

This bail application is moved on behalf of Ghulam Muhammad, son of Abdul Sattar who is challaned under section 317/511, P. P. C. and section 12/18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The facts are that on 8-10-1982 complainant Muhammad Haroon who is a student of 10th Class had gone to Moolchand forest to hand over his business to herdsman Motan. After doing so he was returning when he was encountered near Bhada by Ghulam Muhammad, the present applicant who requested him to permit him to commit sodomy on him. The boy refused. After that Ghulam Muhammad caught him by arm and drew knife which was tied in the right leg and forced his Shalwar to be put off. As he did so the boy began crying and raising an alarm which attracted Muhammad Hasan and Ghulam Muhammad. On seeing them the applicant ran away. This happened on 8th of October 1982 while the F. I. R. is lodged on 12th October, 1982. The late filing of the F. I. R. is due to the fact that the parties were expecting a Faisla at the hands of certain Nekmards.

I have heard the learned counsel for the applicant, Mr. Madad Ali Shah and Mr. Sarfraz Ahmad A. A.-G. for the State and also Mr. Aftab Akhund for the complainant. The arguments of the learned A. A. G. are that the offence under Hudood Ordinance is punishable for life imprisonment and as such he opposes the grant of bail. Similar are the arguments advanced by learned Advocate for the complainant.

Mr. Madad Ali Shah referred me to F. I. R. the true copy of which is filed alongwith the present bail application in which one Muhammad Ishaq who is said to be the brother of complainant Muhammad Haroon had filed the F. I. R. under sections 457 and 380, P. P. C., had shown suspicion in F. I. R. against applicant Ghulam Muhammad and his father Abdul Sattar. The said F. I. R. was filed about a month before the filing of the present F. I. R. by the victim boy. It is clear that there does appear a grouse *inter alia* between the parties. The learned counsel has urged that the delay in filing the F. I. R. coupled with existence of enmity is a factor which entitles the applicant for the grant of bail and ultimately the case may not be proved. I feel that in the circumstances the applicant is entitled to bail. He be released on bail furnishing surety in the sum of Rs. 5,000 and P. R. bond in the like amount to the satisfaction of the trial Court.

Bail allowed.

1983 P Cr. L J 889

[Karachi]

Before Z. C. Vallani, J

NOORUDDIN—Applicant

versus

THE STATE—Respondent

Criminal Miscellaneous No. 580 of 1982, decided on 18th November, 1982.

Criminal Procedure Code (V of 1898)—

— S. 561-A read with Pakistan (Control of Entry) Ordinance (X of 1952), Ss. 3, 4 & 6—Quashment of proceedings—No permission for arrest of accused applicant an Indian National, obtained from Central or Provincial Government as required by S. 6 of Ordinance—Offences.

under S. 3/4 of Ordinance, for which accused applicant arrested, being non-cognizable and his arrest also being unauthorised, proceedings pending against him quashed, in circumstances. [p. 891]A

1981 P Cr. L J 1008 ref.

Muhammad Ali Shaikh for Appellant.

Sattar Shaikh, Addl. A.-G. for the State.

Date of hearing : 3rd November, 1982.

JUDGMENT

The applicant above-named has filed the above petition under section 561-A, Cr. P. C. for quashment of proceedings pending against him, under section 3/4, Pakistan Entry Ordinance, 1952, in the Court of A. D. C. (U. T.) Hyderabad, on the following facts and grounds :—

2. That the facts leading to this quashment application in brief are that one Muhammad Farooq A. S. I. Market Police Station, Hyderabad had lodged the report against the applicant above-named on the directions given by D. I. B. Office on the Superintendent of Police Hyderabad (P. R. O.) disclosing therein in the F. I. R. that the applicant above-named is an Indian National and at present he is residing at Ilyasabad (Phuleli) Hyderabad and he came to Pakistan on the authority of Indian Passport No. L. 065457 dated 18-5-1977 bearing Visa No. 13823/77 issued by High Commissioner of Pakistan at Delhi. He entered Pakistan on 26-11-1977 viz. Lahore Check-Post and his Visa was valid for Hyderabad and Lahore.

3. It is next disclosed in the F. I. R. that the applicant got himself registered vide Office No. 18/N/77 Hyd. dated 29-11-1977 and the last Visa for stay in Pakistan was valid up to 26-12-1977 and made extension application for extension of his Visa for 2 months more from 29-1-1978 to 23-3-1978 and his last extension application for a period of 2 months was received by District Magistrate, Hyderabad. It is next stated, that the applicant made another application for further stay in Pakistan but the same was under consideration but till that time he had stayed in the country, therefore, contravened the provisions of section 3/4 of Pakistan Entry Act, 1952.

4. That the Police after making usual investigation arrested the accused and challaned him before the Additional Deputy Commissioner (U T) Hyderabad.

5. That before the trial Court, the legal pleas were raised but the Trying Magistrate did not consider those and application under section 249-A was also submitted but the same was also not entertained and was rejected and consequently the applicant has filed the above petition for quashment of the said proceedings, on the grounds mentioned in the above petition.

6. The learned Advocate for the applicant in support of the above petition submitted as under :—

(a) That section 6 of Pakistan Control Entry Act, 1952 requires the permission from Central and Provincial Government for arrest of accused and in the instant case no such permission seems to have been acquired for the same has not been produced before the trial Judge, therefore, the very arrest of the applicant was not proper, was illegal and without jurisdiction.

(b) That the learned Magistrate has not considered and appreciated the legal pleas, which were raised before him by the defence counsel by

1983] quoting identical cases of Sind High Court and identical authority where the same pleas were raised and the Hon'ble High Court in their Criminal Appeal No. 140 of 1980 decided on 1-4-1981, viz *State v. Muhammad Sarwar and others* have also considered the same type of pleas, whereby they have held the offence to be non-cognisable and entire proceedings as illegal.

(c) That the learned trial Judge was erroneously led to believe under section 6 of Pakistan Control of Entry Act, that the police has power to arrest, when it is not clearly specified in the said section whether the offence is cognizable or non-cognizable therefore, the reference is to be made to Schedule II of Pakistan Criminal Procedure Code according to which offence which is punishable with imprisonment for one year and upward, but less than 3 years, the accused shall not be arrested without warrants from Magistrate, therefore, the offence becomes non-cognizable and hence entire investigation conducted by the police was illegal.

7. In view of the above submissions the continuance of the proceedings against the applicant before the learned trial Court would amount to abuse of the process of the trial Court and in support thereof the learned Advocate for the applicant relied upon D. B. decision of this Court reported in 1981 P Cr. L J 1008.

8. The learned Additional Advocate-General submitted that in view of the D. B. decision of this Court reported in 1981 P Cr. L J 1008 he supports the above application for quashment, as *prima facie* no permission for the arrest of the applicant was obtained from Central and/or Provincial Government as provided by section 6 of the Pakistan Central Entry Act, 1962 and as such arrest of the applicant was not justified and was contrary to the said provision. The learned Additional Advocate-General further submitted that offence with which applicant has been arrested by police, was *prima facie* non-cognizable and as such investigation conducted by police was illegal, as observed by D. B. decision of this Court reported in 1981 P Cr. L J 1008.

9. I have carefully considered the above submissions made by the learned Advocates before me and have gone through the case reported in 1981 P Cr. L J 1008 to which I was also party. Divisional Bench of this Court refused to interfere with acquittal of the applicants in this decision on account of above-noted legal position. I find that case of present applicant is on all fours with the said reported case, as there is nothing on record to show that the police officer, who arrested the applicant was generally or specially empowered to do so under section 6 of Pakistan (Control of Entry) Ordinance, 1952 as admittedly the offence for which the applicant was arrested is a non-cognizable offence.

10. Therefore, I allow the above petition and quash the proceedings pending against the applicant under section 3/4, Pakistan (Control of Entry) Ordinance, 1952, in the Court of A. D. C. (U.T.), Hyderabad and discharge the bail bonds executed by the applicant.

11. However, before parting with the above petition, I would like to mention, that prosecution will be free to proceed against the applicant after fully complying with the provisions of section 6 of Pakistan (Control of Entry) Ordinance, 1952, if it so deems fit, as I have quashed the said proceedings on

technical legal grounds only and not on merits of the case, in view of the proposition of law as propounded in case reported in 1981 P Cr. L J 1008.
Proceedings quashed.

1983 P Cr. L J 892

[Karachi]

Before Fakhruddin H. Shaikh and Sajjad Ali Shah, JJ

HAMZO AND ANOTHER—Appellants

versus

THE STATE—Respondent

Criminal Appeal No. 47 and Confirmation Case No. 15 of 1982, decided on 24th November, 1982.

(a) Criminal trial—

— Appreciation of evidence, principle of — One piece of tainted evidence—Cannot corroborate another piece of tainted evidence.— [Evidence]. [p. 895]A

(b) Criminal trial—

— Evidence, appreciation of—Identification of culprits in dark night in light of torch—*Held*: Always unreliable.—[Identification]. [p. 896]B

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

— Ss. 164 & 364—Judicial confession, sanctity of—Judicial confession recorded three days after arrest of accused—Ruled out of consideration.—[Confession]. [p. 896]C

(d) Penal Code (XLV of 1860)—

— S. 302—Murder—Evidence, appreciation of — Deceased killed in dark night but allegedly identified in flash of torch by prosecution witnesses, having a grouse against them — Corroboration of such interested witnesses sought yet by another interested witness—Evidence regarding recoveries of incriminating articles at instance of accused also found unreliable—Judicial confession of accused got recorded three days after their arrest—Prosecution, *held*, failed to prove charge against accused, in circumstances—Conviction and sentence set aside. [p. 896]D

Muhammad Hayat Junejo for Appellants.

Rashid Akhtar Qureshi for the State.

Date of hearing : 24th November, 1982.

JUDGMENT

FAKHRUDDIN H. SHAIKH, J.—Appellants Hamzo and Allah Deno along with acquitted accused Uris and Deno were tried by learned Sessions Judge, Thatta for offences under section 302/34, P. P. C. and 201/34, P. P. C. The appellants only were convicted and sentenced as under :—

- (1) Under section 302/34, P. P. C. to death and also to pay fine of Rs. 2,000 each or in default of payment to suffer R. I. for one year each; and
- (2) Under section 201/34, P. P. C. to R. I. for five years each and also