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

In the matter of an Application in terms of Article 126 of the Constitution of the Democratic

S.C. FR Application No. 524/2012

1. H.D.S. Wimalarathna
   No. 209, Mahabopitiya,
   Alawwa.

PETITIONER

Vs.

1. D.M.S.K. Dassanayake,
   Inspector of Police,
   Police Station, Alawwa.

2. Senaratna,
   52524, Police Constable,
   Police Station, Alawwa.

3. A.B. Mahinda Pushpakumara
   Inspector of Police,
   Officer-in-Charge,
   Police Station, Alawwa.

4. Lal Kumara
   20167,
   Police Sergeant,
   Police Station, Alawwa.

5. Karunarathna,,
   32182,
   Police Sergeant,
   Police Station, Alawwa.

6. Inspector General of Police,

Police Head Quarters,
Colombo 01.

7. Hon. Attorney-general,
Attorney- General's Department,
Colombo 12.

RESPONDENTS

BEFORE : A.L. Shiran Gooneratne, J.
Menaka Wijesundera, J. &
M. Sampath K. B. Wijeratne J.

COUNSEL : P.K. Prince Perera with S. Panchacharam for the Petitioner.

Razik Zarook, PC for the 1st - 5th Respondents.

Ms. V. Hettige, ASG for the 6th and 7th Respondents.

ARGUED ON : 30.05.2025

DECIDED ON : 18.09.2025

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner filed this application in terms of Articles 17 and 126 of the Constitution seeking *inter alia* a declaration that his fundamental rights guaranteed under Articles 11, 13(1) and 13(2) of the Constitution were infringed by the 1st to 5th Respondents who are police officers attached to Alawwa Police station; compensation in a sum of Rs. 3 million from 1st to 5th Respondent and to direct the 7th Respondent, the Attorney General to institute criminal proceedings under the

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, against the 1st to 5th Respondents who are liable for the infringement of the Petitioner's fundamental rights under Article 11 of the Constitution.

The Petitioner's complaint is that he was subjected to torture, cruel, inhuman and degrading treatment by the 1st to 5th Respondents using the colour of their office whilst he was unlawfully arrested and detained in the Alawwa police station.

Accordingly, this Court granted leave to proceed on the alleged violation of the Petitioner's fundamental rights guaranteed under Article 11, 13(1) and 13(2) of the Constitution.[1]

Petitioner's version of the Case

According to the Petitioner, on 12.06.2011 at around 8.15 a.m. when he reported for duty in the Abans Alawwa branch where he worked as a sales assistant, he came to know that the shop has been broken into. On the same day 1st and 2nd Respondents together with two other Police officers have come to his workplace and have taken the Petitioner to Alawwa Police station without informing him of the reasons for the arrest. When he was taken to the backside of the Alawwa Police station, the 3rd Respondent who is the OIC of Alawwa Police station had arrived. After learning who the Petitioner was, the 3rd Respondent had slapped the Petitioner's face twice and as a result of these assaults the Petitioner had fallen down. The Petitioner claims that there was a bed in the place which was also used to assist the torture inflicted upon the Petitioner.

The Petitioner describes the torture he was subjected to while he was unlawfully detained at the Alawwa police station in the following manner;

" පලමු වග උන්තරකරු විසින් මාගේ කකුලට මාංචු දමලා ඇද කකුලට අනෙක් මාංචුව දමන ලදී. එලෙස දමා පලමු

[1] Journal entry dated 01.10.2012.

වගඋත්තරකරු පෙත්සම්කරුව බිම ඉන්දවන ලදී. එලෙස ඉන්දවන ලද්දේ පෙත්සම්කරුගේ කකුල් දෙක දිග ඇරය. 3 වන වග උත්තරකරු විසින් වේවැලක් ගෙනවිත් පෙත්සම්කරුගේ කකුල් දෙකේ යටි පතුල් වලට පහර දෙන ලදී. මෙම පහර කෑමෙන් දැඩි වේදනාවක් දැනුන අතර එම වේදනාව හිස් මුදුනින් පිට විය. පලමු වගඋත්තරකරු එම ස්ථානයෙන් පිටව ගොස් නයි කොච්චි වගයක් ෂොපිං බෑගයක දමා ගෙන ගෙනෙන ලදී එම නයි කොච්චි ටික 2 වන වග උත්තරකරුට 1 වන වගඋත්තරකරු විසින් දෙන ලදී. 2 වන වග උත්තරකරු එම නයි කොච්චි ටික තලා ලේන්සුවකට ගෙන පොඩි පොට්ටනියක් හදලා එනන තිබුන වතුර බෝතලයක් අරගෙන ලේන්සුවෙන් හදා ඇති පොඩි පොට්ටනියකට දමා ඒක ගෙන 1 වන වගඋත්තරකරුට දෙන ලදී. 2 වගඋත්තරකරු විසින් පෙත්සම්කරුගේ ඇස් උඩටම සිටින සේ ඔලුව අල්ලා ගන්නා ලදී. 1 වන හා 3 වන වග උත්තරකරුවන් විසින් මාරුවෙන් මාරුවට වතුරෙන් පොගවා තිබු තලන ලද නයි කොච්චි සහිත පොට්ටනිය පෙත්සම්කරුගේ ඇස් දෙකට නාසයට නලළට කටට මිරිකන ලදී."

On the same day at or about 7.30 PM, the Petitioner was further tortured by 1st, 2nd, 4th and 5th Respondents after stripping down the garments of the Petitioner forcibly.

"ඉන් පසුව 1,2.4 සහ 5 වග උත්තකරුවන් පෙත්සම්කරුගේ අත් දෙකයි කකුල් දෙකයි එතන තිබූ ලණුවකින් ගැට ගසන ලදී. එතන කබඩ් දෙකක් තිබුණි. 1,2 4 සහ 5 වන වග උත්තකරුවන් විසින් යකඩ ඉන්නක් ගෙන එම යකඩ ඉන්න

ගැට ගසා තිබූ පෙත්සම්කරුගේ අත් දෙකයි කකුල් දෙකයි අතරින් දමා 1 සහ 2 වන වගඋත්තරකරුවන් විසින් ගල් ඉන්නේ එක පැත්තක්ද 4 සහ 5 වග උත්තරකරුවන් විසින් ගල් ඉන්නේ අනිත් පැත්තද අල්ලා කබඩ් දෙක උඩ සිටින සේ රදවන ලදී. එසේ රදවා පලමු වගඋත්තරකරු විසින් පෙත්සම්කරුව තල්ලු කරන ලදී. දෙවන වගඋත්තරකරු විසින් කුඩු කල නයි කොච්චි ඉහත සඳහන් පරිදි ගෙනවිත් වතුර දමා පෙත්සම්කරුගේ ඇස් දෙකටත් මුහුණටත් පුරුෂ ලිංගයටත් වතුරෙන් පොගවා තිබූ කොච්චි පොට්ටනිය මිරිකන ලදී. එලෙස මිරිකීම 1,2 සහ 4 වග උත්තකරුවන් විසින්ද මාරුවෙන් මාරුවට කරන ලදී. මෙලෙස පෙත්සම්කරු පැය 3 පමණ එල්ලා තබන ලදී. ඉන් පසුව 1,2,4 සහ 5 වගඋත්තරකරුවන් විසින් එතනින් යන ලදී. පැය තුනකට පමණ පසුව 1,2, 4 සහ 5 වන වග උත්තරකරුවන් පැමිණ පෙත්සම්කරුව ලිහා බිමට ගන්නා ලදී. ඉන් පසුව 1,2 4 සහ 5 වන වගඋත්තකරුවන් මාරුවෙන් මාරුවට පෙත්සම්කරුගේ අත් වලට පාදයට පිටට අතින් පයින් සහ කොටුවලින් පහර දෙන ලදී."

After obtaining Petitioner's signature to some papers forcibly, he was put into a detention cell and subsequently produced before the magistrate of Warakapola at his residence on or about 6.30 pm by the 1st and 2nd Respondents on or around 08.06.2011. The Petitioner was also threatened by the 1st and 2nd Respondent to not to disclose that he was assaulted in the Police station.

The Petitioner was enlarged on bail on 21.06.2011. On the same day he was admitted to Kurunegala teaching hospital and was examined by the JMO on or about 30.06.2011. Upon being discharged, the Petitioner has complained to Human Rights Commission of Sri Lanka (hereinafter 'HRCSL'). After an inquiry the HRCSL has

issued a recommendation dated 24.08.2012 which ordered the 1st Respondent to pay a sum of Rs. 25,000 and each 2nd, 4th and 5th Respondents to pay a sum of Rs. 7,500.

It was informed to the Court that the Petitioner has received a money order from 1st ,2nd, 4th and 5th Respondents pursuant to HRCSL recommendations for a sum amounting to forty-seven thousand five hundred, but that has not been encashed by the Petitioner as he wishes to proceed with this application.[2]

The 1st to 5th Respondents' Version of Event

The Respondents contend that the Petitioner was lawfully arrested on 18.06.2011 pursuant to an investigation on a complaint made on 13.06.2011 and was duly produced before the Magistrate on the same day. The 1st to 5th Respondents contend that on the day he was taken into custody, he attempted to escape and run away from the Police custody and as a result, sustained injuries to the hands and feet. According to 1st to 5th Respondents' version, the injuries depicted in the Medico-Legal Report (MLR) are due to this attempted escape.

The 1st to 5th Respondents further submit that since they have already paid the compensation that the Human Right Commission has ordered to pay to the Petitioner, he is not entitle to seek further relief from this Court.

However as already noted above, the Petitioner has not acknowledged the compensation offered by the Respondents as he wishes to pursue this application.

Time Bar objection

The preliminary objection of the Respondents was that the Application of the Petitioner has been filed outside the mandatory period of one month stipulated in Article 126(2) of the Constitution and on that basis, the Respondents moved to have this application dismissed *in limine*.

[2] Journal entry dated 21.02.2013.

Article 126(2) of the Constitution reads as follows:

> Article 126(2) -"*Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf,* ***within one month thereof****, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two judges*." (emphasis added)

However, Section 13 (1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 provides as follows:

> Section 13 (1) - *"Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution."*

In the case of ***A.M.K. Aththanayake v. H. W. S. Udayakumara, IP of Police and Others***,[3] Justice Padman Surasena (now Chief Justice of Sri Lanka) quoting Justice

[3] S.C. F.R. Application No. 412/ 2015, S.C.M 27-06-2024.

Janak De Silva in ***Thilangi Kandambi v State Timber Corporation and others***[4] observed that,

> "*The initial view was that mere production of a complaint made to the Human Rights Commission of Sri Lanka within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996[…]However, the correct position is that a petitioner must show evidence that the Human Rights Commission of Sri Lanka has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate*."

In ***Ranasinghe Arachchige Nadeesha Seuwandi Ranasinghe and another v Ceylon Petroleum Storage Terminals Limited***[5] that,

> *" … in view of the provisions of Section 13(1) of the Human Rights Commission Act, time would not run during the pendency of proceedings before the Human Rights Commission and such time will not be taken into account in computing the period of one month within which an application may be made to this Court in terms of Article 126(2) of the Constitution*.".

In the case before us not only the Petitioner has filed a complaint in the HRCSL but also has received recommendations to which he is not satisfied. Therefore, in computing one month period, the period in which the inquiry was pending has to be excluded.

[4] S.C. F.R. Application No. 452/2019, S.C.M 14.12.2022.
[5] SC FR No. 244/2017 – S.C.M of 22.02.2019.

In order to consider whether the Petitioner has complied with Article126(2), the following dates stated in the paragraph 1 of the Written Submissions of the Petitioner would be of relevance:

> "*He was enlarged on bail on 21.06.2011. On the same day he got admitted to the Kurunegala teaching hospital. He was examined by the JMO on 11 am on 30.06.2011. He was discharged from the hospital on 30.06.2011. He made a complaint to the Human Right Commission on 18.07.2021 (P2). An inquiry was held before the Human Right Commission. (P4-P7). The Human Right Commission had made it's recommendation on 14.08.2012(P 11) whereas he received the recommendation through normal post on 27.08.2012, and he filed this application before your Lordships Court on 05.09.2012."*

In the case of ***Saman v Leeladasa***,[6] it was held that,

> "*Here, the Petitioner was hospitalised from 2.12.87 until his release, and was thus prevented from taking immediate action to petition this Court for redress : an impediment, to the exercise of his fundamental right (under Article 17) to apply to this Court, caused by the very infringement complained of. Further, the fact that he had been assaulted, or that an injury had been inflicted on him, would not per se bring him within Article 11 ; whether the treatment meted out to him would fall within Article 11 would depend on the nature and extent of the injury caused ; until the Petitioner had knowledge, or could with reasonable diligence have discovered, that an injury sufficient to bring him within Article 11 had resulted, time did not begin to run*."

Similarly, in ***Gamaethige v Siriwardana***[7], Mark Fernando J had held that,

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[6] [1989] 1 Sri LR 1.
[7] (1988) 1 Sri L.R. 384 at p.402.

"*… in exceptional cases, on the application of the principle lex non cogit ad impossibilia, if there is no lapse, fault or, delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time*."

On the application of that principle, time did not begin to run in this case until 30.06.2011, the date in which he was discharged from the hospital. As the HRCSL made its recommendations on 14.08.2012 and the instant application was made on 05.09.2012, the Petitioner's application is well within the one-month time period stipulated by Article 126(2) of the Constitution. Therefore, I am of the opinion that there is no merit in the preliminary objection taken up by the Respondent, and must necessarily be overruled.

Purported violation of Article 11 of the Constitution

Article 11 of the Constitution provides that,

Article 11 -**"***No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment***."**

Here it is important to note that Article 11 of the 1978 Constitution is an entrenched provision with no restrictions whatsoever.

United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment defines torture in Article 1 of the Convention as follows:

Article 1 -*"For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,*

punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'

This convention has been signed and ratified by the government of Sri Lanka and has also incorporated into the domestic law of Sri Lanka through Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994.

Article 12 of the Act No 22 of 1994 provides:

Article 12 -*"torture" with its grammatical variations and cognate expressions, means any act which causes severe pain, whether physical or mental, to any other person, being an act which is—*

(a) done for any of the following purposes that is to say—

(i) obtaining from such other person or a third person, confession; or any information or

(ii) punishing such other person for any act which he or a third person has committed, or

(iii) is suspected of having committed; or intimidating or coercing such other person or a third person; or

(b) done for any reason based on discrimination

and being in every case, an act, which is, done by, or at the instigation of, or with the consent or acquiescence of, public officer or other person acting in an official capacity."

Our Courts have sought to interpret what amounts to '*cruel, inhuman and degrading treatment*' under Article 11 of the Constitution in different cases that have come before it.

Justice Sharvananda in his treatise, **Fundamental Rights in Sri Lanka (A Commentary) [(1993) at page 69**] has pointed out that,

> "*The fundamental nature of the right of freedom from torture or inhuman treatment is emphasized by the fact that it is an absolute right subject to no restriction or derogation under any condition, even in times of war, public danger or other emergency. This human right from cruel or inhumane treatment is vouched not only to citizens, but to all persons, whether citizens or not, irrespective of the question whether the victim is a hard-core, criminal or not*."

In ***Kumara v Silva, Sub-Inspector of Police, Welipenna and Others***[8] this Court noted that,

> *"Article 11 refers to torture separately from cruel, inhuman or degrading treatment or punishment similarly to Article 5 of the Universal Declaration of Human rights, Article 7 of the International Covenant on Civil and Political Rights as well as Article 3 of the European Convention which had referred to torture separately from inhuman, degrading treatment or punishment. The importance of the right to protection from torture has been further recognized and steps had been taken to give effect to the universally accepted safeguards by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment signed in New York in 1984, which has been accepted in Sri Lanka by the enactment of Act No. 22 of*

[8] [(2006) 2 Sri LR 236 at page 244.

1994 on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

Atukorale J. in ***Amal Sudath Silva v Kodituwakku Inspector of Police and Others***[9] commenting on Article 11 of the Constitution held as follows,

"*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. Every person in this country, be he a criminal or not, is entitled to this right to the fullest content of its guarantee. Constitutional safeguards are generally directed against the State and its organs. 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. Just as much as this right is enjoyed by every member of the police force, so is he prohibited from denying the same to others, irrespective of their standing, their beliefs or antecedents. 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 and that the executive by its action does not reduce it to a mere illusion."*

The '*cruel, inhuman or degrading treatment*' is not limited to the physical force used or any physical pain thereby caused but also extend to dignity of a person as a human being. Therefore, in the case of ***Subasinghe v Police Constable Sandun and Others***[10] this Court held that,

[9] [(1987) 2 Sri LR 119 at page 126-127.
[10] [1999] 2 Sri L.R. 23.

> "*The fact that the petitioner was taken handcuffed in a private vehicle to the Dankotuwa town and 'exhibited' in the manner spoken to by the petitioner in my view, is an affront to the petitioner's dignity as a human being and amounts to 'degrading treatment' within the meaning of Article 11*."

The conduct complained of in the case at hand, as I have already noted above, includes infliction of severe pain and suffering to the Petitioner accompanied by humiliation of torturing him while stripping him naked.

The Medico-Legal Report that has been tendered before this Court, supports the Petitioner's version of the facts of the case rather than 1st to 5th Respondents' version. According to the Judicial Medical Officer (JMO), the statement made by the Petitioner at the time of being admitted to Kurunegala teaching hospital is compatible with the history of the injuries. Further MLR identifies around 11 injuries in the body of the Petitioner where one of which has been identified as an injury that falls within the category of grievous injury. "*foot drop of right led [sic]- he cannot walk properly with right foot due to nerve damage and temporary paralysis*".

HRCSL following an investigation and upon examination of images of injuries submitted by the Petitioner, notes that statements made by 1st to 5th Respondents regarding the Petitioner's injuries that were reported in the MLR were owing to Petitioner jumping out of the moving vehicle is not compatible with the nature and the situation of the injuries in question. The HRCSL is in the opinion that these injuries are result of a torture inflicted upon the Petitioner.

When considering all the evidences tendered before this Court together with the observation of the HRCSL, I am of the opinion that the Petitioner has been subjected to '*torture or to cruel, inhuman or degrading treatment or punishment*' within the meaning of Article 11 of the Constitution.

Alleged violation of Article 13(1) and 13(2) of the Constitution

The Petitioner submits that the arrest and detention of the Petitioner was in contravention of the Constitution and provisions of the Code of Criminal Procedure Act No.15 of 1979 (as amended).

Article 13 (1) of the Constitution provides as follows:

> Article 13 (1) -"*No person shall be arrested except according to procedure laid down by law. Any person arrested shall be informed of the reason for his arrest*"

Section 23 of the Code of Criminal Procedure Act No. 15 of 1979 lays down the procedure in which a lawful arrest can be done which reads as follows:

> Section 23 (1)-*"In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.*
>
> Section 23 (2)- *If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, the person making the arrest may use such means as are reasonably necessary to effect the arrest."*

Section 32 (1) (b) of the Code of Criminal Procedure Act No. 15 of 1979 as follows:

> Section 32 (1) – "*Any peace officer may without an order from a Magistrate and without a warrant arrest any person –*
>
> *(a) (.....)*

(b) who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

(c) –(i)(.....)

In ***Corea v Queen*** [11] Gratien J. held that,

"*A police officer acts illegally in Ceylon (as in England) if he arrests a man without a warrant on a mere " unexpressed suspicion " that a particular cognizable offence has been committed-unless, of course, " the circumstances are such that the man must know the general nature of the offence for which he is detained" or unless the man "himself produces the situation which makes it practically impossible to inform him* "

As clearly enumerated above, the narration of events by the parties are vastly different and contradictory. So are the date and time the alleged event took place. Even though there are no clear evidence supporting the date of arrest of the Petitioner, particularly the affidavit of one Balagalla Ralalage Susantha Sampath presented before HRSCL support the Petitioner's version that he was in Police custody on 16.06.2011, the date which is prior to the date which the arrest claimed to have taken place by the 1st to 5th Respondents. Therefore, it is probable that the Petitioner's version that he was arrested without giving reasons or having reasonable grounds to do so.

Here it is noteworthy that the Petitioner was acquitted of all the charges by the learned the Magistrate by order dated 03.09.2012 under which the questionable arrest was done, that formed the basis for the instant application.

[11] 55 NLR 457.

In the case ***Gerald Mervin Perera v. Suraweera, Officer-In-Charge, Police Station Wattala and Others***[12] Court held that,

> *"Further, had the Respondents been acting bona fide when they arrested the Petitioner, they would have promptly recorded his statement, and would then have either produced him before a Magistrate or released him. The fact that they failed to record a statement (or if the IB extracts are accurate, waited ten hours to do so) strongly suggests that they did not, even subjectively, believe that he had committed an offence, but were merely hoping that something would turn up. It is also probable that the Petitioner was not given a reason for arrest."*

Similarly in the case of ***G.S.T.P. Akalanka v. Wijesinghe and Others***[13] Thurairaja, PC, J. made the following observation:

> "*This Court observes that if there had been a reasonable suspicion that the Petitioner was in some manner involved in the alleged theft due to a name divulged by an arrested suspect, the officers should have followed the correct procedure and made an 'official arrest' of the Petitioner as prescribed by law. The blatant disregard of the relevant procedure by the Respondents leads to the finding that the Petitioner was illegally arrested and detained contrary to Article 13 of the Constitution."*

Once a person is arrested, such person ought to be brought before the judge of the nearest competent court.

Article 13(2) of the Constitution thus provides:

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[12] (2003) 1 Sri LR 317.
[13] SC FR 46/2018, SCM dated 21.10.2021.

Article 13(2) -"*Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.*"

Section 37 of the Code of Criminal Procedure Act No. 15 of 1979 reads;

Section 37 -*"Any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate."*

The Petitioner claims that he was unlawfully detained at the Alawwa Police Station for a period of over 144 hours which is a clear violation of aforesaid provisions in the Constitution and the Code of Criminal Procedure Act No. 15 of 1979. The contention of the Petitioner regarding unlawful detention is also supported by the following observation made by the HRCSL consequent to an investigation that was conducted upon the Complaint of the Petitioner.

"මෙහිදී සලකා බැලිය යුතු කරුණ වන්නේ පැමිණිලිකරු අත්අඩංගුවට ගන්නා ලද්දේ 2011.06.12 දින ද එසේත් නොමැතිනම් වගඋත්තරකරුවන් සදහන් කරන ආකාරයට 2011.06.18 දිනයේද යන්නයි.

මේ පිළිබඳ සලකා බැලීමේදී 2011.06.12 දින අත්අඩංගුවට ගත් බව පැමිණිලිකරු ප්‍රකාශ කල ද එය ඔප්පු කිරීමට ප්‍රමාණවත් වෙනත් සාක්ෂි පැමිණිලිකාර පාර්ශවය ඉදිරිපත් කිරීමට

අපොහොසත් වී ඇත. නමුත් පැමිණිල්ල වෙනුවෙන් සාක්ෂියක් ලෙස දිවිරුම් ප්‍රකාශයක් ඉදිරිපත් කරන ලද බලගල්ල රාළලාගේ සුසන්න සම්පත් යන අය ප්‍රකාශ කර ඇත්තේ 2011.06.16 වන දින පස්වරු 4.00 ට පමණ තමා දිවුලපිටිය පොලිස් ස්ථානයෙන් අත්අඩංගුවට ගෙන අලවිව පොලිසියට භාර දෙන විට අලවිව පොලිසියේ සිර මැදිරියේ දුමින්ද සම්පත් විමලරත්න යන අය ඉතා අපහසුවෙන් සිටිනු දුටු බවත් ඔහුගේ අත් වල, කකුල් වල, පිටේ තුවාල තිබෙනු දුටු බවත් ඔහු ඉතා අපහසුවෙන් සිටිනු දුටු බවත්ය.

ඒ අනුව එම සාක්ෂිය පිළිගත හැකි සාක්ෂික් බව පෙනී යන අතර, සැකකරු 2011.06.16 වන දින පස්වරු 4.00 ට පමණ පොලිස් අත්අඩංගුවේ සිටි බව සනාථ වන සාක්ෂියකි. සැකකරු අධිකරණය වෙත ඉදිරිපත් කර ඇත්තේ 2011.06.18 වන දින බැවින් පැය 24 කට වඩා වැඩි කාලයක් රඳවා තබා ගෙන ඇති බව නිරීක්ෂණය වී ඇත.”

Upon consideration of all the aforementioned facts, this Court finds that the rights of the Petitioner guaranteed under Article 13(1) and Article 13(2) have been violated.

Can this Court review the decision of the HRCSL?

The Human Rights Commission of Sri Lanka (HRCSL) is an independent Commission established in 1997 pursuant to the enactment of the Human Rights Commission Act No. 21 of 1996. The Commission has a broad mandate as well as powers, *inter alia,* to investigate into any complaints of fundamental rights violations or imminent fundamental rights violations and grant suitable redress, including compensation.

As correctly pointed out by Yasantha Kodagoda, PC, J in ***Chandana Suriyarachchi and Others v Secretary Ministry of Defence and others,***[14]

> *"[I]t must be appreciated that the investigational, inquisitorial and dispute resolution mechanisms created by the HRCSL Act is aimed at inter-alia providing the public a mechanism to which they may have convenient and expeditious access for the resolution of disputes arising out of the alleged infringement of their fundamental rights and to obtain relief, without having to access the Constitutional mechanism by invoking the jurisdiction of the Supreme Court. In the circumstances, for the purpose of having fundamental rights related disputes resolved and to obtain relief, if they choose to, the public need not go through what is now observable as being a cumbersome, complicated, time-consuming and possibly expensive method of judicial adjudication of disputes."*

The investigations, findings and observations of HRCSL provides valuable assistance to Court in dispensing the justice. However, the Supreme Court is not bound by such findings or investigations of the HRCSL. The recommendations or orders that are being made by HRCSL could be reviewed by the Supreme Court.

In the case of ***Chandana Suriyarachchi and Others v. Secretary Ministry of Defence and others*** (*supra*) Yasantha Kodagoda, PC, J. further states:

> *"the creation of an independent, para-judicial or administrative state (nevertheless independent) institution statutorily empowered to engage in investigation and inquiry, ascertainment of the truth, possessing authority to engage in dispute resolution pertaining to infringement of human rights, and for the performance of a multitude of other functions aimed at the promotion and protection of human rights, is a globally*

[14] SC/FR/ 329/2017, SCM 12.01.2023.

recognized, critically important norm. An independent, competent and effective national human rights institution is a cornerstone of a country's mechanism for the promotion and protection of human rights. In Sri Lanka's context, it is aimed at subordinately augmenting the role of the Supreme Court in the area of disputes arising out of alleged infringement / imminent infringement of fundamental rights.

The investigative, inquisitorial and dispute resolution mechanisms provided for in the Act are subordinate and alternate to the Constitutional mechanism created by Article 17 read with Article 126 of the Constitution for the protection of fundamental rights through judicial adjudication of disputes pertaining to the infringement and imminent infringement of fundamental rights. A careful consideration of the provisions of the Act clearly reveals that the HRCSL has not been created to make inroads towards the jurisdiction of the Supreme Court. Nor has the Commission been established to create a parallel system for judicial or quasi-judicial adjudication of disputes."

Hence in the event a person comes before the Supreme Court against decision made by HRCSL, such decisions can be quashed, modified or implemented by this Court.

State Responsibility

The learned State Counsel on behalf of the 6th to 7th Respondents submit that subsequent to the inquiry, indictment was filed against 1st to 3rd Respondents and prompt actions have been filed against the accused Police officers of Alawwa Police station, and urge the Court to absolve the state for the alleged violation of the fundamental rights of the Petitioner. The Learned state Counsel rely on the cases of ***Kanda Udage Malika vs D.M.Abeyratna and others*** [15]and ***Gunawardene vs Perera and others***[16] to support his position.

[15] SC/FR/157/2014, SCM 21.05.2021.
[16] [1983] 1 SRI LR 305.

In ***Amal Sudath Silva v Kodituwakku Inspector of Police and Others*** **(***supra***)** Atukorale, J. dealing with strongly condemns torture while in police custody in the following manner;

> *"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. The facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. Such methods can, only be described as barbaric, savage and inhuman. They are most revolting to one's sense of human decency and dignity particularly at the present time when every endeavour is being made to promote and protect human rights. Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects a helpless suspect in his charge to depraved and barbarous methods of treatment within the confines of the very premises in which he is held in custody. Such action on the part of the police will only breed contempt for the law and will tend to make the public lose confidence in the ability of the police to maintain law and order. The petitioner may be a hard-core criminal whose tribe deserve no sympathy. But if constitutional guarantees are to have any meaning or value in our democratic set up, it is essential that he be not denied the protection guaranteed by our Constitution.*"

In the aforementioned case Atukorale, J. went on to hold the state vicariously liable for the acts committed by its errant officers.

> "*…However as the petitioner has established that he has been subjected to torture and cruel treatment by the police, whoever they be,*

when he was under arrest, the State is liable to pay compensation to the victim of such action."

The blatant violations of law and order and the abuse of the powers by the Police officers who are responsible to uphold law and justice should be strongly condemned and punished. However, in my view, it is illogical to impose the liability on the state for acts committed by such errant officers to fulfill their own personal agendas in the context where state has already taken appropriate steps to bring such officers before law.

A similar view has been adopted in the case of ***Kanda Udage Malika v D.M. Aberathna and others,***[17] where Thurairaja, PC, J. quoting Soza J. in ***Goonewardene v. Perera and Others*** (*supra*) made the following observation.

"It is illogical to hold the state responsible for acts committed by such officers in pursuing their personal vengeance without the authorization or knowledge of the persons in authority. This was also highlighted in Goonewardene v. Perera and Others [1983] 1 Sri LR 305 (Soza, J.) as follows,

'The State no doubt cannot be made liable for such infringements as may be committed in the course of the personal pursuits of a public officer of to pay off his personal grudges. But infringements of Fundamental Rights committed under colour of office by public officers must result in liability being cast on the State.'

In light of the above, the phrase 'colour of office is not limited to whether or not the officers were in official uniform but includes factors surrounding the conduct of the officers and the authority given to them. In the instant case the acts committed by the errant officers were not

[17] SC/ FR/ 157/2014, SCM 21.05.2021.

committed under the supervision or the orders of a senior officer. The state has not in any manner approved nor shall approve such conduct. In considering the facts laid before this court the acts of the officers were conducted in their personal capacity and not in the 'colour of office.'."

Deterrence is of prime importance in awarding compensation in the context of violations of fundamental rights, because the impugned conduct is the very action that the framers of the Constitution sought to avoid. However, when a court awards compensation against the state, it is ultimately the taxpayers' money which is being expended to make up for such commission or omission on the part of government officials.

Thus, I am of the opinion that, as the burden of compensation against the state has to be born by ordinary tax payers, state should not be imposed with the burden of compensating the victims of such wrongful acts on the part of its errant officers unless there is evidence to the effect that state through its omission is responsible for encouraging or continuance of such discreditable conduct. In the event the state has proceeded against such deviant officers, it is more appropriate for the court to directly hold the deviant officer personally liable rather than the state.

In the instant case, as the state has fully co-operated to serve justice to the Petitioner by instituting criminal proceedings in the High Court of Kurunegala against 1st to 3rd Respondents in accordance with the provisions of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, I hold that liability need not be imposed on the state for the wrongdoings of the 1st to 5th Respondents and the said officers themselves are personally liable for their discreditable conduct.

Conclusion

In the above premise, I declare that the fundamental rights of the Petitioner guaranteed under Articles 11, 13(1) and 13(2) of the Constitution have been infringed by executive and administrative action.

Accordingly, acting under Article 126(4) of the Constitution which empowers the Supreme Court 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), I order

a. The 1st Respondent to pay Rs. 50,000 (Fifty thousand rupees) from his personal funds in addition to the Rs. 25,000 ordered by HRCSL.

b. The 2nd to 5th Respondents to pay a sum of Rs. 25,000 each, (Twenty -five thousand rupees) in addition to Rs. 7,500 ordered by HRCSL from their personal funds.

as compensation to the Petitioner within six months from the date of this judgment.

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J.
I Agree.

JUDGE OF THE SUPREME COURT

Menaka Wijesundera, J.
I Agree.

JUDGE OF THE SUPREME COURT