

(1970) 05 GAU CK 0003
In the Gauhati High Court

U. Shan Manik and Others

APPELLANT

Vs

Ka Brie Nongrum and Another

RESPONDENT

Date of Decision : 11-05-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 124A, 147, 153, 427, 448

Citation : AIR 1970 Guw 130 : (1970) CriLJ 1598

Hon'ble Judges : P.K. Goswami, C.J.; M.C. Pathak, J; D.M. Sen, J

Bench : Full Bench

Judgement

P.K. Goswami, C.J.—This Criminal revision is placed before this Full Bench without any referring order as required under the High Court Rules. All the same, having heard the learned Counsel on both sides, we may frame the question in the following term:

Whether the decision in the case of U. Bithiang Malangiang v. State of Assam reported in AIR 1965 Assam and Nagaland 51, which is a Division Bench decision of this Court, has been correctly made.

The second point which is necessary for consideration is whether a certain trial u/s 147, Indian Penal Code, pending in the Court of the Assistant to the Deputy Commissioner Shillong, is competent under the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953. In other words, whether the Judge, District Council Court, has exclusive jurisdiction for trial of such a case under these Rules. It may be stated here that the learned Counsel for the petitioners felt that the decision above referred to needs reconsideration and that is why, we have entertained this case before the Full Bench.

2. The facts of the case are that on 7th February, 1966, a complaint was lodged by the Opposite Party No. 1 against the accused petitioners and the Police after investigation of the case submitted charge-sheet u/s 147/448/427, Indian Penal Code and the Assistant to the Deputy Commissioner took cognizance of that charge-sheet and proceeded with the trial.

3. It is admitted that both parties belong to the Scheduled Tribes (Khasi tribals) and the place of occurrence is also within the autonomous District of United Khasi-Jaintia Hills. The petitioners, therefore, moved the Additional Deputy Commissioner for transferring the case to the Judge, District Council Court and by order dated 17-5-1967 that Court rejected the application relying on the decision of the Division Bench of this Court above referred to.

4. Mr. Guha, the learned Counsel for the petitioners, relies upon a notification of the Governor dated 26-11-1966 for his submission that the Judge. District Council Court alone had exclusive jurisdiction to try the cases. The notification may be set out:

"Dated Shillong, the 26th November, 1966,

No. TAD/GA/234/66/11 : - In exercise of the powers conferred by the sub-paragraph (1) of paragraph 5 of the Sixth Schedule to the Constitution of India, the Governor of Assam is pleased to confer on Shri B. R. Laso. Judge District Council Court, United Khasi-Jaintia Hills, with the powers to try offences punishable with imprisonment for a term not exceeding ten years under the Indian Penal Code or under any other law for the time being applicable to the United Khasi-Jaintia Hills Autonomous District.

We fail to understand how this notification assists the learned Counsel in this case to exclude the jurisdiction of the Assistant to the Deputy Commissioner for trial of the offences of which he took cognizance. We have in Chapter II of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 hereinafter called "the Rules" the different classes of Courts, namely, (i) Village Courts (ii) Subordinate District Council Court and Additional Subordinate District Council Court, and (iii) District Council Court. Chapter III describes the powers of the Courts. Rule 21, which is material is in the following terms:

21. Courts not competent to try suits and cases in respect of certain offences.-
(1) A Subordinate District Council Court or an Additional Subordinate District Council Court shall not be competent to try suits and cases in respect of offences-

(i) under Sections 124-A, 147 and 153 of the Indian Penal Code,

(ii) under Chapter X of the same Code in so far as they relate to the contempt of a lawful authority other than an authority constituted by the District Council,

(iii) of giving or fabricating false evidence....

* * * *

The rest is not material for our purpose in this case. Rule 22 may be set out:

22. (1) Suits and cases referred to in Rule 21 shall continue to be tried and dealt with by the existing Courts until such time as the Governor deems fit to invest the Subordinate District Council Court and Additional Subordinate District Council Court with such powers by notification in the Gazette.

(2) For the purposes of this rule the existing Courts mean the Courts of the Deputy Commissioner and his Assistant." Since under Rule 21 the Subordinate District Council Court is not competent to try an offence u/s 147, Indian Penal Code, the jurisdiction of the Assistant to the Deputy Commissioner to try these offences is saved by Rule 22. That is the short answer to the submissions made by the learned Counsel. But says Mr. Guha that the Judge, District Council Court, has simple powers to try offences of this kind and the notification of the Governor set above clearly gives him jurisdiction to try the offences of this description between the members of the Scheduled tribes. As pointed out earlier, the Judge, District Council Court has been given powers under the relevant paragraph of the Sixth Schedule to try certain offences mentioned therein. That notification does not relate to the jurisdiction to try offences of, the description which arises for consideration in this case. That notification cannot be called in aid for the purpose of empowering the Judge, District Council Court, to try an offence originally u/s 147, Indian Penal Code. We are, therefore, satisfied that the learned Assistant to the Deputy Commissioner is competent to proceed with the trial of the case in his Court. The decision which was arrived at by a Division Bench of this Court in U. Bithiang Malngiang and Others Vs. The State of Assam, with all respect, is correct although we find an additional reason for coming to the same conclusion reached in that case.

5. The petition is accordingly rejected.

D.M. Sen, J.

6. I agree.

M.C. Pathak, J.

7. I agree.