

Mata Bhikh And Anr. vs Baij Nath on 12 October, 1954

Equivalent citations: AIR1955ALL249, 1955CRILJ696, AIR 1955 ALLAHABAD 249

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an application under Article 227 of the Constitution. The two applicants were convicted by the Panchayati Adalat of village Anua of offences under Sections 426 and 323, I. P. C. Their revision against that order was rejected by the Sub-Divisional Magistrate as he did not find that any miscarriage of justice had taken place.

2. It appears that the bench of the Panchayati Adalat which decided this case consisted of seven panches, including Naraindhar, the President of the Adalat. It is contended for the applicants that Section 49, U. P. Panchayat Raj Act, authorises the Sarpanch to form a Bench of five panches from the panel for the trial of every case, and as this Bench consisted of more than five panches, it was not properly constituted and, therefore, had no jurisdiction to decide this case.

3. It was also contended that the Panches included only one Panch from village Khem Patti, in which village both the complainant and the accused resided, while it should have included two panches from this village in view of Sub-section (2) of Section 49 of the Act.

4. I am of opinion that this case should be decided by a larger Bench so that it be authoritatively laid down as to in what circumstances this court should exercise its power of superintendence under Article 227 of the Constitution and to what extent the non-compliance with the provisions of Section 49 of the Act affects the jurisdiction of the Bench to try the case. The questions are of general importance in view of the large number of cases decided- by Panchayati Adalats, whose Panches have not had much experience of the technicalities of law and have not the benefit of the help of lawyers. I, therefore, order that the case be laid before a larger Bench.

OPINION OF FULL BENCH Malik, C.J.

5. In this case the decision of the Panchayati Adalat was attacked on two grounds, firstly that the decision was given by as many as six Panches, and secondly that there was only one Panch from the Gaon Sabha Khama Patti in which both the complainant and the accused reside. The first point has

not been made out and it need not, therefore, be considered. As regards the second point, I have already expressed my opinion in -- 'Bhagirathi v. State', (S) AIR 1955 All 113 (A) which was put up along with it at the time of hearing.

6. The learned single Judge has also asked for a decision of the question, in what circumstances a High Court should exercise its power of superintendence under Article 227 of the Constitution. I have already indicated my views in (S) AIR 1955 All 113 (A) and in view of the decisions of the Supreme Court in -- 'Waryam Singh v. Amarnath', AIR 1954 SC 215 (B), and in -- 'T. O. Baaappa v. T. Nagappa', AIR 1954 SC 440 (C), it is not necessary for me to say anything more.

7. I agree that this writ application should be dismissed. B. MUKERJI J.:

7a. I agree and have nothing to add. Desai J.

8. This is an application under Article 227 of the Constitution for the quashing of the applicants' conviction under Sections 323 and 426, I. P. C. by a panchayati adalat.

The applicants were prosecuted by Baij Nath: before the panchayati adalat for the offences of Sections 426 and 323, I. P. C. The Sarpanch of the panchayati adalat constituted a Bench to try the case. While the case was pending there, the applicants applied to 'the Sub-Divisional Magistrate, presumably under Section 85, Panchayat Raj Act, for cancellation of the jurisdiction of the panchayati adalat over the case. The Sub-Divisional Magistrate stayed further proceedings before the Bench during the pendency of the application. Subsequently the application was rejected and the proceedings were resumed by the Bench.

The applicants did not appear before it on resumption of the proceedings and the Bench acting ex parte against them convicted them. The applicants went up in revision against the order of the panchayati adalat under Section 85 of the Act. The Sub-Divisional Magistrate finding that no miscarriage of justice had been done by the panchayati adalat refused to set aside the order of conviction and dismissed the application.

9. In the present application the applicants contended (1) that the Bench was constituted in contravention of the provisions of Section 49 of the Act inasmuch as if, consisted of six panhes and included only one panch from the Gaon Sabha Khama Patti and Raja Ram Kuswaha panch being related to the opposite party was disqualified to be a member of the Bench (2) that no notice of the resumption of the proceedings after the dismissal of the application by the Sub-Divisional Magistrate was given by the panchayati adalat to the applicants and the ex parte proceedings against them were illegal and (3) that in the absence of any valuation of the loss said to have been suffered by the opposite party the panchayati adalat had no jurisdiction to try the offence under Section 426, I. P. C.

10. The opposite party filed a counter-affidavit admitting that the applicants and the opposite party both are residents of Khama Patti but denying that Section 49 requires two panhes from the Gaon Sabha of Khama Patti to be included in the Bench, denying that Raja Ram Kuswaha was a member

of the Bench, alleging that the panchayati adalat had issued fresh notices to the applicants informing them of the date on which the proceedings were to be resumed and contending that the . applicants did not avail themselves of the remedy of getting the ex parte proceedings set aside under Section 19(2) and that if there was any defect in the constitution of the Bench an objection, about it should have been raised by the applicants before the Bench itself.

The application came up for disposal before our in other Raghubar Dayal who referred it to a Bench for an authoritative decision of the questions (1) in what circumstances a High Court should exercise its powers of superintendence under Article 227 of the Constitution and (2) to what extent non-compliance with the provisions of Section .49, Panehayat Raj Act, affects the jurisdiction of the Bench to try the case, which questions are of general importance.

11. Shri S; C. Khare did not press before us the contentions that the ex parte proceedings were invalid or that the panchayati adalat had no jurisdiction to try the case because it was not known what was the extent of the damage suffered by the opposite party. There is also no force in the contentions. If the Bench informed the applicants of the date fixed for the hearing of the case, as alleged in the counter-affidavit, it did everything that it was required to do and the applicants themselves are to blame, if they did not appear before it. So long as it was not alleged by the opposite party that he suffered damage, of more than Rs. 50/- the panchayati adalat could try the case.

The law is that a Magistrate has jurisdiction to try a case only if it is not within the cognisance of a panchayati adalat; so before a Magistrate can assume jurisdiction of a case it must be shown to him that a panchayati adalat has no jurisdiction over it. The law is not that be fore a panchayati adalat assumes jurisdiction it must be shown that a Magistrate had no jurisdiction over it.

12. The allegation of the applicants that the Bench consisted of six panehes is denied by the opposite party. The records of the panchayati adalat is lost. It is, therefore, not possible for us to ascertain whether the Bench consisted of six panehes or five. The applicants founded their allegation only on the copy of the order of the panchayati adalat which is signed by Narain Dhar Sarpanch, Bhawani Prasad and Panna Lal panehes, four other persons including Ram Raj Kuswaha and Baij Nath opposite party. It is not known who were the four persons, whether they were panehes or agents of the parties. We cannot assume without any data that they were panehes. The applicants have thus failed to establish that the Bench included six panehes. The question what would be the effect of there being more than five panches in a Bench does not arise.

13. Since it is denied, and is not established, that Ram Raj Kuswaha was a panch of the Bench, his being related to the opposite party is absolutely immaterial and of no consequence.

14. There remains the objection that the Bench included only one panch from the Gaon Sabha of Khama Patti from where both the parties hail. There is no dispute about this fact. For the reasons stated by me in (S) AIR 1955 All 113 (FB) (A), I consider that the constitution of the Bench was illegal, that the illegality committed could not be, and was not, waived and that the order of the panchayati adalat cannot be quashed under Article 227 of the Constitution. The application should,

therefore, be dismissed.

BY THE COURT

15. The application is dismissed. Having regard to the facts of the case, we make no order about the costs.