



Article 11
Article 13(1)

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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My No. }

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உமது இல. }
Your No. }

දිනය } 28/02/2018.
திகதி }
Date }

H.M.I.K Hemantha,
Unagaswewa,
Naagollagama.

Complainant

Complaint Number : HRC/2736/12

Vs.

1. Officer In Charge,
Police Station,
Mahawa.
2. Police Constable 35390
Samansiri, Police Station,
Mahawa.
3. Police Constable 22909
Abeyasinghe, Police Station,
Mahawa.
4. Police Constable 33635
Jayalath, Police Station,
Mahawa.
5. Police Sergeant 24771
Dharmadasa, Police Station,
Mahawa.

Respondents

The Complaint

The Complainant states as follows:

- On 26.06.2012 four police officers took the Complainant from near his home without recording any statement to the police station on a motorcycle.
- He was detained that night at the police station. He heard PC Samansiri telling the other officers that there was a bomb and drugs in his pocket.

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14, R. A. De Mel Mawatha, Colombo - 04.

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- He was then taken to a room and handcuffed to the bed. The next day, he was accused of having stolen the handbag and money of a passenger on the Trincomalee-Colombo night train.
- He was hung from his shoulders and beaten. They then took him down and PC Abeysinghe made him lie on the ground and stood on his knees and hit the soles of his feet. PC Samansiri also beat him. This process was repeated twice. He was then taken down and asked to walk. He was imprisoned in a room that night.
- When his family called on 27.06.2012, he was asked to inform them that he was not detained at the police station.
- The next morning on 28.06.2012 around 7.00 am he was taken to a canteen for food and officer Abeysinghe brought a woman and showed the Complainant to her. They left after some discussion.
- Around 10.00 am the two police officers gave the Complainant some cream to apply for the bruises and stated that they cannot release him since he had been beaten and this would cause a stir.
- On 28.06.2012 evening, Officer Samansiri put the Complainant in the police cell. On 29.06.2012 he was produced before the Mahawa Magistrate and later imprisoned.
- The Complainant participated in 2 identification parades but was not identified as the culprit. Further no stolen items were recovered from the Complainant.
- Since the Complainant was not identified as the culprit he was released on bail on 11.07.2012. He thereafter admitted himself to the hospital on 12.07.2012.
- He alleges that his Fundamental Rights under Article 11, 12 (1), 13 (1) and 13 (2) of the Constitution have been violated.

The Respondent's Reply

The Respondent's submissions state as follows:

- The submissions produced by the 1st Respondent states that they have no record of an arrest of H.M.I.K. Hemantha by 2nd, 3rd and 4th Respondent Officers on 26.06.2012.
- The station records only indicates that these officers left the station on 26.06.2012 at 9.20 a.m. for further investigation on Complaint no. 73/12 and arrived at 5.30 p.m. after having obtained information. Notes of what happened while these officers were out have not been recorded or have not been produced at this Commission.
- The subsequent report produced by the Respondents on 21.05.2017 state that Police Sergeant 24711 Dharmadasa (5th Respondent) arrested the Complainant on 28.06.2012 at 5.50 p.m.
- The suspect was arrested on a complaint made on 06.06.2012 by S.F. Sarifa Humma of Trincomalee of a theft of property valuing 308,000 Rupees.
- A long statement was recorded for the Complainant upon arrest. The Respondent's records show that the Complainant was produced before the Magistrate on the 29.06.2012.

- A case was subsequently filed against the Complainant (Mahawa MC case no. 82569) and since there was insufficient evidence against him he was freed of all charges on 11.11.2015.
- At the inquiry held on 03.09.2012 at the Commission Sub Inspector Ratnayaka who appeared for the Respondents stated that since he himself was away on training during this period, Police Sergeant 24711 Dharmadasa was left in charge.

JMO Report

- The Medical Report notes 6 non-grievous injuries caused by blunt weapons on the Complainant.
- The patient has 2 similar tramline contusions on both shoulders. Both are 1 cm wide and 6 to 8 cm long.
- Injury 3 is a contusion on the arm. Injuries 5 and 6 are contusions on the right knee. Injury 4 is an abrasion on the right wrist.
- The JMO is of the opinion that the injuries are compatible with the history of assault provided by the patient.

Observations

- Complaint number 73/12 referred to in the Respondent's submissions is the police complaint regarding the theft. This means that on 26.06.2012 the 2nd, 3rd and 4th Respondents did leave the police station for an investigation relating to this particular case.
- The Complainant claims that he was arrested on 26.06.2012 at around 8.00 pm. However, the reports show that the 2nd, 3rd and 4th Respondents returned to the station at 5.30 p.m.
- The copy of the police records produced by the Respondents for the arrest made on 28.06.2012 records that the suspect confessed to the crime and detailed how it was carried out.
- However, the Respondents submit that on 11.11.2015 the Complainant was freed of all charges by the Magistrate as there was insufficient evidence against the Complainant to convict him of the crime. In the circumstances, this seems contradictory.
- All evidence shows that the Complainant was produced before the Magistrate on 29.06.2012. Therefore the question lies in whether the Complainant was in custody for more than 24 hours and whether he was tortured during that period.
- The Complainant was referred to the JMO by the Officers of the Wariapola Prison. It must be highlighted that the Medical Report notes injuries on both shoulders which could have been a result of being hung. This seems to correspond with the details of torture presented by the Complainant.
- Thus, submissions presented by the Respondents are not strong enough to refute the claims made by the Complainant.

Conclusion


In view of the above circumstances, it is concluded that the Respondents **have violated** the Fundamental Rights of the Complainant guaranteed under Article 11 and 13 of the Constitution.

Recommendation

- a) In terms of the provisions in Section 15 (3) (a) of the HRC Act, the Commission hereby forwards this matter to the Inspector General of Police to take suitable action to institute proceedings against the persons infringing such Fundamental Right.
- b) In terms of the provisions in Section 15 (3) (c) of the HRC Act, the Commission recommends the Inspector General of Police to take suitable action to remedy the wrongful procedure that gave rise to the Fundamental Rights violation in this case.
- c) In terms of the provisions in Section 11 (g) of the HRC Act, the Commission recommends that the 2nd, 3rd and 5th Respondents pay compensation in the sum of Rs. 25000/ each, and the Sri Lanka Police pay a further Rs. 50,000/; totally a sum of Rs. 125,000/ to the Complainant.


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Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka


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Ghazali Hussain
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Copy- Inspector General of Police