

**JUDGMENT SHEET.**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No. 241-Q/2016.**

**Sajid Javed VS SHO, P.S Sabzi Mandi, etc.**

<b>Petitioner by</b>	<b>Malik Ghulam Mustafa Kandwal, Advocate.</b>
<b>Respondent No.2 by</b>	<b>Mr.Rizwan Akhtar Awan, Advocate</b>
<b>State by:</b>	<b>Hadiya Aziz, State Counsel Aman Ullah, ASI, P.S Sabzi Mandi.</b>
<b>Date of decision:</b>	<b>01.02.2016.</b>

**MOHSIN AKHTAR KAYANI, J:-** Through the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought quashment of FIR No.18/16, dated 18.01.2016, U/Ss 440, 448, PPC, registered with Police Station Sabzi Mandi, Islamabad.

2. As per contents of FIR, respondent No.2 Ch.Arif Bashir moved written application to police, wherein he has mentioned that he is resident of House No.805-A, Street No.77, Sector I-8/3, Islamabad and he as well as her mother are owners of shops No. 73 & 74 situated in Sector I-11/4. He is doing business in the said shop for the last 20 years. On 15-11-2015 he was present in his shop when his nephews Sajid Pervaiz, Sohail Pervaiz, Waqas Farooq, Bilal Javed alongwith other accomplices attacked on shop and threw him out of the shop . They after taking over the shops put their locks.

3. Learned counsel for petitioner argued that alleged prosecution story mentioned in the FIR is false and concocted; that the instant FIR has been registered against the petitioner to pressurize and blackmail him to withdraw the suit filed by his uncle against respondent No.2; that respondent No.1, SHO should have not registered the FIR as the matter between the parties is of civil nature and civil litigation is pending between the parties before different courts; that regarding this incident, respondent No.2 has also filed a complaint under Illegal Dispossession Act, 2005, in which learned ASJ has taken the cognizance of the matter and summoned the petitioner to face the trial; that two parallel criminal trials before different courts regarding same occurrence cannot

proceed against the petitioner. Learned counsel for petitioner prayed for quashment of the FIR as the same is result of malafide and ulterior motives and civil litigation regarding the suit property is also pending adjudication.

4. Conversely, learned counsel for the respondent No.2/Arif Bashir argued that police has not yet investigated the matter and from the contents of the FIR prima facie, offences are made out as the petitioner alongwith others came to complainant's shops and assaulted him and thereafter, after evicting respondent No.2 from the said shops they put locks on the shops and takeover the possession of the same. Learned counsel further contends that Civil Court has already decided the matter in favor of respondent No.2. He further contends that the shops in dispute have already been leased out by respondent No.2 through a lease agreement to one Abdul Qayyum Butt, hence, the offence of trespassing is made out against the present petitioner. Learned counsel for respondent No.2 also contends that answering respondent No.2 is owner in possession on the basis of sale deed No. 2520, dated 28 June 1992 purchased by his father and even in the CDA record the ownership is in the name of respondent No.2. Learned counsel for respondent No.2 further contends that the instant writ petition contains the disputed questions of fact which do not fall within the jurisdiction of this Court and cannot be resolved in constitutional petition before the High Court hence, the quashment petition is not maintainable in the eyes of law.

5. Arguments heard, record perused.

6. The Hon'ble Supreme Court of Pakistan, in a judgment reported as **2011 SCMR 1937 (Rana Shahid Ahmad Khan Versus Tanveer Ahmed and others)** has held that:-

*“There is no cavil to the proposition that the High Court in exercise of powers even under section 561-A, Cr.P.C. can quash the criminal proceedings even at initial stage if it is of the view that if the allegations leveled in the F.I.R. or the complaint, if un-rebutted, no criminal case was made out. The Court may also take into consideration any special circumstances to arrive at a conclusion as to whether the prosecution should be allowed to proceed with the case in the interest of justice or that there were no possibility of conviction of the accused or that the*

*admitted facts make out a case of civil nature or that the malicious prosecution is floating on the record and that no useful purpose would be served in permitting the criminal proceedings to continue. However, the learned High Court in its power under section 561-A, Cr.P.C, will ordinarily not interfere with the police investigation in a cognizable offence.”*

In the instant case, investigation is yet to be completed and there is nothing floating on the surface of the record to prove that further proceedings in the matter would amount to shattering the safe guard of Fundamental Rights of the petitioner guaranteed under the Constitution. Any order passed at this stage would amount to stifling the Police Investigation and would certainly hamper the due process of law. Moreover, the petitioner has alternate efficacious remedy in terms of Section 249-A and 265-K Cr.P.C which can be applied at the appropriate stages even the same are applicable at the initial stages. All these disputed facts require recording of evidence which can only be seen by the learned Trial Court at the appropriate stage. I could not found any jurisdictional defect or violation of law to accept the quashment petition U/s 561-A Cr.P.C I am fortified with the view taken by Peshawar High Court in PLD 2015 Peshawar 115 “Liaqat Ullah Khan versus The State” wherein it has been held that;

*“For seeking interference of High Court under S.561-A, Cr.P.C., three conditions were essential to be fulfilled; that the injustice which came to light, should not be of a trivial character; that the injustice which was noted was of a clear and palpable character, and not of a doubtful character; and that there existed no other provisions of law by which the party aggrieved could have sought relief --- Power under S.561-A, Cr.P.C., was extraordinary in its nature, which could be exercised sparingly, carefully and with caution and only where such exercise was justified by the tests specially laid down by section itself, as its application in frequent and light manner, would tend to circumvent the due process of law---Jurisdiction under S.561-A, Cr.P.C., was neither alternative nor additional in its nature, and was to be rarely invoked only to secure the ends of justice, so as to seek redress of grievance for which no other procedure was available, but should not be used to obstruct or direct the ordinary course of criminal procedure --- Such jurisdiction was designed to do substantial justice, and same was neither akin to appellate jurisdiction nor to the revisional jurisdiction--- Such powers did not extend to uncalled for and unwarranted interference which the procedure prescribed by law, which must always be followed---If prima facie, an offence had been committed, the ordinary course of trial before the competent court, was not to be deflected by resorting to exercise of inherent jurisdiction--- Jurisdiction under S.561-A, Cr.P.C., was only to fill in lacunae, existing in the Code of Criminal Procedure, in the matters, for which no specific provision or remedy had been provided-*

*--Section 561-A, Cr.P.C. would not be frequently applied for determining the guilt or innocence of accused at premature stage--- Stifling and thwarting of criminal procedure, as it was against the scheme provided by Criminal Procedure was disapproved."*

Even otherwise, High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction and I am fortified by the judgment of Supreme Court of Pakistan (2006 SCMR 276) "Col. Shah Sadiq versus Muhammad Ashiq and others" wherein it was held that"-

*"If, Prima facie, an offence had been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court---High Court had no jurisdiction to quash F.I.R. by appreciation of documents produced by the parties without providing chance to cross-examine or confronting the documents in question---High Court would err in law to short circuit the normal procedure of law as provided under Criminal Procedure Code, 1998---Party seeking the quashing of F.I.R. had alternative remedy to raise objection at the time of framing the charge against them by the Trial Court or at the time of final disposal of the trial after recording the evidence---Said party had more than one alternative remedies before the Trial Court under Ss.265-K & 249-A, Cr.P.C. or to approach the concerned Magistrate for cancellation of the case under the provisions of Cr.P.C.*

7. For what has been discussed above, the instant writ petition is without any merits. Resultantly, the same stands dismissed.

**(MOHSIN AKHTAR KAYANI)  
JUDGE**

**Announced in open Court on 04-02-2016.**

**(MOHSIN AKHTAR KAYANI)  
JUDGE**

**Approved for reporting.**

**JUDGE**

Irfan Ali

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