

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 537 of 2021

Rana Mubashir Ahmed

Versus

The State and others.

| S.No. of order/ proceeding | Date of order/ proceeding | Order with signature of Judge and that of parties or counsel where necessary. |
|-----------------------------------|----------------------------------|---|
| 06. | 12.05.2022 | Mr. Zafar Kundi, Advocate for the petitioner. Mr. Muhammad Zafar Khokhar, Advocate for the respondents No. 6 & 7. Mr. Fahad Ali, State Counsel. Nawazish Ali, S.I. |

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioner has impugned order dated 11.01.2021, passed by learned Additional Sessions Judge-IV, West-Islamabad, whereby the petition filed by the petitioner U/S 22-A Cr.P.C for registration of F.I.R was dismissed.

02. Succinctly stated facts of the case are that the petitioner filed applications

before the S.H.O P/S Koshar, Islamabad on 25.09.2020 and before the A.S.P Koshar, Islamabad on 01.10.2020 for registration of case against respondents No. 6 & 7. However, police did not register the same, consequently the petitioner left with no option but to file the petition under Section 22-A Cr.P.C, which was dismissed vide impugned order dated 11.01.2021, hence the instant writ petition.

03. Learned counsel for the petitioner, *inter alia*, contends that impugned order dated 11.01.2021, is illegal and the same has been passed in violation of law and dictums laid down by the Superior Courts of the country; impugned order is erroneous, not tenable under the law; U/S 154 Cr.P.C, the S.H.O is bound to register the case whenever matter regarding commission of cognizable offence is reported to the police but he has failed to perform his legal obligations, hence

impugned order be set aside and direction be issued to the S.H.O concerned for registration of case against respondents No. 6 & 7.

04. On the other hand, learned State Counsel assisted by learned counsel for respondents No. 6 & 7 controverted the arguments advanced by learned counsel for the petitioner and stated that contents of the proposed F.I.R clearly disclose that no cognizable offence has been made out; impugned order has rightly been passed by the learned ASJ-IV, West-Islamabad; Superintendent of Police Investigation / Complaints has also submitted his report that no cognizable offence has been made out, and has prayed for dismissal of instant writ petition.

05. Arguments heard, record perused.

06. Under Section 154 Cr.P.C, Police Officer is under statutory obligation to register case, where the complaint

discloses a cognizable offence. The petitioner has submitted an application to the S.H.O P/S Koshar, Islamabad on 25.09.2021, wherein he has alleged that someone has changed the lock of the Ladies Fitness Institute owned by him. It is further alleged in the proposed F.I.R that it might be possible that some articles have been stolen and has apprehension that said act has been done by proposed accused / respondents No. 6 & 7. Lastly, it has been prayed in the application that after conducting an inquiry, proceedings should be initiated against the delinquents.

07. After this, second application dated 01.10.2020, was submitted by the petitioner before the A.S.P Koshar, Islamabad, wherein it is alleged that all the imported machinery from the Ladies Fitness Institute was missing and the old furniture was placed inside the gym. It is also alleged that through reliable sources,

it transpired to the petitioner that the imported machinery amounting to Rs. 2,00,00,000/- (Rupees Twenty Million) have been stolen by the proposed accused / respondents No. 6 & 7.

08. The contents of two applications filed by the petitioner before the S.H.O and the A.S.P Koshar, Islamabad are entirely different in nature. During the pendency of petition U/S 22-A Cr.P.C, learned Additional Sessions Judge-IV, West-Islamabad sought report from the Superintendent of Police Investigation / Compliant, Islamabad who has categorically mentioned in his report that there is a civil litigation pending between the complainant and the proposed accused, they are real brothers, both the parties were called and heard in front of each other at length. The dispute between the parties is of civil nature and the parties are trying to convert the civil liability into criminal one. S.P, Investigation /

Complaints has further mentioned in his report that, during inquiry no occurrence has been found committed and even facts were not verified during probe at the place of occurrence, the petitioner failed to produce any evidence in support of his version, civil cases between the parties are pending in the Civil Court of competent jurisdiction, it was recommended that the petition may kindly be dismissed being meritless.

09. It is evident from record that the application submitted by the petitioner to the S.H.O P/S Kohsar, Islamabad neither contains any plausible evidence, nor source of information of the petitioner has been mentioned regarding commission of offence, rather only mentioned, "possible" and "apprehended" that the lock of the Ladies Fitness Institute has been replaced by the proposed accused / respondents No. 6 & 7. The said allegations do not constitute cognizable offence.

10. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155).**

(ii) **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar**

Awan and others (2020 SCMR 260).

(iii) **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919).**

(iv) **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28).**

(v) **Shajar Islam Vs. Muhammad Siddique and 2 others (PLD 2007 SC 45).**

11. Even the petitioner has alternative statutory remedies under Sections 156(3) & 190 Cr.P.C as well as remedy to file criminal / private complaint under Section 200 Cr.P.C to press and prove its allegation before the Court of Competent jurisdiction.

12. Learned counsel for the petitioner has failed to point out as to how the impugned order dated 11.01.2021, was the consequence of error of law or without jurisdiction or in excess of jurisdiction.

13. In view of the above prospective,
instant writ petition has no merits and the
same is **dismissed**.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-