

**P L D 1969 Supreme Court 158**

**Present : Hamoodur Rahman, C. J., Sajjad Ahmad and  
M. R. Khan, JJ**

**SHAHADAT KHAN AND ANOTHER-Appellants**

**Versus**

**HOME SECRETARY TO THE GOVERNMENT  
OF WEST PAKISTAN AND OTHERS----Respondents**

Criminal Appeal No. 24 of 1968, decided on 13th February 1969.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore dated the 15th April 1966, in Writ Petition No. 132 of 1966).

**(a) West Pakistan Criminal law (Amendment) Act (VII of 1963)**, S. 3 read with First Schedule-First Schedule not framed on basis of categories of offences but as an enumeration ad hoc of particular offences Legislature had chosen to be referable to Tribunal-Section 34, P. P. C. does not create any distinct offence but merely lays down principle of joint liability-Person charged constructively for offence by appending S. 34, P. P. C.-Validity of reference to Tribunal under S. 3 of Act VII of 1963 not affected despite fact that S. 34, P. P. C. not included in First Schedule to Act-Person found constructively liable for offence-Tribunal competent to record conviction thereunder-Penal Code (XLV of 1860), S. 34.

The First Schedule to the West Pakistan Criminal, Law (Amendment) Act, 1963, is not framed on any basis of categories of offences but has to be treated as an enumeration ad hoc of the particular offences which the Legislature had chosen to be referable to the Tribunal. Since section 34 of the Penal Code does not create any distinct offence but merely lays down a principle of joint liability in a criminal act, it is immaterial whether it is mentioned in the Schedule to the West Pakistan Criminal Law (Amendment) Act or not as a referable offence. The mere fact, therefore, that a person is charged constructively for an offence by appending section 34, P. P. C. to the said offence does not affect the validity of the reference itself. Even if section 34 is not included in the Schedule yet, on the facts, if it is found that certain persons whose cases have been referred to the Tribunal are only constructively liable for that offence, the Tribunal would be able to recommend their conviction thereunder.

Khizar Hayat and others v. Commissioner, Sargodha Division and another P L D 1965 Lah. 349 ; Commissioner, Sargodha Division and another v. Khizar Hayat and others P L D 1966 S C 793 ; The Commissioner, Rawalpindi Division and another v. Pervez Iqbal P L D 1968 S C 259 and Muhammad Nawaz and others v. The State P L D 1967 Lah. 952 ref.

**(b) West Pakistan Criminal Law (Amendment) Act (VII of 1963)**, S. 3 read with West Pakistan Criminal Law (Amendment) Rules, 1963, r. 3-Reference to Tribunal-Rule 3 makes it obligatory on Commissioner to consider factors enumerated in cls. (a) to (j) of rule-Commissioner, therefore, must disclose :firs mind by specifying in writing specific reasons prompting him to refer case to Tribunal-Non-compliance renders reference Invalid.

When a reference to the Tribunal is made under section 3 of the West Pakistan Criminal Law (Amendment) Act, 1963 the law clearly requires that the reference must be made "by an order in writing with reasons therefore. The necessity for the giving of reasons arises because rule 3 of the West Pakistan Criminal Law Amendment) Rules, 1963, framed in exercise of the powers given by the statute itself, makes it obligatory on the Commissioner to consider a number of factors which have been specified seriatim in clauses (a) to (j) of this rule. It is only when he is satisfied that the case falls within one or the other of the said categories that he can make a reference. It postulates, therefore, that the reason to be given must be a reason relatable to one of the matters mentioned in rule 3. The Commissioner must, therefore, disclose his mind by specifying in writing the specific reason which had prompted him to refer the case to the Tribunal so that the revising authority may be in a position to say as to whether the reference had been made upon valid and sufficient reasons.

**(c) Criminal Procedure Code (V of 1898)**, Ss. 234, 235, 236 & 239-Sections, exceptions to general rule-Joint trial-Not compulsory-Several accused charged for committing same offence do course of same transaction, tried separately-Trial, irrespective of prejudice to accused, not illegal.

Under the Code of Criminal Procedure the rule laid down in section 233 is that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 234, 235, 236 and 239, Cr. P. C. These sections are the exceptions to the general rule. The general rule is clear enough. A joint trial is under these provisions, by no means compulsory. Nor can it be said that if several accused persons charged for committing the same offence in the course of the same transaction are tried separately then the trial will, irrespective of any question of prejudice, be illegal. The provisions of sections 234 to 239, Cr. P. C. are merely enabling provisions and do not make it incumbent upon the criminal Courts to hold a joint trial in every case.

**(d) West Pakistan Criminal Law (Amendment) Act (VII of 1963)**, S. 3 and West Pakistan Criminal Law (Amendment) Rules, 1963, r. 3-Splitting up of offences and persons for trial by Tribunal-Several persons jointly charged-Cases of some falling within categories of offences mentioned in rule 3 and of others not within mischief of rule 3-Cases of persons not falling within mischief of rule 3 must be taken out as they cannot be lawfully referred to Tribunal.

It is not difficult to visualize a position in which out of several persons jointly charged for an offence, the cases of some may come within the categories mentioned in rule 3 while of others may not fall within any one of the said categories. In such circumstances it is manifest that the cases of those persons who do not come within the mischief of rule 3 must be taken, out, for, their cases cannot be lawfully referred to a Tribunal. Furthermore, if as already held, it is possible to split up, offences even though they may be co-related or lesser offences of the same category, then what serious objection can in principle be taken to the splitting up of accused persons. Such an interpretation would render the words "any person accused of a scheduled offence" in section 3 of the Act artificially restricted to only the cases in which a single individual is charged. There can be no justification for so restricting the meaning of these words which in their ordinary grammatical sense are of general application.

**(e) Constitution of Pakistan (1962)**, Art. 98(2)(a)(ii)---Provision does not contemplate making of any consequential order-Empower Court to declare act done or decision taken to be of no legal effect-Consequences follow of their own force.

Under Article 98 of the Constitution, it seems that clause (2) (a) (ii) thereof does not contemplate the making of any consequential order. It merely gives to the High Court the power to declare an act done or decision taken by a functionary of the Government in the Province or a local authority to have been done or taken without lawful authority and as of no legal effect. The consequences of this declaration will follow of their own force.

Muhammad Anwar Buttar, Advocate Supreme Court instructed by Wajid Hussain, Senior Attorney for Appellants.

M. Aslam Riaz Hussain, Assistant Advocate-General West Pakistan (Saeedul Hasan, Advocate Supreme Court with him) instructed by Ijaz Ali, Attorney for Respondents Nos. 1 to 3.

Muhammad Shafi Sheikh, Senior Advocate Supreme Court (Mazharul Haq Bhatti, Advocate Supreme Court with him) instructed by Masud Akhtar, Attorney for Respondents Nos. 4 to 7.

Dates of hearing : 20th and 21st November 1968.