

not be said that by virtue of Central Act 52 of 1952 the Punjab General Sales-tax Act of 1948 became invalid. The removal of a defect retrospectively does not render the Act invalid. I am, therefore, of the opinion that the Act is *intra vires* and that the levy of the tax from the appellants cannot be held to be illegal merely because of the provisions of the Central Act 52 of 1952. This appeal must fail and I would dismiss it with costs.

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The Excise and Taxation Commissioner, Punjab, at Jullundur and etc.

Bhandari, C.J.—I agree.

Khosla, J.
Bhandari, C. J.

REVISIONAL CRIMINAL

Before Bishan Narain, J.

MAHAN SINGH AND ANOTHER,—*Petitioners*

v.

SHRI RANA PARTAP,—*Respondent*

Criminal Revision No. 1102 of 1955.

Code of Criminal Procedure (V of 1898)—Section 439—Whether applicable to proceedings before a Panchayat under the Punjab Gram Panchayat Act (IV of 1953)—Section 66—High Court, whether has inherent revisional jurisdiction over the subordinate courts—Constitution of India—Articles 226 and 227—Interference under, by High Court with an order of Panchayat, whether permissible—Punjab Gram Panchayat Act (IV of 1953)—Sections 42(1) and 41—Proviso—Panchayat taking cognizance of an offence against a person who becomes a public servant during the course of trial—Subsequent trial, whether vitiated—Section 41, Proviso—Phrase “competent jurisdiction”—meaning of—Transfer of case from one Panchayat to another—Whether can be made—Indian Penal Code (XLV of 1860)—Section 447—Offence under—Conviction for, when can be maintained—Interpretation of Statutes—Limited and restricted meaning of a term, when preferred to general construction.

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Held, that the revisional jurisdiction is entirely a creation of the statute and the High Court has no inherent power of revision over subordinate courts within its jurisdiction.

Held, that by virtue of section 66(1) of the Punjab Gram Panchayat Act, provisions of the Code of Criminal Procedure and of the Evidence Act do not apply to a Panchayat save to the extent mentioned in that Act. There is no provision in that Act which applies section 439 of the said Code to the proceedings before a Panchayat and, therefore, the High Court cannot interfere with the sentence or order of the Panchayat passed in the exercise of its criminal jurisdiction either under the Code of Criminal Procedure or under the Gram Panchayat Act. The order of sentence passed by a Panchayat in the exercise of criminal jurisdiction is final subject to the supervisory jurisdiction of the District Magistrate. But it is open to the High Court to scrutinize an order of Panchayat under Article 226 or 227 of the Constitution which confer on it powers of superintendence over all courts or tribunals throughout territories within its jurisdiction as the Panchayats are deemed to be Courts under section 40(2) of Gram Panchayat Act and, therefore, subject to the power of supervision and superintendence of the High Court.

Held, that section 42(1) of the Punjab Gram Panchayat Act, only provides that no Panchayat shall take cognizance of any offence under the Indian Penal Code in which either the accused or the complainant is a public servant and, therefore, if cognizance of an offence has been taken by a Panchayat against a person who was not a public servant then, but becomes a public servant during the trial, neither the cognizance of the offence already taken nor the trial of such a person by the Panchayat becomes vitiated or invalidated thereby.

Held, that the words "competent jurisdiction" occurring in the proviso to section 41 of Punjab Gram Panchayat Act are general terms and are wide enough to include both territorial and all other kinds of jurisdiction. But the context of this enactment requires that limited and restricted meaning should be given to these words in this Act and should be limited to jurisdiction of Panchayats other than territorial jurisdiction as such a construction will carry out the intention of the Legislature that a case pending before one Panchayat can be transferred to another Panchayat.

Held, that a case may be transferred from one Panchayat to another Panchayat in spite of the fact that the transferee Panchayat has no territorial jurisdiction to try the case.

Held, that before a conviction under section 447 Indian Penal Code is maintained, it must be held that the accused had not occupied the land under a bona fide claim of right and that the real and dominant intention of the accused was to insult or intimidate or annoy the complainant when the accused entered into the property. Where there is a bona fide dispute regarding the title to the land in dispute, it cannot be said that any offence under section 447, Indian Penal Code, has been committed.

Held, that where general construction of a term leads to defeat of the legislative intent, then limited or restricted meaning may be given to that term.

Petition under section 439 of Criminal Procedure Code for revision of the order of Shri P. S. Multani, Magistrate, 1st Class, Ambala, dated 18th July, 1955, affirming that of the Panchayat Chamkaur Sahib, Tehsil Rupar, District Ambala, dated the 30th March, 1955, convicting the petitioners.

H. S. DOABIA, for Petitioners.

SURINDER SINGH, for Advocate-General, for Respondent.
SHAMAIR CHAND, for Complainant-Respondent.

JUDGMENT

Bishan Narain, J.—The facts leading to this Bishan Narain, J.
petition for revision are briefly as follows:—Rana Partap, resident of village Bela, tehsil Rupar, district Ambala, filed a complaint on 4th of July, 1951, in the court of Sub-Divisional Magistrate, Rupar under section 447, Indian Penal Code against Mahan Singh and Pritam Singh of the same village. It was sent to the Panchayat for village Bela for decision. It appears that sometime in 1953 Pritam Singh, one of the accused was

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elected a Panch and then Sarpanch of this village during the pendency of this petition. The case was then transferred by order, dated 10th of June, 1954, to the Chamkaur Sahib Panchayat which village is only a few miles away from village Bela. The Panchayat examined the witnesses again and then came to the conclusion that the accused had taken illegal possession of the land in dispute and had made the thoroughfare as their own property and had blocked the complainant's passage. The Panchayat admonished the accused and ordered them to remove the wall in question. The accused filed a revision petition before Shri P. S. Multani, Magistrate, 1st class, Ambala, who held that the complainant had a right of passage through the land in dispute and the accused had no justification for blocking that passage. Accordingly the order of the Panchayat directing the accused to demolish the wall was upheld. The Magistrate, however, suggested in his order that the accused (Mahan Singh) can establish his right over the disputed land in civil courts if so advised. The accused have filed this petition in this court under section 439, Criminal Procedure Code.

Shri Shamair Chand on behalf of the complainant respondent raised a preliminary objection to this petition for revision to the effect that this petition under section 439, Criminal Procedure Code, was not competent as the Panchayat Act did not confer any such right on this court. There is force in this contention. The Gram Panchayat Act establishes a Panchayat by name in every Gram Panchayat area and its members are partly elected and partly nominated (section 5 of the Act). Every Panchayat has been given criminal judicial powers for trial of certain offences specified in the Act and it is laid down that when it tries a criminal case it is deemed to be

a Criminal court [section 40(2)]. The Act prescribes the procedure which is to be adopted by the Panchayats when exercising their criminal jurisdiction and it is laid down in section 66(1) that the provisions of the Code of Criminal Procedure and of the Evidence Act shall not apply to a Panchayat, save to the extent mentioned in the Gram Panchayat Act. There is no provision in this Act which applies section 439, Criminal Procedure Code, to the proceedings taken under it. In fact the provisions of the Act exclude the applicability of section 439, Criminal Procedure Code, by necessary implication. The District Magistrate is given supervisory jurisdiction to cancel or modify any order of the Panchayat if he is satisfied that a failure of justice had occurred (section 65) and subject to this supervisory power no sentence or order is subject to any appeal or revision by any other court or authority [section 77(1)]. It follows from these provisions of the Act that the order or sentence passed by a Panchayat in the exercise of Criminal jurisdiction is final subject to the supervisory jurisdiction of the District Magistrate. This necessarily excludes the applicability of section 439 Criminal Procedure Code, to these proceedings and this court has no jurisdiction to set aside or modify any order of the Panchayat under the provisions of this Act or under Criminal Procedure Code. It must be remembered that the revisional jurisdiction is entirely a creature of statute and it has been held in *Pashupati Bharti v. Secretary of State and another* (1), that the High Court has no inherent power of revision over subordinate courts within its jurisdiction. The preliminary objection therefore, succeeds and I hold that this court cannot under section 439 Criminal Procedure Code, interfere with the sentence or order of the Panchayat

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passed in the exercise of its criminal jurisdiction. It is, however, open to this court to scrutinize an order of the Panchayat under Article 226 or 227 of the Constitution of India which confer powers of supervision and superintendence over all courts or tribunals throughout the territories within the jurisdiction of this court. The Panchayats are deemed to be courts under section 40(2) of the Act and therefore, this court has power of supervision and superintendence over them. I have, therefore, decided to consider this case on merits under Article 226 or 227 of the Constitution both of which are wide enough to enable me to do so.

Shri H. S. Doabia, the learned counsel for the petitioners, has argued that the Panchayat of village Chamkaur Sahib had no jurisdiction to try this case. This objection is based on two grounds (1) that Pritam Singh, one of the petitioners, being the Sarpanch of village Bela, no Panchayat had any jurisdiction to try him and (2) that the Panchayat of village Chamkaur Sahib had no jurisdiction to try the petitioners, for the offence which was alleged to have been committed by them was done outside its territorial jurisdiction and within the territorial jurisdiction of the Panchayat of village Bela. The complaint in the present case was filed on the allegation that the offence was committed within the territorial jurisdiction of village Bela. The Panchayat of this village then tried the case and recorded evidence, but before it was finally disposed of Pritam Singh was elected a Panch of this village and then the Sarpanch. On 3rd of September, 1953, on the complainant's application the District Magistrate transferred the case to the Panchayat of village Chamkaur Sahib under the proviso to section 41 of the Act. The case was decided by the transferee court by order, dated 30th of March, 1955.

Taking up the first objection, section 42(1) of the Act provides that no Panchayat shall take cognizance of any offence under the Indian Penal Code in which either the accused or the complainant is a public servant. Under the definition section 3(1) a "Public servant" includes a Panch and a Sarpanch. It follows from these provisions that no cognizance of any offence could be taken against Pritam Singh after he had become a Panch and Sarpanch. In the present case, however, Pritam Singh was not a public servant within the Act when the proceedings were started against him on 4th of July, 1951, and even when evidence was being recorded by the Panchayat of village Bela. Since he became a Panch the complainant got the case transferred. It is argued that cognizance of the offence continues till the case is disposed of by final order and therefore, after the election of Pritam Singh as Panch the continued cognizance of the offence against him contravened section 42(1) of the Act. Support for this argument is sought from the remarks of Blacker, J., in *Arjan Singh v. Emperor* (1). In that case, however, it was not open to a Magistrate to take cognizance of the offence charged without previous sanction of the authority concerned under section 197, Criminal Procedure Code, and that sanction was obtained after part of the evidence in the trial had been recorded. In these circumstances Blacker, J., held that the trial till the sanction was obtained was void, but as the complaint or police report was, in the absence of sanction, not invalidated, the proceedings could start from the time the sanction was obtained. The present case, however, is different. Admittedly when the cognizance of the alleged offence was taken and evidence was recorded, the proceedings were valid till the time

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when Pritam Singh was elected a Panch. In my opinion his becoming a Public servant under the Act subsequently cannot invalidate the cognizance of the offence already taken. It must be remembered that the Act does not anywhere prohibit trial of a public servant by a Panchayat nor does it prohibit hearing of a case against such a person. In section 71 of the Act it is provided that if the Panchayat finds that it has no jurisdiction to try a case then it can direct any of the parties to present the complaint to the proper court. This section deals with trial and not with cognizance of complaints under section 42(1) and there is an obvious distinction between the two. This section does not say that if a complaint is filed against a public servant under the Act then the complaint shall be presented to a proper court. Taking all these matters into consideration, I am of the opinion that the present trial is not vitiated by the election of one of the accused persons as a Panch after the trial had commenced. This contention of the petitioners therefore fails and is hereby rejected.

The second objection to the jurisdiction of the Panchayat is that it had no territorial jurisdiction. Section 49(1) makes the provisions of sections 179 to 182 of the Code of Criminal Procedure applicable to Panchayats. Section 41 deals with proceedings and reads—

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

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

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Similar provisions have been made relating to jurisdiction of Panchayats with regard to civil and revenue matters and section 54 dealing with transfer of suits reads :—

- "(1) Any other court before whom a suit triable by Panchayat is filed shall transfer the suit to the Panchayat of competent jurisdiction.
- (2) The District Judge or Collector may, for reasons to be recorded in writing, transfer any civil or revenue suit respectively from one Panchayat to another Panchayat of competent jurisdiction or to another court subordinate to him".

It is noticeable that section 41 and section 54 are couched in very similar language and enable a District Magistrate, District Judge or Collector, as the case may be, to transfer a case from one Panchayat to another Panchayat of 'competent jurisdiction'. Section 74(1) provides the procedure which is to be adopted when an application for transfer is made in a criminal, civil or revenue matter. It reads—

"If in any criminal case or civil or revenue suit before a Panchayat any party intimates at any stage before the announcement of the final order or decree that he intends to make an application under this section to the District

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Magistrate or the District Judge or the Collector, as the case may be for the transfer of the case or suit, the Panchayat shall, upon his executing if so required, a bond without sureties of an amount not exceeding ten rupees, that he will make such application within a reasonable time to be fixed by the Panchayat, which shall not be less than fifteen days, adjourn the case or suit for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Panchayat to adjourn the case or suit upon a second or subsequent intimation from the same party."

The point raised before me is that the District Magistrate cannot exercise the power of transfer as there cannot be *ex necessitate* any Panchayat other than the one in whose jurisdiction the offence is alleged to have been committed according to the provisions of sections 179 and 182 of the Criminal Procedure Code. It is argued that section 526 (1), Criminal Procedure Code, specially provides that a case can be transferred to a court which has no territorial jurisdiction and this provision enables the High Court to transfer criminal cases under the Code and it is submitted that otherwise the High Court would not have had the power to do so. It is then argued that as the provisions corresponding to section 526(1) have not been enacted in the Panchayat Act the powers of transfer cannot be exercised at all by any authority. When pressed the learned counsel stated that this is a

case of an omission which could be supplied only by Legislature and not by courts of law. The same arguments apply to transfer in civil and Revenue matters. Indeed, there cannot be any doubt that the words "Competent jurisdiction" occurring in the proviso to section 41 of the Act are general in terms and it may be argued with some force that these words are wide enough to include both territorial and all other kinds of jurisdiction. It is also submitted that these words in this enactment include territorial jurisdiction as well as jurisdiction of the Panchayat prescribed in sections 38 and 39 of the Act. It is, however, clear that the territorial jurisdiction of a Panchayat is limited to an area as declared under section 4 of the Act. Within a Gram Panchayat area there cannot be more than one Panchayat and as argued by Shri H. S. Doabia the power of transfer therefore cannot be exercised if a wide meaning to words "competent jurisdiction" is given. The provisions of sections 41 and 74 of the Act, however, clearly indicate that the Legislature intended that cases before one Panchayat should be transferable to another Panchayat. It is well-established that where general construction of a term leads to defeat of the legislative intent, then limited or restricted meaning may be given to the term. In my opinion the context of the enactment requires that limited and restricted meaning should be given to these words in this enactment and should be limited to jurisdiction of Panchayats other than territorial jurisdiction (e.g. jurisdiction under sections 38 and 39 of the Act). This construction will obviously carry out the intention of the Legislature that a case pending before one Panchayat can be transferred to another Panchayat. In civil matters section 24, Civil Procedure Code, empowers the High Court to transfer a case to the court "competent to try it" and this

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section has no provision corresponding to section 526(1) of the Criminal Procedure Code. It has been held repeatedly that these words in section 24 are limited to pecuniary jurisdiction of courts and have no application to territorial jurisdiction (vide *inter alia* observations of Suliaman, C.J., in *Kishori Lal v. Balkishan* (1)). I am, therefore, of the opinion that a case may be transferred from one Panchayat to another Panchayat in spite of the fact that the transferee Panchayat has no territorial jurisdiction to try the case. I, therefore, reject this objection to the jurisdiction of the Panchayat of village Chamkaur Sahib.

On the merits, however, it appears to me that the petitioners have a good case. The complainant alleged in the complaint that the petitioners had taken unlawful possession of land and had unlawfully constructed a wall thereon. The defence taken was that the land in question belonged to the petitioners and they were in lawful possession thereof since some time. The Panchayat held that the accused had taken illegal possession and had converted a thoroughfare as their own property and had blocked the passage of the complainant. It is to be noticed that this was not the case of the complainant. It is true that it is not fair to scrutinize an order of a Panchayat as if it was a court of law and it may be that one need not look to the mention of all the ingredients of an offence before an order of the Panchayat convicting a person is to be maintained. In the present case, however, the Panchayat of Chamkaur Sahib has proceeded to make out an absolutely new case which was not the case of either party. It was not the complainant's case that the petitioners had occupied a thoroughfare and had made it their own property. His case was that by

(1) I.L.R. 54 All. 824

erection of a wall the complainant had been deprived of the possession of the property and the passage to his property. The Magistrate on revision has held that the accused had taken the law into their own hands and had blocked the passage by constructing a wall on the site, the ownership of which was in dispute and he directed the accused persons to establish their title to the land in dispute in civil courts. If it be the accused's bone fide plea that they were the owners of the site in dispute and constructed a wall thereon, then it cannot be said that they had committed any offence under section 447, Indian Penal Code. Before a conviction under section 447, Indian Penal Code, is maintained, it must be held that the accused had not occupied the land under a bona fide claim of right and that the real and dominant intention of the accused was to insult or intimidate or annoy the complainant when the accused entered into the property. In the present case it is clear that there is a bona fide dispute regarding the title to the land in dispute and in those circumstances it cannot be said that any offence under section 447, Indian Penal Code, has been committed. I, therefore, accept this petition and set aside and quash the order of the Panchayat, dated the 30th of March, 1955 and the order of the Magistrate 1st Class, Rupar, dated the 18th of July, 1955.

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APPELLATE CIVIL

Before Kapur and Passey, JJ.

VISHAN SINGH AND OTHERS,—*Plaintiffs-Appellants*

v.

NARANJAN SINGH AND OTHERS,—*Defendants-Respondents*

Regular First Appeal No: 123 of 1951.

Hindu Law—Joint Family—Money borrowed by Karta for running a shop for the benefit of the Joint Hindu

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