

Judgment Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.3966 of 2022
(Khurram Khursheed v. Ex-Officio Justice of Peace, etc.)

JUDGMENT

Date of hearing:	<u>05.11.2025</u>
Petitioner by:	Rao Jamshed Ali Khan, Advocate
State by:	Mr. Bashir Ahmed Buzdar, AAG Mr. Khaliq uz Zaman, Inspector Legal
Respondent by:	Mr. Fayyaz Mansab Sukhera, Advocate

MUHAMMAD JAWAD ZAFAR, J.: Through this Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 (“Constitution”), the Petitioner seeks setting aside of Order dated 11.03.2022 passed by the learned Ex-Officio Justice of Peace, District Khanewal (“Justice of Peace”) whereby the learned Justice of Peace allowed petition under Section 22-A(6) of the Code of Criminal Procedure 1898 (“Code” or “Cr.P.C”) of respondent No. 4 and issued direction to ‘*SHO, PS Railway ... to record version of petitioner* (present respondent No. 4) u/s 154 Cr.P.C’ and respondent No. 3, namely, DSP, Railway Police, Multan was directed to supervise the registration of case (“impugned order”).

2. The synoptical facts and circumstances, relevant, yet shorn of unnecessary details, giving rise to this petition, as are, or may, be necessary for the disposal of the same are that the petitioner had involved respondent No. 4 and his father in crime report bearing FIR No. 14/2021 dated 03.03.2021 for offences under Section 5(2) of Prevention of Corruption Act, 1947 read with Section 120,121 of the Railway Act and 406, 380, 353, 506, 186 and 34 of the Pakistan Penal Code 1860 (“PPC”) registered with Police Station Railway Khanewal

(“**Crime Report**” or “**FIR**”) *via* supplementary statement but when they were found not involved in the commission of offences mentioned in the Crime Report, brother of respondent No. 4 was involved in the said case by the petitioner and he too was found not involved *vide* case diary No. 16 dated 03.04.2021. Thereafter, respondent No. 4 was arrested and kept confined in Police Station Railway Khanewal, where he was subjected to torture and nude pictures of respondent No. 4 were also captured by the petitioner. On the next day, when respondent No. 4 was produced before the learned Area Magistrate, Khanewal for the purpose of obtaining remand, the learned Magistrate *vide* Order dated 02.02.2022 ordered for medical examination of respondent No.4 and after medical examination, it was found in the MedicoLegal Examination Certificate (“**MLC**”) that respondent No. 4 had sustained injuries. Against these facts, respondent No. 4 instituted a petition under Section 22-A(6) of the Code before the learned Justice of Peace and *vide* impugned order, the aforementioned direction was issued for registration of case against the petitioner in terms of Article 155(1)(c) of the Police Order 2002 (“**Police Order**”).

3. The record of the case was perused and the relevant provisions of the law were meticulously scrutinized with the able assistance of learned counsel for the parties and learned Law Officer, whereby this Court is of the view that the following questions of law need to be determined, as *infra*:

1. Whether “railway police”, established and governed by the Pakistan Railways Police Act 1977 (“**Railway Police Act**”) fall within the purview of “police authorities” in terms of Section 22-A(6) of the Code of Criminal Procedure 1898 (“**Code**” or “**Cr.P.C**”)?
2. If in the affirmative, then whether the learned Justice of Peace can issue direction in terms of clause (iii) of Section 22-A(6) of the Code against delinquent “railway police” Official/Member for offence under Article 155(1)(c) of the Police Order?
3. Whether offence under Torture and Custodial Death (Prevention and Punishment) Act 2022 (“**Custodial Torture Act**”) are in addition to and not in derogation of offence in

terms of Article 155(1)(c) of the Police Order?

Therefore, it would be appropriate that these queries should be addressed properly.

4. Section 22-A(6) of the Code stipulates that an ‘*ex-officio justice of peace may issue appropriate directions to the police authorities*’ with regards to ‘*non-registration of a criminal case*’ and ‘*neglect, failure or excess committed by a police authority in relation to its functions and duties*’. The question of law before this Court is whether or not “railway police” would fall within the ambit of “police authorities” as mentioned in the provision *ibid*. In order to address said query, provisions of the governing law, the Railways Police Act, were examined, and the same are reproduced *infra* for reference:

‘4. Constitution superintendence and administration of the Pakistan Railways Police.—

(1) The Pakistan Railways Police shall be constituted in such manner as may be prescribed by rules.

(2) The head of the Pakistan Railways Police shall be an Inspector-General who shall administer it in accordance with the provisions of this Act and the rules and regulations, and such orders and instructions as may be made or issued by the Federal Government from time to time.

9. Powers of officers and members of the Pakistan Railways Police.—

(1) The Inspector General shall exercise the powers of an Inspector-General of Police under the Police Act, 1861 (V of 1861).

(2) The Inspector-General shall, in respect of the officers, members and ministerial staff, have all the powers conferred on him by or under this Act.

(3) An officer or member shall, in respect of 1[Railway],—

(a) for the purpose of inquiry, investigation, arrest, trial and prosecution, exercise all the powers conferred on an officer or member of Police under the Police Act, 1861 (V of 1861), and the Code 2[* * * *] the Railways Act, 1890 (IX of 1890), this Act and the rules and regulations; 3[* *]*

(b) use such arms, ammunition and equipment as may be authorised by the Inspector-General, for the purposes of this Act, 4[; and]

(c) for the purpose of arresting without warrant any person whom he is authorised by law to arrest and who is attempting to escape, or has escaped, immediately after the commission of an offence, have the power to pursue such person into any place in

Pakistan.]

(4) *Officers superior in rank to an officer-in-charge of a Railway Police Station may exercise the same powers, throughout the local areas or jurisdictions to which they are appointed, as may be exercised by such officer within the limits of his station or jurisdiction.*

Explanation.—For the purpose of the exercise by the officers and members of the powers of an officer-in-charge of a Railway Police Station under this Act, ‘Police Station’ means any place declared, generally or specially, by the Federal Government to be a Police Station within the meaning of the ‘Code’.

(5) *If any officer or member suspects that any property is stolen property and that it is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such officer or member may, by order in writing, direct the owner or any person who is apparently for the time being in possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of that officer or member and such order shall be subject to any order made by the Court having jurisdiction in the matter.*

(6) *Any contravention of an order made under sub-section (5) shall be punishable with rigorous imprisonment for a term which may extend to one year, or with fine, or with both.*

(7) *An officer or an officer-in-charge of a Railway Police Station may, for the purposes of this Act, call upon the Provincial Police and the District Magistrate concerned to come to the help of the Pakistan Railways Police and in such a case the Provincial Police and the District Magistrate shall act in the same manner as they act within their own jurisdiction for the maintenance of law and order, for the arrest of offenders and for recovery of persons and property.*

2. Definitions.—

(i) *‘Provincial Police’ means the police constituted by a Provincial Government under the Police Act, 1861 (V of 1861).*

3. Power to constitute, control and maintain the Pakistan Railways Police and its functions.—

(2) *Without prejudice to the powers conferred on it by or under this Act, the Federal Government may, in relation to the Pakistan Railways Police exercise all powers which, under the Police Act, 1861 (V of 1861) and the Code, are exercisable by a Provincial Government in relation to the Provincial Police’.*

5. Perusal of Section 4(2) of the Railway Police Act provides that the administration of the “railway police” is vested in the Inspector General of Railway Police, who exercises the powers of

an Inspector-General of Police under the Police Act 1861 (“**Police Act**”) and subsection (3) of Section 9 of the Railway Police Act states that a “railway police” officer shall have and exercise all the same powers as conferred on an officer or member of Police under the Police Act and the Code. Code has been defined under the Railway Police Act under clause (b) of Section 2 to connote ‘*the Code of Criminal Procedure, 1898 (Act V of 1898)*’. Similarly, explanation to subsection (4) of Section 9 states that ‘‘*Police Station*’ means any place declared, generally or specially, by the Federal Government to be a Police Station within the meaning of the ‘Code’’’. It is evident from a conjunctive reading of the self-explanatory provisions reproduced hereinabove that the status, functions, rights, privileges and liabilities of “railway police” are identical to those of the provincial police officers under the Code. In other words, since “railway police” are vested with the same powers as those exercised by Provincial Police officers under the Code, they will fall within the purview of the term “police authorities” used in Section 22-A(6) of the Code.

6. In similar circumstances, when the same question came before this Court with regards to the Federal Investigation Agency (“**FIA**”), this Court after examining the provisions of the Federal Investigation Agency Act 1974 (“**FIA Act 1974**”), in the case of “National Bank of Pakistan and another v. The State and 4 others” (**PLD 2021 Lahore 670**), held as under:

‘11. Therefore, when status, functions, rights, privileges and liabilities of officials of F.I.A. are same as that of Provincial Police officer under the Cr.P.C., ex-officio justice of peace is very much competent to issue directions to the respondents as it can issue to the Provincial police and contention of the learned counsel for the petitioners regarding lack of jurisdiction of ex-officio justice of peace in matters of F.I.A. is not tenable.

12. The term 'police authorities' used in section 22-A(6) Cr.P.C. is wide enough to include FIA officials and does not only connote provincial police authorities especially when FIA authorities can use all the powers of a police officer of provincial police under the Cr.P.C. There is no quibble that there may be some provisions of Act of 1974, which one may

find in direct conflict with the provisions of Cr.P.C. and in that case, being special enactment, provisions of the Act of 1974 shall take precedence but this is not the case in instant lis as no provision of the Act of 1974 contradicts the powers of ex-officio justice of peace granted under section 22-A(6), Cr.P.C. This view is further fortified by the dictum in Makhdoomzada Syed Mushtaq Hussain Shah's case cited as (PLD 2013 Islamabad 26), where Islamabad High Court has vividly held that directions under section 22-A(6), Cr.P.C can be issued to F.I.A. as status of F.I.A. is also of police.

13. Same view was taken by this Court in Ch. Abdur Rehman's case, reported at (2010 MLD 1346) that an aggrieved person can also seek his remedy against F.I.A. by filing complaint before the ex-officio justice of peace. Therefore, an aggrieved person is fully competent to file a complaint under section 22-A(6), Cr.P.C with the ex-officio justice of peace against any neglect, failure, or excess committed by the F.I.A. authorities and can conveniently get adequate redressal of his grievance from that quasi-judicial forum'.

The *ratio decidendi* laid down in “National Bank of Pakistan and another v. The State and 4 others” (**Supra**) was subsequently followed in “Munir Ahmad Bhatti v. Director, FIA Cyber Crime Wing, Lahore” (**PLD 2022 Lahore 664**). Having read the judgments *supra* passed by this Court, particularly when the holding therein regarding the applicability of subsection (6) of Section 22-A of the Code with regards to FIA has an unmistakable affinity with the “railway police” and amply closely to it, there is no reasonable cause for this Court to differ from the reasons and findings given therein and hold otherwise in the present *lis*. As a consequence thereof, the learned Justice of Peace is competent to issue directions to the “railway police” in terms of subsection (6) of Section 22-A of the Code because they would, for all sense and purpose, be “police authorities” under the provision *ibid*.

7. The next question before this Court is whether the learned Justice of Peace can issue direction in terms of clause (iii) of Section 22-A(6) of the Code against delinquent “railway police” officer(s) for offence under Article 155(1)(c) of the Police Order.

8. Police authorities, in this *lis* the “railway police”, are under a duty to protect the rights and privileges of a person taken into custody. To this end, Article 14 of the Constitution provides that ‘*no person shall be subjected to torture*’ and when railway officials torture a person in their custody, for the purpose of extorting evidence or otherwise, not only is the evidence obtained under duress unreliable while simultaneously it undermines the integrity of the criminal justice system, but the same also results in contravening of the aforementioned cardinal right, as enshrined in the Constitution of the person under custody, in addition thereto, constitutes the commission of criminal acts. It follows that when police authorities contravene Article 4(1)(c) of the Police Order, they become liable to criminal liability in terms of Article 155(1)(c) of the Police Order, along with subject to departmental liability in terms of Article 113 of the Police Order. The reason is that as soon as a police officer takes a person into custody, Article 4 of the Police Order, on the “Duties of police” is triggered. Article 4(1) of the Police Order is reproduced *infra*:

‘*Subject to law, it shall be the duty of every police officer to—*
(c) *ensure that the rights and privileges, under the law, of a person taken in custody, are protected*’. [emphasis supplies]

This may be substantiated when examined from a different lense. The term “law” used in Article 4 of the Police Order does not merely connote statutory law or constitutional protection but is also inclusive of principles of law laid down by judicial pronouncements/judge-made law. The larger bench of the Honourable Supreme Court of Pakistan held in “Government of West Pakistan And Another v. Begum Agha: Abdulkarim Shorish Kashmiri” (**PLD 1969 Supreme Court 14**) that: ‘*law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law this country including even the judicial principles laid down from time to time by the Superior Courts*’. Reliance is also placed on the cases of “Kundan Bibi v. Walayat Hussain, Controller of Estate Duty, Government of Pakistan, Karachi” (**PLD 1971 Lahore 360 (dB)**); and, “Farhat Nasreen v. Muhammad Hussain” (**PLD 1997 Karachi 204**). In “Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro” (**2010 SCMR 624**), the honourable Supreme Court observed:

'It is noted that the fact that the respondent had received injuries from the hands of public, complainant and P.Ws of Crime No.99 of 2009 is specifically mentioned in the F.I.R. and memo of arrest of the respondent. However, only the seat and number of injuries were not mentioned in the memo of arrest. This can at the most be treated as irregularity and for that Police Order, 2002 and rules can adequately deal with the situation when any police officer has failed to perform his duties within the scope of Article 4 of Police Order. For such violation, a police officer can be punished by a Magistrate under section 155 of the said Order or disciplinary action can be taken by the competent authority of police department as provided under Article 113 of the said Order and appropriate rules'. [emphasis supplies]

Therefore, in view of the above, inflicting torture on an under-custody person by “railway police” would instantly and without fail attract sanction in terms of Article 155(1)(c) and the Justice of Peace is competent to issue direction for registration of case against the delinquent officer because, as already held in “Muhammad Usman v. Additional Sessions Judge, Rawalpindi and 3 others” (**2022 YLR 1131 Lahore (dB)**) at paragraph No. 33 and “Zulfiqar v. ASJ/Ex-officio JOP, Lahore” (**2021 PCr.LJ 1779 Lahore = PLJ 2021 Lahore 951**) at paragraph No. 12, offence under Article 155 of the Police Order is cognizable. In “Zulfiqar v. Additional Sessions Judge/Ex-Officio Justice of Peace, Lahore and 2 others” (**Supra**) it was further held that:

'On receipt of information and after inquiry, if he finds that an offence has been committed or any wrong persists or is repeated, he can order for registration of FIR under Article 155(1)(C) of Police Order which is a cognizable offence now.⁶ [6. KLR 2015 Criminal cases 211; PLJ 2014 Lahore 161; 2012 PCr.LJ 1526; 2006 MLD 855; PLD 2005 Lahore 470; PLD 2005 Karachi 285.]'

Additionally, it has also been observed that the overt act of the petitioner, *prima facie*, also attracts the provision of Article 156 of the Police Order, which provision in clause (d) provides that whoever ‘inflicts torture or violence to any person in his custody’ shall ‘be punished with imprisonment for a term, which may extend to five years and with

fine'. The Honourable Peshawar High Court in "Andaz Khan v. Salma Gul and 2 others" (**2019 MLD 7 Peshawar**) upheld the order of learned Ex-Officio Justice of the Peace holding that the offence under Article 156 of the Police Order is cognizable. The decision of "Andaz Khan v. Salma Gul and 2 others" (**Supra**) was later followed by an Honourable Division Bench of this Court in "Muhammad Usman v. Additional Sessions Judge, Rawalpindi and 3 others" (**Supra**).

9. At this junction, the learned counsel of the Petitioner brought the attention of this Court to the provision of Section 11 of the Railway Police Act and vehemently averred that no direction could be issued due to the embargo contained therein. One of the most celebrated principles of statutory interpretation is that a statute is to be read as an organic whole and its provisions, especially those closely related to each other, are to be harmoniously reconciled instead of making out inconsistencies between them. In "Saudi Pak Industrial and Agricultural Investment Company (Pvt.) Ltd., Islamabad v. Messrs Allied Bank of Pakistan and another" (**2003 CLD 596 Supreme Court**), the Honourable Supreme Court held that:

'it is a fundamental principle of interpretation of documents and statutes that they are to be interpreted in, their entire context following a full consideration of all provisions of the document or statute, as the case may be, that every attempt shall be made to save the document and for this purpose a difference between general statements and particular statements of the document be differentiated properly, to save the document rather to nullify it, that no provision of the document be read in isolation or in bits and pieces, but the entire document is to be read as a whole to gather the intention of the parties, that the Court for this purpose can resort to the correspondence exchanged between the parties, that the Court shall lean to an interpretation, which will effectuate rather than one, which will invalidate an instrument'.

It is also a settled principle of interpretation that where the intention of the legislature is clear and so is the object for which the law has been enacted the Courts are not allowed to interpret such a law in a manner which could impede or defeat the object for which such law has been

enacted. The Honourable Supreme Court in “Bank of Punjab and another v. Haris Steel Industries (Pvt.) Ltd. and others” (**PLD 2010 Supreme Court 1109**) observed that ‘*in view of the fact that no interpretation was permissible which could have effect of defeating the clear intention and object of legislature and finally in view of, the, fact that what could not be achieved directly could not be allowed to be accomplished indirectly*’. Further, it is trite that the internal aid of interpreting any statute or its provision can be derived primarily from the statute itself including its preamble, illustrations, headings, marginal notes, punctuation, transitory provisions, etc. Reliance is placed upon “Mst. Rehmat Begum v. Mehfooz Ahmed and others” (**PLD 2024 Supreme Court 1108**). In “Messers Sadiq Poultry (Private) Limited v. Federation of Pakistan and others” (**PLD 2025 Lahore 57**), this Court held that ‘*the preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law*’. Similarly, in “Sui Northern Gas Pipelines Ltd. v. Wafaqi Mohtasib and others” (**2024 CLC 1787 Lahore**), it was observed that ‘*[t]hough the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law*’. Reliance is also placed upon “Director General, FIA and others v. Kamran Iqbal and others” (**2016 SCMR 447**).

10. In view of the aforementioned principles of statutory interpretation, the provision of Section 11 of the Railway Police Act was examined in light of the preamble of the Railway Police Act and it was observed that it pertains to execution of duties, orders and instructions issued by the competent authority and violations in terms of subsection (3) of Section 11 of the Railway Police Act, to which the embargo of subsection (4) of Section 11 of the Railway Police Act applies, to instances contained therein, and not otherwise, which comprise of ‘*violation of duty or wilful breach or neglect of any provision of this Act or of any rule or regulation or lawful order made by a competent*

authority, or who withdraws from his duties without permission, or who, being absent On leave, fails, without reasonable cause, to report himself for duty on the expiration of such leave, or on being recalled to duty earlier, or who engages without authority in any employment other than his duty under this Act, or Who is guilty of cowardice, or who offers any unwarrantable personal violence to any person in his custody’. A harmonious interpretation whereby no provision is rendered nugatory and legislative intent behind the enactment is not defeated would be that instead of departmental proceedings under Article 113 of the Police Order, the same would be conducted under Section 11 of the Railway Police Act, however, the provision of Article 155(1)(c) would still apply and the delinquent “railway police” officer can be prosecuted thereunder because the term “duty”, as finds mention in subsection (1) of Section 11 of the Railway Police Act, is limited to obeying and executing orders and instructions issued by the competent authority, and not otherwise. Further, the objection *qua* jurisdiction of the learned Justice of Peace in terms of Section 25 of the Code is misconstrued. It is self-explanatory, yet for the sake of brevity clarified, that the provisions of the Code and Police Order are applicable to all “police authorities”, irrespective of whether they are controlled by the province or federation or whether they are functioning and operating in the province alone or in the whole of the federation. Territorial jurisdiction of the learned Justice of Peace over a given region need not be needlessly conflated with the authority over a statutory body created under an enactment by either the federation or province and control exercised by the said governments.

11. The last question before this Court, namely, whether offence under Torture and Custodial Death (Prevention and Punishment) Act 2022 (“**Custodial Torture Act**”) is in addition to and not in derogation of offence in terms of Article 155(1)(c) of the Police Order, in view of the deliberation made hereinabove, specifically, that “police authorities” are under a bounden duty to ‘*ensure that the rights and privileges, under the law, of a person taken in custody, are protected*’. The term “law” here would include the Custodial Torture Act as it is statutory law, as such, this query is also answered in the affirmative. In view thereof, not only would the

delinquent “police officer” be liable to be prosecuted under the Police Order in terms of Article 155(1)(c) and Article 156(d) but also under the relevant provisions of the Custodial Torture Act asw and where applicable.

12. Reverting to the case at hand, the learned Justice of Peace was justified in passing the impugned order by observing that the allegations levelled by respondent No. 4 against the petitioner, duly supported by material available on record, specifically, the MLC, constitute cognizable offence(s). In view thereof, this petition being devoid of any merit is **dismissed**.

(MUHAMMAD JAWAD ZAFAR)
JUDGE

Approved for reporting.

Judge

The judgment was announced on 05.11.2025,
prepared and signed on 17.11.2025.

Ejaz*