

**2010 S C M R 1816****[Supreme Court of Pakistan]****Present: Khalil-ur-Rehman Ramday, Nasir-ul-Mulk and Ch. Ijaz Ahmed, JJ****ZAFAR and others---Petitioners****Versus****UMER HAYAT and others---Respondents**

Criminal Petition No. 732-L of 2009, decided on 14th October, 2009.

(Against the judgment dated 9-6-2009 passed by Lahore High Court, Lahore, in Criminal Revision No. 441 of 2009).

**(a) Criminal Procedure Code (V of 1898)---**

---Ss. 202, 203 & 204---Procedure to be adopted and considerations to be kept in mind in dealing with complaint---Trial Court must scrutinize the contents of the complaint, nature of allegations made therein, supporting material in support of accusation, object intended to be achieved, possibility of victimization and harassment, if any, to ensure itself that no innocent person against whom allegations are levelled should suffer the ordeal of protracted, time consuming and cumbersome process of law.

Abdul Wahab Khan's case 2000 SCMR 1904 ref.

**(b) Criminal Procedure Code (V of 1898)---**

---Ss. 202, 203 & 204---Expressions "if any" and "sufficient grounds for any", as used in S. 203 Cr.P.C.---Significance---Provisions as contained in Ss. 202, 203 and 204, Cr.P.C., if read together, would show that a proper safeguard has been provided by the legislature showing its intention in this regard by using the words "if any" and "sufficient grounds for any" in S. 203, Cr.P.C. and accordingly the frivolous and vexatious complaints must be buried at their inception, where no prima facie case is made out.

Abdul Wahab Khan's case 2000 SCMR 1904 ref.

**(c) Criminal Procedure Code (V of 1898)---**

---S. 204---Penal Code (XLV of 1860), Ss. 302/148/149---Accused summoned by Trial Court in complaint containing counter version---Validity---Nominated accused in the F.I.R. lodged more than seven months earlier under Ss. 302, 148 and

149, P.P.C. had filed the private complaint with a counter version about the same incident and this fact was not considered by Trial Court at the time of issuing summonses to the petitioners/respondents, which was countersigned by High Court without application of mind---Although no limitation is prescribed in criminal prosecution, yet the longer the complaint is delayed the lesser would become the chance of believing in its truth, particularly when the same was based entirely on oral evidence---No sufficient ground existed for issuance of process in the complaint case---Judgments of both the courts below were consequently set aside and the complaint filed by the respondent was dismissed accordingly by Supreme Court.

Abdul Wahab Khan's case 2000 SCMR 1904; Muhammad Salim's case 2001 SCMR 1738; G.M. Sikdar's case PLD 1970 SC 158; Messrs Airport Services' case 1998 SCMR 2268; Ghulam Mohi-ud-Din's case PLD 1964 SC 829; Noor Muhammad's case PLD 2007 SC 9 and Muhammad Saleem's case 1994 SCMR 2213 ref.

**(d) Criminal Procedure Code (V of 1898)---**

---S. 200---Complaint---Limitation---No limitation is prescribed in criminal prosecutions, but the longer a complaint is delayed the lesser becomes the chance of believing in its truth, particularly when it is based entirely upon oral evidence.

M. Aftab Iqbal Chaudhry, Advocate Supreme Court for Petitioners.

Syed Ali Imran Shah, Deputy Prosecutor-General, Punjab for the State.

Date of hearing: 14th October, 2009.

**JUDGMENT**

**CH. IJAZ AHMED, J.**---Petitioners have sought leave to appeal against the impugned judgment of the High Court dated 9-6-2009 wherein the revision petition filed by them against the summonses issued to them by the learned Additional Sessions Judge, Sargodha, vide its order dated 12-5-2009 on the complaint filed by respondent No. 1 was dismissed.

2. Detailed facts have already been mentioned in the impugned judgment and in the memo. of petition. However, necessary facts out of which the present petition arises are that one Rehmatullah son of Dara lodged F.I.R. No.302 of 2008 under sections 302, 148, 149, P.P.C. at Police Station Sillanwali, District Sargodha, on 15-6-2008. According to the contents of the F.I.R. the following persons along with four unknown persons were involved in the murder of Saeedullah, deceased:--

(a) Umer Hayat son of Ghulam Muhammad;

(b) Ahmad Hayat son of Ghulam Muhammad;

- (c) Muhammad Yaseen son of Abdul Ghafoor;
- (d) Sana Ullah son of Ahmad Hayat;
- (e) Muhammad Naeem son of Inayat Ullah;
- (f) Rehmat Ullah son of Noor Muhammad;
- (g) Muhammad Riaz son of Raja;
- (h) Amjad Sana son of Sanaullah and
- (i) Saleem Ullah son of Abdul Ghafoor.

Respondent No.1 Umar Hayat who is nominated accused in the said F.I.R. filed complaint in the Court of Additional Sessions Judge Sargodha on 9-2-2009 regarding same occurrence by his counter version. The learned Additional Sessions Judge after recording evidence of complainant Umer Hayat (respondent) who also produced Hafeezullah (P.W.2) and Ghulam Muhammad (P.W.3) in support of his version and also submitted postmortem report of Saeedullah before the Court. The learned Additional Sessions Judge issued summonses to the petitioners/ respondents vide order dated 12-5-2009. Petitioners being aggrieved filed Criminal Revision No. 441 of 2009 in the Lahore High Court which was dismissed vide impugned judgment. The above petition was fixed before this Court on 25-8-2009 wherein it was ordered to issue notice to respondent No.1. Office had issued notice to respondent No.1 but he did not turn up in spite of the service.

3. Learned counsel for the petitioners submits as under:

- (i) F.I.R. was lodged qua the same incident on 15-6-2008 whereas the complaint was filed by respondent No. 1 with regard to the same incident by his counter version in the court of Additional Sessions Judge on 9-2-2009 without explaining delay for filing belated complaint before the said Court.
- (ii) The complainant had only mentioned in the contents of the complaint that he had approached high officers of the police for recording his counter version but police failed to record his counter version on the political influence of the petitioners/ respondents. It is the duty and obligation of the trial Court to issue summons to the petitioners/respondents after application of mind but the learned trial Court did not apply its mind as is evident from para 2 of the order of the Additional Sessions Judge dated 12-5-2009.
- (iii) The learned High Court has also countersigned the order of the trial Court without application of mind.
- (iv) Challan has already been submitted after investigation by the police in terms of the F.I.R. No.304 of 2008 mentioned hereinabove and the trial court was almost at the verge of the conclusion and the statements of all the material

eye-witnesses have been recorded and suddenly out of the blue, a complaint was lodged by respondent No.1 accused party, implicating the complainant and eye-witnesses of the F.I.R. case as accused and this fact was riot considered while summoning the petitioners/ respondents. This fact was also not considered by the learned High Court in the impugned judgment.

4. The learned Deputy Prosecutor-General has supported the impugned judgment.
5. We have given our anxious consideration to the contentions of the learned counsel of the parties and perused the record.
6. It is better and appropriate to reproduce the admitted facts in chronological order to resolve the controversy between the parties which are as follows:
  - (a) F.I.R. was lodged on 15-6-2008 by one Rehmatullah son of Dara against Respondent No.1 and his co-accused.
  - (b) Challan has already been submitted before the learned Additional Sessions Judge Sargodha.
  - (c) Statements of almost all the material witnesses have been recorded by the learned Additional Sessions Judge in the abovementioned F. I . R.
  - (d) Respondent No.1 filed complaint before the Additional Sessions Judge on 9-2-2009.

It is pertinent to mention here that same Additional Sessions Judge had recorded evidence in the aforesaid F.I.R. case against respondent No.1 and his co-accused qua the same incident with counter version. It is duty and obligation of the trial Court to scrutinize the contents of the complaint, nature of allegation made therein supporting material in support of accusation, the object intended to be achieved, the possibility of victimization and harassment, if any, to ensure itself that no innocent person against whom allegations are levelled should suffer the ordeal of protracted time consuming and cumbersome process of law. It is also settled principle of law that the provisions as contained in sections 202 to 204, Cr.P.C. if read together would show that a proper safeguard has been provided by the Legislature which showed its such intention by using the words "if any" and "sufficient grounds for any" in section 203, Cr.P.C. and accordingly the frivolous and vexatious complaints must be buried at their inception where no prima facie case is made out. See Abdul Wahab Khan's case (2000 SCMR 1904). It is also settled principle of law that every one has a right to approach the court for redress of grievances but the same is subject to condition that sufficient grounds for issuance of process is made out. In the case in hand, we have found that there was no sufficient ground for issuance of process considering the facts that earlier also F.I.R. No.304 of 2008 was got registered by one Rehmatullah son of Dara but after about more than seven months counter version has been brought by respondent No.1 about the same incident. This fact was not considered by the trial Court at the time of issuing summons to the petitioners/respondents which was countersigned by the learned High Court without application of mind as is evident from the impugned judgment.

Judgments of both the courts below are not in consonance with the dictum laid down by this Court in Muhammad Salim's case (2001 SCMR 1738). It is also settled principle of law that although no such thing as limitation is prescribed in criminal prosecutions, but yet on the other hand the longer complaint is delayed the less becomes the chance of believing in its truth, more particularly when it is based upon entirely oral evidence. It is also settled principle of law that all the laws of the land must wear in the sleeves of the Judge. It is basic and fundamental principle of law that it is duty and obligation of the learned Additional Sessions Judge and the learned High Court to decide the controversy between the parties after application of mind as law laid down by this Court in G.M. Sikdar's case (PLD 1970 SC 158). Every public functionaries are duty bound to decide the applications of the citizens after application of mind after addition of section 24-A in the General Clauses Act as law laid down by this Court in Messrs Airport Services' case (1998 SCMR 2268). As mentioned above the learned High Court had countersigned judgment of the trial Court, therefore, judgment of the learned High Court is not sustainable in the eyes of law as law laid down by this Court in Ghulam Mohi-ud-Din's case (PLD 1964 SC 829).

7. The learned High Court had non-suited the petitioners in view of the law laid down by this Court in Noor Muhammad 's case (PLD 2007 SC 9). It is settled principle of law that each and every case is to be decided on its own peculiar circumstances and facts as law laid down by this Court in Muhammad Saleem's case (1994 SCMR 2213). The facts of the case in hand are entirely distinguished from the cited case.

8. In view of what has been discussed above the impugned judgments of both the courts below are set aside. Consequently the complaint filed by respondent is dismissed. The petition is converted into appeal and appeal is allowed with no orders as to costs.

N.H.Q./Z-13/SC Appeal allowed.

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