

(1968) 12 PAT CK 0006
In the Patna High Court
Case No : Criminal W.J.C. No. 33 of 1968

Dharam Sonar and Others

APPELLANT

Vs

Budhan Sonar, Subdivisional Magistrate and Lari Gram
Cutchery

RESPONDENT

Date of Decision : 19-12-1968

Acts Referred:

Constitution of India, 1950 — Article 227
Penal Code, 1860 (IPC) — Section 153, 426

Citation : (1969) PLJR 306

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : Braj Kishore Prasad No. II and Yogesh Chandra Verma, for the Appellant; R.P. Katriar and Satish Kumar Katriar for the Opp. Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

N.L. Untwalia, J.—All the six petitioners have been convicted by Lari Gram Cutchery, district Hazaribagh, u/s 426 and 153 the Penal Code. Each of the petitioners 1 and 2 has been sentenced to pay a fine of Rs. 10/- and each of the remaining petitioners 3 to 6 has been sentenced to pay a fine of Rs. 5/-. Each of them has been directed to undergo three days simple imprisonment in default of payment of fine. A complaint was filed by Budhan Sonar, opposite party no. 1, on 28-3-1967. On 4-4-1967, the petitioners appeared before the Gram Cutchery, and as the order of that date shows, nominated one Mahesh Mahto as a Panch on their behalf in accordance with Section 57 of the Bihar Panchayat Raj Act, 1947, hereinafter referred to as the "Act", read with Rule 25 of the Bihar Gram Cutchery Rules, 1962, hereinafter referred to as the "Rules". I ought to have stated that on the lodging of the complaint, the Sarpanch asked two Panches named in the order-sheet to make a preliminary enquiry. It was only after the submission of the enquiry report that notices were issued to the petitioners.

2. On 22-4-1967, the complaint was examined. The petitioners were also examined and their statements were recorded. The order-sheet of that date mentions the fact of taking of the statement of the complainant and the statement of the accused first and then mentions that they were asked to amicably settle the matter. The order dated 22-8-1967 of the Gram Cutchery shows that the Sarpanch nominated one Kitku Mahto as the Panch, stating in the order-sheet that the accused had refused to nominate their Panch. No fresh evidence seems to have been taken thereafter and the accused were convicted by order of the Gram Cutchery passed on 29-8-1967. They moved the Sub-divisional Magistrate of Hazaribagh u/s 73 of the Act, but the petition was rejected on the ground of limitation.

3. Two points have been raised on behalf of the petitioners by their learned counsel Mr. Braj Kishore Prasad No. II (i) that Kitku Mahto was nominated a Panch by the Sarpanch in violation of the provisions of Section 57 of the Act, and, (ii) that the trial commenced without complying with the requirements of Section 58 of the Act.

4. Ordinarily, this Court would be reluctant to exercise its power of superintendence under Article 227 of the Constitution when a person aggrieved has failed to avail of the remedy provided in Section 73 of the Act. In this case, the petitioners, as is the view of the Sub-divisional Magistrate, Hazaribagh, did not avail of this remedy in time. On reading Section 73(1) of the Act, however, I am not quite sure whether application has got to be filed within sixty days from the date of the order complained against. What the section requires is that the Sub-divisional Magistrate may, on the application of any party or of his own motion, call for the record from a bench of the Gram Cutchery within sixty days from the date of an order. The time limit imposed by the section seems to be upon the exercise of the power by the Sub-divisional Magistrate, which, according to well known canons of interpretation of statutes, should be held to be directory, and not mandatory. Be that as it may, without expressing any final opinion in that regard, I think, this is a fit case where the order of the Gram Cutchery should be quashed, even though the remedy u/s 73 of the Act was not availed of by the petitioners in time.

5. In several cases decided by this Court it has been pointed that the trial can commence only when a bench of the Gram Cutchery does not succeed in bringing about an amicable settlement u/s 58. In the instant case, this infirmity is there, in that, no attempt was made for bringing about settlement before the commencement of the trial. Moreover, the order as recorded in the order-sheet of 22.4.1967, merely shows that the parties were asked to settle the matter. It does not further indicate that the bench of the Gram Cutchery made endeavour to bring about settlement. Reference in this connection may be made to the decisions of Sahai, J. in (1) Criminal Miscellaneous Case No. 507 of 1963 (Bibi Khatun and another V. Nain Khan) decided on the 14th November, 1963, and in (2) Criminal Miscellaneous Case No. 519 of 1961 (Basawan Singh and another V.

The State and others) decided on the 19th March, 1902.

6. I think, the second contention urged on behalf of the petitioners is sound, as discussed by me above. I do not propose to decide the first question because it is not quite clear from the file of the Gram Cutchery that there was a clear infraction of the provisions of Section 57 of the Act. The order, as recorded on 22.4.1967, shows that the accused had refused to nominate their panch.

7. I may point out one more infirmity as it appears to me in the judgment of the Gram Cutchery. The final order states.

The statements of the complainant and the accused were taken. From the inquiry report, it was proved that the accused persons are in reality guilty u/s 426 and 153 (I.P.C.).

As I have stated above, the statements of the complainant and the accused were taken on 22.4.1967 before making an attempt for bringing about a settlement. On the basis of those statements alone, the conviction could not be based. The statement in the final order of the Gram Cutchery that from the enquiry report it was proved that the accused persons were guilty cannot be supported on the general principles of law in that conviction of a person cannot be based upon an enquiry report, which is not necessarily a report after taking evidence in presence of the accused, or a report for conviction after taking evidence at the trial of the accused. In my opinion, therefore, the order of conviction recorded by the Gram Cutchery against the petitioners is bad on this account also.

8. I do not think that in a petty case like this, it would be expedient to order re-trial of the petitioners. In the result, the application is allowed, the order of the Gram Cutchery is quashed in exercise of the power of this Court under Article 227 of the Constitution and the petitioners are acquitted of the charges levelled against them.