

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Crl. A.T. J. Appeal No.184 of 2019**

Date	Order with signature of Judge
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For Direction/Further Order.

**15.12.2020**

Mr. Hussain Bux Baloch, Additional Prosecutor General a/w  
P.I Ibadat Ali Shah.

1. SIP Ghulam Shabbir Gopang.
2. SIP Bagh Ali Junejo.
3. ASI Najaf Ali.
4. H.C Rana Tariq.

**NAZAR AKBAR, J.-**

By Judgment/detailed reasons dated

**07.12.2020**, in the instant appeal we have decided to proceed  
against the police officials under **Section 27** of the ATA Act, 1997.

The relevant part of order for today's proceedings is as under:-

15. In view of the above facts and circumstances, we  
intend to invoke the power conferred on High Court under  
**Section 27** of A.T. Act, 1997, which is reproduced below:-

27. **Punishment for defective investigation.** If  
an Anti Terrorism Court or an High Court comes  
to the conclusion during the course of or at the  
conclusion of the trial that the investigating  
officer, or other concerned officers have failed to  
carry out the investigation properly or diligently or  
have failed to pursue the case properly and in  
breach of their duties, it shall be lawful for such  
court or, as the case may be, and High Court to  
punish the delinquent officers with imprisonment  
which may extend to two years, or with fine or  
with both by resort to summary proceedings.

16. Now since the appeal has been concluded with  
reasons given hereinabove and scrutiny of police record  
from Court file we found that in addition to the police  
officials present in Court on **26.11.2020**, the complainant  
of FIR No.164, 165 and 166 of 2018 and one more I.O was  
part of the inquiry and investigation. They are PW-03, H.C  
Rana Tariq, Complainant and PW-04, SIP Muhammad  
Laeque Ghanghro need to be proceeded in terms of above  
law. Therefore, the following police officials are issued  
notices under **Section 27** of A.T. Act, 1997 to submit their  
written explanation within seven days from today that why

they should not be punished for their failure to carry out their respective duties carefully and for the breach of their duty a responsible official during the course of inquiry and investigation of Crime No.164/2018 and 166/2018 and conducting defective investigation:

1. **H.C Rana Tariq** has to explain that as to the following:-

That the story you narrated to ASI Najaf Ali about police encounter resulting in death of alleged accused Syed Owais Hussain Jaffery and arrest of appellant was false since neither P.C Muneem Raheem nor P.C Faizullah supported your story. The injured was allegedly sent by you to hospital through P.C Faizullah and according to you P.C Muneem Raheem has also fired one shot from his official SMG. Both P.C Faizullah and P.C Muneem Raheem did not appear in the witness box to support your statement, incorporated by ASI Najaf Ali in the FIR No.164/2018. Admittedly there was no mark of bullet fired by the appellant or deceased upon the wall of Faysal Bank or U-fone franchise or any other wall or vehicle in the vicinity of the scene of incident. I.O ASI Bagh Ali stated on oath that he did not find any blood stained earth at the place of wardat at the time of inspection. You have not handed over your official SMG and SMG of Muneem Raheem to ASI Najaf Ali to be sealed as case property with empty shells of SMG to be sent to FSL for confirmation of firing by official SMG that caused injury to the deceased. The injured, according to you, was taken to hospital by P.C Faizullah but dead body of accused was found in the Edhi Home Mortuary at Sohrab Goth by his mother and brother to whom the dead body was handed over. All this shows that you cooked a false story against the appellant after snatching three mobile phones and Rs.42,250/- from his possession on the eve of **Eid-ul-Adha** of **2018** which was on **23.8.2018** and the incident took place in the night of **22.8.2018** as stated by the appellant in his statement under **Section 342** of the Cr.P.C before the trial Court.

2. **ASI Najaf Ali**, has to submit his separate explanation as to the following:-

That you on **23.8.2018** at about **2145 hours** recorded a false statement of H.C Rana Tariq and incorporated the same in FIR No.164/2018 under sections 353/324/34 PPC r/w Section 7 ATA, 1997, whereas no such offence had taken place on the said date and time. Then on the basis of said false statement at **2300 hours** you on the same day registered two more FIRs bearing **crime No.165 and 166 of 2018** both under Section 23(1)(a) of Sind Arms Act, 2013 against the appellant and the deceased Owais Hussain Jaffery. In the memo of arrest you have shown Complainant, H.C Rana Tariq and P.C Muneem Raheem. P.C Muneem Raheem has refused to given evidence. H.C Rana Tariq was making false statement of police encounter after allegedly

killing the accused Syed Owais Hussain Jaffery as neither encounter was proved nor the death of accused was proved to be a result of police encounter at the place of the incident. Even police firing in which one shot was fired by H.C Rana Tariq and one shot by P.C Muneem Raheem from their official weapons could not be proved as you in the memo of arrest, seizure and personal search failed to mention identity of official weapons used in the encounter and the same were not sent to the FSL to match with empty shells of SMGs.

3. **ASI Bagh Ali, Inspector Shabbir Hussain Gopang** and **ASI Muhammad Laeque Ghanghro** have to submit their explanations as to the following:-

That you as investigating officers, failed to perform your duties as an honest, diligent and sincere police officer to verify contents of the FIR. It was clearly stated in the FIR that the injured was sent to hospital from the crime scene through P.C Faizullah, whereas on the same day dead body of accused Owais Hussain Jaffery was handed over to the legal heirs of the deceased from Eidhi Cold Storage, Sohrab Goth instead of Hospital. None of you have recorded statement of any Medico-legal officer under Section 161 Cr.P.C. Neither anyone of you prepared inquest report in terms of **Section 174** of the Cr.P.C nor obtained any postmortem report of the deceased who was injured and subsequently died by police fire in alleged encounter. You also have not even mentioned the name of the hospital or Medico-legal officer in your evidence. It is strange that the dead body of the deceased was not handed over to the legal heirs from the hospital whilst it ended up in Edhi Centre, which is an utter violation of law and procedures. As investigating officers it was your duty to send official SMG for Forensic Examination to match with the official SMG used in the encounter. None of you checked from the record of police station that which weapon was given to whom and also at what time and date. You failed to inquire that whether H.C Rana Tariq and P.C Muneem Raheem during the alleged encounter were on patrolling duty on official motorcycles under any official entry. The record shows that for identification/inspection of place of incident, you have not taken the accused/appellant for identification of the place of occurrence and you relied upon and have identified the place of occurrence on the pointation of complainant H.C Rana Tariq and ASI Najaf Ali, who were both police officials.

17. In view of above defects in investigation, you **H.S Rana Tariq, ASI Najaf Ali, ASI Bagh Ali, Inspector Shabbir Hussain Gopang** and **ASI Muhammad Laeque Ghanghro** should submit your explanation in writing on **15.12.2020** to this Court.

The police officials are present in the Court and have also submitted their written explanations in response to the above orders. The same are taken on record. The Court after going through their written response, gave them opportunity of hearing. They have made following statements in presence of Mr. Hussain Bux Baloch, Additional P.G:-

**1. SIP Bagh Ali Junejo** stated in presence of Mr. Hussain Bux Baloch, learned Additional P.G that he went to the place of incident for inspection alongwith ASI Najaf Ali, who identified the place of incident. He admits that at the time of identification of place of incident, the accused was not present with them. He further stated that by the time he reached there, he was informed that injured (namely Owais Jaffery) had died on the way to the hospital. However, he has not produced any medical or postmortem report in the trial Court because, according to him, he was never called by ATC Court for the recording of evidence. We were shocked to hear his claim that he never appeared in trial Court. However, his evidence was even quoted by us in judgment in para-9. When confronted with his evidence recorded by the Court as PW-02, he could not reply. Learned Additional P.G confirms that he is the same Bagh Ali whose particulars are given in the impugned judgment. However he was unable to satisfy us that he was performing his duty in accordance with The Police Rules, 1934 as an Investigation Officer. It also cannot be believed that he did not appear in the trial Court.

**2. SIP Ghulam Shabbir Gopang** admits that he was also one of investigating officers, however, he explained his position

that under instructions of the Court, he only added **Section 7 ATA** in the challan and submitted the same to the ATC Court. He was examined by the ATC Court. He has been categorically asked as to whether, while submitting challan, he did or did not find that the name of medico-legal officer was not mentioned in the list of witnesses. He agreed that MLO's name was not included and that he did not even try to meet the medico-legal officer in a case in which one accused has died on the spot from police firing.

Both the Investigating Officers submitted that they have not seized SMGs used in the alleged encounter, nor sent any official weapon used in encounter for FSL. In addition to above and many lapses as pointed out by us in the detailed judgment, the I.O has not complied with trial Court's order about disposal of case property. The trial Court in the judgment dated **29.05.2019** has specifically ordered for return of the case properties to the appellant. In our detailed judgment, too, we have ordered about case property in the following terms:-

Therefore, it is ordered that the I.O should hand over **motorcycle No.KJP-8269, cash Rs.67,800/-** and **five mobile phone sets** identified by him in his evidence to the Nazir of this Court within three days (72 hours). SSP concerned is directed to ensure handing over of the case property to the Nazir of this Court from the date of receiving of this order. The Nazir shall issue notice to the appellant and the legal heirs of deceased and hand over the properties to them on proper identification and verification.

Even our order has not been complied with till date. The I.O present in Court says that appellants property has been handed over to incharge Malkhana Police Station, North Nazimabad.

**3. Muhammad Laeeq Ghanghro.** We have been informed that **ASI Muhammad Laeeq Ghanghro** stood retired on **21.01.2020** and, therefore, he was not served. Proceedings against him are dropped.

**4. H.C Rana Tariq** states that the appellant was arrested from outside CNG Station where he has reached while trying to escape on foot after crossing of Imam Bargah at 5 star roundabout, North Nazimabad towards CNG Station. He has followed him from the spot where the other accused was shot dead. The appellant was arrested at CNG Station by the Security Guard of CNG Station, however, whatever he is saying today is not part of his story or his evidence given before the trial Court. The place of incident has been shown in the challan is a different place even for the arrest of the appellant. H.C Rana Tariq initially denied that he fired one shot, however, when we confronted him with his own statement on oath in evidence that "*I made one fire shot*" he has shown his surprise. Apparently the story given by him today and even in the FIR are contradictory to each other and the investigation in which only police officials were supposed to be interrogated remains defective.

**5. ASI Najaf Ali.** The story narrated by him and the record reflects that except H.C Rana Tariq and ASI Najaf Ali, nobody else is the mastermind of the alleged encounter. ASI Najaf Ali has not been able to give any satisfactory explanation that despite the fact that it was Eid-ul-Adha day or a day before Eid-ul-Adha why any private person was not even asked to associate as mashir. The place of incident was heavily

populated and congested place, however, he says because of Eid-ul-Adha nobody was there. The mashir of arrest was H.C Rana Tariq and he himself and none of the other member of police party were made mashirs. One Muneem Rahim was shown as mashir of one memo but he did not come to court to support fake encounter. There was no enquiry regarding motorbike which is now claimed by the police officials to have been owned by the brother of the deceased accused. Copies of documents of motorcycle have not been placed on record even today.

2. All the above factors clearly indicate that at the time of killing the accused by firing, the accused was not committing any robbery since he was driving motorcycle of his brother (as today alleged by I.O) with cash Rs.25,500/- and his own two mobile phones. The prosecution has not even produced CRO of the deceased before trial Court or this Court. Therefore, it cannot be ruled out that it was coldblooded killing from point blank range at the time when there was no information about any criminal record of the deceased with the police party. Both the Investigating Officers confirm that the appellant in this case namely Arshad has no criminal record and the manner of arrest has been contradicted even today. He was made to live in police custody on Eid days in 2018 and also for two and half years in jail in a false case. All the above facts and evidence on record indicate that there has been not only a false case against the two accused in the FIRs, even otherwise no enquiry/investigation was properly conducted to finally get the conviction on merit. In response to our short order dated **26.11.2020** the police officials are facing disciplinary proceedings which would have its own course till final decision on disciplinary proceedings. The proceedings in terms of

**Section 27** of the Anti-Terrorism Act, 1997 are separate and independent, therefore, we have not examined documents of disciplinary action against them.

3. In view of the above, the case of defective inquiry and investigation against the police officials is fully established and all these police officials were delinquent in discharge of their duties. Learned Additional P.G also agrees with the Court that it is a clear-cut case of defective investigation of a case in which one person has lost his life on the eve of Eid-ul-Adha, therefore, all the police officials, namely **(1) SIP Ghulam Shabbir Gopang, (2) SIP Bagh Ali Junejo, (3) ASI Najaf Ali** and **(4) H.C Rana Tariq** are convicted under **Section 27** of the Anti-Terrorism Act, 1997 and sentenced to undergo **06 (six) months R.I** and fine of **Rs.50,000/-** each and in case of default in payment of fine to undergo 03 (three) months S.I more. They will be entitled to the benefit of **Section 382-B Cr.P.C.** The police officials present in Court are remanded to Jail Custody to serve the above sentence.

4. While, we were dictating this order in Chambers, after completing our today's Board, we were informed that an advocate wanted to file an application for suspension of this order and vakalatnamas were shown to us, but neither the learned counsel came forward, nor waited for us to finish this order, whereafter Mr. Salman Talibuddin, Advocate General, Sindh also appeared in the Chambers. We showed him the order in which proceedings have been initiated against the police officials under Section 27 of the Anti-Terrorism Act, 1997. After going through our order of **07.12.2020**, he stated that he was misinformed by some one that we have passed the said order in constitutional jurisdiction and left. Be that as it may,



keeping in view the detailed facts narrated in the order dated **07.12.2020** and the replies and performance of the Investigating Officers and conduct of the police officers as is emerging from the material before us, we were not inclined to grant any interim relief.

Copy of this order should be sent immediately to the S.S.P, Central, Karachi. His attention is drawn to non-compliance of the order reproduced at page-5 of this order. He is again directed to comply with the said order within three days and the compliance report should be submitted to this Court by the Nazir for perusal in Chamber.

JUDGE

JUDGE

Ayaz Gul