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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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எனது இல.
My No. }

ඔබේ අංකය
உமது இல.
Your No. }

දිනය
திகதி
Date } 2-1-2018

Complaint Number: **HRC/660/13**

1. A.G.U.P. Kumari
Elagawa Lokumahattayalage Gedara,
Heendalu Inna,
Palukatuwa,
Embilipitiya

Complainant

vs.

1. Head Quarters Inspector of Police (HH)
Police Station,
Embilipitiya
2. WPS 3329 Seetha Ranjani
Police Station,
Embilipitiya
3. S.I. Peter
Police Station,
Embilipitiya

Respondents

A. THE COMPLAINT

1. This Complaint was received by the Commission on 19.02.2013.
2. At the time of the Complaint, the Complainant was a 21-year-old mother of a child. She was unemployed and a homemaker. The following narrative is according to the Complaint sent by her to the Commission.

නො 14, අර්.ජ.ද මැල් මාවත, කොළඹ 08.
இல. 14, ஆர்.ஜ.டி. மெல் மாவத்தை கோழம்பு - 08

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Head Office
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165, කිංසි රෝඩ්, කොළඹ - 08.
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Chairman
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3. On 21.10.2012 around 09.00 am, the Complainant was physically assaulted by her husband, W.P. Nishantha Kumara, while she, her husband and their 7½ months old daughter were travelling home on their motorcycle. He had parked the motorcycle, assaulted her, manhandled their baby, and left them both on the street and ridden away. On the same day, the Complainant lodged a complaint of the incident at the Embilipitiya Police Station, under **CIB (3), Page 94/Para 288**.
4. When her complaint was examined the next day, on 22.10.2012, the officer had questioned her about the incident, but not her husband. The officer had further advised her to "forget about the incident and go back home with your husband." When the Complainant insisted this was not the first time she had been assaulted, the officer had turned testy, and had urged her again "not to take these things so seriously; the child needs a father; go home with your husband."
5. The Complainant had been referred to the women's division of the Station. There, after making further queries with the Complainant, an officer had made records in an information book. According to the Complainant, the recorded information had distorted the previous day's events, and omitted her husband's assaults on her. No questions were asked from the husband. They were then advised to appear at the Station on 05.11.2012.
6. On 26.10.2012, the Complainant found a note slipped under the door of her home, requiring her to appear at the Police Station on 30.10.2012. The note was signed by the 2nd Respondent.
7. When the Complainant arrived at the Station as advised, the 2nd Respondent had threatened her and insulted her, insisting that she return home with her husband. The Complainant had maintained that returning with her husband could result in harm to her. At this point, her husband had tapped the 2nd Respondent on the back and muttered in her ear, "If I take this woman home, I might poison her to death before long."
8. When the Complainant's step-father was recording a statement with an officer (W.P.C. 1571 Shakila), the Complainant's husband had assaulted both the step-father and the Complainant's mother in the presence of the said officer. The 2nd Respondent had also been present. Neither of them had taken any steps regarding the assaults.
9. Once statements were recorded and a report was drafted, the 2nd Respondent had accompanied them all to the Embilipitiya Magistrate's Court. In court, the Complainant discovered that both she and her step-father had been named as defendants in a domestic abuse dispute, according to a report presented to court by the 2nd Respondent, under case number 79046/12. Both the Complainant and her stepfather were released on bail. The court case against them is pending. The Complainant has, since then, filed her own complaint against her husband under the Prevention of Domestic Violence Act, as well as a maintenance action.
10. Further to the incident described above, the Complainant has also informed the Commission of previous instances of abuse by her husband she had reported to the Respondent Station:
 - On 22.11.2011, she had complained regarding an assault under **CIB (2), Page 129/Para 266**. She was 05 months pregnant with their daughter at the time.
 - On 03.02.2012, she had complained again to the police regarding a second assault under **CIB (4)**,

Page 273/Para 88. She was eight months pregnant at the time.

B. THE INQUIRY

11. The Commission received a report by Headquarters' Chief Inspector of Police, Embilipitiya Police Station, in response to the instant Complaint, on 01.04.2013.

12. According to the police report, the complaint made by the Complainant at the Station on 21.10.2012 (see para 3, above) was examined, and both parties were mediated and reconciled.

13. However, the records of said examination (MCR [3] 127/309, made available to the Commission) indicates that the examining officer

- explicitly recognised the complaint as a "family dispute"
- explicitly recognised the complaint as falling within the ambit of "Prevention of Domestic Violence Act"
- noted that the Complainant had recalled previous complaints made to the police of the abuse caused by the same defendant (her husband)
- makes an ambiguous reference to producing the parties before the court on 24.10.2012
- states that "both parties were advised", and that "the defendant was strongly advised"

14. However, the record does not indicate any verification of the substance of the complaint made by the Complainant (i.e. whether her husband had assaulted her, man-handled their baby, or left her in a public street).

15. Furthermore, according to the report, on 29.10.2012, the Complainant's *husband* had complained to Embilipitiya Police about interference in his domestic affairs by his wife's step-father and mother, and further requested the Police to order the step-father to refrain from visiting and interfering in their home. W.P.S. 3329 Seetha recorded this complaint under **MCR (4) 290/327**.

16. The very next day, i.e. 30.10.2012, the Complainant and her step-father were summoned to the Station as defendants; the Complainant's husband was present as the Complainant. The 2nd Respondent, who examined the complaint, recorded steps to be taken under s.2 (1) (a) of the Prevention of Domestic Violence Act, No. 34 of 2005 (hereinafter, PDVA), against the step-father and the Complainant. In doing so, she emphasised the step-father's marital status to the Complainant's mother, the age of the child born between the Complainant and her husband, as well as an alleged assault by the step-father on the Complainant's husband at the Station.

17. A statement recorded by the step-father (MCR [4] 307/341) under the complaint made by the husband indicates that he had raised the Complainant from the time she was two months old, with her biological mother, with whom he had been cohabiting. He explains in his statement that his step-daughter was at his home because her husband had assaulted her and deserted her in a public street, as well as because of the history of previous assaults, both physical and verbal. A statement recorded by the Complainant confirms the above claims. In addition, her statement indicates that the history of abuse had persisted despite previous mediatory interventions by the police.

18. The same day (30.10.2012), the 2nd Respondent produced the Complainant and her step-father before the Embilipitiya Magistrate as co-defendants in a domestic violence case in which the Complainant's husband was named as the aggrieved person. The Magistrate, under case number 79046/12, issued an Interim Order prohibiting the defendants from committing any of domestic violence against the husband. The defendants were released on bail with a hearing scheduled for a later date.

19. As regards the previous complaints of domestic violence made by the Complainant to the Embilipitiya Police, police records made available to the Commission indicate that, on both occasions, the Complainant's husband had admitted to the commission of assaults. As regards the first such complaint, records indicate that the police mediated reconciliation between the parties. As regards the second such complaint, though records indicate that the husband was arrested, no records of any further steps taken about him are mentioned. When this was questioned at the Inquiry held on 28.04.2014, Respondent has admitted that no records exist of any steps taken after the arrest.

C. OBSERVATIONS

20. As regards the instant Complaint, there appears to have been sufficient information of an offence, considering the very public context in which the offence took place, the number of individuals directly involved in assisting the Complainant after the incident, the perpetrator's own admitted history of abuse against the Complainant, and the testimony of the Complainant's own family members. Though police officers are not bound to enter on an investigation where there is no sufficient ground to do so, in the instant Complaint, there appears no reason to doubt the victim's complaint as meriting an investigation, especially given its consistency with records of past offences available to the police independently of the complaint (records in which the accused had admitted to similar offences against the same victim). Accordingly, the failure of the police to adequately investigate the incident and forward the suspect before the Magistrate's Court deprived the Complainant of her entitlement to the equal protection of the law.

21. It is evident, based on the Commission's Inquiry, that the marital relationship between the Complainant and the accused, as well as the parental relationship between the Complainant's daughter and the accused, played a significant role in the Respondents' choice to mediate the dispute instead of prosecuting. However, the protection against hurt, grievous hurt, criminal force etc., is an entitlement of all Sri Lankans equally under Chapter XVI of the Penal Code. Thus, treating those offences differently when committed by a spouse runs the risk of discrimination against victimised parties by virtue of their relationship to the offender.

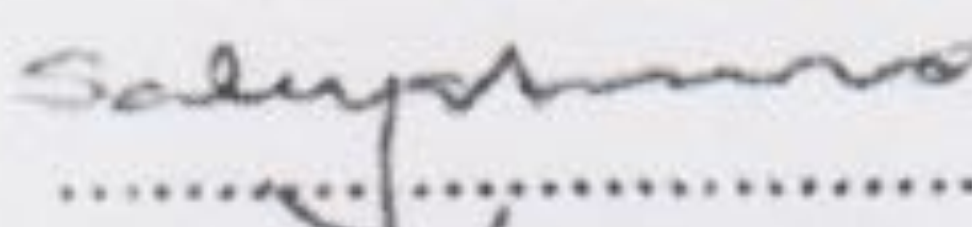
D. CONCLUSION

22. Based on the foregoing, it is concluded that the Complaint discloses violations of her Fundamental Rights under Chapter III of the Constitution by the Respondents, namely:

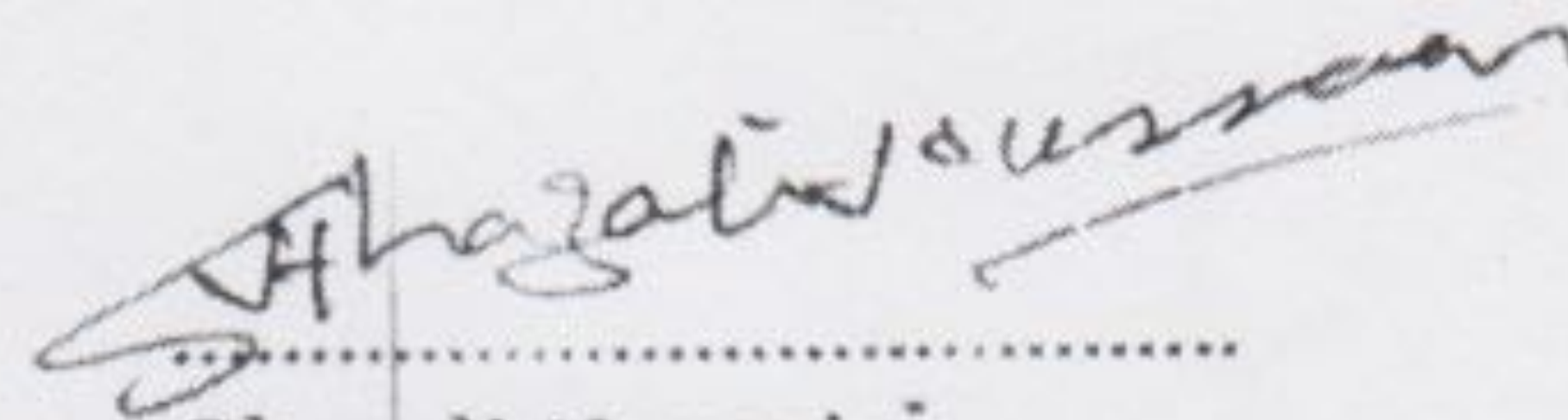
- her entitlement to the *equal protection of the law* under **Article 12(1)**, and
- her right to be free of *discrimination based on her sex* under **Article 12(2)**

E. RECOMMENDATION

- A) The recommendation report of this case is hereby forwarded to the Inspector-General of Police for appropriate action under the law to be taken to remedy the failure of the Embilipitiya Police to investigate and prosecute the previous complaints of domestic violence made by the Complainant.
- B) The Respondents are hereby directed to take appropriate action immediately as per the provisions of the Prevention of Domestic Violence Act, No. 34 of 2005 by making an application to the Magistrate's Court for a Protection Order, for the prevention of such acts of domestic violence on the Complainant by her husband and report the Commission about such action taken on/ before 28th February 2018.


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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- 1. Inspector General of Police