

Monilal Bakshi Vs. Dipak Ranjan Bakshi

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Court : Guwahati

Decided On : Mar-23-2001

Judge : P.G. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 144, 144(4) and 145

Appeal No. : Criminal Revision No. 448 of 1998

Appellant : Monilal Bakshi

Respondent : Dipak Ranjan Bakshi

Advocate for Def. : G.P. Bhowmick and R. Hazarika, Advs.

Advocate for Pet/Ap. : M. Singh and G. Singh, Advs.

Disposition : Petition dismissed

Judgement :

1. 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 under Section 144 Cr PC can be converted to a proceeding under Section 145 Cr PC. Although there is no specific provision under the Criminal Procedure Code, various High Courts have held that proceeding drawn under Section 144 Cr PC may be converted to a proceeding under 145 Cr PC 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 under Section 144(4) Cr PC no order passed in a proceeding under Section 144 Cr PC 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 under Section 144 is alive, that is within a period of two months from the date of initiation of the proceeding. Once the proceeding under Section 144 Cr PC 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 under Section 144 Cr PC to proceeding under Section 145 Cr PC 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 under Section 144 Cr PC 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 under Section 144 Cr PC was drawn up on 21.10.1992. Thus, in view of the provisions contained under Section 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 under Section 144 Cr PC was not alive. The order of conversion was passed beyond the stipulated period. The revisional court rightly quashed the proceeding under Section 145 Cr PC.

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