

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P.No.1387-P of 2016

JUDGMENT

Date of hearing 26.6.2018

Petitioner (s) (Abbas Khan) by Mr. Mukamil Shah Taskeen, Advocate.

Respondent (s)(Inspector General of Police KPK, Peshawar and others) by
Mr. Muhammad Riaz Khan, AAG and Syed Abdul Fayaz, Advocate

MUHAMMAD NASIR MAHFOOZ, J:-. Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following relief:-

It is, therefore, most humbly prayed that on acceptance of the instant petition, the administrative order/proceeding of the respondents by submission of final report for cancellation of the FIR and conclusion of the case FIR No.533 dated 02.9.2015 u/s 302 PPC of P.S. Urmar in the form of un-trace/non-existence of case, may be declared illegal, unlawful, with malafide intention, contrary to the established principle of law, contrary to the evidence on record, without lawful authority and without jurisdiction and respondents may be directed to act and investigate the case according to law.

2. Respondent No.10 allegedly raided the house of petitioner at 5.45 hours on 02.9.2015 and

opened indiscriminate firing on his son, namely Aslam Nawaz sleeping in the room who sustained multiple injuries on the body and died on the spot. The occurrence was registered vide FIR No.533 dated 02.9.2015, wherein, respondent No.10 was directly charged alongwith other police officials. It is further alleged that on the 4th day of the occurrence a false, concocted and counterblast FIR No.532 dated 02.9.2015 was registered under sections 302/353/324/472/148/149/7 ATA against the present petitioner. Since respondents police officials were not conducting proper investigation, therefore, petitioner requested the high up of police officials for impartial investigation and after his release from bail he got knowledge that FIR No.533 has been terminated on the report of police officials, whereby, respondent No.10 was discharged from the commission of the alleged offence, hence the instant writ petition.

3. Respondents were summoned who submitted their comments and denied the allegations as levelled in the instant writ petition.

4. We have heard learned counsel for the parties and learned AAG and have gone through the record.

5. The documents annexed with the writ petition are replete with written request of petitioner submitted to high up of the police department as well the officials of administration for redressal of his grievance as prayed in the instant writ petition. The said request was also agitated in this court in W.P.No.3636-P/2015 which was dismissed on 18.11.2015 on the ground that it is pre-mature, however, the prosecution was directed to investigate the matter in both the cases strictly in accordance with law and ensure the completion of investigation expeditiously. Through Cr.Misc (BA) No.2276-P/2015 filed on 11.3.2016 petitioner was released on bail by this court. After perusal of report concluded u/s 173 of the Cr.P.C. the same contents have been rewritten but finally it has been observed that the FIR is based on political victimization and hence the accused be discharged, this report is dated 30.10.2015 in case FIR No.533 dated 02.9.2015.

6. We have perused the original record and have arrived at the conclusion that once FIR in a cognizable offence and that too u/s 302 PPC read with section 7 ATA and other ancillary sections of law is registered, it could not be simple quashed by the police officials specifically when the police officials are accused

of such a serious offence. It appears that the discharge of accused/respondents has been moulded to circumvent the process of law which has defeated the ends of justice. This is not the first petition that the petitioner has moved in this court but his second petition which prima facie shows that the police officials are failing to perform their duties in accordance with law and the grievance of the petitioner is not being redressed.

7. Under section 173 Cr.P.C. every investigation shall be completed without unnecessary delay and where the investigation is not completed within the period of 14 days from the date of recording of FIR and interim report shall be forwarded to the court by the Public Prosecutor. In the instant case, applicability of section 169 for discharge of the accused is ruled out of consideration as in cross FIR No.532, petitioner is also accused for similar offence. In case, the accused/respondent No.10 has been discharged as per report then the petitioner also deserves to be treated in a similar manner, however, in the instant writ petition the subject matter relates to the wrongful discharge of accused/respondent No.10 and it is deplorable that despite lapse of three years from the date of lodging of FIR challan has not been put in court.

8. Without dilating upon the contents as mentioned in both the FIRs, we would allow the instant writ petition and quash the observations made in the report impugned herein, with the observation that respondents shall submit challan before the court within a period of 14 days and initiate trial in both the FIRs. There shall be no order as to costs.

Announced
26.6.2018

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