

(1990) 11 GAU CK 0014

Gauhati High Court

Case No: Criminal Revision No. 202 of 1981

Prafulla Chandra Mech

APPELLANT

Vs

Delhi Special Police
Establishment C.I.A.

RESPONDENT

Date of Decision: Nov. 28, 1990

Acts Referred:

- Assam Re-organisation (Meghalaya) Act, 1969 - Section 3
- Constitution of India, 1950 - Article 21, 244(2), 372, 395
- Government of India Act, 1935 - Section 91, 92, 92(1)
- North Eastern Areas (Reorganisation) Act, 1971 - Section 5
- Prevention of Corruption Act, 1947 - Section 5(1), 5(2)

Citation: (1991) 2 GLR 170

Hon'ble Judges: R.K. Manisana Singh, J

Bench: Single Bench

Advocate: D.K. Bhattacharjee, D.K. Das, H.K. Sarma and B.M. Choudhury, for the Appellant; D.K. Hazarika, Special Public Prosecutor, CBI, for the Respondent

Final Decision: Allowed

Judgement

Manisana, J.

This revision petition arises from an order of the Special judge Shillong in Special Case No. 36 of 1974/2 of 1979 made on 12.5.81.

2. Facts,-- The accused Prafulla Chandra Mech, the Petitioner herein was working as executive Engineer. Jowai Badarpur Road Construction Division, Government of Assam from April 1970 to December 1971. The accusation against him was that during the said period of 20 months the income of the accused from different known source was Rs. 82,668.85. His expenditure during the said 20 months Was Rs. 49,554.63. On an enquiry, it was found that during the said period of 20 months assets of the Petitioner in hand was Rs. 1,02,209.00 and, therefore, he was found

possessing assets disproportionate to his known source of income, viz, Rs. 66,094. 88 (after giving margin). The accused Petitioner as a public servant has thus committed offence punishable u/s 5(2) read with 5(1)(e) of the Prevention of Corruption Act, 1947. On the basis of an FIR dated 18.2.74, the Delhi Special Police Establishment investigated the offence and submitted charge-sheet dated 31.11.74.

3. After submission of the charge-sheet, the Petitioner has challenged the jurisdiction of the Delhi Special Police Establishment to investigate the offence alleged to have been committed by him at Jowai and to submit charge-sheet. The learned Special Judge has held that the Delhi Special Police Establishment had jurisdiction to Investigate the offence. Hence this petition.

4. Mr. D.K. Bhattacharjee, the learned Counsel for the Petitioner Das advanced two submissions. First, the Prevention of Corruption Act, 1947, for short the Act of 1947", has not been extended to Jowai where the occurrence took place. Secondly, the Government of India has not extended the powers and jurisdiction of the members of the Delhi Special Police Establishment u/s 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946, for short "the Act of 1946" in Jowai.

5. Before the commencement of the Constitution of India u/s 92 of the Government of India Act 1935, for short "the Act of 1935", no Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or the partially excluded area, unless the Governor by public notification so directs. Section 91 of the Act of 1935 defines excluded areas and partially excluded areas. u/s 91 of the Act of 1935, the expressions "excluded areas" and "partially excluded areas" mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas. On 3 March 1936, the Government of India (Excluded and Partially Excluded Areas), Order, 1935, for short "the Order" was issued Under the Order, in the State of Assam "excluded areas" were and/or are the North-East frontier (Sadiya. Balipara and Lakhimpur) Tracts; the Naga Hills District ; the Lushai Hills District; and the North Cachar Hills subdivision of the Cachar district; and the "partially excluded area" were and/or are the Gare Hills District; the Mikir Hills (in the Nowgong and Sibsagar Districts); and the British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment.

6. The Governor of Assam in exercise of power u/s 92 of the Act of 1935 issued the following notification.

(1) The notification dated 8 May 1947 (published in the Assam Gazette, 14 May 1947, Pt II page 343) runs.:

In exercise of the powers conferred by Sub-section (1) of Section 92 of the Government of India Act, 1935, the Governor of Assam is pleased to direct that the Prevention of Corruption Act, 1947 (Act No II of 1947), shall apply to all the Excluded Areas in Assam specified in the Schedule to the Government of India (Excluded and Partially Excluded Area) Order, 1936.

(2) The notification dated 19 May 1947 (published in the Assam Gazette, 24 May 1947, Pt II page 384) read.:

In exercise of the powers conferred by Sub-section (1) of Section 92 of the Government of India Act, 1935, the Governor of Assam in pleased to direct that the Prevention of Corruption Act, 1947 (Act II of 1947) as republished with this Government Notification No. HPL. 151/47/1, dated 9th April 1947, shall apply to all the Partially Excluded Area in Assam specified In the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order, 1936.

The above two (2) notifications make It clear that the Prevention of Corruption Act, 1947 was made applicable to the "excluded areas" and "partially excluded areas" of the State of Assam. is not disputed that Jowal where the occurrence took place is within the "partially excluded areas". In that view of the matter, the Act of 1947 was brought into Operation in Jowai from May 1947 by the exercise of authority by the Governor.

7. After Commencement of the Constitution of India the Act of 1935 has been repealed by Article 395 of the Constitution. Under Article 372 of the Constitution of India, subject to the other provisions of the Constitution, all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue to be in force therein until altered or repealed or amended by the competent Legislature or other competent authority, and the President of India may by order make such adaptations and modifications of such laws, whether by way of repeal or amendment, as may be necessary or expedient, and provided that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made. Article 244(2) of the constitution provides that the provisions of Sixth Schedule shall apply to the administration of Tribal Areas in the State of Assam. Under para 12 of the sixth Schedule, with regard to the Acts of Parliament the Governor of Assam shall decide whether any Act of the Parliament shall not apply to an autonomous district or an autonomous region or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification with or without retrospective effect. By Adaptation of Laws Order (26.1.50), Sub-section (2) of section (1) of the Act of 1947 was substituted by the words "It extends to the whole of India" and, therefore, the Act of 1947 extended throughout India. The Act of 1947 was in force in the "excluded areas" and "partially excluded area" and it would continue in those areas which were excluded and partially excluded areas before the commencement of the Constitution. (sic) Unless altered by the Governor exercising power under para 12 of the sixth Schedule, Therefore, the position has not been changed after commencement of the Commencement of the Constitution and it continues to be in force in view of the discussions above.

8. With regard to the Delhi Special Police Establishment Act, 1946, the Assam Autonomous Districts (Special Police Establishment) Regulation, 1951, for short the

"Regulation" was made under paragraph 19 of the sixth Schedule. The regulation was Published in the Assam Gazette of 21 November 1951 after receiving the assent of the president on 27 October 1951. The Regulation reads:

1. (a) This Regulation may be called the Assam Autonomous District (Special Police Establishment) Regulation, 1951.

(b) It extends to the tribal, areas of the State of Assam Specified in part A of the table appended to paragraph 20 of the sixth Schedule to the constitution of India, hereinafter referred to as "the said areas".

(c) It shall come into force at once.

2. The provisions of the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946) and all orders made or directions issued thereunder subject to any amendments to which they are for the time being subject in the rest of Assam shall be in force in the said areas and be deemed to have come into force on the 26th January, 1950.

3. Notification No SK/124/49, dated the 5th December 1949 issued by the Deputy Advisor to the Governor of Assam for Excluded Areas and State is hereby cancelled", (emphasis added)

9. The Regulation came into force on 26 January 1950. To Part A of the table appended to para 20 of the Sixth Schedule referred to in the Regulation the Khasi and Jaintia Hills District, where Jowai is situated, is specified therein, Therefore, the Delhi Special Police Establishment Act, 1946, for short "the Act of 1946", has been in force in the Khasi and Jaintia Hills District on and from 26 January 1950, i.e. the powers and jurisdiction of the police force belonging to the Union Territory under the Act of 1946 were extended to the khasi and Jaintia Hills District by the legislative enactment and continues to be in force. Therefore, the question of extension of powers and jurisdiction of the Delhi Special Police Establishment by the Central Government u/s 6 and the consent of the State Government u/s 5 are not required.

10. It may be noted here that u/s 3 of the Asian Reorganisation (Meghalaya) Act, 1969, within the State of Assam, as Autonomous State known as Meghalaya was formed comprising tribal areas, namely-

1) The United Khasi Jaintia Hills District as described sub-paragraph (2) of paragraph 20 of the Sixth Schedule to Constitution (exclusive of the proviso thereto) but excluding the areas transferred to the Mikir Hills autonomous district by the notification of the Government of Assam No TAD/R/31 /50/149 dated 13th April, 1951, and

2) the Garo Hills District specified in Part A of the table appended to paragraph 20 aforesaid.

In the Sixth Schedule, paragraph 12-A was inserted by the Assam Reorganisation (Meghalaya) Act. Under paragraph 12-A, with respect to any Act of the Parliament, President by notification direct that it shall not apply to Meghalaya, or shall apply thereto or to any part thereof subject to such exceptions or modifications as may be specified in the notification with or without retrospective effect. Since there is no notification, the Act of 1946 continues to be in force.

11. This was the position before the commencement of the North-Eastern Areas (Reorganisation) Act 1971, for short "the Act of 1971" which came into force on 21.1.72. u/s 5 of the 1971 Act, the State of Meghalaya was formed comprising the territories which immediately before 21.1.72 were comprised in the autonomous State of Meghalaya aforesaid, and so much of the territories comprised within the cantonment and municipality of Shillong which did not form part of that autonomous State, and thereupon the said territories shall cease to form part of the State of Assam as existing before 21.1.72. By the Act of 1971 necessary amendment of paragraph 12-A of the Sixth Schedule was also made, Under Clause (b) of paragraph 12-A, the President may, with respect to any Act of the parliament by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions and notifications as may be specified in the notification with or without retrospective effect. u/s 79 of the Act of 1971 the Government of Meghalaya may before the expiration of two years from the appointed day (21.1.72) by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptation and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. However u/s 80 of the 1971 Act, notwithstanding that no provision or insufficient provisions has been made u/s 79 for the adaptation of a law made before the appointed day, any Court may, for the purpose of (sic) its application in relation to the State of Meghalaya, construe law in such manner, without affecting the substance, as may be necessary.

12. After the formation of the State of Meghalaya, it appears that with regard to the Act of 1946, the Act of 1947 and the Regulation, no adaptation has been made. Although, no adaptation has been made, by the reason of the absence of adaptation by the Government of Meghalaya, it cannot be said that the Acts and Regulations referred to above lapsed for the reason that operation of the existing laws is not conditioned by making adaptations and modifications by the Government in view of the discussions above.

13. For the reasons stated above, the Act of 1946 was brought into application by legislative enactment on and from 26 January 1950 and the Act of 1947 was extended and continues to be in force, in the State of Meghalaya including Jowai where the Occurrence took place.

14. The next question which arises for consideration is whether the case shall be sent back for consideration of the charge. The constitutional position is now well settled that the right to a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21 of the Constitution, that is to say, speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution for "fair and reasonable procedure" is what is contemplated by the expression "procedure established by law" under Article 21. Therefore, the infringement of that right in appropriate cases, would be sufficient to quash conviction or stop further proceedings, what is the appropriate case is the question. It depends upon the variety of relevant factors.

15. Coming to the case on hand, the occurrence took place between April 1970 and December 1971. The first information report was lodged on 18.2.74. The charge-sheet was submitted on 31.12.74. The case has been pending from 1974 till date for no fault of the accused. There has been enormous delay and the sword has been hanging over the head of the accused for the last more than 16 years. It is true that offences of that kind should not be allowed to go unpunished. But, as already stated, quick justice is sine (sic) non of the Article 21 of the Constitution Of India. Considering the over-all circumstances of the case, it would be just and fair to direct that the trial or prosecution of the Petitioner to proceed no further. I do so accordingly. In the result, the proceedings against the Petitioner are quashed. The petition is allowed.