

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
C.P.No.D-2517 of 2016
C.P.No.D-2831 of 2016

Before;

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Petitioners: Altaf Ahmed son of Jan Muhammad, Aftab
Ahmed son of Jan Muhammad and Altaf
Hussain son of Jan Muhammad,
Through M/s Riazat Ali Sahar and Ayaz
Hussain Tunio, Advocates

Respondent No.4: Shafique Ahmed son of Ghulam Mustafa,

Through Mr. Salahuddin Panhwar, Advocate

State: Ms. Sana Memon, A.P.G

Date of hearing: 24.09.2019.

Date of decision: 24.09.2019

ORDER

IRSHAD ALI SHAH, J. The facts leading to passing of instant order are that an FIR bearing crime No.85 of 2014 u/s 364 PPC was lodged by Shafique Ahmed with PS A-Section Shaheed Benazirabad with regard to abduction of his brother Maqsood Ahmed against the petitioners. On intervention of this Court, on investigation it was concluded by joint investigation committee that Maqsood Ahmed was having illicit terms with Mst. Sumera wife of accused Aftab Ahmed for which he was killed and thrown in Rohri Canal on 'Karap' basis. Consequently, an interim challan u/s 344 Cr.P.C was submitted by police before learned Civil Judge & Judicial Magistrate-III Nawabshah for trial of the accused u/s 364 PPC. It was accepted by learned Civil Judge & Judicial Magistrate-III

Nawabshah to be final vide his order dated 02.11.2014. The case was sent up to the Court of Sessions. The charge against the accused was framed for an offence punishable u/s 364 PPC. In the meanwhile, on application of complainant Shafique Ahmed the Inspector General of Police vide his order dated 03.08.2016 directed re-investigation of the case to be conducted by Inspector Ghulam Ali Jumani of Complaint Cell Sukkur Range, subject to approval of the Court. On conclusion of the investigation, supplementary challan was submitted by the police before the Court of learned Civil Judge & Judicial Magistrate-III Nawabshah on 07.10.2016, for taking cognizance of the offence against the accused for offence punishable u/s 302, 201, 311, 141 and 149 PPC, who vide his order dated 07.10.2016 by took the cognizance of the case by accepting the supplementary challan and then sent up it, to the Court of Sessions for trial according to law. It was in these circumstances, the petitioners by way of preferring two separate petitions have challenged the re-investigation of the Case, submission of the supplementary challan and cognizance of the case taken by the learned Civil Judge & Judicial Magistrate-III Nawabshah, on supplementary challan.

2. Since, common question of facts and law is found to be involved, therefore said constitutional petitions are being disposed of through single order.

3. It is contended by learned counsel for the petitioners that the petitioners being innocent have been involved in a false case by the complainant party in order to satisfy their matrimonial dispute with them; there is no eye witness of the incident; no dead body is recovered; after submission of the challan the Inspector General of Police Sindh was having no authority to have order re-investigation of the case; the re-investigation of the case even otherwise was subject to approval of the Court; no such approval was obtained by the police; the police continued with the further investigation malafidely, ignoring the fact that the operation of the order of Inspector General Police Sindh was suspended by this Court; learned trial Magistrate ought to not have taken cognizance of the case on supplementary challan; all such actions being illegal are liable to be reversed. By contending so, they sought for setting aside of the order of Inspector General of Police for re-investigation of the case and order of learned Civil Judge & Judicial Magistrate-III Nawabshah, whereby he has taken cognizance of the offence on supplementary challan. In support of their contention they have relied upon case of ***GHULAM SARWAR ZARDARI vs PIYAR ALI alias PIYARO and another (2010 SCMR 624)***.

4. It is contended by the learned counsel for the complainant and learned A.P.G for the State that the police has got every right to re-investigate the case and such right has been exercised by the police properly within its domain; there was no need for the police

to have obtained approval of the Court for re-investigation of the case as is prescribed by Section 156 Cr.P.C; no order was transmitted either to the police or to learned Civil Judge & Judicial Magistrate-III Nawabshah whereby the operation of the order of Inspector General of Police Sindh for re-investigation of the case was suspended by this Court; the amended charge has already been framed against petitioners and case has been scheduled for recording evidence of the complainant and his witnesses. By contending so, they sought for dismissal of captioned petitions. In support of their contentions they have relied upon case of ***BANK OF PUNJAB an another vs HARIS STEEL INDUSTRIES (PVT)LTD. and others (PLD 2010 Supreme Court 1109).***

5. We have considered the above arguments and have perused the record.

6. Nothing has been brought on record which may suggest that the police has got no authority to re-investigate the case. It is true that in his order the Inspector General of Police Sindh has directed re-investigation of the case subject to approval of the Court. No approval of the Court was obtained before undertaking the re-investigation of the case by Inspector Ghulam Ali Jumani, but for this reason the conclusion arrived at by the police on re-investigation could hardly be declared to be illegal simply for the reason that section 156 Cr.P.C authorizes police to investigate (re-investigate) the case of cognizable offence without order of the

Magistrate. If it is believed that the re-investigation of the case was conducted, ignoring the order of this Court, whereby the operation of the order of Inspector General of Police Sindh for re-investigation of the case was suspended, even then, it may not be a reason for that the conclusion arrived at police on re-investigation could be declared to be illegal by this Court simply for the reason that nothing has been brought on record which may suggest that the order of this court was transmitted to Inspector Ghulam Ali Jumani or learned Civil Judge & Judicial Magistrate-III Nawabshah within time prior to doing the needful. On re-investigation, the supplementary challan has been submitted by the police before learned Civil Judge & Judicial Magistrate-III Nawabshah, who took the cognizance whereof, such cognizance could hardly be declared to be illegal simply for the reason that none has seen the petitioners committing the alleged incident and dead body of the deceased has not yet been recovered. It is the merits of the case, which could hardly be discussed by this Court in exercise of its constitutional jurisdiction. At present, the amended charge in conformity with the supplementary challan submitted by the police on account of re-investigation has already been framed by learned trial Court (1st Additional Sessions Judge, Shaheed Benazirabad) and the very case has been scheduled for recording evidence of prosecution witnesses. The framing of the charge against the petitioners as is mandate by section 256-D Cr.P.C is a judicial

function/order, which obviously has not been challenged by the petitioners, which impliedly / expressly suggest that the petitioners have accepted the commencement of trial. In that situation, it would be unjustified to reverse the entire proceedings as suggested by the petitioners to its beginning by declaring the order of Inspector General of Police Sindh, submission of the supplementary challan by the police and order of learned Civil Judge & Judicial Magistrate-III Nawabshah, whereby he has taken the of the offence on supplementary challan to be illegal.

7. The case law which is relied upon by learned counsel for the petitioners is on distinguishable facts and circumstances. In that case the re-investigation was ordered by this Court by passing adverse remarks against the investigating officer, which was impugned by the investigating officer. In the instant matter no question of adverse remarks against the investigating officer is involved and the very case is at the verge of recording evidence of the witnesses after framing of charge against the petitioners.

8. In view of the facts and reasons discussed above, the captioned petitions fail and are dismissed accordingly.

JUDGE

JUDGE