

Banshi and ors. Vs. State

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Court : Allahabad

Decided On : Sep-21-1951

Reported in : AIR1952All38

Judge : Agarwala, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 83, 85(5) and 89; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 435

Appeal No. : Criminal Ref. No. 399 of 1950

Appellant : Banshi and ors.

Respondent : State

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : L.M. Pant, Adv.

Judgement :

ORDER

Agarwala, J.

1. This is a reference by the Sessions Judge of Jaunpur in a matter which was decided by a Panchayati Adalat and in which orders were passed by the Sub-divisional Magistrate. A complaint was filed in the Panchayati Adalat of Kalichabad

under Section 447, Penal Code. The Sarpanch constituted a bench of Shri Rajpat Misir, Shri Sahdeo Ram, Shri Jagannath, Shri Gobind Ram and Shri Raja Ram. The entire evidence was recorded by these Panches and when the case was ready for judgment the accused made an application to the Sub-divisional Magistrate praying that the bench should be reconstituted as they were not likely to get justice from the bench which was trying the case. The Sub-divisional Magistrate rejected this application but expressed an opinion that the Sarpanch may reconstitute the bench. The Sarpanch reconstituted the bench and the accused were convicted and three of them were sentenced to a fine of Rs. 50 each and the fourth to a fine of Rs. 25. Against this order the accused again went up in revision to the Sub-divisional Magistrate. Their application was dismissed. Then the accused applied in revision under Section 435, Criminal P. C. to the Sessions Judge on the ground that the order of the Sub divisional Magistrate directing a reconstitution of the bench was unwarranted in law and should be set aside so that if that is done the subsequent order of the bench convicting the accused would automatically fall to the ground.

2. On behalf of the complainant an objection to the hearing of the revision by the Sessions Judge was raised. It was urged by him that the Sessions Judge had no jurisdiction to entertain the revision as the order of the Panchayati Adalat was final and the Sub-divisional Magistrate had merely rejected the applications of the accused and had not interfered with the order of the Panchayati Adalat. The learned Sessions Judge was of opinion that the Sub-divisional Magistrate had directed the reconstitution of the bench and that, therefore, had interfered with the constitution of the bench and as this was not warranted by law he had power to entertain the revision under Section 435, Criminal Procedure Code, and make a recommendation to this Court.

3. The first point that falls to be decided in the present case is a question of fact whether the Sub-divisional Magistrate directed the Sarpanch of the Panchayati Adalat to reconstitute the bench. The order of the Sub-divisional Magistrate is not on the record. The order of the Sarpanch reconstituting the bench is on the record. In this order the Sarpanch stated that according to the directions of the Sub-Divisional Magistrate he was reconstituting the bench. In their explanations both

the Sub Divisional Magistrate and the Sarpanch stated that no order directing the Sarpanch to reconstitute the bench was passed by the Sub-Divisional Magistrate but that a mere desire was expressed by the Sub-Divisional Magistrate that it would be better if the bench is reconstituted by the Sarpanch. This explanation has not been controverted by the learned Sessions Judge in his note made after the receipt of the explanations. I must, therefore, take it that no order directing the Sarpanch to reconstitute the bench was passed by the Sub Divisional Magistrate. The mere expression of an opinion about the desirability of the reconstitution of the bench by the Sarpanch is not an order directing the reconstitution of the bench. Since the application of the accused was dismissed by the Sub-Divisional Magistrate it cannot be said that he interfered with the order of the Panchayati Adalat. The second application of the accused to the Sub-Divisional Magistrate after they were convicted by the Panchayati Adalat was also dismissed.

4. The question is whether a revision lies under Section 435 of the Criminal Procedure Code against an order of the Sub-Divisional Magistrate under the Panchayat Raj Act. In this connection Sections 83 and 85 of the Act have to be considered. Section 85, U. P. Panchayat Raj Act defines the powers of a Sub-Divisional Magistrate in a criminal case pending before a Panchayati Adalat or decided by it Sub-section (5) of Section 85 enacts that a decree or order passed by a Panchayati Adalat in any suit, case or proceeding under the Act shall be final and shall not be open to appeal or revision in any Court, except as provided in Section 85. Sub-section (5) of Section 85, therefore overrides the provisions of Section 435, Criminal P. C., in so far as the questioning of the orders of the Panchayati Adalats is concerned.

5. Section 83 lays down the procedure to be followed by a Panchayati Adalat. The section ends by saying:

'The Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1898, the Indian Evidence Act, 1872 and the Indian Limitation Act, 1908, shall not apply to any suit, case or proceeding in a Panchayati Adalat except as provided in this Act.'

Do the words 'in a Panchayati Adalat' in the last sentence of Section 83 quoted above limit the non-applicability of the Codes and Acts mentioned therein to the

stage of a suit, case or proceeding when it is pending in the Panchayati Adalat? or the said Codes and Acts are made inapplicable to the entire suit, case or proceeding instituted in a Panchayati Adalat in whatever stage it may be, whether it may be in revision before the Sub-Divisional Magistrate or in the stage of trial before the Panchayati Adalat? In other words, does the phrase "in a Panchayati Adalat" in the above sentence mean 'instituted in the Panchayati Adalat', or does it mean 'while it is pending in a Panchayati Adalat.' As the phrase qualifies the noun 'suit, case or proceeding', and does not modify the verb 'apply' I think the phrase has the former meaning. A suit or case or proceeding does not change its nature whether it is in the trial stage or is in the appellate or revisional stage. It would be anomalous if the Acts and Codes mentioned above which are not applicable to such suit, case or proceeding at one stage, become applicable to it at another stage. In this view of the matter Section 435, Criminal P. C., will not apply even to an order passed by a Sub-Divisional Magistrate under the U. P. Panchayat Raj Act whether that order be of dismissal of the revision application or of interference with the order passed by the Panchayati Adalat.

6. The scheme of the Act also shows that the Legislature intended it to be a complete Code providing its own procedure for the suits, cases or proceedings with which it deals. Decisions of Panchayati Adalats are intended to be final except as provided by the Act. The Act provides for a special revisional authority. The order of such revisional authority does not seem to be intended to be further revised by a higher authority.

7. In any case, I think when the Sub Divisional Magistrate dismissed an application made to him either under Section 85 or under Section 89, there can be no further revision under Section 485, Criminal P. C. The only effect of such a revision being allowed can be to direct the Sub-Divisional Magistrate to alter his decision dismissing the application made to him. This would amount to an indirect interference with the decree or order of the Panchayati Adalat and would be contrary to Section 85 (5), because what cannot be done directly, cannot be done indirectly.

8. It was urged that under Article 227 of the Consitution an application could have been made to this Court. That may be so. But an application under that Article could not have been made to the Sessions Judge. It could only be made direct to this Court. No such application has been made to this Court. The Sessions Judge had no jurisdiction to entertain an application either under Section 435, Criminal P. C., or Article 227 of the Constitution.

9. The reference is, therefore, rejected.

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