

P L D 2016 Sindh 238

Before Salahuddin Panhwar, J

NASRULLAH---Petitioner

Versus

**STATION HOUSE OFFICER, POLICE STATION JACOBABAD and 6 others---
Respondents**

Constitutional Petition No.S-618 of 2012 and S-65, S-74, S-79, S-134, S-164, S-226, S-284, S-337, S-697, S-814, S-834, S-845, S-932 and S-1079 of 2015, decided on 14th October, 2015.

(a) Words and phrases---

----"Accused"---Meaning.

Black's Law Dictionary (Eighth Edition) rel.

(b) Words and phrases---

----"Abscond"---Meaning.

Black's Law Dictionary (Eighth Edition) rel.

(c) Police Rules, 1934---

----R. 23.25--- Proclaimed offender---Information to public---Object, scope and purpose---Not only every police officer was responsible to arrest a proclaimed offender but the rules permit informing public of such proclamation of arrest---Purpose of informing public could be nothing except to have help from public in causing arrest of such persons.

(d) Police Rules, 1934---

----R. 23.25---Criminal Procedure Code (V of 1898), Ss. 59, 87 & 88---Constitution of Pakistan, Art. 199---Constitutional petition---Proclaimed offender, arrest of---Procedure---Grievance of petitioners was that police had not arrested their accused persons despite they had been declared as proclaimed offenders---Petitioners had further grievance that the accused persons who had been declared proclaimed offenders were leading normal lives without any deterrence of arrest---Validity---If accused persons were enjoying normal rights then purpose and object of declaring one as 'absconder/proclaimed offender' never served its objective nor would so if allowed to continue on the hearts of the files only---High Court issued directions to the police authorities in that respect.

High Court directed the Inspector General of Police, DIGPs and SSPs to:

- (i) ensure proper maintenance of relevant register(s), as insisted by Chapter XXIII of Police Rules, 1934, at every police station or at relevant place, as explained by the relevant rules;
- (ii) ensure proper checking thereof periodically;
- (iii) ensure progress in this regard and reward to rightful and necessary action against negligent;
- (iv) ensure attachment of properties of such proclaimed offenders against whom proceedings under section 88, Cr.P.C., stood completed by approaching concerned Mukhtiarkar or head of Revenue authority at district level;
- (v) ensure creation of well-organized websites containing details of proclaimed offenders and absconders wanted by concerned Courts as well as Police Stations concerned of relevant districts with friendly use/utility for private informants, whereby information conveyed by the informant should be sent automatically to the concerned I.O./Police Station, SSP and District and Sessions Judge simultaneously. Needless to add here that secrecy of private informant from general public should be ensured;
- (vi) ensure wide circulation of information regarding creation of such website(s) for general public in electronic and print media, seeking their cooperation in arrest of those proclaimed offenders and absconders with assurance of their anonymity of informants in order to curb criminal elements at large;
- (vii) ensure proper display, communication and update of information/data of absconders/proclaimed on such website periodically;

In second phase, they are further directed to:

- a. establish "cells" on districts and divisions levels specifically for the purpose of maintaining record of such persons, shall be fully equipped with modern devices;
- b. the Cells shall develop a relation-nexus with NADRA in getting/collecting data of such persons;
- c. the Cells shall also develop a mechanism by consultation with Member, Board of Revenue, Sindh, so as to have details of properties of all such persons and to proceed for attachment thereof;
- d. the Cells shall also develop a net-working with consultation of State Bank for getting/obtaining details of Bank-accounts of such persons and then to process such information to concerned court(s)/authority for necessary order of attachment/seizure etc. as such money falls within the meaning of section 88(3)(a) of the Code;
- e. the Cells shall also communicate details of proclaimed offenders to F.I.A. for placing their names in E.C.L. (Exit Control List).

A detailed report regarding efforts taken towards first phase, shall be communicated to High Court within a period of one month, wherein detailing the issuance of 'reward to deserving'; 'action against negligent' and progress in lessening such mountain of absconders/proclaimed offenders. All the S.H.Os. shall be directed to submit quarterly report to the ILLAQA Magistrate regarding progress towards matter of absconders/proclaimed offenders.

The report regarding second phase, shall also be submitted to High Court within a period of three months showing progress towards such subject. Any further effective addition in first and second phase shall be a mark of appreciation on part of the IG, DIGs and SSPs of Police.

Issue of special funds, meant for investigation, be mechanized in a manner so as to eliminate all chances of intervention of third person and such fund should directly reach the Investigation Officer concerned through cross-cheque(s), which surely will make the investigation officer accountable for speedy and effective investigation without an excuse of having no fuel etc. Needless to add that purpose of 'reward' or allocation of funds towards investigation was always to encourage investigating officers to use all means without a fear of spending his own money (salary) in the name of 'duties'. Separate record shall be maintained on police station(s) level, non-compliance shall expose to the contempt proceedings.

Since, with reference to sections 87 and 88 of the Code, the Court(s) were under heavy obligations(s) to complete process of publication of proclamation (87) and that of attachment (88) within strict meaning purpose and object of the provisions, which could not be achieved unless the Court(s) took advantage of available means particularly that of establishment of I.T. Cell at District Level, therefore, the I.T. personnel working at District level should be engaged to:

- * prepare and maintain data of proclaimed offenders(s) of Judicial District maintaining the statistics thereof on daily basis and to present the same before District and Sessions judge for communication to Sr. Superintendent of police of that District for progress and report thereof, which, if found unsatisfactory, be communicated to DIGP;

- * Fix all cases kept on dormant file on quarterly basis and call progress report in those matters by directing concerned SHOs.

(e) Investigation---

---Conclusion of--- Scope--- Investigation continues till the crime is unearthed and guilt or innocence is determined by courts of law.

(f) Criminal Procedure Code (V of 1898)---

---Ss.87, 88, 344 & 512--- Proclaimed offender, case of---Procedure---Cases wherein police submits final report/charge sheet by showing all accused as absconders under S.512, Cr.P.C., such report should not be treated as final report---Magistrate should postpone cognizance in terms of S.344, Cr.P.C., by treating such report as an interim report and should fix those cases fortnightly for progress report.

(g) Constitution of Pakistan---

---Art. 199---Constitutional petition---Writ of mandamus---Direction to police officer---Scope---Writ of mandamus is available where one legally bound to perform is guilty of avoiding---Police officer needs no direction from High Court even for performing his duty.

Asif Ali Abdul Razzak Soomro and Safdar Ali Ghouri for Petitioner (in C.P. No.S-618 of 2012).

Naimatullah Bhurgri for Petitioner (in C.Ps. Nos.S-65 and 284 of 2015).

Ali Nawaz Ghanghro for Petitioner (in C.P. No.S-74 of 2015).

Akeel Ahmed Bhutto for Petitioner (in C.P. No.S-79 of 2015).

Muhammad Imran Abbasi for Petitioner (in C.Ps. Nos.S-134 and 834 of 2015).

Mir Muhammad Buriro for Petitioner (in C.P. No.S-226 of 2015).

Mrs. Najaf Shah for Petitioner (in C.P. No.S-337 of 2015).

Mumtaz Ali Brohi for Petitioner (in C.Ps. Nos.S-164 and S-932 of 2015).

Rafique Ahmed K. Abro for Petitioner (in C.Ps. Nos.S-697 and 814 of 2015).

Imdad Ali Junio for Petitioner (in C.P. No.S-845 of 2015).

Muhammad Afzal Jaghirani for Petitioner (in C.P. No.S-1079 of 2015).

Athar Abbas Solangi and Shamsuddin Abbasi Amicus Curiae.

Shahzado Saleem, Assistant Prosecutor General.

Abdul Hamid Bhurgri, Additional Advocate General along with Dr. Sain Rakhio Mirani, DIGP Larkana and Kamran Nawaz Panjutha, SSP, Larkana.

Date of hearing: 8th October, 2015.

ORDER

SALAHUDDIN PANHWAR, J.--Through this common order, I intend to dispose of the captioned petitions, wherein the petitioners are seeking arrest of absconding accused persons, nominated in the F.I.Rs, as well as arrest and production of proclaimed offenders before the trial Courts concerned. For the sake of brevity relevant facts are as under:-

2. C.P. No.S-618 of 2012: Petitioner is seeking arrest of six proclaimed offenders in the case, arising out of F.I.R. lodged by him, regarding murder of his father, contending that the case was challaned by respondent No.1 without arresting the accused persons nominated in the F.I.R; despite issuance of N.B.Ws by the learned trial Court, the SHO concerned had failed to arrest

the accused due to ulterior motives, whereas the accused had allegedly occupied more than hundred jirebs of his land.

3. C.P. No.S-65 of 2015: Petitioner seeks arrest of four proclaimed offenders in the case registered by him in respect of murder of his son and injuries caused to his cousin Saifullah, who were not being arrested by the police despite coercive process in shape of N.B.Ws being issued by the trial Court.

4. C.P. No.S-74 of 2015: Petitioner is seeking directions to the SHO P.S. Warrah for arrest of absconding accused in the case registered by him regarding murder of his son, contending that the police was reluctant to arrest the accused, though, many times, his whereabouts were pointed out by the petitioner.

5. C. P. No.S-79 of 2015: Petitioner's case is that he lodged F.I.R. regarding murder of his brother Nadir Ali; the SHO and I.O concerned having mixed up with accused party challaned the case on the basis of partial investigation, whereby only one of the nominated accused was sent up to face trial and remaining all were left un-arrested, who were roaming about in the locality, thus, he seeks arrest of those proclaimed offenders.

6. C.P. No.S-134 of 2015: Petitioner has sought directions for arrest of nominated accused in the F.I.R. lodged by him under Sections 324, 114, 337-H2, 148, 149, P.P.C., asserting that the accused being influential persons were not being arrested by the respondents No.1 and 2/police officials, and that the accused persons were extending him threats of murder.

7. C. P. No.S-164 of 2015: It is stated that accused/respondents Nos.4 to 6 committed theft by house trespass and also caused firearm injuries, for which petitioner lodged FIR and one of the nominated accused, namely, Roshan though was arrested, but the police after receiving huge bribe released him and challaned the case. It was further case of Petitioner that he was being threatened by the absconding accused to withdraw from the case, and the police officials were not taking any effort to arrest them.

8. C.P. No.S-226 of 2015: Perusal of petition reflects that petitioner and his relative were attacked upon by five accused persons, for which he approached the concerned police for registration of FIR, which was initially refused and then on payment of Rs.30,000/- his F.I.R was recorded against four nominated accused and one unknown person, but the I.O. had failed to make any progress in the investigation and none of the accused was arrested so far.

9. C.P. No.S-284 of 2015: It was claimed that petitioner lodged FIR in March, 2015 against five nominated accused persons, of whom accused Niaz though was arrested by the I.O., but was not being produced before any Magistrate for remand and his arrest was also not being shown on record with mala fide intention and ulterior motives, whereas the rest of nominated accused were freely roaming.

10. C.P. No.S-337 of 2015: Petitioner in the instant petition is seeking investigation in the murder case of her brother Bakhtiar through a high rank police officer as well as arrest of accused/private respondents involved in such murder.

11. C.P. No.S-697 of 2015: The petitioner is seeking arrest of absconding accused Barkat Ali along with co-accused, who had allegedly abducted Mst. Ghinwa in a case registered under Section 365-B, P.P.C. by the petitioner; contending that the absconding accused were continuously extending threats of murder and pressurizing him to withdraw from the case. The police officials/respondents Nos.1 and 2 despite his approaches were avoiding to arrest him.

12. C.P. No.S-814 of 2015: It is claimed that in 2013, petitioner lodged F.I.R against four nominated accused under Sections 489-F, 420, 406, 506, P.P.C.; the challan whereof was submitted under Section 512 Cr.P.C and in 2014 nominated accused Abdul Wahab was arrested, but being influential person police released him and illegally detained the petitioner, hence through instant petition, petitioner is seeking arrest of nominated accused.

13. C.P. No.S-834 of 2015: Petitioner's case is that he lodged F.I.R against six nominated and three unknown accused persons for committing murder of his brother Riaz, in which two accused were arrested, while remaining being influential persons and supporters of local MPA, were still at large. The official respondents Nos. 1 and 2 instead of arresting the said absconders were harassing the petitioner, therefore, by filing instant petition, petitioner is seeking directions for arrest of absconding accused.

14. C.P. No.S-845 of 2014: It is pleaded that in the background of dispute over joint family property, petitioner's brother, namely, Akber Hussain committed a murderous assault thereby causing him (petitioner) firearm injury on his foot; he lodged FIR under Section 324, P.P.C.; the I.O. concerned without arresting the accused submitted challan; despite repeated N.B.Ws. absconding accused Akber Hussain, though available in his house, was not being arrested and he has been declared proclaimed offender.

15. C.P. No.S-932 of 2015: It is the case of petitioner that the relatives of her first husband having enraged on her contracting second marriage, after demise of her first husband, abducted her son Jabbar and daughter Mst. Shaheena and she after seeking orders from concerned Sessions Court had lodged FIR; that despite her approaches to DIGP, the concerned police without effecting recovery of her abducted son and daughter and without arresting the nominating accused have submitted challan; thus through instant petition, she is seeking arrest of absconders and recovery of abductees.

16. C.P. No. S-1079 of 2015: Petitioner lodged FIR under Sections 365-B, 452, 148, 149, P.P.C. regarding abduction of her daughter, in which police initially arrested the accused persons but later-on released them on receiving huge bribe; report under section 173, Cr.P.C. was submitted without arrest of any accused or recovery of abductee; accused persons were compelling petitioner to withdraw from the case, hence she filed instant petition seeking directions for arrest of absconding accused and recovery of her daughter/abductee, besides protection against the harassment.

17. In compliance of order dated 05.10.2015, DIGP, Larkana has submitted report giving details of absconders and proclaimed offenders in Larkana Division; relevant paragraph (No.1) is as under :-

"That, in pursuance of directives contained in order dated 05.10.2015, passed by this honourable Court list of absconders in cases pending under adjudication and proclaimed offenders in cases kept on dormant file was called from Senior Superintendents of Police, all of Larkana Range, vide this office letter No. Legal/DIGP/LRK/31847-53 dated 06.10.2015. They have submitted as under:

Sr.	District	Cases Pending Under Adjudication	Cases Kept on Dormant file	No. of Absconders	No. of Proclaimed offenders	District wise No. of P.Os absconders.
1	Larkana	1077	933	6985	4186	11171
2	Kamber	559	1017	7893	2315	10208
3	Shikarpur	1917	1370	1382	19142	20524
4	Jacob-Abad	777	681	2839	3010	5849
5	Kashmore	1635	1132	5691	5824	11515
Range Total		5965	5133	24790	34477	59267

- 2) That, district wise lists in shape of booklets are submitted herewith for kind perusal.
- 3) That, any order passed by this Hon'ble Court will be implemented in letter and spirit."

18. Similarly, learned District and Sessions Judges as well as Special Judges of A.T.Cs. have also furnished their respective reports in respect of number of proclaimed offenders and absconders in their respective district as under:-

Sr. No.	District	Proclaimed offenders	Absconding Accused.
1	Larkana	8515	2611
2	Kamber	4143	588
3	Shikarpur	11277	1028
4	Jacobabad	2839	3010
5	Kashmore	7093	2882
6.	ATC Kashmore@Kandhkot	411	44
7.	ATC Larkana	383	19
8.	ATC Shikarpur	376	118
Grant Total		35037	10,300

19. I have heard learned counsel appearing on behalf of petitioners, learned A.A.G, learned A.P.G, learned Amicus Curiae, as well as DIGP, Larkana Range at considerable length.

20. In reply to the Court query as to how they will cope with the alarming situation of there being 24790 absconding accused as well as 34477 proclaimed offenders, which comes to a total of 59267 (fifty-nine thousand, two hundred sixty seven), the DIGP, Larkana Range, contended that no doubt it is an alarming situation but they had taken concrete steps and comparatively this year than the last year they had brought down the crime rate; almost 14000 deployment of police personnel from the rank of police constable to S.P is there, out of whom 20% have no

vehicles facility, 40% Police Stations are running without building and 80% police officials are without accommodation, therefore, they are facing trouble due to lack of such basic facilities; in order to cope with the above alarming situation, they are also utilizing electronic gadgets of advanced technology system for tracking the absconders and proclaimed offenders through mobile phones and special teams have also been constituted, in which every S.P. is made responsible to bring down the number of proclaimed offenders and absconding accused and national action plan is going on; amongst the reasons of such huge number of P.Os. and absconders; there are longstanding clashes between clans/ tribes in Shikarpur and Jacobabad Districts, in which the police constables, mostly local residents of that area, are unable to do substantial job in order to avoid the likely consequences in view of bitter past experience and the police constable is a basic unit, therefore, they are facing problems and it is very difficult to shift bulk of P.Cs from one district to another, as it would be very difficult to manage the things.

21. Mr. Asif Ali Abdul Razzak Soomro, counsel for the petitioner, contended that in our country the police force is having limited sources and training, hence there should be major part of law enforcing agencies to curb the situation.

22. Mr. Ali Nawaz Ghanghro, learned counsel for the petitioner, contended that in order to curb the situation, he would suggest to depoliticize the entire police department; any officer who is local resident may not be posted in his locality; criminal element in police department may be wiped out; police officers are living beyond their means, their accountability must be ensured; government should provide all facilities equivalent to the Islamabad police and lack of professionalism/necessary training is also crucial, they must be provided such training to the standard of armed forces.

23. Mr. Habibullah G. Ghouri, counsel for the petitioner, contended that timely action against the culprits should be taken before they turn into strong gang, which requires full-fledged war against them.

24. Mr. Rafique Ahmed K. Abro, advocate for petitioner, suggested that detailed report from I.G.P. and P.G. Sindh may be called in respect of provision of funds, vehicles and fuel provided to the I.Os.

25. Mr. Athar Abbas Solangi, Advocate/Amicus Curiae, contended that there should be merciless operation against the culprits; police officers be given independent position to work without political influence to bring good fruitful result, because one man can bring good change as is done by some police officers in certain districts and the tendency of transferring honest police officers within months' time and leaving corrupt high rank police officers on the posting for years together should be changed.

26. Mr. Shamsuddin Abbasi, Advocate/Amicus Curiae, while referring Police Rules and relevant sections of Criminal Procedure Code, contended that law provides mechanism to curb the crime and arrest the proclaimed offenders, but there is complete failure on the part of police, hence they may be directed to follow and comply with the police rules strictly.

27. Mr. Shahzad Saleem, Assistant Prosecutor General, contended that Investigating Officers, who have to perform field duty, are not being paid funds to conduct investigation properly; they have not been provided vehicles and fuel to go into field in search of culprits or conduct fair investigation; hence the I.Os being basic units of investigation department, without availability of such resources, would naturally perform paper work only and under the prevailing circumstances fair investigation cannot be expected from them.

28. The figure of absconder(s) and proclaimed offenders surfacing as a mountain of 59267/-bodies, which too in five district(s) only, for all citizens and authorities is an alarming and shocking figure; presence and fearless movement of such huge number of absconders/proclaimed offenders even is an unseen threat to guaranteed fundamental rights of the citizens of such Districts. It is pertinent to mention that happening of offences in a society is quite natural, therefore, concept of active functioning of 'Law Enforcing Agency' is a mandatory element for a peaceful society. A proper mechanism for assuring dispensation of justice, if fails, shall result in collapsing the whole system even, however, before proceeding further, it would be proper to first refer the meaning of terms 'accused' and 'abscond' which per Black's Law Dictionary (Eighth Edition) are:

'ACCUSED'

1. A person who has been blamed for wrongdoing; esp. a person who has been arrested and brought before a magistrate or who has been formally charged with a crime (as by indictment or information). A person against whom legal proceedings have been initiated.

while the term 'abscond' is defined as:-

'ABSCOND' To depart secretly or suddenly, esp. to avoid arrest, prosecution, or service of process. 2. To leave a place, usu. Hurriedly, with another's money or property.

From above definitions, it should not be confusing any more that per both terms there is a charge (allegation) against a person. The one who either appears or is brought to face the trial shall be tagged with status of 'accused' but one, who with active knowledge, avoids prosecution against him shall stand tagged with status of 'absconder'. In short, the main difference is that of 'to honour the process of law' or 'to avoid the process of law'. One who honours and respects the law cannot be made to stand in the row of those who intentionally choose otherwise, as far as privileges ensured by the Law itself are concerned, because the privileges/fruits shall be available to those only who acknowledge the existence of 'tree' (Society, State, as the case may be). At this particular point, a reference to meaning of term 'citizen', being relevant to make viewpoint clear, needs to be referred, which per Black's Law Dictionary (Eighth Edition) is:

'CITIZEN'

A person who, by either birth or naturalization, is a member of a political community, owning allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges.

29. Thus, it can safely be said that a person, even if accused of an offence, shall continue to be a 'citizen', but the moment he chooses the act of 'abscondance', he ceases to be an abiding 'citizen' because Article-5(2) of the Constitution insists that:

'Article-5(2). Obedience to the Constitution and law is the (inviolable) obligation of every citizen, wherever he may be and of every other person for the time being within Pakistan.'

Since, the issue involved is in respect of the 'absconder/proclaimed offender, therefore, to properly attend the issue, I would say that while examining the Criminal Procedure Code, Police Rules and other relevant law(s), it is manifest that law provides two mechanisms to compel an accused to face the charge i.e. by appearing or bringing before the Court of law either by 'arrest' or 'compelling him/her to appear'. The former needs no interpretation or explanation but the latter is one wherein the law permits stepping over certain fundamental rights, as enshrined in Articles-15 to 20 and 23, for compelling one (absconder/proclaimed offender) to cause his appearance before the Court of Law or Authority concerned, which fundamental rights otherwise are guaranteed for every single citizen.

30. To strengthen such conclusion, it would be material and relevant to first have a sail through Chapter-XXIII of Police Rules, 1934, which insists surveillance over 'suspects', 'bad-characters', 'proclaimed offenders', deserters etc. as one of the means to prevent offences. Worth to add that title of Chapter-XXIII of Police Rules, 1934 is 'PREVENTION OF OFFENCES' though it only speaks about maintaining record of such persons; keep a watch over their movements; their modes of livelihood; properties and even their relatives. A brief reference to such Chapter, being helpful, is made hereunder:-

23.1. Patrolling at rural stations--(1). This casts a mandatory duty:

- i) to pay special attention to villages where crime has occurred, or where registered bad characters and suspects whose history sheets are on record live,
- ii) to pay visit to every village occasionally for the purpose of adding to their local knowledge, becoming known to the people, collecting information, and checking the proper performance of their duties in relation to crime by zaildars, in a mkhors, lambardars and chaukidars.
- iii) to collect information regarding the mode of live hood of bad characters;
- iv) to obtain, mainly by personal visits and inquiry, so as to ascertain whether certain specified bad characters are present or not, and trace the whereabouts of proclaimed offenders of absconders.

This means that officer-in-charge (SHO) should have such information by paying visits, inquiry and collecting information from headman (people) and since this Rule has been kept at the top of the Chapter, therefore, importance of such knowledge and information cannot be denied to be very effective for preventing offences and to take help from such information in the event of happening of an offence. Worth to add here that it is the conduct and attitude of one which makes him/her law-abiding or otherwise, hence officer in-charge of a police station must possess such information within available means and sources, as insisted by the said Rule. The person living beyond his means would constitute a suspicion permitting concerned Law Enforcing Agency to suspect such a person. Thus, if Law Enforcing Agencies succeed in establishing assurance of conduct an enquiry (having information) against those persons, it would surely limit the criminal activities, which otherwise was/is the object of such rule.

31. Then comes the Rule 23.3 (Patrolling by villagers)--the organization of thikri pahra and naka-bandi. This insists planning of organizing 'thikri pahra' and 'naka-bandi'. Since the object of this is to provide the best protection against criminals and securing that duties are allotted fairly and with little inconvenience to the individual as possible, which cannot be achieved if the planning thereof is not based on information collected and maintained under former rule, Rule 23.4. Surveillance Register No.X, is of much significance in curbing and prevention of the offences, therefore, same is referred hereunder:-

23.4.Surveillance Register No. X.--(1) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in form 23.4 (1).

2. In Part 1 of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction of the police station concerned, who belong to one or more of the following classes:-

(a) All persons who have been proclaimed under section 87, Code of Criminal Procedure.

(b) All released convicts in regard to whom an order under section 565, Criminal Procedure Code, has been made.

(c) All convicts the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under section 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made under section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1981.

3. In Part II of such register may be entered at the discretion of the Superintendent-

(a) persons who have been convicted twice or more than twice, of offences mentioned in rule 27.29;

(b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;

(c) persons under security under section 109 or 110, Code of Criminal Procedure;

(d) convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions.

Note:- This rule must be strictly constructed, and entries must be confined to the names of person falling in the four classes named therein.

32. The opening rule i.e. 23.1 requires the officer-in-charge of police stations and assistant sub-inspectors to patrol in their jurisdiction freely for paying special attention to villages where crime has occurred, or where registered bad characters and suspects, having history sheets on record, live. This is with an object to collect information regarding the mode of livelihood of such persons. The person living beyond his means would constitute a suspicion permitting concerned Law Enforcing Agency to suspect such a person. Thus, if Law Enforcing Agencies succeed in establishing assurance of conduct an enquiry against such a person, it would surely limit the criminal activities of such a person which otherwise was/is the object of such rule. The subsequent rule insists sending head constables and constables with definite orders to ascertain whether certain specified bad characters are present or not, and trace the whereabouts of proclaimed offenders or absconders.

33. The Surveillance Register though is a confidential document (register) but the importance and significance thereof cannot be denied or disputed because the prevention of offence(s) cannot be achieved without an effective surveillance. The word surveillance in itself is clear

that it only brings one under watch without interference into his personal liberty or movements, as is evident from Rule 23.7, which reads as:

23.7 Mode of surveillance.-(1) Police surveillance shall comprise such close watch over the movements of persons under surveillance by police officers village headmen and village watchmen, as may be practicable without any illegal interference.

The purpose of history sheet is evident from Rule 23.8 (1), which says as:

(1) The description of the criminal should be such as will enable the person reading it to form for himself a picture of the individual described, special attention being given to peculiarities of appearance, gait, speech, etc., by mean of which the man may be distinguished.

The Rule also speaks publication of history sheet in the Criminal Intelligence Gazette and endorsement thereof to police station concerned with criminal's provincial numbers in red ink. The Rule further says that activities of all such criminals subsequent to the publication of their provincial history sheets must be communicated promptly to the Criminal Investigation Department through the District Central Investigating Agency. Duplicate of the sheets of criminal known or suspected to operate on the railway shall be supplied to the nearest railway police station and the originals of such sheets shall be endorsed with the letter 'R' in red ink. The District Police shall also supply the Railway Police Station with copies of all subsequent entries made in such History Sheets, so that the Railway Police copies may be kept strictly up to date. The history sheets are to be kept at each police station (Rule 23.10).

34. Further, Rule 23.11 requires gazette officer on tour and Inspectors while checking history sheets of proclaimed offenders to make sure that recent inquiries have been made to ascertain the whereabouts and to effect his capture, where he be in his jurisdiction or elsewhere and that all necessary information about the proclaimed offender and his associated has been obtained from or communicated to other districts and police station. The Police Rules also insists maintaining (23.15) Village Crime Register No.IX and Bad Character rolls (23.16) the object whereof is also nothing but to curb the crime/offences by surveillance, so also to arrest the proclaimed offenders.

35. The Rules further provide mechanism for issuance of Hue and Cry notices (23.18), which is aimed for to have a search made for an absconding suspect, or to issue warnings for precaution to be taken against a particular type of offence or particular individuals. The sub-rule (2) permits Superintendent of Police or head of the prosecuting branch to send such notice to other districts or to the Criminal Investigation Department' even. Sub-rule (3) says :

(3). In cases where the absconder is known to have associates, relatives, or resorts in two or more districts and when the offender is not immediately arrested, a notice in Form 23.18(1) in English shall be sent to the Assistant Inspector-General, Crime and Criminal Tribes, for publication in the Criminal Intelligence Gazette. In case where a reward is offered the amount should be stated on the form.

So far sailing through this chapter, has made me of the clear view that surveillance and maintaining the record of suspects, criminals and proclaimed offenders is not to be kept to pages of the police station concerned only, but circumstances, if justifying, can permit joining

hands of all the police stations of District and Province even as was/is the purpose of publication in Criminal Intelligence Gazette.

36. While reverting to the second part of this chapter, dealing directly with issue of absconder(s), Rule 23.20 speaks about 'District register of absconders'. This also includes sending of fingerprint to Finger Print Bureau. Rule 23.21 speaks about maintaining a register showing progress of action against absconders and proclaimed offenders. The relevant portion reads as:-

"In order that a proper check may be kept on the progress of action prescribed in rules 21.5. and 26.5, the head of the prosecuting agency, shall maintain a register in Form 23.21. This register shall be examined at frequent intervals by the Superintendent of Police, gazetted officers and inspectors in supervisory charge of police stations and by prosecuting officers, and the latter shall be held responsible that no delay in proclamation and attachment of property or perfunctory action in regard thereto, whether on the part of police officer or the court, is allowed to occur."

Further, Rule-23.21 insists for maintaining a Register of proclaimed offender at each district by the head of the prosecuting agency and even requires a statement (23.22(2) to be submitted to Deputy Inspector General, Criminal Investigation Department, showing the result of action taken against proclaimed offender during the past year. An abstract of such a statement shall be prepared in the office of the Deputy Inspector-General, Criminal Investigation Department and published in the Police gazette. The figures relating to proclaimed offenders, who are registered members of the criminal tribes, shall be given separately. Rule 23.24 describes the procedure when person is proclaimed offender and reads as:

"(1) Immediately proceedings under section 87, Criminal Procedure Code, have been taken, intimation shall be sent by the prosecuting agency to the police station initiating such proceedings to the police station of which the proclaimed offender is believed to be a resident. Such intimation shall be sent through the Superintendent of Police concerned, if the person proclaimed is a resident of another district. The primary responsibility for securing the arrest of such offender rests with the police of the station in which he is a resident. Immediately on receipt of intimation of proclamation of a resident of the police station jurisdiction a history sheet shall be opened, particulars being ascertained from the police station, which has instituted proclamation proceedings, if necessary, and the offender's name shall be entered in Part I of the surveillance register.

(2). Thereupon intimation in Form 23.24. (2) shall be sent to the headmen and watchmen of the village of which the proclaimed offender is resident, and intimation in the same form shall be sent separately and through the police stations concerned, to the headmen and watchmen of all villages where the proclaimed offender is known to have relatives or friends whom he is likely to visit. When the offender is resident of a police station other than that in which he is proclaimed, the officer-in-charge of the latter police station shall immediately furnish the police station of the offender's residence with all available information for the compilation of his history sheet and issue of notices."

Per Rule 23.25, the list of proclaimed offenders shall be hung up in the office of each police station and a duplicate thereof in conspicuous place. Sub-rule (2) casts a mandatory by saying that :

(2). Every police officer shall be instructed, as soon as possible after joining a police station in the names, descriptions and likely resorts of all proclaimed offenders included in the lists prescribed above. Police officers shall be frequently tested by officers in charge of police station and inspecting officers in their knowledge of proclaimed offenders and shall be required at all times, when moving about the jurisdiction, themselves to obtain all possible information which may facilitate the arrest of such offenders and to inform the public of the proclamation of arrest and of any reward offered, and warn them of the penalties of harbouring.

From above, it is quite clear that it is not only the responsibility of every police officer to arrest a proclaimed offender but the rules do permit informing the public of such proclamation of arrest. The purpose of informing the public could be nothing except that to have help from the public in causing arrest of such person(s).

37. Having gone through the said Chapter of Police Rules, 1934, suffice to say that it is not only the responsibility of every police official to arrest the absconder/proclaimed offender but the public is equally responsible in aiding and helping the police in achieving such object.

38. Chapter-IV is titled as 'of aid an information to the Magistrate, the Police and persons making arrest'. Sections 42 and 43 of Criminal Procedure Code place every person under legal obligation to assist such arrest, if demanding his aid; while Section 44, brings every person aware of the commission of, or of the intention of any other person to commit, any offence liable to give such information forthwith to the nearest Magistrate or police officer regarding such commission or intention, while Section 45 to every village headman, accountant, landholders and others, under a mandatory obligation to give information regarding :

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer or in which he owns or occupies land, or is agent, or collects revenue or rent;
- (b) the resort to any place within or the passage through such village of any person on whom he knows or reasonably suspect to be a thug, robber, escaped convict or proclaimed offender;
- (c) the commission of or intention to commit, in or near such village any non-bailable offence or any offence punishable under Sections 143, 144, 145, 147 or 148 of the Pakistan Penal Code ;
- (d) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances; or the discovery in or near such-village of any corpse or part of a corpse, in circumstances which lead to a reasonable suspicion that such a death has occurred or the disappearance from such village of any person in circumstances which lead to a reasonable suspicion that a non-bailable offence has been committed in respect of such person;
- (e) the commission of or intention to commit, at any place out of Pakistan near such village any act which if committed in Pakistan ..
- (f) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property, ..

39. Thus, it can safely be concluded that purpose of informing the public about such persons, in particular absconders/proclaimed offenders, is to immediately inform the law enforcing

agencies about such persons. It can safely be added here that the object and purpose of law for surveillance and method for declaring one as absconder/proclaimed offender was never to keep the names of such persons secret (to the hearts of files or to concerned police station only) by letting the absconders to enjoy all privileges only by avoiding the police but it was always intended to make the person to face trial either by arrest or compulsion, else the legislature would not have included Section 59 in the Code which does permit even a private person to cause arrest of such person or proclaimed offender as is evident from its bare reading, which reads as under:

"59. Arrest by private persons and procedure on such arrest: (1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police officer or, in the absence of a police officer, take such person or causes him to be taken in custody to the nearest police station."

The Code even permits attachment and sale of property of any accused person or a witness even as a last remedy for compelling his attendance, which right (to enjoy property) is inviolable right of a person. The Criminal Procedure Code insists for compliance of certain formalities before resorting to last remedy for compelling the appearance of an offender and his/her declaration as proclaimed offender, which duty per Code is entrusted to the Courts, therefore, relevant provisions are reproduced hereunder:-

"87. Proclamation for person absconding: (1) If any Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides ;

(b) it shall be affixed to some conspicuous part of the house or home stead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed, to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the "effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day."

From above, it is quite clear that before recording statement within meaning of Section 87(3) of the Code, the Courts must satisfy the requirements as insisted in former subsection(s) i.e. affixing of publication at conspicuous place of town/village; house of accused and Court house in such a manner and fashion that it must be publicly read/ noticed because the purpose of publication of proclamation is not a mere formality but a last remedy for compelling appearance of the absconding person.

Whereas Section 88 of the Code, reads as:

"88. Attachment of property of person absconding: (1) The Court issuing a proclamation under Section 87 may at any time order the attachment of any property, movable or immovable or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the [Sessions Judge] within whose district such property is situated.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(a) by all or any two of such methods, as the Court thinks fit.

(4) if the property ordered to be attached is immovable, the attachment under this section shall, in the case of land-paying revenue to the Provincial Government, be made through the [District Officer (Revenue)] in which the land is situated, and in all other cases--

(e) by taking possession ; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide, the order of the Court.

(6) The powers, duties

(6-A) ..

(6-B)

(6-C) ..

(6-D)

(6-E)

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Provincial Government but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under subsection (6-A) has been disposed of under that sub-section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit."

The plain reading of the above provision is sufficient to establish that this provision does authorize the Court to attach and sell property of such person no matter:

* if it be a movable or immovable;

* if it is within district or without district;

* If it be a debt or other movable property;

A--ccordingly, the provisions provide that an inquiry or attachment of movable/immovable, properties shall be by adopting proper means and not by mere sending a letter to Mukhtiarkar concerned, as is done in routine.

40. Joint reading of the relevant provisions of the Criminal Procedure Code and that of Chapter-XXIII of the Police Rules, 1934, has brought me to a definite conclusion that law does provide a proper mechanism, which, if followed, surely shall not let the numbers of absconders/proclaimed offenders mount abnormally, as has been noticed in the instant case. Let me insist that the purpose of gathering information either by patrol, inquiry, preparing history sheet or maintaining surveillance register, informing public about proclamation, placing persons under a moral mandatory obligation to inform/aid the police in arresting such persons and even resort to last mode of attachment of property and sale thereof of such persons, is purposeful and does have wisdom behind it. The method of:

- * preparing history sheets, describing picture of required person with a view to have his ultimate arrest;

- * maintaining record to have information (data) about the required person;

- * doing time taking correspondence in communicating information;

- * sending of finger-prints to Finger Print Bureau etc;

are old-fashioned and were effective at such times when the Rules were framed, but since it is the era of 'technology' hence the mechanism should be developed so as to get maximum benefits of advanced technology. There can be no denial to the legally established principle of law that rules and law are like living organs and should stand well with changed/developed circumstances, hence the quarters concerned (Law Enforcing Agencies) should take complete advantage of technology so as to meet the objective of law/rules. Worth to add here that trend to have history sheet (rule 23.8) has also lost its gloom despite advanced technology which otherwise was to give a complete picture to a naked eye, which now can well be prepared with a single snap. The surveillance also involves gathering information regarding the person, his property, blood-relations and movement, which can also be gathered without much trouble only by approaching official of NADRA, which too with few clicks, therefore, officer-in-charge or other officer concerned should resort to available technology particularly when the purpose and object of such technology is meant so. Let me make it clear that establishment of NADRA was to have a 'registration system for the entire population' which helps letting the details of person only by referring his particulars or even by fingerprints, therefore, the benefit thereof must be taken by all departments, in particularly by law enforcing agencies in tracking the criminals and crimes.

41. Since, the discussion made so far has made it clear that an absconder/proclaimed offender is not legally entitled to enjoy the privileges which an ordinary citizen shall enjoy but the facts, prima facie, are otherwise. An absconder/proclaimed offender is normally not supposed to enjoy certain rights. Since the advancement in 'technology' has shown its indulgence in every single matter of life; every single bank-transaction, transfer of property, movement, obtaining sim-card etc. requires proper registration of person as was/is the object of establishment of NADRA. I cannot hold the presumption that such huge number (59267), after their being absconded/declaration as proclaimed offenders, have never enjoyed: freedom of movement; freedom of assembly, freedom of associations, freedom of trade, business or profession,

freedom of speech, freedom to profess religion and to manage religious institution and freedom as to property.

42. If they have been enjoying such rights then the purpose and object of declaration of one as 'absconder/proclaimed offender' never served its objective nor would so, if allowed to continue on the hearts of the files only.

43. Therefore, the Inspector General of Police, DIGPs and SSPs, as phase-1, are directed to:

i) ensure proper maintenance of relevant register(s), as insisted by Chapter-XXIII of Police Rules, 1934 at every police station or at relevant place, as explained by the relevant rules;

ii) ensure proper checking thereof periodically;

iii) ensure progress in this regard and reward to rightful and necessary action against negligent;

iv) ensure attachment of properties of such proclaimed offenders against whom proceedings under section 88, Cr.P.C. stood completed by approaching concerned Mukhtiarkar or head of Revenue authority at district level;

v) ensure creation of well-organized website(s) containing details of proclaimed offenders and absconders wanted by the concerned Courts as well as Police Stations concerned of relevant districts with friendly use/utility for private informants, whereby the information conveyed by the informant should be sent automatically to the concerned I.O/Police Station, S.S.P and District and Sessions Judge simultaneously. Needless to add here that secrecy of private informant from general public should be ensured;

vi) ensure wide circulation of information regarding creation of such website(s) for general public in electronic and print media, seeking their cooperation in arrest of those proclaimed offenders and absconders with assurance of their anonymity of informants in order to curb the criminal elements at large;

vii) ensure proper display, communication and update of information/ data of absconders/proclaimed on such website periodically;

In second phase, they are further directed to:

a. establish 'Cells' on districts and divisions levels specifically for the purpose of maintaining record of such persons, which shall be fully equipped with modern devices;

b. the Cells shall develop a relation-nexus with NADRA in getting/ collecting data of such persons;

c. the Cells shall also develop a mechanism by consultation with Member, Board of Revenue, Sindh, so as to have the details of properties of all such persons and to proceed for attachment thereof;

d. the Cells shall also develop a net-working with consultation of State Bank for getting/obtaining details of Bank-accounts of such persons and then to process such information to concerned court(s)/ authority for necessary order of attachment / seizure e.t.c as, such money falls within meaning of Section 88(3(a) of the Code;

e. the Cells shall also communicate details of proclaimed offenders to F.I.A for placing their names in E.C.L (Exit Control List).

A detail report regarding efforts taken towards first phase, shall be communicated to this Court within a period of one month, wherein detailing the issuance of 'reward to deserving'; 'action against negligent' and progress in lessening such mountain of absconders / proclaimed offenders. All the S.H.Os shall be directed to submit quarterly report to the ILLAQA Magistrate regarding progress towards matter of absconders/proclaimed offenders.

44. The report regarding second phase, shall also be submitted to this Court within a period of three months showing progress towards such object. Any further effective addition in first and second phase shall be a mark of appreciation on part of the IG, DIGs and SSPs of Police.

45. At this juncture, it is worth to add here that issue of special fund, meant for investigation, be mechanized in a manner so as to eliminate all chances of intervention of third person and such fund should directly reach the Investigation Officer concerned through cross-cheque(s), which surely will make the investigation officer accountable for speedy and effective investigation without an excuse of having no fuel etc. Needless to add that purpose of 'reward' or allocation of funds towards investigation was always to encourage investigating officers to use all means without a fear of spending his own money (salary) in the name of 'duties'. Separate record shall be maintained on police station(s) level, non-compliance shall expose to the contempt proceedings.

46. Since, as already discussed particularly with reference to Sections 87 and 88 of the Code, the Court(s) are under heavy obligation(s) to complete process of publication of proclamation (87) and that of attachment (88) within strict meaning, purpose and object of the provisions, which cannot be achieved unless the Court(s) take advantage of available means particularly that of establishment of I.T. Cell at District Level, therefore, the I.T. personnel working at District level should be engaged to:

* prepare and maintain data of proclaimed offender(s) of Judicial District; maintaining the statistics thereof on daily basis and to present the same before District and Sessions Judge for communication to Sr. Superintendent of Police of that District for progress and report thereof, which, if found unsatisfactory, be communicated to DIGP;

* Fix all cases kept on dormant file on quarterly basis and call progress report in those matters by directing concerned SHOs.

47. It is surfaced that investigation officers in many cases submit report under 'A' class thereby burying the file in dump of files though it is settled principle of law that investigation continues till the crime is unearthed and guilt or innocence is determined by the Court(s) of law, hence in such like matter(s) (reported under 'A' class), the responsibilities of the police do not come to an end by submitting such paper alone nor that of Magistrate concerned who otherwise is ultimate authority and does possess supervisory jurisdiction. Thus, judicial propriety demands that learned Magistrates shall maintain record of such case(s) and shall keep calling report(s) from police station concerned on quarterly basis and matter shall be fixed at such occasion with notice to complainant/victim party to show that what efforts have been taken for completing the investigation which in no way fulfills by submission of a report under 'A' Class. Similarly, the cases, wherein police submits final report/charge sheet by showing all accused as absconders under Section 512, Cr.P.C., shall not be treated as final report; learned Magistrate shall postpone the cognizance in terms of Section 344, Cr.P.C.; while by treating such report as an interim report, shall fix those cases fortnightly for progress report.

48. All the District and Sessions Judge(s) are accordingly directed to implement the above directive(s) so that very spirit and object of the provision of Sections 87 and 88, Cr.P.C be achieved. Needless to add that all concerned department(s) shall cooperate with DIGP and Court(s) concerned.

49. In the end, it would be relevant to mention that all these petition(s) were for one and same relief i.e. directions for arrest of absconding/proclaimed offenders, which I believe shall stand satisfied now. It is also to be added that a writ of mandamus is available where one, legally bound to perform is guilty of avoiding. However, a police officer needs no direction from the High Court even for performing his duty which otherwise demands for arresting the accused. However, the DIGP shall pay special attention in matters, brought before this Court by petitioners and shall ensure arrest of the absconding accused persons and so also use of all means for compelling them to appear.

50. Accordingly, Registrar of this Court shall communicate this judgment to all the learned Judges of District Courts. Office shall ensure that compliance is made.

51. In above terms all captioned petitions are disposed of.

MH/N-39/Sindh Order accordingly.