
(1970) 06 GAU CK 0005
In the Gauhati High Court

Sapam Laingam Singh

APPELLANT

Vs

Kakyengpaibam Amuyaima Singh and Others

RESPONDENT

Date of Decision : 11-06-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 447, 506

Citation : (1971) CriLJ 404

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Judgement

R.S. Bindra, J.C.

1. On the basis of complaint lodged by S. Leingam Singh on 13th November, 1963, under various sections of Indian Penal Code, the five respondents of this revision petition were summoned as accused and in course of time they were charged Under Sections 447 and 506, Indian Penal Code. The case was tried by Shri Upendra Singh, First Class Magistrate, Imphal, who convicted all the five accused on both the charges by his judgment dated 6-4-1967 and sentenced them to a fine of Rs. 30/- on each count, or, in default, 30 days" rigorous imprisonment respecting each charge. The convicts went in appeal to the Court of Session and the Additional Sessions Judge Shri P. N. Roy, who heard the appeal, acquitted all the five accused on the finding that the complainant's version was not free from doubt and that it appeared that the accused had been falsely implicated clue to animosity which the complainant bore to them. It is against that appellate judgment of acquittal that the complainant has come up in revision to this Court u/s 439 , Criminal Procedure Code.

2. Though on merits the complainant appears to have a good case, but I am afraid this petition will have to be rejected on a legal ground. Sub-section (5) of Section 439, Criminal Procedure Code enjoins that where under the Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. Section 417(3) of the Code provides that if an order of acquittal is passed in any case instituted

upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. It has been held in a large number of cases by the High Courts of Orissa, Allahabad, Kerala, Madhya Pradesh, Bombay, Punjab and Mysore that Section 417(3) confers a right of appeal on the complainant and that securing of special leave to appeal constitutes only a procedural step in pursuit of that right and as such where the complainant does not take the requisite steps for filing the appeal, a revision at his instance is incompetent in view of Sub-section (5) of Section 439, Criminal Procedure Code. I am aware that this Court had expressed a contrary view in the case of Gaibidingpao v. Union Territory of Manipur AIR 1963 Manipur 12, but no elaborate discussion of the relevant provisions of law was made, nor were the authorities of the other High Courts in India referred to. Therefore, I am not inclined to adopt the view taken by this Court as it is against the preponderant unanimous view taken by other High Courts in India. Hence, the revision is rejected because of the bar created by Section 439(5), Criminal Procedure Code.