

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP 113 - Q. - 2012

Mohammad Yaseen etc.

Titled

Vs

S.S.P. Islamabad

(a) Judgment approved for reporting

☒ Yes / ☐ No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes / ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.113-Q-2012

Muhammad Yaseen etc.

Vs.

SSP, Islamabad etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.04.2012	Raja Rizwan Abbasi, Advocate for petitioners. Sardar Abdur Razzaq Khan, Advocate & Malik Fakhar Ali Awan, Advocate for respondents. Ghulam Mustafa, SI with record.

Through the present writ petition, the petitioners have prayed for quashment of FIR No.398 dated 07.10.2011 u/s 420, 468, 471 PPC registered at PS Koral, Islamabad.

2. The petitioners, being accused cited in the said FIR, have concentrated to seek relief on the grounds of another FIR registered on the same subject bearing FIR No.524 dated 21.10.2011 u/s 420, 468, 471 & 409 PPC in which, Patwari of Halqa and petitioner No.1 have been cited as accused. Allegedly, both the FIRs were got registered on the basis of same stamp paper bearing No.1241 dated 17.02.2006, when contrary to the requirement of law that two FIRs, on the same subject, cannot be lodged, hence same being violative of

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Article 13 of the Constitution. Besides other grounds, the petitioners have taken the ground of pendency of civil suit preferred by petitioner No.1, as one of the very important ground. Same is based upon enunciation of legal principle that civil and criminal proceedings cannot be continued on the same subject, as same being abuse of process of law, requires to be quashed. It is also pointed out that FIR No.524 contains scheduled offences as provided in Criminal Law Amendment Act of 1958, as Patwari has also been cited as co-accused. Therefore, both the offences are covered in the said FIR hence, petitioners are interested towards quashment of FIR bearing No.398/2011 P.S. Koral registered earlier to FIR No.524, PS Shahzad Town, Islamabad.

3. It is necessary to mention here the text of both the FIRs to ascertain the real allegations leveled by the complainant. I would like to state facts narrated in FIR No.398, P.S. Koral, Islamabad first, which are reproduced hereunder: -

"FIR lodged on 17.10.2011 does not disclose the date and time of incident, sections applied therein are 420, 468 &

471 PPC. Malik Babar Ali moved an application, which was resulted into FIR containing allegation that he is resident of Ali Pur, Tehsil & District, Islamabad. He received information through Azhar Hussain Khokhar that petitioner No.1 is claiming ownership of land belonging to respondent No.5 measuring 33-kanals 06-marlas situated in Khasra No.827. On contact, petitioner No.1 showed a fake stamp paper, neither was attested by Notary Public nor issued by any stamp vendor. Also, it is alleged that same stamp paper contained forged signature of father of respondent No.5. It is alleged that on inquiry from relatives and companions of his father by respondent No.5, they exhibited their ignorance about execution of the sale agreement. The application u/s 22-A/B was moved, when Hon'ble Court ordered for registration of FIR.

The FIR bearing FIR No.524 lodged at P.S. Shahzad Town, Islamabad on 21.10.2011, not showing the date and time of incident applying same Section of PPC i.e. 420, 468, 471, subsequently, section 409 was applied, which was lodged by the same complainant i.e. Babar Ali in which, it is inter alia alleged that complainant is resident of Alipur Village and he acquired knowledge through Malik Naseer Ahmed & Malik Aftab Ahmed that yesterday on 07.10.2011, ex-Halqa Patwari Amanullah Khan before his transfer took away, register Khasra Gardawari & Roznamcha

from Munshi and with connivance of Muhammad Yaseen s/o Punno Khan, Malik Wajid s/o Amin, Changaiz Akhtar, Nasir Iqbal, exceeding his powers, kept a false entry in the record showing possession, which is a penal offence, which they have done knowingly on the stamp paper No.1241 dated 17.02.2006 is a fake document and with ulterior motives by deceitful means with the connivance of Patwari Amanullah Khan, kept such an entry, therefore, requested for action.

4. Learned counsel for the petitioners has argued that in fact, in the second FIR, the petitioner was arrested, bail was granted by the learned Special Judge (Central), thus, such Court has taken cognizance, whereas the bail in respect of FIR bearing No.398 is still pending. He also argued that since cognizance has been taken by granting bail, which is duly confirmed by the Special Judge, therefore, he has sought relief of quashment of earlier FIR.

He also argued that investigation done by the police includes report of handwriting expert, which by itself, is not a conclusive proof to involve the accused, as the same is a weak type of evidence, not to be considered as a piece

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of evidence. Same stamp paper has again been made the subject in second FIR, therefore, it is violation of Article 13 of the Constitution.

He argued that one person cannot be vexed twice for the same offence, which is contrary to the Constitution as well as Section 403 Cr.P.C. and otherwise, there is no evidence available on record on the basis whereof, the accused could be connected with the commission of offence.

He argued that during pendency of civil suit, criminal case is to be stayed as a principle of law and final fate of the criminal case is to be decided in view of decision of civil suit, as such, the continuity of investigation, proceedings at any stage, will be a futility. Same being abuse of process of law, thus, requires to be quashed.

In support of his contentions, learned counsel for the petitioners has relied upon the following case law: -

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- a. 2005 SCMR 152
 - b. NLR 1989 Criminal 460
 - c. 1995 MLD 563
 - d. 2009 CLC 21
 - e. NLR 1989 Cr.LJ 214
 - f. 2011 MLD 64
 - g. 1997 P.Cr.LJ 1167
 - h. 2010 SCMR 1835
 - i. 2004 SCMR 1859

- j. AIR (39) 1962 Nagpur 12*
k. NLR 1986 Criminal 15

5. On the other hand, learned counsel for respondents argued that these are two distinct offences and there is no stamp paper number mentioned in FIR No.398/2011, P.S. Koral, Islamabad, therefore, subject of both the FIRs is not same.

It is also argued that both the FIRs have been registered on different occasions. Time, day and stories are quite different as well as the nature of offence. Inclusion of scheduled offences coupled with a public servant being accomplice with the principle accused, has totally changed the nature of offence, which is now falling under scheduled offences and is to be tried exclusively by the learned Special Judge (Central) and ordinary court cannot try it as bar contained in Section 5 of the said Act.

It is also argued that merely, similarity of the sections does not mean that it is a same subject. Even the FIR lodged by the same complainant, but both the offences, in clear terms of the story narrated separately identifying

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their own complexion having no relevancy.

He also argued that even if relevancy respecting same stamp paper is taken, that too, will not be considered as a hurdle, as such, execution of the stamp paper is not the subject of FIR No.524/2011, which has only limited scope to try an offence in respect of forgery is committed in the relevant record with the active connivance of Patwari, who is a public servant defined u/s 21 PPC.

He has relied upon following case

law: -

- a. 2000 P. Cr.LJ 956
- b. PLD 2009 Lahore 8
- c. 2004 MLD 1201
- d. 1997 MLD 1691-92
- e. PLD 2008 Lahore 103
- f. PLD 2009 Karachi 350
- g. 2008 SCMR 76
- h. 2008 SCMR 1193
- i. 2006 SCMR 276
- j. NLR 2008 Criminal 426
- k. NLR 1998 Criminal 161
- l. 2008 P.Cr.LJ 469
- m. PLD 2005 Supreme Court 279
- n. 2000 P.Cr.LJ 22

6. Arguments heard. Record perused and the authorities referred by both the learned counsel so also the police papers.

7. From the record, it transpires that there is strong material available on

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record, which connects the petitioners with the commission of offence. Moreover, it could be hardly ascertained after material placed before the Court while submitting final report u/s 173 Cr.P.C. about the similarity of the subject.

8. At this verge, when final report has not been submitted by the police, it is not possible to ascertain that it is same offence. However, the allegations leveled in FIR No.524, P.S. Shahzad Town, Islamabad are quite different, which mostly defines tampering in the revenue record on the basis of stamp paper by the Patwari, who is a public servant defined u/s 21 PPC. Therefore, the offence is to be tried by the Special Judge (Central) coupled with the offence falling u/s 5(2) (ii) of 1947 Act, known as Prevention of Corruption Act, 1947.

9. The scheduled offences as provided by the Criminal Law Amendment Act of 1958 are exclusively triable by the Special Judge and direct cognizance is to be initiated without application of Section 190 Cr.P.C. Whereas if the same offences committed by private person without assistance of a public servant, if


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cannot be considered as scheduled offences and could be tried by the ordinary court having jurisdiction to try.

10. Surprisingly, despite a fact narrated in the FIR bearing No.524/2011 P.S. Shahzad Town, Islamabad, public servant has also been cited as collusive element with the private person, but yet ordinary police was continuing with the investigation, which is not permissible by law. On the contrary, even the same was lodged, it should have been immediately transmitted to the FIA for onward investigation.

11. It is also a settled principle of law that even the investigation conducted either erroneously, inadvertently or deliberately, but final report cannot be submitted By the ordinary police, as final fate of the investigation has to be decided by the FIA, as offences specified in FIR No.524/2011 included into the schedule of FIA Act, as such, same is required to be immediately transferred to FIA without delay.

 12. Office is directed to communicate this order to SSP, Islamabad for compliance and report within one week.

13. From the above discussion, I am of the view that authorities cited by the learned counsel for the petitioners have no nexus with the features of the instant case, as same being irrelevant, are not required to be considered in favour of the petitioners.

14. No material or substance is available on record on the basis whereof, FIR bearing No.398/2011 P.S. Koral, Islamabad be quashed nor any legal aspect is available to help the petitioners in this regard. It is neither a case of double jeopardy nor a case of double incrimination. As yet, the challan/final report has not been submitted in both the cases.

15. It is also observed that the police frequently violates the period stipulated by law for submission of final report, therefore, directions are issue to immediately, by following the provisions of Section 173 Cr.P.C., final report be submitted before the court having competent jurisdiction without any amount of delay.

16. In view of above discussion, I do not incline to grant relief of quashment

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of FIR, hence, the petition in hand is dismissed.

17. The police papers be returned immediately to the SHO concerned for compliance.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in Open Court on 09-05-2012

JUDGE

WJ Zawar

Blue slip added.

Attended for reporting

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