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

In the matter of an Application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

S.C. (FR) Application
No. 129/2007

K.H.G. Kushan Indika,
"Dhammika",
Dombagahawatta,
Niyagama,
Talgaswela.
Petitioner

Vs.

1. Christy Leonard Ranjan Wijesekera, Officer-in-Charge, Police Station, Pitigala.

2. J.M. Karunaratne, Superintendent of Police, Office of the Superintendent of Police, Elpitiya.

3. Victor Perera, Inspector General of Police, Police Head Quarters, Colombo 01.

4. Hon. The Attorney-General,
Attorney General's Department,
Colombo 12.
Respondents

BEFORE : Shirani A. Bandaranayake, J.
N.G. Amaratunga, J. &
Chandra Ekanayake, J.

COUNSEL : Sagara Kariyawasam for Petitioner
Upul Kumarapperuma for 1st Respondent
Riyaz Hamza, SSC, for 2nd – 4th Respondents

ARGUED ON: 10.12.2008

WRITTEN SUBMISSIONS

TENDERED ON: Petitioner : 25.06.2009
1st Respondent : 22.01.2009
2nd to 4th Respondents : 29.07.2009

DECIDED ON: 31.08.2009

Shirani A. Bandaranayake, J.

The petitioner, who was a Driver attached to the Sri Lanka State Plantation Corporation, had complained that his fundamental rights guaranteed in terms of Articles 11 and 13(1) of the Constitution were violated by the 1st respondent for which this Court had granted leave to proceed.

The petitioner's complaint, as submitted by him, *albeit* brief, is as follows:

The petitioner had to report for work usually at the Head Office of the Sri Lanka Plantation Corporation situated at Vauxhall Street, Colombo 02 and as he was from Niyagama, Talgaswatta, for his convenience he had been staying with a family known to him at Park Avenue in Colombo 08.
On 30.03.2007 after his work the petitioner had gone to Niyagama as the following Monday was also a holiday and on 02.04.2007, he had left his home at Niyagama to proceed to Colombo on 02.04.2007. He had come to the bus halt at Gallinda Junction around 5.00 p.m. to proceed to Elpitiya from where he could wait for a bus plying to Colombo.

While the petitioner was waiting at the bus stand at Gallinda Junction around 5.10 p.m. a police jeep had arrived at the said bus stand with 4 police officers in civilian clothes with another person, whom the petitioner had subsequently had got to know to be a person taken into police custody, named Wasantha. The 1st respondent had been seated in the front passenger seat of the said police jeep.
At that time the petitioner had been the only male waiting for a bus to proceed to Elpitiya and there had been a few females on the other side of the road waiting for a bus travelling towards the opposite direction. There had been a motorbike stopped near the bus stand, where the petitioner was standing.
The said police jeep had stopped near the petitioner and the 1st respondent had alighted from the jeep and had questioned the petitioner on his identification. When the petitioner gave his driving licence to the 1st respondent, the 1st respondent had given a heavy slap on to his face without accepting his driving licence. The petitioner had realised that the 1st respondent had been under the influence of liquor at that time, as he smelt of liquor.
When the 1st respondent had slapped the petitioner, he had told the 1st respondent that the petitioner had not committed any offence; that he had been waiting there for a bus and was on his way to his

work place, the 1st respondent while stating that there cannot be any kind of work at that time, had again slapped the petitioner several times.

Thereafter the 1st respondent had made inquiries from the petitioner as to the motorbike, which was parked near the bus stand to which the petitioner had stated that it does not belong to him and that he had no knowledge about the said motorbike. The 1st respondent had then stopped an open truck, which was proceeding in the direction of Pitigala Police Station and the 1st respondent had ordered the petitioner to load the motorbike into that truck. Since the said motorbike was too heavy for the petitioner to have moved, he had told the 1st respondent that he could not load the motorbike alone into that truck and that he needs the assistance from another person. At that stage, the 1st respondent had taken out a club from the jeep and had assaulted the petitioner with that club for over four times. Thereafter the 1st respondent had ordered the other person, who was in the jeep to assist the petitioner to load the said motorbike into the truck and the petitioner had loaded the said motorbike with that persons' assistance.

The 1st respondent thereafter had ordered the petitioner to get into the jeep and the petitioner was taken to Pitigala Police Station. Even on his way to the Police Station, the petitioner had attempted to explain to the 1st respondent that he was waiting for a bus to go for work to which the 1st respondent had stated that, "තෝ පොලිසියට යමං මට තෝව වැඩට යවන්න.. The other police officers, who were inside the jeep had told the petitioner not to talk and if he talks he would get into trouble as the 1st respondent was in a bad mood.

When they arrived at the Police Station, the 1st respondent ordered the petitioner to unload the motorbike, which the petitioner did with the assistance of the other persons who were in the jeep. Thereafter the petitioner was put inside the cell around 5.40 p.m. on 02.04.2007. Around 6.30 p.m. the petitioner was taken out of the cell and produced before the 1st respondent, where the 1st respondent has

released the petitioner after scolding and threatening him not to get caught to him again.
The petitioner stated that no statement was recorded from him and he was never informed of the reason for his arrest. The only reason given by the other officers had been that the 1st respondent was in a bad mood.
The petitioner submitted that as a result of the said incident, he could not come to Colombo as planned on 02.04.2007 to report for work on 03.04.2007. Later he had learnt that the motorbike he had to load into a truck and which was brought to the Police Station was claimed by its owner on the same day itself. The petitioner had gone to the office of the Superintendent of Police, Elpitiya on 03.04.2007, to lodge a complaint, but he was unable to do so since the 2nd respondent was not available. Accordingly the petitioner had made a complaint on 07.04.2007 at the Superintendent's office at Elpitiya. Thereafter, the petitioner had learnt that the other person, who was in the police custody at the time the petitioner was assaulted by the name Wasantha, was summoned by the 2nd respondent, where he had made a statement confirming the incident narrated by the petitioner.

The petitioner had accordingly complained of the alleged infringement of his fundamental rights guaranteed in terms of Articles 11 and 13(1) of the Constitution.
An examination of the petitioner's submissions clearly indicates that the petitioner's allegations are only against the 1st respondent and the only relief he had sought from the 2nd respondent was to direct the 2nd respondent to tender the proceedings of the complaint made by him on 07.04.2007, which the 2nd respondent had carried out without any delay.
The 1st respondent had denied the allegations levelled against him by the petitioner and had submitted that he had not assaulted the petitioner and that he had not asked the petitioner to load a motorbike to his jeep. He had averred in his affidavit of 14.08.2008 that on

02.04.2007 he was on routine mobile patrol service in the Thalgaswela area with two other police officers attached to the Pitigala Police Station, namely Sergeant Piyal Shantha and Sergeant Thilak Jayasumana. He had noticed that the petitioner and several other persons were talking at Niyagama/Gallinda Junction. According to the 1st respondent the said junction was well known for robberies and various other illegal and anti-social activities. The 1st respondent had proceeded to the said place with other officers with the intention of questioning the said persons. At that moment except for the petitioner, the others in the said group had started running. The 1st respondent had questioned about the petitioner's identification and the petitioner had failed to produce any document to prove his identity. The 1st respondent had asked the petitioner about the other persons, who had fled when he reached that place and the petitioner had failed to divulge any information. Since the 1st respondent had a serious doubt about the petitioner, he had brought him to the Police Station for further investigations after explaining the reasons for bringing him to the Police Station.
Soon after the petitioner was brought to the Police Station, one Padmasiri Block, who was a member of the Nagoda Predesheeya Sabha came to meet the 1st respondent and had informed that the petitioner was a strong supporter of one Ananda Padmasiri Kariyawasam, who was a politician in the area and had requested the 1st respondent to release the petitioner without taking further action. The said Padmasiri Block had further informed the 1st respondent that the petitioner is his cousin and a person of good character.

The 1st respondent had then informed the said Padmasiri Block that the petitioner was brought to the Police Station to question about his suspicious behaviour as there had been complaints from the Manager of the Bank of Ceylon, to the effect that female employees of the Bank had been subjected to various humiliations by a group of people, who had been usually loitering in the said area and that an armed robbery

had also taken place at the said area and that a case on that matter was pending before Court.
The 1st respondent had further averred that, after accepting the said Padmasiri Block's recommendation regarding the petitioner, he had released the petitioner after advising him not to behave in a suspicious manner.
The 1st respondent in support of his contention had tendered an affidavit from the Manager, Bank of Ceylon, Thalgaswela (1R-3C) dated 10.02.2007 that there were persons loitering near Gallinda Junction, who have been passing remarks to lady officers of the Bank when they were on their way either for work or returning home after work.
It is not disputed that the 1st respondent had arrested the petitioner near the Niyagama/Gallinda Junction. The 1st respondent's contention was that since the area in question had a reputation as a place where unlawful activities had taken place, and the petitioner had not been able to prove his identity and had failed to give information about the other persons, who had fled at the time the 1st respondent had stopped near the Niyagama/Gallinda Junction, the petitioner was arrested. The petitioner on the other hand submitted that he had been waiting for a bus to proceed to Colombo and when the 1st respondent had inquired about his identity the petitioner had taken out his Driving Licence, which was not accepted by the 1st respondent.
Admittedly the petitioner was an employee of the Sri Lanka State Plantation Corporation and had been working as a driver. The arrest took place on 02.04.2007 around 5.00 p.m., which was a holiday on account of Full Moon Poya Day. The petitioner's version was that since he had to report for duty on the next morning, viz., on 03.04.2007, that he left his home on the evening of 02.04.2007 to proceed to Colombo.

The 1st respondent had admitted that he had arrested the petitioner and had taken him to the Police Station, Pitigala. He had also averred in his affidavit that such arrest had been on suspicion. However, it is not disputed that the 1st respondent had not recorded a statement from

the petitioner. Further, the petitioner had complained that the 1st respondent had assaulted him. The 1st respondent had not produced the petitioner before the Judicial Medical Officer and therefore no medico-legal Report was available regarding his injuries.
The relevant IB extract of 02.04.2007 stated that several people, who were loitering at the Niyagama Junction were dispersed and two persons, who were taken to the Police Station were released due to the intervention of a member of the Pradesheeya Sabha.
,නියාගමල මානම්පිටල බඹරවානල පෝද්දිවෙලල යන ප්‍රදේශ සංචාරය කලාග නියාගම හන්දියේදී නිකරුනේ ගැවසුනු පුද්ගලයන් කීපදෙනෙක් විසුරුවා හරින ලදීග මෙම අවස්ථාවේදී ප්‍රාදේශීය සභා මන්ත්‍රී බ්ලොක් මන්ත්‍රීතුමා ස්ථානයට පැමින කරුණු දැන්වීමෙන් අනතුරුව මෙම රැගෙන ආ දෙදෙනකු අවවාද කර පිටත්කර හරින ලදී. :සෘ1-ග
However, it is to be noted that although, the 1st respondent had filed the two affidavits (R2 and R3) from the two officers who had accompanied him on 02.04.2007 in support of his version, both affidavits refer to the fact that the petitioner had been waiting at the bus halt at Niyagama/Gallinda Junction. Moreover, these two affidavits support the version given by the petitioner that there was no one near the bus halt at that time. For instance, in his affidavit Sergeant H.H. Tilak Jayasumana had averred that,
“On 02.04.2007, while engaged in mobile police patrol, a person, who was loitering suspiciously at the Gallinda bus halt attracted our attention and on being suspicious of his behaviour, on the instructions of the first respondent, we took him into custody and took him to the police station.”
The aforementioned averments clearly indicate that the contention of the 1st respondent was that the petitioner was arrested due to his suspicious behaviour whilst he was waiting at the bus halt near Niyagama/Gallinda Junction.

The petitioner had alleged that no reason was given by the 1st respondent for his arrest and that he was arrested without following the procedure established by law and therefore had violated his

fundamental right guaranteed in terms of Article 13(1) of the Constitution.

Article 13(1) of the Constitution, which deals with freedom from arbitrary arrest states that,

"No person shall be arrested except according to procedure established by law. Any person shall be informed of the reason for his arrest."

The provisions of Article 13(1) thus clearly indicate that the said Article contains two important limbs, viz., the arrest according to procedure established by law and giving reason for arrest. Since the petitioner had complained of both limbs under Article 13(1) of the Constitution, let me now turn to consider them separately.

It is not disputed that the 1st respondent had arrested the petitioner around 5.00 p.m. on 02.04.2007 near Niyagama/Gallinda Junction. Therefore the question, which arises at this point is whether the petitioner was arrested according to the procedure established by law, as Article 13(1) of the Constitution clearly provides that "No person shall be arrested except according to procedure established by law". The petitioner was arrested admittedly by the 1st respondent and the arrest was carried out without a warrant. Section 32 of the Code of Criminal Procedure Act, No. 15 of 1979 deals with arrest without a warrant and Section 32(1) b refers to a situation, where a person is arrested on suspicion. The said Section 32(1) b reads as follows:

"32(1) Any peace officer may without an order from a Magistrate and without a warrant arrest any person –

a. . . . .

b. who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned,"

The contention of the 1st respondent was that he had arrested the petitioner on suspicion at a time he was standing at a bus halt near Niyagama/Gallinda Junction. Section 32(1)b of the Criminal Procedure

Code Act, no doubt provides for a peace officer to arrest a person on the basis of suspicion, but the said Section quite clearly states that there should be the existence of a 'reasonable suspicion'. Considering the circumstances of this application, the question that arises would be as to whether there was a reasonable suspicion on the behaviour of the petitioner at the time he was waiting for a bus at Niyagama/Gallinda Junction, on 02.04.2007.

In **Pelawattage (AAL) for Piyasena** v **OIC Wadduwa and others** (S.C. (Application) 433/93 – S.C. Minutes of 31.08.1994), the petitioner was arrested near a hotel in Kurunegala as he was unable to explain his presence at that place. He had been a person, who was 'wanted' in connection with offences committed previously. Kulatunga, J., whilst holding that such an arrest was violative of Article 13(1) of the Constitution, had stated that,

"If Piyasena was a wanted man in respect of offences committed in 1990 and 1992, and the 2nd respondent had information that Piyasena was at Kurunegala, there was nothing to prevent the 2nd respondent obtaining a warrant for his arrest. To permit extra-judicial arrests would be detrimental to liberty. Interested parties can get involved in such exercises. It would also encourage torture in the secrecy of illegal detention. We cannot encourage illegality to help the police to apprehend criminals. The end does not justify the means."

In **Gamlath** v **Neville Silva and others** ([1991] 2 Sri L.R. 267) the petitioner was arrested on suspicion of a theft of a water pump from an estate. The estate was owned by the wife of a Superintendent of Police. The watcher of the said estate could not name a suspect and a Police Sergeant, who was known to the owner, named one Dharmadasa as a suspect as he was working in this estate and had been arrested by the police previously for theft of similar articles. On this material Dharmadasa was arrested. Within 15 minutes from his arrest he was said to have confessed to the offence and the disposal of the water pump. He had also referred to one Kirthipala, who had assisted him to sell the water pump. On this statement Kirthipala was arrested who

had confessed within 10 minutes of his arrest of the involvement of the petitioner. On this statement, the petitioner was arrested, but the stolen article was not recovered.

On a complaint by the petitioner with regard to the violation of his fundamental right guaranteed in terms of Article 13(1) of the Constitution, Kulatunga, J., held that the said right had been violated. It was further stated that,

". . . there is no credible information giving rise to a reasonable suspicion that the petitioner is concerned in the offence of dishonestly receiving stolen property. It was an arbitrary arrest particularly having regard to the background to the case, viz., the water pump which was lost belongs to the wife of a senior Police Officer and the initial information which led to the petitioner's arrest was given by a subordinate Police Officer. The information, even if it has any value, does not touch the petitioner."

It is therefore apparent that although provision had been made under the Code of Criminal Procedure Act for a peace officer to arrest a person, such a peace officer is not entitled to arrest a person on mere suspicion, except on grounds, which justify the entertainment of a reasonable suspicion.

In **Muttusamy** v **Kannangara** ((1951) 52 N.L.R. 324), referring to the entertainment of a reasonable suspicion by a Police Officer, Gratiaen, J., citing the decision in **McArdle** v **Egan** ((1933) 30 Cox G.C. 67) stated that,

"A suspicion is proved to be reasonable if the facts disclose that it was 'founded on matters within the police officer's own knowledge or on statements by other persons in a way which justify him in giving them credit'."

A similar view was taken in **Veeradas** v **Controller of Immigration and Emigration and others** ([1989] 2 Sri L.R. 205), where it was clearly stated that for a peace officer to make an arrest of a person in terms of Section 32(1)(b) of the Code of Criminal Procedure Act, it is necessary

for there to be a reasonable suspicion of such person committing the offence in question.

It is therefore abundantly clear that although a person could be arrested without a warrant in terms of Section 32(1)(b) of the Code of Criminal Procedure Act, for such action to be taken it is necessary that there should be a reasonable suspicion that such person had committed the offence in issue.

Accordingly, the question which arises at this juncture is whether there was a reasonable suspicion of the petitioner at the time he was arrested by the 1st respondent.

The contention of the 1st respondent was that he had received complaints from the Manager of the Bank of Ceylon, Thalgaswela Branch that some of the female employees of the Bank had been harassed. The said complaint was made in February 2007 and the incident pertaining to this application took place in April 2007. According to the 1st respondent, while he was on mobile duty he had seen several people near Niyagama/Gallinda Junction who had started running when the vehicle he was travelling approached the said junction. The 1st respondent had averred in his affidavit that all the persons in the said group except for the petitioner, had started running from the scene. Thereafter the 1st respondent had inquired from the petitioner about the other persons, who had fled from that place to which the petitioner had not been able to divulge any information. The 1st respondent had further stated that the petitioner had been unable to produce any document to prove his identity.

The petitioner's version is quite different to the aforementioned. According to him he was the only person, who had been at the bus halt at the time in question. The two affidavits filed by the two sergeants on the other hand is supportive of the version given by the petitioner and both of them had averred that only the petitioner had been at the bus halt near Niyagama/Gallinda Junction. Learned Counsel for the 1st respondent submitted that the petitioner had not been able to produce any identification. However, when the 1st respondent had asked for his

identification, the petitioner had immediately handed over his Driving Licence. The question that arises at this juncture therefore, is as to whether it is mandatory to produce the National Identity Card as the only means of identification.

There is no doubt that the best method of identification of a person would be to produce the National Identity Card issued by the Commissioner for the Registration of Persons. As correctly pointed out by the learned Senior State Counsel for the 2nd to 4th respondents that there are no provisions in the Registration of Persons Act, No. 32 of 1968 requiring or stipulating that the National Identity Card of a person is the only method by which a person has to prove his identity. Section 15(1) of the Act, which deals with the production of an identity card states thus:

"The holder of an identity card shall, on a request made by the Commissioner or any other prescribed officer, produce that card at such time and place as shall be specified in such request and permit it to be inspected."

The proviso to the aforementioned Section clearly states that no person shall be deemed to have contravened provision contained in Section 15(1), if his identity card had at the time of alleged contravention been lost and he has complied with the provisions of Section 16(1) of the Act. Section 16(1) of the Act deals with the issue of a duplicate identity card in case of loss of the original.

It is therefore quite evident that the National Identity Card of a person is not the only method by which a person could prove his identity.

On a consideration of all the aforementioned facts and circumstances it is thus apparent that the 1st respondent could not have reasonably suspected the petitioner of having been concerned with an offence.

The 1st respondent had also contended that he brought the petitioner to the Police Station as he had a 'serious doubt' about the petitioner. However, he had not described as to the kind of suspicion, which had made him to arrest the petitioner. The petitioner had submitted that he was not informed of any reason for his arrest.

In terms of Article 13(1) of the Constitution a person arrested should be informed of the reason for his arrest and this is a salutary requirement. In **Muttusamy** v **Kannangara** (supra) Gratiaen J. had emphasised the need to inform the suspect of the nature of the charge upon which he is arrested and had stated that,

"A *fortiori* whenever a police officer arrests a person on suspicion without a warrant 'common justice and commonsense' require that he should inform the suspect of the nature of the charge upon which he is arrested. This principle has been laid down in no uncertain terms by the House of Lords in **Christie** v **Leachinsky** and it is indeed very much to be desired that the following general propositions enunciated by Lord Chancellor Simon should be borne in mind by all police officers in this country:-

1) If a police officer arrests without warrant upon reasonable suspicion, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself, or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized;

2) If a citizen is not so informed, but is nevertheless seized, the police man, apart from certain exceptions, is liable for false imprisonment."

Although the 1st respondent had stated that he had informed the reason of his arrest to the petitioner, there is no material to substantiate this position. It is also to be borne in mind that the 1st respondent had not taken steps to record a statement from the petitioner. Moreover, the petitioner was released within a period of 2 hours from the time of his arrest.

It is my considered view, that a mere statement by a Police Officer that the reasons were informed would not be sufficient to satisfy the provisions in Article 13(1) of the Constitution. A citizen has the right to

know the reasons for his arrest and it is the duty of a Police Officer in ordinary circumstances to inform the person the true reason for his arrest.

Considering the totality of the aforementioned facts and circumstances it is quite apparent that the petitioner had not committed any offence. It is also clearly evident that the petitioner was not arrested according to the procedure established by law, that he was not informed of the reason for his arrest and therefore the decision to arrest the petitioner was arbitrary.

Accordingly I hold that the petitioner's fundamental rights guaranteed in terms of Article 13(1) of the Constitution had been violated by the 1st respondent.

The petitioner alleged that the 1st respondent had slapped him near the Niyagama/Gallinda Junction. He has also stated that at that time in addition to the 1st respondent there had been the two sergeants, who had accompanied the 1st respondent and one Wasantha inside the jeep. However, except for the version given by the petitioner in his petition and affidavit he had not tendered any affidavits and/or documents in support of his version.

The petitioner had however referred to the inquiry proceedings of the complaint made by him to the 2nd respondent on 07.04.2007. In that report it is stated that on the basis of the complaint made by the petitioner, he had been examined by the District Medical Officer of the Elpitiya hospital and the observations had been recorded. The relevant portion of the 2nd respondent's report reads as follows:

"මා විසින් මෙම පැමිණිලිකරු කුෂාන් ඉන්දික ඇල්පිටිය රජයේ රෝහලේ රෝහල් පත් අංක 145/07ල යටතේ ඇල්පිටිය රෝහලේ දිස්ත්‍රික් වෛද්‍ය නිළධාරී එදිරිසිංහ මහතා වෙත 2007ග04ග07 වන දින ඉදිරිපත් කළෙමිග එහි අපවර්ථනල මොට්ටල බරපතල නොවනල බීමත්ව නැති බවට සඳහන් කර ඇතග එය මෙහි පිටු අංක 08 ලෙස යා කර ඉදිරිපත් කරමිග ඉහත වෛද්‍ය වාර්ථාව අනුව පැමිණිලිකරු කුෂාන් ඉන්දික යන අයට පහර දීමක් වී ඇති බවට සඳහන් කර ඇතග එම අයගේ ප්‍රකාශය හා වසන්තගේ ප්‍රකාශය අනුව ස්ථානාධිපති පහර දුන් බව කියා සිටියිග ආනන්ද පත්මසිරී මහතාගේ ප්‍රකාශය අනුව ඉන්දික පොලීසියට ගෙන ගොස් ඇතග පොලීසියට රැගෙන ගිය මොහුගේ ප්‍රකාශයක් ද ගෙන නැතග මොහුට පහර දුන්නේ නම් ස්ථානයට ඉදිරිපත් කර අධිකරණ වෛද්‍ය වාර්ථාවක් මගින් වෛද්‍ය වරයෙකුට ඉදිරිපත්

කර වෙයි වාර්ථාවක් ලබා ගැනීමට තිබුනිග එසේ කර නැතග ස්ථානාධිපති සමග ගිය පොලිස් සැරයන් වරයා සටහන් ද යොදා නැතග ස්ථානාධිපති වරයකු වශයෙන් මීට වඩා වගකීමකින් යුතුව වැඩ කල යුතුයග (2 ව 11),

In response to this report the Senior Superintendent of Police Elpitiya had forwarded his observations to the Deputy Inspector-General of Police, Southern Division, where he had clearly stated that disciplinary action should be taken on the officer on the following charges:

,1ග කේග එවිග පීග කුෂාන් ඉන්දික යන අයට අතින් හා පොල්ලකින් පහර දීමත 2ග චෝදනාවක් නොමැතිව අත් අඩංගුවට ගෙන පොලිස් ස්ථානයට ඉදිරිපත් නොකොට කුඩුවේ රඳවා තබා ගැනීමත 3ග 2007ග04ග02 දින කේග එවිග පීග ඉන්දික හා කේග ටීග වසන්ත යන දෙදෙනා අත් අඩංගුවට ගැනීම හා පොලිස් ස්ථානයට රැගෙන ඒම පිළිබඳව කිසිඳු සටහනක් නොයෙදීම (2 ව 12)ග

In response to the observations and recommendations of the Senior Superintendent of Police, Elpitiya the Deputy Inspector–General of the Southern Division by his letter dated 05.06.2007 (2 j 13), had decided to severely warn the 1st respondent, instead of holding a disciplinary inquiry after issuing a charge sheet.

Article 11 of the Constitution provides that 'no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. A long line of cases of this Court had decided that Article 11 of the Constitution, which is an absolute fundamental right, is a constitutional safeguard to prohibit persons being subjected to torture or to cruel, inhuman or degrading treatment.

Considering the contents of Article 11, in **W.D.K. de Silva** v **Ceylon Fertilizer Corporation** ([1989] 2 Sri L.R. 393), Jameel, J., was of the view that, ill- treatment, *per se*, whether physical or mental was not enough as a very high degree of mal-treatment was required for in infringement of Article 11 of the Constitution. However, it is noteworthy to refer to the decision by Amerasinghe, J., in **W.D.K. de Silva**, (supra), where it was stated, referring to inhuman treatment, that,

"I am of the opinion that the torture or cruel, inhuman or degrading treatment or punishment contemplated in Article 11 of our

Constitution is not confined to the realm of physical violence. It would embrace the sphere of the soul or mind as well . . . .
Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom I shall refer to as 'the victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office . . . ."
Considering the circumstances of this application, although the injuries inflicted on the petitioner may belong to the category of 'non-grievous', nonetheless, it is to be noted that, the petitioner was assaulted, he was taken to the Police Station in the police jeep, kept him in the Police Station for over 1 ½ hours for no apparent reason and thereafter had released him even without recording his statement. All these actions of the 1st respondent lead to one simple question as to the reasons for the decision of the 1st respondent to have brought the petitioner to the Pitigala Police Station. By the said action of the 1st respondent, it is also to be noted that the petitioner was deprived of reporting for duty on the next morning in Colombo.
Accordingly the physical assault combined with the actions of the 1st respondent, when taken together were capable of humiliating the petitioner for no fault of his and I therefore hold that the 1st respondent had violated the petitioner's fundamental right guaranteed under Article 11 of the Constitution by the subjection of the petitioner to degrading treatment.
For the reasons aforementioned I hold that the 1st respondent had violated the petitioner's fundamental rights guaranteed in terms of Articles 11 and 13(1) of the Constitution. The 1st respondent is directed to pay personally to the petitioner a sum of Rs. 50,000/- as compensation and costs. This amount to be paid within three (3) months from today.
The Registrar of the Supreme Court is directed to send a copy of this Judgment to the Inspector-General of Police.

Judge of the Supreme Court
N.G. Amaratunga, J.
I agree.
Judge of the Supreme Court
Chandra Ekanayake, J.
I agree.
Judge of the Supreme Court