
(1999) 04 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule (HC) No. 22 (K) of 1998

Manyau Phom

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-04-1999

Acts Referred:

Constitution of India, 1950 — Article 21, 21, 22, 22, 226

Citation : (2000) 1 GLJ 94

Hon'ble Judges : H.K.Sema, J and W.A.Shishak, J

Bench : Division Bench

Advocate : R.Iralu, K.Meruno, Advocates appearing for Parties

Judgement

W. A. Shishak, J.—The petitioner is the elder sister of Shri Lima Phom who was arrested by personnel of the 311 Mm Brig on 8.4.98 at about 9.30 AM while said Lima Phom was proceeding to Longleng by a private Jeep with his mother, one sister named B. Helem Phom, Pastor of Baptist Church Tamlu Town, Shri Mongmei, Deacon and GB, Shri Bushong, Finance Secretary Baptist Church Tamlu Town, Shri Henshenand Shri Thepmei and another youth worker of the Baptist Church of Tamlu Town. After the said Shri Lima Phom was apprehended, he was detained by the Army personnel and he was taken away. Para 3 of the

petition states that Pastor of the Baptist Church, Tamlu Town had pleaded with the Army by his letter dated 8.4.98 saying that said Lima Phom was an ordinary person and he had no link with any organisation. Subsequently the Chairman of Tamlu Village Council also wrote a letter to the Chief Secretary of Nagaland on 29.4.98 requesting him to intervene in the matter so that the arrested person could be released from Army custody, but to no avail.

2. It is contended in para 5 of this writ petition that the petitioner came to know that her brother had been badly tortured at the hands of Army and so she sought interview with her brother; but the said request was turned down. It is contended in the same para that her brother Lima Phom was subjected to

various kinds of torture including electric shock.

3. When this petition was filed, Shri Lima Phom had been detained by Army for 27 days without assigning any reason and in complete violation of the provisions of Article 21 of the Constitution of India and section 5 of the Armed Forces (Special Powers) Act, 1958. The contention of the petitioner is that soon after arrest on 8.4.98 and not later than 24 hours from the time of arrest, said Lima Phom ought to have been made over to the Officer Incharge of the nearest a Police Station as mandated in this behalf by the constitutional provisions as well as the provisions under Armed Forces (Special Powers) Act. It may be stated that after 42 days of the arrest, Shri Lima Phom was made over to police on 20.5.98.

4. While issuing the Rule in the present case on 5.5.98, this Court had passed the following interim order:

"I direct the respondents, particularly respondent No.3 to make over the said Lima Phom to the Officer Incharge of the nearest Police Station immediately on receipt of this order."

Office note dated 5.5.98 states that the order passed by this Court was duly communicated to the 3rd respondent viz, the Commandant, 10th AR Mokokchung. However, despite the aforesaid direction issued by this Court and despite receipt of the said order on 8.5.98, Shri Lima Phom was not made over to the police. In other words, the detention of Lima Phom continued at the hands of respondent No.3 in violation of this Court's direction and also in violation of the constitutional mandate and the provisions of the Armed Forces (Special Powers) Act.

5. We have heard Mr. R. Iralu, learned counsel for the petitioner as well as Mr. K. Meruno, learned Central Govt Standing Counsel. Counter affidavit has been filed on behalf of respondents 2 and 3. Para 4 of the counter affidavit states :

"That with regard to the statement as contained in para 2, 3 and 4 of the writ

petition, the deponent respectfully beg to state that in exercise of the power conferred by the Armed Forces (Special Powers) Act, 1958, the Security Forces apprehended the detenu Mr. Lima Akom Phom (hereinafter being referred to as the detenu). The detenu is a confirmed member of the banned organisation NSCN (K), holding the rank of SS Corporal and was picked up on 8.4.98, between Merangkong and Tamlu, from MokokchungAmguri Road, based on specific information. The detenu has been involved in quite a few cases of extortion, looting, coercion, criminal conspiracy and propaganda against the nation. As claimed by the petitioner, the detenu was not physically abused at all by any of the Security Force personnel, at the time he was apprehended or while he was in detention."

It is averred in the counter affidavit that the detenu said Lima Phom was

taken to Tamlu Village on 10.5.98 and he was allowed to meet his family

members. It is denied that the detenu was tortured by the Armed Security Forces. In para 6 of the counter affidavit, it is further averred :

"That the detenu have voluntarily given a lot of information about seditious and secessionist activities of hard core members of the banned organisation NSCN (K), while he was in the custody of the Security Forces."

It is further averred on behalf of the respondents 2 and 3 that:

"The said detenu has been handed over to the Mokokchung Police on 20.5.98, pursuant to the order passed by this Hon"ble High Court."

As stated above, this Court issued direction to the respondents to make over the detenu immediately on receipt of the order dated 5.5.98 and the said order was duly communicated to the 3rd respondent. However, there is no explanation as to why Shri Lima Phom could not be made over to police as directed by this Court.

6. Section 5 of the Armed Forces (Special Powers) Act, 1958 reads :

"5. Arrested persons to be made over to the police Any person arrested and taken into custody under this Act shall be made over to the Officer Incharge of the nearest Police Station with the least possible delay together with a report of the circumstances occasioning the arrest."

Article 21 of the Constitution of India reads :

"21. Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

Although Security Forces may be given free hand as far as operational part of the activity of Armed Forces is concerned, it seems clear to us that the provision of section 5 would not permit the Security Forces to arrest and detain a person , indefinitely inasmuch as in our view, Security Forces must take the civil authorities in confidence and work in harmony. The fact that the arrested person should be made over to the Officer Incharge of the nearest Police Station with the least possible delay should be read with the provision of Article 22 (2) which is as follows :

"Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate."

7. Liberty is dear to every citizen of this democratic country of India. Hence deprivation of liberty of a citizen of this country can only be done in accordance with procedure established by law. We may state here that any procedure established by law must be construed as meaning which is reasonable, fair and just. Once relevant law mandates that arrested person under the provisions of

the Armed Forces (Special Powers) Act, 1958 should be made over to the Officer Incharge of the nearest Police Station with the least possible delay, no authority under the said provision of law has any right to detain an arrested person at will. We cannot allow the provisions of law to be abused by the officers/agents representing the Union of India. If the provisions of law regarding personal liberty of a citizen of this country are violated without any reason to do so and if the direction issued by this Court is also ignored and violated, a day is not far off when there will be anarchy in the country. We cannot allow disrespect to the laws of the country. So on careful perusal of the pleadings filed on behalf of the parties and in terms of the provisions of law that we have stated above, we are of the view that, respondents have violated the relevant provisions of law and also the direction of this Court issued on 5th May, 1998. In the facts and circumstances of the present case, we have no hesitation to say that the detention of said Lima Phom amounts to unlawful confinement not authorised by any provisions of law. We are also of the view that in the facts and circumstances of the present case, the only relief that is allowable is by way of monetary compensation. As Shri Lima Phom was made to suffer wrongful confinement/illegal detention for 42 days at the hands of Security Forces without any legal authority to do so, we direct the respondents, particularly respondents 2 and 3 to pay an amount of Rs. 50,000/ (Rs fifty thousand) only as compensation to Shri Lima Phom within a period of 3 (three) months from the date of receipt of this order.

With the above observation and direction, this petition is disposed of. No costs.