

2005 P Cr. L J 623

[Peshawar]

Before Shahzad Akbar Khan and Fazlur Rehman Khan, JJ

Maulana MUHAMMAD ILYAS QADRI---Petitioner

versus

SUPERINTENDENT OF POLICE, HARIPUR DISTRICT and 3 others---Respondents

Writ Petition No.234 of 2002, heard on 21st September, 2004.

Penal Code (XLV of 1860)---

---S. 182---Criminal Procedure Code (V of 1898), S.195---Constitution of Pakistan (1973), Art.199---Constitutional petition---Quashing of proceedings---Petitioner had sought quashing of proceedings initiated against him under S. 182, P.P.C. in the Court of Judicial Magistrate alleging that complaint filed by Police against him under S.182, P.P.C. was not competent as it was contrary to mandatory provisions of S.195, Cr.P.C. under which any offence punishable under Ss. 172 to 188, P.P.C. would be taken cognizance of only when complaint was made in writing by public servant concerned or by some other public servant to whom he was subordinate---Public servant concerned in the present case, was S.H.O. of Police Station concerned whereas complaint against petitioner under S. 182, P.P.C. had been filed by another official of said Police Station who being subordinate to S.H.O. was wholly incompetent---Validity---When a thing was required to be done by law in a particular manner it should be done in that manner or not at all---Complaint in the present case having been filed by a person not authorized by law, no proceedings could be initiated against petitioner on such invalid complaint---High Court allowing Constitutional petition set aside impugned proceedings initiated against petitioner in the Court of Magistrate observing that public servant concerned could file a fresh complaint in absence of any legal bar in his way.

Khalid Rehman Qureshi for Petitioner.

Qari Abdur Rashid, A.A.-G. for Respondents.

Date of hearing: 21st September, 2004.

JUDGMENT

SHAHZAD AKBAR KHAN, J.--- Petitioner Maulana Muhammad Ilyas Qadri has filed this writ petition soliciting the quashment of the Criminal Proceeding No.581 of 2002 initiated against him under section 182, P.P.C. in the Court of Judicial Magistrate, Haripur.

2. Short facts of the case are that the petitioner is running a registered welfare society in his native village namely Padhana where he administers treatment to the addicts of narcotics. A considerable number of the addicts were admitted with him for their treatment. On 15-8-2002 he made a report to S.H.O. Police Station Khalabat Township complaining therein that one Raja Muhammad Arif came to his institution duly armed with pistol and wanted to visit a

patient namely Kamran. The petitioner refused to allow him to enter his premises due to which Raja Muhammad Arif aimed his pistol towards the petitioner and extended threats followed by two fires made on the petitioner with the pistol by Raja Muhammad Arif. However, he escaped unhurt. Instead of registering the case respondent No.3, i.e. S.H.O. of the concerned police station ordered an inquiry in the matter which appears to have been conducted by an I.H.C. of the same police station. The outcome of the inquiry according to the respondents was that a false report was made by the petitioner. Resultantly, a complaint under section 182, P.P.C. was filed in the Court of Judicial Magistrate of the area who issued a notice in the name of the petitioner for his appearance. The filing of the complaint caused grievances to the petitioner obliging him to file the instant petition.

3. The learned counsel appearing on behalf of the petitioner has at the very outset of his arguments argued a legal point that the complaint filed by the I.H.C. under section 182, P.P.C. was not competent being contrary to the mandatory provision of section 195, Cr.P.C. as the cognizance of such a complaint is made conditional on the fact that the complaint shall be made by the public servant concerned or some other public servant to whom he is subordinate. It was urged that as the complaint was made to the S.H.O., therefore, only the S.H.O. or an officer to whom he was subordinate could legally file a complaint.

4. The learned Deputy Advocate-General being confronted with this legal objection could not refute the argument of the learned counsel for the petitioner.

5. We have considered the arguments of the learned counsel for the petitioner in the light of the relevant provision of law and have avidly read the record. For proper appreciation of the controversy and the relevant portion of section 195, Cr.P.C. is reproduced below:--

“195. Prosecution for contempt of lawful authority of public servants: Prosecution for certain offences against public justice: Prosecution for certain offences relating to documents given in evidence.---(1) No Court shall take cognizance:

(a) of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate”

A plain reading of the above provision of law would make it clear that any offence punishable under sections 172 to 188 of the Pakistan Penal Code shall be taken cognizance of only when the complaint is made in writing by the public servant concerned or by some other public servant to whom he is subordinate. The pronoun “he” is relateable to the public servant concerned. In the instant case the public servant concerned was S.H.O. to whom the petitioner had made the complaint. Therefore, the I.H.C. who filed complaint against the petitioner under section 182, P.P.C. was wholly incompetent being in flagrant violation of the above quoted law. It is a settled legal position that when a thing is required to be done by law in a particular manner it shall be done in the manner demanded by the law or not at all.

6. The net result of the above discussion would be that the complaint was filed by a person not authorized by law, therefore, no proceedings could be initiated against the petitioner on such invalid complaint. Resultantly, we are obliged to allow this writ petition and set aside the impugned proceedings initiated against the petitioner in the Court of concerned Magistrate. The learned D.A.-G. had urged that the incompetency of instant

complaint is purely on a technical ground and such infirmity can be removed, therefore, observation by this Court be made that a fresh complaint can be filed after removing the technical lacuna. We, therefore, observe that the public servant concerned may file a fresh complaint in absence of any legal bar in his way.

H.B.T./328/P

Petition allowed.