

Baldeo And Ors. vs The State And Anr. on 4 February, 1954

Equivalent citations: AIR1954ALL650

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. This is an application under Article 227 of the Constitution for quashing the order of the Panchayati Adalat, Derapore, Kanpur, convicting the applicants of offences under Sections 352, 447 and 426, I. P. C.
2. Two points are taken in this application: One is that the judgment was signed by four Panches and not by all the five panches who constituted the bench for the trial of this case; the second point is that no offence was made out on the allegations of the complainant.
3. The complainant alleged that the accused-applicants had demolished his cattle-trough which stood on the land in front of his house, that the accused placed some 'jhankars' over that land in front of the house and on the complainant's asking them to remove them they were prepared to fight. These allegations, if proved to the satisfaction of the court, could establish the offences of which the applicants have been convicted. It was not necessary for the court to hold that the land in front of the complainant's house really belonged to him. The complainant alleged possession and if he succeeded in establishing it he would succeed in establishing the commission of the offence under Section 447, I. P. C.
4. For the consideration of the other question reference has to be made to Section 77-A of the U. P. Panchayat Raj Act and to Rule 100 framed by State Government. Rule 100 provides that the Adalat shall record, in the prescribed register, a brief judgment or order and the signatures of the Pan-ches and signatures or thumb-impressions of the parties present at the time of the decision. It has been held by this Court in some cases that this Rule required the delivery of judgment by all the panches constituting the bench and also the signing by all the panches in the register. Subsequent to these cases, Section 77-A has been enacted. It reads:

"77-A (1) If any Panch appointed to a bench constituted under Section 49 for the trial of a case, suit or proceeding is absent at any hearing, the remaining Panches may, notwithstanding anything contained in this Act, try the case, suit or proceeding provided, however, that at least three Panches, including the chairman, are present

and provided further that at least one of the Panches present is able to record evidence and proceedings, (2) No trial as aforesaid shall be invalid by reason merely that all the five Panches forming the bench were not present at any hearing or that the same Panches were not present at all the hearings.

(3) The provisions of Sub-sections (1) and (2) shall 'mutatis mutandis' apply to an inquiry made by a Panchayati Adalat under Section 13." .

5. It appeal's to me that Section 77-A allows the trial of a case by panches less than 5 in certain circumstances and that any trial by such panches in those circumstances would be valid. If a trial by panches less in number than five can be valid, it is clear that the judgment has to be signed by only those panches who deliver it & not also by the panches who have not delivered the judgment & that therefore Rule 100 should now be interpreted to mean that the register should have the signatures of the panches who deliver the judgment and not of all the panches irrespective of the fact whether any of them had taken part in the delivery of judgment or not. It may be said that Sub-section (1) and Sub-section (2) of Section 77-A refer only to the effect of the non- presence of any panch constituting the bench at any hearing and does not refer to the effect of the absence of a panch at the time of pronouncing the judgment.

I see no good reason to restrict the scope of the word 'hearing' to the proceedings in the case up to the stage of the delivery of the judgment and not to include the stage of the delivery of the judgment itself. It is not very reasonable that a panch who has not taken part in all the proceedings should have his say in the judgment. I, therefore, see no good reason to hold that Section 77-A does not allow the delivery of a judgment by panches less in number than five in the circumstances mentioned in that section. The panches who delivered the judgment included the sarpanch & were four in number & therefore the judgment is covered by the provisions of Section 77-A.

6. I, therefore, reject this application.