

**ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI**

C.P.No.D-4576 of 2019

Azhar Aijaz .....Petitioner

**Versus**

The Military Station Commander  
Malir Cantt, Karachi & others.....Respondents

For order as to maintainability

**31.10.2019**

Syed Shabbir Hussain Shah, Advocate a/w Petitioner  
Mr. Irfan Ali Memon, DAG  
Mr. Faheem Hussain, DPG

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**ORDER**

Petitioner is an Advocate by profession and complainant in FIR No.447/2016, U/s 302, 34 PPC, registered at Police Station Sachal Karachi, pending trial before the learned Model Criminal Trial Court Extention/III-Additional Sessions Judge, Malir, Karachi as Session Case No.809/2016. Therein he has reported murder of his son namely Wajahat Azhar inside Cattle Mandi, Gate No.4, Karachi on 11.09.2016 at 2015 hours, when he had gone there to purchase sacrificial animals. In the said case after investigation two accused namely Afsar Khan and Raheem Khan have been referred to trial U/s 173 Cr. P.C.

2. By means of this petition, the petitioner is seeking directions to respondent No.1/The Military Station Commander, Malir Cantt, Karachi to submit inquiry report conducted by the Pakistan Army, Malir Cantt in the matter of his son's murder before the trial Court and to the Investigating Officer (IO) to conduct the re-investigation and insert names of accused in the case shown involved in the aforesaid inquiry report.

3. Learned Counsel for the petitioner while referring to the report U/s 173 Cr. P.C. containing observations of I.O. that in the said matter Pakistan Army is conducting inquiry and whose report will be submitted as soon as received has contended that proper investigation was not conducted and the army personnels, who were involved in murder of petitioner's son were not arraigned in the case; that Pakistan Army had conducted inquiry in the matter because son of the petitioner was maltreated and tortured by army personnels, who were present at Cattle Mandi for security purpose.

4. On the other hand, Mr. Munir Ahmed Khan, Advocate, who has filed Vakalatnama on behalf of accused, namely, Afsar Khan today, learned DPG and learned DAG have opposed this petition and submitted that the trial is at fag-end as evidence of five witnesses including petitioner has been recorded and this petition has been filed only to cause delay in the trial.

5. Learned DAG has further stated that Pakistan Army has nothing to do with the case of the petitioner, the contract of Cattle Mandi, where the incident took place, was given to private contractor; and that no inquiry as alleged by the petitioner was conducted by Pakistan Army and therefore there is no question of filing of its report; that this petition is baseless and may be dismissed.

6. We have considered submissions of the parties and perused the record. There is no material available to show that in this case any inquiry as alleged by the petitioner was conducted by Pakistan Army against its personnel allegedly involved in the incident except an observation of I.O. in the report U/s 173 Cr. P.C. to the effect; that Pak Army is also conducting inquiry and if anyone found involved therein would be referred to the trail. However, in support of such observation apparently no material has either been referred or placed by I.O. before the trial Court to establish such fact. Learned counsel for petitioner's whole emphasis to justify maintaining this petition is on this observation. But in absence of any material pointing out to initiation of any inquiry by Pakistan Army or its own admission to that effect no direction of the kind sought by the petitioner can be issued under Article 199 of the Constitution. Further, the record reflects that petitioner had filed an application to the same effect before the trial Court asking for a report to be called from respondent No.1; and the report was called through I.O. of the case from SDPO, Sachal, District Malir, Karachi. He has submitted that no inquiry in relation to death of son of the petitioner was conducted nor they were concerned in any way with the matter and that the contract of cattle yard was dealt with by private contractor. After such report, the application was dismissed and the trial proceeded. Learned DAG during course of arguments vouched for this fact by submitting that Pakistan Army has not conducted any inquiry in the matter as it has got nothing to do with it. Since a fact asserted by the petitioner relating to inquiry has been disputed by other side and we have nothing before us to form our opinion on either way, we will not proceed while exercising constitutional jurisdiction to give any definite finding thereon.

7. As for reinvestigation of the case is, as informed the trial has advanced and five material witnesses including petitioner have been examined. At this stage to order for re-investigation which too without any specific terms of reference for it would not bear any fruit and additionally it would be against well-established principles regulating re-investigation of the matters pending trial in the Court. More so, the record does not testify to the fact that for reinvestigation of the case, the petitioner approached the trial Court or the relevant police hierarchy before approaching this Court in order to maintain a petition for such relief. This being the position, we do not find any merits in the petition and dismiss it along with pending application(s).

Judge

Judge

Rafiq/P.A.