

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

W.P No. 131-B of 2019

Javed Khan etc:

Vs

The State etc:

JUDGMENT

Date of hearing 04/3/2019.

Appellant-Petitioner: **By Haji Hamayun Khan**
Wazir, Advocate.

Respondent: **Nemo for Respondents.**

SHAKEEL AHMAD, J.--- Javed and others, the
petitioners in this case have filed this Constitutional petition
filed U/A-199 of the Constitutional of Islamic Republic of
Pakistan 1973, the petitioners have impugned the order
dated 16.01.2019, passed by the learned Senior Civil Judge/
Judicial Magistrate, Lakki Marwat in crime No. 475 dated

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21.7.2016 registered U/Ss. 354/452/337-F(V)/148/149, whereby recommendation/request of the investigating officer to discharge the accused was turned down and he was directed to further investigate the case in the light of observation of the Regional Review Board dated 07.02.2017 and thereafter submit the report U/S. 173 Cr.P.C.

2. The facts of the case, in brief, are that the complainant Munawar Khan had lodged an FIR on 21.7.2016 at PS Lakki Marwat alleging that at about 05:00 hours, he was busy in reciting the Holy QURAN in his home, in the meanwhile, his neighbors threw stones from his house into his home and at once, accused Javbed Alias Fouji, Hameedullah sons of Taj Muhammad, Pervaiz, Hameedullah, Waheedullah sons of Noor Muhammad, Momin s/o Muhammad Ameen, Dilawar, Jehangir sons of Gul Sarwar, Arifullah s/o Mir Badshah, Muhammad Jan s/o Mira Gul entered into his home and started giving danda blows to the women-folk and torn the clothes of his father and sister namely-Mst:Hukam Jana Bibi, while he sustained

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injury on his left hand. He charged the accused for the commission of offence.

3. It was argued by the learned counsel for the petitioners that the I.O had submitted his report after proper investigation, but same was disbelieved by the learned Judicial Magistrate and directed to further investigate the case vide impugned order dated 16.01.2019 for no cogent reasons. It was next contended that the learned Judicial Magistrate has passed the impugned order in a slipshod manner and had no jurisdiction to issued direction to I.O to further investigate the case.

4. We have heard the arguments of the learned counsel for the petitioners and have scanned the record with their able assistance.

5. It may be noted that investigating agency is under obligation to complete every investigation without unnecessary delay as required under Section-173 (1) of Cr.P.C, and as soon as completed, the officer incharge of the police station shall forward to a magistrate empowered to

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take cognizance of the offence. On a police report, a report in form prescribed by Provincial Government setting forth the names of the parties, the nature of accusation information and the names of the person who appear to be acquainted with the facts of the case and stating whether the accused, if arrested has been forwarded in custody or has been released on his own bond. This section contemplates that on conclusion of investigation, the concerned SHO was required to submit a report of the result thereof in the prescribed manner to the Judicial Magistrate competent to take cognizance U/S. 190 Cr.P.C or to submit a report to the Judicial Magistrate concerned for disposal of the case in accordance with law. Perusal of Section. 190 Cr.P.C reveals that magistrate can take cognizance upon receiving complaint of the facts, which constituted offence, upon request in writing of such facts made by any police officer, and upon information received from any person other than police officer upon his own knowledge or suspicion or suspicion that such offence has been committed. Magistrate only after

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taking cognizance of a case is to determine whether the matter before him is exclusively triable by a court of Sessions, once he arrives at the conclusion that it is so triable, his own jurisdiction to try the same would cease, and in such event he must send the case to the court of Sessions for trial.

6. Now question for determination before us is that if the magistrate disagrees with the report of police, can he take action under Clause (b) against those whose names have been recommended for discharge and to be placed in column No.2. It is well-settled that a report submitted by the police officer U/S. 173 Cr.P.C, is not binding on the court. The court, therefore, notwithstanding the recommendation of the I.O regarding cancellation of the case and discharge of the accused from case, may decline to cancel the case and proceed to take cognizance of the matter as provided U/S. 190 Cr.P.C, In this behalf reliance can be placed on the case reported as *Federation of Pakistan V Malik Mumtaz*

Hussain (1997 SCMR 299). In this context reliance can also

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be placed on the case reported as ***Muhammad Ahmad V The State (2010 SCMR 660)***, wherein it was observed as under:-

"It may be mentioned here, for the benefit and guidance of all concerned, that determination of guilt or innocence of the accused persons was the exclusive domain of only the Courts of law established for the purpose and the said sovereign power of the Courts could never be permitted to be exercised by the employees of the police department or by anyone else for that matter. If the tendency of allowing such-like impressions of the Investigating Officer to creep into the evidence was not curbed then the same could lead to disastrous consequences. If an Investigating Officer was of the opinion that such an accused person was innocent then why could not, on the same principle, another accused person be hanged to death only because the Investigating Officer had opined about his guilt"

7. Undisputedly, the magistrate is competent to pass any order on the report submitted by the investigating officer and take cognizance of the offence or even order for further investigation. If any case law is needed reference may be made to the case reported as ***Imran V Liaqat Ali (2010 YLR 3288)***.

8. In the present case, the learned Snior Civil Judge/Judicial Magistrate has applied her mind to the facts and circumstances of the case and has passed order giving reasons of disagreement with the report of the investigating officer.

9. The learned counsel for the petitioners has not been able to point-out any illegality in the impugned order showing disagreement with the report of investigation officer and to further investigate the case in the light of observations of the Regional Review Board dated 07.02.2017.

10. For the forgoing reasons, we do not find any illegality or irregularity in the impugned order which is hereby upheld. The writ petition being devoid of force is hereby dismissed in *LIMINE*.

Announced.
04.3.2019.

JUDGE

JUDGE

