
(1983) 03 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6720 of 1975

Ram Pat (deceased) and others

APPELLANT

Vs

The Judicial Magistrate, Ist Class, Rewari and others

RESPONDENT

Date of Decision : 09-03-1983

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 21

Citation : (1983) 03 P&H CK 0087

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : Rajesh Chaudhary, for the Appellant; Gopi Chand for the Respondents Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Kang, J.—On a complaint made by Sheo Sahai and Rura respondent No 3 & 4 Gram Panchayat Turkiawas issued a notice to Ram Pat and Shadi Ram petitioners, which reads as under:--

Today the 27th July. 1974 an application has been presented to the Panchayat in an open gathering. The applicant should come present on 8.8.1974 Notice to the accused under sections 21/447 may be given to be present on 8.8.1974

Ram Pat and Shadi Ram appeared before the Gram Panchayat. The complainants examined Roop Ram, Jagan and Ghisa besides appearing themselves These witnesses claimed that Ram Pat and Shadi Ram had made an unauthorised obstruction on the public thoroughfare by placing stones etc The accused-petitioners claimed that the site in dispute belonged to them. They produced Prabhu and Lala as their witnesses and made their own statements. The Gram Panchayat accepted the evidence of the complainants and did not believe the witnesses produced by the petitioners and came to the conclusion that the accused-petitioners were guilty. It was ordered:--

.....So the Panchayat unanimously convict and impose a fine of Rs. 10/ by way of

punishment and order the respondents (now petitioners) to remove the Roras within a week's time, otherwise the Panchayat itself would get them removed and costs of removal will be recovered from party No 2.

Dissatisfied with this order the petitioners filed a revision petition. The same was dismissed by the Judicial Magistrate Ist Class, Rewari, vide order dated 20th August, 1975 (Annexure P5) Aggrieved by these two orders, Ram Pat and Shadi Ram have filed the present petition

2. Mr. Rajesh Chaudhary, learned counsel for the petitioners, has argued that the Gram Panchayat has not followed the procedure prescribed by Sections 21 and 23 of the Punjab Gram Panchayat Act, 1952, as applicable to Haryana (hereinafter referred to as "the Act"). After receiving the complaint the Gram Panchayat had to form an opinion regarding the existence of the obstruction. If they were so satisfied, then they had to make a conditional order, requiring the petitioners to remove the encroachment within a specific time. Thereafter, if the petitioners did not comply with the order and showed cause against the order of the Gram Panchayat, then the Gram Panchayat had to record the evidence and to take a decision thereon as to whether the petitioners had been able to show any cause. If they were not satisfied with the cause shown by the petitioners, then they had to make the order absolute and if that order had not been obeyed by the accused-petitioners, only then a penalty could be imposed. It will be appropriate to notice the provisions of Section 21(i) (a) (i) & (2) and Section 23 of the Act, which are relevant for our purpose:--

21. Power to require removal of encroachments, and nuisance: (1) A Gram Panchayat either suo motu or on receiving a report or other information and on taking such evidence, if any, as it thinks fit, may make a conditional order requiring within a time to be fixed in the order:--

(a) the owner or the occupier of any building or land --

(i) to remove any encroachment on a public street, place or drain;

XXX XXX XXX XXX

XXX XXX XXX XXX

Or if he objects so to do, to appear before it, at a time and place to be fixed by the order, and to move to have the order set aside or modified in the manner hereinafter provided. If he does not perform such action appear and show cause, the order shall be made absolute. If he appears and shows cause against the order the Gram Panchayat shall take evidence and if it is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case. If it is not so satisfied the order shall be made absolute

(2) If such act is not performed within the time fixed, the Gram Panchayat may cause it to be performed and may recover the costs of performing it from such person.

23 Penalty for disobedience of a special or general order of the Panchayati--Any person who disobeys an order of the Gram Panchayat made under the two last preceding sections shall be liable to a penalty which may extend to fifty rupees; and if the breach is a continuing breach, with a further penalty which may extend to five rupees 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.

3. A perusal of the two sections leaves no doubt that the Gram Panchayat had first to make a conditional order requiring the present petitioners to remove the encroachments within a fixed time. This has not been done. Thereafter, if the Gram Panchayat was not satisfied with the cause shown by the petitioners (which in this case was not), it had to make the conditional order final. Since in this case no conditional order was made, so this provision could not be complied with and the order could not be made final. After this order is made final and the delinquent did not comply with the order, only then a penalty could be imposed. Since in this case no conditional order was passed, the order passed by the Gram Panchayat is wholly illegal and the order passed by the learned Judicial Magistrate is also unsustainable.

4. There is another aspect of the case highlighted by Shri Chaudhary. It is apparent from the notice issued to the petitioners that the Gram Panchayat had summoned them as accused u/s 447, Indian Penal Code, also. Ram Pat was a public servant because he was serving in the Post & Telegraphs Department. u/s 42 of the Act the Gram Panchayat could not take cognizance of an offence u/s 447, Indian Penal Code, against him. The conclusions of the learned Judicial Magistrate that no action has been taken u/s 447, Indian Penal Code, are against the record. Notice u/s 447, Indian Penal Code, was issued to the petitioners. The petitioners have been described as accused. The punishment has been described as a conviction and the petitioners have been imposed a fine. u/s 23 of the Act only a penalty could be imposed and not a fine. So the sentence of fine could be only u/s 447, Indian Penal Code.

5. For the foregoing reasons, I hold that the order of the Gram Panchayat is wholly against law and is liable to be set aside. Therefore, I allow this petition and quash the orders dated 13th October, 1974, passed by the Gram Panchayat, and 20th August, 1975, of the learned Judicial Magistrate. No costs.