

**BANDULA SAMARASEKERA  
VS.  
VIJITHA ALWIS, O.I.C., GINIGATHHENA  
POLICE STATION AND OTHERS**

SUPREME COURT  
DR. SHIRANI BANDARANAYAKE, J.  
EKANAYAKE, J. AND  
IMAM, J.  
S.C. (FR.) APPLICATION NO. 107/2007  
JANUARY 30<sup>TH</sup>, 2009

*Fundamental Rights-Article 11 – Freedom from torture or cruel, inhuman or discriminatory treatment or punishment –Article 13(1) Failure to communicate reason for arrest to arrestee – 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.- Criminal Procedure Code – Section 32(1)b – An arrest could be made not on vague reasons, but only on a reasonable suspicion that the person in question has been concerned in a cognizable offence – Section 37 – Person arrested not to be detained more than 24 hours.*

The petitioner had filed this application in the Supreme Court alleging that his fundamental rights guaranteed in terms of Articles 11, 12(1), 13(1) and 13(2) of the Constitution were violated by the 1st and / or 2nd Respondents.

The Supreme Court granted leave to proceed for the alleged infringement of Articles 11, 13(1) and 13(2) of the Constitution.

**Held:**

- (1) Section 32(1)b of the Code of Criminal Procedure Act, had clearly stipulated that an arrest could be made not on vague reasons, but only on a reasonable suspicion that the person in question has been involved in any cognizable offence.
- (2) An arrest take place when a person is either taken into custody or placed under restraint.

Per Dr. Shirani Bandaranayake, J.

“Although Section 37 of the Criminal Procedure Code refers to a period of 24 hours as the period a person taken without a warrant could be kept in custody without, producing him before the Magistrate, this does not mean that a person could be kept for a maximum period of time under arrest without taking necessary steps to produce him before the learned Magistrate.

What Section 37 of the Code of Criminal Procedure Act had contemplated is that, a person who has been taken into custody without a warrant should be produced before the learned Magistrate as early as possible and without any unnecessary delay. The time taken should be considered on the circumstances of each case.”

- (3) Where there is a complaint against a police officer alleging that the complainant had been assaulted, it cannot be rejected merely because the police deny such allegation. Whether any such allegation is in violation of Article 11 of the Constitution would depend on the facts and circumstances of the case.

Per Dr. Shirani Bandaranayake, J.

“However, in order to establish alleged allegation of torture it would be necessary for an aggrieved party to corroborate his averments against the respondents and for such corroboration it would be necessary to produce evidence including medical evidence.”

“ It is the duty of a police officer to use his best endeavour and ability to prevent all crimes, offences and public nuisances and more importantly to preserve the peace. In order to carry out his duties efficiently and effectively, it would be necessary to have the trust and respect of the public. It is not easy to command that from the public and in order to earn such trust and respect, the police officers must possess a higher standard of moral and ethical values than is expected from an average person ”

- (4) The Petitioner’s fundamental rights guaranteed in terms of Article 11,13(1) and 13(2) of the Constitution had been violated and the 1st Respondent is responsible for the said violation of Article 11 and 13(1) of the Constitution.

**Cases referred to:-**

- (1) *Kushan Indika V. Ranjan Wijesekera, O.I.C. Police Station, Pitigala*, - S.C. (Application) No.129/2007- S.C. Minutes of 31.8.2009.

- (2) *Pelawattage (Attorney-at-law) for Piyasena V. O.I.C. Wadduwa and Others* – S.C. (Application ) 433/93 - S.C. Minutes of 31.8.1994.
- (3) *Gamlath Vs. Neville Silva and Others* 1991 2 Sri L.R. 267
- (4) *Muttusamy V. Kannangara* (1951) 52 N.L.R.324
- (5) *Veeradas V. Controller of Immigration and Emigration and Others* (1989) 2 S.L.R.205
- (6) *Holgate – Mohammed V. Duke* (1984) 1 A.E.R. 1056
- (7) *Ansalin Fernando V. Sarath Perera and Others* 1992 1 Sri L.R. 411
- (8) *Namasivayam V. Gunawardena* 1989 1 Sri L.R. 394
- (9) *Amal Sudath Silva V. Kodituwakku* 1987 2 Sri L.R. 10

**APPLICATION** complaining of infringement of fundamental rights.

*J.C. Weliamuna with Maduranga Ratnayake and Pasindu Silva* for Petitioner.

*W. D. Weeraratne* for 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

*K. A. P. Ranasinghe, S.S.C.* for 4<sup>th</sup> Respondent.

September 14, 2009

**DR. SHIRANI BANDARANAYAKE, J.**

The petitioner had filed this application in this court alleging that his fundamental rights guaranteed in terms of Articles 11,12(1), 13(1), and 13(2) of the Constitution were violated by the 1<sup>st</sup> and /or 2<sup>nd</sup> respondents. This court had granted leave to proceed for the alleged infringement of Article 11, 13(1) and 13(2) of the Constitution.

The facts of this application, as submitted by the petitioner, are as follows:

The petitioner had been an employee at Brown and Company 1979 -1996 and thereafter was engaged in facilitating sales of vehicles. His wife is a retired teacher in English who was the Head of the English Division of the Advanced Technical Institute, Kandy. Their son Sahan, was 24 years of

age at the time of this incident and was engaged in a mobile phone shop in Kandy.

In 2005, the petitioner and his wife had learnt that Sahan was having an affair with a married woman. In the best interest of their son, the petitioner and his wife had advised Sahan not to continue with the said affair, which Sahan had ignored. Both of them had made several attempts through their friends and relatives to advise Sahan against the said affair to no avail.

On 02.12.2006, Sahan had left the petitioner's residence stating that he would be thereafter living on his own and later the petitioner had become aware that Sahan was living with the said married woman in a rented house at Ampitiya.

At that point, the petitioner and his wife in a desperate attempt to change Sahan's mind had decided to retain the services of a local exorcist (Kattadiya). Accordingly the petitioner had obtained the services of one P.G.Pemaratne of Katugastota, a retired Grama Niladhari, who was said to be skillful in exorcism. The said exorcist had informed the petitioner that the exorcizing rituals must be scattered on the compound of the house, where Sahan was living. The exorcist had also told the petitioner to bring incense, camphor, flowers of five (5) kinds, beetle, coconut oil, an egg, frankincense, mustard and clay lamps for the exorcism. Thereafter on 28.02.2007, around 7.00 in the evening the exorcist had commenced the exorcizing rituals at the petitioner's residence. After that performance, around 10.00 p.m., the petitioner, a friend of Sahan and the exorcist had set off in the jeep bearing No.31 Sri 9734 to Sahan's house. After scattering charmed mustard on the compound of Sahan's house, the petitioner along with the others had proceeded back home around 10.45 p.m.

Soon after within matters of 5-10 minutes drive from Sahan's house another vehicle had approached from the opposite direction and the lane had been too narrow at that point for the two vehicles to move forward. The petitioner had stopped his jeep and then the driver of the other vehicle had alighted from his vehicle and had asked the petitioner if he could reverse the jeep. By that time the petitioner had also got off from the jeep and whilst trying to get into his jeep he had said that he would reverse the jeep. Just as the petitioner was getting into his jeep, the 1st respondent, who was seated in the front passenger seat of that vehicle got off and came close to the petitioner stating that,

"මම ගිනිගන්නේන පොලිසියේ ඕ. අයි. සී. විජිත අල්විස්. අපේ ගමේ අපට කරන්න බැරි දෙයක් නැහැ. අපේ ගමට ඇවිත් අපට පාවි දාන්න දෙන්න බැහැ."

Thereafter, the 1<sup>st</sup> respondent had snatched the ignition key of the jeep. The petitioner at that stage had stated that he was going to reverse the jeep and therefore there was no need to create any difficulty. No sooner the petitioner had stated the above, the 1<sup>st</sup> respondent had jumped forward and dealt several severe blows on the petitioner's face and had assaulted him. Thereafter having seen in the jeep the remaining items used for the rituals such as incense, camphor etc., the 1<sup>st</sup> respondent had started shouting stating that,

"මුත් නිදන් හොරු කට්ටියකුත් ඉන්නවා."

Having stated that, the 1<sup>st</sup> respondent had assaulted the exorcist and Sahan's friend, who were in the jeep. The 1<sup>st</sup> respondent according to the petitioner was smelling of liquor and the vehicle he came was driven by a member of a Pradeshiya Sabba, whom he could not identify.

Thereafter the 1<sup>st</sup> respondent had got into the driver's seat of the jeep, threatened the petitioner and the two others

that they would be killed if they shout and had driven them to the Kandy Police Station. The petitioner, due to the brutal assault, was bleeding from his nose and his face and his right eye was swollen. He had also realized that his gold bracelet and the chain were missing. He had however managed to call his wife on his mobile phone and had told her briefly that he was arrested and being taken to the Kandy Police Station. When they reached the Kandy Police Station, the 1<sup>st</sup> respondent has told the petitioner and the two others to follow him and had made certain entries in a book at the Police Station. After stating that "මුත් නිදන් භාරුව, මුත් රිමාන්ඩ් කරනවා." he had left the Police Station. The officers of the Kandy Police Station had remanded the petitioner and the two others.

Soon after the petitioner's wife and the daughter had arrived at the Kandy Police Station with an Attorney-at-Law (P1, P2 and P3). Around 2.00 a. m. the officers of the Kandy Police Station had taken the petitioner and the other two persons to the Judicial Medical Officer. However his injuries were not attended to by the said Medical Officer. On 01.03.2007 around 9.00 a.m, a Police Officer had obtained statements from the petitioner and the other two persons and thereafter around 12.00 noon they were taken to Dr. A. B. Seneviratne, who was Judicial Medical Officer; the said Judicial Medical Officer had referred them to the E. N. T. clinic of the Kandy Hospital and thereafter necessary X-rays had been taken by them (P4).

Around 5 p.m. on 01.03.2007, all three were produced before the Magistrate's residence and were released on surety of Rs. 100,000/- for each of them.

The petitioner had made a complaint to the Human Rights Commission of Sri Lanka and to the National Police Commission regarding the aforesaid incident (P6 and P7). His position was that he had to undergo continuous treatment for the injury caused to his eye and the said incident had caused him severe pain of mind.

When this matter came up on 27.07.2007, an application had been made by the learned Counsel for the 2<sup>nd</sup> respondent to discharge the 2<sup>nd</sup> respondent from these proceedings. Learned Counsel for the petitioner on that date had submitted that the petitioner had not claimed any relief against the 2<sup>nd</sup> respondent. In the circumstances, this Court had discharged the 2<sup>nd</sup> respondent from these proceedings.

The 1<sup>st</sup> respondent in his affidavit had averred that he had received a message on 24.02.2004 for him to attend the Magistrate's Court, Kandy on 28.02.2007 to lead evidence in M. C. Case No. 61908 (1R1). On 28.02.2007, after attending the duties in Court, he had returned to his residence in his private vehicle at 190/4, Pallegama, Ampitiya around 10.30 p. m. As he was around 100 meters away from his house he had noticed a commotion and there was a gathering of a big crowd near a jeep, where some were shouting. Referring to the said incident the 1st respondent had averred in his affidavit that,

"I noticed those three people were been man handled by the crowd. I shouted at them to disperse the mob and asked the crowd to hand them over to me. The people then brought the petitioner and two others to me and informed that they were suspected as treasure hunters."

Thereafter he had handed over the suspects to the Police Sergeant Padmasiri attached to Kandy Police Station to take necessary action. His contention was that he had not assaulted any body and that he had noticed that the petitioner had sustained some marks on his left eye.

In support of his contention, the 1<sup>st</sup> respondent had annexed a certified copy of the notes entered by him in the Police Station, Kandy (1R2). The contention of the 1<sup>st</sup> respondent was that the petitioner with two others had been

at that particular place on the night of 28.02.2007 for the purpose of treasure hunting and in support of his contention he had referred to the items in the petitioner's possession at the time of his arrest.

The petitioner's position, as stated earlier, had been that his arrest and detention had been unlawful and that he was assaulted by the 1<sup>st</sup> respondent at the time of his arrest.

The 1<sup>st</sup> respondent's version was that the civilians of the area had surrounded the petitioner and the two others and thereafter the 1st respondent had arrested the petitioner and had brought him to the Kandy Police Station. In support of this position he had filed a copy of his entry made at the Kandy Police Station at 11.50 p. m. on 28.02.2007 (1R2) and an affidavit filed by one Jegan Navaratne Raja (1R9), a resident of No. 35A, Wewathena Road, Ampitiya, Kandy. The said Navaratne Raja's position was that he had been returning from the construction site of his house situated at Pallegama around 10.30 p.m. on 28.02.2007 and he had witnessed the incident related by the 1<sup>st</sup> respondent.

Article 13(1) and 13(2) of the Constitution refer to freedom from arbitrary arrest and detention and read as follows:

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

*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."*

It is to be borne in mind that the 1<sup>st</sup> respondent had contended that the petitioner and the three others were arrested by the villagers and thereafter they were handed over to him. The procedure for the arrest of any person by private person is dealt with in Section 35 of the Code of Criminal Procedure Act, No. 15 of 1979. According to the said Section 35, that,

*“Any private person may arrest any person who in his presence commits a cognizable offence or who has been proclaimed as an offender, or who is running away and whom he reasonably suspects of having committed a cognizable offence, and shall without unnecessary delay make over the person so arrested to the nearest peace officer or in the absence of a peace officer take such person to the nearest police station. If there is reason to believe that such person comes under the provisions of Section 32 a peace officer shall re-arrest him. . . . If there is no reason to believe that he has committed any offence he shall be at once discharged.”*

The situation which prevailed at the time the 1<sup>st</sup> respondent had arrested the petitioner was vividly described by him in his affidavit, where he had averred that,

*“. . . as I was approaching around one hundred meters close to my house where there is a small bridge I heard a big noise from a crowd; some were shouting and some were screaming centering a pajero with three people. I noticed that those three people were being man handled by the crowd. I shouted at them to disperse the mob and asked the crowd to hand them over to me. The people then brought the petitioner and two others to me and informed that they were suspected as treasure hunters.”*

According to his affidavit, the 1<sup>st</sup> respondent had arrested the petitioner as he was suspected as a treasure hunter.

However, in his own entry entered at 11.50 p.m. at the Kandy police Station it had been stated that the 1st respondent had arrested the petitioner not for any other reason, but for the petitioner's own safety.

"පැය 23.10 ට සැකකරු හා දේපල ආරක්ෂාව සඳහා අත් අඩංගුවට ගෙන වැඩිදුර පරීක්ෂණ සඳහා පොලිස් ස්ථානයට රැගෙන විත් උප ඡේවයේ යෙදී සිටි පො. සැ. පත්මසිරි වෙත භාර දෙමි" (emphasis added) (1R2)

When one considers the averment of the 1st respondent in his affidavit tendered to this Court and the entry entered by him on 28.02.2007 at 11.50 p.m., it is quite clear that there is clear contradiction in the two versions given by the 1st respondent.

Learned Counsel for the 1st respondent contended that the petitioner was a treasure hunter and therefore the 1<sup>st</sup> respondent had to arrest him as the petitioner had got caught to the people of that area. However, no material was produced before this Court to indicate that the area in question had any places of archaeological value. A police officer of the Kandy Police Station had investigated into the incident in question and according to his report about 200 meters away from the place, where the petitioner was arrested on the night of 28.02.2007 there had been a place with a stone stairway leading to a house and the said stairway, which consisted of 27 stone steps had a historical value. It was further stated in the police officer's Report that during the period of King Rajasinghe, in one of his visits, the King had rested for a while in the house near the said stone stairway. However, this place is about 200 meters away from the place of the incident in question (1R7) and the owner of the house to which the stone stairway leads to had categorically stated that no one had visited their house on the night of the incident. Further the said owner had not referred to any

archaeological importance being attributed to the said stone stairway. More importantly, the Deputy Director (Movable and Immovable Property) of the Archaeological Department by his letter dated 25.04.2007 had informed the Head Quarters Inspector of the Police Station, Kandy that on an examination of the place in question, it is ascertained that the particular place has no archaeological value.

On the basis of the letter of the Deputy Director of Archaeological Department the Officer-in-Charge of the Police Station, Kandy had submitted to the Magistrate's Court, Kandy that as there is no material against the petitioner and the other two suspects, that they be discharged from the proceedings.

As referred to earlier, Section 32(1)b of the Code of Criminal Procedure Act, had clearly stipulated that an arrest could be made not on vague reasons, but only on a reasonable suspicion that the person in question has been concerned in any cognizable offence.

In *Kushan Indika v Ranjan Wijesekera, Officer-in Charge, Police Station, Pitigala*<sup>(1)</sup>, the question of arresting a person according to the procedure established by law in terms of Article 13(1) and Section 32 of the Code of Criminal Procedure Act, was examined in detail. Considering the rationale in decisions of *Pelawattage (A.A.L.) for Piyasena v O.I.C. Wadduwa and other*<sup>(2)</sup>, *Gamlath v Meville Silva and others*<sup>(3)</sup> *Muttusamy v Kannangara*<sup>(4)</sup> and *Veeradas v Controller of Immigration and Emigration and others*<sup>(5)</sup>, it was clearly stated that,

“It is therefore abundantly clear that although a person could be arrested without a warrant in terms of section 32(1)b of the Code of Criminal Procedure Act, for such

action to be taken it is necessary that there **should be a reasonable suspicion that such person had committed the offence in issue**" (emphasis added).

Accordingly, the question which arises at this juncture is whether there was a reasonable suspicion against the petitioner at the time he was arrested by the 1st respondent.

As referred to earlier, the contention of the 1<sup>st</sup> respondent was that he had suspected him to be a treasure hunter. However, as has been already described, the Assistant Director of the Archaeological Department in his letter had categorically stated that according to the report issued on the basis of the examination of the site in issue, that the area in question is not a place with any archaeological value. Furthermore the owner of the house, where the stone stairway was located has stated that no person had come near their house in that night. In those circumstances it is apparent that the petitioner could not have committed the alleged offence.

Accordingly I hold that the petitioner's fundamental rights guaranteed in terms of Article 13(2) had been violated by the 1<sup>st</sup> respondent.

The 3<sup>rd</sup> respondent, who was the Officer-in-Charge of the Divisional Crime Prevention Unit, Police Station, Kandy had averred that at the time the petitioner was brought to the Kandy Police Station on 28.02.2007, he was not in the Police Station as he had left the Police Station around 4.00 p.m. on 28.02.2007 and reported for duty only on 01.03.2007 at 2.00 p. m. and had attended to duties until 10.00 p.m. in the mobile duty car (3R<sub>2</sub>).

The B report dated 01.03.2007 had been prepared by the police officer, who was on duty at the time and not by the 3<sup>rd</sup> respondent.

The B report clearly stated that the petitioner was brought to the Kandy Police Station and a complaint was made by the 1<sup>st</sup> respondent. The petitioner was brought to the Police Station around 11.00 p.m. on 28.02.2007 and he had been produced before the learned Magistrate at his residence around 4.00 p.m. on 01.03.2007, where he was released on surety bail of Rs. 100,000/- (P<sub>s</sub>). It is interesting to note that the learned Magistrate after a perusal of the material placed before him had recorded that 'no offence' appears to have been committed'.

An arrest take place when a person is either taken into custody or placed under restraint. In *Holgate-Mohammed v Duke*<sup>(6)</sup> Lord Diplock was of the view that when a person is detained or restrained by a police officer and that he is aware that he is being detained or restrained, that would amount to an arrest of the person although no formal words of arrest were spoken by the officer.

Considering the circumstances of this application, a question arises as to whether there was a need for the 1<sup>st</sup> respondent to have brought the petitioner to the Kandy Police Station. In his statement recorded at the Kandy Police Station he had stated that the petitioner was arrested for protection of the petitioner and if that had been the reason for his arrest there would not have been any need to have detained the petitioner until 4.00 p.m. on 01.03.2007.

It is not disputed that the petitioner was arrested around 10.00 p.m. on 28.02.2007 and produced before the learned Magistrate around 4.00 p.m. on 01.03.2007. In effect he had been in police custody for over 18 hours.

Section 327 of the Code of Criminal Procedure Act refers to the procedure that should be adopted when a person is arrested by a peace officer without a warrant. According to 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,”*

Section 35 of the Code of Criminal Procedure Act states that when a person, who had been arrested by a private person is produced before a peace officer and there is no reason to believe that he had committed any offence that he shall be at once discharged. The peace officer could arrest such a person only if there is reason to believe that he is a person, who has acted in the circumstances set out in Section 32 of the Code of Criminal Procedure Act.

Considering the circumstances of the present application it is apparent that there were no reasons for the petitioner to have been arrested and also there was no necessity for him to have been kept in custody without, being produced before the Magistrate for over 18 hours. Although Section 37 of the Criminal Procedure Code refers to a period of 24 hours as the period a person taken without a warrant could be kept in custody without producing him before the Magistrate, this does not mean that a person could be kept for the maximum period of time under arrest without taking necessary steps to produce him before the learned Magistrate. What Section 37 of the Code of Criminal Procedure Act had contemplated is that, a person who has been taken into custody without a warrant should be produced before the learned Magistrate as early as possible and without any unnecessary delay. The time taken for such production should be considered on the circumstances of each case.

On a consideration of the totality of the circumstances it is clear that the petitioner was taken into custody for his own

protection and for the protection of his property and therefore there was no necessity for any unnecessary delay. I accordingly hold that the petitioner's fundamental rights guaranteed in terms of Article 13(2) of the Constitution had been violated.

The petitioner had complained that his fundamental rights guaranteed in terms of Article 11 had been violated by the 1<sup>st</sup> respondent as he was brutally assaulted by him. The petitioner had complained that as a result of the said brutal assault by the 1<sup>st</sup> respondent, he was bleeding from his nose, his face and his right eye was swollen and reddened and the left ear drum too had got injured. Article 11 of the Constitution, which deals with the right pertaining to freedom from torture, reads as follows:

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

Torture or cruel, inhuman or degrading treatment or punishment could take many forms and even the nature of the physical harm may differ from case to case. When there is a complaint against a police officer alleging that the complainant had been assaulted, a mere allegation would not be sufficient to prove that there had been a violation of Article 11 of the Constitution. As stated in *Ansalin Fernando v Sarath Perera and others*,<sup>(7)</sup> an allegation against the police cannot be rejected merely because the police deny such allegation or due to the fact that the aggrieved party cannot produce any medical evidence of the injuries. Whether any allegation is in violation of Article 11 of the Constitution would depend on the facts of each case.

However, in order to establish the alleged allegation of torture it would be necessary for an aggrieved party to corroborate his averments against the respondents and for

such corroboration it would be necessary to produce evidence including medical evidence.

In *Namasivayam v Gunawardena*<sup>(8)</sup> referring to the need for corroborating the averments of alleged torture, Sharvanandá, C. J., had stated that,

“On the question whether the petitioner was subject to cruel treatment or torture, petitioner’s averments stands uncorroborated by any medical evidence and has been denied by the respondents. The evidence is not sufficient for us to hold that there had been any violation of Article 11 of the Constitution.”

On many instances, this Court therefore had directed aggrieved persons to be examined by a Judicial Medical Officer, in order to obtain a Medico-Legal Report. In this instance, however, after the petitioner was arrested and taken to the Police Station, a police officer had taken the petitioner to the Judicial Medical Officer, Dr. A. B. Seneviratne of the General Hospital, Kandy around 12.00 noon on 01.03.2007.

The consultant Judicial Medical Officer, Dr. A.B.Senevirathne, who was attached to the General Hospital, Kandy had tendered the Medico-Legal Report pertaining to the petitioner to this Court. The relevant parts of the Judicial Medical Report are re-produced below to indicate the kind of injuries the petitioner had sustained on the night of 28.02.2007.

“ Injuries

1. Sub conjunctival haemorrhage in left eye,
2. Traumatic perforation of the ear drum in the left ear  
No evidence of nerve damage.
3. Pain and swelling in the nose with fracture of the nasal bone,

4. Multiple small abrasions over the malar prominence of the left cheek
5. Abrasion 4.0 x 2.0 cm. over upper third front right side of the chest.

Non -grievous injuries - (1),(3),(4)

Grievous Injuries	Limb under Section 311 of Penal Code	Explanatory remarks if any
(2)	C	Permanent privation or impairment of the hearing of either ear
(3)	G	Cut or fracture of bone cartilage or tooth dislocation or subluxation of bone, joint or tooth

Injuries caused by - blunt weapon.”

An examination of the Medico - Legal Report clearly indicated that the petitioner had suffered several grievous and non - grievous injuries. The question that arises at this juncture is as to who had been responsible for such injuries. As stated earlier the petitioner’s contention was that the 1<sup>st</sup> respondent, in his anger that the petitioner’s vehicle had obstructed his vehicle from moving , had assaulted him and the 1<sup>st</sup> respondent had taken up the position that since the petitioner and his friends were treasure hunters, the villagers had assaulted him.

Although the 1<sup>st</sup> respondent had stated that since the petitioner was a treasure hunter the villagers had assaulted him, he had not tendered any evidence in support of this contention. Moreover as pointed out earlier, the place where

the incident took place or the surrounding area had not been either declared or known as an area, where there is any archaeological value. In such circumstances the contention of the 1<sup>st</sup> respondent fails and on a careful examination of the two versions and the findings of the consultant Judicial Medical Officer referred to in the Medico-Legal Report, it is apparent that the contention of the petitioner is more probable and has to be accepted.

I accordingly hold that the 1<sup>st</sup> respondent had violated the petitioner's fundamental rights guaranteed in terms of Article 11 of the Constitution.

The petitioner had clearly stated that the 1<sup>st</sup> respondent had become annoyed with the petitioner since the 1<sup>st</sup> respondent could not move his vehicle as the petitioner's vehicle had come from the opposite direction, at a place where the road was too narrow for two vehicles to pass.

Although the 1st respondent had contended that the petitioner had been on that road on an expedition in search of treasure, it is apparent that the petitioner's contention is more probable and that the 1<sup>st</sup> respondent had been simply displaying his authority as the Officer - in - Charge of the Police Station Ginigathena.

**It is the duty of a police officer to use his best endeavour and ability to prevent all crimes, offences and public nuisances and more importantly to preserve the peace. In order to carry out his duties efficiently and effectively, it would be necessary to have the trust and respect of the public. It is not easy to command that from the public and in order to earn such trust and respect, the police officers must possess a higher standard of moral and ethical values than that is expected from an average person.**

The facts and circumstances of this application clearly demonstrate the lack of such higher standards of ethical and

moral value that is expected from a police officer. As stated by Atukorale, J. In *Amal Sudath Silva v Kodituwakku*.<sup>(9)</sup>

**“Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects helpless suspect in his charge to depraved and barbarous methods of treatment..... 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 ” (emphasis added)”**

For the reasons aforesaid I hold that the petitioner’s fundamental rights guaranteed in terms of Articles 11, 13(1) and 13(2) of the Constitution had been violated and the 1st respondent is responsible for the said violation of Article 11 and 13(1) of the Constitution. I accordingly direct the 1<sup>st</sup> respondent to pay personally to the petitioner a sum of Rs. 50,000/- as compensation and costs. Since the violation of Article 13(2) had occurred whilst the petitioner was in the custody of the police station, Kandy and no particular officer was responsible for such violation I hold that the said violation would be the responsibility of the State and therefore I direct that a sum of Rs. 15,000/- be paid to the petitioner by the State as compensation and costs. Altogether the petitioner would be entitled to a sum of Rs. 65,000/-. These amount to be paid within three(3) months from today.

The Registrar of the Supreme Court is directed to send a copy of this judgment to the Inspector – General of Police.

**EKANAYAKE, J.**- I agree.

**IMAM, J.** - I agree.

*Application allowed*