

Ganga Prasad vs The State on 1 August, 1952

Equivalent citations: AIR1953ALL334, AIR 1953 ALLAHABAD 334

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This revision has been filed by one Ganga Prasad who was convicted by a Magistrate of the first class for offences punishable under 8. 523, Penal Code and Section 121, Railways Act, and sentenced to two months' rigorous imprisonment for the former and to a fine of rs. 50, for the latter offence. In default of the payment of fine, he was to undergo simple imprisonment for one month. Ganga Prasad appealed before the learned Sessions Judge who set aside the conviction and sentence of Ganga Prasad appellant for the offence punishable under Section 121, Railways Act, but upheld his conviction and sentence for the offence punishable under Section 323, Penal Code.

2. Learned counsel has urged that once the learned Sessions Judge had set aside the conviction of the appellant under Section 121, Railways Act, the case became one of which a Panchayati Adalat could have taken cognizance under Section 52, IT. P. Panchayat Raj Act, 1947, and hence the case should have been sent to the Panchayati Adalat and the conviction and sentence of the appellant under Section 323, Penal Code, should also have been set aside by the learned Sessions Judge. This argument advanced by the learned counsel ignores the effect of the language which has been used by the Legislature in Section 56, U. P. Panchayat Raj Act. The provisions of this section require only those cases to be transferred to the Panchayati Adalat in which it appears, at any stage of the proceedings "pending before a Magistrate," that the case is triable by a Panchayati Adalat. One of the requirements, therefore, is that the fact that the case is triable by a Panchayati Adalat should appear in a criminal case pending before a Magistrate. If the case does not happen to be pending before a Magistrate, there is no need to transfer the case. It seems that the Legislature desired that cases need be transferred only if they are still pending in the Court of a Magistrate but, if they have been concluded in the Court of a Magistrate and are pending at any later stage before the Sessions Judge or the High Court, it should not be necessary to transfer them to the Panchayati Adalat.

In the present case, it never appeared to the Magistrate during the time that the case was pending in his Court that the case was triable by a Panchayati Adalat because the Magistrate was, right up to the delivery of the judgment, of the opinion that the charge under Section 121, Railways Act, an offence which could not have been tried by a Panchayati Adalat, was also established. When the case came up in appeal before the learned Sessions Judge, the learned Judge had several courses open to him

under the provisions of Section 423, Criminal P. C. One of these was to set aside the conviction and sentence passed by the learned Magistrate and to send back the case for re-trial. If this course had been adopted by the learned Sessions Judge, it would also have been necessary, on the finding that the accused was liable to be convicted for an offence punishable under Section 323, Penal Code, only, to send the case to the Panchayati Adalat for trial. In that case the learned Sessions Judge could give a direction to the Magistrate to transfer the case to the Panchayati Adalat but even if no such direction was given, it would have been incumbent on the Magistrate to send the case to the Panchayati Adalat for trial.

On the other hand, it was open to the learned Sessions Judge to confirm the conviction and sentence passed by the Magistrate in respect of the offence punishable under Section 323, Penal Code. If he chose to confirm the sentence in appeal, the case: did not become a case pending before a Magistrate after it appeared that the only offence made out was an offence punishable under Section 323, Penal Code, and might have been tried by the Panchayati Adalat under Section 52, U. P. Panchayat Raj Act. In the present case, this is the course chosen by the learned Sessions Judge and it cannot be said that he acted at all illegally. Learned counsel referred me to the decision of a learned Single Judge of this Court in *Ajedhia Singh v. Balesh-war Singh*, 1952 all. l. J. 304 in support of his contention that it was the duty of the learned Sessions Judge in this case also to direct that the case be sent to the Panchayati Adalat for trial. The views expressed in that case cannot be applied to the facts of the case before me. In that case, the learned Sessions Judge had chosen the first alternative mentioned by me and, having set aside the conviction and sentence passed by the Magistrate, he sent back the case to the Magistrate. Thereupon, of course, it could be held that it was the duty of the learned Sessions Judge to give a direction to the Magistrate to transfer the case to the Panchayati Adalat.

In that case, the question whether the learned Sessions Judge was, in all circumstances, bound to set aside the conviction and send back the case with a direction that the case be transferred to the Panchayati Adalat was never considered. In fact, the effect of the words 'pending before a Magistrate' used in Section 56, U. P. Panchayat Raj Act, 1947, did not come up for discussion at all, obviously because, the learned Sessions Judge, by setting aside the conviction and sending a direction to the Magistrate to transfer the case to the Panchayati Adalat had converted the case into a case pending before the Magistrate and Section 56 of the Act had clearly become applicable. In the case before me, Section 56 is clearly inapplicable and the order passed by the learned Sessions Judge is, therefore, correct.

3. There is no force in the revision and it is dismissed. The applicant shall surrender to his bail to undergo the remaining part of his sentence.