Lachman Singh vs Ghanshiyam And Anr. on 10 September, 1953

Equivalent citations: 1954CRILJ384, AIR 1954 ALLAHABAD 175

ORDER

Randhir Singh, J.

1. This is an application in revision under Article 227 of the Constitution against an order of the Panchayati Adalat of village Bar-wan district Hardoi.

2. It appears that a complaint under Sections 323 and 325, 1. P. C. was instituted in the Court of a Magistrate against the applicant by one Ghanshyam. As the Magistrate found that the case was triable by a Panchayati Adalat it was transferred to the Panchayati Adalat for disposal. It held the charge under Section 323, I. P. C. proved against the applicant and he was convicted and entenced to a fine of Rs. 80/-. Towards the close of the judgment of the Panchayati Adalat it was also mentioned that the accused should be ordered to furnish bail bonds. The applicant was aggrieved by this order and went in revision to the Sub-Divisional Magistrate but the revision was dismissed. He has now come up to this Court in revision.

3. The first point which has been urged on behalf of the applicant is that no oath was administered to the witnesses for the prosecution and as such the evidence relied upon by the Panchayati Adalat could not be taken into consideration in finding the applicant guilty. The only basis on which this plea has been raised is that there is no mention in the record of the evidence of the witnesses that oath had been administered except in the case of one witness. From this omission it is sought to be inferred that no oath had been administered to the witnesses. This point was taken up before the Sub-Divisional Magistrate but was given up and was not pressed. An affidavit has been filed by the complainant that oath had actually been administered to the witnesses and the contention that no oath had been administered to the witnesses was not correct. There is a mention in the record of the proceedings dated 7-10-1952, that the chaukidar Murli refused to take oath. This shows that the Panchayati Adalat was alive to question of administering oath to witnesses and there is, therefore, no reason to believe that oath was not administered to the witnesses.

4. The second point which has been pressed in arguments on behalf of the applicant is that the charge had not been explained to him. It was a simple case of marpit and the case was originally instituted in the Court of a Magistrate whence it was transferred to the Panchayati Adalat. This argument again is based on the omission of any mention of the charge having been explained to the applicant in the proceedings. There is no provision in the Panchayat Raj Act or in the rules framed thereunder that a Panchayati Adalat shall keep a complete record of the proceedings. All that is enjoined by Rule 95 is that the prosecution evidence shall be recorded. The omission in the record of proceedings about the charge having been explained does not lead to the conclusion that the charge had not been explained. Evidently no prejudice could be caused to the applicant as the case was a

simple case of marpit and evidence was led on behalf of the prosecution and the defence. There is, therefore, no force in this contention also.

5. The third point taken up in arguments is that the accused was allowed to be cross-examined. Rule 95 of the Panchayat Raj Act Rules lays down that each party shall be allowed to cross-examine any other party except the accused. The accused could not, therefore, be cross-examined. It has been pointed out by the learned Counsel for the appellant that two questions were pur to the accused after his examination had been recorded and, they were to the effect whether he was a cultivator and whether his uncle had borrowed Rs. 100/- from the father of the complainant. To the first question the reply of the accused was that he was a cultivator and to the second question the answer was that he did not know. It is not apparent from the record if these questions were put by the Panchayati Adalat or by the complainant and learned Counsel relied on the forms of the questions for inferring that they must have been put by the complainant. It is possible that these Questions might have been put at the request of the complainant and they were, therefore, noted in that form.

There is no doubt that cross-examination of an accused is not to be allowed and in support of this contention learned Counsel has cited a ruling of this Court, - 'Pati v. Dubari' . In this reported case a similar question arose for consideration. It was argued in that case that it was not possible to gauge the effect of cross-examination on the minds of the panches and as such it would be difficult to find out exactly if there was or was not prejudice caused to the accused. In the present case, however, the two questions and the answers given by the accused are on the record and they are of such a nature that no inference against the accused or in favour of the com-plainant could be derived from the answers. Moreover a Court is entitled to put questions to the accused and the questions in the present case were not in reference to the offence itself. The principle laid down in the reported case does not therefore apply to the facts of the present case.

6. The last and only remaining submission on behalf of the applicant was that the order of the Panchayati Adalat with regard to the security bonds was invalid inasmuch as the period for which the bonds were to be executed and the amounts in which the bonds were to be furnished are not mentioned in the order. The learned Counsel for the applicant has cited Section 53, Panchayat Raj Act wherein it is necessary that the period for which the bond has to be executed and the amount of the bond should be mentioned. It appears to me that Section 53 is wholly inapplicable to the present case. Proceedings under Section 53 are independent proceedings and it is not open to a Panchayati Adalat to pass an order for furnishing security in the operative part of the judgment of a case when the opposite party has never been called upon to show cause under Section 53 of the Act. A perusal of the judgment however shows that it was in the nature of a suggestion or recommendation which the Panchayati Adalat had made. It was not an executable order nor was any effect given to this order. The judgment is, therefore, not vitiated by the insertion of a recommendation of this nature in the operative part of it.

7. No other point has been pressed in arguments. As a result the application in revision is dismissed.