

REVISIONAL CRIMINAL

*Before Shamsheer Bahadur, J.*BANSI LAL,—*Petitioner.**versus*GRAM PANCHAYAT MULLANA AND OTHERS,—*Respondents.***Criminal Revision No. 1357 of 1961.**

1962
 January, 30th.

*Punjab Gram Panchayat Act, 1952 (IV of 1953)—
 Sections 21, 22, 23 and 41—Proceedings under section 21—
 Whether criminal—Order for transfer of such proceedings
 from one Panchayat to another—Whether can be made.*

*Held, that the proceedings under section 21 of the
 Punjab Gram Panchayat Act, 1952, are criminal in nature
 as the Panchayat is authorised to levy the punishment of
 fine under section 23 for breaches committed under sec-
 tion 21 and an order for transfer of such proceedings from
 one Panchayat to another can be made by the Magistrate
 under section 41 of the Act.*

*Case reported under Section 438, Cr. P. C. by Shri Sant
 Ram Garg, Sessions Judge, Ambala, with his reference
 No. P/199, dated the 10th October, 1961, for revision of the
 order of Shri V. K. Agnihotri, Magistrate 1st Class, Ambala,
 dated 27th February, 1961, transferring the case to the
 Gram Panchayat, Sohana.*

R. N. MITTAL, ADVOCATE, for the Petitioner.

S. K. JAIN, ADVOCATE, for the Respondents.

ORDER

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SHAMSHER BAHADUR, J.—The question of law which arises in this reference is whether this Court should interfere in the exercise of revisional jurisdiction with the order of the Magistrate transferring a complaint under section 21 of the Punjab Gram Panchayat Act, 1952, from one Panchayat to another ?

The Gram Panchayat of Mullana sent a notice under section 21 of the Punjab Gram Panchayat Act to Vir Bhan and his son Ved Parkash to remove the *chabutra* which had obstructed the watercourse opposite to the house of Shri Bansi Lal, who is a Sarpanch of the Panchayat. Section 21 empowers a Gram Panchayat to require removal of an encroachment or nuisance, and any disobedience of the order entails a penalty under section 23 which may extend to Rs. 25 and if the breach is a continuing one a further penalty which may extend to one rupee for every day after the first during which the breach continues. The recurring penalty, under the proviso to section 23, is not to exceed a sum of Rs. 500.

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Apprehending that they would not receive justice from the Gram Panchayat of Mullana as the encroachment of which notice was given was in front of the house of the Sarpanch Shri Bansi Lal, an application was made for the transfer of the complaint to some other Gram Panchayat under section 41 of the Gram Panchayat Act, which empowers a 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" for reasons to be recorded in writing to transfer any criminal case from one Panchayat to another. The Magistrate considering that the case was likely to engender some prejudice against Vir Bhan transferred the case to the Gram Panchayat of Sohana and it appears from the order passed by him on 27th of February, 1961, that the representative of the Panchayat who appeared before him took no objection to this course. A petition for revision all the same was preferred before the Sessions Judge by Bansi Lal on the ground that the Magistrate could not have made the order of transfer because the proceedings under section 21 of the Gram Panchayat Act constitute a "criminal case" as envisaged in the proviso to section 41. It is to be noted that while criminal cases could be transferred in pursuance of section 41 of the Gram Panchayat Act, a similar

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provision exists with regard to the transfer of civil suits by the District Judge or Collector under section 54 of the Act. Thus a proceeding, whether of a civil or criminal nature, is liable to be transferred from one Panchayat to another of competent jurisdiction, the difference being that the transfer of criminal cases is to be made by a Magistrate and that of civil ones by a District Judge or Collector.

The learned Sessions Judge, before whom the petition was filed by Bansi Lal himself as the representative of Gram Panchayat Mullana against the order dated 27th of February, 1961, of the Cantonment Magistrate, Ambala, being of the view that the proceedings under section 21 not being criminal, has recommended that the order of transfer should be set aside.

In my opinion, the recommendation of the learned Sessions Judge cannot be accepted. It has been brought to my notice that the Panchayat of Sohana before whom the proceedings were transferred has dismissed the complaint on merits by its order dated 19th of September, 1961. A certified copy of the order of the Panchayat has been placed on record of this Court by the learned counsel for the respondents. Thus, no proceedings were in existence on 25th of September, 1961, when the learned Judge made the recommendation to this Court for rescinding the order of transfer made by the Magistrate on 27th of February, 1961. Even if it be assumed that the order of transfer could not be upheld proceedings under section 21 not constituting a 'criminal case', the revisional powers of the High Court as pointed out by their Lordships of the Supreme Court in *Pranab Kumar Mitra v. State of West Bengal and another* (1), can be exercised only to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. It appears to me that substantial justice has been done and indeed the application for transfer has

(1) A.I.R. 1959 S.C. 144.

become utterly infructuous, the complaint having already been dismissed by the Panchayat to which the proceedings had earlier been transferred. The complaint virtually had become *non est factum* when the Sessions Judge made his order under this reference and the discretionary power of the Court need not be exercised in a case of this nature, especially when the ground of transfer *prima facie* is genuine. The encroachment is said to have been made in front of the house of the Sarpanch and a reasonable apprehension could arise in the minds of the petitioners that they would not receive justice from the Gram Panchayat whose Sarpanch was the real complainant in the case. As observed in *Pranab Kumar Mitra's* case by their Lordships of the Supreme Court, the discretionary power of the Court under section 439 of the Code of Criminal Procedure has to be exercised in aid of justice depending on facts and circumstances of each case.

I am further unable to agree with the learned Sessions Judge that the proceedings under section 21 of the Gram Panchayat Act are not "criminal". Under section 21 a Gram Panchayat on receiving a report or other information may require an owner to remove encroachments and nuisances of the description enumerated in the various clauses of this provision. Section 22, which follows it, empowers the Gram Panchayat to make general orders for the prohibition and regulation of certain nuisances. Under Section 23, it is stated that any one who disobeys the provisions of section 21 and 22 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 recurring penalty not to exceed a sum of Rs 500. It is important to bear in mind that a breach or disobedience of an order passed under sections 21 and 22 can be visited by the penalty of fine. Now it is essential characteristic of an offence or crime that its legal consequences are penal in nature. As stated in Salmond's Jurisprudence (11th edition) at page

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110, "the distinction between civil wrongs and crimes relates to the legal consequences of acts..... Criminal proceedings, if successful, result in one of a number of punishments, ranging from hanging to a fine." In a civil proceeding, a person comes to seek relief for himself while in a criminal action nothing is demanded for oneself but merely punishment of the accused for the wrong committed by him. It may be that in some cases a wrong is both civil and criminal capable of being made the subject-matter of proceedings of both kinds. As stated in Words and Phrases, Volume 10, page 464, punishment is an essential feature of a crime. Punishment is annexed to a breach or disobedience of the order of the Gram Panchayat calling upon a person to remove the encroachment. In my judgment, when a Panchayat is authorised to levy the punishment of fine under section 23 for breaches committed under section 21, the proceedings under these provisions at once become "criminal" in nature. The policy of the Legislature that a case whether civil or criminal is liable to be transferred by an appropriate authority indicates that no distinction between the two on this aspect was intended to exist. For these reasons I do not find it possible to agree with the view expressed by Grover, J., in an unreported judgment, *Mukh Ram v. The Gram Panchayat Mullana* (Civil Writ No. 1074 of 1959) decided on 27th October, 1960.

In my view, the learned Magistrate was within the bounds of his authority to make the order of transfer which is sought to be impugned. The recommendation of the learned Sessions Judge cannot, therefore, be accepted and the petition for revision would stand dismissed.

B.R.T.

FULL BENCH

Before S. S. Dulat, Inder Dev Dua, and D. K. Mahajan, JJ.

MESSRS MANGAT RAM-ROSHAN LAL AND OTHERS,—

Appellants.

versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Regular Second Appeal No. 1526 of 1959

Punjab District Boards Act (XX of 1883)—Section 30—

January, 31st. Whether valid—Tax imposed on timber carried over two