

(2009) 08 GAU CK 0054

In the Gauhati High Court

Case No : C. Revision No. 4 (K) of 2009

Neiloulhou G.B. and Another

APPELLANT

Vs

Khrielhoulie and Party

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Administration of Justice and Police in the Khasi and Jaintia Hills Rules, 1937 — Rule 31, 36A

Nagaland Administration of Justice and Police Rules, 1984 — Rule 29, 29(1), 31, 32, 34
Rules for Administration of Justice and Police in Nagaland (Amendment), 1974 — Rule 29, 29(1), 32

Citation : (2011) 4 GLR 163 : (2009) 5 GLT 139

Hon'ble Judges : K. Meruno, J

Bench : Single Bench

Advocate : C.T. Jamir, Wati Jamir, N. Longkumer, Akum Jamir, Wati Walling and Imkong Jamir, for the Appellant; R. Iralu, K.L. Solo, L. Belho, Alemla, Chemtila and Seyiekronuo, for the Respondent

Final Decision : Allowed

Judgement

K. Meruno, J.—I have heard Mr. C.T. Jamir, learned Counsel for the revisionist and Mr. R. Iralu, learned Counsel for the Respondent.

2. Mr. C.T. Jamir, learned Counsel for the Petitioner submits that being aggrieved by an order dated 16.12.2008 passed by the Assistant to Deputy Commissioner in Civil Appeal No. 2/08 the instant Petitioner as Appellant filed an appeal before the Additional Deputy Commissioner (Judicial) Kohima, under Rule 29 of the rules for Administration of Justice and Police in Nagaland 1984, as amended, which was registered and numbered as Civil Appeal No. 1/09. The Respondent filed an affidavit and raised objection that the aforesaid appeal is not maintainable under Rule 29 of the rules stating that the impugned order in the aforesaid appeal is not an original order, and as such, appeal does not lie to the Deputy Commissioner. The case was heard only on question of maintainability under Rule 29 of the rules and not on the merit of the appeal and the learned

Court below misinterpreting the rules came to a conclusion that the appeal is not maintainable under Rule 29 of the rules and by an order dated 03.06.2009, the learned Court below illegally dismissed the Civil Appeal No. 1/09.

3. Under Rule 29 of the rules provides that an appeal shall lie to the Deputy Commissioner against the decision of any of his Assistant and to the High Court against the original decision of the Deputy Commissioner. As per the above rules, the Civil Appeal No. 1/09 is maintainable inasmuch as the impugned order in the said appeal was an order passed by the Assistant to Deputy Commissioner. However, the learned Court below misinterpreted the Rule 29 of the rules and failed to exercise its jurisdiction so vested by law and thereby deprived the Petitioner by the illegal action of the learned Court below and hence the instant revision petition.

4. Mr. C.T. Jamir, the learned Counsel for the revisionist further states that Rule 29 of the rules is in two parts. The first part of the Rule 29 is; an appeal shall lie to the Deputy Commissioner against the decision of any of his Assistant. The second part of the Rule 29 is, to the High Court against the original decision of the Deputy Commissioner.

Therefore, when an order is passed by the Court of Assistant to Deputy Commissioner, than in the first part of Rule 29 of the rules, an appeal lies to the Deputy Commissioner. The second part of the Rule 29 of the rules is that, to the High Court against the original decision of the Deputy Commissioner. The case of the Petitioner/revisionist falls under the first part of Rule 29(1) of the rules since the appeal is against the order of Assistant to Deputy Commissioner. The case of the Petitioner/revisionist does not in any manner falls under the second part of Rule 29 of the rules which deals with an original decision of the Deputy Commissioner.

5. The order dated 16.12.2008 is not an order of the original decision of the Deputy Commissioner but an order passed by the Court of Assistant to Deputy Commissioner. Therefore, the Court below has misinterpreted Rule 29 of the rules and failed to exercise its jurisdiction so vested by the law and therefore the order dated 03.06.2009 passed by the learned Court of Addl. Deputy Commissioner (Judicial) Kohima is liable to be set aside and quashed.

6. Mr. R. Iralu, the learned Counsel appearing for the Respondent has strenuously argued about the position of Rule 29 and Rule 34 of the rules, before amendment and after amendment and also for defending the order 03.06.2009 passed by Addl. Deputy Commissioner (Judicial) Kohima. Mr. Iralu, to substantiate his argument has drawn the attention of the Court to the old provisions of Rule 31 and Rule 34 of the rules before amendment. According to Mr. Iralu, the provision of Rule 34 of the rules has been deleted by the new amendment. Rule 34 of the old rules has been splited into 2 (two) parts as Rule 29 and Rule 32. By the new amendment, the provision of second appeal has been done away and provisions of revision have been provided under Rule 32 of

the amended rules. Therefore, as per the new amendment of the rules, the Court below has rightly and legally held that the impugned judgment and order is an order of the appellate Court and therefore, the appeal memo under Rule 29(1) is not maintainable as per the provision of rules and procedure.

7. Mr. Iralu in support of his submissions has relied upon the decision of the Apex Court reported in Shyam Sunder Agarwal and Co. Vs. Union of India, in the case of Shyam Sunder Agarwal & Co. v. Union of India. This cited case will be discussed in the later part of this judgment.

8. As consented by the learned Counsels appearing for the respective parties that this revision petition be disposed of at the Admission stage, and in this view of the matter, this revision petition is heard and disposed of at the Admission stage.

9. After hearing the learned Counsels appearing for the respective parties at length, I have perused the provisions of Rule 31 and Rule 34 before amendment and after amendment. Upon careful perusal of Rule 31 and Rule 34 of the rules before amendment and after amendment, it is crystal clear that Rule 31 of the principal rule has been completely deleted and also Rule 34 of the principal rules has been completely deleted. After deleting Rule 31 and Rule 34 of the principal rules, the principal Rule 34 has been substituted as Rule 29. The relevant part of which is as follows:

29. (1) An appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants and to the High Court against the original decision of the Deputy Commissioner, if the value of the suit be Rs. 500/- or over, or of right, to or possession of immovable property:

Provided that a petition of appeal accompanied by a copy of the order appealed against and by a clear statement of the grounds of appeal be filed within 30 days from the date of decision, excluding the time required for obtaining a copy of the decision:

Provided further, that the appeal may be admitted after the aforesaid period of 30 days if the Appellant satisfied the Appellate Court that he has sufficient cause for not preferring the appeal within such period.

(2) An appeal which lies to the High Court may be presented to the Deputy Commissioner, who shall if it be in order and presented in due time, endorse upon it the date of receipt and transmit it with the records of the case to the High Court.

(3) The decree of the Appellate Court shall be transferred to the Court passing the original order for execution as a decree of its own.

10. In the newly amended rules, it is recorded;

32. The High Court or the Deputy Commissioner may, on an application by the aggrieved party or otherwise call for the proceedings of any case decided by any officer subordinate to him and pass such order as may be deemed fit:

Provided that the party aggrieved may move such application only after availing of remedy by way of appeal, if any, provided under the Rules against such decision.

11. It is also to be noted as per the submissions of Mr. Iralu that the old Rule 34 has been split into two parts, Rule 29 and Rule 32. Though other rules in the old rules have also been deleted and 32. Though other rules in the old rules have also been deleted and changed to new rules after the amendment, this Court is concerned with the amended Rule 29 and Rule 32 of the rules for the purpose of adjudication of this instant revision petition and the order dated 03.06.2009 passed by the learned Court of Addl. Deputy Commissioner (Judicial), Kohima.

12. Keeping in view of the newly amended Rules 29 and 32, the question to be considered by this Court is, whether the Court below interpreted the said Rules 29 and 32 of the rules rightly or misinterpreted the same, which is under challenged in this revision. Further, it is to be noted that the newly amended Rule 29(1) consists of two parts; (a) an appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants. (b) to the High Court against the original decision of the Deputy Commissioner.

13. Following this classification, the second part of Rule 29(1) "to the High Court against the decision of the Deputy Commissioner", pertains to the appeal to the High Court against the original decision of the Deputy Commissioner and the first part i.e. "Appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants", are two distinct and separate issues which cannot, in any circumstances, be conjoined together. Also the case in hand pertains to the interpretation of the first part of Rule 29 of the rules and therefore, the second part of the rules is not being discussed in this judgment.

14. With regard to Rule 32 of the rules, being a separate issue pertaining to the provisions of revision, which is not disputed, the said rule is not being discussed in this judgment. In this view of the matter, the cited case relied upon by Mr. Iralu not being connected substantially in the context of this present revision petition has not been relied because of the reasons that the provisions of revision under Rule 32 is not in dispute in this revision petition. The dispute in this revision petition is, whether the Court below in its order dated 03.06.2009 has misinterpreted the provision of Rule 29(1) of the rules or not. While the case relied upon by Mr. Iralu is pertaining to certain provision of the Arbitration Act, 1940 read with Rule 31 and 36-A of the rules for the Administration of justice and Police in Khasi and Jaintia Hills, 1937, which is quite similar to our own Rules 29 and 34 of the rules for Administration of Justice and Police in Nagaland, before the amendment Act in 1984. Further in this reported case, it has been held:

Even if appellate order passed under a special statute is made final by providing bar to maintainability of a second appeal, such provision of finality will not bar revisional powers of High Court.

15. Further also the said case of the Apex Court is pertaining to the Arbitration Act, read with rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937, while the instant revision petition pertains to interpretation of Rule 29(1) of the rules for Administration of Justice and Police in Nagaland as amended and therefore, the cited case has no context or bearing in this revision petition. With due respect of the judgment of the Supreme Court, the principles laid down has to be followed by this Court, however, as stated above, the context of the Supreme Court in the reported case and in this instant revision petition are different.

16. As stated in the preceding para, the powers of jurisdiction of the High Court with regard to revisional powers under Rule 32 of the rules is not the matter under challenged, but appellate and revisional jurisdiction under Rule 29(1) is under challenged. Therefore, the cited case of the Supreme Court relied by the learned Counsel for the Respondent has not been relied for the purpose of adjudication of this revision petition.

17. Upon reading of the first part of Rule 29(1) reveals that; "An appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants". It does not speak of any second appeal. It only speaks of "any decision of any of his Assistants". Therefore, in the plain language or interpretation of Rule 29(1) of the rules would meant "against the decision of any of his Assistants", an appeal would lie to the Deputy Commissioner, regardless of whether it is an order under appeal or otherwise. In view of any expressed provision in the rule, whether it pertains to second appeal or not, but in clear unambiguous terms, the rules lays down as "an appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants", the question of original decision is dealt with by the second part of Rule 29 of the rules. Therefore, the decision of the Assistant to Deputy Commissioner is not an original decision of the Deputy Commissioner, but a decision of the Assistant to Deputy Commissioner and the same is appealable under the provision of Rule 29(1) (first part).

18. In view of what has been discussed above, this Court holds that, against the decision of any of the Assistant to Deputy Commissioner, an appeal shall lie to the Deputy Commissioner, regardless of whether the decision of the Assistant to Deputy Commissioner is an order under appeal or otherwise. Since the rule is silent with regards to Second appeal or Revision and in clear unambiguous words written as "an appeal shall lie to Deputy Commissioner against the decision of any of his Assistants", in the Rules, has been stated, an appeal shall lie to the Deputy Commissioner against the decision of any of his Assistants regardless of whether the decision is an order under appeal or otherwise.

19. The order dated 03.06.2009 passed by the Addl. Deputy Commissioner (Judicial), Kohima in Civil Appeal No. 1/09 is hereby quashed and set aside. The Court below is directed to hear the appeal in its own merit, by affording the parties, the due opportunity of being heard, thereafter, dispose of the said appeal in accordance with law.

In the facts and circumstances of the case, this appeal is allowed and stands disposed.