Serial No. 01-06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 2 of 2020 with
Crl. Rev.P. No. 3 of 2020
Crl. Rev.P. No. 4 of 2020
Crl. Rev.P. No. 5 of 2020
Crl. Rev.P. No. 6 of 2020
Crl.Rev.P. No. 7 of 2020

Date of Decision: 25.06.2020

Shri. Rajeev Baidya	Vs.	State of Meghalaya & Anr.
Smti. Milon Das	Vs.	State of Meghalaya & Anr.
Smti. Milon Das	Vs.	State of Meghalaya & Anr.
Smti. Milon Das	Vs.	State of Meghalaya & Anr.
Smti. Milon Das	Vs.	State of Meghalaya & Anr.
Smti. Milon Das	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG. with
Mr. A.H. Kharwanlang, GA.

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

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

1. Being aggrieved with the order dated 28.05.2020 passed by the learned Judicial Magistrate First Class (JMFC), Shillong in Bail Application No. 128 (T) arising out of Shella P.S. Case No 9 (2) 2020 under Sections 148/326/506/307/302/34 IPC read with Section 3 of PDPP Act, whereby the learned Judicial Magistrate had rejected the bail application of the petitioners herein, these instant Criminal Revision petitions was preferred before this Court.

2. These set of similar petitions arising out of the grievance against the

said impugned order of the learned JMFC, Shillong as stated above, are therefore taken up together as a common order is deemed proper to be passed being convenient and expedient, which is accordingly done so herein.

3. The records where the matter was taken up before the Court of the learned JMFC, Shillong having been called for by this Court, the impugned order on being perused would show that the Court on consideration of the submission of the learned counsel for the petitioners therein as well as the submission of the learned Assistant P.P. has thought it fit to reject the bail application primarily on the ground that since the case has already been charge sheeted, the bail application could not be considered.

4. Heard Mr. K. Paul, learned counsel for the petitioners who at the first instance has argued on the issue of jurisdiction of the learned Judicial Magistrate First Class (JMFC) at Shillong who has passed the impugned order and is at pains to argue that the said learned JMFC, Shillong having been duly empowered to exercise jurisdiction over the entire East Khasi Hills District and as such, was competent to take up the bail application under consideration, had rejected the same on the ground that the charge sheet has been submitted before the concerned Court of the JMFC, Sohra and had therefore acted with material irregularity.

5. To support his contention, the learned counsel for the petitioners has submitted that an affidavit has been filed before this Court to bring on record certain notifications issued by the High Court of Meghalaya being Notification No. HCM.II/184/2015/709 dated 5th March, 2018 annexed as Annexure-2 of the affidavit, wherein under the heading "East Khasi Hills District" at Serial No. 4, the name of Smti. Darry G. Kharshiing, the then Judicial Magistrate, Ri-Bhoi District, Nongpoh appeared as being transferred as Judicial Magistrate First Class, East Khasi Hills District, Shillong. It may be mentioned that this is the same learned JMFC, Shillong who has passed the impugned order.

6. Learned counsel for the petitioners has also submitted that by the same notification dated 5th March, 2018 at Serial No. 5 again under the heading of "East Khasi Hills District", Smti. Imarbarkordor Lyngkhoi was posted as Judicial Magistrate First Class, East Khasi Hills District, Sohra Sub-Division. However, the learned counsel has pointed out to another Notification of the High Court of Meghalaya, Shillong being No. HCM.II/184/2015/Estt/154 dated 8th May, 2019, whereby Smti. I. Lyngkhoi, Judicial Magistrate First Class, Sohra Sub-Division was assigned additional duty to also function and hold Court both at Shillong and Sohra.

7. Mr. Paul has argued that the learned JMFC at Shillong is competent to try cases situated at Sohra Sub-Division since the notification would show that the extent of jurisdiction as conveyed by the relevant notification extend to the whole of East Khasi Hills District. This is in contradistinction to the notification issued by the Government of Meghalaya dated 18th July, 2013 being No. LJ(A) 77/2000/254 by which power of Assistant to Deputy Commissioner was conferred on two Judicial Magistrates to exercise the same within West Jaintia Hills District to the exclusion of Amlarem (Civil) Sub-Division, which falls under the West Jaintia Hills District. This, according to Mr. Paul would show that there is a clear demarcation of jurisdiction as far as the exercise of the same by the Judicial Magistrate concerned. However, in the case of East Khasi Hills District, there is no such clear demarcation and as such, the learned Judicial Magistrate at Shillong has failed to exercise jurisdiction as far as Sohra Sub-Division is concerned resulting in the passing of the impugned order.

8. To buttress his submission, Mr. Paul has referred to Section 14 Cr.P.C, which provides for the local jurisdiction of Magistrates and sub-Section 2 of the same, which convey power of jurisdiction of such Magistrate throughout the District.

9. The case of ***Golam Rahaman Khan v. Kalipada Manna: AIR 1932 Cal 864***, the case of ***Baliram Nagorao Ekbote, Manager A.A.V. School,***

Umarkhed v. Dawalatsingh Gulabsing & Ors: AIR 1945 Nag 56 at paragraph 3 & 4**,** the case of ***Prasanta Kumar Mukherjee v. The State: AIR 1952 Cal 91*** at paragraph 3 and yet another case of ***Bai Meghi Sajan & Ors v. Harijan Neja Khima & Anr: 1971 Cri LJ 717*** at paragraph 8 was cited by the learned counsel for the petitioners to support his contention as far as the issue of jurisdiction is concerned.

10. On the issue of maintainability of these instant criminal revision petitions, learned counsel for the petitioners has cited the case of ***Madhu Limaye v. The State of Mahararashtra: (1977) 4 SCC 551*** at paragraph 10 as well as the case of ***Girish Kumar Suneja v. Central Bureau of Investigation: (2017) 14 SCC 809*** at paragraph 29, 30 and 31.

11. Terming the impugned order as one having been passed with failure to exercise proper jurisdiction, the same being illegal, it is therefore submitted by the learned counsel for the petitioners that the impugned order be set aside and quashed.

12. Mr. B. Bhattacharjee, learned AAG assisted by Mr. A.H. Kharwanlang, learned GA in his counter argument has firstly raised the issue of maintainability by submitting that the impugned order is not a final order, but is an interlocutory order and therefore, falls within the ambit of sub-Section 2 of Section 397 Cr.P.C which would render the same as not maintainable before this Court.

13. The case of ***Girish Kumar Suneja (supra)*** at paragraphs 10, 11, 21, 27 and 29 was cited by the learned AAG in support of his contention.

14. On the issue of jurisdiction, the learned AAG has submitted that by virtue of the provisions of sub-Section 3 of Section 7 Cr.P.C, the Sohra Sub-Division was created, which was headed by the Judicial Magistrate First Class as notified by the High Court of Meghalaya vide Notification No. HCM.II/184/2015/709 dated 5th March, 2018 and as such, the police case under reference being Shella P.S. Case No 9 (2) 2020 arising out of Sohra

Sub-Division must be taken up by the Court in that Sub-Division.

15. Again, it was submitted that the impugned order was passed on 28.05.2020 by that time, the charge sheet has already been submitted on 26.05.2020 and as such, the findings of the learned JMFC, Shillong even on verbal submission of the learned Assistant P.P. that the charge sheet has been filed is not an abuse of power.

16. The learned AAG has further submitted that the case having been instituted under section 209 (a) Cr.P.C the accused persons has to be produced before the committing Magistrate who will remand the accused to custody, subject to provisions relating to bail.

17. It is prayed that the revision petitions are devoid of merits and are liable to be rejected.

18. In reply, Mr. Paul has submitted that in view of the provisions of Section 437 Cr. P.C., the accused having been brought before a Court by the police, in this case, before the learned JMFC, Shillong, he or they may be released on bail and as such, the learned JMFC, Shillong has jurisdiction, which she failed to exercise judiciously.

19. I have considered the arguments of the learned counsels for the rival parties and I have also gone through the citations relied upon by the parties.

20. Though essentially, it would be prudent for this Court to decide on the issue of maintainability, which would then decide the outcome of the case, however since elaborate arguments has been raised as regard jurisdiction, this Court would deem it proper to firstly decide on the issue of jurisdiction.

21. As pointed out above, in Chapter-II of the Code of Criminal Procedure, 1973 under the heading of "Constitutional of Criminal Courts and Offices", Section 7 provides for Territorial divisions, by which sessions divisions are created in every State and sub-Section 2 of Section 7 empowers the State Government to alter the limits or the number of such divisions and

districts after consultation with the High Court, and further in sub-Section 3, the State Government may divide any district into sub-divisions.

22. In the State of Meghalaya under the High Court Meghalaya Rules, 2013, Hon'ble the Chief Justice in exercise of the powers thereof, would post Judicial Officers to man the Office of the District and Sessions Judge as well as the Chief Judicial Magistrate and the Judicial Magistrate First Class in the respective Districts of the State. The nomenclature of "Judicial Magistrate First Class" would mean that the incumbent is presiding over a criminal Court in the district or the case may be in the sub-Division.

23. Under the peculiar system of Administration of Justice and Police in the State of Meghalaya under the relevant rules, e.g., "Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 and the "Khasi Syiemship (Administration of Justice) Order, 1950, the Governor of Meghalaya, with the approval of the Hon'ble High Court of Meghalaya, would invest the power of Assistant to Deputy Commissioner, on a Judicial Officer under Rule 17 and paragraph 4 (2) of the aforesaid rules and orders with powers of the Judicial Magistrate of the First Class as defined in the Code of Criminal Procedure, 1973.

24. On this premise, it is seen that the learned JMFC, Shillong has also been empowered as an Assistant to Deputy Commissioner under the relevant rules to exercise jurisdiction in civil and criminal matters as a Judicial Magistrate First Class in East Khasi Hills District. This is as per Notification No. LJ(A) 77/2000/Pt.I/35 dated 3rd May, 2018. Similarly, vide Notification No. No. LJ(A) 77/2000/Pt.I/36 dated 3rd May, 2018 the Judicial Officer of Sohra (Civil) Sub-Division was invested with the powers of Assistant to Deputy Commissioner, Sohra (Civil) Sub-Division, East Khasi Hills District and further under Rule 17 and paragraph 4(2) of the aforesaid rules and orders, invest the officer with the powers of the Judicial Magistrate First Class as defined in the Code of Criminal Procedure, 1973 within Sohra (Civil) Sub-Division, East Khasi Hills District.

25. This then would show that apart from the Judicial Officers stationed at Shillong exercising jurisdiction over the whole of East Khasi Hills District which includes Sohra (Civil) Sub-Division, the Presiding Judicial Officer of Sohra (Civil) Sub-Division has also been specifically invested with powers of the Judicial Magistrate First Class vide Notification No. LJ(A) 77/2000/Pt.I/36 dated 3rd May, 2018 (Annexure-3 of the affidavit filed by the petitioner).

26. This being the case, it appears that there is a dual exercise of jurisdiction over the Court of the Judicial Magistrate First Class, Sohra, firstly by the incumbent specifically empowered to preside over the said Court and secondly, by a Judicial Magistrate First Class sitting at Shillong and taking up matters pertaining to the said Sohra Sub-Division by virtue of endorsement by the learned Chief Judicial Magistrate, Shillong, particularly for remand and bail.

27. On perusal of the judgments cited by the learned counsel for the petitioners, it is seen that the common issue of exercise of jurisdiction by a Judicial Magistrate over a district as opposed to and confined to a Sub-Division has been dealt with in the said judgments.

28. In the case of ***Golam Rahaman Khan (supra)*** the Calcutta High Court on observation that the incumbent Magistrate exercising first class powers stationed at Howrah with his local area of jurisdiction not having been defined, it is held that his jurisdiction would extend to the whole district of Howrah. Similarly, in the case of ***Baliram Nagorao Ekbote, Manager A.A.V. School, Umarkhed (supra),*** and in the case of ***Prasanta Kumar Mukherjee (supra)*** as well as in the case of ***Bai Meghi Sajan & Ors (supra)*** a similar ratio has been laid down as above. In all the above mentioned cases, the point of reference is the provision of Section 12 of the Code of Criminal Procedure, 1898, which section corresponds to Section 7 of the Code of Criminal Procedure, 1973.

29. Coming back to the case in hand, the impugned order would reflect that the learned JMFC, Shillong had taken up the bail application on being endorsed with police papers and bail matters on a particular date i.e. 28.05.2020. By virtue of the related notifications, it would be proper to say that the said learned JMFC, Shillong has not traverse or acted without jurisdiction in passing the impugned order, though there might have been an overlap of jurisdiction, but apparently the learned JMFC, Shillong is not incompetent to take up the bail matter and to pass the impugned order.

30. From the submissions of the learned counsels for the rival parties, it appears that though differently argued, both sides have contended that the learned JMFC, Shillong has exercised due jurisdiction while passing the impugned order, however the learned counsel for the petitioners would submit that the same has been exercised without application of mind and the learned AAG would submit that the same has been exercised judiciously.

31. On perusal of the impugned order, it is seen that the learned JMFC, Shillong had taken up the bail matter on the same being endorsed to her. It is also seen that the learned counsel for the petitioners therein had acknowledged the fact that the charge sheet has been filed against the accused in the case. The prosecution has also taken the same ground that the charge sheet having been filed, the prayer for rejection of the bail application is made. The learned JMFC, Shillong on further confirmation from the Court of Prosecuting Inspector (P.I) has therefore passed the impugned order.

32. In my considered opinion, I find that the learned JMFC, Shillong had passed the impugned order on the submissions of the parties and as it is well settled that grant or refusal of bail depends on the discretion of the Court. As stated above, I find no perversity or illegality in the said impugned order and as such, I find that the learned JMFC, Shillong has passed the impugned order within jurisdiction and on this count, I find that the judgments cited by the learned counsel for the petitioners are relevant to the extent and as regard the issue of jurisdiction.

33. Coming to the issue of maintainability, the learned counsel for the petitioners has submitted that in the case of ***Madhu Limaye (supra)*** at paragraph 10 of the same, the Hon'ble Apex Court has held that notwithstanding the provision of Section 397 (2) Cr.P.C, 1973, the High Court in appropriate cases may take recourse to the provision of Section 482 Cr.P.C by invoking its inherent power, there being no other provision in the Code for the redress of the grievance of the aggrieved party.

34. Another case cited by the learned counsel for the petitioners is the case of ***Girish Kumar Suneja (supra)*** particularly at paragraphs 29, 30 and 31 of the same which reads as follows:

> ***"29.*** *This leads us to another facet of the submission made by learned counsel that even the avenue of proceeding under Section 482 of the Cr.P.C. is barred as far as the appellants are concerned. As held in Amar Nath, 1977 SCC (Cri) 585 and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) Cr.P.C. that cannot be circumvented by resort to Section 482 CrPC. There can hardly be any serious dispute on this proposition.*
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> ***30.*** *What then is the utility of Section 482 CrPC? This was considered and explained in Madhu Limaye, 1978 SCC (Cri) 10 which noticed the prohibition in Section 397(2) CrPC and at the same time the expansive text of Section 482 CrPC and posed the question: In such a situation, what is the harmonious way out? This Court then proceeded to answer the question in the following manner: (SCC pp. 555-56, para 10)*
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> > *"10. ... In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under*

the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly."

31. *The expanse of Section 482 CrPC was also discussed in great detail in State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426 in the context of quashing a first information report or a complaint. After giving several illustrations, this Court cautioned that the power available under Section 482 CrPC should be exercised in the "rarest of rare" cases. It was said: (SCC p. 379, para 103)*

" 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

35. The learned counsel for the petitioners has reiterated that even if there is a bar under Section 397 (2) Cr.P.C for exercise of revisional power of the High Court, the High Court would still be able to exercise power under Section 482 Cr.P.C to meet ends of justice as is required in the present case vis-a-vis the impugned order.

36. The learned AAG has maintained that the impugned order passed is an interlocutory order and as such, this High Court is barred from exercising jurisdiction under Section 397 (2) Cr.P.C. Relying on one of the judgments cited by the learned counsel for the petitioners i.e. a case of ***Girish Kumar Suneja (supra)***, the learned AAG has referred to paragraphs 10, 11, 21, 27 & 29.

37. On perusal of the portions relied upon by the learned AAG as referred to above, it is seen that in the said case of ***Girish Kumar Suneja (supra)*** the main context of the case is with regard to revisional jurisdiction and shifting of inter alia revisional forum from High Court to Supreme Court. However, within the said judgments, the concept of revision jurisdiction and revisable order has been discussed, which would led this Court to understand that under the old Criminal Procedure Code of 1898, Section 439 of the same confer a discretionary jurisdiction as far as exercise of revision jurisdiction is concerned. At paragraph 21 of the said judgment, the Hon'ble Apex Court has also reiterated the concept of an intermediate order in contradistinction to a final order or interlocutory order as was held in the case of ***Madhu Limaye (supra).*** At paragraph 27 of the same, the Hon'ble Apex Court has held that filing of a revision petition before the High Court is an entitlement and not a right and that the High Court is under no obligation to entertain a revision petition, and if the High Court is inclined to accept the revision petition, it can do so, only against the final order or an intermediate order. At paragraph 29 the Hon'ble Apex Court has also referred to the case of ***Amar Nath v. State of Haryana: (1997) 4 SCC 137*** and has agreed with the conclusion therein that if an interlocutory order is not revisable due to the prohibition contained in Section 397 (2) Cr.P.C, that cannot be circumvented by resort to Section 482 Cr.P.C.

38. In surmise, it is seen that an order for grant or refusal of bail does not determined the innocence or guilt of an accused. Hence, it does not terminate the proceedings to make the impugned order revisable, which stands to reasons that such an order is an interlocutory order. In such a case, there is an inherent lack of jurisdiction on the part of the High Court in entertaining a revision application in respect of interlocutory orders.

39. In view of the above, I am of the considered opinion that the instant revision petitions are not maintainable and accordingly, these set of revision petitions are hereby rejected.

40. Petitions stands disposed of by this common order.

41. Registry is directed to send back the Lower Court case record to the concerned Court.

Judge

Meghalaya
25.06.2020
"D. Nary, PS"

सत्यमेव जयते
HIGH COURT OF MEGHALAYA