

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P No.764-Q of 2020

Syed Athar Ali Shah
Vs
S.H.O P.S Golra, Islamabad, Etc.

Petitioner By: Mr. Kaiser Mehmood Raja, Advocate.
Respondent By: Ch. Naeem Ali Gujjar, Advocate.
State by: Mr. Zohaib Hassan Gondal, State Counsel
with Rashid, A.S.I.
Date of Hearing: 24.04.2020

Ghulam Azam Qambrani, J: The petitioner namely (*Syed Athar Ali Shah*) has invoked the jurisdiction of this Court by filing instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A of Cr.P.C for quashment of F.I.R No.571, dated 28.10.2019, under Sections 489-F P.P.C, registered with Police Station Golra, Islamabad.

2. Briefly stated facts of the instant petition are that the respondent No.2 /complainant (hereinafter be called as "**respondent**") lodged F.I.R No.571/2019 under section 489-F P.P.C with the Police Station Golra, Islamabad with the allegation that the petitioner entered into a written agreement with him that the petitioner will provide him five Honda Civic cars, 2019 Model, within a period of fifty days. In this regard, he paid two cheques worth of Rs.80,00,000/- and Rs.40,00,000/-. It has been alleged that the petitioner encashed the earlier amount while returned the second cheque and received cash amount from the respondent. It has further been alleged that the petitioner handed over three vehicles to him and he also issued a cheque wroth of Rs.1,20,00,000/- (one cror twenty lac) in favour of respondent. It has further been alleged that the petitioner refused to hand over the remaining two vehicles to him upon which the respondent

presented cheque issued by the petitioner for encashment to the concerned bank, which was dishonored. Hence, instant F.I.R.

3. Learned counsel for the petitioner has contended that; on 16.05.2019, the petitioner entered into a written agreement with the respondent No.2/ complainant that he will provide him five Honda Civic Cars, 2019 Model, for which a period of fifty days was fixed. In this regard, the respondent issued two cheques worth of Rs.80,00,000/- and Rs.40,00,000/- and the petitioner handed over a guarantee cheque worth of Rs.1,20,00,000/- to the respondent. It has been argued by the learned counsel that according to terms of the said agreement, the petitioner handed over four units of Civic 1.8 vehicles to the respondent which becomes more than the amount given by the respondent. On the other hand, according to terms of the above said agreement the respondent was bound to get transfer the flat No.QJ, 42-A Heights Bharia Town, in favour of petitioner but he did not and malafidely with ulterior motives lodged instant false F.I.R against the petitioner. The learned counsel further argued that the Superintendent of Police while in its report dated 12.02.2020, has supported the version of the petitioner even than a false challan has been submitted against the petitioner before the learned trial Court, therefore, urged for quashment of F.I.R and proceedings.

4. Conversely, learned State Counsel assisted by the counsel for respondent opposed the contentions of learned counsel for the petitioner by contending that the petitioner issued cheque in favour of respondent which on presentation dishonored due to insufficient balance which *prima-facie* reflected the dishonesty on the part of petitioner; that investigation has been completed and challan submitted before the learned trial Court; that the petitioner has alternate remedies available to him but the petitioner has directly approached this Court by filing the instant petition which requires extra ordinary discretion, therefore, the petition is not maintainable and request for dismissal.

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

6. It is important to mention here that scope of the powers to be exercised by this Court under Article 199 of the Constitution by way of quashing of a criminal case needs to be considered. In this regard, the principles and law, 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 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.*

7. In the light of above stated law and principles, this Court is not inclined to quash the F.I.R at this stage, as the Challan/Report under Section 173 of Cr.P.C. has been submitted before the learned trial Court. Propriety would also require to exercise restraint in making any observation regarding the contents of the impugned FIR. Various adequate remedies are available to the petitioner. It would therefore, be appropriate for the petitioner to approach the learned trial Court and/or avail other adequate remedies available under the law. This petition being without merits is accordingly **dismissed**.

~~(Ghulam Azam Qambrani)~~
Judge