
(1952) 09 AHC CK 0011

Allahabad High Court

Case No: Criminal Miscellaneous Case No. 177 of 1952

State

APPELLANT

Vs

Hem Narain Singh

RESPONDENT

Date of Decision: Sept. 10, 1952

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1898 (CrPC) - Section 195(1)
- Penal Code, 1860 (IPC) - Section 172
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 49(3), 52

Citation: AIR 1953 All 200 : (1952) 22 AWR 649

Hon'ble Judges: Raghubar Dayal, J

Bench: Single Bench

Advocate: Chaturbhuj Sahai, for the Appellant; Govt. Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Raghubar Dayal, J.

The Gram Panchayat of Shivapur Karan Chhapra reported to the panchayati Adalat of Kararha Uparwar against the applicant and others in connection with apprehending breach of peace. The Panchayati Adalat issued a notice to the applicant requiring him to appear in Court on a certain date. The notice is alleged to have been served on the applicant. The applicant, however, denies, it. The fact is that on the date of hearing the applicant did not appear before the Panchayati Adalat. The Panchayati Adalat being satisfied that the notice had been served convicted the applicant of the offence u/s 172, I. P. C. and ordered him to pay Rs. 85/-fine. The revision filed against that order was rejected by the Sub-Divisional Magistrate who held that u/s 52, Panchayat Raj Act the Panchayati Adalat had jurisdiction to try the offence u/s 172, I. P. C. and that therefore the sentence passed

on the applicant could not be held to be illegal or improper. The applicant therefore has filed this application under Article 227 of the Constitution for setting aside the orders and judgments of the Courts below.

2. It appears that neither of the Courts below realised what they were doing. The order of the Panchayati Adalat shows that the notice had been served on the applicant and he insolently did not appear before the Court. If the notice had been served on the applicant no offence u/s 172, I. P. C. was made out. Section 172, I. P. C. makes absconding of a person in order to evade being served with a summons or notice an offence and does not make non-appearance of a person served with a summons or notice an offence. It is clear; therefore that the Panchayati Adalat which felt offended immensely on account of insult to its dignity by the non-appearance of the applicant failed to have the judicial mind and without ascertaining the offence committed by the applicant convicted him of the offence and imposed a sentence which by no means is a lenient or a proper sentence in the absence of any aggravating circumstances attending the non-appearance of the party.

3. The Panchayati Adalat could not have convicted the applicant even if he had committed an offence either u/s 172 or Section 174, I. P. C. with respect to his absconding in order to avoid service of a summons issued by that Court or his not appearing in compliance with the summons issued by that Court. There is nothing in the Panchayat Raj Act which empowers a Panchayati Adalat to convict a person who behaved in that manner with respect to a summons or notice issued by it. At best it is empowered like any ordinary individual or public servant to lodge a complaint against the person concerned with respect to his conduct which amounted to an offence. Such complaint would be lodged before the proper Court and could not be tried by the same Panchayati Adalat. On general principles applicable to the trial of every criminal case the party concerned in the incident leading to the commission of the offence cannot be the judge of that case. In the Panchayat Raj Act Section 49 Sub-section (3) specifically provides that:

"No panch or sarpanch shall take part in any case, suit or proceeding to which he or any near relation, employer, employee or partner in business of his is a party or in which any of them may be personally interested."

The members of the Panchayati Adalat who issued notice to the applicant and who are the real complainants against him are persons interested in this matter and could not have taken part in its decision even if his Panchayati Adalat itself was competent to punish the applicant for this particular offence.

4. Section 52, Panchayat Raj Act just enumerates the various offences over which a Panchayati Adalat has jurisdiction. Of course, it can try a complaint of an offence u/s 172, I. P. C. if made by a person other than the Panchayati Adalat itself. The Panchayati Adalat and the Sub-Divisional Magistrate failed to see this point which should have been obvious enough.

5. Section 195 (1), Criminal P. C. bars any Court from taking cognizance of an offence punishable u/s 172, I. P. C. except on the complaint in writing of the public servant concerned or by some other public servant under whom he is subordinate. It follows that this Panchayati Adalat could not have taken cognizance of this offence even though it is competent to try such offences u/s 52, Panchayat Raj Act without there being a formal complaint against the applicant of his committing the offence u/s 172, I. P. C. No such complaint was before this Panchayati Adalat and could not have been. It would be improper that the Panchayati Adalat should have formally lodged a complaint before "itself. The complaint would have to be lodged before the Sub-Divisional Magistrate who, in the circumstances, will have to quash the jurisdiction of the Panchayati Adalat with respect to the commission of the offence which took place within its jurisdiction.

6. In view of the above I allow this application, set aside the conviction of the applicant by the Panchayati Adalat of the offence u/s 172, I. P. C. and also the sentence of Rs. 85/- fine. I further order that the fine, if paid, shall be refunded to the applicant.