

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

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

Harindra Shashika Kumara  
of Ameragedera, Bulathsinhala,  
appearing by his next friend, his mother,  
Himali Rupika Ratiyala,  
of Ameragedera, Bulathsinhala

**Petitioner**

SC Application No. 462/2001 (FR)

**Vs.**

1. D.I.G.D.A.De Fonseka,  
Director Operations, Officer-inCharge,  
Central Anti-Corruption Task Force,  
Police Headquarters, Colombo 1.  
2. The Officer-in-Charge  
3. S.I.Gamini Seneviratne  
4. Sgt.Nandasiri (7930)  
5. Sgt.Wijesuriya (444)  
6. Reserve Police Sgt. Karunaratne (16181)  
7. PC Kamalasiri (28777)  
8. P.C.Sumanasena (37933)  
9. R.P.C.Premasiri (16190)  
10. R.P.C.Premadasa (11471)  
11. Home Guard Rodrigo (2244)  
12. P.C.(Driver) Ratnayake (2002)  
All of Central Anti-Corruption Task Force, Walana, Panadura.

13. Lucky Kodituwakku,  
Inspector-General of Police,  
Police Headquarters,  
Colombo 1.

14. Hon. Attorney General  
The Attorney General's Department  
Colombo 12.

**Respondents**

BEFORE : **Fernando, J**  
**Gunasekera, J., and**  
**Wigneswaran, J.**

COUNSEL : K. Thiranagama for the Petitioner.  
Riyaz Hamza, SC, for the 1<sup>st</sup>, 13<sup>th</sup> and 14<sup>th</sup> Respondents;  
U.Abdul Najeem for the 3<sup>rd</sup> to 12<sup>th</sup> Respondents.

ARGUED ON : 21<sup>st</sup> January 2003  
DECIDED ON: 17<sup>th</sup> March 2003

**FERNANDO, J.**

This application was filled by a 13-year old boy ('the petitioner') appearing by his mother as his next friend. He complains that his fundamental right under Article 11 was infringed by the 3<sup>rd</sup> to 6<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents (who are police officers from the 'Anti Corruption Task Force' functioning from Walana, Panadura), who subjected him to cruel and degrading treatment on 9.8.2001.

The petitioner's father owns a small shop situated close to their home, and in the same compound. The petitioner did not file an affidavit. According to his mother's affidavit, at about 2.45pm on 9.8.2001 she left him in the shop and went to bathe. When returning she heard him crying and hastened to the shop, where she found a group of six persons in civil cloths, one of whom was abusing him in obscene language. She asked him why he was crying, whereupon someone said that an insect had stung him. The son however, pointed to the man who had been scolding him, and said 'this uncle hit me'. That person told the mother 'you bring up your son properly,

it is I who hit him, and you can do whatever you can'. When the mother asked them who they were, they merely said that they had come from Colombo on official duties, and left after having again abused the Petitioner and his mother. The petitioner's mother noticed that both his cheeks were red and swollen, and bore finger marks, and that he had a bruise on his chest. She asked him what happened. He replied that those persons had come to the shop, and one had asked him "Where the Kasippu"?. Thinking that they were want kasippu to drink, he had replied that he did not know and for them to find out for themselves. Thereupon one person had slapped him both cheeks, pulled him by the shoulder, and poked him in the chest with an elbow so hard that he went crashing against the wall and upset some toffee bottles. That person thereafter pulled and disarranged some of the things in the shop and kicked him in the buttocks. None of the others in the group made any effort to prevent all this.

The petitioner went with his father and mother to the Bulathsinhela Police Station in a three-wheeler. The Officer-in-Charge asked them to find the registration number of the vehicle in which those persons had come. Having looked around, they found a van parked outside the town and the Petitioner recognized a person getting out from it as one of those who had come to the shop. That van had the registration number 250-6347. They then went back to the Bulathsinhela Police Station where the Petitioner's statement was briefly recorded at 5.30 pm. He was recorded as having said that he had been slapped twice on the right cheek and hit on the chest. The police gave him a ticket for admission to the Bulathsinhela hospital, and immediately thereafter, at 5.45 p.m., he was admitted to that hospital. "An assault by an unidentified gang", was the history noted by the Medical Officer in his medico-legal report, and according to him the Petitioner had contusions on each cheek, 3 cms by 4cms. There was no mention of any chest injury. Later that evening the mother learnt that the persons who had come that day were from Anti-Corruption Task Force.

At about 9.00 pm the father complained to Member of Parliament Bandula Gunawardena, who arranged for the two of them to meet the 1<sup>st</sup> Respondent, the Senior Superintendent of Police in overall charge of the Anti-Corruption Task Force the next afternoon. On 10.08.2001 the 1<sup>st</sup> Respondent stated that he had looked into the M.P.'s complaint and 'had been informed that the child's ears had been tweaked by one person and that the child had not assaulted', and requested the father to lodge a complaint at the Police Head Quarters, which he did. The father also complained to the Human Rights Commission. We were not informed of any action taken on the latter two complaints.

The petitioner was in hospital for three days. Because of this incident, he gets nightmares and is afraid to go out in the dark.

The 2<sup>nd</sup> Respondent was not a member of the Police party which conducted several raids that day, and was discharged from the proceedings as learned Counsel for the Petitioner accepted that he was not involved in the incident. Although the 7<sup>th</sup>, 8<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Respondents were members of that Police Party they were not among those who came to the Petitioner's father's premises and they too should have been discharged from these proceedings much earlier.

I now turn to respondents' version. According to a joint affidavit filed in June 2002 by the 3<sup>rd</sup> to 12<sup>th</sup> Respondents they left the Walana Police station at 9.00am on 9.8.2001 in a Police van bearing No. 250-6347 in order to conduct raids in the Bulathsinhela and Welipenna areas, based on information received about illicit breweries. After conducting several successful raids, at 1.45 pm they came to the Petitioner's father's premises since they had previous information that father was involved in illicit brewing. (Apart from that vague statement, no particulars whatsoever were given of the nature of that "information" or about the informant and his credibility. However, in the notes made by the 9<sup>th</sup> respondent regarding the raids it was stated that the Petitioner's father's premises were searched because of a *petition* received by the Unit –which was not produced.)

The 3<sup>rd</sup> Respondent Identified himself as Police Officer and obtained the consent of the occupant, an elderly lady (the petitioner's grandmother) ,to search the house. The six respondents then searched the house, and she began " to abuse the Police team saying that it has become a habit for the Police to come and search there house from various Police stations'. They found nothing suspicious, and went towards the shop. A young boy (Obviously the Petitioner) started shouting to the lady, saying "Police comes everyday and boys are passing hints at (me)'. When the 3<sup>rd</sup> Respondent turned to the side of the boy, the boy said "always the Police comes when the father was out, why can't they come when he is in"? The 3<sup>rd</sup> Respondent "approached the boy and advised him to learn good manners of speaking according to his age'. Then another lady (obviously the Petitioner's mother) came up, and the elderly told her "the police have come today as well'. whereupon the former began to abuse the Police saying' it had become a big problem' 'don't you know for what they are coming everyday', 'wait, I will do a good thing', 'this may be their last trip' ,we will never keep room to come again' , 'we also have big people'. Those respondent further stated, "She also stated that she would inform Bandula Gunawardena' – however, in their notes made after the raids, none of them have made any mention of him. According to the respondents, they made no response whatever to all these many "abusive" remarks.

The police party left the premise at 2.20 pm, conducted another successful raid, and returned to the Walana Police station at 5.50 pm.

The respondent also pleased that they had been involved in several anti-vice operations all over the island, bringing before the Law several big time criminals having connections with powerful politicians, and that not a single complaint of misconduct had been made against any of them. They alleged that the Petitioner and his parents had fabricated a case of assault and ill-treatment in order to keep the Police completely away from raiding their house in future in order to enable them to engage in illicit liquor business with full freedom'.

The Respondent further submitted that the petitioner in his statement to the police had only stated that he had been slapped on the right cheek, while the medico-legal report did not mention any injury to the chest; and that the petitioner and his parents failed to identify the particular person alleged to have assaulted him.

The 1<sup>st</sup> Respondent filed an affidavit denying that he had stated that the child's ear had been tweaked, but admitting that he had looked into the matter and asked the Petitioner's father to complaint to Police Headquarters. He did not state the result of his "looking into matter", nor why he considered a complaint appropriate, nor did he produce any report or other documents submitted to him.

In order to determine whether the petitioner's version is more credible than the respondents' it is necessary to identify certain crucial facts which are not in dispute. There is no doubt whatever that the 3<sup>rd</sup> to 6<sup>th</sup> and 10<sup>th</sup> Respondents, clad in civil cloths, did come to the Petitioner's father's premises that afternoon; that they did meet the Petitioner; that the Petitioner made a remark which the 3<sup>rd</sup> respondent considered rude or impertinent, and reacted at least verbally; that the petitioner did have on his two cheeks large contusions consistent with having received two very hard slaps; and that the Respondents have failed to suggest any other plausible explanation for those injuries. In view of the medico-legal report, the discrepancy in the Petitioner's statement to the Police is of little significance, and was probably due to a lapse in communication at a time of stress.

If the respondents are to believed the Petitioner and his mother and grandmother made various remarks consistent only with the Police having conducted several previous raids, successful or otherwise, and fabricated a case in order to prevent any future raid. They did not tender a scrape of evidence of a single previous raid, and the petitioner's mother filed a counter-affidavit asserting that there had been none. Besides, if the Petitioner and his parents wished to fabricate a case against the Police, they would immediately have identified the assailants as Police Officers. It is probable, however, that they did not know that the Respondents were police officers, because even as late as 5.45 p.m., the Medical Officer was told of an assaulted by "an unidentified gang". In those circumstances, the respondents' version-that there had been previous Police raids, that the petitioner and his parents were annoyed by such raids, and that they wished to prevent future Police raids – cannot be accepted.

I hold the Petitioner's version is true and that the Respondents' version is not. I have no doubt that one of the six Respondents did violently slap the Petitioner on cheeks, causing severe physical injury as well as continuing mental distress. While it is probable that it was the 3<sup>rd</sup> respondent who reacted in this way to the Petitioner's remarks, nevertheless the 3<sup>rd</sup> respondent is liable even if it was another member of the group who slapped him, for the reason that the 3<sup>rd</sup> respondent was in charge of the police party, and if he could not prevent the assault he should at least have reported it. As for the other five members of the police party, they not only acquiesced in the assault but condoned and concealed it. In determining the relief to be awarded, the circumstances in which the six Respondents conducted the raid must be taken into account. They have failed to establish that they had reliable information from an informant or otherwise (cf *Bandaranaike v Rajaguru*, (1999) 1 SriLR 104).

In *Wijesiriwardena V Kumara*, (1989) 2 SriLR 312, a similar blow was held to be an excessive use of force, but not an infringement of Article 11. In that case too, a Police officer hit a schoolboy on the face, but in very different circumstances – in an atmosphere of tension and violence, in an emergency, in which that officer did not act cruelly or brutally, or with the intention of causing humiliation, and did not display indifference to pain and suffering. There were no mitigating circumstances in this case, and the Petitioner was subjected not merely to an excessive use of force, but to cruel and degrading treatment.

I hold that the petitioner's fundamental right under Article 11 has been infringed by the 3<sup>rd</sup> to 6<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents, and award him sum of Rs. 40,000 as compensation and costs payable on or before 31.05.2003, of which Rs. 25,000 shall be paid by the 3<sup>rd</sup> Respondent personally, and Rs. 3000 each shall be paid by the other five respondents personally.

JUDGE OF THE SUPREME COURT

**GUNASEKERA,J**

I agree

JUDGE OF SUPREME COURT

**WIGNESWARAN,J**

I agree.

JUDGE OF THE SUPREME COURT