

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-334/2019

Petitioner : Mst. Mahjabeen and another,

Respondents : Government of Sindh and others,

Date of hearing : 21.05.2019.

Date of announcement : 30.05.2019.

Appearance:

Sardar Shiraz Anjum advocate for petitioner.

Mr. Faheem Hussain Panhwar, DPG

J U D G M E N T

SALAHUDDIN PANHWAR, J. Through instant petition, the petitioners sought for following relief (s):-

- a) To direct the Respondent NO.1 to 5 to give legal protection to the petitioners and further may be pleased to direct the Respondent no.2 to 7 to take strict action against the Respondent no.8 to 12 and their companions.
- b) To direct the Respondent no.8 to 12 and their companions to stop harassment to the petitioners;
- c) To record the statement of the petitioner no.1 in respect of the above marriage;
- d) To quash the proceedings if any lodge by the respondent No.12 and their companions on the ground of marriage of petitioners;
- e) To direct the Respondent No.2 to bound subordinates to not lodge any FIR against the petitioners without permission of this Hon'ble Court;
- f) To direct the Respondent No.11 to submit detail report in the above case before this Hon'ble Court;

- g) Any other relief (s) which this Hon'ble Court deems fit and proper in the circumstances of the case, be also awarded to the petitioners;

It is contended in the petition that petitioners being *sui juris* contracted marriage inter-se; before that Respondent No.12 illegally detained the petitioner No.1 without any cause, reason and justification; for which brother of petitioner No.2 filed HCP No.291/2018 which was allowed by the learned XIth ADJ at Karachi East vide order dated 10.10.2018 wherein it was also observed that she (petitioner No.1) is at liberty to lodge FIR against Respondent No.12 but due to his influence in police, the police did not initiate any legal proceedings against the Respondent Mo.12. It was further contended that before marriage of petitioners with each other, petitioner No.1 did not know that Respondent No.12 is extremely a danger person and work for the Karachi Police as well as different agencies who (respondent No.12), after the marriage, become serious enemy of the petitioners and extended threats for their involvement in false cases or their encounter. The petitioner No.2 is a qualified person and serving in SSGC Karachi but he was falsely involved in a case of Narcotics by foisting huge recovery of Garda Chars; he was sent to jail and later released on bail in FIR of above case i.e Crime No.195/2018, u/s 6/9-C CNS, PS Gulshan-e-Maymar, Karachi, registered by *SI Asadullah of PS Gulshan-e-Maymar*. Investigation was conducted by respondent No.10 and 11. It was also contended in petition that FIR was lodged on 02.9.2018 while as per police file the alleged recovered charas was sent for chemical examiner on 03.8.2018 which means the alleged recovered chars was sent before lodging of FIR. This fact was also quoted by the Honourable Special Judge (CNS-I) at Karachi in Special Case

No.1107/2018 in bail granting order dated 15.01.2019. Many persons also filed their affidavits before trial court in support of petitioner No.2.

2. It was further alleged that Respondent No.12 (Hafeez ur Rehman) and his companions are very influential persons and they with the collusion of local persons as well police of local area started harassment to the petitioners and even threats of dire consequences are being issued at instance of respondent No.12 because of which petitioners and their family suffering mental torture, agony, physical inconvenience and financial losses. Such complaints were also made to high-ups but with no fruits, so instant petition was filed.

3. Out of different law enforcing agencies, the police is the *only* law enforcing agencies which directly comes into contact with general people and *legally* it is the only law enforcing agency which has been vested with powers to initiate a *legal* action on a complaint of cognizable offence as well to ensure protection to every single citizen if comes with such complaint. Thus, role and importance of the **Police officials** can't be denied. The image and impression of police and police station should never be short of **protector** and a place of **safety/protection** however, serious high handed ness was complained in the petition which, *too*, on activation of a private person i.e respondent No.12 and even liberty and life were claimed to be under serious threats. The matter was taken up and number of order (s) were passed. However, to give a complete picture of whole proceedings, it would be relevant to refer the order dated 19.4.2019, passed in this petition. The same reads as:-

“Order dated 06.03.2019 is that :-

Petitioner No.1 present contends that she was under illegal detention of respondent No.12 Hafeez-ur-Rehman, who kept her under influence for two years with promise that she would be accommodated by providing job; in that period she also observed immoral activities of such respondent, thereafter, she contracted marriage with petitioner No.2. Within few days of that marriage petitioner No,2 was apprehended by the police officials and 5 KG Charas was foisted upon him. Though bail was granted, besides she contends that such complaints were made already to the high-ups. By order of this Court directions were issued to conduct probe.

Inquiry officer present contends that I.O. is no more alive. It is strange that inquiry officer failed to examine the original record with regard to departure entry as well failed to call respondent No.12. Inquiry Officer present on query is not in a position to reply correctly with regard to arrest of petitioner No.2 and recovery effected from him. *Prima facie*, this is a case of colorful exercise by the concerned Officer who allegedly arrested the petitioner No.2 in recovery of Narcotics substance; hence, under these circumstances judicial propriety demands that matter shall be reinvestigated by a competent and God fearing officer. Accordingly, Mr. Aleem Lashari, Deputy Superintendent of Police (DSP) shall reinvestigate the matter by taking every circumstance on record. DIGP, Karachi shall ensure that all papers are transferred to Mr. Aleem Lashari for reinvestigation purpose and every co-operation shall be provided to Mr. Lashari to reinvestigate the case and submit report before this Court within one month. Meanwhile, proceedings of Special Case No. 1107of 2018 are hereby stayed as well as petitioners shall not be arrested in the case without prior permission of this Court. Attendance of police officials, who are present in court is dispensed with.”

Pursuant to that, respondent filed statement that :-

“It is most respectfully submitted before the Honorable High Court that the PROGRESS REPORT in to the subject referred C.P is as under:-

That on 12.04.2019 the undersigned received a called regarding reinvestigation of case FIR No. 195/2018 u/s 6/9-C CNS of P.S Gulshan-e-Maymar Karachi. On this on 12.04.2019 @ 0020 hrs the undersigned approached at P.S Gulshan-eMaymar and collect the case file of above mentioned case consisting on 32 pages, after deeply perused the case papers it revealed that case was found silent. According to previous investigation accused person was bring 05 K.g Charas on his Motor Cycle in day time without any fear of police. **Further the activities the then SHO was also found doubtful.** The undersigned recorded the statements of complainant of FIR and witnesses and also

inspect/memo the place of offence on the pointation of the petitioner.

According to the statements of complainant and witnesses that they **called by the SHO in Police Station and orders them to lodged FIR against the accused** under section 6/9-C CNS but they refused to registered case against the accused.

On 13.04.2019 the undersigned called the Petitioner Mst. Mahjabeen w/o Muhammad Usman along with her husband Muhammad Usman (On Bail) and recorded their statements.

On 14.04.2019 the duty officer ASI. Sadruddin of P.S Gulshan-e-Maymar called by the undersigned at SDPO Sachal office and also called the Nikkah Khuwah namely Qari Hafiz Zubair recorded their statements and also verified the Nikkah Nama.

1- As per the statements of the complainant of FIR and witnesses, **they denied the facts of FIR** and stated in their statements that the then SHO ask for registered the above case. They also recorded their statements before this Honorable Open Court.

2- The undersigned also recorded the statement of Ex-SHO SIP. Jamshed Khan of P.S Gulshan-e-Maymar (under Upper Course at PTC Saheedabad) who stated that SIP Abu Umair and SIP. Asadullah informed that from Afghan Cut Northern By Pass a Motor cycle along with 5 K.G Charas recovered, on this he ordered them to take legal action as per law.

3- It is further submitted that Petition No. 291/2018 which was filed by Muhammad Ali s/o Muhammad Abu Bakar brother of accused Muhammad Usman, the Honorable District and Session Judge East Karachi **passed an order to the concerned P.S for registration of FIR regarding the kidnapping of petitioner against Hafeez-Ur-Rehman.**

It is further prayed before this Honorable Court that due to non-availability of office, staff as well as vehicles the investigation cannot be completed. SIO of PIB Police Station PI Naseem Farooqi is being assist of the undersigned which is supervised by me. It is therefore requested that directions may kindly be issued to above named PI to further investigate the case under the supervision of undersigned.

That as per facts and collective evidence and witnesses the investigation above case is going towards 'B' Class.

(underlining is mine for emphasis)

The picture, so depicting from above report, is sufficient to support the claim of the petitioners regarding misusing of powers and authority by respondent Nos.7 to 11 (police officials). I have to emphasis that powers and authorities are

created by laws which are always meant to achieve the objectives, attached with *designata* and not for personal gains of the person, dressed in *designata*. I shall have to further add that law enforcing agencies are meant to protect the lives and properties of every single person hence their actions and omissions must always be shown to be **bona fide** and any colourful exercise, if comes to notice, must always be taken seriously by quarter concerned. The subordination, I shall have to add, is never meant to *blindly* follow the *illegal* orders but legal and lawful order (s) *alone* should be honoured because they (*law enforcing agency*) are meant to protect those who can't protect themselves. The investigation, needless to add, has been defined to find the *truth* and not following the dotted line hence the investigating officer must always possess the courage even to recommend legal action against the complainant, if he so deserves. Reference may well be made to the case of *Sughran Bibi v. State* PLD 2018 SC 595 wherein at rel. P 628 it is observed as:-

“(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person”

4. I shall have to *further* add that those, if are found guilty of honouring an *illegal* order at cost of their *legal* obligations, would also be guilty of equal *illegality* hence should be placed in same line. Here, it is needless to add that such acts / omissions were always demanding actions by law but the moment the Honourable Apex Court has hammered stern action against those who *lie* in criminal matters, the responsibility of Court (s) while performing criminal administration of justice have become more serious in that regard.

5. Be that as it may, the re-investigation was / is always meant to satisfy the true object of **‘investigation’** if it was departed in *first* investigation, as was complained in the instant case. Here, it is necessary to add that **‘investigation’** or **‘reinvestigation’**, as the case may be, should be completed within *least* practicable time as dictated by law and all quarter concerned must extend complete cooperation with *investigating officer*. In the instant matter it is quite surprising that despite order, no police mobile is with DSP as well no staff and office.

6. Circumstances of the case reflect that there is also serious allegation against Hafeez-ur-Rehman which, needless to add, have brought the lives and liberty of certain under serious prejudice, therefore, such conduct from quarter concerned (*Police department*) is not worth appreciating. The Hafeez-ur-Rehman is yet to be produced before this Court by the DSP Mr. Abdul Aleem Lashani and his team which, I believe, shall, *no longer*, be avoided under any excuse rather team of the DSP shall establish that **none is above law** even if he belongs to same *head* (department). Inspector Naseem Farooqui is investigating the matter and accordingly he shall complete further investigation within seven days and submit report under the supervision of Mr. Abdul Aleem Lashari, DSP

before the Court of law concerned who shall deal with the same, as per law and procedure, as well as before this Court.

7. Besides, DIGP East is hereby directed to ensure compliance of order dated 10.10.2018 and further ensure that such FIR is lodged which, *otherwise*, was ordered by a competent *fora*. DIGP shall ensure compliance of order passed in 491 CrPC proceedings to record statement and ensure that FIR is registered and copy is placed before this Court.

8. I would further add that management is a science which always insist choosing the *best* for the job however, it is quite surprising that an officer of a rank of DSP, having lost his one eye in an encounter neither has police mobile nor staff though has been on such *rank* for last seven (7) years. Accordingly, Additional I.G.P. Sindh shall provide police mobile alongwith sufficient police officials for the team of DSP Mr. Abdul Aleem Lashari who is investigating this case as well he be assigned investigations of cases of heinous nature.

9. Additional IGP Karachi shall depute responsible officers, well versed with the law, as focal person to appear in this case as well in other cases before this Court. Since Muhammad Usman and Mahjabeen, husband and wife, as mentioned above, *prima facie* appear to have been implicated *falsely* hence no FIR shall be registered against both of them without permission of this court. To come up on 07.05.2019”.

4. Through above order, the police was asked for nothing but to satisfy the *literal* and *true* meaning of the word **‘investigation’** and what came on surface is nothing short of a **tragedy** and classic example, giving air to an adverse presumption against police whereby a *few* black sheep are disfiguring the **true** and **literal** meaning of the word **‘POLICE’**. For ease the order dated 07.5.2019 is reproduced hereunder:-

“Investigation officer present submits that **‘B’ Class report is submitted before the trial Court**, copy whereof is provided before this court , as well **FIR has been lodged with regard to illegal detention**, whereas directions with regard to DSP Mr. Abdul Aleem Lashare are yet to be complied with. Accordingly, Addl. I.G.P Karachi DIGP, East, Karachi shall ensure compliance and submit report. In case of failure, contempt proceedings would be initiated against them. Focal person of Addl. I.G.P Karachi shall be in attendance and ensure that order dated 19.4.2019 is complied with in its letter and spirit. Accordingly, attendance of present I.Os. is dispensed with”.

From above, it is quite obvious that FIR wherein the petitioner No.2 was sent up to face the trial declared as **'false'** by none other but the **police officials** themselves thereby admitting that *huge* quantity of Charas was even foisted by none other but the police officials (witnesses of FIR No. 195/2018), however, police official (s) came with a plea that a case FIR no.233/2019 has been registered with PS Sachal against respondent No.12 (Hafeez ur Rehman) for offence punishable under sections 365/380/506/337-A(i)/376/34 PPC.

5. On the date of hearing, the petitioners seem satisfied with above position, however, what I cannot loose sight of the fact that *prima facie* there is an *implied* admission that police officials (complainant and witnesses of FIR No.195/2018) completely disregarded to the fact that they were entrusted with **powers, jurisdiction** and **authority** to serve the people *only* and at no times they were authorized to exploit their powers and position (s) to:-

- i) please a private person to satisfy his own personal gains;
- ii) arrest an innocent person; lock him up; foist *huge quantity* of Charas; making him visible to general public in **handcuffs**; and sending him to face trial;

rather they, at all material times, were supposed to protect the fundamental rights of petitioner No.2, which are not limited to his **dignity** only but includes **liberty** and **life** too. The subordinate (s) are not supposed to *blindly* act in support of **wrongs** but they are always supposed to be brave enough to refuse to be part of such **wrongs**. The **investigating officer** of such case also appears to have never bothered to conduct the **investigation** as was / is required by the law and so reaffirmed in the case of Sughran Bibi. The facts, detailed *supra*, reaffirms the importance of a **true** and **genuine**

investigation which, even, can result in release of **named accused** (an innocent person) and can expose to complainant for legal action which, I have no hesitation in aiding, shall not be limited to *private* persons only but shall always include **police officials** too, if they are found to be deserving so. The peculiar facts, so appears on surface in the instant case, makes it clear that even during **investigation** of such like cases, the **investigating officer** shall always be under heavy responsibility to act *fairly* as required by police rules as well what has been directed in the case of Sughran Bibi at Rel.P-641 particularly:-

“27. As a result of the discussion made above we declare the legal position as follows:

- (i) ...;
- (ii) ...;
- (iii) ...;
- (iv) During the investigation conducted after the registration of an FIR the investigating officer **may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.PC in the same case. ..;**
- (v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules 1934 “It is the duty of an investigating officer to**He shall not commit himself prematurely to any view of the facts for or against any person.**”
- (vi) ...;
- (vii) Upon conclusion of the investigation the report to be submitted under section 173 Cr.PC is to be based upon the **actual facts discovered during the investigation irrespective of the version of the incident , advanced by the first informant** or any other version brought to the notice of the investigating officer by any other person.

I would add that responsibility to unearth the **truth** is the sole purpose and object of the **investigation** and a case, reported by police official, shall never be an excuse to avoid any of the duties which an **investigating officer** is supposed to do in other crimes. Further, the law is also quite clear that the **informant** of a false case is to be prosecuted under relevant provision of law i.e Section 182 PPC. Let me make it clear that the provision of Section 182 PPC is not meant to initiate an action against **private informant** only but the word '**whoever**' is sufficient to show the intention of the legislature. Even otherwise, when one, including police official, gives an information about commission of cognizable offence to an Incharge of a police station or duty officer, his status becomes that of **informant** only while that of recorder shall, for this section, would be '**public servant**'. Accordingly, the Sr. Superintendent of Police concerned shall ensure initiation of proceedings against the **SI Asadullah** (complainant of a declared false FIR) with direction that mandatory *procedural* formalities, as detailed in section 195 Cr.PC, shall be complied with in letter and spirit.

6. Since the act of complainant, witnesses as well I.O of said declared false FIR has not only exposed their **mindset** but *prima facie* show a '**misconduct**' on their part hence the respondent No.2 shall ensure legal departmental action against all those, found guilty but after following required procedure.

7. I would add that legally the respondent No.2 is direct supervisory authority of subordinate police officials therefore, not only required to have a watch over his subordinates through his helping hands i.e *Superintendent (s) of police* but to ensure all legal actions against such like acts of the police official (s). It may well be

added that **compensation** *normally* is proportionate to **damage / loss** hence the same could only be assessed by the *aggrieved* therefore, I avoid touching such aspect in *constitutional jurisdiction* of this Court, however, the authority may, at his own, order for compensation of the **wrongs**, done by his subordinates even if same are claimed to have been *independent* from the available *funds* of such guilty *public servant*. This, however, would not prejudice the right of the petitioners to sue the concerned for **damages** as well to initiate criminal litigation against *guilty* police officials whose acts of arresting and detaining petitioner No.2, having been declared as based on **false**, stand turns into wrongful confinement *too*.

8. With these observations the petition is disposed of. Let the copy of this order be sent to respondent No.1 for information and compliance with direction to all **investigating officers** to ensure compliance of the directives of relevant rules of Police Rules and those insisted in case of *Sughran Bibi* supra. As well as trial court shall proceed in view of re-investigation report in accordance with law.

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