
(1970) 11 GAU CK 0009
In the Gauhati High Court

Rongseng Sangma

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 26-11-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 435

Citation : (1971) CriLJ 1482

Hon'ble Judges : M.C. Pathak, J

Bench : Single Bench

Judgement

M.C. Pathak, J.—By this application u/s 439, Criminal Procedure Code and/or Rule 22 of the Rules for the Administration of Justice and Police in the Garo Hills District the petitioner has challenged the order passed by the Deputy Commissioner, Garo Hills in Criminal Revision No. 10 of 1968.

2. The police submitted charge-sheet against the petitioner u/s 435, Indian Penal Code on 19-5-1965. Thereafter on 14-7-1965 charge u/s 435, Indian Penal Code was framed against the accused petitioner, to which he pleaded not guilty. The case dragged on and some prosecution witnesses were examined. On 28-6-1968 the learned Assistant to the Deputy Commissioner and Magistrate, First Class, Garo Hills passed the following order:?

The accused is present. The I.O. is absent in spite of receiving summons. No step is taken. It appears that W/A is to be issued to the I/O. But I don't want to put the I/O into unnecessary trouble. The prosecution is not interested with the case. The case is therefore dropped and the accused is discharged.

3. Against this order the State filed a revision petition before the learned Deputy Commissioner on 13-8-1968. The learned Deputy Commissioner by his order dated 16-5-1969 set aside the order of discharge dated 28-6-1968 and remanded the case for trial from the stage where it was left by the learned trial court. The petitioner has challenged this order of the learned Deputy Commissioner by this revision petition.

4. Mr. K. P. Sen, the learned Counsel for the petitioner submits that there is no revisional power in such a matter under Rule 22 (2) of the Rules for the Administration of Justice and Police in the Garo Hills District. The order passed by the trial court on 28-6-1968 discharging the accused is either an order of acquittal or an order of discharge. But u/s 251-A, Criminal Procedure Code there is no provision of discharge after an accused is charged. Since the Criminal Procedure Code is applicable in spirit only in the Garo Hills, this order of the trial court may be interpreted as an order of acquittal and in that case an appeal lies from the order under Rule 22-A, which provides as follows :-

22-A. The Governor may direct an appeal to be presented to the High Court from an original or appellate order of acquittal passed by any Court other than the High Court.

Admittedly no such appeal has been filed against this order of the trial court.

5. It is next submitted that if this order is interpreted as an order of discharge, then also an appeal lies under Rule 21 which provides as follows:

21. An appeal lies to the Deputy Commissioner from the decision of his Assistant if preferred within 30 days.

Provided that no appeal shall lie against the sentence of fine only passed by a Magistrate of the first class when the amount of fine does not exceed rupees fifty.

If the impugned order of the trial court is regarded as an irregular order of discharge, it may be treated as a decision and therefore an appeal lies to the Deputy Commissioner, but admittedly no such appeal has been preferred in the instant case. On the other hand a revision petition has been filed against this order under Rule 22 (2), which reads as follows:?

22(2). The High Court or the Deputy Commissioner may call for the proceedings of any officer subordinate to it or him and reduce, and enhance, cancel or alter any sentence passed or remand the case for retrial.

6. Mr. Sen submits that the Revision petition under Rule 22 (2) is not maintainable at all and as such the impugned order should be quashed.

7. Mr. Laskar, the learned Counsel appearing for the State submits that the case has been remanded for retrial and the power of remand is provided in Sub-rule (2) of Rule 22 and such the Revision Petition is maintainable.

8. From a perusal of the language of Sub-rule (2) of Rule 22 it is found that the High Court or the Deputy Commissioner may call for the proceedings of any subordinate officer and reduce and enhance or cancel or alter any sentence passed by such officer or remand the case for retrial. When the case is to be remanded for retrial under this provision it is required that the order of sentence has to be set aside. In the instant case there was no order of sentence and the question of setting aside sentence and remanding the case did not arise.

9. I have given due consideration to the provision of Rules 21, 22 and 22-A and am clearly of opinion that from an irregular order of discharge as is found in the impugned order of the learned Magistrate dated ; 28-6-1968 an appeal would lie to the "Deputy Commissioner under Rule 21. This order of the Magistrate cannot be interpreted as an order of acquittal u/s 251-A(ii) of the Criminal Procedure Code also. As it is not an order of sentence, the provisions of Rule 22 (2) are not attracted and as such the learned Deputy Commissioner purporting to exercise his jurisdiction under Rule 22 (2) in setting aside the order of discharge and remanding the case is without jurisdiction. By entertaining the revision petition under Rule 22 (2) beyond the prescribed period of appeal as provided in Rule 21, the appeal provision has been bypassed which cannot be allowed in law. In such matter there is no revisional power in the Deputy Commissioner.

10. The next question arises whether the Magistrate's order should be interfered with in exercise of the revisional powers u/s 439, Criminal Procedure Code by the High Court. Sub-section (5) of Section 439 provides that where an appeal lies under the Code and no appeal is brought, no revision petition shall be entertained at the instance of the party who could have appealed. The State in the instant case could have appealed either under Rule 21 or under Rule 22 but no such appeal was filed. No doubt the spirit of the Criminal Procedure Code is only applicable to this area. But the Rules for the Administration of Justice and Police are specific laws governing such cases and it is incumbent on the authorities to follow those laws and they may not bypass or misuse them. In view of the fact that prosecution started as far back as in 1965 (G. R. Case No. 75/65), it would not be for the ends of justice to interfere with the Magistrate's order u/s 439, Criminal Procedure Code at this distant date.

11. In the circumstances I hold that the impugned order of the learned Deputy Commissioner is without jurisdiction and it is set aside. The petition is allowed.