1981 S C M R 267

Present : Aslam Riaz Hussain and Nasim Hasan Shah, JJ

MEHAR KHAN-Petitioner

Versus

YAQUB KHAN AND ANOTHER-Respondents

Criminal Appeal No. 44 of 1980 in Criminal Petition for Special Leave to Appeal No. 278 of 1979, decided on 14th April, 1980.

(Appeal against the judgment and order dated 26-5-1979 of the Lahore High Court in Cr. Misc. No. 751/B of 1979).

(a) Interpretation of statutes---

Words used in statutes-To be construed literally-Ordinary meaning of a word, however, according to golden rule of interpretation, need not be adhered to if construction based thereon calculated to be at variance with intention of Legislature as collected from statute itself or if such construction leads to absurdity-Language in such cases, held, may be varied or modified to avoid such absurdity or inconvenience.

Beck v. Smith (1836) 2 M W 191 ref.

(**b) Criminal Procedure Code (V of 1898)-**

-- Ss. 190(1), (3) [as standing before their amendment by Law Reforms Ordinance, 1972] & S. 344(1)-Word "inquiry" as used in sections Interpretation of statutes-Proper mode of interpretation or discovering true intention of Legislature : To consider state of law before statute or its provision given its present form, mischief or difficulty sought to be suppressed, and remedy intended to be advanced-Keeping earlier state of law in mind while interpreting provisions of S. 344(1), Criminal Procedure Code, 1898 wording of related provisions of S. 190(3) & 190(1), Criminal Procedure Code, 1898 as they stood before their amendment by Law Reforms Ordinance, 1972 provide strong indication of change intended to be brought about by amendment of S. 190(3) & (1) and effect thereof on true meaning of word "inquiry" in S. 344(1), Criminal Procedure Code, 1898.-[Words and phrases Interpretation of statutes].

Abdul Majid Khan v. Chief Settlement and Rehabilitation Commissioner P L D 1968 S C 154 ; Divisional Superintendent, P. W. R. v. Bashir Ahmad P L D 1973 S C 589 and Rabnawaz v, Jahana P L D 1974 S C 210 and Maxwell on Interpretation of Statutes, 12th Edn., p. 40 ref.

(c) Criminal Procedure Code (V of 1898)-

---Ss. 190 (1) (3) & 344 (1)-Word "inquiry" as used in section Remand (judicial)--- Magistrate's power to order, in cases exclusively tribal by Sessions Court-Inquiry for purpose of commitment of cases to Sessions Court having been dispensed with, difficulty felt to visualize as to how a Magistrate could postpone, commence, -or adjourn an inquiry-Held : Such difficulty results from overlooking fact that even under amended provisions of subsections (1) & (3) of S. 190, as substituted by Law Reforms' Ordinance. 1972, Magistrate taking cognizance of any offence under any clause of subsection (1) of S. 1.90 still required to apply his mind to ascertain whether case in question is one he is required to "send" for trial to Court of Session or if he could try it himself-Application of mind by Magistrate in such regard-Constitutes inquiry-Magistrate taking cognizance of a case under S. 190(1) and applying his mind for such purpose-Empowered to postpone commencement of, or adjourn, such inquiry and consequently empowered to remand accused to judicial custody front time to time till he finally sends case for trial to Sessions Court.—[Words and phrases-Remand of accused].

Although now a Magistrate is not required to hold an 'inquiry' under 5 Chapter XVIII, but that does not mean that he is to act merely as a post office and automatically 'send' the case for trial to a Court of Session simply because a section relating to an offence exclusively triable by a Court of Session has been mentioned by the Police or the complainant (as the case may be) in the challan or the private complaint. He is, in fact, required on having taken cognizance of such a

matter to enquire into the case and to apply his mind to whatever material is placed before him, by the Police or the complainant, in order to determine whether the allegations made in the Police report, private complaint or information received by him, make out a prima facie case triable exclusively by a Court of Session. In the changed circumstances, after the commitment proceedings have been dispensed with by the Law Reforms Ordinance, this inquiring into the relevant material and application of mind thereto by a Magistrate, to determine the nature of offence i.e., to determine as to whether or not the case is one triable exclusively by the Court of Sessions, would now constitute an inquiry within the meaning of the word as defined in clause (k) of section 4, Cr. P. C. and used in S. 344 (1), Cr. P. C. A Magistrate could take cognizance of soma cases for trying the same. He could also take cognizance of cases triable exclusively by a Court of Session but only for the limited purpose of committing them to that Court for trial. As such for that purpose he had to hold an inquiry under Chapter XVIII of the Code which were commonly known as commitment proceedings. As such it could, under section 344, Cr. P. C., "postpone the commencement of" or "adjourn" the trial of cases which he was empowered to try. It would also "postpone" or "adjourn" an inquiry which was required to hold under Chapter XVIII. But now that the inquiry, for the purpose of commitment, under Chapter XVIII, has been dispensed with, it has been found difficult to visualize as to how a Magistrate could postpone, commence or adjourn an 'inquiry' which he; is no longer empowered to hold. Similarly it cannot be visualized how a Magistrate car, postpone the commencement or adjourn a 'trial' which he is not empowered by law to conduct i.e., the trial of a case which is a triable only by a Court of Session. The cause for this apparent conflict or confusion, is, however, not difficult to spot. It has resulted simply from the fact that it has been generally overlooked that, as explained in paragraph No. 9, above, even under the recently substituted subsection (3) of section 190, Cr. P. C. a Magistrate who takes cognizance of any offence under any of the clauses of subsection (1) of that section, is required to apply his mind in order to ascertain as to whether the case in question is one which he is required to 'send' for trial to the Court of Session or whether it is one which he can proceed to try himself; In other words, under the law, as it stands at present, this application of mind by the Magistrate now constitutes the 'inquiry' which be is empowered to postpone or adjourn under section 344 (1), Cr. P. C. It follows, therefore, that a Magistrate who has taken cognizance of a case under section 190(1), Cr. P. C. and is applying his mind for the aforementioned purpose, is also empowered under the said section, to postpone the commencement of or adjourn the said 'inquiry' and naturally therefore, he would have the power to remand the accused to judicial custody from time to time, till he finally 'sends' the case for trial to the Court of Session.

Shadi Khan v. M. Salim P L D 1978 S C 38 distinguished.

(d) Criminal Procedure Code (V of 1898)--

-- Ss. 190(1), (3) & 344(f)-Remand (judicial)--Court of Session in case not yet sent by Magistrate under S. 190(3) and cognizance where of not taken by him under S. .190(1), held, cannot commence its trial hence can neither postpone, or adjourn, or pass order of remand under

S. 344(1).-[Remand of accused].

(e) Criminal Procedure Code (V of 1898)---

---Ss. 190(1), (3) & 344(1) read with Punjab Police Rules, 1934. r_25.26-Remand (judicial)-Neither complete nor incomplete challah as envisaged by r. 25.26 of Police Rules, 1934 submitted before Magistrate-Magistrate cannot be assumed to have taken cognizance of case under S. 190 (1) (b) nor can he be assumed to have taken cognizance of case under S. 190(1) (a) when no private complaint lodged before him-Magistrate in such cases, held, not empowered to remand accused to custody under S. 344(1).-[Remand of accused-Cognizance of case].

A wan M. Hanif, Advocate Supreme Court and Sh. Abdul Karim, Advocate-on-Record for Petitioner.

Kh. Wali Muhammad, Advocate-on-Record and Amjad Shaikh, Advocate Supreme Court for Respondent No. 1.

Advocate-General (Punjab) arid Gulzar Ahmad, Advocate-on-Record for Respondent No. 2.

Date of bearing 21st July, 1979.