

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

Crl. Misc. No.664-BC/2019.

Khalid Mehmood Bhutta

Versus

Qazi Muhammad Shakir etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
06.	04.02.2020.	Mr. Munsif Khan, Advocatte for the petitioner. Mr. Ali Nawaz Kharal and Rana Rashid Javed, Advocates for respondent No.1. Ms. Ramsha Izhar, State Counsel.

Vide my judgment of even date, passed in connected writ petition No.3468/2019, the instant criminal miscellaneous petition stands **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.3468/2019.

Qazi Muhammad Shakir Vs. The State etc.

Petitioner by: Mr. Ali Nawaz Kharal and Rana Rashid
Javed, Advocates.

Respondent No.1 by: Ms. Ramsha Izhar, State Counsel.

Respondent No.2 by: Mr. Munsif Khan, Advocate.
Akram, ASI, P.S Kohsar, Islamabad.

Crl. Misc. No.664-BC/2019.

**Khalid Mehmood Bhutta Vs. Qazi Muhammad Shakir
etc.**

Petitioner by: Mr. Munsif Khan, Advocate.

Respondents No.1 by: Mr. Ali Nawaz Kharal and Rana Rashid
Javed, Advocates.

Respondent No.2 by: Ms. Ramsha Izhar, State Counsel.

Date of Decision: 04.02.2020.

MOHSIN AKHTAR KAYANI, J:- Through this single judgment, I intend to decide the abovementioned writ petition and criminal miscellaneous petition as both have arisen out of the same FIR.

2. In writ petition, petitioner Qazi Muhammad Shakir has prayed for quashing of FIR No.331, dated 01.08.2019, U/S 406 PPC, P.S Kohsar, Islamabad.

3. Through Crl. Misc. petitioner Khalid Mehmood Bhutta (Respondent No.2 in writ petition) has prayed for cancellation of bail granted to Qazi Muhammad Shakir vide order dated 14.10.2019, passed by learned Additional Sessions Judge, Islamabad-West.

4. Learned counsel for petitioner Qazi Muhammad Shakir contends that dispute between the parties is of civil nature and from the bare reading of the FIR no offence is made out in terms of section 406 PPC; that extraordinary circumstances exist in favour of the petitioner, who is seeking quashing of the FIR on the principles settled by the Apex Court.

5. Conversely, learned counsel for respondent No.2/Khalid Mehmood Bhutta contends that the FIR was lodged on the complaint of respondent No.2 with the allegations that Qazi Muhammad Shakir received amount of Rs.60,00,000/- from him as (امانت) for investment purpose in property business but he did not return the amount despite the fact that he acknowledged the same in his diary in written format and learned Additional Sessions Judge vide order dated 14.10.2019 confirmed pre-arrest bail of Qazi Muhammad Shakir without adhering to legal principles; that challan has been submitted and learned Trial Court has taken the cognizance, therefore, the FIR against Qazi Muhammad Shakir cannot be quashed.

6. Learned State Counsel contends that challan has been submitted before the Court and as such alternate remedy in terms of section 249-A, Cr.P.C is available to Qazi Muhammad Shakir and it is trite law that bail once granted cannot be recalled when challan has been submitted in the Court, therefore, both the petitions are liable to be dismissed.

7. I have heard arguments of learned counsel for the parties and gone through the record.

8. Perusal of the record reveals that petitioner Qazi Muhammad Shakir is nominated accused in FIR No.331, dated 01.08.2019, U/S 406 PPC, P.S Kohsar, Islamabad lodged on the complaint of respondent No.2/Khalid Mehmood Bhutta with the allegations that Qazi Muhammad Shakir has misappropriated amount of Rs.60,00,000/- received by him in written format available in the diary and despite his continuous requests the amount was not returned.

9. The tentative assessment of the record reflects that the allegations contained in the FIR are based upon disputed question of facts as such there is no written agreement to support contention of either party. Even otherwise, challan has been submitted before the Trial Court and in such situation extra ordinary exceptional jurisdiction for quashing of FIR in terms of section 561-A, Cr.P.C cannot be exercised. It is trite law that when challan has been submitted in the Court, the accused may resort to appropriate remedy in terms of section 249-A, Cr.P.C for settlement of his rights, if he earns the non-probability of conviction. All these questions have to be considered by learned Trial Court, therefore, any finding

qua entrustment and dishonest misappropriation of the property at this stage will effect merits of case of either party.

10. As regards to cancellation of pre-arrest bail granted to Qazi Muhammad Shakir by learned Additional Sessions Judge vide order dated 14.10.2019 is concerned, the impugned order spells out the application of mind and even no illegality has been highlighted by respondent No.2/Khalid Mehmood Bhutta in bail granting order. It is trite law that when challan has been submitted in the Court, bail cannot be recalled. Even otherwise, respondent No.2/Khalid Mehmood Bhutta has failed to justify misuse of bail granted to petitioner Qazi Mehmood Shakir, which is minimum requirement for cancellation of bail order in terms of section 497(5), Cr.P.C.

11. In view of above discussion, both writ petition and criminal miscellaneous petition bear no merits, therefore, the same are hereby **dismissed**. However, learned Trial Court seized with the matter is directed to conclude the trial within period of 08 months from the date of receipt of copy of this judgment under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

R Anjam