

Isher Dass Vs. Amar Nath

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Court : Punjab and Haryana

Decided On : Jun-14-1972

Reported in : 1973CriLJ718

Judge : B.R. Tuli, J.

Appellant : isher Dass

Respondent : Amar Nath

Judgement :

ORDER

B.R. Tuli, J.

1. Isher Dass petitioner lodged reports with the police on October 26 and 28, 1964, alleging that Amar Nath respondent was the Sarpanch of village Shahzadpur and in that capacity had embezzled certain amounts of the Gram Panchayat and had also made false entries in its books of account, thereby committing offences under Sections 409, 466 and 420. Indian Penal Code. The police, however, filed a charge sheet against the respondent only in respect of the embezzlement of Rs. 6/- in Court and did not investigate into the other charges. On February 21, 1966, the petitioner filed a complaint under the above said sections which was dismissed by the learned judicial Magistrate 1st Class, Ambala City, on December 19, 1969, on the ground that sanction of the State Government under Section 197 of the Code of Criminal Procedure was necessary before the Court could take

cognizance of the complaint as all the acts of misconduct alleged against the respondent had been committed by him in his capacity as a Sarpanch of Gram Panchayat that is. while acting as a public servant and in the discharge of his official duties. The petitioner filed a revision against that order which was dismissed by the learned Additional Sessions Judge, Ambala, by order dated October 20, 1970. The present petition is directed against the order of the learned Additional Sessions Judge.

2. The learned Counsel for the petitioner has submitted that under Section 197 of the Code of Criminal Procedure, two conditions have to co-exist, namely.

(i) the public servant must be removable from his office only by or with the sanction of the State Government or the Central Government; and

(ii) the public servant must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

3. In the case in hand none of the two conditions can be said to be present. A Sarpanch like the respondent is removable from his office under Sections 9 and 102(2) of the Punjab Gram Panchayat Act, 1952. (hereinafter called 'the Act'). Under Section 9, he is removable by a two-third majority of the votes of the members of the Sabha at an extraordinary general meeting held with the previous permission of the Director and the resolution of removal so passed by the Gram Sabha is to be approved by the Director. Under Section 102(2); Government can remove a Sarpanch on any of the grounds mentioned in that sub-section. It is thus apparent that there are two authorities which can remove a Sarpanch from his office. Whereas the power of the Government is limited and circumscribed, the power under Section 9 is much wider. It only requires the previous sanction of the Director for holding the extra-ordinary meeting and his subsequent approval to the resolution which may be passed by the Gram Panchayat by two-third majority. The grounds for removal may be the same as are mentioned in Section 102(2) of the Act or any other ground. It cannot, therefore, be said that the respondent in the present case was removable from his office only by the State Government.

4. The learned Counsel for the petitioner has relied on a judgment of Shamsheer Bahadur J. in *Basant Lal v. Net Ram* 1961 (63) Pun LR 872, wherein the learned Judge held that under the Pepsu Panchayat Raj Act, 2008 BK., a Sarpanch was not removable by sanction of the State Government and therefore., no previous sanction for his prosecution was necessary under Section 197 of the Code of Criminal Procedure. Under Section 12 of the Pepsu Panchayat Raj Act, the Sarpanch was removable from his office by a two-third majority of votes of the members of the Sabha at an ordinary meeting, if approved by the Director. There was no provision in that Act analogous to the provisions of Section 102(2) of the Punjab Gram Panchayat Act, 1952. empowering the Government to remove the Sarpanch from his office. Gurdev Singh, J. in Criminal Revn, No. 430 of 1965, *Aimer Singh v. The State* decided on 22.2.1966 (Punj), ruled that the previous sanction of the State Government under Section 197 of the Code of Criminal Procedure was necessary for the prosecution of a Sarpanch under Section 409, Indian Penal Code, as under Section 102 of the Act. the Sarpanch was removable from his office only by the State Government. The judgment in (1961) 63 Punj LR 872 (supra) was cited before the learned Judge but it was held that it was distinguishable on facts because of the provisions of Section 12 of the Pepsu Panchayat Raj Act, 2008 BK. It is unfortunate that the provisions of Section 9 of the Act were not brought to the notice of the learned Judge nor was it argued that there were at least two authorities under the Act which could remove the Sarpanch from his office. This judgment has. therefore, no binding force.

5. This matter came up for consideration before Gopal Singh, J. in *Pritam Singh v. The State of Haryana* Criminal Revn, No. 299 of 1969, decided on 10.12.1969 (Punj), and the learned Judge held that in view of the fact that there were two authorities under whose orders a Sarpanch can be removed from his office, sanction under Section 197 of the Code of Criminal Procedure is not necessary for his prosecution. I find myself in respectful agreement with the opinion expressed by Gopal Singh, J. and hold that the sanction of the State Government for the prosecution of the respondent in this case was not necessary. The Rajasthan High Court has taken a different view in *Prabhu Dayal v. Milap Chand* , *Pukhrai v. Ummaidram* and *Ramdutt v. State of Rajasthan* AIR 1966 Raj 125 : 1966 Cri LJ 584. Those judgments are not applicable because the provisions of the Rajasthan

Panchayat Act, 1953, are different and not in pari materia with the provisions of the Punjab Gram Panchayat Act.

6. Even the second ingredient of Section 197 of the Code is missing in this case. The alleged acts of embezzlement and falsification of accounts cannot be said to have been committed by the respondent in the discharge of his official duties. This matter has been dealt with by Shamsheer Bahadur, J. in (1961) 63 Punj LR 872 (supra) and with respect I find myself in complete agreement with what has been said by the learned Judge.

7. For the reasons given above, I hold that the sanction of the Punjab Government for the prosecution of the respondent under Section 197 of the Code was not required. I therefore, accept this petition and set aside the order of the learned trial Court, and the Appellate Court dismissing the complaint. The trial Court is directed to proceed to decide the complaint in accordance with law. The parties, through their counsel, have been directed to appear before the learned trial Court on July 10, 1972.