Article 13 (1)
Article 13 (2)

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය / எனது இல. / My No.

ඔබේ අංකය / உமது இல. / Your No.

දිනය / திகதி / Date: 09-02-2018 ?

C. Dilaana,
92/2/9, Thelwala
Apartments, Thelwala Road,
Mount Lavinia.

-Complainant

Gamaralage Sampath
Chandana Thilakarathne
(husband of the Complainant)

-Party aggrieved

Complaint Number: **HRC/4500/14**

Vs.

Through the Police Legal
Division
Officer in Charge,
Police Station, Mount Lavinia.

Respondents

The Complaint

The Complainant states as follows:

- The Complainant's husband Gamaralage Sampath Chandana Thilakaratna was working at the Road Development Authority.
- On 15.11.2014 he was arrested by officers of the Mount Lavinia Police Station.
- The Complainant made complaints regarding this to the Mount Lavinia police on 16.11.2014 under CIB 169/275 and the officer there advised her to complain at the Galle Police Station as she last heard from him stating that he will get down from the bus at Galle. She complained at the Galle police under CIB 22/186.
- Three weeks before the incident, a group of officers arrived at the Complainant's residence armed and inquired about her husband. They threatened to kill her husband, if he did not produce himself.
- The Complainant's husband was kept at the Mount Lavinia Police Criminal Investigations Unit and on 19.11.2014; she was allowed to visit him. He stated that he had been hung by his fingers and feet and beaten. He had been also stamped on and kicked.

- He was produced before the Mount Lavinia Magistrate's Court and later taken to the Welikada Prison.
- He had been tortured and after having informed this to the Magistrate, he was taken to the Prison Hospital and later, the Colombo National Hospital.

The Respondent's Reply

The Respondents in their submissions state as follows:

- On 19.11.2014, officers of the Mount Lavinia Crimes Investigation Unit along with the OIC of Unit at the time went out to arrest G.S. Chandana Thilakaratna who was connected to underworld thugs.
- The suspect saw the officers on Sea Beach Road near the Ratmalana Police Station and attempted to run away. They pursued him and after a tussle were able take him into custody.
- He had with him a black bag that contained 5 Army Special Task Force shirts, 4 trousers of the same colour, 3 STF caps, 2 foreign made hand grenades, 20 5.6 hand grenades.
- This suspect was a main suspect in a shooting of a 25 year old with a T 56 firearm on 17.04.2014. He was arrested for aiding and abetting murder.
- During the investigations after his arrest, it was discovered that this suspect had also been involved in several other serious crimes.
- This suspect has been listed under no. 473303 at the Criminal Reports Division as having received punishments under Sections 382 and 314 of the Penal Code.
- 3 police teams are conducting investigations and have been reporting to the Court on the crimes this suspect is connected to.
- They reject allegations of torture.

Medical report

- The Jailor of the Welikada Prison states that on 21.11.2014 when the suspect G.S. Thilakaratne was brought to the prison he had made a statement to jailor, Thanuja Pradeep Kumara, that he was tortured by the Mount Lavinia Police.
- The suspect had stated that he did not wish to take legal action against the officers but wanted medical treatment.
- The suspect was not admitted to the Prison Hospital but was treated at the prison.
- The diagnosis tickets do not indicate any injuries on the suspect.

Observations

- The Complainant claimed that her husband was arrested on 15.11.2014, while the police claimed that they arrested him on the 19.11.2014.
- However, it is observed that the Complainant had made the complaint to the Human Rights Commission regarding this arrest on 17.11.2014, two days prior to the date claimed by the police.

- This demonstrates that the notes claiming to have arrested the suspect on 19.11.2014 are false.
- The Respondents are likely to have noted the date of arrest as the 19th since the suspect was produced before the Magistrate only on 20.11.2014. Therefore if it were not for the complaint at the Human Rights Commission, any means of proving the date of arrest may have been lost.
- It is therefore apparent that by 17.11.2014 the suspect had been arrested. This means that the Complainant's husband had been kept in custody for more than 24 hours before being produced before the Magistrate. This is a clear violation of his personal liberty, as per the provision of Section 37 of the Criminal Procedure Code.
- The medical reports provided by the Jailor is inconclusive as it is difficult to discern signs of torture. Although the Complainant claims that there had been a JMO examination these details could not be obtained.

Conclusion

In view of the above circumstances, it is hereby concluded that the Respondents **have violated** the Fundamental Rights of the Complainant guaranteed under Article 13(1) and 13 (2) of the Constitution.

Recommendation

As per the conclusion/s above, the Commission makes the following recommendations.

- In terms of the provisions in Section 15 (3) (c) of the HRC Act, the Commission hereby recommends the Inspector General of Police to investigate the matter and take suitable action to remedy the wrongful procedure that gave rise to the Fundamental Rights violation in this case and to take appropriate action against the Respondent responsible for this violation.
- In terms of the provisions in section 11 (g) of the HRC Act, the Commission recommends that the Sri Lanka Police pay a sum of Rs.50,000 as Compensation to the Party aggrieved.

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Saliya Pieris PC,
Commissioner
Human Rights Commission of Sri Lanka

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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka

Copy to- 1. Inspector General of Police