

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Cr. Misc. Application No.284 of 2018

Date: Order with signature(s) of the Judge(s)

1. For hearing of main case
2. For orders on MA No.10489/2022

27.04.2023

Mr. Abdul Khalique, advocate for the applicant.

Mr. Abbadul Hasnain, Advocate / Amicus Curiae

M/s. Ameeruddin and Adeela advocates for University of Karachi.

Choudhri Muhammad Rafiq Rajourvi, AAG.

Mr. Saleem Akhtar Buriro, Additional P.G.

Mr. Rajesh Kumar, Law Officer, STEVTA, Engineer Liaquat Ai Jamro,
Director Academics and Training, STEVTA.

Mr. Raza Mian, DSP Legal, Focal Person to IGP Sindh alongwith PI
Sajjad Ali.

Dr. Qamarul Arifin, Executive Director, Mr. Muhammad Fahim,
Director Planning and Development, Syed Irfan Hassan Zaidi,
Lecturer, Muhammad Talha Farooqi, Digital Forensic Trainer;
International Institute of Digital Forensic Science and Technology.

Mr. Abdul Fattah, Law Officer, School Education Department,
Government of Sindh.

Mr. Asghar Mehar, Home Department, Government of Sindh
Mr. Muhammad Rafiq Rajourvi, Addl. A.G. Sindh.

Salahuddin Panhwar, J:- This is a part heard matter. Compliance report have been filed and perused accordingly. Being relevant, paragraph-5 of order dated 19.12.2018 is reproduced herewith:-

“5. In view of above legal position, I would say that when a thing (*investigation*), having been started, was never competed then continuity thereof shall be believed. The attitude of police in believing the submission of a report under A-class as disposal of case was / is not only illegal but against spirit of “**investigation**”. The active consciousness of *magistrate (s)* in dealing with such reports was also found to be not in accordance with rule of **supervisory**. Such situation (proposition), having surfaced before this Court, in the case of *Nasrullah supra* was attended. It was held therein that Magistrate is bound to call the investigation officer and victim with regard to progress on the crime in A-class cases fortnightly but here Magistrate not only failed in following the directives but *Magistrate* and police failed in appreciating that in such like situation the **investigation** is deemed to be continue till completion thereof which is subject to a report under section

173 Cr.PC. The learned District and Sessions Judge also seems to have not followed the guidelines.

Here, I would say that since *legally* a departure to a decision of this Court by a subordinate Court is not permissible hence it is believed that they had no knowledge of circulated case of *Nasrullah* which, though, is not appreciable however, I take it as inadvertent. This, however, demands recirculation of judgment in Nasarullah's case to all criminal courts as well Special Courts with

Tegard to arrest of absconding accused, hearing of cases which are on dormant files and hearing of reports, filed under A-class whereby Magistrates are bound to supervise the investigation.

2. Accordingly, IGP Sindh, in view of Nasrullah case **PLD 2016 Sindh 238** and coupled with above direction shall submit complete details of absconding accused persons till today on a division-wise basis before the next date of hearing.

3. Learned MIT-II shall call for reports from all criminal courts with regard to dormant file cases and details of witnesses who have failed to appear in heinous crimes and proceedings under Section 87 & 88 Cr.P.C. have been taken against them.

4. At this juncture, learned Amicus has pointed out that despite judgments passed by this Court in the cases of **Rehmat Bibi and another vs. SHO, Karan Sharif** [PLD 2016 Sindh 268] and **Wadero Mohabat Khan Khoso vs. The State** [PLD 2016 Sindh 146] and **2004 P.Cr.L.J 1523** the custom of Jirga is continuing in the upper part of Sindh, which is against the Constitution of Pakistan; therefore, concerned SSPs are liable to be prosecuted. Being relevant paragraphs No. 26, 27, 28, 29 and 31 of Rehmat Bibi's case are reproduced herewith:-

"26. Let me insist that Constitution and all other law(s) of the land nowhere recognize any person to conduct judicial proceedings and to determine guilt or innocence, charged for any crime. Since the 'JIRGA' is not backed by any law, hence cannot be stamped as legal. The Court(s) are the competent forum(s) to pass a decree and to enforce its decree by taking all necessary assistance from all organs of the State. It is matter of fact that in certain parts of this country the true-light of education is yet to reach, hence the tradition of 'Jirga' is permitted (acceptable) as 'custom' or 'usage' but even acceptance thereof by certain masses cannot give it any legal status or capability of enforcement, because it is not only illegal but has no legal means for enforcement of decision.

27. The above context also demands a reference to Article-8 of the Constitution which reads as:-

Article 8. Laws inconsistent with or in derogation of Fundamental rights to be void.--(1) Any LAW, or any CUSTOM or USAGE having the force of law, (in so far as it is inconsistent with the rights conferred by the Chapter), shall, to the extent of such inconsistency, be "VOID".

(2) The STATE shall not make any Law, which takes away, or abridges the rights so conferred, and any law made in contravention of this clause, shall, (to the extent of such contravention), be "VOID".

28. Thus, question of legality of 'Jirga' should no longer be in dispute, which otherwise stood declared as 'illegal' by this Court.

29. If there exists laws and punishments specifically addressing the issues for all said illegal acts yet there is no change in statistics, as it surfaced above. It is relevant to state that purpose of law enforcing agency is not only restricted to lodging FIR(s) or submitting reports in Court(s) to try the accused but the prime duty of law enforcing agency is:

- i) prohibiting happening of offences;
- ii) assuring sense of security / protection to each single individual;
- iii) ensuring a sense that a guilty shall not escape from legal and lawful punishment;
- iv) punishment to guilty (guilt or innocence is determined first on evidence / documents of police);

31. Every participant of such 'JIRGA' must be dealt with in accordance with law not only for such illegal act(s) but also for those offences which the illegal and unauthorized decree(s) dictate. I have no hesitation in saying that since failure of police officer of that particular territory amounts in either facilitating or aiding such conduct of 'JIRGA' and encouraging people to insist on execution of decree of such 'JIRGA' hence in future conduct of such JIRGAs should not only be stopped but in case of failure of the police officer (incharge of that territory) results in successful conduct of 'JIRGA' and compulsion upon victims, then such police officer also be prosecuted for his failure by lining him up in list of accused. A proper and vigilant eye of the police on 'conduct of such JIRGA' shall not only result in discouraging the people taking the role of 'state within State' but

no female shall also be declared as 'Kari' nor shall be punished with such status."

as well as it would be conducive to refer relevant paragraphs No. 3, 4, 6 & 8 of the judgment reported as Wadro Mohabat Khan Khoso case, which are that:-

3. Before coming to the merits of the instant case, I painfully feel it necessary to address certain issues. The above facts made it clear that:

i) the influential did dare to hold 'JIRGA' openly;

ii) announced a verdict without an authority imposing fine with further direction to give girls on failure of payment of imposed amount;

iii) a man became compelled to come in town for sell of his daughters;

iv) the police lodged the FIR after recommendation of the JIT;

4. The area of holding 'JIRGA' does fall within domain of the defined territory of Pakistan hence souls, residing therein, do qualify the term 'citizen of Pakistan'. The status of 'citizen of Pakistan' earns him/her all the privileges, protection and guarantee for which the 'State' is duty bound to provide necessary protection. The term 'State' shall not stand well with its meaning unless each single organ thereof functions properly and masses feel existence of protection, safety, liberty and all other rights which have been defined as 'fundamental rights'. To ensure this, the 'State' confers its authority to different 'offices'. Since the freedom and safety is the prime basic (fundamental) rights of an individual which are to be protected through law enforcing agencies, in particularly the 'police' which is established at root level(s) so as to create a sense of 'fear' among the wrong-doers while that of 'peace' in minds of peace loving persons. The Honourable Supreme Court of Pakistan in the following cases held that:

Rohaifa v. Federation of Pakistan (PLD 2014 SC 174)

'Under Article 9 of the Constitution... that he shall not be deprived of life and liberty save in accordance with law. State of Pakistan being guardian of its citizen is bound to implement the Constitution provisions in letter and spirit particularly the Fundamental Rights, which are guaranteed by the Constitution.

Watan Party v. Federation of Pakistan (PLD 2011 SC 997)

'The State is duty bound to protect the life and property of its citizens in accordance with law against all the atrocities, target killings, homicide, etc. The basic human rights of life, liberty and enjoyment of one's property

have been recognized nationally as well as internationally. Article 3 of the Universal Declaration of Human Rights provides that 'everyone has the right to life, liberty and security of person', no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; everyone has the right to recognition everywhere as a person before the law and all are equal before the law and are entitled without any discrimination to equal protection of the law.

Human Rights Case No.20107-G of 2013 (2014 SCMR. 287)

'It is trite law that Article 9 of the Constitution, 1973 guarantees the protection of the life of citizens. It is the duty of the State to ensure such protection by following relevant laws which are made to protect and preserve life.'

6. The Article-8(1) leads nothing ambiguous that not only the law but all the 'custom' or even 'usage' , having the force of law, shall be void if are inconsistent or in derogation to fundamental rights. The custom or usage of 'JIRGA', being in derogation to fundamental rights, in particularly that of Article 10-A of the Constitution was/is 'void' . Further, the JIRGA cannot dress itself up with status of a 'Law Authority' which is always vested with jurisdiction to enforce its 'verdict' , therefore, holding of Jirga(s) are illegal which even has so been declared by Hon'ble Apex Court. In a society or State illegality or crimes do happen hence happening of such thing is not shocking but it becomes shocking when the authority, required to take action against an illegality, remains silent. A silence over or against an illegality/crime always amounts in encouraging the wrong doers which on other hand discourages the victims (masses of society) in their faith in 'State'. Needless to add that the moment the direct functionaries, in particularly the law enforcing agencies or administrative authorities, slow down in taking necessary legal actions at relevant time, the ultimate effect thereof would be nothing but infringement of Article 4(2) of constitution i.e.:

a) no action, detrimental to the life, liberty , body, reputation or property of any person, shall be taken except in accordance with law;

b) no person shall be prevented from, or be hindered in doing that which is not prohibited by law; and

c) no person shall be compelled to do that which the law does not require him to do.

8. The act of holding 'Jirgas' and passing order(s) therein for payment of amount or giving daughters in lieu thereof was/is prima facie a denial to guarantee provided by Article-4 of

Constitution which otherwise has been guarded jealously, therefore, the law should not have taken so much time in taking necessary legal action as has been done in the instant matter. In the instant matter, criminal silence on part of the officer incharge of concerned police station and other authorities is manifest; who neither took the legal action, as insisted by Section 154 of the Cr.P.C. till recommendation of JIT, flashing of News etc. Every single organ of the State under the law is not only required to take steps but in time so as to ensure discouragement to any such act couple with bringing the same to justice.”

5. In view of above judgments, it is categorically contended in paragraph No.31 in Rehmat Bibi case that in case, any *Jirga* is conducted in any district, respective SSP would be liable to prosecution under the Pakistan Penal Code. Learned Amicus has emphasized over a news report in “**Daily Dawn**” dated 25.04.2023, according to him a *Jirga* has been held in District Jacobabad. Needless to mention that directions have already been communicated to the concerned authorities. Accordingly, issue show cause notice to SSP Jacobabad as to why he has failed to lodge a criminal case against the persons who conducted and participated in the *Jirga*. At this juncture, it would be pertinent to direct IGP Sindh to ensure compliance with the above judgment, and in case any *Jirga* is conducted in any part of Sindh, respected SSPs and SHOs would be liable for criminal prosecution as well as departmental proceedings. Besides, he shall submit details of *Jirga* in last five years.

6. Since directions were issued to learned District & Sessions Judges for compliance with the above reported cases, therefore, they shall also ensure that concerned Magistrates would be competent to issue notices to the concerned SSPs and SHOs if such illegal practice of *Jirga* is continuing in any respective area of Sindh.

7. At the outset Mr. Abdul Fattah, Law Officer, School Education Department, submits Notification dated 07.03.2023 with regard to composition of Technical Working Committee pursuant to order dated 01.03.2023. It is pertinent to mention that the Committee is required to submit report on subject “Internet of Things” (skills) to be adopted in Higher and Higher Secondary Schools while providing computer labs. It has also come on record that provision of technical workshops is already available and there are Rules with regard to appointment on technical posts.

8. At this juncture Law Officer, School Education Department, contends that STEVTA can be consulted on technical education of the subject of

"Internet of Things". Director Academics and Training STEVTA contends that they have such mechanism and in 16 institutes they are imparting education on technical and such scheme can be adopted by the School Education Department as well. Accordingly that Committee with the consultation of M.D. STEVTA and Director Academics and Training STEVTA shall also introduce matriculation technical on same pattern as earlier ensured, from upcoming academic year 2023-2024 specially in Schools where workshops are already in existence; all vacant posts shall be filled up through third party testing agency without any fail. Secretary School Education Department shall ensure change of nomenclature of relevant posts of technical education. This exercise shall be completed by the School Education Department preferably within six weeks with compliance report. In case of failure, Secretary School(s) shall appear in person with explanation.

9. At this juncture Mr. Abbadul Hasnain advocate, learned amicus curiae, contends that in technical education subject of Artificial Intelligence (AI) can be introduced upto matriculation level. Accordingly the Committee referred above shall also consider Dr. Qamarul Arifin (Executive Director) and Syed Irfan Hussain Zaidi (Lecturer) with regard to induction of AI subject in High Schools and Higher Secondary Schools.

10. Learned counsel for University of Karachi seeks time to submit fresh report with regard to establishment of technical forensic labs and decision taken by the Committee as formed on direction of this Court.

11. Focal Person to IGP Sindh shall submit compliance report and ensure that at least one month's digital forensic course is provided to the police officials/officers who are working in Investigation Wing in whole province, on divisional level. IGP Sindh shall ensure witness protection program to be implemented in high profile cases. IGP Sindh shall also ensure a serious campaign against drug addiction and narcotics/Gutka mafias. Mr. Nasrullah Korai, advocate is appointed as Amicus. Learned MIT-II shall ensure compliance.

To come up on 17.05.2023 at 11:00 am.

J U D G E

Sajid