

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application under Article 126 of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

S.C. Application No. 258/94

Mathes Hewage Sisira Kumara,
80/8, Peterson Lane, Colombo 6

Petitioner

Vs

2. Police Sergeant Perera (3864) Police
Station. Wellawatta, Colombo 6

3. Police Sergeant Ranjan (4577) Police
Station. Wellawatta, Colombo 6

8. Inspector General of Police, Colombo

9. The Attorney General, Attorney
General's Department, Colombo 12

Respondents

BEFORE: G. P. S. DE SILVA, CJ.,
PERERA, J. AND
SHIRANI BANDARANAYAKE. J.

COUNSEL: Gamini Perera for the petitioner.

L. C. M. Swamadhpathi for the 3rd respondent.

ARGUED ON: December 3rd, 9th, 1997.

DECIDED ON: December 19. 1997.

Fundamental Rights - Article 11 of the Constitution - Assault on a person in police custody .

The petitioner was arrested by the 2nd respondent a police officer and taken to the Wellawatte Police Station, another Police Officer, the 3rd respondent ordered the petitioner to sit on a bench, abused him and struck his face thrice. The medical evidence supported the allegation of assault.

Held:

The assault to which the petitioner was subjected amounted to torture' violative of his rights guaranteed by Article 11 of the Constitution.

Case referred to:

1. *Wijayasiriwardene v. Kumara, Inspector of Police, Kandy and two others* (1998) 2 Sri LR 312.

APPLICATION for relief for infringement of fundamental rights.

December 19. 1997.

SHIRANI BANDARANAYAKE, J.

According to the petitioner, on 10.09.1994, while he was washing his clothes at a public water tap close to his house, one Somapala, had abused him. Later, Somapala had come armed with a knife and a stone and had started chasing the petitioner. The petitioner had gone inside his house and closed the door. He had heard a commotion outside his house, and the petitioner had wanted to go to the Police Station to make an entry. However, his wife prevented him from doing so as Somapala was his neighbour. The same evening around 9.45 p.m. the 2nd respondent took the petitioner to the Wellawatte Police Station. At the Police Station, the 3rd respondent had ordered the petitioner to sit on a bench and while abusing him had hit him hard

thrice, on his face. The petitioner was kept in the cell until 11.09.1994 and around 4 p.m. on the 11th September he was taken to the Magistrate's bungalow and he was told that he could be bailed out on Rs. 1,000 security or would be remanded until 15.09.1994. Thereafter he was taken to the Mahara Remand Prison and on the 12th September he was released on bail. The petitioner was asked to appear before the Magistrate's Court of Mount Lavinia on 15.09.1994 and on the 15th September, the case was postponed to 23.03.1995.

The petitioner claimed that his fundamental rights guaranteed under Articles 11 and 13 (1) of the Constitution were violated by the actions of the respondents. This court granted leave to proceed only in respect of the alleged violation of Article 11 of the Constitution.

The respondents do not dispute the fact that the petitioner was arrested around 9.15 p.m. on 10.09.1994. The 2nd respondent in his affidavit gives the reasons for arresting the petitioner. His position is that while he was on mobile duty, he received instructions from the Police Station to proceed to premises No. 80/9, Peterson Road, Wellawatte immediately as there had been some incident. On his arrival he received information that one Somapala had been assaulted by the petitioner and that the said Somapala had been admitted to the hospital. The petitioner was arrested by the 2nd respondent and was brought to the Police Station where he was detained until he was produced before the Magistrate on the following day. The respondents position is that the 3rd respondent was not involved in the arrest of the petitioner. The petitioner concedes this position. However, the petitioner's complaint is that the 3rd respondent hit him thrice on his face, and this is completely denied by the 3rd respondent.

In support of his contention, the petitioner has produced affidavits, from his wife, S. Priyanthi Fernando (P1) and father-in-law, S. Wilfred Fernando (P2). Both aver that the 3rd respondent hit the petitioner on his face. The 3rd respondent, on the other hand, relies on an affidavit of the Sub Inspector, who recorded the statement of the petitioner (3R1) and he avers that the 3rd respondent did not assault the petitioner as alleged by him.

The petitioner was referred to the Eye Surgeon (P3) and the ENT Surgeon (P4) of the General Hospital by the JMO, Colombo on 16th September 1994. The "history" as given in the medical reports and the observations as set out in the Consultant's reports read thus:

History : Assault in Police custody on 10.09.1994 night. Treated by GP for pain on 13.09.1994. Pain . . . Rt. eye.

Consultant's Report : Traumatic uveitis . . .

History : Assault in Police custody on 10.09.94 night. Treated by GP on 13.09.94 for pain.

c/o noise in the Rt. ear-pain.

Consultant's Report : R/ear drum intact. Mild hearing loss 30db. R/ear joint tender.

Review in 3 weeks.

The 3rd respondent's position is that the medical report does not reveal any serious injuries on the petitioner. I cannot agree. The petitioner's position is that the 3rd respondent hit him on his face thrice and in my view the medical reports (P3 and P4) corroborate the learned Counsel for the 3rd respondent submitted that even if the 3rd respondent hit him thrice on the petitioner's face that would not amount to "torture". The learned Counsel's submission is that 'all acts of assault do not amount to torture just because there is some physical element involved. There must be a minimum level of severity'. In support of his argument he has cited *Wijayasiriwardene v. Kumara, Inspector of Police, Kandy and two others* ⁽¹⁾, where it was held that the use of force does not per se amount to cruel, inhuman or degrading treatment. While agreeing with the view expressed in *Wijayasiriwardene's* case, I cannot agree with the submission that the petitioner's allegation is far short of the required minimum level of severity and therefore does not amount to "torture".

There is no evidence before this Court to show that there was any need for the Police Officers to use 'minimum force' to keep the petitioner under control. According to the material placed before us, the petitioner was taken to the Police Station and he was seated on a bench, when the assault took place. The medical evidence provides strong corroboration of the petitioner's version of the assault.

In the circumstances, I hold that the petitioner has succeeded in

establishing the infringement of his fundamental right guaranteed under Article 11 of the Constitution.

The petitioner in his petition avers that Sergeant Ranjan (3rd respondent) made him sit on the bench in front of the Crimes Division and thereafter hit him hard thrice on his face. This had happened after waiting for 1 1/2 to 2 hours at the Police Station. The petitioner's wife (P1) and father-in-law (P2) who had seen this incident have submitted affidavits to this Court in support of the petitioner's case.

According to the 1B extracts of 10.09.1994, the petitioner was taken into custody at 20.15 hrs. and was handed over to Police Sergeant Chandana Kapila Kumara at 21.35 hrs. Sergeant Chandana Kapila Kumara in his affidavit avers that the 2nd respondent brought the petitioner to the Police Station at about 21 hrs and handed him over at 21.35 hrs (3R2). Accordingly the assault should have taken place between 10.30 - 11.00 p.m. on 10th September 1994. The 3rd respondent avers that on 10.09.1994 he returned to the Police Station at 19.30 hrs and went out on patrol at 23.15 hrs. The 3rd respondent, therefore, was at the Police Station during the time of the assault and the petitioner had identified the 3rd respondent as the person who assaulted him.

On a consideration of the totality of the facts and circumstances of this case I direct the 3rd respondent to pay the petitioner a sum of Rs. 5,000 as compensation and Rs. 1,000 as costs. I also direct the State to pay the petitioner a sum of Rs. 1,000 as compensation.

The Registrar is directed to forward a copy of this judgment to Inspector General of Police.

G. P. S. DE SILVA, CJ. - I agree.

PERERA, J. - I agree.

Relief granted.