

## **Pratap Bahadur Singh vs Dau Bahadur Singh And Ors. on 14 February, 1950**

**Equivalent citations: AIR1952ALL581, AIR 1952 ALLAHABAD 581**

ORDER

Kidwai, J.

1. Pratap Bahadur Singh instituted a case under Sections 379 & 426, I. P. C. against Dan Bahadur Singh & others in the Court of a Tahsildar Magistrate of Rae Bareli. Subsequently, Pratap Bahadur Singh applied to the Tahsildar Magistrate on 30-8-1949, praying that, as the case related to the price of wood worth Rs. 25 only, the case was triable by Panchaiti Adalat & should, according to Section 56, Panchayat Raj Act, be transferred to the Panchaiti Adalat of Benta Kalan. This application was opposed by the accused who alleged that the complainant himself was a Panch & that his witnesses too were panches or the Sarpanch of the said Adalat. They also gave other grounds for not transferring the case. The learned Tahsildar Magistrate considered that he could not transfer the case to that Panchaiti Adalat because that lay in Tahsil Dalmau while he had jurisdiction only in Tahsil Rae Bareli. He accordingly instructed the applicant to move the Sub-Divisional Magistrate, Dalmau for necessary orders.
2. The applicant failed to take any action & the Tehsildar Magistrate dismissed the application.
3. Thereafter the applicant was again given time to move the Sub-Divisional Magistrate & he did do so but the Sub-Divisional Magistrate held that the Court empowered to hear appeals from orders of the Tahsildar Magistrate was the District Magistrate & that he could not, therefore, entertain the application. He accordingly rejected the application.
4. In the meanwhile Pratap Bahadur Singh had moved the Ses. J. of Rae Bareli in revision against the order of the Tahsildar Magistrate for refusing to transfer the case to the Panchaiti Adalat.
5. The Ses. J. has referred the case to this Court with the recommendation that the order of the Tahsildar Magistrate be set aside & that he be directed to transfer the case to the Panchaiti Adalat.
6. It appears from the record of the case that, after the order of the Tahsildar Magistrate in question the Sub-Divisional Magistrate of Dalmau was moved in the matter but, owing to incorrect appreciation of the position, as well as owing to some misapprehensions as to the procedure according to which the provisions of this new Act are to have effect, he considered that he had no jurisdiction to entertain the application. This is not so. It was in fact for him to decide whether he would cancel the jurisdiction of the Panchaiti Adalat under Section 85, Panchayat Raj Act, or not. Indeed it would have been advisable, if on the matter being brought to his notice, the Tahsildar

Magistrate had himself referred the case to the Sub-Divisional Magistrate of Dalmau.

7. Be that as it may, this is a matter which requires the order of the Sub-Divisional Magistrate under Section 85 if he thinks it fit to pass any such orders. Since he has given no consideration to the provisions of that section & has disposed of the application of Pratap Bahadur Singh in a manner which is not in accordance with law, I must accept this reference & set aside the orders of Shri J. H. Qizilbash, Tahsildar Magistrate refusing to remit the case to the Panchaiti Adalat.

8. In the circumstances of the case, however, I direct that the papers should be laid before the Sub-Divisional Magistrate of Dalmau, District Rai Bareilly under Section 85, Panchayat Raj Act for him to decide whether the circumstances disclosed in this case make it unfit for trial before the Panchaiti Adalat. If he thinks that they are such as to make it appear that there is an apprehension of miscarriage of justice if the case is allowed to proceed before the Panchaiti Adalat, he should pass orders under Section 85, Panchayat Raj Act. If he does not think that there is any such apprehension he should order the case to be sent to the Panchaiti Adalat having jurisdiction to dispose of it & take such further action as the Panchayat Raj Act may justify.