

بسم الله الرحمن الرحيم  
نحمده و نصلی علیٰ رسولہ الکریم

# **LAW AS TO POSTPONE OR ADJOURN CRIMINAL PROCEEDINGS**

**[Ch. XXIV S. 344 Cr. P. C.]**

**Justice ® Dr. Munir Ahmad Mughal**

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## ***Introduction***

Fair trial is the right of every accused. Fair trial is a trial which is expeditious and inexpensive, with full impartiality and honesty throughout the proceedings. It becomes unfair where it causes harassment or prejudice of any kind to the accused. It also becomes unfair where there is bias behind it. Article 10

and 15 of the Constitution of Islamic Republic of Pakistan 1973 are based on the concept of a fair trial. Every accused person is entitled to a fair trial and the concept of fair trial necessarily proceeds on the premise that a trial shall be held without inordinate delay. <sup>1</sup>There is difference between accusation and conviction. Accusation may be the outcome of mere suspicion and it is the test at the trial going through which an allegation is proved beyond all reasonable doubt.

In this paper it has been explained as on what grounds this discretionary power of adjournment of the proceedings can be exercised.

Grounds are sound reasons that justify the postponement the hearing of a case. It varies from case to case. But still there

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<sup>1</sup> 1996 MLD 157.

are certain circumstances which when exist a case for an adjournment is fairly made out. The right of the Complainant are also to be honoured and protected and a fair balance is to be maintained between the respective rights of the Complainant and the accused.

The superior judiciary in Pakistan has interpreted this right of the accused which is presented in the main contents of this article which covers the historical, analytical and ethical dimensions on the subject.

### ***What is an adjournment?***

An adjournment is a postponement of a date of hearing. Normally a case is to proceed day by day but to many just and reasonable grounds the Court is to

postpone the proceedings to some other date.

### ***Where the law of adjournment in criminal cases can be found?***

The law of adjournment in criminal cases is available in section 344 of the Code of Criminal Procedure, 1898. For ready reference the text of the said provision of law is reproduced below:

#### **“S. 344. Power to postpone or adjourn proceedings.**

(1) If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons therefor from time to time, postpone or

adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

***Remand:*** Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(2) Every order made under this section by a court other than a High Court shall be in writing signed by the Presiding Judge or Magistrate.

***Reasonable Cause for remand.***

***Explanation.*** If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.”

## ***What are the prerequisites to apply section 344 Cr. P. C. ?***

To apply Cr. P. C. the Court is to see the existence of the following facts and circumstances, namely,

1. that there is the absence of a witness; or
2. that there is another reasonable cause;
3. that it has become necessary or advisable;
4. that the commencement of the inquiry or trial be postponed or adjourned.

## ***What power is given by law where there exist the above circumstances?***

In the presence of the above circumstances the Court is given the discretionary power that if it may think fit, by order in writing, stating the reasons therefore from time to time, postpone or adjourn the same on such terms and conditions as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused in custody.

## ***Why the Court has been vested with such discretion?***

When a court of law takes cognizance of a case, it is to be taken to its natural end in accordance with law for which the law has prescribed a procedure which is to be

followed honestly and fairly. To do any thing the Court must have power given to it by the law of the land in force. It is not to do anything whimsically. It is to proceed judiciously. Adjournment can only be granted if the Court has taken cognizance of the case.<sup>2</sup>

***What Constitutional guarantee is made available to an accused by the Constitution of the Islamic Republic of Pakistan, 1973?***

Constitution of Pakistan 1973 provides that reasonably expeditious trial is a fundamental right of the accused.

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<sup>2</sup> PLD 1959 Karachi 157.



## ***What care and caution s.344 Cr. P. C. prescribes for the Court?***

Section 344 of the Criminal Procedure Code, 1898 empowers the Court to postpone the commencement of or adjourn any inquiry or trial. It further authorizes the Court to do so “from time to time” and “for such time as it considers reasonable.” Accordingly having taken cognizance of the offence under section 193 (1) the Sessions Judge postponed the commencement of the trial till such time as the case was fixed for hearing as it was not possible to give any firm date in every case on account of a larger number of cases having been sent to the court of Sessions pursuant to the deletion of the committal proceedings from the Cr. P. C. In this context even if the period was not specified still the

interregnum must be regarded as reasonable and sufficient compliance of the words “for such time”. They should not be given a rigid meaning for in doing so it would lead to an impossible situation necessitating the production of a number of accused in Court and thereby causing hindrance to the trial of the cases. On this view of the matter there is no occasion for postponing the commencement of the trial now and again. It cannot be held as proposition that the case cannot be adjourned sine die.<sup>3</sup>

***What dictum was laid down in Saleem Akhtar’s case?***

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<sup>3</sup> PLD 1978 SC 38

In the case of Saleem Akhtar v. State<sup>4</sup> it was held that provisions of section 344 prohibiting postponement *sine die* of proceedings does not in turn apply to cases before the Court of Sessions. The dictum was followed in the case of Muhammad Yaqub v. Stae.<sup>5</sup>

As per mandate of section 344 Cr. P. C. accused cannot be kept for more than 15 days in custody obtain. Non production of accused before the Court and keeping him in jail without proper adjournment as required under this section the detention of the accused would become illegal.<sup>6</sup>

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<sup>4</sup> PLD 1980 Lahore 127.

<sup>5</sup> 1981 P. Cr. L.J. 939.

<sup>6</sup> 2008 P. Cr. Reporter 1089

## Can there be a justification for postponement of a case *sine die*? If so when?

There may be some justification for postponing case *sine die* where none of accused is in custody.<sup>7</sup>

## ***Personal Engagement of a Counsel viz. a viz his Professional Engaement:***

Personal engagement of a counsel cannot be given preference to his professional duties towards the Court. Supreme Court rejected application for adjournment of hearing of review petition.<sup>8</sup>

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<sup>7</sup> NLR 1980 UC 168.

<sup>8</sup> NLR 2002 SCJ 584.

## ***Adjournment for arguments on the conclusion of evidence***

There is no warrant for the proposition that on the conclusion of the evidence the case must be adjourned for arguments. This depends on the exigencies of the case and in proper cases and on a proper representation the Courts are usually inclined to extend this concession<sup>9</sup>

## ***What is the legal nature of grant of an adjournment for calling a witness:***

The granting of an adjournment for the purpose of calling a witness is essentially

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<sup>9</sup> PLD 1955 F.C. 14.

a matter of the exercise of discretion by the Court.<sup>10</sup>

In Criminal cases especially in a case where accused were facing the charge of murder, it was advisable that adjournment on the ground of absence of senior counsel should be granted unless it appeared that same was being sought merely to prolong the proceedings.<sup>11</sup>

### ***Arrest without Warrant***

- Custody is of two kinds. One is called Police custody and the other is called Judicial custody. When a person is in Police custody he is kept in Police lock-up and when he is in judicial

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<sup>10</sup> PLD 1958 P.C. 161.

<sup>11</sup> 2007 SCMR 210.

custody he is kept in civil prison.  
Section 167 Cr. P. C. deals with grant of remand to police custody and section 344 Cr. P. C. deals with the grant of remand to judicial custody.

- The Police may arrest a person without any order from a Magistrate and without a warrant, in cognizable offence or against whom a reasonable complaint is made or credible information received or a reasonable suspicion exists of his having been so concerned in exercise of its powers under section 54 of the Cr. P. C. <sup>12</sup>

***Analysis of the law on the subject of remand with reference to powers of police, powers of Magistrate and rights of the Accused***

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<sup>12</sup> 1970 SCMR 7.

Article 10 of the Constitution of the Islamic Republic of Pakistan, 1973 is one of the fundamental rights guaranteed to every citizen by the Constitution.

It reads as under:

“ 10. Safeguards as to arrest and detention.

(1) No person who is arrested shall be detained in custody, without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest Magistrate, and



- no such person shall be detained in custody beyond the said period without the authority of a Magistrate.
- (3) Nothing in clause (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.
- (4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorise the detention of a person for a period exceeding three months unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case

and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of the three months, unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

Explanation I . In this Article, “the appropriate Review Board” means,-

- (i) in the case of a person detained under a Federal law, a Board appointed by the Chief Justice of Pakistan and consisting of a Judge of the Supreme Court or a High Court; and
- (ii) in the case of a person detained under a Provincial law, a Board

appointed by the Chief Justice of the High Court concerned, and consisting of a chairman and two other persons, each of whom is or has been a Judge of a High Court.

Explanation II. The opinion of a Review Board shall be expressed in terms of the views of the majority of its members.

- (5) When any person is detained in pursuance of an order made under any law for preventive detention, the authority making the order shall, within fifteen days from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order.

Provided that the authority making any such order may refuse to disclose such facts which such authority considers it to be against the public interest to disclose.

(6) The authority making the order shall furnish to the Appropriate Review Board all document relevant to the case unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced.

(7) Within a period of twenty four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such order for more than a total period of eight months in the case of a person

detained for acting in a manner prejudicial to public order and twelve months in any other case:

Provided that this clause shall not apply to any person who is employed by or works for , or acts on instructions received from, the enemy or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti national activity and defined in a Federal Law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity.

(8) The appropriate Review Board shall determine the place of detention of the person detained and fix a

reasonable subsistence allowance for his family.

(9) Nothing in this Article shall apply to any person who for the time being is an enemy alien.

- Section 61 of the Cr. P. C. enjoins that the police is to produce the accused person before a Magistrate within 24 hours. This section is in consonance with Article 10 of the Constitution 1973. Section 61 contemplates that an order remanding the accused to police custody shall be passed in the presence of the accused. It means production of person of the

accused before the Magistrate is must for the purposes of getting an order of the Magistrate for remanding the accused to Police Custody.

- Section 167 enjoins that if the investigation is not completed within 24 hours, the SHO shall forthwith transmit a copy of the entries in the case diary to the nearest Magistrate and shall at the same time forward the accused to such Magistrate.
- Section 344 Cr. P. C. lays down that if a court thinks fit to postpone or adjourn the inquiry, it shall do so by stating in writing the reasons therefor and may by a warrant remand the accused if in custody for not exceeding 15 days. This section also requires the presence of the accused while remanding him to judicial custody.