

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-1832 of 2023**

*(Zafarullah Magsi Vs. Province of Sindh & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on office objection.
2. For Orders on CMA No. 718/2024 (Ex./A)
3. For Orders on CMA No. 7890/2023 (Ex./A)
4. For hearing of main case.

**15-02-2024.**

Mr. Shahid Ali K.Memon, advocate for the petitioner.

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1. Over ruled.
- 2&3. Deferred.
4. The facts in brief necessary for disposal of instant petition are that the private respondent by lodging an FIR and making further statement involved the petitioner and others for having committed murder of his brother Ghulam Mustafa by causing him fire shot injuries. The petitioner carrying a feeling that he has been involved in the said case falsely by the private respondent moved an application through his mother Mst. Phullan with Deputy Inspector General of Police, Sukkur for re-investigation of the case and withholding of the submission of report u/s 173 Cr.P.C till completion of such re-investigation.

It is contended by learned counsel for the petitioner that the petitioner being innocent has been involved in this case by the private respondent falsely and re-investigation of the case through an honest officer would prove his innocence; therefore Deputy Inspector General of Police, Sukkur be directed to dispose of the application of the mother of the petitioner pending with him for fair re-investigation of the case. In support of his contention, he relied upon case of *Raja Khurshid Ahmed Vs. Muhammad Bilal and others (2014 SCMR 474)*.

Heard arguments and perused the record.

As per section 173 Cr.P.C, the report of investigation in shape of challan is to be forwarded to the Magistrate having jurisdiction within fourteen days from the date of recording First Information Report u/s 154

Cr.P.C by the Officer Incharge of Police Station or investigation. In the instant matter, the FIR of the incident was recorded on 25-08-2023; it was more than five months back to filing of instant petition. Naturally the requisite report u/s 173 Cr.P.C might have been forwarded by the police to the Magistrate having jurisdiction after completion of the investigation for cognizance of the offence. In that situation, directing the Deputy Inspector General of Police, Sukkur to dispose of the application of the mother of the petitioner for fresh and/or re-investigation of the case would be unjustified.

In 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 petitioner is on distinguishable facts and circumstances. In that case, it was held that if an accused is having a feeling that an FIR has been registered and/or investigation is being carried out against him without lawful authority then he before submission of report u/s 173 Cr.P.C asks for judicial review of such act through constitutional jurisdiction of High Court. It was case of misappropriation allegedly committed by the employees of Capital Development Authority. The instant case is relating to a murder of an innocent person. The FIR has been lodged with the police lawfully presumably after expiry of fourteen days' time, the report u/s 173 Cr.P.C might have been submitted before the Magistrate having jurisdiction; therefore, judicial review of the act of the police in shape of direction for disposal of an application of mother of the petitioner for fresh investigation would be unjustified.

In view of the facts and reasons discussed above, the instant petition fails and is dismissed in limine directing the petitioner to prove his innocence by joining the trial, if so is advised to him.

**J U D G E**

# JUDGE

Nasim /PA