

(1986) 03 GAU CK 0002

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 144 of 1986

Puspalata Choraria and Another

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-03-1986

Acts Referred:

Constitution of India, 1950 — Article 39, 51A

Citation : (1986) 1 GLR 461

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : N.M. Lahiri, G.N. Sahewalla and A.K. Goswami, for the Appellant;
A.K. Phukan, Addl. Sr. Government Advocate, for the Respondent

Judgement

K. Lahiri, J.—I find applications pouring in from women and girls praying for bail or anticipatory bail. So, in 1986 our women and girls have the apprehension that they might be arrested by male police personnel and detained and kept in police custody, The provisions of Article 39(e) and (f) of the Constitution are not merely show pieces. They have contents and significance. They command the State to perform certain Constitutional obligations. The expressions to secure to all its citizens fraternity assuring, "the dignity of the individual" printed in the preamble to the Constitution are not merely slogans.

2. The women and girls victims of police arrest and detention in lock up mostly come from the lowest strata of the society. They are mute and as such their rights have gone by default. It is well known to the Government of Assam what: this Court observed in Khagendra Nath Narzary (Criminal Misc. Case No. 214 of 1982) decided on 2.5.84. The limitations of police power to arrest and detain women and girls have been outlined in Food Corporation of India Vs. Dyanuba K. Nikam and Others, , Notwithstanding the observations made by this Court arrests of women and girls and taking them into police stations are going on unabated. Should" our women and girls be physically arrested or taken in police custody in the prevailing social milieu? What is the upshot or sequel of women

and girls coming out from the police lock up? Although she might be acquitted but the stigma lowers her dignity in the society. The provisions of Articles 51A(e), *inter alia*, provides that it shall be duty of every citizen of India "to renounce practices derogatory to the dignity of women". If it is the fundamental duty of every citizen of India the State is also obligated to renounce the archaic practices derogatory to the dignity of the women. I consider that the practice of arrest of women and putting them into police lock up is derogatory to the dignity of women. But I hasten to add that in exceptional cases arrest and detention in custody may be necessary under extra-ordinary circumstances or when heinous offences are committed by them. The dignity of our women can be protected, shielded and ensured by the State. All hitherto known the practices derogatory to the dignity of the women of Assam need be ensured affirmatively and positively by the State Government in all disciplines of life. If necessary the Assam Police Manual may be altered to ensure that no practice derogatory to the dignity of the women be perpetrated by anyone. In most of the cases the poor and the helpless women suffer indignity, I feel that Indian women should not be arrested and detained except in exceptional cases falling within the ilk of heinous offences. It is also a common knowledge that in the State the Women Police Force is inadequate to deal with the problems. Let the State Government perform their fundamental duty under Article 51A(e) to renounce derogatory practice that lowers the dignity of women.

3. While considering the question I have had too advantage of hearing Mr. A.K. Fhukan, learned Additional Senior Government Advocate, Assam-cum-Public Prosecutor. I am anxious to know what changes have been brought about by the Government of Assam after the decisions of this Court alluded to and what actions shall be taken by the State to renounce the derogatory practices which undermine the dignity of women in Assam. In the State of Tripura I am told, after the decision of *Ham Nath* (Supra) the Government have taken positive and affirmative actions. Is it necessary to change and alter the archaic Assam Police Manual and to re structure it in the light of the fundamental rights and fundamental duties enshrined in the Constitution? I desire a detailed report from learned Public Prosecutor, Assam as to the action taken by the State Government and what action the Government propose to take to secure the honour and dignity of women and girls in Assam. The report may be submitted to me within a week from the date of receipt of the order by learned Public Prosecutor.

4. The report may be furnished to the Registrar, (J) of the High Court who shall place it before me in Chambers for doing the needful.