

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 12912/2023

Mst. Yasmeen

Vs.

Dr. Fahad Ahmad, District Police Officer Hafizabad, and others

JUDGMENT

Date of hearing:	5.4.2024
For the Petitioner:	Mr. Salman Shahid Khan, Advocate.
For the Respondents:	Mr. Khalid Ishaq, Advocate General Punjab, and Mr. Sittar Sahil, Assistant Advocate General, with Maryam Rani/SI.

Tariq Saleem Sheikh, J. – The Petitioner lodged FIR No.1409/2022 dated 27.10.2022 at Police Station City Hafizabad, alleging offences under sections 376(1), 384, and 341 PPC against three individuals for abducting and raping her. She further claimed that they recorded her nude videos and threatened to publicize them on social media if she disclosed the incident. The investigation was assigned to Gul Rukh Tabassum/ASI, but the Petitioner accused him of dishonesty and bias toward the accused. Consequently, she submitted an application to the District Police Officer, Hafizabad (Respondent No.1), requesting the transfer of the investigation to another police officer. Allegedly, Respondent No.1 did not attend to it, upon which she filed Writ Petition No.4770/2023 seeking a writ of *mandamus*. By an order dated 25.1.2023, this Court directed Respondent No.1 to decide the Petitioner's aforementioned application, if pending, in accordance with the law within fifteen days.

2. Respondent No.1 placed the Petitioner's application before the District Standing Board under Article 18-A(5)(a) of the Police Order 2002. The Board recommended it upon which Respondent No.1 transferred the investigation of case FIR No.1409/2022 to Maryam Rani/SI vide order dated 9.2.2023.

3. The Petitioner contends that FIR No.1409/2022 falls within the purview of the Anti-Rape (Investigation and Trial) Act, 2021 (the “Anti-Rape Act”). Therefore, it must be investigated by a special sexual offences investigation unit (SSOIU) established under section 9 of the Act. Individual police officers cannot investigate such cases, even if they are members of the SSOIU in the relevant district. According to her, Respondent No.1’s order dated 9.2.2023 is bad in law. Maryam Rani/SI is not competent to conduct the investigation independently as a single officer without other unit members.

4. The Petitioner approached Respondent No.1 with the above contention and requested him to transfer her case to a team of officers. Respondent No.1 disagreed with her interpretation of section 9 of the Anti-Rape Act and orally declined her request. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner challenges the legality of the order dated 9.2.2023.

5. The Advocate General Punjab submits that section 9 of the Anti-Rape Act has introduced the concept of SSOIUs with special jurisdiction to investigate sexual and gender-based violence (SGBV) offences within their designated areas. This legislative initiative aims to ensure that qualified and dedicated officers handle such cases efficiently and with expertise and expedite justice for victims. It would prevent delays in the trial process and ensure its completion within four months, the time specified in section 16 of the Act.

6. The Advocate General further submits that the Anti-Rape Act does not specify the exact composition of the SSOIUs to be established. Section 9(2) only provides that SSOIU shall comprise officers who have received specialized training concerning sexual offences, and, secondly, one member of the unit shall preferably be a female police officer. According to the Advocate General, to the extent of Punjab, the Home Department has issued a notification dated 20.9.2023, whereby SSOIUs have been established in every district as outlined in the list annexed therewith. The number of units formed in each district and the personnel assigned to them vary based on the distinct geographical and legal requirements of each area. For instance, District Lahore boasts seven SSOIUs with 93 officers, whereas Rahim Yar Khan has a single unit staffed by 33 personnel.

7. The Advocate General argues that the Petitioner's understanding of section 9 of the Anti-Rape Act is flawed. A single officer may effectively exercise all the powers necessary to investigate the offences mentioned in the schedules of the Act (referred to as the "Scheduled Offences"). Mandating the entire unit to investigate every case collectively would be impracticable and frustrate the Act's objective of speedy investigation and trial.

Opinion

8. The preamble of the Anti-Rape Act reads as follows:

"An Act to ensure expeditious redressal of rape and sexual abuse crimes in respect of women and children through special investigation teams and Special Courts providing for efficacious procedures, speedy trial, evidence and matters connected therewith or incidental thereto."

9. The preamble is a part of a statute, though not its operative part. Nevertheless, it provides a valuable guide to find out the legislative intent. Coke said: "The preamble of the statute is a good means to find out the meaning of the statute, and as it were, a key to open the understanding thereof."¹ According to another jurist, "it is a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress."² In *Brett v. Brett* [1826] 162 ER 456, Sir John Nicholl observed:

"The key to the opening of every law is the reason and spirit of the law – it is the *animus imponens*, the intention of the law-maker expressed in the law itself taken as a whole. Hence, to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from its context in the statute, it is to be viewed in connection with its whole context meaning by this as well as the title, and the preamble as the purview or enacting part of the statute. It is to the preamble more specially that we are to look for the reason or spirit of every statute, rehearsing it, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the state, and so evidencing in the best and most satisfactory manner, the object or intention of the legislature in making and passing the statute itself."

10. In *Murree Brewery Co. Ltd. v. Pakistan through the Secretary to Government of Pakistan, Works Division, and others* (PLD 1972 SC 279), the Supreme Court of Pakistan held that "the preamble is a legitimate aid in discovering the purpose of a statute." In *Mst. Ummatullah through Attorney v. Province of Sindh and others* (PLD 2010 Karachi 236), a Division Bench of the Sindh High Court held

¹ *Craies on Statute Law*, 7th Edition, p. 200.

² See *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th Edition.

that “preamble is the gateway to any statute; it is bedrock to understand the scope, purpose and object to any statute.” Similarly, in ***Kamil Khan Mumtaz and others v. Province of Punjab through Chief Secretary, Government of Punjab, and others*** (PLD 2016 Lahore 699), a Division Bench of this Court ruled:

“A preamble is, therefore, a window to the main statute. Although the preamble does not control the main enactment, it certainly gives an inkling of the intention of the legislature and the policy of the Act. The concept relating to the policy of the Act is of paramount importance, and all interpretation must be done in accordance with the policy and the intention of the legislature found therein.”

11. The preamble of the Anti-Rape Act expresses the nation’s resolve to confront the pervasive issue of sexual violence and gender-based crimes. It highlights that the Act aims to develop efficacious procedures to streamline the entire judicial process from the time a crime is reported to its resolution in court. This includes adopting faster and more effective methods of processing cases, better management of evidence to preserve its integrity for trials, and swiftly bringing perpetrators to justice. In ***Sumaira v. The State etc.*** (2023 LHC 4535), this Court ruled that the Act serves as a remedial social statute.

12. The Anti-Rape Act is a remarkable legislative initiative aimed at upholding the constitutional rights of women and children, including their rights to life, dignity, and justice. Additionally, it seeks to fulfil Pakistan’s obligations under international law, which require it to address the scourge of sexual violence.

13. Section 9 of the Anti-Rape Act outlines the following procedure for investigating the Scheduled Offences:

9. Investigation in respect of scheduled offences.— (1) For the purposes of investigation under this Act, special sexual offences investigation units (SSOIUs) shall be established in every district by the provincial governments and for the purposes of the Islamabad Capital Territory by the federal Government.

(2) The SSOIU shall comprise police officers who have received training on investigation in relation to sexual offences and preferably one member of the unit shall be a female police officer.

(3) The investigation in respect of offences mentioned under this Act shall be carried out as follows:

- (i) for offences mentioned in Schedule-I, by the SSOIU; and
- (ii) for offences mentioned in Schedule-II, by SSOIU under the supervision of a police officer not below the rank of BPS-17.

(4) In case the complainant in relation to an offence under Schedule-II expresses dissatisfaction which is based on reasonable grounds, the investigation shall be transferred to the district head of investigation of the police.

(5) The officers of the SSOIUs shall ordinarily be from the area in which the occurrence of the offence has taken place:

Provided that in exceptional circumstances, and where the dictates of fair, accurate and technical investigation warrant otherwise, officers from areas other than the area of occurrence, may be deputed in the SSOIUs.

(6) Upon completion of investigation, the SSOIU shall, through the prosecutor general or special prosecutors, submit the final report under section 173 of the Code before the Special Court.

14. Section 9 *supra* introduces a crucial mechanism for handling the intricacies of investigating sexual offences by establishing Special Sexual Offences Investigation Units (SSOIUs) in every district by provincial governments and in the Islamabad Capital Territory by the federal government. This provision embodies a contemporary law enforcement approach, recognizing the need for specialized expertise and dedicated resources to address such crimes effectively. The formation of SSOIUs reflects the Act's victim-centred approach, emphasizing survivors' rights, dignity, and well-being throughout the investigative process. By prioritizing the needs of survivors, SSOIUs create a supportive environment conducive to reporting incidents of sexual violence and seeking justice.

15. The concept of "investigation units" is distinguishable from "joint investigation teams" (JITs). They serve unique purposes in the pursuit of justice. Investigation units typically operate within a single law enforcement agency and are specialized teams or divisions responsible for investigating various types of crimes. These units, such as homicide or cybercrime units, focus on specific areas of criminal activity and possess expertise and resources tailored to their respective fields. In contrast, JITs are collaborative entities formed by multiple law enforcement agencies or governmental entities to investigate specific cases or types of crimes that transcend jurisdictional boundaries. Comprising representatives from various agencies and stakeholders, JITs pool together resources, expertise, and investigative powers to address cases requiring cooperation and coordination across different jurisdictions. While investigation units concentrate on internal investigations within a single agency, JITs facilitate cross-agency collaboration to tackle cases that demand a unified approach.

16. The Anti-Rape Act does not define the precise composition of the SSOIUs but only gives broad parameters. Section 9(2) of the Act stipulates that the SSOIUs shall comprise police officers who have received training on investigation in relation to sexual offences, and preferably, one member of the unit shall be a female police officer. Section 9(3) mandates that investigations for offences listed in Schedule-I shall be conducted exclusively by the SSOIU, while those in Schedule-II are to be carried out by the SSOIU under the supervision of a police officer not below the rank of BPS-17. Two interpretations of section 9 of the Anti-Rape Act are possible: first, that the SSOIU as a unit should handle the investigation of Scheduled Offences collectively, and second, that individual police officers who are members of the SSOIU in the relevant district may conduct the investigations independently.

17. The first interpretation, which advocates for a collaborative approach involving multiple unit members in each investigation, could present practical challenges. Expecting the entire unit to handle every case could lead to inefficiencies and delays, undermining the Act's objective of expediting investigations and trials. On the other hand, the second interpretation, which permits individual officers within the unit to undertake the investigations autonomously, offers a more flexible and potentially more efficient use of personnel and resources. Considering these factors, the second approach is more effective, pragmatic, and likely better suited to accomplishing the Act's objectives. The success of the Act hinges on striking the right balance between the need for specialized units and the practical realities of resource allocation and case management.

18. It is, however, important to note that the Anti-Rape Act encourages the involvement of lady police officers in handling the Scheduled Offences – though it does not impose a strict requirement. Section 9 of the Act states that the SSOIU should preferably have a female police officer as one of its members who has received training on investigation in relation to sexual offences. The use of the word “preferably” instead of “must” indicates flexibility in unit formation, recognizing factors such as staffing constraints and resource availability.

19. Sections 154, 161 and 164A Cr.P.C. contain special provisions for recording FIRs, examining witnesses, and medical examination of

victims of sexual abuse. The Anti-Rape (Investigation) Rules 2022 also cast certain duties on a female police officer when appointed.³ The purpose of these provisions is that where the victim is a woman or child, the association of a woman officer with the investigation makes them feel comparatively comfortable and, in some instances, even prevent re-traumatization.

20. Although it is technically permissible for a single officer to investigate Scheduled Offences, the Anti-Rape Act does not prohibit the constitution of special teams. Hence, considering the legislative intent, if the victim is a woman or a child, or if circumstances otherwise demand, the investigation of the case should be entrusted to a lady officer. Alternatively, she could be included as a member of a special team.

21. On 15.12.2020, the President promulgated the Anti-Rape (Investigation and Trial) Ordinance 2020. The National Assembly extended the law for another 120 days, with effect from 13.4.2021. The Ordinance also contained two Schedules mentioning the offences it dealt with. Section 9 of the said legislation provided the procedure for their investigation⁴ and envisaged the setting up of a special JIT for the investigation of offences mentioned in Schedule-II (with offences under Schedule-I left to be carried out by any police officer not below BPS-17). Section 9 of the Ordinance prescribed that the JIT shall comprise of the District Police Officer as the

³ In exercise of the powers conferred by section 19(1) of the Anti-Rape Act, the Ministry of Law and Justice, upon the recommendations of the Special Committee (see section 15 of the Anti-Rape Act), has framed the Anti-Rape (Investigation) Rules 2022. These Rules incorporate the “*Standard Operating Procedure (SOP) for Investigation of Rape Cases*” dated 20th August 2013 issued by the Investigation Branch, Lahore, which was affirmed by the Supreme Court in *Babar v. The State* (2020 SCMR 761).

⁴ For facility of reference, section 9 of the Ordinance of 2020 is reproduced below:

9. Investigation in respect of Scheduled offences.— (1) The investigation in respect of offences mentioned in Schedule-I shall be carried out by a police officer not below the grade of BPS-17, who preferably shall be a female police officer.

(2) The investigation in respect of offences mentioned in Schedule-II shall be carried out by a special Joint Investigation Team (JIT) comprising the following, out of which at least one shall preferably be a woman:

- (a) the District Police Officer (DPO) as the Head;
- (b) one Superintendent of Police (Investigation);
- (c) one Deputy Superintendent of Police;
- (d) one Station House Officer.

(3) The officers of the JIT shall ordinarily be from the relevant area in which the occurrence of the offence has taken place; however, in exceptional circumstances, where the dictates of fair investigation warrant otherwise, the concerned Inspector General of Police (IGP) may depute in the JIT, officers from areas other than the area of occurrence.

(4) Upon completion of investigation, the JIT shall, through the Prosecutor General or Special Prosecutors, submit a report before the Special Court:

Provided that notwithstanding anything contained in the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984), such report shall be admissible in evidence within the meaning of section 173 of the Code.

head, one Superintendent of Police (Investigation), one Deputy Superintendent of Police, and one Station House Officer. In the case of a JIT, it may be correct to presume that the investigation was to be entrusted to the JIT as a whole instead of its individual members. However, the fact that while enacting the Anti-Rape Act 2021, the legislature made a conscious departure from the concept of a JIT and resorted to the establishment of SSOIUs in each district also suggests that its intent was not to assign the investigation of the Scheduled Offences to the entire unit.

22. Our law, jurisprudence and practice allow the constitution of a joint investigation team to investigate sensitive and complex cases. The observations in the preceding paragraph should not be construed to mean that the Anti-Rape Act prohibits the constitution of a joint investigation team to investigate a particular case. As highlighted above, the concept of “investigation units” is distinguishable from JIT.

23. One of the important features which gave rise to the controversy that I seek to address through this judgment is section 10 of the Anti-Rape Act, which reads as follows:

10. Connected offences not in the Schedules.— The investigation officer or the joint investigation team (JIT), as the case may be, under section 9, may also take cognizance of offences not listed in the schedules, committed in connection with the scheduled offences, as if those offences were scheduled offences.

24. Section 10 of the Ordinance of 2020 was couched in precisely the same words as section 10 of the Anti-Rape Act reproduced above. Since section 9 of the Ordinance envisaged JIT as an essential component of the investigative process, its mention in section 10 of the Ordinance was imperative. This is not so under the Anti-Rape Act. The draftsman apparently transcribed section 10 from the Ordinance when drafting the Anti-Rape Act, overlooking the disparity in the investigative procedures between the two legislations. Consequently, section 10 of the Anti-Rape Act should be interpreted to address instances where the Competent Authority establishes a JIT specifically.

25. Given the above, I can't entirely agree with the Petitioner's contention that every Scheduled Offence under the Anti-Rape Act has to be investigated by the entire SSOIU.

26. In the present case, Respondent No.1 has transferred the investigation of case FIR No.1409/2022 to Maryam Rani/SI vide order dated 9.2.2023. The Advocate General has submitted documents reflecting that she is fully trained to investigate sexual offences. In light of the above discussion, I find her competent to investigate the case and overrule the Petitioner's objection.

27. This petition is dismissed.

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge

Approved for reporting

Judge