

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

In the matter of an application in Terms of Articles 126 (2) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

SC Application No. 158/1988

Subramaniam Ragunathan of 12 Newnham
Square, Kochchikade, Colombo 13.

Petitioner

Vs

1. M. Thuraisingham, Inspector of Police,
Officer in Charge, Criminal Detection Branch,
Police Station, Kirillapone.

2. The Attorney General, Colombo 12.

Respondents

BEFORE: ATHUKORALE J, FERNANDO J AND KULATUNGA J.

COUNSEL: C.V. Vivekananthan with S. Perimpanayagam K.
Packiyalingam, Ms. K. Rajaratnam and Mrs G.
Thevarajah for the petitioner.

K.V. Mahendran with A. Chinniah and K. Jayakrishnan for
the 1st respondent

A.R.N. Fernando SSC for the 2nd respondent.

ARGUED ON: 24th and 26th July 1989

DECIDED ON: 23rd August 1989.

Fernando J.

The 1st respondent, an Inspector of Police who was then the Officer in Charge of the Criminal Detection Branch of the Kirillapone Police arrested one Shiran at 4.00 am on 4.8.88, in a statement recorded at 9.15 am Shiran admitted several robberies and gave information as to the disposal of the stolen articles. One such robbery was of a thalikody, stolen the previous afternoon which he said he had pawned at Maradana, the 1st respondent took him to that pawn shop and recovered the thalikody, at about 10.00 am. Another robbery was of three gold bangles and some items of jewellery, stolen in June, he said that he had sold one bangle to a doctor in Maradana, through one George and the other two bangles and some jewellery at a shop at Sea Street. The 1st respondent took Shiran to Sea Street where he pointed out a shop, but before the 1st respondent could enter he stated that this was not the shop, he then indicated another shop and again changed his mind. Finally, he identified 'Sangeetha Jewellers' of 129, Sea Street, as the place, at or about noon the 1st respondent entered the premises and Shiran pointed out the petitioner as being the person to whom he had sold the bangles. The petitioner denies that Shiran ever came, or that anyone purported to identify him in that manner. In reply to the 1st respondent's question the petitioner stated that the business of 'Sangeetha Jewellers' had been closed, that the owners were not there and that he himself was carrying on a business only in gems, and not in jewellery and that too in a portion of the premises, a pawn broking business was being carried on in another part of the premises. The 1st respondent was not satisfied with the petitioner's replies, and alleged that he had purchased stolen jewellery and then according to the petitioner, demanded that he should hand over three gold bangles. The petitioner refused whereupon the 1st respondent arrested him and asked him to get into the police jeep, when the petitioner refused, the 1st respondent slapped him, compelled him to get into the jeep and took him to the Kirillapone Police Station.

Learned Counsel for the petitioner submitted that the arrest was in violation of Article 13(1), that he had not been informed of the reason for the arrest and also that the 1st respondent knew that he was not involved in the commission of the offence. The first of these contentions is clearly untenable, although numerous letters were written by the petitioner and his wife (to the 1st respondent, the Officer in Charge of the Kirillapone Police and to the Inspector General of Police) within a few days this allegation was not made in any of these letters. These letters as well as the petitioner's affidavit, indicate that prior to the arrest the 1st respondent alleged that the petitioner had purchased stolen jewellery, I therefore accept the 1st respondent's statement that he did not inform the petitioner of the reason for arrest.

From what transpired on 5.8.88, it is now quite clear that the petitioner was not involved in any way in the receipt or retention of the jewellery stolen by Shiran. However the 1st respondent had information that gave rise to a suspicion that the petitioner had been concerned in such an offence, was that a 'reasonable suspicion', Learned Counsel for the petitioner submitted that Shiran was a drug addict, in possession of heroin when arrested, and hence should not have been regarded as credible. Even if that were the case initially, at 10.00 am a similar suspicion in regard to the thalikodyned out to be well founded, thus when the 1st respondent came to Sea Street, he was justified in treating Shiran's statement as worthy and credit. Having regard to Shiran's vacillation at Sea Street, as to which shop it was, it appears intrinsically probable that he would have asked Shiran to identify the buyer of the stole property and Shiran may have done this without being noticed by the petitioner. However, even if I were to assume that Shiran did not identify the..... In this way, he certainly did identify the shop. I hold that 1st respondent had a 'reasonable suspicion' and even 'credible information' within the meaning of section 32 (1) (b) of the Code of Criminal Procedure Act that the petitioner was concerned in an offence when he arrested the petitioner. The petitioner has failed to establish any violation of Article 13(1).

For six or seven hours from 1.00 pm to 8.00 pm the petitioner was at the Kirillapone Police Station and upon his release was taken to a

private hospital from which he was discharged on 13.8.88. Although no medical evidence of any kind has been produced the diagnose card issued to him upon his discharge from hospital indicates that his left ear drum had been ruptured and that he had a contusion on the left side of his chest. It was not suggested that these injuries had been sustained before he was taken into police custody and since no other reasonable explanation has been suggested for this injuries the petitioner's version they were caused by an assault while in police custody has necessarily to be accepted. **What is not so clear is, who was actually responsible for such assault.**

According to the petitioner, he was repeatedly hit on the face, chest, and ears by the 1st respondent and then by the 1st respondent together with the three constables who have not been identified. Initially the 1st respondent hit him several times asking him to admit the purchase of the bangles he refused and informed the 1st respondent that he had been operated six months ago presumably hoping that more sympathetic treatment. The 1st respondent's response was that he would perform many operations on the petitioner, unless the latter admitted the purchase of the bangles and hand them over. It was at this stage that he invited the constables to join then the petitioner fell but the assault continued until the petitioner began to vomit blood and to bleed from the mouth. At this stage one Namasivayam also a businessman from Sea Street pleaded with the 1st respondent not to assault the petitioner and undertook to purchase some bangles and hand them over to the 1st respondent. The assaults ceased and the petitioner was put into the cell. Namasivayam visited the owner of the stolen bangles, ascertained the design and purchased three bangles of that design for Rs. 18,000/-. At 6.30 pm he gave these bangles to the 1st respondent, the petitioner was then produced before the officer in charge, Lugoda, to whom he explained everything, Lugoda directed the 1st respondent to release the petitioner and advised him to take medical treatment. The 1st respondent warned the petitioner not to disclose that he had been assaulted, threatening dire consequences if he did so. Through fear, the

petitioner kept silent, informing the nurse at the hospital that the injuries had been sustained as a result of a fall, it was only when the pain in his ear became acute that he disclosed the truth to a specialist who examined him but the petitioner has not named this specialist or obtained a medical certificate from him.

Three letters were written by the petitioner's wife on 10.8.88 and 12.8.88 to the 1st respondent and to Lugoda, after his discharge from hospital, the petitioner wrote three letters to the Inspector General of Police between 15.8.88 and 19.8.88 as well as one letter to Lugoda. The Jewellers and Pawn Brokers Association of Sri Lanka also wrote to the Inspector General of Police. The averments in the petition are supported by the statements in these letters. The receipt of these letters is admitted and no explanation has been given in the counter affidavits for the failure to reply or to deny the serious allegations therein. Learned Counsel for the 1st respondent submitted that during the relevant period Police Officers were working long hours and under great stress and **did not have time to deal with correspondences** as far as the 1st respondent was concerned he submitted the matter was closed with the release of the petitioner on the 4th evening and it was **unnecessary for him to reply**. Such explanations should have been set out in the affidavits and I can only hope as did Gratiaen J. in *Wijesekera V Principal Collector of Customs* (53 NLR 329, 333) ' that it will never be suggested that public officers need not observe the same high standard which is expected from ordinary citizens with regard to the duty to attend promptly to official or business correspondence'.

It is common ground that on 5.8.88 one Nagaratnam, the doctor referred to in Shiran's statement was traced; he admitted the purchase of two bangles through George. According to Nagaratnam his statement was not correctly recorded as the 1st respondent insisted that he should admit the purchase of three bangles and that he had handed them to the police on 5.8.88. In fact he says he was forced to accept the 1st respondent's suggestion to treat the three bangles handed over by Namasivayam as having been handed over by him, and to pay Namasivayam Rs. 18,100/-. The two bangles he had bought were in Jaffna, he brought these two bangles and

purchased another bangle and handed all three to the 1st respondent on 8.8.88 he then told Namasivayam to collect his three bangles from the 1st respondent (in lieu of payment of Rs. 18,100/-). Although the 1st respondent denies this, Nagaratnam's version appears more probable there is no suggestion in Shiran's statement that more than one bangle was sold to Nagaratnam, Nagaratnam himself admits the purchase of two bangles from George, two of the bangle stolen by Shiran were sold at Sea Street, and not at Maradana. Why should Nagaratnam admit the purchase of or hand over three bangles? It appears far more likely that Namasivayam did buy and hand over three bangles on 4.8.88 no record was maintained of this transaction, on 5.8.88 the petitioner's innocence was confirmed, upon Nagaratnam agreeing to hand over three bangles, the case relating to the robbery of three bangles was 'solved' and the property recovered.

Learned Senior State Counsel appearing for the Attorney General submitted that the petitioner's complain was belated and hence not worthy of credit, that the incident had been exaggerated that the complain had really been made in consequence of the 1st respondent's failure to return the bangles and was thereafter pursued at the instance of the Jewellers and Pawn Brokers Association. It is the petitioner's case that the 1st respondent refused to hand over the bangles on 10.8.88 to Namasivayam wanting the petitioner to be brought to the police station, the petitioner's wife feared a further assault if he went to the police station and wrote to the 1st respondent and Lugoda pleading for the return of the bangles. On 15.8.88 she went to the police station with several others but not the petitioner and she says at the instance of Lugoda the bangles were returned. The 1st respondent denies that Namasivayam handed over any bangles and everything connected with the return of those bangles and it is submitted on his behalf that this is a complete fabrication. There is no particular reason for Namasivayam to have connected this story his only connection with the petitioner is that he is a fellow trader at Sea Street. Nagaratnam has no such link with either Namasivayam or the petitioner. Namasivayam has produced the receipt for the purchase of three bangles on 4.8.88 and there is no reason to think that this is a fabrication. Further the details of this incident are set out in the letters referred to earlier and in the absence

of a convincing explanation for the failure to reply to these letters I am satisfied that Namasivayam's version is the truth. Thus it is clear that the petitioner was subjected to an assault while he was in police custody but there is substance in Learned Senior State Counsel's submission that the incident had been exaggerated and that the 1st respondent had been implicated only belated upon his refusal to return the bangles.

Did the assault amount to cruel, inhuman or degrading punishment? If the petitioner did suffer a serious assault while in police custody one can well believe that he kept silent through fear, fear which was reinforced by the 1st respondent's threat at the time of release. His silence until 10.8.88 when the petitioner's wife referred to this assault in her letter to the 1st respondent – does it in any way negative the fact of such assault. However the petitioner has failed to obtain and produce any medical or other evidence as to the nature and extent of the injuries suffered by him. Such obviously must have been recorded in some document upon admission to hospital. Had he been subjected to a sustained assault by several police officers or even by the 1st respondent alone in the manner described by the petitioner (there having been no attempt to prevent visible signs of injury), inevitably there would have been several more injuries and more serious injuries than are referred to in the diagnosis card. Learned Senior State Counsel's submission that the whole incident would have been over if the bangles had been returned on 10.8.88 appears to be justified. It was only upon the 1st respondent's refusal to return the bangles unless the petitioner came personally, that reference was first made to a serious assault, in a letter written the same day and only then that the 1st respondent was identified as being the principal assailant. In these circumstances I am satisfied that although the petitioner was assaulted on 4.8.88 such assault was not as extensive as claimed by him, and that the petitioner has failed to establish the complicity of the 1st respondent in that assault. The two injuries sustained by the petitioner are consistent with a blow on the ear and another on the chest; no weapons are alleged to have been used. There is no doubt that violence had been illegally used on the petitioner and he would have been entitled to maintain an action for damage, in delict, in respect of the assault and the infliction of bodily harm. Further these were

not blows struck in the course of a struggle or in response to an attack or some other provocation. The petitioner pleaded that he was sick, he was in custody and alone, the treatment he received was such as to impel Namasivayam to spend Rs. 18,000/- on the purchase of bangles. In these circumstances I hold that the assault allowing for some degree of exaggeration by the petitioner, displayed elements of indifference if not pleasure in causing pain and suffering of intentional humiliation and of brutal and unfeeling conduct and was therefore in violation of Article 11. Although there is grave suspicion as to the 1st respondent's role I am not satisfied that he was responsible for such treatment.

I therefore hold that the petitioner's fundamental rights under article 11 have been violated while he was in police custody, the absence of evidence as to the nature of the injuries the medical ...penses involved and the consequential disabilities or suffering I could award Rs 2,500/- as compensation, together with a sum of Rs 1,500/- as costs.

The complaints made to the Inspector General of Police by the petitioner resulted in an inquiry by a Superintendent of Police according to the petitioner's counter affidavit. The 1st respondent in a further affidavit has denied this. I therefore direct the 2nd respondent, the Attorney General as representing the State and the Inspector General of Police to submit a report to this Court within three months as to the persons responsible for the assault on the petitioner on 4.8.88 and the action taken or proposed to be taken against such persons, I further direct that this case be called on 16.1.90 before a bench while include at least one of the members of this bench, to consider such report and to make such further orders and directions relating thereto as may be considered appropriate.

JUDGE OF THE SUPREME COURT

Athukorale J

I agree

JUDGE OF THE SUPREME COURT

Kulatunga J

I agree

JUDGE OF THE SUPREME COURT