

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

In the matter of an application under Article 126 of the Constitution of the Democratic Socialist
Republic of Sri Lanka

S.C. (SPECIAL) NO. 106/97

Chaminda

Petitioner

Vs

Gunawardena, OIC, Police Station,
Kataragama and others

Respondents

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

COUNSEL: Prince Perera for the petitioner

Harsha Fernando, SC for 1st, 3rd and 4th respondents

ARGUED ON: JANUARY 28, 1999

DECIDED ON: FEBRUARY 10, 1999

Fundamental rights - Unlawful arrest and detention - Torture - Articles 11, 13 (1) and 13 (2) of the Constitution.

On 20.02.1997 the Post Master, Central Post Office, Kataragama, made a complaint to the Kataragama Police regarding a loss of monies from the Post Office safe. The petitioner was a messenger attached to that Post Office; but there was no complaint against the petitioner. However, on the same day the 2nd respondent, an Inspector of Police (since dead), arrested the petitioner and took him to the police station. The 2nd respondent questioned the petitioner about the "theft", slapped him on the left ear and knocked his head on a wall. Thereafter the petitioner was locked up in a cell until 10.30 am on 21.02.1997 when a Pradeshiya Sabha member intervened and had him released. The petitioner produced in support an affidavit from the Pradeshiya Sabha

member. The 1st respondent (OIC) denied the alleged arrest and detention on the basis that there were no entries at the police station regarding an arrest or discharge. However, the 1st respondent admitted that he had instructed the 2nd respondent to proceed with inquiries; that the 2nd respondent questioned the petitioner after which a police constable had recorded the petitioner's statement. The medical report on the petitioner gave a history of assault by police on 20.2.1997. It stated that the petitioner had pain in the ear and a perforation on left tympanic membrane.

Held :

The petitioner was arrested without reasonable grounds and detained at the police station for over 18 hours without any criminal proceedings. He was not produced before a Magistrate. The 1st respondent had failed in his duty by failing to maintain correct records. The medical evidence was consistent with the petitioner's allegation. As such the petitioner's rights under Articles 11, 13 (1) and 13 (2) were violated.

APPLICATION for relief for infringement of fundamental rights.

February 10, 1999.

SHIRANI A. BANDARANAYAKE, J.

The petitioner was a messenger attached to the Central Post Office, Kataragama, since 01.11.1995. On or about 20.02.1997 the petitioner became aware that the money kept in the Post Office safe was lost. On the same day around 4.00 pm the 2nd respondent asked him to accompany him to the Police Station. At the Police Station, the 2nd respondent had questioned him about the theft and had hit him hard on the petitioner's left ear and knocked the petitioner's head on the wall. The 1st respondent had kept him in the police cell until 10.30 am on 21.02.1997. According to the petitioner, one J. W. Chulasena, a Pradeshiya Sabha member, had intervened and got him released from the police custody. The petitioner alleged that by the actions of the 1st and 2nd respondents, his fundamental rights guaranteed under Articles 11, 13 (1) and 13 (2) were violated.

This Court had granted leave to proceed in respect of the alleged infringement of Articles 11, 13 (1) and 13 (2) of the Constitution.

The 2nd respondent had died on 01.06.1997. The position of the 1st respondent is that he received a complaint from the Post Master of the Central Post Office, Kataragama, on 19.02.1997 that the money kept in the Post Office safe was lost. He had made the preliminary investigations and had instructed the 2nd respondent to proceed with the inquiries. Thereafter he had left the station to attend a conference held at the office of the Assistant Superintendent of Police, Tangalle. He has averred that he left the station at 12.10 pm on 19.02.1997 and returned on the same day at 7.15 pm (1R3). The 1st

respondent further averred that the 2nd respondent had questioned the petitioner and a statement of the petitioner was recorded by a Police Constable (1R1). His position is that no arrest of the petitioner was made. He relied on the notes made by the 2nd respondent and submitted that there are no entries in the relevant books to the effect that the petitioner was brought to the Police Station or that he was taken into custody at any time.

According to the material before us, there was no complaint made against the petitioner and no criminal proceedings were instituted against him at anytime. Although the 1st respondent has denied the presence of the petitioner in the Police Station at any time on the 20th and 21st February, 1997, the petitioner has produced an affidavit from a Pradeshiya Sabha member (P2) which affirms that -

(a) on the morning of 21.02.1997 the mother of the petitioner met him and informed him that the petitioner was taken into custody on 20.02.1997 and that he had been assaulted. She had requested him to get her son released from police custody;

(b) when he went to the Police Station, Kataragama, the petitioner was seated near the cell. The petitioner was crying while holding his left ear;

(c) the 2nd respondent handed over the petitioner to him. However, he did not ask for any surety bond for the discharge of the petitioner.

The affidavit marked as P2 was given by a Pradeshiya Sabha member who was a disinterested witness as far as this incident is concerned. The affidavit clearly affirms that the petitioner was taken into custody on 20.02.1997 and was kept in the Police Station until 21.02.1997. If the petitioner was not taken into custody as submitted by the 1st respondent, there was no need for the 1st and 2nd respondents to keep the petitioner in custody until the morning of 21.02.1997. According to the facts of this case, if there was a reasonable suspicion that the petitioner was concerned in the theft at the Central Post Office, Kataragama, the police could have taken the petitioner into custody as it is the duty of the Police Officers to carry out investigations regarding such complaints. However, it is essential for an arrest to be carried out according to the procedure laid down in the Code of Criminal Procedure Act.

The 1st respondent while denying that the petitioner was ever arrested, supports his submissions on the basis that there were no entries regarding the petitioner's arrest and discharge. There is evidence, on the other hand, provided by a disinterested party that the petitioner was taken into custody on 20.02.1997 and released on 21.02.1997. On a consideration of the different versions given by the petitioner and the 1st respondent, I accept the version given by the petitioner which is strongly supported by the affidavit P2.

The 1st respondent was the officer in charge of the Police Station, Kataragama, at the time of this incident. The IB extracts submitted to this Court make no reference to the arrest or the detention of the petitioner. It is the responsibility of the OIC of the Police

station to ensure that all records are properly and duly maintained. According to the material placed before us, the 1st respondent has failed in his duty, by not maintaining correct records.

Section 37 of the Code of Criminal Procedure Act, reads thus:

Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

Admittedly there was no warrant against the petitioner and he was not produced before the Magistrate. I wish to reiterate that, no criminal proceedings were instituted against the petitioner at any time. The petitioner was kept in police custody for over 18 hours without giving any reasons either for his arrest or for his detention. There were no reasonable grounds at all for his arrest. The petitioner was not produced before a Magistrate but was handed over to a Pradeshiya Sabha member without any surety bond.

I hold that the 1st respondent has violated the petitioner's fundamental rights guaranteed under Articles 13 (1) and 13 (2) of the Constitution.

The petitioner was admitted to the Karapitiya Hospital on 22.02.1997 and was discharged on 27.02.1997. On an Order made by this Court the medical report was sent, which reads as follows:

ADMISSION FORM

Assault by police on 20.02.97

Pain in l/ear

...hearing

A Medical Certificate was issued by the MO/ENT of the Karapitiya General Hospital, Galle, which stated that the petitioner was suffering from traumatic perforation of left tympanic membrane (emphasis added).

The petitioner's complaint was that the 2nd respondent hit him hard on his left ear. On the material placed before us, the petitioner was in custody at the Police Station, Kataragama, from the evening of 20.02.1997 to 21.02.1997. **I find that the medical evidence is consistent with the petitioner's allegation and therefore I declare that the petitioner's fundamental rights guaranteed by Article 11 was violated by the 2nd respondent.**

I award to the petitioner a total sum of Rs. 25,000 as compensation out of which Rs. 5,000 must be paid personally by the 1st respondent and the balance by the State. The State must also pay Rs. 5,000 as costs to the petitioner. These amounts must be paid within 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.

PERERA, J. - I agree.

Relief granted.