

**P L D 2005 Lahore 377****Before Muhammad Akhtar Shabbir, J****MUHAMMAD AFZAL, EX-ASSISTANT SUB-INSPECTOR---Petitioner****Versus****SENIOR SUPERINTENDENT OF POLICE, OPERATION, LAHORE and 4 other**

Writ Petition No.4930 of 2005, decided on 8th April, 2005.

**(a) Interpretation of statutes---**

---- Every Statute was prima facie prospective, unless it was expressly or by necessary implication have retrospective operation---Nothing was to be read into a Statute, which was not expressed in the Statute. The Court as a canon of construction would presume that a Statute was not intended to be given retrospective effect unless intention was made clear by express words or necessary implication---Court, while giving effect to legislative intention by giving ordinary meanings to the words used and the function of Law maker---Judges do not make law by interpreting relevant provisions in the Statute---Where law-makers had deliberately not given any preference to one category of persons, the Court had to recognize that---Any Act or Statute promulgated by Legislature would be effective from the date of its enforcement and it would have no retrospective effect unless so provided in law. If not provided in the law at the time of occurrence, would not be punished under the offence committed or added in the Statute after that period.

Rooh Afza v. Muhammad Umar and others PLD 1978 Pesh. 1; Keshavan Madhava Prasad v. State of Bombay AIR 1951 SC 128; Nasimul Haque Malik v. Chief Secretary to Government of Punjab and others 1996 SCMR 1264; Mst. Frida and others. v. Rehmatullah and another PLD 1997 SC 199; Ahmad and 3 others v. Government of Punjab through Secretary Punjab Secretariat, Lahore PLD 1997 SC 359 and Afaf Rehim v. Nisar Ahmad and 2 others 2004 PCr.LJ 263 ref.

**(b) Constitution of Pakistan (1973)---**

----Art. 12---Protection against retrospective punishment---No law would authorize punishment for an act not punishable at the time of its commission.

Muhammad Sharif and 3 others v. The State 2004 PCr.LJ 1547 ref.

Muhammad Rafiq Ch. for Petitioner.

Rana Naeem Sarwar, Addl. A.-G. along with Asghar Ali Virk, S. H. O. and Sarwar S.-I.

**ORDER**

The petitioner through this Constitutional petition seeks quashment of the F.I.R No.860, dated 21-1-2002, section 155 Police Order, 2002 at Police Station Kahna, Lahore.

2. Briefly stated the prosecution story as narrated in the F.I.R is that Muhammad Afzal was in possession a vehicle Land Cruiser bearing No.,8086/MNU vide report No.2 dated 21-1-2002. C.I.A Kahan a under section 550 of Criminal Procedure Code and on receipt of report recommended that the vehicle be given on Superdari to one Mst. Shahida Batool wife of Mst. of House No. 152/A Muhallah Arraian Attock City. The said A.S.I Tad taken into custody from the Dera of Shamshir Ali son of Ch. Suleman, Mauza Barki, Lahore. In this context and

and the D.S.P Muhammad Aslam came to the conclusion that Hadayat Ali real brother of the Officer in Habib Bank and his friend Zubair the other employee of the said Bank saw a vehicle standing near the said land Cruiser who told Zubair Bank Officer that his vehicle had been taken. She requested that her vehicle be parked at some safe place and she after repair of the vehicle 2/3 days after the said date, the vehicle was shown to have been taken in to possession. She did not know previously this lady neither he met her. At that time she gave her address and a copy of Chit of paper and on that telephone he informed the lady that alleged vehicle had been taken to police under section 550 Cr.P.C. the Inquiry Officer found the petitioner guilty, recommended punishment against him and on 30-12-2004, F.I.R. No.860/2004 under section 155 Police Order has been issued against the petitioner on 30-12-2004 at Police Station Kahna, Lahore.

3. Learned counsel for the petitioner contended that the occurrence has taken place in the enforcement of the Police Order, 2002 which has provided punishment under section 155 of Cr.P.C. Officer. On the other, learned A.A.G contended that the inquiry against the petitioner has been conducted in the year 2004 when the Police Order had been enforced in force in the Province of Punjab, which was not lawfully registered against the petitioner.

4. I have heard the arguments of the learned counsel for the parties and perused the records.

5. It is an admitted position that the vehicle No.8086/MNU was taken into possession by Muhammad Afzal A.S.I., C.I.A under section 550, Cr.P.C and thereafter he recommended punishment of the vehicle on Superdari to one Mst. Shahida Batool wife of Safdar Hussain resident of Lahore. Investigating Officer found the petitioner guilty of the offence. He did not only investigate into the vehicle taken into custody by him and without ascertaining the facts that whether Mst. Shahida is real and legal owner of the vehicle he recommended for delivery of he said vehicle to her. As it may, the petitioner is a guilty of the offence punishable under any law prevailing in force at the time of the Police Order, 2002 provided the punishment under section 155. This order was not enacted in force in the year 2000, when the alleged occurrence has taken place. Subsection 2 of Section 1 provides that "this Act shall apply to the whole of Pakistan". Subsection (3) further envisages that it shall come into force at or after the date on which the Legislature has intended prospective operation of the Police Laws and not retrospective effect.

6. Every statute is prima facie prospective unless it is expressly or by necessary implication made retrospective operations as laid down in the case of *Rooh Afza v. Muhammad Umar* (PLD 1984 Peshawar 1). In the case of *Keshavan Madhava Menon v. The State of Bombay*, (AIR 1951 SC 450) held by the Hon'ble Judges of the then Supreme Court of India that Every Statute is prospective unless it is expressly or by necessary implications made to have retrospective operation. The proposition that nothing is to be read into a statute, which is not expressly enacted therefor, was affirmed in the case of *Nasimul Haque Malik v. Chief Secretary to Government of Sindh, Karachi* (PLD 1984 SC 1264). The Court as a canon of construction presume that a statute is not intended to have retrospective effect unless intention is made clear by express words or necessary implication. In this case, it is placed to the case of *Mst. Frida and others v. Rehmatullah and another* (PLD 1984 Peshawar 1).

7. Protection has been provided by the Constitution of the Islamic Republic of Pakistan against the punishment of a person. Article 12. of the Constitution enshrines as under:--

Article 12. Protection against retrospective punishment.---(1) No law shall authorize the punishment of a person--

- (a) for an act or omission that was not punishable by law at the time of the act or omission;
- (b) for an offence by a penalty greater than, or of a kind different from, the penalty provided for the offence at the time the offence was committed.

8. From the bare reading of the above provision of Article 12 of the Constitution, it is law shall authorize punishment of a person for an act not punishable at the time of commission. Reliance can be placed to the case of Muhammad Sharif and 3 others v. The State (2004 F

9. Learned Law Officer; when confronted with the position that the Police Order has no operation, could not respond. It has been observed in the case of Dr. Riaz Ahmad and 3 others v. Punjab through Secretary, Punjab Secretariat Lahore and 6 others (1999 PLC (C.S.) 35) that judges interpreting law have to give effect to the legislative intention by giving ordinary meaning to the provisions and the High Court cannot assume the function of law-maker, Judges do not make law by interpreting provisions and by removing the ambiguity---where law-makers have deliberately not done so in one category over the other, the Court has to recognize that. This Court has already observed in Rehman v. Nisar Ahmad and 2 others (2004 PCr.LJ 263) that any act or Statute promulgated would be effective immediately from the date of enforcement and it would have no retrospective effect unless so provided in law. The offence, which was not provided in the law at the time of this offence, punished under the offence which was enforced or added in the statute after that period. The offences against the petitioner are not covered within the offence under section 155 Police Order,

10. For the foregoing reasons, this writ petition is allowed and the F.I.R. No.860 of 2002 registered under section 155 Police Order, 2002 at Police Station Kahna, Lahore is quashed and registered illegally and without lawful authority, hence quashed.

H.B.T./M-1005/L Petition allowed.