Copy kept on Legal Lexicon for reference. Source: https://pakistancaselaw.com/case/154833/petitioner-mst-yasmeen-shaikh-vs-state. The source gives no name of the judge and no date of decision. Check the official report before citing.

petitioner Mst. Yasmeen Shaikh vs State

Sindh High Court

petitioner Mst. Yasmeen Shaikh Versus State

C. P. No.S-608 of 2015.

Through instant petition, petitioner Mst. Yasmeen Shaikh has prayed as under :-

a.That, this Honourable Court may kindly be pleased to call and direct the official respondent No.1 to 4, above not to violate fundamental rights and legal privileges of petitioner and his family and to avoid from arresting, harassing, pressurizing or confining him except due course of law at the instance of private respondents.

b.That this Honourable Court may be pleased to direct the respondent No.2 to register F.I.R of the murder of one younger boy Mushtaque Ahmed Shaikh aged about 15/16 years in police custody against the respondents No.1 to 8 under Section 154, Cr.P.C.

c.That this Honourable Court may also be kindly pleased to direct respondent No.9 and 10 to ensure legal protection to petitioner and her family against apprehended life and property loss at the hands of respondents No.1 to 8.

2.Precisely, the relevant facts are that about one and half month back an F.I.R in respect of murder of one Imran Brohi bearing crime No.31/2015 was registered at P.S Civil Line, Jacobabad, wherein petitioner's son, namely, Mushtaque Ahmed Shaikh, aged about 15/16 years, was nominated, who was arrested by the police;]was detained at Police Station Jacobabad, where he was being tortured physically. It is further case of petitioner that on 30.4.2015, at about 3.30 p.m. when she was present in her house alongwith relatives, namely, Paras and Mst. Altaf Khatoon, at that time accused persons, namely, 1. Ghulam Abbas Jakhrani, 2. Jameel Ahmed Mangi, 3. Saeed Ahmed Brohi, 4. Ahmed Khan alias Waseem Ahmed, all armed with Kalashnikovs, intruded into the house, on gunpoint they took petitioner and her above-named relatives and brought at P.S City, Jacobabad in a white colour land cruiser vehicle, where petitioner's son Mushtaque Ahmed was lying in serious condition in the lockup duly handcuffed and the petitioner was threatened to disclose the whereabouts of her husband Muhammad Haneef Shaikh, else her son will be murdered. On cries of petitioner, she was slapped by SHO Anwar Brohi and her son was denuded and whipped and mixture of water and "Choona" was

forcibly put in the mouth of petitioner's son, as a result of which he became unconscious and subsequently on 04.5.2015, at about 10.00 a.m. he expired at CMC Hospital, Larkana.

3.It is further pleaded that postmortem reveals that deceased received injuries, but such postmortem was withheld till report of viscera. Following surface wounds and injuries were noted down by the doctor, who conducted postmortem of deceased Mushtaque Ahmed, with his remarks as under :-

1. Skin laceration semi healed at scab formation 06 cm x 03 cm on right lip joint laterally. 2. Skin laceration (semi healed) 08 cm x 06 cm on the right side of buttock.

3. Skin laceration (semi healed) 06 cm x 04 cm on the left side of buttock.

Ward Expiry Note. (Death Summary) by consultant of Medical Unit 1 CMC Hospital Larkana :- Mr. Mushtaque was referred from Jacobabad Hospital in unconscious on 03.5.2015. He was admitted in Medical Unit 1 CMC Hospital Larkana in High dependency on Bed No.1 O/E: Pulse 90/min, PB = 100/70, Neck, Rigidity positive, liver, spleen was also palpable. There was suspicions of CLD at Meningitis and Septicemia HBS Ag +ve, Blood urea and creatinine deranged. All measures management for serious were taken but patient expired on 04.05.2015 at 10.10 p.m. in Medical Unit 1 CMC Teaching Hospital Larkana.

Remarks

From external as well as internal examination of deceased Mushtaque Ahmed s/o Mohammad Hanif Shaikh opinion reserved for want of Histo Pathological and Chemical analysis Examination reports of visceras which are taken during the postmortem examination opinion will be given after receipt of such reports."

4.It is matter of record that deceased was arrested and such mashirnama was prepared, at that time he was not injured. Subsequently he received injuries in custody of police and was referred to CMC Hospital, Larkana, where he died and such postmortem was conducted. Proceedings under Section 174, Cr.P.C were not initiated, when it is matter of record that deceased was in custody. It is settled principle of law that every SHO is bound to record the statement of every informant and once information, narrated or received by him spells commission of a cognizable offence, he is left with no discretion but to incorporate the same into 154 Cr.P.C because the provision is mandatory in nature. Worth to take note of that the mandatory obligation of the officer in-charge of a police station also brings him under an obligation that he does not have to

stop the pen while recording report in 154 Cr.P.C even if the informant names the man with pen himself. It is not the caste, colour, creed or position of the accused but theinvestigation / trial alone which would dress an accused with clothe of innocence, but in this case that was not done. Also record reflects that within short period of time deceased died in hospital and medical report also shows injuries but opinion as regard to status of death of be natural or un-natural was withheld which prima facie was not requiring expert opinion. The conduct of the doctor and police is not up to the mark. Let me add here that even concerned Magistrate was not approached who otherwise was legally empowered to inquire into in such matters, as is provided by Section 176 of the Code, which for sake of clarity is referred hereunder:-

176. Inquiry by Magistrate into cause of death: (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in Section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either .instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding:, an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

5.This also prima facie goes to suggest that such legal inquiry was deliberately avoided. Under peculiar circumstances of the instant case it was obligatory duty of the Officer in-charge of police station and even the medical officer to have informed to the concerned Magistrate for necessary inquiry but this obligation was not done. The medical officer on appearance or production of an injured should not delay the treatment in name of any formality like police letter etc but at very first opportunity should report the matter to police or to Magistrate concerned, as the case may be. Accordingly, they are required to be prosecuted on their negligence.

6.While parting, it is material to mention here that provision of the Section 176 of the Code from its plain reading does not restrict the Magistrate concerned to initiate such inquiry even if the police, medical officer or any other person does not make such request. In case of death in custody inquiry to know cause of death is mandatory because it is with word shall while in cases, mentioned in Section 174, clauses (a), (b) and (c) of sub-section (1) the word may has been used which even is permissive in nature. Therefore, let this order be circulated to all learned Magistrates of Province of Sindh for guidance so that a soul cannot be made to rest in peace least cause of death is brought into light which is aimed for no other purpose but to bring a full stop against all maneuvers on part of police (death in custody) or against a killing coloured as suicide.

7.On receipt of the copy of this order, the Magistrate shall proceed to conduct an inquiry within scope of the provision of Section 176 of the Code which however shall be in addition to the investigation into FIR, ordered to be lodged.

8.These are the detailed reasons of short order whereby instant petition was disposed of, for the sake of brevity same is reproduced as under :-

"Heard learned counsel for the parties and perused the record. For reasons to be recorded later on, instant petition is allowed.

(i)The SHO, P.S City Jacobabad shall record statement of petitioner; if same narrates ingredients of a cognizable offence he shall incorporate the same in book provided under Section 154, Cr.P.C.

(ii)With regard to postmortem it appears that there is negligence on the part of Medical Officer, thus Director General, Health Services Sindh, Hyderabad, is hereby directed to constitute a team for probe with regard to postmortem report, whether such careless conduct is on the part of medical officer or otherwise. This exercise shall be completed within fifteen days with compliance to this Court through Additional Registrar."