REVISIONAL CRIMINAL

Before Gopal Singh, J.

PRITAM SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 299 of 1969

December 10, 1969

Code of Criminal Procedure (V of 1898)—Sections 197 and 367—The Punjab Gram Panchayat Act (IV of 1952)—Sections 9 and 102—Sanction of State Government for the prosecution of a public servant—Whether necessary only for those exclusively removable by the State Government—Section 197 of the Code—Whether applicable to Sarpanch—Lower Court's judgment without reasons—Whether vitiated.

Held, that the expression 'save by' preceded by the expression, 'not removable' shows that in order that section 197, Criminal Procedure Code as regards the authority entitled to remove a public servant may apply, the power to remove a public servant must vest solely and exclusively in the State Government and in no other authority. These two expressions place beyond the pale of ambiguity, the view that the section is applicable to a public servant, when he is removable only by a State Government, if he is employed in connection with the affairs of such Government. The section will not apply, if such a public servant is removable otherwise by any authority other than the State Government. Section 197 lays down that Court is not to take cognizance of an offence unless sanction for prosecution grantable by State Government alone has been accorded. In other words, the condition precedent for sanction of prosecution of a public servant is necessary only if the power of his removal is exercisable by the solitary authority of the State Government and by no other authority. (Para 16)

Held, that by virtue of the power conferred upon a Gram Panchayat under section 9 of Punjab Gram Panchayat Act, 1952, a Sarpanch is removable by resolution of the Panchayat subject to its approval by the Director. He is also under certain circumstances as given in sub-section (2) of section 102 of the Act removable by the Government of the State of Punjab. Thus, under these two provisions of the Act, he is not only removable by the State Government but is also removable by the Gram Panchayat subject to the approval of the Director of Panchayats. The authority of the State Government entitled to remove a Sarpanch under section 102 of the Act is different from the authority of the Panchayat entitled to remove a Sarpanch by passing a resolution to that effect subject to its approval by the Director of Panchayats as contemplated by section 9 of the Punjab Gram Panchayat Act. The authority of the State Government when placed in *juxta-position* with the authority of the Panchayat exercising power subject to the approval of the Director cannot be equated with the latter. The two authorities are different and distinct from each other. Hence section 197 of the Code does not cover the case of Sarpanch as he is not removable only by the authority of the State Government.

(Para 15)

Held, that section 367, Criminal Procedure Code enjoins upon a Court and makes it obligatory to give reasons for decision on a point or points arising for its determination. In other words, when a Court has to give a finding whether on a question of law or of fact, the Court has to give reasons in support of that finding. In order that findings of fact may be appreciated by the High Court in a revision and their legality or propriety judged, the findings must have been arrived by process of reasoning with reference to the material placed both on behalf of the prosecution and the defence in relation to the points to be determined. One general and vague sentence in conclusion that the Court agreed with the arguments of the Public Prosecutor, is no finding nor a decision on the points requiring determination by the Court. By such a judgment, the High Court is deprived of the advantage of the various findings of fact, which should have been arrived at after well reasoned discussion of the evidence. Thus absence of reasons in the judgment of the Court of appeal will vitiate the same (Para 21)

Petition under section 439/435 Crminal Procedure Code, for revision of the order of Shri Salig Ram Bakshi, Additional Sessions Judge, Ambala City dated 18th March, 1969 affirming that of Shri R. K. Taneja, Judicial Magistrate Ist Class, Ambala City, dated 11th July, 1966, convicting the petitioner.

NARINDER SINGH, ADVOCATE, for the petitioner.

H. N. MEHTANI, ASSISTANT ADVOCATE-GENERAL, (HARYANA) for the respondents.

DILBAGH SINGH AND J. S. WASU, ADVOCATES, for the complainant.

JUDGMENT

GOPAL SINGH, J.— This is revision petition by Pritam Singh, from the judgment of Shri Salig Ram Bakshi, Additional Sessions Judge, Ambala City dated March 18, 1969, convicting the appellant under section 409 Indian Penal Code and sentencing him to rigorous imprisonment for one year and to pay fine of Rs. 500 or in default of payment of fine to further rigorous imprisonment for three months and under section 477, Indian Penal Code and sentencing him to rigorous imprisonment for six months and to pay fine of Rs. 200 or in default of payment of fine to further undergo rigorous imprisonment for three months, thereby confirming on appeal the conviction and sentences of the appellant from the judgment of Shri R. K. Taneja, Judicial Magistrate 1st Class, Ambala City, dated July 11, 1968. The substantive sentences of imprisonment were directed to run consecutively.

(2) Elections of the members of Gram Panchayat and to the office of Sarpanch of village Sakhetri were held in 1953. Bir Baksh, Tulsi Ram, Ram Kishan, Chuhar Singh and Achhru Ram were elected as members of the Panchayat. The petitioner was elected as its Sarpanch. The petitioner continued as Sarpanch from January, 1953 to December, 1960.

(3) Sometime in the last week of February, 1960, the petitioner had to appear for interview for selection as Assistant Sub-Inspector of Police in the Border Security Force. In order to enable himself to do so, he handed over the charge of the office of Sarpanch on February 22, 1960, after the Panchayat convened on that date in Dharamshala of the village had passed resolution Exhibit D.W. 3/A entered in the Proceedings Book Exhibit 'D' to the effect that charge be handed over by him. The charge was handed over to Chuhar Singh. The genuineness of this resolution is controverted by the prosecution on the ground that that resolution had been forged by the petitioner on a piece of paper upon which thumb-impression of Chuhar Singh was obtained by him when Chuhar Singh was on his death bed. After the interview was over, the petitioner returned to the village and resumed working as Sarpanch.

(4) On August 29, 1960, Jit Pal Singh Jhanji, P.W. 3 audited the accounts of the Panchayat for the period from July, 1958 to July, 1960. The auditor's note and the inspection note submitted by him to the Inspector of Local Funds is Exhibit P.W. 3/A. He found Rs. 6,593.58 as balance in hand with the petitioner. He noted that sum of Rs. 1,290 was withdrawn from the Bank Account of the Panchayat and not accounted for. He further discovered that lease money of Rs. 670 received from Sangat Singh lessee of the land of Panchayat leased out to him had not been credited in the account books of the Panchayat. The audit of the books revealed that sum of Rs. 42 received as *chulha tax* by the petitioner from the residents of the village in 1960 was not shown as received in the Cash Book. Thus, according to the report of the Auditor, the petitioner had failed to account for the total sum of Rs. 8,552.15 P. composed of these four items and had been converted by him to his own use. Although the aggregate amount mentioned and given in the charge-sheet and referred to in the two Courts below is Rs. 8,652.15 P. but the total amount of these items comes to Rs. 8.595.58 P. Fresh elections of the Panchayat were held on December 4, 1960. Shrimati Shamsher Kaur, P.W. 9, Sardar Singh, P.W. 14, Dhanna Singh, P.W. 15, Ram

Dass, P.W. 18 and Nasib Singh, P.W. 20 were elected as members of the Panchayat while Pohla Singh, P.W. 21 was elected as new Sarpanch. The election to the office of the Sarpanch was also contested by the petitioner. He lost it to Pohla Singh. Feeling aggrieved of the election of Pohla Singh, as Sarpanch, the petitioner invoked the writ jurisdiction of the High Court. His writ petition was dismissed on January 21, 1961.

(5) A letter, dated December 29, 1960, Exhibit D.W. 3/B was sent by the Block Development Officer to the petitioner to collect records from the heirs of Chuhar Singh deceased, which may be found with them and to hand them over to Pohla Singh. Sarpanch. On January 7, 1961, the petitioner sent a notice, Exhibit D-3 under registered postal cover to Pohla Singh Sarpanch communicating to him to take charge of the records and assets of the Panchayat. The petitioner handed over on February 13, 1961, the charge of the documents whatever were with him to Pohla Singh Sarpanch.

(6) After enquiry, on July 13, 1961, first information report Exhibit P.W. 28/B was registered on the report made by Mukhtiar Singh, Block Development Officer at Police Station Chandi Mandar stating that the petitioner had misappropriated Rs. 8,552.15 out of the Panchayat funds and he had tampered with the records of the Panchayat and committed forgery. The investigation of the case continued for about three years. In December, 1963, pending investigation, elections of the Panchayat were held again. The petitioner was elected as Sarpanch and Pohla Singh, who contested against the petitioner for that office, was defeated. On June 5, 1964, order sanctioning prosecution of the appellant was made under Section 197 of the Code of Criminal Procedure. In course of investigation, Pohla Singh and other Panches of the then functioning Panchayat gave evidence to show that the petitioner had made confessional statement before the assembly of the villagers that he was prepared to pay the sum of Rs. 7,000 towards the amount found to have been defalcated, if receipt in full and final settlement of the amount claimed to have been embezzled was issued to him.

(7) Shri Narinder Singh, appearing on behalf of the petitioner has contended that sanction given under section 197, Criminal Procedure Code, is invalid and its invalidity vitiated the trial, that the judgment of the Court of appeal does not give reasons for the decision on the points that arose for consideration and is no judgment

in law, that charge of the records of the Panchayat was delivered to Pohla Singh, new Sarpanch, that no confessional statement had been made by the petitioner before the assembly of the villagers, that the evidence of Jit Pal Singh Jhanji, Auditor does not establish the commission of breach of trust by the petitioner nor the evidence shows that the petitioner had committed any falsification of accounts and that the records having not been tampered with by the time the petitioner handed over charge of the office of Sarpanch to Pohla Singh, the petitioner could not be convicted of the offence under section 477, Indian Penal Code.

(8) It was urged by Shri Narinder Singh, that the order of sanction, dated June 5, 1964, has not been proved to have been passed by the authority, by which it purports to have been passed and consequently the prosecution having failed to prove the sanction for prosecution of the petitioner as laid down in section 197, Criminal Procedure Code, there is no sanction by the authority concerned for the prosecution of the petitioner and hence the trial is vitiated. In reply, Shri H. N. Mehtani appearing for the State contended that section 197, Criminal Procedure Code does not make it obligatory for the prosecution to obtain sanction for prosecution of the petitioner, when the petitioner could be removed not only by the State Government but also by the Gram Panchayat subject to approval by the Director of Panchayats of the resolution of his removal as recommended by the Panchayat.

(9) It is by virtue of section 197, Criminal Procedure Code that necessity for sanction for prosecution of public servants arises. Section 197(1), Criminal Procedure Code, runs as follows:—

> "When any person who is a Judge within the meaning of section 19 of the Indian Penal Code or when any Magistrate, or *when any public servant, who is not removable from his office save by or with the sanction of a State Government* or the Central Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, *no Court shall take cognizance of such offence except with the previous sanction*.. .. ..
>
> (a) .. ..
>
> (b) in the case of a person employed in connection with the affairs of a State, *of the State Government*."

(10) According to the language of this section as its above underlined (in italics in this report) portion indicates, a Court is not to take cognizance of an offence alleged to have been committed by a public servant, who is not removable from his office save by or with the sanction of a State Government, unless the sanction of the State Government is forthcoming. This shows that sanction is a condition precedent for trial and the person, who is sought to be prosecuted and in respect of whom sanction is to be obtained, should be removable from his office only by or with the order of the State Government. In other words, if he is removable by some authority apart from and other than the State Government, this section will not apply. The section contemplates that the public servant should be removable only by the State Government and by no other authority.

(11) There are two sections in the Punjab Gram Panchayat Act, 1952, which deal with the power of removal of a Sarpanch. That power of removal is provided in sections 9 and 102 of the Act. Section 9 runs as follows: —

> "(1) Before entering upon the duties of their office, the Sarpanch and Panches shall take an oath in the form specified in Schedule IV.
>
> (2) The Sarpanch and Panches shall hold office for a period of three years :
>
> Provided that, after the first general election of Chairman and members of executive committees of the Sabhas, and co-option of members of such committees, held and made or deemed to be held and made under section 95-A, the Sarpanches and Panches shall hold office for a period of five years:
>
> Provided further that an outgoing Panch shall, unless the Government otherwise directs, continue to hold his office, until his successor has taken the oath:
>
> Provided further that subject to the approval of the Director, the Sarpanch or a Panch may be removed from his office by a two-thirds majority of the votes of the members of the Sabha at its extraordinary general meeting held with the previous permission of the Director."

(12) According to the third proviso appended to sub-section (2) of section 9, a Sarpanch may be removed from his office by a resolution passed by two-third majority of the votes of the members of the Panchayat at its extraordinary general meeting held with the previous permission of the Director and the Director has accorded approval of the resolution pertaining to that removal.

(13) The relevant provision of sub-section (2) of section 102 runs as under:—

"Government may, after such enquiry as it may deem fit, remove any Panch—

(a) on any of the grounds mentioned in sub-section (5) of section 6".

(14) Sub-section (5) of section 6 prescribes the following grounds:—

(a) is not qualified to be elected as a member of the Legislative Assembly; or

(b) has been convicted of any offence involving moral turpitude unless a period of five years has elapsed since his conviction; or

(c) has been subjected to an order by a criminal Court and which order in the opinion of Government or of the officer to whom Government has delegated its powers of removal, implies a defect of character unfiting him to be a Sarpanch or Panch, unless a period of five years has elapsed since the date of order; or

(d) has been convicted of an election offence; or

(e) has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1898; or

(f) has been notified as disqualified for appointment in public service, except on medical grounds; or

(g) is a whole-time salaried servant of any local authority or State or the Union of India; or

(h) is registered as a habitual offender under the Punjab Habitual Offenders (Control and Reforms) Act, 1952; or

(i) is an undischarged insolvent; or

(j) has not paid the arrears of the tax imposed by the Gram Panchayat; or

(k) is an employee of Sabha or Gram Panchayat; or

(l) is a tenant or lessee holding a tenancy or lease under the Gram Sabha or is in arrears of rent of any lease or tenancy held under the Gram Sabha, or is a contractor of the Gram Sabha.

(15) The word, 'Government' as defined in section 3, clause (h) means, 'Government of the State of Punjab', and the word, 'Panch' as defined in section 3, clause (i) includes a Sarpanch. By virtue of the power conferred upon the Gram Panchayat, a Sarpanch is removable by resolution of the Panchayat subject to its approval by the Director. He is also under certain circumstances as given in sub-section (2) of section 102 of the Punjab Gram Panchayat Act, 1952 removable by the Government of the State of Punjab. Thus, under these two provisions of the Act, he is not only removable by the State Government but is also removable by the Gram Panchayat subject to the approval of the Director of Panchayats. The authority of the State Government entitled to remove a Sarpanch under section 102 of the Punjab Gram Panchayat Act is different from the authority of the Panchayat entitled to remove a Sarpanch by passing a resolution to that effect subject to its approval by the Director of Panchayats as contemplated by section 9 of the Punjab Gram Panchayat Act. The authority of the State Government when placed in juxta-position with the authority of the Panchayat exercising power subject to the approval of the Director cannot be equated with the latter. The two authorities are different and distinct from each other.

(16) The expression, 'save by' preceded by the expression, 'not removable' shows that in order that Section 197, Criminal Procedure Code as regards the authority entitled to remove a public servant may apply, the power to remove a public servant must vest solely and exclusively in the State Government and in no other authority. These two expressions place beyond the pale of ambiguity the view that the section is applicable to a public servant, when he is removable only by a State Government, if he is employed in connection with the affairs of such Government. The Section will not apply, if such a public servant is removable otherwise by any authority other than the State Government. Section 197 lays down that Court is not to take cognizance of an offence unless sanction for prosecution grantable by State Government alone has been accorded. In other words, the condition precedent for sanction of prosecution of a public

servant is necessary only if the power of his removal is exerciseable by the solitary authority of the State Government and by no other authority.

(17) As discussed above, section 197, Criminal Procedure Code does not cover the case of the Sarpanch as he is not removable only by the authority of the State Government. If the section does not apply to the case of prosecution of a Sarpanch, the question of invalidity of the sanction accorded and the trial being vitiated on the score of such invalidity does not arise and needs no consideration. In the present case, no sanction for prosecution of the Sarpanch under section 197, Criminal Procedure Code, is called for. Sanction being not necessary, the trial is in order and valid. Its validity could not be impugned for any irregularity or defect in the order of sanction.

(18) It was next contended by the Counsel for the petitioner that by virtue of section 367, Criminal Procedure Code, the judgment of the Court of appeal is no judgment in law inasmuch as the Court of appeal has not given any reasons for the decision of the points for determination that arose in the case at the time of arguments. Section 367, Criminal Procedure Code, requires that a judgment whether of trial Court or of Court of appeal should contain the point or points for determination, the decision thereon and the reasons for the decision on each point to be determined or decided. After giving a narration of the facts of the case in paras 1 to 5, the Court stated in para No. 6 that the arguments of the Counsel for the appellant and the Public Prosecutor had been heard at length. Paras 7 and 8 are devoted to the discussion about the validity or otherwise of the sanction for prosecution of the petitioner. The Court took the view that the sanction was in order. Paras 9 and 10 deal with the points of arguments advanced on behalf of the Counsel for the petitioner before the Court of appeal and their controversion by the Public Prosecutor on behalf of the State. Nowhere, in these paras and these are the only two paras, which refer to the points in broad outlines arising for determination, there is any discussion or reasoning pertaining to the decision on the points urged. Various points raised on behalf of the petitioner and controverted in reply by the Public Prosecutor in that Court can be summed up under the following heads:—

(1) Charge of certain records of the Panchayat was delivered to Chuhar Singh by the petitioner and his thumb-impression had been duly appended to the charge report and the

charge of other records of the Panchayat was delivered by the petitioner to the new Sarpanch Pohla Singh.

(2) No confessional statement was made by the petitioner before the assembly of the villagers.

(3) The evidence of Jit Pal Singh, Auditor does not establish either the offence of breach of trust by the petitioner or cancellation, destruction or defacement of the records of the Panchayat.

(4) The records had not been tampered with when charge was delivered by the petitioner to Pohla Singh.

(19) The arguments were advanced on behalf of the petitioner under the above four heads in one form or the other. The Court of appeal did not at all discuss these points although there exists on the record large volume of documentary evidence and the oral evidence of as many as 28 prosecution witnesses and of four defence witnesses produced in the case. The Court gave no reasons for determination of those points. The Court after having referred to the points of arguments observed as follows at the end of para 10:—

"I agree with the arguments of the Public Prosecutor on all points taken up before me".

(20) Thus, the Court has failed to assign reasons by entering into detailed discussion of the evidence placed on the record with reference to which various points were raised before the Court and which points had to be determined. The judgment having failed to give reasons in support of the decision on various points, the judgment is no judgment in law.

(21) Section 367, Criminal Procedure Code enjoins upon a Court and makes it obligatory to give reasons for decision on a point or points arising for its determination. In other words, when a Court has to give a finding whether on a question of law or of fact, the Court has to give reasons in support of that finding. In the present case, the questions raised pertain to the appreciation of evidence relied in support of their arguments by Counsel for both the parties. The Court has not at all referred to any portion of the record whether in the form of oral evidence or documentary evidence and not discussed that evidence. In order that findings of fact may be appreciated by the High Court in a revision and their legality or propriety judged, the findings must have been arrived by process of

reasoning with reference to the material placed both on behalf of the prosecution and the defence in relation to the points to be determined. The judgment lacks a reasoned discussion of the evidence. One general and vague sentence in conclusion that the Court agreed with the arguments of the Public Prosecutor, is no finding nor a decision on the points requiring determination by the Court as argued by the parties. By such a judgment, this Court has been deprived of the advantage of the various findings of fact, which should have been arrived at after well reasoned discussion of the evidence. In order that this Court may have the advantage of a judgment of a Court below, there should be definite findings on the points whatsoever raised for determination after giving a well reasoned discussion of the evidence on the record pertaining thereto. As the judgment of the Court of appeal does not satisfy the principles laid down in section 367, Criminal Procedure Code, the same is set aside. The case is remanded to the Sessions Judge, Ambala for arguments being heard on various points that may be urged before him and for findings given on each point after discussing the evidence and giving reasons for arriving at those findings.

(22) As I have held that no sanction in the present case is required under section 197, Criminal Procedure Code for prosecution of the petitioner, the Court of appeal will confine itself to the other points that may be urged before it. The Counsel for the petitioner prays for the petitioner being released on bail on furnishing security to the satisfaction of the Sessions Judge, pending the disposal of the appeal by him. Counsel for the State has no objection to the release of the petitioner on bail. I direct that he be released on bail accordingly if he is not required to be detained in any other case.

N. K. S.

CIVIL MISCELLANEOUS

Before Harbans Singh and S. S. Sandhawalia, JJ.

HUKAM SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1935 of 1966

December 11, 1969

The Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 5 and 6—Election to a Panchayat Samiti—Person elected under