

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

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

S.C. APPLICATION NO. 66/97

J.A. Sudath Nishantha Jayasinghe,
'Samangiri', Ambagahawadiya,
Nattandiya

Petitioner

Vs.

Inspector

1. Sub Inspector of Police, Jayakody

2. Ananada Fernando, Head Quarter

3. Police Sergeant Gunawadena

4. Reserve Police Constable, 14900,
Nizabdeen

All of Police Station, Marawila

5. The Attorney General, Attorney
|General's Department, Colombo 12.

Respondents

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

BANDARANAYAKE, J

COUNSEL: A. A. de Silva with Jayalath Hissella for petitioner.

J. C. Weliamuna for 1st to 4th respondents.

S. Rajaratnam, S.C. for 5th responden

WRITTEN SUBMISSION TENDERED ON: for petitioner 06.02.1998

For 1st to 4th respondents

22.01.1998

DECIDED ON: 19.03.1998.

22ND JANUARY AND 6TH FEBRUARY, 1998.

*Fundamental Rights - Unlawful arrest and detention - Torture of a suspect
Police custody - Articles 11, 13 (1) and 13 (2) of the Constitution.*

The petitioner was arrested by a Sub Inspector of Police on 22.12.1996 for alleged attempt to rob a motor bicycle; but the petitioner was not informed of the reason for the arrest. The Sub Inspector threatened the petitioner with a pistol and ordered a police constable to remove him to the Marawila Police Station. At the police station, the petitioner was handcuffed after which he was slapped by the Officer in Charge of the Police Station. Thereafter, the petitioner was stripped, hung on a beam on the orders of the OIC, chillie powder was applied on his nose and private parts after which two other police officers assaulted the petitioner with a club. He was asked whether he knew about a robbery. The petitioner denied the allegation. He was detained at the Police Station until 26.12.1996 when he was produced before a Magistrate and remanded. A self serving entry was made in the police book stating that the petitioner was arrested on 26:12.1996. Whilst on remand the petitioner was admitted to the Base Hospital, Negombo and treated for abrasions and contusions all over his body. He was also vomiting and had difficulty of breathing. He was discharged on 06.01.1997. The respondent police officers claimed the injuries to have been caused during the arrest by the use of "minimum force".

Held:

The petitioner had been unlawfully arrested on 22.12.1996 and detained illegally in Police custody. The petitioner had also been subjected to torture whilst in police custody. The respondents had thereby infringed the petitioner's rights under Articles 13 (1), 13 (2) and 11 of the Constitution.

Cases referred to:

1. *Ansalin Fernando v. Sarath Perera and others* (1992) 1 Sri L.R. 411.
2. *Weerasinghe v. Premaratne and others* S.C. Application No. 477/96 S.C. Minutes 31st October, 1997.

APPLICATION for relief for infringement of fundamental rights.

19th March, 1998

SHIRANI A. BANDARANAYAKE, J.

The petitioner alleges that his fundamental rights guaranteed under Articles 11, 13 (1) and 13 (2) were violated by the 1st to the 4th respondents. Leave to proceed was granted in respect of the alleged infringement of Articles 11, 13 (1) and 13 (2).

According to the petitioner, around 10 p.m. on 22.12.1996 he went to see the carnival held at the Dammissara Maha Vidyalaya, Nattandiya. When the petitioner was close to the said school, the 1st respondent had arrested him. When the petitioner inquired from him as to the reason, the 1st respondent had informed him that it is in order to meet a friend. Near the school gate, the 1st respondent had held his service pistol to the petitioner's head and had told a Police Constable to bring the Police Jeep. The petitioner was taken to the Marawila Police Station, where he was handcuffed and put into a cell. A few minutes later the petitioner was taken before the 2nd respondent, who asked the petitioner whether he knows him and whether the petitioner had heard about him.

When the petitioner answered in the negative for both questions, the 2nd respondent had stood up and had slapped the petitioner 4 to 5 times which caused minor injuries to the petitioner's lips and the eye brows. Thereafter the 1st respondent took the petitioner to the police barracks and the 2nd respondent followed them. The 1st respondent had asked the petitioner whether he is Lionel to which the petitioner

answered in the negative. The petitioner was forced to remove his clothes and the 1st respondent, on the orders of the 2nd respondent, tied the petitioner's hands and hung him on a beam. While he was hanging from the beam, chillie powder was applied on the nose and on his private parts which caused excruciating pain. While this was done, the 3rd and the 4th respondents assaulted the petitioner with hands and club on the instructions of the 1 st and 2nd respondents.

The 2nd respondent inquired from the petitioner whether he possesses a T56 gun and whether he had any knowledge of the robbery. of the Rural Bank at Bingiriya, which allegations the petitioner denied. Around 11.30 p.m., the 1st respondent came with a man and a woman and the petitioner was shown to them. Later the petitioner got to know that they were Mohamed Iqbal and Kumudini Antonita, respectively.

An hour later, the petitioner was released from the 'hanging position' but a little later it was repeated by the 1st and 2nd respondents while questioning the petitioner whether he went to steal the motor cycle owned by Libel. The petitioner was thereafter handcuffed to two beds and was kept naked. The 4th respondent trampled the petitioner's chest and threatened that if the petitioner does not admit the theft of the motor cycle, the petitioner would be killed.

On 26.12.1996, the petitioner was shown to the said Iqbal and Kumudini and was brought before the DMO, Marawila. In the afternoon of the 26th, he was produced before the Acting Magistrate, Dankotuwa and was remanded until 08.01.1997. On the 08th, he was further remanded until 13.01.1997 and was granted bail. on 13.01.1997.

According to the respondents, one Mohomed Iqbal had made a statement to the Police stating that on 20.12.1996, there was an attempt to rob a motor bicycle at gun point at Dunkannawa. The suspects had used a T56 and had fired a few shots. Iqbal had described the suspect and had said that he could identify him, if he sees him again (1R1). During this period there had been several robberies in the area and the Police had been alerted on possible crimes (affidavit of the 1st respondent). The investigations had continued thereafter and several statements were recorded. Based on these investigations there was no doubt that the

aforesaid attempted robbery had taken place on 20.12.1996. While being on duty on 25.12.1996, the 1st respondent had received information from a private informant about a suspect to the said robbery. The said informant showed the suspect to the 1st respondent, and he arrested the petitioner, who was the suspect.

While the petitioner avers that he was arrested on 22.12.1996, the respondents' position is that the petitioner was arrested only on 25.12.1996. According to the respondents, after the arrest, the petitioner's statement was recorded (1 R5) in which he has denied any involvement in the robbery, and he was produced before the Magistrate on 26.12.1996. The Magistrate had ordered an identification parade and the parade was held on 13.01.1997. Two witnesses had identified the petitioner at the parade as the person who attempted to rob the motor bicycle (1 R8). The case is now pending in the Magistrate's Court, Marawila.

The petitioner's position is that, while he was in custody, the respondents had forced him to remove his clothes, assaulted him and had kept him handcuffed on several occasions even when he was allowed to sleep. While the petitioner was in remand, he was admitted to Prison Hospital in Negombo on 27.12.1996 and was transferred to Base Hospital, Negombo, on 29.12.1996. He was hospitalized until 06.01.1997. The respondents aver that the 1st respondent had to use minimum force to arrest the petitioner. In the process, the 1st respondent had to obtain the support of the people who were in the vicinity. According to the notes of the arrest (1 R4), in the process the 1st respondent had to hold the petitioner's left hand tightly and the people who were around had done similarly. The 1st respondent further states that the petitioner's hand had hit the car and due to this there are external wounds and a wound on his knee.

The Diagnosis Ticket issued by the Base Hospital, Negombo (P4) indicates that the petitioner was admitted on 29.12.1996 and discharged on 06.01.1997. The details given in the Diagnosis Ticket are reproduced below:

Assaulted by police 1152 ago	Soft tissue contusion
	+
Difficulty in breathing	L . . . nerve . . .
Difficulty in . . . movements	L upper limp both ankles

L upper arm weakness +

LOC +

Vomitting +

Referred to surgery on 10.02.1997

Abrasions and contusions all over the body

Tender soft tissue

R/G clinic in 2/52 time to remove back slab

Back slab to upper arm

The submission of the learned counsel for the 1st to 4th respondents is that there is no evidence to establish any violation of Article 11. His position is that the petitioner's version that he was hung or brutally assaulted is not supported by medical evidence. The learned counsel for the 1st to 4th respondents further submit that the Diagnosis Ticket (P4) is the only medical evidence and that it does not give any conclusion or any medical opinion to the effect that the injuries, if any, were due to the assault by the respondents and no other'. I am unable to agree with this submission. In my view, the medical evidence could reveal various aspects regarding the injuries, the physical health of a person, the approximate time of the assault and the type of violence that had taken place. While agreeing with the submission of the learned counsel for the 1st to the 4th respondents, that medical evidence is relevant in proving torture, there are instances where (depending on the circumstances), an allegation of violation of Article 11 had been proved even in the absence of medical evidence (Ansalin Fernando v. Sarath Perera and others(1), Weerasinghe v. Premaratne and others(2). I am not inclined to accept the position of the respondents that the injuries sustained by the petitioner were due to the 'minimum force' used to arrest the petitioner. The injuries set out in the Diagnosis Card are consistent with the details given by the petitioner as to the inhuman and degrading treatment meted out to him by the respondents. Accordingly I hold that the respondents have violated the petitioner's rights enshrined in Article 11 of the Constitution.

According to the respondents, the petitioner was taken into custody on 25.12.1996. While the 1st respondent was on duty, controlling traffic in the area, an informant had told him that one of the 3 suspects who tried to rob a motor bicycle on 20.12.1996 is in the vicinity. Acting on this information, the 1st respondent had arrested the petitioner, using 'minimum force', on the 25.12.1996 at 8.00 p.m. (1 R4). The petitioner in his petition has averred that he was taken into custody on 22.12.1996 around 10.00 p.m. while he was proceeding to the carnival held at Dammissara Maha Vidyalaya, Nattandiya. The petitioner has further averred that the 1st respondent who was in uniform stopped his motor bicycle near the school gate and told the petitioner to come with him as there is a friend to meet. The petitioner's version that he was taken into custody on 22.12.1996 is supported by affidavits from several persons. R. M. D. U. C. Appuhamy (P5) and W. M. Padmalal (P5A) have averred in their affidavits that they saw the petitioner being taken into custody on 22.12.1996 around 10.00 p.m. There is no reason to reject this evidence. The respondents have submitted the 16 extracts relevant to the arrest. The 1st respondent has made notes on 25.12.1996, that he had taken the petitioner into custody on that day (1 R4). He had made a note on 20.12.1996 on the attempted robbery of a motor bicycle. However, it appears that, he has entered this only on 25.12.1996 at 7.15 a.m. (1 R2). The petitioner's statement was recorded, according to the IB extracts submitted by the respondents on 26.12.1997 at 8.40 a.m. (1 R5). The IB extracts are documents of a self serving character and little credence could be attached to entries made therein in the circumstances of this case. The petitioner in his statement has stated that on 22.12.1996, around 1.00 p.m. he had gone to Nattandiya and after returning home he had slept for a while. Around 9.00 p.m. he came to Nattandiya and thereafter Police Inspector Jayakody brought him to the Police Station (1 R5). **I hold that the petitioner has proved that he was arrested not on 25.12.1996 as stated by the respondents but on 22.12.1996 and he was not informed of the reason for his arrest. The petitioner was produced before the Acting Magistrate on 26.12.1996. Accordingly the 1st to 4th respondents had kept the petitioner illegally in their custody from 22.12.1996 to 25.12.1996 and I hold that 1st to 4th respondents have violated the petitioner's fundamental rights guaranteed under Articles 13 (1) and 13 (2).**

I direct the 1st and 2nd respondents to pay the petitioner a sum of Rs. 3,500/- each as compensation and Rs. 1,000/- each as costs; the 3rd and 4th respondents to pay a sum of Rs. 1,500/- each as

compensation and Rs. 500/- each as costs; the state will pay the petitioner Rs. 2,000/- as compensation and Rs. 1,000/- as costs. In all the petitioner will be entitled to Rs. 12,000/- as compensation and Rs. 4,000/- as costs.

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.

PERERA, J. - I agree.

Relief granted.