

(1958) 06 MP CK 0005
In the Madhya Pradesh High Court
Case No : Mis. Cr. Case No. 41 of 1957

Jalam Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-06-1958

Acts Referred:

Madhya Bharat Panchayat Vidhan, 1957 — Section 66
Penal Code, 1860 (IPC) — Section 426, 447

Citation : (1959) MPLJ 107

Hon'ble Judges : T.C. Shrivastava, J

Bench : Single Bench

Advocate : Chhazed, for the Appellant; D.N. Dange, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Shrivastava, J.

The Petitioners Jalamsingh, Ramsingh and Sukka were tried by the Nyaya Panchayat Unhel for offences under Sections 426 and 447, Penal Code. They were convicted and sentenced to pay a fine of Rs. 25 each. Their petitions for revision of the order were dismissed by the Additional Sessions Judge, Ujjain. They have therefore come up in revision u/s 439, Code of Criminal Procedure code and Article 227 of the Constitution. In the title to the petition only Jalamsingh has been named as the applicant but the petition purports to be on behalf of all the applicants and has been signed as such by their counsel. The discrepancy however is not material.

The only point that has been pressed in revision before me is that as the Nyaya Panchayat failed to try that the parties may comprise the dispute as required by Section 66 of the Madhya Bharat Panchayat Vidhan, 1957 (hereinafter referred to as "the Act"), the subsequent trial was without jurisdiction. It is argued that the provisions of Section 66 are mandatory and omission to comply with them vitiates the trial.

In support of his contention Shri Chhajed for the applicants relied upon the decision in *Gopi Malah and Others Vs. Mt. Birni*, Interpreting Section 58 of the Bihar Panchayat Rai Act, it was held there that failure to endeavour to effect a compromise between the parties affected the jurisdiction of the Court and "if the Gram Kacheri fails to first endeavour to bring about an amicable settlement, it can have no jurisdiction to proceed to try the case". It may be mentioned that the words "try as far as possible" which occur in Section 66 of the Madhya Bharat Act, do not find place in Section 58 of the Bihar Act. The language of Section 66 of the Madhya Bharat Act is therefore much weaker and the duty imposed upon the Nyaya Panchayat does not appear to be absolute.

The question whether the provisions of a particular enactment are mandatory or directory is generally fraught with difficulty. Section 66 of the Madhya Bharat Act imposes a duty on the Nyaya Panchayat in the interest of the parties before it. As regards the interpretation of enactments imposing such public duties it has been observed by Maxwell in his "Interpretation of Statutes, 10th Edn., page 376 as follows:

But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

Craze on Statute Law (5th Edn., page 242), observes--

This was plainly stated by Lord Campbell in *Liverpool Brough Bank v. Turner* with regard to enactments expressed in merely affirmative language. "No universal rule," said he, "can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with and implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed". In *Howard v. Bodington* Lord Penzance, after citing this dictum of Lord Campbell, added as follows: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject, matter, consider the importance of the provision and the relations of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory.

The object of Section 66 in the Nyaya Panchayat Act is to enable the parties to have the assistance of the Court in case an amicable settlement is likely to be arrived at. No doubt a duty is cast on the Nyaya Panchayat to make their best efforts to induce the parties to come to an amicable settlement but it is also clear that this step has nothing to do with the trial of the case. The Nyaya Panchayat derives jurisdiction over the case from Section 65 of the Act and the provisions of

Section 66 form only a procedural step to be taken by the Nyaya Panchayat before commencing the trial of the case. It does not follow that the step is a condition precedent to the exercise of jurisdiction. At worst, the omission to follow the requirements of Section 66 would only be an irregularity in the exercise of jurisdiction which would not call for interference Under Article 227 of the Constitution.

On the question whether the provisions in a statute are mandatory or directory, I may refer to the decision in *Narayan Rao Vs. The State of Andhra Pradesh*, . In that case the question for decision was, whether the provisions in Sections 173 and 207-A of the Code of Criminal Procedure code were mandatory or directory. These Sections are couched in language which is apparently mandatory. The duties imposed on a Magistrate Under these Sections appear to be obligatory and their Lordships of the Supreme Court held that it was the duty of the Magistrate to see that the provisions aforesaid of the Code have been fully complied with. Even then it was observed as follows:

But we are not prepared to hold that non-compliance with those provisions has, necessarily, the result of vitiating those proceedings and subsequent trial. The word "shall" occurring both in Sub-section (4) of Section 173 and Sub-section (3) of Section 207-A, is not mandatory but only directory, because an omission by a police officer to fully comply with the provisions of Section 173, should not be allowed to have such a far-reaching effect as to render the proceedings including the trial before the Court of Session, wholly ineffective.

In respect of the Panchayat Act, I may say that it would be too much to hold that non-compliance of Section 66 of the Act would vitiate the whole proceedings and render the trial wholly ineffective.

The provisions of Section 66 are intended for the benefit of the parties. The accused allowed the trial to proceed to a conclusion without requesting the Court to exercise its good offices in inducing the parties to come to an amicable settlement. Under these circumstances, they should be deemed to have waived the requirements of that Section.

I hold that non-compliance with the provisions of Section 66 does not affect the subsequent trial and there is no substance in the contention that the conviction should be set aside for that reason.

I may also observe that there is nothing on record to show that the Nyaya Panchayat did not endeavour to effect a compromise. The learned Sessions Judge has drawn a presumption that the Court must have acted in accordance with law and in the absence of an affidavit from the accused it cannot be considered that the provisions were not complied with. In spite of these observations, no affidavit has been filed in these proceedings. It appears that one of the Petitioners, Jalamsingh, is dead. But there are other Petitioners, Ramsingh and Sukka, who could have filed the necessary affidavit. Shri Chhajed for the applicants states that no such affidavit is necessary as there is nothing in the recorded

proceedings of the Nyaya Panchayat to show that any effort for amicable settlement was made. The procedure before the Nyaya Panchayat is governed by rules made u/s 62 of the Act and these rules do not provide for any proceedings to be recorded as in a regular Court. The only requirement is in Rule 88 which provides for recording of the final decision or order alone. It was not therefore necessary for the Nyaya Panchayat to record formal proceedings about everything that they did. It was necessary for the applicants to show affirmatively that there was non-compliance of the provisions of Section 66. They have failed to do this and for this reason also the petition must fail.

In the result, the petition is dismissed.