

P L D 1993 Supreme Court 399

*Present: Naseem Hasan Shah, Ajmal Mian
And Sajjad Ali Shah, JJ*

BADARUDDIN---Petitioner

Versus

Mehr AHMAD RAZA, ADDITIONAL SESSIONS JUDGE,
JHANG and 6 others --- Respondents

Civil Petition No.204-L of 1992, decided on 5th April, 1993,
(On appeal from the judgment of the Lahore High Court, Lahore dated 11-1-1992 passed in W.P.
No.3427 of 1990).

(a) Civil Procedure Code (V of 1908)--

---- 0. 1, R.10--- Constitution: of Pakistan (1973), Art.185 --- Appeal before Supreme Court --- Respondent No.1 in the case was Additional Sessions Judge, who had disposed of revision application and that judgment was the Constitutional petition in the High Court --- Supreme Court observed and it was considered fit and proper to implead Additional Session Judge as party, in spite of the fact that he was pro forma party, then 'good and scrupulous draftsmanship demanded that he should not have been impleaded by name but by designation or office and in all fairness such pro forma respondent should have been mentioned at the end after naming of necessary respondents who contested proceedings as active parties --- Such lapses were desired to be avoided in future.

(b) Criminal Procedure Code (V of 98)-.

S. 249-A --- Scope and application 'of 249-A, Cr.P.C.- --Words "at any stage of the case" occurring in S.249-A, .P.C. ---Connotation --- Order of acquittal can be passed by the Court without recording of evidence provided the Court is satisfied that peculiar facts of that case justify such order.

Section 249-A, Cr.P.C. clearly shows that trial Magistrate is given power of acquitting an accused person at any stage of the case, if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that charge' is groundless or that there is no probability of the accused being convicted of any offence. Use of words "at any stage of the case" indicates intention that such order can be passed even before recording of evidence. If facts of the case are such and the Court is satisfied that no useful purpose would be served by proceeding further in the matter.

Facts in each criminal case are different from the other and if the trial Court is given power to acquit at any stage of the proceedings-if satisfied, then it can be said that order of acquittal can be passed by the Court without recording of evidence provided the Court is satisfied that peculiar facts of that case justify such order.

(c) Penal Code (XLV of 1860)

---- Ss. 420, 406, 467 & 468 --- Ingredients of criminal offences such as under Ss-420, 406, 467 & 468, P.P.C. and other cogent offences are similar as would appear in most cases of breach of contract --- Civil Courts be given preference and allowed to decide such disputed facts --- Duty of Criminal Court to employ its process for compelling attendance stated.

Ingredients of criminal offences such as, under sections 420, 406, 467 and 468, P.P.C. and other cognate offences are similar as would appear in most cases of beach of contract. No doubt in such cases both remedies on criminal as well as civil sides arc available and can be pressed into service but Civil Courts be given preference and allowed to decide such disputed facts. In such circumstances it is the duty of the Criminal Court to act with circumspection and exercise power with utmost care and caution before it is persuaded to employ its process for compelling attendance.

Jamot Ghulam Muhammad and others v. The State and another 1972 PCr.LJ 130 and Khan alias Kbanu and others v. The State 1989 PCr.LJ 1883
ref.

(d) Constitution of Pakistan (1973)-

---- Art. 199 --- Criminal Procedure Code (V of 1898), S 439 --- When there is finding by the Court of competent jurisdiction on the revisional side then it has attained finality and Constitutional petition would be non-maintainable on the same question.

Powers of the High Court for exercise of revisional jurisdiction under section 439, Cr.P.C. are wider in scope than powers in the writ jurisdiction. By amendment in the law now Sessions Court and High Court have concurrent revisional jurisdiction which is allowed in the normal course to be exercised first by lower forum but that does not decrease the scope of jurisdiction as mentioned above. In such circumstances it is said that if there is finding by the Court of competent jurisdiction on the revisional side then it has attained finality. On the same question writ petition would be non-maintainable because otherwise it would amount to allowing question finally decided in one set.-of forums to be agitated afresh in .another set of forums and that way there will be no end to the finality.

Abdul Rehman Bajwa v. Sultan and others PLD 1981 SC 522 and Javaid Iqbal v. Muhammad Din and another 1990 SCMR 1309 ref.

Ashiq Hussain Malik, Advocate Supreme Court and Syed Abul Assim. Jafri, Advocate-on-Record for Petitioner.
Nemo for Respondents.

Date of hearing: 5th April, 1993.