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IN THE GAUHATI HIGH COURT
 (HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
 MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR PERMANENT BENCH

Appeal From
Writ Petition (Civil)

W.P.C. No....56.... (AP) 2010

Shri R. D. Lewi

Appellant
Petitioner.

-Versus-

The State of AP & 3 ors

Respondent
Opposite Party.

Counsel for the Appellant
Petitioner.

K. N. Chowdhury
 D. Panging
 O. Pada
 S. V. Barang
 D. Saki

Counsel for the Respondent
Opposite Party.

G.A. (A.P.)
 Mr. M. Batt. (For R-32)
 " H. Chada
 " P. Saka
 " G. Tadi

Noting by Officer or Advocate	Serial No.	Date	Office note, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

-AND-

IN THE MATTER OF:

Shri Rockpo Dabu Lewi,
R/o Vivek Vihar, Itanagar,
Papumpare District, Arunachal
Pradesh.

....Petitioner

-VERSUS-

1. The State of Arunachal Pradesh represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner, Dept. of Home, Govt. of Arunachal Pradesh, Itanagar.
- ③ The Additional District Magistrate-Cum-Estate Officer, Capital Complex, Papumpare District, Arunachal Pradesh.
- ④ Shri Talo Potom,
Additional District Magistrate-Cum- Estate Officer, Capital Complex, Office of the Deputy Commissioner, Capital Complex, P.O. Naharlagun,

Papumpare District, Arunachal
Pradesh.

...Respondents

WP(C) 56 (AP) 2010

**BEFORE
THE HON'BLE MR. JUSTICE HRISHIKESH ROY**

[21ST January, 2011]

Heard Mr. D. Panging, learned counsel for the petitioner and also heard Mr. M. Batt, learned counsel appearing on behalf of the respondents.

2. The action taken by the Estate Officer-cum-Magistrate, Capital Complex in respect of encroachment within the campus of *Dera Natung Government College* has led to filing of these two writ petitions.

3. By referring to the order passed on 03-02-2010 by the Estate Officer (Annexure-7), the learned counsel contends that while the Estate Officer (Respondent No.4) exercises the function under *the Arunachal Pradesh Public Premises (Eviction of Un-authorized Occupants) Act, 2003* (hereinafter referred to as "the *Eviction Act*"), the said officer could not have ordered for arrest of the petitioner and issued NBW under Section 174 of the IPC. He submits that although, the private respondent is also entrusted with the power of the Magistrate, the officer had no authority to proceed on his own under Section 174 IPC, for alleged defiance of the petitioner, to his order for attendance in a proceeding under the *Eviction Act*.

4. The procedure laid down under Section 195 Cr.P.C. is read out to show that for an offence under Section 172 of IPC, the Court cannot take cognizance except on a complaint in writing of that Court and on reference of the case to a Magistrate of competent jurisdiction, as contemplated under the provisions of Section 340 of the Cr.P.C. Mr. Panging submits that as the concerned public servant whose order for attendance was defied in a proceeding under the *Eviction Act*, the very same officer is not competent to take it up upon himself, to take cognizance of the offence under

Section 174 IPC and should have dealt with the matter, as per the Sections 195 and 340 of the Cr.P.C.

5. Mr. Batt representing the respondent Nos. 3 & 4, however, submits that only to ensure attendance of the petitioner in the proceeding under the *Eviction Act*, where the petitioner failed to appear on two consecutive dates, the impugned steps were taken by the Estate Officer. However, the learned counsel concedes that the procedure prescribed under Sections 195 and 340 of the Cr.P.C. was not followed by the respondent No.4, due to his inexperience.

6. For taking cognizance of an offence under Section 174 IPC, the procedures prescribed under Section 145 Cr.P.C. is mandatorily required to be followed and in this case, the Estate Officer never lodged any complaint nor he had referred the matter along with the complaint to the Court of the competent jurisdictional Magistrate. Therefore, it is apparent that the private respondent acted without jurisdiction in passing the impugned order dated 03-02-2010.

7. The above action of the Estate Officer is contrary to the law laid down by the Supreme Court in *M.S. Ahlawat Vs. State of Haryana*, reported in 2000 (1) SCC 278 and the decision reported in *AIR 1934 Lahore 545(1) [Muhammad Din Vs. Emperor]* where it is held that for an offence under Section 174 IPC, the Court before whom, the witness failed to appear, is not competent to try the offence under Section 174 IPC.

8. Having regard to the procedure prescribed under Section 195 and Section 340 of the Cr.P.C. for taking cognizance of an offence under Section 174 IPC and the law laid down in *M.S. Ahlawat (supra)* and *Muhammad Din (supra)*, it is held that the impugned proceeding of the Estate Officer of taking cognizance of the offence and ordering for arrest of the petitioner in a proceeding under the *Eviction Act* was not authorised in law. Consequently,



the impugned order dated 03-02-2010 and also the proceeding drawn up by the Estate Officer for an offence under Section 174 IPC is held to be without jurisdiction and the same is accordingly interfered with. It is quashed accordingly.

9. The writ petition is allowed by awarding cost of Rs.1000/- to be deposited by the private respondents with the Registry of this Court within 2(two) weeks from today. The petitioner is permitted to withdraw the cost amount upon proper identification.

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JUDGE