

2. Find out the annual income from the orchard in respect of each set of claimants.
3. Find out whether whole of the acquired land was under the orchard and for purpose subservient to orchard. If not, how much land of each claimant was outside the orchard ?

The cases are remanded to the Additional District Judge, Gurgaon, under order 41, rule 25, Civil Procedure Code, who shall permit the parties to lead evidence on the aforesaid three points and hear arguments thereon and send a report to this Court along with the evidence already recorded and to be recorded, within a period of four months after the appearance of the parties before the Court below. The parties through their counsel are directed to appear before the Court below on 25th August, 1980.

(11) Put up for hearing after the report is received.

S. C. K.

Before S. S. Sidhu, J.

BHAGAT RAM,—*Petitioner.*

versus

GRAM PANCHAYAT and another,—*Respondents.*

Criminal Misc. No. 1598 of 1980.

August 1, 1980.

Punjab Gram Panchayat Act (IV of 1953)—Sections 21, 23-A, 51 and 66—Code of Criminal Procedure (II of 1974)—Sections 397, 399 and 401—Gram Panchayat imposing fine under sections 21 and 23—Aggrieved party filing revision under section 51—Sub-Divisional Magistrate holding such revision maintainable—Order of the Sub-Divisional Magistrate challenged before the Sessions Judge under sections 397 and 399 read with section 401 of the Code—Sessions Judge—Whether competent to take cognizance of the dispute under the Act.

Held, that the Sessions Judge is not a competent authority to take cognizance of or to entertain any matter arising under the Punjab Gram Panchayat Act, 1952. The Act is a special law and a complete code by itself. All the authorities which are competent to take

Bhagat Ram v. Gram Panchayat and another ((S. S. Sidhu, J.)

action in respect of any matter covered by the Act are specifically mentioned in it and the Sessions Judge nowhere figures as such in the Act. For the purposes of dealing with criminal proceedings under the Act, as far as the Gram Panchayat is concerned, the competent authorities mentioned therein are Gram Panchayat, District Development and Panchayat Officer and the Chief Judicial Magistrate. Of course, the Chief Judicial Magistrates of the Punjab State have delegated their powers under the Act to the Sub-Divisional Judicial Magistrates posted at the Sub-Divisional Headquarters. The provisions of the Code of Criminal Procedure, 1973 are not applicable to the proceedings before the Panchayat save to the extent mentioned in the Act. In view of section 66(1) of the Act, the Sessions Judge has no power to deal with any matter covered by the Act in any capacity. Of course, if any of the above mentioned three authorities passes any illegal order relating to criminal matters, then the aggrieved party can ultimately get relief from the High Court by filing a writ petition under Article 227 of the Constitution read with section 482 of the Code, as the High Court under those provisions is vested with wide powers including that of judicial supervision and superintendence over all tribunals and courts in the State.

(Para 3).

Application under Section 482 Cr.P.C. praying that the petition be accepted and this Hon'ble Court may be pleased to hold that the order of learned Sessions Judge is illegal and without jurisdiction and the same be set aside and further praying that during the pendency of the petition in this Hon'ble Court, the operation of the order of learned Sessions Judge, Rupnagar, be stayed.

R. L. Sharma, Advocate. for the Petitioner.

Daulat Ram, Member Gram Panchayat Kalitran, (In person), for respondent No 1.

D. S. Brar, A.A.G., Punjab, for the Respondents.

JUDGMENT

S. S. Sidhu, J.

(1) The Gram Panchayat of village Kalitran took action under sections 21 and 23 of the Punjab Gram Panchayat Act, 1952, hereinafter called the Act against Bhagat Ram and,—*vide* its order dated 18th May, 1979, it imposed fine on him. Bhagat Ram feeling aggrieved by that order preferred a revision petition under section 51 of the Act against that order in the Court of the Sub-Divisional Judicial Magistrate, Anandpur Sahib (a delegate of the powers from the

Chief Judicial Magistrate, Ropar),—Shri Jagroop Singh Mehal. Sital Singh Sarpanch appeared before that Court on behalf of the Gram Panchayat and presented an application alleging therein that since new section 23-A has been introduced by way of amendment of the Act, the right of filing a revision petition by the party aggrieved by the order of the Gram Panchayat passed under sections 21, 22 and 23 of the Act has been taken away and now the only remedy available in such a situation is to file an appeal against the order of the Gram Panchayat made under the above three sections before the District Development and Panchayat Officer in the State of Punjab and the Deputy Director in the State of Haryana. It was also alleged that the Court of the Sub-Divisional Magistrate, therefore, had no jurisdiction to entertain the revision petition presented before it by the Gram Panchayat. The aforesaid Magistrate after hearing both the sides,—*vide* its order dated 15th October, 1979 (copy Annexure P-1), rejected the contention of the Gram Panchayat and held that the revision petition was maintainable in his Court as his Court was competent to adjudicate upon the matter in question. The Gram Panchayat, through its Sarpanch, filed a revision petition against the aforesaid order dated 15th October, 1979, in the Court of the Sessions Judge, Rupnagar, alleging therein that the revision petition filed by Bhagat Ram in the Court of the Sub-Divisional Judicial Magistrate, Anandpur Sahib, was not competent and that the said Magistrate had no jurisdiction to entertain the same. It was also prayed that the revision petition pending in that Court be held as incompetent. The learned Sessions Judge, after hearing the counsel for both the parties, came to a finding that from the scheme of the Act, as it stands amended after the coming into force of section 23-A, it is abundantly clear that right of the aggrieved party to claim remedy against the order passed by the Gram Panchayat under section 21, or 22 or 23 of the Act from the Court of the Judicial Magistrate has been taken away from that Court and that exclusive and conclusive jurisdiction has been vested in the District Development and Panchayat Officer (in the State of Punjab) before whom appeal lies against that order. It was also found by the learned Sessions Judge that the learned Magistrate had taken an erroneous view of the legal position and that he had illegally assumed jurisdiction in the matter to himself. Accordingly, he,—*vide* his order dated 22nd February, 1980 (copy Annexure P-2), accepted the revision petition, struck down the order of the learned Magistrate and declared that the revision petition pending before the learned Magistrate was not competent. Bhagat Ram feeling aggrieved by

Bhagat Ram v. Gram Panchayat and another (S. S. Sidhu, J.)

the said order of the learned Sessions Judge filed the present miscellaneous application under section 482, Code of Criminal Procedure, in this Court, praying therein that the aforesaid order, Annexure P-2, may be quashed.

(2) At the very outset it may be remarked that instead of filing this miscellaneous application under section 482, Code of Criminal Procedure, the petitioner ought to have filed a writ petition under Article 227 of the Constitution of India read with section 482, Code of Criminal Procedure. Since it was not so done and the parties would be put to inconvenience if the petitioner is allowed to amend his application, this application shall be treated to have been filed as a writ petition under Article 227 of the Constitution read with section 482, Code of Criminal Procedure.

(3) The question whether the impugned order of the learned Sessions Judge (Annexure P-2) can be sustained on merits or not, in my opinion, cannot be gone into because, as it shall be presently discussed, the revision petition in which that order was passed could not be entertained by the learned Sessions Judge since he had no jurisdiction to entertain the same. Obviously, the Sessions Judge entertained that revision petition because he was under the impression that he had power to do so under sections 397 and 399 read with section 401, Code of Criminal Procedure. But, in my opinion, the Sessions Judge is not a competent authority to take cognizance of or to entertain any matter arising under the Act. The Act is a special law and a complete Code. All the authorities which are competent to take action in respect of any matter covered by the Act are specifically mentioned in it and the Sessions Judge nowhere figures as such in the Act. For the purposes of dealing with criminal proceedings under the Act as far as the State of Punjab is concerned, the competent authorities mentioned therein are Gram Panchayat, District Development and Panchayat Officer and the Chief Judicial Magistrates. Of course, the Chief Judicial Magistrates of the Punjab State have delegated their powers under the Act to the Sub-Divisional Judicial Magistrates posted at the Sub-Divisional Headquarters. The provisions of the Code of Criminal Procedure are not applicable to the proceedings before the Panchayat save to the extent mentioned in the Act. Reference in this behalf be made to section 66(1) of the Act which reads as under :—

“66. *General.*—(1) The provisions of the Code of Criminal Procedure, 1973, the Code of Civil Procedure, 1908 (V of

1908) and the Indian Evidence Act, 1872 (Act I of 1872) shall not apply to proceedings before Panchayats, save to the extent mentioned in this Act, but the Panchayat may ascertain the facts of any criminal case or civil or revenue suit by all legitimate means in its power and thereafter pass such order, sentence or decree as may be in accordance with justice, equity and good conscience."

In view of the above statutory provision ; I am of the considered opinion that the Sessions Judge has no power to deal with any matter covered by the Act in any capacity. Of course, if any of the above mentioned three authorities passes any illegal order relating to criminal matters that aggrieved party can ultimately get relief from the High Court by filing a writ petition under Article 227 of the Constitution read with section 482, Code of Criminal Procedure, as the High Court under those provisions is vested with wide powers, including that of judicial supervision and superintendence over all Tribunals and Courts in the State. Hence, on this short ground, the impugned order of the Sessions Judge, dated 22nd February, 1980. Annexure P-2, which is an illegal order in the eye of law, is liable to be quashed.

(4) It has been argued by the learned counsel for the petitioner that any party which is aggrieved by an order of the Gram Panchayat made under section 21 or 22 or 23 of the Act, can file either an appeal under section 23-A or a revision under section 51 of the Act against that order and since Bhagat Ram petitioner, who was aggrieved by the order dated 18th May, 1979, passed by the Gram Panchayat under sections 21 and 23 of the Act, elected to file a revision petition under section 51 of the Act against that order, it may be held that his revision petition is maintainable. The learned counsel for the State has contended that in view of the provisions of section 23-A of the Act, the petitioner was competent to file only an appeal and not a revision petition and, therefore, the revision petition filed by him in the Court of the Sub-Divisional Judicial Magistrate is not maintainable. I need not go into this question in this application in which only the order dated 22nd February, 1980 (Annexure P-2), passed by the Sessions Judge has been challenged. No prayer has been made in this application that a finding be given that the revision petition filed by Bhagat Ram under section 51, Code of Criminal Procedure, against the order dated 18th May, 1979,

Parshootam Dass Jain v. Inder Sain (S. S. Dewan, J.)

of the Gram Panchayat is maintainable even in the face of the provisions of section 23-A of the Act. Hence, I am most reluctant to adjudicate upon that controversial question. Of course, if the aggrieved party feels any necessity, it can, if so advised, get the matter decided by the High Court by filing a writ petition under Article 227 of the Constitution read with section 482, Code of Criminal Procedure.

(5) In the result, I accept this petition on the short ground that the learned Sessions Judge had no jurisdiction to entertain the revision petition and, as such, set aside the impugned order dated 22nd February, 1980 (Annexure P-2), passed by him. The order dated 11th April, 1980, insofar as it directed that operation of orders Annexures P. 1 and P. 2 is stayed, stands vacated.

S.C.K.

Before S. S. Dewan, J.

PARSHOOTAM DASS JAIN,—Petitioner.

versus

INDER SAIN,—Respondent.

Criminal Revision No. 446 of 1977

August 6, 1980.

Code of Criminal Procedure (II of 1974)—Sections 244(1) and 245(2)—Power of Magistrate to discharge an accused—Provisions of section 244(1)—Whether bar the exercise of jurisdiction under section 245(2).

Held, that the Magistrate under section 245(2) of the Code of Criminal Procedure, 1973 has full discretion to discharge an accused at any time if he is of opinion that the complaint is groundless and is not bound to take any further evidence on behalf of the complainant. The Magistrate's order that all evidence on behalf of the complainant must be taken before discharging the petitioner under section 245(2) is not quite correct. Section 245(2) makes this perfectly clear. The Magistrate has ample jurisdiction to make an order of discharge if upon the materials then before him, he is satisfied that no case could possibly be sustained against the accused. Under the circumstances, section 244(1) will not operate as a bar to the exercise of jurisdiction by the Magistrate under section 245(2) of the Code.

(Para 1).