



# MONTHLY CASE LAW UPDATE

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## **CONSTITUTION OF PAKISTAN**

- 1) Gohar Nawaz Sindhu vs. Mian Muhammad Nawaz Sharif and others

(PLD 2014 Lahore 670)

### *Ijaz-ul-Ahsan and Faisal Zaman Khan, JJ*

Constitutional petition filed before the High Court seeking disqualification of Prime Minister for 'lying' in Parliament

Present issue raised a political question, which was not justiciable in constitutional jurisdiction of the High Court. For addressing a political question adequate and sufficient mechanisms were available in the Constitution as well as in the Rules of Procedure and Conduct of Business in National Assembly, 2007

Such factual inquiry could not ordinarily be undertaken by the High Court in its constitutional jurisdiction.

## **CIVIL PROCEDURE CODE**

- 2) Global CNG Chakwal vs. Sui Northern Gas Pipelines and another

(PLD 2014 Lahore 570)

### *Mamoon Rashid Sheikh and Shahid Jamil Khan, JJ*

Proprietary firm may sue in its name but cannot bring legal action in its name. Where a person mistakenly sued in his trade name, then exceptionally necessary corrections/amendments were allowed subject to the law of limitation.

## CRIMINAL PROCEDURE CODE

### 3) SARWAR and others vs. The State and others

(2014 SCMR 1762)

*Mian Saqib Nisar, Asif Saeed Khan Khosa, Sh. Azmat Saeed, Iqbal Hameedur Rahman and Dost Muhammad Khan, JJ*

Supreme Court formulated the following principles in relation to furnishing a bond under section 91, Cr.P.C, when an accused had been summoned by the Trial Court under section 204, Cr.P.C. to face trial in connection with a private complaint:

(i) Issuance of process by a court through summons for appearance of an accused person before the court neither amounted to arrest of the accused person nor it could ipso facto give rise to an apprehension of arrest on his part and, thus, such accused person could not apply for pre-arrest bail.

(ii) A process was issued to an accused person under section 204, Cr.P.C. when the court taking cognizance of the offence was of the "opinion" that there was "sufficient ground" for "proceeding" against the accused person. Opinion of a court about availability of sufficient ground for proceeding against an accused person could not be equated with appearance of "reasonable grounds" to the court for "believing" that he "has been guilty" of an offence within the contemplation of section 497(1), Cr.P.C. Due to such differences in the words used in section 204 and section 497, Cr.P.C. the intent of the legislature became apparent that the provisions of section 91, Cr.P.C. and section 497, Cr.P.C. were meant to cater for different situations.

(iii) If the court issuing process against an accused person decided to issue summons for appearance of the accused before it then the intention of the court was not to put the accused person under any restraint at that stage. If the accused person appeared before the court in response to the summons issued for his appearance then the court may require

him to execute a bond, with or without sureties, so as to ensure his future appearance before the court as and when required.

(iv) If in response to the summons issued for his appearance the accused person appeared before the court but failed to submit the requisite bond for his future appearance to the satisfaction of the court or to provide the required sureties then the accused person may be committed by the court to custody till he submitted the requisite bond or provided the required sureties.

(v) If the process issued by a court against an accused person under section 204, Cr.P.C. was through a warrant, bailable or non-bailable, then the accused person may be under some kind or form of restraint and, therefore, he may apply for his pre-arrest bail if he so choose which may or may not be granted by the court depending upon the circumstances of the case, but even in such a case upon appearance of the accused person before the court he may, in the discretion of the court, be required by the court to execute a bond for his future appearance, with or without sureties, obviating the requirement of bail.

### 4) Alam Zeb and another vs. The State and others

(PLD 2014 S.C. 760)

*Asif Saeed Khan Khosa and Iqbal Hameedur Rahman, JJ*

Reasonable grounds had to be grounds which were legally tenable, admissible in evidence and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary or presumptuous.

### 5) Muhammad Ali vs. Additional I.G., Faisalabad and others

(PLD 2014 S.C. 753)

*Mian Saqib Nisar, sif Saeed Khan Khosa and Sh. Azmat Saeed, JJ*

It has been held that order passed by the ex-officio Justice of the Peace under S.22-A(6) Cr.P.C. is an executive/administrative order and petition filed before the High Court under S.561-A Cr.P.C. impugning such order of Justice of Peace is not competent or maintainable. Jurisdiction of High Court under S. 561-A, Cr.P.C. could be exercised only in respect of orders or proceedings of a court.

Held further:-

High Court while seized of a petition filed under S.561-A, Cr.P.C. had no jurisdiction to interfere in the investigation of criminal case.

6) Talib Hussain vs. The State and others

(PLD 2014 Lahore 574)

*Before Muhammad Qasim Khan and Muhammad Tariq Abbasi, JJ*

History of insertion of S.426(2B), Cr.P.C. and amendments therein have been traced.

7) Ghulam Farid vs. The State and others

(2014 P Cr. L J 1803)

*Sikandar Zulqarnain Saleem and Muhammad Qasim Khan, JJ*

Object and scope of summoning a person as witness was discussed. Provision of S.540, Cr.P.C. is divided into two parts first is discretionary in nature, whereas the second is mandatory. Solitary purpose of judicial proceedings in criminal cases is to find out truth and to arrive at a correct calculation and to see that no innocent person is punished. If it appears essential to Court that evidence is necessary for just decision of case, Trial Court is vested with jurisdiction to re-examine any witness and the only requirement is that his/her examination should be essential for the just decision of the case.

8) Saleemullah Khan vs. The State

(2014 P Cr. L J 1799)

*Nadeem Akhtar, J*

In this judgment principles of forfeiture of surety bond under S. 514 have been described by observing that where there was nothing on record to suggest that the surety had any other consideration except the benevolence of the accused, or stood surety for the accused out of charitable motive and not to derive any monetary benefit and there was no ulterior motive or connivance on his part, the surety should not be penalized heavily or treated harshly in case of non-appearance of the accused. High Court reduced the penalty imposed on applicant which was equivalent to the fine imposed by Trial Court.

## INTERPRETATION OF STATUTES

9) M.I. Sanitary Store through Proprietor and another vs. Federation of Pakistan through Secretary Commerce and 2 others

(PLD 2014 Lahore 583)

*Syed Mansoor Ali Shah, J*

Interpretation of a statute must be fashioned in a manner that advanced the purpose of the statute.

## INDUSTRIAL RELATIONS ACT

10) National Telecommunication Corporation through Chairman vs. National Industrial Relations Commission through Chairman and others

(2014 SCMR 1833)

*Ejaz Afzal Khan and Iqbal Hameedur Rahman, JJ*

Industrial Relations Act, 2012 would not apply to the officers and employees of the National Telecommunication Corporation. Reference to Art. 17(1) of the Constitution would not help attract application of the Industrial Relations Act, 2012, to the officers and employees of the National Telecommunication Corporation notwithstanding it would not restrict their right to form associations or unions to voice their grievance and negotiate with their employers for better terms of their employment.

### **PUNJAB PRE-EMPTION ACT**

11) Muhammad Anwar vs. Bashir Ahmad and another

(2014 CLC 1819)

*Ch. Muhammad Masood Jahangir, J*

It was laid down that where date regarding dispatch of performance of Talb-i-Ishhad was not mentioned then it is fatal for pre-emptor. Right of pre-emption could not succeed on account of such lapse.

12) Muhammad Shabbir through Legal Representatives and 3 others vs. Muhammad Zafeer

(2014 CLD 1617)

*Amin-ud-Din Khan, J*

In suit for malicious prosecution it was held that cause of action would disappear and extinguish with the death of wrong doer or to the party wronged on the basis of maxim "actio personalis moriture cum persona".

### **LAND ACQUISITION ACT**

13) Fazal Khaliq and another vs. National Highway Authority and 2 others

(2014 CLC 465)

*Mamoon Rashid Sheikh and Kh. Imtiaz Ahmad, JJ*

If any person is not satisfied with award he may file application before Collector to refer the matter to Referee Court for determination of his objection whether it is in respect of measurement of land or amount of compensation payable or the person to whom it is payable or the apportionment of compensation amongst persons interested.

If person making application was present or represented before Collector at the time of making award, then application has to be filed within six weeks from the date of the award. If person making application was neither present nor represented at the time of making of award, then application can be made within six weeks of the receipt of the notice under S.12(2) of Land Acquisition Act, 1894, from Collector or within six months from the date of award whichever period expires first.

Referee Court could not go behind the reference and reject it being barred by limitation or to hold that reference had been illegally made as application for making reference was beyond time. High Court set aside the order rejecting the reference and remanded the case to Referee Court for decision afresh. Appeal was allowed in circumstances.