

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P No.645-Q of 2017

Sheikh Abdul Sattar
Vs
The State & others

Date of Hearing: 09.03.2020

Petitioner By: Mr. Ahmad Nawaz Bhatti, Advocate.

State by: Hafiz Mazhar Javed, State
Counsel with Khalid ASI.

Ghulam Azam Qambrani, J: The petitioner namely (Sheikh Abdul Sattar) has invoked the jurisdiction of this Court by filing this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A of Cr.P.C for quashing of FIR No.18 dated 19.01.2017, under Section 489-F PPC, registered with Police Station, Margalla, Islamabad.

2. Briefly stated facts of the instant petition are that complainant lodged FIR No.18, dated 19.01.2017, under Section 489-F PPC, registered with Police Station, Margalla, Islamabad, stating therein that the petitioner issued a cheque for an amount of Rs.2,530,000/- which was dishonoured thrice, hence the instant FIR.

3. Learned counsel for the petitioner contended that civil suit was filed by the complainant which was decreed by the learned Court of Civil Judge, Islamabad against the petitioner and in consequence upon respondent No.4 filed execution petition. The execution proceedings are of penal nature and the registration of FIR against the petitioner tantamounts to double jeopardy,

hence Article 13 of the Constitution and Section 403 Cr.P.C comes into field, therefore, FIR may kindly be quashed.

4. Conversely, learned State Counsel opposed the contentions of learned counsel for the petitioner contending that the challan has already been submitted before the learned Trial Court and the petitioner has been declared proclaimed offender and urged for dismissal of the petition.

5. I have heard the arguments of learned counsel for the petitioner, learned State Counsel and have perused the record with their able assistance.

6. Perusal of the record reveals that there was a business transaction between the parties. Consequently, respondent No.4 approached the Court of law by filing a civil suit against the petitioner which was decreed vide order dated 14.10.2015. The petitioner failed to pay the decretal amount to the respondent No.4 and during the proceedings of execution, the petitioner issued cheque No. 23765574 worth of Rs.2,530,000/- which on presentation was dishonoured thrice and resulted into registration of FIR.

7. Perusal of record further reveals that respondent No.4 filed an affidavit before the learned Trial Court that he had no objection if pre-arrest bail of the petitioner is confirmed. On the basis of said affidavit, pre-arrest bail of the petitioner was confirmed by the Court and after usual investigation, challan of the case was submitted.

8. Record further reveals that the petitioner failed to appear before the learned Trial Court and proceedings under section 87/88 Cr.P.C were carried out. Resultantly, the petitioner was declared proclaimed offender vide order dated 18.12.2018. The petitioner is fugitive from law and has not approached this Court with clean hands, therefore, he is not entitled to discretionary relief.

9. It is important to mention that the scope of quashing of FIR or interfering in the investigation is limited while exercising power of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard the principles and laws as enunciated and laid down by the Hon'ble Supreme Court of Pakistan in the case titled as "Director General, Anti Corruption Establishment, Lahore & others Vs Muhammad Akram Khan & others" [PLD 2013 SC 401], "Rehmat Ali & others Vs Ahmad Din & others" [1991 SCMR 185], "Miraj Khan Vs Gul Ahmad & three others" [2000 SCMR 122], "Muhammad Mansha Vs Station House Officer, Police Station City Chiniot, District Jhang & others" [PLD 2006 SC 598], "Col. Shah Sadiq Vs Muhammad Ashiq & others" [2006 SCMR 276], "Emperor Vs Kh. Nazir Ahmad" [AIR 1945 PC 18], & "Shahnawaz Begum Vs. The Hon'ble Judges of the High Court of Sindh & Baluchistan & Others" [PLD 1971 SC 677] are well settled by now and may be summarized as follows:-

- (i) The High Court is not vested with the power to quash an FIR under section 561-A of Cr.P.C on the grounds of malafide or disclosing a civil liability.
- (ii) Resort to the provisions of Section 561-A of Cr.P.C or Article 199 of the Constitution for quashing a criminal case is an extraordinary remedy, which can only be granted in exceptional circumstances.
- (iii) As a general rule powers under Article 199 of the Constitution cannot be substituted for the trial, nor can any deviation be made from the normal course of law.
- (iv) The consideration to be kept in view for quashing of a criminal case is whether the continuance of the proceedings before the trial Court would be a

futile exercise, wastage of time and abuse of the process of the Court, and whether an offence on the admitted facts is made out or not.

- (v) The exercise of powers and jurisdiction under Article 199 of the Constitution is discretionary in nature; however, the same are to be exercised in good faith, fairly, justly and reasonably, having regard to all relevant circumstances.
- (vi) While considering quashing of a criminal case in exercise of powers vested under Article 199 of the Constitution, the High Court is required to take into consideration the various alternate remedies available to a petitioner before a Trial Court, inter alia, under sections 249-A and 265-K Cr.P.C.
- (vii) Besides the above, the other alternate remedies available under the law have been enumerated by the August Supreme Court in the case of 'Col' Shah Sadiq Vs Muhammad Ashiq and others' [2006 SCMR 276] as follows:-
 - (a) To appear before the Investigating Officer to prove their innocence.
 - (b) To approach the competent higher authorities of the Investigation Officer having powers vide Section 551 of Cr.P.C
 - (c) After completion of the investigation, the Investigation Officer has to submit the case to the concerned Magistrate, and the concerned Magistrate has the power to discharge them under section 63 of the Cr.P.C in case of their innocence.
 - (d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.
 - (e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.
 - (f) There are then remedies which available to the accused person who claims to be

innocent and who can seek relief without going through the entire length of investigation.

- (viii) A criminal case registered cannot be quashed after the trial court has taken cognizance of a case, as the law has provided an aggrieved person with efficacious remedies for seeking a premature acquittal, if there is no probability of conviction or a case is not made out.
- (ix) Prior to exercising jurisdiction under Article 199 of the Constitution, the High Court has to be satisfied that the trial Court has neither passed an order nor any process issued.
- (x) Courts exercise utmost restraint in interfering with or quashing investigations already in progress, pursuant to statutory powers vested in the police or other authorities. Courts do not interfere in the matters within the powers and jurisdiction of the police, particularly when the law imposes on them the duty to inquire or investigate.

10. In the light of above stated law and principles, this Court is not inclined to quash the FIR at this stage. This petition being without merits is, therefore, **dismissed**.

~~(Ghulam Azam Qambrani)~~
Judge

Announced in Open Court, on this 15th day of April, 2020.

~~Ghulam Azam Qambrani~~
Judge

S.Akhtar