

Sheo Murar And Ors. vs State on 21 April, 1954

Equivalent citations: AIR1955ALL128, 1955CRILJ336, AIR 1955 ALLAHABAD 128

ORDER

Randhir Singh, J.

1. This is an application in revision under Sections 435/439, Criminal P. C., and under Articles 226 and 227 of the Constitution of India against the order of S. D. M. Malihabad, Lucknow dismissing an application in revision against the order passed by the Panchayati Adalat, Gonda Moazam Nagar.

2. It appears that a complaint was instituted under Sections 379/511/504/506, Penal Code, before the Panchavati Adalat of Gonda Moazamnagar. The allegations made by the complainant were that his gram crop was being stealthily removed from his field. When he noticed the loss on the 17th March and again on 18-3-1952 he made a complaint to the Mukhia, who asked him if he suspected anybody of the theft. The complainant told the Mukhia that he had no idea as to who had committed the theft. The Mukhia advised him to keep a watch and find out the culprits.

The complainant then sat stealthily near the 'mend' of his field on the evening of 19-3-1952, when, at about 7 p.m. the four applicants came to the field. They had lathis in their hands. They looked on all sides and then started uprooting gram plants. Just then the complainant emerged from his hiding and challenged the applicants. The applicants then chased the complainant, abused him and decamped. This was followed by a complaint to the Panchayati Adalat. The Panchayati Adalat found the applicants guilty and imposed a fine of Rs. 30/- under Sections 379/511 and Rs. 25/- and Rs. 20/- respectively under Sections 504 and 506, Penal Code. The applicants went in revision under Section 85, Panchayat Raj Act, to the Sub-Divisional Magistrate who dismissed it. They have now come up to this Court in revision.

3. It is conceded by the learned counsel appearing on behalf of the applicants that Section 435, Criminal P. C., has no application to this case and the learned counsel for the applicants has stated that he confines his application to Article 227 of the Constitution.

4. The only point which has been pressed on behalf of the applicants was that the facts disclosed in the complaint made out an offence of robbery under Section 390, Penal Code, and such a case could not be heard by a Panchayati Adalat. Reliance has been placed on a decision of this Court in -- 'Sant Prasad v. The State', AIR 1952 All 785 (A). Section 390 defines the offence of robbery and the relevant provisions are as follows: "Theft is "robbery" if, in order to the committing of the theft, or in committing the theft or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or

wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint." It would, therefore, appear that theft would become robbery only if in the committing of the theft or in order to the committing of theft or carrying away or attempting to carry away property obtained by theft, force is used. In the present case the Panchayati Adalat found and the allegations were also to that effect that the culprits neither took away the property nor attempted to use force while in the act of committing theft. They were detected and in order to escape away, it appears, they made use of a show of force. Such an offence would not, therefore, be covered by the definition of the word "robbery" as given in Section 390, Penal Code.

In the reported case of -- 'AIR 1952 All 785 (A)' referred to above, it was in the act of committing theft and in the act of carrying away stolen property that hurt was caused. It was held under those circumstances that the offence amounted to robbery. The reported case has no application to the facts of the present case. The applicants did not use force or show of force in the act of committing theft or in attempting to take away stol(sic) property in the present case and the offence (sic) which they have been found guilty could not, therefore be said to be robbery. The Panchayati Adalat had, therefore, jurisdiction to take cognizance of the case.

5. No other point has been pressed in arguments The application for revision is, therefore dismissed.