

## **P L D 1981 Supreme Court 522**

Present : Aslam Riaz Hussain and Nasim Haran Shah, JJ

ABDUL REHMAN BAJWA-Petitioner

versus

SULTAN AND 9 OTHERS--Respondents

Criminal Petition for Special Leave to Appeal No. 55 of 1981, decided on 26th May, 1981.

(On appeal from the judgment and order of the Lahore High Court. dated 7-12-1980 in Writ Petition No. 2501 of 1980). (a) Criminal Procedure Code (V of 1898)-

5. 439-A [as added by Law Reforms Ordinance (XII of 1972)] and Constitution of Pakistan (1973), Art. 199--Legislature having enacted S. 439-A and curtailed jurisdiction of High Court in order to relieve High Court of burden of deciding thousands of revisions against orders of hundreds of Magistrates, filing of petitions for writ against judgments of final Courts, held, amounts to circumventing law and defeating obvious intention of Legislature.-[Legislature-Jurisdiction].

(b) Constitution of Pakistan (1973)-

-- Art. 199-Writ jurisdiction-Court or Tribunal set up under ordinary law having jurisdiction to decide a particular matter, has jurisdiction to decide it rightly or wrongly - Mere fact of decision being incorrect, or such as to which High Court would not have arrived, held, does not render decision without jurisdiction.[Jurisdiction].

Badrul Haque Khan v. The Election Tribunal, Dacca P L D 1963 S C 704; Raunaq Ali etc. v. Chief Settlement Commissioner and others P L D 1973 S C 236; Rahim Shah v. Chief Election Commissioner P L D 1973 S C 24; Muhammad Hussain Munir v. Sikandar P L D 197:1 S C 139; Zulfikar Khan Awan v. Secretary, Industries and Mineral Development Government of Punjab, Lahore and 8 others 1974 S C M R 530 and Begum Wazir Ahmad Industrial Home v. Niaz Begum P L D 1976 S C 214 ref.

(c) Constitution of Pakistan (1973)--

-- Art. 199-Writ jurisdiction-High Court while interfering with orders or judgments of final Tribunals or Courts has only to see whether Tribunal or Court acted without jurisdiction or in violation of relevant statute or law as laid down by superior Courts-High Court, in such cases, held, cannot embark upon a reappraisal of evidence and proceed as if it were hearing an appeal from a subordinate Court.

(d) Constitution of Pakistan (1973)-

Art. 199 and Criminal Procedure Code (V of 1898), Ss. 439 & 439-A-Powers of revision and powers of High Court in writ jurisdiction-Difference.--[Revision (criminal)-Writ],

Powers of revision under sections 439 and (439-A), Cr. P. C. are much wider in scope than the powers of the High Court in writ petitions.. Whereas in writ petitions, the High Court can only consider the questions of jurisdiction or legality, a revisional Court exercising powers under section 439 or 439-A, Cr. P. C. cannot only consider the legality but that of correctness and even of the propriety of any finding, sentence or order recorded or passed by, and the regularity of any proceedings of an inferior Court. In other words, it cannot only go into the evidence and reverse the finding of fact, but can even consider the propriety of an order or the propriety of adopting any particular procedure.

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

S. 439-Principles relating to and factors to be considered in revisional jurisdiction while remanding cases of acquitted accused for retrial.-[Khairdi Khan and others v. The Crown P L D 1953 F C 223 held overruled].-[Re-trial].

Anwar and another v. Crown P L D 1955 F C 185; Abdul Rashid Khondkar v. Chandu Matbar and another P L D :964 S C 795 and Khan and 6 others v. The Crown 1971 S C M R 264 ref.

Khairdi Khan and others v. The Crown P L D 1953 F C 223 held overruled.

(f) Criminal trial-

Cross-cases-Trial of-Practice generally adopted: to try countercases side by side by same Court till their conclusion and to pronounce judgment in each case simultaneously.-[Practice and procedureCross-case].

The practice generally adopted by Courts is to try counter-cases side by side, by the same Court, till their conclusion and to pronounce judgment in each case simultaneously. No doubt the rule is not absolute and there could be cases in which the circumstances do not warrant that the said procedure must be followed, but the rule of propriety which is the basis of the general practice mentioned above is founded on sound principle because if two cross-cases abut the same incident between the same parties are tried by different Courts there can be a serious possibility of a conflict in judgments resulting in two different Courts given two diametrically opposite findings about the same incident.

Moonda v. The State P L D 1958 S C (Pak.) 275; Muhammad Sadiq v. The State and another P L D 1971 S C 713; Nur Elahi v. The State P L D 1966 S C 708 and Zulfikar Ali Bhutto v. The State P L D 1979 S C 1 ref.

Rana Abdur Rahim Khan, Advocate with Rana Maqbool Ahmad Kadri, Advocate-on-Record for Petitioner.

Hamid Aslam, Advocate for Respondents Nos. 1 to 9.

Tanvir Ahmad Khan, Assistant Advocate-General (Punjab) and Sh. Ejaz Ali, Advocate-on-Record for the State.

Dates of hearing: 4th March; 4th and 18th April, 1981.