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Basdeo Misra Vs. Badal Misra and ors.

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Court : Allahabad

Decided On : Nov-08-1926

Reported in : AIR1927All199

Appellant : Basdeo Misra

Respondent : Badal Misra and ors.

Judgement :

Iqbal Ahmad, J.

1. This is an application for transfer of a case under Section 323 of the Indian Penal Code (Basdeo Misra v. Badal Misra, and others) pending in the panchayat at Sonbarsa.

2. A preliminary objection is taken to the hearing of this application by Mr. Pandey on the ground that a panchayat constituted under the provision of Act 6 of 1920 (United Provinces Village Panchayats Act) is not a Court within the meaning of Ch. 2 of the Criminal P.C., and as it is not a criminal Court within the meaning of that Act, Section 526 of the Criminal P.C. has no application, and as such this Court has no jurisdiction to transfer a case pending before a panchayat.

3. The matter was considered by a Division Bench of this Court in the case of Sat Narain v. Sarju A.I.R. 1924 All. 265. One of the learned Judges was of opinion that a panchayat constituted under the provisions of the Local Act referred to above is

not a 'criminal Court' and as such this Court has no jurisdiction under Section 526 of the Criminal P.C. to transfer a case pending before a panchayat. He was further of opinion that Section 22 of the Letters Patent did not vest jurisdiction in this Court to transfer a case from a village panchayat.

4. The other learned Judge constituting the Bench was of a contrary opinion. He held that the village panchayat must be deemed to be a Court for the purpose of Section 22 of the Letters Patent, and as such

the High Court has power under that section to transfer any criminal proceeding pending before the village panchayat to another village panchayat empowered to take cognizance thereof.

5. The same question arose for consideration in the case of Kamlapati Punth v. Emperor : AIR1926 All27 and the learned Judges constituting the Bench made the following observation:

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 obsrevations 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.

6. Though the observations quoted above are in the nature of obiter dicta still they are entitled to the greatest weight.

7. The main reasons assigned by one of the learned Judges, who decided the case of Sat Narain v. Sarju A.I.R. 1924 All. 265. for holding that Section 526 of the Criminal P.C. has no application to village panchayats was that such a panchayat was not a 'criminal Court' within the meaning of Ch. 2 of the Criminal P.C. In view of the observations quoted above to be found in Kamlapati Punth v. Emperor : AIR1926 All27 the reasoning of the learned Judge who held that this Court has no jurisdiction to direct the transfer of a case of a panchayat loses much of its weight. Section 5 of the Criminal P.C. prescribes that all offences under the Indian Penal

Code shall be

investigated, enquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

8. I am not sure if this Court does not 'otherwise deal with offences under the Indian Penal Code,' when this Court in the exercise of the powers vested in it by Section 526 of the Criminal P.C. transfers a case from one Court to another and I am inclined to the view that by Section 5 of the Criminal P.C. read with Section 526 of the same Code, this Court has jurisdiction to transfer cases from village panchayats.

9. For the reasons given above, I am of opinion that I have jurisdiction to deal with this matter.

10. After going through the affidavits filed and hearing the learned Counsel for the parties I have come to the conclusion that this is a fit case which ought to be transferred from the panchayat Court to some other Court competent to try the same.

11. I direct that the case under Section 323 of the Indian Penal Code (Basdeo Misra v. Badal Misra and others) be transferred from the panchayat Court at Sonbarsa to the Court of the District Magistrate of Ballia who will make over the case for trial to some other Magistrate subordinate to him and competent to take cognizance of the offence mentioned in the complaint.

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