

HCJD/C-121  
**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P. No.172/2015**

**MUHAMMAD ZUBAIR, ETC.**  
*VERSUS*  
**SENIOR SUPERINTENDENT OF POLICE, ETC.**

Petitioners by : **Raja Adeeb Ahmed Abbasi Advocate.**  
Respondents by : **Ch. Riasat Ali Gondal & Mr. Muhammad Ali Bhatti Advocates.**  
**Malik Zahoor Awan, Standing Counsel.**  
**Mr. Muhammad Abbas, Sub-Inspector.**  
Date of Hearing : **29-01-2015.**

**ATHAR MINALLAH, J.-** The petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*), seeking an appropriate writ for the quashment of FIR No.846/2014, dated 24-11-2014, registered at Police Station Margalla, Islamabad. The petitioners and the respondent No.3 had initially entered into an agreement dated 12-01-2012 (*hereinafter referred to as the 'Initial Agreement'*) for the exchange of their respective properties, as described in the said agreement. Pursuant to the Initial Agreement, an agreement titled "Full and Final Agreement" was later executed on 24-01-2012 (*hereinafter referred to as the 'Agreement'*). The petitioner also executed an irrevocable General Power of Attorney in favour of the respondent No.3 for giving effect to the Agreement. The said power of attorney was

cancelled by the petitioner No.3 vide the Cancellation Deed, dated 22-11-2013. It appears that disputes had arisen between the parties which led to the filing of a suit by the respondent No.3 on 12-11-2014, and the learned Civil Court passed an order restraining the alienation or transferring of the suit property. After filing of the suit, FIR No.846/2014 was registered by the respondent No.3 at Police Station Margalla on 24-11-2014 (*hereinafter referred to as the 'FIR'*). The petitioners, therefore, seek the quashment of the FIR.

2. The learned counsel for the petitioners has contended that; a bare perusal of the FIR unambiguously reflects that the offence, punishable under Section 406 of the Pakistan Penal Code, 1860 (*hereinafter referred to as the 'PPC'*), is not made out; the ingredients of "criminal breach of trust" under Section 405 of the PPC are not satisfied, as there was no "entrustment" of property or any dominion over the property, nor has such entrusted property been dishonestly misappropriated or converted by the petitioners for their use; the FIR was registered after more than one year; the dispute between the parties is purely of a civil nature, and the respondent No.3 filed the suit prior to the registration of the FIR; the initial agreement, dated 13-01-2012, was for exchange of the respective properties, and the agreement dated 20-01-2012 did not "entrust" any property either; both the Initial Agreement and the Agreement were for the exchange of respective properties, without any clause which could even remotely suggest that there had been an "entrustment" of property; the power of attorney dated 26-01-2012, executed by the petitioner No.3 in favour of the respondent No.2,

was in respect of acquired land and the same was revoked on 22-11-2013; the conduct of the respondent No.2 is evident from several criminal cases registered against him, and in this regard copies of FIRs have been placed on record; hence it is urged for quashment of the FIR. Reliance has been placed on the cases of '*Allah Rakhio and others Vs. The State*' [2001 PCrLJ 551], '*Shah Fahad and another Vs. The State*' [2014 YLR 2241], '*Shaukat Ali Sagar Vs. Station House Officer, Police Station, Batala Colony, Faisalabad and 5 others*' [2006 PCrLJ 1900], & '*Shaikh Muhammad Taqi Vs. The State*' [1991 PCrLJ 963].

3. On the other hand, Mr. Riyasat Ali Gondal and Mr. Muhammad Ali Bhatti, learned counsels for the respondent No.3, have opposed the acceptance of the petition and have contended that; the property was "entrusted" to the petitioners and, therefore, the ingredients of the offence under Section 405 of PPC have been fulfilled; several alternate remedies are available to the petitioners before the trial Court, such as Sections 249-A and Section 265-K of the Code of Criminal Procedure, 1898 (*hereinafter referred to as 'Cr.P.C.'*); the quashment of FIR of a criminal case in exercise of jurisdiction under Article 199 of the Constitution is an extraordinary remedy, which is exercised only in exceptional circumstances; powers under Article 199 of the Constitution cannot be used to circumvent the trial, and thereby frustrate the normal course prescribed by law; the civil proceedings relating to the same transaction, even if instituted, could not be considered a bar to maintainability of criminal proceedings; the learned counsels have, therefore, urged the dismissal of the petition and a direction to the

petitioner not to cause delay in the completion of the proceedings before the trial Court. Reliance has been placed on the cases of *Sh. Naveedur Rehman Vs. The State and 2 others*’ [2010 PCrLJ 1340], *Seema Fareed & others Vs. The State and another*’ [NLR 2008 Criminal 109], *Zulfiqar Mustafa Vs. Station House Officer and 2 others*’ [2010 PCrLJ 590], *Shevo Vs. Regional Police Officer, Hyderabad Region, Hyderabad and 15 others*’ [PLD 2009 Karachi 24], *Muhammad Mansha Vs. Station House Officer, Police Station City, Chiniot, District Jhang and others*’ [PLD 2006 SC 598], *Muhammad Yaqoob Vs. Senior Superintendent of Police, Gujranwala and 2 others*’ [PLD 2000 Lahore 421],

4. Mr. Malik Zahoor Awan, learned Standing Counsel appeared along with Muhammad Abbas, Sub-Inspector. On enquiring about the current status of the proceedings before the trial Court, the Investigation Officer present in the Court has stated that neither has a report under Section 173 of the Cr.P.C. been filed, nor has the charge been framed.

5. The learned counsels have been heard and the record perused with their able assistance.

6. Admittedly, the FIR has been registered by invoking sections 406/34 of PPC. Section 406 prescribes punishment for a person who “commits criminal breach of trust”. The offence of “criminal breach of trust” is defined under Section 405 of PPC. A plain reading of the said section shows that the following ingredients have to be fulfilled so as to attract the offence of criminal breach of trust.-

- a) There must be an entrustment of property or with any dominion over property;
- b) The property entrusted should have been dishonestly misappropriated or converted to the use of the person to whom the entrustment is made; or
- c) The person who is entrusted with the property has dishonestly used or disposed-of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, or which he has made touching the discharge of such trust; or
- d) Wilfully suffers any other person so to do.

7. The definition of criminal breach of trust has been explained through illustrations provided in Section 405 of PPC. It is therefore evident that for attracting the offence defined as "criminal breach of trust" under Section 405 of PPC, there must be an "entrustment" of property and thereafter the said property should have been alienated, disposed-of, misappropriated or converted in the manner specified in the said provision. It would also be beneficial to quote a passage from the judgment of the Indian Supreme Court in the case titled '*Jaswantrai Manilal Akhaney v. The State of Bombay*' [AIR 1956 SC 575] as follows.-

*"It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party, the person so put in possession only obtaining a special interest by way of a claim for money advanced or spent upon the safe keeping of the thing or such other incidental expenses as may have been incurred by him."*

8. In the light of the above, exchange of property without there being an element of "entrustment" and pursuant thereto, its disposal, misappropriation or conversion as specified under Section 405 of PPC, will not constitute an offence.

9. Next, the scope of the powers to be exercised by this Court under Article 199 of the Constitution by way of quashment of a criminal case needs to be considered. In this regard, the principles and law, as enunciated and laid down by the august Supreme Court, are well settled by now and may be summarized as follows.-

- i) The High Court is not vested with the power to quash an FIR under Section 561-A of Cr.P.C. on the grounds of *malafide* or disclosing a civil liability.

- ii) Resort to the provisions of Section 561-A of Cr.P.C. or Article 199 of the Constitution for quashing a criminal case is an extraordinary remedy, which can only be granted in exceptional circumstances.
- iii) As a general rule powers under Article 199 of the Constitution cannot be substituted for the trial, nor can any deviation be made from the normal course of law.
- iv) The consideration to be kept in view for quashment of a criminal case is whether the continuance of the proceedings before the trial Court would be a futile exercise, wastage of time and abuse of the process of the Court, and whether an offence on the admitted facts is made out or not.
- v) The exercise of powers and jurisdiction under Article 199 of the Constitution is discretionary in nature, however, the same are to be exercised in good faith, fairly, justly and reasonably, having regard to all relevant circumstances.
- vi) While considering quashment of a criminal case in exercise of powers vested under Article 199 of the Constitution, the High Court is required to take into consideration the various alternate remedies available

to a petitioner before a trial Court, *interalia*, under Sections 249-A and 265-K of Cr.P.C.

vii) Besides the above, the other alternate remedies available under the law have been enumerated by the august Supreme Court in the case of '*Col. Shah Sadiq Vs. Muhammad Ashiq and others*' [2006 SCMR 276] as follows.-

- a. To appear before the Investigating Officer to prove their innocence.
- b. To approach the competent higher authorities of the Investigation Officer having powers vide section 551 of Cr.P.C.
- c. After completion of the investigation, the Investigation Officer has to submit the case to the concerned Magistrate, and the concerned Magistrate has the power to discharge them under section 63 of the Cr.P.C. in case of their innocence.
- d. In case he finds the respondents innocent, he would refuse to take cognizance of the matter.
- e. Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the



course of investigation under the orders of the concerned Magistrate.

f. There are then remedies which are available to the accused person who claims to be innocent and who can seek relief without going through the entire length of investigation.

- viii) A criminal case registered cannot be quashed after the trial Court has taken cognizance of a case, as the law has provided an aggrieved person with efficacious remedies for seeking a premature acquittal, if there is no probability of conviction or a case is not made out.
- ix) Prior to exercising jurisdiction under Article 199 of the Constitution, the High Court has to be satisfied that the trial Court has neither passed an order nor any process issued.
- x) Courts exercise utmost restraint in interfering with or quashing investigations already in progress, pursuant to statutory powers vested in the police or other authorities. Courts do not interfere in the matters within the power and jurisdiction of the police, particularly when the law imposes on them the duty to inquire or investigate.

10. The above principles of law have been enunciated and laid down in the cases of '*Director General, Anti Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others*' [PLD 2013 SC 401], '*Rehmat Ali and others Vs. Ahmad Din and others*' [1991 SCMR 185], '*Miraj Khan Vs. Gul Ahmed and 3 others*' [2000 SCMR 122], '*Muhammad Mansha Vs. Station House Officer, Police Station City, Chiniot, District Jhang and others*' [PLD 2006 SC 598] '*Col. Shah Sadiq Vs. Muhammad Ashiq and others*' [2006 SCMR 276], '*Emperor v. Kh. Nazir Ahmad*' [AIR 1945 PC 18] & '*Shahnaz Begum Vs. The Hon'ble Judges of the High Court of Sind and Baluchistan and another*' [PLD 1971 SC 677].

11. In the present case, admittedly, the Agreement specifies the terms and conditions for the exchange of respective properties between the petitioner No.3 and the respondent No.3. A bare perusal of the FIR also reveals that the complainant i.e. respondent No.3 has alleged that the petitioner No.3 had entered into an agreement with him for the exchange of their respective properties. It is further alleged that the petitioner No.3 cancelled the power of attorney given to him pursuant to the Agreement. There is no specific allegation against the petitioners No.1, 2 & 4, except a vague allegation that they, in connivance with the petitioner No.3, caused the cancellation of the power of attorney and violated the provisions of the Agreement. It would not be appropriate at this stage to make observations regarding the merits of the case, so that the proceedings before the trial Court are not prejudiced. However, the learned counsels for the respondents were not able to satisfy this Court regarding the "entrustment" of property or its disposal in a manner which

would attract the ingredients of Section 405 of the PPC. It is also admitted that the investigations in the present case have not been completed, nor has a report under Section 173 of the Cr.P.C. been submitted before the trial Court. However, the learned counsels strenuously argued that there had been "entrustment" of property and the same is a disputed question of fact, which cannot be resolved in the present proceedings.

12. It is noted that the petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution. The said powers and jurisdiction are discretionary in nature and are exercised only if the Court is satisfied that no adequate remedy is provided by law. The principles and law enunciated and laid down by the august Supreme Court has narrowed down the scope of the exercise of powers under Article 199 of the Constitution to an extent that the same can only be exercised sparingly and under extraordinary and exceptional circumstances. It is also emphasised that the august Supreme Court in the case of '*Col. Shah Sadiq Vs. Muhammad Ashiq and others*' [2006 SCMR 276] has dealt in detail with the various alternate remedies available to a person before the trial Court. The law, as laid down and discussed above, indeed leans against circumventing the alternate remedies available under the law by exercising powers under Article 199 of the Constitution for quashing a criminal case.

13. Keeping in view the scope of jurisdiction under Article 199 of the Constitution and the trappings provided therein, this Court would exercise restraint in the present case, and enable the petitioners to

approach the trial Court for availing remedies available to them under the law. This caution is also necessary so as to ensure that the powers of the trial Court and the intent of the legislature in providing several alternate remedies under the provisions of the Cr.P.C. are neither eroded nor undermined. The law laid down by the august Supreme Court, particularly in the case of '*Director General, Anti Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others*' [PLD 2013 SC 401] affirms the view that quashment of a criminal case in exercise of powers vested under Article 199 of the Constitution may be exercised only in exceptional and extraordinary circumstances. Examples of such circumstances may be when the criminal case has been registered by a person who had no jurisdiction under the law, or the facts are so undisputed that there exists no doubt, which is not the case in the instant petition as the parties dispute the 'entrustment' of property. There is yet another crucial factor which is to be taken into consideration i.e. the investigations have not yet been completed, and in such circumstances it cannot be overruled that further material may not be collected for proceeding with the trial. Though at this stage it, *prima facie*, appears to this Court that on the bare perusal of the FIR, the ingredients of Section 405 of PPC are not fulfilled. Nevertheless, the facts to the extent of execution of the Agreement is admitted, but the question regarding the determination as to whether there was an "entrustment" of the property, as asserted by the respondent No.3, can best be left to the trial Court to consider and decide in exercise of its powers, which the petitioner may invoke by way of availing the alternate remedies available under the law such as Sections 249-A or 265-K of the Cr.P.C.

14. In the present case the pre-arrest bail of the petitioners has already been confirmed by this Court and, therefore, no prejudice would be caused to them in approaching the trial Court for availing the alternate remedy available under the law. This Court expects that the trial Court at first instance shall proceed in accordance with the law, and decide any application or petition which may be filed by the petitioners by invoking one of the alternate remedies available to them under the law. The instant petition is, therefore, disposed-of in the above terms.

**(ATHAR MINALLAH)**  
**JUDGE**

Announced in open Court on 10-02-2015.

**JUDGE**

**Approved for reporting.**

\*Luqman Khan/