
(1961) 03 GAU CK 0007
In the Gauhati High Court

Easih Mia and Another

APPELLANT

Vs

Tripura Administration

RESPONDENT

Date of Decision : 22-03-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 10, 151, 167, 173, 190
Passports Act, 1967 — Section 3, 4

Citation : (1962) CriLJ 673

Hon'ble Judges : T.N.R. Tirumalpad, J.C.

Bench : Single Bench

Judgement

T.N.R. Tirumalpad, J.C.

1. In this reference the learned Sessions Judge has recommended that the orders of the District Magistrate dated 10.5.60 and 30.5.60, forfeiting the bail bond given by the two sureties for the appearance in Court of one Suruj Mia Bhuiya and calling upon the sureties to pay the penalty and ordering distress warrant for the realisation of the penalty, should be set aside.

2. To understand the points involved in this reference the following facts have to be stated:

Suruj Mia Bhuiyan was arrested by the Sonamura Police on 12.5.58 u/s 54 Cri.P.C. and u/s 4 of the Indian Passport Act and produced before the S.D.M. Sonamura on 13.5.58 with a report by a police officer that he was arrested under the said sections suspecting that he was a Pakistani national and that he had come to India with a view to commit some cognizable offence. The S.D.M. remanded him to custody, but subsequently on 26.5.58 granted him bail on condition that he lived within Sonamura town and reported to the O/C, Sonamura police station daily.

3. We find from the note paper of the S.D.M. dated 29.5.58 that Suruj Mia was immediately wanted at Agartala by the District Magistrate. I have searched the entire record and also given time to the Government Advocate to produce the

order of the District Magistrate by which he directed the S.D.M. to produce the arrested person before him. At first, it was stated that it may have been by a Police Wireless message. Then I wanted the message to be produced. I was informed after a month's adjournment that there was no such order or message on record.

4. Suruj Mia on learning that he was wanted by the District Magistrate to appear before him duly presented himself before that officer on 2.6.58. The District Magistrate then directed him to be taken into custody. He moved for bail before the District Magistrate, but bail was refused on 18.6.58. I get even these details from the later order of the Sessions Judge in the bail application. The records relating to the order of arrest and refusal of bail by the District Magistrate are not forthcoming.

5. Thereupon Suruj Mia applied to the Sessions Judge Sri S.C. Talukdar and the Sessions Judge granted him bail on 4.7.58. A bail bond for Rs. 2000/- with two sureties of like amount was to be given to the satisfaction of the District Magistrate. Further conditions of the bail were that Suruj Mia should not stir out of the Municipal area of Agartala and must daily report to the O/C, Kotwali police station, but that he will report to the S.D.M. Sonamura whenever called for in connection with any case that may be started against him.

6. The District Magistrate then took bail and the petitioners were the two sureties. The bail bond did not mention the conditions laid down in the Sessions Judge's order but simply said that Suruj Mia will appear before the District Magistrate on each and every date to be fixed in future to answer to the charge brought against him and that he will continue to so attend Court until otherwise directed by the Court. Later the learned Sessions Judge on application by Suruj Mia but without notice to the sureties altered the condition and permitted Suruj Mia to stay with his parents at Sonamura, by his order dated 8.9.1958.

7. In the meantime, the District Magistrate appears to have got the records in the case from the S.D.M. Sonamura. I find from the records that they were sent through a police officer to the District Magistrate. But there is no written order by the District Magistrate calling for the records. On 1.6.59 the District Magistrate passed an order in the said record after hearing the lawyer for Suruj Mia that the case was pending for more than a year and no specific charge was brought against the accused till then and there was no reason to drag on the case and so he transferred the case to Sri N. Singh, Magistrate first class, Sonamura for speedy disposal.

8. On receipt of the records Sri N. Singh directed the sureties on 8.8.59 to produce Suruj Mia in Court. We are unable to know for what purpose he was directed to be produced, as he had no charge at all to meet and no charge-sheet had been filed by the police against him as required under Section 173 Cr.P.C. Any way the Magistrate passed the Order. But the, sureties were not able to produce him. So the Magistrate Sri N. Singh forfeited the bail bond and directed

them on 5.10.59 to pay the penalty or to show cause u/s 514 Cri.P.C. The petitioners thereupon appealed to the District Magistrate u/s 515 Cri.P.C. In that appeal, the District Magistrate set aside the order of the Magistrate as according to him the bond was for appearance before his Court and he alone could forfeit the bail bond.

9. After allowing the appeal on 15.2.60, he withdrew the case from the Magistrate Sri N. Singh to his own file and then issued notice on 17.2.60 to the sureties to produce Suruj Mia before him on 7.3.60. We are unable to know for what purpose the District Magistrate wanted Suruj Mia to be produced as even then no charge-sheet had been filed against him by the police. This was stated by the District Magistrate himself in his order dated 7.3.60 and he also brought it to the notice of the Superintendent of Police. But still no charge-sheet was filed till September 1960. Still he again called upon the sureties on 11.9.60 on their failure to produce the accused, to show cause why the bail bond should not be forfeited. The sureties pointed out to the District Magistrate that the bail bond was not worded in accordance with the order of the Sessions Judge and that it was, therefore, invalid and the District Magistrate had no jurisdiction to forfeit the bail bond. But that argument was not accepted by him and he directed them to pay the penalty on 10.5.60. Subsequently on 30.5.60 he directed the issue of distress warrant against the sureties.

10. It is under these circumstances that the sureties applied u/s 435 to Sri Section N. Banerjee, successor of Sri, S.C. Talukdar Sessions Judge and he made the reference u/s 438 Cri.P.C to this Court.

11. This case discloses a series of acts by the police and by Criminal Courts, which were totally unwarranted under the provisions of the Criminal Procedure Code,

The police in the first place had no authority to arrest Suruj Mia u/s 54 Cr.P.C., or u/s 4 of the Indian Passport Act. The report of the police officer dated 13.5.58 to the S.D.M. Sonamura showed that the arrest u/s 54 Cr.P.C. and u/s 4 of the Indian Passport Act was made because it was suspected that Suruj Mia was a Pakistani national and had come to India with a view to commit some cognizable offence.

12. A person cannot be arrested u/s 54 Cr.P.C., either because he is suspected to be a Pakistani or because it is suspected that he came to India with a view to commit some cognizable offence. u/s 54(1) first, a police officer can arrest a person who has been concerned in any cognizable offence or against whom credible information has been received or a reasonable suspicion exists of his having been so concerned. It is clear from this that a cognizable offence must have been committed and the person sought to be arrested must have been concerned with the said offence or at least reasonable suspicion existed of his having been so concerned. It is not enough to arrest u/s 54 that there was likelihood of a cognizable offence being committed in the future. There was no

statement in the first report dated 13.5.58 by the police officer that any cognizable offence has been committed. So the arrest u/s 54 Cr.P.C., was illegal.

13. The police have, of course, powers of arrest to prevent the commission of a cognizable offence. But it is not u/s 54 Cr.P.C. In the case of vagabonds and habitual robbers, an officer-in-charge of a police station can arrest person found faking precaution to conceal his presence within the limits of such police station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence. This is u/s 55. Again u/s 151, Cr.P.C., a police officer knowing of a design to commit any cognizable offence may arrest, if it appears to such officer that the commission of the offence cannot be otherwise prevented. The first report, dated 13.5.58, by the police officer does not show that the conditions for the exercise of the power of arrest either u/s 55 or u/s 151 Cr.P.C., existed. In any case the arrest in our present case was not made under either of those sections. The arrest u/s 54 Cr.P.C., was clearly, illegal.

14. Nor could a police officer arrest a person u/s 4 of the Indian Passport Act on suspicion that he is a Pakistani. An arrest u/s 4 can be made only for contravention or reasonable suspicion of contravention of any rule or order made u/s 3, of the said Act. Being a Pakistani, even if true, cannot be a contravention of the rules made u/s 3. What is prohibited under the rules framed u/s 3 is any person whether he is a Pakistani or any other national or even an Indian national entering India from outside without a valid Passport. Section 4 of the Indian Passport Act will not give the authority to a police officer to call upon any man inside India on suspicion that he is foreigner to produce his Passport or to arrest him in case he fails to produce it. A foreigner found inside India can be proceeded against under the Foreigners Act, but cannot be arrested under the Indian Passport Act. I have pointed this out in various decisions of mine.

15. Thus the arrest of Suruj Mia either u/s 54 Cr.P.C. or Section 4 of the Indian Passport Act was certainly illegal. When a person is thus brought before a Magistrate under arrest, it is the duty of the Magistrate to see that the arrest was legally made and if he finds that the arrest was illegal, it is his duty to direct the release of the person immediately. The Criminal Procedure Code has provided the production before a Magistrate u/s 167, as a check to prevent the abuse of the wide powers given to the police for arrest without warrant. It will be wrong for a Magistrate either to order detention of the accused u/s 167 Cr.P.C., or to call upon him to produce sureties u/s 496 or 497 Cr.P.C. if the arrest is illegal. At least, he has to be released on his executing a bond without sureties for his appearance u/s 496 or 497 Cr.P.C. Thus, the S.D.M. Sonamura was wrong in calling upon Suruj Mia to give sureties to support his bail. Since the very arrest of Suruj Mia was thus illegal, all the subsequent proceedings including the order for bail by the S.D.M. Sonamura, the subsequent commitment to custody by the District Magistrate, the grant of bail by the Sessions Judge, the forfeiture of the bail bond and the issue of distress warrant by the District Magistrate were all

illegal. On that ground alone, this reference has to be accepted.

16. When once the S.D.M. Sonamura had released Suruj Mia on bail, the District Magistrate had no authority to direct that Suruj Mia should be produced before him. Nor had he any authority to take him into custody in the facts of the bail given by the S.D.M. No provision in the Cr.P.C., has been pointed out which would give jurisdiction to the District Magistrate to do so. Section 497(5) Cr.P.C. authorises only a High Court or a Court of Sessions to cause the arrest of a person who has been released on bail and to commit him to custody. The District Magistrate had no such power. In this case, there was no application before the District Magistrate by the police to cancel the bail given by the S.D.M. Sonamura or to take Suruj Mia, into custody again.

17. It is not known on what information the District Magistrate directed the production of Suruj Mia before him or caused him to be committed to custody when Suruj Mia appeared before him on 2.6.58. If he did so on getting any information given by the police u/s 62 Cr.P.C., there must be something on record to show it. But the learned Government Advocate was not able to produce any written order from the District Magistrate.

It is surprising that no written order at all was passed by him either calling upon the S.D.M. Sonamura to produce Suruj Mia before him Or committing Suruj Mia to custody. He was dealing with the liberty of a citizen guaranteed under the Constitution and that too, not as an officer of the executive administration, but as a Judge of the Criminal Court. How can he act in such a cavalier fashion and issue oral orders in such matters?

18. Thus, when once Suruj Mia was released on bail under the orders of S.D.M. Sonamura, the commitment to custody of Suruj Mia by the District Magistrate was clearly illegal. This illegality again makes the subsequent bail proceedings illegal. Any bail bond taken as a result of such illegal procedure cannot therefore be enforced either against Suruj Mia or against any sureties. There was some duty cast on the Sessions Judge Mr. S.C. Talukdar when the matter came up before him on the motion of Suruj Mia for bail to see if his arrest and detention under the orders of the District Magistrate were in accordance with law. I have pointed out now that they were not in accordance with law.

It was the duty of the Sessions Judge when the matter came up before him in bail proceedings to have examined the records and taken action u/s 435 and reported the matter to this Court u/s 438 for action u/s 439 Cr.P.C. In merely releasing Suruj Mia on bail the learned Sessions Judge in a way accepted that the detention under the orders of the District Magistrate was legal. Still the bail bond taken on such bail granted by the Sessions Judge to a person who has been illegally committed to prison will itself be invalid and such an invalid bail bond cannot be enforced against the sureties. On that ground also this reference has to be accepted.

19 The bail bond was taken by the District Magistrate as directed by the Sessions

judge. Hence it has to be in conformity with the order granting bail. The Sessions Judge did not order that the bail bond was to be for appearance before the District Magistrate. In fact, there was no case pending before the District Magistrate against Suruj Mia. By illegally committing Suruj Mia to prison, the District Magistrate cannot say that there was any case before him against Suruj Mia. He did not pass any order transferring the proceeding pending before the S.D.M., Sonamura to his own file. The District Magistrate can no doubt, transfer a case from the file of the S.D.M. Sonamura to his own file u/s 528 Cr.P.C. But under that section he can transfer only a case. There was no case at all against Suruj Mia. A case can be said to have arisen only when a Magistrate has taken cognizance of an offence u/s 190. That can be done in the present case only after the police have submitted a report u/s 173 Cr.P.C. That stage had not been reached.

All that the S.D.M. Sonamura did in this matter was to grant bail to Suruj Mia when he was produced before him u/s 167 Cr.P.C. Such a matter cannot be transferred by the District Magistrate u/s 528, Cr.P.C. Further, I have pointed out that no written orders were passed by the District Magistrate transferring the matter to his file. The procedure adopted appears to have been to intimate to the S.D.M. Sonamura orally through the police to direct the production of Suruj Mia before the District Magistrate and to send the record through the police officer. Such procedure is unheard of in a Court of law. He seems to have acted not as a judicial officer bound by law and legal procedure, but as an executive officer issuing oral instructions to a subordinate executive officer.

20. Thus there was no proceeding before the District Magistrate in respect of which he could have directed Suruj Mia to appear before him or taken him into custody. Hence he could not take a bail bond from Suruj Mia to appear before him. The learned Sessions Judge himself treated it as a matter pending before the Section D, M. Sonamura and directed in his order, dated 4.7.58, that Suruj Mia was to appear before the S.D.M. Sonamura whenever called in connection with any case that may be started against him. As no case had been started against Suruj Mia his appearance either before the District Magistrate or before the S.D.M. Sonamura did not arise at all.

21. When we turn to the bail bond in question, we find that what Suruj Mia and his sureties undertook therein was to appear before the Court on each and every date to be fixed in future to answer the charge brought against him. It is clear from this that before any charge was brought against him the Court cannot call upon Suruj Mia to appear before it and Suruj Mia also is not bound to appear if the Court fixes a date merely for appearance, but not to answer any charge brought against him. I have already pointed out that no charge till this date has been brought against Suruj Mia. On this ground also, even granting that the bail bond, for appearance before the District Magistrate was valid, the time to direct the appearance of Suruj Mia had not arrived under the bail bond and there was no duty cast on the sureties to produce him in Court, if the Court chose to direct

his production for no purpose whatsoever.

We can envisage the situation when no charge is brought against Suruj Mia for years and the Court goes on fixing dates after dates for his appearance and directs the sureties to produce him. Such an order by the Court will be totally meaningless and will be nothing but harassment. I cannot understand why either the S.D.M. or the District Magistrate should have directed the production of Suruj Mia in Court when there was no charge against him. There must be some purpose in an order of Court.

22. No doubt, the learned Sessions Judge in granting bail, had directed Suruj Mia not to leave the limits of Agartala town. But that was not included in the surety bond. If that had been violated, I can understand a Court directing "the production of Suruj Mia in Court. But the particular bail bond in question did not include that condition and on that bail bond which was only for his appearance on the day fixed to meet a charge brought against him, the Court cannot direct his production on the ground that he had left the limits of Agartala town.

23. On 1.6.59 the District Magistrate transferred the case to the file of Sri N. Singh, first class Magistrate, Sonamura. When the original transfer to his own file was illegal, this further transfer to the file of Sri N. Singh was equally illegal. The District Magistrate had stated in his order dated 1.6.59 that no specific charge was brought against Suruj Mia till then, though more than a year had passed. One fails to understand why he should have transferred the case to Sri N. Singh in such a situation. He could have himself directed the release of Suruj Mia. After all, when he found that Suruj Mia had no case at all to meet there was no point in continuing the bail or in transferring the case to Sri N. Singh. Nor was there any meaning in Sri N. Singh's calling on the sureties to produce the accused. He could have released Suruj Mia. Of course, the forfeiture of the bail bond by Sri N. Singh was beyond his jurisdiction.

24. The further transfer of the case to his file on 17.2.60 was another meaningless thing which the District Magistrate did. It was after this that he forfeited the bail bond himself on the ground that he was the proper authority to forfeit the surety bond. I have pointed out in this order that he had no such authority not only to forfeit the surety bond but even to commit Suruj Mia to custody or to take bail from him. I have also pointed out that the learned Sessions Judge was himself wrong in having directed bail instead of reporting to this Court to take action u/s 439.

25. Thus the whole proceeding in this case from beginning to end has been illegally done by the police, by the Section D. M., and the District Magistrate. This case discloses that it is high time that the judiciary is separated from the executive and that criminal judicial posts should be manned by persons having knowledge and experience of law and legal procedure and having legal training. Executive officers put in charge of judicial work are apt not to do their duties in a judicial manner in accordance with statutory provisions. When even the District

Magistrate to whom all the other Magistrates are subordinate can act in this executive fashion in respect of matters which are strictly judicial we can imagine the position of Magistrates subordinate to him, A copy of this order will go to the Tripura Administration. It will be well if the Tripura Administration will appoint as District Magistrate u/s 10, Criminal Procedure Code, a judicial officer having legal training and knowledge and experience of law and legal procedure, so that he may carry out the judicial functions of the District Magistrate under the Cr.P.C. This has been done in the Union Territory of Manipur.

26. The reference is accepted and the orders of the District Magistrate dated 10.5.60 and 30.5.60 are set aside.