

CIVIL MISCELLANEOUS

Before Mehar Singh and Jindra Lal, JJ.

THE GRAM PANCHAYAT PONAHAHA,—*Petitioner.*

versus

THE JUDICIAL MAGISTRATE, PALWAL AND OTHERS,—
Respondents.

Criminal Miscellaneous No. 862 of 1962

Punjab Gram Panchayat Act (IV of 1953)—Ss. 21, 23 and 41—Proceedings under section 21—Whether criminal and can be transferred from one Panchayat to another.

1963

Sept., 10th.

Held, that section 23 of the Punjab Gram Panchayat Act deals with a criminal offence and a Panchayat, when dealing with such an offence, discharges criminal judicial functions, in other words, the proceedings before it under that section are criminal proceedings, and thus a 'criminal case'. Proceedings under section 21(1) of the Act cannot be completely divorced from the offence under section 23 because, although an order absolute under section 21(1) can also be enforced in the manner given in sub-section (2) of that section, yet nothing compels a Panchayat to have resort to that course, and not to proceed to deal with disobedience of such an order under section 23. Once section 21 is taken as an entirely independent proceeding, the basis for the offence under section 23 is not there. So that the offence under section 23 is essentially and mainly dependant upon the proceedings under section 21(1). These two sections thus cannot be read disjunctively and unconnected. When they are read together as forming, for all practical purposes, one proceeding, it becomes clear that proceedings under section 21(1) are criminal proceedings in the same manner as proceedings under section 23. The nature of both is the same and in fact they are proceedings so connected together that they cannot be considered as something separate. The outcome of proceedings under section 21(1) may be punishment of fine by way of penalty under section 23, and proceedings which thus end in a punishment are criminal proceedings and they are a 'criminal case'. Consequently such proceedings can be transferred from one Panchayat to another under the proviso to section 41 of the Act.

Petition under Article 227 of the Constitution of India praying that the order dated 16th August, 1962, of the Judicial Magistrate, Palwal, transferring the proceedings under Section 21 of the Gram Panchayat Act, 1952 from the petitioner to the Gram Panchayat Panigwan be quashed.

SHAMAIR CHAND & P. C. JAIN, ADVOCATES, for the Petitioner.

K. S. KAWATRA, ASSISTANT ADVOCATE, AND J. N. SETH, ADVOCATE, for the Respondents.

ORDER

Mehar Singh, I. The judgment of the Court was delivered by—

There is no substance in the stand of the petition by Gram Panchayat, Ponahana, of Tehsil Ferozepore Jhirka, in Gurgaon district, questioning the legality of the order of respondent No. 1, the Judicial Magistrate at Palwal, transferring proceedings under section 21 of the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), against respondent 3, Het Lal, from the petitioner-Panchayat to respondent 2, Gram Panchayat, Panigwan, in the same Tehsil. Respondent 1 has made the order under section 41 of the Act. The petitioner-Panchayat takes the position that transfer under proviso to section 41 of the Act can only be of a 'criminal case' and that proceedings under section 21 are not a 'criminal case' as held by Grover J., in *Mukh Ram v. The Gram Panchayat Mullana*, C. W. No. 1074 of 1959, decided on October 27, 1960, and that, therefore, the order of respondent 1 is without jurisdiction. Return to the petition has only been made by respondent 1 and it says that order of transfer of the case was passed after hearing counsel for both the sides and the order made is legal and with jurisdiction because the District Magistrate of Gurgaon delegated his power under section 41 of the Act to him pursuant to sections 74 and 75 of the Act.

There is no substance in the stand of the petitioner-Panchayat that respondent 1 made the order behind its back, for respondent 1 has, in the return, clearly stated that the counsel for the petitioner-Panchayat was also heard before the order was made. The only other question for consideration is whether the order of respondent 1 is without jurisdiction on the ground as urged in the petition.

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In Punjab Act 4 of 1953, chapter III has heading—"Gram Panchayats—Conduct of business, duties, functions and powers", and it is in this chapter that section 21 appears, Sub-section (1) (a) (i) of this section reads thus—

"21. (1) A Gram Panchayat on receiving a report or other information and on taking such evidence, if any, as it thinks fit, may make a conditional order requiring within a time to be fixed in the order:—

(a) the owner or the occupier of any building or land—

(i) to remove any encroachment on a public street, place or drain;

* * * * *

or if he objects so to do to appear before it, at a time and place to be fixed by the order, and to move to have the order set aside or modified in the manner hereinafter provided. If he does not perform such act or appear and show cause, the order shall be made absolute. If he appears and shows cause against the order the Gram Panchayat shall take evidence and if it is satisfied that the order is not reasonable and proper no further proceedings shall be taken in the case. If it is

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not so satisfied the order shall be made absolute.”

And section 23 provides that any person who disobeys an order of a Gram Panchayat made under section 21 shall be liable to a penalty which may extend to twenty-five rupees, and if the breach is a continuing breach, with a further penalty which may extend to one rupee for every day after the first during which the breach continues. The proviso says that the recurring penalty shall not exceed the sum of rupees five hundred. The procedure for abatement of nuisance in section 21 of the Act is in substantial detail analogous to procedure for abatement of nuisance under sections 133, 136 and 137, and the other procedural sections connected therewith, in the Code of Criminal Procedure. The learned Judges of the Full Bench in *Narain Singh v. State*, (1) have pointed this out, while holding that proceedings under sections 21 and 23 of the Act are judicial proceedings. Chapter IV in the Act concerns ‘criminal judicial functions’ of a Gram Panchayat. Section 38 says that the criminal jurisdiction of a Gram Panchayat shall be confined to the trial of offences specified in Schedule 1-A to the Act, and in that Schedule entry (k) refers to offences “under this Act or under any rule or by-law made thereunder”, which means offences under Punjab Act 4 of 1953 or any rule or by-law made thereunder are triable by a Gram Panchayat. The proviso to section 41 enacts 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’. Sections 38 and 41 appear in chapter relating to ‘criminal judicial functions’ of a Panchayat, and sections 21 and 23 appear in chapter III to which reference has already been made when there is disobedience of an order of Gram Panchayat under section 21, for that disobedience

(1) I.L.R. 1958 Punj. 1696.

penalty is provided in section 23. If the proceedings under section 21 are a 'criminal case' as those words are used in the proviso to section 41, the order of respondent 1 is not open to exception, if otherwise, it is obviously without jurisdiction.

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This question first came for consideration of Grover J., in *Mukh Ram's case*. The learned Judge after noticing the opinion of the Full Bench that a Gram Panchayat exercising functions under section 21 of the Acts judicially and the proceedings before it are proceedings judicial in nature, goes on to observe that the Full Bench has not held that those proceedings, though judicial in nature, are proceedings of criminal nature. The Full Bench has also held that in trying an offence under section 23, as that offence is included in Schedule 1-A of the Act, a Gram Panchayat discharges criminal judicial functions as laid down in chapter IV. After noticing this and also the observation of the Full Bench in regard to similarity of the provisions in sections 21 and 23 of the Act and sections 133, 136 and 137 and other connected sections in the Criminal Procedure Code, the learned Judge further observes that this similarity cannot be of much assistance in deciding whether any judicial order or proceedings antecedent to the making of an order under section 23 would be of a criminal nature, and, further, that 'even if it is assumed for the sake of argument that they have the attributes of criminal proceedings, I cannot persuade myself to hold that proceedings under section 21 would fall within the category of a criminal case because it is only a 'criminal case' which can be transferred under the proviso to section 41". So the learned Judge held that transfer of proceedings under section 21 of the Act in exercise of the power in proviso to section 41 was without jurisdiction in that case. The question again came before Shamsheer Bahadur J., in *Bansi Lal*

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v. *Gram Panchayat, Mullana* (2). The learned Judge did not follow *Mukh Ram's case* on the ground that a Gram Panchayat is authorised to levy the punishment of fine under section 23 for breaches committed under section 21, and so the proceedings under those provisions at once become 'criminal' in nature, as it is the essential characteristic of an offence or crime that its legal consequences are penal in nature. The learned counsel for the petitioner-Panchayat refers to *Mahadeolal Kanodia v. The Administrator General of West Bengal* (3), in which their Lordships held that even a Single Judge differing from a decision of another Single Judge in a previous case on a question of law should refer the case to a larger Bench instead of deciding the case in accordance with his own view, and says that *Bansi Lal's case*, should have been referred to a larger Bench. It does not, however, appear that *Mahadeolal Kanodia's case* was brought to the notice of the learned Judge, for otherwise I am sure that *Bansi Lal's case* would have been referred to a larger Bench. It is this difference of opinion among the two learned Judges that has led Khanna J., in his order of April 15, 1963, to refer this question to a larger Bench.

In *Narain Singh's case* (1), the Full Bench has held that proceedings under section 21(1) are judicial proceedings. It has been pointed out that after an order absolute has been made under sub-section (1) of that section, there are two provisions in the Act whereunder such an order absolute is made effective, (a) under sub-section (2) of section 21, under which if such act as referred to in the order absolute, is not performed within the time fixed, the Gram Panchayat may cause it to be performed and may recover costs of performing it from the person against whom such an order has been made, or, (b) under section 23 such a person may be prosecuted for disobedience

(2) 1962 P.L.R. 892.

(3) A.I.R. 1960 S.C. 936.

of such an order and becomes liable to penalty as is detailed in that section. The learned Judges have further held that the words 'fine' and 'penalty' are used in the Act as interchangeable and with the same connotation, and that disobedience of an order absolute under sub-section (1) of section 21 is an offence under section 23. A Gram Panchayat when dealing with such an offence discharges criminal judicial functions. It is evident then that section 23 relates to a criminal offence and a Panchayat when dealing with such an offence discharges criminal judicial functions, in other words, the proceedings before it under that section are criminal proceedings, and thus a criminal case'. The question is, can proceedings under section 21(1) be completely divorced from the offence under section 23? In my opinion, this cannot be done, because, although an order absolute under section 21(1) can also be enforced in the manner given in sub-section (2) of that section, yet nothing compels a Panchayat to have resort to that course, and not to proceed to deal with disobedience of such an order under section 23. Once section 21 is taken as an entirely independent proceeding, the basis for the offence under section 23 is not there. So that the offence under section 23 is essentially and mainly dependant upon the proceedings under section 21(1). These two sections thus cannot be read disjunctively and unconnected. When they are read together as forming for all practical purposes one proceeding, it becomes clear that proceedings under section 21(1) are criminal proceedings in the same manner as proceedings under section 23. The nature of both is the same and in fact they are proceedings so connected together that they cannot be considered as something separate. The outcome of proceedings under section 21(1) may be punishment of fine by way of penalty under section 23, and proceedings which thus end in a punishment are criminal proceedings and they are a 'criminal case'.

In section 526, before its amendment in 1923, of the Code of Criminal Procedure, there appeared the words 'criminal case' in connection with the power of

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the High Court to transfer such a case. *In re Pandurang Govind Pujari and others* (4), was a case in which under section 526 of the Code transfer of proceedings under section 145 of it was sought. It was held that proceedings under section 145 of the Code are not a 'criminal case', and Sir Lawrence Jenkins, C. J., among the other reasons, gave the reason for this conclusion that "a criminal case like a criminal appeal must arise out of and deal with some crime already committed. It seems, therefore, that this clause confers no power to deal with procedure that can be taken only for the prevention of crime". This view of the words 'criminal case' has, however, not been accepted in *Lelit Mohan Moitra v. Surja Kanta Achariji* (5), *Jaggu Ahir v. Murlu Shukul* (6), *Farid Immam Bakhsh v. Piru Kouru* (7), and *Wazed Ali Khan v. Emperor* (8), in which the learned Judges have held that it is not necessary to construe the expression, 'criminal case' as restricted to cases arising out of and dealing with some crime already committed. In the last mentioned case, proceedings under section 107 of the Code of Criminal Procedure were held to be a 'criminal case' within section 526 of the Code, although the proceedings related to preventive measures and not to a crime already committed on the grounds (a) that under section 107 a Magistrate is empowered in his discretion to detain a person, who is the subject of the proceedings, in custody until the completion of the enquiry; and (b) that if a person ordered to keep the peace does not give the necessary security he shall suffer simple imprisonment for the period laid down in the order. It were these penal consequences of proceedings which did not arise out of a crime already committed that was the basis on which the learned Judges proceeded to hold proceedings under section 107 to be a 'criminal Case'.

In the Supreme Court of Judicature Act, 1873 (36 and 37 Vict. c. 66) section 47 provides, with

- (4) (1901) 25 Bom. 179.
 (5) (1901) 28 Cal. 709.
 (6) (1912) 34 All. 533.
 (7) A.I.R. 1914 Sind. 11.
 (8) A.I.R. 1914 Cal. 792.

stated exceptions, that "no appeal shall lie from any judgment of the said High Court in any criminal cause or matter", and in the Supreme Court of Judicature Act, 1873 (38 and 39 Vict. c. 77), section 19 also refers to the words 'criminal causes and matters'. In *Queen v. Fletcher* (9), Mellish, L. J., freely refers to the words 'criminal cause or matter' as the same thing as a 'criminal case'. In other words, a 'criminal cause' in section 47 of the first Act and section 19 of the second Act as referred to above is the same thing as a 'criminal case'. In the Metropolitan Building Act, 1855 (18 and 19 Vict. c. 122), section 45 provides for the district surveyor to give notice to a builder engaged in erecting a building or in doing work as referred to in the section requiring him, within the time stated in the section, to cause anything done contrary to the rules of that Act to be amended, or to do anything required to be done by that Act or to cause so much of any building or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as detailed in the section to be to a sufficient extent cut into, laid open, or pulled down. Under section 46, in the event of default by the builder in complying with the notice the district surveyor may cause complaint of such non-compliance to be made before a Justice of the Peace, and such Justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance or in his absence, upon due proof of the service of such summons, it appears to such Justice that the requisitions made by such notice or any of them are authorised by that Act, he shall make an order on such builder commanding him to comply with the requisitions of such notice, or any such requisitions that may in his opinion be authorised by that Act, within a time to be stated in such order. Under section 47, if such an order is not complied with, such a builder incurs a penalty not exceeding twenty shillings a day, and in addition the district

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surveyor is given power to enter upon the premises and to do all such things as may be necessary for enforcing the requisitions of such notice. In *Payne v. Wright* (10), the respondent, Wright, was summoned by the appellant, Payne, the district surveyor, under section 45 of the Metropolitan Building Act, 1855, for having covered the roof of a building externally with a combustible material contrary to the provisions of section 19(1) of that Act and a notice under section 45 was duly served upon him to do such things as were required by the Act to be done, but he did not comply therewith. On a complaint by the district surveyor under section 46 of that Act, the Magistrate held that the material with which the roof was covered was 'incombustible' within the meaning of that Act, but stated a case for the opinion of the Queens Bench Division upon that question. The Queens Bench Division decided that the material was not 'incombustible' and remitted the case to the Magistrate with that expression of opinion. Against the decision of the Queens Bench Division there was an appeal by the district surveyor to the Court of Appeal, in which on behalf of respondent, Wright, a preliminary objection to the hearing of the appeal was taken on the ground that the proceedings before the Magistrate under section 46 of that Act were a 'criminal cause or matter', as to which section 47 of the Supreme Court of Judicature Act, 1873, enacts that no appeal shall lie to the Court of Appeal. This objection prevailed, Lord Esher M. R., observing that the words 'criminal cause or matter' in section 47 are not confined to "proceedings the actual final result of which would be the infliction of a penalty (but extend to), any dispute which at any time, and at any stage, might end in a penalty * * * * It seems to be clearly

within the decision in *Reg. v. Schofield* (11), where I quoted and adopted the words, 'I think that the clause of section 47 in question applies to a decision by way of judicial determination of any question raised in or with regard to proceedings the subject-matter of which is criminal, at whatever stage of the proceedings the question arises'. There cannot be a doubt but that, if this matter had to be taken before the Justices, under Jervis's Act (11 and 12) Vict. c. 43), so as to enforce the order by inflicting a penalty, it would then be a 'criminal cause or matter'; it has been so held over and over again. This proceeding, therefore, is a step in a criminal cause or matter as to which we have no appellate jurisdiction. "It will be seen that in substance section 46 of the Metropolitan Building Act, 1855, is in the matter of abatement of what is statutorily required to be abated for all practical purposes something similar as section 21 of the Punjab Act 4 of 1953, and, further, that section 47 of the first Act is again similar in imposing penalty to section 23 of the second Act. In *Payne's case* it were the proceedings under section 46 before the Magistrate that were held by the Court of Appeal to be a 'criminal cause or matter'; in other words, to be a 'criminal case'. It is apparent that the basis of this conclusion is that proceedings under section 46 of the first Act may end in imposition of penalty under section 47 of that Act. Similarly, proceedings under section 21 of our Act may end in imposition of penalty under section 23 of the Act. *Payne's case* is, therefore, a close parallel to the present case. Learned counsel for the petitioner-Panchayat contends that a decision of an English Court interpreting a British statute or statutes cannot be of assistance in the interpretation of Punjab Act 4 of 1953, and it has been so held by the Privy Council in *Lasa Din*

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v. *Mt. Gulab Kunwar* (12). It is so. But all that their Lordships said was that it is always dangerous to apply English decisions to the construction of an Indian Act where clauses under consideration are not the same, and I have endeavoured to show that sections 46 and 47 of the Metropolitan Building Act, 1855, are, for the matter under consideration, a close parallel to sections 21 and 23 of Punjab Act 4 of 1953.

In consequence, the proceedings under subsection (1) of section 21 of Punjab Act 4 of 1953 are found to be a 'criminal case' as those words appear in proviso to section 41 of that Act. On this conclusion, the petition of the petitioner-Panchayat is without substance. It is dismissed. There is no order on costs in this petition.

K.S.K.

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Before Inder Dev Dua and Harbans Singh, JJ.

OM PARKASH AND OTHERS,—*Petitioners.*

versus

CHIEF SETTLEMENT COMMISSIONER, PUNJAB,
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Civil Writ No. 841 of 1962.

1963
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Land Resettlement Manual by Tarlok Singh—Chapter VIII, para 17 on page 180—Scope and binding effect of—Heirs of a landlord who died in Pakistan before partition—Whether entitled to allotment of land as displaced landholders.

Held, that there is no statutory basis for para 17 at page 180 in Chapter VIII of the Land Resettlement Manual by Tarlok Singh and it cannot, therefore, be said that this para embodies a rule of law calling for strict obedience on

(12) A.I.R. 1932 P.C. 207.