

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
AT GILGIT
S.M.C NO.22/2011
(COMPLAINT AGAINST PWD)

Advocate General Gilgit-Baltistan.

Mr. Kareem Khan, XEN B&R, Division Gilgit.

Mr. Zahoor Ahmad, SHO Police Station City Gilgit.

Syed Murtaza Hassan, Investigating Officer ,P.S. City Gilgit.

Date of hearing: 29-05-2013.

ORDER

Rana Muhamad Arshad Khan, CJ: Mr. Siyal Ahmed s/o Late Jamsheed r/o Kashorte Gilgit made an application in the name of Chief Judge, Supreme Appellate Court Gilgit-Baltistan stating therein that late Jamsheed father of the applicant, while going on Motor Bike, had met with an accident due to a pothole on the Basin Road which was not repaired by the concerned authorities for the last about one year. He was hurriedly taken to the District Headquarters Hospital Gilgit, where he was admitted for treatment but soon thereafter, he had gone in Coma and remained in that state for more than eighteen hours and had expired on 13.07.2011 at 04:45 pm at DHQ Hospital Gilgit on account of head injury sustained in the accident which had taken place at about 09:00 pm on 11.07.2011.

2. A case F.I.R No. 205/11 was registered with the police Station City Gilgit on 14.07.2011 at about 08:15 pm on the written application of Siyal Ahmed s/o jamsheed under section 322 PPC. The afore-referred criminal case remained pending with the Investigating Officer for a petty long time. The applicant had been running pillar to post to get the Investigation of the case concluded but the local police, on one or the other pretext, neither concluded the investigation nor the report under Section 173 Cr.Pc was prepared and submitted before the Court of competent jurisdiction, whereas, the investigation was to be concluded without unnecessary delay and as soon as it is concluded, the Officer Incharge of the Police Station was under legal obligation to forward the same through Public Prosecutor to a Magistrate empowered to take cognizance of the offence on the Police report. The plain reading of Section 173 Cr.PC clearly reveals that the investigation was to be completed within a period of 14 days from

the date of recording of First information Report under Section 154 Cr.PC. If the investigation is not concluded within stipulated period, it was imperative duty of the Officer Incharge of the police Station to prepare and Interim Report within three days of the expiration of the said period in the form prescribed by the Provincial Government, stating therein the conclusion of the investigation. The case was registered on 14.07.2011 but the Challan was not completed within stipulated period and it remained pending with the Investigating Officer and nobody had adhered to see as to why, this Challan was being kept with the Police Station instead of forwarding the same to the concerned Court of Judicial Magistrate under the law.

3. The matter came up before the Court on 24.11.2011 when the following order was passed:-

“The S.H.O of the concerned police station has produced the record of the case and learned advocate General with reference to the statement of witnesses recorded by S.H.O during the investigation has submitted that one Mr. Jameel S/O Rasool R/O Basin Khari has been found responsible for creating trouble as he with the purpose of taking water to his land for irrigation caused a big hole in the road at the place of incident and since he has not joined the investigation, therefore, challan in the case has not been submitted. The S.H.O when pointed out that submission of challan cannot be withheld for joining investigation, by a person, he submitted that challan will be forwarded without any further delay. The failure of the police not to submit the challan as per direction of law is an act of negligence because if a person required by the police in a case is not traceable, the police is not supposed to frustrate the law and we direct that S.H.O of police station shall submit challan in the case within two days.

The question relating to the criminal liability of a person in the transaction is entirely different to civil liability in the matter for the purpose of payment of damages to the legal heirs of the victim.

The perusal of the record would show that despite repeated complaints made by the people of the area to the PWD department for construction of road the department has not bothered to remove the hurdle of a hole on the road. The negligence of the department in the matter would also be ascertainable from the prevailing situation and consequently we, without further commenting upon the matter deem it proper to direct the District and Sessions Judge Gilgit for appointment of a Judicial Officer for holding an inquiry in to the matter and if PWD Department is found at fault in the inquiry the inquiry officer will fix the liability accordingly and also determine the quantum of compensation to be paid to legal heirs of victim”

4. The perusal of the order dated 24.11.2011 reveals that the District & Sessions Judge, Gilgit was directed for appointment of a Judicial Magistrate to hold an inquiry in to the matter and it, the PWD Department is found to be at fault in the inquiry, he shall fix the liability accordingly and shall also determine the quantum of compensation to be paid to the legal heirs of the victim.

5. In pursuance of this Court, learned District & sessions Judge, Gilgit appointed Mr. Muhammad Ishaq, Senior Civil Judge/Judicial Magistrate as Inquiry Officer, who probed into the mater in detail and having come to the conclusion, made recommendation to the effect that Gilgit-Baltistan PWD, Building & Roads Division, Gilgit be ordered to compensate the legal heirs of the victim and keeping in view various aspects of the causes of death of victim, Rupees Two Lac would be adequate as compensation.

6. The SHO concerned along with Sub-Inspector is present in the Court and states that the Challan was prepared and the same was forwarded though Public Prosecutor to the learned Judicial Magistrate concerned but the learned Judicial Magistrate instead of entertaining the same had refused to consider the Challan and no orders were reportedly made on the Challan while refusing the same. In fact, the Challan was not forwarded in the manner prescribed in the law.

7. However, having lenient view of the matter, the SHO present in the Court is directed to submit the Challan within three days without fail, before the Court of competent jurisdiction for further proceedings

8. On the submission of Challan, the trial Court shall proceed with the matter under the law. The Gilgit-Baltistan PWD, B&R Division, Gilgit shall make payment of Rupees Two Lac to the legal heirs of late Jamsheed within two months positively and if, the orders are not complied with, in its latter and spirit, the applicant Siyal Ahmed is at liberty that he may approach this Court with an application for an appropriate order.

9. The SMC. No. 22/2011 is disposed of accordingly.

Chief Judge

Judge