

Form No.HCJD/C-121

**IN THE LAHORE HIGH COURT, LAHORE.**  
**(JUDICIAL DEPARTMENT)**

WP.No.10957/2023

Hafeez Ullah Shahid                      Vs                      ASJ/JOP, etc.

S/No. of order/Proceedings	Date of order/Proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.
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05.06.2023      Mr. Khadim Hussain Tahir Hashmi, Advocate for the petitioner.  
Mr. Waqas Umar, Assistant Advocate General with Muhammad Akram ASI.  
Ms. Rahat Majeed, ADPP on Court’s call.  
Mrs. Naseem Akhtar, wife of respondent No.5 in person.

Briefly the facts of the case leading to the filing of instant writ petition are that on the application of Muhammad Ashraf son of Muhammad Khan (respondent No.5) containing the allegation of misappropriation of his Tractor Belarus bearing No.7217/SBA with Engine No.480681, Chassis No.05734774, an FIR No.570/2019 under sections 420/468/471 PPC was registered at police station Gogera and investigation of the said case was entrusted to Hafeez Ullah Shah, ASI (Petitioner). Subsequently while suspecting defective investigation, the complainant (respondent No.5) filed an application under section 22-A (6) Code of Criminal Procedure, 1898 (Cr.P.C.) before the learned Additional Sessions Judge/Ex-officio Justice of the Peace, Okara with two-fold prayer i.e., for transfer of investigation as well as initiation of proceedings under Article 155(1)(c) of the Police Order, 2002 against the Investigating Officer. On such application, besides order for transfer of investigation, vide the same impugned order dated 09.02.2023 the SHO police station Gogera was directed to register FIR against the present petitioner under Article 155(1)(c) of Police Order, 2002, which is the precise grievance of the petitioner.

2.            Learned counsel for the petitioner states that on the similar allegation a departmental inquiry was conducted against the petitioner but he was exonerated from the charge and direction of ex-officio Justice of the Peace amounts to double jeopardy. Further states that

if the liability is conceded, even then no cognizable offence is committed and direction for registration of FIR under Article 155(1)(c) the Police Order, 2002 is misconceived. On the other hand, learned Counsel for the respondent states that order was perfect in the circumstances.

3. Arguments heard; record perused.

4. It has been observed that for defective investigation, Pakistan Penal Code, 1860 (PPC) identifies two provisions i.e., Sections; 166(2) & 186(2) which according to the second schedule of Cr.P.C. are non-cognizable, therefore, FIR cannot be registered. If specific sections applicable to the situations fall non-cognizable, then ex-officio Justice the Peace should not have resorted to Article 155(1)(c) referred above.

5. Police an entity cannot be read in complete topsy-turviness, they hang up by overdue and expectations attached to their job description (JDs), which though rowing them into hardships yet with butch intervals and feisty sighs they move on. They feel like angels in distress situation with mighty spirits to rescue ailing souls, soaring or oppressed communities but sometimes react with boo-boo, after all they are human force and to err is human; their extra bondage in the form of long hours of duty sometimes transform their gentle instinct into hideous habits, may be due to change in chemical composition of the body so as to make them nimble or docile, the two human attributes contributory to revolt or destroy, which most of the time controls their responding abilities in comprehension or execution of orders. Principle of stick and carrot is the rule for discipline maintenance on the administrative side, that is why they are punished or rewarded for derelictions and a duty-ride but resolution and hope tagged or anchored to their spirit make them alive to serve with best of their abilities. Diversification is inherent in human beings which creates variables expecting different treatment from people at the top who should understand this difference while dealing with officers of different ranks in police. Law also suggests different processes to meet with various kinds of misdemeanours by police. Police is a major component of criminal justice system, their

blood is used for intelligence, information sharing, preventing crimes, security, maintaining law and order situation, inquiries, investigation, process serving, recovery of detenus, evidence support and progression in a trial. They despite being dutiful, sometimes deflect the processes, missed the direction with failed execution of court orders, therefore, they are treated differently in law on such omissions, but Courts usually preferred to pass omnibus orders for registration of FIRs against them. Though law authorizes for such an action yet it is not the panacea but a last resort depending upon the nature of allegations. It is in the experience that power brings atrocious attitude, self-centric touch and inflated egos if remained unchecked. The police in exercise of such powers when fall in misdemeanours, they are resisted with the force of law vested on the Courts or the administrative authorities. Here are some measures to deal with different types of derelictions or misdemeanours.

### **During Investigation**

**“Section 166 (2) PPC:** *Whoever being a public servant entrusted with the investigation of a case fails to carry out the investigation properly or diligently or fails to pursue the case in court of law properly and in breach of his duties shall be punished with imprisonment of either description for a term which may extend to three year or with fine or with both.*

**Section 186 (2) PPC:** *Whoever intentionally hampers, misleads, jeopardizes or defeats an investigation, inquiry or prosecution or issues a false or defective report in a case under any law for the time being in force shall be punished with imprisonment for a term which may extend to three years or with fine or with both.”*

Both these offences are non-cognizable, therefore, direction for initiating the process u/s 155 of Cr.P.C. can be passed or aggrieved can file private complaint under such sections in respective court. Section 166, is the scheduled offences of Anti-Corruption Establishment Ordinance 1961, therefore, a reference can be sent for inquiry if it could be materialized for registration of FIR by Anti-Corruption Establishment.

### **Contempt of Lawful Authority**

**175. Omission to produce document to public servant by person legally bound to produce it.** *Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with*

simple imprisonment for a term which may extend to one month, or with fine which may extend to one thousand five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both.

**177. Furnishing false information:** Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**178. Refusing oath or affirmation when duly required by public servant to make it** Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both.

**179. Refusing to answer public servant authorized to question** Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal, powers of such public servant shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both.

**180. Refusing to sign statement:** Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand, or with both.

**181. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation:** Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching that subject any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**228. Intentional insult or interruption to public servant sitting in judicial proceeding** Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both.

6. Police is bound to obey and promptly execute all lawful orders, perform other duties and exercise powers as are conferred by this Order, the Code or any other law for the time being in force as ordained under Article 4(1)(m) & (n) of Police Order, 2002, therefore, disobedience to any order passed by a court if falling in above situations can validly be applied on police officers/officials for sentence suggested therein. However, different mechanisms are in place to deal with such offences. Some of above sections could be attended with following procedure explained in Cr.P.C.

**“480. Procedure in certain cases of contempt.--** (1) When any such offences as is described in section 175, section 178, section 179, section 180 or section 228 of the Pakistan Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine, not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

**482. Procedure where Court considers that case should not be dealt with under section 480.--**(1) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same and may require security to be given for the appearance of such accused person before such Magistrate or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.”

Prosecution of offences u/ss 172 to 188 PPC shall ordinarily be initiated in the court of competent jurisdiction but on the complaint of concerned court/public servant as per section 195 Cr.P.C.; however, Section 228 PPC can also be prosecuted u/s 476 of Cr.P.C.

### **Offences under Police Order, 2002**

**155. Penalty for certain types of misconduct by police officers:-** (1)  
Any police officer who—

(a) makes for obtaining release from service as police officer, a false statement or a statement which is misleading in material particulars or uses a false document for the purpose;

(b) is guilty of cowardice, or being a police officer of junior rank, resigns his office or withdraws himself from duties without permission;

(c) is guilty of any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey;

(d) is guilty of any violation of duty;

(e) is found in a state of intoxication, while on duty;

(f) malingers or feigns or voluntarily causes hurt to himself with the intention to render himself unfit for duty;

(g) is grossly insubordinate to his superior officer or uses criminal force against a superior officer; or

(h) engages himself or participates in any demonstration, procession or strike or resorts to or in any way abets any form of strike or coercion or physical duress to force any authority to concede anything,

shall, on conviction, for every such offence be punished with imprisonment for a term which may extend to three years and with fine.

(2) Prosecution under this Article shall require a report on writing by an officer authorized in this behalf under the rules.

**156. Penalty for vexatious entry, search, arrest, seizure of property, torture, etc.–** Whoever, being a police officer–

(a) without lawful authority, or reasonable cause, enters or searches or causes to be entered or searched any building, vessel, tent or place;

(b) vexatiously and unnecessarily seizes the property of any person;

(c) vexatiously and unnecessarily detains, searches or arrests any person; or

(d) inflicts torture or violence to any person in his custody;

shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine.

**157. Penalty for unnecessary delay in producing arrested persons in courts.–** Any police officer who vexatiously and unnecessarily delays the forwarding to a court or to any other authority to whom he is legally bound to forward any arrested person, shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine.

7. Clauses (c) & (d) of Article 155(1) above are relevant to the subject under discussion because for willful breach or neglect of any provision of law or of any rule or regulation or any order which the police is bound to observe or obey or guilty of any violation of duty, FIR can be registered as being cognizable offences but under Article 155(2) of the Police Order, it still needs a sanction for prosecution in the form of report in writing by an officer authorized in this behalf under the rules. Article 2 (xxiii) of Police Order, 2002 says, 'rules' means rules made under this

Order and as per Article 186 of Police Order, 2002 “Existing police deemed to be constituted under this Order” therefore, Police Rules, 1934 shall also be deemed applicable until the new rules are framed. As per Police Rules, 1934, Deputy Inspector General of Police is the authorized officer for granting sanction for prosecution which is as under:-

**“16.11. Prosecution under Section 29, Act V of 1861.—***When a disciplinary offence on the part of a police officer can be adequately punished departmentally, such officer shall not be prosecuted under section 29 of the Police Act, and no upper subordinate shall be prosecuted under that section without the sanction of the Deputy Inspector General.”*

(Emphasis supplied)

Section 29 of Police Act, 1861 is parametria to Article 155 of the Police Order, therefore, above mechanism would also be in place for action under Article 155 above. Similarly, in another situation, the same officer is authorized to initiate judicial prosecution.

**“16.12. Judicial prosecutions: -***When a police officer is departmentally punished for an offence committed in his public capacity for which he is liable to be prosecuted criminally, the Deputy Inspector General is required to satisfy himself that the course adopted was expedient in the interests of the administration, and may order a criminal prosecution if he considers it desirable.”*

It is held that for initiation of departmental action against any rank of police officer/official, different authorities are authorized in the police hierarchy but for judicial prosecution respective Deputy Inspector General of Police is the authorized officer. Therefore, despite registration of FIR, sanction of prosecution shall further determine the continuation of proceedings against the accused police officer/official. If such sanction is not available then court cannot proceed further. This situation has impliedly been met under section 230 of Cr.P.C. which is as under:-

**“230. Stay of proceedings If prosecution of offence in altered charge requires previous sanction: -***If the offence stated in the new or altered or added charge is one for the prosecution of which previous Sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.”*

If required sanction is not given then court can stay the proceeding in trial of such offence or Prosecutor can drop the prosecution of such offence under section 10(3)(f) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006.

Types of offences if committed under Article 156 of the Police Order, 2002, do not require any sanction of authorized officer and being punishable up to five years would be cognizable as per second schedule of Cr.P.C. under segment "offences against other laws", therefore after registration of FIR it shall be prosecuted through a normal course of trial. However, offence under Article 157 being punishable up to one year shall be non-cognizable as per above scheme; thus, for such offence action can be taken as per Section 155 of Cr.P.C. meant for investigation into non-cognizable offences but if some cognizable offences are also attracted in the series of act, then it shall also be investigated with cognizable offences without the permission of a magistrate. Reliance is on "OBAIDULLAH KHAN Versus INAYATULLAH KHAN" (1998 P Cr. L.J 1718)

### **Administrative side**

8. A complete mechanism has been provided in Police Order, 2002, therefore, no new legislation is required except to make functional the following Complaints Authority.

**"106. Functions of the Provincial Police Complaints Authority: -**  
*The Provincial Police Complaints Authority shall perform the following functions: -*

*(a) receive from District Public Safety Commission or an aggrieved person in writing on an affidavit, complaint of neglect, excess or misconduct against a Police Officer;*

*(b) process the complaint and refer the ordinary cases to an appropriate authority for action and report and in serious cases initiate action on its own;*

*(c) receive from the District Public Safety Commission or Head of District Police any report of death, rape or serious injury to any person in police custody and take steps to preserve evidence relating to such incident and request the Chief Justice of the High Court under intimation to the Government to appoint a Judge not below the District and Sessions Judge for a judicial enquiry;*

*(d) may appoint in appropriate cases a police officer of the same district or of a different district who is senior in rank to the officer complained against as an inquiry officer, and supervise the inquiry proceedings;*



(e) send a copy of the report to the competent authority and direct him for departmental action based on the findings of the enquiry or registration of a criminal case as appropriate and direct the competent authority to submit a report about the action taken on the findings of the report;

(f) inform the complainant of the outcome of the enquiry in writing as soon as possible;

(g) where the Provincial Police Complaints Authority is not satisfied with the order in cases referred under clause (e), it may send a report to the next higher authority for revision of the order by the awarding officer and the process be repeated till it is considered by the final authority;

(h) in case of any frivolous, or vexatious complaint, initiate legal action against the complainant;

(i) may recommend disciplinary action against an enquiry officer for willful neglect or mishandling of an enquiry;

(j) prepare and send to the Government an annual report on matters relating generally to its functions, including any matter to which it considers attention of the Government may be drawn by reason of gravity or other exceptional circumstances, for laying the report before Provincial Assembly;

(k) may in consultation with the Provincial Government establish regional offices anywhere in the province.”

The above regime caters to almost every situation, giving remedy to aggrieved persons, senior police officers (see Article-36) to report derelictions of police in different ranks. Police officers shall liable to be proceeded against for departmental action with or without a direction to register an FIR. It also covers the conduct of judicial inquiry with a request to Chief Justice of the High Court under intimation to the Government to appoint a Judge not below the District and Sessions Judge for said purpose. By establishing the regional offices, the grievances redressal mechanism becomes accessible to all concerned making it an inexpensive and expeditious process of taking proper action. Action against frivolous complaints is also a solution in above Article which can be materialized as under:-

**“152. Penalty for frivolous or vexatious complaint:-** Any person who files a complaint against the police, which on enquiry by the Police Complaints Authority is held frivolous or vexatious, shall be punished on conviction with imprisonment for six months, or with fine, which may extend to fifty thousand rupees, or with both.”

Above offence is cognizable as per following Article of the Police Order, 2002:-

**“153. Certain offences to be cognizable: -** Notwithstanding anything contained in the Code, offences falling under Articles 148 to 152 shall be cognizable.”

All the offences highlighted above except offences for contempt of lawful authority of court can simply be regulated through Police Complaints Authority which after attending it through inquiry can decide as to whether action on the departmental side be taken or FIR be registered. Where the offences are non-cognizable Police Complaints Authority can pass direction for action u/s 155 Cr.P.C. for investigation with the permission of concerned magistrate or if they are scheduled offences of Anti-Corruption Establishment, reference can be sent to that department for further action.

9. The Police Order, 2002 does not specifically provide any remedy against failure, neglect or excess committed by Police Complaints Authority in taking action against the delinquent police officer/officials, therefore, the law suggested a course in the form of section 22-A (6) Cr.P.C, which was inserted through the Criminal Procedure (Third Amendment) Ordinance (Federal Ordinance No. CXXXI) of 2002 on 21.11.2002 only to cater to the requirement of newly enacted Police Order, 2002 which was promulgated on 14.08.2002. Insertion of Section 22-A (6) Cr. P.C. was also felt when this Court in a case reported as “MIAN KHAN and others Versus INSPECTOR GENERAL OF POLICE PUNJAB and others” (PLD 2002 Lahore 619) has interpreted the powers exercisable u/s 22-A & 22-B by the Sessions Judges, Additional Sessions Judges and Magistrates for appropriate direction to police authorities to perform their administrative duties properly and diligently. The above case was decided on 26<sup>th</sup> September, 2002 after promulgation of Police Order, 2002 (14.08.2002) wherein question of transfer of investigation, registration of FIR, and to prevent excess by police was discussed and it was also suggested as under:-

*“The provisions of the Police Order, 2002 should also be kept in view while exercising powers in this regard, in case an aggrieved person approached the Sessions Judges with any grievance of the kind noted above, the Judges or Magistrates shall issue necessary direction to police even in the absence of any direction from the High Court and the District Nazim can also be advised to come to the aid of aggrieved party and to exercise powers under section 35 of the Police Order, 2002.”*

(Emphasis supplied)

10. The cited Amendment in Cr.P.C. for insertion of section 22-A (6) was made on 21.11.2002 which is as follows:-

“[(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding-

(i) non-registration of a criminal case;

(ii) transfer of investigation from one police officer to another; and

(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.] “

This provision was specially designed to meet with new regimes introduced in the Police Order, 2002 in the form of “Transfers of investigation, Public Safety Commission, Police Complaints Authority, and action for neglect, failure or excess committed by police officers”. Police authorities particularly designed for such functions are mentioned in different Articles of the Police Order, 2002, i.e., Article 18-A (Transfer of investigation); and for neglect, failure and excess committed by Police authorities in respect of their official duties, the establishment of Federal Police Complaints Authority and Provincial Police Complaints Authority was suggested in Chapter-X of the Police Order, 2002 starting from Article 97 to 108. According to provisions of Chapter-X above the Government shall establish a Federal Police Complaints Authority for enquiring into serious complaints against the members of Federal Law Enforcement Agencies and Provincial Police Complaints Authority for enquiring into serious complaints against the police. The members of both Police Complaints Authorities shall be eminent persons of impeccable integrity with skills, knowledge and experience in such fields as may be specified by the Government. Both Police Complaints Authorities shall consist of a Chairperson and six members. Function of Provincial Police Complaints Authority has already been highlighted in preceding paragraph No. 8. If a direction passed by ex-officio Justice of the Peace is not complied with then action for disobedience of his order can be taken in the like manner as mentioned in a case reported as “KHIZER HAYAT and others Versus INSPECTOR-GENERAL OF POLICE (PUNJAB), LAHORE and others” (PLD 2005 Lahore 470) including registration of FIR as held in case reported as “ZULFIQAR Versus

ADDITIONAL SESSIONS JUDGE/EX-OFFICIO JUSTICE OF PEACE, Lahore and 2 others” (2021 P Cr. L J 1779).

11. While dictating the order, a fact was taken notice of that Articles 103 to 108 of Police Order, 2002 relating to establishment of Provincial Police Complaints Authority were shown omitted through Police Order (Second Amendment) Ordinance, 2005 (Ordinance IX of 2005); therefore, continuation of such Ordinance was checked and it was disclosed that Ordinance had elapsed after certain period as mentioned in the Constitution. However later Police Order (Amendment) Ordinance, 2007 (Ordinance No. XLI of 2007) was promulgated and such Articles of Police Order, 2002 were again omitted which fact is mentioned in the cited Ordinance at Para No.46. It was observed that said Ordinance was to be expired on 26.11.2007 but before that an emergency was imposed in the country on 03.11.2007 and through Provisional Constitutional Order (PCO), it was ordained that any Ordinance etc. in force at the time of proclamation of emergency shall remain operative and it shall be exempted from limit of Constitutional duration. This situation was taken care of by the Honourable Supreme Court of Pakistan as per judgment reported as “SINDH HIGH COURT BAR ASSOCIATION through its Secretary and another Versus FEDERATION OF PAKISTAN” (PLD 2009 Supreme Court 879). The Ordinance of year 2007 supra was not declared as permanent law rather an Ordinance subject to validation by the respective legislature. It was declared that any Ordinance passed before or after 3<sup>rd</sup> November, 2007 up to 15<sup>th</sup> December, 2007 be laid before the competent authority. The relevant parts of judgment are cited as under:-

*185. It may be noted that Article 4 of PCO No. 1 of 2007 provided that notwithstanding the abeyance of the provisions of the Constitution, but subject to the Orders of the President, all laws other than the Constitution, all Ordinances, Orders, Rules, Bye-laws, Regulations, Notifications and other legal instruments in force in any part of Pakistan, whether made by the President or, the Governor of a Province would continue in force until altered, or repealed by the President or any authority designated by him. Clause (1) of Article 5 ibid provided that an Ordinance promulgated by the President or by the Governor of a Province shall not be subject to any limitations as to duration prescribed in the Constitution. Likewise, under clause (2) of the said Article, an Ordinance issued by the President or by a Governor which was in force immediately before the commencement of Proclamation of Emergency of the 3<sup>rd</sup> day of November, 2007 shall also not be subject to aforesaid limitations. As a result, all the Ordinances, which were in force on 3<sup>rd</sup> November, 2007 as well as the*

*Ordinances which were promulgated on or after 3rd November, 2007 up to 15th December, 2007 were continued in force as permanent laws and were not laid before the respective legislatures during the period prescribed by the Constitution.*

**186.** *Proclamation of Emergency and PCO No. 1 of 2007 having been declared unconstitutional and void ab initio and the validity purportedly conferred on all such Ordinances by means of Article 270AAA and by the judgment in Tikka Iqbal Muhammad Khan's case also having been shorn, such Ordinances would cease to be permanent laws with the result that the life of such Ordinances would be limited to the period specified in Articles 89 and 128 of the Constitution, viz., four months and three months respectively from the date of their promulgation. Under Article 89 of the Constitution, an Ordinance issued by the President, if not so laid before the National Assembly, or both Houses of Parliament, stands repealed on expiration of four months from its promulgation. Similarly, under Article 128 of the Constitution, an Ordinance issued by the Governor, if not so laid before the concerned Provincial Assembly, stands repealed on expiration of three months from its promulgation.*

**187.** *It may be noted that such Ordinances were continued in force throughout under a wrong notion that they had become permanent laws. Thus, the fact remains that on the touchstone of the provisions of Articles 89 and 128 read with Article 264 of the Constitution and section 6 of the General Clauses Act, 1897, only such rights, privileges, obligations, or liabilities would lawfully be protected as were acquired, accrued or incurred under the said Ordinances during the period of four months or three months, as the case may be, from their promulgation, whether before or after 3rd November, 2007, and not thereafter, until such Ordinances were enacted as Acts by the Parliament or the concerned Provincial Assembly with retrospective effect.*

**188.** *In the light of the above, the question of validation of such Ordinances would be required to be decided by the Parliament or the concerned Provincial Assemblies. However, the period of four months and three months mentioned respectively in Articles 89 and 128 of the Constitution would be deemed to commence from the date of short order passed in this case on 31st July, 2009 and steps may be taken to lay such Ordinances before the Parliament or the respective Provincial Assemblies in accordance with law during the aforesaid periods. This extension of time has been allowed in order to acknowledge the doctrine of or trichotomy of powers as enshrined in the Constitution, to preserve continuity, to prevent disorder, to protect private rights, the strengthen the democratic institutions and to enable them to perform their constitutional functions, which they were unconstitutionally and illegally denied under PCO No.1 of 2007. Needless to say that any validation whether with retrospective effect or otherwise, shall always be subject to judicial review on the well-recognized principles of ultra vires, non-conformity with the Constitution or violation of the Fundamental Rights, or on any other available ground."*

Pursuant to such judgment, through Constitution (Eighteenth Amendment) Act, 2010, Article 270AA was enacted; according to which ordinances, regulations, enactments, notifications, rules, orders or bye-laws made between the twelfth day of October, 1999 and the thirty-first day of October, 2003 and still in force shall continue to be in force until altered, repealed or amended by the competent authority, which clearly reflects that though Police Order, 2002 in its original form would remain operative until it is amended, altered or repealed by the competent authority but the ordinances promulgated thereafter and one referred

above (2007) are not in the field anymore because it has not been placed before the competent authority (Respective Legislature) for further validation; therefore, any contention that Articles 103 to 108 of the Police Order, 2002 stood repealed is without any force.

12. Police Complaints Authority, independent in nature by its composition as per Article 104 of the Police Order, 2002 shall consist of a Chairperson and six members. The Governor shall appoint the Chairperson of the Provincial Police Complaints Authority whereas the Government shall appoint the members of the Provincial Police Complaints Authority on the recommendation of the Provincial Public Service Commission. Therefore, its establishment is essential for running the system smoothly and in accordance with prevailing law. Even otherwise it is trite that when a statute describes or requires a thing to be done in a particular manner; it should be done in that manner or not at all. Functioning of Police Complaints Authority has also been focused in cases reported as “HAIDER ALI and another versus DPO CHAKWAL” and others **(2015 SCMR 1724)**; “KHIZER HAYAT and others Versus INSPECTOR-GENERAL OF POLICE (PUNJAB), LAHORE and others” **(PLD 2005 Lahore 470)**; “MUBASHIR AHMED Versus S.H.O., POLICE STATION SADDAR, GUJRANWALA and 4 others” **(2007 P Cr. L J 384)**. In Haider Ali case Supra, The Supreme Court has observed as under;

“It was also noted by us that the systemic accountability forums which were created pursuant to the Police Order, 2002, in the form of National and Provincial Public Safety Commissions and Police Complaints Authority are either inactive or not operational.”

Learned Assistant District Public Prosecutor was directed to establish contact with police authorities to know about the establishment of Police Complaints Authority, who has informed later that till to date no such Authorities have been established. In the situation when after almost 21 years of the promulgation of Police Order, 2002, no effort was made to establish Police Complaints Authority, Provincial Government is directed to establish Provincial Police Complaints Authority in accordance with the mandate of Articles 103, 104 and 105 of the Police Order, 2002 as early as possible but not later than six months.

13. The scheme of law discussed above concludes that if a complaint of neglect, failure or excess committed by any police officer/official is received by the ex-officio Justice of the Peace, he can simply pass it to District Police Officer concerned for placing it before the Police Complaints Authority who is authorized to channelize it as per Article 36 of the Police Order, 2002, or ex-officio justice of the peace can direct the aggrieved person to approach the Police Complaints Authority by filing an application and further course of action shall be taken care of by the said authority under the law. If both the directions are not met, ex-officio justice of the Peace can proceed as per law suggested above.

14. Coming to the case in hand, according to which allegation of defective investigation has been levelled against the petitioner which offence is non-cognizable as highlighted above. I have not found any defect in direction passed by ex-officio Justice of the peace for transfer of investigation, which does not call for any interference; however, direction for registration of FIR under Article 155(1)(c) of the Police Order, 2002 is set aside with the direction to concerned SHO to enter information in a register, maintained u/s 155 of Cr.P.C. and proceed strictly in accordance with law so as to investigate the matter, if permission is granted by the Magistrate, for further course of action as suggested above including filing of reference before Anti-Corruption establishment if substance of allegation coupled with material so requires. With these observations, this petition stands **disposed of.**

15. Copy of this order be sent to the Chief Secretary, Government of the Punjab, for compliance.

**(MUHAMMAD AMJAD RAFIQ)**  
**JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**

This order has been pronounced on 05.06.2023, thereafter, dictated, prepared and signed on 06.07.2023.

*Jamshaid\**