

P L D 1971 Supreme Court 677

Presents Hamoodur Rahman, C. J., Muhammad Yaqub Ali, Sajjad Ahmad, M. R. Khan and Waheeduddin Ahmad, JJ

SHAHNAZ BEGUM-Appellant

versus

THE HON'BLE JUDGES OF THE HIGH COURT OF SIND AND BALUCHISTAN AND ANOTHER-Respondents

Criminal Appeal No. K-2 of 1971, decided on 25th May 1971.

(On appeal from the orders of High Court of Sind and Baluchistan, dated 30-10-70, 2-11-70, 9-11-70, 12-11-70 and 4-11-70, in *Sao Motu* Reference No. 86 of 1970).

(a) Letters Patent (Lahore), cl. 22-Nature and scope of provision-Expression "direct preliminary investigation . . . of any criminal case by any officer though such case belongs in ordinary course to the jurisdiction of some other officer"-

Meaning-High Court under cl. 22 (in case no investigation initiated) has power to direct preliminary investigation to be started even by officer ordinarily not vested with territorial jurisdiction-High Court has no power to direct transfer of investigation from one officer to another-Words "direct" and "preliminary investigation"-Connotation-Words "preliminary investigation" in cl. 22 not same thing as "investigation" contemplated under Cr. P. C.[Chauhar Khan v. The State P L D 1971 Lah. 328 overruled].

A criminal case was inquired into and under investigation by the police. The incident had created a sort of sensation and the local newspapers not only gave this incident considerable publicity but also highlighted its sensational aspect, propounded their own speculations and even suggested that the investigation ran the risk of interference by the accused, said to be connected with highly placed personages. A Senior Judge of the High Court of Sind and Baluchistan reading the newspaper reports thought it fit to take action *suo motu* in, what he described to be, "the exercise of supervisory jurisdiction vested in the Court under the Constitution, Letters Patent and otherwise" to call upon the Inspector-General of Police to produce before him all "investigation papers" relating to the case so that he may examine "if the conduct of the investigation has been fair or impartial or the ends of justice require that further investigation of this case be entrusted to any other officer or a Court of law". This order of the High Court was impugned in appeal before the Supreme Court. It was urged that the High Court, neither under the Constitution, nor under the Criminal Procedure Code nor by Letters Patent or otherwise, had any jurisdiction to interfere with the investigation conducted by officers competently authorised by the Criminal Procedure Code in that behalf nor has the High Court any power to transfer an investigation from officer so competently authorised to any other officer or Court nor can it claim any right to hold any *suo motu* inquiry into the conduct of officials discharging statutory or executive functions.

Held: The impugned action of the High Court of Sind and Baluchistan in the present case was unwarranted and beyond its jurisdiction.

So far as the Constitution of 1962 is concerned the powers of the High Courts are such as have been described under the provisions of Article 98 of the Constitution. They are those which have been conferred on them by the Constitution itself or by any law and apart from them they have no other powers, because, Article 130 of the same Constitution provided that "no Court shall have any jurisdiction that is not conferred on it by this Constitution or by or under the law." Under the 1962-Constitution a High Court has been given the power of judicial review of executive actions by Article 98 in certain specified circumstances but even in such a case the High Court cannot move *suo motu* for, it is specifically provided in each of the sub-clauses (a), (b) and (c) of Clause (2) of Article 98 that only "on the application of an aggrieved party or of any person," the High Court may make the orders or issue the directions therein specified. It is clear, therefore, that under Article 98, there is no scope for any *suo motu* action by the High Court. The High Court has also no power of supervision or control over investigation agencies for the power of superintendence which is given by Article 102 of the Constitution is only in

respect of "all other Courts that are subordinate to it". The question, therefore, that next arises for consideration is as to whether this jurisdiction can be culled from the provisions of Clause 22 of the Letter Patents of the High Courts of West Pakistan. It will be observed that under this Clause two distinct kinds of powers have been given to the High Court, viz. :-

- (i) To direct the transfer of any criminal case or appeal ; from any Court to any other Court of equal or superior jurisdiction, and;
- (ii) To direct the preliminary investigation or trial of any -criminal case by any officer or Court otherwise competent to 1 investigate or try it, though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

The first power is not attracted in the present case. But the question is whether the second power gives the jurisdiction which the High Court has purported to exercise. The words "though such case belongs in the ordinary course to the jurisdiction of some other officer or Court" in clause 22 merely mean that the High Court under the latter part of the provisions of clause 22 of the Letters Patent has the power to direct the preliminary investigation to be started where no such investigation has already been initiated by even an officer who in the ordinary course would not have had territorial jurisdiction to make such an investigation although he must still be an officer who is competent to make an investigation under the Criminal Procedure Code of an offence of that nature.

What is a "preliminary investigation" has not, of course, been defined in the Letters Patent of the High Court nor has it been defined in the Code of Criminal Procedure although "investigation" has been defined in clause (1) of subsection (1) of section 4 of the Criminal Procedure Code as including "all the proceedings in this Code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf." Indeed there was no provision in the Criminal Procedure Code for preliminary investigation until section 196-B was introduced therein by an amending Act in 1923 (No. XVIII of 1923). 'Preliminary' according to its dictionary meaning, means "something preceding or leading up to the main subject or business." In this view of the matter a "preliminary investigation" would be something preceding or leading up to the main investigation as contemplated under the Criminal Procedure Code. Every word in the Letters Patent has to be given a meaning and, therefore, the "preliminary investigation" referred to in the Letters Patent is not the same thing as the "investigation" contemplated under the Criminal Procedure Code. In any event, the word "direct," which has been used in the aforementioned clause of the Letters Patent in contradistinction to the word "transfer" occurring earlier in the same clause, connotes that two distinct and different kinds of powers were intended to be given by the said clause to the High Court, namely, to "direct the transfer" of a case or an appeal and to "direct" simpliciter a "preliminary investigation" or trial as the case may be. The words used are, by no means, tautologous nor can it be said that the word "direct" includes the powers to transfer, for, then the first part of the clause would have been redundant and it would have been wholly unnecessary to give expressly the power "to direct the transfer" of a criminal case to the High Court. The word "direct" in clause 22 means "command" and could only signify that something which was not being done should be done. Therefore, the necessity for making a direction can only arise in a case where no investigation has started. The power to issue a direction cannot be involved where investigation has already commenced in accordance with law by authorities competent to investigate under the Criminal Procedure Code nor does the power to "direct" include the power to "transfer" from one competent investigating agency to another. This would be unwarranted interference with the investigation.

The High Court has no power under section 561-A of the Cr. P. C. to interfere with police investigations into criminal offences. In the case of *Ghulam Muhammad v. Muzammal Khan* P L D 1967 S C 317 the Supreme Court had occasion to point out that the power given by section 561-A, Cr. P. C., "can certainly not be so utilized as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute." If an investigation is launched *mala fide* or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding either under Article 98 of the Constitution of 1962 or under the provisions of section 491 of the Criminal Procedure Code, if the applicant is in the latter case in detention, but not by invoking the inherent power under section 561-A of the Criminal Procedure Code.

Shashadhar Acharjya v. Sir Charles Tegart A I R 1932 Cal: 229 ; *Mohammad Hussain v. Inspector-General of Police* P L D 1967 Lah. 1123 ; *Shamsuddin v. Captain Gauhar Ayyub* P L D 1965 S C 496 ; *Crown v. Muhammad Sadiq Niaz* P L D 1949 Lah. 562 ; *Emperor v. Kh. Nazir Ahmad* A I R 1945 P C 18 ; *State of West Bengal v. S. N. Basak* A I R 1963 S C 447 ; *Sher Khan and others v. The State* 1968 S C M R 62 ; *Ghulam Muhammad v. Muzammal Khan* P L D 1967 S C 317 and *M. S. Khawaja v. The State* P L D 1965 S C 287 ref.

Chauhar Khan v. The State P L D 1971 Lah. 328 overruled.

(b) Constitution of Pakistan (1962), Art. 98-Expression "on the application of an aggrieved party or of any person" in Art. 98 High Court in exercise of its jurisdiction under Art. 98 cannot make orders or issue directions suo motu.

(c) Constitution of Pakistan (1962), Art. 102-Supervisory control of High Court-Limited to Courts subordinate to it-High Court has no power of supervision or control over investigation agencies.

(d) Criminal Procedure Code (V of 1898), S. 561-A-High Court has no power under S. 561-A to interfere with police investigation into criminal offence--*htve,,ugatia~i* if mala fide or beyond jurisdiction of investigation agencies-Recourse could be had to S. 491, Cr. P. C. or Art. 98, Constitution of Pakistan (1962) Word "justice" in expression "otherwise to secure the ends of iustice" in S. 561-A-Means justice as administered by Courts and not justice in abstract as may be administered by other agencies Criminal Procedure Code (V of 1898), S. 491 & Chap. XIV Constitution of Pakistan (1962), Art. 98-[*Yaqoob Khan v. State* 1971 P Cr. L J 266 overruled].

Yaqub Khan v. State 1971 P Cr. L J 266 overruled.

Nazir Ahmad Khan and *Sh. Muhammad Shafi*, Senior Advocates Supreme Court (*Etizaz Hussain*, Advocate Supreme Court with them) instructed by *Muhammad Nazar Khan*, Advocate-on-Record for Appellant.

Nemo for Respondent No. 1.

Kazi Akhtar Ahmad, Advocate-General Sind (*Sh. Maqbool Ahtnad*, Advocate Supreme Court with him) instructed by *M. I. Memon*, Advocate-on-Record (absent) for the State.

M. B. Zaman, Advocate-General Punjab and *K. M. Bokharl*, Assistant Advocate-General Punjab (*R. S. Sidhwa*, Advocate Supreme Court with them) instructed by *Ijaz Ali*, Advocate-on-Record under Order XLV, Supreme Court Rules.

Dates of hearing : 24th and 25th May 1971.