

time, determined to see that their victim did not possibly escape the assassins' hands.

As regards the second appellant, we need not say anything more than that he was lucky enough to escape conviction under s. 302 of the Indian Penal Code, for the reasons given by the High Court, which may not bear close scrutiny. He amply deserves the punishment of 5 years' rigorous imprisonment under s. 326 of the Indian Penal Code.

For the reasons aforesaid, both the appeals fail and are dismissed.

Appeals dismissed.

BALDEO SINGH AND OTHERS

v.

THE STATE OF BIHAR AND OTHERS

(S. R. DAS C. J., JAFER IMAM, S. K. DAS, GOVINDA MENON and A. K. SARKAR JJ.)

Gram Cutcherry—Criminal Jurisdiction—Concurrent jurisdiction of ordinary criminal Courts—Enactment, if discriminatory in character.—Bihar Panchayat Raj Act, 1947 (Bihar Act 7 of 1948), ss. 60, 62, 68, 69, 70, 73—Constitution of India, Art. 14.

The appellants were convicted of an offence under s. 379 of the Indian Penal Code by a full bench of the Gram Cutcherry constituted under the provisions of the Bihar Panchayat Raj Act, 1947. It was contended for the appellants that the conviction was bad on the grounds *inter alia*, that s. 62 of the Act which provided for the criminal jurisdiction of Gram Cutcheries gave concurrent jurisdiction to the ordinary criminal Courts and left it open to a party to go either to the ordinary criminal Courts or to a bench of the Gram Cutcherry, and as the procedure followed in the ordinary criminal Courts was substantially different from that followed by a Gram Cutcherry, the Act was discriminatory in nature and as such infringed Art. 14 of the Constitution.

Held, that the impugned provisions of the Act are not discriminatory in nature.

The scheme of the Act is that a case or suit cognizable under the Act by a Gram Cutcherry should be tried only by it unless the Sub-Divisional Magistrate or the Munsif concerned chooses to take action under s. 70 or s. 73 of the Act. The

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reference to concurrent jurisdiction in s. 62 is explainable by reason of the provisions in ss. 69, 70 and 73, so that on the transfer or withdrawal of a case from the Gram Cutcherry or the cancellation of the jurisdiction of the bench, it may not be said that the ordinary criminal Courts also have no jurisdiction to try it.

CRIMINAL APPELLATE JURISDICTION : Criminal
Appeal No. 145 of 1955.

Appeal by special leave from the judgment and order dated July 20, 1954, of the Patna High Court in Criminal Miscellaneous No. 228 of 1954.

S. P. Verma, for the appellants.

R. C. Prasad, for the respondents.

1957. April 22. The judgment of the Court was delivered by

S. K. Das J.

S. K. Das J.—This is an appeal by special leave from an order of summary dismissal passed by the High Court of Patna on July 20, 1954, on an application under Arts. 226 and 227 of the Constitution of India. The relevant facts are these. One Uma Shankar Prasad instituted a case against eight persons, including the three appellants before us, Baldeo Singh, Ramdeo Singh and Sheodhar Singh, on the allegation that they had forcibly cut and removed 'urad' and 'kodo' crops from his field in village Darwan on October 1, 1953, at about 10 a.m. Uma Shankar said that he objected, but was threatened with assault. The case was instituted before the Gram Cutcherry of Bankat in the district of Champaran, constituted under the provisions of the Bihar Panchayat Raj Act, 1947 (Bihar Act 7 of 1948), hereinafter referred to as the Act. Altogether four witnesses were examined in the case, two on behalf of the prosecution and two for the accused persons. The defence of some of the accused persons was that the land on which the crops stood belonged to one Yogi Sahni, who had sold it to Sunder Singh, accused, on September 25, 1953. On December 28, 1953, a bench of the Gram Cutcherry acquitted all the accused persons. On January 7, 1954, Uma Shankar Prasad preferred an appeal under s. 67 of the Act. The appeal was heard on June 24, 1954,

and the full bench by a majority, with three dissentient panches, held the three appellants guilty of the offence under s. 379, Indian Penal Code, and sentenced them to imprisonment for fifteen days each. The appellants then moved the High Court of Patna under Arts. 226 and 227 of the Constitution, with the result stated above. The appellants then moved this Court and obtained special leave under Art. 136 of the Constitution.

Learned counsel for the appellants has pressed the following contentions before us. His first and foremost contention is that the Act, by reason of certain provisions contained therein, is discriminatory in nature and offends against Art. 14 of the Constitution. It is advisable to set out first those provisions of the Act which, according to learned counsel for the appellants, are discriminatory in character. Section 62 of the Act, which provides for the criminal jurisdiction of Gram Cutcherries, is in these terms :

“Notwithstanding anything contained in the Code of Criminal Procedure, 1898, and subject to the provisions of this Act, a bench of the Gram Cutcherry shall have jurisdiction concurrent with that of the Criminal Court within the local limits of whose jurisdiction the bench is situate for the trial of the following offences as well as abetment of and attempts to commit any such offence, if committed within the local limits of its jurisdiction, namely :

(a) offences under the Indian Penal Code, sections 140, 143, 145, 147, 151, 153, 160, 172, 174, 178, 179, 269, 277, 279, 283, 285, 286, 289, 290, 294, 323, 334, 336, 341, 352, 356, 357, 358, 374, 379, 380, 381, 403, 411, 426, 428, 430, 447, 448, 461, 504, 506, 510 ;

(b) offences under the Bengal Public Gambling Act, 1867 :

(c) offences under sections 24 and 26 of the Cattle Trespass Act, 1871 :

(d) except as otherwise provided, offences under this Act or under any rule or bye-law made thereunder ;

(e) any other offence under any other enactment, if empowered in this behalf by the Government :

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Provided that the bench shall not take cognizance of any offence under sections 379, 380, 381 or 411 of the Indian Penal Code in which the value of the property alleged to be stolen exceeds fifty rupees or in which the accused—

(i) has been previously convicted of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment of either description for a term of three years or upwards; or

(ii) has been previously fined for theft by any bench of the Gram Cutcherry; or

(iii) is a registered member of a criminal tribe under section 4 of the Criminal Tribes Act, 1924; or

(iv) has been bound over to be of good behaviour in proceedings instituted under section 109 or 110 of the Code of Criminal Procedure, 1898.”

It is worthy of note that the section contains two important qualifications: one is contained in the non-obstante clause with which the section begins and the other is contained in the expression ‘subject to the provisions of this Act.’ The importance of this second qualification will be apparent when some of the other provisions of the Act are set out. Subject to the two qualifications mentioned above, s. 62 gives a bench of the Gram Cutcherry jurisdiction concurrent with that of the ordinary criminal Court within the local limits of whose jurisdiction the bench is situate for the trial of the offences mentioned therein. Section 63 vests the bench with the powers of a Magistrate of the third class. Section 64 is not relevant for our purpose and need not be read. Section 65 provides for *exclusive* civil jurisdiction of a bench of the Gram Cutcherry in certain classes of suits, subject to certain provisos. Section 66 says that certain suits shall not be heard by a bench of the Gram Cutcherry. Section 67 provides for appeals. Then comes s. 68, which is very important for our purpose and must be quoted in extenso—

“No court shall take cognizance of any case or suit which is cognizable under the Act by a bench of the Gram Cutcherry unless an order to the contrary has been passed by the Sub-Divisional Magistrate or

the Munsif concerned under the provisions of the Act or any other law for the time being in force.”

Section 69 gives the Sub-Divisional Magistrate or the Munsif power to transfer a case or suit pending before a Magistrate or a Munsif to a bench of the Gram Cutcherry having jurisdiction to try it. Section 70 gives the Sub-Divisional Magistrate or the Munsif power to withdraw any case or suit pending before a bench of the Gram Cutcherry and transfer the same to the ordinary Courts. Section 71 provides, *inter alia*, that no legal practitioner shall appear, plead or act on behalf of any party in any suit or case before the Gram Cutcherry. Section 73 gives power to the Sub-Divisional Magistrate and the Munsif to take necessary action when there has been a miscarriage of justice or there is an apprehension of a miscarriage of justice. Sub-section (2) of s. 73 says that when an order under sub-s. (1) has been made in respect of any suit or case, the complainant or the plaintiff, as the case may be, may institute the case or suit afresh in the Court of the Sub-Divisional Magistrate or a Munsif of competent jurisdiction.

The argument of learned counsel for the appellants is that inasmuch as s. 62 gives only concurrent jurisdiction, it leaves it open to a party to go either to the ordinary criminal Courts or to a bench of the Gram Cutcherry. According to him, this opens the door for discrimination, because the procedure followed in the ordinary criminal Courts is substantially different from that followed by a Gram Cutcherry. The procedure to be followed by the latter is indicated in s. 60 which states :

“Subject to the provisions of this Act and to any rules or directions that may be made or issued by the Government in this behalf, the procedure to be followed by a bench of the Gram Cutcherry shall be such as it may consider just and convenient and the bench shall not be bound to follow any laws of evidence or procedure other than the procedure prescribed by or under this Act.”

This argument as to discrimination fails to take note of the other provisions of the Act which we have set

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out above. Section 62 is, in express terms, subject to other provisions of the Act; therefore, it is subject to s. 68 which states that no Court shall take cognizance of any case or suit which is cognizable under the Act by a bench of the Gram Cutcherry, unless an order to the contrary has been passed by the Sub-Divisional Magistrate or the Munsif concerned under the provisions of the Act or any other law for the time being in force. On a proper construction of s. 62 and s. 68, it is clear that there is really no discrimination and a case cognizable by a bench of the Gram Cutcherry must be tried there, unless there has been an order to the contrary in the exercise of his judicial discretion by the Sub-Divisional Magistrate or the Munsif concerned as contemplated by the latter part of s. 68. The provisions of the Act under which such an order can be passed are contained in the succeeding sections already referred to by us. The whole scheme of Ch. VII of the Act is that a case or suit cognizable under the Act by a Gram Cutcherry should be tried by a bench of the Gram Cutcherry save in those exceptional cases which are provided for in ss. 70 and 73. The reference to concurrent jurisdiction in s. 62 is explainable by reason of the provisions in ss. 69, 70 and 73, so that on the transfer or withdrawal of a case from the Gram Cutcherry or the cancellation of the jurisdiction of the bench, it may not be said that the ordinary criminal Courts also have no jurisdiction to try it.

For these reasons, we are of the view that the impugned provisions of the Act are not discriminatory in nature, and there is no merit in the first contention pressed before us.

Secondly, learned counsel for the appellants has referred us to rr. 60 and 61 of the Bihar Gram Cutcherry Rules, 1949. Rule 60(2) requires that the decision of the full bench shall be signed by the members and where a dissentient judgment has been delivered, the minute of dissent shall also be recorded under the signatures of the dissenting members. These requirements were fulfilled in the present case, and no materials have been placed before us which may lead to the conclusion that rr. 60 and 61 have been violated.

The third and last contention on behalf of the appellants is that the conviction of two of the appellants, Ramdeo Singh and Sheodhar Singh, is bad, because there was *no evidence at all* against them. The two witnesses examined on behalf of the prosecution definitely said that they saw Baldeo Singh (appellant) and two other named persons who have been acquitted, but did not identify the remaining persons who also forcibly cut and removed the crops. On this evidence, there was no legal basis for the conviction of Ramdeo Singh and Sheodhar Singh. Our attention has been drawn to Ramdeo Singh's own statement in which he said that he had removed the crops of *his own field*. That statement, standing by itself, is not an admission of guilt. We agree with learned counsel for the appellants that there was no evidence whatever to sustain the conviction of Ramdeo Singh and Sheodhar Singh. Their conviction was manifestly, and on the face of the record, erroneous.

The High Court was moved for the exercise of its power of superintendence under Art. 227, and it is open to us in this appeal to exercise the same power. We would accordingly allow this appeal so far as Ramdeo Singh and Sheodhar Singh are concerned and set aside their conviction and sentence. They will now be discharged from bail. So far as Baldeo Singh is concerned, he was rightly convicted. We do not, however, think that any useful purpose will be served by sending him to jail for a short period. We would accordingly reduce his sentence to a fine of Rs. 30/- only or in default imprisonment as directed by the full bench of the Gram Cutcherry. The appeal is disposed of accordingly.

Appeal disposed of accordingly.

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