JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 1781-2020
Muhammad Moeen Akhtar
Versus
IG Police & Others

Petitioner by:	Abdul Rehman Sheikh, Advocate.
Respondents by:	Mr. Muhammad Bilal Ibrahim, State Counsel with Akhtar Khan Inspector, Faiz Ahmad SI & Ashiq ASI. Muhammad Rasheed ASI P.S. Sihala and Irshad ASI/previous I.O.
Date of Decision:	27.07. 2020.

FIAZ AHMAD ANJUM JANDRAN, J: Through the instant writ petition, petitioner (Muhammad Moeen Akhtar) prays for quashment of FIR No.119, dated 08.03.2020, registered under Sections 25-D of the Telegraph Act, at Police Station Kohsar, Islamabad.

2. Facts, relevant for the disposal of instant writ petition are that on 8.3.2020, at about 03:05 PM, petitioner transmitted a message through his mobile phone to Rescue-15 that a suspect wearing suicide jacket was present near Press Club, where a procession is being held by the women folk on the International Women Day. According to the police, said information was found false which led to cause harassment and panic in the general public. Thereafter, police registered the FIR-in-question, sought to be quashed through the instant writ petition.

3. Learned counsel for the petitioner contends that petitioner transmitted the information to the police in good faith; that essential to constitute offence i.e. *mense rea* is missing; that communication made in good faith does not constitute an offence; that the allegation of causing fear and harassment is without any substance and that further proceedings would amount to abuse of process of law, therefore, FIR in question is liable to be quashed.

4. Learned State Counsel repelled the above submissions, inter-alia stating that efficacious alternate remedy in terms of Section 249-A Cr.PC is available to the petitioner and, therefore, in presence of admitted disputed facts, normal course would not be allowed to be deflected.

5. Heard and record perused.

6. It is settled principle that this Court under Article 199 of the Constitution and Section 561-A of the Code of Criminal Procedure retains power to quash the FIR but this power is required to be exercised in exceptional and rare cases. The exercise in routine will not only crumble down the process but also result in devastating the exercise carried on by the Investigating Agency before its logical conclusion i.e. the culmination of trial which is the ultimate object of criminal justice system. It does not seem proper to bulldoze the process and brush aside the exercise with one stroke of pen. After submission of report under section 173 Cr.PC before the Court of competent jurisdiction, it would not be appropriate to halt the normal course where the defence i.e. the accused would also have an opportunity to lead evidence. If the accused succeeds to get an order of quashing of FIR by way of filing writ petition, it would amount to defeat the criminal trial system. Guidance in this respect is taken from the law laid down by the Hon'ble Apex Court of the Country in "***Muhammad Farooq V. Ahmed Nawaz Jagirani and others (PLD 2016 SC 550)***" wherein it was held that: -

> "*the High Court in exercise of inherent jurisdiction cannot strangulate the trial by overstretching its jurisdiction under Section 561-A, Cr.PC (see Noor Muhammad case, supra) and embark upon to examine adequacy and or inadequacy of evidence, which stage will only reach after charge is framed and complainant is given an opportunity to prove his case beyond reasonable doubt.*"

7. The case in hand is at initial stage, challan has been submitted and the prosecution has to prove its case by producing evidence of unimpeachable character. The trial, ultimately would reach to a final conclusion, either in favour of

prosecution or the defence. **Whether the petitioner, as asserted, transmitted message with bonafide intention or believing it to be false and fabricated would, of course, warrant factual inquiry.**

8. In presence of above disputed question and availability of efficacious alternate remedy, normal course would not be allowed to be deflected. If at any stage, after taking cognizance by the Court, accused is of the view that he is innocent, he has a remedy under Section 249-A Cr.PC/265-K Cr.PC. Guidance in this respect is taken from the case law reported as "***Director-General, Anti-Corruption Establishment, Lahore and others V. Muhammad Akram Khan and others (PLD 2013 SC 401)"*** wherein it was held that:-

> "*The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/ 265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction.*"

9. In the light of above, the instant writ petition is without merits and is accordingly **dismissed,** however, the petitioner shall be at liberty to avail all remedies available to him under the law, if so advised.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran