

THE HIGH COURT OF SINDH, KARACHI

Phone No. 021-99203220

Fax No. 021-99203221

Email: ar.gazette@shc.gov.pk

No. GAZ/Circulation of SHC's Judgment/Order

Dated: 19-06-2023

All communications should be addressed to the Registrar High Court of Sindh Karachi and not to any official by name.

From:

Registrar,
High Court of Sindh,
Karachi.

To,

All the District & Sessions Judges
of the province of Sindh

SUBJECT: ORDER DATED 08-06-2023 PASSED BY THIS COURT IN CONSTITUTION PETITION NO. D-1157 OF 2020 (ALONG WITH CONNECTION PETITIONS)

I am directed to enclose herewith a copy of Order dated 08-06-2023 passed by this Court in Constitution Petition No. D-1157 of 2020 (along with connected petitions) (Syed Mehmood Akhtar Naqvi *versus* Secretary Ministry of Port & Shipping & others), for compliance.


(ABDUL RAZZAQ)
REGISTRAR

Encl: As above

Copy forwarded for information to:

I/c Assistant Registrar (Writ) of this Court.

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D-1157 of 2020

Along with connection petitions

Syed Mehmood Akhtar NaqviPetitioner.

VERSUS

Secretary Ministry of Port & Shipping & Others.....Respondent.

ORDER

C. P. No. D - 1858 of 2023

Dated _____ Order with signature of Judge.

Hearing of case
For hearing of Main Case

08.06.2023.

Mr. Shahzaib, Advocate for the Petitioner (C.P No. D-1858 of 2023)

Mr. Muhammad Saleem Mangrio, Advocate for KPT alongwith Ms. Nasima Mangrio, Advocate

Mr. Liaquat Ali, Advocate for Petitioners (CPs No. D-1989 to 1992 of 2023)

Mr. Tariq Mansoor Khan, Advocate for Intervener (C.P No. D-666 of 2023)

Mr. Muhammad Nizar Tanoli, Advocate for the Petitioner.

Mr. Saleem Akhtar, A.P.G alongwith M. Anwar Mahar, DPP.

Mr. Hassan Akbar, Advocate General, Sindh alongwith Mr. Saifullah, Mr. Shahryar Mahar, and Ms. Saima Imdad Mangi, AAGs.

Mr. Imran Sabir, Director, Technical SEPA and Dr. Habib ur Rehman Solagi, Deputy Director, Law SEPA.

Mr. Ghulam Nabi Memon, IGP Sindh; DIG Irfan Ali Baloch; SSP Keamari, Hafecz ul Rehman; AIGP Legal Qamar Raza Jiskani; AIG-II Mushtaq Ahmed Abbasi; PI Asif Ali Khoso, PI Sajjad Ali; PI Rashid Rind and PI Arif Meo.

On 07.02.2023, a Progress Report had been filed under the signature of DSP Zubair-ul-Islam, Investigating Officer, Investigation-III, District Keamari, in C. P. No. D-1157 of 2020 and connected matters relating to the incident that took place in the Keamari area of Karachi in the year 2020, where it has been stated *inter alia* that:



"It is respectfully submitted that on 17th day of February 2020, SHO/ PI Adil Khan of Jackson P.S lodged a case vide FIR No.143/2020 u/s 322/337-J/284 PPC at Jackson P.S, while he was patrolling in the area when received information that in the locality of Jackson, Railway Colony, Bhutta Village Docks Colony, Kachi Para and adjacent areas, peoples were affected due to some unknown poisonous gas and chemical smell in atmosphere and they were being taken and shifted to various hospitals. Reportedly, after inhaling toxic gas, residents had complained of experiencing breathing difficulties, "burning sensation in the nose", watery eyes and itching in the throat. Approximately 537 peoples were affected. Out of them, 09 people died. Hence the said case / FIR was registered against unknown accused persons."

The aforementioned Report went on to state that in continuation of the investigation of that case, five more FIRs/cases had been registered at PS Jackson u/s 322/337-J/284 PPC, bearing FIR Nos. FIR Nos.167/2020, 168/2020, 169/2020, 170/2020 and 171/2020, with it being submitted on the subject of the investigation conducted in those cases as follows:

"1. Post Mortem:-

That the 10 requested the Ziauddin, KPT, Civil and Keamari & other Hospitals for Post Mortem of the deceased bodies. However, the legal heirs of the deceased did not allow post mortem to be carried out. Such entries and statements of the heirs of few of the deceased are attached as Annexure--A.

2. Post Mortem was carried out of an unknown dead body, which was found from the affected area. Dead body was shifted to Edhi Cold Storage, and later on, the same was identified as Ali Gul Ujan. According to Post Mortem report, the cause of death reproduced as under;

"Respiratory depression due to ingestion of drug of dependence (morphine) possibly over dose, leading to Cardio Respiratory failure and subsequent death"

3. Exhumation:-

Later on, during the course of investigation, I/O obtained permission from the Court for exhumation to ascertain the cause of death of other remaining dead persons. A letter in this regard was sent to Police Surgeon dated 18.04.2020, but Police Surgeon offered his opinion, reproduced as under:-

"Due to poisons gas inhalation, the cause of death is not likely to be ascertained on exhumation after such as long passage of time. Gases are volatile and do not persist in body after death"

The copy of such reply is attached as Annexure-----B."

[underling added for emphasis]



On a perusal of the Report, especially the underlined excerpts, it had been observed that it reflected a distinct lack of initiative in the collection/securing of evidence. Needless to say, when a suspicious death occurs, acceding to the wishes of family members does not serve the ends of justice and requirements of S.174 Cr. P.C., as the body of the deceased is often a valuable repository of evidence, that could serve a critical purpose when presented in Court. As such, to treat a post-mortem as a matter of choice rather than a mandatory requirement undermines the future course and outcome of an investigation and trial. The learned AG and the AIGP Legal were thus put on notice to assist us in this regard on the next date.

Today, the learned AG has stated unequivocally that a post mortem is a requirement of the law in such cases. Furthermore, he has filed a Statement reflecting that a protocol has been devised to cater to cases of multiple suspicious death, which has not been duly notified by the Government of Sindh with the object to facilitate smooth and timely investigation of such cases in future. The Statement is taken on record. The relevant Notification attached along with said Statement is reproduced hereunder:-

“SUBJECT: STANDARD OPERATING PROCEDURE POLICY
GUIDELINES FOR MONITORING, COORDINATION,
TIMELY ACTION AND DEFINED LINES OF
COMMAND AND CONTROL IN ALL FUTURE CASES
OF MULTIPLE SUSPICIOUS DEATHS.”

- This department's notification of even number dated 10.05.2023 is hereby withdrawn.



I am directed to refer to subject noted above and to state that the Advocate General Sindh while pursuing cases of multiple deaths at Keamari Port and Deaths of Children at Mawach Goth, in C.P Nos. D-1157/2020, D-1166/2020, D-1296/2020 and D-666/2023 was of the considered view that in future such like incidents containing Multiple Suspicious Deaths should be monitored to control its entailing consequences as such in order to better manage and supervise the whole process of monitoring, coordination, timely action and defined lines of command and control, following protocols/ guidelines are given:

A committee "Multiple Suspicious Deaths" is constituted comprising as follows:-

1	Secretary, Home Department, Government of Sindh	Chairperson
2	DIG Police (concerned Division)	Member
3	Director General, Sindh Environment Protection Agency (SEPA)	Member
4	Deputy Commissioner (concerned District)	Member
5	Police Surgeon, Karachi	Member
6	SP Investigation police (concerned District)	Member
7	District Health Officer (concerned District)	Member
8	SHO (of the concerned Police Station)	Member
9	Any relevant officer of any department, as deemed appropriate by the Chairperson	Member

- i. The concerned SHO shall immediately secure the perimeter of the death scene as and when information received through any source, about three or more deaths in suspicious circumstances within the jurisdiction of a police station.
- ii. The SHO concerned shall be responsible for securing the perimeter, providing access to the respective teams of the above Departments and for 'Scene Investigation' timely carrying out of post-mortem or exhumation of bodies, through the concerned Magistrate, strictly in accordance with law.
- iii. The Chief Secretary, on receipt of information through any source shall immediately direct the Chairman of the committee to convene a meeting within 12 hours upon multiple suspicious deaths.
- iv. The first meeting of the Committee be convened to deliberate upon the possible reasons and factors of such deaths. The Committee shall maintain complete minutes of each of its meetings.
- v. Within 6 hours of such meeting, teams of all the concerned Departments (Police, Health, SEPA) shall visit the scene/area and conduct thorough collection of evidence, tests, sampling, post mortem and investigation etc.
- vi. All the samples collected shall be sent to their respective laboratories for tests within 6 hours of their collection.



4

- vii. SEPA shall immediately initiate the protocols required for collection of evidence in accordance with law and start investigation into the possible causes and also for preservation of life, livestock and environment.
- viii. The bodies shall be sent for Postmortem immediately to the PS/DPS/APS. The PS/APS/DPS shall immediately convene a Medical Board comprising of Professors of Pathology, Forensic Medicine, Senior MLO/WMLO for Postmortem(s) as required, who should consult a qualified head of Chemical Analytics, for accurate collection and preservation of samples.
- ix. The DHO shall coordinate with the Medical Board if exhumations are ordered by the area magistrate, for logistics and resource requirements.
- x. DHO shall also designate responsible Medical Officers to collect all relevant data/information from the families of the deceased, relevant clinics and hospitals where the deceased were taken to before or after death and screen the area by deploying Medical Experts for the potential cases (showing similar symptoms).
- xi. The concerned laboratories shall at the earliest, without delay, furnish their reports of the above collected tests.
- xii. Upon receipt of Reports from each of the laboratories, the concerned officers shall submit their detailed Reports to the Committee, based whereon, meetings of the Committee shall be convened for further deliberations and preventive measures.
- xiii. The Committee shall convene its second meeting after sending of samples to the laboratories, to deliberate upon the evidence so collected and to chalk out measures to prevent the spread of the possible reasons of such suspicious deaths based upon the evidence and ground observations for the teams.
- xiv. Such Reports shall also be submitted before the concerned Court(s) in accordance with law along with the minutes of the meetings of the Committee.
- xv. Upon receipt of all reports from laboratories, the Committee shall deliberate upon and issue a detailed 'Final Report' mentioning the reasons and causes for such suspicious deaths, and shall also provide clear recommendations for further spread and prevention of the cause(s) of such deaths to the Government. Such Final Report shall be submitted before the Chief Secretary for further necessary action, if any, and shall also be submitted before the concerned Court(s).



- xvi. The Committee shall have complete powers to instruct any of the concerned department to take necessary action in order to prevent further spread of the cause of the suspicious deaths.
- xvii. That while performing in the said Committee, all Departments shall strictly adhere to and comply with the Laws, Rules and Regulations, respectively applicable to them.

The learned AG submits that the Notification represents an initial step, and the protocols would be improved be subject to improvement, if and when the need is observed from time to time. He further submits that a proposal for creation of a State of the Art Forensic Laboratory has also been approved by the Sindh Cabinet, and that the relevant particulars would be placed on record on the next date.

The Deputy Director Law, SEPA is also in attendance and undertakes that a proper inquiry will be carried out in relation to the residential areas where the incidents in question have occurred and a report would similarly be submitted on the next date. Let such inquiry and report also encompass the factories of the Petitioners in C.P No. D-1858 of 2023 and CP Nos. D-1989 to 1992 of 2023. Counsel for those Petitioners are directed to join SEPA as Respondent in those matters and file an amended title within one week from today.

Furthermore, as to the ineptitude shown by police functionaries in the matter at hand, the IGP undertakes that the inaction on the part of such functionaries in seeking that a post-mortem be carried out in respect of victims of the incidents will be inquired into and appropriate action will be taken against those who are found to have been delinquent in discharging their functions.



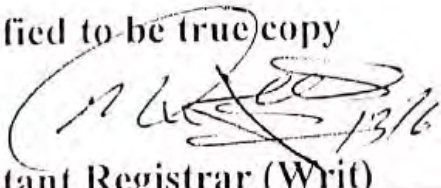
✓

Without citing a particular instance, the IGP submits that when applications for exhuming the mortal remains of the deceased are filed before the concerned Court, the same are on occasion dealt with in a routine manner, without appreciating the fact that the subject is time sensitive. Needless to say, it is imperative that applications on the subject are taken up on a priority basis and disposed of in accordance with law without any undue delay. As such, all Judicial Magistrates serving in the province are directed to ensure that such applications are attended to accordingly. The Registrar is directed to communicate this Order to all the District Judges of the Province for onward circulation and compliance.

Adjourned. To come up in the 1st week after Summer Recess. Let a copy of this order be placed in the connected Petitions listed above.

SD/. JUDGE
SD/. JUDGE

Certified to be true copy

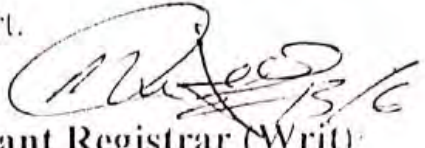

Assistant Registrar (Writ)

C.P.No.D-1157/2020

Karachi Dated 13.06.2023

Copy of above order forwarded for information compliance to:

➤ The Learned Registrar of this Court.


Assistant Registrar (Writ)

