
(1964) 07 GAU CK 0001
In the Gauhati High Court

Durgesh Ranjan Chakraborty

APPELLANT

Vs

The Administration of Tripura

RESPONDENT

Date of Decision : 04-07-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 304

Citation : (1965) CriLJ 138

Hon'ble Judges : Rajvi Roop Singh, J.C.

Bench : Single Bench

Judgement

Rajvi Roop Singh, J.C.

1. This is a reference made by the learned Sessions Judge of Tripura u/s 438 Cr. P. C., recommending that the order dated 3-4-62, of the District Magistrate directing the issue of warrant of arrest against the surety petitioner is illegal and without jurisdiction and as such should be set aside.

2. The reference arises in the following circumstances : On 13-5-61, under the orders of Shri S. C. Das, Magistrate First Class, Sonamura, three accused persons Achanullah, Asmat All and Mairan Bibi were committed to the Court of Sessions, Tripura on charges u/s 304 I. P. C. and 304/109 I. P. C. Thereafter under the order of the Sessions Judge the accused Achanullah was released on a bail bond of Rs. 400/- executed by him along with two sureties namely the petitioner Shri Durgesh Ranjan Chakraborty, Pleader and another man named Abdul Hamid. The bail bond was for appearance of the accused in the Court of Sessions and was accepted on 24-5-61 by Shri N. N. Choudhury, Additional District Magistrate, Tripura for the District Magistrate, Tripura. The Sessions Case arising out of the commitment order being Sessions Case No. 10 of 1961 having been transferred by the Sessions Judge to the Court of Shri S. B. Laskar, Assistant Sessions Judge, the latter fixed 7-8-61 for trial. On 7-8-61 the accused Achanullah failed to appear in Court and the petitioner Durgesh Ranjan Chakraborty who stood surety for him filed a petition praying for 15 days time but the learned Assistant Sessions Judge rejected the prayer and passed an

order forfeiting the bail bond of the accused and also directed issue of non-bailable warrant of arrest and a distress warrant for realisation of the forfeited money against the accused Achanullah, On 22-8-61 the learned Assistant Sessions Judge further recorded an order to the following effect:

It appears from the return of warrant that accused Achanulla has absconded. So issue proclamation u/s 87 of Cr. P. C. and write a letter to S. D. M., Sonamura to furnish the list of landed properties and moveables of accused Achanullah. It appears that the surety bond was given for attendance at the Court of Sessions Judge. The bond does not provide for production of accused to the transferee Court. So u/s 514 Cr. P. C. this Court, cannot forfeit this bond. So the bond is sent to Sessions Judge for doing the needful.

3. On 9-9-61 the learned Assistant Sessions Judge passed a further order as follows:

The Sessions Judge has returned the bail bond stating that this Court has also powers to take necessary action in the matter of bail bond.

Send the bail bond to the District Magistrate, Tripura for taking necessary action.

4. On the basis of the said order of the learned Assistant Sessions Judge, a Misc. Case, being Misc. Case No. 3 of 1961 u/s 514 Cr. P. C. was registered in the Court of the District Magistrate against the sureties Abdul Hamid and Durgasb Ranjan Chakraborty, Pleader, and on 26-9-61, the District Magistrate Shri L. B. Thanga passed an order for issuing of notice upon the bailors to produce the accused persons on 11-10-61. Accordingly notice was Issued on the sureties calling upon them to produce the accused In the Court of the District Magistrate on 11-10-61. Thereafter on 24-11-61 separate petitions were filed by the two sureties including the petitioner Durgesh Ranjan Chakraborty stating inter-alia that they did not give any undertaking to produce the accused in the Court of the District Magistrate, Thereafter the case was adjourned from time to time till 3-4-62. On that date the learned District Magistrate Shri L. B. Thanga passed the impugned order to the following effect:

Defence party nor their pleader appeared and hence takes no step. This is the third time the O.P. has not appeared taking no step. Issue W/A bailable for Rs. 200/- each. Fix 19-4-62.

5. Being aggrieved by this order of the learned District Magistrate, the petitioner filed a revision petition to the Court of Sessions Judge, Tripura. The learned Sessions Judge after hearing both the parties has made this reference to this Court for setting aside the order of the Additional District Magistrate dated 3-4-62.

6. After hearing counsel on both sides, I am of the opinion that the order of the Magistrate is Illegal and cannot therefore, be maintained,

7. The order for Issuing of warrant of arrest against the surety is Illegal for the

simple reason that there is no provision under the Code of Criminal Procedure to issue such warrant of arrest. Section 614 Cr. P. C. under which the proceedings against the petitioner appears to have been taken simply empowers a Court mentioned therein to call upon any person bound by the bond to pay the penalty thereof, or to show cause why it should not be paid. If it is proved to the satisfaction of such Court that the bond has been forfeited and in the event of the person so bound not showing any cause or not paying the penalty, the Court has power to recover the same by issuing a warrant of attachment and sale of any movable property belonging to such person. The learned District Magistrate does not appear to have adopted the procedure as laid down in Section 514 Cr. P. C. Instead he simply issued a notice requiring the sureties to produce the accused Achanullah before his Court although the bond executed by the sureties including the petitioner was one for appearance of the accused before the Court of Sessions and in default to issue a warrant of arrest against them. There is absolutely no warrant for such procedure either u/s 514 Cr. P. C, or anywhere under the Code of Criminal Procedure.

8. The impugned order dated 3-4-62 passed by the learned District Magistrate is also without jurisdiction because the bond executed by the two sureties including the petitioner was one for appearance before the Court of Sessions. Under Sub-section (1) of Section 514 Cr. P. C., when the bond is for appearance before a particular Court, it is only that Court which has got power to take steps under that section. That being so, in the present case the learned District Magistrate clearly acted without jurisdiction in starting proceedings purporting to be u/s 514 Cr. P. C. against the petitioner in respect of the bail bond executed by the petitioner.

9. In view of my foregoing discussions, I find that the order of the learned District Magistrate dated 3-4-62 is illegal. I have therefore, no option but to accept the reference and set aside the order of the Magistrate. Hence the reference is accepted and the order of the Magistrate is hereby set aside.