ORDER SHEET
LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

ICA No. 292 of 2024

Muhammad Qaswar Hussain   Vs.   Judicial Magistrate Section, 30, Multan and others

Sr. No. of order/ Proceedings	Date of order/ Proceeding	Order with signature of Judge, and that of Parties' counsel, where necessary
	23.12.2024	Mr. Shahbaz Ali Khan Gurmani, Advocate for appellant. Mr. Bashir Ahmad Buzdar, A.A.G. Mr. Muhammad Ashraf Sindhu, Advocate for respondent.

The appellant is aggrieved of dismissal of his constitution petition by the learned Single Judge in chambers, who declined to interfere in the order dated 31.03.2023 passed by the learned Judicial Magistrate Section-30, Multan whereby he had discharged the respondent No.4, who was accused in F.I.R. No.1919 of 2021 dated 14.12.2021 registered under Section 489-F P.P.C. at P.S. Muzaffarabad, Multan, by claiming that as the investigation of the case had already been transferred, said order to discharge the accused on the basis of the report of the Investigating Officer from whom the investigation had been transferred was not justified.

2. The learned counsel for the respondent No.4 has defended the said orders on legal and factual grounds. On the other hand, the learned Law Officer states that he has no objection to the setting aside of the order of discharge of the accused for the reason that the Investigating Officer to whom the investigation had been transferred is investigating the matter, which is permissible despite discharge of accused.

3. The perusal of the impugned order shows

that the learned Single Judge had declined to interfere in the impugned discharge order passed by the learned Judicial Magistrate for the reason that the appellant had already filed a private complaint for the same offence, in which the respondent No.4 had already been summoned to face trial and in any case in terms of principles laid down in the case titled "*Nur Elahi Vs. The State and others*" **(PLD 1966 SC 708)** the trial court had to proceed with the private complaint in preference to the State case.

4.   On this the learned counsel for the appellant states that on the one hand it is claimed that accused has been summoned for trial in the private complaint case and on the other hand Investigating Officer has initiated proceedings against the appellant under Section 182 P.P.C. which is not justified.

5.   When confronted, learned Law Officer states that proceedings under Section 182 P.P.C. would not be initiated against the appellant before finalization of the private complaint filed by him before the Court, which statement is in accordance with principles laid down in judgments reported "*M.J.A. Gazdar Vs. The State*" **(1989 MLD 1694)**, "*Ashfaq Ali Vs. The State*" **(PLD 1975 Karachi 87)** and "*Muhammad Murad Vs. The State*" **(1983 P.Cr.L.J. 1097)** wherein it is provided that during pendency of complaint case, proceedings under Section 182 P.P.C. in a criminal case relating to same subject matter cannot be initiated, which legal position is also not disputed by learned counsel for respondent No.4.

6.   It is important to note here that in view of the principles laid down in judgments reported as

"*Mian Muhammad Asif Vs. S.S.P. Operation, Lahore and 02 others*" (**2010 YLR 944**), "*Habib Ur Rehman and others Vs. The State*" (**1999 MLD 860**), "*Ashiq Hussain Vs. Sessions Judge, Lodhran and 3 others*" (**PLD 2001 Lahore 271**) and "*Muzafar Ahmad Vs. The State and 02 others*" (**2021 P.Cr.L.J. 1393**) despite discharge order police authorities may reinvestigate the matter which is already being done in the instant case as per statement made by the learned Law Officer hence, no further order is required to be passed in this appeal as the impugned order passed by the learned Single Judge does not suffer from any illegality and jurisdictional defect for this Court to warrant interference and in view thereof, this Intra Court Appeal is **disposed of** accordingly.

(**Sultan Tanvir Ahmad**)   (**Muzamil Akhtar Shabir**)
Judge   Judge

MuzamilMohsin*

Approved for reporting.