

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**W.P No. 2472 of 2018**

Syed Asad Abbas Kazmi alias Zaigham Shah  
Vs  
Learned Judicial Magistrate, Islamabad & others

Petitioner By: Raja Ikram Ameen Minhas & Amir  
Zar Bhatti Advocates

Respondent No.2 By: Mr. Asif Khan, Advocate

State by: Mr. Zohaib Hassan Gondal, State  
Counsel with Munir Khan S.I &  
Khalid Awan SI.

Date of Hearing: 17.07.2020

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**Ghulam Azam Qambrani, J:** Through this petition, the petitioner, *Syed Asad Abbas Kazmi alias Zaigham Shah*, has invoked the jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

*"It is most respectfully prayed that instant petition may kindly be accepted and the impugned order dated 02.12.2017 passed by learned Judicial Magistrate may kindly be declared as illegal, void ab-initio, coram non-judice and the same may graciously be set-aside and report of the police may graciously be accepted, which in the interest of justice.*

*Any other relief which this Hon'ble Court may deem fit, just and proper may also be awarded."*

2. Briefly stated facts of the case are that F.I.R No. 57 of 2015 was lodged under sections 324/109, 148/149 P.P.C., Police Station Golra Sharif, Islamabad on the complaint of one Syed Husnain Shah against the petitioner with the allegation that one Zeeshan

Haider alongwith Muhammad Sajaad alias Gudu and 6/7 unknown accused persons, duly armed with deadly weapons came at the under construction plot of the complainant and opened fires upon him and labour working there. Further alleged that said accused persons committed alleged offence at the instigation and conspiracy of petitioner.

3. After registration of F.I.R, investigation was conducted by Superintendent of Police, Saddar Zone, Islamabad, the complainant failed to produce any evidence with regard to commission of alleged offence by the petitioner under section 109 PPC on the basis whereof, the petitioner was discharged from the case. The discharge report was placed before the learned Judicial Magistrate, Islamabad, which was disagreed vide order dated: 02.12.2017 with the direction for submission of report under section 173 Cr.P.C. The petitioner feeling aggrieved filed a revision petition before the learned Sessions Judge, Islamabad, which was disposed-of vide order dated 14.04.2018 on the ground that the same is not maintainable, hence this petition.

4. Learned counsel for the petitioner has contended that the impugned order is against the law, facts and circumstances of the case and the same is not sustainable in the eyes of law for the reason that the learned Judicial Magistrate travelled beyond his jurisdiction while passing the impugned order by directing the Investigation Officer for submission of report under section 173 Cr.P.C. Learned counsel further submitted that the learned Judicial Magistrate played the role of investigating officer and his directions are against the principles of law and that the interference in the investigation is not the domain of Courts; thus has committed illegality, which act seriously prejudiced the petitioner; that the impugned order is not speaking one. Lastly, urged for setting aside of the impugned order.

5. Conversely, learned counsel for the respondent No.2 (hereinafter be referred to as "**respondent**") opposed the

contentions of learned counsel for the petitioner and contended that the petitioner has alternate remedy of filing application under section 249-A Cr.P.C., before the learned Trial Court. During the arguments, it was asked from the learned counsel that is there any evidence against the petitioner with regard to commission of the alleged offence, in reply stated that there is no evidence to connect the petitioner with the commission of alleged offence. Learned State Counsel submits that challan has been submitted. He has further confirmed that there is <sup>no</sup> iota of evidence available on record to connect the petitioner with the alleged offence.

6. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

7. Perusal of the record reveals that on the application of complainant, F.I.R No. 57/ 2015 was registered with the Police Station Golra Sharif, Islamabad, with the allegation that one Zeeshan Haider alongwith Muhammad Sajaad alias Gudu and 6/7 unknown accused persons, duly armed with deadly weapons opened fires at his under construction place upon him and labour working there. It has been alleged that at the instigation and conspiracy of the petitioner, the co-accused persons have committed the alleged offence. The record further reveals that warrant of arrest against the petitioner were obtained and thereafter on 27.09.2017, the petitioner appeared before the Court of learned Additional Sessions Judge for grant of pre-arrest bail, which was granted and then he joined the investigation. The record further reveals that after completion of investigation by the police it was found that the petitioner was only nominated in the F.I.R and that there was no evidence on record against him, therefore, Superintendent of Police, Saddar Zone, Islamabad, directed that the petitioner may be discharged from the said case.

8. So far as the impugned order with direction for submission of report under section 173 Cr.P.C is concerned, in this regard it is stated that investigation of a criminal case falls within the exclusive domain of the police. Reliance is placed on the Judgment of August

Supreme Court of Pakistan titled as "Muhammad Hanif Vs The State" [2019 SCMR 2029 ] has held as under:-

*"Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each others' roles destroys the concept of separation of powers and works a long way towards defeating justice and this was so recognized in the case of Emperor v. Khwaja Nazir Ahmed (AIR 1945 Privy Council 18). The relevant paragraph from the judgment passed in that case is reproduced below:*

*"Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so, it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Ss. 154 and 156, to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under S. 561-A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P.C., to directions in the nature of habeas corpus. In the case of a cognizable offence, the Court's functions begin when a charge is preferred before it and not until then and, therefore, the High Court can interfere under S. 561-A only when a charge has been preferred and not before. As the police have under Ss. 154 and 156, a statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds."*

9. The authority to register and investigate a criminal case in law vests with the police and not with the Court. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan in case titled "Brig. (R) Imtiaz Ahmad versus Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others" [1994 SCMR 2142]. No direction can be given to the police officials as to how and in what manner investigation in a criminal case is to take place. Reliance in this regard is also placed upon the case reported as "Waris Ali Raza versus The State and 4 others" [2013 P.Cr.L.J 267].

10. In the instant case, after completion of investigation, the police has come to the conclusion that there is no evidence on record against the petitioner to connect him with the commission of alleged offence. The complainant in his report has alleged that at the abetment of petitioner, the co-accused persons have committed the alleged offence. Section 107 of PPC provides abetment of a thing. For proving the allegation of abetment, the basic ingredients are, **Firstly**, instigates any person to do that thing, or **Secondly**, engages with one or more persons in any conspiracy for the doing of that thing and **Thirdly**, intentionally add by any act or illegal omission, the doing of that thing to constitute the offence of abetment. There is no evidence on record to prove that the alleged offence was committed at the instigation of petitioner, therefore, the Investigation Officer discharged the petitioner from the case but the learned Judicial Magistrate vide impugned order dated: 02.12.2017, instead of placing on record the discharge report, disagreed with the same and directed the concerned SHO for re-investigation on merits and submission of report under section 173 Cr.P.C. The impugned order created an irresistible impression that the learned trial Court had insisted that the local police must file a challan against the present petitioner. Such approach of the trial Court is completely alien to the law as the law is settled by now that no Court can insist that a challan of a case must be submitted against any particular person.

11. The Hon'ble Supreme Court of Pakistan in the case reported as "Muhammad Hanif Versus The State" (2019 S C M R 2029) has held as under:-

*"no court can insist that a Challan of a case must be submitted against any particular person and this legal position had been clarified by this Court in the case of Muhammad Nasir Cheema v. Mazhar Javaid and others (PLD 2007 SC 31). The said principle has also been reiterated by a Larger Bench of this Court in the recent case of Mst. Sughra Bibi v. The State (PLD 2018 SC 595)."*

12. Keeping in view the principles laid down by the Hon'ble Supreme Court of Pakistan in the cases supra, and also saving the petitioner from rigors of trial in the instant case, this petition is **allowed**. The impugned order dated 02.12.2017 is hereby set aside and the relevant proceedings against petitioner pending before the trial Court are hereby quashed.

~~Ghulam Azam Qambrani~~  
Judge

Announced in open Court on this 24<sup>th</sup> day of July, 2020.

Judge

S.Akhtar