Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.50329-Q/2024

Rai Muhammad Usama **Versus** *District Police Officer, etc.*

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

08.11.2024 M/S Barrister Murad Ali Khan Marwat, Barrister Khadija Siddiqui and Asad Ullah Butt, Advocates for the petitioner.
Ch. Fiza Ullah, A.A.G. with Zafar, DSP and Khalid Naizr, ASI.

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Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner Rai Muhammad Usama seeks quashing of case FIR No.337/24 dated 13.08.2024, in respect of offence under Section 16 of the Punjab Maintenance of Public Order Ordinance, 1960 (Ordinance) read with Section 341 PPC, registered at Police Station, Muhammad Wala District Chiniot.

2. Learned counsels for the petitioner submitted that the impugned FIR is result of *malafide* and ulterior motive; that the petitioner and other co-accused were celebrating 77th Independence day of Pakistan and have not taken the law into their hands; that neither the petitioner made any speech nor taken any action detrimental to the public peace and tranquility, as such provision of Section 16 of the Ordinance does not attract; that similarly there is nothing on the record to suggest that the petitioner or his companions wrongly restrained any individual, as such offence U/S 341 PPC is not made out; that no permission from the Deputy Commissioner before lodging of

the impugned FIR was sought; that *mens rea* which is essential requirement to constitute an offence is patently missing; that there is no likelihood of conviction of the petitioner and continuation of the trial would be wastage of the precious time of the Court; that the impugned FIR is a result of political victimization and is liable to be quashed.

3. Conversely, learned Law Officer submits that offence U/S 16 of the Ordinance is cognizable and non-bailable, as such the complainant was vested with authority to get lodge the impugned FIR; that a number of accused persons including the petitioner blocked the road and chanted slogans which resulted in breach of peace; that due to the act of the petitioner and his companions traffic flow and public order was disturbed as such the complainant, being a police official, rightly lodged the impugned FIR; that the investigation is underway wherein the claim of the petitioner that he has not committed any crime will be determined; that quashing of FIR during process of investigation amounts to hamper and jeopardize the entire investigation process prior to its finalization which is not warranted under the law. In the end, a prayer has been made for dismissal of instant writ petition.

4. I have heard the arguments advanced by the learned counsels for the petitioner, learned Law Officer and gone through the record.

5. By way of this petition the petitioner has invoked extraordinary Constitutional jurisdiction of this Court for quashing of aforementioned impugned FIR. Ordinarily, time and again this Court has shown reluctance in interfering in the

ongoing investigating process on the well cherished principle that the functions of Investigating Agency and judiciary are complementary and not overlapping and the combination of individual liberty with due observance of law and order can only be achieved if both the organs are allowed to function independently. However, this principle in any way cannot be construed an absolute bar on the power of this Court in quashing of FIR in cases where the Court is satisfied that investigation is launched with malafide intention, without jurisdiction or there is no likelihood of the conviction of the accused persons. In case reported as "*Anwar Ahmad Khan ..Vs.. The State (1996 SCMR 24)*", the Apex Court has laid down as under:-

> " It is well settled principle that where investigation is malfide or without jurisdiction, the High Court in exercise of its Constitutional jurisdiction under Article 199 is competent to correct such proceedings and pass necessary order to ensure justice and fair play. The Investigating Authorities do not have the entire and total authority of running investigation according to their whims".

In case reported as *Raja Rustam Ali Khan ..Vs.. Muhammad Hanif (1997 SCMR 2008)*, it has been observed as under:-

> " It would, therefore, be seen that if an investigation is launched malafide by the Investigating Agencies, the same is open to correction by invoking the constitutional jurisdiction of the High Court under Article 199 of the Constitution."

In case reported as *"Muhammad Irshad Khan ..Vs.. Chairman, National Accountability Bureau and 2 others (2007 P Cr. LJ) 1957* the

learned Division Bench of Sindh High Court, observed as under:-

> " Thus the consensus of the Honourable Supreme Court of Pakistan from the year 1971 and onward is that High Court has jurisdiction under Article 199 of the Constitution and competent to correct such proceedings and pass necessary orders to ensure justice and fairplay. The Investigating Authorities do not have the entire and total authority of running investigation according to their whims, therefore, if the investigation is launched malafidely or beyond the jurisdiction of investigating agency, then the same can be corrected and appropriate orders can be passed."

The question what is " malafide" has been answered by the Apex Court in case reported as "*The Federation of Pakistan through Secretary Establishment Division, Government of Pakistan, Rawalpindi .V.. Saeed Ahmad Khan (PLD 1974 SC 151)* in the following way:-

> " Mala fides" literally means "in bad faith". Action taken in bad faith is usually taken maliciously in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. Action taken in colourable exercise of powers, that is to say, for collateral purposes not authorized by the law under which the action is taken or action taken in fraud of the law are also malafide. It is necessary, therefore, for a person alleging that an action has been taken mala fide to show that the person responsible for taking the action has been motivated by any one of the considerations mentioned above."

6. On the touchstone of above criteria, I have to determine the fate of instant case. In the impugned FIR the petitioner was charged under Section 16 of the Ordinance and Section 341 of

PPC. Before proceeding further it is appropriate to reproduce said sections for ready reference.

"Section-16. Dissemination of rumours, etc. Whoever—

(a) Makes any speech, or

(b) By words whether spoken or written or by signs or by visible or audible representations or otherwise publishes any statement, rumours or report,

shall be punishment with imprisonment which may extend to three years, or with fine, or with both if such speech, statement, rumour, or report

(i) Causes or likely to cause fear or alarm to the public or to any section of the public;

(ii) Furthers or is likely to further any activity prejudicial to public safety or the maintenance of public order."

Similarly, definition of "wrongful restraint" contained in Section 339 PPC attracting the provision of Section 341 of PPC reads as under:-

"Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

Now in order to determine as to whether from the contents of impugned crime report, both the offences alleged against the petitioner are made out or not, it is appropriate to reproduce the impugned FIR, which reads as under:-

استغاثہ زیر دفعہ 341ت پ 1960 16MPO امروز من ASIمعہ سید احمد C/352منصبدار C/379، فضل عباس C/536بسواری سرکاری گاڑی GBA-409ڈرائیور محمد حفیظ C/278بسلسلہ گشت وکار سرکار سرووالا اڈاموجود ہوں کہ اطلاع موصول ہوئی کہ چند اشخاص اڈا محمد والا پر روڈ بلاک کر کے نعرے بازی کر کے نقص امن پیدا کر رہے ہیں جس سے امن وامان میں خلل پیدا کر رہے ہیں اور ٹریفک کے بہاؤ میں بھی رکاوٹ پڑ رہی ہے اطلاع وقوعہ پا کر جائے متذکرہ پر پہنچا تو 17/16اشخاص جن میں بعد از دریافت نام وپتے 1۔ سیف اللہ ولد محمد ریاض قوم کلہ 2۔ ساجد علی ولد سرفراز قوم کلہ 3۔ زوار مظہر علی ولد مقصود علی قوم قریشی 4ظہور ولد بہادر قوم کھرل 5علی حسن ولد اللہ دتہ قوم کمہار 6جمشید ظفر ولد ظفر اقبال قوم کلہ 7سلیم ولد عبدالرحمان قوم کھرل 8ملک بہار ولد پرویز قوم کمہار 9فیصل حیات ولد حیات قوم کلہ سکنائے محمد والا 10رائے اسامہ سلطان ولد رائے نیپو سلطان قوم بھٹی سکنہ بڑانہ 11وسیم ولد نامعلوم قوم پاولی سکنہ گنجہ تکہ ودیگر 5/6کس نامعلوم شامل تھے جو کہ مین چوک لالیاں روڈ پر اڈا محمد والا پر نعرے بازی کر رہے تھے اور موٹر سائیکلوں پر ریلی کی شکل بنا کر جا رہے تھے جس سے عوام الناس کو گزرنے میں دشواری پیش آ رہی تھی اور لوگوں کا امن وامان خراب ہو رہا ہے جو پولیس پارٹی کو آتا دیکھ کر منتشر ہونے لگے اور اپنی اپنی موٹر سائیکل ہائے پر سوار ہو کر فرار ہو گئے جملہ ملزمان نے روڈ بلاک کر کے اور عوام الناس کی گزرگاہ میں رکاوٹ ڈال کر ارتکاب جرم 341ت پ 1960 16MPO کا کیا ہے لہذا استغاثہ ہذا مرتب کر کے برائے اندراج مقدمہ بدست سید احمد C/352ارسال تھانہ ہے مقدمہ درج کر کے نمبر مقدمہ سے اطلاع دی جاوے میں موقع پر مصروف تفتیش ہوں۔ خالد نذیر ASIتھانہ محمد والا مورخہ 13.08.2024از اڈا محمد والا بوقت 6/- بجبشام از تھانہ حسب آمد تحریری استغاثہ پر رپورٹ ابتدائی اطلاعی ہذا جرم مذکور مرتب کر کے نقل مثل پولیس ہمراہ تفتیش بدست ارندہ کانسٹیبل نزد فرسندہ ASIصاحب بھجوائی جا رہی ہے اطلاع مقدمہ ہذا جناب SHO صاحب کو دی گئی ہے۔

First of all, we have to see whether Section 16 of the Ordinance attracted from the contents of the impugned FIR, the answer is big NO. In order to attract the provision of said offence not only making of speech or words whether spoken or written or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report is necessary but as a consequence thereof fear or alarm to the public or any section of the public or any activity prejudicial to the public safety or the maintenance of public is *sina qua non*. It is manifestly clear from the contents of the crime report that on receiving an information, the complainant attracted at the spot and saw the petitioner and his companions were chanting slogans but what kind of slogans were being chanted by them was conspicuously missing in the crime report. Since the nature of words, speech or rumour is necessary to determine the fate of its consequences that may occur due to said act is missing, therefore, it can safely be said that provision of said section is not attracted in the facts and circumstances of the case.

7. Now coming to attraction of Section 341 PPC. Bare reading of definition of "wrongful restraint" contained in Section 339 PPC attracting the provision of Section 341 of PPC it is manifestly clear that obstruction should be of a human being and mere allegation that due to the act of the petitioner flow of the traffic was disturbed was not sufficient to constitute said offence. Reliance is placed on case reported as "*Mst. Riaz Bibi ..Vs.. S.H.O. Police Station, Zahirpir (2002 P Cr.LJ 530)*", wherein it has been laid down as under:-

> "Where it is not disclosed that a human body was obstructed and that the obstruction was only to vehicle and passage was common to both, thus no offence would be committed under section 341, P.P.C."

Since neither in the crime report, the complainant cited that any particular person was wrongfully restrained by the petitioner or his companion nor anyone step forward during the course of investigation to raise accusing finger towards the petitioner or his companion for wrongfully obstructing him/them, as such to my mind offence U/S 341 PPC is not made out.

8. Needless to observe that *mens rea* is a basic component in order to establish that a crime has taken place. It is derived from the maxim " *actus reus non facit reum nisi mens sit rea*" which means "that an act is not guilty unless the mind is not guilty". No person can be held accountable under the criminal law unless he can be proved to have acted with intention to commit a crime. Here in the instant case, the defence of the petitioner was that they were celebrating 77th Independence Day of our beloved country and the prosecution is unable to bring on record anything contrary to the claim of the petitioner. The prosecution is not equipped with any evidence that the petitioner and his companions were inclined to take the law into their hands and creating any law order situation. From the contents of the crime report, it is abundantly clear that the accused persons were going on motor-cycles in the shape of rally, as such in that backdrop question of blockage of road does not arise. According to the complainant, accused persons were 16/17 in numbers, so if they

have any intention to cause any loss to the vehicle or the police officials, they could do so but nothing such like has taken place. Even according to the impugned crime report on seeing the police party the accused persons scattered, which shows the respect of the law enforcement agencies in the mind of the petitioner and his companions. Had they any intention to create a law and order situation or disturb the public peace and tranquility, they could easily achieve desired result, thus, I have no hesitation in holding that in order to establish a crime against the petitioner basic ingredient of *mens rea* is patently missing in the instant case. In the words of Sir Matthew Hale one of the greatest scholars on the history of English Common Law and Jurist "Where there is no will to commit an offence there can be no just reason to incur the penalty."

9. Besides above, we are living in a democratic country and peaceful assembly is very important right for preservation of a democratic political system. This right has also been guaranteed under Article 16 of the Constitution of Islamic Republic of Pakistan, 1973, which reads as under:-

> "Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality."

From the very language of this Article four necessary preconditions are necessary for exercise of this right. *Firstly*, person should be a citizen of Pakistan. *Secondly*, gathering must be peaceful. *Thirdly*, the participants of such gathering should be weaponless. *Fourthly*, the right is subject to

reasonable restriction imposed by ‘law’ in the interest of ‘public peace’. The term ‘law’ here clinches both primary and secondary legislation and implies that restrictions placed upon the right of an individual must have backing of law. Here in the instant case neither the nationality of the petitioner or his companion is disputed nor it was the case of the prosecution that the participants were armed or turned violent. Therefore, in the absence of any reasonable restriction imposed by law, the fundamental right of the petitioner for peaceful assembly cannot be curtailed. It was not the case of the prosecution that at the time of alleged occurrence, Section 144 of Cr.P.C. was in place, therefore, lodging of the impugned FIR is in sheer disregard to the fundamental rights of the petitioner.

10. For what has been discussed above, instant writ petition is **allowed** as a consequence thereof impugned FIR is quashed.

(Asjad Javaid Ghural)
Judge

Approved for reporting

Judge

*Azam**