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JUDGMENT SHEET

LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

Writ Petition No.1359/2024

Zubaida Qureshi

Vs.

Ex-officio Justice of Peace and others

JUDGMENT

Date of hearing:	**6.3.2024**
For the Petitioner:	Syed Zeeshan Haider, Advocate.
For the State:	Mr. Tahir Mehmood Mufti, Deputy Attorney General, Rai Mazhar Hussain Kharal, Assistant Advocate General, with Rizwan Umar Gondal/DPO Rahimyar Khan, Farrukh Javed/DSP, Akbar Khan/ Inspector and Aftab/SI.
For Respondents No.5 & 6:	Mr. Nazir Hussain Aslam, Advocate, with Hafiz Muzaffar Karim, Advocate.

Tariq Saleem Sheikh, J.– The Petitioner filed an application under section 22-A Cr.P.C. before the Ex-officio Justice of Peace, Ahmadpur East, seeking an order directing the SHO of Police Station City Ahmadpur East to register an FIR against Respondents No. 5 to 11. She stated that Respondent No. 5 (Dr. Hassan Mehmood) had previously lodged a false FIR (No. 377/2023) under section 363 PPC at Police Station City Khanpur, District Rahimyar Khan, accusing her sons of abducting his children, Muhammad Subhan Hassan and Muhammad Shoban Hassan. The Petitioner further alleged that on 09.04.2023, around 9:30 a.m., Respondents No. 5 to 9, along with Respondents No. 10 and 11 and numerous other police officials, forcibly entered the house of her son, Muhammad Usman, and arrested him and his family members, including Muhammad Haseeb, Junaid, and Raheel, and also seized household items. She immediately went to Police Station City Khanpur to report the incident, but no one listened to her as the SHO (Respondent No. 10) was involved. According to her, Respondent No.10 released all the detenues after six hours.

2. On 10.04.2023, around midnight, Respondents No. 5 to 11 and their associates returned to Usman's house in police and private vehicles, arrested Usman, Haseeb, Junaid, and Raheel again, and took them away. The Petitioner stated that recognizing the gravity of the situation, she and her witnesses, including her other son, followed the accused in their private cars. At approximately 2:00 a.m., when they reached an area within the remit of Police Station Kot Sabzal, the accused stopped. Respondent No. 11 and other policemen dragged the handcuffed Usman, Haseeb, Junaid, and Raheel out of the police vehicle and began beating them. After some time, they removed their handcuffs and ordered them to leave the scene. As soon as the men started running, Respondent No.11 retrieved a gun from his vehicle, and Respondent No.12 pulled out a pistol from his holster. Both started firing at them along with other police officials. As a result, all four men were killed. The Petitioner approached Respondents No. 2 to 4 to register an FIR against the accused, but they refused.

3. According to the report of the S.P./District Complaint Officer, Bahawalpur, on 07.04.2023, Respondent No.5 registered FIR No. 377/2023 under section 363 PPC at Police Station City Khanpur, District Rahimyar Khan, regarding the abduction of his children, Muhammad Subhan Hassan and Muhammad Shoban Hassan, against unknown persons. Subsequently, the offence under section 364-A PPC was added. The investigation revealed that Muhammad Usman (the Petitioner's deceased son), Muhammad Junaid, Muhammad Haseeb, Muhammad Raheel, Sami Ullah, Abdul Saim, Irum Bibi, Noreen Bibi, and Alishba Bibi were involved in the abduction. On 10.04.2023, Irum Bibi, Noreen Bibi, Alishba Bibi, Sami Ullah, and Abdul Saim were arrested, interrogated, and later sent to the District Jail Rahimyar Khan on judicial remand. On 11.04.2023, the Investigating Officer searched for Muhammad Usman, Muhammad Junaid, Muhammad Haseeb, and Muhammad Raheel and discovered that they had been killed by gunfire from their co-accused in the area of Police Station Ahmadpur Lama, District Rahimyar Khan. Consequently, FIR No. 205/2023 was registered at Police Station Ahmadpur Lama under sections 302/324/353/186/148/149 PPC and section 13(2)(a)(b) of the Punjab Arms Ordinance, 1965. The S.P./District Complaint Officer reported that no such incident as alleged by the Petitioner

had occurred, and there was no police encounter in the district. Furthermore, the Petitioner lacked reliable evidence to support her claims. The DPO, Bahawalpur, filed a report on the same lines in this Court during the hearing of this petition.

4. The Ex-officio Justice of Peace dismissed the Petitioner's application by order dated 17.01.2024. He noted that the alleged incident occurred on 10.04.2023, while the Petitioner filed the application under section 22-A Cr.P.C. on 25.07.2023, i.e., after two months and 15 days. The Ex-officio Justice of Peace found no satisfactory explanation for this delay. He was also satisfied with the report of the S.P./District Complaint Officer and saw no reason to disregard it.

5. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has assailed the aforementioned order dated 17.01.2024 of the Ex-officio Justice of Peace before this Court.

6. The Petitioner's counsel, Syed Zeeshan Haider, Advocate, argues that Respondents No. 5 to 11 brutally murdered four innocent persons, which necessitates a thorough investigation to ensure justice for the families of the deceased. He states that the Petitioner submitted a written complaint to the SHO Police Station City Ahmadpur East regarding the incident on 11.4.2023, but he did not attend to it. Then, on 15.4.2023, she lodged a complaint with the S.P./District Complaint Officer, Bahawalpur, and on 20.4.2023, with the District Police Officer, Bahawalpur, but they also did not take any action. Therefore, on 25.7.2023, she filed an application under section 22-A Cr.P.C. before the Ex-officio Justice of Peace. The counsel asserts that the Petitioner diligently pursued her remedies and that there was no delay on her part. He relies on ***Rafique Bibi v. Muhammad Sharif and others*** (2006 SCMR 512) to contend that the impact of delayed FIR cannot be determined at this stage as it is for the trial court to assess its effect.

7. Mr. Haider argues that Parliament enacted the Torture and Custodial Death (Prevention and Punishment) Act No. XXVIII of 2022 (the "Act of 2022") to protect people against all acts of torture committed by public officials during custody. He asserts that this new legislation covers

the Petitioner's case, so she is entitled to have an FIR filed against Respondents No. 5 to 11. When confronted with the fact that FIR No.205/2023 dated 10.04.2023 has already been registered for the same incident and that the Supreme Court's ruling in ***Sughran Bibi v. The State*** (PLD 2018 SC 595) prohibits the registration of a second FIR, Mr. Haider contends that the Act of 2022 introduces a new legal remedy that creates an exception to this rule.

8. This case involves the interpretation of Act of 2022. Therefore, by order dated 1.3.2024, this Court issued notices under Order XXVII-A CPC to the Attorney General for Pakistan and the Advocate General Punjab.

9. Mr. Tahir Mehmood Mufti, Deputy Attorney General, argues that the Act of 2022 applies specifically to instances when a public official (or an individual acting in an official capacity) perpetrates the stipulated offence while a person is in custody. Thus, "custody" is a prerequisite for the Act's applicability. In the present case, there is no evidence that Usman and his companions were in police custody at the relevant time. Hence, the Petitioner's request for registration of FIR under the Act of 2022 deserves a short shrift. Additionally, Mr. Mufti points out that the registration of a second FIR is impermissible after the Supreme Court's ruling in *Sughran Bibi's* case.

10. Rai Mazhar Hussain Kharal, Assistant Advocate General Punjab, has supported the Deputy Attorney General's viewpoint and the impugned order, agreeing with the reasoning of the Ex-officio Justice of Peace.

11. Advocate Nazir Hussain Aslam, the counsel for Respondents No.7 to 9, has also adopted the Deputy Attorney General's arguments.

Opinion

12. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984 requires Member States to take effective measures to prevent torture in any territory under their jurisdiction. It also forbids Member States from expelling, returning, or extraditing individuals to another country where there are substantial grounds for believing that they would be in danger of

being subjected to torture.[1] Pakistan ratified CAT on June 23, 2010, marking a significant commitment to international human rights standards. This ratification obligated Pakistan to take measures to prevent and punish acts of torture within its borders. Therefore, it has enacted the Torture and Custodial Death (Prevention and Punishment) Act, 2022.

13. Before considering the contentions of the learned counsel and examining the issues raised in this petition, it is necessary to understand the scheme of the Act of 2022 and look at some of the provisions relevant to our present purposes.

14. Article 14(1) of Pakistan's Constitution (1973) guarantees the right to dignity, while Article 14(2) explicitly prohibits the use of torture to extract evidence. The Act of 2022 defines torture and establishes a comprehensive framework to protect individuals from it during custody by any public official or other person acting in his official capacity. Section 3(1) of the Act renders inadmissible any statement, information, or confession obtained through torture or cruel, inhuman, or degrading treatment by a public official in any proceedings against the person making it. Section 3(2) stipulates that a public official who knowingly uses such information faces imprisonment for up to one year, a fine of up to one hundred thousand rupees, or both. However, under section 3(3), the aforementioned information, statement, or confession is admissible as evidence against the person accused of committing the offence of torture.

15. The Act of 2022 primarily focuses on the following three offences: (a) torture (section 8), (b) custodial death (section 9), and (c) custodial rape (section 10). Section 11 provides punishment for filing false and malicious complaints. Section 16 of the Act of 2022 stipulates that the provisions of the Act will take precedence over any other conflicting laws currently in force. However, section 15 clarifies that the Act does not affect any civil remedies available under existing laws.

16. The Act of 2022 grants exclusive jurisdiction to the Federal Investigation Agency (FIA)[2] for investigating complaints against public officials accused of offences under the Act, but it must do so under the

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[1] Article 3 of the Convention.

[2] FIA is constituted under the Federal Investigation Agency Act 1974 (VIII of 1975).

supervision of the National Commission for Human Rights (the "HR Commission"). This arrangement ensures that investigations are fair, impartial, and free from conflicts of interest. By involving an independent oversight body, the Act aims to safeguard the integrity of the investigation process, thereby maintaining public trust and upholding justice. If an agency involved in the dispute were responsible for the investigation, the credibility of the process could be compromised, which would be detrimental to both public interest and the pursuit of justice.

17. The Act of 2022 deviates from the standard procedures outlined by the Code of Criminal Procedure 1898 (hereinafter referred to as the "Code" or "Cr.P.C.") typically followed by police authorities for investigating offences. A combined reading of clauses (c) and (d) of section 2(1) indicates that the Act establishes a special procedure for initiating proceedings. Any person or their representative with reliable information about the commission of an offence under this Act may file a complaint with the FIA. The said complaint may be oral or in writing. Additionally, section 5(2) stipulates that if, at any time – including during the grant of physical remand under the Code – the Magistrate has reasonable grounds to believe that an offence under this Act has been committed or if a complaint of torture in custody is lodged, he shall order a medical examination. If the results of such examination reveal the infliction of torture, the Magistrate shall notify the FIA to investigate the offence.

18. Section 5(3) of the Act of 2022 stipulates that the FIA, while investigating offences under the Act, shall have the same powers and follow the same procedures as prescribed in the Federal Investigation Agency Act 1974 (the "FIA Act") and the Rules made thereunder. According to Bennion, it is common for drafters to incorporate existing statutory provisions by reference instead of repeating them in full when drafting new legislation. This technique conserves space and brings in the established case law and interpretations related to the earlier provisions. Additionally, it benefits the legislative process by shortening the Bill and limiting the scope for debate.[3] This practice aligns with the legal maxim *verba relata hoc maxime operantur per referentiam ut in eis inesse videntur*, which means that words

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[3] F.A.R. Bennion, *Statutory Interpretation*, (1984) at p. 600.

referred to in an instrument have the same effect as if they were inserted in the referring document.

19. There are two primary types of referential legislation: (i) simple reference and (ii) incorporation by reference.[4] Simple reference involves the new law merely citing or mentioning provisions of an existing law, as mentioned in section 28(1) of the General Clauses Act 1897. On the other hand, in incorporation by reference, the new law makes the existing law an integral part of itself, as if the provisions of the old law were directly included in the new text. The earlier law's provisions are not copied verbatim but are treated as if they were written into the new law. This method fictionally embeds the referenced provisions within the new legislation.[5]

20. Courts frequently face the issue of determining whether a reference to earlier legislation in a new law is merely a citation or an incorporation. Its resolution hinges on the language used in the new law.[6] Insofar as section 5(3) of the Act of 2022 is concerned, its language is explicit and unambiguous. It incorporates the specified provisions of the FIA Act and the Federal Investigation Agency (Inquiries and Investigation) Rules 2002 (the "Investigation Rules") into the Act of 2022.

21. A detailed examination of the Investigation Rules reveals that they were primarily designed for anti-corruption investigations involving various categories of government servants. Ideally, new Rules should have been framed to achieve the objectives of the Act of 2022 effectively. Since this has not been done, this Court must discern the legislative intent and interpret the Act of 2022, the FIA Act, and the Investigation Rules in a harmonious manner.

22. Section 5 of the FIA Act and the Investigation Rules use two terms, "inquiry" and "investigation", without providing specific definitions. While these terms are commonly considered interchangeable, they carry distinct meanings in the legal context. The *Black's Law Dictionary* defines

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[4] *U.P. Avas Evam Vikas Parishad v. Jainul Islam and others* (1998) 2 SCC 467. Also see: Jain, K.C., *Referential Legislation: Need For Fresh Look,* (2000) 2 SCC (Jour) 17.

[5] Jain, K.C., *Referential Legislation: Need For Fresh Look,* (2000) 2 SCC (Jour) 17.

[6] *Ujagar Prints and others v. Union of India and others* [(1989) 3 SCC 488]; *Bhatinda Improvement Trust v. Balwant Singh and others* [(1991) 4 SCC 368].

"inquiry" as "(a) a question someone asks to elicit information; (b) the act or process of posing questions to elicit information."[7] On the other hand, it describes "investigation" as "the activity of trying to find out the truth about something, such as a crime, accident, or historical issue; esp., either an authoritative inquiry into certain facts, as by a legislative committee, or a systematic examination of some intellectual problem or empirical question, as by mathematical treatment or use of the scientific method."[8] According to the *Oxford Advanced Learner's Dictionary*, "inquiry" signifies "a solicitation for information", while "investigate" denotes "the comprehensive exploration and scrutiny of all facts surrounding a particular event, such as a crime or an accident, with the objective of ascertaining the truth."[9] The Code defines the two terms in section 4(1) as follows:

> (k) **"Inquiry".–** "Inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.
>
> (l) "**Investigation".–** "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

23. Legal precedents also acknowledge the distinction between inquiry and investigation. In ***Muhammad Bilal Nawaz v. Director General, Federal Investigation Agency, and others*** (2024 LHC 3288), this Court held:

> "In summary, 'inquiry' and 'investigation' are distinct processes within legal proceedings, each serving specific purposes. An inquiry refers to a preliminary examination or fact-finding process conducted by a designated authority or agency to gather information regarding a particular matter. It aims to assess the situation and determine whether further legal action is warranted. Inquiries vary in scope and formality, ranging from informal discussions to formal hearings. On the other hand, an investigation involves a detailed examination of a specific matter or allegation to gather evidence and determine its truth or validity. Investigations are conducted by law enforcement agencies or authorized entities to collect evidence, identify suspects, and gather information for legal proceedings. Although both procedures entail scrutinizing facts and evidence, inquiries are preliminary, primarily focusing on information gathering. In contrast, investigations are more thorough and structured, geared explicitly towards accumulating evidence to support legal action."[10]

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[7] Black's Law Dictionary, 11th Edn., p. 946.

[8] *ibid*, p. 989.

[9] Oxford Advanced Learner's Dictionary, Fifth Edn.

[10] Also see: *Adamjee Insurance Company Ltd. v. Assistant Director, Economic Enquiry Wing* (1989 PCr.LJ 1921).

24. Albeit the FIA Act and the Investigation Rules envisage an inquiry before an investigation, section 5(1) of the Act of 2022 deliberately uses the term "investigation," thus setting aside the requirement for an inquiry as outlined in the aforementioned instruments. This interpretation is further supported by the fact that the term "investigation" is used multiple times in the Act of 2022, while the word "inquiry" has nowhere been mentioned. It is well established that mistakes or absurdities cannot be attributed to the legislature when interpreting a statute or discerning legislative intent.[11] Generally, when interpreting statutes, it is assumed that the legislature chooses its words carefully. Therefore, if a word or phrase is included, it is not considered redundant; similarly, if a word or phrase is omitted, such omission is not deemed inconsequential. A change in language implies a change in intent.[12] It is also well settled that the legislature is presumed to be mindful of existing laws, and thus, the expression of legislative will should not be ignored lightly.[13] As a result, under the Act of 2022, the FIA does not hold an inquiry before initiating a formal investigation. Instead, it investigates the complaint directly under the oversight of the HR Commission.

25. Let's now examine some of the key provisions of the Investigation Rules that are pertinent to our current discussion. Rule 3 states that, subject to Rules 4 and 5, the FIA may initiate an inquiry or investigation on its own initiative or upon receiving a complaint or information, whether oral or written. Once an inquiry or investigation is registered, it must be conducted discreetly to avoid undue publicity and prevent unnecessary damage to the reputation of any public servant involved. Rule 4 stipulates that the Deputy Director or a higher-ranking officer must verify the identity of the complainant and the genuineness of the complaint, but no action will be taken on anonymous or pseudonymous complaints. According to Rule 5(1), an inquiry against a public servant can only be initiated with prior permission from the designated authority, determined by the public servant's pay scale. Rule 5(2) requires prior

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[11] *Federal Government Employees Housing Foundation and another v. Ednan Syed and others* (PLD 2022 Islamabad 273).

[12] Reference No.1 of 2012 [Reference by the President of Pakistan under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973] (PLD 2013 SC 279).

[13] *Aamir Khurshid Mirza v. The State and another* (2006 CLD 568).

permission from the designated authority before registering a criminal case. However, Rule 5(3) provides an exception: if a public servant is apprehended in a trap arranged by the FIA under the supervision of a First Class Magistrate, prior approval to register a criminal case is not necessary. In such instances, a report must be submitted to the concerned authorities within twenty-four hours. Rule 5(4) states that if the competent authority decides not to initiate an inquiry or register a case upon receiving a complaint, it must record the reasons for its decision. Rule 6 mandates that the registration of a case and the subsequent arrest of a public servant be reported to the Head of the Department of the accused within twenty-four hours. Rule 7(1) stipulates that the Secretary, Ministry of Interior, Government of Pakistan, and the Director-General FIA may *suo motu* or otherwise call for the record of any case or inquiry pending with the Agency for examination and give such directions as may be necessary for the speedy, fair, and just disposal of the case. Rule 7(2) states that a Director may *suo motu* or otherwise call for the record of any case or inquiry to satisfy himself as to the correctness or propriety of a decision taken by a Deputy Director under these Rules and may pass such orders as he deems fit. Rule 8(1) empowers the designated authority to drop a case and recommend departmental proceedings against the accused public official. Rule 10 provides that upon completion of an investigation, a case found fit for prosecution for which sanction is required under section 197 Cr.P.C., or section 6(5) of the Pakistan Criminal Law Amendment Act 1958 (XL of 1958), or the rules made thereunder, shall be submitted by the FIA to the Federal Government for sanction of prosecution along with the full facts of the case, the opinion of the Legal Officer, and the statement of allegations. Rule 10 also contains certain provisions that must be followed in respect of officers in BPS-19 and above.

26. The requirement under Rule 5(2) of the Investigation Rules, which mandates obtaining prior permission from the designated authority before registering a criminal case against an accused public official, may be justified as a measure to protect officials from harassment, even though section 11 of the Act of 2022, penalizes the filing of false and malicious complaints. However, Rule 8(1), which allows the designated authority to

drop a case and instead recommend departmental proceedings, is inconsistent with the objectives of the Act of 2022 and, therefore, cannot be enforced. It must be read down[14] to state that the competent authority may initiate departmental proceedings against the accused public official in addition to criminal proceedings under the Act of 2022.

27. It is well-established that criminal prosecution and departmental proceedings serve different purposes. The objective of a criminal trial is to punish the accused for their crimes. In contrast, departmental proceedings aim to investigate misconduct to maintain discipline, decorum, and departmental efficiency, thereby preserving public confidence in the institution. Even if a criminal court acquits the accused, it does not preclude an employer from exercising disciplinary powers under the applicable service rules and regulations.[15]

28. Given the above, it is ordered that Rule 8(1) of the Investigation Rules shall be read down as specified.

29. It is important to note that the designated authority cannot arbitrarily refuse permission to register a criminal case against a public official. Rule 5(4) makes it mandatory to record reasons. The decision is subject to judicial review.

30. In summary, proceedings under the Act of 2022 can be initiated based on a complaint by anyone with reliable information about an offence, their representative, or at the Magistrate's instance as per section 5(2). The FIA follows procedures outlined in the FIA Act and the Investigation Rules. The Investigation Rules require an inquiry before a formal investigation, but the Act of 2022 mandates that the FIA conduct a direct investigation into the

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[14] "Reading down" is a rule of interpretation of statutes/Rules. In the *Province of Punjab through Secretary Agriculture Department v. Saleem Ijaz and others* (2023 SCMR 774), the Supreme Court of Pakistan explained: "The golden rule behind the rule of reading down is to recognize and respect the wisdom of the legislature and assume that legislature would never have intended to legislate an invalid law. The same principle applies to subordinate legislation as it is not expected that the subordinate legislating authority will frame rules in violation to the parent Act or any other statute. Rule of reading down a statutory provision is now well recognized rule of interpretation. This rule avoids striking down of statute or rule which carries curable constitutional or legal vice and instead by reading them down achieves to harmonize the statute or the rule with the general scheme of the Act and the Rules. It is a rule of harmonious construction under a different name. It is generally used to straighten the crudities or ironing out the creases to make a statute or a rule workable. The rule of reading down is used for a limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statues." (internal citations omitted).

[15] *Senior Superintendent of Police (Operations) and others v. Shahid Nazir* (2022 SCMR 327) and *Postmaster General, Karachi and another v. Arshad Ali* (2022 SCMR 1796).

complaint under the oversight of the HR Commission. If the FIA determines that the accused public official committed the alleged offences, Rules 5 to 7 and 10 of the Investigation Rules apply. The designated authority may also recommend departmental proceedings against him. Section 16 of the Act of 2022 states that the Act overrides other laws, requiring the FIA to adhere to this specific procedure in all cases. Resultantly, even though the offences of torture, custodial death and custodial rape are cognizable, section 154 Cr.P.C. is rendered inapplicable. Individuals have a statutory right to file a complaint with the FIA regarding these offences but, subject to judicial review, the registration of an FIR is governed by the provisions of the FIA Act and the Investigation Rules.

31. Section 13 of the Act of 2022 provides timelines for investigation, trial, and appeal. Section 13(1) mandates that the investigation of offences under the Act be completed within thirty days from the date of submission of the complaint. Section 13(2) stipulates that if the investigation of an offence under this Act is not completed within thirty days, the Agency shall call for a report explaining the delay in the completion of the investigation. If satisfied with the causes of the delay, the Agency may grant a maximum of five additional days for the completion of the investigation. If the Agency is not satisfied with the causes of the delay, it may transfer the investigation to another investigating officer, who shall take up and complete the investigation from the same stage where it was left by his predecessor.[16] Section 13(3) states that if the investigation of an offence is not completed within thirty days, the FIA shall also file an interim report before the Court of Session, which may decide to initiate the trial based on such information. Section 13(4) states that the trial of offences under the Act shall be completed within three weeks from the date of submission of the challan. Finally, section 13(5) provides that the appeal against the offences under the Act shall be decided within thirty days from the filing of such appeal.

32. The next question is whether the provisions of section 13 of the Act of 2022 are mandatory. In ***The State through Regional Director ANF v.***

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[16] Section 13(2) of the Act of 2022 repeatedly uses the term "Agency," which is defined in section 2(1)(a) as the Federal Investigation Agency (FIA). *Prima facie*, this term is not appropriate for the context in which it is used in section 13(2). I leave this issue to be addressed in a suitable case.

Imam Bakhsh and others (2018 SCMR 2039), the Supreme Court of Pakistan explained:

> "To distinguish where the directions of the legislature are imperative and where they are directory, the real question is whether a thing has been ordered by the legislature to be done and what is the consequence, if it is not done. Some rules are vital and go to the root of the matter, they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance. The duty of the court is to try to unravel the real intention of the legislature. This exercise entails carefully attending to the scheme of the Act and then highlighting the provisions that actually embody the real purpose and object of the Act. A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceedings. Thus, some parts of a statute may be mandatory whilst others may be directory. It can even be the case that a certain portion of a provision, obligating something to be done, is mandatory in nature whilst another part of the same provision is directory, owing to the guiding legislative intent behind it. Even parts of a single provision or rule may be mandatory or directory. 'In each case, one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured.'"

The Supreme Court further stated:

> "Crawford opined that 'as a general rule, (those provisions that) relate to the essence of the thing to be performed or to matters of substance, are mandatory, and those which do not relate to the essence and whose compliance is merely of convenience rather than of substance, are directory.' In another context, whether a statute or rule be termed mandatory or directory would depend upon larger public interest, nicely balanced with the precious right of the common man. According to Maxwell, 'where the prescription of statute relates to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words as directory only. The neglect of them may be penal indeed, but it does not affect the validity of the act done in disregard of them.' Our Court has held while determining the status of a mandatory or directory provision that 'perhaps the cleverest indicator is the object and purpose of the statute and the provision in question.' And to see the 'legislative intent as revealed by the examination of the whole act."

33. The case ***Tallat Ishaq v. National Accountability Bureau through the Chairman, and others*** (PLD 2019 SC 112) is relevant to this discussion. While interpreting section 16(a) of the National Accountability Ordinance, 1999, the Supreme Court observed that the term "shall" in this provision, which pertains to the conclusion of a trial by an Accountability Court, is directory rather than mandatory because it does not prescribe any penalty or consequence for non-observance or non-compliance.

34. Considering the above precedents and the language of the Act of 2022, it can be concluded that the timelines for investigation under sub-sections (1) to (3) of section 13 of the Act are mandatory for the following reasons: First, a holistic analysis of the Act indicates that treating these provisions as directory would undermine its very object and purpose. Second, delays may cause destruction of evidence. Third, non-compliance or delay has specific consequences, such as a change of investigation. However, sub-sections (4) and (5) of section 13 are directory in nature because they do not prescribe any penalty or consequence for non-compliance. *Tallat Ishaq's* case has authoritatively settled this point.

35. The issue of torture and custodial death can arise in three scenarios: (a) when an individual is in custody and is subjected to torture or killed. In this case, the police or the public official involved acknowledges that the individual was in custody within the meaning of section 2(1)(f) of the Act of 2022 but refutes the allegations of torture or custodial death; (b) when the accused public officials deny that the individual was ever in custody, claiming that the question of torture or custodial death does not arise; and (c) when the allegation constitutes a cross-version of an already registered FIR.

36. Section 2(1)(f) of the Act of 2022 defines "custody" as follows:

> (f) "custody" includes all situations where a person is detained or deprived of his liberty by any person, including a public official or by any other person working in an official capacity irrespective of legality nature and any place of such detention.
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> Explanation-I.– It includes judicial custody and all forms of temporary and permanent restraint upon the movement of a person by law or by force or by other means; and
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> Explanation-II.– A person shall be deemed to be in custody during search, arrest and seizure proceedings.

37. Section 2(1)(h) of the Act of 2022 defines "custodial death" as follows:

> (h) "custodial death" means the death of a person while in custody, directly or indirectly caused by and attributable to acts of torture committed upon the deceased while in custody;
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> Explanation-I.– Custodial death includes death occurring in police, private or medical premises, in a public place or in a police or other vehicle, or in jail. It includes death occurring while a person is being arrested or taken into detention, or being questioned; and
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> Explanation-II.– Custodial death also includes all cases where the death of a person after his release from custody is directly caused by and may be substantially attributed to acts committed upon the deceased while in custody.

38. The definition of the term "custody" in section 2(1)(f) is not exhaustive, as is apparent from the language of the section. The legislature has used the term "includes" instead of "means" and employed *deeming clause* in Explanation-II. Likewise, the Explanations of section 2(1)(h) use the term "includes". The Supreme Court of Pakistan has interpreted the said term in many judgments. In ***Don Basco High School v. The Assistant Director, E.O.B.I., and others*** (PLD 1989 SC 128), it stated: "The word 'include' is generally used in the interpretation clauses to enlarge the meaning of the words and phrases occurring in the body of the statute." In ***Mushtaq Ahmad v. The State*** (1991 SCMR 543), it held: "As a general rule, the word 'includes' is used as a word of enlargement and ordinarily implies that something else also falls within that definition beyond the general or generic meaning of that expression which precedes it, i.e. a species which does not naturally belong to it or a species which normally or naturally attaches to it." Similarly, in ***Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan and others*** (PLD 1997 SC 582) it was held that "the factum that the word 'includes' has been employed and not the word 'means' indicates that the definition given in a statute regarding a term is not exhaustive." Thus, the term "includes" is used where it is intended to broaden the meaning of a particular word or phrase.

39. The courts have also discussed the rules for interpreting the *deeming clause* in numerous cases. In ***Muhammad Mubeen-us-Salam and others v. Federation of Pakistan and others*** (PLD 2006 SC 602), the Supreme Court of Pakistan summarized them as follows:

> (i) When a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time but by a legal fiction we are to assume as if it did exist.
>
> (ii) Where a statute says that you must imagine the state of affairs, it does not say that having done so you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.
>
> (iii) At the same time, it cannot be denied that the court has to determine the limits within which and the purposes for which the legislature has created the fiction.
>
> (iv) When a statute enacts that something shall be deemed to have been done which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."

40. In ***Dr. Abdul Nabi v. Executive Officer, Cantonment Board, Quetta*** (2023 SCMR 1267), the Supreme Court of Pakistan stated:

> "According to the *Black's Law Dictionary*, Ninth Edition, Pg. 477-478, the meaning of the word "Deem" is to treat (something) as if it were really something else, or it has qualities that it does not have. " 'Deem' has been traditionally considered to be a useful word when it is necessary to establish a legal fiction either positively by 'deeming' something to be what it is not or negatively by 'deeming' something not to be what it is …" In order to interpret the statute, the court is obligated to give effect to the deeming provisions while taking into consideration the object of such legal fiction and also dredge up the rationales of statutory fiction to its cogent finale vis-à-vis the intention of legislature so it should not cause any injustice. Legal fictions give rise to explicit objectives restricted to the purposes which should be construed contextually but should not be elongated further than the legislative wisdom for which it has been created. In the case of *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2012 SC 1), this Court, while referring to the case of *Mubeen-us-Salam v. Federation of Pakistan* (PLD 2006 SC 602), held that the purpose of importing a deeming clause is to place an artificial construction upon a word/phrase that would not otherwise prevail and sometimes it is to make the construction certain. It was further held that a deeming clause is a fiction, which cannot be extended beyond the language of the section by which it is created or by importing another fiction."

41. Applying the principles settled in the above and other precedents on the subject, it is observed that under section 2(1)(f) of the Act of 2022, "custody" encompasses any situation where a person is detained or deprived of liberty by anyone, including public officials or others acting in an official capacity, regardless of the legality or location of the detention. This definition includes all forms of temporary or permanent restraint on a person's movement, whether imposed by law, force, or other means. It also covers instances where a person is considered to be in custody during search, arrest, or seizure proceedings. Under section 2(1)(h) "custodial death" refers to the death of a person while in custody that is directly or indirectly caused by acts of torture committed while in custody. This includes deaths occurring in various settings such as police stations, private or medical premises, public places, vehicles, or jails, and also covers deaths occurring during arrest, detention, or questioning. Additionally, it includes cases where death occurs after release from custody if it is directly attributable to acts committed while the person is still in custody.

42. The phrase "when a person is being arrested or taken into detention" in Explanation-I of section 2(1)(h) of the Act of 2022 is crucial. It covers situations where death occurs during an encounter or interaction with

the police when the individual is not formally in their custody but is under their control or restraint. Therefore, allegations of a fake encounter by the victim fall within the investigative jurisdiction of the FIA. The following observations of the Supreme Court in ***Ch. Muhammad Yaqoob and others v. The State and others*** (1992 SCMR 1983) are quite instructive:

> "It is true that there is no entry in the diary of the police station, but we cannot overlook the fact that it is not uncommon that police detains suspects at the police station for interrogation without formally arresting them … Bhide and Din Mohammad, JJ., while dealing, *inter alia* with the above question, have held that police custody does not necessarily mean custody after formal arrest and that it also includes some form of police surveillance and restriction on the movement of the person concerned by police …"

43. In cases where it is admitted that the individual was in police custody at the time of the alleged torture or killing, the process is straightforward. The FIA can act on the complaint of the aggrieved person or at the Magistrate's direction under section 5(2) of the Act of 2022 and proceed according to the procedures outlined in the FIA Act and the Investigation Rules.

44. When allegations are made against public officials for torturing or killing an individual in custody, the FIA is obligated to entertain the complaint. It cannot refuse to exercise jurisdiction merely because the public officials deny the allegations. It must be borne in mind that it is common for the accused to reject the charges. The investigating agency must gather evidence and uncover the truth.

45. In *Sughran Bibi's* case, the Supreme Court stated that the purpose of the FIR is to set the law in motion. The FIR is essentially an "incident report" because it informs the police for the first time that an occurrence involving the commission of a cognizable offence has taken place. Once the FIR is registered, the occurrence becomes a "case", and all investigative steps under sections 156, 157, and 159 Cr.P.C. are part of this case. The Investigating Officer should seek the truth and gather information from those familiar with the incident, not just establish the FIR's version. A new FIR is not needed for additional information or new circumstances discovered during the investigation; these are part of the ongoing case. After completing the investigation, the Investigating Officer should file a report under section 173 Cr.P.C. on the real facts that he discovers, regardless of

the initial or other versions of the incident. The Supreme Court emphasized that the power to investigate pertains to the offence, not just the FIR details. Any information about the offence, including its background and perpetrators, is the informant's version and should not be accepted as the whole truth. All versions of the incident are recorded under section 161 Cr.P.C., whether supplemental or divergent, and all of them are part of the same "case" that originated with the registration of the FIR as aforesaid.

46. The Act of 2022 is *lex specialis*. Even if the local police have already registered an FIR, a complaint under the Act of 2022 would still be competent before the FIA where torture or custodial death is alleged. The precedent set by *Sughran Bibi's* case does not impede this process because the narratives of the police and the victim party are subject to separate legal frameworks and investigative agencies.

The case in hand

47. Considering section 5 of the FIA Act, ample case law holds the FIA as a police force. Consequently, the FIA is subject to the jurisdiction of the Ex-officio Justice of Peace under section 22-A Cr.P.C.[17] The Act of 2022 does not affect the powers of an Ex-officio Justice of Peace and he can competently exercise them even in cases where an offence under the said Act is alleged.

48. In the present case, the Ex-officio Justice of Peace declined to direct the FIA to consider the Petitioner's complaint against Respondents No. 5 to 11, primarily because the application under section 22-A Cr.P.C. was filed two months and 15 days late. *Prima facie*, the Petitioner has explained the delay in her application. Regardless, the impact of the delay should be determined by the trial court, as per the Supreme Court's ruling in *Rafique Bibi*, cited by Mr. Haider.

49. In ***Khizar Hayat and others v. Inspector-General of Police Punjab*** (PLD 2005 Lahore 470), a Full Bench of this Court held that an Ex-officio Justice of Peace is not required to requisition a report from the police in every case, but when he does, it must be given proper

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[17] *Makhdoomzada Syed Mushtaq Hussain Shah v. Additional Sessions Judge, Islamabad and others* (PLD 2013 Islamabad 26); *National Bank of Pakistan and other v. The State and others* (PLD 2021 Lahore 670); and *Munir Ahmad Bhatti v. Director, FIA Cyber Crime Wing, Lahore and others* (PLD 2022 Lahore 664).

consideration.[18] In the present case, the S.P./District Complaint Officer filed a report with the Ex-officio Justice of Peace negating the Petitioner's version. While the Ex-officio Justice of Peace felt satisfied with it, I find it unconvincing. It raises serious questions that necessitate a thorough investigation by an independent agency to ensure justice. Therefore, the impugned order dated 17.01.2024 is set aside.

50. I have already held that the Act of 2022 is a federal law which grants a new remedy in instances of torture by public officials, custodial death, and custodial rape. Registration of FIR No.205/2023 dated 10.04.2023 does not trump the proceedings under the said Act. The principle laid down in *Sughran Bibi* is inapplicable.

51. The Petitioner is directed to file a complaint with the FIA as contemplated in the Act of 2022 which shall proceed with it in accordance with the prescribed procedure, as elucidated in this judgment.

52. This petition is **accepted** in the terms specified.

(Tariq Saleem Sheikh)
Judge

Announced in open court on _____

Judge

Naeem

Approved for reporting

Judge

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[18] Also see: *Mureed Hussain v. Additional Sessions Judge/Justice of Peace Jampur and others* (2014 PCr.LJ 1146); *Bushara Ghias v. Justice of Peace/Additional District & Sessions Judge, Lahore and others* (2019 YLR 1299); and *Talat Hafeez v. Justice of Peace/Additional Sessions Judge, Dera Ghazi Khan and others* (2021 PCr.LJ Note 61).