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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.78006/2023

Nasira Ashfaq

Vs.

Director General Safe Cities Authority and others

JUDGMENT

Date of hearing:	21.12.2023
For the Petitioner:	Mian Faiz Ali, Advocate, assisted by Mr. Muhammad Faheem Ahmad and Mian Husnain Raza, Advocates.
For Respondents No.1 & 2:	M/s Malik Shahzeb Nawaz Khokhar and Muhammad Taqi, Law Officers, with Rana Shoaib, SSP/Chief Administration Officer, and Waqas Ahmed, Chief Maintenance Officer, PSCA.
For Respondents No.3 to 7:	Ms. Khalida Parveen, Additional Advocate General, with Jawad/SI and Azam/SI.

Tariq Saleem Sheikh, J. – On 14.09.2023 at 03:05 a.m., Sub-Inspector Muhammad Nawaz Kahloon (Respondent No.6) lodged FIR No.1701/2023 at Police Station Wahdat Colony, Lahore, under section 9-(1)3c of the Control of Narcotic Substances Act, 1997 (CNSA). He reported that earlier the same night, around 02:45 a.m., he had arrested Muhammad Ashfaq, son of Hafeez Ullah, on source information and seized 1460 grams of *charas* from his possession. The investigation of this case was assigned to Respondent No.7. He produced Ashfaq before the Area Magistrate the following afternoon, who remanded him to judicial custody.

2. The Petitioner, who is Ashfaq's wife, has a cross-version. According to her, on 13.09.2023, she went to her parents' house at Faizpur Attari, District Sheikhupura, along with Ashfaq and their children. The same evening, around 06:30 p.m., 6/7 unknown persons dressed in plain clothes barged into the house, mercilessly beat Ashfaq and then dragged

him out. A black Toyota Corolla Car No.TEU-552, three motorcycles and three unknown persons, out of whom two were wearing police uniforms, were waiting for them. They forced Ashfaq into the car and sped away. At about 07:15 p.m., the Petitioner called the police emergency helpline '15' from her cellphone (No. 0320-8425380) and reported the incident, but no assistance arrived. Approximately 30 minutes later, she received a call from Ashfaq's cellphone (No. 0308-1120813), and an unidentified person spoke to her. He warned her against pursuing legal action and threatened that she would put Ashfaq's life and liberty in danger if she proceeded. The said person then handed over the phone to Ashfaq who told her that Respondent No.6 was taking him to Police Station Wahdat Colony, Lahore. The Petitioner alleges that half an hour later, she received another call from her husband's phone. Ashfaq conveyed that Respondent No.6 was demanding a ransom of Rs.500,000/- for his release. She lacked the means to meet such a demand. Upon seeing her helplessness, the amount was lowered to Rs.200,000/-. Despite her earnest efforts, the Petitioner could not raise even the reduced sum. Consequently, Respondent No.6 framed Ashfaq in a narcotics case through FIR No.1701/2023. The Petitioner asserts that between the initial call and the registration of the FIR at 03:05 a.m. on 14.09.2023, Ashfaq contacted her multiple times at the behest of Respondent No.6. She possesses recordings of all those calls, which she could present as evidence when required.

3. The Petitioner filed applications with senior police officers requesting them to obtain CCTV footage from the Punjab Safe Cities Authority (PSCA) and call data records (CDRs) of Cellphone Nos. 0320-8425380 and 0308-1120813 from the cellular companies concerned for the relevant period but they did not take any action. On 02.10.2023, the Petitioner submitted two applications addressed to the Director General and the Chief Operating Officer of the PSCA (Respondents No.1 & 2, respectively) for providing camera footage regarding the incident of September 13th and the record of her call to the police helpline '15' that day. However, her request was declined through a letter dated 19.10.2023. Meanwhile, on 18.10.2023, she filed an application under sections 22-A & 22-B of the Code of Criminal Procedure 1898 (hereinafter referred to as the "Code" or "Cr.P.C.") before the Ex-officio Justice of Peace, Lahore,

praying that Respondents No.1 & 2 be directed to provide the requisite CCTV footage and call data to Respondent No.7, who was investigating case FIR No. 1701/2023. She further requested that Respondent No.7 be directed to receive and incorporate this evidence into the police file and conclude the investigation in accordance with the law. The Ex-officio Justice of Peace dismissed the said application by order dated 07.11.2023 on the ground that it would amount to interference in the investigation of FIR No.1701/2023, which is prohibited under the law.

4. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner prays for the same relief she sought in her application under section 22-A & 22-B Cr.P.C.

5. This Court issued notices to the Respondents and also sought a report and para-wise comments from the PSCA which it submitted.

6. Arguments heard. Record perused.

7. The “right to information” is a fundamental human right recognized and protected by international human rights jurisprudence. This right is often considered essential for the functioning of democratic societies and is closely linked to the principles of transparency, accountability, and the right to freedom of expression. The right to information empowers individuals to access information held by public authorities, fostering informed decision-making and civic engagement and preventing corruption.

8. The Universal Declaration of Human Rights (UDHR), adopted in 1948, enshrines the right to information in Article 19, which states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers.” This provision lays the foundation for the right to information as an integral component of freedom of expression.

9. The International Covenant on Civil and Political Rights (ICCPR), another cornerstone of international human rights law, reinforces the right to information in Article 19. It echoes the sentiments expressed in

the UDHR, emphasizing the significance of freedom of expression and recognizing the pivotal role of access to information.

10. Additionally, regional human rights instruments, such as the European Convention on Human Rights (ECHR) and the American Convention on Human Rights, incorporate provisions related to the right to information. For example, Article 10.1 of the ECHR states: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

11. On a global scale, the United Nations (U.N.) has been actively promoting the right to information. The U.N. General Assembly, in its Resolution 59/1, recognized that “freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.” The U.N. also designated September 28 as the International Day for Universal Access to Information to emphasize the importance of this right.

12. The right to information is, however, not absolute. Legal provisions often allow for restrictions, particularly in national security, public order and safety, personal privacy, commercial interests, law enforcement, State secrets, intellectual property rights, and the prevention of hate speech and defamation. The challenge lies in balancing the right to access information and other societal interests. International human rights instruments stress that any restrictions should be prescribed by law, necessary, proportionate, and serve legitimate objectives.

13. Numerous countries have adopted specific legislation to give effect to the right to information. In Pakistan, Article 19 of the Constitution of 1973 guarantees every citizen the “freedom of speech and expression”. In a landmark ruling in the case of Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473), the Supreme Court of Pakistan affirmed that this freedom encompasses the right to receive information. Subsequently, in 2010, Article 19A was introduced into Part-II Chapter-I of the Constitution through the Constitution (Eighteenth Amendment) Act 2010. This Amendment established the right to access information as an independent fundamental right in matters of

public importance. Article 19A is reproduced below for facility of reference:

19A. Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

14. In *Watan Party and others v. Federation of Pakistan and others* (PLD 2012 SC 292), the Supreme Court of Pakistan underscored the transformative impact of Article 19A in empowering citizens. It stated that this constitutional provision elevates access to information from a discretionary grant by the State to an enforceable right for the people. Article 19 has enabled every citizen to break free from the dominance of power centres that previously controlled information on matters of public importance. Additionally, the Supreme Court highlighted that this constitutional provision shields citizens from dependence on external sources or leaks for vital information, thus reinforcing the pillars of responsible and accountable governance as envisaged in the constitutional framework.

15. In *Justice Qazi Faez Isa and others v. President of Pakistan and others* (PLD 2023 SC 661), the Supreme Court highlighted that Article 19A of the Constitution is framed in “positive” terms, which signifies that it grants citizens the proactive right to access information. It restricts the State from withholding information on matters of public importance and mandates it to take active measures to ensure citizens’ access to such information. The Supreme Court recognized that the State functions through its various organs – the Legislature, the Executive, and the Judiciary – and stressed that the responsibility to uphold the fundamental right outlined in Article 19A rests on all these branches.

16. The right to information granted under Article 19A of the Constitution is not absolute. It is subject to two things: (a) it is restricted to matters of public importance, and (b) it is subject to regulation and reasonable restrictions imposed by law. In the *Province of Punjab v. Qaisar Iqbal and others* (PLD 2018 Lahore 198), a Full Bench of this Court noted that Article 19A of the Constitution does not define the expression “public importance”. Therefore, it adopted its dictionary meaning according to which it means “question which affects and has its

repercussions on the public-at-large, and it also includes the purpose and aim in which the general interest of the community, particularly the interest of individual, is directly or widely concerned.”¹ In *Justice Qazi Faez Isa and others v. President of Pakistan and others* (PLD 2023 SC 661), the Supreme Court elucidated the phrase “matters of public importance” occurring in Article 19A in light of the jurisprudence developed in respect of Articles 184(3), 186(1) and 212(3) of the Constitution, which employ similar terminology. The Supreme Court stated:

“Therefore, as per the judicial definition, the expression ‘matters of public importance’ used in Article 19A means the matters that pertain to and affect the public at large, a whole community, and not an individual or a small group of individuals. In other words, it includes the matters in which the general interest of a whole community, as opposed to the particular interest of individuals, is directly and vitally concerned. The adjective ‘public’ necessarily implies a matter relating to the people at large, the nation, the State or a community as a whole. If a matter in which only a particular individual or group of individuals is interested, and the people at large or an entire community have no interest, that cannot be treated as a matter of public importance.”

17. The second vital condition specified in Article 19A of the Constitution is that the right to information is subject to regulation and reasonable restrictions imposed by law. In *Pakistan Broadcasters Association and others v. Pakistan Electronic Media Regulatory Authority and others* (PLD 2016 SC 692), the Supreme Court defined the expression “reasonable restriction” as follows:

“It is certainly not easy to define ‘reasonableness’ with precision. It is neither possible nor advisable to prescribe any abstract standard of universal application of reasonableness. However, factors such as the nature of the right infringed, the duration and extent of the restriction, the causes and circumstances prompting the restriction, and the manner as well as the purpose for which the restrictions are imposed are to be considered. The extent of the malice sought to be prevented and/or remedied, and the disproportion of the restriction may also be examined in the context of reasonableness or otherwise of the imposition. It needs to be kept in mind that ‘reasonable’ implies intelligent care and deliberation, that is, the choice of course that reason dictates. For an action to be qualified as reasonable, it must also be just right and fair, and should neither be arbitrary nor fanciful or oppressive.”

18. The Punjab Transparency and Right to Information Act 2013 (the “Information Act”) seeks to actualize the right to information guaranteed by Article 19A of the Constitution to the extent of the provincial bodies mentioned in clause (h) of section 2 of the Act. This

¹ The same interpretation was made by the Supreme Court of Pakistan in *Ch. Muhammad Akram v. Registrar, Islamabad High Court and others* (PLD 2016 SC 961) and the Supreme Court of India in *State of Jammu and Kashmir v. Bakshi Ghulam Mohammad* (AIR 1967 SC 122).

legislation extends to the whole of the Punjab. On the other hand, Parliament has enacted the Right to Access to Information Act, 2017, which applies to all public bodies of the Federal Government.

19. The Punjab Assembly has also enacted Act I of 2016. The Punjab Safe Cities Authority was established under Act I of 2016 (the “PSCA Act”) for the construction, development and maintenance of an integrated command, control and communication (IC3) system for police in major cities of the province for public safety through the use of modern technology, infrastructure and processes.² In exercise of the powers conferred on it under section 19 of the PSCA Act of 2016, the Authority has framed PSCA Electronic Data Regulations 2016 (“EDR-16”), which cover the whole process of collection, analysis, storage, presentation and use of the electronic data. These are supplemented by the Standard Operating Procedures (SOPs) for PPIC 3 Centre, Lahore.

20. Recently, PSCA has developed the concept of Police Unified Communication and Response (PUCAR-15), which integrates 15 call centres and 15 response systems. It is operational across the province.

21. Regulation 3(2) of EDR-16 states that, through the IC3 Project, a quantum of electronic data within the range of ancillary facility is generated (a) to help the prosecution in criminal cases, crime detection, investigating, inquiry or trial; and (b) to be used as an authentic piece of evidence in any investigation, inquiry, or trial; and (c) to maintain law and order. Regulation 2(1)(d) explains that “ ‘electronic data’ means any probative data or information in the form of videos/audio/picture, stored or transmitted in electronic format or on electronic media duly collected, recorded, generated or extracted through the ancillary facilities/equipment installed under the [PSCA] Act.”

22. The PSCA has defined a procedure for the presentation of electronic data in Regulation No.9(1) of EDR-16. Regulation 9(1) stipulates that the PSCA shall only provide the data it collects to the Investigating Officers, law enforcement agencies (LEAs), courts, tribunals or any other authorized person for investigation, inquiry or trial as

² Preamble of Act I of 2016.

evidence. It follows that the PSCA's data can be used for certain specific purposes only, i.e. for matters under inquiry, investigation or trial. Most importantly, under EDR-16, no person, institution or office other than those mentioned above can apply for and obtain any data from the Authority. EDR-16 prescribes a special form for electronic data requests (EDR Form), which means that a request to provide electronic data in any other mode is not entertainable.³

23. According to Regulation 3(3) the electronic data generated through the IC3 facility shall be preserved and made available: (a) in the PSCA's Data Centre for 30 days except otherwise required by the PSCA; (b) for two months after it is stored in electronic data storage device [(defined in Regulation 2(1)(h)]; (c) upto seven years on instructions of the PSCA.

24. The PSCA Act of 2016, EDR-16, and the SOPs serve as regulatory framework for the PSCA to share the information it gathers. Notably, they do not prohibit the PSCA from sharing with the accused or the complainant party in a criminal case. Instead, they only establish procedural protocols and streamline the process to ensure that access is granted in a manner that prevents misuse and does not impede ongoing investigations. In *Pakistan Fisheries Ltd., Karachi, and others v. United Bank Ltd.* (PLD 1993 SC 109), the Supreme Court of Pakistan stated:

“It is a fundamental rule that where an enactment creates a new jurisdiction and prescribes the manner in which that jurisdiction is to be exercised and further specifies the remedy, such remedy is exclusive, and the party aggrieved of an order made in exercise of that jurisdiction must seek only such remedy and not others.”

25. Mr. Ali has failed to persuade this Court that PSCA Act of 2016, EDR-16, or the SOPs contain anything that violates the Petitioner's rights under Article 19A of the Constitution – so far as this case is concerned.

26. In view of the above, if an officer investigating a case requires CCTV footage from the PSCA systems or '15' call data record, he may apply to PSCA on the EDR Form. On the other hand, if he requires CDRs from any cellular company, he must follow the law elucidated by a Full

³ EDR Form is available free of cost and can be accessed and downloaded from the PSCA's official website www.psc.gov.pk

Bench of this Court in *Mst. Saima Noreen v. State and another* (PLJ 2023 Cr.C. 371). The law regarding probative value of CDRs and the guiding principles for their use in legal proceedings can *inter alia* be found in the said judgment and the following cases: *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675); *Azeem Khan v. Mujahid Khan* (2016 SCMR 274); *Mian Khalid Perviz v. The State and another* (2021 SCMR 522); *Shameem Bibi v. The State and others* (2022 SCMR 2077); *Rashed alias Chand and others v. The State* (2022 PCr.LJ 664); and *Noor Ahmed alias Ahmed Agha v. The State* (2022 PCr.LJ 1126).

27. The Petitioner's applications to Respondents No.1 & 2 were not maintainable for two reasons: first, they were on plain papers and not in the prescribed form (EDR Form); secondly, under Regulation 9(1), the PSCA is not authorized to entertain requests from private persons for the provision of any data. Only investigating officers, LEAs, courts, tribunals, or other authorized persons may collect specific data for a particular purpose in matters under inquiry or investigation or cases pending adjudication. Therefore, the PSCA rightly declined the Petitioner's request vide letter dated 19.10.2023.

28. Confronted with the above situation, Mr. Ali sought to invoke the Information Act of 2013 to assert the Petitioner's right to have the data in question. The Additional Advocate General responds that the PSCA Act of 2016 would prevail over the Information Act as it is a special law. I am inclined to agree with her. The 2013 Act deals *generally* with the right to information. The following excerpt from *Allahabad Bank v. Canara Bank and another* [(2000) 4 SCC 406], decided by the Indian Supreme Court, is instructive:

"At the same time, High Courts have rightly held that the Companies Act is a general Act and does not prevail under the RDB Act [Recovery of Debts due to Banks and Financial Institutions Act, 1993]. They have relied upon *Union of India vs. India Fisheries* [1965 (3) SCR 679]. There can be a situation in law where the same statute is treated as a special statute *vis-a-vis* one legislation and again as a general statute *vis-a-vis* yet another legislation. Such situations do arise as held in *Life Insurance Corporation of India vs. D.J.Bahadur* [AIR 1980 SC 2181]. It was there observed: "for certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with finer points of law". For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure. But *vis-a-vis* an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in *Damji Valji Shah and Anr. vs. Life Insurance Corporation of India*

and Ors. (1965(3) SCR 665 = AIR 1965 SC 135 already referred to), this Court has observed that vis-a-vis the LIC Act 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed: “Further, the provisions of the Special Act, i.e. LIC Act, will override the provisions of the general Act, viz; the Companies Act which is an Act relating to companies in general”. Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute. Special law versus special law: Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, section 34.”

29. Even if it is assumed that the Information Act of 2013 is not a general law and both it and the PSCA Act of 2016 are special laws, the latter would take precedence as it was enacted subsequently. There is no clause in either statute giving it an overriding effect. Reliance is placed on ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and others*** (2001) 3 SCC 71.

30. It is noteworthy that section 13(1) of the Information Act of 2013 places certain restrictions on the disclosure of information by the provincial bodies.⁴ According to clause (f) of section 13(1), information required by an individual may be refused if deemed necessary for the administration of justice. This clause is quite expansive and can be invoked to reject the Petitioner’s direct request for the data, requiring her to approach through the Investigating Officer.

31. According to Paul B. Weston *et al.*, “criminal investigation is a lawful search for people and things useful in reconstructing the

⁴ Section 13 of the Punjab Transparency and Right to Information Act, 2013, reads as follows:

13. Exceptions.— (1) A public information officer may refuse an application for access to information where disclosure of the information shall or is likely to cause harm to—

- (a) national defence or security, public order or international relations of Pakistan;
- (b) a legitimate privacy interest, unless the person concerned has consented to disclosure of the information;
- (c) the protection of legally privileged information or of the rules relating to breach of confidence;
- (d) the legitimate commercial interests of a public body or a third party, including information subject to third party intellectual property rights;
- (e) the life, health or safety of any person;
- (f) the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice;
- (g) the ability of the Government to manage the economy; or
- (h) the effective formulation of or success of a policy either by its premature disclosure or by restraining the free and frank provision of advice within the Government.

circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine the truth as far as it can be discovered in any post-factum inquiry.⁵ Article 4 of the Constitution states that enjoying the protection of the law and being treated in accordance with the law is the inalienable right of every citizen, wherever he may be, and of every other person currently within Pakistan. Article 10A guarantees the right to a fair trial. Fair investigation is concomitant with this right.⁶ It is also recognized as essential to the right to life and personal liberty.⁷ It is a minimum requirement of the rule of law⁸ and necessary to ensure the integrity of the criminal justice system.

32. Section 4(l) Cr.P.C. gives a statutory definition of the term “investigation”, stating that it encompasses all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) whom a Magistrate authorizes for this purpose. In *Kailash Vijayvargiya v. Rajlakshmi Chaudhuri* (2023), the Supreme Court of India noted the investigative process under the Code generally consists of the following steps: (a) proceeding to the scene of the incident; (b) establishing the facts and circumstances surrounding the case; (c) identifying and apprehending the suspected offender; (d) collecting evidence relevant to the alleged offence, which may involve examination of various persons, including the accused, and documenting their statements if deemed necessary by the investigating officer; (e) conducting searches at relevant locations and seizing items deemed necessary for the investigation and potential trial; and (f) forming an opinion based on the collected evidence as to whether there are sufficient grounds to bring the accused before the Magistrate for trial, and if so, taking the necessary steps such as filing a report under section 173 Cr.P.C.

33. In *Vinay Tyagi v. Irshad Ali alias Deepak and others* [(2013) 5 SCC 762], the Supreme Court of India explained that in criminal jurisprudence, the expression “fair and proper investigation” connotes two

⁵ Criminal Investigation : Basic Perspectives

⁶ *Afzal Ahmad v. City Police Officer, Faisalabad and others* (PLD 2022 Lahore 721); *Altaf Ahmad Makhdoom v. Inspector General of Police, Punjab and others* (2023 PCr.LJ 1).

⁷ *Babubhai v. State of Gujarat and others* [(2010) 12 SCC 254]

⁸ *ibid.*

things: firstly, the investigation should be honest, unbiased and in accordance with law, and secondly, the entire emphasis should be to dig out the truth and bring it before the court of justice. Rule 25.2(3) of the Police Rules, 1934, embodies this principle. It states that it is the duty of an investigating officer to find out the truth of the matter under investigation. His objective shall be to discover the actual facts of the case and arrest the real offender or offenders. He must not prematurely commit to any view of the facts for or against anyone. In *Mst. Sughran Bibi v. The State* (PLD 2018 SC 595), the Supreme Court of Pakistan emphasized that investigations must not be confined solely to the narrative presented in the FIR or the allegations contained therein. The Investigating Officer should not feel obligated to validate the accuracy of the incident as described in the FIR and should not allow the contents of the FIR to influence his judgment or control his actions. If the information received by the local police about the commission of a cognizable offence also contained a version as to how the relevant offence was committed, by whom it was committed, and in which background it was committed, then that version of the incident was only the version of the informant and nothing more. The Investigating Officer should not unreservedly accept such a version as the truth or the whole truth. Instead, following the registration of the FIR, he should conduct an impartial inquiry to ascertain the facts of the matter, gathering information from various sources and arriving at their own conclusions. The final report submitted under section 173 Cr.P.C. should reflect the Investigating Officer's independent opinion, uninfluenced by the statements or allegations made in the FIR.

34. There are frequent complaints against investigating officers, alleging that, due to dishonesty, negligence, or other factors, they fail to include crucial evidence in the case record, thereby impeding the fair adjudication of the matter. The present case is a classic example of such an instance. The Petitioner's husband, Ashfaq, stands accused of an offence under section 9-(1)3c of the CNSA, which is punishable with rigorous imprisonment up to fourteen years, with a minimum of nine years, and a fine ranging from eighty thousand to four hundred thousand rupees. The Petitioner believes that Ashfaq can be cleared of the charge if certain data from the PSCA is brought into the case file, but the law prohibits the PSCA

from directly providing her with this data. The opposing party, in this case, is the police themselves. The Petitioner sought the indulgence of superior police officers, but they did not respond. Then she approached the Ex-officio Justice of Peace under section 22-A Cr.P.C., but he also refused to intervene. It is necessary to outline what remedies an individual has when the police officer does not bring the relevant evidence on record, which is imperative for the just decision of the case.

35. The Police Order 2002 provides various remedies for the individual dissatisfied with the investigation of a case. Firstly, under Article 18(9), he can approach the supervisory officer charged with the duty to ensure timely completion and verification of the investigation. The said officer may summon the investigation officer, review the case file, evaluate the evidence, and issue instructions to the investigation officer in the form of a case diary. Article 18(10) provides that a supervisory officer not below the rank of a Deputy Superintendent of Police may verify the correctness of the investigation and the accuracy of the conclusions of the investigation by writing a case diary before submitting a report to the court. Secondly, the aggrieved person can seek the transfer of the investigation for which Article 18-A provides a complete mechanism. Thirdly, he can file a complaint to the Provincial Police Complaints Authority under Article 106. The PPCA is an independent body that oversees the performance and accountability of the police. It can inquire into the complaint and direct the investigating officer to take appropriate action or refer the matter to the competent authority for disciplinary or criminal action against him.

36. An individual dissatisfied with the investigation may also invoke section 551 Cr.P.C., which reads as follows:

551. Powers of superior officers of police. – Police officers superior in rank to an officer in-charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

37. An Ex-officio Justice of Peace can also be helpful to an individual aggrieved by police conduct. Clause (iii) of section 22-A(6) Cr.P.C. empowers him to issue appropriate directions to the concerned police authorities on a complaint regarding neglect, failure, or excess committed by a police officer concerning his functions and duties.

However, it is crucial to note that this provision is limited in scope. In ***Khizer Hayat and others v. Inspector General of Police (Punjab), Lahore and others*** (PLD 2005 Lahore 470), a Full Bench of this Court ruled that the directives of the Ex-officio Justice of Peace under section 22-A Cr.P.C. must conform strictly to the relevant legal framework. He must not usurp the powers of other authorities and address grievances directly. Nevertheless, there is an exception to this principle in cases where a clear legal obligation mandates a specific action by a police officer. In such instances, the Ex-officio Justice of the Peace may issue directives to ensure compliance with legal obligations. The Court further stated that the role of an Ex-officio Justice of Peace under section 22-A(6) Cr.P.C. is primarily that of a facilitator and mediator between complainants and the relevant police authorities. Effective communication and cooperation are essential for addressing grievances under this jurisdiction.

38. Section 36 Cr.P.C. stipulates that all Magistrates have the powers specified in the Third Schedule. Such powers are called the “ordinary powers”. Section 37 further provides that, upon the High Court’s recommendation, the Provincial Government may empower any Magistrate with additional powers listed in the Fourth Schedule alongside their ordinary powers. A review of the Third Schedule reveals that Magistrates of the First and Second Classes have the ordinary power under section 155(2) Cr.P.C. to direct the police to investigate cases involving non-cognizable offences where they have the jurisdiction to try or send to the Court of Session or the High Court for trial. It is well-settled that when a power is given to an authority to do something, it includes such incidental or implied powers that would ensure the proper doing of that thing. In other words, when the statute expressly grants any power, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective.⁹ Therefore, the aforementioned power to order the police to investigate cases involving non-cognizable offences under section 155(2) Cr.P.C. includes all such incidental powers essential to ensure a proper investigation.

⁹ *Sakiri Vasu vs State of U.P. and others* (AIR 2008 SC 907).

39. Section 156 Cr.P.C. deals with the investigation of cognizable offences, and its sub-section (3) plays a vital role in maintaining the rule of law. It empowers Magistrates to intervene when the police fail to address complaints or information concerning cognizable offences and ensures that they are investigated fairly, impartially, and thoroughly. In *Mohd. Yousuf v. Smt. Afag Jahan & another* (AIR 2006 SC 705), the Supreme Court of India analyzed the scope of section 156(3) of India's Code of Criminal Procedure of 1973, which mirrors section 156(3) of our Code. It stated that while section 156(1)¹⁰ allows an officer in charge of a police station to investigate any cognizable offence without a Magistrate's order, section 156(3) empowers a Magistrate to intervene if needed. The Supreme Court highlighted that although the investigations under section 156(3) also end up with a report under section 173 – the same outcome as police-initiated investigations – the significant point is that investigations under section 156(3) occur before the Magistrate takes cognizance of the offence. Thus, it offers a pre-cognizance check on the police. The Supreme Court further stated that the investigation under section 156(3) is distinguishable from the one under section 202 of the Indian Code.¹¹ The latter is limited in scope and is only to help the Magistrate decide whether to proceed further with the complaint.

40. In *Sakiri Vasu vs State of U.P. and others* (AIR 2008 SC 907), the Indian Supreme Court ruled that section 156(3) provides for a check by a Magistrate on the police. If he finds that they have not done their duty of investigating the case at all, or have not done it satisfactorily, he can issue necessary directives to ensure its thoroughness. The Supreme Court said: "Section 156(3) Cr.P.C., though briefly worded, is very wide and will include all such incidental powers as necessary for ensuring a proper investigation." It further stated that the Magistrate can also monitor the investigation under this provision.

41. In *M. Subramaniam v. Janki* (AIROnline 2020 SC 387), the Indian Supreme Court reaffirmed the above view, clarifying that although the Magistrate is empowered to monitor the progress of the investigation,

¹⁰ Section 156(1) of the Indian Code of Criminal Procedure Code 1973 is analogous to section 156(1) of Pakistan's Code of Criminal Procedure 1898.

¹¹ This corresponds to a similar provision of our Code.

he is not authorized to conduct the investigation himself because this responsibility lies with the police. Citing *State of Bihar and another v. J.A.C. Saldanha and others* (AIR 1980 SC 326), it stated:

“17. In our opinion section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

“18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

42. Here, I must also refer to section 94(1) Cr.P.C. It stipulates that whenever any court, or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for any investigation, inquiry, trial or other proceeding under the Code before it, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. The words “whenever” and “thing” in section 94 Cr.P.C. are significant. “Whenever” indicates that a court can exercise the power to require the production of any document or other thing at any stage during an inquiry or trial. The only condition is that it must be necessary or desirable for the proceedings.

43. In *The State v. Chaudhry Muhammad Usman* (2023 SCMR 1676), the Supreme Court of Pakistan addressed two questions: (i) whether an accused can request the court, before the commencement of trial, to order the production of documents not covered under section 265-C Cr.P.C., and (ii) whether an accused can make such a request before presenting a defence, despite the existence of section 265-F(7) Cr.P.C., which provides that, after entering on his defence, an accused can apply to the trial court to issue any process for compelling the production of any document. The Supreme Court answered both questions in the affirmative. It ruled that any party may apply to the court for an order

under section 94 Cr.P.C. and the court would allow its request if the condition mentioned above is satisfied. It clarified that section 265-F(7) does not control or limit the power of a court under section 94(1). “The provisions of these two sections differ from each other in their extent and scope. They are not opposed to each other. Section 94(1) affords both the parties to an inquiry or trial (not to the accused alone) the opportunity of causing the production of any document at any stage of such inquiry or trial, with the condition that the party applying for it must satisfy the court that the production of the required document is necessary or desirable for the purposes of the inquiry or trial. Section 265-F(7), on the other hand, only gives the accused another similar opportunity at the stage of his defence subject to a lesser condition, which is that his application should not be for the purpose of vexation or delay or defeating the ends of justice.”

44. In *Shakeel Akhtar v. The State etc.* (2023 LHC 7704), this Court determined that the word “thing” in section 94 Cr.P.C. should be broadly construed to encompass anything relevant to the offence, the production of which would promote the cause of justice. The relevant excerpt is reproduced below:

“Section 94 Cr.P.C., Articles 24, 40, 59 and 164 of QSO [the Qanun-e-Shahadat 1984] and Rule 2 of Chapter 1-E, Volume III of the Rules & Orders of the Lahore High Court, must be given a purposive interpretation. In particular, the term “thing” used in section 94 Cr.P.C. and Article 161 of QSO must be given a broad meaning and understood to signify anything connected with the offence whose production will serve the interest of justice. In *Abdul Latif Aassi v. The State* (1999 MLD 1069 : 2001 P.Cr.R. 548), Asif Saeed Khan Khosa J. stated that contrary to the general perception that we have an adversarial justice system, sections 245(1), 540, 428 and 561-A Cr.P.C., Article 161 of QSO and Rule 2, *supra*, cut over that paradigm and allow the courts to take an inquisitorial approach in certain circumstances. Therefore, in a criminal case, a trial court can rectify an intentional or unintentional lapse on the part of the complainant, the Investigating Officer or the prosecuting counsel by calling in evidence on its own if it can have a bearing on the determination of guilt or innocence of the accused person. Such authority must be granted to a criminal court in the larger interest of the community. The stage of the trial is irrelevant for this purpose. The only factor important for exercising such power is that the evidence called is relevant.”¹²

45. Sections 156(3) and 94(1) of the Code play crucial roles within the legal framework, contributing to the fair and effective administration of justice. Nevertheless, they serve different purposes.

¹² Also see: *Zaheer Ahmed v. Judge, Special Court and others* (PLD 2023 Lahore 528), and *Muhammad Asif Ali Usama v. The State and others* (2022 PCr.LJ 59).

Section 156(3) empowers Magistrates to intervene when the police do not adequately address complaints or information regarding cognizable offences. It allows Magistrates to direct the police to investigate the alleged offence properly. In contrast, section 94(1) deals with the production of documents and evidence during legal proceedings (including investigation, inquiry, trial or other proceedings under the Code).

46. In summary, the Police Order 2002 and sections 22-A(6), 551, 155(2), 156(3), and 94 of the Code effectively address complaints regarding an unsatisfactory police investigation. These remedies are not mutually exclusive. However, an individual must be vigilant and resort to the most effective one in a given situation.

47. The right to a fair trial is as much to the accused as the complainant/victim party. In Zahira Habibullah Sheikh and another v. State of Gujarat and others (AIR 2004 SC 3114), the Indian Supreme Court stated that crimes are public wrongs that affect the entire community and emphasized the need to balance the interests of the accused, the victim, and society. The principles of the rule of law and due process are closely linked to human rights protection, and all parties involved in a criminal trial have the right to be treated fairly. In this view of the matter, the remedies available against flawed or dishonest investigations are equally accessible to both the complainant/victim party and the accused.

48. The High Court is the guardian of the people's fundamental rights. Article 199 of the Constitution empowers it to enforce fundamental rights through the constitutional remedy of writs. These writs include *habeas corpus*, *mandamus*, prohibition, *quo warranto*, and *certiorari*. In the seminal case of Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Baluchistan and another (PLD 1971 SC 677), the Supreme Court of Pakistan held that the general rule is that the High Court has no jurisdiction under the Constitution or any other law, including the Code, to supervise the investigation of a criminal case or to control the agency conducting it. The constitutional jurisdiction of the High Court may be invoked if the investigation is *mala fide* or without jurisdiction. In such a situation, the High Court may even exercise power under section 491 Cr.P.C. – though not under section 561-A Cr.P.C. – to release a person if he is in detention. Several subsequent decisions approved this view. The

following excerpt from *Younas Abbas and others v. Additional Sessions Judge, Chakwal, and others* (PLD 2016 SC 581) is quite instructive:

“The investigating authorities do not have an unfettered authority of running investigation according to their whim and caprice. They can be pushed back to their allotted turf if and when they overstep it. In the case of *Anwar Ahmed Khan v. The State* (1996 SCMR 24), this Court held that the High Court, in the exercise of its jurisdiction, was competent to pass necessary orders where investigation was *mala fide* or without jurisdiction to ensure justice and fair play. It was also held in the case of *Muhammad Latif, ASI, Police Station Sadar, Sheikhupura v. Sharifan Bibi and another* (1998 SCMR 666) that the High Court in the exercise of its constitutional jurisdiction, could pass appropriate orders where the investigation is *mala fide*. In the case of *Nasrullah Khan v. Manzoor Hussain and others* (2004 SCMR 885), this Court declined to interfere with the order of the High Court directing the entrustment of the investigation of the case to some responsible officer of repute. In the case of *Col. Shah Sadiq v. Muhammad Ashiq and others* (2006 SCMR 276), this Court, after referring to a string of judgments of this Court, Privy Council and Indian Supreme Court reiterated the same principle.”

49. In view of the above, the High Court retains the authority to intervene if the investigation appears to be conducted in bad faith or without jurisdiction. In specific situations where it is evident that an Investigating Officer is deliberately neglecting to secure crucial evidence, potentially motivated by ulterior motives, and the affected individual can demonstrate that he has no alternative adequate and efficacious remedy, which is a pre-requisite for invoking jurisdiction under Article 199 of the Constitution, the High Court may issue a writ of *mandamus*. Factors such as the involvement of police officers in the dispute or their direct or indirect interest in the investigation’s outcome, as well as the risk of evidence destruction if timely action is not taken (as exemplified by the PSCA’s practice of destroying records after a specified period), are crucial in determining whether the alternative remedy is adequate and effective and whether the High Court should exercise its constitutional jurisdiction.

Disposition

50. The Petitioner’s applications before the PSCA (addressed to Respondents No.1 & 2) were not maintainable due to the reasons discussed in paragraph 27. Although she had remedies available under the Police Order 2002 and sections 551 and 156(3) Cr.P.C., she did not pursue them. Instead, she filed an application under section 22-A Cr.P.C. before the Ex-officio Justice of Peace, who dismissed it through an order dated 07.11.2023. The dismissal was based on the premise that it would

constitute interference in the investigation of FIR No.1701/2023, which is prohibited under the law. In my opinion, the Ex-officio Justice of Peace erred in this determination. As per *Khizar Hayat's* case, he could issue directives to senior police officers to redress the Petitioner's grievance.

51. The Petitioner filed this constitutional petition on 25.11.2023, i.e. 02 months and 12 days after the incident regarding which she has a cross-version. By that time, the video recordings had already been disposed of. As regards the CDRs mentioned by the Petitioner, the Additional Advocate General submitted that the Investigating Officer (Respondent No.7) obtained it during the pendency of this petition and placed it on the case file. In these circumstances, no further direction need be issued.

52. I may write an additional note before concluding this judgment.

53. Recently, the Ministry of Communications, Government of Pakistan, approved SOPs (EDAP3) for sharing CCTV footage from motorways and highways for conducting investigations by law enforcement agencies. These SOPs were submitted to this Court in Crl. Misc. No. 62979/B/2023 (*Hamza Imdad v. The State etc.*), which was adjudicated at the Principal Seat of this Court on 13.12.2023. Following the prescribed protocol, an officer investigating a case may request footage from the Ministry of Communications if necessary.

54. During the hearing of this case, it was brought to the attention of this Court that a significant number of CCTV cameras operated by the PSCA are currently not operational. Respondent No.1 is directed to look into this matter and take the necessary steps to restore the cameras to full functionality as soon as possible.

55. The Chief Minister of Punjab, in his capacity as the Chairperson of the Punjab PSCA, has appointed the Commissioner of Lahore Division as the focal person to resolve *Right of Way* issues and ensure collaboration between various entities and departments. On 03.08.2017, the Commissioner convened a meeting to address PSCA's infrastructure maintenance and security concerns. It was noted that development and repair activities undertaken by various departments such

as LDA, WASA, PHA, and MCL were damaging the Optical Fibre Cable (OFC) network. Therefore, the Commissioner directed that in the future, all departments must consult with the PSCA and secure approvals before launching any development or Maintenance and Repair (M&R) projects to safeguard the existing infrastructure. It has been reported that the above directives are not being followed. The Chief Secretary of Punjab is directed to look into the matter personally and ensure that there is no such violation in the future.

56. *Disposed of.*

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge

Approved for reporting

Judge