

THE COMMANDANT, 68, BN. BSF GAKULNAGAR

v.

SHRI ARJUN DAS AND ANOTHER

OCTOBER 16, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Seizure of sugar bags and arrest of driver of a jeep by an officer of Border Security Force—Judicial Magistrate observed that BSF had no authority to seize sugar on public road, hence, directed release of the accused and also directed Company Commandant, BSF to enquire into the matter—Appeal against dismissed by Single Judge of High Court—On appeal, Held: Observations made by the Judicial Magistrate prima facie do not appear to be sustainable—Judicial Magistrate is directed to complete the trial expeditiously taking into consideration relevant Notifications on the subject issued by Government of India.*

On 31.12.1998, Assistant Commandant of BSF with special Patrol party carried out special operation and intercepted one Jeep with 44 bags of sugar in the vicinity of Indo-Bangladesh Border. The Driver of the Jeep, respondent no.1 was asked to produce documents relating to the stock and transportation of sugar which was carried in the Jeep, but he could not produce the documents. Since the place of seizure was at a short distance from the border, it raised suspicion in the mind of the Officer that the goods were intended for smuggling to Bangladesh. The Officer, therefore, arrested respondent no.1 and seized the sugar bags. The arrested person was handed over to the Police and the seized articles were handed over to the Inspector of Customs. Respondent no.1 was produced before SDJM. SDJM took serious view of the functioning of the BSF and held that the BSF personnel were with their arms and might have disobeyed all legal directions and the police was giving indulgence to them by acting on their directions. He directed release of the accused at once and also directed Company Commander, BSF to enquire into the matter and report. Questioning the correctness of the order passed by SDJM, the appellant filed revision petition before the High Court. Single Judge of the High Court dismissed the petition. Hence the present appeal.

Appellant contended that the order passed by the SDJM has no sanction

**A** in law as he failed to take into consideration Notifications issued by Ministry of Defence and Department of Revenue, which dealt with functioning of the BSF personnel posted in the State of Assam etc.; and that without granting opportunity to the particular BSF personnel to place relevant facts for consideration, SDJM came to the conclusion that an innocent person had been illegally detained.

**B**

Respondents submitted that there was absence of power by the BSF functionaries to act in the manner as they acted.

Allowing the appeal, the Court

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**HELD:** Since the trial is still pending, the conclusions arrived at by SDJM were not appropriate. The stage to decide whether the detention of the respondent and/or the authority of the BSF Assistant Commandant was yet to be tested in trial. SDJM made some observations, which *prima facie* do not appear to be sustainable. These are matters which were to be decided in the trial itself. Since the occurrence is nearly 7 years old it would be appropriate

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to direct the SDJM to complete the trial of the case as expeditiously as practicable. The directions given by him for conducting enquiry shall not be carried out. The effect of the two notifications referred to by the appellants shall be duly considered during trial. [254-E, F, G]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1056 of 2006.

From the Final Order dated 24.3.2005 of the High Court Tripura (Agartala Bench) in Criminal Rev. P. No. 07 of 1999.

**F** A. Sharan, A.S.G., K. Amreshwari, Rekha Pandey and Sushma Suri for the Appellant.

Gopal Singh, Rituraj Biswas and Nishakant Pandey for the Respondents.

The Judgment of the Court was delivered by

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**ARIJIT PASAYAT, J.** Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Guwahati High Court, Agartala Bench. By the impugned order High Court upheld the direction given for inquiry by learned SDJM, Belonia, South Tripura. The revision petition was filed under the Code of Criminal

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Procedure, 1973 (in short the 'Cr.P.C'.)

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Factual background as projected by the appellant is as follows:-

On 31.12.1998 at about 5.50 p.m. Assistant Commandant of BSF with special Patrol party of BOP Radhanagar carried out special operation in BOP Rajnagar area and intercepted one Commander Jeep bearing No. TR-03-2031 loaded with 22 quintals of sugar in 44 bags, each bag containing 50 kgs. The Jeep Driver i.e. respondent no.1 was asked to produce documents relating to the stock and transportation of sugar which was carried in the Jeep. But the driver said that he had no paper and expressed his inability to show as to who was the owner of the sugar. He stated that there some unknown persons asked him to carry sugar in his vehicle. The place where the vehicle was intercepted was at a distance of about 200 yards from Indo-Bangladesh border. Since the place of seizure was at a short distance from the border and the answer given by the driver created strong belief in the mind of the Assistant Commandant of the BSF that the goods were intended for smuggling to Bangladesh where it was in great demand, the Assistant Commandant arrested the respondent and seized the sugar. On the next day i.e. 1.1.1999 at about 10.00 a.m. the arrested person was handed over to the P.R. Bari Police Station and the seized articles were handed over to the Inspector of Customs, Belonia who acknowledged the receipt in writing. The respondent no.1 was produced before learned SDJM, Belonia on 2.1.1999 who started case no.1/99. Learned SDJM observed that on the direction of BSF police forwarded the accused for no good reason. He further observed that carrying of sugar is not a penal offence and BSF had no authority to seize sugar on the public road and the police should not have taken any person from the BSF without being satisfied that any offence was committed. The learned SDJM took serious view of the functioning of the BSF and held that the BSF personnel were with their arms and might have disobeyed all legal directions and the police was giving indulgence to them by acting on the directions of the BSF personnel. He directed release of the accused at once. He further directed the P.R. Bari, Police Station to find out the name of the BSF personnel who illegally seized the sugar on the public road which according to him was illegal. He also directed Company Commander Belonia BSF, 68 Bn., BSF to enquire and report about the seizure of sugar on the public road.

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Questioning correctness of the order passed by learned SDJM, the appellant filed revision petition before the Guwahati High Court. Primary stand was that the order was passed in respect of the BSF personnel without

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A affording any opportunity and without examining the powers of BSF functionaries under the Customs Act, 1962 (in short 'Custom Act'). The learned Single Judge dismissed the petition observing that there was mere direction by the Court to make an enquiry and the appellant behaved as if he is above law.

B Learned counsel for the appellant submitted that the order passed by the learned SDJM has no sanction in law. Without considering the fact that the Government of India, Ministry of Defence, Department of Revenue has issued a notification on 20th December, 1969, further notification was issued on 3.8.1974 which dealt with functioning of the BSF personnel posted in the State of J & K, Punjab, Gujarat, West Bengal, Assam and the U.T. of Tripura to carry out functions of the nature indicated in the notifications. Without granting opportunity to the particular BSF personnel to place relevant facts for consideration, learned SDJM came to the conclusion that an innocent person had been illegally detained. At the stage the order was passed learned SDJM had no jurisdiction to pass such order.

D Learned counsel for the State, on the other hand, submitted that there was absence of power by the BSF functionaries to act in the manner done and learned SDJM had, therefore, rightly passed the order.

E It is accepted by learned counsel for the respondent that the trial is still pending. The conclusions arrived at by learned SDJM, therefore, were not appropriate. The stage to decide whether the detention of the respondent and/or the authority of the BSF Assistant Commandant was yet to be tested in trial. Learned SDJM made some observations which *prima facie* do not appear to be sustainable i.e. carrying sugar is not a penal offence and/or BSF has no authority to seize the sugar on the public road. These are matters which were to be decided in the trial itself. Since the occurrence is nearly 7 years old it would be appropriate to direct the learned SDJM to complete the trial of the case as expeditiously as practicable. The directions given by learned SDJM for conducting enquiry shall not be carried out. The effect of the two notifications referred to by learned counsel for the appellants shall be duly considered during trial.

G The appeal is allowed to the extent indicated.

S.K.S.

Appeal allowed.

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