State Through Luddhur vs Lalta Singh And Ors. on 15 September, 1955

Equivalent citations: AIR1956ALL73, 1956CRILJ21

JUDGMENT

Mukerji, J.

1. The above mentioned two revisions have been referred to a Division Bench because a question of law of some importance called for decision.

2. The cases, out of which these two revisions arose, were tried by Magistrates as in both cases complaints had been filed alleging that offences punishable under Section 323 and Section 440, Penal Code had been committed by the accused. In Criminal Revision No. 959 of 1953 the learned Magistrate who tried the case convicted the accused both under Section 440 and Section 323, I. P. C. The Magistrate awarded a sentence of six months' rigorous imprisonment under Section 440 I. P. C. and imposed a fine of Rs. 100/- each under Section 323, I. P. C. In Criminal Revision No. 2036 of 1953 also the Magistrate convicted the accused both under Section 323 and Section 440 I. P. C. He awarded a sentence of six months' rigorous imprisonment and a fine of Rs. 100/- to each accused under Section 323 and a similar sentence of .six months' rigorous imprisonment and a fine of Rs. 150/- to each accused under Section 440, I. P. C.: the sentences of imprisonment, however, were directed to run concurrently. Appeals were preferred in both the cases by the convicted accused and the appeals were heard by the respective Sessions Judges.

The appeal, out of which Criminal Revision No. 959 of 1953 has arisen, was heard by the learned Additional Sessions Judge of Jaunpur, Mr. C. A, Buck, while the appeal, out of which Criminal Revision No. 2036 of 1953 has arisen, was heard by the learned Sessions Judge of Gorakhpur, Mr. Tamil Ahmad. The Additional Sessions Judge of jaunpur while disposing of the appeal, which had been preferred to him, came to the conclusion that the offence under Section 440, I. P. C, had not been made out on the evidence and that the only offence that had been made out on the evidence was an offence punishable under Section 323, I. P. C. The learned Judge, therefore, made the following order:

> "The result is that as Section 323 I. P. C. is triable by the Panchayat Court in view of Section 56, Panchayat Raj Act I allow the appeal, set aside the conviction and the sentence of the appellants and direct the trial Court to send the case for trial 'de novo' to the Panchayat Adalat having jurisdiction in the case."

In the appeal that was before the learned Sessions Judge of Gorakhpur the learned Judge came tp the conclusion on the evidence that the conviction under Section 440, I. P. C. had not been made out

but that the offences which had been made out on the evidence on the record were (1) and offence punishable under Section 426, I. P. C. and (2) an offence punishable under Section 323, I. P. C. The learned Judge, therefore, maintained the conviction of the accused under Section 323 but altered the conviction under Section 440, I. P. C. to one under Section 426, I. P. C. Under Section 426 the learned Sessions Judge imposed -a fine of Rs 25/- on each of the convicted accused.

3. Two revisions were preferred against the two aforementioned decisions to this Court. In the Jaunpur case it was the complainant that preferred the revision and his main contention was that the learned Sessions Judge had no jurisdiction to remand the case to the trial Court with the direction to send the case for trial 'de novo' to a Panchayati Adalat. The revision in the Gorakhpur case was filed by the accused and their main contention was that the learned Sessions Judge having found that the offences, which had been made out on the evidence being offences punishable under Section 323 and Section 426, Penaf Code and these offences being triable exclusively by the Panchayati Adalat, by virtue of Section 52, U. P. Panchayat Raj Act, could not be tried by the Magistrate.

The two revisions, therefore, raise a common question of law, namely, whether there was power vested in an appellate Court to remand a case for trial to a Panchayati Adalat when that Court found that the offences which had been made out on the evidence were such offences as were, so to speak, exclusively triable by a Panchayati Adalat.

The answer to this question, in our judgment, depends upon the true interpretation of Section 56, U. P. Panchayat Raj Act as it stood before its amendment in 1955 by U. P. Act 2 of 1955. Section 56, U. P. Panchayat Raj Act is in these words:

> "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 shall at once transfer the case to the Panchayati Adalat, which shall try the case 'de novo'."

4. There has been in this Court a slight divergence of opinion in regard to the true import of Section 56, U. P. Panchayat Raj Act. Three decisions of this Court, which were in point, were cited by learned counsel for the parties before us and we shall presently refer to those decisions.

5. The first of these decisions in point of time was by Bind Basni Prasad J. in -- 'Bhagwana v. State of U. P.', AIR 1953 All 367 (A). In this case Bind Basni Prasad J. held that where an accused had been convicted by a Magistrate under certain sections, some of which "were cognizable by the Panchayati Adalat while others were not so cognizable, then on an acquittal of the accused under those sections, which were not cognizable by a Panchayati Adalat, the case did not become cognizable by the Panchayati Adalat so as to necessitate its transfer to the Panchayati Adalat for decision. The learned Judge relied upon the oft-quoted principle of law, namely, that the jurisdiction of a Court depended not upon the results of a case but depended on the allegations made by the complainant of the plaintiff at the time when he came to Court for seeking the assistance of the Court.

Generally speaking, the principle on which Bind Basni Prasad J. relied may be availabe for disposing of a matter of a civil nature but in criminal cases the proposition that the allegations in a complaint give jurisdiction to the Court is not always available for determining the jurisdiction of a Court. In the case before us the jurisdiction of the Court, namely, whether the Magistrate had jurisdiction to try the complaint or the Panchayati Adalat had jurisdiction would depend on the nature of the offence committed by the accused. If the offence was one which came within the group of offences mentioned in Section 52, U. P. Panchayat Raj Act then such a complaint would have to be tried and disposed of by a Panchayati Adalat, If, however, there were other offences which fell outside the scope of Section 52 and for the commission of which the accused stood charged, then such a complaint could not be tried by a Panchayati Adalat and had to be tried by a Magistrate. This view of ours is in consonance with the view held in this Court on this question for some time.

6. The next case referred to by learned counsel was a decision by Agarwala J. in the case of -- 'Ajodhia Singh v. Baleshwar Singh', AIR 1952 All 818 (B). In this case it was held that where a Magistrate tried a case which, in his opinion, could not be tried by a Panchayati Adalat and he convicted the accused also of offences which were not triable by the Panchayati Adalat, and in an appeal by the accused the appellate Court came to the conclusion that the accused had been wrongly convicted of the offences which were not triable by the Panchayati Adafat, then in such a case the appellate Court had jurisdiction to return the case to the Panchayati Adalat for being tried by it in respect of offences which were exclusively triable by the Panchayati Adalat. The basis of this decision appears to have been enunciated by the learned Juage in these words:

> "If what should have been done by the Magistrate was not done by him, it is the duty of the appellate Court to rectify the error."

To us it appears that what the learned Judge meant by this was that if the Magistrate had not erred in convicting the accused of those offences which were triable by him and had only found that the offences which the accused had committed were offences which were exclusively triable by a Panchayati Adalat, the Magistrate being empowered to send the case to Pancnayati Adalat for disposal in accordance with Section 56, U. P. Panchayat Raj Act, it was the duty of the appellate Court as a Court of error and correction to do the same thing which the trial Court or the Magistrate should have done.

Normally this principle is a principle to which no just exception can be taken, but the position in the case before us does not admit of such simple treatment. The language of Section 56, U. P. Panchayat Raj Act deprives the appellate Court, in our view, of acting in a case in regard to sending that case for trial to the Panchayati Adalat in the same manner as a Magistrate could have acted. The words 'pending before a Magistrate' in Section 56 make this position abundantly clear to us. The Magistrate under Section 56 has been given the power to make a transfer of a case at any stage of its proceedings so long as the case is pending before a Magistrate. So that, in our view, a case can only be transferred under Section 56 during the course of its pendency before a Magistrate and at no other later stage.

There is widom in this view which the legislature set.ms to have accepted and expressed in this section; the wisdom appears to us to be in avoiding multiplicity of trials before different Courts a contingency which not only causes harassment to the complainant but also causes, if anything, greater harassment to the accused. If, however, there were any special merits in a trial before a Panchayati Adalat then possibly it could be argued that the harassment was likely to be overlooked in order to reap the special benefits accruing in a trial before a Panchayati Adalat, but we can see of no such benefits to the accused and, therefore, we are of the opinion that the Legislature in its wisdom intended to have a transfer of a trial from the Court of a Magistrate to that of a Panchayati Adalat at a stage which was, .so to speak the earlier stage of a trial, even though it may be that in certain cases the transfer order by a Magistrate may bave to he made by him after he has gone through a good deal of the evidence in the case.

There is in any, event nothing in the words of Section 56 which can give the appellate Court the power of remanding a case to the Magistrate for his sending the case on to the Panchayati Adalat ior disposal. A case which has ended in a conviction or an acquittal cannot be said to be a case pending before a Court and, therefore, if the appellate Court sends the case back to the Magistrate with a direction to send it on to the Panchayati Adalat, then the appellate Court would be directing the Magistrate to do something which under the law the Magistrate had no power to do because he became 'functus officio' in respect of his powers under Section 56 the moment he decided the case.

There is yet another difficulty that 'may be noticed in this connection in the appellate Court making such an order. Section 423, Criminal Procedure Code prescribes the powers of the appellate Court in disposing of appeals. Under this section we do not discover any power vested in the appellate Court to make a remand to the trial Court with specific directions as to how that Court is to act. Section 423 (b) (1) says this:

> "reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a Court of competent jurisdiction subordinate to such appellate Court or committed for trial....."

The further difficulty that we see is that a Panchayati Adalat is not a Court subordinate to a Sessions Court. Therefore, the Sessions Court could not send the case for retrial of its own accord to a Panchayati Adalat. We are, on a consideration of those various points, of the opinion that the power to make a transfer under Section 56, U. P. Panchayat Raj Act could not be exercised by an appeallate Court while disposing of an appeal by a convicted person.

7. It remains for us now to notice the last decision that was cited before us a decision by V. Bhargava, J. in the case of -- 'Ganga Prasad v. The State', AIR 1953 All 334 (C). In this case Bhargava, J. took the same view as we have taken of the matter, for he appears to have held that a case could only be transferred by a Magistrate while the case was pending before a Magistrate and that a case could not be transferred at any iater stage when such a case was not pending before a Magistrate. We are in agreement with this view.

8. Counsel for the parties pressed no other question in either of these two revisions before us.

9. In the result, therefore, we allow Criminal Revision No. 959 of 1953 to this extent that we set aside the order of the Additional Sessions Judge of Jaunpur directing the case to be sent to the trial Court for being again sent to the Panchayati Adalat for a trial 'de novo'. On the materials and the findings arrived at by the learned Additional Sessions Judge it is clear to us that the accused were guilty under Section 323, I. P. C. So we uphold their convictions and sentences under that section.

Their acquittal under Section 440, I. P. C., as opined by the learned Judge, is affirmed. Criminal Revision No. 2036 of 1953 is dismissed and the convictions and sentences of the applicants under Section 323 and Section 426, I. P. C. are affirmed.