

Monilal Bakshi Vs Dipak Ranjan Bakshi

Court: Gauhati High Court

Date of Decision: March 23, 2001

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 144, 144(4), 145

Citation: (2001) CriLJ 3776 : (2001) 2 GLT 199

Hon'ble Judges: P.G. Agarwal, J

Bench: Single Bench

Advocate: M. Singh and G. Singh, for the Appellant; G.P. Bhowmick and R. Hazarika, for the Respondent

Final Decision: Dismissed

Judgement

P.G. Agarwal, J.

Heard Mr. M. Singh learned counsel for the petitioner and Mr. GP Bhowmick learned counsel for the opposite party.

2. In this revision the short point that has arisen for consideration is that whether a proceeding drawn u/s 144 CrPC can be converted to a

proceeding u/s 145 CrPC. Although there is no specific provision under the Criminal Procedure Code, various High Courts have held that

proceeding drawn u/s 144 CrPC may be converted to a proceeding under 145 CrPC in appropriate cases. This court will like to agree with the

above provision.

3. The next question that comes for determination is when a court can pass order of conversion. In view of the provisions u/s 144(4) CrPC no

order passed in a proceeding u/s 144 CrPC shall remain in force for more than two months from the date of making the order thereof. There is a

proviso which provides for extension of the period for two months but admittedly the proviso is not applicable in the present case as no such

extension was lawfully made. Thus, a Magistrate has jurisdiction/power to pass an order of conversion when the proceeding u/s 144 is alive, that is

within a period of two months from the date of initiation of the proceeding. Once the proceeding u/s 144 CrPC lapses due to efflux of time, the

Magistrate has no power to pass any order as the proceeding itself has become dead.

4. It is, therefore, held that in appropriate cases the Magistrate can pass an order of conversion from proceeding u/s 144 CrPC to proceeding u/s

145 CrPC within the period when the proceeding is alive.

5. The learned counsel at this stage submits that the application for conversion was made during the pendency of the proceeding u/s 144 CrPC

itself. The making/filing of the application for conversion is not sufficient, the order of conversion have to be passed during the stipulated period.

6. Now, coming to the facts of the case, there is no dispute at the Bar that the proceeding u/s 144 CrPC was drawn up on 21.10.1992. Thus, in

view of the provisions contained u/s 144(4) the order lost its force on 20.12.1997. The order of conversion was passed on 5.1.1998 when the

said proceeding u/s 144 CrPC was not alive. The order of conversion was passed beyond the stipulated period. The revisional court rightly

quashed the proceeding u/s 145 CrPC.

7. In view of the above the revision petition is dismissed.