

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

W.P. No.2539 of 2017  
Mohammad Nazik  
Versus  
The State and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.01.2020	Mr. Naveed Akhtar Rajpoot, Advocate for the petitioner. Ms. Saadia Noreen Malik, learned State Counsel along with M/s Shaukat Ali, Inspector and Nawaz, Sub Inspector. Mr. Rehan-ud-Din Khan Golra, Advocate for respondents No.4 and 5.

Through the instant writ petition, the petitioner, Mohammad Nazik, assails the order dated 27.05.2017 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Islamabad, whereby the learned Magistrate agreed with the cancellation report submitted by the investigation officer in case F.I.R. No.133, dated 20.04.2016 registered under Sections 337-H(ii), 447, 506 and 511 P.P.C. at Police Station Bhara Kahu, Islamabad.

2. The abovementioned F.I.R. No.133 was registered on the petitioner's complaint wherein he alleged that his sons owned and possessed land measuring 70 *kanals* situated in *Khewat* No.787, *Khasra* No.392 *Shamilat Deh, Mouza Phulgaran*, Islamabad; that on 04.04.2016, when the petitioner and his grandson were overseeing construction on the said land, respondents No.4 and 5 attacked them; that respondent No.6, i.e. Nawaz Gondal, A.S.I. also arrived at the scene and helped the assailants; and that the accused resorted to firing and manhandled the petitioner and his grandson who had to run for their life.

3. After the investigation, the police found that the petitioner's case was lacking evidence and prepared a cancellation proposal through the report under Section 173 Cr.P.C. which was agreed with vide impugned order dated 27.05.2017 passed by learned Judicial Magistrate. It is pertinent to mention that another F.I.R. No.120, dated 12.04.2016 under Sections 447, 506(ii) and 511 P.P.C. was registered, wherein the complainant, Muhammad Ashiq Khalid, alleged that the petitioner along with his companions had trespassed onto his land and tried to dispossess him by raising construction. In the said F.I.R. No.120, the trial is in progress.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that Muhammad Ashiq Khalid and his workers had been trying to dispossess him since the year 2012; that the petitioner's sons had filed a civil suit for possession against Muhammad Ashiq Khalid which was decreed in their favour on 30.05.2013 and the appeal thereagainst was dismissed on 31.03.2015; that the local police has been supporting the accused throughout; that the petitioner moved an application for registration of case on 05.04.2016 but the case was not registered; that the petitioner filed a petition under Section 22-A Cr.P.C. which was allowed vide order dated 11.04.2016; that it was only after the said order that the F.I.R. was registered; that when the petition under Section 22-A Cr.P.C. was accepted, respondent No.2 with a *malafide* intention registered cross F.I.R. on 12.04.2016; that the cancellation report was prepared without proper investigation in the

case; that it was concluded in the investigation that no such incident had occurred but at the same time F.I.R. No.120 was lodged by the other side was not proposed to be cancelled; and that learned Judicial Magistrate did not apply his judicial mind before passing the impugned order. Learned counsel prayed for the petition to be allowed and for the impugned cancellation order to be set-aside.

5. Conversely, learned counsel for respondents No.4 and 5 opposed the petition by submitting that the suit referred to by the petitioner is not regarding *khasra* No.392; that Muhammad Ashiq Khalid purchased land measuring 1050 *kanals* in the year 1997-98; that the petitioner claims ownership of *shamlat* land measuring 70 *kanals*; that the petitioner wants to encroach beyond 70 *kanals*; that the F.I.R. No.120 was registered prior in time while the petitioner concocted this story just to establish a cross-version; that case of the petitioner is without any evidence; and that the impugned order has been passed after correct appreciation of the facts and law. Learned counsel prayed for the petition to be dismissed.

6. I have heard the contentions of the learned counsel for the parties and have perused the record with their able assistance.

7. According to scheme of law envisaged under the Code of Criminal Procedure, 1898 and the Police Rules, 1934, when an investigation officer finds that sufficient evidence is not available to proceed against the accused, he can submit report under Section 173 Cr.P.C. to the competent Magistrate for cancellation of F.I.R. Now, the Magistrate seized of the report

although does not pass a judicial order and acts administratively yet while agreeing with the cancellation report he has to pass a detailed order after application of judicial mind. Reliance in this regard is placed on the judgment of Hon'ble Supreme Court in case of Bahadur etc Vs The State (PLD 1985 S.C. 62).

8. In the instant case, learned Judicial Magistrate while passing the impugned order attended to all the circumstances of the case and has rightly appreciated the deficiencies in the petitioner's case. I have gone through the record and did not find any evidence provided by the petitioner in support of his complaint. The petitioner did not name a single independent witness despite the fact that he alleged that his labourers were working at the time of the incident. The opposite party/accused side produced members of the locality in support of their version. The petitioner was given audience by the learned Magistrate before the passing of the impugned order.

9. In view of above, I do not find the impugned order dated 27.05.2017 to be suffering from any illegality. Therefore, the instant petition, being meritless, is dismissed. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**