

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Writ Petition No.807-P/2014**

Date of hearing: 03.06.2015

Appellant (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 “*the Constitution*” petitioner Mst. Hina Rukhsana, seeks an appropriate writ to declare the order/ action of SHO Police Station Akora Khattak, Nowshera whereby arrest of respondent-accused Gul Zarin in a murder charge has been deferred and he has been exonerated/ discharged by invoking the provision of S.169 Cr.P.C. by placing his name in column No.2 of the Challan, which is sheer mala

fide and abuse of process of the law, hence, liable to be set aside.

2. Learned counsel for the petitioner argued that Muhammad Younas deceased, was the husband of the petitioner who contracted court marriage with the petitioner, on which respondents No.8 to 9 and co-accused Abdul Wali and Saddam, the close relatives of the petitioner being annoyed, committed his murder; that in the same incident petitioner also sustained multiple firearm injuries; that consequent upon the report of the petitioner FIR No.752 dated 28.08.2013 under sections 302/324/148/149 PPC, has been registered at Police Station Akora Khattak, wherein she has charged the respondents for commission of the offence; that version of the petitioner get corroboration from recovery of 22 crime empties of 7.62 bore, bloodstained earth from the spot, medico legal report of the petitioner and autopsy report of her deceased husband; that the accused-respondents, after commission of

the offence went into hiding, resultantly, proceedings under section 204 and 87 Cr.P.C. were initiated and challan in terms of S.512 Cr.P.C. was submitted against them, but all of a sudden on 17.09.2013, respondent No.8 Gul Zarreen, who is serving as DSP in Police Department was discharged/ exonerated under section 169 Cr.P.C. by the SHO, in a clandestine manner; that against the illegal action of the SHO, petitioner approached the learned Sessions Judge, who directed the prosecution to re-submit challan vide order dated 13.01.2014; that in the meantime, respondents No.8 and 9, obtained ad-interim pre-arrest bail from the Court of learned Sessions Judge, Nowshera, which was, later on, withdrawn; that both the accused-respondent are enjoying liberty unwarranted on the basis of nepotism and favoritism being higher rank official in Police Department. He contended that an appropriate writ directing the SHO concerned Police Station to arrest respondents-accused may kindly be issued and all action

and inaction of the SHO, be declared as illegal unlawful and without lawful authority.

2. Conversely, learned counsel for the respondents contended that during investigation that respondent/accused Gul Zareen, having been found innocent has been placed in column No.2 of the challan by the I.O./ SHO and has recommended his discharge from the charge. He contended that the action of the SHO being in accordance with law, has not caused any miscarriage of justice.

3. We have heard the respective submissions advanced at the bar from both sides and perused the record with their able assistance.

3. Under Section 169 Cr.P.C., the Investigating Officer/S.H.O of the Police Station, is empowered to release an accused on his executing a bond, with or without sureties, when the charge is found groundless or the evidence against him/her is deficient, which may not justify

the forwarding of the accused in the Court. For convenience we would like to reproduce S. 169 Cr.P.C.:-

***“169. Release of accused when evidence***

***deficient:*** If, upon an investigation under this chapter, it appears to the Officer Incharge of the Police Station, or to the Police Officer making the investigation that there is not sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such Officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial”.

The main theme of this section is availability of sufficient or deficient evidence on the basis of which the Investigating Officer has to form opinion about guilt or innocence of accused. Powers under section 169 Cr.P.C. is to be exercised by the I.O. when he does not find sufficient evidence or when he finds reasonable ground or suspicion to justify the forwarding of the accused and in such circumstance he may place his name in column No.2 of the challan, and thereafter it would be the job of the trial Court whether it agrees with the opinion of the I.O. or not. If the Trial Court does not agree with the opinion of the I.O., it may summon the accused placed in column No.2 of the challan and may treat him as a regular accused by formally charge sheeting him.

4. In this case, some evidence has been collected by the I.O./SHO in support of plea of alibi of respondent-accused Gul Zareen (DSP Police Department), according to which he was found on his duty in Battagram,

on the day, date and time of incident. The Hon'ble Supreme Court in case titled, ***“Sarwar and others Vs the State and others” (2014 SCMR 1762)***, in an authoritative judgment delivered by a larger Bench held as under:-

**“Even in cases of the most heinous offences the police was under no statutory obligation to necessarily and straightaway arrest an accused person during an investigation as long as he was joining the investigation and was cooperating with the same”.**

The only irregularity committed by the I.O./SHO in the instant case, is that he while releasing the respondent/accused Gul Zarin under section 169 Cr.P.C. did not obtain his bail bond with or without sureties, therefore, we direct the respondent-accused Gul Zarin to submit bail bond to the tune of Rs.3,00,000/- with two sureties each in the like amount to the satisfaction of learned Trial Court.

5. With the above observations, this petition  
stands disposed of accordingly.

**Announced.**  
**03.06.2015**

**J U D G E**

**J U D G E**





