

Kallua Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-08-1972

Reported in : 1972CriLJ1588; 1972()WLN169

Judge : L.S. Mehta, J.

Appellant : Kallua

Respondent : The State of Rajasthan and ors.

Judgement :

ORDER

L.S. Mehta, J.

1. Kallua was acting as Sarpanch. Gram Panchayat. Khanua police station, Roopbas. He alone with other Panchas of the Gram Panchayat ordered the demolition of the eastern wall of the complainant Parsadi's house on January 16, 1966. Complainant Parsadi initiated proceedings against Kallua and others under Sections 166, 167 and 120B I. P. C in the Court of Additional Munsiff-Magistrate. Bavana. In the course of the proceedings an objection was taken by Kallua on August 1, 1966. that he acted or purported to act in the discharge of his official duty as Sarpanch in issuing the order for the demolition of the wall and that as Sarpanch was removable by the State Government he could not be prosecuted without the sanction of the Government by virtue of Section 197 of Cr. P.C. That objection was rejected by the Additional Munsiff-Magistrate. Bavana by his order

dated October 15. 1968. A revision-petition was filed by Kallua in the court of Sessions Judge, Bharatpur, against the order of the Additional Munsiff-Magistrate. Bavana. That revision application was dismissed by Additional Sessions Judge, Bharatpur on September 8. 1970. Kallua presents this revision-petition against that order.

2. The contention of learned Counsel for the petitioner is that both the courts below, i.e., the Additional Munsiff-Magistrate and the Additional Sessions Judge, Mr. Murli Dhar Choudhary. fell into error in holding that Sarpanch is removable from the office by the Collector and, therefore, the provisions of Section 197, Cr. P.C. were not attracted. Learned Deputy Government Advocate also supports this contention.

3. The word 'Panch' has been defined in Section 2 (3) of the Raiasthan Panchavat Act, 1953. like this.

'Panch' means a member of a Panchavat other than a Sarpanch.

The very definition of 'Panch' suggests that it does not include 'Sarnanch'. The definition of the term 'Sarpanch' as given in Section 2 (9A) of the Raiasthan Panchayat Act runs as follows:

Sarpanch means the Sarpanch of a Panchavat elected under Sub-section (1) of Section 13:

Panchas are elected in accordance with the provisions of Section 6 of the Raiasthan Panchavat Act. The election of Sarpanch is not conducted according to that section but in accordance with a distinct provision, embodied in Section 13 (1) of the Act. Section 13 (1) is reproduced below:

Every Panchavat shall have a Sarpanch who must be a person Qualified to be elected as a Panch and able to read and write Hindi and shall be elected by the electors of the whole Panchavat Circle in the prescribed manner.

Thus the procedure for election of the Panchas and Sarnanch are quite distinct.

The State Government by its Notification No. F. 4 (138) LSG/A/58/417 dated January 1, 1962, has delegated the power prescribed in Section 17 of the Act relating to the removal of the Panchas under Section 17 (4) to the Collector; of the District. The court below has curiously interpreted the word 'Panchas' mentioned in the notification by holding that it would include Sarpanch. As I have already pointed out above, the definitions of the 'Panchas' and the 'Sarpanchas' are variegated. The provisions relating to their elections are also separate and distinct. The word 'SarDanch' under no stretch of imagination can be said to be covered by the word 'Panch-as'. If the State Government delegated such powers in respect of the 'Sarpanch' also to the Collector the same would have been definitely mentioned in the Notification, but that has not been done. That shows that the State Government retained the power of removal of 'Sarpanch' with itself. Learned Additional Sessions Judge has relied upon an authority of this Court reported in *Malu Ram v. The State of Rajasthan* ILR 1957 (7) Raj 847 : AIR 1957 Raj 340. The relevant portion of the judgment is excerpted as under:

As far as village Panchayats are concerned, a Sarpanch is included in the words 'total number of Panchas' used in Section 19 (2).

Section 19 (2) of the Act deals with no confidence motion. It runs as under:

If the motion against the Sarpanch is carried by a majority of not less than 3/4 of the total number of members of the Panchayat including the Sarpanch but excluding the associate Panchas or if the motion against the Up-Sarpanch is carried by a majority of the total number of members of the Panchayat including the Sarpanch but excluding the associate Panchas, the Sarpanch or the Up-Sarpanch, as the case may be, shall within 3 days of the passing of the motion resign his office by submitting his resignation to the Officer-in-charge of the Panchayats and thereupon his office shall be deemed to be vacant.

The above provision of Section 19 of the Act simply prescribes quorum for the purpose of no-confidence motion. If a Sarpanch is not included in the words 'total number of Panchas', appearing in Section 19 (2), the Sarpanch would have no right to table a motion of no-confidence or even to vote in a meeting convened for that purpose. But that does not mean that the position of Panch and Sarpanch is

the same for the purpose of Section 17 of the Act. As Laid down in Section 17 it is the State Government which can remove a Sarpanch and not the Collector. The power under that section has been 'delegated in respect of the Panehas only and not Sarpanchas. Therefore, the case reported as ILR (1957) 7 Rai 847 : AIR 1957 Rai 340 (supra) hardly supports the proposition Laid down by learned Additional Sessions Judge. Bharatpur.

There is a direct authority of this Court on the matter under discussion. It is reported as Ram Dutt v. State of Raiasthan AIR 1966 Rai 125. In that case it has been pointed out by Hon'ble Bhargava J. that a Sarpanch can be removed only by the State Government and the complaint against him could not be taken cognizance of unless there is a previous sanction of the State Government. The same view has been expressed by Hon'ble Bhandari and Bed JJ. in Pukh Rai v. Ummaid Ram AIR 1964 Rai 174. In that case the learned Judges made the following observation:

The Sarpancha of a Panchavat is a public servant, not removable from his office except by or with the consent of the State Government and consequently he is entitled to protection under Section 197, Cri. P.C. A complaint against him cannot therefore, be taken cognizance of without the previous sanction of the State Government.

The term 'public servant' has not been defined in Criminal Procedure Code, but it is provided in Section 4 that all words and expressions used in the Code and defined in the Indian Penal Code shall be deemed to have meanings attributed to them by that Code. Thus, the words 'public servant' in Section 197, Cr. P.C. can be construed as including a 'Sarpanch' who is deemed to be a 'public servant' within the meaning of the Indian Penal Code, as Laid down in Section 78 of the Raiasthan Panchavat Act. 1953. In this case the act alleged to have been done by Kallua shows that he did so in the execution of his official duties. There is therefore, reasonable connection between the action and discharge of the official duty and, consequently, the provision of Section 197. Cr. P. C does come into play.

4. In the result. I accept this revision-petition and set aside the order of Additional Sessions Judge. Bharatpur dated September 8, 1970. as also that of the Additional Munsiff-Magistrate. Bavana, dated October 15. 1968. and hold that Kallua cannot be prosecuted without the prior sanction of the State Government under Section 197. Cr. P.C.

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