

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa  
Mr. Justice Maqbool Baqar  
Mr. Justice Syed Mansoor Ali Shah

**Criminal Appeal No. 547 of 2017**

(Against the judgment dated 10.03.2014 passed by the High Court of Baluchistan, Quetta in Criminal Quashment Petition No. 428 of 2013)

***Muhammad Hanif***

*...Appellant*

***versus***

***The State***

*...Respondent*

For the appellant: Mr. Abdur Rehman Awan, ASC

For the State: Syed Baqar Shah, State Counsel  
Mr. Aurangzeb, I.O.

Date of hearing: 18.10.2018

**JUDGMENT**

**Asif Saeed Khan Khosa, J.:**

**Criminal Miscellaneous Application No. 359 of 2018**

This miscellaneous application is allowed and the document appended therewith is permitted to be brought on the record of the main appeal. Disposed of.

**Criminal Appeal No. 547 of 2017**

2. The facts of this case are quite long but the long and short of the same is that in his capacity as an Additional Sessions Judge

the appellant had convicted the Naib Court of his court namely Muhammad Akram for an offence under section 218, PPC but while deciding the appeal filed by the said Muhammad Akram the matter was remanded by the High Court to the trial court with a direction to the local police to reinvestigate the case and to resubmit a Challan against all the persons involved in the offence without specifying as to who those all persons were. As a result of the remand order the matter was reinvestigated by the local police and a fresh Challan was submitted before the trial court against one Zaman Khan but instead of entertaining the said fresh Challan the trial court directed the local police for resubmission of the Challan against all the persons involved, as had been directed by the High Court, once again failing to specify as to who all those persons were. Taking clue from the orders passed by the High Court as well as the trial court the local police formed an impression that the relevant courts wanted a Challan to be submitted against the present appellant as well and, thus, a fresh Challan was submitted before the trial court against him as well on the basis of which an order was passed regarding arrest of the appellant and his production before the trial court. The said order was challenged by the appellant before the High Court through a petition under section 561-A, Cr.P.C. and through the impugned order dated 09.11.2016 the said petition filed by the appellant was dismissed by the High Court. Hence, the present appeal by leave of this Court granted on 29.11.2017.

2. We have heard the learned counsel for the parties and have gone through the record of the case with their assistance.

3. The earlier order passed by the High Court on 13.06.2013 as well as the impugned order passed by the High Court on 09.11.2016, when read together with the order passed by the trial court on 16.06.2015, create an irresistible impression that the High Court as well as the trial court had insisted that the local police must file a Challan against the present appellant. Such approach of the High Court and the trial court was completely

alien to the law as the law is settled by now that no court can insist that a Challan of a case must be submitted against any particular person and this legal position had been clarified by this Court in the case of Muhammad Nasir Cheema v. Mazhar Javaid and others (PLD 2007 SC 31). The said principle has also been reiterated by a Larger Bench of this Court in the recent case of Mst. Sughran Bibi v. The State (PLD 2018 SC 595).

4. It is intriguing to notice that another accused person in this case namely Muhammad Iqbal, placed in an identical predicament with the present appellant, had been granted the necessary relief by the same High Court through acceptance of his petition under section 561-A, Cr.P.C. *vide* judgment dated 30.12.2016 handed down by another Hon'ble Judge of the same High Court and the proceedings against the said co-accused had been quashed. It appears that different accused persons placed in the same position in the same criminal case had been treated differently by different Hon'ble Judges of the same High Court which is unfortunate, to say the least.

5. Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each others' roles destroys the concept of separation of powers and works a long way towards defeating justice and this was so recognized in the case of Emperor v. Khwaja Nazir Ahmed (AIR 1945 Privy Council 18). The relevant paragraph from the judgment passed in that case is reproduced below:

“Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Ss. 154 and 156, to investigate the

circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under S. 561A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P.C., to give directions in the nature of habeas corpus. In the case of a cognizable offence, the Court's functions begin when a charge is preferred before it and not until then and, therefore, the High Court can interfere under S. 561A only when a charge has been preferred and not before. As the police have under Ss. 154 and 156, a statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds."

It appears that the High Court as well as the trial court in the present case had remained oblivious of the said constitutional and legal principle imbedded in our Constitution and the law.

6. For what has been discussed above this appeal is allowed, the impugned judgment passed by the High Court on 09.11.2016 in Criminal Quashment Petition No. 428 of 2013 is set aside, the said petition filed by the appellant before the High Court is allowed and the relevant proceedings against him presently pending before the trial court are quashed.

Judge

Judge

Judge

Islamabad

18.10.2018

Approved for reporting.

Arif