

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.

Thilina Rajapaksha,
No. 109/10/1B,
Amarasinghe Mawatha,
Naramminiya Road,
Kelaniya.

Petitioner

SC FR Application No. 90/2021

V.

1. K.G. Ravindra Kumara,
Police Sergeant (34971),
Police Station,
Alawwa.

2. B.M.S.S. Wijebandara,
Police Sergeant (30472),
Police Station,
Alawwa.

3. Police Officer 87445, (Police
Constable Jayasundera),
Police Station,
Alawwa.

4. M.M.H. Jayatillake,
Chief Inspector of Police,
Officer-in-Charge,
Police Station,
Alawwa.

5. Chandrasena Bandara,
Assistant Superintendent of Police,
ASP's Office, Kurunegala.

6. C.D. Wickremaratne,
Former Inspector General of Police,
C/o Inspector General of Police,
Police Headquarters,
Colombo 01.

6A. Deshabandu Tennekoon,
Former Inspector General of Police,
C/o Inspector General of Police,
Police Headquarters,
Colombo 01.

6B. Priyantha Weerasuriya,
Inspector General of Police, Police
Headquarters,
Colombo 01.

7. Samanthi Mihindukula,
Former Secretary of the National
Police Commission,
C/o Secretary,
National Police Commission,
Block No. 9, BMICH Premises,
Buddhaloka Mawatha,

Colombo 07.

7A. Thamara D. Perera,
Former Secretary of the National
Police Commission,
C/o Secretary,
National Police Commission,
Block No. 9, BMICH Premises,
Buddhaloka Mawatha,
Colombo 07.

7B. Thanuja N. Fernando,
Secretary,
National Police Commission,
Block No.9, BMICH Premises,
Buddhaloka Mawatha,
Colombo 07.

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

Respondents

Before : **P. PADMAN SURASENA, CJ.**
 K. PRIYANTHA FERNANDO, J.
 SAMPATH B. ABAYAKOON, J.

Counsel : Shyamal A. Collure with Prabhath S. Amarasinghe
 instructed by A.P. Jayaweera for the Petitioner.

Anura Meddegoda, PC with Ashani Kankanange,

Prabodhinee Nissanka instructed by Hashini
Ratnayake for 1st to 3rd Respondents.

Induni Punchihewa, SC for the 4th to 8th Respondents.

Argued on : 26.09.2025

Decided on : 22.10.2025

K. PRIYANTHA FERNANDO, J

The Petitioner in this application is originally from *Polgahawela* but resided temporarily at the above-captioned address and was the Executive Presenter/Producer (Current Affairs) of 'Neth FM', a private radio station located in Colombo 03. He alleges that the 1st to 4th Respondents, who are officers attached to the Police Station of *Alawwa* subjected him to grave humiliation committed several acts of violence and torture, as well as illegally arrested and unlawfully detained him. Accordingly, he alleges that the Respondents violated fundamental rights guaranteed to him under Articles 11, 12(1), 13(1), 13(2) and 14(1)(g) of the Constitution. This Court granted leave to proceed for the alleged violations of Articles 11, 12(1) and 14(1)(g).

At argument stage Counsel for the Petitioner submitted that he will only pursue the alleged infringement of Article 11 against the 1st, 2nd and 3rd Respondents, and the alleged infringement of Article 12(1) also only against the same Respondents. Further, Counsel informed this Court that he will not pursue the alleged infringement of Article 14(1)(g) against any of the Respondents.

The Facts

According to the Petitioner he left his hometown, *Polgahawela* on 01.03.2021 to head back to Colombo on his motorcycle bearing Registration No. NW BET 1298. Around 1.00 p.m. as he approached *Walakumbura, Alawwa* area, he was signaled to stop the motorcycle by the 1st and 2nd Respondents. According to the

Petitioner, the incident occurred as he overtook a car which had its left rear signal switched on, indicating it was going to turn left.

The Petitioner states that upon stopping his motorcycle on the side of the road, he was asked to furnish his driving license by the 1st and 2nd Respondents. The said Respondents had claimed that the Petitioner overtook a vehicle crossing the white line on the road. The Petitioner has furnished his driving license but denied the said traffic offence on the premise that there was ample room within the boundaries of the carriage way for a safe overtaking. The Petitioner claims that he started videoing the incident from one of his mobile telephones when the Respondents persisted on the charge.

The Petitioner claims that one of the Respondents told him that he would be charged with having failed to ride the motorcycle on the left-side of the road; and the other informed him that a charge of reckless or negligent riding will also be added and proceeded to verbally abuse him. At this point, the Petitioner claims that he informed the 1st and 2nd Respondents that he would report this to the higher officials of the Police.

According to the Petitioner, the 1st and 2nd Respondents have asked him to stop filming and then proceeded to assault him and verbally abuse him. The Petitioner has refused to stop filming the scene on the premise that he was a “media-person”. However, the Petitioner claims that he was severely assaulted on the road by both the 1st and 2nd Respondents.

As per the Petitioner’s recollection, his helmet, cap and face mask had come off as a result of the brutality of the assault. He also claims that he was momentarily blinded due to the same. At this point, according to the Petitioner, ongoing vehicles and pedestrians also crowded to observe the incident.

Thereafter, the Petitioner had contacted the 4th Respondent, and the Petitioner was informed that two more Police Officers would arrive at the scene to mitigate it. Following this, the 3rd Respondent has arrived at the scene and has indicated that the Petitioner’s bags should be checked for any possession or transportation of drugs or cannabis.

The 1st to 3rd Respondents have then again assaulted the Petitioner, with the 3rd Respondent pressing his shoe to the Petitioner's neck while the other two kicked him. The Petitioner was then hand cuffed and taken to the Police Station of *Alawwa* in a three-wheeler by the 1st Respondent. While in the three-wheeler, the Petitioner claims that the 1st Respondent had, over the phone, stated to someone that they would cause the Petitioner to be imprisoned by introducing some substance.

At the Police Station, the Petitioner has been asked to furnish his Media Accreditation Card. He further states that he was not given a temporary driving license even though his driving license was taken into custody.

The Petitioner has asked permission to contact his Office in Colombo but was initially denied permission. Later, upon contacting the Office, the Deputy Inspector-General of the Police Ajith Rohana has spoken to the Petitioner through the 4th Respondent and advised him to admit himself to the Hospital. Following this the 4th Respondent has apologized to the Petitioner and further requested him not to draw any media attention to the incident and had taken him to the Hospital.

The Petitioner was initially taken to the Regional Hospital of *Alawwa* and then transferred to the Teaching Hospital of *Kurunegala*, where he realized his gold chain was missing. He received treatment until 06.03.2021 for the abrasions he sustained on the forehead, the back of the neck, the chest, the upper lip and below the eye.

The Acting Magistrate had visited the Hospital on 03.03.2021 and had remanded the Petitioner until 08.03.2021 and later released him on surety bail on the same day. Subsequently, the Petitioner was discharged from the Hospital on 06.03.2021. The Petitioner states that the Medico Legal Report (MLR) marked "P23" indicates 10 injuries, out of which 8 were abrasions and a tender (dental). The 9th injury was a grievous injury as it was a dental fracture. The Petitioner maintains that the said MLR is consistent with the history given by the Petitioner.

The Petitioner further states that the 4th Respondent has instituted action

against the Petitioner in the Magistrate's Court of *Polgahawela* under the case bearing No. B 233. Further, to the best of his knowledge, another case bearing No. B. 280 has also been instituted in the same Magistrate's Court.

As per the copies of case B233/2021 (44786/MT) submitted, the Petitioner has been charged for using criminal force to deter a public servant in terms of Section 344 of the Penal Code, negligent driving in terms of Section 151(3) of the Motor Traffic Act, failing to drive on the left side in terms of Section 148(1) of the Motor Traffic Act and obstructing the vehicles coming from the opposing side of the adjacent carriage way in terms of Section 148(5) of the Motor Traffic Act.

In these circumstances, the Petitioner alleges that on the totality of the facts and circumstances as herein described, the 1st to 6th Respondents in this case, subjected him to grave humiliation committed several acts of violence and torture, as well as illegally arresting and unlawfully detaining him. Accordingly, it is the Petitioner's position that the Respondents have violated his Fundamental Rights guaranteed under Articles 11, 12(1), 13(1), 13(2) and 14(1)(g) of the Constitution.

However, as mentioned in the 2nd paragraph of this judgment, this Court will only consider the violations of Articles 11 and 12(1) of the Constitution.

In response, the 1st to 3rd Respondents have submitted that they deny the allegations made by the Petitioner.

According to the Respondents, the 1st and 2nd Respondents, while on duty on 02.03.2021 near *Walakumbura, Alawwa*, observed that the Petitioner was violating the Motor Traffic Act. He was allegedly driving at an excessive speed and overtaking some vehicles by crossing the white line on the center of the road.

The Respondents claim that the Petitioner was asked to produce his driving license and the other relevant documents following which a temporary license was issued. The Respondents further claim that at this point the Petitioner resisted the issuance of a spot fine and turned abusive towards the Police and

proceeded to push the 1st Respondent to the ground.

The Respondents claim that the national identity card and the media identity card had discrepancies in terms of their numbers and name. Upon inquiring about the discrepancies, the Petitioner had become even more aggressive and abusive towards the Respondents and proceeded to video record the incident.

Upon informing the 4th Respondent about the incident, the 3rd Respondent and another Police Officer were sent to the scene. The Respondents have then detained the Petitioner and taken him into custody for using criminal force on a public officer with the intention of preventing or deterring the discharge of duty. The Petitioner was taken to the *Alawwa* Police Station with great difficulty in a three-wheeler.

In relation to the injuries sustained by the Petitioner, the position taken up by the Respondents is that the Petitioner behaved violently and unruly and that the injuries were self-inflicted by knocking his head against the three-wheeler and that the contents of the MLR marked “P23” and the Petition do not corroborate.

Alleged Violation of Fundamental Rights

In the case of ***Velmurugu v. The Attorney General and Another [1981] 1 SLR 406***, it was held that the standard of proof that is required in cases filed under Article 126 of the Constitution for infringement of Fundamental Rights is proof by a preponderance of probabilities as in a civil case and not proof beyond reasonable doubt.

It was further held in ***Gunawardene v. Perera and Others [1983] 1 SLR 305 at 313*** by Soza J. that;

“...It is generally accepted that within this standard there could be varying degrees of probability. The degree of probability required should be commensurate with the gravity of the allegation sought to be proved. This court when called upon to determine questions of infringement of fundamental rights will insist on a high degree of probability as for instance a court having to decide a question of fraud

in a civil suit would. The conscience of the court must be satisfied that there has been an infringement.”

Alleged violation of Article 11

Article 11 of the Constitution of Sri Lanka states:

“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Furthermore, Article 11 is an unqualified and non-derogable right as per Athukorala J. in ***Sudath Silva v. Kodituakku Inspector of Police and Others*** [1987] 2 SLR 119 at 126:

*“...It prohibits every person from inflicting torturesome, cruel or inhuman treatment on another. It is **an absolute fundamental right subject to no restrictions or limitations whatsoever**. (...) The police force, being an organ of the State, is enjoined by the Constitution to secure and advance this right and not to deny, abridge or restrict the same in any manner and under any circumstances (...) It is therefore the duty of this court to protect and defend this right jealously to its fullest measure with a view to ensuring that this right which is declared and intended to be fundamental is always kept fundamental (...) This court cannot, in the discharge of its constitutional duty, countenance any attempt by any police officer however high or low, to conceal or distort the truth induced, perhaps, by a false sense of police solidarity.”*

[Emphasis mine]

This Court, in assessing the claim of Article 11 violation in this instant case, takes the following facts into consideration.

Petitioner claims that he was assaulted and the injuries sustained by him that are shown in the MLR marked “P23” are inflicted by the assault by the 1st to 3rd Respondents.

The version presented by the said Respondents is that they did not assault the

Petitioner in the manner described by him. However, it is their position that the Petitioner knocked his head on a three-wheeler and that the injuries were self-inflicted.

When considering the injuries mentioned in the MLR, it is clear that all these injuries cannot be self-inflicted. Further, one injury is even a grievous injury as it is a dental fracture which required extensive treatment. Therefore, it is clear that the 1st to 3rd Respondents caused the said injuries as stated by the Petitioner.

Further, the Medical Officer who examined the Petitioner has stated that these injuries are consistent with the history given by the Petitioner.

In these circumstances, I declare that the Fundamental Rights guaranteed to the Petitioner by Article 11 have been violated by the 1st to 3rd Respondents of the instant case.

Alleged Violation of Article 12(1)

Article 12(1) of the Constitution of Sri Lanka states:

"All persons are equal before the law and are entitled to the equal protection of the law."

The interpretation of Article 12 has expanded over the years as beyond its literal meaning. This is evident in the case of **Wijerathna v. Sri Lanka Ports Authority [SC/FR/ 256/2017 S.C. Minutes of 11 December 2020]** as follows:

"...The concept of 'equality' was originally aimed at preventing discrimination based on or due to such immutable and acquired characteristics, which do not on their own make human being unequal. It is now well accepted that, the 'right to equality' covers a much wider area, aimed at preventing other 'injustices' too, that are recognized by law. Equality is now a right as opposed to a mere privilege or an entitlement, and in the context of Sri Lanka a 'Fundamental Right', conferred on the people by the Constitution, for the purpose of curing not only injustices taking the manifestation of

discrimination, but a host of other maladies recognized by law. While all Fundamental Rights are of equal importance and value, the ‘right to equality’ reigns supreme, as it can be said that, all the other Fundamental Rights stem from the ‘right to equality’. The ability of human beings to live in contemporary society (as opposed to merely existing), and develop and reap the fruits of social, scientific, economic and political developments, is based on their ability to exercise fully the ‘right to equality’. Similarly, for human civilizations may they be national or international, to reap the full benefits of knowledge, skills, experience, talents and wisdom that people possess, people of such societies must enjoy the ‘right to equality’.”

Further, in the case of ***Ariyawansa and Others v. The People’s Bank and Others [2006] 2 Sri LR 145 at 152*** Bandaranayake J. stated that,

“The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.”

Thus, considering the unreasonable and arbitrary conduct of the 1st to 3rd Respondents and their treatment of the Petitioner without adhering to the due legal procedures affects the equal protection guaranteed to the Petitioner under Article 12(1) of the Constitution. Whereby I hold that Article 12 (1) of the Constitution was violated by the 1st to 3rd Respondents against the Petitioner.

Declarations and Compensation

In the above premise, I declare that the fundamental rights that have been guaranteed to the petitioner under Articles 11 and 12 (1) of the Constitution were violated by the 1st to 3rd Respondents.

As per Article 126(4) of the Constitution, the Supreme Court is empowered to grant such relief as it may deem just and equitable in the circumstances in respect of any petition referred to it under Article 126(2). Therefore, in the circumstances of this case, considering the injuries, the discomfort and the losses that were suffered by the Petitioner due to the arbitrary acts of the

Respondents, I order the 1st to 3rd Respondents to pay a sum of Rs. 25,000 each, from their personal funds, totaling to a sum of Rs. 75,000 to the Petitioner within the period of two months from the date of this judgment.

Further, the Honourable Attorney General is directed to cause the conduct of a criminal investigation into the incident, upon the completion of which, consider the institution of criminal proceedings against the Respondents.

Application is Allowed

JUDGE OF THE SUPREME COURT

P. PADMAN SURASENA, CJ.

I agree

CHIEF JUSTICE

SAMPATH B. ABAYAKOON, J.

I agree

JUDGE OF THE SUPREME COURT