

P L D 2007 Supreme Court 539

Present: Khalil-ur-Rehman Ramday and Raja Fayyaz Ahmad, JJ

MUHAMMAD BASHIR---Petitioner

Versus

STATION HOUSE OFFICER, OKARA CANTT. and others---Respondents

Civil Petition No.512-L of 2006, decided on 20th April, 2006.

(On appeal from the order dated 22-3-2006 of the Lahore High Court, Lahore passed in writ Petition No.2279 of 2006.)

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

---Ss. 154, 155, 157 & 162---Recording of F.I.R.---Enquiry as to correctness or otherwise of information received by an Officer Incharge of Police Station for the purpose of being reduced in writing as F.I.R. and powers of Officer Incharge of Police Station to refuse to record F.I.R. only because, in his opinion, the allegations conveyed to him were false--Scope---No authority vested with an Officer Incharge of a Police Station or with anyone else to refuse to record an F.I.R. where the information conveyed, disclosed the commission of a cognizable offence---No authority vested with an Officer Incharge of a Police Station or with anyone else to hold any inquiry into the correctness or otherwise of the information which was conveyed to the S.H.O. for the purposes of recording of an F.I.R. Any F.I.R. registered after such an exercise i.e. determination of the truth or falsity of the information conveyed to the S.H.O., would get hit by the provisions of section 162, Cr.P.C.---Existence of an F.I.R. was no condition precedent for holding of an investigation nor was the same a prerequisite for the arrest of a person concerned with the commission of a cognizable offence; nor does the recording of an F.I.R. mean that the S.H.O. or a police officer deputed by him was obliged to investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested---Check against lodging of false F.I.Rs. was not refusal to record such F.I.Rs, but punishment of such informants under S.182, P.P.C. etc. which should be, if enforced, a fairly deterrent against misuse of the provisions of S.154, Cr.P.C.---Principles.

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

---S. 22-A(6)---Powers conferred under S.22-A(6), Cr.P.C. on Ex-officio Justice of the Peace---Scope and extent---Only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under S.22-A(6), Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question, and no more---Offering any other interpretation to S.22-A(6), Cr.P.C. would be doing violence to the entire scheme of Criminal Procedure Code, 1898 which could not be permitted---Principles---Legislative history of Institution of Ex-officio Justice of the Peace and powers conferred on them, traced.

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

---S.22-A(6)---Constitution of Pakistan (1973), Art.199---Powers of Ex-officio Justice of the Peace under S.22-A(6), Cr.P.C.---Nature---Exercise of discretion under Art.199 of the Constitution was not dependent only, on illegality committed by a competent authority but was also controlled by some other important considerations such as the seeker of a writ being an aggrieved person; availability of alternative remedies such as filing of a complaint etc. in criminal matters and the applicant being qualified, in equity, for the grant of the relief sought---Powers of an Ex-officio Justice of the Peace under S.22-A(6), Cr.P.C. could, therefore, not be equated with the constitutional jurisdiction vesting in a High Court.

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

----S. 22-A(6)---Powers of Ex-officio Justice of the Peace---Scope---Refusal to record, in the

register of F.I.Rs. the information conveyed to him by complainant which information did disclose the commission of a cognizable offence, was illegal and equally invalid was the exercise undertaken by Ex-officio Justice of the Peace wherein the application of complainant was rejected.

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

---S. 22-A(6)---Constitution of Pakistan (1973), Arts. 199 & 185(3)---High Court, under its constitutional jurisdiction had quashed the F.I.R. only on the ground that while securing compliance, from the concerned S.H.O. of one of his legal obligations, complainant had not disclosed the dismissal by an Ex-officio Justice of the Peace, of his application moved for the purpose---Validity---Discretion so exercised by the High Court, could not be sustained for more than one reasons, firstly, because recording of an F.I.R. was not a discretionary relief to be granted by an S.H.O. which could be refused if the one seeking registration of a criminal case had suffered certain acts which disentitled him to a relief in equity; Secondly, it appeared to have escaped the notice of the High Court that a crime was an offence committed against the State; that the position of the one bringing the commission of such a crime to the notice of the competent authorities was never more than a witness and that an offender could never be permitted to escape punishment only because of some error suffered by an informant while putting the machinery of law into motion---Remedy may well lie in punishing the informer for his fault but not in sparing a criminal---Judgment of High Court resulting in the quashment of the F.I.R. was not, therefore, maintainable---Supreme Court, in circumstances, converted petition for leave to appeal into an appeal which was 'allowed as a result whereof the order of the Ex-officio Justice of the Peace refusing the application and impugned judgment of the High Court to the extent of F.I.R. in question were set aside, consequently said F.I.R. stood revived and the concerned S.H.O. shall be free to deal with-the same in accordance with law---High Court shall however, be at liberty to proceed with the notice issued to complainant under S.193, Cr.P.C.

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

---S. 22-A(6)(ii)---Police Order (22 of 2002), Art.18---Powers of transfer of investigation from one Police Officer to another by Ex-officio Justice of the Peace---Supreme Court, on examination of the provision of S.22-A(6)(ii), Cr.P.C. summarized some of the questions which were likely to confront the competent Courts in due course and which would demand resolution.

Following are the questions which were likely to confront the Courts which would demand resolution:

(a) Has this laboured innovation of transfer of investigations introduced by the police, yielded any advantageous benefits to the courts of law in the administration and dispensation of justice in the field of crimes or was it just a source of nuisance for them only complicating the already complicated issues and deserved to be discouraged?

(b) Could a power be conferred on an Ex-officio Justice of the Peace to do that which was not recognized by the Cr.P.C. and was unknown to it?

(c) While deciding the fate of a complaint about transfer of an investigation, the Ex-officio Justice of the Peace, who also happened to be a Sessions or at least an Additional Sessions Judge, will have to pronounce upon the quality of investigation conducted in a given case and this having been so done, what would be its effects on the appreciation of the evidence collected through the said exercise when a trial Court was to undertake the said exercise which trial court could well take even it be a Magistrate and thus a court subordinate to such an Ex-officio Justice of the Peace?

(d) Section 18 and some other provisions of the Police Order of 2002 being the Chief Executive's Order No.22 of 2002, carries certain provisions regarding investigation of criminal cases which are, at least prima facie, not reconcilable with the special and the parent provisions on the subject i.e. the provisions of the Code of Criminal Procedure and if it be so then what would be the effect of such-like illegal investigations on the trials that followed?

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

---Ss. 22-A & 25 [as amended by Code of Criminal Procedure (Third Amendment) Ordinance (CXXXI of 2002)]---Ex-officio Justice of the Peace, powers of---Amendments introduced in Ss.22-A & 25, Cr.P.C. had been so made to lessen the excessive burden of the High Courts which was got created through tiling of writ petitions seeking registration of criminal cases and transfer of investigation---Supreme Court observed that if this be so, then Supreme Court would not be sure about the questionable wisdom leading to these amendments which sought to relieve an elder brother of his burden by adding the same on to the back of an already over-loaded younger brother---Copies of the present judgment were directed to be sent to Registrars of all the four High Courts in the country who shall, in turn, send the same to all the Sessions Judges in their respective provinces for their guidance and compliance---Law Secretaries of the Federation and the Provinces will also be sent the copy of the judgment for re-examining the matter of the amendments in question in the light of observations made in the judgment.

Muhammad Tahir Chaudhry, Advocate Supreme Court with Mahmudul Islam, Advocate-on-Record for Petitioner.

Ejaz Ahmed Khan, Advocate Supreme Court with Ch. M. Anwar Khan, Advocate-on-Record and Respondents Nos. 2 and 3 (in person).

Ch. Aamir Rehman, Addl. A.-G. with M. Ashraf, Inspector/SHO with Ghulam Qadir Khan, Incharge Investigation, Police Station Cantt. Okara.