

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.1598-Q of 2018

Malik Tariq Ayub
Vs
The State & others

Date of Hearing: 10.03.2020

Petitioner By: Mr.Haroon-ur-Rasheed Advocate.

State by: Zohaib Hassan Gondal, State
Counsel with Azmat Bhatti ASI.

Ghulam Azam Qambrani, J: The petitioner namely (Malik Tariq Ayub) has invoked the jurisdiction of this Court by filing this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A of Cr.P.C for quashing of FIR No.107 dated 29.03.2018, under Articles 3/4 Prohibition (Enforcement of Hadd) Order, 1979, registered with Police Station, Shalimar, Islamabad.

2. Briefly stated facts of the instant petition are that on 29.3.2018, on the written report of Azmat Hayat Bhatti ASI, FIR No.107/2018 was registered with Police Station, Shalimar, with the averments that at about 7:30 PM, the accused Shakeel Ahmad was apprehended by the police at Old Margalla Road near Sector F-10/2, Islamabad, and recovered eight Cans of murree beer/liquor from the vehicle Suzuki bearing registration No.HK-056 ICT driven by the accused Shakeel Ahmad. It has further been alleged that the above named accused failed to produce any permit or licence for keeping the liquor in his possession; that the accused stated that the recovered material belongs to Malik Tariq & Shabbir and he is owner of supplies of

these persons. On such report, the FIR was registered under Articles 3/4 Prohibition (Enforcement of Hadd) Order, 1979.

3. Learned counsel for the petitioner contended that the accused Shakeel Ahmad was arrested red-handed and alleged eight Cans of bear were recovered from his possession; that the above named accused Shakeel Ahmad faced trial and vide judgment dated 04.10.2019, he was convicted under Article 4 of Prohibition (Enforcement of Hadd) Order, 1979; that there is no evidence on record to connect the petitioner with the commission of the alleged offence. Further contended that during investigation, the police obtained warrants of arrest of the petitioner in the said case; that the petitioner has been involved in this case with ulterior motives of respondents No.2 & 3; that the alleged offence under Article 3/4 PEHO, 1979 are attracted only against those accused persons from whose possession the liquor is recovered or material evidence is available against them. That challan was submitted on 29.03.2018 but the petitioner's name was not mentioned in Column No.02 and had not been declared proclaimed offender; that during trial, no proceedings under sections 87, 88 Cr.P.C were conducted against the petitioner which fact also reflects that there was no sufficient evidence against the petitioner, therefore, the learned trial Court did not proceed against the petitioner, nor declared him as proclaimed offender.

4. Conversely, learned State Counsel opposed the contentions of learned counsel for the petitioner contending that the petitioner has not appeared before the learned trial Court and that he has remedy under section 249-A Cr.P.C. That other similar nature cases are also registered against the petitioner at different police stations in Islamabad, he is a habitual offender, therefore, the instant petition is liable to be dismissed.

5. I have heard the arguments of learned counsel for the petitioner, learned State Counsel and have perused the record with their able assistance.

6. Perusal of the record reveals that the challan has been submitted before the learned Trial Court where the petitioner is not appearing. The co-accused Shakeel Ahmad has specifically nominated the petitioner stating that he is the actual owner of the recovered beer/liquor. As per police record, there are other cases of similar nature, registered against the petitioner. The petitioner has alternate remedy of filing petition under section 249-A or 265-K Cr.P.C as the case may be, before the learned Trial Court. At this stage, this petition is not maintainable before this Court.

7. It is important to mention that the scope of quashing of FIR or interfering in the investigation is limited while exercising power of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard the principles and laws as enunciated and laid down by the Hon'ble Supreme Court 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 Sadique 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.

8. 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

Announced in Open Court, on this 12th day of March, 2020.

Ghulam Azam Qambrani
Judge

S.Akhtar