

(1993) 10 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. (HC) 47/93

Lal Siamkunga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 1, 1(2), 2, 20, 21
General Clauses Act, 1897 — Section 3(60)
Penal Code, 1860 (IPC) — Section 343, 392, 506
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 4, 5, 9

Citation : (1994) 2 GLR 178

Hon'ble Judges : U.L. Bhat, C.J.; Manisana, J

Bench : Division Bench

Advocate : N.M. Lahiri, General for Meghalaya, S.N. Bhuyan, General for Assam, M.K. Sarma, General for Nagaland, A.M. Mazumdar, General for A.P. and A. Roy, Government Advocate for A.P, for the Appellant; K.P. Pathak, Government Advocate, for the Respondent

Judgement

Manisana, J.—In this application, the Petitioners Lal Siamkunga and Raldothanga, both under trial prisoners, have challenged their detention in jail under GR Cases No. 1258 of 1989, 1259 of 1989, 1583 of 1991, 336 of 1991, 408 of 1991, 395 of 1992, 507 of 1992 and 394 of 1992 pending in the Court of the Additional District Magistrate, Aizawl, GR Cases referred to above, other than GR Case No. 394 of 1992, are in respect of offences either under the Indian Penal Code or Arms Act. GR Case No. 394 of 1992 is in respect of Sections 392, 343 and 506, IPC, and Sections 4 and 5 of the Terrorist and Disruptive Activities (Prevention) Act (TADA Act?, for short), and is pending before the Designated Court at Aizawl. The application of the Petitioners for bail has been rejected by the Designated Court. In Aizawl, the Additional District Magistrate was appointed as Judge of the Designated Court. The appointment of the Additional District Magistrate as Judge of the Designated Court is questioned in the present case.

2. u/s 9 of the TADA Act, the Central Government or a State Government may

constitute one or more Designated Courts for such area or areas, or such case or class or group of cases or as may be specified in the notification. Section 9 further provides that the Designated Court shall be presided over by a Judge to be appointed by the Central Government or as the case may be, the State Government it, with the concurrence of the Chief Justice of the High Court; and that a person shall not be qualified for appointment as Judge or an Additional Judge of a Designated Court unless he is, immediately before such appointment a Sessions Judge or an Additional Sessions Judge in any Suite.

3. In the States of Arunachal Pradesh, Meghalaya (other than the local limits of the municipality and a part of cantonment area), Mizoram and Nagaland, and a part of the State of Assam (which we shall collectively refer to as the "Schedule Areas"), Courts of Session have not been constituted. The question of law to be decided in this case may affect the States mentioned above and, therefore, we requested the Advocates General of Arunachal Pradesh, Assam, Meghalaya and Nagaland, to assist the Court. We are thankful to the learned Advocates General for their assistance.

4. The question now is, - Whether a Deputy Commissioner/District Magistrate can be appointed as Judge of the Designated Court, under the TADA Act, in the Schedule Areas?

5. Under the respective rules of the States "Criminal Justice" is administered by the Deputy Commissioner and his assistants, The Deputy Commissioner shall be competent to pass any sentence warranted by law, but the sentence of death or imprisonment of seven years or upwards shall be subject to confirmation by the High Court. An appeal shall lie to the High Court from any sentence passed by the Deputy Commissioner. The procedure of the High Court, the Deputy Commissioner, his assistants and all Magistrates shall be in the spirit of the Code of Criminal, Procedure as far as it is applicable to the circumstances of the Schedule Areas and consistent with the relevant rules.

6. Section 1 of the Code of Criminal Procedure, 1973, runs:

This Act may be called the Code of Criminal Procedure, 1973.

(2) It extends to the whole of India except the State of Jamuu and Kashmir:

Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply-

(a) to the State of Nagaland,

(b)) to the tribal areas,

but the concerned State Government may, by notification, apply such provisions, or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation - In tin's section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in para 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

(3) It shall come into force on the 1st day of April. 1974.

(emphaiis supplied).

A combined reading of the explanation and para 20 of the Sixth Schedule to the Constitution shows that the Schedule Areas are "tribal areas" within the meaning of the explanation. Therefore, by virtue of proviso to Sub-section (2) of Section 1, Chapter VIII (ss 106 to 124), Chapter X (Ss 129 to 148) and Chapter XI (Ss 149 to 153) are applicable to the State of Nagaland and the Schedule Areas. When States of Arunachal Pradesh and Mizoram were Union Territories, the Central Government by notification dated 20.3.74, applied the provisions of Sections 2, 3 with a new Sub-section (5), 5, 20 to 23 and 373. It may be stated hero that u/s 3(60)(c) of the General Clauses Act, the "State Government" shall mean, in a Union Territory, the Central Government. The notification was issued by tile Central Government in the exercise of power conferred by the proviso to Sub-section (2) of Section 1 of the Code and those extended provisions of the Code were applied with effect from 1.4.74, the day on which the new Code came into force Under Sub-section (5) of Section 3 of the Code, any reference in such provisions of the Code, as apply to Union Territories of Arunachal Pradesh and Mizoram, to the Courts of Session or Sessions Judges shall until Courts of Session are constituted in the said Union Territories, be construed as references to the Court of District Magistrate.

7. u/s 6 of the Code, in every State, there shall be following classes of criminal Courts - Courts of Session; Judicial Magistrate of the first class and, in any Metropolitan area, Metropolitan Magistrate; the Judicial Magistrate of the second class; and Executive Magistrate. u/s 9 of the Code, the State Government shall establish a Court of Session forevery sessions division; and every Court of Session shall be presided over by a Judge to be appointed by the High Court.

8. In Bhagwati Devi v. Uma ALR 1961 Gau 304 (DB), this Court, assumed that the Deputy Commissioner and Addl. Deputy Commissioner are the highest Court of original civil jurisdiction in Meghalaya, other than the areas of local limits of Municipality of Shillong and part of cantonment area, where the Court of District Judge is not constituted, It may be stated here that administration of "Civil Justice is entrusted to the Deputy Commissioner, his assistants, etc, under the rules of Administration of Justice and Police in Khasi and Jaintia Mills; and that the CPC is not applicable to the State of Meghalaya and the Courts are guided by the spirit of the Code of Civil Procedure.

9. In Kulendra Kumar Dey v. Union Territory of Arunachal Pradesh 1983 (1) GLR 23, this Court considered the question as to whether the Deputy Commissioner

can exercise the power u/s 438, Code of Criminal Procedure to grant pre-arrest bail as, u/s 438 Code of Criminal Procedure only the High Court or the Court of Session has the jurisdiction to grant anticipatory bail. This Court assumed the Deputy Commissioner to be a Sessions Judge because the Deputy Commissioner can try the offences under the Indian Penal Code triable by the Sessions Judge under the rules similar to the rules of Mizoram,

11. It is a long standing legal position in the Schedule Areas that references to Courts of Session are construed as references to Courts of Deputy Commissioner/ District Magistrate. In *B. Lakshmipathi Naidu Vs. The Distt. Educational Officer and others*, the Supreme Court held that long standing legal position of law should not be disturbed. Applying the principles laid down by the Supreme Court, we are of the view Unit, although Courts of Session have not been constituted, construction of references to Courts of Session as references to the Courts of Deputy Commissioner should not be disturbed. For the reasons stated, references to "Deputy Commissioner" or "District Magistrate", in the relevant rules, in the context of cases are triable by the Courts of Session, should be read as reference to "Sessions Judge" We hold that "Sessions Judge" and "Additional Sessions Judge" in suction 9 of the TADA Act must be deemed to include Deputy Commissioner for the purpose of TADA Act. The question is answered in the affirmative.

12. The Petitioners are under trial prisoners. In view of the decision of the Supreme Court in *Saptawna Vs. The State of Assam*, the petition for writ of habeas corpus is rejected.

13. Before parting with the case, we deem it cur duty to refer to the state of affairs relating to Civil and Criminal Justice in the "Schedule Areas". As we have pointed out administration of justice is mainly in the hands of Deputy Commissioner and his assistants who are Executive Officers; the position docs not alter even if these officers are described as Deputy Commissioner (Judicial).

Whatever be the description, they are essentially Executive Officers under the full control of the State Government. Appointments are made without reference to the High Court. It is not even certain that all the officers are Law Graduates or have experience in practice of law. We have observed in many cases that the quality of justice rendered to the seeders of justice in these areas is of inferior kind. It is for the concerned Government to decided whether this state of affairs should continue or whether it should be rectified by separating the Judiciary from the Executive and bringing the former under the control of the High Court.

14. In the light of the view we have expressed on the construction of Section 9 of the TADA Act, it must follow that there are validly constituted Designated Courts in Mizoram. Therefore, there should be no difficulty in expeditious trial of the cases. What we have indicated regarding the State of Mizoram applies in all "Schedule Areas" under the jurisdiction of this Court

The Civil Rule is accordingly disposed of.