

Ajodhiya Singh And Anr. vs Baleshwar Singh And Ors. on 17 March, 1952

Equivalent citations: AIR1952ALL818, AIR 1952 ALLAHABAD 818

ORDER

Agarwal, J.

1. This is an application in revision against an order of the Assistant Sessions Judge of Gonda directing a Magistrate to transfer a complaint to the Panchayati Adalat. The facts of the case briefly are these : The complainants and the accused live in a small hamlet Dhauria of village Gohsarai, police station Nawabganj. The house of the complainant Ajodhya Singh is opposite the house of the accused Chhattarpal Singh with a narrow lane intervening. Sometime ago Ajodhya Singh made a construction in a part of the narrow lane which diverted the flow of water towards the house of Chhattarpal Singh. Chhattarpal Singh thereupon tried to divert the flow of water towards the house of Ajodhya Singh. Ajodhya Singh remonstrated whereupon Chhattarpal Singh and the other three accused, who are opposite parties, belaboured Ajodhya Singh and his cousin Ram Kumar Singh with lathis. Ajodhya Singh received six injuries including a fracture of the left thumb and Bam Kumar Singh received seven injuries including a fracture of the forearm and the phalanx.

2. Ajodhya Singh and Ram Kumar Singh filed a complaint in the Court of a Magistrate of Gonda against the opposite parties under Section 325, Penal Code. After recording the prosecution evidence the Magistrate came to the conclusion that the four accused had indeed inflicted the injuries received by the complainants and convicted them under Section 325, Penal Code and sentenced each of them to one month's E. I. and a fine of Es. 50. Against this order there was an appeal by the accused. The lower appellate Court came to the conclusion that inasmuch as it was not found who inflicted the grievous injuries on the complainants, none of the accused could be convicted under Section 325, Penal Code because Section 34, Penal Code did not apply to the case. The case in its opinion was, therefore, one which fell within the purview of Section 323, Penal Code and could be tried by a Panchayati Adalat. It, therefore, quashed the order of the Magistrate and directed that the complaint be transferred by the Magistrate to the Panchayati Adalat for trial under Section 323, Penal Code de novo.

3. In this application in revision it has been urged that the lower appellate Court was not justified in transferring the case to the Panchayati Adalat.

4. Section 52, Panchayat Raj Act lays down that certain offences including an offence under Section 323 but not an offence under Section 325, shall be cognizable by a Panchayati Adalat. Section 55 then bars the jurisdiction of other Courts when a case is triable by a Panchayati Adalat. Section 56 provides for a contingency in which a case is instituted in a regular Court but is found to be triable

by a Panchayati Adalat. It says :

Section 56 : "If at any stage of proceedings in a criminal case pending before a Magistrate it appears that the case is triable by a Panchayati Adalat, he shall at once transfer the case to that Panchayati Adalat, which shall try the case de novo."

5. Section 58 is another section which has to be considered in this connection. It provides for return of complaints to the Sub-Divisional Magistrate by the Panchayati Adalat if at any time it appears to it that:

"(a) It has no jurisdiction to try any case before it, or

(b) that the offence is one for which it cannot award adequate punishment, or

(c) that the case is of such nature or complexity that it should be tried by a regular Court ..."

6. Section 85 empowers a Sub-Divisional Magistrate to cancel the jurisdiction of a Panchayati Adalat if he finds that there has been a miscarriage of justice or if there is an apprehension of miscarriage of justice in any case. When the Sub-Divisional Magistrate cancels the jurisdiction of the Panchayati Adalat, the case may be instituted in the Court of a Magistrate having jurisdiction to try it.

7. The result of the provisions of Sections 58 and 85 is that even though a Panchayati Adalat may have jurisdiction to try a case by reason of the provisions of Section 52, its jurisdiction can be ousted in cases mentioned in Clauses (b) and (c) of Section 58, and; in those two cases a Magistrate will have jurisdiction to try the case.

8. In the present case, a complaint under Section 325, Penal Code, was filed. On the facts of it the case was not triable by a Panchayati Adalat and was triable by the Magistrate in whose Court it was filed. As there was no evidence as to who had inflicted grievous injuries and as the case was not covered by Section 34, Penal Code, none of the accused could be punished under Section 325 but they could be punished under Section 323, Penal Code.

9. It is, however, clear that having regard to the injuries inflicted the case was one in which adequate punishment could not be awarded by a Panchayati Adalat. The maximum punishment that a Panchayati Adalat could award was a fine of Es. 100. Inasmuch as rather severe blows were inflicted, the punishment of a fine of Es. 100 merely would not have sufficed in the circumstances of the case.

10. The question, therefore, is whether the Magistrate should have transferred the case to the Panchayati Adalat? If Section 56 makes it incumbent upon a Magistrate to transfer a case as soon as he discovers that the offence committed by the accused falls under one or other of the sections mentioned in Section 52, Panchayat Raj Act irrespective of the fact that the Panchayati Adalat itself must return the case because it is a case in which the latter Court cannot award adequate punishment, then the Magistrate was bound to transfer it to the Panchayati Adalat. I think the

answer to this question must be in the affirmative because the word "triable" in Section 56 refers, to my mind, to the jurisdiction of the Panchayati Adalat. Once the Panchayati Adalat is held to have jurisdiction to try a case, the Magistrate is bound to transfer it to that Court even if it may have to be returned by the Panchayati Adalat on a different ground, namely, that the Panchayati Adalat cannot award adequate punishment. It may also be noticed that the return of the complaint by the Panchayati Adalat is to the Sub-Divisional Magistrate and not to the Magistrate who was originally trying the case.

[11] If it does not appear to the Magistrate that the case is triable by the Panchayati Adalat and he convicts an accused of an offence for which he has jurisdiction to try him, can the appellate Court order the transfer of the case upon a finding that the proper conviction should be for an offence which is triable by the Panchayati Adalat ? Here again I think the answers must be in the affirmative. If what should have been done by the Magistrate was not done by him, it is the duty of the appellate Court to rectify the error. I would, therefore, hold that the lower appellate Court had jurisdiction to return the case to be tried by the Panchayati Adalat, when it found that the offence is one which is covered by Section 62, Panchayat Raj Act.

12. I, therefore, see no reason to interfere with the order of the lower appellate Court. This application in revision is, therefore, rejected.