

otherwise hardly in dispute. His association with Chhat Ram has already been referred to. Significantly this appellant himself stated that he was known to P.Ws. 1, 2 and 3 and not a hint or suggestion of animus appears as to why such responsible officers are deposing against him. The sole criticism offered against this testimony was that the details of their evidence were not found precisely in their earlier police statement or did not find place in the first information report. It is significant that in the present case the first information report was merely despatched by the concerned official for the purpose of the registration of the case and an investigation therein to. It cannot be equated with the version of an eye-witness in a hurt case wherein a substantial account of the incident is usually required to be stated. The omissions in the police statement also of some of the witnesses on this point are hardly of any significance. The testimony of these three witnesses against this appellant also must be accepted as also other evidence to which reference has been earlier made in the discussion of the case in the context of Chhat Ram appellant. I hold the view that the prosecution has been equally able to establish the case against Joginder Lal appellant beyond reasonable doubt and the conviction and the sentence recorded by the trial Court in his case also must be affirmed. In the result the appeal fails and is hereby dismissed.

K. S. K.

REVISIONAL CRIMINAL.

Before Bal Raj Tuli, J.

ISHER DASS,—*Petitioner.*

versus.

AMAR NATH,—*Respondent.*

Criminal Revision No. 183 of 1971.

June 14, 1972.

Code of Criminal Procedure (Act V of 1898)—Section 197—Punjab Gram Panchayat Act (IV of 1953)—Sections 9 and 102(2)—Sarpanch—Whether removable only by sanction of the State Government—Previous sanction for his prosecution—Whether necessary under section 197.

Isher Dass v. Amar Nath (Tuli, J.)

Held, that a sarpanch is removable from his office under sections 9 and 102(2) of the Punjab Gram Panchayat Act, 1952. Under section 9, he is removable by a two-third majority of the votes of the members of the Sabha at an extraordinary general meeting held with the previous permission of the Director and the resolution of removal so passed by the Gram Sabha is to be approved by the Director. Under section 102(2), Government can remove a Sarpanch on any of the grounds mentioned in that sub-section. It is thus apparent that there are two authorities which can remove a Sarpanch from his office. Whereas the power of the Government is limited and circumscribed, the power under section 9 of the Act is much wider. It only requires the previous sanction of the Director for holding the extraordinary meeting and his subsequent approval to the resolution which may be passed by the Gram Panchayat by two-third majority. The grounds for removal may be the same as are mentioned in section 102(2) of the Act or any other ground. In view of the fact that there are two authorities under whose order a Sarpanch can be removed from his office, previous sanction under section 197 of the Code of Criminal Procedure is not necessary for his prosecution for any offence committed by him while acting or purporting to act in the discharge of his official duties.

(Paras 3 and 5).

Petition under section 439 Cr. P.C. for revision of the order of Shri R. S. Gupta, Additional Sessions Judge, Ambala, dated 20th October, 1970, affirming that of Shri M. S. Nangra, Judicial Magistrate 1st Class, Ambala, dated 19th December, 1969, dismissing the complaint.

K. K. Aggarwal, Advocate, for the petitioner.

Bachittar Singh, Advocate, for the respondent.

JUDGMENT

Tuli, J.—Isher Dass petitioner, lodged reports with the police on October 26 and 28, 1964, alleging that Amar Nath respondent was the Sarpanch of village Shahzapur and in that capacity had embezzled certain amounts of the Gram Panchayat, and had also made false entries in its books of account, thereby committing offences under Sections 409, 466, and 420, Indian Penal Code. The police, however, filed a charge sheet against the respondent only, in respect of the embezzlement of Rs. 6. in Court and did not investigate into the other charges. On February 21, 1966, the petitioner filed a complaint under the above-said sections which was dismissed by the learned judicial Magistrate 1st Class, Ambala City, on December 19, 1969, on

the ground that sanction of the State Government under Section 197 of the Code of Criminal Procedure was necessary before the court could take cognizance of the complaint as all the acts of misconduct alleged against the respondent had been committed by him in his capacity as a Sarpanch of Gram Panchayat, that is, while acting as a public servant and in the discharge of his official duties. The petitioner filed a revision against that order which was dismissed by the learned Additional Sessions Judge, Ambala, by order dated October 20, 1970. The present petition is directed against the order of the learned Additional Sessions Judge.

(2) The learned counsel for the petitioner has submitted that under Section 197 of the Code of Criminal Procedure, two conditions have to co-exist, namely,

- (i) the public servant must be removable from his office only by or with the sanction of the State Government or the Central Government; and
- (ii) the public servant must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.

(3) In the case in hand, none of the two conditions can be said to be present. A Sarpanch like the respondent is removable from his office under Sections 9 and 102(2) of the Punjab Gram Panchayat Act, 1952, (hereinafter called 'the Act'). Under Section 9, he is removable by a two-third majority of the votes of the members of the Sabha at an extraordinary general meeting held with the previous permission of the Director and the resolution of removal so passed by the Gram Sabha is to be approved by the Director. Under Section 102(2), Government can remove a Sarpanch on any of the grounds mentioned in that sub-section. It is thus apparent that there are two authorities which can remove a Sarpanch from his office. Whereas the power of the Government is limited and circumscribed, the power under Section 9 is much wider. It only requires the previous sanction of the Director for holding the extraordinary meeting and his subsequent approval to the resolution which may be passed by the Gram Panchayat by two-third majority. The grounds for removal may be the same as are mentioned in Section 102(2) of the Act or any other ground. It cannot, therefore, be said that the respondent in the present case was removable from his office only by the State Government.

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(4) The learned counsel for the petitioner has relied on a judgment of Shamsheer Bahadur, J., in *Basant Lal v. Net Ram* (1), wherein the learned judge held that under the Pepsu Panchayat Raj Act, 2008 BK., a Sarpanch was not removable by sanction of the State Government and, therefore, no previous sanction for his prosecution was necessary under Section 197 of the Code of Criminal Procedure. Under Section 12 of the Pepsu Panchayat Raj Act, the Sarpanch was removable from his office by a two-third majority of votes of the members of the Sabha at an ordinary meeting, if approved by the Director. There was no provision in that Act analogous to the provisions of Section 102(2) of the Punjab Gram Panchayat Act, 1952, empowering the Government to remove the Sarpanch from his office. Gurdev Singh, J., in *Ajmer Singh v. The State* (2), ruled that the previous sanction of the State Government under Section 197 of the Code of Criminal Procedure was necessary for the prosecution of a Sarpanch under Section 409, Indian Penal Code, as under Section 102 of the Act, the Sarpanch was removable from his office only by the State Government. The judgment in *Basant Lal v. Net Ram* (1) (supra) was cited before the learned judge but it was held that it was distinguishable on facts because of the provisions of Section 12 of the Pepsu Panchayat Raj Act, 2008 BK. It is unfortunate that the provisions of Section 9 of the Act were not brought to the notice of the learned judge nor was it argued that there were at least two authorities under the Act which could remove the Sarpanch from his office. This judgment has, therefore, no binding force.

(5) This matter came up for consideration before Gopal Singh, J., in *Pritam Singh v. The State of Haryana* (3), and the learned judge held that in view of the fact that there were two authorities under whose orders a Sarpanch can be removed from his office, sanction under Section 197 of the Code of Criminal Procedure is not necessary for his prosecution. I find myself in respectful agreement with the opinion expressed by Gopal Singh, J., and hold that the sanction of the State Government for the prosecution of the respondent in this case was not necessary. The Rajasthan High Court has

(1) 1961 P.L.R. 872.

(2) Cr. R. No. 430 of 1965, decided on 22.2.1966.

(3) Cr. R. No. 299 of 1969, decided on 10-12-1969.

taken a different view in *Prabhu Dayal v. Milap Chand* (4), *Pukhraj v. Ummaidram and others* (5), and *Ramdudd and others v. State of Rajasthan and others* (6). Those judgments are not applicable because the provisions of the Rajasthan Panchayat Act, 1953, are different and not in *pari materia* with the provisions of the Punjab Gram Panchayat Act.

(6) Even the second ingredient of Section 197 of the Code is missing in this case. The alleged acts of embezzlement and falsification of accounts cannot be said to have been committed by the respondent in the discharge of his official duties. This matter has been dealt with by Shamsheer Bahadur, J., in *Basant Lal v. Net Ram* (1) (supra) and with respect I find myself in complete agreement with what has been said by the learned judge.

(7) For the reasons given above, I hold that the sanction of the Punjab Government for the prosecution of the respondent under Section 197 of the Code was not required. I, therefore, accept this petition and set aside the order of the learned trial court and the Appellate Court dismissing the complaint. The trial court is directed to proceed to decide the complaint in accordance with law. The parties, through their counsel, have been directed to appear before the learned trial court on July 10, 1972.

N.K.S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J., and Bal Raj Tuli, J.

BAKSHSHISH SINGH,—Appellant.

versus

GURCHARAN SINGH, etc.,—Respondents.

Letters Patent Appeal No. 272 of 1970.

July 13, 1972.

Punjab Pre-emption Act (1 of 1913)—Section 15(1)(b) Fourthly—Particular khasra numbers comprised in specified square out of joint

(4) A.I.R. 1959 Raj. 12.

(5) A.I.R. 1964 Raj. 174.

(6) A.I.R. 1966 Raj. 125.