

The learned counsel for the applicant then contends that one Magistrate had ordered prosecution of the respondents and it was not open to the second Magistrate to discharge the respondents as he has done, but obviously this argument has no force because the order for prosecution by the first Magistrate could not possibly either take away or fetter the powers of the second Magistrate to discharge the respondents under subsection (2) of section 251-A of the Code.

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On merits, it appears that the witnesses named in the report are not cited in the calendar of witnesses, that the two witnesses examined by the first Magistrate made inconsistent statements with regard to the two respondents, and that the two witnesses cited in the calendar of witnesses as eye-witnesses in their police statements have stated that the respondents were not present at the time of the fight. Upon this material both the learned trial Magistrate and the learned Additional Sessions Judge were justified in the orders that they have passed. I see no ground at all for interference with their orders.

The revision application fails and is dismissed.

#### CRIMINAL REVISIONAL

*Before Passey, J.*

THE STATE,—*Petitioner*

*v.*

BANWARI AND OTHERS,—*Respondents*

**Criminal Revision No. 843 of 1956.**

*Code of Criminal Procedure (V of 1898)—Section 435—  
Gram Panchayat Act (IV of 1953)—Sections 51, 66(1) and  
72(2)—Applicability of the provisions of the Code to the  
Criminal proceedings before a Panchayat—Order passed by*

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*the Panchayat revised by the District Magistrate—Whether the Sessions Judge can further revise it.*

*Held*, that the extent of applicability of the Criminal Procedure Code to the proceedings before the Panchayat is given in section 77(2) of Gram Panchayat Act. Sections 77(2) and 66(1) of the Act read together make it doubtless that the provisions of the Criminal Procedure Code except section 403, do not apply to Criminal proceedings before the Panchayat.

*Held further*, that the power of superintendence mentioned in section 51 of Gram Panchayat Act is exclusively for the District Magistrate and the proceedings before the Panchayat which were not revisable by the Sessions Judge on account of the bar prescribed by sections 66(1) and 72(2) of the Act, cannot become revisable by him because the District Magistrate has exercised his supervisory powers under section 51. The District Magistrate for certain purposes and under certain provisions of the Criminal Procedure Code may be subordinate to the Sessions Judge, but the Act which constitutes a special law makes the provisions of that Code inapplicable to proceedings that the Panchayat takes under it. It would therefore be not correct to say that the District Magistrate when he exercises powers under section 51 of the Act is a Magistrate of original criminal jurisdiction whose order the Sessions Judge can reverse.

*Petition under section 439 of Criminal Procedure Code for revision of the order of Sh. Rameshwar Dial, Additional Sessions Judge, Rohtak at Gurgaon, dated the 9th February, 1956, reversing that of Sh. Rajaswar Singh, Sub-Divisional Magistrate, Jhajjar, dated the 17th June, 1955, so far as it ordered the delivery of possession of the premises to Molhu, respondent.*

K. S. CHAWLA, Assistant Advocate-General, for Petitioner.

ROOP CHAND and SATISH CHANDER MITTAL, for Respondents.

## JUDGMENT.

PASSEY, J. This is a petition under section 439 Cr. P. C. by the State for quashing the order of the Additional Sessions Judge, Rohtak at Gurgaon, dated 9th February, 1956, reversing that of the Sub-Divisional Magistrate, Jhajjar, dated 17th June, 1955. whereby the complaint Mohlu Ram was to recover possession of the site in dispute from Banwari Lal accused.

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Mohlu Ram had filed a complaint against Banwari Lal in the Panchayat of village Kolasi alleging that the accused had trespassed on his land. On 11th April, 1955, Banwari Lal was convicted by the Panchayat under section 448, Indian Penal Code, and sentenced to Rs. 100 fine. Banwari Lal moved the Sub-Divisional Magistrate, Jhajjar, to whom the District Magistrate had as permitted by section 95 of the Gram Panchayat Act (Act IV of 1953) hereafter called the Act, delegated his powers exercisable under section 51 of the Act, to quash his conviction. Mohlu Ram, on the other hand, applied to the same Sub-Divisional Magistrate for the restoration of the possession of his site which had been wrongfully and forcibly occupied by the accused. The Sub-Divisional Magistrate only converted Banwari Lal's conviction to one under section 447, Indian Penal Code, and dismissed his petition. He allowed the relief prayed for by Mohlu Ram by making an order that the possession of the site in dispute be restored to him with police help if necessary. Banwari Lal then took a revision to the Additional Sessions Judge Gurgaon, who purporting to act under section 435, Criminal Procedure Code, set aside the order of the Sub-Divisional Magistrate in so far as it had directed restoration of possession to Mohlu Ram.

It is contended by the learned State counsel that no revision in a dispute under the Act could

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lie to the Sessions Judge and that he had no jurisdiction to entertain the revision or make the impugned order. He also contended that even if section 435, Criminal Procedure Code, could apply with regard to criminal proceedings before the Panchayat, the order of restoration of possession having been made by the Sub-Divisional Magistrate in the capacity of a Revisional Court, the Sessions Judge could not interfere as the Sessions Judge and the District Magistrate have concurrent revisional jurisdiction under section 435, Criminal Procedure Code, and the former is in no sense a superior court competent to revise the order of the District Magistrate made under that section. Mr. Rup Chand accepted that contention to have irrefutable force. Developing his first contention the learned State counsel first referred to section 77(1) of the Act which lays down that except in cases where section 51 might apply, no sentence, or other order passed by a panchayat, shall be subject to appeal or revision by any other court or authority. He then referred to section 77(2) of the Act which says that the provisions of section 403 of the Code of Criminal Procedure, 1898, shall apply to criminal proceedings before a panchayat, and to section 66(1) which enjoins that the provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings before panchayats save to the extent mentioned in the Act. The extent of applicability is given in section 77(2) only. Sections 77(2) and 66(1) of the Act read together make it doubtless that the provisions of the Criminal Procedure Code except section 403, do not apply to criminal proceedings before the panchayat. That being so, by no process of reasoning section 435, Criminal Procedure Code, could be contended to apply to a matter before the Panchayat and the Additional Sessions Judge had, therefore, invoked

that section illegally. I have said above that section 77(1) of the Act forbids appeals or revisions against sentences passed or orders made by a panchayat in criminal matters. Section 51 of the Act, however, confers supervisory powers on District Magistrate. This section lays down that "the District 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." The power of superintendence mentioned in the section is exclusively for the District Magistrate and the proceedings before the Panchayat which were not revisable by the Sessions Judge on account of the bar prescribed by sections 66(1) and 77(2) of the Act, cannot become revisable by him because the District Magistrate has exercised his supervisory powers under section 51. The District Magistrate may for certain purposes and under certain provisions of the Criminal Procedure Code, be subordinate to the Sessions Judge but the Act which constitutes a special law makes the provisions of that Code inapplicable to proceedings that the Panchayat takes under it. It would, therefore, be not correct to say that the District Magistrate when he exercises powers under section 51 of the Act is a magistrate of original criminal jurisdiction whose orders the Sessions Judge can revise.

For the reasons stated above the petition must succeed. The order of the Additional Sessions Judge is quashed with the result that the Sub-Divisional Magistrate's order, dated 17th June, 1955, shall stand.

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