



Article 11

Article 13(1)

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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எனது இல. }
My No. }

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உமது இல. }
Your No. }

දිනය } 26 - 02 - 2018
திகதி }
Date }

1. K.K.D.D. Perera,
No. 178, Delgahawatta Road,
Mulleriyawa New Town.

Complainant

Complaint Number : HRC/2174/14

Vs.

Through the Police Legal
Division

1. Assistant Superintendent of
Police, Office of the Assistant
Superintendent of Police,
Dompe.
2. Inspector S.G.M. Ranathunga,
Officer in Charge, Police
Station, Dompe.
3. Police Sergeant 26871
Guruge, Police Station,
Dompe.

Respondents

The Complaint

The Complainant states as follows:

- On 19.05.2014 the Complainant made a complaint to the Dompe Police (under complaint number CIB I/335/260/19-05-2014) regarding a dispute with one Sugath Edirisinghe. Sugath had scolded and threatened him, banged on his back door and damaged it.
- On 23.05.2014 the Complainant was summoned to the Police for an inquiry. However the inquiry was conducted on a subsequent complaint made by Sugath.
- Sugath had complained that the Complainant had taken his tools in 2012 when he worked at the Complainant's house and not returning them.
- Inspector Perera conducted the inquiry and the Complainant was referred to the OIC of the police station. The Complainant was ridiculed at the police station because he is a retired sergeant.

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14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.
14, R. A. De Mel Mawatha, Colombo - 04.

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- The OIC instructed sergeant 26871 Guruge to search the Complainant's house and find at least a screwdriver.
- Sergeant Guruge, the Complainant and Sugath travelled to the Complainant's house by a three wheeler. Sugath's friends followed in the three-wheeler behind.
- At the Complainant's house the Complainant showed the officer the damaged door. He ignored it. The officer and Sugath did not find any tools in the house.
- When they returned to the three-wheeler the Complainant noticed a package. He was not shown its contents.
- He was arrested at the police station and kept in police custody till he was produced before the Pugoda acting Magistrate on 24.05.2014.
- The Complainant made a complaint regarding the matter to the Assistant Superintendent of Police and an inquiry was held by ASP II K.A.J. Kodithuwakku. There, the Complainant was requested to withdraw his complaint against Inspector Perera. The Complainant agreed. The ASP proposed the Complainant and Sugath to settle their dispute and withdraw their complaints against each other.
- The Complainant wishes to pursue his complaint before this Commission against the 2nd and 3rd Respondents for the harassment and wrongful procedure they adopted.

The Respondent's Reply

The Respondents in their submissions state as follows.

- On 23.05.2014 the Complainant and Sugath Edirisinghe were summoned for an inquiry at the Police Station on the complaints made by both these parties.
- Statements from both parties were recorded that day by officer 55384 Rohana.
- Later, the parties met the Officer in Charge of the station who ordered a search of the Complainant's property with his consent.
- On the consent of the Complainant, the 3rd Respondent and the two parties went to the Complainant's house. They searched his house in address 89/4, Morahena, Lower Mapitigama, Malwana and took into custody a saw, wire cord, hammer, tape and grill pins found on the property.
- The OIC advised the Complainant to return the rest of the tools or he will have to be arrested for use of stolen property and criminal breach of trust.
- The Complainant was arrested around 6.10 pm that day, produced before the Pugoda Magistrate on 24.05.2014 under case number B 99564/14 and was released on bail.

Observations

- According to the IB entries that have been presented at this Commission it seems that the Complainant's statement was only recorded on 25.05.2014. This suggests that the inquiry on 23.05.2014 was not held properly.
- Further, they were not able to prove that the tools produced were found at the Complainant's premises and those were the tools involved in this dispute.

- On 07.12.2015 at the inquiry held at the Commission the Gampaha ASP III Lasiran Assan asked the Complainant to appear at the Dompe police station on 09.12.2015. By a letter, dated **08.12.2015** to the Commission however, the ASP states that at the inquiry held on **09.12.2015** at the Dompe police station it was found that there is no evidence to support the Complainant's claim against the Respondents and that the Complainant refused to come to a settlement.
- It is curious that the ASP should address a letter to this Commission dated **a day prior** to what its contents explain. Moreover this letter has been received by this Commission by the 11.12.2015. Clearly, there was some eagerness to communicate its contents to this Commission. Hence, this cannot be accepted as a comprehensive report of the situation and exposes some doubt regarding the Respondents' case.
- The evidence presented before this Commission shows that the Respondents have been biased in conducting their investigations and therefore disadvantaged the Complainant.

Conclusion

In the above circumstances it is concluded that the 2nd and 3rd Respondents have violated the **Fundamental Rights** of the Complainant guaranteed under **Article 11 and 13 (1)** of the Constitution.

Recommendation

- a) In terms of the provisions in section 15 (3) (c) of the HRC Act, it is recommended that this matter be referred to 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.
- b) In terms of the provisions in section 11 (g) of the HRC Act, the Commission recommends that the Respondents pay the Complainant a sum of Rs. 5000/- as costs incurred by them for the complaint made.


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Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka

Commissioner

Human Rights Commission of Sri Lanka

No. 14, R.A. De Mel Mawatha,
Colombo 04.

Copy to Inspector General of Police


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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka

Commissioner

Human Rights Commission

No. 14, R.A. De Mel Mawatha

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