

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

Writ Petition No. 2377 of 2020

Misbah Musarrat Jaura

Versus

The State and others

Petitioner By : Mr. Khurram Mehmood Qureshi, Advocate.

State By : Mr. Hammad Saeed Dar, State Counsel
alongwith Suleman Shah, Sub-Inspector
and Javaid Iqbal, Sub-Inspector.

Date of Hearing: 18.09.2020

Ghulam Azam Qambrani, J.:- Through the instant writ petition, the petitioner seeks setting aside of proceedings under Section 182 P.P.C/ 'kalandara' dated 09.07.2020, being illegal and based upon malafide.

2. Brief facts of the case as narrated by the petitioner are that the she got registered F.I.R No.279 dated 27.09.2018 under Section 380 P.P.C at Police Station Shalimar, Islamabad, against the accused persons namely Muhammad Qasim Tarrar, Iftikhar Ahmed Tarrar and Mst. Zainab Qasim Tarrar, but later on, the accused persons were acquitted under Section 249-A Cr.P.C., from the charge by the learned trial Court, vide order dated 17.05.2019; that after one year and two months from said order, respondent No.3, in collusion with the accused persons, initiated the proceedings against the petitioner by way of filing of 'Kalandara' dated 08.07.2020 under Section 182 P.P.C., at Police Station Shalimar, Islamabad, hence, the instant petition.

3. Learned counsel for petitioner, *inter-alia*, contended that learned trial Court acquitted the accused persons under Section 249-A Cr.P.C vide order dated 17.05.2019, which does not have the sanctity as an order of acquittal on merits after full-fledged trial, as such, on the basis of said order, it is not justified to initiate proceedings against the petitioner by way of 'Kalandara' under Section 182 P.P.C; that the

petitioner provided all the relevant documents and information to the police in case F.I.R No.279, against the accused persons, but they were acquitted under Section 249-A Cr.P.C; that their acquittal was not after full-fledged trial, as such, proceedings under Section 182 P.P.C by way of '*Kalandara*' are not sustainable and liable to be quashed; that the said proceedings have been initiated against the petitioner after about one year and two months of the order dated 17.05.2019 passed by the learned trial Court; that the petitioner has not been issued any prior show-cause notice regarding the said proceedings, therefore, the same are illegal, unlawful, based on malafide, as such, liable to be quashed.

4. Conversely, learned State counsel vehemently opposed the contentions raised by the learned counsel for the petitioner contending that F.I.R No.279 dated 07.09.2018 was registered against accused persons namely Muhammad Qasim Tarrar, Iftikhar Ahmed Tarrar and Mst. Zainab Qasim Tarrar, who were acquitted under Section 249-A Cr.P.C., from the charge by the learned trial Court vide order dated 17.05.2019; that the information given by the petitioner was not proved, therefore, the proceedings under Section 182 P.P.C. were initiated against the petitioner by filing of '*Kalandara*' dated 08.07.2020. Lastly, urged for the dismissal of the petition.

5. Arguments heard. Record perused.

6. Perusal of the record reveals that the petitioner got lodged F.I.R No.279 dated 27.09.2018 under Section 380 P.P.C at Police Station Shalimar, Islamabad, against the accused persons namely Muhammad Qasim Tarrar, Iftikhar Ahmed Tarrar and Mst. Zainab Qasim Tarrar, who were, later on, acquitted under Section 249-A Cr.P.C., from the charge by the learned Judicial Magistrate, Islamabad-West, vide order dated 17.05.2019, and after about one year and two months from the said order, respondent No.3/ S.H.O initiated the proceedings under Section 182 P.P.C., at Police Station Shalimar, Islamabad, against the petitioner by way of '*Kalandara*' dated 08.07.2020. For ready reference, Section 182 P.P.C is reproduced hereunder:-

"182. False information with intent to cause public servant to use his lawful power to the injury of another person. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant----

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term Which may extend to six months, or with fine which may extend to (three thousand rupees), or with both.

From the above, it is clear that when an information is lodged with bonafide belief and knowledge of its being true, it cannot be termed as false, if the same is not proved in accordance with the legal or procedural standard of proof. Such a complaint or information can be said to be not proved, but not false so to attract the penal provisions of Section 182 P.P.C. During investigation, it was duty of Investigation Officer to have reached to the falsehood of the information on the basis whereof, F.I.R was lodged. When the Investigation Officer came to know that a false information was given, on the basis whereof the accused were summoned or arrested, it was his duty first to have issued show-cause notice to the petitioner/ complainant requiring her to explain her position as to why proceedings under Section 182, P.P.C. may not be initiated against her and after providing opportunity of hearing, if Investigation Officer was satisfied that the information given by the petitioner was found false only then he had to proceed against her, as required under the law. A free hand cannot be given to the police as the same would lay the foundation of injustice to the inconvenience of the complainant. The supervisory jurisdiction of the learned Area Magistrate cannot be brushed aside or violated by the police to set the law into motion against the complainant to initiate the proceedings under Section 182 P.P.C, as such, I am constrained to hold that submission of the "kalandara" before the Assistant

Commissioner, by the police to initiate criminal proceedings under Section 182 P.P.C. against the petitioner, is simply an abuse of process of law and the criminal proceedings being conducted by the Assistant Commissioner are a futile exercise, therefore, same are not justified and not sustainable.

7. I have also noticed that, *prima facie*, the petitioner brought forward the matter regarding theft of household articles into the notice of the concerned police, where-after, F.I.R No.279 was lodged against the accused persons. After registration of the F.I.R, the concerned police prepared challan under Section 173 Cr.P.C and submitted the same before the learned trial Court. It was duty of police to have come to the conclusion during the investigation that the information given by the petitioner was false one and had to place a report before the Magistrate concerned alongwith some cogent evidence that the petitioner had filed a false information, therefore, the law was to take into motion, but in the case in hand, the police itself failed to bring on record any evidence and without reaching to a conclusion, on its own motion filed *kalandara* under Section 182 P.P.C. whereas, acquittal of accused persons from the charge, cannot be termed that the information given by the petitioner was a false one.

8. Under the law, a person, who lays information to police, is entitled to have his/her case judicially determined before he/she is called upon to answer the charge of giving false information, whereas, in the instant case, the abovementioned accused persons were challaned by the Police Station Shalimar, Islamabad, if the police was able to investigate into the matter and to reach on a conclusion that it was a false information, then the accused persons had to be discharged by the Investigation Officer under Section 169 Cr.P.C and there was no need to submit challan against those accused persons before the learned trial Court. In this backdrop, continuation of proceedings under section 182 P.P.C. against the petitioner would amount to abuse of process of law, especially when said proceedings have been initiated by the S.H.O/respondent No.3, after lapse of about one year and two months of the passing of the acquittal order dated

17.05.2018, therefore, malafide on the part of the S.H.O cannot be ruled out.

9. So far as the question of initiation of proceedings under Section 182, P.P.C. against the present petitioner is concerned, respondent No.3/ S.H.O has not issued any show-cause notice to the present petitioner to appear and explain her position, and in the proceedings under Section 182, P.P.C., issuance of show-cause notice was mandatory requirement of law, non-fulfillment of which deprived the petitioner of her legal right of opportunity of hearing. It is settled principle of law that no one should be condemned unheard and opportunity of hearing is the vested right of a party before passing any adverse order against that party. The present petitioner had a right to explain her position that she had acted bonafidly and the complaint filed against accused persons was not tainted with her ill-will or malice. Initiation of proceedings against the petitioner under Section 182, P.P.C. by the Assistant Commissioner, is thus, not justified and is not sustainable in the eyes of law.

10. The said action taken against the petitioner is also violative of the principles laid down in the cases of Muhammad Murad vs. The State (1983 PCr.LJ 1097), and Muhammad Juman vs. The State (2005 YLR 1785) wherein it has been held that *"before any action is taken under section 182 or 211, P.P.C. it is necessary to issue show-cause notice to the accused against whom the proposed action is to be taken"*. The report prepared and submitted by respondent No.3, S.H.O Police Station Shalimar, Islamabad, under section 182, P.P.C. reveals that the same was not based upon any evidence, rather the same was prepared just on the basis of speculations and surmises. After receiving the information regarding the theft of household articles from the house, which was given on rent to the accused persons, respondent No.3 should have taken the matter seriously by the petitioner.

11. The police of our country has wide powers but it is expected that the police in exercise of these functions should be honest and fair, therefore, high-ups of the police should see that no arbitrary or

malafide attitude or excess zeal on the part of the police should interfere with the rights and liberties of the innocent citizens as no responsible person would suggest that the police should unnecessarily hamper in the performance of the essential duty of bringing criminals to justice, but in the instant case, the S.H.O./ respondent No.3 has forwarded the case to the Assistant Commissioner for initiation of proceedings under Section 182 P.P.C against the petitioner, after one year and two months of the acquittal order dated 17.05.2019, passed by the learned Judicial Magistrate Section 30, Islamabad-West. Further, the report prepared and submitted by the S.H.O/ respondent No.3 under Section 182 P.P.C reveals that the same was not based upon any evidence. There is neither any oral assertion nor any documentary evidence available on record to show that the petitioner committed the offence attracting the provisions of Section 182 P.P.C, which shows malafide on the part of S.H.O/ respondent No.3.

12. Under the above circumstances, I am fully convinced with the arguments of the learned counsel for the petitioner and of the considered view that no proceedings under Section 182 P.P.C can be initiated by the Assistant Commissioner, in the manner as taken in the present case. Accordingly, this petition is **accepted** and the proceedings under Section 182 P.P.C, pending against the petitioner before the concerned Assistant Commissioner/ Magistrate 1st Class, Saddar, Islamabad, are hereby **quashed**.

—(GHULAM AZAM QAMBRANI)
JUDGE ✓

Announced in open Court on 22nd day of September, 2020.

Approved for reporting — JUDGE