

Sheo Dayal And Ors. vs State on 2 August, 1951

Equivalent citations: AIR1952ALL831, AIR 1952 ALLAHABAD 831

ORDER

Desai, J.

1. This is an application by Sheo Dayal, etc. questioning the legality of their conviction under Section 323, Penal Code by a First Class Magistrate. They were prosecuted under Section 325, Penal Code, but the learned Magistrate framed a charge under Section 323, Penal Code only against them. He convicted them under that section only and sentenced them to imprisonment and fine. They went up in appeal to the Additional Sessions; Judge, Etawah, and pleaded that the learned Magistrate's jurisdiction to try the case was barred by Sections 55 and 56, Panchayat Raj Act, An offence under Section 323, Penal Code is within the cognizance of a Panchayati Adalat; vide Section 52 Section 55 forbids a Court from taking cognizance of any case which is cognizable by a Panchayati Adalat unless an order has been passed by a Sub-Divisional Magistrate under Section 85. A Sub-Divisional Magistrate has been given the power under Section 85 to quash the jurisdiction of a Panchayati Adalat with regard to any case if there has been a miscarriage, or there is an apprehension of a miscarriage of justice. Once the jurisdiction of a Panchayati Adalat over any case cognizable by it has been quashed, the case may be heard by any Magistrate having jurisdiction. In the present, case the complaint was filed under Section 325, Penal. Code, which is not cognizable by a Panchayati Adalat; so Section 55 did not apply. But it is laid down in Section 56 that if "at any stage of proceedings in a criminal case" pending before a Magistrate it appears that the case is triable by a Panchayati Adalat, he must at once transfer it to that Panchayati Adalat. The learned Magistrate might have been justified in taking cognizance of the complaint filed under Section 325, Penal Code; but when after recording the evidence for the complainant he found that the case made out against the applicants was not of Section 325, Penal Code, but of Section 323, Penal Code, he was bound by Section 56 to transfer the case at once to the Panchayati Adalat having jurisdiction. Therefore, the trial by the learned Magistrate of the case after he had framed the charge under Section 323, Penal Code was without jurisdiction and the conviction and sentence must be set aside.

2. The complainant had received a large number of injuries and the learned Sessions Judge thought that the maximum punishment that can be inflicted by a Panchayati Adalat would be inadequate for the offence committed by the applicants. A Panchayati Adalat cannot inflict a sentence of imprisonment or a sentence of fine exceeding Rs. 100. The learned Sessions Judge was right in thinking that the offence committed by the applicants deserved a heavier sentence than the maximum sentence that could be inflicted by the Panchayati Adalat But he went wrong in laying down the law that the Panchayati Adalat had no jurisdiction over the case because it could not inflict adequate sentence. Section 52 gives exclusive jurisdiction to a Panchayati Adalat over a case under

Section 323, Penal Code without imposing any limitations; it does not say at all that the Panchayati Adalat would have jurisdiction only if it can inflict adequate sentence. The learned Sessions Judge had no justification for interpolating these words in Section 52; his duty was to administer the law as he found it and not to enact new law. It is only in respect of the offences under Sections 143, etc. mentioned in Sub-section (2) of Section 52 that the Panchayati Adalat has been given jurisdiction if the Magistrate before whom the case is pending is of the opinion that the offence is not serious. The question whether the offence is serious or not or whether adequate punishment can be inflicted by the Panchayati Adalat or not, has not to be considered in respect of other offences such as of Section 323, Penal Code. If the complainant wanted the applicants to be adequately punished, his remedy was to approach the Sub-Divisional Magistrate and request him to quash the jurisdiction of the Panchayati Adalat as provided in Section 85. That was his only remedy; he could not prosecute the case to the end in the Court of a Magistrate without getting the jurisdiction of the Panchayati Adalat quashed.

3. I allow this application, set aside the applicants' conviction and sentences and direct the learned Magistrate to transfer the case to the Panchayati Adalat having jurisdiction. It will be open to the complainant to move the Sub-Divisional Magistrate to quash the jurisdiction of the Panchayati Adalat and if that is done, the case will be returned by the Panchayati Adalat to be heard de novo by a Magistrate other than Shri Mewa Ram.