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**(1958) 02 GAU CK 0002**

**Gauhati High Court**

**Case No:** None

Dr. Niranjam Bhattacharjee

APPELLANT

Vs

Manipur Administration

RESPONDENT

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**Date of Decision:** Feb. 24, 1958

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 167, 344, 54, 55, 61
- Prisoners Act, 1900 - Section 37

**Citation:** AIR 1958 Guw 33 : (1958) CriLJ 1325

**Hon'ble Judges:** J.N. Datta, J.C.

**Bench:** Single Bench

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**Judgement**

@JUDGMENTTAG-ORDER

J.N. Datta, J.C.

1. The petitioner Dr. Niranjam Bhattacharjee, who appears to have been in this Territory from October, 1957 sent a petition to "this Court, complaining against his detention in the Jail at Imphal, which appears to have commenced from 18-12-57 and the same has been taken up and dealt with u/s 491 of the Cr.P.C.

2. The facts necessary for the consideration, of the question involved, namely, whether petitioner's detention is illegal or improper, and which were presented by the learned Govt. Advocate on behalf of the Administration and which will be found mentioned in the return filed on behalf of the Administration and can be gathered from the papers produced, though not without difficulty, may be briefly stated thus : The petitioner was arrested by the Officer -in-charge, Imphal Police Station u/s 55 Cr.P.C. on 17-12-57. On the same day he was also arrested by the same officer, u/s 54, Cr. P.C. He was produced before the A.D.M., Manipur, on 18-12-57 and separate remands were granted in both the cases first upto 31-12-57 and again till 15-1-58. Thereafter there is no order in the case u/s 55 while in the other case it appears that

the petitioner was further remanded till 18-1-58. Thereafter we find no order in that case also. The learned Govt. Advocate explained that the court was not moved for further remands and the matter was dropped by the Police.

Nothing will therefore turn on these arrests even if they were lawful, as far as the question in the present proceedings is involved, and the matter need not be further pursued, though it is necessary to point out that these cases should have been taken up on the last dates fixed, and in the absence of any further application for remand an order for discharge of the accused should have been passed as far as those arrests were concerned, and the warrants under which the accused was remanded should have been cancelled.

It is very necessary for obvious reasons, that the Magistrate insist that the accused persons are produced before them on the day on which the remand expires and suitable orders passed as regards their further custody or otherwise, as may be necessary.

3. Another proceeding taken against the petitioner during this time, was that a challan under Rule 6(a) of the Indian Pass-port Rules 1950, was filed against him on 10-1-58. in the Court of the A.D.M., Manipur. A charge was framed by the A.D.M. against the petitioner in that case, and some evidence was also recorded, but that case was withdrawn on 13-2-58. An order of acquittal u/s 494(b) Cr. P. Code, was necessary but learned A.D.M. failed to pass such an order.

The effect of withdrawal would however be the same and the petitioner was entitled to be set at liberty on 13-2-58, on the favourable ending of the Pass-port case, unless it could be shown that he was liable to be detained in custody under some other lawful process, and for this the learned Govt. Advocate relied on another arrest said to be u/s 54(9) of the Cr. P. Code.

4. It appears that on 21-12-57, the Police at Imphal, received a wireless message from the Police at Silchar (Assam) for detaining the petitioner and arranging for his transport to Silchar, as he was; wanted there to stand a trial in connection with some offence, and the contention of the learned Govt. Advocate was, that the petitioner was arrested on the receipt of this message, u/s 54(9) of the Cr. P. Code, and produced before the A.D.M., who remanded him from time to time, awaiting; proper steps for the transfer of the petitioner from Manipur to a court in Assam, and papers produced in that connection, show that the petitioner was produced before the A.D.M. on 24-1-58, and was remanded from time to time.

Before proceeding to consider the legality of this detention it might be mentioned that some production orders or warrants were also received from Silchar and Gaolpara also, and there was some difference in the name of the accused but it is not necessary to go into those details, since proceedings, u/s 37 of the Prisoners Act, 1900 under which they appear to have acted were not competent, as-the petitioner was under confinement in a prison within the Union Territory of Manipur, over

which the Assam High Court has no appellate jurisdiction, and action u/s 40 of the said Act was necessary, but it was admittedly not taken.

This position was not only conceded by the-learned Govt. Advocate before me, but has also been taken in the return filed on behalf of the Administration.

5. Faced with this position, the only contention pressed before me, as also in the return filed on behalf of the Administration was, that the remands granted after arrest u/s 54(9) were valid and the petitioner was and is under lawful detentions Hon.

6. But here also the matter is not so simple. The date on which the petitioner was actually arrested in this connection does not appear, and even presuming that the arrest was lawful and was made on 24-1-58, I am afraid that the learned A.D.M. had no power, after 7-2-58 to further remand the-petitioner, that is, to detain him in custody in the Jail at Imphal. It is obvious that the Police acted under Section 61, and the learned A.D.M. u/s 167 of the Cr. P. Code. It is equally obvious that the learned A.D.M. had no jurisdiction to try the offence, trial of which was pending in the court at Silchar.

His power to grant remand was therefore limited in the whole to a period of fifteen days, and Section 344 of the Cr. P. Code could in no case be invoked for the purpose. Therefore detention after 7-2-58 was clearly beyond the power of the A.D.M. and was thus illegal.

7. But here again the learned Govt. Advocate tried to get over the difficulty, by putting forward the contention, that the petitioner having been liable to be detained till 13-2-58 in the case under the Pass-port Rules, the period of 15 days proscribed u/s 167, should be deemed to have commenced from 14-2-58 and it was, in any case, under this understanding, that remands were continued to be granted even after not only 7-2-58 but also 13-2-58. In my opinion, there is no force, in this contention, which is in the very teeth of the language of Section 167.

Each arrest is an independent transaction, and, the period for it must be counted from the date of production before the Magistrate, in connection with that arrest, as is clearly indicated by the language of Section 167 and it is not permissible to indirectly extend the limit of this period, in the manner suggested. No law or ruling supporting this contention was also shown or cited. This point must therefore fail, and in the absence of any other lawful authority to detain the petitioner, his detention must be declared to be illegal, nor can it be justified on the ground that action according to law on the part of the courts in Assam is awaited.

8. The result is that it is ordered that the petitioner who was already released on a personal bond by this Court on 22-2-58 be and is set at liberty forthwith.