REMAND OF THE ACCUSED

[Sections 167 And 344, Cr.P.C.]

S. 167--- Physical remand/police custody on application of complainant/private person after judicial remand---Permissibility---Magistrate had sent the accused to the judicial lockup, as he was no more required for physical remand by the police---District Public prosecutor , nor any other representative of the State, had raised any objection, while the accused was being sent to the judicial lockup---State had also not assailed the order of judicial remand, and the complainant alone had impugned the same in his private capacity---Section 167, Cr.P.C. was clear on the point that any person in his private capacity could not have applied for the police custody of the accused---Impugned order of physical remand was set aside accordingly. **2016  PCrLJ  1566     LAHORE-HIGH-COURT-LAHORE**

Accused remanded to judicial custody cannot be remanded back to police custody. 1969 P.Cr.LJ 786 Muhammad Hayat.

Police remand. Accused surrendering to Magistrate and sent to judicial lock up. Police is entitled to take the accused on remand for interrogation. PLD 1972 Lah. 359 Habib Ahmad.

Representation by counsel. Accused has a right to be represented by a counsel and to have access to his relatives for the purpose. Magistrate should grant time to the accused to be represented by a counsel. (DB) AIR 1935 Lah. 230 Jahangiri Lal etc. v. Emperor. PLD 1969 Lah. 1020 Farooq Bader v. I.G. Police.

Grant of remand by Magistrates without looking into police ziminis and satisfying themselves whether grounds exist for believing the accusation or information against the accused is not only to be condemned but serious action should be taken. PLD 1968 Pesh. 140 State v. Wazir Khan.

Remand can be granted by a Magistrate in a case triable exclusively by Sessions Court because when he applied his mind to the question whether the case should be sent up to the Court of sessions it can be termed as an inquiry and he can postpone such inquiry u/S. 344, Cr.P.C. 1981 SCMR 267. Mehr Khan v. Yaqub Khan.

Remand of accused u/S. 344, Cr.P.C. illegal when under the signature of the reader of the Court, and not the Judge or Magistrate. PLD 1989 Pesh. 43 Asif Mahmood.

Remand order not signed by all members of tribunal. Held, remand order illegal, detenus set at liberty. PLD 1977 Lah. 1414 Begum Shaheen Ramay. PLD 1977 Lah. 1337 Iqbal Ahmad Khan etc.

Police custody under Section 167, Cr.P.C. An under-trial prisoner can be kept in police custody at "Police Station" only. Detention of person in place other than one notified as "Police Station" within meaning of section 4(1)(f), Cr.P.C. is illegal, PLD 1965 Lah. 324. The Magistrate is not to proceed himself to the place of confinement of the prisoner for granting remand. PLD 1965 Lah. 324 State v. Muhammad Yousaf.

Change of prison. Magistrate adjourning case under section 334, Cr.P.C. and remanding the accused to prison at K. Held, the Provincial Government is not competent to order shifting of prisoner from jail at K to jail at B. Section 541, Cr.P.C. not applicable, PLD 1965 Kar. 320 Attaullah.

Under section 344, Cr.P.C. Adjournments are not to be granted mechanically and without good cause. Recording of reasons for adjournment is necessary, PLD 1959 Lah. 322 Muhammad Hussain. PLD 1960 Lah. 490 Hamid Hussain.

Sending up case u/S. 190 (3), Cr.P.C., is equated with inquiry as defined u/S. 4 (k), Cr.P.C. by application of mind to the material on record by the Magistrate who is not to act as merely a post office. The Magistrate in the meanwhile can remand the accused u/S. 344 (1), Cr.P.C. PLJ 1981 SC 431 Mehar Khan v. Yaqub Khan etc.

Section 344-Explained. Court must have taken cognizance of the case and Police report must have been in the Court: Held, in order to obtain remand under section 344, Cr.P.C. the following conditions require to be fulfilled; (1) some evidence should be adduced before the Court which should be sufficient to raise a suspicion of accused's guilt, and the Court should be assured that further evidence to strengthen suspicion into belief is expected to be collected. (2) Challan under section 173, Cr.P.C.. should be submitted in the Court so that the Court may be able to take cognizance of the offence. In case the Court does not grant remand it should be in a position to commence inquiry or trial, and it cannot be done unless Challan is in the Court. (FB) PLD 1959 Kar. 157 The State v. Samiullah.

Remand under section 344, Cr.P.C. Remand can only be given if the Court postpones inquiry or trial. Challan not submitted in Court, no cognizance of offence can be taken and the accused cannot be remanded to custody nor could the commencement of inquiry be postponed. Magistrate's order allowing bail restored and the order of the Sessions cancelling bail quashed. 1971 P.Cr. LJ 885 Dost Muhammad.

Presenting of interim challan by the Police is necessary in order to obtain remand under section 344, Cr.P.C. (DB) PLD 1957 Kar. 210 Darshan Singh.

Accused kept in lock-up after expiry of 15 days without express authority of Court. Accused entitled to be released on bail. PLD 1951 Pesh. 37 Fateh Muhammad v. Crown.

Principles for remand by Magistrate.

(1) During the first 15 days remand to police custody may be given on strong and exceptional grounds for shortest periods.

(2) Reasons for remand are to be recorded by Magistrates. Remand is not to be given mechanically for cooperation with the police.

(3) Copy of remand order u/S. 167, Cr.P.C. shall be sent to the Sessions Judge.

(4) If challan is not submitted after 15 days the Magistrate shall release the accused on bail.

(5) After 15 days no remand shall be granted unless application made by police u/S. 344, Cr.P.C.

(6) Before granting remand Magistrate shall see that evidence sufficient to raise suspicion against the accused has been collected and further evidence is to be collected after remand.

(7) The remand is to be granted only in the presence of the accused, and his objections, if any, are to be recorded. Remand/adjournment may not be given at residence. Reasons for rejecting the objections of the accused are to be given.

(8) The Magistrate shall look into the police file before granting remand, and if no investigation is made during the remand period police is not to be given further remand.

(9) No remand is to be given after 2 months of arrest unless unavoidable. The matter shall be reported to the Sessions Judge and S.P.

(10) The Magistrate may commence the trial on incomplete challan. NLR 1984 Cr.39 Ghulam Sarwar etc. PLJ 1984 Cr.C.1.