
(1991) 09 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Revision No. 389 of 1991

Shri Joyanta Borbora

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 4, 5

Citation : (1992) CriLJ 2147

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : B.K. Sharma, Public Prosecutor, for the Appellant; C.R. De, Public Prosecutor, for the Respondent

Judgement

S.N. Phukan, J.—This is an application u/s 482, Cr. P.C. read with Article 227 of the Constitution filed in respect of Dibrugarh P.S. Case No. 578/90 registered u/s 3/4/5 of Terrorist and Disruptive Activities (Prevention) Act, 1987. The petitioner has prayed for quashing the entire proceeding and also for setting aside the order dated 26-12-90 passed by the learned Addl. District Magistrate, Dibrugarh and also for exemplary cost.

2. The petitioner is a lecturer in Sociology Department of Dibrugarh University. According to the petitioner Dr. Dubey who is the head of the said Department wrote a letter dated 27-11-90 to the Vice-Chancellor, Dibrugarh University, Governor and Army implicating the petitioner with the movement of United Liberation Front of Assam. According to the petitioner, it was done with a mala fide intention by Dr. Dubey and this act was condemned in the meeting of the teachers. Be that as it may, the petitioner was arrested by the members of the Armed Forces at Dibrugarh on 25-12-90. Thereafter, he was handed over to the police. By the impugned order dated 26-12-90, the learned Additional District Magistrate remanded the petitioner to police custody for 6 days for interrogation and also passed the following orders :

The Investigating Officer informs that the Accused may be remanded to Army custody for recovery of more arms and ammunitions and let him be remanded to Army custody during the above period.

However, the Designated Court by order dated 4-7-91, released the petitioner on bail.

3. This court by judgment and order dated 6-6-91 passed in Criminal Revisions Nos. 155 and 157 of 1991 has quoted the law laid down by the Apex Court and has given guidelines to Designated Court and other Courts in respect of the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

4. In view of the above judgment, the prosecution is directed to file the FIR before the Designated Court who shall examine the matter in the light of above law laid down and pass appropriate orders. Regarding compensation, I am unable to pass any order at this stage unless the matter is examined afresh by the Designated Court. The prosecution shall submit the FIR along with all the relevant record to the Designated Court within 15 days and thereafter the Designated Court shall pass order after hearing the present petitioner.

5. I have quoted the relevant portion of the order passed by the learned A.D.M. on 26-12-90 remanding the accused person to Army custody. I am shocked to find that the learned A.D.M. has passed this order without application of mind and without going through the law more particularly the Cr. P.C. The courts have no power to remand any person to the custody of the Army and this portion of the order is absolutely illegal and ultra vires of the Constitution and the law.

6. I leave the petitioner to seek appropriate remedies for compensation, if so advised, before the competent court after the matter is disposed of by the Designated Court.

7. I may also add that the Investigating Officer by making the prayer for remand to Army Custody not only acted against the provisions of the Cr. P.C., but also surrendered the powers of police in respect of the Investigation as provided by the Legislature in the Cr. P.C. The actions of the learned Addl. District Magistrate in passing the order remanding the accused to Army custody and the prayer of the Investigating Officer for such remand, as stated above is highly improper, illegal and ultra vires of the Constitution. The members of the Armed Forces has absolutely no power of investigation, interrogation while coming in aid of Civil Authority of maintaining of law and order. I hope and trust this procedure will not be repeated in future. Accordingly, I direct that the copies of the order be sent to the Chief Secretary and the D.G.P. to issue suitable instructions to all concerned and they shall inform also the learned Addl. District Magistrate, Dibrugarh who passed the impugned order and also the Sub-Inspector of Police who made the above prayer for remand.

With the above direction, the petition is disposed.