

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No.4153/2019

Malik Saif-ur-Rehman & another

versus

Faisal Naeem Khan & 02 others

Petitioners by: Raja Inaam Ameen Minhas, Advocate.

Respondents by: Mr. Moazzam Habib, Advocate for
Respondent No.1.
Mr. Sadaqat Ali Jahangir, State Counsel.

Date of Decision: 08.03.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioners have prayed for quashing of FIR No.394, dated 26.11.2019, under Sections 420, 468, 471 PPC, P.S. Shalimar, Islamabad.

2. Succinctly, petitioners namely Malik Sair-ur-Rehman and Malik Abid-ur-Rehman (petitioners) being owners of Commercial Plot No.11-A, measuring 900 sq. yds., F-10 Markaz, Islamabad have constructed Emporium Mall, in which Faisal Naeem Khan (Respondent No.1) had entered into agreement to sell with the petitioners with respect to purchase of a shop i.e. P-18 at 5th Floor, against sale consideration of Rs.66,000,000/-, as such, respondent No.1 learnt that 5th Floor of said plaza has illegally been constructed by the petitioners in violation of conditions settled by the CDA. Accordingly, on the complaint filed by respondent No.1 the

aforesaid FIR No.394/2019 has been lodged against the petitioners. Hence, instant writ petition.

3. Learned counsel for petitioners contends that registration of the instant FIR is against the law as the matter arises out from contractual obligations, which could only be settled by the Civil Court having competent jurisdiction, per se, the learned trial Court has overlooked this aspect of the matter that the dispute between the parties is purely of civil nature; that non-compliance of the agreement to sell does not constitute any offence, as such, the agreement executed between the parties already contains arbitration clause; that respondent No.1 could not claim possession of the disputed shops until total sale consideration is paid in full; that petitioners have been involved in the instant FIR with malafide intention and ulterior motives to pressurize the petitioners.

4. Conversely, learned State Counsel as well as learned counsel for respondent No.1 contend that petitioners in violation of settled terms and conditions have constructed 5th Floor and knowingly offered public at large to invest their hard earned money in the project; that contents of complaint / FIR shows commission of cognizable offence by the petitioners as respondent No.1 as well as others have been defrauded, per se, the matter could not be resolved without recording of evidence.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioners have been nominated as accused persons in case FIR No.394, dated 26.11.2019, under Sections

420, 468, 471 PPC, P.S. Shalimar, Islamabad, lodged on the complaint of Faisal Naeem Khan / Respondent No.1.

7. The petitioners have been allotted Commercial Plot No.11-A, measuring 900 sq. yards, F-10 Markaz, Islamabad, by the CDA vide letter dated 02.04.2013, over which they have constructed a plaza by the name of Emporium Mall. Respondent No.1 has lodged the FIR alleging that the petitioners have sold him a shop situated at 5th Floor, against total consideration of Rs.66,000,000/-, however the petitioners have failed to deliver possession of said shop within the stipulated period. On inquiry, it revealed to respondent No.1 that the CDA declared the construction of Emporium Mall as illegal because of construction of two illegal floors i.e. 5th and 6th, as a result whereof, respondent No.1 has been deprived of his hard earned money.

8. Learned counsel for petitioners contends that the disputed floors have been demolished by the petitioners and allotment with respect to said mall has been restored by the Estate Management Directorate-II of CDA vide letters dated 22.10.2020 and 04.12.2020.

9. I have confronted learned counsel for petitioners as to whether the FIR could be quashed when a fraud has admittedly been committed with the complainant qua the shop not permitted to be constructed at 5th and 6th floor or even sold? Whereby, learned counsel for petitioner in categorical terms contends that they have provided alternate shops at lower floors to respondent No.1 and the matter has been resolved to that extent but, at

this stage, learned counsel for respondent No.1 has denied any such settlement.

10. In view of above reason, this Court is convinced that, *prima facie*, allegation requires recording of evidence as it could not be resolved in these summary proceedings of quashing of FIR.

11. This Court is also mindful of the fact that the principle governing the exercise of powers available under Section 561-A Cr.P.C. could only be put into effect when no offence is made out from bare reading of the FIR or the charges appear to be groundless or the dispute is of a civil nature, which has been converted into criminal proceedings with malafide intention. Reliance is placed upon 2014 YLR 429 Karachi (Bashir Ahmed v. Family Judge, Karachi), 2014 MLD 795 Peshawar (Aftab Ahmad vs. The State), 2016 P.Cr.LJ 1144 G.B. Chief Court (Faisal Iqbal vs. The State), 2016 P.Cr.LJ 305 Karachi (Muhammad Aslam vs. SECP) and 2015 P.Cr.LJ 576 Islamabad (Muhammad Zubair v. Senior Superintendent of Police).

12. Likewise, alternate remedies under Sections 249-A or 265-K Cr.P.C. are available to the petitioners, who can invoke the jurisdiction of the learned Trial Court at appropriate stage when some evidence has been recorded in due course of time. Per se, the High Court could not exercise the jurisdiction under Section 561-A Cr.P.C. as held in case reported as PLD 2017 Islamabad 64 (Ali Raza v. Federation of Pakistan).

13. The petitioners have failed to demonstrate any exceptional or extraordinary circumstance in this case for exercise of inherent powers under Section 561-A Cr.P.C., which is the key factor for quashing

of FIR. Reliance is placed upon 2008 SCMR 76 (Dr. Ghulam Mustafa vs. The State), 2011 SCMR 1937 (Rana Shahid Ahmad Khan vs. Tanveer Ahmad) and PLD 2007 SC 48 (The State through Prosecutor General, Lahore v. Sultan Ahmed).

14. In view of above, instant writ petition is not made out and same is hereby **DISMISSED**. The learned Additional Sessions Judge seized with the pre-arrest bail of petitioners is directed to decide the said application within the period of 15 days, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.