JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 474 of 2018

Syed Mubashir Hussain

Versus.

Medical Superintendent, PIMS & 5 others.

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Petitioner by	:	Malik Saqib Mahmood, Ch. Zaheer Ahmed & Zahid Riaz Ch., & Amin Ullah Khan, Advocates
Respondents by	:	Syed Nazar Hussain Shah, AAG Mr. Muhammad Khan Nazar, Advocate for respondents 2 & 3. Syed Shahbaz Shah, State Counsel with Muhammad Nawaz ASI, P.S. Sihala, Islamabad. Dr. Muhammad Farrukh Kamal, J.E.D, PIMS, Dr. Nasreen Butt, M.O. PIMS & Dr. Imtiaz Ahmad, M.O. Poly Clinic.
Date of hearing	:	25.02.2022

ARBAB MUHAMMAD TAHIR, J: through the instant writ petition, the petitioner namely *Syed Mubashir Hussain* prayed for the following relief:-

> *"In these circumstances, it is, therefore, most humbly prayed that the instant writ petition may kindly be accepted and the medico-legal report (MLR) dated 28.12.2017 may kindly be declard as illegal, having no sanctity in the eyes of law as it is contradicted/in violation of the judgment of Honourable Supreme Court of Pakistan cited as PLD 2017 SC 730 in the interest of justice.*
>
> *It is also prayed that PIMS Administration may kindly be directed to give authority of legal opinion*

to the same Medical Officer who is examining the victim/patient.

It is further prayed that the FIR No.332/17 dated 30.12.2017, offence U/S 337-A(ii)/148/149 PPC, P.S. Lohi Bhair, Islamabad may kindly be quashed.

It is further prayed that the operation of the FIR No.332/17 dated 30.12.2017, offence U/S 337-A(ii)/148/149 PPC, P.S. Lohi Bhair, Islamabad may kindly be suspended till final disposal of the instant writ petition."

2. The facts giving rise to the instant petition are that on the application of respondent No.3 namely *Shaukat Ali* (**"respondent No. 3"**), FIR No.332 dated 30.12.2017, under section 337-A(ii)/148/149 PPC, was registered at Police Station Lohi Bhair, Islamabad on the allegations that *Mubashir Hussain Shah* (**"Petitioner"**) had been working with the respondent No. 3 as driver and had allegedly stolen 7 tola gold ornaments and Rs.180,000/- from the house of the former when the respondent No. 3 had been away to Vehari in connection with his vacations and that on 27.12.2017 in response to telephonic call, petitioner along with 4-5 persons armed with deadly weapons came to the house of respondent No. 3 and after giving beating to the respondent and his son, fled away from the place of occurrence.

3. After the alleged incident of fight, the respondent No. 3 was taken to the hospital by one Muhammad Azkar ASI of Police Station Lohi Bhair on 28.12.2017 where he was medically examined by Dr. Nasreen Butt, Medico-Legal Officer, Pakistan Institute of Medical Sciences, Islamabad. The Medico-Legal Officer observed the injuries/symptoms as *"Pain,laceration/redness lt eye, O/E laceration below lt eye lid 1-2 c.m subcongactival hemorrhage.* The nature of the injury and the kind of weapon were observed as *"337-A (2) PPC and* "*blun*t". These observations prompted the petitioner to question the same through the instant constitutional petition.

4. The learned counsel for the petitioner contended that the Medical Officer respondent No. 2 acted with malafide intention, ulterior motives and in connivance with respondent No.3, prepared a false and unauthorized Medico Legal Report-**MLR,** in violation of the latest pronouncement of the august Supreme Court of Pakistan reported as **PLD 2017 SC 730**, wherein it has graciously been held that the Medico Legal Officer has no domain or lawful authority to mention the penal provisions of law in the Medico Legal Report; that according to Police Rules 1934, it is not the mandate of Medico Legal Officer to mention the provision of law as he is only authorized to describe the nature of injury; that no injury has been inflicted upon the body of the respondent No. 3 but he managed to obtain a bogus MLR, which is not sustainable in the eye of law and the PIMS authority be directed to give legal opinion regarding the conduct of the Medico-Legal Officer, as such, the subject FIR may be quashed. In support of his contention, the learned counsel relied upon case laws reported as ***PLD 2017 SC 730 and PLD 2014 Lahore 555.***

5. On the other hand, the learned AAG and learned State Counsel assisted by learned counsel for respondent No.3 contended that the injured was produced before the Medico-Legal Officer by the local police and was duly medically examined by the MLO in the presence of representative of the Police and MLR was rightly prepared in the presence of Police Officer and same was handed over to him after due examination. In the last, they prayed for dismissal of the instant writ petition as there exists no exceptional circumstances warranting quashing of the subject FIR.

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

7. 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 in 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.

8. 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.

9. The Hon'ble apex court in its order dated 07.07.2020 passed in "***Criminal Petition No.540 of 2020 titled "Muhammad Ejaz V. the State & another"*** graciously observed that "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." [Emphasis supplied]

10. 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.

11. 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, grievous 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.

12. 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.

13. Adverting to the facts of the instant case, it emerges that the FIR of the instant case was lodged on 30.12.2017 on the basis of report dated 27.12.2017. The respondent No.3 was medically examined for the first time on 28.12.2017 while the petitioner filed the instant writ petition in February, 2018 after a considerable delay of about four months. In the attending circumstances, to accept the plea of the petitioner would amount to circumvent the due process of law where under the petitioner shall have every right to contest his indictment with a view to vindicate his position. Reliance is placed upon case of ***Muhammad Ejaz supra.***

14. Having examined the case from every angle, there exists no exceptional circumstance warranting quashing of the FIR and the MLR as prayed for. Consequently, the instant writ petition is accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR*)*
JUDGE

Announced in open court on **24.05.2022.**

JUDGE

//*Kamran***//****