

APPELLATE CRIMINAL.

Before Falshaw and Kapur, JJ.

THE STATE. --Appellant.

versus

HARBHAJAN SINGH.--Respondent.

Criminal Appeal No. 230 of 1955.

Penal Code (Act XLV of 1860)—Sections 147, 323, 342 and 367—Punjab Gram Panchayat Act (IV of 1953)—Section 41—Proceedings initiated under sections 147, 342 and

1956

April, 25th

367—Magistrate finding accused guilty under section 323—Whether bound to transfer case to Gram Panchayat, under section 41 of the Punjab Gram Panchayat Act—Section 41 of the Gram Panchayat Act, meaning of.

In a case the proceedings were originally started under section 147 read with section 367 and section 342 of the Indian Penal Code. After recording evidence the learned Magistrate was of the opinion that an offence under section 367, Indian Penal Code, was not proved against any of the accused and that the offence under section 342, Indian Penal Code, was proved only against two of them and also that there was no unlawful assembly and, therefore, he convicted each one of the accused for their individual acts.

Held, that in such a case the jurisdiction of the Magistrate is not excluded as soon as the Magistrate finds that on the evidence the accused were not guilty of certain offences which are outside the jurisdiction of a Panchayat.

Held also, that all that section 41 of Punjab Gram Panchayat Act, 1953, 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 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 or cognizance is taken under section 323 alone that the Magistrate shall transfer the case to a Gram Panchayat. In the present case neither the complaint nor the report by the Police was under a section exclusively triable by a Gram Panchayat nor was cognizance taken for an offence mentioned in Schedule IA of the Gram Panchayat Act, and the Magistrate was not bound to transfer the case to the Gram Panchayat.

State appeal from the order of Shri I. M. Lall, Sessions Judge, Ambala, dated the 15th November, 1954, reversing that of Shri Gurdarshan Singh, Magistrate 1st Class invested with powers, under section 30 of the Code of Criminal Procedure, Jagadhri, dated the 31st August, 1954, and acquitting the respondent.

HAR PARSHAD. Assistant Advocate-General. for Appellant.

N. S. KEER, for Respondent.

JUDGMENT

KAPUR, J. This appeal is brought by the State against an order of acquittal by Sessions Judge, I. M. Lal, of Ambala, acquitting Harbhajan Singh of the offence under section 323, Indian Penal Code, on the ground that the proceedings before the Magistrate who convicted him were without jurisdiction.

Kapur, J.

The facts of the case are that Ripudaman Singh, Tara Singh, Avtar Singh, Harbhajan Singh and Mukand Singh were sent up for trial under section 147 read with section 367 and section 342 of the Indian Penal Code. The trying Magistrate after recording evidence framed three charges against the accused—

- (1) under section 367 of the Indian Penal Code,
- (2) under section 342 of the Indian Penal Code ; and
- (3) under section 147 read with section 323 of the Indian Penal Code.

He found that no offence under section 367 had been proved and that all the accused could not be held to be members of an unlawful assembly. He also held that only Ripudaman Singh and his son Avtar Singh were guilty under section 342 and Avtar Singh, Tara Singh and Harbhajan Singh accused were guilty under section 323 of the Indian Penal Code, and he sentenced each one of these three accused to a fine of Rs. 100 under section 323, Indian Penal Code, and Ripudaman Singh and his son Avtar Singh were sentenced to three months' rigorous imprisonment, under section 342, Indian Penal Code. Mukand Singh accused was acquitted.

The State
v.
Harbhajan
Singh
Kapur, J.

On appeal the learned Sessions Judge upheld the conviction of Ripudaman Singh and his son Avtar Singh but reduced the sentence in each case to the period already undergone. In regard to Harbhajan Singh he held that on'y the Gram Panchayat had jurisdiction to try an offence under section 323, Indian Penal Code, and therefore his conviction was without jurisdiction. Tara Singh accused apparently did not appeal.

The learned Sessions Judge has relied upon Chapter IV dealing with criminal judicial functions of the Gram Panchayat under the Gram Panchayat Act, Act IV of 1953. Section 38 of the Act confines criminal jurisdiction of a Panchayat to offences specified in Schedule I. Section 39 gives additional powers to Panchayats with enhanced powers and Adalti Panchayats. Section 41 deals with transfers and when quoted runs—

“Any magistrate before whom a complaint or report by the police of any offence triable by a Gram Panchayat is brought or who takes cognizance of any such offence upon his own knowledge or suspicion shall transfer the proceedings to the Gram Panchayat of competent jurisdiction :

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

Section 42 excludes the jurisdiction of Panchayats in certain cases. Section 43 provides for the method of taking cognizance by the Panchayats in criminal cases, a complaint has to be made to a Panchayat orally or in writing. Subsection (3) of this

section prohibits the Panchayat taking cognizance *suo motu* of cases falling under certain sections. Schedule IA gives a list of offences which are cognizable by a Gram Panchayat, and voluntarily causing hurt falling within section 323, Indian Penal Code, is one of these offences.

The State
v.
Harbhajan
Singh

Kapur, J.

Now, the question for decision is whether in a case such as the one which we have before us the jurisdiction of a Magistrate was excluded as soon as the Magistrate found that on the evidence the accused were not guilty of certain offences which are outside the jurisdiction of a Panchayat. As I have said above, the proceedings were originally started under section 147 read with section 367 and section 342 of the Indian Penal Code. After recording evidence the learned Magistrate was of the opinion that an offence under section 367, Indian Penal Code, was not proved against any of the accused and that the offence under section 367, Indian Penal Code, was proved only against two of them and also that there was no unlawful assembly and therefore he convicted each one of the accused for their individual acts. In my opinion in a case such as this it cannot be said that the proceedings before the Magistrate have to be stayed and the case referred to the Gram Panchayat because it will lead to some peculiar results.

Taking this very case if the view taken by the learned Sessions Judge were to be upheld, although there is one incident some of the accused persons will be tried by one tribunal and others by another, and if the law were as has been laid down by the learned Sessions Judge then in every murder case under section 302, Indian Penal Code, whenever a Sessions Judge comes to the conclusion that the case falls only under section 323 or whenever he finds that some of the accused could only be convicted for an offence

The State
v.
Harbhajan
Singh

Kapur, J.

under section 323, I. P. C., then the case must be transferred in regard to that matter to a Gram Panchayat, which in my opinion is not the intention of the Act, because 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 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 or cognizance is taken under section 323 alone, then the Magistrate shall transfer the case to a Gram Panchayat. In the present case neither the complaint nor the report by the Police was under a section exclusively triable by a Gram Panchayat nor was cognizance taken for an offence mentioned in Schedule 1-A of the Gram Panchayat Act. For these reasons I am of the opinion that the view taken by the learned Sessions Judge is erroneous and the decision could be given by the learned Magistrate in this case as it was done.

Counsel for the respondent submitted that no case had been made out against the respondent under section 323, Indian Penal Code, but in my opinion the statement of the complainant read with other evidence shows that the respondent was guilty under section 323 and in my opinion he was rightly convicted by the learned Magistrate. I would therefore allow this appeal, set aside the order of acquittal and restore that of the learned Magistrate.

In the result the respondent Harbhajan Singh is convicted under section 323, Indian Penal Code, and sentenced to a fine of Rs. 100 and in default he will undergo rigorous imprisonment for two months.

Falshaw, J.

FALSHAW, J. I agree.