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**(1953) 09 AHC CK 0021**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Writ No. 236 of 1953

Mohan Lal and Others

APPELLANT

Vs

The Surpunch, Punchaiti Adalat, Ugaipur and Another

RESPONDENT

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**Date of Decision :** 08-09-1953

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Panchayat Raj Act, 1947 — Section 110, 49(2), 77A(1)

Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 95

**Citation :** AIR 1954 All 159

**Hon'ble Judges :** Desai, J

**Bench :** Single Bench

**Advocate :** Kedar Nath Sinha, for the Appellant; H.L. Kapoor, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Desai, J.—The applicants have been convicted by a Panchayati Adalat under Sections 447 and 426, I.P.C. They apply for the order of the Panchayati Adalat being quashed on three grounds. The first ground is that the bench, which tried the applicants did not include any Panch residing in the area of the Gaon sabha in which the applicants reside. The applicants, as well as the opposite-party, Shrimati Partabi, reside in village Ashrafganj & it is stated in the affidavit that the Bench did not include even one Panch from the Gaon Sabha of Ashrafganj. It is not alleged that the applicants objected to the constitution of the bench when they appeared before it. It is said that they objected to the constitution after their conviction, when they applied to the Sub-divisional Magistrate u/s 85, Panchayat Raj Act. But the order of the Sub-divisional Magistrate dismissing their application makes no reference to any objection that the bench did not include any Panch from the Gaon Sabha of Ashrafganj.

Even if they did raise this question before him, the fact remains that they did not raise it while the case was pending in the Panchayati Adalat. It has been held by a bench of this Court in -- Mohar Singh and Others Vs. State and Another, that

the defect in the constitution of a bench of Panchayati Adalat caused by non-compliance of the provisions of Section 49 (2) of the Act is not a jurisdictional defect and is waived if no objection is raised against it. Therefore when the applicants did not object to the bench that it was improperly constituted, they are estopped from objecting to it now, after their conviction. If there was any irregularity committed in the constitution of the Bench it is waived.

2. The second ground is that the Chairman of the bench did not take part in the proceedings on certain dates. Now there is no provision in the Panchayat Raj Act which expressly makes it obligatory upon the chairman to be present on every date. On the contrary, the effect of Section 77 A (1) is that if any Panch is absent at any hearing the remaining Panches may try the case. A chairman is also Panch and if he happens to be absent the remaining Panches may try the case. There is no reason for holding that the words "any Panch" in the section do not include the chairman, especially when he is one of the Panches and not the Sarpanch.

Shri Kedarnath Sinha relied upon the proviso to the section e.g. "provided, however that at least three Panches, including the chairman, are present." This proviso does not mean that the chairman must be present on every date. If all the five Panches are present, it means that the chairman is also present because without him the number of the Panches present cannot possibly be five. If only three Panches are present, the proviso applies and one of them must be the chairman in order that they may try the case. But if four Panches are present then there is nothing in the proviso to suggest that one of them must be the chairman. The words "including the chairman" govern the preceding words "three Panches". What is meant is that if three Panches are present then the chairman must be one of them; the case of there being four Panches present is not at all dealt with by the proviso. If four Panches are present, they can try the case as permitted by Section 77 A(1) even though the chairman is not one of them. If the Legislature intended the chairman to be present on every date, it would have used some such words as "provided, however, that the chairman and at least two Panches are present". It is not alleged by the applicants that on some dates only three panches were present. The only allegation made is that the chairman was not present on some dates, but that by itself is no irregularity or illegality.

3. The third ground is that the charge or complaint was not explained to the applicants. Though there is an affidavit in support of this allegation, I place no reliance upon it because it is my experience that this allegation is often made frivolously and falsely. Moreover, the defect of not explaining the complaint to the accused in compliance with Rule 95 is one of procedure and not jurisdiction, and cannot justify the issue of certiorari. -- "See Firm Dewan Sugar Mills Vs. The Government of the State of Uttar Pradesh and Others, . If a Panchayati Adalat having jurisdiction over the subject matter and the accused does not follow the correct procedure, that would be no ground for setting aside an order, which was within its jurisdiction to pass, by certiorari. That would not be an error on the face of the record and no certiorari can issue; -- "Vide R v. Northumberland

Compensation Appeal Tribunal" (1952) 1 All ER 122 (C)

4 The application is dismissed.