

**EKANAYAKE (R.P.C 9503)**  
**v.**  
**RESERVE SUB-INSPECTOR,**  
**HEWAWASAM AND OTHERS**

SUPREME COURT  
FERNANDO, J.  
ISMAIL, J., AND  
WIGNESWARAN, J.  
SC NO.34/2002 (FR)  
13th JANUARY, 2003

*Fundamental Rights – Torture of petitioner – Test of probability-Credibility of police version – Complaint under Rule 44(7) of the Supreme Court Rules, 1990.*

The petitioner, a Reserve Police Constable who was attached to the Settikulam Police Station was on five days leave to attend a funeral. The 1st respondent who was a Reserve Sub Inspector of Police attached to the Galnewa Police Station claimed to have been on duty out of the police station on 8.11.2001 with a police party removing flags, banners and cutouts etc. According to his "in" entry he had accompanied unidentified army officers in search of a deserter. The 1st respondent noted that he saw someone about to throw something. The respondent arrested him. The man was drunk. So the 1st respondent brought him to the police station and released him next morning. As a police constable said that the man was working at the police station, he was not charged.

In terms of section 69 of the Police Ordinance a man who is drunk and disorderly is guilty of an offence and may be arrested without a warrant and detained in custody until sober. However the petitioner's condition was not medically examined.

According to the petitioner, when he was passing the police station that day, the 1st respondent alighted from a police jeep and questioned him in obscene language and asked him where he was going. Before he could reply he was arrested, taken to the police station and severely assaulted by the 1st respondent. When a police constable identified him as a Reserve Police Constable, he was chased away from the police station. He was hospitalized for four days due to the assault. The Judicial Medical Officer's report of the examination of the petitioner on 12.11.2001 showed that the petitioner had lacerations and abrasions.

The petitioner, instituted proceedings in the Supreme Court by a complaint under Rule 44 (7) of the Supreme Court Rules, 1990. The State Counsel took

a preliminary objection that the petitioner's complaint was bad for lack of reference to Rule 44 (7) or petitioner's lack of means which makes a person eligible to relief under that Rule.

**Held:**

1. A complaint under Rule 44 (7) is competent where a Judge of the Supreme Court is satisfied of the petitioner's apparent lack of means to pursue a claim. The Rule does not require the petitioner to expressly plead lack of means or to make specific reference to the Rule. As such both objections fail.
2. Upon a scrutiny of the 1st respondent's entry and the supporting affidavits for the 1st respondent, the petitioner's version is more probable than the respondent's version; by reason of the alleged arrest and assault the petitioner's fundamental rights under Articles 11 and 13 (1) have been infringed by the 1st respondent.

**APPLICATION** for relief for infringement of fundamental rights.

*M.R. Sharmila* for petitioner

*K.R. M Abdul Raheem* for 1st respondent

*R. Hamza*, State Counsel for 4th and 5th respondents.

*Cur.adv.vult*

March 17, 2003

**FERNANDO, J.**

The Petitioner, a resident of Galnewa, is a Reserve Police Constable attached to the Settikulam Police station. He complains that his fundamental rights under Articles 11 and 13 (1) were infringed by the 1st Respondent (a Reserve Sub-Inspector attached to the Galnewa Police) by reason of his arrest on 8.11.2001 and assault, both at the time of arrest and later at the Galnewa Police station.

On 3.11.2001 the Petitioner obtained five day's leave to attend a funeral in Galnewa. According to the Petitioner, at about 6.45 p.m. on 8.11.2001, as he was passing the Galnewa Police station, a Police jeep stopped near him. The 1st Respondent got down from the jeep and questioned him, in obscene language, as to

where he was going, and without waiting for an answer assaulted him with hands and feet, continuing to do so despite the Petitioner stating that he was a Police officer. He even kicked him in the chest. The Petitioner was then taken in the jeep to the Police station, where the 1st Respondent slapped him and took him through the charge room to the rear. There were many civilians present who saw the degrading manner in which he was being treated. Two Police officers then identified the Petitioner as being a Reserve Police Constable, whereupon he was chased away from the station. He was hospitalized for four days, from 10th to 13th, and again from 23rd to 29th November. He was not informed of the reason for his arrest. The report of the Judicial Medical Officer who examined him on 12.11.2001 disclosed eleven lacerations and abrasions.

The 1st Respondent's version is set out in the affidavits of himself and six others, as well as information book ("IB") entries made at 11.30 a.m. and 8.00 p.m. on 8.11.2001. Other IB extracts recorded that at 4.45 a.m. Sergeant 90963 Premasiri of the Military Police handed over two alleged deserters (named Premasiri and Prasanna) to the Galnewa Police to be kept in safe custody; that at 4.32 p.m. Sergeant 90963 Premasiri took charge of another alleged deserter (Upali) from the Galnewa Police; and that at 7.00 p.m., on the orders of the Officer-in-Charge, the alleged deserter Premasiri was handed over to Lance Corporal 90935. The IB extracts relied on by the 1st Respondent contain the "out" entry made by him at 11.30 a.m. when he and two Police officers left the station in a Police jeep No. 32 -7136 driven by a Police driver. There was no corresponding "in" entry – at 7.00 p.m. or even later – in regard to the return of that Police party, vehicle and driver. The 1st Respondent made what purported to be his "in" entry at **8.00 p.m.**, which is to the effect that the Police party had removed flags, banners, cutouts, etc, in various areas; that **he** had returned to the station at **7.00 p.m.**; that the 1st Respondent then went in civil clothes in an (unspecified) Army van together with (unidentified) Army officers in order to assist them to arrest a deserter named **Karunatileke**; that when returning; at about 7.45 p.m., the 1st Respondent saw someone *about to throw something* which was in his hand at their vehicle; that when the vehicle was stopped and the 1st Respondent went up to that person – who was quite drunk – he

said that he had thought they were People's Alliance supporters; that the 1st Respondent brought him in the van to the station; that when the 1st Respondent was taking him to the charge room P.S. 31533 identified him as a Police officer serving at Settikulam; that because P.S. 31533 and **P.C. 7376** had stated that he was working at that Police station the 1st Respondent refrained from charging him; and that the 1st Respondent directed P.S. 31533 to keep him until he sobered and to send him off the next morning when he was sober. He also directed **P.C. 34968** to go on patrol again. That entry did not record the name, number, rank or address of the person brought to the station, and he was not sent for examination as to his sobriety.

Learned State Counsel could not point out any significant inconsistency or intrinsic improbability in the Petitioner's version. In order to ascertain whether his version is more probable than the Respondent's version, it is necessary to scrutinize the 1st Respondent's "In" entry as well as the supporting affidavits.

There are many unsatisfactory features in that "in" entry. If the 1st Respondent did return at 7.00 p.m., there should have been an "in" entry at 7.00 p.m., and that should have referred to the return of the Police party, which had left the station at 11.30 a.m., including the jeep and the driver. Indeed, even the "in" entry made at 8.00 p.m. did not specifically state that the other two Police officers, the driver and the jeep had returned to the station. It neither identified the person brought to the station nor stated the basis on which he had been brought. Further, that entry suggests that the 1st Respondent left the station without obtaining permission from (or even informing) the Officer-in-Charge although it is evident from the IB entry made at 7.00 p.m. in relation to the deserter Premasiri that the Officer-in-Charge was present at the station. That entry did not mention the time at which he left the station after changing into civil clothes, or the names of any Police officer who accompanied him; nor did it disclose the names of the Army officers and the number of the Army vehicle. It is significant that at 7.00 p.m. there was an Army officer – Lance Corporal 90935 – present at the station but that was not the officer whom the 1st Respondent claims to have accompanied soon after 7.00 p.m.; coincidentally, Sergeant Premasiri turned up in another vehicle at the very same time on

another errand concerning a deserter. Finally, there was no entry regarding the release of the person brought to the station.

The 1st Respondent produced affidavits from four persons alleged to have accompanied him in the Army vehicle, namely Sergeant Premasiri, a soldier, the driver and P.C. 34968, as well as from P.S. 31533 and P.C.7376. Although P.C. 34968 (and others) stated that he was in the group, the "in" entry made at 8.00 p.m. did not state that he left in the Army vehicle. Although that entry made no mention of the Officer-in-Charge, P.C. 34968 (but not the others) claimed that the trip was on the instructions of the Officer-in-Charge. While that entry stated that the purpose of the trip was to arrest Karunatileke, none of the affidavits mentioned him, but merely referred to "arresting deserters".

Those shortcomings may perhaps be discounted as being relatively minor inconsistencies, of a kind which are often inevitable even in the case of truthful witnesses. However, there are serious discrepancies in regard to the main incident itself. Although in his "in" entry the 1st Respondent only referred to an **attempt** to throw **something** at the Police jeep, yet in his affidavit he claimed that the Petitioner was throwing **stones** at passing vehicles, and asserted that that was the reason for arrest given to the Petitioner. But that reason was not mentioned by any of the others. Sergeant Premasiri stated that the 1st Respondent said that the Petitioner had claimed to be a Police officer, and that he was being taken into the vehicle for his own protection as he was so drunk that he could not look after himself. No one claimed that anything had occurred which could have caused the injuries which the Petitioner undoubtedly had, and the 1st Respondent gave no explanation as to how they might have occurred. Finally, although the "in" entry suggests that by 8.00 p.m. P.C. 7376 had already identified the Petitioner, P.C. 7376 stated that in fact he came to the station only later, at 8.15 p.m.

Under section 69 of the Police Ordinance a person who is found drunk and incapable of taking care of himself in any public place is guilty of an offence, and a person who is guilty while drunk of disorderly behaviour in any public place may be apprehended without warrant and kept in custody until sober: While the 1st Respondent and the other Police and Army officers unanimously

state that the Petitioner was quite drunk, it is difficult to accept that position, firstly, because no attempt was made to have him medically examined, and secondly because of the serious shortcomings and inconsistencies in the "in" entry and in the affidavits. I therefore find it impossible to treat the 1st Respondent as having acted under section 69 – to which he made no reference – and I consider the Petitioner's account to be much more plausible and probable than the Respondent's.

Learned State Counsel took two preliminary objections. The petition filed in this case resulted from an informal complaint under Rule 44(7) of the Supreme Court Rules, 1990. Such a complaint may be treated as a petition under Article 126 (2) where a Judge of this Court is satisfied that "such person does not, or may not, have the means to pursue such complaint in accordance with" the Rules, and may be referred to specified persons for the purpose of the preparation and submission of proper pleadings. Learned State Counsel submitted that in the pleadings filed there was no reference to Rule 44 (7), and to the Petitioner's lack of means. Rule 44(7) requires a Judge to be satisfied about the petitioner's apparent lack of means, and does not require further that the lack of means be pleaded specifically thereafter. It is reasonable to infer that a Reserve Police Constable cannot afford the expenses of a fundamental rights application. Further, if the initial complaint and the subsequent pleadings are in fact in conformity with Rule 44 (7), specific reference to that Rule is not required. Both objections fail.

I hold that the Petitioner's fundamental rights under Articles 11 and 13 (1) have been infringed by the 1st Respondent, and award him a sum of Rs 50,000 as compensation, of which Rs 40,000 shall be paid by the State, and Rs 10,000 by the 1st Respondent personally, on or before 30.4.2003

**ISMAIL, J.** - I agree.

**WIGNESWARAN, J.** - I agree.

*Relief granted.*