

1994 S C M R 798

[Supreme Court of Pakistan]

Present: Saad Saood Jan and Sajjad Ali Shah, JJ

THE STATE---Petitioner

versus

ASIF ALI ZARDARI and another---Respondents

Criminal Petition No. 75 of 1991, decided on 24th January, 1994.

(On appeal from the judgment of the High Court of Sindh dated 26-9-1991 passed in Cr.Misc. Application No.150/1991).

(a) Offences In Respect of Banks (Special Courts) Ordinance (IX of 1984)---

---S. 10---Criminal Procedure Code (V of 1898), S. 561-A---Scope of S. 10, Offences in Respect of Banks (Special Courts) Ordinance, 1984---Provision of S.10, Offences in Respect of Banks (Special Courts) Ordinance, 1984 does not expressly or impliedly bar the jurisdiction of the High Court under S. 561-A, Cr.P.C.

Section 10 of the Offences in Respect of Banks (Special Courts) Ordinance, 1984 envisages that a person sentenced by a Special Court shall have a right of appeal to the High Court and further no Court shall have authority to revise such sentence or to transfer any case from a Special Court or to make any order under section 426 or section 491 or section 498 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Court. There is no prohibition in this provision express or implied that jurisdiction of the High Court under section 561-A, Cr.P.C. is barred.

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

---S. 249-A---Acquittal of accused under S. 249-A---Requirements.

Section 249-A, Cr.P.C. empowers the Presiding Officer of the trial Court to acquit accused at any stage of the trial and the only requirements to be fulfilled are firstly that hearing is to be given to the prosecutor and counsel of accused and secondly reasons are to be recorded in support of conclusion that charge is groundless or that there is no probability of accused being convicted. It is very clear that application can be filed at any stage of the proceedings and it is not necessary and there is no requirement that such application is to be filed after evidence of all the witnesses is recorded.

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

---S. 561-A---Powers of High Court under S. 561-A, Cr.P.C: --Nature.

Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by the High Court at any time. Ordinarily High Court does not quash proceedings under section 561-A, Cr.P.C. unless trial Court exercised its powers under section 249-A or 265-K, Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment of proceedings as envisaged under section 561-A, Cr.P.C. In exceptional cases High Court can exercise its jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C. if the fact of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

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

---S. 561-A---Prevention of Corruption Act (II of 1947), S. 5 (2)---Penal Code (XLV of 1860), Ss. 420, 468 & 471---Offences in Respect of Banks (Special Courts) Ordinance (IX of 1984), S. 10---Constitution of Pakistan (1973), Art. 185 (3)---Quashing of proceedings by High Court under S. 561-A, Cr.P.C:---No flaw or legal infirmity in the conclusions drawn by High Court was found which was done after fair appraisal of evidence and discussion of correct legal position as was enumerated in the case-law cited and relied upon in the impugned judgment for and against the propositions which were elaborately discussed in detail---No justifiable reason was available to disagree with the High Court---Supreme Court refused to grant leave to appeal against order of the High Court in circumstances.

Abdul Haleem Pirzada, Advocate-General Sindh for Petitioner.
Raja Qureshi, Advocate Supreme Court for Respondent No.1.

Date of hearing: 24th January, 1994.