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Court : Rajasthan

Decided On : Jul-24-1987

Reported in : 1988(1)WLN158

Judge : M.C. Jain, J.

Appeal No. : S.B. Cr. Misc. Application No. 287 of 1981

Appellant : Kewal Ram

Respondent : Tilok Das

Advocate for Pet/Ap. : Shri. A.K. Rajvanshy

Disposition : Application allowed

Judgement :

M.C. Jain, J.

1. This is an application under Section 482 Cr.PC against the order dated 20th July, 1981 passed by the Munsif and Judicial Magistrate, 1st Class Sujangarh in criminal revision No. 3/80 under Section 59 of the Rajasthan Panchayat Act, 1953 (here in after referred to as the Act) whereby the petitioner's revision was dismissed and the order of the Nyaya up-Samiti village Luhara dated 9-5-1979 was upheld hereby the applicant was sentenced to a fine of Rs. 50/- for the offence under Sections 379 and 427 IPC and the petitioner was further ordered to

make payment of Rs. 25/- in respect of each tree total Rs. 75/- by way of compensation to the complainant Tilok Das.

2. An application was moved on 2-5-1975 by Shri Tilok Das that 'Bordi' trees have been cut and removed from his field. The accused applicant Kewal Ram was summoned but he did not appear. Thereafter on 3-5-1975 site was inspected and the complainant was directed to produce his evidence. On the basis of the evidence and the inspection report, the petitioner was found guilty. It was also found that the accused has absconded. Consequently the Nyaya up-Samiti village Luhara found the applicant guilty of the aforesaid offences and sentenced him to fine and ordered payment of compensation as aforesaid. The applicant preferred revision petition but was unsuccessful. Hence this application.

3. I have heard Shri A.K. Rajvanshy learned Counsel for the applicant and Shri N.C. Bhati learned Public Prosecutor for the State. No one is present on behalf of the complainant.

4. It has been urged by Shri Rajvanshy that the Nyaya up-samiti could not proceed against the applicant in his absence. It should have followed the provision contained in Section 52. Without compliance of this provision, the order imposing fine is had and illegal and deserves to be quashed. The submission of Shri Rajvanshy, in my opinion has substance. The relevant part of Section 52(2) is as under:

(2) The (Nyaya up-samiti) may hear and decide a suit or case exparte in absence of the defendant or the accused, if he has been informed of the time and place for hearing:

Provided that no sentence shall be imposed by a Nyaya up-samiti on any accused person unless he has appeared either in person or by agent before it and the substance of his statement has been recorded:

(3) If after the service of the summons upon him any accused person fails to appear either in person or by agent, the (Nyaya up samiti) as may apply to the Magistrate concerned who may compel the accused to appear in person before

that Nyaya up-samiti as if it were the Magistrate trying the case;

(4) When an accused person has been under the proceeding Sub-section compelled to appear before a (Nyaya up-samiti) it shall forthwith take his statement.

5. It would appear from the above provision that no case can be proceeded against the accused in his absence. If the accused does not appear after information of time and place of hearing and if sentence is to be imposed, then it can only be imposed after the accused appears in person or by agent and substance of statement has been recorded. Section 52 (3) provides that if after service of summons the accused fails to appear either in person or by agent the Nyaya up-samiti may apply to the Magistrate concerned who may compel the accused to appear in person before that Nyaya up-samiti as if it were the Magistrate trying the case.

6. In the present case this procedure has not been followed and sentence of fine has been imposed on the petitioner in his absence so the whole proceedings are vitiated.

7. It has been further urged by Shri Rajvanshy that the Nyaya up-samiti has no jurisdiction to decide the case in respect of the offence Under Section 427 IPC. The Nyaya up-samiti has got jurisdiction to decide the cases relating to the offences specified in the First Schedule and the First Schedule does not make mention of Section 427 IPC. This submission of Rajvanshy as well is not without substance. Section 28 of the Act is as under:

28. Criminal Jurisdiction--Notwithstanding anything contained in the Code of Criminal Procedure 1898 and subject to the provisions of this Act (Nyaya up-samiti) shall have jurisdiction concurrent with that of the Criminal Courts, within the (Nyaya Circle) for which it has been constituted, for the trial of, and shall take cognizance of, any offence and abetment of or attempt to commit, any offence, specified in the first Schedule:

Provided that no such cognizance shall be taken by a Panchayat of any case in which the accused

(i) has been previously convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment of either description for a term of three years or upwards; or

(ii) has been previously sentenced for any offence to like imprisonment for a term; or

(iii) has been previously sentenced by any Panchayat (or Nyaya up-samiti) for theft or for dishonestly receiving stolen property; or

(iv) is (x x x) a registered habitual criminal; or

(v) has been bound over to be of good behaviour under Section 109 or Section 110 of the Code of Criminal Procedure, 1898;

Provided further that the State Government may, on its own motion or on the recommendation of the (Officer-in-charge of Panchayats) exclude, by notification in the (Official Gazette) the jurisdiction of any (nyaya up-samiti) in respect of any of the offences specified in the First Schedule.

In the First Schedule items No. 41 and 42 are as under:

Law Section 41. Mischief 42 642. Mischief by killing, poisoning maiming or rendering useless any animal of the value pf tenrupees or upward 428

8. No w here in the Schedule Section 427 finds any place. Besides that, Mr. Rajvanshy submits that under item I pf the schedule, the State Government has not declared Section 427 to be triable by the Nyaya up-samiti.

9. The next contention of Shri Rajvanshy is that separate compensation cannot be awarded. Compensation an only be ordered to be paid from the amount of fine. Reference was made by him to Section 31 of the Act, which is as under:

31. Compensation to complainant--A (Nyaya up-samiti) may direct that the whole or any part of the fine, when realised shall be paid as compensation to the complainant or person affected by the offence.

10. In view of Section 31, the price of trees cannot be ordered to be paid. This part of the order, therefore, also is not legal.

11. It was also pointed out that for the offence Under Section 379 and 427 IPC a fine of Rs. 50/- has been imposed. A composite imposition of fine is also not permissible. In law for each offence, fine can be imposed and the maximum penalty that can be imposed is Rs. 50/ as provided in Section 30 which reads as under;

30. Penalties--A Nyaya up-samiti shall not be competent to impose on any person convicted of an offence tried by it any sentence other than a sentence of fine not exceeding fifty rupees.

12. For the aforesaid reasons in my opinion the orders passed by the Nyaya up-samiti as well as by the Munsif and Judicial Magistrate, 1st class Sujangarh deserve to be set aside.

13. Accordingly, this application is allowed and both the impugned orders are set aside and the proceedings are dropped as more than eight years have already elapsed.