

ORISSA HIGH COURT

Digambar Aruk

Vs

Nanda Aruk

O.J.C. No. 349 of 1956

(Narasimham, C.J. and Das, J.)

29.07.1957

JUDGMENT

Narasimham, C.J.

1. The three petitioners were tried before the Adalti Panchayat of Amrutmanohi for an offence under Section 323, I. P. C., and petitioner No. 1 was sentenced to a fine of Rs. 20/- and petitioners Nos. 2 and 3 to a fine of Rs. 10/- each. They filed a revision petition before the Sub-Divisional Magistrate of Kendrapara against their conviction and sentence alleging various irregularities in the trial. But the Sub-divisional Magistrate declined to interfere.

2. The Amrutmanohi Adalti Panchayat was constituted under the provisions of the Orissa Gram Panchayats Act 1948 and the procedure to be followed by the Panchayat for the trial of offences is fully described in Chapter VII of that Act and the various rules framed thereunder. An offence under Section 323, I. P. C., is one of the offences cognizable by an Adalti Panchayat under Section 64 (1) of the Act. The procedure before the Adalti Panchayat is summary and Section 82 of the Act directs every Adalti Panchayat to dispose of all cases as promptly as possible preferably on the very day on which the accused appears. Section 84 of the Act provides that the decision of the Adalti Panchayat shall be according to justice, equity and good conscience and that the Panchayat is not bound by laws of evidence or procedure other than those prescribed in the Act and the rules made thereunder. Section 94 prohibits a lawyer from appearing before a Panchayat and as the constitutionality of this section is under challenge I may quote it in full.

"Notwithstanding anything contained in the Legal Practitioners Act, 1879, Advocates or legal practitioners shall not be permitted to appear before the said Panchayat."

3. Rule 200 of the Orissa Gram Panchayats Rules says that if the accused does not plead guilty the Panchayat shall hear the complainant if any, and take all such evidence as may be produced in support of the prosecution and also hear the accused and take all such evidence as he produces in his defence. It further says that only a summary of the evidence of each witness will be recorded in the appropriate place in the register of cases. Rule 195 further says that in all criminal

cases and civil suits, witnesses shall be examined on oath or solemn affirmation R. 201 (1) requires the Adalti Panchayat to examine the accused after the evidence has been recorded and then pronounce a judgment of conviction or acquittal.

4. Mr. Rath on behalf of the petitioners challenged their conviction and sentence on the following grounds :

(i) Witnesses were not examined on oath by the Adalti Panchayat; nor did the Panchayat examine every one of the petitioners before holding them guilty. Hence, according to Mr. Rath, Rules 195 and 201 (1) were contravened;

(ii) In any case, Section 94 of the Act which prohibits an advocate or a legal practitioner from appearing before the Adalti Panchayat is unconstitutional and hence the entire trial is bad.

5. As regards the first point, I must observe that Mr. Rath has not been able to establish that oath was not, in fact, administered to the witnesses or else that the three petitioners who were accused persons were not examined by the Adalti Panchayat. The petition is supported by an affidavit of an advocate's clerk of Cuttack who has no personal knowledge as to what happened during the trial before the Panchayat. The petitioners themselves have not cared to swear an affidavit before this Court in support of the allegations made in the petition. Mr. Rath however relied on the copies of the extracts from the register of the Panchayat that were filed before us in which it is not stated that the witnesses were examined on oath. But as R. 200 does not require the deposition of a witness to be recorded verbatim as in an ordinary trial under the provisions of the Criminal Procedure Code but permits of the summary of the evidence of the witnesses being recorded, the mere absence in the record of an entry to the effect that oath was administered to a witness does not necessarily lead to an inference that no such oath was given. If the petitioner wanted to rely on this omission for the purpose of challenging the legality of the trial they ought to have sworn an affidavit themselves. I am, therefore, not prepared to hold on the materials available before us that oath was not administered to the witnesses during the trial.

6. Again, as regards the examination of the accused persons also there is no affidavit sworn by the petitioners to the effect that they were not examined by the Panchayat. On the other hand, from the judgment of the Panchayat it appears that the accused persons were, in fact, questioned by the Panchas. It is true that the extract from the relevant entry in the register contains the statement of only one of the accused on behalf of all accused persons. From this entry Mr. Rath developed an argument to the effect that the Panchayat evolved a procedure of their own, that they examined only one of the accused on behalf of all the three and then passed the sentence. There is, however, no sufficient material to support this argument. The rules do not require that the statement of every one of the accused persons should be recorded as elaborately as is required by Section 364, Criminal Procedure Code, in a trial before a Magistrate. It is open to the Panchas to record a summary of the statement of an accused and if all the three accused persons make the same statement and the panchas make a brief record of the statement of one of the accused on behalf of all the accused it cannot be said that all the accused persons were not examined. Hence, in the absence of clear evidence to show that the procedure prescribed in the Orissa Gram Panchayats Rules was not followed, I am unable to accept Mr. Rath's contention that the trial was vitiated due to non-compliance with the rules.

7. The constitutional question, however, requires serious consideration. Section 94 of the Act quoted above prohibits any advocate or legal practitioner from appearing before an Adalti Panchayat. The section contains the opening words "notwithstanding anything contained in the Legal Practitioners Act, 1879" and there is no reference to the Indian Bar Councils Act, 1926 in that section. The advocates of this Court are now governed by the provisions of the Indian Bar Councils Act and not by those of the Legal Practitioners Act. But the omission of any reference to the Indian Bar Councils Act in Section 94 of the Orissa Gram Panchayat Act is not material. That Act clearly refers to 'advocates' and as at present advocates can be enrolled only under the provisions of the Indian Bar Councils Act it follows as a necessary inference that apart from legal practitioners who are governed by the Legal Practitioners Act, even advocates of this Court are not permitted to practice before the Adalti Panchayat. It was argued that such a provision affects-

- (i) the fundamental right of a lawyer to carry on his profession guaranteed by Article 19 (1), (g) of the Constitution; and
- (ii) the fundamental right of an accused to be defended by a legal practitioner of his choice guaranteed by Article 22 (1) of the Constitution.

In my opinion, neither of these contentions can prevail.

8. It is now well settled that apart from the provisions of Article 22 (1) of the Constitution no litigant has a fundamental right to be represented by a lawyer in law Courts. I need only refer to *N.M. Varma and Co. v. G. Ambalal*¹, which has been followed in a recent Division Bench decision of this Court reported in *Nabin Chandra Gantayet v. State of Orissa*², The only fundamental right recognised by the Constitution is that under Article 22 (1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. This Article was construed by the Supreme Court in *State of Punjab v. Ajaib Singh*³, as follows :

"The language of Articles 22 (1) and (2) indicates that the fundamental right conferred by it gives protection against such arrests as are effected otherwise than under a warrant issued by a Court on the allegation or accusation that the arrested person has, or, is suspected to have committed, or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest. In other words, there is indication in the language of Article 22 (1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority."

9. An Adalti Panchayat is a Court and custody under its orders will be judicial custody. Hence, following the aforesaid decision it is clear that the provisions of Articles 22 (1) and (2) will not apply where a person is detained in custody in consequence of the processes issued by that Panchayat. I should, however, observe that the Orissa Gram Panchayats Act does not confer on the Adalti Panchayat a right to arrest or detain a person in custody. Section 77 of the Act requires that at first only a summons shall issue against an accused person and if he fails to appear on receipt of the summons the Adalti Panchayat is required to report the fact to the nearest Magistrate who alone has jurisdiction to issue a warrant

with or without bail for the arrest of the accused and forward him in custody to the Panchayat. Section 92 says that as soon as the accused is produced before the Panchayat it shall as far as possible complete the trial of the criminal case and if this is not feasible the Panchayat shall release him on his executing a bond for Rs. 25/-. Thus, the Panchayat has absolutely no power to detain an accused person in custody. Again, its power of punishment is ordinarily limited to a fine of Rs. 50/- or double the value of the damage or loss caused (see Section 66). Doubtless, in default of payment of fine it has the right to send the convicted person to jail. But such detention in custody after conviction is completely outside the scope of Article 22 of the Constitution. Hence, bearing in mind the limited powers of the Panchayat as provided in the Act and the principle laid down by the Supreme Court in the decision mentioned above it cannot be said that Section 94 of the Act infringes the fundamental right guaranteed by Article 22 to an accused standing trial before an Adalti Panchayat.

10. The next question for consideration is whether Section 94 of the Act offends Article 19 (1) (g) of the Constitution by imposing unreasonable restrictions on the right of a lawyer to practice his profession. This question also is practically concluded by several decisions of the various High Courts. The earliest is that of Bombay reported in *Mulchand v. Mukund*⁴, where it was pointed out that Rule 36 of the Rules framed under the Bombay Co-operative Societies Act, 1925 prohibiting the appearance of a legal practitioner in a proceeding held under the rules was not unconstitutional. Their Lordships observed that the right of a lawyer to practice before a Court or Tribunal is not an absolute right but it is a right subject to the provisions of the law for the time being in force and if that law prohibits him from practising before a class of Tribunals or Courts such a prohibition would not amount to an unreasonable restriction on the right of a lawyer to carry on his profession under Article 19 (1) (g) of the Constitution. They relied on Section 14 (1) (b) of the Indian Bar Councils Act which expressly limits the right of an Advocate to practice in subordinate Courts if any other law for the time being in force contains a provision to the contrary. In *Rangaswamy v. Industrial Tribunal*⁵, also the same question was discussed in connection with the restriction on the appearance of an advocate before an Industrial Tribunal and it was held that the provisions of Article 19 (1) (g) of the Constitution could not be invoked by a lawyer if his right to practice before a particular Tribunal is not found within four corners of Sections 9 and 14 (1), (a) (b) and (c) of the Indian Bar Councils Act.

11. I may now refer to an interesting point argued by Mr. Mohanti on behalf of the petitioners on the construction of Section 14 of the Indian bar Councils Act. The relevant provisions are as follows :

"Section 14 (1). An Advocate shall be entitled as of right to practice :

(a) Subject to the provisions of sub-section (4) of Section 9, in the High Court of which he is an advocate, and

(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force, in any other Court and before any other Tribunal or person legally authorized to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practice". Clause (a) deals with the right to practice in the High Court which is not material for our present discussion. Clause (b) refers to the right to practice before any other Court or Tribunal or person legally

authorized to take evidence and clause (c) refers to the right to practice before any other authority or person. Clause (b) says that unless any other law for the time being in force provides 'otherwise' an advocate shall be entitled as of right to practice before any other Court legally authorized to take evidence. Clause (c) on the other hand, gives an advocate the right to practice before any other authority or person only if by law such a right is expressly conferred. A Panchayat Court is legally authorized to take evidence and hence would come under clause (b).

Section 94 of the Orissa Gram Panchayats Act is undoubtedly a "law for the time being in force" and when it says that an advocate shall not be permitted to appear before a Panchayat such a provision would necessarily be a provision expressly taking away the right of an advocate to practice conferred by the opening words of Section 14 (1) of the Indian Bar Councils Act. Hence, it must be held that Section 14 (1) (b) of the Indian Bar Councils Act read with Section 94 of the Orissa Gram Panchayats Act takes away the right of an advocate to practice in a Panchayat Court. Mr. Mohanti however urged that a somewhat narrow meaning should be given to the word 'otherwise' occurring in clause (b) of Section 14 (1) in view of the general right to practice provided in the main portion of that section and that it should be construed to mean only that any other law may provide restrictions on the right to practice in other Courts. But it cannot absolutely prohibit an advocate from practicing in such a Court. In other words, his argument is that clauses (a) and (b) of Section 14 (1) of the Indian Bar Councils Act give an unfettered right to an advocate to practice subject to such restrictions as may be imposed either by the rules framed under the Act or by any other law for the time being in force. An absolute prohibition from practicing before any Court or Tribunal, according to Mr. Mohanti, is not contemplated by that section.

12. This argument though ingenious is not supported by the language of the section. The right of an advocate to practice in any subordinate Court is clearly made subject to any provision to the contrary in "any other law for the time being in force" That provision to the contrary may be in the nature of a restriction such as a right to appear at the discretion of the Court or with the consent of the opposite party, as found in several statutes or an absolute prohibition from practicing as found in Section 94 of the Orissa Gram Panchayats Act. Whether it is a restriction or a total prohibition it will still be a provision "otherwise" within the meaning of clause (b) of Section 14 (1). Moreover, so long as the general right of an advocate to practice in all subordinate Courts is recognised the prohibition from practising in a particular class of Courts by virtue of a special law dealing with those Courts will also be in the nature of a mere restriction on the right of an advocate to practice in law Courts. Hence, on a construction of Section 14 (1) (b) of the Indian Bar Councils Act it cannot be said that Section 94 of the Orissa Gram Panchayats Act is inconsistent with it.

13. For the aforesaid reasons I see no ground for interference. The petition is dismissed but without costs.

Das, J.

14. I agree.
Petition dismissed.

Cases Referred.

¹ AIR 1956 Cal 476

² ILR 1957 Cut 71

³ AIR 1953 SC 10

⁴ AIR 1952 Bom 296

⁵ AIR 1954 Mad 553