

SIRIPALA
v
SUB INSPECTOR WIJESINGHE AND OTHERS

SUPREME COURT
FERNANDO, J.
GUNASEKERA, J.
J.A.N. DE SILVA, J.
FR 213/2001
FEBRUARY 5, 2002
MARCH 4, 21, 2002

Fundamental rights – Constitution – Articles 11, 13 (2) – Torture – Proved by medical reports? – The State responsible for the Law?

The petitioner complained of assault and torture by the Police.

Held:

- (1) The medical reports received in regard to the petitioner from the Nagoda and National Hospital, Colombo prove the case of torture as set out by the petitioner.
- (2) The law is made for the protection of all citizens rich and poor alike; It is therefore the duty of the State to make its machinery work alike for the rich and the poor.

Per J.A.N. de Silva, J.

“I am unable to accept the police version that the petitioner sustained all the injuries complained of at the time of his arrest due to the resistance offered by the petitioner – It is prudent to infer that the petitioner had been subjected to torture by the police after arrest - The police assault has rendered the petitioner an invalid”.

APPLICATION under Article 126 of the Constitution.

K. Thiranaganama with M. J. A. Hassan, S. Kasturiarachchi for petitioner.

Saliya Peiris for 1st respondent.

Riaz Hamza SC for 2-4 respondents.

May 30, 2002

J. A. N. DE SILVA, J.

The petitioner in this case has complained of infringements of his fundamental rights under Articles 11, 13(1) and 13(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The petitioner in his affidavit states that he is fifty-five years old and a father of four children. Due to indigent circumstances he was dealing in illicit liquor but gave up that trade three to four months prior to the incident complained of. According to him at the time of the alleged incident he had started working as a casual labourer. The petitioner further states that on 07.03.2001, at around 7 pm he went to the edge of the forest situated behind his house, to relieve himself. When he was attending to his ablution a man armed with a pistol grabbed him from behind and demanded illicit liquor. When the petitioner said he did not have any he was dragged towards the forest. Fearing that the man was going to kill him, the petitioner shoved the man away and tried to escape but was caught again, whereupon the petitioner bit the man ran in to the forest and hid himself.

After about half an hour he stepped out of the forest, a quarter of a mile away from his house, and on to the compound of one Seeting whose dogs began to bark upon seeing the petitioner. When the petitioner tried to retreat to the forest, some men jumped from a jeep, ran towards him and caught him.

The man who had questioned him earlier was also there and that person shoved the petitioner into the jeep having punched him several times. The petitioner has identified him as the 1st respondent. When he was pushed in to the jeep there had been two more civilians in the jeep.

When the party arrived at the Matugama police station on the directions of the first respondent, the petitioner was taken to the police quarters situated behind the police station. Thereafter 1st respondent had ordered the other police officers to remove the petitioner's sarong and blindfold him. Armed with an iron rod the first respondent along with some other police officers assaulted the petitioner several times. The blows alighted below the elbow on his

left arm, right thigh, ankle, left calf and on the ribs. Thereafter the right hand of the petitioner was kept on the bed head and on the directions of the first respondent a mighty blow was given. According to the petitioner after this severe assault the 1st respondent offered him illicit liquor which he accepted. The petitioner had never been produced before a magistrate within the stipulated period or any time thereafter. He had been removed to the Weththewa hospital immediately. The petitioner was transferred to the Nagoda hospital the same night and the following day to the National Hospital in Colombo. Hospital records reveal that both hands of the petitioner had sustained fractures.

In the Colombo National Hospital the petitioner had been operated on the 8th of March and his hands were fitted with plates. The petitioner had disclosed the circumstances under which he was assaulted to the Hospital Police and the medical personnel. His wife too had made a complaint to the member of the Pradeshiya Sabha and the ASP of the area. At that stage the Assistant Superintendent of Police had stated that the petitioner as well as the 1st respondent were in hospital and suggested that the matter be settled amicably.

The 1st respondent had filed affidavits together with documents marked 1R1 to 1R6. He denies the story of the petitioner. According to the 1st respondent on 07.03.2001 at 15.00 hours a team of six police officers led by SI Kariyawasam set out on a mission to raid illicit liquor.

The raid covered an area, which included Matugama, Agalawatta, Pinnagoda, Bopitiya, Yaladela and Nawunthuduwa. The IB "extracts" relevant to the above mentioned raid are marked as IR2. During the raid four persons, namely D. K. Nishantha, B. Don Sugath, Surendraarachchige Piyadasa and the petitioner had been arrested at 15.40 hours, 16.35 hours, 18.05 hours and 19.10 hours respectively and they were duly informed of the reasons for their arrest.

According to the 1st respondent when they came to raid the petitioner's residence, SI Kariyawasam and another officer stayed in the jeep, as there were three suspects in it. The 1st respondent and three other officers had gone to the petitioner's house from two

different directions. The first respondent had heard several persons speaking in filthy language on a hillock. When he came to the place three persons fled shouting, "police". The petitioner who remained there was arrested with a can and a glass. Two empty bottles of liquor were also found nearby. The 1st respondent claims that as he was coming down the hill, the petitioner hit him with the can (which the 1st respondent got him to carry) and fought with him. In the ensuing struggle the petitioner had got the better of him when the petitioner got on top of the 1st respondent and that he had tried to kill him by squeezing his neck.

The 1st respondent had shouted out to his colleagues. At that stage SI Kariyawasam who was nearby in the jeep came running to the spot and saved him by assaulting the petitioner with a club which he had found in the vicinity. Sub-Inspector of police Kariyawasam too in his affidavit marked 1R4 (C) admits that it was he who struck the petitioner on his hands with a club.

Notes made at or about the time of the incident by Sub-Inspector of police Kariyawasam have been submitted to the court and they support the 1st respondent's version of the events.

The petitioner was arrested and having been brought to the police station was handed over to police constable Gunasinghe in the reserve together with the productions. The arrest of the petitioner was for being in possession of illicit liquor, assault and causing hurt to the 1st respondent and for obstructing the 1st respondent from carrying out his official duty (vide 1R2 (b)).

The 1st respondent states that not only the petitioner, he too sustained injuries. He has obtained treatment at the Waththewa government hospital and thereafter at the police hospital where he was warded from the 9th to the 16th of March. The diagnosis in respect of the 1st respondent at 1R5 indicates that the 1st respondent was "assaulted by an accused" but the injuries found on him are not indicated.

Police officers Kithsiri Gunaratna and Chaminda Seneviratne have filed affidavits marked 1R4 B and 1R4 C to the effect that, when the petitioner was arrested and brought to the jeep they observed the torn clothes of the 1st respondent and blood on his face. The Headquarters inspector, Mathugama Inspector of Police,

Kasthuriarachchi, by affidavit marked 1R7 has sworn that the 1st respondent had handed over to him the clothes which were torn as a result of the incident.

The petitioner in his counter affidavit reaffirmed the position taken up by him in the original affidavit. It was his contention that the documents relied on by the respondents proves that he has given up dealing in illicit liquor as his last date of arrest was 06.08.2000. [The petitioner has had several convictions for excise offences in the year 2000 itself. This is evident from the documents marked 1R 1A, 1R 1B, 1R 1C and 1RID]. There is evidence to show that the police had been raiding his house for a very long period. In 1997 police officers who had tried to raid the house of the petitioner were attacked by the petitioner's wife who tried to throw acid on them.

According to document 1R6 she was convicted for the offence by the Magistrate. In this backdrop it is difficult to accept that the petitioner had given up his trade in 2001. The petitioner himself says he stopped dealing in illicit liquor three to four months prior to the incident. The incident complained of was in March 2001. The last conviction was in August. This shows that even after his last conviction he had been dealing in illicit liquor for sometime.

Apart from this there are certain averments in his affidavit which corroborates the police version to some extent. The petitioner states that one person suddenly appeared from behind when he was at the edge of the forest. The 1st respondent states that he alone went in one direction while the other three officers took a different route when the raid was conducted. The petitioner states that as he feared for his life he fought with the stranger who demanded liquor.

The 1st respondent had not admitted that he was armed [the petitioner further states that when he reappeared from the forest he was caught by some people, and after he was assaulted, put into a jeep where there were two persons one of whom he knew as Piyadasa. The respondent states that after several raids and arresting three persons including Piyadasa they came to the petitioner's home for a search. In these circumstances it is possible to draw an inference that some incident had taken place near the

petitioners house, but both parties are suppressing certain material facts.

The petitioner's counsel states that the police have not filed a case in connection with the alleged raid upto the time of filing the fundamental rights case because there was no raid in fact.

At the stage of hearing, on a direction given by court the police produced a certified copy of the Magistrate's Court proceedings. It was revealed that the proceedings had been immediately initiated on the 27th March 2001. However the court record had been destroyed by a fire in the Magistrates court, and the record had to be reconstructed. Relevant documents were marked as 1R7. The court queried as to the failure on the part of the police to prosecute the petitioner in the Magistrates court with due diligence and for the reasons for the learned magistrate to have discharged the accused.

Learned counsel for the respondents pointed out that the petitioner had been discharged by the learned Magistrate on the very first day the petitioner was present in court viz. 11th December 2001. This was not a trial date but a day on which the preliminary evidence was to be recorded, in order to send the productions to the Government Analyst.

The reason for the discharge it appears was, that the prosecution had failed to be present that day. Mr. Peiris who appeared for the 1st respondent submitted that he is not in a position to explain the conduct of the prosecuting police officers in the Magistrate court of Matugama.

In the course of the argument it was observed that the original Information Book at paragraph 83 had indicated that there were five productions. That is 41, 42, 43, 44 and 45. The production register had erroneously referred to paragraph 82 whereas it should correctly be 83 as numbered in the Information Book. The 1st respondent conceded that it was a mistake and he had nothing to do with the maintaining of the said notes which had been done by other police officers. It is significant to note that in many cases filed against police officers relevant books are not maintained properly.

Learned counsel for the petitioner contended that the petitioner was a person who had been arrested several times previously. Therefore the petitioner would have no reason to resist arrest this time as alleged by the 1st respondent. It is safer to infer that the petitioner resisted arrest because there was only one police officer. He admits fighting with the "stranger" and biting him to escape his grip. The question for determination is whether the petitioner was assaulted in the manner described by the petitioner once he was arrested and brought to the police station.

At the argument stage the court queried as to how both hands of the petitioner were fractured. It was suggested that the petitioner fell on the rocky ground when he fought with the 1st respondent and that at that stage the left hand may have struck the ground in such a way that it sustained a fracture.

As stated earlier Sub-Inspector Kariyawasam admitted that it was he who gave a blow to the petitioner's right hand, for the purpose of preventing the petitioner from strangling the 1st respondent. The petitioner denies that he sustained any injuries at the time of his arrest and further contends that if SI Kariyawasam was the one who inflicted the injuries on him, he has no reason to shield Kariyawasam and implicate the 1st respondent.

The medical reports received in regard of the petitioner from the Nagoda and National Hospital Colombo prove the case of torture as set out by the petitioner. I'm unable to accept the police version that the petitioner sustained all the injuries complained of at the time of his arrest due to the resistance offered by the petitioner. In all the circumstances of the case it is prudent to infer that the petitioner had been subjected to torture by the police after his arrest. The police assault has rendered the petitioner an invalid. He needs assistance to lie down, to sit up, to be fed, helped with the toilet etc. in his day to day life.

Having carefully considered all the circumstances of this case I am of the view that the petitioner's Fundamental Right guaranteed under Article 11 and 13 (2) have been violated by state officers. I therefore issue a declaration to that effect. The State is responsible for the law. The law is made for the protection of all citizens rich and poor alike. It is therefore the duty of the State to make it's

machinery work alike for the rich and the poor. I direct the State to pay the petitioner rupees fifty thousand (Rs.50,000) as compensation. The petitioner is also entitled to rupees five thousand (Rs.5000) as the cost of this application.

FERNANDO, J. - I agree.

GUNASEKERA, J. - I agree.

Relief granted.