

(1993) 04 GAU CK 0002

In the Gauhati High Court

Case No : Criminal Original applications No. 779 of 1992

State of Meghalaya

APPELLANT

Vs

Autonomous District Council and Ors.

RESPONDENT

Date of Decision : 20-04-1993

Acts Referred:

Constitution of India, 1950 — Schedule 6 Para 5(1), Schedule 6 Para 5(1)

Citation : (1993) 1 GLJ 473

Hon'ble Judges : U.L.Bhat, C.J. and R.K.Manisana Singh, J

Bench : Division Bench

Advocate : A.Sharma, N.M.Lahiri, M.Z.Ahmed, K.H.Choudhary, B.Dutta, B.B.Narzary, Advocates appearing for Parties

Judgement

R.K. Manisana, J.—This revision petition arises from an order. of Sri HM Dkhar, the Presiding Officer of the District Council Court! shilong, made on 22.11.92 granting anticipatory bail in Misc Criminal Case No. 14 of ,1992, In this petition, the petitioner (State of Meghalaya) has challenged the jurisdiction of.Sri Dkhar to make the of der of anticipatory bail,

2. Subparagraph (I) of paragraph 4 of the Sixth Schedule to the Constitution empowers the District Council for an autonomous district in respect of areas within the district to constitute Village Councils or Courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of subparagraph (1) of paragraph 5 of the Sixth Schedule apply, to the exclusion of any Court in the State. Under subparagraph (2) of paragraph 4, any Court constituted in that behalf by the District Council shall exercise the powers of a Court of appeal in respect of all suits and cases triable by a Village Council or Court constituted under subparagraph (1) of paragraph 4 within such area, other than those to which the provisions of subparagraph (1) of paragraph 5 of the Sixth Schedule apply, and no other Court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases. Under subparagraph (3) of paragraph

4, the High Court shall have and exercise such jurisdiction over the suits and cases to which the provisions of subparagraph (2) of paragraph 4 apply as the Governor may from time to time by order specify.

3. In the exercise of powers conferred under subparagraph (4) of paragraph 4 of the Sixth Schedule to the Constitution of India, the United KhasiJaintia Hills Autonomous District Council, with previous approval of the Governor of Meghalaya, made the United Khasi Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 ("Rules" for short). Rule 4 of the Rules provides :

"Classes of Courts. There shall be three classes of Courts, as specified below, in the areas within the United KhasiJaintia Hills Autonomous District to be constituted by the District Council for the trial of suits and cases between the parties all of whom belong to a Scheduled tribe or tribes other than suits and cases to which the provisions of subparagraph (1) of paragraph 5 of the Sixth Schedule to the Constitution apply (i) Village Courts.

(ii) Subordinate District Council Court and Additional Subordinate District Council Court.

(iii) District Council Court." (emphasis added)

The jurisdiction of each of the Courts constituted are defined under the Rules. The District Council Court is a Court of appeal as is provided under Rule 29 of the Rules. However, Rule 32 of the Rules authorises the District Council Court to withdraw any particular case pending in any Court subordinate to it, and try the same.

4. It may be noted here that we are concerned with criminal cases or offences and, therefore, we confine ourselves to the provisions of law relating to criminal cases or offences.

5. A reading of Rule 4 indicates, inter alia, that any of the Courts constituted under Rule 4 shall not be competent to try offences to which provisions of subparagraph (1) of paragraph 5 of the Sixth Schedule apply, unless the Court has been authorised by the Governor to exercise such powers for the trial of particular class or classes of offences specified in that behalf by the Governor as required under the said subparagraph (1) of paragraph 5. The relevant portion of subparagraph (1) of paragraph 5 may be extracted thus: "The Governor may,...for the trial of the offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on ?? Courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under...the Criminal Procedure Code, 1898, as he deems appropriate, and thereupon the said Court or officer shall try the . offences in exercise of the powers so conferred.""

Under sub paragraph (3) of paragraph 5, save as expressly provided in

paragraph 5, the Code of Criminal Procedure, 1898, shall not apply to the trial of any offences in an autonomous district or in any autonomous region to which provisions of paragraph 5 apply.

6. The Court on which power may be conferred under subparagraph (1) of paragraph 5 for trial of offences is not a Court constituted under the Code of Criminal Procedure, ie, that Court is constituted under local law, namely, the Rules. However, under the Assam High Court (Jurisdiction over District Council Courts) Order, 1954, made by the Governor under subparagraph (3) of paragraph 4 of the Sixth Schedule, an appeal shall lie to the High Court from an order or judgment of the District Council Court and the revisional jurisdiction has also been conferred on the High Court. Therefore, the Court constituted under the Rules shall be an inferior criminal Court.

7. The Governor of Meghalaya, by an order dated 2.7.89, for the trial of certain offences made the following orders :

"In exercise of the powers conferred by subparagraph (1) of paragraph 5 of the Sixth Schedule to the Constitution of India the Governor of Meghalaya is pleased to confer on Shri HM Dkhar, MA, LLB, Khasi Hills District Council Court, who is hereby appointed by the Governor as the Officer for the purpose of the aforesaid paragraph, the power for trial of offence* punishable with death, transportation for life or imprisonment for a term of not less than five years under the Indian Penal Code or under any law for the time being applicable to the Khasi Hills Autonomous District." (emphasis added)

The order of the Governor shows that the power has been conferred on the Presiding Officer, but not on the District Council Court. Be that as it may, the question for consideration is whether the Court or the Officer on whom power has been conferred by the Governor under subparagraph (1) of paragraph 5 of the Sixth Schedule to try certain offences has the jurisdiction to make an order of anticipatory bail.

8. As already stated, under subparagraph (3) of paragraph 5, the Code of Criminal Procedure, 1898 shall not apply to the trial of any offence to which the provisions of paragraph 5 apply. Under the Code of 1898, there was no provision for anticipatory bail. If the Code of 1898 is read as the Code of Criminal Procedure, 1973, in view of section 8 of the General Clauses Act read with Article 367 of the Constitution, section 438 of the Code of 1973 empowers the High Court or the Court of Session only to make an order of anticipatory bail. In this regard, we may refer to a decision in *Bal Chand Jain vs. State of MP*, AIR 1977 SC 366. In that case, a three Judge Bench of the Supreme Court has observed in the following words :

"There was at one time conflict of decisions amongst different High Courts in India about the power of a Court to grant "anticipatory bail". The majority view was that there was no such power in the Court under the old Criminal Procedure Code. The Law Commission, in its Forty First Report pointed out: ? " The

Supreme Court has further stated :

And this power being rather of an unusual nature, it is entrusted only to the higher echelons of judicial service, namely, a Court of Session and the ; High Court. It is a power exercisable in case of an anticipated accusation of nonbailable offence and there is no limitation as to the category of nonbailable offence in respect of which the power can be exercised by the appropriate Court." (emphasis added)

9. Even if the Designated Court or Officer under subparagraph (1) of paragraph 5 is a substitute of a Court of Session or Sessions Judge, as the case may be, for the trial of offences triable by a Court of Session, or of a Magistrate of the First Class for offences triable by a Magistrate, the Court or the Officer shall not attain the status of a Court of Session or a Sessions Judge, as the case may be. That apart, as already stated, under subparagraph (3) of paragraph 5 the Code of Criminal Procedure shall not apply to the trial of the offences mentioned in subparagraph (1) of paragraph 5. However, for the purpose of "fair trial", we are of the opinion that the spirit of Code may be applied, though exact requirements or form of words of law, rule, that is, the letter of law shall not apply. In other words, technicalities of the Code shall not apply but the Court may be guided by the spirit of the Code and shall not be bound by the letters of the Code.

10. The power of trial is one thing and make an order of anticipatory bail conferred on the Court of Session or the High Court is another, for example, a Magistrate who has jurisdiction to try an offence cannot make an order of anticipatory bail.

11. For the reasons stated above, the District Council Court or Officer appointed under paragraph 5(1) of the Sixth Schedule for the trial of certain offences is not competent to make an order of anticipatory bail.

12. In the result, the petition is allowed and the order dated 22.10.92 passed by Sri HM Dkhar, the Presiding Officer of the District Council Court at Shillong, in Misc Criminal Case No. 14 of 1992. is set aside.