

**PLD 2012 Islamabad 65**

**Before Shaukat Aziz Siddiqui, J**

**SHOUKAT ALI QURESHI---Petitioner**

**versus**

**THE STATE and another---Respondents**

Criminal Miscellaneous No.94-B of 2012, decided on 16th February, 2012.

**(a) Criminal Procedure Code (V of 1898)---**

----S. 496 8; 498---Penal Code (XLV of 1860), Ss.353/337-H(2)/186/34---Assault or criminal force to deter public servant from discharge of his duty, hurt by rash or negligent act, obstructing public servant in discharge of public functions---Bail---Court below had declined pre-arrest bail application of accused by considering an F.I.R. which was different from the one for which accused sought bail---Judge of the court below had explained that impugned order was passed under some misconception which was a result of inadvertence---Validity---Judge of the court below had dismissed the bail application of accused by considering a different F.I.R. and not a single word/reason was discussed about the F.I.R. in which accused sought the bail---High Court found the explanation advanced by the said Judge as unsatisfactory, but still declared the impugned order, as result of some misunderstanding, amalgamation of facts of two different cases and not of any other consideration---Impugned order was set aside and pre-arrest bail application of accused was deemed to be pending before the court below, which was directed to pass the order afresh in accordance with the law.

Muhammad Ayub v. Muhammad Yaqoob and others PLD 1966 SC 1003 rel.

**(b) Criminal Procedure Code (V of 1898)**

---S. 496 & 498---Penal Code (XLV of 1860), Ss.353/337-H(2)/ 186/34---Assault or criminal force to deter public servant from discharge of his duty, hurt by rash or negligent act, obstructing public servant in discharge of public functions---Bail---Order of judicial officer dismissing bail application of accused by considering an F.I.R. which was different from the F.I.R. for which accused sought the bail---Such order of judicial officer was deprecated by the High Court with the observation that orders of such sort brought chagrin, despondency, disappointment, dismay and dejection to the ordinary litigants---Orders of the type impugned raised eyebrows about the institution of judiciary and brought questions marks about the integrity of a judicial officer.

**(c) Administration of justice---**

---Duties of judicial officers---Scope---Judicial officers are custodians of the rights of the people, rule of law and administration of justice, therefore, it is expected from them that, while discharging their sacred duty of dispensation of justice, they would adhere to the provisions of law and no consideration, relation, liking or disliking would influence or prevail upon them---Judicial officer had to exercise his judicial authority within the four corners of law and not by adopting any novel procedures.

Saeed Khurshid Ahmad for Petitioner.

Nazir Abbasi, Standing Counsel.

Syed Wajhat Hassan, A.S.J.

**ORDER**

**SHAUKAT AZIZ SIDDIQUI, J.**---Admittedly; offences under sections 353, 337-H(ii), 186/34, P.P.C. in which petitioner sought bail before arrest according to Schedule-II of Cr.P.C. are available.

2. Through impugned order, learned ASJ declined the request by discussing case registered vide F.I.R.No.1106 dated 27-10-2011, offence / under sections 324; 427, 148, 149 and 337-F(ii), P.P.C. and not a single word/reason about the F.I.R. in which bail was sought. Apparently, this was arbitrary exercise of authority, against the command of law and dictum laid down by

the' Hon'ble Supreme Court in case titled "Muhammad Ayub v. Muhammad Yaqoob and others reported as PLD 1966, Supreme Court 1003. Therefore in order to confront and to know the reasons of departure, this court constrained to call in person learned ASJ who put appearance and stated that impugned order was passed under some misconception which is result of inadvertence. Learned ASJ assured that he shall be careful in future.

3. This court reminded the learned ASJ of his sacred duty of dispensation of justice and responsibilities towards judicial system, which is the only hope of people of Pakistan. As, such type of orders ( bring chagrin, despondency, disappointment, dismay and dejection to the ordinary litigants. In the arena of judicial activism, it is unimaginable and undreamed of that, any accused of available offence would be compelled to approach the High Court for a relief in which even S.H.O. can take bond. These perverse orders burden the litigant with heavy costs as unfortunately, even filing of any petition before High Court is not inexpensive. The judicial officers are custodian of the rights of the people, rule of law and administration of justice, therefore, it is expected from them that, while discharging their sacred duty of dispensation of justice they would adhere to the provisions of law and no consideration, relation, liking or disliking would influence or prevail upon them. It really is heart breaking that orders like impugned before this court raises eye brows about the Institution of judiciary and bring question mark<sup>1</sup> about the integrity of judicial officer, as well. The only course through which such type of criticism can be avoided is that judicial officer must exercise his authority within the four corners of law and not by adopting any novel procedure.

4. Although the explanation advanced by learned ASJ is unsatisfactory, still this court by showing grace, declares the impugned order, as result of some misunderstanding amalgamation of facts of two different cases and not of any other consideration.

5. In this view of the matter, impugned order dated 7-2-2012, is set aside. Petition for pre-arrest bail shall deem to be pending before learned F ASJ, Islamabad, who is directed to pass the order afresh, in accordance with law. It is expected that learned ASJ will apply his judicial mind and by adhering to provisions of sections 496, 498, Cr.P.C. speaking order would be passed. The petitioner is directed to appear before learned ASJ, Islamabad on 21-2-2012.

6. Office is directed to deliver the copy of this order to both the learned Sessions Judges East and West Divisions ICT for their perusal as well as their subordinate judicial officers.

H.B.T./57/Isl.

Order accordingly.

