

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.295-Q of 2020

Muhammad Afzal Khan & others
Vs
The State & others

Date of Hearing: 05.03.2020

Petitioner By: Syed Tahir Abbas Advocate.

Respondent By: Mr. Azizullah Marwat Advocate

State by: Zohaib Hassan Gondal, State
Counsel with Iqbal Bhutta SI.

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

“ In the circumstances, it is humbly prayed that the instant writ petition for quashment of FIR may kindly be accepted and FIR No. 01/2020 dated 02.01.2020 P.S Koral, Islamabad may kindly be declared to be registered without any lawful authority and the same may please be quashed by declaring the same void abinitio in the interest of justice.

Any other relief, which this Hon'ble Court deems just and proper while quashing FIR, may also be granted to the petitioners in the interest of justice.”

2. Briefly stated facts of the case are that respondent No.3, Samina Afzal lodged FIR No.01/2020 dated 02.01.2020 with the police station Koral, under sections 506-II, 354, 427, 34 PPC with the averments that she has filed a suit for maintenance against petitioner No.1 and she is running a Beauty Parlour for earning of her livelihood. It has further been averred in the contents of FIR that she worked hard and saved money. When she met with petitioner No.2 namely Ghulam Muhammad and desired for purchase of a plot from him. It has been alleged that petitioner No.2 deceived her by showing a plot at Sharif Abad near Korang Nala and sale was done in consideration of Rs 6,00,000/-. After

payment, the said plot was registered in her name and she started construction work over there and spent an amount of Rs.13,00,000/- for construction of the house. It has further been alleged that construction of the house was in finishing position; petitioner No.2 started excavation with excavator machine just near her house and in consequence thereof, the house was badly demolished. When asked about the losses, petitioner No.2 he started extending threats of dire consequences and it has also been alleged that the petitioner No.2 caused damages to the house of complainant at the asking and behest of her husband.

3. Learned counsel for the petitioners contended that the petitioner No.1 and complainant are spouse. Their relations became strained, therefore, she filed a suit for maintenance allowance against the petitioner No.1 and the registration of FIR is based on animosity and further contended that the petitioner No.1 and the complainant purchased 05-marlas of land out of which 04-marlas were registered in the name of complainant and 01-marla was purchased by the petitioner No.1; that it came to the knowledge of petitioner No.1 that the complainant is going to sale the entire land, therefore, the petitioner No.1 filed a suit, obtained injunctive orders and instant FIR has been registered against petitioner to pressurize him to withdraw from his valuable rights; that the police on the behest of complainant also calling him by phone for withdrawal of the suit, then he filed a petition under section 22-A & B Cr.P.C for issuance of direction for protection of petitioner from illegal harassment before the Court of Sessions Judge, Islamabad. Further contended that the petitioners have filed bail after arrest before the competent Court and lastly urged for quashing of the FIR.

4. Conversely, learned State counsel assisted by learned counsel for the complainant contended that the petition is not competent; that the petitioners have other efficacious remedies to avail; that the petitioners are nominated in the FIR with a specific role; that there is sufficient evidence available on record to connect them with the commission of alleged offence; that investigation is in progress and lastly urged for dismissal of the petition.

5. I have heard the arguments of learned counsel for the parties and have perused the record with their able assistance.

6. Perusal of record reveals that after registration of FIR, the investigation was carried out by the I.O, hence prepared map of the place of incident. Affidavits of Muhammad Asif and Raja Shan Mehmood have been placed on record. The investigation is in progress. The above said witnesses in their affidavits have mentioned that the petitioner No.1 excavated from the back side

of the house of complainant due to which the house of complainant collapsed. The contention of the petitioners are there is no evidence against them and the registration of FIR is based on malafide and animosity on the part of complainant, therefore, the FIR ought to be quashed.

7. It is important to mention that the scope of quashing of FIR or interfering in the investigation is limited while exercising power of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard the principles and laws as enunciated and laid down by the Hon'ble Supreme Court of Pakistan in the case titled as "Director General, Anti Corruption Establishment, Lahore & others Vs Muhammad Akram Khan & others" [PLD 2013 SC 401], "Rehmat Ali & others Vs Ahmad Din & others" [1991 SCMR 185], "Miraj Khan Vs Gul Ahmad & three others" [2000 SCMR 122], "Muhammad Mansha Vs Station House Officer, Police Station City Chiniot, District Jhang & others" [PLD 2006 SC 598], "Col. Shah Sadiq Vs Muhammad Ashiq & others" [2006 SCMR 276], "Emperor Vs Kh. Nazir Ahmad" [AIR 1945 PC 18], & "Shahnawaz Begum Vs. The Hon'ble Judges of the High Court of Sindh & Baluchistan & Others" [PLD 1971 SC 677] are well settled by now and may be summarized as follows:-

- (i) The High Court is not vested with the power to quash an FIR under section 561-A of Cr.P.C on the grounds of malafide or disclosing a civil liability.
- (ii) Resort to the provisions of Section 561-A of Cr.P.C or Article 199 of the Constitution for quashing a criminal case is an extraordinary remedy, which can only be granted in exceptional circumstances.
- (iii) As a general rule powers under Article 199 of the Constitution cannot be substituted for the trial, nor can any deviation be made from the normal course of law.
- (iv) The consideration to be kept in view for quashing of a criminal case is whether the continuance of the proceedings before the trial Court would be a futile exercise, wastage of time and abuse of the

process of the Court, and whether an offence on the admitted facts is made out or not.

- (v) The exercise of powers and jurisdiction under Article 199 of the Constitution is discretionary in nature; however, the same are to be exercised in good faith, fairly, justly and reasonably, having regard to all relevant circumstances.
- (vi) While considering quashing of a criminal case in exercise of powers vested under Article 199 of the Constitution, the High Court is required to take into consideration the various alternate remedies available to a petitioner before a Trial Court, inter alia, under sections 249-A and 265-K Cr.P.C.
- (vii) Besides the above, the other alternate remedies available under the law have been enumerated by the August Supreme Court in the case of 'Col' Shah Sadiq Vs Muhammad Ashiq and others' [2006 SCMR 276] as follows:-
 - a) To appear before the Investigating Officer to prove their innocence.
 - b) To approach the competent higher authorities of the Investigation Officer having powers vide Section 551 of Cr.P.C
 - c) After completion of the investigation, the Investigation Officer has to submit the case to the concerned Magistrate, and the concerned Magistrate has the power to discharge them under section 63 of the Cr.P.C in case of their innocence.
 - d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.
 - e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the

orders of the concerned Magistrate.

- f) There are then remedies which are available to the accused person who claims to be innocent and who can seek relief without going through the entire length of investigation.
- (viii) A criminal case registered cannot be quashed after the trial court has taken cognizance of a case, as the law has provided an aggrieved person with efficacious remedies for seeking a premature acquittal, if there is no probability of conviction or a case is not made out.
- (ix) Prior to exercising jurisdiction under Article 199 of the Constitution, the High Court has to be satisfied that the trial Court has neither passed an order nor any process issued.
- (x) Courts exercise utmost restraint in interfering with or quashing investigations already in progress, pursuant to statutory powers vested in the police or other authorities. Courts do not interfere in the matters within the powers and jurisdiction of the police, particularly when the law imposes on them the duty to inquire or investigate.

8. In the light of above stated law and principles, this Court is not inclined to quash the FIR. This petition being without merits is, therefore, **dismissed**.

~~Ghulam Azam Qambrani~~
Judge

Announced in Open Court, on this 12th day of March, 2020.

~~Ghulam Azam Qambrani~~
Judge