

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

W.P No. 2006/2020

Sadaqat Mehmood and others

Versus

SSP Islamabad and others.

Petitioners by: Malik Saqib Mehmood, Mr. Jamil Fayaz
Rajpoot, Advocates.

State by: Mr. Muhammad Sohail Khurshid, State
Counsel.
Mateen Chaudhry, S.I/respondent No.3.

Date of hearing: 26.08.2020.

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MOHSIN AKHTAR KAYANI J. Through the instant writ petition, petitioner has prayed for quashing of F.I.R No. 264/2020, dated 19.07.2020, registered U/s 188, 337-H(ii) PPC, P.S Lohi Bher, Islamabad.

2. The laconic facts referred in the instant petition are that Mateen Chaudhry/respondent No.3/Complainant has got lodged the instant F.I.R against unknown persons for committing violation of COVID-19 SoPs as well as Section 144 Cr.P.C.

3. Learned counsel for the petitioners contends that instant F.I.R has been lodged without adhering to the legal procedures as non-cognizable offence is made out in terms of Section 154 Cr.P.C and the offences Under Section 188 and 337-H (ii) PPC are non-cognizable and registration of very F.I.R without prior permission of concerned Illaqa Magistrate is against the law.

4. Conversely, learned State Counsel alongwith I.O/respondent No.3 contends that the petitioners are involved in indiscriminate aerial firing on a marriage ceremony even violated COVID-19 SoPs as no public gathering was allowed in the COVID-19 Pandemic.

5. Arguments heard and record perused.
6. Perusal of record reveals that F.I.R No. 264/2020, dated 19.07.2020, registered U/s 188, 337-H(ii) PPC, P.S Lohi Bher, Islamabad has been lodged on the complaint of respondent No.3/Mateen Chaudhry, Sub Inspector, P.S Lohi Bher, Islamabad with the allegation that he received information that some unknown persons are resorting to indiscriminate aerial firing in the marriage of Umar S/o Ayaz Nazir in village Sher Dhamial. The respondent No.3/complainant reached at spot about 12:55 a.m and recovered 20 fire empties of .30 bore pistol and after inquiry, he nominated five individuals in this case and has specifically referred that due to COVID-19, Section 144 Cr.P.C was imposed on a public gathering in marriage ceremony and as such the said notification has been violated.
7. I have gone through the record and confronted the Investigation Officer to produce the notification under Section 144 Cr.P.C, issued by the Sub Division Magistrate, the same has been placed on record, whereas the said notification has been issued in line with the decision taken in the meeting of the National Coordination Committee of COVID-19 (NCC) held on 01.06.2020, whereby all educational and training institutions, Deeni Madaris, Shrines, Marriage halls, Business centres, Expo Halls, Restaurants, , Parks, Play areas, Beauty Parlors, cinemas, public processions shall remain close. Even the complete ban has been imposed on the Sports events, social, religious and gatherings of any other purpose at any place public or private.
8. While considering the said notification, there is no reference of Section 144 Cr.P.C as required under the law, therefore, the same has to be considered as ordinary notification, issued for general purpose in line with the decision taken by the National Coordination Committee of COVID-19 and not by District Magistrate for the purpose of taking any action in terms of Section 144 Cr.P.C, which entails criminal

prosecution in terms of Section 188 PPC for disobeying the order duly promulgated by public servant, in which a specific direction to restrain from committing certain act was made, but the same was disobeyed, therefore, such persons, who are found disobedient of the directions, which causes annoyance or injury or risk, be punished with simple imprisonment of one month or with fine or with both, but this aspect is not visible in the said notification, therefore, the District Magistrate at the most can seal such premises or gatherings in order to safeguard the general public in the light of notification of COVID-19 Pandemic, however, stance of the prosecution has not been considered valid in the said notification, especially, when alleged accused persons fled away from the scene and were not arrested on spot.

9. I have also gone through the another notification dated 14.07.2020, whereby District Magistrate, ICT, Islamabad has imposed Section 144 Cr.P.C, in which restrictions was imposed that no person shall carry firearms or display firearms within the revenue/territorial limits of District, Islamabad and as such any person found involved in this regard shall be prosecuted.

10. While considering this order, there is no cavil to the proposition that restriction was imposed and disobedience to the order duly promulgated by public servant is illegal, justiciable to take action in terms of Section 188 PPC.

11. In order to prove the above requirements of the offence, the prosecution is under obligation to justify that public servant, who has issued the order has lawful authority to promulgate the same, the said concept has to be followed in terms of Section 195(1) Cr.P.C, whereby restriction has been imposed upon Court that no Court shall take cognizance, prosecution for contempt of lawful authority for public servants; of any offence punishable under Sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public

servant concerned, or of some other public servant, who is subordinate to the authority, who has issued the order with prior sanction and as such the F.I.R has been lodged on the direct complaint of Mateen Chaudhry/respondent No.3, who received the information that someone has resorted to aerial firing in a marriage ceremony, however, entire complaint is silent that no specific permission has been sought prior to registration of criminal case, even the same has not been processed before the Competent Authority for its sanctions, not a single person has been arrested on spot as such requirements of law envisaged in terms of Section 195 Cr.P.C have not been adhered to the F.I.R in non-cognizable cases could not be registered and as such it amounts to abuse of process of law and proceedings were quashed accordingly. Reliance is placed upon case law reported as **PLD 1996 Peshawar 37 (Muhammad Shohaib Vs. Ghulam Samdani and others), PLD 2001 Peshawar 89 (Sana Ullah Khan Vs. The State and another), 2001 PCr.LJ 1196 [Karachi] (Malik Muhammad Ayoob Awan Vs. Akhtar Lodhi, S.H.O, Police Station Shahr-e-Faisal, Karachi and others).**

12. Similar view has also been taken in case law reported as **PLD 2005 Lahore 386 (Muhammad Suleman and others Vs. Abdur Razzaque and others), 1997 MLD 2532 (Riazuddin and another Vs. The State), 2014 MLD 1645 [Peshawar] (Muhammad Tanvir Khan Kundi and 4 others Vs. Ashraf Khan and 3 others), 2012 YLR 1097 [Peshawar] (Manzoor Ahmed and 5 others Vs. The State and another), 1993 PCr.LJ 2306 (Shah Muhammad Khan Vs. The State), PLD 1975 Lahore 1315 (Sharif and 4 others Vs. The State.), 2001 PCr.LJ 593 [Lahore] (Muhammad Idrees Vs. The State and 3 others.).**

13. Learned State counsel has also been confronted regarding the proper procedure to be adopted in such type of cases in terms of

Section 195 Cr.P.C, whereupon, he conceded that the proper procedure has not been adopted by the complainant in this case, rather he directly lodged the F.I.R and has become the Investigation Officer simultaneously. All these acts of respondent No.3 are violation of law.

14. It is trite law that the F.I.R could only be quashed if no offence is made out and the very registration of F.I.R is illegal or against the law and as such it is also settled by different pronouncements that things have to be done in a specific manner, which has been provided under the law, all other modes in performing the actions stand excluded. Reliance is placed upon the case law reported as **PLD 2017 Islamabad 64 (Ali Raza and another Vs. Federation of Pakistan and another)**, **PLD 2010 Supreme Court 759 (In the matter of Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010)**, **PLD 2013 Supreme Court 255 (Muhammad Anwar and others Vs. Mst. Ilyas Begum and others)**.

15. ^{what} For/has been discussed above, there is no cavil to the proposition that very registration of F.I.R is in violation of Section 195 Cr.P.C and even the Investigation Officer has not obtained any prior permission as of today for the purpose of investigation in non-cognizable matters, which is the key requirement, therefore, said defects at this stage are non-curable, therefore, instant petition is **ALLOWED** and F.I.R No. 264/2020, dated 19.07.2020, registered U/s 188, 337-H(ii) PPC, P.S Lohi Bher, Islamabad is hereby **QUASHED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 8th Sept 2020

JUDGE