
(2007) 11 GAU CK 0047
In the Gauhati High Court

Sofiquil Islam

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 12-11-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 365

Citation : (2008) 2 GLT 85

Hon'ble Judges : Jasti Chelameswar, C.J; Anima Hazarika, J

Bench : Division Bench

Judgement

A. Hazarika, J.—All these petitions, being centering around the same issues are heard together and disposed of by this common judgment.

WP(Crl) 19/2006:

2. By filing this habeas corpus petition, petitioner has prayed for a direction to the respondents to cause an enquiry into the missing of his brother Shri Nazrul Islam Sarkar, Principal of Bhaitbari H.S. School in pursuance to the ejahar dated 2.4.06 and subsequent reminders dated 14.4.06 and 9.5.06, to produce the missing person and also for a further direction under writ of Mandamus as to the reason, which has precluded the Officer-in-Charge of Phulbari Police Station in not taking cognizance of the FIR dated 2.4.06.

3. The brief fact of the case is that, on 29.3.06, Sri N.I. Sarkar, who is the Principal of Bhaitbari H. S. School alongwith one L.D.A., Sri Aynal Haque and Office Peon, Sri Abdul Hasem Mollah left for Tura to meet Sri P.K. Hajong, Inspector of Schools, Tura, for releasing of salary of the teachers and staff. Thus as per telephonic talk petitioner's brother alongwith above persons left for Tura in the morning to meet the Inspector of Schools, Tura, but his brother did not return to his home till 31.3.06. The petitioner enquired from the Inspector of Schools, Tura as to whether his brother met him to receive the salary of the staff. However, the petitioner was informed that neither his brother have been to Tura nor received the salary of the staff. Thus the petitioner filed an FIR before the

Officer-in-Charge (O/C for short). Phulbari Police Station on 2.4.06 requesting him to take necessary action to trace out his brother, Nazrul Islam Sarkar. Subsequently, on 14.4.06, the petitioner wrote a letter to the O/C, Phulbari Police Station informing him some new facts, which were followed by another intimation dated 9.5.06 before the O/C, Phulbari Police Station.

4. According to the petitioner inspite of submission of reminders, the Phulbari Police did not take any action on the FIR submitted on 2.4.06 to trace out his brother. Hence, he approached this Court by filing this instant habeas corpus petition with the aforesaid prayer.

5. This Court directed the official respondents to submit their affidavits in the case specifically the Director General of Police (D.GP. for short), Meghalaya as well as the Investigating Officer of the case.

6. Respondent No. 2, D.GR, Meghalaya in his affidavit has stated that vide order dated 13.7.06, Phulbari P.S. Case No. 8(4)/06 u/s 365 IPC was transferred to the Criminal Investigation Department (C.I.D. for short), Meghalaya, Shillong. By another order dated 14.7.06, the Deputy Inspector General of Police (DIGP for short) (CID), Meghalaya was detailed to conduct an inquiry relating to the lapses on the part of the O/C, Phulbari Police Station and O/C, Tura Police Station, in Phulbari P.S. Case No. 8(4)/06 and submit his finding within one month from the date of receipt of the order, which was followed by another order dated 14.7.06 whereby Mr. Spill Thamar, Assistant Commandant, 1st MLP Battalion was appointed as Investigating Officer in Phulbari P.S. Case No. 8(4)/06 and his services were placed at the disposal of Additional Director General of Police (CID), Meghalaya for the purpose of early and proper investigation of the case. The DIGP has further stated in the said affidavit that the newly appointed I/O being assisted by other Officers were working under the supervision of DIGP (CID) and they have been making all efforts to solve the mystery of missing or kidnapping of the brother of the petitioner. The action plan of the investigation has been worked out by the DIGP (CID), who is also constantly watching and supervising the investigation.

7. On 31.8.06, the I/O in pursuance of the order dated 18.8.06 passed by this Court, filed an affidavit stating therein that after receipt of the case diary from the previous I/O of Phulbari Police Station, on 21.7.06, the investigating team re-examined and recorded the statement of i) Samsul Haque, Vice Principal, Phulbari H.S. School, ii) Inal Haque, LD Clerk of the school, iii) Shahajamal Sheikh, Ex-Secretary, Bhaitbari H.S. School, iv) Sri Safiquil Islam, writ petitioner, v) Mosidur Rahman, Asstt. teacher of the school, vi) Abdul Karim Sarkar, Ex-member of the managing committee, vii) Abdul Kalam Azad, viii) Osial Haque. Some of the witnesses could not provide any clue relating to the missing of the Principal. However, some witnesses stated that probable cause of missing of kidnapping of the brother of the petitioner may be due to the disputes over the appointment of Arts teacher in the school.

8. During the course of investigation, I/O had "visited different places on the basis of the statement of various persons, including the son of the missing person. However, the whereabouts of the missing persons could not be ascertained. On 28.7.06, during the course of investigation, the investigating team recorded the statement of Mahabbat Ali, who stated that he had seen the brother of the petitioner on 30.3.06 travelling in the same Auto rickshaw in which he was also travelling. According to Mahabbat Ali, brother of the writ petitioner got down at Lalmatighat but he could not give the registration number of the Auto rickshaw. Consequently, the investigating team conducted a test to identify the Auto rickshaw drivers at Shibinang, Phulbari, Rajabala and Hallidayaganj but the said witness could not identify the driver of the Auto rickshaw. On 27.7.06, the investigating team recorded the statement of Shetra Begum, wife of the missing person and his son Sri Saiphul Islam. Saiphul Islam in his statement stated that his father was last seen on 18.06.06 at Mandagiri under Selsella out post and the same was informed to him by one Sri Gangsheng Marak of Mandagiri village, but on due verification, they could not find Gangsheng Marak at Mandagiri and his whereabouts could not be ascertained. The I/O also recorded the statement of Abdul Jalil Sheikh, Abdul Hasem Mollah and Abdul Jalil Kazi. No clue could be found from the statement of Abdul Jalil Sheikh and Abdul Hasem Mollah. However, from the statement of Abdul Jalil Kazi it appeared that there might be involvement of Sri P.K. Hajong, Inspector of Schools, Tura, and Sri Abdul Karim Sarkar, Ex-member of the Managing Committee of the school in kidnapping of the brother of the petitioner. On 10.8.06, the four persons namely, Abdul Karim Sarkar, Ex-member of the Managing Committee, Abdul Jalil Sheikh, Shahajamal Sheikh, Ex-member of the Managing Committee and Sri P.K. Hajong, Inspector of Schools, Tura were arrested. Abdul Karim Sarkar obtained anticipatory bail on 18.7.06 and therefore, he was required to be released immediately after the arrest. However, the remaining three arrested persons when forwarded to the court they were released on bail on the same day despite prayer made by the I/O to allow 10 days minimum police custody. On 11.8.06, I/O recorded the statement of all the three arrested persons. On 13.8.06, the writ petitioner verbally informed the I/O that his brother was again seen on 18.6.06 at Babadam Mandagiri under Rangram out post. Hearing the same, investigating team immediately rushed to Babadam Mandagiri in West Garo Hills, but nobody could say anything about the brother of the petitioner. On 18.8.06, information was received from A.K. Azad that brother of the petitioner was again seen on 1.7.06 at Nongapa, 22 k.m. away from Mendipathar moving in a black coloured Bolero car alongwith four other persons, but he could not give the number of the said Bolero car. With the help of Officers-in-Charge of Tura, Mendipathar, Baghmara, Phulbari, Rengeng, Nongstoin an Mawkyrwat Police Station, the process of identifying the vehicle is still continuing.

9. It is also stated that when the investigating team reached Nongapa, where the brother of the writ petitioner was seen by one Mubarak Hussain in a VIP Bolero (Black colour) going towards Williamnagar/Baghmara, Mubarak Hussain informed

the investigating team that he had made a mistake in identifying the place and further informed that he had seen the brother of the petitioner alongwith four persons in the VIP Bolero at Nokshar and not a Nongapa. However, on the basis of the information of Mubarak Hussain, one Sri Gulzarul Islam Sarkar, who was identified by Mubarak Hussain with whom he saw the brother of the petitioner on 30.7.06 in a VIP Bolero, was arrested on 24.8.06. On 25.8.06, Gulzarul Islam Sarkar was granted bail by the court at Tura. On 26.8.06, the writ petitioner informed the I/O the suspected number of the said vehicle (Bolero) but on verification from the Office of the DTO, Tura, no such registration number found to be existed in the Office of the DTO, Tura. It has further been stated that State police has recorded the statement of 27 witnesses and arrested 5 persons in connection with the missing of the brother of the petitioner but till date, no clue could be found and inspite of their best effort, brother of the petitioner could not be traced out.

10. The DGP, Meghalaya, Respondent No. 2 in his status report filed in terms of the order dated 5.1.07 passed by this Court stated that there appears to have been a rift between the members of the Managing Committee of the Phulbari H.S. School with regard to the selection process for filling up the post of Arts teacher in the said school and the Inspector of Schools, Tura had sought for clarification from N.I. Sarkar in this regard. Soon thereafter, the Principal of the School, i.e., N.I. Sarkar was reported missing and there were also counter allegations between the persons concerned. It has been further stated in the status report-that during the course of investigation, source information indicated the fact that the missing person had fled away to neighbouring Bangladesh and there is also reason to believe that he has not been kidnapped as alleged. Under the circumstances, the Investigating Officer, through the State Police Department had written to the State Government with a request to take up the matter with the Ministry of Home Affairs, New Delhi for ascertaining the whereabouts of the said N.I. Sarkar.

11. Pursuant to the order dated 8.11.06, the I/O has submitted another affidavit stating therein that he had visited Lalmatighat, West Garo Hills, where the missing person was last seen before his disappearance.

12. But from the information gathered from sources engaged by the I/O reveals that the missing person is believed to be in Bangladesh and is living there with his relations.

13. Accordingly, vide letter dated 20.9.06, the A.I.G.P. (E), Meghalaya, Shillong wrote to the Respondent No. 1 with a request that State Government might take the matter with the Government of Bangladesh through Government of India, Ministry of Home Affairs, New Delhi to ascertain the presence of missing Principal in the given address or in the adjoining areas. Accordingly, the Government of Meghalaya took up the matter with the Ministry of Home Affairs, New Delhi vide its communication dated 31.10.06 with a request to take up the matter with the Government of Bangladesh to ascertain the presence of the missing person at

Bangladesh in the address mentioned in the said communication.

14. The writ petitioner, on the other hand, submitted an affidavit stating therein that he had enquired from his relations at Bangladesh, who had denied about the presence of his missing brother in Bangladesh.

15. On the other hand, Mr. H. Rahman, learned Assistant Solicitor General of India, on 18.7.07 prayed before the Court for granting some time to file affidavit regarding the steps taken on the basis of the request made by the Government of Meghalaya to find out the missing person in Bangladesh. But no affidavit, as prayed for has been filed till date.

16. We have also perused the case diary in Phulbari P.S. Case No. 8(4)/06 produced by Mr. Nath, learned Counsel appearing on behalf of the Meghalaya Police.

17. Faced with the situation, no information as to the whereabouts of the missing person for almost one year and five months, Mr. S.C. Biswas, learned Counsel for the petitioner submitted that the matter may be entrusted to the Central Bureau of Investigation (CBI for short) for further investigation, to which Mr. M. Nath, learned Counsel appearing for the Meghalaya Police did not oppose.

18. We, therefore, dispose of this petition with a direction to the respondent State, Government of Meghalaya to issue the notification u/s 6 of the Delhi Special Police Establishment Act, 1946 within a period of 15 days from today. We further direct the State respondents to provide all the materials as may be required by the CBI in investigating the case.

2. In Crl. Pet No. 183/06 & Crl. Pet No. 184/06:

These two petitions have been filed by the petitioners praying for cancellation of the bail granted by the lower court to the accused persons, namely, Shri Pobitra Kumar Hajong, Shri Shahajamal Sheikh and Shri Abdul Jalil Sheikh, in Crl. Pet No. 183/06 and Gulzarul Karim Sarkar in Crl. Pet. No. 184/06, who were arrested in connection with Phulbari PS. Case No. 8(4)/06.

19. These two petitions have been filed by the State respondents. learned Counsel for the parties however submitted that, after the order dated 27.9.06 passed by this Court, opposite parties appeared on 2.10.06 at 11 A.M. before the I/O, who had recorded their statements.

20. In view of the above position, the matter has become infructuous and both the petitions are accordingly disposed of.