
(1992) 01 GUJ CK 0006
In the Gujarat High Court

Ramjibhai Morarbhai Patel

APPELLANT

Vs

Additional Development Commissioner and Another

RESPONDENT

Date of Decision : 07-01-1992

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 417(3)
Gujarat Panchayats Act, 1961 — Section 51(1), 51(1), 51(3)

Citation : (1993) 2 GLR 1713 : (1992) 2 GLR 1204

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—The petitioner in Special Civil Application No. 412 of 1991 is Ramjibhai M. Patel, Sarpanch of Manud Gram Panchayat, Patan Taluka of Mehsana District. The petitioner in Special Civil Application No. 413 of 1991 is Shankarbhai N. Patel who is Upa-Sarpanch of said Gram Panchayat.

2. Both these petitions are directed against the order of suspension passed by the District Development Officer, Mehsana-the second respondent herein on 12-10-1987 u/s 51(1) of the Gujarat Panchayats Act, 1961 (hereinafter referred to as "the said Act"). The said order of suspension was challenged by the petitioner in each petition by preferring appeal to the Additional Development Commissioner-the respondent No. 1 herein u/s 51(3) of the said Act and said order of suspension is confirmed by the appellate authority by judgment and order, dated 29-12-1990.

3. Being aggrieved by the order passed by the Additional Development Commissioner on 29-12-1990 confirming the order of the D.D.O., dated 12-10-1987, the petitioners have moved this Court under Article 227 of the Constitution of India.

4. Few facts giving rise to the present proceedings are required to be stated hereunder:

(i) The petitioners in these petitions are duly elected Sarpanch and Upa-Sarpanch of Manud Gram Panchayat. One Khodabhai Shankarbhai Patel who was Presiding Officer in the election of Taluka Panchayat filed a criminal complaint before the Police on 20-1-1987, inter alia, alleging that the Sarpanch of the village and crowd of more than 100 persons have committed offences punishable under Sections 171(F), 511, 146, 353 & 506 of Indian Penal Code. In the said F.I.R. it was alleged by the complainant that while he was in-charge of election booth of election of Patan Taluka Panchayat at village Manud at 3.45 p.m. one woman presented herself and applied for ballot paper. At that time it was found that on her finger just immediate to the left thumb there was a mark indicating that she had exercised her vote, and thereupon the complainant and other officer who was supervising the election stated to the said woman that to exercise vote in the name of other person was an offence and when she has already exercised her right to vote, she should say the truth. The woman insisted that she has not exercised right to vote at that election and upon verification it was found that she had already exercised her right to vote and had also cast her vote and she thereupon admitted that she had already exercised her right to vote. Thereupon the ballot paper which was issued to her was taken back from her. It was at this juncture, that the Sarpanch of Manud Gram Panchayat came to the polling booth and threatened the complainant (Polling officer) and forcibly caused the escape of said woman from the polling booth. He, thereafter took Babubhai Patel a candidate at the said election out of the polling booth and at that time crowd of more than 100 persons committed assault. Accordingly, the said polling officer filed F.I.R. on that very day before P.S.I., Patan. It appears that the P.S.I., Patan had, thereafter, undertaken investigation in said Cr. Reg. No. 12 of 1987 and he had submitted his report to the D.D.O., Mehsana-second respondent herein on 20-2-1987. By the said report the P.S.I., Patan had reported to the D.D.O., Mehsana that the Sarpanch and Upa-Sarpanch of Mahud Gram Panchayat were involved in Cr. Reg. No. 12 of 1987 for offences punishable under Sections 147, 353, 171(F), 332, 506(2), 511 and 379 of Indian Penal Code read with Sections. 28 and 29 of Gujarat Panchayats Act, 1961. He further reported that one woman, namely, Rasilaben Nitinkumar Patel tried to cast bogus vote and she was actually caught while attempting to practise impersonation. At that time, Sarpanch and Upa-Sarpanch of Manud Gram Panchayat formed unlawful assembly and committed attack on polling booth and even caused injuries to the employees who were in-charge of election work. He further reported that the Presiding Officer, Khodabhai Shankarbhai Patel thereupon filed complaint which was numbered as Cr. Reg. No. 12 of 1987 and pursuant to said complaint Sarpanch and Upa-Sarpanch of Manud Gram Panchayat were arrested on 6-2-1987 and were produced before Judicial Magistrate, 1st Class at Patan.

(ii) It appears that based on the said report received from P.S.I., Patan Police Station, the D.D.O., Mehsana-second respondent herein issued notice to show cause to the petitioner in each petition on 10th June, 1987 calling upon the petitioners to show cause as to why action u/s 51(1) should not be taken against

them. Section 51 of the said Act is reproduced hereunder

51 (I) The District Development Officer may suspend from office the Sarpanch or Upa-Sarpanch of a Gram Panchayat or as the case may be, the Chairman or Vice-Chairman of a Nagar Panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted (or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the Panchayat u/s 23 or who has been detained under any law relating to preventive detention for the time being in force).

(2) Where any Sarpanch, Upa-Sarpanch, Chairman or Vice-Chairman has been suspended under Sub-section (1), another member of Gram Panchayat or as the case may be, Nagar Panchayat shall, subject to the conditions to which the election of the Sarpanch, Upa-Sarpanch, Chairman or, as the case may be, Vice-Chairman suspended was subject be elected to perform all the duties and exercise all the powers of a Sarpanch, Upa-Sarpanch, Chairman or Vice-Chairman during the period or which such suspension continues.

(3) An appeal shall lie against an order passed under Sub-section (1) to the State Government. Such appeal shall be made within a period of thirty days from the date of the order.

It is clear from the language of Section 51(1) that it gives power to D.D.O. to suspend from the office of Sarpanch or Upa-Sarpanch of a Gram Panchayat a person against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted. Section 51, undoubtedly, confers power on D.D.O. to suspend from office the Sarpanch or Upa-Sarpanch. Conditions precedent for exercise of power are that such Sarpanch or Upa-Sarpanch must be a person (i) against whom any criminal proceedings have been instituted and (ii) such criminal proceedings must be in respect of offences involving moral turpitude. If these two conditions are satisfied, the power to suspend from the office the Sarpanch or Upa-Sarpanch can be exercised.

(iii) Since the F.I.R. was filed and since offence was registered under Cr. Reg. No. 12 of 1987 at Patan Police Station the D.D.O., Mehsana in the present case proceeded to issue show cause notice and after providing opportunity of being heard to the petitioners and also providing opportunity of tendering their explanation he proceeded to pass the order suspending the petitioner in each petition by order, dated 12-10-1987.

(iv) Being aggrieved by the said order the petitioner in each petition preferred appeal u/s 51(3) to Addl. Development Commissioner who has confirmed the order by judgment and order, dated 29-12-1990, and said order of the Addl. Development Commissioner is the subject-matter of challenge in these petitions.

5. Mr. Kalpesh Section Zaveri, learned Counsel for petitioners has challenged the order of the D.D.O. respondent No. 2 herein as well as the order of the Addl.

Development Commissioner by making following submissions:

(a) The condition precedent for exercising of power u/s 51(1) of the said Act was absent in the present case inasmuch as no criminal proceeding was instituted against the petitioner because mere filing of F.I.R. or lodging of complaint before the Police is not equivalent to institution of criminal proceeding, and therefore, one of the two conditions precedent for exercise of power was not satisfied, and hence, the order of the D.D.O. was without jurisdiction.

(b) The second condition precedent for exercising power was also not satisfied inasmuch as offences for which the F.I.R. was filed against the petitioners were not offences involving moral turpitude, and therefore, the D.D.O. was not justified in taking action u/s 51(1) of the said Act.

6. Mr. Zaveri further submitted that there is a clear distinction among investigation of an offence, institution of a criminal prosecution and trial of offence. He has submitted that on a criminal complaint being filed by the complainant, the criminal law is set into motion and on such complaint being filed those who are in-charge of maintenance of law and order start investigation into the complaint. After the investigation is over, the Police Officer who has investigated into the offences would file a charge-sheet in the competent Criminal Court, and the Court would take cognizance of offences only when the charge-sheet is filed. He further submits that till the charge-sheet is filed in the competent Court and till the cognizance of the offence is taken by the competent Criminal Court, there is no institution of criminal proceedings, and therefore, there is no scope for exercise of power u/s 51(1) of the said Act. He submits that the power to suspend an elected member of a local self-Govt. body is a very drastic power and the legislature has advisedly circumscribed this power by employing the phrase "against whom any criminal proceedings have been instituted", which phrase, in his submission, would mean institution of criminal proceeding in which cognizance of offence is taken by the competent Criminal Court on the charge-sheet being filed. This is a condition precedent to the exercise of power u/s 51(1) of the said Act, submitted Mr. Zaveri.

7. Mr. Mohit Shah, learned Advocate for respondent No. 2 and Mr. R.P. Solanki, learned A.G.P. for first respondent have on the other hand submitted that the law on the subject is well settled by the two decisions of this Court in the case of Patel Bhogilal Manordas Vs. The Development Commissioner of Gujarat State and Another, and Thakorebhai Bhagabhai v. District Development Officer, Swat, reported in (1980) 21 GLR 966. They submitted that the provisions of Section 51(1) are duly construed by the two learned single Judges of this Court in the aforesaid two decisions and applying the ratio decidendi of the said cases the D.D.O. has exercised the power to suspend the petitioner in each case and the Additional Development Commissioner had confirmed the said order while exercising appellate power u/s 51(3) of the Act, and therefore, no interference of this Court is called for under Article 227 of the Constitution of India, more so, when no jurisdictional error is pointed out by the petitioners. It may be noted

that reference is made to the decision of the Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, to impress upon the Court that this Court should not interfere under Article 227 of the Constitution of India when the inferior Court or the Tribunal has functioned within the limits of its authority solely with a view to correct the error of law or fact apparent on the face of record. They further submitted that the D.D.O. has not acted solely on the basis of F.I.R. but he has waited till the investigation was practically over. The D.D.O. has also waited till the report was received from the P.S.I, and even thereafter after issuing notice and giving opportunity to the petitioners to show cause against their suspension the order of suspension is passed as back as 12th October, 1987 while the F.I.R. was filed on 20-1-1987. He has further submitted that in the facts and circumstances the discretion exercised by the D.D.O. is rightly and appropriately exercised especially when the offences in which the petitioners are involved are reprehensible and when the acts attributed to the petitioners virtually amounted to interfering with the democratic process of election by the duly elected representative such as Sarpanch and or Upa-Sarpanch of the Gram Panchayat. He has further submitted that while referring to various decisions which were not dealing with the identical provision it would not be just and proper for the Court to construe the phraseology employed u/s 51(1) of the said Act, especially when the two learned single Judges of this Court have taken a view which has been constantly followed till date by this Court as well as by the officers in the State. He has further submitted that possibility of abuse of power in the given case should not be accepted as ground to read down the language employed in Section 51(1) of the said Act or to give limited meaning to the phrase employed in Sub-section (1) of Section 51 of the said Act. He has, therefore, submitted that these petitions should be dismissed.

8. Mr. K.S. Zaveri, learned Counsel for petitioners has submitted that Section 51(1) empowers the D.D.O. to suspend the Sarpanch or Upa-Sarpanch from the office if against him any criminal proceedings in respect of offences has been instituted. In his submission criminal proceedings can be said to have been instituted only when the charge-sheet is filed in the competent Court which can take cognizance of the offence. In support of this submission the learned Counsel for petitioners has referred to following judgments, namely, (i) Rasulbaksh, S/o. Motan Jat v. Emperor, reported in AIR (31) 1944 103, (ii) Emperor v. Karsan Jesang and Ors., reported in AIR (28) 1941 Bom414, (iii) Parbhu Dusadh and Others Vs. Emperor, , and (iv) Jamuna Singh and Others Vs. Bhadaï Sah, .

9. In the case of Jamuna Singh (supra) the Supreme Court was called upon to decide the question as to whether the High Court was justified in entertaining appeal u/s 417(3) of the Code of Criminal Procedure. One Bhadaï Shah filed complaint in the Court of the Sub-Divisional Magistrate. The Magistrate after examining him on solemn affirmation made an order asking Sub-Inspector of Police to institute a case and report. Ultimately a charge-sheet was submitted by the Police and the accused persons were committed to the Court of Sessions. They were acquitted by Sessions Court and appeal against acquittal was allowed

by the High Court. It was contended before the Supreme Court that no appeal lay to the High Court against an order of acquittal u/s 4173) of the Code. Said provision was introduced by the Amending Act giving a complainant a right of appeal against acquittal where a case is instituted upon a complaint. It was contended that in this case it was not instituted on any complaint but was instituted on a police report. While rejecting the said submission the Supreme Court observed as under:

The Code does not contain any definition of the words "institution of a case". It is clear however and indeed not disputed that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. Section 190(1) of the Code of Criminal Procedure contains the provision for cognizance of offences by Magistrates. It provides for three ways in which such cognizance can be taken. The first is on receiving a complaint of facts which constitute such offence; the second is on a report in writing of such facts-that is, facts constituting the offence-made by any Police Officer; the third is upon information received from any person other than a Police Officer or upon the Magistrate's own knowledge or suspicion that such offence has been committed. Section 193 provides for cognizance of offences being taken by Courts of Sessions on commitment to it by a Magistrate duly empowered in that behalf. Section 194 provides for cognizance being taken by High Court of offences upon a commitment made to it in the manner provided in the Code.

An examination of these provisions makes it clear that when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constitute such offence as a case is instituted in the Magistrate's Court and such a case is one instituted on a complaint Again, when a Magistrate takes cognizance of any offence upon a report in writing of such facts made by any Police Officer it is a case instituted in the Magistrate's Court on a Police report.

10. The aforesaid observations are made in the context of criminal trial. Whether appeal against acquittal was competent at the instance of a complainant was the question. The observations made in such context cannot be pressed into service to decide the question as to when criminal proceedings can be said to be instituted in the context of provision of a Statute dealing with local self-Govt. bodies.

11. It may be noted that the said decisions arise from proceedings pending in Criminal Court. In connection with such proceedings questions have arisen in the aforesaid decisions. It is the settled principle of criminal jurisprudence that the criminal law may be set in motion by giving information to the police of a cognizable offence. However, proceedings can be said to have been instituted within the language of criminal law when actually criminal proceedings are instituted in the Court of law and not otherwise. This very meaning should not be given to the words "criminal proceedings" when they are used in Statutes like Gujarat Panchayats Act, 1961, Gujarat Municipalities Act, 1963 or other Statutes dealing with local self-Govt. The Legislature has advisedly not circumscribed the

words "criminal proceedings" by use of the words "in the Court". This omission is deliberate and purposive.

12. In the case of Karsan Jesang (supra) the Division Bench of Bombay High Court was concerned with conviction of the accused person u/s 211 of Penal Code by the 1st Class Magistrate. The contention before the Bombay High Court was that a case u/s 211 of Penal Code was triable by a Court of Sessions and not by 1st. Class Magistrate. It appears that the accused made false charge to the Police that certain persons had been guilty of dacoity. The Police enquired into the matter, and came to the conclusion that the charge was false, and they, therefore, obtained "B" summary, and the accused was thereafter prosecuted u/s 211 of the Penal Code. Section 211 of Penal Code is divided into two p Articles The first part deals with institution of any criminal proceedings against a person or falsely charging any person for having committed an offence. The requirements, therefore, are that there should be institution of criminal proceedings and the charge made must be a false charge. Second part of Section 211 provides that if such criminal proceedings is instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, the offence shall be punishable more heavily. Since dacoity was punishable with transportation for life or imprisonment upto ten years, the case before the Bombay High Court fell within second part of Section 211 of Penal Code. However, the Division Bench held that in order to bring the case within the second part of Section 211 criminal proceedings must be instituted in a Court on a false charge. Therefore, unless proceedings are instituted in a Court of law the Court held that "the criminal proceedings cannot be said to have been instituted". These observations made by the Division Bench of the Bombay High Court are made in the context of the order of conviction passed against accused person in a criminal trial when the question was as to whether the offence was triable by the 1st Class Magistrate or by the Court of Sessions. These observations made in the context of a criminal trial cannot be pressed into service while interpreting a provision in the statute which does not deal with the commencement or otherwise of a criminal proceeding.

13. Similarly, in the case of Ghulam Nabi (supra) the Division Bench of Patna High Court was dealing with the meaning of the word "proceedings" within the meaning of Section 29 of Arms Act, 1878. The accused before the Patna High Court were convicted by the City Magistrate of Patna for offence under Sections 19(a) and 19(f) of Arms Act, but they were acquitted in appeal by the Sessions Judge of Patna. Question before the Division Bench of Patna High Court was as to whether actions taken by the Police during the course of investigation against the accused can be said to be a "proceeding" pending in a Court of competent jurisdiction. It was in this connection that the Division Bench of the Patna High Court observed that the proceedings in Section 29 of Arms Act, 1878 would mean legal proceeding in Court and not searches, investigations or arrests made by the Police in exercise of powers conferred upon them by Criminal Procedure Code or any other law. These observations also shall have to be read in the

context in which they were made. It was in the context of criminal proceeding actually commenced against the accused persons that the Court was required to examine as to whether steps taken by the Police during investigation can be said to be institution of criminal proceedings. It was in that context that the Court observed that institution of criminal proceedings would mean institution of actual legal proceeding in the Court of law.

14. Similar observations of the Division Bench of Sind High Court in the case of Rasulbaksh (supra) are also required to be read in the content of the facts and circumstances, and more particularly, keeping in mind the fact that the Court was concerned with criminal trial inconnection with the provisions of Arms Act, 1878. While interpreting the word "proceedings" in Section 29 of Arms Act, the Division Bench held that the "proceedings" would mean legal proceedings in a Criminal Court and further held that such proceedings can be said to have been instituted when a Magistrate takes cognizance of this offence.

15. In my opinion, the aforesaid four decisions cannot be projected in the process of interpretation of a provision in a statute dealing with local self-Govt. bodies, more so, when the provision is made to empower the authority to take action of suspending the person against whom criminal proceeding is instituted. The use of phrase "against whom criminal proceedings have been instituted" is an apposite and purposive. The Legislature has not advisedly circumscribed or restricted the Clause "against whom criminal proceedings have been instituted" by further words "in a Court of law". This omission is deliberate and purposive. It is not the function of this Court to re-write the provision or to read something more in a provision which is not there. Such an exercise would denude the provision of its statutory object of achieving suspension of a Sarpanch or Upa-Sarpanch of Panchayat against whom criminal proceeding is instituted. It is true that in all cases of setting in motion of criminal law by F.I.R. by a complainant or informant without anything more may not justify the authority to take drastic step of suspension. However, when coupled with the F.I.R. there is report of Police informing the authority about the involvement of person concerned in the offence it will be open to the authority to satisfy itself independently as to whether it should take action against the person concerned. No hard and fast rule can be laid down for the exercise of power u/s 51(1) of the said Act. In my opinion, it is for the competent authority to decide on the facts and circumstances of the case before it as to whether criminal proceedings can be said to have been initiated against the person concerned.

16. In the facts and circumstances of each case the competent authority has to decide for itself as to whether exercise of such power is called for. For instance, when Sarpanch or Upa-Sarpanch is caught red-handed while committing serious offence involving moral turpitude and when prima facie his involvement is established the situation demands that action should be taken against him so as to keep him away from his office. It should be noted that very faith and confidence of electorate will be shaken if such a person, even though elected by

them is permitted to hold such office when he is under clouds. Under our system the electorate has no power to recall their elected nominee for such a misdemeanor. In absence of such power in the electorate, responsible highly placed office is empowered to take action in appropriate cases. Every case does not call for drastic action. Mere involvement of Sarpanch or Upa-Sarpanch in petty offence not involving moral turpitude may not justify action under this section. However, to insist that unless a regular charge-sheet is filed in a competent Criminal Court and unless cognizance of the offence is taken by the Court no action u/s 51(1) can be taken is to denude the provision of its salutary effect and to render it nugatory and otiose. Take for instance, a case where Sarpanch or Upa-Sarpanch is involved in the offence of murder or grievous hurt or dacoity or rape and he is caught on the spot while committing offence, is it not necessary to take action? Should the authority wait till entire investigation is over and charge-sheet is filed in Criminal Court, which process very often takes time of more than six to ten months? Very often reports of chemical analyser, ballistic expert, hand-writing expert, etc., are delayed by months and sometime by years. Very often the co-accused or some important link of investigation is either missing, not available or is absconding which delays not only investigation but actual filing of charge-sheet. Large number of reasons are known to the Courts of law in India which delay investigation and consequent filing of charge-sheet. Very often, the charge-sheet is filed after several months and at times after years from the date of the offence. In all such cases, despite primary material with the authority indicating involvement of the concerned person in the offence, no action can be taken against him, if interpretation canvassed by Mr. Zaveri is accepted. Such a person would brazen-facedly continue to hold office despite his involvement in the offence of moral turpitude because the investigation is delayed or caused to be delayed and no charge-sheet is filed. Such cannot be and is not the Legislative intendment. The Legislature never wanted to make provision which does not operate. If the interpretation canvassed by Mr. Zaveri is accepted, in large number of cases no action can be taken against Sarpanch or Upa-Sarpanch till actual charge-sheet is filed despite his involvement in the offence of moral turpitude. It is true that in the present day politics possibility of institution of false or frivolous complaint against elected member by political rivals cannot be ruled out. But as stated by me each and every complaint without further scrutiny by the competent authority may not entail the consequence of suspension. The power is vested in the District Development Officer who is the highest administrative officer in the set-up of Panchayat Raj. He is expected to exercise his power judiciously and conscientiously on consideration of all relevant and germane factors. The Legislature has not made his decision final and has provided appeal under Sub-section (3) of Section 51. There is therefore no scope of misuse of power. It can be said that the Legislature has taken sufficient care to provide against possible misuse of power.

17. The aforesaid submission of Mr. Zaveri, learned Counsel for petitioners also cannot be accepted for the simple reason that the two learned single Judges of

this Court have in two different decisions in context of this very provision have given very wider meaning to the phrase "against whom criminal proceedings have been instituted". In the case of Patel Bhogilal Manordas Vs. The Development Commissioner of Gujarat State and Another, Justice S.H. Sheth was called upon to decide identical question in the context of Section 51 of the said Act. Before the learned single Judge the Sarpanch of Panchayat was involved in the offences punishable under Sections 447, 504, 506, 114 and 427 of I.P. Code and also u/s 161 of Gujarat Panchayats Act, 1961. The F.I.R. was lodged against the Sarpanch before P.S.I., Chanasma. An application was made thereafter to the D.D.O. to take action against the Sarpanch u/s 51(1) of the said Act. The D.D.O. held necessary enquiry and thereafter suspended the petitioner from the post of Sarpanch of Gram Panchayat on the ground that he was involved in criminal proceedings. It was contended before the learned single Judge that the lodging of F.I.R. with Police does not amount to "institution of criminal proceedings". While dealing with this submission the Court observed as under:

Now the question whether the information lodged with the Police amounts to institution of criminal proceedings is not difficult to answer. If the legislature had meant by criminal proceedings in a Court of law or judicial proceedings in a Criminal Court of law it would have unmistakably said so. The legislature had not used that language in Sub-section 0) of Section 51. The legislature had used the expression "any criminal proceedings" which admits of a very wide connotation... Proceedings can be before a Court of law or before a Police Officer who is competent to entertain them. If such proceedings, whether before a Court of law or before a Police officer are criminal in nature, then their institution enables the District Development Officer to suspend, inter alia, a Sarpanch from his office provided they are in respect of an offence or offences involving moral turpitude. In my opinion, the expression "any criminal proceedings" is wide enough to include within its sweep proceedings before a Police Officer in the shape of information of an offence lodged with him.

It is clear from the aforesaid observation that as back as 1976 this Court has taken the view that the words "any criminal proceedings" shall have to be given a very wide meaning so as to include not only the proceedings before the Court of law, but even a stage of investigation before the Police Officer. Similar contention was raised before Justice B.K. Mehta in the case of Thakorebhai Bhagabhai v. D.D.O., Surat, reported in (1980) 21 GLR 966. The learned single Judge in the said case took the view that the office-bearer of Panchayat can be suspended, if he is charged with the offence. The institution of "criminal proceeding" was itself given widest possible meaning so as to equate it with even charging of the person with a criminal offence which obviously would include filing of F.I.R. or complaint before the Police.

18. Said interpretation of Section 51 which is given by two learned Judges of this Court has held the field till date and consistently in this State it has been understood that in the context of power of suspension of Sarpanch or Upa-

Sarpanch of a Panchayat, institution of criminal proceedings would mean commencement of criminal proceedings by filing F.I.R. before the Police and investigation thereof by the Police. I agree with the aforesaid proposition of law enunciated by two learned single Judges in aforesaid cases. I am, therefore not inclined to undertake the exercise of sounding a note of dissent to the aforesaid opinion of the two learned single Judges by referring this matter to larger bench especially when said decisions have held the field and when said decisions appear to be consistent with the object which is sought to be achieved by Section 51(1) of the said Act.

19. Mr. Zaveri, learned Counsel for the petitioners has tried to support his first submission by reference to the observations made by the Supreme Court in certain decisions dealing with service matters when the Supreme Court has made distinction between the "initiation of departmental enquiry" and "initiation of proceedings". The learned Counsel for petitioners has invited my attention to the decision of the Supreme Court in the case of P.R. Nayak Vs. Union of India (UOI), . The question before the Supreme Court was about the validity of the order of suspension of delinquent member of service. The said order of suspension was made before actual initiation of commencement of disciplinary proceedings. Justice Dua speaking on behalf of the majority after undertaking the exercise of interpreting Rule 3 of All India Services (D & A) Rules, 1969 observed that "the legislative scheme underlying Rule 3 is thus clearly indicative of the intention for the rule-making authority to restrict its operation only to those cases in which the Govt, concerned is possessed of sufficient material whether after preliminary investigation or otherwise and the disciplinary proceedings have in fact commenced and not merely when they are contemplated. An order of suspension before commencement of disciplinary proceedings was itself regarded as outside the ambit of Rule 3".

20. In my opinion, the observations made by the Supreme Court in the context of statutory Rules dealing with the power of suspension of a member of service cannot be extended in interpretation of a provision dealing with suspension of an office-bearer against whom criminal proceedings have been instituted. It shall have to be kept in mind that the power is given in the context of a local self-Govt. body, and that is the power to suspend a duly elected person. In otherwise democratically elected set up the legislature never wanted to interfere but since absolute clean image is expected in a democratic set up and since cloud criminal proceedings involving a person in an offence of moral turpitude would affect the administration of a local self-Govt. body, the legislature has thought it fit to confer the power of suspension. In my opinion, therefore, the said observations made by the Supreme Court cannot be pressed into service to decide the meaning of expression "against whom criminal proceedings have been instituted" and the extent of power of suspension.

21. In fact, the legislature has used the word "criminal proceeding" and not "criminal prosecution". The word "criminal proceedings" are of wider connotation

so as to include the proceeding on information for a criminal offence. The distinction between "criminal prosecution" and "criminal proceedings" was examined by the Court of appeal in the case of Yates (plaintiff in error) v. The Queen (Defendant in error). The appeal Court observed in the said decision that the term "proceeding" is different from the term "criminal prosecution" and that it is wider than criminal prosecution. The Court also found that the proceeding by information for libel is a criminal proceeding though it is not a criminal prosecution. In the aforesaid sense an information for offence is a criminal proceeding though it cannot be said to be a criminal prosecution. The submission made by the learned Counsel and the decisions on which he has placed reliance are referable to criminal prosecution and not to criminal proceedings in the sense in which the said phrase is used by the legislature. In my opinion, the phrase "criminal proceedings" is required to be widely construed so as to include even an F.I.R. and there is no justification in giving them narrow construction of criminal prosecution which can be said to have been instituted only when a charge-sheet is filed in a competent Criminal Court and when the competent Criminal Court has taken cognizance thereof. I am, therefore, not inclined to accept the first submission of Mr. Zaveri, learned Counsel for petitioners, and the same is rejected.

22. As regards the second submission it shall have to be stated that the F.I.R. and the subsequent report sent by the P.S.I. Pathan, to the D.D.O. leave no room for doubt that the offences are offences of moral turpitude and at least a person in the post of Sarpanch or Upa-Sarpanch cannot be permitted to involve himself in such offences which are of serious nature and to continue in the post of Sarpanch or Upa-Sarpanch. The conduct of the petitioner was highly reprehensible. It was, in fact, a conduct which would amount to interfering with the democratic process of election. The very purpose of Panchayat Raj to see that the democracy is nourished and nurtured at the grass-root-level would be frustrated if the Sarpanch and Upa-Sarpanch of the Gram Panchayat are to be permitted to involve themselves in such offences which have direct effect on the smooth holding of elections. I am, therefore, of the opinion that this second submission of Mr. Zaveri cannot be accepted and the same shall have to be rejected.

No other submission is made by the learned Counsel for the petitioners.

23. In the result, both these petitions fail. Same are hereby dismissed. Rule in both the petitions is discharged with no order as to costs. At this stage, Mr. Kalpesh Section Zaveri, learned Counsel for the petitioners requests that the interim relief which has operated hitherto be extended so as to enable the petitioners to prefer L.P.A. The interim relief operated hitherto is extended for a period of one month from today.