

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-79 of 2016.

DATE

ORDER WITH SIGNATURE OF JUDGE

30.06.2017.

Syed Tarique Ahmed Shah, Advocate for the appellant.

Mr. Shahid Ahmed Shaikh, A.P.G.

Mr. Sajjad Ahmed Chandio and Ali Ahmed Palh Advocates as Amicus Curiae.

I.D. Mangi AIGP Legal CPO Karachi, Dr. Farrukh Ali SSP Sanghar, Tanveer Ahmed Tunio SSP Shaheed Benazirabad / Chairman Committee Constituted by IGP Sindh, Rana Iqbal Jawed DSP Legal Sanghar, SIP Muhammad Juman Khoso SHO Sanghar, SIP Agha Shamshad SHO Tando Adam City, Muhammad Khan WHC PS Sanghar are present in Court.

Witnesses Ghulam Rasool and Mst. Shabana also present in Court.

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Pursuant to orders dated 14.06.2017 and 20.06.2017, SSP Shaheed Benazirabad is present and submits interim report, taken on record; perusal of the same reflects that:-

- *“Efforts are underway to prepare a complete list of her relatives either in Sindh or in Baluchistan who seems to be in knowledge about the fate of missing lady. As soon as list is completed, each and every individual shall be interviewed. The list of relatives of missing lady shall be prepared with the help of NADRA. The list of her relatives shall also be prepared with the mobile phone date of brothers of missing lady.*
- *All Police Stations of various Districts in which jurisdiction lays the Rohri Canal has been requested to intimate through checking of record that either any of unclaimed body was recovered from the canal in the period just after the missing of lady. In this regard special team has been constituted from Nawabshah Police, which shall personally verify from the record of those Police Stations regarding unclaimed dead bodies.*
- *The version of accused Behram Burdi shall also be taken into account.*
- *The mother of missing lady Mst. Salma Burdi is also co-accused and still absconding., efforts will be taken in this regard with help of Intelligence Bureau through call record and NADRA for her early arrest to trace-out missing lady Mst. Salma Burdi, it is also worth mentioning that team has visited the Sanghar and informally interviewed with some persons, who had shared information about the missing lady However, some neutral persons shall be further interviewed. After interviewing all the concerned, we are sure to reach any conclusion.”*

Accordingly, seeks further one month's time to submit progress report and unearth the crime with regard to abduction of one Mst. Salma Burdi. The

report, so placed on the record, reflects the efforts which is worth appreciating and hopefully shall serve the purpose within extended time.

SSP Sanghar is also present and submits reply to show-cause notice alongwith bundle of documents showing therein the efforts taken by the police with regard to recovery of said Mst. Salma. He also has emphasized over a report, which apprehends that there is likelihood that Mst. Salma Burdi might be murdered. Such report is dated 23.06.2010 and placed in C.P. No.D-1939/2010. He further contends that disciplinary proceedings are being initiated against SHO Sanghar with regard to negligence on his part.

2. A.I.G.P. Sindh Legal-II is present and submits Notification with regard to constitution of a Committee under the Chairmanship of Mr. Tanveer Ahmed Tunio, SSP Shaheed Benazirabad as well letter with regard to misconduct of police officers, taken on record.

3. Order dated 20.06.2017 reveals that it included :

“Despite direction, head munshi prepared some papers at the direction of SHO PS: Sanghar in order to defeat the spirit of order of this Court and it has also pointed out that normally head munshis, who are not supposed to leave the limits of their respective police stations, write mashirnamas, 161 Cr.P.C. statements as well F.I.Rs. Such attitude negates the basic scope of investigation.”

Further it is surfaced that on District level in police department there is no separate prosecution wing under the Police Officer, though, there are DSPs Legal but they are only to scrutinize the papers before submission of challan of criminal cases and there is no system to determine the negligence committed by police officials / officers as well to monitor the *investigations* so as to avoid technical irregularities or *illegalities* normally conducted by the Investigation Officers, being not aware of developed legal positions and directives time to time issued by Apex Court which *some time* results in failing the prosecution's case. It is also surfaced modern devices are even not available at Police Stations. At this juncture, M/s. Sajjad Ahmed Chandio and Ali Ahmed Palh Advocates appeared as Amicus Curiae. Mr. Sajjad Ahmed Chandio has referred the case of **Haider Ali v. DPO Chakwal** (2015 SCMR 1724), wherein

it is directed that an Universal Access Number (UAN) and Website should be provided to the general public for filing of their complaint(s). It would be conducive to refer the paragraph-9 of the said judgment, which says that:

“9. In some of our earlier orders, we have noted the high degree of political and administrative apathy which has translated into the failing criminal justice system before us. It must be emphasized that the failure to address individual grievances of citizens causes frustration amongst them which, in turn, may lead to lawlessness. It also needs to be emphasized that a functioning criminal justice system is directly linked to the enforcement and realization of various fundamental rights of citizens such as Articles 9, 10, 10A and 14. We can no longer stand idle as the nation suffers. It is therefore directed as under:--

- (i) A universal access number (UAN) and website should be provided to the general public for filing of complaints. The said website should be developed and be operational within three months from the date of this order. Till such time that the website has been launched, the provisions of section 154, Cr.P.C. should be strictly adhered to and action should be taken against any police official who fails to abide by the said provision.
- (ii) Serious notice should be taken of frivolous, false or vexatious complaints and where applicable cases should be registered under sections 182 and 211 of the Pakistan Penal Code.
- (iii) The principles laid out in Muhammad Bashir's case (PLD 2007 SC 539) should be strictly followed and no person should be arrested unless there is sufficient evidence available with the police to support such arrest. Where a person is unjustly deprived of his liberty, compensation will be required to be paid to him or her by the delinquent police officer. The affected person may approach the civil courts for appropriate remedy in this regard.
- (iv) Adequate provision should be made for the training of police officers and the development of specialized investigation officers and facilities. In addition adequate funds should be made available to police stations and for investigation activities. The respective Provincial and Federal heads of police shall submit a report in court within three months from the date of this order which details the steps taken in this regard and the relevant police funds and personnel dedicated towards investigation activities, training of police personal, and development of forensic facilities.
- (v) No police officer is to be transferred in breach of the principles laid out by this Court in the Anita Turab case (PLD 2013 SC 195). The respective Provincial and Federal heads of police shall submit a report in Court within one month from the date of this order which specifies the names and details of all police officers above BPS-17 who have been transferred or made OSD over the past three years and also provide reasons for the same.
- (vi) Guidelines/SOPs **should be developed to foster coordination between the prosecution and the police**. The Attorney General and the respective Advocates General of each province shall submit the said guidelines/SOPs in court within three

months from the date of this order.

- (vii) Adequate funds should be dedicated towards the training and development of public prosecutors. The Attorney General and the respective Prosecutors General of each province shall submit in Court within three months from the date of this order details of **(i) hiring requirements and compensation packages of public prosecutors; and (ii) accountability mechanisms and review systems of public prosecutors.**
- (viii) The Attorney General and the respective Advocates General shall submit a report in court within one month from the date of this order on the steps being taken **to provide witness protection in their relevant jurisdiction and the funds dedicated for this purpose.**
- (ix) The respective bar councils may take appropriate action against lawyers who deliberately seek adjournments with a view to delay trial. **Respective district judges are also directed to impose costs on such lawyers and hear criminal cases involving the liberty of persons on a day to day basis to the extent possible.**
- (x) Respective heads of police of the Federation and the Provinces shall submit a report within one month of the date of this order which **details the relevant police complaints and accountability mechanisms in place and the actions taken under such mechanism against delinquent police officials.** *This information shall also be made publicly accessible in English as well as Urdu on their respective websites.* The Attorney General and respective Advocates General shall submit a report detailing compliance in this respect within one month from the date of this order.
- (xi) Police budgets (disaggregated by district and local police stations, functions, human resource allocation and a statement of their utilization), police plans and annual performance reports shall be made publicly accessible on the respective Federal and Provincial police websites and submitted in Court within one month of the date of this order. The Attorney General and respective Advocates General shall submit a report detailing compliance in this respect within one month from the date of this order.
- (xii) The Attorney General and the respective Advocates General of the Provinces of Sindh and Balochistan should submit in Court within one month from the date of this order reports which examine the constitutionality of the policing regime established by the Police Act, 1861, currently in force in Sindh and the Balochistan Police Act, 2011 currently in force in Balochistan. **This report should inter alia state whether these policing statutes allow the constitution and organization of a politically independent police force which is consistent with the protection of the fundamental rights of citizens.**
- (xiii) The Federal and Provincial Ombudsmen should submit in Court within three months from the date of this order, good-administration standards for police stations and should also submit a report which outlines the measures being taken to curb maladministration in police stations.

- (xiv) Provincial Information Commissioners should notify transparency standards relating to police services and functions and submit these standards in Court within three months from the date of this order.
- (xv) The Law and Justice Commission of Pakistan shall prepare a consolidated report based on the various reports received by the Court till date and the proposals submitted by Khawaja Haris, learned Senior Advocate Supreme Court, detailing the relevant amendments which are required in legislation to improve the criminal justice system. The said report shall be submitted in court within three months from the date of this order. Copies of the said report shall also be sent to the National and Provincial Assemblies.

4. The above *guidelines* (directives) do include a mechanism to encourage *general* public to make complaints against negligence or excess of police officials as well appropriate actions however, *prima facie* none of the present has intimated *existence* of such mechanism. Thus, it may be concluded that presently there is no internal policing within the Police Department to check the criminal liabilities of police officers / officials nor the directives have been complied with in letter and spirit. In present days this is need of time as it is expected that I.G.P. Sindh will take all efforts with the collaboration of Home Secretary Sindh and issue such comprehensive policy and it is also expected that such efforts would be taken for legislation. Though, section 155(c) of Police Order 2002, as relied upon by Mr. Tanveer Ahmed Tunio SSP Shaheed Benazirabad, provides such mechanism but that order is not in field now. However, Mr. Shahzado Saleem Nahiyoon learned APG has referred Police Order, 1886 and contends that such proceedings can be initiated against the delinquent police officers. Since comprehensive directives have already been issued by the Honourable Apex Court which, being of *binding* effects within meaning of Article 189 of Constitution, shall *hopefully* be complied with and such *mechanism* shall be available within days, if not.

Since SSP Shaheed Benazirabad is seeking one month's time to do the needful, same is granted. He should ensure that complete investigation in the matter is carried out and concrete report / evidence is produced before this Court; whereas I.G.P. Sindh shall ensure that persons who are working in their legal department shall work as a team and pursue the principle of law

particularly in heinous offence and Seminars shall be conducted with regard to heinous offence / cases by calling the witnesses and then shall workout the reasons of their failure. I.G.P. Sindh as well Home Secretary Sindh shall ensure that guidelines provided by the Apex Court in the case of **Haider Ali** (Supra) are complied with in its letter and spirit within two months with compliance report to this Court.

5. Further, SSP Sanghar shall complete departmental proceedings against the delinquent police officers and shall submit report. Accordingly, attendance of all police officers present is dispensed with till otherwise directed. Copy of this order shall be communicated to AAG, APG, I.G.P. Sindh, Home Secretary Sindh, AIGP Legal CPO Karachi, SSP Sanghar, SSP Shaheed Benazirabad / Chairman Committee Constituted by IGP Sindh, Rana Iqbal Jawed DSP Legal Sanghar for compliance and report. Besides, it is surfaced that police officers were submitting reports with regard to progress of case, even SSP Sanghar filed Constitutional Petition against the order of Magistrate, hence I.G.P. Sindh is not required to conduct disciplinary proceedings against the SSP(s) of Sanghar.

6. It appears that Cr. Rev. A. No.107/2012, which has challenged the order passed by trial Court, whereby Magistrate Inayatullah Kundhar was joined as accused, is pending before this Court at Principal Seat, therefore, judicial propriety demands that such criminal revision application be tagged alongwith this appeal as the *former* relates to an early stage of the *later* (case ended in conviction). Accordingly, office shall send the matter for placing the same before Honourable Chief Justice for passing appropriate orders.

Adjourned to 07.08.2017. This matter shall not be treated as part-head.

JUDGE