

(1984) 07 GAU CK 0008
In the Gauhati High Court
Case No : Criminal Revision No. 161/79

Shri Dharanidhar Goswami

APPELLANT

Vs

The Range Forest Officer, Southern Range, Garo Hills Division
and Others

RESPONDENT

Date of Decision : 06-07-1984

Acts Referred:

Assam Forest Act, 1891 — Section 25
Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 326, 432, 438, 482, 561A
Penal Code, 1860 (IPC) — Section 34

Citation : (1985) 1 GLR 42

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : B.K. Das and B.C. Das, for the Appellant; A. Sarma, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The, approach to this Court by the Petitioner being primarily u/s 482, Code of Criminal Procedure, to quash a proceeding pending against him, there is a threshold question as to the applicability of this provision to the territories governed by the provisions like the Rules for Administration of Justice and Police in the Garo Hills District, hereinafter the Rules. The Rules, like many others in their family, have made the spirit of the Code applicable to criminal proceedings governed by them. The question is whether in such a situation he inherent power u/s 482 Code of Criminal Procedure which has been conferred on this Court to prevent abuse of the process of the Court of otherwise to secure the ends of justice, can be invoked by a person governed by the aforesaid Rules.

2. There have been a number of occasions when the Apex Court, or for that matter this Court, has expressed its views as to what is meant by a provision when it says that the spirit of Code of Criminal Procedure (or for that matter

Code of Civil Procedure) would apply to a particular proceeding, I do not propose to burden this judgment with all that has been said in this regard. It would be enough if reference is made to a Full Bench decision of this Court in *U.S. Dkhar v. State of Meghalaya* 1981 (1) GLR 251 and to *K.K. Dey v. Union Territory of Arunachal Pradesh* 1983 GLR 23.

3. The Full Bench was seized with the question as to whether the provision of Section 326 Code of Criminal Procedure (new) would apply to a trial in the area to question. Lahiri J. speaking for the Full Bench stated in para 7 that when there are certain provisions in the Rules of Administration of Justice which go counter to the code, the Rules shall govern the held . In other matters the principle of the Code which are in consonance with "the principles, of justice, equity, and good conscience" would apply. Tail view was taken after referring to *State of Nagaland Vs. Ratan Singh, etc.*, and Civil Appeal No. 659 of 1957 (*G.S. Sarma v. L.O. Anisiju Das* decided by the by the Supreme Court on 9.2.61), In *K.K Dey* (supra) this Court examined the question as to whether the provision of anticipatory bail incorporated u/s 438 Code of Criminal Procedure would apply to the Union Territory of Arunachal Pradesh, which too has special rules relating to administration of criminal justice in that area. This Court upheld the applicability of that foresaid provision, as the same was regarded as one of the basic principles of the Code which also advanced the cause of liberty of the individual.

4. Shri Das for the Petitioner urges that for the aforesaid reasons beneficial provision underlying Section 482 should also be made applicable to the people living in the tribal areas as the power u/s 482 is meant to advance the cause of justice and is also closely related to the personal liberty of individuals. This provision has saved the inherent powers of this Court and there are decisions a galore which say that this Court could exercise its inherent powers even in the absence of provisions like Section 482 Code of Criminal Procedure or Section 151, Code of Civil Procedure. These decisions are too well known. Mention may only be made of *The State of Uttar Pradesh Vs. Mohammad Naim*, which has stated that the provisions like Section 561A Code of Criminal Procedure (whose parallel provision in the new Code is Section 482) has conferred no new powers, on the High Court, but has merely safeguarded all existing inherent powers possessed by a High Court necessary, among other purposes, to secure the ends of justice. Specific mention about inherent power was none- the less made lest it be considered that the only power possessed by the Court are those expressly conferred and that no inherent power has survived with the passing of the Code.

5. As the Courts of law exist to administer Justice, and as the basic thrust of Section 432 is to secure the ends of justice, by no stretch of imagination it can be held that power u/s 432 would act be made available by this Court to the inhabitants of tribal areas. Justice is as dear and as necessary to them as to anybody else living in other parts of the territory under the jurisdiction of this Court, To shut out the doors of this Court to the people in tribal areas to approach u/s 482 on the ground that only spirit of the Code applies will be

indeed a great injustice to the people of this area, I have, therefore, no hesitation, on principle as well as on precedents, to hold that Section 482 could have been invoked by the Petitioner. Learned Public Prosecutor, Meghalaya, has no serious objection to this approach of the Petitioner though he has submitted that in any case Article 227 of the Constitution could be called in aid by any person of the area, (this petition is also under Article 227), as the State of Meghalaya itself had done in Criminal Revision No. 156/78 decided with the assistance of the learned Public Prosecutor himself on 4.4.84 where the power of this Court under Article 227 was upheld when approaching this Court against an order of discharge.

6. In so far as the merits of the case are concerned, it has been submitted by Shri Das that a perusal of the offence report itself would show that no case has been made out against the Petitioner even if the allegations in the offence report are accepted in their entirety. That in such a case, a criminal proceeding can be quashed is no longer in dispute and has been reiterated recently by the Supreme Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*,

7. Now, a look at the officer report in question clearly shows that even as per the Divisional Forest Officer who had reported the matter, the Petitioner was absent when the offence had allegedly been committed. Section 25 of the Assam Forest Regulation, which has been adapted by the State of Meghalaya by the Meghalaya Forest Regulation (Application and Amendment) Act, 1973 deals with the offence committed by any person who, inter alia, fells trees. The allegation in the offence report is about felling of 86 trees illegally. At even according to the offence report, the Petitioner had no part to play in it, it would be difficult to say that he was person who had felled any tree, learned Public Prosecutor contends that though Section 25 of the aforesaid Regulation would not make the Petitioner vicariously liable, it may be that the offence was committed in furtherance of the common intention of the Petitioner and others which would rope in the applicant with the aid of Section 34 of the Indian Penal Code. But then such an averment is totally absent in the offence report. So, the first contention of Shri Das has to be accepted. In view of this it is not necessary to examine the next contention of Shri Das that no offence was committed by the Petitioner also because of the fact that proper markings on trees had not been done following the change in the coupe number though it seems that this submission has also some force. It may be stated here that this allegation is that the aforesaid 86 trees were felled from Coupe No. 6, though Petitioner's firm was settled with Coupe No. 5. But the offence report itself further says that Coupe number 5 was subsequently changed to 6, but the coupe marking officer did not change the coupe number properly in all the trees. Be that as it may, as no offence can be said to have been committed by the Petitioner even on the allegation made in the complaint for the first reason stated above. I am satisfied that the present is a fit case where the proceeding may not continue as against the Petitioner. Accordingly, the petition is allowed and the proceeding is quashed qua the Petitioner.