

a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence."

No fault can, thus, be found with the order of the Magistrate when instead of taking cognizance himself, he forwards the complaint to the police for investigation under section 156 (3) of the Code.

(10) Section 156 of the Code is mandatory and the police officer has to act on the information received with respect to the commission of a cognizable offence. In case he does not act on that information, sub-section (3) gives the aggrieved party a right to give in writing the information to the Superintendent of Police and on that basis, investigation has to be carried out. Whenever information of a cognizable offence is given to the police, a case has to be registered. Adjudged from that angle, even if the Magistrate had not ordered for registration of a case, it was the duty of the police, who was primarily concerned with the matter of investigation to register the case and proceed with the investigation. The order asking the registration of the case may at best be described to be surplusage, but will not vitiate the order of the Magistrate.

(11) In view of the above discussion, I find no illegality in the order dated 8th July, 1992 passed by the Judicial Magistrate I Class, Tohana and therefore, the First Information Report No. 263 dated 9th July, 1992 is not liable to be quashed. There is no merit in this petition and the same is hereby dismissed.

J.S.T.

Before : Hon'ble R. P. Sethi & H. S. Bedi, JJ.

BHUPINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 9857 of 1993

December 6, 1993

Constitution of India, 1950—Art. 226/227—Punjab Gram Panchayat Act, 1952—Appeal—Right of appeal is a creation of statute—Parties cannot confer a right of appeal upon themselves by agreement or acquiescence.

K. P. Sethi, J.

Held, that it is acknowledged position of law that a right of appeal is neither natural nor inherent right attached to the litigation but is the creation of statute. A right of appeal is a substantive right and cannot be termed to be a procedural matter. As the appeal is the creation of a statute, the nature and character of the right to appeal is always controlled by the provisions of the relevant statute. It is also settled that the parties cannot confer a right of appeal upon themselves in any matter either by agreement or by acquiescence. Inherent lack of jurisdiction to entertain the appeal cannot be permitted to be cured by the consent, waiver or acquiescence of the parties.

(Para 3)

Constitution of India, 1950—Art. 226/227—Punjab Gram Panchayat Act, 1952—S. 13N, 13V—Appeal filed against order refusing to grant interim injunction—Appeal allowed—Challenged—Held—Order passed by competent authority refusing to grant interim injunction not an order passed in terms S. 13N & thus no appeal maintainable—Impugned order quashed.

Held, that a perusal of the Punjab Gram Panchayat Act, 1952 (hereinafter to be referred to as the 'Act') would indicate that no appeal is provided against an interim order passed by the authority entertaining the election petition. Section 13-N empowers the prescribed authority to make order to either dismiss the election petition or set aside the election. Section 13-V of the Act provides that any party aggrieved by an order made by the prescribed authority under Section 13-N may appeal can be filed only if the election petition is dismissed or the election is set aside but not otherwise on any ground. The order passed by the competent authority refusing to grant interim injunction was not an order passed in terms of Section 13-N of the Act and that no appeal was maintainable.

(Para 4)

Punjab Gram Panchayat Act, 1952—S. 13G—Code of Civil Procedure—Order 39 rule 1 and 2—Whether provisions of O. 39 rule 1 & 2 applicable to conduct of proceedings in election petition.

Held, that section 13-G of the Act provides that every election petition shall be tried by the prescribed authority, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Such a provision postulates the conduct of the proceedings in the election petition but does not confer any additional right upon the election petitioner to apply for the grant of temporary injunction. The provisions of Section 13-G of the Act are enabling provisions confined to the procedure and not dealing with the ancillary matters not directly connected with the procedure for the conduct of the election petition.

(Para 5)

Jasbir Singh, Advocate, for the Petitioner.

Sanjay Dharwal, Advocate, for the Respondent.

ORDER

(1) Aggrieved by the election of the petitioner as Sarpanch of Gram Panchayat village Chhotian, Tehsil Sunam, District Sangrur, Respondent No. 2 presented an election petition with the competent authority alongwith an application for interim relief praying therein for restraining the petitioner from discharging his duties as Sarpanch. The application for the grant of interim relief was dismissed by the concerned authority with the result that respondent No. 2 filed an appeal before respondent No. 3 who,—vide order impugned in the petition (Annexure P/3) set aside the order of the authority conducting the election petition and held, "the election of respondent No. 1 as Sarpanch is illegal and void and therefore the appellant is entitled to the grant of temporary injunction as prayed for." The order of the appellate authority impugned in this petition is alleged to be without jurisdiction and contrary to the provisions of the law applicable in the case.

(2) We have heard the learned counsel for the parties appearing in the case and have decided to dispose of this petition at the preliminary stage.

(3) It is acknowledged position of law that a right of appeal is neither natural nor inherent right attached to the litigation but is the creation of statute. A right of appeal is a substantive right and cannot be termed to be a procedural matter. As the appeal is the creation of a statute, the nature and character of the right to appeal is always controlled by the provisions of the relevant statute. It is also settled that the parties cannot confer a right of appeal upon themselves in any matter either by agreement or by acquiescence. Inherent lack of jurisdiction to entertain the appeal cannot be permitted to be cured by the consent, waiver or acquiescence of the parties. The Supreme Court in *Ganga Bai v. Vijay Kumar and others* (1), held :

"..... There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute, one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever

frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore one appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

(4) A perusal of the Punjab Gram Panchayat Act, 1952 (hereinafter to be referred to as the 'Act') would indicate that no appeal is provided against an interim order passed by the authority entertaining the election petition. Election Petitions are filed under Chapter IIA of the Act. Section 13-B of the Act deals with election petitions. Section 13-D provides as to what should be the contents of such a petition. Section 13-E prescribes the procedure on receiving election petitions. Section 13-G deals with the procedure before the prescribed authority. Section 13-I specifies the powers of the prescribed authority. Section 13-N empowers the prescribed authority to make order to either dismiss the election petition or set aside the election. Section 13-V of the Act provides that any party aggrieved by an order made by the prescribed authority under Section 13-N may appeal can be filed only if the election petition is dismissed or the election is set aside but not otherwise on any ground. The order passed by the competent authority refusing to grant interim injunction was not an order passed in terms of Section 13-N of the Act that no appeal was maintainable. The Additional District Judge while passing the order (Annexure P/3) appears to have completely ignored the relevant provisions of the law and opted to pass an order which on the face of it is without jurisdiction.

(5) It was contended on behalf of the petitioner that the competent authority hearing the election petition was not justified in dismissing the application for the grant of temporary injunction without assigning sufficient reasons. It is submitted that in the presence of Section 13-G of the Act, provisions of order 39 of the Code of Civil Procedure, 1908, were applicable and the prescribed authority was under a legal obligation to pass an effective order so far as the grant of temporary injunction was concerned. Section 13-G of the Act provides that every election petition shall be tried by the prescribed authority, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Such a provision postulates the conduct of the proceedings

in the election petition but does not confer any additional right upon the election petitioner to apply for the grant of temporary injunction. The provisions of Section 13-G of the Act are enabling provisions confined to the procedure and not dealing with the ancillary matters not directly connected with the procedure for the conduct of the election petition. This Court in *Kundan Singh v. The Executive Magistrate First Class, Barnala* (2), held :

“That the operation of sub-section (1) of Section 13-G is confined to the procedure applicable for the trial of a suit and not to any ancillary matter which does not directly relate to such procedure. Moreover, while defining the powers of the prescribed authority, section 11(1) of the Act has scrupulously avoided to refer to Order 39 of the Code of Civil Procedure. An Election Tribunal is a specially constituted Court of limited jurisdiction and has no authority to pass any order outside those limits, in the absence of any specific provision to the contrary, an Election Tribunal has no inherent jurisdiction like that vested in an ordinary Civil Court. The first respondent (the prescribed authority) appears to me to have out-stepped the limits of his jurisdiction in granting the application for temporary injunction as no law has vested such a jurisdiction in him.”

Similar views were expressed in *Ramashwar Dayal v. Sub Divisional Officer* (3) and *Kartar Singh v. S.D.M. Rampura Phul* (4).

(6) It follows therefore that the prescribed authority conducting the election petition under the Act has no jurisdiction to grant any interlocutory injunction to a petitioner which may amount to the expression of opinion having effect on the merits of the case. Accordingly, this petition is allowed by setting aside the order impugned (Annexure P/3) in this petition.

(2) 1975 P.L.R. 661.

(3) I.L.R. Allahabad Series (1961 (II) 298.

(4) 1981 (III) All India Land Laws Reporter 374.