

(2015) 06 SHI CK 0106

In the High Court Of Himachal Pradesh

Case No : Criminal M.M.O. No. 191 of 2015

Shakuntla Devi and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1994 — Section 34, 67
Penal Code, 1860 (IPC) — Section 323, 34, 447, 506, 506(II)

Citation : (2015) 3 ShimLC 1255

Hon'ble Judges : Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Sanjeev Kumar Suri, Advocate, for the Appellant; R.S. Thakur, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Sureshwar Thakur, J.—The order impugned before this Court has been rendered on 15.06.2015 by the learned Additional Chief Judicial Magistrate 1st Class, Court No. 1, Amb, District Una, H.P., on an application preferred before it by the accused/petitioners herein for transferring the case for trial to the Gram Panchayat concerned, the latter having jurisdiction vested in it by Section 34 of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to the "Act") to take cognizance thereof and try the accused for the offences constituted against them in the notice of accusation. The provisions of Section 34 of the Himachal Pradesh Panchayati Raj Act, 1994 are extracted hereinafter:

"34. No cognizance by Courts.--No Court shall take cognizance of any case, suit or proceeding which is cognizable under this Act by a Gram Panchayat established for the area to which the case, suit or proceeding relates, unless an order has been passed under Section 67."

The aforesaid provisions of Section 34 of the Himachal Pradesh Panchayati Raj Act explicitly display the fact that except the remedy of appeal to the convict/accused against a decision by the Bench of the Gram Panchayat concerned on

conclusion of a trial against the convict/accused for his having committed offences cognizable by a Panchayat as enumerated in Schedule-III of the Act, any cognizance thereon by the Court of the Judicial Magistrate concerned, is barred. A perusal of Schedule III of the Act aforesaid, underscores the factum that the offences, amongst other offences enumerated therein, as allegedly committed by the accused under Sections 447, 323, 506 read with Section 34 of the Indian Penal Code stand depicted therein. Obviously, with a depiction therein of the offences constituted against the accused/applicant/petitioner under Section 447, 323, 506 read with Section 34 of the IPC, hence vest jurisdictional competence in the Gram Panchayat concerned to try them, besides concomitantly, the bar contemplated in Section 34 of the Himachal Pradesh Panchayati Raj Act, 1994 against any cognizance thereon being taken by the Criminal Court of competent jurisdiction is aroused, as such, the application as laid by the petitioners/applicants/accused before the Additional Chief Judicial Magistrate concerned necessitated its being allowed. The learned Court below having declined relief to the petitioners/accused on the score of notice of accusation put to the accused/petitioners omitting to reveal whether the offences allegedly committed by the accused/petitioners under Section 506 of the IPC, falls in Part-I or Part-II thereof, as such, it proceeded to hold that Section 506(II) while being not enumerated in Schedule III, is neither cognizable by nor triable by the Gram Panchayat concerned, hence, further proceeded to not afford relief to the applicants/petitioners herein. The said manner of appreciation of material on record by the learned trial Court below suffers from gross absurdity or perversity which has occasioned substantial miscarriage of justice. The apt and relevant material of which the learned Court below was seized of, was the notice of accusation, with a manifest depiction therein of an accusation of the applicants/accused/petitioners herein having committed offences under Section 506 of the IPC, as such, with Section 506 of the IPC standing enumeration in Schedule-III of the Panchayati Raj Act qua whose cognizance the jurisdiction of the Judicial Magistrate concerned stands barred by Section 34 of the Act, it was improper for the learned Court below to untenably read Part-II into Section 506 of the IPC, whereas, the notice of accusation put to the accused, palpably manifested that the offence allegedly committed by the accused was under Section 506 alone. The aforesaid manner of misreading of the notice of accusation by the learned trial Magistrate is ridden with the vice of gross misappreciation of material on record tantamounting to commission of gross illegality and legal impropriety.

2. Consequently, the instant petition is allowed and the impugned order is quashed and set aside. In sequel, the application preferred before the learned trial Court by the petitioners herein/accused for transferring the case to the Gram Panchayat concerned is allowed.