

Form No. HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. Writ Petition No.8217/2023

Munir Ahmed vs The State, etc.

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary.
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28.04.2023 Mr. Muhammad Azhar Haseeb, Advocate for the petitioner.
Mr. Aamir Umar Khan, Assistant Advocate General, Punjab for respondent No.2 along with Umar, S.I. and record of the case.
Mr. Muhammad Waqas Kahoot, Advocate for respondent No.6.

By means of instant petition preferred under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has made prayer as follows:-

“It is, therefore, humbly prayed that this writ petition may kindly be accepted and the impugned order dated 09.01.2023 passed by respondent No.5 may please be declared as illegal, unlawful, void, ab-initio, against law and may kindly be set aside and the application of the petitioner for the constitution of Provincial Standing Medical Board to re-examine the petitioner-injured may kindly be accepted in the interest of justice.
Any other relief which this Hon’ble Court deems fit and proper may also be granted to the petitioner.”

2. Brief facts of the case are that Munir Ahmad (present petitioner) got registered case vide FIR No.435/2022 dated: 04.11.2022 under Sections: 337 F(i), 337 F(v), 337 L(2), 148, 149 PPC at Police Station: Ravi, District Okara against Attiq-ur-Rehman (now arrayed as respondent No.6 in instant petition) and others; said Attiq-ur-Rehman filed application for constitution of District Standing Medical Board for re-examination (medical) of Munir Ahmad (present petitioner) before Area Magistrate, which was allowed vide order dated: 10.11.2022 and District Standing Medical Board was constituted for medical re-examination of Munir Ahmad (present petitioner); District Standing Medical Board re-examined Munir Ahmad (mentioned above) and vide report No.364/2022/DSMB dated: 09.12.2022 observed that seven (07) injuries were recorded by 1st Medical Examiner, however, in case of injury No.6, possibility of fabrication is “Yes”; being aggrieved by aforementioned opinion of District Standing Medical Board, petitioner moved application to Area Magistrate for his re-examination (medical) through Provincial Standing Medical Board, however, same has been

dismissed *vide* order dated:09.01.2023 passed by Magistrate Section-30, Okara, now impugned herein.

3. Learned counsel for the petitioner submits that impugned order is against the law and facts of the case, therefore, same is liable to be set aside.

4. Learned counsel appearing on behalf of respondent No.6 submits that impugned order has been passed while keeping in view facts of the case as well as relevant law on the subject, therefore, instant petition is liable to be dismissed.

5. Learned Assistant Advocate General, Punjab does not support the impugned order while submitting that opinion of District Standing Medical Board is not based upon well reasons; further submits that it would be appropriate to constitute Provincial Standing Medical Board for re-examination (medical) of the petitioner.

6. Arguments advanced pro and contra have been heard. Available record perused.

7. It has been noticed that petitioner being injured got registered case *vide* FIR No.435/2022 (mentioned above); his medicolegal examination certificate is available at pages No.8 to 13 of instant petition as Annex “B” and perusal of the same reveals that seven (07) injuries were noted by the 1st Medical Examiner at the time of his medical examination; detail of the same is hereby scanned below:-

Description of injury(ies): (Mark the injuries on the body diagram on the back of this page)

Injury No.1- A bluish black bruise 3x2cm on right cheek just below right eye. redness in the eye present.

Injury No.2- A partially healed blackish abrasion on back and upper part of right forearm. size 3x1cm similar abrasion 2x1cm on upper front of 3rd left upper arm.

Injury No.3- C/o pain in left hand.

Injury No.4- Multiple bruises 10x8cm on back of right and left chest. they are blackish blue in colour.

Injury No.5- A blackish abrasion 3x2cm on front and middle of right skin

Injury No.6- C/o pain in left foot with swelling 6x2cm.

Injury No.7- C/o pain in Head.

1st Medical Examiner declared injuries No.2, 4 & 5 as “*Jurh Ghayr Jaifah Damiyah*”, injury No.7 as falling under Section: 337 L(2) whereas kept injuries No.1, 3 & 6 under observation; after receipt of X-ray report wherein fracture involving head of proximal of 2nd toe of left foot was noted, he declared injury No.6 as “*Jurh Ghayr Jaifah Hashimah*” whereas injury No.1 & 3 as falling under Section: 337 L(2) P.P.C.; opinion of

specialist/operation notes/X-ray report mentioned in the medicolegal examination certificate is hereby reproduced:-

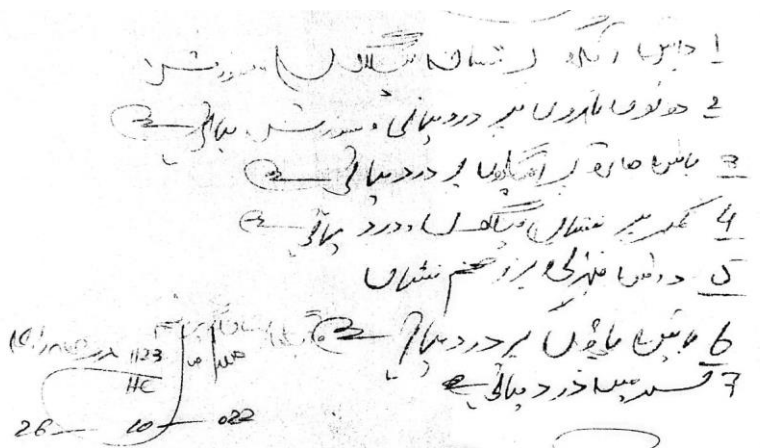
“Opinion of Specialist/Operation Notes/X-Ray Report:

Vide x-ray report 9603-05-06 dated 29-10-2022 fracture involving head of proximal of 2nd toe is noted in x-rays of left foot. No bony injury evident in x-rays of skull and left hand.”

It is relevant to mention here that 1st Medical Examiner mentioned that there was no possibility of any fabrication and relevant portion of the report, in this regard, is also hereby reproduced:-

**“Possibility of Fabrication if any: Yes/No:
No.”**

It is also noteworthy here that as per injury statement of present petitioner prepared by the police (copy whereof is available at page #14 of instant petition), seven (07) injuries were noted by the police official and at Sr. No.6, pain on left foot was also noted and relevant portion of said injury statement is hereby scanned below:-



Aforementioned state of affairs reflects that injury on left foot was declared as “*Jurh Ghayr Jaifah Hashimah*” after receipt of X-ray report. On Court’s query, learned Assistant Advocate General, Punjab after perusing the record (produced by police official mentioned above) apprises that in the application moved by Attiq-ur-Rehman (now arrayed as respondent No.6 in the petition) for constitution of District Standing Medical Board, opinion of Radiologist/X-ray report was not challenged; perusal of report of District Standing Medical Board (copy whereof is available at pages No.15, 16 of instant petition as Annex “C”) reveals that District Standing Medical Board obtained X-rays No.10546 to 10549 from Radiologist of District Headquarter Hospital, Okara City wherein

fracture through head of proximal phalanx of 2nd toe of left foot was noted and relevant portion from said report, in this regard, is reproduced:-

“According to Radiologist DHQ Hospital Okara City, vide X-ray No.10546 to 10549 dated 23-11-2022, “Fracture through head of proximal phalanx of 2nd toe noted in x-rays of left foot.”

Perusal of aforementioned opinion of Radiologist reveals that chance of any fabrication regarding said injury/fracture was not observed by said Radiologist, however, District Standing Medical Board opined that possibility of fabrication regarding said injury No.6 is “Yes” on the ground that small bone was fractured and it was easy to fracture and relevant portion of the report, in this regard, is hereby reproduced:-

“CONCLUSION/OPINION OF THE MEDICAL BOARD

*“The District Standing Medical Board is of the opinion that possibility of fabrication injury No.(1)(2)(3)(4)(5)(7) “No” whereas injury No.(6) possibility of fabrication is “Yes” Because,
 . Small bone fracture,
 . Easy to fracture.*

When all the aforementioned factors are taken into consideration in totality, then it has been noticed that when injury on the left foot was very much observed and noted by the police official at the time of preparing injury statement of the petitioner, same was also noted by the 1st Medical Examiner, which was confirmed as having fracture noted by the Radiologist vide X-ray report No.9603-04-05-06 dated:29-10-2022 and chance of any fabrication regarding said fracture was not noted by said Radiologist, on the basis of same, 1st Medical Officer declared nature of said injury and also mentioned that there was no chance of any fabrication, opinion of said Radiologist was not specifically challenged when application was moved by Attiq-ur-Rehman (now arrayed as respondent No.6) for constitution of District Standing Medical Board, Radiologist of District Headquarter Hospital, Okara City, when asked by District Standing Medical Board, issued X-ray report in which aforementioned fracture was again noted/confirmed and it was not mentioned even in said report that there was any chance of fabrication regarding said injury and District Standing Medical Board did not mention any reservation regarding genuineness/accuracy of opinion of 1st Radiologist as well as opinion of 2nd Radiologist and even did not refer

present petitioner to any other Radiologist, then while ignoring the said consistent X-ray/Radiologist reports, observing possibility of fabrication as “Yes” by District Standing Medical Board merely on the basis that small bone was fractured and it was easy to fracture requires re-assessment by the Provincial Standing Medical Board through re-examination (medical) of the injured because if opinion of District Standing Medical Board based on aforementioned reasons only is accepted, then in future if some small bone will be fractured or if any bone will be fractured which is easy to fracture, then it will be straightway observed that there is possibility of fabrication, which would be against the spirit of medical jurisprudence. Therefore, in peculiar facts and circumstances of the case, re-examination (medical) of petitioner/injured through Provincial Standing Medical Board is quite necessary for safe administration of justice but said aspect has been ignored and not taken into consideration at the time of passing impugned order dated:09.01.2023 by Area Magistrate whereby application filed by present petitioner for constitution of Provincial Standing Medical Board has been dismissed, hence, impugned order (mentioned above) is against the settled principles of law on the subject as well as facts of the case, thus, same is not sustainable in the eyes of law and is hereby **set aside**, application filed by the petitioner for constitution of Provincial Standing Medical Board is allowed/accepted and as a consequence whereof it is hereby ordered that Munir Ahmad (petitioner) shall be medically re-examined by the Provincial Standing Medical Board in accordance with law expeditiously/without loss of further time. Learned Assistant Advocate General, Punjab shall communicate this order to the concerned quarters for compliance. **Petition Allowed.**

(Farooq Haider)
Judge

APPROVED FOR REPORTING.

(Farooq Haider)
Judge

This order has been dictated,
pronounced, prepared and signed
on 28.04.2023.

Asif