

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.4317/2018

Syed Sajjad Haider Gillani

versus

The State, etc.

Petitioner by: Muhammad Fahim Akhtar Gill, Advocate.

Respondents by: Mr. Fareed Hussain Kaif, State Counsel.

Syed Khawar Ameer Bukhari and Malik
Naseem Abbas, Advocates for respondent
No.4.

Muhammad Nawaz, S.I.

Date of Decision: 30.05.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has prayed for quashing of FIR No.479, dated 03.11.2018, under Section 489-F PPC, P.S. Kohsar, Islamabad.

2. Brief facts referred in the instant matter are that the aforesaid FIR has been registered against the petitioner following to his judicial custody vide order dated 09.11.2018, passed by learned Illaqa Magistrate concerned, whereafter he moved application for his post arrest bail along with petition under Section 156(3) Cr.P.C. for collection of defence evidence, which are still pending before the concerned Illaqa Magistrate. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that alleged bank account is fake one as the dishonored slip and the cheque in question are admittedly fake; that the petitioner has not issued the cheque and has no

nexus with the said bank account at Mingora and the said cheque was neither issued/written nor endorsed/signed by the petitioner, rather the complainant prepared the bogus cheque and dishonor slip to victimize the petitioner, on the basis of which FIR has been registered against the petitioner; that registration of FIR is result of highhandedness on the part of respondents as well as police officials under the influence of complainant; that no case is made out against the petitioner, therefore, order to the extent of quashing of the FIR may be issued.

4. Conversely, learned State Counsel as well as learned counsel for respondent No.4/complainant opposed the instant writ petition for quashing of case FIR No.479/2018 and contended that petitioner is directly charged in the said FIR, challan has been submitted in the Court and petitioner has alternate remedy under Section 249-A Cr.P.C., which empowers the learned Trial Court to acquit the accused on the basis of no probability of conviction; that petitioner has been charged for non-bailable offence and he has failed to show any mala fide on the part of respondents in registering the said FIR.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the petitioner has prayed for quashing of FIR No.479, dated 03.11.2018, under Section 489-F PPC, P.S. Kohsar, Islamabad with the contention that cheque in question does not belong to him and the account against which cheque in dispute was issued belongs to someone else, even the reason referred in the memorandum slip at serial No.2.3 issued by UBL, Nawankali Branch,

Mingora is that the cheque is a fake instrument and as such, offence under section 489-F PPC could not be made out.

7. Investigation Officer in attendance states that challan has already been submitted in the Court and after obtaining report from FIA, HQ Technical Wing sections 468/471 PPC have been added in the charge against the petitioner.

8. In view of above, question raised by the petitioner could not be resolved in the instant proceedings as it relates to the disputed facts as to whether instrument i.e. disputed cheque is a fake instrument and was issued by the petitioner to the complainant or otherwise which could only be resolved by learned trial Court. It is trite law that order of quashing of FIR could only be passed when extra ordinary exceptional circumstances have been brought on record that no offence is made out or the dispute is of civil nature and the very registration of FIR is based upon *malafide*, otherwise, if the dispute is based upon disputed facts, same could only be resolved by learned trial Court, even otherwise, petitioner has alternate remedy under section 249-A Cr.PC and instant petition for quashing of FIR is not maintainable. Reliance is placed upon 2008 SCMR 76 titled Dr. Ghulam Mustafa...vs... State, 1983 PCr.LJ 2222 titled Rashid Ahmed Gardee...vs... State, 2016 M L D 278 [Sindh] titled M/s Trust Investment Bank Ltd. through Authorized Officer...vs... Government of Sindh through Secretary Home and 3 others, 2016 PCr,LJ 305 (Karachi) titled Muhammad Aslam... vs ...Securities and Exchange Commission of Pakistan.

6. In view of above, instant petition is misconceived, same is hereby **dismissed** with direction to the petitioner to approach the learned trial Court for redressal of his grievance through an alternate remedy.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.