

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**W.P No.2473 of 2018**

Syed Asad Abbas Kazmi alias Zaigham Shah  
Vs  
Learned Judicial Magistrate, Islamabad, & others

Date of Hearing: 17.07.2020  
Petitioner By: Raja Ikram Ameen Minhas & Amir  
Zar Bhatti Advocates  
Respondent No.2 By: Mirza Muhammad Nazakat Baig,  
Advocate  
State by: Mr. Zohaib Hassan Gondal, State  
Counsel with Munir Khan- S.I &  
Khalid Awan- S.I.

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**Ghulam Azam Qambrani, J:** Through this petition, the petitioner, Syed Asad Abbas Kazmi alias Zaigham Shah, has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

*"It is most respectfully prayed that instant petition may kindly be accepted and the impugned order dated 02.12.2017 passed by learned Judicial Magistrate may kindly be declared as illegal, void ab-initio, coram non judice and the same may graciously be set aside and report of the police may graciously be accepted, which in the interest of justice.*

*Any other relief which this Hon'ble Court may deem fit just and proper may also be awarded."*

2. Briefly stated facts of the case are that F.I.R No. 367 of 2013 was lodged under sections 337-F(1)/337-F(II)/337-L (1)/337-L (II)/337-A (II)/337-H (II)/354/148/149/109 PPC at Police Station Golra Sharif, Islamabad, on the complaint of one Syed Abid Ali Shah Kazmi against the petitioner with the allegation that he is owner in possession of khasra number 437/181, khewat & khatooni

number 06 Mauza Thulla Syedan, Islamabad, where he had constructed a room. On 09.10.2013, at about 4:30 pm complainant alongwith his brothers when reached there, one Naeem raised lalkara by saying his accomplices no one should escape alive today. In the meanwhile, they started firing upon them. It has been also alleged that the armed persons of Asad Abbas held them hostage for three hours. Thereafter, the nominated accused persons beaten them. It has been alleged that at the instigation and conspiracy of petitioner the accused persons committed the alleged offence.

3. After registration of F.I.R, investigation was conducted by Superintendent of Police, Saddar Zone, Islamabad. Warrant of arrest were obtained by the police, when the petitioner was not arrested initially, a challan under section 512 Cr.P.C was filed. The complainant failed to produce any evidence with regard to commission of offence by the petitioner under section 109 P.P.C on the basis whereof, the petitioner was found innocent during investigation. Discharge report was prepared and placed before the learned Judicial Magistrate, Islamabad, which was disagreed vide order dated 02.12.2017 with the direction for conducting investigation on merit and for submission of report under section 173 Cr.P.C. The petitioner feeling aggrieved filed a revision petition before the learned Sessions Judge, Islamabad, which was disposed-of vide order dated 14.04.2018 on the ground that the same was not maintainable, hence this petition.

4. Learned counsel for the petitioner has contended that the impugned order is against the law, facts and circumstances of the case and the same is not sustainable in the eyes of law for the reason that the learned Judicial Magistrate travelled beyond his jurisdiction while passing the impugned order by directing the Investigation Officer for submission of report under section 173 Cr.P.C. Learned counsel further submitted that the learned Judicial Magistrate played role of investigating officer and his directions are

against the principles of law, and that the interference in the investigation is not the domain of Courts. Thus, has committed illegality which act seriously prejudices the petitioner; that the impugned order is not speaking one. Lastly, urged for setting aside of the impugned order.

5. Conversely, learned counsel for the respondent No.2 opposed the contentions of learned counsel for the petitioner and contended that the petitioner has alternate remedy of filing application under section 249-A Cr.P.C before the learned trial Court. During the arguments, it was asked from the learned counsel that is there any evidence against the petitioner with regard to commission of the alleged offence, in reply stated that there is no evidence to connect the petitioner with the commission of offence. Learned State Counsel submits that challan has been submitted. He has further confirmed that not an iota of evidence is on record to connect the petitioner with the alleged offence.

6. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

7. Perusal of the record reveals that on the application of complainant F.I.R No. 367 of 2015 was registered with the Police Station Golra Sharif, Islamabad, with the allegation that one Muhammad Naeem alongwith unknown accused persons duly armed with deadly weapons opened fires upon them where the construction was going on. It has been alleged that at the instigation and conspiracy of petitioner, the co-accused persons have committed the alleged offence. The record further reveals that warrant of arrest against the petitioner were obtained and thereafter on 27.09.2017, the petitioner appeared before the Court of learned Additional Sessions Judge, Islamabad-West, for the grant of pre-arrest bail, which was granted in favour of the petitioner and then he joined the investigation. The record further reveals that after completion of investigation by the police, it was found that the petitioner was only nominated in the F.I.R and no evidence came

on record against the petitioner, therefore, Superintendent of Police, Saddar Zone, Islamabad, directed that the petitioner may be discharged from the said case.

8. So far as the impugned order with regard to direction for submission of report under section 173 Cr.P.C is concerned, in this regard, it is stated that investigation of a criminal case falls within the exclusive domain of the police. Reliance is placed on the Judgment of august Supreme Court of Pakistan titled as "Muhammad Hanif Vs The State" [2019 SCMR 2029] wherein it has been held as under;-

*"Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each others' roles destroys the concept of separation of powers and works a long way towards defeating justice and this was so recognized in the case of Emperor v. Khwaja Nazir Ahmed (AIR 1945 Privy Council 18). The relevant paragraph from the judgment passed in that case is reproduced below:*

*"Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so, it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Ss. 154 and 156, to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under S. 561-A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P.C., to directions in the nature of habeas corpus. In the case of a cognizable offence, the Court's functions begin*

*when a charge is preferred before it and not until then and, therefore, the High Court can interfere under S. 561-A only when a charge has been preferred and not before. As the police have under Ss. 154 and 156, a statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds."*

9. The authority to register and investigate a criminal case in law vests in the police and not in the Court. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan in case titled "Brig. (R) Imtiaz Ahmad versus Government of Pakistan through Secretary, Interior Division, Islamabad, and 2 others" [1994 SCMR 2142]. No direction can be given to the police officials as to how and in what manner investigation in a criminal case is to take place. Reliance in this regard is placed upon the case reported as "Waris Ali Raza versus The State and 4 others" [2013 PCr.LJ 267].

10. In the instant case, after completion of investigation, the police has come to the conclusion that there is no evidence on record against the petitioner to connect him with the commission of alleged offence. The complainant in his report has alleged that at the abetment of the petitioner, the co-accused persons have committed the alleged offence. Section 107 of PPC provides abetment of a thing. For proving the allegation of abetment, the basic ingredients are firstly, instigate any person to do that thing or secondly engage with one or more persons in any conspiracy for doing of that thing and thirdly, intentionally aid by any act or illegal omission, the doing of that thing to constitute the offence of abetment. There is no evidence on record to prove that the alleged offence was committed at the instigation of petitioner, therefore, the Investigation Officer prepared discharge report against the petitioner from the case, whereas, the learned Judicial Magistrate vide impugned order dated 02.12.2017, instead of placing on record the discharge report, disagreed with the same and directed

to the concerned SHO for re-investigation on merits and submission of report under section 173 Cr.P.C. The impugned order creates an irresistible impression that the learned Trial Court had insisted that the local police must file a challan against the present petitioner. Such approach of the Trial Court was completely alien to the law, as the law is settled by now that no Court can insist that a challan of a case must be submitted against any particular person.

11. The Hon'ble Supreme Court of Pakistan in the case reported as "Muhammad Hanif Versus The State" (2019 S C M R 2029) has held as under:-

*"no court can insist that a Challan of a case must be submitted against any particular person and this legal position had been clarified by this Court in the case of Muhammad Nasir Cheema v. Mazhar Javaid and others (PLD 2007 SC 31). The said principle has also been reiterated by a Larger Bench of this Court in the recent case of Mst. Sughra Bibi v. The State (PLD 2018 SC 595)."*

12. Keeping in view the principles laid down by the Hon'ble Supreme Court of Pakistan in the cases supra, and also saving the petitioner from rigors of trial in the instant case, this petition is **allowed**. The impugned order dated 02.12.2017 is hereby set aside and the relevant proceedings against petitioner pending before the trial Court are hereby quashed.

**Ghulam Azam Qambrani**  
Judge

Announced in open Court on this 24<sup>th</sup> day of July, 2020

~~Judge~~

S.Akhtar