

(2002) 05 GAU CK 0053
In the Gauhati High Court
Case No : Civil Rule No. 188 (SH) of 1997

Aryendra Nath Gupta

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) CriLJ 1058 : (2002) 2 GLT 232

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : R. Choudhury, for the Appellant; V.K. Jindal and L. Lyngdoh, for the Respondent

Final Decision : Dismissed

Judgement

N.Surajamani Singh, J.—In this writ petition, the petitioner, namely, Sri Aryendra Nath Gupta, has made a prayer for declaring his arrest and detention for the period from 20.1.1997 to 29.1.1997 as illegal coupled with the prayer for a direction on the respondents to afford a consolidated damages of Rs. Lacs and another consolidated damages of Rs. 1 lac for the sufferings of his family members by contending, inter alia, that he was arrested on 18.1.1997 at the midnight by the police and thereafter released on bail on the very same day. But on the basis of a complaint/FIR lodged by one Sri A. K. Bhattacharjee with the Laitumkhrah Police Station, a case was registered against him, being Laitumkhrah PS Case No. 6(1)1997 under Sections 341, 326 and 307, Indian Penal Code. However, the FIR lodged by the writ petitioner on 19.1.1997 was not registered and the petitioner was arrested on the basis of the said FIR lodged by the said Sri A. K Bhattacharjee on 20.1.1997 at 8.30 PM and his three consecutive bail applications were rejected by the learned Chief Judicial Magistrate, Shillong. However, the petitioner was released on bail on 29.1.1997, and in view of the above circumstances, he remained in judicial custody for long 9 days, i.e., from 20.1.1997 to 28.1.1997, Supporting the case of the petitioner,

Mr. R. Choudhury, learned counsel for the petitioner, argued that in view of the registration of the aforesaid Police Station Case as against the petitioner, the petitioner, a Central Government Class-I employee, was suspended from service as he could not come out on bail within 48 hours, and he suffered both financially and otherwise during his custody period. Though, charge sheet was submitted against the petitioner, two penal provisions, i.e., penal offences under Sections 326 and 307 were dropped, and the petitioner was tried for the rest of the offences, and later on in terms of the related judgment and order dated 30.10.2000, the petitioner was acquitted of the charges levelled against him under Sections 341 and 323, Indian Penal Code, i.e., during the pendency of this writ petition in this court, Mr. R. Choudhury, learned counsel for the petitioner, went on to contend that the petitioner has tiled this writ petition for the said malicious prosecution engineered by one Sri Saropat Kumar, Director, Telecom (Maintenance) in collusion with official respondent Nos. 3 and 4 particularly. According to Mr. Choudhury, a consolidated damages of Rs. 2 lacs should be afforded to the petitioner by the respondents for his illegal arrest and detention for long 9 days and another consolidated damages of Rs. 1 lac be afforded for the sufferings of his family members financially, mentally and otherwise, and further the costs of legal expenses incurred so far as assessed by the petitioner.

Mr. V. K. Jindal, learned senior counsel, appearing for the respondents, at the hearing contend that the present writ proceeding is not maintainable, and the case of the petitioner is not amenable to writ Jurisdiction of this court as there is efficacious and alternative remedy under the related provisions of the Code of Criminal Procedure and the Indian Penal Code.

Upon hearing the learned counsel for the parties, and also on perusal of the available materials on record, I am of the view that this writ petition is devoid of any merit for the following reasons :-

There is a specific provision in Section 250 of the Code of Criminal Procedure pertaining to compensation for accusation without reasonable cause. This section is relevant for the purpose of the present case and, accordingly, the same is quoted hereunder :

"250. Compensation for accusation without reasonable cause. - (1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are used before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of the opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under Sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under Sub-section (3), the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him.

Provided that, any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under Sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under Sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided ; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant-cases."

In the instant case, if the petitioner is really aggrieved, and if he feels that he was wrongly arrested and detained on the accusation without reasonable cause, he ought to have approached the appropriate court for availing compensation/damages as required u/s 250 of the Code of Criminal Procedure. But, he did not do so. There is another provision, i.e., Section 211 of the Indian Penal Code, which provides that whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. These measures were not taken or exercised by the petitioner and he simply approached this court for awarding compensation and for declaring his arrest and detention as illegal which according to me, it cannot be entertained within the purview of Article 226 of the Constitution of India. Apart from that, the present case involves complex and disputed question of facts which this court cannot entertain while exercising its jurisdiction under Article 226 of the Constitution of India. More so, there is efficacious and alternative remedy in the matter as discussed above. At this stage, a reference can be made to a decision of this court rendered in *Sri Rabik Duara v. State of Assam and Ors.*, reported in (1984) 2 GLR 131. Be that as it may, suffice is made with the above observations for dismissing this writ petition.

In the result, this writ petition has no merit and, accordingly, it is dismissed. There shall be no order as to costs.