

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P No.3436-Q of 2020**

Raheem Ullah  
**Vs**  
The State, etc

Petitioner By: Syed Murad Ali Shah, Advocate

Complainant By: Malik Javed Iqbal Wains Advocate

State by: Mr. Hammad Saeed Dar, State  
Counsel with M. Anwar ASI.

Date of Decision: 11.12.2020

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**Ghulam Azam Qambrani, J:** Through this petition, the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“ It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted, case F.I.R No. 387 dated 31.08.2020, under Section 392 P.P.C registered at P.S Sabzimandi, District Islamabad may kindly be quashed.

Any other relief which this Hon’ble Court may deems fit may also be awarded to the petitioner.”

2. Brief facts of the case are that on the report of respondent No.3, above mentioned case FIR was registered, wherein it has been alleged that on 24.06.2020, at about 08: 30 p.m., when the Hino Bus bearing registration No. LES-16-6775, coming from Lahore to Rawalpindi, reached at Sabzi Mandi, Islamabad, all the passengers alighted, except four persons, who abruptly by showing pistols came to the driver and made

them to sit at the back seats of the bus, snatched their mobile phones. One of them sat on driving seat and drove the bus towards motorway. They alighted the Driver, Conductor and Helper at Sawabi Interchange and obtained the cell number of complainant. One of them was Rahimullah s/o Karimullah, another was Khalid Khan and two unknown persons, however, they could be recognized by the staff of the respondent.

3. Learned counsel for the petitioner contended that the F.I.R has been registered after inordinate and unexplained delay of more than six days; that initially on the application of petitioner no F.I.R was lodged by the SHO; that the petition under Section 22-A/B Cr.P.C filed by complainant was also dismissed and during pendency of writ petition No. 2271/2020 against the dismissal order, instant F.I.R was lodged with the collusion of police without waiting for outcome of said writ petition; that the petitioner has purchased the vehicle on 30.12.2018 from one Khalid Saleem on instalments and he has paid an amount of Rs.54,00,000/- to him, however an amount of Rs.7,00,000/- was outstanding; that a dispute arose on payment of final instalment and the above mentioned Khalid Saleem snatched the above mentioned Hino bus and obtained duplicate copy of the registration book; that the petitioner has filed a suit for specific performance against the said Khalid Saleem, therefore, the petitioner has been involved falsely in this case; that no offence has been committed by the petitioner; that there is no evidence on record to connect him with the commission of offence and that there is no probability of conviction to the petitioner. Lastly requested for quashment of the F.I.R.

4. Learned counsel for the respondent has contended that sufficient material evidence is available on record to connect the petitioner with the commission of the alleged offence; that the driver, conductor and helper are eye witnesses of the occurrence; that the petitioner is nominated in the F.I.R; that efficacious remedy is available to the petitioner by filing application under Section 249-A Cr.P.C before the learned Trial Court. Learned State Counsel also supports the version of respondent and contended that the petitioner has taken the law in hand; that sufficient material evidence is available on record and urged for dismissal of petition.

5. Arguments heard, record perused.

6. Perusal of the record reveals that respondent No. 3 has lodged the above mentioned F.I.R, wherein allegedly involved the petitioner in

commission of robbery, whereas the petitioner pleads innocence. There are factual controversies involved in the instant case, which cannot be resolved by this Court in exercise of its constitutional jurisdiction and the same can only be determined by the learned Trial Court after recording of evidence of both the parties. Reliance in this regard is placed upon the cases reported as "Col. Shah Sadiq Vs Muhammad Ashiq & others" [2006 SCMR 276] & "Muhammad Saleem Bhatti Vs Syed Safdar Ali Rizvi & two others" [2006 SCMR 1557].

7. The argument advanced by learned counsel for the petitioner is that this case is based on malafide and animosity on the part of the respondent/ complainant and it is a case of no evidence, therefore, the FIR ought to be quashed. It is important to mention that still the matter is under investigation. Perusal of record reveals that the statements of eye witnesses namely Waheed Aslim driver, Rafaqat Ali conductor and Waseem Hussain helper are on record, who have fully supported the version of complainant. That scope of quashing of FIR or interfering in the investigation is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Resorting to the provisions of Section 561-A Cr.P.C, or to the provisions of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking quashment of a criminal case, is an extra ordinary remedy, which can be invoked only in exceptional circumstances and the said provisions can never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused. Determination of correctness or falsity of allegations levelled against the petitioner in the F.I.R is an obligation cast upon the Court prescribed by the Code of Criminal Procedure for the purpose on the basis of legal evidence led at the trial after a proper opportunity to both the parties to plead their cases. No such extra ordinary circumstances have been mentioned in the instant case, which can permit this Court to deviate from the normal course of law and to quash the F.I.R by exercising extra-ordinary constitutional remedy under Article 199 of the Constitution read with Section 561-A Cr.P.C and is not supposed to enter into a factual controversy unless it is established that certain facts are not disputed between the parties. Keeping in view the controversy between the parties it is not fair to quash the impugned F.I.R at this stage.

8. While considering quashing of a criminal case in exercise of powers vested under Article 199 of the Constitution, this Court is also required to take into consideration various alternate remedies available to a petitioner before the learned trial Court, under Section 249-A or 265-K Cr.P.C as the case may be. Furthermore, the petitioner is seeking partial quashment of the F.I.R to his extent, which is not permissible under the law. Reliance in this regard is placed upon the case reported as Director General, Anti-Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401) wherein it has been held as under:-

*"We have found that through the impugned order the learned Judge-in-Chamber of the Lahore High Court, Lahore had partially quashed the relevant F.I.R. to the extent of respondent No.1 whereas partial quashing of an F.I.R. to the extent of some of the accused persons mentioned therein is a legal impossibility. Apart from that the impugned order had been passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore at a time when a Challan in the relevant criminal case had already been submitted before the learned trial court and the learned Trial court had already taken cognizance of the case. 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 challenged 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 rigors 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. For the forgoing reasons, I am not inclined to quash the impugned F.I.R at this stage. This petition having no force is, therefore, **dismissed**.

**Shulam Azam Qambrani**  
Judge