

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

Cr.Misc.OP No.62-P/2015

Date of hearing: _____

Petitioner (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- Through the instant petition under section 561-A Cr.P.C., petitioner Rahat Zaman, seeks quashment of order dated 23.04.2015, rendered by learned Trial Court/ Additional Sessions Judge-II, Swabi, whereby he while allowing the application of Mst. Fahmeeda alias Hameeda (mother of Asad Amin deceased), returned case FIR No.212 dated 21.08.2014 registered U/Ss 457/458/380/397/511/100 PPC and Ss 13 and 15 Khyber Pakhtunkhwa Arms Act, 2013, Police Station Swabi, to the prosecution with the following directions:-

1. **Place Rahat Zaman the then complainant in column of the accused.**
2. **Re-investigate the case in hand to the extent of version of Mst. Hameeda set forth by her in her statement under section 164 Cr.P.C.**

through an impartial competent police officer.

3. Re-submit challan in the Court within 10 days positively.

2. Facts in brief, forming the background of the instant petition are that, on 21.08.2014 at 07.00 hours, Rahat Zaman complainant reported to local police that on the fateful night he was sleeping in his house, situated in the fields of Natiyan; that at 00.50 hours, on barking of pet dog, he woke up and in the meantime, somebody fired at the door of his room; that he in his self-defence, also fired from inside the room and after 10/15 minutes, when he came out from the room, noticed a person lying dead alongwith 30 bore pistol in the courtyard of his house; that he further noticed identity card in the name of Latif Jan son of Rasool Shah, resident of Mohallah Kanju Khel, lying near the Eastern wall of his house. He charged deceased Asad Amin (dead accused) and his unknown companions for entering into his house for the purpose of committing theft. He produced his pistol and Identity Card of said Latif Jan to local police on the spot. Report of the complainant report was reduced into writing in the shape of murasila by Fawad Ali Khan ASI, on the basis of which, FIR mentioned above was registered. He prepared injury sheet and inquest report of the deceased and shifted his dead

body to the mortuary for postmortem examination. He took into possession the CNIC of the deceased alongwith his 30 bore pistol without number and 3 live rounds, secured blood and 2 empties of 30 bore pistol from the place of the deceased as well as two empties of 30 bore from the place of Rahat Zaman complainant through various recovery memos and prepared site plan.

3. On the next day i.e. 22.08.2014, Rahat Zaman complainant recorded his statement under section 164 Cr.P.C., wherein he nominated the unknown culprits/ companions of dead accused to be Latif Jan and Muhammad Abbas, and also charged them for commission of the offence. Both the above named accused, were arrested on 22.08.2014, who during interrogation, pointed out the crime spot, consequent whereupon, additions were made in the site plan. After completion of investigation, challan was submitted against accused Latif and Muhammad Abbas.

4. In the meantime, Mst. Hameeda, mother of deceased Asad Amin, filed an application under section 22-A Cr.P.C., before the learned Justice of Peace Swabi, for registration of FIR against Rahat Zaman for murder of her deceased son, but the same was dismissed vide order

dated 27.10.2014. The operative part of the order of Justice of Peace read as under:-

“Since the petitioner has already been allowed by this Court (even dated order), passed in Criminal Revision No.15/CR dated 17.10.2014 to record her statement under section 164 Cr.P.C. before the Court of Illaqa/ Judicial Magistrate, Swabi in case FIR No.212 dated 21.08.2014 under section 457/380/511/100 PPC read with S.13 and 15 Khyber Pakhtunkhwa Arms Act, 2013, lodged at P.S. Permooli, earlier got registered in respect of same occurrence, therefore, registration of second FIR deems not appropriate. Instant petition, therefore, dismissed being without merits”.

Statement of Mst. Hameeda under section 164 Cr.P.C. was recorded on 11.11.2014, by the learned Illaqa Judicial Magistrate, Swabi wherein she charged accused Muhammad Abbas, Latif Jan and Rahmat Zaman (complainant of the instant case) for committing the murder of her son. However, on completion of investigation, proceedings against dead co-accused were abated and challan was submitted only against accused Muhammad Abbas and Latif Jan before the learned Trial Court where both the accused were summoned and

formally charge-sheeted, to which they pleaded not guilty and claimed trial. In the meantime, Mst. Hameeda filed an application before the learned Trial Court for arraying complainant Rahat Zaman in panel of the accused, which was disposed of in the above terms, as mentioned in Paragraph first of the judgment, hence, this petition by complainant Rahat Zaman.

5. Learned counsel for the petitioner argued that recovery of dead body of the deceased Asad Amin from the courtyard of the house of complainant alongwith pistol, two crime empties near the deceased as well as bullet marks on the door of room of house of complainant, recovery of pistol of the dead accused coupled with recovery of Identity card of co-accused Latif Jan, are material pieces of evidence, which prima facie establishes the version of the complainant that the deceased alongwith his co-accused in order to commit theft, entered the house of complainant and fired at the door of his room, therefore, there was no other option with the complainant but to re-act in his self defence in the mode and manner as alleged by him; that the version of complainant was found true by the Investigating Officer, therefore, he has rightly been not arrayed as an accused. He submitted that the

impugned order of the learned Trial Court being against the law and facts is liable to be set at naught.

6. Conversely, learned AAG contended that in case of placing complainant Rahat Zaman in column of the accused of the instant case, the other two co-accused charged by him for the commission of offence in his house would succeed in getting acquittal. However, learned counsel for the respondent Mst. Hameeda supported the impugned order and sought dismissal of the instant petition.

7. I have considered the respective submissions advanced from either side and perused the record with their able assistance.

8. Under the law, it is an accused person to agitate the plea of self-defence and to prove the same during trial in light of the pre-requisites contemplated under section 100 PPC. The impugned order of the learned Trial Court directing the Investigating Officer to place complainant Rahat Zaman in column of the accused of challan of the instant case, would be quite appropriate in case of allegation of theft and reasonable apprehension of danger to the life and property of complainant Rahat Zaman only against the dead accused. In such eventualities, the complainant being a sole accused could

agitate the plea of self-defence, but situation in this particular case is quite contrary, as the complainant has not only charged the dead accused Asad Amin for committing theft in his house and firing, but also charged accused Latif Jan and Muhammad Abbas the companions of dead accused for the commission of offence. The Identity card of co-accused Latif Jan has also been recovered from the house of complainant, which was handed over to the police by him at the time of report. So, if complainant Rahat Zaman is arrayed as an accused in this case, the prosecution will be deprived of most important and material evidence of the complainant against accused Latif Jan and Muhammad Abbas, which may ultimately result their acquittal. The learned Justice of Peace has erred in law while refusing registration of FIR on the application under section 22-A Cr.P.C. of mother of the deceased against complainant Rahat Zaman as well as accused Latif Jan and Muhammad Abbas for murder of her son Asad Amin. Keeping in view the peculiar facts and circumstances of the case, separate FIR against complainant of the instant case Rahat Zaman as well as the other two accused named above, on the application of mother of the deceased, would be a proper course, wherein Rahat Zaman in the capacity of an accused can take the

plea of self-defence and if during investigation, the Investigating Officer found his plea true and the version of Mst. Hameeda as false, he may either recommend cancellation of the FIR, defer the arrest of the accused or by placing him/ them in column No.2 of the challan due to deficient evidence followed by obtaining a bond with or without sureties as provided under section 169 Cr.P.C. and can recommend the discharge of the accused or if otherwise the I.O. succeeds in collecting sufficient evidence in support of the version of Mst. Hameeda, he may proceed against the accused in accordance with section 170 and 173 Cr.P.C. by placing them as regular accused in the relevant column of the challan. The findings of the Investigating Officer in the instant case regarding justification of the the plea of self-defence agitated by complainant Rahat Zaman not in the capacity of an accused, are squarely against the law because as stated earlier it is only an accused person to agitate the plea of self defence and not a complainant. Thus, registration of two separate FIRs about the same incident, would be an appropriate step to do justice with both the alleged victims of the incident.

9. For what has been discussed above, the order of the learned Trial Court dated 23.04.2015 and that of

learned Justice of Peace dated 27.10.2014, are hereby quashed. Accordingly, the application under section 22-A Cr.P.C. filed by Mst. Hameeda is allowed and SHO Police Station Permooli is directed to register a separate FIR against the accused named on the application of Mst. Hameeda mother of deceased Asad Amin against the accused nominated in her application, to investigate both the cases independently and to submit challan within a fortnight, positively.

10. This petition is disposed of in the above terms.

11. The Additional Registrar (Judicial) of this court is directed to send copy this judgment to the learned Sessions Judge, Swabi, who shall circulate its copy among the Additional Sessions Judges, posted in District Swabi, for their future guidance, with intimation to this Court.

Announced
30.10.2015.

J U D G E

7. For what has been discussed above, Suo motu notice given to accused Shakir stands withdrawn. He is admitted to bail on already existing bail bonds, on merits. Since this court has already directed expeditious conclusion of trial while dealing with the bail petition of co-accused Farman, therefore, office is directed to send the record to the quarter concerned within two days, positively.

announced:
19.10.2015

J U D G E

