P L D 2005 Lahore 377

Before Muhammad Akhtar Shabbir, J

MUHAMMAD AFZAL, EX-ASSISTANT SUB-INSPECTOR---Petitioner

Versus

SENIOR SUPERINTENDENT OF POLICE, OPERATION, LAHORE and 4 others---Respondents

Writ Petition No.4930 of 2005, decided on 8th April, 2005.

(a) Interpretation of statutes---

---- Every Statute was prima facie prospective, unless it was expressly or by necessary/ implications made to have retrospective operation---Nothing was to be read into a Statute, which was not expressly enacted therein-- Court as a canon of construction would presume that a Statute was not intended to be given retrospective effect unless intention was made clear by express words or necessary implication---Court, while interpreting law, had to give effect to legislative intention by giving ordinary meanings to the words used and Court could not assume the function of Law maker---Judges do make law by interpreting relevant provisions and by removing the ambiguity---Where law-makers had deliberately not given any preference to one category over the other, Court had to recognize that---Any Act or Statute promulgated by Legislature would be effective immediately from the date of its enforcement and it would have no retrospective effect unless so provided in law---Offence which was not provided in the law at the time of occurrence, would not be punished under the offence which was enforced, or added in the Statute after that period.

Rooh Afza v. Muhammad Umar and others PLD 1978 Pesh. 1; Keshavan Madhava Menon v. The State of Bombay AIR 1951 SC 128; Nasimul Haque Malik v. Chief Secretary to Government of Sindh, Karachi and 4 others 1996 SCMR 1264; Mst. Frida and others. v. Rehmatullah and another PLD 1984 Pesh. 117; Dr. Riaz Ahmad and 3 others v. Government of Punjab through Secretary Punjab Secretariat, Lahore and 6 others 1999 PLC (C.S.) 359 and Afaf Rehim v. Nisar Ahmad and 2 others 2004 PCr.LJ 263 ref.

(b) Constitution of Pakistan (1973)---

----Art. 12---Protection against retrospective punishment---No law would authorize punishment of a person for an act not punishable at the time of its commission.

Muhammad Sharif and 3 others v. The State 2004 PCr.LJ 1547 ref.

Muhammad Rafiq Ch. for Petitioner.

Rana Naeem Sarwar, Addl. A.-G. along with Asghar Ali Virk, S. H. O. and Sarwar S.-I.

ORDER

The petitioner through this Constitutional petition seeks quashment of the F.I.R No.860, of 2004 registered under section 155 Police Order, 2002 at Police Station Kahna, Lahore.

2. Briefly stated the prosecution story as narrated in the F.I.R is that Muhammad Afzal A.S.-I. took into possession a vehicle Land Cruiser bearing No.,8086/MNU vide report

No.2 dated 21-12-2000 at Police Station C.I.A Kahan a under section 550 of Criminal Procedure Code and on receipt of illegal gratification he recommended that the vehicle be given on Superdari to one Mst. Shahida Batool wife of Safdar Hussain resident of House No. 152/A Muhallah Arraian Attock City. The said A.S.I Tad taken into custody the said vehicle from the Dera of Shamshir Ali son of Ch. Suleman, Mauza Barki, Lahore. In this context an inquiry was conducted and the D.S.P Muhammad Aslam came to the conclusion that Hadayat Ali real brother of Shamsher Ali is on Officer in Habib Bank and his friend Zubair the other employee of the said Bank saw a lady along with children standing near the said land Cruiser who told Zubair Bank Officer that his vehicle had become out of order and she requested that her vehicle be parked at some safe place and she after repair of the vehicle would take it back 2/3 days after the said date, the vehicle was shown to have been taken in to possession. Zubair stated that he did not know previously this lady neither he met her. At that time she gave her address and telephone number on a Chit of paper and on that telephone he informed the lady that alleged vehicle .had been taken into custody by the police under section 550 Cr.P.C. the Inquiry Officer found the petitioner guilty, recommended for legal action against him and on 30-12-2004, F.I.R. No.860/2004 under section 155 Police Order has been registered against the petitioner on 30-12-2004 at Police Station Kahna, Lahore.

3. Learned counsel for the petitioner contended that the occurrence has taken place in the year 2000 before the, enforcement of the Police Order, 2002 which has provided punishment under section 155 for a negligent Police Officer. On the other, learned A.A.G contended that the inquiry against the petitioner had been concluded in the year 2004 when the Police Order had been enforced in force in the. Province of Punjab, therefore, the F.I.R. was rightly registered against the petitioner.

4. I have heard the arguments of the learned counsel for the parties and perused the record.

5. It is an admitted position that the vehicle No.8086/MNU was taken into possession on 21-12-2004 by Muhammad Afzal A.S.I., C.I.A under section 550, Cr.P.C and thereafter he recommended for handing over the vehicle on Superdari to one Mst. Shahida Batool wife of Safdar Hussain resident of Attock City. The Investigating Officer found the petitioner guilty of the offence. He did not only investigate the case with regard to the vehicle taken into custody by him and without ascertaining the facts that whether Mst. Shahida Batool was real and legal owner of the vehicle he recommended for delivery of he said vehicle to her on Superdari. Be that as it may, the petitioner is a guilty of the offence punishable under any law prevailing at that time: The Police Order, 2002 provided the punishment under section 155. This order was not enacted nor enforced in the year 2000, when the alleged occurrence has taken place. Subsection 2 of Section 1 provided that "it extends to the whole of Pakistan". Subsection (3) further envisages that it shall come into force at once. It would mean that Legislature has intended prospective operation of the Police Laws and not retrospective effect.

6. Every statute is prima facie prospective unless it is expressly or by necessary implications made to hate retrospective operations as laid down in the case of Rooh Afza v. Muhammad Umar and. others (PLD 1978 Peshawar 1). In the case of Keshavan Madhava Menon v. The State of Bombay, (AIR 1951 SC 128) it has been held by the Hon'ble Judges of the then Supreme Court of India that Every Statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operation: It is also settled preposition that nothing is to be read into a statute, which is not expressly enacted therein as laid down in the case of Nasimul Haque Malik v. Chief Secretary to Government of Sindh, Karachi and 4 others (1996 SCMR 1264). The Court as a canon of construction presume that a statute is not intended to be given retrospective effect unless intention is made clear by express

words or necessary implication. In this context reliance can be placed to the case of Mst. Frida and others v. Rehmatullah and another (PLD 1984 Peshawar 117).

7. Protection has been provided by the Constitution of the Islamic Republic of Pakistan against unauthorized punishment of a person. Article 12. of the Constitution enshrines 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.

8. From the bare reading of the above provision of Article 12 of the Constitution, it is manifestly clear that no law shall authorize punishment of a person for an act not punishable at the time of commission. In this context reliance can he placed to the case of Muhammad Sharif and 3 others v. The State (2004 PCr. LJ 1547).

9. Learned Law Officer; when confronted with the position that the Police Order has not provided retrospective operation, could not respond. It has been observed in the case of Dr. Riaz Ahmad and 3 others v. Government of Punjab through Secretary, Punjab Secretariat Lahore and 6 others (1999 PLC (C.S.) 359) that the Court while) interpreting law have to give effect to the legislative intention by giving ordinary meanings to the words used and the High Court cannot assume the function of law-maker, Judges do make law by interpreting' the relevant provisions and by removing the ambiguity---where law-makers have deliberately not given any preference to one category over the other, the Court has to recognize that. This Court has already observed in case of Afaf Rehim v. Nisar Ahmad and 2 others (2004 PCr.LJ 263) that any act or Statute promulgated by the Legislature would be effective immediately from the date of enforcement and it would have no: retrospective effect unless so provided in law. The offence, which was not provided in the law at .the time of this occurrence would not be punished under the offence which was enforced or added in the statute after that period. The alleged allegations against the petitioner are not covered within the offence under section 155 Police Order, 2002.

10. For the foregoing reasons, this writ petition is allowed and the F.I.R. No.860 of 2004 dated 30-12-2004 registered under section 155 Police Order, 2002 at Police. Station Kahna, Lahore is declared to have been registered illegally and without lawful authority, hence quashed.

H.B.T./M-1005/L Petition allowed.

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