

Form No: HCJD/C-121
ORDER SHEET
**IN THE LAHORE HIGH COURT MULTAN BENCH,
MULTAN
(JUDICIAL DEPARTMENT)**

Case No. Writ Petition No.13218/2018

The State

Versus

Muhammad Ishaque

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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21.03.2023

M/S Ch. Shahid Aleem, Deputy Public Prosecutor and Tanveer Haider Buzdar, Assistant District Public Prosecutor for the State/petitioner.

M/S Sardar Anayat Ullah Khan, Muhammad Akmal Khan Sial and Mehr Muhammad Ashraf Sial, Advocates for the respondents.

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Through this single order, I intend to decide the above captioned writ petition as well as connected writ petitions bearing Nos.13219/18, 13220/18, 13221/18, 13222/18, 13223/18, 13224/18, 13225/18, 13226/18, 13227/18, 13228/18, 13229/18, 13230/18, 13231/18, 13232/18, 13233/18, 13234/18, 13235/18, 13236/18, 13237/18, 13238/18, 13239/18, 13240/18, 13241/18, 13242/18, 13243/18, 13244/18, 13245/18, 13246/18, 13247/18, 13248/18, 13249/18, 13250/18, 13251/18, 13252/18, 13253/18, 13254/18, 13255/18, 13256/18, 13257/18, 13258/18, 13259/18, 13260/18, 13261/18, 13262/18, 13263/18, 13264/18, 13265/18, 13266/18, 13267/18, 13269/18, 14041/18, 14054/18, 14055/18, 14058/18, 14059/18, 14060/18, 14061/18, 14062/18, 14064/18, 14570/18, 14571/19, 13261/18 and 4256/2023 as common question of fact and law is involved in all these petitions.

2. By way of this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the State through learned Addl. Prosecutor General has called in question validity of

impugned order dated 10.03.2018, passed by the learned Addl. Sessions Judge, designated as Judge Electricity Utilities Court, Sahiwal, whereby the said court while referring to the provisions of Section 462-O PPC opined that in cases of theft of electricity only a “complaint” can be filed by a duly authorized officer (not below grade-17) before the designated Court and the FIR could not be registered in such like cases and returned report under Section 173 Cr.P.C. to the prosecution with the direction to file complaint.

3. Facts necessary for disposal of instant writ petition are that, Zahid Mehmood, Sub Divisional Officer, Civil Lines, Sub Division Sahiwal got lodged the FIR No.296/2017 dated 24.09.2017, in respect of an offence U/S 462-J PPC, at P.S. Bahadar Shah, District Sahiwal against the respondent with the allegation that on 21.09.2017 at about 3.25 p.m. he was found committing theft of electricity through direct wire from the main PVC line of WAPDA. Report U/S 173 Cr.P.C. was prepared and sent up to the court of competent jurisdiction for trial, where the learned Trial Court by way of impugned order dated 10.03.2018 declared the aforesaid FIR *void ab-initio* and returned the report U/S 173 Cr.P.C. with direction to the prosecution to file complaint according to the provisions of Section 462-O PPC, which is subject matter of this writ petition.

4. I have heard the learned Law Officers, learned counsel for the respondent/ accused and gone through the record.

5. In order to curb menace of theft of electricity, the legislature in its wisdom has amended Pakistan Penal Code, 1860 through “The

Criminal Law Amendment Act, 2016”, whereby a new Chapter XVII-B was inserted. Simultaneously, Schedule II of Code of Criminal Procedure, 1898 was also amended, so as to make the offences mentioned in the aforesaid Chapter as cognizable and non-bailable. By declaring the offences mentioned in aforesaid Chapter as cognizable intention of the legislature is manifestly clear that registration of FIR in such like offences was very much permissible. It appears that the learned Trial Court while passing impugned order misconstrued the provisions of Section 462-O of PPC. Before proceeding further it is appropriate to go through the provisions of said Section which reads as under:-

“462-O Cognizance.”--- (1) The Court shall try an offence punishable under this Chapter.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Court shall not take cognizance of an offence under this Chapter except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be.”

Learned Trial Court has confused the expression “cognizance” mentioned in Section 462-O PPC and has failed to comprehend that taking cognizance of an offence by a Court is entirely a distinct feature from lodging of the crime report or investigation of an offence by the police or anyother investigating agency. The Trial Court remained oblivious of the fact that Section 462-O PPC deals only for taking cognizance of offence by a Court and has nothing to do with the prior actions in the shape of registration of F.I.R. or

investigation thereon. In case reported as “*Zeeshan Anjum ..Vs.. The State and others (2022 MLD 1091)*”, it has been held by this Court that:-

“Cognizance is a later stage in a criminal process when the court for the first time takes notices of an offence on a police report or on a complaint by a private person. Before that criminal process if initiated under Section 154 Cr.P.C. for cognizable offences and 155, Cr.P.C. for non-cognizable offences, it has to pass through the stage of investigation, purpose whereof is collection of evidence which guides to prosecute or not to prosecute. In ordinary offences, court under section 190, Cr.P.C. is authorized to take cognizance plainly on a police report or on a private complainant within the contours of such section without attending any peculiar condition; in certain situations, cognizance is restricted based on public policy in order to govern the cases with controlled prosecution. Sections 195 to 199 of Cr.P.C. is the response of what has been stated above.”

As has been observed supra, Section 462-O PPC only deals with taking cognizance of an offence by a Court, as such the same does not place an embargo upon reporting of an offence by the Officer not below Grade-17 to the police or registration of FIR pursuant to such report/complaint. In case reported as “*Industrial Development Bank of Pakistan and others ..Vs.. Mian Asim Fareed and others (2006 SCMR 483)*”, it has been laid down as under:-

“Needless to add that the registration of an F.I.R. and taking of cognizance of cases were two distinct and independent concepts under the criminal law; that if the intention of the law-maker was to put any clog on the registration of an F.I.R. then the Legislature would have said so specifically and that if the law put a condition only on the taking of cognizance then it can never be read to imply prohibition on registration of F.I.Rs.”

6. The respondent was booked in the instant case under Section 462-J PPC and according to Schedule II of Cr.P.C. said offence was a “cognizable offence”. “Cognizable offence” has been defined in Section 4(1)(f) of the Code of Criminal Procedure, 1898 which reads as under:-

“Cognizable offence;” “Cognizable Case.” “Cognizable offence” means a case in which a police officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.”

7. There seems no confusion in the criminal jurisprudence that in order to cause arrest of an accused in a cognizable offence, registration of FIR is *sina qua non*. Therefore, by no stretch of imagination it can be concluded that by inserting Section 462-O PPC intention of the legislature was to place an embargo upon registration of First Information Report in cases mentioned in Chapter XVII-B.

8. In order to draw an analogy, we have to go through identical law known as “Gas (Theft Control and Recovery) Act, 2016, where question of taking cognizance was regulated under Section 5(2) of the said Act, which reads as under:-

“Notwithstanding anything to the contrary in this Act, Gas Utility Court shall not take cognizance of any offence punishable under the Act except upon a complaint made in writing by a person authorized in this behalf by the Gas Utility company in respect of which offence was committed.”

Section 24 of the said Act deals with the status of offences which reads as under:-

“ Notwithstanding anything contained in the Code of Criminal Procedure (Act V of 1898). All offences under this Act if committed by any person other

than a domestic consumer shall be cognizable and non-bailable.”

9. In somewhat similar situation offender of the aforesaid law while placing reliance on Section 5(2) of the Act ibid seeks quashing of FIR and the Apex Court in judgment reported as “*Mian Haroon Riaz Lucky and another ..Vs.. The State and others (2021 SCMR 56)*” has observed as under:-

“ Similarly, there is a wide variety of offences both under the Pakistan Penal Code, 1860 as well as under various special laws that require prior sanction for prosecution for the purposes of assumption of cognizance by the trial Court, the requirement does not stand in impediment to the registration of First Information Report, arrest of an offender or commencement of investigation thereof as the clog of sanction transiently relates to the step preparatory thereto by the authority designated under the Statute; in the present case, a procedure to be routed through Section 5(2) of the Act.”

Survey of the above discussion leads me to an irresistible conclusion that provisions of Section 462-O PPC does not prohibit registration of First Information Report in offences mentioned in Chapter XVII-B, PPC as all the offences mentioned therein have been described as cognizable in Schedule II of Cr.P.C. However, while taking cognizance the Trial Court ought to have considered as to whether the complaint has been filed by an authorized officer (not below Grade 17) of the Government or the distribution company as the case may be and the same discloses reasons in writing with full particulars of offences committed under this Chapter and if at that stage, the Trial Court arrived at a conclusion that report U/S 173 Cr.P.C. is not in conformity

with the provisions of Section 462-O PPC, he may pass an appropriate order in this regard. In order to avoid any such lacuna, it is expected that the learned Prosecutors before forwarding report U/S 173 Cr.P.C. shall ensure that it fulfills the requirement of Section 462-O PPC.

10. For what has been discussed above, this writ petition as well as connected petitions are allowed, as a result whereof impugned order of the Trial Court dated 10.03.2018 is set-aside. Matter is remanded to the Trial Court with direction to proceed further with the same, in view of the observations made herein above.

**(Asjad Javaid Ghural)
Judge**

Announced in open Court on 22.03.2023

Judge

Approved for reporting

Judge

*Azam**