

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

In the matter of an Application under and in
terms of Article 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

SC(FR) No. 430/2005

H.A. Manoj Talis,
Lesley Iron Works,
Udawela,
Ibbagamuwa.

Petitioner

-Vs-

- 1) Inspector Hiriadeniya,
Officer-in-Charge,
Crimes Branch,
Police Station,
Gokarella.
- 2) Sub-Inspector Nayanananda,
Police Station,
Gokarella.
- 3) Sub-Inspector Ellepola,
Police Station, Gokarella.
- 4) Sergeant Hemachandra
Police Station,
Gokarella.
- 5) Police Constable Ratnasiri,
Police Station,
Gokarella.

- 6) Reserve Police Constable Ajith,
Police Station,
Gokarella.
- 7) Officer-in-Charge,
Police Station,
Gokarella.
- 8) Inspector- General of Police,
Police Headquarters,
Colombo-01.
- 9) Hon. Attorney-General,
Attorney-General's Department,
Colombo-12.

Respondents

Before: : Sisira J. de Abrew, J
Upaly Abeyrathne, J &
Nalin Perera, J

Counsel: : Shyamal A. Collure with A.P.Jayaweera for the Petitioner.

Uditha Egalahewa PC with Vishwa Vimukthi for the
1st,2nd,3rd,5th and 6th Respondents.

Ms. Nayomi Wickramasekera SSC for the 7th to 9th
Respondents.

Argued &
Decided on: : 02.06.2017

Sisira J.de Abrew, J

Heard counsel for both parties in support of their respective cases. The Petitioner complains that the 1st to 6th Respondents came to his house on 24.09.2005 around 9.15. p.m. and arrested the Petitioner. Thereafter the Petitioner was taken to Gokarella Police Station. The Petitioner complains that the 3rd Respondent slapped him, the 2nd Respondent gave a blow to his ear and the 1st Respondent hit him on his face inside the Police Station. This assault according to the Petitioner has taken place in a room of the Police Station. After the said assault, the Petitioner was removed from the said room to another room. In the 2nd room the 1st to 6th Respondents have asked him to kneel down. His hands were tied by some of the Respondents. When the Petitioner was squatting, the 1st, 2nd and 3rd Respondents brought an iron bar and passed the said iron bar between his hands and legs. This has been done according to the Petitioner by the 1st to 3rd Respondents. While the said act was being performed by the 1st to 3rd Respondents, the 5th and 6th Respondents too were inside this room. Thereafter a s-Lon pipe was sent through the Petitioner's rectum and the Respondents assaulted the Petitioner. The Petitioner complains that when he was arrested, the Police Officers did not give him any reason for his arrest. The Respondents have filed objections to this application . When we peruse the objections, and the petition of the Petitioner, we are unable to conclude that the Respondents have given sufficient reasons for the arrest of the Petitioner. The Petitioner was later examined by the Judicial Medical Officer and the report of the Judicial Medical Officer dated 30.11.2009 supports the allegations levelled by the Petitioner against the Respondents. According to the Consultant Judicial Medical Officer, the history of torture was present in the body of the Petitioner.

When we examine the medical reports marked as P1, P2 and P10, there is evidence to suggest that the Petitioner has suffered a rupture in his ear drum. On a complaint made by the Petitioner to the OIC Gokarella (the 7th Respondent), against the Police Officers, Police conducted investigation against the 1st to 6th Respondents. After investigation, the Hon. A.G filed an indictment against the 1st, 2nd, 3rd, 5th and 6th Respondents for offences alleged to have been committed under Act No. 22 of 1994. The learned High Court Judge after trial convicted the 1st, 2nd, 3rd 5th and 6th Respondents and sentenced them to pay a crown costs amounting to Rs.1500/- and 02 years Rigorous Imprisonment suspended for 05 years. In addition to the said punishment each Respondent was ordered to pay Rs.1000/- as compensation to the Petitioner.

Learned President's Counsel appearing for the 1st to 6th Respondents submits that he does not resist the application of the Petitioner as the Respondents have been convicted by the High Court. However we note that there is no sufficient evidence against the 4th Respondent to find him guilty for the alleged violation of Articles 11,12(1),13(1) and 13(2) of the Constitution. Learned counsel appearing for the Petitioner too does not press the case against the 4th Respondent. As I pointed out earlier, the Police Officers who arrested the Petitioner have failed to give reasons for his arrest. Considering the aforementioned matters, we hold that the 1st, 2nd, 3rd, 5th and 6th Respondents have violated the fundamental rights of the Petitioner guaranteed by Article 13(1) of the Constitution and further hold that the arrest of the Petitioner was illegal. If the arrest of the Petitioner was illegal, the detention of the Petitioner by the Police Officers inside the Police Station too becomes illegal. Considering all the above matters, we hold that the 1st, 2nd, 3rd, 5th and 6th Respondents have violated the fundamental rights of the Petitioner guaranteed by Articles 11, 12(1),13(1) and 13(2) of the Constitution.

We therefore order each of the above Respondent (1st, 2nd,3rd,5th and 6th Respondents) to pay a sum of Rs. 100,000/- to the Petitioner as compensation. For the purpose of clarity, we state here that each Respondent abovenamed (1st, 2nd ,3rd,5th and 6th) should pay Rs. 100,000/- to the Petitioner as compensation. When we consider the facts of this case we are unable to find the 4th Respondent guilty of violation of the fundamental rights of the Petitioner guaranteed by the Constitution.

The 1st,2nd,3th,5th and 6th Respondents are directed to pay the said compensation to the Petitioner within 03 months from today.

The Registrar of this Court is directed to send a copy of this order to the 8th and 9th Respondents. We do not make any order against the State to pay compensation.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne, J

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-