

Kamlapati Panth Vs. Emperor

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Court : Allahabad

Decided On : Jun-02-1925

Reported in : AIR1926All27

Appellant : Kamlapati Panth

Respondent : Emperor

Advocate for Pet/Ap. : Mr. Das

Judgement :

Boys, J.

1. In this case on the 10th of December 1924, a panchayat held under the U.P. Act (6 of 1920) convicted Kamlapati. Panth, Parkhotam Panth and Sheo Datt Panth under Section 323 of the Indian Penal Code and sentenced them to pay fines of Rs. 7, Rs. 5 and Rs. 5 respectively. The order of the panchayat refers to the statements of the complainant and two of his witnesses, and briefly to three witnesses produced on behalf of the accused. The order does not state whether the witnesses of the complainant or the witnesses of the accused are on their merits believed or disbelieved, but it continues 'on private enquiry, it appears that the accused used abusive language (against the complainant) and slapped him.'

2. The next step was an application made by the accused to the Deputy Commissioner, Almorah, under Section 71 of the Local Act (VI of 1920). The

principal objection set out in that petition to the order of the panchayat is to be found in paragraph No. 3 of the petition where it is alleged that: 'it appears that the panchas made certain enquiries behind the back of the petitioners and without any information to them, upon which the panchas' order is based.' This appears to be a fair statement of the order of the panchayat. That petition had been duly stamped apparently on the 2nd of March 1925, and it was filed in this Court on the 17th of March 1925 with the revisional application, with which we at present have to deal. We are informed by counsel for the applicants that the petition was presented to the Deputy Commissioner (Collector) of Almorah, but was returned to the applicants with a verbal intimation that they should go to the High Court. This instruction to counsel, who has further communicated it to us, is not supported by affidavit, but we have no reason to doubt the accuracy of the instruction given to counsel in view of the presence of the petition itself and its appearance. At the first hearing of this application on which Mr. Das, counsel for the applicant, was unable to be present, we had to consider for some time the intricate question as to whether a village panchayat under Act 6 of 1920 was a 'Court' and whether, if so, this Court had any power to interfere with its decisions. We had not at the time before us the history of the petition to the Collector to which we have referred.

3. It appears clear to us that our present order must be guided by the general principle that where a lower Court has jurisdiction, an application must be made to that lower Court first and its order obtained thereon before the superior Court is asked to exercise such jurisdiction as it may think fit. In this case we have no information before us as to why the Collector refused to pass any orders on the petition and why he returned it to the applicants, if he did so with instructions to apply to the High Court. We must therefore order the applicants to make their application again to the Collector accompanied by a copy of this order and invite the Collector to deal with it under Section 71 of Act 6 of 1920. That is sufficient for the disposal of this application.

4. But as we have had to consider at some length the question of the jurisdiction of this Court, we think that we should make some observations in regard thereto though we are not unaware that those observations will be in the nature of obiter dicta. We should have little hesitation in coming to the opinion that a village

panchayat constituted and held under Local Act (6 of 1920) is a 'Court' and when it is dealing with a case in regard to an 'offence' that it is a criminal Court. The question whether this Court has any jurisdiction to interfere with its orders is one of very much greater difficulty. It is clear from Section 71 that 'jurisdiction' to deal with the orders of a village panchayat is primarily given to the Collector. The only other section which throws any light on the matter at all appears to be Section 53. That declares that 'there shall be no appeal from any decree or order passed by a panchayat in any suit under this Act, and except as provided in Sections 49 and 71 no Court or authority shall have power to revise any such decree or order.' Where they occur for the second time of course the words 'any decree or order' refer back to those words where they occur for the first time and the words 'any decree or order' where they occur for the first time are clearly limited by the words 'in any suit.' The word 'suit' is declared by Section 3, Sub-section 9, to mean a civil suit.' Section 53 is, therefore clearly confined to civil proceedings. We can find no provision in the Act declaring that the Collector's order under Section 71 in cases, i.e., criminal proceedings, should be final. This is a matter for the consideration of the Legislature. The question is almost certain to recur. For the reasons we have given above we order the petition of the applicants which is on the file now, dated the 2nd of March 1925, to be returned to them for re-presentation to the Collector, who, in view of what we have said above, will no doubt deal with it according to law under the powers vested in him under Section 71.