

the plaint to the extent indicated verbatim in the application under Order 6 Rule 17 of the Code and appoint Dhandi Ram as guardian of the minor defendants for the purpose of the suit from which this petition has arisen. Parties are left to bear their own costs. Parties have been directed to appear before the trial Court on April 4, 1977.

N.K.S.

MISCELLANEOUS CRIMINAL

Before R. N. Mittal, J.

KARTAR SINGH,—*Petitioner.*

versus

GRAM PANCHAYAT SALHANI and another,—*Respondents.*
Criminal Misc. No. 640-M of 1977.

March 21, 1977

Punjab Gram Panchayat Act (IV of 1953)—Sections 104, 105 and 108—Proceedings in a criminal court—Whether maintainable against a Sarpanch—Liability of a Sarpanch—Whether can be determined only under Section 105—Two month's notice in writing under Section 108—Whether necessary before filing a complaint.

Held, that sub-section (1) of section 104 of Punjab Gram Panchayat Act 1952 says that no suit or other legal proceedings in a Civil or Criminal Court shall lie against any Panch in respect of any act done by him in *good faith* under the Act. The word 'Panch' as used in sub-section (1) of Section 104 includes a Sarpanch. In that sub-section the words 'good faith' are significant. Sub-section lays down that no action is maintainable against a Sarpanch in civil or criminal court, if he does an act in good faith. In case the act done by him is not in good faith he is liable to be prosecuted in a criminal court. The question, whether an act is done in good faith or not, is required to be determined by a Court in each case.

Held, that it is true that the District Panchayat Officer has been given powers under section 105 of the Act to assess the amount due from a Sarpanch on account of any loss, waste or misapplication of Panchayat funds. It, however, cannot be said that this is the only remedy provided against a Sarpanch. The Act does not exclude the jurisdiction of a criminal court to proceed against him.

Held, that from the perusal of section 108 of the Act, it is apparent that a notice is required to be served, in case a suit or legal proceeding is to be instituted against any officer or servant of a Gram Panchayat or an Adalti Panchayat or any person acting under their direction for anything done. The words 'suit or legal proceeding' are significant, but the same have not been defined in the

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Act. In common parlance, the word 'suit' is understood as a proceeding instituted by the presentation of a plaint. The words 'legal proceeding' include all types of proceedings in law Courts. The language of the section does not, however, warrant that these words should be given wide interpretation. The intention of the Legislature is clear that the words 'legal proceedings' shall take the colour from the word 'suit'. The section in explicit words says that the notice shall contain the name of the plaintiff, the cause of action and the relief claimed. The use of words 'relief' and 'cause of action' gives a clear indication that 'legal proceeding' means proceeding akin to suit. The irresistible conclusion, therefore, is that in interpreting section 108, rule of *ejusdem generis* applies and that the words 'legal proceedings' do not include criminal proceedings. Consequently, no notice under section 108 is required to be given before instituting a criminal complaint.

Application under section 482 of the Cr.P.C. praying that the proceedings under section 466/468/469/471, 409 and 120-B, of the I.P.C. be quashed and further praying that the learned Magistrate is recording the evidence in the case so the petitioner has to attend on every hearing and the proceedings before the learned Magistrate Ferozpur be set aside during the pendency of the present petition.

G. S. Dhillon, Advocate, for the Petitioner.

R. S. Bindra, Advocate, for the Respondents.

Gurdev Singh, Respondent No. 2 in person.

JUDGMENT

R. N. Mittal, J.

(1) This application has been filed by Kartar Singh ex-Sarpanch of village Salhani, Tehsil and District Ferozpur under section 482 of the Criminal Procedure Code for quashing proceedings in the complaint filed by Gurcharan Singh, Sarpanch, against him and Gurdev Singh, respondent No. 2 under section 409, 466, 468, 469, 171 and 120-B, Indian Penal Code.

(2) Briefly, the case of the applicant is that he was the Sarpanch of Gram Panchayat, Salhani, up to the year 1972, when Gurcharan Singh was elected as such. Gurcharan Singh on behalf of the Gram Panchayat filed a complaint under the above-mentioned sections against the applicant and respondent No. 2 in the court of the Magistrate, 1st Class Ferozpur, stating that respondent No. 2 did not execute any work of Panchayat but he in conspiracy with the applicant submitted to the Panchayat bills pertaining to carriage of bricks, carriage of timber and price of cement-bags. In pursuance of the bills, it is alleged, money was withdrawn from the Panchayat

funds and was misappropriated by the applicant and respondent No. 2. The applicant further said that no complaint could be filed against him in view of sections 104, 105 and 108 of the Punjab Gram Panchayat Act, 1952 (hereinafter referred to as the Act). He consequently prayed that the proceedings before the Magistrate be quashed.

(3) The first contention of the learned counsel for the applicant is that in view of section 104 of the Act, no criminal proceedings could be started against the applicant who was a Sarpanch of the Gram Panchayat, Salhani and carried out his duties under the Act in good faith.

(4) I have heard the learned counsel for the parties at considerable length and given thoughtful consideration to the arguments. I, however, regret my inability to accept the contention of the learned counsel for the applicant. Sub-section (1) of section 104 says that no suit or other legal proceedings in a civil or criminal court shall lie against any Panch in respect of any act done by him in *good faith* under the Act. It is not disputed that the word 'Panch' as used in sub-section (1) of section 104 includes a Sarpanch. In that sub-section the words 'good faith' are significant. Sub-section lays down that no action is maintainable against a Sarpanch in civil or criminal court, if he does an act in good faith. In case the act done by him is not in good faith, he is liable to be prosecuted in a criminal court. The question, whether an act is done in good faith or not, is required to be determined by a Court in each case. It is not possible for this Court in these proceedings to determine whether the applicant made the payment to respondent No. 2 in good faith or not. The matter shall be decided by the trial court after recording evidence. I, consequently, reject the contention of the learned counsel for the applicant.

(5) The second contention of the learned counsel for the applicant is that the liability of a Sarpanch can be determined under section 105 on an application of the Gram Panchayat by the District Panchayat Officer concerned and that no complaint was maintainable against him. He argues that in view of the aforesaid section, the only remedy available to respondent No. 1 was to file an application 105 on an application of the Gram Panchayat by the District counsel has also not impressed me. No doubt, it is true that the District Panchayat Officer has been given powers under the aforesaid section to assess the amount due from a Sarpanch on account of any

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loss, waste or misapplication of Panchayat funds. It, however, cannot be said that this is the only remedy provided against a Sarpanch. The Act does not exclude the jurisdiction of a criminal court to proceed against him. Consequently, I am unable to hold that no complaint is maintainable against the applicant.

(6) The third contention of the learned counsel for the applicant is that no criminal complaint could be filed against the applicant unless two months' notice in writing had been given to him under section 108 of the Act. He submits that as no notice was given by respondent No. 1 to the applicant, therefore, the complaint was not maintainable against him. I have examined the argument of the learned counsel, but do not find any substance in it. Section 108 reads:—

“108. *Suits against Panchayat or its officers.*

(1) *No suit or legal proceedings shall be instituted against any officer or servant of a Gram Panchayat, or an Adalti Panchayat or any person acting under their direction for anything done in good faith under this Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of any aforesaid body delivered or left at its office and, in the case of any individual as aforesaid delivered to him, at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered.*

(2) *Limitation of such suits.* Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.”

From the perusal of section 108, it is apparent that a notice is required to be served, in case a suit or legal proceeding is to be instituted against any officer or servant of a Gram Panchayat or an Adalti Panchayat or any person acting under their direction for anything done. The words ‘suit or legal proceeding’ are significant, but the same have not been defined in the Act. In common parlance, the word ‘suit’ is understood as a proceeding instituted by the presentation of a plaint. The words ‘legal proceeding’ include all types of proceedings in law Courts. In the present case, the language of the section

does not warrant that these words should be given wide interpretation. The intention of the Legislature is clear that the words 'legal proceedings' shall take the colour from the word 'suit'. The section in explicit words says that the notice shall contain the name of the plaintiff, the cause of action and the relief claimed. The use of words 'relief' and 'cause of action' gives a clear indication that 'legal proceeding' means proceeding akin to suit. The irresistible conclusion, therefore, is that in interpreting section 108, rule of *ejusdem generis* applies and that the words 'legal proceedings' do not include criminal proceedings. Consequently, no notice under section 108 is required to be given before instituting criminal complaint. The contention of the learned counsel also deserves to be rejected.

(7) For the reasons recorded above; the application fails and the same is dismissed.

N.K.S.

FULL BENCH
APPELLATE CIVIL

Before O. Chinnappa Reddy, M. R. Sharma and Harbans Lal, JJ.

JOKHI RAM,—Appellant

versus

SMT. NARESH KANTA AND OTHERS,—Respondents.

First Appeal from Order No. 47 of 1972

25th March, 1977.

Motor Vehicles Act (IV of 1939)—Sections 110-A and 110-B—Death resulting in a motor accident—Assessment of compensation—Mode of—Stated—Apportionment of compensation amongst the widow and minor children of the deceased—Minor children—Whether entitled to compensation only upto the age of majority.

Held, that the scope of compensation as contemplated under section 110-B of the Motor Vehicles Act 1939 is wider than under the Fatal Accidents Act, and the Courts while awarding compensation to the dependants of the deceased are to be guided by only one principle that the compensation assessed must be "just". In a fatal accident, the life of the victim is cut short by the rash and negligent driving of the vehicle and the surviving dependents are deprived of the earnings of the deceased in addition to the consequent mental and emotional agony and breaking down of the family fabric. The