

1985 S C M R 1314

Present: Aslam Riaz Hussain, Actg. C.J., Shafiur Rahman, M.S.H. Quraishi and Mian Burhanuddin Khan, JJ

Raja KHUSHBAKHTUR REHMAN and another--Petitioners

Versus

THE STATE--Respondent

Criminal Petition No. 32 of 1984, decided on 14th October, 1984.

(From the order of the Lahore High Court, dated 17-1-1984 passed in Criminal Miscellaneous No. 101-Q of 1982).

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

---S. 190(1) & (3)--Penal Code (XLV of 1860), S. 302/34--Cognizance of offence triable exclusively by Court of Session--Powers and duties of Magistrate--Trial Court issuing process to accused who had been found innocent by police and placed in column 2 of challan, assailed--Magistrate takes cognizance of offence and not of offender--Magistrate takes cognizance of case as a whole and not qua some of accused found by police to be implicated in case--Cognizance can be taken even if offenders be unknown--On taking cognizance of offence, Court acquires jurisdiction over all persons involved and not only over persons against whom challan is submitted--Trial Court having given reasons for summoning accused after perusal of record of case--Order of trial Court suffers from no legal infirmity.

Muhammad Haneef's case 1979 P Cr. L J 1078 and Nur Elahi v. The State P L D 1966 S C 708 ref.

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

---S.190(3)--Cognizance, meaning of--Word 'cognizance' is a term of art implying application of mind to facts of a case in order to determine whether facts disclosed constituted an offence triable exclusively by Court of Session, in which case Magistrate is bound to send case to Court of Session for trial.--[Words and phrases].

Mehar Khan v. Yaqub Khan 1981 S C M R 267 ref.

(c) Constitution of Pakistan (1973)--

---Art. 185(3)--Criminal Procedure Code (V of 1898), Ss. 200 & 202--Penal Code (XLV of 1860), S. 302/34--Complaint against accused in murder case--Trial Court permitting withdrawal and dismissing it--Order assailed on ground that there was no provision of law to permit withdrawal in murder case--Where version and accused are practically same in both complaint and challan cases, even separate trial may not be necessary--Petitioners having been named as accused also in complaint, no prejudice caused by withdrawal of same--Petition being devoid of merits, dismissed.--[Complaint].

Nur- Elahi v. The State P L D 1966 S C 708 distinguished.

Zulfikar Ali Bhutto v. State P L D 1979 S C 38 ref.

Shaukat Ali, Senior Advocate Supreme Court instructed by Ejaz Ahmad, Advocate-on-Record for Petitioners.

Major Wahiduddin Virk, Advocate Supreme Court for the Complainant.

S.M. Zubair, Asstt. A.-G., Punjab for the State.

Date of hearing: 14th October, 1984.