

Mohar Singh And Ors. vs State And Anr. on 27 February, 1953

Equivalent citations: AIR1954ALL81, AIR 1954 ALLAHABAD 81

JUDGMENT

Malik, C.J.

1. This is an application under Article 227 of the Constitution for an appropriate order Setting aside a conviction by the Panchayati Adalat of Mohabbatpur. The complainant was one Sonpal, resident of village Jonthri which is situate within the jurisdiction of the Gaon Sabha Mohabbatpur Labhna. He filed a complaint before the Panchayati Adalat Deohli against three persons, Mohar Singh, Pokhu and Badnu, also residents of the same village. The charges were under Sections 323 and 447, Penal Code. The Sarpanch constituted a bench of five Panches, of whom only one belonged to Gaon Sabha Mohabbatpur Labhna while (he other four belonged to some other Gaon Sabha or Gaon Sabhas. The Panchayati Adalat convicted the three accused under Sections 323 and 447, Penal Code and imposed fines of Rs. 80/- and Rs. 70/- respectively on each of them. There was a revision application filed before the Sub-Divisional Magistrate under Section 85, U. P. Panchayat Raj Act, but the revision was dismissed and this writ application has been made against that order.

2. The case came before a learned single Judge, but by reason of some difference of opinion he referred it to a Division Bench for decision. We are concerned in this case mainly with two questions whether the Panchayati Adalat was properly constituted and had, therefore, the jurisdiction to convict the accused persons, and whether the fines imposed were within the limits laid down by law.

3. The first point arises in this way. Section 49/(1) U. P. Panchayat Raj Act (Act No. 26 of 1947) provides that "The Sarpanch shall, for the trial of every case, suit or proceeding, form, a bench of five panches from the panel; provided that at least one of the panches shall be a person who is able to record evidence and proceedings."

Sub-section (2) is as follows :

"Every such Bench shall include one Panch who resides in the area of the Gaon 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;"

4. We have already said that in this case the complainant and the accused came from the same village. The Sarpanch had appointed one Panch from the Gaon Sabha within the jurisdiction of which the complainant and the accused resided. The contention was that it did not matter that the accused and the complainant were from the same village but there should have been two Panches in

accordance with the provisions of the sub-section and only three outsiders could be appointed Panches from areas in which neither party resided. Brij Mohan Lall J. had, in -- 'Kule-shwar v. The State', Cri Revn No. 1322 of 1950 D/- 15-5-52 (All) (A), in which there were four outsider Panches, if we may use that phrase, while only one Panch was from the common village of the accused and the complainant, held that the bench was not properly constituted. In a similar case, coming up before a Bench, -- 'Harihar Tewari v. State', AIR 1952 All 489 (B), it was held that the fact, that there was only one Panch from the common village of the parties and four Panches were outsiders, was not a fatal defect and such a defect could be waived. This was the opinion expressed by one of us, while the other learned Judge decided the case on the facts that it was not established that there were as a matter of fact four outsiders on the bench of Panches.

In a third case -- 'Shanker Lal v. Tuki Ram', Cri Misc Case No. 2756 of 1951, D/- 5-9-1952 (All) (C), a Bench of this Court (Sapru and Bind Basni Prasad JJ.) held that the objection as regards the constitution of the Panchayati Adalat on the ground that there were not two Panches, one from the Gaon Sabha of the area within which the complainant resided and another from the Gaon Sabha of the area within, which the accused resided, could not be entertained as no such objection was raised before the Panchayati Adalat or the Sub-Divisional Magistrate. In -- 'Musai Bhand v. Ganga Charan', AIR 1953 AH 118 (D), a decision to which one of us was a party, it was held that the provision that some of the Panches should be residents of the area in which the complainant and the applicants resided had been deliberately inserted in order to give a domestic colour to the Panchayati Adalat and that there was no power under the U. P. Panchayat Raj Act which would enable this Court to cure the irregularities affecting the jurisdiction of the Panchayati Adalats. The order of the Panchayati Adalat was thereupon quashed.

It would appear from the judgment that the point that has been raised before us and on which we are disposed to decide this writ application was not raised before that Bench. In the last case cited before us -- 'Girja Prasad v. Zalim Singh', AIR 1953 All 340 (E), a single Judge decision by one of us -- it was held that if both the complainant and the accused resided in one village, the provisions of Section 49 would be sufficiently complied with if a Panch was nominated from that village and it was not necessary to have two such Panches.

5. The Preamble of the Act shows that it was enacted as it was considered expedient 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. Section 2 Clause (t) defines a village as "any local area, recorded as a village in the revenue records of the district in which it is situate". Section 3 makes it clear that a Gaon Sabha may be established with reference to a village or a group of villages, A Gaon Sabha is a corporate body under Section 4. Section 12 of the Act provides for election of Gaon Panchayats. Sub-section (1) of that section is as follows :

"As soon as may be after its establishment, every Gaon Sabha shall elect from among its members an Executive Committee called the Gaon Panchayat."

This Gaon Panchayat has been given, under Section 15, all kinds of jurisdiction and Clause (o) of Section 15 gives it judicial function's.

"The administration of civil and criminal justice and the election of Panches on the panel of the Panchayati Adalat according to the provisions of this Act and rules made thereunder"

are the functions which are to be performed by the Gaon Panchayat.

Section 42 deals with the Panchayati Adalat and provides that "The State Government or the prescribed authority shall divide a district into circles, each circle comprising as many areas subject to the jurisdiction of Gaon Sabhas as may be expedient, and establish Panchayati Adalats for each such circle :

Provided that the areas of Gaon Sabhas within each circle shall, as far as possible, be contiguous."

Section 43 deals with the constitution of Panchayati Adalat and lays down that "Every Gaon Sabha in a circle shall elect five adults of prescribed qualification permanently residing within its jurisdiction to act as Panches in the Panchayati Adalat of that circle. The Panches so elected by all the Gaon Sabhas in a circle shall form a panel." Section 44 provides that the Panches shall elect a Sarpanch. Section 52 of the Act then gives a list of offences that would be tried by a Panchayati Adalat. Section 64 deals with the jurisdiction of a Panchayati Adalat in civil matters and Section 55 provides 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 80 excludes legal practitioners from appearing, pleading or acting on behalf of any party in any suit, case or proceeding before a Panchayati Adalat, the only exception being that a person who is arrested shall have the right to consult and be defended by a legal practitioner of his choice. Section 49 provides that a Sarpanch has to constitute a bench of five Panches from the Panel when a criminal or civil matter is filed before him. Sub-section (2) gives directions to him as to how he has to constitute this panel of five. The Subsection provides that one Panch should be from the Gaon Sabha within the jurisdiction of which the complainant or the plaintiff resides, one Panch from, the Gaon Sabha within the jurisdiction of which the defendant or the accused resides and three Panches from the Gaon Sabha in which neither party resides. The learned single Judge referring the case has remarked that there is thus both a positive and negative limitation on the power of the Sarpanch. Sub-section (3) of Section 49 disqualifies a Panch or Sarpanch from acting who is personally interested in the parties or in the subject-matter, and sub-s. (4) is of some importance and is as follows :

"Notwithstanding anything contained in this section the State Government may by rules prescribe the constitution of special Benches for determining any dispute arising between any parties of Gaon Sabhas of different circles or for any ether

purpose."

Acting under this sub-section the State Government have made certain rules and Rule 84 is the only rule that really concerns us. Rule 84 (a) (1) provides for constitution of special benches in certain special cases. Rule 84 (a) (2) runs as follows :

"The Sarpanch shall prepare a list of names of all the panches in alphabetical order and constitute a bench of five panches serially turn by turn from it for the trial of the case, suit or proceeding :

Provided that the sarpanch shall exclude from a bench, after recording, his reasons in writing, any panch, if he does not fulfil the provisions of Section 49 or rule made in that behalf or if any party has any reasonable objection against him."

Rule 84(d)(1) is important and gives the parties, i.e., the complainant and the accused, the right to object to the constitution of the bench.

It provides that "If any party to a case, suit or proceeding is dissatisfied with the personnel of a bench constituted for its hearing, he shall immediately on receiving the information about the constitution of bench and before commencement of hearing of the case, suit or proceeding, make an application to the sar-panch stating the grounds of his dissatisfaction and requesting for the reconstitution of the bench."

Rule 84(d)(2) is as follows:

"If the party concerned proves to the satisfaction of the sarpanch that the inclusion of a particular panch or panches in the bench would be prejudicial to fair trial, he shall constitute a fresh bench, but if he finds any difficulty in doing so or the party concerned is not satisfied with the reconstituted bench, the sarpanch shall submit the papers to the prescribed authority who shall take such action as he may deem fit, and his decision subject to revision by the appellate prescribed authority within fifteen days of the decision shall be final."

Rule 84 (e) provides that "The provisions of Sub-rules (b) and (d) shall apply 'mutatis mutandis' to the formation of special benches by the prescribed authority."

6. A large number of cases came up before this Court where it was found that the trial was defective either by reason of the fact that five Panches had not been nominated at all by the Sarpanch or having been nominated by him they had not attended on some dates or on all the dates of the hearing of a case, and this Court took the view that trials in such cases were vitiated by the defect.

7. The State Legislature added a Rule 87-A providing that "Three panches of a Panchayati Adalat shall constitute the quorum for the meeting of any bench."

This rule was held to be 'ultra vires' as it went beyond the provisions of the Act itself. The Legislature, therefore, amended the Act and added Section 77-A, Sub-sections (1) and (2) of which are as follows :

"(1) 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.

(2) No trial as aforesaid shall be invalid by reason merely that all the five Panches forming the bench were not present at any hearing or that the same Panches were not present at all the hearings."

This amendment was made retrospective.

8. It is not denied that in the case before us no advantage was taken of the provisions of Rule 84 (d) and no objection was taken to the personnel of the bench. At the same time it is not denied on behalf of the complainant that there was only one Panch who came from the Gaon Sabha of the parties, while the four Panches were outsiders. In the referring order the learned single Judge has pointed out that it is not for us to try to find out the reason behind the rule that one Panch should be from the Gaon Sabha of the area where the plaintiff or the complainant resides and the other from the Gaon Sabha of the area within which the defendant or the accused resides.

Whatever be the intention, there is the rule and the question before us really is, whether that rule is such, keeping in view the Whole scheme of the Act, that it must be deemed to go to the root of the jurisdiction, so that if a bench has not been constituted strictly in accordance with its provisions the whole trial is vitiated, even if no objection to it has been taken on behalf of either the accused or the complainant. In this connection it is permissible to point out that the Act, as its Preamble shows, was passed as it was considered expedient that the establishment and development of Local Self-Government in the villages should be encouraged and the differences which led to criminal and civil cases, suits or proceedings of petty nature should, as far as possible, be decided by the people themselves. It was with the object that complicated questions of law and procedure may not be raised before such bodies that the Act probably excluded legal practitioners from appearing before such bodies.

9. We are further entitled to take into consideration the fact that there might arise cases where it is not possible to comply with the positive and the negative limitations, to borrow the words of the learned single Judge, There may be cases where there are more than one plaintiff or more than one complainant who may bring a suit or file a complaint on the same cause of action and they may be residents of areas within different Gaon Sabhas and there may be cases where there are more than one accused tried for the same offence being residents of areas within different Gaon Sabhas. In such cases it would not be possible to comply with the provisions of Section 49(2) and have three

outsider Panches and two Panches residents one each of the Gaon Sabha of each party. In such a case probably the Sarpanch may be able to refer the matter to the State Government under Section 49(4). Rule 84(b) lays down that-

"If in a suit, case or proceeding the Sarpanch of a Panchayati Adalat finds any difficulty to form a bench according to Section 49 of the Act the Sarpanch, instead of forming a bench under the said Section shall immediately after the institution of the suit, case or proceeding, as the case may be, submit the papers to the prescribed authority who shall constitute a bench for its trial, under Section 49(2) or sub-r. (a) of this rule as the case may be."

Learned counsel's contention is that in a case similar to the illustration given above it is for the State Government to constitute a bench. Whether the sub-rule quoted above can apply to such a case is doubtful because even the State Government has to constitute a bench under Section 49(2) of the Act and the same restrictions would probably apply to it, but if the contention of learned counsel is accepted, it only means that there is no inherent want of jurisdiction in a bench of five Panches of which more than three come from areas of different Gaon Sabhas. If such a Bench is constituted by the Sarpanch, all that can be said is that such a bench should have been constituted by the "prescribed authority" and not by the Sarpanch. In this connection it is also important to bear in mind that though the Sarpanch has to constitute a bench in accordance with the provisions of Section 49(2), Section 77A now makes it clear that three Panches including the Chairman may proceed to decide the case and all these three Panches who constitute the quorum may thus be Guilders who do not belong to the area within which the Gaon Sabha of either one party or the other functions, the only limitation being that one of the three Panches must be literate and should be able to record evidence and proceedings.

Keeping all these provisions in mind, we are of the opinion that the provisions of Section 49(2) of the Act do not go to the root of the jurisdiction of the Panchayati Adalat constituted for the purpose, and if no objection has been taken to the constitution of such a bench by either party in accordance with the provisions of Rule 84 (b), it is not open to either of them to say that the bench has not been properly constituted under the Act.

10. Coming to the next question about the amount of fine imposed on the accused, reliance is placed on Section 54(2) of the Act, which is as follows :

"A Panchayati Adalat may impose a fine not exceeding one hundred rupees but no imprisonment may be awarded in default of payment."

The argument is that in a case no matter how many accused there may be before the Panchayati Adalat, the sub-section imposes a limitation on the jurisdiction of the Adalat and the total fine imposed cannot exceed one hundred rupees. This argument has only to be stated to be rejected. Each person is responsible for his criminal act and the punishment awarded is to each individual. There is no question of any collective responsibility or a collective fine. The words of this sub-section are very similar to the provisions of Section 32(1), Criminal P. C. which provides that--

"(a) Courts of presidency Magistrates and of Magistrates of the first class :

Fine not exceeding one thousand rupees ;

(b) Courts of Magistrates of the second class:

Fine not exceeding two hundred rupees ;

(c) Courts of Magistrates of the third class:

Fine not exceeding fifty rupees "

No court has ever held that Section 32, Criminal P. C. limits the powers of the Magistrates and the fine they can impose on each accused must be limited by the total number of accused and the aggregate amount of the fine imposed on them taken together.

11. In the alternative the argument is that if an accused personally is charged with two separate offences and is convicted on both counts, the total fine must be limited to Rs. 100/-. We do not see any reason to accept this contention. The only limitation on the power of a Court for punishing an accused for two offences is contained in Section 71, Penal Code, which provides that-

"Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

It is not said that the case comes under Section 71, Penal Code, and there is, therefore, no reason to consider that the Panchayati Adalat was not entitled to impose separate fines of Rs. 80/- and Rs. 70/- for the two separate offences committed by each of the accused.

12. The application has no force and is dismissed.