

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.  
Cr.Misc.Appln.No.S-155 of 2017

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

---

**29.06.2017.**

Mr. Ghulam Abbas Dalwani, Advocate for applicant.

Mr. Shahzado Saleem Nahiyoon A.P.G  
=

Through instant Miscellaneous Application, applicant, who was incharge C.I.A, has prayed as under:-

- A) That this Honourable Court may be pleased to acquit the applicant/accused in the above mentioned case and crime and quash the proceedings against the applicant/accused emanating from FIR No.29 of 2016 lodged at PS T.M.Khan U/S 316, 109, 201 PPC pending in Session Case No.88 of 2016 pending before the court of Sessions Judge T.M.Khan.
- B) Any other relief which this Honourable Court deems fit, just and proper in favour of the petitioner may be granted.

Counsel for applicant contends that under police rules applicant In-charge C.I.A is responsible only to collect data with regard to criminal as well intelligence and share the same with the concerned authorities, however, he has been booked directly in an FIR No.29 of 2016 PS Tando Muhammad Khan under 302, 316, 109, 201, 337-J, 35 PPC *however* in subsequent report, submitted under Section 173 Cr.PC, section 302 was excluded. On that, learned Magistrate disagreed with the police report and passed order dated 03.5.2016 which is that:-

“Insp. Muhammad Khan Zounr SHO PS T.M.Khan is present and submitted instant charge sheet U/s 173 Cr.P.C through DPP for state in the aforesaid case/crime.

Heard the I.O, learned DPP for state, learned defence counsel on behalf of the accused persons & perused the record police papers available on record. Precise facts of FIR are that on 22.3.2016, WHC Syed Niaz Hussain Shah informed SHO that the persons of T.M.Khan and of locality are being brought at Civil Hospital in unconscious ness condition. On such information he reached at Civil Hospital, T.M. Khan along with ASI Imam Bux Alimani, PC Muhammad Ramzan, PC Altaf Hussain and DHC Shafi Muhammad, where he saw that 20/30 persons were admitted on that count. On query one Sultan and Gudu informed him that they purchased desi wine on 21.3.2016 at about 0530 PM from Ali Nawaz Panwar Hakim Ali Panhwar, Shoukat Ali, Abdul Rehman and 2/3 unknown persons, who can be identified if seen again, who are selling desi wine at the rate of Rs.100/-near the cattle pond of Ali Nawaz situated in Karim Abad Colony. Thereafter, they came at their houses where they had drink the desi wine and got ill due to which their parents brought them at hospital where police reached. Police also came to know that 22 persons lost their lives due to drinking that wine. Hence Insp Muhammad Khan Zounr lodged instant FIR on behalf of the state against above named accused persons as they sold poisoned desi wine due to which a big number of persons lost their lives. It is also alleged in the FIR that CIA in-charge Ghulam Shabir Dalwani he did not take any step to stop the said factory of manufacturing desi wine during his tenure.

During course of investigation the I.O recorded statements of witnesses namely Heera Lal on 25.3.2016 and of Luxman 26.3.2016 who stated that **the vehicle of CIA remains parked outside the otaque of accused Ali Nawaz but did not named any CIA official.** Thereafter, he recorded statements of witnesses namely Manji on 07.4.2016 who stated that EC Saleem and **Ghulam Shabir Dalwani CIA officer use to take gratification from accused Ali Nawaz for running desi wine factory.** On same day he recorded statement of witness Babo, Ajmal and Faqero s/o Babo who stated that they saw EC Saleem and Ghulam Shabir Dalwani sitting with accused Ali Nawaz in his cattle pond. Who also disclosed stated that the officials present was for the purpose of taking monthly as per statements of local peoples. On the basis of statements of above witnesses IO Muhamamd Khan Zounr implicated EC Saleem of Excise and Taxation circle T.M.Khan. But he neither collected any proof from them regarding such allegation as the witnesses did not stated in their statements who told them or how they came to know that EC Saleem and Ghulam Shabir Dalwani are taking monthly / gratification from Ali Nawaz. Furthermore the first proviso of Rule 1 of Chapter 22 of police Rules 1934 reveals as under:

Officer-in-charge of police station: (1) The officer-in-charge of a police station is ordinarily a sub-inspector. Within the limits of the police station jurisdiction the sub-inspector ( or where the incharge of a police station, is an inspector, the inspector), is primarily responsible for the effective working, management, good conduct and discipline of the local police, for the preservation of peace and the prevention and detection of crime. The due performance of all police duties, the exercise by the police of the powers granted them by law, the

correctness of all registers, records and reports prepared by them, and the direction, instruction and efficiency of all police subordinates in the station jurisdiction are matters for which the officer-in-charge of a police station is essentially answerable.

When the allegation of taking monthly / gratification by two different departments personal, one of them is employee of lower scale of BPS-5 only, coupled with the primary responsibility of detection of crimes and sending of the criminals for facing charge is taken into consideration it appears that such task was not of two officials only but it requires vast and comprehensive investigation as to tress out all the harbours in both departments i.e. in police department and Excise department who have provided the shelter to the factory and the culprits, irrespective of their official position, rank and designation.

It is matter of fact that the FIR was lodged by him on behalf of state being complainant and investigated by him. Further FIR reveals that one namely Ali Nawaz was selling desi wine nearby his house and cattle pond which comes within the meaning of article 3 of PEHO but the said section is neither applied in FIR nor in final charge sheet. So also he did not lodge separate FIR under PEHO as is being practiced in another cases. He also failed to describe for how long Ali Nawaz was running factory of desi wine. While it is talk of the town the learned member of District Bar Association Tando Muhammad Khan has filed petition for action against the factories of desi wine in the Tando Muhammad Khan including the factory of Ali Nawaz Panhwar which is the place of incident in this case. It appears to that the I.O. being public servant has prima facie committed offences punishable under following sections of PPC:

201. Causing disappearance of evidence of offence, or giving false information to screen offender, 217. Public servant disobeying direction of law with intent to save persons from punishment or property from forfeiture, 218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

He is therefore, called to show cause as to why proceedings under above sections should not be initiated against him within 3 days.

Under these circumstances and in view of the aforesaid reasons, undersigned is not satisfied from the investigation as conducted by the I.O/Insp. Muhammad Khan Zounr and investigation is also declared as defective as per note of DPP. Hence SSP T.M.Khan is directed to depute any honest and efficient police officer not below the rank of DSP for further investigation in the matter, and remove the all defects, within the intimation of this court. Report should be submitted within 14 days.

By that concerned authorities were directed for further investigation the matter wherein 41 persons lost their lives and responsibility was to be fixed upon delinquent police officers as well other accused involved in such heinous case. Pursuance to that second report was submitted and same was disposed of by order dated 26.5.2016 which is that:-

“SDPO Bulri Shah Karim Mr. Mir Muhammad Bachal Talpur submitted instant report of further investigation in shape of charge sheet U/s 173 Cr.P.C through DPP for state in the aforesaid case/crime.

Heard the I.O, learned DPP for state, learned defence counsel on behalf of the accused persons & perused the police papers available on record. Precise facts of FIR are that on 22.03.2016, WHC Syed Niaz Hussain Shah informed SHO that the persons of T.M.Khan and of locality are being brought at Civil Hospital in unconscious ness condition. On such information he reached at Civil Hospital, T.M.Khan alongwith ASI Imam Bux Alimani, PC Muhammad Ramzan, PC Altaf Hussain and DHC Shafi Muhammad, where he saw that 20/30 persons were admitted on that count. On query one Sultan and Gudu informed him that they purchased desi wine on 21.03.2016 at about 0530 PM from Ali Nawaz Panwar Hakim Ali Panhwar, Shoukat Ali, Abdul Rehman and 2/3 unknown persons, who can be identified if seen again, who are selling desi wine at the rate of Rs.100/-near the cattle pond of Ali Nawaz situated in Karim Abad Colony. Thereafter, they came at their houses where they had drink the desi wine and got ill due to which their parents brought them at hospital where police reached. Police also came to know that 22 persons lost their lives due to drinking that wine. Hence Insp Muhammad Khan Zounr lodged instant FIR on behalf of the state against above named accused persons as they sold poisoned desi wine due to which a large number of persons lost their lives. **It is also alleged in the FIR that CIA in-charge Ghulam Shabir Dalwani did not take any step to stop the said Factory of manufacturing desi wine during his tenure.**

Initially the investigation was conducted by Inspector Muhammad Khan Zaur, who after recording of statements u/s 161 Cr.P.C. and completing usual formalities submitted charge sheet u/s 173 Cr.P.C. before this Court which was found defective as it appeared that the local police was hiding the remaining harbourers and the official as well as political personnel providing shelter to such a harmful and hazardous criminal activity/illegal factory of manufacturing desi wine resulted in shameful murders of large number of people. Therefore, the matter was found requiring further investigation by an honest and efficient responsible police officer vide order of this Court dated 03.5.2016 mentioning all the defects of investigation.

The police papers show that further investigation was entrusted to SDPO Bulri Shah Karim who after conducting further investigation has submitted instant charge sheet before this Court. I have heard him as well as learned D.P.P.

for State and carefully perused the material available on record.

It is surprising to note that during course of further investigation the I.O. has only verified the investigation conducted by previous I.O. Insp Mr. Muhammad Khan Zounr and inserted the article 3/4 PEHO and issued only two case diaries in that regard. Nothing else has been done by him during course of further investigation. Neither he called the witnesses to enquire them nor has he recorded statements any other witness. His further investigation report is fully silent on all points / defects for which further investigation was required. Even more he did not collect the particulars of accused persons who are forwarded u/s 512 Cr.P.C. which is rectifiable/removable defect. It clearly appears that the further investigation report is mere repetition of the earlier report with a fresh title without collecting any evidence against the remaining harbourers and the official as well as political personnel providing shelter to such a harmful and hazardous criminal activity/illegal factory of manufacturing desi wine resulted in shameful murders of large number of people.

Under these circumstances and in view of the aforesaid reasons, when more than two months have been passed and prima facie it appears that police officials are reluctant to conduct proper and impartial investigation, undersigned has no any other option, though undersigned is not satisfied from the investigation as conducted by the I.O/Insp. Mr. Muhammad Khan Zounr and SDPO Bulri Shah Karim, **but to take cognizance against all the accused persons** on the basis of material viz. statements of witnesses, postmortem reports and chemical reports, as there is apprehension of destruction of the remaining available material with passage of time. Perusal of police papers reveals that the sections applied are exclusively triable by court of Sessions hence the R&Ps be sent up to the court of Sessions after completion of formalities. Prima facie it appears that the offence of manufacturing desi wine was concealed by Insp. Mr. Muhammad Khan Zounr (Complainant /first IO) the then SHO & SDPO Bulri Shah Karim, and the new I.O. Mr. Muhammad Bachal Talpur, as well as said previous I.O., have screened the remaining offenders and providing shelter to the illegal factory of desi wine having reason to believe that by such omission the lives of public at large were at stake and they have disobeyed the direction of law intent to cause injury or to save persons from punishment which are offences punishable u/s 166, 167, 201, 217, 218 PPC and framed incorrect record or writing which are triable by Special Judge, Anti-Corruption Court as per schedule to Pakistan Criminal Law Amendment Act, 1958. It is also to be inquired as to whether such act of both I.Os. as well as the remaining offenders who have been screened comes within the ambit of Criminal Misconduct as defined u/s 5 of Prevention of Corruption Act, 1947 or is outcome of receipt of any illegal gratification which is punishable u/s 161 PPC. Since the above acts of police officers namely Insp. Mr. Muhammad Khan Zounr, the then SHO & SDPO Mr. Muhammad Bachal Talpur, require proper inquiry and investigation, to trace out the remaining harbourers and the official / officers as well as political personnel providing shelter

to such a harmful and hazardous criminal activity / illegal factory of manufacturing desi wine resulted in shameful murders of large number of people due to whose fear and favor Impugned orders have committed the above mentioned \_\_\_\_\_. Hence a copy of this order be sent to Circle Officer, Anti-Corruption establishment, Tando Muhammad Khan for appropriate action in accordance with law under intimation to this Court.

According to learned counsel for applicant one SHO and Excise Taxation Officer as well have been arraigned in anti-corruption court with regard to defective investigation. He contends that since happening of incident is not consequence of an act of *negligence* of applicant / accused, therefore this is not a murder case and applicant /accused is innocence so proceedings against him be *quashed*. He has placed reliance on the case reported as 2016 P.Cr.L.J page 1398.

Learned A.P.G contends that in this case 41 persons lost their lives and applicant was very much responsible under police rules to collect intelligence report and report to the concerned authorities with regard any illegal business including sell of intoxication liquor, however he contends that applicant has remedy to approach trial court.

I have heard the respective sides and have also carefully gone through the available material.

At the outset, I would say that normally the remedy to have a *criminal proceeding* quashed is not available by way of *direct* approach to this Court. I am *however* equally conscious of the legal position that in *exceptional* cases this Court would not hesitate in quashing the proceedings but only if:

- i) *prima facie* no offence is made out or *alleged* offence stood denied by the *victim* himself;
- ii) an *easy* and *safe* access to trial court is not available to petitioner (accused);

It must always be kept in view that for an *early* acquittal or *quashment* is subject to satisfaction of *phrase* “there is no possibility of accused being convicted for **any offence** not necessarily the one with which he is charged’. Normally, in a case not qualifying the first requirement, this Court is always reluctant to examine / appreciate the material, collected during course of investigation, in such a manner and fashion thereby prejudicing a guaranteed right of *fair-trial* to prosecution / complainant. Even otherwise, the course, provided by the Code *itself*, through Section (s) 249-A and 265-K is always available for an accused to

seek his *pre-mature* acquittal if he satisfies the required ingredients. These have been reasons and causes because of which it is by *now* a well settled principle of law that after taking of cognizance of a case by a trial Court the FIR, registered in that case, cannot be quashed. Reference in this regard may be made to the case of Director General, Anti-Corruption Estt. V. Muhammad Akram Khan PLD 2013 SC 401 wherein it is held as:

“2. ... The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and **the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself**. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under section 249-A/265-K Cr.PC to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction.

The applicant / accused has been seeking his *premature acquittal* on ground that there is nothing to suggest his involvement in *murder* however as already stated if there is slightest *possibility* of accused being convicted for ‘**any offence**’ the remedy of *premature* acquittal will not be available for such an accused. In the instant matter there has been material which *least* prima facie shows negligence on part of the applicant / accused particularly when it cannot be believed that the applicant / accused, being incharge of CIA Centre, was not aware of sale of *illicit* liquor within his *territorial* jurisdiction. the case relied by learned counsel reflects that due to electric shock in the rainy season one person lost his life and WAPDA employee was booked in that case and that proceedings was quashed. Those facts are distinguished to the fact of this case. The applicant / accused *however* would be at liberty to move proper application before the learned trial Court which shall be decided strictly in accordance with law without being influenced from any observation, made by this Court, being of tentative in nature. Accordingly, instant petition is dismissed.

While parting, the peculiar facts of instant case leaves nothing to exclude possibility of continuity of *sale* of illicit liquor within active knowledge and notice of under the umbrella of one police agency which (negligence) resulted into death of huge numbers of persons. It has also come on record that even investigation

not properly conducted. It is strange that how police hierarchy remained silent even high level committee was not formed to examine the causes and to take action against delinquent persons which is always necessary where involvement of police officials is there or *least* require determination. Under these circumstances Home Secretary and I.G. Sindh are hereby directed to constitute a high level committee, comprising on Tanveer Ahmed Tunio SSP Shaheed Benazir Abad, Irfan Baloch SSP Hyderabad and Amjad Hussain Sheikh SSP Sukkur to examine the reasons of casualties and negligence of all concerned officials and an appropriate action must be taken against them *all* so as to make it a symbol for future. This exercise shall be completed within one month with compliance report to this Court. As well report shall be submitted before trial Court concerned.

JUDGE

Ahmed/Pa