

Brij Narain vs Ram Dayal on 30 July, 1953

Equivalent citations: AIR1954ALL8, AIR 1954 ALLAHABAD 8

ORDER

R. Singh, J.

1. This is an application under Article 227 of the Constitution of India invoking the powers of this Court for quashing the conviction of the applicant by an Adalati Panchayat,

2. A complaint was made by Ram Dayal to the Panchayati Adalat of village Raukarna alleging that one day Ram Dayal had gone to the market to sell his wares when Dulli alias Brij Narain applicant met him. Ram Dayal told him that he was not getting sufficient sugar for sale and Dulli told him that he could get a permit for sugar if he paid him Rs. 50/- for engaging a lawyer to apply for the permit. Ram Dayal paid the money but Dulli did not do anything to get him the permit. He definitely alleged in the application that Dulli was in the habit of cheating people in this manner and that the applicant was also cheated by him. Thereupon the matter was taken up by the Panchayati Adalat and the accused was summoned. The accused denied having taken any money from Ram Dayal. The Panchayati Adalat, however, came to the conclusion that the complaint made by Ram Dayal was well founded and convicted the applicant under Section 403 of the Indian Penal Code and sentenced him to a fine of Rs. 5/-. The applicant then went in revision. The Sub-Divisional Magistrate rejected the revision. He has now made an application under Article 227 of the Constitution.

3. The allegations made in the complaint, which should primarily decide the forum, clearly show that it was a case of cheating. The applicant is said to have wrongly represented to Ram Dayal that he could obtain a permit for sugar for him when in fact he had no such intention. It would thus be a clear case of cheating. The allegations made in the complaint would not bring the offence under Section 403 or under Section 405 of the Indian Penal Code as alleged on behalf of the applicant. If this had been only a case of a wrong application; of a section to the offence no interference was perhaps necessary, but if the offence made out takes the case out of the jurisdiction of the Adalati Panchayat the conviction of the applicant would be bad.

Section 52 of the Panchayat Raj Act enumerates the various sections of the Indian Penal Code, offences under which are, cognizable by the Panchayati Adalat. The list given in Section 52 (a) of such offences does not include an offence under Section 420 or under Section 405 of Indian Penal Code. If, therefore, the offence made out by the complainant Ram Dayal in this case was not covered by any of the sections mentioned in Section 52 (1) (a) the Panchayat Raj Act's jurisdiction could not be attracted in this case and any proceedings taken by the Panchayati Adalat would be bad. It is a matter of common knowledge that sometimes allegations are twisted in order to make a certain complaint cognizable by a Panchayati Adalat when in fact it is not so, and this also appears to be one of those cases. The Panchayati Adalat had no jurisdiction to entertain a complaint under Section

420 of the Indian Penal Code but had jurisdiction to entertain a complaint under Section 403 of the Indian Penal Code. Although the facts in this case clearly made out an offence under Section 420, the Panchayati Adalat treated the offence as one under Section 403 and dealt with. It would thus appear that the Panchayati Adalat had no jurisdiction to try this case.

4. It has been argued on behalf of the opposite party that the applicant had a remedy open to him inasmuch as he could go up in revision under Section 85 of the Panchayat Raj Act to the Sub-Divisional Magistrate and he should not be heard in this Court if he fails to take up the point now pressed before this Court in the Court below. The appln. made in revision to the Sub-Divisional Magistrate is on the record. Although the point that the Panchayati Adalat had no jurisdiction to entertain the complaint was not specifically taken up by the applicant in the Court of the Sub-Divisional Magistrate it had been pleaded that the order of the Panchayati Adalat was illegal. It could not therefore, be said that the point was not taken up in the Court of the Sub-Divisional Magistrate. No other point arises for determination in this case.

5. As a result the conviction of the applicant and the sentence passed upon him by the Panchayati Adalat are set aside. It will be open to the complainant Ram Dayal to file a fresh complaint in the proper court against the applicant if he so desires. The fine, if paid, shall be refunded.