

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 75 of 2020

Date of Decision: 06.07.2023

Shri. Thuanguangpou Kamei Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Thapa, Adv. with
Mr. D. Thaimei, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. Z.E.Nongkynrih, GA(For R 1-4)
Mr. H. Abraham, Adv. (For R 5)
Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv. (For R 6).

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

1. This writ application has been filed seeking action against the respondents for malicious persecution on the allegation that the

petitioner had been inflicted with wrongful arrest and kept in custody, apart from custodial torture for a period of nearly 6(six) months, which has infringed upon his right to life and liberty guaranteed under Article 21 of the Constitution of India. The prayer made is for compensation to be paid to the petitioner for the humiliation and loss suffered by the petitioner, apart from directions to initiate appropriate action against the concerned officials.

2. The facts necessary for consideration of the matter are that, the petitioner an Ex-Army Serviceman was arrested on 13.05.2018, on the basis of an FIR and the case registered thereon, being Jowai P.S Case No. 105(5) 18 u/s 121/121A/120B/384 IPC read with Section 10/13 of the Unlawful Activities (Prevention) Act, 1967. The allegation contained therein was that, a banned outfit namely NSCN (K) Finance Cell, had carried out illegal activities including extortion, wherein the petitioner was allegedly involved. The investigation was then handed over to the National Investigation Agency (NIA) and the case was re-registered. In due course of investigation, it was discovered that the evidence was not sufficient to prosecute the petitioner at that stage, and as such, the Special Judge NIA, Shillong, discharged the petitioner as per the charge-sheet, as no evidence was found against him.

3. Mr. S. Thapa, learned counsel for the petitioner has submitted that, the petitioner was made to languish for 6(six) months in custody for no fault of his, and on release, he has lost face and respect in society, for which the respondents are liable to make good by way of adequately compensating him for the wrongful arrest. In support of his case, the learned counsel has referred to the case of *S. Nambi Narayanan vs. Siby Mathews & Ors.* reported in (2018) 10 SCC 804, on the point of compensation being awarded on account of unlawful arrest. Reliance has also been placed on the case of *Sohan Lal & Ors. vs. State of Rajasthan* reported in (1990) 4 SCC 580, in the context of the applicability of Section 319 of the CrPC. The learned counsel has also referred to Paragraphs – 11 and 12 of the affidavit filed by the respondent No. 6 (NIA) to buttress his case that, the arrest of the petitioner was a case of mistaken identity. He therefore submits that, the petitioner having been discharged on not being charged sheeted, it was a clear case of malicious persecution, for which the respondents were liable to pay compensation.

4. Mr. S. Thapa, learned counsel has also placed judgments, that notwithstanding Section 49(a) of the Unlawful Activities (Prevention) Act, 1967 and Section 18 of the National Investigation Agency Act, 2008, this Court has ample jurisdiction in exercise of powers under

Article 226 of the Constitution of India, to award compensation, and in support of his submissions, the learned counsel has cited the following cases.

- i) ***Union of India & Ors. vs. Major General Shri. Kant Sharma & Anr.*** reported in (2015) 6 SCC 773.
- ii) ***AIR 1962 Manipur 28, Oinam Apabi Singh vs. Imphal Municipal Board.***

He lastly submits that, the Hon'ble Supreme Court, as well as various High Courts have viewed and taken serious exception to cases involving an individual's right to life and liberty guaranteed under Article 21 of the Constitution, especially when such right is taken away in a most casual and perfunctory manner, and in such cases, awarded compensation to the victim under public law remedy by holding that, compensation can be awarded by Constitutional Courts, for violation of fundamental rights. Reference has been made by the learned counsel to the following judgments.

- i) ***S. Nambi Narayanan vs. Siby Mathews & Ors. (supra)***
- ii) ***Nilabati Behera (Smt) Alias Lalita Behera (Through the Supreme Court Legal Aid Committee) vs. State of Orissa & Ors., (1993) 2 SCC 746***
- iii) ***Rini Johar & Anr. vs. State of Madhya Pradesh & Ors., (2016) 11 SCC 703***

iv) Judgment and Order dated 21.06.2023 passed in W.P. (Cr.) No. 226 of 2014, Ajit Kumar vs. State of Jharkhand by the Hon'ble High Court of Jharkhand at Ranchi.

5. Mr. B. Bhattacharjee, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA for the State respondents No. 1-4 submits that the petitioner was not yet an accused and infact was only a suspect, at the time of his arrest and subsequent discharge. He submits that the petitioner was in the company of the other accused persons on many occasions, and as such, there was a prima facie ground for his detention. The learned AAG, has taken this Court to the charge sheet filed by the NIA, wherein at Para – 17.30, he submits, after the arrest of the petitioner for his alleged complicity in connection with the case, no charge sheet was filed against him due to insufficiency of evidence at that stage, but that nevertheless, liberty was kept reserved to prosecute the petitioner, if in the further course of investigation prosecutable evidence was found. The petitioner he submits, was not charged sheeted nor made an accused, and as such, there was no reason or occasion for the learned Special Judge, NIA Court to pass an order of discharge.

6. The learned AAG on the point of Section 319 CrPC submits that, the decision *Sohan Lal & Ors. vs. State of Rajasthan (supra)*, relied upon by the petitioner will have no application. To substantiate this contention, the learned AAG has referred to Paragraphs – 14, 20, 21 and 27, to demonstrate that there was no legal bar for proceeding against the petitioner under Section 319 CrPC. Further submission has been made that, the other decision i.e., *S. Nambi Narayanan vs. Siby Mathews & Ors. (supra)*, will have no bearing in the instant case, as the facts are totally dissimilar, inasmuch as, the allegation of espionage against the scientists at ISRO, including the appellant (S. Nambi Narayanan), were found to be false.

7. The learned AAG has then referred to Section 49(a) of the Unlawful Activities (Prevention) Act, 1967, which provides for protection against prosecution or other legal proceedings for action taken in good faith. He submits that, the petitioner being in the company of the accused, had given rise to the necessity for his arrest in connection with the investigation. The action by the Investigating Agencies he submits, cannot be said to be unlawful, and it is not that a false case had been made up against the petitioner, for which he was taken into custody.

8. Mr. H. Abraham, learned counsel appearing for the Investigating Officer has relied upon his affidavit, and submits that on the facts of the case and situation of the petitioner, the arrest of the petitioner cannot be said to be wrongful, inasmuch as, he was apprehended with another person, who was later, along with other persons found to belong to the NSCN-K, a banned outfit, and further that incriminating materials had also been discovered. Moreover, he submits on preliminary investigation, it was also revealed that, the petitioner had been facilitating the travel of the NSCN-K members on two different occasions in his vehicle, and as such, materials were present that warranted investigation, as the petitioner's name was mentioned and he was in association with the other accused.

9. Dr. N. Mozika, learned Senior counsel assisted by Ms. S. Rumthao, learned counsel for the respondent No. 6 apart from supporting the submissions made by the learned AAG, has submitted that no case of malicious persecution has been made out. The learned Senior counsel has referred to Annexure – J to the affidavit of the NIA, which contains the Call detail reports and analysis of the mobile numbers of the petitioner and the accused No. 1, which established that the petitioner was in regular contact with the main accused. The learned

Senior counsel further submits that, the NIA has been very fair in its conduct and moreover for action taken in good faith, protection is provided under Section 18 of the NIA Act, as well as, Section 49(a) of the UAPA. He finally submits that, the entire action being done in good faith, no case of malicious persecution or for consideration of any compensation has been made out by the petitioner.

10. I have heard learned counsels for the parties.

11. The petitioner has founded his case on the premise that, as he was not charge sheeted and had been discharged, his arrest and custody were illegal and that, it was a case of malicious persecution, for which the State was liable to compensate him for loss of liberty and also the damage that had been caused to his character and reputation. This Court is therefore, to examine as to whether the facts and circumstances, will warrant the consideration for award of compensation as claimed under public law remedy.

12. As has been noted, the writ petitioner an Ex-Army Serviceman was arrested on 13.05.2018, on the basis of an FIR and the case registered thereon being Jowai P.S Case No. 105(5) 18 u/s 121/121A/120B/384 IPC read with Section 10/13 of the UAPA Act, 1967. The events that unfolded thereafter, was that, the petitioner was then taken into custody, as there was a strong suspicion that he was

involved, as he was seen to be associated with the other accused persons. In this connection, this Court also cannot ignore the fact that, the petitioner's car No. ML 04C 6036 was hired by the main conspirator, before commission of crime, during and even after its commission. The fact that, the main conspirator used the car of the petitioner was also revealed during the investigation. However, it was found from the records, in the form of oral, documentary and technical evidence, that the evidence was not sufficient to prosecute the petitioner at that stage, but however, liberty was reserved to prosecute him, whenever prosecutable evidence was found during further investigation. As such, the ground as sought to be made out by the petitioner that, his arrest was wrongful and illegal and that, the petitioner was totally unconnected or that the case against him was entirely made up cannot be said to be correct.

13. On the other contention put up by the petitioner, that Section 319 CrPC cannot be used to proceed against him, as he has been discharged of all or some of the charges and was an 'accused', also does not seem to be the correct legal position, inasmuch as, the petitioner was neither made an 'accused' in the true sense, nor was he charge sheeted. Section 319 CrPC, for the sake of convenience is reproduced hereinbelow.

“319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

14. In this context, the judgment of *Sohan Lal & Ors. vs. State of Rajasthan (supra)*, on this point is of extreme relevance and though the counsel for the petitioner has cited this, in support of his case, however, it is of no assistance and instead endorses the stand of the respondent, as to the petitioner being liable to be proceeded with under Section 319 by the Special Court. Paragraphs 14, 20, 21 and 27 which are relevant are reproduced hereinbelow.

“14. The crucial words in the section are, 'any person not being the accused.' This section empowers the court to proceed against persons not being the accused appearing to be guilty of offence. Sub-sections (1) and (2) of this section provide for a situation when a court hearing a case against certain accused person finds from the evidence that some person or persons, other than the accused before it is or are also connected in this very offence or any connected offence; and it empowers the court to proceed against such person or persons for the offence which he or they appears or appear to have committed and issue process for the purpose. It provides that the cognizance against newly added accused is deemed to have been taken in the same manner in which cognizance was first taken of the offence against the earlier accused. It naturally deals with a matter arising from the course of the proceeding already initiated. The scope of the section

is wide enough to include cases instituted on private complaint.

20. Chapter XV deals with complaints to Magistrates. Section 200 provides for examination of complainant. Section 202 deals with postponement of issue of process and says in sub-section (1) that any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus we find that the expression "the accused" has been used in relation to a complaint case under this section even before issue of process. It also appears that in the Code the expression "the accused" is used after cognizance is taken by the Magistrate.

[Emphasis supplied]

21. Chapter XVI of the Code deals with commencement of proceedings before Magistrates. Section 204 dealing with issue of process uses the expression "the accused". Under sub-section (1) thereof if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for

proceeding and the case appears to be (a) a summons case, he shall issue his summons for the attendance of the accused, or (b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction. Under sub-section (2), no summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. Thereafter the expression 'the accused' has been used in subsequent sections. Thus one is referred to as 'the accused' even before issue of process.

[Emphasis supplied]

27. In S.S. Khanna v. Chief Secretary, Patna this Court had to consider whether a person against whom a complaint was filed along with some other persons and who after an enquiry under Section 202 of the Code was not proceeded against by the court, could be summoned at a later stage under Section 319 of the latter Code to stand trial for the same or a connected offence or offences along with the other persons against whom process had been issued earlier by the court. It was held that having regard to the nature of the proceedings under Section 202 of the CrPC it may be difficult to hold that there is a legal bar based on the principle of issue estoppel to proceed

under Section 319 against a person complained against on the same material, if the court has dismissed a complaint under Section 203. But the court did not express any final opinion on the question. In that case, however, the Magistrate decided to take action under Section 319 of the Code on the basis of fresh evidence which was brought on record in the course of proceedings that took place after the enquiry contemplated under Section 202 of the Code was over. It was further held that even when an order of the Magistrate declining to issue process under Section 202 was confirmed by a higher court the jurisdiction of the Magistrate under Section 319 remained unaffected, if other conditions were satisfied and the autre fois principle adumbrated in Section 300 of the Code could not, however, apply to such a case.”

15. Another important aspect is the statutory protection provided under Section 18 of the NIA Act, as well as, Section 49(a) of the UAPA, for acts taken in ‘good faith’, which are reproduced hereinbelow.

“18. Sanction for prosecution.- No prosecution, suit or other legal proceedings shall be instituted in any court of law, except with the previous sanction of the Central Government, against any member of the Agency or any person acting on his behalf in respect

of anything done or purported to be done in exercise of the powers conferred by this Act.”

“49. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against-

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorized in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder.”

The scheme of the above quoted provisions provides protection to the respondents or any other authority, on whom powers have been conferred under these Acts, for anything which is done in good faith or purported to be done in exercise of these powers.

16. In the case of *General Officer Commanding, Rashtriya Rifles vs. Central Bureau of Investigation & Anr.* reported in (2012) 6 SCC 228, the Hon’ble Supreme Court at Paragraphs 69-74, has elucidated the meaning of good faith, where it has been held that, it is a duty being performed founded on genuine belief and commands of loyal

performance. A duty performed in 'good faith' as defined in Section 3(22) of the General Clauses Act, 1897, means a thing which is, in fact done honestly, whether it is done negligently or not.

17. In conclusion therefore, the discharge of the petitioner therefore, cannot be said to be absolute, as the respondent NIA has reserved its right to proceed against him, should the need arise on further investigation. Further, there was prima facie grounds for detention of the petitioner, and the arrest cannot be said to be wrongful, or the presence of any element of malicious persecution in the conduct of the respondents. This Court therefore, for the reasons stated above, in consideration of the entire case in its totality, especially the facts and circumstances surrounding the arrest of the petitioner, finds that no case has been made out for grant of any compensation under Public Law Remedy under Article 226 of the Constitution of India.

18. The judgments placed by the writ petitioner, especially *S. Nambi Narayanan vs. Siby Mathews & Ors. (supra)* and *Ajit Kumar vs. State of Jharkhand (supra)*, are not applicable, inasmuch as, the petitioners implicated therein, were in cases, which were found to be patently false.

19. The writ petition accordingly stands dismissed.
20. However, there shall be no order as to costs.

Judge

Meghalaya
06.07.2023
"D.Thabab-PS"

