

(1975) 08 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 36 of 1975

Mast Ram

APPELLANT

Vs

The State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 20-08-1975

Acts Referred:

Himachal Pradesh Gram Panchayat Rules, 1971 — Rule 77
Himachal Pradesh Panchayati Raj Act, 1994 — Section 167, 168, 180, 54, 54(2)
Penal Code, 1860 (IPC) — Section 182
Prevention of Food Adulteration Act, 1954 — Section 16(1), 7
Prevention of Food Adulteration Rules, 1955 — Rule 47

Citation : (1975) 4 ILR HP 549

Hon'ble Judges : Chet Ram Tahkur, J

Bench : Single Bench

Advocate : H.S. Thakur, for the Appellant; B. Sita Ram, General, for the Respondent

Judgement

Chet Ram Tahkur, J.—Shri Mast Ram who had been elected as a member of the Gram Panchayat Bhareli, and subsequently elected as President of that Panchayat in the year 1972 has been removed from the office of the Paradhan of the Gram Panchayat by an order, dated 20th June, 1975, passed by the Under Secretary Panchayats, to the Government of Himachal Pradesh. This order has been passed on the ground that Shri Mast Ram was convicted of an offence u/s 16(1)(a) of the Prevention of Food Adulteration Act, by the Sub-Divisional Magistrate, Rampur on 1st of August, 1972 and the offence for which he had been convicted was an offence involving moral turpitude and that a person convicted for an offence involving moral turpitude could not continue as a member of the Gram Panchayat. The learned Counsel for the petitioner has challenged this order of removal as also the other orders which culminated in this removal order.

2. The point that arises for consideration is whether the conviction under the Prevention of Food Adulteration Act amounts to an offence involving moral

turpitude rendering him liable to removal from the office of the Pradhan of the Gram Panchayat.

3. It is a common ground that Shri Mast Ram was convicted u/s 16(1)(a) of the Food Adulteration Act by the Sub- Divisional Magistrate, Rampur, on 1-8-1972 vide his order Annexure F. It was stated that the petitioner who is running a shop at Kingal was found in possession of Baisan, which was meant for sale and which when analysed by the public Analyst was found to contain "ash" and "ash insoluble" in dil H.Q.O. 5% and 2% respectively higher than the minimum prescribed standard. It also contained" 2. 35% grit and was thus adulterated. Section 9(5) of the Himachal Pradesh Panchayati Raj Act (shortly called the Act) mentions the dis-qualifications which shall disentitle a person for standing for election or to continue to be a Pradhan, Up-Pardhan or a Panch. Clause (b) of Sub-section (5) of Section 9 dis-entitles a person convicted of any offence involving moral turpitude for standing for election or to continue to be a Pradhan or Up-Pradhan or a Panch unless a period of five years has elapsed since his conviction. The action has been taken by the State Government i.e. Respondent No. 1 u/s 54(2) of the Act read with Rule 77 of the Himachal Pradesh Gram Panchayat Rules (shortly called the rules).

4. The learned Counsel for the petitioner contends that this purely a technical offence and it does not amount to moral turpitude and he has tried to take the aid of the definition as given in the "Webster's Third New International Dictionary" Vol. II, page 1469 which defines moral turpitude as an act or behaviour that gravely violates the moral sentiment or accepted moral standards of the community ; esp. sexual immorality. He has also placed reliance on a number of authorities.

5. The first such authority is In the matter of Mr. "P" an Advocate AIR 1963 SC 1313 who was found to be guilty of gross negligence in the conduct of the proceedings of a case on behalf of his client. Therefore, it was held that wherever conduct proved against an advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude.

6. Next is Mangali Vs. Chhakki Lal and Others, In his case it was held that the tests which should ordinarily be applied for judging whether a certain offence did or did not involve moral turpitude are: (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general, (2) whether the motive which led to the act was a base one, (3) whether in account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. This authority was followed in Risal Singh v. Chandgi Ram A .I.R. 1966 P&H 393 which is also relied upon by the Id counsel for the petitioner.

7. The further authority relied upon is Durga Singh Vs. The State of Punjab, , in which it had been laid down that the term "moral turpitude" being a vague expression it may have different meaning in different contexts. The term has

generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general. Next authority is Baleshwar Singh Vs. District Magistrate and Collector, Banaras and Others, in which there was a case of conviction u/s 182 Indian Penal Code for making a false report and while holding that conviction for this offence involved moral turpitude, it was observed that the expression "moral turpitude" is not defined anywhere but it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct.

8. On the other hand, learned Adv. General in submitting that this is an anti-social offence with the motive to make money by endangering the lives of the people, has placed reliance on Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, and Ishar Das Vs. The State of Punjab, In the former case the Appellant was charged and convicted for having sold and retained for selling the Nandi Brand scented supari with saccharin and cyclarnate, prohibited artificial sweetener, adulterated supari in contravention of Section 7(i)(ii), Rule 47, of the Prevention of Food Adulteration Act, 1954. The Appellant was sentenced by the trial Court to a fine of Rs. 100/- against which the State as also the Food Inspector filed two separate revisions in the High Court against the leniency shown to the Appellant. The High Court up-holding the conviction enhanced the punishment to that of six months imprisonment and a fine of Rs. 1,000/- and it was against that, that an appeal was filed to the Supreme Court. The appeal was dismissed. The learned Counsel for the Appellant had made a submission for giving the benefit of the Probation of Offender's Act to the Appellant. While repelling this submission of the counsel for the Appellant, their Lordships observed that the kindly application of the probation principle to offences is negated by the imperatives of social defence and improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti-social operation disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither causal provocation nor motive against particular persons but planned profit making from numbers of consumers furnishes the incentive-nor easily humanised by the therapeutic probationary measure. The next case was also the case under the Food Adulteration Act. The trial Magistrate gave the benefit of Probation of Offenders Act keeping in view the age of the offender as 20 years. The High Court on revision issued a notice to the Appellant as to why the sentence should not be enhanced and he was sentenced to a period of six months and a fine of Rs. 1,000/-. While enhancing the sentence, it was observed by the High Court that the offence under the Prevention of Food Adulteration Act was against the public and called for deterrent punishment. On appeal to the Supreme Court although the appeal was allowed and the order was reversed and the order of the Trial Court was restored, yet it observed that adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been

enacted with the aim of eradicating the anti-social evil and for ensuring purity in the articles of food the courts should lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act.

9. From the above what follows is that the expression moral turpitude is not defined anywhere and it means anything contrary to justice, honesty, modesty or good morals and it implies depravity and wickedness of character or disposition and according to Webster's Dictionary meaning it is "an act or behaviour that gravely violates the moral sentiment or accepted moral standards of the community". In the book "Words and Phrases legally defined" Vol. III, 2nd Edition at page 294, by Saunders it has been observed under the heading "moral turpitude" by the Court in Canada "I find very little merit in the applicant's claim that the admitted offences of issuing false cheques and being the operator of worthless cheques are not crimes of moral turpitude. These are acts of baseness in the duties which a man owes to his fellowmen I agree entirely with the American decisions that the word "moral" preceding the word "turpitude", adds nothing to it, it is a pleonasm which has been used only for the sake of emphasis".

10. This word "Moral Turpitude" in Law Lexicon of British India by P. Ramanatha Iyer, 1940 Edition, at page 832 has been defined, as anything done contrary to justice, honesty, principle, or good morals, an act of baseness, vileness, or depravity in the private and social duties, which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Further what constitutes moral turpitude or what will be held such, is not entirely clear. A contract to promote public wrong, short of crime may or may not involve it. If parties intend such wrong, as where they conspire against the public interest while agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude.

11. Further at page 1200 of the book "Corpus Juris Secundum, Vol. LVIII, it is stated, " "moral turpitude" is not a new term but rather, it is a term which is old in the law, and which has been used in the law for centuries. It is a term which has been the subject of many decisions and which has been much defined by the Courts, but its definition does not gain in clarity by prolixity of statement. Further on, it is stated, as a legal term "moral turpitude" is defined as the quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita. The concept of moral turpitude depends to some extent on the state of public morals and is to be determined by the state of public morals and the common sense of the community and since moral turpitude is a term which conforms to and is consonant with, the state of public morals, it never can remain stationary, but it may vary according to the community or the times. Further it has been stated that "moral turpitude" involves the question of intent, and as a general rule unintentional wrong, or an improper act done without unlawful or improper intent, does not carry with it the

germ of moral turpitude. Moral turpitude implies something immoral in itself, regardless of whether it is punishable by law as a crime, since an act may involve moral turpitude even though it is not a crime. It must not merely be mala prohibita, but the act itself must be inherently immoral. It involves an act of inherent baseness in the private, social or public duties which one owes to his fellow man or to society, or to his country, her institutions and her Government, and refers to conduct which is inherently base, vile, or depraved, and contrary to accepted rules of morality.

12. At page 1205 of the aforesaid book, it has been observed that offences against the revenue laws, such as defrauding the Government of taxes imposed, intoxicating liquor, or smuggling, have been held to be crimes involving moral turpitude. Embezzlement, forgery, robbery and swindling are also crimes which denote moral turpitude and as a general rule, all crimes of which fraud is an element are looked on as involving moral turpitude. Thus concealing assets in bankruptcy, obtaining goods on false representations, and other crimes involving fraud are usually regarded as showing moral turpitude.

13. From what has been narrated above, it would appear that any offence which is inherently wrong, base and motivated by selfishness or in which the element of fraud is involved and which shocks the conscience of the public and which is an act committed by a person in his dealings with his fellow men in which he is required to exhibit a good moral standard in his dealings but he does all that with a depraved conscience, intentionally to make money or to enrich himself at the cost of others by endangering their lives, will definitely amount to an offence, invoking moral turpitude even if the offence may not be severely punishable under the law. Therefore, in these circumstances, this act of selling adulterated Baisan, which is an article of food, on the part of the petitioner is a base, vile and a depraved act and which the law has not only prohibited but even the public policy and morals require that the seller should sell or retain for sale or offer for sale pure and un-adulterated article of food so as not to endanger the lives of consumers. Here in the instant case though the adulteration was not in excess quantity so as to endanger the lives of the consumers, yet it is a base and a vile act which necessarily is done with the intention to fetch more money by playing fraud on the consumers for a commodity which in fact it is not what it is made to appear. Therefore, in the circumstances I am of the view that this offence for which he is convicted involves moral turpitude, which u/s 9(5) of the Act amounts to a disqualification for a person to stand for election.

14. Next is the question whether u/s 54(2) the Deputy Commissioner or the State Government can remove a Panch, Up- Pradhan, or Pradhan from his office as such when that conviction which involves moral turpitude had been committed before the elections. To me it appears that this Section 54 will come into play only when the offence for which he could be removed is committed during the continuance of his office as such i.e. after the election and the State Government or the Deputy Commissioner are competent to hold an enquiry if there is a

complaint of any such act on his part for which he could be removed and disqualified for a further period of five years. But if the person stands convicted before his election then in my opinion, this is not a case which falls within the purview of Section 54 of the Act. For such a case the remedy is only by way of election petition as contemplated u/s 167, 168 and 180 of the Act. The last section gives one of the grounds for setting aside the election on the basis that on the date of his election, he was not qualified or was disqualified to be elected. Therefore, in my opinion this order for removal of the petitioner from the office of the Pradhan and the Panch u/s 54 is not valid when he had not been convicted during the tenure of his office, as such. This was a disqualification which rendered him ineligible for election and if he was elected then his removal could only be made by means of an election petition on the ground of his being disqualified to contest the election.

15. In these circumstances, the order Annexure 6 dated 20th June, 1975 whereby he has been removed from the office of the Panch Gram Panchayat Bhareli as also from the office of the Pradhan of the same Gram Panchayat, is hereby struck down as invalid. The parties are left to bear their own costs.