

1962

The Commissioner of  
Income-tax, Madrasv.  
S. V. Angidi  
Chettiar

Shah J.

was not satisfied in the course of the assessment proceeding that the firm had concealed its income. The assessment order is dated November 10, 1951, and there is an endorsement at the foot of the assessment order by the Income-tax Officer that action under s. 28 had been taken for concealment of income indicating clearly that the Income-tax Officer was satisfied in the course of the assessment proceeding that the firm had concealed its income.

In our view, the High Court was in error in holding that penalty could not be imposed under s. 28 (1) (c) upon the firm Messrs. S. V. Veerappan Chettiar & Co., after its dissolution.

The appeals will therefore be allowed and the orders passed by the High Court will be set aside and the petitions filed by the respondents dismissed with costs in this Court and the High Court. One hearing fee.

*Appeals allowed.*

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PALAKDHARI SINGH & OTHERS.

v.

THE STATE OF UTTAR PRADESH  
AND ANOTHER

(J.L. KAPUR and RAGHUBAR DAYAL, JJ.)

*Limitation—Panchayati Adalat—Fine imposed on conviction—Recovery after expiry of six years—If barred—U.P. Panchayat Raj Act, 1947. (U.P. XXVI of 1947) ss. 54, 83, 94—Indian Penal Code, 1860 (XIV of 1960) s. 70.*

The appellant was convicted by the Panchayati Adalat for theft and sentenced to pay a fine of Rs. 75/- in 1950. The conviction and sentence was confirmed in 1953 by the High Court in revision. In 1958 proceedings were taken to recover the fine. The appellant contended that the recovery was barred by s. 70 The Indian Penal Code. The respondent contended that s. 70 was not applicable to convictions by Panchayati Adalats and that the limitation started from the date of the order of the High Court.

1962

January 19.

*Held*, that s. 70 Indian Penal Code was applicable to convictions by the Panchayati Adalats and that the recovery of the fine after the expiry of six years from the date of conviction was barred. There was no provision in the U. P. Panchayat Raj Act prescribing any period of limitation or providing for the non-applicability of s. 70 of the Code to sentences of fine imposed by the Panchayati Adalats. The limitation started from the date of the "passing of the sentence" and the filing of appeal or revision did not, unless specifically ordered, arrest the operation of the order imposing the sentence.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5 of 1960.

Appeal by special leave from the judgment and order dated September, 7 1959, of the Allahabad High Court in Criminal Reference No. 470 of 1958.

*K.P. Gupta*, for the appellants.

*G. C. Mathur* and *C. P. Lal*, for the respondent No. 1,

1962, January 19. The Judgment of the Court was delivered by

KAPUR, J.—This appeal raises the question of the applicability of s. 70 of the Indian Penal Code to fines imposed in convictions for offences under the Indian Penal Code but tried by Tribunals called the Panchayati Adalats, now known as Nyaya Panchayats.

The appellants were convicted by a Panchayati Adalat on February 5, 1950, for an offence under s. 379 of the Indian Penal Code and were sentenced to a fine of Rs. 75/- each. A revision against that order was taken to the High Court which was dismissed on May 13, 1953. In January 1958, proceedings were taken for the recovery of the fine imposed against the appellants by the Panchayati Adalat. In a revision against that order an objection was raised that the fine was not recoverable as it was barred by s. 70 of the Indian

1962

*Patakdhari Singh*  
v.  
*The State of*  
*Uttar Pradesh*

*Kapur J.*

1962  
 Palakdhari Singh  
 v.  
 The State of  
 Uttar Pradesh  
 Kapur J.

Penal Code. The learned Sub-Divisional Magistrate by his order dated February 6, 1958, held the recovery of the fine to be barred under that section. But a revision was taken to the District Magistrate who recommended the setting aside of the order of the sub-Divisional Magistrate on the ground that there was no period of limitation. The High Court by its order dated September 7, 1959 accepted the recommendation of the District Magistrate and held that there is no limit to the time within which the fines imposed by a Panchayati Adalat can be realised. It is against this order that the appellants have brought this appeal by special leave.

The conviction of the appellants was under s.379 of the Indian Penal Code and if they had been tried and convicted by a Magistrate acting under the Criminal Procedure Code, the recovery of the fine would have been barred under s. 70, Indian Penal Code. But it is submitted that if the conviction is by a Panchayati Adalat, the ban on the recovery of the fine after the expiry of six years limitation is no longer applicable.

It is necessary to refer to the relevant provisions of the U.P. Panchayat Raj Act (Act XXVI of 1947), hereinafter called the 'Act', as applicable to the facts of this case. Under s. 52 of the Act, certain offences are cognizable by the Panchayati Adalats and the offence under s. 379 of the Indian Penal Code is one of them. Section 54 empowers these Panchayati Adalats to impose penalties and it is provided that they have no power to inflict substantive sentences of imprisonment or imprisonment in default of payment of fine. Under s.53, provisions of the Indian Evidence Act, Code of Criminal Procedure and the Limitation Act, are made inapplicable excepting to the extent that the Act makes them applicable. Section 54 provides for recovery of fine and it runs as follows :

[any fine imposed] for compensation - ordered to be paid in s. 61 by a Nyaya Panchayat shall be recoverable in the manner prescribed. But if the Nyaya Panchayat finds any difficulty in its recovery, it may request the Sub-Divisional Magistrate within whose jurisdiction the Nyaya Panchayat lies to recover it and he shall recover it as if the sentence of fine had been passed by him."

Rule 82 of the U.P. Panchayat Raj Rules deals with the limitation for writing off of fines and jurisdiction of the Panchayati Adalats. It provides as to how fines which are not recoverable can be written off, but there is no provision in this rule as to the period of limitation. Therefore as far as the Act is concerned, there is no provision prescribing a period of limitation or providing for the non-applicability of s. 70 of the Indian Penal Code to sentences of fine passed by the Panchayati Adalats. As a matter of fact s. 94 of the Act provides that if there is difficulty in the recovery of a fine, the Sub-Divisional Magistrate shall recover it as if it was a fine imposed by himself, which supports the contention of the appellants that the period of limitation as provided in s. 70 of the Indian Penal Code is not made inapplicable to convictions by Panchayati Adalats. In our opinion the District Magistrate as well as the High Court were in error in holding that the period of limitation provided by s. 70 of the Indian Penal Code is inapplicable to the recovery of fines imposed by Panchayati Adalats.

It was next argued that the final order which is the *terminus & quo* under s. 70 of the Indian Penal Code is the orders of the High Court passed in revision on May 13, 1953, and from that date the proceedings for recovery are within time. But the language of s. 70 prescribes the *terminus & quo* to be the date of "passing of the sentence" by Court which passes such order and the filing of appeal our

1962

Palakdhari Singh

The State of  
Uttar Pradesh

Kapur J.

1962

Palakdhari Singh

v.

The State of  
Uttar Pradesh

Kapur J.

revision does not, unless specifically ordered, arrest the operation of the order of passing of the sentence of conviction. In the present case the limitation started from the date of conviction by the Panchayati Adalat and not from the date of dismissal of Revision by the High Court.

We therefore allow this appeal, set aside the order of the High Court and restore that of the learned Sub-Divisional Magistrate dated February 6, 1958.

*Appeal Allowed.*

1962

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UNDER SINGH AND OTHERS

v.

## THE STATE OF PUNJAB

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and  
RAGHUBAR DAYAL, JJ.)

*Criminal Trial—Acquittal of one accused—No appeal against acquittal—Appeal to High Court by other convicted accused—Power of High Court—Whether can consider correctness of the acquittal—Code of Criminal Procedure 1898 (Act 5 of 1898), s. 423.*

Four persons S, G, L and R were tried for offences under s. 202 read with 34 Indian Penal Code. The Sessions Judge gave the benefit of doubt to R and acquitted him but he convicted the other three of the offences charged and sentence them to death. No appeal was preferred against the acquittal of R. but the three convicted persons appealed to the High Court. The High Court was of the view that the Sessions Judge was wrong in giving the benefit of doubt to R, that R was present at the scene of offence and all the four accused had the common intention alleged by the prosecution. Relying upon the evidence of the eye witness it dismissed the appeal, but reduced the sentence of G to life imprisonment. The appellants contended that the High Court had no jurisdiction or authority to embark upon an enquiry into the propriety or validity of the acquittal of R and that its finding that R had taken part in the offence as alleged by the prosecution had introduced a serious infirmity in the judgment of the High Court.