

## Budhya Singh vs State on 8 September, 1953

**Equivalent citations: 1954CRILJ237**

ORDER

Randhir Singh, J.

1. This is an application in revision against the order of conviction and sentence passed by a Magistrate, first class, which was also upheld in appeal by the Sessions Judge.

2. It appears that one Sri G. S. Chaudhary and another gentleman by the name of Sri M. P. Srivastava were robbed of some of their belongings while travelling and reports were lodged. Ultimately, some property was recovered from the possession of the applicant and two others in a search made by the police. The property recovered from the possession of the applicant was identified to be a part of the stolen property.

The applicant and the other two persons, from whose possession property was recovered, were ultimately sent up for trial. A charge under Section 411, I. P. C., was framed against all three of them, but the property which was found in the possession of the other two accused, who are not applicants in the present case was not identified as stolen property and they were acquitted. The property recovered from the possession of the applicant was, however, identified as part of the stolen property and he was convicted by the Magistrate under Section 411, Penal Code, and sentenced to imprisonment for a period of four months. The applicant then went in appeal but his appeal was rejected.

3. The applicant had raised the point before the Sessions Judge that the trial of the case by the Magistrate was illegal inasmuch as he had no jurisdiction to try the case, the case being triable exclusively by the Panchayati Adalat. It is not disputed that the property recovered from the possession of the applicant was worth less than Rs. 50/-. Section 52 of the Panchayat Raj Act gives a list of the offences which are triable by the Panchayati Adalat. Offences under Section 411, Penal Code, are also triable by the Panchayati Adalat provided the value of the stolen property does not exceed Rs. 50/-.

Section 55, Panchayat Raj Act, lays down 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. Admittedly, no order had been passed by the Sub Divisional Magistrate and in view of the provisions of Section 55 the only court which could take cognizance of the offence with which the applicant was charged was the Panchayati Adalat.

Section 56, Panchayat Raj Act, lays down as follows:

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 Panchayati Adalat, which shall try the case de novo.

4. It would thus appear that if the Magistrate at any stage of the proceedings or trial came to the conclusion that the case was triable by the Panchayati Adalat, it was his duty to have transferred the case to the Panchayati Adalat for disposal. There are two cases on this point which have recently been decided by this Court in which it has been held that the case should be transferred to the Panchayati Adalat even at the time of the writing of the judgment if it appears that the case is triable by the Panchayati Adalat.

5. In the present case the offences against all the three accused were triable by the Panchayati Adalat and the learned Magistrate should have transferred the case to the Panchayati Adalat.

6. It has been argued that the stolen property was worth more than Rs. 50/- and that should be the criterion for deciding whether a particular case in connection with stolen property was or was not triable by the Panchayati Adalat.

It has been held in a recent case by Desai J., that the property which should be taken into consideration in a case under Section 411, I. P. C., is the property which is recovered from the possession of the accused and not the property which has been stolen. The man who is charged with an offence under Section 411 is evidently liable for being in possession of the stolen property found in his possession only and the value of the entire property stolen cannot therefore be taken into consideration. The view taken by Desai J. appears, if I may say so with respect, to be the correct view.

7. The learned Magistrate who decided the case and convicted the applicant had therefore no jurisdiction to try the case against him. The conviction and sentence of the applicant are, therefore, set aside and the case is sent back to the Court of the Magistrate who will transfer the case to the Panchayati Adalat for disposal.