

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. wf. 831 — 2012.

Malik Mohammad Masood etc

Titled

Vs

Mohammad Ayub Malik etc.

(a) Judgment approved for reporting

☒ Yes / ☐ No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes / ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

J. Ayub
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.831 OF 2012

Malik Muhammad Masood etc.

Vs.

Muhammad Ayub Malik etc.

Date of hearing : 25.06.2012
Petitioners by : **Mr. Mohsin Akhtar Kiyani, Advocate**
Respondent No.1 by : **Mr. Arif Mahmood, Advocate**
Respondent Nos.2 to 5 : **Raja Muhammad Abid, DAG on Court's call.**

NOOR-UL-HAQ N. QURESHI J.- Through the instant Writ

Petition, the petitioners seek quashment of cross version of respondent No.1, restraining the official respondents from initiating another investigation against the petitioners and they be directed to file final report u/s 173-Cr.P.C., also to effect arrest of nominated accused Muhammad Fayyaz and Ramal.

2. Brief history of the case as narrated is that wife of petitioner No.1 lodged FIR bearing No.223/2011 u/s 354, 452 , 506 (ii)/34 PPC registered at P.S. Kohsar, Islamabad on 01.05.2011 narrating the incident allegedly occurred on 30.04.2011 at about 10:30 p.m. in their house.

It is inter alia alleged by the complainant that she resides with her family in House No.10-A, Street No.33, Sector, F-7/1, Islamabad, which is a joint property divided into two parts. They started residing in other portion on which, Muhammad Ayub, Noor Muhammad, Fayyaz brother of her husband became annoyed and started quarrel with them. Her husband got stay from the court. Both brothers were extending threats of dire consequences as well as of killing. In the night of incident at about 10:30 p.m., while they were enjoying meal as usual, suddenly, Muhammad Ayub,


Fayyas and Ramal s/o Muhammad Ayub by climbing the walls, entered into the house. Ayub was armed with gun, Fayyaz with hammer and Rammal with club, they all by raising Lalkara, threatened to kill they, started beating her husband with clubs and hammers. Resultantly, he went unconscious. When she proceeded ahead to intervene, Ayub threatened not to come near, otherwise he will fire upon her. They broke the utensils, when she was standing by a side being scared, Ayub by holding her hair, pushed her in the street with showers of abuses. Meantime, Afzal reached to whom, they beat him, when on commotion, security guards of front street and other persons attracted, who got them rescued.

During investigation allegedly, the accused Muhammad Ayub was examined by the police and he recorded his version on the basis whereof, created a cross version thereby, made the petitioners as accused.

Muhammad Ayub, in nutshell, alleged that on the day of incident, when he returned from preach gathering, found Muhammad Afzal, Muhammad Masood, masons and labourers were raising walls in his house. Muhammad Afzal with abuses, raised Lalkara and threatened to kill him, when Masood came running towards him. Therefore, he ran towards room, when Muhammad Afzal armed with shovel, Masud with club, entered in the room forcibly falling him down. Muhammad Afzal inflicted shovel blow to which, he became unconscious. Then Muhammad Masood dragged him out from the room. On his noise, his wife, Adil Rasheed & Aftab reached there. They tried to rescue him, but Masood strangulated him, Afzal caused fists and kicks blows as well as handle of shovel. However, they succeeded in getting him rescued. He was then removed to PIMS Hospital and earlier, he moved such an application. Since they are trying to forcibly occupy over the house, therefore, action according to law be initiated against them. On the basis of these allegations, the petitioners moved application for pre-arrest bail. At about two times, the concerned police in clear words stated that they are not required to them as apparent from order dated 02.01.2012. But

consequently, on change of police officials, when police tried to apprehend them, they sought pre-arrest bail. Now, on change of S.P., they are commencing new investigation instead of submitting final report u/s 173 Cr.P.C. Therefore, instant writ petition has been filed.

3. Learned counsel for the petitioners argued that cross version of the accused without lodging a separate FIR is an illegal practice, which is nowhere provided by law. He argued that in the medical certificate of Muhammad Ayub, the medical officer has opined injury No.1 trauma teeth, but no corresponding injury, external or internal, is available. Apparently, it appears to be a managed medical certificate. Normally, if tooth is broken, there must be other external or internal injury as a result of external force, if used either by fist or any hard substance. He further argued that only trauma teeth is alleged, but medical officer has not indicated, as to which of the teeth or side, lower or upper, were affected. Therefore, apparently, the medical certificate was obtained to create a counter blast, which too, has not been formalized by adopting the legal course. He argued that in their successive investigation, the petitioners were found innocent, now on change of S.P., malafidely they are commencing another investigation, merely to entangle the petitioners for tightening their noose and thereby pressurizing them to bow before ill wishes of the accused. There is sufficient material available against the accused person, but the police by recording cross version of the accused Muhammad Ayub and through a fake medical certificate, has prolonged unnecessary the case, thereby not submitting the final report before the court of competent jurisdiction. He argued that Section 173 Cr.P.C. stipulates maximum period of 16-days to investigating officer for submitting final report. In case, investigation is not finalized, an interim report and application for seeking time to submit final report should be submitted. He argued that it is also a requirement of law that it is for the



court to determine or to extend time for submission of final report, or may consider the interim report as final on declining further time.

4. As against arguments advanced by learned counsel for the petitioners, learned DAG argued that in the same FIR, cross version of the accused persons can be recorded, for which, a separate challan is the only requirement to be submitted. He argued that no bar is provided by law to submit such challan against the cross version. He argued that it is not the requirement of law to question such complaint in shape of cross version of the accused, if recorded by the police during course of investigation nor permitted by law to seek second version recorded in shape of another FIR. He argued that section 249-A & 265-K Cr.P.C. are available with the petitioners, therefore, petition for quashment is totally incompetent, hence merits no consideration and the same is hereby required to be dismissed. He has relied upon **2006 SCMR 276 & 2008 SCMR 76.**

5. Learned counsel appearing on behalf of respondent No.1 has adopted the arguments of learned DAG, by only submitting case law reported in **PLD 1998 Lahore 111.**

6. I have carefully perused the record available, heard arguments of both the learned counsel as well as learned DAG and gone through the authorities referred.

7. It is strange enough to note that medical certificate of respondent No.1 Muhammad Ayub available on record, only indicates trauma teeth. Surprisingly, no external or internal injury on lips, upper or lower, has been noticed by the medical officer. Even the medical officer has not pointed out inside condition of the mouth and trauma teeth of which part, he observed.

But merely mentioning trauma teeth does not figure the actual injury caused.



8. It is also strange enough to note that version of Muhammad Ayub was recorded by the police, but it does not contain the date and place of its recording. Moreover, the said Muhammad Ayub himself has not slightly indicated in his cross version about trauma teeth, any injury on his mouth external or internal, bleeding from the teeth or in any way, the injury he received on any part of his face, which resulted such trauma teeth as observed by the medical officer.

9. A very important feature involved in this case is with regard to cross version, which as per learned DAG is a practice in Islamabad, which is continuing since long and law prohibits lodging of second FIR in respect of same offence, therefore, cross version of the accused has no authenticity as FIR. He added that only the version of the accused is to be relied upon therefore, there is no need to lodge cross case against the complainant party for the injuries received by the accused in the same incident.

10. However, he could not satisfy the Court with regard to delay in submitting final report contrary to the requirement of Section 173 Cr.P.C., which clearly stipulates the time for submission of final report, then interim, in case investigation is not finalized within such period.

11. So far the concern of authorities referred by the learned D.A.G., the same are not supporting his own viewpoint and the plea raised with regard to moving application u/s 249-A & 265-K Cr.P.C. when final report is not submitted, it is not possible for the petitioners to move such application before learned trial court.

12. So far the authority submitted by learned counsel for respondent No.1, which in clear terms, provides a glaring view that registration of second FIR embodying the counter version, is not legally barred nor can be refused to be registered. Such very view has been drawn by their lordship while deciding

the case of Raja Gulzar Ahmed reported in **PLD 1998 Lahore 111**. It

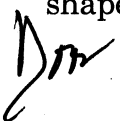
becomes crystal clear that second FIR is neither barred nor can be refused by the police to be registered.

13. Otherwise, the concept of law is very clear as envisaged by Section 154 Cr.P.C., which enunciates a very simple principle that information of a cognizable offence shall be reduced in writing by SHO of Police Station or under his instructions, it shall be signed by the person giving it, substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the provincial government. For convenience, Section 154 Cr.P.C. is reproduced hereunder: -

“154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid 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.

From bare reading of the above provision of law, it becomes crystal clear that a cognizable offence, if reported, is to be read over to the informant, shall be signed by the person giving it and same shall be entered in the book to be kept in such form prescribed by the provincial government required to be kept by such officer at Police Station.

For the cross version, a proper course is to be adopted by registering a case on the basis of such statement, containing the necessary ingredients of FIR as specified in prescribed form by the provincial government, such as time of report, time of incident, name, residence and description of complainant, details of the offences, sections applied, description of place of incident, distance from police station and if delay in registration of FIR occurred. Without such ingredients, any statement recorded by a police officer, cannot be equated as FIR, even such information provided to SHO in shape of cross version.




For example, if any statement is recorded by the police u/s 161 Cr.P.C. orally, supposed to be acquainted with the facts and circumstances of the case, which is required to be reduced in writing by such police officer in the course of examination. Such statement in any form, either further statement of the complainant, statement of PW, statement of DW or statement of accused, whoever may be supposed to be acquainted with the facts and circumstances of the case, is deemed to be a statement recorded u/s 161 Cr.P.C. It has neither the status of police report, case diary nor can be considered as in form of first information report having significance as envisaged by Section 154 Cr.P.C.

14. Another aspect in continuity whereof as envisaged by Section 162, which provides that any such statement reduced in writing, not to be signed by the person making it nor it can be used for any purpose of inquiry or trial in respect of any offence under investigation at the time, when such statement was recorded.

15. It becomes crystal clear that such statement recorded by the police in any above forms, can not be used as a piece of evidence nor it can be exhibited during trial, as such, has no status, except it is used for the purpose of proving contradictions and omissions to that extent, if observed as envisaged by proviso (2) of Section 162 Cr.P.C.

16. When no such document could be produced, relied upon or exhibited as a piece of evidence during trial, its use besides the prescribed limitation u/s 162 Cr.P.C. referred above, it cannot be taken into consideration as a piece of evidence nor could be used as counter version and on the basis whereof, a final report u/s 173 Cr.P.C. could be submitted before the court of law. Hardly, it can be used as defence of the accused being part of the impartial investigation as required by Rule 12.24 of the Police Rules. 2



17. In this regard, I am fortified with a decision delivered by Hon'ble Supreme Court of Pakistan reported in **2011 SCMR 45** (Mushtaq Hussain & Another Vs. The State), by which, their lordships have observed through an elaborate discussion clarified the clouds in this regard from time to time created. Otherwise, law is very much clear. However, the relevant portions of the said decision are reproduced hereunder: -

“Proper course is to register a separate case on the basis of such a written statement containing all necessary ingredients of FIR i.e. time of report, time of occurrence, distance from police station and being read over to the maker and then getting his thumb impression or signature in token of its correctness and at the end the Karwai (proceedings) police with regard to necessary steps taken by the Investigating Officer immediately after registration of case and then signature of scribe”.

“Purpose of FIR is to set criminal law in motion and to obtain first hand spontaneous information of occurrence, in order to exclude possibility of fabrication of story or consultation or deliberation or complainant has time to devise or contrive anything to his advantage and to the disadvantage of others and to safeguard the accused of such like happening/occurrences in FIR. Spontaneity of FIR is the guarantee of truth to a greater extent”

There is no ambiguity in this regard that such practice of recording cross version of the accused, on the basis whereof submitting challan against complainant or PWs without lodging separate FIR, is ipso facto illegal, having no base to stand legally, as such, this judgment be communicated to the Inspector General, ICT, Islamabad for onward instruction to concerned police departments that they should restrain from following such an illegal practice, for which, law prohibits, particularly in the light of Section 154, 161 & 162 Cr.P.C.

18. Since the cross version recorded by the police on the basis whereof they are continuously prolonging the matter without submitting final report u/s 173 Cr.P.C. as required by law within a period specified therein. Therefore, concerned police officer/SHO is directed to submit final report u/s 173 Cr.P.C.

before the court of competent jurisdiction within a period of seven days.

19. In view of above referred discussion, since the cross version of respondent No.1 recorded by the police has no legal status therefore the same is hereby quashed as a result of acceptance of this writ petition.

20. The accused can lodge a separate FIR for the incident reported as cross case, for which, police is bound to register. Simultaneously, he is at choice to institute a direct complaint before the court concern as a cross case, which as per law, has to be registered separately and be concluded on its own merits. But it being cross version required to be proceeded together with the said case of complainant.

21. Instant writ petition stands disposed of accordingly.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in Open Court on 05.07.2012.

JUDGE

APPROVED FOR REPORTING

Blue slip added.

Zawar

Wahid

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