

Form No.HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P No.3373-Q of 2014

Mrs. Ambreen Naseem Khawaja

Versus

Federation of Pakistan, etc.

S.No. of order / Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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23.09.2014 **Mr. Tariq Mehmood Jehangiri, Advocate for petitioner.**
Syed Husnain Ibrahim Kazmi, leared DAG.
M/s Haseeb Muhammad Chaudhry and Yousaf M. Qureshi, learned Standing Counsels.
Kaiser, S.I.
Dr. Babar Awan, ASC for Respondent No.5 & 6.

By way of filing instant Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, Petitioner, Mrs. Ambreen Naseem Khawaja, seeks quashment of FIR No.62 dated 05.09.2013 offence u/s 363 PPC, registered at P.S Women, Islamabad, on the grounds that Petitioner and Respondent Nos.5 & 6 are close relatives and cousins, the Petitioner came to Pakistan from USA in the month of June 2013 and stayed in the house of Respondent Nos.5 & 6 and with their free will and consent, accord and permission took the minor namely Zyam Khawaja real nephew of petitioner to USA, the Respondent Nos.5 & 6 dropped the Petitioner and the minor at the Airport. That when the son met with his father in USA, he refused to come back and opted to study in USA; therefore, brother of Petitioner Mr. Farrukh obtained an injunctive order regarding the removal of the minor from USA Court on 26.09.2013 and this fact was very much in the knowledge of the Respondent No.5 and his daughter/Respondent No.6. That Respondent No.6 filed a petition in the USA Court for vacation of stay and vide order dated

23.08.2013, injunctive order was vacated by the USA Court and visitation rights were provided to the mother. But Respondent No.5 moved application for registration of FIR on 29.08.2013 by concealment of facts regarding pendency of litigation in USA Court. That the custody of the minor was handed over to the mother/Respondent No.6 vide order dated 10.09.2013 by the USA Court and the minor has been brought to Pakistan and presently living with his mother/Respondent No.6. That petition for dissolution of marriage filed by the brother of the Petitioner is pending in USA Court, whereas suit for dissolution of marriage filed by Respondent No.6 is pending before the Judge Family Court, Islamabad. That the parties are close relatives and just to settle the score upon a family dispute, the impugned FIR has been registered. That Petitioner is a respectable lady and cannot think to commit any act of criminal nature and through this cryptic device she has been badly insulted and defamed in the family and her in laws. That even, it is a fit case for initiating the proceedings U/S 182 PPC against the Respondent No.5 who willfully lodged a false report by misrepresentation and concealment of facts.

On the other hand, learned counsel for complainant, Dr. Babar Awan, contended that the Iowa District Court for Scott county, assert temporary and emergency jurisdiction pursuant to Iowa Code Section 598B.204 with the purpose of ordering the return of the child to his mother and his state of habitual residence, which is Pakistan. And decline jurisdiction to make a final custody decision because it is an inconvenient forum. That the FIR against petitioner has been registered under Pakistani Law and instant petition for quashment of FIR is not entertainable as the same has been filed through attorney i.e Ms. Siddiqa Naseem Khawaja. The proper course/remedy for petitioner is to first appear before the

competent court of law for grant of bail in her favour and join the proceedings of the case. That the case is under investigation and till completion of the same the provision of Section 561-A, Cr.P.C do not attract and FIR cannot be quashed. Learned DAG and standing counsel supported the contentions of learned counsel for complainant and prayed for dismissal of instant Petition.

3. Arguments heard. Record perused.

4. First aspect which this court has to examine is that, whether the quashment of FIR can be sought through special power of attorney without joining investigation and applying for bail from competent court of criminal jurisdiction?

It has been held by the Hon'ble Supreme Court of Pakistan in case titled PROVINCE OF EAST PAKISTAN AND ANOTHER VS. HIRALAL AGARWALA, reported as PLD 1970 S.C 399 that a son comes within the definition of "Aggrieved person" and could move for quashment of proceedings. In another case reported as 1998 PCr. L J 1486 titled Muhammad Ashafaq alias CHIEF and 18 others Vs. The State (**The case of Altaf Hussain, leader of MQM**) the Hon'ble Sindh High Court, Karachi observed that Appeal is a fundamental right and is a continuation of proceedings, when a person can be tried in **absentia**, there is no reason as to why his appeal could not be heard as such. Moreover, it has been observed by the Hon'ble Peshawar High Court, Peshawar in a case law reported as PLD 1990 Peshawar 192, titled AFTAB AHMAD KHAN SHERPAO VS. THE GOVERNOR, N.W.F.P AND OTHERS, that under Article 199 of the Constitution of Islamic Republic of Pakistan, the High Court is not bound by any precedent in exercising such discretion as each case entails its own objective conditions and the relief is granted or refused on the basis of such

conditions. Therefore, by placing reliance on above quoted judgments and keeping in view the peculiar facts and circumstances of the instant case, this court is of the view that the attorney Ms. Siddiqi Naseem Khawaja real mother of petitioner Ms. Ambreen Naseem Khawaja is competent to file proceedings for quashment of FIR registered against her daughter in her absence.

5. So far as the question of competence of the High Court for quashment of FIR is concerned, it is observed that under Section 561-A, Cr.PC, High Court vested with inherent powers. The above section provides three situations where the High court can exercise its inherent powers/jurisdiction, the same are as under:-

- a) ***to give effect to any order under the Code.***
- b) ***to prevent abuse of the process of any Court, and***
- c) ***Or otherwise to secure the ends of justice.***

It has been held by the superior courts of the country through various pronouncements that, High Court, in exercise of above conferred powers would be justified to quash **any** proceedings, if it finds that continuation of the same would amount to abuse the process of law or quashing of these proceedings would otherwise serve the ends of justice. The High Court under its inherent powers keeping in view the facts and circumstances of the case, if comes to the conclusion that process is being used as an instrument by a complainant to harass any person needlessly, can quash the proceedings to meet the ends of justice and to prevent the abuse of process of law because if such proceedings are allowed to continue, the same would bring injustice and will cause miscarriage of justice instead of advancing the cause of justice.

6. Judgments on the issue provide following situations wherein discretion of exercising the authority of quashment of FIR has been approved;

- (i) *Registration of FIR by Police/Authorities having no jurisdiction to register the same.*
- (ii) *From the admitted contents of FIR, no offence is constituted;*
- (iii) *From contents of FIR matter purely is of civil nature.*

Even in the judgments through which exercise of such discretion has been dis-approved “**door of extraordinary circumstance**” has been kept open. Guidance in this regard has been borrowed from 1996 SCMR 186, 2006 SCMR 276& PLJ 2011 SC 1932.

7. In present case it is brought on the record that the custody of the minor was handed over to the mother/Respondent No.6 vide order dated 10.09.2013 by the USA Court and the minor has been brought to Pakistan and presently living with his mother/Respondent No.6. Petition for dissolution of marriage filed by the brother of the Petitioner is pending in USA Court, whereas suit for dissolution of marriage filed by Respondent No.6 is pending before the Judge Family Court, Islamabad. Moreover, the parties are close relatives and it seems that just to settle the score upon a family dispute, the impugned FIR has been registered against a lady member of the family. Unfortunately, trend to settle the civil disputes by exercising pressure of criminal proceedings is on high, which is nothing but exploitation. The High Court being custodian of the fundamental rights of the citizens is under obligation to provide shield against any invasion made on the guaranteed constitutional rights and protect the subject from discrimination, exploitation, colourable exercise of authority, bolted actions, malafide and stinking proceedings.

Thus for the foregoing reasons by placing reliance on case laws reported as PLD 1991 SC 575, titled Zahid Iqbal Vs. The State, 1972 SCMR 194, titled Muhammad Aslam and other Vs. The State, 2007 MLD 355, titled Faisal Jameel Vs. The State, instant petition is **allowed**. Impugned FIR is declared to be illegal, unlawful, unprecedented, sham, result of colourable exercise of authority, an abuse of process of law, tainted with malafide, ulterior motives, a device of exploitation without jurisdiction and outcome of arbitrary exercise of authority, and same is hereby **quashed**.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

Announced in open Court on 26-12-2014.

JUDGE

Approved for Reporting.

"Waqar Ahmed"
Waqar Ahmed