

(1965) 01 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc No. 537 of 1964

Milkhan Singh Khanchand and Another

APPELLANT

Vs

Gram Panchayat, Barana, Tehsil and District Karnal

RESPONDENT

Date of Decision : 11-01-1965

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 23, 51

Citation : AIR 1965 P&H 442 : (1965) CriLJ 1667

Hon'ble Judges : J.S. Bedi, J

Bench : Single Bench

Judgement

(1) The facts giving rise to this petition are that the Gram Panchayat of Village Baran Tahsil and District Karnal took proceedings u/s 23 of the Punjab Gram Panchayat Act on the allegations that the petitioners has made encroachments on the public streets and after hearing the parties the Gram Panchayat on 23rd February, 1963, imposed a fine of Rs. 25/- on each of the pet and further ordered that the recurring fine of Re. 1/- per day should also be recovered from each of the petitioners till the removal of the alleged encroachment. The petitioners went up in revision u/s 51 of the Act which was dismissed by Shri R. N. Puri Magistrate 1st Class Karnal on 31st May against the said order in the Court of the additional Deputy Commissioner Karnal who also after hearing the petitioners upheld the order of the Magistrate.

The petitioners have approached this Court under Article 227 of the Constitution for quashing the said order on various grounds. The two grounds which were urged before me were (1) that a daily fine of Re. 1/- could not be imposed for a breach which was yet to take place in future because to pass such a sentence in anticipation for a future breach would be tantamount to treating the case of a guilty and an innocent person alike, and (2) that the order of the Gram Panchayat was illegal as it imposed daily fine of Representatives. 1 form 19-21963 that is from a date which was earlier than the date on which the order was pronounced. The order could not have retrospective effect as the Gram

Panchayat had not been rules made thereunder. On the first point the learned counsel for the per invited may attention to Suram Singh v, Gram Panchayat has not been invested with any such powers under the Act or the rules made thereunder. On the first point the learned counsel of the petitioners invited my attention to Suram Singh v. Gram Panchayat of Samtana Kalan 65 Pun L R. 417 where it was held that fine could not be imposed for a breach which had yet to taken place in future. To pass a sentence in anticipation for future breach would be tantamount to treating the case of guiltily and an innocent person alike. It was further held that the Gram Panchayat could not u/s 23 of the act at the time of passing an order imposing fine for encroachment direct that if the encroachment was continued the accuse would be liable to pay additional fine per day and passing of such an order was not warranted by law. Similar view is also taken in Naurang Lal v. Gram Panchayat of Village Gujarwas 66 Pun L. R. 28 a decision of a Division Bench consisting of the Chief Justice and Mr. Justice Graver. The Bench held that in spite of section 23 of the Punjab Gram Panchayat Act the Gram Panchayat penalty at the stage of first conviction for the breach and that in such a case course to be adopted by the Panchayat Act the Gram Panchayat had no power to impose a prospective recurring penalty at the stage of first conviction for the breach and that in such a case course to be adopted time to time if the had not removed the encroachment and continue composing on him the recurring fine as it became due to the limit prescribed in the section No authority to the contrary has been cited by the opposite counsel. The impugned order is therefore set aside as far as the recurring fine of Re. 1/- is concerned

(2) The second contention of the petitioners counsel also seems to be correct and is borne out from the mere reading of section 23 of the act which runs as under:--

"23. Penalty for disobedience of a special or general order of the Panchayat:-Any person who disobeys an order of the Gram Panchayat made under the two last proceeding sections shall be liable to a penalty which may extend to twenty five rupees; and if the breach is a continuing breach with a "further penalty which may extend to one rupee for every day after the first during which the breach continues;

Provided that the recurring penalty shall not exceed the sum of rupees five hundred."

The order of the Gram Panchayat was passed on 23rd February, 1963, and therefore, it cannot have retrospective effect from 19th February 1963. The impugned order is set aside to that extent also.

(3) Nothing further was urged by the petitioners counsel. The petition is accepted to the extend indicated above.

(4) Petition allowed.