

1992 S C M R 2192

[Supreme Court of Pakistan]

Preset: Nasim Hasan Shah, Shafiur Rahman, Ajmal Mian, Rustam S. Sidhwa and Sajjad Ali Shah, JJ

Criminal Appeals Nos.221-K and 222-K of 1992

THE STATE---Appellant

versus

Syed QAIM ALL SHAH---Respondent

(On appeal from the judgment/order dated 21-10-1991 of the High Court of Sindh, Karachi, passed in Criminal Bail Applications Nos.438/1991 and 937/1991).

Criminal Appeal No.1-K of 1992

THE STATE--Appellant

versus

SHAH NAWAZ KHAN JUNEJO--Respondent

(On appeal from the judgment dated 15-12-1991 of the High Court of Sindh, Karachi, passed in Bail Application No.1055/1991).

Criminal Appeals Nos.221-K, 222-K and 1-K of 1992, decided on 11th August, 1992.

Per Ajmal Mian, J.; Sajjad Ali Shah, J. agreeing--

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

---S. 497(1), first proviso---Constitution of Pakistan (1973), Art. 185(3)---Leave to appeal was granted to consider the question whether the ratio of, judgment in case of Muhammad Aslam v. The State 1991 SCMR 599 could be pressed into service in the case and whether a person facing trial before a Special Court constituted under Suppression of Terrorists Activities Act, 1975 could seek bail on-medical ground under S.497(1), first proviso, Cr.P.C.

Muhammad Aslam v. The State 1991 SCMR 599 ref.

(b) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---Ss. 5A(8) & 7---Analysis of Ss.5A(8) & 7---Expression "or by any other Court" employed in S.5A(8) after the words "Special Court" includes the High Court subject to what has been provided in S.7.

(c) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S. 7(1)---"No Court" in S.7(1) includes High Court.

The expression "no Court" will include High Court, as the High Court as an appellate Court has the power under section 423, Cr.P.C. to pass appropriate order, the application of which section has not been excluded under the second part of subsection (1) of section 7 of the Suppression of Terrorist Activities (Special Courts) Act, 1975.

(d) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)-

---S. 7(1)---Criminal Procedure Code (V of 1898), Ss.497(1) & 561-A---High Court has the power to press into service S.497, Cr.P.C. with its provisos during the pendency of trial before

the Special Court---Section 561-A, Cr.P.C. however, can also be pressed into service in an appropriate case.

Muhammad Aslam v. The State 1991 SCMR 599; Riasat Ali v. Ghulam Muhammad PLD 1968 SC 353; Mirza Jawad Beg v. The State PLD 1975 Kar. 628; Emperor v. Banoari Lai Sarnia and others AIR 1943 FC 36; The Commissioner, Khairpur Division, Khairpur and another v. Ali Sher Sarki PLD 1971 SC 242; The Sindh Employees' Social Institution and another v. Adamjee Cotton Mills Ltd. PLD 1975 SC 32; Shahzad Hussain and Another v. The State PLD 1980 Lah. 54; Gul Muhammad and 2 others v. The State 1987 PCr.LJ 737; Abdul Hafeez Pirzada v. The State. 1987 PCr.LJ 2415; Deputy Superintendent of Police, Larkana v. Mumtaz Ali Bhutto and 8 others 1988 PCr.LJ 195; Aftab Ahmad Shah v. The State 1989 PCr.LJ 112; Ubedullah v. The State 1989 PCr.LJ 626; Ch.Zahur Ilahi, M.NA. v. The State PLD 1977 SC 273; Abdul Khalique v. The State PLD 1990 Kar. 448; Asif Ali Zardari v. The State 1991 PCr.LJ 595; Manzoor Hussain Wassan v. The State PLD 1991 Kar. 261; Altaf Hussain v. The State PLD 1985 Lah. 10; Muhammad Yaqub Ali v. The State PLD 1985 Lah. 48; Abdul Majid v. The Judge, Special Court (Offences in Banks), Lahore and another 1985 PCr.LJ 890; Muhammad Moosa v. The State 1986 PCr.LJ 578; Sajawal Sarwar v. The State 1988 PCr.LJ 1558; Syed Zeeshan Akhtar Zaidi v. The State 1988 PCr.LJ 843; Nifasat Ali Khan v. The State PLD 1989 Kar. 198; National Telephone Company Limited (In Liquidation) and another v. His Majesty's Postmaster-General 1913 AC 546; Secretary of State for India v. Chellikani Rama Rao and others AIR 1916 PC 21; Mating Ba Thaw v. Ma Pin 1961 IA 158; Hussain Bakhsh v. Settlement Commissioner and others PLD 1970 SC 1; In re: Suo Motu Shariat Review Petition No.1-R of 1979 (PLD 1990 SC 865); Ahrar Muhammad and others v. The State PLD 1974 SC 224; Malik Ghulam Jilani v. Station House Officer, Police Station, Gulberg, Lahore and 2 others PLD 1975 Lah. 210 and Abdul Karim and others v. The State 1969 SCMR 312 ref.

(e) Interpretation of statutes-

---- Statute which transgresses on the rights of a subject whether as regards his person or property should be so construed, if possible, which may preserve such rights.

(f) Interpretation of statutes--

---- If two views of a provision of a penal statute are possible, one which favours an accused person be preferred over the other.

(g) Interpretation of statutes--

---- Jurisdiction of the superior Courts could not be abolished or ousted unless same was done by express, clear and unambiguous words or clear intendment.

(h) Jurisdiction--

----Jurisdiction of the superior Courts could not be abolished or ousted unless same was done by express, clear and unambiguous words or clear intendment.

(i) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----S. 7(ix)---Criminal Procedure Code (V of 1898), Ss.497(1) & 561-A--Jurisdiction of High Court---When an established Court without more is provided is a forum for a particular redress, it will be implied that the ordinary incedents of the procedure of that Court are to attach to it.

(j) Interpretation of statutes--

---- When an established Court without more is provided as a forum for a particular redress, it will be implied that the ordinary incedents of the procedure of that Court arc to attach to it.

(k) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----S. 7(I)---Criminal Procedure Code (V of 1898), Ss.497 & 561-A--Provisions of Criminal Procedure Code, 1898 which have not been expressly excluded by S.7(1) of the Act and which

are not inconsistent with the provisions of the Act, shall remain available and therefore not only S.497, Cr.P.C. but even S.561-A, Cr.P.C. can be pressed into service in an appropriate case.

Nifasat Ali Khan v. The State PLD 1989 Kar.198 ref.

(l) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S.7(1)---Criminal Procedure Code (V of 1898), S.497(1), provisos 1 & 3--High Court during the pendency of trial of an accused person under the Act by the Special Court before any conviction is recorded, can press into service S.497(1), Cr.P.C. with its provisos 1 & 3.

(m) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S. 5A(8)---Criminal Procedure Code (V of 1898), S.497(1), provisos 1 and 3---Special Court in absence of express exclusion of S.497, Cr.P.C: in S.5A(8) of the Act can press into service S.497(1), provisos 1 & 3, Cr.P.C.

(n) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S.7(1)---Criminal Procedure Code (V of 1898), S.426---High Court, during the pendency of appeal cannot release a convict on bail in view of the exclusion of the application of S.426, Cr.P.C. by S.7(1) of the Act---Power to release a convict during the pendency of his appeal cannot be pressed into service by the High Court as an ancillary or incidental or independent from S.426, Cr.P.C.

(o) Criminal trial---

---Accused person is presumed to be innocent till the time his guilt is proved beyond reasonable doubt by the prosecution---Accused person during the trial stands on different footing than an accused person against whom a competent Court has returned the verdict of guilt, as in the latter case the presumption of innocence disappears.

(p) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S.7(1)---Criminal Procedure Code (V of 1898), S.561-A---Appeal---Delay--Invocation of S.561-A, Cr.P.C. by the High Court---Appeal of convict remaining pending for a number of years either on account of delaying tactics on the part of prosecuting agency or because of heavy work load of the Court---High Court, in case of such a nature may press into service S.561-A, Cr.P.C. but not as a matter of course or as a substitute to S.426, Cr.P.C: Delay should be of the nature which may be repulsive and unconscionable.

Section 561-A, Cr.P.C. cannot be invoked in aid where there are express provisions dealing with a particular subject, for example, section 426. Cr.P.C. empowers an appellate Court to suspend the sentence or to admit a convict to bail during the pendency of a criminal appeal against conviction. In presence of above express provision in the Code, section 561-A cannot be pressed into service nor the above provision can be used to defeat the express intention of the Legislature, for example, in the present case subsection (1) of section 7 of the Suppression of Terrorist Activities (Special Courts) Act, 1975 excludes the application of section 426, Cr.P.C. during the pendency of an appeal under the Act before the High Court. If the High Court was to invoke section 561-A, Cr.P.C. because of the above exclusion of section 426, Cr.P.C., it may amount to defeating the legislative intent. However, the exclusion of the application of section 426. Cr.P.C. by virtue of section 7(1) of the Act during the pendency of an appeal of a convict before the High Court is founded on the assumption that the appeal would be disposed of within three months as provided in subsection (2) of section 7 of the Act, but in case an appeal of a convict remains pending for a number of years either on account of delaying tactics on the part of the Prosecuting Agency or because of the heavy work load of the Court, would it be fair and just to deny him bail on the ground of delay? The delay in prosecution of a criminal case amounts to abuse of process of Court/law warranting grant of bail, the High Court in a case of above nature may press into service section 561-A, Cr.P.C., but not as a matter of course or as a substitute to section 426, Cr.P.C. The delay should be of the nature which may be repulsive and unconscionable.

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

---S. 561-A---Provisions of S.561-A, Cr.P.C. cannot be invoked in aid where there are express provisions in the statute dealing with a particular subject.

(r) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S. 7(1)---Criminal Procedure Code (V of 1898), S.561-A---Convict during pendency of appeal before the High Court developing ailment of the nature that keeping him in detention may result into his death and that he cannot be provided requisite treatment under detention in the Government/or other hospitals, High Court may in such case invoke S.561-A, Cr.P.C. and may release him on bail.

If a convict during the pendency of appeal before the High Court develops an ailment of the nature that keeping him in detention may result into his death and that he cannot be provided requisite treatment under detention in the Government and/or other hospitals, the High Court may in such a case invoke section 561 .A, Cr.P.C. and may release him on bail, as such an order will be within the ambit of the expression "or otherwise to secure the ends of justice", used in section 561-A, Cr.P.C.

(s) Constitution of Pakistan (1973)--

---Art. 2A---Courts, while construing the provisions of statutes should make efforts that the interpretation of the relevant provisions of the Statute should be in consonance with Art. 2A of the Constitution and the grund norms of human rights.

Constitution guarantees fundamental rights and Article 2A thereof enshrines Islamic mandates - and the enforcement of the human rights has become an international issue. So the Courts while construing the provisions of statutes should make efforts that the interpretation of the relevant provisions of the statute should be in consonance with the above Articles of the Constitution and the grund norms of human rights.

(t) Suppression of Terrorist Activities (Special, Courts) Act (XV of 1975)--

---S. 7(1)---Criminal Procedure Code (V of 1898), Ss.561-A & 497---Appeal before High Court---Bail on medical ground---Court, while admitting an accused person to bail on the medical ground in a case in which bail cannot be granted on merits, because of the statutory prohibition, is required to examine the question, whether the nature of the ailment is such which warrants release of the accused person on bail and for what period---Prosecution has to bring material before the Court to negate the medical expert's views relied upon by the accused.

(u) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---S. 7(1)---Criminal Procedure Code (V of 1898), S.497(1), provisos (1) & (3)---Provisions of S.497(1), provisos (1) & (3), Cr.P.C. are available to the Special Court and the High Court in a case in which an accused person may be facing trial under the Act before a Special Court.

Muhammad Aslam v. The State 1991 SCMR 599 modified.

Per Shafiur Rahman, J.; Nasim Hasan Shah, J. agreeing--

(v) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---Preamble---Criminal Procedure Code (V of 1898), Preamble---Constitution of Pakistan (1973), Art.203---Powers of High Court---None of the remedial powers enjoyed by the High Court under Criminal Procedure Code, 1898 are curtailed or superseded by the Suppression of Terrorist Activities (Special Courts) Act, 1975---Only modification made in the exercise of powers of High Court is that it has been made exercisable by a Bench of not less than two" Judges, with all its consequences---Reasons stated.

Mst. Amir Khatoon v. Faiz Muhammad PLD 1991 SC 787; National Telephone Company Ltd. v. Postmaster General 1913 AC 546 and Hussain Bakhsh v. Settlement Commissioner PLD 1970 SC 1 ref.

(w) Interpretation of statutes--

---- Statutory provisions have to be interpreted harmoniously and consistently with the Constitutional provisions, the paramount law, already occupying the field.

Per Rustam S. Sidhwa, J: --

(x) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----S. 5A(8)---Criminal Procedure Code (V of 1898), S. 497---Provisions of S.5A(8) of the Act does not completely oust the applicability of S.497, Cr.P.C. in respect of bails at trial stage.

Muhammad Aslam v. The State 1991 SCMR 599 ref.

(y) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----S. 5A(8)---What is contained in S.5A(8) 'of the Act is not a provision relating to the grant of bail, but a provision detailing circumstances prohibiting the grant of bail.

(z) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----Ss. 7 & 5A(8)---Criminal Procedure Code (V of 1898), S.497---Provisions of S.7 of the Act do not exclude S.497, Cr.P.C. which is fully applicable to the Act---Provisions of S.5A(8) of the Act can only act as a partial limitation to the rule laid down in S.497, Cr.P.C.

(aa) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----S. 5A(8)---Criminal Procedure Code (V of 1898), S.497---Provisions of S.5A(8) of the Act and S.497, Cr.P.C. analysed and compared---Provision of S.5A(8) of the Act provides a substitute to a part of the rule stated in S.497(1), Cr.P.C.

(bb) Interpretation of statutes--

---- Penal provisions---Relief giving provisions---Conflict between the two provisions cannot be resolved by eliminating the provisions---Penal provision must be construed strictly to maintain the relief giving provisions unless the strict intention to eliminate them is clear and unequivocal---In the event of a somewhat conflicting or defective drafting, where such a clear intention cannot be spelt out, the benefit of the provisions cannot be allowed to be dropped.

(cc) Interpretation of statutes--

---- Meaning of a statute---How to be determined.

In order to know what a statute does mean, it is one important step to know what it does not mean; and if it be quite clear that there is something which it does not mean, then that which is suggested or supposed to be what it does mean must be in harmony and consistent with what it is clear that it does not mean. What it forbids must be consistent with what it permits.

Attorney-General v. Sillem (1864) 2H & C 431 fol.

(dd) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

----S. 5A(8)---Criminal Procedure Code (V of 1898), S.497---Provisions of S.5A(8) of the Act cannot displace S.497, Cr.P.C. except what is in conflict with it---Provisions 1 & 3 of S.497, Cr.P.C. therefore are not eliminated.

(ee) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---Ss. 7 & 5A(8)---Criminal. Procedure Code (V of 1898), Ss.497 & 561-A--Delay in the disposal of the case by the State would be a clear abuse of the process of the Court, entitling the accused to seek bail under S.497(1), third proviso, Cr.P.C. if not under S.561-A, Cr.P.C.---[Delay].

(ff) Suppression of Terrorist Activities (Special Courts) Act (XV of 1975)--

---Ss.7 & 5A(8)---Criminal Procedure Code (V of 1898), Ss.497(1) & 561-A--Bail, grant of---Both the Special Court and the High Court- can grant bail to an accused being tried for a scheduled offence on medical grounds.

Aftab Akhund, A: G. Sindh arid RA. Qureshi, Advocate-on-Record (absent) for Appellant.

Abdul Mujeeb Pirzada, Advocate Supreme Court and N.C. Motiani, Advocate-on-Record (absent) for Respondents.

M.B. Zaman and Raja Muhammad Anwar, Senior Advocates Supreme Court: Amicus curiae.

Date of hearing: 30th June, 1992.