

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.4328 /2021

Junaid Maseeh
Vs
The State and 2 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.01.2022	Mr. Mudassar Rizwan, Advocate for the petitioner.

The petitioner has been implicated in the offence under sections 3 and 4 of the Officials Secrets Act, 1923 in case FIR No. 4/2021 dated 17.3.2021 registered with Federal Investigation Agency, Islamabad. He seeks quashing of the referred case against him.

2. Learned counsel for the petitioner, *inter alia*, contended that under Section 13 of the Official Secrets Act, 1923 (the Act) the Court can take cognizance of the matter only on the complaint of an authorized officer of the Government of Pakistan. It was submitted that the said provision starts with the non obstante clause meaning thereby that the provisions of Code of Criminal Procedure are excluded and the procedure provided in the said section of the Act is to be followed. Reliance was placed on case reported as **Muhammad**

Mohsin Ghuman versus Government of Punjab (2013

SCMR 85). When confronted as to the difference between registration of the case/FIR and taking cognizance of the matter, the learned counsel was unable to assist the Court in the matter.

3. Arguments advanced by the learned counsel for the petitioner have been heard and the material placed on record examined with his able assistance.

4. The petitioner is a civil servant and is being investigated in the aforementioned matter. He seeks quashing of FIR in question on the basis that the Court can only take cognizance in the matter only on the complaint of authorized officer of the Government of Pakistan and not on basis of challan/report under section 173 Cr.P.C. For ease of convenience the relevant provision of law is reproduced below:

“No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from the appropriate Government or some officer empowered by the appropriate Government in this behalf:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceeding shall be taken until such complaint has been made.”

5. The bare perusal of the above sub section of the Act shows that the contention of the learned counsel for

the petitioner is not correct inasmuch as the law does not prohibit lodging of the FIR and investigation of the matter and arrest of the accused in an offence under the Act. However, it is only when the matter is to be proceeded by the Court by taking cognizance in the same, the complaint by an authorized officer is required. The FIR cannot be quashed on the basis of the assertion/argument by the learned counsel for the petitioner. In this behalf there is a distinction between registration of the case and Court taking cognizance in the matter; reliance is placed on **Muhammed Nazir versus Fazal Karim and others** (PLD 2012 Supreme Court 892). In the referred judgment the august Apex Court observed as follows:

“We may observe with respect that the learned judge in chamber of the Lahore High Court, Lahore seems to have confused the expression cognizance appearing in section 195 Cr.P.C. with the expressions cognizable and non-cognizable finding mention in section 154 and 157 Cr. P.C. and had failed to appreciate that taking of cognizance of an offence by a court is a thing quite distinct from investigation of a reported offence by the police or any other investigation agency. The learned judge in chamber ought to have appreciated that the provisions of section 195(1)(c) Cr.P.C. deal only with the taking of cognizance of an offence by a court and the same do not place any embargo upon reported such an alleged forgery to the police, registration an F.I.R. in that regard or conducting of an investigation in respect of an allegation. There may be situations where a court before whom an allegation has been levelled regarding production or giving in evidence of a forged or tampered document may in the first instance like to get the matter of

alleged forgery inquired into or investigated by a trained investigating agency or it may require the party levelling the allegation to report the matter to the investigating agency for an inquiry or investigation before making up its mind whether to lodge any complaint in writing under section 195(1) (c) Cr. P.C. before the trial court or not.”

6. The Hon’ble Supreme Court of Pakistan in making above observations drew assistance from previous precedents involving similar issues. In this behalf in the judgment it was also observed that if the provisions of section 195 (1)(c) Cr.P.C. place a prohibition against taking cognizance of except in the given manner then all prior steps taken before the stage of taking of cognizance by Court could be deemed to be permissible.

7. In view of the above position of law and facts, the F.I.R. in question cannot be quashed. It was specifically inquired from learned counsel for the petitioner as to whether the challan/report under section 173 Cr. P. C. has been filed and the candid reply was in the negative. The registration of the case by Federal Investigation Agency and subsequent investigation in the matter is deemed to be permissible not only in light of proviso to subsection 3 of Section 13 of the Act but also due to the above noted judgment of the august Apex Court.

8. For the above reasons, the instant petition is without merit and is accordingly dismissed *in limine*.

(AAMER FAROOQ)
JUDGE

M.Naveed