

(1952) 02 GAU CK 0004

In the Gauhati High Court

Case No : Criminal Miscellaneous Case No. 73 of 1951

Dhan Bahadur Ghorti

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 14-02-1952

Acts Referred:

Administration of Justice and Police in the Garo Hills District Rules, 1937 — Rule 22
Constitution of India, 1950 — Article 19(5), 226

Citation : AIR 1953 Guw 61

Hon'ble Judges : Haliram Deka, J

Bench : Single Bench

Advocate : J.C. Sen and A.R. Barooah, for the Appellant; D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Judgement

Deka, J.—This is a Criminal Miscellaneous case started on a petition purported to be one under Rule 22 of the Rules for the Administration of Justice and Police in the Garo Hills District against the order of the Deputy Commr., Garo Hills, dated 5-10-1951, directing the petitioner Dhan Bahadur Ghorti to leave Damalgiri Akhing (the village within the jurisdiction of Nokhmas) by 15-11-1951.

2. The learned Deputy Commissioner of Garo Hills started the proceeding numbered Misc. Case No. 170/51 on the application of some 33 persons many of whom came from the village of Damalgiri including the Nokhma thereof. These persons stated in the petition before the Deputy Commissioner that Dhan Bahadur Ghorti was a man of undesirable character and as such his stay in the locality was a sort of nuisance to the people there. The learned Deputy Commissioner directed a notice to be issued on Dhan Bahadur Ghorti to show cause why he should not be asked to vacate Damalgiri within a reasonable time. Dhan Bahadur did show cause and stated therein that the allegations against him were not true but that he was a money-lender and most of the persons who moved against him were his debtors. He, however, expressed willingness to leave the village if his dues were paid. The Deputy Commissioner after hearing both

the parties and referring to old documents traceable in his Court and examining some persons found that Dhan Bahadur's "gallant activities" had become a terror and nuisance to the simple Garo people of the locality. On this basis he directed that Dhan Bahadur should leave the Damalgiri Akhing within the course of about 40 days.

3. On a reference to Rule 22 of the Rules for the Administration of Justice and Police in the Garo Hills District I find that this rule does not empower the Governor nor this court to hear an appeal or revision from an order of extradition or expulsion from the District of Garo Hills as has been the subject-matter of this rule. Rule 22 relates only to cases of Criminal nature where a sentence is passed on conviction. In this case the order of expulsion of the petitioner is more of the nature of an administrative order for maintenance of public peace or for removal of a public nuisance rather than a sentence. In this view the petition to this court is not maintainable.

4. Mr. Sen appearing for the petitioner submits that this application can be treated as one under Article 226, of the Constitution of India as there has been a mention of this article in the petition.

5. Mere mention of an article of the Constitution of India is not enough to make out a case for issue of an appropriate writ as contemplated under that article. Mr. Sen had incidentally argued that by the order of the learned Deputy Commissioner directing expulsion of Dhan Bahadur from Damalgiri Akhing there has been a violation of Article 19 Clause (1) Sub-clause (d) and (e) of the Constitution of India. But on a reference to Clause (5) of the said article of the Constitution of India we find that "nothing in Sub-clause (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes.....reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe." Here it appears from the Deputy Commissioner's report submitted to this court that it is in the interest of the natives of the Garo Hills that a custom prevails that no Nepali or any foreigner should be allowed to live in the Garo Hills without the Deputy Commissioner's permission in various Garo villages and that is traceable to a Standing Order of 18 years ago (S. O. No. 104 dated 31-5-1934). It is clear that this practice has been prevalent at least for the last 18 years if not more and I don't think it to be in the interest of justice to deal with it lightly, rather I am inclined to hold that the Deputy Commissioner had exercised his discretion properly in the matter of asking Dhan Bahadur to leave Damalgiri Akhing.

6. In my view, therefore, the present petition under Rule 22 of the Rules for the Administration of Justice and Police in the Garo Hills District is incompetent and there is no ground for giving relief to the petitioner under Article 226 of the Constitution of India.

7. The Misc. Case therefore fails and the stay order is vacated.

8. I appreciate the assistance rendered by learned Government Advocate, who appeared in this matter at my request.