

Form No.HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P. No.9158 of 2024.

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| Muhammad Aslam Khan. Vs. Judl. Magistrate, etc. | | |
| S.No. of order/ Proceedings | Date of order/ Proceedings | Order with signature of Judge, and that of parties of counsel, where necessary. |

31.05.2024. Mr. Touseef Zada Khan, Advocate for the petitioner.
Mr. Fazaullah, AAG with Abdul Rehman SI.
Mr. Najeeb Faisal Ch., Advocate for respondent No.6.

This petition impugns the order dated 09.01.2024 passed by Magistrate whereby he agreed with case-cancellation report submitted by the police.

2. Learned counsel for the petitioner states that deception practiced by respondents No.4 to 6, cocked the petitioner to bring the matter for a criminal action which took a course through FIR bearing No.1781/2023 under sections 420, 468, 471 PPC Police Station Ferozwala District Sheikhpura with the account that he entered into an agreement to sell with respondent No.5 of **one acre land** situated at Mouza Goya, Ferozwala District Sheikhpura in consideration of Rs.1,20,00,000/- through respondent No.4 (property dealer); respondent No.5 paid Rs.1,00,00,000/- (one crore) to him through pay order and Rs.10,00,000/- (ten lacs) in cash and got his signatures on different papers, however, on demand of remaining amount of Rs.10,00,000/- (ten lacs) and copy of agreement to sell, respondent No.5 provided him a copy of agreement bearing No.BP-LHR-3824B23FFEA187E1, but no payment; perusal whereof transpired an agreement to sell of his whole land measuring 77 kanals and 04 marlas in favour of respondent N0.6 with whom petitioner neither executed agreement to sell nor obtained any amount. After investigation, police recommended the case for cancellation because no fraud was committed however, a civil dispute was already on the platform of civil Court.

3. Learned counsel for the petitioner contends that before agreeing with the cancellation report, learned Magistrate has not given notice to the complainant/petitioner and so much so in the impugned order expression was given of non-appearance of complainant in response to notice so issued which is not correct. On merits, he submits that in first investigation accused/respondents were found involved in the commission of offence and in second investigation, they were declared innocent, therefore, petitioner was constrained to file an application for change of investigation which was pending but in the meantime, police in connivance with respondents No.4 to 6 proceeded to file cancellation report before the learned Magistrate who in a haste agreed with the said report without observing the procedure properly.

4. On the other hand, learned counsel for respondent No.6 opposed the contentions of learned counsel for the petitioner and states that part payment has been conceded by the complainant/petitioner because it was sent to him through banking channel, therefore, rest of the amount, if disputed, could only be resolved through civil proceedings for which respondents have filed suit for specific performance, whereas, petitioner has also filed suit for cancellation of document/ agreement. Learned counsel for the petitioner states that suit for specific performance filed by the respondents was dismissed and appeal also met the same fate.

5. Heard.

6. First question which is to be met is the notice to complainant before agreeing with the cancellation report. There is no cavil that officer incharge of police station is bound to give information to the complainant of any action taken by him during investigation, the relevant part of section 173 Cr.P.C is reproduced as under;

“(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.”

(Section 173 (1) (b) of Cr.P.C.)

Same is the command of Police Rules, 1934; according to Rule 25.57 which deals with final report mentions as under;

"If the informant is present when the final report is prepared, he shall be informed verbally of the result of the investigation, and, after noting this fact in the final report, his signature or thumb mark shall be taken on it. If the informant is not present, he shall be informed in writing by postcard or by the delivery of a notice by hand, and the fact that this has been done shall be noted in the final report.

(Sub-rule (3) of Rule 25.57)

Magistrate must ensure observance of above provision of law and rules when he receives case-cancellation report and if notice had not given by the police officer, he shall send a notice to this effect to the complainant. It is mentioned in the impugned order that notice was given to the complainant but he did not appear and it is said that presumption of truth is attached to such observation as per Article 129 (e) of Qanun-e-Shahadat Order, 1984 but of course such Article could only be focused during a trial or regular inquiry but not in the present proceedings, therefore, it is directed that any adverse inference by such observation would not affect the case of complainant/petitioner.

7. Police after thorough investigation recommended the case for cancellation while following the process mentioned in Rule 24.7 of Police Rules, 1934, which says when information or other intelligence is recorded under section 154, Criminal Procedure Code, 1898 and after investigation, is found to be (i) maliciously false or false owing to mistake of law or fact or (ii) to be non-cognizable or (iii) matter for a civil suit, case can be cancelled by the order of Magistrate. Before framing of Police Rules, 1934 the grounds for cancellation of case were being dealt with under High Court Rules & Orders (1931) Volume-III, which identifies only two grounds, i.e., (i) offence being non-cognizable (ii) case false or unfounded, as reflected from following rule;

1. Magistrate's power to cancel cases reported by Police: - In regard to cognizable cases reported by the Police to the Magistrate having jurisdiction under section 157 and 173 of the Code of Criminal Procedure,

it frequently becomes evident either (a) that the offence committed was really non-cognizable, or (b) that the information given to the Police was false or unfounded, and the Police apply for magisterial authority to show such cases as "non-cognizable" or "false" as the case may be. The Magistrate dealing with the Police reports in such cases, that is, ordinarily, the Magistrate who is empowered to take cognizance of the offence upon Police report, in respect of the particular Police Station, under section 159 or section 173 of the Code of Criminal Procedure, as the case may be, may, for sufficient reasons, pass an order accordingly.

(Chapter-11: Part D, Rule-1)

But through police Rules, 1934 more expressive grounds were introduced that encompass a third category as well, i.e., matter for a civil suit. The duty of Magistrate for agreeing with cancellation report is explained more clearly in High Court & Rules & Orders Volume-III, which is reproduced;

2. Duty of Magistrate to satisfy himself before passing order: -When a Magistrate agrees with a Police report that the F.I.R./case should be cancelled, he acts in an administrative and not in a judicial capacity and the order he makes is not a judicial order. Such an order is not a revisable order and, therefore, the Magistrate is not required to give reasons for his order.

Though, Magistrates should exercise this discretion freely in making such order after satisfying themselves as to the grounds on which it is sought to be made, yet they should not treat the matter as one of ordinary routine. (See Rule 24.7 of the Punjab Police Rules, 1934 framed under section 46 of the Police Act, 1861 and Bahadur vs. The State PLD 1985 S.C. 62).

(Chapter-11: Part D, Rule-2)

It is true that Magistrate is not required to give reasons for his order, because he is not functioning as a criminal court however while cancelling a criminal case he is required to act judicially, in that he has to act fairly, justly and honestly, a duty common to the exercise of all state power. Reliance is on case reported as “BAHADUR AND ANOTHER Versus THE STATE AND ANOTHER” (P L D 1985 Supreme Court 62). Order of Magistrate, in the circumstance is well reasoned: Thus, on merits no interference is required in the impugned order.

8. Coming to the contention that an application for change of investigation was filed well before the Magistrate agreeing with the case-cancellation report, it is trite that

police can validly take up such application for consideration and if reach to the conclusion that there are grounds for change of investigation, senior police officer can direct the concerned investigator to seek permission from the concerned Magistrate to reinvestigate the matter, then Magistrate can pass appropriate order. Reliance in this respect is placed on following cases reported as;

“WAZIR Versus THE STATE” (PLD 1962 (W.P.) Lahore 405): “DIN MUHAMMAD SHAKIR alias D. M. SHAKIR versus D.S.P., ICHHRA, LAHORE” (PLD 1977 Lahore 180): “MEHDI HUSSAIN SHAH Versus Malik KHIZER HAYAT KHAN AND ANOTHER” (1983 P Cr. L J 1601): “ASGHAR ALI Versus THE STATE” (1983 P Cr. L J 2187):

If the permission is declined then cancellation report agreed by the Magistrate shall be deemed as final and complainant/petitioner is at liberty to recourse to alternate remedy by initiating a private prosecution as held in a case reported as **“BAHADUR AND ANOTHER Versus THE STATE AND ANOTHER” (P L D 1985 Supreme Court 62)** with following expression;

“The party is left free to institute a complaint on the same facts, and the same Magistrate does not even after passing such an order render himself functus officio. On the contrary he is quite competent to entertain and deal with such a complaint on material presented to him”

9. With the above observations and direction, this writ petition stands **disposed of**.

**(MUHAMMAD AMJAD RAFIQ)
JUDGE**

Approved for reporting

Judge

Signed on 21.06.2024

Gulzar*