

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE SAEED-UR-REHMAN FARRUKH

CRIMINAL MISC.A.NO.87/I OF 2005 IN
CRIMINAL APPEAL NO.57/I OF 2005

Tordi Khan son of Astana Gul, -- Applicant
Caste Turkman, Resident of
Street Ghaus Abad, near Masjid
Farooqia, Nawan Abad, P.S.
Satellite Town, Quetta.

Versus

The State -- Respondent

Counsel for the applicant/
Appellant -- Sardar Muhammad Ishaq Khan,
Advocate.

Counsel for the State -- Mr. Shafqat Munir Malik,
Asstt: Advocate General

No. date of FIR and
Police station -- No. 161 dated 14.9.2004
P.S. City.

Date of the order of
Trial Court -- 26.2.2005

Date of institution -- 4.3.2005

Date of hearing -- 19.9.2005

Date of decision -- 19.9.2005

ORDER

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This is an application under section 428 Cr.P.C. for taking additional evidence.

2. It has been stated by Sardar Muhammad Ishaq Khan, Advocate, learned counsel for the applicant/appellant that Ghazanfar Ali, Sub-Inspector, P.W.16 has, in the course of his cross-examination, admitted that daily progress reports, in the case, were submitted by the said witness to SHO and DSP, but the same were not brought on the judicial file. He has contended that since perusal of the above reports especially, dated 18.9.2004 and 23.9.2004 is essential for just decision of the case, therefore, it may be allowed to be brought on record.

3. Having been questioned as to whether the said progress reports as per definition contained in Article 2(c) of the Qanun-e-Shahadat Order, 1984 can be termed as "evidence" and brought on record in view of the bar contained in section 172 Cr.P.C., the learned counsel for the applicant/appellant candidly conceded that though the progress reports, in question, cannot be termed as "evidence" and brought on

record as such, however, the same, for just decision of the case, can be

looked into by the Court. Stated that he would be satisfied if the

progress reports, in question, if deemed appropriate, are perused by

the Court.

4. It is well settled that documents not formally admitted in

evidence and available on judicial file, police file or elsewhere even,

can for the purpose of elucidation of certain facts, be looked into

(Muhammad Azam vs. Muhammad Iqbal – PLD 1984 SC 95,

Muhammad Arshad Naseem vs. The State – 2004 P.Cr.LJ 371) yet,

progress reports which are characterized as “special diaries” can, by

no stretch of imagination, be termed as “evidence” within the purview

of Article 2(c) of the Qanun-e-Shahadat Order, 1984 and allowed to

be placed on record, in view of the bar contained in section 172

Cr.P.C. Here, it would be advantageous to have a glance at section

172 Cr.P.C. which reads as follows:-

“S.172. Diary of proceedings in investigation.—(1) Every police officer, making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the

time at which he began and closed his Investigation, the place or places visited by him, and a statement of the circumstances ascertained through this investigation.

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of the Evidence Act, 1872, Section 161 or Section 145, as the case may be, shall apply.

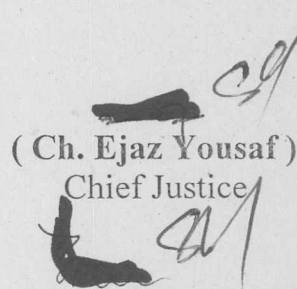
5. Needless to point out that police diaries can though be used in a case under trial by the Court for the limited purpose of seeing as to what was the line of investigation of the case and at times it can also be used for clearing up obscurities in the case yet, it cannot be used to test the correctness of statements made by the witnesses on oath nor can it be taken as evidence in a case because it being merely opinion of the police officer cannot be made basis for finding of the Court. In the case of Subhanuddin vs. The State 1976 SCMR 506 it was held that police diaries being evidently inadmissible in evidence were merely perused by the learned Judges for their moral satisfaction.

Crl.Misc.A.No.87/I of 2005 in 5
Crl.Appeal No.57/I of 2005

6. The upshot of the above discussion is that this petition being misconceived is hereby dismissed. However, the progress reports, in question, if deemed appropriate by the Court, may be looked into, at the proper stage and time.



(Dr.Fida Muhammad Khan) (Saeed-ur-Rehman Farrukh)
Judge



(Ch. Ejaz Yousaf)
Chief Justice

Judge

Islamabad, dated the
19th September, 2005
ABDUL RAHMAN/**

FIT FOR REPORTING

CHIEF JUSTICE