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**JUDGMENT SHEET**

**LAHORE HIGH COURT, LAHORE**

**JUDICIAL DEPARTMENT**

**Writ Petition No.65602/2022**

**Zain Ali and another**

**Vs.**

**Additional Inspector General of Police and others**

**JUDGMENT**

<b>Date of hearing:</b>	<b>27.11.2023</b>
<b>For the Petitioner:</b>	Mr. Muhammad Ishfaq Mughal, Advocate.
<b>For Respondents No.1 to 7:</b>	Mr. Sittar Sahil, Assistant Advocate General.
<b>For Respondent No.8:</b>	Barrister Hamza Shahid Buttar.

**Tariq Saleem Sheikh, J.** – By this consolidated judgment I shall decide Writ Petition No.65602/2022 and 26090/2023 as a common thread weaves through them.

2. Respondent Muhammad Anwar lodged FIR No. 839/2022 dated 10.4.2022 at Police Station Factory Area, District Sheikhupura, against Zain Ali and two others for offences under sections 302, 324, 34, 337-A(i), 337-F(i), and 337-L(2) of the Pakistan Penal Code 1908 (PPC) accusing them of murdering Muhammad Ashfaq Ullah and injuring two persons, including a passerby. The investigation of that case was assigned to Sub-Inspector Shaukat Ali, who concluded it on 17.7.2022. Petitioner Zain Ali also recorded his cross-version against Anwar and his companions under sections 324, 337-F(ii), and 148, 149 PPC, which Shaukat Ali/SI found correct. Anwar applied to the District Police Officer for a change of investigation, who sought the opinion of the District Standing Board and, on its recommendation, entrusted the investigation of the case to Matloob Ahmad, Inspector of District Investigation Branch, Sheikhupura, vide order dated 6.10.2022. Zain Ali and co-accused

Husnain challenged this order in Writ Petition No. 65602/2022, contending that it was illegal because the challan had been submitted in court and copies had been provided to the accused under section 265-C of the Code of Criminal Procedure 1898 (“Cr.P.C.”). They argued that the law did not permit a change in the investigation at such a belated stage, and it would result in an endless investigative process.

3. On 8.11.2022, when Writ Petition No.65602/2022 came up for a preliminary hearing, this Court sought a report and para-wise comments from the DPO Sheikhupura but did not suspend the operation of the order dated 6.10.2022. Consequently, Matloob Ahmed/Inspector finalized his investigation, and a report under section 173 Cr.P.C. was submitted to the trial court.

4. Meanwhile, on 11.11.2023, Anwar filed a private complaint against Zain Ali and others in the Court of the Sessions Judge, Sheikhupura, resulting in their summons. The said private complaint is still pending, and the proceedings are ongoing.

5. Anwar also moved the Regional Police Officer, Sheikhupura, for the second change of investigation in terms of Article 18A(2) of the Police Order 2002. The RPO referred the matter to the Regional Standing Board and, on its recommendations, entrusted the investigation of the case to Inspector Tahir Hussain by order dated 30.1.2023. Zain has assailed that order in Writ Petition No.26090/2023.

6. Mr. Muhammad Ashfaq Mughal, Advocate, contended that the DPO, Sheikhupura, lacked jurisdiction to transfer the investigation of the case to Inspector Matloob Ahmed because Shaukat Ali/SI, the first Investigating Officer, had already completed his investigation by that time. He had submitted the challan and the trial court had summoned Zain Ali and his co-accused for trial. It had even supplied them copies of documents in terms of section 265-C Cr.P.C. Besides, another significant development had occurred: Muhammad Anwar had filed a private complaint on the same allegations, which was pending. Mr. Mughal referred to the Supreme Court’s decision in Nur Elahi v. The State and others (PLD 1966 SC 708), stating that if the party lodging the FIR also institutes a private complaint on identical allegations against the same set of accused, the trial court should prioritize the trial in the complaint case.

Meanwhile, the challan case should be put on hold, awaiting the outcome of the trial in the complaint case. Mr. Mughal argued that, on the same analogy, re-investigation or further police investigation should not be carried out during the pendency of the private complaint. Instead, the parties should present evidence before the court and let it decide the matter. He suggested that re-investigation might be considered after the conclusion of the proceedings in the private complaint, depending on the trial's outcome. Mr. Mughal further contended that permitting re-investigation would lead to an endless investigative process, so it should not be allowed. He concluded that, in the present case, the RPO should not have entertained any request for a second change of the investigation at the current stage. He maintained that the RPO's order dated 30.1.2023 was inappropriate, illegal, and without jurisdiction.

7. Mr. Sittar Sahil, Assistant Advocate General, argued that Article 18 of the Police Order outlines a comprehensive procedure for transferring the investigation of a criminal case. The designated authority can exercise power under that provision, following the prescribed procedure, even after the submission of the challan, until the court concludes the trial. The institution of a private complaint does not impede the exercise of this power. The Assistant Advocate General contended that the *Nur Elahi* principle did not apply to the present case, and Mr. Mughal's reference thereto was inappropriate. He further argued that the RPO had issued the Impugned Order dated 30.1.2023 after carefully considering the facts of the case. It was, therefore, unexceptionable.

8. Barrister Hamza Shahid Buttar supported the Assistant Advocate General. He added that the above-noted petitions were *mala fide* and an attempt to interfere in the investigative process that lies beyond the jurisdiction of the courts. Since Zain had already availed the remedy of a private complaint, re-investigation would not prejudice his case but instead foster the ends of justice.

### ***Discussion***

9. Section 4(1) of the Code of Criminal Procedure defines the term "investigation". It includes all the proceedings under the Code that are conducted to collect evidence by a police officer or by any person authorized by a magistrate (who is not a magistrate himself). The

objective is to discover the real facts surrounding the case and ensure that the individuals behind the crime are held accountable and brought to justice.<sup>1</sup> Fair investigation is concomitant to the right to a fair trial guaranteed under Article 10A of the Constitution.<sup>2</sup> It is also a part of the right to life and personal liberty and a minimum requirement of the rule of law.<sup>3</sup>

10. Police have a statutory duty to investigate the circumstances of the alleged cognizable offences. The case of *Emperor v. Khwaja Nazir Ahmad* (AIR 1945 PC 18) stated that the police do not require any judicial authorization for this purpose. The court's inherent jurisdiction cannot undermine this statutory authority. The roles of the judiciary and the police are distinct yet complementary, with the balance of individual liberty and law enforcement achieved by allowing each institution to fulfil its designated functions. However, the court retains the prerogative to intervene under section 491 Cr.P.C. to give directions in the nature of *habeas corpus* in appropriate cases. The Privy Council further stated that in cognizable offences, the court's functions begin when a charge is preferred before it and not until then. There has been a misconception that section 561-A Cr.P.C. confers new powers upon the court. This section serves to safeguard the court's pre-existing inherent powers. Its inclusion is intended to dispel any impression that the court's authority is confined solely to those powers expressly conferred by the Criminal Procedure Code and to affirm that its inherent authority remains intact even after the enactment of that legislation. In *Ghulam Muhammad v. Muzammal Khan and others* (PLD 1967 SC 317), the Supreme Court of Pakistan pointed out that the power given by section 561-A Cr.P.C. cannot be utilized to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute. In *Shahnaz Begum v. The Hon'ble Judges of The High Court of Sind and Baluchistan and another* (PLD 1971 SC 677), the Supreme Court endorsed the dictum laid down in *Khwaja Nazir Ahmad's* case, adding that the High Court has no power of supervision or control over investigation agencies. It further stated that if

<sup>1</sup> Rule 25.2(3) of the Police Rules, 1934.

<sup>2</sup> *Altaf Ahmad Makhdoom v. Inspector General of Police, Punjab and others* (2023 PCr.LJ 1).

<sup>3</sup> *Babubhai v. State of Gujarat & others* [(2010) 12 SCC 254]

an investigation is commenced with *mala fide* intentions or exceeds the jurisdiction of the investigating agencies, a remedy can be sought through a proper proceeding under the constitutional jurisdiction of the High Court, and if the individual is in detention, under section 491 Cr.P.C. The inherent power under section 561-A Cr.P.C. cannot be invoked. This notion is echoed in several later cases such as Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro and another (2010 SCMR 624), Hayatullah Khan and another v. Muhammad Khan and others (2011 SCMR 1354) and Muhammad Hanif v. The State (2019 SCMR 2029).

11. Investigations can take various forms: (i) initial investigation, (ii) further investigation, or (iii) fresh, *de novo*, or re-investigation.<sup>4</sup> The investigation conducted by the authorized police officer following the registration of an FIR may be termed an “initial investigation”. It may lead to filing a final report under section 173(2) Cr.P.C. The role of the investigating officer is to gather evidence and ascertain the true facts, which must then be presented to the court that decides on the guilt or innocence of the accused. The initial investigation also encompasses investigations under sections 156(3), 157, and 202 Cr.P.C.

12. The necessity for “further investigation” arises when additional inquiries or examinations are required to gather more evidence or clarify certain aspects of the case. This need is often prompted by new information that surfaces during the initial investigation or in response to developments within it. Typically resulting in a “supplementary report”, it complements the initial investigation without nullifying it. Hence, “further investigation” should be distinguished from “re-investigation”, “fresh”, or “*de novo* investigation”.

13. Fresh/re-investigation can be ordered when there is a complaint alleging that the initial investigation is flawed, unfair, tainted, *mala fide*, or otherwise fails to serve the interests of justice. At times, re-investigation may bring on record conflicting evidence and contradictory opinions of police officers. In such situations, the court must evaluate them following the established principles of criminal jurisprudence and rules of evidence to arrive at a correct decision. In Muhammad Ashfaq v. Amir Zaman and others (2004 SCMR 1924), the

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<sup>4</sup>Vinay Tyagi v. Irshad Ali @ Deepak and others [(2012) 5 SCC 762].

Supreme Court held that the petitioner/complainant's apprehension that his case might be prejudiced by the submission of a report on re-investigation is unfounded for two reasons: firstly, because the court concerned can proceed with the trial on the basis of the report already submitted under section 173 Cr.P.C. and, secondly, the court is not bound by the opinion given in the said report or expressed in the one submitted pursuant to re-investigation. It is always the judicial consideration of the material collected by the police that weighs with the court while issuing process.

14. There is no prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C. However, there is a conflict in judicial decisions regarding whether they can do so after the accused has been indicted. In *Altaf Ahmad Makhdoom v. Inspector General of Police, Punjab, and others* (2023 PCr.LJ 1), after thoroughly analyzing the case law on the subject, the High Court held that the Supreme Court's ruling in *Muhammad Akbar v. The State and another* (1972 SCMR 335) was the binding authority. A 4-member Bench handed down this decision, while others have come from Benches of lower numerical strength of the Supreme Court or the High Courts. In *Muhammad Akbar*, the Supreme Court ruled:

“... there is nothing in the Code of Criminal Procedure to prevent the Investigating Officer from submitting a subsequent report in supersession of his earlier one, either on his own initiative or on the direction of the superior police officer.”

15. In *Aswad Iqbal v. RPO etc.* (PLD 2020 Lahore 434), this Court stated that placing any restriction on investigation after the framing of charges would render Article 18A of the Police Order 2002 redundant, which delineates a procedure for transferring the investigation of a criminal case at any stage.<sup>5</sup> This view was reaffirmed in *Altaf Ahmad Makhdoom's* case, supra.

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<sup>5</sup> Neither the Code of Criminal Procedure 1898 nor the Police Rules, 1934, provide any procedure for the transfer of investigation of a criminal case from one police officer to the other. This lacuna came to be exploited, so when the Police Order 2002 was promulgated to reconstruct and regulate the police, specific provisions were made to rectify the situation. Subsequently, the Police Order (Amendment) Act, 2013 (XXI of 2013) enacted Article 18A and introduced a new regime for the transfer of investigation of criminal cases.

16. In *Abid Hussain v. The State through SHO, Police Station Nawab Town, and others* (2022 PCr.LJ 83), the High Court emphasized that investigating agencies should not be constrained solely by concerns about potential trial delays. The pursuit of truth and the delivery of substantial justice should outweigh any considerations of trial duration. While confirming the permissibility of re-investigation, further investigation, or a transfer of investigation at any stage, the High Court stated that such an order could be issued only when certain conditions are fulfilled, such as the discovery of new events or evidence, or if previous investigations were conducted unilaterally without involving the accused, or if the previous investigation was conducted *mala fide* or in excess of jurisdiction.

17. Here, it is necessary to refer to *Bahadur Khan v. Muhammad Azam and others* (2006 SCMR 373), which added a rider that further investigation or re-investigation cannot be done after the trial court has decided the case. This view was reaffirmed in *Raja Khurshid Ahmed v. Muhammad Bilal and others* (2014 SCMR 474).

18. Mr. Mughal draws on the analogy of the dictum laid down in *Nur Elahi's* case for his contention that the pendency of a private complaint should also limit the power of the police to further or re-investigate a case. His reference is inapt and misconceived. In *Nur Elahi*, the central question revolved around the appropriate course of action when there is both a challan case and a private complaint regarding the same occurrence. The Supreme Court focused on guiding how the courts should proceed with the trial in such situations. The police investigation was not an issue at all. In other words, the findings in *Nur Elahi* are confined to judicial proceedings and do not address the issue of further investigation or re-investigation. Thus, *Nur Elahi* cannot be interpreted to lay down a rule that the investigation process should be held in abeyance until the decision of the private complaint.

19. The concept of suspending the investigation process and linking it with the decision of a private complaint militates against the policy and scheme of law. Section 173 Cr.P.C. contemplates expeditious completion of investigation and commencement of trial. It mandates that as soon as the investigation is completed, the officer in charge of the

police station must promptly forward a report in the prescribed form through the public prosecutor to the magistrate authorized to take cognizance of the offence. If the investigation is not concluded within 14 days from the date of registration of the First Information Report (FIR), the officer in charge of the police station must, within three days after that, submit an interim report (through the public prosecutor) to the magistrate, in the prescribed form, detailing the results of the investigation made until then. The court should then immediately commence the trial unless there are valid reasons for a postponement. In *Hakim Mumtaz Ahmed and another v. The State* (PLD 2002 SC 590), the Supreme Court held that the provisions of section 173 Cr.P.C. are mandatory and that failure to comply with them constitutes a grave violation of law. In *Adnan Prince v. The State through P.G. Punjab, and another* (PLD 2017 SC 147), the Supreme Court reiterated the fundamental legal principle that every accused person has the inherent right to a speedy trial. An undue delay in the prosecution process amounts to a denial of justice.

20. The law's intention for the expeditious conclusion of investigations is also evident in Article 18A of the Police Order, which outlines specific timelines for each tier to decide on applications for the transfer of investigations. Additionally, Rule 25.57(1) of the Police Rules emphasizes that if, on any day or days, a police officer in charge of investigating a case does not conduct any investigation, they must enter a statement to this effect in the case diary of that day. Simply put, any gaps in this continuous investigative process must be explained and justified. The only circumstance allowing the suspension of the investigation is outlined in Rule 25.57(2)(i). This Rule states that if the police are unsuccessful despite taking all possible measures and it is deemed advisable to suspend the investigation, a final report in Form 25.57(2) must be submitted as mandated by section 173 Cr.P.C.

21. Section 56(e) of the Specific Relief Act 1877 explicitly prohibits the issuance of injunctions to stay criminal proceedings. In *Naseem Bibi v. Sub-Registrar/M.I.C., Lahore, and others* (2000 YLR 47), it was held that High Courts do not generally issue injunctions in writ jurisdiction to halt ongoing criminal investigations. It was emphasized that it is the statutory duty of the police to investigate a

crime reported to them, and the High Court is typically reluctant to interfere with or impede this duty. In Syed Ghulam Abbas Shah v. D G. of Police, Rawalpindi Range, and others (2001 YLR 186), it was stated that superior courts lack the authority to control investigations directly. However, they do possess the power to strike down any order of re-investigation if it is found to be motivated by malice or ulterior motives. It was further stated that superior courts could not outrightly stop an investigation or invalidate a re-investigation order merely because a police officer had previously concluded the investigation. Suspending an investigation for an indefinite period, or even unnecessary delay, can lead to the loss or destruction of evidence, undermining both fair investigation and fair trial processes. In Azra Israr v. Inspector General of Police, Punjab, and others (PLD 2003 Lahore 1), it was held that in situations where the same matter is pending before a civil court and a criminal court, sometimes in an appropriate case, proceedings before the criminal court are stayed while awaiting a decision from the civil court. Nevertheless, the law does not require the stoppage of the investigation of a criminal case on such grounds. Instead, it underscores the necessity for uninterrupted police investigations of criminal offences and emphasizes their prompt conclusion. This approach is rooted in public policy considerations because halting an investigation could lead to severe complications: witnesses may pass away or become unavailable, memories may fade, crucial documents may disappear or be lost, or the relevant evidence may be tampered with or suborned. The Supreme Court expressed a similar view in Adnan Prince v. The State through P.G., Punjab, and another (PLD 2017 SC 147).

22. To sum up, the law allows for further investigation, re-investigation, or the transfer of an ongoing investigation even after the submission of a challan or framing of charges until the trial is concluded. However, these actions cannot be done arbitrarily; specific conditions must be satisfied, and the competent authority must provide compelling justifications for their decisions. Despite the potential for trial delays, such actions are warranted if they serve the cause of justice.

23. Further investigation or re-investigation can be ordered even when a private complaint is pending if the circumstances warrant it. The

court may hold the challan case in abeyance and proceed with the private complaint following the law enunciated by the Supreme Court in *Nur Elahi*, but it cannot halt further investigation or re-investigation unless exceptional circumstances exist. Section 56(e) of the Specific Relief Act prohibits injunctions against criminal investigations, and it is also the policy of the Code of Criminal Procedure, the Police Order, and the Police Rules 1934 that the investigation should continue and be completed expeditiously. Importantly, *Nur Elahi* does not address the question of further investigation or re-investigation.

***The case at hand***

24. I have examined the Impugned Order dated 30.1.2023 passed by the RPO Sheikhupura in light of the principles discussed above. The objection that it would prejudice the Petitioners is repelled. The mere fact that Respondent Anwar has filed a private complaint or that the trial court has held in abeyance the proceedings in the challan case is no ground to strike down that order.

25. Respondent Anwar applied to the RPO Sheikhupura for transfer of investigation of case FIR No.839/2022 under Article 18A(2) of the Police Order. He referred to the Regional Standing Board for an opinion and, on its recommendation, accepted Anwar's request by order dated 30.1.2023. The RPO has given detailed reasons supporting the order as required by law. Mr. Mughal has failed to persuade this Court that it suffers from any perversity. I may also highlight that it is a settled principle of law that the High Court does not sit as a court of appeal when exercising constitutional jurisdiction.

26. These petitions have no merit and are **dismissed**.

**(Tariq Saleem Sheikh)  
Judge**

Announced in open court on \_\_\_\_\_

Judge

Approved for reporting

Judge