

P L D 1986 Supreme Court 173

Present: Aslam Riaz Hussain, Muhammad Afzal Zullah and Mian Burhanuddin Khan, JJ

THE STATE THROUGH ADVOCATE-GENERAL, N.-W. F. P. Petitioner

Versus

ZUBAIR AND 4 OTHERS-Respondents

Criminal Appeal No. 10-P of 1985 in Criminal Petition for Special Leave to Appeal No. 43-P of 1985, decided on 4th December, 1985.

(On appeal from the Judgment of the High Court of Peshawar, dated 27-7-1985, passed in Criminal Miscellaneous No. 115 of 1985).

(a) Constitution of Pakistan (1973)-

---Art. 185 (3)-Criminal Procedure Code (V of 1898), Ss. 497 & 498-Penal Code (XLV of 1860), Ss. 302, 307, 148 & 149-Bail--Delay-Condonation-Question involved in case i. e. property of second or subsequent bail application by same accused being, heard or dealt with by a Judge of High Court other than the one who had heard previous bail application being of considerable importance, Supreme Court accepted application for condonation of delay of 66 days.

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

---S.497/498-Penal Code (XLV of 1860), Ss. 302, 307, 148 & 149 -Bail-Second or subsequent bail application by same accused heard and dealt with by a Judge of High Court other than the one who had heard previous bail application-Violation of salutary and well-established principle-When a bail application of one or more accused is heard by a Single Judge of High Court, it is he alone who should also hear all subsequent bail applications filed by same or other accused in the same case or the cross-case.-[Practice and procedure].

Farid v. Ghulam Hussain 1968 S C M R 924 ; Muhammad Khan v. Sanaullah P L D 1971 S C 324 ; Muhammad Khan v. Muhammad Aslam 1971 S C M R 789 ; Khan Beg v. Sajawal P L D 1984 S C 341 ; Muhammad Aslam v. The State 1968 P Cr. L J 152 ; The State v. Muhammad Yousaf 1979 P Cr. L J 665 and Ghulam Hussain v. Karim Bakhsh N L R 1980 Criminal 248 mentioned.

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

- S. 497/498-Bail-Successive bail applications-Duty of counsel to mention in a bail application filed by him fact of having filed an earlier bail application also stating result thereof-Failure on part of counsel to mention such facts would amount to professional misconduct.

It is the duty of the counsel to mention in a bail application filed by him the fact of having filed an earlier bail application; also stating the result thereof. Failure on the part of the counsel to do so would, in fact, amount to professional misconduct because the concealment of the fact of the dismissal of the earlier bail application of the accused or the co-accused and getting a subsequent bail application decided by another Judge of the same Court may result in conflicting judgments and disharmony in the Court.

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

-- S. 497/498 -Successive bail applications-Subsequent bail applications must be placed before same Judge who had dealt with first bail application-Counsel must disclose fact of having filed previous application and to state result thereof.-[Practice and procedure].

Subsequent bail application must be placed for disposal before the same learned Judge who had dealt with the first bail application and also that the counsel must disclose the fact of having filed a previous application and to state the result thereof.

If at the relevant time the first Judge is holding Court at a Bench other than the one where the first bail application was filed, it can always be transferred to that Judge, wherever he is sitting. There would, of course, be cases where it is absolutely impossible to place the second or the subsequent bail application before the same Judge who had dealt with the earlier bail application of the same accused or in the same case. In such cases, the Chief Justice of the concerned High Court, may order that it be fixed for disposal before any other Judge of that Court.

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

-- S. 497/496-Second or subsequent bail application to same Court when lies.

The second or the subsequent bail application to the same Court shall lie only on a fresh ground, namely a ground which did not exist at the time when the first application was made. If a ground was available to the accused at the time when the first bail application was filed and was not taken or was not pressed, it cannot be considered as a fresh and made the basis of any subsequent bail application. The mere fact that the Judge who had rejected the first bail application with the observation that as far as the remaining petitioners are concerned no case had been made out for their release on bail, does not mean that the application had not been disposed of on merits. It must be assumed that he had considered all the pleas or grounds raised by the applicants counsel before him and that the same had not found favour with him. The notion that each contention raised before the Court in a bail application must be dealt with separately or repelled by recording elaborate reasoning, is totally misconceived.

(f) Criminal Procedure Code (IV of 1898)--

---S.497/498-Bail-Subsequent bail application-Second or subsequent bail application by same accused in same case heard or dealt with by a Judge other than the one who had heard previous bail application, held, would tantamount to embark on a review of order of Judge who had earlier dealt or decided first bail application-Practice disapproved by Supreme Court.

Bashirullah Khan, Assistant Advocate-General N.-W. F. P. for the State.

Akhunzada Bahrawar, Advocate Supreme Court and Jan Muhammad Khan, Advocate-on-Record for Respondents.

Date of hearing : 3rd December, 1985.