

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P No.3747-Q of 2019**

Waqar Ali  
**Vs**  
The State & another

Date of Hearing: 26.02.2020

Petitioner By: M. Haroon-ur-Rashid Advocate.

Respondent No.2 By: Mr. Tariq Muhammad Khan Marwat Advocate.

State by: Hafiz Malik Mazhar Javed, State Counsel with Abdur Razzaq SHO & Tariq Mehmood SI.

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**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;-

“ It is humbly and respectfully prayed that the FIR NO. 206/19, dated 14.09.2019 under section 489-F PPC, P.S Noon, Islamabad may graciously be quashed being purely concern with civil dispute and the same is converted into a criminal case just to blackmail and to pressurize the petitioner to meet the illegal demands of the respondent No.2.”

2. Briefly stated facts of the case are that respondent No.2 Abbas Khan lodged FIR No. 206, dated 14.09.2019 U/S 489-F PPC, P.S Noon, Islamabad with the averments that the complainant had friendly relations with the petitioner and the petitioner had to pay a huge amount to the complainant for which the petitioner issued cheque No. 84000478 dated 27.9.2018, amounting to

Rs.1,37,00,000/-, which was dishonoured due to insufficient funds. Thereafter, a “Jirga” was held wherein the petitioner admitted an amount of Rs.1,00,00,000/- and out of which on 19.06.2019 the petitioner paid an amount of Rs.1,0,00,000/- cash on 19.06.2019 and for remaining amount, he issued three cheques i.e cheque No. 8400510 amounting to Rs.6,00,000/-, cheque No.8400511 amounting to Rs.20,00,000/- and cheque No.8400512 amounting to Rs.1,0,00,000/- which were dishonoured, hence the instant FIR.

3. Learned counsel for the petitioner contended that registration of FIR is without lawful authority; that no offence has been committed by the petitioner; that as per the agreement, respondent No.2 was to transfer the property in favour of the petitioner as per agreement dated 19.03.2019, but respondent No.2 failed to perform his part of the agreement; that the petitioner has filed a suit for specific performance of the above said agreement against the complainant which is pending adjudication before the learned Court of competent jurisdiction; that the petitioner has already been granted bail before arrest by the learned Additional Sessions Judge-West, Islamabad, vide order dated 29.10.2019. Further contended that respondent No.2 is trying to convert civil dispute into criminal litigation, therefore, the impugned FIR is liable to be quashed.

4. Conversely, learned counsel for respondent No. 2 assisted by learned State counsel opposed the contentions of learned counsel for the petitioner and contended that the petitioner is nominated in the FIR; there is evidence on record to connect him with the commission of offence; that challan has already been submitted before the learned Trial Court and efficacious remedy is available to the petitioner under Section 249-A Cr.P.C before the learned Trial Court; hence, the instant petition is not competent and is liable to be dismissed.

5. Arguments heard, record perused.

6. The arguments advanced by learned counsel for the petitioner is that this case is based on malafide on the part of the respondent/ complainant and it is a case of no evidence, therefore, the FIR ought to be quashed. It is fact that scope of quashing of FIR or interfering in the investigation is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. 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 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 the same, 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 instant case the challan has already been submitted before the learned Trial Court and the petitioner has the efficacious remedy under Section 249-A, if no case is made out against the petitioner.

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 ~~28~~ day of February, 2020.

~~Ghulam Azam Qambrani~~  
Judge

S.Akhtar