

(1953) 12 AHC CK 0001

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ No. 160 of 1953

Jaleel Ahmad and others

APPELLANT

Vs

Mansab and others

RESPONDENT

Date of Decision : 01-12-1953

Acts Referred:

Citation : (1954) 24 AWR 107

Hon'ble Judges : Brij Mohan Lall, J

Bench : Single Bench

Advocate : M.A. Kazmi, for the Appellant; Jagnandan Lal for the Opposite-party., for the Respondent

Final Decision : Dismissed

Judgement

Brij Mohan Lall, J.—This is an application under Article 226 of the Constitution. The applicants have been convicted by a Panchayati Adalat u/s 448 and 426 I.P.C.

2. It appears that a clash took place between the applicants and the opposite-parties on 7th March, 1952. A complaint was filed against the applicants by one Nur Ahmad on 17th March 1952. The complaint resulted in their acquittal on 9th January, 1953. The proceedings took place before a Judicial Magistrate.

3. During the pendency of this litigation i.e., on 14th April, 1952 one Mansab Ali filed a complaint in the Panchayat Court against the present applicants. They were convicted on 28th April, 1952. They preferred a revision before the S.D.M. on 11th March, 1952. This revision has been dismissed by the S.D.M. Hence this application.

4. One of the points urged in this Court is that by virtue of the provisions of Section 73(2) of the Panchayat Raj Act the Panchayati Adalat was precluded from taking cognizance of the offence. In Section 73(2) is embodied the principle embodied in Section 403 Cr.P.C. There is no difficulty on this question of law. But coming to the question of fact it may be pointed out that the two complaints did not relate to the same incident. The complaint filed by Nur Ahmad related to an

incident which had taken place in the morning. The complaint which has resulted in the present proceedings related to certain events which took place some time later. Since the two complaints relate to two different incidents Section 73(2) will not apply. Very likely this was the reason why this point was not raised on behalf of the present applicants before the learned S.D.M.

5. Another point urged on behalf of the applicants is that Nur Ahmad who had filed the complaint dated 17th March, 1952 was a member of the Bench constituted by the Sarpanch u/s 49(1) of the Panchayat Raj Act. It may, however, be pointed out that the Ahmad did not take part in the proceedings. In doing so he complied with the requirements of Section 49(3) which requires that no panch or sarpanch shall take part in any case, suit or proceedings to which he or any near relation, employer, employers or partner in business of his is a party or in which any of them may be personally interested. Strictly speaking Nur Ahmad was not personally interested because the two events have been found to be separate from each other. But still to avoid any possible objection Nur Ahmad acted wisely in refraining from sitting on the Bench while this trial was going on. Therefore, no objection can be taken on the ground that Nur Ahmad was a member of the Bench which was constituted by the sarpanch to try the case pending against the applicants.

6. It is next argued that Nur Ahmad was the only panch from the village of the parties and since he did not take part in the proceedings the requirements, of Sec 49(2) were not complied with. This argument also has no force because all that Section 49(2) lays down is that each Bench shall include such panch. It is nowhere laid down that the said panch should actually take part in the proceedings. The Bench consists of five panches and the trial is by virtue of Section 77-A of the Act perfectly valid if not less than three panches take part in the proceedings. In the circumstances it is contemplated by law itself that it is possible for as many as two panches to refrain from taking part in the proceedings. No limitation has been laid down as to who can abstain. In any case it has not been laid down by the statute that the panches belonging to the villages of the parties or any one of them must necessarily take part in the proceedings. In the circumstances I see no force in this point as well. It may also be pointed out that if the applicants had any objection on this score it was their duty to raise an objection under Rule 84(d) of the Panchayat Raj Rules. If they failed to raise the point there they cannot now be allowed to reagitate the point.

7. It is next contended that the applicants remained ignorant of the proceedings pending against them in the Panchayat Court and the entire trial was ex- parte. If the applicants were really unaware of the proceedings pending against them they had their remedy u/s 79(2) of the Panchayat Raj Act. They could apply to have the order of their conviction set aside. I find no force in this argument also.

8. The learned S.D.M. has based the order of dismissal on the ground of limitation also. He was of the opinion that the revision not having been filed within sixty days of the judgment was time barred.

9. It is not necessary for me in these proceedings to decide whether the revision was or was not filed within time before the learned S.D.M. This question is unnecessary for the decision of this application.

10. The application is rejected.