

Pambhi vs State on 4 December, 1951

Equivalent citations: AIR1952ALL526, AIR 1952 ALLAHABAD 526

JUDGMENT

Misra, J.

1. This is a revision under Article 227 of the Constitution and alternatively under Section 561A, Criminal P. o. against an order of the Panchayti Adalat, Kunda, district Partabgarh. The applicant Pambhi has been convicted of offences under Sections 323 and 504, Penal Code and sentenced to pay a fine of Es. 35 in respect of the first charge and Rs. 20 in respect of the second, it being provided that if the fine was realized, Rs. 15 thereof would be given to the complainant as compensation. Pambhi's revision under Section 85, Panchayat Raj Act to the Court of the Sub Divisional Magistrate, Kunda, failed and he now invokes the aid of this Court under the provisions referred to above.

2. Section 85, Panchayat Raj Act, confers the power of revision on Sub-Divisional Magistrates and Munsifs over the orders or decrees of the Panchayati Adalat and provides that decrees or orders passed by the Panchayati Adalat in any suit case or proceeding under the Act "shall be final and shall not be open to appeal or revision in any Court." Article 227 of the Constitution which is called in aid on behalf of the applicant confers upon every High Court the powers of superintendence over all Courts and tribunals through, out the territories in relation to which it exercises jurisdiction. According to the decision in Sukhdeo Baiswar v. Brij Bhushan Misra, A. I. R. (38) 1951 ALL. 667, this power of superintendence is substantially the same which this Court had upto the passing of the Government of India Act of 1935. It includes powers of a judicial as well as of an administrative nature but as pointed out in Jhakri Kewat v. Ram Naresh Sahi, A. I. R. (22) 3935 ALL. 514, such power should be exercised only in exceptional cases. The decision of 1935 is of importance because the facts involved therein were very similar inasmuch as Sections 253 and 254. Agra Tenancy Act, by which the suit was governed expressly excluded the revisional powers of the High Court. The following remarks of Kendal J. are apposite :

"Leaving aside for the time being the question of whether the present matter is one which could be covered by the revisional powers of the High Court provided for in Section 115, Civil P. C., I think it is necessary to point out that although the High Court may have powers of a judicial as well as of an administrative nature under Section 107, Government of India Act, it will only exercise those powers in the most exceptional cases. If Mr. Agarwala's argument were pressed to its logical conclusion, it would follow that the High Court would be competent to ignore the provisions of Sections 253 and 264, Agra Tenancy Act, and to deal with every application presented to it in a matter relating to the Revenue Courts as if it were one under Section 115, Civil P. C. "

Reference may be made in this connection to the observation of Sir George Rankin C.J. in, *Manmatha Nath v Emperor*, 60 Cal 618 in a case under Section 107, Government of India Act, 1915:

"The general superintendence which this Court has over all jurisdictions subject to appeal, is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and they do it in a legal manner. It does not involve responsibility for the correctness of their decisions either in fact or law."

A further observation in the course of his judgment may also be quoted with advantage :

"It is practicable that the High Court should see that no man is convicted without a legal reason. Indeed, it is idle to give a remedy for irregularity in procedure if remedy is to be refused, where, after a proper trial, the final order of the inferior Court is without any legal foundation. It is not practicable that this Court should retry all cases of the lower Courts, and that it should do so upon no settled principle but in cases arbitrarily and sporadically chosen is highly anomalous and undesirable. The power of superintendence is a power of a known and well recognized character and thus should be exercised upon those judicial principles which give it its character. The matter cannot be better put than in the words of Lord Denman C.J. in *R. v. Bolton*, (1341) 1 Q.B. 76. 'It is of much more importance to hold the rule of law straight, than from a feeling of the supposed hardship of any particular decision, to interpose relief at the expense of introducing a precedent full of inconvenience and uncertainty in the decision of future cases.'"

3. A similar view of the ambit within which the High Courts', wide powers of superintendence should be exercised under Section 107 of the Act of 1915 was taken in *Emperor v. Jamnadas Nathji*, A. I. R. (24) 1937 Bom. 153; *Duraiswami Reddiar v. Secy. of State*, A. I. R. (26) 1939 Mad 648 and *Mehtab Singh v. Secy. of State*, A. I. R. (20) 1933 Lah, 157. The position under the Constitution of India is identical. Indeed the rule laid down in the cases to which reference has been made has been adopted in the cases recently decided under Article 227. I have already referred to *Sukhdeo Baiswar v. Brij Bhushan*, A. I. R. (38) 1951 ALL 667. Two recent decisions of the Calcutta High Court in which the same rule has been propounded may also be mentioned: *Narendra Nath v. Binode Behari Dey*, A.I.R. (38) 1951 Cal. 138 and *Dalmia Jam Airways Ltd. v. Sukumar Mukerjee*, A. I. R. (38) 1951 Cal. 193. I am in complete agreement with the principle enunciated in the aforementioned cases. Accordingly it must be ruled that the superintendence referred to in Article 227 does not invest the High Court with an unlimited prerogative to interfere in cases where a wrong decision has been arrived at either in fact or in law and that powers contained therein must be restricted to cases of grave dereliction of duty and flagrant abuse of any fundamental principles of law. The right to obtain relief under it depends further on the conditions that no other remedy is available to the applicant and the remedying of the wrong is essential in order to prevent very serious results.

4. The powers of this Court under Section 561-A, Criminal P. C., which is also brought in aid by the applicant are not more extensive than those which it has under its inherent power. They are extraordinary in their nature and are exercised *ex debito justitiae* that is to say for the purpose of

doing that real and substantial justice for the administration of which the Courts of law exist. They cannot be appealed to for the purpose of overriding an express provision of law prohibiting interference.

5. The contentions urged on the merits of the case by the learned counsel for the applicant may be stated as follows : (1) That the injury report has not been proved by the production of the report itself (2) That the doctor who examined the injuries was not produced in evidence. (3) That the compensation of Rs. 15 awarded to the complainant violates the provisions of Section 60-B, Panchayat Raj Act, which confines the application of the payment to defraying the expenses properly incurred by him in the case or in compensation of any material damage or loss caused by the offence committed. (4) That amongst the members of the panchayat, there was no member of the gaon sabha of the place where the accused resides and that the sarpanch Arjun Prasad was on inimical terms with him.

6. It was also sought to be urged on behalf of the applicant that the Panchayat Raj Act violates the fundamental right conferred by the Constitution under Article 19(1)(e) and was not within the competence of the State Legislature inasmuch as it fell within (outside?) entry 32 of List 2 of Schedule 7.

7. There is no violation of any fundamental principles of justice. The law provided a remedy to the applicant by way of revision. He availed himself of that remedy but unfortunately for himself failed to convince the revisional Court of the correctness of his allegations. As regards the constitution of the panchayati adalat, the contention is based merely on certain affidavits filed by him in this Court. The opposite party denies the allegations. In these circumstances it is not possible to accept as true the facts which the applicant desires to establish for the first time now and in respect of which no objection was urged earlier at any stage of the case.

8. The last argument is equally futile regard being had to the recent Full Bench decision of this Court in Surajpal Singh v. U. P. Government, A. I. R. (38) 1951 ALL 674.

9. The case is not of the nature to which the provisions of Article 227 of the Constitution can be attracted.

10. The application is rejected. The complainant is not represented. I pass no order as to costs.