

Serial No. 20
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 52 of 2023

Date of Decision: 29.05.2023

Union of India

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG, with
Mr. A.H. Kharwanlang, Addl. Sr. GA.

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

ORDER (O R A L)

1. Challenge has been made to the order dated 15.05.2023 passed by the learned Judicial Magistrate First Class, Shillong in connection with Pynursla P.S. Case No. 12(05) 2023 under Sections 120B/302/201 IPC read with Section 27 Arms Act.

2. From the petition what is seen is that the background of this matter relates to an incident which had taken place on 05.05.2023 on the Pynursla-Dawki Road near Wahkdait village in which three BSF personnel apparently deployed for duty happened to locate or rather met a vehicle which was travelling in a suspicious manner and according to the said personnel was suspected of carrying contraband goods or livestock. On the vehicle being asked to stop and the driver of the vehicle failing to heed to the request, it is said that the three personnel have taken steps to try and stop the fleeing vehicle by shooting at it, as a result of which, one person was rendered injured and who subsequently succumbed to his injuries.

3. The procedure of law which follows such an incident demand that the alleged offenders, who are BSF personnel, to be taken into custody which was done so by the BSF authorities. In the meantime, an FIR was also filed as regard the said incident, which FIR filed before the Officer-In-Charge Pynursla Police Station was registered as Pynursla P.S. Case No. 12(05) of 2023 and investigation commenced.

4. In course of investigation, the matter was brought to the attention of the learned Magistrate who, as mentioned above, vide the order dated 15.05.2023 impugned herein, had inter alia, directed the Commandant, 4th

BN, BSF to hand over the accused persons (the three BSF personnel) to the Investigation Officer for the purpose of investigation.

5. The petitioner/Union of India through the Deputy Inspector General, BSF, being aggrieved by the impugned order has accordingly, approached this Court with a prayer to set aside and quash the said order dated 15.05.2023.

6. The State respondent has resisted this petition and has consistently submitted that there is nothing wrong with the impugned order and the manner in which it was passed and as such, the learned Magistrate has not committed any error of jurisdiction or otherwise.

7. Upon hearing Dr. N. Mozika, learned DSGI for the petitioner/Union of India and Mr. B. Bhattacharjee, learned AAG for the State respondent and without the parties pressing for a resolution in their favour, this Court, on mutual consent by the parties herein as to how the proceedings should continue without disturbing the primary intention as brought out in the impugned order but on a liberal interpretation of the same, has thought it fit to dispose of this case with the following directions:

a) That the BSF authorities shall cooperate with the investigation of the matter and shall accord all necessary cooperation to the Investigation Officer in course of his investigation.

b) To this extent, the BSF authorities are at liberty to make it convenient for the alleged accused to be questioned by the I/O as per his convenience.

c) That the I/O would function within the parameters of settled and laid down procedures of law as required under the Code of Criminal Procedure and under the Border Security Force Act, 1968 and the rules thereof.

d) That in particular, the I/O may resort to comply with the provision of Section 45 Cr.P.C as and when required.

8. To the extent indicated above, the impugned order stands modified accordingly.

9. In view of the above, this petition is hereby disposed of. No costs.

Judge

Meghalaya
29.05.2023
"Tiprilynti-PS"