

**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.

SC Application No. 20/90

Rathnayake Wijesiri,
39/2, Pitipana South,
Delhena,
Homagama.

Petitioner

Vs

1. Rohan Fernando, Headquarter Inspector,
Homagama Police Station, Homagama.

2. Police Constable 2377, Arthur Banda

3. Police Constable 3285, Nandasena

4. Police Constable 20553, Mendis

5. Police Constable 1321, Jayaratne

All of Homagama Police Station,
Homagama

6. Henry Perera, Senior Superintendent of
Police, Nugegoda

7. K.K.D. Gunatilleke, Asst. Superintendent
of Police, Homagama.

8. Earnest Perera, Inspector General of
Police, Police Department. Colombo

9. The Attorney General, Attorney General's
Department, Colombo 12.

Respondents

BEFORE: BANDARANAYAKE J. DHEERARATNE J. AND WADUGODAPITIYA J.

COUNSEL: Ranjith Abeysooriya PC with Desmond Fernando PC Javid Usuf T. Somasundaram and Miss S. Beneragama for petitioner.

M.A. Manssor with K.S. Ratnavel and Rohan Gunapala for 1st respondent Anil Silva for 2nd, 3rd, 4th, and 5th respondents

A.R.N. Fernando Senior State Counsel with V.K. Malalgoda State Counsel for 6th 8th and 9th respondents

ARGUED ON: 21.01.92, 22.01.92 and 23.01.92.

DECIDED ON: 28.07.92

WADUGODAPITIYA J.

The petitioner in this case Ratnayake Wijesiri complained to the court on the 20th of June 1990, of violations of his fundamental rights guaranteed to him under Articles 11, 13(1) and 13(2) of the Constitution. He named the 1st, 2nd, 3rd, 4th and 5th respondents as the wrongdoers and prayed that they be directed to compensate him in a sum of Rs. 400,000/-. He makes no complaints against the 6th, 7th and 8th respondents nor is any relief sought against them.

Before the hearing into this application commenced, Learned Counsel for the 1st to 5th respondents raised a preliminary objection stating that the petition in this case was filed out of time and was therefore prescribed. After hearing order was delivered by my brother Bandaranayake J overruling the preliminary objection and directing that this application be taken up for hearing. Accordingly this application was taken up for hearing on 21.1.92.

The petitioner states that having come to know, on 23rd April, 1990 that he was being sought by the Homagama Police he on the self-same morning met Mr. K. Dharmasena a member of the Provincial Council of the Western Province with the object of ascertaining the reason for his being wanted by the police and thereafter to surrender to the police.

Mr. Dharmasena asked the petitioner to see him at 2.30 pm the same afternoon at his residence in Slave Island. He went as requested but before he could enter Mr. Dharmasena's house the 2nd, 3rd, 4th and 5th respondents dressed in civilian clothes arrested him. The 2nd and 3rd respondents had pistols in their hands. They gave no reason for arresting him. The 3rd respondent 'jabbed his pistol into the petitioner's mouth and as a result two of the petitioner's teeth were broken'. The petitioner was first taken to the Slave Island Police Station and after the arrival of the 1st respondent he was brought to the Homagama Police Station by the 1st to the 5th respondents.

At the Homagama Police Station, the petitioner was not kept in a cell, but in a back room, hand cuffed to a bed. He was not able to sleep that night.

The next day viz. 24th April 1990 the 1st respondent came into the room followed by the 2nd, 3rd, 4th and 5th respondents and called for the rope which was under the bed. The petitioner's hands were tied behind his back with his shirt. The 4th respondent threw one end of the rope over a beam in the ceiling of the roof, the other end of the rope was tied to the petitioner's hands. He was placed on a table and the 2nd and 3rd respondents pulled

the rope, hoisting him and leaving him dangling in mid air. Thereafter the 1st respondent assaulted the petitioner on his knees and toes with a club for about 15 minutes after which the 4th respondent lowered him to the ground.

The 1st respondent threatened the petitioner and asked him what crimes he had committed to which he replied that he had done nothing. The rope was removed and he was then made to kneel on the floor while the 2nd respondent held his hands behind his back. Another respondent held his back and holding him by the nose, forced open his mouth. The 1st respondent using a pair of pliers pulled out the petitioner's 'right corner tooth'. The 1st respondent then tried to pull out another tooth but failed as the second tooth broke into pieces. The 1st respondent then lit a match stick and held it to the petitioner's bleeding gums.

Thereafter the petitioner's head was covered with a gunny bag which was tied around his neck. He was once again hoisted with the rope and a pot containing smoldering coconut shells on which chillie powder had been put was held to the petitioner's face allowing the noxious fumes to reach him through a hole in the gunny bag. After a few minutes he was brought down and the gunny bag was removed. The 1st respondent then hit him several times on his leg with a club while the 2nd respondent burnt him in a number of places with a lighted cigarette.

Thereafter the 2nd, 4th and 5th respondents stood on the petitioner's legs while the 1st respondent stamped on the petitioner's mouth with his foot for about five minutes. Whilst so doing, the 1st respondent repeatedly asked the petitioner what crimes he had committed. The 1st respondent then said that he had not seen the petitioner's blood properly and hit him on the chin with a club causing a bleeding injury.

After being kept for several days in the Homagama Police Station the 1st respondent told the petitioner that was going to file two cases against him for robbery. He asked the petitioner to confess to the robberies, otherwise he would be kept at the station for three months. The 1st respondent then directed another officer to prepare 'a confessionary statement' on the lines set out by him (1st respondent) and thereafter having assaulted him with a club forced the petitioner to sign the prepared statement.

On the 6th of May, 1990 upon a surprising turn of events the 6th and 7th respondents (the 7th respondent has since died) visited the Homagama Police Station and after questioning the petitioner and all the other inmates kept in the police cells transferred all of them to the Maharagama Police Station. The petitioner believed that this visit was the outcome of complaints being made as to the goings on in the Homagama Police Station.

On the 7th day of May 1990, the petitioner was sent before the Judicial Medical Officer, Colombo South Government Hospital, Kalubowila for examination.

On the 1st June 1990, the petitioner was produced before the Kottawa Magistrate and was discharged from the proceedings. He had been in custody continuously without access to his lawyers from 23rd April 1990, when he was arrested until 1st June 1990 when he was discharged.

The petitioner complains that :-

a) he has been subjected to cruel, inhuman and degrading treatment or punishment in violation of Article 11 of the Constitution.

b) he has not been arrested according to procedure established by law in violation of Article 13 (1) of the Constitution

c) he has not been informed of the reason for his arrest in violation of Article 13(1) of the Constitution

d) he has been held in custody detained or otherwise deprived of his personal liberty without an order from a competent court in violation of Article 13(2) of the Constitution.

In the Medico-Legal Report relating to the petitioner, Dr K. Nadesan the Judicial Medical Officer, Colombo South Hospital sets out that the 'short history given by patient' as follows:-

'Produced by Chief Inspector Ganagama of Maharagama Police for injuries, says he was assaulted with baton after hanging and his teeth were broken with a plier by Homagama Police on 24.04.90'

Dr. Nadesan lists the injuries he found in the petitioner on 7th May 1990 as follows:-

- 1) Recent removal of upper central incisor teeth and left outer incisor tooth. Fracture upper right outer incisor tooth with rest of the tooth left behind.
- 2) Multiple circular healing and healed wound on the back of both hands, upper right leg and foot. Said he was burnt with cigarette butt (lighted). Injuries consistent with cigarette burn.
- 3) Grazed abrasion 1 ½ "X 1" with evidence of healing on the front of (R) (i.e. right) knee.
- 4) Partial injury to left 3rd toe nail.

Injury No. 1 was grievous while the others were non-grievous.

The 6th respondent against whom no complaint is made filed an affidavit in which he stated that he was unaware of most of the averments set out by the petitioner regarding his arrest, detention and ill treatment.

He however admits that on 6th May 1990 he and the 7th respondent together with I.P. Ganagama (Officer in Charge of the Maharagama Police Station) visited the Homagama Police Station and examined and questioned the petitioner and the other inmates detained there. The 6th respondent says that he observed that four of the petitioner's teeth were missing and that when questioned by him, the petitioner said that the 1st respondent and G.I. Randeniya removed them. S.I. Randeniya has not been made a respondent in this case.

The 6th respondent states that he took steps to immediately transfer the petitioner to the Maharagama Police Station and that on the following day (7th May 1990) had him produced before the Judicial Medical Officer. The 6th respondent adds that after his visit to the Homagama Police Station on the 6th May 1990 he instructed the 7th respondent who was the Assistant Superintendent in charge of Homagama Police Station to take charge of all the information

books and documents relevant to the arrest and detention of the petitioner and to conduct an inquiry into the matter but that while the inquiry was pending the 7th respondent expired and thereafter all attempts made by him to locate the information books and documents proved futile, and since all such was no longer available no further steps were taken in regard to the pending inquiry.

The 6th respondent however does not say why he visited the Homagama Police Station on 6th May 1990, or why he made order that the petitioner and the other inmates be transferred immediately to the Maharagama Police Station or why he directed the 7th respondent to hold an inquiry into the matter.

The 6th respondent further states that on making inquiries he was informed that the petitioner had been taken into custody on allegation setting fire to a bus belonging to the Ceylon Transport Board, of setting fire to a sub post office and of committing two robberies. The 6th respondent also states that he was informed that the petitioner was arrested on 28th April 1990 and detained at the Homagama Police Station on a detention order issued by the 7th respondent under the Emergency Regulations until he was produced before the Magistrate on the 1st June 1990 and discharged. He produced the detention order marked 6R1 which is dated 29th April 1990 and which sets out the date of arrest as 28th April 1990. The petitioner however says he was arrested on the 23rd of April 1990. According to the 6R1 it was the 1st respondent who arrested the petitioner.

The 6th respondent states paragraph 5 of his affidavit that he himself perused the relevant information books and in addition, took into consideration the information given to him by the 1st respondent and that upon a consideration of all such material he was satisfied that there were reasonable grounds to believe that the petitioner was concerned in or that he had committed offences under regulation 24(1) of the Emergency Regulations. He added that the Police were looking for him since November 1989.

The 1st respondent filed his objections by way of an affidavit dated 26th October 1990 denying the several averments set out by the petitioner and admitting only that the 6th and 7th respondents visited the Homagama Police Station on 6th May 1990 and that the petitioner was transferred to the Maharagama Police Station on that day.

Answering further the 1st respondent states that the petitioner and several others were arrested by a Police party of which he too was a member in an abandoned house at Pitipana on the 28th of April 1990. This was consequent to information received that the petitioner had committed several robberies and was concerned in setting fire to State property. The actual arrest was for the reason that the Homagama Police had received information that 'the petitioner and his gang were conspiring to commit some offences in an abandoned house at Pitipana'.

The 1st respondent states that prior to the arrest he had obtained authority for the arrest of the petitioner under Section 6(1) of the Prevention of Terrorism Act which he produced marked A. He also avers that upon arrest the petitioner was informed of the allegation against him. He however does not say that he himself informed the petitioner of the reason for his arrest.

The 1st respondent goes on to say that in view of the antecedent of the petitioner and the information received that he was involved in subversive activity he obtained a detention order (produced marked B and which is the same as 6R1) from the 7th respondent under the Emergency Regulations. The 1st respondent admits on 1st June 1990 the petitioner was

produced before the Magistrate of Homagama and was 'released as the evidence available against him was insufficient'. He produced marked C a copy of the B report filed in the Magistrate's Court. In conclusion the 1st respondent denies that he violated any of the fundamental rights of the petitioner. The 2nd, 3rd, 4th and 5th respondents also filed a very short joint affidavit wherein they merely 'affirm to the correctness of the contents of the (1st respondent's) affidavit' and deny that they violated any of the fundamental rights of the petitioner. The 1st to 5th respondents state that they were handicapped by the non availability of the relevant information books.

At this point it may be mentioned that the 6th respondent who was present in Court admitted the signature on document A was his, although the document bore no seal and was not typed on official letter head note paper.

Learned President Counsel for the petitioner stressed that the averments contained in the 1st respondent's affidavit regarding the petitioner's alleged involvements in acts of robbery and arson were false and groundless. He submitted that there was no incriminating material whatsoever against the petitioner and that this facts was proved when the police themselves stated as much to Court as much in the B report upon which the petitioner was discharged. Up to date no case of any kind has been filed against the petitioner for any offence. Further the petitioner had no previous convictions either. Learned President's Counsel analyzed the facts in detail and itemized the material against each of the five respondents which he said was accurately set out in the petition of the petitioner. The only matter on which the petitioner was unable to identify the wrongdoer was when his head was covered with a gunny bag and burning chillie powder was held to his face through a hole in the gunny bag. He truthfully could not say who did this for obvious reasons. Learned President's Counsel concluded that the petitioner's version was true and accurate and that all five respondents (1st to 5th) were guilty of the violations complained of.

Learned Counsel for the 1st respondent submitted that the 1st respondent had been transferred to the Homagama Police Station from Giriulla only on 1st April 1990. He further submitted that the 1st respondent had nothing to do with the B report (marked C) which was submitted to the Magistrate's Court by the Homagama Police. Counsel for the 1st respondent submitted that the 1st respondent did not inform the petitioner of the reason for his arrest but added that the allegation made by the petitioner that the police did not give reason for his arrest 'were not valid'. He submitted that in any event, it was not imperative that reasons be given at the time of arrest in respect of offences under the Emergency Regulations in view of Article 15 (7) of the Constitution.

On the discrepancy as to the date of arrest, Counsel for the 1st respondent submitted that it was unsafe to act on the petitioner's version in the absence of an affidavit from Dharmasena from whom he sought assistance on the day of his arrest. He therefore urged that the date of arrest given by the petitioner (viz 23.4.90) be rejected and the date of arrest given by the 1st respondent (viz 28.4.90) be accepted as the correct date.

Larend Counsel for the 1st respondent also submitted that the petitioner had not told the Judicial Medical Officer all the details of maltreatment set out in his petition and that therefore there is no evidence to substantiate the petitioner's version as set out in his petition. Whether the petitioner narrated his entire story in detail or not or even whether he was able to do so during the medical examination by the JMO, only his Medico Legal Report which consists of a printed form with a sub heading, 'SHORT HISTORY GIVEN BY PATIENT'. Below this, there is a space only five

lines provided in the form to enable to JMO to record the 'short history' of which the JMO has used up only four. And in these four lines the bare essentials are set out, viz the date of assault, the fact of assault, the weapon used, the hanging, the fact that the petitioner's teeth were broken and the mention of the pair of pliers used on his teeth. Even leaving aside the fact that the JMO Dr Nadesen may not have clearly understood all the details described by a Sinhala speaking petitioner, I feel that what has been recorded in those four lines is telling enough.

Learned Counsel for the 1st respondent submitted in conclusion that there was no evidence to support the petitioner's version of the assault and the injuries caused to him, that the 1st respondent's application to his superiors to arrest the petitioner was made in good faith on information received and that the 7th respondent sent the B report to the Magistrate' Court stating that there was no material against petitioner for the reason that the 7th respondent was angry with the 1st respondent for having rearrested another suspect already released by the 7th respondent. Counsel also submitted that there was nothing to show that the alleged confessionary statement signed by the petitioner was in fact a confession. He concluded with the submission that the 1st respondent was not guilty of any violation as alleged by the petitioner.

The main point urged by Learned Counsel for the 2nd, 3rd, 4th and 5th respondents was that since it was only the petitioner's own affidavit that implicated the 2nd to 5th respondents and since such material was uncorroborated the allegations against his clients were not adequately proved. He submitted that the burden of proof was on a balance of probability and that therefore any benefit should be given to the four respondents he was appearing for. He invited us to infer that the petitioner was either exaggerating or making a mistake or that he in fact did not know who actually did what either that or he was deliberately uttering a string of falsehoods.

Learned Counsel for the 2nd to 5th respondents urged that the petitioner had three opportunities of making mention of the persons who assaulted him, but that he did not make use of any of them. The first such opportunity occurred on the 6th of May 1990 when the 6th and 7th respondents visited the Homagama Police Station for the purpose of inquiring into certain happening involving the persons detained there. Learned Counsel points out that there is nothing to show that the petitioner mentioned to the 6th respondent the names of the 2nd to 5th respondents and what they did to him. The second opportunity occurred on the 7th of May 1990 when the petitioner was sent before the Judicial Medical Officer. On this occasion too Learned Counsel pointed out that the petitioner did not mention anything about the 2nd to 5th respondents to the JMO since the JMO does not mention any of their names in his Medico Legal Report. Learned Counsel pointed out that the third opportunity occurred on the 1st of June 1990 when the petitioner was produced before the Homagama Magistrate but there is nothing to indicate that he made any complaint at all to the Magistrate. It was on this day that the police produced the B report stating there was insufficient material against the petitioner whereupon the petitioner was discharged by the Magistrate. Learned Counsel submits that thereafter the only inference is that the petitioner is exaggerating or making a mistake or does not actually know who harmed him or is deliberately lying and therefore should not be believed.

In this connection it must be reiterated that having spoken to the petitioner at the Homagama Police Station the 6th respondent ordered the 7th respondent to hold an inquiry into the incident involving the petitioner. This necessarily presupposes the fact that the petitioner at the lowest had supplied the 6th respondent with enough material to move the 6th respondent to order the holding of an inquiry and to transfer the petitioner out of the Homagama Police Station. The fact that the 6th respondent does not mention in his short affidavit the contents of what the petitioner

told him cannot be taken to mean that the petitioner told him nothing. As far as the Medico Legal Report is concerned I have already pointed out that the limited scope and purpose of the Medico Legal Report does not call for more material that is already mentioned therein by the Judicial Medical Officer. Here too one cannot in any way conclude that the petitioner did not mention the names of the assailants to the JMO. As regard the third opportunity mentioned by Counsel it has to be pointed out that the petitioner was produced before the Magistrate for the purpose of being discharged. It is therefore unreasonable to conclude that the petitioner instead of going home would chose to stay on in the Magistrate's Court and narrate to the Magistrate details of the ill treatment he suffered and who his assailants were. This clearly was no opportunity for so doing.

I therefore find it impossible to draw the inference suggested by Learned Counsel for the 2nd to 5th respondents.

Both Counsel for the 1st respondent and Counsel for the 2nd to 5th respondents submitted that inasmuch as the arrest of the petitioner was under the Emergency Regulations it was not imperative that he be informed of the reason for his arrest as stipulated by Article 13(1) of the Constitution since the provisions of Article 15(7) would apply. They cited the case of Wijaya Kumaratunga vs Samarasinghe (FRD2 page 347). In dealing with this submission it has to be kept in mind firstly that there is a discrepancy as to the date of arrest. According to the 1st respondent (who is supported in that regard by the 2nd to the 5th respondents) the arrest took place on the 28th of April 1990. The 1st respondent further states that prior to his arrest, he obtained authority for such arrest on 27th April 1990 (marked A) from the 6th respondent under Section 6(1) of the Prevention of Terrorism Act. Further the Detention Order marked B issued in respect of the petitioner on 29th of April 1990 under the Emergency Regulations set out that 'it has been reported that the said person had been arrested on 28,4,90 by C.I. Rohan Fernando (HQI Homagama) under Emergency Regulation 16(1) '. The 1st respondent adds that in any event the petitioner was informed of the allegations against him at the time he was arrested.

The petitioner's version however, is quite different. He says that he was arrested on the 23rd of April 1990 by four persons dressed in civilian clothes whom he later identified as the 2nd to 5th respondents and that no reason was given to him as to why he was arrested. If his version is correct then it necessarily follows that document A and B above were applied for and obtained after the fact and are to that extent fraudulent.

The 6th respondent when questioning by Court admitted that he signed and issued a document marked A but said that he did not attempt to find out the bona fide of the request for the arrest of the petitioner. He said he took it for granted that there was sufficient material for the officer concerned to make this request.

It appears upon a consideration of the relevant circumstances that the petitioner had no reason whatsoever to name an incorrect date as the date of his arrest. Taking into consideration the events that followed his arrest it is most unlikely that this is a date he would ever forget indeed at one stage during the argument Court pointedly asked Learned Counsel appearing for the 2nd to 5th respondents as to why the petitioner should give the date of his arrest as the 23rd of April, instead of the 28th April in view of the fact that authority for arrest of the petitioner had been obtained (by document A) only on the 27th of April and also in view of the fact that the Detention Order for the incarceration of the petitioner (document B) was obtained on the 29th of April.

Having considered all the facts and circumstances of this case, I have no hesitation in accepting the version of the petitioner that he was arrested and detained without authority. And since the respondents insist that the arrest was under the Emergency Regulations they quite obviously did not arrest the petitioner under the provisions of the Code of Criminal Procedure Act No. 15 of 1979 nor can they seek to take refuge under that Act. **The arrest therefore is not referable to any provision of the law, nor was it under any procedure established by law. The arrest is therefore wholly arbitrary.** In any event I cannot agree that the case cited by Learned Counsel for the 1st to 6th respondents namely Kumaratunga vs Samarasinghe is authority for their assertion that the petitioner need not have been told of the reason for his arrest under Emergency Regulations for the reason that in Kumaratunga's case where the arrest was admittedly under the Emergency Regulations the contents of the Detention Order under which the petitioner was arrested sufficiently apprised the petitioner of the fact that he was being arrested for acts committed in contraventions of Regulations 23 and 24 of the Emergency Regulations. In the instant case inasmuch as the arrest took place on the 23rd of April such arrest was clearly not under the Emergency Regulations it was therefore incumbent upon the persons arrested to inform the petitioner of the reasons for his arrest in terms of Article 13 (1) of the Constitution.

I accept the version of the petitioner that when he was arrested on the afternoon on the 23rd of April 1990 the 2nd, 3rd, 4th, and 5th respondents who arrested him did not give him any reason for his arrest. This is a violation of the Fundamental Rights guaranteed to the petitioner by Article 13(1) of the Constitution. I accordingly find the 2nd, 3rd, 4th and 5th respondents guilty of violating the provisions of Article 13(1) of the Constitution.

Another matter that arises for consideration is the complaint of the petitioner that the arrest itself was arbitrary and unlawful and constitutes a violation of his fundamental rights guaranteed by Article 13(1) of the Constitution inasmuch as he has not been arrested according to procedure established by law. In this connection it is pertinent to mention that the 6th respondent mentioned in his affidavit that 'police has initiated action to take the petitioner into custody as way back in November 1989'. It is to say the least strange that it was only much later on the 27th of April 1990 that the police thought it fit that authority for his arrest should be obtained and thereupon purported to obtain the document marked A. This situation is highlighted by the fact that according to the respondents the petitioner was wanted for subversive activity.

Another aspect that needs to be mentioned here is that according to the version given by the petitioner which I accept the 2nd, 3rd, 4th and 5th respondents when they arrested the petitioner on 23rd of April 1990 were not in police uniform but were attired in civilian clothes. If this was to be lawful arrest under established procedure it is inconceivable that police officers attached to the Homagama Police Station whilst on duty should have been attired as civilians. It figures then that there was no call for four 'civilians' to inform the petitioner the reasons for his 'seizure'. This lends credence to the petitioner's assertion that he was never informed of the reasons for his 'arrest'.

As discussed above this to my mind is a wholly arbitrary arrest by the 2nd, 3rd, 4th and 5th respondents on unspecified material. It seems to that the purpose apparently was no more than to round up a number of persons and having done so to hope to discover incriminating material.

In the circumstances I hold that in this respect too, the 2nd, 3rd, 4th and 5th respondents have violated the fundamental rights of the petitioner in arbitrarily arresting him and have acted in violation of Article 13(1) of the Constitution.

The next question that comes up for consideration is the complaint of the petitioner that he was held in custody and detained without being 'brought before the judge of the nearest competent court according to the procedure established by law' in violation of the mandatory provisions of the Article 13(2) of the Constitution which stipulates further that such person shall continue to be held in custody only upon the order of such judge.

As I have set out above I have no hesitation in accepting the version given by the petitioner with regard to his arrest and detention according to which he was arrested on the 23rd of April 1990 and detained at the Homagama Police Station until the 6th of May, 1990, when he was transferred to the Maharagama Police Station. He was kept in detention at the Maharagama Police Station till the 1st of June, 1990 and it was only on this day that for the first time since his arrest that he was produced before the Magistrate of Homagama. This however was not for the purpose enumerated in Article 13(2) of the Constitution but was for the purpose of having the petitioner discharged as there was no material against him. There has thus been a violation of Article 13(2) of the Constitution.

It may be mentioned at this point that the detention order dated 28th April and marked B issued under Regulation 19 (2) of the Emergency Regulation purports to authorize the detention of the petitioner from 29th April, 1990 for a period of 90 days at one of the following four places viz. 'Homagama Police/Boosa/Poonani/Pelawatta Camp'. As mentioned earlier in this judgment the 6th respondent visited the Homagama Police Station on the 6th of May 1990 where the petitioner was being detained and ordered that the petitioner be transferred to the Maharagama Police Station from 6th May 1990 until 1st June 1990 when he was discharged was in any event unauthorized and unlawful, inasmuch as the Maharagama Police Station was not one of the four places mentioned in the detention order marked B wherein the petitioner could be detained. Therefore at most it is only the short period of detention of 8 days from 29th April 1990 to 6th May 1990 that can be said to have been covered by the detention order marked B. The rest of period of detention is from any view of matter illegal.

On the material available it is clear that the petitioner was brought to the Homagama Police Station on the 23rd of April 1990 and that it was the duty of the 1st respondent who was the Officer in Charge of the Homagama Police Station to ensure that the continued detention of the petitioner in his police station was in every respect in conformity with the law. This is specially so when the evidence makes it clear that he was the Senior Officer who was in overall charge of the entire operation and investigation.

I therefore hold that the 1st respondent is guilty of violating the provisions of Article 13(2) of the Constitution.

The final matter that comes up to consideration is the serious complaint made by the petitioner in paragraph 25 (a) of his petition that he has been subjected to cruel, inhuman and degrading treatment or punishment in violation of Article 11 of the Constitution.

At the commencement of this judgment I have set out in some detail the treatment that the petitioner was subjected to by the 1st to 5th respondents at the Homagama Police Station. I have

also set out the contents of the Medico Legal Report issued by the Judicial Medical Officer, Colombo South in respect of the injuries suffered by the petitioner. **As I have said earlier I accept without hesitation the version given by the petitioner and reject the respondent's version that they did not ill-treat the petitioner in any way, or do any act in violation of the petitioner's fundamental rights.**

I do not think it is necessary to repeat or reiterate the several acts of ill treatment performed by each of the five respondents (1st to 5th) on the petitioner. It is abundantly clear that the petitioner has indeed been subjected to cruel, inhuman and degrading treatment by the 1st to 5th respondents. He has in fact suffered painful punishment at their hands. The acts done by the 1st to the 5th respondents fall clearly into the category contemplated by Article 11 of the Constitution.

I therefore hold that the 1st, 2nd, 3rd, 4th and 5th respondents are guilty of violating the provisions of Article 11 fo the Constitution.

Taking into consideration the particular circumstances of this case and the gravity of the several infringements I make order and direct as follows:-

- a) the 1st respondent to pay a sum of Rs. 5,000/- to the petitioner,
- b) the State to pay a sum of Rs. 25,000/- to the petitioner and
- c) the State to pay a sum of Rs. 2,000/- to the petitioner as costs.

Judge of the Supreme Court

Bandaranayake J.

I agree

Judge of the Supreme Court

Dheeraratne J.

I agree

Judge of the Supreme Court

