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Court : Allahabad

Decided On : Aug-06-1951

Reported in : AIR1951All825

Judge : Raghubar Dayal, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 85(2)

Appeal No. : Criminal Misc. No. 1892 of 1951

Appellant : imami

Respondent : Daya Ram and ors.

Advocate for Pet/Ap. : B.S. Darbari, Adv.

Disposition : Application rejected

Judgement :

ORDER

Raghubar Dayal, J.

1. Imami filed a complaint under Sections 323, 380 and 452, Penal Code against Daya Ram and others. The case was tried by Sri Nahar Singh, Magistrate 1st class, Agra who came to the conclusion that no offence under Sections 380 and 452, Penal Code had been made out while an offence under Section 323 was

made out. He acquitted the accused of the former two offences and transferred the case to the Panchayati Adalat in view of Section 56, Panchayat Raj Act. On an application by the complainant the Sub-Divisional Magistrate cancelled the jurisdiction of the Panchayati Adalat with regard to this case. This order was passed, under Section 85, Sub-section (1), Clause (a).

2. After the jurisdiction of the Panchayati Adalat had been cancelled the Additional District Magistrate sent this case back to Sri Narhar Singh but later, on an application by the accused, he transferred the case to the Court of Sri Har Narain.

3. This is an application praying for the transfer of the case from the Court of Sri Har Narain to that of Sri Nahar Singh on the ground that the entire evidence had been recorded by that learned Magistrate.

4. I am of opinion that this application should be rejected Section 85, Sub-section (2), Panchayat Raj Act is:

'When an order has been passed by the Sub Divisional Magistrate under Sub-section (1) in respect of any case, trial on complaint or otherwise in respect of the same offence may be started in the Court of a Magistrate having jurisdiction to try the case.'

This means, to my mind, that when the jurisdiction of a Panchayati Adalat is cancelled the case has to be instituted in the proper Court either on complaint or otherwise. Even if it be not necessary to institute a fresh complaint and by some process the file of the case gets back to the proper Court, the case has to start in that Court and this should mean that it has to start afresh. I am unable to visualise a process which would send back the case to the proper Court from the Panchayati Adalat, as there is no provision in the Panchayat Raj Act for the transferring of a case pending before the Panchayati Adalat to the Court of any Magistrate. In the absence of any such provision, the order of the Additional District Magistrate transferring in the first instance the case from the Panchayati Adalat to the Court of Sri Nahar Singh may be held to be without jurisdiction. I do not, however, at this stage express any final opinion on that point. I base my present order rejecting this application on the ground that Section 85, Sub-section

(2), Panchayat Raj Act contemplates a fresh trial and that, therefore the applicant will be in no better position if the case is transferred back to the Court of Sri Nahar Singh. He also will have to start the case afresh.

5. Learned counsel for the applicant has submitted on the basis of different expressions used in Sub-section (3), which authorises the plaintiff to institute a suit on the same cause of action and for the same relief in the Court of the Munsif after the Munsif has cancelled the jurisdiction of the Panchayati Adalat, that such an elaborate expression was necessary in Sub-section (3) with respect to civil suits in order to make it clear that a fresh suit can be instituted on the same cause of action and for the same relief. Sub-section (2) uses the expression 'in respect of the same offence' and this makes it clear that for the same offence a trial can take place in the Magistrate's Court after the jurisdiction of the Panchayati Adalat has been cancelled. I am unable, therefore, to agree with the contention for the applicant.

6. I, therefore, reject this application.