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Before Shaukat Aziz Siddiqui, J

Sheikh ASIF IDREES---Petitioner

versus

ILLAQA MAGISTRATE and others---Respondents

Writ Petition No.1127 of 2010, decided on 23rd December, 2011.

(a) Criminal Procedure Code (V of 1898)---

---Part V [Ss.154-176]---Penal Code (XLV of 1860), Ss.452/506(i)/ 147/149---Constitution of Pakistan, Art.199---Constitutional petition---Information to police and their power to investigate--Request for withdrawal of cancellation report submitted by police---Scope and legality---Complainant (respondent) had registered an F.I.R. against accused (petitioner) and during course of investigation police found the complaint to be false---Police submitted cancellation report for the case and requested the Trial Court to keep the cancellation report pending before requesting for return of said report, which was allowed by the Trial Court---Validity---Trial Court had proceeded in the matter in a mechanical fashion and without adhering to the provisions of law---After receipt of cancellation report, it was mandatory for Trial Court to either award concurrence to the report or at otherwise---Trial Court had dealt with the matter by considering it one of civil nature instead of following procedure prescribed under Part V (sections 154 to 176), Cr.P.C. and Police Rules, 1934---Once cancellation report had been submitted by the police, it was left with no justification to keep it pending and subsequently requesting its withdrawal---By submission of cancellation report, a valuable right accrued in favour of the accused, which had been taken away without providing him an opportunity of hearing---Order of Trial Court allowing withdrawal of cancellation report, was an abuse of the process of law and was quashed in circumstances---Cancellation report was deemed to be pending before Trial Court, which was directed to either accord concurrence to it or act otherwise, after giving an opportunity of hearing to both sides---Constitutional petition was allowed.

1983 SCMR 370; PLD 1985 CrL 717(sic); NLR 1998 PCr.LJ 1187(sic); 1994 PCr.LJ 2371; 2000 PCr.LJ 520; 2005 YLR 1876; 2005 YLR 1939; PLD 1962 Lah. 405 and 2000 PCr.LJ 2016 rel.

(b) Criminal Procedure Code (V of 1898)---

--Part V [Ss.154-176---Penal Code (XLV of 1860), Ss.452/506(i)/ 147/149---Constitution of Pakistan, Art.199---Constitutional petition---Request for withdrawal of cancellation report submitted by police---Scope and legality---Complainant (respondent) had registered an F.I.R. against accused (petitioner) and during course of investigation police found the complaint to be false---Police submitted cancellation report for the case and requested the Trial Court to keep the cancellation report pending before requesting for return of said report, which was allowed by the Trial Court---High Court deprecated such practice and observed that Judicial officer (Trial Court) was duty bound to exercise his authority within the four corners of law, and not by adopting novel procedures and he was expected to check his sleeves, to find out whether authority to return the cancellation report was available to him or not---Act of returning cancellation report was not syntonetic to his office, prestige and status, and he was expected to keep the proceedings transparent, instead of being an instrument of tug of war between police officials---Order of Trial Court allowing withdrawal of cancellation report, was quashed in circumstances---Cancellation report was deemed to be pending before Trial Court, which was directed to either accord concurrence to it or act otherwise, after giving an opportunity of hearing to both sides---Constitutional petition was allowed.

Malik Waheed Anjum for Petitioner.

Khawaja Javed Iqbal, Standing Counsel along with Tahir Khan Niazi, S.I. for Respondents.

ORDER

SHAUKAT AZIZ SIDDIQUI, J.---Petitioner, Sheikh Asif Idrees, invoked the constitutional jurisdiction of this court, against impugned order dated 23-12-2009 passed by the learned "IllaqaJudicial Magistrate" Police Station, Aabpara, Islamabad.

2. Brief facts which glean out from the petition are that on the complaint of Mst. Sadaf Sohail, F.I.R. No.241, dated 20-8-2009, for offence under sections 452/506(i)/147/149, P.P.C. was registered at Police Station Aabpara. Although occurrence dated 3-12-2008 was reported,

vide rupt No.55 on the same day, however, F.I.R. was chalked out on 20-8-2009. The local police during course of investigation, found the complaint as false, therefore, S.H.O. prepared cancellation report dated 16-10-2009 to which A.S.P. agreed vide his note dated 17-10-2009. D.S.P. Legal moved an application dated 1-12-2009 through S.P. Legal on which concurrence was accorded by S.S.P. (Operations). Cancellation report, after passing through the process of police, was submitted to the learned "Illaqa Magistrate" on 9-12-2009 which was registered on the same date. Learned counsel for complainant filed his power of attorney on the same date and matter was adjourned to 18-12-2009 for procuring, the attendance of accused. On said date, learned "Illaqa Magistrate" passed the following order:--

"Present I.O. Counsel for complainant and counsel for accused. The I.O. in person, he requested that the police want to withdraw this cancellation report, if it is so, the police should apply through the S.S.P. To come up on 21-12-2009."

Above order was followed by order dated 21-12-2009, which reads as under:--

"Present I.O. counsel for the accused. The I.O. requests time for this process of applying for withdrawal through S.S.P. Two days' time is granted to come up on 23-12-2009."

Ultimately impugned order dated 23-12-2009 was passed which for convenience sake reproduced herein below:--

"Present:- I.L. for the State.

Accused on bail.

Manuwer, S.I.

The cancellation report in case F.I.R. No. 241 Dated 20-8-2009, Offence U/S 452/147/149/506-ii/P.P.C. Police Station Aabpara Islamabad was submitted on 2-12-2009 but the police made request for withdrawal of the cancellation report on 18-12-2009 and finally the application was submitted from Superintendent of police for withdrawal of the cancellation report today. The cancellation report was submitted by SSP, who seeks the withdrawal of the cancellation report in order to re-investigate the matter. The request for withdrawal is accepted and the cancellation report is returned to the police for further investigation."

3. Learned counsel for the petitioner submits that order passed by "Illaqa Magistrate" is without lawful authority, unjust, perverse, against the mandate of law, propriety and result of non-application of judicial mind.

4. The learned Standing Counsel very frankly conceded that impugned order cannot be termed as a legal order.

I have heard the learned counsel for the parties and perused the record.

5. Record reveals this fact that after submission of cancellation report, vide application No.4295-P, dated 17-12-2009, S.S.P. (Operations) requested learned Magistrate to keep the cancellation report pending, and vide application No.10360/C, dated 22-12-2009 request for return of cancellation report was made, which was allowed by the learned Magistrate. I have no hesitation in my mind in observing that learned Magistrate proceeded in the matter in a mechanical fashion and without adhering to the provisions of law. After receipt of cancellation report, it was mandatory for learned Magistrate to accord concurrence or otherwise. It appears that the learned Magistrate, dealt the matter by considering it, one of civil nature instead of following procedure prescribed under Part-V, (sections 154 to 176), Cr.P.C. and Police Rules.

6. Report once submitted and entertained, thereafter, police was left with no justification to request, learned Magistrate, to keep it pending and subsequently, praying for its withdrawal. It is not expected from any Judicial Officer, to oblige the superior police officers by proceeding in any matter, as per their dictates and whims. The Judicial officers are duty bound to exercise their authority within the four corners of law, and not by adopting novel procedure. Orders, like, impugned through instant petition also raises serious questions about the integrity of the judicial officer. I further observed that, a valuable right was accrued in favour of accused, which has been taken away without providing him an opportunity of hearing. My observation is being substantiated by the impugned order itself. The learned Magistrate was expected to check his sleeves, to find whether authority to return the cancellation report was available to him or not? But it appears that request of superior police officer influenced him, resulting into passing of the impugned order. This act of the learned Magistrate is not syntonetic to his office, prestige and status. It is also expected from a judicial officer to keep the proceedings transparent, instead of being an instrument of "Tug of War" between police officers. Cancellation report was submitted with approval of SSP (Operations) and thereafter, allowing him to withdraw the same is nothing but an abuse of the process of law.

I sought guidance from the authoritative pronouncements of the Court of apex and other superior Courts of the country, reported as (1983 SCMR 370), (PLD 1985 CrI 717(sic), (NLR 1998PCr.LJ 1187(sic), (1994, PCr.LJ 2371), (2000 PCr.LJ 520), (2005 YLR 1876), (2005 YLR 1939), (PLD 1962 Lah. 405) and 2000 PCr.LJ 2016.

7. In view of above, impugned order dated 23-12-2009 is quashed/set aside. Cancellation report submitted on 9-12-2009 shall deem to be pending before the learned "Illaqa Magistrate" who is directed to pass order of, according concurrence or otherwise, by affording an opportunity of hearing to both sides and by applying his independent mind and judicial acumen. It is further directed that order may be passed within a fortnight of the receipt of this order.

M.W.A./33/IsI.

Petition allowed.