

Nando and ors. Vs. the State and anr.

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Court : Allahabad

Decided On : May-23-1956

Reported in : 1957CriLJ247

Judge : Roy, J.

Appellant : Nando and ors.

Respondent : The State and anr.

Judgement :

ORDER

Roy, J.

1. This is an application by Nanda and five others for the exercise of the revisional powers of this Court under Sections 435/439 of the Code of Criminal Procedure read with Article 227 of the Constitution of India. The applicants were tried by the Panchayati Adalat of Birauni for offences punishable under Section 379, I, P. C. They were convicted under that section and each of them was sentenced to a fine of Rs. 50/-. The matter was taken up in revision before the Sub-Divisional Magistrate of Bilgram. The Magistrate refused to interfere. The applicants were therefore driven to the necessity of making the present application.

2. The facts and circumstances which have given rise to this application are these. Hari Shanker, Meghraj Chaube and Shambhu Dayal residents of Bilgram held a

lease executed by the Court of Wards, Bhagaitapur Estate in district Hardoi, of a part of the low-lying land in village Biraure, This low-lying land gets inundated during the rainy season and water remains collected there for some time after which it becomes fit for cultivation. The applicants were granted a lease by the aforesaid tenants for catching fish from this low lying land under two leases each, executed for a year.

While the applicants were catching fish by virtue of their rights granted to them under the first lease Lekhraj Pradhan of Biraure Gramsabha and Babu Sarpanch of Panchayati Adalat, Biraure aided by five others, four of whom namely Brijlal, Daley, Nanhoo and Moti were the panchas of the aforesaid Panchayati Adalat forcibly and unlawfully snatched the fish caught and collected by the applicants. The applicants filed a complaint against them under Section 395, I. P. C., which ultimately ended in their conviction. A subsequent complaint was made by the Gramsabha of Biraure through Lekhraj Pradhan against the applicants on the 14th of November, 1953, under Section 379, I.P.C., on the allegation that the applicants were guilty of the offence of theft for catching fish from the aforesaid land.

This complaint of the opposite party No. 2, namely the Pradhan of Gram Sabha, Biraure, was taken up by the panchayati adalat, Biraure, and the members forming the panchayati adalat were persons different from those who were convicted earlier under Section 395, I.P.C. The panchayati adalat after taking the evidence of the parties and after holding 'secret inquiry', as has been stated by them in the judgment, found that the offence under Section 379, I. P. C. was proved.

3. The first point which has been raised by the applicants in this Court is that having regard to Section 49 (3) of the U. P, Panchayat Raj Act, 1947, the members forming the panchayati adalat were incompetent to decide this case. Section 49 (3) of the Panchayat Raj Act provides that no panch, Sarpanch or Sahayak Sarpanch shall take part in the trial or inquiry in any cases to which he or any near relation, employer, employee, debtor, creditor or partner of his is a party or in which any of them is personally interested. The words 'any of them' in the last part of Section 49 (3) refer to a Panch or Sarpanch only and do not refer to mere

relation, employer, employee or partner in business,

So far as the rule about a Panch or Sarpanch not taking part in a case when any of them is personally interested is concerned, it is identical with the rule laid down in Section 556 of the Code of Criminal Procedure. It is one of the fundamental principles of the exercise of judicial functions by Courts that they should be impartial and fair, or, in other words, that they should not have any prejudice against any one of the parties. Thus it is that no Judge can try a case in which he is himself interested. The principle does not rest upon any suspicion as to the honesty of the Judge or his capacity for the purposes of adjudication, but in the words of Mahmud, J.:

It rests upon a thing higher than the technicalities of law. It rests upon the philosophy that says that human beings are after all human beings and, with all honour due to the honesty and integrity of Judges, they are not to hear cases in which they are themselves concerned.' - Queen Empress v. Phipps ILR 13 All 171 (FB) (A).

4. In the present case, however, the members forming the panchayati adalat were not personally interested in the case. They were not the persons against whom the previous proceedings under Section 395, I. P. C. had been taken. It was contended that the members of the panchayati adalat who decided the present case had been influenced by those persons who were prosecuted and convicted under Section 395, I. P. C. in the earlier case. There was, however, nothing on the record to sustain that contention. Consequently it cannot be said that the constitution of the Nyaya Panchayat in the present case was in any way hit by the provisions of sub-clause (3) of Section 49 of the U. P. Panchayat Raj Act, 1947.

5. The next point which has been contended on behalf of the applicants is that the 'secret inquiry' made by members of the panchayati adalat and referred to in their decision is an inquiry which is not permitted by the provisions of the U. P. Panchayat Raj Act and consequently the decision of the adalat is vitiated. It, has, however, been contended on behalf of the State that the use of the words 'secret inquiry' in the decision of the panchayati adalat, though unhappy, cannot be construed as meaning that any secret inquiry had really been made by the

members of the adalat and that what those members really intended to mean is that they had made only a local Investigation.

In this connection reference may be made to Section 83 of the U. P. Panchayat Raj Act. This section, inter alia provides that the Nyaya Panchayat shall receive such evidence in the case as the parties may adduce and may call for such further evidence as in their opinion may be necessary for the determination of the points in issue; and it shall be the duty of the Nyaya Panchayat to ascertain the facts of every civil, criminal or revenue case before it by every lawful means in its power and thereafter to make such decree or order, with or without costs, which may seem Just and legal.

The section further provides that they may make local investigation in the village to which the dispute relates; that it shall follow the procedure prescribed by or under this Act; and that the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Evidence Act and the Indian Limitation Act shall not apply to any civil, criminal or revenue case in a Nyaya Panchayat, except as provided in the U. P. Panchayat Raj Act or as may be prescribed. It is therefore obvious that the panchayati adalat has very wide powers under this section regarding evidence and procedure to be followed in a case, but those wide powers do not by any stretch of reasoning comprehend the making of a secret inquiry behind the back of a party.

The members of the panchayati adalat in their judgment say that the evidence adduced by the parties and the secret inquiry held by them proved that the complaint was true. No doubt they have considered the evidence which was on the record, but there can be no doubt also that they were in their decision largely influenced by the secret inquiry. Such secret inquiry is not permitted by the provisions of the U. P. Panchayat Raj Act. According to Section 83 of that Act it is the duty of the panchayati adalat to ascertain the facts of every case before it by every means in its power.

It further permits the panchayati adalat to make a local investigation in the village to which the dispute relates, but such local investigation cannot be allowed to take the shape of a secret inquiry. As has been held by this Court in *Doulat Ram v. Panchayat Adalat* : AIR1954 All306 , such secret inquiry would not be lawful. In

this view of the matter, the procedure adopted by the panchayati adalat appears to be illegal. It is therefore not possible to uphold the conviction of any of the applicants.

6. The application is therefore allowed the conviction of the applicants under Section 379, I. P. C. and the sentences passed thereunder are set aside and they are acquitted. The fine, if paid, shall be refunded.

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