

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI ANKA.**

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

SC Application No. 860/99

Pushpa Priyantha Dias, Abeysekera layawardena,

No. 333/3, Habarakada, Homagama.

Petitioner

Vs.

1. Ekanayake RPC No. 17766, Police Station, Polpitiyagama.

2. Jayathilake Bandara RPC No. 10550, Police Station, Polpitiyagama.

3. B.L.V. de S. Kodituwakku, Inspector General of Police, Police
Headquarters, Colombo

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

Respondents BEFORE:-

S.N. Silva C.J., Perera J. AND Shirani A. Bandaranayake J.

COUNSEL:- K. Tiranagama for petitioner.

R. Abey Suriya, SC for 4th respondent.

1st and 2nd respondents present in person.

ARGUED ON: 23.01.2001

DECIDED ON: 27.03.2001

23RD JANUARY, 2001

***Fundamental rights - Unlawful arrest and torture - Articles 13(1) and 11
of the Constitution.***

The petitioner who is from Homagama was a teacher attached to the

Kattamberiya Yaya Vidyalaya, Makulpotha. He was accompanied by the Principal of the school and was on the way to board a bus. At that stage, the 1st and 2nd respondent Reserve Police Constables came on a motor cycle and questioned the petitioner, including on his place of birth. When the petitioner replied that, it was Batticaloa they said that he must be a tiger and assaulted him despite the intervention of the Principal. They forcibly took the petitioner on the motor cycle. While riding, the 2nd respondent assaulted the petitioner. When they reached a teak forest, the petitioner escaped and later entered hospital.

The petitioner had 23 injuries including a laceration on his penis. The respondents said that the petitioner was taken into custody as there had been robberies in the area; and the petitioner failed to provide details of himself.

Held :There were no complaints or a reasonable suspicion that the petitioner was concerned in the commission of any offence. Hence, his arrest was violative of Article 13(1) of the Constitution. The respondents had by the treatment inflicted on the petitioner infringed the petitioner's rights under Article 11 of the Constitution.

Per Bandaranayake, J.

"It is clear that the 1st and 2nd respondents have under the colour of office, pounced upon and unleashed their fury on a teacher who had been peacefully waiting near a bus halt with the Principal of his school. Their conduct displays a total lack of discipline and an alarming tendency towards sadism.

If police officers who are guardians of the law unleash their fury in this manner on the very persons whom they are duty bound to protect and safeguard, a dismal picture would emerge as to what passes for law and order."

APPLICATION for relief for infringement of fundamental rights.

March, 27, 2001.

SHIRANI A. BANDARANAYAKE, J. At the time material to this application, the petitioner was a 42 year old school teacher attached to the Kattamberiya Yaya Vidyalaya in Makulpotha. Around 4.30 p.m. on 02.09.1999, the petitioner, along with the Principal of the said School walked towards the Kattamberiya Junction to board a bus. While waiting for a bus, they saw two Policemen, (subsequently identified as the 1st and 2nd respondents) on a motor cycle entering the premises of

one Peter Mudalali. They also witnessed the Policemen inquiring something from one Indra Kumari. Thereafter the Policemen came towards the petitioner and inquired about some person to which the petitioner replied in the negative, as he was not from the area. The 1st respondent queried as to where the petitioner is residing and the petitioner stated that he is a teacher attached to Kottamberiya Yaya Vidyalaya. At this point, the Police officer wanted to know as to why he does not know about the village, if he is a teacher of that school. He further queried from the petitioner as to whether he is a Sinhalese. The petitioner answered in the affirmative and further stated that he is from Homagama. Thereafter the Police officer wanted to know the place of birth of the petitioner. When the petitioner informed them that he was born in Batticaloa, the 1st respondent immediately responded by stating that the petitioner must be a 'tiger' and asked for his National Identity Card. Simultaneously, the 1st respondent pulled the petitioner by his shirt collar and searched for his National Identity Card in his shirt pocket. When the petitioner informed the 1st and 2nd respondents that his National Identity Card is in school, they assaulted him stating that he is a 'tiger' and ordered him to get on to the motor cycle to take him to the police station.

While the 1st and 2nd respondents were assaulting the petitioner the Principal tried to intervene and explain that the petitioner was a teacher attached to his school, who is from Homagama and to refrain from assaulting him. 1st and 2nd respondents were visibly angry about this intervention and had assaulted the Principal as well.

The petitioner refused to get on to the motor cycle, as he had not committed any offence. The 1st and 2nd respondents again assaulted the petitioner and got him to sit on the motor cycle. Whenever the 1st and 2nd respondents made the petitioner sit on the motor cycle, he managed to get off and by this time a large number of villagers were gathered there. The petitioner became embarrassed of the situation and told the 1st and 2nd respondents that if a helmet is given to him, he would get on to the motor cycle. The 2nd respondent removed his helmet and gave it to the petitioner and on the insistence of them the petitioner got on to the motor cycle. The 11

respondent rode the motor cycle and the petitioner sat between the 1st and 2nd respondents.

After the motor cycle proceeded a short distance, the 1st respondent hit the petitioner hard on his stomach with his right elbow, scolded him in filth and ordered him to remove the helmet. The petitioner removed the helmet and gave it to the 2nd respondent. While the motor cycle was moving, the 2nd respondent hit the petitioner hard on his mouth, both ears and the sides of the upper body.

After a while the 1st respondent told the 2nd respondent to hold the petitioner hard, as there is a possibility that the petitioner might try to runaway. The 1st respondent threatened him that he will not allow the petitioner to continue with his employment and that they will introduce a parcel of cannabis and send him to jail. The 1st respondent inquired from the petitioner whether he is a graduate. When the petitioner replied in the negative, the 1st respondent said that if he had been, they would have killed him on the spot. Whenever the petitioner tried to explain

that he was innocent and had committed no offence, the 1st respondent informed

him that he will use this opportunity to show the petitioner the capabilities

of the Police officers. When they came to a deserted area near the teak forest at Makulpotha, the 1st respondent stopped the motor cycle and ordered the petitioner to get off from the cycle. Even before the petitioner could do so, the respondents started assaulting him. The petitioner was pleading with them not to assault him, but they did not accede to his request. Blood was oozing out of petitioner's nose and mouth due to the assault. At that time there was a cyclist on the road and the 1st and 2nd respondents stopped assaulting the petitioner.

Using that opportunity, the petitioner ran away from the scene. The 2nd respondent grabbed the cycle from the cyclist and came after the petitioner. The petitioner ran across the teak forest and reached the house of the Community Health Officer of Kosgaha Ela and informed him as to what had taken place. In the meantime the Principal of Kattamberiya Yaya School along with the Principal of Nikawahara Vidyalaya, who were in search of the petitioner, sent him to the Polpithigama District Hospital.

The petitioner submitted that the 1st and 2nd respondents had infringed his fundamental rights guaranteed under Articles 11 and 13(I) of the Constitution.

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

Article 13(1) of the Constitution states that, "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest."

The 1st and 2nd respondents who were present in Court and appeared in person submitted that the petitioner was taken into custody on suspicion as there had been many robberies in the area. The 2nd respondent submitted that when the petitioner was asked to give details of himself he had not come out with the necessary information. However, there were no supportive affidavits or documents to substantiate the version given by the 1st and 2nd respondents. Moreover, there was no evidence to show that the petitioner had either committed any breach of the peace in the presence of the 1st and 2nd respondents or was concerned in the commission of any cognizable offence. There was no evidence to indicate that there were reasonable complaints or a reasonable suspicion which existed against the petitioner.

The petitioner had along with his petition and affidavit tendered affidavits from the Principal from the Kattamberiya Yaya Vidyalaya in Makulpotha, who was with him at the time of the arrest of the petitioner by the 1st and 2nd respondents (P1) and by Community Health Field Officer of Kosgaha Ela (P2). The petitioner had taken refuge at the latter's house after escaping from the 1st and 2nd respondents. Both these affidavits confirm the position taken up by the petitioner.

The 1st and 2nd respondents were unable to explain the need to check the identity of the petitioner or to know his place of birth. In these circumstances, considering the two versions given by the petitioner and the 1st and 2nd respondents, I do not hesitate in accepting the allegation of the petitioner that he was arrested by the 1st and 2nd respondents without any basis whatsoever. I accordingly hold that the 1st and 2nd respondents had violated the petitioner's fundamental rights guaranteed under Article 13(1) of the Constitution. The petitioner was warded in the District Hospital, Polpithigama from 02nd to 06th September and thereafter he was warded in the Teaching Hospital, Kurunegala from 06th to 08th September 1999. While he was at the Teaching Hospital, Kurunegala, he was examined by the Acting Judicial Medical Officer, Kurunegala. On a direction given by this Court, the Medico-Legal Report was submitted by the Acting Judicial Medical Officer. In a diagram attached to the Medico-Legal Report, dated 47.09.1999, it is revealed that the petitioner had 23 injuries all over his body. These injuries included 22 abrasions and 01 laceration. The abrasions were on the

forehead, chest, upper and lower left arm and the right arm, upper left and right legs and the lower abdomen. The sizes of the abrasions range from 0.5cm x 0.25cm to 5cm x 0.5cm. The single Indication which was 1cm x 0.5cm was on his penis. These injuries are consistent with the description given by the petitioner as to the inhuman and degrading treatment meted out to him by 1st and 2nd respondents. In addition to the injuries sustained by the petitioner, in the circumstances of this case, the suffering occasioned by him, in my view, was of an aggravated kind which no doubt humiliated the petitioner.

I accordingly declare that the petitioner's fundamental right guaranteed under Article 11 of the Constitution has been violated by the 1st and 2nd respondents.

It is clear that the 1st and 2nd respondents have under the colour of office, pounced upon and unleashed their fury on a teacher who had been peacefully waiting near a bus halt with the Principal of his school. Their conduct displays a total lack of discipline and an alarming tendency towards sadism. If Police officers, who are the guardians of the law unleash their fury in this manner on the very persons whom they are duty bound to protect and safeguard, a dismal picture would emerge as to what passes off for law and order. Further, the immediate reaction of the 1st and 2nd respondents that any person born in Batticaloa should be a 'tiger' is a sad reflection of their mental make up. Such attitudes engender hatred and not peace. I have thought it fit to note these comments so that persons responsible for recruitment and discipline of law enforcement officers would instil a higher degree of sensitivity and restraint in those who are clothed with awesome power of armed law enforcement personnel.

I direct the 1st and 2nd respondents to pay the petitioner a sum of Rs. 5000/- each as compensation and costs; the State will pay the Petitioner Rs.20,000/- as compensation and costs. In all the petitioner will be entitled to a sum of Rs. 30,000/- as compensation and costs. These amounts 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.

S.N. SILVA, C.J. - I agree.

PERERA, J - I agree.