Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 4 of 2023 with
Crl.A. No. 5 of 2023

Date of Decision: 20.12.2023

Shri. Nangroi Suting @ Rit Suting	Vs.	State of Meghalaya & Ors.
Shri Phlasstowel Kharbyngar	Vs.	State of Meghalaya & Ors

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Majaw, Adv.

For the Respondent(s) : Mr. N. D. Chullai, AAG. with
Ms. R. Colney, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

COMMON JUDGMENT

1. The learned Judge, District Council Court, Shillong has passed judgment in G.R. No 384(A) of 2004 u/s 376 IPC aimed primarily against the two accused persons implicated in the case, namely; Shri Nangroi Suting @ Rit Suting and Shri Phlasstowell Kharbyngar. The said judgment dated 17.11.2022 has, in effect sealed

the fate of the said accused persons, who were found to have committed an offence under Section 376 IPC. The Court then passed the sentence of conviction on 22.12.2022 sentencing both of them to undergo simple imprisonment of 7(seven) years with fine of ₹ 10,000/- each, failing payment of the same which would entail an additional imprisonment of 6(six) months.

2. Being highly aggrieved with the said impugned judgment dated 17.11.2022, two separate appeals were filed by the two convicts above named, which appeal were registered as Crl.A. No 4 of 2023 and another being Crl.A. No. 5 of 2023, assailing such judgment.

3. This Court, upon hearing the learned counsel for the appellants as well as for the State respondent, the two appeals emanating from a common judgment, it is therefore deemed convenient and expedient to take up both the appeals and to pass a common judgment.

4. Heard Mr. R. Majaw, learned counsel for the appellants who has submitted that the brief background of the case between the parties is that on 09.11.2004, an FIR was lodged by the alleged victim before the Officer Incharge, Madanriting Police Station informing him of the fact that on 08.11.2004, the two appellants herein have forcefully entered the house of the informant and committed an act of rape on her person. On

the basis of such complaint, the police registered a police case being Madanriting P.S. case No 79(11) of 2004 under Section 376 IPC. After the charge sheet was filed on 06.04.2005, the case was taken up for trial by the Fast Track Court, Shillong and registered as FTC No. 2 of 2006.

5. The matter before the Fast Track Court proceeded accordingly with the evidence of 8(eight) witnesses being duly recorded. Eventually, the learned Court has then fixed the matter for examination of the accused persons under Section 313 Cr.P.C. and thereafter, what is left is only for the passing of the final judgment and order.

6. It was at this point of time that the learned Judge, FTC relying on the judgment and order passed by the Hon'ble Gauhati High Court (Shillong Bench) in Criminal Revision No. 452/06 and Criminal Revision No. 12(SH) of 2009, wherein it was held that cases between two tribal are exclusively triable by the District Council Court constituted under paragraph 4 of the Sixth Schedule of the Constitution of India, passed an order dated 20.11.2009, whereby the case was transferred to the District Council Court, Shillong for trial.

7. The learned counsel has further submitted that on receipt of the said order of transfer, the learned Judge, District Council Court, Shillong vide order dated 22.11.2011 has directed that there will be a *de*

novo trial and accordingly fixed the matter for consideration of charge. The parties therein are also called upon to file their arguments before charge in written format which was done do.

8. The learned Judge, District Council Court vide order dated 29.09.2016 directed that the matter shall now proceed from the stage where the learned Judge, Fast Track Court has reached when the matter was transferred to the District Council Court. Accordingly, the case was fixed for recording of the statement of the accused persons under Section 313 Cr.P.C.

9. Again, the learned Judge, District Council Court realizing that the statement under Section 313 has already been recorded before the Fast Track Court, it was ordered that the parties file their respective written arguments. But then, the Court took into consideration the written argument already filed by the parties before the Fast Track Court and judgment was reserved for pronouncement which was done so on 17.11.2022.

10. The learned counsel for the appellants has further submitted that the only point or issue which will be urged by the appellants in this appeal, is as to whether the learned District Council Court can rely on the order passed by the learned Fast Track Court in passing the

impugned judgment, when such order has been passed without jurisdiction as has been acknowledged by the Fast Track Court itself.

11. The learned counsel has submitted that when the Fast Track Court vide order dated 20.11.2009 has transferred the case to the District Council Court, apparently on being conscious of the fact that it lack inherent jurisdiction to try the said case, then all the orders passed by such court becomes null and void. The learned District Council Court, therefore, cannot rely on such orders of the Fast Track Court as has been done, thereby resulting in grave error of exercise of wrongful jurisdiction.

12. Another contention raised by the learned counsel is that the learned District Council Court on receipt of the records of the case from the Fast Track Court, has, vide order dated 22.11.2011 directed that the case be tried *de novo* and as has been submitted, has proceeded to the stage of consideration of charges for which the parties are called upon to file their respective written arguments, however, on 29.09.2016, an order was passed to the effect that it was decided to take up the case from what has been left by the Fast Track Court.

13. The decision of the learned Trial Court to continue with the trial of the case from the stage it has reached before the Fact Track Court

at the time when the same was transferred, is but a commission in error by the learned District Council Court, which has amounted to a review of its own order dated 22.11.2011, the same being not permissible in law.

14. On the point of jurisdiction, the learned counsel has cited the case of Everest Lyngdoh Nongpiur v. State of Meghalaya, 2009 SCC Online Gau 337, para 16 to 21.

15. As to the cause and effect of an order of retrial, the case of Nasib Singh v. State of Punjab, (2022) 2 SCC 89, para 21 to 33.6 was referred to. Another case, that is, Ukha Kohle v. State of Maharashtra, AIR 1963 SC 1531, para 11.

16. The learned counsel has finally prayed that the impugned judgment dated 17.11.2022 be set aside and quashed and the appellants be acquitted in connection with the said GR Case No. 384(A) of 2004, or in the alternative, that the learned District Council Court be directed to take up the retrial of the case.

17. Per contra, Mr. N.D. Chullai, learned AAG has submitted that at the outset, the competence of the Fast Track Court as a Court set up by virtue of a Notification dated 10.12.2007 issued by the Secretary to the Law Department, Government of Meghalaya, whereby the Governor of Meghalaya on the recommendation of the Gauhati High Court has

appointed Smti. B. Giri, Additional District and Sessions Judge, Shillong to function as the Judge, Fast Track Court, Shillong, is not disputed. The power of the Judge, Fast Track Court being concurrent to that of the Sessions Judge.

18. The learned AAG went on to submit that the contention of the appellants that the Fast Track Court has no jurisdiction to proceed with the case of the appellants is legally incorrect and not sustainable in view of the provision of Section 462 read with Section 465 of the Code of Criminal Procedure which provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the same was arrived at, or took place in a wrong sessions division, district, sub-division or other local area. Section 465 provides that such order passed by a competent court of jurisdiction may not be set aside by an appellate court unless a failure of justice has in fact been occasioned thereby.

19. On the issue of jurisdiction, the learned AAG has referred to the judgment dated 17.02.2023 passed by a Division Bench of this Court in Criminal Appeal No. 1 of 2020 in the case of Komerchand Sing Wanrieh v. The State of Meghalaya & others, wherein at para 27, 28, 29, 30, 31 and 32, this Court has held that once the authority in terms of paragraph 5 (1) of the Sixth Schedule to the Constitution of India is

conferred on a court or an officer, the Governor does has the residuary power to carve out a part of such authority already conferred and vest the same with some other court or officer. In this context, the power exercised by the Fast Track Court does have the jurisdiction to try cases involving sexual offence or offences punishable with death, imprisonment for life or imprisonment for a term of not less than five years arising within the East Khasi Hills District of Meghalaya, submits the learned AAG.

20. Having established the fact that the Fast Track Court has jurisdiction to try the case of the appellants, the contention of the appellants that the learned District Council Court ought not to have taken into account the proceeding and evidence already conducted by the Fast Track Court must be rejected in view of the provision of Section 326 Cr.P.C. which whenever any Judge or Magistrate who have heard and recorded evidence in a trial either in part or whole, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate, who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor as was done in the case before the learned District Council Court, again submits the learned AAG.

21. It is the further submission of the learned AAG that the appellants have been given a fair trial, inasmuch as, they have participated in the trial before the Fast Track Court and the fact that the District Council Court has taken note or cognizance of the proceedings before the said Fast Track Court and has come to the conclusion it did in the impugned judgment, the same cannot be termed as having caused prejudiced to the appellants. These appeals therefore has no basis and may be dismissed as devoid of merits.

22. In response to the submission and contention of the learned AAG, the learned counsel for the appellant has submitted that the Notification dated 10.12.2007 whereby the learned Judge, Fast Track Court was said to be empowered to try cases, inter alia, between tribal, is not the correct interpretation of the same since nothing in the notification is said that the Governor while conferring jurisdiction upon the said Fast Track Court, it was done so under paragraph 5 of the Sixth Schedule to the Constitution, which would then enable the said Fast Track Court to try cases, both parties of whom are tribal. In this regard, the case of Everest Lyngdoh Nongpiur v. State of Meghalaya, 2009 SCC Online Gau 337, para 15 to 21 was referred to by the learned counsel to say that this Court has decided a similar case involving the issue of transfer of a

case from the Fast Track Court, Shillong (the very same Fast Track Court involved in this case) to the District Council Court.

23. This Court, on appreciation of the contention of the parties as regard the competency of the learned Fast Track Court to proceed with the trial of the case against the appellants herein, in the light of what has been held in the case of Everest Lyngdoh Nongpiur (supra), is of the opinion that the proposition set forth by the learned AAG has not been placed in the proper perspective, inasmuch as, the argument canvassed that the Fast Track Court has the jurisdiction to try the case of the appellant and that the transfer of the case to the District Council Court is only an exercise applying the provision of Section 326 of the Code of Criminal Procedure, cannot be contemplated as the learned Fast Track Court in the first instance, lack inherent jurisdiction to conduct the aforesaid trial, which was also admitted in its order dated 20.11.2009. Reference to para 15, 16 and 17 of the Everest Lyngdoh Nongpiur's case, which is reproduced herein below would clarify this position:

> ***"15**. While Mr. Mahanta, learned Addl. Advocate General has placed reliance on the notification dated 10.12.2007, on the basis of which the learned Fast Track Court, has passed the impugned order, Mr. Massar, learned counsel for the petitioner, referring to the documents annexed to the additional*

affidavit, submitted that there being no conferment of power as envisaged under clause 5 of the 6th Schedule on the Fast Track Court, the said court is not vested with the jurisdiction to proceed with the trial and that the case is required to be transferred to the District Council Court. The aforesaid notification dated 10.12.2007 is reproduced below:-

> *"No. LJ (A) 77/200/151-A. – Further under sub-section (1) of section 2 of the Meghalaya Autonomous District Administration of Justice Act (Assam Act XIV of 1960 as adapted and amended, the Governor of Meghalaya on the recommended of the Gauhati High Court is pleased to appoint Smt. B. Giri Additional District and Sessions Judge, Fast Track Court, Shillong, Meghalaya as the Additional Deputy Commissioner, East Khasi Hills District for then trial of all offences punishable with death, imprisonment for life or imprisonment for a term not less than 5 (five) years under the Penal Code, 1860 or under any law for the time being applicable to the District and also to hear all Civil and Criminal Revisions, appeals, etc.; from the decision of the Assistants to the Deputy Commissioner within the said District and shall also for the purposes aforesaid, exercise all the powers of the Deputy Commissioner within the said District."*

16. *Similar notification was issued on 28.3.2003, a copy of which is available at page 32 of the additional affidavit filed by the petitioner. Both the notifications have been issued under section 2 of the Meghalaya*

Autonomous District (Administration of Justice) Act, 1960, as adapted and amended. By the said notification dated 10.12.2007, the particular Presiding Officer has been appointed as the Additional Deputy Commissioner, East Khasi Hills District for the trial of all offences punishable with death, imprisonment for life or imprisonment for a term not less than five years, under the IPC or under any law for the time being applicable to the District and also to heard all civil and criminal revisions, appeals, etc.; from the decision of the Assistants to the Deputy Commissioner within the said District and shall also for the purposes aforesaid, exercise all the powers of the Deputy Commissioner within the said District. Be it stated here that the particular officer is the Additional District and Sessions Judge (Fast Track Court).

***17**. The said notification is not the one as envisaged under clause 5 of the 6th Schedule, about which elaborate discussions have been made in the aforesaid decision of the Division Bench., The notification being not the one under clause 5 of the 6th Schedule and being under section 2 of the aforesaid Act of 1960, cannot be said to be in conformity with the exception curved out in the aforesaid decision. Conferment of power and jurisdiction on the particular court or the Presiding Officer thereof by the aforesaid notification under section 2 of the Act, or general provision, generally empowering the particular court/Presiding Officer is not the conferment of power and jurisdiction, specially provided for under clause 5 of the 6th Schedule about which elaborate discussions have been made in the aforesaid decision of the Division Bench. It is*

in this context, Mr. Massar by referring to the provisions of the Acts and the Rules mentioned above brought out the distinctive features of the said provisions and the provisions under clause 5 of the 6th Schedule."

24. On the issue of jurisdiction, the Hon'ble Supreme Court in the case of Jagmittar Sain Bhagat & Ors v. Director, Health Services, Haryana & Ors reported in (2013) 10 SCC 136, para 9 has observed as follows:

"9. *Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply."*

25. In the case of Komerchand Sing Wanrieh (supra), referred to by the learned AAG in support of his case, what is seen is that this Court in the said case has dealt mainly with the relevancy of the conferment of

authority by the Governor under the provision of paragraph 5 (1) of the Sixth Schedule to the Constitution on a **particular court or officer** (emphasis laid), to try suits or cases arising within the jurisdiction of the District Council and under the circumstances discussed therein, has held that the District Judge comes within the meaning of an 'Officer appointed by the Governor' and is therefore competent to try cases involving parties who are tribal, offences having been committed within such District Court's jurisdiction. As has been pointed out, the conferment of power upon a particular officer to function as the Judge, Fast Track Court vide the said notification dated 10.12.2007 was made under the provisions of sub-section (1) of section 2 of the Meghalaya Autonomous District Administration of Justice Act (Assam Act XIV of 1960 (as adapted and amended) and not under paragraph 5(1) of the Sixth Schedule to the Constitution. Herein lies the distinction and as such, it is the considered opinion of this Court that the case of Komerchand Sing Wanrieh(supra) will not applicable to the case of the parties herein.

26. Therefore having established the fact that the jurisdiction of the Fast Track Court ends upon the said order dated 20.11.2009 being passed, whereby the case was transferred to the District Council Court,

the learned Judge, District Council Court was correct in passing the order dated 22.11.2011 for de novo trial.

27. On the reliance of the learned AAG on the provision of Sections 462 and 465 Cr.P.C. to say that the proceedings before the learned Fast Track Court are valid only, but for the fact that the same was done so in a wrong place or jurisdiction and therefore, the District Council Court is otherwise competent to pass the judgment on the basis of such proceedings, the very fact that the learned Fast Track Court which has relinquished its power to try the case in the first place apparently by its own admission, that it lacks inherent jurisdiction to try the case, the learned District Council Court on this premise when the matter was transferred to its court, by directing for de novo trial, the same was done in consonance with the accepted jurisprudential principle on the subject of jurisdiction. Therefore, no illegality can be attached to the said order for de novo trial.

28. The fact that the learned District Council Court has reviewed its own order, which is not permissible in the first place and without affording the parties to be heard in this connection, would render the exercise carried out to be an irregular one which ought not to have been done so by the learned District Council Court.

29. In any case, once it has been established that the Fast Track Court lacks jurisdiction to try the case, the same being transferred to the District Council Court, it is incumbent upon the District Council Court to restart the trial or take up the trial *De Novo*. The action of the learned District Council Court to take up the trial of the case from what was left by the learned Fast Track Court, has vitiated the whole proceedings and as such, the impugned judgment and order as well as the sentence following it, cannot stand judicial scrutiny.

30. Accordingly, the impugned judgment dated 17.11.2022 and the Sentence dated 22.12.2022 are hereby set aside and quashed.

31. The case is remanded to the Court of the learned Judge, District Council Court, Shillong for retrial. However, considering that the matter is a long pending one, the learned Judge is directed to take up the matter on a priority basis with day to day trial to be conducted to the extent possible. The same to be disposed of within a period of 4(four) months from the date of this order.

32. The appellants/convicts are to be released from custody, but would be allowed to go on previous bail, if the same had been granted to them, if not, then fresh application of bail is required.

33. Registry is directed to send back the Lower Court case

records to the Trial Court forthwith.

34. Appeal disposed of. No costs.

Judge

Meghalaya
20.12.2023
"D. Nary, PS"