

Pukhraj Vs. Ummaidram and ors.

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Court : Rajasthan

Decided On : Mar-31-1964

Reported in : AIR1964Raj174; 1964CriLJ339

Judge : D.M. Bhandari and; B.P. Beri, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4 and 197; Rajasthan Panchayat Act, 1953 - Sections 17 and 78; [Indian Penal Code \(IPC\), 1860](#) - Sections 21

Appeal No. : Criminal Revn. No. 56 of 1962

Appellant : Pukhraj

Respondent : Ummaidram and ors.

Advocate for Def. : Makhtoormal, Adv.

Advocate for Pet/Ap. : G.M. Lodha, Adv.

Disposition : Petition dismissed

Judgement :

Bhandari, J.

1. This case has been referred by a Single Judge of this Court to a larger Bench as there is a divergence of Judicial opinion in this Court on the point whether a

Sarpanch of a Gram Panchayat is or is not removable from his office save by or with the sanction of the State Government.

2. The complainant Pukhraj had filed a complaint against Ummaidram and six others alleging that they had demolished the chabutri and the latrine over it on 12th of February 1958 between 9 and 10 A.M. and that the chabutri was on the land belonging to the complainant and the demolition of the chabutri and latrine had caused to the complainant the loss of Rs. 300/-. The complaint was for prosecuting the accused under Sections 451, 427 and 147, I. P. C. Ummaidram accused, took the plea that he was acting as Sarpanch of the Gram Panchayat, Bilara, and he had directed the removal of the encroachment in that capacity in good faith. The trial magistrate discharged the accused. In his opinion no prima facie case was made out as Ummaidram acting as Sarpanch was discharging his duty as Sarpanch in widening the street. The learned magistrate further held that in view of Section 79 of the Rajasthan Panchayat Act, 1953, he had not committed any offence. He also held that: the other accused were labourers and were acting under the instructions of Ummaidram and were not liable for any offence.

3. A Revision application was filed by Pukhraj against the accused in the Court of the Additional Sessions Judge No. 2, Jodhpur. The learned Additional Sessions Judge held that as Ummaid Ram was a Sarpanch who could not be removed except by or with the consent of the State Government, he was entitled to the protection under Section 197, Cri. P. C. The Revision, Application was dismissed by the learned Additional Sessions Judge.

4. The complainant has filed a Revision application in this Court challenging the order passed by the Additional Sessions Judge No. 2.

5. Before we notice the divergence of judicial opinion on the point noted above we think it proper to decide certain other points raised by the learned counsel for the applicant before us.

6. The first point raised is that Ummaidram Sarpanch was holding a public office as a result of his election as a Sarpanch and he could not be said to be a public servant employed in connection with the affairs of the State. The argument is that

Section 197, Cri. P. C. is meant to apply to a Government servant and not to an elected person holding office by virtue of his election.

7. Section 78 of the Rajasthan Panchayat Act'says that:

'The Sarpanch, every Panch, every officer and servant of a Panchayat shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.'

Thus, so far as the applicability of the provisions of the Indian Penal Code is concerned, a Sarpanch is a public servant. Public servant has not been defined in the Criminal Procedure Code but it is provided in Section 4 that all words and expressions used in the Criminal Procedure Code and defined in the Indian Penal Code shall be deemed to have meanings respectively attributed to them by that Code. We shall not be travelling beyond permissible limits, if we construe the words 'public servant' in Section 197, Cri. P. C. as including Sarpanch who is deemed to be a public servant under the Indian Penal Code by virtue of Section 78 of the Rajasthan Panchayat Act. We cannot forget that the law has made Sarpanch a public servant.

8. Next it is argued that the Sarpanch cannot be said to be in the employment of the State Government, and as such, Section 197, Cri. P. C. is not applicable. It is argued that Section 197, Cri. P. C. should be limited in its application to such Government servants who are in the employment of the State Government. In this connection it is pointed out that Section 197 deals with cases only of persons employed in connection With the affairs of the Union or affairs of a State and no other. The word 'employed' in connection with the affairs of the Union or of a State carries the sense of being engaged or occupied in connection with the affairs of the Union or of a State. With the march of democracy some functions which formerly used to be performed by the servants of the State began to be performed by the elected representatives of the people. These elected representatives if they are authorised to perform any duties or functions in connection with the affairs of the Union or of a State must be deemed to be persons employed in connection with the affairs of the Union or of a State. Originally, Section 197 might have been enacted for the purpose of affording protection to Government servants, but the

language of the section is wide enough to cover a case of an elected person discharging executive functions.

9. Now we proceed to notice the divergence of judicial opinion in this Court which led the learned Single Judge to refer it to a Bench. We refer to the decisions of this Court bearing on this point.

10. In *Chauth Mal v. Panna Lal*, ILR (1954) 4 Raj 464 at p. 467, Bapna, J. took the view that:

'Although the Commissioner is only empowered to remove any member of the Board in certain circumstances, the power of dismissal is not exclusively to be exercised by the Provincial Government'

and in such a case Section 197, Cri. P. C. did not apply.

11. In *Kalu v. Pyara*, ILR (1959) 9 Raj 38, Jagat Narayan, J. held that a Panch was not a Judge nor was a public servant removable from the office only with the sanction of the State Government and he did not enjoy the protection of Section 197, Cri. P. C.

12. In *Mohan Lal v. The State*, ILR (1959) 9 Raj 583, Modi, J. held that Sarpanch was a public servant and was not removable except by or with the sanction of the State Government and enjoyed the protection of Section 197, Cri. P. C.

13. The last case is *Bhagwatilal v. Bhanwerlal*, 1960 Raj LW 610: (1961 (i) Cri. LJ 558) in which Changani, J. held that Panch, sarpanch or upsarpanch is a public servant not removable except by or with the consent of the State Government and consequently entitled to protection under Section 197, Cri. P. C.

14. Before we give our views on the point, it is necessary to examine the provisions of the Rajasthan Panchayat Act, 1953. That Act was enacted for the purpose of establishing village panchayats in rural areas and for village administration and development. After making provision for development and constitution of panchayats in Section 3, it is provided in Section 4 that a Panchayat shall consist of a Sarpanch and such number of Panchas not being less than 5 or more than 15, as

the State Government may think fit. The Panchas and Sarpanch Come in existence by a process of election. They continue to hold office till the date of the first meeting of the next Panchayat constituted as a result of periodical election. There is provision in Section 8 for appointment of Panchas on failure to elect them. There is also provision for co-option of Panchas. Section 17 of the Rajasthan Panchayat Act contains provisions for vacation of office by and removal of Panchas, These provisions are important, and relevant part of Section 17 is quoted below. 17. Vacation of seats by and removal of Panchas.-

(1) (a) If any Panch; Sarpanch or Up-Sarpanch, who is not qualified for election or appointment as such under this Act, has been elected or appointed to a Panchayat,

(b) If any Panch, Sarpanch or Up-Sarpanch after having been elected or appointed as aforesaid becomes disqualified during the term of his office for such election or appointment, his seat shall be declared by the State Government, after giving him an opportunity of being heard, to have become vacant.

(2) If any Panch, Sarpanch or Up-Sarpanch during the term of his office, absent himself from five consecutive meetings of the Panchayat without giving information in writing to the Panchayat he shall cease to be such Panch, Sarpanch or Up-Sarpanch and his seat shall become vacant.

(3) If any Panch or Sarpanch fails to make the prescribed oath or affirmation of his office within three months from the date of notification under Section 14, his seat shall be declared by the State Government to have become vacant.

(4) The State Government may, by order in writing and after giving him an opportunity of being heard and making such inquiry as may be deemed necessary, remove any Panch, Sarpanch, or Up-Sarpanch who:

(a) refuses to act or becomes incapable of acting as such, or

(b) in the opinion of the State Government, has been guilty of misconduct or neglect in the discharge of his duties or of any disgraceful conduct: Provided that any such inquiry as is referred to in this Sub-section may be initiated even after the

expiry of the term of a Panchayat or, if already Initiated before such expiry, may be continued thereafter and in any such case the State Government shall, by order in writing, only record , its findings on the charges levelled against a Panch, Sarpanch or Up-Sarpanch of the Panchayat during its term of office.....'

By carefully looking to the provisions of Sub-clauses 1, 2 and 3, it is clear that under certain circumstances a Panch or a Sarpanch or even an up-Sarpanch cease to be a Panch, Sarpanch or Up-Sarpanch as the case may be and his seat becomes vacant. In Sub-section (4) provision is made for the removal of Panch, Sarpanch and Up-Sarpanch and this Sub-section clearly mentions that it is the State Government which is to exercise the power of removing the Panch, Sarpanch or Up-Sarpanch. No doubt under the Act it can delegate this power to some other officer or authority subordinate to it. Unless so delegated it is only the State Government which must exercise the power of removing a Panch, Sarpanch or Up-Sarpanch. In this case, it is not in dispute that such power was not delegated till the decision of the, trial Court. There is only one other provision which may result in the removal of Sarpanch and Panchas and that provision is Section 73 which provides that the State Government may by order published in the official gazette dissolve or supersede the Panchayat.

15. We may also notice Section 10 of the Act which makes provision for the vacation of an office of Panch or Up-Sarpanch on a non-confidence motion moved and carried on in accordance with the provisions of Section 19 and it is further provided that if the Sarpanch or Up-Sarpanch as the case may be against whom a motion of non-confidence has been moved, does not resign his office within the period mentioned in Section 19 he shall be removed from his office by the officer-in-charge of Panchayats.

16. The argument that is canvassed before us is that a Sarpanch is liable to be removed in a number of ways and it is only under Section 17(4) or Section 73 that the State Government takes action for removal and in other cases the removal is caused by force of law or on action taken by the authorities subordinate to the State Government and thus it cannot be said that the State Government is the only authority which can remove a Sarpanch. This leads us at once to consider:

What is meant by- removal under Section 197 Cri. P. C. Section 197 grants the protection; to the public servants but such a public servant- must be one removable from his office only by or with the sanction of the State Government or the Central Government. 'The very word 'removable' signifies that the termination' of the employment of the public servant must act come to an end automatically by force of law nor must it come to an end because he has resigned. It must come to an end on some superior authority forcing him to vacate the office. Usually in the case of a Government servant, this is done on account of misconduct and certain safeguards are provided under Article 311 of the Constitution by placing restrictions on the removal of a Government servant. It is in this technical sense that the word should be construed in Section 197, Cri. P. C. and not in any other sense. It is to be construed in the sense in which it is used in the Civil Service (Classification, Control and Appeal) Rules. There is ample authority for the proposition that under Article 311, it is to be so construed. See *Satish Chandra v. Union of India*, AIR 1953 SC 250, *Khem Chand v. Union of India*, AIR 193\$ SC 360, *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36. There is no reason to construe the word 'removal' in a different manner in Section 197, Cri. P. C. when it is to be applied to the Government servant. It is urged, however, that when it is to be applied to a person holding a public office as an elected representative, such a narrow construction on the word 'removal' should not be given. We are not satisfied that in interpreting the word 'removal' in the case of an elected representative it must be construed loosely. The word 'removal' must have the meaning of causing vacation of office as a result of misconduct or misbehaviour or any other similar, cause .This discussion takes us to the conclusion that Ummaidram could be removed only by the State Government and the complaint against him could not be taken cognizance of as there was no previous sanction of the State Government.

17. It is, however, urged that Ummaid Ram had ceased to hold the office as fresh election to the office of Sarpanch had taken place before the trial Court passed the order of discharge. This point was not canvassed before the Additional Sessions Judge, Jodhpur and we do not think that we should permit the applicant now to do so as there is no material on record from which the actual date on which Ummaid Ram ceased to hold office of the Sarpanch can be determined.

18. The other accused in the case were acting under the orders of Ummaid Ram and as such there is no case against them. In our opinion; the order of discharge passed against them should not be disturbed as Ummaidram cannot be prosecuted.

19. We express no opinion on the point whether Ummaid Ram was protected under Section 791 of the Rajasthan Panchayat Act. We may, however mention that Ummaid Ram Sarpanch was acting only in the public interest for widening the public road as the Public Works Department of the State was undertaking the construction of pucca, roads in the town of Bilara and Ummaid Ram might have been under the impression that demolition of the chabutra of the applicant was necessary so that the road could be 14 ft. in width in front of the house of the accused, instead of being only 12 ft. in width if the chabutra was not demolished. It is on record that the constructions of other residents of the town were ordered to be demolished by Ummaidram for the same purpose. The trial Court has taken the view that Ummaid Ram did not act mala fide. For this reason also we would not interfere in the order of discharge passed against Ummaid Ram.

20. The Revision petition is, therefore; dismissed.