
(1988) 06 GAU CK 0037
In the Gauhati High Court

Potsangbam Ningol Thokchom Ongbi Ibecha Devi and Another	APPELLANT
Vs	
General Officer Commanding and Others	RESPONDENT

Date of Decision : 22-06-1988

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 5
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 61

Citation : (1989) CriLJ 1912

Hon'ble Judges : T.C. Das, J;J.M. Srivastava, J

Bench : Division Bench

Judgement

T.C. Das, J.—These two writ appeals arise out of a judgment passed by the learned single Judge Mr. Justice K. N. Saikia (as he then was) in Civil Rule Nos. 128 and 129/81 (reported in Smt. Thokchom Ningol Kangujam Ongbi Thoibi Devi and etc. Vs. General Officer Commanding and Others, The grievance of the appellants in both the appeals are that Shri Kangujam Loken Singh alias Premjit Singh, aged about 21 years of Kongman Makha and Th. Lokendra Singh, aged about 21 years of Pebia Pandit Leikai, Singjamei Makha along with Kangujam Iboyaima Singh were arrested on 23-9-80 by Army personnel of J. K. Rifle of Manipur, Imphal. Out of these three, Shri Kangujam Iboyaima Singh was admittedly released from army custody on 25-9-80 who came back to his house on 26-9-80 while the two others have not yet been returned home. The appellants in both the appeals who are the , mothers of both the boys claim that both of them were not released from the army custody and the plea taken by the respondents that they were released on 25-9-80 is a false plea to cover up the counterfeited release. As both of them did not return to their house, an inquiry was made through police channel and also through local leaders like M.L.As. to ascertain the whereabouts of both the boys. Having found no clue as to whereabouts of both the boys the appellants submitted a joint application to the G.O.C., M-Sector, Imphal stating that they were at a loss not to know the whereabouts of their sons though it was stated that they were released from

army custody on 25-9-80. Both the mothers in their joint application also stated that while the two boys along with K. Iboyaima Singh were arrested on 23-9-80 and one of them namely the said K. Iboyaima Singh was released, their sons did not yet return home although on 30-9-80 some army Jawans in uniform along with one police officer known as Mr. Peter came to their house and informed them about the release of their sons. They also made inquiries to the mothers of the boys as to whether both the boys were returned to their home or not. On 27-2-81 another joint application was submitted by the mothers of both the boys addressed to Governor of Manipur about the aforesaid fact. In case of Th. Lokendra Singh an application was made to the I.G.P., Government of Manipur, Imphal by his father stating that though three boys were arrested on 23-9-80 and one of them, namely, Kangujam Iboyaima Singh had been released the whereabouts of his son were not known and prayed to inform him as and when the whereabouts of his son could be known. Another joint application was filed by the two mothers on 27-2-81 addressed to the G.O.C., M-Sector, Imphal and also to the Hon"ble Prime Minister of India requesting to ascertain the whereabouts of their sons. Having failed in all the attempts both the mothers filed Habeas Corpus petitions in this Court which were accordingly numbered as Civil Rule No. 128/8 and Civil Rule No. 129 of 1981 (reported in Smt. Thokchom Ningol Kangujam Ongbi Thoibi Devi and etc. Vs. General Officer Commanding and Others, in Imphal Bench of this Court, The concerned respondents appeared and filed return denying the allegations of the writ petitioners maintaining the stand that the two boys for whom the Habeas Corpus petitions were filed they were released from the army custody on 25-9-80 at about 7 P.M. The learned single Judge heard both the Civil Rules and by a common judgment dt. 8-9-81 dismissed both the Habeas Corpus petitions on the ground that both of them were released on 25-9-80 and the families were accordingly informed on 30-9-80 even when no writ petition was pending. The stand taken by the respondents about the release of the two boys from the army custody was accepted by the learned single Judge as a result of which both the petitions were dismissed. Being aggrieved by the aforesaid judgment of the learned single Judge in dismissing both the writ petitions, these two appeals have been preferred. Though initially these two appeals were pending for disposal in Imphal Bench but at the request of the parties both the appeals were transferred to the Principal Seat of this Court for early disposal.

2. We have heard the lengthy arguments of the learned Counsel of both the parties on a short point as to whether the release of the two boys as pleaded by the respondents was a counterfeited release, pretended ignorance and concealment of actual facts or it is a case of continuing detention. The appellants have further pleaded that it was a counterfeited release and both the boys were tortured by the army personnel and they were killed. At the beginning of the arguments Mr. L. Nandakumar Singh, learned Counsel for both the appellants has drawn our attention to the three orders of this Court which were passed on 30-8-82, 14-2-83 and 23-2-83 respectively. This Court on 30-8-82, while the

matter was posted for hearing directed the respondents to acquaint the court with the circumstances or reasons, if any, which stood in the way of not complying with the requirement of the law. This direction was issued as because, admittedly, the provision of Section 5 of Armed Forces (Special Powers) Act, 1958 was not complied with. On 14-2-83 the court expressed its feeling to bring an easy solution to the entire problem by making an inquiry by " the army with the aid and assistance of civil police taking one as the representative of the appellants in confidence. The inquiry which was directed to be made by the court was as regards to ascertain the whereabouts of both the boys and whether they were actually released on 25-9-80 as pleaded by the respondents in their affidavit-in-opposition. On 23-3-83 this Court had to adjourn the case at the request on the learned Counsel for both the parties on the ground that a case of similar nature was pending before the Supreme Court awaiting early disposal. It was also agreed by the learned Counsel that these appeals may be disposed of in terms of the order passed by their Lordships in the Supreme Court in the said case which was still pending for disposal. The case of Sebastian M. Hongray Vs. Union of India (UOI), which was pending in the Supreme Court was disposed of but the learned Counsel for the respondents has taken a plea that the facts and circumstances of Hongray's case (supra) are quite different from the facts and circumstances of the present case and, as such, both the appeals should be heard on its own merit with reference to the documents and the respective affidavits of both the parties which are available on record.

3. Mr. L. Nanda Kumar Singh has, however, argued that since it was a counterfeited release with regard to two boys whose mothers are the appellants in both the appeals substantially carry the similar facts to that of Hongray's case, and, therefore, the ratio of the aforesaid case is squarely applicable in , the present case of the appellants also. In course of the submission Mr. Nanda Kumar has referred to us the judgment and order of this Court rendered in Naosem Ningol Chandam Ongbi v. Rishang Keishing, Chief Minister of Manipur, Civil Rules (HC) No. 923/81/18/82 disposed of on 11-9-87. Reported in Rameshbhai Lallubhai Luni Vs. Devraj Bhalabhai and Others, In the aforesaid case and following the ratio of the Sebastian M. Hongray Vs. Union of India (UOI), it was held by this Court that since the release of Chaoba Singh, son of the petitioner was a counterfeited release the concerned respondents were liable to pay compensation to the parents of the boy. In the aforesaid case the same Bench held that since the boy Chaoba who was arrested by the Army personnel was not released and he died while he was in custody of the Army personnel, we directed the Union of India through, respondent No. 4 to pay a sum of Rs. 2,00,000.00 (two lacs) as compensation to the petitioner. We would like to quote the observations made in the aforesaid Civil Rule No. 923/81/18/82 (disposed of on 11-9-87). more specifically, para 4 of the judgment which runs as follows:

Law has generally been considered to be a close ally of liberty. It constitutes meaning of fostering personal freedom, safeguarding human rights; social goal of equality and general welfare. If "Rule of law" exists in the country, everything

must be done according to law. It requires that every authority, either in the State or of the Centre if takes an action which infringes a man's liberty it must be able to justify its action as authorised by law by Act and statutes, Central or State. The preamble of our Constitution speaks about justice, social, economic and political. Manu, one of our ancient law givers stated "Justice being destroyed will destroy, being preserved will preserve. It must never, therefore, be violated.

Even on this small controversy with regard to "release" of two boys of the appellants we will have to consider the respective pleadings of the parties and the documents as produced before us to ascertain the sole point of the appellants with regard to the release of two boys by the Army personnel.

4. There is no dispute that three boys were taken into custody by army personnel on 23-9-80. Admittedly, K. Iboyaima Singh was released on 25-9-80, According to army authority the other two boys of the appellants were also released and the members of the family were also informed on 30-9-80. Therefore, the sole question is whether these two boys were in fact released as held by the learned single Judge. The plea of both the appellants are that the boys were not released and it was only a counterfeited release. In case of counterfeited release, pretended ignorance or concealment through agencies or instrumentalities not disclosed to court, a writ may be issued if the court is satisfied about continuing detention in exercise of jurisdiction under Article 226 of the Constitution of India. In support of the contention as raised by the respondents about the fact that the two boys were released an affidavit has been sworn by Major Virendra Kumar Saxena, Brigadier Major who according to Mr. R.P. Kakati, learned Counsel for the respondents is a key person and competent to file the affidavit in support of the contentions of the respondents. Turning to the affidavit of Mr. Saxena, Brigadier Major, (respondent 2) we get an idea about the situation then prevailing during the relevant period in Manipur and also relating to the release of the two boys. In para (d) of the affidavit it was stated that the apprehended people were classified into three categories as "Black", "Grey" and "White". Those persons whose involvement was proved beyond doubt were graded as "Black"; those who had peripheral involvement were graded as "Grey"; and those who were found innocent were graded as "White". It is further stated in the affidavit that persons who were found and accordingly graded as "Black" and "Grey" were normally made over to the Officer-in-charge of the nearest police station with detailed report of the circumstances leading to their arrest. The apprehended persons who were found "White" were released without making any reference to the police station. A reason has been stated why the apprehended people who were graded as "White" were not handed over to the police and it was only to avoid harassment to innocent persons apprehended on suspicion.

5. The admitted position, therefore, is that the two boys were not handed over to the Officer-in-charge of the nearest police station in compliance with the provisions of Section 5 of the Armed Forces (Special Powers) Act, 1958. The

respondents have also produced four Sitrep (Situation report) for our perusal but admittedly no sitrep or records were produced from 15 JAK Rifles who apprehended the two boys alongwith others. One Apprehension Register has also been produced before us. The sitrep which was sent from 15 JAK Rif. to 61 Mtn. Bde. under sitrep Ser No. 169 at 251200 (date 25, hours 1200) under the heading "echo" speaks as follows:

Three pers. namely Thokchom Lokendro Singh comma Kamujam Paremjit Singh @ Lokenand Kamujam Iboyaima Singh being released as white.

Annexure-B2 to the original petition is sitrep from 61 Mtn. Bde to 8 Mtn. Div - Ser. 284 on 23rd Sept. at 16 hours which shows that 15 JAK Rif. apprehended 9 (nine) persons in Manipur Valley from 22-9-80 to 23-9-80 and six were handed over to Civil police and three were kept for interrogation. Annexure - B3 is the Secret Sitrep No. 168 from JAK Rif to 61 Mtn. Bde. It shows that three suspects were apprehended and interrogation was in progress. Annexure - B4 is also a secret sitrep showing that three persons including these two boys of the appellants were shown as released being found "White". Similarly, Annexure - B6 which is also a sitrep under Ser. No. 170 dt. 26th Sept. shows that - "three persons released".

6. The learned Counsel for the respondents Mr. Kakati has also drawn our attention to Annexure - B10 to the original petition which is dt. 5-3-81. It shows that Brigade Commander informed the mother of Shri Kangujam Loken Singh alias Premjit that her son was detained for interrogation by the Army on 23rd Sept. 1980 and thereafter he was released on 25th Sept. 1980 and expressed concern to note that he did not return home as yet. The Brigade Commander also informed the mother of Loken Singh that he instructed all groups to keep a watch. In this context Mr, Kakati, the learned Counsel for the respondents has submitted that all these documents which have been produced before this Court were never challenged by the writ petitioners in the original writ petitions and on perusal of all the documents referred to above could throw a clear picture that the two boys of the appellants though arrested on 23rd Sept. 1980 were duly released on 25-9-1980 being found "White" after interrogation by the Army authority. According to the learned Counsel it was absolutely not necessary to file any further affidavit by any person of 15 JAK Rif. in this regard while a most competent person Major Virendra Kumar Saxena being a Brigadier Major and a key person has filed affidavit in support of the contentions of the respondents. It is further submitted that under the existing circumstances prevailed in Manipur during the relevant period the apprehended persons who were graded as "White" were not handed over to the police to avoid harassment. Therefore, according to the learned Counsel for the respondents non-compliance with the provisions of Section 5 of the Armed Forces (Special Powers) Act in case of those apprehended innocent persons would not amount to any illegality though at best it might be treated as irregular.

7. Mr. Nanda Kumar, the learned Counsel representing both the appellants has

submitted that non-compliance of the provisions of Section 5 of the said Act would be a fatal defect. There is no provision under the said Act that the apprehended persons if found "White" or innocent as the case may be, may not be handed over to civil police. Counsel further submits that in the case of the two boys of the appellants, they were not released but they were rather tortured by the Army authority while they were in custody. The records as produced by the respondents showing their release were fabricated to avoid the responsibilities and consequences for the loss of lives. It is further submitted that whether the two boys were alive or dead on 25-9-80 could not be ascertained from the materials produced before this Court. Referring to Annexure-B10 to the original writ petition Mr. Nanda Kumar submits that it was not necessary for the officer concerned to inform the mother of Loken Singh about the release of the boy as no such procedure was followed in case of Rameshbhai Lallubhai Luni Vs. Devraj Bhalabhai and Others, The learned Counsel has submitted that the facts of these two cases are similar to those of N. N. Chandam Ongbi Nungshitombi Devi's case (supra) and placing reliance on Sebastian M. Hongray Vs. Union of India (UOI), this Court by order dt. 11-9-87 directed the Union of India to pay a sum of Rs. 2 lacs as compensation to the mother of Chaoba Singh. Therefore, according to the learned Counsel, the appellants are also entitled to the same treatment in case of two boys as their release was a counterfeited release. Learned Counsel has also submitted that as there is no direct evidence by way of an affidavit or otherwise from the arresting Army personnel, namely, 15 JAK Rifles about the apprehension and release of these two boys, the evidence as produced by the respondents from different Army authorities are not admissible for consideration. In this context the learned Counsel placed reliance on the provisions of Section 61 of the Evidence Act and also a decision of the Supreme Court as reported in Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, Reliance is sought to be placed by the learned Counsel for the appellants by referring para 16 of the aforesaid decision of the Supreme Court, The relevant portion of which is quoted hereinbelow.

...Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue....

As regards the impugned judgment of the learned single Judge, Mr. Nanda Kumar submits that the findings to the effect that "the release of the two boys cannot be doubted to be counterfeited one as it was reported months ahead of the writ petitions" is not based on proper appreciation of the material documentary evidence on record. The further findings as stated by the learned Counsel to the effect that the records as produced before the court clearly show that the two

boys were released and there was no room for believing that they were still under army custody, etc. are not proper findings as to the facts and circumstances of the case. Referring to the observations made by the learned single Judge, i.e., last paragraph of the impugned judgment, Mr. Nanda Kumar submits that if the two boys were released the observation to the effect that the civil police authorities should also follow the practice of informing the families of the two boys until the boys are identified, would sufficiently indicate that the two boys were in fact not released by the army authorities.

8. Mr. Y. Imo Singh, the learned Advocate General, Manipur appearing for the State of Manipur submits that the genuineness of sitrep and Apprehension Register were never challenged by the appellants in the original writ petition nor they have questioned its genuineness even in the Memo, of Appeal. Therefore, according to the learned Advocate General, the appellants cannot take the plea that the documents were fabricated ones. The non-compliance of the provisions of Section 5 of the Armed Forces (Special Powers) Act in this particular case, as submitted by the learned Advocate General is not a fatal defect. As regards applicability of provisions of Section 61 of the Evidence Act, it is submitted by the learned Advocate General that the provisions are not strictly applicable in the writ petitions as the matter can be disposed of on the respective pleadings of the parties supported by affidavits. Non-production of the Release Register has also not caused any prejudice to the writ petitioners on the face of the fact that the relevant records, namely, Apprehension Register and material sitrep were duly produced to show the apprehension and the release of these two boys. Therefore, in the above context as submitted by the learned Advocate General the question relating to strict proof of the contents of the documents has at any rate become admissible evidence on the basis of the affidavit sworn by the key officer relating to the relevant entries to those documents.

9. Lastly, Mr. Nanda Kumar, learned Counsel for the appellants in course of his contentions placed reliance on the ratio of the Judgment of Sebastian M. Hongray Vs. Union of India (UOI), We have considered the facts and also the findings and observation of their Lordships of the Supreme Court rendered in Sebastian M. Hongray Vs. Union of India (UOI) and Others, We have also given our anxious consideration to the facts of the cases and the ratio of the judgment rendered in Naosern Ningol Chandam Ongbi Nungshitombi Devi 1981 1 GLR 109 (supra). In the aforesaid case no materials were placed before this Court relating to release of Chaoba Singh and, as such, this Court under compelling circumstances held that it was a counterfeited released and awarded compensation of Rs. 2 lacs to the petitioner. In the present cases at hand some material documents had been produced by the respondents at least to show that these two boys were apprehended and after interrogation they were released on 25-9-80. As the two boys were not handed over to the civil police in compliance with the provisions of Section 5 of the Armed Forces (Special Powers) Act, to avoid further harassment, the respondents had to enquire on 30-9-80 as to whether these two boys reported to their home. We have carefully perused the impugned judgment of

learned single Judge. Though observations are not needed to be recorded in this judgment yet the findings that the two boys were released are based on evidence on record. The learned single Judge duly considered the documentary evidence as produced by the respondents relating to release of two boys and came to the conclusion that the release was not a counterfeited release. Having considered the facts of the cases, materials placed before us and also the respective submissions of the learned Counsel of the parties, we are of the opinion that the facts of two appeals arising out of two independent Habeas Corpus petitions are quite distinct and different to those of Hongray's case as well as the case of N. N. Chandam Ongbi Nungshitombi Devi (supra). The documentary evidence clearly shows that at least these two boys were released on 25-9-80 and as because they did not return to their home would not be sufficient to draw our inferences that the two boys were not released. Moreover, the contention of the learned Counsel for the appellants that the documents were not proved under the strict provisions of Section 61 of the Evidence Act is also not acceptable relating to the facts and circumstances of these two cases. Therefore, our considered opinion is that the findings of the learned single Judge to the effect that the two boys were found "White" after interrogation and they were released by the Army authority cannot be said to be an erroneous and that requires our interference.

10. For the reasons set forth above we dismiss both the appeals. We, however, make no order as to costs.

J.M. Srivastava, J.

11. I agree.