

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. MISC. APPLICATION NO.284/2018

Date

Order with signature of Judge

For hearing of main case.

24.01.2019

Mr. Manzoor Hussain Soomro advocate for applicant.

M/s. Ali Haider Saleem and Siraj Ali Chandio, Addl. P.Gs alongwith Muhammad Habib Khan, AIGP Legal-II, Khalid Mehmood, PDSP, DSP/SDPO Airport; Abdullah, SSP Investigation Korangi-II, SIP Athar Abbas, SSP Korangi, ASI Yousuf Ali, Mumtaz Ali Rahojo, PS Ganga, District Larkana, SIP Ghulam Sarwar, PS Ferozabad. SIP Wazir Ali, District Sukkur, Inspector Ali Bukhsh Jamali, District Naushahro Feroze, SIP Abdul Jabbar Brohi, District Benazirabad, Inspector Zaheeruddin, PS Ghotki.

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At the outset, M/s. Muhammad Hanif Samma, Muhammad Farooq and Abadul Hasnain advocates are hereby appointed *amicus curie* in this case.

2. To *prima facie* show importance of issue and immediate appointment of *amicus curie*, the paragraph Nos.4, 5, 6 and 7 of order dated 19.12.2018 are that :-

“4. Since, the issue involved is relating to disposal of such like cases under A-Class, therefore, I would confine to such *extent* only. A report under A-Class is not the ***final*** or ***legal*** disposal of a crime (FIR) as was, so observed in the case of Nasrullah v. SHO (PLD 2016 Sindh 238), in this regard as:-

“47. It is surfaced that investigation officers in many cases submit report under “**A**” class thereby burying the file in dump of files though it is settled principle of law that investigation continues till the crime is unearthed and guilt or innocence is determined by the Court (s) of law, hence in such like matter (s) (reported under ‘**A**’ class), the responsibilities of the police do not come to an end by submitting such paper alone nor that of Magistrate concerned who *otherwise* is ultimate authority and does possess supervisory jurisdiction...”

Such *legal* position even was affirmed in the land-mark judgment, so recently passed by Apex Court in the case of Sughran Bibi (PLD 2018 SC 595) while issuing directives as under:-

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

- (i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard;
- (ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth;
- (iii) Upon registration of an FIR a criminal “case” comes into existence and that case is to be assigned a number and **such case carries the same number till the final decision of the matter;**
- (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. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the 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 toHe shall not commit himself prematurely to any view of the facts for or against any person.”
- (vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigation officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934....
- (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 say that **‘no investigation can be said to have been completed unless the culprit thereof is not known/identified’**, therefore, a report under **‘A-Class’** would never be an admission of **‘completion of investigation’** hence no question of *legal* disposal of a crime / offence arises which legally shall start on presentation of a report under section 173 Cr.PC.

5. In view of above legal position, I would say that when a thing (*investigation*), having been started, was never completed 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 regard 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.

6. Since, equally the police also seems to have been *ignorant* of legal position as well case of Nasrullah supra, therefore, P.G. Sindh and IGP shall not only divulge the case of Nasrullah to all police officers but shall also submit details of cases wherein reports under A-class have been submitted in all over Sindh. Compete breakup of last ten years shall be filed as well learned MIT shall call report from all courts with regard to A-class reports submitted before Magistrates and compliance of judgment of this court in view of Nasarullah’s case.

7. Besides, SSPs all over Sindh who are bound to supervise the investigation, shall depute teams of competent officers who shall supervise the investigation of all A-class cases and submit reports before Magistrates on fortnight basis. Magistrates would be competent to take any coercive action against delinquent person in case of failure in compliance of the dictum laid down by this Court in above referred case.”

Pursuant to order, AIGP Legal-II present, submits report with regard to pending A-class cases in following Districts:-

S.NO.	DISTRICT	NUMBER OF CASES
1.	MALIR	117
2.	MIRPURKHAS	611
3.	UMERKOT	199
4.	THARPARKAR	115
5.	THATTA	368
6.	TANDO ALLAHYAR	230
7.	SUJAWAL	68
8.	JACOBABAD	468
9.	NAUSHAHRO FEROZ	604

Whereas SIP Investigation **Korangi** submits complete details of A-class cases (cases wherein investigation is pending and culprits are not arrested) which is **13,769** as well in **Karachi District South-II**, pendency is **16,690** while in **District South-I** it is **9,318**. AIGP Sindh contends that these directions they have conveyed to the concerned SHOs and SSPs and have received the report as mentioned above and further seeks time to submit A-class pending cases in remaining districts. It is strange that IGP Sindh office has no status of A-class cases. It appears that IGP office has not established independent website flashing details of A-class cases and absconders, which is complete negation of judgment of this Court in case of *Nasarullah*.

3. The above statistics leaves me with no option but to regretfully acknowledge that:

“law enforcing agency as well ‘supervisory authority i.e “Magistrates concerned” find satisfaction in only burdening the already burdened record of **‘NA MALOOM LOUG’**;

There can be no denial to the fact that **‘commission of every crime is self indicative of its doer (criminal)’**. If so, which one shall have to admit, would mean that we are having such huge number of

criminals around / within us without their *identity*. Can there be a possibility of peace in society which allows free existence of evil in such numbers?. The answer to this could be nothing but a big **NO**.

4. Law never requires an informant to *first* locate the criminal and then to report the commission of **crime** as same (*finding the criminals*) is undeniable mandatory duty of the law enforcing agency (State) which, I would again insist, does not come to an end by mere throwing some papers before a Court of law by giving them a name of **report under A Class** rather continues till **criminals** are sent up either as **arrested** or as **identified (absconders)**. I would further insist that continuity of an **investigation** least would keep the wrong doer under threat of his being located which *least* may operate as a hurdle in free movement of such **criminals**. The police as well Magistrates concerned are equally believed to be conscious of such legal position hence in the case of Nasrullah, they were hammered of their duties as:-

“47. It is surfaced that investigation officers in many cases submit report under **“A”** class thereby burying the file in dump of files though it is settled principle of law that investigation continues till the crime is unearthed and guilt or innocence is determined by the Court (s) of law, hence in such like matter (s) (reported under **‘A’** class), the responsibilities of the police do not come to an end by submitting such paper alone nor that of Magistrate concerned who *otherwise* is ultimate authority and does possess supervisory jurisdiction. Thus, judicial propriety demands that leagred Magistrates shall maintain record of such case (s) and shall keep calling report (s) from police station concerned on quarterly basis and amter shall be fixed at such occasion with notice to complainant / victim party to show that what efforts have been taken for competing the investigation which in no way fulfills by submission of a report under **“A” Class.** ...”

Submission of above statistics is self indicative of the fact that police as well Magisterial courts do acknowledge pendency of such **‘untraced crimes’** available on their chest yet, *surprisingly*, seem to

be enjoying the position at the cost of their legal obligations, which, *otherwise*, stood defined in referred case of Nasrullah.

5. At this juncture learned *amici curia* contend that figure of A-class cases in two districts of Karachi, is very alarming and the same is contagious and shows inefficiency and incompetence of the investigation or lack of concern by Sindh Police of Karachi law and order situation, only in three districts there are about 39,783 (Thirty-nine thousand seven hundred and eighty three) pending A-class cases. SSP Korangi is also present has assisted this court very well. According to him in District Korangi there are 10 police stations and in every police station there is one SIP having one investigation officer including police constable, with covers about 4 hundred thousand population and in which district investigation force is 350.

6. At this juncture Mr. Muhammad Farooq contends that Karachi's population is more than two crores whereas police force is not adequate and according to the population and in that situation it is not possible for investigation officers to carry out investigation which takes time.

7. I would not hesitate for a single moment that the Sindh Police may have shortage of staff etc but since *legally* a financial or other constrained can never be an excuse for State particularly when such *excuse* is, otherwise, at cost of guaranteed fundamental rights. In the case of Watan Party (PLD 2011 SC 997), the honourable Apex Court while dealing with issue of '**law and order**' observed as:-

"12. Primarily, it is the responsibility of the Provincial Government to maintain law and order in the territories of the respective Provinces for the purpose of smooth running of economic and social life and without disturbance in the daily affairs because if the life and liberty of the citizens is, in any part of a province at stake, highhandedness continues to

remain unabated; atrocious acts like target killings, torture, extortion etc., become the order of the day and then neither the Provincial Government can discharge its duties nor the people consider themselves safe and protected. Virtually, in that case, discomfort painfully envelops the whole Province and decay soon creeps in breaking the very fabric of human life of the citizens.”

Needless to add that departments should not complain about shortage of staff etc, particularly when such excuse is being attempted at the cost of *otherwise* guaranteed fundamental rights rather should, at all material times, come forward with suggestions and mechanism to competent quarter so that purpose of establishing such department may not fade away. Therefore, DIG Police Establishment shall be in attendance on next date with complete breakup of police officers and other force in police and investigation specifying the number of officers in whole Sindh and particularly in Karachi with correspondences, if any, made to Government for establishing police stations because of widening of the *City* and abnormal increase in its population.

8. Since, in the case of Nasrullah, a good coordination of all concerned, including Court (s) was insisted and each institution was asked to perform its role, therefore, IGP Sindh shall ensure complete breakup of remaining pending cases including Districts of Karachi as well initiatives, if so far taken after circulation of judgment of Nasrullah. Needles to mention that Prosecutor General Sindh's office is , *otherwise*, directly concerned to supervise investigation hence PG Sindh office shall also submit details of A-class cases (under investigation) as per directives, given in case of Nasrullah supra. IGP Sindh depute any responsible person to assist P.G. Sindh's office and bifurcate the cases and submit details of cases of heinous crimes separately in whole Sindh particularly Karachi; which

are yet pending for arrest / names of culprits (A-class). Moreover, CTD, SIU, AVCC, Special Branch and Crime Branch, shall also submit details with regard to cases which are yet pending under A-class.

9. IGP Sindh shall submit complete report with regard to Nasarullah's case in respect of Cells established with regard to absconders and their arrest. In view of Nasarullah's case all District and Sessions Judges in Sindh were directed to establish I.T. Cells and were further directed to call every A-class case fortnightly hence all District and Sessions Judges shall submit complete details of initiatives which they were directed to take. The reports also be called from the Magistrates concerned about compliance of directives, so specifically issued to them, so as to turn the '**A class reports**' into completion of **investigation**. The PG Sindh and IGP Sindh shall highly be appreciated if they come forward with some mechanism so as to achieve the *goal* , insisted in case of Nasrullah i.e not to have number of '**crimes**' only but '**sending criminals up to face law**' and **investigation of A-class cases**.

To come up on 06.02.2019 at 9.30 am. Attendance of officers who have submitted report is dispensed with however SSP Investigation Korangi-II, AIGP shall be in attendance to assist this court further. Copy of this order be sent to the Prosecutor General Sindh, Chief Secretary, Secretary Home Department, Government of Sindh and IGP Sindh for compliance.

J U D G E