

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Constitutional Petition No.D- 156 of 2025.

(Mumtaz Ali & Ors v. SHO, PS Gabi Dero, Dist.Qamber & Ors)

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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BEFORE:

Mr.Justice Muhammad Saleem Jessar.

Mr.Justice Adnan-ul-Karim Memon.

Date of hearing & Order : 19.03.2025.

Mr. Habibullah G. Ghouri, advocate a/w petitioners.

Mr. Liaquat Ali Shar, A.A.G a/w DSP Sirajuddin Lashari, RRF/CMU Base Hyderabad, SIP Zulfiqar Mugheri, on behalf of SSP Kamber Shahdaktot and Insp.Azhar Hussain Memon, SHO P.S Ghaibidero.

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ORDER

Adnan-ul-Karim Memon, J:- The petitioner requests that the court order Respondents 1-4 to file a supplementary report under Section 173 of the Criminal Procedure Code (Cr.PC) with the trial court. This report should include all evidence and materials collected by Respondent 4 during the further investigation of Crime No. 09/2024 (P.S. Ghaibi Dero, Sections 302, 337-Hii, 148, 149 of the Pakistan Penal Code [PPC]) and its related case, Crime No. 10/2024 (P.S. Ghaibi Dero, Section 24 of the Sindh Arms Act [SAA]).

2. The petitioners, accused of triple murder, claim they were falsely implicated due to political vendetta by a local MPA, Nawab Sardar Ahmed Khan Chandio. They allege the murders stemmed from the community feud of Karo Kari. Despite a subsequent police investigation by DSP Sirajuddin Lashari that exonerated them and identified other suspects, the police have not filed a supplementary report with the trial court. They assert wrongful arrest, false identification, and politically motivated accusations, including against a polio vaccinator. They provide CDR records as evidence of their absence from the crime scene. The learned counsel for the petitioners submits that their rights to a fair trial and personal safety are being violated and requests the court to compel the police to submit the exonerating supplementary report with the trial court.

3. Police have confirmed the registration of triple murder and arms possession charges. An initial investigation was completed and a challan was submitted. Subsequently, following an order from the DIGP Larkana dated

(1) ...

(2) ...

(3) *It is duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.*

8. Section 173 of the Criminal Procedure Code (Cr.P.C.) requires investigations to be completed promptly. Upon completion, the police station in-charge must submit a report to the Magistrate through the Public Prosecutor. If the investigation exceeds 14 days, an interim report must be submitted within three days of that deadline, detailing the investigation's progress. The court should then commence the trial, barring justifiable delays. The Supreme Court of Pakistan, in Hakim Mumtaz Ahmed v. The State (PLD 2002 SC 590) declared these provisions mandatory, citing that non-compliance violates Articles 4 and 9 of the Constitution. The Supreme Court further stated:

“... on completion of period of police remand under section 167 Cr.P.C. if final or interim report has not been submitted the magistrate before whom accused has been produced for remand can insist upon the prosecution by passing order in writing to comply with the provisions of section 173(1) Cr.P.C. or record reasons for remanding the accused to judicial custody for want of challan in terms of section 344 Cr.P.C. and simultaneously direct initiation of departmental proceedings against the police officer responsible for submission of challan for not complying with mandatory provision of law and proving thereby himself/themselves to be inefficient police officers ...”

9. Neither the Criminal Procedure Code nor the Police Rules of 1934 provided a method for transferring criminal investigations between police officers. This gap was addressed by the (Amendment) Act, 2019.

10. The question as to whether the investigation can be changed or, to put it in another way, whether a case can be reinvestigated or further investigated after the submission of the final report under section 173 Cr.P.C. (and, more particularly after the accused is/are indicted) is quite contentious. There are two streams of decisions of the Supreme Court on this point. It is trite that in such eventuality the one rendered by the Larger Bench prevails. Therefore, this Court is obligated to follow the dictum laid down in Muhammad Akbar v. The State (1972 SCMR 335) because that decision was handed down by a 4-member Bench while all others have come from Benches of low numeric strength. In Muhammad Akbar, the apex Court held that “there is nothing in the Code of

August 27, 2024, under Article 18(4) of the Sindh Repeal of Police Act 1861 and Revival of Police Order 2002 (Amendment) Act 2019, the case was transferred to DSP Abdul Qudoos Kalwar then to DSP Siraj Ahmed Lashari on the request of the petitioners, for further investigation after the trial court took cognizance. The case is currently undergoing trial in a model court and proceedings under sections 87 and 88 Cr.P.C are underway.

4. Learned AAG submitted that a case could not be reinvestigated or further investigated under Article 18(4) of the Sindh Repeal of Police Act 1861 and Revival of Police Order 2002 (Amendment) Act 2019, after the commencement of trial, Therefore, the Order was without jurisdiction and the transfer of investigation to DSP Siraj Ahmed Lashari was void. At this stage learned counsel for the petitioner submits that the law neither prohibits reinvestigation nor further investigation of a criminal case even after the commencement of trial.

5. We have heard arguments and perused the record with the assistance of learned counsel for the parties present in Court. It appears that the complainant of the subject FIR has not been made a party in the proceedings, therefore, the notice could not be issued to him to put forward his plea. However, the issue involved in the present proceedings is a simple one, whether the recommendation for re-investigation/further investigation of the subject crime can be ordered by the DIGP Larkana Range, after submission of the challan and taking cognizance by the trial Court.

6. To appreciate the aforesaid proposition, it is expedient to refer to Section 4(l) of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "Code" or "Cr.P.C."), which defines the term "investigation" as follows:

(l) "Investigation".— "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

7. A fair investigation is essential for a fair trial, a right protected by Article 10A of the Constitution. The Supreme Court of India, in *Babubhai v. State of Gujrat*, affirmed that a fair investigation is also fundamental to the right to life and personal liberty, and a crucial component of the rule of law. Police Rule 25.2(3) of 1934 mandates that investigating officers must uncover the truth and present it to the court. This rule underscores the importance of an impartial and thorough investigation. It is reproduced below for ready reference:

25.2 Power of investigating officers:

Criminal Procedure to prevent the Investigating Officer from submitting a subsequent report in supersession of his earlier one, either on his own initiative or on the direction of the superior police officer." The oft-quoted case Qari Muhammad Rafique v. Additional Inspector General of Police (Inv.), Punjab and others (2014 SCMR 1499) that takes the opposite view was decided by a 3-member Bench. Further, it was passed on a petition refusing leave to appeal.

11. It is true that at times reinvestigation or further investigation may bring on record conflicting evidence and contradictory opinions of the police officers. In such eventuality, the court has to evaluate them under the established principles of criminal jurisprudence and rules of evidence to reach a correct decision. In Muhammad Ashfaq v. Amir Zaman and others (2004 SCMR 1924), the Supreme Court held:

"The apprehension of the petitioner/complainant that his case is likely to be prejudiced by submission of report on reinvestigation is misconceived. Firstly because the court concerned can proceed with the trial on the basis of the report already submitted under section 173 Cr.P.C. and secondly it is not bound by the opinion given in the said report or expressed in the report being submitted pursuant to reinvestigation. It is always the judicial consideration of the material collected by police which weighs with the court while issuing process."

12. Reinvestigation should be reserved for cases where fairness and impartiality demand it, not ordered routinely after challan submission without valid justification. It cannot be used to protect influential individuals. Trial court can address any investigative defects, and accused persons benefit from any technical flaws, ensuring a fair trial under Article 10-A of the Constitution. Indiscriminate reinvestigation would lead to endless delays and undermine criminal justice. As established in Raja Khursheed Ahmed v. Muhammad Bilal (2014 SCMR 474), changing investigations requires reasoned justification from the head of the investigation, reflecting thoughtful consideration, not mere procedural action. It is well settled that the opinion of the investigating officer is not binding upon the Court and it is for the trial Court to accept the report or reject it with reasons. However, in the present case, cognizance has already been taken and at this stage, the submission of the report, exonerating some of the accused in the subject crime, is to be looked into by the trial Court at the appropriate stage and interference by this Court in this regard is uncalled for.

13. This Court emphasizes its role in judicial review, guided by established legal principles. In this instance, because the trial court has already initiated trial proceedings, ordering the submission of a report at this stage is deemed

unnecessary. The petitioners retain the right to present the supplementary report as evidence during their defense, specifically when their statements under Section 342 of the Criminal Procedure Code (CrPC) are recorded, and by examining the Investigating officer. The trial Court shall endeavor to commence the trial, without further delay.

14. This petition is dismissed.

~~JUDGE~~ JUDGE
19/3/2025