

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-5920 of 2015

Date **Order with signature of Judge**

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal

Kainat Soomro & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

31.01.2019

Mohamed Vawda, Advocate for the Petitioners.
Mr. Abdul Qadeer Memon, Deputy Prosecutor General Sindh.
Mr. Abdul Razzak, MIT-II of this court present.
Mr. Jawad Dero, Additional A.G. a/w Ghulam Akbar Lashari, State Counsel.
Mr. Abdul Waheed Khoso, Registrar ATCs Sindh present.
Mr. Amanullah Zardari, Deputy Secretary, Home Department present.
DSP (Legal) Raza Mian, Representative of I.G. Sindh Police present.
Dr. Liaquat Ali Abro, Law Officer, Law Department,
Government of Sindh present.

Muhammad Ali Mazhar, J: The petitioners have approached this court for directions against the respondents to implement the directions of the hon'ble Supreme Court laid down in the judgment rendered in the case of **Salman Akram Raja and another vs. Government of Punjab through Chief Secretary and others reported in PLJ 2013 SC 107.** The directions are more particularly described in paragraph 16 of the judgment which is reproduced as under:

“16. In view of the above proposals, the petitioner has prayed that following points may be approved and the concerned public authorities be directed to enforce them through the course of investigation and prosecution of all rape matters in Pakistan:--

- (a) Every Police Station that receives rape complaints should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of such organizations may be provided by bodies such as the National Commission on the Status of Women. Each Police Station to maintain a register of such organization. On receipt of information regarding the commission of rape, the Investigating Officer(IO)/Station

House Officer (SHO) should inform such organizations at the earliest.

- (a) Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.
- (b) As soon as the victim is composed, her statement should be recorded under Section 164, Code of Criminal Procedure, 1898, preferably by a female magistrate.
- (c) Trials for rape should be conducted in camera and after regular Court hours.
- (d) During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.
- (e) Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court”.

2. The hon'ble Supreme Court in this judgment directed to ensure the directions contained in clauses (a) to (e) in rape matters in Pakistan. On last date of hearing, we directed the learned MIT-II and the learned Registrar, Anti-Terrorism Courts (ATCs) to submit the details of cases pending in the District Courts as well as ATCs in Sindh. The compliance report has been submitted today. According to district-wise list of pendency of rape cases in the Districts Courts, total 474 cases are pending in which 1070 accused persons are involved and the total figure of juvenile accused is 31, whereas in 142 cases DNA test was carried out. In 191 cases the statement under Section 164 Cr.P.C. was recorded and total 21 cases are being tried in camera. However, in 07 cases only the arrangements were made so that the victims and vulnerable witnesses may not expose to the accused persons. Similar statement has been filed for the Anti-Terrorism Courts in Sindh which shows the pendency of 16 cases in which 43 persons are accused. In 10 cases DNA test was carried out and in 05 cases statement under Section 164 Cr.P.C. was recorded but only 05 cases are being tried in camera, whereas in one case only the screens or other arrangements were made so that victims and vulnerable witnesses may not face the accused persons.

3. So far as the directions laid down in clause (a) of paragraph 16 of the apex court judgment, the learned Deputy Prosecutor General Sindh appeared on 15.01.2019 and addressed that police stations have already compiled list of civil society organizations and they are also maintaining a register of such organizations and they use to contact the members of civil society organizations for the purposes of legal aid and counseling. With regard to the provisions for DNA test, the learned Deputy Prosecutor General Sindh addressed on the last date that arrangements of DNA test is available in LUMHS Jamshoro and they have also signed MoU with Karachi University for introducing this facility soon.

4. The statement submitted by the learned MIT-II with the breakup transpires that the 164 Cr.P.C. statements are being recorded though not promptly, however, the ratio of cases in which screens or other arrangements were made so that victims and the vulnerable witnesses may not expose to the accused persons is very low and the ratio of in camera proceedings is also not in accordance with the directions given by the apex court wherein it was explicitly directed that trials for rape should be conducted in camera and after regular Court hours. No compliance has been shown in the statement with regard to the evidence of rape victims if any recorded in appropriate cases through video conferencing so that the victims, particularly juvenile victims, do not need to be present in court.

5. According to Article 187 of the Constitution of Islamic Republic of Pakistan, subject to clause (2) of Article 175, the Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document. Under Sub-Article (2), it is further provided that any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to

be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province, whereas under Article 189 any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Pakistan, while under Article 190 of the Constitution it is lucidly provided that all executive and judicial authorities throughout Pakistan shall act in aid of the Supreme Court.

6. The judgment was rendered by the hon'ble Supreme Court in the year 2012 but its proper application and implementation has not been made so far. The directions given in the judgment do not seem to be very difficult which could not be complied with by the District Courts or the Anti-Terrorism Courts despite lapse of considerable passage of time.

7. This petition is disposed of with the directions to all Anti-Terrorism Courts in Sindh to comply with the order immediately and so far as the issue of funds if any involved for implementation of judgment is concerned, the Home Secretary, Government of Sindh is directed to immediately take up the matter with the Presiding Officers of Anti-Terrorism Courts. He will write letters to all the Presiding Officers of Anti-Terrorism Courts in Sindh for collecting the information and requirements of funds if any and all the learned Presiding Officers of Anti-Terrorism Courts shall promptly reply the letter and communicate the required arrangements including the release of funds if any for the purpose of complying with the judgment of the apex court. Similarly, for all District Courts the learned MIT-II is directed to ensure that all District Courts in Sindh shall comply with the judgment of the apex court in letter and spirit and he will communicate letters to all the learned District Judges of the Province of Sindh for knowing the requirements and basic arrangements which will be replied by the learned District Judges promptly so that the issue of funds if any may be taken

up thereafter a consolidated statement of the requirements will be placed before the hon'ble Chief Justice of this court for consideration and directions as his lordship may deem fit and proper. The I.G. Sindh Police and Prosecutor General Sindh both are also directed to ensure the compliance of DNA test facility/arrangement as directed by the apex court. The Secretary, Home Department shall also ensure the compliance of the apex court's judgment. Pending application is also disposed of.

Copy of this order may be transmitted to the hon'ble Administrative Judge of Anti-Terrorism Courts Karachi Division and hon'ble Monitoring Judge of Anti-Terrorism Courts for Sindh so that my lords may ensure compliance of the judgment passed by the hon'ble Supreme Court.

Copies of this order may also be sent to Home Secretary Sindh, Advocate General Sindh, Prosecutor General Sindh, I.G. Sindh Police, Registrar and MIT-II, Sindh High Court.

Judge

Judge