

*Judgment sheet*  
**PESHAWAR HIGH COURT,**  
**PESHAWAR**  
*Judicial Department*

**W.P No. 2666-P/2020**

**Rasool Khan**  
**Vs.**  
**Saif-Ur-Rehman & others.**

**JUDGMENT**

**Date of hearing:** 25.06.2020  
**Petitioner(s) by:** Mr. Ishfaq Ahmad Afridi, Advocate  
**Respondent(s) by:** Mr. Rab Nawaz Khan, Addl: AG

**IKRAMULLAH KHAN, J.-** Through the instant writ petition, petitioner has challenged the act of police officer (I.O), who had placed the name of respondents in column No.2 of the police report, submitted under Section 173 Cr.P.C before the Judicial Magistrate for taking cognizance of the offence.

**2.** In essence, petitioner/complainant is the brother of the deceased Ameer Rehman s/o Malik Aman. That on 20.07.2019 was murdered by respondents No.1 to 3 and to this effect FIR No.491 was lodged under sections 302/324/449/34 PPC dated 20.07.2019 in Police Station Katlang. On 13.08.2019 complete challan was submitted in the Court of learned Additional Session Judge, Mardan. Ad-interim bail of respondent No.1 was recalled on 20.07.2019,

while ad-interim bail of respondent No.2 was recalled on 10.08.2019. Thereafter accused-respondent No.1 applied for post arrest bail before learned Additional Session Judge, Katlang Mardan which was dismissed on 10.08.2019, while the post arrest bail petition of the respondent No.2 was turned down by learned Additional Session Judge vide order dated 30.08.2019. On 31.07.2019 accused-respondent applied for re-investigation, respondent No.5 submitted complete challan, in which the accused-respondents were declared as accused after impartial investigation by the investigation officer of the concerned police station. The accused-respondents again approached to the Crime Branch to re-investigation after the delay of almost 08 months, in which the accused-respondents except the absconding accused were put into column No.2 of the challan, vide order dated 20.05.2020, hence this petition.

**3.** Learned counsel for petitioner contended that respondents No. 1 and 2, had committed Qatl-e-Amd, charged under Section 302 PPC, whose post arrest bail had also declined by this Court, but the official respondents have placed their names in column No.2 of the police report, whereby they were declared as innocent which is against law and facts on record.

**4.** We heard learned counsel for the petitioner and have gone through the available record.

**5.** The record reveals that on account of re-investigation of the case, on application of accused/respondents, the concern SHO in view of the re-investigation has placed the names of respondents in column No.2 of its report submitted under Section 173 Cr.PC on 20.05.2020 before the Court of learned Judicial Magistrate, whereby both the accused/respondents were declared as innocent.

**6.** No doubt, the police have placed the names of accused/respondents in column No.2, on account of deficient evidence, however, they were not discharged under Section 169 Cr.PC by the concern SHO. The report under Section 173 Cr.PC, be placed before Magistrate concern, who in view of Section 190 (2) Cr.PC would send the case before the Court of Session.

**7.** It would be the Court of Session to take cognizance of the offence, and once cognizance is taken up in an offence, then the Court of Session could issue process against any person prima facie found concerned in the commission of offence, notwithstanding the fact that such person is exonerated or his name is not mentioned in the police report or is placed in column No.2 of the report, as

police are not the final arbiter and it would be the Court to decide finally who should or who should not be tried. Reliance in this regard may be placed on **Chaudhry Muhammad Bashir vs Mirza Wahid Muhammad Baig and another (PLD 2008 Karachi 280)**.

**8.** As the matter has to be resolved by the learned trial Court, while, the learned trial Court is not bound to accept the ipse-dixit of police, therefore, this Court could not intervene at this preliminary stage, either to hold a person accused or innocent. This petition being pre-mature, dismissed accordingly, however, petitioner would be at liberty to agitate his grievance, if not satisfied by the order of learned trial Court before competent Court of law in accordance with principles of criminal law thereof.

Announced:  
25.06.2020

***J U D G E***

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(DB) Hon'ble Mr. Justice Ikramullah Khan & Hon'ble Mr. Justice Ijaz Anwar

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