

Form No: IICJD/C

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Criminal Revision No. 30 of 2014

Khalid Nazir, etc

Vs.

The State, etc.

Petitioner by: Sardar Abdur Raziq Khan, Advocate for the
petitioner.
Respondents No.1 by: Mr. Yasir Barkat, State Counsel.
Respondents No.2 by: Mr. Sheraz Nazir in person.

Date of Decision: 16.05.2017.

AAMER FAROOQ, J.- The instant criminal revision is directed against order dated 27.03.2014, whereby, the petitioners have been summoned in the private complaint filed by respondent No. 2.

2. The facts leading to the instant revision are that Sobia Sheraz daughter of respondent No.2 was a student at Jamia Misbah-ul-Uloom ul-Islamia, G-9/1, Islamabad and upon completion of studies she was relieved from the Madrassa on 07.08.2008. However, she again joined Madrassa in November, 2008 and during her stay there was found dead. An F.I.R. was registered (FIR No. 43 dated 11.11.2009 under section 302 PPC at Police Station Margalla, Islamabad) on the complaint of respondent No.2. In the referred FIR no one was nominated as an accused. Respondent No.2 filed various applications against the petitioners. Subsequently the matter was also referred to the Hon'ble Supreme Court of Pakistan wherein, on the order of the Apex Court, Learned Session Judge, Islamabad conducted an inquiry and submitted report that it was a case of suicide and not homicide. The matter was disposed of by the August Apex Court accordingly. Meanwhile, the police also submitted report and the same was presented before the Learned Judicial Magistrate, who passed an order for cancellation of F.I.R. on the basis of police report. Respondent No.2 filed a complaint before the Session Courts in which after preliminary inquiry it was contended that no case is made out and the same was dismissed accordingly. Respondent No.2 filed another complaint in which matter was entrusted to Judicial Magistrate to

conduct inquiry under section 202 Cr.P.C and submit a report. Upon the report, Learned Additional Sessions Judge, seized of the matter, summoned the petitioners in private complaint vide order dated 27.03.2014 which has been impugned in the instant petition.

3. The Learned Counsel for the petitioners inter alia, contended that the private complaint was filed in 2009 before the Sessions Court which was dismissed vide order dated 29.09.2010 and now on the same subject, facts and circumstances, second complaint has been filed on 04.12.2013 which is not maintainable. It was also contended that in the inquiry report, it was categorically mentioned that the petitioner has no role in the matter which report was not interfered with by the August Apex Court and was accepted accordingly. It was also contended that there is a delay of 05 years in the filing of second complaint. Learned counsel in support of his contentions placed reliance on cases reported as *Abdul Wahab Khan v. Muhammad Nawaz* (2000 SCMR 1904), *Mst. Shamim Akhtar v. Abdul Rauf Dogar* (1999 P Cr. LJ 1870), *Zahoor v. Said-Ul-Ibrar* (2003 SCMR 59), *Muhammad Saleem v. Fazal Muhammad* (2001 SCMR 1738), *Muhammad Fiaz Khan v. Ajmer Khan* (2010 SCMR 105), *Zafar v. Umer Hayat* (2010 SCMR 1816), *Ghulam Akbar v. Riaz* (2006 YLR 286).

4. Respondent No.2 in person submitted that the instant petition is not maintainable inasmuch as this Court does not have the power to exercise revisional jurisdiction against the impugned order. It was further contended that the Learned Additional Sessions Judge, Islamabad, after satisfying regarding prima facie case in the matter decided to summon the petitioners hence there is no illegality or jurisdictional defect in the same. The Learned State Counsel also adopted the submissions made by respondent No.2.

5. The petitioners have assailed order dated 27.03.2014 whereby they have been summoned in the second criminal complaint filed by respondent No.2 before initially the Judicial Magistrate Islamabad which was returned to the Session Judge, however, the matter was referred back to the Learned Judicial Magistrate for an inquiry in the facts alleged by complainant/respondent No.2. The thrust of the arguments made by the petitioners is that second complaint on the same facts and circumstances is not maintainable and that the Learned Additional Sessions Judge, Islamabad while issuing summon has not taken into the account the entire facts including the dismissal of earlier private complaint, filed by respondent No.2.

It was also argued that there is delay of about 5 years in filing of the complaint which casts doubt on the veracity of the allegations made by the complainant.

6. Since respondent No.2 objected to maintainability of the criminal revision therefore, this aspect is being adverted to before adjudicating the case on merits. Respondent No.2 contended that criminal revision against issuance of summons is not maintainable under section 435 and 439 Cr.P.C. The referred objection made by respondent No.2 is without merit. In this behalf reliance is placed on cases reported as *Ghulam Hussain v. Muhammad Waseem* (1999 P Cr.LJ 249), *Ijaz Javed v. The State* (2000 P Cr. IJ 595), *Mehdi Hassan v. The State* (1999 MLD 499), *Mushtaq Ahmed v. Khalida Bibi* (2014 P Cr.LJ 814), *Khuda Bakhsh v. Abdur Rehman* (2007 YLR 3187), *Muhammad Anwar Ujali v. Asghar Ali* (2015 MLD 1145). In above mentioned judgments criminal revision was preferred against issuance/non issuance of summons in a private complaint and the lis was decided on merits.

7. The petitioners have assailed the impugned order whereby the Learned Trial Court issued summon for their appearance on three grounds; firstly, on the basis that previously a criminal complaint filed by respondent No.2 was dismissed by the Trial Court; secondly, there is a delay of about 05 years in filing the criminal complaint and thirdly issuance of summons by the Learned Trial Court does not disclose appreciation of evidence and application of mind keeping in view the facts and circumstances of the case including the dismissal of earlier criminal complaint.

8. Admittedly, the earlier criminal complaint filed by respondent No. 2 was dismissed on merits vide order dated 29.09.2010.

9. The bare perusal of the above order shows that Learned Additional Sessions Judge, Islamabad seized of the matter, after discussing statements of the witnesses and the copies of the documents placed on record, dismissed the complaint. Under the law there is no bar in filing second complaint. In this behalf, reliance is placed on cases reported as *Mst. Shamim Akhtar v. Abdul Rauf Dogar* (1999 P Cr. IJ 1870). However, in the second or subsequent complaint fresh facts and circumstances are to be disclosed. In the referred judgment, the Hon'ble Lahore High Court observed that where Trial Court had taken into consideration evidence offered by complainant and had come to the conclusion that there was no ground to proceed or that the

evidence was not worthy and credence, the complaint was dismissed; entertaining of second complaint in such a case would be abuse of the process of the court. Similarly, in case reported as *Zahoor and others v. Said-Ul-Ibrar* (2003 SCMR 59) the August Apex Court observed that where a decision has been referred on criminal complaint after full consideration of the matter, entertaining the second complaint, cannot be in the interest of justice. In light of the referred case law, respondent No.2 in the instant matter needed to disclose new or such facts and circumstances which were not before Trial Court while passing order dated 29.09.2010. The impugned order does not disclose any appreciation of such facts and circumstances.

10. The issuance of summons in a criminal complaint should not be a mechanical exercise without application of mind. In this behalf reliance is placed on case reported as *Abdul Wahab Khan v. Muhammad Nawaz* (2000 SCMR 1904). The Hon'ble Supreme Court of Pakistan in the said judgment observed that it is well settled by now that the Court concerned must scrutinize the contents of the complaint, nature of application made therein, supporting material in support of accusation, the object intended to be achieved, the possibility of victimization and harassment if any to ensure itself that no innocent person against whom allegations are leveled should suffer the ordeal of protracted time consuming and cumbersome process of law. Similar observations were made by August Apex Court in case reported as *Muhammad Saleem & 4 others v. Fazal Muhammad* (2001 SCMR 1738); it was observed that process is not to be issued in every criminal case as a matter of course; each and every complaint is to be scrutinized and the material is to be examined and the process is to be issued only to the extent of material produced if found to be sufficient. The Learned Trial Court in passing the impugned order has not given reasons and/or discussed the evidence to indicate that the same has been appreciated while issuing summon to the petitioners.

11. There is no limitation prescribed for filing of a criminal complaint under section 202 of the Criminal Procedure Code 1898, however, the delay in approaching the Court casts doubt on the veracity of allegations leveled in the same. In this behalf reliance is placed on case reported as *Muhammad Fiaz Khan v. Ajmer Khan* (2010 SCMR 105). In the referred judgment the Hon'ble Supreme Court of Pakistan observed that when complaint is filed after considerable delay, which was not explained then it raises suspicion

towards its truthfulness. It was also observed that the purpose of preliminary proceedings under section 202 of the Criminal Procedure Code 1898 is two-fold to allow free and fair opportunity to complainant to produce some evidence to make out grounds for issuing process against accused. It is the duty of Magistrate to scrutinize contents of complainant before issuing the process. Similar view was expressed by Hon'ble Supreme Court of Pakistan in case reported as *Zafar v. Umer Hayat* (2010 SCMR 1816).

12. In light of the above observations made by this Court and keeping in view the case law on the subject it is evident that the Learned Trial Court, while passing the impugned order and issuing summons to the petitioners did not discuss or appreciate the enquiry report furnished by the Learned Judicial Magistrate. The mere mentioning of the fact in the impugned order that the same has been taken into account does not satisfy the requirements of section 202 of the Criminal Procedure Code 1898. Since the needful has not been done, therefore, it is just and proper that the Learned Trial Court should exercise jurisdiction in light of the above mentioned law.

13. For the forgoing reasons, the instant criminal revision is allowed and the impugned order dated 27.03.2014 is set aside. Consequently, the criminal complaint filed by respondent No.2 shall be deemed to be pending before the Learned Trial Court which shall decide the question regarding issuance of process to the petitioners in light of the above observations made by this Court as well as the facts and circumstances of the case including the evidence placed on record by respondent No.2.

(AAMER FAROOQ)
JUDGE

Shakeel Afzal

Announced in open Court on the 11th day of August 2017.

JUDGE

Shakeel Afzal