
(1956) 12 GAU CK 0008
In the Gauhati High Court

Thokehom Tomba Singh and Others

APPELLANT

Vs

Huidrom Abung Singh and Another

RESPONDENT

Date of Decision : 22-12-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 427, 441, 447

Citation : AIR 1957 Guw 36

Hon'ble Judges : Datta, J.C.

Bench : Single Bench

Judgement

Datta, J.C.

1. This is a reference by the learned Sessions Judge, Manipur, under s. 438 of the Criminal P. C., with the recommendation that the convictions and sentences of fine of the petitioners (1) Thokchom Tomtaa Singh, (2) Khuman. tttem Raghu Singh, (3) Ningthoujam Tompok Singh and (4) Thoudam Chaoba Singh, u/s 441 of the I. P. C., be set aside, and they be retried.

2. The case against the petitioners was started on a complaint under Sections 447 and 427, and the trial of the case commenced as a warrant case obviously because one of the two offences was triable as a warrant case. After the examination of the prosecution witnesses was over the case was transferred to the file of Shri Lamphel Singh, Magistrate 1st Class, who examined the accused and proceeded further without framing a charge.

Order sheet dated 12-5-1956 however shows that the charge u/s 427, I. P. C., was dropped. No defence evidence was led by the accused and the learned Magistrate convicted them u/s 447, I. P. C., and sentenced them to pay a fine of Rs. 20/- each.

3. Since the trial of the case was commenced as a warrant case, it was necessary that it must be concluded as a warrant case and the sudden change of procedure in the midst of the trial was obviously illegal. The accused were also prejudiced inasmuch as they were deprived of the right of cross-examining the prosecution

witnesses after charge. The learned Government Advocate also conceded this point before me. The conviction and sentence cannot, therefore, be allowed to stand.

4. Taking everything into consideration, I consider that it is necessary in the interest of justice that there should be a retrial and the learned Counsel for the petitioners also admitted before me that it was a fit case for retrial.

5. The result Is that the reference is accepted and the conviction and sentences of the petitioners are set aside, and they shall be retried by another competent Magistrate to be selected by the District Magistrate, Manipur. Fine if recovered, shall be refunded forthwith to the petitioners.