

Kirpa Ram And Ors. vs Ram Asrey on 26 September, 1950

Equivalent citations: AIR1951ALL414, AIR 1951 ALLAHABAD 414

ORDER

Kidwai, J.

1. Kirpa Ram, Siaram, Ram Harsh and Bijai Bahadur were prosecuted on the complaint of Ram Asrey under Sections 379, 447 and 352/506, Penal Code, on the allegation that they had entered a grove situated in Ajitpur on 29-4-1949 and cut mangoes worth about Rs. 35/- from the grove. The case was tried and disposed of by Shri Kamta Prasad, Judicial Magistrate, Kaisarganj at Bahraich. He convicted all the accused persons under Section 379, Penal Code, and sentenced them to pay a fine of Rs. 25/- each. They applied in revision and the learned Additional Sessions Judge of Bahraich had accepted their contention that the learned Judicial Magistrate had no jurisdiction to proceed with the trial of the case and has referred the case to this Court for quashing the order of conviction and directing the case to be transferred to the Judicial Panchayat concerned for disposal. The learned Judicial Magistrate has submitted an explanation in which he seeks to show that his jurisdiction was not ousted by any of the terms of the Village Panchayat Raj Act.

2. Section 52 of the Act makes all the offences under which the accused were charged triable by the Panchayati Adalat. Since, in this case, the theft was alleged to be of property not exceeding Rs. 50/- and by reason of Section 55 all Courts are forbidden from taking cognisance of a suit or a case which is cognisable by a Panchayati Adalat unless action has been taken under Section 85 of the Act. In the present case, it is not suggested that any action was taken under Section 85. Section 56 provides that if at any stage of the proceedings in a criminal case pending before a Magistrate it appears that the case is triable by a Panchayati Adalat the Magistrate shall at once transfer the case to that Adalat which shall try the case de novo.

3. In accordance with the provisions of Section 1, Sub-section (3), the Panchayat Raj Act came into force since it received the assent of the Governor General and was published in the Gazette. This was in December 1947. From that date jurisdiction to try cases of the nature specified in Section 52 vested in the Panchayati Adalats and other Courts ceased to have jurisdiction to try those cases. The fact that the Panchayati Adalats had not been constituted would not affect the provision taking away jurisdiction from the other Courts, although it may result in great inconveniences and lawlessness.

4. It is true that Section 66 speaks of a transfer and not return of the case as pointed out by the learned Judicial Magistrate. This is no doubt deliberate because Section 66 only applies to cases which are pending in any Court and in such a case the Magistrate is not ordered to return the complaint for presentation to the proper Court but he is allowed to retain jurisdiction to the extent of transferring the case to the Panchayati Adalat. The section, however, provides that the Panchayati Adalat shall try the case de novo.

6. The Panchayat Raj Act is an Act which constitutes new Courts and confers certain jurisdiction upon those Courts taking away the same jurisdiction from other Courts unless something specified in the Act happens to restore jurisdiction to those other Courts. It is a special law in derogation of the general law namely the Criminal P. C., and it has not been contended before me that there is any provision of the Panchayat Raj Act which is ultra vires of the legislature. In these circumstances the provisions of the Panchayat Raj Act, in so far as the constitution of the new Courts and the limitation upon which jurisdiction of the old Courts are concerned, must have effect given to them.

6. The learned Judicial Magistrate ought to have transferred this case to the Panchayati Adalat concerned and he was not empowered to proceed with the trial of the case. The reference is, therefore, accepted. The conviction and sentence passed by the learned Magistrate are set aside and the case is returned to the learned Magistrate with directions to transfer the case to the Panchayati Adalat concerned. The Panchayati Adalat shall in accordance with the provisions of Section 56, Panchayat Raj Act, try the case de novo.