Jaisri Tewari And Anr. vs State Through Bindeshivari Tewari on 7 November, 1950

Equivalent citations: AIR1951ALL494, AIR 1951 ALLAHABAD 494

ORDER

P.L. Bhargava, J.

1. This is an application in revision by Jaisri Tewari and his son, Surajbali Tewari. The facts leading up to the revision are these : On 11-7-1949, Bindeshwari Tewari filed a complaint against Jaisri Tewari and Surajbali Tewari. In the complaint, it was prayed that the accused be dealt with for offences punishable under Sections 341, 447, 504 and 506, Penal Code. There was a further prayer that they may also be required to execute a bond for keeping the peace under Section 106, Criminal P. C. The complainant, Bindeshwari Tewari, described himself as the piada of Srinath Sah and others, zemindars of village Sahjore in the district of Banaras. He had alleged in the complaint that the zemindars had obtained a decree for ejectment under Section 180, U. P. Tenancy Act (XVII [17] of 1939) against Jaisri Tewari and Surajbali Tewari; that the zemindars had taken possession over the land in dispute under the decree made on 25-5-1949, and that while he was getting the land cultivated, on behalf of the zemindars, Jaisri Tewari and Surajbali Tewari forcibly prevented him from doing so and threatened to attack him with lathis and break his hands and feet.

2. The learned Magistrate, to whom the complaint was transferred, took cognisance of the offences mentioned therein and proceeded to try the case as a warrant case. He heard the complainant, recorded the statements of the witnesses produced in support of the prosecution, and also examined the accused. On 4-1-1950, the accused filed an application before the Magistrate pointing out that the offences, under Sections 341, 447, 504 and 506, Penal Code, were exclusively cognisable by a Panchayati Adalat, and that under Section 56, U. P. Panchayat Raj Act (XXVI [26] of 1947) the case be transferred to the Panchayati Adalat.

3. The application filed on behalf of the accused was opposed on the ground that the Panchayati Adalat was not empowered to grant the relief under Sections 106 and 522, Criminal P. C., which the complainant had claimed and was going to claim. The Magistrate rejected the application being of the opinion that the complainant should not be deprived of these remedies to which he was entitled under the law.

4. The accused then filed a revision against, the order rejecting the application in the Court of the Sessions Judge of Benaras. The learned Sessions Judge upheld the order and dismissed the revision. The accused have now come to this Court in revision.

5. On behalf of the applicants, it has been contended that the view taken by the Courts below is erroneous. I will deal with the reasons given by the learned Sessions Judge, which also cover the grounds for rejecting the application given by the Magistrate. The learned Sessions Judge has, in the first place, pointed out that the complaint was under Sections 341, 447, 504 and 506, Penal Code, "read with Section 106, Criminal P. C."

6. A criminal proceeding may be initiated by means of a complaint; and a "complaint" has been defined, in Section 4, Criminal P. C., to mean an "allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police-officer."

It would thus appear that a criminal proceeding may be initiated by means of a complaint for any offence which has been committed. A complaint could, therefore, have been filed for offences punishable under Sections 341, 447, 504 and 506, Penal Code, but not under or read with Section 106, Criminal P. C., which does not contemplate any offence punishable thereunder and merely directs that, in case of a conviction for any of the offences mentioned therein, if the Court considers it necessary to require the convicted person to execute a bond for keeping the peace, obviously with the object of prevention of offences in future, an order to that effect may be made. The proper stage for taking action under Section 106 is when and if an order for conviction is recorded. The complainant may at any stage suggest to the Court that action under the said section be taken ; but if the suggestion is contained in a complaint, it would not render the same as one under or read with Section 106. The use of the expression "read with Section 106, Criminal P. C." is, therefore, wrong. The complaint was, in fact, in respect of offences under SECTIONS 341, 447, 504 and 506, Penal Code.

7. In the next place, the learned Sessions Judge has observed that the prayer for taking proceedings under Section 106, Criminal P. C., was not "absolutely unwarranted". The question whether the prayer was warranted or unwarranted really did not arise in this case. What the trial Court had to see in the case was whether the offences in respect of which the complaint had been filed, were cognizable by the Panchayati Adalat or not. As no "complaint" could have been filed for action being taken under Section 106, the prayer in the complaint that action be taken under the said section could not affect the question of jurisdiction.

8. Apart from it, as the offences in respect of which the complaint had been filed were exclusively triable by a Panchayati Adalat and the provisions of Section 106, Criminal P. C. had not been expressly made applicable to the proceedings before the Panchayati Adalat, in this case, the prayer for action being taken under the said section was "absolutely unwarranted," inasmuch as the Panchayati Adalat could not have taken action under that section. The complainant had deliberately introduced the prayer to oust the jurisdiction of the Panchayati Adalat. The jurisdiction of the Panchayati Adalat, however, could not be affected by the mere introduction of the prayer of this kind in the complaint.

9. In the third place, the learned Sessions Judge has pointed out that Section 106, Criminal P. C., "contemplates only one order requiring security being passed at the time of passing sentences on the

accused;" and there is no mention for a preliminary order to show cause, and final order after enquiry, as is provided for in the case of proceedings under Section 107, Criminal P. C. If the offences complained of were exclusively triable by the Panchayati Adalat, it was immaterial whether under the section one order is made or two orders are made. If the trial Court had jurisdiction to try the case, the order could be made in accordance with law.

10. In the fourth place, it has been pointed out by the learned Sessions Judge that the Panchayati Adalat had no power to grant relief to the complainant under Section 106 or Section 522, Criminal P. C. That is in consequence of the statutory provisions contained in the Panchayat Raj Act, 1947 ; and the application filed by the applicants could not have been rejected on this ground. Certain offences having been made exclusively triable by a Panchayati Adalat, under Section 52 read with Section 55, Panchayat Raj Act, and the provision contained in Sections 106 and 522, Criminal P. C., not having been made applicable to the proceedings before the Panchayati Adalat the provisions of these sections, viz., Sections 106 and 522, cannot be availed of by any person who files a complaint in respect of offences exclusively triable by a Panchayati Adalat.

11. Lastly, the learned Sessions Judge has observed that the prayer contained in the application filed by the applicants was not a bona fide one and it does not deserve any consideration. This observation of the learned Judge is not borne out by anything on the record. The applicants were well within their rights to have moved the Court for making an order under Section 56, Panchayat Raj Act. In view of the provisions contained in the said section the Magistrate was bound at once to transfer the case to the Panchayati Adalat for trial de novo. Consequently, in no way their action can be described as mala fide. On the other hand, the attempt made by the complainant to oust the jurisdiction of the Panchayati Adalat by introducing Section 106, Criminal P. C. in the complaint was not at all justified.

12. Learned counsel for the complainant has urged that this is not a fit case in which this Court may exercise its revisional jurisdiction because (1) the learned Sessions Judge after considering the case from all its aspects refused to do so, (2) it would mean depriving a party of his valuable right to obtain an order under Sections 106 and 522, Criminal P. C., and (3) the complainant may move the Sub-Divisional Magistrate under Section 85, Panchayat Raj Act, to cancel the jurisdiction of the Panchayati Adalat with regard to this case. The learned Sessions Judge failed to exercise the jurisdiction properly. He wrongly considered the complaint as one for certain offences punishable under the Penal Code "read with Section 106, Criminal P. C." He erred in thinking that the request for action under Section 106, Criminal P. C., could be made by the complainant in a case like this, which was exclusively triable by a Panchayati Adalat; and he formed an incorrect idea that the complainant was being prevented from obtaining certain reliefs which he was entitled to claim.

13. There is no question of depriving any party of his valuable rights. The zamindars having already obtained a decree for possession, they are entitled to enforce it and obtain possession over the disputed land. If anyone commits criminal trespass over the land, he renders himself liable to punishment under the Penal Code. Learned counsel for the complainant has pointed out that the Court below has found that the possession under the decree was obtained by the zamindar; but the learned Sessions Judge should not have expressed his opinion on facts at this stage. Even if

possession had been obtained under the decree, a remedy to recover back possession according to law will still be open to the zamindars.

14. It is no use speculating what course of action the complainant may hereafter adopt and what orders the Sub-Divisional Magistrate, if moved under Section 85, Panchayat Raj Act, will pass. An application under Section 85 can be made if there has been a miscarriage of justice or if there is an apprehension of miscarriage of justice in any pending case. But, at the present moment no case is pending in the Panchayati Adalat.; and there is no question of any miscarriage of justice having occurred or about any apprehension of miscarriage of justice. It must be presumed that when any application under Section 85, Panchayat Raj Act, is made the Sub-Divisional Magistrate will deal with it in the manner provided by law.

15. It follows, therefore, that the order, dated 4-1-1950, rejecting the application for the transfer of the case to the Panchayati Adalat, cannot be sustained and must be set aside. Accordingly, this revision is allowed, the order, dated 4-1-1950, is set aside and the trial Court is directed to transfer the case to the Panchayati Adalat having jurisdiction for trial de novo.