

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

W.P No. 1992/Q/2019

Aurangzeb Khan

Versus

The State etc.

Petitioner by: Ch. Muhammad Nasir, Advocate

Respondents No. 3 by: Syed Qamar Hussain Sabzwari,
Advocate

State by: Barrister Ayesha Siddique Khan,
State Counsel.
Iftikhar Ali, S.I, P.S Bani Gala,
Islamabad.

Date of Decision: 11.12.2019.

.....

MOHSIN AKHTAR KAYANI J. Through this writ petition, the petitioner has prayed for quashing of F.I.R No. 110, dated 06.05.2019, registered U/s 506, 147, 447, 511, 149 PPC, P.S Bani Gala, Islamabad.

2. Brief facts referred in the instant writ petition are that above mentioned criminal case has been lodged on the complaint of Major Muhammad Qasim (R)/respondent No.3 with the allegation that on 21.04.2019 at about 10:00 a.m, he alongwith servants namely Luqman, Naqeeb Ullah, Muhammad Ashraf visited his land, when Aurangzeb, Shamraiz, Iftikhar Mustafa, two unknown persons alongwith some ladies trespassed on his land and tried to dispossess the complainant, but in vain and the accused person extended life threats and have also damaged the crops in the said land. The complainant has also got lodged similar type of FIRs against the present petitioner and other co-accused vide FIR Nos. 251/18, 162/16, 142/16, 102/16, 88/16, P.S Bani Gala, Islamabad, which are pending before the competent Courts.

3. Learned counsel for the petitioner contends that instant F.I.R has been lodged with malafide and from bare reading of the FIR, no offence is made out and the instant FIR is replica of the previous five FIRs lodged by the respondent No.3 in Police Station Bani Gala. It has further been contended that the FIR against the petitioner is based upon misuse of authority by the local police at the behest of the complainant and the instant FIR is liable to be quashed.
4. Conversely, learned counsel for the complainant contends that complainant is the owner of land situated in Mouza Mohra Noor, measuring 19 Kanals and petitioner as well as other co-accused are continuously interfering in the lawful possession of the respondent and complainant has lodged five different FIRs against the petitioner and co-accused, which are pending adjudication before the competent Courts. Learned counsel further contends that parties are stuck in litigation qua the land before the competent Civil Court and possession is with the respondent and all these matters could not be resolved in the present proceedings as challan has been submitted in the Court.
5. Learned State Counsel alongwith Investigation Officer contends that challan has been submitted in the Court and it is appropriate that matter may be referred to the learned Trial Court with certain direction to conclude the matter as early as possible.
6. Arguments heard, record perused.
7. Perusal of record reveals that the complainant/respondent No.3 has lodged F.I.R No. 110, dated 06.05.2019, registered U/s 506, 447, 511, 149 PPC, P.S Bani Gala, Islamabad regarding interference in his lawful possession on 21.04.2019 by the petitioner as well as other co-accused, who have allegedly extended life threats to the complainant.

8. Record further reveals that the complainant has already got lodged five different FIRs i.e. 251/18, 162/16, 142/16, 102/16, 88/16, P.S Bani Gala, Islamabad in similar offences of attempt to trespass on his land, which are subjudice before the competent Court.

9. The main grievance of the petitioner is regarding registration of instant FIR on similar charges as the same has already been referred in previous FIRs with the connivance of local police by misuse of their authority. I have considered the arguments of present petitioner and also gone through the record of instant case as well as other cases and as such instant FIR could not be quashed if other similar stances have been referred in previous occasions as all the FIRs have been lodged on different point of time and the same are pending before the Competent Courts. The ground for quashing of FIR has not been justified by the petitioner in any manner as petitioner has failed to demonstrate that no offence is made out from bare reading of the FIR. Even otherwise, the civil dispute is also pending with the Competent Court and any observation passed by this Court may effect the case of either party in the pending proceedings.

10. It is trite law that provision U/s 561-A, Cr.P.C never be considered as an additional and alternate remedy nor it could override express provision of law, wherein the normal remedy is provided U/s 249-A Cr.P.C and 265-K, Cr.P.C as the case may be. The remedy U/s 561-A Cr.P.C could only be invoked, when no remedy is available. Reliance is placed upon reported judgment **2005 SCMR 1544 (The State through Advocate-General, Sindh High Court of Karachi Vs. Raja Abdul Rehman), PLD 2013 Supreme Court 401 (Director –General, Anti Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others.)**

11. The challan has been submitted in the Court in this case and it is trite law that once challan has been submitted in the Court and the learned Trial Court has already taken the cognizance of the matter in such situation, it is not allowed to by-pass or circumvent the ordinary remedy in normal course of the event. Reliance is placed upon **PLD 2016 Supreme Court 55 (Muhammad Farooq Vs. Ahmed Nawaz Jagirani and others)**, therefore, allowing instant writ petition would amount to circumvent the ordinary course of law, especially when the matter is based upon disputed question of facts.

12. For what has been discussed above, instant writ petition stands **dismissed** for being meritless. However, the learned Trial Courts seized with the instant F.I.R No. 110, dated 06.05.2019, registered U/s 506, 447, 511, 149 PPC, P.S Bani Gala, Islamabad as well as other FIR Nos. 251/18, 162/16, 142/16, 102/16, 88/16, P.S Bani Gala, Islamabad are directed to conclude the trial of these cases within next six (06) months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN