
(1950) 01 GAU CK 0001
In the Gauhati High Court

Sri Ram Saran Kashyap

APPELLANT

Vs

The King

RESPONDENT

Date of Decision : 24-01-1950

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : AIR 1950 Guw 100 : (1950) CriLJ 957

Hon'ble Judges : T.V. Thadani, C.J.; Ram Labhaya, J

Bench : Division Bench

Judgement

Thadani, C.J.—This is an application under the provisions of Section 526, Criminal P.C. praying for the transfer of Case no. C. Rule 10 of 1919 pending in the Court of the Magistrate, 1st Class, Kohima, Naga Hills, against one Sri Ram Saran Kashyap u/s 420, Penal Code.

2. The case is sought to be transferred on the ground of the convenience of the parties. It is stated in the petition that the accused resides in Calcutta; the journey from Calcutta to Kohima is a long and troublesome one and requires frequent changes and takes several days; that of the 10 prosecution witnesses, 6 reside in Calcutta, 3 in Shillong, and the remaining witness in New Delhi.

3. We had occasion to consider the question of transfer of a criminal case pending before a Magistrate of Kohima in the Naga Hills District in the case of one Krishna Prasanna chakravarty. In our judgment, which is reported In Krishna Prasanna v. Jan Mohammad AIR 1949 Gau 69 : 61 cri L.J. 147 we observed:

The Governor of Assam is empowered by Section 6, Scheduled Districts Act, 1874, to prescribe rules for the administration of justice and polios in the Naga Hills District. It is not disputed that Kohima where the two complaints have been instituted is situated in the Naga Hills District. Rules 15 to 22 of the Rules framed by the Governor of Assam in pursuance of Section 6, Scheduled Districts Act of 1874, appear to to exclude the operation of the Criminal Procedure Code,

4. We referred" to the terms of Section 1, Criminal P.C. which is in these terms:

...(2). It extends to the whole of British India, but In the absence of any specific provision to the contrary, nothing here-in contained shall affect any special of local law now In force, or any appeal jurisdiction or power conferred, or any appeal form of pro- cedure prescribed by any other law {or the time being in force, or shall apply to:

(a) the Commissioner of Police in the towns of Calcutta, Madras and Bombay or the Police in the towns of Calcutta and Bombay ;

(b) heads of villages in the Presidency of Fort St. George, or

(c) Village Police Officers in the Presidency of Bombay: provided that the Local Government may, if it thinks fit, by notification in the Official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persona.

5. We then examined the scheme of the rules framed for the Administration of Justice and Police in the Naga Hills and stated:

It is manifest that Er. 15 to 19 framed under the Act of 1874, to -which we have referred, do not proscribe any procedure for the trial of criminal offences Sections 20 and 21 deal with the right of appeal and the Governor-General's prerogative of reviewing the proceedings of the Governor of Assam. It is common ground that the powers which the Governor of Assam exercised before the establishment of the High Court of Assam have since been conferred on this High Court. But the powers conferred on this Court are undoubtedly limited in their extent to the powers which the Governor of Assam himself could have exercised under the rules framed under the Act of 1874.

We cannot find anything in the rules framed by the Governor of Assam which authorises the Governor of Assam to transfer a criminal case pending in one of the Courts of the Naga Hills District to a Court outside the Naga Hills District....It is plain that as the Governor of Assam himself had no power to transfer a case from a criminal Court in the Naga Hills District to a Court outside that district in the Province of Assam, this Court which is enabled to exercise such powers only as the Governor of Assam should have exercised, is not competent to transfer the cases to a Court at Dibrugarh, a place outside the Naga Hills District....We think the words "in the spirit of I the Code of Criminal Procedure" used in Rule 22 are not to be interpreted in a manner so as to enable this Court to apply the provisions of the Code of Criminal Procedure to the trial of offences in the Naga Hills District, when the operation of the Code to the administration of justice in the Naga Hills District is excluded by rules framed under a special enactment, namely, the Act of 1874.

6. Mr. Das for the petitioner has contended that the Scheduled Districts Act of 1874 has been omitted by the Adaptation Order of 1937, and that as the decision on this Court was based upon the interpretation of r, 22 framed under the Scheduled Districts Act of 1874, the decision arrived at in Krishna Prasanna

v. Jan Makammed AIR 1949 gau 69 : 1951 Cri.L.J. 147, should not be regarded as an impediment to revising our view, so as to enable us to make an order of transfer under the provisions of Section 626, Criminal P.C. While it is true that the Scheduled Districts Act of 1874 has been omitted by the Adaptation Order of 1937, nevertheless there is a Regulation called the Naga Hills (Administration of Justice and Police) Regulation 1947, dated 10-10-1947, which retains the provisions of Rule 22 of the Rules framed for the Administration of Justice and Police in the Naga Hills District framed under the Act of 1874, Mr. Das, on being satisfied that Rule 22 is still in force, contended that even so, Rule 22 which enables this Court to invoke the spirit of the Code of Criminal Procedure, empowers us to make an order of transfer from the Naga Hills District to any other district in the Province of Assam, Rule 22 is in these terms;

22. The procedure of the Governor of Assam, the Commissioner, the Deputy Commissioner and his Assistants shall be in the spirit of the Code of Criminal Procedure far as it is applicable to the circumstances of the district and consistent with these rules; the Chief exceptions are:

(a) Only verbal order or notice shall be requisite, except When the regular police are employed or the person concerned is not resident or in the district at the time; or, if in the district, but resident beyond it, where his place of abode is not known. The order shall be made known to the person affected or to some adult member of his family, or proclaimed at the place he was last known to be at, in sufficient time to allow him, if he see fit, to appear.

(b) A note of the substance of all the proceedings in cases tried before them must be kept by the Deputy Commissioner and his Assistants as required by Section 264 of Criminal P.C. In cases requiring a sentence exceeding three years, a full note of the evidence and proceedings must be kept. Examinations and proceedings shall generally be recorded in English only.

(c) The proceedings of the Maussadars, gaonburas, Chiefs, headmen of khela or other duly recognised village authorities need not be in writing.

(d) All fines levied by the mauzadars, gaonburas, Chiefs, headmen of khels, or other duly recognised village authorities shall be paid to the Deputy Commissioner or his Assistants or other officer empowered to receive them, within eight days from the date of realisation, unless they are immediately paid to the aggrieved party as compensation.

(e) It shall be discretionary to examine witnesses on oath in any form, or to warn them that they are liable to the punishment for perjury if they state that which they know to be false.

(f) No pleader shall be allowed to appear in any case except with the special permission of the Deputy Commissioner. The term "pleader" includes "mukhtar" or any other professional agent recognised by the Court. Such permission shall always be granted when the application is to appear on behalf of a person

accused of murder. For the defences of paupers accused of murder, Rules 19 to 21 of the Assam Law Department Manual, Part II, Criminal Rules, shall be followed mutatis mutandis.

7. The language of Rule 22 is, however, significant. While enjoining that the procedure shall be in the spirit of the Code of Criminal Procedure, it limits the Rule by the words "as far as it is applicable to the circumstances of the district", as distinct from "as far as applicable to the circumstances of the case". If the words had been "as far as it is applicable to the circumstances of the case", the interpretation sought to be put by Mr Das might have been of some assistance to him. If the procedure shall be in the spirit of the Code of Criminal Procedure as far as it is applicable to the circumstances of the district, and not to the circumstances of the case, we cannot see how B, 22 would empower this Court to transfer a case either in terms of the Code of Criminal Procedure or its spirit, for it is plain that Section 526, Criminal P.C. applies to the facts and circumstances of a case, and not to the circumstances of the district.

8. We find it, therefore, difficult to take a different view to the one which we took in the case of Krishna Prasanna v. Jan Mahammed A. I. R. 1949 Gau 69 :1951 Cri L. J. 147.

9. The result is that the application fails and is dismissed.

Ram Labhaya, J.

10. I agree.