

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

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

SC (SPL) NO. 71/96

A.R.M. Rifaideen, 15/1, Moors Road,
Thotawatte, Panadura.

Petitioner

Vs.

1. Sub Inspector of Police Jayalath, Police Station, Wellawatte.
2. A.A.M.Sharfeer Hadjiar, 4, Penquick Road, Wellawatte.
3. Inspector General of Police, Colombo.
4. The Attorney General, Attorney General's Department, Colombo 12.

Respondents

**BEFORE: G. P. S. DE SILVA, CJ.,
WIJETUNGA, J. AND
BANDARANAYAKE, J.**

COUNSEL: Dr. T. Thirunavukarasu for the petitioner.

H. G. Hussain for the 1st respondent.

P. D. Ratnayake SC for the 3rd and 4th respondents.

ARGUED ON: 01.09.1998

DECIDED ON: 25.09.1998.

SEPTEMBER 1 1998.

Fundamental Rights - Torture - Article 11 of the Constitution.

The 1st respondent, a Sub-Inspector of Police subjected the petitioner to an assault whilst the petitioner was in Police custody.

Held:

The 1st respondent violated the fundamental right of the petitioner guaranteed by Article 11 of the Constitution.

AN APPLICATION for relief for infringement of fundamental rights.

September 25, 1998

SHIRANI A. BANDARANAYAKE, J.

The petitioner who was 59 years old, was a "broker" by profession. He has averred that on 27.05.1996, the 1st respondent with some other police officers attached to the Police Station, Wellawatte, took him into custody while he was travelling from Panadura to Colombo. The petitioner alleges that he was taken to the Police Station and was assaulted by the 1st respondent at the instigation of the 2nd respondent. The allegation is that the petitioner was assaulted with sand filled S-Ion pipes and he thereby sustained injuries to his head, eyes, legs and hand. He complains that owing to this assault his right index finger was fractured. He cannot use his finger at present and he suffers from frequent "head and muscle pain". This Court granted leave to proceed in respect of the alleged infringement of Article 11.

Learned counsel for the petitioner informed the Court on 08.06.1998 that the 2nd respondent died on 04.06.1998 and that he is not proceeding against the heirs of the 2nd respondent. It was decided to continue the application as against the 1st, 3rd and 4th respondents.

The 1st respondent in his affidavit averred that the 2nd respondent made a complaint to the Police Station, Wellawatte, on 16.05.1996 with regard to a theft of precious stones owned by him and that he suspected the petitioner in this regard. In the course of his investigations he had arrested the petitioner not on 27.05.1996 as alleged by the petitioner but on 28.05.1996 at 5.20 p.m. after informing him the reason for such arrest. Thereafter the 1st respondent had produced the petitioner before the Magistrate, Mount Lavinia on 29.05.1996 and he was enlarged on bail on the same day. The plaint was filed thereafter in the Magistrate's Court, Mount Lavinia, against the petitioner for the offence of theft under case No. 16309 and the case is pending in Court. Learned counsel for the 1st respondent submitted that the 1st respondent was not involved in the alleged assault on the petitioner. Learned counsel for the 1st respondent referred us to the inquiry notes of the 1st respondent (1 R2) made on 28.05.1996 at 5 p.m. near Roxy Film Hall, Wellawatte. It states that when the 1st respondent informed the petitioner that

he is wanted with regard to a robbery of Gem stones, the petitioner had started to run. The 1st respondent and 3 other police officers had pursued the petitioner. The petitioner had jumped over a 6 foot wall. The 1st respondent and the other 3 officers had jumped over the wall and they had found the petitioner fallen over some stones. At that time the 1st respondent had seen some old wounds on the petitioner (1 R2).

However the petitioner's statement dated 28.05.1996 does not mention the incident where the petitioner had jumped over a 6 foot wall. At the time of the incident, as mentioned earlier, the petitioner was 59 years old. He appeared in Court at the hearing which was 2 years after the said incident and I am unable to accept the version of the 1st respondent that the petitioner had jumped over a 6 foot wall. This is an improbable story.

Learned counsel for the 1st respondent further submitted that the petitioner was taken into custody on the complaint made by the 2nd respondent at the Police Station, Wellawatte. This complaint was made on 16.05.1996 (1R1) and the 2nd respondent has stated in this statement that he became aware of the loss of the Gem stones on 06.05.1996. When the 2nd respondent inquired about the theft from his employees, one Sriyani, had reminded him that the petitioner had come to 2nd respondent's office on 10.04.1996 and that he would have taken the Gem stones. This shows that the petitioner had visited the 2nd respondent's office on 10.04.1996, the 2nd respondent had found out that some of his Gem stones were missing on 06.05.1996, and he had waited for 10 days until 16.05.1996 before he made the complaint. The 1st respondent arrested the petitioner, according to the petitioner on 27.05.1996 and according to the 1st respondent on 28.05.1996. The 1st respondent also had waited for more than 10 days before arresting the petitioner.

The petitioner was examined by the Medical Officer at the Teaching Hospital, Colombo South (Kalubowila) on 04.06.1996. The medical report (P2) is as follows:

10th July, 1996.

Re Mr. A. R. M. Rifaideen

This patient was first seen by me on the 4th of June, 1996, with a history of assault sustained on the 27th of May, 1996.

Examination revealed a contusion on the right frontal region of skull, painful swollen right index finger and several bruises over the trunk and legs. He was asked to come to the accident service the following day and x-rays of skull and right hand done. Skull x-ray normal; hand x-ray showed an undisplaced fracture of proximal phalanx.

Treatment given for the hand injury.

Present status stiffness of right index finger, occasional attacks of frontal headache.

I am not inclined to accept the submission for the 1st respondent that the petitioner has sustained the said injuries by reason of the fall from the 6 foot wall. The medical report, in my view, supports the version of the petitioner that he sustained the said injuries owing to the assault by the 1st respondent at the Police Station, Wellawatte. **I accordingly hold that the 1st respondent has violated the fundamental right of the petitioner guaranteed by Article 11 of the Constitution.**

I direct the State to pay Rs. 20,000/- and the 1st respondent to pay personally Rs. 20,000/- to the petitioner as compensation. In all the petitioner would be entitled to a sum of Rs. 40,000% as compensation. This amount must 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.

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

WIJETUNGA, J. - I agree.

Relief granted.