

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional/Original Jurisdiction)

PRESENT

MR.JUSTICE M. MAHBOOB AHMED CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE CH. EJAZ YOUSAF

SHARIAT PETITION No.10/L OF 1995

Ch. Abdur Rehman, Advocate, -- Petitioner
Bashir Mansion, 1-Turner
Road, Lahore.

Versus

Federal Government of -- Respondent
Pakistan through
Secretary, Justice & Law
Division, Islamabad.

Counsel for the -- Sh. Khizar Hayat,
petitioner Advocate.

Date of institution -- 20.11.1995

Dates of hearing -- 9.6.1998 &
26.1.1999

Date of decision -- 26.1.1999

JUDGMENT

CH. EJAZ YOUSAF, J.- By this petition section 34 of the Drugs Act (XXXI of 1976) (hereinafter referred to as "the Act") has been challenged as repugnant to the Injunctions of Islam as ordained by the Holy Quran and Sunnah of the Holy Prophet (SAW).

2. Sh. Khizar Hayat, Advocate for the petitioner has contended that section 34 of the Act is patently in conflict with the Injunctions of Islam inasmuch-as it provides that if an offence under "the Act" is committed by a company, corporation, firm or an institution, then its directors, managing agents and employees shall be automatically presumed to be guilty of such an offence unless they prove otherwise. He maintained that by way of section 34 onus of proof has wrongly been placed upon an accused, although contrary thereto, Shari'ah has placed burden of proof of the guilt of an accused, upon the prosecution. Reliance has been placed on Ayat No.282 of Sura-e-Al-Baqara and Ayat No.135 of Sura-e-Al-Nisa, besides two Ahadith of the Holy Prophet (SAW) mentioned in "Sahih Bukhari" at serial No.766 at pages 672 and 673 and serial No.787 at page 704.

3. The learned counsel for the petitioner has further tried to canvass that since in the pre-emble of the Qanoon-e-Shaha

Order, 1984 (hereinafter referred to as "the Order"), it has been provided that "the Order" has been enforced to bring the law of evidence in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW) and Article 117 of the said Order also provides that the onus of proof lies on the plaintiff or the prosecution, therefore, contrarily demanding the proof of innocence from the accused by raising a presumption against him of being guilty, is violative of the esteemed commands of the Holy Quran and Sunnah. It is further his case that since the terms of company, corporation, firm and an institution used in the impugned section (though have not been defined in "the Act") carry the meaning of its proprietors, shareholders, partners and chief executive only, therefore, the employees or agents of a company cannot be deemed as covered by the definition or meanings of a company or corporation etc nor are they responsible for the acts and omissions done by the company or corporation etc within the purview of section 34 of "the Act".

4. In order to supplement his contention he has referred to the definitions of a company, corporation, firm and an institution as provided in the Black's Law Dictionary, 5th Edition at pages 179, 224, 307, 308 and 576; Bellin Tines Law Dictionary at pages 232, 275, 476, 640 and Qanuni Lughat by Dr. Tanzeel-ur-Rahman at

of "the Act", is repugnant to the Injunctions of Islam. His only grievance is that "employees" of a company, corporation, firm or institution are not responsible for the acts done and offences committed by a company or corporation etc.

8. No doubt, though, companies or corporations etc are distinct and separate legal entities from its employees yet, it cannot be presumed that employees thereof are not responsible for, anything wrong done by them, or an "offence" committed under "the Act", because law provides that at times, different persons, while sharing common intention, abetting or facilitating or co-operating with each other in prosecution of a common object or otherwise, with or without knowledge even, may be responsible, for the offence. Reference for instance, may be made to the cases falling under sections 34, 35, 36, 37, 38 and 109 of the P.P.C.

9. To our mind, the impugned section , in fact is a shield against straightaway initiation of action against employees of a company or corporation etc because, before being found guilty, they are compulsarily required to be called upon to show, that the offence was committed by the company etc without their knowledge or consent, as in certain cases, offences may be found to have been committed by a company, corporation, firm, or an institution with or without active connivance, help or abetment of their employees. Obviously, a Chemist employed in a pharmaceutical

company who is fully aware that a particular drug, being or have been prepared by the company, does not contain therein the necessary ingredients, contrary to what is or has been reflected on the leaf-let or label thereof or knows that the drug is either spurious, counterfeited adulterated or imitated cannot be equated with a Chowkidar of the company who is standing outside just to guard its premises.

10. Needless to point out that inclusion of the word "employees" in the ambit of the impugned section would rather keep them vigilant, and presumably they would not permit directors, partners or shareholders of the companies etc to do anything wrong or contrary to law.

11. In view of above discussion, we are of the view that the petition is without any substance, which is accordingly dismissed.

(Ch. Ejaz Yousaf)
Judge



(M. Mahboob Ahmed)
Chief Justice



(Dr. Fida Muhammad Khan)
Judge

Lahore, dated the
26th January, 1999.

ABDUL RAHMAN/***

Fit for reporting.


JUDGE