

AKBAR ALI---Appellant

Versus

ADDITIONAL I.G. POLICE and others---Respondents

I.C.A. No.2 of 2011, decided on 2nd February, 2011.

The appellant assailed order dated 20-12-2010 passed by the Hon'ble Chief Justice in Writ Petition No.25717 of 2010.

2. Briefly "stated the facts of case are that appellant/petitioner through Writ Petition No.25717 of 2010 assailed the order dated 1-12-2010 passed by Board constituted under Article 18(6) of the Police Order, 2402 whereby appellant/petitioner's request for change of investigation was declined. The Hon'ble Chief Justice while dismissing the writ petition has observed as under:

"It has been noticed that in the present case the occurrence had taken place on 29-6-2006. The petitioner was not arrested in this case as he remained fugitive from justice. He was arrested on 23-9-2010 i.e. after about 2-1/2 years of the occurrence. The investigation in this case has been completed. Even otherwise the opinion of police is not binding upon the courts. Challan has been submitted in the Court and the police has already concluded the investigation. The petitioner would be provided full opportunity to bring on record his oral as well as documentary evidence in support of his innocence during the trial. In such circumstances, no order of re-investigation of the case can be issued. This petition has no force, hence, the same is dismissed."

3. Learned counsel for the appellant was asked to satisfy this Court that in presence of Article 181 of Police Order, 2002 how this appeal is maintainable in terms of section 3 of the Law Reforms Ordinance, 1972. Learned counsel for the appellant submits that bare perusal of Article 181 of the Police Order, 2002 shows that this provision is available only to the Government and the complainant has no right to file appeal or revision in terms of the above said Article against the order passed by the Board constituted under Article 18(6) of the Police Order. 2002.

4. Argument of learned counsel for the appellant is that provision of Article .181 of the Police Order, 2002 provides that the appropriate government shall exercise jurisdiction for revision against such orders. He submits that the proviso of said Article is an impediment in his way to avail remedy of revision or appeal.

5. For better appreciation of provision of law, Article 181 of the Police Order, 2002 is reproduced as under:-

".....it shall be competent for any interested person to apply to the authority issuing such rule or order to annul, reverse or alter the rule or order: aforesaid on the ground of its being unlawful oppressive or unreasonable:

Provided that the appropriate government shall exercise jurisdiction for revision against such order. "

6. The word "person" has been defined under Article 2 sub-Article (xiii) which reads as under:

"person" includes community, a company or corporation;

7. The word "person" has been used/ in the, Police Order, 2002 in a wider sense. In definition of person, community, a company or corporation is also included. The company and corporation are a juristic person even then they have been included in the definition of person. Hence, the argument of learned counsel for the appellant that it is the government only who can exercise its power under Article 181 of the Police Order, 2002 has no force. The word "annul, reverse or alter" mentioned in she article show that aggrieved person/interested person has the right to pray for annulment, reversal or even in alteration of the order. The word annul denotes the cancellation of the order reversal to remand and alter to change the reasons or terms and such right to appeal, review and revision are built in the article. The proviso confers jurisdiction to appropriate government to hear the revision. The perusal of above said provision of law shows that right of appeal, revision and review is available to aggrieved person.

8. Under section 3 of the Law Reforms Ordinance, 1972, word "review" has been added by a subsequent amendment and now section 3(2) of the Law Reforms Ordinance, 1972 provides as under:--

(1)

(2)

Provided that the appeal referred to in this subsection shall not be available or competent if the application brought before the High Cowl under Article 199 arises out of any proceedings in which the law applicable provided for at least one appeal (or one revision or one review) to any Court, Tribunal or authority against the original order."

9. In the instant case, the original order has been passed by the Board constituted under Article 18(6) of the Police Order, 2002 and, as such, right of appeal, review and revision is available to the appellant. Hence, this appeal is not maintainable and is dismissed in limine.

H.B.T./A-72/L

Appeal dismissed.