

SHARIAT APPELLATE BENCH OF HIGH COURT OF AZAD
JAMMU AND KASHMIR

Criminal Revision Petition No. 51/2021;

Date of institution. 01.03.2021;

Date of hearing. 28.06.2022;

Date of decision. 28.06.2022.

Tahira Maqbool D/o Maqbool Hussain, wife of Altaf Mir R/o
Chehlla Bandi Tehsil & District Muzaffarabad.

.....Petitioner

VERSUS

1. Altaf Mir S/o Muhammad Suleman, caste Mir R/o
WAPDA Colony Muzaffarabad;
2. Nazir Mir;
3. Munir Mir S/o Muhammad Suleman;
4. Muhammad Sarfraz S/o Suleman;
5. Tahir Nazir S/o Nazir Mir R/o WAPDA Colony Tehsil &
District Muzaffarabad;
6. The State through Advocate General Muzaffarabad,
Azad Kashmir;
7. S.H.O. Police Station Saddar Tehsil & District
Muzaffarabad.

..... Respondents

CRIMINAL REVISION PETITION

Before:— Justice Sadaqat Hussain Raja,	CJ.
Justice Muhammad Habib Zia,	J.
Justice Mian Arif Hussain,	J.
Justice Sardar Liaqat Hussain,	J.
Justice Syed Shahid Bahar,	J.
Justice Sardar Muhammad Ejaz Khan,	J.
Justice Chaudhary Khalid Rasheed,	J.

PRESENT:

Raja Gul Majeed Khan, Advocate for the petitioner.

Chaudhary Akif-ud-Din, Advocate for respondent No.1.

Raja Shujhat Ali Khan, Advocate for respondents No.2 to 5

Sajjad Pirzada, AAG for the State.

JUDGMENT:

(Justice Chaudhary Khalid Rasheed, J.) The captioned revision petition has been filed under section 25 of the Azad Jammu & Kashmir Enforcement of Hudood Act, 1974 against the order dated 13.02.2021 recorded by the learned Additional Tehsil Criminal Court, Court No.II, Muzaffarabad, qua cancellation report submitted by the police under section 173 Cr.P.C has been concurred by the Court below.

Detailed facts giving rise to the instant revision petition are, petitioner herein filed an application at Police Station Saddar Muzaffarabad stating therein that on 07.09.2018, the petitioner was busy in work at home. In the meantime, Altaf Mir, husband of the petitioner came to home and demanded her salary, on refusal he started abusing her and in the meantime brother of Altaf Mir namely Nazir Mir, Munir Mir, his nephew Faraz Mir and Tahir Nazir reached on spot who launched attack on the complainant and her children. Altaf Mir broken her clavicle bone by the struck of wooden bar and accused Faraz physically assaulted her with plastic pipe. The other accused beaten her and her children with sticks. On this report, F.I.R. No.192/2018 was registered at Police Station Saddar Muzaffarabad in offences under sections 337, 147, 148, 149 APC. The police upon

conclusion of investigation submitted cancellation report before Additional Tehsil Criminal Court No.1, Muzaffarabad on 06.05.2019. The learned Court below after hearing the parties pro and contra disagreed with the result of investigation and remanded the case to the investigating agency with directions to reinvestigate the matter. The police after reinvestigation, again presented cancellation report before Additional Tehsil Criminal Court No.II, Muzaffarabad on 08.12.2020. The learned Court below after hearing in pros and cons, concurred with the cancellation report vide its impugned order dated 13.02.2021, hence the captioned revision petition.

The learned counsel for the petitioner assailed the Ratio Decidendi of the order dated 05.09.2020 on the ground that the Court below was not competent to direct the police for reinvestigation, thus the order dated 05.09.2019 is liable to be set updated. The learned Advocate further argued that the Court below while passing the impugned edict dated 13.02.2021, miserably failed to judicially ponder the statements recorded by police under section 161 Cr.PC., Medical report of the victim and other relevant material available in the Police file but consented with the revocation report presented under Section 173 Cr.P.C in an anomalous manner, thus, the impugned order entails to set at naught as

being void ab initio and coram non judice. He has placed reliance on:

1. 2012 SCR 1;
2. 2019 SCR 162;
3. 2004 SCR 119;
4. 2000 SCR 344;
5. 1999 SCR 134;

The learned counsel for the private respondent mainly contended that the revision petition is not maintainable on the ground that the impugned order is administrative and not judicial. On merits of the case, the learned counsel defended the impugned order on all counts by further adding that it is a well reasoned order which requires no indulgence of this Court hence, prayed to send away the instant revision petition as being sine any substance.

The learned AAG braced the arguments advanced by the learned counsel for private respondent and solicited for the dismissal of the revision petition.

I have heard the learned counsel for the parties and gone through the record of the case with utmost care and caution.

Before proceeding in seriatim, we would in priority fancy to attend the objection elevated and exalted by the learned counsel for the respondents that the instant revision petition is not maintainable. Under section 22(a) of

the Azad Jammu & Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974 the categories of Courts for hearing criminal cases have been provided as under:

- 22۔ الف۔ تشکیل عدالت ہائے: (1) ایکٹ ہذا کے مقاصد کے لیے حکومت ریاست کی حدود کو ضلع اور سب ڈویژن میں تقسیم کر سکتی ہے۔
- (2) ضابطہ فوجداری 1898ء یا کسی دیگر قانون میں مندرج عدالتوں کے باوجود ایکٹ ہذا کے مقاصد کے لیے عدالتیں درج ذیل ہوں گی:
- (الف) ضلعی فوجداری عدالت: ضلع فوجداری سیشن جج اور ضلع قاضی پر مشتمل ہوگی؛
- (ب) ایڈیشنل ضلعی فوجداری عدالت:
- (i) ایڈیشنل ضلعی فوجداری عدالت ایڈیشنل سیشن جج اور ایڈیشنل ضلع قاضی پر مشتمل ہوگی۔
- (ii) ایڈیشنل ضلعی فوجداری عدالت کو مقدمات کی سماعت و انفصال کے سلسلہ میں وہی اختیارات حاصل ہوں گے جو ضلعی فوجداری عدالت کو حاصل ہیں۔
- (iii) حکومت جہاں مناسب سمجھے گی ایک یا ایک سے زیادہ سب ڈویژن میں ہائی کورٹ کے مشورہ سے ایڈیشنل ضلعی فوجداری عدالت کا قیام عمل میں لاسکتی ہے اور بوقت ضرورت ان کی حدود میں کمی و بیشی یا تبدیلی کر سکتی ہے۔
- (ج) تحصیل فوجداری عدالت: تحصیل فوجداری عدالت سول جج / جج مجسٹریٹ اور تحصیل قاضی پر مشتمل ہوگی۔
- (د) ایڈیشنل تحصیل فوجداری عدالت:-
- (i) ایڈیشنل تحصیل فوجداری عدالت سول جج / مجسٹریٹ اور تحصیل قاضی / ایڈیشنل تحصیل قاضی جیسی بھی صورت ہو پر مشتمل ہوگی۔
- (ii) ایڈیشنل تحصیل فوجداری عدالت کو اپنی حدود میں وہی اختیارات حاصل ہوں گے جو تحصیل فوجداری عدالت کو حاصل ہیں۔
- (iii) جہاں حکومت مناسب سمجھے گی تحصیل کے کسی مخصوص حصہ کے لیے ایڈیشنل تحصیل فوجداری عدالت کا قیام عمل میں لاسکتی ہے۔

As compared to Azad Kashmir, the classes of Criminal Courts in Pakistan have been defined in section 6 of the Criminal Procedure Code, 1898 as (i) Courts of Sessions and (ii) Courts of Magistrates and there is no concept of Tehsil Criminal Courts and District Criminal Courts in Pakistan, hence, the Modus operandi of Courts in Pakistan is entirely distinctive as compared to Azad Jammu & Kashmir.

In Pakistan, after investigation, the police is required to submit its report under Section 173 Cr.P.C before the relevant Magistrate who shall forward it to the trial Court while in Azad Kashmir, the Investigating agency present its report under section 173 Cr.PC. before the concerned Courts present in the shapes of Tehsil/District Criminal Court.

Section 25 of the Azad Jammu & Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974 reveals that an interim order or decision passed by Tehsil Criminal Court can be challenged through a revision petition before Azad Jammu & Kashmir Shariat Appellate Bench of High Court within 60 days. For quick and rapid reference, section 25 of the Azad Jammu & Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974 is reproduced hereunder:-

The words (آزاد جموں و کشمیر میں فوجداری مقدمات کی سماعت کے لیے بذیل عدالت ہاتھکیل شدہ ہیں) used in the preamble and words (ایک ہذا کے مقاصد کے لیے حکومت ریاست کی حدود کو ضلع) used in section 22(a) of the Azad Jammu & Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974 blatantly denote that very purpose of establishment of hierarchy under the Act 1974, is to hear and dispose of the criminal cases in the territory of Azad Kashmir, thus, an order passed by District/Tehsil Criminal Court, which embrace Additional District and Additional Tehsil Criminal Courts, consisting of

two members, hence, any order passed by the said Courts after applying its judicial wisdom could not be treated or considered as an administrative or executive order rather the Courts established under the Act, 1974 work only in judicial capacity to hear, settle and dispose of the criminal cases. We have no quarrel with the proposition that some of the powers and duties of Magistrate under the Code of Criminal Procedure are administrative, executive or ministerial and while doing those obligations a Magistrate performs as a persona designate and not as a Court as has been held by the Supreme Court of Azad Jammu & Kashmir in 2000 PCr.L.J 1739 and 2003 SCR 152 but only an order of Magistrate passed under the Code of Criminal Procedure in executive or administrative capacity can be termed as administrative order or feaisance but not that of a Criminal Court established under the Act of 1974, thus, it can safely be concluded that an interim order or a decision of District/ Tehsil Criminal Court which includes Additional District/ Tehsil Criminal Court alongwith on a report submitted under section 173 Cr.PC. in shape of concur or differ with the report, can be assailed under section 25 of the Act, 1974 through a revision petition before the Shariat Appellate Bench of High Court and in presence of normal remedy of appeal/ revision neither inherent powers nor constitutional powers can be invoked.

An order passed by a Magistrate in the territory of Pakistan where challan has been submitted firstly before Magistrate who later forward it to the relevant trial Court after reaching on the conclusion regarding agreeing or disagreeing with cancellation report submitted under Section 173 Cr.P.C is an administrative order as has been held by the superior Courts of subcontinent, hence, can be assailed under Section 561-A Cr.P.C., which empowers the Court to pass an appropriate order to give effect to any order under Cr.P.C., hence, the order of a said Magistrate on report under section 173 Cr.P.C. can be challenged under section 561-A Cr.P.C., but such situation is not applicable in presence of Section 25 of IPL in Azad Jammu & Kashmir, so, the objection raised by the learned counsel for the respondents is hereby repelled.

Now coming towards the merits of the case in hand, the police in view of order dated 05.09.2019 reinvestigated the matter and submit the report before the trial Court thus the revision petition to the extent of order dated 05.09.2019 has become infructuous and even otherwise is hopelessly time barred, thus, the illegality and validity of the order dated 05.09.2019 need not to be looked into as has been attained finality despite the fact that said order was not in accordance with law as said Court could either concur with said report or proceed with the matter

because directions of reinvestigation way beyond its jurisdictional competence.

So far the order dated 13.02.2021 is concerned, a perusal of medical report of the complainant reveals that she had sustained Shuja-e-Khafifa and Ghayr-Jaifah Damihah and for the said injuries the offences under sections 337/A1 and 337 F1 are attracted, which are non-cognizable offences, thus, even otherwise police could not report the matter under section 173 Cr.PC. to the trial Court. Bilal Awan and Mukhtar Ahmed who as per contents of F.I.R. are eye witnesses of the occurrence deposed in their statements recorded under section 161 Cr.PC. that they have not witnessed the occurrence rather they were told about the incident by the complainant, thus, the allegations leveled in the F.I.R. against the brothers and nephews of Altaf Mir/husband of complainant were not found trust worthy from the record, hence, the Court below has correctly agreed with the nullification report submitted by the police under Section 173 Cr.P.C. As far the injuries sustained by the complainant which are supported by medical legal report are concerned these were ascribed to Altaf Mir and police after deleting Sections 147, 148, 149 Cr.P.C for the reasons of insufficient evidence has already submitted complainant on 21.07.2020 in offences under Section 337A1, F1 APC before the relevant trial Court

against accused Altaf Mir to that extent which has not been assailed, thus, we remained unsuccessful to find any lack of legal efficacy in the impugned order.

The crux and epitome of the above discussion is, finding no essence, the captioned revision petition is hereby dismissed.

Muzaffarabad

28.06.2022

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

Approved for reporting.

-Sd-
JUSTICE

