
(1993) 05 GAU CK 0024
In the Gauhati High Court
Case No : Criminal Revision No. 34 of 1986

Din Dayal Podder

APPELLANT

Vs

The State of Tripura and Another

RESPONDENT

Date of Decision : 28-05-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 14
Penal Code, 1860 (IPC) — Section 265, 365

Citation : (1993) 2 GLR 131

Hon'ble Judges : U.L. Bhatt, C.J

Bench : Single Bench

Advocate : D.K. Sarkar, for the Appellant; M. Nath, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

U.L. Bhat, C.J.—Judicial Magistrate, 1st Class, Belonia, south Tripura detected an offence allegedly committed by the revision Petitioner punishable u/s 265 of I.P.C. , took cognizance of offence, explained the offence to the accused, purported to record his plea admitting the guilt and proceeded to convict him and sentence him to pay a fine of Rs. 500/- in default to simple imprisonment for 7 days. This judgment is now challenged.

2. The entire proceeding of the learned Magistrate appears, to say the least, amazing, besides being wholly illegal. The Magistrate in question was a Judicial Magistrate, 1st Class. He had no authority to detect the offence. Having detected an offence without authority, he had no jurisdiction to take cognizance; having taken cognizance, he should have reported the matter to the Chief Judicial Magistrate to decide about transfer of the case from his file to the file of some other Magistrate. According to the records the Magistrate went to a shop and found that the measuring scale used for measuring cloth was shorter in length than that of the standard meter. He immediately concluded that the accused had committed an offence punishable u/s 365 of I.P.C. He hold court in the shop

itself. There may be two views as to whether this is a good or a bad system, but there can be no opinion that it is wholly contrary to the Code of Criminal Procedure. It also violates one of the principles of natural justice that no man shall be a judge in his own cause.

3. For these reasons, the impugned judgment deserves to be quashed.

4. It is contended by the learned Counsel of the revision Petitioner that the learned Magistrate had no power to function as a mobile court. Whether he had such jurisdiction or not depends upon whether he was functioning as a special Magistrate or not. A special Magistrate under proviso to Section 14 of the Code of Criminal Procedure may hold his sitting at any place within the local area for which the court is established, unlike in case of other Magistrate. In absence of any plea to the effect that the Magistrate was not a special Magistrate the point does not arise.

5. The impugned order, as already mentioned, is an amazing order, equally surprising is the action of the revision Petitioner in impleading the Magistrate as second Respondent and the action of the Registrar in having treated the revision petition as in order and receiving the same on file and numbering it. No Judicial authority whose order is impugned in appeal or revision under the Code of Criminal Procedure can be or should be impleaded as a party.

6. The impugned order is set aside and the accused is acquitted of the charge against him. The revision petition is allowed.

7. A copy of this order will be placed before the Registrar for issuing appropriate direction to the concerned section under this Registry.