

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

CRL.M.C. No. 69 of 2013 **In CRL. A. No. 14 of 2010**

Shri Dhiresh Kr. Chakraborty
S/o (L) Dhirendra Kr. Chakraborty
R/o EA 158, Indrapuri
New Delhi – 110012.

∴ Appellant/Petitioner

-Vs-

Superintendent of Police CBI/ACB,
Shillong.

∴ Respondent

CRL. M.C. No. 70 of 2013 **In CRL. A No. 13 of 2010.**

Shri Joharlal Das,
S/o (L) Motilal Das,
R/o H/95 Lachitnagar, Main Road,
Guwahati, Assam.

∴ Appellant/Petitioner

-Vs-

The Central Bureau of Investigation
having its office at Oakland, Shillong,
East Khasi Hills District, Meghalaya.

∴ Respondent

CRL. M.C. No. 71 of 2013 **In CRL. A. No. 12 of 2010**

Shri Aparash Das Purkayastha
S/o (L) NB Das Purkayastha
R/o Purbanchal Housing
Flat No – C Ulubari,
Gauhati, Assam.

∴ Appellant/Petitioner

-Vs-

The Central Bureau of Investigation
having its Office at Oakland, Shillong,
East Khasi Hills District, Meghalaya.

∴ Respondent

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the Petitioners-Appellants : Mr. BK Deb Roy,
Mr. SD Upadhaya, Advs

For the Respondents : Mr. VK Jindal, Sr. Adv.,
Ms. QB Lamare, Adv

Date of hearing : **17.12.2013**

Date of Judgment & Order : **17.12.2013**

JUDGMENT AND ORDER (ORAL)

Heard Mr. BK Deb Roy, learned counsel for the applicants as well as Mr. VK Jindal, learned senior counsel assisted by Ms. QB Lamare, learned counsel for the respondents.

2. These three applications seeking certificates for appeal to the Supreme Court under Article 134A of the Constitution of India against the common judgment and order dated 12.11.2013 are taken up for joint hearing for being disposed of by this common judgment and order.

3. Article 134A of the Constitution of India is inserted by the Forty Fourth Amendment of the Constitution of India. Article 134A of the Constitution of India is not an independent article. It is ancillary to Article 132 (1), Article 133(1) and Article 134 (c) (1) of the Constitution of India. For disposal of the present applications for certificate for appeal to the Supreme Court, it would be profitable to see and reproduce Articles 134 & 134A of the Constitution of India hereunder:-

“134. Appellate jurisdiction of Supreme Court in regard to criminal matters – (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court –

(a) has no appeal reserved an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) [certifies under article 134A] that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.”

134A. Certificate for appeal to the Supreme Court – Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134 –

(a) may, if it deems fit so to do, on its own motion; and

(b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after passing or making of such judgment, decree, final order or sentence,

determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) article 134, may be given in respect of that case].

4. Under Article 134A of the Constitution of India, the Court itself on its own motion can grant the certificate and also on oral application is made on behalf of the aggrieved party immediately after the passing or making such judgment, decree, final order or sentence, the Court may determine the question whether certificate of the nature referred to in clause (1) of Article 132 or clause (1) of Article 133 or as the case may be, sub-clause (c) of clause (1) of Article 134 may be given in respect of that particular case. In the present applications

for certificates, nothing had been mentioned under which provisions of the Constitution, the petitioners are seeking certificates for appeal to the Supreme Court.

5. Article 134 of the Constitution of India clearly indicates that the appellate jurisdiction of Supreme Court in regard to criminal matters. Under Article 134(1) (a) appeal shall lie to the Supreme Court from the judgment, final order and sentence in a criminal proceeding of the High Court; if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death and also under clause (1) Clause (b) of Article 134 appeal shall lie, if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death. In the present case, does not come under the said clauses i.e. Article 134 (1) (a) and Article 134 (1) (b) of the Constitution of India.

6. The grounds, even if particular provision of the Constitution is mentioned, for seeking certificate under Article 134A of the Constitution of India are mentioned in para 8 of the present applications which reads as follows:-

“8. That your humble petitioners-appellants feeling themselves aggrieved by the said common judgment and order dated 12.11.2013 passed by the Hon’ble Single Judge is desirous an Appeal/SLP to the Hon’ble Supreme Court from the same on the grounds stated hereunder:-

(i) Conviction is not warranted on the basis of evidence on record under Section 468, 420, 41 IPC.

(ii) Evidence to the effect that the appellants were not entrusted with any money.

(iii) The appellants ought to have been acquainted on the evidence on record.

(iv) Rebuttal evidence on record in favour of the appellants is totally ignored.

(v) *Effective witnesses have been ignored by the prosecution.*

(vi) *Miscarriage of justice.”*

7. On perusal of the grounds for seeking certificates, it appears that all those grounds are questions of facts and appreciation of evidence. Therefore, this Court is of the considered view that for such question of facts, the certificate under Article 134A of the Constitution of India is not called for. No doubt, under Article 136 of the Constitution of India, the petitioners can seek special leave to file appeal against the common judgment and order dated 12.11.2013. Over and above, there is a considerable delay in filing the applications for certificates under Article 134A of the Constitution of India. The Apex Court in ***State Bank of India & Anr v. S.B.I. Employees Union & Anr: AIR 1987 SC 2203*** held that:-

“3. Clause (3) of Art. 133 says that notwithstanding anything in that Article no appeal shall unless Parliament by law otherwise provides lie to the Supreme Court from the judgment, decree or final order of one Judge of the High Court. Before the introduction of Art. 134A of the Constitution by the Forty-fourth Amendment of the Constitution there was no express provision in Arts. 132, 133 and 134 of the Constitution regarding the time and manner in which an application for a certificate under any of those articles could be made before the High Court. There was also a doubt as to the power of the High Court to issue a certificate suo motu under any of those Articles. Article 134A was enacted to make good the said deficiencies. Article 134A does not constitute an independent provision under which a certificate can issued. It is ancillary to Art. 132(1), Art. 133(1) and Art. 134(1)(c) of the Constitution. That is the reason for the use of words “if the High Court certifies under Art. 134A” in Art. 132(1) and Art. 133(1) and for the use of words “certifies under Art. 134A” in Art. 134(1)(c). The High Court can issue a certificate only when it is satisfied that the conditions in Art. 132 or Art. 133 or Art. 134 of the Constitution as the case may be are satisfied. In the instant case such a certificate could not have been issued by reason of cl. (3) of Art. 133 of the Constitution by the learned single Judge.

4. The fact that in a similar case a certificate had been issued by a Division Bench of the High Court consisting of two Judges, in a case decided by the Division Bench did not empower the single Judge to issued the certificate under Art. 133(1) of the Constitution in a case decided by him. The restriction placed by cl. (3) of Art.

133 of the Constitution could not be got over by relying upon the order of the Division Bench.”

8. For the foregoing reasons, these applications for certificates are not maintainable and are accordingly dismissed.

JUDGE

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