

SUPREME COURT OF INDIA

Sharanjit Kaur

Vs.

State of Punjab

Crl.A.No.811 of 2013

(P.Sathasivam and M.Y.Eqbal JJ.)

01.07.2013

JUDGMENT

P.SATHASIVAM,J.

1. Leave granted.

2. These appeals are filed against the final judgment and orders dated 23.07.2012 and 07.11.2012 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. M-21109 of 2012 and Criminal Writ Petition No. 1843 of 2012 respectively whereby the High Court dismissed the petitions filed by the appellants herein.

3. Brief facts:

a) On 03.04.2012, a First Information Report (FIR) being No. 17 was lodged by one Kahan Singh, r/o Village Chugawan Roopamali, Kathunangal, Amritsar, against Sharanjit Kaur, Mukhtiar Singh, Manjit Kaur and Kirandeep @ Mandeep Kaur, r/o Village Mann, Tehsil and District Amritsar, at P.S. Kathunangal, Amritsar under Section 420 of the Indian Penal Code, 1860 (in short "IPC") alleging embezzlement of Rs. 30 lakhs on the pretext of sending his son-Gurpreet Singh to America for a permanent job for which he paid the above said amount in several instalments to the accused persons. It was also alleged in the complaint that on failure to honour the promise, the appellants issued a cheque of Rs. 30 lakhs to the complainant bearing No. 534873 dated 23.02.2012, which got dishonoured due to insufficient funds.

b) Against the said FIR, Manjit Kaur and Mandeep Kaur filed an application for anticipatory bail being No. 6148 of 2012 and Sharanjit Kaur and Mukhtiar Singh also filed a similar application being No. 7617 of 2012 under Section 438 of the Code of Criminal Procedure, 1973 (in short “the Code”) before the Additional Session Judge, Amritsar which were dismissed vide orders dated 19.04.2012 and 18.05.2012 respectively.

c) Aggrieved by the orders dated 18.05.2012 and 19.04.2012, Sharanjit Kaur and Mukhtiar Singh filed Criminal Misc. No. M-21109 of 2012 and Manjit Kaur and Mandeep Kaur filed Criminal Misc. No. M-12763 of 2012 before the High Court for anticipatory bail which were dismissed by orders dated 23.07.2012 and 03.05.2012 respectively.

d) Against the said order, Manjit Kaur and Mandeep Kaur preferred Special Leave Petition No. 4932 of 2012 before this Court. Vide order dated 20.07.2012, this Court, dismissed the same.

e) Being aggrieved by the order dated 23.07.2012, the co-accused Sharanjit Kaur and Mukhtiar Singh filed Special Leave Petition No. 6746 of 2012 before this Court. Vide order dated 21.09.2012, while issuing notice, this Court stayed the arrest of the co-accused.

f) In the meantime, Manjit Kaur and Mandeep Kaur again moved a petition being Criminal Writ Petition No. 1843 of 2012 before the High Court praying for an order restraining their arrest in view of the Punjab Panchayati Raj Act, 1994 being a Special Act applicable to the offences leveled against them.

g) By order dated 07.11.2012, the High Court dismissed the Criminal Writ Petition No. 1843 of 2012 filed by the appellants herein.

h) Questioning the order dated 07.11.2012, the appellants, viz., Manjit Kaur and Mandeep Kaur, filed Special Leave Petition No. 9690 of 2012 before this Court.

4. Heard Mr. R.K. Kapoor, learned counsel for the appellants, Mr. Ajay Kapur, learned AAG for the respondent-State and Mr. A.S.Chandhiok, learned ASG as amicus curiae.

Discussion:

5. It is the claim of the appellants that whether in view of Sections 4(2), 5, 44-51, 71 and 77 etc. of the Punjab Panchayati Raj Act, 1994 which give complete powers to the Gram Panchayat to take cognizance of criminal cases, accept complaints, conduct enquiries, summon witnesses, proceed with the trial, pass orders of conviction, sentence and compensation, the impugned proceedings initiated under the IPC is sustainable? On the other hand, it is the stand of the respondent-State that in view of serious allegations against the appellants who cheated the complainant's son and committed fraud by taking his money, in spite of Section 44(3) of the Punjab Panchayati Raj Act, 1994, the prosecuting authority is entitled to proceed under the provisions of the IPC.

6. In order to understand the rival contentions, it is useful to refer the brief facts. The appellants had filed petitions for grant of anticipatory bail before the Additional Session Judge, Amritsar. By orders dated 19.04.2012 and 18.05.2012, the Additional Session Judges dismissed the same by observing that from the allegations made in the FIR, gravity of the offence is quite serious and custodial interrogation of the appellants is necessary for the just and complete investigation. Thereafter, the appellants filed petitions for anticipatory bail before the High Court contending that no investigation could be carried out in the case since the offence was triable by Gram Panchayat. The High Court, by orders dated 03.05.2012 and 23.07.2012, dismissed the same. Being aggrieved by the order dated 03.05.2012, the appellants, viz., Manjit Kaur and Mandeep Kaur filed Criminal Writ Petition No. 1843 of 2012 before the High Court. Vide order dated 07.11.2012, learned Single Judge observed that the offence comes under the purview of IPC and rejected the contention put forth by the appellants by dismissing their petition for anticipatory bail. These orders are under challenge before this Court by way of the present special leave petitions.

7. It is also relevant to note that the complainant, under the hope that his son would be sent to America in order to get settled in life, went to the extent of selling his property and arranged funds to the tune of Rs. 30 lakhs. Despite repeated requests, the appellants failed to honour the promise and issued a cheque of Rs. 30 lakhs to the complainant which got dishonoured due to insufficient funds. The complainant has also filed an affidavit highlighting all these details. On the other hand, it is the stand of the State that criminal courts have no bar for initiation of proceedings against the accused. It is also pointed out that the accused persons failed to join the enquiry proceedings despite being called a number of times and as such the accused would have never appeared before the authority like Panchayat. It is also

pointed out by the State that no investigation can be carried out by the police when the offence is triable by Gram Panchayat is misconceived.

8. Though the issue relates to dismissal of anticipatory bail applications by the High Court, since it relates to an important question as to the jurisdiction of Gram Panchayats in a serious offence like Section 420 IPC and it is also brought to our notice that it is a common practice in the State of Punjab being adopted by the agents like the present appellants whereby innocent people and rustic villagers are duped, in order to lay down an authoritative pronouncement, we requested learned Attorney General for India for assistance. At the time of hearing, Mr. A.S. Chandhok, learned ASG assisted us by taking us through the objects and reasons, relevant provisions of the Punjab Panchayati Raj Act, 1994 as well as provisions of the IPC.

9. The Panchayati Raj Institution has been in existence in the country for a long period of time. It has been observed that the institutions like the Panchayat Samitis, Zila Parishads and Panchayats have not been able to acquire the status and dignity of viable and responsive people's bodies due to variety of reasons including absence of regular elections, prolonged suppressions, inadequate representation of weaker sections like scheduled castes and women, insufficient devolution of powers and lack of financial resources. In order to overcome the shortcoming, various provisions were enacted in the Constitution of India, IPC, Code of Criminal Procedure, 1973 as well as in the Punjab Panchayati Raj Act, 1994 which are as under: (A) Constitution of India:

(i) In the Constitution, a new Part, viz., Part IX relating to 'Panchayats' has been added by the Constitution 73rd Amendment Act, 1992 which defines the 'Gram Sabha' and 'Panchayat' as under:-

“243(b) Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

“243(d) Panchayat means an institution (by whatever name called) of self government constituted under Article 243B, for the rural areas;”

(ii) Similarly, under Article 243A, a Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a State may, by law, provide.

(iii) Article 243N of the Constitution provides as under:- “243N. Continuance of existing laws and Panchayats. Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before commencement of the Constitution (Seventy third Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent legislature other competent authority or until the expiration of one year from such commencement whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each house of the Legislature of that State.”

(B) Punjab Panchayati Raj Act, 1994:

(i) Though in the State of Punjab, Punjab Gram Panchayat Act, 1952 was in existence which was repealed and a new Punjab Panchayat Raj Act, 1994 was enacted. However, the provisions of the earlier act and new act are more or less similar. The new Act of 1994 was enacted with the Statement of Objects and Reasons to bring together the institutions like the Panchayat Samitis, Zila Parishads and Panchayats by a comprehensive and unified enactment consequent upon the Constitutional changes made in the Constitutional 73rd Amendment Act, 1992. The Act thus was aimed to enable the Panchayats to function as an institution of self-government. (ii) Similar Panchayati Raj Acts are in existence in many other States, viz., Himachal Pradesh Panchayati Raj Act, 1994, Jammu and Kashmir Panchayati Raj Act, 1989, Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, Uttar Pradesh Panchayat Raj Act, 1947 and Bihar Panchayat Raj Act, 1993 which contained various provisions relating to Nyaya Panchayats in the concerned State.

(iii) The issue arises for consideration in the case on hand is whether the Punjab Panchayati Raj Act, 1994 deprive the ordinary criminal courts of their jurisdiction to try an offence under the IPC, i.e., Section 420, which is both cognizable and non-bailable and which is also mentioned in the Schedule II of the said Act.

(iv) It is useful to refer the important provisions under the Punjab Panchayati Raj Act, 1994 which are as under:-

Section 2(za) “Gram Panchayat” means an institution of self- government for a Gram Sabha area constituted under Section 9.

Section 2 (zze) The expression “offence”, “non-bailable offence”, “cognizable offence”, “complaint”, “officer-in-charge of a police station”, and “police station” have the same meaning as in Section 2 of the Code of Criminal Procedure, 1973.

Section 4 provides for ‘Constitution of Gram Sabhas’. Section 9 provides for ‘Functions of Gram Sabhas’. Section 30 provides for ‘Functions of Gram Panchayats’. Section 35 provides for ‘Power of Gram Panchayat to make general order’.

Chapter IV provides for the ‘Judicial Functions of Gram Panchayats’.

Section 44 provides for ‘Powers and Jurisdiction of Gram Panchayat over criminal offences’ as under:-

(1) – Gram Panchayat shall exercise powers and shall have jurisdiction over matters laid down in Schedule II.

(2) For the purpose of deciding whether an offence falls within the jurisdiction of a Gram Panchayat, the provisions of Section 178 to 181 of the Code of Criminal Procedure, 1973 shall apply.

(3) A Gram Panchayat shall be deemed to be criminal court when trying criminal cases.”

Section 45 of the present Act is similar to Section 41 of the repealed Punjab Gram Panchayat Act, 1952 which provided as under:-

“Any Magistrate before whom a complaint or report by the Police of any offence triable by a Panchayat is brought or who takes cognizance of any such offence upon his own knowledge or suspicion shall transfer the proceedings to a Panchayat of competent jurisdiction:

Provided that a Chief Judicial Magistrate may for reasons to be recorded in writing, transfer any criminal case from Gram Panchayat to another Gram Panchayat of competent jurisdiction or to another court subordinate to him.

Section 46 provides for 'Exclusion of certain case' which is as under:-

(1) Subject to the provisions of sub-section (3), no Gram Panchayat shall take cognizance of any offence under the Indian Penal Code, 1860, in which either complainant or the accused is a public servant.

(2) When information relating to the commission of a cognizable offence triable by a Gram Panchayat has been given to an officer incharge of a police station, he shall forthwith send a copy of First Information Report, to the Gram Panchayat competent to try such an offence and such Gram Panchayat shall not proceed to try any complaint relating to the same facts nor shall it issue any summons in the matter, until the officer has intimated in writing that the investigation has been concluded.

Provided that such an officer shall send the information to the Gram Panchayat after the conclusion of the investigation.

(3) No criminal cases shall be heard, by any Gram Panchayat when criminal case on substantially the same facts against the same person has been heard and finally decided by the competent court or Gram Panchayat or is pending therein, or before it.

Section 47 provides for 'Cognizance of criminal cases' (1) A criminal case before a Gram Panchayat shall be instituted on a complaint in writing and on payment of fee prescribed in Schedule III by presenting it in person to the Sarpanch, and in absence, to any Panch or by sending it by registered post to the Gram Panchayat.....

(2) The particulars of the complaint shall be recorded by the Secretary of the Gram Panchayat in the register prescribed for the purpose.

(3) Notwithstanding anything contained in sub-section (1) A Gram Panchayat shall be competent to take cognizance suo moto of cases falling under Sections 160, 228, 264, 277, 289, 290 & 510 of the Indian Penal Code, 1860 and under Sections 3 and 4 of the Punjab Juvenile Smoking Act.

Section 48 provides for the procedure by Gram Panchayat after receiving the complaint.

Section 49 provides for ‘Power of Gram Panchayat to refuse to entertain criminal case’:-

(1) If at any time it appears to the Gram Panchayat that the offence is one for which the sentence which the Gram Panchayat is competent to pass would be inadequate, it shall send the record of the case by order in writing to the Chief Judicial Magistrate.

Section 51 provides for Prompt disposal of criminal cases’:- 1) The Gram Panchayat shall, if possible, try a criminal case and pass orders on the day on which the accused appears and if that is not possible may, if he is not already on bail, require him to execute a bond with or without sureties... to appear before the Gram Panchayat or any subsequent day/days to which trial may be adjourned.....

Section 52 provides for the punishment which can be passed by the Gram Panchayat.

(1) A Gram Panchayat may on conviction:-

(a) sentence the accused to a fine not exceeding two hundred rupees or double the value of the damage or loss caused by this Act, whichever is greater;

Provided that no fine shall exceed the maximum fine prescribed by the law for that offence.....

Section 55 provides for supervision of criminal proceedings by Chief Judicial Magistrate.

Section 71 provides that Provisions of the Code of Criminal Procedure, 1973 and Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 shall not apply to proceedings before the Gram Panchayat.

Section 74 provides for ‘Bar to Legal Practitioners’ Notwithstanding anything contained in the Legal Practitioners Act, 1879, no legal practitioner

shall be permitted to appear, plead or act before a Gram Panchayat for any party in any judicial proceedings under this Act.

Sections 79 and 80 provides that on an application filed by any party for transfer of proceedings before the Chief Judicial Magistrate etc. the Gram Panchayat shall adjourn or stay the case.

Section 82 provides for 'Finality of decision.'

Section 222 provides for 'Over-riding Effect on Other Laws' (1) Save as otherwise provided in this Act, the provisions of this Act or rules or regulations or bye-laws made thereunder have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

(C) Code of Criminal Procedure, 1973:

Section 4 Trial of offences under the Indian Penal Code and other laws:-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

Section 5 provides that 'nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed, any other law for time being in force'.

Section 2(d) 'Complaint' and Section 2(r) 'Police Report' has been equally applicable under the Punjab Panchayati Raj Act.

(D) Case Laws:

(i) In *Giani Ram vs. Attar Chand and Ors.*, AIR 1960 Punjab 80, while dealing with earlier Punjab Gram Panchayat Act, 1952, it was observed that

proviso to Section 41 did not intend to take away the jurisdiction vested in the criminal courts to try offences which they are empowered to try under the Code of Criminal Procedure. The ordinary criminal courts have not been completely divested of their jurisdiction under the general law.

(ii) As rightly pointed out by learned ASG, it is important to note that no 'exclusive jurisdiction' for trying certain criminal offences has been conferred upon Gram Panchayat under the Punjab Gram Panchayat Act, 1952 or Punjab Panchayati Raj Act, 1994 unlike in the case of Pepsu Panchayat Raj Act, 2008Bk. (Section 67(2) of the Pepsu Act). [vide Meena Ram vs. Master Dwarki, AIR 1958 Punjab 417 at para 2]

(iii) In Baldeo Singh and Ors. vs. State of Bihar and Others, AIR 1957 SC 612, this Court, after interpreting the provisions of Bihar Panchayati Raj Act, 1948, held that the scheme of the Act was that a case cognizable under the Act by Gram Cutcherry should be tried by a Bench of the Gram Cutcherry save in some exceptional cases. It was further held that in case of transfer, withdrawal of a case from the Gram Cutcherry or the cancellation of the jurisdiction of the bench, it may not be said that the ordinary criminal Courts also have no jurisdiction to try it.

(iv) A similar 'exclusive jurisdiction' has been conferred upon Nyaya Panchayats under the Uttar Pradesh Panchayat Raj Act, 1947. [vide Chhotey Lal and Others vs. State AIR 1967 All 229 para 6]

(v) In Bhim Sen vs. State of U.P., AIR 1955 SC 435, a bench of three-Judges of this Court, while interpreting the U.P. Panchayat Raj Act, 1947, which contained a provision relating to bar of jurisdiction of ordinary criminal courts, has held that such a bar in respect of the entire case can be operative only when there is valid machinery for the trial thereof under the Act.

(vi) In Kartar Singh and Others vs. Pritam Singh and Others AIR 1956 Pepsu 78, it was held with respect to civil matters that "although the Panchayat Courts have been given jurisdiction in certain suits by the Pepsu Panchayat Raj Act, 2008 Bk, the jurisdiction of ordinary civil courts in such suits has not been excluded or taken away, the result of which is that both the courts have concurrent jurisdiction in such suits.

(vii) In *State of M.P. vs. Shobharam & Ors.*, AIR 1966 SC 1910, a Constitution Bench of this Court, while examining the provisions of Madhya Bharat Panchayat Act, 1949 held that “the police have under its general powers under the Code of Criminal Procedure authority to arrest any person concerned in any cognizable offence”.

10. Learned amicus, after adverting to the various provisions of the Punjab Panchayati Raj Act, 1994 as well as of the Code pointed out that de hors the fact that whether the offence is triable under the ordinary criminal courts or by the Gram Panchayats, there is no bar to the police to investigate the offence and submit a report to the Magistrate. He further submitted that according to Section 45 of the said Act, Magistrate can transfer a case to Gram Panchayat at the stage of receiving a complaint under Section 156(3) or at the time of taking cognizance after filing of report by the police under Section 173 of the Code. Therefore, in view of the above, the Punjab Panchayati Raj Act, 1994 in no way prohibits the investigation and arrest by the Police.

11. Learned amicus curiae, by pointing out towards Section 46(2) of the Punjab Panchayati Raj Act, 1994 contended that it makes very clear that at least the part of investigation has been entrusted to the Police. He further pointed out that the provisions contained in Section 47 make it clear that: (i) Gram Panchayat can take suo moto cognizance only in cases falling under Sections 160, 228, 264, 277, 289, 290 and 510 of the Indian Penal Code, 1860 and certain other cases; and (ii) for remaining cases in the Schedule II, cognizance can only be taken after receiving a complaint in writing.

12. Further, it is submitted in view of Section 51 of the Punjab Panchayati Raj Act, 1994 that the wordings ‘if he is not already on bail’ signifies that the accused can be investigated under the provisions of the Code of Criminal Procedure and can even be arrested.

13. Learned amicus curiae further pointed out that in view of Section 52 of the Punjab Panchayati Raj Act, 1994, the Gram Panchayats have a limited power only to impose a fine that too of only Rs. 200 and it has no power to sentence the accused for imprisonment. Further, in view of Section 71 which provides that the provisions of the Code of Criminal Procedure, 1973 and Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 shall not apply to proceedings before the Gram Panchayat, it was submitted that the above provision does not mean that during investigation and the proceeding before the Magistrate, provisions of Code of Criminal Procedure, 1973 will not apply.

14. Admittedly, though civil and criminal jurisdiction has been conferred upon the Gram Panchayats, no qualification etc., has been provided for panchas. Therefore, what culled out from the above is that the power of the police cannot be abridged or taken away under any circumstances.

15. It is not out of place to mention that a new Act, viz., Gram Nyayalayas Act, 2008 has been enacted and has been made applicable to many States including Punjab. The new Act of 2008 also brings in the civil and the criminal jurisdiction to the Gram Nyayalayas. Section 3(3) of the 2008 Act provides that the Gram Nyayalayas established under the sub-Section (1) shall be in addition to the courts established under any other law for the time being in force.

16. As far as the present case is concerned, in view of the various provisions of the Constitution of India, Punjab Panchayati Raj Act, 1994, Code of Criminal Procedure, 1973 as well as the case laws on the point discussed in the earlier paragraphs, the conclusion which can be drawn from the above is as under:-

(i) There is no bar for investigating any offence by the police including the offences mentioned in the Schedule II of the Punjab Panchayati Raj Act, 1994.

(ii) The investigation would include the power to arrest and the ordinary procedure under the Code will govern the entire proceedings.

(iii) Till the stage of completion of investigation, Gram Panchayat has no jurisdiction at all.

(iv) After the report of police under Section 173, the Magistrate shall transfer the case for trial to Gram Panchayat or to any other subordinate court to him.

(v) Unless a case is transferred to Gram Panchayat under Section 45 of the Punjab Panchayati Raj Act, 1994, the 'Gram Panchayat' does not get any jurisdiction over the said case/investigation unless the offence is one mentioned in Section 47(3) of the said Act.

(vi) However, it is open to any person/complainant to directly approach the Gram Panchayat by submitting a written complaint. In that case also, if it is a cognizable offence, there is no bar for the police to investigate the matter.

17. In view of the above analysis, the claim of the appellants, as projected by Mr. Kapoor, that no investigation can be carried out by police is not sustainable. Though Mr. Kapoor has relied on various decisions of the High Courts, viz., State of M.P. vs. Shobaram and Others AIR 1966 SC 1910, Bhim Sen (supra), Meena Ram (supra) and Chhotely Lal (supra), in the light of our interpretation with reference to the relevant provisions of the Punjab Panchayati Raj Act, 1994, we feel that the same are not helpful to the stand taken by the appellants.

18. Under these circumstances, we hold that in the facts and circumstances of the present case, the investigation is to be conducted by the police authorities only and the offence of Section 420 IPC where the allegations are of a serious nature and the appellants has duped of Rs. 30 lakhs from the complainant, should be tried by the regular criminal court only and not by the Gram Panchayat.

19. Consequently, both the appeals fail and are accordingly dismissed. Interim protection granted earlier shall stand vacated.