Date	Order with signature of Judge

Present:
Naimatullah Phulpoto, J.
Irshad Ali Shah, J.

1. For order on office objection
2. For hearing of CMA No.17241/2024
3. For hearing of main case

23.09.2024.

Mr. Ghulam Rasool Mangi, Advocate for the petitioner
Mr. Sardar Mushtaque Ahmed, advocate for respondent
Mr. Abrar Ali Khichi, Additional Prosecutor General for the State a/w I.O and SIO of PS Bin Qasim

.-.-.- -.-.-.-.-.-.-

1. Overruled.

2-3. The facts, in-brief, necessary for the disposal of the instant petition are that an FIR was lodged by the petitioner with PS Zaman Town alleging therein that her daughter Mst. Zoha has been subjected to rape by her father Sohail Mehmood. On investigation, a report u/s. 173 Cr.PC was submitted by the police before the Court having jurisdiction. The case commenced with recording evidence of petitioner/complainant and P.W/victim Mst. Zoha when it was about to proceed further, the Senior Superintendent of Police, Investigation-II (Malir) East Zone, Karachi, vide order No.SSP/INV-II/EZ/RDR/8418 dated 02.08.2024 directed its reinvestigation; such order is impugned by the petitioner before this Court by way of instant petition to be declared illegal and having been passed without lawful authority.

It is contended by learned counsel for the petitioner that after the commencement of the trial, reinvestigation of the case could not be ordered, therefore, impugned order being illegal is liable to be set aside by this Court by way of the instant petition. In support of his

contention, he relied upon the case of *Qari Muhammad Rafique Vs Additional Inspector General of Police (Investigation) Punjab & others* (**2014 SCMR 1499**).

Learned Additional Prosecutor General for the State did not support the impugned order. However, learned counsel for the accused Sohail Mehmood by supporting the impugned order has sought dismissal of the instant petition by contending that the reinvestigation of the case is essential to unearth the real facts. In support of his contention, he relied upon the case of *Muhammad Akbar v. the State and another* (**1972 SCMR 335**).

Heard arguments and perused the record.

It is an admitted fact that on completion of the investigation, a report u/s 173 Cr.PC was submitted by the police and cognizance of offence whereupon has been taken by the Court having jurisdiction; the case has commenced with recording of evidence of the petitioner/complainant and P.W/victim Mst. Zoha. In these circumstances, reversing the entire proceedings to its beginning under the deception of re-investigation by way of the impugned order would be unjustified and is declared to be illegal having no legal consequences with direction to the accused to prove his innocence at the appropriate stage of trial, if is having such feeling.

In the case of *Bahadur Khan Vs. Muhammad Azam & others (2006 SCMR 373),* it has been held by the Apex Court that:

> *"System of reinvestigation is recent innovation which is always taken up at the instance of influential people for obtaining favorable report, which in no way assist the Court in coming to a correct conclusion rather create more complication in way of administration of justice".*

The case law which is relied upon by learned counsel for the accused is on distinguishable facts and circumstances. In that case, a report was furnished by the Investigating Officer stating therein that no case was made out; the further investigation of the case was ordered by the SSP Police concerned; based on further investigation

a charge sheet was furnished against the accused. In the instant case, no negative report has ever been furnished by the police before the Court and a re-investigation of the case has been ordered by the Senior Superintendent of Police, Investigation-II (Malir) East Zone, Karachi with a lapse of two years of furnishing the charge-sheet against the accused that too at the time when the case has commenced with recording of the evidence.

The instant petition is allowed in above terms.

J U D G E

J U D G E

Nadir /PA