

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.58171/2023
(Ali Mansoor vs. Area Judicial Magistrate, etc.)

JUDGMENT

Date of hearing:	03.10.2023
Petitioner by:	Mr. Noraiz Shakoor, Advocate.
For State:	Mr. Shahid Nawab Cheema, Assistant Advocate General with Shahzad SP.
For Respondent:	Mr. Sarfraz Akhtar, Advocate for Respondent No.3.

ALI ZIA BAJWA, J.:- Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter ‘the Constitution’*), the petitioner has challenged the vires of the impugned order dated 18.07.2023 passed by Judicial Magistrate 1st Class, Model Town, Lahore, whereby the cancellation report prepared under Section 173 of the Criminal Procedure Code, 1898 (*hereinafter ‘the Code’*) in case FIR No.1660/2022, dated 07.07.2022, offence under Section 489-F of the Pakistan Penal Code, 1860 (*hereinafter ‘the PPC’*), registered with Police Station Garden Town, District Lahore, was agreed with.

2.. The brief facts that led to the filing of the instant petition are that after the initial investigation by the first investigating officer, the investigation of this case was changed and entrusted to DSP/SDPO Tibbi City Circle, Lahore, who recommended the case for cancellation, whereupon, the cancellation report was prepared by the Station House Officer (SHO), Police Station Garden Town,

Lahore on 25.12.2022 and the same was forwarded through the Superintendent of Police (Investigation), Model Town Division, District Lahore. The record reflects that said cancellation report was transmitted to the Magistrate by the concerned Prosecutor, which was agreed with by the Magistrate Section 30 Model Town Courts, Lahore vide impugned order dated 18.07.2023.

3. Arguments heard. Record perused.

4. Rule 24.7 of The Punjab Police Rules, 1934 (hereinafter '*the Rules*') deals with the cancellation of criminal cases. This rule envisages that no criminal case can be canceled without the order of a Magistrate of the 1st Class passed on a cancellation report duly submitted and forwarded by the concerned Superintendent of Police. The rationale behind this Rule is that a cancellation report in a criminal case should be filed through a senior supervisory officer to preclude the possibility of malpractice and arbitrariness on the part of the investigating officer. This precautionary measure has been provided in the Rules to ensure fairness and impartiality in the investigation process because if a cancellation report of a criminal case is agreed with by the concerned Magistrate, it amounts to the termination of that criminal case. It is incumbent upon the Superintendent of Police to forward the cancellation report after applying his independent mind, otherwise, the very purpose of Rule 24.7 of the Rules shall be defeated.¹ In the present case, the aforesaid Rule was not complied with in its true spirit. This fact was also admitted by the Superintendent of Police while submitting his reply before this Court that the cancellation report was forwarded without furnishing an independent opinion thereon. The learned Law Officer present before the Court frankly conceded that the cancellation report was forwarded without furnishing any opinion or reasons by the concerned Superintendent of Police. It goes without saying that the office of the Superintendent of Police in the

¹ *Ehsan Ullah Chaudhry vs. The State, etc. – PLD 2023 Lahore 233*

scheme provided in the referred Rule is not merely a post office, rather is of vital importance to ensure fairness and transparency.

5. It is further surprising that the Magistrate, while passing the impugned order, observed that there is no mandatory requirement to hear the complainant before passing an order on the cancellation report. No doubt that while agreeing with a cancellation report Magistrate acts on the administrative side but I am afraid that such findings by the Magistrate are against the dictates of law and violative of the principle of natural justice '*audi alteram partem*'. In particular, the rule expressed in the Latin maxim *audi alteram partem* requires no more than that the decision-maker should afford all the parties to a dispute an opportunity to present their case. The literal connotation of *Audi Alteram Partem* is to "hear the other side". It signifies that every party to a cause shall get an opportunity of hearing, and no one shall go unheard. The maxim *Audi Alteram Partem* is derived from the Latin phrase "*audiatur et altera pars*" which means that every party shall be heard. This maxim is one of the foundational rules of law that ensures justice for both sides. According to this maxim, every party shall have a chance to assert and plead his case.

6. The maxim *audi alteram partem* is applicable to judicial, quasi-judicial and administrative proceedings. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording the right of the audience before any detrimental action is taken. The decision maker has an adequate amount of decision-making independence and the reasons for the decision arrived at should be amply well-defined, just, right and understandable, so as to ensure justice according to the tenor of law and without any violation of the principle of natural justice. The rule of justice embodied in the maxim *audi alteram partem* is not confined to judicial proceedings but extends to quasi-judicial and administrative proceedings, too. In Chief Commissioner, Karachi and another vs.

Mrs. Dina Sohrab Katrak - PLD 1959 SC 45 a Full Bench of the Supreme Court of Pakistan speaking through worthy *Justice Shahabuddin* authoritatively observed as infra: -

“As a just decision in such controversies is possible only if the parties are given the opportunity of being heard, there can be as regards the right of hearing, no difference between proceedings which are strictly judicial and those which are in the nature of a judicial proceeding though administrative in form”

It is now beyond doubt that all the tribunals and administrative authorities while exercising quasi-judicial or administrative powers are also under an obligation to opt the above canons of judicial conduct. Thus, Lord Hewart's dictum in Rex vs. Sussex Justices² that “justice should not only be done but should manifestly and undoubtedly be seen to be done” is realized largely in its application to administrative adjudication.³ Further reliance in this regard can be placed on the cases titled “Mrs. ANISA REHMAN vs. P.I.A.C. and another – 1994 SCMR 2232”, “INSPECTOR GENERAL OF POLICE, QUETTA and another vs. FIDA MUHAMMAD and others – 2022 S C M R 1583”, “HABIB Bank LIMITED through Attorney Vs. MEHBOOB RABBANI – 2023 S C M R 1189” and “COLLECTOR CUSTOMS, MODEL CUSTOMS COLLECTORATE, PESHAWAR vs. MUHAMMAD ISMAIL and others – 2023 S C M R 1319”.

7. The principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein. It was ruled by the Supreme Court of Pakistan that “even in absence of any express provision in the statute, the principle of *audi alteram partem* is to be read into the relevant provision and applies in proceedings where adverse action is being considered to be taken against a person or if the contemplated action is going to affect any of his vested rights. The violation of this principle

² [1924] 1 K.B. 256, 25

³ Natural Justice and Reasoned Decisions authored by A. Chatterji published in Journal of the Indian Law Institute, APRIL-JUNE 1968, Vol. 10, No. 2 (APRILJUNE 1968), pp. 241-258

vitiates the proceedings and makes the action taken therein to be illegal, as the violation of this principle is considered as a violation of law.”⁴

8. It is also pertinent to refer to Rule 25.57 of the Rules which deals with the closure of the investigation and final report. It provides the procedure to be opted to inform the complainant by the investigating officer when a case is recommended for cancellation. For better understanding afore-referred Rule has been reproduced hereinafter: -

25.57(1)_____

(2)_____

(3) 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 deliver of a notice by hand, and the fact that this has been done shall be noted in the final report.

In final (untraced or cancelled) reports the facts of the case which the investigating officer believes to be correct should be summarised, together with the grounds, for his belief. Information so recorded should be utilised for the completion of preventive records.

A bare reading of the above-stated Rule makes it amply clear that this Rule applies to all kinds of final reports prepared, under Section 173 of the Code, at the conclusion of an investigation. It also includes a cancellation report and makes it mandatory for the investigating officer to inform the complainant of the conclusion/result of the investigation. His signature or thumb impression shall be taken on the final report. If the informant/complainant is not present, he shall be informed in writing by postcard or by the delivery of a notice by hand, and the fact that needful has been done, shall be noted in the final report. This Court observes that in addition to the abovementioned modes of informing the complainant, the investigating agency can take

⁴ Justice Qazi Faez Isa and others vs. President of Pakistan and others – PLD 2022 SC 119 and Hazara Improvement Trust vs. Qaisra Elahi – 2005 SCMR 678

benefit of the modern ways of communication to show its fairness and transparency. Such a process should be reflected in the final report and relevant police diary.

9. The cancellation report prepared by the investigating agency in this case does not show that signature or thumb impression of the complainant/informant was taken or he was informed regarding the conclusion of the investigation which is violative of the aforementioned Rule and reflects *mala fide* on the part of the investigating officer. It is an axiomatic principle of law that when law requires a thing to be done in a particular manner, it should be done in that manner or not at all.

10. It has been further noticed that the impugned order is non-speaking and the same was passed without furnishing cogent and plausible reasons and providing an opportunity of hearing to the complainant. Moreover, the concerned Magistrate without taking notice of the fact that the report was not forwarded to him in accordance with the law, agreed with the same. When confronted with the above legal proposition, the learned counsel for the respondent No.3 candidly submits that he has no objection if the impugned order is set aside and the matter is remanded back to the investigating agency. Before parting with the judgment, it shall be appropriate to formulate the guidelines for the investigating agency, concerned prosecutors and Magistrates regarding the preparation, forwarding and dealing with a cancellation report in connection with a criminal case. The following are the guidelines to be followed in the future by all the concerned: -

- I. When an investigating officer intends to close the investigation and prepares a report under Section 173 of the Code including a cancellation report, he shall inform the complainant/informer, and his signature or thumb impression should be

taken on that report in accordance with the Rule 25.57 of the Rules.

- II. All the reports prepared under Section 173 of the Code shall reflect that the needful was done and Rule 25.57 of the Rules was complied with in its letter and spirit. In addition to modes as provided in the aforementioned Rule to apprise the complainant/informer regarding the closure of the investigation and its result, modern ways of communication should also be utilized.
- III. The cancellation report prepared in every criminal case shall be forwarded by the Superintendent of Police concerned, who shall forward the same furnishing his independent opinion/reasoning to agree with the same. Guidelines already provided in the case titled Ehsan Ullah Chaudhry vs. The State, etc. – PLD 2023 Lahore 233 must be adhered to.
- IV. No prosecutor shall forward a cancellation report to the concerned Magistrate if the same is not duly forwarded/endorsed by the concerned Superintendent of Police. The concerned prosecutor should also forward the report while furnishing his independent opinion.
- V. The Magistrate, before adjudicating upon a cancellation report, must issue notice to all the concerned to provide them an opportunity for hearing to meet the requirement of the principle of natural justice *audi alteram partem*.

11. For what has been discussed above, the instant writ petition is **allowed** and the impugned order passed by Magistrate 1st Class Model Town Courts, Lahore dated 18.07.2023 is hereby set aside. The case is remanded back to the investigating agency for filing a fresh report under Section 173 Cr.P.C. in accordance with the law. It is expected that the investigating agency and prosecution shall comply with the mandatory provisions of law in the future.

Copy of this judgment shall be sent to all the concerned through the office of the Registrar of this Court.

(ALI ZIA BAJWA)
JUDGE

The judgment was announced on 03.10.2023, and after completion thereof, it was signed on 13.11.2023.

JUDGE

Approved for Reporting

JUDGE

Usman*