

**IN THE SUPREME COURT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an application in terms of Article  
126 read with Article 17 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

**SC FR Application No. 412/ 2015**

Aththanayake Mudiyansele Kelum  
Aththanayake,  
No. 02,  
Lumbini Pedesa,  
Akarangaha,  
Badalgama.

**PETITIONER**

Vs.

1. H. W. S. Udayakumara,  
(Inspector of Police)  
Officer in Charge,  
Police Station,  
Kotadeniyawa.
2. Jayantha Athukorala,  
Assistant Superintendent of Police,  
District ASP,  
SP Division- Negombo.
3. D. U. Lasantha Rathnayake,  
Chief Inspector of Police,  
Officer in Charge,  
Criminal Investigation Department,  
Colombo 01.
4. B. R. S. R. Nagahamulla,

Senior Superintendent of Police,  
Director,  
Criminal Investigation Department,  
Colombo 01.

5. N. K. Illangakoon,  
Inspector General of Police,  
Police Headquarters,  
Colombo 01.

6. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

Before:                   **P. PADMAN SURASENA, J**  
                                  **JANAK DE SILVA, J**  
                                  **MAHINDA SAMAYAWARDHENA, J**

Counsel               :       Lakshan Dias with Ms. Maneesha Kumarasinghe for the Petitioner.  
                                  Shyamal A. Collure with Prabhath S. Amarasinghe for the 1<sup>st</sup>  
                                  Respondent.  
                                  Clifford Fernando instructed by Mahinda Bandara for the 2<sup>nd</sup> and 3<sup>rd</sup>  
                                  Respondents.  
                                  Ms. Induni Punchihewa SC for the Attorney General.

Argued on           :       22-06-2023

Decided on         :       27-06-2024

**P. Padman Surasena, J.**

The Petitioner, filed the Petition pertaining to the instant case in this Court on 09-11-2015, praying *inter alia*, for;

- i. Leave to proceed under Article 11, 12(1), 13(1) and (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka

- ii. a declaration that the Fundamental Rights of the Petitioner guaranteed under Articles 11, 12(1), 13(1) and (2), of the Constitution of the Democratic Socialist Republic of Sri Lanka are been violated by the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents.
- iii. an Interim Order directing the Hon. Attorney General to hold an inquiry and indict all those who are accused in this case for the offence of Torture and Cruel, inhuman or degrading treatment as per the powers given to the Attorney General by Act No 22 of 1994.
- iv. an interim Order directing the Inspector General of Police to hold an immediate internal inquiry against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of the Police Department and take administrative action against them if found guilty of said violations.
- v. Granting of costs
- vi. Rupees 500,000,000/- as compensation

This Court on 11-03-2016, having heard the submissions of the learned Counsel for the Petitioner and the submissions of the learned Counsel for the Respondents, had decided to grant Leave to Proceed in respect of the alleged violations of the Fundamental Rights guaranteed to the Petitioner under Articles 11, 12(1) and 13(2) of the Constitution by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

In the course of the argument, the learned Counsel for the 1<sup>st</sup> Respondent submitted that the Petitioner has failed to file the Petition in the instant case within the time permitted by law. i.e., within one month prescribed by Article 126(2) of the Constitution. It was on that basis that he submitted that this Court should dismiss this Petition as it cannot be maintained any further in Court.

The learned Counsel for the Petitioner sought to counter that argument by stating that the Petitioner has lodged a complaint in the Human Rights Commission which gives him an entitlement to maintain this case. I would now proceed to consider this argument as it pertains to a preliminary issue.

The Petitioner has filed the instant application on 19<sup>th</sup> November 2015. The latest alleged act of infringement i.e. of Article 13 (2), according to the Petition, had occurred from the 16<sup>th</sup> September 2015 to the 19<sup>th</sup> of September 2015. This is because the Petitioner has admitted

in his Petition<sup>1</sup> that he was produced before the Minuwangoda Magistrate's Court on the 19<sup>th</sup> of September 2015 upon which the learned Magistrate of Minuwangoda had ordered that the Petitioner be remanded till the 28<sup>th</sup> September 2015. The learned Magistrate of Minuwangoda had thereafter had extended the period of remand of the Petitioner till the 02<sup>nd</sup> October 2015. Thereafter, the Petitioner was released from custody on the 01<sup>st</sup> October 2015.

The Petitioner states that he got himself admitted to Gampaha hospital thereafter and the hospital had discharged him on 5<sup>th</sup> October 2015.

It is trite law that in terms of Article 126 (2) of the Constitution, a fundamental rights application must be filed within one month (30 days) of the alleged infringement. Thus, even if we consider the supposed date of discharge from the Gampaha Hospital as the date upon which the one-month time bar begins to run (without conceding that this is the correct position), the resultant position would be that the Petitioner has filed his Petition in the instant case, one month and 4 days after the date of his discharge from the hospital. If one is to go by the date of his being released from the Prison's custody, then the resultant position would be that the Petitioner has filed his Petition in the instant case one month and 8 days after the date of his release. On either of the above scenarios, on account of Article 126 (2) of the Constitution, the Petition in the instant case has been filed outside the time limit permitted by law.

There is yet another question to be considered. That is the question of applicability of the provision of law in Section 13 (1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996. This is because the Petitioner has averred in his Petition<sup>2</sup> that he had lodged a complaint dated 08<sup>th</sup> October 2015, at the Human Rights Commission under the No. HRC/3486/2015. In that paragraph, the Petitioner has stated that he would produce a copy of the complaint to Court in due course. although the Petitioner has stated in that paragraph that he would mark the complaint he had lodged at the Human Rights Commission as **P3**, no such document was ever produced by the Petitioner even thereafter.

Section 13 (1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 is as follows.

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<sup>1</sup> Paragraph 30 of the Petition dated 09<sup>th</sup> November 2015.

<sup>2</sup> Paragraph 40 of the Petition dated 09<sup>th</sup> November 2015.

*"where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, **the period within which the inquiry into such complaint is pending**<sup>3</sup> before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126 (2) of the Constitution."*

What section 13 (1) states is, not to take, the period within which the inquiry into a complaint is pending before the Commission, into account, for the purpose of computing the period of one month referred to in Article 126 (2) of the Constitution.

- a) In the case of Thilangi Kandambi Vs. State Timber Corporation and others,<sup>4</sup> Janak De Silva J (with Murdu N. B. Fernando PC, J and Kumuduni Wickremasinghe J agreeing), interpreting the above provisions of law held that the jurisprudence has established the following principles: *The initial view was that mere production of a complaint made to the Human Rights Commission of Sri Lanka within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 [Romesh Coorey v Jayalath (2008) 2 Sri.L.R. 43, Alles v. Road Passenger Services Authority of the Western Province, (S.C.F.R. 448/2009, S.C.M. 22.02.2013)].*
- b) *However, the correct position is that a petitioner must show evidence that the Human Rights Commission of Sri Lanka has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate. [Subasinghe v. Inspector General of Police, SC (Spl) 16/1999, S.C.M. 11.09.2000; Kariyawasam v. Southern Provincial Road Development Authority and 8 Others, (2007) 2 Sri.L.R. 33; Ranaweera and Others v. Sub-Inspector Wilson Siriwardene and Others (2008) 1 Sri.L.R. 260; K.H.G. Kithsiri v Faizer Musthapha, (S.C.F.R. 362/2017, S.C.M. 10.01.2018); Wanasinghe v. Kamal Paliskara and Others, (S.C.F.R. 216/2014, S.C.M. 23.06.2021)].*

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<sup>3</sup> Emphasis added.

<sup>4</sup> S.C. F.R. Application No. 452/2019, S.C.M 14.12.2022.

- c) *A party cannot benefit from the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 where the complaint to the Human Rights Commission is made one month after the alleged violation [Alagaratnam Manoranjan v. G.A. Chandrasiri, Governor, Northern Province, (S.C.F.R. 261/2013, S.C.M. 11.09.2014)]*
- d) *The provisions of section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 is not available to a petitioner who has made a complaint to the Human Rights Commission only to obtain an advantage by bringing his application within Article 126(2) of the Constitution [K.H.G. Kithsiri v Faizer Musthapha, (S.C.F.R. 362/2017, SCM 10.01.2018)]*

Turning back to the instant case, I only find a bare averment (afore-stated paragraph 40 and the corresponding paragraph in the Petitioner's affidavit) indicating that he had lodged a complaint at the Human Rights Commission.

The Petitioner in the instant case, has failed neither to adduce any evidence to show that there has been an inquiry pending before the Human Rights Commission nor made any attempt to explain the long delay in filing his Petition.

In the above circumstances, it is apparent that there is no merit in the submissions made by the learned Counsel for the Petitioner, that the Petitioner has an entitlement to maintain this case on the strength of Paragraph 40 of his Petition.

Thus, for the foregoing reasons, I conclude that the Petitioner has failed to file the Petition in the instant case within one-month time period specified in Article 126 (2) of the Constitution. Therefore, I uphold the preliminary objection raised by the learned Counsel for the 1<sup>st</sup> Respondent and proceed to dismiss this Petition without costs.

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**