

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE MUHAMMAD ALI MAZHAR  
MR. JUSTICE SYED HASAN AZHAR RIZVI  
MR. JUSTICE IRFAN SAADAT KHAN**

**CIVIL PETITION NO.940-K OF 2022**

(Against the Judgment dated 31.03.2022  
passed by the Sindh Service Tribunal at  
Karachi in Appeal No.473/2020)

Ikramuddin Rajput

...Petitioner

**Vs.**

The Inspector General of Police, Sindh  
and others

...Respondents

For the Petitioner : Mr. Javed Ahmed Chhtari, ASC  
Mr. Mazhar Ali B. Chohan, AOR

For the Respondents : Mr. Saleem Akhtar, Addl.PG  
Mr. Sibtain Mehmood, Addl.AG  
Malik Qasim, S.P.

Date of Hearing : 19.12.2023

**JUDGMENT**

**Muhammad Ali Mazhar, J.** This Civil Petition for leave to appeal is directed against the judgment dated 31.03.2022 passed by the Sindh Service Tribunal at Karachi in Appeal No.473/2020 whereby the appeal filed by the petitioner was dismissed.

2. The transitory facts of the case are that the petitioner was serving as Sub-Inspector in the Investigation Wing of Police Station, Mominabad, District West, Karachi. He was assigned the task of Investigation in the offence of rape of a minor girl aged about seven years. The father of the victim witnessed the incident and with the help of neighbors captured the culprit and handed him over to the police. The victim was bleeding from the vagina and was taken to the Jinnah Hospital, where she underwent examination and received

medical treatment. The medical examination of the victim established the commission of rape. The petitioner, as the Investigation Officer in the case, reduced the actual commission of rape into an attempt to commit the rape. On receiving a complaint of this mischief, the DIG Police West Zone, Karachi issued a show cause notice to the petitioner in the following terms:

"A case vide FIR No. 240/2018 u/s 376 PPC of PS Mominabad was investigated by you, in which accused Muhammad Shamim Ahmed was apprehended with red-handed when he was committed rape minor child ..... age 07 years. Moreover, W/MLO of Jinnah Hospital in Medico Legal Report declared that "hymen freshly tone/bleeding P/V+tu" vide ML.No 117 dated 11.07.2018. Furthermore, chemical examiner in result of chemical analysis report declared that "Human sperm declared into the vaginal swab and shalwar of victim baby ...." vide report No.LAB/No. 12595/96 dated 03-08-2018. The Medico legal Report was received on 11-07-2018 and the availability of such Medico Legal Report, there was no need of statement u/s 164 Cr.PC of a seven (07) years old victim before the Honorable Court. Additionally, the Chemical examiner report was received on 03.08.2018 and charge sheet was submitted before the Honorable Court of Law on 13.09.2018 with inserting Section 511 PPC by you. In availability of concrete evidence the adding of Section 511 PPC is clearly speak your ulterior/hidden motives, which will provide advantages to the accused during prosecution.

Being I.O. the attitude assumed by you is reckless/harebrained and not tolerable, which amounts to gross misconduct, inefficiency, irresponsibility on your part and needs to be suppressed with the condign punishment. Thus you have rendered yourself liable to be awarded any of the major/minor punishment as defined in Rule (4) of the Sindh Police (E&D) Rules 1988."

3. The petitioner submitted a reply to the show cause notice, denying the allegations. He was provided with a personal opportunity to be heard regarding the allegations and was dismissed from service on 04.08.2020. He filed a departmental appeal on 08-06-2020 which was rejected *vide* appellate order dated 17.09.2020. Consequently, the petitioner filed a Service Appeal before the Sindh Service Tribunal, Karachi, which was dismissed on 31.03.2022.

4. The learned counsel for the petitioner argued that the impugned order of the Sindh Service Tribunal is flawed both on law and facts. No misconduct was committed by the petitioner, rendering the entire exercise without lawful authority and is not sustainable under the law. It was further contended that no departmental enquiry was conducted, and the fact-finding report of the committee cannot substitute a regular departmental inquiry. He further argued that the petitioner conducted the investigation honestly and fairly to discover the truth. The learned counsel also referred to the statement of the

victim recorded under Section 164 of the Code of Criminal Procedure, 1898 (**"Cr.P.C."**) and argued that the petitioner submitted Final Challan on 10.09.2018, incorporating Section 511 of the Pakistan Penal Code, 1860 (**"P.P.C."**) based on the statement of the victim, which, according to the petitioner, indicates that the accused did not succeed in committing rape.

5. The learned Additional Prosecutor General and the Additional Advocate General both supported the impugned judgment of the Tribunal and argued that, after due diligence and considering the report of Enquiry, disciplinary action was taken against the petitioner. The whole case relied on documentary evidence, revealing deficiencies and dishonesty in the petitioner's performance as the Investigation Officer. Hence, the competent authority had rightly dismissed the petitioner, who was deemed unfit to hold a position in a disciplinary force.

6. Heard the arguments. The allegation against the Investigation Officer (petitioner) in the case is that due to an unfair and dishonest investigation, he converted a rape case registered under Section 376 P.P.C. into Section 511 P.P.C. However, the petitioner, throughout the departmental proceedings, never denied that the father of the victim was an eye witness of the incident who lodged the FIR for the offence of rape; the petitioner never disputed the medical report indicating the rupture of the victim girl's hymen and bleeding vagina, establishing the commission of rape; he never challenged the chemical examiner's report confirming the presence of human sperm in the vaginal swab and the *shalwar* of the victim. In view of such overwhelming evidence, there was no lawful justification to insert Section 511 P.P.C., which was nothing but an attempt to weak the prosecution case and provide benefit to the accused.

7. No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case. However, at times, a botched-up investigation can become a top impediment and stumbling block in the administration of justice, either intentionally with the aim to favour the accused or unintentional due to

inefficiency, incompetence, or unskillfulness of the Investigation Officer. The criminal justice system signifies the procedure for adjudicating criminal cases in order to award a sentence to the culprits for the offence committed by them; and the foremost objective is to penalize the offenders subject to the proof whether the offense has been committed or not, and this very important aspect is attached with the burden of proof on the prosecution which has direct nexus with the investigation report and the material and evidence collected by the Investigation Officer in discharge of his sacred duty to bring out the truth without engaging in any manipulation, favoritism, or exceeding the bounds of the law. A defective investigation gradually contaminates the judicial process and poses a hazard to human rights. In unison, it is the duty of superior officers and officers in charge of police stations to ensure that the Investigating Officer follows the provisions of law conscientiously, without any breach, conducting an impartial and honest investigation with the sole aim of bringing the truth to light. The task of investigation is an art and for attaining the proficiency in the job of investigation, extensive on job training is also required to ensure integrity and uprightness, without any temptation for personal gains or advantages. It is also a foundational pathway for the prosecution case, and being a sacrosanct duty of an investigation officer, it should be performed without any recklessness, sluggishness, or greediness.

8. According to Section 4 (l) Cr.P.C. the term "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person. The importance of this duty or task was also given much significance under Rule 25.2 of the Police Rules, 1934 which deals with the power of Investigating Officers, and under sub-rule 3, it is provided that it is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person. At this juncture, it would also be advantageous to point towards Section 166 (2) P.P.C., which lays down that whoever being a public servant entrusted with the investigation of a case fails to carry out the investigation properly or diligently or fails to pursue the case

in any court of law properly and in breach of his duties shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. Whereas Section 27 of the Anti-Terrorism Act, 1997, provides that if an Anti-Terrorism Court or a High Court comes to conclusion during the course of or at the conclusion of the trial that the investigating officer, or other concerned officers have failed to carry out investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court or, as the case may be, the High Court, to punish the delinquent officers with imprisonment which may extend to two years, or with fine or with both by resort to summary proceedings. While a similar provision has been incorporated under Section 22 of the Anti-Rape (Investigation and Trial) Act, 2021, which explicates that whoever, being a public servant, entrusted to investigate scheduled offences, fails to carry out the investigation properly or diligently or causes the conduct of false investigation or fails to pursue the case in any court of law properly and in breach of duties, shall be guilty of an offence punishable with imprisonment of either description which may extend to three years and with fine. According to Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988, "misconduct" means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules, or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any provision of any law or rules regulating the function and duty of Police Officer or to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer. Even under Article 4 of the Police Order 2002, it is *inter alia* provided that the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance; detect and bring offenders to justice; apprehend all persons whom he is legally authorized to apprehend and for whose apprehension, sufficient grounds exist; prevent harassment of women and children in public

places; afford relief to people in distress situations, particularly in respect of women and children, etc. Further, Article 155 of the Police Order, 2002, underlines various instances of misconduct that impose penalty on the delinquent, which includes any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey or any violation of duty.

9. In the Sughra Bibi versus State [PLD 2018 SC 595], it was held that during the investigation, the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934. It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person. In the case of Gajoo v. State of Uttarakhand [(2012) 9 S.C.C. 532], the Supreme Court of India not only identified serious lapses in the investigation but also directed the Director General of Police of the state to take disciplinary action against the officer whether he is in service or has since retired, for such serious lapse in conducting investigation. Whereas in the case of Babubhai v. State of Gujrat and others [(2010) 12 SCC 254], the Supreme Court of India held that investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law. In the case of State of Gujarat Vs. Kishanbhai [(2014) 5 SCC 108], it was held that if the acquittal is the result of defective investigation, the investigating and/or the prosecuting official responsible for such acquittal must be identified and the nature of lapses are to be ascertained as innocent or blameworthy.

10. The purpose and sagacity behind initiating disciplinary proceedings by the employer is to ascertain whether the charges of misconduct leveled against the delinquent are proven or not and, if so, to determine the appropriate action against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the sound sense of judgment of the competent Authority. In contrast, the justification and *raison d'être* for initiating criminal prosecution is

entirely different, where the prosecution has to prove the guilt of the accused beyond any reasonable doubt. Both processes have distinctive characteristics and attributes concerning the standard of proof. The object of a departmental inquiry is to investigate allegations of misconduct in order to maintain discipline, decorum, and efficiency within the institution, strengthening and preserving public confidence. In a departmental enquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which is a strict standard required in a criminal trial, where the potential penalties are severe.

11. According to the statement of allegations, the Medico-Legal Report declared that the hymen of the victim was freshly torn and bleeding, the chemical analysis report confirmed the presence of human sperm in the vaginal swab and *shalwar* of the victim. In the disciplinary proceedings, the competent authority concluded that there was no justification for the petitioner to insert Section 511 P.P.C. based solely on the statement of a seven-year-old minor girl, recorded under Section 164 Cr.P.C., while ignoring the ocular testimony of the victim's father who caught the accused with the help of neighbors and handed him over to the police. Even the victim in her recorded Section 164 Cr.P.C. does not absolve the accused but he prematurely added Section 511 P.P.C. which provides that "whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of imprisonment provided for that offence or with such fine [*daman*] as is provided for the offence, or with both".

12. As an Investigation Officer, it was the responsibility of the petitioner to submit the Final Report under Section 173 Cr.P.C. and subsequently, it was the function of the Trial Court to consider all evidence and materials collected by the Investigation Officer and proceed further in accordance with the law. Though the punishment

for rape is provided under Section 376 P.P.C., the offence of "Rape" is defined under Section 375 P.P.C., and the attached Explanation emphasizes that "penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape". The police force is a disciplined force with significant accountability and the responsibility of maintaining law and public order in the society. Therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with an unimpeachable, spotless character, and clean antecedents. In the case in hand, we feel that disciplinary action was taken after complying with due process of law and on the basis of self-evident and self-explanatory documents. The enquiry officer, Muhammad Tariq Nawaz (PSP), Superintendent of Police, Investigation Central, West Zone, Karachi, rightly found the petitioner guilty in his report dated 21.05.2020 for further necessary action.

13. It is clarified that this judgment only pertains to the disciplinary action taken by the department against the petitioner and affirmed by the Tribunal. The findings of this judgment will not prejudice or affect the case of either party before the proceedings of Trial Court arising from F.I.R. No.240/2018, lodged under Section 376 P.P.C. at P.S. Mominabad, Karachi which will be decided on its own merits and in accordance with the law.

14. In view of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned Tribunal. Consequently, this Civil Petition is dismissed and leave is refused.

Judge

Judge

Judge

Karachi  
19<sup>th</sup> December, 2023  
Khalid  
Approved for reporting