

**THE
CONCILIATION COURTS ORDINANCE, 1961**

(XLIV OF 1961)

28th November 1961

An Ordinance to make provision
for the establishment of Conciliation Courts.

Preamble: Whereas it is expedient to make provision for the establishment of Conciliation Courts to enable people to settle certain disputes through conciliation, and for matters connected therewith.;

Now, therefore, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement:

- 1)** This Ordinance may be called The Conciliation Courts Ordinance, 1961.
- 2)** It extends to the whole of Pakistan.
- 3)** It shall come into force on such date [1] as the Federal Government may, by notification in the Official Gazette, appoint in this behalf.

Legal Amendment

1. The First Day of March, 1962 which was announced by Gazette of Pakistan 1962 e.x.t.

2. Definitions:

In this Ordinance, unless there is anything repugnant in the subject or context:-

- a) "Cognizable offence"** means a cognizable offence as defined in Section 4 of the Code of Criminal Procedure, 1898 (Act of V of 1898);
- b) "Conciliation Court"** means a Conciliation Court constituted under this Ordinance;
- c) "Controlling Authority"** means [an officer appointed by Government to be the Controlling Authority for the purpose of this Ordinance;]¹
- d) "decree"** means a decree as defined in Section 2 of the Code of Civil Procedure, 1908 (Act V of 1908)
- e) "District Judge"** shall include an Additional District Judge, a subordinate Judge and a Civil Judge;
- f) "Government"** in relation to any local area in Province, means the Provincial Government and in relation to Cantonments, the Federal Government;
- ²[ff) **"Law relating to Government"** means the Punjab Local Government Ordinance, 1979 (Punjab Ordinance No. VI of 1979), The Sind Local Government Ordinance, 1979 (Sind Ordinance No. XII of 1979), the Baluchistan Local Government Ordinance No. II of 1980, the Capital Territory Local

Government Ordinance, 1979 (XXXIX of 1979), or, as the case may be, the Cantonment Act, 1924 (II of 1924);]

g) "Party" shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Conciliation Court adds as a party to such dispute;

h) "Prescribed" means prescribed by rules made under this Ordinance;

i) "Union Council" means a Union Council Constituted under a law relating to Local Government and, except in the schedule, includes a Town Committee so constituted;

j) "Ward" means a ward, an electoral unit or an electoral ward of a city, municipality or cantonment constituted under a law relating to Local Government and.

Legal Amendments

[1] Substituted for "Deputy Commissioner" by the Conciliation Court (Amendment) Ordinance, XVIII of 1982, Section 2 (a).

[2] Clause (ff) inserted by the Conciliation Courts (Amendment) Ordinance, XVIII of 1982, Section 2 (a).

3. Case referable to conciliation:

1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1908) or in the Code of Civil Procedure, 1908 (Act V of 1908),

a) all cases falling under Part I of the Schedule shall, save as otherwise provided, hereinafter be referred to conciliation under this Ordinance, and no civil or criminal Court shall have jurisdiction to try any such case; and

b) any of the cases falling under Part II of the Schedule may be so referred if all the parties thereto agree to such a reference.

2) The following cases relating to matters falling under Section B of Part I of the Schedule or under Section B of Part II thereof shall be excluded from conciliation, namely, -

a) cases to which the interest of a minor is involved;

b) cases where provision for arbitration has been made in a contract between the parties;

c) cases by or against the Federal or a Provincial Government or a public corporation or a public servant acting in the discharge of his duty;

d) cases which according to the customary law of a community are referable to a community Panchayat.

2 A) [Cases relating to matters falling under Section A of Part I and Section A of Part II of the Schedule, against any Government servant, shall be excluded from conciliation except where a certificate is granted by Government or an Officer authorized by Government in that behalf to the effect that the Government servant had not acted in the discharge of his official duties.] ¹

3) [Government may, by notification in the official Gazette, amend the Schedule so as to -

- a) add thereto any class of cases relating to such disputes between private parties as are of a local nature and are capable of settlement by compromise;
- b) omit any entry therefrom; or
- c) alter or modify any entry therein.]²

4) Nothing in this Section shall apply to cases relating to an office specified in the Schedule of the accused had previously been convicted of cognizable offence.

Legal Amendment

[1] Sub Section (2-A) inserted by Conciliation Court (West Pakistan Amendment) XI of 1966, S.2.

[2] Sub Section (3) Substituted by the Conciliation Court (Amendment) Ordinance, XVIII of 1982.

Court Decisions

Jurisdiction

Magistrate acquitting accused under S. 148 and referring offences under Ss. 147, 447, 324 & 114, to District Magistrate for trial by Conciliation Court, District Magistrate sending case to Magistrate for trial instead of Conciliation Court Offences being exclusively tribal by Conciliation Court conviction and sentence passed by Magistrate, held, illegal-All Magistrates In Sind however being subsequently appointed to perform functions of Chairmen, Local Council, respect of criminal cases,, any Magistrate could not try criminal cases as Conciliation Court-Case remanded for fresh trial. **1975 P Cr. L J 945**

Jurisdiction-To be decided on basis of case initially set up and not on its final result or course it takes during trial, accused initially challaned under S. 324, Penal Code, but trial Court an appraisal of evidence finding him liable under S. 323 only and with holding further proceedings in view of bar created under S. 3 read with Sched., para. 1 to Conciliation Courts Ordinance, 1961-Held: Irrespective of fact that case fell under Sched, para. 1 of Ordinance XLV of 1961, Criminal Court, was in circumstances, competent to proceed with the case.

1970 P. Cr. L J 878

Contract

Word 'contract', interpretation of-Word 'contract' stated in Part 1, Section B, subsection (1) of Sched. appended to Ordinance, 1961 evidently contemplated only 'written contract' and not 'oral contract'--Conciliation Courts, held, had no jurisdiction to decide suits founded on oral contracts. **1985 M L D 364**

When two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis, they are understood to be used in their cogent sense. They take, as it were their colour from each other, that is the more general is restricted to sense analogous to the less general. The word "contracts" in subsection (1), section B, Part I of Schedule to the Conciliation Courts Ordinance, 1961, has been used along with other words "receipts or other documents". The context in which the word "contracts" has been used in the said provision, therefore, can be said to indicate written contracts only. Where the question was whether the word "contracts" in subsection (1), section B, Part I of Schedule to the Conciliation Courts Ordinance, 1961, includes both oral and written contracts:

Held, the word "contracts" in subsection (1), section B of Part I of the Schedule to the Conciliation Courts Ordinance, 1961, has been used along with words receipts or other documents". There are authorities for the proposition that "when two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis, they are understood to be used in their cogent sense". "They take, as it were their colour from each other, that is, the more general is restricted to a sense analogous to the less general".

Therefore, the context in which the word contracts has been used in the said provision clearly indicates that written contracts are only meant. **P L D 1969 Supreme Court 57**

Muhammad Nurul Islam alias Yurm Islam v. Anent Rain Sarma P L D 1965 Dacca 288 and Reference No. I of 1965 P L D 1966 Dacca 165 not approved.

Word 'contracts' in Schedule B, Part I, to Ordinance contemplates only written contracts and not suits founded on oral contracts. Appellant making application before Conciliation Court for recovery of amount from respondent not relying upon a written contract--Conciliation Court, held, had no jurisdiction to try dispute. **1988 S C M R 1146**

Zamiruddin Ahmad v. Havas Khan P L D 1969 S C 57 rel.

Oral claim

Oral claim, held, could not be agitated before conciliation Court as suit based on contracts in writing only falling within jurisdiction of Court. **1986 M L D 774**

Movable property

Suit for damages-Conciliation Court decreed the suit-Revision petition filed against such decree was dismissed being time-barred-Validity-Suit by plaintiff was not the one mentioned at Serial No.3 of section B of Part-I of Schedule of the Conciliation Courts Ordinance, 1961 i.e. suit for compensation for wrongfully taking or damaging movable property--Plaintiff showed that no movable property of plaintiff had wrongfully been taken or damaged by defendants, rather it was the plaintiff, who had removed the furniture and fixtures himself and had to suffer loss because of the same-No suit for such voluntary act of plaintiff was competent--No jurisdiction vested in the Conciliation Court to entertain such suit or decree the same-Judgment/decreed of Conciliation Court was wholly without jurisdiction, void and non-existent-No limitation would run against a void order, thus revisional Court had fallen in error to dismiss revision petition on ground of limitation-Section 3 of the Conciliation Courts Ordinance, 1961, provided that cases falling under Part-II of Schedule could be referred to Conciliation Court only with consent of all the parties thereto-Defendants had never agreed to any such reference, thus suit filed by plaintiff could not be tried by Conciliation Court by treating the same to be a suit as described in Section B of Part-II of the Schedule to the Ordinance-High Court accepted Constitutional petition and declared the impugned orders to be without lawful authority and of no legal effect. **2002 C L C 1372**

Objection not Raised

Contention that amount involved being Rs. 324, Civil Judge had no jurisdiction to pass decree for amount and dispute fell within pecuniary jurisdiction of conciliation Court-Held, High Court right in observing such objection not open to petition in revision, due to decree having been passed on objectors' admission. **1976 S C M R 519**

Award

Respondent sued appellant-plaintiff for specific performance of award which was in fact given by a third person /arbitrator to which both parties agreed, as a Sharri Faisla (SHARRAI FAISLA) given on a reference from Conciliation Court--Suit was decreed by trial Court but on appeal District Judge dismissed same on ground that suit was barred under S.32 of Arbitration Act and also because award which related to immovable property was required to be registered under mandatory provisions of S.17(2) of Registration Act, 1908 and was not registered--High Court however decreed suit of respondent on ground that respondent required specific performance of agreement and not award--Respondent had throughout based his case treating said Sharri Faisla as an award and as appellant was resiling from it, respondent wanted it to be enforced--Merely because document of award showed that it was founded on agreement of parties and was signed by both of them, held, did not ipso facto make it an agreement--Suit filed by respondent too was for enforcement of award and not for specific performance of any agreement--Since validity of this was being challenged by appellant, suit was not competent being barred by provisions of S.32, Arbitration Act--Judgment and decree of High Court set aside and that of District Judge dismissing suit of respondent restored. **1988 S C M R 1146**

Question of a fact

Question whether a certain Mohallah wherein parties were residing was within jurisdiction of

a Union Committee a question of a fact which petitioner failed to raise before authority below--Such question, held, could not be agitated in constitutional jurisdiction. **1986 M L D 774**

Nature of the case

In order to decide whether a case falls within the mischief of section 3 (1) (a) of the Conciliation Courts Ordinance, 1961, one must examine the case as a whole, and in its entirety, to ascertain its nature and character and then decide upon its own facts as to whether it falls within the mischief of that section or is outside its purview. If a case does not fall within the mischief of section 3 (1) (a), its provisions would not be attracted. The question as to whether a case falls within one category or another has to be decided upon an examination of the intrinsic nature of the case itself and not upon its eventual result or the course it takes during the trial. A Magistrate may try an accused under section 325 or 327 of the Penal Code, 1860 but he may eventually convict the accused under section 323 of the Code. A complaint was made under section 325 of the Penal Code, 1860. The prosecution witnesses as well as the medical man examined in the case also fortified the complaint, The Magistrate after examining the prosecution witnesses, framed charge, however, under section 323, P. P. C. A reference under section 438, Cr. P. C. was made by the Sessions Judge and he recommended that the trial be quashed inasmuch as a charge was framed against the accused persons under section 323 of the Penal Code and therefore in view of section 3 (1) (a) of the Conciliation Courts Ordinance, 1961 the Magistrate had no jurisdiction to proceed with the case:

Held, the mere fact that the Magistrate framed charge under section 323 of the Penal Code, 1860 did not alter the character of the case itself which fell within section 325 and not section 323 of the Code. Besides, the law permits a Magistrate to alter a charge framed by him at any stage of the trial. He could easily reconvert the charge into one under section 325 of the Code. The case, in the circumstances, therefore, did not fall within mischief of section 3(1)(a) of the Conciliation Courts Ordinance, 1961. **P L D 1967 Dacca 375**

4. Application for constitution of a Conciliation Court:

1) Where a case is, under this Ordinance, referable to conciliation any party to dispute may, in the prescribed manner, and on payment or the prescribed fee, apply to the Chairman of the Union Council concerned [or, as the case may be, to the member representing the ward, or, in the case of ward which has more members than one, to such one of them as may be determined in the prescribed manner,]¹ for dispute, and unless the Chairman or, as the case may be, the member, for reasons to be recorded in writing, rejects, the application, he shall proceed to constitute, in the prescribed manner, a Conciliation Court for the purpose:

Provided that no application under this section shall be made person of unsound mind.

2) Any person aggrieved by an order of rejection under subsection (1) may, on the ground that the order is mala fide or substantially unjust, prefer, in the prescribed manner and within the prescribed time, an application for revision to the Controlling Authority, or to such other authority as may be prescribed.

Legal Amendment

[1] Inserted by the Conciliation Court (Amendment) Ordinance, XVIII of 1982.

Court Decisions

Consent of the parties

Suit by plaintiff was not the one mentioned at Serial No.3 of section B of Part-I of Schedule

of the Conciliation Courts Ordinance, 1961 i.e. suit for compensation for wrongfully taking or damaging movable property-Plaint showed that no movable property of plaintiff had wrongfully been taken or damaged by defendants, rather it was the plaintiff, who had removed the furniture and fixtures himself and had to suffer loss because of the same-No suit for such voluntary act of plaintiff was competent-No jurisdiction vested in the Conciliation Court to entertain such suit or decree the same-Judgment/decree of Conciliation Court was wholly without jurisdiction, void and non-existent-No limitation would run against a void order, thus provisional Court had fallen in error to dismiss revision petition on ground of limitation-Section 3 of the Conciliation Courts Ordinance, 1961, provided that cases falling under Part-II of Schedule could be referred to Conciliation Court only with consent of all the parties thereto-Defendants had never agreed to any such reference, thus suit filed by plaintiff could not be tried by Conciliation Court by treating the same to be a suit as described in Section B of Part-II of the Schedule to the Ordinance-High Court accepted Constitutional petition and declared the impugned orders to be without lawful authority and of no legal effect. **2002 C L C 1372**

Member of Panchayat Committee

Respondent who claimed to be Vice-Chairman of Conciliation Court, had issued notice to petitioners requiring them to nominate a person to Conciliation Court in respect of some complaint pending against them before Councilor and Chairman, Conciliation Court-Respondent who issued notice admittedly was a member of Panchayat Committee for respective unit-Respondent as member of Panchayat Committee could not function as Vice Chairman of Conciliation Court unless he was appointed as such in accordance with Ordinance, 1961-Notice issued by respondent was declared illegal having been issued without lawful authority.

1993 M L D 455

5. Conciliation Courts, their composition, etc:

1) A Conciliation Court shall be body consisting of Chairman and two representatives to be nominated, in the prescribed manner, by each of the parties to the dispute.

Proviso Omitted by the Law Reforms Ordinance, 1972 (XII of 1972) S. 2 and Schedule.

2) The Chairman of the Union Council, [or, as the case may be, the member representing the ward, or , in the case of a ward which has more members than one, such one of them as may be determined in the prescribed manner,]¹ shall be the Chairman of the Conciliation Court, but where he is, owing to illness or any other cause, unable to act as Chairman, or does not, on account of any personal consideration, wish to do so, or his impartiality is challenged by any party to the dispute, any other person appointed in the prescribed manner not being a person nominated by any party, shall be the Chairman of the Court.

3) If either party to the dispute consists of more than one person, the Chairman shall call upon the persons constituting that part to nominate the two representatives on its behalf, and if they fail so to nominate, shall authorize any one of such persons to do so, and thereupon the person so authorized shall alone have the right to nominate such representatives.

4) Where representatives required under this section to be nominated are not nominated within the prescribed time, then

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- a) if the case falls under Part I of the Schedule, the Conciliation Court shall, without such representatives, be deemed to have been validly constituted for the purposes of deemed to have been validly constituted for the purposes of this Ordinance, and conciliation shall proceed accordingly; and
- b) if the case falls under part II of the Schedule the court shall issue a certificate that conciliation has failed.

Legal Amendments

[1] Inserted by the Conciliation Court (Amendment) Ordinance, XVIII of 1982.

Court Decisions

Constitution of Conciliation Court

Failure of one party to nominate his representative-Chairman duty bound in. terms of S. S(4)(b) to certify failure of conciliation - Conciliation Court consisting of two representatives of one of the parties and the Chairman, without any representative of other party-Court not properly constituted as envisaged under S. S(1)-Decree passed by such Court offends against statutory requirement of S. 5. **P L D 1968 Karachi 758**

P L D 1965 Pesh. 149 and P L D 1966 Dacca 125 rel.

Conciliation Court, constitution of -- Charge for offences under Part I of Sched. - Accused refusing to nominate their representatives in Court-Chairman nominating two persons as accused's representatives and convicting them -- Conciliation Court held not legally constituted and proceedings without lawful authority. **P L D 1970 Dacca 336**

6. Jurisdiction of Conciliation Courts, etc.:

- 1) Subject to the provision of sub-section (2), a Conciliation Court shall be constituted and shall have jurisdiction to try a case only when the parties to the dispute ordinarily reside within the [jurisdiction of the same Union Council]¹ in which the offence has been committed or the cause of action has arisen.
- 2) [Where one of the parties to a dispute ordinarily resides, and the offence has been committed or the cause of action has arisen, in one ward of a city, municipality or cantonment, and the other party ordinarily resides in another ward of the same city, municipality or cantonment, then, a Conciliation Court may be constituted in the ward in which the offence has been committed or, as the case may be, the case of action has arisen.]²

Legal Amendments

[1] Substituted for "Limits of the Union" by the Conciliation Court (Amendment) Ordinance, XVIII of 1982.

[2] Sub Section 2 Substituted by the Conciliation Court (Amendment) Ordinance, XVIII of 1982.

7. Power of Conciliation Courts to award compensation:

- 1) Save as otherwise provided in this ordinance, a conciliation Court shall have no power to pass a sentence of imprisonment or fine, but if it holds a person guilty of an offence specified in the schedule, it may order the accused to pay to the aggrieved person compensation the amount of which may not exceed five hundred rupees but if the offence is one punishable under Section 428 or Section 429 of the Pakistan Penal Code (Act XLC of 1860) the amount of compensation may exceed [five hundred]¹ rupees not [one thousand]² rupees.

2) In a case relating to a matter falling under Section B of Part I of the Schedule or under Section B of Part II thereof, the Conciliation Court shall have the power to order payment of money up to the amount specified therein in respect of such matter or delivery of property to the person entitled thereto.

Legal Amendments

[1] Substituted for "Two Hundred and fifty" by the Conciliation Courts (Amendment) Ordinance, XVIII of 1982.

[2] Substituted for "Five Hundred" by the Conciliation Courts (Amendment) Ordinance, XVIII of 1982.

8. Finality of the Decisions of Conciliation Courts:

(1). Omitted by the Law Reforms Ordinance, XII of 1972, S. 2 and Schedule.

(2) Any party may, within thirty days of the decision of Conciliation Court, apply in the prescribed manner --

a) to the Controlling Authority, if the case relates to the decision of a falling under Sec. A of that Part, or

b) to the District Judge, if the case relates to a matter falling under Sec. B thereof,

and the Controlling Authority or the District Judge, as the case may be, if satisfied that there has been a failure of justice, may set aside or modify the decision, or direct that the dispute be referred back to the Conciliation Court for reconsideration.

2 A) In the computation of the period of thirty days provided under sub-section (2) of the Limitation Act, 1908 (Act IX of 1908) shall apply.

1) If the decision of Conciliation Court is not unanimous, and the case falls under Part II of the Schedule, the Court shall issue a certificate that Conciliation has failed.

2) Notwithstanding anything in any law any matter decided by a conciliation Court in accordance with the provisions of this Ordinance shall not be tried in any Court.

9. Enforcement of decree:

1) Where Conciliation Court decides to award compensation to a person or to order the delivery of property, it shall pass a decree in such form and in such manner as may be prescribed, and shall enter the particulars thereof in the prescribed register.

2) If any money is paid or any property is delivered in the presence of the conciliation court in satisfaction of the decree, it shall enter the fact of payment or delivery, as the case may be, in the aforesaid register.

3) Where a decree relates to payment of compensation and the decretal amount is not paid within the prescribed time, the same shall, if the Chairman of the Conciliation Court so directs, be recovered as arrears of land revenue, and, on recovery, shall be paid to the decree holder.

4) Where the satisfaction of a decree can be had otherwise than by payment of compensation, the decree may be presented for execution to such civil Court as the District Judge may, by special or general order, direct, and such Court shall thereupon proceed to execute the decree as if it were a decree passed by itself.

5) A Conciliation Court may, if it thinks fit, direct that the amount of compensation be paid in such installments as it may fix.

10. Procedure on failure of conciliation:

Where a certificate is issued that conciliation has failed, either under clause (b) of sub-section (4) of Sec. 5 or under sub-section or under sub-section (3) of Sec. 8, any party to the dispute may see, its remedy in the Court in which it would in law be entitled to seek such remedy if this Ordinance had not been promulgated.

11. Power of Conciliation Courts to summon witnesses, etc

A Conciliation Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document: -

a) No person who is exempt from personal appearance in Court under sub-section (1) of Sec. 133 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be required to appear in person;

b) A Conciliation Court may refuse to summon a witness or to enforce a summons already issued against a witness when in the opinion of the Court the attendance of the witness cannot be procured without such delay, expense or inconvenience as in the circumstances would be unreasonable.

c) A Conciliation Court shall not require any person living beyond its jurisdiction to give evidence or to produce or cause the production of a document unless such sum of money is deposited for payment to him as the Court would think sufficient for defraying his travelling and other expenses.

1) If any person to whom a Conciliation Court has issued summons to appear and give evidence or to produce or cause the production of any document before it wilfully disobeys such summons, the Conciliation Court may take cognizance of such disobedience, and, after giving such person an opportunity to explain, sentence him to a fine not exceeding twenty-five rupees.

12. Contempt of Conciliation Courts

A person shall be guilty of contempt of Conciliation Court if he, without lawful excuse -

a) Offers any insult to the Conciliation Court or any member thereof while the Court is functioning as such; or

b) causes any interruption in the work of the Conciliation Court; or

c) fails to produce or deliver a document when ordered by the Conciliation Court to do so; or

d) refuses to answer any question of the Conciliation Court which he is bound to answer; or

e) refuses to take oath to state the truth or to sign any statement made by him when required by the Conciliation Court to do so;

and the Conciliation Court may, without any complaint having been made to it, forthwith try such person for such contempt and sentence him to a fine not exceeding fifty rupees.

12-A Revision against sentence

Any person sentenced by a Conciliation Court under Sec. 11 or 12 may, within thirty days from the date on which the sentence is passed, apply in the manner prescribed for an application under sub-section (2) of Sec. 8 -

a) To the Controlling Authority, if sentence has been passed in a case relating to a matter falling under Sec. A of Part I or Sec. A of Part II of the Schedule: and
b) To the District judge, if the case relates to a matter falling under Sec. B of Part I or Sec. B or Part II of the Schedule, and the controlling Authority or the District Judge, as the case may be, if satisfied that there has been a failure or justice, may set aside or modify the sentence.]¹

Legal Amendments

[1] Section (12-A) added by the Conciliation Courts (West Pakistan Amendment) Act, XIII of 1963, S. 2.

13. Recovery of fine:

1) Where a Conciliation Court imposes a fine under Sec. 11 or Sec. 12 and such fine is not immediately paid, it shall record an order stating the amount of fine imposed and the fact that it has not been paid, and shall forward the same to the nearest Magistrate who shall proceed to recover it in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), as if it were a fine imposed by himself, and such Magistrate may also sentence the accused to imprisonment in default of payment of such fine.

2) All fines paid to Conciliation Court under Section 11 and 12, or collected on behalf of Conciliation Court under this section, shall form part of the funds of the [local council] ¹ concerned.

[Explanation: In this sub-section 'local council' means a Union Council, Town Committee, Municipal Corporation, Municipal Committee, Metropolitan Corporation, or, as the case may be, Cantonment Board constituted under a law relating to Local Government.]²

Legal Amendments

[1] Substituted for Union Council by the Conciliation Courts (Amendment) Ordinance, XVIII of 1982, S. 8 (a)

[2] Explanation added by the Conciliation Courts (Amendment) Ordinance, XVIII of 1982, S. 8 (a)

14. Limitation, etc., in certain cases:

Where a case relating to a matter falling under Section B of Part II of the Schedule is referred to Conciliation and Conciliation fails, and the case is subsequently taken to a civil Court, in computing the period of limitation prescribed therefor by or under any law of the time being in force, the time spent on Conciliation proceedings, commencing from the date of the application made under Section 4 and ending on the day the certificate of failure of Conciliation is issued, shall, notwithstanding anything in the Limitation Act, 1908 (IX of 1908), be excluded.

15. Procedure:

1) [Save as otherwise expressly provided by or under this Ordinance, the provision of the Evidence Act, 1872 (1 of 1872), other than those contained in Section 123, 124 and 125 of the Code of Criminal Procedure, 1898 (V of 1898), and the Code of Civil Procedure, 1908 (V of 1808) shall not apply to proceedings before any Conciliation Court.]¹

2) Sections 8 to 11 of the Oaths Act, 1873 (X of 1873), shall apply to all proceedings before Conciliation Courts.

Legal Amendment

[1] Substituted for Sub Section (1) by the Conciliation Courts (West Pakistan Amendment) Ordinance, XI of 1966, S. 3.

16. No appearance through counsel:

1 No appearance through counsel:

1) Notwithstanding anything contained in the Legal Practitioners Act, 1879 (XVIII of 1879) no legal practitioner shall be permitted to appear on behalf of any party to a dispute before any Conciliation Court. [.....]¹

2) If a person required under this Ordinance to appear before a Conciliation Court [is unable to appear personally due to any disability, or]² is a Purdanashin lady, the Conciliation Court may permit [such person]³ to be represented by a duly authorised agent who shall in no case be a paid agent.

Legal Amendments

[1] Omitted by the Conciliation Courts (West Pakistan Amendment) Ordinance, XI of 1966, S. 4

[2] Inserted by the Conciliation Courts (West Pakistan Amendment) Act, VI of 1969, S. 3.

[3] Substituted for "her" by the Conciliation Courts (West Pakistan Amendment) Act, VI of 1969, S. 3.

17. Transfer of certain cases:

1) Where the Controlling Authority is of the opinion that the circumstances of a case relating to matter falling under Section A of Part I of the Schedule or under Section A of Part II thereof and pending before a Conciliation Court are such that the public interest and the ends of Justice demand its trial in a criminal Court, the said authority may, notwithstanding anything contained in this Ordinance, withdraw the same from the Conciliation Court and direct that it be referred to the criminal Court for trial and disposal.

2) A Conciliation Court may, if it is of the opinion that in case relating to a matter as aforesaid and pending before it the ends of justice demand a punishment for the accused, forward the case to the criminal Court for trial and disposal.

18. Investigation by police:

Nothing in this Ordinance shall prevent the police from investigating a cognizable case by reason of the fact that the case relates to an offence specified in Section A of Part I of the Schedule, but if any such case is taken to a criminal Court, such Court may, if it thinks fit, direct that it be referred to Conciliation under this ordinance.

Court Decisions

Discretion under S.18

Respondents on complaint filed by petitioner were summoned by Magistrate to face trial under Ss.323/34 & 506, P.P.C: --Respondent challenged the order in revision---Sessions Court accepted the revision petition holding that offences under Ss.323/34 & 506, Part I, P.P.C. having been made out on the record against the accused were tribal by the Conciliation Court and directed the Trial Court to send the complaint to the Conciliation Court for trial---Held, the complaint being synonymous to F.I.R. was being investigated by the Trial Magistrate who exercising his discretion under S.18 of Conciliation Courts Ordinance, 1961, could either try the complaint himself or send the same to Conciliation Court for trial---Order of Sessions Court was set aside accordingly with the direction to refer the case to the Magistrate for trial in accordance with law. **1995 P Cr, L J 245**

Discretion under S.18 of the Conciliation Courts Ordinance, 1961, lies with the Trial Magistrate either to send the case to the Conciliation Court or try the same himself. **1995 P Cr, L J 245**

If a cognizable case, when investigated by police, was put in Court of a Magistrate, it was, held, within discretion of Magistrate either to try case himself or to refer it to Conciliation Court. **1988 P C r. L J 1560**

Jurisdiction-To be decided on basis of case initially set up and not on its final result or course it takes during trial, accused initially challaned under S. 324, Penal Code, but trial Court an appraisal of evidence finding him liable under S. 323 only and with holding further proceedings in view of bar created under S. 3 read with Sched., para. 1 to Conciliation Courts Ordinance, 1961---Held: Irrespective of fact that case fell under Sched, para. 1 of Ordinance XLV of 1961, Criminal Court, was in circumstances, competent to proceed with the case. **1970 P. Cr. L J 878**

19. Pending cases:

This Ordinance shall not apply to cases referable under this Ordinance to Conciliation which, immediately before the coming into force of this Ordinance, are pending in any civil or criminal Court, and such cases shall be disposed of by these Courts as if this Ordinance had not been promulgated:

Provided that if all the parties to any such case agree to have the same decided by a Court, the proceedings thereof shall terminate, and the case shall be referred to Conciliation in accordance with the provisions of this Ordinance.

20. Power to exempt:

Government may, by notification in the official Gazette, exempt any area or areas, or any case or class of cases, or any community from the operation of all or any of the provisions of this Ordinance.

21. Power to make rules:

Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Ordinance

SCHEDUL

PART – I

SECTION A—CRIMINAL CASES

1. Sections 143 and 147 of the Pakistan Penal Code read with the Third or the Fourth clause of Section 141 of that (Act XLV of 1860), when the common object of the unlawful assembly is to commit an offence under Section 323, or 426, or 447 of that code, and when not more than ten persons are involved in the unlawful assembly.
2. Sections 160, 323, 334, 341, 342, 352, 358, 426, 447, 504, 506, (first part), 508, 509, and 510, Pakistan Penal Code.
3. Sections 403, 406, 417, and 420, Pakistan Penal Code, when the amount in respect of which the offence is committed does not exceed three thousand rupees.
4. Section 427, Pakistan Penal Code, when the value of the property involved does not exceed three thousand rupees.
5. Sections 428 and 429 Pakistan Penal Code, when the value of the animal does not exceed three thousand rupees.
6. Sections 24, 26 and 27 of the Cattle-trespass Act, 1871 (I of 1871)
7. Attempts to commit or the abatement of the commission of any of the above offences.

SECTION B—CIVIL CASES

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|---|---|
| 1 | Suit for the recovery of money due on contracts, receipts or other documents. |
| 2 | Suit for the recovery of movable property or for the value thereof. |
| 3 | Suit for compensation for wrongfully taking or damaging movable property. |
| 4 | Suit for damage by cattle trespass. |

PART II SECTION A-CRIMINAL CASES

1. Sections 324, 343, 355, 357, 430, 448, 461, 498, 500, 501, and 502, <> Penal Code (Act XLV of 1860)
2. Section 379, Pakistan Penal Code, when the value of the property involved does not exceed seven hundred rupees.
3. Sections 380 and 381, Pakistan Penal Code, when the amount in respect of which the offence is committed exceeds one hundred rupees, but does not exceed four thousand rupees.
4. Sections 403, 406, 417, and 420, Pakistan Penal Code, with the amount in respect of which the offence is committed exceeds one hundred rupees, but does not exceed four thousand rupees.
5. Section 408, Pakistan Penal Code, when the value of property involved does not exceed one hundred rupees.
6. Section 411, Pakistan Penal code, when the value of the property involved does not exceed seven hundred rupees..
7. Sections 428 and 429, Pakistan Penal Code, when the value of the animal exceeds one hundred rupees, but does not exceed five hundred rupees.
8. Section 451, Pakistan Penal Code, when the offence is committed with the intention of committing any of the offences mentioned in Section A of Part I of this Schedule or in this section.
9. Attempts to commit or the abetment of the commission of any of the above offences.

SECTION B-CIVIL CASES

All civil cases (excepting those mentioned in Section B of Part I of this Schedule), in which the value of the claim does not exceed one lac rupees.

NOTES

Amendment made vide Notification dated 18th July, 1982 Para (3), (4) and (5) of Part I and (4) of Section A Part II amended vide Punjab Notification dated 21st October, 1984. Amount In Part I Section B and Part II Section B amended vide Notification dated 29th October 1991.

Court Decisions

Jurisdiction

Civil Judge had no jurisdiction to pass decree for amount and dispute fell within pecuniary jurisdiction of conciliation Court-Held, High Court right in observing such objection not open to petition in revision, due to decree having been passed on objectors' admission. **1976 S C M R 519**

Suit by plaintiff was not the one mentioned at Serial No.3 of section B of Part-I of Schedule of the Conciliation Courts Ordinance, 1961 i.e. suit for compensation for wrongfully taking or damaging movable property-Plaint showed that no movable property of plaintiff had wrongfully been taken or damaged by defendants, rather it was the plaintiff, who had removed the furniture and fixtures himself and had to suffer loss because of the same-No suit for such voluntary act of plaintiff was competent-No jurisdiction vested in the Conciliation Court to entertain such suit or decree the same-Judgment/decree of Conciliation Court was wholly without jurisdiction, void and non-existent-No limitation would run against a void order, thus revisional Court had fallen in error to dismiss revision petition on ground of limitation-Section 3 of the Conciliation Courts Ordinance, 1961, provided that cases falling under Part-II of Schedule could be referred to Conciliation Court only with consent of all the parties thereto-Defendants had never agreed to any such reference, thus suit filed by plaintiff could not be tried by Conciliation Court by treating the same to be a suit as described in Section B of Part-II of the Schedule to the Ordinance-High Court accepted Constitutional petition and declared the impugned orders to be without lawful authority and of no legal effect. **2002 C L C 1372**

Question whether a certain Mohallah wherein parties were residing was within jurisdiction of a Union Committee a question of a fact which petitioner failed to raise before authority below-Such question, held, could not be agitated in constitutional jurisdiction. **1986 M L D 774**

Oral contracts

Where the question was whether the word "contracts" in subsection (1), section B, Part I of Schedule to the Conciliation Courts Ordinance, 1961, includes both oral and written contracts: Held, the word "contracts" in subsection (1), section B of Part I of the Schedule to the Conciliation Courts Ordinance, 1961, has been used along with words receipts or other documents". There are authorities for the proposition that "when two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis, they are understood to be used in their cogent sense". "They take, as it were their color from each other, that is, the more general is restricted to a sense analogous to the less general". Therefore, the context in which the word contracts has been used in the said provision clearly indicates that written contracts are only meant. **P L D 1969 Supreme Court 57**
Appellant making application before Conciliation Court for recovery of amount from respondent not relying upon a written contract-Conciliation Court, held, had no jurisdiction to try dispute. **1988 S C M R 1146**

Word 'contracts' in Schedule B, Part I, to Ordinance contemplates only written contracts and not suits founded on oral contracts. **1988 S C M R 1146**

Oral claim, held, could not be agitated before conciliation Court as suit based on contracts in writing oily falling within jurisdiction of Court. Word "contracts" used alongwith words "receipts or other documents"-Context in which word "Contracts" used, in clause 1 of Section B of Schedule to Ordinance XLIV of 1961 indicated written contracts only. **1986 M L**

D 774

Penel Code

Whether case falls within mischief of S. 3(1)(a)-Case as a whole to be examined in its entirety for ascertaining its nature and character-Complaint under S. 325, P. P. C. and same fortified by prosecution and medical witnesses-Mere fact that Magistrate framed charge under S. 323, P. P. C.-Would not alter character of case itself so as to oust his own jurisdiction-Penal Code (XLV of 1860), Ss. 323 & 325.

In order to decide whether a case falls within the mischief of section 3 (1) (a) of the Conciliation Courts Ordinance, 1961, one must examine the case as a whole, and in its entirety, to ascertain its nature and character and then decide upon its own facts as to whether it falls within the mischief of that section or is outside its purview. If a case does not fall within the mischief of section 3 (1) (a), its provisions would not be attracted. The question as to whether a case falls within one category or another has to be decided upon an examination of the intrinsic nature of the case itself and not upon its eventual result or the course it takes during the trial. A Magistrate may try an accused under section 325 or 327 of the Penal Code, 1860 but he may eventually convict the accused under section 323 of the Code. A complaint was made under section 325 of the Penal Code, 1860. The prosecution witnesses as well as the medical man examined in the case also fortified the complaint, The Magistrate after examining the prosecution witnesses, framed charge, however, under section 323, P. P. C. A reference under section 438, Cr. P. C. was made by the Sessions Judge and he recommended that the trial be quashed inasmuch as a charge was framed against the accused persons under section 323 of the Penal Code and therefore in view of section 3 (1) (a) of the Conciliation Courts Ordinance, 1961 the Magistrate had no jurisdiction to proceed with the case:

Held, the mere fact that the Magistrate framed charge under section 323 of the Penal Code, 1860 did not alter the character of the case itself which fell within section 325 and not section 323 of the Code. Besides, the law permits a Magistrate to alter a charge framed by him at any stage of the trial. He could easily reconvert the charge into one under section 325 of the Code. The case, in the circumstances, therefore, did not fall within mischief of section 3(1)(a) of the Conciliation Courts Ordinance, 1961. **P L D 1967 <> 375**

Criminal trial-Jurisdiction-To be decided on basis of case initially set up and not on its final result or course it takes during trial, accused initially challenged under S. 324, Penal Code, but trial Court an appraisal of evidence finding him liable under S. 323 only and with holding further proceedings in view of bar created under S. 3 read with Sched., para. 1 to Conciliation Courts Ordinance, 1961-Held: Irrespective of fact that case fell under Sched, para. 1 of Ordinance XLV of 1961, Criminal Court, was in circumstances, competent to proceed with the case.

1970 P. Cr. L J 878