

(2018) 01 GAU CK 0055
In the Gauhati High Court
Case No : 4 of 2017

NIL

APPELLANT

Vs

STATE OF ASSAM and ORS.

RESPONDENT

Date of Decision : 24-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0055

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

Advocate : U.K. Nair, A. Chetry, R.K.D.Choudhury

Judgement

1. Heard Mr. U.K. Nair, learned Senior Counsel assisted by Mr. A. Chetry, Standing Counsel, Gauhati High Court. Also heard Mr. R.K.D.

Choudhury, learned Senior Government Advocate, Assam for the respondents.

2. The subject matter of the present Public Interest Litigation and the directions made by this Court for causing an independent judicial inquiry has

been succinctly enumerated in the order dated 27.11.2017, the relevant extract of which is reproduced below to avoid repetition of facts.

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This Public Interest Litigation was taken-up on the news paper report dated 30th August, 2017 published in the Assamese News daily ""Amar

Asom"" headlined ""Police High Handedness at Bokota Nemuguri Sivasagar : 11 year old child taken to the thana tied with a tether"".

As per the news report Ajoy Murari Phukan, a juvenile of 11 years of age alleged to have stolen a scooty on 28.08.2017 was apprehended by the

locals and the village defence party of Bokota Deoriting village under Demow revenue circle, Sivasagar, assaulted him mercilessly. On the next

day, the police party from Nemuguri Police Station led by Sub-Inspector, Harinarayan Dutta, came to Deoriting village and took him to the police

station by tying his hands and pulling him along the road like cattle. Such ill treatment drew huge public outcry and this court registered the Public

Interest Litigation (suo-moto).

Respondent No.4-the Superintendent of Police, Sivasagar, in his affidavit-in-opposition has stated that on 28.08.2017 at about 8:30 a.m.,

Assistant Sub-Inspector of Police-Sri Harinarayan Dutta, acting as Incharge of Bokota Nemugurihat Police Station-received information from the

Secretary of Deoriting Village Defense Party that the juvenile was confined by the local people alleging to have stolen a scooty. He then

immediately rushed to the place with available staff and rescued the juvenile from the irate mob. It is also stated that the people tied the hands of

the juvenile with a tether and the mob also came forward towards the police vehicle and tried to stop it. But, Harinarayan Dutta hurriedly rescued

the juvenile from the clutches of the mob and the situation was so tense that he did not get opportunity to untie the juvenile. It is further stated that

the step father of the juvenile also lodged a First Information Report on 30.08.2017 before Bokota Nemugurihat Police Station alleging that his

adopted son stole one scooty and concealed it under banana leaves. But local people came to his house, took him away and tied him to a tree with

a rope. The same has also been registered as Bokota Nemugurihat Police Station Case No. 39/2017 under section 75 of the Juvenile Justice Act.

Respondent No.4 has also stated that Harinarayan Dutta committed gross negligence of duty for which he was severely reprimanded vide order

dated 05.09.2017.

We are, however, prima facie, not convinced by the explanations put forward by Respondent No.4. It is reported that police took the juvenile

from the house on the following day of the incident whereas the incident of theft occurred on 28.08.2017. It is also stated by Respondent No.4

that Harinarayan Dutta was informed on that day itself. If it is so, there is no explanation as to why Harinarayan Dutta did not go to the place of

occurrence on that day itself and what prompted him to drag the juvenile with his hands tied by tether. If the version of Respondent No.4 is to be

believed and the juvenile was rescued on the day of incident itself

i.e.28.08.2017, then what prompted the step father of the juvenile to lodge the First Information report on 30.08.2017 i.e. after two days . Thus, it appears that there is some foul play in the whole incident and we are of the considered view that an independent judicial enquiry is much needed to unearth the truth. Therefore, we direct the District and Sessions Judge, Sivasagar, to cause an enquiry into the incident and submit its report within 1(one) month.

3. Pursuant to the order of this Court, an enquiry was conducted and Report thereof was prepared and submitted by the District & Sessions Judge, Sivasagar. A detailed enquiry was made and conclusion derived by the Enquiry Officer has been summarized at paragraphs 25, 26, 27 and 28 of the Report. For ready reference the same are reproduced hereunder:

25. To sum up, I hold that on 28.08.2017, during 6-7.00 AM, the child, Sri Ajay Mura @ Ajay Phukan @ Riten, (wrongly reported in the news as Ajay Murari) aged about 10 years, who at the relevant time was residing in the house of Sri Dandi Phukan, was apprehended by the local people on suspicion of having committed theft of a scooty belonging to Sri Arabinda Mohan. Thereafter, one Sonu Tanti with the help of Krishna Tanti kept the child Ajay Mura tied with a tether to a tree, situated in the residential campus of Krishna Tanti and that one Bipul Gogoi physically assaulted the child Ajay Mura by slapping and with a bamboo stick. That on coming to learn about the same, the VDP Secretary of Deoriting Gaon arrived at the place of occurrence (where the child was tied to a tree) and informed ASI Hari Narayan Dutta of Bokota Nemuguri Police Station, who was in-charge of the police station due to absence of regular O/C. Subsequently, at about 8.30 AM police of Bokota Nemuguri P.S. lead by ASI Hari Narayan Dutta arrived at the place of occurrence, untied the child from the tree and thereafter without removing the tether from the hands of the child, took away the child by pulling the tether upto the police vehicle and then to the Police Station. The tether was removed at Police Station. There from, the child was taken to Bokota Mini PHC for medical examination and at about 5.00 P.M. when the scooty owner refused to lodge FIR, the child Ajay Mura was handed over to his guardian, Smti. Bina Phukan.

26. Apart from above, from the statement of O/C, Bokota Nemuguri P.S. and

after going through the GD Entry No. 499 dated 30.08.2017, it

appears that on 30.08.2017, Sri Dandi Phukan, the guardian of the child, lodged an written FIR alleging physical assault on the child Ajay Murari

@ Phukan on 28.08.2017, at about 7.10 A.M. by the local people. On receipt of the said FIR, police registered Bokota Nemuguri P.S. Case

No. 39/2017 u/s 74 of Juvenile Justice Act. From the statement of CW 3, it also appears that in this case, during investigation, four persons were

arrested and they were enlarged on bail. The investigation of the said case is almost over. In his statement, the informant was silent regarding filing

of the FIR and the reasons for delay. However, from the certified copy of the said FIR, it appears that in the FIR it has been stated that

apprehending public outrage, the FIR could not be lodged on time, by the informant. The entire incident had taken place on 28.08.2017 between

8.30 AM to 10 AM. Nonfiling of FIR for the assault inflicted on the child, on the same day, has been duly explained by the informant Sri Dandi

Phukan in the FIR only.

27. It may also be noted here that while giving her statement, C.W. 8/ Smti. Bina Phukan alleged that the Bokota Nemuguri P.S. police had

demanded Rs.10,000/- (Rupees ten thousand) for release of her son, i.e. the child Ajay Murari @ Phukan and that she could somehow collect

Rs.3000/- (Rupees three thousand), which she paid to police officer Sri Dutta. However, the above fact was not corroborated by any other

witness. The aforesaid allegation figured during recording of the statement of Smti. Bina Phukan (C.W. 8) regarding demand of Rs.10,000/- for

release of the child and payment/acceptance of Rs.3,000/- from her in lieu of release, by the police of Bokota Nemuguri PS is a matter of concern.

28. From the totality of the facts as discussed above, I am of the considered opinion that ASI Hari Narayan Dutta of Bokota Nemuguri Police

Station, while performing his duty, though promptly reached the place of occurrence to rescue the child, but nevertheless, he not only failed to

follow the mandate of law in respect of juveniles but also failed to display minimum humanitarian conduct expected of a responsible police officer

towards a juvenile, in dragging the child Ajay Mura to the police vehicle with the tether and without first opening tether from the hands of the said

child. The tether, in fact, was not also opened when the child was seated in the

police vehicle and it was opened only in the Police Station.

4. In the above Report, certain amount of laxity in handling the situation on the part of Hari Narayan Dutta, Assistant Sub Inspector of Bokota

Nemuguri Police Station is expressed. The allegation of monetary demand, as mentioned in paragraph 27 of the Report, is not conclusive, although

such evidence has come in the statement of one Smti Bina Phukan. Taking the child to the Police Station without first opening the tether from his

hands exhibits element of callousness on the part of the concerned Police Officer while dealing with a juvenile.

5. On the facts above, we are of the considered view that Sri Hari Narayan Dutta, Assistant Sub Inspector should guard himself from repeating

such action in the discharge of his duties. The Superintendent of Police, Sivasagar shall also take note of the Enquiry Report and take appropriate

measures in accordance with law. To the extent above, the present PIL stands closed.