
(1966) 03 MP CK 0009
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

Shankarlal Dariyav and Others

RESPONDENT

Date of Decision : 18-03-1966

Acts Referred:

Penal Code, 1860 (IPC) — Section 426, 427, 430

Citation : (1968) CriLJ 1144 : (1968) ILR (MP) 654 : (1968) JLJ 578 : (1968) 13 MPLJ 128

Hon'ble Judges : R.J. Bhawe, J

Bench : Single Bench

Judgement

R.J. Bhawe, J.

The Magistrate, First Class, Raipur, by order, dated 5.2.1965, rejected the objection of the accused persona that the complaint should be returned for being presented to the Nyaya Panchayat having jurisdiction to entertain the same. The Second Additional Sessions Judge, Raipur, has made this reference recommending the quashing of the said order.

The facts of the case are: Gulabsingh, Ron applicant; No. 8 (hereinafter referred to as "Party No. 1") filed a complaint before the Magistrate u/s 426, 427 and 430 of the Indian Penal Code on the ground that the non-applicants 1 and 2, Shankerlal and Rameshwar (hereinafter referred to as "Party No. 2") maliciously closed the sleeves of a tank from which the complainant's field a were irrigated and thereby caused damage to the extent of Rs. 1,500/-. The Magistrate examined the complainant u/s 200 of the Code of Criminal Procedure and decided to proceed with the enquiry for an offence u/s 430, I.P.C. only. At tibia stage, an objection was raised that the offence u/s 430, I.P.C. was exclusively triable by the Nyaya Panchayat constituted under the Central Provinces and Berar Panchayats Act, 1946 (Act No. 1 of 1947)(hereinafter referred to as "the Act") and that the complaint should be returned to be presented to the Nyaya Panchayat.

The Magistrate rejected the objection on the ground that the complaint on the face of it was for offence u/s 426, 427 and 430, I.P.C. As the damage alleged was for an amount exceeding Ra. 50/. the Nyaya Panchayat had no jurisdiction to entertain the complaint. u/s 72 of the Act a Magistrate is called upon to return the complaint only if it relates to any offence triable by the Nyaya Panchayat. If the complaint on the face of it does not relate to the offences triable by the Nyaya Panchayat and if the Magistrate takes cognizance of the offence, it is not necessary to return the complaint to be presented to the Nyaya Panchayat, if after making certain enquiries the Magistrate decides to confine the enquiry to any particular offence which is triable by the Nyaya Panchayat.

The Additional Sessions Judge has, however, come to a contrary conclusion. According to him, the Magistrate, before taking cognizance of the offence, should have examined the complainant to find out if the offence disclosed was one which was triable by the Nyaya Panchayat. The Additional Sessions Judge has expressed the opinion that the jurisdiction of the Nyaya Panchayat is exclusive with respect to the offences included in the Schedule and that the provisions of Section 72 of the Act are mandatory and that the Magistrate is bound to return the complaint as soon as he reaches the conclusion that the offense that he proposes to enquire into is one which is triable by the Nyaya panchayat. The ordinary Criminal Courts get jurisdiction to try the offences included in the Schedule only when the jurisdiction of the Nyaya Panchayat is withdrawn by the Sessions Judge in exercise of powers u/s 84 of the Act. As the Magistrate decided to proceed with the enquiry for the offence u/s 430, I.P.C. which is triable by the Nyaya Panchayat, he should have returned the com. plaint for being presented to the Nyaya Panchayat. On this reasoning the reference has been made.

Shri S.C. Pandey, learned Counsel for Party No. 1, opposed the reference, while Shri N.C. Mishra, learned Counsel for Party No. 2 supported it. The State, though served with notice of the case, remained unrepresented.

On hearing the parties, I have reached the conclusion that the reference should be rejected.

Before recording my reasons for rejecting the reference, it would be appropriate to refer to certain provisions of the Act. Section 68 provides that notwithstanding anything contained in the Code of Criminal Procedure, a Nyaya Panchayat shall have jurisdiction concurrent with that of the criminal courts for the trial of offence as are specified in the Schedule. Sections 69 and 70 prescribe certain limitations on the exercise of jurisdiction by the Nyaya Panchayat. Section 71 provides that a Nyaya Panchayat, within whose jurisdiction the offence is committed, will be the Nyaya Panchayat that would be competent to entertain the complaint. Then comes Section 72. That section provides that if a complaint of any offence mentioned in the Schedule is made to the Magistrate, the Magistrate shall, subject to the provisions of Section 78, instead of taking cognizance of the offence, direct the complainant to present the complaint to the appropriate Nyaya Panchayat. Section 73 debars the Nyaya Panchayat from

taking cognizance of a criminal offence after the expiry of one year from the date of the commission thereof. Sections 74 to 83 deal with the powers of the Nyaya Panchayat and with appeals etc against their decisions. Section 84 authorises a Sessions Judge, for just and sufficient cause, to cancel the jurisdiction of a Nyaya Panchayat with respect to any criminal case. Section 85 provides that the effect of an order passed u/s 84 is to restore the jurisdiction of the criminal court with respect to that particular case.

From what has been stated above, the scheme of the Act appears to be that the Nyaya Panchayat is conferred concurrent jurisdiction", with the ordinary criminal courts to entertain complaints with respect to certain offences within the limits prescribed. The jurisdiction of the ordinary criminal courts is not taken away with respect to even those offences, Section 72, however, makes it obligatory on a Magistrate to return the complaint for presentation to the appropriate Nyaya Panchayat if the complaint on the face of it is with respect to an offence which is triable by the Nyaya Panchayat. This action the Magistrate is required to take instead of taking cognizance of the offence himself. The words "instead of" are significant; they clearly indicate that the Magistrate has jurisdiction to entertain the complaint; but, if, on the face of it, the complaint relates to an offence, which may be tried by the Nyaya Panchayat, the Magistrate is under an obligation to return the complaint.

It is thus obvious that the obligation to return the complaint is there till the time the Magistrate has not taken cognizance. Once the Magistrate has taken cognizance and has entered into an enquiry, the provisions of Section 72 of the Act cannot be invoked. It appears that the question of returning the complaint is to be determined only at the initial stage. This conclusion is fortified from the provisions of Section as well. That Section provides that a Nyaya Panchayat shall not take cognizance of a complaint after one year of the commission of an offence. If a complaint is made before a Magistrate and the Magistrate comes to the conclusion after one year that the offence disclosed is one that can be tried by a Nyaya Panchayat and returns the complaint for presentation before the Nyaya Panchayat, the return of the complaint would be meaningless as the Nyaya Panchayat would not be in a position to entertain the complaint. The decision as to whether the complaint is to be returned must, therefore, be taken by the Magistrate at the initial stage before he takes cognizance of the offence. This is also necessary to avoid protracted trials.

In my opinion, Section 72 envisages the possibility of a complaint being entertained by ordinary Criminal Courts even with regard to the scheduled offences: but an obligation is cast on that Court to return the complaint if, on the face of it, it relates to the scheduled offences. To me the provision appears to be only directory and not mandatory. In any case that provision has application only at the initial stage and that too when the complaint is on the face of it, with respect to the scheduled offences.

The interpretation put by the Additional Sessions Judge on the provisions of

Sections 84 and 85 of the Act. In my opinion, is not correct. When two tribunals have concurrent jurisdiction and one of them takes cognizance of an offence, the natural result is that the other tribunal is prevented from taking cognizance of the same offence. This is because two tribunals cannot be simultaneously allowed to try the same case.

Thus, when a Nyaya Panchayat has taken cognizance of an offence on a complaint, it would follow as a corollary that the ordinary criminal court's jurisdiction to entertain the complaint regarding that matter shall remain in abeyance. The Act nowhere provides taking away the jurisdiction of ordinary criminal courts regarding the scheduled offences; on the contrary, Section 63 maintains concurrent jurisdiction of the ordinary criminal courts. Section 84 of the Act empowers the Sessions Judge to withdraw a case from the Nyaya Panchayat. The authority to withdraw is with reference to a complaint of which the Nyaya Panchayat has taken cognizance. When such a case is withdrawn, it has the result of restoring the jurisdiction of the ordinary criminal courts which was in abeyance. This is what is provided for u/s 85. In the new Act the jurisdiction of the ordinary criminal courts has been specifically taken away. That is not the case with respect to the Act in question. In my view, therefore, only when cognizance of an offence is taken by a Nyaya Panchayat, the jurisdiction of the ordinary criminal courts remains in abeyance and it revives as soon as any case is withdrawn by the Sessions Judge from the Nyaya Panchayat.

For the reasons stated above, I am of the view that the Magistrate was correct in rejecting the objection of the accused persons. I am fortified in my view by the decision of Kekre, J. in *Phediva v. Miyaram* Criminal Revn. No. 89 of 1961, D/24.4.1961 : 1961 M.P LJ (Notes) 255. Shri Mishra, however, drew my attention to the decision of Golvalker J. in *State v. Mehtar Bisau Lodhi* 1961 M.P LJ 1019. It is no doubt true that in that case it has been observed that so long as a Nyaya Panchayat is functioning, the jurisdiction of the criminal courts under the Code of Criminal Procedure remains under suspension and that when the jurisdiction of the Nyaya Panchayat with respect to any criminal case is cancelled as provided u/s 84 of the Act, the suspended jurisdiction of the ordinary criminal courts is revived as provided u/s 85. That observation appears to be obiter. In that case, the main question was as to whether a Magistrate could entertain a complaint when a complaint regarding the same offence was dismissed by the Nyaya Panchayat as barred by time, and it was rightly held that the dismissal of the complaint by the Nyaya Panchayat finally and conclusively decided the matter and the case could not have been proceeded against afresh for the same offence, as that would result in double jeopardy. The decision relied on by Shri Mishra is, therefore, distinguishable and does not deal directly with the controversy at issue in the present case.

It is no doubt true that the policy of the Legislature is to encourage settlement of certain disputes of trivial nature before the local tribunals and every attempt should be made to see that the disputes are referred to such tribunals whenever

the tribunals are empowered to take cognizance of the disputes. In this view of the matter, it may be urged that even if a Magistrate discovers, after enquiry, that the offence disclosed is one that can be triad by a Nyaya Panchayat it should be his duty to return the complaint to be presented to the Nyaya Panchayat. Even if this liberal interpretation is accented, it cannot be laid down as a universal rule that in every case the complaint must be returned. It has already been pointed out that Section 78 of the Act debars a Nyaya Panchyat from entertaining a complaint after one year of the commission of an offence. If the complaint is returned in each a case, the Nyaya Panchayat will not be in a position to entertain it at that stage because of the bar u/s 78. In such cases, the return of the complaint would result in great injustice to the complainant, as the accused persons would escape punishment without any trial.

For all these reasons, I am satisfied that the reference should not be accepted. It is accordingly rejected. The Magistrate shall now proceed with the case and dispose it of according to law.