

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

In the matter of an application
under Article 126 of the
Constitution

A.J. Hiran Priyankara,
Palugaswawayaya, Kottukachchiya.

Petitioner

SC APPLICATION NO 214/96 (SPL)

Vs.

1. PC Sisira Kumara, Police Station,
Puttalam
2. PC Anura, Police Station, Puttalam
3. E. Jayasuriya, Headquarters
Inspector, Police Station, Puttalam
4. W.P. Rajaguru, IGP, Police
Headquarters, Colombo 1
5. Hon. Attorney General, Attorney
General's Department, Colombo 12

Respondents

**BEFORE: G. P. S. DE SILVA, CJ WADUGODAPITIYA, J. AND
PERERA, J.**

COUNSEL: Kithsiri Jayalath for the petitioner.

Ms. Chandrika Morawaka for the 1st respondent.

M. Y. M. Faiz for the 2nd respondent.

D. S. Wijesinghe PC with T C. Weliamune and Ms. A. 8. D. Dharmadasa
for the 3rd respondent.

ARGUED ON: 21.05.1998

DECIDED ON: 01.09.1998

MAY 21, 1998

Fundamental rights - Unlawful arrest and detention - Assault by Police Officers - Articles 11, 13 (1) and 13 (2) of the Constitution.

The petitioner was travelling in a Puttalam bound bus when a passenger boarded the bus with a lighted cigarette. When the conductor of the bus attempted to stop the smoking, the passenger retaliated by using obscene language. At that stage the petitioner intervened. Then also the passenger retaliated by using obscene language. When the bus reached the Puttalam bus stand the passenger challenged the petitioner. The petitioner attempted to escape but the passenger assaulted the petitioner repeatedly. Thereafter, the petitioner visited the Puttalam Police Station and complained to the OIC, the 3rd respondent who arranged to have the petitioner's complaint recorded. At that stage it was found that the passenger who assaulted the petitioner was the 1st respondent police officer. Whereupon, the 3rd respondent assaulted the petitioner and directed a Police Officer to lock him up, in a cell, which was done. Thereafter the petitioner was removed from the cell when the 2nd respondent, a police constable also assaulted him. Consequently, the petitioner was hospitalised where he was treated for his injuries.

Held:

The petitioner's rights under Articles 11, 13 (1) and 13 (2) of the Constitution were infringed by the 1st, 2nd and 3rd respondents.

Per Perera, J.

"I trust that I will be failing in my duty in this case if I fail to alert the Inspector-General of Police to the urgent necessity to give appropriate instructions to Officers-in-charge of Police Stations in regard to the manner, the care and courtesy which private persons having legitimate business in Police Stations are entitled to receive at the hands of the Police with a view to ensuring that incidents such as this would not recur in the future".

APPLICATION for relief for infringement of fundamental rights.

September 1, 1998

PERERA, J.

The petitioner in this case was at the relevant time attached to the Alcohol & Drug Information Centre at Anamaduwa. He was working in a voluntary capacity as a Co-ordinating Officer.

By his petition under Article 126 of the Constitution, the petitioner complains that on the 15th of October, 1996, he boarded a bus at the Kalladiya junction to go to Puttalam. This bus was overcrowded, at that stage. A passenger who appeared to have consumed liquor boarded this bus with a lighted cigarette in his hand. The conductor of the bus had requested this passenger not to smoke in the bus and the latter had responded by using obscene language on the conductor and had continued to smoke the cigarette very much to the discomfort of the other passengers.

At this stage, the petitioner had intervened and requested this passenger to put out his cigarette. The passenger concerned had then retaliated by using obscene language on the petitioner as well. When the bus reached the Puttalam bus stand and the petitioner attempted to get off the bus, the aforesaid passenger had held the petitioner's hand and said, "malli mehe vareng". The petitioner had then tried to release himself and get away from this place. The aforesaid person had then assaulted the petitioner and when the petitioner endeavoured to escape from this place of incident, he was followed by this person who continued to assault him. The petitioner has in support of the version given by him filed an affidavit from the conductor of the bus which has been marked P1. The affidavit of the conductor of the bus Nihal Premasiri corroborates the version narrated by the petitioner in regard to the incident that took place in the bus on the 15th of October 1996, and the subsequent assault at the Puttalam bus stand on the petitioner by the aforesaid passenger.

The petitioner states further that when this passenger who has now been identified as the 1st respondent continued to assault him at the bus stand, the crowd that had gathered there intervened and set upon the 1st respondent.

The petitioner had thereafter proceeded to the Puttalam Police Station to complain about this incident. He was accompanied to the Police Station by one W. N. Dhammike.

At the Police Station the petitioner states that he met the Officer in-Charge, the 3rd respondent and informed him that he wished to make a complaint to the Police regarding an assault on him. The 3rd respondent then directed the petitioner to a Police Officer with instructions to record his complaint. As this Police Officer was about to record the petitioner's statement, he heard some person who had come to the Police Station at this stage telling the OIC that the petitioner had come there after assaulting "one of our fellows". The 3rd respondent had then come up to the petitioner and assaulted him. The petitioner complains that the 3rd respondent had hit him several times on his head. The 3rd respondent having assaulted him further had directed a Police Officer to lock him up in a cell. It is the petitioner's case he was in fact arrested at this point of time when he had come to the Police Station to make a complaint, in contravention of the provisions of Article 13 (1) of the Constitution. Shortly thereafter he was taken out of the cell and the 3rd respondent had questioned him whether it was wrong

for a Police Officer "to smoke inside a bus". At this stage the petitioner had come to know that the person with whom he had a dispute in the bus and had thereafter assaulted him was indeed a Police Officer, namely the 1st respondent. The petitioner states that he was in severe pain and the 3rd respondent having observed this had ordered a Police Officer to lock the petitioner up in a cell. The 3rd respondent has also in his hearing given directions to the Police Officer not to send the petitioner to hospital alone. The 3rd respondent had stated thus, "Send him with our fellow, otherwise we will stand to lose".

The 3rd respondent then left the Police Station. Thereafter the petitioner was taken out of the cell by the 2nd respondent who had assaulted him once again together with another Police Officer whom he was unable to identify. The petitioner had cried out in pain and pleaded with the officers not to assault him any further, but they continued with the assault and he was thereafter locked up in the cell.

The petitioner's mother having heard of this incident had come to the Police Station around 7.30 pm but she had not been permitted to speak to the petitioner by the Police Officers.

The petitioner's father had in the meantime met the Member of Parliament of the Puttalam District Mr. S. D. R. Jayaratne and informed him about this incident. The Member of Parliament had then telephoned the Police on the complaint made by the petitioner's father and requested the OIC to give some relief to the petitioner. At this stage, the petitioner's mother and sister who were at the Police Station were permitted to speak to the petitioner.

Thereafter the Police Officers had prepared certain documents and sent the petitioner to the hospital accompanied by some Police Officers. The petitioner's mother and sister had also accompanied the petitioner to the hospital. The petitioner was admitted to Ward No 4. at the Base Hospital, Puttalam, around 8.20 pm. The petitioner avers further that he remained in hospital from 15. 10. 1996 till the 17th of October, 1996, and that consequent on the assault by the Police, he suffered from severe pain in the region of the chest, stomach, face and head. After his discharge from hospital, he had obtained treatment from his family Physician for approximately one month. Thus according to the petitioner he was kept in custody for the aforesaid period of time without producing him before a Magistrate as required by Article 13 (2) of the Constitution.

The petitioner had on the 23rd of October, 1996, made a complaint to the Assistant Superintendent of Police, Puttalam, who summoned the petitioner and held an inquiry on the 9th of December, 1996. The petitioner had produced marked P2 a letter from the ASP, Puttalam, in support of this averment.

The petitioner has in the above circumstances complained of illegal arrest, detention, inhuman and degrading treatment at the hands of the 1 st, 2nd and 3rd

respondents which he states constitute a violation of his fundamental rights guaranteed by Articles 11, 13 (1) and 13 (2) of the Constitution. He has also claimed compensation in a sum of Rs. 200,000/- from the respondents.

This Court has granted the petitioner leave to proceed for the alleged infringement of Articles 11, 13 (1) and 13 (2) on the 24th of March, 1997.

I would now advert to the affidavit filed by the 3rd respondent, the Officer-in-Charge of the Puttalam Police Station. In his affidavit, the 3rd respondent substantially denies the allegations made by the petitioner in the petition. According to the 3rd respondent, around 6.00 pm on the 15th of October, 1996, both the petitioner and the 1st respondent were seen at the Puttalam Police Station. The 1st respondent was bleeding from his nose and was seen covering his face with a 'bloodstained cloth. On inquiry, he learnt that there had been an altercation and an exchange of blows between the petitioner and the 1st respondent. He had then directed the OIC of the Minor Offences Branch to inquire into this matter. The inquiry revealed that the petitioner and the 1st respondent had engaged in a fight on the same day and that the 1st respondent had sustained injuries as a result. The investigation according to the 1st respondent was concluded on the 16th of October, 1996 and to the best of his knowledge neither the petitioner nor the 1st respondent were arrested. The 3rd respondent has specifically denied that any politician spoke to him or to any other Police Officer regarding the petitioner. He has averred that the petitioner's application is a vexatious one consequent upon a dispute which he has had with a Police Officer in the earlier part of the day.

The 3rd respondent in support of the averments in his affidavit has sought to file a further affidavit from the OIC of the Minor Offences Branch Sub-Inspector Punchi Banda Wijekoon. Wijekoon states in his affidavit that on the 15th of October, 1996, around 5.00 pm he received a complaint relating to a dispute between the petitioner and the 1st respondent who was a Police Constable attached to the Puttalam Police Station. The 1st respondent Police Constable Sisira Kumara was covering his face with a piece of cloth which appeared to be bloodstained. The OIC of the Puttalam Police Station, the 3rd respondent had detailed him to inquire into this matter. He had accordingly recorded the statements of the petitioner and the 1st respondent. He had thereafter produced both these persons the petitioner and the 1st respondent before the Medical Officer, Base Hospital, Puttalam. The Medical Officer had examined both these persons and issued Medical Reports. He had not observed any external injuries on the petitioner.

Sub-Inspector Wijekoon had then proceeded to the scene of the incident and recorded the statements of a person by the name of Sunimal Joseph Antony. His inquiries revealed that there had been a fight between the 1st respondent and the petitioner and that the 1st respondent had sustained injuries in the course of this transaction. He had not effected the arrest of either of these persons as there was no justification for doing so and he had informed the petitioner that it would not be necessary for him to report to the Police Station thereafter.

Wijekoon also denied any assault by the 3rd respondent. He further denies that while the petitioner was at the Police Station that the latter's mother and sister visited him. He has denied that the Member of Parliament of the Puttalam District Mr. S. D. R. Jayaratne telephoned the Police regarding this incident. Wijekoon has produced together with his affidavit the statements recorded relating to this matter and the inquiry notes marked XI and the Medico-Legal form relating to the petitioner and the 1st respondent marked X2 and X3.

The 1st respondent has also filed an affidavit stating that on the 15th of October, 1996, around 4.30 pm he had boarded a bus proceeding to Puttalam at the Kalladiya junction. He was on leave on that day and was clad in civil clothes. While waiting for the bus he had lit a cigarette and he had boarded the bus with a lighted cigarette in his hand. The conductor had invited him to enter the bus, but he had not complied with this request and was travelling on the footboard because he was smoking a cigarette. He specifically denies having abused the conductor or any other passenger in the bus. He admits that a passenger whom he now knows as the petitioner in this case had come up to him and ordered him to put out the cigarette. He had told the petitioner to "mind his business". He states that he did not abuse the petitioner nor had he consumed liquor on that day.

The 1st respondent further states that when the bus reached the Puttalam bus stand, he had alighted from the bus and had asked the petitioner why he had questioned him in the bus. The 1st respondent then stretched his hand to shake hands with the petitioner.

The petitioner who had misunderstood the move made by the 1st respondent had assaulted him with an umbrella. The 1st respondent had then retaliated. He states that there were several onlookers who joined the petitioner. These persons had held him and had encouraged the petitioner to assault him. In support of the facts set out in his affidavit the 1st respondent has annexed to his affidavit a statement made by one Sunimal Joseph Antony and an affidavit dated 26. 5. 97 from one Tony Jayantha and Mohamed Iqbal marked 1R4 and 1 R5. The 1st respondent had also annexed the complaints made by himself and the petitioner to the Police on the 15th of October, 1996, marked 1R2 (a) and 1R2 (b) and the Medico-legal report relating to his injuries marked 1R3 and a certificate from the DMO Puttalam to the effect that he was admitted to the Puttalam hospital on 15. 10. 96 and discharged on 18. 10. 96.

The petitioner in a counter-affidavit dated 17th September, 1997, has denied the averments filed in the affidavit by the 1st, 2nd and 3rd respondents and has attached to his counter-affidavit an affidavit by the Member of Parliament, Puttalam District, Mr. S. D. R. Jayaratne and a further affidavit from one Wijeyaweeralage Nilanka Dhammike, the person who accompanied the petitioner to the Police Station immediately after this incident marked P3 and P4, respectively. In his affidavit the Member of Parliament Jayaratne confirms that the petitioner's father had on the 15th October, 1996, complained to him that the petitioner had been assaulted by a Police Constable Sisira Kumara (the 1st respondent) attached to the Puttalam Police Station and requested him to obtain some assistance for his son by telephoning the Headquarters Inspector (the 3rd respondent to this application.) On this representation made to him by the

petitioner's father, Mr. Jayaratne had in his capacity as Member of Parliament of the Puttalam District immediately telephoned the 3rd respondent and requested him to grant some form of relief to the petitioner.

According to the affidavit filed by Dhammike (P4) who had accompanied the petitioner to the Puttalam Police Station on the date of the alleged incident, the petitioner had been assaulted by some person in the Puttalam town. As the petitioner was about to make a statement to a Police Officer at the Police Station re this matter the 1st respondent had arrived there and without any inquiry had assaulted the petitioner in the most inhuman manner. This was on the 15th of October, 1996, around 6.00 pm. After the 1st respondent set upon the petitioner, Police Constable Anura the 2nd respondent who was attached to the Traffic Branch of the Puttalam Police Station and another Police Officer attached to the Puttalam Police Station had set upon the petitioner. Dhammike states that he was an eyewitness to this assault. He avers further that subsequently he became aware of the fact that the person who assaulted the petitioner at the Puttalam bus stand was a Police Officer attached to the Puttalam Police Station by the name of Sisira Kumara who is the 1st respondent to this application.

The 2nd respondent has also filed an affidavit denying the allegation that he had participated in an assault on the petitioner at the Puttalam Police Station on the 15th of October, 1996.

Counsel for the respondent stated that this application was out of time and that this Court should therefore reject this application. In this connection it must be observed that this application was one which has been originated upon an undated petition sent by the petitioner to His Lordship the Chief Justice and received in the Registry of the Supreme Court on the 19th of November, 1996. The petitioner is therefore strictly speaking out of time by approximately 4 days. But this Court has consistently taken the view that in respect of applications made in this form to His Lordship the Chief Justice, the time bar should not be strictly adhered to. Taking into consideration the particular circumstances of this case, I am of the view that it would not meet the ends of justice if I were to hold against the petitioner on this point. I therefore hold that this objection raised by counsel must fail.

The version given by the petitioner therefore is supported by the averments contained in the affidavit marked P4 filed by Dhammike who had accompanied the petitioner to the Puttalam Police Station on the 15th of October, 1996.

There is further support for the petitioner's version in the affidavit filed by the Member of Parliament S. D. R. Jayaratne who in his affidavit has affirmed to the fact that petitioner's father had on the 15th of October, 1996, complained to him that the petitioner had been assaulted by a Police Constable attached to the Puttalam Police Station and had requested him to contact the 3rd respondent, the Headquarters Inspector of the Puttalam Police Station for the purpose of ensuring his safety. It is significant that the 3rd respondent has in his affidavit denied this statement made by the Member of Parliament. I fail to comprehend why the Member of Parliament should make

a false averment in his affidavit relating to the 1st respondent if in fact he had not done so on the representation made to him by the petitioner's father on the 15th of October, 1996.

Yet another reason which throws considerable doubt on the version given by the 3rd respondent in his affidavit is his own conduct on this occasion when he saw one of his Police Officers with a bleeding injury at the Police Station and upon inquiry had discovered that such injuries had been sustained as a result of an assault by the petitioner who was himself at the Police Station. According to the 3rd respondent he had not proceeded to arrest the petitioner who is alleged to have inflicted this injury on the Police Officer concerned. This to my mind appears to be highly improbable conduct on the part of the 3rd respondent.

The 3rd respondent also in his affidavit admits the presence of the petitioner at the Police Station around 6.00 pm on this date and according to him he had directed the petitioner to make a complaint to an Officer detailed by him for this purpose. If this was in fact the course of action that was taken by the 3rd respondent on that occasion, I fail to understand why the petitioner should have made any allegation, leave alone an allegation of a merciless assault upon him by the 3rd respondent. It is also significant that neither the 1st nor the 3rd respondent have alleged any motive on the part of the petitioner to falsely implicate them in the alleged assault on him at the Police Station.

I have also given my mind to the fact that the petitioner had sustained certain injuries and had complained of pain in the region of his chest, head and abdomen. This is borne out by the Medico Legal report. It would also be relevant to advert to the averment in the petitioner's affidavit where he states that while at the Police Station he heard the 3rd respondent stating thus: "Don't send him to the hospital alone. Send him with our fellow, otherwise we will stand to lose". It is the version of the petitioner that the injuries he had sustained were inflicted upon him at the Puttalam Police Station by the 2nd and 3rd respondents.

Further the petitioner's version in regard to the circumstances in which the fight between the 1st respondent and himself commenced finds support in the affidavit filed by the conductor of the bus and to an extent in the averments in the affidavit filed by the 1st respondent himself. Indeed it was the misconduct of the 1st respondent that set in motion this unfortunate trail of events which led to the violation of the petitioner's Fundamental Rights. Although there is no evidence to establish that the 1st respondent on 15. 10. 96 participated in the assault on the petitioner at the Puttalam Police Station, one cannot overlook the fact that it was the 1st respondent and none other who was responsible for this unfortunate incident by his gross misconduct and assault on the petitioner both while travelling in the bus and at the Puttalam bus stand on that day. He must therefore, in my view take full responsibility for the predicament in which the petitioner was placed.

I also wish to observe that the conduct of the 3rd respondent who was the then OIC of the Puttalam Police Station must indeed be condemned without reservation. The 3rd

respondent has in this case acted in the most reprehensible manner when he set upon a law abiding citizen who had come to the Puttalam Police Station on legitimate business to complain of an unprovoked attack upon him at a public bus stand.

I see no reason to doubt the truth of the story narrated by the petitioner in regard to his arrest and unprovoked assault upon him by the 2nd and 3rd respondents at the Police Station. I hold, therefore, that upon an evaluation of the material placed before this Court the petitioner has established that his fundamental rights protected by Articles 11, 13 (1) and 13 (2) of the Constitution have been infringed by the 1st, 2nd and 3rd respondents. I would accordingly direct the 3rd respondent to pay the petitioner a sum of Rs. 20,000/- as compensation. The 1st and 2nd respondents will also pay the petitioner a sum of Rs. 7,500% each. The 1st, 2nd and 3rd respondents will jointly pay the petitioner the costs of this application fixed at Rs. 6,000/-. I also direct the state to pay a sum of Rs. 15,000/- as compensation to the petitioner. The 1st, 2nd and 3rd respondents are further directed to pay the compensation and costs ordered by this court on or before the 30th of October, 1998.

I trust that I will be failing in my duty in this case if I fail to alert the Inspector-General of Police to the urgent necessity to give appropriate instructions to Officers-in-Charge of Police Stations in regard to the manner, the care and courtesy which private persons having legitimate business in Police Stations are entitled to receive at the hands of the Police with a view to ensuring that incidents such as this would not recur in the future. The Registrar is directed to forward a copy of this judgment to the Inspector-General of Police.

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

WADUGODAPITIYA, J. - I agree.

Relief granted.