

SUPREME COURT OF INDIA

Saptawna

Vs.

State of Assam

Writ Petition No. 554 of 1970

(S. M. Sikri, C.J.I., P. Jaganmohan Reddy and I. D. Dua, JJ.)

05.02.1971

JUDGEMENT

SIKRI, C. J.:-

1. In this petition under Article 32 of the Constitution the petitioner complains against his detention. The relevant facts are these. It appears that the petitioner was arrested on January 10, 1968 but it is not quite clear by whom he was arrested. The suggestion of the State Counsel is that he was arrested originally under the Armed Forces (Assam and Manipur) Special Power Act, 1958. Be that as it may, according to the affidavit of Shri P. Sengupta, Deputy Secretary to the Government of Assam Political (A) Department, he was arrested by the Civil Police on January 24, 1968, and was produced before the competent Magistrate on January 25, 1968, in connection with G. R. Case No. 27/68. It is further stated that the Civil Police registered other cases against the petitioner vide G. R. 235/68 of Aijal Police Station Case No. 16 (8)/ 68 under Section 32 (5), D. I. R., G. R. 212/66 of Aijal Police Station Case No. 54 (5) 166 under Section 121, Indian Penal Code., etc., and G. R. Case No. 27/68 vide Session Case No. 128/69 under Section 121 (A)/392, Indian Penal Code. It is further stated in the affidavit that subsequent to the production of the petitioner before the Magistrate in connection with G. R. Case No. 27/68, the petitioner was shown as arrested in the other two cases as well. The petitioner was, however, discharged from G. R. 27/68 on October 10,

1970, but it is maintained in the affidavit that the petitioner is in custody in connection with the other two cases in which he has been charge-sheeted. It was denied that the petitioner was never produced before a Magistrate. It is further stated that the last order of remand for the petitioner was passed by the Aijal Court in G. R. Case No. 235/68 on December 16, 1970. It was admitted that there has been delay in the trial of the cases owing to various circumstances but it appears that the High Court has already ordered on December 18, 1970 that the trial of the cases should be completed within four months. It was further stated that this order of the High Court has been communicated to the Prosecuting authorities and every effort is being made to comply with the order of the Hon'ble High Court for early disposal of the cases.

2. The learned counsel for the petitioner says that the petitioner is entitled to be released on three grounds: (1) The original date of arrest being January 10, 1968 and the petitioner not having been produced before a Magistrate within 24 hours the petitioner is entitled to be released; (2). The petitioner having been arrested in one case on January 24 1968 and he having been discharged from that case, he is entitled to be released; and (3) As the Petitioner was not produced for obtaining remand he is entitled to be released.

3. A similar case came before this Court from this very District V. L. Rohlua v. Dy. Commr. Aijal Dist. Writ Petition No. 238 of 1970, D/- 29-9-1970 (SC) (reported in 1971 Cri LJ (N) 8) and the first point was answered by a Bench of five Judges thus:

"If the matter had arisen while the petitioner was in the custody of the Armed Forces a question might well have arisen that he was entitled to be released or at least made over to the police. However, that question does not arise now because he is an under-trial prisoner."

It seems to us that even if the petitioner had been under illegal detention between January 10 to January 24, 1968 - though we do not decide this point - the detention became lawful on January 24, 1968 when he was arrested by the Civil Police and produced before the Magistrate on January 25, 1968. He is now an under-trial prisoner and the fact that he was arrested in only one case does not make any difference. The affidavit clearly states that he was also treated to have been arrested in the other cases pending against him.

4. It appears from the affidavit that the petitioner was not produced before the Magistrate in all cases but as observed by this Court in the case of V. L. Rohlua (supra),

"the Criminal Procedure Code is not applicable by reason of the Sixth Schedule to the Constitution in this area. This was laid down in State of Nagaland v Rattan Singh, (1966) 3 SCR 830 = (AIR 1967 SC 212). Only the spirit of the Criminal Procedure Code applies "

It is not necessary that the petitioner should be produced on each occasion before a Magistrate for remand.

5. In the result the petition fails and is dismissed.

Petition dismissed.