

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. JUDICIAL DEPARTMENT.

Writ Petition No. 2864/Q/2017.

Ch. Ijaz Ahmed

Versus

The State, etc.

Petitioner by: Syed Sabir Hussain Shah, Advocate

Respondents: Ms. Saima Naqvi, State Counsel.
Mehdi Ranjha, ASI, P.S. Shahzad Town,
Islamabad.

Date of Hearing: 03.05.2019.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has prayed for quashing of FIR No.108, dated 19.06.2017, U/S 406 PPC, P.S. Shahzad Town, Islamabad.

2. Brief facts referred in the instant FIR got lodged by complainant/respondent No.2 are as under:-

سائل چوہدری عدنان آصف ولد چوہدری محمد آصف ساکن کھاتہ نمبر NW-27-A، محلہ سید پور روڈ، راولپنڈی کارہائشی و سکونت ہوں۔
چوہدری اعجاز جو کہ میرا حقیقی چچا ہے ہمارا آپس میں جائیداد کی تقسیم کا معاملہ پلاٹ نمبر 27-A، واقع چک شہزاد قبر میں کنال (20K) کا پیش آیا ہے درج ذیل افراد کی موجودگی میں معاملہ طے پایا چوہدری آصف (والد)، چوہدری عارف (چچا)، چوہدری مرسلین (کزن)، عدنان قریشی (فیملی فرینڈ)، اور ان کی موجودگی میں چوہدری اعجاز کی مرضی شامل تھی جب میں مبلغ (50,00,000/-) پچاس لاکھ روپے کا چیک نمبر 2415277 بذریعہ اکاؤنٹ اپنے بڑے بھائی چوہدری آصف جو کہ میرے والد ہیں سے چوہدری محمد عارف کے ادا کروائے میں موقع پر موجود تھا اور مبلغ 25,00,000/- (بچیس لاکھ روپے) بذریعہ چیک نمبر 2451299 بینک اسلامی کی صورت میں چوہدری اعجاز بھی وصول کر لی۔ چوہدری اعجاز نے مورخہ 21.02.2017 کو زیر سماعت کیس بعد ازاں جناب شبیر بھٹی سول جج سے چوہدری محمد عارف کا کیس واپس لینے کے بعد اپنے کیس واپس لینے اور رقم سے انحراف ہو گیا جو کہ خیانت مجرمانہ کا مرتکب ہوا ہے۔ جناب عالی چوہدری اعجاز نے مذکورہ بالا فارم ہاؤس اپنی رضامندی سے ہمارے ساتھ بیٹھ کر فروخت کیا تھا اور رقم بھی اپنے حصہ کی لینے پر رضامند تھا۔ جب فارم ہاؤس ٹرانسفر کا وقت آیا تو اپنے وعدہ سے انحراف ہو گیا اور جو رقم وصول بھی کی اس سے بھی

منحرف رہا ہے۔ جناب عالی آپ سے التماس ہے کہ مذکورہ بالا شخص کو طلب کیا جائے اور اس کے خلاف قانونی کارروائی عمل میں لائی جائے اور مجھے انصاف دلایا جائے۔

3. Learned counsel for the petitioner contends that from the bare reading of FIR no offence has been made out; that petitioner has received an amount of Rs.75,00,000/- on the basis of two cheques in his name in the year 2008 as part of sale consideration of his share in the property as joint property was sold in which petitioner has inherited share; that suit titled Ch. Ejaz Ahmed Vs. Muhammad Anwar, etc. suit for declaration, permanent injunction, specific performance and mandatory injunction and second suit titled Muhammad Amjad Abbas Vs. Ch. Ejaz Ahmed, etc. suit for declaration, cancellation of instrument, possession and permanent and mandatory injunction were pending before the Court of Civil Judge, 1st Class (East), Islamabad and both the suits were decided vide consolidated judgment & decree dated 08.07.2013 and RFA titled Mst. Farrah Shamim, etc. Vs. Ch. Ejaz Ahmed, etc. was also adjudicated upon by the Court of Additional District Judge (East), Islamabad vide judgment dated 08.12.2015, whereby appeal was dismissed and as such entire controversy has nothing to do with the amount claimed by the complainant; that bare reading of FIR reveals that amount referred is meant to settle the dispute pending before the Civil Court but the cheques amounting to Rs.50,00,000/-, dated 04.02.2008 and Rs.25,00,000/- dated 28.03.2008 related to a transaction which was actually made ten years prior from the alleged offence, which has no nexus with the instant case and nothing has been entrusted to the petitioner which could be considered as an ingredient to constitute offence U/S 406 PPC; that instant FIR is liable to be quashed as further proceedings in the trial Court would amount to abuse of process of law.

4. Conversely, learned State Counsel as well as I.O in attendance contends that challan was submitted in the Court on 18.07.2017 and trial is in progress and as such all these matters could only be taken care by the trial Court. I.O of this case contends that complaint of this case has been served with notice. However, no one put appearance on behalf of respondent No.2 despite notice, therefore, I have no other option but to decide the matter as per available record.

5. Arguments heard, record perused.

6. From the perusal of record, it reveals that complainant/respondent No.2 got lodged the FIR No.108, dated 19.06.2017, U/S 406 PPC, P.S. Shahzad Town, Islamabad against the petitioner with the allegations that petitioner received an amount of Rs.25,00,000/- and Rs.50,00,000/- through different cheques against the consideration to withdraw his suit pending before the Civil Court, Islamabad but he later on refused to withdraw the case, nor even willing to settle the alleged dispute against which he received sale consideration.

7. I have gone through the record, whereby petitioner received an amount of Rs.50,00,000/- vide cheque No.2451277, dated 04.02.2008, Bank Islami Ltd. and amount of Rs.25,00,000/-, dated 28.03.2008 vide cheque No.2451299 Bank Islami Ltd. Satellite Town Branch, Rawalpindi. Both these cheques were encashed by the petitioner and received the amount. However, petitioner contends that suits which have been referred by the complainant/respondent No.2 in his FIR are Ch. Ijaz Ahmed Vs. Muhammad Anwar, etc. and second suit titled Muhammad Amjad Abbas Vs. Ch. Ijaz Ahmed, etc. and both these suits are relating to plot No.A-27, Park road scheme-II, Islamabad and the first suit was filed on 04.12.1998, whereas the second suit was filed on 06.12.2000

and both these suits were decided vide consolidated judgment & decree dated 08.07.2013, wherein following relief has been passed:-

In view of above discussion, it is held that plaintiff by producing the original documents or the plot and receipt of payment etc, has brought on record evidence which is sufficient to prove his case. As such, Issue No.5 is resolved in favour of plaintiff Ch. Amjad Abbass and against the defendants and the suit filed by Ch. Ejaz Ahmed is allowed with cost. The defendants are directed to transfer the suit plot in his name after completion of necessary formalities. Decree sheet be prepared.

The defendant Muhammad Amjad Abbass has not produced any documentary or oral evidence to substantiate his allegations. He has neither produced his father M. Anwar, nor could substantiate the incident of 26-4-99 by any medical evidence or FIR. He has also not produced Hanif chowkidar in this behalf. Further, he has also evasively admitted in reply to para-3 of the plaint filed by Ch. Ejaz Ahmed all the assertions made by him. As such Issue No.6 is resolved against defendant Muhammad Amjad Abbas and in favour of the plaintiff Ch. Ejaz Ahmed. Further the suit was filed by defendant Muhammad Amjad Abbass is dismissed. Separate decree sheet be prepared for him.

The case files be consigned to record after completion of necessary formalities.

8. The said judgment & decree was further assailed by Muhammad Anwar, etc. through RFA, which was decided by learned Additional District Judge (East), Islamabad vide judgment & decree dated 08.12.2015 and appeal was dismissed. After concurrent findings of the learned Civil Court and Appellate Court, complainant/respondent No.2 managed to lodge the instant FIR No.108, dated 19.06.2017, U/S 406 PPC, P.S. Shahzad Town, Islamabad despite the fact that all the issues have already been resolved and the amount which was admittedly paid to the petitioner was paid on 04.02.2008 & 23.08.2008, almost 10 years ago, which have nothing to do with the instant matter, although petitioner has mistakenly referred those transaction but no nexus has been justified.

9. On the other hand entire issue is arising out of civil dispute which could only be resolved through competent Court and as such complainant in FIR acknowledged that petitioner is his real uncle and some dispute regarding partition of land i.e. plot No.27-A, Chak Shahzad, measuring 20 Kanal is pending and he has settled the matter by way of payment which clearly spells out that the amount paid was sale consideration as per the version of complainant.

10. While considering the above background, question of entrustment of amount is not visible rather it revolves around sale transaction and it is trite law when the matter is purely of civil nature and revolves around an agreement in which any amount has been paid as sale consideration as per version of complainant, such matter does not fall within the parameters of Section 406 PPC i.e. entrustment of property, which is lacking in this case. Reliance is placed upon 2017 P.Cr.L.J. 133 (Muhammad Nawaz Vs. SHO, P.S. Sabzi Mandi, Islamabad).

11. Although respondents' side has argued that challan has been submitted in the Court but in my humble estimation mere submission of challan in the Court and framing of charge is no bar in the way of quashing of proceedings as contention of such kind of trial is a futile exercise and wastage of time. Reliance is placed upon 2009 SCMR 141 (Muhammad Aslam Vs. DPO, Rawalpindi).

12. I have also gone through the record of trial Court, whereby I.O has not collected evidence through which it could be assumed that any amount has been entrusted to the petitioner rather complainant has failed to explain as to why he kept silent for long ten years since day of first payment dated 04.02.2008 till the registration of FIR dated 19.06.2017, even he has concealed the entire civil proceedings, which were settled by the Courts below and

matter was settled in favour of petitioner. This aspect further confirms that the dispute is of civil nature which has already been resolved by the competent Court when complainant failed to take any benefit qua plot No.27-A, he got lodge instant FIR in order to pressurize the petitioner.

13. In view of above situation, High Court is equipped with the powers to quash any FIR where any abuse of process of law is apparent on record, therefore, while exercising the inherent powers U/S 561-A Cr.P.C. FIR No.108, dated 19.06.2017, U/S 406 PPC, P.S. Shahzad Town, Islamabad is hereby quashed alongwith its proceedings pending before the Court of competent jurisdiction.

14. Instant petition is allowed in the above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 10th May 2019.

JUDGE

Zahid