
(1957) 08 GAU CK 0001
In the Gauhati High Court

Union Territory of Tripura

APPELLANT

Vs

Marfat Ali and Others

RESPONDENT

Date of Decision : 09-08-1957

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 403

Citation : AIR 1958 Guw 26 : (1958) CriLJ 973

Hon'ble Judges : J.N. Datta, J.C.

Bench : Single Bench

Judgement

J.N. Datta, J.C.

1. This order governs this appeal and also Criminal Appeal No. 29 of 1956, both of which are appeals against orders of acquittal, and have been preferred in the name of the Union Territory of Tripura (i. e, by the Government) u/s 417 (1) of the Criminal Procedure Code. This appeal arises out of a Sessions trial involving charges u/s 302 and some other sections of the IPC while the other appeal arises out of a case tried by a Magistrate of the first class for an offence u/s 403, IPC

2. A preliminary objection has been taken to the competency of both the appeals, and that objection consists of two points:

i) That there was no direction by the State Government as required by Section 417 (1) of the Criminal Procedure Code.

ii) That they have not been preferred by a Public Prosecutor as required by the said Sub-section of Section 417.

3. It is an admitted fact that the powers of a State Government u/s 417(1) have been vested in the Chief Commissioner of this Territory, and he is competent to give the direction under that subsection. It is also an admitted fact that the Judicial Secretary of the Administration of Tripura has not been appointed a Public Prosecutor u/s 492 of the Criminal Procedure Code. In fact it was admitted before me that the Government Advocate of this Territory is the only person, who

has been appointed the Public Prosecutor in this Territory.

4. This appeal was preferred by Shri M. C. Das, an advocate of this Court, on the authority of a letter from the Judicial Secretary, which is reproduced below:

No. F. 2 (2)-J/55, Tripura Administration. Judicial Department.

Agartala, the 14th February, 1957

MEMORANDUM

Subject: Preferring an appeal against the order of the acquittal of the accused persons passed by the District and Sessions" Judge, Tripura in connexion with Chandrapur Murder case.

Sarvashree Mahim Chandra Das, B. L., and Nagendra Chandra Talapatra, B. L., Advocate Agartala are hereby appointed to prefer and conduct an appeal against the order passed by the District and Sessions Judge, Tripura in the above mentioned case in the Court of the Judicial Commissioner, Tripura, on behalf of the Administration. The dates of the case may be ascertained from the Court.

2. They may be allowed the scale of fees sanctioned: vide Government of India, Late Ministry of States, letter No. F. 44 (3)-J/53 dated the 3rd July, 1953.

(R. N. Shinghal) Judicial Secretary, Tripura Administration.

A copy of the memo, was forwarded to this Court).

5. It will be thus seen that the letter does not appoint any of the Advocates, whose names are mentioned in it as Public Prosecutor nor does it say that the direction was given by the Chief Commissioner. The Memorandum is also not expressed to be signed by the order of the Chief Commissioner, from which it could be implied that the order was passed by the Chief Commissioner. It might be mentioned here, that Shri Talapatra the other Advocate, who was also appointed by that Memorandum refused to accept the brief and did not therefore appear in this Court on behalf of the Appellant, and the Government Advocate came in at a later stage.

6. After the objection to the competency of the appeal was raised, a copy of a letter addressed to the Advocate Shri M. C. Das was received, which is in these terms:

TRIPURA ADMINISTRATION JUDICIAL DEPARTMENT.

No. F. 2(3)-J/55. Dated, Agartala 5-8-1957.

Subject: Preferring an appeal against the order of the acquittal of the accused persons passed by the District and Sessions Judge, Tripura in connection with Chandrapur murder case (now criminal appeal No. 4 of 1957 in the Court of the Judicial Commissioner).

In reply to his verbal query Shri Mahim Chandra Das, B. L., Advocate appointed

through this Administration's letter of even number dated the 14th February, 1957 is hereby, informed that his appointment -to prefer and conduct the aforementioned appeal against the order of acquittal passed by the District and Sessions Judge, Tripura in connection with Chandrapur murder case was under the directions of the Tripura Administration (State Government) .

2. It may further be pointed out that the necessary words to indicate the above intention i.e. the mention of the words "by order etc."1 omitted in the appointment letter referred to above has happened as a result of typographical error.

(R. N. Shinghal) Judicial Secretary

A copy of the letter was forwarded to this Court)

7. This second letter is dated 5-8-57, that is nearly a month after the objection to the competency of the appeal cropped up, and even then it does not say specifically that the direction was given by the Chief Commissioner. Nor were the papers relating to the subject placed before me, which would have shown that the matter went up to the Chief Commissioner for his approval. The learned Government Advocate also after much demurring stated that he was not able to say (which in the circumstances means nothing except that he is not able to assert) that the matter went up to the Chief Commissioner for his orders, and this in the face of the assertion by the learned Counsel on the other side that the approval of the Chief Commissioner was never obtained, and the fact that this question was being harped upon from at least 8-7-1957, when the bail matter came up before this Court, On that date also the learned Government Advocate had stated that he was unable to state definitely if there was a direction by the Government, as contemplated by Section 417. His plain duty in these circumstances was to have obtained clear instructions on the point. In these circumstances and also because the Government Advocate did not offer or pray for an adjournment to ascertain the facts, there appears to be no necessity to pursue the matter any further, and it can be safely presumed that the direction was not given by Chief Commissioner.

8. In this connection, I may also point out that it is not proper to address or send such communications as referred to above to the Court and I do not take a more severe view of the matter, as I was informed that such was the practice in the past and nothing else was meant, The practice which discloses a lack of knowledge of matters legal must cease. The position of the Government in a case, be it Criminal or Civil is that of a party, and the Court is not concerned with any correspondence or instructions that may pass between the Government and its Advocate, as regards a case. Any authority, sanction or empowerment which is necessary under the law should be filed as a piece of evidence on behalf of the Government and not communicated to the Court in this manner which is open to objection from more than one point of view.

9. Reverting to the point, this lack of sanction by the Chief Commissioner is fatal

to the competency of the appeal as it clearly prevents the appeal from coming within the protective mantle of Section 417 (1). The power to prefer an appeal against an acquittal has been given u/s 417 (1) to an authority no less than the State Government (the Chief Commissioner in the case of this Territory) with the obvious object that such appeals will be preferred only in cases where there has been a miscarriage of justice so grave as would induce the Government to move in the matter and thereby prevent harassment of the accused which might otherwise be the result if the matter is left to others or treated lightly. It is therefore in my opinion necessary that the proposal to prefer an appeal against an acquittal should have the approval of the Chief Commissioner, where the liberty of the subject is involved and an appeal is sought to be preferred against an order of acquittal, the Statute must be strictly construed and full compliance with its provisions required (see Deputy Legal Remembrancer, Bengal v. Kamna Baistoba ILR Cal 164 (Ai) and Deputy Legal Remembrancer Vs. Gaya Prosad,

10. Coming now to the second point, I think that the Government stands there on an even weaker footing. It is clear that it is only a Public Prosecutor who can file an appeal, A Public Prosecutor is appointed u/s 492, but that was not done in the case, and the letter appointing Shri Das cannot be construed as appointing him as a Public Prosecutor. The mere fact that a person has been directed to present such an appeal does not involve his appointment as Public Prosecutor for the purposes of the case and it is not permissible to draw such an inference by implication ignoring the express language of sections 417 and 492. (See Deputy Legal Remembrancer Vs. Gaya Prosad, and State v. Brindawan AIR 1952 Mad 13 (C)). Thus it must be found that the appeal was not preferred by a Public Prosecutor and was therefore incompetent on both the grounds, any one of which was enough to make it untenable.

11. The facts of the other appeal (Criminal appeal No. 29 of 1956) are still more unfortunate. The appeal was preferred by Shri N. C. Talapatra, Advocate under instructions from the District Magistrate, Trifpura, and an attempt was made to patch it up by the following Memorandum from the Judicial Secretary:

No. F. 2(2)-J/55, TRIPURA ADMINISTRATION JUDICIAL DEPARTMENT Agartala, the 8th June, 1957.

MEMORANDUM:

Subject: Criminal Appeal No. 29 of 1956, Appointment of Advocate, Shri N. C. Talapatra.

The undersigned is directed to convey the approval of the Chief Commissioner to the appointment of Shri N. C. Talapatra, Advocate, Agartala to prefer and conduct the Criminal Appeal No. 29 of 1956 in the Court of the Judicial Commissioner, Tripura made by the District Magistrate, Tripura vide his Memo No. 7069/73/DM/IV-3/JDL 55 dated the 20th November, 1956.

(R. N. Shinghal) Judicial Secretary Tripura Administration.

A copy of the memo was forwarded to this Court)

12. This letter of approval came several months after the appeal was filed, and when a fresh appeal would have been time barred if preferred. It is needless to say that such subsequent approval is of no avail, and it might be observed that it is surprising that even then it only approves of the appointment of Shri Talapatra, but does not say that he is appointed a Public Prosecutor for this appeal. It is further significant that it is not expressed to be signed by order of the Chief Commissioner.

13. This is thus a clear case where there has been a flagrant disregard of the requirements of Section 417. Admittedly the appeal was neither preferred by the direction of the Chief Commissioner nor was it preferred by a Public Prosecutor and this appeal must also be found to be incompetent.

14. The result is that both these appeals must fail as being incompetent and are dismissed accordingly.