

ABEYWICKREMA
v.
GUNARATNA AND THREE OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
ANANDACOOMARASWAMY, J. AND
DR. SHIRANI A. BANDARANAYAKE, J.
S.C. SPL 93/96.
OCTOBER 9, 1997.

Fundamental Rights – Articles 11, 13(1) – Degrading treatment – Lawful arrest – Section 32(1)b – Code of Criminal Procedure Act.

The petitioner who is a three wheeler driver has taken a passenger on hire; and after arriving at the Police Station with the passenger as requested by him, he was assaulted by the Police taken into custody and produced before the A.J.M.O.

Held:

Per Bandaranayake, J.

“When a man who made an endeavour to earn his living by carrying on an honest occupation, is taken into custody, assaulted and locked up in a cell in my view he has been subjected to degrading treatment.”

It appears that the arrest was for the reason that the petitioner was under the influence of liquor, no sooner the petitioner was arrested he was produced before the AJMO and the AJMO had reported that the petitioner was not under the influence of alcohol.

Per Bandaranayake, J.

“The arrest has to be lawful and for it to be lawful, the arrest should be carried out according to the procedure laid down by law. The MLR shows that the petitioner had not consumed any liquor, there was no complaint made against the petitioner and there were no reasons at all to suspect the petitioner of having committed any offence, therefore after obtaining the A.J.M.O.’s Report there was no reason at all for detaining the petitioner.”

APPLICATION for relief for infringement of fundamental rights.

Case referred to:

1. *Thadchanamoorthi v. Attorney-General* 1980 FRD 120 at pg. 140.

A. S. M. Perera, P.C., with Ms Damayanthi Fernando, P. Wanigasekera and Prassanna de Soysa for the petitioner.
S. Rajaratnam S.C., for respondents.

Cur. adv. vult.

November 13, 1997.

DR. SHIRANI A. BANDARANAYAKE, J.

The petitioner, who is a three wheeler driver, complains that his fundamental rights guaranteed under Articles 11, 13(1) and 13(2) were violated by the 1st and 2nd respondents. Leave to proceed was granted in respect of the alleged infringement of Articles 11, 13(1) and 13(2). The counsel for the petitioner submitted at the hearing that he is not pursuing the alleged infringement under Article 13(2).

According to the petitioner, on 7th July 1996 he has taken a passenger to Ragama on hire and had returned with the said passenger around 7 p.m. The passenger had gone into his place of lodging to bring the money to pay the hire due to the petitioner and the petitioner had been waiting outside the hotel for the passenger. As the passenger did not return, the petitioner had gone in search of him and had seen the passenger involved in an argument with a person who was inside the said lodge. After a while, some police officers had come to the lodge and had directed the passenger to go to the Maradana Police Station. The passenger had decided to go in the same three wheeler. After arriving at the police station, the petitioner had stayed outside, when a police officer had called the petitioner into the police station. When the petitioner went inside, the petitioner was assaulted and thereafter produced before the AJMO. On his return from the AJMO, the petitioner was locked up in a cell. The petitioner was in the custody of the police until he was released on the 8th July 1996 on police bail.

The Chief Inspector of the Police Station, Maradana (1st respondent) in his affidavit avers that, although he is the Officer in Charge of the Maradana Police Station, during the period under reference, on 07th July 1996 at 6.00 p.m. he had left the Police Station to check up some information received in Wattala. He had returned on 08th July at 6.13 a.m. This is supported by the IB

extracts (1R1). In the absence of the 1st respondent, Inspector Bertu Jayakody was the acting Officer in Charge of the Maradana Police Station and when the petitioner was detained, Inspector Bertu Jayakody was in charge of the Maradana Police Station. According to the 1st respondent, on 07th July 1996, at about 8.10 p.m. a complaint was lodged by one Palanivelu Jayaseelan, an employee of Elite Hotel, Maradana that he was assaulted by one Saman, who accused him of stealing Rs. 5,000/- from his room in the hotel (1R2). Following this complaint, information was received that there was an imminent breach of the peace at Elite Hotel. A police party led by P.S. 10688, Dharmasena proceeded to the said hotel and arrested Saman Athula Nissanka and the petitioner who seemed to be under the influence of alcohol. The reasons for this arrest were explained to them and the petitioner and the said Saman Athula Nissanka were taken into custody to conduct further investigations (1R3). The 1st respondent further avers that following the medical examination by the AJMO, Colombo, the petitioner and Saman Athula Nissanka were brought to the Maradana Police Station and detained until further instructions were given by the Officer in Charge (1R6). The 1st respondent concedes that the petitioner was released on police bail on 08th July around 11.30 a.m.

Immediately after being released from police custody, the petitioner got himself admitted to the Colombo General Hospital, as he was in pain due to the assault by the Police. According to the hospital records, the petitioner was admitted around 1.55 p.m. on the 08th July 1996 and was discharged on the 13th July 1996. On admission, according to the admission sheet of the General Hospital, the petitioner had complained of abdominal injury. The petitioner in his petition avers that a police officer, hit him with his hand and feet (paragraph 9 of the petition) and when he was released as there was a severe pain in the lower segment of his abdomen, he got himself admitted to the General Hospital, Colombo (paragraph 10 of the petition). The statement which was recorded on the 12th July 1996 at 4.30 p.m. at the Ward No. 27 of the General Hospital, also mentions that a police officer had hit the petitioner on the lower segment of his abdomen. The Medical Officer, who examined the petitioner, has made the following observations:

contusion/Rt/groin

tenderness +

No ... or rigidity

small abrasion + (pg. 5 of the Daily States Sheet)

The learned State Counsel for the respondent suggested that as there are no injuries except tenderness, Article 11 cannot be sustained.

Article 11 of the Constitution reads as follows:

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

This Court has expressed the view that an 'aggravated form of treatment or punishment' (*Thadchanamoorthi v. Attorney-General*⁽¹⁾) could satisfy the requirements under Article 11. 'Something might be degrading in the relevant sense, if it grossly humiliates an individual before others, or drives him to act against his will or conscience' (Justice A. R. B. Amerasinghe, *Our Fundamental Rights of Personal Security and Physical Liberty*, pg. 28).

The petitioner was a three wheeler driver, who earned his living by taking hires. When a man, who made an endeavour to earn his living by carrying on an honest occupation, is taken into custody, assaulted and locked up in a cell, in my view, he has been subjected to "degrading treatment". The medical evidence corroborates the physical suffering, the petitioner had to undergo owing to the actions of the police officers. I accordingly hold that the petitioner has succeeded in establishing the infringement of his fundamental rights guaranteed under Article 11 of the Constitution.

According to the petitioner, at the time he was taken into custody, he was not informed of the reasons as to why he was taken into custody. The petitioner avers that he had not committed any offence and according to his knowledge, no complaint had been made

against him to the Maradana Police Station, which warranted his arrest. He further avers that no statement had been recorded from him at the Police Station.

The 1st respondent in his affidavit avers that Saman Athula Nissanka and the petitioner were taken into custody on the complaint lodged by one Palanivelu Jayaseelan (1R2). Jayaseelan's complaint was made at 8.10 p.m. on 07.07.1996 (1R2). His complaint is against Saman and there is no mention what so ever about the petitioner. Police Sergeant Dharmasena had taken Saman and the petitioner into custody around 8.30 p.m. (1R3). In the IB extracts of 07.07.1996, it is recorded at 8.45 p.m. that the two suspects (Saman and the petitioner) were taken into custody as they were under the influence of liquor. Both of them had been produced before the AJMO, Colombo at 9.00 p.m. on 07.07.1996. The Medico-Legal Examination Form of the petitioner states that the reason for examination was to see whether he was under the influence of alcohol (1R4). The AJMO's report reveals that while Saman had a 'breath smelling of alcohol' (1R5), the petitioner had 'not taken alcohol' (1R4).

Document 1R3, suggests that the arrest was for the reason that the petitioner was under the influence of liquor. No sooner the petitioner was arrested, he was produced before the AJMO and the AJMO had reported that the petitioner was not under the influence of alcohol.

Article 13(1) 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."

Section 32(1)b of the Code of Criminal Procedure Act, specifies the established procedure for arrest. Section 32(1)b reads as follows:

"Any peace officer may without an order from a Magistrate and without a warrant arrest any person – who has been concerned in any cognizable offence or against whom a reasonable complaint

has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned."

Accordingly the arrest has to be lawful and for it to be lawful, the arrest should be carried out according to the procedure laid down by law. In the present case, there was no complaint made against the petitioner and there were no reasons at all to suspect the petitioner of having committed any offence. Although 1R3 indicates that the petitioner was taken into custody for the purpose of conducting a proper inquiry, the reasons were not explained to the petitioner. The Medico-Legal Report (1R4) shows that the petitioner had not consumed any liquor. Therefore 1R3 is contradicted by the medical evidence and the statements made in the IB extracts (1R3) are not corroborated by the medical evidence. It should be noted that the petitioner was produced before the AJMO within half an hour of his arrest. Therefore after obtaining the AJMO's report there was no reason at all for detaining the petitioner. I hold that the arrest is unlawful.

The petitioner was released on bail only around 11.30 a.m. on the 08th July 1996. As stated earlier, there was no basis whatever for his arrest. On a consideration of the totality of the facts and circumstances of this case, I direct the State to pay the petitioner a sum of Rs. 12,000/- as compensation and Rs. 3000/- as costs.

The Registrar is directed to forward a copy of this judgment to Inspector General of Police.

G. P. S. DE SILVA, C.J. – I agree.

ANANDACOOMARASWAMY, J. – I agree.

Relief granted.