

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3479/2019
Qamar ur Zaman Abbasi
Versus
D.I.G. Islamabad Police and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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24.10.2019	Ch. Abdul Rehman Hur Bajwa, Advocate for the petitioner Raja Shafat Ali Khan Advocate for respondents No.4 to 7, Athar Khan, Inspector in person.
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Through the instant writ petition, the petitioner, Qamar ur Zaman, seeks the issuance of a writ declaring the inquiry conducted by respondents No.1 and 2 (Deputy Inspector General of Police) and (Superintendent of Police (City) Zone Islamabad Police) during the pendency of trial to be without lawful authority. Furthermore, the petitioner seeks a direction to be issued to respondent No.3 (Illaqa Magistrate police station *Bani Gala*, Islamabad) to conclude the trial at the earliest.

2. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that on the petitioner's complaint, F.I.R.No.62, dated 09.03.2019, under Sections 452, 447, 511, 427, 148, 149 and 506(ii) PPC was registered against respondents No.4 to 7 at police station *Bani Gala*; that during the investigation, an inquiry was conducted by the Revenue Officer, Islamabad, who furnished his report, which was challenged in an appeal in the revenue hierarchy; that subsequently the accused party filed an application to re-inquire the case which was marked to the A.S.P. *Sihala*, who on being influenced by respondent No.2, recommended for cancellation of the case; that the said report was rejected by the

then S.P. (City) Zone Islamabad, vide inquiry report dated 12.04.2019; that thereafter, D.I.G. Islamabad Police marked the inquiry in the case to S.P. Investigation, Islamabad, who furnished report dated 30.09.2019, wherein he, after declaring the accused persons guilty, recommended for submission of *challan* under Section 173 Cr.P.C.; that thereafter the investigation was transferred to the C.I.A. from the Police Station *Bani Gala*; that the investigating officer, after conducting the investigation, furnished report under Section 173 Cr.P.C. through S.H.O. police station *Bani Gala*; that on the submission of the *challan*, the learned trial Court took the cognizance for commencement of the trial; that despite submission of the *challan* and commencement of the trial, the accused party, in order to frustrate the judicial process, moved an application (fifth time) for inquiry, and on such an application, respondent No.1 appointed respondent No.2 as an inquiry officer; that the grievance of the petitioner is that the investigating officer/respondent No.2 was earlier appointed as an inquiry officer in the matter who had earlier managed an illegal report recommending the cancellation of the case; that under the law, investigation or inquiry cannot be allowed to be done in multiple rounds as has been done in the case at hand; that respondent No.2's appointment as an inquiry officer again on the fifth application of the accused party for inquiry is liable to be declared without lawful authority; that the F.I.R. in question has been registered for committing criminal intimidation while the inquiry is being sought and initiated to determine the ownership of the parties in respect of the land situated in disputed *khasras*, and such exercise could only be done before a Civil Court of competent jurisdiction; that a

police officer could not have been authorized either to demarcate the land, determine the ownership of the same declaring the rights and liabilities of the parties; and that respondent No.2's appointment as an inquiry officer authorizing to conduct an inquiry beyond the scope of investigation is liable to be declared without lawful authority. In support of his submissions, learned counsel for the petitioner relied upon the case law reported as 2006 SCMR 373, PLD 2007 Supreme Court 31, 2000 P.Cr.L.J 1551 and PLD 2008 Lahore 171.

3. On the other hand, learned counsel for respondents No.4 to 7 opposed the petition by stating that the F.I.R. in question was lodged with a delay of almost one month; that in the inquiry conducted by the *Tehsildar*, the petitioner/complainant admitted that he has occupied more land than his share; that there is no bar against the re-investigation of a criminal case, and the police authorities are at liberty to file a supplementary *challan* even after submission of the final report under Section 173 Cr.P.C.; that the petitioner/complainant's objection as regards the order of transfer of investigation to respondent No.2 is misconceived as there is no legal impediment against conducting re-investigation of the case even after filing of report under Section 173 Cr.P.C.; and that the police authorities are authorized to carry out fresh investigation and submit report to the Court. Learned counsel prayed for the writ petition to be dismissed. In order to strengthen his arguments, learned counsel relied upon the case law reported as 2014 SCMR 474, 2005 P.Cr.L.J 754 and 2007 P.Cr.L.J 139.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record.

5. The petitioner has filed this petition seeking to set aside the order passed by respondent No.2 (Superintendent of Police, Islamabad) ordering "further investigation" of the case. Considering the submissions made on behalf of the contesting parties and on perusal of the record, it is evident that F.I.R. No.62/2019 was registered against respondents No.4 to 7 at the instance of the petitioner/complainant. The point to be considered by this Court is as to whether the Superintendent of Police is competent to order further investigation or not? The record appended with the instant petition shows that on 25.03.2019, the *Tehsildar*, Islamabad furnished his report, wherein it was reported that total land in the disputed *khasra* numbers 494 to 498 was 10 *kanals* and 13 *marlas*. Ulfat Zaman son of Sher Zaman was found to be in possession of 02 *kanals* and 8 *marlas* whereas Muhammad Abbasi etc were found to be in possession of 2 *kanals* and 14 *marlas*. The record further shows that Muhammad Abbasi son of Taj Muhammad filed an application to inquire into the matter and as a result, an inquiry was conducted by Muhammad Esa Khan, Assistant Superintendent of Police, *Sihala* (Circle), Islamabad, was appended with the instant petition. Perusal of the report shows that pursuant to the inspection report of *Gardawar Tehsil* Islamabad, the petitioner's brother, Qamar Zaman Abbasi, was the owner of 1 *kanal* and 19 *marlas*. However, he was found to be in possession of 2 *kanals* and 8 *marlas*. Whereas the accused was the owner of 3 *kanals* and 6 *marlas* and was found to be in possession of 2 *kanals* and 14 *marlas*. Furthermore, it was

mentioned in the said inquiry report that the petitioner/complainant had been constructed boundary wall on a suit land exceeding his brother's share. The said Inquiry Officer recommended the proceedings under Section 145 Cr.P.C. to be initiated.

6. On 12.04.2019, the Superintendent of Police City (Zone) Islamabad, on the application of Muhammad Abbasi, observed that pursuant to the inquiry report as well as CCTV footage, alleged offences mentioned in the F.I.R. in question were made out. Furthermore, S.H.O. P.S. *Bani Gala* was directed to further investigate into the matter and submit report thereon. Thereafter, on Aziz Abbasi's application, on 30.09.2019, the Superintendent of Police (Investigation) inquired into the matter and after doing the needful, he was in agreement with the above-said inspection report of *Gardawar* Tehsil Islamabad. Furthermore, Aziz Abbasi was directed to adduce evidence in support of his contentions before the Court concerned.

7. As regards the petitioner's contention that after filing of the *challan* under Section 173 Cr.P.C. and framing of the charge sheet, the police authorities cannot carry out "further investigation" and submit report, Section 156(2) Cr.P.C. deals with "investigation" of cases. Section 156(2) deals with "further investigation". In the case of *Bahadur Khan Vs. Muhammad Azam and others (2006 SCMR 373)*, it has been held that no legal bar exists for reinvestigation of a criminal case even after submission of final report under Section 173 Cr.P.C. and police can carry out the fresh investigation and submit its report to a Court. Furthermore, it was held that subsequent *challan* could be entertained which is submitted as a result of reinvestigation or further

investigation of the case by the police on happening of a subsequent incident and that a Court would proceed with the trial of the case in the normal course.

8. In the case of Raja Khurshid Ahmed Vs. Muhammad Bilal and others (2014 SCMR 474), it was held that no embargo on the power of police for carrying out re-investigation after submission of *challan*.

9. Section 156(2) provides that police has statutory right to investigate the circumstances of an alleged cognizable crime without requiring any permission from the judicial authorities and such statutory right cannot be interfered with by judiciary. Reference in this regard may be made in the case of Muhammad Dildar Hussain Vs. The Civil Judge/Judicial Magistrate, Shujabad (2000 P.Cr.L.J 43). The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of charge-sheet is a statutory authority/right of the police.

10. From a plain reading of Sub-section (8) of Section 173 and Sub-section (2) of Section 156 Cr.P.C. it is evident that even after submission of police report on completion of investigation, the police has a right to "further investigation" but not "fresh investigation" or "reinvestigation". However, reinvestigation by police cannot be stopped in a particular case. The meaning of "further" is additional; more; or supplemental. Therefore, "further investigation" is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio* wiping out the earlier investigation altogether.

11. An Investigating Officer may exercise his statutory power of "further investigation" in several situations for example; when new facts come to its notice; when certain aspects of the matter had not been considered; and when he found that further investigation is necessary to be carried out from a different angles keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, magisterial or Superior Courts can direct "further investigation", if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice.

12. Since the petitioner's grievance is to direct the investigating agency not to further investigate the matter and not to direct the investigation agency to reinvestigate the matter. Re-investigation means the earlier investigation has been wiped out and fresh investigation has been taken. Therefore, it is safe to hold that no embargo exists on the power of police for carrying out "further investigation" after submission of *challan*. For seeking guidance, I may refer to the observations made in the case of Ramachandran Vs. R. Udhayakumar (2008 (5) SCC 413), wherein it was held as follows:-

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under Sub-section (2) of Section 173 of the Code, the police has right to further investigate under Sub-section (8), but not fresh investigation or re-investigation."

13. The plea raised by the petitioner/complainant herein was not for reinvestigation but to stop the investigating agency for "further investigation". In the circumstances of this case, the petitioner has not justified his plea not to authorize the investigating agency for "further investigation".

Nothing seems to have been established which would justify calling for interference in ordering for "further investigation". In the light of the above said citations and the facts and circumstances of the case, this Court is not inclined to interfere with the order of the Superintendent of Police (Investigation), Islamabad, authorizing Athar Khan, Inspector for "further investigation" in case F.I.R.No.62/2019. For the foregoing reasons, the instant writ petition, being devoid of merits, is accordingly dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*