

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja

Mr. Justice Dost Muhammad Khan

Mr. Justice Qazi Faez Isa

Civil Petition No.1282 of 2014

(Against the order dated 20.06.2014 of Lahore High Court,
Rawalpindi Bench passed in Writ Petition No.1194 of 2014)

Haider Ali & another

Petitioner(s)

VERSUS

DPO Chakwal & others

Respondent(s)

For the Petitioner(s):

Syed Rafaqat Hussain Shah, AOR with
Haider Ali petitioner No.1

On Court's notice:

For the Federation:

Mr. Sohail Mehmood, Dy. Attorney General,
Syed Nayab Hassan Gardezi, ASC/Standing Council

For Govt. of Balochistan:

Mr. Tariq Mehmood Butt, Prosecutor General
Mr. Muhammad Ayaz Khan Swati, Addl. AG
Syed Parvaiz Akhtar, Dy. Prosecutor General

For Govt. of KPK:

Mr. Mujahid Ali Khan, Addl. AG

For Govt. of Punjab:

Mr. Razzaq A. Mirza, Addl. AG
Ch. Zubair Ahmed Farooq, Addl. PG

For Govt. of Sindh:

Mr. Shehryar Qazi, Addl. AG

Date of hearing:

04.09.2015

ORDER

Jawwad S. Khawaja, CJ.- The facts of this case are all too typical for our criminal justice system. A party to a family dispute, which appeared to be of a civil nature, filed a compliant with the police to allegedly pressurize the other party. The police initially (presumably in good-faith) rejected the complaint. The party then attempted to have the case registered through the Justice of Peace. This application was also denied. Thereafter, a writ petition was filed, on the basis of which the High Court ordered investigation of the case. What culminated thereafter was a series of appeals and petitions taking the matter right up to the Supreme Court.

2. When the case came up for hearing before us, the unsatisfactory state of affairs was apparent. We were perplexed to note that the police failed to register the FIR on the

complaint being filed, even though the provisions of Section 154 Cr.P.C. do not provide them any discretion in deciding whether or not they can register a FIR. Numerous judgments of this Court have also reaffirmed this principle. If the complaint was indeed false and vexatious, as the petitioner alleged, then the police should have filed a case against the complainant under the relevant provisions of the Pakistan Penal Code. However, the relevant officials chose not to do this and instead pushed the parties into various rounds of litigation involving a simple issue of whether the FIR should be registered. Similar maladministration was noted in the police investigation. Neither the challan had been submitted within the stipulated period of fourteen days nor was there any valid or apparent reason as to why the investigation of the case had not been concluded. It was clear to us that such unjustified delays created room for wrongdoing. What made the matter worse is that there were no effective safeguards within the police to guard against such maladministration. And there was no accountability.

3. It would be an under statement to say that the state of our criminal justice system which led to this case, and many others like it, is deficient. The majority of human right cases which come before us concern in one way or another police abuse of powers or inefficiency. Even as we heard this case, we noted many instances of police excesses. These numerous complaints cannot be adequately dealt with by the apex Court nor is it the primary function of the apex Court to probe into the transparency or honesty of police investigation. This is a function which has to be performed by the Provinces and by the Federation. Ineffective investigation and weak prosecution is similarly another matter which has created deep ruptures in our justice system and which we identify on a daily basis. Therefore, seeing how this matter is recurrent, of great public importance and directly related to the fundamental rights of the citizens at large, we issued notices to the Federation and the four Provinces to submit a comprehensive and effective plan which

would be necessary for ensuring that the grievances of citizens are redressed at their doorsteps in the shortest possible time and that instances of wrongdoing or maladministration are dealt with promptly.

4. At our request Khawaja Haris, learned Sr. ASC agreed to assist us. He reviewed the reports submitted by the Provinces and also solicited suggestions and proposals from the Advocates General, Prosecutors General, Secretaries Prosecution and Inspectors General of Police, as well as from some of the eminent retired civil servants who had served in the Police or the Prosecution Department.

5. In response thereto, a number of suggestions and proposals were received by Khawaja Haris, learned Sr. ASC and the same were placed on the record through C.M.A. No.1014/2015. Thereafter, on the basis of the suggestions and proposals so received, Khawaja Haris, learned Sr. ASC, formulated 72 questions considered to be relevant for purposes of ensuring effective redressal of complaints, fair, honest and effective investigation and for ensuring accountability of the police. These questions were then forwarded to all the aforementioned officials of the four Provinces and the retired civil servants. Their responses were placed on the record of this Court through C.M.A. No. 1457/2015. The learned Sr. ASC also provided his own proposals with respect to the subject matter through C.M.A. No. 3710/2015. Based on our directions, Mr. Sarwar Khan, Secretary Law & Justice Commission of Pakistan, also submitted his report on the issue with suggestions through C.M.A. No. 5569/2015.

6. A bare overview of the above mentioned reports and the numerous responses we received from the various state officials during the course of this case, would be enough to show that there are a number of fundamental issues with our criminal justice system. Everyone admits as such. Even the learned Prosecutor General Punjab admitted before this Court that the Government is *"aware that steps have to be taken to ensure that the police and*

prosecution departments which are meant to ensure the enforcement of the law fairly and honestly, do not in fact become instruments of oppression of the public at large". While admission of fault is the first step towards making amends, our concern is that despite appreciation of the problem no effective steps have been taken to enhance the efficiency and competence of the concerned government departments. What is more troubling is that certain key issues faced by our justice system could be addressed instantly, in some cases through administrative measures and in others through legislation.

7. It may be useful at this stage, to refer to some of the key issues which were highlighted before us. For ease of reference, we have categorized the issues based on whether they relate to: (i) pre-investigation stage (registration of FIR); (ii) investigation stage; (iii) prosecution and trial; and (iv) accountability and transparency.

A. Pre-investigation stage (registration of FIR)

Any person familiar with the workings of a police station in Pakistan knows that the provisions of Section 154 Cr. P.C. are flouted and misused. Section 154 Cr. P.C. provides, *inter alia*, that every information given to an officer in charge of a police station relating to the commission of a cognizable offence, whether given in writing to him or reduced in writing by an officer in charge of a police station, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf. While this provision is mandatory in nature, often the concerned police station refuses to register the FIR even if the information provided to it relates to the commission of a cognizable offence. Khawaja Haris, learned Sr. ASC, noted in his report that in the year 2011 alone, out of 419,365 FIRs lodged in the Province of the Punjab, 28,787 (approximately 7%) were registered pursuant to orders of the Justices of Peace under Section

22-A (6) of the Cr. P.C. What is astonishing is that despite orders of the Justices of Peace, FIRs were not registered in 554 (approximately 2%) cases. It is thus clear that a number of persons suffer and are pushed into litigation because of failure of the police to register the FIR. Litigation too, it seems, does not guarantee relief. The Justice of Peace cannot issue coercive process for compliance of his orders. At best, learned Sr. ASC submits, the Justice of Peace can refer the matter to the higher officials of police for taking actions against the defaulting SHO under Article 155 of the Police Order, 2002, but such a direction to proceed against the official for misconduct is rarely implemented.

Another issue at this stage is the registration of false or vexatious complaints to pressurize and harass people. While, the Pakistan Penal Code provides for measures through Sections 182 and 211 to discourage and punish false complaints, it is common knowledge that very few cases involving such offences are filed and prosecuted. This must be unacceptable, especially given that Section 154 of the Cr.P.C. requires mandatory registration of FIR. If the Police therefore has no discretion in registering an FIR, action must be taken against those who abuse this provision of law and use the police as an instrument for their designs.

B. Investigation stage

While the registration of a FIR is mandatory, initiating investigation is not. Reading section 156 Cr.P.C with section 157 Cr.P.C. it appears that the officer in charge of a police station shall proceed to initiate investigation of a case only where, *inter alia*, from information received, he has reason to suspect the commission of an offence. This interpretation is further fortified when we read clause (b) of the proviso to sub-section (1) of section 157 Cr.P.C, which provides

that *"if it appears to the officer in charge of a police station that there is not sufficient ground for entering on an investigation he shall not investigate the case."* Yet, what we often find is that on registration of a FIR, the relevant police officer without application of mind directly proceeds to arrest the accused.

We have held time and again (see for instance Muhammad Bashir's case (PLD 2007 SC 539), that the police should not move for the arrest of the accused nominated in the FIR unless sufficient evidence is available for the arrest. Yet to our dismay we have to deal with such matters on a daily basis. Perhaps, as some of the reports referred to above point out, the issue lies in the fact that there are no real guidelines available to the police which would channel their discretion and judgment. This coupled with their lack of training, makes defective investigation almost a near possibility. In this regard, it is instructive to note the following observations of Khawaja Haris, learned Sr. ASC in his report:

"It is indeed a fact that even today an officer investigating a case of murder has no concept of (1) securing the scene of the crime so that the place where the occurrence has taken place as well as the surrounding area is not trampled or invaded by the general public before the investigation officer has had an opportunity to collect evidence from the place of occurrence, (2) how to secure incriminating articles, likes pieces of cloth, blood, fiber or hair etc from the place of occurrence and its surrounding area, (3) how to lift and secure fingerprints from various articles found inter alia at the scene of the crime and to get them examined and matched for purposes of investigation, (4) how to ensure that all incriminating articles are properly secured from the spot and delivered promptly and intact to a forensic laboratory and/or fingerprints expert in safe custody and without being tampered with, and to expeditiously

obtain the results from the forensic laboratory so as to be credibly admitted in evidence during the trial.”

The lack of training and emphasis on the development of specialized investigation officers and facilities, is perhaps indicative of the wider issue in policing: the police it appears is still largely used to secure the interests of the dominant political regime and affluent members of society, rather than furthering the rule of law. As a result, where, even in this debilitating environment, an honest and competent investigation officer is found, his work is thwarted at one juncture or another.

C. **Prosecution and trial**

In our order dated 15.01.2015, we noted how at least in the Punjab more than 65% of criminal cases do not result in conviction. The learned Prosecutor General Punjab also stated that in even those cases where a person has been convicted by the trial court, a substantial number are acquitted by the appellate forums. These figures are indicative of weak investigation and gathering of evidence which we noted above, but are also a result of serious deficiencies in our prosecution system. The following issues among others were highlighted by the various parties in this respect:

- i. Lack of cooperation between the police and prosecution at the investigation stage: there appears to be no standardized SOPs which guide the relationship between prosecutors and police officers and allow them to aid each other in the fair and timely investigation of the case.
- ii. Lack of training and competent prosecutors: prosecutors are not provided proper training and facilities. In addition, competent prosecutors because of lack of incentives resign from their service for better opportunities. There also appears to be no effective quality review system in place to check underperforming prosecutors. As a result, the best prosecutors are not being retained in service.

- iii. Protection of witnesses: we have been informed that in many cases the prosecution's case is damaged as key witnesses resile from their stated position because of pressure from the accused.
- iv. Adjournment requests by lawyers and delay in fixation of cases by judiciary: the defendant's lawyer deliberately at times delays resolution of cases. Delays and injustice is also caused as a result of backlog in the judicial system and frequent transfers of presiding judicial officers.

D. **Accountability and transparency**

During the course of the proceedings, we directed the Inspector General of Police Punjab to submit figures relating to actions taken against delinquent police officials. As a result, various reports were submitted regarding actions taken against delinquent police officials on the recommendation of the prosecution department. An overview of these reports would make two things clear. First, we noted that the figures submitted in these reports kept changing. We assume that such changes were made in good-faith to present the correct position before this court. But this exercise at the very least lays bare the attention which senior police officials place towards delinquents within their ranks: they did not even have for ready reference an accurate collation of complaints against police officials! Second, even if we accept the most conservative figures of complaints submitted before us, we note that in only 20 cases was some form of major punishment (reduction in rank and pay) awarded to delinquent officers (in another report this figure was stated to be 10). We must therefore ask whether sufficient measures are being taken by senior police officials to deter delinquent behavior and misconduct by police officials. 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.

Transparency in policing activities is another major issue. Public money is used to finance the police, which in turn is supposed to deliver services to the public.

At present however information regarding funds allocated to the police, police plans and annuals performance reports are not publicly available. How then are the public and state functionaries supposed to properly examine (and if required make changes to) the delivery of this important public service, if the relevant facts and figures are not available to them?

8. The issues noted above can be addressed, provided there is political and administrative action to transform the police and prosecution into an effective public service. There are many examples where we have seen this. The Police Order, 2002, is one such example of political will aimed at transforming the police. During the course of these proceedings, our attention was also drawn to various initiatives taken by the Punjab and KPK Governments towards making the police an effective public service. Regrettably however such actions are few and far between. Even in the case of the Police Order, 2002, it is discouraging to note that after the passage of the 18th Amendment, the provinces of Sindh and Balochistan abandoned the Police Order and shifted to a policing regime which is reminiscent of colonial times where the police was used to keep the 'natives' on a tight leash.

9. In some of our earlier orders, we have noted the high degree of political and administrative apathy which has translated into the failing criminal justice system before us. It must be emphasized that the failure to address individual grievances of citizens causes frustration amongst them which, in turn, may lead to lawlessness. It also needs to be emphasized that a functioning criminal justice system is directly linked to the enforcement

and realization of various fundamental rights of citizens such as Article 9, 10, 10A, and 14.

We can no longer stand idle as the nation suffers. It is therefore directed as under:

- i. A universal access number (UAN) and website should be provided to the general public for filing of complaints. The said website should be developed and be operational within three months from the date of this order. Till such time that the website has been launched, the provisions of Section 154 Cr. P.C. should be strictly adhered to and action should be taken against any police official who fails to abide by the said provision.
- ii. Serious notice should be taken of frivolous, false or vexatious complaints and where applicable cases should be registered under Sections 182 and 211 of the Pakistan Penal Code.
- iii. The principles laid out in Muhammad Bashir's case (PLD 2007 SC 539) should be strictly followed and no person should be arrested unless there is sufficient evidence available with the police to support such arrest. Where a person is unjustly deprived of his liberty, compensation will be required to be paid to him or her by the delinquent police officer. The affected person may approach the civil courts for appropriate remedy in this regard.
- iv. Adequate provision should be made for the training of police officers and the development of specialized investigation officers and facilities. In addition adequate funds should be made available to police stations and for investigation activities. The respective Provincial and Federal heads of police shall submit a report in court within three months from the date of this order which details the steps taken in this regard and the relevant police funds and personnel dedicated towards investigation activities, training of police personal, and development of forensic facilities.
- v. No police officer is to be transferred in breach of the principles laid out by this Court in the Anita Turab case (PLD 2013 SC 195). The respective Provincial and Federal heads of police shall submit a report in Court within one month from the date of this order which specifies the names and details of all police officers above BPS-17 who have been transferred or made OSD over the past three years and also provide reasons for the same.
- vi. Guidelines/SOPs should be developed to foster coordination between the prosecution and the police. The Attorney General and the respective Advocates General of each province shall submit the said guidelines/SOPs in court within three months from the date of this order.
- vii. Adequate funds should be dedicated towards the training and development of public prosecutors. The Attorney General and the respective Prosecutors General

- prosecutors; and (ii) accountability mechanisms and review systems of public prosecutors.
- viii. The Attorney General and the respective Advocates General shall submit a report in court within one month from the date of this order on the steps being taken to provide witness protection in their relevant jurisdiction and the funds dedicated for this purpose.
- ix. The respective bar councils may take appropriate action against lawyers who deliberately seek adjournments with a view to delay trial. Respective district judges are also directed to impose costs on such lawyers and hear criminal cases involving the liberty of persons on a day to day basis to the extent possible.
- x. Respective heads of police of the Federation and the Provinces shall submit a report within one month of the date of this order which details the relevant police complaints and accountability mechanisms in place and the actions taken under such mechanism against delinquent police officials. This information shall also be made publicly accessible in English as well as Urdu on their respective websites. The Attorney General and respective Advocates General shall submit a report detailing compliance in this respect within one month from the date of this order.
- xi. Police budgets (disaggregated by district and local police stations, functions, human resource allocation and a statement of their utilization), police plans and annual performance reports shall be made publicly accessible on the respective Federal and Provincial police websites and submitted in Court within one month of the date of this order. The Attorney General and respective Advocates General shall submit a report detailing compliance in this respect within one month from the date of this order.
- xii. The Attorney General and the respective Advocates General of the Provinces of Sindh and Baluchistan should submit in Court within one month from the date of this order reports which examine the constitutionality of the policing regime established by the Police Act, 1861, currently in force in Sindh and the Balochistan Police Act, 2011 currently in force in Balochistan. This report should *inter alia* state whether these policing statutes allow the constitution and organization of a politically independent police force which is consistent with the protection of the fundamental rights of citizens.
- xiii. The Federal and Provincial Ombudsmen should submit in Court within three months from the date of this order, good-administration standards for police stations and should also submit a report which outlines the measures being taken to curb maladministration in police stations.
- xiv. Provincial Information Commissioners should notify transparency standards relating to police services and functions and submit these standards in Court within three months from the date of this order.

- xv. The Law and Justice Commission of Pakistan shall prepare a consolidated report based on the various reports received by the Court till date and the proposals submitted by Khawaja Haris, learned Sr. ASC, detailing the relevant amendments which are required in legislation to improve the criminal justice system. The said report shall be submitted in court within three months from the date of this order. Copies of the said report shall also be sent to the National and Provincial Assemblies.

- 10. It is so ordered. Let the matter come up for hearing in the 3rd week of October, 2015.

Chief Justice

Judge

Judge

ISLAMABAD, THE
4th September, 2015
A. Rehman

APPROVED FOR REPORTING.