

Sant Prasad and ors. Vs. State

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Court : Allahabad

Decided On : Jun-01-1951

Reported in : AIR1952All785

Judge : P.L. Bhargava, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 49, 58, 78(2) and 83; Uttar Pradesh Panchayat Raj Rules - Rules 95(3), 115, 117 and 118; Indian Penal Code (IPC) - Sections 379 and 390

Appeal No. : Criminal Revn No. 15 of 1951

Appellant : Sant Prasad and ors.

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Kalbe Mustafa, Adv.

Disposition : Application allowed

Judgement :

ORDER

P.L. Bhargava, J.

1. This is an application by Sant Prasad, Jagdamba Prasad Meghai and Earn Adhar, residents of village Bhewanigarh, in the Pratapgarh district, for the exercise of the revisional powers of this Court under Sections 435/439, Criminal P. C. read with Article 227, Constitution of India. The applicants were tried by the Panchayati Adalat of Rampur circle and Sant Prasad and Jagdamba Prasad were convicted and sentenced to pay a fine of Rs. 10 each, under Section 323, Penal Code and Maghai and Ram Adhar were convicted and sentenced to pay a fine of Rs. 10 each, under Section 379, Penal Code. The matter was taken-up in revision, which come-up for hearing before the sub-divisional Magistrate of Patti, in the district of Partapgarh. The learned Magistrate refused to interfere in revision. Now, the applicants have made this application.

2. The facts and circumstances, which have given rise to this application, are these. On 9.10.1949, one Jhoora Kurmin filed a complaint before the Panchayati Adalat of Rampur against the applicants. In this complaint she alleged that after harvesting the paddy crop in her field in Bhewanigarh. she had stocked it there; that the applicants came together to her field on 6-1-1949, at about 9 or 10 A. M. and forcibly attempted to remove the harvested crop; that when she protested Maghai Pasi and Ram Adhar Pasi pushed her and she fell down; and that after she had fallen down on the ground Jagdamba Prasad advanced towards her with a lathi, but in the meantime village people arrived on the scene and the applicants went away. In the complaint, the valuation of the crop was stated to be Rs. 50.

3. It appears from the record that some evidence was recorded by the Panchayati Adalat of Ramapur and then a local investigation was decided upon. The local inspection was made in village Bhawanigarh, where the applicants as well as the complainant reside, by the five panches of the Panchayati Adalat of Ramapur and by three other persons. A document, which purports to be the decision of these eight persons, is dated 14-12-1949, and is on the record. This document bears the signatures of the five panches, who have given decision in this case, namely, Tirath Raj Tripathi, Lachchman DAS, Bhagvati Prasad Chaubey, Earn Dhan Kurmi and Ram Dayal and also of Hata Pher Panch, Raja Ram Yadav and Pateh Bahadur Singh Panch.

4. The decision given by the Panchayati Adalat of Rampur in this case refers to the statements of the Panches and Sabhapati of Bhawanigarh and is based thereon. The statements of these panches and Sabhapati of Bhawanigarh are contained in the document, dated 14-12-1949, to which reference has been made above.

5. The judgment of the Sub-divisional Magistrate of Patti goes to show that before him only the question of jurisdiction of the Panchayati Adalat, having regard to the actual valuation of the property, subject of theft, was pressed by and decided against the applicants.

6. In this Court, in the first place, it has been contended on behalf of the applicants that as far as Jagdamba Prasad is concerned his conviction is bad in law because the summons of the case was never served upon him and the entire proceedings had taken place behind his back. It is noted in the decision of the Panchayati Adalat that a summons was once issued to Jagdamba Prasad to his house address and another summons was sent to him by registered post. The summons, which was issued by the Court in the ordinary way, was returned unserved with a report that Jagdamba Prasad was not present at his house. It does not appear from the record whether any summons was actually sent to Jagdamba Prasad by post and whether it was served upon him. Learned Government advocate has not been able to show to me any provision which allows or recognises the service of summons in criminal cases by registered post. Rule 115 of the Rules framed under the U. P. Panchayat Raj Act, 1947, lays down that if the person on whom the summons or notice is to be served resides within the jurisdiction of the Adalat the procedure outlined in Rules 117 and 118 shall be followed. Rule 117 provides that the summons or notice shall ordinarily be served by a chowkidar or process-server, but the sarpanch or panch who directs its issue may, in his discretion, cause it to be served by any other person. Rule 115 requires that the summons or notice shall be served by delivery to the person concerned, whose signature or thumb-impression shall be taken on the duplicate. If the person concerned cannot be found or if it appears that he is evading service, the sarpanch or a panch may order that the summons or notice be served on an adult male member of the family or the persons residing with him, or affixed to some conspicuous part of the

house in which the person ordinarily resides. The applicants, as we have already seen, are residents of Bhawanigarh. Having regard to the fact that the Panchayati Adalat of Ramapur had tried the case against the applicants in relation to an offence, which was alleged to have been committed in Bhawanigarh, it may safely be assumed that Bhawanigarh is within the jurisdiction of the said Panchayati Adalat. Consequently, the summons issued to Jagdamba Prasad ought to have been served in the manner provided in Rules 117 and 118, to which reference has been made above. It is clear from the record that the summons issued to Jagdamba Prasad was not served in the manner provided in Rules 117 and 118 aforesaid.

7. It appears from the decision of the Panchayati Adalat that the Adalat proceeded against Jagdamba Prasad ex parte in view of the provisions of Section 78, Sub-section (2), U.P. Panchayati Raj Act, 1947. That sub-section lays down :

'The Panchayati Adalat may hear and decide the suit, case or proceeding in the absence of the defendant, accused or opposite party, if the summons has been served upon him or if he has been informed of the time and place fixed for hearing.'

As has been pointed out above, the summons issued to Jagdamba Prasad was not served upon him; and there is nothing on the record to show that he was informed of the time and place fixed for the hearing of the case against him. Consequently, the Panchayati Adalat could not proceed to hear the case against Jagdamba Prasad in his absence. As far as he is concerned, therefore, the proceedings before the Panchayati Adalat were ineffective and his conviction cannot be sustained on that account.

8. In the next place, the learned counsel for the applicants has raised certain other objections, which, according to his contention, vitiate the entire proceedings before the Panchayati Adalat. He has pointed out, firstly, that the recording of the statements of the accused on oath was illegal, inasmuch as Rule 95 (3) of the Rules framed under the U. P. Panchayati Raj Act, 1947, provides that before examining any person, except an accused, a Panchayati Adalat shall administer him a certain oath. That rule makes it incumbent upon the Panchayati Adalat to

examine all persons other than the accused after administering them to the prescribed oath. It does not lay down that, if oath is administered to an accused person before his statement is recorded, that would vitiate the entire proceeding in which the statement is recorded. I, therefore, see no force in this objection.

9. Secondly, it has been pointed out that, having regard to the nature of the allegations contained in the complaint the case really fell within the purview of Section 390, Penal Code and as such the Panchayati Adalat had no jurisdiction in the matter. It is not disputed that an offence under Section 390, Penal Code is not cognisable by a Panchayati Adalat; but it has been contended that the allegations in the complaint do not amount to an offence under Section 390, Penal Code, inasmuch as there is no clear indication in the complaint about the use of force in the commission of theft or in the carrying away of the stolen property. As has already been pointed out above, it was stated in the complaint that the applicants had forcibly removed the harvested crop, which was stocked in the field; and further it was alleged that the complainant had been pushed by two of the accused persons when she raised a protest against the applicants carrying away her property. It was further alleged in the complaint that on being pushed the complainant had fallen down on the ground. From these circumstances; it is possible to draw a reasonable inference that bodily pain waft caused to the complainant and as such hurt was caused to her. No particular offence was mentioned in the complaint and the offence alleged to have been committed by the applicants had to be gathered from the allegations made in the complaint. They, as pointed out above, clearly indicated the use of force and attempt to cause hurt in the commission of theft.

10. Further, it has been pointed out that, although it was alleged in the complaint that the value of the property removed was Rs. 50, in her statement the complainant had admitted that the value was about Rs. 80. After the statement of the complainant, the applicants had, at one stage of the proceedings before the Panchayati Adalat, brought to the notice of the Adalat that in view of the statement of the complainant the case was beyond its jurisdiction. That application was, however, rejected. Section 58, U. P. Panchayati Raj Act, 1947, lays down that :

'If at any time it appears to a Panchayati Adalat

(a) that it has no jurisdiction to try any case before it, or

(b) that the offence is one for which it cannot award adequate punishment, or

(c) that the case is of such nature or complexity that it should be tried by a regular Court; it shall return the complaint to the complainant directing him to file it before the Sub-divisional Magistrate, having jurisdiction to try such case.'

It would thus appear that, in refusing the application filed by the applicants, the Panchayati Adalat had overlooked the provisions of Section 58 aforesaid.

11. Consequently; having regard to the allegations in the plaint and in view of the valuation of the property said to have been stolen, the Panchayati Adalat had no jurisdiction to try the case and this want of jurisdiction vitiates the entire proceedings before the Adalat.

12. Thirdly, it has been pointed out that the Panchayati Adalat seized of the case had no power to direct any of the matters in issue to be investigated on the spot by the persons on the panel of panches of Panchayati Adalats of other circle. The reference in the judgment is to the statements of the panches of Bhawanigarh and of the Sabhapati or Chairman of the Gaon Sabha or Gaon Panchayat of that place. It, no doubt, appears that the five panches, who constituted the Panchayati Adalat seized of the case, were among the persons who had made the local inspection in Bhawanigarh; but they had no power to associate outsiders in the investigation or trial of this case. No provision in the U. P. Panchayat Raj Act has been cited which empowers a Panchayati Adalat to take the help of outsiders in investigating the matters which arise in the cases which come up before the Adalat for determination.

13. Under Section 42, U. P. Panchayat Raj Act, 1947, a Panchayati Adalat has to be established for each circle. The Gaon Sabha of the circle is empowered under Section 43 of the Act to elect five adults of prescribed qualification permanently residing within its jurisdiction to act as panches in the Panchayati Adalat of that circle. The panches so elected by the Gaon Sabha in a circle are to form a panel.

Section 44 provides for the election of a Sar-panch. Section 49 of the Act lays down that the Sirpanch shall for the trial of every case, suit or proceeding, form a bench of five panches from the panel; provided that at least one of the panches in the bench shall be a person who is able to record evidence and proceedings. The bench so constituted has to give decision in every case, suit or proceeding that comes up for disposal before it. Section 83 provides that the Panchayati Adalat shall receive such evidence in a suit, case or proceeding 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 that it shall be the duty of the Panchayati Adalat to ascertain the facts of every suit, case or proceeding before it by every lawful means in its power and thereafter to make such decree or order with or without costs, as to it may seem just and legal. In regard to the local investigation the section provides that the Panchayati Adalat may make local investigation in the village to which the dispute relates. The Adalat has to follow the procedure prescribed by or under the U. P. Panchayat Raj Act, 1947. In the present case, as has been pointed out above, the local investigation was not made by the Panchayati Adalat itself; but it was made by it in collaboration with outsiders. The procedure adopted by the Panchayati Adalat was, therefore, contrary to the provisions of the U.P. Panchayat Raj Act, 1947, and there can be no doubt that the applicants were seriously prejudiced thereby.

14. For the reasons stated above, the whole proceedings before the Panchayati Adalat were vitiated by irregularities and illegalities which go to the root of the matter. It is, therefore, not possible to uphold the conviction of any of the applications.

15. The application is, therefore, allowed, the conviction of and the sentence imposed upon the applicants are set aside and they are acquitted. The fine, if paid, will be refunded. Having regard to the petty nature of the offence with which the applicants were charged, I do not consider it necessary to order a fresh trial.