

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-5920 of 2015

Date **Order with signature of Judge**

Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Amjad Ali Sahito

Kainat Soomro & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

Heard on 04.06.2021

Mr. Mohamed Vawda, Advocate & Ms. Palvasha Shahab,
Advocates for the Petitioners.

Mr. Abdul Razzaq, Registrar, Sindh High Court.

Ms. Leela Kalpana Devi, Addl. A.G. Sindh.

Syed Meeral Shah Bukhari, Addl. P.G. Sindh.

DSP Raza Mian (Legal), Representative of IGP Sindh.

Muhammad Ali Mazhar, J: As a matter of fact, this petition was brought to seek directions against the respondents for the implementation of the directions contained in the judgment rendered by the hon'ble Supreme Court in the case of **Salman Akram Raja vs. Government of Punjab (PLJ 2013 SC 107)**. The hon'ble Supreme Court in this judgment directed to ensure the directions contained in clauses (a) to (e) in rape matters. This petition (**Kainat Soomro and others vs. Province of Sindh and others. PLD 2020 Sindh 611**) (order authored by **Muhammad Ali Mazhar-J**) was disposed of with the directions to all Anti-Terrorism Courts in Sindh to comply with the order immediately and so far as the issue of funds if any involved for implementation of judgment is concerned, the Home Secretary,

Government of Sindh was directed to immediately take up the matter with the Presiding Officers of Anti-Terrorism Courts. He will write letters to all the Presiding Officers of Anti-Terrorism Courts in Sindh for collecting the information and requirements of funds if any and all the learned Presiding Officers of Anti-Terrorism Courts shall promptly reply the letter and communicate the required arrangements including the release of funds if any for the purpose of complying with the judgment of the apex court. Similarly, for all District Courts the learned MIT-II was directed to ensure that all District Courts in Sindh shall comply with the judgment of the apex court in letter and spirit and he will communicate letters to all the learned District Judges of the Province of Sindh for knowing the requirements and basic arrangements which will be replied by the learned District Judges promptly so that the issue of funds if any may be taken up thereafter a consolidated statement of the requirements will be placed before the hon'ble Chief Justice of this court for consideration and directions as his lordship may deem fit and proper. The I.G. Sindh Police and Prosecutor General Sindh both were also directed to ensure the compliance of DNA test facility/arrangement as directed by the apex court.

2. Since the petitioners were of the view that directions given by this court while disposing of the petition have not been complied with, henceforth, they filed an application under Sections 3, 6 & 12 of the Contempt of Court Ordinance, 2003, read with, Article 204 of the Constitution to initiate contempt proceedings against Home Secretary and I.G Sindh. In the supporting affidavit, the petitioner avowed that this court was pleased to grant the prayer in the aforementioned petition and gave directions for the implementation of the instructions and guidelines set forth in Paragraph 16 of the judgment, passed in the case of **Salman Akram Raja vs. Government of Punjab (supra)** and also referred to Paragraph 7 of the judgment, passed in the aforesaid petition by this court. The petitioners have lodged the grievance that a letter, dated:

07.02.2019, detailing the obligations of the contemnors No. 1 and 2, was sent along with a copy of the judgment, dated 31.01.2019 passed by this Court but no response was received from contemnors No. 1 or 2. The abovementioned letter was followed by another letter dated 30.07.2019, which requested contemnors No. 1 and 2 to share information regarding the compliance of the abovementioned judgment but the contemnors No.1 and 2 miserably failed to furnish any response or ensure comprehensive compliance and have therefore violated the orders in aforementioned judgment, dated 31.01.2019, passed by this Court.

3. The petitioner also pleaded that the police stations have failed to engage civil society organizations on the receipt of a rape complaint on various occasions. The preservation of and testing of DNA evidence is sporadic, un-standardized and delayed, the facilities available for DNA testing continues to be severely limited and dysfunctional. The alleged contemnors took the defence that there was no intention to flout the order or non-compliance but they were making some SOP document. On 13.2.2020, we passed following order:

The petitioner has approached this court in fact for the implementation of the judgment of the hon'ble Supreme Court reported in PLJ 2013 S.C. 107 as well as judgment passed by this court on 31.01.2019, whereby, the petition was disposed of with certain directions. Learned counsel for the petitioner argued that despite clear directions, the orders have not been implemented as still various cases of DNA Test are pending and reports are awaited which has bad impact on the trial of rape cases. Syed Kaleem Imam, I.G. Sindh is present with DIG Legal. He submits that they have a SoP for immediate DNA Test with certain directions to the SHOs and I.Os. We have gone through the SoP but no exact timeframe is mentioned in which SHOs or the I.Os. are required to forward the sample for DNA test and receiving report without any delay. Learned counsel for the petitioners further argued that so many DNA Test reports are awaited due to non-payment of bills of the concerned Laboratories. DIG Legal submits that Sindh Government has recently entered into an agreement with Karachi University and Jamshoro University for the facility of DNA Test and they have made some payment also to them but still no mechanism is placed before us to deal the situation as to when I.O will forward the sample and whether the same is directly received by the University or they ask for the payment first or they directly send the bill to the Sindh Government. The Home Secretary submits that some amount has been paid and some amount will be transferred in escrow account but he is not confident about the procedure in which samples are received and bills are sent to the Sindh Government. According to our understanding, in order to enforce the mandatory test of DNA in rape cases smooth mechanism is required to be made out in which I.Os or the SHOs should not be burdened for the cost or demand of bill at site but there must be a mechanism that after

collection of the samples a bill should be sent of all such DNA test to the Sindh Government for payment. The Home Secretary and the I.G. Sindh as well as DIG Legal all are directed to convene a meeting within three days and jot down a complete mechanism for the implementation that will be circulated after approval of the court not only to the concerned Laboratories but also to all SHOs and I.Os of the cases for the effective implementation of the judgment. Mr. Abdul Razak, MIT-II is directed to focus on the next implementation in which the trial courts should fix screen in the rape cases in compliance of the directions of the hon'ble Supreme Court as well as this court. He is directed to contact Sessions Judges individually and submit the report as to whether trial and proceedings in the rape cases are being conducted in compliance of the directions with proper screening or not. We want to see the list of all individual cases pending in individual courts and the reasons for non-compliance by the Sessions Judges or ATC Judges in letter and spirit. In case any deficiency is found in compliance of the directions of the hon'ble Supreme Court or this court, the Presiding Officer of the concerned court would be responsible to face the consequences and they will be bound to appear in person and explain their position. At this juncture, I.G. Sindh submits that they have some already sanctioned funds for the investigation and if they are allowed they may pay the DNA Test fee so he requests that some directions may be issued to grant this amount as impress money for consumption in DNA Test on immediate basis. This aspect will also be considered by the Home Secretary in the meeting that is being convened under the directions of this court. The Secretary Finance shall also attend the meeting on the directions of this court. Adjourned to 27.02.2020 at 11:00 a.m. on which date I.G. Sindh, DIG Legal, Home Secretary and MIT-II shall also be in attendance.

4. On 27.02.2020, besides, learned counsel for the petitioners and learned A.A.G, Dr. Usman Chachar, Home Secretary, Government of Sindh, Ms. Rahat Ehsas, Additional P.G., Mr. Abdul Razak, Member Inspection Team-II, High Court of Sindh, Syed Kaleem Imam, Inspector General of Police, Sindh, Amanullah Zardari, Focal Person, Home Department, Government of Sindh, AIGP (Legal) Zulfiqar Mehar, DSP (Legal) Mushtaq Ahmed Abbasi, AIGP (Legal) Muhammad Habib Khan, AIGP Farhat Ali Junejo, Crime/Investigation, DSP (Legal) Raza Mian and DSP (Legal) Akbar Qureshi also appeared in person. The court after hearing respective contention, passed the following orders:-

“In compliance of the last order, Mr. Abdul Razzak, MIT-II of this court has submitted the progress report of each district separately. He submits that in some districts the compliance has already been made but there are some issues of funds also for which the District Judges have sent their requisitions to this court which were placed before the hon'ble Chief Justice and have been forwarded to the Director Finance for arrangement and allocation of appropriate funds. He will also submit the progress report on the next date as to whether some efforts have been made by the Director Finance with the Finance Department, Government of Sindh for the allocation and release of required funds or not. So far as the cases pending in the ATC Court, learned MIT-II submits that according to ATC courts compliance is being made but he requests that Registrar of the ATC court may be summoned for the next date to ensure the compliance. Office is directed to issue notice to the Registrar, ATC Courts, Karachi to appear in person on the next date

along with all requisite details as to whether ATC courts are following the judgment or not. At this juncture, learned counsel for the petitioners pointed out that three rape cases are fixed in the court of Vth Additional Sessions Judge, Malir, Karachi, XIIth Additional Sessions Judge West, Karachi and VIth Additional Sessions Judge Central, Karachi but the Presiding Officers are not following the protocol mentioned in the hon'ble Supreme Court judgment. Learned counsel will also supply the case numbers to the learned MIT-II who will examine whether all protocols provided in the judgment of hon'ble Supreme Court and this Court are being followed or not by the said Presiding Officers. Zulfiqar Ali Mahar, AIGP (Legal) and Additional Chief Secretary, Home Department, Government of Sindh have filed their progress report and they also addressed this court that in compliance of the last directions they have conducted a meeting in which various aspects have been discussed. It has been decided that some amount in aid will be sanctioned for utilization for the payment of DNA tests in all rape cases and payment will be made to International Center for Chemical and Biological Sciences (ICCBS) and LUMHS. It is further stated by the AIGP Legal that the payment of 166 cases of DNA have been made to Karachi University and payment for 367 cases of DNA has been made to the Jamshoro Institute (JUMHS). He further submits that 46 report are pending in Karachi Lab and 235 reports are pending in LUMHS. I.G. Sindh present in court assured us that within few days the entire payment will be made and reports will be collected from the Labs for onward submission to the prosecution and court. They are also directed to submit progress report on the next date. I.G. Sindh has also filed revised SoP. Copy has been supplied to the petitioners' counsel who has also submitted a working paper for showing timeline for the collection of forensic evidence in cases of rape and sexual assault. According to learned counsel he has collected some data from different websites of International Organization to show the life of the samples and its transmission to the labs to safe its effect. Copy has been supplied to the I.G. Sindh and AIGP Legal who may go through the same and if required some changes in their proposed SoP the same may be made in the advancement of justice as well as make procedure appropriate for decision of rape cases in future. AIGP legal further submits that for the assistance of this court it would be appropriate to call focal person from International Center for Chemical & Biological Sciences (ICCBS) and University of Management & Health Sciences (LUMHS). Office is directed to issue notice to Prof. Beka Ram Devraja from LUMHS and Mr. Javed Iqbal from ICCBS to appear in person on the next date for the assistance of this court. It appears from the compliance reports that some progress have been made and we hope that some more compliance will be submitted to this court so that proper implementation of the hon'ble Supreme Court's judgment as well as this court may be made effectively and practically. So far as sanctioning of amount is concerned, the Home Secretary submits that summary has been moved to the Chief Minister Sindh through Finance Department and decision is awaited. The Chief Secretary as well as Home Secretary both are directed to expedite the matter and ensures that within three weeks' the amount is sanctioned by the Chief Minister Sindh. Let them submit the progress report also".

5. In order to enforce substantial compliance of the judgment of honourable Supreme Court and the judgment passed by this court, the learned counsel for the petitioners, learned A.A.G as well as the representative of I.G Sindh all agreed that some SOP should be made out with due deliberation of all stake holders to ensure the compliance of aforesaid judgments. The SOP document was prepared and vet by the learned counsel for the petitioners, Registrar of this court, learned A.A.G, Sindh, Persecutor General

Sindh as well as the representative of I.G Sindh. The final document of SOP was prepared and signed by I.G Sindh after incorporating feedback and suggestions of all aforesaid persons with the assurance that agreed SOP shall be implemented in the province of Sindh across the board in letter and spirit. Eventually after due consultation and bearing in mind the pros and cons, final document of approved SOP was submitted in court on 04.06.2021 by AIGP Legal-II duly signed by IGP Sindh which is reproduced as under:-

Standard Operating Procedures (SOP) for Sampling and Preservation of DNA Samples in Rape, Sodomy and Sexual Violence Cases

SOPs for the Duty Officers and SHO

1. The SHO/Duty Officer shall ensure that FIR is lodged at once after intimation of a complaint of rape, sodomy or sexually assault. While registering the FIR, the Police will strictly follow the directions contained under Section 154 Cr.P.C.
2. The complainant/victim should be informed that the victim should not bathe or change and/or wash his/her clothes until the Medico Legal Examination has taken place. Furthermore, the complainant should be informed that a separate set of clothing should be taken to the relevant hospital for the medico legal examination.
3. The SHO/Duty Officer must ensure that the Medico Legal Officer is informed immediately so that the Medico Legal Examination of the victim and/or accused person can take place at once. In case of a female victim, the presence of a female Medico Legal Officer must be ensured for collection of DNA samples.
4. Upon the lodging of FIR, the Duty Officer/SHO shall ensure that a forensic team is immediately notified so that they can visit the scene of crime for collection of DNA samples/evidence.
5. The scene of crime should be sealed immediately after the occurrence of the incident. It must also be ensured that until a forensic team/crime scene unit takes DNA and other samples, no person is allowed to enter and contaminate the scene of the crime. Such instructions be issued to Police Posts that as soon as they receive information regarding offence, the Duty Officer should proceed to place of incident and should not wait for registration of FIR.
6. The IO should ensure that till the visit of Forensic Team/Crime Scene Unit, the place of incident is secured in a manner so that the evidence may be collected.
7. The Investigation Officer will ensure that the DNA samples which are taken by the Medico Legal Officer are collected and delivered to the relevant DNA laboratories within 24 hours. The Investigation Officer must follow-up with the labs so that the reports are collected and placed in the police file and incorporated in the Challan as soon as possible. The Investigation Officer shall ensure that the reports are collected within 24 hours after intimation that the reports are ready.
8. The IO should also ensure that these reports are then immediately placed before the Court along with challan with originals duly sealed and secured at some appropriate place for production by the Prosecution during trial.

SOPs for the Medico Legal Officer

1. The Medico Legal Officer shall ensure that the DNA samples are taken from the victim without delay. Upon intimation from the SHO that a sexual assault crime has been committed, the Medico Legal Officer shall ensure their presence at the relevant Hospital on time so that the victim does not have to wait.
2. The Medico Legal Officer as guidelines shall make sure that the DNA samples are taken from the following potential sources:

Evidence	Possible location of DNA on the evidence	Source of DNA
Bite marks	Person's skin or clothing	Saliva
Facial tissue, cotton swab	Surface area	Mucus, blood, sweat, semen, ear wax
Fingernail	Scrapings	Blood, sweat, tissue
Hat, head band, mask	Inside	Dandruff, hair, sweat Saliva
Tooth pick	Tips	Saliva
Used condom	Inside/outside surface	Semen, vaginal or rectal cells

3. The clothes worn by the victim or the accused at the time of offence must be taken, preserved and sealed for testing.
4. The Medico Legal Officer shall ensure that the Medico Legal Certificate is prepared as soon as the examination is taken place and completion of all formalities. The Investigation Officer must be notified as to when the report will be ready so that the report is collected without delay.
5. Efforts should be made to ensure and strictly follow anti-contamination guidelines as mentioned in Annexure A.
6. In case, Radiology test is required but facility is not available at the place of examination then MLO shall specify that within 24 hours the victim should reach at the relevant Radiology lab and the MLO should get in touch for obtaining the reports quickly so that final MLC is issued without delay.

SOPs for the Forensic Team

1. The forensic team shall take DNA and other samples from the scene of the crime without any delay.
2. Effort should be made to ensure anti-contamination guidelines as mentioned in Annexure A.
3. Potential Sources of DNA Samples:

Evidence	Possible location of DNA on the evidence	Source of DNA
Blanket, pillow, bed sheet, bed cover	Surface area	Blood, semen, saliva, hair, vaginal fluid, sweat
Bottle, can, glass	Sides, mouthpiece	Fingerprint, saliva, sweat

Dirty laundry	Surface area	Blood, dandruff, hair, Semen, sweat
Door knobs	On the handle	Fingerprints, skin, sweat
Eye glasses	Nose or ear pieces	Sweat, skin
Hat, head band, mask	Inside	Dandruff, hair, sweat Saliva
Stamp on envelope	Licked area	
Tape or ligature	Inside/outside surface	Skin, sweat
Through and through bullet	Outside surface	Blood, tissue
Tooth pick	Tips	Saliva
Used cigarette	Cigarette butt	Saliva
Used condom	Inside/outside surface	Semen, vaginal or rectal cells
Weapons	Handle, end	Blood, fingerprints, flesh sweat

SOPs for the AIGP Investigation and AIGP Forensics and concerned SSP:

1. The investigation of rape, sodomy and sexual assault cases shall be supervised directly by the SSP concerned who shall be immediately intimated by the duty officer/SHO when an FIR for such offences is lodged.
2. Forensic teams tasked to collect the samples and evidence should be notified for each district and SSP should ensure that this team is fully equipped with all required material so as to scientifically collect the evidence.
3. The SSP in coordination with Police Surgeon will monitor on weekly basis the DNA testing and all above mentioned time frames and shall ensure immediate compliance and strict action should be taken against the officers responsible for the delay.
4. That the AIGP Investigation and AIGP Forensics shall ensure that the notified laboratories do not refuse to accept DNA sample or refuse to give report on the pretext of non-payment of fee. However the Home Secretary and I.G shall ensure that requisite funds are allocated and disbursed by the Sindh Government for timely payment of DNA test fee to the concerned labs.
5. It must be ensured by SSP concerned in coordination with DHO that female Medico Legal Officer is available round the clock or on call at least at each Taluka or Town level Hospital. Such Hospitals should be notified in each Districts so that victim is taken to the nearest Hospital.
6. In the event that any DNA test and/or its report is pending due to non-payment, the laboratory bills/liabilities should be cleared immediately from the cost of investigation head or from the Cost of Investigation Inspector General of Police Reserve Account.

Annexure A

ANTI-CONTAMINATION GUIDELINES

- Always wear disposable gloves and mask before touching any evidence.
- Use disposable instruments for handling each sample.

- **Avoid touching the area where you believe DNA may exist.**
- **Avoid talking, sneezing and coughing over evidence.**
- **Avoid touching your face, nose, and mouth when collecting and packaging evidence.**
- **Do not allow one evidence stain to come into contact with other biological samples or residue from other biological samples.**
- **Contact between victim and suspect samples should be avoided at all times.**
- **Do not subject evidence to heat or sunlight to dry it.**
- **Each evidence should be packaged separately into paper bags. Where possible, take the container to the evidence. Use clean containers for transport. Seal all packaging securely with a seal.**
- **Each item should be packaged, sealed, and labelled as soon as it is taken.**
- **Ensure that any person attending a crime scene has no contact with a suspect or his/her clothing.**

6. The contempt application is disposed of on the assurance that aforesaid SOP shall be religiously followed for proper and effective implementation of the judgments. Slight changes are made in the draft of SOP to make the compliance more effectively and practically. The I.G Sindh, within 20 days shall ensure that aforesaid SOP document is translated in Urdu and Sindhi languages also and he will distribute the SOP in English language as well as accurate translated SOP in Urdu and Sindhi languages to all Police Stations in Sindh, Prosecutor General Sindh, all Prosecution Departments, Advocate General Sindh, all DIGs, all SSPs, Registrar of this Court, all District Judges and ATC Judges of the province of Sindh. Copy shall also be transmitted to the Administrative Judge of Anti-Terrorism Courts and Monitoring Judge of Anti-Terrorism Courts for Sindh. Office is directed to transmit the copy of this order to Home Secretary Sindh, I.G. Sindh Police, Advocate General Sindh, Prosecutor General Sindh, Registrar and MIT-II, Sindh High Court as well as all District & Sessions Judges and ATC Judges in Sindh.

Judge

Judge