

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

**Present:**

Mr. Justice Jamal Khan Mandokhail  
Mrs. Justice Muhammad Ali Mazhar  
Mr. Justice Syed Hasan Azhar Rizvi

**Crl. Petition No. 235-L of 2015**

(On appeal from the judgment of the Lahore High Court, Bahawalpur Bench, Bahawalpur dated 13.01.2015 passed in Crl. Appeal No. 4/ATA of 2011, Crl. Appeal No. 05/ATA of 2011 and Crl. Appeal No. 06/ATA of 2011)

Mehboob Hassan

...Petitioner

**Versus**

Akhtar Islam etc

...Respondents

For the Petitioner:

Ch. Azeem Sarwar, ASC  
(Via video link Lahore)

For the State:

Mirza Abid Majeed, DPG

Date of Hearing:

27.10.2023

**JUDGMENT**

**Jamal Khan Mandokhail, J.-** Brief background of the case is that the petitioner lodged an FIR on 13.07.2006 against unknown persons, under sections 365-A, 201, 34 PPC and section 7 of the Anti-Terrorism Act, 1997, at Police Station City Haroonabad, District Bahawalnagar, for the abduction of his nephew, Muhammad Farrukh Iqbal. Subsequently, the respondents were arrested in connection with some other case. It is the prosecution's case that, during investigation whereof, the private respondents allegedly confessed before the investigating officer regarding their involvement in the present case. Consequently, they were subjected to identification parade in presence of a Magistrate, where the witnesses identified the respondents as the persons, who received the ransom amount. It is also alleged that during the interrogation, upon disclosure of Kamran (respondent No.4) and Muhammad Boota (respondent No.3), an amount of Rs. 100,000/- and Rs. 50,000/- was recovered from their respective houses on 07.08.2008 and 21.08.2008. On conclusion of trial, the respondents were convicted and sentenced. On an appeal, they

were acquitted of the charge by the High Court through the impugned judgment, hence, this petition for leave to appeal.

2. Arguments heard and have perused the record. The prosecution's case rests upon the identification parade and recovery of the alleged amount from the houses of the stated respondents. The Magistrate who conducted the identification parade in jail, stated that five rows consisting of under-trial prisoners and the respondents were made. In each row, one of the respondents was made to sit. The witnesses were asked one by one to identify the accused. Consequently, they identified all the respondents in one go. Though the Magistrate managed to make five rows consisting of the under-trial prisoners and each of the respondents, but the fact remains that they all were present in the same premises under one roof. The manner in which the Magistrate managed to conduct the identification parade leads us to a conclusion that it was a combined and joint identification parade. This Court in the cases of ***Gulfam***<sup>1</sup>, ***Shafqat Mehmood***<sup>2</sup> and ***Mian Sohail Ahmed***<sup>3</sup> has held that joint identification parade is a nullity. Besides, the abductee saw the persons for the first time when he was abducted, whereas, the complainant witnessed those for the first time, who allegedly received the ransom amount from him. It is noteworthy that the persons who abducted the abductee and those who received the ransom amount were not known to the witnesses prior to the identification parade. It was, therefore, necessary for the witnesses to have had given some features of each of the respondents, with their specific role, during the investigation, before the identification parade, enabling the Magistrate to manage the person of identical features for the purpose of including them in identification parade as dummies. It is an admitted fact that the witnesses did not disclose any such fact in respect of the respondents. Moreover, in order to maintain secrecy, it was the responsibility of the concerned police to ensure that the accused should not witness by the witnesses while in police station lock-up or in police custody. The police was required to have taken every precaution to conceal the identity of the detainees before conducting the identification parade. All these

---

<sup>1</sup> 2017 SCMR 1189.

<sup>2</sup> 2011 SCMR 537.

<sup>3</sup> 2019 SCMR 956.

precautions should not only be taken, but must have been proved to have been taken. There is nothing on the record to prove that any step was taken by the police in this behalf. Before conducting the identification parade, the respondents had raised an objection before the Magistrate that the witnesses saw them in the lockup and their photographs were published in the newspapers in connection with some other case. The prosecution did not deny the objection. The Magistrate was required to record the objection and to decide its fate, but he ignored the objection and instead, continued to complete the process of identification parade. The identification was conducted after a lapse of more than two years of the occurrence, therefore, it is hard to believe that the witnesses could still have momentary glimpse of the respondents. Under such circumstances, the presumption would be that they were picked from amongst the other persons during that identification, because the witnesses had access to the police station and saw the respondents in the police lock-up and might have saw their pictures published in the newspapers before the identification parade. Evidence of such witnesses, identifying the respondents as accused, looses its efficacy. The respondents are mainly picked up in the identification parade, and the role attributed to them is not stated by the witnesses, the identification parade in the circumstances was not in line with Article 22 of the Qanoon-e-Shahadat Order, 1984, hence, is of no evidentiary value and cannot be relied upon. Reliance in this behalf can be placed on ***Nazir Ahmad***<sup>4</sup>.

3. Besides, the prosecution has relied upon the amount recovered after more than two years of the occurrence from the respective houses of Kamran and Muhammad Boota. It is unbelievable that someone would retain the crime amount for such a long time. Even otherwise, the recovered currency notes admittedly did not contain any identification mark nor had the prosecution given any description or denomination thereof allegedly delivered by the complainant to the respondents. It is a common practice that most of the people retain cash amount in their houses, therefore, it is not safe to consider the recovered amount to be a part of the ransom amount. The prosecution has failed to prove that the recovered amount was actually a portion of

---

<sup>4</sup> 2011 SCMR 527.

the ransom amount, allegedly paid by the complainant to the alleged abductors, hence, such recovery cannot be believed or relied upon for the purpose of convicting the respondents.

4. Other than the identification parade and recovery of the amount, there is no other evidence to corroborate the contents of the FIR and statements of the complainant and his witnesses. The Trial Court while convicting the respondents has come to a wrong conclusion by mis-appreciating the evidence and material available on the record. The High Court after proper appraisal of the record and scanning the evidence in its true perspective, has reached a correct conclusion by acquitting the respondents of the charge. After their acquittal, the respondents have earned a double presumption of innocence. To reverse the judgment of acquittal, reasonable grounds are required, which are lacking in this case. The learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned judgment, warranting interference. Even otherwise, it is a fundamental legal principle that only an aggrieved person can challenge a judgment or order of acquittal. In real sense, in the cases of abduction, the abductee(s) is an aggrieved person and has a right to challenge a judgment or order of acquittal. In the case in hand, the abductee was an aggrieved person, but he did not challenge the impugned judgment. Instead, the petition has been filed by the complainant, who has no *locus standi* in his capacity as a complainant to challenge the impugned judgment of acquittal.

5. We have observed in number of cases that accused are acquitted in genuine cases because of poor or colourable investigation; lack of ameliorating skills of investigating authorities; non-availability of modern equipments and techniques with investigating agencies; lack of evidence or reluctance of witnesses to cooperate with the prosecution for multiple reasons, one of which is that there is no mechanism in vogue for their protection. Sometimes, in genuine cases, the accused are acquitted for the reason that the complainant conceals necessary facts or widens the net by involving person(s) having no nexus with the case, in order to pressurize the main culprit. In certain cases, the accused are acquitted by the courts without properly appreciating the evidence and law in its true perspective. Similarly, in some

cases, the accused are convicted by the Trial Courts, but subsequently, they are acquitted by the High Courts or by this Court because of lack of evidence. In any case, wrongful acquittal or wrongful conviction is a breach of law and an abuse of process of the Court.

6. The basic duty of the Judges is to protect the fundamental rights of every person, including a complainant and an accused, in all circumstances. They are under obligation to discharge their duties and perform their functions with open mind, without any influence or pressure, fear or favour, affection or ill-will, honestly, justly and to the best of their ability, by applying the Constitution and law in their true perspective, on the basis of facts and circumstances of each case. In doing so, they are required to get the assistance of lawyers, prosecutors and guidance from the judgments of this Court and the High Courts, in order to reach a correct conclusion. This will protect the fundamental rights of the people to a possible extent, will serve the interest of justice, and will also boost faith and confidence of people in our judicial system. We do not doubt the integrity and competence of any Judge. There might be multiple reasons for wrong decision, but there should be no excuse for a Judge in delivering a judgment contrary to the law and facts. In any case, the Judges must be aware of their judicial powers and must exercise them to reach a correct conclusion, in order to protect the fundamental rights of the people and to promote the interest of justice.

7. The Code of Criminal Procedure, 1898 ("**Cr.P.C.**") provides a procedure for investigation of criminal cases and their trial. Section 173 of Cr.P.C. requires that the police must complete investigation and submit its report within a period of 14 days from the date of recording of an FIR. In most of the cases, the investigating officers submit reports with unjustified delay, which is one of the obstacles in early disposal of cases<sup>5</sup>. Similarly, non-observance of mandatory provisions of Cr.P.C. and relevant Rules by the investigating officers, result into acquittal of real culprits. Sometimes, false accusation is made against persons who in reality, are not involved in a case, but for no reason, they are subjected to prolong litigations. Because of the neglect of the investigating authorities,

---

<sup>5</sup> 2021 SCMR 1458

the real culprit is either kept from being punished for the offence actually committed or an innocent person is detained or even wrongly convicted by the courts. Such act of the investigating officers is in violation of the Constitution and law. In any case, it is against the fundamental rights of a person, which eventually creates a wrong perception and sends a negative message against the judiciary.

8. It is obligatory upon the Trial Court to ensure constitutional guarantee of life, liberty, fair trial and due process enshrined in Articles 9 and 10A of the Constitution. Section 265-D of Cr. P.C. provides that the Trial Court should consider all the available material, whereafter, if it is of the opinion that there is ground for proceeding with the trial of the accused, it shall frame in writing a charge against the accused. If no charge could be framed or if charge is framed, but there is no probability of the accused being convicted of the charge on the basis of the material available on the record, the Trial Court has power under sections 265-K and 249-A, of Cr.P.C., as the case may be, to acquit an accused at any stage of the case, either on its own motion or upon an application in this behalf filed by an accused after providing opportunity of hearing to all concern<sup>6</sup>. Such power is mandatory in nature, which must be exercised judiciously in order to prevent the abuse of process of law and frivolous and malicious litigation, which will also result into curtailing the backlog.

9. Another issue which is being faced by the litigants is the inordinate and unreasonable delay in conclusion of criminal trials and appeals/petitions, without any substantial progress, which is a crucial challenge to the *Administration of Criminal Justice System* in our country. Such delay is antithetic to the foundational principles of liberty, fair trial and due process. Under such circumstances, it is the primary duty of the investigating agencies and every judge of the country to take into account such fundamental rights of persons, whose cases are brought before them by strict adherence to law. The present case is a classic example, wherein, the respondents were arrested in the year 2008, they were convicted by the Trial Court on 12.01.2011 and

---

<sup>6</sup> Ammad Yousaf V. The State through Advocate General, Islamabad and another; 2023 SCP 314, citation available on official website of SCP.

remained in custody till 13.01.2015, when they were acquitted by the Appellate Court. Though the respondents got acquittal, but they did not get justice in time. No one can justify the detention of the respondents, depriving them from their constitutional right of liberty and free movement for long seven years. In addition, they have faced the agony and misery of a prolonged trial and unreasonable delay in conclusion of appeal, besides incurring expenditure. They remained uncompensated, because there is no mechanism for doing so. The famous legal maxim that *justice delayed is justice denied*, is often used when unjustified delay occurs in disposal of disputes. When the legal machinery fails to deliver justice within a reasonable time, it not only violates the constitutional mandate, but also leads to frustration. Thus, an inexpensive and timely justice is a requirement of the Constitution, which must be observed by all stakeholders in all circumstances without any excuse.

10. There is no doubt that the prosecuting agencies and the courts are over-burdened because of increase in the number of cases as a result of population explosion and lack of basic facilities, necessary for early dispensation of justice, but still they are under constitutional and legal obligations to conduct and conclude fair investigation and fair trial within a stipulated period to the possible extent, or in a reasonable period where there is no time limit provided by law for doing so. Within the prevailing system, it is difficult to achieve the desired results, but some improvements could be made into the system by proper management in order to streamline the investigation and judicial proceedings. Such goal cannot be achieved without the cooperation of investigating agencies, complainants, lawyers, prosecutors and all relevant persons/authorities. It is incumbent upon investigating officers, lawyers and prosecutors to follow the law and cooperate with courts so as to avoid unnecessary and unjustified delays in early disposal of the cases. Likewise, cooperation between investigating agencies and prosecutors/complainants is essential in order to pursue the matter to ensure timely and fair conclusion of the cases.

11. To address the deficiencies in prosecution's cases, and to avoid unreasonable delays in the timely conclusion of criminal

trials and appeals, it is an obligation of the State under Article 37(d) of the Constitution to ensure inexpensive and expeditious justice. In this behalf, the vacancies of judicial officers across the country must be filled in on merits, without any delay; to consider increase in the number of judges, wherever it is so required; to ensure upgradation of the investigation mechanism, introduction of modern techniques, equipments, devices and tools; conducting regular and fruitful training courses for the investigating officials; ensuring independence of judiciary and the investigating agencies, providing basic facilities, friendly and workable atmosphere to the Courts, the investigating agencies, ensuring safety and protection of the judicial officers, investigating officials and witnesses. The Government must also take steps to curb the trend of registration of false and frivolous litigation; and to ensure that the frivolous litigants are not let off scot-free for such acts. By taking all such measures, certain laws are required to be amended or certain legislation is required, which may be considered by the Government and the Parliament/Assemblies. Till the time, such a policy is devised or necessary enactments are made, the courts must exercise their powers already granted by available laws to do complete justice and to discourage frivolous and malicious litigation.

Thus, in view of above, leave is refused and the petition is dismissed. The amount recovered from the respondents No. 3 and 4 should be returned to them.

Judge

Judge

Judge

ISLAMABAD  
27<sup>th</sup> October 2023  
K.Anees/ Waqas Ahmad, LC  
"Approved for Reporting"