

## **Lachmi And Ors. vs Somaroo And Ors. on 3 November, 1954**

**Equivalent citations: AIR1955ALL122, 1955CRILJ313, AIR 1955 ALLAHABAD 122**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. This case was referred to a Full Bench by a learned Single Judge, as in his view, an important question of law arose for decision which was likely to arise in other cases.

2. A complaint was filed by one Sumaroo against Roop Narain and his two sons, Lachmi and Bhaggan, under certain sections of the Indian Penal Code. The Sarpanch constituted a Bench of five Panches whose names were Parshotam Dass, Chairman, Raghunath Prasad, Misri Lal, Harihar Prasad and Ram Lakhan. During the course of the proceedings, it appears that two of the Panches, Harihar Prasad and Ram Lakhan, were replaced by two new panches Bhagirathi and Ram Adhar Singh.

As regards Bhagirathi there is a paper on the file, paper No. 21 from which it appears that a report was made by Parshotam Dass, Chairman, and Misri Lal that Harihar Prasad was not in Banaras and that, therefore, some difficulty was felt in getting the quorum. On this report the Sarpanch passed an order that the only other panch available from the Gaon Sabha of one of the parties was Bhagirathi and, therefore, he was being appointed.

It was said by the learned counsel at the Bar that Ram Lakhan had fallen ill and he was replaced by Ram Adhar Singh. The fact that Ram Lakhan was replaced by Ram Adhar Singh is mentioned in the supplementary affidavit and it is not denied in the counter-affidavit filed on behalf of the complainant, but in what circumstances and on what date is not clear from the file.

3. On the 3rd August, 1952, the three Panches originally appointed, that is, Parshotam Dass, Ragunath Prasad and Misri Lal and the two new panches, Bhagirathi and Ram Adhar Singh, delivered a judgment in the case. Bhagirathi gave a dissenting judgment and the other four decided in favour of the complainant and convicted the accused and sentenced them to pay various amounts as fine. There was a revision filed against that order in the court of the Sub-Divisional Magistrate,

1st Class, Banaras, taut the learned Magistrate dismissed the revision on the 26th of November, 1952.

4. The only two points dealt with by him were, firstly, whether the charge was read out to the accused and, if not, whether any prejudice had been caused to the accused and, secondly, whether the Chairman was present on all the dates of hearing. The Magistrate held that the charge had been read out to the accused and that there was no satisfactory evidence that the Sarpanch had not attended on all the dates of hearing.

5. The two points raised before the learned Magistrate were not taken before us. The point raised in this Court is that once the Panches have been nominated by the Sarpanch he cannot replace them by new Panches.

6. Section 49 of the U. P. Panchayat Raj Act (Act No. XXVI of 1947) provides that after a case, suit or proceeding has been instituted the Sarpanch has to form a Bench consisting of five panches in accordance with the provisions of that section. The Sarpanch in this case did constitute a Bench of five Panches in accordance with the provisions of Section 49.

Section 77-A provides that "If any Panch appointed to a bench constituted under Section 49 for the trial of a case, suit or proceeding is absent at any hearing, the remaining Panches may, notwithstanding anything contained in this Act try the case, suit or proceeding provided, however, that at least three panches, including the chairman, are present and provided further that at least one of the panches present is able to record evidence and proceedings. The mere absence, therefore, of a panch does not affect the proceedings and it is possible for three Panches to continue the trial provided the Chairman and a panch who is literate enough to record the proceedings are available.

Rule 84-B, framed under Section 110 of the Act, provides that where there is disagreement among the Panches constituting a bench, and by reason thereof it is not possible for them to give a decision by the opinion of the majority, the Sarpanch may constitute another bench but no panch, who was a member of the former bench, can be appointed to the new bench.

The only other rule that need be mentioned is Rule 84-D which provides that if any party to a case, suit or proceeding is dissatisfied with the personnel of the bench constituted for its hearing, he has to immediately on receiving information about the constitution of the Bench and before commencement of hearing of the case, suit or proceeding, make an application to the Sarpanch stating the ground of his dissatisfaction and request for the reconstitution of the bench. In such a case the Sarpanch has the power to reconstitute the bench.

These are all the provisions contained in the Act and the Rules about constitution of Benches by the Sarpanch. There appears to be no provision in the Act or the Rules for appointment of a new Panch in place of a Panch already appointed and to whose appointment no objection had been taken by the parties.

7. Section 55 of the Act bars the jurisdiction of courts of law to hear a case which is cognizable by a Panchayati Adalat unless an order has been passed by a Sub-Divisional Magistrate or Munsif under Section 85 quashing the jurisdiction of the Panchayati Adalat. Even in drafting Section 85 of the Act it does not appear to have been kept in mind that there might arise a case where by reason of death, incapacity or other reasons it may not be possible for the Panchayati Adalat to function and give a decision in the case. The relevant portion of the section is as follows:

"If there has been a miscarriage of justice or if there is an apprehension of miscarriage of justice in any case, suit or proceeding, the Sub-Divisional Magistrate ..... may on the application of any party or on his own motion, at any time in a pending case ..... and within sixty days from the date of decree or order, call for the record of the case ..... from the Panchayati Adalat and may for reasons to be recorded in writing,

(a) cancel the jurisdiction of the Panchayati Adalat at any stage, or

(b) quash any decree or order passed by the Panchayati Adalat at any stage."

The section empowers the Sub-Divisional Magistrate to quash any decree or order in the interest of justice or to cancel the jurisdiction of the Panchayati Adalat when he apprehends a miscarriage of justice. The case will then have to be tried in the ordinary courts of law.

It has been pointed out that in a case where, say three out of the five Panches are not available on account of death, incapacity or any other reason, it will not be possible for the remaining two to form a quorum. No doubt such a situation can rarely arise but there should be a provision for the reconstitution of a Bench.

One view may be that in such a case there is in fact no Bench and the original position is restored and the Sarpanch can nominate a new Bench for the hearing of the case. He may then re-start in accordance with the provisions of Section 49 and the case can be heard by the new Bench constituted by him, the previous Bench having, by reason of death or incapacity of its members, come to an end.

To illustrate our point we may take a case where all the five Panches nominated by the Sarpanch die. There is then no Bench in existence and there is, therefore, no reason why the Sarpanch should not again act under Section 49 of the Act and constitute a fresh Bench. If the Panches, capable of acting, are less than three, the same result should follow and the Sarpanch should have the power to constitute a new Bench. If, however, three Panches are still available who can function, the Sarpanch has no right to interfere and appoint new Panches to replace the old ones or put in a new Bench to replace the old Bench.

8. The Act nowhere provides for the removal by the Sarpanch of a validly nominated panch to a Bench except in a case coming within the provisions of Rule 84-D. To hold that the Sarpanch has got full discretion to interfere with a Bench & replace one panch by another at any time during the

pendency of a case, even after hearing has been commenced & a part of the evidence has been recorded, would not only be against the rules of natural justice but might result in serious abuse of power. A Sarpanch may in that case at his sweet will and pleasure and for reasons of his own that may not be always commendable, replace one Panch by another, if that Panch happens to be absent on account of ill-health or on any other good ground, even though the Act does not make it obligatory on every panch to be present at every sitting of the Bench.

9. The Act makes it clear that the Panchayati Adalat was not bound by technical rules of procedure or evidence and we are, therefore, always reluctant to interfere with decisions of a Panchayati Adalat on technical grounds. It does not appear from the record of the Panchayati Adalat nor is it suggested in the affidavits filed on behalf of the petitioner, though they have filed several affidavits, that any objection was taken to the nomination of Bhagirathi and Ram Adhar Singh by the Sarpanch. There was a Bench of three Panches properly appointed who functioned throughout & who were parties to the Judgment. It is not suggested that the two new Panches, Bhagirath & Ram Adhar Singh, influenced the decision so that the other three Panches might have given a decision different to the one that they gave on the 3rd of August 1952.

10. We have already said that there is no mention made in the judgment of the learned Sub-Divisional Magistrate that the point was argued before him. In this connection we may refer to Rule 84-D which provided that if a party is dissatisfied with the personnel of a Bench, he has to make an objection before the commencement of the hearing of the case immediately on the receipt of the information. If he does not do so he is not allowed to object later on after the proceedings have commenced. In 'Bhagirathi v. The State', AIR 1955 All 113 (FB) (A), it was held that the provisions of Section 49 (2) of the U. P. Panchayati Raj Act do not go to the root of the jurisdiction of the Bench and that if no objection was taken to the constitution of the Bench it was not open to them to raise that point in a writ petition under Article 226 or 227 of the Constitution.

11. We are, therefore, not prepared to interfere and dismiss this application but make no order as to costs.