

PETITIONER:
V.L.ROHLUA

Vs.

RESPONDENT:
DY. COMM. AIJAL, DISTT. MIZO

DATE OF JUDGMENT:
29/09/1970

BENCH:
[M. HIDAYATULLAH, C.J., J. M. SHELAT, G. K. MITTER, C. A. VAIDIALINGAM AND A. N. RAY, JJ.]

ACT:
The Armed Forces (Assam & Manipur) Special Powers Act, 1958, ss. 4 and 5-Code of Criminal Procedure, 1898, s. 344-Mizo hostile arrested by armed forces under s. 4 of 1958 Act-Handed over to civil authorities after two months-Whether this was done with the least possible delay within meaning of s. 5-Remand orders by Magistrate exceeding 15 days-Code of Criminal Procedure not applicable to area-Spirit of Code only applies-Remand orders exceeding 15 days when not unconscionably long do not vitiate detention.

HEADNOTE:
The petitioner was a resident of Mizo District. He was arrested by the Armed Forces under s. 4(c) of the Armed Forces (Assam & Manipur) Special Powers Act, 1958. He was handed over to the Civil Authorities on March 2, 1968, i.e., about two months after his arrest. Thereafter two criminal cases covering a wide range of offences under the Assam Maintenance of Public Order Act, the Arms Act and several sections of the Indian Penal Code were started against him. He was remanded to Judicial custody from time to time the period of remand being on each occasion more than 15 days. He filed a petition for a writ of habeas corpus in the High Court and on its dismissal he filed a writ petition in this Court under Art. 32 of the Constitution. The questions that fell for consideration were : (i) whether his detention was illegal on the ground that the armed forces had not handed him over to the civil authorities with the 'least possible delay' as required by s. 5 of the 1958 Act; (ii) whether the detention of the petitioner could be held to be illegal because (a) the remand orders were for more than 15 days and (b) there was a break in the remand orders while the petition under Art. 32 was pending in this Court.

HELD : (i) Under s. 5 of the Armed Forces (Assam & Manipur) Special Powers Act the person arrested has to be made over to the officer in charge of the nearest police station with the least possible delay, together with the circumstances occasioning the arrest. What is the least possible delay in a case depends upon the facts, that is to say, how, where and in what circumstances the arrest was affected. In the present case the petitioner was, according to the affidavit filed on behalf of the State Government, connected with the Mizo hostiles who were waging war against India. It was, therefore, necessary to question him about his associates, his stores of arms, and like matters. The difficulty of the terrain, the presence of hostile elements in the

area must be considered in this connection. Although the Armed Forces surrendered the petitioner to the Civil authorities after some delay, which was not intended by the law, there was not too much delay. [506 A-D]

(ii) The Criminal Procedure Code is not applicable by reason of the sixth Schedule to the Constitution, in the area in question. only the spirit of the Criminal Procedure Code applies. Therefore strict compliance with the provisions of Art. 344 could not be insisted on. [506 E-F]

State of Nagaland v. Rattan Singh, [1966] 3 S.C.R. 830, referred to.

50 4

The period of remand in the present case was each time more than 15 days but not so unconscionably long as to violate the spirit of the Code. There was a gap when the petitioner was in the custody of this court but no request was made for his release then. He was remanded to the custody of the Magistrate by this Court and thereafter his detention could not be held to be illegal. [406 G]

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 238 of 1970.

Petition under Art. 32 of the Constitution of India for writ in the nature of habeas corpus.

Hardev Singh, for the appellant.

Naunit Lal, for the respondent.

The Judgment of the Court was delivered by Hidayatullah, C. J. The petitioner Rohlua has applied for his release by the issuance of a writ of Habeas Corpus. previously he had applied to the High Court of Assam & Nagaland (Misc. Criminal Case No. 506 of 1969) but his petition was dismissed. The facts are as follows :

The petitioner is admittedly an inhabitant of Bakupi in the Mizo District. He was arrested by the Armed Forces under s. 4(c) of the Armed Forces (Assam & Manipur) Special Powers Act, 1958. He was handed over to the Civil Authorities on March 2, 1968. Since then two criminal cases have been started against him on November 10, 1969 and February 26, 1970. They cover a wide range of offences under the Assam Maintenance of Public Order Act, the Arms Act, several sections of the Indian Penal Code, etc. The cases are pending against him.

The petitioner's complaint is that he was not informed of the rounds of his arrest and detention, that no warrant was shown to him and that he was denied the right of making representations. His further grievance is that the cases have not been tried and he is held in illegal custody without obtaining proper remands from Magistrates.

These allegations are controverted in counter-affidavits by Mr. D. B. Poon the Additional Deputy Commissioner, Mizo District, Aijal. According to him the petitioner was arrested without warrant by the Armed Forces as is authorised under S. 4(c) of the Armed Forces (Assam & Manipur) Special Powers Act. The petitioner was informed of the grounds of his arrest and as soon as he was handed over to the Civil Authorities he was prosecuted for the offences. The petitioner was also given the grounds of detention along with the detention order on May 9, 1968. He could have represented to the Advisory Board but did not make a representation. Since then the petitioner made a confession which is also exhibited in the case but as he is to be tried we do not refer to it here.

505

The State authorities have produced the order-sheets from the cases. From them it appears that the petitioner was charged in the Court of the Additional District Magistrate on March 3, 1968 and was kept in judicial custody. He has since been remanded to jail custody from time to time. On July 28, this Court in the Habeas Corpus petition ordered his production in Court and appointed Mr. Hardev Singh Advocate as Amicus Curiae.

The petitioner then filed a second affidavit on August 3, 1970. In that affidavit he has alleged that he was handed over to the civil authorities by the Armed Forces after 2 months from his arrest, his confessional statement was obtained at gun-point, that no order was served on him under the Assam Maintenance of Public Order Act, 1953, that he was tortured, that the detention order was vague and that as the remand order expired on July 18, 1970 his further detention became illegal.

In reply to this another affidavit has been filed by Mr. D. B. Poon. According to him the petitioner was handed over to the civil authorities on March 2, 1968 and the petitioner was produced before a Magistrate the very next day. The order of remand made on that day has been filed. The last order of remand was made on June 20, 1970 and it was till July 18, 1970. Since then another order of remand has been produced and the remand is to run till September 28, 1970. During the time he has been in the custody of this Court there has been a break in the orders of remand as will appear presently. The Additional Deputy Commissioner also stated that owing to shortage of accommodation at Aijal Jail the petitioner was kept in Dibrugarh Jail till his production in this Court. In a supplementary affidavit the Additional Deputy Commissioner has explained that the petitioner was held for some time by the Armed Forces for interrogation at the Security Force Head Quarters because of his connection with activities against the security of the State and his close association with the outlawed Mizo National Front Army and with Pakistan, that before the last order of remand expired the petitioner was put in the custody of this Court and that now he is again on a proper remand by the Magistrate in the original custody. The affidavit also states that the Criminal Procedure Code does not apply to the Mizo District and the spirit of the Code has been followed in this case, that the petitioner was produced before a Magistrate within the time prescribed by the Constitution and the Code of Criminal Procedure and that the remands, although of more than 15 days duration, were legal as there was no provision applicable and the requirements of this disturbed area justified slightly longer periods between each remand as jail conditions were difficult.

506

-From the order-sheets produced before us it is clear that the petitioner was first produced before the Magistrate on March 3, 1968. That was roughly two months after his arrest by the Armed Forces. Under s. 5 of the Armed Forces (Assam & Manipur) Special Powers Act, he had to be made over to the Officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest. What is the least possible delay in a case depends upon the facts, that is to say; how, where and in what circumstances the arrest was effected. From the affidavit of Mr. Poon, it prima facie appears that the petitioner is connected with the Mizo hostiles who are waging war against India. It was, therefore, necessary to question him about his associates, his stores of arms, and like matters. The difficulty of the

terrain, the presence of hostile elements in the area must be considered in this connection. Although it seems to us that the Armed Forces delayed somewhat his surrender to the civil authorities, which is not the intention of the law, there is not too much delay. 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. The only question is one of remand. Here too, if the matter had been for the application of the rules of the, Code of Criminal Procedure, no remand could have been longer than 15 days at a time. The fact of the matter, however, is that the Criminal Procedure Code is not applicable by reason of the Sixth Schedule to Constitution in this area. This was laid down in *State of Nagaland v. Rattan Singh*(1). Only the spirit of the Criminal Procedure Code applies. In this view of the matter we cannot insist on a strict compliance with the provisions of s. 344 of the Code of Criminal Procedure. The petitioner had to be kept at Dibrugarh for want of space at Aijal. Long distances, difficult terrain and hostile country, are considerations to take into account. The period each time was slightly longer than 15 days but not so unconscionably long as to violate the spirit of the Code. There was a gap when the petitioner was in the custody of this Court but no request was made for his release then. Now he is on a proper remand and in fact has been remanded to the custody of the Magistrate by us. We cannot now hold his detention to be illegal. We see no reason to release him. The petition fails and will be dismissed.

G.C. Petition dismissed.

(1)[1966] 3 S.C. R. 830.

50 7