Asharfi Lal Vs. the State

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Court : Allahabad

Decided On : Jun-14-1951

Reported in : AIR1952All306

Judge : Brij Mohan Lal, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 19, 21 and 228; Code of Criminal Procedure (CrPC) , 1898 - Sections 195(1), 195(2), 260 and 476; Uttar Pradesh Panchayat Raj Act, 1947 - Sections 2 and 42

Appeal No. : Criminal Ref. No. 33 of 1951

Appellant : Asharfi Lal

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : M.P. Shrivastava, Adv.

Disposition : Application rejected

Judgement :
ORDER

Brij Mohan Lal, J.

1. This is a reference by the learned Sessions Judge of Barabanki recommending that the conviction of one Asharfi Lal recorded by a learned Magistrate of Barabanki under Section 228, Penal Code be set aside.

2. It appears that Asharfi Lal was tried by the Panchayati Adalat of Baraeli in the district of Barabanki of an offence punishable under Section 403, Penal Code. On 26-12-49 the Panchayati Adalat pronounced judgment of conviction against Asharfi Lal and inflicted on him a fine of Rs. 45. Immediately on hearing the sentence Asharfi Lal abused the Panches and swore in open Court that he would kill them. Thereafter he stood in front of the Court room door, lathi in hand, ready to assault the Panches.

3. The complaint was sent by the Sarpanch to the Sub-Divisional Magistrate and this led to Asharfi Lal's prosecution. His trial was summary and he was sentenced to a fine of Rs. 60.

4. In revision the Sessions Judge was of the opinion that no offence had been committed.

5. I have gone through the judgment of the learned Sessions Judge and have listened to the arguments advanced by the learned counsel who appears in support of this reference. Several points have been taken which I propose to deal with one by one.

6. The first point to be seen is whether an offence under Section 228, Penal Code, was committed by Asharfi Lal in uttering the abuse and in holding out a threat to the Panches. This section runs as follows:

'Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

The point to be seen is whether the Panches constituting the bench were public servants. The term 'public servant' is defined in Section 21, Penal Code, of which the third clause says that it includes 'Every Judge'. The term 'Judge' is defined in

Section 19 and it includes every one 'who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.'

Illustration (c) of Section 19 says that :

'A member of a panchayat which has power, under Regulation VII of 1816, of the Madras Code, to try and determine suits' is a Judge.'

It will, therefore, follow that every member of the Panchayati Adalat was a Judge and was, therefore, a public servant.

7. The next question to be seen is whether the members were sitting at a stage of a judicial proceeding. The panchayat had assembled on that particular day to deliver judgment. Pronouncement of judgment is a stage of a judicial proceeding. It is, however, contended that the moment the judgment is pronounced that stage is over and it is open to a person dissatisfied with the judgment to insult the panchayat with impunity on the ground that the panchayat ceased to be sitting in a stage of a judicial proceeding. With this contention, I am unable to agree. Since the Panches had assembled on that particular day to pronounce judgment they should be deemed to be sitting in a stage of a judicial proceeding till their dispersal, unless, of course, the dispersal was delayed beyond a reasonable time. In the present case the pronouncement of the judgment and the utterance of the threat and abuses were almost simultaneous events. It cannot be urged with any show of reasonableness that the threat and abuses were hurled by Asharfi Lal at a stage which was not a stage of a judicial proceeding.

8. I am fortified in my view by the case of Queen-Empress v. Salig Ram, 16 Pun. Re. 1897 Cr. page 43. In that case an order binding an accused under Section 107 was pronounced by a Magistrate and thereupon the person bound down remarked that the Court had acted with sulm. It was held that he was guilty of contempt of Court and the Magistrate was sitting at a stage of a judicial proceeding when the utterance was made by the accused. I am, therefore, of the opinion that in the

present case also Asharfi Lal held out the threat and hurled abuses at a time when the members of the panchayat were sitting at a stage of a judicial proceeding. It will, therefore, follow that the requirements of Section 228 were complied with and every ingredient of the offence was present. Asharfi Lal was, therefore, guilty of an offence punishable under Section 228, Penal Code.

9. The next point to be considered is whether the procedure adopted during the trial was one warranted by law. In this connection it is contended in the first instance that the learned Magistrate was not justified in holding a summary trial. This contention is also without force. An offence under Section 228, Penal Code, is punishable with imprisonment which may extend to six months. Section 260 (a), Criminal P. C. lays down that all 'offences not punishable with death, transportation or imprisonment for a term exceeding six months' may be tried summarily. Therefore there was no illegality on the part of the learned Magistrate in trying the case in a summary manner.

10. The next contention put forward by the learned counsel on behalf of Asharfi Lal is that the proceedings were vitiated because no steps were taken under Section 476, Criminal P. C. This argument also carries no weight. The holding of a preliminary inquiry under Section 476 is discretionary with the Court. If the Court does not wish to hold such an inquiry there is no illegality in the proceedings.

11. It is next to be seen whether the requirements of Section 195, Criminal P. C. have been complied with. Clause (1) (b) of this section lays down that no Court shall take cognizance of any offence punishable under Section 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate. The view taken by the learned Sessions Judge is that the Panchayati Adalat is not a Court. If that is so, Section 195 (1) (b) does not apply and the procedure prescribed need not be gone into. Then this would mean that anybody in the world could make a complaint. But I do not agree with the view taken by the learned Sessions Judge. In my opinion the Panchayati Adalat is a Court. Chapter VI, Panchayat Raj Act deals with the Panchayati Adalat. Section 52 confers on the Panchayati Adalat the power to try a large variety of

cases. Sub-section (2) of Section 195, Criminal P. C. lays down that the term 'Court' includes a Civil, Revenue or Criminal Court. The word 'includes' indicates that the enumeration is not exhaustive. There can be other Courts which come with the term 'Court' as used in Clause (b) of Section 195 (1). The learned Sessions Judge referred to Section 6, Criminal P. C. and thought that the Courts which were enumerated therein were the only Courts contemplated by Section 195 (1) (b). This view is not correct. Section 6 of the Code enumerates the 'Criminal' Courts. As already stated the word 'Court' as used in Section 195 (1) (b) is not confined to criminal Courts. It is more comprehensive in its nature and embraces Courts which are neither civil nor criminal nor revenue Courts. I am, therefore, of the opinion that the Panchayati Adalat was a Court within the meaning of the term as used in Section 195 (1) (b).

12. It is next contended that the complaint should have been made by some member of the bench which was seized of the case. It is argued that the contempt was committed only of that panel of Panches which constituted the Adalat for that particular case and therefore, a complaint by Raj Mohan Singh, the Sarpanch who was not a member of that particular Bench, was not competent. This contention also is without force. Section 2 (a) says that 'Panchayati Adalat' means a Panchayati Adalat established under Section 43 and includes a bench thereof. Therefore by committing the contempt of the particular Bench Asharfi Lal was guilty of contempt of the Panchayati Adalat. Therefore the Panchayati Aclalat could make a complaint.

13. If one refers to the complaint one finds the title of the case was 'Panchayati Adalat Barauli, tahsil Nawabganj v. Asharfi Lal'. It is, therefore, obvious that the complaint was in fact made by the Panchayati Adalat. Of course, it had to be signed by some individual and Raj Mohan Singh signed it as the representative of the Panchayati Adalat. Being the Sarpanch he was the most proper person to represent the Panchayati Adalat. The complaint was not made by him in his individual capacity. He made the complaint on behalf of the Panchayati Adalat and affixed his signature to the petition of complaint as the representative of that Court. I am, therefore, of the opinion that the complaint complied with every requirement of Section 195 (1) (b), Criminal P. C.

14. For the reasons stated above, I am of the opinion that Asharfi Lal has been rightly convicted. There is no force in this reference and it is hereby rejected.