

Bhim Sen

Vs

The State of U.P.

Criminal Appeal No. 22 of 1954

(B. P. Sinha, B. Jagannath Das, Vivian Bose JJ)

15.03.1955

JUDGMENT

JAGANNADHADAS J. -

This is an appeal by leave granted by the High Court of Allahabad presumable under article 134(1)(c) of the Constitution. The facts are simple. Three persons including the appellant were, at the material time, parcel porters at the railway station Manikpur in the district Banda of Uttar Pradesh. On the night of the 18th June, 1952, they were found by two watchmen of the Watch and Ward staff attached to the railway station, committing theft of certain packets of biscuits by breaking open a railway parcel containing those packets, which as parcel porters, they had occasion to handle. First information of the same was lodged, before the Sub-Inspector, Railway Police, by one Ram Prasad, Head Watchman. The Railway Police filed the charge-sheet under section 379 of the Indian Penal Code on the 20th June, 1952. The case was taken cognizance of by the Railway Magistrate, Manikpur. All the three accused pleaded guilty. They were convicted by the Magistrate on the 15th July, 1952, and sentenced to a fine of Rs. 25 each. Against this conviction the present appellant filed a revision to the Sessions Judge of Banda. It is necessary at this stage to mention that under the U.P. Panchayat Raj Act, 1947, the Panchayati Adalats in U.P. have criminal jurisdiction in certain matters. The point taken before the Sessions Judge was that by virtue of the said Act, the present case should have been tried by the Panchayati Adalat and that the Railway Magistrate had no jurisdiction. This contention was accepted by the learned Sessions Judge. He accordingly made a reference to the High Court for quashing the conviction and sentence. It came before a Single Judge of the High Court who did not feel quite satisfied that the Railway Magistrate had jurisdiction. But without deciding the question one way or the other, he declined to accept the reference on the ground that the revisional jurisdiction of the High Court was discretionary. Somewhat curiously however, the learned Judge granted a certificate against his own judgment that the case is a fit one for appeal to the Supreme Court. If the learned Judge thought fit to grant leave to appeal, he might well have himself decided the question involved so that we should have had the benefit of his consideration of the same.

To decide the question of jurisdiction thus raised it is necessary to notice the scheme of the U.P. Panchayat Raj Act, 1947 (U.P. Act XXVI of 1947) (hereinafter referred to as the Act) and a few relevant sections of the same. It may be mentioned that the Act appears to have undergone some amendments in the year 1952 and recently in 1955. These amendments have no application to the present case. Under the Act, as it stood at the time of the commission of the offence and the conviction therefor, the scheme thereunder is as follows : Under section 3, the State Government shall, by notification in the official Gazette, establish a Gaon Sabha for every village or group of villages. Under section 42, the State Government or the prescribed authority shall divide a district

into circles, each circle comprising as many areas subject to the jurisdiction of Gaon Sabhas as may be expedient. The State Government shall also establish Panchayati Adalats for each such circle, provided that the areas of Gaon Sabhas within each circle shall, as far as possible, be contiguous. Under section 43, every Gaon Sabha in a circle shall elect five adults of prescribed qualification permanently residing within its jurisdiction to act as Panches in the Panchayati Adalat of that circle. The Panches so elected by all the Gaon Sabhas in a circle shall form a panel. Under section 44 all the Panches elected under section 43 shall elect from among themselves a person who is able to record proceedings and to act, as Sarpanch of the Panchayati Adalat. As will be seen from the subsequent sections the Panchayati Adalat has jurisdiction to deal with all disputes and cases, both civil and criminal, arising within its area but it is enough for the present case to notice only those portions which relate to criminal jurisdiction. Section 52(1) provides that certain specified offences, if committed within the jurisdiction of a Panchayati Adalat (which in this context must be taken to refer to local jurisdiction) shall be cognizable by such Panchayati Adalat. The clauses of sub-section (1) of section 52 specify the various classes of offences under the Indian Penal Code and under some other special and local Acts which are within the cognizance of the Panchayati Adalat. Section 379, Indian Penal Code, is one of the sections so enumerated and it is specifically provided that the jurisdiction of the Adalat in respect of this offence is only where the theft of the stolen property does not exceed Rs. 50. Section 51(1) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898, every case instituted under the Act shall be instituted before the Sarpanch of the Panchayati Adalat of the circle in which the offence is committed. It is also provided under Section 55 that no court shall take cognizance of any case which is cognizable under the Act by the Panchayati Adalat unless an order has been passed by a Sub-Divisional magistrate under section 85. Section 85 authorises a Sub-Divisional Magistrate, on an application of a party or on his own motion, to cancel the jurisdiction of the Panchayati Adalat with regard to any pending case if there is an apprehension of miscarriage of justice. Section 49 provides the machinery for the trial of cases by the formation of benches to deal with the same. It is necessary to set out the whole of that section in so far as it relates to criminal cases and it is as follows :

"49. (1) The Sarpanch shall, for the trial of every case, form a bench of five Panches from the panel (the panel referred to in section 43 above noticed) provided that at least one of the Panches in the bench shall be a person who is able to record evidence and proceedings.

(2) Every such bench shall include one Panch who resides in the area of the Gaon Sabha in which the complainant of a case resides and likewise one Panch in the area in which the accused resides and three Panches residing in the area of the Gaon Sabha in which neither party resides, provided that in police cases one Panch shall be such as may be residing in the Gaon Sabha in which the offence was committed, one Panch residing in the area of Gaon Sabha in which the accused resides and three Panches residing in the areas other than those mentioned above.

#(3).....##

(4) Notwithstanding anything contained in this section, the State Government may, by rules, prescribe the constitution of special benches for determining any dispute arising between any parties or Gaon Sabhas or different circles or for any other purpose".

One of the rules framed with reference to this sub-section which is relevant for the present purpose

is rule 84 and is as follows :

"For the purposes of trial or decision of any case or proceeding parties of which are residents of different circles or different districts or any one of the parties is a resident of a place not governed by the Act, the prescribed authority having jurisdiction over the Panchayati Adalat in which a case or proceeding is instituted or transferred for disposal shall constitute a special bench consisting of Panches of the said Panchayati Adalat and if convenient and possible may include a Panch of the other circle and shall appoint one of them as Chairman of the bench unless the Sarpanch is a member of it".

The question of jurisdiction arises with reference to the above provisions of the Act. The charge-sheet filed by the police shows that the theft of the property involved in the case is Rs. 3. There can also be no doubt that the offence has been committed within the limits of Manikpur. It would appear, therefore, prima facie that by virtue of sections 51 and 52, the Panchayati Adalat of Manikpur had jurisdiction to try the case. If so, the jurisdiction of the regular Magistrate would appear to be barred under section 55 of the Act, since it is not suggested that there has been any order under section 85. But there is a serious difficulty in the way of the exercise of this jurisdiction by the Adalat.

The jurisdiction of the Adalat to try any criminal case has to be exercised by a bench of the Panches to be formed by the Sarpanch under section 49 of the Act. The bench has to consist of five Panches of whom one is to be of the Gaon Sabha of Manikpur (since the offence was committed in that place and this is a police case) and another belonging to the Gaon Sabha of the accused and the other three from Gaon Sabhas outside the above two. Where there is only one accused and that accused belongs to an area within Uttar Pradesh for which a Gaon Sabha has been formed under the Act or where there are more than one accused all belonging to the area of the same Gaon Sabha, the constitution of a bench of the Panchayati Adalat for the trial of such a case presents no difficulty. But in the present case it is on the record that one out of the three accused by name Tulsi belongs to Jabalpur in Madhya Pradesh. It was, therefore, not possible to constitute a bench in strict compliance with section 49(2) of the Act to try his case. Recourse had, therefore, to be had to section 49(4) and the rules framed thereunder. The relevant rule 84 (which has been quoted above) no doubt provides for the constitution of special benches to try cases where there are more than one accused who are residents of different areas. Now this rule in so far as it provides for cases wherein all the parties concerned are residents of Uttar Pradesh may be unexceptionable. But whether it is valid in so far as it provides for the exercise of jurisdiction in respect of a resident outside the State may be open to argument on more grounds than one. In the present case, it is sufficient to consider whether this portion of the rule is valid, with reference to section 49(4) under which it is framed. Section 49(4) authorises the Government to frame rules for the constitution of special benches "for determining disputes between parties of different circles or Gaon Sabhas or for any other purpose". "Circles or Gaon Sabhas" mentioned herein has reference only to circles and Gaon Sabhas constituted under the Act. This does not authorise the framing of a rule in so far as it relates to a person belonging to a place outside the State. Nor can the phrase "for any other purpose" in sub-section (4) of section 49 whatever that may mean - be construed so widely as to authorise a rule affecting such an outside, assuming without deciding, that a statutory provision by a State Legislature can, directly or by delegation and in terms, validly provide for the exercise of such jurisdiction by a Panchayati Adalat. We are clearly of the opinion that rule 84 in so far as it relates to the constitution of a special bench where one of the parties belongs to a place outside the State is ultra vires. Hence no competent bench could be constituted under section 49 of the Act for the trial of the present case in which there

are three accused of whom one is a person belonging to a different State.

Now, in these circumstances, it has to be considered whether the trial of this case by the ordinary criminal Court is barred. The bar of the jurisdiction of the ordinary criminal Court is brought about by section 55 of the Act. But it requires to be noticed that the bar which is brought about by the section, is a bar which relates to the case as a whole. Because, in terms, what it says is "no court shall take cognizance of any case which is cognizable under the Act by a Panchayati Adalat". Under section 2(a) of the Act a "case" is defined as meaning "criminal proceeding in respect of an offence triable by a Panchayati Adalat" and "Panchayati Adalat" is defined as "including a bench thereof". It is clear, therefore, that this bar has reference to the entire proceeding, i.e., as involving all the accused together. Such a bar in respect of the entire case can be operative only where there is a valid machinery for the trial thereof. In the present case in which at least one of the accused (through not this very appellant) is a person coming from an area outside the local extent of the Act, any bench of the Adalat that can be validly formed thereunder cannot try the three accused together and hence can have no jurisdiction over the whole case. The jurisdiction of the regular criminal court in respect of such a case cannot be taken away by the operation of section 55 of the Act. It is to be remembered that the jurisdiction of the criminal courts under section 5 of the Code of Criminal Procedure is comprehensive. That section enjoins that all offences under the India Penal Code shall be investigated, enquired into, tried and otherwise dealt with "according to the provisions hereinafter contained". To the extent that no valid machinery is set up under the U.P. Panchayat Raj Act for the trial of any particular case, the jurisdiction of the ordinary criminal court under section 5, Code of Criminal Procedure cannot be held to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction, can be brought about by the setting up of a court of limited jurisdiction, in respect of the limited field, only if the vesting and the exercise of that limited jurisdiction is clear and operative. Where, as in this case, there is no adequate machinery for the exercise of this jurisdiction in a specific case, we cannot hold that the exercise of jurisdiction in respect of such a case by the Court of general jurisdiction is illegal.

We are, therefore, of the opinion that the Railway Magistrate had the jurisdiction to try the case.

The appeal is accordingly dismissed.

Appeal dismissed.

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