IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

JAIL PETITION NO.51 OF 2023
(Against the judgment dated 15.03.2023 of the High Court of Sindh, Circuit Court Hyderabad passed in Cr.A.D-124/2019 and Confirmation Case No. 26/2019)

Seeta Ram ...Petitioner(s)

VERSUS

The State ...Respondent(s)

For the Petitioner(s):	Qari Abdul Rasheed, ASC Syed Pervez Zahoor, ASC
For the State:	Mr. Khadim Hussain, Addl. P.G
Complainant:	Mr. Umer Ijaz Gillani, ASC
On Court's call:	Mr. Ghulam Nabi, I.G. Police, Sindh Mr. Muntazir Mehdi, Actg. PG Sindh (V.L. Karachi)
Date of Hearing:	21.05.2025

O R D E R

Athar Minallah, J.-The jail petition filed by Seeta Ram, son of Chetan Kohli ('**appellant**'), was converted into an appeal and allowed through a short order of even date. The appellant was acquitted from the charge framed against him by extending the benefit of doubt as of right and he was ordered to be released, if not required to be incarcerated in any other matter. We are recording our reasons for his acquittal.

2. This appeal related to the unnatural death of Chander Kumar ('**deceased victim'**) at around 5.30 pm on 18-08-2018. The SHO of Police Station Mithi, District Umerkot, Qurban Ali Rajar, Sub Inspector (PW-11) had deposed that Nawaz Ali Kanbhar (PW-2) had informed

regarding the commission of a cognizable offence and it was entered in the Daily Entry Register No.2 which was tendered in evidence during trial as Ex.45. The information, however, was not entered in the book prescribed under section 154 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**'). It was reported that the deceased victim and one Sarwan Kumar were seated on chairs outside the shop of Nawaz Ali (PW-2), when a person armed with a firearm weapon i.e. a pistol, came and fired at the deceased victim. The perpetrator of the crime had pointed the firearm weapon at other persons as well who had attempted to apprehend him. A second fire was shot injuring the deceased victim before the assailant decamped. The brother of the deceased victim i.e. Dr. Anil Kumar (PW-1) had also reached the crime scene and the injured deceased victim was rushed to the hospital. The latter succumbed to his injuries and the autopsy on the body was conducted at 6 pm on the day of occurrence by Dr.Madan Lal (PW-3). Pursuant to the information which was received from Nawaz Ali Kanbhar (PW-2), police officials had reached the hospital and the necessary formalities relating to investigation were carried out. The Investigating Officer had also visited the crime scene on the same day and had collected the necessary evidence in the presence of witnesses. After the post mortem was conducted, the dead body was handed over to the legal heirs. After performing the last rites, the complainant of this case, Dr. Anil Kumar (PW-1), went to the police station for filing the complaint. However, according to the deposition of Qurban Ali Ranjhar, Sub-Inspector (PW-11), the complainant was called by him for the purpose of registering the report under section 154 of the Cr.P.C. The crime report No.37/2018 was ultimately registered at 11:15 pm on 20.08.2018 i.e. almost two days after the date of the occurrence. The crime report was registered at Police Station Mithi,

District Umerkot and for the first time the appellant was nominated as an accused and he was alleged to have committed the offence under section 302 of the Pakistan Penal Code, 1868 ('**PPC**'). The appellant was arrested on 24-08-2018 and the crime empties collected by the Investigating Officer from the crime scene were sent to the Forensic Science Laboratory ('**FSL**') on 28.08.2018. The appellant had led police to the crime weapon on 29.08.2018, which was recovered from beneath bushes next to the wall of the Civil Hospital. The firearm weapon was sent for forensic analysis to the FSL on 31.08.2018. On 31.08.2018, the appellant was produced before Civil Judge, Gur Mukh Das Gehani (PW-5) for recording his confessional statement under section 164 of the Cr.P.C. The Investigating Officer, after concluding the investigation, had filed his report under section 173 of the Cr.P.C. and, pursuant thereto, the charge was framed on 06.11.2018. The appellant did not plead guilty and, therefore, upon conclusion of trial, the trial court, vide judgment dated 03.07.2019, convicted the appellant under section 302(b) of the PPC and he was sentenced to death with direction to pay Rs.300,000/- as compensation to the legal heirs of the deceased victim under section 544-A of the Cr.P.C. and, in default thereof, to undergo simple imprisonment for seven months. He was also convicted under section 506(2) of the Cr.P.C. and sentenced to rigorous imprisonment for three years. The benefit of section 382-B of the Cr.P.C. was extended in favour of the appellant. The appeal preferred by the appellant was dismissed by the High Court vide the impugned judgment dated 15.03.2023 and the sentence of death was confirmed, since the reference was answered in the affirmative.

3. We have heard the learned counsels for the appellant, the complainant and the Additional Prosecutor General, Sindh. The Inspector General of Police, Sindh had also appeared along with the

Acting Prosecutor General, Sindh to explain the widespread phenomenon in the Province of Sindh for delay in registration of FIRs. We have perused the record with the able assistance of the learned counsels.

4. The occurrence which had led to the unnatural death of the deceased victim had taken place on 18.08.2018 around 5:35 pm and, according to the prosecution's story, the crime scene was outside the shop of one of the witnesses i.e. Nawaz Ali Kunbhar (PW-2). As already noted above, the crime report in this case was registered after a considerable delay. The occurrence had taken place on 18.08.2018 while the information was entered in the register prescribed for the purpose of section 154 of the Cr.P.C. at 11:15 pm on 20.08.2018. However, it is not disputed that the information was promptly given to the concerned police station telephonically by Nawaz Ali Kunbhar (PW-2) and this was confirmed by Qurban Ali Rajar, Sub-Inspector (PW-11) who was performing duties as the In charge of the Police Station. He had entered the information in the Daily Entry Register No.2 and not in the register prescribed for the purpose of recording information under section 154 of the Cr P.C. The promptly received information was against an unknown person. The appellant was nominated in the crime report which was registered after considerable delay. This aspect of the case will be discussed in more detail later.

5. The prosecution, in order to prove the guilt of the appellant, had based its case on the ocular account deposed by two witnesses i.e. Dr.Anil Kumar (PW-1) and Nawaz Ali Kunbhar (PW-2); the retracted judicial confession of the appellant recorded under section 164 of the Cr.P.C.; recovery of the firearm weapon and the positive report of the FSL.

6. The information regarding the occurrence was promptly given to the Police Station by Nawaz Ali Kumbhar (PW-2) telephonically and he had also provided his cellular phone number. It was received by the In charge Police Station at 5.40 pm on 18-08-2018. It is obvious from the information that the accused was not known because no one was nominated. The information further indicated that Dr. Anil Kumar (PW-1) was not present when, allegedly, the appellant had caused two fire arm injuries and that he had reached the crime scene later. Dr. Anil Kumar (PW-1) had filed a complaint and, pursuant thereto, the crime report was registered at 11.15 pm on 20-08-2018 under section 154 of the Cr.P.C. There is no convincing explanation for the delay in the registration of the information as mandated under section 154. The In charge of the Police Station had not only received the information but several steps in the course of investigation were also taken. The postmortem was conducted and the crime scene was also inspected from where incriminating articles were collected. All this was done prior to registration of the crime report. The question arises as to whether the delayed registration of the crime report entailed any consequences. Also, what was the status of the investigation carried out prior to registration of the case under section 154 of the Cr.P.C? We will, therefore, examine the scheme of the Cr.P.C to answer these questions.

7. 'First Information Report' is not an expression used or defined in the Cr.P.C. It refers to information received by an officer In charge of police station under section 154 or section 155 of the Cr.P.C, as the case may be. The legislature, in both these provisions, has used the expression 'shall' in the context of the obligation to enter the substance of the information in the relevant book to be kept by an officer In charge of a police station in the prescribed form. The former provision relates

to a cognizable offence while the latter to a non-cognizable one. The expressions 'cognizable' and 'non cognizable' are defined under sections 2(f) and 2(n) respectively. In case of a cognizable offence, section 156 empowers any police officer In charge of a police station to investigate without the order of a Magistrate while section 155 places a clog on the power of the police officer, who cannot investigate without a specific order of a Magistrate competent in this regard and as has been mandated under section 155(2). However, the legislature has used the expression 'shall' in both these sections, making it a mandatory statutory obligation of the In charge of a Police Station to enter the information in the relevant prescribed book or, in other words, to register the FIR. If the information relates to the commission of a cognizable offence given orally or in writing then the In charge of the police station has no option except to enter it in the book prescribed for this purpose. In case of a non-cognizable offence, it is a statutory duty to enter the information in the relevant prescribed book but investigation cannot be commenced or carried out without obtaining a specific order from a Magistrate competent in this regard. In case of a cognizable offence the powers of an In charge of a police station to investigate are also not unfettered, rather they have been circumscribed under section 157 of the Cr.P.C. Before embarking on the course of investigation, the In charge of a police station must, on the basis of the information received or otherwise, have 'reason to suspect' the commission of an offence which he is empowered under section 156 to investigate. In such an eventuality it is a statutory duty of the latter to forthwith report to the competent Magistrate and then proceed. Proviso (b) of sub-section 1 of section 157 provides that if it appears to the officer In charge of a police station that there is no sufficient ground for embarking on an investigation then he may decide

not to investigate the case. In such an event the officer in charge of the police station shall state in his report to the Magistrate the reasons for his decision and forthwith notify the informant that he will not investigate the case or cause it to be investigated. This Court, in Sughran Bibi's case[1], while interpreting section 154 of the Cr.P.C, has eloquently explained that the section refers to 'cognizable cases' meaning, thereby, that after entering the first information relating to a cognizable offence in the prescribed book i.e after registration of the FIR, the matter becomes a 'case'. The FIR is no more than an incident report which merely informs the police for the first time about the occurrence regarding a cognizable offence. After registration of the FIR the occurrence is treated as a case and it enables the police officer to initiate the process of investigation under sections 156,157, and 159 of Cr.P.C. This Court has held that the investigating officer is not to be guided nor is he or she controlled in this regard by the contents of the FIR. The contents of an information under section 154 are not sacrosanct. The investigation, after registration of the case, cannot be embarked upon in a mechanical manner and the investigating officer is bound to observe the provisions of the Cr.P.C. It was in this background that this Court has held that it was misconceived that arresting an accused was necessary or sine qua non for investigating a crime merely because of registration of a case. It was held in Sughran Bibi's case (*supra*) that, ordinarily, no person is to be arrested straightaway only because he or she has been nominated as an accused person in the FIR or in any other version of the incident brought to the notice of the investigation officer. The investigating officer can exercise the power to arrest a person if satisfied that sufficient justification exists for the arrest and for such justification

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[1] *Mst. Sughran Bibi v. The State (PLD 2018 SC 595)*

the investigation officer must be guided by the provisions of the Cr.P.C. A suspect is not to be arrested straightway or as a matter of course unless sufficient material or evidence becomes available on the record which, prima facie, satisfies the investigating officer regarding the correctness of the allegations. The purpose of the above discussion was to highlight that registration of the FIR is a mandatory statutory duty of an officer in charge of a police station and it cannot adversely affect the rights of the parties involved in the criminal proceedings, provided the ensuing investigation is carried out in accordance with the mandate and procedures contemplated under the Cr,P.C. The safeguards provided under the Cr.P.C are meant to ensure that the right to liberty, even of an accused, is not prejudiced unjustifiably. The edifice of the criminal justice system rests on the fairness of the investigation and, obviously, the integrity and professionalism of the investigating officer. The registration of an FIR as soon as the information has been received relating to the commission of a cognizable offence is necessary for preserving the evidence and to rule out the possibility of making up a story after deliberations and consultations. This Court has consistently held that an officer In charge of a police station has no authority, nor does such authority vest with any other person, to refuse to register an information under section 154 when it discloses the commission of a cognizable offence. Moreover, the officer In charge of a police station nor any other person is vested with the authority to embark upon an inquiry regarding the correctness or otherwise of the information which has been given for the purposes of registration of a case under section 154 of the Cr.P.C. It has been further held that any investigation or inquiry in the nature of finding the correctness or otherwise of the information prior to registration of the FIR will be hit by the provisions

of section 162 of the Cr. P.C.[2]. The expression 'investigation' has been defined under section 2(l) of the Cr.P.C and it includes all the proceedings under the Code for 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. Likewise, 'inquiry' is defined under section 2(k) and it includes every inquiry conducted under the Code by a Magistrate or a court. This distinction is important so as to appreciate that under the scheme of the Cr.P.C conducting an inquiry falls within the domain of a Magistrate or a court while investigation of a crime is the exclusive duty and obligation of an authorized officer. The registration of an FIR is the first step for setting in motion the criminal proceedings. It is not the concern of the officer in charge of a police station whether the information is true or false. The latter cannot assume the role of an adjudicator or assume the role of a Magistrate or a court to embark upon an inquiry in order to ascertain the falsity, truth or credibility of the information before it is entered in the prescribed book kept under section 154 of the Cr.P.C. Though there are some exceptions explicitly mentioned in the Cr.P.C when steps which are part of the process of investigation could be taken before a case is registered under section 154 of the Cr.P.C e.g under sections 54, 55, 57 or 151 ibid. It is noted that, even in such an eventuality, sections 60 and 61 make it a mandatory duty of the concerned police officer to take the arrested person before or to inform the Magistrate. These provisions or exceptions have been placed by the legislature before section 154. The registration of a case under section 154 relating to information of the commission of a cognizable offence is a statutory duty of an officer In Charge of a police station and it cannot be delayed for any reason if the information discloses

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[2] *Muhammad Bashir v. Station House Officer, Okara and others (PLD 2007 SC 539), Syed Qambar Ali Shah v. Province of Sindh and others (2024 SCMR 1123)*

commission of a cognizable offence. Registration of a case under section 154 is an executive function and the officer In Charge of a police station has no authority or jurisdiction to delay the registration of the case by embarking upon an inquiry to first ascertain its truth, falsity or credibility nor is such information sacrosanct and binding to be followed by the investigating officer. The latter has a statutory duty to carry out an investigation after a case has been registered under section 154 of the Cr.P.C, except in those eventualities which have been explicitly provided ibid. In case the information is ultimately established to be false then it would attract the offence and its prescribed punishment under section 182 of the PPC. It is noted, however, that if the information does not disclose a cognizable offence or is so vague or indefinite that the officer in charge of a police station requires to satisfy himself or herself whether it relates to the commission of a cognizable offence then the delay, if any, also has to be justified by the officer In Charge of a police station. Nonetheless, the onus will always be on the officer In Charge of the police station to justify the delay, if any.

8. It is obvious from the above discussed provisions of the Cr.P.C that the registration of a case under section 154 of the Cr.P.C cannot be refused nor delayed when the information relating to the commission of a cognizable offence has been given to or received by the officer In Charge of a police station. The registration of the case is the first step to put the criminal proceedings in motion and to enable the officer In Charge of a police station to embark upon the course of investigation strictly in accordance with the mandate set out in the Cr.P.C. The registration of the case, i.e the FIR itself, is not a substantive piece of evidence unless its contents are affirmed on oath by its maker while entering the witness box and being subjected to

cross examination. In terms of Articles 140 and 153 of the Order of 1984 it is no more than a previous statement which may be used for confronting its maker unless the same has been proved by the prosecution[3]. Since it is not a substantive piece of evidence, therefore, it cannot be used to corroborate the evidence of a witness. The non mentioning of the name of a witness in the FIR is not a fatal omission and it would not be a sufficient reason to discard the testimony in every case. The evidentiary value of a testimony depends on the facts and circumstances of each case[4]. The registration of a case, i.e the FIR without delay has significance for both the complainant as well as an accused. A *bona fide* and truthful complainant would definitely want the process of investigation to commence at the earliest. The delay in registration of a case raises the probability of false implication of an accused or an opportunity to manipulate and manage the evidence by bringing it in line with the prosecution's story e.g with the findings of the autopsy etc. The delay gives an opportunity of prior consultation and deliberations and, therefore, the possibility of false implication and manipulation cannot be ruled out. The promptness eliminates the chances of such prior consultation and deliberations and raises a presumption of credibility and *bona fides*[5]. It is further noted that entry of an information relating to the commission of a cognizable offence other than in the manner provided under section 154 of the Cr.P.C e.g in a daily diary, is not contemplated under the scheme of the Code. The scheme of the Cr.P.C contemplates an external check on abuse of powers by the police authorities. The external check has been ensured

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[3] *Sohni v. Bahuduri and others (PLD 1965 SC 111), Siraj Din v. Kala and another (PLD 1964 SC 26), Muhammad Ramzan v. The State (2025 SCMR 762) Sikandar v. The State and another (2006 SCMR 1786) Jan Muhammad v. Muhammad Ali and others (2002 SCMR 1586)*

[4] *Siraj Din v. Kala and another (PLD 1964 SC 26), Shah Jehan and another v. Raheem Shah and others (2022 SCMR 352)*

[5] *Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others (2024 SCMR 1773), Muhammad Nawaz and another v. The State and others (2024 SCMR 1731), Abid Hussain and another v. The State and others (2024 SCMR 1608), Maskeen Ullah and another v. The State and others (2023 SCMR 1568), Abdul Wahid v. The State (2023 SCMR 1278), Sohail Akhtar v. The State and another (2022 SCMR 1447), Sardar Bibi and another v. Munir Ahmed and others (2017 SCMR 344), Mst. Asia Bibi v. The State and others (PLD 2019 SC 64), Nasrullah and others v. The State (1996 SCMR 1926)*

by way of requiring the officer In Charge of police station to keep the competent Magistrate informed regarding each step taken from registration of the FIR till filing of the report under section 173. Every case registered under section 154 and the ensuing investigation ends up with filing a report under section 173 of the Cr.P.C. There is no doubt that a Magistrate or a court has no authority to interfere in the process of investigation nor to guide and direct the investigation officer how or in what manner to investigate a case. The supervision of a Magistrate at each stage, from registration of a case till filing of the report under section 173 is to ensure that powers vested in an officer of the police station or any other authorized person are not abused for *mala fide* and extraneous reasons nor that the liberty, freedoms and rights of an accused are violated in disregard to the scheme contemplated under the Cr.P.C. The entry of a cognizable offence in a Daily Diary, for instance, rather than the prescribed book kept for the purposes of section 154 of the Cr.P.C enables an officer In Charge of a police station to circumvent and disregard the mandatory provisions of the Cr.P.C by avoiding the external supervisory check of a competent Magistrate contemplated there under. It gives an opportunity to an officer In Charge of a police station to abuse the powers without any external Magisterial check expressly provided under the scheme of the Cr.P.C.

9. In the case before us, the information relating to the commission of a cognizable was promptly given by Nawaz Ali (PW-2). The appellant was not nominated and the information was entered by the officer In Charge of the police station, SIP Qurban Ali Rajar (PW-11) at 5.40 pm on 18-08-2018 in the Daily Entry Register No. 2, instead of the prescribed book kept for the entry of information, i.e the FIR under section 154 of the Cr.P.C. Most of the steps relating to investigation

were also taken before the FIR was registered after a considerable delay of almost two days. The crime report was registered at 11.15 pm on 20-08-2018. The complainant was Dr. Anil Kumar (PW-1) and the appellant was duly nominated. When the information was given on 18-08-2018 it appears that the informant, Nawaz Ali (PW-2), did not know the identity of the person who had committed the offence and it also was obvious that the other witness who later became the complainant, Dr. Anil Kumar (PW-1), was also not present and had reached after the offence was committed and the assailant had decamped. The likelihood of nominating the appellant after consultation and deliberation, therefore, cannot be ruled out in the facts and circumstances of this case. It thus raises a doubt as to whether the perpetrator of the crime was identified by those who claim to have witnessed the commission of offence. It also appears from the testimonies that the identity of the appellant was known to Dr. Anil Kumar (PW-1). The latter has not imputed any motive nor was it set up by the prosecution. Dr. Anil Kumar (PW-1) had deposed that he came with his deceased brother but they had separated because he went to another shop while his deceased brother proceeded to the shop of Nawaz Ali (PW-2). The latter had also stated in his deposition that when the appellant came to the crime scene Dr. Anil Kumar (PW-1) was not present. There is also nothing on record to show that the identity of the person who came and had caused two fire arm injuries to the deceased victim was known to him. As already noted, this witness had promptly informed the police station but the person who was alleged to have committed the offence was not named or nominated. The testimony of Dr. Anil Kumar (PW-1) is also not confidence inspiring. According to his testimony he had accompanied his deceased brother but before reaching the shop of Nawaz Ali (PW-1) they had separated and he went to another shop. The

latter had not interacted with him nor seems to have seen him while going to another shop. Dr Aneel Kumar (PW-1) was not a resident of the place where the occurrence had taken place and his explanation was that his deceased brother had asked him to accompany him. He had spent time, according to his deposition, in other shop and the reason given by him for his visit was 'chit chat'. It appears that the appellant was known to him and not to the other witness. If that was so and he had seen the occurrence and had identified the accused then there is no plausible explanation why it took him two days to nominate the appellant. This witness was also present in the hospital on the day of occurrence and had met the officer In Charge of the police station and the investigating officer, but he did not nominate the appellant. How the appellant was identified and subsequently nominated is shrouded in mystery. The testimonies of the two witnesses who had deposed the ocular account are not confidence inspiring and, therefore, it would not be safe to place reliance thereon for sustaining the conviction. The High Court in the impugned judgment has referred to a CCTV footage recorded by the investigating officer. However, this evidence was not considered as reliable and trust worthy since it was not relied upon by the trial court.

10. The next evidence relied upon by the prosecution was the judicial confession of the appellant recorded under section 164 of the Cr. P.C. by Civil Judge Gur Mukh Das Gehani (PW-5). The appellant was arrested on 24-08-2018 and remained in the custody of the investigating officer for investigation before he was produced before the aforementioned Magistrate on 31-08-2018 i.e after seven days. Gur Mukh Das Gehani (PW-5) had deposed that when the appellant was produced before him he had directed his 'custody' to be kept by his staff though he had stated police personnel were asked to leave. The

staff obviously included persons in police uniform. He had also acknowledged that his uniformed guard was also performing duties outside his chambers. The removal of handcuffs is also unclear because the witness had acknowledged that this aspect was not stated in his report. What was the nature of the appellants 'custody' when he was kept by the staff of the Magistrate? Were his handcuffs removed? Was he handcuffed when his confessional statement was recorded? The witness had also conceded that he had not informed the appellant regarding the consequences of confessing his guilt i.e the sentences he would be exposed to. He had also admitted that he had not informed the appellant that he would not be given in the custody of the police officials. He had also accepted that though the appellant was ordered to be sent to a judicial lock up, his custody was given to the investigating officer who had brought him. We have also carefully perused the confessional statement recorded under section 164 of the Cr.P.C and we have found it to be based on a different version and narration of the events than the story set up by the prosecution. We have also noted that the investigating officer had not made any attempt to investigate the events highlighted in the confessional statement recorded under section 164 of the Cr. P.C. This statement was retracted by the appellant. Could it be relied upon by the two courts for convicting the appellant for the charge framed against him? Before answering this question it would be beneficial to examine the principles and law regarding the status and evidentiary value of a confession made by an accused under section 164 of the Cr.P.C.

11. Article 91 of the Qanoon-e-Shahadat Order, 1984 ('**Order of 1984**') provides that whenever any document is produced before any court, *inter alia,* given by a witness in a judicial proceedings or before any officer authorized by law to take such evidence or to be a statement

of confession by any person or an accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, the court shall presume that the document is genuine and that any such statement as to the circumstances under which it was taken purporting to be made by the person signing it are true and that such evidence, statement or confession was duly taken. This presumption is essentially qualified by the expression 'taken in accordance with law'. It is noted that under Article 38 of the Order of 1984 no statement which is made to or before a police officer is admissible even if it is made in the immediate presence of a Magistrate. Likewise, a confession of an accused while in custody is also inadmissible except when it is made in the immediate presence of a Magistrate or if there is a disclosure of fact as contemplated under Article 40 of the Order of 1984. Section 164 of the Cr. P.C. sets out the mandatory conditions relating to recording a judicial confession in the course of investigation conducted under chapter XIV ibid. Section 364 prescribes the manner in which the judicial confession is to be recorded under section 164 *ibid.* The safeguards are provided under Chapter 13 of the High Court Rules and Orders (Vol.III) ('**Rules and Orders**'). A statement will be considered as having taken in accordance with law when the mandatory conditions and manner of recording prescribed under the law have been met and the minimum safeguards required to be observed have been ensured. It is noted that the safeguards set out under the Rules and Orders are not exhaustive and it would be an onerous task of a court to satisfy itself having regard to the facts and circumstances of the case, that the confession is genuinely voluntary and true. The conditions, manner of recording of a confession and the safeguards are, therefore, discussed as follows;

The mandatory conditions have been prescribed under section 164 of Cr.P.C;

(i) The conditions under section 164 of Cr.P.C have been prescribed in relation to a 'statement' as well as a 'confession'.

(ii) The timing for recording a judicial confession under section 164 has been specified therein as in the course of an investigation which is being conducted under chapter XIV of the Cr. P.C. or at any time afterwards before the commencement of the inquiry or trial.

(iii) The statement or confession can be recorded under section 164 only by a competent authority i.e any Magistrate of the 1st Class and any Magistrate of the 2nd Class specially empowered in this behalf by the provincial government to record statements or confessions as the case may be but a police officer is not competent to record any statement or confession even if the latter is empowered to exercise the powers of a Magistrate.

(iv) A statement, other than a confession may be recorded by a competent Magistrate in the presence of the accused and that the latter shall be given an opportunity of cross-examination of the witnesses who are making the statement. A statement shall be recorded in such manner as in the opinion of the Magistrate is best fitted for the circumstances of the case while the confessions have to be recorded and signed in the manner provided under section 364 of the Cr. P.C. After recording of a confession, it has to be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(v) A Magistrate before recording any confession shall explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him.

(vi) No Magistrate shall record any confession unless upon questioning the person making it. The latter has reason to believe that it was made voluntarily.

(vii) When a Magistrate has reasons to believe that the statement was made voluntarily then he or she is required to make a memorandum at the foot of such record to the effect as has explicitly been given in sub section 3 of section 164 of the Cr.P.C.

(viii) It is not necessary that the Magistrate recording a confession under section 164 should be a Magistrate having jurisdiction in the case.

The manner of recording a judicial confession under section164 has been prescribed under section 364 of the Cr. P.C. as follows:

(i) After the accused has been examined by any Magistrate or by any court other than a High Court then the whole of such examination including every question put to the accused and every answer given by him shall be recorded in full.

(ii) The examination including every question and every answer given by an accused must be recorded in the language in which the latter has been examined or if that is not practicable in the language of the court or in English.

(iii) The record i.e. the whole of examination and every question put to him as well as every answer given by the accused shall be shown to have been read over to him or her or if the latter does not understand the language in which it is written then it shall be interpreted to the accused in a language which he understands and he shall be at liberty to explain or add to his answer. When the whole is made conformable to what an accused has declared to be true then the record shall be signed by the accused and the Magistrate or the Judge of such court and such Magistrate or Judge shall certify under his or her own hand that the examination was taken in his/her

presence and that the record contains a full and true account of the statement made by the accused.

(iv) Cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, then such a Magistrate or Judge shall be bound as the examination proceeds to make a memorandum thereof in the language of the court or in English, if acquainted with such language and such memorandum shall be written and signed by the Magistrate or Judge with his own hand and shall be annexed with the record.

(v) If the Magistrate or Judge is unable to make the abovementioned memorandum then the latter shall record the reasons of such inability.

The safeguards required to be observed while recording a confession have been set out in Rules and Orders as follows:

(i) Unless there are exceptional reasons to the contrary, confessions are required to be made in open court and during the court hours in the absence of police officers investigating the case.

(ii) An accused person who has made a confession under section 164 before a Magistrate can only be sent to the judicial lockup and cannot be handed over to the police after the confession has been recorded.

(iii) If the police requires an accused person for investigation at some subsequent stage after confession has been recorded, a written application should be made giving reasons in detail why the accused is required.

(iv) If an accused has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution then he shall not be remanded to police custody.

(v) When an accused after recording his confessional statement is remanded to the lockup then the Magistrate shall record an order for him to be kept

separate from other prisoners as far as may be practicable.

(vi) Before recording the confession, the Magistrate must arrange, so far as is compatible with the safety and that of the staff and with the safe custody of accused, that the latter is left for some time i.e. for half an hour, out of the hearing of police officers or other persons likely to influence him/her.

(vii) The Magistrate who records the confession under section 164 of Cr.P.C., should not hand over the document after completion to the police officer In charge of the accused, but should forward it direct to the Magistrate by whom the case is to be enquired into or tried.

(viii) However, there is no prohibition for a Magistrate who has recorded a statement to allow the concerned police officials from obtaining a copy before the recorded confession has been forwarded to the trial Magistrate. When permission is granted the police officer, may be given the copy in the manner set out in clause (c) of rule 13 of the Rules and Orders.

12. The safeguards set out in the Rules and Orders are not exhaustive. We have been informed that the High Court of Sindh has not prescribed safeguards and that it follows the principles and law developed in the precedents of this Court in the light of the Rules and Orders. However, it is noted that the object of the safeguards is to enable and facilitate a court to ensure that enabling conditions and circumstances are created so that an accused may exercise the option to genuinely confess voluntarily and out of free will. As already noted, these safeguards are not exhaustive and the competent Magistrate may also adopt such other safeguards so as to ensure that the circumstances are conducive and appropriate for an accused to

genuinely confess voluntarily and out of free will. The precedent law has also enunciated the principles and safeguards required to be observed relating to a confession.

13. It has been the consistent view of this Court that a judicial confession can be made the basis for a conviction when it is found to be true, convincing and made voluntarily without any duress, coercion, inducement or any other influence of whatever nature. Even a retracted confession recorded in accordance with law would be presumed to be genuine as has been contemplated under Article 91 of the Order of 1984[6]. Retraction of a judicial confession is not a sufficient ground for discarding it if it is otherwise found to be reliable[7]. Mere retraction would not diminish its evidentiary value if it has been corroborated by other evidence[8]. There is no absolute rule that retracted judicial confessions cannot be acted upon unless the same are corroborated. However, the rule of prudence requires that, by way of caution, corroboration must be sought. It is not essential that each and every circumstance mentioned in the confessional statement regarding complicity must be separately and independently corroborated nor that the corroboration must come from facts and circumstances discovered after the confession was made[9]. The judicial confession, even when retracted, does not lose its evidentiary value if it is independently corroborated and the court is satisfied that the narration is true and has been made voluntarily[10]. The fundamental principle is that the evidentiary value of the statement rests on the voluntariness of the confession. There must not be any sign of fear

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[6] *Fazal Wadood v. The State (2006 SCMR 1911).*

[7] *Tariq Hussain Shah v. The State (2003 SCMR 938)*

[8] *Islamic Republic of Pakistan through Secretary Ministry of Defense and another v. M/s Omer Nicholas and Company (Pakistan) (2000 SCMR 1364)*

[9] *Fazal Mahmood alias Pappu v. The State (1999 SCMR 2040), Joygun Bibi v. The State (PLD 1960 SC (Pak.) 313) and The State v. Minhun alias Gul Hassan (PLD 1964 SC 813)*

[10] *Arabistan and others v. The State (1992 SCMR 754).*

inculcated by the investigating agency in the mind of the accused and any such fear or apprehension must have been removed by assuring the accused that, even if he confesses his guilt, he shall not be handed over to the police authorities. It is the court's responsibility to take all precautionary measures to ensure that the confession is made voluntarily and without any influence of any kind. In case the confession is a result of inducement, threat or promise or influence of any other kind, whether direct or indirect, given by a person in authority, then it shall not be treated as having been given voluntarily. A confession recorded may be true but it would not be admissible if it has not been given voluntarily. Whether or not a statement is true and has been made voluntarily is a question of fact and it is to be determined keeping in view the attending circumstances of each case[11]. Delay in recording of a judicial confessional statement may also have an adverse effect on the mind of an accused and it could be one of the factors which a court may take into consideration while assessing whether it was a voluntary confession or made under some influence. However, delay in recording the judicial confession by itself is not fatal[12]. The longer an accused remains in the custody of the police before making a judicial confession the more care and scrutiny is required to be exercised by a court, because such delay in facts and circumstances of a case may prejudice its evidentiary value[13]. Recording of a judicial confession with promptitude reflects the probability of its voluntariness though it may be retracted[14]. Though delay in recording a judicial confession by itself is not sufficient to affect its validity but no hard and fast rule can be laid down regarding its timing. A voluntary and true recorded confession, though, does not

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[11] Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274), Sh.Muhammad Amjad v. The State (PLD 2003 SC 704).
[12] Muhammad Gul and others v. The State (1991 SCMR 942).
[13] The State through PG Sindh and others v. Ahmed Omer Sheikh and others (2021 SCMR 873).
[14] Muhammad Amin v. The State (PLD 2006 SC 219).

require corroboration and it may also be sufficient for conviction but, as a rule of procedure and prudence, the court requires to seek corroboration in material particulars[15]. A court has to exercise extra caution while recording a confessional statement in case of vulnerable classes such as juveniles. It is desirable, in their case, to provide them counseling/consultation, *inter alia,* of a natural guardian[16]. A confessional statement has to be read as a whole and its inculpatory parts cannot be relied upon while discarding the exculpatory portions[17]. The confessional statement must be accepted and rejected as a whole[18]. The handcuffs must have been removed before an accused has been brought before a Magistrate for recording his confessional statement. The failure to mention this fact by a Magistrate in his report or his deposition would raise doubts regarding the reliability of a confessional statement because its having been made voluntarily would become questionable[19]. A lapse on the part of a Magistrate in recording the confessional statement may not always be treated as fatal to the evidentiary value of a confession, provided the court is satisfied that the lapse had in no way adversely affected the voluntariness and truthfulness of the confession[20]. The prosecution has to prove its case against an accused beyond a reasonable doubt irrespective of any plea raised by an accused in his defense and the prosecution cannot fall back on the plea of an accused to prove his or her case. If the prosecution fails in proving its case the accused has to be acquitted. The stage to consider the plea of the accused precedes proving his guilt beyond a reasonable doubt[21]. When the prosecution's story has been rejected by the court and the confessional statement is

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15 *Majeed v. The State (2010 SCMR 55)*

16 *Muhammad Bilal and another v. The State and others (2021 SCMR 1039)*

17 *Bahadur Khan v. The State (PLD 1995 SC 336), Javed Iqbal v. The State (2023 SCMR 139).*

18 *Muhammad Abbas v. The State (PLD 2020 SC 620).*

19 *Muhammad Ismail and others v. The State (2017 SCMR 898).*

20 *Majeed v. The State (2010 SCMR 55), Ch.Muhammad Yaqoob and others v. The State and others (1992 SCMR 1983) and Mst. Naseem Akhtar and another v. The State (1999 SCMR 1744)*

21 *Shamoon alias Shamma v. The State (1995 SCMR 1377).*

the only material on which an accused has to be convicted then the same has to be either accepted as a whole or rejected as a whole. It is not open for a court to accept only part of it and reject the rest[22]. Article 37 of the Order of 1984 explicitly provides that the confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person and which proceeds from a person in authority and is sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he/she would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. The confession, therefore, whether judicial or extra judicial, must be demonstrably voluntary, made out of absolute free will and without influence of any kind, whether a threat, inducement, promise or even hope etc. The fundamental principle regarding the admissibility and assessment of a confession, judicial or extra judicial, is that it ought to be genuinely voluntary and must have been made out of one's free will. It must have been given freely and without any coercion or influence in any form. The court must be mindful of the fact that, ordinarily, no person would confess to the commission of a crime because of its consequences and the possibility that the profound effects of being in custody and exposed to the physical and psychological distress and trauma associated with investigation and custody a person's rational thinking generally gets impaired. It cannot be ruled out that an innocent person may confess so as to free himself from the extremely distressful conditions. However, in exceptional and rare cases, it cannot be ruled out that an accused may voluntarily

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[22] *Naseer Hussain v. Nawaz and others (1994 SCMR 1504).*

confess his or guilt because of genuine remorse or regret. It becomes an even more onerous task of the court when the circumstances are such that there is a likelihood of the accused being exposed to the influence of a person in authority, such as being in the custody of a police officer and confined in the lock up of a police station.

14. The confessional statement recorded in this case had, as already discussed above, lost its evidentiary value because, in the facts and circumstances, serious questions have been raised and it is doubtful whether the confession was made voluntarily, out of absolutely free will. The attending circumstances were not conducive to conclude that there was no influence. The safeguards were also violated. It was a delayed confession because the appellant had spent seven days in custody during the course of investigation. He was given in the 'custody' of the staff of the Magistrate during the time he was given to reflect. Whether the staff included persons in police uniform is not clear. Whether the handcuffs were removed has also not been mentioned and established. The handing over of custody to the investigating officer who had brought the appellant and failure on part of the recording Magistrate to explain the consequences to him had raised doubts as to whether the confession was voluntary and made out of free will. The judicial confession recorded under section 164 of the Cr. P.C was, therefore, not reliable and trustworthy for reliance in a case that attracts capital punishment.

15. The prosecution's story is without a motive, as has already been discussed above. The appellant was arrested on 24-08-2018 and, on 29-08-2018, he had led to the recovery of the crime weapon from a packet stated to have been buried under the bushes near an electric

pole. The spent bullets were sent to the FSL on 28-08-2018 i.e after the arrest of the appellant. It would not be safe to rely on the recovery of the firearm weapon because the spent bullets were sent to the FSL after the arrest of the appellant and it does not appeal to a prudent mind that a person would conceal the firearm used to allegedly commit the crime at a place frequented by the public i.e next to the wall of the Civil Hospital.

16. The above are our reasons for allowing the appeal vide our short order of even date. The prosecution had failed in its obligation to prove the guilt of the appellant beyond a reasonable doubt.

17. Before we close this judgment, we feel constrained to record our observations regarding the widespread phenomenon of refusal or considerable delay in the registration of FIRs i.e entry of the substance of information relating to the commission of a cognizable offence in the prescribed register as mandated under section 154 of the Cr.P.C. This phenomenon has been observed invariably in most of the cases which emanate from the Province of Sindh. This case is only a tip of the iceberg and it reflects adversely on the status of the criminal justice system. Registration of FIRs and the ensuing investigations till filing of the respective reports under section 173 of the Cr. P.C is exclusively an executive function and one of the most crucial and fundamental components of the criminal justice system. As we have already held that it is a statutory duty of an officer of a police station to register a case i.e FIR as soon as the information has been received. The officer in charge of a police station has no authority to refuse or delay its registration as mandated under section 154 of the Cr.P.C. Delay without a convincing reason gravely affects the rights of the parties,

the victim and the accused as well. It gives an opportunity to manage and manipulate the evidence and to falsely implicate innocent persons. The police force and the police stations have been established to serve the people, who are the real stakeholders. The officer in charge of a police station has an onerous duty to protect the citizens and their rights and to prevent crimes within his or her area of jurisdiction. We had put the Inspector General of Police, Province of Sindh and the Prosecutor General, Sindh to notice so as to explain why the mandatory provisions of the Cr.P.C and other enabling laws are being flagrantly violated. The Inspector General of Police along with the Acting Prosecutor General had appeared and they had explained in detail the reasons for existence of such a phenomenon and the measures taken to put a stop to it. A written report dated 02.06.2025 was also received while the reasons were being recorded. It appears from the reasons stated by the Inspector General of Police, Government of Sindh that this phenomenon is widespread. We record our appreciation for the candid acknowledgement and the explanation of the Inspector General of Police regarding the measures being taken to put an end to this illegal conduct. However, the reasons explained for the existence of such widespread violation of the statutory duty of an officer in charge of a police station are neither tenable nor expected from a uniformed police force entrusted with the responsibility of upholding the law, maintaining public order, prevention and control of crime, protecting the citizens from harm and, above all, safe guarding their rights and freedoms. The reasons stated, such as deep-rooted cultural practices, preference of the complainants, attempts of reconciliation and dispute resolution prior to the registration of FIRs, religious beliefs or medical priorities are alien to the mandate of the Cr.P.C and inconceivable in a society governed under a Constitution

which guarantees to every citizen their rights, liberty and freedoms. These reasons may be justified in a society governed under tribal and archaic traditions but not when the governance is under a Constitution which assures and guarantees to every citizen protection of law and to be treated in accordance with law as an inalienable right. Acknowledgement of such reasons would be perceived as capture of the police force and the criminal justice system by those who wield power and influence, rather the system being subservient to the rule of law. Every officer in charge of a police station is bound to strictly perform functions and duties mandated under the provisions of the Cr.P.C. He or she has no authority to disobey or ignore the law. The foundation of the edifice of the criminal justice system is built on the prevention and investigation of a crime whether reported to or whether the information is otherwise received by an officer in charge of a police station. The latter has no excuse nor authority to refuse or delay the registration of a case, i.e FIR under section 154 of the Cr.P.C if it relates to the commission of a cognizable offence. The officer in charge of a police station cannot sit back and wait for a complainant to file a formal complaint. This would be a serious dereliction of a statutory duty and negation of the statutory authority vested under the Cr.P.C. The phenomenon of refusal to or delay in registration of a criminal case under section 154 has been invariably observed in cases affecting the rights of the most vulnerable, marginalized or underprivileged classes of the society. The phenomenon is seen to be an abuse of powers to the advantage or in favor of the powerful and privileged. The inadvertent or deliberate refusal on part of an officer in charge of a police station to fulfill the statutory duty mandated under section 154 of the Cr.P.C erodes the confidence of the people in the criminal justice system. They would be justified in perceiving the police force to be serving the

interests of the powerful and privileged rather than the actual stakeholders; the people. These are characteristics of a police state and not a State meant to be governed under the Constitution. When the police authorities disregard their duties and functions mandated under the provisions of the Cr.P.C they are then perceived as being used by the powerful and privileged to maintain a repressive social and political control over the people. This perception manifests that the Constitution is being gravely violated. We therefore, expect that the Inspector Generals of Police of all the provinces will take effective steps in order to ensure that there is no refusal or delay in the registration of cases under section 154 of the Cr.P.C if the information relates to the commission of a cognizable offence. We also expect the Prosecutor Generals of the respective Governments to advise the police authorities and frame standard operating procedures in accordance with the mandate of the Cr.P.C. The onus is on the respective Governments to demonstrably establish, through the conduct of each officer in charge of a police station within their jurisdiction, that the statutory duties and obligations mandated under the provisions of the Cr.P.C are being strictly followed and respected. It is an onerous duty of each government to ensure that the police force established under its control exists solely to serve the people, rather than to maintain a repressive social and political control over them. The trust of the people in the impartiality, fairness and independence of the criminal justice system, particularly in the police force established to serve them, is the sole test to determine whether they are being governed in accordance with the Constitution or the norms that characterize a police state.

18. The office of this Court is directed to send copies of this judgment to the Inspector Generals and Prosecutor Generals of the Provinces

and the Federal Islamabad Capital Territory for consideration of the above observations.

Judge

Judge

Judge

ISLAMABAD THE
21st May 2025
"APPROVED FOR REPORTING"
(Aamir Sh.)