

(1960) 08 OHC CK 0009
In the Orissa High Court
Case No : Criminal Appeal No. 39 of 1960

The Chikiti Grama Panchayat

APPELLANT

Vs

Lala Mangula and Others

RESPONDENT

Date of Decision : 10-08-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 245
Orissa Grama Panchayat Act, 1948 — Section 17, 49A, 49A(1), 49B, 49C
Orissa Municipal Act, 1950 — Section 391

Citation : (1960) 26 CLT 585

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : R.N. Misra, for the Appellant; B.K. Pal and M.S. Ray, for the Respondent

Final Decision : Allowed

Judgement

Barman, J.—The Chikiti Grama Panchayat, represented by Sarpanch of Chikiti, P.S. Muagan, District Ganjam, is the Appellant herein from an order of acquittal passed by the learned Magistrate 3rd Class, Berhampur, in Criminal Case No. (a) C.C. 10/59, on a complaint petition filed by the said Grama Panchayat against the accused Respondents for jointly carrying on keeping together for trade more than 200 heads of sheep and goats in village Kolathia, within the Chikiti Grama Panchayat area, without a licence from the Grama Panchayat of Chikiti and thereby committing an offence punishable u/s 49-H of the Orissa Grama Panchayats Act, 1948 (Orissa Act XV of 1948).

2. The facts are few and simple. On October 21, 1959 the Sarpanch of Chikiti Grama Panchayat filed a petition before the S.D.M. Berhampur, u/s 49-H of the said Act against the accused-Respondents on which cognizance was taken and it was transferred to the file of the trial Magistrate. The accused Respondents took objection to the said complaint, on the ground that no power was given to the Sarpanch under the Orissa Grama Panchayats Act corresponding to Section 391

of the Orissa Municipal Act, 1950 Orissa Act XXIII of 1950), which provides that prosecution under the Orissa Municipal Act for breach of any provision of the Act, rules, regulations or bye-laws may be instituted by the Executive Officer or any person authorised by him in this behalf. It was contended on behalf of the accused-Respondents that in the present case the Orissa Grama Panchayats Act, 1948 had given no authority to the Sarpanch of the village to institute the prosecution under the Act. The learned Magistrate, while accepting the objections made by the accused Respondents, dismissed the case as being not maintainable and accordingly the accused Respondents were acquitted u/s 245 Code of Criminal Procedure . Hence this appeal against the order of acquittal.

3. The simple point in this case is whether under the Orissa Grama Panchayats Act, 1943 the Grama Panchayat has any authority to initiate prosecution under the Act as done by the complainant-Appellant in this case. Section 6 of the Grama Panchayats Act provides that every Grama Sasan shall be a body corporate by the name of the Grama for which it is constituted and shall have perpetual succession and a Common seal with power to acquire and hold property, both movable and immovable, and subject to the provisions of the said Act or of any rules made thereunder to transfer any property held by it, to enter into contracts and to do all other things necessary for the purpose of carrying out the provisions of this Act and may sue or be sued in its corporate name. Then Section 8, providing for authority to exercise executive power, lays down that the executive power of the Grama Panchayat for the purpose of carrying out the provisions of this Act shall be exercised by the Sarpanch who shall act under the authority of the said Grama Panchayat. The provisions in Section 49-A to 49-H both inclusive come under Chapter V-A of the Act, which are provisions relating to Industries and Factories (including dangerous and offensive, trades, occupation or processes) as appears from the title of the Chapter itself. Section 49-A (1) (p) provides to the effect that with the previous sanction of the Provincial Government and notwithstanding anything -contained in any other law for the time being in force, a Grama Panchayat may notify that no place within the local area of the Grama Sasan shall be used without a licence granted by it and except in accordance with the condition specified in such licence, for any of the purposes including keeping together twenty or more sheep or goats or ten or more pigs, heads of cattle. The penal provision is in Section 49-H which provides that every person who, having the immediate control of any place or building within the local area of Grama Sasan, permits it to be used for any of the purposes in respect of which a licence is required under Chapter V-A of the Act without having obtained a licence here for or having obtained a licence under the said Chapter permits such use in contravention of any of the conditions of such licence, shall be liable on conviction to a fine which may extend to one hundred: rupees for the first offence and if the offence be a continuing one with a further fine which may extend to five rupees for every day after the first conviction during which an offender is proved to have persisted in the commission of the offence.

4. Mr. R.N. Misra, learned Counsel for the complainant Appellant contends that, in view of the Clear provisions in Sections 6 and 8 of the Act s aforesaid, giving executive power to the Sarpanch of the village to sue or be sued or to do all other things necessary for the purpose of carrying out the provisions of this Act, the complaint-petition is maintainable. In the present case, in compliance with the provisions of Section 49-A, a notification dated January 19, 1957 was issued in exercise of the powers conferred on Grama Panchayat under Notification No. 1263 L.S.G. dated 8-11-1950 of the Government and Co-operative Department and in pursuance of Section 49-G of the Orissa Grama Panchayats Act, 198 under which the Grama Panchayat may, subject to such maximum as may be determined by the Provincial Government, levy a fee in respect of any licence or permission under Chapter V-A as provided in the said section.

5. Mr. M.S. Ray, learned Counsel for the accused-Respondents while arguing in support of the order of acquittal, relies on Section 17, relating to the power of the Sarpanch, which provides that the Sarpanch shall, in the execution of his duties, give effect to the decisions of the Grama Panchayat. The learned counsel? s point is that Section 8, does not clothe the Sarpanch with any authority to institute the prosecution. The learned Counsel further contends that the notification, referred to above, appears to have been issued without any sanction of the Provincial Government. I am, however, of opinion that the provisions of Sections 6 and a are sufficiently clear to come to a finding that the executive power of the Grama Panchayat shall be exercised by the Sarpanch. In the present case, the complaint-petition filed by the Sarpanch was within the ambit of the powers vested in him u/s 8 of the Act, who certainly is to act under the authority of the said Grama Panchayat. The very fact that he filed the complaint petition as Sarpanch of Chikiti Grama panchayat is sufficient compliance with the provisions of the Act. The very cause title of the complaint-petition shows that the real complainant was the Grama Panchayat of the village represented by the Sarpanch at the village. As regards the notification, it is clear from the recitals in the body of the notification itself that there was previous sanction of the Provincial Government as required by the Act.

6. The appeal is therefore allowed and the order of acquittal is set aside. I direct the case to go back to the learned Magistrate to be disposed of according to law.