

Pahla vs Makhdoom on 26 September, 1951

Equivalent citations: AIR1952ALL28, AIR 1952 ALLAHABAD 28

ORDER

N.U. Beg, J.

1. The facts out of which this revision arises lie within a short compass. On 6-3-1950, a complaint was lodged by one Makhdoom against Pahla accused for an offence under Section 379, Penal Code. This complaint was sent to the panchayat for disposal. On 11-5-1950, the accused gave an application for transfer of the case and cancellation of the jurisdiction of the panchayat under Section 85 (1), U.P. Panchayat Raj Act (XXVI [26] of 1947). This application was granted by the Sub-Divisional Magistrate and the case was ordered to be transferred to the Court of Mr. S.L. Shukla, a local Magistrate, for trial. In spite of this order the panchayat proceeded to try the accused and on 21-5-1950, passed an order convicting him under Section 379, Penal Code, and sentencing him to pay a fine of Rs. 70 and directing that out of the said fine Rs. 40 should be paid to Makhdoom as compensation in respect of the ornament stolen by the accused. According to the case of the accused, he had approached the panchayati adalat and informed its members previous to the date of conviction that an order cancelling its jurisdiction had been passed by the Sub-Divisional Magistrate and in spite of the said intimation the panchayat proceeded to try the case. The record shows that the said order of transfer was formally communicated to the Sarpanch of the panchayati adalat on 23-5-1950, after the panchayat had already decided the case on 21-5-1950. A paper on the record which is marked as paper No. 3A and is an office report, however, indicates that the order of 11-5-1950, cancelling the jurisdiction of the panchayati adalat had reached it on 20-5-1950, and that the panchayat proceeded to try the accused and to convict him in spite of the fact that it was apprised of the order of cancellation of its jurisdiction by the Court of the Sub-Divisional Magistrate.

2. The accused filed a revision application against his conviction before the Sub-Divisional Magistrate. The Sub-Divisional Magistrate maintained the conviction of the accused but reduced the fine from Rs. 70 to Rs. 50. A revision against the said order of conviction was filed before the Sessions Judge of Rai Bareli, who has made a reference to this Court for quashing the order of conviction of the accused-applicant. The opposite party has been served but no one appears on his behalf to support the order of the lower Court.

3. Having heard the learned counsel appearing for the accused-applicant, I am of opinion that the order of conviction passed by the panchayat was clearly ultra vires. If the order was communicated to the panchayat, then the panchayat had obviously no jurisdiction to proceed with the trial of the case. Even if it be assumed that the order was not communicated to the panchayat, the order would take effect from the date on which it was passed.

4. In *Mardan v. Rex*, (A.I.R. (37) 1960 ALL. 478) it was held that an order of transfer takes effect as soon as it is pronounced and the Magistrate has no jurisdiction to go on with the case after the order of transfer is passed. Even if the accused knows the order of transfer and addresses argument or takes any other steps, his action would not confer any jurisdiction upon the Court. An order convicting the accused after the order of transfer is passed is, therefore, without jurisdiction.

5. An attempt seems to have been made in the lower Court to justify the order of conviction of the accused on the basis of Section 85 (5) of the Panchayat Raj Act. Section 85 (5) of the said Act says that:

"except an aforesaid, a decree or order passed by a panchayati adalat in any suit, case or proceeding under this Act shall be final and shall not be open to appeal or revision in any Court."

This argument advanced on behalf of the complainant seems to me to be devoid of all force in view of the fact that if the panchayat had no jurisdiction to try the case, its order could not be an order under the Panchayat Raj Act at all. I am clearly of opinion that the order of conviction of the accused is ultra vires and must be set aside.

6. I accordingly accept the reference, set aside the order of conviction of the accused and send back the case to the District Magistrate who should direct the retrial of the accused by a Sub-Divisional Magistrate competent to try it according to law.