

(2022) 12 SHI CK 0063
In the High Court Of Himachal Pradesh
Case No : CR.MMO No. 395 Of 2019

Vinod Kumar & Others

APPELLANT

Vs

State Of H.P. & Others ?

RESPONDENT

Date of Decision : 19-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 186, 323, 332, 353, 451, 457, 504, 506
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x)
Himachal Pradesh Panchayati Raj Act, 1994 — Section 34, 37, 64, 64(2)

Citation : (2022) 12 SHI CK 0063

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Vandana Misra, Aakash Thakur, Desh Raj Thakur, Narender Thakurm, Vivek Singh Attr, Anamika Chauhan, C.S. Thakur

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioners have prayed for following relief:-

"It is, therefore, most respectfully prayed that this petition may kindly be allowed and impugned summons dated 26.06.2019 (AnnexureP-

6) issued by learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. to the petitioners may kindly be quashed and set aside and further proceedings before the learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. connected with the same summons may also be quashed and set aside, in the interest of law and justice."

2. Facts necessary for adjudication of the instant petition can be summed up as under:

(a) Two cross FIRs bearing Nos. 17 of 2016 and 18 of 2016, arising out of the same incident, came to be registered at Police station Nirmand, District Kullu, H.P. on 03.03.2016.

(b) FIR No. 17 of 2016 was registered under Sections 451, 323, 504, 506 read with Section 34 of the IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act at the instance of Respondent No.2 and the petitioner alongwith one Bhima Ram were named as accused.

(c) FIR No. 18 of 2016 was registered under Sections 353, 332, 504 and 186 of the IPC on the basis of written complaint of the Assistant Engineer, IPH Sub Division Nither, Distt Kullu and Respondent No.2 was named as accused therein.

(d) It was alleged by way of FIR No. 18 of 2016 that on 03.03.2016, at about 8.00 a.m., petitioner No.1 along with Bhima Ram, Fitter, was on duty to inspect water supply scheme. During such inspection, it was noticed that respondent No.2 had illegally attached an electrical motor/pump to main water supply line. On being asked to disconnect the electric motor/pump from the water supply line, respondent No.2 got infuriated and committed offence of obstructing the public servant in discharge of his duty. It was further alleged that respondent No.2 had even physically assaulted petitioner No.1.

(e) On the other hand, respondent No.2 had alleged in his complaint that it was petitioner No.1 and Bhima Ram, Fitter, who had visited his house at about 7.00 a.m., on 03.03.2016. Bhima Ram, Fitter, started argument with him and his family members in connection with drinking water. Petitioner No.1, who was also an employee of IPH Department also started abusing respondent No.2 and called him by his caste. On being objected, respondent No.2 was given beatings with kick and fist blows. In the meanwhile, petitioners No.2 and 3 also arrived at the spot and started manhandling respondent No.2 after abusing him.

(f) Investigation in both the FIRs was carried out. In FIR No.17 of 2016, police presented challan under Sections 323 and 504 that too against petitioner No.1 only. Since, both the offences were triable by the Panchayat in accordance with provisions of Himachal Panchayati Raj Act, 1994, challan was presented before the concerned Panchayat i.e. Respondent No.3.

(g) As regards FIR No.18 of 2016, the police presented the challan against respondent No.2 before the learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P.

3. Petitioners have alleged that petitioner No.1 had presented himself once before respondent No.3 on 24. 04.2018 in compliance to the summon received by him, but respondent No.3 had remained absent. It is further alleged they did not hear anything from respondent No.3 after 24.04.2018, however, they received summons from the Court of learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P., directing them to appear on 20.07.2019 in case titled as State vs. Vinod Kumar, under Sections 451 and 323 of the IPC.

4. It is contended on behalf of the petitioners that the police had filed challan against petitioner No.1 only under Sections 504 and 323 of the IPC, which were exclusively triable by Gram Panchayat. Respondent No.2 in connivance with

respondent No.3 had managed the transfer of case from jurisdiction of respondent No.3 to the Court of learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. in an illegal manner by wrongfully inserting Section 457 of the IPC in the case. Further, grievance of the petitioner is that the learned Judicial Magistrate 1st Class, Anni, without application of mind proceeded to issue summons against all the petitioners without even realising that petitioners No.2 and 3 were not the accused in the case.

5. I have heard learned counsel for the parties and have also gone through the entire record carefully.

6. Respondent No.1 in its reply has submitted that the police had filed the challan under Sections 504 and 323 IPC against petitioner No.1 before Gram Panchayat, Dehra, on 30.03.2016. It has further been submitted that as per the report of Secretary, Gram Panchayat Dehra, neither petitioner No.1 nor respondent No.2 had attended the proceedings before the Gram Panchayat on the date fixed, therefore, on 29.09.2018, Gram Panchayat Dehra had returned the case to learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P.

7. Respondent No.3 has also filed its separate reply and has averred that the matter was rightly referred by the Gram Panchayat to the learned Judicial Magistrate 1st Class, Anni for adjudication in terms of unanimous resolution passed by the members of the Gram Panchayat.

8. Record divulges that the case was transferred by respondent No.3 to the Court of learned Judicial Magistrate 1st Class, Anni, on the basis of resolution which reads as under:-

9. As per Schedule-III appended to the H.P. Panchayati Raj Act (for short, "the Act"), Sections 323 and 504 of the IPC are cognizable by a Gram Panchayat, if committed within the jurisdiction of such Panchayat. The exclusivity of such cognizance has been provided by Section 34 of the Act, which bars any other Court from taking cognizance of any proceeding which is cognizable under the Act by a Gram Panchayat. Thus, respondent No.3 was under legal mandate to decide the case presented before it in pursuance to investigation in FIR No.18 of 2016.

10. Section 37 of the Act provides for following circumstances in which the Gram Panchayat can return the complaint to the complainant directing it to be filed before the Magistrate having jurisdiction to try the case:-

- (a) it has no jurisdiction to try the case before it;
- (b) the offence is one for which it cannot award adequate punishment and
- (c) the case is of such a nature or complicity that it should be tried by a regular Court.

11. It is evident from the above noted resolution of respondent No.3 that the case was not sent to the Court of learned Judicial Magistrate 1st Class, Anni, on

any of the situations contemplated by Section 37 of the Act. Rather, it is revealed from the resolution of Respondent No.3 that matter was decided to be sent to learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. as the parties had failed to appear before the Gram Panchayat despite repeated issuance of summons/notices.

12. Order dated 04.10.2018, passed by learned Judicial Magistrate 1st Class, Anni, reads as under:-

"04.10.2018 Present: Sh. P.S. Negi, Ld. APP for the State.

Office report seen. As per which there is an objection that the proceedings of the concerned Gram Panchayat Dehra, Tehsil Nirmand, District Kullu, H.P. is not enclosed herewith. A perusal of the record reveals that the challan is accompanied with the letter from the concerned Panchayat stating that the concerned Panchayat had issued summons to the parties to appear before the Panchayat on 06.10.2017, 26.10.2017 and 06.04.2017, however, the parties did not appear before the Panchayat. In view of the above, report, let summons be issued to the Pradhan and Secretary of the concerned Gram Panchayat returnable for 12.12.2018."

13. On perusal of the aforesaid order, there remains no doubt that the case came to be transferred to the Court of learned Judicial Magistrate 1st Class, Anni, in pursuance to the resolution passed by respondent No.3 in the aforesaid terms. It is further divulged from the records of file maintained in the Court of learned Judicial Magistrate 1st Class, Anni that though the records of Gram Panchayat were requisitioned but instead of production of record, some report was submitted by the Secretary of the Gram Panchayat concerned, again reiterating the fact that the complainant and accused had not appeared before the gram Panchayat and it was on such basis that the case was transferred to the Court of learned Judicial Magistrate 1st Class, Anni.

14. Learned Judicial Magistrate 1st Class, Anni had proceeded to issue summons to both the parties purportedly under Section 64 of the Act. The record further reveals that in addition to petitioner No.1, petitioners No.2 and 3 were also summoned by learned Judicial Magistrate 1st Class, Anni.

15. Evidently, none has seen the record of proceedings allegedly undertaken by the Gram Panchayat.

The only available record is a copy of extract of proceeding register annexed as Annexure R-2, with the reply of respondent No.3. It is shown from this document that on 24.08.2018 in the meeting of Gram Panchayat, a resolution was passed authorising the transfer of case to the Court of learned Judicial Magistrate 1st Class, Anni.

16. Respondent No.3 has not placed on record any proceedings undertaken by it, whereby petitioner No.1 had been summoned and he had remained absent. On the contrary, petitioners have placed on record, a copy of notice dated

06.04.2018, whereby petitioner No.1 was asked to remain present before the Panchayat on 24. 04.2018. On the said date i.e. 24.04.2018, the presence of petitioner has been recorded vide Annexure P-5, whereas respondent No.2 has been marked absent. Except as above, there is no material to justify the stand of respondent No.3.

17. Section 64 of the Act provides that the Gram Panchayat shall report the fact if the accused fails to appear or cannot be found, to the nearest Magistrate. On such reference, the only jurisdiction vested with the Magistrate is to issue warrants of arrest to the accused in accordance with sub-section (2) of Section 64 of the Act and in pursuance thereto on appearance of accused before the Magistrate, to direct him to execute a bond with or without surety to appear before the Gram Panchayat and also to continue to appear before the Panchayat.

18. Admittedly, petitioners No.2 and 3 were not accused before the Gram Panchayat. In such circumstances, it is not understandable as to how the learned Judicial Magistrate 1st Class, Anni, District Kullu, issued summons to petitioners No.2 and 3.

19. Above noticed facts clearly demonstrate that respondent No.3 and also the learned Judicial Magistrate 1st Class, Anni, have failed to undertake proceedings in accordance with law. The illegalities have been perpetuated by both of them. The act of Respondent No.3 in transferring the matter to learned Judicial Magistrate 1st Class, Anni is not legally sustainable for want of fulfillment of conditions of Section 37 or 64 of the Act. The manner in which learned Judicial Magistrate 1st Class, Anni conducted himself in the matter also cannot be countenanced. Merely on the report of Secretary of the Panchayat and without testing the veracity of resolution passed by the Panchayat, the summoning of parties especially petitioners 2 and 3, who were not even the named accused in the case, was totally uncalled for and reflects non application of mind.

20. Thus it is a fit case where the proceedings so undertaken by respondent No.3 and learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. are required to be quashed and set aside to prevent abuse of process of law.

21. In result, the instant petition is allowed and the proceedings under taken by respondent No.3 and learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. in the matter till date are quashed and set aside. The case is ordered to be heard afresh by respondent No.3 afresh strictly in accordance with law. Learned Judicial Magistrate 1st Class, Anni, District Kullu, H.P. is directed to send back the records of the case to Respondent No.3 forthwith. The petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

22. Records be sent back forthwith.