Khurshidali Ehsanali Vs Gujab Laxman

Court: Bombay High Court (Nagpur Bench)

Date of Decision: April 18, 1957

Acts Referred: Penal Code, 1860 (IPC) â€" Section 147, 379, 447

Citation: (1957) 59 BOMLR 873

Hon'ble Judges: Gokhale, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Gokhale, J.
In both these revisions an identical point of law is involved and it arises in this way. In Criminal Revision No. 79 of 1957 one

Gujab Laxman of Antargaon filed a complaint under Sections 379 and 447 of the Indian Penal Code against the present petitioners and one

another. The value of the stolen property was stated to be about Rs. 40 in the complaint. After preliminary examination the trial Magistrate

registered an offence u/s 447, Indian Penal Code, only, against all the six accused persons. On this, the accused filed an application challenging the

jurisdiction of the trial Magistrate u/s 72 of the C.P. and Berar Panchayats Act, 1946, contending that as an offence u/s 447, Indian Penal Code,

alone was registered against them after preliminary enquiry, the learned trial Magistrate had no jurisdiction, but he should transfer the case to the

Nyaya Panchayat of the village u/s 72 of the C.P. and Berar Panchayats Act. This contention was negatived by the learned trial Magistrate and

also by the learned Additional District Magistrate, Yeotmal, in Criminal Revision No. 29 of 1956 of his Court. In Criminal Revision No. 80 of

1957 one Bapurao Laxman of Antargaon lodged a complaint under Sections 379, 447 and 147 of the Indian Penal Code against one Amanali and

22 others of Antargaon. After preliminary examination an offence u/s 447, Indian Penal Code, alone was registered against the present six

petitioners. These accused, therefore, filed an application challenging the jurisdiction of the trial Magistrate u/s 72 of the C.P. and Berar Panchayats

Act and that application was rejected by the trial Magistrate and that order was upheld by the Additional District Magistrate, Yeotmal, in Criminal

Revision No. 30 of 1956 of his Court. That is how these two criminal revision applications have arisen. Criminal Revision No. 79 of 1957 is

against the order passed by the Additional District Magistrate, Yeotmal, in Criminal Revision No. 29 of 1956 of his Court, whereas Criminal

Revision No. 80 of 1957 is against the order of the same Additional District Magistrate in Criminal Revision No. 30 of 1956 of his Court.

2. Mr. Qazi, the learned advocate for the petitioners in both these matters, relies on Section 72 of the C.P. and Berar Panchayats Act, 1946,

which provides that if a complaint of any offence mentioned in the Schedule be made to a Magistrate, the Magistrate shall, subject to the provisions

of Section 73 and the rules made under this Act, instead of taking cognizance of the offence direct the complainant to present the complaint to the

Nyaya Panchayat within whose jurisdiction the offence was committed. u/s 68 of this Act, a Nyaya Panchayat has concurrent jurisdiction with that

of the ordinary criminal Courts in connection with the trial of offences under this Act and of such other offences as are specified in the Schedule.

But u/s 72, when a complaint is about an offence mentioned in the Schedule, the Magistrate has to transfer the complaint to the Nyaya Panchayat.

Now, the argument of Mr. Qazi is that the offence registered in both these revisions against the petitioners is u/s 447 of the Indian Penal Code,

which is an offence mentioned in the Schedule to the Act. Therefore, he says, the trial Magistrate had no jurisdiction to try the cases of the

petitioners. In my opinion, this contention is not sound, because u/s 72 the Magistrate has to transfer to the Nyaya Panchayat only such complaints

which refer to offences mentioned in the Schedule. In Criminal Revision Application No. 79 of 1957 the complaint was under Sections 379 and

447 of the Indian Penal Code and the value of the stolen property was stated to be Rs. 40. Under the Schedule to the Act, a Nyaya Panchayat is

empowered to try an offence u/s 379, Indian Penal Code, provided the value of the property stolen does not exceed Rs. 25. Therefore, the

Magistrate had jurisdiction to take cognizance of the complaint and he could not have transferred it u/s 72 of the C.P. and Berar Panchayats Act,

1946. Similarly in Criminal Revision No. 80 of 1957 the original complaint was under Sections 379, 447 and 147, Indian Penal Code, and an

offence u/s 147, Indian Penal Code, is not triable by a Nyaya Panchayat as it is not mentioned in the Schedule to the C.P. and Berar Panchayats

Act. It is true that, after preliminary investigation, the learned Magistrate registered the offences u/s 447, Indian Penal Code, alone in both the

cases, but in my opinion, that would not make any difference and would not bring into operation Section 72 of the C.P. and Berar Panchayats Act,

1946. It is really the original complaint and the offences mentioned therein which will determine the question of jurisdiction u/s 72 and not the

offence revealed as a result of preliminary enquiry. Mr. Qazi contends and, in my opinion with some force, that if Section 72 is interpreted in this

manner, it would frustrate the intentions of the Legislature in giving power to the Nyaya Panchayats to try certain criminal offences and deprive the

accused of certain beneficial provisions of the Panchayats Act. According to Mr. Qazi, a complainant can frustrate the object of the Act by making

a complaint including therein offences which are not covered by the Schedule to the Panchayats Act. As I have already stated, there is some force

in what Mr. Qazi has contended, but looking to the wording of Section 72 it is not possible to accept his argument that, if after preliminary

investigation, the Magistrate registered an offence which was covered by the Schedule to the Panchayats Act, then the Magistrate would have no

jurisdiction but he must transfer the complaint to the Nyaya Panchayat. If false and frivolous charges are made by the complainant against the

accused, the accused has got his remedy against the complainant. If there is any lacuna in the legislation, it is for the Legislature to remedy the

same. In my opinion, the view of the lower Courts that the Magistrate has jurisdiction in these cases seems to be correct.

3. The result is that both these revision applications fail and must be dismissed.