

Ram Prasad And Ors. vs State Through Chhote on 10 January, 1952

Equivalent citations: AIR1952ALL843, AIR 1952 ALLAHABAD 843

ORDER

P.L. Bhargava, J.

1. Ram Prasad, Sudama, Sada Shiv and Sukhdeo were prosecuted for an offence punishable under Section 323, Penal Code. They were tried by a Panchayati Adalat of Bagehta, Tehsil Baberoo, in the district of Banda. The Adalat found them guilty of the offence with which they were charged and convicted and sentenced them. They filed a revision in the Court of the Sub-Divisional Magistrate of Baberoo; but the revision was rejected. Now, this application has been filed for the quashing of the conviction and sentence in exercise of this Court's power of superintendence, under Article 227 of the Constitution of India.

2. It is contended on behalf of the applicants that the Panchayati Adalat was not constituted according to law inasmuch as the Sarpanch had not formed a bench of five panches from the panel as required by Section 49, U. P. Panchayat Raj Act (No. 26 of 1947) and the case was heard and decided by only three panches. This aspect of the matter was not considered by the Sub-Divisional Magistrate, who seems to have confined his attention only to facts.

3. On behalf of the complainant it has been argued that this application is in substance an application for the exercise of the powers of this Court under Article 226 of the Constitution of India, and as such it is not cognizable by a Single Judge. Learned counsel for the complainant has pointed out that Article 227 of the Constitution confers jurisdiction upon the High Court to exercise powers of superintendence over the Courts and tribunals throughout the territories in relation to which it exercises jurisdiction; but while exercising that jurisdiction the Court has to make an order in exercise of its powers under Article 226 of the Constitution.

4. Article 227 of the Constitution of India lays down that every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction; and that without prejudice to the generality of the foregoing provision the High Court may act in the manner specified in the article. In exercise of the power of superintendence under Article 227, the High Court cannot exercise the powers exercisable under Article 226 ; and, as pointed out by this Court, in Sukhdeo Baiswar v. Brij Bhushan Misra, 1951 ALL. L. J. 305, the Court can exercise, only in a limited manner, " the power to interfere with judicial orders of subordinate Courts", "to check the assumption, or excess, of jurisdiction or to compel the exercise of jurisdiction wrongfully declined, and not to substitute its own judgment, whether on a question of fact or on a question of law, in place of the subordinate Court's." The power conferred on

this Court under Article 227 is not in any way controlled by the power exercisable by the Court under Article 226 of the Constitution. Under the rules of this Court, applications, under Article 226 and those under Article 227 of the Constitution are treated and dealt with differently. There are special rules for the institution and disposal of applications under Article 226, while there are no such rules for applications under Article 227. An application filed in this Court for the exercise of powers under Article 296 is, no doubt, cognizable by a Bench of this Court but an application for the exercise of power of superintendence under Article 227 is cognizable by a single Judge, as has been held by a Division Bench of this Court in *Teja v. Mogla*, cri. Misc. case no. 971 of 1951 (ALL.).

5. In my opinion, therefore, as in this case the Court has been called upon to exercise its power of superintendence under Article 227 of the Constitution, the present application is cognizable by a Single Judge and the objection raised on behalf of the complainant has got no force.

6. On the materials placed before me, it is not possible to say whether the Sarpanch had or had not formed a Bench of five panches as required by Section 49 of the Act; but, it, no doubt, appears that the case was decided by only three panches.

7. Section 42, Panchayat Raj Act lay down that for different circles into which a district may be divided, a separate Panchayati Adalat must be established. Under Section 43 of the Act every Gaon Sabha in a circle has to elect five adults of prescribed qualification to act as Panches in the Panchayati Adalat of that circle and the Panches so elected by all the Gaon Sabhas in a circle shall form a panel. The Panches elected under Section 43 have to elect from among themselves a person who is able to record proceedings and to act as Sarpanch of the Panchayati Adalat. The Sarpanch thus elected, under Section 49 of the Act, for the trial of every case, suit or proceeding, has to form a Bench of five Panches from the panel. Section 49 of the Act is in these terms :

" 49 (1). The Sarpanch shall, for the trial of every case, suit or proceeding, from 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.

(2) Every such Bench shall include one Panel; 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; provided that in police cases one Panch shall be such as may be residing in the area of the Gaon Sabha in which the offence was committed, one Panch residing in the area of Gaon Sabha in which the accused resides and three Panches residing in the areas other than those mentioned above.

(3) No Panch or Sarpanch shall take part in any case, suit or proceeding to which he or any near relation, employer, employee or partner in business of his is a party or in which any of them may be personally interested.

(4) Notwithstanding anything contained in this section the Provincial Government may by rules prescribe the constitution of special Benches for determining any dispute arising between any parties or Gaon Sabha of different circle or for any other purpose."

8. The provisions referred to above clearly show that every case, suit or proceeding cognizable by a Panchayati Adalat must be tried by an Adalat constituted in the manner laid down by the Panchayat Raj Act. Rule 87A of the U. P. Panchayat Raj Rules, framed by the State Government under its rule-making power, no doubt, lays down that:

" Three Panches of a Panchayati Adalat shall constitute the quorum for the meeting of any Bench";

but the said rule is obviously inconsistent with the provisions of the main Act and as such invalid and ultra vires. The rule has been so declared by a Division Bench of this Court in two recent decisions in *Jiwa Ram v. Panchayati Adalat*, Cri. Misc. Case No. 2313 of 1951, D/- 7-12-1951 (ALL.) and in *Kangali v. Panchayati Adalat*, Cri. Misc. Case No. 2166 of 1951, D/- 11-12-1951 (ALL.).

9. The case against the present applicants had, therefore, to be tried and decided by a Bench of five Panches constituted in the manner laid down in Section 49, Panchayat Raj Act; but no such Bench appears to have been constituted for the trial of this case, which was decided by only three panches. It follows, therefore, that the conviction of the applicants was by a Bench which had not been duly constituted and which, for that reason, had no jurisdiction to try the case. The conviction of the applicants was, therefore, recorded without jurisdiction and as such it cannot be sustained.

10. Another point urged on behalf of the applicants is that the Panchayati Adalat had no jurisdiction to entertain the complaint as the allegations made in the complaint did not only make out a case under Section 323, Penal Code, but also contained allegations which amounted to an offence under Section 452, Penal Code. In the view which I have taken in this case, it is unnecessary for me to express any opinion on this point. I propose to send the case back for disposal according to law to the Panchayati Adalat and it will be open to the applicants to raise this point before the Adalat and if that Court finds that it has no jurisdiction to try the case it can make an order under Section 58, Panchayat Raj Act.

11. For the reasons stated above, in exercise of the powers of this Court under Article 227 of the Constitution of India, the conviction of the applicants is quashed. The case will now go back for disposal according to law to a Panchayati Adalat to be constituted in the manner provided by Section 49, Panchayat Raj Act by the Sarpanch on the motion of the complainant.