



11, 13(1), 13(2)

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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My No. }

ඔබේ අංකය
உமது இல. }
Your No. }

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திகதி } 15 - 03 - 2021
Date }

Mr. S.M. Ishaq and Others
No: 136/09, Central Camp – 09.
Complainant/s

HRCSL Application Case No: HRC/KL/84/17

Vs.

1. Mr. A.M.M. Najeeb – OIC
Police Station-Chawalakadai.
2. Mr. M.A. Faseel
PS – 24908
Police Station-Chawalakadai.
3. Mr. H.W.R. Dharshana (SI)
Police Station-Chawalakadai.
4. Mr. R.K.G.T.S. Thusara
PC – 66116
Police Station-Chawalakadai.

Respondents

A brief synopsis of the complaint/Documentary Evidence submitted by the complainant/s

- The above complainer Mr. S.M. Ishaq lodged a complaint at this office on 17th April 2017.
- The above plaintiff stated that his relatives namely as Mr. J.M. Farhan, Mr. M.B. Abdul Munas, Mr. Meera Mohaideen Fayas, Mr. A.S. Ismail Harris and Mr. Mohammed Ibrahim Abdul Razak, they were engaged in rabbit hunting on 15th April 2017 at 03.00 p.m., and they returned on the same at 05.00 p.m.

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Head Office
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தொலைபேசி
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14, ආර්. ඒ. ද මෙල් මාවත, කොළඹ - 04.
14, ஆர். ஏ. த. மெல் மாவத்தை, கொழும்பு - 04.
14, R. A. De Mel Mawatha, Colombo - 04.

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தவிசாளர்
Chairperson

011-2505451

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செயலாளர்
Secretary

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- A few police officers hail from Chawalakadai Police Station searched at Mr. Fayas' residence and inquired his wife about him, since his arrivals he has immediately been arrested without any reasons being given and brought to the police station on 15th April 2017.
- At the Police Station, he was accused of a charge of possession of robbery of sum Rs. 480000.00. He has categorically been denied the charges and they interrogated the rest of his four relatives and etc.
- On 15th April 2017, the rest of three except Mr. Mohideen Bawa Abdul Munas (on 16th April 2017) went to the Police Station and they were arrested on the charge of theft since they had severely been tortured and brutally assaulted for denying the charges at the station.
- The petitioner has tendered several affidavits in support of his averments.

Intervention by the Regional Office:

- Received a complaint on 17th April 2017, is being submitted by Mr. S.M. Ishaq and others at No: 04, 136/09, Central Camp – 01. The complaint is consisted by the Affidavits of Justice of Peace and 02 Jumma Mosque and along with the signatures of the villagers.
- Statement recorded from Mr. Mohaideen Bawa Abdul Munas at Base Hospital, Kalmunai North on 18th April 2017.
- Statement recorded from the rest of the 04 petitioners at this office on 19th April 2017.
- The 2nd petitioner Mr. J.M. Farhan informed to the office on 20th April 2017 that he has been admitted for a medical treatemnet at Ashraff Memorial Hospital, ward No – 08 on the same date.
- The 3rd petitioner Mr. Ismail Haris informed to the office on 19th April 2017 that he has been admitted for a medical treatment at Base Hospital Kalmunai, Ward No: 01 on the same date.
- Report calling done on 20th April 2017 and a report submitted by the respective OIC on 03rd May 2017 and from ASP – Kalmunai on 19th August 2017.
- Inquiry held on 03rd May 2017 at 10.00 a.m.

A brief summary of the statement at the inquiry held on 03rd May 2017 at 10.00 a.m.

- 1. Mohaideen Bawa Mohammed Munas, married, age of 43, resides at Chawalakadai – 5/51**
 - While he was under gone a medical treatment at Base Hospital, Kalmunai, and the Regional Office recorded his statement on 18th April 2017 at 11.00 a.m. He stated that he was brought to the Chawalakadai Police Station on 16th April 2017 at 8.00 a.m. by three Police personals.

- They arrested him on a charge of a fabricated hoax and false information, four Police Officers at the police station had severely been tortured for denying the charge.
- They removed his shirts and tied petitioner's hands and legs by other clothes and was hung him on a table and assaulted by a (cricket) wicket. The beaten continued till morning 08.00 a.m. to evening 06.00 p.m. on and off. They assaulted him by cricket wicket on bilateral foot, right calf, by hand on the back of the left ear and right ear, kick over the mid of the chest.
- He had screamed in earnest and pleaded them to stop the beaten. Later in the night, they had been brought to the Central Camp Government Dispensary and then, transferred to Kalmunai North Base Hospital for further treatment since he could not walk due to torture.
- They wanted to file a fabricated charge against him even though they did not find any evidence against him and, failed to recover any robberies under his possession.
- He has been arrested on 16th April 2017 and his arrest registered in DR on 17th April 2017, it is a clear evidence of illegal arrest and detention (annexed a copy of DR).

II.

- a) Meera Mohaideen Fayas, Age of 28 at No: 5/77 Chawalakadai
- b) Mohideen Ibrahim Abdul Razak , Age of 42 at 4/130 Central Camp
- c) Jowfer Mohammed Farhan, Age of 23 at 4/136, Central Camp
- d) Abdul Sathar Ismail Haris, Age of 18 at 4/136, Central Camp
 - The Regional office recorded their statements on 19th April 2017 and 3rd May 2017.
 - They arrested them on 15th April 2017 on a charge of robberies since they were in the police custody, the Officer-in-Charge at the police station inquired them. They kept in the police custody for two nights and, on 17th April 2017, they were produced at Kalmunai Magistrate.
 - They were abused in obscene languages by the police officers and kept them handcuffed and tied with tables. During the police custody, they were beaten with wooden sticks and cricket wickets. The alleged police officers gave thundering slaps of both ears when they refused the fabricated allegations. They assaulted them on bilateral foot, right calf, by hand on the back of the left ear and right ear.
 - They further reiterated that Mr. A.M. Munas hung upside in a table and beaten by cricket wicket and brooms sticks.
 - They pleaded them to stop the beating. Later in the night, they brought to the Central Camp Government Dispensary for the medical treatments. Due to continuous torture they caused to excruciating pain.
 - Mr. J. Farhan admitted at Ashraff Memorial Hospital for a medical treatment on 20th April 2017 (annexed a copy of the medical report)

Statement by the respondents:

1. Mr. A.M.H. Najeeb – OIC at Chawalakadai Police Station
 - He stated at the inquiry that he has given an instruction to the rest of the three police officers to conduct an inquiry based on the complaint reported by Mr. A.H.M. Nowzath at No: 5/57, Chawalakadai in case of robbery of sum 480000.00 possession of him. He was attending a meeting in outside at the time of reporting this complaint.
 - He made seen visit on 16th April 2017 at 5.15 a.m., then he instructed his officers to accelerate the investigation.
 - For an investigation purpose, they arrested them and recorded their statements, later on his requests; they send them for medical checkup at Central Camp Government Dispensary, since Mr. A.M. Munas admitted at Kalmunai North Hospital due to his illness.
 - They produced them at Kalmunai Magistrate on 17th April 2017 and released on bails on 19th April 2017.
 - He categorically denied the allegation made against him.

2. Statements of the other three respondents :
 - They stated that they conducted an inquiry on an instruction given by OIC of Chawalakadai.
 - They arrest them on an allegation of the compliant in case of robbery of sum 480000.
 - They further stated that they did not engage in any of violence against the petitioners.

The JMO Reports

1. **Victim : Mr. Jowfer Mohammed Farhan**
 - He was examined by the Judicial Medical Officer at Ashraff Memorial Hospital on 21st April 2017.
 - The report notes four non grievous injuries as
 - 0.1 x 4cm abrasion over left upper half of chest mid point was 15cm above and 1cm height to the left nipple.
 - 0.1 x 10cm abrasion over left upper half of chest mid point was 16cm above and 2.5cm right to the left nipple.
 - 0.1 x 1cm abrasion over left upper half of chest mid point was 17cm above and 2.5cm right to the left nipple.
 - 0.1 x 0.1 multiple (twenty in number) healed abrasions over the outer aspect of right arm. Mid point was 14cm above and 5cm right to the right elbow joint.

2. Victim : Mr. Mohaideen Bawa Abdul Munas

- He was examined by the Judicial Medical officer at Base Hospital Batticaloa on 19th April 2017.
- The report notes that he had non grievous injuries as "Contusion around 4cm x 5 cm in size over the back of the hip area towards right side".

3. Victim : Abdul Sathar Ismail Haris

- He was examined by the Medical Officer at Divisional Hospital Central Camp on 16th April 2017.
- There was mild soft tissue swelling and tenderness over the left side of the face involving cheek and zygoma.
- There were no external injuries on the body.

4. Victim : Meera Mohaideen Fayas

- He was examined by the Medical Officer at Divisional Hospital Central Camp on 16th April 2017.
- There were no external injuries over the body and no soft tissues tender swollen areas of the body.
- No evidence of bone fractures.

5. Victim : Mohammed Ibrahim Razak

- He was examined by the Medical Officer at Divisional Hospital Central Camp on 16th April 2017
- There were no external injuries over the body and no soft tissues tender swollen areas of the body
- No evidence of bone fractures

Observation / Sub recommendation :

- I. The respondents do not seem to be interested in presenting evidence to counter the complaint's case and the evidence in the JMO report proves that severe torture occurred and etc.
- II. They had been arrested on 16th April 2017 and their arrest registered in DR on 17th April 2017. It is a clear evidence of ill – legal arrest and detention.
- III. An investigation reveals the petitioners held in inhuman and degrading treatment established in the custody in the confines of the police station and in the privacy of a speculated cell in the course of and for the purpose of an investigation. The respondent did not become function after taking the petitioner into custody. They were even under gone physical and mental ill – treatment.
- IV. The 1st respondent as the Officer-in-Charge (OIC) at the Police Station as the police officer endowed with coercive power was carrying out his official duty in keeping the petitioners in his custody until the petitioner was produced before the

magistrate. He failed to maintain law and order in the confines of the police station.


- V. The respondents deprived personal liberty and freedom of the petitioners while they were in custody at the police station since it further avers they infringed and abused the fundamental rights guaranteed to the petitioner by Article 11 of the constitution, namely freedom from torture, where an officer of a state, in the exercise of the authority, which they clothed with, use the power to do a wrong forbidden by the constitution.
- VI. Article 11 of the constitution mandates that “no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The fundamental nature of the human right of freedom from torture is emphasized by the fact that no derogation is permitted from this right under any condition. It means, it is an absolute fundamental rights subject to no restrictions since the respondents severely violated the article and tortured and held them in degrading and ill treatment under their custody is a punishable offence and the regional office proposes the respondents to pay the complainant/s a suitable sum as compensation and etc.

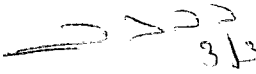
Conclusion

Therefore, it is hereby concluded the respondents have violated the fundamental rights of the complainants guaranteed by the Article 11 and 13(1) & 13(2) of the Constitution.

In terms of the provisions in Section 15 of the HRC Act, the respondent is requested to submit a report regarding the implementation of the recommendations to the Commission on or before 15.03.2021.

Further, the complainant is requested to notify the Commission concerning the implementation or non-implementation of the recommendation by the respondent within a week from the above date and the complainant is hereby informed that no request/notice should be taken into consideration thereafter.


Anushuya Shanmuganadan
Commissioner
Human Rights Commission of Sri Lanka.


M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka.

Ms. Anusuya Shanmuganathan
Commissioner
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Dr. M.H. Nimal Karunasiri
Commissioner
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