Stereo. HCJDA 38

JUDGMENT SHEET

LAHORE HIGH COURT, MULTAN BENCH, MULTAN

JUDICIAL DEPARTMENT

Crl. Revision No. 148/2023

Umar Hasnain and others

Vs.

The State and another

JUDGMENT

Date of hearing:	**16.06.2023**
For the Petitioners:	Mr Wasim Sarwar Khan, Advocate.
For Respondent No.1:	Mr Adnan Latif Sheikh, Deputy Prosecutor General.
For Respondent No.2:	Malik Sajid Raza Thaheem, Advocate.

Tariq Saleem Sheikh, J. – Respondent No.2 filed a private complaint under sections 337-F(i), 337-F(ii), 337-L(2), 448, 354, 452, 282, 148 & 149 PPC titled "*Shahnaz Parveen v. Muhammad Safdar etc.*" in the Court of the Additional Sessions Judge, Muzaffargarh, alleging that she married Muhammad Safdar who gave her a house measuring 01 kanal 13 marlas in Chah Itrawala, Mouza Daira Din Panah, Tehsil and District Kot Addu, by way of dower (the "House"). The marriage could not continue. Safdar divorced her and shifted to WAPDA Colony to live with his second wife. According to Respondent No.2, she resided in the House for several years as an owner and continued to live there even after the divorce. On 16.06.2020, around 9/10 a.m., she was alone there when Muhammad Safdar and his co-accused, including the Petitioners, trespassed the House while armed with different weapons and began beating her. As a result, she suffered injuries on her right leg, left arm and neck. Her hue and cry attracted witnesses to the scene. She further stated that the accused ejected her from the House and took over its possession. She lodged FIR No.245/2020 dated 19.06.2020 at Police Station Daira Din Panah regarding the incident, but the accused, who are lawyers, influenced the investigation.

The police declared them innocent, forcing her to institute a private complaint for redress.

2. The Additional Sessions Judge recorded cursory evidence of Respondent No.2 (the complainant) as PW-1, and two witnesses, Muhammad Aqeel and Muhammad Shakeel, as PW-2 and PW-3 respectively. Respondent No.2 also produced documentary evidence (Exh.PA to PD and Mark-A to Mark-L) to support her claim. The Additional Sessions Judge admitted the private complaint and summoned Safdar and the Petitioners to face trial by order dated 04.02.2023 (the "Impugned Order"). This revision petition under sections 439/435 Cr.P.C. is directed against that order.

3. The Petitioners contend that the Impugned Order is without jurisdiction because the Additional Sessions Judge has entertained the private complaint of Respondent No.2 directly in violation of sections 190 and 193 of the Code of Criminal Procedure, 1898 (hereafter referred to as the "Code" or "Cr.P.C."). He could not take cognizance unless the Magistrate forwarded it to him. On merits, they claim that the allegations against them are baseless and vexatious. Respondent No.2 initially lodged FIR No.245/2020 against them and Safdar, which the police investigated and found false. Respondent No.2 has now filed a private complaint on the same facts. She has a dispute with Safdar over the House and wants to drive him towards a compromise by entangling them in false criminal cases. According to them, she has implicated them in this case because they are Safdar's friends.

4. The Deputy Prosecutor General has supported this petition on the legal plane.

5. The counsel for Respondent No.2 has, however, defended the Impugned Order on legal and factual grounds. He maintains that the Petitioners have not been prejudiced because of the Additional Sessions Judge directly entertaining the private complaint. It is merely an irregularity curable under section 537 Cr.P.C. He has relied upon ***Muhammad Saeed and others v. The State and others*** (1984 PCr.LJ 1373), ***Damon and 6 others v. The State and another*** (1992 MLD 1993), and ***Mst. Mariam Sultana v. The State*** (PLD 2000 Quetta 12) in support of this contention. On

merits, the learned counsel states that sufficient incriminating evidence is available on record to justify the summoning of the Petitioners and their co-accused for trial.

Opinion

6. Section 190(1) Cr.P.C. states that all Magistrates of the First Class or any other Magistrate specially empowered by the Provincial Government on the recommendation of the High Court may take cognizance of any offence (a) upon receiving a complaint, (b) upon a report by any police officer, (c) upon receiving information from anyone other than a police officer, or upon his knowledge or suspicion that an offence has been committed. Section 190(2) Cr.P.C. stipulates that a Magistrate taking cognizance of an offence triable exclusively by the Court of Session shall send the case to that court for trial without recording any evidence. Section 193 Cr.P.C. ordains that, except as otherwise expressly provided by the Code or any other legislation in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been sent to it under section 190(2). And section 193(2) stipulates that an Additional Sessions Judge shall try only such cases as the Sessions Judge assigns to them for trial or the Provincial Government by general or special order may direct.

7. To comprehend the scheme of law regarding cognizance of offences by the courts of original jurisdiction, it is necessary to look at the legislative history. Ch. Ejaz Yousaf J. has ably traced it in ***Bismillah Khan and others v. The State*** (2001 PCr.LJ 481). The original section 193(1) of the Code provided that "no Court of Session shall take cognizance of an offence as a court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf." The Law Reforms Ordinance 1972 abolished committal processes and substituted the words "commit for trial" used in the last part of section 190(1) with the words "sent to the Court of Session for trial." Similarly, it replaced the wording "committed to the Court of Session" in section 191 Cr.P.C. with the phrase "sent to the Court of Session". In section 193(1) also, the Ordinance substituted the words "unless the accused has been committed to it by a Magistrate duly empowered in that behalf" with the expression "unless the

case has been sent to it under section 190(3) Cr.P.C."[1] Before the aforementioned amendments, there was a judicial consensus that, except in cases where a Court of Session was expressly empowered to take cognizance of offence as a Court of original jurisdiction, it lacked the power to do so unless a commitment has been made by a Magistrate duly empowered in that regard.

8. After the amendments mentioned above, the Magistrate was not required to record evidence where the case was triable exclusively by a Court of Session. Therefore, the question arose as to whether, the committal proceedings having been abolished, the Session Court was competent to take cognizance of an offence directly without the medium of the Magistrate. In ***Muhammad Aslam and others v. Mst. Natho Bibi*** (PLD 1977 Lahore 535), this Court held that the Magistrate retains the power of taking cognizance in all cases whether triable by him or by the Court of Session, with the only difference that before the amendment he could try cases which fell within his jurisdiction and would commit only those cases for trial which would fall in the exclusive jurisdiction of the Court of Session. The learned Judge pointed out that the word "Court" has been substituted for the term "Magistrate" under section 202 Criminal Procedure Code, but the same has been kept in the text of sections 190, 200 and 201 Cr.P.C. He further stated:

> "As to the argument of the learned Assistant Advocate-General that this interpretation would lead to absurdity because it will serve no meaningful purpose as a case which is ultimately to be tried by the Court of Session should first be taken cognizance of by a Magistrate, it is sufficient to say that this enactment as it stands on the anvil of law, is not without wisdom. The Law Reforms Ordinance has laid a lot of emphasis on the form of the complaint to be made pertaining to the cases triable by the Court of Session, and for that reason, the power of the Magistrate to take initial cognizance of the same has been left intact. This duty has been assigned to the Magistrate under the law to scrutinize the complaints and to find whether they conform to the pro forma laid down in this behalf and applying his mind to the facts of the cue as stated in the complaint his discretion will always remain there to refuse to send the same to the Court of Session. This will positively reduce the burden which otherwise would have fallen on the Court of Session if this power had not been given by law to the Magistrate."

9. The Supreme Court of Pakistan approved the above view in ***Mehar Khan v. Yaqub Khan and another*** (1981 SCMR 267). It added that even under the amended provisions of section 190 Cr.P.C., the Magistrate

---

[1] See note 2.

was required to apply his mind to determine whether the case in question was one he was required to "send" for trial to the Court of Session or if he could try it himself. In ***Riffat Hayat v. Judge Special Court for Suppression of Terrorist Activities, Lahore, and another*** (1994 SCMR 2177), while considering the question as to whether the Special Court established under the Suppression of Terrorist Activities Act, 1975, could take cognizance of a case directly, the Supreme Court observed:

> "Subsection (3) of section 5 of the Act provides that the Special Court may directly take cognizance of a case triable by that Court without the case being sent to it under section 190 of the Criminal Procedure Code. A comparison of provisions of section 190 of the Criminal Procedure Code with section 5 of the Act will show that neither application of section 173 nor section 190 of the Code is excluded either specifically or by necessary implication. The provisions relating to taking of direct cognizance by the Special Court contained in subsection (3) of section 5 of the Act is not a new one as a similar provision for taking cognizance of the case directly by a Magistrate already existed under subsection (2) of section 190 of the Code. Section 5 of the Act, which appears to be a combination of sections 173 and 190 of the Code, differs from these provisions only to the extent hereinafter indicated ... A Court of Session under section 193 of the Code is debarred from taking cognizance of a case as a Court of original jurisdiction unless the case is sent to it by a Magistrate under section 190(3) of the Code whereas a Special Court under the Act can take cognizance of a case directly as a Court of original jurisdiction in the same manner as a Magistrate is empowered to take cognizance of a case under section 190 of the Code."[2]

10. The principle that may be deduced from the above discussion is that a private complaint must be filed with the Magistrate unless the law permits otherwise. The Session Court cannot take cognizance of any offence as a court of original jurisdiction unless the Magistrate sends it the case under section 190(2) Cr.P.C.[3]

11. I am not inclined to agree with the counsel for Respondent No.2 that the direct institution of a private complaint is an irregularity curable under section 537 Cr.P.C. and does not vitiate the proceedings. The rule is well established that where the law requires an act to be done in a specific manner, it has to be done in that manner alone, and such dictate of law cannot be considered a mere technicality. (Latin maxim: *a communi*

---

[2] Act XXXVII of 2001 deleted sub-section (2) of section 190 of the Code and re-numbered sub-section (3) as sub-section (2) w.e.f. 13.08.2001. [See: PLJ 2001 Fed. St. 430]. Therefore, reference to section 190(3) Cr.P.C. in this excerpt may be considered as reference to the present section 190(2) Cr.P.C.

[3] The following cases also reiterate this principle:

Bismillah Khan and other v. The State (2001 PCr.LJ 481); *Muhammad Tayyab Abu Bakar v. Rana Masood Akhtar, Additional Sessions Judge Bahawalpur and others* (2005 PCr.LJ 1496); *Mst. Akhtar Bano v. Umar Baz and other* (2006 PCr.LJ 1101); *Rao Fahd Ali Khan v. The State and other* (2014 PCr.LJ 1071).

observantia non est recedendum). In ***State of Uttar Pradesh vs Singhara Singh and others*** (AIR 1964 SC 358), the Supreme Court of India held that the rule established in *Taylor v. Taylor* [1875] 1 Ch. D. 426, 431, is well recognized and is founded on strong principles. As a result, if a statute confers a power to do an act and specifies how that authority must be exercised, it necessarily prohibits doing the act in any other manner than that which has been prescribed. The principle underlying the rule is that if this were not so, the statutory provision might not have been enacted. Apart from that, Article 189 of the Constitution of 1973 mandates that the law declared by the Supreme Court of Pakistan is binding on all the courts in the country. It has ruled that the provisions of sections 190 and 193 Cr.P.C. are mandatory, as discussed above. The authorities cited by the counsel for Respondent No.2 are distinguishable on facts and deviate from the Supreme Court's dictum.

12. In the present case, Respondent No.2 could not bypass the Magistrate while presenting her private complaint, and the Additional Sessions Judge wrongly assumed jurisdiction over it. The entire proceedings are liable to be quashed. Having held so, I need not go into the merits of the case.

13. This petition is **accepted** and the proceedings in the private complaint titled "*Shehnaz Parveen v. Muhammad Safdar etc.*" undertaken by the Additional Sessions Judge are quashed. However, Respondent No.2 would not be precluded from filing a fresh private complaint in accordance with the law.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge