

P L D 1967 Supreme Court 425

Present: A. R. Cornelius, C. J., Fazle-Akbar and

Muhammad Yaqub Ali, JJ

FALAK SHER AND ANOTHER-Appellants

versus

THE STATE-Respondent

Criminal Appeal No. 22 of 1967, decided on 10th March 1967.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 21st December 1965, in Criminal Revision No. 991 of 1965).

(a) Constitution of Pakistan (1962), Art. 58(3)-Leave to appeal-Granted by Supreme Court to consider whether Magistrate was entitled to take cognizance, under S. 190(6), Criminal Procedure Code (V of 1898), of case of accused shown in column 2 of challan, submitted under S. 173, Criminal Procedure Code (V of 1898).

(b) Criminal Procedure Code (V of 1898), S. 190(6) read with S. 173-Magistrate may take cognizance under S. 190(6) of case of accused shown as innocent in column 2 of report submitted under S. 173. Held, that the action of the Magistrate in issuing summons to accused despite the fact that the investigating officer in his report under section 173, Cr. P. C. had placed their names in column 2 thereof was correct.

Under subsection (3) when it appears from the report forwarded under subsection (1), that the accused has been released on his bond "the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit". It is clear that under subsection (3) of section 173 a Magistrate may agree or may not agree with the police report. It, however, does not say what step the Magistrate should take if he disagrees with the police report. If the Magistrate wants to start a proceeding against the accused, he must act under section 190 of the Code of Criminal Procedure.

The Magistrate is not bound by the report submitted by the police under section 173. When the said report is received by the Magistrate, the Magistrate on the report itself may not agree with the conclusions reached by the investigating officer. There is nothing in section 190 to prevent a Magistrate from taking cognizance of the case under clause (b) in spite of the police report *Sardar All and others v. The State P. S. L. A. No. 66 of 1966* and *Muhammad Nawaz Khan v. Noor Muhammad and others P L D 1967 Lah. 176 ref.*

Masud Ahmad Khan, Advocate Supreme Court instructed by Ghulam Mohyuddin, Attorney for Appellants.

Raja Said Akbar, Advocate-General West Pakistan (A. Waheed Khawaja, Advocate Supreme Court with him) instructed by Ijaz Ali, Attorney for Respondent.

Date of hearing: 10th March 1967