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Date: 13/11/2025

(2001) 03 GAU CK 0024

Gauhati High Court

Case No: Criminal Revision No. 448 of 1998

Monilal Bakshi APPELLANT

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Dipak Ranjan Bakshi RESPONDENT

Date of Decision: March 23, 2001

Acts Referred:

• Criminal Procedure Code, 1973 (CrPC) - 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 form 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.