

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Criminal Miscellaneous Application No. S-868 of 2025
(Abdul Hameed Rodnani and others Vs. The State and others)

Date	Order With Signature Of Judges
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- 1. . For hearing of MA No.13777/2025
- 2. For hearing of main case.

27-11-2025

Mr. Muhammad Ahmed Leghari, Advocate for applicants.
Mr. Muhammad Daud Narejo, Advocate for the Respondent
No.3
Ms. Rahat Ahsan, Additional Prosecutor General, Sindh.

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Ali Haider 'Ada' J.- Through this Criminal Miscellaneous Application, the applicants being Police officials assailed the Order dated 24.09.2025, passed by the learned Additional Sessions Judge-II, Thatta in Habeas Corpus Application No. 132 of 2025 filed by the Respondent No.3 Shabir Ahmed as in such order the learned Court directed the police for recording the statement of the Respondent No.3 and incorporate the same in the book of 154 Cr.P.C. and the Applicants were further directed to pay compensation amounting to Rs.30,000 as well, further the disciplinary action be taken against the Applicants.

2. Briefly, the Respondent No.3 moved one application under Section 491 Cr.P.C. that his brother Noor Hassan and nephew Munawar are illegally confined by the Applicants, as the Applicants are designated SHO of concerned Police Station, ASI as well the Police Constable. On such application the Raid Magistrate was appointed who submitted the report that the Detenue No.2 Munawar was sitting on the ground floor outside the lock-up but within the premises of police post, and on inquiry the concerned SHO failed to justify. As on such raid report the statement of the detenue was recorded who implicated the Applicants for his illegal arrest as well as arrest of another detenue Noor Hassan. On such aspect, learned Court passed the order which is called in question.

3. Learned counsel for the Applicant submits that there is no any detention of the detenue as one detenue was found within the

premises but not in a lock-up, further submits that under Section 491A Cr.P.C. there is no ample power to pass such kind of order whereby direction for registration of FIR, imposition of compensation and for departmental proceedings as the same is not the domain, further submits that there is criminal record of the Respondent No.3 as well as the detinue so in order to save their skins the application under Section 491 Cr.P.C. was filed, further submits that in compliance the FIR was lodged when the stay was granted by this Court, therefore, he prays for setting aside the impugned order.

4. On the other hand, learned counsel for Respondent No.3 contends that the order of this Court was passed on 29.09.2025, whereas the FIR had already been lodged earlier on the same date at about 12:30 p.m. He further submits that the present Applicants obtained stay thereafter, and that the police, upon completion of investigation, recommended disposal of the matter under 'B' Class, which is presently pending adjudication before the competent Magistrate. Learned counsel argues that a police station is not a public park where individuals may stroll at their ease; therefore, the stance advanced by the Applicants is wholly baseless. With regard to the allegation of criminal record, learned counsel vehemently opposes the Applicants' contention, asserting that neither the detinue nor Respondent No.3 have any criminal record, and that the names appearing in the police database pertain to different individuals with similar names. According to him, the impugned order is well reasoned, and the police must be bound to perform their functions diligently and effectively in the field.

5. The learned Additional Prosecutor General supports the impugned order and submits that the police officials are under a statutory obligation to act fairly, lawfully, and strictly in accordance with their mandate.

6. Heard the learned counsel for the parties at considerable length and carefully perused the material available on record. The

record has been minutely examined to appreciate whether any illegality, material irregularity, or jurisdictional defect exists, warranting interference in the present proceedings.

7. In the present case, the applicants stand fully implicated on the basis of the statements of the detainees as well as the report submitted by the Raid Commissioner. The applicants failed to justify the presence of the detainee at the police station, even though he was found outside the lock-up. It is pertinent to observe that specific statutory provisions exist requiring the maintenance of a complete record of every person who enters the police station, including those who present themselves as visitors. In this regard, **Rule 22.48(2) of the Police Rules, 1934 (Volume III)** is explicit on the point. For ready reference, the said provision is reproduced as under:

22.48 Register No.II

(1) ---

(2) The daily diary is intended to be a complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.

(3) ---

(4) ---

8. The police station is not a public park where anyone may enter and leave at will. It is not a place open for casual visits or free movement. Proper mechanisms and mandatory procedures are prescribed for recording the presence of every individual who enters the premises. Therefore, the stance taken by the applicants that the detainee was merely present as a visitor and free to come and go is wholly misconceived.

9. Furthermore, **Articles 9 and 10 of the Constitution of the Islamic Republic of Pakistan** provide that no person shall be deprived of life or liberty save in accordance with law, and further prescribe safeguards with respect to arrest and detention. For ready reference the same are reproduced as under:-

9. No person shall be deprived of life or liberty save in accordance with law.

10. Safeguards as to arrest and detention(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorise the detention of a person for a period exceeding 1[three months] unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of '[three months]', unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

Explanation I. – In this Article, "the appropriate Review Board" means,

(i) in the case of a person detained under a Federal law, a Board appointed by the Chief Justice of Pakistan and consisting of a Chairman and two other persons, each of whom is or has been a Judge of the Supreme Court or a High Court; and (ii) in the case of a person detained under a Provincial law, a Board appointed by the Chief Justice of the High Court concerned and consisting of a Chairman and two other persons, each of whom is or has been a Judge of a High Court.

Explanation II. – The opinion of a Review Board shall be expressed in terms of the views of the majority of its members.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, 2[within fifteen days] from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order :

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

(6) The authority making the order shall furnish to the appropriate Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government concerned, to the effect that it is not in the public interest to furnish any documents, is produced.

(7) Within a period of twenty-four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in pursuance of any such order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case :

Provided that this clause shall not apply to any person who is employed by, or works for, or acts on instructions received from, the enemy 1[, or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a Federal law or is a member of any association which has for its objects, or which indulges in, any such anti national activity].

(8) The appropriate Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family.

(9) Nothing in this Article shall apply to any person who for the time being is an enemy alien.

10. It is observed that incidents of police excesses are increasingly surfacing, accompanied by a growing apprehension of fundamental liberties being usurped through unlawful detention. Such a trend must be curbed to safeguard the rights of citizens as guaranteed under Articles 9, 10 and 14 of the Constitution. One effective means to achieve this objective is the imposition of costs upon delinquent officials, to be paid to the victims. The award of such costs serves a dual purpose: on the one hand, it acts as a corrective measure for police officials who exhibit a tendency to act beyond the parameters of law, and on the other, it seeks to restore the dignity of the victims, protect their fundamental rights, and strengthen public confidence in the legal system.

11. Now, as per **Black's Law Dictionary**, the terms "*compensation*" and "*costs*" have been specifically defined. The

underlying purpose of these concepts is to provide relief to a victim or aggrieved party by awarding monetary benefits to redress the loss or inconvenience caused by the opposing party. For ready reference, the definitions of *compensation* and *costs* as stated in Black's Law Dictionary are reproduced as under: —

COMPENSATION. *Indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value; that which is necessary to restore an injured party to his former position; consideration or price of a privilege purchased; equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description; that return which is given for something else. An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury. Railroad Co. v. Denman, 10 Minn. 280 (Gil. 208) ; Hughson Condensed Milk Co. v. State Board of Equalization, 23 Cal.App.2d 281, 73 P.2d 290, 292.*

COSTS. *A pecuniary allowance, made to the successful party, (and recoverable from the losing party,) for his expenses in prosecuting or defending a suit or a distinct proceeding within a suit. Stevens v. Bank, 168 N.Y. 560, 61 N.E. 904; Bennett v. Kroth, 37 Kan. 235, 15 P. 221, 1 Am.St.Rep.248; Pezel v. Yerex, 56 Cal.App. 304, 205 P. 475, 478; In re Leary's Estate, 172 Misc. 286, 14 N.Y.S.2d 960, 961.*

12. A review of judicial precedent demonstrates that Courts in this jurisdiction have, on numerous occasions, awarded compensation or cost to victims of unlawful police actions. In this regard, reference may be made to a line of authorities such as *Rana Muhammad Aslam v. Azmat Bashir and others* (2011 SCMR 1420), *Ali Ahmed v. Muhammad Yakoob Almani, Deputy Superintendent of Police, Qasimabad, Hyderabad and 5 others* (PLD 1999 Karachi 134), *Abdul Majid v. SHO, Police Station Rohilanwali District Muzaffargarh* (1995 PCr.LJ 1209), *Shahid Hussain v. The State and others* (1997 PCr.LJ 1582), *Muhammad Manzoor v. SHO, Police Station Layya, District Multan and another* (1997 MLD 1331), *Haji*

Noor Hassan v. Khalid Masood, Inspector/SHO, Police Station "B" Division, Rahim Yar Khan (1998 PCr.LJ 1451) and Naseer Ahmad v. SHO, Police Station Tirandah Muhammad Panah, District Rahim Yar Khan (1998 PCr.LJ 196). Further in the case of *Mazharuddin v. The State (1998 PCr.LJ 1035-DB)*, held that:

43. The next question that has received our anxious consideration is whether such compensation is payable by the State or by the delinquent officer personally. The cases discussed above clearly show that the duty to protect fundamental rights of a citizen is that of the State and it must compensate a person whose rights have been violated on account of mala fide and unlawful acts of its servant. As held by the Privy Council in *Maharaj v. The Attorney-General of Trinidad and Tobago* 1979 AC 385 such compensation is payable under public law even when it cannot be claimed under private law on account of some immunity. The same view has been taken by the Supreme Court of India in *Nilabati Behera v. The State of Orissa and others* (1993) 2 SC Case 746. Even otherwise unlawful acts of public functionaries in the pretended or purported exercise of State power had always been treated as State action in different Constitutional systems. In *IOWA Des Moines National Bank v. Bennett* (1931) 284 U.S. 239 the Supreme Court of U.S.A. after discussing several earlier precedents held "but acts done by virtue of public position and in the name and for the State are not to be treated as if they were acts of private individuals, although in doing so the official acted contrary to an express command of a State Law. When a State official acting under the colour of State authority, invades, in the course of his duties, a private right secured by the Federal Constitution that right is violated even if the State Officer not only exceeded his authority but disregarded special commands of the State Law".

44. Even if the liability to pay compensation is not treated as an independent public law duty but is brought down to the level of tortious liability under the private law, we regret that in view of the legal position operating in Pakistan the State cannot be altogether absolved. It may be kept in view that the principle of sovereign immunity against tortious act of its servant which used to operate in English law and which had been adopted in India with respect to the State in case of *Kasturi Lal v. The State of U.P.* AIR 1965 SC 1039 is not part of the law in Pakistan. In *Pakistan v. Muhammad Yaqoob Butt* PLD 1963 SC 627 the concept of tortious liability of the Government in relation to act of its servants was elaborately considered by the Honourable Supreme Court. It was held that since enactment of the Crown Proceedings Act in 1947, the law as to sovereign immunity has become obsolete even in England and, subject to certain exceptions contained in the Act, the Crown was also vicariously liable like any other employer in respect of tortious act of its employees. It was further held that in any case where the State had taken benefit of property illegally detained by its servant or where it had ratified the tortious act of its employees, it was clearly liable for such acts. The same principle was applied by this Court in

the case of Sardar Muhammad Ali and others v. Pakistan PLD 1961 Kar. 88 where a suit for false imprisonment arising out of illegal order of detention passed by the Additional District magistrate was decreed against the Federal Government as a detention order had been ratified by the Administrator Karachi. This decision was upheld by the Division Bench in the case of Government of Pakistan v. Sardar Muhammad Ali PLD 1965 Kar. 1.

45. On the question as to what amounts to "ratification" it may be appropriate to refer to a D.B. judgment of Lahore High Court, in the case of Muhammad Nawaz v. Province of West Pakistan PLD 1975 BJ 11. In this case the appellant had entered into a contract with the Railway, whereby a bogie carrying a number of passengers were destined to travel from Sargodha to Bahawalpur to attend a marriage was required to detached from the train at Shorkot Road Railway Station and to be attached to a Khanewal bound train Though the bogie reached the Shorkot Road Station the Assistant Station Master failed to order its attachment to the Khanewal bound train resulting in delay in arrival at Bahawalpur, causing, apart from material losses, gain suffering arid humiliation to the appellant. The Court held that mere fact that the Government, despite a finding in an inquiry to the effect that the action of the Assistant Station Master was unwarranted and in breach of the contract, failed to take any action against the said officer, amounted to ratification and as such the Government was bound to compensate the appellant.

46. In view of the above we are of the opinion that as long as a State functionary violates the fundamental rights of a citizen, has acted illegally or in excess of lawful powers under the pretended colour of State authority, the State was equally bound to compensate the victim unless it is able to demonstrate that prompt action was taken against such functionary for the excess committed by him. We are indeed aware that it would not always be fair to burden the tax?payer for excess committed by Government functionaries which are mala fide and in clear violation of the powers lawfully conferred upon them. At the same time apart from the strict liability in law, we think that the fundamental rights guaranteed to a citizen would become entirely illusory if the State extricates itself from all liabilities and requires the victim to pursue his claim against the delinquent functionary purely as a private dispute. Moreover if public officials are allowed to exercise wide powers despite the fact that they have been found to have invaded the guaranteed right of citizens through reckless' misuse of such powers it could hardly be said that the State is attempting to protect the rights guaranteed to citizens by the Constitution and we see no reason why inaction on the part of higher officials against such functionaries should not be treated as ratification of unlawful acts. Consequently we would hold that both the State as well as the concerned officer would be jointly and severally liable to compensate the victim of unlawful action.

13. Where the liberty of a citizen is at stake and the action initiated by the police is found to be mala fide or intended to extract evidence or information from the detainee, the Superior Courts are

not expected to remain reluctant in extending relief. The High Court is fully empowered to protect citizens against frivolous and mala fide actions by imposing appropriate conditions or restrictions upon the erring authorities and agencies. Support for this principle is drawn from the case of *Government of Sindh through the Chief Secretary, Karachi and 4 others v. Raeesa Farooq and 5 others* (1994 SCMR 1283).

14. So, keeping in view the facts and circumstances of the case, it is evident that the learned trial Court rightly passed the order while addressing the illegal act committed by the applicants. The impugned order does not suffer from any legal infirmity warranting interference by this Court. Consequently, the instant Criminal Miscellaneous Application is dismissed, and the order of the learned trial Court is hereby upheld.

JUDGE

Amjad/PS.