

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

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

**SC (FR) Application No: 123/2009**

1. H.T.A. Ariyaratne
2. H.R.D.G. Mendis

Both of: No. 53, Horape Temple Road,  
Ragama.

**PETITIONERS**

Vs.

1. Jayantha Wickremarathne,  
Former Inspector General of Police,
- 1A. N.K. Illangakoon,  
Former Inspector General of Police,
- 1B. C.D. Wickremaratne,  
Inspector General of Police.
2. A.L. Keerthi Kumara Atapattu,  
Retired Senior Superintendent of  
Police of the Crime Division of the  
Western Province.

1<sup>st</sup>, 1A, 1B and 2<sup>nd</sup> Respondents at  
Police Headquarters, Colombo 1.

3. Neville Piyadigama
- 3A. Senaka Walgampaya
- 3B. P.H. Manatunge

3C. K.W.E. Karaliedda

3D. S.C.S. Fernando

3E. E.W.M. Lalith Ekanayake

3<sup>rd</sup> – 3E Respondents were/is  
Chairman,  
National Police Commission

4. Nihal Jayamanne

4A. Elle Gunawansa Thero

4B. Savitri Wijesekera

4C. S. Liyanagama

4D. D.K. Renuka Ekanayake

5. R. Sivaraman

5A. D. Dissanayake

5B. Y.L.M. Zwaheer

5C. A.S.P.S.P. Sanjeewa

5D. K. Karunaharan

6. Elle Gunawansa Thero

6A. Charmaine Madurasinghe

6B. Anton Jeyanthan

6C. Gamini Navarathne

6D. N.S.M. Samsudeen

- 6E. P.G.S. Gamini De Silva
- 7. M.M.M. Mowjood
- 7A. R. Sivaraman
- 7B. Frank De Silva
- 7C. Asoka Wijethilake
- 7D. M.P.P. Perera
- 7E. D. Kapila Jayasuriya
- 8. Chandradasa Nanayakkara
- 8A. M.M.M. Mowjood
- 8B. Thilak Collure
- 8C. G.Wickramage
- 9. Charmaine Madurasinghe
- 9A. Newton Gunaratne
- 9B. G. Jeyakumar
- 9C. T.P.Parameswaran

4<sup>th</sup> to 9C Respondents are/were members of the National Police Commission, Block No. 9, BMICH Premises, Colombo 7.

- 10. Somasiri Liyanage,  
Former Office-in-Charge of the  
Negombo Police Station
- 11. Nimal Rathnayake,

Former Officer-In-Charge,  
Police Station, Ragama.

12. Maharaigam Mudalige Dias Peiris,  
Former Officer-In-charge (Administration),  
Police Station, Negombo
13. Imihamillage Senarath Bandaranayake,  
Former Police Sergeant (No. 31267),  
Police Station, Negombo.

11<sup>th</sup> to 13<sup>th</sup> Respondents at,  
Police Headquarters, Colombo 01.

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

#### **RESPONDENTS**

**Before:** S. Thurairaja, PC, J  
Arjuna Obeyesekere, J  
Sobhitha Rajakaruna, J

**Counsel:** Shyamal Collure with Prabath S. Amerasinghe for the Petitioners

Madhawa Tennekoon, Senior Deputy Solicitor General for the 1<sup>st</sup>, 11<sup>th</sup> and  
14<sup>th</sup> Respondents

B. N. Thamboo with K. Jackson for the 12<sup>th</sup> and 13<sup>th</sup> Respondents

**Argued on:** 5<sup>th</sup> February 2025

**Written** Tendered by the Petitioners on 3<sup>rd</sup> May 2021 and 19<sup>th</sup> February 2025

**Submissions:**

Tendered by the 1<sup>st</sup>, 11<sup>th</sup> and 14<sup>th</sup> Respondents on 4<sup>th</sup> May 2021

Tendered by the 12<sup>th</sup> and 13<sup>th</sup> Respondents on 18<sup>th</sup> February 2025

**Decided on:** 21<sup>st</sup> March 2025

## **Obeyesekere, J**

The Petitioners filed this application on 26<sup>th</sup> February 2009 complaining that their fundamental rights guaranteed under Articles 11, 12(1) and 14(1)(g) of the Constitution have been violated by the Respondents. Leave to proceed for the alleged infringement of the said Articles by the Respondents was granted on 5<sup>th</sup> March 2009.

### **Facts in brief**

The 1<sup>st</sup> Petitioner is an Attorney-at-Law primarily engaged as a practitioner in the High Courts of Colombo, Negombo and Gampaha and the Magistrate's Court of Negombo. The 2<sup>nd</sup> Petitioner is also an Attorney-at-Law and is the wife of the 1<sup>st</sup> Petitioner.

The 1<sup>st</sup> Petitioner states that since 2004, he has represented litigants who have been subjected to unlawful arrest and torture by the Police. He states that his professional services have been retained by many civil society and non-governmental organisations including an organisation by the name of 'Right to Life Human Rights Centre' at Katunayake [the Centre]. The 1<sup>st</sup> Petitioner has stated further that he has served as the Legal Consultant of the Centre from 2007 and had continued to represent a large of number of underprivileged persons who had been subjected to physical abuse and harassment by the Police.

The 1<sup>st</sup> Petitioner states that one such person he represented was Anton Sugath Nishantha Fernando who it is alleged had been brutally assaulted by officers attached to the Negombo Police, and in respect of which assault Fundamental Rights Application No. 446/2007 had been instituted. The said Nishantha Fernando had been killed on 20<sup>th</sup> September 2008 by unidentified gunmen. The Petitioners state that while no arrests have been made in that regard, the Centre had received a message on 24<sup>th</sup> September 2008 threatening the 1<sup>st</sup> Petitioner with death if he continued to look after the interests of the said Nishantha Fernando. The Petitioners have stated further that the Centre had formally lodged a complaint with the Headquarters Inspector of the Negombo Police in that regard on 26<sup>th</sup> September 2008 [P4a]. The said complaint does not form part of the subject matter of this application.

On 27<sup>th</sup> January 2009, the 1<sup>st</sup> Petitioner had visited the Negombo Police Station to obtain a copy of a complaint that had been made by the wife of Nishantha Fernando over the loss of her identity card. There had been an exchange of words between the 1<sup>st</sup> Petitioner and the Officer of the Civil Defence Force who was on duty at the entrance to the Police Station with regard to the place where the Petitioner could park his vehicle. The 1<sup>st</sup> Petitioner states that he thereafter met the 12<sup>th</sup> Respondent, who was the Officer-in-Charge of Administration who had directed another officer to provide the 1<sup>st</sup> Petitioner with a copy of such complaint. Thus, at this point of time, there is no complaint by the 1<sup>st</sup> Petitioner that the Respondents interfered with and/or obstructed him in attending to his professional duties as an Attorney-at-Law.

As the 1<sup>st</sup> Petitioner had been requested to stay half an hour to collect the statement, the 1<sup>st</sup> Petitioner states that he left the building with a view of coming back later to collect the said statement. The 1<sup>st</sup> Petitioner states that on his way out, he was accosted by the 13<sup>th</sup> Respondent, who, having blocked his pathway, threatened the Petitioner with death and dealt a severe blow on the left shoulder of the 1<sup>st</sup> Petitioner. While this version of the 1<sup>st</sup> Petitioner has been denied by the 13<sup>th</sup> Respondent, the 1<sup>st</sup> Petitioner does not state what may have triggered this sudden eruption on the part of the 13<sup>th</sup> Respondent nor does the 1<sup>st</sup> Petitioner claim that the 13<sup>th</sup> Respondent bore any grudge towards him as a result of the 1<sup>st</sup> Petitioner having appeared against officers attached to the Negombo Police Station. This is the first incident that the 1<sup>st</sup> Petitioner has complained of to this Court, with the 1<sup>st</sup> Petitioner claiming that the 13<sup>th</sup> Respondent violated his fundamental rights guaranteed by Article 11.

The 1<sup>st</sup> Petitioner states that he immediately visited the office of the 12<sup>th</sup> Respondent and informed him of such assault and demanded that action be taken by the 12<sup>th</sup> Respondent. While he was talking to the 12<sup>th</sup> Respondent, the 1<sup>st</sup> Petitioner states that the 13<sup>th</sup> Respondent entered the office of the 12<sup>th</sup> Respondent and hit him twice on his left wrist. In spite of having seen such incident, the 1<sup>st</sup> Petitioner claims that the 12<sup>th</sup> Respondent ignored the above incident and refused to take any action relating to the first incident. This is the second incident that has been complained of by the 1<sup>st</sup> Petitioner to this Court. The 1<sup>st</sup> Petitioner claims that the said action of the 13<sup>th</sup> Respondent is a violation of his fundamental rights guaranteed by Article 11 and that the failure of the 12<sup>th</sup> Respondent

to take action against the 13<sup>th</sup> Respondent is a violation of his fundamental rights guaranteed by Article 12(1).

The 1<sup>st</sup> Petitioner had lodged a written complaint in respect of the above two incidents with the 1<sup>st</sup> Respondent, the Inspector General of Police on the very next date [P8] where the 1<sup>st</sup> Petitioner had reiterated the entire incident. While a formal inquiry had been held by the 2<sup>nd</sup> Respondent into such complaint, it is the position of the 2<sup>nd</sup> Respondent that in spite of several messages having been sent to the 1<sup>st</sup> Petitioner to be present for an inquiry, the 1<sup>st</sup> Petitioner did not respond resulting in the inquiry not being proceeded with.

The third and final incident that has been complained of to this Court took place on 30<sup>th</sup> January 2009. The Petitioners state that they were at their office situated next to their residence at Ragama till about 10.30pm that night and had just returned to their residence when they observed that their office was on fire. The Petitioners state further that all efforts taken by them and their neighbours to douse the fire had been unsuccessful and that the entire office building together with all valuables were completely destroyed by the fire. The Petitioners have not produced any independent evidence as to who the perpetrators of the said incident may have been nor do they make any specific allegation against any person/s. The Petitioners however claim that they verily believe that the fire was a meticulously planned and well-coordinated attack and was the culmination of a series of incidents to prevent the 1<sup>st</sup> Petitioner from engaging in his professional duties.

The Petitioners state that a complaint with regard to the fire was lodged at 11.50pm that night at the Ragama Police Station and that the 1<sup>st</sup> Petitioner visited the said Police Station at around noon the next date. The Petitioners state that while Officers from the Ragama Police Station visited the scene of the incident on 31<sup>st</sup> January 2009 and 1<sup>st</sup> February 2009, a formal visit by officers attached to the Peliyagoda Police Station was done only on 2<sup>nd</sup> February 2009. The Petitioners state that no further action has been taken by the Police Department thereafter. The inaction on the part of the Police in investigating the said complaint and the impact that such failure had on the right of the Petitioners to engage in their professional duties as Attorneys-at-Law is the third complaint by the Petitioners to this Court. This complaint involves a violation of the fundamental rights of the Petitioners guaranteed by Articles 12(1) and 14(1)(g).

## Article 11 and 12(1) – the first and second incidents

I shall commence by considering the aforementioned first and second incidents together as both incidents formed part of one transaction.

As pointed out by Atukorale, J in **Amal Sudath Silva v Kodituwakku, Inspector of Police and Others** [(1987) 2 Sri LR 119; at page 126], “*Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torturous, cruel or inhuman treatment on another. It is an **absolute** fundamental right subject to **no restrictions or limitations** whatsoever.*” [emphasis added]

In **Mrs. W M K De Silva v Chairman, Ceylon Fertilizer Corporation** [(1989) 2 Sri LR 393], Amerasinghe, J stated [at page 405] that:

*“In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, **whether physical or mental** is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom I shall refer to as ‘the victim’) by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach or a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be.”* [emphasis added]

In **Hettiarachchige Gemunu Tissa v Jayaratne, Sub Inspector of Police and others** [SC (FR) Application No. 417/2016; SC minutes of 28<sup>th</sup> May 2024], it was stated that, “*Every human being is entitled to live in dignity and not be subject to any torture or cruel, inhuman or degrading treatment or punishment. It is the duty of this Court, as the guardian of the fundamental rights of our People, to foster and protect these rights. Whenever a complaint alleging the infringement of Article 11 is made to this Court, our duty is to*



*examine carefully the facts relating to such complaint, the corroborative evidence, if any, tendered by the petitioner in support of such complaint, the version of the respondent/s and arrive at a considered decision.”*

It was pointed out by Amerasinghe, J in **Channa Pieris and others v Attorney General and others (Ratawesi Peramuna Case)** [(1994) 1 Sri LR 1; at page 105] that in considering any allegation of a violation of Article 11, “... *the acts or conduct complained of must be qualitatively of a kind that the Court can take cognizance of.*” It was observed [at page 106] that where physical harm is concerned, a long line of cases had adopted the criteria set out in **Mrs. W M K De Silva v Chairman, Ceylon Fertilizer Corporation** [supra; at page 401], that for there to be an Article 11 infringement, the degree of mental or physical coerciveness or viciousness must be such as to occasion not mere ill-treatment, but maltreatment of a very high degree.

Bearing the above in mind, I shall now re-visit the factual matters as pleaded by the parties.

The fact that, (a) the 1<sup>st</sup> Petitioner visited the Negombo Police Station on 27<sup>th</sup> January 2009, (b) the 1<sup>st</sup> Petitioner got into an argument with the officer of the Civil Defence Force on duty at the entrance to the Police Station over the location where he could park his vehicle, and (c) there was an argument between the 1<sup>st</sup> Petitioner and the 13<sup>th</sup> Respondent inside the Police Station in respect of the said incident are borne out by the notes maintained by PC 33287 Dharshana [12R2], the 12<sup>th</sup> Respondent [12R6] and the 13<sup>th</sup> Respondent [12R7].

I have very carefully examined the said notes in the light of the narration of the 1<sup>st</sup> Petitioner and observe the following matters:

- (a) As admitted by the 1<sup>st</sup> Petitioner, an incident occurred prior to the 1<sup>st</sup> Petitioner entering the Police Station. The said incident was however resolved, at least for the time being, by the 1<sup>st</sup> Petitioner parking his vehicle at a different location;
- (b) The 1<sup>st</sup> Petitioner’s request for a copy of the statement made by the wife of Nishantha Fernando had been allowed and the 1<sup>st</sup> Petitioner was asked to stay half an hour to collect the said statement;

- (c) The Respondents have not obstructed the 1<sup>st</sup> Petitioner in carrying out and/or discharging his professional duties as an Attorney-at-Law;
- (d) Having come out of the Police Station, the 1<sup>st</sup> Petitioner had again got entangled over the parking issue with the Officer on duty at the entrance at which point the 13<sup>th</sup> Respondent had come to the defence of the said Officer;
- (e) The 1<sup>st</sup> Petitioner got into an argument with the 13<sup>th</sup> Respondent in the mistaken belief that the 13<sup>th</sup> Respondent was a respondent in the fundamental rights application filed by Nishantha Fernando;
- (f) The 13<sup>th</sup> Respondent is alleging that the 1<sup>st</sup> Petitioner was under the influence of alcohol and had threatened the officers present that he will ensure that disciplinary action is taken against the 13<sup>th</sup> Respondent and other officers.

The Respondents have of course denied that they assaulted the 1<sup>st</sup> Petitioner.

In Hondamuni Chandima and another v Inspector Malaweera, Police Station, Ambalangoda and others [SC (FR) Application No. 242/2010; SC minutes of 30<sup>th</sup> April 2021] Aluwihare, PC, J stated as follows:

*“Article 12 (1) stipulates that everyone is equal before the law and is entitled to the equal protection of the law. **It needs no reiteration that the primary responsibility of upholding these fundamental protections lies with the State.** As reminded over and over again by this Court, police officers, being state officers tasked with law enforcement and the maintenance of law and order have an utmost responsibility in respecting, safeguarding and advancing these rights. **Police officers are expected to extend common courtesies at all times when dealing with the public.** The identity or the status of the person whom the police is dealing with should have no bearing whatsoever on the fair and courteous treatment that they are entitled to, as of right. Police officers are bound to treat every person with dignity and respect.”* [emphasis added]

The friction between Police Officers and Attorneys-at-Law who visit Police Stations to attend to their professional duties has been the subject matter of much litigation over the years. In the above case, Aluwihare, PC, J went on to refer in the following manner to an amicable resolution reached before this Court of such issues:

*“In D. W. C. Mohotti v. Upul Seneviratne, OIC, Bambalapitiya and Others, (SC FR 527/08 SC minutes 27. 04. 2009) which involved an incident where an Attorney-at-Law was obstructed by a police officer in representing his client at the police station, a settlement was reached between the parties. The terms of the settlement were to the effect that the IGP would issue formal rules under Section 55 of the Police Ordinance delineating the manner in which the police should interact with persons at police stations, police headquarters and/or any other permanent unit, base, post or such like that have been established by the Sri Lanka Police. By Rule No. 3 it was stated that “No officer of the Police Force shall in any manner or circumstances whatsoever, use, physical force, abusive language or resort to any other intermediary conduct in respect of any person.” Regarding the treatment of Attorneys-at-Law who may enter such place for the purpose of representing and/or watching the interests of their clients who are suspects or otherwise, it was stated by Rule No. 1 that their right to represent their clients should be fully recognized. Rule No. 2 required that every officer of the Police Force shall at all times, treat such Attorney-at-Law within the above-mentioned places “cordially, and courteously, and shall afford to such Attorney-at-Law all reasonable assistance during the course thereof.” Any officer who acts in violation of those rules, or aids and abets the violation of those rules is to be dealt with severely, according to the available procedures and may be liable to any other disciplinary inquiry/proceedings and punitive sanctions.*

*Although the present case was anterior to the publication of the ‘Police (Appearance of Attorneys-at-Law at Police Stations) Rules, 2012’ in Gazette Extraordinary No. 1758/36 of 18. 05. 2012 which provided guidelines to the Police regarding interacting with Attorneys-at-Law within the precincts of police stations, the rules agreed upon in the Mohotti case (supra) would be applicable to the present case. In my view the Rules referred to have only restated the Fundamental Rights enshrined in the Constitution and referred to them expansively with the objective of enlightening the*

*police officers of the need to respect Fundamental Rights. The effect of the said rules is that every person who enters a police station or similar premises should be treated with dignity and politeness by the police. Attorneys-at-Law who represent the interests of their clients and act in the exercise of their professional duties too are entitled to courteous and proactive treatment. Needless to say, even in the absence of any binding rules, these are basic human decencies any public servant owes a fellow citizen, in their interactions. ... Police officers are required to take extra care in the discharge of their duties in view of the fact that they are endowed with coercive powers to perform their functions.” [emphasis added]*

A similar incident occurred in **Ratnayaka Weerakoonge Sandya Kumari v Lakshitha Weerasinghe and others** [SC (FR) Application No. 75/2012; SC Minutes of 18<sup>th</sup> December 2019]. The petitioner, a lady Attorney-at-Law complained that she was abused and harassed inside the Meegahatenna Police Station by the Officer-in-Charge when she went to surrender a suspect who was wanted on an allegation of rape. Having weighed the evidence produced, this Court was inclined to accept the narration given by the 1<sup>st</sup> and 2<sup>nd</sup> respondents that the **petitioner created a commotion at the police station**. Murdu Fernando, PC, J [as she then was] went on to state that:

*“Another factor that should be borne in mind is that the office of an Attorney at-Law is also governed by the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules of 1988 where it is specifically stated that an Attorney at-Law must not conduct herself in any manner which would be reasonably regarded as unworthy, disgraceful and dishonorable by Attorney-at-Law of good repute.*

*When analysing the behavior of the petitioner and the 1<sup>st</sup> respondent based on the affidavits filed before Court, I am reminded of the oft quoted saying that, ‘courtesy begets courtesy’.”*

Taking into consideration (a) the two conflicting versions of the 1<sup>st</sup> Petitioner on the one hand and the Respondents on the other with regard to the alleged assault of the 1<sup>st</sup> Petitioner by the 13<sup>th</sup> Respondent, and (b) the nature of the complaint before this Court, I am unable to conclude that the incidents complained of by the 1<sup>st</sup> Petitioner satisfies the test laid down **Mrs. W M K De Silva v Chairman, Ceylon Fertilizer Corporation** [supra].

What is clear to my mind however is that the entire incident was triggered by the distrust and the dislike that the 1<sup>st</sup> Petitioner had towards the officers of the Negombo Police Station arising from the alleged torture of Nishantha Fernando, and possibly other incidents involving officers of the Negombo Police Station. This led to an insignificant issue of the 1<sup>st</sup> Petitioner being unable to park at a place of his choice being blown out of proportion. It is clear that both parties failed to act with restraint and with respect towards each other. Just as much as Police Officers must act with courtesy to all those visiting a police station, an Attorney-at-Law must also bear in mind that he or she cannot use his or her professional status and privilege to impose unnecessary demands on those serving in a Police Station.

I am therefore of the view that the 1<sup>st</sup> Petitioner has failed to discharge the burden cast on him to establish that the first and second incidents complained of to this Court has resulted in a violation of his fundamental rights guaranteed by Articles 11 and 12(1).

#### Articles 12(1) and 14(1)(g) – the third incident

This brings me to the third incident complained of by the Petitioners.

It is admitted by the Respondents that the office premises of the 1<sup>st</sup> Petitioner was destroyed by fire and that the 1<sup>st</sup> Petitioner complained to the Ragama Police Station of such incident. A citizen of this Country is entitled in terms of the law to make a complaint to law enforcement authorities of the commission of an offence and is equally entitled to have such complaint investigated in accordance with the applicable law in a fair, independent and transparent manner.

This position is clearly set out in Section 109(5)(a) of the Code of Criminal Procedure Act, No. 15 of 1979, as amended, which provides as follows:

*“If from information received or otherwise, an officer in charge of the police station or inquirer **has reason to suspect the commission of any offence**, he shall himself **make an investigation** or authorize the making of an investigation under this Chapter in the manner hereinafter set out:*

*Provided however, if the offence is a cognizable offence or he has reason to apprehend a breach of the peace, he shall, in the case of every inquirer, forthwith submit a report to the Magistrate's Court having jurisdiction in respect of such offence and in the case of an officer in charge of the police station, forthwith submit a report to his own immediate superior and proceed in person to the spot to investigate the facts and circumstances of the case and **to take such measures as may be necessary for the immediate discovery and arrest of the offender;**"*

In **Victor Ivon v Sarath N. Silva, Attorney General and another** [(1998) 1 Sri LR 340; at page 349], Mark Fernando, J stated that, "A citizen is entitled to a proper investigation - **one which is fair, competent, timely and appropriate** - of a criminal complaint, whether it be by him or against him. The criminal law exists for the protection of his rights - of person, property and reputation - and lack of a due investigation will deprive him of the protection of the law." [emphasis added]

Whether inaction by law enforcement authorities can amount to a violation of Article 12(1) was considered by this Court in **Faiz v Attorney General and others** [(1995) 1 Sri LR 372]. In that case, the complaint of the petitioner was that the 2<sup>nd</sup> – 4<sup>th</sup> respondents who were officers attached to the Polonnaruwa Police Station failed to prevent the 6<sup>th</sup> respondent, a Parliamentarian representing the Polonnaruwa District, from assaulting the petitioner, failed to make any endeavour to apprehend the suspects or to take any further steps under the law or even to record the statement of the petitioner that he had been assaulted by the 6<sup>th</sup> respondent inside the police station.

Perera, J observed [at page 402] that:

***"In this instance it is clear that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents deliberately refrained from apprehending the suspects as they were entitled to do in law. It was conceded by the Additional Solicitor General that up to date no complaint had been filed by the police against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents. While the respondent police officers had taken action with such astounding promptitude against the petitioner on the complaint of the 6<sup>th</sup> respondent of an attempt to cause hurt to him and had ensured that the petitioner was remanded, no meaningful action whatsoever has been taken against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents who had committed such serious***

*offences inside the police station itself up to date. I hold therefore that the petitioner has established beyond doubt that his fundamental right guaranteed by Article 12(1) of the Constitution has been infringed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents by executive or administrative action.” [emphasis added]*

Perera, J went on to state [at page 403] that, *“It is true that a denial of equal protection has hitherto been largely confined to affirmative acts of discrimination. **The view that culpable, official state inaction may also constitute a denial of equal protection has now been recognized by the United States Supreme Court as well.** In *Burton v. Wilmington Parking Authority et al* ([1961] 345 US 715) Justice Clark delivering the opinion of the Court, observed thus “by its inaction the Authority and through it the state, has not only made itself a party to the refusal of service but has elected to place its power property and prestige behind the admitted discrimination.” In *Lynch v. USA* (5<sup>th</sup> CIR 1951) the Federal Court of Appeal stated the opinion thus, “there was a time when the denial of equal protection of the law was confined to affirmative acts, but the law now is that culpable official inaction may also constitute a denial of equal protection.” [emphasis added]*

In **M.W. Leelawathie Harriot Perera and others v N.K. Illangakoon and others** [SC (FR) Application No 372/2015; SC Minutes of 17<sup>th</sup> November 2017], the complaint of the petitioners was the failure by the Police to expeditiously prosecute the case against the suspect before the Magistrate’s Court of Moratuwa or in other words inaction by the police officers who investigated into the said offence to prosecute the offender. Even though the Magistrate directed that the matter be referred to the Attorney General for his advice it took the Police over a year to comply with such order. Malalgoda, PC, J held that the said inaction amounts to the violation of the equal protection guaranteed under Article 12(1) of the Constitution.

I shall now consider whether the Petitioners right to the equal protection of the law guaranteed by Article 12(1) has been infringed by the failure of the Police to take action on his complaint that his office was set on fire.

The 11<sup>th</sup> Respondent served as the Officer-in-Charge of the Ragama Police Station at the relevant time, and was acting in the course of the official functions assigned to him at all times relevant to this application. Thus, the State is responsible for the actions of the 11<sup>th</sup>

Respondent. Even though the 11<sup>th</sup> Respondent ceased to hold office upon his retirement from the Police Department and did not file an affidavit, the 11<sup>th</sup> Respondent was represented by the Attorney General.

I only have before me an affidavit of the Officer-in-Charge of the Ragama Police Station who served in that office in 2013. According to the said affidavit, officers of the Ragama Police Station had visited the scene of the incident on 1<sup>st</sup> February 2009, and officers of the Government Analyst Department are said to have visited the scene on 3<sup>rd</sup> February 2009. This Court has however not been apprised of what transpired as a result of such visits.

Facts have been reported to the Gampaha Magistrate's Court by the 11<sup>th</sup> Respondent on the same date under Case No. B/343/2009 on the basis that the complaint discloses an offence punishable under Section 419 of the Penal Code. Thus, on the 11<sup>th</sup> Respondent's own admission, the provisions of Section 109(5)(a) had been triggered. The 11<sup>th</sup> Respondent was therefore under a legal duty *"to investigate the facts and circumstances of the case and to take such measures as may be necessary for the immediate discovery and arrest of the offender."*

I have examined the 'B' report marked '11R1' and observe that other than (a) recording the statement of the 1<sup>st</sup> Petitioner, where the 1<sup>st</sup> Petitioner had expressed his suspicion that it was foul play especially in view of the previous incidents involving officers of the Negombo Police, and (b) filing 11R1, the 11<sup>th</sup> Respondent has not conducted any investigation at all.

This is clearly borne out by the final paragraph in 11R1, which reads as follows:

**“මෙම සිද්ධිය සම්බන්ධයෙන් පැමිණිල්ල සටහන් කිරීමෙන් පසු වහා පරීක්ෂණ කටයුතු ආරම්භ කර ඇති අතර මෙය ගිනි තැබීමක් නිසා ඇතිවූ ගින්නක්ද, එසේ නොමැතිනම් වදුලිය කාන්දු වීමක් සිදුවූවක්ද යන්න පරීක්ෂා කිරීම සඳහා වදුලි බල මණ්ඩලය, ඇසරේ කාර්යාලය, රස පරීක්ෂක කාර්යාලය, විශේෂ පොලිස් අපරාධ විමර්ශන කණ්ඩායම් වෙත දැනුවත් කර ආදාල නිලධාරීන් මාර්ගයෙන් මෙම ගින්න ඇතිවීමට හේතුව සොයා බලා මෙම සිද්ධිය සම්බන්ධයෙන් යම් සැකකරුවන් සිටිනම් ඔවුන් අත්අඩංගුවට ගෙන ගරු අධිකරණය වෙත වාර්ථා කරන තෙක් මෙම නඩුව බහා තබන මෙන් ගෞරවයෙන් ඉල්ලා සිටිමි.”**



Thus, even though the 11<sup>th</sup> Respondent speaks of assigning special police teams to investigate the complaint, the 11<sup>th</sup> Respondent has clearly demonstrated on the first day itself that he had no intention at all in acting in terms of the law, investigate the facts & circumstances of the case and take such measures as may be necessary for the immediate discovery and arrest of the offender/s. The 11<sup>th</sup> Respondent has openly engaged in an absolute sham in dereliction of his statutory duty. There was simply no basis for the 11<sup>th</sup> Respondent to move at the first available opportunity to lay by the case, especially in view of the aforesaid statement in 11R1.

That the complaint of the 1<sup>st</sup> Petitioner was 'strangled and put to death' on day one is clearly evident when one considers that the affidavit of the Officer-in-Charge of the Ragama Police Station filed over 4 years after the incident does not disclose if any steps were taken after 3<sup>rd</sup> February 2009. Nor has the State apprised this Court the steps taken by it even after the filing of the said affidavit. Sixteen years later and the complaint of the 1<sup>st</sup> Petitioner that his office was set on fire has remained an unsolved crime.

It is indeed a very sad situation as far as law enforcement in this Country is concerned if Police Officers are to adopt such a lackadaisical approach towards their statutory duties. The complainants were Attorneys-at-Law who had the ability to come before this Court and complain. It is not a privilege that a majority of the citizens of this Country can afford, and I fear to think of what the position might be of such majority.

It is not that I do not appreciate that it may not be possible to apprehend the offenders in each and every complaint. However, it shall be the basic responsibility of a Police Officer to conduct a fair and impartial investigation without sabotaging the investigation at the first available opportunity. The seriousness of the 'action' of the 11<sup>th</sup> Respondent must be viewed in the background of the allegations levelled against the officers of the Negombo Police Station to which I have referred to. As observed by Mark Fernando, J in **Victor Ivon v Sarath N. Silva, Attorney General and another** [supra], the Petitioners were certainly "*entitled to a proper investigation - one which is fair, competent, timely and appropriate...*". I am therefore of the view that the inaction on the part of the 11<sup>th</sup> Respondent who functioned as the Officer-in-Charge of the Ragama Police Station to investigate in terms of the law the complaint of the 1<sup>st</sup> Petitioner has resulted in the

violation of the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution.

I must for the sake of completeness state that although the damage to their office would have resulted in an obstruction to the Petitioners engaging in their professional duties as Attorneys-at-Law, the Petitioners have not placed any material to substantiate their position that the failure to investigate the said complaint prevented them from engaging in their professional duties. Hence, I am not inclined to hold that the fundamental rights of the Petitioners guaranteed by Article 14(1)(g) have been infringed by any of the Respondents.

### Conclusion

In the above circumstances, I hold that the State must take responsibility for the inaction of the 11<sup>th</sup> Respondent which has resulted in the violation of the fundamental rights of the Petitioners guaranteed by Article 12(1). I therefore direct that the State pay a sum of Rs. 50,000 as compensation to each of the Petitioners within three months hereof.

I make no order with regard to costs.

**JUDGE OF THE SUPREME COURT**

**S. Thurairaja, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**Sobhitha Rajakaruna, J**

I agree.

**JUDGE OF THE SUPREME COURT**