Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Crl. Misc. No. 81211/B/2024

Aftab Mehmood Vs. The State and others

S.No. of order/ proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of the parties or counsel, where necessary

28.04.2025 Qazi Zafar Ullah Khan, Advocate, assisted by M/s Shahid Mir, Asad Iqbal, and Qazi Shahid Rashid, Advocates, for the Petitioner.
Mr. Muhammad Amjad Pervaiz, Advocate General Punjab, and Mr. Sittar Sahil, Assistant Advocate General.
Syed Farhad Ali Shah, Prosecutor General Punjab, and Rana Tasawar Ali Khan, Deputy Prosecutor General.
Mr. Asad Ali Bajwa, Deputy Attorney General, and Mr. Shahid Ahmad Ranjha, Assistant Attorney General.
Mr. Azhar Iqbal, Advocate, for the Complainant.
Mr. Haider Rasul Mirza and Ms. Qurat-ul-Ain Afzal, Advocates, *amici curiae*.

Tariq Saleem Sheikh, J. – On 13.03.2024, Respondent No.2, Abdul Hayee/SI, reached ABS Hospital, Gujrat, upon receiving a call on the Emergency Helpline '15'. There, he learnt that about 2/3 days earlier, Muhammad Ali/SI, Incharge Police Post Garhi Ahmadabad, Zahid Nadeem 2851/HC, Muhammad Bilal 1267/C, and Muhammad Aftab 932/C (the Petitioner), had arrested Shehroze Haider for investigation in case FIR No. 84/2024 dated 06.03.2024 registered at Police Station Lorry Adda, Gujrat, under section 392 of the Pakistan Penal Code ("PPC"). They allegedly tortured him while he was in custody and caused him serious injuries that endangered his life. Faced with his deteriorating condition, they took Shehroze to Doctors Hospital, Gujrat, where he succumbed to his injuries. Subsequently, they brought his body to ABS Hospital and fled. Abdul Hayee/SI reported the incident to his SHO upon which FIR No. 98/2024 dated 13.03.2024 was registered at Police Station Lorry Adda, Gujrat, under sections 302, 342, 34 PPC and section 155-C of the Police Order 2002.

2. On 15.03.2024, the Petitioner was arrested in the above-mentioned case. Through this application under section 497 of the Code

of Criminal Procedure 1898 (hereinafter referred to as the “Cr.P.C.” or the “Code”), he seeks post-arrest bail.

3. The Petitioner’s counsel, Qazi Zafar Ullah Khan, Advocate, contended that considering the contents of FIR No. 98/2024, this case falls within the ambit of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 (the “2022 Act”), which prescribes a special procedure for investigation and trial of such offences. He submitted that under section 5(1) of the Act, read with section 2(1)(c), prosecution can be initiated only through a complaint to the Federal Investigation Agency (“FIA”) established under the Federal Investigation Agency Act, 1974 (the “FIA Act”), and that it has exclusive jurisdiction to investigate it. Therefore, according to him, FIR No. 98/2024 was registered without lawful authority, and no proceedings could validly be undertaken on its basis. On the merits, Mr. Khan argued that the Petitioner was innocent and had been falsely implicated in this case. There was no eyewitness of the alleged offence, particularly none implicating the Petitioner. The counsel asserted that the investigation of the case was complete, and the Petitioner was not required for further probe. In these circumstances, he was entitled to the concession of post-arrest bail.

4. Rana Tasawar Ali Khan, Deputy Prosecutor General, contended that the registration of FIR No. 98/2024 by the local police was a procedural irregularity. The report under section 173 Cr.P.C. had already been submitted to the court, and the trial was underway. The Petitioner never objected to the registration of the FIR or its investigation by the local police at any earlier stage. He could not be permitted to do so now, particularly when there was nothing on the record to suggest that he had suffered any prejudice. On the merits, the Deputy Prosecutor General submitted that there was sufficient evidence to establish that the Petitioner had committed the offence and was thus not entitled to bail. He refuted the allegation of false implication and prayed for the dismissal of the application.

5. This case involves the following legal questions which must be addressed before considering the merits of the bail application:

i) What is the procedure for prosecuting the offences under the 2022 Act?

ii) If an FIR alleging custodial death, torture, or rape is registered under the general law (PPC) by the local police in contravention of the 2022 Act, can it be transferred to the FIA? If so, what is the legal mechanism for such a transfer?

iii) If such transfer is permitted, what is the legal status of the investigation conducted by the local police and the evidence collected before the transfer?

6. The questions mentioned above are of immense public importance involving the interpretation of various statutory laws and the preservation of the right to a fair trial of the Petitioner – and those accused of similar offences in other cases – which is guaranteed under Article 10A of the Constitution. Therefore, this Court issued a notice under Order XXVII-A of the Code of Civil Procedure, 1908 ("CPC") to the Attorney General for Pakistan and the Advocate General Punjab. Besides, the Prosecutor General Punjab was asked to assist the Court personally. Mr. Haider Rasul Mirza and Ms. Qurat-ul-Ain Afzal, Advocates, were appointed *amici curiae*.

7. Mr. Muhammad Amjad Pervaiz, Advocate General Punjab, entered appearance and submitted that the notice issued under Order XXVII-A CPC was not competent. However, as the principal law officer of the Province, he could assist this Court with legal issues. He argued that the CPC's preamble expressly states that its object is to "consolidate and amend the laws relating to the procedure of the courts of *civil judicature*."[1] Furthermore, an examination of the various provisions of the CPC, particularly section 9, confirms that the CPC applies only to civil proceedings and not to criminal cases. Order XXVII-A is part of the CPC, and it also refers only to "suits." Hence, it has no application to criminal proceedings, which are governed by a separate statute – the Code of Criminal Procedure, 1898 (Cr.P.C.).

8. Before turning to the merits, it is necessary to examine whether the notice issued under Order XXVII-A CPC was procedurally competent.

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[1] Emphasis added.

Applicability of Order XXVII-A CPC to criminal proceedings

9. The Constitution provides for the appointment of the Attorney General for Pakistan (Article 100) and Advocate General for each Province (Article 140). They are the principal law officers of the Federal Government and the Provincial Government, respectively, and advise them upon such legal matters and perform such other duties of a legal character as may be referred to them by the Government concerned and to appear before courts on their behalf.

10. Previously, the Government of India Act, 1935, empowered the Governor of the Province to appoint the Advocate General at his discretion, and the Punjab Law Department Manual, 1938, defined his duties. In ***United Provinces v. Mt. Atiqa Begum*** (AIR 1941 FC 16), Gwyer C.J. stated that cases involving challenges to the constitutionality of legislation should not be adjudicated without the Advocate General's assistance because they affect the scope of the executive authority of the Province. However, he clarified that, in such cases, the Advocate General appears as a representative of the executive government, and his role is limited to assisting the court. His appearance does not convert him into a party to the proceedings.

11. It is generally believed that Gwyer C.J.'s opinion prompted the introduction of Order XXVII-A in the CPC through Act No. XXIII of 1942, Code of Civil Procedure (Amendment) Act, 1942.[2] The relevant excerpt from the Order as it now stands is reproduced below:

> **1. Notice to the Advocate General.–** In any suit in which it appears to the court that any substantial question as to the interpretation of constitutional law is involved, the court shall not proceed to determine the question until after notice has been given to the Attorney General for Pakistan if the question of law concerns the Federal Government and to the Advocate General of the Province if the question of law concerns a Provincial Government.
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> **2. Court may add Government as party.–** The Court may at any stage of the proceedings order that the Federal Government or a Provincial Government shall be added as a defendant in any suit involving any substantial question as to the interpretation of constitutional law if the Attorney General for Pakistan or the Advocate General of the Province as the case may be, whether upon receipt of notice under Rule 1, or otherwise, applies for such addition and the court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question of law involved.

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[2] See: *Federation of Pakistan and others v. Aftab Ahmad Khan Sherpao and others* (PLD 1992 SC 723).

> **3.** …[3]
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> **4. Application for Orders to appeals.–** In the application of this Order to appeals the word 'defendant' shall be held to include a respondent and the word 'suit' an appeal.

12. In ***Federation of Pakistan and others v. Aftab Ahmad Khan Sherpao and others*** (PLD 1992 SC 723), the Supreme Court held that Rule 1 of Order XXVII-A CPC is mandatory and prohibits a court from determining any substantial question of constitutional interpretation without first issuing notice to the Attorney General or the Advocate General, depending upon whether the matter concerns the Federal Government or the Provincial Government. The Court observed that non-compliance with this Rule renders the proceedings defective and, in the case before it, declared the impugned judgment of the High Court a nullity.[4] The Supreme Court also endorsed the view taken in *Heman Santlal v. State of Bombay* (AIR 1951 Bombay 121) that in every case which involves a question referred to in Rule 1 of Order XXVII-A CPC, notice must be separately given to the Attorney General or the Advocate General, as the case may be, even if the Government is already a party to the proceedings. The requirement of the Rule has to be literally satisfied by giving notice to the Attorney General or Advocate General.[5]

13. Mr. Haider Rasul Mirza, *amicus curiae*, submitted that the State is a necessary party in all criminal proceedings. Article 7 of the Constitution defines the "State" to include the Federal Government, a Provincial Government, the Parliament, a Provincial Assembly, and such local or other authorities as are by law empowered to impose any tax or cess. Since the State is represented through the Attorney General or the Advocate General, the Court may seek their assistance in criminal cases involving constitutional interpretation without relying on Order XXVII-A CPC. In such instances, they appear not as a party but as a law officer

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[3] Rule 3, which concerns the service of notices, is omitted here for brevity.

[4] In *Hadayat Ullah and others v. Federation of Pakistan and others* (2022 SCMR 1691), while recording his dissent, Syed Mansoor Ali Shah J. noted that the appeal in *Aftab Sherpao's* case, which arose from a judgment of the Peshawar High Court, was heard by a twelve-member Bench of the Supreme Court. The Judges were equally divided (6 – 6) on the issue whether issuance of a separate notice under Rule 1 of Order XXVII-A of the CPC was mandatory when the Federal or Provincial Government was already a party to the proceedings. However, the appeals were ultimately allowed by a majority of 8 to 4 on other legal grounds. In these circumstances, the common law principle of *pro negante* applied to the point of equal division, and the decision of the High Court on the notice issue became the binding decision of the Supreme Court. The High Court had held that where the Federation or a Province is already a party to the proceedings, no separate notice to the Attorney-General or Advocate-General is required under Rule 1 of Order XXVII-A CPC.

[5] Also see: *Federal Public Service Commission and others v. Syed Muhammad Afaq and others* (PLD 2002 SC 167).

representing the public interest, which aligns with the principles outlined in *Atiqa Begum* by Gwyer C.J. and the subsequent case law. Mr. Mirza further submitted that the Court may also invoke its inherent jurisdiction under section 561-A Cr.P.C. to issue such notice. He contended that this recourse is justified by the Court's broader duty to consider all relevant perspectives to ensure a proper interpretation of the law, particularly where the matter directly affects the scope of executive authority.

14. The foundational guarantees of liberty (Article 9), protection against arbitrary detention (Article 10), dignity (Article 14), and fair trial (Article 10A) are directly involved in all criminal proceedings. Even in a bail application, the accused seeks, in effect, the enforcement of the fundamental right to liberty available to every citizen and non-citizen under the Constitution. Questions involving fundamental rights of the parties, particularly the accused, frequently arise in criminal proceedings, whether at the stage of investigation, bail, trial, or post-conviction.

15. I have already concluded that the Civil Procedure Code, including Order XXVII-A, does not apply to criminal proceedings governed by the Cr.P.C. In writ petitions under Article 199 of the Constitution, its applicability depends on the nature of the subject matter. Where the petition concerns a criminal matter, the CPC remains inapplicable. The case ***Hussain Bakhsh v. Settlement Commissioner, Rawalpindi, and others*** (PLD 1970 SC 1) is instructive. In that case, the issue arose whether the High Court could review an order passed in a writ petition under Article 98 of the 1962 Constitution. The Supreme Court held that the writ jurisdiction is original in nature and extends to "civil as well as other matters." Since the matter in *Hussain Bakhsh* related to a civil right, it explained that a proceeding taken to enforce a civil right is a civil proceeding, regardless of the source of the Court's jurisdiction. It further stated that whether a proceeding is civil or not depends on the nature of the subject matter of the proceeding and its object, and not on the mode adopted or the forum provided for the enforcement of the right. A proceeding dealing with a civil right does not cease to be so merely because that right is sought to be enforced through writ jurisdiction. Therefore, a writ petition concerning a civil matter would fall within the

purview of a civil proceeding, and the provisions of the CPC would apply, subject to any statutory exceptions.

16. Applying the above reasoning, a constitutional petition seeking relief in respect of a criminal matter, or involving the enforcement of rights arising in a criminal context, would not attract the application of the CPC. Such issues are instead governed by the Cr.P.C. It follows that Order XXVII-A CPC, a provision applicable only to civil proceedings, has no application in such cases.

17. In the present case, the Court is seized of a post-arrest bail application arising from a criminal case. The Code of Criminal Procedure contains no provision analogous to Order XXVII-A CPC. Accordingly, the objection to the issuance of notice under Order XXVII-A CPC is upheld. However, as this case raises substantial questions involving the interpretation of constitutional and statutory provisions, the Court was competent to seek assistance from the Attorney General and the Advocate General as a matter of judicial propriety. Their appearance should be deemed not to have been solicited under Order XXVII-A but rather in recognition of their status as principal law officers under Articles 100 and 140 of the Constitution and their obligation to assist the Court on legal questions affecting the public interest. I endorse Mr. Mirza's interpretation of Article 7 of the Constitution for this approach.

18. In my opinion, section 561-A Cr.P.C. cannot be invoked as a substitute for Order XXVII-A CPC. It is a residuary provision that preserves the High Court's inherent powers to prevent abuse of process and to secure the ends of justice in criminal proceedings. However, it cannot be construed to enlarge the Court's jurisdiction so as to incorporate procedural rules from the Civil Procedure Code prescribed exclusively for civil suits.

19. I now turn to the legal questions framed in paragraph 5 of this order.

Arguments

20. The Petitioner's counsel reiterated the submission made in paragraph 3 that FIR No. 98/2024 was registered without lawful authority

and was of no legal effect. Consequently, the said FIR and the trial proceedings instituted in pursuance thereof were liable to be quashed. He maintained that the Petitioner had a case for post-arrest bail both on this legal ground and on the factual contentions already noted.

21. Mr. Muhammad Amjad Pervaiz, Advocate General Punjab, submitted that Pakistan is a party to the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984), and it has enacted the 2022 Act to implement it. He stated that the Act prescribes a special procedure for investigating the offences to which it applies. It designates the FIA for their investigation under the supervision of the National Commission for Human Rights (the "HR Commission"), following the Federal Investigation Agency (Inquiries and Investigations) Rules 2002 (the "Investigation Rules"). The Advocate General submitted that section 5(3) of the 2022 Act[6] incorporates the specified provisions of the FIA Act and the Investigation Rules into the 2022 Act, making them an integral part of it on the principle of referential legislation.[7] Hence, their compliance is mandatory. According to him, all complaints under the 2022 Act must initially be registered as an inquiry, and an FIR should be lodged only upon its conclusion. The Advocate General contended that this Court misconstrued the 2022 Act in ***Zubaida Qureshi v. Ex-officio Justice of Peace*** (2024 LHC 3636) by holding that the FIA is not required to conduct an inquiry before initiating a formal investigation and that it should register an FIR directly upon receiving a complaint and investigate it under the oversight of the HR Commission. He argued that Parliament intentionally provided for a two-stage process to guard against false implication.

22. The Advocate General submitted that section 197 Cr.P.C. and section 6(5) of the Pakistan Criminal Law Amendment Act, 1958,

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[6] Section 5(3) of the 2022 Act is reproduced below for ready reference:

> (3) The Agency, while investigating the offences under this Act, shall have the same powers and shall follow the same procedure as prescribed in the Federal Investigation Agency Act, 1974 (Act VIII of 1975) and rules made thereunder.

[7] There are two primary types of referential legislation: (i) simple reference and (ii) incorporation by reference. Simple reference involves the new law merely citing or mentioning provisions of an existing law, as mentioned in section 28(1) of the General Clauses Act 1897. On the other hand, in incorporation by reference, the new law makes the existing law an integral part of itself, as if the provisions of the old law were directly included in the new text. The earlier law's provisions are not copied verbatim but are treated as if they were written into the new law. This method fictionally embeds the referenced provisions within the new legislation, thereby attracting the case law and legal interpretations associated with the earlier law. [Jain, K.C., *Referential Legislation: Need For Fresh Look*, (2000) 2 SCC (Jour) 17].

required prior sanction from a designated authority before initiating criminal proceedings against certain public servants to shield them from malicious prosecution. However, in ***Zafar Awan v. The Islamic Republic of Pakistan*** (PLD 1989 FSC 84), the Federal Shariat Court (FSC) declared the aforesaid provisions contrary to the Injunctions of Islam and struck them down. This decision was upheld in ***Federation of Pakistan v. Zafar Awan*** (PLD 1992 SC 72) and later affirmed in review.[8] The Advocate General argued that even while striking down the aforementioned provisions, the FSC stated that the law may provide procedural safeguards, subject to the condition that they do not obstruct a person's right to access the courts.[9] The Advocate General maintained that the preliminary inquiry mechanism under the Investigation Rules is one such permissible safeguard because it ensures that only genuine complaints against public officials proceed. In the absence of the substantive protection once provided by section 197 Cr.P.C., this procedural filter assumes greater importance to balance accountability with due process. He asserted that the 2022 Act should be interpreted harmoniously with the Investigation Rules, and the inquiry requirement should be preserved as a constitutionally valid safeguard. FIRs, especially against public officials, should not be registered automatically but only after prior permission or a fact-based inquiry has been conducted.

23. The Advocate General submitted that being named in an FIR irreparably harms a person's reputation, especially public officials in sensitive posts. He maintained that procedural filters such as inquiries and prior approvals are not bureaucratic obstacles but essential protections that maintain institutional integrity and prevent abuse. Their removal, he warned, would undermine good governance by exposing public officials to retaliatory or politically motivated accusations. The Advocate General emphasized that the right to due process under Article 10A of the

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[8] *Federation of Pakistan v. Zafar Awan* (PLD 2005 SC 19).

[9] The relevant excerpt from *Zafar Awan v. The Islamic Republic of Pakistan* (PLD 1989 FSC 84) is reproduced below:

> "A suggestion was then made that various fora may be provided for different categories of the employees so as to avoid rush of litigation, embarrassment to the lower courts and also to afford protection to some high officers in case a litigant just wants to humiliate them in the eye of public. Such a safeguard can, undoubtedly, be provided in the law ... The legislature may thus provide; levels of the various fora as long as it does not deny or restrict the right of the person to go to the courts or confronts him with such an obstacle as may amount to defeating that right. The law may thus authorise various levels of courts commensurate with the levels of public servants to deal with cases against them."

Constitution extends to the investigation stage, and according to ***The Bank of Punjab and another v. Harris Steel Industries (Pvt) Limited and others*** (PLD 2010 SC 1109) and ***Sharjeel Inam Memon v. National Accountability Bureau and others*** (2018 PCr.LJ Note 34), a fair investigation is integral to a fair trial. He concluded that public officials are entitled to the protections under Article 10A.

24. The Advocate General submitted that if an FIR is erroneously registered with the local police instead of a complaint for prosecuting offences falling within the ambit of the 2022 Act, it amounts to a procedural irregularity curable under section 537 Cr.P.C. Although the Police Rules, 1934, do not provide an express mechanism to address such situations, the principles underlying Rules 25.3 to 25.7 may be applied to transfer the case from the local police to the FIA. He further submitted that the evidence collected by the local police before such transfer may lawfully be relied upon during the trial. Accordingly, neither the investigation nor the trial conducted pursuant to a wrongly registered FIR is vitiated.

25. Syed Farhad Ali Shah, Prosecutor General Punjab, endorsed the Advocate General's submissions and reiterated that *Zubaida Qureshi* was not rightly decided. He acknowledged that the term "investigation" is used repeatedly in the 2022 Act, while the word "inquiry" does not appear. He argued, however, that this omission may have been inadvertent and does not alter the legal position, as section 5(3) incorporates the Investigation Rules, which contemplate an inquiry stage and thereby make it an integral part of the 2022 Act.

26. Mr. Asad Ali Bajwa, Deputy Attorney General, contended that the FIA Act and the Investigation Rules form part of the 2022 Act by virtue of section 5(3) and must be reckoned as such. These Rules, he emphasized, are not subordinate legislative instruments. They prescribe essential safeguards against misuse of the process, which must be followed. He submitted that the 2022 Act introduces a special mechanism for prosecuting custodial offences based on a "complaint" as defined in section 2(1)(c), and that this term cannot be equated with an FIR under section 154 Cr.P.C. According to him, the Act neither contemplates nor

requires the registration of an FIR as a condition precedent to investigation. Drawing an analogy with section 202 Cr.P.C., he argued that just as a Magistrate may conduct an inquiry before summoning the accused on a private complaint, the FIA should likewise be permitted to conduct a verification exercise before commencing a formal investigation. This interpretation, he contended, is consistent with judicial precedents and ensures a balanced application of the law without compromising its objectives.

27. Mr. Bajwa submitted that the FIA is authorized to investigate a wide range of offences under 38 statutes listed in the Schedule to the FIA Act. The standard procedure followed by the FIA in all those cases is to register each complaint initially as an inquiry and to launch a formal investigation only if warranted by the evidence collected during that inquiry. He contended that the 2022 Act contemplates the same procedural framework, and there is no justification to depart from it.

28. Mr. Haider Rasul Mirza, *amicus curiae*, elaborated on the scope of the 2022 Act. He acknowledged that the FIA follows the procedures outlined in the FIA Act and the Investigation Rules in all cases listed in the Schedule to the FIA Act. However, that practice must yield where a special statute provides a different framework. Custodial abuse involves grave violations of fundamental rights, often committed by law enforcement officials themselves. In such cases, delay or procedural filtering may result in cover-ups, intimidation, or loss of crucial evidence. Therefore, a different procedure is both rational and justified. To insist on mechanically applying the Investigation Rules to this special legislation would nullify Parliament’s clear policy choice and dilute the protection intended for victims of custodial abuse. Mr. Mirza maintained that there is tension between those Rules and the 2022 Act, which is correctly resolved in *Zubaida Qureshi*. That decision, he submitted, faithfully reflects the legislative intent and structure of the 2022 Act. Section 5(3) refers only to “investigation” and omits any mention of “inquiry,” and thus dispenses with that stage entirely.

29. According to Mr. Mirza, a case erroneously registered by the local police can be transferred to the FIA in three ways: first, under the

Police Rules, the IG Police/Provincial Police Officer may devise a mechanism authorizing the transfer of such cases. This authorization may be initiated either on the basis of a special report received from the concerned Superintendent (under Rules 24.13 and 24.14 of the Police Rules) or upon a direct application from any of the concerned parties. Second, the FIA may assume jurisdiction on its own initiative or the application of a party and call for the record of a case already registered with the local police by relying on section 5(1) of the 2022 Act read with Rule 3 of the Investigation Rules. Third, under section 5(2) of the 2022 Act, a Magistrate may direct the FIA to investigate an alleged offence of custodial torture, death, or rape if there are reasonable grounds to believe that such an offence has been committed, or if the person in custody makes a complaint of torture. Mr. Mirza further contended that even if the local police illegally assume jurisdiction and register an FIR under the general law, such error is curable and does not vitiate the proceedings. In his view, an improper assumption of jurisdiction does not furnish a basis to quash the FIR or the ensuing trial.

30. Ms. Qurat-ul-Ain Afzal, the second *amicus curiae*, submitted that the 2022 Act prescribes a special procedure for handling complaints of custodial torture and their investigation. She contended that under section 5(1) of the Act, the FIA may initiate an investigation directly on the basis of a complaint without prior registration of an FIR, subject to the supervision of the HR Commission. Once the investigation is complete, the FIA may submit a report to the court. This report may or may not be described as one under section 173 Cr.P.C., but it falls within the scope of section 190(1)(b) Cr.P.C. She argued that the trial court may take cognizance based on that report, summon the accused, conduct the trial, and decide the case on the evidence produced before it.

31. Mr. Mirza disagreed with Ms. Afzal. He submitted that the 2022 Act does not override the general procedural requirements applicable to cognizable offences. He pointed out that sections 8 to 10 of the Act declare the offences cognizable, which attracts section 154 Cr.P.C. He argued that a complaint under section 5(1) must be treated as information requiring registration of an FIR. He contended that section

5(3), which incorporates the FIA Act and the Investigation Rules, regulates the mode of investigation but does not dispense with the FIR requirement. He further submitted that a report under section 173 Cr.P.C. presupposes an FIR and that cognizance under section 190(1)(b) Cr.P.C. can only be taken if this precondition is met.

Analysis and findings

Procedure for the prosecution of the offences under the 2022 Act

32. The 2022 Act is a special law that provides a comprehensive framework for prosecuting acts of torture perpetrated by public officials or persons acting in an official capacity against an individual during custody. The Act primarily focuses on the following three offences: (a) torture (section 8), (b) custodial death (section 9), and (c) custodial rape (section 10). Section 11 provides punishment for filing false and malicious complaints. However, section 15 clarifies that the Act does not affect any civil remedies available under existing laws.

33. The 2022 Act deviates from the standard procedures outlined by the Code typically followed by police authorities for investigating offences. A combined reading of clauses (c) and (d) of section 2(1) indicates that the Act establishes a special procedure for initiating proceedings. Any person or their representative with reliable information about the commission of an offence under this Act may file a complaint with the FIA. The said complaint may be oral or in writing. Additionally, section 5(2) stipulates that if, at any time, including during the grant of physical remand under the Code, the Magistrate has reasonable grounds to believe that an offence under this Act has been committed or if a complaint of torture in custody is lodged, he shall order a medical examination. If the results of such examination reveal the infliction of torture, the Magistrate shall notify the FIA to investigate the offence.

34. Section 2(1)(c) of the 2022 Act defines “complaint” as “allegations made orally or in writing to the Agency (FIA) that a public official or a person working in an official capacity has committed an offence under this Act.” This definition is broader than that found in

section 4(h) Cr.P.C.,[10] and in view of sections 16 and 17 of the 2022 Act, prevails and overrides the Code's definition. In ***Mst. Sarriya Bibi v. RPO Sheikhupura etc.*** (PLJ 2024 Lahore 789), this Court held that the term "complaint" in section 5(1) of the 2022 Act does not carry the restrictive meaning assigned to it under section 4(h) Cr.P.C., which expressly excludes police reports. In contrast, the 2022 Act employs the term broadly to include any allegations or reports against public officials that the FIA is competent to investigate. This expanded scope empowers the FIA to initiate proceedings on the basis of various forms of information.

35. Section 5(1) of the 2022 Act grants exclusive jurisdiction to the FIA for investigating complaints against public officials accused of offences under the Act, subject to the supervision of the HR Commission. Section 5(3) of the 2022 Act stipulates that the FIA, while investigating offences under the Act, shall have the same powers and follow the same procedure as prescribed in the FIA Act and the Rules made thereunder. At present, the FIA conducts inquiries and investigations under the Investigation Rules.[11] The Law Officers have rightly pointed out that the FIA Act and the Investigation Rules are an integral part of the 2022 Act by virtue of section 5(3). They are not subordinate legislative instruments.

36. Section 16 of the 2022 Act declares that this Act shall have effect notwithstanding anything contained in any other law for the time being in force. Section 17 stipulates that the provisions of the Code shall apply to proceedings under this Act. Therefore, the provisions of the Code remain applicable to the officials of FIA as long as they do not conflict with the 2022 Act, the FIA Act, and the Investigation Rules.

37. The 2022 Act consistently uses the term "investigation" and does not refer to "inquiry". In contrast, section 5 of the FIA Act and the Investigation Rules use two terms, "inquiry" and "investigation", without providing specific definitions. While these terms are commonly considered interchangeable, they carry distinct meanings in the legal context. "An inquiry refers to a preliminary examination or fact-finding

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[10] **(h) "Complaint".** "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the reports of a police officer.

[11] These Rules were framed under section 9(1) of the FIA Act.

process conducted by a designated authority or agency to gather information regarding a particular matter … On the other hand, an investigation involves a detailed examination of a specific matter or allegation to gather evidence and determine its truth or validity."[12] This distinction has led to divergent views on the true import of section 5(3) of the 2022 Act and has prompted a legal controversy: whether, upon receiving a complaint under the 2022 Act, the FIA must first conduct a preliminary inquiry or proceed directly to register an FIR without such inquiry. The arguments advanced by the Law Officers and the *amici curiae* on this issue have already been set out above. In *Zubaida Qureshi*, it was held:

> "Albeit the FIA Act and the Investigation Rules envisage an inquiry before an investigation, section 5(1) of the 2022 Act deliberately uses the term "investigation," thus setting aside the requirement for an inquiry as outlined in the aforementioned instruments. This interpretation is further supported by the fact that the term "investigation" is used multiple times in the 2022 Act, while the word "inquiry" has nowhere been mentioned. It is well established that mistakes or absurdities cannot be attributed to the legislature when interpreting a statute or discerning legislative intent.[13] Generally, when interpreting statutes, it is assumed that the legislature chooses its words carefully. Therefore, if a word or phrase is included, it is not considered redundant; similarly, if a word or phrase is omitted, such omission is not deemed inconsequential. A change in language implies a change in intent.[14] It is also well settled that the legislature is presumed to be mindful of existing laws, and thus, the expression of legislative will should not be ignored lightly.[15] As a result, under the 2022 Act, the FIA does not hold an inquiry before initiating a formal investigation. Instead, it investigates the complaint directly under the oversight of the HR Commission."

38. The divergent views on section 5(3) of the 2022 Act require careful scrutiny. The court must faithfully interpret the statutory scheme of the Act and give effect to the legislative intent. Since I authored the judgment in *Zubaida Qureshi*, this case affords me an opportunity to re-examine its reasoning and determine whether it was correctly decided.

39. The State's primary argument is that since the Investigation Rules prescribe a two-tiered process consisting of "inquiry" followed by

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[12] *Muhammad Bilal Nawaz v. Director General, Federal Investigation Agency, and others* (2024 LHC 3288). Also see: *Adamjee Insurance Company Ltd. v. Assistant Director, Economic Enquiry Wing* (1989 PCr.LJ 1921).

[13] *Federal Government Employees Housing Foundation and another v. Ednan Syed and others* (PLD 2022 Islamabad 273).

[14] Reference No.1 of 2012 [Reference by the President of Pakistan under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973] (PLD 2013 SC 279).

[15] *Aamir Khurshid Mirza v. The State and another* (2006 CLD 568).

"investigation," and the FIA follows this model for offences under other statutes, the same must apply to proceedings under the 2022 Act. This argument rests on the assumption that section 5(3) of the 2022 Act incorporates the entirety of the investigative framework under the FIA Act and the Investigation Rules, including the inquiry stage. However, this argument is misconceived for two reasons. First, section 5(3) provides that the FIA "shall, while investigating the offences under this Act, have the same powers and follow the same procedures as prescribed in the Federal Investigation Agency Act, 1974 (Act VIII of 1975) and the rules made thereunder." The use of the phrase "while investigating" indicates that the incorporation is limited to the conduct and mode of investigation once commenced, not to the threshold requirements or conditions for initiating the investigation. There is no textual basis to infer that section 5(3) imports the inquiry stage as a mandatory prerequisite for invoking investigative jurisdiction under the 2022 Act.

40. Second, when a statute, employing the doctrine of referential legislation, adopts another enactment, whether in whole or in part, the adopted provisions become an integral part of the incorporating statute as if written into it verbatim. However, where the incorporating statute also contains a *non obstante* clause, as section 16 of the 2022 Act does, the incorporated provisions must yield in the event of any substantive inconsistency. In such instances, the incorporated law remains operative only to the extent that it aligns with the parent statute's purpose, text, and structure. Thus, incorporation and override can co-exist within the same statute, but the overriding clause prevails where conflict arises. Applying these principles, the procedures under the FIA Act and the Investigation Rules, including the practice of conducting a preliminary inquiry, are incorporated into the 2022 Act through section 5(3). However, since the Act consistently uses the term "investigation" and makes no reference to "inquiry," it must be concluded that a preliminary inquiry is not a condition precedent for registering an FIR. Section 16 of the 2022 Act overrides the incorporated provisions to the extent they are inconsistent with the Act's express language, structure, or purpose.

41. It is true that the FIA follows a uniform two-stage procedure in all cases listed in the Schedule to the FIA Act. I agree with Mr. Mirza that while such practice may favour an initial inquiry, it cannot override clear legislative command. The 2022 Act represents a departure from the standard model, having regard to the special nature of the offences it addresses. Parliament had the authority to prescribe a different procedure, and it did so.

42. The Prosecutor General's contention that the omission of the term "inquiry" may have been inadvertent cannot be accepted. The legislative drafting reflects a conscious and deliberate choice. Given that "inquiry" is a familiar procedural term in the FIA framework and yet finds no mention in the 2022 Act, the omission must be presumed intentional. It is well established that courts must give effect to legislative silence where it appears deliberate and not treat omissions as mere oversights in the absence of compelling contextual justification.

43. The Deputy Attorney General's contention that the term "complaint" under section 2(1)(c) of the 2022 Act is not equivalent to information under section 154 Cr.P.C., and that the Act permits initiation of proceedings without first registering an FIR, is not tenable. Sections 8 to 10 of the 2022 Act expressly declare the offences of torture, custodial death, and custodial rape to be cognizable. Under the general scheme of the Code of Criminal Procedure, a cognizable offence requires immediate registration of an FIR. There is nothing in the 2022 Act that overrides or dispenses with this foundational requirement. The Act merely transfers the responsibility of investigation from the local police to the FIA.

44. Similarly, Ms. Afzal's related proposition that the FIA may conduct an investigation without registering an FIR and submit a report directly to the trial court, which may be deemed a report under section 190(1)(b) Cr.P.C., cannot be accepted. While section 190(1)(b) does permit cognizance "upon a police report of such facts," that phrase, in the context of the Cr.P.C., refers specifically to a report submitted under section 173 upon conclusion of an investigation triggered by a valid FIR. That report is the culmination of the process governed by Chapter XIV of the Code. A report prepared outside that framework, however labelled,

does not satisfy the statutory requirements of section 190(1)(b). It is true that section 190(1)(c) empowers a Magistrate to take cognizance upon information received from any person other than a police officer, or on his own knowledge or suspicion, but that provision addresses a distinct procedural route. It must not be conflated with clause (b), which is predicated on formal police procedure initiated by an FIR.

45. The Advocate General's argument regarding the need for procedural safeguards, such as a preliminary inquiry, in cases involving public officials requires serious consideration. It is true that in *Zafar Awan v. The Islamic Republic of Pakistan* (PLD 1989 FSC 84), the FSC acknowledged that procedural safeguards may be permissible to protect public officials from malicious prosecution and harassment. However, at the same time, it stressed that such measures must not obstruct access to justice or give unbridled discretion to the executive. Thus, while procedural sieves and filters are not inherently objectionable, they must be reasonable, clearly defined, and open to judicial review. The "preliminary inquiry" requirement emphasized by the Advocate General fails this test. It creates a serious barrier to justice, delays action in cases involving fundamental rights, and risks frustrating the rights the 2022 Act seeks to protect. Therefore, though initially persuasive, his argument collapses under the weight of the very precedents he invokes.

46. It is pertinent to highlight that, even otherwise, the criminal justice system already provides sufficient procedural safeguards to protect public officials against false or frivolous accusations, making any additional pre-investigation inquiry unnecessary. Firstly, the Investigating Officer is not required to arrest a person merely because he is named in the FIR. He must collect evidence to justify the arrest. Secondly, if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he must not investigate the case, invoking the proviso (b) to section 157(1) Cr.P.C. Thirdly, the officer-in-charge of the police station may proceed under section 169 Cr.P.C. if there is insufficient evidence against the accused. Fourthly, the Magistrate may discharge the accused where appropriate. Fifthly, the person filing a *mala fide* complaint under the 2022 Act can be prosecuted

under section 11 of the Act. Lastly, a victim of false prosecution may also seek civil redress under the law of malicious prosecution. These safeguards balance public accountability and institutional fairness without frustrating the purpose of the 2022 Act.

47. Having examined the matter from all aspects, I am of the considered opinion that *Zubaida Qureshi* was correctly decided. The ruling is consistent with the text, structure, and object of the 2022 Act and does not call for a departure. It is, therefore, reaffirmed.

Role of the HR Commission

48. The HR Commission has been established under the National Commission of Human Rights Act 2012 (the "NCHR Act"), for the promotion and protection of human rights as provided for in the Constitution and the various international instruments to which Pakistan is a State party or shall become a State party.[16] Section 9 of the NCHR Act describes the HR Commission's functions and further clarifies and reinforces the above mandate.

49. As discussed, the proviso to section 5(1) of the 2022 Act provides that the FIA shall investigate complaints under the supervision of the HR Commission. However, the Act neither defines the nature of that supervision nor specifies its scope. Accordingly, the HR Commission's role must be determined in light of both the 2022 Act and the NCHR Act. A combined reading of these statutes suggests that the HR Commission is intended to perform an oversight function aimed at safeguarding the fundamental rights of both the accused and the victim and protecting complainants from harassment or obstruction. It should monitor whether the FIA complies with the procedural obligations imposed by the 2022 Act, including the timelines under section 13, and ensure that investigations are conducted fairly, impartially, and without institutional bias or external influence. Where the FIA unreasonably delays proceedings or disregards material evidence, the HR Commission may raise concerns or recommend remedial measures to promote transparency and accountability. It may also compile and publish reports identifying

[16] The Preamble of the National Commission of Human Rights Act, 2012.

systemic patterns in custodial torture cases necessary for institutional reform. However, the HR Commission is not an investigative or prosecutorial body and must not usurp the FIA's statutory mandate. It cannot independently investigate offences, initiate prosecutions, or direct the course of the FIA's proceedings.

50. The Prosecutor General has apprised the Court that standard operating procedures (SOPs) are being prepared to formalize and regulate the HR Commission's engagement with the FIA under the 2022 Act.

FIRs registered by local police under the general law in violation of the 2022 Act

51. The Police Rules, 1934, were a comprehensive set of regulations framed during British rule under the authority of the Police Act, 1861. Though originating in the erstwhile Punjab province (and thus often called the Punjab Police Rules, 1934), they came to be widely applied across British India and governed various aspects of policing, including organizational structure, administrative control, and investigative procedure. Following independence, both the Police Act and the 1934 Rules were inherited as part of Pakistan's legal system. In 2002, the Federal Government introduced a major police reform through the Police Order, 2002, which replaced the Police Act, 1861. The Police Rules, 1934 were expressly preserved under proviso (a) to Article 185(1) of the Police Order. However, with the devolution of policing to the provinces under the Eighteenth Constitutional Amendment (2010), each province enacted its own legal framework for police administration. The continued application of the 1934 Rules now depends on whether they have been retained or re-enacted under the relevant provincial legislation. In Punjab, the 1934 Rules have largely remained in force.

52. The FIA is governed by the FIA Act, 1974, the rules made thereunder – such as the FIA Rules, 1975, and the FIA (Inquiries and Investigations) Rules 2002 – and the provisions of the Code of Criminal Procedure. The Police Rules, 1934, do not apply *ex proprio vigore* (of their own force) to the operations of the FIA. However, the spirit and content of many Rules find their way to the FIA practices through other means. These include internal administrative orders, the operation of

section 5 of the FIA Act (which confers upon FIA officers the powers and responsibilities of police officers), and judicial expectations that the FIA adhere to the same professional standards as any police force.

53. Rules 24.13 and 24.14 of the Police Rules require the Superintendents of Police to send special reports to the District Magistrate,[17] the Deputy Inspector General (DIG) of the Range, the DIG Criminal Investigation Department and any neighbouring Superintendent or police officer whom they consider should be informed of the occurrence of a serious case as mentioned in the table sub-joined to Rule 24.15. The offence of *death whilst in police custody* is mentioned as a serious offence/case at Serial No. 2 of the table sub-joined to Rule 24.15.

54. Rule 24.15 requires that, upon receipt of a special report pursuant to Rule 24.14, the District Magistrate and the DIG shall, at their discretion, forward copies of the special reports to the Commissioner and Inspector General (IG) for information. The IG shall send copies of the said reports to the Government and the head of departments in any cases which he considers are of sufficient importance. On the other hand, the Commissioner shall only send copies to the Government when he has any particular comment on the case.

55. Rule 25.3 states that when the occurrence of a cognizable offence in the jurisdiction of another police station is reported, the fact shall be recorded in the daily diary, and information shall be sent to the officer-in-charge of the police station within whose jurisdiction the offence was committed. Meanwhile, all possible lawful measures shall be taken to secure the offender's arrest and the detection of the offence. Rule 25.4 provides that, after registering a case and commencing an investigation, if the police officer discovers that the offence was committed in the jurisdiction of another police station, he shall at once send information to the officer-in-charge of that police station. Upon receipt of such information, that officer shall proceed without delay to the place where the investigation is being held and undertake the investigation. Rule 25.5 states that if the officer who is thus summoned to

[17] The office of the District Magistrate has been abolished in Punjab but the Punjab Police Rules havenot been amended accordingly.

the spot disputes the jurisdiction, both officers shall jointly carry on the investigation under the orders of the senior officer, and neither shall leave until the question of jurisdiction has been settled and acknowledged. The case record shall be kept at the police station where the information was first received until the question of jurisdiction has been decided. Rule 25.6 stipulates that when a police officer is relieved during an investigation, he shall record in the case diary a report of all the proceedings he has undertaken and sign it, noting the date and hour of his relief. Such case diary shall be handed over to the relieving officer, who shall certify thereon that he acknowledges the crime that occurred within his station limits or to be one which he is empowered to investigate. Rule 25.7 provides that when a case is transferred from one police station to another, the Superintendent shall cancel the offence registered in the original police station, and a first information report shall be submitted from the police station within whose jurisdiction the offence occurred.

56. Thus, in custodial death cases, the Police Rules mandate immediate report of the incident to higher authorities. Considering the provisions of the 2022 Act, and subject to any SOPs which the Government may lay down, the HR Commission should also be immediately notified about the custodial death. Simultaneously, the officer-in-charge of the local police station concerned should move under Rule 25.3, and the FIA should then take over the case and proceed in the manner discussed above.

57. As adumbrated, the 2022 Act covers a broad spectrum of custodial offences; custodial death is only one of them. Rules 24.13 to 24.15 of the Police Rules, 1934, apply specifically to custodial death. In other matters, the general investigative provisions contained in Rules 25.4 to 25.7 may still be invoked by analogy to fill procedural gaps because they are not inconsistent with the 2022 Act, the FIA Act, or the Investigation Rules. They would rather ensure continuity and recordkeeping.

58. The legal position that emerges from the foregoing discussion is unambiguous. Rule 3 of the Investigation Rules empowers the FIA to initiate action either on its own motion or upon receipt of a

complaint or other information relating to the commission of a cognizable offence under the 2022 Act. However, where such a case is already registered with the local police, the FIA may invoke section 5(1) of the Act, read with Rule 3, and seek transfer of the record. The Magistrate also plays a vital role under section 5(2). If, at any stage, including during remand proceedings, the FIR or the material on record discloses the commission of an offence under the 2022 Act, he is duty-bound to refer the case to the FIA for investigation.

59. The public prosecutor and the court are also responsible for ensuring proper application of the 2022 Act. Under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 (the "Prosecution Act"), public prosecutors are entrusted with important supervisory responsibilities in criminal proceedings. Section 9(5) of the Act requires the prosecutor to scrutinize the report submitted under section 173 Cr.P.C. and to return it for further investigation or correction if found deficient. Section 9(7) obliges the prosecutor to submit to the court a written assessment regarding the sufficiency of evidence and the applicability of the alleged offences, which the court must duly consider. Section 12(a) further mandates that the officer-in-charge of a police station must notify the District Public Prosecutor when a criminal case is registered. These provisions show that the prosecutor performs a critical evaluative function at the pre-trial stage, including identifying jurisdictional or procedural defects and recommending appropriate corrective measures. Consequently, if a case falling under the 2022 Act is erroneously registered by the local police, the prosecutor has a duty to intervene. He may also return the report and recommend referral to the competent investigative forum, i.e., the FIA. The court, for its part, bears an independent obligation to ensure that the proceedings before it have been lawfully initiated and are being conducted in accordance with the applicable statutory framework. In particular, before taking cognizance of the offence, it must ascertain whether the report under section 173 Cr.P.C. has been submitted by the competent agency and whether any procedural irregularity requires curative action.

60. During the hearing of this case, the Prosecutor General Punjab informed the Court that necessary instructions and guidelines have been issued to all Prosecutors across Punjab, directing them to promptly refer to the FIA any cases involving custodial torture, death, or rape that fall within the exclusive scope of the 2022 Act.

61. Any person aggrieved by the illegal assumption of jurisdiction by the local police may approach the District Police Officer concerned or his superiors or file a complaint with the HR Commission for appropriate redress.

62. Where a case falling within the purview of the 2022 Act is initially registered with the local police under the general law but is subsequently transferred to the FIA, the local police may cancel the FIR in accordance with Rule 25.7 of the Police Rules. Upon such transfer, the FIA shall register a fresh FIR under the relevant provisions of the 2022 Act. Although the Police Rules do not apply to the FIA of their own force, the FIA may do so on the analogy of Rule 25.7. Where the local police have already submitted a report under section 173 Cr.P.C., the next step depends on whether the trial court has taken cognizance. If cognizance has not been taken, the case may still be transferred to the FIA, preferably with the court's permission. In that event, the local police shall cancel the FIR and the FIA shall register a new one. On the other hand, if cognizance has already been taken and trial proceedings have commenced, the FIR registered with the local police remains in the field and cannot be cancelled, nor is the FIA required to lodge a fresh FIR.

The legal value of the investigations conducted by the local police in respect of offences falling within the purview of the 2022 Act

63. This issue may be examined from two perspectives: (a) where the report under section 173 Cr.P.C. has not been submitted, or if submitted, the trial has not commenced, (b) where the court has taken cognizance and the trial has commenced.

64. An investigation by an agency lacking investigative competence constitutes a procedural irregularity. Section 156(2) Cr.P.C. stipulates that no proceedings of a police officer in any cognizable case shall be called into question on the ground that the case was one which

such officer was not empowered to investigate. However, this protection is subject to the condition that the accused has not been prejudiced and there is no failure of justice. Rules 25.5 and 25.6 of the Police Rules, referenced above, also support the proposition that the proceedings conducted by the local police and the evidence they collect should be preserved. Therefore, where the local police investigate a case falling within the purview of the 2022 Act, the resulting procedural irregularity does not, by itself, vitiate the trial.

65. Given the above, if a case is transferred to the FIA before submission of a report under section 173 Cr.P.C., the FIA is competent to assess the available material and prepare its own report. However, if the local police have already submitted a report under section 173 Cr.P.C. before the transfer, the FIA may, if circumstances so warrant, file a supplementary report regardless of whether the trial has commenced.

66. Cognizance taken by a competent court is distinct from the process of investigation. Once cognizance has been taken, any prior irregularity, such as erroneous registration by an unauthorized agency, does not vitiate the trial. Section 537(a) Cr.P.C. is instructive. It provides:

> **537. Finding or sentence when reversible by reason of error or omission in charge or proceedings.** – Subject to the provisions hereinbefore contained, no finding, sentence, or order passed by a court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account –
>
> (a) of any error, omission or irregularity in the complaint, report by police officer under section 173, summons, warrant, charge, proclamation, order, judgment, or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, or

67. In ***The Crown v. Nur Alam*** (PLD 1955 Lahore 667), the Magistrate convicted the accused under section 161 PPC. On appeal, the Court of Session acquitted him, holding that the trial was vitiated because the police investigation was in contravention of the proviso to section 3 of the Prevention of Corruption Act, 1947 (as it stood before the Amending Act XXXVII of 1953). The investigation, at least up to the preparation of recovery memos following the raid, had been conducted by a Sub-Inspector without the requisite authorization from a First Class Magistrate. The High Court held that non-compliance with the proviso did not, by itself, invalidate the trial. The trial court was required to decide the

case based on the evidence presented before it, and the mere fact that an unauthorized officer had collected the evidence did not create a jurisdictional defect. Unless the statute explicitly barred the court's jurisdiction in such circumstances, the irregularity in the investigation did not vitiate the proceedings. In this case, the Court found no words in the proviso or anywhere in the Prevention of Corruption Act, 1947, which would lead to such a conclusion.[18] In ***State v. Bashir and others*** (2017 SCMR 155), it was argued that CIA personnel lacked authority under section 156(1) Cr.P.C. to investigate cognizable offences or submit challans. The Supreme Court agreed, holding that such an investigation without proper authorization was irregular and contrary to law. However, it concluded that "the violation of section 156(1) Cr.P.C. may not vitiate the trial if no serious prejudice has been caused to the accused person concerned resulting in miscarriage of justice, in view of sub-section (2) of section 156 Cr.P.C." At the same time, the Court emphasized that this does not mean the CIA personnel may knowingly violate the law. It emphasized that law enforcement agencies remain under a legal obligation to uphold the rule of law. In ***Walizar v. State*** [PLD 1960 (W.P.) Karachi 204], the High Court held that an investigation conducted by an unauthorized police officer does not affect the jurisdiction of the Special Judge to try the accused. The irregularity is curable under section 537 Cr.P.C. A report prepared by an incompetent police officer may be treated as a report under section 190(1)(b) Cr.P.C., and the court may validly take cognizance on its basis. The High Court observed that a conviction is not founded on the investigation or such report, but on the evidence produced during the trial. Investigation is merely a preliminary step and does not determine the outcome. Unless the irregularity results in a miscarriage of justice, the trial remains valid and the conviction cannot be set aside solely because of the investigating officer's incompetence. Similarly, in ***State v. Zulfiqar Ali Bhutto and others*** (PLD 1978 Lahore 523), a five-member Bench of this Court, citing *Walizar*, held that the "mere fact that a police officer not competent to

[18] Also see: *The Crown v. Mehar Ali* (PLD 1956 FC 106).

investigate has carried out the investigation is not a defect which may vitiate the trial."[19]

68. There is no indication in the 2022 Act that the legislature intended to bar the jurisdiction of the trial court in cases of unauthorized investigation. The absence of any express provision to this effect is significant. Had the legislature intended such a harsh consequence, it would have said so in clear terms. This is another reason why procedural irregularities during the investigation, even where they involve unauthorized actions by officials, do not vitiate the jurisdiction of the trial court.

The present case

69. In the present case, it is not disputed that FIR No. 98/2024 was wrongly registered at Police Station Lorry Adda, Gujrat, and investigated by the local police instead of the FIA. However, as discussed above, such an unauthorized investigation constitutes a procedural irregularity that does not, by itself, affect the jurisdiction of the court or the legality of the trial. The competent court has already taken cognizance of the matter under section 6(1) of the 2022 Act, and the trial is in progress. No material on record suggests that the Petitioner has suffered any prejudice or that the irregularity has resulted in a miscarriage of justice. Therefore, there is no occasion to refer the matter to the FIA for a *de novo* investigation. The trial court shall proceed to adjudicate the case on the basis of the evidence brought before it in accordance with the law. The Petitioner's objection that the investigation and trial proceedings are vitiated is misconceived and thus repelled.

70. Coming to the merits of the case, it is observed that the prosecution's case at this stage primarily rests on the statements of PWs Farrukh Shehzad, Khurram Shehzad, and Zulfiqar Ali recorded under section 161 Cr.P.C. and the postmortem report of Shehroze Haider. The prosecution witnesses stated that five to six days before the incident, Muhammad Ali Shah/SI, Incharge Police Post Garhi Ahmadabad, along with Zahid Nadeem 2851/HC, Muhammad Bilal 1267/C, and the

[19] paragraph 347 at p. 606.

Petitioner had apprehended Shehroze Haider in connection with FIR No. 84/2024 dated 06.03.2024. During the investigation, Shehroze Haider was subjected to severe torture. They further alleged that on 12.03.2024 around 7:00/8:00 p.m., they visited Police Post Garhi Ahmadabad to meet Shehroze, where they met Muhammad Ali Shah/SI and Zahid Nadeem HC/851, who demanded an illegal gratification of Rs. 500,000/- for Shehroze's release. The PWs further alleged that Muhammad Ali Shah/SI, along with the other officials, physically assaulted Shehroze with *dandas* and *sotas* on his legs and back in their presence. They subsequently left to arrange the demanded amount. However, on 13.03.2024 at 6:30 a.m., they received information that Shehroze had died as a result of the torture by the said police officials.

71. It is observed that the prosecution witnesses have levelled only vague and general allegations against the Petitioner in their statements under section 161 Cr.P.C. There is no accusation that he demanded illegal gratification or personally subjected Shehroze to torture. Consequently, further inquiry within the meaning of section 497(2) Cr.P.C. is required to ascertain his culpability.

72. The Petitioner has been behind bars since 15.03.2024. The investigation is complete, and he is no longer required by the police for further probe. His continuous incarceration would not advance the prosecution's case.

73. Considering the above circumstances, I ***accepted*** this application by an order of even date. I admitted the Petitioner to post-arrest bail subject to his furnishing bail bond of Rs.200,000/- (Rupees two hundred thousand) with one surety in the like amount to the trial court's satisfaction.

74. During the hearing of this case, it came to this Court's notice that the Government has not taken meaningful steps to implement section 18 of the 2022 Act, which obligates it to ensure public awareness through media campaigns and to provide sensitization and training to public officials on issues addressed in the Act. Effective enforcement of this provision is essential for realizing the Act's objectives. Accordingly, the Chief Secretary, the Home Secretary, and the Prosecutor General, Punjab,

are directed to take immediate and concrete measures to discharge the obligations under section 18 of the 2022 Act.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge