

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.2352-Q of 2020

Zabi Ullah Abbasi
Versus
The State and another.

Petitioner by:	Mr. Shoukat Mehmood Malik, Advocate alongwith petitioner.
Respondent No.2 by:	Raja Rizwan Abbasi, Advocate.
State by:	M/s Zohaib Hassan Gondal and Hamaad Saeed Dar, State Counsels alongwith Tanveer, A.S.I. Muhammad Riaz, Inspector Legal.
Date of Hearing:	02.09.2020

Ghulam Azam Qambrani, J: Through this single judgment, I intend to dispose of Writ Petition No.2352-Q of 2020 and Criminal Miscellaneous No.913-B of 2020, arising out of the same F.I.R.

2. By means of instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, read with Section 561-A Cr.P.C., petitioner, Zabi Ullah Abbasi, seeks quashing of F.I.R No.378/2020 dated 01.07.2020 (hereinafter be called as **“impugned F.I.R”**), registered under Section 489-F, P.P.C at Police Station Koral, Islamabad with the following prayer;-

*“Under these circumstances it is, therefore,
most respectfully prayed that instant writ petition
may kindly be accepted and case F.I.R No.378/2020,
dated 01.07.2020, u/s 489-F P.P.C, registered at P.S
Koral, Islamabad, may graciously be ordered to be
quashed in the best interest of justice.*

*Any other relief which this Honorable Court
deems fit may also be awarded.”*

3. Briefly stated facts of the instant case are that on the complaint of respondent No.2, impugned F.I.R No. 378/2020 dated 01.07.2020 was registered under Section 489-F P.P.C at Police Station Koral, Islamabad, wherein it has been alleged by respondent No.2 that the petitioner/ accused purchased 22 Tons Iron Steel from respondent No.2, against consideration of Rs.23,32,000/-, out of which an amount of Rs.17,32,000/- was paid in cash, and for the remaining amount of Rs.600,000/-, the petitioner issued a cheque bearing No.44864065, which on presentation in the concerned bank, was dishonoured.

4. Learned counsel for the petitioner contended that the impugned F.I.R has been lodged on the basis of false, baseless, concocted story while tampering the cheque in-question with the intention to humiliate and defame the petitioner in the eyes of law as well as in the society and relatives, whereas, the petitioner has no nexus with the commission of alleged offence in any manner; that the said cheque is tampered; that the petitioner planned to construct a house in his native area i.e. Kahuta and for that purpose, in the month of March, 2020, he purchased Iron Steel of Itehad Steel Company from respondent No.2; that out of the total amount, Rs.17,32,000/- were paid in cash while for the remaining amount, the petitioner issued a cheque worth of Rs.6,00,000/-; that respondent delivered 22-Tons substandard Iron Steel, the petitioner approached the respondent and requested him for return of the substandard material with request to payback the received amount alongwith return of given cheque; that the respondent admitted the fault on his part and agreed to collect back the Steel/ Iron from the compound of the petitioner. The labour of the respondent took 04-Tons of Iron Steel and delivered the same to the respondent, and for taking the remaining steel, the respondent was asked but he refused; that during this period the local police contacted and informed the petitioner that an application has been filed against him by the respondent for registration of F.I.R for which he appeared and explained the facts to the police, that the police, being satisfied by the petitioner, refused to register any case; that the respondent by concealing the real facts, filed an application under

Section 22-A Cr.P.C before the learned Ex-Officio Justice of Peace for issuance of a direction to the concerned police officials for registration of F.I.R; that the police officials also submitted report with a request for dismissal of the application under Section 22-A Cr.P.C; that the cheque is tampered one but even then the learned Ex-Officio Justice of Peace, allowed the application under Section 22-A Cr.P.C with a direction to the police for registration of F.I.R against the petitioner; that the petitioner has already filed a suit for declaration and cancellation of the cheque, which is pending before the competent Court of jurisdiction; that no case is made out against the petitioner, hence, the impugned F.I.R may be quashed.

5. *Per contra*, learned counsel for the respondent assisted by learned State counsel, while repelling the arguments of learned counsel for the petitioner, contended that the issuance of cheque has not been denied by the petitioner; that when the cheque was presented, the manager of the concerned bank issued a certificate that the account of the petitioner was inactive and closed one; that the petitioner has intentionally and dishonestly issued the cheque; that alternate remedy is available to the petitioner, therefore, the petition may be dismissed.

6. Heard arguments of the learned counsel for the parties and perused the record with their able assistance.

7. Perusal of the record reveals that on 11.05.2020, respondent No.2 filed an application to the S.H.O Police Station Koral, Islamabad for taking action against the petitioner and for registration of F.I.R against him. On refusal of the police, he filed an application under Section 22-A / B Cr.P.C for registration of F.I.R against the petitioner. The record also shows that the learned Ex-Officio Justice of Peace called for a report from the police, which was placed on record on 22.06.2020, the same is reproduced herein below:-

رپورٹ بابت درخواست زیر دفعہ 22-A ض ف

جناب عالی!

گزارش ہے کہ مسمی ناصر زیب ولد اورنگزیب نے بوساطت افسران بالا درخواست دی کہ مسمی زینج اللہ عباسی ولد اللہ بخش نے سنیل کی خریداری میں بقایا رقم کی ادائیگی کیلئے چیک نمبری 44864065 مبلغ 06 لاکھ روپے الاینڈ بینک چاندنی چوک راولپنڈی کا دیا جو ڈس آنر ہو گیا۔

جناب عالی!

بینک منیجر نے ڈس آنر سلپ پر ذیل ریمارکس تحریر کیے۔

"Fluid correction date not allowed on cheque issue new cheque."

استدعا ہے کہ درخواست زیر دفعہ 22-A ض ف داخل دفتر فرمائی جائے۔

(Forwarded please)

Signature and Seal of S.H.O P.S Koral

Islamabad

Signature and Seal of P.S Koral

محمد تنویر رضا - ASI - تھانہ کورال - اسلام آباد

22.06.2020

On 27.06.2020, the learned Ex-Officio Justice of Peace passed the following order:-

"In such like situation the petitioner has rightly invoked the jurisdiction vested with this court in capacity of Justice of Peace. Thus the instant petition u/s 22-A & B Cr.P.C is accepted and the SHO concerned is directed to register the case as per allegations of the petitioner and thereafter investigate the matter in accordance with law. Petitioner is directed to present the original cheque before the concerned police official. File to records."

That respondent No.2 allegedly being aggrieved from the inaction of S.H.O Police Station Koral, filed application under Section 22-A/B Cr.P.C before the learned Ex-Officio Justice of Peace but the learned Ex-Officio Justice of Peace, in paragraph No.2 of the impugned order has mentioned as under:-

"Notice was issued, but despite direction, comments of SHO police station Nilore has been received."

It transpires that despite the report placed by the SHO Police Station Koral, before the learned Ex-Officio Justice of Peace that the Bank Manager while issuing dishonour slip has made remarks that upon the cheque fluid correction on the date was found and mentioned for issuance of a new cheque but the learned Ex-Officio Justice of Peace, surprisingly, did not consider the fact while accepting the application of respondent No.2. It is also noticed that without examining the original cheque and the fact stated in the police report dated 22.06.2020 about correction of date in the cheque and the objection raised by the Manager, learned Ex-Officio Justice of Peace, while hearing the application under Section 22-A Cr.P.C, passed the order for registration of case without application of judicial mind. The contention of the learned counsel for the petitioner that respondent No.2 supplied substandard Steel Iron, and on complain, respondent No.2 received back 04-Tons Iron through truck driver, Muhammad Aftab. This fact is also supported by the prosecution evidence as the statement of Muhammad Aftab, Driver, has been recorded under Section 161 Cr.P.C as well as his affidavit is also on the record. On query, Tanveer- A.S.I produced the original cheque bearing No.44864065, which apparently reveals that in the date 20.04.2020, the digit of month "04" has been rubbed and tampered, on the basis whereof, when it was first time presented for encashment; the concerned bank issued memorandum/ slip dated 18.06.2020 with the reasoning that "is returned for following reasons:---

"Signature required on each cutting/ alteration."

On 23.06.2020, the concerned bank issued memorandum/ slip with the reasons "closed inactive account".

8. It was the duty of learned Ex-Officio Justice of Peace to have looked into the matter carefully and after application of the judicial mind, had to pass any order or direction to the concerned police for registration of F.I.R or otherwise. The contention of the petitioner that the cheque was issued for the month of November, 2020 but respondent No.2 with malafide intention, before time and after tampering the date as 20.04.2020, presented the same before the

concerned bank, which was not accepted with the objection that signatures are required on each cutting/ alteration. Later on, the petitioner himself requested the concerned bank for closure of the account. I have minutely peruse the disputed cheque, which can be seen through naked eye that it has been rubbed and the date in the place of month, the digit "04" has been tampered.

9. Consequently, allowing the petitioner to be grilled through a lengthy trial in the given circumstances, would amount to allow the courts to be used as a tool for ulterior motive. It would also amount to abuse the process of law, which would always prickle the conscious of this Court while deciding this petition and in dispensation of justice. It is also settled proposition of law that when there are extraordinary circumstances, High Court is duty bound to protect the life, liberty, honour and dignity of every citizen.

10. As far as, the alternate remedy, as agitated by the learned counsel for respondent No.2 is concerned, I have paid due consideration to this aspect and after examining the case from all angles and law propounded by the superior courts, I am unable to see eye to eye with the learned counsel for respondent No.2, for the simple reason that High Court is quite competent rather has inherent powers to quash the F.I.R. in appropriate cases and it is not necessary to direct the aggrieved person to first exhaust the alternate remedy. In this regard I am pinning faith upon the case of "Miraj Khan v. Gul Ahmed and 3 others" (2000 SCMR 122), wherein it was laid down as under:-

"There is no absolute bar on the power of High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A Cr.P.C".

11. For ready reference, Section 561-A Cr.P.C is reproduced hereunder:-

"561-A.Saving of inherent power of High Court.
Nothing in this Code shall be deemed to limit

or affect the inherent power of the High Court to make such order as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12. In the instant case, the police refused to lodge the F.I.R against the petitioner on the ground that no case is made out against the petitioner. Further, malice on the part of respondent No.2 by rubbing / tampering in the date on cheque, cannot be ignored, as such, continuation of proceedings of this case on the basis of the above said F.I.R would be a futile exercise and great miscarriage of justice as, *prima facie*, there is no likelihood of conviction of the petitioner in the instant case lodged against him and that it would be a sheer abuse of the process of the Court, the same is not permissible under the law.

13. For the foregoing reasons, this petition is **accepted** and the impugned F.I.R No.378/2020 dated 01.07.2020 under section 489-F, P.P.C. registered at Police Station Koral, Islamabad, is quashed. As a result of acceptance of writ petition No.2352-Q of 2020, Criminal Miscellaneous No.913-B of 2020 has become infructuous. The same is disposed of, accordingly.

(Ghulam Azam Qambrani)
Judge

Announced in open Court on this _____, 2020.

Judge

"Approved for reporting."

Rana.M. Ift

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