

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.736 of 2023

(Anjum Shakeel **vs.** The State)

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

12.02.2026

Mr. Irshad Ahmed Jatoi, Advocate for the Applicant.

Mr. Nisar Ahmed Mallah, advocate

Ms. Shazia Hanjrah, DAG.

Mr. Habib Ahmed, Special Prosecutor ANF.

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ORDER

MUHAMMAD IQBAL KALHORO, J. Applicant who is an Inspector in ANF was assigned investigation in FIR No. 11/2023 U/S 9(2) 5, E, 15 of CNS Act, 2022 registered at P.S ANF, Clifton, Karachi. The crime pertains to seizure of a Container on 26.03.2023 from ANF Examination Area QCIT, Karachi from which 33,900 KGs of Charas and 800 grams of ice was recovered.

2. Since investigation could not be completed within mandated 14 days time, applicant from time to time applied for extension of time to submit the Challan in the relevant Court which was granted to him accordingly. Consequently, he submitted final Challan on 05.05.2023 after delay of 45 days. The Trial Court accepted the Challan, however, after going through the record, imposed fine of Rs. 100,000/- upon the applicant to be paid to two accused who were arrested but through the final Challan were exonerated and released. He further referred his matter to departmental Competent Authority to conduct an inquiry against him for delay in submission of the Challan against him vide impugned order dated 09.05.2023 which has been challenged by the applicant on the ground that the Trial Court has no jurisdiction to impose fine; fine is a punishment as defined U/S 53 PPC and that unless a proper procedure is adopted, such punishment cannot be imposed.

3. It is argued by his counsel that applicant was not given any show cause notice to explain his position; delay, if any, in submission of Challan was already condoned by the Trial Court from time to time on applications of the applicant.

4. In this case, Mr. Habib Ahmed, Special Prosecutor ANF, was called upon to assist the Court on the point. He has submitted that there is no provision in Cr.P.C.

and CNS Act authorizing the Special Court to impose fine in a manner as has been done. Section 175 PPC envisages punishment for a delinquency on the part of a person who is required to produce documents before the public servant or the Court. Per him in this case, if the Special Court was of the view that I.O was guilty of that offence, then a proper procedure should have been followed such as filing of a complaint, framing of charge and holding a summary trial as provided under Chapter 12 and Chapter 22 of Cr.P.C.

5. On the other hand, learned DAG has supported the impugned order stating that every court has inherent powers which it can exercise for ensuring delivery of justice.

6. We have considered submissions of the parties and are of a view that impugned order suffers from illegality, for, there is no provision in Cr.P.C. or CNS Act empowering the Trial Court to impose fine (of Rs. 100,000/-) on delay in submission of the Challan. Not the least, when as per record delay was already condoned by the Trial Court. Once delay is condoned on applications submitted by the I.O, it cannot be taken up as a ground by the Trial Court and hold the I.O guilty of the same.

7. More so we agree with Mr. Habib Ahmed, Special Prosecutor ANF that in this case if the applicant was guilty of delay in submission of Challan, apparently an offence U/S 175 PPC, he should have been atleast given an opportunity to put up his defense through a proper procedure. The procedure adopted by the Special Court is a lien to law and not sustainable.

8. Further, Section 173(1) Cr.P.C. covers the situation when investigation is not completed within prescribed period of 14 days and it is not possible to submit the final Challan. In the circumstances, it commands that the Investigating Agency should and must submit interim Challan for a trial. This stipulation is mandatory in nature which the courts are required to ensure compliance of. Therefore, we are of a view that, if in this case I.O. did not submit the Challan, in time as required, the trial court should have insisted upon compliance of Section 173(1) Cr.P.C and directed the I.O. to submit interim report which the trial Court could have treated as a final Challan and proceed with the trial.

9. The Supreme Court in the case of *Hakim Mumtaz Ahmed and another v. The State*¹ has dealt with the issue of detention of accused in police custody, if the

¹ PLD 2002 SC 590

Challan is not filed in terms of Section 173(1) Cr.P.C. It has laid down that the courts should check practice of late submission of Challan by insisting upon the compliance of Section 173(1) Cr.P.C. Adverting to the facts, which appear to be identical to the present case, the Supreme Court has stated that the Court which had been granting judicial remand of the petitioner in terms of section 344 Cr.P.C. would also be equally responsible for the delay in commencement of the trial because if it had insisted hard upon police to comply with the provisions of Section 173(1) Cr.P.C. or to face consequence for keeping the accused in custody, there was no reason that concerned SHO/Investigating Officer had not put up Challan against the accused. The Supreme Court has further observed, "*it is a general practice that we do point out weaknesses in the system but do not bother to discharge the duty cast upon the functionaries seized with the matter*". Further, it has observed that we are sure that if the provisions of section 173(1), Cr.P.C. are complied with in letter and spirit the delay in submission of Challan and completion of trial in criminal cases can conveniently be controlled.

10. Then, the Supreme Court has gone on to observe that on completion of period of police remand U/S 167 Cr.P.C, if Challan or interim report has not been submitted, the Magistrate before whom accused has been produced for remand insist upon the prosecution by passing an order in writing to comply with the provisions of Section 173(1) Cr.P.C. on recording 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 the mandatory provisions of law and proving thereby himself to be inefficient police officer. If this procedure is adopted the positive result shall start coming forward. The Supreme Court has further noted the conduct of the relevant Magistrate as well as Additional Sessions Judge, who had been granting police or judicial remand without insisting upon the SHO / Investigation Officer to submit Challan, and has observed that they had failed to discharge their duties. In such scenario, the Supreme Court has concluded that police and judicial officers who were associated with the instant case had violated the mandatory provisions of law.

11. In this case, the Supreme Court has lastly held that before or after completion of investigation period prescribed U/S 167 Cr.P.C., if it is not possible to submit final report, the Investigating Agency should strictly adhere to the provision of Section 173(1) Cr.P.C. and must submit interim Challan through Public Prosecutor for trial and the accused arrested in the case should not be kept in

custody for indefinite period without any legal justification. Although in the cited case, the issue was not of consequences or impact of late submission of Challan by the I.O, but the Supreme Court has observed that in such circumstances the relevant Magistrate or the Court can direct initiation of departmental proceedings against police officer responsible for submission of Challan for not complying with the mandatory provisions of law. Notably, the Supreme Court has not made any reference or suggestion to infer that Magistrate or the Court can also impose fine upon the I.O in such circumstances.

12. The Supreme Court in another case of *Adnan Prince v. The State and another*² has also taken a note of delay in submission of the Challan, and to curb such practice has directed all concerned to collectively and individually devise a proper strategy/policy to prevent the grave menace of delay and causes thereof and to immediately redress the same within the minimum possible time so that compliance is made with the mandatory provision of law and the relevant articles of the Constitution in its true letter and spirit and to make accountable each and every officer who was found responsible for such delay. Notably, the Supreme Court has also not suggested that investigating officer would be liable to pay fine in case of delay in submission of Challan.

13. The impugned order reflects that trial judge has imposed fine upon the applicant to be distributed amongst the accused, who in his view were unlawfully detained in custody for want of submission of the final Challan. In view of the ratio laid down by the Supreme Court in above referred cases, we feel that for illegal detention of the accused who were subsequently exonerated and released, not only the applicant but the trial court would be held responsible for not adhering to compliance of Section 173(1) Cr.P.C. and insisting upon submission of interim report or if the interim report was submitted treating the same as final Challan and commencing trial against the accused.

14. There is another aspect of the case, the trial court has awarded compensation to the accused, by treating their custody in investigation as illegal detention, without there being any request in this regard from the accused themselves. It has ignored the fact that it was a right of the accused to initiate proceedings against the I.O. if they were of a view that he was responsible for detaining them in jail illegally during investigation or that he was deliberately causing delay without any cogent justification in submitting the Challan and releasing them as no evidence was found against them. Besides, it is also a

² PLD 2017 SC 147

debatable point whether the custody of an accused during investigation per se can be treated as illegal detention if subsequently through Challan he is exonerated by the I.O. But we do want to land on this shore and survey it for the time being as it is beyond demarcation of this case.

15. The order appears to have been passed in haste without taking into consideration the ratio laid in this account by the Supreme Court and without ascertaining its own responsibility in this regard.

16. We therefore set aside the impugned order to the extent of imposing fine upon the applicant, however, without touching the discretion referring the matter of the applicant to his department to enquire whether he was responsible for delay in submission of Challan or not if so and take action in accordance with law.

17. This application is disposed of in the above terms.

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