

SUMITH JAYANTHA DIAS
v.
REGGIE RANATUNGE, DEPUTY MINISTER
OF TRANSPORT AND OTHERS

SUPREME COURT
FERNANDO, J.,
DHEERARATNE, J. AND
GUNAWARDANA, J.
S.C. APPLICATION NO. 98/97
NOVEMBER 09, 1998

Fundamental rights – Articles 11, 13 (1) and 13 (2) of the Constitution – Liability of private individuals in proceedings under Article 126 of the Constitution.

The petitioner led an electronic news gathering team of the Independent Television Network (ITN) to film a programme named "Vimasuma". The team travelled in a van belonging to the ITN. They carried with them the necessary equipment including a valuable camera. The ITN logo was fixed prominently on the van used by them and on the camera. During their return to Colombo after conducting the programme, the petitioner observed at the Miriswatte junction a burning lorry on the road with a crowd gathered around it. The petitioner and his team commenced filming that event with the camera and other equipment when they were interrupted by the 1st respondent, a Deputy Minister who arrived in an Intercooler Pajero accompanied by some other vehicles and several persons including the 2nd respondent (a PA Pradeshiya Sabha member), the 4th respondent (a PA supporter) and the 5th respondent (a police sergeant). The 1st respondent demanded that the petitioner give him the tape alleging that the petitioner had filmed the 1st respondent and the Pajero. As it later transpired, the 1st respondent had thought that the television team was from the TNL and were attempting to make a film involving the 1st respondent with the burning of the lorry.

The respondents attempted to seize the camera, but the petitioner resisted whereupon on the instigation of the 1st respondent, the 5th respondent and others put him on the ground and assaulted him; next the 2nd, 3rd and 5th respondents lifted the petitioner and put him into a police jeep. He was again assaulted by the 5th respondent inside the jeep and made to handover his shirt, ITN identity card and the wallet containing Rs. 3,700 to a police officer. At the Gampaha police station the petitioner's shirt and the identity card were returned but when he asked for his money the 6th respondent, a police sergeant, abused him in obscene language. The 1st respondent was seated in the OIC's chair and

questioned the petitioner regarding the tape whilst a uniformed police officer stood by. The petitioner explained that he was working for the ITN, whereupon the 1st respondent suggested an amicable settlement. The petitioner was released next day after six and a half hours of detention. The petitioner received hospital treatment for his injuries which he alleged were sustained during the alleged assault. The injuries were consistent with assault.

Held:

The petitioner's rights under Articles 11, 13 (1) and 14 (1) (a) of the Constitution were infringed by the acts of the police officers, and the 1st, 2nd and 3rd respondents were also personally liable for such acts by reason of approval, connivance and acquiescence and participation in respect of such infringement of rights.

Cases referred to:

1. *Saman v. Leeladasa* (1989) 1 Sri LR 10.
2. *Fernando v. Sri Lanka Broadcasting Corporation* (1996) 1 Sri LR 157, 173, 179.
3. *Faiz v. Attorney-General* (1995) 2 Sri LR 372, 383.

APPLICATION for relief for infringement of fundamental rights.

L. C. Seneviratne, PC with *Ronald Perera* for the petitioner.

1st, 2nd and 3rd respondents absent and unrepresented.

N. Pulle SC for the 4th and 7th respondents.

Mohan Perera for the 5th and 6th respondents.

Cur. adv. vult.

December 17, 1998.

A. DE Z. GUNAWARDANA, J.

This application was filed on 30. 1. 1997 and leave was granted on 13. 2. 1997 for the alleged violations of the petitioner's fundamental rights enshrined in Articles 11, 13 (1) and 14 (1) (a) of the Constitution. The court directed notice to be issued on all seven respondents named in the petition.

However, when the case was taken up for hearing on 9. 11. 98, 1st, 2nd and 3rd respondents were absent and unrepresented. According to the journal entry dated 23. 5. 1997, Gamini Perera, Attorney-at-law had filed proxy of the 1st, 2nd and 3rd respondents. All three proxies which are filed of record are dated 14. 5. 97 and have been filed in this court also on the same day. In the motion filed along with the proxies, the Attorney-at-law has moved for four weeks' time to file objections as, "the 1st respondent has very recently been informed about the Attorney-General's intention not to appear and file objections on his behalf". The motion further stated that, "I respectfully move that Your Lordship's Court be pleased to move this Application out from "the argument list" and be pleased to list in the "list of mention" for allowing the counsel of both parties to suggest a suitable date for argument". On 23. 5. 1997 when this matter came up for hearing Attorney-at-law Gamini Perera has appeared for 1st, 2nd and 3rd respondents and the said respondents were granted time till 30. 6. 1997, finally, for objections and the case was fixed for hearing on 9. 9. 1997. On 8. 9. 1997 Attorney-at-law for the 1st, 2nd and 3rd respondent has filed a motion moving for another two weeks' time to file objections. When the case came up for hearing on 9. 9. 1997 counsel for the 1st, 2nd and 3rd respondents had moved for one month's time to file objections and the hearing was fixed for 3. 12. 1997. When the case came up for hearing on 3. 12. 1997, the appearances have been as before, and the hearing has been fixed for 2. 4. 1998. On 2. 4. 1998 when the case came up for hearing, the court had been informed that the Attorney-at-law Gamini Perera was indisposed, and the case has been postponed for 23. 7. 1998. On 23. 7. 1998 the appearance of Attorney-at-law Gamini Perera, does not appear in the docket. The case had been postponed for 9. 11. 1998. When the case came up for hearing on 9. 11. 1998 counsel for the 1st, 2nd and 3rd respondents, Gamini Perera was absent and the 1st, 2nd and 3rd respondents themselves, were also absent. Thus it is seen that although the 1st, 2nd and 3rd respondents have filed proxy and have been represented on several occasions by counsel, the counsel himself, and the said respondents themselves were absent on 9. 11. 1998. They have also failed to file objections, and written submissions, although several opportunities were given to them to do so. Having considered all the circumstances,

the court decided to hear this application although the 1st, 2nd and 3rd respondents were absent and unrepresented.

The petitioner has stated in his petition that on 1. 1. 1995 the petitioner led an Electronic News Gathering team of the Independent Television Network (ITN), to film a programme named "Vimasuma" which was to be telecast on 5. 1. 1997. The team consisted of five other members. This team had travelled in a van belonging to the ITN. Among the equipment taken on this trip was a Sony Betacam Professional Camera (valued at Rs. 2 million), a Betacam Recorder (valued at over Rs. 800,000), a "Zenhizer 541" Microphone, "Zenhizer" clip-on Microphone, Mini Brute Lights and several other lights. The ITN logo was fixed prominently on the van they travel and on the camera. Having filmed several sequences they travelled on the Kandy road to get to Colombo.

At about 10.00 pm when the van was near the Miriswatte Junction, on the Colombo-Kandy road the petitioner had seen a lorry on fire on the middle of the road. There was a large crowd gathered on the road around the burning lorry. Several police officers in uniform were on duty at this point. As it appeared to the petitioner, as a newsworthy event, the petitioner directed the vehicle to stop and got down with the camera and the rest of the team. They had dropped off the cameraman at the Gampaha railway station and the cameraman was not present. The petitioner who had been trained, operated the camera. The recorder was carried, by a team member, Ranga Janaka Jayasinghe.

While the burning lorry and the surrounding area was being filmed, the petitioner had seen as unregistered Intercooler Pajero accompanied by some other vehicles travelling towards Gampaha. They stopped amidst the crowd. The petitioner turned towards the Pajero with the camera in his hand. The petitioner saw the 1st respondent, who is the Deputy Minister of Transport, Environment and Women's Affairs and People's Alliance Member of Parliament for Gampaha District, in the front seat of the Pajero. The 1st respondent called out to the petitioner, and demanded from the petitioner as to why he filmed the 1st respondent and the number plate of the Pajero. The petitioner

showed his ITN Identity Card and denied that he filmed the 1st respondent and the number plate of the Pajero. But the 1st respondent shouted that the petitioner had in fact filmed the 1st respondent, and demanded that the petitioner give the tape to the 1st respondent. The petitioner replied that he cannot give the tape as it was State property. The 1st respondent ordered his security officers and the persons accompanying him to grab the tape from the petitioner's camera-thereupon several persons who accompanied the 1st respondent in the said convoy of vehicles, including the 2nd respondent, who is a People's Alliance Member of the Minuwangoda Pradeshiya Sabha, the 3rd respondent a supporter of the People's Alliance, and a Police Officer, Sergeant 19730 Rajapakse (the 5th respondent), in civil clothing, surrounded and assaulted the petitioner. They tried to wrest the tape from the petitioner's camera. Some of these persons tried to smash the camera on the ground. The petitioner managed to save the camera and handed it over to an uniformed Police Officer who was present there. The petitioner requested the said Police Officer to save the camera as it was valuable State property. The petitioner was put on the ground and assaulted by the 2nd, 3rd and 5th respondents and other unknown persons. Some persons, including the 2nd, 3rd and 5th respondents tried to push the petitioner into a Police jeep. The 2nd respondent threatened the Police Officers and said that if they were unable to handle the petitioner, he will use his boys. The petitioner was lifted by this group of persons and thrown inside the back of the Police jeep. The 5th respondent assaulted the petitioner while the petitioner was inside the jeep. Two Police Officers rested their feet on the petitioner's back, and did not allow him to get up. The 5th respondent ordered the petitioner to remove his shirt and hand over the contents of his pockets, including the ITN Identity Card, and the petitioner did so. The petitioner's Driving Licence and the wallet containing Rs. 3,700 were also removed by an unidentified Police officer, while the petitioner was inside the Police jeep.

At the Gampaha Police Station the petitioner's shirt and the ITN Identity Card were handed over to him. When the petitioner requested that his wallet with Rs. 3,700 be returned, Sergeant 11228 Mahinda, the 6th respondent, abused the petitioner in foul language. The 6th respondent shouted at the petitioner stating that the Police were not

thieves. The petitioner was then taken to the Office of the officer-in-charge of the Gampaha Police Station. The petitioner saw the 1st respondent seated in the chair of the officer-in-charge. Another uniformed Police officer stood by the side of the 1st respondent. The 1st respondent questioned the petitioner and demanded to know where the tape was. The petitioner explained to the 1st respondent that he was merely performing his official duties as an Officer of ITN, a State institution. The petitioner once again proved the petitioner's identity to the 1st respondent by showing his ITN Identity Card and explained that he was the Head of the News Section of the ITN. At that point the 1st respondent told the petitioner that the petitioner was assaulted by the 1st respondent's voters in the area because the 1st respondent and others with him thought that the petitioner and his team were employed by TNL, a privately owned television company. The 1st respondent said that this matter can be settled amicably and to hand over the tape in his custody to the Police and to have his statement recorded by the Police. The 1st respondent further said that he objected to the petitioner filming because he feared that the petitioner would film the said burning lorry and the 1st respondent's vehicle and say that the 1st respondent set fire to the lorry and fled the scene of the incident.

Thereafter the petitioner was taken to the Gampaha hospital to be examined by the Judicial Medical Officer to ascertain whether the petitioner was intoxicated. The Gampaha JMO, merely asked the petitioner to open and close his eyes and inquired as to how he felt. No blood test or breathalyser test was done on the petitioner by the Gampaha JMO. The petitioner's position is that he did not consume any alcohol on that day.

The petitioner's statement and the statements of the members of the petitioner's team were recorded by the Gampaha Police after the visit to the hospital. The petitioner states that he was unaware of what he stated in that statement as he was in severe pain and discomfort, at that time, due to the assault. The said statement was not read over to the petitioner prior to the petitioner's signature being taken. The other members of the petitioner's team also made statements to the Gampaha Police on that day. The petitioner has annexed marked

P2A, the statement and P8A the affidavit of Ranga Janaka Jayasinghe, P2B the statement and P8B the affidavit of Upul Pushpakumara, P2C the statement, and P8C the affidavit of Anura S. Arachchige and P3 the affidavit of Gratien P. Gunawardena. The said affidavits support the averments in the petition of the petitioner.

The petitioner had been in Police custody for over six and a half hours and had been released on the early morning of 2nd January, 1997.

The petitioner specifically alleges that the said illegal acts and the ensuing assault took place at the behest of the 1st respondent, who at no stage sought to prevent the petitioner from being assaulted as stated above.

On 3.1.1997, as the petitioner was in agony and discomfort, the petitioner has sought treatment at the Colombo South Hospital. The Colombo South JMO Dr. Dassanayake had examined the petitioner and prepared a detailed report. The said report which was called for by this court, gives details of the injuries sustained by the petitioner, and is filed of record.

The petitioner has also produced two medical certificates marked P4A and P4B from Colombo South Hospital and Sri Jayawardenapura Hospital, respectively.

The report of the Gampaha JMO, who examined the petitioner first, on 2.1.1997 at 12.15 am, is produced marked 5R4. The reason for examination as stated in the said report was to ascertain the level of intoxication and the injuries. Strangely, the Doctor had found no injuries. However, he has noted in the said report that the petitioner was smelling of alcohol and under the influence of alcohol. It is to be noted here that the petitioner's position is that, no blood tests or breathalyser test were done and he did not consume alcohol on that day.

The affidavits filed by the other respondents do not disclose whether the JMO, who examined the petitioner, at the Gampaha Hospital

carried out any tests. The 5th respondent, who had accompanied the petitioner to the Gampaha Hospital states, "I was not present at the time of examination of the petitioner by the said JMO". Thus the assertion made by the petitioner that he was not subjected to any tests by the JMO at the Gampaha Hospital, stands uncontradicted. In the circumstances the finding of the JMO Gampaha that the petitioner was under the influence of alcohol is open to doubt. Another matter I wish to deal with here is the finding of the Gampaha JMO that the petitioner had no injuries, as recorded in the Medico-Legal Report marked 5R4. However, according to the Medico-Legal Report furnished to this court, and filed of record, made by of Dr. P. B. Dassanayake, JMO Colombo South, the petitioner had been examined at 12.02 pm on 3.1.97 at Kalubowila Hospital. The following 7 injuries have been noted in the said Report :

- (1) Area of oedema (swelling) on the upper part of the right side of the neck 3 x 3 cm.
- (2) A superficial abrasion of 3 x 1.5 cm over the right upper arm on outer side of the upper 1/3.
- (3) An abrasion of 3 x 2 cm over the inner side of the right elbow joint.
- (4) A contusion of 3 x 1 cm over the left side of the back of the chest.
- (5) A contusion of 6 x 3 cm over the middle of the back of the chest.
- (6) A contusion of 5 x 3 cm over the back of the right chest.
- (7) A linear abrasion of 4 cm long over the back of chest.

It is noted there that all the injuries were fresh. It is further stated that, a *blunt weapon* could have caused all the injuries. The history given by the petitioner was that he was assaulted by the security guards of a politician and the Police with hands and legs, on 1. 1. 97 at 10.30 pm, at Gampaha, Miriswatte, when he was filming a lorry set on fire. It is to be observed that the nature of the injuries sustained by the petitioner, are consistent with such an assault. In the circumstances, it is strange, as to how the JMO Gampaha failed to observe any injuries on the petitioner when he examined the petitioner on 2. 1. 97 at the Gampaha Hospital. Hence the report of

the JMO Gampaha in regard to the intoxication and the absence of injuries on the petitioner, lacks credibility.

The averments in the affidavit of the petitioner are supported by the affidavits of the members of the team who were present at the place of the incident, and further corroborated in regard to the injuries sustained, by the Medical Report of Dr. P. B. Dassanayake, JMO, Colombo South. Therefore there is credible evidence to conclude that the petitioner sustained the above injuries as a result of the said assault by the said respondents.

The petitioner has alleged that the said assault, "took place at the behest of the 1st respondent who had at no stage sought to prevent the petitioner from being assaulted and manhandled". The 1st respondent has called out the petitioner and demanded to know from the petitioner as to why he filmed the 1st respondent and the number plate of the Pajero. The 1st respondent had shouted at his security officers and persons accompanying him to grab the tape from the petitioner's camera. Thereupon several persons who accompanied the 1st respondent including the 2nd, 3rd respondents and the 5th respondent surrounded and assaulted the petitioners and tried to wrest the tape from the petitioner's camera. They also tried to smash the camera on the ground. At the Gampaha Police Station the petitioner had seen the 1st respondent seated in the chair of the officer in charge of the Police Station. The 1st respondent had questioned the petitioner and demanded to know where the tape was. The petitioner has explained that he was merely performing his official duties as an officer of the ITN, a State institution. The petitioner has once again proved the petitioner's identity to the 1st respondent by showing his ITN identity card. At that point the 1st respondent had told the petitioner that the petitioner was assaulted by the 1st respondent's voters in the area because the 1st respondent and the others with him thought that the petitioner and his team were employed by TNL, a privately owned television company. The 1st respondent had stated that he objected to the petitioner filming because he feared that the petitioner would film the said burning lorry, and the 1st respondent's vehicle, and say that the 1st respondent set fire to the lorry and fled the scene of the incident. In spite of the aforementioned specific allegations against the 1st respondent, the 1st respondent did not file objections nor did he participate or was represented by counsel at the hearing of this application. Thus the said averment by the petitioner stands uncontroverted.

There is a specific averment that the 2nd and 3rd respondents assaulted the petitioner, and tried to wrest the tape from the petitioner's camera. The 2nd and 3rd respondents with others had tried to push the petitioner into a Police jeep. The 2nd respondent is also alleged to have threatened the Police officers and stated that if they were unable to handle the petitioner he will use his boys. The 2nd and 3rd respondents along with others have lifted the petitioner, and thrown him inside the back of the Police jeep. The specific allegations against the 2nd and 3rd respondents have not been denied by filing objections nor were they present or represented by counsel at the hearing of this application. Thus the said allegations against the 2nd and 3rd respondents stand uncontradicted.

It is alleged in the petition that the 5th respondent who was in civil clothing at the time surrounded and assaulted the petitioner along with others and tried to wrest the tape from the petitioner's camera. Thereafter the 5th respondent along with others had tried to smash the camera on the ground. The 5th respondent along with other persons had put the petitioner on the ground and assaulted him. The 5th respondent had tried to push the petitioner into a Police jeep and later lifted the petitioner along with others and thrown him inside the back of the Police jeep. The 5th respondent had assaulted the petitioner whilst the petitioner was inside the Police jeep. The 5th respondent had rested his feet on the petitioner's back and did not allow him to get up while he was inside the Police jeep. The 5th respondent had ordered the petitioner to remove his shirt and hand over the contents of his pocket. The 5th respondent had filed objections and denied the above allegations. He has stated that he was off duty on that day and was called to assist a Police party led by Sub-Inspector Munasinghe. When he was engaged in the task of extinguishing the fire, he saw a crowd of media personnel filming the scene of the burning lorry. He had observed that the petitioner was involved in an argument with a group of persons, and fearing that the petitioner would be assaulted by the crowd he along with other Police officers put the petitioner into the jeep with great difficulty, as the petitioner was trying to resist. He has categorically denied that he assaulted the petitioner before the arrest or whilst in the jeep. His position is that he took the petitioner into custody, as he feared that

the petitioner might be assaulted and there would be a breach of the peace. He has denied that he ordered the petitioner to remove his shirt. He has explained that the petitioner's shirt was torn when another Police officer pulled the petitioner by his shirt to prevent him from being hit by a passing bowser, when the petitioner tried to jump from the jeep. Thus it is discernible from the above averments of the affidavit of the 5th respondent that, he was present at the scene in civil clothes and that he "with difficulty" put the petitioner into the back of the jeep. It is also admitted that the petitioner's shirt was torn as it was pulled by another officer whilst travelling in the jeep. These averments partially corroborate the averments made by the petitioner.

It is alleged in the petition that at the Gampaha Police Station when the petitioner requested that his wallet with the contents including Rs. 3,700, in money, be returned, the 6th respondent had abused the petitioner in foul language. The 6th respondent had shouted at the petitioner stating that the Police were not thieves. The 6th respondent had filed objections and had denied the allegations against him. He has stated in his affidavit that he was off duty that day, but was asked to report to the Station by the officer-in-charge at that time. When he went to the Police Station he has seen a group of persons at the Station. He has recorded the statement of the 2nd respondent and thereafter left the Station. He has categorically denied having assaulted the petitioner. In fact the petition does not reveal the manner or the time at which the petitioner was assaulted by the 6th respondent, except the general averment in paragraph 15 of the petition that: "... the petitioner was assaulted by members of the Gampaha Police, namely the 5th and 6th respondents".

The counsel for the 5th and 6th respondents submitted that there is no material at all to sustain an allegation of torture or cruel, inhuman and degrading treatment or punishment of the petitioner by the 5th and 6th respondents. He cited the case of *Saman v. Leeladasa*⁽¹⁾ where it has been held that, the mere fact that there was an assault and some injury, may not be a violation of Article 11. He pointed out that what was contemplated by the prohibition was an aggravated form of treatment or punishment, and in this case the petitioner has failed to establish the said ingredient as contemplated by the decision

in *Saman v. Leeladasa*. He also cited a page from the book titled *Our Fundamental Rights of Personal Security and Physical Liberty* by Dr. A. R. B. Amerasinghe at page 29, which states as follows:

'Torture' implies that the suffering occasioned must be of a particular intensity or cruelty. In order that ill treatment may be regarded as inhuman or degrading it must be 'severe'. There must be the attainment of a 'minimum level of severity'. There must be the crossing of the 'threshold' set by the prohibition. There must be an attainment of 'the seriousness of treatment envisaged by the prohibition in order to sustain a case based on torture or inhuman or degrading treatment or punishment.

The evidence in this case establishes that a crowd of people including the 2nd, 3rd and 5th respondents assaulted the petitioner. The petitioner has been put on the ground and assaulted and thereafter put in the back of the jeep. The 5th respondent has put his foot on the petitioner when he was lying inside the jeep. The 5th respondent has ordered the petitioner to remove his shirt. The 6th respondent has abused the petitioner in foul language at the Gampaha Police Station, but has not participated in any assault. It is alleged that the assault took place at the behest of the 1st respondent, which allegation has not been denied. Thus on an application of the very criteria set down in the above quotation, to the available evidence in the case, I am of the view that quite clearly the 'threshold' set by the prohibition under Article 11 has been crossed.

Thus the petitioner has established that the 1st, 2nd, 3rd and 5th respondents have violated the fundamental right guaranteed under Article 11 of the Constitution.

It is alleged that the petitioner's fundamental right guaranteed under Article 13 (1) of the Constitution has been violated, by the illegal arrest of the petitioner by the Gampaha Police.

According to the affidavit of the 5th respondent he had observed that: "...the petitioner was involved in an argument with a group of persons and fearing that he would be assaulted I along with other officers put him into the jeep with great difficulty since he was trying to resist". He says that he intervened on the orders of the Sub-Inspector of Police Munasinghe. He further states that : "I intervened

and took him into custody solely because I feared that he may be assaulted and that there would be a breach of the peace". The notes of SI Munasinghe produced marked 5R3 states that the petitioner was assaulted by people who had gathered there. He had brought the situation under control and had taken the petitioner into custody in order to establish peace. Thus it is seen from this evidence that although it was the petitioner who was assaulted by the other persons present there, ironically it is the victim of the assault who had been arrested and not the assailants. Except the assertion by the respondents that the petitioner was intoxicated there is no allegation of an offence committed by the petitioner. Up to date no charges have been framed against him or any criminal action instituted. Thus it appears that there was no legal basis for the arrest of the petitioner. Although the 4th respondent, the HQI of the Gampaha Police Station was not present at the scene at the time of arrest, he has in his affidavit justified the arrest by stating that : "... the petitioner had been taken into custody by R/SI Munasinghe to avoid a breach of the peace at 23.05 hrs. on 1.1.97. He was released on bail at 4.20 am on my instructions on 2.1.97 ...". In paragraph 10 of his affidavit he takes up the erroneous position that : "... the petitioners had been involved in the breach of the peace". Whereas it is the petitioner who was assaulted. It is averred in the petition that when the petitioner was taken to the office of the officer-in-charge of the Gampaha Police Station, the petitioner had seen the 1st respondent seated in the chair of the officer-in-charge. Another uniformed Police officer had stood by the side of the 1st respondent. The 2nd respondent has threatened the Police officer and said that if they were unable to handle the petitioner, he will use his boys. The 2nd, 3rd and 5th respondents along with others has lifted the petitioner and put him in the jeep. The above evidence clearly establishes that the petitioner was the victim of the assault.

However, the counsel for the 5th and 6th respondents argued that there was no illegal detention of the petitioner since the petitioner was arrested to prevent a breach of the peace. As pointed out earlier, I am of the view that there was no basis for the arrest of the petitioner and therefore the fundamental right of the petitioner guaranteed under Article 13 (1) has been violated by the 5th respondent, upon the instigation and/or with the participation of the 1st, 2nd and 3rd respondents.

The petition also prays for relief for the infringement of Article 14 (1) (a). It is clear that there has been no direct violation of the petitioner's freedom of speech and expression. Upon the petitioner refusing to accede to the 1st respondent's demand for the surrender of the tape of the petitioner's camera, he attempted to seize the tape and the camera by force, through the instrumentality of the 2nd, 3rd and 5th respondents; and when that failed, it was he who instigated the assault on the petitioner. That was an interference with the petitioner's legitimate activity, of gathering information for the purpose of the "Vimasuma" programme; the telecast of that programme would have been an exercise of the petitioner's freedom of speech and expression; and therefore the 1st respondent's conduct indirectly, but necessarily, impaired (although it did not totally deny) the petitioner's fundamental right.

At the time of the incident, the 1st respondent appears to have believed that the petitioner had filmed his unregistered Pajero jeep and its number plate, and would make use of that film to smear his character. The petitioner denied that allegation even then. In the absence of an affidavit from the 1st respondent, the petitioner's version – which is neither unlikely nor improbable – that he did not film the jeep or its number plate, has to be accepted. But even if the petitioner had in fact filmed the unregistered jeep and its number plate, while it was in a public place, that was not unlawful. No reason whatever has been suggested why the 1st respondent should have assumed that the state-owned Independent Television Network would deliberately misuse that film in order to concoct a news item to the detriment of a Deputy Minister. The fact that the 1st respondent had mistakenly thought that the petitioner was from another privately owned, television network makes no difference as far as the petitioner is concerned, he was filming an event which it was not unreasonable for him to have considered newsworthy, and there was nothing unusual or objectionable in his also filming the persons who were watching that event – whether they were private citizens or persons in public life.

It is unnecessary to consider whether the position might have been different if in fact the 1st respondent had reasonable grounds to believe that the petitioner was intending to defame him, or if the incident had not occurred in a public place.

Although the Constitution does not entrench a right to information, it has been held in *Fernando v. Sri Lanka Broadcasting Corporation*⁽²⁾, that a right to information is implicit in some of the fundamental rights: "the right to information, simpliciter, is a corollary of the freedom of thought guaranteed by Article 10" (at page 179); and that the freedom of speech may include other rights, such as the right to obtain and record information, by means of interviews, photographs, and the like, needed to make the actual exercise of that freedom effective (at pages 173, 179). I therefore hold that the petitioner's fundamental right under Article 14 (1) (a) has been infringed.

Although the 1st respondent was not acting in his official capacity as a Deputy Minister, and although the actions of the 2nd and 3rd respondents did not *per se* amount to "executive action", the 5th respondent participated in the attempt to seize the petitioner's camera and tape, in the assault on him, and in his arrest. Other Police officers were present, and did nothing to check the assailants, to arrest them, or even to record their statements; instead they assisted in the arrest; and they even permitted the 1st respondent to question the petitioner while sitting in the chair of the officer-in-charge. What would otherwise have been the purely private action of the 1st to 3rd respondents was transformed into executive action by reason of the approval, connivance, acquiescence, participation and inaction of the 5th respondent and other Police officers (see *Faiz v. Attorney-General*⁽³⁾).

The petitioner has established three serious infringements of his fundamental rights. Having regard to all the circumstances, I award the petitioner a sum of Rs. 150,000 as compensation and costs. I direct the State to pay the petitioner a sum of Rs. 75,000, and the 1st, 2nd and 3rd respondents personally to pay him Rs. 50,000, Rs. 12,500, and Rs. 12,500, respectively. These payments shall be made, and proof of payment submitted to the Registrar, on or before 1st February, 1999, in default of which the Registrar shall list this matter for an order in regard to enforcement.

FERNANDO, J. – I agree.

DHEERARATNE, J. – I agree.

Relief granted.