

DISCHARGE OF ACCUSED

- The concept of discharge is relatable only to custody of an accused person in a criminal case and it has no relevance to anything else during investigation or a trial
- A accused person may be discharged and released from custody by investigating officer u/s 63 CrPC on executing a personal bond regarding his appearance before IO or a magistrate whenever required to do so during investigation
- Difference of discharge of an accused by a magistrate u/s 63 & 173 CrPC:
 - A accused person may be discharged by the magistrate from custody during investigation either on bail or under the special order of a magistrate u/s 63 CrPC
 - On receiving report u/s 173 CrPC the magistrate has power to discharge an accused of his bond u/s 173(3) CrPC
- Discharge of an accused does not amount to smothering of the investigation qua him, cancellation of the case against him, termination of prosecution or his acquittal
- No permission is required from magistrate by IO to get the discharged accused joined the investigation
- Formal permission is needed from the magistrate for the arrest of discharged accused by the police
- Discharge of accused by the magistrate is not possible after taking of cognizance of the case by the trial court
- Discharge order is administrative order and is challenge able in writ of certiorari in high court
- Magistrate can discharge the accused in cases triable by Special Court or Sessions Court....
- Discharge order by the Magistrate is an administrative order and not a judicial order

(2001 PLD 271 LAHORE-HIGH-COURT-LAHORE) ASHIQ HUSSAIN Vs SESSIONS JUDGE, LODHRAN AND 3 OTHERS

Summoning up of the accused by the trial court placed in column No 2yes

--S.302/34--Criminal Procedure Code (V of 1898), Ss.63 & 173-Constitution of Pakistan (1973), Art. 185(3)--Discharge of accused under S.63, Cr.P.C.--,Effect of Challan against petitioners had not been cancelled by placing them in column No.2, it only meant that according to police investigation they were found innocent, and therefore, they were discharged under S.63, Cr.P.C. which did not mean that they could not be summoned to stand trial---

(1988 SCMR 1428 SUPREME-COURT) WAQARUL HAQ ALIAS NITHOO Vs STATE

PLD 2001 LAHORE 271 Ashiq Hussain vs session judge Lodhran and other

Reinvestigation after discharge of accused....yes

S. 156---Reinvestigation after discharge of accused---Police is competent to reinvestigate the matter even after the discharge of accused by Magistrate, if some new evidence is brought on record to, prima facie, connect him with the alleged offence and police cannot be stopped from reinvestigation. (2012 PCrLJ 1493 LAHORE-HIGH-COURT-LAHORE) MUHAMMAD GULFAM vs REGIONAL POLICE OFFICER, SHEIKHUPURA RANGE, LAHORE/

(2010 YLR 944 LAHORE-HIGH-COURT-LAHORE) Mian MUHAMMAD ASIF vs S.S.P. OPERATION, LAHORE, PLD 2001 LAHORE 271 Ashiq Hussain vs session judge Lodhran and other

Discharge of the accused in cases triable by Special Court or Sessions Court....Magistrate can discharge

Constitution of Pakistan 1956 ---Ss. 173(3) & 190---discharge of accused by the magistrate --- Magistrate's power to discharge an accused person of his bond under 'S.173(3), Cr.P.C. even in cases triable exclusively by a Court of Session remained unaffected by the amendments introduced by the Law Reforms Ordinance, 1972--Power to discharge the accused in cases triable by Special Court or Sessions Court exclusively remained vested with the Magistrate and not with the Trial Court; i.e. the Court of Session or Special Court ---[Sardar Muhammad v. Zaffar Javid Awan and others PLJ 1996 Lah. 680 and Muhammad Dildar Hussain and another v. The Civil Judge, Judicial Magistrate, Shujabad and 3 others 2000 PCr.LJ 43 dissented from].

(2001 PLD 271 LAHORE-HIGH-COURT-LAHORE)ASHIQ HUSSAIN Vs SESSIONS JUDGE, LODHRAN AND 3 OTHERS ,(2008 YLR 1669 Lahore High court)

Nature of discharge order

Discharge order by the Magistrate is an administrative order and not a judicial order.....

(2012 PLD 179 supreme court) Sher Muhammad Unhar vs State

(2014 YLR 92 SHARIAT COURT AZAD KASHMIR) RAJA ALI SHAN VS SHAKEEL

(2013 PLD 46 Peshawar High court) Yasir Khan VS Imtiaz

(2003 YLR Lahore High court) Sakhawat Ali vs The State

(2001 PLD 271 LAHORE-HIGH-COURT-LAHORE)ASHIQ HUSSAIN Vs SESSIONS JUDGE, LODHRAN AND 3 OTHERS

Discharge by Duty Magistrate...not allowed

Discharge by Duty Magistrate is not allowed by law and this order is 'void ab initio'

(2009 YLR 1078 Lahore High court) Safder Hussain vs Judicial magistrate

Discharge during Physical Remand

Magistrate is not empowered U/S 167 CrPC to discharge the accused ...he can either grant or refuse Physical Remand....

(2012 YLR 2258 Gilgit Balistan Chief Court) shakoor khan vs Mst. Iqbal Bano

Miscellaneous judgments on discharge

Discharge on account of absence of complainant and not on merits of the case. Fresh inquiry or fresh complaint is not barred. (DB) 1970 P.Cr.L.J. 1101 (Dacca) Mst. Rosmatun Nissa v. Murtaza Ali, 1970 P.Cr.L.J. 645.

Accused discharged on police report under section 173, Cr.P.C. Trial upon complaint legal. PLD 1949 Lah. 537 Sardara v. Muhammad Nawaz.

Accused discharged being declared innocent by the police, can be summoned by the Trial Court to face trial. PLJ 1995 SCMR 894, Muhammad Sharif.

Discharge on police report under section 173 (3), Cr.P.C. is merely in the nature of an administrative order and not a judicial one. (DB) PLD 1965 Lah. 734 Atta Muhammad v. I.G. Police etc.

Ilaqa Magistrate discharged the accused on police report u/S. 173 Cr.P.C. Complainant filed revision petition against the order of the Magistrate to the Sessions Court. Addl. Sessions Judge accepted the revision petition and directed the Magistrate to place the accused in column No. 2 of the report u/S. 173 Cr.P.C. Held, the Magistrate while discharging the accused u/S. 173 Cr.P.C. was not an inferior Criminal Court within the meaning of section. 435 Cr.P.C. and as such the magistrate's order was not revisable. Order by Sessions Judge set aside and that of the magistrate restored, holding that the discharge order was an administrative order and not a judicial order, PLJ 1996 Cr.C. (Lah) 1908, Muhammad Aslam etc. PLD 1985 SC 62, Bahadar etc. relied upon. Order under section 63, Cr.P.C. is not revisable by the Sessions Court, being an administrative order NLR 1985 Cr. 376. Muhammad Wasim v. Additional Sessions Judge. *Contra*. PLD 1968 Lah. 537 *Amir Ali v. State, held to be judicial act*.

Sessions Courts has jurisdiction to try a person discharged by a Magistrate. Discharge order is only an administrative act and not a judicial order; even though the accused's name is placed in column No. 2 or 3 of challan, the Court can summon the accused for trial. PLJ 1996 Cr.C. (Lah) 198, Khadam Hussain etc.

Magistrate to send up the case triable by Sessions Court. He cannot discharge the accused on police report. PLJ 1996 Lah 680. Sardar Muhammad v. Zaffar Javed Awan etc. Also see Sec. 193 Cr.P.C. as well and NLR 1985 Cr. 1 Raja Khush Bakhat-ur-Rehman etc.

Discharge Order by Magistrate not revisable u/S. 435/439 Cr.P.C. because the Magistrate does not function as a criminal Court. Order u/S. 561-A Cr.P.C. passed by the High Court against the Order of the Magistrate discharging the accused set aside. 1997 SCMR 304, Mohammad Shrif etc.

Discharge in summons cases after evidence, amounts to acquittal. PLD 1951 Pesh. 4 Mahmud v. Mir Hassan Shah.

Want of jurisdiction. Dismissal of a complaint on the ground that the Magistrate had no jurisdiction as the requisite sanction for prosecution had not been obtained, does not amount to an acquittal even if the dismissal was after the charge had been framed. (PC) PLD 1949 PC 108 Yousaf Ali.

Want of sanction. Accused acquitted solely for want of proper sanction for prosecution. Such order of acquittal does not operate as an order of acquittal but of discharge. Held, the accused could again be tried for the same offence. Provision of section 403, Cr.P.C. not applicable. (DB) 1968 P.Cr.L.J. 1707 State v. Karam Ali. (DB) PLD 1964 Lah. 1 State v. Muhammad Shafi. 1972 Cr.LJ 424.