

Stereo. HC JD A 38.
Judgment Sheet
**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR**
JUDICIAL DEPARTMENT

Criminal Revision No.143 of 2025.

(Ghulam Hassan Vs. The State and four others)

J U D G M E N T

Date of hearing: 16.10.2025.

Petitioner by: Ch. Mussadiq Munir, Advocate.

Respondents No.3 to 5 by: Ch. Sarfraz Noor Meo, Advocate.

State by: Mr. Zafar Iqbal Somro, Deputy District
Public Prosecutor.

SADIO MAHMUD KHURRAM, J. Through this petition filed under sections 435 and 439 Cr.P.C., the petitioner has assailed the order dated 25.08.2025, passed by the learned Additional Sessions Judge, Yazman, whereby his application seeking the summoning of the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed to face the trial of the case F.I.R No. 162 of 2024, registered at the Police Station Saddar Yazman, District Bahawalpur, was dismissed.

2. The brief facts of the case are that the petitioner got the F.I.R No. 162 of 2024, registered at the Police Station Saddar Yazman, District Bahawalpur, in respect of offences under sections 302, 324, 148, 149 and 109 P.P.C. and after the conclusion of the investigation, the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, were

declared as not to be involved in the case and in the report under section 173 Cr.P.C. their names were placed in Column No.2. After the learned trial court had taken cognizance of the case, the petitioner, moved an application before the learned Additional Sessions Judge, Yazman seeking the summoning of the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, whose names had been placed in Column No.2 of the report under section 173 Cr.P.C., however, vide impugned order dated 25.08.2025, the said application of the petitioner was dismissed, hence, this petition.

3. The learned counsel for the petitioner, *inter alia*, contended that the order dated 25.08.2025 passed by the learned Additional Sessions Judge, whereby he refused to summon the respondents No.3 to 5 as accused to face the trial of the case, was liable to be set-aside being against the facts and the law; that the learned Additional Sessions Judge had based his order only on the opinions of the Investigating Officers of the case, however, had not discussed at all as to whether there was any evidentiary material available as against the respondents No.3 to 5 which could be considered sufficient for proceeding against them; that there was sufficient material available against the respondents No.3 to 5 in the shape of the statements of the witnesses recorded during the investigation of the case, to proceed with their trial.

4. Learned counsel for the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed submitted that the impugned order dated 25.08.2025, passed by

the learned Additional Sessions Judge was based on sound reasoning and did not merit any interference.

5. The learned Deputy District Public Prosecutor submitted that the names of the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, were placed in Column No.2 of the report under 173 Cr.P.C. therefore, it was necessary that some further material be brought on record before they could be summoned to face the trial of the case, therefore, the order passed by the learned Additional Sessions Judge, dated 25.08.2025, did not merit any interference.

6. I have heard the arguments advanced by the learned counsel for the petitioner, the learned counsel for the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, the learned Deputy District Public Prosecutor and perused the record with their able assistance.

7. A perusal of the record reveals that the petitioner got the F.I.R No. 162 of 2024, registered at the Police Station Saddar Yazman, District Bahawalpur, in respect of offences under sections 302, 324, 148, 149 and 109 P.P.C. and after the conclusion of the investigation, the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, were declared as not to be involved in the case and in the report under section 173 Cr.P.C. their names were placed in Column No.2. After the learned trial court had taken cognizance of the case, the petitioner, moved an application before the learned Additional Sessions Judge, Yazman seeking the summoning of the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, whose

names had been placed in Column No.2 of the report under section 173 Cr.P.C., however, vide impugned order dated 25.08.2025, the said application of the petitioner was dismissed. It is a fact that the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed were not only named in the F.I.R as accused but were also named as accused in the statements of the witnesses recorded under section 161 Cr.P.C. Though it is correct that the Investigating Officers of the case, had declared that the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed, were not involved in the incident at all, however, the said opinions of the Investigating Officers of the case, were not even relevant to be considered while adjudicating upon the application of the petitioner seeking summoning of the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed to face the trial of the case, as the question of the summoning was to be decided within the parameters of section 204 Cr.P.C.. In this particular case, it is obvious that there was evidentiary material in the shape of not only the F.I.R but also the statements of the witnesses recorded under section 161 Cr.P.C. to proceed with the trial of the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed. Moreover, the learned Additional Sessions Judge, while passing the order dated 25.08.2025, only referred to the result of the investigation as conducted by one of the Investigating Officers of the case, however, did not at all advert to the statements of the witnesses recorded during the investigation of the case, wherein the respondents No.3 to 5 namely Tariq Mehmood, Muhammad

Usman and Gohar Javed alias Muhammad Javed, were duly implicated. The august Supreme Court of Pakistan, has already held that the learned trial court can summon any accused whose name has been placed in column No.2 of the report under section 173 Cr.P.C. to face the trial of the case before recording of any evidence when there is sufficient material available against him and there is no bar whatsoever in this regard placed on the learned trial court. Moreover, the august Supreme Court of Pakistan has also held that the accused as having been declared by the Investigating Officer of the case not to be involved in the case, should not be made a consideration while adjudicating upon the application under section 204 Cr.P.C. for the simple reason that the august Supreme Court of Pakistan has already held that the opinion of the Investigating Officer of the case is not only irrelevant but also not admissible in evidence. In this regard reliance is placed upon the case titled “Safdar Ali versus Zafar Iqbal and others” (2002 SCMR 63), wherein the august Supreme Court of Pakistan has held as under:-

“8. It is well-entrenched legal principle that "when a Magistrate takes cognizance under section 190(1)(b) on a police report he takes cognizance of the offence and not merely of a particular person charged in the report as an offender. He can, therefore, issue process against other persons who also appear to him on the basis of the report and other material placed before him when he has taken cognizance of the case, to be concerned in the commission of the offence when he does so he does not act under clause (c), therefore, section 191 is not applicable." (Mehrab v. Emperor (F. B.) 26 Cr.LJ 181, Lai Bihari Singh v. Emperor 31 Cr.LJ 55). On the touchstone of criterion as discussed hereinabove we are of the considered view that the order passed by learned Ilaqa Magistrate dated 8-11-1997 is neither perverse nor capricious but on the other hand it has been passed after having an in-depth scrutiny of the entire record and thus, it cannot be termed as non-speaking as held by the learned High Court in the impugned judgment and being unexceptionable it hardly calls for any interference. We are inclined to convert this petition into appeal and accordingly while allowing the same the impugned order, dated 11-5-2001 is hereby. set aside being violative of the relevant provisions of law and consequently order, dated 8-11-1997 is

restored. The learned trial Court is directed to proceed with the case in accordance with law."

Reliance is also placed on the cases of "Waqar ul Haq alias Nithoo and another versus The State" (1988 SCMR 1428), wherein the august Supreme Court of Pakistan has held as under:-

"The contention is that first evidence should be recorded and if in the light of such evidence the trial Court deems it proper to summon them only then they may be summoned. The point involved in this case is that three persons have been accused of the offence out of which one Muhammad Rafiq was placed in column No.3 whereas the present petitioners were placed in column No.2. The accused person whose name appears in column No.2 of the challan can be summoned by the trial Court directly to stand the trial and it is not necessary that first some evidence should be recorded. In the present case the challan against the petitioners had not been cancelled by placing them in column No.2. It only meant that according to the police investigation they were found innocent, and therefore, they were discharged under section 63 of the Cr.P.C. However it does not mean that they could not be summoned to stand trial by the Sessions Court. In that view of the matter we do not find any substance in this petition which is accordingly dismissed."

Reliance is also placed on the cases of "Sher Muhammad Unar and others versus The State" (PLD 2012 SC 179) wherein the august Supreme Court of Pakistan has held as under:-

"The Court is not bound by such a finding of innocence reflected in the final report submitted under section 173, Cr.P.C. and it can still summon the accused."

Reliance is also placed on the cases of "Falak Sher and another versus The State" (PLD 1967 SC 425), wherein the august Supreme Court of Pakistan has held as under:-

"Now, the question is, if he disagrees with the report, can he take action under clause (k) against those whose names have been placed under column 2 of the challan. As already pointed out, the Magistrate is not bound by the report submitted by the police under section 173. When the said report is received by the Magistrate, the Magistrate on the report itself may not agree with the conclusions reached by the investigating officer. There is

nothing in section 190 to prevent a Magistrate from taking cognizance of the case under clause by in spite of the police report. This Court in the case of Sardar Ali and others v. The State P. S. L. A. No. 66 of 1966, while dealing in a similar question, observed:-

"Reference to section 173, Cr. P. C., which prescribes the details that must go into a police report of relevant kind shows that the requirements are of a factual nature, so That, irrespective of the investigating officer's opinion, a Magistrate takes cognizance on a police report, when he proceeds against a person whose name is mentioned therein as one accused of the offence reported upon."

In conclusion, we may observe that this has been the consistent view of the High Court of West Pakistan and that correctly interpreted the meaning and scope of sections 173 and 190 of the Code of Criminal Procedure in Muhammad Naira: Khan v. Noor Muhammad and others (P LD 1967 Lah. 176).

For the reasons stated above, we see no ground for interference with the order of the High Court and accordingly dismiss this appeal."

8. In view of the above discussion, this petition is **allowed** and the learned trial court is directed to summon the respondents No.3 to 5 namely Tariq Mehmood, Muhammad Usman and Gohar Javed alias Muhammad Javed to face the trial of the case F.I.R No. 162 of 2024, registered at the Police Station Saddar Yazman, District Bahawalpur and proceed with the conclusion of the trial in accordance with the law. Obviously, the learned trial court shall base its findings upon the facts proved before it during the course of the trial.

(SADIQ MAHMUD KHURRAM)
JUDGE

Approved for Reporting

Judge

*Rashid**