

(1991) 02 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule (HC) No. 24 of 1991

Niloy Dutta

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Constitution of India, 1950 — Article 20, 22, 226
Criminal Procedure Code, 1973 (CrPC) — Section 160, 160(1)
Penal Code, 1860 (IPC) — Section 178, 179

Citation : (1991) CriLJ 2933

Hon'ble Judges : A. Raghuvir, C.J.; S.N. Phukan, J

Bench : Division Bench

Advocate : P.K. Goswami and H. Roy, for the Appellant; A.R. Barthakur, General, P. Prasad, Sr. Govt. Advocate, Sk. Chand Mohammad, Sr. Central Govt. Standing Counsel and K.N. Choudhury, Central Govt. Standing Counsel, for the Respondent

Judgement

A. Raghuvir, C.J.—The circumstances in which the writ petition was filed in this court are rather unusual. We set out the facts in brief in chronological order.

2. A practising advocate of this court Sri Pranabananda Pathak intervened at a convenient time in the forenoon of January 24, 1991 read a news item in the open court from Natin Dainik (a daily newspaper in Assam) under the caption "Sandehjukta ULFA Sadashya Atak", Translated into English the news item reads as follows : "Suspected ULFA female members detained". On January 22, 1991 it is reported two females were taken in custody to Army camp for interrogation. The occurrence perturbed the local populace. Among the two females one is Asomi Gogoi, a High School student of Class X. The other Minu Saikia is a student of Higher Secondary School in 2nd year. Sri P. Pathak requested the powers of this court under Article 226 of the Constitution be invoked to interdict the Army from taking females to Army Camp for interrogation.

3. On January 24 it was not known whether the two females were arrested or whether they were taken for interrogation. The court requested the learned

Central Government Standing Counsel, the learned Sr. Government Advocate, Assam and Shri N. Dutta and Shri H. Roy, two practising advocates all the four to meet us in the Chambers at the lunch recess for what steps are to be taken. Since the news item was in Assamese a request was made to have the news item translated. The English translation of the news item reads as under :

"Natun Dainik"

Fourth Year Edition: Guwahati Thursday 10 Magha, 1912.

Saka : January 14, 1991. Price Rs. 1.50 Suspected Ulfa Female Member Detained --By Special Correspondent.

Sibsagar, January 23 : The police yesterday arrested two young women suspecting them to be members of the ULFA. Later, they were taken to an Army camp for interrogation.

The two young women are Asomi Gogoi (16) of Namati-Demowr Maut Gaon and Minu Saikia (20) of Bailung Gaon, according to police sources. Although they were kept in police custody yesterday, army personnel, who had come in civilian clothes, took the two young women this morning from the Sadar thana to army camp for further interrogation. The arrest and transfer of the two girls to army camp has created a great deal of tension among the local populace. Asomi Gogoi is a high school student of Class X, while Minu Saikia is a second year Higher Secondary Class student. According to police sources, both the girls are suspected to be involved with the ULFA.

108 arrested.

Till this day, 108 suspected ULFA activists have been arrested in Sibsagar district."

4. The learned Standing Counsel for the Union of India, who represents the Army officials of the Army in this court was requested in the Chambers to cause production of the two students. We informed the learned Sr. Government Advocate, Assam to produce the two students if they are in police custody by that date. The two female students were produced on January 25, 1991. Curiously along with the two students two other females Nownnona alias Anowalla and Sangkhim alias Sanchanla, residents of Arunachal Pradesh and members of Scheduled Tribes, were also produced in the court. The four we (were ?) ordered to remain in Kasturba Ashram after having obtained the consent of Manila Samity Legal Aid Wing, Gauhati through Dr. H. Das, a practising lawyer who is their guide, friend and philosopher of Mahila Samity. Thereafter the instant writ petition was filed and was debated at great length by all Counsel connected with the subject matter.

5. The questions that arose for consideration in the case are of far-reaching in importance. The issues touched the subject of constitutional protection to women from interrogation at the police station houses. In this case we have heard Shri

H. Roy and Sri N. Dutta, whom we requested to file the writ petition. We had the advantage of hearing a Senior Advocate of this Court Sri P. K. Goswami, who till yesterday was the Additional Solicitor General of India for the writ petitioner. He represented the four females in the deliberation of this court. We heard Sri P. Prasad, learned Sr. Government Advocate, Assam, Sri Sk. Chand Mohammad and Sri K. N. Choudhury, learned counsel for the Central Government. Finally we heard Sri A. R. Barthakur, learned Advocate General of Assam, who represented the State of Assam and the Government of India. In more than one sense the deliberation of this Court covered all facets of the issues involved in the case. Notwithstanding such a full discussion we term the instant order subject to further orders of this court in Civil Rules 2238, 2341, 2415 of 1990 and Civil Rule No. 11 of 1991 as in the above group of cases larger issues are pending decision amongst other including the subject protection of women from police and army officials under the statutory provision of the Central Act 28 of 1958.

6. Nownnona alias Anowalla and Sangkhim alias Sanchanla were informed that it is better a separate application is moved on their behalf as the above two are shown in the record were arrested on January 2, 1991 and further army authorities handed over the two to Amguri Police Station in Sibsagar District on 9th January, 1991. Ms. Nandita Haksar, learned counsel informed the court that a separate application on behalf of the arrested two females is being filed. This order therefore is not to be understood to have adjudicated rights of the two females from Aruhachal Pradesh.

7. The father of Miss Minu Saikia who appeared in the court filed an affidavit in that he affirmed that he resides at Nami Dal Bailung Gaon, Dhupdhar Mouza, P. S. Halwating in Sibsagar. Between 10 to 11 a.m. on 22nd January, 1991, four Jawans in a vehicle came and searched his house, opened boxes but did not find incriminating material. They took away a broken transistor along with Miss Minu Saikia. On 23rd January, 1991 at 8 p.m. she was delivered back to them. On January 24 at 11 p.m. the Jawans came and took Minu Saikia, thereafter he did not know her whereabouts from that time. When enquired at the police station on January 27, the Officer-in-Charge, Namtichariali P.S. Sibsagar informed him to be present in the Gauhati High Court on January 31. In the circumstances Miss Minu Saikia were set free on January 23, 1991 as the two students were produced in this Court only in compliance of the directions of the Court. The two were not arrested at any point of time.

8. The questions that were mooted for consideration turned on Clause (2) of Article 20, Clause (1) and (2) of Article 22 of the Constitution of India and Section 160, Criminal Procedure Code, especially the proviso to Clause (1) of Section 160, Code of Criminal Procedure. Proviso to Clause (1) recites : "Provided that no male person under the age of fifteen years or women shall be required to attend any place other than the place in which such male person or woman resides." A woman be she accused or a witness or even if she should not fall within the two descriptions is to be interrogated or dealt with in investigation

what are their rights was the subject of debate and discussion. In simple words the precise issue was whether the proviso applied in the context of provisions of Armed Forces (Special Powers) Act 28 of 1958.

9. Act 28 of 1958 is assailed in this Court in a group of four cases, Civil Rules 2238, 2314, 2415 of 1990 and 11 of 1991, where the implication of arrest and interrogation of the arrested persons in all varied aspects under the Criminal Procedure Code in the background of State Act 19 of 1955, the Assam Disturbed Areas Act and the Act 28 of 1958, are the subject matter of discussion. The vires of the two Acts are assailed before this Court. While the discussion was afoot the learned counsel requested this Court in view of the importance of the subject matter namely the protection of women the instant order be passed subject to the final order in the above group of four cases. This again is another aspect we make it clear in this order to obviate any finality to the instant order. The question for consideration is the implications of the proviso to Clause (1) of Section 160 of the Code of Criminal Procedure juxtaposed with the Special Powers of the Army Officers under Act 28 of 1958.

10. The Indian Parliament in 1973 had regard for the criminal jurisprudence of the country when the old Code of Criminal Procedure was repealed. The new Code of Criminal Procedure, Act 2 of 1974, was promulgated in that the Parliament is imputed with notice of the Act 28 of 1958. Fortunately for this Court the issues projected from the stand point of women is covered in all its facets in a case where one of the Ex-Chief Ministers of a State was arraigned as an accused. The Ex-Chief Minister was summoned to the Police Station for interrogation. When she was summoned to a police station house with the possible prosecution in the event of a default u/s 178 or 179 of the Indian Penal Code she questioned the proceedings and that case is reported in *Nandini Satpathy Vs. P.L. Dani and Another*,

11. The Supreme Court in that case considered the criminal laws of the country relating to women. In more than one sense the entire gamut of the subject matter is covered from all perspectives of issues touching upon the rights of women be it an accused (female), a witness (female) to hold that no woman can be summoned to a police station for interrogation or for the investigation of crime. It is needless to dilate aspects dealt in that case as the case is a locus classicus in many respects.

12. Learned counsel for the petitioners pointed out that the powers of the police establishment under the criminal laws of this country and the rights of women in the country have been unequivocally clarified in para 32 to para 68 and para 72 to para 74. It is not necessary to extract them. The ratio of the decision that no woman when arraigned in criminal law even if she is an offender or a mere witness, no police officer can summon a woman to a police station house for interrogation. A woman can be interrogated at a place as the proviso recites "where the woman resides". That in simple words is the law laid down in that case. In this connection the learned counsel also referred to a case reported *Raja*

Ram v. State of Haryana.

13. We are not confining the question only to the Criminal Procedure Code in the instant case. To obviate controversy we make it clear what is stated with reference to police establishment and powers of the police officials in elucidation of the proviso referred earlier applies to Army or Army Officers under the provisions of Central Act 28 of 1958. The learned Advocate General elucidated the above question from the perspective of the Army representing the Union of India. He stated that whatever is the law under the criminal laws of the country is not altered or modified under the provisions of Act 28 of 1958 read with Act 19 of 1955. He placed before this court to support his elucidation; instructions issued by the Army Authorities or by the Central Government on March 31, 1982 under the caption of "Aid to Civil Authorities", a document covering many useful instructions to Army officials. He read Assam Police Manual Part V. He referred to the instructions issued by the Inspector General of Police, Assam at Gauhati on June 27, 1981, Circular No. 3 addressed to all Superintendent of Police, all D. I. Gs. Ranges in Assam. The instructions dealt with the treatment to be meted to women demonstrators by police. Having regard to the stand taken by the learned Advocate General on behalf of the State of Assam and on behalf of the Government of India, we are relieved of sifting many cobwebs from the perspective of women under Act 28 of 1958 as what has been elucidated represents the correct position in law.

14. We therefore formulate to hold whenever Army officials have to deal with women under Act 28 of 1958 as offenders before arrest or as witnesses or "otherwise" when women are to be interrogated, no woman is expected to be taken to the Army Camp for interrogation. In simple words a woman is not to be requisitioned by the Army Officials for attendance at any place other than the woman's residence, as provided in Section 160 of the Code of Criminal Procedure. There is yet another aspect relating to the modus operandi to be followed as elucidated by the learned Advocate General. That relates when a male or female is arrested for interrogation or for investigation and army officials after arrest hand over the person arrested to police authorities whether the Army Officials can take back the custody of the arrested person for interrogation from the police authorities. The learned Advocate General stated once a person male or female when is handed over to the police authorities by the Army Authorities, such arrested person cannot be taken again into the custody by the Army officials. The elucidation is recorded for guidance and compliance by Army officials and police establishment. In our view the learned Advocate General fairly put the subject matter beyond any controversy.

15. We have tried to deal with this difficult subject to cover all aspects in the circumstances of the case. We have stated in the prefatory part of the order that this order will be subject to the decision of larger question that is to be discussed in the batch of four cases to cover the issues under Act 28 of 1958 and Act 19 of 1955. We have repeated in this order with a view to obviate confusion in the

implementation of this order and for the guidance of Army officials.

16. Finally we express our gratitude to the Legal Aid Cell for Women and the Kasturba Ashram for providing food and accommodation to the females at our request for some time.

17. The writ petition is ordered, as indicated. No costs.