

Girja Prasad And Ors. vs Zalim Singh on 15 December, 1952

Equivalent citations: AIR1953ALL340, AIR 1953 ALLAHABAD 340

JUDGMENT

Agarwala, J.

1. The complaint against the applicants which was presented before the Panchayati Adalat of Bhagwatipur was that the applicants had cut away a tree belonging to the complainant and standing in his land and that when the complainant remonstrated with the applicants he was assaulted with lathis by them. The tree was claimed by the applicants to belong to them. The Panchayati Adalat went into the matter and found that the tree belonged to the complainant and that the applicants were not justified in cutting it. Each of the applicants were, therefore, convicted and sentenced to a fine of Rs. 25. The applicants went up in revision to the Sub-Divisional Magistrate. The revision was dismissed.

2. In this application before me it has been urged that the constitution of the Panchayati Adalat which tried the case was not in accordance with the provisions of Section 49 of the U. P. Panchayat Raj Act inasmuch as only one panch out of the five panches was taken from the village in which the complainant and the accused lived. It is urged that both parties live in the same village and since Section 49 requires that one panch from the village in which the complainant lives and another from the village in which the accused live must be taken and that three panches from other villages should be taken, the taking of only one panch from the village of the complainant and the accused was illegal and rendered the constitution of the Panchayati Adalat unconstitutional. In my opinion, this contention has no force. Section 49 provides that a Bench of five panches shall be formed for the trial of any case, suit or proceeding. It further provides that :

"Such a Bench shall include one panch who resides in the area of the Goan Sabha in which the plaintiff of a suit or proceeding or the complainant of a case resides, and likewise one panch residing in the area of the Gaon Sabha in which the defendant or the accused resides, and three panches residing in the area of the Gaon Sabha in which neither party resides."

The provisions quoted above apparently contemplate the contingency in which the complainant and the accused reside in different villages. They do not contemplate the contingency in which both of them reside in the same village.

The idea underlying the provision that one panch from each of the villages in which the complainant and the accused reside should be included in the Bench of the panches, is to make available to the Panchayati Adalat the services of a person acquainted with the locality in which each party resides.

His knowledge of the locality is expected in cases tried by the Panchayati Adalat, which are of a petty and local nature, to help in the decision of such cases. The object of the section is fully secured by there being on the Panchayati Adalat a panch who has knowledge of the locality of both the parties. In a case in which both parties reside in the same village the section does not lay down that two panches of the same village should necessarily be included in the composition of the Bench. In such an event if one panch of the village in which both parties reside is a member of the Bench it is quite sufficient to comply with the provisions of the Act. In this view of the matter the constitution of the Panchayati Adalat was not illegal or irregular.

3. The second point urged is that the Panchayati Adalat had no jurisdiction to award the wood of the tree to the complainant. As the Code of Criminal Procedure does not apply to the procedure of the Panchayati Adalat, the Panchayati Adalat had no jurisdiction to make an order for the return of the property in connection with which the offence was committed. But the Panchayati Adalat in the present case has done nothing of the kind. The statement in the judgment that the tree was justly awarded to the complainant merely meant that the tree was found to belong to the complainant and not that the wood was awarded to him. Learned counsel for the opposite party states that for the wood a separate decree had been obtained by him against the applicants. Hence the order of the Panchayati Adalat will not be construed as awarding the wood to the complainant.

4. The third point urged before me is that in an investigation made by the Panchayati Adalat outsiders were appointed as Commissioners and the Panchayati Adalat relied upon their report. I do not consider that the procedure was illegal. The Civil Procedure Code, the Criminal Procedure Code and the Evidence Act do not apply to the proceedings of the Panchayati Adalat. The Panchayati Adalat is entitled to appoint Commissioners and to rely upon their report. It is not necessary for the Panchayati Adalat to examine the Commissioners on oath before their statements can be taken into account. Further it appears from the record that the Panchayati Adalat had before it other evidence taken on oath on the basis of which it decided the case in favour of the complainant. There is, therefore, no force in this point.

5. Learned counsel has relied upon a decision of my brother P. L. Bhargava J. in *Sant Prasad v. State*, 1951 ALL. I. J. 719. In that case, the Panchayati Adalat associated other persons with it in the investigation and trial of the case and it was held that this procedure vitiated the trial. I entirely agree with that decision. But here the Panchayati Adalat did not associate outsiders in the trial of the case. Outsiders were asked to make a report as Commissioners and there is nothing wrong in the Panchayati Adalat doing so.

6. Lastly, it has been urged that oath was administered to the accused in the present case. I do not consider that the mere fact that the accused had been examined on oath prejudices the trial. Learned counsel has referred to *Pati v. Dubari*, 1952 ALL. I. J. 565. In that case the accused was not only put on oath but was also cross-examined. Prejudice was, therefore, caused to him. In the present case the accused was not cross-examined and it has not been shown that any prejudice was caused to him.

7 There is no force in this application and it is dismissed. The stay order is discharged.