CHALLAN, POLICE REPORT AND DISCHARGE

[Section 173, Cr.P.C.]

Police Report u/S. 173 Cr. P.C is only an information of the Police Officer and it is not admissible in evidence. Presumption of innocence of the accused involved in the case is not diminished by the mere fact that case has been sent up for trial or that particular witness or person had formed opinion against the accused. 1993 SCMR 550, Syed Saeed Muhammad Shah.

Challan not submitted in Court within 14 plus 3 days of the arrest of the accused. (See Section 173(1)(b) Cr.P.C.). Challan produced after 34 days of the arrest of the accused. Held, it is clear violation of sec. 173 (1) (b) Cr.P.C In case investigation is not completed within 14 days from the recording of the FIR, officer incharge of police station is mandatorily required to submit an incomplete challan within 3 days of the expiration of such period of 14 days. This provision when not only not complied with but is contravened, held, appellant had remained in unlawful custody with police and was so at the time he was sent up for trial before Court; thus, entire proceedings stand vitiated. Appeal allowed. In this case the accused was arrested on 14-6-93 but challan was produced in Court on 18-7-93 which is 34 days after the arrest of the accused appellant. This is violation of sec. 173 (1) (b) Cr.P.C which is mandatory provision of law. (D.B) PLJ 1995 Cr.C (Kar) 420, Mooso.

Complete and incomplete challan: The assumption that a separate complete challan has to be submitted after an incomplete one has been submitted is not correct. Parties to the case have no legal right to insist on re-investigation of a case. (DB) 1976 Lah. 574 Muhammad Khan etc. v. I.G. Police.

Incomplete Challan: Separate complete challan has to be submitted after an incomplete challan has been submitted to the Court is not correct. (DB) PLD 1976 Lah. 574. Muhammad Khan v. I.G. Police.

Incomplete Challan. If the magistrate starts the trial on an incomplete challan he takes cognizance of the case, if he waits for the complete challan he does not take cognizance. (FB) PLD 1962 Lah. 405. Wazir.

Complete or incomplete Challan, no distinction. Court can proceed on an incomplete challan (FB) PLJ 1978 Cr.C. (Lah.) 234. State v. Z.A. Bhutto PLD 1978 Lah. 523.

Incomplete or interim challan (Namukamil challan): There is no such thing as interim challan or interim charge-sheet in law. The prevailing practice of sending charge-sheet describing it as interim challan to satisfy form of law in not warranted by law. 1974 P.Cr. LJ 231 Noor Dad etc.

Fresh challan or second challan or report under section 173, Cr.P.C.: A report under section 173 Cr. P.C. to the Court is no bar to fresh investigation and second report. (DB) PLD 1965 Lah. 734 Atta Muhammad v. I.G. Police (SC) 1972 SCMR 335 Muhammad Akbar.

Fresh report under section 173, Cr.P.C Nothing in Criminal Procedure Code debars a police investigating officer from submitting a fresh report in supersession of his earlier one either on his own initiative or on the direction of superior police officer. (SC) 1972 SCMR 335 Muhammad Akbar.

(Decided by four Judges on 22-6-72 in Cr.A.No (18 of 1972). Contra: See below (PLD 1971 SC 324) three Judges decided on 15-2-1971 in Cr.A. No 226 of 1970).

Interim challan not put in Court within time u/S. 173 Cr.P.C. held, detention of petitioner in jail after 14 days had become unlawful and violative of Articles 9 & 10 of the Constitution. Petitioner's continuous detention for offences u/Ss. 10 & 16 of Offence of Zina Ordinance was unlawful. Bail allowed. PLJ 1997 Cr.C. (Lah.) 1045, Muhammad Aslam. Also see (DB) PLJ 1995 Cr.C. (Kar.) 420, Mooso.

"Interim supplementary challan", there is no provision in law for submitting of "interim supplementary challan", Challan so submitted to be treated as final challan for all legal intents and purposes. PLD 1999 Kar. 121 Muhammad Hanif Pathan.

Challan after reinvestigation ordered to be sent to Court, although a challan had already been sent to Court, after first investigation PLJ 1978 Cr.C. (Lah.) 398. Muhammad Abdullah etc. v. S.H.O.

No further inquiry (Investigation) or report by police: The final report under section 173, Cr.P.C. having been submitted in the Court of the inquiry magistrate and the statements of a number of witnesses recorded by him. Section 497 (2), Cr.P.C was not attracted. There is no other provision in law under which a further inquiry could be made by the police. (SC) PLD 1971 SC 324 Muhammad Khan v. Sanaullah.

Further investigation and report allowed. Final report under section 173, Cr.P.C. submitted by police. Police may still make further investigation. Position would not change even if cognizance of offence already taken by the Court and recording of evidence commenced. (DB) PLD 1973 Lah. 304 Alam Din. PLJ 1973 Lah. 396.

Multiple investigation and reports: Police is competent to carry out multiple investigations in the same case. After the submission of a final report by the police, there is no bar to fresh investigation in the same case and if so desired to police can submit another report under section 173, Cr. P.C. as well. (DB) PLD 1965 Lah. 734 Atta Muhammad v. I.G Police. AIR 1932 Lah. 611. dissented from.

Fresh challan subsequent to final challan: Police is competent to submit charge sheet after submission of final report. (DB)  PLD 1963 Dac 618. Abu v. Abdul Ghani.

Column No. 2: The magistrate when taking cognizance of the case on police report under section 173, Cr.P.C. is competent of proceed against person mentioned in column No. 2 of the challan, as well. He is not bound by the opinion of the police officer. PLD 1966 Lah. 790 Sardar Ali 1972 SCMR 335. Muhammad Akbar. PLD 1967 SC 425 Falak Sher.

Summoning accused mentioned in column No. 2 of challan from when reasons were given for that it makes no difference whether those accused were found innocent by the police or the magistrate. (SC) NLR 1985 Cr. 1. Raja Khushbakht-ur-Rehman etc.

Accused mentioned in column No. 2 of challan can be summoned by the sessions Judge for trial. 1984 SCMR 221. Mumtaz etc. v. Mansoor etc.

Challan and cognizance: The police report by itself, when received by the magistrate, does not constitute the taking of cognizance, and it is reasonable to expect that some thing more will be done to show that the magistrate intends to start the proceedings. (FB) PLD 1962 Lah. 405. Wazir.

Sections 173, 190 and 191, Cr.P.C.: Magistrate issuing summons to persons mentioned in column No. 2 of challan submitted by the police deemed to be acting under clause (c) of sub-section (1) of section 190 and bound to comply with provisions of section 191. PLD 1953 FC 15 rel. PLD 1964 Lah. 7 Muhammad Abbas.

Cancellation of cases: A Magistrate is competent to take cognizance of a case even though the police report is negative or case is recommended for cancellation or the accused is placed in column No. 2 of challan. A magistrate is competent to direct police to submit fresh report even though the police recommend that there is no case against the accused. (Section 190) (b), Cr. P.C (SC) 1970 SCMR 178 - 1970 P.Cr. LJ 896 Muhammad Arif. (SC) 1972 SCMR 516 Said Jala.

Accused placed in column No. 2 can be competently called for trial by the Sessions Judge. PLJ 1993 Cr.C. (Kar.) 189, Mukhtar Ali etc, Cases ref. 1985 SCMR 1314; 1988 SCMR 1428.

Accused released u/S. 169 Cr.P.C. but placed in column No. 2 of challan, held, such person is not arrayed by police as accused. Trial Court cannot array him as an accused. Petition u/S. 561-A allowed, in case u/S. 302, 324/34 PPC. PLJ 1998 Cr.C. 9 (Pesh.) 75, Nasar Ullah.

Process summoning accused placed in column No. 2 of challan set aside when no material was found by the police against them. PLJ 1995 FSC 160, Shaukat Ali etc.

Sections 173 and 190, Cr. P.C.: Investigating Officer reporting no case against accused and showing him in column No. 2 of challan. Magistrate held justified by law in summoning accused to stand trial 1971 P.Cr. LJ 1127 Haji Muhammad Ali. (SC) PLD 1967 SC 425 Falak Sher etc. rel.

Cancellation of case by Magistrate on police report u/s 173 Cr.P.C. is not revisable u/s 435 to 439 Cr.P.C. but when the High Court reaches a conclusion that the order passed by the subordinate criminal Court amounts to the abuse of the process of Court it has power to rectify the injustice by setting aside the order of the magistrate u/s 561-A Cr. P.C. and direct him to dispose of the case in accordance with law. In this case the magistrate had passed the order on the police report in a mechanical manner without applying his mind. "Allowed as per request" 1993 SCMR 187, Arif Ali Khan.

Cancellation of challan by Magistrate on police report being an administrative order does not amount to discharge of accused in judicial proceedings and cannot operate as a bar to fresh prosecution. PLJ 1974 Cr.C. (Lah.) 553 Abdul Hakim v. Bashir Ahmad PLD 1968 Lah. 537 ref. (FB) 49 Cr. LJ 531 Emp v. Hayat Fateh Din.

Cancellation of challan: When a magistrate has cancelled a case there is no occasion for the Sessions Judge to hold that the accused has been discharged, or consequently he has a power to order a retrial. The accused  can be discharged only if some evidence has been recorded. Such a case does not fall within revisional jurisdiction of the Sessions Judges and any order for further inquiry would be set aside by the High Court. (FB) PLD 1962 Lah. 405. Wazir.

Order of discharge by magistrate on police report is not amenable to revision u/Ss. 435 to 449 Cr.P.C However, High Court is fully justified in setting aside the discharge order of the magistrate in application u/S. 561 A Cr. P.C 1993 SCMR 187, Arif Ali Khan.

Cancellation of challan is a judicial order and not an administrative order : Such order is open to revision. Power of revision however. not exercised as aggrieved party may file a private complaint. PLD 1968 Lah. 537 Amir Ali. Contra. (FB) 49 P.Cr. LJ 531 Emp v. Hayat.

Order of discharge made by the magistrate on the recommendation of the police in final report under section 173, Cr.P.C Order discharging the accused is an administrative and not judicial order. PLD 1949 Lah. 537 Sardara v. Muhammad Nawaz. Contra : PLD 1968 Lah. 537 Amir Ali, 1968 P.Cr. LJ 27 (1).

Discharge order when not a speaking order and magistrate discharging the accused on the recommendation of police only. The order was set aside in writ jurisdiction. High Court directed the magistrate to re-decide the case in the light of the rule laid down by the Supreme Court in PLD 1985 S.C. 62, Bahadar etc. 1994 P.Cr. LJ 515, Falak Sher v. IIaqa Magistrate etc. Also see 1994 P.Cr. LJ 497, Mushtaq Raj v. Magistrate First Class etc. where in order cancelling the case the Magistrate by Magistrate was set aside on police report only without applying his independent mind, by short order, "Police report perused. As prayed by police the case is cancelled.

Mechanical order discharging the accused set aside as the magistrate had simply recorded that as per request the accused were discharged. The magistrate should have examined the case file to satisfy himself that whether the police request was justified on the basis of the evidence collected. 1995 P.CR.L.J. 423, Amir Hussain v. Murid Hussain etc.

Cancellation of Criminal case by Magistrate not giving reasons for doing it. He did not apply his own independent mind and did not pass a speaking order. In writ jurisdiction case was remanded to the Magistrate for passing fresh order in accordance with law. PLJ 1994 Lah 327, Muhammad Siddiq v. SHO Saddar Sialkot etc.

Cancellation of case: The magistrate takes cognizance of the case on police report only when the takes some action to commence the proceedings. The magistrate can start proceedings on incomplete challan but in case he waits he does not take cognizance. When a magistrate waits after the incomplete challan and then he receives a second report recommending the cancellation of the case, the Magistrate is competent to do. so (FB) PLD 1962 Lah. 405 Wazir.

Cancellation of case on police report u/S. 173, Cr.P.C. by a Magistrate is an administrative act and therefore the order is not amenable to revision u/S. 435 or 439, Cr.P.C PLJ 1985 SC 63. Bahadar etc. NLR 1985 Cr. 221 = 1993 SCMR 187, Arif Ali Khan, Order set aside Sec. 561-A Cr. P.C.

Cancellation and discharge: Where a magistrate has cancelled a case the Sessions Judge cannot hold that the accused has been discharged or that he has a power to order re-trial. The accused can be discharged only when some evidence has been recorded. Such a case does not fall within the revisional jurisdiction of the Sessions Judge. (FB) PLD 1962 Lah. 405 supra.

Order cancelling case under police report u/S. 173. (3), Cr.P.C. is an administrative order not subject to revision u/S. 439 A, Cr.P.C Order quashed by High Court in writ jurisdiction as being illegal. PLJ 1983 Cr.C. (Lah.) 387 Mehdi Hassan Shah v. Malik Khizar Hayat Khan.

Cancellation of police case is not discharge amounting to acquittal. Fresh investigation and challan is competent. Successor magistrate cannot review the cancellation order. PLJ 1984 Cr.C. (Lah) 278 Ali Ahmad.

Discharge report by police. When a police officer reports to the magistrate that there is no case against the accused and he should be discharged, the magistrate can either order that he agrees with the report if there is no reason to differ from his investigation and discharge the accused or he may order reinvestigation if he thinks that the police officer is wrong in his report of discharge. (DB) AIR 1941 Bom. 294. J.D. Boywala v. Sohrab Rustamji- 196 IC 104 = 42 Cr.LJ 814.

Discharge order passed by Illaqa (Circle) Magistrate cannot be treated as order of acquittal nor it would bar subsequent proceedings against discharged accused by a competent Court. NLR 1999 Cr.. 158 Abdul Ghaffar etc. v. Addl. Sessions Judge Gujranwala.

Discharge of accused by magistrate on police report. Revision against the discharge order accepted by the Sessions Judge. Application u/S. 541-A, Cr.P.C. allowed against the order of the Sessions by High Court. Appeal in the Supreme Court allowed against the High Court order and order of Sessions Judge maintained, as the respondent's counsel remained unable to urge anything is support of the judgment of the High Court. Held, cognizance having been taken by the magistrate in the case, the High Court order was set aside, 1990 SCMR 12 Nasira Surriya v. Muhammad Aslam etc.

A Magistrate cannot pass discharge order when the case in pending trial before another magistrate. PLJ 1993 Cr.C. (Lah.) 301, Ansar Hussain v. Allah Ditta etc.

Return of challan for amendment to police, there is no such provision in the Cr.P.C. The Court can itself separate the trial if there is misjoinder of charges. PLD 1985 Lah. 173. Muhammad Shafi.

Supplementary challan cannot be filed in Court. After Court takes cognizance of the case on complete or incomplete challan police is not authorised to file a supplementary challan in Court. PLD 1988 Lah. 666 Syed Waqar Hussain Shah. This authority is contrary to 1972 SCMR 335 Muhammad Akbar. (DB) PLD 1965 Lah. 734 Atta Muhammad Khan v. I.G. Police. DB) PLD 1976 Lah. 574 Muhammad Khan etc. v. I.G. Police. PLD 1987 SC 13 Aftab Ahmed v. Hassan Arshad etc. (DB) PLD 1973 Lah. 304 Alam Din. (DV) PLJ 1977 Lah. 139 Muhammad Khan v. I.G.Police.

Whether name in column No. 2 or not in challan from, the Court has the power to summon any person appearing to be involved in the commission of the offence. PLD 1998 Lah. 523 Muhammad Yaqub.

Order of discharge u/S. 249-A, Cr.P.C. has the force of acquittal but in decision on application u/S. 265-K Cr.P.C. the Court is under obligation to consider and assess the material which can be treated as evidence. Order of acquittal passed in under haste is not sustainable. Order of acquittal of accused in application u/S. 249-A or 265-K, Cr.P.C. does not have he same sanctity as that of the order of acquittal passed by trial Court after recording and assessing evidence during trial. NLR 1999 Cr. 185 Faiz Muhammad v. Abdur Rauf, etc.