Chivdeni Rai vs Bans Narain Rai And Ors. on 3 December, 1953

Equivalent citations: AIR1954ALL391, AIR 1954 ALLAHABAD 391

ORDER

Asthana, J.

1. This is an application under Article 226 of the Constitution of India for the issue of a writ in the nature of certiorari quashing the order of the Sub-divisional Magistrate of Ghazi-pur, dated the 27th December, 1952, who quashed the order of the Panchayati Adalat, Reotipur, and cancelled its jurisdiction.

2. The facts which gave rise to the case out of which this application has arisen may be stated as follows: The Applicant filed a complaint under sections 323 and 426, I. P. C. against the opposite parties 1 to 3 in the Panchayati Adalat, Reotipur. It appears that an application was made by the accused to the Panchayati Raj Inspector that they were not on good terms with the Sar-panch and that the case might be tried by another bench of which he was not a member. The Panchayati Raj Inspector stayed further proceedings. This stay order was subsequently vacated by him and a date was fixed for the hearing of the case in the Panchayati Adalat and notice was ordered to be issued to the parties.

When the case was taken up on the date so fixed the opposite parties 1 to 3 were not present at the time of the hearing of the case. The case was adjourned to several dates and ultimately it was decided ex parte on 19-12-51 against the opposite parties 1 to 3 and they were convicted and sentenced under Sections 323 and 426 I. P. C. They were sentenced to a fine of Rs. 24/- each under section 323, I. P. C. and Rs. 3/- each under section 426, I. P. C. Thereafter, the opposite parties 1 to 3 made an application on 7-3-1952 for the setting aside of the ex parte order against them and for the rehearing of the case according to the provisions of section 79 (2) of the U. P. Panchayat Raj Act. This application was presented to the Sarpanch of the Panchayati Adalat but he instead of placing this application before the Panchayati Adalat disposed it of himself on the 5th May, 1952, and rejected it.

The same day a revision was filed by the convicted persons in the court of the Sub-divisional Magistrate on the ground that they had no knowledge of the date fixed for the hearing of the case. The learned Sub-divisional Magistrate after hearing both the parties came to the conclusion that the allegations made by the opposite parties 1 to 3 in their revision application were correct and that the case was decided behind their back without informing them of the date fixed for the hearing of the case. He also found that interpolations had been made in the order-sheet of this case in the

Panchayati Adalat. He, therefore, quashed the order of the Panchayati Adalat and cancelled its jurisdiction as already stated.

3. It was contended before me on behalf of the applicant that the Sub-divisional Magistrate could entertain the revision only within 60 days of the order as provided in section 85 of the U. P. Panchayat Raj Act and as the revision in this case was filed much beyond this period it could not have been entertained by him and his order, therefore, quashing the conviction and cancelling the jurisdiction of the Panchayati Adalat was without jurisdictions Section 85, no doubt, provides that a Sub-divisional Magistrate may either of his own motion or on the application of any party send for the record from the Panchayati Adalat concerned within 60 days from the date of the order. Section 89 provides the forum in which a revision will lie against the orders of the Panchayati Adalat It confers jurisdiction on the Sub-Divisional Magistrate to revise the orders of the Panchayati Adalat in criminal matters; in civil matters the powers have been conferred on the Munsif and in revenue matters on the sub-divisional officer concerned. This section, however, does not provide for any period of limitation within which a revision is to be filed. Section 83 provides that the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Evidence Act and the Indian Limitation Act shall not apply to any suit, case or proceedings in a Panchayati adalat except as provided in this Act or as may be prescribed.

4. In view of the provision contained in section 85 that the revisional court can send for the record within sixty days only from the date of the order it appears that this is the period of limitation for filing the revision. If this section does not provide any period of limitation and the revision can be filed even beyond this period then the restriction placed by this section that the record can be summoned within 60 days only from the date of the order becomes meaningless. Rule 95-A of the U. P. Panchayat Raj Rules framed under section 110 of the U. P. Panchayat Raj Act provides that an application under section 85 shall be accompanied by a certified copy of the order against which it is made. In view of this requirement it was argued for the accused that the time requisite in obtaining the certified copy will be excluded in computing the period of 60 days.

As section 83 has made the Indian Limitation Act inapplicable to the proceedings under the Panchayat Raj Act it is very doubtful if section 12 (2) of the Limitation Act which excludes the period requisite in obtaining the copies of the judgment will be applicable. There is no doubt that there is some inconsistency in the provisions, Rule 95-A requires the revision application to be accompanied with a certified copy of the order but no provision is made either in the rules or the Act to exclude the period taken in obtaining the copies, but merely on account of this inconsistency or hardship the limitation Act will not become applicable when it has been expressly made inapplicable by section 83.

5. Learned counsel for the opposite parties relied on the case of -- 'Dwarka Gorh v. Sita Ram Singh', AIR 1953 All. 666 (A). It was held in this case by Agarwala, J. that although no period of limitation was fixed for filing revision applications before the sub-divisional Magistrate under the U. P. Panchayat Raj Act, yet a period of two months was a reasonable time for filing such applications and if they were filed beyond that time, it was open to the Sub-divisional Magistrate to reject them unless the delay was explained by the applicants. It was argued on the basis of this decision that the

period of two months was not the inflexible rule and if the applicant could satisfy the revisional court that he had sufficient ground for not making the application for revision within the period of two months it could still be entertained. There is no doubt that this decision supports this contention.

It was, however contended for the applicants that the attention of the learned Judge was not drawn to the provisions of section 83 which clearly laid down that the provisions of the Limitation Act were not applicable to the proceedings in a Panchayati Adalat except as provided in the Act itself or as might be prescribed and, as by means of this section the provisions of the Limitation Act were expressly not made applicable to the proceedings under the Panchayat Raj Act the period of two months could not be extended in that case. It is not clear from a perusal of the above decision whether the provisions of section 83 were brought to the notice of the learned Judge in the above case. It may also be point-ed out that according to section 85 the revisional court can send for the record within 60 days of the order only and this implies that sixty days is the period within which the revision should be filed.

6. It was also contended on behalf of the opposite parties that section 83 was applicable only in respect of the proceedings pending in a Panchayati Adalat and not in the revisional court. It was held in the case of -- 'Banshi v. State', AIR 1952 All 38 (B), by Agarwala, J. that the words "in a Panchayati Adalat" occurring in the last sentence of section 83 do not limit the non-applicability of the Codes and Acts mentioned therein to the stage of a suit, case or proceeding pending in the Panchayati Adalat but that they were made inapplicable in whatever stage it was. In other words this decision lays down that the provisions of section 83 will be applicable also in revisions arising out of the proceedings in the Panchayati Adalat.

7. It, however, appears that section 85 only provides for the period of limitation within which an application for revision is to be filed. It has nothing to do with the jurisdiction which is conferred according to the provisions of section 89 of the Act. It appears from the record that in this case no objection was taken on behalf of the applicant about the question of limitation in the lower court. The mere fact that the Sub-divisional Magistrate entertained the revision beyond the period of 60 days docs not, in my opinion mean that he had no jurisdiction. If a suit is filed beyond the prescribed period of limitation in a competent court and that court decides it one way or the other it cannot be said that that court has got no jurisdiction simply because it entertained the suit when it was barred by limitation.

8. Jurisdiction and limitation are two different matters. The former is not dependent on the latter. It is a creature of Statute and in the pre-sent case it was conferred on the Sub-divisional Magistrate by section 89. I do not think that a court which has otherwise jurisdiction in respect of a matter loses it because of limitation. The question of limitation when raised has got to be decided by the court having jurisdiction in the matter & merely because the court decided that the case was barred by limitation it did not mean that it had no jurisdiction. The decision has got to be given by some court and it is the court which has jurisdiction that can decide it. Where a court has got jurisdiction to decide a matter, it can decide it rightly as well as wrongly and the mere fact that it decided wrongly does not mean that it had no jurisdiction.

9. Coming now to the facts of the case, I am not satisfied that any grave injustice has been done to the applicants. I have been taken through the record but have not been able to find in it that the notice intimating the date fixed by the Panchayati Adalat for the hearing of the case was duly served on the opposite parties and that in spite of the service of notice they deliberately absented themselves from the court and allowed the case to be decided ex parte against them. It also cannot be said that the remark of the Sub-divisional Magistrate that there were certain interpolations in the order-sheet was quite unjustified.

The conduct of the Sarpanch in not placing the application for restoration before the Panchayati Adaiat for necessary orders and himself rejecting it on 5-5-1952 was also very undesirable and indicates that he was not well disposed towards the Opposite Parties. In the ordinary course it was his duty to put the application which had been made to him according to the provisions of section 79 before the Panchayati Adaiat for orders; and it is possible that if this application were placed before them and the correct "facts would have come to their knowledge they would have set aside the ex parte order which had been passed against the opposite parties 1 to 3 and would have reheard the case.

10. It was also argued on behalf of the opposite parties 1 to 3 that the Sub-divisional Magistrate had merely cancelled the jurisdiction of the Panchayati Adaiat and it was still open to the applicant to file a fresh complaint against them according to the provisions of section 85(2) of the Act. It is not one of those cases where the applicant had no remedy after the order of the Sub-divisional Magistrate. In my opinion the contention is not without force.

11. I do not think that merely because a court entertained an application which was barred by limitation and passed certain orders on it, an application for writ under Article 228 will lie. The applicant has further to satisfy that his fundamental rights conferred by Part III of the Constitution of India or any other legal right has been infringed and great injustice has been done to him and that he has got no other adequate legal remedy. If the law provides another legal remedy it is doubtful that an application for writ will lie under Article 226 of the Constitution. As already stated above, the applicant has got an alternative remedy, if he is aggrieved against the order of the Sub-divisional Magistrate, to file a fresh complaint in a competent criminal court. I am also not satisfied that any injustice has been done to the applicant.

12. Considering the above facts I am of opinion that it is not a fit case in which a writ should be granted to the applicant. The application is, therefore, rejected.