2020 INSC 171

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE TO APPEAL (CRL.) NO.1218 OF 2018

THE STATE OF MEGHALAYA ....PETITIONER

VERSUS

MELVIN SOHLANGPIAW ....RESPONDENT

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. The Respondent herein, a member of the Khasi Scheduled Tribe, was being tried for the offences punishable under Sections 302 and 201 of the Indian Penal Code ('IPC') before the Sessions Judge, Nongstoin, West Khasi Hills District. Briefly, the case set up by the prosecution is that a dead body was found lying on the Nondein river bank on 26.03.2017,

pursuant to which the Officer in Charge of Police Station, Nongstoin ('Complainant') was informed and an FIR was registered by him. Upon investigation, the identity of the deceased person was known, who was also found to be a member of the Khasi Scheduled Tribe. With the use of a SIM card recovered from her body, the last calls made using her number were traced to the Respondent herein (accused). Consequently, the accused was arrested and he voluntarily lead the police to the spot where he had buried the dead body. On 31.08.2017, a chargesheet was filed against him under Sections 302 and 201, IPC. On 08.11.2017, the case was committed for trial to the Court of the Sessions Judge, Nongstoin, West Khasi Hills District and the accused was summoned to appear before it.

However, on the basis that the parties to the instant case are both tribals and thus, the case is exclusively triable by the District Council Court, the accused preferred a petition for transfer of the said case to the Court of Judge, Khasi Hills Autonomous District Council, Shillong. Vide the impugned judgment dated 05.12.2017, the High Court of Meghalaya, Shillong allowed this petition. The instant SLP has been filed against this order of the High Court.

2. At the very outset, it is important to note that the area where the alleged offence is said to have occurred, West Khasi Hills District, is a notified autonomous district included in the table appended to paragraph 20 of the 6th Schedule to the Constitution of India ('the Constitution'), which deals with the administration of tribal areas in the States of Assam, Meghalaya, Mizoram, and Tripura. Specifically, the aspect of judicial dispensation in such areas is dealt with under paragraphs 4 and 5 of the 6th Schedule to the Constitution as follows:

> **4. Administration of justice in autonomous districts and autonomous regions.—**(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule…
>
> …(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

(a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
(b) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
(c) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;
(d) the enforcement of decisions and orders of such councils and courts;
(e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

x x x

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898 , on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.—(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the

> case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.
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> (emphasis supplied)

3. Relying on these provisions, learned Counsel for the Petitioner urged that under paragraph 4 of the 6th Schedule to the Constitution, all of the parties to a suit or case must necessarily belong to Scheduled Tribes within such areas, for the District Council Court to have exclusive jurisdiction over such suits or cases. Given that a criminal case is always prosecuted by the State, he submitted that the instant case against the Respondent cannot be said to be a dispute between two tribals, as the deceased is not and cannot be a party to such a case. He also urged that the Complainant, i.e. the Officer in Charge at the Police Station, can also not be considered a party to the case, as he was acting in his official capacity and thus forms part of the State machinery.

4. Per contra, learned Counsel for the Respondent-accused emphasized that a combined reading of paragraphs 4 and 5 of the 6th Schedule to the Constitution indicates a special dispensation for the adjudication of disputes in tribal areas, that

must be given effect. Where the Governor exercises his power under paragraph 5(1) and entrusts the Courts set up by a District Council with the trial of certain kinds of offences, such Courts must have exclusive jurisdiction. In this regard, learned Counsel drew our attention to the notification dated 07.02.2017, vide which the Governor of Meghalaya conferred the judge of the Additional District Council Court, Shillong, with the powers for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the IPC or under any other law applicable in the Khasi Hills Autonomous District Council for the time being. In light of this, she submitted that the jurisdiction of the case against the Respondent rests exclusively with the District Council Court. Reliance was also placed on a Full Bench decision of the Meghalaya High Court in ***Longsan Khongngain* v. *State of Meghalaya*, (2012) 1 Gauhati Law Reports 812** in this regard.

5. Upon considering the material on record and the arguments advanced by the parties, the central issue that arises for our consideration is whether the criminal case against the Respondent is exclusively triable by the District Council Court,

having regard to the scheme and language of paragraphs 4 and 5 of the 6th Schedule to the Constitution.

6. Before we delve into the provisions of the 6th Schedule, it is to be noted that the Sessions Court before which the Respondent was facing trial is a court established and functioning under the provisions of the Code of Criminal Procedure, 1973 ('Cr.P.C.'). Notably, sub-section (2) of Section 1 of the Cr.P.C. provides that the Code has no application to tribal areas. At the same time, it gives the State Government the power to extend the operation of the Cr.P.C. to tribal areas as follows:

> "**Section 1. Short title, extent and commencement.**
> (1) This Act may be called the Code of Criminal Procedure, 1973.
> (2) It extends to the whole of India
> Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply--
> (a) to the State of Nagaland,
> (b) to the tribal areas,
> but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification.
> Explanation.-- In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth

Schedule to the Constitution, other than those within the local limits of the municipality of Shillong.

As seen above, the expression "tribal areas" occurring in Section 1 of the Cr.P.C. refers to the areas indicated in the Fifth and Sixth Schedule of the Constitution. In the absence of a notification by the State Government extending the Cr.P.C. to such areas, except the three chapters referred above, the provisions of the Cr.P.C. are not applicable to the tribal areas in the State of Meghalaya, including the Khasi Hills District.

Here, it would be useful to note that that Chapter VIII of the Cr.P.C. deals with security for keeping peace and for good behaviour, Chapter X deals with maintenance of public order and tranquility, and Chapter XI deals with preventive action of the Police. Evidently, none of these subjects falling under Chapter VIII, X and XI are relevant for the purpose of deciding this matter. Trial before the Court of Sessions falls under Chapter XVIII of the Cr.P.C, which does not apply to the tribal areas in question.

7. Under the 6th Schedule to the Constitution, Paragraphs 4 and 5 deal with the administration of justice in Autonomous Districts and Autonomous Regions referred to in paragraph 2 of the 6th Schedule. As mentioned supra, paragraph 4(1) accords the District Council or Regional Council, as the case may be, with the

power to constitute Courts to *exclusively* try suits and cases where all parties thereto belong to Scheduled Tribes within such areas. This, however, does not apply to those suits and cases that are covered by paragraph 5(1) of the 6th Schedule, wherein the Governor may confer on the District or Regional Council, or the courts set up by a District Council, or on any officer appointed by the Governor in that behalf, such powers under the Cr.P.C. or the Code of Civil Procedure ('C.P.C.') as the Governor deems appropriate. Further, paragraph 4(4) stipulates that Courts set up by the District Council are to function in accordance with the procedure evolved by the rules made by the District Council or Regional Council, as the case may be.

8. In the instant case, in exercise of powers under paragraph 4(4) of the 6th Schedule to the Constitution, the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 were adopted. Rule 9 hereunder provides for the constitution of one District Council Court for the Khasi Hills Autonomous District and for the appointment of judges thereto.

In exercise of such powers under Rule 9 and paragraph 5(1) of the 6th Schedule, a notification was published on 07.02.2017, vide which the Governor of Meghalaya appointed an

Additional Judge to the District Council Court, Shillong and conferred her with powers for the trial of offences punishable with death, transportation for life or imprisonment for a term of not less than five years under the IPC or any other law applicable in the Khasi Hills Autonomous District Council.

9. In light of such specific conferral of powers on the District Council Court, Shillong, the issue to be examined is whether the jurisdiction to try the case against the Respondent rests solely with the District Council Court.

9.1 As mentioned supra, paragraph 4 of the 6th Schedule contemplates the "*trial of suits and cases between the parties all of whom belong to Scheduled Tribes*" to the exclusion of any other Court in the State. Though the expression "*suits and cases*" has not been defined in Article 366 of the Constitution, the Cr.P.C., or the C.P.C., in common legal parlance developed over the years, the expression 'suit' is used to connote legal proceedings of a purely civil nature, while the term 'case' is used to connote either a civil suit or a criminal proceeding.

9.2 In view of this, when we look to the argument raised by the Petitioner that the term 'case' as used in paragraph 4 of the 6th Schedule precludes criminal cases, merely because the State is the de jure complainant in all such cases, it appears that their

interpretation suggests that paragraph 4 of the 6th Schedule does not comprehend trial of criminal cases by the District Council Court at all. This, however, is not supported by the scheme of the 6th Schedule, specifically when a conjoint reading of paragraphs 4 and 5 is undertaken. As mentioned supra, paragraph 4 itself refers to suits and cases to which provisions of paragraph 5(1) apply. Thus, to examine the content of "suits and cases" under paragraph 4, it is first necessary to look to the content of paragraph 5(1).

9.3 Under paragraph 5(1), the Governor is invested with the power to confer the District or Regional Council, or the courts set up by a District Council, or on any officer appointed by the Governor in that behalf, such powers under the Cr.P.C. or the C.P.C. as he deems appropriate, for the trial of certain suits, cases, and offences. The conferral of powers under the Cr.P.C. in certain instances, as has been done by the notification dated 07.02.2017 here, makes it amply clear that the District Council Court has jurisdiction to entertain criminal cases, notwithstanding the fact that the State is the de jure Complainant in such cases and cannot be considered as a tribal

party. In fact, it is reflective of an intention to ascribe a broad meaning to the term 'case' under paragraph 4 of the 6th Schedule.

9.4 Such a reading of the term 'cases' is also substantiated by the fact that paragraph 5 only empowers the Governor to make the Cr.P.C. applicable to those cases where the punishment for the offence is not less than five years under the IPC. By necessary implication then, the Governor is not authorized to invest any of the bodies mentioned in paragraph 5(1) with the powers under Cr.P.C. for offences where the punishment is less than five years. Reading paragraph 5 in conjunction with paragraph 4 inevitably leads to the conclusion that all such criminal cases are triable by the Courts constituted under paragraph 4 of the 6th Schedule, irrespective of the fact that de jure Complainant is the State, as long as both the accused and the victim of the offence belong to the same Scheduled Tribe.

9.5 Thus, in our considered opinion, the term "case" does not preclude criminal cases merely because the State is a party to such cases. Upon a close reading of paragraphs 4 and 5 to the 6th Schedule, it becomes clear that the reference to "*suits and cases between the parties all of whom belong to Scheduled Tribes*" was in fact to the affected party (victim/Complainant) and the accused party.

9.6 In the instant case, it is an admitted position that the victim and the Respondent-accused both belong to the Khasi Scheduled Tribe. Thus, given that there is a specific notification dated 07.02.2017 that confers the District Council Court with the powers under Cr.P.C. to try certain criminal offences, we find that such conferral should be given effect. In fact, upon a combined reading of paragraphs 4 and 5 of the 6th Schedule, such District Council Court has the exclusive jurisdiction to entertain such a case.

10. In view of the foregoing, we do not find any grounds to interfere with the judgment and order dated 05.12.2017 passed by the High Court of Meghalaya inasmuch as the High Court was justified in transferring the criminal case against the Respondent-accused from the Court of Sessions Judge, Nongstoin, West Khasi Hills District to the Court of Judge, Khasi Hills Autonomous District Council, Shillong.

As mentioned supra, on 08.11.2017, the case against the accused was committed for trial to the Court of the Sessions Judge, Nongstoin, West Khasi Hills District and he was summoned to appear before it. In view of the same, we now direct the transferee Court, i.e. the District Council Court to issue fresh

summons to the accused, if he has not already entered appearance, and to proceed with the trial after framing of charges in accordance with law. Furthermore, given that the incident in question occurred in March, 2017, the District Council Court is directed to complete the trial and decide the matter on merits as early as possible, but not later than one year from the date of this order. With such observations, the instant Special Leave Petition is disposed of.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(R. SUBHASH REDDY)

New Delhi;
February 11, 2020