

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.1939/2013

Hareon Rashid

Vs.

The Station House Officer, Police Station Aabpara, Islamabad &

Another

Petitioner by : Mr. Tariq Asad, Advocate
Respondents by : Malik Zahoor Akhtar Awan, Standing Counsel.
Mr. Muhammad Ilyas Siddiqui, Advocate for respondent No.2.
Muhammad Yousof, SI with record.

Date of hearing : 12.07.2013

NOOR-UL-HAQ N. QURESHI, J. This writ petition was

fixed on 12.07.2013, when after hearing both the sides, the same was allowed by passing short order. The following are the reasons of my above short order, which are being recorded today i.e. 02.09.2013.

Through the instant writ petition, the petitioner has prayed as under: -

“It is, therefore, respectfully prayed to set aside the impugned order dated 23.04.2013 to be without lawful authority and of no legal effect and order the respondent No.1 to register criminal case of murder against General (R) Pervez Musharraf in accordance with law.”.

2. Facts leading towards disposal of instant writ petition are that a Military Operation known as “Silence Operation” was carried out at Lal Masjid and Jamia Hafsa situated at G-6, Islamabad in July, 2007 in which a large number of innocent persons were killed

including father and grandmother of the petitioner. Several applications were filed before respondent No.1 for registration of FIR, but same were refused. To thrash out the real facts, a Fact Finding Commission was constituted by the orders of the Hon'ble Supreme Court of Pakistan regarding Operation on the Lal Masjid & Jamia Hafsa. In the report prepared by the said Commission, it has been alleged that the then President Pervaiz Musharraf/respondent No.2 herein had ordered for carrying out the above Operation. The legal heirs of the innocent victims had been filing applications to the police and civil authorities from time to time for registration of criminal cases against responsible of that Operation, but their requests were not acceded to. In this regard, the petitioner had also filed petition u/s 22-A Cr.P.C. before learned Sessions Judge (West), Islamabad, which was marked to the learned Additional Sessions Judge-VI/Ex-Officio Justice of the Peace (West), Islamabad. Nevertheless, ordeal and miseries of the petitioner remained continued and his petition was dismissed vide order dated 23.04.2013. Thus, the said order caused discomfort for the petitioner and promoted him to file the instant writ petition.

3. Learned counsel for the petitioner has argued that cognizable offence is made out from the application moved u/s 22-A Cr.P.C. by the petitioner, but learned Ex-Officio Justice of the Peace has not applied his judicial mind to go through the same. Learned Ex-Officio Justice of the Peace has passed the impugned order in a slipshod

manner without appreciating the facts of the case. In the light of evidence deposed by various eye witnesses of above said Operation recorded in the report of Commission, respondent No.2 was held responsible for killing the innocent people therefore, he should be punished for his wrong deeds. The learned Ex-Officio Justice of the Peace has not recorded any valid reason for rejection of the application of the petitioner. Learned counsel for the petitioner has requested that as impugned order has been passed illegally, therefore, same is liable to be set aside.

4. Learned counsel for respondent No.2 has supported the impugned order dated 23.04.2013 by arguing that any action done or caused to be done by the alleged accused being the President of Pakistan was immune within the purview of Article 47 of the Constitution of the Islamic Republic of Pakistan. He has argued that no direct evidence is available against respondent No.2 for commission of offence as alleged in the instant writ petition. There is a considerable delay in moving application u/s 22-A Cr.P.C. In the said Operation, so many other officials also participated, therefore, respondent No.2 alone cannot be held responsible being the sole accused. The alleged incident being old one cannot be agitated at this stage nor there is any reason to entertain the same at this verge after a lapse of about more than six years. As many as 19-FIRs have already been registered and the petitioner can put his viewpoint before the Investigating Officer or the concerned court, or may make a complaint to the concerned trial court in addition to the version recorded by the police with regard to the

alleged incident. At this belated stage, it would be better for the complainant to file a private complaint rather to make application for registration of FIR.

5. Learned Standing Counsel has adopted the arguments as set forth by the learned counsel for respondent No.2.

6. Arguments heard. Record as well as relevant provisions of law perused with care.

7. Before proceeding further, it would be apt to reproduce the short order dated 12.07.2013 passed by this Court, which runs as under: -

“The legitimate right of the petitioner since declined vide order dated 23.04.2013 passed by learned Additional Sessions Judge-VI/Ex-Officio Justice of Peace (West), Islamabad, dismissing the application moved under Section 22-A Cr.P.C., seeking registration of FIR. The right otherwise legitimated by law cannot be curtailed nor can be denied even if a false case is registered. Repercussion whereof has been provided by law, where no compensation is provided as a result of non-registration of the case.

2. Therefore, for the reasons to be recorded later on, the instant Writ Petition stands allowed and SHO concerned is directed to record the version of the petitioner in writing or orally, if cognizable offence is made out, FIR be registered instantly without any amount of delay”.

8. The right of registration of FIR is a legitimate right guaranteed by law, which cannot be curtailed or denied to any person making complaint before the police officer. Otherwise, if a cognizable offence of like nature is reported at Police Station, the police is under statutory obligation as required u/s 154 Cr.P.C. and Rule 24.1 of Police Rules, 1934 to record version of the complainant in verbatim and same be incorporated in the book of Section 154 Cr.P.C. if cognizable offence is made out. Otherwise, from such verbatim, if non-cognizable offence is

made out, the matter is to be reported to the concerned Magistrate for seeking further guidance and appropriate action. At this juncture, it would be instructive to reproduce the provisions of Section 154 Cr.P.C. which reads as under: -

“154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police-station, shall be reduced to writing by him or under his directions, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form and the Provincial Government may prescribe in this behalf”

9. The bare perusal of provisions of section 154 Cr.P.C. indicates that the word ‘shall’ has been used. By using the word ‘shall’ manifests the intention of the legislature to make the said provisions as mandatory in nature. Thus, it is the statutory duty of the police to record the information in the relevant book in a trice.

10. The Hon’ble Supreme Court of Pakistan while elaborating the provisions of section 154 Cr.P.C. in the case of “**Muhammad Bashir Vs. Station House Officer, Okara Cantt. & Others (PLD 2007 Supreme Court 539)**” held as under: -

“12. The scheme of law which becomes apparent from a bare perusal of these provisions is that whenever an Officer Incharge of a Police Station receives some information about the commission of an offence, he is expected first to find out whether the offence disclosed fell into the category of cognizable offences or was one which was non-cognizable. And once he was through with this exercise then the word “SHALL” appearing in the said provisions of section 154, Cr.P.C. would take over which obliged, the S.H.O. thereafter to reduce the said information to writing in the First Information Register, as what is called by Chapter XXIV of the Police Rules of 1934, a FIR if the offence disclosed was cognizable or else

to merely record the same in the Station Diary as mentioned by section 155(1) of the Cr.P.C. and rule 24.3 of the said Rules and refer the informant to the competent Magistrate if the offence be non-cognizable”.

11. FIR is a document which is entered into book maintained at Police Station at the complaint of informant and brings the law into motion, whereby police commences investigation of the case u/s 156 Cr.P.C. Section 154 Cr.P.C. lays down the procedure of an information in cognizable cases and it also indeed gives mandatory directions for registration of case as per the procedure. Any slackness or lethargic attitude by the registering authority of FIR in fact intends to favour the accused.

12. The Hon'ble Supreme Court of Pakistan in the case mentioned op-cit further held that “No authority vested with an Officer Incharge of a Police Station or with anyone else to refuse to record an FIR, where the information conveyed, disclosed the commission of a cognizable offence. No authority vested with an Officer Incharge of a Police Station or with anyone else hold an inquiry into the correctness or otherwise of the information which was conveyed to the SHO for the purpose of recording of FIR”.

13. The Hon'ble Lahore High Court Lahore in case of “Tassaduq Hussain Vs. DPO & Others (2007 P.Cr.LJ 145, Lah.)”, held that “If there was an information relating to commission of a cognizable offence, it would fall u/s 154 Cr.P.C. and a Police Officer was under statutory obligation to enter it in prescribed register. Conditions precedent was simply two-folds; first it must be an information and secondly, it must

relate to a cognizable offence on the face of it and not merely in the light of subsequent events”.

14. In the instant case, the refusal to grant relief is mainly emphasized for the reason that already certain FIRs regarding same incident have been registered. To clarify such a legal aspect, learned Standing Counsel has candidly conceded that no such FIR with regard to the allegations levelled has been registered nor such type of version as set forth has ever been brought to light. However, it is a factual aspect that so many other FIRs have been registered not specifying the incident alleged through the application u/s 22-A Cr.P.C. or writ petition. The allegations so levelled being oral have not been recorded which might be fatal for the prosecution case in case of non-registration of FIR.

15. So far the point raised with regard to delay in lodging FIR, under the law, delay by itself in lodging FIR is not material for the simple reason that no limitation has been provided in criminal law for lodging a complaint. Reliance in this respect is placed on 2011 SCMR 872. This aspect is also to be considered by the learned trial court by evaluating evidence.

16. On a query raised by the Court, as to whether any forbidden clause is provided by law for registration of FIR to which, learned counsel for respondent No.2 frankly conceded that no such provision of law is provided and FIR can be registered even at belated stage, but fate is to be decided by the learned trial court after examining the prosecution evidence.

17. With regard to the objection raised that instead of registration of FIR, a private complaint would be better remedy for the petitioner, it is observed that in such high profile cases, evidence by way of direct complaint cannot achieve such result by collecting evidence or procuring even attendance of the accused persons as well as PWs. Otherwise, private complaint under such circumstances cannot be equated with a state case, wherein possibility of collecting impressive evidence would be more probable. Although, an alternate remedy is provided to an aggrieved party under the law, by way of complaint, but this thing in no way can deter the court from giving direction to the police to record FIR in appropriate cases. Therefore, in my humble view, registration of FIR is the best course to meet the principles of equity, wherein equally accused is also provided an opportunity to defend himself, even at the stage of investigation. No right of accused would stand tampered with at the time of registration of case and mere such registration would not cause stigma.

18. For the rest legal issue raised with regard to immunity as provided under Article 47 of the Constitution of the Islamic Republic of Pakistan being the then President of Pakistan, it is a settled principle being admitted by the learned counsel for respondent No.2 that such point cannot be raised at this verge and the same is to be decided by the learned trial court when asked for.

19. The ratio deducible from different citations of superior courts is that in some cases, courts can refuse to issue directions for registration of FIR in special circumstances i.e. the matter was of civil nature, the

complainant was trying to convert the civil dispute into criminal one, the complaint was based on malafide and ulterior motives and that an alternate remedy in shape of private complaint is available. In the instant case, neither any civil dispute is involved nor there appears any malafide or ulterior motive on the part of the petitioner. As far as alternate remedy is concerned, same has already been dealt with and discussed in the preceding paras. Even-otherwise, each criminal case has its own features and is required to be decided on its own merits independently.

20. Principally, registration of FIR is a right legitimated by law and there is no compensation or alternate to it. But in case, if FIR is registered, the allegations if proved to be false during course of investigation, the complainant shall be subjected to face consequences of false accusation as required u/s 182 PPC, whereas no such compensatory procedure is adopted in case of non-registration of FIR, where important pieces of evidence are required to be collected.

21. However, it is made clear that if information furnished is proved to be false, proceedings u/s 182 Cr.P.C. be initiated so that compensatory procedural law could be enforced under the circumstances.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Approved for Reporting

Zawar

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