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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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My No. }

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உமது இல. }
Your No. }

දිනය } 2021-03-13
திகதி }
Date }

1. W.D.M.G.A. Wijesundara
2. S.C. Annathugoda
44/1, C Green Cottage
Palle Weragama
Kaikawala.

Complainant/s

HRCSL Application Case No:

HRC/1943/13 + 1942/141-16 +

K/171/13

Vs.

1. Police Inspector Sanjeewa
5068/13
2. Chief Inspector Hapugoda
3. Police Sergeant Mendis
4. Police Constable Menaka
Matara Crime Division
5. Police Constable 17865
S. Abeywardena

Thihagoda Police Station
Via Police Headquarters
Colombo 01.

Respondent/s

In case No. HRC/1943/14, the Complainant states as follows

1. The Complainant was detained at the Thihagoda Police Station for a period of 90 days, following a detention order.
2. On 04.12.2013, the 1st Respondent had assaulted the Complainant at the said Thihagoda Police Station.

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பிரதான அலுவலகம்
Head Office

14, අර්. ඒ. ජ මෙල් මාවත, කොළඹ - 04.
14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.
14, R. A. De Mel Mawatha, Colombo - 04.

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தொலைபேசி

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தவிசாளர்
Chairperson

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In a letter dated 08.05.2014 the Complainant states that (Marked A1)

1. He, together with eight other suspects were remanded at the Thihagoda Police Station for a 90 days period, owing to a detention order given on 08.09.2013.
2. In the early hours of 04.12.2013 owing to the number of mosquitos in the in the room, the Complainant had asked the officer on duty namely P.C Abeywardena (5th Respondent) to move the Mosquito coil (which was purchased by the suspect(s) closer to the Complainant's holding cell.
3. The Complainant further states that the said officer had thereafter kicked the coil towards them and the Complainant had gone to sleep thereafter.
4. The following morning, the 1st Respondent had come to the Complainants cell and used profanity on him. The 1st respondent had also subjected the Complainant to humiliation. When the Complainant had attempted to explain himself to the 1st Respondent, the 1st Respondent had put his right hand through the cell bars and attempted to slap the Complainant. He had however not succeeded in his attempt. Thereafter the 1st Respondent had clenched his fists and punched the Complainant on the left side of his chest several times.
5. The Complainant further states that he had sustained several lacerations on the left side of chest owing to this.
6. The 1st Respondent had thereafter kicked his hands, whilst he (the Complainant) was holding the cell bars. The 1st Respondent was wearing sports shoes at the time. At this instance, the Complainant had immediately moved his hands away from the cell bars. Nevertheless, he had sustained injuries to his middle finger and index finger on his right hand.
7. The 1st Respondent had thereafter ordered an officer on duty to open the Complainant's cell. The Respondent had used more profanity and said he had wanted to go inside the cell and assault the Complainant. The 1st Respondent had also threatened to kill and hide the Complainant's body. However, the order to open the cell wasn't compiled with.
8. Shortly after this, the Complainant informed his wife about the incident. She had thereafter complained to the Matara DIGs office. Thereafter as per the orders given by the DIG, the Complainant had directed her complaint to the Matara Police for a further inquiry.
9. Following the incident, the Complainant felt pain on his chest. He was also bleeding from his fingers. However, the Police did not make any attempts to provide him with first aid.

10. On 04.12.2013, at 6.00 p.m., the Complainant was finally taken to the Matara Hospital for treatment. However prior to being taken, the 1st Respondent had further insulted the Complainant. The 1st Respondent had further instructed the officers escorting the Complainant to simply tell the doctor that the Complainant only needed treatment for fever and that the Complainant should under no circumstance be admitted in the hospital.
11. However the Complainant, had told the doctor (in English) of what had happened to him, the said doctor had thereafter directed the Complainant to the JMO and had also ward him till 09.12.2013.
12. The Complainant further states that throughout the period he was detained at the Thihagoda Police Station, he was subject to degrading treatment owing to the actions of the 1st Respondent.

Case No. HRC/K/171/13/S/T-S is the same Complaint as HRC/1943/14, with the Complainant here being the said Sanjeewa Aththanagodas wife

In case No: HRC/1942/14 the Complainant states as follows (Marked A2)

1. Whilst reiterating his arrest as aforementioned, the Complainant adds that shortly after his arrest, the 1st Respondent had asked him to take off his Navy uniform. Upon the Complainant refusing, the Respondents had taken the Complainant to an office, where they had gotten him to publicly strip his Uniform.
2. There were five women Police officers and three other suspects in the room at the time.
3. Thereafter the Complainant was made to wear civvies and was moved to the Thihagoda police Station.
4. The Complainant states that he suffered humiliation by the aforesaid actions of the Respondents.

Complainant's Position

The Complainant reiterates his aforementioned complaints at the inquiry marked 11. However in this instance the Respondent denies all allegations.

At the inquiry marked 12, the Complainant states that the 1st Respondent attacked him, owing to the actions of the 5th Respondent. However, the Complainant does not maintain that the 5th Respondent attacked him.

Respondent's Position

In the document marked R1, the 1st Respondent states as follows;

1. The Complainant was detained through a detention order (signed by the President) for a period of three months.
2. The said detention order was to end on 06.12.2013. However, on 03.12.2013 the Complainant had threatened the 5th Respondent with death.
3. The 1st Respondent was in the habit of checking on the prisoners every morning. Whilst he was engaged in this activity on 04.12.2012, the Complainant had shouted at him and threatened the 1st Respondent as well.
4. However, the 1st Respondent had told the complainant to be quiet and had gone back to his daily work in his office.
5. However, the Complainant still kept shouting, whereby the 1st Respondent informed this to the Police Director.
6. Shortly after the Director had called the 1st Respondent to inquire if he had assaulted the Complainant, which was denied.
7. The Director had come to the Police station to check on the matter.
8. The Complainant was produced before a Judicial Medical Officer, whereby he had complained of chest pains.
9. The Respondent denies all allegations in this complainant.

In the document marked R5, the 5th Respondent states as follows

1. Whilst he was engaged in his official duty at the Thihagoda Police Station, he was threatened with death by the Complainant, owing to the fact that the cell light was still on and no mosquito coil was given to the cell.
2. He had later told the 1st Respondent about the incident.

Observations

1. Though the Complainant alleges that he was subject to degrading treatment at the hands of the Respondents, in his complaint numbered HRC/1942/14, he has not tendered any other evidence to support the same. Furthermore, at the final inquiry marked 13, and Petitioner Calling Marked P1, he makes no mention of the same. Thereby it is apt to discharge the 2nd to 4th Respondents.
2. Though the Complainant alleges torture, he does not state that the 5th Respondent played any part in the said torture and solely goes on the basis that the 1st Respondent committed the alleged act of torture and that the 5th Respondent merely complained to the 1st Respondent.

3. Furthermore, it is deducted that the 1st Respondent was fueled by his own anger which led to the alleged torture (which will be proved herewith). Therefore it seems apt to discharge the 5th Respondent.

4. In the Medical-Legal-Report (Marked M1) it is set out as follows.

Victim – Sanjeewa Conrad Annatugoda	Date of Admission 04.12.2013, 11.55 a.m.
Issued on 05.12.2013	
Examination of injuries : 1) An abrasion (1 x 1 cm) on the dorsal surface of the right index finger, 1cm below root. 2) An abrasion (2 x 1 cm) on the dorsal surface of the right middle finger, 1 cm below root. 3) A contusion (5 x 4 cm) on the anterior surface of the left chest, 5 cm away from the midline and 130 cm above from heel. Opinion : injuries are caused by blunt force. Non – grievous injuries – One to Three Grievous injuries – none Blunt Weapon – One to Three Patient smelling of liquor ? No Under influence of liquor ? No	Observations of the inquiry Officer : in his complaint marked A1, he states the 1 st Respondent had cleaned his fists and punched the Complainant on the left side of his chest several times. He also states that he had sustained several lacerations on the left side of chest owing to this. He adds that the 1 st Respondent had thereafter kicked his hands, whilst he (the Complainant) was holding the cell bars. The 1 st Respondent was wearing sports shoes at the time. At this instance, the Complainant had sustained injuries to his middle finger and index finger on his right hand. Thereby it seems clear that the medical report is compatible with the account given by the complainant.

5. As per the witness statements given in the document marked W1, W2, W3, W4, W5 and W6 it is observed that all these witnesses maintain that the Complainant shouted at the 1st Respondent on 04.12.2013 in the morning.

6. These statements go to prove that an encounter did take place the Thihagoda Police Station on 04.12.2013.

7. However, though all these witnesses maintain that the 1st Respondent did not assault the Complainant, a few notable contradictions are observed.

- W3 says the 1st Respondent went quietly to his office after the incident, which contradicts the Respondent's statement in R1.
- W4 also says the 1st Respondent did not do anything to the complainant, but only listened to him which also contradicts R1.

8. It is observed that though there were several detainees in the Thihagoda Police Station at the time of the said incident, only one statement has been obtained from a lady detained in cell 2 (marked W6).
9. However, no statements have been taken from the detainees inside the Complainant's cell.
10. Furthermore, the aforementioned statements have been recorded in the police records maintained at the Thihagoda Police Station where the 1st Respondent was the Officer-in-Charge, which does not eliminate the possibility of them being tampered with.
11. Thereby going on the basis, it is observed that these statements cannot be relied on fully.
12. Thereby going on the basis of the Medical report, whereby the complainant was examined the very next day (05.12.2013) it is clear that the Complainant was indeed assaulted and going on the premises of the statements marked W1 to W6 and exchange did take place between the 1st Respondent and the Complainant.

Article 11 of the Constitution prohibits persons from inflicting torture, cruel or inhuman treatment on another.

This is an absolute right that does not have restrictions or limitations. Furthermore, the treatment contemplated under article 11 is not confined to the realm of physical violence. It could be pain or suffering, be it physical or mental.

In **Jayasinghe Vs. Sub Inspector of Police, Jayakody and others (1998) 2 SLR 204**

Shirani Bandaranayake J observed

“The Court is not inclined to accept the position of the respondents that the injuries sustained by the petitioner were due to the ‘minimum force’ used to arrest the petitioner. The injuries set out in the Diagnosis Card are consistent with the details given by the petitioner as to the inhuman and degrading treatment meted out to him by the respondents.”

Looking at the standard of proof used in cases invoking the fundamental rights jurisdiction, **Velmurugu Vs. Attorney General and others (1981) 1FRD 180**, a case concerning the violation of Article 11 of the Constitution Wanasundara J said that, the test applied is a degree of proof used in civil cases which is not so high as required in criminal cases. Further, in **Shaul Hameed and Another Vs. Ranasinghe and Others (1990) 1SLR 104**, Kulathunga J held that ‘an alleged violation of human rights has to be established by cogent evidence having a high degree of probability which is proportionate to the subject matter, however, that degree is not high as what is required in a criminal case.


Conclusion

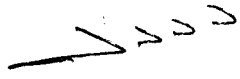
1. Therefore, on a degree of probability, going on the basis of the Complainant's account and the Medical Report (Marked M1), it is clear that the complainant was tortured.
2. And as per the aforementioned observations it is clear the complainant was tortured by the 1st Respondent.
3. As per the observations and the applicability of the relevant laws above, on a preponderance of evidence it is hereby concluded that the 1st Respondent has violated the fundamental rights of the aggrieved party, guaranteed by Article 11 of the Constitution.
4. Furthermore, the Respondents from 2 to 4 are hereby discharged.
5. The Complainant is advised to appeal to the Commission in the event the Respondent failed to take necessary action in relation to this matter.

Recommendations

1. In terms of the provisions in section 15(3) (c) of the Human Rights Commission of Sri Lanka Act No: 21 of 1996, it is recommended that the Inspector General of Police take disciplinary action against the 1st Respondent and other officers (if any) responsible for incident.
2. In terms of the provisions in section 11 (g) of the Human Rights Commission of Sri Lanka Act No.21 of 1996, the Commission recommends the 1st Respondent should pay the Complainant a sum of Rs. 50,000 in total as compensation.
3. In categorical condemnation of the violation committee by the 1st Respondent, the recommendation report of this case is hereby sent to the Inspector General of Police and the Attorney General for further action in terms of the provisions in section 15(6) of the HRC Act.

As per Section 15(7) of the HRCSL Act, the Respondent should report to the HRCSL on the action taken to implement Recommendation within the month of the date of this Recommendation.


Anusuya Shanmuganathan
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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