
(1970) 01 RAJ CK 0015
In the Rajasthan High Court
Case No : Writ Petition No. 653 of 1967

Nyaya Panchayat Nagar District, Bharatpur	APPELLANT
Vs	
Munsiff Magistrate, Deeg and Others	RESPONDENT

Date of Decision : 07-01-1970

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 49

Citation : AIR 1971 Raj 121 : (1970) RLW 343 : (1970) 3 WLN 1

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Advocate : V.L. Thakur, for the Appellant; G.M. Mehta, for Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kan Singh, J.—The writ petition before me, which has been lodged by the Nyaya Panchayat Nagar, raises a question whether the Nyaya Panchayat could, in a criminal case triable by it, take a bond from the accused for his appearance before it and on his non-appearance subsequent to the execution of the bond forfeit the bond.

2. A criminal case under Sections 323, 304 and 352 of the Indian Penal Code was instituted before the petitioner Nyaya Panchayat by one Dayachand against one Durgalal and others. One Nathulal who was an accused executed a bond for his appearance and the respondent Girraj Prasad stood as surety for his appearance and he executed the surety bond. As Nathulal was absent on the date of hearing, the Nyaya Panchayat called upon both Nathulal and Girraj Prasad to show cause why the amount of the bond be not recovered from them. Both these persons admitted their mistake and the Nyaya Panchayat forfeited the entire amount of the bond and issued notice for its recovery. Nathulal and Girraj Prasad then lodged a revision application before the Munsif-Magistrate, Deeg. The learned Munsif Magistrate accepted the revision and set aside the order of the Nyaya Panchayat holding that it had acted wholly without jurisdiction as there was no

provision in the Rajasthan Panchayat Act (Act No. XXI of 1953) (hereinafter called the Act) enabling the Nyaya Panchayat to take any bond or surety bond for the appearance of an accused before it in a criminal case. As the question was of general importance, I gave notice of the case to the Government Advocate this morning and Shri G. M. Mehta has appeared on behalf of the Government Advocate. I have heard learned counsel for the petitioner and Shri G. M. Mehta on behalf of the Government Advocate. The question falls to be determined in the light of the relevant statutory provisions and it will be convenient to read them.

3. Criminal Procedure Code provides for the various classes of criminal Courts. Section 6 thereof provides that besides the High Courts and the Courts constituted under any law other than the Code for the time being in force, there shall be five classes of Criminal Courts in India, namely: the Courts of Session, Presidency Magistrates, Magistrates of the first class, Magistrates of the second class and Magistrates of the third class. Section 6 therefore clearly recognises that there are criminal Courts other than those specified in the section. The Nyaya Panchayat has been constituted under the Rajasthan Panchayat Act, 1953 and according to Section 28 thereof, criminal jurisdiction has been conferred on it. It is laid down that notwithstanding anything in the Code of Criminal Procedure, 1898 and subject to the provisions of this Act, (the Panchayat Act), Nyaya Pancha-yats shall have jurisdiction concurrent with that; of criminal Courts, within the Nyaya Circle for which it has been constituted for the trial of and shall take cognizance of any offence and abetment of or attempt to commit any offence specified in the first schedule. Section 28 therefore leaves no doubt in my mind that Nyaya Panchayat is a criminal Court of concurrent jurisdiction with the criminal Courts created under the Code of Criminal Procedure. In a case under the U. P. Village Panchayat Act (6 of 1920) the Chief Court of Oudh held in *Badri Nath v. Sheopal* AIR 1939 Oudh 143, that there was nothing in the Village Panchayat Act to indicate that a pancha-yat was in anyway to be regarded as a Court of law. However, the cases of the Allahabad High Court were to the contrary. I may refer to *Kamlapati Panth Vs. Emperor*, and *Basdeo Misra Vs. Badal Misra and Others*. The provisions of the Rajasthan Panchayat Act referred to by me are explicit and the Act had thereby created the Nyaya Panchayat as a criminal Court exercising its jurisdiction concurrently with the regular criminal Courts in the area.

4. Section 5 of the Criminal Procedure Code lays down that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained. This section, therefore, makes the provisions of the Criminal Procedure Code applicable to the trial of all offences under the Indian Penal Code. Section 91 of the Criminal Procedure Code lays down that when any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in that Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court. It is noteworthy that this

section uses the term "Court" and not a Magistrate or a Sessions Judge as such and in the absence of anything more would enable a Panchayat Court to require an accused to execute a bond with or without surety for his appearance before it provided such person has appeared in pursuance of a summons issued by it. Section 514 enacts that whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken or of the Court of a Presidency Magistrate or Magistrate of the first class that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Here also the expression used is "Court" and could cover a Nyaya Panchayat as well. However, when one looks to the provisions of the Panchayat Act itself, one finds that the Code of Criminal Procedure, 1898 has been made inapplicable to any proceeding before a Nyaya Panchayat. Section 49 of the Act reads as under :--

"Section 49. Nyaya Panchayat to ascertain truth -- The provision of the Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1898, the Court-fees Act, 1870, the Indian Evidence Act, 1872, and the Indian Limitation Act, 1908, shall not apply to any proceedings before a Nyaya Panchayat save to the extent provided in this Act or as may be prescribed but the Nyaya Panchayat shall ascertain the facts of every suit or case before it by every lawful means in its power and thereafter make such decree or order as it may deem just. Such decree or order shall contain a brief statement of the reasons thereof."

5. This section therefore clearly implies that the provisions of the Code of Criminal Procedure shall not apply to the proceedings before the Nyaya Panchayat save to the extent provided in the Act itself or as may be prescribed under the Rules. One has therefore to find out if there are any provisions in the Act or the Rules enabling the Nyaya Panchayat to ask for a bond for the appearance of the accused before it or to call upon him to produce a surety and take any bond from the surety. Though the provisions of the Criminal Procedure Code referred to above are explicit, they have to yield before the Rajasthan Panchayat Act which is a special law and having been passed by the Rajasthan Legislative Assembly had received the assent of the President.

6. Complaints are lodged before a Nyaya Panchayat by any person in accordance with Section 45 of the Act-The Nyaya Panchayat may on receipt of the complaint, for reasons to be recorded and after examining the complainant, dismiss the complaint or summon the accused. Section 47 provides that the parties to a case triable by a Nyaya Panchayat shall appear personally before such Nyaya Panchayat, provided that the Nyaya Panchayat if it sees reasons to do so may dispense with the personal attendance of the complainant or the accused and permit him to appear by agent. Section 47 gives the impression that an accused has to appear personally. It will be inconvenient if no arrangement were made for enforcing or ensuring the personal appearance of an accused. Section 52, however, provides that the Nyaya Panchayat may hear and decide a case ex

parte in the absence of the accused if he had been informed of the time and place for hearing. This is a material departure from the provisions of the Criminal Procedure Code which does not provide for ex parte trial in criminal cases. However, it is provided that no sentence shall be imposed by the Nyaya Panchayat on any accused person unless he has appeared either in person or by agent before it and the substance of his statement has been recorded. In other words, even though the Nyaya Panchayat may proceed ex parte in a criminal case, it has to ensure the attendance of the accused when his statement has to be recorded and also at the time the sentence is to be pronounced. Sub-section (3) of Section 52 of the Act lays down that if after the service of summons upon him, an accused person fails to appear either in person or by agent, the Nyaya Panchayat may apply to the Magistrate concerned who may compel the accused to appear in person before the Nyaya Panchayat as if it were the Magistrate trying the case. Sub-section (3) is not happily worded. The pronoun "it" occurring in Sub-section (3) obviously stands for the Nyaya Panchayat. How can a Magistrate ensure the appearance of an accused before another Magistrate is not clear. There is no provision in the Criminal Procedure Code which enables a Magistrate who had not taken cognizance of a case to issue any process against a person for his appearance before another Magistrate. The drafting of this Sub-section (3) is thus not happy. Anyway, the language of Section 49 is quite clear and the application of the Code of Criminal Procedure is ruled out save to the extent provided in this Act or as may be prescribed by the Rules. Section 52, therefore, does not bring in the provisions of the Criminal Procedure Code for the proceedings before the Nyaya Panchayat. The only rules which are relevant are Rules 139, 142, 144 and 147. Rule 139 is for the issuing of summons and the summons has to be in Form XVII. Form XVII appended to the Rules contemplates only the personal appearance of an accused. Rule 142 is for the mode of service of summons. Rule 144 is about the hearing of cases. It lays down that in the trial of a criminal case, the Nyaya Panchayat shall first explain to the accused the charge or charges against him and record his reply and if the accused admits his guilt, he may be convicted and sentenced according to law. Rule 144 is couched in mandatory form and Nyaya Panchayat is obliged to first explain the charge to the accused and record his reply. It passes one's comprehension as to how this could be done unless the attendance of an accused is compelled by some process. There can be nothing ex parte regarding this provision. Rule 147 is about the recording of the statement of the accused and the evidence. The statement of the accused has to be recorded in full and no oath or solemn affirmation has to be administered to him.

7. A perusal of the several provisions of the Panchayat Act and the Rules do not show that having dispensed with the application of the provisions of Criminal Procedure Code, the legislature has provided for the execution of personal bonds by the accused persons before the Nyaya Panchayat for their appearance. In the circumstances, there could be no provision for forfeiture of such bond. Effect has to be given to the provisions of Section 49 of the Panchayat Act and, as the

matter stands, a Nyaya Panchayat in Rajasthan cannot be held empowered to secure any bond or surety bond for the appearance of the accused before it. The order of the Munsif Magistrate setting aside the order forfeiting the bond by the Nyaya Panchayat is, therefore/ correct.

8. The writ petition has no force and is accordingly hereby dismissed. There will be no order as to costs.