

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

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

Jathun Gamage Priyantha

36/A, Manahara,
Surawiru-gama,
Sooriyawewa.

Petitioner

Vs.

SC FR Application 18/2016

1. S.R.J. Dias

Headquarters Inspector,
Police Station,
Embilipitiya.

2. Sub-Inspector Ranasinghe

Officer-in-Charge,
Minor Offence Branch,
Police Station,
Embilipitiya.

3. Inspector General of Police

Police Headquarters,
Colombo 01.

4. Chairman

National Police Commission,
Block No. 9, B.M.I.C.H. Premises,
Colombo 07.

5. Hon. Attorney-General

Attorney-General's Department,
Colombo 12.

Respondents

Before : **Vijith K. Malalgoda, P.C., J.**
Yasantha Kodagoda, P.C., J.
Mahinda Samayawardhena, J.

Appearance: Pulasthi Hewamanne with Ms. Harini Jayawardhana instructed by Ms. Thamarashi Wickramanayake on behalf of the Legal Aid Commission for the Petitioner. [At the hearing stage Ms. Harini Jayawardhana argued the case on behalf of the Petitioner.]
Chula Bandara with Ms. Gayathri Kodagoda for the 1st and 2nd Respondents.
Ms. Chathurangi Mahawaduge, State Counsel for the 3rd, 4th and 5th Respondents.

Argued on: 9th and 10th June 2022

Written Submissions filed on: For the Petitioner on 12th May 2020 and 4th August 2022.
For the 1st and 2nd Respondents on 30th November 2021 and 8th August 2022.

Decided on: 22nd August, 2024

Yasantha Kodagoda, P.C., J

Introduction

- 1) This judgment relates to an Application filed by the Petitioner invoking the jurisdiction vested in this Court under and in terms of Article 17 read with Article 126 of the Constitution, wherein the Petitioner complained to this Court of the infringement of his fundamental rights by the Respondents. On 8th July 2016, having heard learned counsel for the Petitioner in support of the Petition and learned State Counsel who at that stage represented all Respondents, this Court granted "*Leave to Proceed under Article 11 against the 1st and 2nd Respondents and also under Article 13(1) of the Constitution*".
- 2) The Petitioner had been a Police Constable of the Sri Lanka Police. For some time in early July 2014, the Petitioner who at that time was attached to the Kuttigala

Police Station had failed to report to work, and with effect from 10th July 2014, he had been served with a notice informing that he is deemed to have '*vacated his post*'. Since then, the Petitioner had been engaged in minor farming and living under indigent circumstances. Learned counsel informed this Court that the events relating to the Petitioner having vacated his post were not directly related to the facts in issue in this matter.

- 3) It is the Legal Aid Commission which had on a request by the Petitioner undertaken to prepare and prosecute this Application and retained counsel to appear on his behalf.

Complaint of the Petitioner

Background -

- 4) In May 2014, at a time when the Petitioner was serving at the Kuttigala Police Station, a dispute had erupted between him and the 1st Respondent, who at that time was the Headquarters Inspector (HQI) / Officer-in-Charge of that Police Station. This had resulted in the 1st Respondent berating the Petitioner in the presence of his family. The Petitioner had presented complaints regarding this incident against the 1st Respondent to the Senior Superintendent of Police of the Ratnapura Division (complaint dated 19th May 2014 produced marked "P1(a)"), to the Police Headquarters and to the Human Rights Commission of Sri Lanka. In view of these occurrences, the 1st Respondent had harboured animosity towards the Petitioner.

Incident in issue -

- 5) Sequel to a notice received on 25th July 2015 from the Sooriyawewa Police Station to appear before the Embilipitiya Police Station, on 26th July 2015, the Petitioner went to the Embilipitiya Police Station. At the Police Station, he was interviewed by Police Constable 42796 Aruna Shantha regarding a District Court action wherein the Petitioner was a party. The case related to the leasing of a motor vehicle. (A copy of the Complaint dated 16th June 2015 of case No. DHP/2047/15 of the District Court of Colombo, wherein the Petitioner has been cited as the 1st Defendant, has been produced marked "P2".) His statement was recorded, though he was not informed of the purpose for which he was required to call-over at the Police Station and make such statement. A short while thereafter, the Plaintiff of the District Court action arrived at the Police Station and made a statement. Thereafter, the said Plaintiff and the Petitioner discussed the possibility of arriving

at a settlement pertaining to the dispute between them, which was the subject matter of the afore-stated District Court action.

- 6) At or about that time, the 1st Respondent arrived at the branch of the Police Station inside which the Petitioner and the afore-stated Plaintiff were in discussion, and started to berate the Petitioner in extremely foul and contumelious language. The exact utterances of the 1st Respondent cannot be included in this judgment, due to its unparliamentary nature. The scolding bore reference to the fact that the Petitioner had filed action against the 1st Respondent at the Human Rights Commission. The Petitioner had sought to explain himself, at which stage the 1st Respondent had got further angered and snatched from the Petitioner his mobile phone. Thereafter, having drawn his pistol, the 1st Respondent assaulted the Petitioner with the aid of the pistol. The blows using the pistol had alighted on the face and the head of the Petitioner. Consequently, the Petitioner fell on the ground. Then, the 1st Respondent had kicked the Petitioner. Though several Police Officers including the 2nd Respondent witnessed this incident, none intervened to prevent or halt the assault.
- 7) Soon after the assault, around 4.30 p.m. on the instructions of the 1st Respondent, the Petitioner had been placed inside a police cell and detained. The 1st Respondent also directed Police Sergeant Dharmawansa (P.S. 30151) not to permit the Petitioner to communicate with anyone.
- 8) The Petitioner has produced marked "P3" an affidavit of Ratnayake Mudiyansele Dharmawansa (the afore-stated Police Sergeant). In the said affidavit, the Police Sergeant affirms the fact that on 26th July 2015 he was on duty at the Embilipitiya Police Station. He served as the 'Reserve Officer'. That afternoon, he saw the Petitioner coming into the police station. In fact, it had been him who directed the Petitioner to go into the Miscellaneous Crimes Unit. Around 4.30 p.m., he heard someone being assaulted. When he looked, he saw the 1st and 2nd Respondents holding on to the Petitioner, and thereafter the 1st Respondent assaulting the Petitioner on his head and face. Subsequently, he noted the Petitioner bleeding from his mouth. The 1st Respondent had opened cell No. 1, pushed the Petitioner into it and while the Petitioner was entering the cell, kicked him as well. Having locked the Petitioner inside the cell, the 1st Respondent had instructed the witness not to permit anyone to see the Petitioner, and also not to permit him to speak with anyone else.

- 9) Though the Petitioner had sustained several injuries on his lips and a tooth, which were visible, he was not taken to a hospital for treatment. His detention inside the cell continued till 9.30 a.m. on the 27th of July 2015.
- 10) On the 27th, a statement of the Petitioner was partially recorded. He was deprived of an opportunity to read the statement. Thereafter, the Petitioner was taken to the Embilipitiya Hospital. On the initiative of medical authorities, the Petitioner was admitted to the hospital, notwithstanding objection by police officers to that course of action. At the hospital, he was examined by Consultant General Surgeon Dr. Kamal Weeratunga. According to entries made by him in the 'Diagnosis Ticket' produced by the Petitioner marked "P4", the examinee (Petitioner) had a lacerated mouth, face and head. There had been tenderness in the lower abdominal area. The Petitioner had complained of a headache and a backache. There has been nasal bleeding. The reverse of the 'Diagnosis Ticket' contains several other entries ostensibly made by Dr. Weeratunga. There are multiple references to these notes which are in abbreviated form and interpretations given to them in the written submissions of learned counsel for the Petitioner. However, as there was no evidence presented in that regard, though the interpretations provided may be correct, I shall neither make reference to them nor rely on them.
- 11) As the Petitioner claimed that he was examined by a Judicial Medical Officer, this Court called for the Medico-Legal Report. In response, the Court received a medico-legal report issued by Dr. Chamil Abeysuriya, Medical Officer (Medico Legal) of the District General Hospital, Embilipitiya. According to that report, the Petitioner had been examined by Dr. Abeysuriya on 27th July 2015. The examinee had told Dr. Abeysuriya that he was assaulted by the 'OIC Embilipitiya'. A laceration of 0.5 x 0.5 cm had been observed over the left side of the upper lip, and a fracture had been noted of the left first upper incisor teeth. Dr. Abeysuriya has expressed the opinion that these injuries had been caused by a heavy blunt weapon. The injuries sustained by the Petitioner were consistent with the 'history' provided by the examinee.
- 12) On the afternoon of 27th July, the Magistrate of the area visited the hospital and interviewed the Petitioner. He informed the Magistrate of the assault. The Magistrate made order transferring the custody of the Petitioner to prison officers and placed him in virtual remand custody at the Embilipitiya Remand. Following

treatment, the Petitioner was discharged from hospital on 29th July 2015. That same day, around 2.30 p.m., the Magistrate visited the Petitioner at the hospital, and made order enlarging the Petitioner on bail.

Complaints to the Human Rights Commission and to the Police Headquarters

13) On 19th August 2015, the Petitioner presented a complaint regarding this incident to the Human Rights Commission. On 21st August 2015, the Petitioner presented the same complaint to the Police Headquarters.

Complaint to the Supreme Court

14) By his Petition to the Supreme Court dated 25th January 2016, the Petitioner complained that in view of the foregoing events, he continues to live in fear of further harassment by the Respondents and other officers acting at the behest of the 1st Respondent.

15) The Petitioner has alleged that the conduct of the Respondents towards him amount to infringement of the Petitioner's fundamental rights guaranteed under Articles 11, 12(1), 13(1), 13(2) and 13(5) of the Constitution. An overarching allegation has been made that the entire episode reflects conduct of the police which is malicious and arbitrary.

16) The allegation that the Petitioner's fundamental rights guaranteed under Article 11 has been infringed is founded upon (a) the berating of the Petitioner by the 1st Respondent using profane language and filth, (b) the assault on the Petitioner by the 1st Respondent, and (c) the failure on the part of the police to provide the Petitioner with medical treatment in a timely manner.

17) The allegation that the Petitioner's fundamental rights guaranteed under Article 13(1) has been infringed is founded upon (a) the arrest and police custody of the Petitioner being contrary to law, (b) the absence of reasonable grounds to believe that the Petitioner had committed any cognizable offence, (c) the arrest having taken place without any prior investigation, (d) the failure on the part of the police to verify the innocence of the Petitioner, and (e) the arrest and police custody being tainted with malice, and being arbitrary.

Position of the 1st and 2nd Respondents

- 18) On 7th July 2015, one Maathota Aarachchige Somawardhana had arrived at the Embilipitiya Police Station, and lodged a complaint against the Petitioner. According to the said complaint, the Petitioner had purchased a van using a leasing facility obtained from L B Finance Ltd. On behalf of the Petitioner (lessee), the complainant and another person had signed the lease agreement as guarantors. According to that complaint, after sometime, the Petitioner had defaulted paying lease rentals and had hidden the vehicle. Consequently, L B Finance Ltd. had instituted action against the Petitioner and the two guarantors for the recovery of the sum of money due to the company.
- 19) In view of the complaint received, the Petitioner and Somawardhana had been required to come to the Embilipitiya Police Station for the purpose of conducting an inquiry. Accordingly, on the evening of the 26th July 2015, the Petitioner had arrived at the Embilipitiya Police Station.
- 20) According to the 2nd Respondent, the Petitioner was seen inside the Minor Crimes Division of the Police Station around 4.55pm, examining the 'Miscellaneous Offences Information Book'. The 2nd Respondent had inquired from the Petitioner what he was doing. The Petitioner had responded that he was a police officer. As the 2nd Respondent did not know who the Petitioner was, he had required the Petitioner to show his 'police identity card'. The Petitioner had refused to comply with that directive. Then an argument had ensued. When the 1st Respondent went to the Crimes Division, he had heard a heated argument from within the Minor Crimes Division. Therefore, he had gone into the Minor Crimes Division. When he went in, he had seen the Petitioner arguing with the 2nd Respondent.
- 21) After seeing the 1st Respondent, the Petitioner became more aggressive and started to abuse both police officers. Some of the other police officers who were inside the police station gathered around the Petitioner. According to the 1st Respondent, he had arrested the Petitioner as the latter was obstructing the 2nd Respondent in the performance of his duties and behaving in a provocative manner. According to the 2nd Respondent, as there was an imminent breach of the peace, the Petitioner was arrested. According to the 2nd Respondent, the Petitioner struggled and protested at being arrested, and police officer Amila had forcibly taken away the Petitioner and placed him inside a cell.

- 22) In his affidavit, the 2nd Respondent claims that, while being taken to the cell, the Petitioner *"hit his face and his forehead against the wall of the entrance to the cell and injured his lip"*. According to the 1st Respondent, he denies the allegation of assault. In his affidavit, the 1st Respondent has stated that, as the Petitioner was behaving in an abusive manner, he used *"reasonable force"* to arrest the Petitioner. The 1st Respondent makes no reference to how the Petitioner hit his face and head on the wall.
- 23) According to the 2nd Respondent, while inside the cell, around 11.25 pm, Police Constable Kularatne had seen the Petitioner abusing the 1st Respondent and continuously banging his head on the wall of the cell. In support of that position, the 2nd Respondent has attached to his affidavit an affidavit of P.C. 51954 Gamini Kularatne, wherein he has stated that while on duty as the officer-in-charge of suspects who were detained in cells, he saw the Petitioner *"several times banging his head on the steel door of the cell"*. He claims that at that stage he saw an injury on a lip of the Petitioner.
- 24) Following his arrest, that night the Petitioner was interviewed and his statement partially recorded by Sub-Inspector U. Rajapakse. The recording of the statement was discontinued as the Petitioner was feeling unwell. The Petitioner did not sign his statement. As the Petitioner was complaining of a headache, the 1st Respondent had instructed subordinate officers to, if necessary, take the Petitioner to hospital.
- 25) Criminal proceedings had been initiated against the Petitioner on 8th July 2015 for having committed the offences punishable under sections 177 (for having failed to provide answers to questions put by an officer who has statutory power to ask questions), 344 (for having criminally intimidated the 2nd Respondent), and 402 (impersonation as a police officer) of the Penal Code, and sections 79(2) (abusing the 2nd Respondent), and 84(1) (unlawfully exercising powers of a police officer by reading the Information Book) of the Police Ordinance. Later he was prosecuted for having committed those offences.
- 26) On behalf of the Respondents, a typed extract of the notes of investigations pertaining to the complaint received against the Petitioner, circumstances relating to his arrest and investigations conducted were produced.

Position of the Inspector General of Police and the Attorney-General

27) The 3rd Respondent - Inspector General of Police did not present affidavit evidence or any other material before this Court.

Submissions of learned Counsel

28) **Learned Counsel for the Petitioner** submitted that on the day of the incident complained of, the 1st Respondent angrily bereted the Petitioner using filth and contumelious language, and tortured, arrested and detained him, due to pre-existing animosity he had towards the Petitioner. The animosity with the Petitioner was due to the fact that the Petitioner had complained to the Human Rights Commission of Sri Lanka against the 1st Respondent. He also submitted that the 2nd Respondent was a passive spectator of this incident, and failed to prevent torture and illegal arrest and detention. He further submitted that both Respondents had denied the Petitioner timely medical treatment which he submitted amounts to inhuman treatment. He also submitted that the conduct of the 1st and 2nd Respondents amounted to misleading the Magistrate's Court (in MC case No. 38201/16), since they had averred to blatant falsehood and fabricated evidence. He also adverted to the fact that, in that case, after trial, the learned Magistrate had acquitted the Petitioner. He submitted that the findings of the learned Magistrate lent corroboration of the case for the Petitioner, as the learned Magistrate had disbelieved the position taken up by the 1st and 2nd Respondents.

29) Learned counsel for the Petitioner also submitted that the medical reports before this Court '*sufficiently corroborate*' the version of the Petitioner. He submitted that the injuries sustained by the Petitioner were of '*aggravated kind*' since the Petitioner had been hospitalised at the Embilipitiya Hospital for three days. Explaining the entries in the medical report, learned Counsel submitted that the Medical Officer (Medico-Legal) had recorded the '*history*' provided by the Petitioner, which was consistent with the narrative of the events provided by the Petitioner to this Court. The Medical Officer having subjected the Petitioner to an Oral and Maxillofacial referral, noted that the left side of the 1st upper incisor tooth was broken, a laceration on the left side of the upper lip, and the Petitioner had bled from his nose. The Petitioner had pain on the jaw. The medical opinion was that the observed injuries and other features were '*due to assault*'.

30) Counsel for the Petitioner submitted further that the learned Magistrate who visited the hospital on 27th June 2015 had noted that the clothing of the Petitioner

was torn, rear side shoulder area soiled, an injury on the inner side of the lip in the bottom jaw.

- 31) Learned counsel for the Petitioner also drew the attention of Court to the fact that the complaint lodged by the Petitioner at the Human Rights Commission a few days after the incident also served to corroborate the Petitioner's narrative to this Court.
- 32) He submitted that, particularly given the manner in which the Respondents alleged events occurred, the position of the 1st and 2nd Respondents that the Petitioner voluntarily caused on himself the injuries sustained by him (self-inflicted injuries) was *'highly improbable'*. He submitted further that, particularly given the findings of the Medical Officer (Medico-Legal), the Respondents' version of events is palpably false.
- 33) Citing multiple reasons, learned counsel for the Petitioner submitted that the 'notes of investigation' submitted to this Court by the 1st and 2nd Respondents were fabricated and devoid of any truth.
- 34) Learned counsel for the Petitioner submitted to this Court marked "X1" the Judgment of the learned Magistrate in Magistrate's Court Embilipitiya case No. 38201/16, in which the learned Magistrate had acquitted the Petitioner.
- 35) **In response, learned Counsel for the 1st and 2nd Respondents** submitted that the Respondents vehemently deny the allegation made against them that they assaulted the Petitioner, arrested him without sufficient cause, and detained him in an unlawful manner.
- 36) Learned counsel for the 1st and 2nd Respondents submitted that the contents of the affidavit of the Petitioner was self-serving and was contradictory to the contents of his statement recorded at the Embilipitiya Police Station. Furthermore, he submitted that the affidavit of Police Sergeant Dharmawansa should not be relied upon, as the contents of that affidavit was contradictory to his notes made on the information book by himself. He submitted that the statement of complainant Somawardhana also lent support to the position of the 1st and 2nd Respondents that the Petitioner had during the argument between the Petitioner and the 1st Respondent, the former had abused the latter. Somawardhana had denied the

Petitioner's allegation against the 1st Respondent that the police officer had assaulted the Petitioner.

- 37) Learned counsel for the 1st and 2nd Respondents made lengthy submissions that the injury on the lip of the Petitioner had been caused by his having engaged in sustaining self-inflicted injuries by banging his head initially on the wall and subsequently on the cell door. He further submitted that the tooth injury was due to a motor cycle accident the Petitioner had met with several months prior to this incident.

Analysis of evidence, conclusions and findings

- 38) As in most matters of this nature, in this instance too, this Court is confronted with two contradictory narratives. One provided by the Petitioner, and the other by the Respondents whose conduct is being impugned as amounting an infringement of the Petitioner's fundamental rights. Those two opposing narratives relate to what happened at the Embilipitiya Police Station on the evening of the 26th of July 2015. The issue to be determined is, whether as the Petitioner asserts, he was abused and assaulted by the 1st Respondent, unlawfully arrested and detained at the Embilipitiya Police Station at the instance of the 1st Respondent, and whether such infringement of the Petitioner's fundamental rights was abetted by unlawful omissions of the 2nd Respondent; or on the other hand, did the Petitioner without lawful authority read the contents of the Information Book, abuse the 1st and 2nd Respondents who inquired into his conduct, assert that he was a serving police officer, obstruct the 1st and 2nd Respondents in the performance of their duties, attempt to evade being arrested, and thereafter did he inflict on himself injuries that were sustained by him?

- 39) Particularly as a Fundamental Rights Application is to be determined based on testimonial evidence presented through affidavits (as opposed to oral or parole evidence) and documentary evidence, it is challenging to arrive at findings where two opposing parties provide such directly contradictory narratives. Arriving at a definitive finding can be difficult, since in a Fundamental Rights Application the most important tool available for trial judges in the determination of credibility and testimonial trustworthiness being '*the assessment of answers given under cross-examination*' and '*observing the demeanor and deportment of witnesses*' is not available. However, this Court cannot refrain from arriving at findings based on the evidence, merely because determining the truth may be difficult. Every possible

attempt must be made to determine the truth. This is primarily done by applying tests pertaining to the assessment and determination of credibility and testimonial trustworthiness (including the tests of spontaneity, probability, and consistency *per-se* and *inter-se*) as in any other case. Court also considers the availability or the absence of corroboration where it is reasonably possible to expect corroboration.

40) However, this Fundamental Rights Application is different from most other cases. That is due to the benefit the Court has in considering the findings of the learned Magistrate who heard the testimony and adjudicated in Embilipitiya Magistrate's Court case No. 38201/16, in which the Petitioner was the accused. In that case the Petitioner was prosecuted with regard to his alleged commission of five offences (referred to above) inside the Embilipitiya Police Station on the evening of 26th July 2015. It may be noted that following trial, the accused had been acquitted by the learned Magistrate of all charges against him. According to learned counsel, there had been no Appeal against the judgment of the learned Magistrate.

41) The evidence presented against the accused (Petitioner) in the said case appears evidently to have been the sum total of the contents of the affidavits presented to this Court by the 1st and 2nd Respondents. Having considered the evidence led on behalf of the prosecution and the evidence given by the accused (Petitioner), the learned Magistrate has concluded that the defence was able to impeach the credibility of prosecution witnesses. The learned Magistrate has highlighted several instances in which the key prosecution witnesses (P.W. 1 - 2nd Respondent and P.W.2 - 1st Respondent) had faltered during cross-examination. The learned Magistrate had noted that there was a '*lack of flow*' between the testimonies of the two main prosecution witnesses (1st and 2nd Respondents), which in the context in which that term has been used, is an obvious reference to '*inconsistencies inter-se*' between the testimonies provided by the two main prosecution witnesses. The learned Magistrate has expressed the view that a serious doubt has arisen in his mind that the prosecution witnesses had fabricated a story to justify the arrest of the accused. He has also concluded that the presumptiveness of the case for the prosecution has been successfully impeached by the defence. Concluding his Judgment, the learned Magistrate has adjudicated that the prosecution has failed to prove that the accused committed any of the offences he had been charged with or any other offence. Accordingly, the learned Magistrate had acquitted the accused of all charges framed against him.

42) In my view, the analysis of the oral testimony provided by the 1st and 2nd Respondents before the learned Magistrate in the afore-stated criminal case, and the conclusions reached by the learned Magistrate in respect of such testimony, lend ample justification for the submission of the learned counsel for the Petitioner that the affidavit evidence provided by the 1st and 2nd Respondents should be rejected by this Court.

43) It is necessary to note that the position advanced by the 1st and 2nd Respondents that the Petitioner banged his head on the wall and on the cell door and thereby sustained injuries on the face, lips and on one of his teeth is highly improbable. It is so improbable that it comes within the ambit of '*inherent improbability*' which is a factor which by itself can seriously affect credibility. Furthermore, the medical evidence provided by Medical Officer (Medico-Legal) Dr. Chamil Abeysuriya distinctly supports the position of the Petitioner that he had sustained those injuries as a result of being assaulted with the butt-end of a pistol. This is in view of the opinion expressed by Dr. Abeysuriya that the injuries observed on the Petitioner had been caused by "*a heavy blunt weapon*", and the "*injuries were consistent with the history of assault given to him by the Petitioner*". It is to be noted that, notwithstanding the position taken up by the 1st and 2nd Respondents that the injuries of the Petitioner were self-inflicted, no expert evidence was presented to this Court on their behalf, which is an additional reason which supports the position of the Petitioner.

44) I must place on record my agreement with the view advanced by learned counsel for the 1st and 2nd Respondents, that the affidavit given on behalf of the Petitioner by Police Sergeant Dharmawansa lacks credibility, since he has in such affidavit asserted a position which is contradictory with his own notes made in the Information Book. Thus, in arriving at a finding in this matter, the contents of Police Sergeant Dharmawansa's affidavit was not taken into consideration.

45) In view of the foregoing, I conclude the following:

- a. The Petitioner had been initially abused and thereafter assaulted by the 1st Respondent at the Minor Crimes Division of the Embilipitiya Police Station in the manner described by him in his Petition to this Court.
- b. The Petitioner was thereafter arrested in a manner that is contrary to law (not in accordance with section 32(1)(b) of the Code of Criminal Procedure Act).

- c. The Petitioner had been thereafter detained in police custody for no valid reason.
- d. Notwithstanding the injuries sustained by the Petitioner, there had been a delay in securing medical treatment for the Petitioner.

46) However, I must note that, in all probability the Petitioner is likely to have by his own conduct given a degree of provocation to the 1st and 2nd Respondent. I have taken that factor into consideration when determining the relief to be granted to the Petitioner.

47) During the hearing, learned counsel agreed with Court that, should the court find the 1st Respondent had assaulted the Petitioner in the manner the Petitioner has alleged in his affidavit, in the circumstances in which such assault is said to have taken place, the conduct of the 1st Respondent would indeed amount to an infringement of Article 11 of the Constitution.

48) Learned counsel also agreed with Court that, should the Court accept the version of the Petitioner regarding the circumstances pertaining to his arrest and detention at the Embilipitiya Police Station, and reject the version of the Respondents, the arrest of the Petitioner and his custody at the Police Station would amount to an infringement of the Petitioner's Fundamental Rights under Article 13(1) of the Constitution.

49) In these circumstances, application of the jurisprudence developed by this Court pertaining to what amounts to an infringement of Articles 11 and 13(1) would not be necessary in this matter.

50) Suffice for me to express the view that, cruel, inhuman degrading treatment or punishment (which is what is protected by Article 11 of the Constitution, which is a fundamental right from which there can be no derogation) occurs not only when physical or psychological trauma is exerted for the purpose of extracting from a person suspected of having committed an offence, a confessional statement. Infringement of Article 11 may occur in different forms and manifestations. The case at hand is one such manifestation, in which a person has been assaulted by a police officer using the colour of his office, treated in a degrading manner, and thereafter notwithstanding his having suffered serious injuries (including one

grievous injury – fracture of a tooth) deprived of medical treatment in a timely manner.

- 51) In view of the foregoing, I hold that the 1st Respondent has infringed the Petitioner's fundamental rights guaranteed under Articles 11 and 13(1) of the Constitution.
- 52) Though the Petitioner alleges that the 2nd Respondent by his illegal omissions is also culpable of having infringed his fundamental rights guaranteed under Articles 11 and 13(1) of the Constitution, in the circumstances of this case, I do not arrive at such a finding. This is because, both the assault and the unlawful arrest had been at the instance of the 1st Respondent. The 2nd Respondent was an officer subordinate to the 1st Respondent, who was required to act on the instructions of his superior. While in terms of the law, the 2nd Respondent was required to only comply with lawful instructions received by him, in the circumstances of this case, this Court finds it difficult to realistically expect the 2nd Respondent to have intervened in the prevention or mitigation of the infringement of the fundamental rights of the Petitioner. However, the 2nd Respondent may be culpable for having violated police discipline, Police Orders (issued under the Police Ordinance) and standing orders. That is a matter for his disciplinary authorities.

Orders of Court

- 53) In view of the foregoing findings, this Court declares that the 1st Respondent has infringed the fundamental rights of the Petitioner guaranteed by Articles 11 and 13(1) of the Constitution.
- 54) In view of the foregoing finding, the 1st Respondent is directed to, using his personal funds, pay compensation in a sum of One Hundred Thousand Rupees (Rs. 100,000.00) to the Petitioner within two months of this Judgment.
- 55) Since the case of the Petitioner was presented to this Court by the Legal Aid Commission, the 1st Respondent is also directed to pay a sum of Fifty Thousand Rupees (Rs. 50,000.00) to the said Commission as costs incurred by it.
- 56) Following the completion of the hearing of this matter, through Motion dated 16th June 2022, learned State Counsel who appeared for the 3rd to 5th Respondents presented to Court a copy of an advice letter dated 16th June 2022 dispatched on

behalf of the Attorney-General to the Inspector General of Police. It provides as follows:

“When this matter came up for Argument on 09.06.2022 and 10.06.2022, their Lordships’ of the Supreme Court viewed with displeasure the entire incident pertaining to this case, and were concerned that no meaningful and/or disciplinary action had been taken against the officers.

I also draw your attention to the observations of the learned Magistrate in Judgment dated 03.03.2021 in Embilipiya Magistrate’s Court Case number 38201/16, which was the case instituted against the Petitioner by the Embilipitiya Police in respect of the said incident. The Petitioner was acquitted from all charges forwarded against him. A copy of the said Order is annexed herewith for your ease of reference.

Accordingly, both Judicial bodies have expressed their concerns in respect of the conduct of the Police in respect of this incident.

Therefore, you are hereby advised to consider suitable disciplinary action.

Please note that parties have been directed to file Written Submissions in this matter within 4 weeks from 10.06.2022. Court also directed the Hon. Attorney-General to file a motion in respect of the steps taken regarding this matter by the Police.

Therefore, you are also directed to report the progress of such action on or before 30.06.2022.”

- 57) This Court has not been informed of whether or not any disciplinary or other action had been taken against the 1st and 2nd Respondents. If in fact, no disciplinary action has been taken up to date, the 4th Respondent – National Police Commission is directed to act on the advice of the 5th Respondent – Attorney General and take necessary steps to forthwith initiate disciplinary action against the 1st Respondent, and if deemed necessary against the 2nd Respondent.
- 58) Furthermore, if upon the receipt of the afore-stated communication by the 5th Respondent – Attorney General, the 3rd Respondent – Inspector General of Police has failed to take appropriate action against the 1st and 2nd Respondents, he is directed by this Court to file a Motion in this Court within one month hereof, stating reasons for his failure.
- 59) The 3rd Respondent – Inspector General of Police is also directed to forthwith cause the conduct of a criminal investigation against the 1st Respondent for having committed the offence of ‘torture’ as contained in the Convention Against Torture

and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994 (as amended) and upon the completion of such investigation, forward the notes of investigation to the 5th Respondent - Attorney General for the consideration of the institution of criminal proceedings against the 1st Respondent.

60) Within one (1) year from the date of this Judgment, the 5th Respondent - Attorney General is directed to file a Motion in this Court setting-out in detail all steps taken by the 3rd, 4th and 5th Respondents towards implementation of the several orders contained in this Judgment.

61) As stated earlier, it was the Legal Aid Commission which retained counsel and prosecuted this Application on behalf of the Petitioner. This Court wishes to place on record its appreciation of the services being rendered by the Legal Aid Commission towards granting access to justice to people who would otherwise be deprived of the opportunity of presenting their grievances to Court and obtaining redress. This Court also wishes to acknowledge the professionalism with which learned Counsel for the Petitioner presented the case. Learned counsel for the 1st and 2nd Respondents and learned State Counsel also assisted this Court in the administration of justice. Therefore, this Court expresses its appreciation to them.

62) The Registrar is directed to forward copies of this Judgment to the Legal Aid Commission and to the 3rd, 4th and 5th Respondents.

Observations of Court

63) Before departing with this judgment, I must place on record my growing serious concern regarding repeated instances being brought to the attention of this Court pertaining to the continuing violation of the prohibition against the perpetration of torture, and infliction of other forms of cruel, inhuman or degrading treatment or punishment by officers of the Sri Lanka Police.

64) I wish to observe that, over the years, it is not possible to observe a significant improvement in the situation signaled by a significant reduction in the prevalence of this most uncivilized and illegal phenomena. Before the ink on one Judgment dries, another similar or worse case is brought to the attention of this Court. This case is one in that ongoing series of cases. While the Court cannot at this stage based on available material go to the extent of concluding that such repeated instances of torture and other forms of cruel, inhuman or degrading treatment or

punishment stems from State policy, I must arrive at the inescapable conclusion based on cases before this Court, that torture remains significantly present throughout the length and breadth of this country.

- 65) What then has numerous Judgments of this Court pertaining to Article 11 achieved? Most certainly redress to victims. However, regrettably though there has been no significant sustained protection to the people of this country from infringement of the fundamental right guaranteed by Article 11.
- 66) The causes for the prevailing situation appear to be manifold. Tolerance of torture and other forms of cruel, inhuman or degrading treatment or punishment being one. I wonder whether tolerance coupled with the lack of prompt and effective punitive action against perpetrators, is a manifestation of tacit approval. If that is established though cogent and systematic evidence and logical reasoning, the leadership of the Police both within and outside the organisation would have to be necessarily held accountable.
- 67) Therefore, the leadership and the senior management of the Sri Lanka Police must take serious cognizance of this situation. The leadership would include not only the Inspector General of Police and the senior Deputy Inspectors General of Police, but also the Minister to whom the Police has been assigned and the Secretary to the Ministry of the Minister in-charge of the subject as well. It is also necessary for the National Police Commission to take this matter into serious consideration.
- 68) Policy, management techniques, and supervision methodologies must be examined, and necessary measures must be taken to prevent and eliminate the scourge of torture and other forms of cruel, inhuman or degrading treatment or punishment from the law enforcement and criminal investigational system of this country. If the prohibition is violated, prompt and effective punitive action must be taken, which should include a criminal justice response as provided by law and appropriate prompt and effective disciplinary action.
- 69) This Court is mindful that Article 118(b) of the Constitution read with Article 4(c), mandates this Court to exercise the judicial power of the People for the protection of fundamental rights. That is a duty which includes but is not limited to the

adjudication of disputes pertaining to the infringement of fundamental rights. Therefore, unless the existing situation is not addressed effectively and the scourge of torture and cruel, inhuman or degrading treatment or punishment is eliminated, future judgments of this Court may contain sanctions against the leadership and the senior management of the Police. That would be founded upon the failure on their part to eliminate the menace of torture, cruel, inhuman or degrading treatment or punishment from the law enforcement and criminal investigational system of Sri Lanka.

Judge of the Supreme Court

Vijith Malalgoda, J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court