Mowu

Vs

The Superintendent, Special Jail, Nowgong, Assam and Others

Writ Petition No. 316 of 1970

(Shelat JJ)

14.12.1970

JUDGMENT

SHELAT, J. -

1. This petition for habeas corpus is by one L. Shaiza for and on behalf of Mowu Angami challenging his present detention in the Special Jail at Nowgong, Assam.

2. Mowu Angami was first detained by an order, dated March 18, 1969, under Section 3 of the Preventive Detention Act, 1950. The order was confirmed by the Central Government and was to continue till March 18, 1970. As the Act was about to expire, he was released on December 30, 1969, from the Jail in Delhi where he was detained and was immediately arrested. Since then he has been in jail first in Delhi and now in Nowgong.

3. The petition challenges his detention on the grounds : (1) that he has, since December 30, 1969, never been produced before a Magistrate in violation of the requirements of Article 22(2) of the Constitution; (2) that since he has been detained in Nowgong Jail and not in Nagaland, the Code of Criminal Procedure applies to his case; hence, as required by Section 167 of the Code, it was incumbent on the part of the police authorities to produce him before a Magistrate. There being thus non-compliance of Section 167, his detention is also in violation of Article 21; and (3) that the authorities have so far failed to disclose to him the reasons for his continued detention. On these three grounds the detention is said to be in contravention of law, and therefore, illegal.

4. The counter-affidavits filed on behalf of the State of Nagaland disclose that the petitioner and some 131 others belong to the "hard core of the hostile Nagas", that they along with other hostile Nagas launched a violent agitation for the separation of Nagaland and its establishment as a separate sovereign State, that in pursuance of the said objective they collected men and materials, formed a Government calling it the Naga Federal Government and organised a Naga army with the object of waging war against the Government of India, that a large number of them have been visiting Pakistan and China for receiving military training and procuring arms and ammunition, and that the petitioner styling himself as the commander-in-Chief of the Naga army also surreptitiously visited China for the aforesaid purposes between 1966 and 1968. The Security Forces deployed at the border arrested the petitioner and some others while they were returning from China, seized from them arms and ammunition manufactured in China brought by them from that country together with a large number of documents of incriminating character and also currency, both Indian and foreign. At the time of their apprehension by the Security Forces, the petitioner and others with him were in Chinese military uniforms.

5. On their arrest, as aforesaid, the Government of India, for reasons of security and maintenance of public order, passed orders of detention under the preventive Detention Act, 1950 and detained them in different jails, the petitioner being detained in a Delhi Jail. In the meantime, one Lt. Col. H. L. Sethi, the General Staff Officer, Intelligence Grade I, made a report to the Government of the State of Nagaland. On a study of the said report, the State Government authorised, by its order, dated December 18, 1969, the said Sethi to lodge a complaint under Sections 120-B, 121, 121-A and 122 of the Penal Code and certain other provisions and to prosecute the petitioner and the said 131 other persons.

6. The order-sheet of the Court of the District Magistrate, Kohima, produced before us shows that on December 22, 1969, the said Sethi filed a complaint against the petitioner and others through the Chief Secretary of the State Government. On December 23, 1969, the District Magistrate also received a first information report filed at the Kohima police station charging the petitioner and others under the aforesaid provisions. The order-sheet further indicates that on that very day an application was made before the District Magistrate by the officer in charge of Kohima police station for issuance of non-bailable warrants against the petitioner and the said 131 persons for their production in Court in respect of the said charges. It would appear that the District Magistrate took cognisance of the said offences on being satisfied that there was a prima facie case against the petitioner and the said 131 other persons and issued warrants to the District Magistrates of Delhi and other places where the petitioner and those others were in detention under the Preventive Detention Act, 1950, to place the petitioner and those others under arrest. The District Magistrate also asked, it appears, the Kohima police officer to investigate and expedite his report to him.

7. As stated before, on the expiry of the Preventive Detention Act, 1950, on December 30, 1969, the petitioner was released from Tihar Jail, Delhi, where he had so far been detained and was placed under arrest in pursuance of the warrant issued against him by the District Magistrate, Kohima. On and after that date, the petitioner was kept in Delhi Jail as an undertrial prisoner on the strength of the said warrant in respect of the charges alleged against him.

8. According to the counter-affidavits, the arrest of the petitioner and the said other persons caused considerable commotion amongst the hostile Nagas in the State. The State authorities feared that if the petitioner and the other accused persons were to be kept in Kohima for purposes of further investigation and trial, their very presence in the State would incite the hostile Nagas and bring about a situation jeopardizing public order and security. The petitioner and others, therefore, were not immediately brought to Kohima but were kept in the respective jails where they had been arrested and detained until alternative arrangements were made. On January 10, 1970, the police officer, Kohima, as earlier directed, made his report before the District Magistrate, whereupon the District Magistrate passed an order remanding the petitioner till January 27, 1970. Similar orders appear also to have been passed against the other accused. The orders of remand were communicated to the various jails where the petitioner and the accused persons were detained.

9. In the meantime, the State of Nagaland filed an application under Section 526 of the Code before the High Court of Assam and Nagaland praying for the transfer of the case to the Court of District Magistrate, Nowgong (Assam) in view of the tense situation prevailing in Nagaland. At the instance of the Advocate-General for Nagaland, the High Court, pending the final disposal of that application, passed an interim order on January 19, 1970, directing the records of the case to be sent to the District Magistrate, Nowgong and authorising that Magistrate to pass orders, when necessary, with regard to the accused persons. That order, we understand, has never been so far challenged.

10. Since the application under Section 526 is still pending and a final order disposing of that application has not yet been passed, the case against the petitioner and the said 131 other persons cannot be said to have yet been transferred to Nowgong Court. It still continues to be on the file of the District Magistrate, Kohima. The interim order merely directed the transfer of the record of the case to enable the District Magistrate, Nowgong to pass such orders as may become necessary from time to time, pending the disposal of the said Section 526 application. Such orders would include orders on remand applications which may have to be made pending the trial of the case.

11. In pursuance of the said interim order, the District Magistrate, Kohima, on January 21, 1970, directed that the record of the case should be despatched to the Nowgong Court and the accused persons should be produced before the District Magistrate, Nowgong on or before February 4, 1970. Accordingly, the petitioner, as the affidavit of the Additional District Magistrate, Nowgong, shows, was produced before him on February 2, 1970, at the gate of the Special Jail at Nowgong when the Magistrate informed the petitioner of the various charges against him and then ordered remand after hearing the police officer. The petitioner, therefore, had an opportunity to oppose the remand order, if he so desired. Similar orders have since then been passed from time to time following the same procedure, that is to say, the Magistrate going to the jail and the petitioner being produced before him at the gate of the jail. Such a procedure, though somewhat unusual, had to be resorted to, as explained by the Magistrate in his affidavit, as the production of the petitioner in his court had to be dispensed with for reasons of security and public order.

12. In the meantime, the present writ petition was filed and the petitioner was brought at his instance to Delhi for his production before this Court. During his stay in Delhi pending the disposal of this petition, the Additional District Magistrate passed remand orders from time to time. These orders cannot be challenged as invalid, though passed without his being produced before the Magistrate, in view of the decisions in Raj Narain v. Superintendent, Central Jail, New Delhi. (1970 (2) SCC 750 : 1970 SCC (Cri) 543.)

13. On the strength of the record of the courts at Kohima and Nowgong and the affidavit of the Additional District Magistrate, Nawgong we must reject the contention taken in the petition that the petitioner's detention has become illegal by reason of his never having been produced before a Magistrate, as also the contention that the grounds for his arrest have not so far been disclosed to him. There is, therefore, no question of any breach of the requirements of Article 21 or Article 22 of the Constitution as urged in the petition.

14. Finding themselves in difficulty in supporting these grounds in face of the record of the case, Mr. Chagla, and following him Mr. Garg, raised certain other contentions which are not taken in the petition. We permitted them to do so because this being a habeas corpus petition we thought we should not bar them from urging any ground which they can justifiably urge. The argument urged by Mr. Chagla was that the District Magistrate, Kohima did not validly take cognisance of the offences with which the petitioner has been charged, firstly, because he did not examine either on December 22 or 23, 1969, the complainant, the said Lt. Col Sethi, before issuing a non-bailable warrant against the petitioner, and secondly, because no list of witnesses was placed before him as required by Section 204(1-A) of the Code before he could issue any process.

15. The order-sheet shows that on December 22, 1969, the Magistrate received the said complaint through the Chief Secretary and ordered that the complaint should be sent to the Superintendent of Police, Kohima for registering the case. It appears that the police on the next day drew up a first information report and registered the case as Kohima Police Station Case No. 11(12)/69 under

Sections 121, 121-A and various other sections of the Penal Code and other Acts. This having been done, the police appeared before the Magistrate, produced the first information report and applied for a warrant for the production of the petitioner before him as the petitioner at that time was lodged in the jail at Delhi under the Preventive Detention Act, 1950. There is no question that the District Magistrate, Kohima was a competent Magistrate to take cognisance of the offences, with which the petitioner and others were charged, under Section 190 of the Code. Taking cognisance of an offence within the mean of Section 190 only means that the Magistrate must apply his mind to the contents of the complaint before him for the purpose of proceeding under Section 200 and the other provisions of the Code following it. It is true that in his orders, dated December 22 and 23, 1969, he directed the Kohima police to register the case and to expedite their report. Nonetheless, the order of December 23, 1969, also states that he was prima facie satisfied from the first information report produced before him that the accused therein mentioned had committed the offences with which they were charged. The issuance of the warrants by him thereafter to ensure the production of the petitioner and others from different jails where they were then lodged was after he had taken congnisance of the said offences. Therefore, there is no difficulty in holding that the Magistrate had taken congnisance of the offences either upon the complaint filed by Lt. Col. Sethi or upon the first information report produced by the police the next day before him. If he can be said to have taken cognisance on the said complaint, there was no necessity for him to examine the complainant as the complaint was in writing and was by a public officer who was directed by the State Government to prosecute the petitioner and others [see Section 200, proviso (aa)].

16. It is true that Section 204(1-A) requires that a Magistrate shall not issue a process until a list of the prosecution witnesses has been filed before him. This provision is intended to be a safeguard for an accused person so that he knows beforehand what evidence is likely to be produced against him. Before the Magistrate issued the warrant he had both the complaint and the first information report before him which presumably contained particulars of the various offences charged against the petitioner, and in this particular case, the manner and the circumstances in which he was arrested as also the persons who apprehended him, the materials, that is to say, the arms and ammunition, currency both Indian and foreign and various documents seized from him at the time of his arrest. The complaint and the first information report, therefore, would disclose the evidence which would be relied upon by the prosecution although a list of witnesses might not have been filed before the Magistrate. In any event, the objection that the Magistrate could not issue any process without there being a list of witnesses filed before him as required by Section 204(1-A) cannot be sustained by reason of the fact that in Nagaland it is the procedure laid down in the Rules for the Administration of Justice and Appeals in Naga Hills Districts, 1937, which applies and not the procedure laid down in the Code. Under these rules, since the Code is not in force in Nagaland, the procedure to be followed is according to the spirit of the Code and not strictly according to the terms of its provisions. (See State of Nagaland v. Rattan Singh, ((1966) 3 SCR 830.) and also V. L. Rohlua v. Dy. Commissioner, Aijal, Distt. Mizo 1970 (2) SCC 908 : 1970 SCC (Cri) 587 :)). In view of these decisions it is not possible to say that the Magistrate did not validly take cognisance of the offences.

17. Whereas, Mr. Chagla argued the case on the assumption that the District Magistrate, Kohima had taken cognisance, but which according to him, was not validly done, Mr. Garg, who followed him argued that the Magistrate could not be said to have taken any cognisance at all, and therefore, could not issue any process. Relying on R. R. Chari v. The State of U.P., (1951 SCR 312 : AIR 1951 SC 207 : 1951 SCJ 302.) he contended that what the Magistrate did on receipt of the said complaint was simply to ask the police to draw up the first information report and register the case. Therefore, the Magistrate had not taken cognisance of the offences at that stage and had merely passed an executive order directing the police to register the case and start investigation. Therefore, once the

police started their investigation, as ordered by him, the Magistrate could not interfere with such investigation as the prosecution in such a case would be on a police report. We do not find any substance in this argument. As stated earlier, the District Magistrate, Kohima, must be held to have taken cognisance of the offences at least on December 23, 1969, when, on the first information report having been produced before him, he noted that he was prima facie satisfied that the accused persons had committed the offences set out in that document. This was clearly not an administrative act on his part but a judicial act after he had applied his mind to the contents of the first information report before him for the purpose of initiation of proceedings before him.

18. The next objection was that in passing the various remand orders the mandatory provisions of Section 344 of the Code, under which only those orders could be passed, were not followed in the sense that while passing the said orders the Magistrate did not record his reasons for doing so. It must, however, be remembered that so far as the remand orders passed by the District Magistrate, Kohima are concerned, the Code not being in force in Nagaland, the question of the provisions of Section 344 being strictly applied cannot arise. Even after the interim order passed by the High Court on January 19, 1970, and the record of the case in pursuance of that order having been transferred to Nowgong it is somewhat doubtful whether the provisions of the Code had to be strictly applied. As aforesaid, the State's application under Section 526 of the Code is not yet disposed of and there is, therefore, yet no final order transferring the case from the Court at Kohima to the Court at Nowgong. The interim order merely directed the records of "the Kohima Police Station Case No. 11(12)/69" to be sent to the District Magistrate, Nowgong only for the purpose of passing necessary orders with regard to the petitioner. No final order having yet been passed trasferring the case, the case would still appear to continue to be Kohima case only authority given to the District Magistrate, Nowgong being to pass necessary orders in the meantime as regards the petitioner. The interim order in fact did not authorise the District Magistrate, Nowgong, to try the case.

19. Assuming, however, that Section 344 applies after the record was sent to Nowgong and the petitioner was produced before the Additional District Magistrate, Nowgong, the order-sheet shows that the Magistrate had before him the remand report of the concerned police officer. The affidavit of the Magistrate shows that the petitioner was produced before him every time he passed the remand order. The remand report would obviously contain a prayer for remand on the ground that the investigation and the collection of evidence has not yet been completed probably due to the dimensions of the case and the complicated nature of the evidence. These clearly would be the reasons for the order of remand. Therefore, when the order-sheet speaks of the Magistrate having perused the police report for remand, the reasons and the circumstances set out in the report would be the reasons for passing the orders of remand. Hence, it is difficult to say that Section 344 of the Code, assuming it applies, was contravened.

20. These were the only grounds raised before us for sustaining the petition. In our view, none of them is capable of being upheld. Consequently, the petition fails and is dismissed.

21. Before we part with this case, we should draw the attention of the prosecution authorities that nearly a year has elapsed since the filing of complaint. We should think that there has been sufficient time for them to complete the work of collection of evidence and investigation. We, however, appreciate the difficulty of the Magistrate concerned at Kohima and Nowgong in proceeding further with the case as neither of them would know whether to proceed with it or not so long as the State's application for transfer of the case to Nowgong is pending. If the application is still pending, the State should apply to the High Court to expedite and dispose of the application as

soon as possible and thereafter do everything possible to proceed expeditiously with the trial in such court as the High Court may, according to the result in the said application, direct.

</html