

Judgment Sheet
ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 4613 of 2018

Raja Shoaib Mehmood

Versus

Inspector General of Police, Islamabad, etc.

Petitioner by: ***Raja Ikram Ameen Minhas, Advocate.***

Respondents by: ***Mr. Qaiser Imam Ch., Advocate***
Barrister Ayesha Siddique Khan, State
Counsel.
Muhammad Athar Khan, Inspector, CIA,
Islamabad.

Date of Decision: ***16.08.2019.***

MOHSIN AKHTAR KAYANI; J: Through this Writ Petition, petitioner has assailed the order dated 14.11.2018 passed by respondent No.1/Inspector General of Police, Islamabad, whereby Special Investigation Team (SIT) was constituted for reinvestigation of criminal case FIR No. 182 dated 31.03.2014 under Sections 467, 468, 470, 471, 408, 34 PPC registered at Police Station Sabzi Mandi, Islamabad.

2. Brief facts referred in instant writ petition are that respondent No.4/complainant of the case Dr. Israr Shah, proprietor Attabak Pharmaceutical Industries got registered the above mentioned FIR against the accused persons (Ex-General Manager, Ex-Finance Manager and Ex-Civil Distributors) of his company and after thorough probe the police submitted *Challan*, where-after charge was framed by the learned Trial Court. During the course of investigation, different audits of accounts of M/s Attabak Pharmaceutical Industries were conducted, whereas the 3rd and last audit report reveals that certain transactions were made on the part of M/s Attabak Pharmaceutical Industries to different companies, which require probe from new individuals, whose names came on record. The complainant filed an application for investigation from those new

individuals, whose names have been surfaced in the 3rd audit report. The Investigation Officer/Abdul Sattar, S.I., CIA after conducting the investigation submitted report U/S 173 Cr.P.C on 21.12.2017 against the accused persons by declaring them innocent. The matter was further transferred to another Investigation Officer, who has also submitted report before the learned Trial Court on 28.05.2018 reiterating the stance of earlier investigation officer. The Complainant/respondent No.4 through an application requested the learned Trial Court for summoning of 08 new accused persons namely Mahmood Ahmed, Qasim Mahmood, Shoaib Mahmood, Zaheer Ahmed Usman Zafar, Malik Aftab and Aamir Usman Waqas. The said application was turned down by learned Judicial Magistrate vide order dated 28.07.2018 and refused to summon the above mentioned accused persons on the ground that no *prima-facie* incriminating material is available on record against the said 08 persons. Order passed by learned Judicial Magistrate was assailed by the complainant/respondent No.4 through a criminal revision before the learned Additional Sessions Judge (West), Islamabad, which was subsequently withdrawn vide order dated 27.10.2018.

3. Complainant/respondent No.4 filed another application for inquiry of the matter with concerns that newly nominated 08 accused persons have been exonerated by investigation officer through an under hand deal with accused side. On the said application an inquiry was marked by the Additional Inspector General of Police, Islamabad, however, complainant/respondent No.4 again requested the Additional Inspector General of Police, Islamabad for withdrawal of his application, as he intended to approach concerned Court for redressal of his grievance. The Additional Inspector General of Police, Islamabad vide order dated 11.04.2018 passed an appropriate order that on the request of complainant his application stands withdrawn. Complainant/respondent No.4 again filed another application for reinvestigation of the matter to the Senior Superintendent (Operations), Islamabad on 15.10.2018 with the request to constitute a Special Investigation Team (SIT), as a result whereof the Inspector General of Police, Islamabad passed order dated 14.11.2018, whereby under the

chairmanship of Senior Superintendent of Police, an SIT comprised of four members was constituted. Hence, the instant writ petition.

4. Learned counsel for petitioner contends that after registration of said case, different investigation officers investigated the matter, different reports were submitted in learned Trial Court, even separate challans were submitted against different sets of accused persons and even charge was also framed; that learned Trial Court has recorded statement of one of the prosecution witness, but the complainant/respondent No.4 is not satisfied and continuously lingering on the matter on one pretext or the other, as a result whereof the trial has not been proceeded further; that once learned Trial Court has passed order for non-summoning of accused persons on the basis of available material on record, hence, no further investigation could be conducted; that when a judicial order passed by the learned Judicial Magistrate for non-summoning of 8 new accused persons including petitioner, was challenged before the Revisional Court by complainant/respondent No.4, however, the same was withdrawn and as such the order attained finality, therefore, further investigation is barred by the law.

5. Conversely, learned counsel for complainant/respondent No.4 as well as learned State Counsel contends that there is no bar for further investigation or investigation at the first occasion under Criminal Procedure Code as well as under the Police Rules; that the purpose of investigation is to extract the truth and collect evidence for the purpose of prosecution, as such the matter has not yet been investigated completely for the first time against the 08 newly added accused persons, whose names came on record after the final and 3rd audit report, which establishes the link of previously nominated/*Challaned* 07 accused persons, requires thorough probe and investigation; that the trial has not yet been concluded and even only one prosecution witness has been brought on record, therefore, the police requires the physical presence of the 8 newly nominated accused persons, who are beneficiary of the crime proceed in the main fraud, committed by the first set of 7 accused persons.

6. Arguments heard record perused.

7. Perusal of record reveals that FIR No.182, dated 31.03.2014, under Sections 467, 468, 470, 471, 408, 34 PPC, Police Station Sabzi Mandi, Islamabad was registered on the complaint of respondent No.4/Dr. Israr Shah, proprietor of M/s Attabak Pharmaceutical Industries, wherein he nominated Raja Muhammad Rizwan (Ex-General Manager), Muhammad Sohail Awan (Ex-Finance Manager), Muhammad Dolat (Ex-Civil Distributor), Ch. Aamir (Ex-Civil Distributor), Ayaz Qureshi (Ex-Civil Distributor), Raja Qasim Mehmood and Muhammad Razaq Tanoli (Ex-Civil Distributor) Attabak Pharmaceutical Industries, Islamabad, who allegedly committed fraud and criminal breach of trust in the affairs of M/s Attabak Pharmaceutical Industries, Islamabad. The tentative assessment of record reveals that different audits have been conducted, in which misappropriation of funds have been referred.

8. In this regard, first audit report of Ghafoor & Co. Chartered Accountant, Peshawar dated 14.03.2014 reveals the fraud of Rs.14 Crore. The second audit report was based upon review of RSM Company conducted by Salman Mahmood/Auditor vide his report dated 08.01.2016, however, the same was disputed, where-after another review was conducted by another audit firm namely Baker Tilly Mehmood Idrees Qamar, who has submitted his report of review on 26.08.2016, to the CIA officials. In the 3rd audit report tentative assessment of fraud comes to Rs.474,741,000/-. The 3rd and last report reveals the names of Raja Mahmood Ahmed, Raja Qasim Mehmood, Raja Shoaib Ahmed, Raja Awais, Malik Aftab, Usman Zafar, Zaheer Ahmed and Aamir Usman. The investigation officer exonerated the above referred 08 new accused persons in the final investigation report, however, the matter was transferred to another investigation officer of CIA, who also submitted report U/S 173 Cr.P.C. dated 28.05.2018 reiterating the stance of previous I.O. The second Investigation Officer has also referred in his report that: -

"ان آٹھ ملزمان متذکرہ کو مقدمہ ہذا میں طلب کیا، جو شامل تفتیش نہ ہوئے"

9. The above referred tentative assessment of record further reveals that the new set of accused persons including petitioner/Raja Shoaib Mehmood was confronted with certain questionnaires by the I.O., which have been appended

with this petition, even the response submitted by the said individuals has also been attached, but the complainant/respondent No.4 was not satisfied with the conduct of I.O., therefore, he filed an application to the Inspector General of Police as well as Senior Superintendent of Police (Operations), Islamabad for constitution of SIT, comprising of senior officials of police. The constitution of said SIT has been assailed by petitioner in this writ petition.

10. The preliminary question before this Court, as to whether any matter could be reinvestigated, which has already been investigated in the early proceedings by some of the police officials or Special Investigation Team could be constituted for the purpose of investigation or reinvestigation, especially when judicial order was already passed by the learned Magistrate (learned Trial Court), wherein request for summoning of these 8 new accused persons has already been turned down.

11. In order to resolve the said controversy, I have gone through the following judgments passed by the Superior Courts reported as **PLD 2007 SC (Muhammad Nisar Cheema Vs Mazhar Javaid & others), 2014 SCMR 1499 [Qari Muhammad Rafique Vs Additional Inspector General of Police (Inv.) Punjab and others], 2014 SCMR 474 (Raja Khurshid Ahmed Vs Muhammad Bilal & others), PLD 2009 Lahore 101 (Khalid Javed Vs Board through Deputy Inspector-General of Police (Investigation), Lahore and 5 others), 1986 SCMR 1934 (Riaz Hussain and others Vs The State), 2015 PCr.LJ 1436 (Muhammad Nazir Vs Deputy Inspector-General of Police and 6 others), 2006 SCMR 373 (Bahadur Khan Vs Muhammad Azam and 2 others), PLD 1987 SC 13 (Aftab Ahmad Vs Hassan Arshad and 10 others, PLD 2001 Lahore 271 (Ashiq Hussain vs Sessions Judge, Lodhran and 3 others).** While considering the above case studies, following principles were highlighted:

- (a) When investigation report (challan) had already been submitted in trial court, trial has been commenced, change of investigation or order of further investigation in the matter is not sustainable under the law.

- (b) There is no bar for the re-investigation of the case and police authorities are at liberty to file supplementary challan, even after submission of final report under Section 173 Cr.P.C., however, this cannot be done after the case has been disposed of by the learned Trial Court.
- (c) Change of investigation was only possible if same was based upon reasons.

12. Keeping in view of above principles laid down in different case laws, this Court is of the view that there is no bar on further investigation. Even in this matter the investigation against new set of 08 accused persons, including the present petitioner, has been required for the first time as the new set of accused persons are holding different positions in different companies and firms having business transactions with M/s Attabak Pharmaceutical Industries, Islamabad. Whereas, the 3rd audit report reveals that the amounts received by the first set of accused persons (who are already challaned) have transferred certain amounts through banking channel or otherwise to present petitioner and newly nominated accused persons and as such, the said transactions require a thorough probe, due to which complainant suffered a huge financial loss in M/s Attabak Pharmaceutical Industries, Islamabad. Although, it is mere an allegation at this stage, which requires a thorough probe and investigation on the basis of principles laid down and discussed above.

13. This Court is also of the view that further investigation could be restricted, if challan has already been submitted and trial has been commenced, however in this case the new set of accused persons, including the petitioner, has not yet been considered as accused. The Abdul Sattar/I.O. has given his opinion that all the 08 accused persons are innocent, whereas, it is trite law that *Ipsi-Dixit* of police is not binding upon the Court, especially when the incriminating material was not collected in a prescribed manner. There is no second opinion that I.O. can declare any person innocent after thorough probe and investigation, however, at this stage, Investigation Officer of the case as well as report

submitted on record does not reflect any sufficient material to settle the question of innocence or guilt of newly added accused persons, therefore, this Court cannot render any observation in this regard.

14. The epitome of above discussion suggests that the constitution of SIT by the Inspector General of Police, Islamabad is a right approach to settle the disputed controversial questions or allegations, which may result into declaration in favour of nominated accused person or otherwise.

15. This Court shall not enter into the arena of investigation, nor prompt to pass any observation, which might affect the merits of the case, therefore, the grounds raised by the petitioner for setting aside the order regarding constitution of SIT is not legally entertainable, rather it is the mandate of law to settle all such controversies through investigation, which could not be restricted under any authority, therefore, the instant writ petition, at this stage, is considered as premature and the same hereby stands **DISMISSED**.

16. As the composition of said SIT reveals that Senior Superintendent of Police (Operations), Superintendent of Police, Deputy Superintendent of Police and concerned S.H.O. being members of said team are competent enough to settle the question of merits without any favour and fear, hence, this Court upholds the order dated 14.11.2018, passed by Inspector General of Police, Islamabad, with further direction to the SIT to conclude the investigation within a period of sixty (60) days, by calling all the relevant record from registered firms, companies, Federal Board of Revenue (FBR), Inland Revenue Officer, Joint Sub-registrar of properties, individuals or any other official or Bank, which deems to be required in such type of investigations. However, it is not necessary that every accused person should be taken into custody for the purpose of investigation, unless he does not cooperate with the SIT.

17. Before parting with this judgment, it is necessary to highlight the conduct of the complainant/respondent No. 4, who has not yet put any serious effort for early conclusion of trial, despite clear direction issued by this Court, therefore,

learned Trial Court seized with the matter is directed to proceed with the trial on day to day basis, without waiting for the new investigation report of the SIT, as the said investigation report is not related to the previous set of accused persons, who are already under trial. Learned Trial Court is further directed not to give any adjournment to the complainant on such reasons. However, if the SIT comes to an opinion against the new set of accused persons in future, the learned Trial Court can exercise its powers for re-summoning of complainant or any other evidence under the law, if so required.

18. Learned Trial Court shall submit report of progress of trial on fortnightly basis through the Member Inspection Team (MIT) of this Court and consider the instant matter as direction case. It is expected from learned Trial Court to conclude the trial till 31.12.2019, by all means.

(MOHSIN AKHTAR KAYANI)
JUDGE

"Khurram"