

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.1701/2019

Hajra Karam Khan

versus

State through S.H.O., P.S. Kohsar, etc.

Petitioner by: Raja Ikram Ameen Minhas & Mr. Moazzam Habib, Advocates.

Respondents by: Mr. Sadaqat Ali Jahangir, State Counsel.
Raja M. Nisar-ul-Haq Abbasi & Raja M. Shafat Khan, Advocates for respondent No.3.
Abdul Razzaq, S.I.
Ch. Nadeem Zahir, ASI.

Date of Decision: 26.06.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner prays for quashing of FIR No.130, dated 18.04.2019, under Section 406 PPC, P.S. Kohsar, Islamabad, which has been registered against her.

2. Brief facts referred in the instant matter are that Hajra Karam Khan "*petitioner*" entered into agreement to sell dated 14.06.2017 with Tanveer Ullah Khan "*respondent No.3*" regarding sale of 01-Kanal land, situated in Khewat No.337, Khatooni No.423/424, Khasra No.614, Fateh Jang, Attock "*disputed land*" against certain terms and conditions, which were not adhered to and as a result whereof, respondent No.3 sent a legal notice dated 14.11.2018 to petitioner for execution of sale deed, whereas petitioner in response replied the said legal notice on 28.11.2018 and asked respondent No.3 for arrangement of stamp duty, CVT, etc. by 15.12.2018 as per Clause 10 of the agreement, but of no effect. Eventually, both the parties filed their complaints against each other in police station and consequently the case FIR No.130,

dated 18.04.2019, under Section 406 PPC, P.S. Kohsar, Islamabad was registered against the petitioner. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that respondents No.1 and 2 at the behest of respondent No.3 have illegally registered the case FIR against the petitioner as bare reading of Section 406 PPC does not entail criminal remedy for breach of terms of agreement to sell; that respondent No.3 failed to abide by the terms settled in the agreement; that the instant FIR is counter blast of incident of criminal intimidation/trespass on the part of respondent No.3, which was taken place on 12.03.2019 at the residence of petitioner; that it is settled law that amount paid by a party in lieu of agreement to sell is not an entrustment of property in terms of Section 405 PPC; that the dispute between the parties is of civil nature, which has to be settled by the Civil Court after recording of evidence; but respondents No.1 and 2 at the behest of respondent No.3 with malafide intent have maliciously registered the case FIR against petitioner, which is liable to be quashed.

4. Conversely, learned State Counsel as well as learned counsel for respondents contended that failure to execute the sale agreement is on the part of petitioner, who lingered on the matter on one or other pretext; that petitioner is solely responsible for the delay and respondent No.3 feeling aggrieved thereby submitted complaint against the petitioner in police station, on the basis of which the case FIR was registered, which is strictly in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that respondent No.3 and petitioner entered into agreement to sell dated 14.06.2017 regarding sale of

01-Kanal land, situated in Khewat No. 337, Khatooni No. 423, 424, Khasra No. 641, Fateh Jang, Attock against total sale consideration of Rs.11 Million, out of which an amount of Rs.10.5 Million has been received by the petitioner through different modes and in shape of properties as referred in Clause 3 of the agreement. However, dispute arose when the property has not been transferred, even respondent No.3 has served a legal notice on the petitioner on 14.11.2018, which has been replied by the petitioner with further direction to respondent No.3 to arrange stamp duty, Capital Value Tax, etc. for the purpose of execution of sale deed. However, respondent No.4 on the complaint of respondent No.3 got registered FIR No.130, dated 18.04.2019, under Section 406 PPC, P.S. Kohsar, Islamabad against the petitioner for misappropriation of amount to the tune of Rs.10.5 Million.

7. During the course of arguments, both the parties have acknowledged their relationship on the basis of agreement to sell dated 14.06.2017 together with the sale consideration of Rs.11 Million and the petitioner being seller has further conceded the fact that she had received Rs.10.5 Million as part sale consideration, therefore, while considering the acknowledgments on the part of petitioner and respondent No.3, this Court is positive to hold that the dispute is of a civil nature and the allegations set out by respondent No.3 attract breach of terms of agreement to sell, hence, enforcement of contract through criminal prosecution is tainted with malafide.

8. On the other hand, respondent No.3 has already filed suit for specific performance of agreement to sell dated 14.06.2017 before the learned Senior Civil Judge, Attock against the petitioner, hence a proper

remedy has been exercised to resolve the dispute qua the breach of terms of agreement, hence, it has been proved from record that the allegation leveled in FIR No.130, dated 18.04.2019, under Section 406 PPC, Police Station Kohsar, Islamabad by respondent No.3 is just an abuse of process of law, especially in the light of suit filed by respondent No.3 titled as "*Maj. G. Tanveer Ullah Khan vs. Hajra Karam Khan*".

9. Similarly, the inherent powers of High Court in terms of Section 561-A Cr.P.C. are meant to rescue a person, who is victim, and believes in safe administration of justice while appearing before the Court for settlement of civil rights, which could only be interpreted by the competent Civil Court. Even otherwise, when the agreement provides remedy for breach of any term in contract, all other remedies could be seen under the said clause, whereas the breach of contract and its enforcement along with its remedy has already been defined in said contract, therefore, criminal prosecution is just an abuse of process of law, which is apparent on record. In such like situation, matters alike have been dealt in cases reported as 2017 P.Cr.LJ 133 Islamabad (Muhammad Nawaz vs. S.H.O., P.S. Sabzi Mandi, Islamabad, etc.) and 2006 P.Cr.LJ 1900 Lahore (Shaukat Ali Sagar vs. S.H.O. P.S. Batala Colony, Faisalabad, etc.), whereby such kind of FIRs have been quashed.

10. Similarly, while deciding the question of contractual liability and the amount so received by accused side under the terms of contract does not fulfill the requirement of entrustment as referred in Section 406 PPC. Reliance is placed upon 2015 SCMR 1575 (Rafique Haji Usman vs. Chairman NAB). The case in hand is purely of civil nature and

registration of criminal case is illegal, even continuance of criminal proceedings would be considered as abuse of process of law, therefore, the High Court in exercise of powers under Article 199 read with Section 561-A Cr.P.C. is competent to quash an FIR at any stage of proceeding as also held in 2007 YLR 2766 Lahore (Badar-ul-Islam vs. DPO, Faisalabad).

11. In view of above discussion, the instant writ petition for quashing of FIR is ALLOWED and case FIR No.130, dated 18.04.2019, under Section 406 PPC, P.S. Kohsar, Islamabad is hereby QUASHED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.