

(1981) 09 GAU CK 0023
In the Gauhati High Court
Case No : Criminal Appeal No. 165 of 1975

Changram Marak

APPELLANT

Vs

Phubilini Sangma & Ors.

RESPONDENT

Date of Decision : 17-09-1981

Acts Referred:

Assam Rules for the Administration of Justice and Police, 1937 — Rule 22A, 22A

Citation : (1982) 1 GLR 23

Hon'ble Judges : B.L.Hansaria, J and K.Lahiri, J

Bench : Division Bench

Advocate : B.K.Das, Advocates appearing for Parties

Judgement

Lahiri, J.—This is an appeal against an order of acquittal passed by the Additional Deputy Commissioner, Garo Hills at Tura. The parties are Garos, the offence is insignificant, petty, tribal. It is a petty Squabble between two private individuals where no question of public interest is involved. The patent object of the action is to use the criminal Court as a weapon of oppression, instead of going to the Civil Court in civil manner for redress.

2. Be that as it may, in our opinion, the appeal is incompetent. Mr. B. K. Das, Senior Advocate, in fitness of his status and position has pointed out that this Court has held that no appeal against an order of acquittal is permissible in respect of trials held by the Courts dispensing Criminal Justice in Garo Hills Mr. Das points to U. Shondro Lyngkhai vs. U. Keni Pyrtuh Nongbasap and three others, 1970 ALR 275 (DB). The rationale of the decision is that Rule 22A of "The Rules for Administration of Justice and Police in Garo Hills District, 1937" is total, absolute and exhaustive. Rule 22 provides that an appeal shall lie to the High Court from any sentence passed by the Deputy Commissioner or Additional Deputy Commissioner. It is an enabling provision that permits appeals to be preferred against an order of conviction and sentence. However, Rule 22A. of the said Rules is an enabling as well as disabling provision, Rule 22A reads :

"The Governor may direct an appeal to be presented to the High Court from an original or appellate order of acquittal passed by any court other than the High Court."

3. It will be seen that against the order of conviction and sentence an appeal can be preferred by any aggrieved person. Parties have absolute right, unrestricted and unchecked, without any constraint or restrain. Where a when we turn 10 Rule 22A we find that the sole authority competent to direct an appeal to be presented from an original or appellate order of acquittal, is the Governor of Meghalaya. It is the Governor who has the absolute preserve to give the direction for preferring an appeal against an order of acquittal. Conferment of power to the sole authority takes away the right of any aggrieved person to present an appeal against an order of acquittal. It follows, therefore, that when there is an order of acquittal the High Court is incompetent to entertain an appeal against an order of acquittal in the absence of a direction from the Governor to present the appeal. The relevant provisions of Criminal Procedure Code dealing with appeal against an order of acquittal would be found in Sec. 378 of the Criminal Procedure Code, 1973, corresponding to Sec. 417 of Criminal Procedure Code, 1898 (since repealed). Section 1(2) of the new Code reads as follows;

"I. * * *

(2) It extends to the whole of India except the State of Jammu and Kashmir :

Corresponding law : S. 1(2) of Act V of 1898. Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply

(a) to the State of Nagaland,

(b) to the tribal areas, but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation: In this section, "tribal areas" means the territories which immediately before the 21st day of January 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong"

4. Parliament in its wisdom has applied the provisions of Chapter VIII, X and XI to the Tribal Areas. Garo Hills is a district within the State of Meghalaya and is a tribal area within the meaning of the explanation. Section 378 of Criminal Procedure Code falls in Chapter XXIX. Therefore, the provisions of the Chapter are not applicable to the Tribal Areas. No notification has been brought to our notice applying Chapter XXIX or the provision of Section 378 of "the Code" in Garo Hills. As such, the provision is not applicable in the Tribal Area. However, the spirit of the provisions of the Criminal Procedure Code is applicable in Garo Hills. Is it possible to apply the spirit of Section 378 of "the Code" circumventing

the express provisions of Rule 22A of "the Rules" ? We cannot destroy the structure of Rule 22A of "the Rules" to apply the spirit of section 378 of "the Code". Rule 22A carves out a special provision and overrides the provision of Section 378 of "the Code". We cannot omit or add anything to Rule 22A in order to apply the spirit of "the Code". Rule 22A specifically and clearly makes the provisions of Section 378 of "the Code" inapplicable in the State of Meghalaya as the Rule is a special provision which overrides the provision of Section 378. This is the mandate of Rule 22A. In the name of application of the spirit of the Code we cannot alter the fabric and material with which Rule 22A is woven.

5. A faint attempt has been made by Mr. Das, learned counsel for the petitioner that the ratio in *U. Shondro* (Supra), a decision under the old Code, are not applicable in view of the change brought about in Section 378 of "the Code". We do not find any significant change in Section 378 of the Code which nullified the applicability of the Rule enunciated in *U. Shondro* (Supra). Rule 22A is still there in the statute book. So long the said Rule is preserved no appeal against an order of acquittal can be presented to the High Court without the direction from the Governor of Meghalaya. The spirit of Section 378, in our opinion, cannot override the letter or the actual terms, substance and the strict meaning of Rule 22A.

6. In the instant case the appeal has been preferred by the appellant without obtaining any direction from the Governor permitting him to prefer the appeal. Therefore, the appellant has no "locus standi" to appeal nor can the High Court entertain the appeal and dispose of it on merit, in the absence of a direction from the Governor.

7. Under these circumstances we are constrained to hold that appeal is not sustainable. In the result we hold that we cannot accept the appeal as it is not maintainable in law.