

Serial No. 11
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 28 of 2018

Date of Decision: 13.06.2023

Shri. Rakesh G. Momin Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Kumar, Adv.
For the Respondent(s) : Mr. A.H. Kharwanlang, Addl.Sr.GA. for R 1.
Mr. N. Choudhury, 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 |

JUDGMENT (ORAL)

1. Heard Mr. S. Kumar, learned counsel for the petitioner.
2. The grievance in this petition filed under Section 482 Cr.P.C is with regard to an order dated 09.10.2018 (Annexure-A4 to this petition) passed by the Court of the learned District Magistrate, South Garo Hills, Baghmara in a criminal case registered as Nongalbibra P.S. Case No. 16 (8) of 2015 under Sections 406/420/384/323/34 IPC, also being registered on the Court taking cognizance of the matter as G.R. Case No. 70 of 2015.

3. The issue before the learned District Magistrate is with regard to an order dated 09.10.2018 passed by the learned Additional District Magistrate (J), South Garo Hills, Baghmara, wherein the learned Additional District Magistrate is said to have reviewed his own order dated 28.09.2018 in an application filed for releasing of a vehicle bearing registration No. AS-18-A-1771 to the alleged owner of the said vehicle who is the respondent No. 2 herein, claiming to be the owner of the vehicle.

4. It is noted that by the said order dated 28.09.2018, the learned ADM, upon consideration of an application under Section 451 Cr.P.C, has handed over custody of the said vehicle bearing registration No. AS-18-A-1771 to the respondent No. 2 herein.

5. As submitted, the order dated 28.09.2018 was actually reviewed by the same Court by passing an order dated 04.10.2018 reversing the earlier order dated 28.09.2018.

6. It is in this context that the respondent No. 2 as petitioner, has preferred a revision petition before the Court of the learned District Magistrate, who vide the said impugned order dated 09.10.2018, has in effect revised the order dated 04.10.2018 and has directed for immediate release of the vehicle into the custody of the petitioner therein who is the respondent No. 2 herein.

7. This Court need not go into the facts and circumstances of the case,

suffice it to say that parties have presented their arguments only on the issue of jurisdiction and power exercised by the learned Presiding Officer of the said Court, firstly, as to whether the learned ADM by passing the order dated 04.10.2018 could do so, since the same would amount to recall or review of its own order, which is barred by the provision of Section 362 Cr.P.C and secondly, whether the learned District Magistrate has the jurisdiction to offset the said order dated 04.10.2018.

8. The respondent No. 2 as petitioner being rightfully aggrieved by the said impugned order dated 04.10.2018, has approached the District Magistrate, who as stated above vide the impugned order dated 09.10.2018, has reviewed the decision passed by the learned ADM.

9. The controversy arose from this action or rather by the passing of the said impugned order dated 09.10.2018, inasmuch as, the petitioner has now approach this Court with this application under Section 482 Cr.P.C, questioning the jurisdiction of the learned District Magistrate to pass the impugned order on the ground that the learned District Magistrate is not competent to do so, when apparently, the order impugned before the said learned District Magistrate was passed by an authority who is possessing concurrent power while exercising judicial administration over the matter in question.

10. To this extent, the parties are in agreement that in view of the

various notifications and conferment of powers passed by the relevant authorities, it is apparent that the Additional District Magistrate or the Additional Deputy Commissioner has concurrent power of judicial exercise as that of the Deputy Commissioner under rule 1-A of the Rules for Administration of Justice and Police in this case within the Garo Hills District.

11. To assist the Court in this matter, Mr. A.H. Kharwanlang, learned Addl. Sr. GA appearing on behalf of the State respondent No. 1 has also produced a Notification dated 05.02.2018, wherein the Governor of the State has appointed the Additional Deputy Commissioner who incidentally, was the same officer who had passed the order dated 04.10.2018 and in effect, in the said notification, it is stated that the Additional Deputy Commissioner shall exercise all the powers of the Deputy Commissioner under the said rules.

12. This is the clinching factor which has persuaded this Court to believe that the impugned order passed by the learned District Magistrate whether rightly or wrongly cannot be done so in view of the fact that it is sitting in judgment over an order passed by a coordinate court.

13. The parties have agreed that the impugned orders dated 04.10.2018 and 09.10.2018 cannot be sustained and as such, the same is hereby dismissed.

14. Though the learned counsel for the respondent No. 2, Mr. N. Choudhury has also questioned the exercise of power by the learned ADM which is apparent by the order dated 04.10.2018 which in effect, is a review of its own order dated 28.09.2018, however, no specific pleadings have been made in this regard.

15. Be that as it may, this Court in exercise of its power under Section 482 Cr.P.C, after striking down the impugned order dated 09.10.2018, the order dated 04.10.2018 passed by the learned ADM also required to be struck down, which is done so herein. It would now be proper to direct that the matter with regard to the application for custody of the vehicle in question under Section 451 Cr.P.C be taken up by the competent court of jurisdiction, that is, the learned ADM for disposal. The respondent No. 2 is also hereby directed to produce the said vehicle which is now in his custody before the Investigating Officer of the case for production before the Court as and when required.

16. Finally, the competent court of jurisdiction is hereby directed to take up the petition to consider the custody of the said vehicle on Zimma and after hearing the parties, to pass necessary orders in this regard.

17. In view of the fact that the case has travelled for a long time till date, the concerned court is hereby requested to take up the petition within 2(two) weeks from today i.e. on 30.06.2023 and to dispose of the same on the

same day itself. All the parties present herein are directed to appear before the said Court on the date fixed.

18. With the above noted directions, this petition is accordingly disposed of. No costs.

19. Registry to send back the relevant records.

Judge

Meghalaya
13.06.2023
"D. Nary, PS"

