2009 S C M R 181

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J., Ch. Ejaz Yousaf and Muhammad Farrukh Mahmud, JJ

REHAN----Petitioner

Versus

THE STATE-Respondent

Criminal Petition No.242 of 2008, decided on 28th August, 2008.

(On appeal from the order, dated 30-6-2008 of the Peshawar High Court, Abbottabad Bench passed in Criminal Miscellaneous No.63 of 2008).

(a) Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), S.324/34---Constitution of Pakistan (1973), Art.185(3)---Bail, grant of----Indiscriminate firing was attributed to all the accused---No crime-empty was recovered from the spot, ,nor any blood stains were observed at the place of occurrence---Two pallet injuries suffered by the complainant on his back had not been described "as dangerous to life" by the doctor and they had not caused any fracture---No .recovery was effected from the accused---Accused was in jail for about eleven months and no challan had so far been submitted in the Court---Accused was admitted to bail in circumstances.
Hakim Mumtaz Ahmed and another v. The State PLD 2002 SC 590 ref.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 344 & 173---Commencement of trial and adjournment of proceedings---Duty of Court emphasized---Trial should normally commence, if possible, on the basis of interim report under S.173, Cr.P.C. which must be submitted as per mandatory requirement of proviso to subsection (1) of S.173, Cr.P.C.---If the commencement of the trial is to be postponed, then the Court must record reasons in writing---Section 344, Cr.P.C. casts a heavy duty on the Court to commence the trial as early as possible and not to adjourn the case on flimsy grounds---Court is also duty bound to ensure submission of complete challan/find report under S.173, Cr.P.C. without any unnecessary delay.

(c) Criminal Procedure Code (V of 1898)---

----Ss. 173 & 167---Strict adherence of the Investigating Agency to the provisions of S.173(1), Cr.P.C. stressed---If final report cannot possibly be submitted before or after

completion of investigation period prescribed under S.167, Cr.P.C., the Investigating Agency should strictly adhere to the provisions of S.173(1), Cr.P.C. and must submit interim challan through Public Prosecutor for trial and should not keep in custody the accused arrested in the case without any legal justification for indefinite period.

Hakim Mumtaz Ahmed and another v. The State PLD 2002 SC 590 ref.

(d) Criminal Procedure Code (V of 1898)---

----Ss. 167 & 344---Constitution of Pakistan (1973), Arts.9 & 10---Note of caution for Courts---Article 9 of Constitution guarantees that no person would be deprived of life or liberty save in accordance with law, while Art.10 of Constitution provides safeguard as to arrest and detention---Courts should be mindful of the said Articles before remanding the accused to police custody or postponing the commencement of trial.

Qari Abdul Rasheed, Advocate Supreme Court for Petitioner.

Ch. Muhammad Akram, Advocate Supreme Court for the Complainant.

Zia-ur-Rehman, Advocate-General, N.-W.F.P. for the State.

Date of hearing: 28th August, 2008.

JUDGMENT

MUHAMMAD FARRUKH MAHMUD, J.---This petition is directed against order dated 30-6-2008 handed down by the learned Judge in Chambers of Peshawar High Court, Abbottabad Bench in case F.I.R. No.462, registered at Police Station Saddar, Mansehra on 8-10-2007 for offences under sections 324/34 P.P.C. whereby bail application of the petitioner was dismissed.

2. The relevant facts are that on the fateful day, Muhammad Banaras complainant was going to Mansehra to attend to a Court date on a taxi cab Registration No.04227-Mansehra, which was driven by Sajid. Complainant's father Muhammad Mahroof, brother Muhammad Tariq and sister's husband Niaz Akhtar were accompanying him. At about 8.30 a.m. while they were near the house of Khaqan co-accused, Javed armed with klashnikov, Rehan-petitioner armed with .12 bore repeater, Khaqan and Naseer both armed with .30 bore pistol, who were present there, fired at the cab indiscriminately, resultantly Muhammad Banaras received injuries on the back of his chest. The motive behind the occurrence was existing enmity between the parties over a previous murder.

3. The learned counsel for the. petitioner had argued that petitioner was in jail since 6-11-2007 and so far challan/final report under section 173, Cr.P.C. has not been submitted; that injuries suffered by the complainant were simple in nature; that the story was not plausible; that no recovery was effected from the petitioner; that according to investigation, the occurrence did not take place in the manner described in

the F.I.R. and that the petitioner was innocent who was, implicated due to admitted enmity.

4. Conversely, learned counsel for the complainant has submitted that petitioner was duly named in the promptly lodged F.I.R. and that medical evidence connected the petitioner with the crime as the injuries suffered by the complainant were caused by pellets and that his case was distinguishable from the co-accused admitted to bail as only petitioner was armed with .12 bore repeater.

5. The learned Advocate-General, N.-W.F.P. has submitted with concern that so far challan/final report under section 173, Cr.P.C. has not been submitted in the Court.

6. We have heard the learned counsel for the parties and have scanned the entire record of the case.

7. The complainant attributed indiscriminate firing to all the accused while according to rough site plan no empty was recovered from the spot nor any blood stains were observed at the place of occurrence. According to medical evidence, the complainant suffered two pellet injuries on his back which have not been described "as dangerous to life" and did not cause any fracture. Admittedly no recovery was effected from the petitioner.

8. In addition to that, petitioner is in jail for about 11 months and so far charge-sheet/challan/final report under section 173, Cr.P.C., has not been submitted in the Court. Non-submission of challan for such a long period is a matter of grave concern and cannot be taken lightly. Time and again superior courts have been deprecating the practice of delay in submission of challan/report under section 173, Cr.P.C. So section 173, Cr.P.C. was suitably amended by Act XXV of 1992 which is being reproduced hereunder for ready reference:---

> "173 Report of Police Office.---(1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed, the officer in charge of the police station shall [through the Public Prosecutor]:---
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> (a) forward to a Magistrate empowered to take cognizance of the offence on a police report, a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and if so, whether with or without sureties, and
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> (b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given:

[Provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer-in-charge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public Prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial should not so commence].

(2) Where a superior Officer of Police has been appointed under section 158, the report shall in any cases in which the Provincial 'Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(5) Where the officer-in-charge of a police station forwards a report under subsection (1), he shall along with the report produce the witnesses in the case except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other Court on the date fixed for trial."

9. The provisions of sections 61, 167, 173 and 342 Cr.P.C. are to be read together. After arrest an accused can be detained, without permission of Court, for a period of 24 hours at the maximum under section 61, Cr.P.C. and if during this period, investigation of the case is not completed, the Magistrate considering the progress of the case only on well-founded reasons may authorize detention of accused in police custody not exceeding 14 days, as a whole, under section 167, Cr.P.C.. On completion of maximum period of police remand, the accused becomes entitled for trial, and challan/final report under section 173, Cr.P.C. is to be submitted before the competent Court of jurisdiction through Public Prosecutor. During judicial remand, the accused is to be dealt with according to provisions of section 344, Cr.P.C. which provides that the trial should normally commence, if possible, on the basis of interim report under section 173, Cr.P.C. which must be submitted as per mandatory requirement of proviso to subsection (1) of section 173, Cr.P.C.. If the commencement of trial is to be postponed, then the Court must record reasons in writing. Section 344, Cr.P.C. cast a heavy duty on the Court to

commence the trial as early as possible and not to adjourn the case on flimsy grounds. It is also duty of the Court to ensure submission of complete challan/final report under section 173, Cr.P.C. without any unnecessary delay. It was observed by this Court in the case of Hakim Mumtaz and another v. The State PLD 2002 SC 590 which is as follows:---

> "However, our emphasis is that notwithstanding the fact that before or after completion of investigation period prescribed under section 167, Cr.P.C. if it is not possible to submit final report, the Investigating Agency should strictly adhere to the provisions of section 173(1), Cr.P.C. and must submit interim challan through Public Prosecutor for trial and the accused arrested in the case should not be kept in custody for indefinite period without any legal justification."

10. Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees that no person would be deprived of life or liberty save in accordance with law; while Article 10 of the Constitution provides safeguard as to arrest and detention. The courts should be mindful of the above noted Articles before remanding the accused to police custody or postponing the commencement of trial. The Superior Courts had been taking serious note of the lapses on behalf of police, Public Prosecutors, Magistrates and the Sessions Judges in charge on that regard, but it appears that unfortunately after passage of time, the above noted functionaries go into slumber and need to be shaken up. It is obvious from the fact that action was taken by this Court in the year 2002, against all concerned functionaries while deciding the case of Hakim Mumtaz Ahmed supra yet the malaise of delay in submission of challan/final report under section 173 Cr.P.C. persists.

11. Considering all the above noted circumstances, we are inclined to convert this petition into appeal which is allowed, as a consequence whereof, impugned judgment dated 30-6-2008 passed by the Peshawar High Court, Abbottabad Bench in Criminal Miscellaneous No.63 of 2008, is set aside.

> (1) Copy of this judgment be sent to Inspector-General of Police, N.-W.F.P. who is directed to take action against the concerned S.H.O./Investigating Officer, D.S.P. Investigation and S.S.P/ Incharge of Investigation as to why provisions of section 173, Cr.P.C. were not complied with.
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> (2) Copies of this judgment shall also be sent to the Home Secretaries and Inspectors-General of Police of all the Provinces including Inspector-General of Police, Islamabad Capital Territory and Registrars of all the High courts including Islamabad High Court, Islamabad, for ensuring strict compliance of section 173, Cr.P.C. read with section 344, Cr.P.C.
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> (3) The Registrar of Peshawar High Court will also bring this matter into the notice of Honourable Chief Justice for initiating action against the Magistrate who had been granting remand of the accused beyond the period of 14 days under section 173(1), Cr.P.C. without insisting 'upon the police to submit challan within stipulated period.

12. For the above noted reasons, the petitioner was admitted to bail through our short order of even dated in the following terms:-

> "For the reasons to be recorded later, this petition is converted into appeal and is allowed. Appellant Rehan son of Ayub is granted bail subject to furnishing surety in the sum of Rs.1,00,000 (rupees one lac only) with P.R. bond in the like amount to the satisfaction of trial Court.

N.H.Q./R-14/SC Bail allowed.

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