

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

W.P No.375-Q of 2020

Asif Mehmood
Versus
The State & another

Petitioner By: Mr. Zahid Ayub Rathore, Advocate.
Respondent No.2 by: Raja Kaiser Abbas, Advocate
State by: Mr. Zohaib Hassan Gondal, State
Counsel with Shahid Sub-Inspector.

Date of decision: 03.06.2020

GHULAM AZAM QAMBRANI, J: Through this petition, the petitioner has invoked the jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C with the following prayer;-

“In the circumstances, it is, respectfully prayed that this Hon’ble Court may kindly be accepted the instant petition and may graciously be ordered for quashing the FIR No. 205/19, dated 15.10.2019 Under Section 496 PPC, P.S Margalla, Islamabad in the best interest of justice.”

2. Briefly stated facts of the instant case are that respondent No.2/ complainant, Iqra Bibi daughter of Jumma Khan, lodged F.I.R No.205 dated 15.10.2019 with the Police Station Margalla, Islamabad, under Section 496 P.P.C with the averments that she was residing at Qadeer Road, Khanna Daak, Islamabad. It has been alleged that the petitioner offered her for marriage, which was accepted by her. It has further been stated that the petitioner also demanded her hand from her mother and stated that nikah will be held at F-8 Katchehry, Islamabad. It was Sunday, they went to

Katchehry for the purpose of nikah and on the pretext of marriage, the petitioner took her signatures on the form of nikahnama and assured her that marriage has been solemnised. That in this episode, Munshi Aziz, Nouman and one unknown person who pretended to be nikah-khawaan, were involved with the petitioner. It has further been alleged that petitioner committed zina with her and when she demanded nikahnama from him, he postponed the matter on the one pretext or the other, but did not provide the same to her, hence, the instant F.I.R.

3. Learned counsel for the petitioner contended that there is delay of two months in registration of instant F.I.R which shows malafide on the part of complainant; that prior to lodging the above said F.I.R, mother of respondent No.2 also lodged an F.I.R No.16 dated 18.01.2018 under section 365-B, 376, 452, 380 & 344 P.P.C with Police Station Shahzad Town, Islamabad, where the complainant/ respondent No.2 sworn an affidavit, stating therein that she had contracted marriage with one Dildar (accused in the said F.I.R) with her free will and consent and nobody had abducted her; that no offence has been committed by the petitioner. Lastly, prayed for quashment of the instant F.I.R.

4. On the other hand, learned counsel for respondent No.2 assisted by learned State counsel opposed the contentions raised by the learned counsel for the petitioner and submitted that the challan has already been submitted before the learned trial Court and that the petitioner has alternative remedy of filing application under Section 249-A or 265-K Cr.P.C as the case may be before the learned trial Court. Lastly, prayed for the dismissal of the instant petition.

5. Arguments heard, record perused.

6. The stance of the petitioner that he has committed no offence and he has been involved malafidely, is a question to be determined by the learned trial Court after recording of prosecution evidence,

which exercise cannot be done by this Court under its extraordinary jurisdiction. It is a fact that scope of quashing of F.I.R or interfering in the investigation is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. Resorting to the provisions of Section 561-A Cr.P.C, or to the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking quashment of a criminal case, is an extraordinary remedy, which can be invoked only in exceptional circumstances and the said provisions can never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused. Determination of the correctness or falsity of the allegations levelled against the petitioner in the F.I.R, is an obligation cast upon the Court prescribed by the Code of Criminal Procedure for the purpose on the basis of legal evidence led at the trial after a proper opportunity to both the parties to plead their causes. No such extraordinary circumstances have been mentioned in the instant case, which can permit this Court to deviate from the normal course of law and to quash the F.I.R by exercising extraordinary constitutional remedy under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C.

7. 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 the learned trial Court. In the present case, challan has already been submitted before the learned Trial Court and the petitioner can seek alternate remedy under section 249-A or 265-K Cr.P.C as the case may be. 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. Reliance in this regard is placed on "Muhammad Abbasi Vs. S.H.O Bhara kahu" [PLD 2010 SC 969], Muhammad Farooq Vs. Ahmed Nawaz

Jagiran” [PLD 2016 SC 55], “Dr. Ghulam Mustafa vs. State” [2008 SCMR 76] and “Muhammad Zubair Vs. Senior Superintendent of Police” [2015 P.Cr.L.J 576].

8. In view of what has been discussed above, this Court is not inclined to quash the impugned F.I.R. at this stage. This petition having no force is, therefore, **dismissed**.

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(GHULAM AZAM QAMBRANI)
JUDGE

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