JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 3020 of 2020

Muhammad Siddique

Versus

Additional District Magistrate (Rural),& 5 others.

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Petitioner by :		Mr. Zahid Riaz Chaudhry, Advocate.
Respondents by	:	Mr. Muhammad Khan Nazar, Advocate for respondents 3 & 4. Mr. Sohail Khurshid, State Counsel with Muhammad Hassan ASI, P.S. Sihala, Islamabad.
Date of hearing	:	25.02.2022

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ARBAB MUHAMMAD TAHIR, J: The instant writ petition impugns the order dated 30.09.2020, passed by the learned Additional District Magistrate, Islamabad, whereby application of the petitioner for the constitution of the Medical Board for re-examination of the injured/respondent No.2, was dismissed.

2. Relevant facts are that the subject FIR bearing No.229 was registered under Sections 337-F(iii), 148, 149, 452 and 354 PPC at Police Station Sihala, Islamabad on 26.06.2020, on the basis of report No.14 dated 16.05.2020, which was lodged by the petitioner (Muhammad Siddique) through a written application. It is a case of cross-version. The respondent No.3 (Muhammad Fayyaz) is complainant of said cross-version ignited on the same day i.e. 16.05.2020 through a written application.

3. After the alleged incident of fight, respondent No.2 Shaista Fayyaz was taken to the hospital by one Riaz ASI of Police Station Sihala, on the same day on 16.05.2020 where she was medically examined by Dr. Imtiaz Ahmad, Medico-legal Officer, Chief Causality Medical Officer, Federal Government Poly Clinic Hospital, Islamabad. The Medico-Legal Officer observed the particular of injuries/symptom as *"history of fight, brought by police*" and *superficial abrasion on nose and cheek, a lacerated*

wound of 0.2 c.m. deep right ring finger, pain in shoulder and left finger. The nature of the injury was observed as *"Jurhghayr-jaifahbadi'ah*" while the kind of weapon is mentioned as "*blun*t".

4. The petitioner alleges that the cross-version in the subject FIR is outcome of untrue and baseless medico legal report of respondent No.2, and in order to gauge its authenticity, he movedthe respondent No.1, with a request for constitution of Medical Board for re-examination of the lady, but remained unsuccessful vide impugned order, hence before this Court.

5. Learned counsel for the petitioner while recapitulating the grounds mentioned in the memo of the petition, on facts attempted to counter the observations contained in the impugned order qua delayed approach for the purpose. According to the learned counsel, it is not the domain of respondent No.1 to lay emphasis upon merits of the case while dealing with an application for re-examination which is, otherwise, an administrative job. The learned counsel in support of his submissions placed reliance upon case of *Ahmad Khan v. Additional Sessions Judge Talagang and 4 others* **(PLD 2020 Lahore 77)**.

6. On the other hand, the learned State Counsel opted to defend the impugned order, while learned counsel for the respondents 2 & 3 added that the first medical examination being authentic and admissible piece of evidence, cannot be brushed aside through a tainted and concocted attempt, that too after lapse of considerable period, which itself, is enough to discard the credibility of the such attempt. Learned counsel placed reliance upon the case of ***Ahmad Khan supra*** and *Khalil Akhtar v. Magistrte 1st Class, District Mianwali* **(2021 P.Cr.L.J 1822)**.

7. I have heard the learned counsel for the parties and gone through the record with their able assistance.

8. At the inception, it is necessary to refer that the Medico Legal Report retains corroboratory nature, and is an essential discourse to substantiate chain of events. A Medico Legal Report, prepared by Medical Officer, designated for the purpose, depicts the essentials that include time of reported incident, that of examination, mark of identification, particulars of the Medical Officer, the details of injuries, its nature, cause of the

injuries/depth, probable duration of injuries, date of admission and discharge besides the name of the official with designation who brought the injured/deceased. The Medical Officer while dealing with examination of any injured, is under obligation to mention all these essentials in Medico Legal Report. Casual and haphazard treatment of like cases is not only fatal for digging out the truth or falsehood, of any criminal case but also exposes the said medical officer to professional misconduct and disciplinary action in this regard.

9. An incident of such casual approach is also witnessed while examining the record. One of the injured of the instant case namely Fatima Siddique was medically examined on 16.05.2020 at about 3:35 p.m., but surprisingly her Medico Legal Report was issued on 26.6.2020,This aspect, of course, warrants probe and inquiry besides disciplinary action against the delinquent in accordance with law in due course.

10. Article *129(e) of the Qanun-e-Shahdat Order, 1984 stipulates that the court* may presume that judicial and official acts have been regularly performed while Article 150 of the Constitution emphasized on extending full faith and credit to public act and record and judicial proceedings of every Province.

11. The credibility of the first medical examination is unambiguous as "*the first medical examination is protected by statutory presumption of being genuine under Article 129(e) of the Qanun-e-Shahdat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973. Such formidable statutory protections cannot be summarily dismantled on the whims of an accused struggling to ward off consequences of criminal prosecution, therefore, a Magistrate must insist for tangible and sufficient grounds to plausibly justify exposure of a person already wronged to the inconvenience and embarrassment of a re-examination, while an accused is certainly entitled to "Due Process of Law" and a meaningful opportunity to contest indictment with a view to vindicate his position, the prosecution and its witnesses also deserve protection of law so as to prosecute the case with least inconvenience and without unnecessary hardship; equality before law without equal protection is a travesty; scales must be held strictly in balance." Guidance is taken from* the latest order of the

Hon'ble apex court dated 07.07.2020 passed in "***Criminal Petition No.540 of 2020 titled "Muhammad Ejaz V. the State & another"***.

12. The statutory protection cannot be summarily dismantled on the whims of either party of a criminal case, unless and until strong exception exists to explore element of malafide attributable to a Medical Officer, who has initially examined the injured/victim, in my estimation, direction for constitution of board for re-examination would be unjust. Even otherwise, the law on the subject has since been settled that direction for constitution of medical board for second time is alien to the Criminal Justice System. Reliance is placed upon case of "*Muhammad Ejaz v. The State and another*" **(2021 SCMR 387)** and *"Saifullah Salim Arshad v. The State and 2 others*" (**2014 P.Cr.L.J. 850**).

13. The Medical Officer, at the time of first examination, should be conscious of the fact that he/she has to give expert opinion, qua the nature of the injuries for which a separate head is provided in the Medico Legal Report. For instant, either injury was simple, grievance or dangerous. In order to vanish possibility of fabrication and concoction by either of the parties, the Medical Officer after physical examination of an injured person while issuing the Medico Legal Certificate, should record reasons in unambiguous manner, on the principles of Medical jurisprudence qua the nature of injuries either result of fabrication or self inflicted. Not only this but he/she shall specifically mention as to for which injury, there is possibility of fabrication.

14. At this juncture, I also deem it necessary to mention that it is the job of the Investigating Agency to unearth the real facts of the case and cause arrest of actual culprits, and not to act remotely on the desires of any of the parties. It is therefore, need of the time that if there is any suspicion that the injury or injuries could be the outcome of any fabrication, besides an aggrieved party, the Investigating Agency through the Public Prosecutor may move the concerned Magistrate for reconstitution of the Medical Board. It means that the exercise cannot only be carried out by the parties alone rather the prosecution is not debarred to go for the exercise in order to effect transparent investigation.

15. Adverting to the facts of the instant case, it emerges that the FIR of the instant case was lodged on 26.06.2020, on the basis of report dated 16.05.2020. The respondent No.2, was medically examined for the first time on 16.05.2020, while according to petitioner's own stance, he filed the application before the respondent No.1 for constitution of Medical Board on 09.07.2020, as is evident from the Diary Number mentioned on the margin of the said application. It is thus obvious that it was the petitioner who prompted the action with a delay of about more than one and a half month for re-examination of the injuries that were observed as *superficial abrasion* on nose and cheek besides *lacerated wound* on the ring-finger. One cannot imagine as to under what methodology an abrasion or laceration can be re-assessed as a result of any self-infliction after passage of more than one and half month.

16. Having examined the case from every angle, it appears that the impugned order in the backdrop of facts and circumstances of the instant case besides the law on the subject as mentioned therein is well-reasoned and does not call for any interference. Consequently, the instant writ petition is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//Kamran//

Announced in open court on : .03.2022.

JUDGE