JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 2875/Q/2016

Ali Raza and another
Versus
Federation of Pakistan and another

Petitioners by:	Taimoor Aslam Khan, Advocate
Respondents by:	Mian Abdul Rauf, Advocate General Muhammad Haseeb Ch., Advocate for respondent No. 2 Ms. Hadia Aziz, State Counsel Muhammad Yasin Bhutta, Inspector P.S. Secretariat, Islamabad.
Date of Hearing:	08.12.2016

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, petitioner has prayed for the quashment of FIR No. 100 dated 14.07.2016 U/S 120-B/124-A/505(ii)/34 PPC, PS Secretariat, Islamabad.

2. Brief facts of the instant writ petition are that Inspector Muhammad Yasin Bhutta of P.S. Secretariat, Islamabad visited the area and found banners hanging with the poles and trees at the road near Kashmir Chowk, Murree Road, Islamabad, having photograph of the then Chief of Army Staff, General Raheel Sharif with the inscriptions**:-**

"جانے کی باتیں ہوئیں پرانی۔ خدا کے لیئے اب آجاؤ",
Education, Health, Peace; Move on Pakistan
Cell No. 0321-7946666, 0321-7574444.

The banners were taken into possession and case was registered vide FIR No. 100, dated 14.07.2016, U/S 120-B/124-A/505(ii)/34 PPC, P.S. Secretariat, Islamabad.

3. Learned counsel for the petitioners contends that instant FIR has been lodged by the police in violation of law, offence U/S 124-A is non cognizable and cognizance for the offences U/S 120-B and 505 PPC could only be taken upon a complaint made by or under authority of Federal or Provincial Government or some other officer empowered in this behalf by either of the two governments. Learned counsel further contends that no complaint either

oral or written was initiated by government rather registered on mere interpretation of police officer. He further contends that Sec. 196 Cr.P.C. imposes specific bar to the taking of cognizance unless complaint has been filed by prescribed authority and by the prescribed officer.

4. Learned Advocate General Islamabad contends that challan has been submitted against the accused persons, proper permission and sanction has been obtained from the competent authority before registration of criminal case. He further contends that letter has been issued on 03.08.2016 in pursuance of Justice Division notification dated 31.12.1980 in pursuance of Art. 2 of the Islamabad Capital Territory (Administration) Order, 1980 whereby the Chief Commissioner Islamabad is pleased to accord sanction for prosecution U/S 196 of Cr.P.C. against the accused persons involved in the said FIR. Whereas the learned Advocate General has put his reliance upon 3 different letters dated 03.08.2016 where SSP Islamabad, Additional District Magistrate ICT Islamabad and Deputy Director (Admin) office of the Chief Commissioner ICT have accorded the sanction for prosecution in the above mentioned case. He further contends that requirements of Sec. 196 Cr.P.C. have duly been complied with and the same are appended with Challan U/S 173 Cr.P.C.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that the entire issue was raised on the registration of FIR No. 100, dated 14.07.2016, U/S 120-B/124-A/505(ii)/34 PPC, P.S. Secretariat, Islamabad, on the complaint of SHO, P.S. Secretariat with the following allegations:-

> "استغاثہ زیر دفعہ 34/124-A/120-B/505(ii) ت پ امر دزدن، انسپکٹر معہ محمد لطیف ASI، محمد جاوید 4334/C گن مین بسواری سرکاری گاڑی نمبر GF-787، ڈرائیور طارق 1863/C چلا رہا تھا۔ بسلسلہ گشت علاقہ تھانہ میں بوقت قریب 5:30 بجے شام کشمیر چوک مری روڈ پہنچا تو دیکھا کہ سڑک کنارے بجلی کے کمبوں پر قابل اعتراض پوسٹرز/بینرز آویزں کئے گئے جن پر ذیل تحریر درج ذیل ہے۔
>
> "جانیں کی باتیں ہوئی پرانی خدا کے لیے اب آجاؤ"
>
> (Move on Pakistan - Education Health Peace)
>
> 03217946666 – 03217574444

ارد گرد سے معلوم کرنے پر پتہ کیا گیا ہے کہ یہ قابل اعتراض بینرز/پوسٹرز جن پر قابل اعتراض عبارت تحریر ہے کچھ نامعلوم ملزمان نے عوام کو حکومت وقت کے خلاف بغاوت پر اکسانے اور ریاستی اداروں کے خلاف نفرت پر آمادہ کرنے کے لیے سازش مجرمانہ کرتے ہوئے آویزاں کیے ہیں۔ قابل اعتراض بینرز/پوسٹرز دو عدد فوری طور پر اتروا کر بروئے فرد روبرو گواہان بطور وجہ ثبوت قبضہ پولیس میں لیے گیے ہیں۔ نامعلوم ملزماں نے سازش مجرمانہ کرتے ہوئے درج بالا قابل اعتراض بینرز/پوسٹرز مختلف جگہوں پر آویزاں کر کے عام عوام کو حکومت وقت کے خلاف بغاوت پر اکسایا اور ریاستی اداروں کے خلاف نفرت پر آمادہ کرتے ہوئے حکومت وقت کے خلاف بغاوت کر کے سازش مجرمانہ کے مرتکب ہو کر ارتکاب جرم 124-A/120-B/505(ii)/34ت پ پائی ہے۔"

7. From the perusal of above mentioned contents of FIR the objectionable content which gives rise to the registration of instant FIR is that:-

"جانے کی باتیں ہوئیں پرانی۔ خدا کے لیئے اب آجاؤ"

The same been interpreted by the Inspector / complainant as "قابل اعتراض" by giving his opinion as:-

"کچھ نامعلوم ملزمان نے عوام کو حکومت وقت کے خلاف بغاوت پر اکسانے اور ریاستی اداروں کے خلاف نفرت پر آمادہ کرنے کے لیئے سازش مجرمانہ کرتے ہوئے آویزں کیے ہیں"

8. Above mentioned opinion has been used to meet the requirements of offence U/S 120-B (Criminal conspiracy), 124-A (Sedition), 505(ii) (Statement conducing to public mischief) and 34 (Common intention). However it is settled law that where law requires to do the things in a particular manner that things have to be done in that manner and all other modes stand excluded as no court shall take cognizance of any offence under Chapter VI and IX-A of PPC unless upon the complaint of authority, Sec. 196 and 196-A Cr.P.C. are hereby reproduced as under:-

> ***Sec. 196 Cr.P.C. Prosecution for offences against the State.*** *No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Pakistan Penal Code (except section 127), or punishable under section 108-A, or section 153-A, or section 294-A, or section 295-A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the [Federal Government], or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments.*

Sec. 196-A Cr.P.C. Prosecution for certain classes of criminal conspiracy. *No Court shall take cognizance of this offence of criminal conspiracy punishable under section 120-B of the Pakistan Penal Code.*

(1) In a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the [Federal Government], or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments, or

(2) In a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence, not punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, unless the Provincial Government, or [officer incharge of the prosecution in the District] empowered in this behalf by the Provincial Governments, has by order in writing, consented to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary.

9. Both the above mentioned provisions provide direction and power to proceed in the offences of criminal conspiracy against the State and Sedition etc. but in the instant case, FIR was lodged on 14.07.2016 and letter was issued on 03.08.2016, i.e, after registration of FIR, hence, it can safely be concluded that at the time of registration of criminal case, SHO PS Secretariat was not an authorized person nor even could investigate the matter, neither take any step in this regard but he has lodged the criminal case without seeking any permission or sanction by the Federal Government specially when he was not authorized or not competent to register such kind of FIR and even he has completed the investigation and submitted the Challan before the court and thereafter referred the matter before District Magistrate for compliance of requirements in terms of Sec. 196 and 196-A Cr.P.C., the said letter was responded on the same date and Chief Commissioner ICT, Islamabad vide letter dated 03.08.2016 accorded the sanction. Beside the said letter another document dated 14.07.2016 is also

available on record where District Magistrate has directed SHO PS Secretariat to take action in terms of Sec. 124-A and 120-B PPC against the culprits whereas FIR was lodged by Muhammad Yasin Bhutta, Inspector/SHO, P.S. Secretariat. Hence from the perusal of record it has been observed that the law has not been followed in its true spirit as SHO was not authorized to register any such FIR directly and in present case the complaint does not show that the same has been lodged under the orders of Federal or Provincial Government or any officer empowered in this behalf by either of the two governments.

10. The other factor which plays a key role in the instant FIR is the concept of freedom of expression / speech whereby Article 19 of the Constitution of Pakistan, 1973 provides the concept of freedom of expression but at the same time state could regulate the right to speech when it comes in conflict with the rights of other individuals and equilibrium had to be maintained by placing the reasonable restrictions of freedom of expression in the maintenance of "public order". Reliance is placed upon ***PLD 2016 SC 692, Pakistan Broadcaster Associations V/s PEMRA etc***.

> " *In examining the reasonableness of any restriction on the right to freedom of expression it should essentially be kept in mind as to whether in purporting to exercise freedom of expression one was infringing upon the right of freedom of expression of others, and also violating their right to live a nuisance free life, and as to whether one's right to time and space was being violated. No one could be forced to listen or watch that he may not like to, and one could not be invaded with unsolicited interruptions while eagerly watching or listening to something of his interest. State was not supposed to remain oblivious of such violation/invasions and could not detract from its obligation to regulate the right to speech when it came in conflict with the right of the viewers or listeners. Constitution, though secured the right to free speech, but had not left the same unchecked, and had provided for reasonable restriction as postulated under Article 19 of the Constitution. State had a compelling interest in regulating the right to speech when it came in conflict with the rights of other individuals, or other societal interests.*

> *In a civilized and democratic society, restrictions and duties co-existed in order to protect and preserve the right to speech. It was inevitable to maintain equilibrium by placing reasonable restriction on freedom of expression in the maintenance of "public order". Unless the restriction struck a proper balance between the freedom of expression guaranteed by Article 19 of the Constitution and the social control permitted thereby, it must be held to lack the attributes of reasonableness. Government should therefore strike a just and reasonable balance between the need for ensuring the people's right of freedom of speech and expression on the one hand and the need to impose social control on the business of publication and broadcasting."*

Similarly, in another judgment of the Sindh High Court referred as ***2010 YLR 1647 titled Flt. Ltd. (Dr) Shariq Saeed V/s Mansoob Ali Khan and 5 others***, it was held that :-

> *"The right of free speech extends to all subjects which affect ways of life without limitation of any particular fact of human interest and include in the main term "freedom of expression". Moreover the right of freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication. However, the right of freedom of speech and expression is not unfettered and unbridled. Absolute and un-restricted individual rights do not exists in any modern State and there is no such thing as absolute and uncontrolled liberty."*

In view of above it can safely be concluded that term freedom of expression is not so free that any person is entitled for freedom of speech and expression to the extent that rights of others will be effected but in our case words "اب آجاؤ" have been used with photograph of the then Chief of Army Staff General Raheel Sharif by the accused person, however it could not be assumed on the basis of above mentioned expression that incitement, sedition, conspiracy has been formulated although the expression used in the said banner is a motivational factor in favour of the then Chief of Army Staff, who is admittedly the most loved public figure in Pakistan as his efforts on War on Terrorism, Zarb-e-Azab and his response to the needs of

nation and Pakistan is remarkable which could not be forgotten due to his higher standard of professionalism and integrity, he would be remembered as savior of Pakistan. However no one is allowed to put any expression or language or words in any banner, speech, TV program, newspaper or journals which give an impression that one of the institution should act according to their whims, without jurisdiction or in violation of constitutional mandate, hence it can safely be referred that General Raheel Sharif proves his worth in most difficult times and always acted in accordance with law under the command of Constitution of Pakistan, 1973.

11. The banners used in the entire issue have been considered as threat to democratic set up and political institutions and interpreted as conspiracy, sedition and incitement by the police officer but in my understanding it is an expression used by someone of his own thoughts without considering the factors of freedom of expression U/A 19 of the Constitution of Pakistan, 1973, which is subject to reasonable restrictions as held in 2010 YLR 1647 as well as in PLD 2016 SC 692, concept of freedom of speech given in the recent judgment of Apex Court.

12. The requirements for sedition is very clear from the contents of the Sec. 124-A, i.e., hatred, excites and disaffection towards Federal or Provincial Government established by law, similarly, in order to charge U/S 120-B it is necessary for the offenders to do an illegal act under an agreement in a secret and superstitious manner and the same is dependent upon the illegal act which in present case alleged in the FIR as sedition, whereas the visible representation used in the above referred term is, "اب آجاؤ" does not reflect the disaffection nor even it has been considered a message to an institution to disrupt the government. In order to consider the requirement of sedition I am fortified with the judgments of Indian Courts referred as:-

"Bilal Ahmed Kaloo V/s State of A.P. (1997 SCC 431):

g. Penal Code, 1860 – Ss, 153-A(1)(a) & (b) and 505(2) – Distinction between – Mens rea essential ingredient for both the offences – They cover two different fields of similar colour – Words "whoever makes, publishes or circulates" in S. 505(2) must be interpreted as supplementary to each other and not disjunctively – Appellant spreading the news that Kashmiri Muslims were being subjected to atrocities by the Indian Army personnel – Held, none of the two sections attracted.

d. The main distinction between the two offences is that publication of the word or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153A also and then that Section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

e. The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or language or regional groups or castes and communities it is necessary that at least two such groups or communities should be involved. Merely inciting the felling of one community or group without any reference to any other community or group cannot attract either of the two sections."

Whereas in judgment reported as ***Kedar Nath Singh V/s State of Bihar (AIR 1962 SC 955)*** it was held that:-

"16. This statement of the law is derived mainly from the address to the Jury by Fitzerald, J., in the case of Reg v. Alexander Martin Sullivan (1). In the course of his address to the Jury the learned Judge observed as follows:

"Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the empire. The objects of sedition generally are to induce discontent and

insurrection and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described, as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder."

29. It is only necessary to add a few observations with respect to the constitutionality of s. 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquility; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under s. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that cl. (2) of Art. 19 clearly save the section from the vice of unconstitutionality."

13. The other side of this case is the concept of cognizance where legislature has used negative language in Sec. 196 and 196-A Cr.P.C., hence no court can initiate the process where in present case, FIR was registered by the SHO at his own and authority under the law has not initiated the process whereas number of judgments explained the very concept of cognizance in such like case as under:-

In judgment reported as ***Makhdoom Javed Hashmi V/s The State (2010 P.Cr.LJ 1809)*** it was held that:-

"Section 124-A, P.P.C. was not only non-cognizable, but there was no concept of registration of case thereunder by local police---Cognizance of the case under S. 124-A,

P.P.C. could only be taken on the complaint instituted by the Federal Government, which was lacking in the case--- Federal Government had not either specifically examined the case or taken a decision to file a complaint regarding the commission of the alleged offence---Despite all this, police had taken cognizance of the offence, investigated the case and filed the challan against the accused in which ultimately he had been convicted and sentenced---Entire proceedings started from the registration of the case, investigation, submission of challan in the court, proceedings before the court and culminating into the impugned conviction, were not sustainable in the eyes of law."

Whereas in ***Sabz Ali Khan etc. V/s Inspector General of Police, KPK etc. (2016 YLR 1279)*** it was held that:-

"8. In order to set the criminal law into motion, two modes are provided, one by way of lodging of a report with the police under the section in respect of commission of a cognizable offence and the other by filing complaint as provided by section 200, Cr.P.C. The condition that necessitates the recording of an information and setting the criminal law into motion under section 154, Cr.P.C. are firstly, that it must be an information and secondly, it must be on the face of it relating to a cognizable offence. In the present case, the information provided to rather direction of the IGP, issued to the S.H.O., Police Station Khazana, coupled with section of law i.e. 167/193, P.P.C., prima facie disclosed commission of a non-cognizable offence, therefore, the S.H.O. was having no authority to incorporate the given information in the register provided for registration of FIR. He has transgressed of his power while making recourse straight away for registration of case and has deviated from the legal course available to him. As observed above on receipt of information about commission of a non-cognizable offence, the S.H.O. ought to have made entries in the book maintained for the purpose (roznamcha) and without any investigation should have referred the case to the concerned Magistrate. Simple is that the police officials in non-cognizable case are not competent to investigate an offence under section 155(2), Cr.P.C. without prior permission of the concerned Judicial Magistrate.

There is no cavil with the proposition that in non-cognizable case, the only course open for the police by virtue of section 155(1), Cr.P.C. is to enter the received information in a book and refer it to the Judicial Magistrate or at the most the complainant can redress his grievance under section 200, Cr.P.C. In the case in hand, both the remedies available to the complainant were not adhered to

and recourse has been made to a line of action contrary to the legal provisions of law. We are not hesitant to mention here that if a police officer investigate a case of non-cognizable offence without permission of a Magistrate, his act shall amount to blatant violation of the mandatory direction of law, and its continuation shall be an abuse of process of law. In this respect wisdom may be derived from the following precedents:--

"Mst.Malka Jan v. IGP NWFP Peshawar and 2 others 2000 PCr.LJ 320 (DB), "Haji Rehman SHO and 3 others v. Provincial Police Officer, Government of KPK Peshawar and 3 others" (2012 PCr.LJ Peshawar 1526), "Muhammad Ashiq and 2 others v. S.H.O., Police Station, Northern Cantt. Lahore and 3 others" (2005 YLR 1879) and "Muhammad Shafi v. S.H.O. and others" (2012 YLR 828).""

It was held in judgment reported as ***Abdul Razzaq V/S The State (PLD 2005 Lah 631)*** that:-

"10. In a case reported as Bashir Ahmad v. The State 2000 PCr.LJ 902, his Lordship Faqir Muhammad Khokhar, J. (as he then was) discussed the affect of non-compliance of provisions of section 196, Cr.P.C. in greater details. According to his Lordship, the omission to observe the provisions of section 196, Cr.P.C. is illegality and not curable under section 537, Cr.P.C. His Lordship further observed that non-compliance of provisions of section 196, Cr.P.C. render the subsequent proceedings nullity in the eyes of law. For convenience, the relevant portion of the judgment is reproduced as under:-

"6. The question of the effect of want of requisite sanction for an offence as mentioned in section 196, Cr.P.C. was examined by the Courts in a number of cases. In the case of Labh Singh v. Narinjan Das AIR 1925 Lah. 449. Harrisan, J., took the view that in absence of an order by the Government as required by section 196, Cr.P.C. a Magistrate had no jurisdiction to hold a judicial inquiry. In the cases of (Major-General) Fazal-i-Raziq, Chairman WAPDA, Lahore v. Ch. Riaz, Ahmad and the State PLD 1978 Lah. 1082, and Qaiser Raza v. The State 1979 PCr.LJ 758(2) (Karachi), the criminal proceedings under section 295-A, P.P.C. and issuance of process thereafter without the orders of the appropriate Government or any other person authorizes by it were quashed. In Moin Alam v. The State 1993 PCr.LJ 1913, a Division Bench of the Sindh High Court took the view that omission to file a complaint in terms of section 196, Cr.P.C. in the absence of the sanction of the appropriate Government for an offence under

> *section 121-A, P.P.C. was not an irregularity curable under section 537, Cr.P.C. but an illegality vitiating the conviction and sentence by the learned Special Court. In the case of Salman Taseer v. Judge, Special Court (1993 SCMR 71), the criminal proceedings were initiated and the learned Special Court took cognizance of an offence under section 124-A, P.P.C. without the sanction of the Provincial Government or examination of the case by it as required by section 196, Cr.P.C. The Honourable Supreme Court issued notice to the State as to why the petition should not be converted into appeal and be allowed."*

In judgment reported as ***Muhammad Ishaq etc. V/s The State (1988 P.Cr.LJ 992)*** it was held that:-

> *"A. ---Ss. 561-A & 196--Penal Code (XLV of 1860), S.124-A--Quashing of proceedings--Offence under S.124-A, Penal Code, of which accused was charged was not cognizable-- Case against accused registered without authority of Central or Provincial Government or of some officer empowered in this behalf--Proper procedure for lodging report not followed--Held, taking of cognizance by Trial Court was illegal and void ab initio--Proceedings quashed in circumstances."*

Whereas in judgment reported as ***Salman Taseer V/s Judge, Special Court (1993 SCMR 71)*** it was held that:-

> *"S.124-A---Criminal Procedure Code (V of 1898), S.196---Constitution of Pakistan (1973), Arts. 138 & 268(3) (6)---Cognizance of case under S.124-A, Penal Code---Notice to State as to why petition should not be converted into appeal anti be allowed was issued on the basis of contentions cognizance of the case under S.124-A P.P.C. could only be taken on complaint instituted by the Provincial Government, but as the Provincial Government had specifically not examined the case or taken any decision to file the complaint regarding the occurrence in question, legally therefore there was no complaint, that by virtue of Arts. 138 & 268(3) & (6) of the Constitution of Pakistan (1973), unless the Provincial Assembly, on the recommendation of the Provincial Government, had by law conferred functions on officers or authorities subordinate to the Provincial Government, S.196, Cr.P.C. could not authorise the Provincial Government to empower any officer on its behalf to make a complaint that even assuming that the Punjab Government, Home Department's Notification dated 18-3-1989 was treated as having been validly issued, it could not be general in nature but had to be specific and therefore should be struck down and that since the police took cognizance of*

the case, investigated the same and filed the challan much before. sanction was received and conveyed to the Court, the said proceedings must be treated as void."

Whereas in ***Naveed Ahmad Khan, Advocate etc. V/s SHO, Renala Khurd (1994 P.Cr.LJ 2381)*** it was held that:-

" A comparative reading of sections 154 and 155, Cr.P.C. leads one to the conclusion that under section 154, Cr.P.C, a statutory duty has been cast upon the officer incharge of police station to enter the information regarding commission of any cognizable offence in a register the form of which is prescribed by the Provincial Government. This form is known as F.I.R. in common parlance. As regards recording of information relating to commission of a non-cognizable offence another book is prescribed and it is in that book that substance of such information is recorded. This book is known as "Roznamcha" or "Station Diary". It is in this "Roznamcha" that such an information is recorded and generally the informant or complainant is sent away without action by the police after being given a copy of report so entered. However, in subsection (2) of section 155, if the Police Officer wants to investigate such an information, he has to obtain order from the Magistrate. Section 156(1) of the Code empowers the officer incharge of a police station to investigate any cognizable case without order of a Magistrate. The other subsections of section 156 of the Code are not strictly relevant to the present discussion."

It was held in judgment reported as ***Mst. Tehmina Doltana etc. V/s The State (2001 P.Cr.LJ 1199)*** that:-

".....while coming to a conclusion as to whether the speeches are seditious or not, the intention of the speaker has to be inferred from reading the speech as a whole and the true import of the words used, has to be gathered from the context and the effect they are intended or likely to produce on the audience although the truthfulness or falsity of the allegations levelled by the speakers is not relevant and similarly whether the speeches excited disorder or not is also not relevant for determining the guilt of accused under section 124-A, P.P.C. Mashiur Rehman v. The State (supra) and Emperor V. Sidhashiv Narain (supra) may be referred in this regard. It has also been held repeatedly, by the superior Courts of this country, including in the judgments discussed in this order that the Court has to consider such speeches in fair, free and liberal spirit and not in a narrow-minded or sectarian way nor are we to pick out isolated words or sentences as held by Hamood-ur-Rehman, J. (as he then was) in Sanghad v. The Province of East Pakistan (supra).

> *Furthermore, mere criticism of actions and policies of Government, even though harsh in nature does not attract definition of "sedition" as elaborated in Muhammad Inamullah Khan v. The State (supra). Whether there was a refusal to recognize the Government established by law or a call to rebel against such Government or to resort to un-Constitutional methods by use of force so' as to disturb the public peace or to disrupt the maintenance of essential supplies, is yet to be determined through evidence by the Trial Court. It may be added here that the complainant has not levelled any such allegations against the petitioners in the F.I.R."*

And in judgment reported as ***Abdul Fatah etc. V/s The State (1990 MLD 1087)*** it was held that:-

> *"----Ss. 561-A & 196---Penal Code (XLV of 1860). Ss. 121-A, 123-A & 124-A--Quashing of proceedings---Police was not competent to investigate the case or put up the challan as proper procedure as provided under S. 196 Cr.P.C. had not been followed---Submission of challan and taking of cognizance by Court were thus ab initio void and illegal and amounted to abuse of process of Court - Proceedings were quashed in circumstances."*

In view of above case law studies, following principles are necessary for the cognizance of offences like sedition, criminal conspiracy, statement conducing public mischief:-

a) Offence must contain promotion of feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes.

b) Words, deeds or writing used to disturb the tranquility of the State or to subvert the government.

c) Incite the people to incursion and rebellion.

d) Complaint must be initiated by the Federal or Provincial Government and by authorized person under the law after considering the relevant factors of the alleged incident with reasons.

e) Private persons cannot agitate the matter regarding seditions of charges rather it should be initiated, inquired and investigated by the government or at least on their directions.

f) Criminal conspiracy can only be considered if the other principle offence comes on record on the basis of allegations referred in the complaint in each case whereas, "اب آجاؤ" is not a sedition, therefore, criminal conspiracy is not available in the instant matter.

g) Authorized officer shall state reason before issuing any sanction in terms of Sec. 196 and 196-A Cr.P.C. with speaking order.

From the perusal and verification of letters dated 14.07.2016 and 03.08.2016 issued from the office of District Magistrate ICT, Islamabad as well as Chief Commissioner regarding sanction for prosecution, it has been observed that SHO has put his effort to fulfill the very concept of sanction for prosecution but Chief Commissioner ICT, Islamabad who claims to be the competent authority in terms of Sec. 196 and 196-A Cr.P.C. on behalf of Federal Government failed to give any reason for making opinion from where it can be proved that "اب آجاؤ" amounts to sedition or there is any conspiracy behind all these events even no valid reason in terms of Sec. 24-A General Clause Act has been mentioned as how and under what circumstances the interpretation of photograph of the then General Raheel Sharif, Chief of Army Staff with words "اب آجاؤ" fulfills the requirements of incitement and for that matter there is no evidence available on record nor Advocate General on behalf of Federal Government could explain these concepts. Although the letters of sanction of prosecution are available on record but the same have been issued in mechanical manner without any reason or logic even the person authorized, i.e. Chief Commissioner ICT, Islamabad is not aware of about the very concept of sanction, hence the available letters do not fall under valid sanction on behalf of Federal Government to prosecute the petitioners in case FIR No. 100/2016.

In view of above it can safely be concluded that no sanction was obtained in the FIR No. 100/2016 for the offence U/S 124-A, 120-B, 505(ii)/34 PPC and the said FIR has also been registered without the approval of competent authority as referred in Sec. 196-A Cr.P.C. Moreover no such authority or valid permission was available with the respondents at the time of registration of FIR and in last, the phrase, "اب آجاؤ" does not fall under any type of sedition, incitement or conspiracy in any manner although placing these banners/posters on public thoroughfare without permission of municipal corporation Islamabad is chargeable under Local Government Laws at Islamabad, but at this stage Advocate General contends that challan has been submitted in court and FIR could not be quashed.

14. It is an admitted position under the law that FIR could not be quashed when alternate course of action is available U/S 249-A or under 265-K Cr.P.C. However, it is fundamental duty of this court to protect the citizen from any abuse of process of law. Even from the plain reading of FIR no offence has been made out nor any legal process has been adopted while registration of case. Reliance is placed upon ***2011 SCMR 1937 (Rana Shahid Ahmad Khan V/s Tanveer Ahmad and others:-***

> *"There is no cavil to the proposition that the High Court in exercise of powers even under section 561-A Cr.P.C. can quash the criminal proceedings even at initial stage if it is of the view that if the allegations leveled in the FIR or the complaint, if un-rebutted, no criminal case was made out. The Court may also take into consideration any special circumstances to arrive at a conclusion as to whether the prosecution should be allowed to proceed with the case in the interest of justice or that there was no possibility of conviction of the accused or that the admitted facts make out a case of civil nature or that the malicious prosecution is floating on the record and that no useful purpose would be served in permitting the criminal proceedings to continue. However, the learned High Court in its power under section 561-A Cr.P.C., will ordinarily not interfere with the police investigation in a cognizable offence."*

Therefore, FIR No. 100, dated 14.07.2016, U/S 120-B/124-A/505/34 PPC, P.S. Secretariat, Islamabad, submission of Challan and proceeding by the Magistrate are illegal and hereby quashed.

15. In view of above instant quashment petition is allowed.

(MOHSIN AKHTAR KAYANI)
JUDGE

ANNOUNCED IN OPEN COURT ON 05.01.2017.

JUDGE

Approved for reporting.

Khalid Z.