

GAHC020003332019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRAPL/8/2019

- 1. Surjit Thakur @ Surjet,**
Aged about 38 years,
S/o Pima Thakur,
Village-Dihari,
P.S.- Audant Nagar, PO-Ashani,
District-Ara, State- Bihar,
Present Address-2nd Nap Alichen,
Mokokchung-798601, Nagaland.
- 2. Pankaj Mishra @ P Mishra,**
Aged about 37 years,
S/o- Late Mukti Nath Mishra,
Village:- Dath Police Station Hassanpur,
District- Samastipur, Bihar,
Present Address-2nd Nap Alichen,
Mokokchung-798601, Nagaland
- 3. Deepak Kumar Ram,**
S/o- Late Shiv Shankar,
R/o- Alichen,
Mokokchung-798601, Nagaland
- 4. Upendra Kumar @ Upandra @ Obenter,**
Aged about 33 years,
S/o- Jai Ram Thakur, Village:- Pindarha,
P.O.-P.S.- Bansdih, District- Balia, State- Uttar Pradesh,
Present Address-2nd Nap Alichen,

Mokokchung-798601, Nagaland

5. Danushdar Jha @ D Jha,
Aged about 59 years,
S/o- Gudri Jha,
Village- Chattrneshwar, P.O.-P.S.- Warish Nagar,
District- Samastipur, Bihar,
Present Address-2nd Nap Alichen,
Mokokchung-798601, Nagaland

VERSUS

1. Moatoshi,
S/o- Shri Rekum,
Permanent Resident of Mangmetong Village,
Mokokchung-798601.
Computer Instructor at Unit Higher Secondary School,
Alichen, Mokokchung, Nagaland.

2. Ram Kumar Gautam,
S/o- Shri Pugam Prasad,
Permanent resident of Chalakari Village,
P.O-P.S.- Gola, Gorakhpur District,
Uttar Pradesh. Present Address 2nd NAP Alichen,
Mokokchung-798601, Nagaland

3. The State of Nagaland

BEFORE

HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Petitioners : Mr. Sentiyanger, Adv.

For the Respondents : Mr. N. Longkumer, Adv.
(for respondent Nos. 1 and 2)

Date of Judgment : 14.03.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. Sentiyanger, learned counsel for the appellants. Also heard Mr. N. Longkumer, learned counsel for the respondent Nos. 1 and 2.

2. This appeal has been filed by the appellants under Sections 374/372 read with Sections 397/401 of the Code of Criminal Procedure, 1973 impugning the order dated 25.09.2018 passed by the learned Sessions Judge, Mokokchung, Nagaland in G.R. Case No. 003/2016 corresponding to PS-II Mokokchung Case No. 002/2016 whereby the respondent No. 1 Mr. Moatoshi was convicted under Sections 420/468/471 of the Indian Penal Code on the basis of his pleading guilty to the said charges. Learned Sessions Judge sentenced the respondent No. 1 with a fine of Rs.1,000/- for the offence under Section 468 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for two months. He was also sentenced to pay a fine of Rs.1000/- for the offence under Section 471 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for two months. The respondent No. 1 was also sentenced to pay a fine of Rs.1000/- for the offence under Section 420 of the Indian Penal Code and in default of payment of fine to undergo simple imprisonment for two months. The respondent No. 2 Ram Kumar Gautam was convicted under Section 202 of the Indian Penal Code on the basis of his pleading guilty to the said charge and was sentenced to pay a fine of Rs.200/- only and in default of payment of fine to undergo simple imprisonment for 15 days.

3. The facts relevant for adjudication of the instant appeal, in brief, are as follows:-

- i.** On 11.01.2018, the appellants had filed an FIR before the Officer-in-Charge of PS-II Mokokchung, Nagaland, *inter alia*, alleging that the respondent Nos. 1 and 2 had collected money from the complainants with a promise to help in getting job in the Nagaland Arms Police Department. The total amount of money taken by the respondent Nos. 1 and 2 was to the tune of Rs. 79,16,000/- which was transferred to the account of the respondent No. 1 on various dates. It is also alleged in the FIR that fake appointment letters and other letters were issued to the candidates with forged signatures of Commandant 2nd BN NAP, Alichen, NAP(IGP) and Director General of Police, Nagaland.
- ii.** On receipt of the said FIR, the Officer-in-Charge of Police Station-II Mokokchung, registered the PS-II Mokokchung Case No. 002/2016 under Sections 420/34 of the Indian Penal Code and entrusted SI Moyangangin of PS-II Mokokchung to conduct the investigation.
- iii.** After completion of the investigation, sufficient materials were found under Sections 420/468/471 of the Indian Penal Code against respondent No. 1, Moatoshi and sufficient materials under Section 202 of the Indian Penal Code were found against the respondent No. 2, Ram Kumar Gautam. Accordingly, charge-sheet bearing Charge-sheet No. 4/2017 dated 18.05.2017 was laid before the Chief Judicial Magistrate, Mokokchung.
- 4.** It is pertinent to mention herein that the offences under Section 468/471/420/202 of the Indian Penal Code are triable by the Judicial

Magistrate, 1st Class as per the Schedule-I appended to the Code of Criminal Procedure, 1973. However, by order dated 25.09.2018, which has been impugned in this appeal, the learned District and Sessions Judge, Mokokchung ignoring the provisions of the Code of Criminal Procedure, 1973 took up the case himself without any committal order from the learned Chief Judicial Magistrate or any other Judicial Magistrate, 1st Class, and framed the charges and, thereafter accepted the plea of guilt of the respondent Nos. 1 and 2 and convicted and sentenced them in the manner as already described herein above. It is pertinent to mention that there is no mention in the impugned order as to for what offence respondent No. 2 has been convicted, though he was sentenced to pay a fine of Rs.200/- only with default stipulation.

5. Mr. Sentianger, learned counsel for the appellants has submitted that as per notification dated 28th February, 2018 issued by Kohima Bench of the Gauhati High Court, Smti Seyielenuo Mezhi "Civil Judge (Jr. Division)-cum-JMFC, Wokha was directed to look after the works of Chief Judicial Magistrate, Mokokchung as in-charge in addition to her own duties.

6. It is further submitted by learned counsel for the appellants that when the Gauhati High Court had made arrangement by issuing the aforesaid notification as to who shall be the in-charge of the vacant Court of Chief Judicial Magistrate, Mokokchung, the learned Sessions Judge, Mokokchung could not have taken up the G.R. Case No. 003/2016 for disposal by himself without the said case being committed to him by the Court of learned Judicial Magistrate, 1st Class, Mokokchung.

7. It is also submitted by learned counsel for the appellants that by merely stating that "*as there is no regular Judicial Magistrate posted in Mokokchung at present as such I am inclined to take up the case for speedy trial*", learned Sessions Judge, Mokokchung has made a mockery of the statutory provisions regarding committal of sessions cases as well as he has also showed disrespect to the Gauhati High Court by disobeying the aforesaid notification issued by it.

8. Learned counsel for the appellants has also submitted that not only learned Session Judge had blatantly violated the provisions of Code of Criminal Procedure, 1973 by taking up magisterial triable case without same being committed to it under Section 323 of the Code of Criminal Procedure, 1973 or under any other provision of law but also the surprising fact is that same has been done just a week prior to his retirement by the learned Session Judge, Mokokchung. He had accepted the plea of guilt in a case which could not have been tried by him and imposed a nominal fine of Rs.1,000/- for each offence in respect of the respondent No. 1 and only Rs.200/- fine in respect of respondent No. 2, hence, same requires immediate interference by this court.

9. Learned counsel for the appellants has also submitted that the impugned order passed by the learned Sessions Judge, Mokokchung in GR Case No. G.R. Case No. 003/2016 in connection with PS-II Mokokchung Case No. 002/2016 is palpably illegal, unsustainable, unjust, and against statutory provisions and established canons of law and therefore, same needs interference by this court. It is also submitted by learned counsel for the appellants that in the peculiar facts of this case, the interference of this court is also called for under revisional as well as appellate jurisdiction

of this Court. It is also submitted by learned counsel for the appellants that the appellants having suffered loss and injury due to the acts of the respondent Nos. 1 and 2, they may be considered as victim within the meaning of Section 2 (wa) of the Code of Criminal Procedure, 1973 and therefore, they have right to approach this court under section 372 of the Code of Criminal Procedure, 1973 also.

10. On the other hand, Mr. N. Longkumer, learned counsel for the respondent Nos. 1 and 2 has submitted that the instant appeal filed by the appellants is not maintainable in its present form as the appellants cannot be regarded as victims. It is submitted that as per the allegation made by the appellants they have themselves collected money from various persons in order to get service in Nagaland Arms Police and paid the said money to the respondent Nos. 1 and 2 and, therefore, they have also indulged into an unlawful activity and any agreement between the appellants and the respondent Nos. 1 and 2 for enforcement of such an agreement whose object is unlawful is itself a void agreement and same cannot be enforced at law. In support of his submission, learned counsel for the respondent Nos. 1 and 2 has cited the rulings of the Supreme Court of India in the case of "**Kuju Collieries Ltd vs Jharkhand Mines Ltd. & Ors**" reported in "**AIR 1974 SC 1892**" as well as in the case of "**Nagendrappa Natikar -Vs- Neelamma**" reported in "**(2014) 14 SCC 452**". He has also submitted that this appeal cannot be treated as an appeal under Section 374 of the Code of Criminal Procedure, 1973 as under the said provision only the convicted persons can prefer an appeal. It is further submitted by learned counsel for the respondent Nos. 1 and 2 that even if the appeal is considered as an appeal under Section 372, same

would be limited only with regard to the quantum of punishment. Moreover, the prayer made by the appellants in their memo of appeal relates only to enhancement of the quantum of punishment imposed on the respondent Nos. 1 and 2. Learned counsel for the appellants has thus prayed for dismissal of the instant appeal.

11. I have considered the submissions made by the learned counsel for both the sides and perused the materials available on record including the case record of G.R. Case No. 003/2016, which was called for in connection with this appeal.

12. On mere perusal of the impugned order, it appears that the learned Session Judge, Mokokchung has exceeded his jurisdiction by himself taking up the G.R. Case No. 003/2016 for disposal when the offences involved in the said case i.e., offence under Sections 420/468/471/202 of the Indian Penal Code are all triable by a Magistrate of 1st class. It also appears from record that by notification dated 28.02.2018 issued by the Kohima Bench of Gauhati High Court, learned Civil Judge (Jr. Division)-cum-JMFC, Wokha was additionally entrusted to work as in-charge Chief Judicial Magistrate Mokokchung. Under such circumstances, the learned Session Judge, Mokokchung by ignoring the said notification has transgressed his jurisdiction in taking up the G.R. Case No. 003/2016 for disposal when all the offences involved in the case were triable by the Judicial Magistrate, 1st Class and the case was never committed to learned Session Judge by any Judicial Magistrate either under the provisions of Section 323 of the Code of Criminal Procedure, 1973 or under any other law. It is also pertinent to mention that the

learned Session Judge who passed the impugned order had retired after seven days of delivering the impugned order which also is a alarming fact to be noted in this regard.

13. As regards submissions made by learned counsel for the respondent Nos. 1 and 2 are concerned, the rulings cited by him are distinguishable from facts of this case as this case is a criminal case where the question of acting beyond jurisdiction by the learned Session Judge, Mokokchung has been raised. Whereas, the facts of the cases which are cited by learned counsel for respondent Nos. 1 and 2 relates to enforcement of a contract which is void due to the fact that the agreement was against public policy. In the instant case the question before this court is not relating to any enforcement of contract, rather it is regarding the manner in which the trial of the G.R. Case No. 003/2016 were the respondent Nos. 1 and 2 were the accused has been conducted. Therefore, the cases cited by the learned counsel for the respondents are of no help to the respondent side in this case.

14. Considering the facts and circumstances of this case, as discussed herein above, this court is of considered opinion that without committal of the case by Judicial Magistrate to the learned Session Judge and in this case no such occasion for committal would have arose as the offences involved in the case are triable by Judicial Magistrate, 1st Class, the act of taking up of the G.R. Case No. 003/2016 by the learned Session Judge, Mokokchung and passing the impugned order imposing a nominal fine of Rs.1000/- against each offence on respondent No. 1 and a nominal fine of Rs.200/- on respondent No. 2 is palpably illegal, and against the statutory provision and established canons of law.

15. Though, in the memo of appeal filed by the appellants various provisions of law i.e., 374/372/397/401 of the Code of Criminal Procedure, 1973 have been quoted, however, this court is of considered opinion that when such glaring and palpably illegal act of learned Session Judge, Mokokchung has been brought to the notice of this court, it is not expected to remain a mute spectator to such illegal deeds and this court has sufficient powers under Sections 401/482 of the Code of Criminal Procedure, 1973 to interfere with the impugned order for the ends of justice otherwise there would be grave miscarriage of justice. As the impugned order dated 25.09.2018 has been passed by learned Session Judge, Mokokchung without jurisdiction and in violation of the provisions of Code of Criminal Procedure as well as the notification dated 28.02.2018 issued by the Kohima Bench of the High Court, the impugned order is hereby set aside and the case i.e., G.R. Case No. 003/2016 corresponding to PS-II Mokokchung Case No. 002/2016 is hereby remanded back to the Court of learned Chief Judicial Magistrate for *de novo* trial from the stage of framing of charges against the respondent Nos. 1 and 2 who shall appear before the court of learned Chief Judicial Magistrate, Mokokchung on 2nd of April, 2024 to face the trial in accordance with law.

16. Let the records of the G.R. Case No. 003/2016 along with all connected files and a copy of this judgment be sent back to the learned Chief Judicial Magistrate, Mokokchung for a *de novo* trial.

17. With this observation, this criminal appeal is hereby disposed of.

JUDGE

Comparing Assistant