

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

In the matter of an application under and interms of Article 126 read with Article 17 of the Constitution

**SC.FR.NO.378/2010**

Egodawattege Ruwan Niroshana  
Uragoda Road, Ellekanda,  
Welipenna.  
**Petitioner**

Vs.

01. Police Assistant Gamini  
02. Police Constable Bandara  
03. Police Constable 82100  
All of Police Station, Welipenna.  
04, Officer-in-Charge,  
Police Station, Welipenna.  
05. The Inspector General  
Police Headquarters,  
Colombo 01.  
06. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.  
**Respondents**

BEFORE :  
SISIRA.J. DE ABREW, J.  
ANIL GOONERATNE, J. &  
NALIN PERERA, J.

COUNSEL :  
Shantha Jayawardena with Niranjan Arulpragasam for the  
Petitioner.

Dr. S. F. A. Cooray for the 1st , 2<sup>nd</sup> and 3<sup>d</sup> Respondents.  
Sanjeewa Dissanayake SSC for the 4th ,5<sup>th</sup> and 6<sup>th</sup>  
Respondents.

ARGUED &  
DECIDED ON: 20.10.2017.

SISIRA J. DE ABREW. J.

Heard both Counsel in support of their respective cases and learned Senior State Counsel in support of his case. The Petitioner in this case, in his petition dated 30.06.2010 filed in this Court complained that his fundamental rights were violated by the 1<sup>st</sup> ,2<sup>nd</sup> and 3<sup>rd</sup> Respondents. This Court by its order dated 08.02 .2011 granted Leave to Proceed for alleged violation of Article 11 and 13(2) of the Constitution against the 1st, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The allegation of the Petitioner is that he was arrested by the Police and was

assaulted inside the Police Station. I will now discuss the circumstances under which the Petitioner was arrested by the Police.

Police received a complaint from Widdana Gamage Shamali Malkanthi on 26.05.2010 around 10.30. a.m. to the effect that her chain was robbed by the Petitioner while she was sleeping at home. According to Malkanthi this incident had taken place in the night of 25.05.2010. She made the complaint on the following day. In her complaint, she had stated the name of the person who robbed the chain i.e. the name of the Petitioner. Petitioner states that he was arrested by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who were Police Officers attached to Welipanne Police Station on 26.05.2010. But the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have taken up the position that the Petitioner was arrested by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents on 28.05.2010 and not on the 26.05.2010. Thus, version of the Petitioner with regard to arrest is that the Petitioner was arrested on 26.05.2010. But the version of the Police with regard to the arrest is that the Petitioner was arrested only on 28.05.2010. I will now examine the date on which he was arrested. Although, the Police take up the position that the Petitioner was arrested only on 28.05.2010, the Police have failed to mention the date on which he was arrested in the B Report filed in the Magistrate's Court when the Petitioner was produced before the Magistrate. This raises certain doubts with regard to the version given by the Police. One Pradeep Kumara who was alleged to have possessed certain amount of Ganja was arrested by the Police on 26.05.2010. Pradeep Krmara in his affidavit states that he was arrested on 26.05,2010 and that he saw the Petitioner being assaulted by the Police on 26.05.2010. Police also accepts the fact in their statement of objections that Pradeep Kurnara was arrested on 26.05.2010 around 7.25 p.m. It is the position of Pradeep Kumara that the Petitioner was arrested on 26.05.2010 and was assaulted by the Police on 26.05.2010. When we consider all the above matters, we feel that the version of the Police that the Petitioner was arrested on 28.05.2010 cannot be accepted and the version of the Petitioner that he was arrested on 26.05.2010 can be accepted. Petitioner alleges that after the arrest he was assaulted by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who were Police officers attached to Welipanne police station. He was examined by the Consultant JMO, Dr. Ajith Thennakoon. Petitioner has given his version to Dr. Thennakoon to the effect that he was assaulted by the Police. Doctor Ajith Thennakoon had found several injuries on the body of the Petitioner. According to Dr. Aiith Thennakoon's opinion the history given by the Petitioner is consistent with the injuries found on the body of the Petitioner. Police take up the position that they did not assault the petitioner and further take up the position that Petitioner sustained injuries due to a fall when he was running away from the Police custody. Is this version of the Police correct? In this regard, I would like to examine the document marked R3 by the 1<sup>st</sup>, 2<sup>nd</sup> and and 3<sup>rd</sup> Respondents. Although, police take up the position that the Petitioner sustained injuries due to a fall while he was running way from the Police custody, the entry made by the police sergeant 501- Dayaratne on 29.05.2010 at 6.45 a.m. states that the Petitioner did not have any injuries on his body. Thus, although the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in their statement of objections in paragraph 1 7 take up the position that the petitioner sustained injuries due to a fall while he was running away from the police custody, this version is contradicted by their own police officers namely, police sergeant 501- Dayaratne. Therefore, when I consider all the above matters the version of the Police that the Petitioner sustained injuries due to a fall while he was running away from the Police custody cannot be accepted. I reject the said version.

As I observed earlier, the Petitioner has been arrested on 26.05.2010 and according to the B Report marked R6, the Petitioner had been produced before the Magistrate only on 29.05.2010. The fact that the petitioner was assaulted inside the Police station is corroborated by the affidavit given by Pradeep Kumara who was in the Police custody on 26.05.2010. The petitioners version with regard to the assault has also been corroborated by the Dr. Ajith Thennakoon, the Consultant JMO. In this connection, I would like to consider the judicial decision in **Ansalin Fernando Vs, Sarath perera, officer in- charge Police**

**station Chilaw and others reported in 1992 1 SLR page 411**, where in the Supreme Court held,

*"An unlawful custody for 49 days and detention for 15 days without assemblance of authority for such detention and assaults and humiliations and pain (by being blind folded and chained to a Bench) inflicted during this period would amount to degrading treatment or punishment and are violative of Article 11 of the Constitution",.*

The Petitioner in this case was arrested by the Police on 26.05.2010 and produced before the Magistrate only on 29.05.2010. As I observed earlier, the Petitioner states that he was assaulted by the Police while he was inside the Police Station. This version has been supported by Pradeep Kumara's affidavit.

For the above reasons I hold, that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated the fundamental rights of the Petitioner guaranteed by Article 11 of the Constitution.

As I pointed out earlier, the Petitioner was arrested on 26.05.2010 and was produced before the Learned Magistrate only on 29.05.2010. Article 13(2) of the Constitution reads as follows;

*"Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the Judge of the nearest competent Court according to procedure established by law, and shall not be further held. In custody, detained or deprived of personal liberty except upon and in terms of the order of such Judge made in accordance with procedure established by law."*

As I observed earlier, the Petitioner has not been produced before the Magistrate within a period of 24 hours.

For the above reasons, I hold the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated the Fundamental rights of the Petitioner guaranteed by Article 13(2) of the Constitution.

Considering all these matters, we order each of the Respondents (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) to pay an amount of Rs.100,000/- to the Petitioner. Each Respondent (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) must pay this amount (Rs.100,000/-). The Petitioner is entitled all together in a sum of Rs.300,000/- . The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are directed to pay the said amount of money to the Petitioner within 4 months from today.

Petition allowed.

I agree  
Sgd. ....  
ANIL GOONERATNE J.  
JUDGE OF THE SUPREME COURT

I agree.  
Sgd.  
NALIN PERERA. J.  
JUDGE OF THE SUPREME COURT