Stereo. HC JD A 38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN.

JUDICIAL DEPARTMENT

Writ Petition. No.15477 of 2021

Muhammad Ajmal **VS.** Ex-Officio Justice of Peace /Additional Sessions Judge, Burewala, and ten others.

J U D G M E N T

Date of hearing	02.05.2023
Petitioner represented by:	Mr. Muhammad Shahbaz Khan, Advocate.
Respondent No.4 by:	Nemo. Despite issuance of several notices ,none has entered appearance on behalf of respondent No.4.
State by:	Mr. Mushtaq Ahmed Chohan, Assistant Advocate General.

SADIQ MAHMUD KHURRAM, J.-Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the following prayer has been made:-

> *"It is most respectfully prayed that the instant writ petition may kindly be accepted and impugned order dated 04-10-2021 on the application of respondent No 4 passed by learned respondent No 1 may kindly be declared illegal, and against law and facts of the case, be set aside the same and the application U/S 22-A Cr.P.C of the Respondent No 4 may kindly be dismissed in the interest of justice and equity.*

2. Brief facts of the case leading up to the filing of this petition are that the respondent No.4 namely Ghafooran Bibi , moved an application under section 22-A/22-B Code of Criminal Procedure, 1898, complaining of the non-registration of the F.I.R. by the police

authorities. The respondent No.4 had asserted in her application that the accused, including the petitioner, named by her in her application, had deprived her of inheriting property of her deceased husband. That upon the said application filed under section 22-A/22-B Code of Criminal Procedure, 1898 by the respondent No.4, the learned Ex-Officio Justice of Peace, Burewala vide his order dated 04.10.2021, directed the registration of the F.I.R. against the petitioner and the others.

3. Learned counsel for the petitioner *inter-alia* contended that the order passed by Ex-Officio Justice of Peace, Burewala, District Bahawalpur dated 04.10.2021 was liable to be set aside being against the facts and law; that the learned Ex-Officio Justice of Peace misconstrued the facts of the case; that the perusal of the application as filed by respondent No.4 did not reveal commission of any cognizable offence, hence, the impugned order was liable to be set aside.

4. The learned Assistant Advocate General has submitted that no cognizable offence had been committed, hence no order for registration of an F.I.R. could have been passed.

5. I have heard the learned counsel for the petitioner, the learned Assistant Advocate General and perused the documents appended with this writ petition as well as the impugned order dated 04.10.2021 passed by the learned Ex-Officio Justice of Peace, Burewala.

6. The record evinces that the respondent No.4 namely Ghafooran Bibi, moved an application under section 22-A/22-B Code

of Criminal Procedure, 1898, complaining of the non-registration of the F.I.R. by the police authorities. The respondent No.4 had asserted in her application that the accused, including the petitioner, named by her in her application, had deprived her of inheriting property of her deceased husband. That upon the said application filed under section 22-A/22-B Code of Criminal Procedure, 1898 by the respondent No.4, the learned Ex-Officio Justice of Peace, Burewala vide his order dated 04.10.2021, directed the registration of the F.I.R. against the petitioner and the others. A perusal of the application as filed under section 22-A/22-B Code of Criminal Procedure, 1898 by the respondent No.4 reveals that in the application itself commission of an offence made punishable under section 498-A PPC had been complained of. The offence made punishable under section 498-A PPC is not a cognizable offence. Section 4(1) (f) defines cognizable offence as under:-

> (f) **''Cognizable offence", "cognizable case":** "Cognizable offence" means an offence for, and cognizable case" means a case in which a police officer, may, in accordance with the second Schedule or under any law for the time being in force, arrest without warrant."

Section 4(1) (n) defines non-cognizable offence as under:-

> (**n) "Non-cognizable offence," "Non-cognizable case":** "Non-cognizable offence means an offence for, and "non-cognizable case" means a case in which a police officer, may not arrest without warrant.

According to the Schedule-II of the Code of Criminal Procedure, 1898, police shall not arrest without warrant any person alleged to had committed the offence made punishable under section 498-A P.P.C. making the offence made punishable under section 498-A

P.P.C. a **non-cognizable offence**. Obviously, an F.I.R cannot be ordered for the registration of a non-cognizable offence which section 498-A P.P.C is and which offence the respondent No.4 namely Ghafooran Bibi had complained that the petitioner and the other accused had committed. The available material *prima facie* does not reveal commission of any cognizable offence. As is obvious, an F.I.R. cannot be registered with regard to a non-cognizable offence. Moreover, according to the application the respondent No.4 namely Ghafooran Bibi, she was deprived of the inherited property of her deceased husband at the time of opening of succession and Inheritance mutation No. 641 of **17.05.2010** was got entered in the revenue record. The act of depriving a woman of inheriting property was made an offence as defined under section 498-A P.P.C. by way of the Criminal Law (Third Amendment) Act of 2011 which received the ascent of president of Pakistan on **26th December, 2011**. **Ac**cording to the application of the respondent No.4 herself she was deprived of her inheritance on 17.05.2010. Such an act had not been made punishable under section 498-A P.P.C. by then. Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 provides that no person would be punished for an act which was not punishable by law at the time of the act or omission. Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 reads as under:-

> **"Article 12: Protection against retrospective punishment**
>
> 1. No law shall authorize the punishment of a person-
>
> a. for an act or omission that was not punishable by law at the time of the act or omission; or

> b. for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed
>
> 2. Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence."

According to Bennion on Statutory Interpretation (Seventh Edition), page 181 with regard to the retrospectivity effect of law, it was said that "principle is sometimes expressed in the maxim *lex prospicit non respicit* (law looks forward not back). As Willes J said in *Phillips v Eyre* retrospective legislation is '*contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law*." Whereas in Crawford's Statutory Construction, Chapter XXV, germane to Prospective and Retrospective Operation, at pages 562 to 566 and 622, the gist of the discussion is that retroactive legislation is looked upon with disfavor, as a general rule, and properly so because of its tendency to be unjust and oppressive. There is a presumption that the legislature intended its enactments to have this effect to be effective only in future. This is true because of the basic presumption that the legislature does not intend to enact legislation which operates oppressively and unreasonably. If perchance any reasonable doubt exists, it should be resolved in favour of prospective operation. In other words, before a law will be construed as retrospective, its language must imperatively and clearly require such construction.. In the case of People v Dilliard (298 N.Y.S. 296, 302, 252 Ap. Div.125) Court held that "*It is chiefly where the enactment would prejudicially affect vested rights, or the*

legal character of past transactions that the rule in question applies. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation." The august Supreme Court of Pakistan in the case of "*MUHAMMAD FAZAL and others versus SAEEDULLAH KHAN and others*" (**2011 SCMR 1137**) has held as under:-

> "2. After hearing the learned counsel for the parties and going through the relevant record of the case appended with this petition we have straightaway observed that for allowing the Writ Petition filed by respondent No. 1 and for remanding his complaint under the Illegal Dispossession Act, 2005 to the learned Sessions Judge, Islamabad for holding further proceedings in connection with the same the learned Judge-in-Chamber of the Islamabad High Court, Islamabad had squarely relied upon the judgment rendered by this Court in the case of Rahim Tahir v. Ahmed Jan and 2 others (PLD 2007 SC 423) without appreciating that the said judgment had expressly been overruled by this Court in the later case of Dr. Muhammad Safdar v. Edward Henry Louis (PLD 2009 SC 404). In the latter judgment this Court had clarified that the penal provisions contained in the Illegal Dispossession Act, 2005 could not be given retrospective effect in view of the provisions of Article 12(1) of the Constitution of the Islamic Republic of Pakistan, 1973. It is not disputed before us that the alleged dispossession of respondent No.1 had come about in the year 2002, i.e. about three years before introduction of the Illegal Dispossession Act, 2005 and, thus, the said Act had no retrospective application to the case in hand."

Exposing a person to investigative process and face rigors of criminal prosecution is a no small measure; there must exist reasonable and tangible material, with evidential basis to set the law into motion so as to bring about an indictment. The insertion of section 22-A(6)(iii) was never meant to necessary allow every such

application else the legislature would not have used word 'may' in subsection (6) which (word may) always speaks of 'discretion' by application of mind. Thus, it is settled law that the Ex Officio, Justice of Peace may refuse to issue direction regarding registration of case and may competently dismiss application under section 22-A(6), Cr.P.C.,

7. For the above identified reasons, it is a fit case for interference and invalidation of the impugned order. Therefore, by **allowing** this petition, impugned order dated 04.10.2021 passed by the learned Ex-Officio Justice of Peace, Burewala, is **set-aside**.

(*SADIQ MAHMUD KHURRAM)*
JUDGE

Rashid

APPROVED FOR REPORTING

JUDGE