

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. S-176 of 2023

(Shahid Hussain Solangi Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For non-prosecution.

15-03-2024.

None present for the petitioner.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

The facts in brief necessary for disposal of instant constitution petition are that an FIR Crime No. 295/2023 u/s 489-F PPC was lodged with PS Moro by the petitioner on behalf of Telenor Micro Finance Company; during course of its investigation, a person named Aslam Abro was apprehended by police, and was produced before Incharge IInd Judicial Magistrate Moro probably for remand, instead authorizing his custody, learned trial Magistrate discharged him u/s 63 Cr.P.C by cancelling the very FIR by directing the police to submit such report u/s 173 Cr.P.C vide order dated 07-07-2023, which is impugned by the petitioner before this Court by way of instant petition.

Apparently the impugned order has been passed without providing chance of hearing to the petitioner that too at the time when the case was under investigation. By such act besides denying right of hearing to the petitioner, the police has been denied right of investigation which is against the mandate contained by Article 10-A of Islamic Republic of Pakistan, 1973. It is settled by now that the Magistrate has no right to stop the investigation of a criminal case, which is statutory right of the police. In these premises, the impugned order being illegal having been passed without providing chance of hearing to the petitioner being complainant of the case, is set aside with direction to learned trial Magistrate to allow the police to continue with the investigation of the case in accordance with law

and then to pass an appropriate order on final report to be submitted by the police on conclusion of investigation of the subject FIR.

In case of *Said Jalal and 2 others Vs. The State and & another* (1972 SCMR 516), it has been held by Apex Court that;

“On a consideration of the aforesaid provisions of the Code of Criminal Procedure it appears to use clear that where investigations are being carried on by the police, and the police have not acted in terms of the provisions of subsection (2) of section 157 of the Code, the Magistrate concerned cannot stop the police from carrying on investigation or either hold a preliminary inquiry himself or depute any other Magistrate subordinate to him to hold such inquiry. The police has a statutory duty to investigation in a cognizable case under section 157 of the Code and the competent police office is entitled to carry the investigation to conclusion in accordance with the provisions of the Code”.

The instant constitution petition is disposed of accordingly.

Judge