

Zaheer and anr. Vs. State and ors.

Zaheer and anr. Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/470705

Court : Allahabad

Decided On : May-03-1954

Reported in : AIR1954All653

Judge : Malik, C.J. and ;V. Bhargava, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 85; [Constitution of India](#) - Article 14

Appeal No. : Misc. Writ Case No. 229 of 1953

Appellant : Zaheer and anr.

Respondent : State and ors.

Advocate for Def. : N.D. Ojha, Adv. for Opposite Party No. 3 and ;D.P. Uniyal, D.G.A.

Advocate for Pet/Ap. : B.N. Katju, Adv.

Disposition : Application dismissed

Judgement :

Malik, C.J.

1. The applicants were convicted of offences under Sections 447 and 323, Penal Code, by the Panchayati Adalat, Village Para, Police Station Kotwali, District

Ghazipur, and were sentenced to pay a fine of Rs. 15/- and Rs. 5/- under the two sections respectively. This order is dated 29-10-1952. The applicants filed a revision in the Court of the Sub-Divisional Magistrate Sadar, Ghazipur, which was dismissed by him on 6-7-1953. This writ petition has been moved under Article 226 of the Constitution and the only point raised is that Chapter VI of the U. P. Panchayat Raj Act (XXVI of 1947) is 'ultra vires' being in conflict with the provisions of Article 14 of the Constitution.

2. The offences mentioned in Section 52 of the Act are exclusively triable by Panchayati Adalats. Section 54 provides for penalties which the Panchayati Adalat can impose. Section 55 bars the cognizance of any case or suit which is cognizable under the Act by a Panchayati Adalat unless an order has been passed by a Sub-Divisional Magistrate or Munsif under Section 85. Section 56 provides that

'If at any stage of proceedings in a criminal case pending before a magistrate it appears that the case is triable by a Panchayati Adalat, he shall at once transfer the case to that Panchayati Adalat, which shall try the case 'de novo'.'

Section 58 provides for return of complaint to the complainant by a Panchayati Adalat where it finds that it has no jurisdiction, or the offence is one for which it cannot award adequate punishment, or the case is of such nature or complexity that it should be tried by a regular Court. Section 59 bars the cognizance by the Panchayati Adalat of any offence in which the accused belongs to one of the categories mentioned in Clause (a) to (e). Section 85 then provides that if a Sub-Divisional Magistrate or a Munsif or a Sub-Divisional Officer finds that there is apprehension of miscarriage of justice if a case, suit or proceeding is tried by a Panchayati Adalat, it shall cancel the jurisdiction of that Adalat and in such a case under Sub-sections (2), (3) and (4) of Section 85 the case, suit or proceeding will have to be instituted in a regular Court having jurisdiction.

3. Learned counsel has urged that this amounts to discrimination. He has argued that if a Sub-Divisional Magistrate, Munsif or Sub-Divisional Officer had been given the power under Section 85 to transfer the case to the Court of another Panchayati Adalat, he would raise no objection to the validity of the provision, taut inasmuch

as for the same type of offence triable by a Panchayati Adalat, if on the ground that there is apprehension of miscarriage of justice the jurisdiction of the Panchayati Adalat is cancelled and the case has to be tried under the ordinary law in the regular Courts having jurisdiction, that procedure being more elaborate amounts to discrimination under Article 14 of the Constitution.

4. Reliance has been placed on the judgment of the Supreme Court in -- 'State of West Bengal v. Anwar Ali Sarkar', AIR 1952 SC 75 (A) and on the remarks of Fazl Ali J., where the learned Judge dealing with the West Bengal Special Courts Act (X of 1950) said:

'..... once it is established that one procedure is less advantageous to the accused than the other, any person tried by a Special Court constituted under the Act, who but for the Act would have been entitled to be tried according to the more elaborate procedure of the Code, may, legitimately enquire: Why is this discrimination being made against me and why should I be tried according to a procedure which has not the same advantages as the normal procedure and which even carries with it the possibility of one's being prejudiced in one's defence?'

The West Bengal Special Courts Act was different in certain material particulars from the U. P. Panchayat Raj Act. There, for the same offence it was open to the Government to direct the trial by a Tribunal rather than by an ordinary court of law in the so-called interest of speedy decision. The procedure before the Tribunal being different and less advantageous to the accused than the procedure before an ordinary court of law, the learned Judge said :

'The Act itself lays down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root-cause of the discrimination which may result by the application of the Act.'

In that very case Fazl Ali, J. pointed out that classification of offences for the purpose of applying different sets of provisions relating to summary trials, trial of summons cases, trial of warrant cases and trial of cases by a court of session, according to the gravity of the offence, was possible.

5. In the case before us there has been no discrimination between person and person and all offences mentioned in Section 52 of the U. P. Panchayat Raj Act if committed within the jurisdiction of a Panchayati Adalat were cognizable by such Panchayati Adalat. No appeals are provided against the decisions of Panchayati Adalats but revisions can be filed in the court of a Sub-Divisional Magistrate, Munsif or Sub-Divisional Officer according to the cases, criminal, civil or revenue. The Court of the Sub-Divisional Magistrate Munsif or Revenue Officers is thus the superior court before which correctness of the decisions of Panchayati Adalats can be challenged. These courts have been given the power, in a case where it is apprehended that there would be miscarriage of justice, to cancel the jurisdiction of the Panchayati Adalat and leave the parties to the remedy under the ordinary law.

6. In -- 'Kedar Nath v. State of West Bengal'. AIR 1953 SC 404 (B), their Lordships held that the provisions of Sections 4 and 9(1) of the West Bengal Criminal Law Amendment (Special Courts) Act (XXI of 1949) did not violate the provisions of Article 14 of the Constitution and said that:

'Hence the system of Special Courts to deal with the special types of offences under a shortened and simplified procedure was devised and it seems to us that the legislation in question is based on a perfectly intelligible principle of classification having a clear and reasonable relation to the object sought to be attained.'

Neither can It be said that the provision authorising the superior court in a case where it apprehends that there might be miscarriage of justice to cancel the jurisdiction of the Panchayati Adalat is discriminatory. Such provisions are to be found in numerous Acts. Under the Small Cause Courts Act cases giving rise to difficult questions of law can be transferred to the regular side. Cases giving rise to questions of interpretation of the Constitution have now to be transferred to the High Court so that they may be quickly decided. In -- 'Kedar Nath Bajoria's case (B)', their Lordships held that:

'Section 4 of the Act (West Bengal Criminal Law Amendment (Special Court) Act) offends against Article 14 of the Constitution merely because the Government is

not compellable to allot 'all' cases of offences set out in the schedule to Special Judges but is vested with a discretion in the matter.'

In the case before us, there is no discretion in the Government. It is the superior court which, in a fit case, may cancel the jurisdiction of the Panchayati Adalat.

7. Reference has been made to -- 'Shrikisan Jaskaram v. Dattu Shiwaram', AIR 1953 Nag 14 (C), where a Bench of the Nagpur High Court held that the C. P. and Berar Panchayats Act (I of 1947) was valid.

8. In -- 'Kathi Raning Rawat v. State of Saurashtra', AIR, 1952 SC 123 (D), Fazl Ali, J. pointed out that

'a distinction should be drawn between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this distinction.....'

9. There is no question, in the case before us of discrimination without reason. It is when a superior court apprehends that there might be miscarriage of justice that it has right to cancel the jurisdiction. That right is usually given to the superior courts to prevent miscarriage of justice, and we are of the opinion that it cannot be said that such provisions are either discriminatory or improper.

10. The application has no force and is dismissed.

BY THE COURT

11. A request has been made by the applicants that leave may be granted under Article 132 and Article 134(1)(c) of the Constitution. In our opinion, the case does not raise any such question of interpretation of the Constitution or any other question of law of such general importance that certificate can be granted. The prayer is, therefore, refused.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com