

**FORM No.HCJD/C-121  
ORDER SHEET**

**IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

**Case No.** W.P. No.30913 of 2021

Shehzadan Mayi

**Versus**

Area Magistrate, etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
	28.05.2021	Mehar Gulzar Ahmad Nanga, Advocate for the petitioner. Mr. Muhammad Pervaiz Akhtar Kamoka, Advocate for respondent No.6. Barrister Syed Ali Nouman, AAG with Abdullah, Inspector and Mazhar, ASI. Mr. Sher Hassan Pervez, Research Officer.

Through this Constitutional petition, the order dated 15.3.2021 passed by a learned Area Magistrate, Ahmad Pur Sial has been called into question.

2. By way of order dated 15.3.2021, the learned Area Magistrate agreed with the discharge report prepared by the police in respect of FIR No.28/2021, P.S. Garh Mahraja, District Jhang registered under sections 365-B, 380 and 511 PPC and ordered the cancellation thereof.

3. It is the case of the petitioner that while the discharge report was prepared on 15.2.2021 and while it was agreed with by the learned Area Magistrate on 15.3.2021 resulting in the cancellation of the crime report in question, the

first change of investigation in terms of the Police Order, 2002 had already been ordered by the competent authority on 03.3.2021 and that this fact had been kept hidden from the learned Area Magistrate by the beneficiary i.e. respondent No.6 in the writ petition (the accused of the case). The petitioner initially filed a revision petition before the learned Additional District & Sessions Judge against the order passed by the learned Area Magistrate. Soon, the petitioner woke up to the law laid down by the Hon'ble Supreme Court of Pakistan in cases reported as "Bahadur and another v. The State and another" (PLD 1985 SC 62), "Arif Ali Khan and another v. The State and 6 others" (1993 SCMR 187), "Muhammad Sharif and 8 others v. The State and another" (1997 SCMR 304), "Hussain Ahmad v. Irshad Bibi" (1997 SCMR 1503) and "Hidayatullah and others v. The State through Advocate-Genegal, N.-W.F.P. Peshawar High Court, Peshawar" (2006 SCMR 1920), which categorically hold the order of discharge resulting in cancellation of a crime report to be an administrative and executive order against which a revision is not maintainable, and filed the present writ petition to

question the legality, propriety and validity of the order passed by the learned Area Magistrate dated 15.3.2021.

4. It is the case of the petitioner that Garh Mahraja Police in collusion with the accused had deliberately not brought the information about the first change of investigation into the notice of the learned Area Magistrate because their collective aim of securing cancellation would have been frustrated had the learned Area Magistrate been apprised about the first change of investigation having already been ordered in terms of Police Order, 2002. It is his case that by deliberately concealing this fact, the private respondent No.6 and the police have secured an order which does not take into account a **most relevant consideration** and that being the change of investigation by way of order dated 03.3.2021. The learned counsel for the petitioner also pointed out that he was not canvassing the right to be heard but only demanding the right to be informed about the fate of the criminal report that he had lodged. It is his case that fairness, transparency and propriety demanded that the Investigation Officer of Garh Mahraja Police

Station should have kept the petitioner in the loop about the preparation of discharge report and its subsequent presentation before the learned Area Magistrate for the purpose of securing cancellation of the case. The counsel for the petitioner also stated that the right of the petitioner to be dealt with in accordance with due process has been violated and he, therefore, seeks this Courts' indulgence in the matter.

5. The learned counsel for private respondent submits that no useful purpose would be served by having the matter investigated again because the matter was rooted in a domestic dispute between two families who had severed their close relations *inter se* and the present crime report was the result of such newly developed enmity. He has, however, not been able to defend the crucial omission whereby the learned Area Magistrate was kept in the dark about the first change of investigation that took place on 03.3.2021. He also submits that since the Deputy District Public Prosecutor also agreed with the discharge report this Court may not interfere with the impugned order.

6. Learned Assistant Advocate General was also heard in the matter. He submits that had the information about the first change of investigation been relayed to the learned Area Magistrate, the order under challenge would have never been passed and quite fairly concedes that the impugned order since it fails to take into account **a most relevant consideration** cannot be defended. The grace shown by the learned AAG is appreciated by this Court.

7. Heard. Record perused.

8. The facts of the case are that an FIR bearing No.28/2021 dated 21.1.2021 for offences under section 365-B, 380 and 511 PPC was lodged at Police Station Garh Mahraja at the instance of the petitioner against, *inter alia*, respondent No.6/Saqlain Abbas. The matter was marked for investigation to respondent No.4 i.e. Investigation Officer of the case. Thereafter, since the complainant of the case i.e. the petitioner was not satisfied with the conduct of the investigation, he applied for the first change of investigation to the District Police Officer, Jhang, who, vide order dated 03.3.2021 transferred the investigation of the case to

Ghazanfar Abbas, DSP posted as SDPO, Shorkot. In the meanwhile, and unknown to the petitioner the Investigation Officer of the case i.e. respondent No.4 had already prepared a discharge report on 15.2.2021 recommending the case to be cancelled on account of insufficient evidence. However, this discharge report was only presented to the learned Area Magistrate on 15.3.2021. Needless to add that the preparation of a discharge report or even its presentation is not of any legal value unless the same is agreed and assented to by a Magistrate and it is only then that the crime report in issue is cancelled.

9. However, this discharge report did not carry any endorsement about the first change of investigation and was absolutely criminally silent in this respect. Since the petitioner had also been kept in the dark about the preparation and presentation of the said discharge report, there was no way that the learned Area Magistrate could gain knowledge about this most relevant consideration which could have persuaded him in not passing the order under challenge. The then Investigation Officer i.e. respondent No.4 in the present writ petition committed a near criminal

act of neither informing the present petitioner about the discharge report or its presentation before the learned Area Magistrate nor did he take the Area Magistrate into confidence or even inform him about the first change of investigation. Respondents No.4 and 6 made sure that there was no way that the learned Area Magistrate could be informed about the change in circumstances i.e. the first change of investigation having been ordered before presentation of such discharge report. In fact, the Investigation Officer i.e. respondent No.4 even did not inform the Deputy District Public Prosecutor in this regard and, therefore, there was no way that even the Deputy District Public Prosecutor could have informed the learned Area Magistrate about such a development. The opinion of the Deputy District Public Prosecutor is, therefore, not worthy of any reliance being based on incomplete facts.

10. It goes without saying that it was incumbent upon respondent No.4 to hand over the file of the case to the officer made responsible pursuant to the first change of investigation. He should have left the matter there and not

presented the discharge report to the learned Area Magistrate for the purpose of securing cancellation. Furthermore, it is a fact that the District Standing Board had transferred the investigation on 03.3.2021 and which act is prior in time to the order under challenge dated 15.3.2021. Even more important is the fact that respondent No.6 never bothered to challenge the order dated 03.3.2021 before any forum. The order of first change of investigation having been competently passed by the DPO, Jhang on 03.3.2021 ought to have been relayed, both, to the Deputy District Public Prosecutor as also the learned Area Magistrate. The *mala fides* and ulterior motives of respondents No.4 and 6 are conspicuously evident in the present matter. To use a cliché, malice of respondents No.4 and 6 is floating on the face of the record.

11. A judgment of the Lahore High Court reported as “*Mst. Shamim Bibi v. Judicial Magistrate, Police Station Sahoooka and 8 others*” (2008 YLR 1695) provides guidance with respect to the present matter and holds that since the Area Magistrate was kept in the dark about the status of investigation and since he had deliberately not

been informed about the first change of investigation his order cannot be sustained on account of being based on incorrect facts. The judgment holds as follows:-

*“2. On the perusal of the record, it transpires that on the application of the petitioner, the investigation was transferred to Range Crime on 23-2-2006 and all the concerned failed to bring this fact into the notice of Magistrate who without examining the record agreed with the cancellation report. Although during subsequent investigation, the respondents were held guilty by the I.O.*

*3. As the investigation of the case has validly been changed by the competent authority and the Investigating Officer had formed his independent opinion but by concealing the facts, the police officer got the case cancelled by the Illaqa Magistrate. Admittedly true facts were not in the knowledge of the Illaqa Magistrate and in this way he had passed the impugned order.*

*4. In view of the above, impugned orders dated 21-6-2006 and 14-9-2006 are hereby set aside with the direction to the S.H.O., P.S. Sahoka to submit a report before the Illaqa Magistrate containing all the details of the case as well as all the investigations carried out by different Investigating Officers. On receipt of the same, the Illaqa Magistrate shall pass an appropriate order on it after considering the contentions raised by both the parties i.e. the complainant as well as the accused, on merits strictly in accordance with law without having been influenced by the earlier orders of cancellation of the case which were passed without considering the record properly.”*

12. This Court believes that the learned Area Magistrate was not properly allowed to apply his mind in the matter by respondents No.4 and 6, since the learned Area Magistrate was not provided complete and relevant information. It is

also evident from the order passed by the learned Area Magistrate that the order is totally lop-sided and in favour of the accused and appears to have been passed in a mechanical manner without having regard to the allegations contained in the FIR. Needless to add that the learned Area Magistrate was not at all bound by the findings of the police.

13. In “Zafarul Haq Khan v. Muhammad Amin and others” (PLD 2005 Karachi 375), a learned Division Bench of the Sindh High Court has attended to a similar matter such as the present one and has held that after an illegal cancellation order of an FIR the only course available is to set aside the order of cancellation of the FIR and apprise the Magistrate through agency of the Police about the development earlier hidden from the Area Magistrate so as for him to direct a re-investigation. Also that it is the police that has to approach the learned Area Magistrate with the request for re-investigation.

14. In “Bhagwant Singh, Petitioner v. Commissioner of Police and another, Respondents” (AIR 1985 SC 1285), the Indian

Supreme Court has held at paragraph No.3 as follows:-

*“When an informant lodges the First Information Report with the officer-in-charge of a police station he does not fade away with the lodging of the First Information Report. He is very much concerned with what action is initiated by the officer in charge of the police station on the basis of the First Information Report lodged by him. On sooner he lodges the First Information Report, a copy of it has to be supplied him, free of cost, under sub-section (2) of Section 154. If notwithstanding the First Information Report, the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated. Then again, the officer in charge of a police station is obligated under sub-section(2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer in charge of a police station on the First Information Report is required to be communicated and the report forwarded to the Magistrate under sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the First Information Report must know what is the result of the investigation initiated on the basis of the First Information Report. The informant*

*having taken the initiative in lodging the First Information Report with a view to initiating investigation by the police of the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the First Information Report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.”*

15. The precedent case listed above clearly lays down that the complainant of a crime report is at least entitled to be informed about the developments occurring with respect to the crime report that he has lodged. Had the complainant in the present matter been informed about preparation of discharge report and its presentation he would have at least brought the information about the first change of investigation in the knowledge of the learned Area Magistrate and perhaps the impugned order may not have been passed. A combined reading of Articles 4, 9, 10-A, 14 and 19-A of the Constitution of Islamic Republic of Pakistan, 1973 also suggests that the complainant of a case ought to be informed about all and any

developments in relation to a crime report that he has lodged.

16. As a result of what has been discussed and highlighted above, it is quite clear that the impugned order passed by learned Area Magistrate cannot be allowed to remain in the field. It is, therefore, set aside being a nullity in law. District Police Officer, Jhang is directed to take a stock of activities going on in his department and to ensure that the matter is investigated properly as a result of the order for first change of investigation and for that purpose and in line with, *inter alia*, “Mst. Shamim Bibi v. Judicial Magistrate, Police Station Sahoooka and 8 others” (2008 YLR 1695) and Zafarul Haq Khan v. Muhammad Amin and others” (PLD 2005 Karachi 375), the DPO, Jhang shall ensure that the law takes its course.

17. Respondent No.4 who is present in the Court has been asked as to why he did not inform the Area Magistrate about such a crucial development. He has quite lamely replied that he was not aware of the first change of investigation. The disconnect between the Office of the DPO, Jhang and the Investigation Officer/respondent

No.4 is indeed alarming. A copy of this Order is, therefore, being sent to the DPO, Jhang for re-investigating the matter.

18. The writ petition is **allowed** in the above terms.

**(MUHAMMAD SHAN GUL)**  
**JUDGE**

**Approved for reporting**

**Judge**

*Waseem*