

P L D 2009 Supreme Court 809

Present: Iftikhar Muhammad Chaudhry, C.J., Jawed Iqbal, Raja Fayyaz Ahmad, Ch. Ijaz Ahmed, Sayed Zahid Hussain, and Muhammad Sair Ali, JJ

SHAH HUSSAIN---Petitioner

Versus

THE STATE---Respondent

Jail Petition No. 56 of 2005, decided on 1st June, 2009

* Judgment of Ch. Ijaz Ahmed, J., was inadvertently omitted to be published along with the judgment of Iftikhar Muhammad Chaudhry, C.J. in PLD 2009 SC 460 (July issue). The omitted judgment is being published now and may be read as part of PLD 2009 SC 460.

(On appeal against the judgment dated 11-9-2003 passed by the Peshawar High Court, Abbottabad Bench in CrI. Appeal No. 61/2001)

Per Ch. Ijaz Ahmed, J. agreeing with Iftikhar Muhammad Chaudhry, C.J.---

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

---S. 382-B---Intent, object and scope of S.382-B, Cr.P.C.---Duty of Court---Provision of S.382-B, Cr.P.C. is mandatory in character---Exception.

Justice delayed is justice denied. In view of undue delay in criminal trials, either due to shortage of judicial officers or failure in procedural working, the necessity occurs to give benefit to the accused/prisoners. Section 382-B, Cr.P.C. was therefore, introduced through Law Reforms Ordinance, 1972 in Criminal Procedure Code.

Right of speedy trial of any accused is one of the basic and fundamental rights to life and liberty as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan. It is the constitutional obligation of the State that cases of the under-trial prisoners must be finalized as soon as possible.

The paramount purpose of criminal justice is the protection of the innocent and the punishment to the offender.

Once the benefit of section 382-B, Cr.P.C. has been given to any of the accused at the time of awarding conviction/punishment then it deems to be effected on the date of arrest that is why the period he had remained in jail during the period of trial before the announcement of his conviction would be deducted otherwise it would not be possible. The insertion of section 382-B is based on principles of equity and justice on the basis of which the detention period undergone by accused as under-trial prisoner is deducted from his sentence. The purpose and object of the provisions of law/Act for which it was enacted must be kept in mind at the time of interpretation of the same.

Court can supply an obvious omission in a particular provision of statute or omit the same which is apparently redundant in the context of the provision keeping in view the principle, viz; to advance object of the Act and not to frustrate the same. There are several guiding principles laid down by the superior courts qua supplying of omission such as the one that such interpretation should be preferred which carries into effect the object of the statute.

The object of this section is to compensate the accused if he has remained incarcerated for long period as under-trial prisoner and bail was not granted to him. The object of this provision of law is to grant to the accused the benefit of concession by treating, in appropriate cases, the period of detention undergone by him as an under-trial prisoner as that spent by him as a convict so as to relieve him from the burden of undue incarceration to which he may have been subject as a result-of any delay in the trial. In view of the mandatory language of this section, the court is duty bound in each case to apply its mind to this question, but this does not mean that it is bound in all cases to grant the concession. The

trial Court should therefore, in each case record its reasons for withholding the said concession. Since the provision is founded in equity, this section should be liberally applied, unless for certain strong or special reasons, to be expressly recorded, the court considers otherwise.

Section 382-B, Cr.P.C. cast a duty on a court while awarding sentence of imprisonment to take into consideration the period, if any, during which, such accused was in custody for such offence. This being a palliative provision is an important string to maintain a balance among different theories of punishment. A perfect system of criminal justice cannot be based on any one theory of punishment. Every theory has its own merits and every effort must be made to take the good points of all.

The deterrent aspect of punishment must not be ignored. Likewise, the reformatory aspect must be given its due place. The personality of the offender is as important as his action and court must not divorce his action from his personality. The offender is not merely a criminal to be punished. He is also a patient to be treated. Punishment must be in proportion to the gravity of the crime. If interpretation of any provision of criminal law confers any benefit upon the accused, then that benefit should be given to the accused as accused is a favourite child of law. Section 382-B, Cr.P.C. takes care of maladies of administration of justice and fundamental rights of accused relating to life and speedy trial. In fact, the intent and object of section 382-B Cr.P.C. is based on a legal maxim *actus curiae neminem gravabit*, that is, an act of court shall prejudice no man. The use of word "shall" in the above stated contributory circumstances has rendered the provision of section 382-B, Cr.P.C. mandatory in character and, therefore, a court is bound to give benefit of section 382-B, Cr.P.C. to the accused while awarding sentence of imprisonment unless otherwise found by the court.

(b) Interpretation of statutes---

---Court can supply an obvious omission in a particular provision of statute or omit the same which is apparently redundant in the context of the provision keeping in view of the principle that to advance object of the Act and not to frustrate the same---Construction which carries into effect the object of the statute be preferred.

Qadir and another v. The State PLD 1991 SC 1065; Hussain Ara Khatoon's case AIR 1979 SC 1360 at 1367; Hussain Ara Khatoon and others' v. Home Secretary State of Bihar Patna AIR 1979 SC 1369; State of Andhra Pradesh v. P.V. Pavithran AIR 1990 SC 1266; Abdul Rehman Antulay and others v. R.S. Nayak and another AIR 1992 SC 1701; P. Ramachandra Rao v. State of Karnataka AIR 2002 SC 1856 and Smt. Maneka Gandhi v. Union of India and another AIR 1978 SC 597 ref.\

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Sh.Zameer Hussain, Senior Advocate Supreme Court.

Ms. Naheeda Mehboob Elahi, D.A.G.

Qazi Muhammad Amin, Addl. A.-G.

Muhammad Naeem Sheikh, Advocate Supreme Court (with permission of the Court).

Dates of hearing: 7th & 11th May, 2009.