APPELLATE CRIMINAL

Before D. Falshaw and I. D. Dua, JJ.

GIANI RAM,—*Appellant*

versus

UTTAR CHAND AND OTHERS,—*Respondents*

Criminal Appeal No. 701 of 1958

Punjab Gram Panchayat Act (IV of 1953)—Section 41—Complaint under sections 447, 448/147, I.P.C., filed in the court of a magistrate against five persons—Magistrate summoning two persons under sections 447 I.P.C., and convicting them after trial—Trial—Whether illegal and without jurisdiction—Irregularity—Whether cured by section 529 of the Code of Criminal Procedure (V of 1898).

1959

May, 14th

Held, that where a complaint was filed against five persons under sections 447, 448/147, Indian Penal Code, in the court of a magistrate who summoned two persons only under section 447, I.P.C., and after trial convicted them, the order of the magistrate cannot be said to be tainted with any illegality which renders it void or without jurisdiction. The Gram Panchayat Act does not specifically or expressly deprive the ordinary criminal courts of their jurisdiction to try offences under the Indian Penal Code. Section 41 of the Act merely places a restriction with respect to certain minor offences mentioned in section 38 read with Schedule 1-A. But this restriction is also removable by a District Magistrate who may, for reasons to be recorded in writing, transfer any criminal case from a Panchayat to another Court subordinate to him. The offences with respect to which criminal jurisdiction has been vested in the Gram Panchayats are, as is clear from Schedule 1-A, very minor offences. If, therefore, a complaint contains allegations which may amount to an offence which is not triable by a Panchayat, then the Magistrate is under no obligation to transfer the proceedings, in pursuance thereof, to a Panchayat; and similarly the Panchayat would not be competent to entertain and enquire into such a complaint. Even if section 41 is capable of two interpretations, the one which ensures to a citizen, trial by a more competent and

trained judicial officer must be preferred to the one which subjects him to be tried by untrained, unprofessional and not very literate officers, who owe their position to a not very satisfactory method of election.

Held, that if no objection as to jurisdiction is raised before the trial court, it would merely be an irregularity which would not by itself vitiate the proceedings. Such an irregularity is cured by section 529 of the Code of Criminal Procedure. If a magistrate erroneously and in good faith takes cognizance of an offence under section 190, subsection (1) clause (a) or clause (b), his proceedings are not to be set aside merely on the ground of his not being so empowered unless prejudice has been caused to the accused.

Appeal against the judgment of Shri H. S. Bhandari, Sessions Judge, Rohtak, dated 4th September, 1958, reversing that of Shri K. K. Puri, Magistrate, Ist Class, Rohtak, dated 30th July, 1958, and acquitting accused respondents.

PREM CHAND JAIN, for Appellant.

RUP CHAND and K. L. JAGGA, for Respondents.

JUDGMENT

Dua, J.

DUA, J.—The only question which arises for decision in this appeal is whether the order of the Magistrate, 1st Class, Rohtak, dated 30th of July, 1958, is without jurisdiction and, therefore, illegal and void as found by the learned Sessions Judge and whether the lower appellate Court was justified in setting aside the said order without considering the appeal on the merits.

Giani Ram brought a complaint against Attar Chand and 4 others under sections 447, 448/147 of the Indian Penal Code. The learned Magistrate, however, summoned only Attar Chand and Gurdas Mal and after trial found them both technically gulity of the offence under section 447, Indian Penal Code. On this finding they were fined Rs. 51 each.

Feeling aggrieved the two accused went up in appeal to the Court of the learned Sessions Judge. The lower appellate Court has observed that after recording preliminary enquiry the learned Magistrate had summoned Attar Chand and Gurdas Mal only under section 447 of the Indian Penal Code and offence under this section being triable by the Gram Panchayat, the Magistrate should have transferred the proceedings to the Panchayat of competent jurisdiction as enjoined by section 41 of the Gram Panchayat Act. On this finding the appeal was allowed, the order of the trial Magistrate set aside and the accused acquitted.

Against this order of acquittal, Giani Ram has preferred this appeal and we have heard Mr. Prem Chand Jain for the appellant, Mr. K. L. Jagga for the State and Mr. Rup Chand for the accused. Mr. Jain has submitted that if the complaint as brought includes an offence which is outside the jurisdiction of the Panchayat, then the Magistrate is not obliged to transfer the proceedings from his Court to a Panchayat of competent jurisdiction. He has also submitted that the Magistrate should be deemed to take cognizance of an offence when he actually entertains a complaint and the mere fact that he orders a preliminary enquiry does not necessarily mean that the Magistrate has not taken cognizance of the offence. In support of his contention he has placed reliance on *R. R. Chari* v. *The State of Uttar Pradesh* (1), in which the following quotation from a decision in *Superintendent and Remembrancer of Legal Affairs, West Bengal* v. *Abani Kumar Banerjee* (2), was reproduced with approval:—

> "What is 'taking cognizance' has not been defined in the Criminal Procedure Code,

(1) A.I.R. 1951 S.C. 207
(2) A.I.R. 1950 Cal, 437

Giani Ram
v.
Uttar Chand
and others

Dua, J.

and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceedings in a particular way as indicated in the subsequent provisions of this Chapter,—proceeding under section 200, and, thereafter, sending it for enquiry and report under section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

The counsel has also admitted that no objection having been raised by the accused persons in the Court of the Magistrate questioning his juridiction, the order of the trial Court should nat have been set aside as illegal and void and section 529 of the Code of Criminal Procedure should have been held to save these proceedings. In support of his submission, the counsel has referred us to *Purshottam Jethanand* v. *The State of Kutch* (1), head-note (a) of which is in the following terms:—

"Where a Magistrate of the First Class, though not empowered to do so, takes in good faith cognizance of an offence

(1) A.I.R. 1954 S.C. 700

under section 190(1) (a) and (b), the defect in the absence of any prejudice to the accused is cured by section 529. And further the defect will be held as cured by a *bona fide* decision given by the Magistrate as to the existence of the power when objection thereto is taken, even assuming without deciding that the 'taking of cognizance' was then continuing." —

The counsel has also relied on a decision of a Division Bench of this Court in *The State* v. *Harbhajan Singh and others* (1). In this case section 41 of the Punjab Gram Panchayat Act came up for considering in the following circumstances: Proceedings were originally started against 5 accused under section 147 read with section 367 and section 342 of the Indian Penal Code; after recording evidence the Magistrate found that no offence under section 367, Penal Code, had been proved against any of the accused and the offence under section 342, Penal Code, was only proved against two of them, and convicted them under section 342, Penal Code; it was also found that there was no unlawful assembly and, therefore, three of the accused persons were convicted under section 323, Penal Code, for their individual act. The High Court held that the proceedings before the Magistrate were not to be stayed and the case was not to be referred to a Gram Panchayat; the Magistrate was held to possess full jurisdiction to convict the accused under section 323, Penal Code. While dealing with the scope of section 41 of the Gram Panchayat Act it was observed that all that section 41 requires is that if a complaint or a report of an offence triable by a Gram Panchayat is brought before a Magistrate or he takes cognizance of any

(1) 1956 P.L.R. 323

Giani Ram
v.
Uttar Chand
and others

Dua, J.

such offence upon his own knowledge or suspicion, he shall transfer the proceedings to a Gram Panchayat, which can only mean that where the complaint is made under section 323, Penal Code, or cognizance is taken under section 323 alone, then the Magistrate shall transfer the case to a Gram Panchayat. Where neither the complaint nor the report by the Police is under a section exclusively triable by a Gram Panchayat nor cognizance taken for an offence mentioned in Schedule I-A of the Gram Panchayat Act, the Magistrate is not bound to transfer the case to the Gram Panchayat. The contention of the counsel is that in the instant case the complaint was not exclusively confined to an offence triable by a Gram Panchayat, with the result that, according to the reasoning of the Division Bench, the Magistrate was not under an obligation to transfer the proceedings to a Gram Panchayat.

While dealing with *Meena Ram* alias *Basti Ram* v. *Mst. Dwarki* (1), on which the learned Sessions Judge has placed his reliance, the counsel submits that the reported case dealt with the scheme of the Pepsu Panchayat Raj Act and the language of section 67 of the said Act is not wholly similar to that of section 41 of the Punjab Act IV of 1953. Mr. Jagga, counsel for the State, has also supported the contention advanced by the counsel for the appellant. He has emphasised the distinction between a complaint or report by the Police of an offence triable by a Panchayat brought before a Magistrate, and an offence of which the Magistrate takes cognizance upon his own knowledge or suspicion; the contention being that as soon as a complaint is brought before a Magistrate section 41 becomes operative and it is not necessary

(1) 1958 P.L.R. 417

to go into the technical question as to when a criminal Court can be deemed to take cognizance of an offence. He submits that as soon as a complaint is brought before a Magistrate if that complaint is not confined exclusively to an offence triable, by a Panchayat, the Magistrate concerned is under no legal obligation to transfer the proceedings to a Panchayat of competent jurisdiction. He also supported the submission of Mr. P. C. Jain that the irregularity, if any, is saved by sections 529 and 537 of the Code of Criminal Procedure.

Mr. Rup Chand, on behalf of the accused, has urged that it is the substance of the offence which is to be considered and mere label of the section, under which the complaint has been preferred, is not of much consequence. He also submits that as soon as the Magistrate came to the conclusion that the offence, established on the record, was only under section 447 of the Indian Penal Code, he should have stayed his hands at that stage, and transferred the proceedings to a Panchayat of competent jurisdiction. According to the counsel this construction alone would promote the object of the statute.

After considering the respective contentions advanced by the counsel for the complaint and the State on the one side and of the accused on the other, I am of the opinion that the order of the trial Court is not tainted with any illegality which renders it void or without jurisdiction. It may be noticed that the Gram Panchayat Act does not specifically or expressly deprive the ordinary criminal Courts of their jurisdiction to try offences under the Indan Penal Code. Section 41 of the Gram Panchayat Act is in the following terms:—

> "41. Any magistrate before whom a complaint or report by the police of any offence triable by a Panchayat is brought

Giani Ram
v.
Uttar Chand
and others

Dua, J.

or who takes cognizance of any such offence upon his own knowledge or suspicion shall transfer the proceedings to a Panchayat of competent jurisdiction:

Provided that a District Magistrate may for reasons to be recorded in writing transfer any criminal case from one Panchayat to another Panchayat of competent jurisdiction or to another Court subordinate to him.'

The proviso clearly suggests that the framers of the Gram Panchayat Act did not intend to take away the jurisdiction vested in the criminal Courts to try the offences which they are empowered to try under the Code of Criminal Procedure. The ordinary criminal Courts have not been completely divested of their jurisdiction under the general law. The section merely places a restriction with respect to certain minor offences mentioned in section 38 of the Gram Panchayat Act read with Schedule I-A. But this restriction is also removable by a District Magistrate who may, for reasons to be recorded in writing, transfer any criminal case from a Panchayat to another Court subordinate to him. The offences with respect to which criminal jurisdiction has been vested in the Gram Panchayats are, as is clear from Schedule I-A, very minor offences. If, therefore, a complaint contains allegations which may amount to an offence which is not triable by a Panchayat, then in my opinion the Magistrate is under no obligation to transfer the proceedings. in pursuance thereof, to a Panchayat; and similarly the Panchayat would not be competent to entertain and enquire into such a complaint. Even if section 41 is capable of two interpretations, one as suggested by the counsel

for the complaint and the other as suggested by the counsel for the accused, I think the one which ensures to a citizen, trial by a more competent and trained judicial officer must be preferred to the one which subjects him to be tried by untrained, unprofessional and not very literate officers, who owe their position to a not very satisfactory method of election. I am also of the view that if no objection is raised before the trial Court on this score, it would merely be an irregularity which would not by itself vitiate the proceedings. Section 529 of the Code of Criminal Procedure is in the following terms:—

"529. Irregularities which do not vitiate proceedings:—

If any Magistrate not empowered by law to do any of the following things, namely:—

(a) to issue a search-warrant under section 98;

(b) to order. under section 155, the police to investigate an offence;

(c) to hold an inquest under section 176;

(d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed offence outside such limits;

(e) to take cognizance of an offence under section 190, sub-section (1), clause (a) or clause (b);

(f) to transfer a case under section 192;

(g) to tender a pardon under section 337 or section 338;

Giani Ram
v.
Uttar Chand
and others

Dua, J.

(h) to sell property under section 524 or section 525; or

(i) to withdraw a case and try it himself under section 528; erroneously in good faith does that thing his proceedings "shall not be set aside merely on the ground of his not being so empowered."

If a Magistrate erroneously and in good faith takes cognizance of an offence under section 190, sub-section (1) clause (a) or clause (b), his proceedings are not to be set aside merely on the ground of his not being so empowered. It has not been contended—and I think it is not possible to contend—that the accused in the present case have in any way been prejudiced by the trial having been held by a Magistrate of 1st Class. The Magistrates are the normal custodians of the general administration of criminal justice. It is true that so far separation of the executive from the judiciary has not been effected in this State as contemplated by Article 50 of the Constitution and the Magistrates are invested with both executive and judicial powers, but it cannot be contended, and it has not been contended before us, that an accused person can by any stretch be considered to have been prejudiced by having been tried before a Magistrate according to the Code of Criminal Procedure with the aid of a lawyer, instead of the Panchayat. In my view, therefore, the learned Sessions Judge was not right when he found that the order of the Magistrate was illegal and void deserving to be set aside on the ground of want of jurisdiction.

Before concluding it must also be observed that if the learned Sessions Judge was of the view that the Magistrate should have transferred the proceedings to a Panchayat, then instead of just

Giani Ram
v.
Uttar Chand
and others

Dua, J.

acquitting the respondents the lower appellate Court should itself have passed the necessary order transferring the proceedings to a Panchayat after setting aside the order of the Magistrate. It is clear that whatever order the Magistrate could pass, the appellate Court while dealing with the appeal was also fully competent to pass. It is, however, unnecessary to pursue this matter any further.

For the reasons given above, the appeal is allowed, the order of the learned Sessions Judge acquitting the respondents set aside and the case sent back to the lower appellate Court for decision of the appeal on the merits. The parties have been directed to appear before the learned Sessions Judge on 8th June, 1959, when another date would be given for further proceedings.

Falshaw, J.

Falshaw, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw and I. D. Dua, JJ.

BASANT RAM,—*Petitioner.*

versus

GURCHARAN SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 232 of 1957

Patiala & East Punjab States Union Urban Rent Restriction Ordinace (VIII of 2006 Bk.)—Proviso to clause (i) of section 13(2)—Meaning of—"Arrears" and "rent due"—Meaning of—Whether amount of rent due on the date of application as claimed by the landlord or the amount of rent due up to the date of payment or tender—Interpretation of Statutes—Words used ambiguous—Meaning, how to be ascertained.