

(2021) 09 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 447 Of 2017

Vinod Kumar Stokes

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 13-09-2021

Acts Referred:

Himachal Pradesh Panchayati Raj (General) Rules, 1997 — Rule 51
Code Of Criminal Procedure, 1973 — Section 173, 173(2)
Himachal Pradesh Panchayati Raj Act, 1994 — Section 32, 33, 34, 36, 37, 38, 39, 40,
51, 52, 54, 54(3), 67, 341, 447, 506
Code Of Criminal Procedure, 1973 — Section 109, 110, 125, 173(2), 202, 313
Indian Penal Code, 1860 — Section 341, 379, 447, 506(I)

Citation : (2021) 09 SHI CK 0026

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : B.C. Negi, P.P. Singh, Nand Lal Thakur, Kunal Thakur, Sunny
Dhatwalia, R. K. Bawa, Ajay Kumar Sharma

Final Decision : Disposed Of

Judgement

Anoop Chitkara, J

This petition coming on for final hearing this day, the Court passed the following:

FIR No.

Dated

Police Station

Section

78

05.07.2016

Kumarsain, District Shimla, H.P.

341, 447 and 506 of IPC

1. Challenging the above captioned FIR, the report under Section 173 of the Code of Criminal Procedure, 1973, (CrPC), and its presentation before Gram Panchayat instead of the Court of Chief Judicial Magistrate, (CJM), the accused had come up before this Court.

2. A perusal of the Police report filed under Section 173(2) CrPC reveals that the Officer-in-charge of the Police Station Kumasain had forwarded the challan to the Gram Panchayat Thanedar. The matter is pending consideration before the said Panchayat.

3. Sections 32, 33, 34, 36, 37, 38, 39, 40, 51, 52 and 54 of the H.P. Panchayati Raj Act, 1994 read as follows: -

32. Offences cognizable by Gram Panchayat. -(1) Offences mentioned in Schedule-III or declared by the State Government to be cognizable by a Gram Panchayat, if committed within the jurisdiction of a Gram Panchayat, and abetment of and attempts to commit such offences shall be cognizable by such Gram Panchayat.

(2) Application for maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be heard and decided by the Gram Panchayat. A Gram Panchayat may grant a maintenance allowance not exceeding five hundred rupees per month on such application without prejudice to any other law for the time being in force in this behalf.

33. Penalties. -A Gram Panchayat may impose a fine not exceeding one hundred rupees but shall not inflict a sentence of imprisonment either substantive or in default of payment of fine.

34. No cognizance by Courts. -No Court shall take cognizance of any case suit or proceeding which is cognizable under this Act by a Gram Panchayat established for the area to which the case, suit or proceeding relates, unless an order has been passed under section 67.

36. Summary disposal of complaint. -A Gram Panchayat may dismiss any complaint, if after examining the complainant and taking such evidence as he produces, it is satisfied that the complaint is frivolous, vexatious or untrue.

37. Return of complaints. -If, at any time, it appears to a Gram Panchayat, -

(a) that it has no jurisdiction to try any case before it; or

(b) that the offence is one for which it cannot award adequate punishment; or

(c) that the case is of such a nature or complexity that it should be tried by a regular court, it shall return the complaint to the complainant directing him to file it before the Magistrate having jurisdiction to try such case.

38. Certain persons not to be tried by the Gram Panchayat. -No Gram Panchayat

shall take cognizance of any offence where the accused--

(a) has been previously convicted of an offence punishable with imprisonment of either description for a term of three years or more; or

(b) has been previously fined under section 379 of the Indian Penal Code (45 of 1860) by any Gram Panchayat or has been previously convicted and sentenced under the said section by a Court; or

(c) has been bound over to be of good behaviour under section 109 or 110 of the Code of Criminal Procedure, 1973 (2 of 1974); or

(d) has been previously convicted of gambling;

or

(e) is Government servant and act complained of is the one done in his official capacity.

39. Compensation to the accused. -If a Gram Panchayat is satisfied after enquiry that a case brought before it was false, frivolous or vexatious, it may order the complainant to pay to the accused such compensation not exceeding two hundred rupees, as it thinks fit.

40. Enquiry in cases forwarded by a Magistrate. - A Magistrate may direct an inquiry to be made under section 202 of the Code of Criminal Procedure, 1973 (2 of 1974), by a Gram Panchayat in any case in which the offence was committed within the territorial jurisdiction of such Gram Panchayat and the Gram Panchayat shall inquire into the case and submit its report to the said Magistrate.

51. Double jeopardy. -Where a case is pending in any court against an accused person in respect of any offence or where an accused person has been tried for any offence, no Gram Panchayat shall take cognizance of any such offence, or on the same facts, of any other offence, of which the accused might have been charged or convicted.

52. Concurrent jurisdiction. -Where a case, suit or proceeding is maintainable in more than one Gram Panchayats the plaintiff or the complainant or the applicant, as the case may be, may bring the case, suit or proceeding in any one of such Gram Panchayats. Any dispute regarding jurisdiction shall be decided by the judicial Magistrate, Sub-Judge or the Collector having jurisdiction, as the case may be.

54. Recording of substance of the complaints and application and appointment of benches. -(1) Where a case, suit or a proceeding is instituted orally, the Pradhan or the Up-Pradhan receiving the complaint or application shall record without delay the prescribed particulars and take the signature or thumb impression of the complainant or applicant thereon.

(2) On recording the substance of the complaint or application in the register under sub-section (1) the Pradhan or in his absence the Up-Pradhan, as the case

may be, shall, or on a reference by a revenue court concerned, appoint a bench of the Gram Panchayat consisting of three Panches and refer the said complaint or application to that bench for disposal and shall also fix a date for the first hearing of the complaint or application before the said bench and give notice of the said date to the complainant or the applicant and to the Panches thereof:

Provided that no Panch, who is a member of the Gram Sabha in the ward for election to the Gram Panchayat in which ward the place of occurrence of the case lies, or in which ward the cause of action for the suit arose, as the case may be, shall be included on the bench.

(3) On the date fixed for the first hearing of case, suit or proceedings the bench formed under sub-section (2), shall, unless the Pradhan or Up-Pradhan is a member of it, choose one of the Panches to be the Chairman of that bench to conduct the proceedings and shall take up and hear case, suit or proceedings, as the case may be, in the prescribed manner.

(4) For the purposes of judicial functions, a Gram Panchayat shall include a bench thereof."

4. Rule 51 of The Himachal Pradesh Panchayati Raj (General) Rules, 1997 reads as follows: -

51. Examination of the parties and their witnesses under section 54(3) of the Act.- (1) When hearing a civil suit or a revenue proceeding, the Gram Panchayat shall first examine the plaintiff or applicant and his witnesses and thereafter the defendant or objector and his witnesses, as the case may be, while trying a criminal case it shall first explain to the accused the charge or charges made against him and shall thereafter record prosecution evidence and thereafter examine the accused and his defence:

Provided that if in a criminal case an accused makes a clear and voluntary confession of the crime, he may be convicted without recording any evidence and in civil suits or revenue proceedings if the claim of the plaintiff or the applicant is totally admitted by the other party, it will not be necessary for the Gram Panchayat to record any evidence.

(2) Each party shall be allowed to cross examine another party and their witnesses just after their examination-in-Chief but the Gram Panchayat may, either of its own motion or on the request of any party, examine any person at any stage of the proceedings before passing final orders and in such case party shall be entitled to put question to the person so examined.

(3) Before examining any person, except an accused, a Gram Panchayat shall administer him the following oath or affirmation: -

"I shall state the truth and nothing but truth so help me God"

OR

"I solemnly affirm that I shall state the truth and nothing but the truth."

5. Sections 341, 447, 506 of the Schedule-III of Himachal Pradesh Panchayati Raj Act, 1994 read as follows: -

SCHEDULE-III

OFFENCES COGNIZABLE BY A GRAM PANCHAYAT

No.

Name of the Act/Code

Offence

Section

20

Indian Penal Code

Wrongfully restraining any person

341

31

Indian Penal Code

Criminal Trespass

447

33

Indian Penal Code

Criminal Intimidation

506

6. Given the mandate of S. 32 of the H.P. Panchayati Raj Act, 1994, for the offences punishable under S. 341, 447, and 506 (I) IPC, only the concerned Gram Panchayat, in whose jurisdiction the offences were committed, alone can take cognizance, and none else.

7. The allegation of criminal intimidation prima facie falls under the first part of S. 506 IPC, which is triable by the Panchayat. Consequently, the concerned Gram Panchayat had the jurisdiction to take the cognizance.

8. Thus, the Officer-in-charge of the Police Station Kumasain filing the challan under Section 173(2) CrPC before the Gram Panchayat Thanadar is legally correct and calls for no interference.

9. Mr. Bipin Negi, Ld. Senior Advocate's next submission is that the petitioner is suffering from some serious ailment, and traveling might be unsafe and a health

risk. Given this, Ld. Counsel requests this Court to direct the concerned Panchayat to permit the accused's appearance through video conference and dispense with his physical presence during the entire trial.

10. Mr. Nand Lal Thakur, Ld. Additional Advocate General contends that in the absence of specific legal provisions, the Court should pass refrain from legislating.

11. The COVID-19 pandemic has unfolded the way things will happen in the near future by demonstrating that physical presence is not that material and that video conferencing works well.

12. Per Rule 51 of The Himachal Pradesh Panchayati Raj (General) Rules, 1997, it is mandatory for every Gram Panchayat undertaking proceedings in a criminal trial to proceed by taking the following steps: (1)

First: Explain to the accused the charge or charges made against them;

Second: If the accused make(s) clear and voluntary confession of the crime, they may be convicted without recording any evidence; otherwise;

Third: Record prosecution evidence, but before examining any person, except an accused, a Gram Panchayat shall administer him the following oath or affirmation: -

"I shall state the truth and nothing but truth so help me God."

OR

"I solemnly affirm that I shall state the truth and nothing but the truth."

Fourth: Examine the accused (Without Oath and without any duress, undue influence, pressure, or force); Fifth: Examine the defence brought by the accused (If any);

Sixth: Type and print/Write the order, put signatures, and thereafter pronounce it.

(2) Each party shall be allowed to cross examine another party and their witnesses just after their examination-in-Chief but the Gram Panchayat may, either of its own motion or on the request of any party, examine any person at any stage of the proceedings before passing final orders and in such case party shall be entitled to put question to the person so examined.

13. This provision does not insist upon the physical presence of the accused or even the witnesses.

14. In *Basavaraj R Patil v. State of Karnataka*, (2000) 8 SCC 740, a three - member bench of Hon'ble Supreme Court, while considering the examination of the accused under section 313 CrPC, through video conference, held that "the mandate of Section 313 is imperative with no exception. However, the violation of its compliance can be objected to only by the accused for whose benefit the section has been enacted. The complainant or the prosecution cannot be

permitted to allow the illegality being committed and perpetuated and after the enquiry or trial results in acquittal of the accused, to complain on the basis of the alleged violation. There is no allegation nor could there be any that the personal non-examination of the accused persons had, in any way, adversely affected the prosecution."

15. Reliance be also placed on *Ratilal Bhanji Mithani v. State of Maharashtra*, Constitutional Bench of Hon'ble Supreme Court of India, (1972) 3 SCC 793; and *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601.

16. By accepting the submissions of Ld. Senior Advocate about the precarious health of the accused, coupled with the fact that the H.P. Panchayati Raj Act, 1994 and its rules do not insist upon the accused's physical presence, there is no difficulty in permitting the petitioner to appear through video conference. However, it is subject to the condition that in case the accused chose to appear through video conference, then he shall not seek an adjournment, except for medical reasons beyond his control, and later on, he shall not take the plea that the proceeding was illegal or irregular. The complainant shall also be entitled to appear through Video Conference, in case she so desires. The static law is the dead law. Such direction would significantly advance the law.

17. The Panchayat is directed to conduct the proceedings following the 'Himachal Pradesh Panchayati Raj Act, 1994' and Rule 51 of 'The Himachal Pradesh Panchayati Raj (General) Rules, 1997.' However, the Panchayat shall record the proceedings of video conference and such video recording shall be admissible in evidence.

The petition is disposed in aforesaid terms. All pending applications closed.

Petition and all pending applications are closed.