

2006SCMR 1192

[Supreme Court of Pakistan]

Present: Khalil-ur-Rehman Ramday and Ch. Ijaz Ahmed, JJ

Haji SARDAR KHALID SALEEM---Petitioner

Versus

MUHAMMAD ASHRAF and others---Respondents

C.P. No.1210-L of 2004, decided on 14th November, 2005.

(On appeal from the judgment, dated 4-3-2004, passed by Lahore High Court in I.C.A. No.158 of 2003).

(a) Practice and procedure--

---Civil and Criminal proceedings---Criminal proceedings were not barred in presence of civil proceedings and civil and criminal proceedings could be proceeded simultaneously.

Ahmad Saeed v. The State 1996 SCMR 186; Talab Hussain v. Anar Gul Khan and 4 others 1993 SCMR 2177 and Deputy Inspector-General of Police v. Anees-ur-Rehman Khan PLD 1985 SC 134 ref.

(b) Constitution of Pakistan (1973)---

---Art. 199---Penal Code (XLV of 1860), Ss.420, 468, 471 & 489-F---Constitutional jurisdiction---Scope---If, prima facie, an offence had been committed, ordinary course of trial before the Court: should not to be allowed to be deflected by resorting to constitutional jurisdiction of High Court---By accepting constitutional petition, high Court would err in law to short circuit the normal procedure as provided by law, while exercising equitable jurisdiction which was not in consonance with the law.

Habib Ahmed v. M.K.G. Scott Christian PLD 1992 SC 353 ref.

(c) Constitution of Pakistan (1973)---

---Arts. 185(3) & 199---Penal Code (XLV of 1860), Ss.420, 468, 471 & 489-F---Criminal Procedure Code (V of 1898), Ss.249-A & 265-K---Constitutional petition before High Court---Competency---Quashing of F.I.R.---Constitutional petition for quashing of F.I.R. was accepted by High Court on the ground that cheque in question was issued prior to the promulgation of Criminal Law (Amendment) Ordinance (LXXXV of 2002)---Intra-Court appeal was also dismissed on the ground of 'being not maintainable---Mere mentioning of S.489-F, P.P.C. in the F.I.R., was no ground to quash F.I.R. by High Court while exercising constitutional jurisdiction under Art.199 of the Constitution, without advertent to contents of F.I.R.---Petitioner had alternative remedy to raise objection at the time of framing charge against him by the Trial Court or at the time of final disposal of the trial by the Trial Court after recording evidence---Even otherwise petitioner had more than one alternative remedies viz. before, the Trial Court under Criminal Procedure Code, 1898 i.e. S.265-A or 249-A, Cr.P.C. and that fact was also not considered by High Court---If the contents of constitutional petition and F.I.R. were put in juxtaposition, then it would bring case of petitioner in the area of disputed question of fact which could not be decided by High Court in exercise of its constitutional jurisdiction which required investigation and evidence of parties to be recorded by the Trial Court---High Court, in circumstances had erred in law in accepting constitutional petition by quashing F.I.R. at initial stage---Cheque in question which was issued, having been dishonoured, ingredients of Ss.420, 468 & 471, P.P.C. were prima facie, attracted---Petition for leave to appeal was converted to appeal and was allowed setting aside the impugned order---Supreme Court had ample jurisdiction to condone delay in case party would approach wrong forum---Delay was condoned.

Nawazul Haq Chowhan v. The State and another 2003 SCMR 1597; Ghulam Muhammad

v. Muzamal Khan and 4 others PLD 1967 SC 317; Mohsin Ali and another v. The State 1972 SCMR 229; Abdul Rehman v. Muhammad Hayat Khan 1980 SCMR 311; Marghoob Alam and another v. Shams-ud-Din and others 1986 SCMR 303; Manzoor Hussain Shah v. The State 1986 SC 265; Sheikh Muhammad Yameen v.. The State 1973 SCMR 622; Bashir Ahmad v. Zafar-ul-Islam PLD 2004 SC 298 and Shirin and 4 others v. Fazal Muhammad and 4 others 1995 SCMR 584 ref.

Ahmad Awais, Advocate Supreme Court and Mahmood A. Qureshi, Advocate-on-Record for Petitioner.

Mian Shah Abbas, Advocate Supreme Court for Respondents.

Date of hearing: 14th November, 2005.