

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.540 of 2020

*(Against the order dated 20.05.2020 passed by the Lahore High Court
Rawalpindi Bench Rawalpindi in CrI. Misc.No.719-B/2020)*

Muhammad Ejaz

...Petitioner(s)

Versus

The State & another

...Respondent(s)

For the Petitioner(s): Mr. Ghulam Farooq Awan, ASC
Mr. Muhammad Sharif Janjua, AOR

For the Respondent(s): N.R.

Date of hearing: 07.07.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Accompanied by co-accused, the petitioner thrashed Sohail Ikram PW within the precincts of District Courts Rawalpindi, where he was present to record his statement as a witness against the assailants; he endured multiple injuries that included a nasal fracture. Petitioner's plea for bail was withdrawn and dismissed as such on 2.4.2020. After his failure throughout, the petitioner again approached the Court for admission to bail on the ground that findings recorded by a medical board had furnished him a new ground for release on bail as the injury suffered by the complainant was viewed as possibly fabricated.

2. Learned counsel for the petitioner contends that a medical board comprising four experts unanimously opined as under:

*"After having gone through examination the Board is
of unanimous opinion that regarding injury No.4,
possibility of fabrication/fall cannot be ruled out"*

The above unanimity of opinion according to the learned counsel not only constituted a fresh ground but also squarely brought petitioner's case within the remit of further probe.

3. Heard. Record perused.

4. Occurrence took place on 10.12.2019 and the injured was examined same day when the medical officer noted as many as four injuries on his person and categorically ruled out possibility of their fabrication; he kept the injuries under observation and referred the examinee for radiographic examination wherefrom he was further referred for CT scan which confirmed fracture of nasal bone. The accused, however, moved learned Area Magistrate on 18.1.2020 for re-examination of the injured on the grounds that *"medical report 2564/19 is totally false and fake and is being obtained by the complainant and other person while in connivance with medical officer and if, there is any injury on the body of the abovementioned person then the same is result of self-fabrication and concocted one"*. The learned Magistrate without taking the injured on board or recording argument of ADPP, marked present during the proceedings, directed medical examination by the Standing Medical Board. It is in this backdrop, the Board assembled on 4.3.2020 to re-examine the complainant. It evaluated the nature of injuries on the basis of opinion recorded by the Radiologist Dr. Umm-e-Kalsum whom the injured was referred for C.T. Scan by Dr. Rida Arshad CMO and it is on the basis of findings recorded by the above medical officers that the Board rendered its opinion being relied upon by the petitioner.

We have gone through the entire record of the case. The first medical officer has unambiguously ruled out possibility of any foul play, however, the learned Magistrate readily obliged the defence without affording opportunity of hearing to the injured; even the Law Officer is shown present as a silent spectator to the proceedings. The application moved on behalf of the accused is not only stereotype and slipshod but also self-destructive as well; on the one hand, it is asserted that the impugned medical report was totally false and fake with the alternate allegation of injuries being self suffered and fabricated in case these are noted during examination by the Board. There was no occasion for the learned Magistrate to hurriedly exercise ex-parte jurisdiction to the detriment of prosecution/injured in the face of allegations vague and non-specific. The first medical examination was protected by statutory presumption of being genuine under Article 129(e) of the Qanun-e-Shahdat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973. Such formidable statutory protections cannot be summarily dismantled on the whims of an accused struggling to ward off consequences of criminal prosecution, therefore, a Magistrate must insist for tangible and sufficient grounds to plausibly justify exposure of a person already

wronged to the inconvenience and embarrassment of a re-examination, a consideration conspicuously missing in the present case. While an accused is certainly entitled to "*Due Process of Law*" and a meaningful opportunity to contest indictment with a view to vindicate his position, the prosecution and its witnesses also deserve protection of law so as to prosecute the case with least inconvenience and without unnecessary hardship; equality before law without equal protection is a travesty; scales must be held strictly in balance. Performance of medical board is no less dismal either. It miserably failed to take stock of findings recorded by Dr. Rida Arshad, CMO, reproduced as below:

*"Suspicious radiolucency is seen on nasal surface. Medico legal C.T. scan nasal bone is suggested.
No bony injury is seen in (L) orbit and face."*

She referred the examinee for C.T. scan conducted by Dr. Umm-e-Kalsum that conclusively confirmed fracture of the nasal bone; her finding is reproduced below:

"Fracture nasal bone viewed."

The members of the medical board not only ignored the above findings, they went a step further in their inconsequential opinion to add the possibility of a fall as well, a case never agitated even by the accused. Even otherwise, observation that possibility of fabrication/fall cannot be ruled out is a judgment resting upon the brink of hypothetical possibility that by itself cannot override positive findings earlier unanimously recorded by the medical officers who attended the injured; possibilities are infinite and cannot dislodge proof. The opinion is also devoid of any objective finding and, thus, we do not feel inclined to receive the half-cooked hypothesis of fabrication/fall as a fresh ground in circumstances. Petition fails. Leave declined. Observations being issue specific will not cast their shadows upon the outcome of trial to be settled essentially upon the strength of prosecution evidence alone, expected to be concluded with all convenient dispatch.

Judge

Judge

Islamabad, the
7th July, 2020
Not approved for reporting
Azmat/-