

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE IQBAL HAMEEDUR RAHMAN
MR. JUSTICE KHILJI ARIF HUSSAIN

CRIMINAL APPEAL NO. 424 OF 2015

(on appeal from the judgment of the High Court of Balochistan, Quetta dated 20.08.2015 passed in CrI. Misc. Quashment No.42 of 2010)

Ali Muhammad & others

...**Appellants**

VERSUS

Syed Bibi and others

...**Respondents**

For the Appellant: Mr. Zulfiqar Ahmed Bhutta, ASC.

For the State: Mr. Ayaz Khan Swati, Addl. AG, Balochistan.

Date of Hearing: 22.02.2016.

JUDGMENT

Anwar Zaheer Jamali, CJ.— Through this appeal by leave of the Court, the appellants have invoked jurisdiction of this Court against the judgment dated 20.08.2015 in Criminal Miscellaneous Quashment No.42 of 2010, passed by learned Division Bench of the High Court of Balochistan, Quetta, whereby quashment petition of Respondent No.1 under Section 561-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as "Cr.P.C.") against the order dated 15.07.2010 passed by Sessions Judge Pishin as Justice of Peace on an application under Section 22-A Cr.P.C. was accepted; consequently, order dated 15.07.2010 was set aside with direction to Respondent No.2 to register the FIR against the appellants for causing murder of Hafiz Muhammad Jan.

2. Briefly stated relevant facts of the case are that Respondent No.1, Syed Bibi wife of Khatak, had moved an application under Section 22-A Cr.P.C. for registration of FIR against the appellants with the averments that she was a widow, residing in Kuchlak with her son, Hafiz Muhammad Jan, who was the only earning member of her family. During an exchange of fire between levies and some unknown persons, her son was hit by a bullet on his leg, whereupon people gathered on the spot and began protesting. The levies started aerial firing due to which the unknown persons fled away from the scene. Thereafter, the levies took her injured son with them and she found out the next day that her son had succumbed to the injuries and his dead body was lying in the Civil Hospital Quetta.

3. Regarding this incident, an FIR was earlier lodged with misleading and incorrect statement of facts, therefore, she filed an application under Section 22-A Cr.P.C. before the Justice of Peace/Sessions Judge Pishin with the following assertions:-

"2. That her deceased son Haifz Muhammad Jan alongwith her nephew namely Abdul Wali have left the house to go to their relatives living in Killi Nilli, Bostan after offering Asar prayer at about 06:00 p.m., when on Kuchlack road there was a cross firing between levies personnel with some unknown persons, therefore, number of people were gathered nearby, and his son and nephew also parked their motorcycle and were standing with other people, when from the levies side a bullet came which hit Hafiz Muhammad Jan on his leg, meanwhile other party has made their escape good and her nephew Abdul Wali and their other tribes man gather on the spot, have protested for injuring Hafiz Muhammad Jan, while the assailants on quite opposite site of the people, where the deceased was standing, which turned into scuffle on the spot with levies and other people, the levies personnel were provoked and were shouting that their Risaldar has been injured and assailants who escaped were relative of Hafiz Muhammad Jan, therefore, they will not spare him on saying so, they have started aerial firing to disburse the public and took Hafiz Muhammad Jan in injured condition and thrown him into their pickup on which Abdul Wali rushed towards them and protested for

cruel and inhuman attitude with an injured person levies personnel already provoked have started beating Abdul Wali and also took him and boarded him into vehicle, while at that time levies personnel namely (1)Ali Muhammad s/o Habibullah, Aaffadar levies Bostan (2)Feroz Jumadar levies Bostan, (3) Yousaf (4) Muhammad Mir (5) Mohd Amin s/o Sagzai Khasadar levies (6) Mohd Sadiq s/o Dad Khan (7) Anwar (8) Abdul Hameed s/o Abdul Rasheed, all levies personnel have been identified on the spot.

3. That on the fateful night the mother of deceased went to levies police station, where she had been informed that her injured son and nephew both have been sent to Pishin, thus, on said night the widow of an advanced age had thrice travel between Kuchlak Bostan and Pishin, and finally she was told by levies personnels in Civil Hospital Pishin that her son has been succumbed to his injuries and his dead body is transmitted to the Quetta Hospital, on next morning the mother of deceased reached to Civil Hospital at 6:00 a.m. morning and on her quarries the staff in casualty department told her that some dead body has been brought but same could not been handed to her without permission of levis Bostan, the whole day an old lady was sitting in front of morgue causality, meanwhile her few relatives have also reached to hospital and started protesting and demanded the dead body, when police personnel at the spot have informed the levies line Queta at about 11:30 a.m. the Naib Tehsildar came, in initially creating unnecessary hurdles under the garb of interrogation, but after confirming from his high officials had agreed to handover the dead body..."

4. This application was, however, dismissed by the learned Sessions Judge Pishin vide his order dated 15.07.2010. Respondent No.1 then filed C.P. 513/2010 under Section 561-A Cr.P.C. before High Court of Balochistan, which was heard, converted into Criminal Misc. Quashment No.42 of 2010, and allowed vide impugned judgment dated 20.08.2015; thereby directing the concerned official (Naib Tehsildar Bostan) to get the FIR of the incident registered, *inter alia*, for the following reasons:

"14. Considering the facts and the attending circumstances of the instant case, two distinct and opposite versions have come on record, wherein manner of the occurrence, place of occurrence and other details are not only different, but are also opposite to each other. Therefore, interest of justice as well as fair investigation demands that a separate FIR on the basis

of application of the petitioner should be recorded and investigated upon, so that both the versions may be placed before the Court who will then be in a position to determine and adjudicate upon as to which of the version is wholly or partly correct and which of the accused persons are guilty and liable to conviction.

15. *In the referred case of 'Mohammad Azam' it has been held that where a different, opposite or a cross version is put forth by the complainant which discloses commission of cognizable offence, second FIR is not barred*

In the case of 'Humayun Khan' it has been held that recording of second FIR depends upon the facts of each case and the matter is to be seen in the context of totality of the circumstances and allegations"

5. We have heard arguments of the learned ASC for the appellants. He contended that indeed there is no specific prohibition under the provisions of Cr.P.C. which precludes registration of another FIR with respect to the same incident; nevertheless, depending upon the facts and circumstances of each case, such practice has been deprecated particularly when the proceedings in a criminal case arising out of earlier FIR have reached at an advanced stage; however, this important legal aspect has not been duly taken into consideration by the High Court in its impugned judgment. He, however, could not refer to any case law in support of his argument that registration of another FIR is unwarranted by any specific provision of law.

6. The learned Additional Advocate General Balochistan in his submissions did not oppose findings of the High Court of Balochistan in the impugned judgment. He referred to before us the judgments in the cases of Wajid Ali Khan Durani and others v. Government of Sindh and others (2001 SCMR 1556) and Mst. Anwar Begum v. Station House Officer, Police Station Kalri West, Karachi and 12 others (PLD 2005 SC 297), which lay down a general principle in this regard as under:

"no definite rule could be laid down barring the registration of another F.I.R. when a different version of the same occurrence is given by an aggrieved party.

Moreover, any direction to the police to record another F.I.R. would depend on the facts and circumstances of each case, however, refusal to record/register a genuine version of the same occurrence is unwarranted in law."

7. In another earlier case Kaura v. The State and others (1983 SCMR 436) while dismissing the CPLA, the Court had suggested the aggrieved party to move the High Court for review of its order regarding registration of another FIR with the observation that the police was not only competent but also duty bound to unearth the true facts and trace the real culprits while conducting investigation of the crime. This judgment was taken into notice in the case of Mst. Anwar Begum (*supra*) but not commented upon, while in the other case of Wajid Ali Khan Durani (*supra*) similar contention of the learned counsel was repelled as being misconceived. It was further held that in the circumstances discussed, the learned High Court correctly appreciated the view expressed in several other cases of the superior Courts for giving direction to register another FIR.

8. We have considered submissions of the learned ASC for the appellants on short controversy involved in the matter relating to registration of another FIR. In the instant case, perusal of contents of the earlier FIR lodged at the instance of Ali Muhammad Defedar Levies on 09.06.2010 and the contents of other FIR lodged by Respondent No.1 on 27.08.2015, in terms of the impugned judgment, reveals two entirely different and conflicting stories about the actual occurrence. It is, thus, obvious that in case prosecution leads its evidence on the basis of contents of earlier FIR and the investigation made on that basis, then from no stretch of imagination the grievance of Respondent No.1, attributing criminal liability of whole occurrence to the complainant and his party ("the appellants" herein), could be considered or adjudicated

upon by the Court. In such circumstances, considering the allegations of Respondent No.1 about mala fide of the complainant in the earlier FIR so as to exonerate himself from the liability of *Qatl-i-amd* of her son, followed by distorted and collusive investigation, the impugned judgment of the High Court directing registration of another FIR seems fully justified and in accordance with law, wherein no specific bar or prohibition is provided in this regard. The two cases referred to by the learned Additional Advocate General Balochistan in support of the impugned judgment also fully support this view.

9. The whole gambit of controversy in hand revolves around the import and application of Section 154 of Cr.P.C. hence for ready reference it will be useful to reproduce the same as under:

“154. Information in cognizable cases.—Every information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person given it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.”

10. As could be seen from the plain reading of above reproduced provision of law, the requirement of Section 154 Cr.P.C. is to enter every information of commission of a cognizable offence, whether given orally or in writing to the officer-in-charge of the police station, which shall then be reduced into writing and signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Provincial Government in this behalf. Meaning thereby, that it is not a legal requirement for provider of such information to canvass the whole scene of occurrence of a cognizable offence giving description and details of accused, details of weapons used by them, their specific role, motive behind the occurrence, and the names of eye witnesses etc. But it is a matter of common experience that usually the entries made in Section 154 Cr.P.C. book, as per practice, contain invariably all such details so much so that in the ordinary parlance/sense it is considered as the gist of the prosecution case against the accused. In such state of affairs, if a collusive, mala fide or concocted FIR, registered at the instance of some individual with some ulterior motive, is taken as sacrosanct, it is likely to divert the whole course of investigation in a wrong direction and spoil the entire prosecution case on that premise. The Court while considering the crucial point of registration of another FIR cannot remain oblivious of these ground realities so as to non-suit

the aggrieved party from agitating his grievance in an honest manner, or ensure regulating proper investigation of a crime in the right direction, or apprehend the real culprits and brought them before the Court of law for justice.

11. Though our criminal legal system proceeds on the presumption of honest, God fearing and fair police officers, impartial and honest investigation system, but this is far from reality in the society we live in. In such circumstances when the Courts feel that due to mala fide, dishonest, colourful and motivated acts or omissions, entire investigation of the crime has been mislead or it is going to be misled and on that account the case of the prosecution is likely to fail, then they are not denuded of their powers to order recording of another FIR disclosing a different version to check such nefarious design meant to save the real culprits vis-a-vis misleading the investigation/prosecution, at any appropriate stage of the proceedings. However, where need be, such powers are to be exercised with extreme care and caution and not in a routine manner so as to merely fulfill the wish of an individual who, as per his whims, is not satisfied either with the contents of earlier FIR or the direction of investigation based thereon or wants registration of another FIR with some ulterior motive. It is more so important in the circumstances when the procedure of direct complaint under Section 200 Cr.P.C. is also provided to meet such eventualities. However, it may be clarified here that there may be circumstances where registration of another FIR will be the only proper course as adopting the alternate course provided in Section 200 Cr.P.C. may not be equally efficacious and effective for the aggrieved person. The case law on the subject, which has been referred to above, lend support to the view that provisions of Section 154 Cr.P.C. are to be read in a pragmatic, holistic and realistic manner in order to ensure that its true spirit and object is achieved and it is not abused at the hands of

individuals or police, who may be adamant to make mockery of this system. It is for these reasons that no definite principle can be laid down barring the registration of another FIR.

12. It is unfortunate to note that in the instant case due to one-sided version disclosed in earlier FIR No.17/2010, the investigating agency never bothered to look into the crime from another angle as narrated in the other FIR dated 27.08.2015, which means that as per assertions of Respondent No.1, the alleged culprits could have otherwise escaped from their criminal liability successfully at the very initial stage without even being charged for the offence on the basis of misleading contents of earlier FIR. The short and long of the above discussion is that the impugned judgment of the Balochistan High Court warrants no interference.

13. In view of the above, this appeal was dismissed vide short order of even date, which reads as under:

"We have heard arguments of the learned ASC as well as learned Additional Advocate General Balochistan. For reasons to follow separately, this appeal is dismissed."

Chief Justice

Judge

Judge

Judge

Judge

ISLAMABAD.
22nd February, 2016.

Mudassar/★

"Approved for reporting."