

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No.116 of 2023

Date of Order: 25.09.2024

Shri. Pearson Ch. Marak.

Vs. Smti. Krisbina N. Marak.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. T. Sangma, Adv.

For the Respondent(s) : Mr. A. G. Momin, Adv.

ORDER

A challenge to the maintainability of this criminal petition has been raised by the learned Counsel for the respondent on the ground of application of Section 3 of the Limitation Act, 1963.

1. Mr. A. G. Momin, learned Counsel for the respondent submits that though this petition has been filed and registered as criminal petition, the same essentially is a revision petition as rule 6 of the High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 1954 (hereinafter referred to as the Order), has been invoked in filing the present petition. The learned Counsel submits that rule 6 of the Order being revisional jurisdiction would attract the provisions of the

Limitation Act, 1963 and any petition invoking the said rule has to be filed within a period of 90 days as prescribed under Article 131 of the Limitation Act, 1963. The learned Counsel further submits that since the challenge in this petition is to an order passed in a proceeding under Section 125 Cr.PC., the exercise of jurisdiction under rule 6 of the Order has to be in accordance with the provision of Section 397 Cr.PC. and hence, would be subject to the provision of the Limitation Act, 1963. He submits that rules 3 & 4 (2) of the Order prescribe specific period for preferring appeal but rule 6 of the Order does not lay down any time frame in view of the fact that the law maker did not want to change the period available for filing revision prescribed in Article 131 of the Limitation Act, 1963. The learned Counsel submits that the present petition was filed on 01-11-2023, much beyond the period of 90 days without preferring any application for condonation of delay and without explaining any reasons for delay. The learned Counsel contends that the provisions of the Code of Criminal Procedure, 1973 has been made applicable throughout the State of Meghalaya by notification issued vide Memo No.LI(B).67/88/397-A dated 20-09-2022 and the impugned order having been passed in exercise of jurisdiction under Section 125 Cr.PC., the exercise of revisional jurisdiction under rule 6 of the Order in the present matter has to be subject to provision of Section 397 Cr.PC. In support of his contention, the learned Counsel places reliance on a decision of Patna High Court reported in *2012 SCC OnLine Pat 917, Sita Devi versus The State of Bihar & Anr.* wherein, it was held that the period prescribed in Article 131 of the Limitation Act, 1963 would apply to a revision filed under Section 19 (4) of the Family Courts Act, 1984, though no specific time

limit has been prescribed therein. The learned Counsel, therefore, submits that the present petition is not maintainable and liable to be dismissed forthwith.

2. Mr. P. T. Sangma, learned Counsel appearing for the petitioner refutes the contentions made by the Counsel for the respondent and submits that rule 6 of the Order does not prescribe any time frame and the provisions of Article 131 of the Limitation Act, 1963 would not apply in the present matter. He further submits that the respondent herself has filed the application for grant of maintenance under Section 125 Cr.PC. after more than 25 years of her separation from the petitioner and, hence, cannot raise any objection on the ground of delay. He submits that the present petition cannot be rejected on the ground of limitation.

3. The case of *Sita Devi (supra)*, on which the learned Counsel for the respondent has placed heavy reliance, has held that the provisions of Article 131 of the Limitation Act, 1963 would apply to a revision preferred under Section 19 (4) of the Family Courts Act, 1984. The said finding was recorded upon noticing that the provisions of the Family Courts Act brought a change only with regard to forum for adjudication without altering any substantive rights, and in Section 10 (2) of the Family Courts Act, 1984, it is provided that subject to the provisions of the Family Courts Act, the provisions of Code of Criminal Procedure would apply to all proceedings under Chapter IX of the Code of Criminal Procedure which include Section 125. Therefore, it was concluded that what is exercised under Section 19 (4) of the Family Courts Act is the power of the High Court of superintendence as contained under Section 397 read with Section 401 of the Code of

Criminal Procedure and it is because of that Article 131 of the Limitation Act would apply.

4. The order impugned in the present matter has been passed by the Assistant Judge, District Council Court, Garo Hills Autonomous District Council, Tura, which is a Court established under the authority of the Sixth Schedule to the Constitution of India. Clause (2) of Article 244 of the Constitution of India makes it amply clear that the provision of Sixth Schedule to the Constitution shall apply to the administration of justice in the tribal areas. These provisions purport to provide for a self-contained code for the governance of the tribal areas. The Scheme for administration of justice in tribal areas has to conform to, and abide by the scheme for administration of justice envisaged by the Sixth Schedule to the Constitution of India.

5. The High Court of Meghalaya (Jurisdiction over District Council Courts) Order, 2014 was made in exercise of power conferred by sub-para (3) of paragraph 4 of the Sixth Schedule to the Constitution of India which came by replacing the Assam High Court (Jurisdiction over District Council Courts) Order, 1954. It is not provided anywhere that the Order was made to supplement the provision of the Code of Criminal Procedure or is subject to any other provision made by or under an Act of the appropriate Legislature. Sub-para (3) of paragraph 5 of the Sixth Schedule to the Constitution of India lays down: -

“5. (3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898 (now the Code of Criminal Procedure, 1973), shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.”

Furthermore, the notification issued vide Memo No.LI(B).67/88/397-A dated 20-09-2022 makes it clear that the District Council Court shall continue to derive powers under paragraphs 4 and 5 of the Sixth Schedule to the Constitution.

6. In view of the above, it is apparent that the propositions laid down in *Sita Devi (supra)* case would not apply in the present matter. Thus, provisions contained in rule 6 of the Order is not subject to Section 397 of the Code of Criminal Procedure, 1973. Hence, the period of limitation prescribed under Article 131 of the Limitation Act, 1963 would also not be attracted in the present case. Resultantly, the question of maintainability raised by the respondent stands rejected.

7. Let this matter be posted for hearing after two weeks.

Judge

Meghalaya
25.09.2024
“Biswarup PS”