

2008 M L D 728

[Lahore]

Before Muhammad Akram Qureshi, J

MANZOOR AKBAR TURK---Petitioner

Versus

Raja ASHIQ HUSSAIN and 6 others---Respondents

Writ Petition No. 544 of 2004, decided on 7th February, 2008.

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

---S. 190(1)(b)---Cognizance of offences by Magistrate---Magistrate under S.190(1) clause (b), Cr.P.C. takes cognizance of an offence upon report made by police officer under S.173, Cr.P.C., which may be positive or negative.

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

---Ss. 190 & 193-'Cognizance'-Connotation-Cognizance is application of mind by the Court on the facts and circumstances of the case---Court taking cognizance of an offence has to consider, (i) whether the offence falling within its jurisdiction is made out or not; whether offence is committed in its territorial jurisdiction; who are the persons responsible for the commission of the offence and whether in Court's opinion sufficient grounds are existing for proceeding with the trial.

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

---Ss. 193 & 204---Penal Code (XLV of 1860), Ss. 302/324/148/149---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Sessions Court had taken cognizance of the offence on the basis of facts mentioned in complaint but had shown its reluctance to proceed further on the basis of the report of the police officer---After having taken cognizance Sessions Court was required to process both the cases in accordance with the provisions of S.193, Cr.P.C. read with S.204, Cr.P.C.---Till that stage both the cases would be dealt with independently---Accused summoned in the complaint case or in the challan case would be dealt with separately and supplied copies of required documents, and then Trial Court would proceed with the cases according to the law laid down by Supreme Court in Nur Elahi's case reported as PLD 1966 Supreme Court 708---Sessions Court while dealing with the present case did not observe the said precedent and relevant provisions of the Criminal Procedure Code, 1898 and its conduct was not in accordance with law---Impugned order was consequently set aside with the direction to Trial Court to proceed further with the police report case observing the provisions of sections 193 and 204, Cr.P.C. before framing the charge in the complaint case initiated upon the report of police officer---Since accused in both the cases were the same, Trial Court would consolidate both the complaint-case and the challan case and then frame the charge, complete all proceedings of the trial and hold proceedings in either of the two cases, examine all the witnesses of both the cases as prosecution witnesses and after having fulfilled the required formalities would announce one judgment in both the cases---Constitutional petition was disposed of accordingly.

Nur Ellahi. v. The State and others PLD 1966 SC 708; Zulifqar Ali Bhutto v. The State PLD 1979 SC 53; Atta Jilani, v. The State 1980 PCr.LJ 901 and Muhammad Bohra and another v. The State PLD 1989 Lahore 18 ref.

Malik Rab Nawaz Noon for Petitioner.

Muhammad Ilyas Siddique for Respondents Nos. 1 to 5.

Mudassar Khalid Abbasi, A.A.-G.