

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

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

**S.C. (FR) No. 259/2016**

Vithanage Sunil,  
No.850/1,  
Rukmale Road,  
Kottawa,  
Pannipitiya.

**Petitioner**

**Vs.**

1. L.P.B. Samarasinghe,  
Inspector of Police,  
The Officer-in-Charge,  
Police Station,  
Kottawa.
2. Cyril Perera,  
Sub Inspector of Police,  
Police Station,  
Kottawa.
3. Nandana Piyal,  
Police Constable,  
Police Station, Kottawa.
4. Sampath  
Police Constable,  
Police Station, Kottawa.

5. Chandra Niroshan  
Police Constable,  
Police Station,  
Kottawa.
6. Premasiri,  
Sub Inspector of Police,  
Police Station,  
Kottawa.
7. The Deputy Inspector General of Police,  
Western Province (South)  
Police Head Quarters,  
Colombo 01.
8. Hon. Attorney General,  
The Attorney General's Department,  
Colombo 12.

**Respondents**

Before : Yasantha Kodagoda, PC, J  
Janak De Silva, J  
Menaka Wijesundera, J

Counsel : Rasika Dissanayake with Shabeer Hussain and Charith  
Minipuraarachchi instructed by Sanath Wijewardane  
for the Petitioner.

Jagath Abeynayaka with Gavesha Amarasinghe  
instructed by L. Aruna Prabash Perera for the  
1<sup>st</sup> Respondent.

Nuwan Kodikara for the 2<sup>nd</sup> – 5<sup>th</sup> Respondent.

Ms. V. Hettige, PC, ASG, instructed by Ms. Rizni  
Firdous, SSA, for the 7<sup>th</sup> & 8<sup>th</sup> Respondents.

Written

Submissions : Written submissions on behalf of the Petitioner on  
20<sup>th</sup> January 2021.  
Written submissions on behalf of the 1<sup>st</sup> Respondent on  
12<sup>th</sup> March 2021.  
Written submissions on behalf of the 7<sup>th</sup> and 8<sup>th</sup>  
Respondents on 23<sup>rd</sup> September 2021.

Argued on : 06.08.2025

Decided on : 10.10.2025

**MENAKA WIJESUNDERA, J.**

The Petitioner in the instant matter namely Vithanage Sunil claims that his fundamental rights under Article 11, Article 12(1) and Article 13 of the Constitution have been violated by the 1<sup>st</sup> to the 6<sup>th</sup> Respondents and has sought a declaration of the said violation and compensation from the 1<sup>st</sup> to the 6<sup>th</sup> Respondents.

When this matter was supported for leave, this Court has granted leave to proceed against the 1<sup>st</sup> to the 6<sup>th</sup> Respondents on 13.10.2016, under Articles 11, 12(1) and 13(1)

In the instant application, the 1<sup>st</sup> Respondent is the Officer-in-Charge of the Police Station Kottawa, L. P. B. Samarasinghe. The 2<sup>nd</sup> Respondent is the Sub Inspector of Police attached to Kottawa Police Station, Cyril Perera. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents are Police Constables attached to Kottawa Police Station namely, Nandana Piyal, Sampath and Chandra Niroshan respectively and 6<sup>th</sup> Respondent is a Sub Inspector of Police, Premasiri. The 7<sup>th</sup> Respondent is the Deputy Inspector General of Police (Western Province, South) and the 8<sup>th</sup>

Respondent is the Honourable Attorney General.

The Petitioner claims that he had been an omni bus operator and had owned two buses plying between Colombo and Kottawa.

The Petitioner claims that on 09.07.2016 in the evening when he had been returning home from a friend's place around 10.00 pm, he had seen his two buses parked after the days running and had met the 2<sup>nd</sup> Respondent along with another police officer, who had abused the Petitioner in filth. The 2<sup>nd</sup> Respondent had proceeded to aim his pistol at his head and had threatened to kill him. At that point the 2<sup>nd</sup> Respondent had got down the 4<sup>th</sup> and 5<sup>th</sup> Respondents to the scene. Thereafter, according to him, the 4<sup>th</sup> and 5<sup>th</sup> Respondents had slapped him and asked him to kneel down.

According to the Petitioner, the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have continued to assault him brutally inside his own bus. Thereafter, the 3<sup>rd</sup> Respondent had arrived at the scene and continued to assault him. Although his family members had pleaded with the Respondents to stop assaulting him, it had not happened. Instead, he had been taken to the Kottawa police station and had been assaulted by the 1<sup>st</sup> Respondent and had been put inside a cell with his friend. The eye-witnesses of the incident are the Petitioner's wife, Priyal Prasantha (his brother-in-law), and Petitioner's mother.

The Petitioner has alleged that he was bleeding from his face, mouth, chest, hands and legs due to the assault by the 1<sup>st</sup> to 5<sup>th</sup> Respondents.

Thereafter, on 10.07.2016 at 2.30 pm he had been produced before the Magistrate of Homagama for the alleged offence of possessing 550 mgs of heroin. He completely denies this allegation. His Attorney at Law had informed court with regard to his alleged assault and injuries and, thereafter, the Magistrate had ordered for the Petitioner to be produced before the judicial medical officer of Colombo and remanded him till 18.07.2016.

However, the Petitioner claims that he was never placed before a JMO and when this case was called on 18.07.2016 the Magistrate had been duly informed and the Magistrate had summoned the JMO of Homagama base hospital. Thereafter, the magistrate had ordered this matter to be investigated by the SSP of the Nugegoda division. The said JMO summoned by court had produced a medical report marked as P7, where injuries to his eyes, face, chest and forearms have been observed.

The Petitioner claims that his allegation of assault by the 1<sup>st</sup> to 6<sup>th</sup> Respondents had been established by the report. Further, he denies the allegation of being in possession of heroin at the time of the arrest.

The issue as to whether the Petitioner's fundamental rights guaranteed under

Articles 11, 12(1), and 13(1) of the Constitution have been violated by the 1<sup>st</sup> to 6<sup>th</sup> Respondents remains to be determined and will be addressed in the subsequent sections of this Judgment.

Article 11 of the Constitution reads as follows:

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

In **Hettiarachchige Gemunu Tissa v Jayaratne, Sub Inspector of Police and others** [SC (FR) Application No. 417/2016; SC minutes of 28th May 2024], it was stated that,

*“Every human being is entitled to live in dignity and not be subject to any torture or cruel, inhuman or degrading treatment or punishment. It is the duty of this Court, as the guardian of the fundamental rights of our People, to foster and protect these rights. Whenever a complaint alleging the infringement of Article 11 is made to this Court, our duty is to examine carefully the facts relating to such complaint, the corroborative evidence, if any, tendered by the Petitioner in support of such complaint, the version of the Respondent/s and arrive at a considered decision.”*

Similarly, in **Amal Sudath Silva v. Kodituwakku, Inspector of Police and Others** [(1987) 2 Sri LR 119 at page 126], Atukorale, J. emphasized 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.”*

The Petitioner alleges that he was subjected to severe assault by the 1<sup>st</sup> to 6<sup>th</sup> Respondents, resulting in visible injuries and further contends that an attempt was made to conceal such injuries by producing another individual before the JMO. It is observed that the medico-legal reports produced before Court are contradictory in nature.

The first report, dated 10.07.2016 and prepared by Dr. Nawasivayam, records no injuries on the person examined. In contrast, the second report, dated 12.07.2016 and prepared by Dr. Pranavan pursuant to a direct order of the learned Magistrate of Homagama, clearly records multiple injuries to the face, chest, forearms, and wrist of the patient. Further, the said report states that there was no clinical evidence of the patient’s drug dependence.

During cross-examination, Dr. Nawasivayam admitted that he could not identify the person inside the witness box as being the same individual on whom he had

prepared the medico-legal report. His explanation was that a large number of patients were presented before him and that he cannot remember all of them individually. However, the Petitioner claims that another individual was presented to the medical examination, instead of him.

In examining the affidavits placed before this Court, the affidavit of Mrs. Shanthi Priya, the wife of the Petitioner, states that she witnessed the Petitioner being forced into a bus and thereafter, being brutally assaulted by police officers. Similarly, the affidavit of Dinesh Priyankara, a neighbour, corroborates this, stating that he observed the Petitioner being handcuffed and assaulted by police officers and was taken to the Police jeep.

Further affidavits filed by Janaka Kumara, Dilan Priyankara, and Piyal Prashantha, who are neighbours of the Petitioner, established that the Petitioner had an argument with the police officers and was thereafter assaulted inside the bus while being handcuffed. Both Janaka Kumara and Piyal Prashantha, in their affidavits, specifically claim that the Petitioner was bleeding from his mouth.

Piyal Prashantha, along with his friend, proceeded to the police station after the incident. Piyal further states in his affidavit that he had overheard an attempt by the police to falsely implicate the Petitioner on a drug offence. He inquired on this matter with Upali Senaratne, Attorney at Law. Even though, he has asked the OIC to file a case for obstructing police duty, a drug case was filed. He further claimed that T.V. Priyantha, who was arrested alongside the Petitioner, was released the next day.

The affidavits disclose a consistent and corroborative narrative, namely that the Petitioner, while restrained in handcuffs, was subjected to physical assault by police officers inside a bus, resulting in visible injuries and that there was a subsequent attempt by the police to mischaracterize the events through improper charges.

Affidavits were filed by Joseph Shantha Kumara and Rohana Sudath Liyanage to substantiate the position of the Respondents. The affidavit filed by Joseph Shantha Kumara state that he was in the custody of the Kottawa Police Station from 09.07.2016 to 10.07.2016 and during that period no suspect was subjected to assault by the police. Likewise, the affidavit filed by Rohana states that he was present at the Police Station on 09.07.2016 until 1.00 p.m. and during that time he observed two police officers in uniform placing a handcuffed person inside the cell, but specifically notes that neither the OIC nor the police officers assaulted any suspects while he was there. However, both affidavits do not negate the position of the Petitioner, who claims he was subject to assault, not only at the police station, but prior to reaching the police station as well, and had sworn affidavits by 5 individuals present at the time substantiating his position.

In the case of ***Mrs. W. M. K. De Silva v Chairman, Ceylon Fertilizer Corporation***, it was held that for there to be an Article 11 infringement, the degree of mental or physical coerciveness or viciousness must go beyond mere ill-treatment and amount to maltreatment of a high degree.

The facts and the corroborative evidence abovementioned, especially the second JMO report and the affidavits filed indicate that the Petitioner was subjected to physical assault of a profound nature and degrading treatment. Such conduct falls squarely within the prohibition under Article 11.

Additionally, the Petitioner contends that his rights under Article 12(1) were violated when the 1<sup>st</sup> to 6<sup>th</sup> Respondents produced him before court based on false allegations, and further violated the said Article by failing to present him to the JMO.

Article 12(1) of the Constitution reads as follows:

*“All persons are equal before the law and are entitled to the equal protection of the law.”*

Aluwihare, PC, J. in his judgement in ***H. M. M. Sampath Kumara and others vs. Officer-in-Charge, Police Station, Katunayake***, cited with approval the case of ***Sanghadasa Silva vs. Anuruddha Ratwatte*** and stated as follows;

*“...it is now well settled law that powers vested in the state, public officers and public authorities are not absolute and unfettered but are held in trust for the people to be used for the public benefit and not for improper purposes.” Even though Police officers are charged with the duty of maintaining law and order they cannot exercise the power granted for that purpose in a manner that negates the equality provision.”*

Once again, taking into consideration the fact that the doctor who submitted the first JMO report could not identify the Petitioner and could not recall that day's events, coupled with the fact that there are five independent affidavits claiming the assault took place, suggest that there was truth to the accusations made by the Petitioner that initially, he was in fact not produced in front of the JMO, thereby violating his rights under Article 12(1).

The Petitioner further asserts that his arrest by the 1<sup>st</sup> to 6<sup>th</sup> Respondents were carried out without informing him of the reason for the arrest, thereby contravening Article 13(1) of the Constitution.

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

*“No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.”*

In **Dissanayaka v Superintendent Mahara Prison and others**, Kulatunga, J. stated the following to highlight the importance of examining the material to decide the validity of the arrest.

*“Nevertheless, it is for the Court to determine the validity of the arrest objectively. The Court will not surrender its judgement to the executive for if it did so, the fundamental right to freedom from arbitrary arrest secured by Article 13(1) of the Constitution will be defeated. The executive must place sufficient material before the Court to enable the Court to make a decision, such as the notes of investigation, including the statements of witnesses, observations etc. without relying on bare statements in affidavits”.*

Further in **Channa Pieris and Others v. Attorney General and Others** the Court held that,

*“However the officer making an arrest cannot act on a suspicion founded on mere conjecture or vague surmise. His information must give rise to a reasonable suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature but of a positive and definite character providing reasonable ground for suspecting that the person arrested was concerned in the commission of an offence.”*

According to the Police B Report submitted in this matter, it is noted that the Police had received information regarding the suspect. The said report fails to disclose the nature of the information received and due to its vague nature, it casts a doubt on the veracity of the information received. During the course of their inquiry, they had apprehended the Petitioner and discovered 550 milligrams of heroin in his possession.

However, the Petitioner has categorically denied the contents of the B Report filed. He asserts that this charge was fabricated with the intention of covering up the assault to which he was subjected. I am of the opinion that the sequence of events, including the failure to produce the Petitioner before the JMO immediately after arrest, the contradictory medical reports and the corroborative affidavits of eyewitnesses, casts significant doubt on the veracity of the version set out in the Police B Report. While the report suggests that the Petitioner was lawfully apprehended with heroin in his possession, the surrounding circumstances strongly suggest that there is good reason to doubt the validity of the report.

Further, the second JMO report also claims that there was no history of drug abuse, therefore the fact that the Petitioner had in his possession what is perceived to be is highly unlikely, thereby further invalidating the nature of the



arrest.

In conclusion, having considered the totality of the evidence, it is evident that the Petitioner was subjected to physical assault and degrading treatment. The conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in brutally assaulting the Petitioner amounts to torture and cruel, inhuman, and degrading treatment, thereby constituting a clear violation of Article 11 of the Constitution.

The failure to produce the petitioner before a JMO constitutes a breach of procedural safeguards and amounts to a violation of the Petitioner's right to equal protection of the law under Article 12(1) of the Constitution. Furthermore, the inaction of the other officers in preventing the assault reinforces this violation, as their omission reflects a disregard for the Petitioner's constitutional rights.

The arrest and detention without properly informing the Petitioner of the reasons for his arrest also violate Article 13(1) of the Constitution.

Accordingly, I hold that the Petitioner has successfully established that his fundamental rights under Articles 11, 12(1) and 13(1) have been infringed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, and that the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents bear responsibility for their failure to prevent or rectify such violations.

The application for a declaration that the Petitioner's fundamental rights under Article 11, 12(1) and 13(1) were violated by the 1<sup>st</sup> to the 6<sup>th</sup> Respondents is made and this Court further orders compensation in the sum of Rs 1,000,000 is awarded to the Petitioner, to be paid jointly by the 1<sup>st</sup> to 6<sup>th</sup> Respondents from their personal funds, for the reason that they were directly involved in the assault.

**JUDGE OF THE SUPREME COURT**

**Yasantha Kodagoda, PC, J**

I agree.

**JUDGE OF THE SUPREME COURT**

**Janak De Silva, J**

I agree.

**JUDGE OF THE SUPREME COURT**