Article 11

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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 : 26-2-2018

P.S. Perera,
No. 54/60/1, 4th Lane, Hirana,
Panadura.

Complainant

Vs.

Through the Police Legal Division

1. Officer in Charge, Police Station, Panadura.
2. Police Inspector M.H.M. Mubarak, Police Station, Nawalapitiya.
3. Police Sergeant Ruwan, Police Station, Mirihana.

Respondents

Complaint Number : **HRC/2682/14**

The Complaint

The Complainant states as follows:

- On 05.07.2014 around 12 midnight, two police officers came to the Complainant's house and took him in a three-wheeler to the police station stating that they need to record a statement from him.
- They went in a different direction from the Panadura Police Station. The officers bought him some tea from a shop and later blind folded the Complainant.
- He was taken by his shirt collar to a room, and he was asked to whether he would give the goods. He inquired as to what they were referring to. They stated that he knows who takes the cattle. The Complainant stated that he did not know.
- The Complainant was asked the same question thrice and he denied it all three times.
- Then the Complainant was slapped on his face and he fell down as a result. When he got up he was slapped again. He was then taken to a different room.
- There he was slapped again 4 times and the blind fold was taken off.

- The Complainant realized that he was slapped by Officer Mubarak of the Panadura Police and he had been brought to the Mirihana Police Station.
- He was then handcuffed and made to sit on the floor. Then a plastic bag with petrol in it was held over the Complainant's face till he could not breathe.
- His handcuffs were removed and he was made to cross his arms over his head and was handcuffed again. He was then hung on a pole with the handcuffs between a box and the door.
- He was beaten on the soles of his feet with a pole. A call came to Officer Mabarak's phone. The Complainant heard him stating that he tortured as much as possible but no information could be obtained.
- The Complainant was then put on the ground and handcuffed with his hands between his knees. The officer then stood on top of the complainant's legs and beat the soles of his feet around 20 times.
- Afterwards he was asked to get up and jump. He was asked to raise his hands up and down. His leg was then handcuffed to the table and he was asked to sleep there for the night.
- In the morning, the Complainant and five others were taken to the canteen and given a fish bun and a tea.
- Later in the morning the Officer Mubarak asked the Complainant to inform his grand uncle to come to the station to take him home.
- He threatened to be arrested by planting drugs, if he complained regarding the incident or went to the hospital.
- On 07.07.2014 he admitted himself to the Panadura hospital and he had stated that he was torture by Officer Mubarak. A statement was recorded from him by the hospital police. He was examined by the JMO on 08.07.2014. Around 11.00 am on that day, a statement was recorded from him by the Panadura Police Intelligence Unit.

The Respondent's Reply

The 2nd Respondent at inquiry held at this Commission on 24.03.2015 state as follows.

- That they received information that the Complainant was involved in a cattle robbery.
- Upon receiving this information the 2nd Respondent contacted the Complainant's grandfather and asked that the Complainant be brought to the police station.
- On 05.07.2014 night, the Complainant was brought to the station and a statement was recorded.
- The Complainant was released after having his statement recorded.
- There was insufficient evidence against him to arrest the Complainant.
- He rejected the allegations of torture.

No other substantive evidence has been produced by any of the Respondents. Although the 1st Respondent undertook on 05.12.2014 to provide a report regarding the matter no report was received.

The JMO Report

- The Complainant was examined by the Assistant Judicial Medical Officer of the Panadura Base Hospital on 07.07.2014.
- The report notes three non-grievous injuries caused by blunt weapons.

- Injury 1 is an abrasion on the right wrist while injury 2 is an injury on the left wrist.
- Injury 3 is a right tender heel.
- The AJMO is of the opinion that the injuries are compatible with the history of the patient.

Observations

- The Respondents do not seem to be interested in presenting evidence to counter the Complainant's case.
- The torture that is described by the Complainant is of a particular kind. It seems that the Respondents have gone out of their way to prevent any visible injuries on the Complainant.
- The only trace of evidence available are the injuries on the Complainant's wrists indicative of handcuffs and the injury on the heel which is in the area the beating occurred.
- The 2nd Respondent admits that there was insufficient evidence against the Complainant to arrest him. Therefore, there was only a vague suspicion against the Complainant.
- The affidavits provided by the Complainant's granduncle states that Officer Mubarak told him that he slapped the Complainant. There is admission here then regarding physical contact.
- The absence of any evidence contrary to the Complainant's case and the evidence in the JMO report proves that severe torture occurred in this instance.

Conclusion

In the above circumstances, it is concluded that the 2nd Respondent has **violated** the Fundamental Rights of the Complainant guaranteed under **Article 11** of the Constitution.

Recommendation

a) In terms of the provisions in section 15 (3) (a) of the HRC Act the recommendation report of this case is hereby sent to the Inspector General of Police to investigate into the matter and 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 that the Inspector General of Police 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 hereby recommends that the Sri Lanka Police pay the Complainant a sum of Rs. 10,000 as compensation.

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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

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.

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Copy- Inspector General of Police