

# ALLAHABAD HIGH COURT

Lal Bachan Singh

Vs.

Suraj Bali Singh

Criminal Revn. No. 65 of 1950, in Cri. Ref. No. 69 of 1951

(Brij Mohan Lall, J.)

## JUDGMENT

### **Brij Mohan Lall, J.**

1. This is a reference under Section 438, Criminal Procedure Code, by the learned Sessions Judge of Gorakhpur recommending that a case pending at present in the Court of Mr. Harihar Prasad, Magistrate, First Class, of Deoria be transferred to the Panchayati Adalat and that the Magistrate's order dated 21.4.1950 refusing to transfer the case to the Panchayati Adalat be quashed.

2. It appears that a complaint was filed by one Suraj Bali Singh against one Lal Bachan Singh under Sections 307 and 323, Penal Code, in the Court of the aforesaid Magistrate. As the offence under Section 307, Penal Code, was not cognizable by the Panchayati Adalat, there was no illegality in filing the complaint in the Magistrate's Court. After recording the evidence the learned Magistrate framed a charge under Section 323, Penal Code only. It was then brought to his notice by the accused that since he had framed a charge under Section 323, Penal Code only and since the said offence was by reason of Section 52, U. P. Panchayat Raj Act triable exclusively by a Panchayati Adalat he should transfer the case to the said Adalat. His attention was drawn to Section 56 of the Act also which made it imperative for him to do so. The learned Magistrate refused to accede to this request.

3. The first reason given by the learned Magistrate for retaining the case with him was that in his opinion the case was one in which the accused could not, in case of conviction, be adequately punished by the Panchayati Adalat. He has in this connection referred to Section 58 of the Act. The relevant portion of this section runs as follows :

"58. If at any time it appears to be a Panchayati Adalat

(a) ... ..

(b) that the offence is one for which it cannot award adequate punishment or

(c).....

It shall return the complaint to the complainant directing him to file it before the Sub-Divisional Magistrate having jurisdiction to try such a case." It is obvious from the language of this section that it is for the Panchayati Adalat to exercise this discretion and not for the Magistrate to do so. The opinion that adequate punishment cannot be awarded by the Panchayati Adalat is to be entertained by the Panchayati Adalat and not by the Magistrate. The power of returning the complaint for presentation to the Sub-Divisional Magistrate is to be exercised by the Panchayati Adalat. The Magistrate cannot make an assumption that the Panchayati Adalat would come to the conclusion that it cannot award adequate punishment and he cannot, on that assumption, refuse to transfer the case to the Panchayati Adalat. So far as he is concerned, Section 56 casts a duty on him to transfer the case. No exception is provided under Section 56. The learned Magistrate's view, namely, that he could retain the case with him because in his opinion the Panchayati Adalat would not be able to award adequate punishment is obviously erroneous.

4. The learned Magistrate has next referred to Section 85, Panchayat Raj Act. This section confers on the Sub-Divisional Magistrate the power to cancel the jurisdiction of the Panchayati Adalat in a "pending case." The phrase "pending case" means a case pending in a Panchayati Adalat. This section does not confer on a Sub-Divisional Magistrate any power in respect of a case pending in his own Court. Nor does it empower him to refuse to perform the duty imposed on him by Section 56 of the Act. In the circumstances, this section also cannot be pleaded in justification of the learned Magistrate's order.

5. The third ground given by the learned Magistrate for refusing to transfer the case to the Panchayati Adalat is that Article 22 of the Constitution confers on an accused person a right to be defended by counsel and that this right cannot be exercised in a Panchayati Adalat because no counsel is permitted to appear in the said Court. This argument also is without force. Article 22 (1) of the Constitution runs as follows :

"22 (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

This Article confers a right to be defended by a counsel on a person who is "arrested" and is "detained in custody." The accused has not been arrested in this case. Nor is he being detained in custody. Moreover, it is the accused himself who is pressing for a transfer to the Panchayati Court. The complainant cannot possibly take advantage of this Article because he is neither a person arrested nor a person detained in custody. Therefore Article 22 (1) of the Constitution also does not support the view taken by the learned Magistrate.

6. In the circumstances, the reference is accepted. The learned Magistrate's order dated 21st April

1950, is set aside. The case shall be transferred to the proper Panchayati Adalat for trial in accordance with law.

Reference accepted.