

IN THE FEDERAL SHARIAT COURT  
( Original Jurisdiction )

PRESENT

HON.MR.JUSTICE DR.TANZIL-UR-RAHMAN CHIEF JUSTICE

HON.MR.JUSTICE DR.FIDA MUHAMMAD KHAN

HON.MR.JUSTICE NAZIR AHMAD BHATTI

SHARIAT PETITION NO.22/L OF 1991

Capt.(R) Mukhtar Ahmad ... Petitioner  
Shaikh, r/o 13-E, Mohammad  
Ali Society, Ghazi  
Salahuddin Road,  
Karachi -8,

Versus

Government of Pakistan ... Respondent

For the petitioner ... Nemo

For Respondent ... Nemo

Date of Institution ... 12-5-1991

Date of hearing ... 19-4-1992

Date of decision ... 19-4-1992

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ORDER

DR.TANZIL-UR-RAHMAN, CHIEF JUSTICE.- By this

Petition the petitioner has challenged the provisions of sections 169 and 249-A of the Criminal Procedure Code, 1898, which read as under :-

"169. Release of accused when evidence deficient.- If, upon an investigation under this Chapter, it appears to the officer incharge of the police-station (or to the police-officer making the investigation) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear; if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or (send) him for trial."

"249-A. Power of Magistrate to acquit accused at any stage.- Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence."

2. The provisions of section 169 Cr.P.C., authorise a police-officer, not below the rank of Sub-Inspector, making an investigation, to release the accused if upon an investigation, it appears to him that there is no sufficient evidence or reasonable ground of suspicion to justify the sending up of the accused to Magistrate for trial, on his executing a bond with or without sureties, whereas Section 249-A Cr.P.C., empowers a Magistrate to acquit the accused

at any stage of the case if, for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.

3. The grievance of the petitioner, as stated in the Petition, is that the above said provisions do not provide any remedy to an innocent accused for the harm caused to him.

4. It is true that the provisions of section 249-A or for that matter section 169 Cr.P.C., do not provide for compensation to such an accused. However, section 250 Cr.P.C., makes such provisions for frivolous accusation in cases tried by Magistrate which are reproduced as under :-

"250. False, frivolous or vexatious accusations.- (1) If in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid."

"(2) The Magistrate shall record and consider any cause which such complainant or informant may show and if he is satisfied that the accusation was false and either frivolous or vexatious may,



not exceeding (twenty-five thousand rupees) or, if the Magistrate is a Magistrate of the third class, not exceeding (two thousand five hundred rupees), as he may determine, be paid by such complainant or informant to the accused or to each or any of them."

"(2-A) The compensation payable under sub-section(2) shall be recoverable as an arrear of land revenue."

"(2-B) When any person is imprisoned under sub-section (2-A), the provisions of section 68 and 69 of the Pakistan Penal Code shall, so far as may be, apply".

"(2-C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him;

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter."

"(3) A complainant or informant who has been ordered under sub-section(2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate."

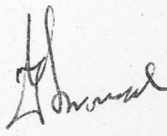
"(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section(3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order".

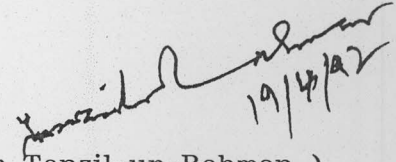
is at liberty to file criminal complaint against the persons concerned including a police-officer for malicious prosecution or may sue them for damages in a civil court.

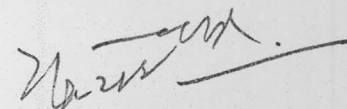
6. The above said provisions cannot be said to be against the Injunctions of Islam as no innocent person should be booked for trial by a police-officer and so if a trial court during the trial considers that the charge is groundless or that there is no probability of the accused being convicted of any offence, it may order the acquittal of the accused at any stage of the proceedings.

7. Even otherwise, the above provisions are procedural in nature and outside the ambit of jurisdiction of this Court, as provided under Article 203B(c) of the Consitution of the Islamic Republic of Pakistan, 1973.

8. For the aforesaid discussion, the Petition is dismissed in limine.


  
( Dr. Fida Muhammad Khan )  
Judge

  
( Dr. Tanzil-ur-Rahman )  
Chief Justice

  
( Nazir Ahmad Bhatti )  
Judge

Islamabad,  
19th April, 1992.  
Naseer.

Approved  
for reporting

  
C. J.