Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.

KRISHANA DEVI and others,—*Petitioners.*

versus

GRAM SABHA LAHORA,—*Respondent.*

Criminal Misc. No. 6423-M *of* 1978

October 11, 1979.

Punjab Gram Panchayat Act (IV of 1953)—Sections 21, 23, 51 and 66—Code of Criminal Procedure (II of 1974)—Section 397—Proceedings initiated by a Panchayat under sections 21 and 23—Such proceedings transferred to the court of Judicial Magistrate under section 51—Order passed by the Magistrate—Whether revisable under section 397 of the Code—Magistrate while deciding those proceedings—Whether acts as a 'Panchayat'.

Held, that the proceedings initiated under sections 21 and 23 of the Punjab Gram Panchayat Act, 1952, are in the nature of criminal proceedings and the Panchayat while exercising its jurisdiction under those sections is a Court. Once those proceedings are transferred to the court of a Judicial Magistrate, the said judicial court would not be reduced to the status of a Panchayat. The Gram Panchayat and the Judicial Magistrate are two independent and parallel forums of competent jurisdiction to try and decide those proceedings. This is more than clear by a reference to section 51 of the Act which reveals that a Chief Judicial Magistrate while cancelling or modifying the order in a judicial proceeding made by a Panchayat may direct the retrial of the case by the same or the other Panchayat of competent jurisdiction or by a court of competent jurisdiction subordinate to him. Section 66 of the Act excludes the applicability of the provisions of the Code of Criminal Procedure, 1973, to the proceedings pending before the Panchayat and not before a court of competent jurisdiction. In fact, such a court of the Magistrate is created under the Code and in all its actions and orders is governed by the procedure laid down by the Code. It cannot, therefore, be held on any principle that when a proceeding is transferred from the court of a Panchayat of competent jurisdiction to the court of a Magistrate of competent jurisdiction, the provisions of the Code would not apply to the latter court or the proceedings. In this view of the matter, the court of Sessions was competent to call for and examine the proceedings of the Court of the Judicial Magistrate which court undoubtedly was an inferior criminal court situated within the local jurisdiction of the Sessions Judge. The order of the Judicial Magistrate was, therefore, revisable under section 397 of the Code. (Para 5).

Petition under section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India praying that this

petition be accepted and the impugned judgment and order of the learned Additional Sessions Judge, Chandigarh dated 29th September, 1978 be quashed and that of the trial Court restored. It has further been prayed that during the pendency of this petition the respondent be restrained from taking any action in the matter.

Harbans Singh, Advocate, *for the Petitioner.*

R. K. Mittal, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) The question of law of some significance which has come before us on a reference by D. S. Tewatia, J., relates to the jurisdiction of the Sessions Judge to entertain a revision petition against an order passed by a Judicial Magistrate in proceedings under sections 21/23 of the Gram Panchayat Act, 1952. While making the reference, the learned Judge doubted the correctness of a Division Bench decision of this Court in *Mahan Singh and another* v. *Rana Pratap* (1). We mention here at the outset that during the course of arguments, the learned counsel for neither of the parties assailed the correctness of the said decision and rather were of the categoric opinion that a reference to the same is not even relevant for the decision of this petition. We, therefore, do not feel it necessary to examine the correctness of the said judgment.

(2) Briefly the facts giving rise to the above-noted question of law are that Gram Sabha, Lohara, Union Territory, Chandigarh, issued a notice dated June 8, 1968, asking the petitioners to remove the boundary wall constructed by them around a certain area which resulted in obstruction in a public passage known as 'Rasta Dhanaswala Dharamsala'. The petitioners filed their objections to this notice alleging therein that the notice was not only vague and indefinite, but similar earlier notices issued by the Panchayat had already been met successfully by them and the Panchayat should not harass them by repeatedly issuing such notices. The proceedings which continued to be pending for a considerably long time in one Panchayat or the other on account of transfer orders by the competent authorities, ultimately were transferred to the Court of Judicial

(1) A.I.R. 1960 Pb. 160.

Magistrate 1st Class, Chandigarh, under the orders of Sessions Judge presumably passed by him under section 408 of the Criminal Procedure Code. The matter was finally decided by Shri J. P. Gupta, Judicial Magistrate, Chandigarh,—*vide* his order dated July 30, 1977, holding that the Gram Sabha could not take any further action against the petitioners on the basis of the notice dated June 8, 1968.

(3) The Gram Sabha, Lohara, preferred a revision petition under section 397, Criminal Procedure Code, against this order of the Judicial Magistrate dated July 30, 1977. During the course of pendency of the revision petition before the Additional Sessions Judge, the Gram Sabha probably realising the weakness of their case withdrew the said impugned notice with an undertaking that the Gram Panchayat shall not proceed on this notice and shall issue a fresh notice giving the boundaries of the property if they decided to proceed against the respondents again. As a result of this undertaking, the Additional Sessions Judge dismissed the petition before him with the observation that the Panchayat shall not proceed to get the obstruction removed on the basis of the impugned notice but it would be open to it to give a fresh notice describing the boundaries of the property and to proceed against the respondents if it so liked. It is this order of the Additional Sessions Judge which is now challenged before us.

(4) The primary, rather the sole contention of Mr Harbans Singh, learned counsel for the petitioners, is that no such revision petition was competent before the Additional Sessions Judge as according to the learned counsel, Shri J. P. Gupta, Magistrate, had only decided the proceedings under section 21/23 of the Gram Panchayat Act as 'a Panchayat' and applicability of Criminal Procedure Code as such has specifically been excluded by the provisions of section 66 of the Gram Panchayat Act, 1952. In a nutshell the learned counsel submits that when a Judicial Magistrate tries or concludes proceedings under the Gram Panchayat Act, the jurisdiction he exercises and the procedure he follows is that laid down under the Gram Panchayat Act and not under the Criminal Procedure Code. If that is the situation, contends the learned counsel, then no revision under section 397, Criminal Procedure Code, was competent against the order of the Judicial Magistrate. He points out that at the most the Chief Judicial Magistrate could cancel or modify the order in exercise of his supervisory jurisdiction under section 51 of the Gram Panchayat Act.

(5) To us it appears that the argument of the learned counsel is based on misapprehensions and misreading of the relevant provisions of the Gram Panchayat Act and the Criminal Procedure Code. It is beyond dispute that the proceedings initiated under section 21/23 of the Gram Panchayat Act are in the nature of criminal proceedings and the Panchayat, while exercising its jurisdiction under those sections, is a Court. The rest of the argument of the learned counsel that once those proceedings are transferred to the Court of a Judicial Magistrate, the said judicial Court would be reduced to the status of a Panchayat, is not based on any principle or precedent. The Gram Panchayat and the Judicial Court of a Magistrate are two independent and parallel forums of competent jurisdiction to try and decide those proceedings. This aspect of the matter is more than clear by a reference to section 51 of the Panchayat Act itself which reads as under:—

> "51. Supervision of Criminal Proceedings by Chief Judicial Magistrate.
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> (1) The Chief Judicial Magistrate, if satisfied, that a failure of justice has occurred, may of his own motion or on an application of the party aggrieved by order in writing after notice to the accused, or the complainant as the case may be, cancel or modify any order in a judicial proceeding made by (a) Panchayat or direct the retrial of any criminal case by the same or any other Panchayat of competent jurisdiction or by a court of competent jurisdiction subordinate to him.
>
> (2) ... ...
> .. .."

A bare reading of the above noted provision would reveal that a Chief Judicial Magistrate, while cancelling or modifying an order in a judicial proceeding made by a Panchayat, may direct the retrial of the case by the same or the *other Panchayat of competent jurisdiction* or by a *Court of competent jurisdiction* subordinate to him. Section 66 of the Gram Panchayat Act excludes the applicability of the provisions of the Code of Criminal Procedure to the proceedings pending before the Panchayat and not before a Court of competent jurisdiction. In fact such a court of the Magistrate is created under the Criminal Procedure Code and in all its actions and orders, is governed by the procedure laid down by the said Code. It cannot

therefore, possibly be held on any principal that when a proceeding is transferred from the Court of a Panchayat of competent jurisdiction to the Court of a Magistrate of competent jurisdiction, the provisions of Criminal Procedure Code would not apply to the latter Court or the proceedings. In this view of the matter we fail to see how the Court of Sessions was not competent to call for and examine the proceedings of the Court of Shri J. P. Gupta, Judicial Magistrate 1st Class, Chandigarh, which Court undoubtedly was an an inferior criminal Court situated within the local jurisdiction of the Sessions Judge/Additional Sessions Judge. We, therefore, are clearly of the view that the order of the Additional Sessions Judge dated September 29, 1978, cannot be said to be without jurisdiction.

(6) No other argument has been advanced before us by the learned counsel for the petitioners.

(7) In the light of the discussion above, we do not find any merit in this petition and dismiss the same.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

Before Harbans Lal, J.

SHER SINGH, *Petitioner.*

versus

VIJAY KUMAR and another,—*Respondents.*

Civil Revision No. 124 *of* 1979.

October 12, 1979.

Code of Civil Procedure (V of 1908)—*Order* 20 *Rule* 14—*Suit for pre-emption decreed—Pre-emptor depositing decretal amount by cheque on the last date—Such deposit by cheque—Whether a sufficient compliance with Order* 22 *Rule* 14.

Held, that it cannot be disputed that payment in these days in accepted and well established mode of payment in these days in the present state of development of trade and commerce. It is too much