

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.163 of 2011

Date	Order with signature of Judge
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For hearing of case

21.05.2019

None present for the appellant.

M/s. Imran Rana and Usman Khan, advocates alongwith surety Nawaz.

Ms. Rahat Ahsan, Additional P.G alongwith

Md. Tarik, SSP (Investigation) South Karachi and Inspector Ghulam Ali Marwat, Investigation-I of P.S Artillery Maidan.

NAZAR AKBAR, J.- It is indeed very unfortunate that despite repeated assurances given by the SSP Investigation to the Court on different dates that absconding appellant/accused who has jumped the bail will be arrested, the SSP Investigation has failed to fulfill his undertakings. During course of these proceedings in last few months, the SSP Investigation was even directed to take departmental action against the person responsible to produce absconding appellant/accused. He has placed on record copy of the final order dated 20.5.2019 whereby it is reported that Inspector Ghulam Ali Marwat, SIO Artillery Maidan has been awarded major punishment in departmental proceedings against him. Copy of the said order has been taken on record.

2. Be that as it may, the position is one and the same as it was on 26.4.2019 when I was constrained to call SSP Investigation to ensure arrest of the absconding appellant/accused. Today again he seeks one week time to ensure arrest of the absconding appellate/accused. However, the vehicle involved in the accident has been brought in terms of order dated **06.5.2019** and the same is handed over to the Nazir of this Court pending this appeal.

3. This is an admitted position from the record that owner of the vehicle involved in the accident is real brother of the absconding appellant (driver of the vehicle). On query by the Court that why the owner of vehicle was not nominated as co-accused, the SSP Investigation after going through the record concedes before the Court that the owner of vehicles involved in the road accident cases are also supposed to be impleaded alongwith drivers of the vehicles who are charged under Section 320 of the PPC but in this particular case neither the license of the absconding driver was verified by the I.O nor the owner of the vehicle was made co-accused. If any authority is required on this preposition, one may refer to the case of **Atta Muhammad vs. The State** reported in **2005 P.Cr.L.J 1648** authored by Hon'ble Mr. Justice Rahmat Hussain Jafferri (as he then was judge of this Court) and he in an order on bail application has been pleased to held as under:-

*18. In order to curb the offence of accident by a person who is not holding licence or an effective licence, the owner or person incharge of the vehicle should be charged along with driver of the vehicle so as to fulfil the requirement of law, implement the wisdom of the law-makers in making the provision in the shape of section 11 of the Ordinance, 1965, and to save loss of lives of the citizens, therefore, **the trial Court may examine the case of joining the owner or person incharge of the Bus bearing No.JA-7070 as a co-accused in this case on the application of prosecution nor on its own motion after giving him notice and providing him an opportunity of hearing and then may pass any appropriate order under the law.***

4. Now taking the guidance from the judgment of **Atta Muhammad** (supra) learned SSP is hereby directed to go through the reported judgment and ensure that in all the pending cases of District South, Karachi under **Section 320** of the PPC after examination of police papers and investigation, if the case is made out, owners of the vehicles involved in the accident cases should also be charged as co-accused. In addition to the observations quoted

above, I also draw the attention of all concern to para-22 of the said reported judgment which is reproduced below:-

*22. Before parting with the order I would like to draw the attention of the Driving Licensing Authority under the Ordinance, .1965, that they should examine the cases of driving licence issued to persons of above 50 years of age, who are driving transport vehicles to ascertain whether the provisions of section 4(2)(a) to (c) have been complied with or not. In order to make the road safe and save the precious lives of the citizens, various required tests and a report of blood sample of the drivers be obtained, who are driving passengers or goods vehicles, to ascertain whether they are addicts to any narcotic substance or drugs, therefore, **a copy of the order be sent to the Central Police Office, Karachi, for issuing directions to all concerned for strict compliance of the above provisions of law.***

5. I believe the directions contained in the above judgment have been violated with impunity by both the prosecution branch of the Sindh police by not impleading the owner of vehicle in accident cases, wherever case against them is made out and also by the Driving License Authority.

6. In view of the above copy of this order may also be sent to the Additional I.G, Karachi with direction that all the observations and findings of this Court in the case reported as **2005 P.Cr.L.J 1648** should be strictly followed otherwise, if required, even Contempt of Court proceedings will be initiated in each case for non-compliance of the said judgment.

7. The Senior Additional Prosecutor General is also present in Court and she undertakes that she would also ensure that all the Prosecutors who are handling the cases will follow the observations reproduced in para-3 above from the judgment of Atta Muhammad (supra) now coming back to the pathetic performance of prosecution in the case in hand, it is further ordered that keeping in view of repeated undertaking of the SSP and his failure to produce accused it

is ordered that copies of the orders dated **26.4.2019**, **29.4.2019**, **06.5.2019** and **13.5.2019** alongwith copy of today's order may be sent to the DIG (Investigation) South Karachi with a warning that if the police fail to produce the absconding appellant/accused on the next date of hearing that is **30.5.2019**, DIG (Investigation) South Karachi himself should be present in Court to explain the position that how and why the police is unable to arrest an ordinary person who is guilty of killing a main on the road by rash and negligent driving.

JUDGE

Ayaz Gul