

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2297/2019
Mst. Basray Begum
Versus
The Sate and others

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

17.07.2019	M/s Haroon ur Rasheed & M. Asif Butt, Advocates for the petitioner, Mr. Shaukat Malik, Advocate for respondent, Mr. Sadaqat Ali Jehangir, Standing Counsel alongwith Ghulam Abbas Khan, SI (I.O.)
------------	---

Through the instant petition under Article 199 of the Constitution read with Section 561-A, Cr.P.C., the petitioner (Mst. Basray Begum) seeks quashment of F.I.R. No. 258, dated 14.06.2019, offence under Section 420 P.P.C. registered at Police Station Golra Sharif, Islamabad.

2. The case is at the stage of investigation and the petitioner has joined the investigation after having been granted interim pre-arrest bail by the Court of learned Sessions Judge, Islamabad-West.

3. In the said F.I.R., the complainant (Sohail Akhtar) alleges that he purchased land measuring 25 *kanals* from the petitioner and her sons through his business partner Asfandiyar Sohail. The transaction was video recorded and reduced in writing on stamp paper bearing number PB-RWP-956E3C03EA6FA31F, dated 17.04.2019, issued by the Bank of Punjab. The petitioner received earnest money in cash amounting to Rs. 25,00,000/- and handed over possession of the said land and house built thereon to respondent no.3. Purportedly, after taking over the possession of the said

property, he constructed boundary wall and spent huge amount on renovation and decoration. It is further alleged in the F.I.R. that subsequently, petitioner was tempted by a higher offer for the said property and to avail the same she forged a back dated sale agreement for the same land with another purchaser on a forged stamp paper No. 904, dated 31.12.2018. The complainant alleges that vendor and purchaser of the said agreement are residents of Wah Cantt, but they surreptitiously got the forged stamp paper issued from Islamabad *Kacheri* by bribing a stamp vendor namely, Malik Muhammad Ibrar and in connivance with the latter, prepared a forged agreement to deprive the complainant of his property.

4. Learned counsel for the petitioner submits that the petitioner and her sons sold out the land to one Nazim, vide agreements to sell dated 31.12.2018 and 10.05.2019; that on 15.04.2019, Asfandyar Sohail trespassed the petitioner's house and forcibly got blank papers signed by her; that petitioner had no dealing with the complainant; that the property is located in Taxila; that the complainant is a land grabber of the area; that petitioner has filed a suit for cancellation of the agreement against Asfandyar Sohail while the latter has filed a suit for specific performance against the petitioner; that the two civil suits between the parties are sub-judice before the learned Civil Court at Taxila; that the petitioner is innocent; that no time of occurrence has been mentioned in the complaint; that at the most dispute is of civil nature; and that the contents of the

complaint do not disclose any offence. Learned counsel requested for the petition to be accepted and for the F.I.R. in question to be quashed. In support of his submissions, learned counsel placed reliance on an unreported judgment of the Hon'ble Supreme Court in Criminal Appeal No. 277 of 2015 (Colonel (R) Yahya Jamil-ul-Haq Vs The State etc) and judgment of this Court in case titled as Muhammad Nawaz Vs S.H.O. Police Station Sabzi Mandi etc" (2017 PCrLJ 133 Islamabad).

5. On the other hand, learned counsel for complainant submits that the petitioner and her sons through an agreement dated 17.04.2019, sold 25 *kanals* of land situated in Mouza Sagra Brahma Wah Cantonment, Tehsil Taxila, District Rawalpindi, to the complainant's business partner; that the agreement was executed against a sale consideration of Rupees two crore thirty five lacs, out of which Rupees twenty five lacs were paid; that petitioner and her sons executed another agreement dated 06.06.2019 for sale of the same land with one Nazim Khan against sale consideration of Rupees two crore seventy lacs; that the petitioner, her sons and the vendor Nazim Khan, in connivance with stamp vendor at Islamabad forged a backdated agreement on stamp paper shown to have been issued on 31.12.2018; that the accused/petitioner dishonestly forged the stamp paper and used the same to deprive the petitioner of his valuable property; that during the investigation, several columns in the register of stamp vendor were found to be blank; that

the case is at the investigation stage; and that the petitioner has several alternate remedies available to her. Learned counsel requested for the petition to be dismissed. In support of his contentions, learned counsel placed reliance on cases titled as "Muhammad Abbasi Vs. S.H.O. Bhara Kahu" (PLD 2010 SC 969), "The State through Prosecutor General Punjab, Lahore Vs. Sultan Ahmed" (PLD 2007 SC 48), "Haji Sardar Khalid Saleem Vs. Muhammad Ashraf" (2006 SCMR 1192), "Muhammad Shafique Vs. The State" (2018 PCr.LJ 352 Peshawar), "Seyar Zeb Vs. The State" (2018 PCr.LJ 1207 Peshawar), "Muhammad Ishtiaque Vs. Station House Officer Police Station Shalimar, Islamabad" (2011 PCr.LJ 958 Islamabad) and "Muhammad Saleem Vs. SHO Police Station Hujra Shah Muqem, Okara" (2010 PCr.LJ 919 Lahore).

6. Learned State Counsel submits that the investigation against the petitioner as well as stamp vendor is in progress and the record of stamp vendor was examined after taking the same into custody.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

9. The allegation against the petitioner is that she and her sons first entered into an agreement dated 17.04.2019 for sale of their land measuring 25 *kanals* and received

Rupees twenty five lacs as earnest money. In clause 5 of the agreement dated 17.04.2019, it is covenanted that the land in question has not been sold to anyone earlier. However, the petitioner claims to have executed two other agreements dated 31.12.2018 and 06.05.2019, whereby she and her sons sold the same land to another purchaser, Nazim Khan. The stamp papers on which agreements dated 17.04.2019 and 06.05.2019 were executed, were issued at Rawalpindi whereas the stamp paper on which agreement dated 31.12.2018 was executed, was issued at Islamabad. The complainant alleges that to defeat earlier agreement in his favour, the petitioner forged the agreement dated 31.12.2018 on a false back dated stamp paper issued by a stamp vender at Islamabad after receiving illegal gratification.

10. On the face of the record, undisputedly there exists

more than one agreement for sale of the same property. It is correct that there are divergent pleas regarding circumstances in which the said agreements were executed, but this is of course the responsibility of the investigating agency, i.e. police to ascertain the veracity of allegations leveled in the complaint while this Court can neither indulge in appreciation of documents nor can substitute the role of investigation officer.

11. From the facts and circumstances of the case, there does not arise any extraordinary circumstance to interfere in the investigation. The Hon'ble Supreme Court, in

case titled as "Rana Shahid Ahmad Khan Vs. Tanveer Ahmed" (2011 SCMR 1937) held that;

"6. There is no cavil to the proposition that the High Court in exercise of powers even under section 561-A, Cr.P.C. can quash the criminal proceedings even at initial stage if it is of the view that if the allegations leveled in the F.I.R. or the complaint, if un-rebutted, no criminal case was made out. The Court may also take into consideration any special circumstance to arrive at a conclusion as to whether the prosecution should be allowed to proceed with the case in the interest of justice or that there were no possibility of conviction of the accused or that the admitted facts make out a case of civil nature or that the malicious prosecution is floating on the record and that no useful purpose would be served in permitting the criminal proceedings to continue. However, the learned High Court in its power under section 561-A, Cr.P.C, will ordinarily not interfere with the police investigation in a cognizable offence."

In the same Judgment the Hon'ble Supreme Court, reiterated the observation in an earlier judgment as follows:-

"10. The Court has been consistent in its view so far as the powers of the High Court for quashment of the criminal case either under Article 199 of the Constitution or under section 561-A, Cr.P.C. are concerned. This view was once again reiterated in Ghulam Mustafa v. State (2008 SCMR 76) wherein at page 78, the Court observed:--

The Courts have right to interpret the law and the High Court had no jurisdiction whatsoever to take the role of the investigating agency. There are several pronouncements of this Court that learned High Court has no jurisdiction to quash the F.I.Rs. while exercising constitutional power under Article 199 of the Constitution or section 561-A of Cr.P.C. unless and until there are very exceptional circumstances existed."

13. Pending civil litigation between the parties on the same subject matter is not in

itself a bar against prosecution for criminal liability as both the proceedings can go side by side. In case titled as "Col. Shahid Sadiq Vs Muhammad Ashiq" (2006 SCMR 276), the Hon'ble Supreme Court observed that *"the contention of the learned counsel for the respondent that the dispute between the parties is of civil nature has no force in view of law laid down by this Court in Ahmed Saeed Vs The State and another 1996 SCMR 186."* In the said case of Ahmed Saeed the Hon'ble Supreme Court held as under:-

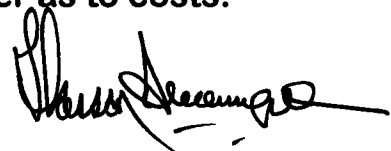
"We find that the investigation was not complete and no challan had been submitted in the Court when petition for quashment of the F.I.R. was filed in the High Court. The High Court, under its inherent powers, may quash judicial proceedings, if it was of the view that the proceedings amount to an abuse of the process of Court. Since no proceedings were pending in the Court by the time the quashment petition was filed in the High Court, the question of preventing the abuse of process of any Court did not arise in this case. A plain reading of section 561-A, Cr.P.C. shows that nothing in the Criminal Procedure Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Criminal Procedure Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice. In the instant case neither any order was made by any Court nor any process was issued by any Court. So, the question of making such orders as may be necessary to give effect to any order under the Criminal Procedure Code or to prevent abuse of process of any Court does not arise. We are afraid that the High Court under section 561-A, Cr.P.C. could not quash F.I.R. on the ground of mala fide or on the ground that F.I.R. discloses civil liability."

(Emphasis added)

14. The selling of same property to several purchasers by unscrupulous vendors has unfortunately become a common occurrence. This practice not only creates problems for unsuspecting purchasers, but also clogs the Courts with litigations between the buyers for consideration while the actual perpetrator is the vendor, who falsely represents in an agreement that the property is not encumbered or sold earlier to any other party.

14. As discussed above, In view of the dictums laid down by the Hon'ble Supreme Court, the investigation of case still being in progress and due to absence of any extraordinary circumstance at this stage, the instant writ petition for quashing of F.I.R. is dismissed.

15. Before parting with the order, it is made clear that the observations made hereinabove are tentative in nature and the same shall not prejudice case of either party. There shall be no order as to costs.



(MIANGUL HASSAN AURANGZEB)
JUDGE