

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

**Writ Petition No.863/2020**

**Arsalan Awais**

**Versus**

**The State etc**

Petitioner by: Mr. Sajjad Haider Malik, Advocate,  
Respondents by: Syed Shahbaz Shah, State Counsel,  
Mr. Shehryar Tariq, Advocate  
Abdul Hameed S.I.  
Date of Decision: 12.08. 2020.

**FIAZ AHMAD ANJUM JANDRAN, J:** Through the instant writ petition, petitioner (Arsalan Awais) prays for quashment of FIR No.461, dated 26.09.2019, under Sections 420, 468, 471, 406 and 448 PPC, Police Station Koral, Islamabad.

2. Precisely, facts necessary for the disposal of instant writ petition are that respondent No.2/complainant through Ishfaq Ahmad and Sajjad Abbasi co-accused, contacted the petitioner for purchase of a shop in Falcon Heights, Gulberg Green, Islamabad, who posed himself as owner of the said property and further introduced her to co-accused Ahmad Jawad on the pretext that the latter has purchased that shop from him, therefore, she should contact said Ahmad Jawad Butt; that on the assurance of petitioner, she entered into agreement to sell with co-accused Ahmad Jawad Butt on 14.12.2018 and paid sale consideration of Rs.9.5 Million; that petitioner also gave her the allotment letter through his accountant Imran Hussain; that possession of the shop was handed over to her on that very day; that she rented out the shop to one Sikander Hayat but subsequently, after about six months, petitioner along with co-accused, in connivance with each other, took over the possession of her shop and thus committed fraud. Hence, the instant FIR.

3. Learned counsel for the petitioner contends that the very registration of the instant FIR is tainted with *malafide* on the part of the complainant who, in order to grab money, involved many persons by throwing a wider net; that malafide can be witnessed from the fact that on one hand she alleges that fraud has been committed with her on the basis of forged documents, while on the other hand on the basis of same documents, filed a suit for declaration, possession, permanent injunction and recovery of the amounts, which is pending before the court of competent jurisdiction; that the dispute is of civil nature which has been converted into criminal just to exert pressure; that it was the complainant herself who failed to abide by the terms of allotment letter by not making the payments in time which led to cancellation of her allotment and that further proceedings would be wastage of time and abuse of process of law. Learned counsel placed reliance upon case law cited as *Muhammad Nawaz V. SHO P.S. Sabzimandi and others (2017 PCr.LJ 133) and Shoukat Ali V. The State and others (2019 PCr.LJ 1622).*

4. Learned State Counsel assisted by the learned counsel for the complainant, repelled the above submissions. It is contended that receiving of money, agreement and handing over of possession of the shop to the complainant are admitted facts and it is also petitioner's case that the complainant committed default in making payments as per allotment letter, therefore, these facts require factual inquiry not permissible at this stage and that an FIR can only be quashed in exceptional case. It is further argued that where the disputed questions of facts are involved, normal course would not be allowed to be deflected. Reliance is placed upon case law reported as 1991 PCr.LJ 2177, 2016 PCr.LJ Note 69, 2006 SCMR 276 and 2008 SCMR 76.

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5. Heard, record examined.

6. It is settled principle that, this Court under Article 199 of the Constitution and Section 561-A of Criminal Procedure Code 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 and the complainant as well 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. This would also amount to lay the complainant in chaos and uncertainty that he/she had been deprived of the right to prove his/her case which if allowed would have been proved.

7. The agreement, receipt of money are although admitted by some of the accused but are denied by the present petitioner, furthermore handing over of possession and deprivation of the complainant from said possession, actual ownership of the said shop, whether lies with the present petitioner or the co-accused Ahmad Jawad Butt, are the disputed facts that require factual inquiry which is not permissible at this stage and in such eventuality, 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 sought from the law laid down by the Hon'ble Apex Court of the Country in PLD 2016 SC 55 (Muhammad Farooq V. Ahmed Nawaz Jagirani and others) wherein it was held that: -

*“the High Court in exercise of inherent jurisdiction cannot strangle the trial by overstretching its jurisdiction*

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*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.”*

8. As observed above, in presence of disputed questions of facts 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 PLD 2013 SC 401 (Director-General, Anti-Corruption Establishment, Lahore and others. V. Muhammad Akram Khan and others) 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 case of Muhammad Nawaz (Supra), the facts and question of law are quite different as there were two parties who entered into an agreement regarding sale of 4-Marla house, wherein breach was committed and suit was filed for specific performance while in case of Shoukat Ali (Supra), there was partnership inter-se the complainant and the accused and pursuant to a settlement, the accused paid some amount but failed to pay the outstanding amount within the stipulated period. As against these facts, in the present case, the stance of one of the accused is that the amount has been received by the co-accused and he has no concern whatsoever with the alleged deal, while the

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claim of the co-accused is that the main role is of the petitioner and as per the investigation, one of the accused found not involved in the commission of alleged offence, therefore, the facts of the instant case are quite distinct with those of referred citations, therefore, the case laws do not extend any help to the petitioner. Even otherwise, it is settled principle that every criminal case is to be decided in the light of its own peculiar facts and circumstances.

10. 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