IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, CJ
MR. JUSTICE RAZA ALI KHAN

CRIMINAL REVISION NO. 03 OF 2024
CRIMINAL MISC. NO. 07 OF 2024.
(From the judgment/order of the Shariat Appellate Bench of the High Court dated 29.12.2023, passed in Revision Petition No. 459 of 2023).

Mudassar Iqbal s/o Muhammad Iqbal Mughal & 06 others.

…Petitioners

VERSUS

The State of Azad Jammu and Kashmir through Advocate-General of the State of Jammu and Kashmir and another.

…Respondents

Appearances:

For the Petitioners:	Mr. Tahir Aziz Khan, Advocate.
For the State:	Sh. Masood Iqbal, Advocate-General.
For Respondent No.2:	Ch. Abdul Jabbar, Advocate.

Date of hearing: 08.05.2024

ORDER:

***Raza Ali Khan, J*:-** Impugned, herein, is the judgment/order dated 29.12.2023, passed by the Shariat Appellate Bench of the High Court *(hereinafter to be referred as High Court*) in Revision petition No. 459 of 2023.

2. The facts shortly stated are that the petitioners who are currently undergoing trial for the alleged murder of Shahnawaz Kiani, face charges under sections 302, 337-A(i), F(i), 147, 148, and 149 APC before the District Court of Criminal Jurisdiction, Jehlum Valley. During the prosecution's evidence, the testimony of Manzar Chughtai, the Investigation Officer (PW), testified on June 15, 2023, with his cross-examination conducted on August 30, 2023. During this cross-examination, he revealed the existence of additional statements of purported prosecution witness being their signatures and thumb impressions, besides the alleged statement under section 161 of Criminal procedure Code. The petitioners requested the trial court to provide the copies of these statements for further cross-examination which the Court denied. Dissatisfied with this order of the trial Court the petitioners filed a revision petition before the learned High Court, seeking to set-aside the impugned order of the District Criminal Court, Jehlum Valley, dated August 30, 2023. Following due process, the High Court, through its judgment/order dated December 29, 2023, dismissed the revision petition.

3. Mr. Tahir Aziz Khan, the learned Advocate representing the petitioners, contended that the decisions made by the trial Court and the learned High Court directly contradict the established law and fundamental right of fair trial of the petitioners. He argued that both the Courts unlawfully refused to provide the requested statements, despite the prosecution's alleged reliance on them and investigation Officer’s admission that they are identified by the statement recorded under section n161 Cr.PC. He highlighted that the prosecution refused to provide these statements undermine the petitioner’s basic rights implying that the prosecution did, in fact, rely on and utilize these statements against the accused-petitioners to implicate them in this purportedly false and concocted case. He further emphasized that under these circumstances, it is imperative for the trial court to provide the requested records to ensure a fair, impartial, and just trial; however, the court unlawfully rejected this request. In conclusion, he prayed for the appeal to be accepted and for the orders of the lower courts to be set aside.

4. On the contrary, the learned Advocate-General representing the State and Ch. Abdul Jabbar, the learned Advocate for respondent No. 2, argued that the judgments rendered by the both Courts are in alignment with both the law and the factual context of the case. They asserted that the alleged statements sought by the petitioners are integral components of the prosecution's record, and as such, cannot be furnished to the petitioners due to legal constraints. Additionally, they contended that the purported statements and those recorded under Section 161 of the Criminal

Procedure Code are identical, thus justifying the rightful dismissal of the petitioners' application by the trial and High Court. To bolster their argument, the learned Advocate-General referenced the legal precedent established in the case of *Arshad Mehmood and another vs. Tariq Mehmood and another*, [2010 SCR 75], highlighting that under section 161(3) Cr.PC ,the police officer may reduce into writing any statement made to him in the course of an examination and if he does so he has to make a separate record of the statement of each such person whose statement he records and this fact, however, would not mean that prosecution story is completely tainted. Moreover, during the hearing, the Investigation Officer affirmed that the statements bearing signatures and thumb impressions were recorded solely for personal satisfaction and were not included in the charge sheet, indicating that they form part of the police file rather than the official court record.

5. After carefully considering the arguments presented by the learned counsel for both parties and examining the available case record, it becomes apparent that the petitioners requested the trial court to supply the copies of statements of prosecution witness recorded under Section 161 of the Code of Criminal Procedure (Cr.PC) containing signatures and thumb impressions. This matter appears to fall under the purview of Section 265(C) of the Cr.PC, which outlines the procedure for supplying statements and documents to the accused. To provide clarity and context, it is beneficial to reproduce the pertinent provisions of this section, as follows: -

> **"265-C. Supply of statements and documents to the accused**.---(1) In all cases institute upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely;
> (a)the first information report;
> (b)the police report;
> (c)the statements of all witnesses recorded under sections 161 and 164, and
> (d)the inspection note recorded by an Investigation Officer on ha first visit to the place of occurrence and the note by him on recoveries made, if any:
> Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused."

6. Section 265-C of the law outlines the procedure for providing statements and documents to the accused in criminal cases initiated based on a police report. This provision mandates that the accused must be given copies of specific documents at no cost, and this must be done no later than seven days before the trial begins. These documents include the First Information Report (FIR), which is the initial report filed with the police regarding the alleged offense. Secondly, the accused must receive the police report, which summarizes the findings of the investigation. Furthermore, statements made by all witnesses recorded under Sections 161 and 164 of the law must be provided to the accused. Section 161 deals with statements made to the police during the investigation, while Section 164 pertains to statements made before a magistrate. Lastly, the accused must be given the inspection notes made by the investigating officer during their first visit to the scene of the crime, as well as any notes

regarding recoveries made during the investigation. However, there is a provision that allows for the exclusion of any parts of statements recorded under Sections 161 or 164 if their disclosure to the accused would be against the public interest. Furthermore, the basic purpose of supplying the copies of documents under section 265(C) Cr.PC is to facilitate the accused so that he may know the accusation and gauge the evidence against him.

7. Police officers often have the practice of summarizing or condensing the statements of certain witnesses during investigations, either in formal documents called Ziminis or in gist form. These condensed statements, known as 'boiled statements,' can significantly impact the case as they may either incriminate or exonerate the accused. It is a legal requirement that the accused be provided with copies of such statements. This legal provision aims to ensure that the accused is not disadvantaged in their defense, as they rely on the evidence and material gathered by the investigating agency to determine their defense strategy. By providing access to these statements, the law seeks to uphold the principle of fairness and ensure that the accused can make informed decisions regarding their defense based on the available evidence. In a case reported as *Muhammad Tahir vs. The State*[1], an identical situation arose before the Peshawar High Court, whereby, the Court observed as under: -

> "20. In order to resolve the controversy and to be fair to all the accused, it would be proper to direct the learned trial Court to supply to the accused-petitioner as well as other accused in the case the

[1] [1986 Pcr.LJ 3025]

> copies of the statements of all the witnesses recorded by the Police Officers who investigated the case under Chapter XIV of the Code of Criminal Procedure. Such statements, either in details or in gist form, may have been recorded by the police separately or in the police Ziminis. The copy of each such statement, either in details or in gist form or in police. Ziminis, as the case may be, shall now be provided to the accused-petitioner and the other accused. The Court would, however, be competent to direct the exclusion of any part of such statement if it falls within the purview of the proviso to subsection (1) of section 265-C, Cr.P.C. In addition, the copies of the other documents mentioned in section 265-C(1) , Cr.P.C. Shall also be provided to all the accused. This direction shall also be followed in the case under section 307/109, P.P.C. Which has been amalgamated with the main case under section 302 etc., P.P.C. If a separate record was prepared by the Investigating Agency with respect to that case."

8. However, section 172 of the Criminal Procedure Code (Cr.PC) provides an exception to Section 161, establishing the independence of the two provisions. While Section 161 mandates that the Investigating Officer must separately record statements from individuals familiar with the case's facts, Section 172 pertains to the maintenance of case diaries, documenting the investigation's progress. Case diaries are deemed privileged and inaccessible to the accused, as they serve as a record of the investigation's various stages. However, statements recorded under Section 161, even if included in case diaries, do not enjoy the same privilege. These statements are considered public documents under Article 49 of the Qanun-e-Shahadat, 1984, and are inherently relevant under the same article. While the privilege granted by Section 172 is not absolute, it does

afford the accused the right to access case diaries for cross-examination purposes, subject to court orders. Furthermore, the court may compel the Investigating Officer to reference the case diaries to accurately respond to cross-examination queries. Additionally, case diaries serve as valuable tools for the court to track the investigation's progression. We are fortified in our view by the case reported as *Muhammad Riaz and another vs. The State*, [PLD 2003 Lahore 290], wherein, it has been held as under: -

> "It is pertinent to state here that section 161 of the Cr.P.C. Is independent of its section 172. Section 161 requires an Investigating Officer to record statement of a person who is acquainted with the facts of the case separately and section 172 which is independent, relates to maintenance of case diaries as record of the various stages through which the investigation has passed. It is only the case diaries which are meant to be treated as "privileged" and shall not be made accessible to the accused. It means clearly that the statements recorded under section 161 of the Cr.P.C. Are not privileged even if recorded in the body of the case diaries. Those are public documents within the meaning of Article 49 of the Qanun-eShahadat, 1984 and are per se relevant under its Article 49. Moreover, the privilege stated in section 17.2 of the Cr.P.C. Is not of absolute nature. The provisions of the Qanun-e-Shahadat, 1984 are independent of the Cr.P.C. An Investigating Officer has to refresh his memory by looking into the case diaries at the time he makes a statement in Court. Article 155 of the Qanune-Shahadat, 1984 provides that a witness, may, while under examination, refresh his memory by referring to arty writing made by himself at the time of the transaction concerning which he is questioned or so soon afterwards that the Court considers it likely that the transaction Was at that time fresh in his memory. The witness may also refer to any such writing made by any

other person and read by the witness within the time aforesaid, if when he read it, he knew it to be correct. Whenever a witness may refresh his memory by reference to any document he may with the permission of the Court, refer to a copy of such document provided the Court be satisfied that there is sufficient reason for the non-production of the original. An expert may refresh his memory by reference to professional treatises. Article 156 of the Qanun-e-Shahadat, 1984 is to the effect that a witness may also testify to facts mentioned in any such document as is mentioned in Article 155. Although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. Article 157 of the Qanun-e-Shahadat, 1984 is to the effect that any writing referred to under the provisions of the two fast preceding Articles must be produced and shown to the adverse party, if he requires it. Such party may, if he pleases, cross-examine the witness thereupon. It is abundantly clear that the privilege referred to in section 172 of the Cr.P.C. Is not of absolute nature and allows the accused to have access to the case diaries to contradict through cross-examination the Investigating Officer. Reliance can be placed on PLD 1992 Lahore 336 in which it has been held that the Investigating Officer is bound to look into the case diaries recorded by him during the investigation of a case. In terms of Article 15 of the Qanun-e-Shahadat, 1984 the Court can force him to look into case diaries to answer correctly the questions put to him in cross-examination. The case diaries can also be used by the Court to trace out the various stages of investigation."

9. At this occasion we also cannot ignore Article 19 of Azad Jammu and Kashmir Interim Constitution,1974 which envisions right to fair trial.

> "**19. <u>Right to fair trial</u>.** – For the determination of this civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process."

What is significant in the above Article is the phrase and expression ‘fair trial’ and ‘due process’. No doubt it is the role of government to hold people to account for crimes they have committed and ensure that justice is done and seen to be done. It is also their responsibility to maintain law and order situation for the betterment of society and to create deterrence against the crimes so that the crime ratio should be lessened and diminished. Simultaneously, a grave responsibility is also attached to them because convicting a person of a criminal offence and potentially taking away liberty is one of the most serious steps which is only justified after the person has been given opportunity of fair trial which is a best devices of separating the guilty from the innocent and protection against the injustice. The fair trial is also recognized internationally as a foundation of freedom and justice and fundamental human right. So far as the phrase and or expression ‘due process of law’ is concerned, it means a legal requirement that the state must respect all legal rights that are owned to a person. Due process balances the power of law of the land and protects the individual person from it. It is analogous to the concept of natural justice and procedural justice.

10. In the light of what has been state above, we find it imperative that no pre-judice will be caused to any of the parties in case of supply of the statements as prayed for, therefore, we are constrained to accept the revision petition and set-aside the orders of the High Court as well as trial Court. The trial Court is directed to supply the copies of the statements containing signatures and thumb impressions

recorded by the Investigating Officer Manzar Chughtai, as prayed for.

JUDGE **CHIEF JUSTICE**

Mirupr,
14.05.2024