

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.3555/2019

Legal Aid Foundation for Victims of Rape and Sexual Assault and others

Versus

Federal Government, etc.

Petitioner By : Mr. Faisal Siddiqi, ASC, assisted by Ms. Sheeza Ahmed and Ms. Natalya Kamal, Advocates.

Respondents By : Mr. Fazal Ur Rehman Khan Niaz, Learned Deputy Attorney General.
Mr. Zohaib Hassan Gondal and Ms. Khadija Ali, State Counsels.
Mr. Arshad Nazir Mirza, Amicus Curiae.
Mr. Fahad Azhar, Advocate.
Muhammad Riaz, Inspector, Fazal, S.I and Shahzad, ASI.

Date of Hearing : 19.09.2022.

AAMER FAROOQ, J. – This is a public interest litigation initiated by the Legal Aid Foundation for Victims of Rape and Sexual Assault and others seeking multiple declarations and directions some in general and other specifically pertaining to case FIR No.99/19, dated 19.05.2019, under sections 201, 302, 364-A, 365-B, PPC, Police Station Shahzad Town, Islamabad.

2. The facts, which prompted the filing of the instant writ petition, are that apparently on 15.05.2019, Farishta Bibi, a minor child, left home to go to a friend's house but did not return home; the complainant i.e. Farishta's father, went to Police Station Shahzad Town, Islamabad to lodge complaint but the same was not registered despite his best efforts. On

17.05.2019, second visit was made by the complainant upon which the police took the details of Farishta Bibi from the complainant and prepared a report regarding the missing child but case was not registered; third visit of the complainant was made on 18.05.2019 who implored the authorities for registration of the case by even handing over the photographs of his minor daughter whereupon the police visited the house of the complainant. On 19.05.2019, case was registered bearing number and details as mentioned above. On 20.05.2019, Farishta Bibi's dead body was found which was taken to the Polyclinic Hospital at about 10:50 pm but post-mortem was conducted on 21.05.2019 belatedly. The referred facts and attitudes of the police authorities resulted in hue and cry and the administrative authorities of Islamabad Capital Territory faced criticism for failing to take prompt action in registering the complaint of Farishta Bibi's father. This led to appointment of a commission by the Magistrate to probe into the reasons for delay in registration of the case and post-mortem. Report was furnished wherein a number of issues were highlighted and deficiencies pointed out in the police system of Islamabad Capital Territory and the state of affairs of the administration and other governmental bodies. Report under section 173 Cr.P.C was filed by the police whereby the arrested accused was believed to be guilty who on the basis of the report was subjected to trial in the case and, during pendency of the instant petition, was convicted. In view of the facts, which led to public criticism of the government authorities and in particular the police, the instant public interest litigation has been initiated seeking declarations and directions for the betterment of the Criminal Justice System.

3. Mr. Faisal Siddiqi, ASC, appearing for the petitioner, *inter alia*, contended that this Court being a constitutional Court has jurisdiction to

issue directions for enforcement of the fundamental rights under Article 199 (1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973. Reference was made to Human Rights Commission of Pakistan and 2 others versus Government of Pakistan and others (PLD 2009 SC 507) and Karamat Ali and others versus Federation of Pakistan through the Secretary, Ministry of Interior and others (PLD 2018 Sindh 8). It was submitted that time and again, the Constitutional Courts have issued guidelines in relation to investigation and trial in rape and sexual violations cases, hence the same can be done by this Court in the facts and circumstances, as in the instant matter there was considerable delay in registration of the case. Reference was made to Salman Akram Raja and another versus Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others (PLJ 2013 SC 107), Kainat Soomro and 2 others versus Province of Sindh through Chief Secretary and 4 others (PLD 2020 Sindh 611) and Kainat Soomro versus Province of Sindh (C.P. No.5920/2015). It was further contended that in Judicial Inquiry Report, a number of recommendations have been made, which are pertinent for improving the overall system of the criminal administration and judicial system. Learned counsel took the Court through the findings recorded in the Judicial Inquiry Report and pleaded that the same be enforced through the judgment of the Court for effective redressal of the grievance of the public, especially in cases of rape and other sexual violence. Learned counsel also drew attention of the Court towards the directions of the august Apex Court in Salman Akram Raja and another versus Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others (PLJ 2013 SC 107), Kainat Soomro and 2 others versus Province of Sindh through Chief Secretary and 4 others (PLD 2020 Sindh 611) to contend

that directions made in the referred judgments are also very pertinent for ensuring the administration of justice on the criminal side as well as investigation and conduct of the police on the administrative side. It was added that Zainab Alert, Response and Recovery Act, 2020 by enforcing the recommendations made by the respondents is also pertinent and be accordingly enforced.

4. This Court, during the course of proceeding, appointed Mr. Arshad Nazir Mirza, as *Amicus Curiae*, to assist the Court in the matter and he furnished his written opinion. The salient features of the submissions on behalf of the *amicus curiae* are that the principles regarding registration of the FIR enshrined in law are very clear and there are two conditions precedent for registration of a case i.e. information must be provided and it must relate to a cognizable offence on the face of it. Reference was made to Muhammad Yousaf versus Inspector General of Police and 4 others (PLD 1997 Lahore 135). It was contended that even if the police officer considers the information as false, FIR must be registered. Reference was made to Sawant versus SHO, Police Station Saddar, Kasur and another (PLD 1975 Lahore 733). It was submitted that refusal to register FIR amounts to denial of lawful duty conferred on the police officer by law. Reference was made to Syed Saeed Muhammad Shah and another versus The State (1993 SCMR 550) and Shafiqur Rehman versus Jan Bahadur Khan, SHO Zaida and 6 others (1998 MLD 1161). It was submitted that refusal to register FIR or any negligence on part of the police officer would make such police officer amenable to action under section 29 of the Police Act, 1861. Reference was made Oazi Muhammad Javed versus SSP Gujranwala (PLJ 1997 Lahore 1547). It was stated that delay in lodging of FIR creates doubt in the credibility of the same and speaks volume on the

veracity of the prosecution version. Reference was made to Mst. Asia Bibi versus The State and others (PLD 2019 SC 64) and Altaf Hussain versus The State (2019 SCMR 274). It was contended that under section 551 Cr.P.C, any police officer superior to officer in-charge of a police station may exercise the same power as of the officer in-charge of the police station, hence delay or violation of duty makes the superior officer also liable for action. Learned *Amicus Curiae*, in his report, submitted that it is a statutory obligation of the police under section 154 Cr.P.C and 156 *ibid* to investigate a cognizable offence as per the decision in case reported as Muhammad Awais Khan versus SHO, Police Station City Mian Channu, District Khanewal and 2 others (2018 PCr.LJ 1128). Learned *Amicus Curiae* took the Court through the case law highlighting the effective investigation as per the principles laid down in the decisions handed down by various Courts, including cases reported as Abdul Latif versus Inspector General of Police and other (1999 PCr.LJ 1357), Allah Bakhush versus S.H.O and another (2013 MLD 885) and Madawa through President versus Inspector General of Police, Punjab and 15 others (PLD 2013 Lahore 442). It was submitted that registration of FIR means nothing and it is incumbent upon the Investigating Officer to embark upon an exercise to discover the actuality of the matter, irrespective of the version named by the complainant/informant. Reliance was placed on Mst. Sughran Bibi versus The State (PLD 2018 SC 595). It was contended that in the facts and circumstances, legal duties have been breached by the respondents. In this behalf, reference was made to In the matter of Human Rights Case No.20107-G/2013 (2014 SCMR 287) to highlight that as per Article 9 of the Constitution, it is the duty of the State to ensure protection of life of citizens by following the relevant laws which have been made to protect

and preserve the life. It was further contended that no person or institution could be given the right to jeopardize a life and expose a person to danger due to malafide intent or heedless attitude. Reference was made to *Sheikh Ahsan ud Din, Advocate and 2 others versus Federation of Pakistan and others (2014 CLC 451)*. It was also contended that Article 10-A of the Constitution which provides right of fair trial does not confer that right to accused alone but also to the complainant and in a way to the victim.

5. The learned Amicus Curiae's report then highlighted the shortcomings in the investigation conducted by the police and made recommendations.

6. Learned State counsel appearing for Islamabad Capital Territory Police and ICT Administration admitted that there are lapses in the investigation system and conduct of the police and submitted that efforts are being made to improve the setup and bring betterment in the same; even learned Deputy Attorney General as well as representatives of the respondent departments also had not much to say about the process which was adopted in the registration of the case.

7. Rival submissions of the parties have been heard and their rival details noted and considered.

8. The background, leading to filing of the instant petition, has been mentioned hereinabove, hence need not be reproduced. In the backdrop of the same, the relief sought from this Court, in the instant petition, is reproduced below:-

- "a) *Declare that the Respondents have failed in their constitutional and legal duty to protect the fundamental rights of the murdered rape victim i.e. Farishta Bibi, and of the citizens of the Islamabad Capital Territory;*
- b) *Direct the Respondents to ensure effective investigation and prosecution in relation to the case of murdered rape victim Farishta Bibi, arising out of FIR No.99/19, P.S Shahzad Town, Islamabad, and to submit monthly reports to this Hon'ble Court, till the completion of the trial;*

- c) Direct the relevant trial court to complete the trial of murder victim Farishta Bib, arising out of FIR No.99/19, within sixty days from the disposal of the instant petition, and to submit fortnightly reports to this Hon'ble Court till the decision of the case;
- d) Direct the Respondents to implement the recommendations of the Judicial Inquiry into the matter of Ms. Farishta Bibi in Case FIR No.99/19, dated:19.05.2019 (Police Station Shahzad Town, Islamabad), dated: 31.05.2019, and to submit monthly reports regarding such implementation to this Hon'ble Court till the full implementation of these recommendations;
- e) Direct the Respondents to implement the following recommendations, in addition to the recommendations of the aforementioned Judicial Inquiry, for the prevention of and effective action against the crime of child sexual assault, rape and murder, and to submit monthly reports to this Hon'ble Court till the full implementation of these recommendations:
 - i) Any complaint regarding the suspicion of an offence against a child be registered immediately, in a separate notebook and in the presence of a witness, and all apparatus that should be functional be immediately deployed and activated in order to search for the missing child and/or apprehend the perpetrator;
 - ii) The safety of the accused in police custody should be ensured at all times;
 - iii) The investigation of a case of a crime that is sexual in nature and/or pertains to a child should be assigned to a female police officer and/or a person duly sensitized on the issues and implications pertaining to such cases;
 - iv) No child survivor may ever be held in police custody overnight, even if it may be on the pretext of a medical examination;
 - v) Every victim or survivor of a sexual offence should be afforded a medico legal exam (consisting of a physical exam, DNA testing and chemical testing) within 24 hours of their person being found, and if the medical exam is delayed to 48 hours, then reasons for delay should be recorded in writing;
 - vi) All efforts should be made to provide medical aid, testing for any sexually transmitted diseases and pregnancy, and a trained therapist to a child survivor before and after the medical exam, and reasons for failure to do so should be recorded in writing;
 - vii) For every child survivor, their statement under section 164 of the Criminal Procedure Code, 1998:
 - a. Should be recorded within 10 days of the perpetration of the crime or within 10 days of the recovery of the child,
 - b. The statement should be recorded in a child friendly atmosphere or at the hospital if need be,

- c. *The presence of a parent or trusted person may only be refused if the Magistrate believes the child stands to be intimidated or uncomfortable due to such presence;*
- d. *The statement should be recorded verbatim and be supplemented by an audio recording;*
- viii) *The child survivor should never be placed in the direct presence of the accused either during the police investigation or the trial in any circumstances;*
- ix) *Respondent No.2 should set up community policing initiatives in order to gain citizens' assistance in prevention of crimes against children and maintenance of law and order;*
- x) *The Gender and Child Unit of the Respondent No.2 should maintain separate list of repeatedly accused persons which should be shared with all police stations;*
- f) *Direct the Respondent No.2 and 3 to submit a detailed report of all cases involving sexual assault and rape against women and children instituted in the Islamabad Capital Territory during the last five years, for passing of appropriate orders by this Honourable Court for any inquiry/investigation or expeditious disposal in this regard;*
- g) *Grant such further, additional or alternative relief as the Hon'ble Court may deem fit and proper in the circumstances of the case."*

Reading of the above prayer clearly shows that clause (a) to (d) pertains specifically to Farishta Bibi's case. In Clause (e) and onwards, a generalized relief has been sought in terms of directions. As noted above, during the course of proceedings, in the instant petition, trial in Farishta Bibi concluded and accused was convicted and awarded capital punishment, hence the relief sought with respect to direction to register Farishta Bibi's case has borne fruit and petition has become infructuous as such.

9. Article 9 of the Constitution provides security of person and under the same, no person is to be deprived of life and liberty save in accordance with law. Article 10-A confers right of fair trial. Undoubtedly, this Court has jurisdiction to issue direction under Article 199 (1) (c) of the Constitution for enforcement of the fundamental rights. Reference is made to Human Rights Commission of Pakistan and 2 others versus Government of

Pakistan and others (PLD 2009 SC 507) and Karamat Ali and others versus Federation of Pakistan through the Secretary, Ministry of Interior and others (PLD 2018 Sindh 8). Lapses on part of the police authorities in registration of cases, conducting sloppy investigations and submission of defective report under section 173 Cr.PC which subsequently results in rather poor trial is not something novel but rather, it is observed with dismay, has become usual practice. This state of affairs rampant in the criminal administration of justice has led to intervention by superior courts time and again, directing the relevant authorities to adopt corrective measures and take steps for the improvement of the system. The recommendations handed down in the Judicial Inquiry Report reflect some issues and makes observations regarding improvement in the matter. The salient features of the recommendations made in the Judicial Inquiry Report are reproduced below:-

- "1. *Islamabad Capital Territory Police shall ensure:*
 - a. *The functioning of cameras installed in police stations and ensure their live connectivity with safe city or digital control room.*
 - b. *The functioning of recording devices and dispatcher for wireless call.*
 - c. *That the major penalties be imposed on police officers who failed to record FIRs promptly.*
 - d. *That penalties be imposed on senior police officers for failing to supervise their subordinate officers who are responsible for delay in recording of FIR.*
 - e. *Effective supervisory mechanism be developed to prevent incidents of negligence in future.*
2. *The SOPs of Gender & Child Protection Unit shall be revised and child rape, child molestation, sexual harassment of children shall be included in the SOP of Gender and Child Protection Unit.*
3. *Data base of individuals (record holders) involved in offences against children shall be maintained at Gender and Child Protection Unit and at all Police Stations in Islamabad Capital Territory.*

4. *Islamabad Capital Territory Police should issue written instructions to all Zonal SPs to conduct regular inspection of their Police Station under Chapter 22 of Police Rules, 1934 and devise a mechanism to monitor DO Dairy on daily basis.*
5. *Inspector General of Police and Deputy Inspector General Police (Operations) of Islamabad Capital Territory shall spare time to conduct regular inspection of Police Stations.*
6. *Disciplinary proceedings shall be initiated against the MLOs and displeasure notices be issued to the supervising officer of the Medical facility for causing delay in Postmortem.*
7. *Secretary Ministry of National Health Services, Regulations and Coordination, shall ensure availability of the MLO round the clock or on call at all the Government Hospital and at least at each Taluka or Town level Hospital. Such Hospitals should be notified in each District so that victim is taken to the nearest Hospital.*
8. *Secretary Ministry of National Health Services, Regulations and Coordination, shall also issue written instructions to do away with the archaic practice of performing Postmortem in day time only.*

Likewise, the Hon'ble Supreme Court of Pakistan in judgment reported as

Salman Akram Raja and another versus Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others (PLJ 2013 SC 107), made certain recommendations which are reiterated by the Hon'ble Sindh High Court in case reported as *Kainat Soomro versus Province of Sindh (PLD 2020 Sindh 611)* and the same are noted as follows:-

- a. *Every police Station that receives rape complaint should involve reputable civil society organizations for the purpose of legal aid and counseling. A list of such organizations may be provided by bodies such as the National Commission on the status of Women. Each Police Station to maintain a register of such organization. On receipt of information regarding the commission of rape, the Investigating Officer (IO)/Station House Officer (SHO) should inform such organizations at the earliest.*
- b. *Administration of DNA tests and preservation of DNA evidence should be made mandatory in rape cases.*
- c. *As soon as the victim is composed, her statement should be recorded under Section 164, Code of Criminal Procedure, 898, preferably by a female Magistrate.*
- d. *Trials for rape should be conducted in camera and after regular Court hours.*

- e. *During a rape trial, screens or other arrangements should be made so that the victims and vulnerable witnesses do not have to face the accused persons.*
- f. *Evidence of rape victims should be recorded, in appropriate cases, through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court."*

In addition to the superior Courts guidelines, respondents also made certain recommendations, which are noted below:

1. *In relation to the child abuse and rape cases, Respondents have suggested the effective implementation of the Islamabad Capital Territory Child Protection Act, 2018, and the Juvenile Justice System Act, 2018, in response to their report submitted pursuant to Order dated: 11.08.2021.*
2. *In relation to the conducting of Postmortem and MLOs, the Respondent No.1(iii), Ministry of National Health Services, Regulation and Coordination Division, has submitted detailed SOPs, as well as, list of Doctors in response to their report submitted to Order dated:11.08.2021."*

Likewise, the petitioner also suggested additional recommendations, which are as follows:-

1. *The investigation of a case of a crime that is sexual in nature and/or pertains to a child should be assigned to a female police officer and/or a person duly sensitized on the issues and implications pertaining to such cases.*
2. *No child survivor should be held in police custody overnight, even if it maybe on the pretext of a medical examination.*
3. *All efforts should be made to provide medical aid, testing for any sexually transmitted diseases and pregnancy, and a trained therapist to a child survivor before and after the medical ea, and reasons for failure to so should be recorded in writing.*
4. *For every child survivor, their statement under Section 164 of the Criminal Procedure Code, 1898:*
 - a. *Should be recorded within 10 days of the perpetration of the crime or within 10 days of the recovery of the child,*
 - b. *The statement should be recorded in a child friendly atmosphere or at the hospital if need be,*
 - c. *The presence of a parent or trusted person may only be refused if the magistrate believes the child stands to be intimidated or uncomfortable due to the such presences,*

- d. *The statement should be recorded verbatim ad be supplemented by an audio recording.*
- 5. *The child survivor should never be placed in the direct presence of the accused either during the police investigation or the trial in any circumstances.*
- 6. *Islamabad Capital Territory Police should setup community policing initiative in order to gain citizens assistance in prevention of crimes against children and maintenance of law and order."*

The above recommendations and case law cited at bar makes it abundantly clear that the criminal administration of justice is surely defective. The salient features which can be drawn from the submissions and information are as follows:-

- (i) As soon as the information is received from any concern regarding the commission of a cognizable offence, an FIR under section 154 Cr.P.C is to be registered.
- (ii) In case of refusal to register a case even upon coming to know about the commission of a cognizable offence, the non-registration of the same would amount to denial of duty and would attract disciplinary proceedings against the concerned police officer, not only confined to the Incharge of a Police Station but also his superior.
- (iii) Investigation is to be carried out by the officer entrusted with the same diligently, effectively and honestly without having any preset notion and he/she should collect the entire evidence i.e. inculpatory and exculpatory, because the fair trial requires that the entire evidence collected by the investigating agency whether inculpatory or exculpatory is to be presented before the court so that while reaching to the conclusion regarding the guilt of the accused or

otherwise, the adjudicating authority has benefit of the same.

- (iv) In cases of rape and sexual violence, recommendations (made by the) Judicial Inquiry Report as well as directions and observations made by the Sindh High Court in *PLD 2020 Sindh 611 supra* should be followed in letter and spirit.
- (v) All Medico Legal Officers shall adhere to the Standard Operating Procedures and any violation thereof should be taken as a breach of their duties.
- (vi) The Ministry of Human Rights as well as other departments of the Government should ensure implementation of the conventions on rights of the child through effective legislation, if the same has not yet been done.
- (vii) The enforcement of Zainab Alert, Response and Recovery Act, 2020 should be followed in letter and spirit being law of the land.
- (viii) The effective implementation of the Islamabad Capital territory Child Protection Act, 2018, and the Juvenile Justice System Act, 2018 should be ensured.
- (ix) In relation to conducting post-mortem and MLRs, the SOPs issued by the Ministry of National Health Services, Regulations and Coordination should be followed in letter and spirit.
- (x) The investigation of a case of a crime that is sexual in nature and/or pertains to a child should be assigned to a

- female police officer and/or a person duly sensitized on the issues and implications pertaining to such cases.
- (xi) No child survivor should be held in police custody overnight, even if it may be on the pretext of a medical examination.
- (xii) All efforts should be made to provide medical aid, testing for any sexually transmitted diseases and pregnancy, and a trained therapist to a child survivor before and after the medical exam, and reasons for failure to do so should be recorded in writing.
- (xiii) For every child survivor, their statement under Section 164 of the Criminal Procedure Code, 1898, should be recorded within 10 days of the perpetration of the crime or within 10 days of the recovery of the child in a child friendly atmosphere or at the hospital, if need be. The presence of a parent or trusted person may only be refused if the Magistrate believes the child stands to be intimidated or uncomfortable due to such presence and the statement should be recorded in verbatim and be supplemented by an audio recording.
- (xiv) The child survivor should never be placed in the direct presence of the accused either during the police investigation or the trial in any circumstances.
- (xv) The Islamabad Capital Territory Police should setup community policing initiative in order to gain citizens assistance in prevention of crimes against children and maintenance of law and order.

10. In light of the above, the instant petition is **disposed of** with direction to the respondents to ensure that the directions and observations made hereinabove should be duly complied by strictly adhering to the law on the subject. Copy of the judgment be placed before the Ministry of Law & Justice for initiation of proper legislation vis-à-vis Islamabad Capital Territory (ICT) keeping in view the discussion made above, in case the law on the various aspects mentioned in the judgment is silent or require clarity.

**(AAMER FAROOQ)
JUDGE**

Announced in open Court this 16th day of December, 2022.

(CHIEF JUSTICE)

M.Shah/.