

P L D 2003 Lahore 228

Before Asif Saeed Khan Khosa, J

SANA ULLAH---Petitioner

Versus

S.H.O., POLICE STATION CIVIL LINES, GUJRAT and 3 others---Respondents

Writ Petition No. 12554 of 2002, heard on 10th January, 2003.

(a) Constitution of Pakistan (1973)---

---Art. 175(3)---Separation of Judiciary from Executive---Tentative assessment of certain facts by an Executive Functionary cannot be automatically termed as a judicial function of such a Functionary so as to attract the provisions of Cl. (3) of Art.175 of the Constitution and for pressing into service the requirement of separation of the Judiciary from the Executive.

Abdul Latif v. Inspector-General, Police and others 1999 PCr.LJ 1357; Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others PLD 1999 SC 504; Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445; Byram D. Avari and 3 others v. The State and 4 others PLD 1989 Pesh. 145; Iftikhar Ahmad and another v. S.H.O., Police Station Kohsar, Islamabad and 2 others PLD 2001 Lah. 399; Miraj Khan v. Gul Ahmad and 3 others 2000 SCMR 122; Emperor v. Khawaja Nazir Ahmad AIR 1945 PC 18; M.M.S.T. Chidambaram Chettiar v. Shanmugham Pillai AIR 1938 Mad. 129; Sharif Faridi and 3 others v. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another. PLD 1989 Kar. 404; Government of Sindh through Chief Secretary to Government of Sindh, Karachi and others PLD 1994 SC 105; Black's Law Dictionary, 5th Edn., p.760 ; Grammer of Politics by Harold J. Laski, pp.129-130; M. Bashir Saigol and another v. The State and another PLD 1964 Lah. 148; Muhammad Anwar v. The State 1968 PCr.LJ 1597; Taj Muhammad alias Tajoo v. The State 1991 PCr.LJ 2167; Riaz Ahmad and 3 others v. The State PLD 1994 Lah. 485; Mst. Sajida Parveen v. Ashiq Ali and 3 others PLD 1998 Lah. 3; Muhammad Siddiq v. Rashid Ahmad Ch. and another 1998 MLD 686; Muhammad Akbar v. The State and others PLD 1968 SC 283 ; Mian Fazal Ahmad v. Station House Officer, Gulberg Liberty Market, Lahore and 3 others PLD 2002 Lah. 164; M. Hafeez Ahmad and others v. The State and others 2001 PCr.LJ 218; Mst. Gul Reza and others v. The State and others 2002 PCr.LJ 9; Haji Abdul Latif Memon v. Government of Sindh through Chief Secretary, Home Department, Karachi and 2 others 1999 YLR 577; Mian Ghulam Yasin v. S.H.O., Police Station Chehal Yak, District Multan and another KLR 1997 Cr.C 581; Syed Muhammad Ahmad v. The State.1972 SCMR 85 and Bahadur and another v. The State and another PLD 1985 SC 62 ref.

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

---S. 154---Information in cognizable cases---Words "every information relating to the commission of a cognizable offence" appearing in S.154, Cr.P.C. pertain only to the information so supplied and do not pertain to actual commission of a cognizable offence---Information supplied should be about an alleged commission of a cognizable offence irrespective of the fact whether such information is ultimately proved to be correct or not and also whether ultimately such an offence is found to have been actually committed or not---Station House Officer at such a stage is to be satisfied only to the extent that the information is in respect of an offence which is cognizable.

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

---S. 154---Information in cognizable cases---Every information relating to commission of a cognizable offence is to be reduced to writing as an F.I.R. and then an opinion is to be formed subsequently during the investigation regarding the correctness or falsity of such information.

M. Anwar, Barrister-at-Law v. The Station House Officer, Civil Lines, Police Station, Lahore and another PLD 1972 Lah. 493; Nazir Ahmad v. Khushi Muhammad and 2 others 1974 PCr.LJ

579 and Ghiasuddin v. Station House Officer, Police Station Pindi Bhattian 1983 PCr.LJ 1085 ref.

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

---S. 154---First Information Report---No requirement at the time of registration of the case to give a hearing to the accused named in the complaint---Accused cannot claim an opportunity of hearing before registration of F. I. R. against him or before passage of an order in that regard by a Court.

Saeed Ahmad and others v. Naseer Ahmad and others PLD 2000 Lah. 208 ref.

(e) Penal Code (XLV of 1860)---

---Ss. 420/468/471/474---Constitution of Pakistan (1973), Art.199--Constitutional petition---Quashing of F. I. R. ---Alleged alienor of the land in dispute had disowned the agreement to sell relied upon by the accused not only in the Civil Court but also before the Investigating Officer of the case--Stamp vendor had denied to have issued the stamp paper on which the said agreement to sell was executed---Scribe of the agreement to sell had stated before the police that he had not scribed the same upon the instructions of the alleged alienor---D.S.P. deputed by the S.S.P. had found allegations against the accused to be prima facie correct whereupon the impugned F.I.R. was registered against him---Original agreement to sell was yet to be recovered from the possession of accused and the local police was in a better position to recover the same than the Civil Court---A tentative visual comparison of the admitted signatures of the alleged alienor available on his written statement filed in the Civil Court with his alleged signatures on a photocopy of the agreement to sell being relied upon by the accused, had highlighted the necessity of allowing further and continued Investigation of the impugned F.I.R. which did not appear to have been registered with any mala fide intention ---F.I.R. had expressly and specifically alleged cheating, forgery and use of a forged document by the accused which could have straightaway been chalked out on the basis of receipt of an information relating to commission of such an offence---Offences under Ss.468, 471 & 474, P.P.C. although were non-cognizable yet they could be investigated by the police alongwith the other offence under S.420, P.P.C. which was cognizable--Even otherwise, local police had obtained permission for investigation in respect of the said non-cognizable offences from the Area Magistrate---Allegations levelled against the accused by the complainant being not only serious but also prima facie having substance, needed a thorough investigation by the police and the F.I.R. could be quashed---Constitutional petition was dismissed accordingly.

Abdul Latif v. Inspector-General, Police and others 1999 PCr.LJ 1357; Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others PLD 1999 SC 504; Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445; Byram D. Mad and 3 others v. The State and 4 others PLD 1989 Pesh. 145; Iftikhar Ahmad and another v. S.H.O., Police Station Kohsar, Islamabad and 2 others PLD 2001 Lah. 399; Miraj Khan v. Gul Ahmad and 3 others 2000 SCMR 122; Emperor v. Khawaja Nazir Ahmad AIR 1945 PC 18; M.M.S.T. Chidambaram Chettiar v. Shanmugham Pillai AIR 1938 Mad. 129; Sharif Faridi and 3 others v. The Federation of Islamic Republic of Pakistan through Prime Minister of Pakistan and another PLD 1989 Kar. 404; Government of Sindh through Chief Secretary to Government of Sindh, Karachi and others PLD 1994 SC 105; Black's Law Dictionary, 5th Edn., p.760; Grammer of Politics by Harold, J. Laski, pp.129-130; M. Bashir Sigol and another v. The State and another PLD 1964 Lah. 148; Muhammad Anwar v. The State 1968 PCr.LJ 1597; Taj Muhammad alias Tajoo v. The State 1991 PCr.LJ 2167; Riaz Ahmad and 3 others v. the State PLD 1994 Lah. 485 and Mst. Sajida Parveen v. Ashiq Ali and 3 others PLD 1998 Lah. 3. Muhammad Siddiq v. Rashid Ahmad Ch. and another 1998 MLD 686; Muhammad Akbar v. The State and others PLD 1968 SC 281; Mian Fazal Ahmad v. Station House Officer, Gulberg Liberty Market, Lahore and 3 others PLD 2002 Lah. 164; M. Hafeez Ahmad and others v. The State and others 2001 PCr.LJ 218; Mst. Gul Reza and others The State and others 2002 PCr.LJ 9; Haji Abdul Latif Memon v. Government of Sindh through Chief Secretary, Home Department, Karachi and 2 others 1999 YLR 577; Mian Ghulam Yasin v. S.H.O. Police Station Chehal Yak, District Multan and another KLR 1997 Cr.C 581; Syed Muhammad Ahmad v. The State 1972 SCMR 85 and Bahadur and another v. The State and another PLD 1985 SC 62; M. Anwar, Barrister-at-Law v. The Station House Officer, Civil Lines, Police Station, Lahore and another PLD 1972 Lah. 493; Nazir Ahmad v. Khushi Muhammad and

2 others 1974 PCr.LJ 579; Ghiasuddin v. Station House Officer, Police Station Pindi Bhattian 1983 PCr.LJ 1085; Hazoor Bakhsh v. Senior Superintendent of Police, Rahimyar Khan and 12 others PLD 1999 Lah. 417; Saeed Ahmad and others v. Naseer Ahmad and others PLD 2000 Lah. 208 and Akhtar Hussain Zaidi v. The State PLD 1985 Lah. 662 ref.

A.K. Dogar for Petitioner.

Ishfaq Ahmad Chaudhry for Respondents Nos. 1 and 2.

Zubair Ahmad Farooqi and Muhammad Rafique Warraich for Respondents Nos. 3 and 4.

Dates of hearing: 8th, 12th and 13th November; 13th, 16th December, 2002 and 10th January, 2003.