

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

Writ Petition No.2181 of 2020  
Syed Aoun Abbas Kazmi  
Versus  
The State and another

**Petitioner by:** Mr. Aamir Rehman Mughal, Advocate,  
**Respondents by:** Syed Shahbaz Shah, State Counsel,  
Muhammad Ishaq SI of Police Station  
Sabzimandi, Islamabad.  
**Date of Decision:** 10.09.2020.

**FIAZ AHMAD ANJUM JANDRAN, J:** Through the instant writ petition, petitioner seeks quashment of F.I.R No.351 dated 07.08.2020, registered under Section 188 & 341 PPC, Police Station Sabzimandi, Islamabad.

2. Briefly, the allegations set forth in the FIR are that on 07.08.2020, petitioner along with about 300 persons held a procession (Juloos) near Imam Bargha Moosa Kazim, Sector I-10/1, Islamabad without N.O.C in contravention of order dated 14.07.2020, issued by the District Magistrate, ICT whereby the latter while exercising powers conferred on him under Section 144 Cr.P.C prohibited all kinds of gathering of five or more persons, processions/rallies and demonstrations at any public place within the revenue limits of District Magistrate. The local police registered the FIR under Section 188 and 341 PPC, sought to be quashed through the instant writ petition.

3. Learned counsel for the petitioner contends that earlier N.O.C was issued to the petitioner by the District Magistrate for holding the procession while second application has not yet been decided and that under the law, local police is not competent to register the instant FIR which could only be registered by the competent authority i.e. the District Magistrate. Learned counsel placed

reliance upon case laws reported as 1997 PCr.LJ 589, 1998 PCr.LJ 87, 1998 PCr.LJ 584, PLJ 1998 Lahore 1435, 2000 PCr. LJ 297, 2001 PCr.LJ 1196 and judgment of this Court passed in W.P. No.3788-Q/2018.

4. On the other hand, learned State Counsel argued that the petitioner along with others without having the requisite N.O.C held the procession in contravention of the prohibition enforced by the local administration, therefore, their case is quite distinct from the case laws referred above and the facts of the case of W.P. No.3788-Q/2018.

5. Heard and record perused.

6. The subject FIR was registered on the allegations of '*disobedience to order duly promulgated by public servant*' and '*wrongful restraint*'. The former is with regard to disobedience to an order duly promulgated by a public servant like the one in hand while the latter caters for the situation where there is an allegation of wrongful restraint to any person in such a manner as to prevent that person from proceeding behind certain circumscribing limits.

7. Undoubtedly, right to hold demonstration was conferred on every citizen as a fundamental right under Article 16 of the Constitution which provides that every citizen should have the right to assemble peacefully and without arms subject to any reasonable restriction imposed by the law in the interest of public order. The qualification for holding the procession in the instant case, is provision of N.O.C by the District Magistrate.

8. It was consensus that earlier N.O.C for holding the procession was issued to the petitioner on 28.08.2018 while the ratio set in by this Court in *Syed Ehtasham Shah V. S.H.O. P.S. Noon, etc.* (W.P. No.3788/Q/2018) guides to hold that "when N.O.C is issued for arranging any procession, the same stands continued till it has been revoked or cancelled as such there is no document on record,

**through which it could be presumed that previously issued N.O.C dated 11.12.2011 was cancelled.”**

9. Admittedly, N.O.C was issued to the petitioner previously which has not been revoked or cancelled as there is no such document on record while it is also an admitted fact that for holding the instant procession, they have already moved the District Magistrate through an application in writing. In such eventuality, the precedent (*Supra*) is squarely applicable to the case in hand.

10. Moreover, it is held in numerous case laws that in case of violation of the order passed by the District Magistrate within the meaning of Section 144 Cr.P.C, the machinery of law can only be moved by filing complaint by order of such public servant, who promulgated the order or his superior as envisaged in Section 195(1)(a) Cr.P.C. In the present case, the local police initiated the proceedings which cannot be termed to be in accordance with the spirit of Section 195(1)(a) Cr.P.C. Reliance is placed upon “*Kafaitullah V. Ibrahim and others (2018 YLR Note 95 Peshawar)*”, wherein it is held that:-

“In case of violation of the order passed by District Magistrate within the meaning of section 144, Cr.P.C. the machinery of law can only be moved by filing complaint by order of such public servant who promulgated the real order or by his superior, as envisaged under section 195(1)(a), Cr.P.C. In the present case, there ought to have been a complaint as envisaged under section 4(h) Cr.P.C. by District Magistrate himself or his superior i.e. Home Secretary and under no circumstances by a private person who is landlord of the accused, therefore, the accused was rightly acquitted by the learned Resident Judicial Magistrate.”

In another case titled “*Ikram and 6 others V. S.D.M. Tamergara, District Dir and another*” (2000 PCr.LJ 297 *Peshawar*), it is held that:-

“Whether the order passed by the Sub-Divisional Magistrate under section 144, Cr.P.C. was a lawfully promulgated order, being besides the point; a case under section 188, P.P.C. is a complaint case and no Court,

under section 195(1)(a) of the Cr.P.C. is competent to take cognizance of the offence unless a complaint in writing is made by the public servant concerned or by some other public servant to whom he is subordinate.”

Reliance is also placed upon case laws reported as “*Malik Muhammad Yaqoob Awan V. Akhtar Lodhi, S.H.O. P.S. Shahrai Faisal Karachi and 2 others (2001 PCr.LJ 1196 Karachi) and Muhammad Ayub V. District Magistrate/ Deputy Commissioner Multan (2001 PCr.LJ 1039 Lahore).*”

11. In view of above, instant writ petition is allowed and FIR No.351 dated 07.08.2020, registered under Section 188 & 341 PPC, Police Station Sabzimandi, Islamabad is hereby quashed.

(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE

Imran