

**P L D 2008 Lahore 171**

**Before Hasnat Ahmad Khan, J**

**MEHMOOD-UL-HASSAN GILLANI---Petitioner**

**Versus**

**MAGISTRATE 1ST CLASS, KHUSHAB and 3 others---Respondents**

Writ Petition No.11671 of 2007, decided on 6th December, 2007.

**(a) Penal Code (XLV of 1860)---**

---Ss. 452 & 506---Constitution of Pakistan (1973), Art.199---Constitutional petition---  
Petitioner seeking declaration of impugned order as illegal and quashing of F.I.R.---Magistrate  
had passed impugned order after going through the relevant record which showed that the  
prosecution case was supported by the statement of the complainant as well as by the evidence of  
witnesses recorded under S.161, Cr.P.C.---Petitioner could not assail impugned order of the  
Magistrate on the ground that same did not indicate that statements made by certain witnesses  
during the investigation were not considered by the Magistrate---Magistrate was not bound to  
follow the opinion of the Investigating Officer and was well within his right to disagree with  
him---Case of prosecution could not be throttled just on the basis of the opinion of Police---  
Impugned order not suffering from any illegality, irregularity or jurisdictional error could not be  
interfered with.

Nazar Muhammad v. Mushtaq Ahmad and others PLD 1996 Lah. 277 and Abdul Majeed v. The  
State 1995 PCr.LJ 1124 rel.

Bahadur and another v. The State and another PLD 1985 SC 62; Arif Ali Khan and another v.  
The State and 6 others 1993 SCMR 187; Muhammad Sharif and 8 others v. The State and  
another 1997 SCMR 304 and Hussain Ahmad v. Mst. Irshad Bibi and others 1997 SCMR 1503  
ref.

**(b) Criminal Procedure Code (V of 1898)---**

---S.4(1)---Investigation---Investigation as defined in S.4(1) of Criminal Procedure Code, 1898  
indicated that same would mean only collection of evidence and no more---Determination of the  
guilt or the innocence of accused was an obligation vested in the courts of law which task could  
never be delegated to the Police functionaries investigating a case.

Muhammad Bashir v. S.H.O. Okara Cantt. And others PLD 2007 SC 539 and Syed Muhammad  
Ahmed v. The State and others PLD 2006 SC 316 rel.

Muhammad Farooq Qureshi Chishti for Petitioner.