

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

In the matter of an application under
and in terms of Article 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

S.C. (FR) No. 426/2010

Kalidasan Sachchudanandan
No. 104, Ginigathhena road,
Yatyanthota.

Petitioner

Vs.

1. Officer-in-charge of Police Station,
Yatyanthota.
2. Kahavita Vidanalage Wijewardena,
Sub-Inspector Police Station,
Yatyanthota.
3. Kaduهارالالage Palitha Dharmasiri
(52483), Sergeant, Police Station,
Yatyanthota.
4. P. K. W. A Jeewananda (PC48702)
Police Constable Police Station,
Yatyanthota.
5. Mahinda Balasooriya,
Inspector General of Police,
Police Headquarters,
Colombo.
6. Hon. Attorney General,

Attorney General's Department,
Colombo 12.

Respondents

Before : Janak De Silva, J.
Mahinda Samayawardhena, J.
Menaka Wijesundera, J.

Counsel : Nuwan Kodikara for the Petitioner.
Madhawa Tennakoon, DSG for the 1st, 5th and 6th
Respondents.
Dr. Sunil Coorey instructed by Sudarshani Coorey for the
2nd, 3rd and 4th Respondents

Written
Submissions : Written submissions on behalf of the 2nd, 3rd and 4th
Respondents on 25th February, 2016.

Argued on : 24.03.2025

Decided on : 30.05.2025

MENAKA WIJESUNDERA J.

The instant application has been filed by one Kalidasa Sachudanandan alleging that his fundamental rights have been violated by the respondents.

This Court, having heard the Counsel for the petitioner in support of his application, has granted leave under Article 11 of the Constitution against the 2nd, 3rd and the 4th respondents on 13.05.2011.

The petitioner has alleged in his petition that he is a motor-mechanic by profession and that on 29.06.2010, the 2nd, 3rd and the 4th respondents, who

were attached to the Yatiyanthota police station, assaulted him for no reason, while he was walking on the road.

The petitioner further states that the abovementioned respondents were under the influence of liquor at the time of the assault.

He further says that on the 30th, which was the very next day after the alleged assault took place, he was hospitalized at the Karawanella hospital by the owner of the garage in which he was working.

He has also complained to the the Special investigation unit at the police head-quarters about the alleged assault and received a letter from the head-quarters directing him to participate in the inquiry.

The petitioner had filed an affidavit from the owner of the garage substantiating the position that the owner had to hospitalize him on the 30th because he had been subjected to an assault, but he had not stated as to who was responsible.

The response from the police head-quarters also had been attached to the petition.

According to the admission form of the petitioner issued by the hospital, he has been admitted on the 30th of June, 2010 at 11.02 am and the case history has been given as being assaulted by three policemen and the doctor has noted injuries on the petitioner.

The respondents have filed their objections and have vehemently denied the allegations and have stated that on the 29th of June at 11.55 pm, the 3rd respondent had received a call stating that some people, under the influence of alcohol, were causing trouble in the Yatiyanthota town and as such, the 2nd and the 3rd respondents had left the police station to the scene on foot, on the directions of the fourth respondent.

Once they approached the place, which had been at the heart of the Yatiyanthota town, they had seen a group of people behaving very boisterously and when the patrol jeep had approached the scene, many had run away. However, they had been able to arrest two persons and the petitioner had not been among them.

Once the two suspects were taken to the police station and their statements were recorded, they had been released on bail. Thereafter, a message had been sent to the petitioner, who was in hospital at that time, to make a statement. The petitioner had refused to make a statement.

The other two persons had been produced before the Magistrate and they had pleaded guilty, while the petitioner had refused to make a statement. Police records reveal that the petitioner and the garage owner have several pending cases in the Magistrates Court. (2R8a)

According to document marked and attached as 2R7, the petitioner had been drunk and behaving in a very unruly manner in the Yatiyanthota town with some others on the night of 29th June and when the police jeep arrived, he had runaway.

The respondents also had recorded statement of persons who had been in the Yatiyanthota town at the time of the incident, which are at 2R5, which clearly substantiates the position of the respondents with regard to the unruly behaviour of the petitioner and the fact that the petitioner ran away when the police jeep approached.

The notes of the respondents further substantiates the abovementioned position.

As such, it is obvious that the petitioner had been part of an unruly mob at the heart of the Yatiyanthota town in which there had been internal squabbling and a tussle and finally had run away from the scene when the police jeep had approached.

Hence, a reasonable doubt arises with regard to the fact whether the petitioner received the injuries while being assaulted by the police or while being a member of the unruly crowd, which had been making trouble in the Yatiyanthota town.

The petitioner had filed only the garage owner's affidavit to substantiate his position but the said affidavit does not reveal whether the respondents assaulted the petitioner, as alleged by him, or the place in which the alleged assault took place.

In the case history, he had said that the police assaulted him, but there are statements from very independent people to say that the petitioner was part of a very unruly, drunk crowd in the town of Yatiyanthota and ran away when the police jeep arrived at the scene.

Therefore, there is no reasonable evidence to draw the inference that the petitioner sustained injuries from being assaulted by the respondents.

Instead, there is cogent evidence to say that the petitioner was involved in an unruly riot and among them there was a tussle and a reasonable inference can

be drawn that he sustained injuries while being involved in the tussle. The subsequent behaviour of the petitioner, such as running away from the scene on seeing the police jeep and his refusal to make a statement to the police, only further substantiates the position of the respondents.

In the instant matter, this Court has granted leave under Article 11 of the Constitution, which ensures every human being, freedom from torture, cruel, inhuman or degrading treatment or punishment.

According to the case of **Amal Sudath Silva vs Kodituwakku Inspector of Police and others (1987) 2 Sri. LR. 119** it has been held that,

“Article 11 of our Constitution mandates that no person shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. It prohibits every person from inflicting torturesome, cruel or inhuman treatment on another. It is an absolute fundamental right subject to no restrictions or limitations whatsoever.”

However, the petitioner, who is alleging the violation, has to prove the same upon standards acceptable to Court.

But the question of whether the standard of proof is according to a balance of probability, as per a civil case, or on a balance of probability, as per a criminal case, has been discussed in our legal literature and has been decided that it should be on a balance of probability taking all factors in to account.

At this point I draw my attention to the case of **Saman vs Leeladasa (1989) 1 SLR 12**, where **Fernando J** had stated that standard of proof in complainants of violations under Article 11 is usually expressed as involving a *“preponderance of probability”*, which is similar to the standard of proof of a civil case.

However, upon perusal of the above mentioned facts, I am of the view that the petitioner had failed to prove, on the standards stipulated above, that he was assaulted by the police and not during the tussle with his friends. The affidavit of the garage owner, which he submitted to substantiate his position, does not speak to the place where he had been assaulted. Furthermore, the statements recorded by the police from the bystanders in the town, at the time of the incident, cut across the case of the petitioner.

As such, I am of the opinion that there is no material to decide with certainty that the fundamental rights of the petitioner, under Article 11 of the Constitution, have been violated.

Hence, the instant petition is dismissed without costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT