

Joy Chandra Borkotoki Vs. State of Assam

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Court : Guwahati

Decided On : Jun-07-1976

Reported in : 1977CriLJ101

Judge : Baharul Islam, J.

Appellant : Joy Chandra Borkotoki

Respondent : State of Assam

Judgement :

ORDER

Baharul Islam, J.

1. This is an application under Section 401 of the Criminal Procedure Code, 1973 (hereinafter called the 'new Code') and is directed against an order passed by the Sessions Judge at Jorhat in Criminal Motion No. 13 (3)/74.

2. At the outset, Shri C, R. De, learned Counsel appearing for the State of Assam, raised a preliminary objection. His submission is that against the same impugned order of the Magistrate, the petitioner made an application before the Sessions Judge in revision and therefore a second application in revision before the High Court is barred in law.

3. In the Criminal case pending before the Magistrate, the prosecution made an application to record the evidence of the hand-writing expert on commission. The Magistrate allowed the Application by his order dated 20-7-1974. Against that order the accused-petitioner made an application before the Sessions Judge. The Sessions Judge held that in view of Section 397(2), the application before him was incompetent inasmuch as it was directed against an interlocutory order.

4. Unless this application is held to be competent, this Court cannot examine the correctness or otherwise of the aforesaid order of the Sessions Judge.

5. Section 399 of the new Code has given powers of revision to the Sessions Judge. Sub-section (3) of that Section provides, 'where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.' The power of revision has been given to the High Court by Section 401 of the Code. The Sub-section (3) of Section 399 of the Code is mandatory; in other words, when an application is made by a person against an order passed by a Magistrate before the Sessions Judge, the order of the Sessions Judge shall be final, another application made by the same person shall not be entertained by the High Court. Under Sub-section (3) of Section 399 the High Court is debarred from entertaining an application made by the same person against the same order. In my opinion, this application is barred under Sub-section (3) of Section 399. The preliminary objection prevails.

6. Dr. M.K. Sarma, the learned Counsel appearing for the petitioner submits that as the trial now pending before the Sessions Judge is under the old Code, i.e. Criminal Procedure Code of 1898; the interlocutory order passed by the Magistrate, and the order passed by the Sessions Judge in revision, both will be governed by the old Cr.P. C, in view of Section 484(2) of the new Code. In my opinion the submission cannot be accepted. The application in revision made before the Sessions Judge was not pending before the Magistrate, nor the application made before the Sessions Judge after coming into force of the new Cr.P. C can by any stretch of imagination, be said to be an application made

before the Magistrate, and as such, the application made by the petitioner before the Sessions Judge is not saved by Sub-section (2) of Section 484 of the Code.

7. In the result this application is rejected as incompetent. The Rule is discharged and the stay order vacated.

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