

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.3279-Q-2016

Safeer Ullah Khan

V.

SHO, P.S. Sabzi Mandi, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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29.01.2020

Rana Abid Nazir Khan, Advocate for petitioner.
Mr. Arif Khan, Advocate for respondent No.3.
Mr. Awais Haider Malik, State Counsel with
Yaseen, SI.

Through the instant petition, the petitioner seeks quashing of FIR No.274 dated 23.08.2016 under section 406 PPC registered at P.S. Sabzi Mandi, Islamabad.

2. The facts, in brief, are that on complaint of respondent No.3, above mentioned FIR was registered against the petitioner. The allegations, as leveled in the FIR, are that respondent No.3 used to supply wheat to the petitioner, who used to sell the same and make payment by crediting the same in the account of respondent No.3, but no payment was made for the wheat supplied in the crushing season of 2015.

3. Learned counsel for the petitioner, *inter alia*, contended that bare perusal of FIR shows that sections 405 & 406 PPC are not attracted in the facts and circumstances. It was further contended that dispute, between the parties, is civil in nature and suit for rendition of accounts is pending in the court of plenary jurisdiction. In support of his contentions, learned counsel placed reliance on cases reported as 'Rafiq Hajji Usman Vs. Chairman, NAB and another' (2015 SCMR 1575), 'Mrs. Ambreen Naseem Khawaj Vs. Federation of Pakistan and others' (2015 P.Cr.LJ

506), 'Rizwan Bibi Vs. The State and another' (2012 SCMR 94) and 'Rana Saeed Ullah Vs. Inspector General of Police and 6-others' (2013 YLR 2513).

4. Conversely, learned counsel for respondent No.3, *inter alia*, contended that investigation is still at the initial stage; that offence attracted can always be altered, if investigating agency is of the view that some other provision is attracted; that sections 405 & 406 PPC are attracted; that mere pendency of civil proceedings is no bar to the criminal proceedings; that High Court has no jurisdiction to assume the role of investigating agency and quashing FIR. Reliance was placed on cases reported as 'Dr. Ghulam Mustafa Vs. The State and others' (2008 SCMR 76), 'Col. Shah Shafiq Vs. Muhammad Ashiq and others' (2006 SCMR 276), 'Haji Sardar Khalid Saleem Vs. Muhammad Ashraf and others' (2006 SCMR 1192), 'M. Aslam Zaheer Vs. Ch. Shah Muhammad and another' (2003 SCMR 1691) and "Bashir Ahmad Vs. Zafar-ul-Islam and others' (PLD 2004 Supreme Court 298).

5. Learned State Counsel submitted that investigation has not yet commenced hence the case for quashing of FIR has not been made.

6. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

7. The petitioner seeks quashing of FIR mainly on the ground that sections 405 & 406 PPC are not attracted and that civil litigation is pending.

8. The investigation has not yet concluded but was under way when FIR in question was suspended by this Court vide order dated

22.09.2016 passed in CM No.3463-2016 filed by the petitioner. Learned State Counsel has categorically submitted that the matter is still to be investigated. The investigating agency is still to determine, whether in the facts and circumstances, sections 405 & 406 PPC are attracted or some other offence is made out.

9. Mere pendency of civil litigation is no bar for initiation of criminal proceedings. The case law relied upon by learned counsel for respondent No.3 is instructive. Reliance is placed on case reported as 'Dr. Sher Afghan Khan Niaz Vs. Ali S. Habib and others' (2011 SCMR 1813).

10. Moreover, disputed question of fact, as to the nature of transaction, cannot be determined by this Court in a petition under Article 199 of the Constitution. Reliance is placed on cases reported as 'Dr. Ghulam Mustafa Vs. The State and others' (2008 SCMR 76), 'Col. Shah Shafiq Vs. Muhammad Ashiq and others' (2006 SCMR 276). Since both sides controvert the facts, the matter cannot be resolved in the instant petition.

11. In view of above, no case for quashing of FIR is made out, hence instant petition is dismissed.

(AAMER FAROOQ)
JUDGE

Zawar