

False charges and fabrication of cases in Sri Lanka

Asian Human Rights Commission

A study into several hundred cases clearly reveals the widespread practice of falsified criminal charges and fabricated cases against innocent Sri Lankan citizens. As a result of such fabrication, individuals may suffer prolonged detention without bail and severe harassment, particularly when they or their families complain about the false charges. They are also likely to be tortured at the initial stages of arrest, either to force them to admit to the false charges or to provide other information. Moreover, in the experience of numerous victims, there is no way of obtaining speedy investigations into allegations of false charges. In fact, even when the fabricated nature of the charge is proved at criminal trials, no action is taken against those who filed such charges, despite the country's penal code treating such fabrication as a crime.

The following three cases indicate the extent of such criminal behaviour amongst Sri Lanka's law enforcement mechanisms, as well as the heavy toll paid by those wrongly implicated.

1. Sarath Kumara Naidos: 'Illegal possession of heroin while in police custody'

Thirty-eight-year-old mason Sarath Kumara Naidos was arrested on 5 July 2008 at around 12:30pm and kept in police custody at the Moratuwa police station until July 12. At the time of arrest, the police accused Sarath of theft, which he denied. After being assaulted on a daily basis while in custody, on July 13 he was produced in court, where the police filed two cases against him. One was regarding theft and the other was for being in possession of 2300 milligrams of heroin at 11:30pm on July 12.

These are clearly fabricated charges; it is impossible for Sarath to have been in possession of drugs while in police custody. Complaints to this effect have been made to all police authorities, as well as to the Human Rights Commission and the National Police Commission.

Such fabrication was a result of the pressure put on the police to release Sarath; by charging him with a non-bailable offence, the police are now able to keep him in custody. The repeated assault that Sarath was subjected to after his arrest resulted in serious physical injuries, including losing control of his bowel movements. He was visited in custody by his mother, wife and sister as well as other family members, all of whom saw the condition wreaked by the daily assaults. In fact, his family feared that without proper medical treatment, Sarath may die from his injuries.

Verbal complaints as well as a written complaint on July 11 were made to the Human Rights Commission, regarding Sarath's illegal arrest, detention and torture. Written complaints were also sent to the Inspector General of Police, the Deputy Inspector General of the area and the National Police Commission by fax.

Two lawyers visited Sarath several times between July 5 and 13. He was even visited by the superintendent in charge of the Moratuwa police station. Only after a lawyer's notice was faxed to high-ranking police officers about the incident on July 12, was Sarath produced in court the following day. There, the magistrate approved bail for the theft charges, but had no power to do so on the drug charges.

2. Dodampe Gamage Asantha Aravindra: 'Victim of acid attack but charged with illegal firearms possession'

In another case, a young man, Dodampe Gamage Asantha Aravindra, while in police custody, had acid thrown on his face by a truck-driver named Chandrasiri Mudalali and subsequently lost the faculties of one eye. While being treated at the Matara hospital, the police filed a fabricated case against him, charging him with the possession of a bomb. Furthermore, the police noted that Aravindra was fleeing

after attempting to shoot truck-driver Mudalali, and that an unknown person in the crowd—which was helping the police catch him while he ran away—threw the acid on Aravindra’s face. This person reportedly could not be identified because the incident occurred at night, in the dark.

In actual fact, Aravindra and his friend K J Thusara Chaminda were driving on a scooter to visit relatives on 28 February 2008. At around 5:30pm they passed a truck, whose driver crossed the road without checking for traffic. As the scooter passed by, the driver’s hand lightly touched the scooter’s rearview mirror, angering him and resulting in a heated verbal exchange between the two parties. The driver finally said, “You go ahead and let us see.”

A short time later, the truck pursued and struck the scooter. Due to the impact, Aravindra was thrown some distance from the scene of the collision. When he managed to get up and return, he saw Chaminda and the scooter lying beneath the truck, whose driver had disappeared. Aravindra pulled his friend out and found that he was bleeding severely from an injury to his leg.

Aravindra left Chaminda near a house where he also kept the damaged scooter and went looking for a three-wheeler to take him to the hospital. As he was searching, one taxi stopped and police officers from the Pitabaddara Police Station with guns in their hands alighted. The truck-driver was also among them, and started beating Aravindra, saying, “You are the one who collided with my truck.” They tied Aravindra’s hands and legs and continued to beat him, even picking him up and dropping him several times.

When Aravindra called for water, the truck-driver gave him some liquid in a cup, which Aravindra soon realized was acid. He shouted and the truck-driver threw the acid onto his face; the liquid also spread to his eyes.

By this time, Chaminda had been brought to the same place and was also beaten by the police officers. Both Aravindra and Chaminda were then taken to the police station, where the Officer-in-Charge and the truck-driver assaulted them again. When Aravindra screamed in pain from the aggravation of the acid burns by further beating, liquor—brought by Mudalali—was poured on the burns.

Aravindra’s father learned about the incident at around 11pm that night, but when he went to the Pitabaddara Police Station he was not allowed to see the two young men. Permission to see them was denied on the next day as well. The family was not even allowed to bring them food and drink. Aravindra’s father was told that some local people had assaulted Aravindra and thrown acid at him, and that a gun was discovered in Chaminda’s possession. Aravindra’s father then pleaded with the police to take his son to a hospital. Although the officers said they would do so soon, in fact they did not.

On March 1 at around 3pm, Aravindra and Chaminda were taken out from their cell and photographed by some cameramen and journalists. The Officer-in-Charge asked Aravindra to remove his shirt and his father saw that the left side of his chest showed severe burn marks. There were also wounds on one of Thusara Chaminda’s legs. Aravindra’s father was then ordered to pay Rs 175 for the photographers, while the two young men were taken back to their cell.

Aravindra’s father then contacted an attorney, who called the police station and was also told that the two men would be taken to the hospital. Later, Aravindra’s father received a call that the two men had been taken to the Moravoka Hospital. Upon visiting the hospital however, he could not find either of the men, so he returned to the police station. There a police officer approached him and said, “You better go away otherwise somebody may kill you.” He replied, “Even if I am killed I will not move away.”

At about 7pm Aravindra and Chaminda were put in a police vehicle with Aravindra shouting to his father, "Please don't go home, they may kill us." His father replied that he would follow them. The police car drove to the Mathara Hospital, where Aravindra was hospitalized until March 5. The specialist treating Aravindra told his father that the delay in treatment had cost Aravindra the sight in one eye.

On April 3 Aravindra underwent eye surgery, which unfortunately worsened his situation, and he was then transferred to the Colombo Eye Hospital, where he continues to get treatment. By this time Aravindra's hearing in one ear had also deteriorated.

In the meantime, the Pitabaddara police filed charges against Aravindra and Chaminda for possessing firearms, attempting to shoot a person and attempting to engage in robbery. In contrast, no action has been taken against the truck-driver or the police officers for their severe assault of the two youth. Also, no inquiry has been initiated in the holding of the youth at the police station for more than 24 hours and preventing them from getting medical treatment for their serious injuries. While their assaulters remain at large, Aravindra and Chaminda have to face fabricated charges.

3. Lalith Rajapakse: 'Torture victim acquitted in court, but no punishment for officers who filed false charges'

Lalith Rajapakse was arrested by the Kandana Police on 20 April 2002 and subjected to severe torture. Among other injuries, the torture harmed his brain and left him unconscious for over 15 days, forcing the police to hospitalize him. The report of these injuries led to considerable publicity, and subsequently one police sub-inspector was charged. This case, filed under Sri Lanka's torture law (Act No 22 of 1994), is still pending before the Negombo High Court.

In the meantime, in retaliation against the torture complaints, the police filed three fabricated cases against Lalith before the Magistrate's Court of Wattala. Subsequently, officers came to court regarding two of the cases and declared that at no time had they made any complaint against Lalith. Moreover, the sub-inspector who arrested Lalith admitted in court that neither at the time of arrest, nor at any other time thereafter, had the police received any complaint or evidence against Lalith. Although Lalith was acquitted of both charges, there has been no investigation against the officers who fabricated such charges.

The third charge against Lalith was of attempting to obstruct police officers in the course of their duty, for which there was no evidence for several years. Finally, an application for mandamus on behalf of Lalith was filed against the police officers and attorney general in the Court of Appeal. While the attorney general agreed not to proceed with the case, no inquiries have been made regarding the fabrication of the charge.