
(1963) 09 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 910 of 1962

Joginder Singh

APPELLANT

Vs

Amar Singh

RESPONDENT

Date of Decision: Sept. 11, 1963

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1898 (CrPC) - Section 18(2)
- Penal Code, 1860 (IPC) - Section 323
- Punjab Gram Panchayat Act, 1952 - Section 5, 51, 51(1)

Citation: (1964) 1 ILR (P&H) 325

Hon'ble Judges: Mehar Singh, J; Jindra Lal, J

Bench: Division Bench

Advocate: R.M. Vinayak, for the Appellant; K.L. Jagga, Assistant A.G., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mehar Singh, J.

In this petition under Article 227 of the Constitution, Petitioner Joginder Singh, on a complaint by Respondent Amar Singh for simple hurt caused to him by the Petitioner, was acquitted by the Gram Panchayat of village Kakarwal, whereupon Respondent Amar Singh moved the District Magistrate u/s 51 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), against the order of acquittal of the Petitioner, and the District Magistrate on May 9, 1962, set aside that order and convicted the Petitioner u/s 323 of the Penal Code awarding him a sentence of fine of Rs. 20. The Petitioner in this petition urges that the District Magistrate had no power u/s 51 or under any other section of Punjab Act 4 of 1953 to set aside the order of acquittal made in his favour by the Gram Panchayat and to convict him as he has done.

2. This case first came up for hearing; before Khanna, J., who on consideration of Section 51 of Punjab Act 4 of 1953 was disposed to the view that the order of the District Magistrate is without jurisdiction not being within the scope of that section under which all that the District Magistrate can do is, in a proper case to direct retrial, if he is minded to interfere as has been done in the present case. However, the learned Judge has referred the case to a larger Bench because it concerns the powers of the District Magistrate under the particular section of the Act and is a matter that is likely to arise quite fairly often.

3. The question raised by the Petitioner has to be answered in relation to Section 5 of the Act, Sub-section (1) of which is in these terms-

The District Magistrate, if satisfied, that a failure of justice has occurred, may, on his own motion or on an application of the party aggrieved by order in writing after notice to the accused, or the complainant as the case may be, cancel, or modify any order in a judicial proceeding made by a Panchayat, or Direct the retrial of any criminal case by the same or any other Panchayat of competent jurisdiction or by a Court of competent jurisdiction subordinate to him.

4. It is obvious that the District Magistrate under this section can do one of the three things (a) cancel an order, or (b) modify an order, or (c) direct retrial of a criminal case. It is apparent that the word "cancel" just means that the District Magistrate obliterates or puts an end to the order made by a Gram Panchayat, and it is equally apparent that when he does that he cannot substitute or make an alternative order for the order of the Gram Panchayat. In so far as the word "modify" is concerned, again its ordinary and dictionary meaning has to be taken. This word, however, appeared in Section 18(2)1 of the Code of Criminal Procedure of 1872 whereby a Sessions Judge was given power to "confirm, modify, or annul" a sentence passed by an Assistant Sessions Judge. In *Imperatrix v. Rama Prema* ILR 4 Bom 239, the learned Judges held that the word "modify" in that provision did not include power of enhancing the sentence. In other words, the learned Judges were of the view that while a sentence passed by an Assistant Sessions Judge may be modified by the Sessions Judge by reduction, it was not modifying it when it was enhanced. The ordinary dictionary meaning of the word in the Shorter Oxford Dictionary is-"to limit, restrain; to make less severe, rigorous; to tone down; to make a partial change in", and in Webster the meaning given to the word is "to limit; also to mitigate; assuage; to reduce in extent or degree; to moderate; qualify; lower; to change somewhat the form or qualities of; to alter the same". It is thus evident that the ordinary meaning of this word which has to be applied in the present case with reference to its use in Sub-section (1) of Section 51 of the Act is partial change or alteration in the order of a Gram Panchayat. It is clear that in the case of order of acquittal, a partial change is an impractical proposition, but in the case of an order of conviction it is obviously a practical proposition. Neither under the word "cancel" nor the word "modify" as used in Sub-section (1) of Section 51 is there a power in the District Magistrate to

make order on his own convicting a person who has been acquitted by a Gram Panchayat. All that he can do, when he applies the first word of the Sub-section, is to set aside the order of a Gram Panchayat and when he applies the second word to such an order to change or alter it so as to tone it down or make it less rigorous or severe, but no more. So the approach that Khanna, J., was making to the case on consideration of the meanings of these words is correct, and the order of the District Magistrate in this case is not supported by the provisions of Sub-section (1) of Section 51 of Punjab Act 4 of 1953. It is in substance an order without jurisdiction.

5. In consequence, the order of the District Magistrate in this case is quashed, with a direction under Article 227 that if, after considering the case, he is of the opinion within the meaning and scope of Sub-section (1) of Section 51 of Act 4 of 1953 that this is a proper case in which retrial should be had, he may then proceed to make an order for retrial in accordance with that provision.

6. In spite of service Respondent Amar Singh has not appeared, but on behalf of the State learned Counsel has appeared and he has not been able to support the order of the District Magistrate by any cogent and acceptable argument. In the circumstances, there is no order in regard to costs. The parties present are directed to appear in the Court of the District Magistrate on September 30, 1963.