

NOOR ELAHI CASE AND FURTHER DEVELOPMENTS

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Introduction

In criminal courts it is quite common to see a private complaint concerning an occurrence regarding which a police case was previously filed. However there is also no dearth of general misunderstanding of the facts of Noor Elahi case, as it is taken for granted that wherever a private complaint is filed alongwith a police case, dictum laid down by Noor Elahi case would be applicable. In this write-up I have tried to explicate the Noor Elahi case & in the light of the decisions of superior courts have suggested when that case law should or should not be followed & in latter case what alternative would be available to us for trial of both the case.

Noor Elahi case (PLD 1966 SC 708)

This case relates to single murder where the complainant (Noor Elahi) implicated three accused in the FIR. However the police in report u/s 173 Cr.P.C. mentioned all those three accused in column No.II (innocent) & instead it Challaned 2 totally different accused. Noor Elahi filed a private complaint against all those three accused he had named in the FIR & filed application for separate trial of both those case i.e. police case & complainant case. Trial Court dismissed the application & proceeded for joint trial of the cases. Noor Elahi challenged that order in revision before Honorable, Lahore High Court Lahore, which made following observation:

- *Police case to be taken up first & complete evidence be recorded;*

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- *Thereafter additional evidence by the complainant to be recorded;*
- *Evidence of common witnesses recorded once & read in both the cases;*
- *Judgments in both the cases to be delivered simultaneously.*

Noor Elahi filed leave to appeal against the decision before August Supreme Court, which with the Ratio 4:1 held:

- *Complaint case to be tried first;*
- *Witnesses of challan if not called already to be called as court witnesses, so that both parties can cross examine them;*
- *In case of conviction in complaint case, prosecutor to decide whether he should or should not withdraw from prosecution the Police case u/s 494 the Code of Criminal Procedure 1898;*
- *& in case of acquittal to the accused of complaint case, police case to continue normally (but it will have the advantage of utilizing the material placed on record of the earlier trial, by way of cross examination of the relevant witnesses as permitted by law).*

However Mr. Justice B.Z Kaikus (Baidi-Uz-Zaman Kaikas) wrote dissenting note & suggested that both the cases should be consolidated by observing following anomalies in the above cited decision:

- *In criminal case evidence or findings recoded in a case cannot be considered in other case;*

- *There cannot be more than one legal proceedings regarding same incident;*
- *Judge while delivering judgment in the second case will be affected by the findings he reached in the other case;*
- *It would be absurd that different persons be convicted in different proceedings on stories inconsistent with each other (in one case held that A had murdered B while in the other C had murdered B);*
- *What if state case withdrawn by prosecutor on conviction in complaint case, but High court or Supreme Court set aside the conviction?*

Syed Muhammad Hussain Shah Case (1981 SCMR 361)

In FIR of this case, 7 accused were nominated by the complainant regarding double murder & hurt to a number of other persons. But In report u/s 173 Cr.P.C. police named 4 accused in column No.III/IV while the remaining accused in column No.II. An injured of the occurrence filed pvt complaint against 6 of the accused named in FIR & 1 accused not named anywhere. On application of accused, trial court held that complaint case to be tried first. Nevertheless subsequently on the application of complainant (of pvt Complaint), trial court recalled its order & held that there would be joint trial of both the cases & together those would be disposed off. Accused challenged the order before Hon'ble High court, which ordered trial of the complaint case first. Complainant of FIR went to The August Supreme Court of Pakistan against the order by Hon'ble High court. Supreme Court dismissed the application with following observations:

- *Not only name of some accused are different but at least one accused nominated in FIR was dropped in complaint with the substitution of another accused;*
- *When two sets of allegations made in said two cases as to the weapons which were used as well as role ascribed to various accused is materially different; complaint case to be taken up first as laid down in Noor Elahi case.*

Mumtaz Case (1984 SCMR 221)

FIR of this case was also concerning single murder where the complainant had incriminated 9 accused; 6 with active roles while 3 conspirators of the murder. The police in report u/s 173 Cr.P.C. had named 4 accused (2 of FIR & 2 others) in the guilty column while the remaining 7 accused of FIR in the column of innocent. Complainant filed pvt complaint against all those 9 accused he had named in FIR. Magistrate was given the task of inquiry u/s 202 CrPC who held that case was made out against the 6 accused with active roles, while there was not sufficient material against the 3 conspirators. Sessions court summoned only 6 accused with active roles. Honorable High Court in revision held that complaint case to be tried first. Accused went to the Supreme Court with the request of Joint trial of both the cases by asserting same allegations against them in FIR & pvt complaint. Supreme Court held:

- *since 2 different accused are mentioned in challan case, which are not mentioned in FIR & pvt complaint; so procedure suggested by this court in Noor Elahi case should be followed.*

Rasheed Ahmad Case (PLD 1986 SC 737)

In this case also, decision of Noor Elahi case was held to be applicable by August Supreme court of Pakistan. The FIR of the case was relating to single murder where three accused were named. Police had Challaned 2 accused (1 of FIR & 1 other), whereas 2 accused of FIR opined innocent. Complaint was filed against all the three accused of FIR. Trial court summoned all the accused mentioned in complaint & those held guilty in challan case. By relying upon Noor Elahi case August Supreme Court of Pakistan held that complaint case should be tried first & state case (optionally) afterwards.

Zulfiqar Ali Bhutto Case (PLD 1979 SC 53)

August Supreme court of Pakistan in this renowned verdict made the following observation about the Noor Elahi case:

- *There was no necessity for separate trials of the 2 cases when, technically speaking, there were neither 2 sets of accused nor any additional evidence to be examined by the complainant; It was only to avoid prejudice to the complainant that a particular procedure was devised in NOOR ELAHI case;*
- *But to say invariably it should be followed even if the facts of case are distinguishable is not correct.*

➤ **Atta Jilani Case (1980 PCrLJ 901 Lhr)**

This case was about single murder where 5 accused were nominated in the FIR. Accused Atta Jilani was discharged by the Magistrate during investigation while the remaining 4 accused were opined guilty by the police. Complainant filed pvt complaint against Atta Jilani & remaining accused. Learned trial court (ASJ) observed that neither there was different set of accused nor different version; hence both the cases should be tried together. Atta Jilani challenged the order in High Court which dismissed the petition by observing:

- *When the accused cited in the complaint & challan case being the same, there was no harm in consolidation of police & complaint case.*

Aziz Ur Rehman Case (PLD 1987 Lhr 245)

Honorable Lahore High Court Lahore, through this decision endorsed the decision in Atta Jilani Case. The FIR of this case was against 5 persons regarding the homicide of a lawyer. In report u/s 173 Cr.P.C. 2 accused were mentioned in column No.2 as those were discharged by magistrate, 2 accused were mentioned in the guilty column while the last one was a proclaimed offender. Private complaint was filed against all those 5 accused. The accused filed application to the trial court for supply of copies of statements of witnesses recorded u/s 161 CrPC but trial court dismissed the application. Accused moved to the high court where the Hon'ble court held:

- *where the story of police case & complaint be same but only difference be regarding the number*

of accused then “Atta Jilani Case” should be followed but if some accused named by complainant be held guilty, some innocent & some accused not named in FIR were shown guilty by the police in report u/s 173 Cr.P.C, then NOOR ELAHI case should be followed.

Hon’ble High Court also observed that following procedure of joint trial is being followed by the courts:

- *Recording of witnesses in that case which has more accused (which automatically meant compliant case as if more accused were in challan case then Noor Elahi case would have been followed);*
- *Witnesses of police case if not already recorded to be recorded as court witnesses;*
- *Contrary to Noor Elahi case, final decisions in both the cases at the same time.*

Conclusion

The ratio decidendi of the above referred case laws is that Noor Elahi case would apply where at least one accused be different in the police case & the complainant case. However in case there are same accused as those named in the police case & the complaint, then Atta Jilani & Aziz ur Rehman case shall come into operation.