

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3485/2019.

Masood Sadiq Sulehri

Versus

Assistant Commissioner, Secretariat, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01. 11.10.2019 Mr. Javed Iqbal Khan, Advocate for the petitioner.

Through the instant writ petition, the petitioner has assailed the order dated 01.07.2019, whereby the proceedings initiated by the State against the petitioner U/S 182 PPC are pending before Assistant Commissioner, Secretariat, Islamabad.

2. Learned counsel for the petitioner inter-alia contends that the petitioner filed an application before SHO, P.S Bara Kahu, Islamabad alleging therein that he has purchased immovable property on the basis of agreement to sell dated 13.06.2019 regarding land measuring 5 Kanal and 3 Marla situated in Mouza Phulgran, Tehsil & District Islamabad from Jawad Khaliq attorney of the owner and paid Rs.45,00,000/- as earnest money, whereas Rs.2,50,00,000/- was balance sale consideration; that the petitioner took over the possession of property having boundary wall and a room and the same was under lock and key of the petitioner, however, on his visit to the said place on 30.06.2019 it revealed that his property has been damaged and some material has been stolen by Azhar Ghafar but the said application was not entertained rather the police officials prepared Qalandra U/S 182, PPC against the petitioner, which is illegal act of the SHO; that the petitioner was not heard while initiating proceedings U/S 182, PPC; that the I.O never called the petitioner for the purpose of inquiry rather decided status of the application at his own

without considering any evidence as such the proceedings U/S 182, PPC pending before the Assistant Commissioner, Secretariat, Islamabad are liable to be quashed.

3. I have heard learned counsel for the petitioner and gone through the record.

4. Perusal of the record reveals that the petitioner claims to be in possession of land measuring 5 Kanal and 3 Marla situated in Mouza Phulgran, Tehsil & District Islamabad on the basis of agreement to sell dated 13.06.2019. Learned counsel for the petitioner has conceded that civil suit titled Masood Sadiq Sulehri vs. Jawwd Khaleeq etc for specific performance is pending before the Civil Court (East) Islamabad and restraining order is in filed, whereby the petitioner is ready to deposit the balance sale consideration of Rs.2,50,00,000/- in Court account for protection of his property but he was dispossessed by same accused persons after removing the material from constructed portion of the petitioner.

5. Tentative assessment of the record reveals that the claim of the petitioner is yet to be established as agreement to sell dated 13.06.2019 does not create any right unless the same is appreciated by the competent Civil Court in pending civil suit for specific performance. Even otherwise, there is no document of revenue record, through which possession can be determined. The petitioner is mainly aggrieved with the proceedings U/S 182, Cr.P.C, whereby the I.O has declared his application of alleged tress pass and stolen material to be false and frivolous. It is trite law that when final report has been submitted before the Court, quashment of the proceedings U/S 561-A, Cr.P.C cannot be invoked as the petitioner has alternate remedy under the law in terms of section 249-A, Cr.P.C, whereby the concerned Court can look into the evidence and pass any order while assessing the

available record, therefore, the proceedings U/S 561-A, Cr.P.C claimed by the petitioner at this stage are not maintainable. Reliance is placed upon 2010 SC 969 (Muhammad Abbasi vs. SHO Bhara Kahu), 2008 SCMR 76 (Dr. Ghulam Mustafa vs. State) and 2011 SCMR 1937 (Rana Shahid Ahmed Khan vs. Tanveer Ahmed and others), whereby it has been settled that powers U/S 561-A, Cr.P.C can be exercised in very exceptional circumstances.

6. For what has been discussed above, the instant writ petition is not maintainable, therefore, the same is dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam