

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO.2667-Q-2020

KHALID NADEEM KIYANI.
Vs.
I.G. POLICE, ISLAMABAD, ETC.

Petitioner by : Mr. Imran Feroz Malik, Advocate.

Respondents by : Ajmal Raza Bhatti, Advocate for Complainant.
Ms. Abida Mukhtar Chaudhry, State Counsel.
Mr. Sohaib, S.I.

Date of hearing : 21.10.2020

LUBNA SALEEM PERVEZ, J. Through instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan read with Section 561-A Cr.P.C., Petitioner seeks quashment of FIR No.513, dated 02.09.2020, registered under Section 25-D of Telegraph Act, 1885 at Police Station Golra, Islamabad.

2. Learned counsel for the petitioner while apprising about the background of the matter submitted that the above said FIR has been registered on behest of Complainant/Respondent No.5 alleging therein that petitioner threatened him through whataapp messages and Complainant has the recording of that whatasapp audio sent by the petitioner.

Learned counsel contended that the subject FIR is false and frivolous which is based on concocted story, that matter pertains to Cybercrime and has been illegally registered under Telegraph Act; that the petitioner was kidnapped by the Complainant/Respondent No.5 and was beaten severely and against the incident FIR No. 246/20 was also registered in P.S. Golra and the concerned SHO and the Complainant tried to force the petitioner to enter into a compromise but on petitioner's refusal present FIR has been registered against him to be used as a pressurizing and blackmailing tool; that even otherwise if it is presumed

that any occurrence of the kind as alleged in the FIR has actually taken place, even then, Respondent No.4 does not have the jurisdiction to register FIR u/s 25-D of the Telegraph Act, as the offence falls within the jurisdiction of Cyber Crime and Local Police cannot investigate the matter; that there is nothing available on record to establish the alleged occurrence; that the alleged audio message of the petitioner has not been placed by the Complainant before the investigating agency. Learned counsel prayed for quashment of the subject FIR.

3. On the other hand learned counsel for Respondent No.5 and learned State Counsel submitted that audio recording of the petitioner while extending threats to the complainant has been handed over to the police; that investigation in the matter has not yet been completed, however, there is sufficient incriminating material on record to connect the present petitioner with the commission of offence, that the petitioner has not yet been arrested by the police; that an alternate remedy is available to the petitioner under Section 249-A Cr.P.C. before the learned Trial Court, therefore, the relief sought under Article 199 of the Constitution read with Section 561-A Cr.P.C. for quashment of FIR is without merit, hence, is not maintainable. Reliance, in support of above contentions was placed on the case law reported as *Raja Muhammad Nadeem versus The State and another (PLD 2020 SC 282)* and *Muhammad Ali versus Additional I.G. Faisalabad and others (PLD 2014 SC 753)*, .

4. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the relevant record with their able assistance.

5. Admittedly, the investigation in the matter has not yet been completed and the complainant of the case has not succeeded in providing some solid evidence against the petitioner but as stated above, the investigation is under way and CDR of the phone number provided by the petitioner allegedly on which the threatening call was made by the petitioner has yet to be procured by the Police and real facts can only be ascertained once the investigation is complete and police challan u/s 173 Cr.P.C. is submitted before the concerned trial Court. Moreover, as a

general rule powers under Article 199 of the Constitution cannot be substituted for the trial nor can any deviation be made from the normal course of law. Therefore, before submission of Police Challan it would be too early to exercise the discretion for quashing the FIR. The Police has not arrested the petitioner whose bail before arrest is also pending before the learned Additional Sessions Judge, however, he has been included in the investigation.

6. Even otherwise, I am of the view that under the law, an alternate remedy under Section 249-A is available to the Petitioner before the Magistrate, who has ample power to acquit the accused on the basis of report of Investigating Officer filed under Section 173 Cr.P.C. Guidance has been taken from the law laid down in case reported as **Director General Anti Corruption versus Muhammad Akram (PLD 2013 SC 401)**, wherein The Honourable Supreme Court of Pakistan has observed as follows:

"The law is settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigors of the trial then the law has provided him a remedy under sections 249-A/265 K Cr. P.C. to seek his premature acquittal if the charge against him is groundless or there is no possibility of conviction.

Similar view has been taken by a learned Single Bench of the Hon'ble Lahore High Court, Lahore in case of **Muhammad Shoaib versus S.H.O. Police Station new Multan and another (2005 PCr.LJ 1681)**, by holding that:-

"It has also been held in Ghulam Muhammad Vs. Muzammal Khan and others PLD 1967 SC 317 that when the alternative remedy is available to the petitioner under section 249-A or 265-K, Cr.P.C. Constitutional petition would not lie. No illegality or malafide and jurisdictional error has been found in this case. Instant writ petition having without substance is dismissed."

Further, this Court in case reported as **Sajid Javed versus SHO PS Sabzi Mandi (2016 PCr.LJ 693)** observed that the petitioner has alternative efficacious remedy in terms of sections 249-A and 265-K Cr.P.C., which can be applied at the appropriate stages, even at the initial stages of trial.

7. In view of above, I am of the firm view that instant writ petition is not maintainable as the petitioner has an adequate, alternate remedy available to him under Section 249-A Cr.P.C. Hence, titled petition is dismissed, accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the open Court on _____.

JUDGE

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