JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Writ Petition No.105 of 2021

Kamran Ali Khan

Versus

S.H.O, Police Station Noon, Islamabad and others.

Petitioner by:	**Mr. Muhammad Ilyas Siddiqi, Advocate.**
Respondents by:	**Mr. Waqar Hanif Abbasi, Advocate.** **Sadaqat Ali Jahangir, State Counsel** **Mubarak Ali, DSP/SDPO.**
Dates of hearing:	**19.03.2021**

Tariq Mehmood Jahangiri, J: The petitioner has filed the instant writ petition with the following prayer:-

> **"In view of above*, it is respectfully prayed that a writ be issued in the following term:***
>
> ***That the application dated 02.01.2021 of respondent No. 2 and opinion of doctor / respondent No. 3 on it dated 02.01.2021 is illegal and based on malafide and same may kindly be quashed."***

02. Brief facts of the case are that a case was registered at Police Station Noon on the complaint of Mr. Muhammad Asim, Complainant / respondent No. 4 wherein it is alleged that he alongwith his relatives was present on his land near Ghazi Imam Darbar Road. In the meanwhile, five persons nominated in the F.I.R along with two unknown persons armed with weapons came to the spot and attacked on the complainant party. Resultantly, one person namely Zafran got injured, whereupon case FIR No. 164 dated 25.07.2020, U/s 324, 148, 149 PPC was lodged at Police Station Noon.

03. On the other hand, Mr. Yaaran Ali Khan father of Kamran Ali Khan / petitioner has also submitted an application to the police for registration of cross version that he came out of his house where he saw accused Zafran, Asim, Shoaib, Noman and four unknown persons armed with weapons beating his sons and also made firing, whereupon they got injured.

04. The I.O of the case has got Mr. Kamran Ali Khan medically examined on 25.07.2020. As per Medico Legal Report, the injured received following fire arm injuries:

i. **injury No. 1&2 was *Hashima;***
ii. **injury No. 3 was *Baddiah.***

During the course of investigation an application was filed for re-examination of Kamran Ali Khan / injured, hence, on 02.01.2021 Mr. Ibrar Hussain, ASI / I.O of the case got him medically re-examined. Doctor Muhammad Farrukh Kamal / respondent No. 3 re-examined the injured, X-rays, MLRs and Wounds Scars and gave his opinion that the weapon used / F.A.I, looking to be Pallets.

05. Learned Counsel for the petitioner contends that the Challan / Report U/s 173 Cr.P.C has been submitted before the Court; the first Medico Legal examination of Kamran Ali Khan / injured was got conducted by M. Arif, ASI / I.O of the case and re-examination has got conducted by Mr. Ibrar Hussain, S.I on 21.02.2021. Learned Counsel further contended that act of re-examination of the injured by the second I.O is patently illegal; the police cannot get any injured re-examined after submission of challan in the Court, so the act of re-examination of the injured be declared as illegal and same may be quashed. Learned Counsel has further contended that strict action against Dr. M. Farrukh Kamal, Director Emergency & Accident Centre & In-charge Medico Legal Officer, P.I.M.S, Islamabad should be taken for his criminal act.

06. Learned State Counsel assisted by the learned Counsel for complainant has stated that police can conduct the investigation even after the submission of challan and can submit supplementary challan before the final adjudication of the case. He has further stated that to unearth the truth, the police can conduct the investigation and get expert opinion at any stage during the course of investigation and has prayed for dismissal of the instant writ petition.

07. Arguments advanced by the learned Counsel for the petitioner, learned Counsel for the complainant and learned State Counsel have been heard and record has been perused with their able assistance.

08. The allegation of inflicting the fire arm injury to Kamran Ali is against the accused Zafran who himself is an injured in a case registered in FIR No. 164/2020 at Police Station Noon.

09. Learned State Counsel and I.O have informed that police has not submitted any challan / Report u/s 173 Cr.P.C against Zafran accused and investigation against the said accused is being conducted by the police as he has obtained interim bail before arrest from the Court of learned Additional Sessions Judge, Islamabad and challan against the other accused has been submitted in the Court.

10. As the investigation against the accused zafran is in progress, Challan has not yet been submitted against him in the Court, even the police is authorized to conduct investigation after submission of the final report u/s 173 Cr.P.C and can submit supplementary challan before the final decision of the case. Reliance may be placed on the following case laws:

(i) The Hon'ble Supreme Court of Pakistan in the case reported as "Raja Khurshid Ahmed versus Muhammad Bilal and others" [2014 SCMR 474] has held as under.-

> ***"There is no bar to the reinvestigation of a criminal case and the police authorities are at liberty to file a supplementary challan even after submission of the final report under Section 173 CrPC. However, this cannot be done after the case has been disposed of by the learned trial court".***

(ii) In another case reported as "Muhammad Ashfaq versus Amir Zaman and others" [2004 SCMR 1924] it has been held as under.-

> ***"There is nothing in the Criminal Procedure Code, which debars the police to re-investigate a case to unearth the truth. The law stands settled by this Court long ago, which had been reiterated in Aftab Ahmad v. Hassan Arshad and 10 others PLD 1987 SC 13."***

(iii) In another case reported as "Muhammad Hanif versus The State" [2019 SCMR 2029] The Hon'ble Supreme Court of Pakistan has held as under.-

> ***"Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each others' roles destroys the concept of separation of powers and works a long way towards defeating justice and this was so recognized in the case of Emperor v. Khwaja Nazir Ahmed (AIR 1945 Privy Council 18).***

(iv) In another case reported as "Muhammad Yousaf versus The State and others" [2000 SCMR 453], It has been held as under:-

> ***"However, we may add that since there is no legal bar on the re-investigation of the case, even after the submission of final report under section 173, Cr.P.C., the A police may carry out fresh investigation and subnet its report to the Court. We stand fortified in this behalf by an illuminating judgment of a Division Bench of the Lahore High Court delivered in the case of Ata Muhammad v. Inspector-General of Police, West Pakistan, Lahore and others (PLD 1965 (W.P)***

Lahore 734), with regard to the competency of the police, to carry out further investigation in the same case even after submission of final report.

11. In view of the above referred dictum laid down by Hon'ble Supreme Court of Pakistan, I have come to conclusion that police is competent to re-investigate under the law as there is no bar for re-investigation of a criminal case, the authority to register and investigate the criminal case vests in the police and not in the Court and no direction regarding investigation can be issued to the police. The petitioner will be at liberty to cross-examine the witnesses or to file a petition in the trial Court for the redressal of his grievance after submission of challan / Report u/s 173 Cr.P.C.

12. For what has been discussed above, I do not find any merit in the instant writ petition, hence, the same is dismissed being meritless.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in open Court on 24.03.2021.

JUDGE

Ahmed Sheikh/*