

Case Comment

Police Investigations and the Zulfiqar Ali Bhutto Case

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The opinion of the Supreme Court of Pakistan on the constitutional reference sent by the President of Pakistan has been rendered (PLD 2024 SC 509). It makes a scathing criticism of the criminal proceedings and takes into account many a theme that have been in the discourse on the case for long. For example, the opinion discussed, in detail, the consequences of leapfrogging the criminal processes by which Lahore High Court, that opted to hold trial of the case itself instead of leaving the matter to the Sessions Court. Likewise, it was noted that by doing so, the important statutory safeguard of confirmation of death penalty under section 376 of the Code of Criminal Procedure, 1898 (Code) was bypassed denying the accused both a forum of appeal and an opportunity to defend against confirmation of death penalty as envisaged in the law. Quintessentially, the opinion is trial-centric and has focused more on the role of judges in the court and less on the pre-trial mechanics that took place prior to the adjudication. This piece has been written to highlight the issues related to police investigation that affected the final outcome of the case of Zulfiqar Ali Bhutto (ZAB).

It may be noted that under the present legal framework, the right to investigate a criminal case solely rests with the police/investigation agency. This point is almost written in stone insofar as the law is concerned. It has statutory basis in section 4(1) of the Code that ordains ‘collection of evidence by police’ as ‘criminal

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investigation'. In case, the evidence is collected by anyone other than police, it is to be brought on the case-file through a formal and legal process called the Police Professional Work (PPW), in police parlance. The statutory role of police at the crime scene is protected under Rule 25.33 of the Punjab Police Rules, 1934 (Police Rules). Even the forensic evidence collected through the staff of a forensic science agency (like the Punjab Forensic Science Agency established under the Punjab Forensic Science Agency Act, 2007) has to process it as declared in a latest judgment of the Lahore High Court that interpreted section 4 of the Punjab Forensic Science Agency (PFSA) and held that the technical and forensic staff can seek clarification from police officer who collected the evidence, but cannot, him[her] self-collect the evidence. The judiciary has always distanced itself from the function of investigation as it is purely an executive function. The principle was articulated by Justice Porter in his speech in *Emperor vs Kh Nazir Case* ((1945) 27 BOMLR 245)), and has been favourably followed and cited by the courts since. This point was discussed briefly in the opinion of the court, but not with the required thrust. In the case of Zulfiqar Ali Bhutto (ZAB), the police was not able to solve the murder case as shown by the record of the case. Besides, the poor evaluation of the evidence of the case, the case suffered from many problems related to investigation. Some of the chief issues were:

- a. The crime scene was not properly inspected. The police only recorded statement of the complainant and did not take pain to associate other eye-witnesses to maximize the information for investigation of the case;
- b. As noted in the opinion, no genuine forensic evidence was collected. Even the spent casings collected from the crime scene did not match the weapon of offence attributed to the perpetrators of crime from the Federal Security Force (FSF). A very dangerous inference was drawn by assuming that the weapons were substituted on the behest of ZAB. The

negative report of forensics should have been transformed into a benefit of doubt and the capital punishment should not have been awarded;

- c. The administration of investigation in form of its entrustment and transfer from one agency to another was also not as per law. The role of senior police officers (gazetted officers) through their supervision as noted in Rule 25.17 of the Police Rules was not considered in the case. The transfer of investigation from local police to the Central Intelligence Agency (which is mistakenly stated as Central Investigation Agency) was not documented and was not transparent. The Central Intelligence Agency (CIA) is a product of the Police Rules and is established under Rule 21.35. The CIA is just an intelligence wing of the police with the mandate to provide information about inter-district crimes. Since long, the CIA was not working as per its legal mandate as contained in Police Rules. The legal position of the CIA was not discussed in the opinion. For record, it may be stated that the Supreme Court, while looking at the powers of police officers posted in CIA, held in the case of *State vs. Bashir* (PLD 1997 SCMR 408) that its officers were not police officers in terms of section 4(p) of the Code. Owing to this fact, the Punjab Police got amended the Police Order, 2002 to add new article 18-B to the Police Order, 2002 to allow the Organized Crime Units (OCU) to investigate criminal cases.
- d. Likewise, the change of investigation from provincial police to the federal police (the Federal Investigation Agency established under the Federal Investigation Agency Act, 1974) is yet to be addressed. The consequences of blatant

violation of administrative and procedural safeguards were not discussed in the opinion.

The aforementioned points are not exhaustive and only highlight broad areas that must be noted for reform of the criminal justice system. The ZAB case was symptomatic of the system that is experienced by citizens on daily basis, though in different form. The inadequacies of the criminal justice system must be fixed at the earliest as the internal security is mirrored by peace, truth and fairness. The judiciary in Pakistan has spoken in unison and has declared the truth; now, the burden is on all segments of the society to complement the effort by telling their part of the truth and to work to improve and reform the system for posterity.