

**JUDGMENT SHEET.**

**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.1925/2019.**

**Ajmal Hussain Shah**

**Vs.**

**The State etc.**

Petitioner by:

Mr. Muhammad Saeed Khan Niazi,  
Advocate.

Respondent No.4 by:

Mr. Muhammad Saeed Raja, Advocate.

Darya Khan, S.I, P.S Shahzad Town,  
Islamabad.

**Date of Decision:**

**28.06.2019.**

**MOHSIN AKHTAR KAYANI, J:-** Through the instant petition, the petitioner has prayed for quashing of FIR No.85/19, dated 26.04.2019, U/S 406/34, PPC, Police Station Shahzad Town, Islamabad.

2. Learned counsel for the petitioner contends that complainant/respondent No.4 lodged the FIR against the petitioner with the allegation that he entered into an agreement with the petitioner for purchase of land measuring 75 Kanal and 30 Kanal in Mouza Pind Bhegwal as well as in Mouza Malot against total sale consideration of Rs.10,00,00,000/- and paid Rs.35,00,000/- through cheques to the petitioner. However, the petitioner has allegedly failed to deliver the possession nor even transferred the land as per terms of the agreement and misappropriated the earnest money; that entire FIR discloses civil dispute amongst the parties regarding interpretation and breach of terms of the agreement, regarding which suit for declaration, permanent and mandatory injunction titled *Ajmal Hussain Shah vs. Khalid Abbasi* is pending before competent Civil Court, which was filed on 28.08.2018; that the petitioner has received earnest money but respondent No.4 has not complied with terms of the agreement, therefore, earnest money stands forfeited, hence, the FIR is liable to be quashed.

3. Conversely, learned counsel for respondent No.4 contends that the petitioner entered into agreement, whereby the petitioner acknowledged receiving of earnest money of Rs.35,00,000/- but he failed to transfer the land as per agreement dated

05.03.2018; that the petitioner being seller has committed fraud with different individuals on the basis of agreement to sell and sold out the same land to different individuals, which otherwise falls within concept of sections 419, 420 PPC.

4. I have heard the arguments and gone through the record.

5. From perusal of the record, it has been observed that complainant/respondent No.4 and the petitioner entered into agreement dated 05.03.2016 regarding two sets of land measuring 12 Kanals situated in Mouza Malot and 8 Kanals common land alongwith land measuring 75 Kanal and 30 Kanal from Khasra No.444 of Mouza Pind Bhegwal total measuring 125 Kanals against total sale consideration of Rs.10,69,00,000/-, whereby the amount of Rs.35,00,000/- was paid as earnest money through banking channel and same was acknowledged in the terms of agreement.

6. As per terms of the agreement, the seller is bound to transfer the land alongwith its possession on 05.04.2016 and is eligible to receive balance sale consideration, however, terms of the agreement have not been complied with and civil suit for declaration, permanent and mandatory injunction titled *Ajmal Hussain Shah vs. Khalid Abbasi* was filed against respondent No.2 on 28.08.2018, which is still pending before the competent Civil Court.

7. Record further reveals that respondent No.2 initially filed complaint before SHO, P.S Bani Gala against the petitioner for registration of case with similar allegation, whereby the prosecution branch of Islamabad Police Department issued legal opinion and declared the matter in question purely of civil nature and directed SHO P.S Bani Gala to proceed in accordance with law while referring judgment of this Court reported as 2017 P Cr. L J [Islamabad] 133 (Muhammad Nawaz vs. SHO, P.S Sabzi Mandi, Islamabad), however, respondent No.4 filed another application to SHO P.S Khanna and as result whereof instant FIR has been lodged.

8. The entire epitome of discussion reveals that instant matter pertains to dispute qua terms of the agreement to sell, which issue is pending in civil suit before the competent Court and the civil suit was filed prior to registration of instant FIR. Even otherwise, a matter relating to breach of terms of an agreement

can only be resolved by the Civil Court. It is trite law that if the following ingredients are reflected from the record, the FIR is liable to be quashed:-

- (a) The matter in dispute is arising out of a contract of civil nature.
- (b) Terms of contract are yet to be settled through competent Court of law.
- (c) If a civil suit is pending, which was filed prior to the registration of the FIR.
- (d) The amount paid under the terms of the agreement as earnest money will not be considered as entrustment in terms of section 406 PPC.
- (e) The very registration of FIR is based upon malafide to convert civil disputed into criminal one.

9. Keeping in view the above principles and the ratio settled in **2017 P Cr. L J [Islamabad] 133 (Muhammad Nawaz vs. SHO, P.S Sabzi Mandi, Islamabad)**, the very registration of the FIR is based upon malafide and abuse of process of law, which is not permissible in any circumstances. Even otherwise, respondent No.4 has not yet filed suit for specific performance although suit for declaration, permanent and mandatory injunction has been filed by the petitioner prior to the registration of the FIR and respondent No.2 has acknowledged receiving of Rs.35,00,000/-. This is fit case, where FIR is liable to be quashed. Therefore, instant writ petition is **allowed** and while exercising powers U/S 561-A, Cr.P.C, FIR No.85/19, dated 26.04.2019, U/S 406/34, PPC, Police Station Shahzad Town, Islamabad is hereby **quashed**.

(MOHSIN AKHTAR KAYANI)  
JUDGE

R.Anjam