

- c) Any other efficacious and equitable relief(s) as this Honourable Court may deem fit and proper under the circumstances of this constitution petition.

3. SIP Javaid Akhtar, Respondent No.4, present and filed comments contending therein that the petitioner was called at police station with regard to information of two accused persons, having friendship with petitioner. Petitioner present contends that he has provided such information, despite of that concerned SHO is causing harassment without any justification. Official present in Court is unable to submit any notice issued by him to the petitioner or any acknowledgment receipt with regard to appearance of petitioner.

4. The admission of the respondent no.4 with regard to calling the petitioner for *information* which the petitioner claimed to have provided to respondent no.4 *prima facie* made the respondent No.4 to produce the *requisite* notice for such purpose which he (*respondent No.4*) failed. At this juncture, it is pertinent to mention that *legally* a competent police official always has jurisdiction (*right*) to call *anyone* for information or production of *documents* even while *address* is under legal *obligation* to provide such information or *documents*. Such competence (*right*) in law has been recognized as '**lawful authority**' while an act of *avoidance*; *refusal* and *preventing* have been termed as '**contempt of lawful authority**'. The Chapter-X of *Pakistan Penal Code, 1890* is having heading as '**of contempts of the lawful authority of public servant**'. Such acts and *omissions* have been recognized as **offence(s)**. The term '**public servant**' does include police officer therefore, competence of a *police officer* to summon one for information or document is **lawful**.

6. The above makes it clear that such *lawful authority* even has not given unbridled powers but brings such *officer* under a legal obligation to:-

- i) serve a summon / notice upon such person wherein date, time and place for appearance shall be mentioned;
- ii) date and time of his *arrival* as well *departure* shall be maintained / noted;
- iii) no **avoidable trouble** shall be given such person;

Having attended to competence of police Official as well his obligation in exercise of such **lawful authority**, now, I would add here that since it can never be believed that a *police officer* would necessarily learn about the person, having some information or *documents*, necessary to unearth a *crime* therefore, it is always hoped *rather* believed from every member of a *society* to come forward in *aid* of law enforcing agency in achieving the ultimate object i.e *bringing a criminal to justice*. This *obligation* has been detailed as Chapter IV of Code (Cr.P.C) which has heading “**Of aid and information to the Magistrates, the police and persons making arrests**” and such Chapter is consisting upon Section 42, 43, 44 and 45, Cr.P.C. It would be conducive to reproduce Section 44, being relevant, as under:-

44. *Public to give information of certain offences.*
(1) Every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Pakistan Penal Code, namely, 121, 121 A, 122, 123,123A, 124, 124A, 125, 125A 126, 130, 143, 144, 145, 147, 148, 153A, 161, 162,163, 164.165. 168,170,231, 232, 255, 302, 303, 304, 304A, 364A, 382, 392, 393, 394, 395 396, 397, 398, 399, 402, 435,436 449, 450, 456, 457. 458, 459, 460 and 489A, shall, in the absence of reasonable excuse, the burden of proving shall lie upon the person so aware, forthwith give information to the nearest Magistrate [Justice of the Peace] or police-officer of such commission or intention.

(2) For the purposes of this section the term, 'offence' includes any act committed at any place out of Pakistan which would constitute an offence if committed in Pakistan.

7. From above discussion and references of relevant *Chapters* of the Codes (PPC & Cr.PC) it should no *more* be confusing that unearthing *crimes* would always require a *good* coordination of *right* and *obligation*. A failure in establishing *faith* and *confidence* in public would not only result in keeping the police officials wondering in search of *assistance* but would also leave a *door* opened for criminals to take role of *helper* thereby threatening the concept of *society* even. This concept has *elaborately* been detailed in Chapter **XXI** of Police Rules. Without a direct reference thereto the lust of subject would never find satisfaction, hence the same is referred hereunder:-

Prevention and detective organization:-- The criminal of law in (Pakistan) and the police organization , which is based upon it, are both founded on the principle that public order depends essentially upon the responsibility of every member of the community within he law to prevent offences and to arrest offenders. The magisterial and police organization is set up to enforce, control and assist this general responsibility. This fundamental principle must be thoroughly understood and borne constantly in mind by police officers of all ranks, but more especially by gazetted officers and upper subordinates.

Instructions as to the general relations between police officers and magistrates are contained in Chapter 1 of these Rules and some further detailed instructions are placed in this chapter. The ideal to be aimed at in respect of relations with the public is that every police officer, of whatever rank, should be regarded by every law-abiding person as a wise and impartial friend and a protector against injury to his person and property. In proportion as this ideal is approached, the police will receive the information and assistance which they need, in order to combat crime successfully. When confidence and co-operation are lacking, private persons and village officials escort to connivance at crime and to seeking redress for their

own losses through threat with criminals; the police are isolated in their efforts to prevent and detect offences, and can hope for but a small measure of success.

The proper relations between the police and the public in a district depend primarily upon the personal attitude of the Superintendent, and the example set by him and enforced upon his subordinates. The most important duties of a Superintendent are to know the people of his district and to know what his subordinates are doing. Such knowledge can only be gained by the fullest personal accessibility, activity in touring, thorough and intelligent supervision and a sympathetic interest in the life of the district and the facts and difficulties of the work of his own men. He must inspire confidence in his subordinates, as well as in the public. While alert to check tyranny, dishonestly and other abuses by his subordinates, he must be accessible to them as to non-officials, and ready at all times to help them in their difficulties and support them against the evil influences, which they have to face. This should be the attitude of all supervising officers. They should ensure direct access to themselves impeded by their subordinates, and must be ready to give a patient hearing to all complaints and grievances, but must avoid creating any impression of spying, which would destroy the confidence and undermine the authority of their officers.

8. Reverting to merits of the instant case what came out on surface is that a *lawful authority* not found to have been exercised in accordance with law which resulted into a *complaint* of harassment. The term *harassment* means a course of conduct which annoys, threatens, intimidates, alarms, or puts a person in fear of his safety. Police officials, being bound by law, are never supposed to adopt such a course rather their *every* action is expected to be well within *strictly* drawn four corners of law. If the police officials continue in such manner it shall result what has been mentioned in the Chapter-XXI as:

“...When confidence and co-operation are lacking, private persons and village officials escort **to connivance at crime and to seeking redress for their own losses through threat with criminals**; the **police are isolated in their efforts** to prevent and detect offences, and can hope for but a small measure of success”

This cannot be allowed to hold the field as it may result in collapsing the concept of *safety* which *otherwise* is the soul of every society.

9. Accordingly, police officers are directed that in such type of cases a notice in writing shall be provided to the concerned person (citizen), notice shall include the details of inquiry /investigation and on due appearance acknowledgment receipt shall be given to that citizen, such record shall be kept by every police station separately. Therefore, it is hoped rather *expected* that ultimate supervisory authority of every **District** i.e '**Senior Superintendent of Police**' to:

- i) know the people of his district and to know what his subordinates are doing;
- ii) by conducting meeting and attending grievances of *public* in this regard;
- iii) by taking *legal* action against any *guilty* official;
- iv) by educating officials to follow the *procedure*;

This shall develop a proper relation between **police** and **public** which would materially help the police in combating the crime and criminal elements.

10. Besides, since the petitioner has also claimed to have provided *required* information about his friends therefore, I would not go in determining *bona fide* of respondent No.4 in calling the petitioner for such purpose but would prefer to leave it open for *Sr. Superintendent of Police* (respondent No.3) to examine, if is moved by petitioner. However, no harassment on the pretext of inquiry or information shall be caused, which may cause mental agony to the citizen *however* if an assistance is found *necessary* then proper procedure shall be followed.

11. In view of above, instant petition is disposed of. IGP Sindh shall ensure that from now on every single police official shall follow the *procedure* and a **lawful authority** be not allowed to be turned into **harassment** or an **illegality** and comply with para-9 of this order. Moreover, a *refresher* of Chapter-XXV of Police Rules as well Chapter-XIV of *Code (Cr.PC)* be circulated at all police stations thereby hammering the *investigating officers* of their **authority** and **obligations**. This order is complied with in its letter and spirit in whole Province with compliance report within 15 days.

Sajid

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