

Khachu Jagannath and ors. Vs. the State of Madhya Pradesh and anr.

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Court : Madhya Pradesh

Decided On : Dec-19-1963

Reported in : AIR1964MP239; 1964CriLJ422; 1964MPLJ186

Judge : Shiv Dayal and ;N.M. Golvalkar, JJ.

Acts : [Constitution of India](#) - Article 14; Madhya Pradesh Panchayat Rules, 2008 Smt. - Rule 85; Madhya Bharat Panchayat Rules; Code of Criminal Procedure (CrPC) - Sections 251A and 256; Madhya Bharat Panchayat Act, 1949 - Sections 75

Appeal No. : Criminal Revn. No. 59 of 1963

Appellant : Khachu Jagannath and ors.

Respondent : The State of Madhya Pradesh and anr.

Advocate for Def. : H.L. Khaskalam, Govt. Adv.

Disposition : Revision dismissed

Judgement :

Shiv Dayal, J.

1. This revision was referred to the Chief Justice by Sharma, J., sitting alone, with the recommendation that it be placed before a Bench of two Judges in view of

important questions of law involved. The petitioners were tried under Sections 447, 504 and 506 of the Penal Code by the Nyaya Panchayat, Jigni, established under the M.B. Panchayat Act, No. 58 of 1949 (hereinafter called the Act). The Nyaya Panchayat found the petitioners guilty and punished them with a fine of Rs. 25/- each. Their revision was dismissed by the 1st Additional Sessions Judge, Morena. The petitioners grievance is that the provisions of the Panchayat Act infringe Article 14 of the Constitution inasmuch as in a trial before a Nyaya Panchayat, there is no provision for framing of a charge or for further cross-examination of prosecution witnesses even in a warrant case.

2. A Nyaya Panchayat is established under Section 51 of the Act. Its criminal jurisdiction, is provided in Section 75. Offences specified in that section when committed within the jurisdiction of a Nyaya Panchayat are triable by it. Sections 447, 504 and 508 of the Penal Code are some of the offences specified in that section. The limit of punishment which a Nyaya Panchayat can inflict is provided in Section 76; it cannot award a sentence of imprisonment; the maximum limit of fine which it can impose is one hundred rupees, but it cannot award imprisonment even in default of payment of fine. If a case triable by Nyaya Panchayat is instituted before a Magistrate, Section 77 gives him discretion to transfer it to the Nyaya panchayat having jurisdiction, if he thinks that the case should be tried by it. *Deolal v. Lohere*, 1960 Jab IJ 246.

3. The procedure for the trial of offences by the Nyaya Panchayat is laid down in Rule 85 of the M.B. Panchayat Rules, Samvat 2008. The Nyaya Panchayat shall explain to the accused the particulars of the offence or offences of which he is accused; shall record statements of the complainant and his witnesses; and thereafter shall hear the accused and the defence evidence. If the accused admits his guilt he may be convicted without further trial.

4. Under the Criminal Procedure Code a case relating to Section 447 of the Penal Code is a summons case but a case under Sections 504 and 506 is a warrant case as the term of imprisonment may extend to two years. Chapter 20 of the Criminal Procedure Code lays down the procedure for the trial of summons cases while Chapter 21 for the trial of warrant cases. The procedure in Rule 85 of the

M.B. Panchayat Rules is substantially and practically the same as that of the trial of a summons case under the Code of Criminal Procedure. But in the trial of a warrant case under Chapter 21, Criminal Procedure Code, a charge has to be framed under the provisions of Chapter 19 of that Code. Moreover, when a warrant case is instituted otherwise than on a police report, the accused has the right to further cross-examine witnesses for the prosecution whose evidence had been taken before the charge was framed.

5. The questions which we are called upon to answer are: (1) Whether the procedure laid down under the M.B. Panchayat Rules for trial of offences by a Nyaya Panchayat is violative of Article 14 of the Constitution inasmuch as it does not provide for the framing of charge, nor has the accused the right of cross-examination of the prosecution witnesses twice? (2) Inasmuch as the offences specified in Section 75 of the Act are not exclusively triable by the Nyaya Panchayat, are the provisions discriminatory and hit by Article 14 of the Constitution because it is the complainant's choice whether to institute his complaint in the ordinary Court or in the Nyaya Panchayat.

6. Equal protection of the laws as guaranteed in Article 14 of the Constitution means a right to equal protection in similar circumstances in respect of privileges conferred as well as liabilities imposed by them. No person can, therefore, be singled out as a subject for discriminating and hostile legislation. That, however, does not mean that every law must have universal application to all persons. As the Supreme Court observed in *Ameerunnissa Begum v. Mahboob Begum*, 1953 SCR 404 at p. 414 : (AIR 1953 SC 91 at p. 94):

'A legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular object; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate.'

Therefore, under the equal protection clause, the problem is one of classification which means segregation in classes which has a systematic relation and postulates a rational basis. Classification is reasonable when it is not an arbitrary

selection and rests on differences pertaining to the subject in respect of which classification is made. The difference which will warrant a reasonable classification must be real and substantial and must bear some just and reasonable relation to the object of the legislation. See *Baburao v. The Bombay Housing Board*, 1954 SCR 572 : (AIR 1954 S C 153) and *Surajmall Mohta and Co. v. Vishvanatha Sastri*, AIR 1954 SC' 545). The inequality produced in order to encounter the challenge of the Constitution must be actual and palpably unreasonable and arbitrary (per *Arkansas Natural Gas Co. v. Arkansas Rail Road Commission*, (1923) 261 US 379 at p. 384). In 1953 SCR 404 at p. 414 : (AIR 1953 SC 91 at p. 94) (Supra), their Lordships observed :

'Mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the Legislature has in view.'

7. The Court 'should not', observed Fazl Ali, J., in *Charanjitlal Chowdhuri v. Union of India*, 1950 SCR 869: (AIR 1951 SC 41), 'adopt a doctrinaire approach which might choke all beneficial legislation'. The Court has first to ascertain the policy underlying the Statute and the object intended to be achieved by it. This may be gathered from the title, preamble and the provisions of the enactment. (See *Kedarnath v. State of West Bengal*, 1954 SCR 30 : (AIR 1953 SC 404)). Having done so, the Court has to address itself two questions: Is the classification rational and based on intelligible differentia? Has the basis of differentiation any reasonable nexus or relation with its avowed policy and object? If both these questions are answered in the affirmative, the Statute must be held to be valid and it is outside the province of judicial enquiry to ask whether the same result could not have been better achieved by adopting a different classification.

8. A procedural law is equally subject to these constitutional limitations as a substantive law. In *State of West Bengal v. Anwar Ali Sarkar*, 1952 SCR 284 at page 322 : (AIR 1952 SC 75 at p. 89), Mukherjea, J., observed :

'A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.'

No general rule applicable to all cases can be safely laid down to ascertain whether an enactment which provides for a special procedure for trial of certain offences is or is not discriminatory and, therefore, violative of Article 14. A procedure different from that laid down by the ordinary law can be prescribed for a particular class of persons if the discrimination is based upon a reasonable classification. (*Muthiah v. Commr. of Income-tax*, 1955-2 SCR 1247 : ((S) Am 1956 SC 269); *Gurbachan Singh v. State of Bombay*, 1952 SCR 737 : (AIR 1952 SC 221) and 1954 SCR 30 : (AIR 1953 SC 404) (Supra)).

9. Even before the Constitution, particular offences could be tried by special Courts under a special procedure (see *Emperor v. Benoarilal*, 72 Ind App 57 : (AIR 1945 PC 48).) After the commencement of the Constitution, there has been much divergence of judicial opinion, and as the Supreme Court has said in *Medanath's case*, 1954 SCR 30 : (AIR 1953 SC 404) (Supra) no general rule applicable to all cases can safely be laid down to test whether or not a special procedure for trial of certain offences is or is not discriminatory. However, their Lordships observed in *Kangshari Halder v. State of West Bengal*, AIR 1960 SC 457 at p. 459:

'In applying the said principles to the different sets of facts presented by different cases emphasis may shift and the approach may not always be identical, but it is inevitable that the final decision about the vires of any impugned provision must depend upon the decision which the Court reaches having regard to the facts and circumstances of each case, the general scheme of the impugned Act and the nature and effect of the provisions the vires of which are under examination.'

10. Applying these principles and tests to the present case, the preamble of the Panchayat Act must at once engage our attention. The object of this enactment is the establishment of Self-Government and development of rural areas through Panchayats. The Nyaya Panchayats established under the Act are invested with both civil and criminal jurisdiction, for the trial of petty cases. The offences

enumerated in Section 75 are minor. The policy of the law obviously is that for the trial of such minor offences a complainant may get redress in his own rural area at the hands of the Nyaya Panchayat. The limit of punishment which a Nyaya Panchayat can award is presumably fixed having regard to the capabilities of those who are entrusted with the task of dispensing justice. The procedure must necessarily be as simple as possible. Of all the kinds of trials under the Code of Criminal Procedure that for the trial of a summons case is the simplest and that is substantially the procedure prescribed in Rule 85 of the Panchayat Rules.

11. Although a charge is not required to be framed, the substance of the accusation has to be explained to the accused. This substantially fulfils the object of informing the accused of the allegations which he has to meet. Similarly, although, under Section 256, Criminal Procedure Code, a second opportunity of cross-examination is given to the accused, such a right is not found even in the procedure laid down in Section 251-A, Criminal Procedure Code, that is, in the case of trial of a warrant case on a police report.

12. It is clear from this discussion that the departure in the M. B. Panchayat Act from the ordinary procedure laid down in Criminal Procedure Code is neither substantial nor real. The changes are so minor that they do not really prejudice the accused in getting substantially similar trial as under the existing general law. The test to be applied is not the degree of inequality but the reality of it. (See *Oasim Razvi v. State of Hyderabad*, 1953 SCR 589 : (AIR 1953 SC 156) and *Anwar Ali's case*, 1952 SCR 284 : CAIR 1952 SC 75) (Supra). Also see *Habeeb Mohamed v. State of Hyderabad*, 1953 SCA 789 at p. 795 : (AIR 1953 SC 287 at p. 290i).

13. This matter can also be viewed from another angle. The limit of punishment which a Nyaya Panchayat can award is a fine of one hundred rupees. Now it is quite clear from the scheme of the Code of Criminal Procedure that different procedures for trial are laid down according to the gravity of the offences. The dividing line between a summons case and a warrant case is imprisonment which may extend to one year. It will, therefore, be permissible to say that for the purposes of the Panchayat Act where the maximum punishment to which an accused can be sentenced is a fine of Rs. 100/- all the cases triable by it are

summons cases and since the procedure laid down in Rule 85 is in accord with that provided in Chapter 20 of the Criminal Procedure Code, there is no discrimination whatever.

14. This brings us to the second question. It is true that the Panchayats Act does not confer exclusive jurisdiction on the Nyaya Panchayat and it is open to the complainant to institute his complaint in the ordinary Court of law. But it must be recalled that if the complainant chooses to get his case tried by the Nyaya Panchayat, the maximum punishment which can be awarded is Rs. 100/-. It is not as if there are two Courts of concurrent jurisdiction. The powers in regard to punishment being very different, there is no prejudice to the accused. Under the Code of Criminal Procedure also there are certain offences which can be tried summarily under Chapter 22 and Section 262 lays down the limit of sentence of imprisonment as three months. Just as a Magistrate trying an offence summarily may convert the trial into an ordinary trial under Chapter 20 or 21, as the case may be, so also under Section 79 of the Panchayat Act, the Nyaya Panchayat may transfer a case to the ordinary Court having jurisdiction. We are, therefore, of the opinion that merely because the complainant has the option to approach the Nyaya Panchayat or the ordinary Court, in case of an offence triable by the Nyaya Panchayat, Article 14 of the Constitution is not violated.

15. For reasons stated above, we would answer both the questions as follows:

(1) The procedure laid down under the M.B. Panchayat Rules for trial of an offence by a Nyaya Panchayat is not violative of Article 14 of the Constitution merely because it does not provide for the framing of charge nor gives the accused the right to cross-examine the prosecution witnesses twice. ,

(2) Section 75 of the M. B. Panchayat Act does not offend against Article 14 of the Constitution merely because it does not confer exclusive jurisdiction on the Nyaya Panchayat and it is still open to the complainant to institute his complaint in the ordinary Court.

16. The revision is dismissed.

