

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa

Mr. Justice Syed Mansoor Ali Shah

Criminal Petition No. 583/2021

(Against the judgment dated 30.04.2021 of the
Peshawar High Court, Abbottabad Bench passed
in CrI. Misc. (BA) No.552-A of 2021)

Amjid Khan

.....***Petitioner(s)***

Versus

The State through A.G. KPK, etc.

.....***Respondent(s)***

For the petitioner(s): Mr. Mohammad Siddique Awan, ASC.
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Shumail Aziz, Addl. A.G.
Hayat Khan, Inspector.
Naeem Gul, ASI.

Date of hearing: 08.07.2021

ORDER

Qazi Faez Isa, J. Learned counsel for the petitioner states that in the impugned judgment dated 30 April 2021 a direction was issued to the prosecution to submit complete *challan* within one week and to conclude the trial expeditiously, however, the *challan* was not submitted and as such the trial could not commence.

2. The learned Additional Advocate General, Khyber Pakhtunkhwa (**'AAG'**) states that the investigation report (*challan*) was submitted to the Prosecution department on 22 February 2021 and in court on 18 June 2021. He has referred to section 173 of the Code of Criminal Procedure, 1898 (**'the Code'**) and to the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (**'Act'**) and states that the report has to go through the Prosecution department; it appears that the learned AAG seems to be justifying the delay in submitting the *challan* in court.

3. Section 173(1) of the Code stipulates that the police investigation shall be completed '*without unnecessary delay*' and

'through the Public Prosecutor' the investigation report shall be submitted to the magistrate/court, and the proviso thereto mandates that if the *'investigation is not completed within a period of fourteen days from the date of recording of the first information report' ('FIR')* then *'within three days of the expiration of such period'* through the Public Prosecutor an interim report shall be submitted.

4. However, the learned AAG seems to be deriving a novel interpretation which is that compliance is made with the requirement of section 173 of the Code if the investigation report (*challan*) is submitted to the Public Prosecutor. Section 173 of the Code does not permit this interpretation; its language is clear and requires that the report is to be submitted through the Public Prosecutor but its destination is the Magistrate/Court. In this case the FIR was recorded on 25 August 2020 and the investigation report had to be submitted within fourteen days, that is, by 8 September 2020, but instead it was submitted on 18 June 2021, that is, after nine months and ten days, and no interim report was submitted. Unfortunately, in the Province of Khyber Pakhtunkhwa, section 173 of the Code, with regard to the timely submission of the report, is violated in almost every case, and now the Court time is unnecessarily wasted by putting forward a submission, which if accepted, would negate the law.

5. The Prosecution had undoubtedly disobeyed the order of the High Court and contravened the law. We enquired whether the delay in submitting the investigation report (*challan*) creates any right in favour of the petitioner and the learned counsel was not able to cite any precedent in this regard. He instead states that since the *challan* has finally been submitted, the Prosecution be directed to proceed with the case. As the investigation report (*challan*) has been submitted in Court we expect the Prosecution to proceed with the case expeditiously and not seek unnecessary adjournments. In case the prosecution fails to do so the learned Judge of the Trial Court may take appropriate action against the recalcitrant. This petition is disposed of in such terms.

6. However, before parting with this case, it requires restating that the Act established the Khyber Pakhtunkhwa Prosecution

Institution for the stated objective of '*achieving a speedy justice process*' but as this case, and many others testify, this objective has been lost sight of. The Prosecution Institution was established to oversee the police investigation and ensure the proper and timely prosecution of cases, but instead it is delaying the commencement of trials. As per the learned AAG the Prosecution Institution received the investigation report (*challan*) from the police on 18 February 2021, but sat on it for about four months for no reason whatsoever. The Prosecution Institution is required to ensure that the police properly investigate cases and the investigation report is comprehensive and accords with the law. The object of the Prosecution Institution is not to create hurdles in the timely submission of investigation reports (*challans*).

7. The British colonial rulers had enacted the Code in 1898 and had bound themselves to submit investigation reports (*challans*) promptly. In 1992 the Code was amended and a proviso specifying certain time periods was inserted after section 173(1) to ensure further expeditious submission of the reports, but these time periods are mostly observed in the breach. It is now over 73 years since we attained Independence, with a great many sacrifices, but even the standard set by foreign rulers is not met and the betrayal of the people continues. And, it seems that with every passing day the situation deteriorates further. It is a rare case in which the investigation report (*challan*) is submitted within fourteen days from the recording of the FIR. We are constrained to observe that this unjustifiable delay in the submission of investigation reports (*challans*) also vitiates the Fundamental Rights of '*fair trial and due process*' which the Constitution of the Islamic Republic of Pakistan guarantees in its Article 10A.

8. A copy of this order be sent to the Director General Prosecution of the Khyber Pakhtunkhwa Prosecution Institution, the Advocate General, Khyber Pakhtunkhwa and to the Principal Police Officer, Khyber Pakhtunkhwa.

Judge

Islamabad,
8th July, 2021
Approved for Reporting
Iqbal

Judge