

(1977) 11 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2410 of 1977

Khazan Singh

APPELLANT

Vs

Sub-Divisional Officer

RESPONDENT

Date of Decision : 14-11-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 409, 95, 95(1)

Citation : (1978) AWC 1

Hon'ble Judges : M.B. Farooqui, J;H.N. Seth, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution, Khazan Singh has challenged the Validity of an order dated 21st April, 1977, passed by the Sub-Divisional Officer, Koil, placing him under suspension.

2. The Petitioner was duly elected as Pradhan of Gaon Sabha Luhara in the year 1972. On the basis of certain information conveyed to the police, the Station Officer of Police Station Lodha started investigating a case u/s 409, IPC, against the Petitioner. He also submitted a report to the Sub-Divisional Officer requesting that during the pendency of the investigation the Petitioner should be placed under suspension. Acting upon the aforesaid report of the Station Officer, the Sub-Divisional Officer, Tide his order dated 21st April, 1977, placed the Petitioner under suspension and appointed the Vikas Khand Adhikari as Enquiry Officer. He further directed that the Vikas Khand Adhikari should complete his enquiry and submit a report within 60 days.

3. A counter-affidavit, sworn on 4th August, 1977, has been filed on behalf of the Respondent on 16th of August, 1977. This affidavit indicates that the Petitioner has been placed under suspension merely because of the request made by the

Station Officer and that no charges have been framed or served upon the Petitioner as yet. It has been averred in the affidavit that the charges will be framed of after receiving report of investigation from the police.

4. The power to place a Pradhan of Gaon Sabha under suspension is contained in Section 95(1)(gg). This section lays down that a Pradhan against whom proceedings under Clause (g) are pending or contemplated or against whom prosecution for an offence, which, in the opinion of the State Government, involves moral turpitude is pending, can be placed under suspension. Second proviso added after Clause (4) to Section 95 then lays down that no action shall be taken under Clause (gg) on the ground that the proceedings under Clause (g) are pending or contemplated, unless the State Government is prima facie satisfied that the ground on which the action is proposed under that clause exist. A perusal of the section shows that a Pradhan can be placed under suspension in following two contingencies:

(1) Where proceedings under Clause (g) are pending or contemplated, and the authority making an order of suspension is prima facie satisfied that the grounds for taking those proceedings exists; and

(2) Where prosecution for an offence, which, in the opinion of the State Government, involves moral turpitude, is pending.

5. There is nothing in the impugned order or in the counter affidavit filed on behalf of the Respondents to indicate that the Sub-Divisional Officer, before making the order of suspension, took care to prima facie satisfy himself that the grounds, on which he was proposing to hold an inquiry under Clause (g) against the Petitioner, existed. As stated earlier, the affidavit indicates that the action was taken and an enquiry officer was appointed merely because the Station Officer had submitted a report that a case u/s 409, IPC was being investigated against the Petitioner. The action of the Respondent suspending the Petitioner, therefore, could not be justified for the first reason enumerated above.

6. The case against the Petitioner is still under investigation and it cannot be said that any prosecution u/s 409, IPC, is at the moment pending against the Petitioner. In the circumstances, the action to suspend the Petitioner could not be taken for the second reason enumerated above, either. The order placing the Petitioner under suspension, therefore, cannot be sustained.

7. In the result, the petition succeeds and allowed and the order dated 21st April, 1977, is quashed. It is, however, made clear that notwithstanding the quashing of the aforesaid order, it will be open to the Respondent to make a fresh order suspending the Petitioner, if necessary, after complying with the provisions of law. The Petitioner is entitled to his costs.