

*Before Saeeduzzaman Siddiqui, C.J.
and Iman Ali G. Kazi, J,*

MUHAMMAD SIDDIQ--Petitioner

versus

**PROVINCE OF SINDH through Home Secretary,
Karachi and 2 others--Respondents**

Accused acquitted

C. Ps. Nds. D-292, D, 325, D-339, D-502; CrI. Misc. Applications Nos.63, 77 and 98 of 1991, decided on 17th May, 1992.

(a) Criminal Procedure Code (v or 1898)--

--- Ss. 491, 54 & 167 --- Detenus were' arrested by the police in investigation of one crime, kept in their custody under orders of remand granted under S.167, Cr.P.C. by Magistrates and on expire of maximum period of remand rearrested in other cases and thus continuously kept in custody of police without any limit of time by resorting to provision S.167, Cr.P.C.---Such practice clearly amounted to an abuse of power by the, police invested in them under the law.

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

S. 54 --- Police Officer has been conferred sufficient powers to arrest a person in the investigation of a cognizably offence if he be concerned with commission of such offence, but such a power can be exercised only in those cases where a police officer is possessed of some evidence indicating involvement of a person under the four situations mentioned in section 54(l), Cr.P.C.

W Criminal Procedure Code (V of 1898)--

--- Ss. 54, 61 & 62 --- Powers and duties of police officers and Magistrates or arrest of a person concerned or suspected to have committed a cognizable offence clarified.

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

---Ss. 167 & 61 ---- Remand --- Provision of S.167, Cr.P.C. being in the nature of an exception to S.61, Cr.P.C. and also amounting to putting restriction on the right of personal liberty granted under the Constitution has to be very strictly construed and unless all the requirements of S.167, Cr.P.C. are complied with, a remand cannot be granted.

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

--- S.167 --- Remand ' ' ' grant of---Magistrate while hearing application for grant of remand of an accused person performs judicial functions and the accused through his lawyer, *a friend or relative is entitled to raise objection to the passing of such orders --- Magistrate necessarily has to pass orders only in open Court --- Magistrate is not expected to pass orders granting remand of accused in a mechanical manner but has to examine very carefully the justification for depriving a citizen of his liberty which can only be done if material justifying such action is available on record.

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

--- S. 167 --- Remand --- Magistrate is expected to act stringently in matters of grant of remand and' it will always be in the interest of justice that remand of an accused person either to police or judicial custody during the investigation is-* granted for the minimum possible time required for completing the investigation of a case expeditiously.

W Criminal Procedure Code (v or 1898)--

;-q~'~'''

---- S. 167 --- Remand of an under trial prisoner --- Under trial prisoner if required by police in the investigation of another offence can by orders of Magistrate under S.167, Cr.P.C. be remanded to police custody.

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

D-339 of 1991).

---- S.167 --- Remand of an under trial prisoner --- Procedure stated. [p. 3771 H

A. Mujeeb Pirzada for Petitioners (in C.Ps. Nos.D-292, D-325 and

Yasin A7ad, for Petitioners (in CrI.Misc. Nos.98 and 63 of 1991). Syed Amir Hussain Shah, Kh. Naveed Ahmad and M.S. Khattak for Petitioners (in CrI. Misc. No.77 of 1991, C.P. No.502 of 1991). Aftab Ahmed Akhund, A.-G., Siridh for Respondents. Abdul Hafeez Lakho, Dy. A.-G. as Amicus Curiae.

Dates of hearing: \$th, 9th, 10th, 24th, 30th April and 6th May, 1991