
(1953) 07 PAT CK 0010
In the Patna High Court

Shoukat Ali and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 28-07-1953

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 141, 143

Citation : (1954) CriLJ 485

Hon'ble Judges : Sahai, J;Jamuar, J

Bench : Division Bench

Judgement

Jamuar and Sahai, JJ.—This is an application under Article 226 of the Constitution by which the petitioners challenge their conviction by a bench of the Gram Cutchery of Manwarparsi, constituted under the Bihar Panchayat Raj Act, 1947, for an offence punishable u/s 143, Penal Code and their sentence of one month's rigorous imprisonment each as being without jurisdiction.

2. The case against the petitioners, who are eight in number, was that in the early hours of the 31st January 1952, that is, at about 3 A.M. they were found in an orchard to the west of village Parsi sitting together and engaged in a conversation. The conversation which was taking place between them was deposed to by two witnesses to have been to the effect that, when the Mukhia or Swayang Sevak would demand payment of taxes, they would break his head and they were further saying that they should keep their party intact. It was in respect of this conversation only that the conviction of the petitioners u/s 143, Penal Code, has been recorded by the Gram Cutchery.

3. A bench of the Gram Cutchery has been given concurrent jurisdiction with that of the Criminal Court for the trial of certain offences enumerated in Section 62, Bihar Panchayat Raj Act, 1947, and amongst the offences so enumerated, there appears Section 143, Penal Code. The argument in support of this application was that the Gram Cutchery can only assume jurisdiction if the facts alleged against the accused constitute one of the offences enumerated in Section 62 of

the Act and that, If the facts so alleged do not constitute any of those offences, the conviction would be without Jurisdiction.

4. Section 143, Penal Code provides punishment for being a member of an unlawful assembly, and an unlawful assembly has been defined in Section 141 of the Code as an assembly of five or more persons, if the common object of the persons composing that assembly is one of those mentioned in that section. In the present case before us, the common object is said to have been the third mentioned in the section, namely, "to commit any mischief or criminal trespass or other offences"; and, in the present case, to assault. It appears to have been the case of the prosecution that the petitioners had the common object of committing assault upon the Mukhia or Swayang Sevak in accordance with the conversation in which they were engaged. I do not think that the mere conversation would show that the petitioners constituted an unlawful assembly. All that they were saying was that, if and when the Mukhia or the Swayang Sevak would come to demand payment of taxes, his head would be broken. This was, therefore, in contemplation of some event which might or might not happen in future.

It seems to me that to constitute an unlawful assembly, the common object of the assembly must be an immediate one to be carried into effect forthwith, If a certain number of people meet merely to arrange a plan for some future action, on an uncertain event taking place, it cannot be said that they had assembled to carry out some plan forthwith. There should be some present and immediate purpose of carrying into effect the common object. If five or more persons meet for deliberations only or to arrange some plans for future action which may be brought into effect individually and not necessarily jointly, that would not constitute an unlawful assembly. I am fortified in this view by the decision of - "Emperor v. Nga Tun Maung AIR 1925 Bang 362 (A). Accordingly, even accepting the evidence adduced in the present case against the petitioners that they were heard saying that, if and when the Mukhia or the Swayang Sevak would demand payment of taxes, his head would be broken, this circumstance by itself would not constitute them into an unlawful assembly within the meaning of Section 141, Penal Code.

5. The bench of the Gram Cutchery under the Panchayat Raj Act, as I have said, can only assume jurisdiction to try offences which they have been empowered to try u/s 62 of the Act. If the facts found do not constitute any of those offences, they cannot, in my opinion, assume jurisdiction to try such a case and, if such a case is tried and an order passed, that order would be, in my opinion, without jurisdiction.

6. It was contended on behalf of the" State that, even if it be so, this Court should not interfere under Article 226 of the Constitution. I think, when an order has been passed by a tribunal which is without jurisdiction altogether, and, as has been held in several cases, as a result of grave dereliction of duty and flagrant abuse of any fundamental principles of law, this Court would interfere

and set aside such an order. This in my opinion, is the case in the present application before us. A Division Bench of this Court in the case of - Nivas Singh Vs. Amar Sao, , interfered and quashed the conviction on the ground that the trial of the petitioners held by the Gram Cutchery was without jurisdiction.

7. I would accordingly allow this application and, holding that the trial of the petitioners was without jurisdiction, quash their conviction and the sentence imposed on them.

Sahai, J.

8. I agree.