

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3058 of 2019
Professor Khalid Mehmood
Versus
Judicial Magistrate Section-30, Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	07.09.2020	Ch. Muhammad Javed Gujjar, Advocate for the petitioner

Through the instant writ petition, the petitioner, Professor Khalid Mehmood, seeks the setting aside of the impugned order dated 13.02.2019, whereby learned Judicial Magistrate Section-30/respondent No.1 concurred with the cancellation report submitted by the prosecution in case F.I.R.No.77, dated 02.03.2018, for offence under Sections 506 and 406 P.P.C. registered at Police Station *Lohi Bher*, Islamabad.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner submitted an application for registration of F.I.R. against the proposed accused (*ex-wife* Mst. Shazia Zameer), wherein it was alleged that the petitioner is a lawful owner of a car bearing registration No.RLA-513 and on 26.11.2016, his *ex-wife* borrowed the above-said vehicle from the petitioner through Major Innayat in Behria Town for two days trip for Murree; that the petitioner made a number of requests for the return of his car but all in vain and as a result, he filed an application under Sections 22-A & B Cr.P.C. before the learned *Ex-officio* Justice of Peace for the registration of F.I.R.; that pursuant to the order dated 07.02.2018 passed by the learned *Ex-Officio* Justice of Peace, F.I.R. No.77, dated 02.03.2018, under Sections 506 and 406 P.P.C. was registered against the proposed accused at Police Station *Lohi Bher*, Islamabad; that the learned Judicial Magistrate while concurring with the cancellation

report failed to consider that the original registration book of the vehicle is in the petitioner's name; that from the bare reading of the said F.I.R., the offence under Section 406 PPC is made out as respondent No.2 committed criminal breach of trust; that the cancellation report declaring the accused/respondent No.2 to be innocent by the investigating officer was made due to manipulation; that agreement of the learned Judicial Magistrate with the cancellation report furnished by the I.O. amounts to a pre-trial judgment; that the learned Judicial Magistrate while passing the impugned order halted the normal procedure provided in Criminal Procedure Code, 1898; that even if the investigation agency declares the accused to be innocent, the Courts are not under an obligation to agree with such findings/declaration of the investigating agency; and that the impugned order has been passed without taking into consideration the documentary evidence tendered by the petitioner. Learned counsel has prayed for the writ petition to be allowed and for the impugned order dated 13.02.2019 to be set-aside.

3. I have heard the contentions advanced by the learned counsel for the petitioner and perused the record.

4. Admittedly, the petitioner and respondent No.2 were an *ex*-husband and wife. In the F.I.R., it was alleged that the petitioner was the real owner of vehicle in question and on 26.11.2016 respondent No.2 on the pretext of going for a trip to Murree took the vehicle from the petitioner and did not return the same. Respondent No.2 was alleged to have illegally possessed the vehicle in question on the basis of an agreement which was executed between the parties. In the F.I.R., it was also mentioned that the petitioner had filed a suit for declaration and cancellation of the said agreement. Indeed, there was a family dispute

which resulted in the registration of the F.I.R. No.77, dated 02.03.2018, offence under Sections 506 and 406 P.P.C. registered at Police Station *Lohi Bher*, Islamabad. During the investigation, the police came to the conclusion that no occurrence as alleged in the F.I.R. took place. The learned Judicial Magistrate, vide its order dated 13.02.2019, concurred with the said cancellation report furnished by the prosecution. The order dated 13.02.2019 has been impugned by the petitioner in the instant writ petition. The question that needs to be determined by this Court is as to whether the learned Judicial Magistrate was justified while passing the impugned order showing his agreement with the cancellation report furnished by the prosecution in the light of material/evidence brought before him.

5. The cancellation report shows that in response to the petitioner's allegations, respondent No.2 along with two witnesses appeared before the police. The statements of said two witnesses under Section 161 Cr.P.C. were recorded in which they categorically deposed that the petitioner had handed over the vehicle in question to his children in their presence. Furthermore, prior to the registration of the F.I.R. in question, the petitioner had filed an application for registration of F.I.R. regarding the vehicle in question before the police station Sabzi Mandi on 01.06.2017 in which he disclosed that the occurrence took place at I-10 Markaz, Islamabad. The cancellation report also shows that as regards the vehicle in question, the petitioner had also filed applications before different police stations at Rawalpindi. Thus, the report shows that there was a civil dispute between the petitioner and respondent No.2 which appears to have been converted into a criminal matter. Even otherwise, the petitioner himself alleged in the F.I.R. that respondent No.2 possessed the vehicle in question on the basis of

an agreement which was executed between them. For the cancellation of the said agreement (which is not available on file), the record shows that the petitioner had filed a suit for declaration and cancellation of the said agreement.

6. Furthermore, perusal of the cancellation report furnished under Section 173 Cr.P.C. shows that during the investigation, the police authorities came to the conclusion that occurrence as alleged in the FIR did not take place. The said cancellation report was prepared by S.H.O., which was verified by D.S.P. (Legal), and Senior Superintendent of Police. Since a number of police officers including the S.S.P. had concurred with the findings of the Investigating officer (I.O.) that the case was false and was liable to be cancelled, therefore, it cannot be said that the police had acted in malafide manner or that the police had been in league with the other party. In this backdrop, the possibility of false implication of the alleged accused/respondent No.2 cannot be ruled out. It is settled that where the continuation of process of the Court would result in futile exercise, it would be in the fitness of things, and in the interests of justice to quash the proceedings. Thus, the learned Judicial Magistrate had rightly concurred with the cancellation report furnished by the prosecution.

7. In view of the above, I do not find any illegality or material irregularity in the impugned order dated 13.02.2019 passed by the learned Judicial Magistrate, Islamabad, and as a result, the instant writ petition, being devoid of merits, is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE