

Gokaran vs The State on 9 April, 1952

Equivalent citations: AIR1953ALL188, AIR 1953 ALLAHABAD 188

ORDER

Kidwai, J.

1. This is a reference made by the learned Sessions Judge of Sitapur for setting aside the conviction of Gokaran who has been convicted under Section 379, I. P. C. and sentenced to a fine of Rs. 20/- for the theft of a 'razai'.

2. Birbal, Gokaran, Sahu and Bhallar were the four persons originally charged. All except Gokaran have been acquitted. The learned Magistrate tried the case because according to him Bhallar had been previously convicted and consequently by reason of Section 59 of the U. P. Panchayat Raj Act the offence was not triable by a Panchayati Adalat. The learned Sessions Judge was of the opinion that the trial was not beyond the cognizance of the Panchayati Adalat because only one of the accused persons was a previous convict at the most and even with regard to him there was no evidence on the record to show that he was in fact a person who had been convicted to three years or more imprisonment. He was also of the opinion that once the Court had come to the conclusion that that person, namely, Bhallar was not guilty, it should have held its hand and transferred the case to the Panchayati Adalat because at least without the presence of Bhallar among the accused the Panchayati Adalat had jurisdiction.

3. Section 59 of the U. P. Panchayat Raj Act excludes from the jurisdiction of Panchayati Adalats any offence in which the accused "(a) has been previously convicted of an offence with imprisonment of either description for a term of three years or more". What is excluded from the jurisdiction of the Panchayati Adalat is the cognizance of the offence not against any particular individual but of the whole offence. In the present case the allegation was that four persons jointly committed the offence of theft. One of those persons has been sentenced on a previous conviction to more than 3 years' imprisonment as is proved by an affidavit filed in this Court which is not challenged by the learned counsel for the applicant. The Panchayati Adalat had, therefore, no jurisdiction to take cognizance of the offence at all and could not hold the trial.

4. The next question is whether when the Judicial Magistrate had arrived at the conclusion that Bhallar was not guilty he should have held his hand and transferred the case under the provisions of Section 56 of the U. P. Panchayat Raj Act to the Panchayati Adalat. In support of the view of the learned Sessions Judge reliance has been placed upon -- 'Ramdin v. State', 1950 All WR (HC) 679; 'Sheo Dayal v. State', 1951 All WR (HC) 519 and -- 'Shankar Singh v. State', Criminal Ref No. 51 of 1951.

5. In these cases it was held that even if at the last moment before the judgment is delivered, the Court is satisfied that no offence beyond the cognizance of the Panchayati Adalat is proved the Court is to hold its hand and to transfer the case to the Panchayati Adalat for disposal,

6. The last of the cases mentioned above is a Bench case by which I would be bound if it is applicable to the facts of the present case. I find, however, that it has no application to the facts of this case. What has been laid down in that decision is that the Court must stay its hand when it comes to the conclusion that no offence beyond the jurisdiction of the Panchayati Adalat has been established and must order a transfer to the Panchayati Adalat. It also lays down that the proceedings end with the judgment and that consequently before judgment is delivered, the power of transfer exists. In that case the charge was under Sections 147 and 323, I. P. C. The Court came to the conclusion that the offence under Section 147, I. P. C. was not proved but proceeded to convict under Section 323, I. P. C. This order of the trial Court was set aside and 'de nova' trial was ordered by the Panchayati Adalat.

7. In the present case judgment must be delivered and the Court cannot stay its hand because Bhallar is also an accused person and so long as he continues to be an accused, the Panchayati Adalat has no jurisdiction over the case. He can only cease to be an accused if judgment is delivered acquitting or discharging him. Thus, in the present case it was not possible for the Magistrate to hold its hand once he had come to the conclusion that Bhallar was not guilty. If the Magistrate had to deliver judgment, he could not deliver piecemeal judgment but had to dispose of the whole case. It is not possible for one Court to have jurisdiction over a part of the case and another Court to have jurisdiction over another part of the case when the offence is the same and depends upon the same facts and is said to be jointly committed by all the accused. In the present case, it was only after judgment had been delivered acquitting Bhallar that it could be said that there was no person accused of an offence who had been previously convicted. When the judgment has been delivered, the proceedings are at an end and there is nothing to transfer. Thus in the present case the order of the Magistrate was not beyond jurisdiction and cannot be set aside on that ground.

8. It was contended that at any rate the evidence produced on behalf of the prosecution is unsatisfactory and that the witnesses were on hostile terms with the accused. Having considered the judgment of the trial Court I find that the Court has given good reasons for holding that no enmity is proved to have existed between the witnesses for the prosecution and the accused-applicant. In these circumstances I do not see any reason to interfere with the merits of the case.

9. I accordingly reject the reference and uphold the conviction of Gokaran and the sentence passed upon him.

10. On the last hearing because I thought that the three persons who have been acquitted, namely, Birbal, Sahu and Bhallar might be affected by my decision if I were to hold that the Magistrate had no jurisdiction to dispose of the case since in that eventuality the order of acquittal of those three persons would also be 'ultra vires' I issued notice to them to show cause why the order of the Magistrate should not be set aside. For the reasons that I have given above, I have come to the conclusion that the order of the Magistrate was not without jurisdiction. In these circumstances the

acquittal of the three persons mentioned cannot be set aside and I discharge the notice that I issued.