
(1949) 02 GAU CK 0003
In the Gauhati High Court

Krishna Prasanna Chakrawarty

APPELLANT

Vs

Jan Mahammad

RESPONDENT

Date of Decision : 21-02-1949

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1949 Guw 69 : (1950) CriLJ 147

Hon'ble Judges : Ronald Francis Lodge, C.J;T.V. Thadani, J

Bench : Division Bench

Judgement

1. These are two applications by one Krishna Praaanna Ohakravarty under the provisions of Section 526, Criminal P.C., praying for the transfer of two criminal cases pending against him in the Court of Mr. L. 8. Ingty, a Magistrate of the First Class at Kohima. The facts material to the application are these:

2. On 24th April 1948 the applicant drew a cheque in favour of one Mr. D. K. Nath on the Noakhali Union Bank, Dibrugarh, for Ba. 85,687-10-6 in pursuance of an award passed by one Mr. D. K. Nath in a criminal case no. 6 of 1948 in which one Jan Muhammed was the complainant. On receipt of the cheque by Mr. Nath the case against the applicant filed by Jan Muhammed was disposed of by an order of acquit-tal passed on 24th April 1948, For some reason or other the applicant then advised the drawee Bank to withhold payment of the cheque. One Biawanath Missir who apparently had some interest in the amount covered by the cheque filed a criminal case against the petitioner at Kohima on 13th October 1948, u/s 420, Penal Code. Similarly Jan Muhammed, who was the complainant in the case no. 6 of 1948, filed a complaint against the petitioner in the Court of the Eohima Magistrate. The applicant now seeks a transfer of the two cases pending in the Court of the First Class Magistrate at Eohima to any criminal Court at Dibrugarh on the ground that the only Court which had jurisdiction in the matter was the criminal Court at Dibrugarh and that in any case it would be more convenient if the trial is held at Dibrugarh.

3. Mr. Ghose for The complainants has taken a preliminary objection as to the

powers of this Court to entertain an application under the provisions of Section 526, Criminal P.C., in view of the rules framed for the administration of justice and police in the Naga Hills district. We think the objection is sound and must prevail.

4. The Governor of Assam is empowered by Section 6, Scheduled Districts Act, 1874, to prescribe rules for the administration of justice and police in the Naga Hills district. It is not disputed that Kohima where the two complaints have been instituted is situated in the Naga Hills district. The Br. 15-22 of the Rules framed by the Governor of Assam in pursuance of Section 6, Scheduled Districts Act of 1874 appear to us to exclude the operation of the Criminal P.C. Section 1, Criminal P.C. lays down ;

(2) It extends to the whole of British India, but in the absence of any special provision to the contrary, nothing herein contained shall affect any special original law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force, or shall apply to,

(a) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay ;

(b) heads of villages in the presidency of Fort St. George, or

(c) village police Officers in the presidency of Bombay: provided that the Local Government may, if it thinks fit, by notification in the Official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such exempted persons.

It is manifest that Br. 15-19 framed under the Act of 1874 to which we have referred do not prescribe any procedure for the trial of criminal offences. Sections 20 and 21 deal with the right of appeal and the Governor-General's prerogative of reviewing the proceedings of the Governor of Assam. It is common ground that the powers which the Governor of Assam exercised before the establishment of the High Court of Assam have since been conferred on this High Court. But the powers conferred on this Court are undoubtedly limited in their extent to the powers which the Governor of Assam himself could have exercised under the rules framed under the Act of 1874.

5. We cannot find anything in the rules framed by the Governor of Assam which authorises 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. The application before us is for the transfer of a case from a criminal Court in the Naga Hills district to a Court outside that district. It is plain that as the Governor of Assam himself had no power to transfer a case from a criminal Court in the Naga Hills district to a Court outside that district in the Province of Assam, this Court which is enabled to exercise those powers only as the Governor of Assam himself could have exercised is not competent to transfer the cases to a Court at

Dibrugarh, a place out-side the Naga Hills district.

6. It was contended by Mr. Roy for the applicant that as Rule 22 provides that the procedure to be followed by the criminal Courts for the trial of offences in the Naga Hills district was to be in the spirit of the Code of Criminal Procedure, this Court is competent to entertain an application made under the provisions of Section 526, Criminal P.C. We are unable to accept this contention. We think the words "in the spirit of Code of Criminal Proaedure" used in Rule 22 are not to be interpreted in a manner be as to enable this Court to apply the provisions of the Code of Criminal Procedure 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. Moreover, the two applications for transfer have been made on the ground (1) want of jurisdiction in the Court which is seized of the complaints and (2) of convenience. As regards the ground of convenience, the con-venience contemplated by the Code of Criminal Procedure or the spirit of the Code of Criminal Procedure ia not the convenience of an accused person only but convenience of both parties. It is not the case of the applicant that the transfer of the two complaints to a Court at Dibrugarh will be for the convenience of the complainants.

7. as to the alleged want of jurisdiction, it not a matter which we can deal with upon an application for transfer. It is for the Court Which is seized of the complaints to decide whether or not it has jurisdiction. If it wrongly decides to exercise jurisdiction when it has not, it would be open to the applicant, if the cases against him result in a conviction to invoke our revisional powers and have the convictions Bet aside on the ground of want of jurisdiction.

8. Accordingly, we decline to exercise our powers under the provisions of Section 526, Criminal P.C., arid dismiss the two applications.