Bisuntha And Ors. vs The State Of Uttar Pradesh And Anr. on 9 September, 1953

Equivalent citations: AIR1954ALL167, AIR 1954 ALLAHABAD 167

JUDGMENT

Chaturvedi, J.

1.This is an application under Article 226 of the Constitution praying that the judgment of the Panchayati Adalat Satnyao, police station Baberu, district Banda dated 5-1-1951 be quashed.

2. The complaint was filed by one Sarju before the Panchayati Adalat against seventeen persons. His allegation was that the six applicants before us had given him a beating, and they along with four others had restrained him from proceeding towards his house. The allegations made in the complaint show that the six applicants were accused of having committed offences under Section 323 & also Section 341, I. P. C., but the other four were accused only of the offence under Section 341, I. P. C., that is, wrongful restraint. As stated above the complainant had mentioned seven more persons as accused before the Panchayati Adalat, but the Panchayati Adalat acquitted these seven and it will not be necessary to mention them any more in this judgment.

3. A revision against the order of the Panchayati Adalat convicting the other ten was filed before the Sub-Divisional Magistrate under Section 85, U. P. Panchayat Raj Act. The Sub-Divisional Magistrate appears to have been under a slight misapprehension as to the offence under which the ten applicants before him had been convicted & also as to the fines imposed upon them under the two sections. What the Panchayati Adalat did was that it sentenced the six applicants before us to a fine of Rs. 40/- each under Section 333.

I. P. C. and to a fine of Rs. 25/- each under Section 341, I. P. C. The other four accused were convicted only under Section 341, I. P. C. and sentenced to a fine of Rs. 25/- each under the said section. The Sub-Divisional Magistrate in his order dated 19-3-1951 says that it appeared from the statement of the prosecution witnesses that the six applicants assaulted the complainant. He appears to have totally ignored their conviction under Section 341, I. P. C. As there was no case of assault against the other four he acquitted them saying that no charge was established against them. As regards the six appellants the Magistrate thought that the fines imposed upon them were excessive and, therefore, reduced them to Rs. 40/- each. Here again the Magistrate omitted to notice the fact that the fine against the applicants under Section 323, I. P. C. was only a fine of Rs. 40/- each, and the rest of the fine of Rs. 25/- each was with respect to their conviction under Section 341, I. p. c. The Magistrate wrongly thought that the applicants had been sentenced to Rs. 65/- each under Section 323, I. P. C. and he was reducing the sentence from Rs. 65/- to Rs. 40/-under Section

323, I. P. C.

4. The result of the decision of the Magistrate was that the sentences passed against all the ten accused under Section 341, I. P. C. were set aside. Only the fines imposed upon the applicants under Section 323, I. P. C. were maintained. The six applicants then came to this court and filed a writ petition which came up for hearing before a learned Single Judge. The learned counsel for the applicant cited before him the case -- 'Raghunandan Singh v. State', AIR 1952 All 668 (A). After hearing the parties the learned Single Judge was not inclined to agree with the decision mentioned above and has referred the case for decision to a Bench of two Judges. The mistakes committed by the Sub-Divisional Magistrate have led to similar mistakes in the referring order of the learned Single Judge; but the mistakes are not of any real consequence and the correct facts have already been mentioned by us above.

5. There is only one point that arises for consideration in this case, and that point is whether under section 85, U. P. Panchayat Raj Act a Sub-Divisional Magistrate can legally quash a part of the order maintaining the rest or he is bound to leave the whole of it intact or to quash the whole of it, if he finds that any miscarriage of justice has occurred in the proceedings before the Panchayati Adalat. The relevant portion of Section 85, U. P. Panchayat Raj Act is as follows:

> 85(1) "If there has been a miscarriage of justice or if there is an apprehension of miscarriage of justice in any case, suit or proceeding the Sub-Divisional Magistrate in respect of any case and the Munsif in respect of any suit and the Sub-Divisional Officer in respect of any proceeding under the United Provinces Land Revenue Act, 1901 may on the application of any party or on his own motion, at any time in a pending case, suit or proceeding, as the case may be and within sixty days from the date of a decree or order, call for the record of the case, suit or proceeding, as the case may be from the Panchayati Adalat and may for reasons to be recorded in writing
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> (a) cancel the jurisdiction of the Panchayati Adalat with regard to any suit, case or proceeding, or
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> (b) quash any decree or order passed by the Panchayati Adalat at any stage.....
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> (5) Except as 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."

6. It would appear from the above provisions that if there has been a miscarriage of justice or if there is an apprehension of it, the officers mentioned in this section, in their respective spheres, have the jurisdiction to quash the decree or order, or cancel the jurisdiction of the Panchayati Adalat, as the case may be. The cancellation of the jurisdiction refers to a stage where the case has not been decided and miscarriage of justice is apprehended; and the quashing of the decree or order refers to a stage where the case has been decided and the officer is of the opinion that the miscarriage of justice has occurred. Sub-section (5) then provides that except as aforesaid a decree or order of the

Panchayati Adalat shall be final and shall not be open to appeal or revision. If this sub-section had stood by itself there would have been no difficulty in interpreting it, but under Section 89 of the same Act we find that a general power of revision has again been conferred on the same Officers.

7. Section 89 runs as follows:

> "A revision from any order or decree passed by a Panchayati Adalat shall in a case lie to the Sub-Divisional Magistrate, in a suit to the Munsif and in a proceeding under the U. P. Revenue Act, 1901, to the Sub-Divisional Officer having jurisdiction in the matter."

This section comes just three sections after section 85, and it is difficult to understand the utility of the section if the idea was not to give a general power of revision to the officers mentioned therein, apart from the powers given to them under Section 85 in cases of miscarriage of justice. In case Sub-section (5) of Section 85 did not exist, a clear interpretation of the two sections would have been that in the case of miscarriage of justice the officer could cancel or quash the decree or order under Section 85, and a general power of revision was conferred by Section 89. But this interpretation has been rendered impossible by Sub-section (5) of Section 85, which specifically says that the order of the Panchayati Adalat shall be final and shall not be open to appeal or revision "except as aforesaid", that is, except as already provided.

8. It has been argued that Section 89 only provides for the forum for a revision, and the powers and conditions are all laid down in Section 85. But it la impossible to accept this contention because Section 85 itself gives the forum, and there was no point in giving the forum again in Section 89. We have further to take into consideration the fact that Section 89 does not confer any power on the court of revision, nor does it lay down any conditions under which revisions under that section would be maintainable. In other statutes providing for revisions, the appropriate sections mention also the powers of the revising courts, and the conditions under which a revision would be entertainable. See for example Section 115 C. P. C. and Section 439, Cr. P. C. The absence, therefore, of both these matters from Section 89 lends support to the view that Section 89 is wholly redundant and enacted under some misapprehension. We are conscious of the fact that a statute should not generally be interpreted so as to make any provision of it nugatory, but in this case, the provisions of Sub-section (5) are so very clear and emphatic that they make it impossible I to hold that any further powers of revision have been conferred on the same officers by Section 89.

9. There is another section, namely, Section 71 in the same Act which also provides for a revision in revenue cases referred to under Section 70, to the Sub-Divisional Officer. This section simply says that the Sub-Divisional Officer shall have powers of revision either upon reference made to him or upon his own motion. It was the contention of the learned counsel for the applicants that the matters referred to under Section 70 were all matters concerning the entry of names in the village registers excepting a matter concerning the determination of the boundary disputes. He said that in all these cases, where they are contested, the Tahsildar is authorised to record the evidence and to send his report to the Assistant Collector. He is not authorised to pass any order, and the same powers have by Section 70 been given to the Panchayati Adalat. If this is so, it is difficult to

understand what orders in the exercise of the power of revision the Sub-Divisional Officer can pass in proceedings referred to under Section 70, which had been transferred to the Panchayati Adalat. Instead of the Tahsildar the Panchayati Adalat would send a report to the Sub-Divisional Officer who is the Assistant Collector in charge of the Sub-Division, and the Sub-Divisional Officer has the power to either accept the report or to reject it. This power of acceptance or rejection is not a power of revision at all but the power of the original court.

10. This section also does not lay down the conditions under which a revision would lie nor mentions the powers of the revising authority but it simply says that the Sub-Divisional Officer shall have powers of revision. The Sub-Divisional Officer has the powers of cancelling the jurisdiction or quashing the order under Section 85, and this section also may be as superfluous as Section 89; but we need not finally adjudicate upon this point because we are loath to curtail the powers conferred upon a Sub-Divisional Officer to interfere with the orders of the Panchayati Adalat. It is possible to say that the expression "except as aforesaid" in Sub-section (5) of Section 85 includes within its ambit the provisions of Section 71 also. In the present case the question whether the provisions of Section 71 are superfluous or not does not arise for decision and we refrain from deciding that question in this case.

11. Only three cases on the interpretations of Sections 85 and 89 have been brought to our notice. The first case is a Single Judge case -- 'AIR 1952 All 668 (A)'. In this case the Panchayati Adalat convicted the applicants and two other persons and passed a cumulative sentence of fine of Rs. 20/-each for commission of both the offences under Section 24, Cattle Trespass Act and Section 323, I. P. C. A revision was filed against this order and the learned Magistrate acquitted two persons and reduced the fine of the three applicants. It was held by the learned Single Judge that the Magistrate had to quash the entire order passed by the Panchayati Adalat if he came to the conclusion that a miscarriage of justice had taken place. The order was either to be confirmed in tact or it was to be quashed. It was further held that the finding acquitting two of the accused amounted to saying that there had been a miscarriage of justice in this case, and the proceedings against all the accused should, therefore, have been quashed.

12. The other case is an unreported Bench decision -- 'Ramnaresh Tewari v. Mahadeo', Cri. Misc. Case No. 539 Of 1951, D/- 27-7-1951 (All) (B). In this case the Panchayati Adalat had convicted the applicant under Section 506, I. P. C. and sentenced two of them to a fine of Rs. 100/- each and others to a fine of Rs. 50/- each. The Sub-Divisional Magistrate in exercise of his powers under Section 85 altered the conviction from one under S. 506 to one under Section 504, I. P. C. and reduced the sentence to Rs. 10/- in each case. It was held by the Bench that the learned Magistrate had no power to modify the order. The learned Magistrate could quash the order of the Panchayati Adalat; but he had no power to substitute a fresh order in place of the order passed by the Panchayati Adalat. The view of the learned Judges was that no final orders could be passed by the Sub-Divisional Magistrate to which it was the exclusive jurisdiction of the Panchayati Adalat to pass. The Magistrate could only confirm or quash the order, or cancel the jurisdiction.

13. The last case on the point is another single Judge case -- 'Shafi Ahmed v. State', AIR 1953 All 561 (C). In this case it was held that it was not open to the Sub-Divisional Magistrate to maintain the

convictions of the applicants for one offence, and to set aside the jurisdiction of the Panchayati Adalat with respect to the proceedings concerning the other offence. In this case the applicants were convicted by the Panchayati Adalat for commission of offences under Sections 445 and 352, I. P. C., but the Sub-Divisional Magistrate set aside the conviction under Section 352, I. P. C. and maintained the conviction under Section 447, I. P. C. The learned Judge was of the view that the word "case" means a criminal proceeding and where there is only one proceeding with respect to more than one offence the entire proceeding is a "case". It was, therefore not open to the Sub-Divisional Magistrate to set aside the conviction with respect to one offence and maintain it with respect to the other.

14. We have already held that the powers of revision are confined within the ambit of the provisions of Section 85, U. P. Panchayat Raj Act. In the case of apprehended miscarriage of justice the jurisdiction is cancelled, and in the case of miscarriage of justice which has already occurred the decree or order is quashed. The question that arises for consideration is whether the quashing can be of a part of a decree or order apart from quashing it as a whole. Further, if quashing of a part is possible whether the order can be quashed with respect to some accused and maintained with respect to the others and even in the case of the same accused whether it can be quashed With respect to one offence and maintained with respect to the other. As far as the power of cancelling the jurisdiction is concerned we do not think that the legislature meant the cancellation of the jurisdiction with respect to some of the accused or with respect to some of the offences committed by the same accused. In case, miscarriage of justice is apprehended the Sub-Divisional Magistrate is authorised to cancel the jurisdiction of the Panchayati Adalat with regard to the case; which obviously means with regard to the whole case and not to a portion of it. Cancelling the jurisdiction with regard to one portion and maintaining the jurisdiction with regard to the other cannot be taken to be the likely intention of the legislature. We think that the same interpretation should be given to the word "quash" also. When an order or a decree is only modified or altered it is not said to have been quashed. The word "quashing" has been applied generally to the setting aside of the entire proceedings. Then the result of the cancellation or quashing is that the jurisdiction of the Panchayati Adalat is taken away, and the jurisdiction is conferred on the ordinary courts the party having been given a right to obtain an adjudication from the regular courts.

15. We, therefore, respectfully agree with the view taken in the above cases, and hold that the (Magistrate has jurisdiction either to leave the order intact or to quash the whole of it. Partial quashing of the order of the jurisdiction was not the intention of the Legislature.

16. We may, however, point out that the quashing of the jurisdiction at times may result in great hardship to the accused where some of them had been acquitted, or those who had been convicted had been acquitted on some of the charges. It is also unfortunate that a magistrate should have no option but to quash the whole jurisdiction when he might be of the opinion that the conviction was right but either the sentence was inadequate or was too severe. We have, however, to interpret the law as we find it and the remedy lies in the hands of the Legislature itself. As the revision of the Act is under consideration, a. copy of this judgment may be sent to the Government for such action as it may consider necessary.

17. In view of the matter the application must be allowed: & because the Magistrate must be taken to be of the opinion that there had been a mis carriage of justice not only with respect to some of the accused persons but also with respect to one out of the two offences said to have been committed even by the applicants, we think the proper order to pass in this case would be to quash the entire proceedings of the Panchayati Adalat, which we hereby do. The Magistrate's order is also set aside. The fines, if paid, shall be refund ed.