
(1951) 04 GAU CK 0004
In the Gauhati High Court

Forching Rava and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 03-04-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 526

Citation : AIR 1952 Guw 3 : (1952) CriLJ 104

Hon'ble Judges : T.V. Thadani, C.J; Ram Labhaya, J

Bench : Division Bench

Judgement

Thadani, C.J.—This is an application by one Forching Rava and 5 others under the provisions of Section 526 of the Code of Criminal Procedure praying for a transfer of the case pending against them before the Additional Deputy Commissioner of Shilling to a Court of competent jurisdiction at Gauhati on the ground of the convenience of the parties.

2. The offence of dacoit for which the petitioners are being prosecuted, is said to have taken place within the territorial limits of the Khasi Hills. Mr. Das for the petitioners contends that with effect from the 26th of January, 1950, the Code of Criminal Procedure is in force in the Khasi and Jaintia Hills, and that the order passed by the Governor of Assam on 25.1.50 for the administration of justice in the Khasi States, no longer governs the trial of an offence committed within the Khasi States. He has pointed out that the order made by the Governor of Assam on 25.1.50 was made in pursuance of the powers conferred by Section 4 of the Extra Provincial Jurisdiction Act, 1947, as delegated to him by the Government of India in the Ministry of States by their notification No. 335-I.B., dated 2.11.48, - an Act which cannot be regarded as being in force on and after 26.1.50, having regard to the fact that the Khasi States, after 26.1.50, are part of the territory of Assam.

3. It is unnecessary, in the facts of this case, to express our view as to whether the Governor of Assam, after 26.1.50, could or could not exercise the powers conferred by Section 4 of the Extra Provincial Jurisdiction Act, 1947, for, the

order made by the Governor of Assam relating to the administration of justice in the Khasi States was made a day before the Constitution of India came into force. The question for our consideration is whether the order made by the Governor of Assam on 25.1.1950 governs the procedure to be followed in the present case. We think does.

4. Paragraph 20 of the 6th Schedule to the Constitution of India describes what are tribal areas. Tribal areas are the areas specified in parts A and B of the table contained in the 6th Schedule. The United Khasi-Jaintia Hills District is mentioned in part A of the table, as a tribal area. Paragraph 19 of the 6th Schedule contains transitional provisions with regard to the administration of the areas described in the 6th Schedule. Clause (b) of paragraph 19 says:

the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

It is not disputed that the order made by the Governor of Assam on 25.1.50 is to be regarded as an existing law applicable to the Khasi States. This order, as far as we know, has not been repealed or amended by the Governor of Assam after the Constitution of India came into force. The administration of criminal justice, therefore, in the Khasi States must be governed by the order made by the Governor of Assam on 25.1.1950.

5. Rule 14 of the rules framed for the administration of justice in the Khasi States by the Governor of Assam on 25.1.50 deals with procedure. It says:

The Procedure of the High Court of Assam, the Deputy Commissioner or the Additional Deputy Commissioner and his Assistants shall be in the spirit of the Code of Criminal Procedure, 1898, as far as it is applicable to the circumstances in the Khasi States.

There is, therefore, no substance in the contention of Mr. Das that the Code of Criminal Procedure applies in terms. The question, therefore, arises - whether we can invoke the spirit of Section 526 of the Code of Criminal Procedure and order the case to be transferred from the file of the Additional Deputy Commissioner, Shilling, to any Court of a Magistrate in Kamrup District, having jurisdiction.

6. This aspect of the case was considered by this Court in a case reported in *Krishna Prasanna v. Jan Mohammad* AIR 1949 guh 69. It is true that the Constitution of India was not in force then, but, as we have observed, the Administration of Justice in the Khasi and Jaintia Hills is to this day governed by the rules framed by the Governor of Assam. In the case reported in AIR 1949 guh 69 we were dealing with the question of transfer arising in a case governed by the rules framed for the administration of Justice and police in the Naga Hills District. We pointed out that there is nothing in the rules framed by the Governor of Assam which authorized the Governor of Assam to transfer a criminal case

pending in one of the Courts of the Naga Hills District to a Court outside the Naga Hills District. We also pointed out that the words "in the spirit of the Code of Criminal Procedure" used in Rule 22 of the rules framed for the administration of justice in the Naga Hills, are not to be interpreted in a manner so as to enable the High Court to apply the provisions of the Code of Criminal Procedure in terms to the trial of offences in the Naga Hills District when the operation of the Code to the administration of justice in the Naga Hills District, is excluded by rules framed under a special enactment, namely the Act of 1874. The observations which we made in the case to which we have referred apply with equal force to the case before us, having regard to Rule 14 of the rules framed for the administration of justice in the Khasi and Jaintia Hills.

7. There is yet another case reported in *Ram Saran v. The King* AIR 1950 Gau 100 - also from the Naga Hills District - in which the question of transfer was involved, in that case, we gave an additional reason for refusing to transfer the case. We pointed out that the language of Rule 22 of the rules framed for the administration of justice in the Naga Hills-enjoins that the procedure to be adopted should be in the spirit, of the Code of Criminal Procedure as far as it is applicable to the circumstances of the District; Rule 22 cannot, therefore,, be invoked to transfer a case either in terms of the Code or its spirit, for, it is plain that Section 526 , Cr.P.C. applies to the facts and circumstances of the case, and not to the circumstances of the District. Rule 14 of the order governing the present case is also couched in the same language. Moreover, under Rule 2 of the order made by the Governor of Assam on 25.1.1950, criminal justice is to be administered by the D.C. or Addl. D.C., Khasi and Jaintia Hills District, and his Assistants, or the Courts of the Siems of the Khasi States. In other words, Criminal Justice in the Khasi and Jaintia Hills District "is not" to be administered yet by a Magistrate appointed under the Code of Criminal Procedure. If, then we were to transfer a criminal case from the Court of an Addl. D.C, Shillong, to that of a Magistrate appointed under the Code of Criminal Procedure in the Kamrup District, we would be ordering a trial to be had by a person other than the persons mentioned in Sub-rules (1) and (2) of Rule 2 of the order made by the Governor of Assam, dated 25.1.1950, relating to the administration of justice in the Khasi States.

8. The result is that the application fails and is dismissed. The Rule is discharged.

Ram Labhaya. J.

9. I agree.