
(1962) 02 GAU CK 0003
In the Gauhati High Court

Gaibidingpao Kabui

APPELLANT

Vs

Union Territory of Manipur and Another

RESPONDENT

Date of Decision : 15-02-1962

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (1963) CriLJ 451

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

Bench : Single Bench

Judgement

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

1. This is an application for the issue of a writ of habeas corpus for releasing the petitioner Gaibidingpao Kabui from Jail custody.
2. This petitioner and two others, Kadonglung and Namei were arrested on 12-8-1961 near Tameiiglong by the Army and they were produced before Shri K. Lamphel Singh, Magistrate 1st Class at Imphal on 17-8-1961 with a letter from the O/C Imphal Police Station. In the said letter, it was mentioned that they were Naga Hostiles of the area and were arrested by the Army, that the O/C Tamenglong and Nungba Police Stations have been asked to submit N.F.I.R. u/s 109, Cri.P.C. for prosecution and that they may be remanded to Jail for a period of 15 days, during which the N.F.I.R. will be submitted. The Magistrate thereupon remanded them to Jail custody till 30-8-1961.
3. On 24-8-1961, the petitioner Gaibidingpao Kabui sent a petition to the Magistrate from jail stating that he was a cultivator and innocent of any offence and that a Police Report may be immediately called for and he may be released. This petition was sent for a Police report by 30-8-1961. The O/C 1. P.S. endorsed a report on the said petition on 30-8-1961 that the village from where the petitioner was arrested was within the jurisdiction of Nungba Police Station and so the O/C Nungba Police Station may be directed to submit the necessary prosecution report. The petitioner and the two others were produced before the

Magistrate with this report and the Magistrate again remanded them to custody till 13-9-1961 and in doing so he passed an order in the following words:

Ask O/C concerned to submit an offence report.

On 13-9-1961, they were again produced before the Magistrate and he passed an order that no offence report has yet been submitted, nor any report for further remand, that there has been serious objection from the side of the arrested persons and that the O/C Imphal Police Station will be directed to submit a report by the next remand date at any rate and that the arrested persons will be remanded till 27-9-1961 and he directed that a copy of the order should be sent to the Additional Superintendent of Police for necessary action. On 27-9-1961, they were again produced before the Magistrate without any offence report and the Magistrate again remanded them till 11-10-1961 saying that the I/O will be asked to submit the offence report early.

After this further remand, a letter was received by the Court from the S.I. of the Imphal Police Station stating that the O/C Tamenglong and Nungba Police Stations have been asked to submit offence report against the arrested persons and that report had also been submitted to the Court praying for directing the Police Stations concerned to submit necessary reports.

On this letter, an endorsement had been made by the O/C, Imphal Police Station stating that it was beyond the competence of the Imphal Police Station to submit a prosecution report in the case as the place of occurrence was beyond Imphal Police Station and that therefore the Police Stations concerned may be directed to submit the necessary prosecution report. Thus, the O/C Imphal Police Station was throwing the burden on the Court for getting the necessary offence report from the Tamenglong and Nungba Police Stations concerned. On receipt of this letter, the Magistrate wrote on the order sheet that he has received the report for further remand. Thus, the three arrested persons continued in Jail custody without any offence report from the Police and without the Court knowing why they were being remanded. It is surprising that the Magistrate should have continued to remand the arrested persons to police custody in this fashion.

4. It was at this stage that the petitioner Gaibidingpao Kabul filed the present application for the issue of a writ of habeas corpus before this Court on 22-9-1961 in which he pointed out that his arrest itself was done mala fide without any F.I.R. or any other information and without his being informed of the grounds for his arrest and detention in Jail. It was pointed out that the arrest was illegal and in contravention of the provisions of the Cri.P.C. that his detention was against the provision of Section 167, Cri.P.C. that the remand orders were being passed by the Magistrate without any jurisdiction and without recording any reason and that such detention was against the fundamental rights of the petitioner.

5. When this matter came up for hearing of the bail application on 29-9-1961, I directed the petitioner to be released on bail immediately, as there was no

reason for his detention. When the writ application for habeas corpus came for hearing, the Government Advocate wanted time to file counter, but he admitted that as the petitioner was being proceeded against only u/s 109, Cri.P.C. there was no provision for detention in Jail and so on 15-12-1961 I directed the petitioner to be released. I also directed the two persons Kadonglung and Namei to be released from Jail, But final orders were not passed as I was awaiting the explanation of the Magistrate for having continued to remand the arrested persons to Jail custody continuously even without any request from the Police.

6. A counter statement has been filed for the Government in which it is stated that the petitioner and the other two persons were arrested by the Military in exercise of the power u/s 4(c) of the Armed Forces (Assam and Manipur) Special Powers Act, 1958, that they were produced before the Magistrate by the O/C Imphal Police Station with a report that the O/C Tamenglong Police Station in whose jurisdiction the petitioner was arrested would submit prosecution report for proceeding u/s 109, Cri.P.C" that in respect of the petitioner, the said prosecution report was duly submitted on 28-8-1961 before the A.D.M. Manipur instead of before this Magistrate, that the said case has been registered under N.F.I.R. 1/61 and it stands transferred to the Court of Shri B. Ahamad, Magistrate First Class for disposal, and that as far as the report regarding the other two persons were concerned, vigorous search is being made to see if any report has since been submitted.

7. I am afraid that the counter statement filed for the respondent does not disclose anything which would in any way support the procedure adopted by this Magistrate against the petitioners and the other two persons. It is stated that the arrest of the three persons was made by the military u/s 4(c) of the Armed Forces (Assam and Manipur) Special Powers Act, 1958 (hereinafter to be referred to as the Act). Such arrest can be made u/s 4(c) by the Army of a person who nor either committed a cognizable offence or against whom a reasonable suspicion existed that he has committed or is about to commit a cognizable offence. As soon as such arrest is made, the Army have to make over the arrested person, u/s 5 of the said Act, to the O/C of the nearest Police Station together with a report of the circumstances occasioned in the arrest.

In this case, the army made over the petitioner to the O/C, Imphal Police Station and I am sure that they must have submitted the report of the circumstances occasioned in the arrest as required u/s 5. That report has not been produced. Hence we are unable to know the circumstances which led to their arrest. We do not know therefore whether the petitioner and the two others were reported to have committed a cognizable offence or whether a reasonable suspicion existed that they have committed or were about to commit a cognizable offence. The report of the O/C Imphal Police Station to the Court was that the 3 persons were Naga Hostiles and that the O/C Tamenglong and Nungba Police Stations have been asked to submit N.F.I.R. u/s 109, Cri.P.C. for prosecution. This report did not show what cognizable offence the 3 persons had committed or what

reasonable suspicion existed that they have committed or were about to commit a cognizable offence.

8. If we compare Section 4(c) of the Act with Section 54(1) First and Section 151, Cri.P.C. it will be seen that the provision for the arrest u/s 4(c) of the said Act is similar to the provision u/s 54(1) First and Section 151, Cri.P.C. u/s 54(1) First Cri.P.C. there must be reasonable complaint or credible information or reasonable suspicion that the person has been concerned in any cognizable offence. u/s 151, Cri.P.C. the arrest is to prevent the commission of a cognizable offence. In both those cases, there has to be investigation and the arrested person has to be produced before a Magistrate u/s 167, Cri.P.C. if his detention is desired pending the investigation. In such a case, ordinarily action u/s 109, Cri.P.C. is not contemplated. If we read Section 55, Cri.P.C. and Section 109, Cri.P.C. together, it will be seen that vagabonds, habitual robbers etc. could be arrested u/s 55, Cri.P.C. and they can be proceeded against u/s 109, Cri.P.C. The provision for arrest u/s 55 by the Police is quite different from the provision for the arrest u/s 54(1) First and Section 151, Cri.P.C. It is only if the arrest is made u/s 55 that the question of proceeding against the arrested person u/s 109, Cri.P.C. would arise. But the provision for arrest by the Army u/s 4(c) of the Act is not similar to the provision for the arrest u/s 55, Cri, P.C.

9. When a person is arrested u/s 4(c) of the Act and handed over to the Police or when a person is arrested by the Police u/s 54(1) First or u/s 151, Cri.P.C. he has to be produced before a Magistrate u/s 167, Cri.P.C. with a copy of the entries in the diary relating to the case and the Magistrate must proceed u/s 167 and decide whether he should be remanded or not pending Police investigation.

In our present case, no diary relating to the case was submitted at all, except the report which I have already referred to. It was the duty of the; Police Officer to have produced in Court the report! given u/s 5 of the Act by the Military. That was not done, evidently, because no further Police investigation regarding the commission of any cognizable offence was contemplated, but only action u/s 109, Cri.P.C. Thus this is a case where the Police treated the arrest as one u/s 55, Cri.P.C. In such a case when the arrested person is produced before the Magis; trate under Sections 61 and 167, Cri.P.C. no question! of his detention in Jail would arise at all. There is no provision u/s 109, Cri.P.C. to detain a person in Jail pending proceedings under the said section. If a person is produced before a Magistrate for action u/s 109, Cri.P.C. what the Magistrate may do is to make an order u/s 112, Cri.P.C. setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the manner, character and class of sure ties, if any, required. Thus, it is clear that this Magistrate had no authority u/s 167, Cri.P.C. to order the detention of the 3 persons produced before him.

10. What the Magistrate did in this case was much worse. In the first Police Report of the Police dated 17-8-1961, the Magistrate was not given any information which would permit him to initiate proceeding u/s 109, Cri.P.C. All

that the O/C Imphal Police Station stated was that the O/C Tamenglong and Nungba Police Stations have been asked to submit N.F.I.R. u/s 109, Cri.P.C. It was not the fault of the arrested persons that the O/C of Tamenglong and Nungba Police Stations could not submit a N.F.I.R. u/s 109, Cri.P.C. when they were produced before the Magistrate. The O/C Imphal Police Station had no right to request the Magistrate to remand the arrested persons to Jail custody pending the receipt of the N.F.I.R. from the O/C Tamenglong and Nungba Police Stations.

I have already pointed out that even if the said N.F.I.R. had been received in time, the Magistrate cannot order the detention of the arrested persons u/s 167, Cri.P.C. but that he can proceed only u/s 109, Cri.P.C. and direct the arrested persons to give surety pending further enquiry into the matter u/s 117, Cri. P.C

11. The petitioner before me, pointed out to this Magistrate that he has not been informed to to the cause of his arrest and that a report should be called for from the Police and he should be released. It is a pity that this Magistrate and the O/C Imphal Police Station were ignorant of the fundamental right of a citizen as provided in Article 22 of the Constitution. It provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

12. When, therefore the petitioner informed" this Magistrate that he has not been told of thereasons for his arrest, the Magistrate should no. have simply ordered his continued detention, but he should have seen to at that the petitioner was informed of the grounds of his arrest. If the Magistrate had himself looked into the matter, he would have seen for himself that no grounds for the arrest had been disclosed to him and that he had no authority to order detention

It is indeed surprising that this Magistrate was on ordering the continued detention of the petitioner and the other two Arrested persons tortnight after fortnight, when no report had been received from the Police stating the ground for the arrest It would look as if this Magistrate did not know that citizens had certain fundamental rights guaranteeing them freedom, which, it is the duty of Court safeguard. He behaved as if he was merely an agent of the Executive to help the Police in detaining persons in custody, as long as the Police wanted. It is high time that this Magistrate learnt that at a Court he cannot behave in this fashion.

13. The explanation of this Magistrate is that he was only a link Magistrate to the S.D M., Tamenglong as per order of the District Magistrate and that remand reports had to be obtained from Tamenglong and Nungba Police Stations which was not convenient and so remands had to be considered and granted in anticipation of such reports and so the arrested persons continued to be remanded till 11-10-1961. The explanation only betrays that for this Magistrate, the convenience of the Police is of greater concern than the freedom of the citizen or the provisions of the Criminal Procedure Code.

When dealing with Section 167, Cri.P.C. the Magistrate cannot look to the convenience of the Police to submit remand reports. The Court it dealing with the lover of a citizen which it guaranteed under the constitution and it has to act according to the strict letter of the Law. If the Police do not transmit to the Court a copy of the entries in the diary relating to the case, to satisfy the Magistrate that investigation could not be completed within 24 hours and that there are grounds for believing that the accusation or information is well-founded, the Magistrate has no jurisdiction to direct the detention of the arrested person. It is a travesty of justice to order detention in anticipation of a remand report. It is seen in this case, that on many occasions no Police Officer was present and no remand report received and still the Magistrate went on ordering further remands of the arrested persons.

14. I am not able to understand what the District Magistrate meant by link Magistrates in his Order No. 5(J)-DM/61 dated Imphal, the 29th July, 1961. There is no provision for appointment of link Magistrates under the Criminal Procedure Code. It can at best only mean that one Magistrate has been given concurrent jurisdiction along with another Magistrate who may not be readily available. Even the so-called link Magistrate has to act u/s 167, Cri.P.C. and abide by the strict provisions of the said section.

15. There is no doubt in my mind that the detention of the petitioner and the other two arrested persons in this case was totally against law and they have to be directed to be released from Jail. I have already ordered their release pending final orders in this application and the said release order is hereby made absolute.