

## Shafi Ahmad And Anr. vs State And Anr. on 10 September, 1952

**Equivalent citations:** AIR1953ALL564, AIR 1953 ALLAHABAD 564

**Author:** Raghubar Dayal

**Bench:** Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. The applicants were tried by a Panchayati Adalat and convicted of the offences under Sections 447 and 352, I. p. c. and sentenced to a fine of Rs. 15/- each for each offence. On revision, the Sub-divisional Magistrate set aside the order of conviction under Section 352, I. P. C., holding that it was wrong; but he did not quash the conviction of the applicants under Section 447, I. P. C. They, therefore, apply to this Court under Article 227 of the Constitution for the quashing of the conviction under Section 447, I. P. C.

2. The Jurisdiction of the Sub-Divisional Magistrate under Section 85 of the Panchayat Raj Act is limited to his cancelling the jurisdiction of the Panchayati Adalat with regard to any case, suit or proceeding if he finds that there had been a mis-carriage of justice. If he finds that there was a miscarriage of justice, he is not given the power to pass the order which he considers to be correct on the basis of the material on record. It appears that the Act contemplates that once it is established to the satisfaction of the Sub-Divisional Magistrate that there had been miscarriage of justice the proceedings of the Panchayati Adalat to be treated as null and void, its jurisdiction being cancelled so that the complainant, if so advised, might take the benefit of Sub-section (2) of Section 85 of the Act and file a fresh complaint in respect of that case. The fact that the Sub-Divisional Magistrate found the conviction of the applicants under Section 352, I. P. C. to be bad in law amounts to a finding that there had been miscarriage of justice. It would follow therefore that the only order which the Sub-Divisional Magistrate could have passed by virtue of the power given to him under Section 85, Panchayat Raj Act, was an order cancelling the jurisdiction of the Panchayati Adalat with regard to this case, leaving it free to the complainant to file a fresh complaint with regard to these offences in a competent court.

It was not open to him to maintain in a way the conviction for one offence and set aside the Jurisdiction of the Panchayati Adalat with respect to the proceedings resulting in the conviction of the applicants for the other offence, under Section 352, I. P. C. The proceedings before the Panchayati Adalat were one just as the complaint was one and the case was one it is true that the word "case" defined in cl. (c) of sec: 2 of the Act is to the effect that " 'Case' means a criminal

proceeding in respect of an offence triable by a Panchayati Adalat"; and this definition may be open to the interpretation that a case with respect to several offences against an accused amounts to there being several proceedings each of which is with respect to one particular offence. I am, however, of opinion that this would not be the correct interpretation of the word "case" as defined in this Act. There are no separate proceedings with respect to each of the offences made out on the allegations concerning the events of any particular transaction. It is only the result of the legal provisions that the act consisting of certain activities amounts to one offence and the act consisting of some other activities makes out a different offence.

It would be also very embarrassing in the trial for the different offences if the proceedings with respect to each offence be held to be a separate case and they happen to be tried separately by different courts, as there is a probability of the same evidence being open to scrutiny in the different courts; thus leading to a possibility of different judgments. I am, therefore, of opinion that the word "case" means a criminal proceeding in respect of the incidents complained of irrespective of the fact whether the incidents make out one particular offence or several offences, and that, therefore, when miscarriage of justice takes place with respect to the conviction of an accused about a certain offence that should affect the entire trial and lead to the quashing of the jurisdiction of the Panchayati Adalat with respect to the entire case.

3. I, therefore, allow this application, set aside the order of the Sub-Divisional Magistrate and order the Sub-Divisional Magistrate to pass the correct order in the light of what I have observed above, keeping in view that it has been held by the Sub-Divisional Magistrate in revision that there had been miscarriage of justice in so far as the applicants had been wrongly convicted of the offence under Section 352, I. P. C.