



FOR YOUR information



Judgment relating to section 54, 167 of CrPC Restrictions on police interrogation, remand and detention

LAW DESK

ARREST under section 54 of the Code of Criminal Procedure and the subsequent remand under section 167 of the code become common practice. Section 54, which is termed as "black law" gives the police a



wide power to arrest any person without any warrant or without order of the court. Even the police officer can arrest any person on mere suspicion of one's being indulged in crime. But the misuse of power of the police officer is rampant. Moreover almost every person who was under the police remand alleged that they were subjected to inhuman torture in the police remand. On the backdrop it becomes growing demand of people of every walk of life to scarp the law or to make some restriction over the power of the police. Finally the High Court Divi-

sion in a landmark judgement asked the government not to put anyone under the Special Powers Act following arrest on suspicion under section 54 of the Criminal Procedure Code. The judgement came up upon a writ petition filed jointly by BLAST, Ain-O-Salish Kendra, Sammilita Samajik Andolan and some individuals on 29 November 1998. The bench comprising Justice Hamidul Huq Chowdhury and Justice Salma Masud Chowdhury passes the verdict.

Directions with regard to arrest, interrogation and remand under section 54

If any person is arrested by the police under section 54 of the Criminal Procedure Code from his house or office, the arresting police personnel must disclose his identity and relatives of the person so arrested must be informed about the arrest immediately.

If any person is arrested from other places than his house or office, his relatives must be communicated about his arrest through telephone or special messenger.

In both the cases, reasons of arrest must be communicated to the person arrested within three hours of arrest. In special cases, medical check up of the arrested person must be done immediately and the concerned police officer must record the mark of injuries, if any.

When a person is arrested under section 54 of CrPC he must not be put under detention under Special Powers Act 1974 if he is not involved with other offence(s).

Directions with regard to section 167

If any person is arrested under section 54 of CrPC and brought before the court of magistrate, the magistrate court will not grant any remand for questioning him under police custody. Only the Investigation Officer (IO) can question the arrested person inside the jail in a separate room, if it is necessary for proper investigation.

If remand is necessary in certain cases, the magistrate will examine the accused, his lawyer and the investigation officer to satisfy him that proper procedure has been followed. Remand granted by the magistrate will not be effective unless it is approved by the Sessions Judge or Metropolitan Sessions Judge.

Medical examination of an accused has to be made before and after he is taken to police remand for interrogation. If any accused complains of torture during police remand and if the medical examination proves it, the court will take action against the investigation officer on the basis of his complaint.

The court also directed the government to amend section 54 and 167 of the CrPC in line with the guideline given by the court within next six month. The court also asked the government to follow the guidelines strictly till the necessary amendments ordered by it.

Source: News Paper reports.

LAW letter



The uncivilised slaughter

American and British authorities launched a war against Iraq, regardless of the worldwide protest, ignoring efforts by many UN members to prevent war. Along with few American and British fighters, hundreds of Iraqi lives have been destroyed as an obvious consequence of the war. However, will it be very uncanny to say that it was neither an Iraqi or American, nor a British; rather it was the Humanity, the fundamental norms of the international law or the dream of the peace loving people of the world, that had fallen the first victim of this Anglo- American aggression? This action constitutes a gross violation of the fundamental principles of international law, including the United Nations Charter. It also renders the United Nations ineffective, creates an extremely dangerous precedent in international relations.

The basic principles of the international law are that international relations, national independence, sovereignty, and territorial integrity must be fully respected. And that conflict must be settled peacefully on the basis of equality and mutual respect, refraining from the threat or use of force. Today the world community denounces the military action against the Iraqi people and strongly demands an immediate end to those actions, and full respect for Iraq's sovereignty and territorial integrity.

American way of respecting international law has remarkably introduced a new era and has already set a dangerous precedent for violence that will endanger the fate of other Muslim countries around the globe. President Bush claims that Iraq's "decade of defiance" of United Nations resolutions justifies a war

not a soft luxury to be discarded on one's wish. Did the USA or UK see the face of innocent Iraqi children on the news media? The massive civilian deaths, the scarred and maimed children, the ruined and starving peoples, can only generate new generations of embittered people, determined to answer violence with violence.

Md. Zahurul Haq,
Student (LL.M), Department of law, Dhaka University.

Is UN dead?

The whole world is shocked and dumbfounds seeing the British- American aggression in Iraq. Millions of peace loving people took to the streets all over the world in anti-war demonstration. It is our utmost dismay that the UN remains nonchalant about the situations. The Secretary General of UN has expressed his personal anguish over the war. But it is not enough. The UN has to do more.

It is fact that United Nations was formed after 2nd world war to maintain international peace and security or to prevent war in future. Under the UN charter it is a crime for any nation to make war except in self-defiance or with the explicit approval of the Security Council. Breach of these conditions is clear violation of international law. Iraq has neither attacked nor threatened to attack either United States or the United Kingdom and possesses no such military capability. So, attacking Iraq without Security Council approval is illegal under international law.

After two months of inspection the head of weapon inspection team Dr. Hans Blix presented his updated report to the UN Security Council. He said that Iraqi authorities were co-operative in the process and they find no destructive weapons of mass destruction in Iraqi possession. Yet President Bush declares war against Iraq and strikes innocent Iraqi people defying all international norms and Security Council. We do not know who will be next target.

It is sad that world body couldn't be able to stop one of its member from doing such wrong. The decision of the US and its partners to strike Iraq with or without UN support has virtually left the UN dead. Is it so?

M.H.Bari,
South Tarer Pakur, Khulna.

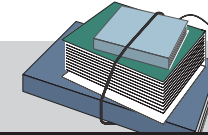
Reform politics before police

In the last few days national dailies published several news regarding police. One of them was the report of Transparency International Bangladesh, which find police department as most corrupted sector of the country. Other one was findings of a survey where the respondent answered that police personals are very corrupt and they are not people friendly and honest. No doubt that police is one of the most corrupted section of the country. But have we ever explored why? Every political party raise their voice for free functioning of the police but use police as a tool for suppressing their oppositions. Many Non-Governmental organisations also works on police. They monitor the police stations and investigate police torture, abuse. Some other organisation regularly holding seminar, meetings, stressing police reform.

Like other institutions, we inherited police system created by the colonial ruler. Even after more than thirty years after independence we have not made any major and comprehensive reform in this sector. I think the scope for police personnel to remain honest is very limited. The process of corruption starts from the selection process. Moreover, I feel that police is over worked and less paid. I have seen police officers in the thana's working for more than 24 hours continuously. Do we pay them enough to lead an honest life? There is also rampant allegation of abuse or misuse of power by the police using different special laws particularly section 54. It is said that police use these laws as tools of extorting money, torture. But can we blame only police for this? It is our lawmakers who provided with the tool. If our political leaders had the good will then they could have curtailed this arbitrary power of the police by amending or repealing these laws. I don't think this will happen only because our political parties are not willing to do this. We have not seen any single sincere and comprehensive effort to change or reform police administration from any government though they promised a lot. I think we need to reform our political system first to reform the police system.

Jahangir Kabir,
Tolarbagh, Mirpur-1, Dhaka.

LAW lexicon



Dejure

Latin: "of the law." The term has come to describe a total adherence of the law. For example, a de jure government is one, which has been created in respect of constitutional law and is in all ways legitimate even though a de facto government may be in control.

Delegatus non potest delegare

One of the primary principles of administrative law: that a delegate cannot delegate. In other words, a person to whom an authority or decision-making power has been delegated to from a higher source, cannot, in turn, delegate again to another, unless the original delegation explicitly authorised it.

Defacto

Latin: as a matter of fact, something which, while not necessarily lawful or legally sanctified, exists in fact. A de facto government is one, which has seized power by force or in any other unconstitutional method and governs in spite of the existence of a de jure government.

De minimis non curat lex

Latin: a common law principle whereby judges will not sit in judgement of extremely minor transgressions of the law. It has been restated as "the law does not concern itself with trifles".

Denovo

Latin: new. This term is used to refer to a trial, which starts over, which wipes the slate clean and begins all over again, as if any previous partial or complete hearing had not occurred.

Dicta or dictum

Latin: an observation by a judge on a matter not specifically before the court or not necessary in determining the issue before the court; a side opinion which does not form part of the judgement for the purposes of stare decisis. May also be called "obiter dictum."

Dominion utile

Latin: the property rights of a tenant. While not owning the property in a legal sense, the tenant, as having dominion utile, enjoys full and exclusive possession and use of the property.

LAW news



America's double standard in execution of children



Though US Secretary of State Colin Powell spoke of "the steadfast commitment of the United States to advance internationally agreed human rights principles world-wide", the USA is set to violate a fundamental principle of international law respected across the world, as Oklahoma prepared to execute Scott Hain for a crime committed when he was 17.

Where will that steadfast commitment be at 6pm on Thursday evening (3 April 2003) in Oklahoma's death chamber? As the execution team kills Scott Hain, the USA's claim to be global human rights champion will once again be drained of credibility.

International law prohibits the use of the death penalty against anyone who was under 18 years old at the time of the crime. The USA is today virtually the only country prepared to flout this principle.

Scott Hain is set to become the fourth child offender to be executed in the World in the past 12 months. All four will have been put to death in the United States. Scott Hain would also become the 18th child offender reported to have been executed worldwide in the past six years. All but five will have been killed in the USA, whose President has repeatedly stressed its commitment to the rule of law.

On Monday, launching the US State Department's reports on human rights in other countries, Secretary Powell referred to President Bush's "solemn pledge that the United States will always stand for the non-negotiable demands of human dignity." Warehousing a child offender for 15 years, before strapping him down and injecting him with poison - how does that uphold human dignity? Last October four US Supreme Court Justices described the execution of prisoners for crimes committed when they were under 18 years old as "a relic of the past" and a "shameful practice."

Also in October, the Inter-American Commission on Human Rights found that by continuing this practice, the USA was violating a norm of international law from which no country can exempt itself. It noted that "the acceptance of this norm crosses political and ideological boundaries", and added that violations had been roundly condemned by the international community. Numerous resolutions and statements at the United Nations have called for an end to the execution of child offenders.

Source: Amnesty International.

LAWSCAPE



A lawyer finds out he has an inoperable brain tumour. It's so large, they have to do a brain transplant. His doctor gives him a choice of available brains. There's a jar of rocket scientist brains for \$10 an ounce, a jar of regular scientist brains for \$15 an ounce, and a jar of lawyer brains for the sum of \$800 an ounce. The outraged lawyer says, "This is a rip-off! How come the lawyer brains are so damned expensive?" The doctor replies, "Do you know how many lawyers it takes to get an ounce of brains?"

"You're a high-priced lawyer! If I give you \$500, will you answer two questions for me?"

"Absolutely! What's the second question?"

READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: My father died of cardiac failure last January. He was a government officer serving in the foreign ministry. We have a residential building in Dhaka and some land property in and out side Dhaka. All the properties are in my father's name. Before his death he did not nominate any one for his bank accounts and service benefits. We are one brother and one sister. Now we need to sell some landed property. Can my mother do so on behalf of us? We also want to execute a power of attorney to our mother for management of all our properties. How can we do so? It may be mentioned that my brother is staying abroad and it is not possible for him to come home now. Please advice.

Md. Kabir Hossain,
Sathmosjid road, Dhanmondi, Dhaka.

Your Advocate: Your mother cannot dispose of any property belonging to you or your brother since both, as I understand are major and sui juris. Of course law is not a closed shop. As you have indicated, your brother and you are willing to execute a Power of Attorney in favour of your mother. Under law you are really sailing very close to the solution. Both of you can well serve your purpose by executing a Power of Attorney in your mother's favour. So far as your expatriate brother is concerned, he can send a Power of Attorney from abroad through our Embassy/ High Commission. For the bank accounts and service benefit, a Succession Certificate would be necessary in the particular circumstances.

Q: I am owner of a small factory. I leased a one storied building from its owner under an agreement and the agreement is duly registered. According to the deed, I am entitled to use the building for three year and the owner will not raise the rent and either party is entitled to terminate the agreement giving three months notice in written to the other party or penalty. I have paid the rent of one year in advance and set up my business there. Now the owner is asking me to evacuate the building within one month as he want to construct a high rise building there. But he has not given me any kind of notice and he is saying that he will not pay me any compensation. In this circumstances can I take any legal action against him for violating the agreement? If so, how?

Mirza Azam,
Halisahar, Chittagong.

Your Advocate: As it appears from your query that you are a tenant of the premises. The tenancy is created by a written agreement with the stipulation that any of the parties will be entitled to terminate the lease by serving at least three months prior notice. You already pay an advance rent for one year and you are running a factory in the premises. In the circumstances your landlord does not have any legal authority to ask you to vacate the premises without serving necessary notice in terms of the agreement to which he or she is a party. In the particular facts, you are not to pre-empt action against your landlord rather he or she should be allowed to initiate legal action against you, if he or she wants to. It is advisable for you to sit tight as none can touch you without lawful authority.

Q: We had a garments shop near bus terminal on our own land. We purchased the land several years ago from another person through a purchase agreement that was duly registered. It was adjacent to kash land of government and the government claimed it as kash land and made several attempts to evict us from the land. As a result we filed a case in the Assistant Judges Court and obtained an Injunction order in our favour, which ordered the DC not to disturb us till disposal of the case. But during the army drive, the government personnel's dispossessed us from the land and demolished our shops. I produced the courts order before them and request them not to do so. But they did not pay any respect to the courts order. The shop was the only source of bread and butter of our family. Now we are not in a position to take another legal action against the government. But I want to know (1) was not the action of the government officials' contempt to the court. (2) Are we entitled to any compensation for loss of our business? (3) Is there any opportunity for legal aid to help people like us?

Apu Sarker,
KDA Avenue, Khulna.

Your Advocate: Your case is an unfortunate instance of high handedness on the part of the public functionaries. During pendency of an injunction order in your favour granted against the Govt. you are dispossessed from the suit land by law enforcing agencies and the shop standing thereon was demolished despite the fact that you brought to their notice about the injunction order passed by a competent court. Of course it is contempt if done deliberately. There is a popular dictum: There is no wrong without a remedy. You have remedies in law. Since the whole thing is in connection with a proceeding pending in a court you have to approach the respective court for relief. Court, if satisfied, can restore your possession and take action against the Govt. and punish the Government servants individually responsible for wilful disobedience of the order of injunction. Government occupies the same position as any other party to a proceeding and is bound by law. For the loss you have sustained you may go for a separate suit for damages or claim relief in the ongoing suit by amendment of plaint. To the last question the reply is - there are a number of NGOs providing legal aid to the indigent and underprivileged people not capable to bear the expenses of their cases. And so far as Govt. is concerned, the recent law entitled "Legal Aid Act, 2000" provides, amongst other things, legal assistance to the similar class of people. Under the law there are District Committees in each district headed by the District and Sessions Judge, to arrange for legal aid of the kind. The President and the Secretary of the local Bar and the Public Prosecutor and the GP of the district are members of the Committee. You may conveniently consult any one of them.

Q: I started my career as a junior officer in a private company and continued there for nearly 15 years. I was promoted to the post of Manager when I resigned from the company. Just after my resignation they implicated me with a criminal case alleging that I misappropriated a huge amount of money from the company. I was arrested by police and was in jail for two month before I was granted bail. Finally last month the court dismissed the case. After that I went to the office and claimed service benefits for my 15 years service with the company. But the company refused me to pay any thing. I want to take legal action against the company for filing false case, which caused immense mental and social trauma for my family and me. I also want to get my service benefits to which I am entitled. Please advice me.

Masud Rana
Bakshi Bazar, Dhaka.

Your Advocate: So far as prosecuting somebody for malicious prosecution there need be findings by the court that the case was false and tainted with motive. Mere discharge or acquittal for absence of proof is not enough for such action. So a lawyer should be approached with the relevant papers of the case so that he or she can examine the prospect of an act in the kind. So far as your service benefit is concerned, you are entitled to them as you are acquitted from the charges brought against you. An appropriate suit shall lie for the purpose.