

Majuran Sathananthan

(Complainant)

v

Andige Priyanka Indunil Fernando

(Defendant)



Details of the Case

**Majuran Sathananthan**

**(Complainant)**

v

**Andige Priyanka Indunil Fernando**

**(Defendant)**

The Public Interest Law Centre acts for the complainant Mr Majuran Sathananthan in this private prosecution against Andige Priyanda Indunil Fernando ('Brigadier Fernando') from the Sri Lankan Army.

The case is due to be heard at the Westminster Magistrates Court, on Monday 21<sup>st</sup> January 2019 at 10.00 am.

The defendant, **Mr. Andige Priyanka Indunil Fernando**, [referred throughout as 'Brigadier Fernando'] is a Sri Lankan military official who, in the past, has carried out military operations during the civil war in Sri Lanka. In [2017], Brigadier Fernando was posted to the United Kingdom as the Sri Lankan High Commission's defence attaché.<sup>1</sup>

**Background to the case:**

On the 4<sup>th</sup> February 2018, protestors were gathered outside the Sri Lankan Embassy in London, protesting against the treatment of Tamils by the Sri Lankan Government. Embassy and Consular staff had gathered to celebrate Sri Lankan Independence Day. The Defendant was attending the celebrations.

The Defendant initially came outside the embassy and started filming the protestors using his mobile phone before returning to the Embassy. He returned a second time and then made gestures towards the protestors. He repeatedly ran his forefinger across his throat while looking

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<sup>1</sup> THE LONDON DIPLOMATIC LIST as of 6 October 2017, viewed at [https://p10.secure.hostingprod.com/@spyblog.org.uk/ssl/ldl/London\\_Diplomatic\\_List\\_-\\_October\\_2017.htm](https://p10.secure.hostingprod.com/@spyblog.org.uk/ssl/ldl/London_Diplomatic_List_-_October_2017.htm)

at the protestors causing them fear, alarm and distress. The video of him, in full military dress uniform, doing this in front of the High Commission went viral.<sup>2</sup>

As a report prepared by Journalists for Democracy in Sri Lanka (JDS) & the International Truth & Justice Project noted:

“In a context where members of the Sri Lankan military have been accused of a wide range of war crimes including summary execution that in some instances involved the slitting of throats of bound Tamil detainees, the gesture was deliberate and intended to inspire fear. More so given that photographs of Tamil protests abroad are routinely the subject of questions during interrogations and torture in Sri Lanka itself. In addition, the context of Brigadier Fernando’s record in frontline combat positions in 2008 and 2009...”<sup>3</sup>

Mr. Majuran Sathananthan [along with Mr. Palliya Guruge and Mr. Vinoth Priyantha Perera] was attending the protest on the day. On the same day, they went to report the incident to a local police station. Since reporting them we understand the police have taken no further action.

The private prosecutors laid an information charging the Defendant with offences under section 4 of the Public Order Act 1986. The private prosecutors will rely upon the statements of witnesses present at the scene and, upon a video recording which captures the behaviour of the defendant, who, can be clearly seen to repeatedly run his finger across his throat imitating the slitting of the throat. This was clearly directed towards the defendant and other protestors present at the scene and was intended to cause them fear of violence, alarm or distress.

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<sup>2</sup> Sri Lankan military official motions death threat to Tamils protesting in London, 4 February 2018, *Tamil Guardian* <http://www.tamilguardian.com/content/sri-lankan-military-official-motions-death-threat-tamils-protesting-london> and available on YouTube at <https://www.youtube.com/watch?v=fpWtUuzxgp8>

<sup>3</sup> ‘Brigadier Priyanda Fernando Defence Attach in London’ by Journalists for Democracy in Sri Lanka (JDS) & the International Truth & Justice Project (ITJP) – 5 February 2018 - [http://www.itjpsl.com/assets/press/brigadier\\_api\\_fernando\\_final.pdf](http://www.itjpsl.com/assets/press/brigadier_api_fernando_final.pdf)

**Who is Brigadier Fernando and why is the complainant bringing the case?**

Brigadier Fernando was active in 2008-9 in the final phase of the Sri Lankan civil war in the north. He was also posted to the conflict areas in the post war period when violations, documented by UN and various NGO's were reported. After the war he was promoted.<sup>4</sup>

i) Combat in the final war against the LTTE – 2008-09

According to *Journalists for Democracy in Sri Lanka* (JDS) and the *International Truth & Justice Project* (ITJP) Brigadier Fernando fought in Welisariya and Janakapura as part of the 59<sup>th</sup> Division of the Sri Lankan Army.<sup>5</sup>

ii) Active in the Mullaitivu Front -59<sup>th</sup> Division

The 59<sup>th</sup> Division advanced on the Mullaitivu Town from the South capturing villages along the way during late 2008. The UN confirmed that a hospital in Mullaitivu came under repeated shell attack by Government forces in the region during the same period of time.<sup>6</sup>

iii) Capture of Kumalamunai and Othiyamalai.

The 59 Division captured Kumalamunai on November 11, and Othiyamalai on Nov 29, 2008, and then Mulliyaveli on December 16, 2008. The 59 Division finally captured Mullaitivu town on 25 January 2009.<sup>7</sup> Brigadier Fernando played a key role in the offensive on Mullaitivu – he was described in the Sri Lankan media as 'battle hardened' as a result.<sup>8</sup>

iv) Mullaitivu Hospital Attacks

According to the UN OHCHR Investigation into Sri Lanka (2015) shells repeatedly fell on the hospital in Mullaitivu from August 2008 onwards as the fighting advanced towards Mullaitivu from the south where the 59 Division was advancing.<sup>9</sup> This was equally reported by Human Rights Watch.<sup>10</sup>

**Brigadier Fernando being a key member of the military decision making throughout this crucial period of the battle would have been fully aware of the order, if not actually have given them himself for the hospital to be shelled.**

<sup>4</sup> Ibid p4 - [http://www.itjpsl.com/assets/press/brigadier\\_api\\_fernando\\_final.pdf](http://www.itjpsl.com/assets/press/brigadier_api_fernando_final.pdf)

<sup>5</sup> Ibid p4 – also see <http://archives.dailynews.lk/2008/04/11/fea03.asp>

<sup>6</sup> UN staff and hospital come under shelling as Sri Lanka fights cornered rebels' *New York Times* 27<sup>th</sup> January 2009 <https://www.nytimes.com/2009/01/28/world/asia/28lanka.html> ; United Nations panel of experts 31<sup>st</sup> March 2011 [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Executive\\_Summary.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Executive_Summary.pdf) -

[http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) ( see pts 80; 81; 87; 90 and 91)

<sup>7</sup> Ibid p5 - [http://www.itjpsl.com/assets/press/brigadier\\_api\\_fernando\\_final.pdf](http://www.itjpsl.com/assets/press/brigadier_api_fernando_final.pdf)

<sup>8</sup> 'Kilinochchi Triumph' – *The Nation* 4<sup>th</sup> January 2009 - <http://www.nation.lk/2009/01/04/military.htm>

<sup>9</sup> A/HRC/30/CRP.2, UN

[https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/\\_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.CRP.2\\_E.docx&action=default&DefaultItemOpen=1](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.CRP.2_E.docx&action=default&DefaultItemOpen=1)

<sup>10</sup> Human Rights Watch - <https://www.hrw.org/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes#Hospital>

v) Conclusion

Brigadier Fernando has a leadership role as part of the 59 Division in the push towards capturing Mullaitivu. From August 2008 to January 2009 the UN, Human Rights Watch and other sources cite repeated shell attacks on the Mullaitivu Hospital coming from the south from where the 59 Division was advancing. It is not possible to say if Brigadier Fernando's battalion was responsible for those specific attacks (unfortunately much of his role in the war between January to May 2009 has been expunged) on the hospital, which would amount to war crimes if proven in a court of law.

### **War Crimes and Sri Lanka**

As the film 'Sri Lanka's Killing Fields' graphically illustrated the Sri Lankan army did not hold back when pursuing not only LTTE fighters, but anyone suspected of being sympathetic to their cause, indeed innocent civilians were caught up in summary justice.

Video footage captured the shelling by government forces of crowded hospitals and of an extended video showing an execution in which naked prisoners are shown being shot in the head. There are also graphic scenes of dead females – claimed Tamil Tiger fighters – who appear to have been raped and murdered.<sup>11</sup>

### **The Court case and the charges:**

This case is being pursued in the Magistrates Court based on the following charges, and for the following reasons.

#### **1. Contrary to S.5 (1) and (6) of The Public Order Act 1986.**

On the 4<sup>th</sup> January 2018, Andige Priyanka Indunil Fernando, outside the Sri Lankan High Commission, 13 Hyde Park Gardens, Westminster, London, W2 2LU, used threatening or abusive words or behaviour, or disorderly behaviour, or displayed any writing, sign or other visible representation which is threatening or abusive.

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<sup>11</sup> <https://vimeo.com/26647448> Ch4. 'Sri Lanka's Killing Fields'

2. Contrary to S.4(1) and (4) of the Public Order Act 1986.

On the 4<sup>th</sup> January 2018, Andige Priyanka Indunil Fernando, outside the Sri Lankan High Commission, 13 Hyde Park Gardens, Westminster, London, W2 2LU, displayed to another person, namely, **Mr. Majuran Sathananthan, Mr. Palliya Guruge Vinoth Priyantha Perera, and Mr. Gokulakrishnan Narayanasamy**, writing, signs or other visible representations which were threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Why the Trial?

Since the end of the Civil War in 2009, there has been no accountability of Sri Lankan Government Forces for their actions during the civil war. This has sustained a culture of impunity in the Sri Lankan Military. Enforced disappearances continue long after the end of the Sri Lankan war by the Sri Lankan military.<sup>12</sup> In this context, the threat by a serving Sri Lankan military official has had a visceral impact on Tamil activists. The fact that it happened in the United Kingdom illustrates the strength of the confidence of the Sri Lankan military in their ability to evade accountability.

The Complainant and witnesses are seeking for Brigadier Fernando to be held accountable for his actions in the UK. Brigadier Fernando has been served the summons and trial papers and has not responded to the charges to date. Although it would be welcome for Brigadier Fernando to attend the trial to

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<sup>12</sup> OHCHR, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, 8 July 2016 A/HRC/33/51/Add.2 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/146/63/PDF/G1614663.pdf?OpenElement>; Report of the OHCHR Investigation in Sri Lanka (hereinafter "OISL Report"), 16 Sep 2015, UN Doc. A/HRC/30/CRP.2, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>; ICJ, "Sri Lanka: ICJ Report documents 'Crisis of Impunity.'" 1 November 2012 <https://www.icj.org/sri-lanka-new-icj-report-documents-crisis-of-impunity/>

answer for his actions, the Complainants intend to apply for the case to proceed in his absence if he fails to do so. It will be one of the rare occasions where an overseas army officer will be held to account for his unlawful actions.

We hope that this small action on behalf of our client(s) will once again shine a light on the alleged war crimes committed by not only Brigadier Fernando, but by the actions of the state of Sri Lanka.

ENDS.

For more information contact Paul Heron | solicitor – 07747857172 or Helen Mowat | solicitor – 07986 803694