

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

*In the matter of an application  
under Articles 17 read with 126 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka*

Thennakoon                      Mudiyanseelage  
Lakshman Thenakoon,  
Sinharagama, Ralapanawa  
Nochchiyagama.

**PETITIONER**

**Vs.**

1. R.M.S.C. Rathnayaka  
Inspector of Police  
Divisional Vice Squad of  
the                      Anuradhapura  
Division,  
Police                      Station,  
Anuradhapura
2. Rathnayaka,  
Police Sergeant,  
Divisional Vice Squad of  
the                      Anuradhapura  
Division,  
Police                      Station,  
Anuradhapura
3. PS 17176 Asela  
Divisional Vice Squad of  
the                      Anuradhapura  
Division,  
Police                      Station,  
Anuradhapura
4. PC Bandara

Divisional Vice Squad of  
the Anuradhapura  
Division,  
Police Station,  
Anuradhapura.

5. Jayathilake,  
Chief Inspector of Police  
The Officer in Charge  
Police Station,  
Nochchiyagama
6. C.D. Wickremarathne,  
Acting Inspector General of  
Police (As he was then)  
Police Headquarters,  
Colombo 01
7. Hon. Attorney General,  
Attorney General's  
Department, Colombo 12

### **RESPONDENTS**

#### **BEFORE:**

**Hon. S. Thurairaja PC, J.**  
**Hon. K. Kumudini Wickremasinghe J.**  
**Hon. M. Sampath K.B. Wijeratne, J.**

#### **COUNSEL:**

Anil Silva PC with Arindra Silva instructed by  
Nadndana Perera for the Petitioner.

Sapumal Bandara with Ms. Vishmi Yapa  
Abeywardena instructed by Manjula  
Balasooriya for the 1st to 4th Respondents.

Ms. Lakmali Karunanayake SDSG for the 7th  
Respondent.

#### **WRITTEN SUBMISSIONS:**

By the 1st to 4th Respondents on 17.05.2024.

By the 6th and 7th Respondents on  
02.09.2025

ARGUED ON: 07.07.2025

DECIDED ON: 10.12.2025

**K. KUMUDINI WICKREMASINGHE, J.**

**The Facts of the Case in Brief**

The Petitioner is a citizen of Sri Lanka and a resident of Sinharagama, where he has lived for over twenty years. The Petitioner is married and has two adult daughters, though he has been separated from his spouse for some time. The Petitioner stated that he was engaged in lawful business activities in the area, including the purchasing, storing, and selling of grains, the buying and selling of used motor vehicles, and the operation of a small eatery.

The 1st Respondent was, at the material time, the Officer-in-Charge of the Divisional Vice Squad of the Anuradhapura Division. The 2nd to 4th Respondents were officers attached to that same unit and were members of the police party responsible for the arrest and assault of the Petitioner. The 5th Respondent was the Officer-in-Charge of the Nochchiyagama Police Station who produced the Petitioner before the Magistrate's Court of Thambuththegama. The 6th Respondent was the Acting Inspector General of Police, responsible for the supervision and discipline of police officers, including the 1st to 5th Respondents. The 7th Respondent is the Hon. Attorney General named in terms of Article 134 of the Constitution.

The Petitioner asserted that his arrest and detention were unlawful, without reasonable cause, and not in compliance with due process. The Petitioner stated that the Respondents violated his fundamental rights guaranteed under Articles 11, 12(1), 13(1), 13(2), and 14(1)(g) of the Constitution.

On 14.03.2023, this court granted leave to proceed of the alleged violation of Article 11 and 12(1) of the Constitution against the 1st to 4th Respondents and against the 5th Respondent for the violation under Article 12(1). Leave was not granted against the 6th and 7th Respondents.

In their Statement of Objections, the 1st to 4th Respondents, as a preliminary objection, raised that the instant application has been filed outside the mandatory period prescribed under Article 126(2) of the Constitution and further, that the Petitioner has failed to invoke the jurisdiction of the Human Rights Commission of Sri Lanka pursuant to Section 14 of the **Human Rights Commission Act, No. 21 of 1996**. The Respondents therefore contended that the application is liable to be dismissed *in limine*.

### **The Preliminary Objection raised by the 1st to 4th Respondents**

In terms of Article 126(2) of the Constitution, an application invoking the fundamental rights jurisdiction of this Court must be filed within one month of the Petitioner becoming aware of the alleged infringement. This requirement has long been recognised as the general rule, as articulated in ***Gunawardena v. Senanayake*, FRD Vol. 1 p. 177**, where the Court observed that adherence to the one-month period is integral to the proper exercise of this Court's constitutional jurisdiction.

However, this Court has also recognised that the time requirement is not absolute. The Court retains discretion to entertain an application which is *ex facie* outside the one-month period. In exercising that discretion, the Court must be satisfied that the Petitioner has provided an adequate excuse for the delay. This principle was affirmed in ***Edirisuriya v. Navaratnam* (1985) 1 Sri LR 100 at 106**, where it was held that the Court may consider exceptional circumstances preventing timely filing. The rationale for this discretion is grounded in the maxim *lex non cogit ad impossibilia*—the law does not compel a person to do the impossible.

Turning to the present facts, the alleged infringement occurred on 01.06.2020, and the Petition was filed on 28.09.2020, outside the one-month period. However, the Petitioner has explained that his daughter attempted to make a complaint to the Human Rights Commission, but that the complaint was refused on the ground that the Petitioner must be personally present to lodge such complaint. The Petitioner was at that time

in detention and medically unfit to attend personally, as corroborated by the Medico-Legal Report P3C and the production and case records P3, P3A, P3B, P4, P5A, P5B and P6, which reflect his physical condition and the circumstances of his detention. Given these circumstances, the delay is attributable to the Petitioner's inability to act personally, rather than to any neglect or failure on his part. On a consideration of the factual materials before Court, I am inclined to accept the explanation tendered.

The right claimed by the Petitioner is a fundamental right. Under Article 4(d) of the Constitution, fundamental rights form part of the sovereignty of the People and must be respected, secured, and advanced by all organs of Government. Articles 10 through 14 recognise and declare these rights. While such rights apply to all persons or citizens, the right to invoke the jurisdiction of this Court is individual and personal. Article 17 provides that *every person* is entitled to apply to this Court for the enforcement of a fundamental right. Article 126(2) further emphasises this personal character by requiring that the person alleging infringement must apply himself or by an Attorney-at-Law on his behalf within one month of the infringement.

The wording of Article 126(2) "*he may himself or by an Attorney-at-Law on his behalf, within one month thereof...*" (emphasis added) makes clear that the constitutional right to seek redress is vested in the individual who alleges the infringement. This thereby invokes the principle *vigilantibus non dormientibus jura subveniunt*—the law assists those who are vigilant, not those who sleep on their rights. However, the burden of vigilance cannot be imposed where, due to detention and medical condition, the Petitioner was *factually* unable to assert his rights, and where his family made a bona fide attempt to pursue an administrative remedy before the Human Rights Commission.

In these circumstances, the lapse of less than under four months, occurring during the height of the COVID-19 pandemic and attendant administrative disruptions, cannot be deemed a deliberate or negligent failure to assert rights, nor can it reasonably be construed as the Petitioner having "*slept on*

*his rights,”* particularly in relation to an allegation under Article 11, which concerns non-derogable protections.

Therefore, the delay is both reasonably explained and justified by reference to the above principles and authorities. The Petitioner’s conduct does not amount to acquiescence, negligence, or indifference. Rather, the delay is directly attributable to circumstances beyond his control, the very situation to which *lex non cogit ad impossibilia* speaks. The discretion of this Court is therefore properly engaged.

Accordingly, based on the factual record and the established jurisprudence, this Court is entitled to, and in the interests of justice, *ought to* excuse the delay and proceed to examine the alleged infringement on its merits. As such, I overrule the preliminary objection raised by the 1st to 4th Respondents.

### **The version of the Petitioner**

The Petitioner stated that he is the owner of approximately one and a half acres of agricultural land situated in the vicinity of the Relapanawa Tank at Sinharagama, containing coconut trees and other seasonal cultivations. The Petitioner frequently visited the land in order to attend to and maintain the cultivation.

The Petitioner stated that on 01.06.2020, at around 12 noon, while travelling to his cultivation on his motorcycle bearing Registration No. NC BCT-0279, the Petitioner was stopped by a police party led by the 1st Respondent. Without providing any reason, the Petitioner was arrested and assaulted, and thereafter transported in the police jeep to the Anuradhapura Police Station. Upon arrival, the Petitioner was taken into the police quarters, tied, suspended, and assaulted with clubs, hands, and feet by several officers, including the 1st Respondent. During this assault, he heard the 1st Respondent refer to three other officers by the names Rathnayake, Asela, and Bandara, whom the Petitioner has identified as the 2nd to 4th Respondents. The Petitioner was questioned as to whether he had any

involvement in cannabis-related transactions, which he categorically denied. Notwithstanding this, the assault continued, resulting in pain, injuries, and impairment of hearing.

The Petitioner stated that he was thereafter compelled to sign a statement prepared by the police, which was neither made by him nor read over to him. He was detained overnight at the Anuradhapura Police Station and thereafter transferred to the Nochchiyagama Police Station. On 02.06.2020, he was produced before the Magistrate's Court of Thambuththegama on the allegation that he was in possession of 1336 grams of cannabis. A full certified copy of the proceedings in the Magistrate's Court has been marked P3. The B Report dated 02.06.2020 filed by the 5th Respondent is at page 1 of the said document and has been marked P3a. The record of proceedings dated 02.06.2020, including the Learned Magistrate's Order remanding the Petitioner and directing that he be produced before the Judicial Medical Officer, is contained at pages 17 to 20 of P3 and has been marked P3b.

The Petitioner was thereafter admitted to the Anuradhapura Teaching Hospital on 04.06.2020, and the Bed Head Ticket issued to him has been marked P4. On the same date, the Petitioner was examined by the Judicial Medical Officer, Dr. H. A. Karunathilake, who recorded multiple injuries including a traumatic perforation of the left ear, extensive contusions to the back and both thighs, and tramline contusions to the upper arm and wrist. The Medico-Legal Report submitted to Court is contained at page 22 of P3 has been marked P3c / P3e.

During the period of his hospitalization, the Petitioner stated that he was examined by the Departments of Audio-Vestibular and ENT and Audiology to assess the degree of hearing impairment sustained as a result of the assault. The said reports confirm a severe hearing loss on the left side and has been marked P5a and P5b.

Due to COVID-19 restrictions, the Petitioner was not physically produced in Court for several months, and his period of remand continued to be extended. During this time, no family members were permitted to visit him.

On 04.06.2020, the Petitioner's daughter attended at the Human Rights Commission Office, Anuradhapura, seeking to lodge a complaint regarding his arrest and assault. However, her complaint was refused on the basis that the Petitioner must be personally present. Her affidavit recounting these events has been marked P6.

On 02.09.2020, the Petitioner stated that was granted bail by the Magistrate's Court. After his release, he personally sought to lodge a complaint before the Human Rights Commission, but was informed that as proceedings were pending before the Court, such a complaint could not be accepted.

The Petitioner stated that due to the assault by the 1st to 4th Respondents, he has suffered partial hearing impairment and continues to experience pain and disability. During his incarceration of approximately three months, he was prevented from engaging in his business activities, resulting in financial loss. He was also unable to cultivate seven acres of paddy land belonging to him at Wilachchiya, further worsening his financial hardship.

The Petitioner asserted that his arrest and detention were unlawful, without reasonable cause, and not in compliance with due process. The Petitioner stated that the Respondents violated his fundamental rights guaranteed under Articles 11, 12(1), 13(1), 13(2), and 14(1)(g) of the Constitution. The Petitioner stated that grave loss and damage has been caused to him and therefore is seeking compensation from this court.

### **The version of the Respondents**

In their Statement of Objections, the 1st to 4th Respondents denied the Petitioner's assertions that he was unlawfully arrested, detained, or subjected to cruel, inhuman, or degrading treatment. According to the Respondents, on 01.06.2020 at approximately 08.10 hours, they departed the Anuradhapura Police Station in a jeep bearing registration number 61-7148 and on their personal motorcycles to conduct investigations. The certified copy of the Out Entry entered by the 1st Respondent in the Daily



Information Book has been marked R-1. On the same day, three arrests were effected within the Anuradhapura and Nochchiyagama Police Divisions, including that of the Petitioner at approximately 15.35 hours in Sinharagama, based on intelligence information received from the Senapura Army Camp that he was involved in transporting and trading cannabis. The certified copy of the arrival entry made at 22.00 hours has been marked R-2.

The Respondents averred that upon receiving intelligence that the Petitioner was delivering approximately one kilogram of cannabis, they positioned themselves in the vicinity of Oyamaduwa Road. Upon seeing the Petitioner arriving on a motorcycle bearing registration number NCBCT 0279 while carrying a black tulip bag, they attempted to apprehend him. The Petitioner allegedly attempted to flee, resulting in a pursuit and physical struggle lasting approximately four to five minutes. After subduing the Petitioner, the Respondents inspected the black tulip bag in his possession, which contained cannabis, whereupon he was arrested and taken to the Nochchiyagama Police Station. Certified copies of the relevant investigation entries and property receipts have been marked R-3 and R-4(a), R-4(b), and R-4(c), respectively.

The Respondents asserted that upon handing over the Petitioner to the 5th Respondent, the Reserve Police Officer recorded that no visible injuries were present, as evidenced by entry marked R-5. They contend that the Medico-Legal Report marked P3(c), which classifies the injuries as non-grievous, corroborates their position that any injuries sustained were a result of the Petitioner's resistance during arrest rather than any deliberate assault. The Respondents further noted that the medical documents tendered by the Petitioner, marked P3, P3(a), P3(b), P3(e), and P4, together with reports P5(a), P5(b), and P6, do not substantiate the claim that the 1st to 4th Respondents inflicted unlawful harm.

The Respondents emphasised that, in the discharge of their official duties, they maintained accurate and contemporaneous records in the Daily Information Book and property registers, and that under Section 114(d) of

the Evidence Ordinance, the Court may presume that official acts have been regularly performed. Accordingly, the Respondents have submitted that the records produced, including entries R-1 to R-5, must be accorded due evidentiary weight.

The Respondents further stated that the Petitioner is a habitual offender engaged in the illicit trafficking of cannabis, and that certified reports marked R-6 and R-7 demonstrate prior convictions in the Puttalam Magistrate's Court for possession of cannabis. They contend that these prior convictions cast serious doubt on the credibility of the Petitioner, particularly in light of his assertion in document P3(c) that he had never consumed alcohol or cigarettes in his life. However, the existence of such prior convictions does not in any way justify any form of mistreatment, as every person is equal before the law and entitled to the protection of Article 12(1) of the Constitution.

The Respondents denied that the Petitioner was arrested for any collateral or mala fide purpose, asserting that he was apprehended lawfully upon reasonable suspicion, informed of the offence, and produced before the Magistrate without delay.

With respect to the role of the 5th Respondent, the 1st to 4th Respondents submitted that the custody of the Petitioner was duly handed over to the 5th Respondent without any visible injuries, and therefore the burden shifts to the 5th Respondent to explain any subsequent injuries observed. The only allegation levelled against the 5th Respondent by the Petitioner is that he produced the Petitioner before the Thambuthegama Magistrate's Court on a false allegation that he possessed 1136 grams of cannabis. Therefore, considering the documentary record, the timeline of events, and the inconsistencies in the Petitioner's own account, the Respondents submitted that the Petitioner has failed to establish a violation under Article 11 of the Constitution.

In the written submissions of the 7th Respondent, the Learned Senior Deputy Solicitor General (SDSG) appearing for the 7th respondent

submitted that, the Hon. Attorney General, by letter dated 12.07.2021, informed the 1st to 4th Respondents that in view of the Medico-Legal Report marked P3C, filed by the Petitioner, the Attorney General would not undertake their representation. A copy of this communication has been marked 7R1.

When the application was supported for leave to proceed on 14.03.2023, the learned SD SG appeared on behalf of the Attorney General (7th Respondent) alone. Upon hearing submissions, the Court granted leave to proceed under Articles 11 and 12(1) against the 1st to 4th Respondents, and under Article 12(1) against the 5th Respondent. The Learned SD SG submitted that consequent to this order, the Attorney General, by letter dated 19.04.2023, informed the 5th Respondent that the Attorney General would not undertake his defence. A copy of this communication is marked 7R2. The 5th Respondent thereafter requested reconsideration, but the decision had remained unchanged.

When this application was taken up for argument on 07.07.2025, the learned SD SG stated that she took steps to inform the Director Legal of the Police Department in order to alert the 5th Respondent, who was unrepresented at the time. However, the 5th Respondent remained absent and unrepresented. The Learned SD SG stated that thereafter, by letter dated 20.08.2025, the Director Legal informed the Attorney General that the 5th Respondent was presently attached to the SSP's Office, Anuradhapura, and that he had previously been informed of the Attorney General's decision.

On behalf of the 7th Respondent, it was submitted that the application is time-barred, as the alleged acts of torture are said to have occurred on 01.06.2020, whereas the Petition was filed on 28.09.2020. The Petitioner contends that delay was caused due to the Human Rights Commission declining to accept a complaint tendered by his daughter. However, the only material before Court on this point is the affidavit of the Petitioner's daughter, and no documentary material from the Commission itself has

been produced. Accordingly, the SDSG submitted that the Petitioner has not established the alleged refusal by the Human Rights Commission to entertain the application of the Petitioner.

The Learned SDSG for the 7th Respondent contended that throughout the Petition the Petitioner attributes the assault exclusively to the 1st to 4th Respondents at the Anuradhapura Police Station. The Petitioner does not allege that the 5th Respondent assaulted him at the Nochchiyagama Police Station. The only allegation directed at the 5th Respondent is that he produced the Petitioner before the Magistrate on a false charge. During argument, the Petitioner pointed to an inconsistency between two B-Reports, one referring to possession of 1g 136mg of heroin, and the earlier report stating 1kg 136g of cannabis. The Respondent had submitted that this discrepancy is a typographical error, particularly since the subsequent reports, the Government Analyst reference, and the affidavit tendered by the 1st Respondent in the Thabuththegama MC case record (pages 26–27 of P3) consistently refer to 1kg 136g of cannabis, and the Petitioner raised no objection before the Magistrate, although he was legally represented. The Learned SDSG submitted that the Petitioner himself, in paragraph 12 of his Petition, refers to the production as cannabis. The Respondents contention that therefore the Petitioner was neither misled nor prejudiced by the clerical error.

It was further submitted on behalf of the Attorney General that the State has neither authorised nor condoned the alleged conduct of the 1st to 5th Respondents. Reliance is placed on ***Thadchanamoorthi and Others v Attorney General (1978-79-80) 1 SLR 154***, where it was recognised that there may arise circumstances in which an act committed by an officer, though carried out while holding office, must be regarded as a purely personal act not attracting State liability. Attention is also drawn to ***Sri Lanka Rupavahini Corporation and others v Kurukulasuriya and Jayasekara, SCFR 556 and 557/2008; 2021 (2) SLR 1***, where this Court observed that the awarding of compensation must depend on the particular

circumstances of the case, bearing in mind that public funds represent taxpayer money and must not be dispensed without careful justification.

In these circumstances, the Learned SDSG for the 7th Respondent contended that the Petitioner has not established entitlement to the relief sought, and that the facts and evidence do not warrant the imposition of liability on the 6th and 7th Respondents in this application.

### **The alleged violation of Article 11 by the 1st to 4th Respondents**

Article 11 of the Constitution mandates that, “*No person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.*” As reiterated in ***Wasana Niroshini Wickrama v. Nalaka and Others SC FR 349/2014 decided on 16th October 2023***, the protection afforded by Article 11 is absolute, allowing no exception or derogation under any circumstance. The acts committed against the Petitioner strike at the core of human dignity, a foundational constitutional value recognised in ***Dr. Ajith Perera v. Daya Gamage and Others SCFR 273/2018 decided on 18th April 2019***, where this Court affirmed that dignity is the wellspring from which all fundamental rights derive their meaning and effect.

In ***W.B. Inoka Nadishani and Another v K.D. Somapala and Others SC FR 155/2009, decided on 04th April 2025***, Justice Thurairaja PC undertook a detailed and thoughtful exposition on the centrality of human dignity within our constitutional framework, drawing on long-standing ethical and philosophical traditions of this country. His Lordship observed that the *Dasavidha-rājadhamma* in Buddhism lays down the ten virtues expected of those who exercise authority, including *Sīla* (morality), *Maddava* (kindness), *Akkodha* (freedom from hatred) and *Avihimsa* (non-violence), which require those in positions of power to act with restraint, compassion and respect for the intrinsic dignity of each individual. His Lordship further referred to the *Aththupanayaka Dhamma Pariyaya*, beautifully expressed in the *Dhammapada*, as reflecting this fundamental moral imperative:

“*Sabbe tasanti daṇḍassa/ සබ්බෙ තසන්ති දණ්ඩස්ස,*  
*sabbesaṃ jīvitaṃ piyaṃ/ සබ්බෙසං ජීවිතං පියං,*  
*attānaṃ upamaṃ katvā/ අත්තානං උපමං කත්වා,*  
*na haneyya na ghātaye/ න හනෙය්‍ය න ඝාතයෙ.*

*[all fear the stick/punishment  
all hold their lives dear  
putting oneself in another's place  
one must not commit violence nor kill]*

His Lordship Justice Thurairaja PC further observed that Hindu philosophy, as reflected in the concept of *Rajadharma* and the model of governance embodied in *Rama Rajya* in the *Ramayana*, similarly posits that rulers must embody *Nyaya* (justice), *Karuna* (compassion), *Satya* (truthfulness) and *Kshama* (forbearance), placing the welfare and dignity of the people at the centre of all governance. His Lordship emphasised that both Buddhist and Hindu traditions converge on a common ethic: that authority may only be exercised in a manner that affirms, protects, and advances the inherent dignity of human beings.

This philosophical and cultural heritage, as articulated by Justice Thurairaja PC, reinforces the absolute nature of the protection guaranteed under Article 11 of the Constitution. The inviolability of the human person is not only a constitutional command but is also deeply rooted in the moral consciousness and civilisational values of this nation.

The medical report tendered by the Petitioner and marked P3C records a series of injuries of significant severity and extent, inconsistent with incidental force or a brief scuffle, and instead indicative of deliberate and repeated infliction of pain. The report identifies a 10% traumatic perforation of the left ear, demonstrating an impact of appreciable force to the head region. In addition, the examiner records a contused and oedematous area measuring 50 x 42 cm across the back of the body, extending down to the posterior aspect of both thighs. The sheer area affected, encompassing the

back and both upper legs, is strongly suggestive of systematic and repeated beating while the Petitioner was in a vulnerable position.

The report further notes a tramline contusion measuring 11 x 7 cm on the posterior aspect of the left upper arm, an injury typically associated with blows administered by a flexible rod-like instrument. There is also an abrasion placed over the lateral aspect of the right wrist joint, which aligns with friction or restraint consistent with the Petitioner having been restrained or held down.

Moreover, P3C documents two distinct clusters of *tramline contusions* on both thighs: five tramline contusions on the right thigh, measuring 14 x 3 cm, 10 x 3 cm, 14 x 3 cm, 7 x 3 cm and 8 x 3 cm, and a further five tramline contusions on the left thigh, measuring 20 x 4 cm, 21 x 4 cm, 14 x 4 cm, 11 x 4 cm and 15 x 4 cm. Tramline contusions of this nature are regarded in forensic medicine as classic markers of corporal punishment inflicted with a rod, pole, baton or similar implement. They are not the result of accidental contact or incidental force in the course of arrest. The repeated patterning, near-symmetrical placement, and varying but significant lengths of these contusions reinforce that the force was applied intentionally, at multiple points, and with severity.

In the face of this medical evidence, the explanation offered by the Respondents, that the injuries resulted from a scuffle during arrest and that the Petitioner bore no visible injuries when he was handed over to the 5th Respondent, cannot be accepted. The nature, pattern and distribution of the injuries recorded in P3C directly contradict the Respondents' narrative. Where a person has suffered injuries during a period of detention, the custodial officers bear a corresponding obligation to offer a clear and credible explanation for the manner in which those injuries were caused. Here, no plausible justification has been provided. The inference that the injuries were inflicted while the Petitioner was under the custody and control of State officers is therefore both reasonable and compelling.

The injuries described in P3C are not merely physical impressions; they are manifestations of a deliberate assault on the dignity of the human person. They demonstrate subjugation, humiliation, and the infliction of suffering for purposes incompatible with lawful authority. Such treatment plainly constitutes cruel, inhuman and degrading treatment within the meaning of Article 11.

This conclusion is reinforced by Sri Lanka's obligations under Article 14.1 of the **Convention Against Torture**, which mandates that a victim of torture is entitled to redress, including compensation and rehabilitation. The alignment of constitutional protection with international obligation here is direct and unequivocal.

Accordingly, based on the objective medical evidence contained in P3C, the absence of any credible or lawful explanation from the Respondents, and the constitutional and international standards governing the treatment of persons in custody, this Court finds that the Petitioner's fundamental right under Article 11 of the Constitution has been violated. The dignity of the individual was not preserved; it was actively denied. This Court is therefore duty-bound to grant appropriate relief to vindicate that right in full measure.

### **Alleged violation of Article 12(1) by the 1st to 4th Respondents**

The Petitioner's claim under Article 12(1) of the Constitution warrants close judicial scrutiny within the framework of the statutory provisions and the factual record disclosed before this Court. Article 12(1) of the Constitution declares that "*All persons are equal before the law and are entitled to the equal protection of the law.*" This provision is not an abstract declaration of equality; it is a substantive guarantee that binds all agents exercising public authority to act lawfully, reasonably, and without arbitrariness, discrimination, or mala fides. The constitutional promise of equality before the law demands that all persons similarly circumstanced be treated alike, and that no person be subjected to differential or hostile treatment except upon a reasonable and lawful basis.



Section 23 of the **Code of Criminal Procedure Act, No. 15 of 1979 (as amended)**, reinforces this principle by delineating the permissible limits of physical conduct in the course of effecting an arrest. The law permits only such measures as are “*reasonably necessary to effect the arrest*” in instances of resistance. It thereby safeguards individuals from arbitrary use of force, fabricated charges, and any form of ill-treatment under the guise of law enforcement. These statutory provisions reflect the broader constitutional ethos that every arrest and detention must be effected with respect for the inherent dignity and equal protection owed to every person.

In ***Elmore Perera v Major Montague Jayawickrama, Minister of Public and Plantation Industries and Others* (1985) 1 Sri LR 285**, Sharvananda CJ articulated the essence of Article 12 in terms that remain authoritative. His Lordship observed that “*Since the essence of the right guaranteed by Article 12 and the evils which it seeks to guard against are the avoidance of designed and intentional hostile treatment or discrimination on the part of those entrusted with the administering of the same, a person setting up grievances of denial of equal treatment must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relevance to the object sought to be achieved.*” Thus, the touchstone for a violation under Article 12(1) is not merely difference in treatment, but unjustified and arbitrary differentiation that departs from the rule of law.

Applying these principles to the present case, the material before the Court, particularly the medico-legal report marked P3C, the contemporaneous court record at P3(b), and related documents, discloses significant irregularities in the process by which the Petitioner was deprived of his liberty. The Petitioner’s account of events is corroborated by P3C, which records extensive and severe injuries wholly inconsistent with a mere resisted arrest. The report details, inter alia, a 10% traumatic perforation of the left ear; a large contused and oedematous area extending across the back and thighs; tramline contusions on both arms and thighs; and abrasions on the wrist. These injuries, further supported by hospital

admission notes (P4) and subsequent audiological findings (P5a and P5b), clearly bear the marks of deliberate infliction rather than incidental contact.

The Respondents, in their Statement of Objections, seek to shift the burden of explanation, contending that the Petitioner was uninjured when custody was transferred to the 5th Respondent and that any injuries must have been sustained thereafter. Reliance is placed on official entries, including R5, purporting to record the absence of visible injuries at the time of handover. Yet such entries stand in stark and irreconcilable contrast with the comprehensive medical evidence. It is well established that where a person sustains injuries while in the custody of public officers, those officers bear a heightened duty to account for such harm. The Respondents have failed to discharge that burden. Their silence and the implausibility of their explanations only reinforce the inference of unlawful and unequal treatment.

Further, the Respondents have sought to tender documents marked R6 and R7, which refer to previous convictions of the Petitioner for possession of cannabis before the Puttalam Magistrate's Court. They contend that these convictions undermine the credibility of the Petitioner's statement in P3C, wherein he claimed never to have consumed alcohol or cigarettes. This argument is wholly misplaced. Even assuming a contradiction exists as to the Petitioner's personal habits, such inconsistency is immaterial to the central question before this Court, namely, whether he was subjected to unlawful arrest, fabrication of charges, and cruel treatment while in custody. The existence of prior convictions, however relevant to sentencing or character assessment in criminal proceedings, cannot in law justify the violation of constitutional rights.

Indeed, as a matter of constitutional doctrine, equality before the law does not depend on an individual's moral worth, prior record, or social standing. The right to equal protection inheres in every person, including those with criminal antecedents. To permit otherwise would erode the foundation of the rule of law and confer upon state actors the power to determine whose

rights deserve protection. The Respondents' reliance on R6 and R7 is, therefore, not only irrelevant but constitutionally untenable.

This Court finds instructive the reasoning of Sisira de Abrew, J. in ***Rajapaksha v Rathnayake and Others* [2016] 1 Sri LR 119 at 130**, where His Lordship observed:

*“When the 1st Respondent arrested the petitioner without any reasons and fabricated a false charge against him, can it be said that he got equal protection of law and that the 1st Respondent applied the principle that ‘all persons are equal before the law’ to the petitioner? This question has to be answered and is answered in the negative.”*

In the present case, the inconsistencies in the B Reports filed by the 5th Respondent, most notably the contradiction between the references to heroin and cannabis, raise serious doubts about the legitimacy of the proceedings initiated against the Petitioner. These contradictions, coupled with the absence of credible explanation for the documented injuries and the reliance on irrelevant past convictions, expose an arbitrary and mala fide exercise of authority inconsistent with the obligations imposed by Article 12(1).

Having regard to the statutory standard under Section 23 of the **Code of Criminal Procedure Act** and the totality of the evidence, this Court is satisfied that:

- (i) the Petitioner's arrest was unjustified and unlawful;
- (ii) the B Reports are tainted by inconsistency and fabrication;
- (iii) the Respondents have failed to provide a reasonable or lawful explanation for the Petitioner's injuries; and
- (iv) reliance on the Petitioner's prior convictions constitutes an impermissible attempt to rationalise misconduct.

These cumulative circumstances demonstrate not only a denial of equal protection but also a deliberate disregard for the constitutional obligation to treat all persons alike under the law. Accordingly, I find that the Petitioner's fundamental right guaranteed under Article 12(1) of the Constitution has been violated.

### **Alleged violation of Article 12(1) by the 5th Respondent**

In their Statement of Objections, the 1st to 4th Respondents contended that the Petitioner was handed over to the custody of the 5th Respondent, who at the relevant time was functioning as the Officer-in-Charge of the Nochchiyagama Police Station. They asserted that the responsibility to explain the injuries sustained by the Petitioner accordingly shifts to the 5th Respondent, particularly since one of the subordinates under the command of the 5th Respondent had entered in the Official Information Book that the Petitioner bore no visible injuries at the time of the handover. The only direct allegation leveled against the 5th Respondent by the Petitioner is that he thereafter produced the Petitioner before the Thambuthegama Magistrate's Court on the basis of a false charge alleging possession of 1136 grams of cannabis.

However, during oral submissions, attention was drawn to significant discrepancies in the B Reports submitted by the 5th Respondent, specifically where the Petitioner was described as having been in possession of heroin rather than cannabis. These are not minor inconsistencies. The nature of the controlled substance forms the very core of the charge and the legality of the arrest. A contradiction of this nature casts substantial doubt on the accuracy of the investigative material placed before the Magistrate and undermines the integrity of the prosecution narrative. Such discrepancies engage the constitutional protection guaranteed under Article 12(1), as they suggest the possibility of arbitrary and capricious conduct rather than uniform and equal application of the law. When the record itself indicates uncertainty or carelessness in the formulation of the primary

accusation, the resulting deprivation of liberty cannot be said to have arisen through due process.

The B-report(s) and the magistrate's file (P3, P3a, P3b and related entries) reveal an unexplained discrepancy: on the one hand the original production alleged possession of 1 kg 136 g of ganja; on the other, a subsequent B-report records the same quantity as "heroin", a manifestly improbable transposition for which no satisfactory explanation has been tendered in the Magistrate's Court or to this Court. That typographical anomaly, left uncorrected despite the petitioner being legally represented in the Magistrate's Court, not only raises questions of sloppiness but also of reliability and transparency in the prosecutorial record.

The fact that the 1st Respondent in a sworn affidavit in the magistrate's proceedings confirms the discovery of 1 kg 136 g of cannabis (see pages 26–27 of P3) only highlights that the discrepancy was a recording error, one that ought to have been noticed, corrected and explained at the earliest stage. The failure to do so prejudiced the petitioner and diminishes confidence that the arrest and charging process was exercised with due regard to legal safeguards.

In the Written Submissions tendered on behalf of the 7th Respondent, it is stated that the 7th Respondent elected not to represent the 5th Respondent and had communicated this decision to him. Throughout the course of these proceedings, the 5th Respondent has remained absent and unrepresented. No explanation has been provided by the 5th Respondent to clarify the discrepancies in the B Reports nor to account for the injuries alleged. The 7th Respondent submits that the reference to heroin instead of cannabis was merely a typographical error which occasioned no prejudice to the Petitioner, particularly since no objection had been raised before the Magistrate at the time, while the Petitioner was represented by counsel.

This Court cannot accept such a submission lightly. The responsibility to ensure accuracy in the preparation and filing of B Reports lies squarely with the officer producing the suspect before Court. The B Report is the

foundational document upon which judicial oversight is triggered, and it directly informs the liberty of the individual. A discrepancy as to the substance alleged to have been found is not clerical but substantive. The failure of the 5th Respondent to appear before this Court and offer any explanation for either the injuries or the inconsistent material strengthens the inference that there has been a failure to discharge the duty of candour and accountability expected of an officer acting under colour of law.

Accordingly, the contradiction in the B Reports, coupled with the unexplained injuries and the absence of the 5th Respondent, support the conclusion that the Petitioner was not afforded the equal protection of the law guaranteed to him under Article 12(1) of the Constitution.

### **Liability of the State**

The 7th Respondent, has consistently maintained throughout the pendency of this Application that the Attorney General's Department will not undertake the defence of the 1st to 5th Respondents. This position, as correctly noted, signifies the disapproval of the alleged conduct of the said Respondents and the unwillingness of the State's principal legal office to endorse or justify such acts. The Learned Senior Deputy Solicitor General (SDSG) appearing for the 7th Respondent submitted that not every police officer who arrests and detains a suspect resorts to violence and that the decision to assault a suspect is one taken in a private capacity. It was thus contended that not every wrongful act of an errant police officer automatically attracts State liability. In support of this contention, reliance was placed on ***Thadchanamoorthi and Others v Attorney General* [1978] 1 SLR 154** and ***Velmurugu v Attorney General and Others* [1981] 1 SLR 406**.

However, the principle articulated in ***Amal Sudath Silva v Kodituwakku, Inspector of Police and Others* [1987] 2 Sri LR 119 at 126**, is of decisive importance in this context. There, the Court held that "*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.”* This pronouncement firmly establishes that acts of torture, assault, or unlawful detention by police officers cannot be treated as private ventures detached from the State, for such actions are possible only through the authority and power vested in them by law.

This principle has been further reinforced in ***Rannula Sugath Mohana Mendis v D.K.A. Sanath Kumara and Others*** [SC FR 100/2022, decided on 06.10.2023], where Justice Thurairaja, PC, observed that, “*If this Court were to criticise the actions of the Police Force, it need not look further than the police motto itself; ‘ධම්මෙ’ භවෙ’ ජිකති ධම්මවාදි’ which states ‘those who live by the Dhamma are protected by the Dhamma’. One would expect that the Police force of Sri Lanka would follow this motto when carrying out their duties, without mala fide. However, we observe, they have failed to stick to the basics of their code of conduct and the principles of natural justice.*” This observation captures the moral and constitutional responsibility of the Police to act as protectors of the people and as custodians of the rule of law, not as violators of it.

The liability of the State arises from this fundamental constitutional duty to protect and uphold the rights of its citizens. Every organ of the State, including the Police, is bound by this duty. When police officers, acting under the colour of their official authority, infringe upon the fundamental rights of individuals, the responsibility does not dissipate merely because such acts are unlawful. Rather, the State is held accountable for those violations, as it is the very power and authority conferred by law that enables such transgressions. This is not only a question of legal liability but of constitutional morality and the preservation of public confidence in the justice system.

The Police form the bedrock of law enforcement and public security. They are entrusted with immense powers to maintain peace and order. With that power comes an equally compelling duty, to ensure that those under their custody are treated with dignity, fairness, and respect. When those entrusted with protecting the public instead become its tormentors, the

fabric of public trust unravels. The law cannot and must not tolerate such a situation.

Upon a careful examination of all material before this Court, it is evident that the versions of the 1st to 5th Respondents are inconsistent and self-contradictory. The evidence, particularly the medical reports marked P3C and the discrepancies in the B Reports filed by the 5th Respondent, reveal grave irregularities. The contradictions concerning the nature of the narcotics allegedly found in the Petitioner's possession, as between cannabis and heroin, cast serious doubt on the credibility of the Respondents' version and demonstrate arbitrary and unequal treatment before the law, amounting to a violation of Article 12(1) of the Constitution.

In light of the material facts and legal principles discussed above, I find that the 1st to 4th Respondents and the State have violated the Petitioner's fundamental rights guaranteed under Articles 11 and 12(1) of the Constitution by subjecting him to cruel, inhuman, and degrading treatment and by acting in a manner that denies him equal protection of the law. I further hold that the 5th Respondent has violated Article 12(1) through arbitrary and mala fide conduct in the filing of inconsistent B Reports and the institution of a fabricated charge.

While the Learned SDSCG, relying on ***Kurukusoorya and Jayasekara v Sri Lanka Rupavahini Corporation and Others* [SC FR 556/2008 and 557/2008, 2021 (2) SLR]**, has cautioned against indiscriminate orders of compensation, noting that the State's funds are drawn from public revenue, this Court observes that the source of funds cannot absolve the State of responsibility for violations committed under its authority. To accept such an argument would be to render constitutional guarantees hollow. The police are meant to be the shield of the people, not the sword that wounds them.

Accordingly, while I refrain from awarding monetary compensation in this instance, I direct the 6th Respondent (the present Inspector General of Police) to initiate immediate disciplinary proceedings against the 1st to 5th



Respondents to ensure accountability and to prevent the recurrence of such acts in the future. The preservation of justice demands no less.

Further I order the 1st to 5th Respondents to pay compensation to the Petitioner in the following manner:

1. The 1st Respondent is ordered to pay as compensation a sum of Rs. 200,000/- (Rupees Two Hundred Thousand );
2. The 2nd Respondent is ordered to pay as compensation a sum of Rs. 200,000/- (Rupees Two Hundred Thousand);
3. The 3rd Respondent is ordered to pay as compensation a sum of Rs. 200,000/- (Rupees Two Hundred Thousand).
4. The 4th Respondent is ordered to pay as compensation a sum of Rs. 200,000/- (Rupees Two Hundred Thousand).
5. The 5th Respondent ordered to pay as compensation a sum of Rs. 100,000/- (Rupees One Hundred Thousand).

The 1st, 2nd, 3rd, 4th and 5th Respondents are to pay the aforementioned sums, within six months from the date of judgement, **out of their personal funds.**

*Application Allowed.*

**JUDGE OF THE SUPREME COURT**

**S. Thuraija PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**M. Sampath K.B. Wijeratne J.**

I agree.

**JUDGE OF THE SUPREME COURT**

