

Writ Petition No.16927 of 2023

J U D G M E N T

Date of hearing	14.11.2023.
Petitioner represented by:	Ms. Sadia Rehmani, Advocate.
Respondents No.6 and 7 by:	Rana Mehboob Ali, Advocate.
State by:	Mr. Mushtaq Ahmad Chohan, Assistant Advocate General and Muhammad Rafique, ASI.

2. Brief facts of the case leading up to the filing of this petition are that a case F.I.R No.530 of 2023 was registered at Police Station Saddar Mianchannu, District Khanewal, on the information of Rashid

Ikram, against the petitioner with the allegation that the petitioner had attempted to rape Aliza Rashid (respondent No.7), the daughter of the complainant of the case. During the investigation of the case, the statement under section 164 Cr.P.C. of Aliza Rashid (respondent No.7), was recorded on 11.09.2023 and subsequent to the recording of the said statement of Aliza Rashid (respondent No.7), the learned counsel for the petitioner moved an application before the learned Magistrate, Mianchannu for being allowed to cross examine Aliza Rashid (respondent No.7), however, the said application was rejected by the learned Magistrate, Mianchannu, vide order dated 17.10.2023. The petitioner assailed the order dated 17.10.2023 passed by the learned Magistrate, Mianchannu by way of filing a criminal revision petition, however, the said criminal revision petition was also dismissed by the learned Additional Sessions Judge, Mianchannu, vide order dated 25.10.2023, hence, this petition.

3. The learned counsel for the petitioner, *inter alia*, contended that according to section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, an opportunity to cross examine the victim, whose statement under section 164 Cr.P.C. is being recorded, by the counsel for the accused, has been made mandatory however, that right was not extended to the learned counsel for the petitioner and therefore, the order dated 17.10.2023 passed by the learned Magistrate and the order dated 25.10.2023 passed by the learned Additional Sessions Judge, are liable to be set-aside.

4. On the other hand, the learned Assistant Advocate General and the learned counsel appearing on behalf of the respondents No.6 and 7 submitted that the order dated 17.10.2023 passed by the learned Magistrate and the order dated 25.10.2023 passed by the learned Additional Sessions Judge, did not suffer from any illegality and needed no interference being passed in accordance with the law.

5. I have heard the learned counsel for the petitioner, the learned counsel appearing on behalf of the respondents No.6 and 7, the learned Assistant Advocate General and perused the documents appended with this petition as well as the order dated 17.10.2023 passed by the learned Magistrate and the order dated 25.10.2023 passed by the learned Additional Sessions Judge.

5. A perusal of the record reveals that case F.I.R No.530 of 2023 was registered at Police Station Saddar Mianchannu, District Khanewal, on the information of Rashid Ikram, against the petitioner with the allegation that the petitioner had attempted to rape Aliza Rashid (respondent No.7), the daughter of the complainant of the case. During the investigation of the case, the statement under section 164 Cr.P.C. of Aliza Rashid (respondent No.7), was recorded on 11.09.2023 and subsequent to the recording of the said statement of Aliza Rashid (respondent No.7), the learned counsel for the petitioner moved an application before the learned Magistrate, Mianchannu for being allowed to cross examine Aliza Rashid (respondent No.7), however, the said application was rejected by the learned Magistrate,

Mianchannu, vide order dated 17.10.2023. The petitioner assailed the order dated 17.10.2023 passed by the learned Magistrate, Mianchannu by way of filing a criminal revision petition, however, the said criminal revision petition was also dismissed by the learned Additional Sessions Judge, Mianchannu, vide order dated 25.10.2023. With regard to the prayer of the petitioner for allowing his learned counsel to cross examine Aliza Rashid (respondent No.7), the victim of the case, it has been observed that the provisions of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, are very much clear in their meaning. As per section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, it has been made mandatory that ***an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused.*** For reference, section 14 of the Anti-Rape (Investigation and Trial) Act, 2021, is being reproduced below:-

“14. Statement under section 164 of the Code.— (1) Notwithstanding anything contained in any other law for the time being in force, as soon as practicable, a statement of the victim shall be recorded under section 164 of the Code only once
Explanation:— The statement under this sub-section shall be video-recorded, preserved and reduced in writing.
(2) **An opportunity of cross examining the victim shall be given to the counsel for the accused and not the accused himself, or the Court may itself put questions to the victim** or any questions framed by the accused may be given to the presiding officer of the Court who may put such questions, as found appropriate by him, to the victim.” (emphasis supplied)

The provisions of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, are unambiguous in their meaning and are **mandatory** in nature, as the word “**shall**” has been used in the same and it has been made mandatory that an opportunity to cross examine

the victim shall be given to the counsel for the accused and not to the accused. It is settled law that when the word 'shall' is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature brands a provision as mandatory. The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself. Reference may be made to the cases of *The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others* (2017 SCMR 1427), *Haji Abdul Karim and others Versus Messrs Florida Builders (Pvt) Limited* (P L D 2012 Supreme Court 247), *Province of Punjab through Secretary, Excise and Taxation Department, Lahore and others v. Murree Brewery Company Limited and another* (2021 SCMR 305), *Syed Zia Haider Rizvi and others v. Deputy Commissioner of Wealth Tax, Lahore and others* (2011 SCMR 420), *In Re. Presidential Election, 1974* (AIR 1974 SC 1682), *Lachmi Narain v. Union of India* (AIR 1976 SC 714) and *Dinesh Chandra Pandey v. High Court of Madhya Pradesh and another* [(2010) 11 SCC 500] The use of the word 'shall'

is a strong indicator that the provisions of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021 are mandatory in nature. Another aspect of the matter is that when a statute requires that a thing should be done in a particular manner or form, it has to be done in such manner. The non-compliance of a mandatory provision would invalidate such an act. In this context, reference may be made to the cases of *Rubber House v. Excellisor Needle Industries Pvt. Ltd.* (**AIR 1989 SC 1160**), *Mall Development (Pvt.) Ltd Versus Waleed Khanzada and others* (**2022 S C M R 2080**) and *Messrs Tri-Star Industries (Pvt.) Limited Versus Trisa Burstenfabrik Ag Triengen and another* (**2023 SCMR 1502**).

6. In view of the above discussion, the instant petition is **allowed** in the terms that the learned Magistrate, Mianchannu shall summon Aliza Rashid (respondent No.7), the victim of the case F.I.R No.530 of 2023 registered at Police Station Saddar Mianchannu, District Khanewal and provide **one opportunity of cross-examining her to the learned counsel for the petitioner** and if the learned counsel for the petitioner does not avail that opportunity, then the matter will end there. In this regard, it is further directed that the learned Magistrate, Mianchannu shall issue notices to be served upon Aliza Rashid (respondent No.7), the victim of the case F.I.R No.530 of 2023 registered at Police Station Saddar Mianchannu, District Khanewal, to appear before him on 16.11.2023 and the learned counsel for the petitioner shall cross examine her on the said date. The

Office is directed to transmit a copy of this order to the learned Magistrate Mianchannu for information.

(SADIQ MAHMUD KHURRAM)
JUDGE

*T.M.Alvi/**

APPROVED FOR REPORTING

JUDGE