

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO.2292 OF 2020**

Noor Muhammad

VERSUS

Learned Addl: Sessions Judge (GBV Court), Islamabad West,  
and 3 others.

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**DATE OF HEARING:**                    **03.09.2020.**

**PETITIONER BY:**                    **Ch. Qaiser Nazir Sipra,**  
**Advocate.**

**RESPONDENTS BY:**                **Khadija Ali, learned State Counsel.**  
**Khalid Mehmood, Advocate for**  
**respondent No.3**  
**Muhammad Nawaz SI with police**  
**record.**

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**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant writ petition, petitioner impugns orders dated 06.02.2020, 23.07.2020 and 17.08.2020 passed by learned the Judicial Magistrate Section- 30, and Learned Additional Sessions Judge/Gender Base Violation (GBV) Court, Islamabad (West) respectively, whereby application of the petitioner/ complainant for transfer of case to learned Sessions Judge for adjudication of the same on the issue of deletion of offence under Section 377-B of the Pakistan Penal Code (“PPC”) was dismissed.

2. Facts, relevant for the disposal of instant Writ Petition, are that the petitioner got registered FIR No. 228 dated 29.10.2019 under Section 377 PPC against respondent No. 3 on the allegation of commission of sodomy. After the submission of report under Section 173 of the Code of Criminal Procedure (“Cr.P.C.”), the learned Judicial Magistrate indicted respondent No. 3 for offence under Section 377 PPC while striking-out offence under Section 377-B PPC. The petitioner

filed an application for transfer of the trial to the learned Sessions Court, *inter alia*, on the ground that during investigation, offence under Section 377-B PPC was added which makes the case triable by Sessions Court and that the learned Judicial Magistrate had no authority to delete the said offence. The learned Judicial Magistrate dismissed the said application *in limine* vide order dated 23.07.2020. The petitioner then filed a revision petition against the said order which also met the same fate vide order dated 17.08.2020 passed by the learned ASJ, Islamabad (West)/GBV, hence the instant writ petition.

3. Learned counsel for the petitioner contends that the learned Judicial Magistrate could not assume jurisdiction in offence under Section 377-B PPC being triable by the Sessions Court; that the order impugned is non-speaking, had been passed without notice and hearing the prosecution and the petitioner; that according to the investigation, the offence of sexual abuse is attracted to the facts of the present case, therefore, before passing of final order qua its deletion or otherwise, it was mandatory to give notice to the prosecution and the petitioner; that the learned Revisional Court also did not give any reasoning on the issue and therefore, both the impugned orders are liable to be set aside.

4. The learned counsel for respondent No. 3 repelled the above submissions. It is argued that respondent No. 3 is facing trial on the charge of commission of unnatural offence, while Section 377-B PPC pertaining to sexual abuse, in the circumstances of this case, is not attracted; that the learned Judicial Magistrate, being the Court of competent jurisdiction deleted the said offence; that application of the petitioner for recalling of said order was also dismissed while revision petition met the same fate, therefore, in presence of successive findings on the issue, the instant writ petition due to having factual controversy is not maintainable.

5. Heard the learned counsels for the parties and examined the record with their able assistance.

6. Perusal of record reveals that after due investigation, report under Section 173 Cr.P.C was submitted against respondent No. 3 with offences under Sections 377 and 377-B PPC. During investigation, the prosecution added the second offence of Section 377-B PPC as there was an allegation of forcing the victim, aged less than 18 years, to engage in sexually explicit conduct. The learned Judicial Magistrate indicted respondent No. 3 for offence under Section 377 PPC however, deleted the offence under Section 377-B PPC by passing a one liner order dated 06.02.2020, which reads as under:-

*“The offence under Section 377-B PPC is not made out, hence deleted.”*

7. It is necessary to mention here that the prosecution, during investigation, reached the conclusion that besides offence under Section 377 PPC, offence under Section 377-B PPC is also attracted, therefore, in such an eventuality it was incumbent upon the learned Judicial Magistrate to have heard the prosecution as well as the complainant/petitioner before passing the impugned order. It is also necessary to mention that any order which decides a controversy in its entirety is deemed to be a final order. In that a final order should contain the precise controversy, and the reasons which made basis to arrive upon any conclusion.

8. It also gleans out of record that the learned Judicial Magistrate adopted the same course while dismissing the application vide order dated 23.07.2020 of the petitioner/complainant by observing as under:-

*“The court may not revisit the orders once passed regarding the deletion of the said offence due to technical restrained, however, the complainant if aggrieved of such order could avail the effective remedy under the law.”*

9. The order *ibid* depicts that the learned Judicial Magistrate without dilating upon merits of the case, proceeded

to dismiss the application, *inter alia*, on account of technical restraints.

10. The learned Revisional Court also did not advance any reasons for dismissal of the revision petition. The order-in-revision, too, does not contain any observations/reasons on the basis of which, the offence under Section 377-B PPC, was struck out.

11. It is settled principle that the orders/judgments, which are sketchy, slipshod and devoid of reasons cannot be described as a speaking or judicial orders within the legal parlance. Reliance is placed upon Muhammad Ibrahim Khan V. Secretary Ministry of Labour & Others (1984 SCMR 1014), Gouranga Mohan Sikdar V. The Controller of Import & Export (PLD 1966 SC 357), Nazim Paly Sock Ltd V. Collector of Customs (2005 YLR 1019), and Malik Zaheer Nawaz and Six Others V. Pakistan Industrial Leasing Corporation Limited (2002 CLC 739).

12. Another important aspect of the matter is that under Section 227 Cr.P.C the Court is competent to alter or add to any charge at any time before judgment is pronounced and the only prerequisite is that the same should have been done prior to announcement of judgment, and subject to the condition that every such alteration or addition shall be read and explained to the accused. Therefore, the learned Trial Court, even otherwise, is competent to alter or add to any charge at any time before judgment is pronounced. Reliance is placed upon “Muhammad Jameel Azeem V. Ghulam Shabbir and others (2011 SCMR 1145).

13. At the cost of repetition, it is reiterated that when the prosecution after investigation, recommended trial of respondent No.3 in offences under Sections 377 and 377-B PPC, it was incumbent upon the learned Judicial Magistrate to have given hearing to the prosecution and the petitioner/complainant and then to pass a speaking order with reasoning, made basis to arrive at any conclusion. Likewise rejection of application of the petitioner on the ground of

technical restraints, being a Court of competent jurisdiction, cannot be termed as just and proper. Subsequently the learned Revisional Court did not lay any comment upon the issue, though, discussed conduct of the petitioner, therefore, the order in revision also did not fulfill the requirements of a speaking order.

14. The prosecution laid emphasis that besides Section 377 PPC, Section 377-B PPC is also attracted to the facts of the instant case as a child/victim below the age of 18 years was forced by respondent No. 3 to engage in sexually explicit conduct. Whether Section 377-B PPC is attracted or not, is the prerogative of the learned Trial Court, which is otherwise competent to alter or add to any charge at any stage before passing the judgment subject to the condition that the said alteration or addition should be put to the accused, therefore, in such an eventuality when neither the learned Trial Court nor the learned Revisional Court, rendered any reasoning for deletion of the said offence, it would not be just to embark upon the said exercise by laying any comment upon the same in jurisdiction under Article 199 of the Constitution, so to avoid causing prejudice to the case of either side.

15. To sum up, it is held that the impugned orders do not qualify the status of speaking orders for want of reasoning and the material made basis to arrive at the conclusion. Because Court has to discuss the material placed before it to be sufficient for addition/deletion of the charge. The orders are also hit by the principle of natural justice and fair trial envisaged in Article 10-A of the constitution. Consequently, both the impugned orders are set aside. The learned Trial Court is directed to decide the issue qua application or otherwise of Section 377-B PPC afresh after giving due hearing to the prosecution, defence and the complainant through a speaking order. It is worth to mention, that, order may be the same or not the same but should be in accordance with the mandate of law, particularly highlighted in supra paras.

16. Moreover, it is also necessary to mention that in the present case, this Court while declining post arrest bail to the petitioner vide order dated 09.07.2020 passed in Criminal Misc. No. 797/B/2020, directed the learned Trial Court to conclude the trial by proceedings on day-to-day basis, therefore, the learned Trial Court should make every endeavour to conclude the trial in accordance with the spirit of the direction. At this juncture, it is necessary to mention that any alteration or addition to the charge, in terms of Section 227 Cr.P.C can be made at any stage before pronouncement of the judgment, therefore, the exercise to be conducted pursuant to the instant order, would not be consider as an impediment to proceed with the trial and to record evidence as the issue regarding application of the Section ibid or otherwise is an issue that can be decided without any hindrance to the trial/record of evidence.

17. The instant writ petition is allowed in above terms.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

\*A.R.Ansari\*

Approved for Reporting