

**Judgment Sheet**

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR.**

**JUDICIAL DEPARTMENT**

**Criminal Appeal No.17-P of 2013**

**Inspector Syed Rahim.**

**Versus**

**The State/respondents.**

**J U D G M E N T**

Date of hearing: 11.12.2018  
Appellants by: Syed Abdul Fayaz and Mr. Bashir  
Ahmed Khan, Advocates.  
The State/respondent by: Mr. Muhammad Riaz Khan, AAG.



**QALANDAR ALI KHAN, J:-** The judgment in this criminal appeal shall also disposed of the connected criminal appeal No.21-P/2013 by SHO Sher Afsar Khan and S.I Irshad Khan as appellant in this criminal appeal, Inspector Said Rahim as well as the said two appellants in the connected criminal appeal were the police officers and charged for defective investigation and convicted under section 27 ATA and awarded the punishment of fine of Rs.10000/-, each, by the

learned Judge, Anti-Terrorism Court-III, Peshawar, vide impugned judgment dated 05.01.2013 after acquittal of all the six accused in case vide FIR No.114 dated 20.02.2012 under sections 365-A/342/171 PPC, 17(3) Haraabah and 7-ATA of Police Station, Nowshera Cantt.

2. The background of proceedings against the three police officers by the learned Judge Anti-Terrorism Court-III, Peshawar, briefly stated is that on the report of one Gul Zaman, complainant, the case mentioned hereinabove was registered about kidnapping for ransom of his brother Shah Zaman alias Zalmay, who was recovered subsequently and accused in the main case were also arrested; and after initial inquiry under section 156(2) Cr.P.C, and investigation, challan was submitted to the trial Court/Anti-Terrorism Court; where, after trial, accused in the case were acquitted; and the accused police officers alongwith DSP Shah Nawaz Khan were charge sheeted as under;

*“1. That you DSP Shah Nawaz Khan was under obligation to perform your duties as per law/rules governing the same. That case property i.e. motorcars were unauthorizedly taken out of PS*

*Nowshera Cantt soon after its recovery by you with the connivance of the then SHO PS Nowshera Cantt Mr. Sher Afsar Khan and the same were kept with fake number plates and found in tidy condition at the time of exhibition before the court suggesting its use for private purpose and thus you have committed breach in the discharge of your duties i.e. to keep and secure material evidence of the crime and do not create circumstances pregnant with mala-fide and doubt;*

- 2. That you Inspector Sher Afsar Khan as SHO of PS Nowshera Cantt during the days of occurrence was under obligation to perform your duties honestly and in accordance with law/rules. You has not only failed to discharge your duties with the required care and caution besides be honest and truthful in actions as appear from the following;-*
  - I. You have deposed before the court that on 01/03/2012 you received spy information of transportation of abductee Shah Zaman by the acquitted accused in two motorcars and thus placing Naka Bandi, you succeeded in arrest of the accused and recovery of abductee leading to recoveries including three pistols with cartridges from possession of acquitted accused Khan Mohammad, Abdul Sattar and Mohammad Saleem and prepared recovery memo of the same under your*

*signature of the said date available on case file of FIR No.132 u/s 13 AO registered by you separately against the aforesaid accused. Zamima-A and Fard Khulasa both available under your signature of 01.03.2012 bear the facts of production of aforesaid accused before the court of Judicial Magistrate within the time of 08:30 to 1200 hours and thereafter obtaining their judicial remand and handing over them to jail authorities. The aforesaid record of you under your signature has not only rendered false your version of arrest and recovery at 16:40 hours on 01.03.2012 but has apparently made the record about their arrest, recovery and sketch fabricated which is criminal office on its own besides evidence of committing breach in discharge of your duties.*

- II.** *You have handed over motorcars soon after its alleged recovery bearing registration No.MBV-712 Islamabad and 9653-RIA to SIs Chiragh Shah and Jehanzeb to be handed over to DSP Shah Nawaz posted at police line and thus committed breach in discharge of your obligatory duties to keep and secure case property material evidence of a case and save it from misuse etc.*
- III.** *That you SI Irshad Khan was handed over enquiry u/s 156 of Cr.P.C by the SHO PS Nowshera Cantt on receipt of*

*application dated 26.12.2011 of the complainant Gul Zaman.*

- IV. That you proceeded with the enquiry without getting permission of the concerned Magistrate as per law and thus violated the mandatory law for such proceedings.*
- V. That you have conducted enquiry but the enquiry file is not handed over to IO to be placed on judicial record and as such possibility of suppression of material evidence by you cannot be ruled out. Legally you were bound to have handed over the enquiry file to the IO on registration of case and would have entered the reference of proceedings conducted by you in register No.2 of PS an obligation you appears to have violated;*
- VI. That recording statement as PW-04, you have suppressed the fact of your posting at PP Badrashai on the day of alleged arrest and recovery in the case and knowingly stated wrongly that you were member of investigation staff of the PS and was present with SHO at Naka Bandi while on record you were available in Police Lines Nowshera at the relevant time of recovery and arrest as per DD No.8 and No.13 of PP Badrashai dated 01/03/2012 and as such have committed breach in discharge of you duties*

*besides recording false statement before the court a criminal offence on its own;*

**VII.** *That you Said Raheem Khan Inspector conducted investigation in the subject criminal case and was under obligation to find out truth about the alleged abduction and arrest of accused and recovery of abductee on the relevant dates;*

**VIII.** *That you failed to enquire about the fact of abduction of Shah Zaman in the area where he was allegedly carrying out business of cloth and no evidence whatsoever worth name was collected in this respect.*

**IX.** *That the enquiry file in the case conducted by SI Irshad Khan was also not brought on judicial record to ascertain properly and definitely the whole proceedings conducted by him since 26/12/2011 till the date of registration of FIR i.e. 20/02/2012;*

**X.** *That as IO you were under obligation to questions SI Irshad Khan about his application for information of CDR and location of cell number 0332-8599488 and 0300-8583786 when these numbers were not at all referred to by the complainant party.*

**XI.** *You did not question SI Irshad Khan about another important fact showing his intimacy with the occurrence when he recorded in application dated 27/12/2011 that mobile number 0332/0300-8599488*

were with the abductee at the time of his abduction as to how these information were obtained by SI Irshad Khan when not disclosed by complainant in his application and in statement of Ismail and Haji Gulab.

**XII.** That another important fact found reference in Zemini dated 21/02/2012 and in statement of abductee recorded on 01/03/2012 that the motorcar of abductee was received by the complainant party after settlement with the abductors. A material fact to have been enquired upon that may have led to the truth has not been enquired and you failed to investigate the case on this line;

**XIII.** Similarly motorcars MB 712 Islamabad and 9653-FIA were not taken into possession and similarly no investigation was conducted in this regard while actually both the motorcars were taken out of the jurisdiction of concerned PS and were apparently used with a fake number;

**XIV.** That relevant facts of case file under section 13 AO against three of the acquitted accused of the case were not even touched by you to show an attempt on your part to find the truth which on perusal was found with documentary proof of their arrest prior to the alleged recovery and arrest on 01/03/2012;

**XV.** *That PW Irshad Khan was shown to be present at the time of arrest of accused and recovery of abductee at Naka Bandi while on record he was found to be present at police line Nowshera at the relevant time as per record of PP Badrashai and you failed to find out this important fact thus as a whole you have never attempted to fine out the truth and failed to dig out those facts which were found during trial proceedings. As IO you did not question the three separate proceedings carried about one case and its consequences on trial besides creating shadow of doubts and mala-fide. As a whole you failed to (carry out investigation properly and your these acts of omission and commission constitute an offence of defective investigation).*

*And whereas you were asked to submit reply to the aforesaid lapses in investigation constituting offence of breach in discharge of duties defective investigation on your parts respectively and your replies in this respect were found non satisfactory, therefore this court decided to charge you u/s 27 Anti-Terrorism Act, 1997 which falls in the jurisdiction of this court and as such I Syed Asghar Ali Shah, ATC-III, Peshawar do hereby charge you accused under section 27 ATA, 1997 and direct that you will be tried by this Court under the said charges.”*



3. DSP Shah Nawaz Khan, however, approached this Court and sought quashment of notice under section 27 ATA, 1997 dated 29.09.2012 through writ petition No.3158-P/2012, which was allowed and notice issued to him was withdrawn vide judgment/order dated 04.12.2012, therefore, rest of the proceedings were conducted against the remaining three police officers i.e. the appellants in these two connected criminal appeals, during which, they submitted their replies, which were found unsatisfactory; and their statements were also recorded in question and answer format; followed by the impugned judgment whereby all the three police officers/appellants were convicted under section 27 ATA, and awarded the punishment of payment of fine of Rs.10000/-,each, and in case of failure to pay the fine, to undergo simple imprisonment for one month; hence the instant two criminal appeals.

4. Arguments of learned counsel for the appellants and learned AAG heard; and record perused.

5. The judgment/order dated 29.09.2012 of the learned Judge Ant-Terrorism Court,

Peshawar, impugned in criminal appeal No.635-P/2012 would show that accused in the main case were acquitted, mainly, on the basis of discrepancies, shortcomings, contradictions, improvements and, above all, defective investigation by the appellants, who remained associated with enquiry and investigation in the case at different stages; but demonstrated irresponsible, inefficient and incompetent behavior, which proved detrimental to the prosecution case.

6. From the very inception, after the complainant, Gul Zaman, reported disappearance of his brother, Shah Zaman, on 15.12.2011, when he left his home situated in Regi Lalma, Peshawar alongwith one Ismail in motorcar No.APL-2011 for Islamabad, the local police failed to conduct the initial enquiry and then investigation in accordance with the requirements of law and police rules; as neither FIR was registered nor order of the Magistrate for conducting enquiry was obtained; and even record of the enquiry was not made available so as to ascertain what proceedings were conducted by SI Irshad Khan who was entrusted with

enquiry under section 156 Cr.P.C by the SHO PS, Nowshera Cantt, on the receipt of application/complaint of Gul Zaman complainant dated 26.12.2011. This conduct of SI Irshad Khan gave rise to the suspicion that he might have suppressed material facts and evidence which could lead to conviction of the accused in the case. The said SI while recoding his statement as PW-4 also made a misstatement about his posting in PP Badrashai during the period of alleged arrest and recovery in the case and deliberately furnished wrong information that he was member of investigation staff of the Police Station and was present with the SHO at *Naka Bandi* (barricade) while the record, particularly DD Nos.8 and 13 of PP Badrashai, showed his presence in Police Lines, Nowshera, on the date of arrest and recovery i.e. 01.03.2012.

7. Likewise, Sher Afsar Khan SHO PS, Nowshera Cantt, recorded statement in the Court about receiving spy information about transportation of abductee, Shah Zaman, by the accused in two motorcars on 01.03.2012, and they were allegedly intercepted at the *Naka Bandi*, leading to arrest of the accused, recovery

of abductee, recoveries of three pistols with cartridges from possession of accused Khan Mohammad, Abdus Sattar and Mohammad Saleem vide recovery memo bearing signature of the SHO on the said date available on case file of FIR No.132 under section 13 AO, registered separately; and *Zamima-A* and *Fard Khulasa* dated 01.03.2012 also show production of accused before the Court of Judicial Magistrate within 08:30 to 1200 hours, wherefrom their judicial remand was obtained and they were handed over to jail authorities; but the record prepared with his signature falsify the above facts and show the arrest and recovery at 16:40 hours on 01.03.2012, thus creating doubt about authenticity of record of the case prepared by him. The SHO also handed over motorcars bearing registration No.MB-712/Islamabad and 9653-RIA to DSP Shah Nawaz posted at Police Line, Peshawar, through SIs Chiragh Shah and Jehanzeb immediately after the alleged recovery, without a Court order or proper procedure for handing over the cars to a police officer having nothing to do with investigation of the case. The learned Court observed that when produced in

the Court, both the cars were displaying fake numbers and leaving no doubt about their use, rather misuse. This act on the part of the local police, particularly the SHO, was not only a clear misconduct but also a criminal offence by the police officers entrusted with the case property; but instead of registration of a criminal case, the learned Court only had resort to section 27 of the Anti-Terrorism Act, 1997.

8. Similarly, Inspector Said Rahim Khan was found by the learned trial Court to have failed in his duty of carrying out the investigation properly and diligently and also to pursue the case properly, as enumerated in detail in the impugned order by the learned Judge, Anti-Terrorism Court. The learned trial Court pointed out that the said Inspector failed to enquire about the fact of abduction of Shah Zaman in the area where he was allegedly carrying out business of cloth, and as such, collected no evidence. He also failed to bring the enquiry file on the judicial record in order to ascertain the whole proceedings conducted since 26.12.2011 till the date of registration of FIR i.e. 20.02.2012. It was also pointed out by the learned trial Court that the

Inspector was under obligation to question SI Irshad Khan about his application for information of CDR and location of cell numbers 0332-8599488 and 0300-8583786 when these numbers were not at all referred to by the complainant party. According to the learned Judge, Anti-Terrorism Court, it was still a mystery that how SI Irshad Khan came to know that abductee was keeping mobile numbers 0332/0300-8599488 at the time of abduction when neither this information was provided to him by the complainant nor the information was otherwise available at that time. It was, indeed, intriguing and a glaring suppression of material fact on the part of the appellants to conceal the fact of return of motorcar to the complainant party much before nomination of the accused and registration of the case. The learned Court observed that the IO was under obligation not only to question the complainant but also to take into custody the motorcar as the same was material fact for establishment of case and determination of guilt of the accused; but reply of the IO demonstrated his inability and incompetency, besides his unwillingness to work for finding out the truth.

**9.** All the above stated commissions and omissions on the part of the senior police officers of the rank of Inspectors and Sub-Inspector, in addition to the grounds mentioned for acquittal of the accused in the main case, and maintained by this Court vide judgment/order of even date, not only show dereliction in duty but also misconduct and commission of criminal offence of breach of trust on the part of the appellants, entrusted with investigation of the case; thus making them liable not only to summary proceedings under section 27 of the Anti-Terrorism Act, 1997, but also disciplinary action for misconduct and criminal case for breach of trust; but they were spared of disciplinary action and criminal case for breach of trust; and only convicted under section 27 of the Anti-Terrorism Act, 1997, and awarded symbolic punishment of fine of Rs.10,000/-, each; which was neither unjustified in view of overwhelming evidence proving defective investigation because of incompetency and lack of diligence, if not some ulterior motive on the part of the appellants.

**10.** Needless to say that wherever there are powers there must be check on the powers through accountability of authorities exercising

such powers as a trust by the State. Obviously, the police officers enjoy unique and vast powers of arrest and detention, thereby curtailing the constitutionally guaranteed rights of liberty and freedom of the citizens. They, therefore, were to be made accountable for misconduct or and neglect in performance of their duty. They, as such, deserve no leniency and were to be made an example for others in the police force in order to restore confidence of the general public in the institution; which is, indeed, responsible for protection of their life, liberty, property and honour; and the fine of Rs.10,000/- imposed on each of them appears akin to the letter and spirit of law and justice.

11. Finding no merit in the appeals, both are consequently dismissed.

**Announced.**  
**11.12.2018**

**J U D G E**

**J U D G E**

*(D.B) Hon'ble Mr. Justice Rooh-ul-Amin Khan.  
Hon'ble Mr. Justice Qalandar Ali Khan.*

*(M. Iqbal)*