IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Misc. Appln. No.S-622 of 2024

Applicants: Mst. Muskan d/o Hamadullah, Mst. Ayesha Bibi w/o Hamadullah: Through M/s. Abid Hussain Chang and Mohsin Zameer, Advocates.

Respondent: The State through Mr. Shehriyar Shar, Special Prosecutor ANF.

Date of Hearing: 11.04.2025

Date of Decision: 25.04.2025

O R D E R

Dr. Syed Fiaz ul Hassan Shah, J:

Introduction

1. The applicant impugned Order dated 22.08.2024 passed by the learned Sessions Judge/Special Judge (CNS), at, Hyderabad.

2. I have heard the counsel for applicant as well as Special Prosecutor ANF so also inquired certain queries from the Investigation Officer/ Inspector Daud Munawar present in Court.The learned Sessions Judge / Special Judge (CNS), Hyderabad through Order dated 22.08.2024 has taken the cognizance on the basis of Report / Challan submitted by the Investigation Officer under Section 173 Cr. P.C. against accused Hamadullah son of Ahmed Hussain Soomro in Crime No.25 of 2024 registered at P.S ANF Hyderabad for offence u/s 6, 9(1)(3)(d), 14,15 of CNS Act, 1997. The Investigation Officer has also indicted the wife and young daughter of the Principal Accused

Hamadullah son of Ahmed Hussain who are the Applicant before me and have impugned said Order dated 22.08.2024 before me.

3. I have carefully examined the record and perused the FIR, Police report and documents filed thereto. The foundational documents in Narcotics related case is the Memorandum of Recovery and Arrest. It appears that the recovery of 07 KG chars has been recovered from principal accused Hamadullah Soomro when he was travelling on his motorcycle as described in the FIR, Memorandum of Recovery and seizer so also final police report.

4. The foundational document of the present case is the Memorandum of Recovery, Seizer and Arrest which has no reference with regard to any collusion, abetment or purported facilitation by the Applicants before me. It is also admitted position that at the time of Recovery of alleged Narcotics, the Applicants were not available with the principal accused Hamadullah Soomro. It is also admitted position that subsequently an FIR was registered by the Raiding Officer/ Seizing officer/Complainant and even the FIR has no reference that the present applicants have any connection or relation with the commission of offence as alleged.

5. The Investigation Officer at the time of preparation of final challan has flattery stated that the principle accused Hamadullah Soomro during interrogation has disclosed that at the time of commission of offence his wife and daughter (Applicants) were following her in their personal car. This flimsy narrative in Police Report has no evidentiary, logical or documentary back and it is absolutely transgression of powers.

6. I have repeatedly inquired from the investigation officer, to show me the interrogation report from the police file. Surprisingly, the Investigation Officer has no knowledge about the Interrogation report and therefore he has failed to produce the interrogation report which led basis to incorporate the names of females Applicants. I have again asked the Special Prosecutor to produce the interrogation report and the learned Prosecutor has categorically admitted that interrogation report has not been prepared by the Investigation Officer.

7. The second interesting point is that the investigation officer has not bothered to inquire the vehicle number in which the applicants were following the principal accused. When I inquired, he has shown his inability to inquire about vehicle as alleged in order to develop a connection even the I.O has no information about the vehicle number or color of vehicle which has disclosed by the arrested accused. The third important aspect miserably, Investigation Officer is his police report states that principle accused Hamadullah had admitted that his wife is also involved in this business and has been arrested by the ANF and according to principal accused Hamadullah they have purchased various properties from the narcotic business. Surprisingly, the Investigation Officer has not given detail even about a single property of the applicants before me as well as the principle accused Hamadullah Soomro. When I inquired the investigation officer so also the Special Prosecutor with regard to the details of any property weird both have miserably failed to satisfy this Court as to why such contents has been incorporated in the final police report in utter violation of Police Rules, 1934. Even the police

diaries of the investigation are silent with regard to the interrogation report, description and ownership of vehicle, properties generated from the narcotic business or the site inspection memo which may or can demonstrate that at the time of commission of offence the applicants were available at certain known place as allegedly disclosed by the principal accused Hamadullah according to the Investigation Officer.

Jurisdiction

8. The expansion of inherent jurisdiction of High Court conferred under section 561-A Cr.P.C. was made by Supreme Court of Pakistan in case of ***"Arif Ali Khan and another v. The State and 6 others" (1993 SCMR 187)***, by creating an exception to the ratio of case ***"Bahadur and another v. The State and another" (PLD 1985 SC 62)*** and held:

> "It is true that in the above cited case this Court clearly laid down that a Magistrate while cancelling a registered criminal case, acting on the report of police submitted to him under section 173, Cr.P.C., through required to act judicially but his orders so passed are not amendable to revisional jurisdiction under section 435 to 439, Cr.P.C. But this does not mean that where the Court reaches a positive conclusion in a case that a particular order passed by the subordinate criminal Court amounted to an abuse of the process of Court, it would be powerless to rectify the injustice. In the case before us, firstly, the application filed by respondent No. 2 before the High Court was not under sections 435 to 439, Cr.P.C. but it was a petition under section 561-A, Cr.P.C. Secondly, on the facts of the case the learned Judge in Chamber reached the

> conclusion that exclusion of the names of petitioners from the first challan submitted to the Court was a malafide act on the part of police and the manner in which the orders were obtained from the Magistrate by the police for discharge of petitioners from the case clearly amounted to an abuse of the process of the Court. On these considerations, the learned Judge in Chamber in our view as fully justified in setting aside the order of Magistrate under section 561-A, Cr.P.C. and direct him to dispose of the case in accordance with the law. No interference is called for with the order of High Court."
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9. The Supreme Court of Pakistan in case "Ali Gohar v. State" (2020 SCMR) held:

> "… the judicial consensus that has evolved over time on the undisputed features of the inherent jurisdiction of the High Court under section 561-A. Cr.P.C. is curative in nature and would only be available, if no other remedy provided under Cr.P.C is attracted in a given case."

10. A High Court had inherent jurisdiction under section 561-A, Cr.P.C. to entertain any challenge order made by a trial court even before framing of charge. Reliance can be placed on cases, ***"Hidayatullah and others v. The State" (2006 SCMR 1920), "Hussain Ahmad v. Ms.Irshad Bibi and others" (1997 SCMR 1503), "Muhammad Sharif and 8 others v. The State and another" (1997 SCMR 304), "Arif Ali Khan and another v. The State and 6 others" (1993 SCMR 187) and "Muhammad Ali v. Additional I.G., Faisalabad and others" (PLD 2014 SC 753).***

11. The inherent jurisdiction under section 561-A of the Cr. P.C. has discussed by superior Courts and held that the High Court has power to examine and quash the proceedings but sparingly and only prevent the abuse of process and injustice. The Peshawar High Court in case ***"Abdul Rashid Khan v. State", (PLD 2012 Pesh. 39)*** held that:

> "Of great implication is the fact that a Judicial Magistrate has to pass a speaking order after scrutinizing the evidence available on the record. If the order of a Judicial Magistrate suffers with miscarriage of justice or amounts to abuse of the process of court, it is amenable to the inherent jurisdiction of the High Court under section 561-A, Cr. P.C."

12. In the case of ***"The State v. Asif Ali Zardari & another" (1994 SCMR 798)***, the Hon'ble Supreme Court while examining the scope of inherent powers under Section 561-A Cr.P.C vested in High Court has held as under:

> "9. Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by the High Court at any time. Ordinarily High Court does not quash proceedings under section 561-A, Cr.P.C. unless trial Court exercises its power under section 249–A or 265-K, Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment of proceedings as envisaged under section 561-A, Cr.P.C. In

> exceptional cases High Court can exercise its jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

13. This judgment was also followed in the case of ***"Muhammad Khalid Mukhtar v. The State" (PLD 1997 275)***. In the case ***"Miraj Khan v. Gul Ahmed and 3 others", (2000 SCMR 122***), the Hon'ble Supreme Court has held as under:

> "There is no absolute bar on the power of the High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A, Cr.P.C. It is cardinal principle of law that every criminal case should be adjudged on its own facts. The facts of one case differ from the other and, therefore, no rule of universal application can be laid in a certain case so as to be made applicable to other cases. Even in the case reported in PLD 1997 SC 275, relied on by the learned counsel for the petitioner this principle has been recognized that the High Court in exceptional cases can exercise jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C., if the facts of the case so warrant. The main consideration to be kept in view would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of process of Court or not. It on the basis of facts admitted and patent on record no

> offence can be made out then it would amount to abuse of process of law to allow the prosecution to continue with the trial.

14. In the case of ***"Maqbool Rehman v. The State and others", (2002 SCMR 1076)***, held:

> "9. In law, there is no warrant for the argument that since the charge had been framed by the trial Court, proceedings could not be buried by way of quashment. The petitioner appears to be laboring under a misconception of law that in all cases where the accused persons are summoned by a Court of law, it is incumbent upon the Court to record the evidence. There is no invariable rule of law and it will depend on the facts of each case whether to allow the prosecution to continue or to nip in the bud."

15. In the case of ***"Mian Munir Ahmad v. The State" (1985 SCMR 257)***, held that:

> "that the powers of the trial Court under section 249-A, Cr.P.C. and 265-K, Cr.P.C. are co-extensive with the similar powers of the High Court under section 561-A, Cr.P.C., and both can be resorted to.

16. It seems to me, for the reasons noted below, that this ambitious submission of Special Prosecutor ANF and the Investigation Officer, attractively though it was argued, must fail for a variety of reasons.

17. The question for me now is; whether it is appropriate to draw an inference at all and, if so, the precise nature and extent of such an inference will depend on the particular circumstances of

this peculiar case. Relevant considerations will include the proximity between a breach of duty by the Investigation Officer and the non-available evidence, the effect of the other motivation circumstances before the trial court and what other evidence might have been available when he decided to take cognizance.

18. I would refer to the principle that whether it is appropriate to draw an inference, and if so the nature and extent of the inference, will depend on the facts of the prosecution case only; and that a failure to adduce relevant documents and statement of any prosecution witness may convert claim on the other side into established proof and also depend on the non-explanation for the absence of the documents or record against the Applicants and failure to enumerate concrete reason (for Investigation Officer and Prosecution) or plane reason (for trial Judge as no deep appreciation allowed) putting their names into the police report and sending them for trial.

19. The Investigation Officer could not assert that Interrogation Report is prepared and his action was legal when it was in breach of the duty to record the Interrogation report or statement of accused in order to connect the principal Accused with the Applicants with the measure and material those levels of allegations. There had been contrasting evidence of fact: the Investigation Officer claimed the Applicants are involved in the commission of offence while the Prosecution has had not a single document or witness to support his claim. The claim failed at first instance as the Investigation Office has not possessed a single document or witness that link the Applicants with the commission of offence. On the contrary, his admission that the names of

Applicants have been incorporated in the Police Report as the principal Accused Hamadullah Soormo has disclosed their names during interrogation when the fact is admitted that Interrogation report is not prepared. It may be observed that the Investigation Officer had "made it difficult the case of prosecution to that extent without any relevant evidence", so has to run the risk of adverse factual findings and in such circumstances the rule of appraisal to judge Applicant's evidence benevolently, and the Prosecution's evidence critically."

20. Police Report is not binding upon Court—Any measurement or opinion made by the Investigation Officer would not have bound or in other words assisted in relation to identifying the material factors to try commission of offence through judicial determination. It follows that the ipse dixit of the police is not binding on the Court, and the Court retains the final authority to determine the fate of an even if a case has come up for cancellation of FIR or declaring it false FIR or negation of occurrence or lacking of evidence to prosecute or regardless of their names being placed in column No.2 of the Police Report /challan. It is a settled principle of law that the opinion of police officer is not binding upon the Court. The reliance is respectfully placed upon the cases ***"Anwar Shamim & another v. State", (SCMR 1791)***, **"*Muhammad Ahmed (Mehmood Ahmed) v. The State" (2010 SCMR 660), "Baksh Ali v. The State", (2013 YLR 1948), "Mushtaque Ahmed v. The State", (2012 YLR 1101), "Muhammad Shahid Khattak v. The State", (PLD 2013 Sindh 220,) "Allahdad & Seven others Vs. The State", (2011 P.Cr.L.J***

1169) and in the case of "Farooq Soomro v. The State" (2004 P.Cr.L.J 1023).

21. It does not seem to me be a sustainable argument by the Special Prosecutor, ANF that in view of recovery of huge quantity of narcotics substance and proper documentations at spot so also previous registration of cases, a legal criterion, the lack of interrogation report or other material may lead the Court to adopt uncritically the Police report/Charge sheet and decided to take cognizance in circumstances where I have concluded that they do not reflect the factual matrix and record i.e. lacking the name of Applicants at preparation of Memorandum of Recovery and Arrest, Remand process, lack of interrogation report and incremental material. The prime purpose of statement of accused is not to indictment to other person(s) but to confront or contradict the said maker during evidence or use as corroboration. The investigation Officer is under duty of investigation to find truth and collect material instead of riding on the shoulders of Accused who can lie or mislead too in order to damage case of prosecution. It is settled principle of criminal jurisprudence that, evidence of one case cannot be read into another case. Reference may be made to ***"Natho v. The State" (PLD 1986 SC 146), "Akbar Ali v. Qazi Javed Ahmad and others" (1986 SCMR 2018), "Ali Sher v. The State" (PLD 1987 Kar. 507), "Umer Hayat v. Additional Sessions JudgeIII, Khushab and 2 others" (2008 P Cr. L J 523) and "Malik Aman v. Haji Muhammad Tufail" (PLD 1976 Lah. 1446).*** The provisions of Articles 140, 151 and 153 of Qanun-e-Shahadat Order, 1984 clearly indicates that there are two purposes for which a previous statement of a witness can be used. One is for

confrontation or contradiction and the other is for ***corroboration***. The present case lacking the link of the Principal Accused with the Applicants either for the commission of spontaneous recovery or in relation to previously registered cases though culminated into acquittal.

22. It is also settled principle of law that each person is responsible for his deeds and actions, hence, holding the Applicants responsible for the act of the main accused, without prima facie cogent evidence, is unjustified. For reference reliance can be placed on dictum laid down by Supreme Court of Pakistan in case ***"Ahmed Yousuf v. The State", (Crl. Petition No. 225 of 2023).***

23. I have not found to exist at the relevant time when the Investigation Office prepared Police Report and by himself opined that principal Accused Hamadullah during interrogation took names of Applicants and that Interrogation report, interestingly, is not available with him in his official file which is against the norms of investigation and in the line of breach of duty. The Investigation Officer is required to record the Statement of accused or witness under Rule 25:28 of the Police Rules, 1934. The same are re-produced as under:

> **Rule 25.28(1)(a) of Police Rules, 1934—**
>
> 25.28 Statement recorded by Magistrates. – (1) The circumstances under which police officers may require a statement to be recorded by a Magistrate are as follows: (a) <u>The statement, made in the course of an investigation by a witness or an accused person</u>, and not amounting to a confession, may be recorded by a

> Magistrate under section 164 Code of Criminal Procedure [1898], in order that it may be available as evidence at a later stage. Such statements may be recorded in any of the manners prescribed for recording evidence.

24. Generally, the statement of accused during investigation has no evidentiary value and it can only be used to "confront" or "corroboration" to prove something before the trial Court. Miserably, the Investigation Officer has nothing in official police file or in his daily diaries about investigation against the Applicants except the words of mouth of the principal Accused which according to the Investigation Officer are the disclosure during his investigation or interrogation sans an infinitesimal connection or without inextricably linked or intrinsic alliance and not even iota of doubt about the guilt's of the Applicants in the investigation file or record before me. The Hon'ble Supreme Court in the case ***The State through Director Anti-Narcotic Force, Karachi v. Syed Abdul Qayum [2001 SCMR 14]***, while dilating upon the evidentiary value of statement of co-accused made before the police in light of mandates of Article 38 of the Qanun-e-Shahadat Order, 1984, inter alia, held that statements of co-accused recorded by police during investigation are inadmissible in the evidence and cannot be relied upon. Similar view has been reiterated by the apex Court in case of ***"Raja Muhammad Younas v. The State" (2013 SCMR 669)***, wherein it has been held as under:

> "2. ……..….After hearing the counsel for the parties and going through the record, we have noted that the only material implicating the

> petitioner is the statement of co-accused Amjad Mahmood, Constable. Under Article 38 of Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused……"

25. Now still the Investigation Officer and Special Prosecutor is urging to dismiss the present application on the ground that since he has inserted the name of Applicants in final charge sheet. I have already hold in the preceding paragraph that the Investigation Officer and the Prosecution has built the whole case against the Applicants on the basis of statement of principal Accused during interrogation and such interrogation report has not been prepared by the Investigation Officer and the Investigation Officer has not found anything since the foundation of the case based on the Memorandum of Recovery and Arrest, Remand proccedings or further stages of investigation and surprisingly after completion of investigation, the names of Applicants have incorporated in the Police report /Charge Sheet is obviously an act of improvement. The Supreme Court of Pakistan in the case ***"Kashif Ali v. The Judge, Anti-Terrorism, Court No.II, Lahore & Others", (PLD 2016 SC 951)*** while considering judgment in case reported as ***"Syed Saeed Muhammad Shah v. The State" (1993 SCMR 550)*** held that:

> "15. … that supplementary statement recorded subsequently to the F.I.R can be viewed as improvements made to the witness's statement…"

26. The law caste a duty upon the Investigation Officer to determine truthfulness and nothing else. I may refer the Police Rules, 1934:

> **25.2. Powers of investigating officer. –**
> (1) ……..
> (2) ……...
> (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.

27. It is also a settled law even an ***investigation*** if based on malafides of Investigation agency or officer, it can be open to correct under the constitutional jurisdiction of this Court under Article 199 of the Constitution. Reliance can be placed on cases, ***"Anwar Ahmad Khan vs. The State" (1996 SCMR 24), "Raja Rustam Ali Khan vs. Muhammad Hanif" (1997 SCMR 2008)***.

28. It seemed to this court that the Prosecution needed to demonstrate that that police report or that police file in some way, has some incremental material, intrinsic link or evidence that may develop or gradually increase the severity or nature of a crime or wrongdoing of both women Applicants with the offences related to the spontaneous recovery of alleged narcotics from an Accused against whom sufficient material is available with the prosecution. One should also bear in mind that the concept of pre-trial scrutiny has introduced within the criminal justice system of Pakistan with gatekeeping power to filter the criminal cases by careful examination, evaluation of record of every case of prosecution according to law, rules, regulation, judicial norms and principles

settled by the superior Courts. Otherwise, the basic idea for the establishment of prosecution system and prosecutorial decision would be frustrated. I may make quite easy the said reason; the legal scrutiny to remove defects in an ongoing investigation or whilst preparation of good police report which may or can prevent case of prosecution in various aspects, for instance; in the present case, to join the applicants in a case of spot recovery when they were not present would have to be fatal or would make the case of prosecution more strong before the trial Court? Such aspect is missing in the present case and rising a question on the performance of prosecution side.

29. There is no evidence or material record that may expose to a certain level that Applicants were involved in the commission of offence in the present case of on spontaneous recovery of Narcotics substance. Both Special Prosecutor and the Investigation Officer have failed to produced daily diaries at least which may link the interrogation report or disclosure by the principal accused Hamadullah that the Applicants are also working with him. Startlingly, neither the statement of the Accused Hamadullah is available in the police file nor the interrogation report is prepared by the Investigation Officer and yet the Investigation Officer has referred the names of Applicants in Charge Sheet/Police report with recommendations to try and sentence them and remotely accepted by the trial Judge through the impugned Order. I obligate to follow dictum of Supreme Court of Pakistan on the point of “police diaries” as required under Section 172 of the Code and I delineate the rule laid down in cases ***“Muhammad Idrees v. The State”, (in Crl.***

P.742-L/2019), "Muhammad Akram v. The State", (in Crl. P. 629-L/2019):

> "The object to require recording of the said details in the police dairy appears to be to enable the courts to check the method and manner of investigation undertaken by the investigating officer. Until the honesty, the capacity, the discretion and the judgment of the Police can be thoroughly trusted, it is necessary for the protection of the public against criminals, for the vindication of the law, and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for inquiry or for trial should have the means of ascertaining what was the information (true, false, or misleading) which was obtained from day to day by the Police Officer who was investigating the case, and what were the lines of investigation upon which such Police Officer acted. A properly kept police diary would afford such information, and such information would enable the Magistrate or Judge to determine whether persons referred to in the police diary, but not sent up as witnesses by the Police, should be summoned to give evidence in the interests of the prosecution or of the accused. It is important to remember that it is the duty of the Magistrate or of the Judge before whom a criminal case is, to ascertain the truth and to decide accordingly. It is axiomatic that a Police Officer who is investigating a criminal case, receives all sorts of information: true, false or misleading. The formulation of opinion on the basis of investigation by the Police Officer can also range from correct and fair opinion to a premature, biased, influenced or incorrect

> opinion. It is to check these infirmities that may creep into police investigation that it is essential that the Magistrate or the Judge, who is to hold the scales of justice evenly between the State and the accused, should have some means of ascertaining the quality of information obtained by the Police Officer during the course of investigation every day. (See Queen v. Mannu, (1897) ILR 19 All 390 (Full Bench), per John Edge, C.J)"
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30. Even the Investigation Officer has not disclosed any of the property whatever he has claimed in his Police report under section 173 Cr. P.C. that the Applicants or principal Accused have generated from the dirty money of narcotics selling despite the Investigation Officer procured physical remand of the Accused and kept incarcerated the principal accused Hamadullah Soomro for the best reason known to him. The Investigation Officer even failed to find out the elementary points of Narcotics cases—who is the seller—who is the purchaser of the Accused (07 KG Charas)? Generalized, allegations are mentioned in the challan that the Applicants own properties from dirty money.

31. The opinion of Investigation Officer in the Police report is drafted and prepared by the Investigation Officer himself. Unfortunately, he has not unearthed any details of property of the Accused Hamadullah or the Applicants despite he has written in the Police Report/Charge sheet that the Accused Hamadullah, during interrogation disclosed that he and the Applicants have obtained several properties in suburbs of Hyderabad. No notice under section 160 Cr. P.C. to Land Grant Agencies have brought on

record. This led to form a view that either it is breach of duty by the Investigation Officer in utter failure to place on record the properties of drug peddler and initiate confiscation proceedings or a hackneyed narration wisecrack disaster for the Applicants. As per aspiration of Section 12 of the Control of Narcotics Substance Act, 1997 some proceedings must be filed by the Investigation Officer to freeze the properties which he has claimed but the Investigation Officer has not done so and another adverse inference has drawn that it is just bully otherwise he must have mentioned the complete description of the alleged properties.

32. The rule handed down by the superior courts on the only remaining point that mere disclosure of name by Accused during interrogation through a report or statement is nothing unless statement recorded before a Magistrate under section 164 Cr.P.C and that too helpful for corroboration with fact or facts of relevant facts including its factual record. The way trial judge keeps popping up as a needle in his side and his ire at his ability to wriggle out from duty of determination of sufficient material exists or sufficient material is not existed cannot be sustainable before me whilst following the dictum laid down in Mohammad Idrees's case (supra).

33. It seems tolerably clear that, by the end of the Investigation in the case in hand, the prosecution's case is that, because the principal Accused Hamadullah have disclosed the names of Applicants during interrogation, therefore, Applicants should have been prosecuted, conversely, without adhering to single document or incremental material or intrinsic link. The trial judge accepted that submission, saying nothing which is definitely against the judicial norms and such unreason and irrational Order

can not be called as valid judicial order. I have also considered carefully the adverse inference point as no incrementing material or evidence available against the Applicants, which required judicial determination which tends to act ulterior motives of the Investigation Officer.

34. The self-admission of the Investigation Officer about insufficient material has been ignored whilst his opinion has been followed bypassing settled principles of law. The Order impugned before me was passed without realizing judiciously that it was opinion of Investigation Officer without reasons or backing material. The action levels are extraordinary exceeded against women in transgression of power and that case must be needed evaluation either to be pleaded or prosecuted and proved by way of factual and expert evidence or prima facie material is not available against the Applicants.

35. Consequently, I hold that the learned trial Judge has not formed final determination about the Applicants as per guidelines of Supreme Court of Pakistan the relevant portion which is re-produced:

> "…. This power of investigation, in no way, includes the power to determine guilt or innocence of the accused persons. An investigation, as defined in Section 4(1)(l) of the Cr.P.C, includes all proceedings under the Cr.P.C for the collection of evidence conducted by a Police Officer or by any other person authorized by a Magistrate. This definition makes it clear that the assignment of a Police Officer conducting an investigation is limited to the collection of evidence, and the evidence when collected has to be placed by him before the

> competent court of law. Only the court has the power and duty to form an opinion about the guilt or innocence of an accused person and to adjudicate accordingly on the basis of evidence produced before it. An opinion formed by the investigating officer as to the non-existence or existence of sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused person to a Magistrate under sections 169 and 170 of the Cr.P.C does not tantamount to opinion as to the guilt or innocence of the accused person. And despite such opinion of the investigating officer, the final determination even as to the existence or non-existence of sufficient ground for further proceeding against the accused person is to be made by the Magistrate under Section 173(3) and 204(1) of the Cr.P.C on examining the material available on record, and not on the basis of that opinion of the investigating officer. **(Referred: Muhammad Ahmed v. State, P L D 2006 Supreme Court 316; Muhammad Ahmad v. State, 2010 SCMR 660; Muhammad Arshad v. State, PLD 2011 SC 350).** Therefore, the reference to and reliance on the opinion of the investigating officer by the High Court in its judgment was also legally untenable."

36. I understand that it settled law that while taking cognizance on police report, a judge should not involve deep appreciation of record and adhered to prima facie case or in other words sufficient material is required to accept the police report. It would have been wrong in principle, and contrary to common sense, for the judge to have made decisive findings to accept police report on the wrong factual assumptions. I consider that the

argument in the present case seeks to put the judge into a straitjacket. In this way, the inference sought runs completely counter to the findings of fact made by the judge while decided to take cognizance against the Applicants without single iota of doubt or intrinsic link or record or evidence that may term as sufficient material or prima facie case.

37. After all, the extent to which a trial judge ostensibly accedes (which otherwise may not be) to a submission that he failed to draw an adverse inference despite the convenience of record placed by the prosecution which undoubtedly does not link the Applicants except with an exception, that is the opinion of Investigation Officer and that too without required standard of investigation and obligatory judicial requirements or alternatively to directly hold accountable without sufficient evidence or lacking as prima facie case for cognizance unless some material is not brought before the trial Court.

38. The two expressions i.e. existence of “sufficient ground” and “prima-facie case” (as used in Section 204 of Cr.PC) have interchangeably been construed by the Courts. For reference; cases are enumerated of ***“Noor Muhammad Vs. State” (PLD 2007 SC 9)***; ***“Abid Shah Vs. Additional Sessions Judge Sheikhupura” (PLD 2009 Lahore 444)***. In the case of ***“Sher Singh v. Jatendranath Sen” (AIR 1931 Cal. 607)***, from Indian Jurisdiction, it was observed "a prima facie case only means that there is ground for proceeding”. The same views have been adopted by the Supreme Court of Pakistan in the case of ***“Noor Muhammad Vs. State” (PLD 2007 SC 9)***. The Supreme Court of Pakistan further elaborated the proposition of both terms while

emphasized that starting point of a call or process under sections 202 and 204 of the Code **depends** upon the availability or non-availability of sufficient incriminating material (2010 SCMR 194). Has the trial Judge followed this dictum while handing down the Order impugned before me? Obviously, negative. These principles have also hold in earlier cases by Supreme Court of Pakistan, for instance; ***"Abdul Wahab Khan v. Muhammad Nawaz and 7 others" (2000 SCMR 1904).*** The Supreme Court of Pakistan has observed in Noor Muhammad's case (supra) that frivolous and vexatious complaints must be buried in its inception where no prima facie case is made out or where no sufficient grounds for issuing the process exist.

39. I may advert to the concept of imposition of cost in criminal jurisdiction which is not alien. The Honorable Supreme Court of Pakistan ruled that High Court under its inherent jurisdiction may impose cost. Reliance can be placed on case "Inayatullah v. Sh. Muhammad Yousaf and others" (1997 SCMR 1020), the Supreme Court held:

> "We are unable to accept the contention of the learned counsel for the petitioner that special costs could only be awarded in terms of section 35A, C.P.C. The learned Judges in the case came to a definite conclusion that the proceedings initiated against respondent No. 1 at the instance of petitioner were mala fide and that the petitioner had no reasonable ground to prosecute the same. In fact, respondent No. 1 was sentenced to one year R.I. in the proceedings of the case initiated by the petitioner, which were ultimately found to be coram non judice. In these circumstances, the High Court was fully competent in the exercise of its inherent power to grant appropriate compensation to the respondents. There being no positive

> prohibition on the power of the High Court, while exercising jurisdiction under Article 199 of the Constitution, to award costs to compensate a party made to suffer unnecessarily through frivolous litigation. The High Court, in appropriate cases, in the exercise of its inherent power, may award adequate costs by way of compensation to a party made to suffer on account of such litigation."
>
> Line supplied

40. Reliance can also be placed on cases ***"Deen Muhammad and Others v. Assistant Commissioner and S. D. M., Shahdadpur and others" (1984 SCMR 455) and "Qazi Naveed-ul-Islam v. District Judge, Gujrat", (PLD 2023 SC 298),*** the Supreme Court imposed costs of Rs.100,000/- under Order 28 Rule 3 of the Supreme Court Rules 1980 while refusing leave to appeal against application under section 476 Cr.P.C. and in ***case "Qazi Naveed ul Islam v. District Judge, Gujrat", (PLD 2023 SC 298),*** the Supreme Court of Pakistan held that the purpose of awarding costs is to compensate for the expenses borne by a party so also it is an effective instrument for ridding the legal system for frivolous, vexatious and speculative claims.

41. In light of the discussion, law and legal principles referred hereinabove, I hold that Order impugned before me is based on a demonstrable misunderstanding of the record and settled legal principles, therefore the Order dated 22-08-2024 passed by the learned Sessions Judge/ Special Judge (CNS), Hyderabad is set aside to the extent of the Applicants and proceedings against both Applicants (Mst. Muskan D/o Hamadullah and Mst.Ayesha Bibi w/o Hamadullah) stand quashed while I impose Rs.40000/- cost upon the Investigation Officer PI Daud

Munawar, SHO PS ANF Hyderabad, for vexatious proceedings against the Applicants including her young daughter who is high school student.

42. The Criminal Misc. Application stands disposed of.

43. Let copy of this Order be forwarded to the DG ANF, Head Quarters, Islamabad for necessary information and compliance.

JUDGE

Ahmed/Pa,