

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

**W.P No.2716-Q of 2017**

Mazloom Hussain  
**Vs**  
SHO, P.S Bani Gala, Islamabad etc

Date of Hearing: 25.02.2020

Petitioner By: M. Saeed Raja Advocate.

Complainant By: In person.

State by: Zohaib Hassan Gondal, State  
Counsel with Hanif ASI.

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**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 with the following prayer;-

“ The instant writ petition may kindly be allowed and the impugned FIR No. 106 dated 06.07.2017 under section 406 PPC registered at Police Station Bani Gala, Islamabad be declared as illegal, unlawful, without lawful authority and of no legal effect and the same be quashed.

Any other relief which this Hon'ble Court may deem fit proper be also awarded to the petitioner.”

2. Briefly stated facts of the case are that respondent No.2, Muhammad Nawaz lodged FIR No.106 dated 06.07.2017 with the police station Bani Gala, under Section 406 PPC with the averments that he entered into a sale agreement with the petitioner on 03.03.2016 with regard to landed property under khasra number No.262 against consideration of Rs.1,60,000/- per kanal and paid an amount of Rs.10,00,000/- as earnest money and remaining amount of Rs.1,45,00,000/- was agreed to be paid on 01.04.2016 at the time of registered sale deed in his favour, but the petitioner failed to do so.

3. Learned counsel for the petitioner contended that registration of FIR is without lawful authority; that no offence has been committed by the petitioner; that the petitioner has paid the sale consideration amount but he has been roped malafidely and the complainant has tried to convert the civil litigation into criminal proceedings.

4. Conversely, learned State counsel opposed the contention of learned counsel for the petitioner and contended that the petitioner is nominated in the FIR; there is evidence on record to connect him with the commission of offence; that challan has already been submitted before the learned Trial Court; that the petition is not competent and is liable to be dismissed.

5. Arguments heard, record perused.

6. The arguments advanced by learned counsel for the petitioner is that this case is based on malafide and animosity on the part of the respondent/ complainant and it is a case of no evidence, therefore, the FIR ought to be quashed. It is fact that scope of quashing of FIR or interfering in the investigation is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. In this regard, the principles and law as enunciated and laid down by the Hon'ble Supreme Court of Pakistan 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 are 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.

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

~~Ghulam Azam Qambrani~~  
Judge

S.Akhtar