

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO.2493-Q-2020

ABDUL RAHEEM, ETC.

Vs.

THE STATE, ETC.

Petitioner by : Ch. Shaukat Mehmood Malik, Advocate.

**Respondents by : Mr. Anwar Zeb Yousafzai, Advocate for
Complainant/Respondent No. 2.
Ms. Bushra Tariq Raja, State Counsel.
Mr. Ishaq, S.I.**

Date of hearing : 12.10.2020

LUBNA SALEEM PERVEZ, J. Through instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan read with Section 561-A Cr.P.C., Petitioner seeks quashment of FIR No.428/2020, dated 05.07.2020, registered under Section 408/34 PPC, at Police Station Tarnol, Islamabad.

2. Learned counsel for the petitioner while apprising about the background of the matter submitted that the said FIR has been registered against the petitioner on the complaint of Respondent No.2/complainant alleging therein that he was serving as Manager in New National Traders (NNT), where the Petitioner No.1 was working as storekeeper and incharge of warehouse who misappropriated the certain material placed in warehouse in league with the petitioner Nos. 2 & 3.

Learned counsel for the petitioners contended that the story narrated in the FIR is fake and frivolous as such no offence as alleged in the FIR has been made out against the petitioner; that infact the Complainant and one Muhammad Aslam who were running businesses with the name & style of Speed Bikes (Pvt) Ltd, New National Traders and KB Group of Industries having office at Itfaq Colony, Pind Paracha Tarnol, Tehsil & District Islamabad, received an amount of Rs. 4,564,000/- from the Petitioner No.1 for investment in the said businesses with promise and assurance to pay a handsome profit as per

proportionate ratio of investment but neither paid the agreed profit nor returned the original amount of the Petitioner No.1. However, on petitioner's continuous demand informed that the business is running in loss and he will return principal amount to the Petitioner No.1. Said Muhammad Aslam returned an amount of Rs. 3,200,000/- out of total amount in the form of electronic items to the Petitioner No.1 on 09.10.2019, vide a written document while undertaking to the effect that if the said items are not sold out he will return the amount in cash and also admitted that he will pay the remaining amount of Rs. 13,64,000/- on or before 25.07.2020, otherwise the Petitioner No.1 will be at liberty to initiate legal proceedings. But, instead of returning of the amount, said Muhammad Aslam in connivance with the Complainant registered instant FIR against the petitioners. Learned counsel contended that no such occurrence, as alleged in the FIR has taken place rather it is the Complainant and his accomplice Muhammad Aslam who have caused great financial loss and inconvenience to the Petitioner No.1; that instant FIR has been registered with malafide intentions so as to pressurize, humiliate and blackmail the petitioners; that there is nothing available on record to associate the petitioners with the alleged offence, therefore, FIR in question is liable to be quashed as being fake and frivolous.

3. On the other hand learned counsel for Respondent No.2 and learned State Counsel submitted that the petitioner's bail before arrest is pending before the learned Judicial Magistrate; that sufficient material is available on record to connect the petitioner with the commission of alleged offence; that an alternate remedy is available to the petitioner under Section 249-A Cr.P.C. before the learned Trial Court as under Section 249-A Cr.P.C., Magistrate has power to acquit the accused at any stage of the trial, therefore, the relief sought under Article 199 of the Constitution read with Section 561-A Cr.P.C for quashment of FIR, is without merit, hence, is not maintainable.

4. I have heard the learned Counsel for the parties as well as learned State Counsel and have also perused the relevant record with their able assistance.

5. Admittedly, the investigation in the matter has not yet been completed and the Petitioner No.1 has also stated before the police that actually the Complainant owes a huge amount to him and for pressurizing and blackmailing the Petitioner No.1, he has registered the instant FIR.

After hearing the learned counsel for the parties and examination of documents it has transpired that both the parties are accusing each other for fraud and misappropriation during the course of business. The Petitioner No.1 is relying on business agreements, and undertakings and the Complainant is relying on the photocopies of undated promotion letters issued in favour of Petitioner No.1. I am of the view that the documents relied upon by the parties require proper scrutiny of record and probe into the facts which can only be done at the trial stage, which stage under the law is meant for digging out actual facts through in depth scrutiny of documentary evidence and statements of witnesses. This court though has inherent discretionary power u/s 561-A, but at the same time has no powers to step into the jurisdiction of Trial Court and indulge in fact finding activities which is exclusive domain of the Trial Court. The inherent powers u/s 561-A Cr.P.C. cannot be used as a device to short cut the proceedings before Trial Court, as jurisdiction u/s 561-A is exercised only in such cases where there are no disputed facts and there is glaring illegality of the action against a person and which does not require any elaboration and detailed inquiry thus, saving of inherent power of High Court u/s 561-A Cr.P.C. is invoked in exceptional cases to prevent the abuse of process of law and court.

6. Even otherwise, I am of the view that under the law, an alternate remedy under Section 249-A is available to the Petitioner before the Magistrate, who has ample power to acquit the accused on the basis of report of Investigating Officer filed under Section 173 Cr.P.C. Guidance has been taken from the law laid down in case reported as **Director General Anti Corruption versus Muhammad Akram (PLD 2013 SC 401)**, wherein The Honourable Supreme Court of Pakistan has observed as follows:

"The law is settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons charged therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigors of the trial then the law has provided him a remedy under sections 249-A/265 K Cr. P.C. to seek his premature acquittal if the charge against him is groundless or there is no possibility of conviction.

Similar view has been taken by a learned Single Bench of the Hon'ble Lahore High Court, Lahore in case of **Muhammad Shoaib versus S.H.O. Police Station new Multan and another (2005 PCr.LJ 1681)**, by holding that:-

"It has also been held in Ghulam Muhammad Vs. Muzammal Khan and others PLD 1967 SC 317 that when the alternative remedy is available to the petitioner under section 249-A or 265-K, Cr.P.C. Constitutional petition would not lie. No illegality or malafide and jurisdictional error has been found in this case. Instant writ petition having without substance is dismissed."

Further, this Court in case reported as **Sajid Javed versus SHO PS Sabzi Mandi (2016 PCr.LJ 693)** observed that the petitioner has alternative efficacious remedy in terms of sections 249-A and 265-K Cr.P.C., which can be applied at the appropriate stages, even at the initial stages of trial. I am also of the view that before submission of Police Challan it would be too early to exercise the discretion and quash the FIR. The Police has not arrested the petitioner whose bail before arrest is also pending before the learned Additional Sessions Judge.

7. In view of above, instant writ petition is held to be not maintainable as the petitioner has an adequate, alternate remedy available to him under Section 249-A Cr.P.C. Hence, titled petition is dismissed, accordingly.

**(LUBNA SALEEM PERVEZ)
JUDGE**

Announced in the open Court on _____.

JUDGE

APPROVED FOR REPORTING.
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