
(1969) 02 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 64-R of 1968

Rattan Lal and others

APPELLANT

Vs

Gram Panchayat Jatauli

RESPONDENT

Date of Decision : 06-02-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : (1969) 02 P&H CK 0030

Hon'ble Judges : Gopal Singh, J

Bench : Single Bench

Advocate : P.S. Jain, for the Appellant; H.R. Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Gopal Singh, J.—This is report dated February 8, 1968 made by the Additional Sessions Judge, Gurgaon u/s 438 of the Criminal Procedure Code with the recommendation that the order of Shri P.R. Aggarwal, Chief Judicial Magistrate, First Class, Gurgaon dated November 10, 1966, be set aside and the case remanded for trial.

2. An application was made to the Gram Panchayat of village Jatauli u/s 21 of the Punjab Gram Panchayat Act, 1952 by Amar Singh and others against Balbir Singh and others as the latter had made encroachment upon a public street and common land of the village.

3. During the pendency of that case, an application was made to the Chief Judicial Magistrate, Gurgaon, u/s 41 of the Gram Panchayat Act for transfer of that case from that Gram Panchayat to another Gram Panchayat or to a criminal Court subordinate to the Chief Judicial Magistrate. The Chief Judicial Magistrate, instead of transferring the case to another Gram Panchayat or to a criminal Court subordinate to him transferred the case to his own file and tried the case.

By his order dated November 10, 1966, he took the view that the site in dispute belonged to the village and vested in the Gram Panchayat and that the interim

order of the Gram Panchayat for removal of the encroachment by the respondents was justified on the basis of the evidence led before him. The Chief Judicial Magistrate made the order of the Gram Panchayat absolute u/s 21 of the Punjab Gram Panchayat Act with the direction that the respondents should remove on or before December 31, 1966, the encroachment, which they had made by construction of walls and a room on the site in dispute.

4. The respondents feeling aggrieved of the above order of the Chief Judicial Magistrate invoked revisional jurisdiction of the Court of Sessions u/s 435 of the Criminal Procedure Code impugning the validity of the order passed by the Chief Judicial Magistrate. In that revision petition, it was contended that u/s 41 of the Punjab Gram Panchayat Act, the Chief Judicial Magistrate had no power to retain the case on his own file and try it himself. Proviso to section 41 of the Punjab Gram Panchayat Act lays down that the Chief Judicial Magistrate may for reasons to be recorded in writing transfer any criminal case from one Panchayat to another Panchayat of competent jurisdiction or to another court subordinate to him. The language of that proviso clearly indicates that there does not exist in the Chief Judicial Magistrate any power to retain a case on his own file after he transfers the case from a Gram Panchayat, If the legislature contemplated that a case could be transferred by the Chief Judicial Magistrate to his own file, the legislature would have specifically provided to that effect. Thus there does not exist any power in a Chief Judicial Magistrate to order after transfer of a case from a Panchayat for its trial by himself.

5. If the language of the proviso of section 41 of the Act is compared and contrasted with the language of section 24 of the CPC or with that of section 526 of the Criminal Procedure Code, it becomes amply clear that power u/s 24 of the CPC and u/s 526 of the Criminal Procedure Code has been specifically conferred for trial of cases by the Court entitled to transfer them pending in subordinate courts. This shows that wherever the legislature wanted to provide for transfer of cases from subordinate courts and also wanted to confer powers of trial upon the transferring court, it specifically provided for its power to try the transferred cases itself apart from making provision for transfer of cases to other subordinate courts of competent jurisdiction. The omission in the proviso to section 41 of the Puniab Gram Panchayat Act as to the right of a Chief Judicial Magistrate to transfer a case to its own file and to try it himself shows that the legislature while dealing with the subject of transfer of cases from Panchayats, did not contemplate that the cases so transferred could be tried by a Chief Judicial Magistrate himself.

6. There existing no power in the Chief Judicial Magistrate to try the case himself, its trial be him is vitiated and ultravires his authority. I accept the recommendation of the Additional Sessions Judge and quash the order of the Chief Judicial Magistrate dated November 0, 1966. the case is remanded to the Chief Judicial Magistrate for the transfer from the Gram Panchayat of village Jatauli to some other Gram Panchayat or to another Court subordinate to him

and competent to try it. The counsel for the parties have undertaken that the parties will appear before the Chief Judicial Magistrate on February 24, 1969.