
(1949) 11 GAU CK 0005
In the Gauhati High Court

Ganpatrai Agarwalla

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-11-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : AIR 1951 Guw 47 : (1951) CriLJ 200

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

Bench : Division Bench

Judgement

Ram Labhaya, J.—This order will dispose of Revn. petns. (cri.) Nos. 28 and 30 of 1949. The petitioners were committed to the Court of, and tried by the Political Officer, Sadiya, who was also the Sessions Judge for the area. Ganpatrai was tried for an offence u/s 376, Penal Code, and Radhakissen for its abetment. The petitioners were acquitted of the charges against them. It was found that though Ganpatrai had committed sexual intercourse with Bimola and Radhakissen had abetted the act, no offences had been committed as the evidence in the case did not disclose that sexual intercourse had been committed without Bimola's consent. While acquitting both the petitioners of the charges, the Political Officer ordered externment of the petitioners from the Mismi Hills district holding that their presence in the area constituted a menace to society. In his opinion the petitioners were undesirable persons and therefore deserved to be externed.

2. The petitioners have applied to this Court for revision of the orders against them by separate petitions.

3. The order of externment does not refer to the provision of law under which action was taken. On a rule having been issued calling upon the Political Officer to show cause why the order be not set aside he pointed out that the order had been passed u/s 22, Chin Hill Regulation (v [5] of 1896) and that no appeal or revision lay to the High Court. The order could be revised only by the Provincial Government. The learned Government Advocate supports this position and urges that this Court has no jurisdiction to entertain the revision petition.

4. The learned Counsel for the petitioner do not deny that the action taken was possible only under S. 22, Chin Hill Regulation, which applied to the Sadiya Tract in a modified form at one time admittedly. Their contention is that the sections of the Chin Hill Regulation which were applicable to the Sadiya tract till 1945 stood repealed when Regulation I [1] of 1945 was passed. They concede that there is no express provision repealing these sections. Their contention is that the repeal has come by necessary implication.

5. We have given our careful consideration to this argument and we are inclined to the view that it has got no force. Certain sections of the Chin Hill Regulation (Sections 22, 23, 38 (2), 40) were applied in their restricted and modified form to Sadiya and certain other tracts. The Political Officer or the Deputy Commissioner was empowered u/s 22 for reasons to be recorded in writing to order any person not being a native of the area to leave the area within a given time if he was satisfied that his presence in the area was injurious to the peace and good administration of the area. An order passed under this provision cannot be called in question in any civil or criminal Court. The Provincial Government alone has the power to revise such orders. The object with which certain sections of the Regulation were applied (though in a modified form) to the tract in question was the maintenance of peace and good administration in the area. These provisions were applied by a Notification which embodies more or less a special law for the area. Regulation I [I] of 1945 as is apparent from its preamble was intended to consolidate and amend the law governing the administration of justice in the frontier tracts of Assam including the area in question. The two measures can run parallelly. They do not meet at all. There is no essential conflict between them and sections of the Chin Hill Regulation can be enforced without contravening any provision of Regulation I [1] of 1945. The objects of the two measures are also different. In these circumstances there cannot be any implied repeal of the Notification applying certain sections of the Chin Hill Regulation to the Sadiya tract. These sections are still in force and can be resorted to if circumstances exist which justify their application.

6. The order of externment having been passed u/s 22, Chin Hill Regulation, as applicable to the Sadiya tract, this Court has got no jurisdiction to interfere. The petitions are, therefore, rejected. The petitioners can ask for redress from competent authority.

Thadani, C.J

I agree.