

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitutional Petition No.D-1211 of 2024
(Sht. Seeta & another Vs. Tiloo Mal)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing and order 09.09.2024

Mr. Imam Ali Chang, advocate for the petitioners a/w petitioners.

Mr.Afzal Karim Virik advocate for respondent No.5

Mr. Dhani Bakhsh Mari, Additional P.G. Sindh a/w respondent No. 3.

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ORDER

Adnan-ul-Karim Memon, J. Petitioners sht. Seeta and Tiloo

Mal have filed this Petition under Article 199 of the Constitution Islamic Republic of Pakistan, 1973, seeking directions to the official respondents not to harass them and quash the proceedings arising out of FIR No.62/2024 under section 365-B, 458, 34 PPC at P.S Mangli, District Sanghar.

2. Petitioners 1 and 2, a married couple, filed a petition seeking protection against respondent 5, the father of petitioner 1. Respondent 5 became upset about the marriage and filed a false police report against them, accusing them of kidnapping and theft. The petitioners filed their earlier petition with the Circuit Court of Hyderabad.

3. ASI P.S Mangli present in the Court has recorded the statement of petitioner No. 1 where she reiterated her stance with the narration that she intends to go with her husband/ petitioner No. 2.

4. The learned counsel for respondent No. 5 argues that once the police submit a challan (charge sheet) to the magistrate, they cannot submit additional reports under Section 173 of the Code of Criminal Procedure (Cr.P.C) to the court. This is because the challan is considered the final report of the investigation and concludes the investigation process. Any additional evidence or reports should be presented to the court during the trial proceedings.

5. We do not agree with this proposition for the simple reason that there are exceptional circumstances where additional information or evidence may be necessary for the court to make a just decision. In such cases, the investigating officer may request permission from the court to submit a supplementary report under Section 173 CrPC. However, this request should be supported by a clear explanation of why the additional information is necessary and why it was not included in the original challan. Besides, there is no statutory prohibition in the Code of Criminal Procedure for the police not to embark on a fresh investigation of the case after the conclusion of the first and the submission of the final report whatever the defects in the first investigation or the flaws in the final report given in the wake of it, that might subsequently be detected. The first investigation may be utterly unsatisfactory for many reasons. It may be due to the non-availability of the evidence, or the successful induction of false evidence during the investigation or the reason may be, the corrupt behavior of the police officers concerned. To say that the same police officers or their superiors on receipt of further information or the availability of better evidence cannot revive the investigation already done, leading to a contrary or a varied result, would virtually amount to putting a seal on human errors and frailties once committed, whether by design or by inadvertence, with no opportunity to make amends, although it is possible to do so. The police, as an agency of the State, should be as much interested as any other agency concerned in the administration of justice, to find out the truth in respect of crime and lay the whole facts bare for determination by the competent tribunals as honestly and correctly as possible.

6. The statutory functions of the police and the Courts in this respect are complementary to each other and do not overlap. The fact that the previous investigation had yielded certain results should not act as a hurdle or a deterrent for the police in reaching the truth if additional facts and additional circumstances brought to light help in its discovery. The Magistrate himself does not have the legal powers to direct a further investigation by the police after he has taken cognizance of the case and has himself launched an inquiry or trial, but there is no bar for the police to pursue its investigations and submit their results to the Court to find the guilt or innocence of the accused persons before it becomes too late.

However in the present case, petitioner No. 1 has refuted the allegations in the subject FIR, and her statement has been recorded by the order of this court where she has denied the allegations as made in the F.I.R which is fresh evidence and this piece of evidence can be considered by reopening the case when the Magistrate receives the first investigation report under section 173 CrPC; therefore, no fruitful result will come out to send the petitioner No.2 for further trial in terms of the statement of the petitioner No.1.

7. In view of the above, the Investigation Officer is directed to submit the fresh report under section 173 Cr. P.C. before the concerned Magistrate for appropriate order in terms of the statement of petitioner No. 1 wherein she has denied the allegations of her abduction.

8. In view of the above, the instant petition is allowed.

JUDGE

JUDGE

Ali Sher