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**Examination of Sections 54 & 167
of the Code of Criminal Procedure 1898**

Report No. 49

(153-159)

**EXAMINATION OF SECTIONS 54 & 167
OF THE CODE OF CRIMINAL PROCEDURE 1898**

Mr. Justice Ali Nawaz Chohan, Judge, Lahore High Court *vide* his judgment passed in the case of Allah Rakhi vs the State while examining Sections 54 and 167 of Cr.P.C., forwarded a copy to the Secretary of the Commission and desired to incorporate a new section in the Cr.P.C on the pattern of Section 50 of the Indian Criminal Procedure Code. In the said judgment, he also gave some directions to the subordinate judiciary for supervision/control of the powers of Police and Ilaqa Magistrates as follow:—

"Person arrested to be informed for grounds of arrest and of the right of bail—

- (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.
- (2) Where a police arrests without warrant any person other than a person accused of a non-bailable offence he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

The Hon'ble Court further added that

"An additional provision through the rules can be made for displaying the provision afore-mentioned at prominent places/a notice board in bold letters outside every police station for creating public awareness".

The relevant Section 54 is as follows:—

Section 54 of the Code of Criminal Procedure 1898 authorizes a police officer to arrest a person without an order or warrant of a Magistrate under nine situations mentioned in its nine Sub-clauses. First sub-clause is relevant as follows:—

"54 When Police arrest without warrant

- (1) Any police officer may, without an order from a Magistrate and without a warrant, arrest. Firstly, any person who has

been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.

It will there be seen that under the first Sub-clause of Section 54 (1) of Cr.P.C a person can be arrested without a warrant in the following circumstances:

- (a) If he is concerned in any cognizable offence.
- (b) Against whom a reasonable complaint has been made.
- (c) Against whom credible information has been received that he is concerned with commission of such offence.
- (d) If reasonable suspicion exist about him being so concerned.

The above mentioned Section conferred sufficient powers to police officer, but such powers can be exercised only in those cases where a police officer is possessed of some evidence indicating involvement of a person under the four situation mentioned in Section 54 (1) of Cr.P.C. But in most of the cases it is noticed that the police officer arrested the person without collecting any material connecting with commission of the offences.

Under the provisions contained in the Cr.P.C that once a person concerned or suspected to have committed a cognizable offence is arrested by a police officer it is expected of him that he would complete the investigation without any loss of time and at least complete the investigation within 24 hours of his arrest as laid down in Section 61 of Cr.P.C. Under Section 62 of Cr.P.C. every public officer incharge of police station is required to report to the concerned District Magistrate or if directed by him to the Sub-Divisional Magistrate about the arrest of person without warrant within their territorial limits. It is the responsibility of the concerned Magistrate to scrutinize the report of arrest made by the police officer and find out if the action can be justified in law.

Section 167 of Cr.P.C authorizes the detention of any person by the police beyond 48 hours upto maximum of 15 days subject to the orders of a Magistrate in cases where police is unable to complete the investigation within 24 hours of the arrest. The provision of Section 167 Cr. P.C. being in the nature of an exception and also amounting to put restriction on the right of personal liberty granted under the constitution has to be very

strictly construed and unless all the requirements of section are complied a remand can not be granted. It will be noticed that the production of an accused person under custody of a police officer along with entries made by them in the diaries, before a Magistrate is mandatory requirements of law. The purpose behind production of a person before the Magistrate for obtaining remand is that he can notify to the Magistrate if any excess has been committed against him by the police officer in violation of provisions contained in Section 50 or 53 of Cr.P.C. or any other illegal action taken by police for the purpose of extorting confession or any other act.

Law and Justice Commission of Pakistan examined the issue on the basis of complaints received from the public as follows:—

"Police making arrest under Section 54 and 55 of the Code do not give information to the family members of the persons arrested, therefore, they remain unaware about the whereabouts of the detainee."

The issue already have examined by the Commission in its Report No. 17 and proposed some amendments in the Cr.P.C.

For consideration of issue, the Commission suggested to insert a new section 59-A in Cr.P.C.

Insertion of a new Section 59-A, Act V of 1898.—In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code, after Section 59, the following new Section shall be inserted, namely:—

"59-A. Right to have some one informed when arrested.—

- (1). Where a person is held, in custody in a Police Station or other premises, he shall be entitled to have a friend or relative or other person who is known to him or who is likely to take an interest, in his welfare, told by the Officer Incharge of Police Station about his arrest.
- (2). A Police Officer not below the rank of Superintendent of Police may only authorise delay where he has reasonable grounds of believing that telling to the named person of the arrest shall—
 - (a) lead to interference with or harm to the evidence connected with a cognizable offence or interference with or physical injury to other persons; or

- (b) lead to alerting of other person suspected of having committed such an offence but not yet arrested for it; or
- (c) hinder the recovery of any property obtained as a result of such an offence".

Under Section 167(4) of the Cr.P.C. Magistrate while giving such order should forward a copy of it to the Sessions Judge with person for making such order.

The Commission recommended that Section 167(4) be amended so as to make the provision mandatory as follows:—

Amendment of Section 167

In the said code, in Section 167 in sub section (4) after the word "shall" the word "forth with" shall be inserted.

Instructions/Directions for compliance by the provincial governments

It is therefore recommended that the following instructions/directions for the compliance by the provincial governments may be circulated:—

- (i) That the SHO is required to send on daily basis a report to their judicial Ilaqa Magistrates reflecting the names and addresses of persons who although not nominated in FIR have been detained in exercise of power under Section 54 of the Cr.P.C.
- (ii) All the judicial Ilaqa Magistrates are directed to obtain case reports on daily basis from the respective police station under their control. The session judges are also to be burdened because of their supervisory role and who may ensure implementation of these direction by the judicial Ilaqa Magistrates.
- (iii) The purpose behind production of a person before the Magistrate for obtaining remand is that he can notify to the Magistrate if any excess has been committed against him by the Police in violation of provision contain in Sections 50 or 53, Criminal Procedure Code or any other illegal action taken by Police for the purpose of extorting confessions or any other act.
- (iv) A Magistrate while hearing application for grant of remand of an accused person performs judicial functions. The accused

through his lawyer or a friend or relatives is entitled to raise objection to the passing of such orders. It is therefore necessary for a Magistrate to pass orders only in open Court. A Magistrate is not expected to pass orders granting remand of accused persons in a mechanical manner. He has to examine very carefully the justification for depriving a citizen of his liberty, which can only be done if material justifying such action is available on record.

- (v) In every case where a Magistrate grants remand to Police or judicial custody of an accused person under Section 167(1), Criminal Procedure Code, he is required by its Sub-section (4) to forward a copy of such order with his reasons to the Sessions Judge. A District Magistrate is to be informed of apprehensions of persons by Police in exercise of their powers under Section 54, Criminal Procedure Code while a Sessions Judge has to be kept informed by Magistrates who allow remand of person for the purpose of investigation beyond a period of 24 hours. A Sessions Judge too like a District Magistrate as pointed out hereinabove is expected to keep vigilance on exercise of such powers by Magistrate.
- (vi) In addition to the provision contain in Section 167, Criminal Procedure Code, High Courts in Pakistan have been issuing Circulars from time to time to safeguard the liberty of a citizen and enjoining upon the Magistrates to act with due caution so that the liberty of a citizen is not jeopardized.

Commission's deliberations

The Commission, after due deliberations, approved the proposal out-lined above that administrative instructions/directions should be issued by the provincial governments to the police and the Chief Justices of the High Courts to the judicial officers to ensure that the liberty of citizens is protected and no person is detained or held in custody, in violation of the law.