

P L D 1985 Supreme Court 62

Present : Shafiur Rahman, S. A. Nusrat and Zaffar Husain Mirza, JJ

BAHADUR AND ANOTHER-Appellants

versus

THE STATE AND ANOTHER-Respondents

Criminal Appeal No. 75 of 1978, decided on 23rd October, 1984.

(On appeal from the Judgment and Order of the Lahore High Court, Lahore, dated 25-4-1973 in Criminal Revision No. 145 of 1973).

Criminal Procedure Code (V of 1898)

-- Ss. 435, 436, 437, 438 & 439-Magistrate concurring with Police Report submitted under S. 173, Cr. P. C. discharging accused and cancelling a criminal case registered under S 379/420, P. P. C. does not function as criminal Court-Order of cancellation of criminal case for that reason is not amenable to revisional jurisdiction of High Court under Ss. 435 to 439. Cr. P. C.-Penal Code (XLV of 1860), Ss. 379 & 420-Criminal Procedure Code (V of 1898), S. 173.

Under the Criminal Procedure Code a Magistrate is entrusted with diverse duties and in discharging the same does not always function as a Court, conduct judicial proceedings . or is amenable to the. revisional jurisdiction. Some of his powers and duties under the Code are administrative, executive or ministerial and he discharges these duties not as a Court but as a persona designata. Mere name or designation of a Magistrate is not decisive of the question because "Judges often administer and administrators often Judge".

A Magistrate, even while concurring in cancellation of a case is required to judicially examine the report submitted under section 173, Cr. P. C. and this has led to the impression that he must while doing so be acting and functioning as a Court. This obviously is a mistaken impression.

The primary characteristics of `pure' judicial functions, by whomsoever exercised, are :

- (1) The power to bear and determine a controversy.
- (2) The power to make a binding decision (sometimes subject to appeal) which may affect the person or property or other rights of the parties involved in. the dispute.

Administrative functions, on the other hand, consist of those activities which are directed towards the regulation and supervision of public affairs and the initiation and maintenance of the public services.

Robson, Justice and Administrative Law, p. 15 quoted.

Held, though a magistrate in cancelling a registered criminal case is required to act judicially in that he has to act fairly, justly and honestly, a duty common to the exercise of all state powers, there is no lis before him, there is no duty to hear the parties, there is no decision given, no finality or irrevocability attaching to the order. The party is left free to institute a complaint on the same facts, and the same Magistrate does not even after passing such an order lender himself functus officio. On the contrary he is quite competent to entertain and deal with such a complaint on material presented to him.

These peculiarities establish beyond any doubt that in so concurring with a report submitted under section 173, Cr. P. C. be does not function as a criminal Court. For that reason his order is not amenable to revisional jurisdiction under sections 435 to 439, Cr. P. C. This appeal is, therefore, allowed, and the impugned order of the High Court is set aside, as one without jurisdiction.

Wazir v. The State P L D 1962 Lab. 405 (F. B.) ; Emperor v. Hayat Fateh Din A 1 R 1948 Lab. 184 (F. B) ; Mst. Fatima Bibi v. Rana Lal Hassan 1970 P Cr. L J 178; Muhammad Ishaq Khan v. Abdul Hamid Khan P L D 1958 Azad J & K 42; Brahm Dev. v. Emperor A I R 1938 Lab. 469; Dharamdas Hiranand v. Emperor A I R 1938 Sind 213; Uma Singh v. Emperor A I R 1933 Pat. 242 and Kamsarup v. State A I R 1951 Raj 146 approved.

Reid and David on Administrative Law and Practice, 2nd Edn. ; Canadian Legal Text Series, p. 52 ; A I R 1968 S C 117 ; 1972 P Cr. L J 1446: 1971 P Cr. L 1 194 ; A I R 1969 A P 281 and Royal Aquariam's case (1892) 1 Q B 431 ref.

Amir Ali v. The State and others P L D 1968 Lab. 537 ; State v. Vipra Khimji Gangaram 1952 P Cr. L J 11184 ; E. Pedda Subba Reddy v. State A I R 1969 A P 281; Narayan Ramchandra Karambelkar v. The State 1972 P Cr. L J 1446 (F. B.) and Krishna v. State 1966 P Cr. L J 650 not approved.

Ghulam Mujtaba, Advocate-on-Record for Appellants.

Malik Saeed Hassan, Advocate Supreme Court for Respondent.

M. A. Bajwa, Advocate Supreme Court for the State.

Date of hearing : 30th March, 1983.