2004 P Cr. L J 1545

[Lahore]

Before Sardar Muhammad Aslam, J

MUKHTAR ALI QURESHI---Petitioner

Versus

STATION HOUSE OFFICER, POLICE STATION WESTRIDGE. RAWALPINDI and another---Respondents

Writ Petition No.2184 of 2003, decided on 9th April, 2004.

Constitution of Pakistan (1973)---

----Arts. 12 & 199---Penal Code (XLV of 1860), S.489-F [As inserted vide Criminal Law (Amendment) Ordinance (LXXXV of 2002)]-- Constitutional petition---Quashing of F.I.R.---Cheques issued by accused were allegedly dishonoured on 3-10-2001 whereas S.489-F, P.P.C. was inserted on 25-10-2002 whereby offence was made punishable-- On date of issuance of cheque by accused, offence under S.489-F, P P.C. being not on the Statute Book, accused could not be punished in view of provisions of Art. 12 of the Constitution according to which, no law would authorize punishment of a person for an act not punishable at the time of its commission and restriction had been imposed on Legislature by Art. 12 that it could not punish by retrospective Legislation for an act which was not offence at the time it was done-- Continuation of prosecution in such case would be mere abuse of the process of law ---F.I.R. registered against accused under S.489-F, P.P.C. was quashed, in circumstances---Present order, however, would have no bearing on civil proceedings pending between the parties which were to be adjudicated on merits without being influenced by observations made herein.
Afaf Rahim v. Nisar Ahmed and 2 others 2004 PCr.LJ 263 ref.

M. Ikhlaque Awan for Petitioner.

Raja Muhammad Tariq for the Complainant.

Syed Sajjad Hussain, A.A.-G.

ORDER

Through this petition the petitioner seeks quashment of case F.I.R. No.346, dated 7-7-2003 registered under section 489-F, P.P.C. at Police Station Westridge, Rawalpindi.

2. Learned counsel for the petitioner contends that the offence under section 489-F, P.P.C. was inserted in Pakistan Penal Code vide Ordinance No.LXXXV of 2002, dated 25-10-2002 and thus the same could not be made punishable retrospectively under the provisions of Article 12 of the Constitution of Islamic Republic of Pakistan. Reference can be made to case of Afaf Rahim v. Nisar Ahmed and 2 others 2004 PCr.LJ 263.

3. Conversely, the learned A.A.-G. as we as the learned counsel for the complainant find it difficult to defend the petition.

4. Section 489-F; P.P.C. was inserted into the P.P.C. through Criminal Law (Amendment) Ordinance 2001., on 25-10-2002. A Cheque No.916685 was issued on 3-10-2001 by the petitioner which was dishonoured on presentation and accordingly the

instant F.I.R. was registered. Bare reading of section 489-F, P.P.C. indicates that offence has been made punishable on issuance of a cheque, dishonestly towards repayment of a loan or fulfillment of an obligation which is dishonoured op presentation: The words "whoever dishonestly issue a cheque" provided in section 489-F are of added importance, which means that an offence is constituted, when a cheque is dishonestly issued.

5. On the date of issuance of cheque by the petitioner the offence under section 489-F, P.P.C. was not on the statute book. The petitioner cannot be punished in view of the provisions of Article 12 of the Constitution of Pakistan. reproduced hereinbelow:--

" 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) ..

6. The reading of Article 12 makes it absolutely clear that no law shall authorize punishment of a person for an act not punishable at the time of commission. Restriction has been imposed on the legislative by this Article that it cannot punish by retrospective legislation for an act which was not offence at the time it was done. Constitution of prosecution will be mere abuse to the process of law.

7. In view of the above discussion, this petition is allowed and F.I.R. No.346 dated 7-7-2003 registered under section 489-F. P.P.C. at Police Station Westridge. Rawalpindi is quashed.

8. Needless to observe that order has no bearing on the civil proceedings pending between the parties, which are to be adjudged on its own merits, without being influenced by the observations made herein.

H.B.T./M-260/L Petition allowed.

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