

HIGH COURT OF MEGHALAYA
AT SHILLONG

Tr. P. (Crl.) No. 1 of 2020

Date of Order: 26.02.2020

Shri Kitbok Rymbai

Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. K.S. Kynjing, Sr. Adv. with
Mr. L. Shongwan, Adv.

For the Respondent(s) : Mr. H. Abraham, GA (For R 1)
Mr. C.C.T. Sangma, Adv. (For R 2)

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| i) | Whether approved for reporting in
Law journals etc. | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

ORAL

1. This application has been filed for transfer of the appeal that has been filed before the Court of the Judge, District Council Court, West Jaintia Hills District, Jowai.

2. Heard Mr. K.S. Kynjing, learned Senior counsel assisted by Mr. L. Shongwan, learned counsel for the petitioner, Mr. H. Abraham, learned GA for the respondent No. 1 and Mr. C.C.T. Sangma, learned counsel for the respondent No. 2.

3. Mr. K.S. Kynjing, learned Senior counsel submits that against the order of conviction dated 13.11.2019 whereby the petitioner was convicted, an appeal under Rule 28 of the United Khasi Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 read with Section 374 (3) (a) of the C.P.C. has been preferred before the Court of the

Judge, District Council Court, Jowai which is the Appellate Court. However, the same could not be registered or diarized in view of the fact that there is no incumbent at present in the Court of District Council Court, Jaintia Hills District, Jowai. Hence, the petitioner is before this Court with a prayer that the petitioner be permitted to prefer the said appeal before the Court of the Judge, District Council Court, Shillong subject to the order to be passed by this Court.

4. Mr. C.C.T. Sangma, learned counsel for the respondent No. 2 also does not dispute this fact and submits that he has no submissions to make or objection to the transfer as sought for.

5. The prayer of the petitioner is for transfer of the Criminal Appeal which due to the vacancy in the office of the Judge District Council Court cannot be moved. However an aspect that raises concern is the submission that the Appeal per se, cannot even be registered or given a filing number due to the said vacancy. On a pointed query, it is submitted by the learned Senior Counsel that for an appeal to be registered the endorsement of the Judge is necessary, and as such, though the appeal had been presented since 20.11.2019, within the prescribed period of limitation, the same has remained in suspended animation due to the vacancy.

6. This Court fails to understand as to what should prevent the Registry or the Sheristadar of the Court of the Judge from accepting the appeal memo on the same being filed, and to register or at the most to diarize the same, so the records would show that the appeal had been presented on a certain date. The absence or vacancy in the office of the Judge cannot be a reason for appeals or for that matter any other application, to be not accepted for filing and left hanging. The endorsement of the case to any other Presiding Officer of a Court of competent jurisdiction thereof, by the Judge is another matter which cannot be linked with the filing, and logically should come at a stage when the case has already been registered and numbered by the Registry, and put up as such, before the Judge for necessary endorsement. Procedure it is said, is *the handmaid of justice*, but in the procedure as adopted by the District Council Court of Jaintia Hills it seems, the converse is true.

7. It is to be noted that for a transfer to be effected, the case must have its own identity and not that transfer granted, amounts to allowing the litigants to present the appeal or application before the other court to where transfer is sought independent and un connected from the jurisdictional court where the appeal should have ordinarily been filed. This piquant situation therefore needs to be addressed in the interest of justice.

8. Accordingly, in consideration of the facts as placed and in exercise of supervisory jurisdiction, it is directed that the Registry or Filing section of the District Council Court Jaintia Hills, shall accept the Criminal Appeal memo that has been filed against the Judgment and order dated 13.11.2019 in G.R. Case No. 258 of 2013 (State of Meghalaya vs Kitbok Rymbai) diarize the same or issue acknowledgement receipt or issue a filing number to be entered into the filing register of the office of the Judge District Council Court.

9. Thereafter on the same being registered/ diarized the records of the same be transmitted to the Court of the Judge District Council Court, Khasi Hills, Shillong for disposal.

10. Needless to add, in view of the directions contained above, henceforth in the absence of or vacancy in the office of the Judge, District Council Court, Jaintia Hills, Jowai the Registry/Office/ Sheristadar of the Judge, District Council Court, Jaintia Hills, Jowai shall accept applications /appeals that are presented for filing and diarize or issue acknowledgement receipt or issue a filing number to be entered into the filing register of the office of the Judge.

11. With the above noted directions, the instant application is allowed and is accordingly disposed of.

JUDGE

Meghalaya
26.02.2020
"V. Lyndem PS"