

(2019) 08 MAN CK 0003

In the Manipur High Court

Case No : Writ Petition (Criminal) No. 23 Of 2011

Longjam Mangi Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 365

Citation : (2019) 08 MAN CK 0003

Hon'ble Judges : Ramalingam Sudhakar, CJ;M.V. Muralidaran, J

Bench : Division Bench

Advocate : M. Rakesh, S. Suresh, S. Samarjeet, RK Umakanta

Final Decision : Disposed Off

Judgement

R.S., CJ

1. The prayer in the writ petition is as follows :

i) to admit this writ petition and issue Rule Nisi calling upon the Respondents to show cause as to why a Writ in the nature of habeas corpus or any other appropriate writ should not be issued directing the Respondents to produce the said Shri Longjam Suresh Singh before the Hon'ble Court.

iii) to issue rule nisi calling upon the Respondents to show cause as to why an order should not be passed directing one of the Sessions Judge of Manipur or any other Senior Judicial Officer to hold a fact finding inquiry about the illegal arrest and unlawful detention of Shri Longjam Suresh Singh by the Security Forces;

iv) to issue an appropriate writ or direction directing the Respondents to pay adequate compensation to the Petitioner's son Shri Longjam Suresh Singh for his illegal and unjustified arrest and detention by the Security Forces at such rate as the Hon'ble Court may deem just and fit in law and equity.

[2] This petition is filed by father of the alleged detainee for production of his son Shri Longjam Suresh Singh who has been arrested and illegally detained.

[3] According to the petitioner on 18.02.2011 at about 11.50 pm, some persons in the guise of security forces suspected to be personnel of 12 Maratha Light Infantry intruded into the house of the petitioner and picked up his son who was sleeping and thereafter, his whereabouts were not known.

[4] The petitioner lodged a written report about the incident on 19.02.2011 to the Officer-in-Charge, Wangoi Police Station. An FIR has been registered in FIR 19(2)2011 U/S 365/34 IPC on 17.03.2011. On 24.08.2011, the petitioner submitted representation to the Director General of Police, Govt. of Manipur.

Thereafter, the writ petition was filed on 28.02.2011. The case was taken up and the following order was passed on 03.03.2011 :

"Heard Mr. K. Rabei, learned counsel appearing on behalf of the petitioner, Mr. C. Komol, learned CGSC appearing for the respondents 1,2,3 & 4 and Mr. R.S. Reisang, learned GA appearing for the State respondents.

2. It is stated that the petitioner's son, Shri Longjam Suresh Singh, was picked up by the security personnel suspected to be the personnel of the 12th Maratha Light Infantry from his house in the night of 18th February, 2011. In the writ petition it is also categorically pleaded that the petitioner's son, Longjam Suresh Singh, was dragged out from his house in presence of the petitioner and the present petitioner also demanded to know who are the security personnel but the security personnel refused to disclose their identity. Petitioner's son was also arrested with another person, namely Shri Chabungbam Manglemba Singh, aged about 31 years, S/o Ch. Nungshijao Singh, whose house is located at a distance of about 300 ft. from the house of the petitioner's son. In the early morning of 19.02.2011, the petitioner had lodged a complaint for the arrest of his son by the Security Personnel without disclosing any reason to the Officer-in-Charge, Wangoi Police Station, which had been registered as criminal case under FIR No.19(2)2011 U/S 365/34 IPC. On the very day itself, i.e. 19.2.2011, local people had formed a joint Action Committee (for short "JAC") to help the petitioner and others in finding out the whereabouts of the petitioner's son. The said JAC also submitted a memorandum to His Excellency, the Governor of Manipur on 20.2.2011 and His Excellency, the Governor of Manipur wrote a DD. letter dated 21.2.2011, which reads as follows:

"Dear Shri O.Ibobi Singhji,

Enclosed please find a copy of the memorandum submitted by Shri Longjam Tomba Singh, Convener, JAC against the alleged kidnapping of Shri Chabungbam Manglemba Singh and Shri Longjam Suresh Singh. This memorandum was handed over to the ADC(P) at Raj Bhavan on 20th February, 2011. The allegations leveled by the JAC are serious and I would request you to have them looked into by a senior officer and take necessary action as per the results of the enquiry.

2. Early action would be appreciated and I would also like to have a report

regarding the action taken by the Government.

With warm regards.

Yours sincerely,

Sd/-

(Gurbachan Jagat)"

3. On receipt of the said D.O., the Hon'ble Chief Minister, Manipur also directed the respondent no.7, i.e. the Director General of Police, to take immediate necessary action. This is the case of the petitioner that till date the whereabouts of his son is not known and it is also alleged that no steps have been taken by the respondent no.7 for tracing out the whereabouts of the petitioner's son. Shri Ch. Komol, learned CGSC, who is appearing for the respondents 1 to 5, is directed to take a specific instruction from the respondent no.5, the Commanding Officer, 12th Maratha Light Infantry as to the above allegation is concerned. Also, Mr. R.S. Reisang, learned GA, who is appearing for the respondent no.7, has to submit a definite information as to the steps taken up by the respondent no.7. Instructions so received should be filed in the form of an affidavit on 11.03.2011. The Officer-in-Charge, Wangoi Police Station has to appear in person along with the Case Diary of the said FIR No.19(2)2011 U/S 365/34 [PC on 11.3.2011 before this Court at 10.30 AM.

List it on 11.03.2011.

Registry is directed to furnish copy of this order to the learned counsel appearing for the parties in the course of the day."

[5] Subsequently, the following order was passed on 11.03.2011 :

"None appears for respondent Nos. 1 to 5 without showing any cause. This court is compelled to observe that in such a matter respondent Nos. 1 to 5 should make necessary arrangements for their representation by an authorized person before this Court.

Registry is directed to intimate the displeasure of this Court to respondent Nos. 1 to 5 for the absence without any reason.

Pursuant to the order of this Court dated 03.03.2011, Shri Amumacha, Inspector, O/C, Wangoi P.S. has appeared in person along with the progress report of investigation of the case, i.e. FIR No. 19 (2) 2011 Wangoi P.S., under Section 365/34 IPC.

We have perused the said report which is far from satisfactory. Mr. Th. Ibohal, learned senior GA and Mr. Reisang, learned GA appearing for respondent Nos. 6 and 7 are directed to take information as to further development of the investigation of the above said case.

List this case on 18.03.2011, on which date the Inquiry Officer, has to appear in

person again along with the progress report and Case Diary."

[6] Thereafter, on 23.03.2017, the following order was passed:

"It is the case of the petitioner that the petitioner's son and also some other persons were taken away by some unknown persons suspected to be the army personnel. On account of that cases were lodged which were registered as FIR No.19(2) 2011 and 20(2) 2011 of Wangoi P.S. under Section 365/34 IPC. On 17.03.2011, when the police did not act in positive manner, this application was filed. This Court called for the progress report of the investigation which was submitted by the OC Wangoi PS on 31.03.2011 but thereafter what happened it is not known neither to the counsel appearing for the petitioner nor the counsel appearing for the State.

Therefore, before we proceed with the hearing it would be proper and appropriate to know about the final outcome of the aforesaid FIRs. Therefore, matter be posted on 06.04.2017, on which date I.O. of this case shall remain present in Court at 10.30 am."

[6] Thereafter, the case was adjourned from time to time at request of either parties and on 06.04.2017 the following order was passed :

"Pursuant to order dated 23.03.2017, I.O. of Wangoi P.S. is present in the Court. Mr. R.S. Reisang, learned senior G.A submits that the investigation of the two cases was being made by the I.O. but in the year 2014 cases had been transferred to the CID branch and now those two cases registered as FIR No. 19 (2) 2011 and 20(2) 2011 of Wangoi P.S. under Section 365/34 IPC are being investigated upon by the CID. In that event, let this case be listed after two weeks on which date, the I.O. of the CID who is investigating the aforesaid two cases must remain present in the Court so as to he may give information about the stage of the investigation. Personal appearance of I.O. Wangoi, PS. is dispensed with.

Matter be posted on 02.05.2017.

Let a copy of this order be handed over to Mr. R.S. Reisang, learned senior G.A for needful."

[7] Then, on 02.05.2017, the District & Sessions Judge, Imphal West was directed to inquire into the incident and submit report. The order dated 02.05.2017 reads as follows :

"Heard Mr. M. Rakesh, learned counsel for the petitioner. The I.O. of the case namely, Mr. Ch. Victor Singh is present before this Court as directed earlier on 6-4-2017 for giving information about the stage of the investigation. Heard also Mr. R.S. Reisang, learned senior GA for the State and Mr. S. Rupachandra, learned ASG for the Union of India.

The I.O. of the case has submitted that there is no progress in the investigation of the case as regards the allegation that the security personnel has picked up

the son of the petitioner as the security personnel who were deployed at the relevant time in the near vicinity of the residence of the petitioner have been already shifted out of this State. It has been stated by Mr. Ch. Victor Singh, the LO. of the case that by referring to the case diary that the Office of the Inspector General, Assam Rifles (South) as well as the Office of the 57 Mountain Division had informed vide communication dated 15-3-2011 and 21-2-2011 that the person mentioned in the query of the police had not been picked up. Thus, the Office of the Inspector General, Assam Rifles (South) as well as the 57 Mountain Division have declared their ignorance of the whereabouts of the son of the petitioner who the petitioner alleges was picked up by unified security personnel.

It seems, after the said communication from the Inspector General, Assam Rifles (South) as well as the 57 Mountain Division, there has been no further investigation in the matter by the C.I.D. also. Since the matter stands as such, it is to be examined by this Court as to whether investigation should be continued by the police or by any other agency. However, before considering the same, we are of the view that it would be appropriate for the Learned District & Sessions Judge, Imphal West to call an enquiry as to the circumstances under which the son of the petitioner namely, Longjam Suresh Singh was picked up allegedly by the security personnel on 18-2-2011 at around 11:50 pm. as contended by the petitioner.

Accordingly, let this enquiry be conducted by the Learned District & Sessions Judge, Imphal West by giving notice to all the parties concerned and submit a report before this Court within a period of six months, after which, this Court would proceed with the matter.

List the matter again on 14th November, 2017.

A copy of this order may be furnished to the Learned District & Sessions Judge, Imphal West as well as to the learned counsel for the parties.

The personal appearance of the I.O. of the case is dispensed with until further order."

[8] That report is dated 22.20.2018. Copy of the report has been submitted to the petitioner as well as to the Union and State Government.

[9] Respondents no. 1 to 5 have filed objection.

[10] On perusal of the detailed report running to 40 pages we find that the District & Sessions Judge, Imphal West has made a thorough and detailed inquiry that on his examination, several witnesses both related to the alleged detainee as the other parties and from the analysis of the evidence the finding of the District & Sessions Judge which is relevant for the present case is at Para 12.2, 13 and 14. A reading of the relevant portion makes it is clear that the local people and eye witnesses are not able to establish as to who is responsible for the so called abduction of the son of the petitioner. It will be relevant to extract the relevant portion of report at para 9 where the 12 Maratha Unit was not responsible for the

abduction or kidnapping of the son of the petitioner. The said para 9 reads as follows :-

"9. Per contra, learned counsel of the respondent no.1,2,4 and 5 has contended that the allegations of the petitioner is that his son was picked by some personnel of Security Forces, suspected to be from the 12 Maratha Light Infantry, attiring combat dress and welding with sophisticated weapons but it is a fact that the members of unlawful organization were also wearing combat dresses and holding sophisticated weapons just like Army personnel. Ld. Counsel has further maintained that the respondent nos. 1,2,4 and 5 have produced two Witnesses, R.W. 1 and R.W. 2 and as per their statements the troops of 12 Maratha LI, no person was apprehended by the troops of 12 Maratha LI on that night from the village of the petitioner and that their troops were involved in intense patrolling in the vicinity of Tuliha Airport from the evening of 18th February, 2011 to late evening of 19th Feb, 2011 in connection with the visit of the Defense Minister of the Union of India, Mr. A.K. Anthony and some other dignitaries. Ld. Counsel has also contended that on 20/2/2011 a group of locality led by the then MLA of Wangoi, Salam Joy Singh were allowed to carry out search of the Company Operating Base location at Mayang Imphal Telephone Exchange, however, no person was found and thus, the petitioner has failed to prove that his son was picked up by the Army personnel of 12 Maratha LI or from other Camp and prays for deciding this issue in negative."

[11] The eye witnesses are not able to establish the specific case as to who was responsible for the abduction of the son of the petitioner.

[12] In the result, the observation of the Judge is that the some army personnel operating the State of Manipur apprehended the son of the petitioner but is not able to conclude whether the troops of 12 Maratha Unit is responsible for the same and since there is a possibility of involvement of some army personnel has suggested that the case may be investigated by the CBI in view of the limited jurisdiction of the State. From this, it is clear that the identity of the person who has apprehended the son of the petitioner is not very clear. The Officer-in-charge in FIR No. 19(2) 2011 Wangoi Police Station is directed to pursue the investigation. For this, even the FIR No. 19(2)2011 Wangoi Police Station can be taken up and proceed further by the SP (CID) CB, State of Manipur who is now entrusted the investigation of the present case. If he is able to identify that a particular army unit is responsible then through the State Government he may recommend that appropriate investigation may be taken up by the Central Agency.

[13] In this view of the matter, we find that the whereabouts of petitioner's son is not known and identity of the person who is supposed to apprehend or pick up the petitioner's son is not clear and we are not able to issue any direction, against any particular person so as to secure the son of the petitioner.

[14] In the result, we direct the SP(CID) CB, State of Manipur to pursue this

investigation in a more effective manner and give a report to the Director General of Police, Manipur once in 3 (three) months so that some progress is made in the case. In the meanwhile, the suggestion made by the enquiry officer namely, the District & Sessions Judge, Imphal West may be considered by the State Government on the basis of the report of the SP(CID) CB, Manipur who has been directed by this Court.

[15] Observing as above, the writ petition stands disposed of.