
(1964) 02 GAU CK 0002
In the Gauhati High Court

U. Bithiang Malngiang and Others

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 20-02-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 124A, 147, 153, 342

Citation : AIR 1965 Guw 51 : (1965) CriLJ 72

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Judgement

G. Mehrotra, C.J.—This is a petition under Rule 6 of the Assam High Court (Jurisdiction over District Council court) Order, 1954 by five persons who have been convicted by the judicial Officer, District Council Court, United Khasi Jaintia Hills, Shillong u/s 342, Indian Penal Code and sentenced to pay a fine of Rs. 100/- each in default six months rigorous imprisonment.

2. The facts alleged against the petitioners are that on the evening of the 6th August, 1960 while P. W. 2 U Kynthok was making an announce merit in the village WahKhen at the instance of P. W. 9 U Shiap Sirdar that there was no epidemic at Laltlyng Kot and that the villagers could attend the Bazar there, he and his two companions P. W. C U Danlal and P. W. 7 U Kain who accompanied him as well as P. W. 3 U Ngiah were arrested, tied and taken to Smit by the 15th accused and kept in the Siem's hajat and on the following day were released on bail by the Siema of Khyrim, The defence case is that the four persons above threatened to kill Ka We Ka Wep and so they were taken to the Siem as they would not submit to the jurisdiction of the Durbar. The Judicial Officer of the District Council Court convicted and sentenced the five accused appellants as already stated above.

3. The first point raised by Dr. Medhi on behalf of the accused petitioners is that the Judicial Officer, District Council Court has no Jurisdiction to try the applicants u/s 147 of the Indian Penal Code. The District Council in the exercise of the powers conferred under paragraph 4 (4) of the Sixth Schedule to the Constitution

of India with the approval of the Governor of Assam made certain rules Known as the United Khasi Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, (hereinafter called "the Rules"). Under Rule 4 of the Rules certain courts were created. The Subordinate District Council Court has been empowered to deal with criminal matters under Rule 18 of the Rules. But Rule 18 is subject to the provisions of Rule 21. Rule 21 (1) (i) of the rules provides that the Subordinate District Council Court or the Additional Subordinate District Council Court shall not be competent to try suits and cases in respect of offences under Sections 124-A, 147 and 153 of the Indian Penal Code. There is thus complete bar to the subordinate District Council Court trying an offence u/s 147, Indian Penal Code. The District Council Court has appellate jurisdiction except in the cases covered by Rule 32 which reads as follows:

32. (1) If it appears to the District Council Court -

(a) that a fair and Impartial Inquiry or trial cannot be had in any Village Court or Subordinate District Council Court, or Additional Subordinate District Council Court; or

(b) that some question of law, tribal or otherwise of unusual difficulty is likely to arise; it may order -

(i) that any offence be enquired Into or tried by another Village Court or Subordinate District Council Court or Additional Subordinate District Council Court;

(ii) that any particular case or class of cases be transferred from one village Court to another village Court from one Village Court to a Subordinate District Council Court or Additional Subordinate District Council Court, or from one Subordinate District Council Court or Additional Subordinate District Council Court to another Subordinate District Council Court, or Additional Subordinate District Council Court; or

(iii) that any particular case be transferred to and tried before itself.

(2) When the District Council Court withdraws for trial before itself any case from any Court it shall observe in such trial the same procedure which mat Court would have observed, if the case Had not been so withdrawn.

(3) The District Council Court may act either on the report of the Lower Court or on the application of a party interested or on its own initiative.

The District Council Court cannot transfer to Itself any case which the Subordinate District Council Court had no jurisdiction to try. The case was transferred by the Additional Deputy Commissioner first to the Subordinate District Council Court and from there it was withdrawn by the District Council Court and tried by the Judicial Officer. As the Subordinate District Council Court itself had no jurisdiction to try the offence u/s 147 Indian Penal Code, the District Council Court could not transfer to itself such a case and try it under Rule 32.

The District Council Court thus has no Jurisdiction to try offences u/s 147, Indian Penal Code.

4. The case u/s 342, Indian Penal Code stands on a different footing. There is no bar to the trial by the Subordinate District Council Court of the offences u/s 342, Indian Penal Code, as Rule 21 does not apply to such cases and under R. 18 the Subordinate District Council Court was competent to try an offence u/s 342, Indian Penal Code. The District Council Court thus could transfer to its file the case u/s 342, Indian Penal Code. Dr. Medhi, however contends that the accused have been prejudiced a great extent by the joint trial by the District Council Court. When the District Council Court could, not try an offence u/s 147 of the Indian Penal Code, obviously the accused were prejudiced in their trial for the offence u/s 342 also when both the charges were tried together. In the ordinary course thus we would have allowed, the revision, quash the order of the District Council Court and order retrial, But having regard to the nature of the offence and the punishment awarded by the court, we do not think that It is a case where we can send it back for trial. The offence is that the accused took four persons to the Smit and kept them in the hajat of the Siem till they were released by the Siem on bail. They might have only asked these persons to go to the Smit under the order of the Siem. Under these circumstance It is not a case where a retrial should be ordered. We accordingly allow this revision and set aside the order of the Judicial officer, District Council Court. Fine if paid, will be refunded.