

HERATH BANDA
v.
SUB-INSPECTOR OF POLICE, WASGIYAWATTE POLICE
STATION AND OTHERS

SUPREME COURT.
AMERASINGHE, J.
PERERA, J. AND
WIJETUNGA, J.
S. C. APPLICATION NO. 270/93.
OCTOBER 25, 1993.

Fundamental Rights – Application to withdraw application for infringement.

Held :

There may be certain occasions where in the circumstances of a particular case the Court may permit the withdrawal of an application for infringement of fundamental rights. Each case must depend on its own circumstances, leave to withdraw being a matter within the absolute discretion of the Court. Applications pertaining to fundamental rights are not ordinary private matters.

Cases referred to :

1. *Basheshar Nath v. Commissioner of Income Tax* AIR 1959 S.C. 149, 157 – 159.
2. *Velmurugu v. The Attorney-General and another* Vol. 1 FRD 180.

APPLICATION to withdraw application for relief for infringement of fundamental rights guaranteed by Article 11 of the Constitution.

K. Tiranagama for petitioner.

D. P. Kumarasinghe, D. S. G. with S. Rajaratnam S.C. for Attorney-General.

Cur. adv. vult.

November 29, 1993.

AMERASINGHE, J.

On 28 May 1993 the Petitioner complained as follows: The first respondent, a Sub-Inspector of Police, came to his home and ordered him to accompany him to the Police Station; when he sought an explanation, he was addressed in rude terms, slapped and dragged out and struck all over his body with a thick stick drawn out of the

fence in his garden until he was rendered unconscious. The Petitioner was taken to the Polpitigama Government Hospital and later admitted to the Kurunegala Government Hospital and examined by the Judicial Medical Officer. After being in the Kurunegala Hospital for five days, he was transferred to Ehetuwewa Government Hospital where he was treated for two days. Thereafter he was treated by an Ayurvedic physician. As a result of the assault he is now bedridden.

The Petitioner prayed that the Court declares his fundamental rights enshrined in Article 11 of the Constitution had been violated and claimed Rs. 200,000 as compensation.

On 3 June 1993, this Court granted the Petitioner leave to proceed with his application and in terms of his prayer the Court directed the Judicial Medical Officer, Kurunegala, to examine the petitioner and report to this Court.

When the matter came up for argument on 24 August 1993, Counsel for the Petitioner moved that the Petitioner be allowed to withdraw the petition since the petitioner had "settled his differences with the police officer."

The respondents were absent and unrepresented on that date. The Court directed that the matter be set down for hearing on 25 October 1993 and that the Attorney-General be asked to assist the Court on the question whether the request of the petitioner should be acceded to.

On 25 October 1993 the learned Deputy Solicitor-General, citing *Basheshar Nath v. Commissioner of Income Tax* ⁽¹⁾, submitted that an application in respect of the alleged violation of fundamental rights was not a private matter between parties which could be settled or withdrawn at the instance of the parties especially with regard to a violation of Article 11 of the Constitution.

I agree that applications pertaining to fundamental rights are not ordinary private matters. However, I am reluctant to accept any suggestion that the question of withdrawal depends on the importance of the right violated. I do not think any useful purpose will be served by attempting to arrange the rights on a hierarchical scale although

admittedly, as pointed out in *Velmurugu's Case* ⁽²⁾, Article 11 has special distinguishing features.

There may be certain occasions where in the circumstances of a particular case the Court may permit the withdrawal of an application. Indeed, hundreds of applications are withdrawn in this way each term. Each case must depend on its own circumstances, leave to withdraw being a matter within the absolute discretion of the Court.

In the matter before us the medical evidence clearly supports the averments in the petition relating to the brutal assault complained of. The reasons for a change of heart are not clear, but the petitioner in his petition did allege that attempts had been made to prevent him from seeking redress in Court. In the circumstances, permission to withdraw the petition is refused.

I declare that the petitioner's rights under Article 11 of the Constitution have been violated. As the petitioner has, according to learned Counsel, "settled" his "differences" with the Police Officer, no compensation is awarded.

The Inspector-General of Police is directed to investigate the complaint against the Police Officer concerned and report to this Court on or before 10 April 1994 as to what action he has deemed fit to take in the matter. The Registrar should forward certified copies of the petition, affidavits and Medical Reports to the Inspector-General of Police with a copy of this order.

PERERA, J. - I agree

WIJETUNGA, J. - I agree

Application to withdraw refused.