

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

SC Application No. 257/94.

Wimalarathne Dahanayake,
No. 313, Stage 2, Anuradhapura.

Petitioner

Vs.

1. Police Sergeant 10597, Piyadasa, Crime Branch, Police Station, Anuradhapura.
2. Police Sergeant Asoka, Crime Branch, Police Station, Anuradhapura.
3. Police Sergeant 7614, Athapattu, Crime Branch, Police Station, Anuradhapura.
4. Police Constable 23098, Thennakone, Crime Branch, Police Station, Anuradhapura.
5. Headquarter Inspector, Police Station, Anuradhapura.
6. Inspector General of Police, Police Headquarters, Colombo 1
7. Hon. Attorney General, Attorney General's Department, Colombo 12.

Respondents

BEFORE:- G.P.S.de Silva CJ, Kulatunga J and Ramanathan J.

COUNSEL:- Ran Banda Seneviratne with Gamini Perera for the petitioner
R.E. Thambiratnam with N. Raviraj for 1st to 4th respondents.
E. Rodrigo SSC with M.F.MSC for 6th and 7th respondents.

ARGUED ON: 1.12.1995

DECIDED ON: 2.3.1995.

G.P.S.de Silva. C.J.

The petitioner complained to this Court of an alleged violation of Articles 13(1), 13(2) and 11 of the Constitution. Leave to proceed was allowed by this Court only in respect of the alleged violation of Article 11 of the Constitution.

According to the petitioner, while he was at home on a friend of his named Rupawansa had informed him at about am that a television set had been found at a culvert near the Community Center at Anuradhapura. Rupawansa and he had proceeded to the scene. While they were at the scene the 1st, 2nd, 3rd and 4th respondents who were police officers attached to the Anuradhapura police station arrived in a jeep. It was the 1st and 4th respondents who carried the television set to the jeep. While they were so carrying the television set, the petitioner states that he told them 'try to catch the thief in the same way you are taking the TV'. Thereupon the 1st respondent had asked him whether he was drunk. He replied in the negative. The 1st respondent asked him what he was talking about. He replied what he had said earlier. It... is his case that the 1st respondent had then abused him and 'slapped him on his face'. As he covered his face with his hands, the 2nd, 3rd and 4th respondents assaulted him, his face was injured and swollen and blood was pouring from his mouth, nose and eyes. He was ordered to get into the jeep and when he refused to do so, he was forcibly grabbed and dumped into the jeep by the respondents. At the police station, he was further assaulted 'mercilessly'.

The 1st and 3rd respondents produced him before the JMO Anuradhapura. He was admitted to the General Hospital at Anuradhapura on the same day at about 12.15 pm. He had to remain in hospital for 4 days.

All the respondents have denied the allegation of assault on the petitioner. According to the respondents, when the petitioner had made the remark referred to above the 1st respondent had asked him if he was drunk. The petitioner had replied, 'yes, I am drunk' and aimed a blow with his hands at the 1st respondent. The 1st respondent warded off the blow and caught him. The petitioner attempted to run away but the respondents brought him under control and put him into the police jeep. On the way to the police station, the petitioner continued to behave in a violent manner and 'in so doing knocked his face and head on the side of the jeep'.

The fact that the petitioner sustained injuries on 9.9 94 is common ground. The only matter that arises for the consideration is the circumstances in which the petitioner came by his injuries. On this issue, the medical evidence is very relevant.

The medical report clearly establish that the petitioner had sustained a 'black eye' (the right eye) contusions on the lower and upper lips and an injury to a finger. There was also an abrasion on the back of his chest. The 'black eye' is strongly suggestive of a 'fist blow' and so do the contusions on the upper and lower lips. There were 4 police officers travelling in the jeep. It is most unlikely that the petitiitner would have been allowed to behave in a violent manner while travelling in the jeep to the police station and thus sustaining injuries on his face. It seems to me that the medical evidence tends to support the version given by the petitioner namely an assault with hands; the story of the respondents is unacceptable having regard to the medical evidence.

There is a further weakness in the version given by the respondents. If in truth it was the petitioner who had dealt a blow on the 1st respondent, it is very strange that no criminal proceedings were initiated against the petitioner. The allegation is that the police officer was assaulted while he was engaged in the performance of his duties.

I accordingly hold that the petitioner has established an infringement of Article 11 of the Constitution and is entitled to relief. In considering the quantum of compensation to be awarded, it is not irrelevant to note that the remark made by the petitioner was quite uncalled for and was perhaps of a provocative nature. This however, does not justify an assault on the petitioner by the police officers.

I direct each of the respondents, namely, the 1st, 2nd, 3rd and 4th respondents to pay the petitioner a sum of Rs. 1,000/- as compensation. I also direct the State to pay a sum of Rs 1,000/- as compensation to the petitioner and a sum of Rs 500/- as costs.

The Registrar is directed to forward a copy of this judgment to the Inspector General of Police for his information.

CHIEF JUSTICE

Kulatunga J.

I agree

JUDGE OF THE SUPREME COURT

Ramanathan J.

I agree

JUDGE OF THE SUPREME COURT