

Ram Nath vs Manna And Anr. on 4 January, 1954

Equivalent citations: AIR1955ALL230, 1955CRILJ662, AIR 1955 ALLAHABAD 230

ORDER

Kidwai, J.

1. These are two connected revision applications, one being under the Code of Criminal Procedure and the other under Article 227 of the Constitution, directed against the order of Mr. K. Ray, Extra Magistrate, Barabanki, holding that he had no jurisdiction to proceed with the case and directing that it be sent to the Pancha-yati Adalat of Narauli for disposal.

2. The facts which gave rise to these applications are that Ram Nath, against whom the opposite parties are stated to have a long-standing grievance with regard to a grove, was waylaid at about 11-00 a.m. in the fields of his village while proceeding to Razaganj Bazar and beaten with lathis. Two grievous injuries were caused, one of them being fracture of the little finger of the left hand and the other being a similar fracture of the index finger of the right hand. Altogether Ram Nath received 10 injuries and he was examined by the Medical Officer in charge of the dispensary at Rudauli on the same day. He was taken on a cot to police station Bhelsar where he lodged the first information report at 6.05 p.m. naming the two opposite parties as his assailants.

3. Evidence on behalf of the prosecution was recorded and a charge was framed under Section 325, I P. C. Thereafter the prosecution witnesses were again cross-examined and some formal witness were produced. The accused also produced three witnesses in defence. Arguments were heard and eventually the learned Magistrate passed a very short order in which he held that there was no convincing proof as to which of the two accused persons was responsible for causing grievous hurt to the complainant. He also found that there was no sufficient ground for holding that the two accused persons had a common intention of causing grievous hurt. On these findings the learned Magistrate was bound under Section 56, U. P. Panchayat Raj Act, to transfer the case to the Panchayati Adalat since his findings led to the conclusion that neither of the two persons could be convicted under Section 325 but that any offence that may have been made out was one under Section 323, I. P. C.

4. The complainant went up in revision but the learned Sessions Judge of Barabanki dismissed the application on the ground that since the matter was pending before the Panchayat Adalat, he had no jurisdiction to interfere. These two applications have, therefore, been filed in this Court and I have heard the learned counsel at some length.

5. I do not desire to say anything about the oral evidence since I have not gone into that evidence and for purposes of this application it must be accepted on the basis of the decision of the Magistrate

that there is no convincing proof as to which of the two accused was responsible for causing grievous hurt. It was, however, contended that by application of Section 34, I. P. C., both of the, accused persons could be convicted under Section 325, I. P. C. Reliance was placed, upon a decision of a Full Bench of this Court in -- 'State v. Saidu Khan', AIR 1951 All 21 (A). In that case the learned Judges laid down a proposition that a person could be convicted under Section 304 read with Section 34 if the facts and the circumstances of the case establish that he had a common intention or that he had a knowledge of the natural consequences of the acts of his companions in assaulting a person with lathis. Each of the three learned Judges who composed the Bench makes it clear in his judgment that the application of Section 34 depends upon the facts established in a case. This view is of undoubted validity and cannot be disputed. It has been followed in subsequent decisions also but it is not necessary to refer to them.

6. On the other hand we must not lose sight of the fact that it has been laid down in --"Mahbub Shah v. Emperor", AIR 1945 PC 118 at p. 121 (B), that the common intention that has to be proved is the common intention to commit the crime that is actually complained of. It was, therefore, necessary in this case for the Magistrate to find that there was a common intention on behalf of the two accused persons to cause grievous hurt to the complainant and if, on considering the circumstances of the case, he does not find such an intention established obviously he would not be justified in convicting either of them under Section 325 read with Section 34, I. P. C. In this view of the matter there was no alternative but to transfer case to the Panchayati Adalat.

7. This does not mean that it is not open to the complainant to move the Sub-Divisional Magistrate to quash the jurisdiction of the Panchayati Adalat nor does it mean that it is not open to the Panchayati Adalat, if it considers the offence to be so serious as to require a punishment greater than that which the Adalat can impose, to make a report to that effect to the Sub-Divisional Magistrate. On the face of it the order must be upheld.

8. The learned Magistrate was quite right in not entering into a discussion of the evidence on the merits because in view of the order that he was passing, an appraisal of the same evidence has still to be done by the Panchayat Adalat and it might have prejudiced one of the parties before that Adalat if the Magistrate had given his detailed reasons. Both the applications are dismissed. Since these applications are dismissed, criminal miscellaneous application No. 33 of 53 is also dismissed and the interim order for stay dated 19-1-1953 is vacated.