

Zain Sheikh & Associates, Advocates & Corporate Consultants

P L D 1977 SC 657

BEGUM NUSRAT BHUTTO

V/S

CHIEF OF ARMY STAFF AND FEDERATION OF PAKISTAN

(a) Constitution of Pakistan (1973), Articles 184 & 199:

Article 184(3) — Maintainability of petition — Petition directed against Chief of Army Staff whereas impugned orders of detention passed by Chief Martial Law Administrator — Chief of Army Staff also being Chief Martial Law Administrator, objection regarding non-maintainability of petition on ground of not having been directed against Chief Martial Law Administrator, held, only technical since it could be easily rectified by adding words “Chief Martial Law Administrator” to description of respondent. (Writ). [p. 674]A

Article 184(3) read with Article 199 — Aggrieved person — Petitioner moving petition in her capacity of wife of one of detenus and as Acting Chairman of Party to which all detenus belonged — Petitioner though not alleging any contravention of her own Fundamental Rights yet in circumstances, held, an aggrieved person within meaning of Article 199 — (Aggrieved person). [p. 675]B

MANZOOR ELAHI V. STATE PLD 1975 SC 66. Ref.

Article 184(3) read with Laws (Continuance in Force) Order, 1977 (C.M.L.A.’s 1 of 1977), Articles 2, Proviso & 4 — Jurisdiction — Maintainability of petition under Article 184(3), Constitution of Pakistan (1973) — C.M.L.A.’s Order 1 of 1977 — New Legal Order for time being — Supreme Court deriving its jurisdiction from new Legal Order, orders of detention, held, cannot be challenged and petition liable to dismissal. Criteria: — [Jurisdiction]

Since the Courts including the Supreme Court were revived by the Laws (Continuance in Force) Order and continued to work under the authority, they therefore derived their jurisdiction also from the said Order. For example, if after the issuance of the Proclamation the Chief Martial Law Administrator had not issued the Laws (Continuance in Force) Order and had started ruling by decrees through his officers then where would have been this Court and what jurisdiction it would have had.

Otherwise too allegiance is always due to the def facto Government for it is this Government which can provide protection to the citizens and allegiance to the State imposes as one of its most important duty obedience to the laws of the sovereign power for the time being within the State. The municipal Courts have always to enforce the laws of the de- facto Government and it is such a Government which can enact law, can appoint Judges and can enforce the execution of law. [p. 742]LL

INTERPRETATION — Apprehension that decision of Supreme Court in Asma Jilani’s case PLD 1972 SC 139 in effect rendered illegal all successive Governments of Pakistan and Constitutions framed during relevant period, held, not well-founded — [Interpretation of precedents]. (p. 684)C

STATE V. DOSSO PLD 1958 SC 533; STATE V. ZIA-UR-REHMAN PLD 1973 SC 49; MISS ASMA JILANI V. THE GOVERNMENT OF THE PUNJAB AND ANOTHER PLD 1972 SC 139. Ref.

Interpretation of – Judgements delivered in Southern Rhodesian case of Madzimbabwe [(1968) 3 All ER 561] – Held, cannot be regarded as judicial authority for proposition that effectualness of new regime provides its own legality – Doctrine subjected to weighty criticism on ground of seeking to exclude all considerations of morality and justice from concept of law and legality – [Interpretation of precedents – Doctrine of necessity]. (p. 688) D

This site uses Akismet to reduce spam. [Learn how your comment data is processed.](#)

[Entries \(RSS\)](#), and [Comments \(RSS\)](#).