

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No.300/Q/2019

Zaffar Iqbal Shaheen

Versus

Khalid Mehmood Bhatti etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(05)	26.12.2019	Mr. Mazhar Akram Awan, Mirza Irfan Ghazanfar, Advocates for the petitioner. Raja Muhammad Ishtiaq Ahmed, Advocate for respondents. Barrister Ayesha Siddique Khan, State Counsel. Alamgir, S.I and Mumtaz S.I, P.S Golra Sharif, Islamabad.

MOHSIN AKHTAR KAYANI J. Through this criminal miscellaneous petition, the petitioner has assailed the order dated 04.03.2019, passed by learned Judicial Magistrate, Section 30 (West), Islamabad, whereby the learned Judicial Magistrate agreed with the cancellation report submitted by the police in case F.I.R No. 211, dated 04.05.2018, U/s 406/506(ii)/34 PPC, P.S Golra Sharif, Islamabad.

2. Learned Counsel for the petitioner inter-alia contends that petitioner is complainant in above mentioned criminal case, wherein it has been alleged that the respondents No.1 to 3/accused persons have received a huge money against the services for development of sewerage and roads in the private society, but failed to provide the said services and misappropriated the paid amount; that the respondents are bound to return the amount or to comply with the terms and conditions of the

agreement under the law and as such the misappropriation is visible, but the police without going into the facts of the case has recommended the cancellation report, which was accepted in toto by the learned Judicial Magistrate without application of judicial mind; that respondents have also extended life threats to the petitioner, but the offence U/s 506 PPC was also not considered in its true perspective; that the requirement of Section 405 PPC is reflected in this case by way of illustration (C) referred in the definition clause and the learned Judicial Magistrate while passing the impugned order has not considered the same.

3. Conversely, learned counsel for respondents No.1 to 3 contends that they have received the amount from different individuals to provide the services to develop the roads and sewerage system and as such they have provided the basic structure in the society being Land Developer, however, the allegation of misappropriation of amount is not true as the development is in progress and respondents are bound to complete the project in all manner, which itself is not an offence rather it is a civil dispute. He further contends that the police has rightly recommended the cancellation report as the matter relates to a civil dispute, whereas the terms claimed by the petitioner could only be enforced through the judgment of learned Civil Court and not by a criminal prosecution. It has lastly been contended that the respondents are ready to perform

their obligations under the terms of agreement, which they have agreed, however, due to pendency of *Suo Moto Case No. 05/2016* (cutting of trees from Margalla Hills as well as Stone Crushing), the development working could not be carried out and even they have submitted the recent Google images to justify the basic contentions that development work is underway.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that the petitioner is mainly aggrieved by the order dated 04.03.2019, whereby the cancellation report of case F.I.R No. 211, dated 04.05.2018, U/s 406/506(ii)/34 PPC, P.S Golra Sharif, Islamabad was agreed by the learned Judicial Magistrate (West), Islamabad. Perusal of record further reveals that the petitioner has got registered the criminal case qua the allegations that he alongwith others have paid huge money to the respondents for development of the society, who are under obligations to provide the roads and develop sewerage system, whereby the respondents have made commitment with the petitioner alongwith others that the facilities would be provided immediately.

6. The petitioner has approached the learned Ex-Officio Justice of Peace, who has passed the direction to proceed in accordance with law and the said order was assailed by the respondents before this Court through W.P No. 4724/2016, which was dismissed vide judgment dated 17.04.2018.

7. In compliance of order of learned Ex-Officio Justice of Peace, case F.I.R No. 211, dated 04.05.2018, U/s 406/506(ii)/34 PPC, P.S Golra Sharif, Islamabad was registered, which was investigated by the local police, however, subsequently Investigation Officer recommended the cancellation of FIR mainly on the ground that:-

مدعی مقدمہ کوئی شہادت متعلق جرم II-506 تپ پیش نہ کر سکا۔ جو بحوالہ ضمنی نمبر 6، مورخہ 14-5-18 کو مذکورہ S.I. نے مقدمہ ہذا سے جرم 506 تپ حذف کیا۔ مورخہ 17-5-18 کو ملزمان میں سے ملزم خالد محمود بھیجی مورخہ 18-5-18 کو ملزم ابرار خان، جاوید ترابی شامل تفتیش ہوئے معقول نے متوقف بیان کیا کہ سپریم کورٹ سو موٹو ایکشن 5/16 کے مارگلہ ہیلٹ پہاڑی علاقہ جس علاقہ میں تعمیرات پر پابندی کی وجہ سے Development کا کام روک دیا گیا تھا۔ مدعی فریق کے ساتھ درخواست ہائے اور انکوائری رپورٹ بھی حوالے کی جو انفران کی کیگئی انکوائری کے مطابق معاملہ سول نوعیت کا پایا گیا۔

8. The above referred report clearly spells out that the petitioner alongwith others have paid different amounts to the respondents for the development of roads and sewerage system in the society, which was developed by the respondents/ accused person. The development work of the society has not yet been completed and as such the agreement made by the respondents have not complied with. This fact has already been observed by this Court in earlier decision passed in W.P No. 4724/2016 and even as of today, learned counsel for the respondents in categorical terms before this Court acknowledges that respondents are ready to fulfill their obligations to develop the sewerage system and roads in the Society of the petitioner and the same would be provided, but such assignment could not be completed immediately.

9. While considering the above background, there is no cavil with the proposition that the entire issue revolves around a civil dispute for enforcement of civil rights and as such the stance taken by the petitioner side on the strength of Section 405 PPC, illustration (C), which is as under does not attract in this case:-

(C) A, residing in Dacca, is agent for Z, residing at Lahore. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

10. The above referred illustration is also not applicable as claimed by the petitioner side, which relates to investment and the facts and circumstances of the instant case are different and the petitioners, who are allottees/owners of the land and have paid the different amounts to the respondents for development work, which has not yet been carried out.

11. All these facts disclose that respondents are bound to comply with their promises/commitment, which could only be enforced through the competent Court of law and not through a criminal case. It is trite law that civil dispute could not be converted into a criminal prosecution, especially when the matter relates to enforcement of terms and conditions of agreement, whether promises are orally or in writing. Reliance is placed upon case law reported as **2017 PCr.LJ 133 (Muhammad Nawaz**

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and others).**

12. I have also gone through the order passed by the learned Judicial Magistrate, whereby proper appreciation of facts have been given and no illegality has been observed, therefore, instant criminal miscellaneous petition is meritless and same is hereby **dismissed**. However, the petitioner is at liberty to approach the competent Court for enforcement of their civil rights, if so advised.

**(MOHSIN AKHTAR KAYANI)
JUDGE**

RAMZAN