

**JUDGMENT SHEET.**

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

**W.P No.1832/2017.**

**Nadeem Khalid, etc. Vs. Kamal ud Din, etc.**

Petitioners by: Mr. Tariq Mehmood Musa, Advocate.

Respondents by: Mr. Saeed Ahmed Waseer, State  
Counsel.

Ayaz Ajmal/respondent No.3 in  
person.

Khalid S.I, P.S Aabpara, Islamabad.

**Date of Decision: 16.01.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through the instant writ petition, the petitioner has assailed the order dated 01.04.2017, passed by respondent No.1/learned Judicial Magistrate 1<sup>st</sup> Class, Islamabad, whereby cancellation report submitted by respondent No.2/SHO P.S Aabpara, Islamabad in case FIR No.431/15, dated 19.10.2015, U/S 382/511 PPC, P.S Aabpara, Islamabad.

2. Brief facts are that the petitioner lodged the above mentioned FIR against respondent No.3/Ayaz Ajmal with the allegations that on 26.11.2014, at about 10 p.m, when the petitioner/complainant was going to his office from his house, all of sudden one person attacked upon him and gave him fist blow and as a result of the same he was injured and his wife came out and raised hue and cry, whereby alleged accused fled away from scene and later on identified as Ayaz Ajmal (respondent No.3), who attempted to commit robbery.

3. After registration of the FIR, the police investigated the matter and while considering cross-version of FIR No.559/14, dated 13.12.2014, U/S 337-F(i), 337-F(ii) PPC, P.S Aabpara, Islamabad, FIR No.431/15, dated 19.10.2015, U/S 382/511 PPC, P.S Aabpara, Islamabad has been recommended for cancellation. The SHO submitted the cancellation report before the learned Judicial Magistrate, which was agreed by the learned Judicial Magistrate vide impugned order dated 01.04.2017, hence, this writ petition.

4. Learned counsel for the petitioner has contended that the police has not investigated the matter in accordance with law and submitted the cancellation report; that learned Judicial Magistrate has not appreciated the available record in its true perspective and passed the impugned order in mechanical manner; that cross-version placed on record vide FIR No.599/14 got lodged by respondent No.3 was given due weightage but the fate of the said case was decided vide judgment dated 15.01.2018, whereby the petitioner was acquitted from the said case.

5. Conversely, learned State Counsel has opposed instant writ petition. Respondent No.3 in persons has contended that he was attacked by the petitioner and he lodged FIR No.559/14, dated 13.12.2014, U/S 337-F(i), 337-F(ii) PPC with P.S Aabpara, Islamabad against the petitioner, however, after trial the petitioner has been acquitted from that case by extending benefit of doubt and the petitioner in order to take revenge has filed the instant writ petition although there is no evidence that the petitioner was attacked by respondent No.3.

6. I have heard the arguments and gone through the record.

7. From perusal of the record, it has been observed that the petitioner got lodged FIR No.431/15, dated 19.10.2015, U/S 382/511 PPC, P.S Aabpara, Islamabad, in which he alleged that he was attacked by an unknown person, who was later on identified as Ayaz Ajmal/respondent No.3. The investigation was conducted and after the investigation, the police recommended cancellation of the FIR, which was agreed by learned Judicial Magistrate vide impugned order dated 01.04.2017.

8. Record further reveals that Ayaz Ajmal/respondent No.3 is neighbor of the petitioner, who was living in the said area since long and as such both the petitioner and respondent No.3 were known to each other and only one fist blow was alleged to respondent No.3. The police initially tried to make the case of attempt to commit robbery but in my humble estimation, the I.O has rightly concluded that no evidence is available on record, even as per stance of the petitioner himself in the FIR, there is not an iota of evidence to believe that respondent No.3 attempted to snatch the vehicle or any other valuable security from the petitioner.

9. Besides the above referred circumstances, respondent No.3 had already lodged FIR No.559/14, dated 13.12.2014, U/S 337-F(i), 337-F(ii) PPC with P.S Aabpara, Islamabad against the petitioner, in which the trial was conducted and after completion of the trial the petitioner has been acquitted vide judgment dated 15.01.2018 by extending benefit of doubt. By placing judgment of Trial Court of cross-version in juxta position, I am of the view that initially the petitioner concealed certain facts from the I.O and intentionally did not mention the details of the accused despite the fact that respondent No.3/Ayaz Ajmal is neighbor of the petitioner and no witness has been produced who could establish that FIR No.431/15, dated 19.10.2015, U/S 382/511 PPC, P.S Aabpara, Islamabad was lodged in order to equalize the matter, especially when FIR No.559/14, dated 13.12.2014, U/S 337-F(i), 337-F(ii) PPC with P.S Aabpara, Islamabad was got registered against the petitioner by respondent No.3, however, at this stage, when the petitioner has already been acquitted by the competent Court, the present report submitted by the police is otherwise in favour of respondent No.3. No incriminating evidence is available on record, therefore, learned Judicial Magistrate has rightly agreed with cancellation report. No illegality has been committed by learned Judicial Magistrate while passing the impugned order, therefore, the petitioner while invoking jurisdiction of this Court in terms of Article 199 of the Constitution of Islamic Republic of Pakistan 1973 has failed to demonstrate any illegality in the procedure adopted by the police as well as by the learned Judicial Magistrate.

10. For the foregoing discussion, the instant writ petition bears no merits, therefore, the same is hereby dismissed.

(MOHSIN AKHTAR KAYANI)  
JUDGE

R.Anjam