

“NON-REPORTABLE”

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1601 OF 2012

(Arising out of Special Leave Petition (Crl.) NO. 1957 of 2012)

Subhashree Das @ Milli

.... Appellant

Versus

State of Orissa & Ors.

.... Respondents

ORDER

1. Leave granted.

2. First Information Report no. 8 dated 14.1.2010 was registered at police station Balugaon under Sections 120B, 121, 121A, 124A read with Section 34 of the Indian Penal Code, Section 17 of the Criminal Law (Amendment) Act, Section 63 of the Indian Copyright Act, 1957, and Sections 10, 13, 18 and 20 of Unlawful Activities (Prevention) Act, 1967. According to the complainant (Balabhadra Pradhan, Sub Inspector of Police), on 14.1.2010 he alongwith Assistant Sub Inspectors of Police D.K. Pathnaik and B.K Behera, were on motor vehicle checking duty on National Highway no. 5. The complainant and his companions were also keeping a watch on the movement of anti social criminals. At about 5:20 PM, one Bollero pick-up van bearing registration no. PR-02 BA 5327, was

seen by the police party, coming at a high speed from Bhubaneswar side. On being signalled, the said vehicle stopped, but one of its occupants alighted therefrom and started running away. The complainant chased him and was successful in detaining him. In view of the conduct of one of the occupants of the vehicle, and in view of the smell emanating from the vehicle, the complainant and his companions became suspicious, and therefore, decided to search the vehicle. In the vehicle, they found two persons including the driver. In the presence of the occupants, the vehicle was searched by the police party. Four packed cartons, one air bag and one hand bag were found in the vehicle. On opening the cartons, the complainant and his companions found "Maoist" leaflets and "Maoist" literature. The air bag contained jungle shoes. The small bag contained Naval related literature, one diary, and one Naxal secret letter. Cash of Rs.21,175/- was recovered from one of the occupants on his personal search. The police also found three mobile phones with SIM cards bearing numbers 9692197593, 9439071458 and 9692231528 in possession of the occupants of the van. The vehicle and materials aforementioned were seized by the police party. A seizure memo was prepared, which was got signed from the occupants of the van, and a copy thereof was also handed over to them.

3. On being questioned, the occupants of the Bollero pick-up van allegedly disclosed to the police party, that the confiscated materials had been handed over to them by the appellant, who was allegedly the wife of Naxal leader, Sabyasachi Panda. According to the occupants of the vehicle, the aforesaid material was being taken to Bhanjanagar and the same was to be handed over to some unknown "Naxalites". The material would thereupon be used for subversive activities in different parts of Orissa.

4. According to the appellant, she was arrested on account of her alleged involvement in the crime case arising out of First Information Report no. 8 dated 14.1.2010. She also asserted, that she had been arrested after sunset and before sunrise i.e., during the night intervening 14/15.1.2010. It was also the assertion of the appellant, that she was arrested without the permission of the Judicial Magistrate First Class. It was, therefore, contented that her arrest was illegal. It was further submitted, that the appellant was not produced before the concerned Court within 24 hours of her arrest. Accordingly, the prayer of the appellant has been, that her detention being illegal, she deserved to be adequately compensated. In fact, it is for the aforesaid reason, that the appellant had approached the High Court of Orissa at Cuttack, by filing Writ Petition (Crl.) no. 130 of 2010.

5. It was the vehement contention of the learned counsel for the appellant, that the crime case arising out of First Information Report no. 8 dated 14.1.2010, in which the appellant was arrested, has already been quashed by the High Court of Orissa, and as such, according to the appellant, it is obvious that her detention on the night intervening 14/15.1.2010 was wholly baseless and illegal. In order to seek compensation, two pleas were pressed by the appellant before the High Court. Firstly, that her arrest after sunset but before sunrise, having not been made in terms of the procedure prescribed by law, was wholly unwarranted. Secondly, it was also the contention of the appellant, that she had been produced before the concerned Court, well beyond 24 hours of her arrest, and as such, her detention was also illegal and unauthorized. It is on the aforesaid two counts, that the appellant claimed compensation through the writ petition filed before the High Court.

6. A perusal of the pleadings filed by the appellant before this Court, as also the factual position depicted in the impugned order passed by the High Court of Orissa dated 24.11.2011 reveals, that the contention of the appellant was, that she was detained at 3:00 AM on 15.1.2010, whereas, the assertion of the functionaries of the police department was, that her arrest had been made at 3:00 PM on the said date. The instant aspect of

the matter was gone into by the High Court. The High Court examined the matter in the following manner:-

“So far as the date and time of arrest is concerned, undisputedly, the date of arrest has been mentioned as 15.01.2010 in the arrest memo but time has been reflected as 3 A.M. On verification of the case diary produced before us, we find that time of arrest as indicated in the case diary has been corrected from 3 A.M to 3 P.M. Therefore, the question as to whether the petitioner was arrested on 15.01.2010 at 3 A.M or 3 P.M is a disputed question of fact. On further scrutiny of the case diary, we find that the petitioner was examined by the Investigating Officer on 15.01.2010 in between 8.15 A.M to 2.45 P.M, Thereafter the petitioner appears to have been arrested at 3 P.M. The subsequent entry also reflects that at 3.15 P.M on 15.01.2010 the petitioner was shifted to Bhubaneswar Mahaila Police Station and the rest of the entries made in the case diary bear the time 3.50 P.M, 5.45 P.M etc. Therefore, the entry before the time of arrest and entry made after the arrest prime- facie indicate the petitioner had been arrested at 3 P.M on 15.01.2010. Therefore, entry in the memo of arrest indicating the time of arrest to be 3 A.M prime- facie appears to be an error and not supported by the entries made in the case diary.

It is apparent from the conclusion drawn by the High Court, that the arrest of the appellant at 3:00 AM was erroneously recorded, whereas, actually she had been arrested at 3:00 PM on 15.1.2010. This conclusion drawn by the High Court is subject matter of challenge at the hands of the appellant.

7. Having given due consideration to the contention advanced at the hands of the learned counsel for the appellant, we are of the view that the claim of the appellant under Article 226 of the Constitution of India before the High Court of Orissa, could not have been determined on the basis of

disputed facts. In a case where a petitioner/appellant wishes to press his/her claim before a High Court under Article 226 of the Constitution of India, the claim raised by such a petitioner/appellant must be determined on the basis of the factual position acknowledged by the respondent. This is so because a High Court in exercise of jurisdiction under Article 226 of the Constitution of India, would ordinarily not adjudicate a matter, where the foundational facts are disputed. It is, therefore, apparent that the High Court would have ordinarily been fully justified in determining the claim of the appellant by accepting the factual position depicted by the functionaries of the police department, namely, that the appellant was arrested at 3:00 PM on 15.1.2010. The High Court, however, chose not to fully rely upon the assertions made on behalf of the respondents. The High Court, in fact, personally verified the factual position from the case diary and on its scrutiny, arrived at the conclusion extracted above. We find absolutely no infirmity in the conclusion rendered by the High Court. In the absence of any material (relied upon by the appellant) to the contrary, we find no infirmity in the determination rendered by the High Court, in so far as the time of detention of the appellant is concerned.

8. The second aspect of the matter relates to the production of the appellant before the competent Court well after 24 hours of her arrest. In

so far as the instant aspect of the matter is concerned, the factual determination of the High Court is being reproduced below:-

“So far as the second question is concerned, the case diary indicates that the petitioner was arrested at 3 PM on 15.01.2010. She was produced before the learned J.M.F.C. Banapur at 7 PM on 16.01.2010. Bhubaneswar is connected with Banapur mostly by National Highway and the time consumed ordinarily for travelling from Bhubaneswar to Banapur should be near about three hours. Under these circumstances, if the petitioner admittedly was produced before the learned J.M.F.C., Banapur on 7 P.M on 16.01.2010, no grievance can be made by her to the effect that she was not produced before the learned Magistrate within 24 hours. On both the issues having found that claim of the petitioner has no substance, the question of grant of compensation does not arise.”

9. It has not been disputed before us during the course of hearing, that the travel time between Bhubaneswar and Banapur is about three hours. Accordingly, after having detained the appellant at Bhunbaneswar, she was produced before the Court of Judicial Magistrate First Class, Banapur at 7:00 PM on 16.1.2010. If the travel time is taken into consideration, it is apparent that it would be unjust for the appellant to contend, that she was produced before the concerned Court well after 24 hours of her arrest. It may be noted that her contention would have been of substance, if she could have established that she was arrested at 3:00 AM on 15.1.2010. We have, however, accepted the determination rendered by the High Court, that the appellant was arrested at 3:00 PM on 15.1.2010. It is not disputed, that the appellant was produced before the Judicial Magistrate First Class, Banapur at 7:00 PM on 16.1.2010. Taking into consideration

the travel time, it cannot be stated that she remained in detention well beyond 24 hours from her arrest i.e., till her production before the Judicial Magistrate First Class, Banapur.

10. In view of the conclusions drawn by us hereinabove, we are satisfied that the High Court was fully justified in concluding, that the arrest of the appellant was not unauthorized, since she had been arrested well before sunset. We are also satisfied in affirming the reasons recorded by the High Court, that the detention of the appellant did not substantially exceed 24 hours i.e., after her arrest and before her production before the Judicial Magistrate First Class, Banapur. In view of the aforesaid conclusions, the claim of the appellant for compensation for unauthorized arrest and detention is clearly unwarranted. We, therefore, hereby confirm the order passed by the High Court declining compensation to the appellant.

11. For the reasons recorded hereinabove, we find no merit in the instant appeal. The same is, accordingly, dismissed.

.....J.
(B.S. CHAUHAN)

.....J.
(JAGDISH SINGH KHEHAR)

New Delhi;
October 5, 2012