
(1977) 11 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6920 of 1971

Mst. Budhani and Others

APPELLANT

Vs

Nyaya Panchayat and Others

RESPONDENT

Date of Decision : 15-11-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 506

Citation : (1978) AWC 9

Hon'ble Judges : D.M. Chandrashekhar, C.J;K.N. Seth, J

Bench : Division Bench

Advocate : Virendra Saran, for the Appellant; R.S. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth, J.—The Petitioners have prayed for quashing the orders of the Nyaya Panchayat dated 30th September, 1970, convicting the Petitioners under Sections 323/506 IPC and sentencing them to a fine and further convicting and sentencing them for not attending the Nyaya Panchayat on the date of hearing thereby they committed contempt of the Nyaya Panchayat, and that of the Sub-Divisional Magistrate dated 15-8-1971 dismissing their revision on the ground that it was barred by time.

2. Kharpattu Manjhi, Respondent No. 2, made an application to the Nyaya Panchayat alleging therein that he was a co-sharer with the Petitioners and had half a share in the house which they had reconstructed. It was further asserted that they had sold a tree for Rs. 350/-in which also he had half a share. A half share in the clump of bamboos was also claimed. Kharpattu alleged that when he made demand of his share he was threatened by the Petitioners. He prayed that his half share in the aforesaid properties be given to him. Kharpattu examined witnesses in support of his case. The Nyaya Panchayat convicted and sentenced the Petitioners as mentioned earlier by its order dated 30th September 1970.

3. In the petition it has been alleged that in the summons issued to the Petitioners the nature of the claim or offence was not mentioned and the column meant for those particulars was left blank. This fact is not denied in the counter affidavit. It has further been averred that no notice or summons of any criminal proceeding was ever issued to the Petitioners and the charge or accusation of any offence was never explained to the Petitioners who had no notice of any criminal proceeding against them. A certified copy of the order-sheet has been produced before us. That also does not disclose that the accused were explained the charge or charges made against them and thus there was non-compliance with the provisions of Rule 95 of the Panchayat Raj Rules. The application made by Kharpattu leaves no room for doubt that he had approached the Nyaya Panchayat claiming his half share in the disputed properties. The allegation that the Petitioners had threatened him was made to indicate that the Petitioners were not inclined to grant him his share of the properties. The relief claimed was also with regard to the share in the disputed properties. It did not purport to be a criminal complaint for any offence committed by the Petitioners. Evidence may have been led that the Petitioners beat Respondent Kharpattu "on a particular date but that was not the case before the Nyaya Panchayat and the Petitioners were never made aware of any such case against them. The Nyaya Panchayat was therefore, not justified in convicting the Petitioners u/s 323/506 IPC. As regards the sentence imposed for not attending the Nyaya Panchayat on the date fixed in the case the Nyaya Panchayat had no jurisdiction to punish or award any sentence. Section 87 of the Panchayat Raj Act provides that when a person fails to appear before the Nyaya Panchayat or wilfully disobeys such summons or notice or order, the Nyaya Panchayat may make a complaint to the Magistrate having jurisdiction and the said person shall be punishable with fine of Rs. 25/. The only course open to the Nyaya Panchayat was to make a complaint to the Magistrate concerned. It had no jurisdiction to convict and sentence the Petitioners on that ground. In the order of the Nyaya Panchayat it has been observed that the non-appearance of the Petitioners amounted to contempt of court. We fail to see how the non-appearance of the Petitioners on a particular date amounted to contempt of court. On that score also the order of the Nyaya Panchayat sentencing the Petitioners to a fine of Rs. 5/- each must be held to be illegal and without jurisdiction.

4. As regards the revision before the Sub-Divisional Magistrate the Petitioners alleged that they applied for a copy of the judgment of the Nyaya Panchayat on 4-10-1970 and sent another application through registered cover on 15-10-1970 for the same purpose. No copy of the judgment was supplied to them and they were compelled to make an application to the District Magistrate. It has further been alleged that when they were issued a copy on 14-4-1971 it bore the date of notice of preparation of the copy as 15-2-1971. The allegation of the Petitioner is that there was interpolation and the figure of "2" was altered from figure "3". The Petitioners filed a revision on 15-4-1971 i.e. a day after the receipt of the copy of the order of the Nyaya Panchayat. Along with the revision the Petitioners

filed an application accompanied by an affidavit praying for condonation of delay in filing the revision. The learned Magistrate dismissed the revision on the ground that the delay in filing the revision had not been satisfactorily explained. The order does not indicate that the learned Magistrate applied his mind to the allegations made by the Petitioners in their affidavit accompanying the application for condonation of delay. In the counter affidavit filed in this Court by Respondent No 3 there is no clear denial of the allegations made by the Petitioners. In our opinion the learned Magistrate was not justified in dismissing the revision without applying his mind to the facts set out in the affidavit in support of the application for condonation of delay.

5. Since we have already held that the Nyaya Panchayat acted illegally and without jurisdiction in convicting and sentencing the Petitioners for the various offences alleged to have been committed by the Petitioner, petition must be allowed. We accordingly allow the petition and quash the orders of the Nyaya Panchayat dated 30th September 1970 and that of the Sub-Divisional Magistrate dated 18th August 1971. The fine, if it has already been deposited, shall be refunded to the Petitioners. Parties shall bear their own costs.