

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Sh. Azmat Saeed

Human Rights Case No.19526-G of 2013

(Application by Mst. Bibi Zahida for arrest of accused of murder of her daughter Waheeda)

Applicant: In person with her daughter Ms. Fareeda

On Court Notice: Mr. Sajid Ilyas Bhatti, DAG
Syed Arshad Hussain Shah, Addl. A.G. KPK
Mr. Naveed Akhtar, Addl. A.G. KPK

For KPK Police: Mr. Abdul Latif Afridi, ASC
Mr. M. Zahoor Qureshi, AOR with
Mr. Ihsan Ghani, IGP, KPK
Mr. Imran Shahid, SSP Operation Peshawar
Mr. Muhammad Faisal SP Cantt, Peshawar
Rana Umer Farooq, ASP U/Town Peshawar
Mr. Rizwanullah SI, U/Town

For Islamabad Police: Mr. Bani Amin Khan, IGP
Mr. Yasin Farooq, SSP Operation
Mr. Jamil Ahmed Hashmi, SP Saddar
Mr. Abdul Rasheed Niazi, DSP
Mr. Sajjad Bukhari, Inspector/SHO
Mr. Rashid Ahmed, SI
(All in person)

Date of hearing: 11.07.2013

JUDGMENT

Iftikhar Muhammad Chaudhry, CJ. Instant proceedings under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 have originated from an application received from Mst. Bibi Zahida wife of Darya Khan. Petition has been entertained for enforcement of fundamental rights involving question of public importance about the denial of right of the general public to have excess to justice by the law enforcing agency i.e. the police, as a

result whereof victims continuously suffered at the hands of culprits, leading to the increase of unrest/uncertainty in the society.

2. In the instant case, petitioner Mst. Zahida alleges murder of her daughter Waheeda @ Palwasha @ Honey, which took place on 19.05.2013 at the hands of her husband Darya Khan and son Khalid-ur-Rahman within jurisdiction of police station University Town, Peshawar.

3. Recapitulating facts of the events which had given rise to the instant case can only be appropriately explained by reproducing the contents of her application in extenso herein below: -

بخدمت جناب رجسٹرار صاحب سپریم کورٹ آف پاکستان

جناب عالی!

گزارش ہے کہ میری بیٹی مسماۃ وحیدہ عرف پلوشہ عرف ہنی جو کہ علی امین ولد بنیامین (موجودہ آئی جی اسلام آباد) کی بیوی تھی اور گزشتہ 6/7 سال قبل شادی ہوئی جس میں سے ایک بیٹا اور ایک بیٹی عمر 6 سال اور 3 سال پیدا ہوئی۔ یہ کہ مورخہ 18-5-13 کو میری بیٹی مسماۃ وحیدہ عرف پلوشہ عرف ہنی میری دوسری بیٹی فریدہ خان کے ہمراہ اسلام آباد سے میرے گھر آئی۔ یہ کہ اسی رات تقریباً 2 بجے رات مورخہ 18-5-13 جو کہ 19-5-13 کی تاریخ ہی ہے اپنے ساتھ اپنے گھر رات کے کھانہ کے بعد اپنے ساتھ گھر واقع یونیورسٹی ٹاؤن ہمراہ دونوں بچے اور نوکرانی سونیا کو اپنے ساتھ بھی لے گیا۔

یہ کہ رات کے کھانے کے دوران میرے خاوند دریا خان نے یہ کہا کہ خالد خان مسماۃ وحیدہ عرف پلوشہ عرف ہنی کو ضرور جان سے مار دے گا اس کے بعد میرا بیٹا خالد خان اسے اپنے ساتھ لے کر روانہ ہو گیا۔

یہ کہ مورخہ 19-5-13 کی صبح 9 بجے تقریباً خالد خان کی بیوی نے اطلاع دی کہ مسماۃ وحیدہ عرف پلوشہ مرجکی ہے۔ جس پر میں نے ہمراہ دختران خالد خان کے گھر آ کر دیکھا تو مسماۃ وحیدہ کمرہ میں چار پائی پر مردہ پڑی تھی اور موقع پر میرا خاوند دریا خان، میرا بیٹا خالد خان اور داماد جواد خان اور نور عالم بھی موقع پر موجود تھے اور بنگالہ کا چوکیدار بھی موجود تھا اور میرا بیٹا خالد خان یہ ڈرامہ کر رہا تھا کہ وہ مسماۃ وحیدہ سیڑھیوں سے گر گئی ہے اور ہم اس کو ہسپتال لے کر جاتے ہیں۔ جس پر میں نے اندازہ لگایا کہ یہ سب لوگ جھوٹ بول رہے ہیں اور میں پولیس اسٹیشن کی طرف چلی گئی اور میرے ہمراہ میری بیٹی فریدہ خان، شیم اور شہناز پنچنی اور پولیس کو مطلع کیا۔ پولیس کاروبار یہ نہایت ظالمانہ تھا اور وہ ہمارے ساتھ تقریباً 2 سے 3 گھنٹے کا وقت ضائع کرنے کے بعد پنچنی اور اسی دوران گھبراہٹ کے مارے خالد خان، دریا خان وغیرہ نے میری بیٹی کی لاش کو غائب کر دیا اور پولیس نے مکمل موقع پہنچایا کہ ملزمان میری بیٹی کی لاش کو وہاں سے غائب کر دیں اور خالد خان، دریا خان وغیرہ موقع سے لاش سمیت غائب ہو گئے۔

یہ کہ ہمارے پولیس اسٹیشن ٹاؤن تھانہ یونیورسٹی روڈ پشاور پر چیننے چلانے پر کئی گھنٹوں کے بعد حرکت میں آئی اور تقریباً شام 5 بجے کے بعد میری بیٹی کی لاش میرے دوسرے بیٹے سے برآمد ہوئی جس نے خالد خان وغیرہ کے کہنے پر یہ کام کیا ہے۔

یہ کہ پولیس اسٹیشن میں موجود پولیس آفیسر جو کہ reporting روم میں موجود تھا یہ کہہ رہا تھا کہ خالد خان فون پر مسلسل یہ کہہ رہا میں آئی جی اسلام آباد کے ساتھ رابطہ میں ہوں اور لاش ترنول کے قریب سے ایسویٹس سے پولیس نے پکڑ کر واپس پشاور تھانہ ٹاؤن پشاور پہنچائی گئی اور وہاں سے یہ لاش ہسپتال پوسٹ مارٹم کے لیے لے جانی گئی۔ اسی دوران آئی جی اسلام آباد بنیامین بھی پشاور پہنچ گیا اور لاش کو اپنے ساتھ لے جانے پر اصرار کرنے لگا میں نے اور میری بیٹی فریدہ نے اصرار کیا کہ آپ FIR کی کاپی پولیس سے کیوں نہیں لیتے اور پوسٹ مارٹم رپورٹ اور ہسپتال کا ریکارڈ جس میں میری بیٹی مسماۃ وحیدہ عرف پلوشہ عرف ہنی کے جسم کے باڈی پارٹس کیمیکل ایگزامینیشن کے لیے بھجوائے گئے ہوں حاصل کریں کیونکہ یہ آپ کی بھی بہو ہے مگر ہم بیچاری عورتوں کی کوئی فریاد نہ سنی گئی اور میں اور میری بیٹی فریدہ زبردستی اس ایسویٹس میں بیٹھ گئی جو کہ اسلام آباد آئی جی اسلام آباد کے گھر واقع گلی نمبر 14، 2، F-10/2 اسلام آباد لے جا رہی تھی۔

یہ کہ میں نے جب میری بیٹی وحیدہ (عرف پلوشہ) کو دفنانے کے لیے لے جانے لگے تو میں نے اور میری بیٹی فریدہ نے پھر شور مچایا کہ ہم میت کی تدفین نہ ہونے دیں گے تا وقتیکہ ہمیں FIR اور میڈیکل پوسٹ مارٹم کی رپورٹ حوالہ نہ کی جائے گی اور اس پر آئی جی اسلام آباد نے اپنے گھر پر تھانہ شالیمار میں میرے کہنے پر ایک FIR سیریل نمبر 32312 نمبر 134 زبردفعہ 302/34 تپ مہیا کی گئی جو کہ لف ہے۔

جناب عالی! میری بیٹی وحیدہ (عرف پلوشہ) کا اپنے خاندان علی امین ولد بنیامین کے ساتھ جھگڑا رہتا تھا اور وہ اکثر شراب کے نشے میں میری بیٹی وحیدہ (عرف پلوشہ) کو مارتا پیٹتا اور اس سلسلہ میں میری بیٹی نے علی امین کے خلاف ویمن پولیس اسٹیشن میں مقدمہ درج 2012ء کرنے کے لیے درخواست دی جو کہ ایک ریکارڈ پر موجود ہے لیکن آئی جی کے بیٹے کے خلاف کوئی کارروائی عمل میں نہ لائی جاسکی اور اس کو بھی دبا دیا گیا اور علی امین اور میرے بیٹے خالد خان آپس میں میل ملاپ کرنے لگے۔

جناب عالی!

- آپ سے التماس ہے کہ انصاف کے حصول کے لیے مندرجہ ذیل حکم صادر کیا جائے اور سو Moto نوٹس لیا جائے۔
- 1- ملزم خالد خان کو گرفتار یا جائے اور اس کے ساتھ تمام شامل لوگوں کو چاہے کتنے ہی طاقتور کیوں نہ ہوں شامل تفتیش کر کے اس قتل کے ملزمان کو کیفر کردار تک پہنچایا جائے اور مقدمہ کا اندراج درست جائے وقوعہ پر کیا جائے۔
 - 2- میری بیٹی وحیدہ عرف پلوشہ خان کا دوبارہ پوسٹ مارٹم کروایا جائے اور ایک independent میڈیکل بورڈ تشکیل دے کر رپورٹ ریکارڈ پر لا کر ملزمان کے خلاف کارروائی کی جائے میری بیٹی کی لاش H-8 قبرستان میں موجود ہے جس پر پولیس کا پتہ بھی لگا ہوا ہے۔
 - 3- کیمیکل ایگزامینیشن دوبارہ کروایا جائے تاکہ کوئی influence استعمال نہ ہو سکے۔
 - 4- ملزم خالد خان اور اس بیوی فوزیہ کو بھی گرفتار کیا جائے تاکہ اس قتل کے اصل ملزمان سامنے آسکیں۔

5- میں چونکہ ایک ان پڑھ عورت ہوں اور میں اپنی بیٹی فریدہ خان جو کہ اسلام آباد کے سیکٹر 4/E-11 مکان نمبر 323 گلی نمبر 21 کے ساتھ رہائش پذیر ہوں، جو کہ میرے ساتھ اس مقدمہ کی پیروی میں ہوتی ہے کو جان کا خطرہ ہے لہذا ہمیں پولیس کی مکمل حفاظت میں رکھا جائے اور مجھے اور میری بیٹی کو جان سے مارنے کی مسلسل دھمکیاں مل رہی ہیں۔ میں چیف جسٹس آف پاکستان سے اللہ اور رسول کے واسطے درخواست کرتے ہیں کہ وہ اس مقدمہ میں سومونوٹوٹس لے کر میری جوان بیٹی پر ہونے والے ظلم اور بہیمانہ قتل کے تمام ملزمان چاہے وہ میرا بیٹا خالد خان، میرا خاوند دریا خان، میری بیٹی کا خاوند علی امین اور یا کوئی اور اعلیٰ درجہ کا شخص شامل ہو کو منظر عام پر لا کر کیفر کردار تک پہنچایا جائے اور سخت سے سخت سزا دلوائی جائے۔ مجھے، میری بیٹی فریدہ خان، اس کے بچے ہارون اور یسریٰ کو اگر کچھ ہوا تو اس کے ذمہ دار خالد خان، دریا خان اور اعلیٰ عہدہ پر فائز ایک اعلیٰ شخصیت ہوں گے۔

درخواست گزار

1- بی بی زاہدہ (والدہ وحیدہ عرف پلوشہ)

2- فریدہ خان (بیٹی)

0334-5476215, 0300-5060050

H.323, Basement, St. 21,

E-11/4, Islamabad

21/5/2013

4. At the hearing of the petition, it revealed that the case of deceased lady could not be handled as per criminal law prevailing in the country against culprits, reasons of which are still required to be unearth because insistence of petitioner to register FIR of murder of her daughter was not conceded to by Peshawar police at highest level. Inasmuch as, without conducting autopsy, her dead body was dispatched from Peshawar to Islamabad in an ambulance but on her hue and cry, the police was compelled to get back the dead body from a place known as Tarnol near Islamabad, to Peshawar, where allegedly post-mortem was conducted at 4:00 pm. Statedly instead of issuing post-mortem report, one of the parts of her body i.e. heart was sent to Forensic Science Laboratory, Lahore as it was difficult to ascertain her cause of death. As such no FIR was registered except recording report vide Entry No.16 in Daily Diary of PS Shalimar, wherein her case was

treated to be covered under section 174 Cr.PC. It is stated that deceased's husband is resident of Islamabad where she was living with him along with her two children, therefore, her dead body was again brought back to Islamabad in the house of her father-in-law, Bani Amin Khan who is IGP, Islamabad.

5. The petitioner did not permit her burial without registering FIR and getting Post-Mortem. On this, FIR No.134/2013 dated 19.05.2013, under section 302/34 PPC was registered at Police Station Shalimar, Islamabad, knowing well that incident had taken place in the area of Town Police Station, Peshawar (KPK).

6. On having issued process under HRC, reportedly no effective progress was made by concerned Authority, therefore, petitioner, Mst. Bibi Zahida submitted another application, contents whereof are reproduced as under: -

”بخدمت جناب چیف جسٹس صاحب سپریم کورٹ آف پاکستان

جناب عالی

گزارش ہے کہ سانیلا مسماة بی بی زاہدا نے حضور کی خدمت میں مورخہ ۲۵ مئی ۲۰۱۳ کہ ایک عدد درخواست گزاری تھی۔ جس میں موقف اختیار کیا گیا تھا کہ میری بیٹی وحیدہ پلوشہ عرف ہنی جو کہ علی امین ولد بنامین کی بیوی تھی اور میری بیٹی کا سسر اس وقت اسلام آباد پولیس میں IG ہے اور میری بیٹی کو مورخہ 19.5.2013 کو پشاور میں قتل کر دیا گیا۔ جس کی بابت میں میں نے ایک رپورٹ مورخہ 19.5.13 اٹھانہ ٹاؤن میں درج ہو چکی ہے۔ یہ قتل جو کہ پشاور ٹاؤن شپ میں ہوا ہے اس میں ملوث میرا سگا بیٹا ہے خالد خان اسکی بیوی فوزیہ اور میری بیٹی وحیدہ پلوشہ عرف ہنی کا خاوند علی امین اس قتل میں ملوث ہیں۔ جبکہ خالد خان کا والد دریا خان بنگش اور علی امین کا والد بنیامین ہر ممکن کوشش کر رہے ہیں کہ ہمارے بیٹے بچ جائیں اور ہم ماں بیٹی کو دونو پارٹیوں سے جان کا خطرہ ہے اور ہمیں مسلسل دھمکیاں مل رہی ہیں کہ ہم اس کیس سے دور ہو

جائیں اور وہ دونوں آپس میں سیٹل منٹ کر لیں۔ اور اس قتل کو دبا دیں۔ آپ سے میری گزارش ہے کہ ہماری جان کی حفاظت کیلئے FC یا رینجرز کی سیکیورٹی مہیا کی جائے کیونکہ اسلام آباد کی پولیس کے IG کنٹرول میں ہے آپ سے ایک ماں کی فریاد ہے کہ ہماری مدد کی جائے تا کہ اصل قاتل کو سزا مل سکے۔

مجھے اور میری بیٹی جسکے 2 بچے ہیں جو کہ بیوہ ہے اور اسکے بچوں کے O لیول کے پیپرز ہورے ہیں جسکی وجہ سے ہم کہیں دوسری جگہ پر رہائش نہیں رکھ سکتے۔ اس لئے آپ ہماری حفاظت کیلئے FC یا رینجرز ہمارے گھر پر تعینات کر دیں
آپ کی بڑی بڑی مہربانی ہوگی۔

مسماۃ بی بی زاہدہ

مکان نمبر ۳۲۳ گلی نمبر ۲۱ بیسمنٹ E-11/4 اسلام آباد

7. The hearing of the case commenced on 03.07.2013 when Mr. Yasin Farooq SSP Operation conceded that in respect of murder of daughter of petitioner, namely Mst. Waheeda @ Palwasha @ Honey, FIR should have not been registered at Islamabad. Contents of his statement read thus: -

“Statement regarding case FIR No.134 P.S. Shalimar, Islamabad

On 19.5.2013, at around 8 p.m. all officers were in the residence of I.G. Islamabad regarding the funeral of his daughter in law Miss Waheeda. The mother of the deceased sat in front of the Ambulance and insisted for an FIR before the burial.

At this IG Islamabad directed SHO Shalimar Sajjad Haider and DSP Margalla Rashid to record their statement and register the FIR. In compliance of his orders FIR No.134/13 u/s 302/34 PPC P/S Shalimar was registered.

Sd/-

YASEEN FAROOQ
SSP/Islamabad"

The above statement was followed by another statement of the same officer, which has been incorporated in the following para of the proceedings dated 04.07.2013: -

"4.....

Since the occurrence/incident had taken place at Peshawar, hence registration of FIR at Islamabad is not legally justified. It may be noted that undersigned has not passed any orders for registration of FIR. It is further submitted that after verifying that the incident has actually taken place in the jurisdiction of PS Town, Peshawar and legal proceedings were already underway, cancellation report in the subject case was prepared on 25.05.2013 and the matter was referred to the Home Department, Government of KPK."

8. On 04.7.2013 IGPs of KPK and Islamabad were asked to furnish lists of officers/officials to whom they consider that right of hearing should be provided to them, lest, injustice may not be caused to them, if any adverse order is passed. Following lists were according furnished: -

List of KPK Police Officers

1. Mr. Ihsan Ghani, IGP
2. Mr. Imran Shahid, SSP (Operations)
3. Mr. Faisal, SP (Cantt)
4. Mr. Umar Farooq ASP, Town
5. Mr. Sardar Hussain, SHO Town
6. Mr. Rizwan Ullah, I.O.

List of Police Officers of Islamabad

1. Mr. Bani Amin Khan, IGP, Islamabad

2. Mr. Yaseen Farooq, SSP (Operations),
 3. Mr. Jameel Hashmi, SP Saddar Zone
 4. Mr. Rasheed Niazi, DSP, Margalla
 5. Mr. Sajjad Haider, SHO, PS. Shalimar
 6. Mr. Rasheed Ahmed, SI, P.S. Shalimar
9. Mr. Latif Afridi, ASC filed HRCMA No.98/2013, whereas Mr. Bani Amin Khan, IGP Islamabad also filed HRCMA 97/2013. Similarly Jamil Hashmi, SP filed separate application.
10. We have heard to all of them in support of contentions put forward by them.
11. Learned counsel for IGP, KPK contended that as per facts disclosed to police, no evidence was available to conclude *prima facie* that she died because of unnatural death, therefore, police after recording report No.16 dated 19.05.2013 in the Daily Diary Register of Police Station, proceeded to consider incident covered under section 174 Cr.P.C. because in the meanwhile incomplete Post-Mortem report was received and police surgeons/doctors were waiting for the result of Forensic Laboratory to whom, heart of deceased was sent for examination to ascertain whether her death was natural or due to administrating poison to her or due to asphyxia.
12. However, in his presence, Mr. Ihsan Ghani, IGP, KPK stated that Bani Amin was insisting for registration of the case but he refused to do so. Such statement he had also made on 03.07.2013 during the hearing of the case. As per Mr. Bani Amin Khan, IGP, Islamabad, he approached to everyone, responsible for registration of case, including Moharar to IGP, KPK but no body listened him.

13. It is important to note that learned counsel for IGP, KPK also conceded that Police should have registered the case at Peshawar as there were allegations of murder against the father and brother of the deceased.

14. Learned Additional Advocate General, KPK also agreed that as per section 154 Cr.P.C. police had no option except to register the case at the police station where incident of murder of deceased allegedly took place.

15. It is to be observed that when there is no difference of opinion amongst all of them that case should have been registered u/s 154 Cr.P.C. when matter was reported, the police administration is bound to follow the dictate of law, which has been explained by this Court time and again. Reference may be made to the following paras of the judgments in the case of Muhammad Bashir v. Station House Officer, Okara Cantt (PLD 2007 SC 539):-

27. The conclusions that we draw from the above, rather lengthy discussion, on the subject of F.I.R., are asunder:-

- (a) no authority vested with an Officer Incharge of a Police Station or with anyone else to refuse to record an F.I.R. where the information conveyed, disclosed the commission of a cognizable offence.
- (b) no authority vested with an Officer Incharge of a Police Station or with any one else to hold any inquiry into the correctness or otherwise of the information which is conveyed to the S.H.O. for the purposes of recording of an F.I.R.
- (c) any F.I.R. registered after such an exercise i.e. determination of the truth or falsity of the

information conveyed to the S.H.O., would get hit by the provisions of section 162, Cr.P.C.

- (d) existence of an F.I.R. is no condition precedent for holding of an investigation nor is the same a prerequisite for the arrest of a person concerned with the commission of a cognizable offence;
- (e) nor does the recording of an F.I.R. mean that the S.H.O. or a police officer deputed by him was obliged to investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested; and finally that
- (f) the check against lodging of false F.I.Rs. was not refusal to record such F.I.Rs, but punishment of such informants under S.182, P.P.C. etc. which should be, if enforced, a fairly deterrent against misuse of the provisions of S.154, Cr.P.C.

16. Prior to above dictum, this Court in the case titled as the Human Rights Case No.3212 of 2006 (2006 SCMR 1547) observed as under: -

3. I.G. Police is appearing in another case, which pertained to District Sialkot, therefore, the above matter was brought to his notice as he was present in the Court. D.P.O. Sheikhupura stated that now the case has been registered by the police vide F.I.R. No.138, dated 28-4-2006 under section 302, P.P.C. and investigation is going on. Non-registration of a criminal case wherein a murder has taken place for a period about 2-1/2 years clearly demonstrates inefficiency, and gross negligence on the part of the concerned Police Officers. It is well-settled that during the investigation it is always better to collect evidence if available, as early as possible. We are not in

a position to understand that in such a case where murder has taken place what would be the result of the same and particularly poor lady Mumtaz Bibi who has appeared and is complaining against the police attitude saying that she had been approaching them again and again for the purpose of registration of the case but no one had listened her and at the end of the day D.P.O. came to her rescue and directed the registration of the case and entrusted investigation to S.P. Investigation. We understand that matter will be investigated and evidence will be collected, sufficient or otherwise for the purpose of submitting challan but what would be the recompense to the lady whose son has been killed in a gruesome manner.

4. As far as the system of the law is concerned, the constitution says that everyone is entitled to the protection of the same and is entitled to get justice in all the circumstances but the attitude of the police in this case is irresponsible and on account of such attitude, mother of the deceased Mumtaz Bibi is bound to suffer throughout her life, so long as she lives. As per her claim she is a widow and after the death of her husband she had taken it as a mission to bring up her children but in the meanwhile this incident took place. The facts and circumstances of the case which have been narrated before I.G. Police and Advocate-General, Punjab, her plight can be well-imagined by all of us. However, we direct I.G. Police to take personal interest in the investigation of the case.

5. Let this case remain pending and I.-G. Police shall submit report personally after every week in respect of the progress of the case and even after the submission of challan it would be his responsibility to ensure that evidence is produced if ultimately evidence is not available then it would be the liability/responsibility of

the police department to compensate her in any manner whatever they deem fit, under the circumstances. In the meanwhile I.G. Police shall take strict disciplinary action against officers/officials who are responsible for not registering the case ultimately after the happening of the incident as this Court observed time and again that it is the duty of the police to register the case without any delay and submit challan as far as possible within the period of fifteen days in terms of section 173, Cr.P.C. Reference in this behalf may be made to Hakim Mumtaz Ahmed and another v. The State PLD 2002 SC 590.

17. Unfortunate aspect of the case is that IGP, KPK is taking responsibility as noted above upon his shoulder not once but twice that he had declined to register the case.

18. Whereas on the other hand Bani Amin I.G.P, Islamabad, whose daughter-in-law (wife of his son Ali Amin) has been murdered, maintained that deceased was poisoned as according to him he had noticed that: (i) her hands and feet were bluish; (ii) there were wounds on her lips; and (iii) spots on cheeks. To substantiate his plea, he had also produced photographs of dead body, which were taken after her death. Contention so raised, seems to be true as per photographs. Not only this, he had also shown another photo to show that a sign of administering injection was visible on her forearm, which has also been confirmed by petitioner when picture was shown to her in Court.

19. *Prima facie* these facts are sufficient to establish that police of KPK abused their powers in not registering of FIR on 19.05.2013 as in view of principles discussed hereinabove, in the

judgments and the law on the subject u/s 154 Cr.P.C. The IGP, KPK and his subordinates had no lawful authority to deny access to justice to petitioner. This is nothing but clearly a case of either inefficiency or criminal negligence of the police for the reasons best known to them, including external pressure on all of them but a law abiding officer is not supposed to deny due process of law to victim party.

20. Importantly it is to be noted that during hearing of matter, a case has been registered vide FIR No.366/2013, PS Town, District Peshawar dated 19.5.2013 u/s 302/34 PPC. Copy of FIR has been placed on record.

21. Now turning towards the conduct of Islamabad Police, which needs no discussion as per facts noted above and same are sufficient to conclude that all of them acted with sheer criminal negligence, favouritism and inefficiency.

22. The statement of IGP Bani Amin noted above is not acceptable as he being a senior police officer, without getting registered FIR at Peshawar brought back dead body of her daughter-in-law to Islamabad where under his direction in respect of incident of Peshawar a case was got registered in Islamabad and subsequently a guard was posted on her grave, disclosure of which has been made by him during hearing when pointed out by Mst. Bibi Zahida, reason should be known to him. Inasmuch as, none amongst other officers whose named he has furnished himself, refused to accede his illegal demand including SP Jamil Hashmi, who now is trying to distance him from the illegal act.

23. Learned Additional Advocate General pointed out that provincial government of KPK has constituted a committee to probe into the incident of killing of Mst. Waheeda on 19.05.2013 for non registration of the case in Peshawar and SSP Imran Shahid has been suspended.

24. Learned Deputy Attorney stated that Federal Government has been conveyed about hearing of the case and registration of FIR at Shalimar Police Station. He also agreed that no FIR in respect of incident, which had taken place about the alleged unnatural death of Mst. Waheeda in the area of Town Police Station, Peshawar could have been registered at Shalimar Police Station.

25. It is to be noted that heavy responsibility lies upon the law enforcing agencies, particularly, police to ensure that life and property of the people in terms of Article 9 of the Constitution is protected by them but we are constrained to observe that in our country police is not fulfilling its commitments efficiently, as a result whereof, law & order situation, all over the country, is worsening day-by-day. There could be acceptable reasons, on account of which the forces including the police, with other duties, maintain peace in society and bring the culprits to book without being influenced from anyone because once the accused is involved in an offence, he and his near ones try their best to ensure that he is saved from the clutches of law.

26. We have in our police department such officers who are known for their efficiency, credibility, commitment and whenever any task is assigned to them, they do discharge their duty strictly in accordance with the Constitution and the law. However, justice does

not mean that it should only be done to the culprits, because at the same time, victims/sufferers also deserve for the same and their grievance can only be redressed, if the accused are brought to book immediately.

27. In the instant case, as we have noticed, petitioner Bibi Zahida is agitating that her daughter Waheeda @ Palwasha @ Honey has been killed by her husband Darya Khan and son Khalid-ur-Rahman but no one is ready to listen her, with the result she has to run from pillar to post and ultimately matter reached in Human Right Cell of this Court, where jurisdiction is exercised under Article 184(3) of the Constitution along with all other enabling provisions of law on individual or collective requests, to ensure enforcement of fundamental rights, particularly, in public importance cases.

28. There could be numerous complaints against the police throughout in the country and some of them reach to this Court in its Human Rights Cell, which is functioning continuously to redress the grievances but despite of issuing directions, the law enforcing agencies failed to redress the grievances of the complainants. In this context reference to the reported judgment in the case of *the Human Rights Case No.3212 of 2006* (ibid) may be made, wherein a lady had been waiting for a period of 2 ½ years but no one registered FIR of the murder of her son and ultimately she succeeded in getting the justice from this Court. This is one case, there could be more than that.

29. Thus, under the circumstances we direct that:

- (i) The Federal and Provincial governments may take initiative for improving the professional efficiency of the police

department enabling them to meet with all types of challenges to ensure that whosoever has taken the law in his hands, notwithstanding the status, he has to face the consequences.

- (ii) The Police Department in all the Provinces and Islamabad should strictly adhere to the Constitution and the law, while dealing with the criminal cases instead of showing any leniency or favouritism, either to the complainant or to the accused, whatsoever the case may be.
- (iii) As far as registration of the cases is concerned, they should follow the law under section 154 Cr.P.C and the principles discussed hereinabove in light of Muhammad Bashir's case (ibid).
- (iv) As in the instant case FIR has been registered at Peshawar but on having seen the facts and circumstances, noted hereinabove, let the Federal and Provincial Governments ensure that no influence is used by any of the police officers who have already committed criminal negligence in not handling the case of the deceased lady. The competent authority should also deal with them in accordance with law on the subject.
- (v) To ensure transparent and independent inquiry, the Chief Secretary of KPK and Secretary Interior shall take steps to constitute a team of independent police officers who shall be responsible to conduct the investigation and submit challan in the court of law accordingly. Both these functionaries shall submit report compliance of the

direction within a period of two weeks because any further delay in concluding the investigation of the case is likely to cause further injustice and prejudice to the petitioner.

30. Petition stands disposed of accordingly.

Chief Justice

Judge

Judge

Announced in open Court on 24.07.2013
At Islamabad

Chief Justice

Approved For Reporting