

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT
W.P No.1413-Q of 2020

Maryam Noor
Versus
The State and another

Petitioner by:	Mr. Husnain Haider Thaheem , Advocate.
Respondent No.2 by:	Mr. Imran Shafiq, Advocate.
State by:	Mr. Hammad Saeed Dar, State Counsel alongwith Azghar- S.I.
Date of Hearing:	07.08.2020

Ghulam Azam Qambrani, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C, the petitioner, Maryam Noor, has invoked the constitutional jurisdiction of this Court, with the following prayer:-

“A. The FIR No.541/2018 dated 13.12.2018 Under Section 494, 496-B, 506-II, 109 PPC, Police Station Sahalla may kindly be quashed.

B. The legal actions may kindly be initiated against respondent No.2 for harassing, defaming and registering false FIRs against the petitioner.

C. Directions may kindly be issued to th Police Officials not to register fake FIRs against the Petitioner and her brother.

This Honourable Court may grant any other relief deemed appropriate in view of the facts and circumstances of the case.”

2. Briefly stated a case was registered against the petitioner and one Muhammad Atique vide F.I.R No.541 dated 13.12.2018 (hereinafter be called as ***“impugned F.I.R”***), under Section 494, 496-B, 506-ii, 109 P.P.C with Police Station Sihalla, Islamabad, at the instance of respondent No.2, stating therein that he contracted

marriage with Maryam Noor on 03.05.2007 and out of the said wedlock two daughters namely Rahima Nisar aged about 10 years and Fatima Nisar aged about 05 years were born; that at the time of marriage, he gave her 50-tolas gold ornaments and Rs.50,000/- as dower to the petitioner; that before her marriage with the complainant, Maryam Noor had contracted marriage with one Taimoor but thereafter, she got decree of Khula from him; that it was fourth marriage of Maryam Noor with the petitioner; that after the marriage she obtained a house valuing Rs.60,00,000/- from him and also Rs.50,00,000/- in order to obtain visa of U.K. and at that time, she was residing with him at his house situated at Bahria Town; that in the month of August, 2016, she changed her behaviour towards the complainant and started meeting with unknown persons in his absence and when the complainant asked from her about those persons, she filed a suit for dissolution of marriage on the basis of Khula on 19.01.2017; many member of my family are witnesses of her relationship with unknown persons; that the complainant came to know that she has illegally contracted Nikah with Muhammad Attique on 12.10.2018, whereas the complainant has not divorced her nor she has a decree of Khula in her favour; that the inhabitants of the Mohallah are witnesses of this sin committed by Maryam Noor; that the complainant approached said Muhammad Attique, who became furious and threatened him on gun point and stated that now Maryam Noor is his wife; that this occurrence was also witnessed by his son namely Umair.

2. Learned counsel for the petitioner contended that the petitioner was married with the complainant/ respondent No.2 on 03.05.2007 when she was only 17 years of age; that respondent No.2 in connivance of the local police managed to lodge FIR No.541 on 13.12.2018 with malafide intention alleging therein that the petitioner was already married with respondent No.2, whereas on the abetment of Nasira Afaridi Alias Nanno she has contracted marriage with Muhammad Attique; that on 24.09.2016, the petitioner was verbally divorced by respondent No.2 whereas, on 04.02.2017, she filed a suit for dissolution of marriage on the basis of khulla which was decreed vide judgment dated 27.11.2018 and as a consequence of that

decree, the concerned union council issued divorce certificate to the petitioner on 26.03.2019. It is further contended that respondent No.2 lodged F.I.R No.17 on 12.02.2018 under Section 420, 468 & 471 P.P.C at Police Station Ramna Islamabad, against the petitioner and her brother. The petitioner filed writ petition No.941/2018 before this Court which was allowed and F.I.R No.17/2018 was quashed. It is further stated that respondent No.2 through his friend Shoukat Ali lodged F.I.R No.832 on 04.12.2016 under Section 506 P.P.C at Police Station Saddar wherein the petitioner was discharged from the allegation by the police, thereafter, he filed petition under Section 22-A/B Cr.P.C for registration of F.I.R against the petitioner and her brother before the learned Additional Sessions Judge, Islamabad-East, which was dismissed on 02.03.2018. Further contended that the instant F.I.R has been lodged against the petitioner just to harass and humiliate her; that there is a family dispute between the petitioner and respondent No.2; that the petitioner has not contracted any marriage and no nikahnama of another marriage was produced by respondent No.2; that petitioner has not changed her CNIC and still the name of respondent No.2 is mentioned as husband in her CNIC; that the petitioner is innocent and has falsely been implicated in the instant case with malafide intention and ulterior motive; that no case is made out against the petitioner, hence the impugned F.I.R is liable to be quashed.

4. On the other hand, learned counsel for respondent opposed the contentions raised by the learned counsel for the petitioner contending that F.I.R No. 541 was lodged on 13.12.2018 whereas the petitioner was divorced on 27.11.2018; it was a case of Jactitation of marriage; that the petitioner has filed Writ Petition No.1166/2020 before the Hon'ble Lahore High Court- Rawalpindi Bench, Rawalpindi wherein she admitted that she has contracted marriage after completing the mandatory period of Iddat. Further submitted that the interim challan has been submitted and petitioner has alternate remedy before the learned trial Court. Learned State counsel submitted that an inquiry is pending on the application of the respondent; that the FIR at this initial stage, cannot be quashed.

5. Arguments heard, record perused.

6. Perusal of the record reveals that factual controversies are involved in the instant matter which cannot be resolved by this Court in exercise of its constitutional jurisdiction, and same can only be determined by the learned trial Court after recording of evidence of both the parties. Reliance in this regard is placed upon the cases reported as "Col. Shah Sadiq Vs. Muhammad Ashiq and others" (2006 SCMR 276) and "Muhammad Saleem Bhatti Vs. Syed Safdar Ali Rizvi and 2 others" (2006 SCMR 1957). Stance of the petitioner that she has committed no offence and has been falsely involved in the instant case, is a question to be determined by the learned trial Court after recording of evidence, which exercise cannot be done by this Court in exercise of its Constitutional Jurisdiction. It is a fact that scope of quashing of F.I.R or interfering in the investigation by this Court is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. Resorting to the provisions of Section 561-A Cr.P.C, or to the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking quashment of a criminal case, is an extraordinary remedy, which can be invoked only in exceptional circumstances and the said provisions can never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused. Determination of correctness or falsity of the allegations levelled against the petitioner in the F.I.R is an obligation cast upon the Court prescribed by the Code of Criminal Procedure for the purpose on the basis of legal evidence led at the trial after a proper opportunity to both the parties to plead their cases. No such extraordinary circumstances have been mentioned in the instant case, which can permit this Court to deviate from the normal course of law and to quash the F.I.R by exercising extraordinary constitutional remedy under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C and is not supposed to enter into a factual controversy, unless it is established that certain facts are not disputed between the parties and keeping in view the controversy between the parties, it is not fair to quash the impugned F.I.R at this stage.

7. While considering quashing of a criminal case in exercise of powers vested under Article 199 of the Constitution, this Court is also required to take into consideration the various alternate remedies available to a petitioner before the learned trial Court, under Section 249-A or 265-K Cr.P.C as the case may be. As per contents of the FIR, the respondent contracted marriage with Maryam Noor on 03.05.2007 and at the time of marriage he gave her 50-tolas gold ornaments and Rs.50,000/- as dower and after marriage she obtained a house valuing Rs.60,00,000/- from him but, thereafter, she developed her relations with unknown persons and has illegally contracted Nikah with Muhammad Attique on 12.10.2018, whereas the complainant has not divorced her. The petitioner is seeking partial quashment of the FIR to her extent, at a time when the challan had already been submitted before the Trial Court and the learned trial Court had already taken cognizance of the case, therefore, the partial quashment of FIR is not permissible under the law. Reliance in this regard is placed upon the case reported as Director General, Anti-Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401) wherein it has been held as under:-

“we have found that through the impugned order the learned Judge-in-Chamber of the Lahore High Court, Lahore had partially quashed the relevant F.I.R. to the extent of respondent No.1 whereas partial quashing of an F.I.R. to the extent of some of the accused persons mentioned therein is a legal impossibility. Apart from that the impugned order had been passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore at a time when a Challan in the relevant criminal case had already been submitted before the learned trial court and the learned Trial court had already taken cognizance of the case. The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. 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 rigours of a 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 probability of his conviction.”

8. For the forgoing reasons, I am not inclined to quash the impugned F.I.R at this stage. This petition having no force is, therefore, **dismissed**.

(~~Ghulam Azam Qambrani~~)
Judge

Announced in open Court on this 12th August, 2020.

~~Judge~~

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