
(1970) 09 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 122 of 1969

Jiwan Prasad

APPELLANT

Vs

Maha Singh and others

RESPONDENT

Date of Decision : 29-09-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 294, 504

Citation : (1976) ILR (MP) 626 : (1971) JLJ 4 : (1971) MPLJ 30

Hon'ble Judges : Bishambhar Dayal, C.J; P.K Tare, J

Bench : Division Bench

Advocate : B.K. Tiwari, for the Appellant; V.S Pandit for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Tare, J.

This is a petition under Articles 226 and 227 of the Constitution of India, by a complainant against the revisional order of the Civil Judge, Class I, Mandla, dated 11-9-1968 (Petitioner's Annexure IV), setting aside the conviction of the first and the second Respondents who had been found guilty of an offence u/s 294 of the Indian Penal Code by the Nyaya Panchayat and had been sentenced to pay a fine of Rs. 30 and Rs. 15 respectively.

The present Petitioner filed a complaint before the Nyaya Panchayat alleging that the said Respondents had committed an offence u/s 504 of the Indian Penal Code. After recording of evidence on different hearings and after giving the accused due opportunity to have their say, the Nyaya Panchayat delivered the judgment. Against that judgment the accused filed a revision before the learned Civil Judge who allowed the same on the ground that there had been contravention of Section 223 of the Madhya Pradesh Panchayats Act, 1962, inasmuch as it was not established that at least three panchas were present on every date of hearing. The learned Judge also expressed the opinion that it was

not proper to look into the register of attendance maintained by the Nyaya Panchayat but, in his opinion, the order sheets would be conclusive of that fact.

We may observe that this approach of the learned Civil Judge was erroneous and illegal. It is true that the order sheets maintained by the Nyaya Panchayat have been signed by the person who wrote them. On most of the hearings, the sarpanch Bhaiyalal was present and he has signed the order sheets. On some of the hearings the sarpanch was not present and, therefore, the senior member of the panchayat, namely, Hirapuri has signed the order sheets. On behalf of the Petitioner a certified copy of the attendance register maintained by the Nyaya Panchayat has been produced in this Court. The certified copy shows that on all the relevant hearings, at least three or more than three panchas were present. The learned Civil Judge, who was the revisional authority, thought that the order sheets themselves would be conclusive of the fact. In fact, if he felt any doubt about the matter, he should have afforded the parties an opportunity to prove the fact that at least three panchas or more than three panchas remained present on every hearing and he should not been guided by the signatures on the order sheets. He should have looked into the fact whether the Nyaya Panchayat maintains an attendance register regarding the different hearings. There are no rules framed in that behalf and it is for the members of the Nyaya Panchayat to evolve their own procedure. In these circumstances it was necessary for the learned Civil Judge to enquire into the fact as to what practice was followed by this particular Nyaya Panchayat about attendance of its members.

In this view of the matter, merely on account of the fact that the order sheets had been signed by the presiding panch only, we are unable to agree with the view of the learned civil Judge, that there was contravention of section 223 of the Madhya Pradesh Panchayats Act, 1962. In our opinion, no conclusion could have been arrived on that insufficient material and an enquiry into that fact was necessary.

We, therefore, allow this petition, quash the order of the learned Civil Judge and direct him to pass a fresh order after holding a proper enquiry and after giving the parties an opportunity to establish or to demolish that fact. We may further observe that he need not confine his order to the preliminary point raised before him but, if necessary, he should also dispose of the revision on merits. In the circumstances of the case, we direct that there shall be no order as to costs. The amount of security deposited by the Petitioner shall be refunded to him.