

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No. 76-Q of 2020

Sarmad Naseem
Vs.
S.S.P Islamabad, etc.

Petitioner By: Sardar Muhammad Hafeez Khan,
Advocate.
State By: Mr. Zohaib Hassan Gondal, State
counsel with Ashraf, Sub-Inspector
Date of Hearing: 03.03.2020.

GHULAM AZAM QAMBRANI, J: The petitioner (Sarmad Naseem) through the instant petition has made the following prayer:-

“It is therefore respectfully prayed that instant petition under Section 561-A Cr.P.C. may kindly be allowed and all the criminal proceedings been conducted / arising in pursuance of FIR No.129 dated 21.12.2014 under sections 302, 148, 149 of P.P.C, registered with Police Station Nilor, Islamabad, may kindly be order to be quashed in the interest of justice against the petitioner.

It is further prayed that all the criminal proceedings, issuance of process of arrest, declaration as proclaimed offender, and rest of the proceedings been conducted by the police may kindly be ordered to be quashed in any manner whatsoever.”

2. Briefly stated facts of prosecution case are that on 21.12.2014, Sub-Inspector Muhammad Abbas lodged F.I.R No.129/2014 with Police Station Nilore, Islamabad, with the averments that on the alleged day, at about 11:55 a.m., he was informed that a vehicle bearing registration No.LWH-8317, Suzuki Mehran, is parked near Dallah Pully graveyard, wherein a dead body is lying. On such information, he along with other police officials rushed to that place and found the dead body of a person with pool of blood and found that unknown persons have committed murder of

the said person; that the dead body was brought to Poly Clinic Hospital, Islamabad, for conducting his post-mortem; from the place of occurrence, four (04) empty shells of 30-bore pistol were recovered, the vehicle was also taken into possession through recovery memo. Investigation was carried out. Three accused persons namely Irfan Naseer, Sarwar and Israr Ahmed were arrested. The petitioner was nominated by the co-accused persons, in the commission of offence as well as father of the deceased nominated him in his statement recorded under Section 161 Cr.P.C.

3. The petitioner stayed away from law, therefore, after fulfilling the codal formalities, learned trial Court declared him proclaimed offender and then charge was framed against the arrested accused persons. On denial of the charge, the prosecution was directed to produce its evidence. In order to prove the charge, prosecution produced as many as fifteen (15) witnesses. After closure of prosecution evidence, the accused persons were examined under Section 342 Cr.P.C and at the end of trial, accused persons were acquitted by the learned Additional Sessions Judge-East, Islamabad, vide judgment dated 15.04.2019, and perpetual warrants of arrest were issued against the petitioner.

4. Learned counsel for petitioner, *inter-alia*, contended that the petitioner is innocent and he has committed no offence; there is no evidence on record to connect the petitioner with the commission of alleged offence; that on the same set of evidence, the co-accused persons were acquitted while the learned trial Court fell into error, declaring the petitioner as proclaimed offender; that the alleged incident is un-witnessed and is a blind murder case, there is no

chance of conviction of the petitioner, and the impugned order is against the facts, law and evidence therefore, all the proceedings arising out of said F.I.R against the petitioner, may be quashed.

5. Conversely, learned State counsel vehemently opposed the contentions raised by learned counsel for the petitioner contending that the petitioner after commission of the offence has absconded, which fact shows that he is involved in the commission of offence; that the petitioner has other remedies to approach the competent Court of law and finally urged for dismissal of the petition.

6. Arguments heard. Record perused.

7. Perusal of the record reveals that the petitioner is nominated in the case and after investigation, challan has been submitted before the Court of learned Additional Sessions Judge, (East) Islamabad. After full dressed trial, the co-accused have been acquitted from the charge; perpetual warrants of arrest against the petitioner have been issued. The law is quite settled by now that after taking cognizance of a case by the learned trial Court, the F.I.R registered in that case and proceedings conducted therein, cannot be quashed. Fate of the case of accused challaned therein, is to be determined by the learned trial Court itself. Exercise of inherent jurisdiction is dependent on non-availability of alternate and efficacious remedy and or existence of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by this Court. No special and extraordinary circumstances are available to the petitioner in the instant case, which can be considered by this Court. The petitioner has alternate remedy of filing an application under Section 249-A, Cr.P.C. or 265-

K Cr.P.C. as the case may be, to seek his acquittal, if there is no possibility of his conviction. Reliance in this regard is placed upon the judgment reported as Director General, Anti-Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others (PLD 2013 SC 401) wherein the Hon'ble Supreme Court of Pakistan, has held as under:

"It goes without saying that if after taking of cognizance of a case by the trial Court an accused persons deems himself to be innocent and falsely implicated and he wishes to avoid the rigorous of a trial then the law has provided him a remedy under Section 249-A/265-K Cr.P.C to seek his pre-mature acquittal if the charge against him is groundless or there is no probability of his conviction."

8. Without going into the merits of the case that as to whether or not accused-petitioner is involved in the commission of alleged offence or there is evidence against the petitioner or there is no probability of his conviction, no extra-ordinary circumstances or reasons are available to exercise discretion in favour of the petitioner.

9. Further, this Court in exercise of inherent jurisdiction cannot strangle the trial by overstressing its jurisdiction under Section 561-A, Cr.P.C. and embark upon to examine adequacy and or inadequacy of evidence, which stage will only reach after charge is framed and complainant is given an opportunity to prove his case beyond reasonable doubt.

10. In the case reported as Muhammad Farooq Vs. Ahmed Nawaz Jagirani and others (PLD 2016 S.C. 55), it has been observed by the Hon'ble Supreme Court of Pakistan as under:-

“Exercise of jurisdiction under Section 561-A, Cr.P.C. by this Court is akin to the exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; exercise of such jurisdiction is not to be exercised in routine and or as a matter of course merely because such jurisdiction is available and or could be exercised. Exercise of inherent jurisdiction is dependent on non-availability of alternate and efficacious remedy and or exercise of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by this Court. Another rule of propriety, that has evolved by precedent law must not lose sight is that where two courts have coextensive or concurrent jurisdiction, then propriety demands that jurisdiction of Court of the lower grade is to be invoked in the first instance.

The remedy under Section 561-A, Cr.P.C. is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, Cr.P.C. as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event.”

11. In the case reported as Maqbool Rehman Vs. State (2002 SCMR 1076), it has been held as under:-

“High Court does not exercise inherent jurisdiction unless there is gross miscarriage of justice and interference by the High Court seems to be necessary to prevent abuse of process of Court or to secure the ends of justice. Jurisdiction under Section 561-A, Cr.P.C is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction.”

12. In view of the above facts, circumstances and judicial pronouncement, the instant petition having no force, is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced in open court, on ~~20th~~ ^{11th} day of March, 2020.

~~AWJ~~
JUDGE

"Imtiaz"