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IN THE COURT OF ADDITIONAL SESSIONS JUDGE–V, KARACHI CENTRAL

(Before: Mr. Ghulam Murtaza Metlo, J.)

Sessions Case No. 642 of 2023

FaizanHabib alias Raja s/oHabib-ur-Rehman. Applicant / Accused (in custody)

vs.

The State.

Respondent.

In re.

The State.

Complainant.

vs.

1. Mumtaz Bux s/o Qalandar Bux.(died hence proceedings were abated)

2. Rehan Khan s/o Muhammad Arshad Khan Accused (in custody)

3. Saleem s/o Badshah Khan (on bail)

4- Faizan Habib @ Raja S/o Habibur Rehman (in custody)

5- Muhammad Asif S/o Muhammad Ali (Absconder)

F.I.R. No. 535/2022

U/S 395 / 397 / 34 P.P.C.

P.S. Bilal Colony, Karachi

Hearing on application under Section 265-K Cr.P.C. 1898.

Mr. Muhammad Arif Khan, Advocate learned counsel for the accused Faizan.

Mr. Muhammad Azeem Ansari, ADPP for the State.

ORDER.

14.10.2025

1. The accused FaizanHabib alias Raja has filed this application under Section 265-K Cr.P.C., seeking acquittal on the ground that the case against him is false and fabricated. His name does not appear in the FIR; he was never identified by the complainant or any witness; and no recovery of the alleged looted property has been made from him. His implication rests solely upon the so-called disclosure statement of co-accused Mumtaz before the police, which is inadmissible in law. Notice was issued to the State.

2. I have heard the learned counsel for the accused and the learned ADPP for the State and have carefully examined the entire record.

3. Per arguments advanced by both parties and record, the alleged incident of dacoity took place on 09.09.2022 at about 4:45 p.m. within the jurisdiction of PS Bilal colony, yet the FIR was lodged four days later on 14.09.2022 without any plausible explanation, even though the complainant himself is a police constable. In the FIR, he alleged that four unknown persons on

two motorcycles, who could be identified if seen again, snatched his cash more than Rs 2.2 million, ATM card, and CNIC and fled.

4. After registration of the FIR, the Investigating Officer showed the complainant several CRO photographs of suspected criminals, where he identified three persons, namely (i) Muhammad Iqbal s/o Saad Muhammad, (ii) Ashraf Masih @ Arshad Masih, and (iii) Akbar S/o Mansoor. When the police attempted to trace them, their houses were found locked and they could not be arrested. The investigation officer A.S-I.P Zubair Ansari without taking efforts to arrest the indentified crime suspects for recovery of looted money, prepared final report U/S 173 Cr.P.C for the disposal of case under “A” class. He after obtaining approval from his superior U/S 168 Cr.P.C submitted final report before Learned District Public Prosecutor vide inward no. 8546 dated 20-10-2022, who on the same day forwarded the summary to the court of Learned Judicial Magistrate for approval. The Perusal of record shows that the Learned Judicial Magistrate declined the request of Police for disposal of case under “A” class. The order recorded by learned Magistrate reads as under “I.O has mentioned that the complainant identified the accused persons from CRO. IO to further investigate the matter & submit his report within seven (07) days without fail”. Astonishingly, instead of continuing the investigation to trace the real suspects, the same Investigation Officer namely A.S-I.P Zubair Ansari arrested one person namely Mumtaz on 06.11.2022 when he was already in police custody in another case under Section 23(1)(A) of the Sindh Arms Act of same Police station. The investigating officer allegedly recorded his disclosure statement. In that statement, accused Mumtaz took responsibility for this offence and named others, including the present accused Faizan, Rehan, Saleem, and Asif. On this inadmissible statement alone, the I.O. involved these persons, prepared a charge sheet under section 173 Cr.PC, and forwarded it to his superiors for approval. The record shows that S.P investigation vide his letter no 6588/2022, Karachi dated 24.11.2022 being the head of investigation granted approval for the submission of charge sheet through learned District Public Prosecutor. It appears that learned District Public Prosecutor mechanically approved it without any lawful scrutiny or supporting evidence, and thus the accused were challaned to face the trial.

5. The facts clearly reveal that the entire case against present accused is a manufactured, careless, malafide and base on baseless piece of investigation. The FIR itself is blind and delayed; the complainant did not name any accused and gave no reason for the delay of four days. The photographs identified by the complainant were of entirely different persons who were never arrested, while innocent persons were later substituted and challaned showing malafide intent. Thus on one hand complainant has been deprived from his wealth, and, on other hand real culprit were left unchecked and unpunished, and, in their place, innocent persons were substituted just to close the chapter.

6. There is not a single recovery of cash, CNIC, ATM card, weapon, motorcycle 125 allegedly used in dacoity, or any article connected with the occurrence. There is no CCTV footage, no independent witness, and no forensic or circumstantial link connecting the accused with the offence. The so-called statement of co-accused Mumtaz before the police is inadmissible under Articles 37 and 38 of the Qanun-e-Shahadat Order, 1984; such a statement cannot be used even against its maker, much less against others. Reliance on it by the police and prosecutors constitutes a gross violation of law and a mockery of justice.

7. Taking notice of above legal & factual aspect of case, during the course of hearing, the prosecution was put on notice as to why the other accused, whose cases stand on the same footing, should not also be acquitted, and why the delinquent police officers who acted mala fide should not be directed to compensate the accused for their unlawful confinement caused by the false and fabricated challan. In response, the learned Assistant District Public Prosecutor candidly submitted that he too was surprised by the manner in which the investigation was conducted and could not defend the conduct of the investigating officials. He, however, prayed that the delinquent officials may not be fined, submitting that in the past no such fine has been imposed upon the State.

8. To this submission, it must be firstly observed that justice cannot remain chained to the past. As famously held by Lord Denning, “If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both.” (See *Packer v. Packer* [1954] P 15). The mere absence of precedent cannot be a shield against progress or an excuse for inaction. When liberty is wrongfully invaded by agents of the State, the Courts must evolve remedies commensurate with the wrong.

9. Secondly, it has been emphasized in the minutes of the NJPMC and through authoritative judgments of the Apex Court that, to curtail frivolous and futile litigation, it is the need of the hour to impose exemplary costs upon delinquent parties, whether public or private. The Court is conscious that a public officer acting bona fide is exempted from prosecution, but when he acts mala fide, no public servant can claim protection. Hence, the view taken by the learned prosecutor is untenable.

10. Thirdly, the Sessions Court, being a court of criminal jurisdiction entrusted with the sacred duty of safeguarding the liberty and dignity of citizens, is not powerless to grant redress when an accused is found to have been falsely or maliciously prosecuted. The superior courts of the country have consistently held that where the fundamental rights guaranteed under Articles 4, 9, and 14 of the Constitution stand violated by State functionaries through arbitrary arrest, fabricated investigation, or mala fide prosecution, the courts are fully empowered to issue remedial and compensatory directions. Reference may be made to *Ali Sher v. The State* (PLD 1993 SC 418), *Muhammad Rafique v. The State* (PLD 2013 Lahore 332), *Watan Party v. Federation of Pakistan* (PLD 2019 SC 527), and *Muhammad Hussain v. The State* (2022 YLR 1570 [Sindh]), wherein it was observed that criminal courts are not toothless when liberty is wrongfully invaded by the State. These precedents reaffirm that a Court of Sessions, while adjudicating a criminal matter, may issue appropriate compensatory or restorative directions whenever the record reveals mala fide conduct, abuse of authority, or deliberate violation of fundamental rights. Thus, while this Court may not impose a direct fiscal fine upon the State exchequer, it can lawfully direct recovery of compensation from the salaries of delinquent officials through the Inspector General of Police or the Home Department, ensuring that the aggrieved person receives due recompense for the injury caused by the abuse of authority. The direction issued in this judgment, therefore, falls squarely within the judicial powers of this Court and accords with both the constitutional mandate and the dictates of justice, serving also as a deterrent against future misuse of State power by investigative agencies

11. The record ex facie reveals that the conduct of the I.O. and his superiors is deplorable. They have acted mala fide in reckless disregard of law and liberty by forwarding and approving a false challan without an iota of evidence. Such collective mala fide conduct, approved at every level from I.O. to Prosecutor, reflects a systemic failure and dangerous misuse of authority. When the law enforcers themselves become law-breakers, it becomes the bounden duty of the Court to intervene promptly and firmly.

12. It may be mentioned that the courts are not silent spectators; they are constitutional sentinels created to protect citizens from the arbitrary use of State power. In a contest between the State and citizen, the State stands as an elephant mighty, resourceful, and armed with force while the citizen stands like a fragile ant. It is only the Court that can stand between the two and prevent the citizen from being crushed. If a citizen violates the law, he must be dealt with iron rods to create deterrence in society and maintain order. But when the State itself violates the law, the Court must strike harder, for unchecked authority breeds tyranny. If Courts falter in this duty, liberty will perish and anarchy will prevail. It can safely be presumed from the record that although the complainant identified three real suspects through CRO photographs, no step was taken by the I.O. or his superiors to trace them. This silence is not innocent; it reeks of deliberate concealment. The only rational inference is that the investigating staff, in order to close the chapter, knowingly replaced the real culprits with innocent persons, anticipating that the Court would eventually acquit them and the true offenders would go scot-free. Such conduct is not mere incompetence; it is

collusion and betrayal of public trust, revealing a design to misuse law for convenience, not for justice.

13. This Court cannot ignore such violations. The right to liberty is the most sacred right enshrined in the Constitution. It cannot be surrendered at the altar of police negligence or prosecutorial indifference. When liberty is curtailed unlawfully, it is not merely a legal wrong but a moral tragedy. Citizens cannot be made scapegoats merely to decorate police performance sheets. The judiciary must stand without fear or favour to protect the weak against the mighty and to remind every organ of the State that the law is supreme over all.

14. In view of the above discussion, the application under Section 265-K Cr.P.C. filed by accused Faizan Habib alias Raja is allowed. He is acquitted. As the cases of co-accused Rehan, Saleem and Asif rests on the same illegal and inadmissible material, they too are acquitted under Section 265-K Cr.P.C. Accused Faizan and Rehan are in custody, shall be released forthwith if not required in any other case. Accused and Saleem is on bail. He is also acquitted; his bail bonds is cancelled and surety discharged. The proceedings against accused Mumtaz have been already been abetted due to his death.

15. Considering the shocking circumstances based on malafide and gross negligence of the investigators, this Court holds that the Investigating Officer A.S-I.P Zubair Ansari, his SIO, SHO, DSP, and SP (investigation) being jointly responsible by virtue of Section 551 & 168, Cr.P.C and Police Rudes have acted malafide, illegally and irresponsibly by forwarding and approving a false challan based entirely on an inadmissible evidence. This constitutes gross abuse of official authority and violation of the fundamental rights of the accused. Therefore the Inspector General of Police, Sindh, is directed to trace and identify all delinquent police officers from I.O. to S.P. who handled, supervised, and approved this false challan, and to recover jointly and collectively a sum of Rs. 500,000 (being Rs. 250,000 each for accused Faizan and Rehan) from their salaries, in equal shares, and pay the same to the said accused within thirty (30) days. Proof of payment and recovery shall be filed before this Court through the Home Department. Copies of this order shall be sent to the Inspector General of Police, Sindh; the Home Secretary, Government of Sindh; and the Prosecutor General, Sindh for strict departmental inquiry and disciplinary proceedings against all concerned officers. Compliance report shall be submitted within sixty (60) days.

16. Lastly, it is observed that the liberty of a citizen is a sacred trust. When State officials misuse their power to destroy that liberty malafidely, it wounds the very soul of justice. The Court, as custodian of the Constitution, must heal that wound by restoring faith in the rule of law. No citizen is expendable every life deserves the protection of due process. Justice delayed or denied is a blemish on the conscience of the State. Let this order be a reminder that in Pakistan, the judiciary shall stand as the last fortress of liberty fearless in speech and firm in conviction so that the law may remain a shield for the weak and a warning to the mighty.

Pronounced in open Court on this 14th October, 2025.

(Ghulam Murtaza Metlo)
Additional District & Sessions Judge,V
Karachi- Central