
(2011) 06 GAU CK 0030

Gauhati High Court

Case No: Criminal Petition No. 03 of 2010

Shri H. Lalthanmaia

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision: June 2, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 374, 482
- Foreigners Act, 1946 - Section 14, 2, 9
- Penal Code, 1860 (IPC) - Section 307, 394

Hon'ble Judges: H. Baruah, J

Bench: Single Bench

Advocate: S.N. Meitei, for the Appellant; Dinari T. Azyu, Addl. P.P., for the Respondent

Final Decision: Allowed

Judgement

H. Baruah, J.

Heard Mr. S.N. Meitei, learned Counsel for the Petitioner and Mrs. Dinari T. Azyu, learned Additional Public Prosecutor for the State Respondents.

2. Petitioner herein being aggrieved by the judgment and order dated 28-6-2004 passed by Additional District Magistrate (Judicial), Lunglei District, Lunglei in Criminal Appeal No. 2 of 1996 has preferred this criminal petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India to quash the judgment and order as indicated above, where under, the Petitioner was convicted u/s 14 of the Foreigners Act, 1946 and sentenced to under go 6 (six) months S.I and pay fine of Rs. 200/- in default S.I for one month.

3. It appears from the records that around 8 am on 16-5-1992 one Pi Lalbeiseii, a meter reader working in the Office of SDO, Maintenance Division, P & E, Lunglei was severely assaulted and money with her had been forcibly taken away by some

unknown miscreants. An FIR having been filed, Lunglei P.S Case No. 123 of 1992 was registered u/s 394/307 IPC. During investigation a prima facie case having found as against the Vanlalchungnunga and Lalthanmawia, the present Petitioner, a charge sheet was laid against them. Both were tried before the Judicial Magistrate, 1st Class, Lunglei and after due trial they were found guilty of the charges framed against them and accordingly convicted to under go S.I for six months and pay fine of Rs. 200 each in default S.I. for one month.

4. Being aggrieved, the Petitioner, Lalthanmawia filed a Criminal Revision No. 17 of 1996 before the Court of Deputy Commissioner, Lunglei District, Lunglei challenging the conviction and sentence. The revisional court by judgment and order dated 15-11-1996 dismissed the revision.

5. The Petitioner thereafter approached this Court by filing Criminal Appeal No. 2 of 1996. This Court by judgment and order dated 31-03-1999 set aside the judgment and order dated 15-11-1996 and remanded back the matter to the Court of Additional District Magistrate (Judicial), Lunglei District, Lunglei with a direction to convert the revision to an appeal u/s 374 of the Code of Criminal Procedure with an observation that the jurisdiction of revisional court being limited, the revision Petitioner may be prejudiced by the impugned judgment and order. On remand the revision was converted to an appeal and accordingly rendered this impugned judgment by the Court of Additional District Magistrate (Judicial), Lunglei, whereby and where under, the conviction u/s 394 was set aside and affirmed the conviction u/s 14 of the Foreigners Act, 1946.

6. Now, this criminal petition is filed for quashing the judgment and order of conviction and sentence.

7. It is submitted by Mr. S. N. Meitei, learned Counsel for the Petitioner that the Petitioner being charged u/s 14 of the Foreigners Act, 1946, he was not asked nor given any liberty to discharge his liability as provided u/s 9 of the Foreigners Act, 1946. The conviction is awarded by the trial court only on the basis of the statement recorded u/s 313 of the of the Code of Criminal Procedure which, however, cannot be branded as evidence. It is submitted by Mr. Meitei that under Foreigners Act, 1946, burden of proof is always on the accused to prove that he is not a foreigner as defined in Section 2(a) of the Act. The trial court having framed charge u/s 14 of the Foreigners Act, 1946, opportunity ought to have given to him to place evidence to prove that he is not a foreigner within the definition of "foreigner" under the Act. This opportunity having not been given to Petitioner herein, the trial court has violated the provision of Section 9 of the Foreigners Act. It is further argued by him that no person can be convicted on the basis of the statement recorded u/s 313 of the Code of Criminal Procedure as such statement cannot be branded as evidence. It is under the facts and circumstances, Mr. S.N. Meitie, has prayed that the conviction awarded u/s 14 of the Foreigners Act is liable to be quashed.

8. From the perusal of the records, it appears that at no point of time the Petitioner was asked to adduce evidence for discharging his burden u/s 9 of the Act. Mrs. Dinari T. Azyu, learned Addl. P.P. also submits that the trial court did not offer any opportunity to the Petitioner to discharge his burden to prove that he is not a foreigner. Conviction is passed only on the basis of the statement recorded u/s 313 of the Code of Criminal Procedure, which according to Mrs. Dinari T. Azyu would be illegal.

9. Taking all the matters in its entirety, this Court is of the considered view that the judgment rendered by the appellate court cannot stand in the eye of law. It is accordingly set aside and quashed. The matter is remanded back to the trial court to proceed with the trial of the Petitioner on the basis of charge sheet filed against him and another. Such trial shall be commenced after receipt of the records from this Court. Mr. S. N. Meitei, learned Counsel representing the Petitioner shall advise the Petitioner to appear before the trial court to stand his trial .

10. Criminal Petition is accordingly allowed.