Jagan And Ors. vs Ram Kishore Pandey And Ors. on 24 November, 1953

Equivalent citations: 1954CRILJ736

ORDER

Chaturvedi, J.

1. This case was ordered to be connected with Civil Misc. Writ No. 187 of 1953. In Misc. Writ No. 187 of 1953, the learned Judge admitted the application, mentioned three points which were considered to arise in that case. These points have been argued in the present Writ case, and I now propose to deal with them after briefly giving the facts of the case.

2. The Panchayati Adalat of Bhabhot Circle, district Sultanpur, passed an order on the 27th June, 1951 holding that the applicants had committed an offence under Section 447, I. P. C. and sentenced them to a fine of Rs. 50/- each. A revision against this order was preferred before the Sub-Divisional Magistrate, Sadar, on the 30th July, 1951. When it was filed, there was no affidavit along with it as provided by Rule 95-A(l) of the Rules framed under the U. P. Panchayat Raj Act. An affidavit, however, was subsequently filed some months after revision had been filed. The matter came on for hearing before the learned Sub-Divisional Magistrate on a number of dates, and the learned Magistrate dismissed the revision by his order dated the 21st April, 1953 on the ground that the revision was incompetent, inasmuch as it was not accompanied by an affidavit.

The present application under Articles 226 and 227 of the Constitution prays for setting aside the order of the learned Magistrate as also of the Panchayati Adalat. The learned Counsel has argued that the order of the learned Magistrate shows that he thought that he was helpless in the matter; and in view, of the defect of not filing an affidavit with the Revision application, he had no power to interfere with the order of the Panchayati Adalat.

2a. It was urged by the learned Counsel, in the first instance, that Rule 95-A is ultra vires, inasmuch as it is inconsistent with the provisions of Section 85 of the U. P. Panchayat Raj Act. I am unable to accept this contention of the learned Counsel. What Rule 95-A(l) lays down Ms that an application filed under Section 85 should be accompanied by an affidavit stating the specific grounds on which it is based, and a certified copy of the order against which it is made. Sub-rule (2) then goes on to provide that notice of the application would be sent to the opposite party with a copy of the application; and a report of the Sarpanch would also be called for. Sub-rule (3) says that the court shall, before passing orders on the application give a reasonable opportunity to both the parties of being heard. It would be clear from the provisions of this Rule that it really provides a procedure which is to be followed when a revision is preferred under Section 85 of the Act. section 85 of the Act says that a court may act on the application of any party or on its own motion. The Rule in further

adds that that application should be accompanied by an affidavit. I find nothing inconsistent in the provisions of Section 85 and Rule 95-A. There are numerous instances in the different Acts where the Rules provide for the filing of additional documents, and the validity of the Rule has never been questioned on that ground. I, therefore, do not see any reason to hold that Rule 95-A is, 'ultra vires' as being inconsistent with the provisions of Section 85. The Rule really lays down the procedure and it is in no way inconsistent with the provisions of the section.

3. The next point that was argued was that the revision having once been admitted, it was not possible for the learned Magistrate to have rejected it on the ground that it was not accompanied by an affidavit. Here again I do not find it possible to agree with the contention of the learned Counsel. It is quite clear from Rule 95-A that the revision petition must be accompanied by an affidavit, and if a revision petition is filed without any affidavit, then obviously the revision is not complete, it could have been rejected the very moment that it was preferred; but if for some reason the defect was not noticed at that stage and was pointed out by the opposite party at the date of the final hearing, the position is really not in any way altered. The revision was a defective revision, and if the office of the Magistrate did not notice the defect, there is no reason for holding that the learned Magistrate had no jurisdiction at that stage to dismiss the revision on the ground that it was not accompanied by an affidavit. The revision being clearly a defective one, the learned Magistrate had a jurisdiction to dismiss it at any stage of the proceedings whenever the defect was brought to the notice of the learned Magistrate. From what I have stated above I am of the opinion that it is open to a Magistrate to dismiss a revision at any stage of the case before him, if he finds that it is defective and has not been properly filed.

4. The next question as to whether he is bound to dismiss such an application may be considered from two aspects-namely the right of the party and the power of the Revising authority. As far as the right of the party is concerned, the party not having acted according to the provisions of law, his right came to an end and it is open to the Revising authority to dismiss the revision on the ground of its being a defective one. But this does not necessarily lead to the conclusion that the power of the Revising authority to interfere with the decree or order of the Panchayati Adalat also does not exist at all in such a case.

Section 85 clearly provides that a Magistrate or Munsif can cancel the jurisdiction or quash any decree or order, on the application of any party or on his own motion. If the revision has been entertained and the record has been summoned, and both the parties are present, then the learned Magistrate should consider whether, in a case like that, he would like to dismiss the revision, or act 'suo motu' in the matter, the power being undoubtedly there to act on his own motion. If he finds mat mere are some defects in the decree or order of the Panchayati Adalat leading to miscarriage of justice, then certainly it is open to him to exercise his powers 'suo motu'. The case having reached that stage, it would not be desirable to dispose it of simply on the ground that there was a defect in the revision, which was not noticed previously and which, if noticed, could have been easily remedied.

I have already said that the Magistrate certainly has a discretion to dismiss the revision at any stage of the case. But at the same time if it has been brought to his notice that the order of the Panchayati

Adalat is liable to be quashed, then certainly he has a right of his own accord to interfere with the order and to quash the decree or order passed by the Panchayati Adalat. He might very well say that the revision is defective and he is dismissing it on that ground; and at the same time, he is quashing the order 'suo motu' because of certain defects found in the order. The position, therefore, is that if a revision has been admitted, notice issued to the other party and the record is before the court then the Revising officer must apply his mind to find out whether it is a case in which he would like to act 'suo motu' or not. It is open to him to say that, looking to the facts of the case, he would not like to exercise his discretion of acting of his own accord, and it would be equally open to him to set aside the order of the Panchayati Adalat if he considers it proper to do so.

What I wish to emphasise is that if the revision once having been admitted, is ready for final hearing and it is then found to be defective, then the learned Magistrate should further consider the question whether he is inclined to interfere with the order of the Panchayati Adalat of his own accord or not. His interference of his own accord is also discretionary but the order of the learned Magistrate should show that he has considered the question whether he would like to interfere with the order of his own accord, or he would not like to so interfere. In the absence of the expression of his opinion on this point, a doubt remains whether the learned Magistrate was really conscious of his power of setting aside the order of the Panchayati Adalat of his own accord. In the order under consideration the learned Magistrate remarked:

> The words of the statute must be given their literal meaning and it is not open to a court to introduce any consideration of public policy or equity to control or restrict the natural meaning of the words used by the legislature. The word "accompanying" mentioned in Rule 95-A can have the only literal meaning of the affidavit filed with the revision application at the same time and legally the application is not, therefore, maintainable.
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> These observations of the learned Magistrate show that he thought that he was powerless in the matter and, therefore, never applied his mind to the further question as to whether the order of the Panchayati Adalat was such as would induce him to interfere with it of his own accord.

5. In this view of the matter I think that this order should not be allowed to stand. I, therefore, quash the order of the learned Sub-Divisional Magistrate of Sadar, district Sultanpur, and send the case back to him to be restored to its original number. The learned Magistrate should further consider the question whether this is a case in which he considers it proper to interfere with the order of the Panchayati Adalat of his own accord or not.

6. Generally speaking, it is not necessary for Magistrate, exercising powers under Section 85 of the Act, to say in every order whether they would like to exercise their powers 'suo motu' or not. But in a case of this kind, where the case has" reached the stage of final hearing and the defect in the revision is discovered at that stage, It is certainly desirable that the learned Magistrates should consider whether they would act on their own motion or not in that particular case, and this consideration of theirs should appear from the order passed by them, or by the learned Munsifs as the case may be.

7. The writ petition is. allowed and the order of the learned Magistrate is quashed, and the case is sent back to him for a fresh decision in the light of the observations made above.

8. As it is a criminal case, no question of costs arises.