

(1957) 01 AHC CK 0057
In the Allahabad High Court

Sita Ram

APPELLANT

Vs

Tejram and Others

RESPONDENT

Date of Decision : 28-01-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 352, 427

Citation : (1957) 27 AWR 463 : (1957) CriLJ 667

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that an order passed by the Sub-divisional Magistrate, Sardhana," dated the 21st of October, 1955, under the Panchayat Raj Act be quashed.

2. The petitioner filed a complaint against the opposite parties under Sections 352 and 427, I. P. C., on the allegation that he had a grove in village, Daulri, which had Kalmi mango and guava plants some six or seven years old and the accused trespassed into the said grove and cut three plants and broke branches of four other trees. The case was transferred to the Nayaya Panchayat and on the 11th July, 1955, both the parties appeared before the Nayaya Panchayat and on that date the complainant and his witness were examined. Thereafter 14th of July, 1955, was fixed for local inspection and 18th of July, 1955 was fixed for the next hearing of the case. On 18th July, 1955 some more prosecution Witnesses were examined and on 25th July, 1955 the accused and the witnesses were examined. On 1st of August, 1955 judgment was delivered and the accused were found guilty and sentence of fine was passed against them. At the time of the delivery of the judgment all the three panches were not present; only two of the panches were present but the signatures of all the three panches were present on the judgment. On revision the Sub-divisional Magistrate set aside the order of the Nyaya Panchayat dated the 1st August, 1955 on the ground that one of the

panches was not present on the date on which judgment was pronounced although signatures of all the three panches were obtained on the judgment. It is this order of the Sub-divisional Magistrate which has been challenged by means of this writ petition.

3. The main contention raised by the counsel for the petitioner is that the trial was held by three panches but it was the pronouncement of judgment which was done by only two panches, There was no violation of the provisions of the Panchayat Raj Act and thus the order of the Sub-Divisional Magistrate was illegal.

4. A counter-affidavit has been filed on behalf of the opposite parties Nos. 1 and 2 in which it is stated that on the 1st of August 1955 all the accused including the accused Tej Ram were present and only two panches were present and these two alone delivered the judgment. The quorum was not complete. The signature of the other panch must have been obtained afterwards. Section 77-A of the Panchayat Raj Act provides that it is open to the panches present at the time of the hearing to proceed with the case provided there are at least three panches present and the Chairman is one of them.

5. The contention raised by the Petitioner's counsel is that the decision of the Sub-Divisional Magistrate in revision is manifestly erroneous, Admittedly the judgment had been signed by three panches. The case was heard by the three panches of the Nyaya Panchayat and the decision was arrived at by the concurrence of the three including the Chairman. On the date when the judgment was pronounced however only two of the panches who had signed the judgment were present and the question to be determined is whether the trial or at any rate the delivery of judgment is illegal inasmuch as only two of the panches were present on the date when the judgment was pronounced. Section 49 of the Panchayat Raj Act, provides that:

The Sarpanch shall form Benches consisting of five panches each for the disposal of cases and inquiries coming up before the Nyaya Panchayat.

In the present case it is not disputed that the bench was constituted of five Panches. It would follow from the provisions of Section 49 that at every hearing all the five Panches should be present otherwise on that date there will be no proper constitution of the Panchayat. The Legislature however engrafted an exception to Section 49 by enacting Section 77-A which provides as follows:

77-A (1) If any Panch appointed to a Bench constituted u/s 49 is absent at any hearings, the remaining Panches may, notwithstanding anything contained in this Act, try the civil, criminal or revenue case, provided, however, that at least three Panches, including the Chairman, are present, and provided further that at least one the Panches present is able to record evidence and proceedings.

2. No trial as aforesaid shall be invalid by reason merely that all the five Panches forming the Bench were not present at any hearing or that the same Panches were not present at all the hearings.

Sub-section (2) to Section 77-A to my mind engrafts an exception to Section 49 inasmuch as it provides that it is not necessary, that at every hearing all the five panches should be present. Sub-section (1) of Section 77-A however provides another limitation to Clause (2) itself by enacting that it is necessary that at least three panches including the Chairman should be present and provided further that at least one of the panches present is able to record evidence and proceedings. The effect of Section 49 and Section 77-A (1) and (2) is to my mind that no trial can be held to be invalid provided three panches are present at the time of the trial including the Chairman and one of them is able to record evidence and proceedings.

In the present case the question therefore to be determined really is whether the pronouncement of the judgment is a part of the trial and whether in accordance with the provisions of Section 77-A CD the presence of three panches including one Who is able to record evidence and proceedings and the Chairman was essential even at the pronouncement Of the judgment.

6. In the present case it is not stated that the Chairman was not present on the date when the judgment was pronounced, nor it is stated that out of the two who were present none was able to record the evidence and proceedings. The contention mainly is that the presence of three members was essential on the date when the judgment was pronounced and consequently the only question which requires consideration is whether the pronouncement of the judgment is a part of the trial.

7. Reliance was placed by the counsel for the petitioner on the case of Tajjamul Vs. Mohd. Ismail, . That was a case where on the date when the judgment was pronounced the judgment had not been signed by three members and consequently it was held that the trial was illegal. It was observed by a single Judge of this Court in that judgment that:

The words "present at the time of the decision in Rule 100 of the Panchayat Raj Act Rules govern not the word "panches" but the word "parties". The panches are required to be "present at all stages of the suit which includes pronouncement of the judgment also. Therefore it is incumbent on all the panches to sign the judgment. Where the judgment has not been signed by one of the panches, it is not proper judgment as required by law and is liable to be set aside.

The facts of that case to my mind are distinguishable. In the present case it is admitted that the judgment was signed by three but it was only pronounced by two of the members of the case. In the case referred to above the judgment itself was not signed by more than two members. That case was decided prior to enactment of Section 77-A and the argument which was advanced in that case was that the bench consisted Of five panches and it was necessary for all the five panches to have signed the judgment. In reply to that contention reliance was placed on Rule 100 of the Rules framed under the Panchayat Raj Act which provides that:

After ascertaining the facts of the case by examining the parties, their witnesses and the documents produced, if any, and by any other lawful means in its power, the Nyaya Panchayat shall record a brief judgment and the final order over the signatures of the Panches. The judgment shall be read in the open court and signatures or thumb-impression of the parties present will be taken on it as far as possible, which shall form part of the record. The judgment, and if the case is a civil or revenue case a decree in the prescribed form shall be drawn up in terms of the judgment.

8. Relying upon Rule 100 it was contended by the petitioner that it was obligatory on all the five panches to sign the judgment. The argument was advanced by the opposite parties that this rule provides that only the panches who were present should sign and not the other panches. That contention was not upheld and it was held that the word "present" governs the parties and not the panches in that suit. That case, as I have said, was prior to the enactment of Section 77-A and that cannot be a guide for the controversy before me.

9. The next case relied upon is the case of Jiwa Ram Vs. Panchaiti Adalat and Others, . That is a Division Bench decision and that is also a decision prior to the enactment of Section 77-A, In the absence of anything contrary in the provisions of Section 77-A it could be very well argued that the constitution of the bench was to be in accordance with the provisions of Section 49 at every stage of the hearing and on any date if the constitution was not in accordance with the provisions of Section 49 the trial should be vitiated.

10. The next case relied upon by the other side is the case of Baldeo and Others Vs. The State and Another, . In that case the petitioner had been convicted by the Panchayati Adalat and two points were urged against the decision of the Adalat, One was that the judgment was signed by only four panches & not by all the five panches who constituted the bench for the trial of the case. Dealing with that point the learned single Judge repelled that contention relying upon Section 77-A (2). An argument in that connection was advanced that Sub-section (2) of Section 77-A only applies to the case of hearing and that it does not apply to the case of the pronouncement of the judgment.

In that connection it was observed by the learned Judge that the word "hearing" in Sub-section (2) of Section 77-A also include the pronouncement of the judgment and consequently the exception engrafted to Section 49 u/s 77-A (2) also applies to the case of the pronouncement of a judgment. But that does not to my mind decide that the word "trial" in Sub-section (1) includes the pronouncement of the judgment so as to require presence of three panches at the time of the pronouncement of the Judgment.

11. The case relied upon by the counsel for the petitioner is Bakshi Ram and Others Vs. Emperor . There the trial was held by the Assistant Sessions Judge, At the time when he pronounced the judgment he had been promoted to the post of an Additional Sessions Judge and he had convicted the petitioner. The question

which arose for decision before a Division Bench of this Court was whether the appeal lay to the District Judge or to the High Court. If it was a decision by the Assistant Sessions Judge it lay to the District Judge but if it was treated to be a trial by the Additional Sessions Judge the appeal would lay to the High Court. It was held by this Court that:

Judgment is no part of the trial and is outside the scope of a trial as contemplated by the Code of 1898. The Code draws a distinction between the trial of a case and the decision thereof. The former includes those stages of the proceedings of the case in which the parties the e-to are entitled to take part. The trial extends to the recording of evidence and to the hearing of arguments. But so far as the act of the preparation and delivery of judgment is concerned, it is an act of the judge and the judge alone and parties can take no part in the same.

Reliance was also placed on an earlier Bench decision of this Court in the case of *Queen Express v. McCarthy* ILR All 420(E). While referring to this case In the case of *Bakshi Ram (D)*(supra) It was observed that:

This decision however can furnish no guide for the interpretation of the word "trial" as used in the Code of 1898 for the simple reason that this decision was under the Code of 1882 in which there was no provision similar to the provision in the Code of 1898 that the delivery of judgment is to be "after the termination of the trial."

This case to my mind therefore is distinguishable.

12. Reliance was then placed on the decision of this Court in the case of *Sheomoorat v. Bhagwati Prasad* 1955 All LJ 26 (P) That case to my mind does not apply to the facts of the present case. There the question which arose was about the interpretation of Section 77-A of the Panchayat Raj Act and it was observed that:

The general principle laid down in Section 49(1) of the U. P. Panchayat Raj Act is that the bench shall consist of five panches, and in our judgment a bench consisting of less than that number will not be validly constituted unless the provisions of Section 77-A (1) are complied with.

The argument there was that the three panches, who decided the case did not include the Chairman which is a necessary condition for the application of Section 77-A (1). In the present case it is not contended that the Chairman was not one of the members who were present on the date of the delivery of the judgment.

13. In my opinion therefore the Sub-Divisional Magistrate was not right in seating aside the judgment of the Panchayati Adalat merely on the ground that only two of the panches delivered the judgment, I therefore set aside the order of the Sub-Divisional Magistrate dated the 21st of October 1955 and send back the case to him for disposal on the merits. The parties will bear their own costs.