

## Badri And Anr. vs State on 13 July, 1950

**Equivalent citations: AIR1952ALL211, AIR 1952 ALLAHABAD 211**

ORDER

Malik, C.J.

1. The applicants have been convicted under Section 323, Penal Code, and sentenced to one month's rigorous imprisonment and a fine of Rs. 50 each. The incident, complained of, took place on 28-6-1949. The complaint was filed on 4-7-1949, and on the same date it was forwarded to the City Bench Magistrates for disposal. The case remained pending before the Bench Magistrates till 12.10 1949, when they convicted the applicants under Section 923 and sentenced them to one month's rigorous imprisonment and to a fine of Rs. 90 each and in default rigorous imprisonment for a further period of one month.

2. A point was taken in the lower Court that the case was cognizable by a Panchayati Adalat and not by the Bench Magistrates. The lower Court has mentioned a notification of the U. P. Government No. 9692/P R D 117/49, dated 27-7-1949. According to this notification the Panchayati Adalats in the United Provinces started functioning from 15-8-1949, except in places where the Panchayati Adalat has not elected a Sarpanch under Section 44, Panchayat Raj Act. The learned Assistant Sessions Judge was of the opinion that as it was not established on behalf of the accused that a Sarpanch had been elected before 12-10 1949, it could not be urged that the Bench Magistrates had no jurisdiction.

3. Section 56, U. P. Panchayat Raj Act (U. P. Act XXVI [26] of 1947) 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 Panchajati Adalat, which shall try the case de novo."

The Panchayati Adalat is elected under Section 43 of the Act and under Section 44, the panches have to elect a Sarpanch. Section 51 provides that notwithstanding the provisions of the Code of Criminal Procedure, every case instituted under the Panchayat Raj Act has to be instituted before the Sarpanoh of the Fanchayati Adalat of the circle in which the offence is committed. Section 52 enumerates the offences which are triable by the Panchayati Adalats, Section 323, Penal Code is one of the sections mentioned in Section 52. Section 1 (3) of the Act provides that the Panchayat Raj Act "shall come into force at once". There is no provision in the Act for the exclusion of the period taken by the Government in dividing the State into various circles for the election of the Panchayati Adalats and for the election of the Sarpanches. Nor is there any provision that Section 56 of chap. VI of the Act will come into force after the Sarpanch and panches have been elected. The notification mentioned above, dated 27-7-1949, was probably issued under Section 110 of the Act. There is no

provision, however, in Section 110 giving authority to the Provincial Government to postpone the coming into effect of any part of the Act from a future date in contravention of the provision in Section 1, Sub-section (3) which provides that the Act "shall come into force at once". It is not disputed that the Panchayati Adalat had been elected before the case was decided by the learned Magistrate on 12-10-1949. The date, however, on which the Sarpanch was elected was not known. If the pro-secution wanted to take this case out of the provisions of Section 56, it was for them to have shown that the notification was applicable to this case, even if it be assumed that the notification was a valid notification about which I entertain grave doubts.

4. In the circumstances it must be held that the case should have gone to the Panchayati Adalat in accordance with the provisions of Section 56, U. P. Panchayat Raj Act.

5. The revision is, therefore, allowed. The convictions and the sentences are set aside. The fine, if paid, shall be refunded to the applicants, The case will be sent to the appropriate Panchajati Adalat for disposal according to law.