

Tunda And Ors. vs The State on 27 April, 1953

Equivalent citations: AIR1953ALL621, AIR 1953 ALLAHABAD 621

ORDER

Desai, J.

1. This is an application by Tunda etc. challenging their conviction under Section 447, I. P. C. by a Magistrate, 1st class. They plead that the learned Magistrate had no jurisdiction to try the case because the offence of Section 447, I. P. C. is exclusively triable by a Panchayati Adalat. The land upon which the applicants have been found guilty of trespassing is situated in village Dharampur which formed part of the territory of Bharatpur State. It was transferred to Uttar Pradesh and included in Mathura District by a notification dated 25-1-50. On 12-10-1950 the applicants are said to have committed the offence. On 23-6-1951, they were found guilty and convicted by the learned Magistrate. After that on 30-7-1951, the village Dharampur was included in a certain Panchayati Adalat. Till then there was no Panchayati Adalat having jurisdiction over it. Panchayati Adalats had been formed in Mathura district previously, but they were formed for villages which were included in the district at the time when the Panchayat Raj Act was enacted. As village Dharampur was included in the district on a later date, its area was not included within the jurisdiction of any Panchayati Adalat prior to 30-7-1951. I consider that on these facts the jurisdiction of the learned Magistrate to try the case was not barred by anything contained in the Panchayat Raj Act.

2. It is clearly laid down in Section 52 of the Panchayat Raj Act that an offence of Section 447, I. P. C. if committed within the jurisdiction of a Panchayati Adalat, is to be exclusively tried by the Panchayati Adalat. This necessarily means that there, must exist a Panchayati Adalat having jurisdiction over the area in which the offence of Section 352 is committed. If no Panchayati Adalat has been constituted having jurisdiction over that area, it cannot be said that the offence was committed within the jurisdiction of a Panchayati Adalat. If a Panchayati Adalat is constituted later on, it cannot have retrospective effect and the offence cannot, even after the, constitution of the Panchayati Adalat, be said to have been committed within the jurisdiction of the Panchayati Adalat. The jurisdiction of a Magistrate is cancelled by the Panchayat Raj Act only when a jurisdiction is vested in a Panchayati Adalat. The Act certainly does not purport to cancel the jurisdiction of a Magistrate without creating jurisdiction somewhere else. It purports simply to transfer the jurisdiction from a Magistrate to a Panchayati Adalat. If there is no Panchayati Adalat in existence there cannot possibly be any transfer of the jurisdiction and the Act does not at all purport to destroy the Magistrate's jurisdiction. The view that a Magistrate's jurisdiction is destroyed without corresponding jurisdiction being created in some other authority has nothing to support it. On the date on which the offence was committed and even on the date on which the learned Magistrate convicted the applicants, there was no Panchayati Adalat which had jurisdiction to try the case. Therefore, the jurisdiction of a Magistrate to try it was not lost,

3. There is another provision which leads to the same conclusion and that is Section 56 of the Act which requires a Magistrate, at any stage of a case, to transfer it to a Panchayati Adalat having jurisdiction on his finding that it is exclusively triable by it. This implies that there exists a Panchayati Adalat having jurisdiction. If there does not exist any Panchayati Adalat, the case cannot possibly be transferred and the provision would be meaningless. It is not that the Magistrate has to return the complaint to the complainant for presentation to a Panchayati Adalat; a complaint can be returned to the complainant for presentation to a Panchayati Adalat even if, no Panchayati Adalat exists having jurisdiction over it. As far as the physical act of return is concerned, it can be performed. But the physical act of transferring the case to a Panchayati Adalat cannot be performed unless there exists a Panchayati Adalat to receive it. There is no provision in the Act dealing with the contingency of a case being triable exclusively by a Panchayati Adalat and there being no Panchayati Adalat in existence to try it. It would have been an absurd position if the legislature created an offence and provided no tribunal to try it. The Act contains no provision dealing with the situation of there being no Panchayati Adalat to try a case exclusively triable by it because the scheme of the Act does not contemplate the possibility of such a contingency. In other words, the scheme of the Act is that the jurisdiction of a Magistrate is lost only when a Panchayati Adalat is established having jurisdiction to try it.

4. It was said that the Act came into force in the whole state as soon as it was passed. This does not at all advance the case of the applicants. When an Act is in force in a certain area it only means that its provisions will be enforced there, that is, what is written in the Act will be applied to that area. The real question, therefore, is what is the interpretation of the provisions contained in the Act. If they themselves do not bar the jurisdiction of a Magistrate in a certain area, the Act may be in force in that area as much as it likes, but the jurisdiction of a Magistrate will not be barred. It is not Section 1 or Section 2 of the Act that bars the Magistrate's jurisdiction; that is done by Sections 52, 56 etc. The Act is in force in Lucknow city also but it will not be contended by anyone that the jurisdiction of a Magistrate to try an offence of Section 447, I. P. C. committed in Lucknow is barred. It may be that a Panchayati Adalat will never be established in Lucknow city, but that is no reason for distinguishing it from village Dharampur where there was no Panchayati Adalat in existence when the learned Magistrate convicted the applicants. As far as the non-existence of a Panchayati Adalat is concerned, Dharampur stood in the same position as Lucknow on 23-6-1951. The applicability of Sections 52, 56 etc. does not depend upon whether the absence of a Panchayati Adalat's jurisdiction over the area in which an offence is committed is temporary or permanent. If the jurisdiction of a Magistrate to try an offence of Section 447, I. P. C. committed in the city of Lucknow is not lost, it is because the case is not covered by the provisions of Sections 52 and 56. It is not covered by those provisions simply because there is no Panchayati Adalat having jurisdiction to try that offence and that exactly was the case with regard to the offence of Section 447, I. P. C. committed by the applicants on 12-10-50.

5. Two authorities were cited before me, One is -- 'State v. Badri', 1950 All LJ 564 (A) and the other, -- 'Kirpa Ram v. Ram Asrey', AIR 1951 All 414 (B). The former is a decision of the learned Chief Justice. There a Panchayati Adalat had been established but no Sarpanch had been elected by the Panches. As a Panchayati Adalat had been established, the jurisdiction of a Magistrate was lost and he could not try the case. The loss of jurisdiction depended upon the existence of a Panchayati

Adalat and not upon the existence or election of a Sarpanch. Therefore that case is to be distinguished from the present case. The other was a decision of my learned brother Kidwai. There the facts were exactly similar to those here and my learned brother held that even though no Panchayati Adalat had been established the Magistrate had no' jurisdiction to try the case. My learned brother has not discussed the language of Sections 52 and 56. He has referred to Section 52 but not to the words "if committed within the jurisdiction of a Panchayati Adalat". They are material words. He has also referred to Section 56 but not to the words "transfer the case to a Panchayati Adalat having jurisdiction". In the circumstances, I think it can be said that I am not bound by that decision and with great respect to my learned brother, I dissent from it.

6. I hold that the learned Magistrate had jurisdiction to convict the applicants on 23-6-51. The application is dismissed.