

(1968) 10 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ. No. 3611 of 1953

Mohammad Amin

APPELLANT

Vs

Sub-Divisional Officer Sadar Sultanpur and others

RESPONDENT

Date of Decision : 07-10-1968

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 89(1)
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 120

Citation : (1968) 38 AWR 802

Hon'ble Judges : M.H. Beg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.H. Beg, J.—The Petitioner alleges that he is a tailor residing in the City of Sultanpur who had some dispute over tailoring charges with a practising lawyer of Sultanpur. He alleges that the Sarpanch of the Nyaya Panchayat of village Mayang is the father of the practising lawyer with whom the Petitioner had the dispute. The Petitioner alleges that a complaint was filed against him by one Ghirrau, Opposite Party No. 3, in the Nyaya Panchayat of Mayang alleging that the Petitioner had been entrusted with a blanket and a Durri when he went to the village and slept there. The Petitioner is alleged to have disappeared in the morning with the blanket and the Durri. In other words, the allegation was that the Petitioner was a casual visitor to the village who disappeared with, some property entrusted to him. The complaint was, however, brought for an offence of theft punishable u/s 379 IPC.

2. The Petitioner also alleges that he was not served personally with the summons fixing the date of hearings. The order sheet of the case in the Nyaya Panchayat shows that a letter was sent by registered post which was returned with an endorsement that the Petitioner had refused to accept it. Consequently, the evidence of the complainant was taken without the attendance of the Petitioner. It is not disputed that the Petitioner resides outside the jurisdiction of

the Nyaya Panchayat of village Mayang. The procedure for service of summons upon persons residing outside the jurisdiction of a Nyaya Panchayat is contained in Rule 120, which runs as follows:

If the person to be summoned by a Nyaya Panchayat in a case resides outside its jurisdiction, the Nyaya Panchayat shall send the summons, by post or otherwise to the Nyaya Panchayat or the Court within whose jurisdiction the person on whom it is to be served resides and such Nyaya Panchayat shall cause it to be served as if it were its own summons and shall return the duplicate to the Nyaya Panchayat concerned.

It is evident that this was not done at the initial stage. But, after the examination of the prosecution witnesses, the Nyaya Panchayat seems to have realised that the summons should have been served through a court as the Petitioner resides in the city of Sultanpur. Consequently, a summons was issued to the Petitioner through the court. This was received by the Petitioner's brother. It appears that the next date fixed was 5-4-1963. The date initially fixed for delivery of judgment on 5-3-1963 was postponed in order that the summons may be served upon the Petitioner. It is, however, clear that the summons was not served personally upon the Petitioner although the Petitioner had knowledge of the service of the summons fixing 5-4-1963 as the date of hearing.

3. The Petitioner's conduct is also not above suspicion. The Petitioner alleges that he realised as soon as the summons was served upon his brother that a complaint was filed at the instance of the practising lawyer who had already threatened him. But, evidently, after having come to know of the date of hearing, the Petitioner avoided going to the Nyaya Panchayat. Instead, the Petitioner filed a transfer application (a copy of which is Annexure A) u/s 85 of the UP Panchayat Raj Act before the Sub-Divisional Magistrate Sadar Sultanpur opp. party No. 1. In this application the Petitioner alleged that there is a danger of his being beaten up by the opp. party or by men hired by the opposite party if he went to attend the case on the date fixed. This shows that the Petitioner not only knew the date of hearing but also knew the "opposite party" meaning thereby Ghirrau. It is apparent that the Petitioner was afraid of going to this village because he knew that Ghirrau was hostile to him although he alleges in this Court that he did not even know Ghirrau from before.

4. It is somewhat surprising that Ghirrau, Opposite Party No. 3, who filed the complaint u/s 379 IPC, so that the Petitioner was fined Rs. 85/- , has not appeared at all to oppose this writ petition although he had been served. Therefore, so far as Ghirrau is concerned, the allegations made by the Petitioner, which have not been controverted, could be deemed to have been admitted. The Petitioner had obtained an order from the Sub-Divisional Magistrate, Opposite Party No. 1, on 29-3-1963, staying proceedings before the Nyaya Panchayat. But, he did not have the courage to go to the village and inform the Nyaya Panchayat of the stay order. It appears that he sent a letter to the Sarpanch of the Nyaya Panchayat which was received by the Sarpanch on 9-4-1963 after the

delivery of the judgment on 5-4-1963. He alleges that he sent another letter on 18-4-1963. This is evident from the counter-affidavit filed in this case by the Sarpanch of the Nyaya Panchayat who opposed the writ petition although Ghirrau opposite party No. 3 has not come forward to oppose it.

5. The Petitioner also filed a revision application in the Court of the Sub-Divisional Magistrate Opposite Party No. 1 on 8-7-1963 which was dismissed by an order dated 17-8-1963 (Annexure B) by the Sub-Divisional Magistrate Opposite Party No. 1. In the order dismissing the revision application, the learned Magistrate has doubted the Petitioner's assertion that he did not know of the order passed by the Nyaya Panchayat before 10-6-1963 when the record was received by the Court of the Sub-Divisional Magistrate. But, the learned Magistrate has not recorded any finding that the Petitioner came to know of the order passed against him on a date beyond 60 days of the filing of the revision application. The Petitioners, therefore, relies on the provisions of Section 89(1) of the UP Panchayat Raj Act which read as follows:

A Sub-Divisional Magistrate, Munsif or Sub-Divisional Officer, according as it is a criminal, civil or revenue case, may either on his own motion or on the application of any party made within 60 days from the date of the order complained of or where personal service of summons had not been effected on the Applicant from the date of the order call for the record of any case which has been decided by a Nyaya Panchayat and if it appears to him that injustice or material irregularity has occurred, he may make such order in the case as he thinks fit.

6. It is clear from the above mentioned provision that the date from which time will run for a revision application is the date of the knowledge of the order complained of in those cases where summons was not personally served upon a party aggrieved. In the present case there was no service of the summons at all initially upon the Petitioner in accordance with Rule 120. At the subsequent stage the service was upon his brother. If the attempt to serve the Petitioner subsequently through the correct procedure amounted to an admission that the previous service was defective the only service which will be relevant for the purposes of determining the period of limitation for revision would be the subsequent service. This subsequent service was not upon the Petitioner personally. Therefore, the Petitioner was entitled to compute the period of limitation from the date of the knowledge of the order. There being no finding of the date of the knowledge of the order by the Petitioner the order of the Sub-Divisional Magistrate rejecting his revision application on 17-8-1963 is, on the face of it, illegal. I, therefore, quash the order passed by the Sub-Divisional Magistrate on 17-8-1963 and direct that the revision application may be heard and disposed of in accordance with, law. I make no order as to costs as the Petitioner himself seems to have been, rather remiss.