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"Remand" in the Light of Ghulam Sarwar Case: Judgement Passed by Lahore High Court with Respect to Recommendations of Charges, Its Legality and Scope Under Code of Conduct, 2016

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Abstract: Lord Hewart said that justice must not only be done but must also be seen to be done. Keeping in view the very spirit of this dictum, it is fair enough to say that each and every block of the legal system must be carefully placed following the principles of law so that no one is condemned with abusive power. Fair trial, due process of law, and all such principles enlisted in the framework of a legal system make it effective, efficient, and just.

Introduction

According to Merriam-Webster, remand is a transitive verb with two meanings: first, to send back (a case) to another court or agency for further action; Second, to return to custody pending trial or for further detention (Merriam-Webster, 2022).

What is remand? As a student of law, the word rings two different meanings. In the legal system, the phrase remand denotes sending back the case to the lower concerned court by the appellate court to complete any of the requirements as prescribed or ordered by the upper court from which the case has been remanded. So, in a legal system, it is sending the case back to the court

from which it has last received any decision and against which the appeal has been preferred in the upper court. For example, in a suit which the District Court has decreed, and an appeal has been preferred in High Court, as per the given conditions of the law, the High Court decided that there are some lacunas due to which the case must be sent back to the previous court from which the decree has been passed it can remand the case back to the District Court. The second meaning of the word remand is a step a process in a pre-trial investigation conducted in the criminal justice system. In this case, the investigating officer brings a demand before the

concerned court and asks for the custody of the accused/suspect to conduct an investigation.

According to law, remand is a pre-trial step often used in the investigation to conduct and collect investigation against the suspect/accused. It is used not only to collect incriminating material against the accused person but mainly to rule out every possible aspect of the case regarding that person whose body is being handed over as a result of the grant of the remand. The process is mainly a material step in the pre-trial investigation; it helps the investigating agencies to collect the evidence that can support connecting the suspect with the case or the collection of such evidence that can lead to the conviction at the trial stage. It is not necessary if we term this step as a deterrent process in the criminal justice system. But it is the time when the investigating officer can truly dissect the case. It is pertinent here to mention that sometimes if the investigating officer finds out that there is no sufficient incriminating material present on the record or the circumstances turn out to be opposite during the remand stage, the investigating officer can request the concerned area magistrate to discharge the suspect in the very next appearance before the court. So, the remand is a vital step in the criminal justice system; it helps in bringing out the actual aspects of the case to light. It helps in the building of the case before it is presented before the concerned court and the trial is conducted. It would not be wrong to say that it is the very point from which, if justice has not been served, it can taint the whole case proceedings. If the officers are making the remand, the officers forwarding the remand, and the officers granting it do not act diligently, it can spread like a tumor in the roots of the case, and the foundation of the case can be destroyed. It means that the investigating officer, the prosecutor, and the presiding officer of the court granting the remand are all equally responsible for completing the process following the principles laid down by the law.

Historical background

If we turn the pages of human history, we will find out that the concept of remanding/ handing over the custody of the suspect is as old as the term investigation is. Because till the time the accused/suspect is not being questioned by the authority, no valid conclusion can be drawn. And for this remand concept evolved. But everything has its pros and cons. With the evolution, the idea of remand also evolved. The apex courts keeping the true nature of the law in view and giving due regard to the rights of the accused, formulated guidelines that can genuinely prescribe the actual mechanism of remand so that no harm is brought to the right of the accused and the process of investigation is not abusive. No law of any state allows or gives power to the investigating agency to torture out the facts from the suspect that he is not willing to produce. The accused has a right of defense, and if the power of remand is not checked upon or guided by the principles of law, it can be a way of extracting information and torture.

Relevant Laws

The concept of remand is introduced in the criminal justice system in

- The S.167 and S.344 of the Criminal Procedure Code(Parliament, 1898)
- Chapter 11, Part B, High Court Rules and Orders Volume 3(*High Court Rules and Orders, Volume III*, no date)
- Police Rules, 1934, Chapter 25 Rule 56(*Police Rules*, 1934)
- The guidelines laid by the apex courts

Section 167 and 344 of the Criminal Procedure Code, 1898

Following are the principles of remand laid down in the Criminal Procedure Code

1. Person arrested against whom the investigation is not yet completed in the time 24 hours.
2. The police officer requires his custody for investigation

3. Brought before the concerned area magistrate
 4. A magistrate of the third class cannot give it
 5. The magistrate granting must be specially empowered
 6. Must not exceed 15 days
 7. The magistrate granting remand must record his reasons for granting remand
 8. Copy must be forwarded to the District and Session Judge
 9. Female accused must not be granted remand unless in the case of Qatil and Dacoity
 10. Must be interrogated in the presence of a female officer
 11. Not to be kept except on jail premises
 12. If taken out for interrogation, the duration must be between sunrise and sunset, not before or after
 13. S.167 is about physical remand
 14. S.344 is about judicial remand
 15. Reasonable cause of remand
 16. Reasons for it can be the absence of a witness, adjournment, or sufficient suspicion for keeping him in custody.
- The purpose of remand must not be to get a confession in police custody. And magistrate must not facilitate the police in doing so
 - Remands cannot be granted by a magistrate of third or a magistrate of the second class specially empowered. And the one concerned magistrate, while granting it, must keep in mind the point of jurisdiction for trial and proceed to discharge the accused if he sees that there is no incriminating material on the file, even if the police have made an application for further remand, must never be more than 15 days and a copy of it to be forwarded to the District and Sessions Judge. Even if the magistrate finds out that he does not have the jurisdiction to try the case, he must forward the application to the concerned magistrate having jurisdiction over the case.
 - When the application for remand is brought before the concerned area magistrate, he must make sure that there is sufficient reason to believe the accusation or allegation made by the police on the accused and that there are sound reasons for the demand of police custody remand.
 - Remand is not a right of the police, but it is to be granted as an exception only when the magistrate feels that there is a specific need and the custody of the accused will serve an essential role in the inquiry or investigation.
 - It is not mandatory to complete 15 days; remand must be kept as short as possible.
 - If the accused makes a confession before the magistrate, he must be sent to judicial lock-up immediately.
 - The magistrate accepting the application of remand must record his reasons in writing for doing so
 - The accused must not be removed to a place where he does not have access to his friends or lawyer. Rather he must be well aware of his rights.

Lahore High Court Rules and Orders Volume III

The High Court has also enlisted governing principles for remand in High Court Rules and Orders Volume III, Part B. Those are as under:

- Magistrates must make sure of the difference in reasons while giving a physical and a judicial remand
- Mere reason that the investigation is not complete is not a good and sufficient cause for the grant of further remand
- Remand should only be granted when it appears on the face of the case that it is for absolute necessity
- If the nature of the case is such that the investigation can be easily completed in twenty-four hours, then the magistrate must avoid a grant of remand.

Punjab Police Rules, 1934; Chapter 25 Rule 56

Like the Criminal Procedure Code, 1898 and High Court Rules and Orders Volume 3, Police Rules also provides the guidelines for the mechanism of remand and its basic features are discussed below:

- The magistrate must make sure that the accusation against the accused is well-founded, which means it is not baseless or mere suspicion
- A magistrate must also make sure that the reason for physical custody to the police holds good ground instead of judicial custody.
- If the police officials bring a demand for a further grant of remand now, the scrutiny of the magistrate must be even stricter.
- A magistrate must see the progress being shown by the police in this time period and what is the sufficient ground due to which a further grant should be made.
- Remand must be short.
- Remand must not be more than 15 days maximum
- Remand must be in times of need
- Remand plays or will play an effective role in the ongoing inquiry or investigation.
- Remand of physical custody must be declined to get a confession
- If the accused voluntarily makes a confession, he must be sent to judicial lock-up
- Even if the accused was brought for a statement and he denies it, he must not now be sent to physical custody

Types of Remand

Five types of remand are found in our criminal justice system:

Physical Remand: The physical custody of the accused/suspect is handed over to the police

Judicial Remand: In this type, the accused is sent to judicial custody, sent to judicial lock-up

Transit Remand: It moves the accused from one jurisdiction to another; this type of remand is mostly granted, keeping the journey duration in view.

Remand on Bail: When the accused is not granted bail, he is sent to the judicial lock-up

Successive Remand: One after another, this concept is discouraged somewhat; it is explicitly mentioned that no matter what the number of cases pending under investigation in a police station against an accused, it must never reach the upper limit of 15 days. It is pertinent to mention that the limit is only for a single police station. If the accused is involved in two different cases of two different police stations having different jurisdictions entirely, then the concept of successive will not make a hit on it.

Important Guidelines Provided by the Apex Courts

The most important case on the topic of remand is the GHULAM SARWAR case (PCr.LJ, 1984)

The following guidelines are laid down in this case:

- i. The magistrate must not give remand to the police except in a case of solid and exceptional circumstances, which means that the grant of remand is an exceptional procedure. It must not be done in order just to do the paperwork. But it must have opted for the ends of justice to meet.
- ii. While granting the application, the magistrate records his reasons for doing so. Again a check that the discretion must not be arbitrary.
- iii. Copy of the order of the magistrate must be sent to Session Judge; again, it is a check on the power of the magistrate.
- iv. After the expiry of 15 days, the magistrate shall require the police to submit a complete or incomplete challan, and in case a challan is not submitted, he shall refuse further detention of the accused and shall release him on bail with or without sureties.

- v. Before granting a police remand, the magistrate must ensure sufficient evidence against the allegations made. It is precisely what the Code of Conduct requires from the prosecutor. It means both the prosecutor and court must carefully analyze the evidence available at that time.
 - vi. No remand shall be granted without the production of the accused before the court.
 - vii. The magistrate shall avoid granting remand at his residence. The reason, again, is to prevent stereotypical cases.
 - viii. Opportunity should be given to the accused to raise objections against the demand, and he must be given a fair chance to defend himself, even at this stage.
 - ix. The magistrate shall examine the police file, and the case diaries annexed. If there are some lacunas or defects, the benefit must be given to the accused.
 - x. If no investigation was conducted after obtaining remand, the magistrate shall refuse to grant further remand/adjournment. For this, again, the court must carefully analyze and study the police file and decide.
 - xi. If a complete challan is not submitted, the magistrate shall commence trial on the strength of the incomplete challan.
 - xii. If the challan is not submitted within two months, the magistrate shall report the matter to the Sessions Judge and issue notice to the District Police Officer.
 - xiii. No remand for the sake of cooperation with the police. It must always be in the mind of all three institutions, police, prosecutor, and court, that remand is an exception and not a general rule.
 - xiv. The magistrate shall always give reasons for the grant of remand and adjournment.
- Remand cannot be granted on the application of a private person. Law is very clear on this point. It is only granted on the demand of police officials('2016 PCrLJ 1566', no date).
 - If the accused is once sent to judicial custody now, he cannot be brought back to police custody in the same case('Muhammad Hayat Case (1969 P.Cr.LJ 786)', no date).
 - The accused has the right to be presented/defended by the counsel even at the remand stage('Jahangiri Lal etc. VS Emperor Case (AIR 1935 Lahore 230 (DB))', no date) ('Farooq Bader VS I.G. Police Case (PLD 1969 Lahore 1020)', no date).
 - Suppose the magistrate does not take into consideration the police dairy or the case diary and grants the remand without thoroughly analyzing the features of the case. Such actions must bring consequences for the responsible magistrate, and departmental action must be initiated against him('State VS Wazir Khan Case (PLD 1968 Peshawar 140)', no date).
 - A Magistrate can grant remand in a case triable exclusively by Sessions Court because when he applies his mind to the question of whether the case should be sent up to the Court of Sessions, it can be termed as an inquiry that can postpone such inquiry U/S. 344, Cr.P.C('Mehr Khan v. Yaqub Khan Case (1981 SCMR 267)', no date).

Important Principles on Remand in Various Judgements

Important principles on remand in various judgments are enlisted below:

Important Judgments on Remand

Various principles or guidances are laid down in decided cases for Magistrate by INDO-PAK Apex Courts are PLD 1978 SC 236: Nazir Ahmad case, AIR 1969 SC 1014: Ramsawami case, 1984 PrCLJ 2588: Gulam Sarwar case, PLD 2001 SC 607,608,609: Khan Asfandiyar Wali Case, PLD 1992 Kar 358: M Sadiq Case, PLD 1999 Pesh 39: Azmat Ali Case, 1995 MLD 771: Mohsin Ali shah Case, AIR 1993 SC 1,11: Bihari Babu Case and AIR 1990 SC 71: Rajnikant Case.

Code of Conduct

In the code of conduct issued by the Worthy Prosecutor General under The Punjab Criminal Prosecution Service (Constitution, Functions and Powers), Act 2006(*The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006*, no date), the prosecutors are bound to apply the threshold test at the remand stage. Now the question arises what is a threshold test? What are the parameters of this test? What are the requirements, and last but not least, what is the role of the prosecutor in it? Before going deeper, firstly, we must understand what a threshold test is. It is basically a test/ parameter required from the prosecutor to apply before forwarding the demand of the remand to the court. The prosecutor in charge of the case has this obligation to follow.

According to para 6 of the Code of Conduct, the threshold test is a test only applicable when there is insufficient evidence on the file. If the evidence is complete, we cannot adopt this test.

A threshold test can be applied at two stages one is remand, and the other is at bail time. But the basic principle remains the same; it cannot be applied when there is complete evidence on the record.

Moreover, the two points of the threshold test are:

- Whether there is reasonable ground for the charge that has been put up against the accused person. If it is evident on the face of the case facts that the charge is baseless, the remand fails at the very beginning step, and after failing this step, the remand must not be forwarded by the prosecutor. Instead, he must communicate his observation to the court.
- Now the second point comes into action. This second part is only operational if the case passes the first step. Now the second step is that there is sufficient reason to believe that if the remand is granted and the physical custody of the accused/ suspect is handed over to the police, it will help in the

investigation, and there is a strong reason to believe that further evidence will be brought on the record.

- If the case fails either of the steps of the threshold test, the demand of the remand must not be forwarded to the court; instead, the prosecutor must communicate his opinion to the court.
- Even if the case is not supporting the charges alleged or the charge is groundless, the prosecutor must enlighten the court about it so that the accused is discharged by the court.
- If the charge is not groundless, but it is evident that even if the physical custody of the accused is handed over to police, it will still not serve any purpose, then the prosecutor must state his reasons for it.
- If we observe the test, it is to decline the stereotypical demands made by the police for remands. Instead, it puts a check on the demand right at the beginning so that we can stop misuse of power at its initial stage, only if the prosecutor and court completely follow its instructions.

Wrong Practices/Anomalies

In Pakistan, we are in a society that has a malignant tumor of corrupt practices and abusive use of power, as it is rightly said that power corrupts and absolute power corrupts absolutely. The same is the case in the system in Pakistan. Not only the legal system but every field is tainted with corruption and corrupt practices. If we keenly dissect the criminal justice system in Pakistan, it will not be an exaggerated statement that mainly in Punjab, the police rule is like an unchained department. The checks and balances on the working of police officials are far less compared to what is required. The primary reason for that is that we use our police for our gains. We take duties from them which are not in their assigned targets. We have appointed them to security protocols of our elites because of which the basic duty of investigation is put behind. Our officials have far more concerns

about gaining benefits than providing legal assistance and justice to the aggrieved parties. People of our beloved state use the power, or we can say misuse the power of police for their gains. They arrested people falsely, and the police put their names in the FIRs of unknown accused persons. As a result, that person becomes the record holder in no time and suffers the abuse of power. The second problem arises when the person is not brought before the concerned area magistrate in due time to recourse to the authorities or to present a defense for himself. Even if the person is brought before the court, the police mainly had planted false recovery on them to show him a suitable case for the grant of remand/ police custody. So still, it becomes difficult for the court to determine whether the remand is reasonable and just or is just to make the person suffer the abuse of power. And this could be because of many reasons. Another wrong practice is that the investigating officer prepares successive remand for him due to the nomination of a person in many FIRs, which is against the spirit of the law. It mostly goes unchecked because of the work pressure on the court. For such issues, it should be understood that the provision of guidelines for the grant of remand is not enough; there should be a defined mechanism if the guidelines are not appropriately followed so that the aggrieved party can get compensation.

Comparative Analysis

The concept of remand is different in special laws. In the Anti-terrorism Act 1997, the successive remand is also allowed if the prosecutor or the law officer shows reasons that due to the introduction of an offense under the anti-terrorism act, it can be again put into police custody although he was sent to the judicial lock-up (*The Anti Terrorism Act, 1997*, no date). Moreover, the accused can be remanded to police custody for 90 days only requirement is that the remand shall not be less than 15 days and more than 30 days at a time.

It is also observed that the same principle is enlisted in the National Accountability Bureau Ordinance, 1999 (National Accountability Ordinance, 1999, no date). Such laws show the deterrent side of the legislation to take hard measures to stop the acts done by such offenders and leave a mark in society's minds that people knowing the consequences of such offenses, tend to stay away from them. However, a softer side of legislation is seen in the Juvenile Justice System Act, 2018 (*Juvenile Justice System Act, 2018*, no date), where the juvenile offender is given the privilege and is not being sent to jail even if he has been sent into police custody at the remand stage.

Now, keeping articles 4, 10-a, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ('The Constitution of Islamic Republic of Pakistan, 1973', no date) in view, why does a single process have different standards in different laws? What is the remedy provided against the laws if, after the expiration of 90 days, the concerned authorities fail to provide or gather any incriminating material against the accused person, and what sort of compensation is being provided by the law to such person? The concept of malicious prosecution cannot be invoked before the trial, and remand is still a step in the investigation, and no law provides such a remedy. Pakistan, still a developing country, is borrowing concepts from developed countries. We are well aware that it is against the law to keep someone in custody after the expiration of 24 hours. But what if, after the expiry of remand, the accused is still found innocent? What is the stance of the state on it? A right of an individual has been violated by investigating authorities. But again, we are unable to find black-and-white laws on this topic. However, when such practices are brought to the notice of courts or the state, departmental inquiries or actions are taken against them. But as a law researcher, I cannot entirely agree with such a remedy. It does not compensate the accused in any way. It can be a deterrent act for the officers concerned but is not linked to the aggrieved person. It is a direct

infringement of due process of law. And against the fundamental rights provided in the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion

After discussing different aspects of remand, we can safely say that it is a crucial step in the criminal justice system. The apex court issued new guidelines with advancements in the law and evolving laws. So that our law does not become stagnant and our criminal justice system does not become tainted with injustice. But we can't say that we have established a criminal justice system that provides justice to all; still, there are chances of misuse of power, and the stereotypical cases and processes are deeply rooted in our system. The continuous effort by three stakeholders of the criminal justice system, which are police, prosecutors, and courts, have to fulfill their duties regardless of all the pressure society puts on them. We can never achieve the highest standards of justice till the day we have not put the law above all.

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