

Judgment Sheet

ISLAMABAD HIGH COURT
ISLAMABAD

Crl. Misc. No.19-Q/2010

Al-Haj Jafar Ali Alvi

Versus

The State etc.

Petitioner by:

State by:

Mr. Aftab Ahmed Khan Advocate

Rao Abdul Ghaffar, Standing Counsel

Safdar Hussain ASI

Date of hearing:

21-06-2011

Date of decision:

28-06-2011

Riaz Ahmad Khan J: Syed Asad Ullah Kazmi on 30-07-

2005, lodged report in Police Station Kohsar, stating therein that he was Director of M/s Trade House Ltd. having its office at house No.10-A, Street No.53, F-7/4, Islamabad. One Al-Haj Jafar Ali Alvi (present petitioner), who was representing a company namely Busaoud & Jafar Trading Importing Co. LLC approached him in connection of business. Both the parties agreed on sale and purchase of certain material. Mr. Jafar Ali against the purchase of different items, issued following cheques:

S. No.	Cheque Number	Amount of Cheque (In Dirhams)
1.	711614	36,750/-
2.	708862	69,160/-
3.	711619	63,000/-
4.	711618	63,000/-
5.	711620	65,909/-
6.	708914	52,614/-
7.	708915	52,614/-
8.	708916	52,614/-
9.	709000	57,500/-
10.	711651	57,500/-
11.	711652	57,500/-
12.	708911	52,614/-
13.	708912	52,614/-
14.	708913	52,614/-
15.	711653	57,500/-

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16.	711654	57,500/-
17.	711655	57,500/-
18.	715625	30,000/-
19.	715624	30,000/-
20.	711694	30,000/-
21.	711695	30,000/-
22.	711696	30,000/-
23.	711697	30,000/-
24.	711656	59,542/-
25.	711660	57,500/-
26.	715623	30,000/-
27.	711698	30,000/-
28.	711699	41,816/-

All these cheques were dishonoured, so on the above said report, case FIR No.192, dated 30-07-2005, under Section 489-F PPC was registered against the present petitioner.

2. The petitioner filed an application under Section 249-A Cr.P.C. before the learned Illaqa Magistrate; however, the same was dismissed vide order dated 19-11-2009. The petitioner then filed revision petition against the order of dismissal, which was also dismissed by the learned Additional Sessions Judge, Islamabad on 29-06-2010. Thereafter, the present petition under Section 561-A Cr.P.C. was filed for setting aside the orders of the two Courts below and quashing the proceedings pending in the trial Court.

3. Learned counsel for the petitioner contended that the alleged transaction had taken place in Al-Ain. The disputed cheques were offered at Al-Ain in the year 2003. The cheques were offered on behalf of the Company and not by the petitioner in his personal capacity. Furthermore, the complainant had initiated civil as well as criminal proceedings against the petitioner at Al-Ain. As a result of those proceedings the Civil Court at Al-Ain had passed the judgment for payment of disputed amount alongwith interest at the rate of 12% w.e.f. 30-09-2003 till the date of payment. The said order was basically passed against the Company. On criminal side, in

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respect of the disputed cheques, the criminal Court at Al-Ain had passed order and a sentence for imprisonment of two months was passed against the petitioner. Learned counsel for the petitioner submitted that the petitioner had already been punished for same offence at Al-Ain and now the Court at Pakistan has no jurisdiction to re-adjudicate the matter already decided. It was further contended that the case has been pending since 2005 and no evidence has been recorded, so the only object of the complainant was to prolong the agony of petitioner. Learned counsel for the petitioner contended that under Section 188 Cr.P.C., the accused cannot be prosecuted without certificate from the Federal Government and in the absence of the same certificate, the prosecution is illegal.

4. On the other hand, learned Standing Counsel submitted that the offence has been committed abroad, the same can be tried in Pakistan. Learned counsel submitted that the cheques were dishonoured and therefore, case under Section 489-F PPC was registered against the accused / petitioner.

5. I have heard learned counsel for the parties and have also perused the record.

6. Admitted position in the present case is that occurrence had taken place at Al-Ain. The record also shows that in respect of the disputed cheques, Civil Court had passed an order; the petitioner was also tried in the Criminal Court.

7. The offences committed outside Pakistan are dealt with under Section 188 Cr.P.C. For the sake of convenience Section 188 Cr.P.C. is reproduced as below:-

***"Liability for offences committed
outside Pakistan. When a citizen of***

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*Pakistan commits an offence at any place
without and beyond the limits of Pakistan,
or*

*when a servant of the State
(whether a citizen of Pakistan) or not
commits an offence in [a tribal area,] or*

*when any person commits an
offence on any ship or aircraft registered in
Pakistan whenever it may be,*

*he may be dealt with in respect of
such offence as if it had been committed
at any place within Pakistan at which he
may be found:*

***Political Agents to certify fitness of
inquiry into charge.*** Provided that
notwithstanding anything in any of the
preceding sections of this Chapter no
charge as to any such offence shall be
inquired into in Pakistan unless the Political
Agent, if there is one, for the territory in
which the offence is alleged to have been
committed, certifies that, in his opinion, the
charge, ought to be inquired into in
Pakistan; and, where there is no Political
Agent, the sanction of Federal
Government shall be required.

*Provided, also that any proceedings
taken against any person under this
section which would be a bar to*

subsequent proceedings against such person for the same offence if such offence had been committed in Pakistan shall be a bar to further proceedings against him under the [Extradition Act, 1972, (XXI of 1972)] in respect of the same offence in any territory beyond the limits of Pakistan.

8. The section has created a condition for the trial of an offence under it, that the certificate of the Political Agent in the area in which the offence was committed or where there is no Political Agent, the sanction of the Federal Government should be obtained. The object of such a provision is to prevent the accused being tried over again in the same offence in two different places. Reference in this respect may be made to **AIR 1934 Sindh 96.** Where a person commits an offence outside Pakistan and is later on found in Pakistan, there are two courses open, he can be tried in Pakistan under Section 188 Cr.P.C., if a case falls within its purview, or he can be arrested and sent to the place where he committed the offence to take his trial there. This is called extradition. As such certificate from the Political Agent or from the Federal Government is mandatory for the trial of an offence committed outside Pakistan. Reference in this respect may be made to **P L J 2002 (Lahore) 433.**

9. In the present case, no certificate has been issued by the Federal Government for the prosecution of accused / petitioner. The offence was allegedly committed in the year 2003; FIR in Pakistan was registered in the year 2005 and since then the case has been pending. The two Courts below had held that the

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accused had been tried abroad, yet the Courts in Pakistan have jurisdiction. There is no-doubt, the Courts in Pakistan have jurisdiction; however for trial of such an offence, certificate from the Federal Government would be required.

10. In the present case no sanction of Federal Government for the trial of the accused / petitioner is available, so the trial cannot proceed. The petition is accordingly **accepted** and the proceedings pending against the petitioner in the learned trial Court are accordingly **quashed**.

(RIAZ AHMAD KHAN)
JUDGE

Asad K^o

Approved for reporting