Shankar Singh vs State on 18 February, 1952

Equivalent citations: AIR1952ALL833, AIR 1952 ALLAHABAD 833

JUDGMENT

Beg, J.

1. This is a reference by the learned Sessions Judge, Hardoi, recommending that the conviction and sentence of Shankar Singh by Sri E.N. Asthana, Judicial Magistrate, under Section 323, Penal Code be set aside.

2. It appears that Shankar Singh, the applicant/accused before the lower Court, and 12 others, were prosecuted under Sections 147 and 308, Penal Code. The case was tried by Sri E.N. Asthana, Judicial Magistrate, Hardoi, who framed a charge against all the accused under Sections 147 and 323, Penal Code. The trial of the case proceeded before the learned Magistrate up to its termination. At the time of writing the judgment the trial Court came to the conclusion that none of the accused were guilty of the offence under Section 147, Penal Code. He accordingly acquitted all of them of the said charge. He was also of opinion that none of them, except Shankar Singh were guilty of the offence under Section 328, Penal Code. The trial Court, therefore, acquitted all the accused, except Shankar Singh, under Section 323 as well. He convicted Shankar Singh under the said section and sentenced him to pay a fine of Rs. 20, in default one month's rigorous imprisonment.

3. The accused filed a revision before the learned Sessions Judge of Hardoi, who was of opinion that the case under Section 323, Penal Code being exclusively triable by the Panchayati Adalat under the U. P. Panchayat Raj Act (U. P. Act XXVI [26] of 1947), the conviction by the trial Court was ultra vires. He accordingly made a recommendation to this Court that the said conviction be set aside. The case came up for hearing before a single Judge of this Court, who has referred it to a Bench for disposal.

4. The U. P. Panchayat Raj Act (U. P. XXVI [26] of 1947) came into force in the year 1947. Its purpose as given in the preamble is, "to establish and develop local self-government in the rural areas of the United Provinces and to make better provision for village administration and development."

To achieve this object, the Act seeks to provide a comprehensive scheme for the constitution of Gaon Sabhas and Gaon Panchayats and for the establishment of Court called Panchayati Adalats in villages. Under Section 52 of the said Act offences under the sections enumerated in that section, if committed within the jurisdiction of the Panchayati Adalat, as well as abetments of and attempts to commit such offences, were made cognizable by such Panchayati Adalat. It may be mentioned that under Section 52 an offence under Section 147, Penal Code is not cognizable by the Panchayati

Adalat and an offence under Section 323, Penal Code, amongst other offences, is made cognizable by the Panchayati Adalat. Under Section 55 of the said Act it is laid down that :

> "No Court shall take cognizance of any case or suit which is cognizable under the Act by a Panchayati Adalat unless an order has been passed by a Sub-Divisional Magistrate or Munsif under Section 85."

Section 56 of the Act provides that:

> "if at any stage of proceedings in a criminal case pending before a Magistrate it appears that the case is triable by a Panchayati Adalat, he shall at once transfer the case to that Panchayati Adalat, which shall try the case de novo."

5. A perusal of Sections 52, 55 and 56, Panchayat Raj Act makes its clear that the purpose of the Legislature in enacting those sections was to make a particular class of cases exclusively cognizable as well as triable by the Panchayati Adalat unless an order under Section 85 of the Act was passed in regard to them. No order under Section 85 has been passed in the present case. Section 55 of the said Act would apply to the stage of cognizance of a case. If the complaint as initially framed or the case as sent up at the very outset indicated that it related to an offence or offences which were exclusively triable by the panchayati adalat, then the Court was debarred from trying it.

It may however happen, as it sometimes does, that a party may exaggerate the case against the opposite party and narrate facts in such a manner as to make out a graver offence. In such cases the case would be initially cognizable by the ordinary Courts but after the trial has proceeded and a certain amount of evidence has been recorded or a charge has been framed and the proceedings concluded, the Court may find that the offence disclosed to have been committed was really one triable by the Panchayati Adalat. To meet such case Section 56 mentioned above seems to have been enacted.

In the present case the complainant seems to have exaggerated his case. The case as initially put up before the Court was cognizable by the said Court. Neither an offence under Section 147 nor an offence under Section 308, Penal Code was triable by the Panchayati Adalat. At the stage of charge also the Court proceeded to frame charges under Section 323, Penal Code and the case remained triable by the Court. At the time of writing the judgment the Court, however, realised that no offence under Section 147, Penal Code was made out but only an offence under Section 323 was committed. The question in the present case is whether even at that stage the Court was bound to stay its hand and transfer the case to the Panchayati Adalat for a da novo trial.

A perusal of Section 56, Panchayat Raj Act indicates that it is worded most widely so as to embrace every stage of a criminal case from the beginning of the proceedings up to its conclusion. It is noticeable that the section is attracted whenever a criminal case is "pending." A criminal case is "pending" before a Court from the moment a Court takes cognizance of it right up to the time when its termination is brought about by acquittal, discharge or conviction of the accused. Further Section 56, has been made applicable to "any stage of proceedings in a criminal case." The use of the word

"proceedings" in place of the word "trial" is not without significance.

In this connection the learned counsel appearing for the State argued that the trial of a case does not include judgment and sentence. The word "trial" is not defined in the Criminal Procedure Code. According to the view taken in Queen-Empress v. McCarthy, 9 ALL. 420 and Niamat Shah v. Hanuman Buksha, A. I. R. 1931 cal. 626 it would include the stage of judgment and sentence. On the other hand, a contrary view seems to have been taken in Bakshi Ram v. Emperor, 39 cri. L. J. 345 and Public Prosecutor v. Chockalinga Ambalam, A. I. R. 1929 Mad. 201. The observations of their Lordships of the Privy Council in Basil Banger Lawrence v. Emperor, A. I. R. 1933 P. C. 218 would support the former view.

In view, however of the use of the word "proceedings" in Section 56, Panchayat Raj Act it is not necessary to answer this question. It appears to us clear that the word "proceedings" is a word of widest amplitude and would clearly cover the stage of judgment or sentence in a criminal case. The word "proceedings" may be used to mean the separate steps taken in the progress of a case the aggregate of which makes up the case or the entire case taken as a whole. According to Iyer's Law Lexicon the term "proceedings" is used as "including all possible steps in an action, from its commencement to the execution of judgment." In the same book in connection with the meaning of the word "pending" it is said that "an action is pending the entire time from the beginning of the action until final judgment has been pronounced and entered up, for until final judgment there cannot be said to be a termination of the action and it is therefore still pending".

The words "pending proceedings" have also been defined in Iyer's Law Lexicon as follows :

> "A legal proceeding is said to be pending as soon as it is commenced and until it is concluded."

6. In Jivanji Mamooji v. Ghulam Hussain Sheikh Tayab, 47 Ind. cas. 771 (Sind) the Court in expounding the meaning of the words "pending proceedings" quoted with approval their exposition as given in Stroud as follows :

> "Stroud, in the edition of 1890, refers to the cases decided up to that date, and states, 'A legal proceeding is pending' as soon as commenced, and until it is concluded, that is so long as the Court having original cognizance of it, can make an order on the matters in issue or to be dealt with, therein."

7. In In re Clagett's Estate; Fordham v. Clagett, (1882) 20 ch. D. 637. Jessel, M. E. while dealing with a bankruptcy case, expounded the meaning of word "pending" in the following manner :

> "A cause is said to be pending in a Court of Justice when any proceeding can be taken in it. That is the test. If you can take any proceeding it is pending. 'Pending' does not mean that it has not been tried. It may have been tried years ago. In fact, in the days of the old Court of Chancery, we were familiar with cases which had been tried fifty or even one hundred years before, and which were still pending. Sometimes, no doubt,

> they require a process which we call reviving, but which, the Scotch call waking up, but nevertheless they were pending suits, and all such causes have been transferred to the High Court of Justice under the words 'causes which shall be pending' in Section 22, Judicature Act, 1873, when the word 'pending' is used in this large sense."

Similarly in Salt v. Cooper, (1880) 16 Ch. D. 544, it was laid down by Jessel M. E. that so long as the final judgment in an action remains unsatisfied the action is a "cause or matter" pending within the meaning of Section 24, Sub-section 7, Judicature Act, 1873. Although these words had to be interpreted in a different context in the above cases, the interpretation placed upon them by the Court certainly brings out the wide import ordinarily assigned to the words "pending proceedings."

8. The last portion of Section 56, which lays down that the ease shall be tried de novo by the Panchayati Adalat also supports the conclusion that it is mandatory on the Court to send the case to Panchayati Adalat for trial even though the trial might have terminated before the Court trying the case. The use of the word de novo clearly implies that a trial of the case had already taken place in the Court where it was pending previously and that it would have to be started again in the Panchayati Adalat after transfer of the case to it.

9. Learned counsel for the State has argued that once a Court has taken cognizance of a case it would be competent to try the same. We are of opinion that if this interpretation is accepted, the entire purpose of the provisions of Section 56, Panchayat Raj Act would be nullified, for it would always be open to a party wanting to take out its case from the cognizance of the Panchayat Court to exaggerate its case thereby making it cognizable by ordinary Courts. Such an interpretation would lead to circumvention of law and defeat the very object of the Legislature in enacting the U. P. Panchayat Raj Act and establishing the Panchayati Adalat thereunder.

10. Learned counsel has further argued that a transfer of the case at the late stage would result in a good deal of inconvenience to the parties. There is no doubt that a fresh trial of the case would have this consequence. The words of the Statute, however, are so clear that there seems to be no escape from this conclusion. Where words of a Statute are clear and unambiguous, considerations of convenience or hardship cannot incline the Court to take a view contrary to the one pointed out by the clear provisions of such Statute.

11. Learned counsel for the State has invited our attention to Section 73 (2), Panchayat Raj Act, according to which where an accused has been tried for any offence, no Panchayati Adalat shall take cognizance of any such offence, or on the same facts, of any other offence of which the accused might have been charged or convicted. He has relied on the words "on the same facts" in the said sub-section and has argued that the accused having been already tried for the offence of Section 147, he could not under Section 73 (2) of the said Act be tried again for the offence of Section 323. This argument seems to ignore the fact that the circumstances or set of facts which constitute the offence under Section 147 are not the same as those that constitute an offence under Section 323, Penal Code.

12. The view taken by us in this case is ' supported by three decisions of this Court reported in Ramdin v. The State, 1950 ALL W. R. (H C.) 679; Kirpa Bam v. Ram Asrey, 1950 ALL. W. B. (H.C.) 681 and Sheo Dayal v. State, 1951 ALL. W. R. (H. C.) 519.

13. Having heard the learned counsel for the parties, we have come to the conclusion that the recommendation made by the learned Sessions Judge must be accepted. We accordingly allow the reference, set aside the conviction of the accused under Section 823, Penal Code and send the case to the trial Court with the direction that he should transfer the case under Section 323, Penal Code against the accused to the Panchayati Adalat having jurisdiction to try the same for a trial de novo. The fine, if paid, shall be refunded.