JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No.4479 of 2019

Hasnain Yaseen
Versus
S.H.O. Police Station Sihala, Islamabad, etc

Petitioner by:	M/s Khuda Bakhsh & Ijaz Ahmad, Advocates,
Respondents by:	Mr. Tahir Hameed Khan Niazi, State Counsel. Muhammad Rasheed ASI P.S. Sihala and Irshad ASI/previous I.O.
Date of Decision:	23.01. 2020.

FIAZ AHMAD ANJUM JANDRAN, J: Through this writ petition, petitioner {Hasnain Yaseen} has prayed for quashment of FIR No.235 dated 29.06.2019, registered under Sections 506, 354/ 452 PPC, at Police Station Sihala, Islamabad.

2. Precisely, facts necessary for disposal of instant writ petition are that petitioner purchased a piece of land measuring 9½ Marlas bearing Khewat No.784, Khatuni No.1244, Khasra No. 1954, from Iftikhar Hussain, Nasreen Akhtar, Khurshid Begum, son and daughters of Begum Jan and Bagga Jan vide sale deed dated 27.03.2018. The petitioner, after obtaining registered sale deed, applied for mutation and copy of sale deed handed over to Halqa Patwari and after due process mutation No.1436 dated 31.12.2018 was sanctioned in his favour. That on 18.01.2019, Qadir Bakhsh, Hussain Bakhsh, Qasim Hanif & Sarfraz Pervaiz alongwith some unknown persons, armed with deadly weapons, illegally and forcibly took over the possession of the plot. The petitioner reported the matter to the Police Station Sihala, Islamabad and finding no response, moved an application to ASP, Sihala Islamabad, who with the approval of SP conducted

inquiry and issued direction for registration of FIR. The local police still failed to abide by the direction which led to filing of an application under Section 22-A Cr.PC for registration of FIR against the proposed accused. During pendency of the said petition, police ultimately registered FIR No.72/2019 under section 147, 149, 447 & 506-II PPC, P.S. Sihala, Islamabad.

It is also matter of record that on 19.01.2019, petitioner filed civil suit titled Husnain Yaseen. Vs. Sakina Bibi, etc for declaration, permanent and mandatory injunction, which is pending adjudication before the learned Civil Court. On 31.01.2019, Mst Sakina filed a civil suit titled as Sakina bibi etc Vs. Husnain Yaseen, etc for permanent injunction regarding the same property.

3. Learned counsel for the petitioner contends that issue between the parties is a plot which was purchased by the petitioner but a Qabza Group illegally took over its possession; criminal and civil litigation is pending adjudication between the parties; that local police is favouring the trespassers and also lodged a false case against the petitioner; that complainant of the case has been brought forward by the said Qabza Group. According to the learned counsel, the complainant of the present FIR has been innovated by the said Group as a tool while actually no incident as alleged had ever happened. It is added that the claim regarding, petitioner being absconder is false as he had been on official duty at the relevant time and the concerned department had also issued a certificate in this respect. Learned counsel further asserted that at the time of confirmation of pre-arrest bail of the petitioner in another FIR,the same Investigating Officer arrested the petitioner again in the instant case which establishes the fact of malice and *malafide* on the part of local police as the Investigating Officer of both the FIRs is one and the same. Learned counsel prays for quashment of the FIR as further

proceedings would be wastage of time and abuse of process of law. Learned counsel placed reliance upon case law cited as 1990 P Cr. LJ 1094 [Karachi] titled K.M. Hussain and 3 others Vs. Fayyazullah Shareef and another & 1991 P Cr. LJ 9 [Lahore] titled Riffat Ali Barq Vs. S.H.O. Police Station Muzaffarabad and 4 others.

4. Learned State Counsel repelled the above submissions, inter-alia stating that efficacious alternate remedy in terms of Section 249-A Cr.PC is available to the petitioner and, therefore, in presence of admitted disputed facts, normal course would not be allowed to be deflected.

5. Heard and record perused.

6. Under the Administration of Criminal Justice System, the trial of an accused retains pivotal position in the proceedings initiated through registration of FIR. The investigating agency i.e. police carries on exercise to investigate, probe and collect the evidence and then transmit the same to the Court by way of report under Section 173 of Criminal Procedure Code. To understand **the concept of evidence** it is imperative to go through Article 2(c) of Qanun-e-Shahadat Order, 1984 which reads as under:-

> *"2(c) "Evidence" includes---*
> *(i) all statements which the Court permits or requires be made before it by witnesses, in relation to matters of fact under inquiry such statements are called oral evidence ; and*
> *(ii) all documents produced for the inspection of the Court; such documents are called documentary evidence."*

7. The above definition guides to hold that evidence is not only the statements of the witnesses but also the documents produced by the parties and other statements and documents which are allowed and required by the Court to be brought on record. The Investigating Agency collects oral as well as documentary evidence and ultimately subjected judicial scrutiny by the Court of competent jurisdiction through the trial. The

evidence collected by the Investigating Agency has to be proved through the production of witnesses and carrying on the process of cross examination. This exercise is not only indispensable, inevitable but also fulfils the requirements of principle of natural justice and right of fair trial envisaged in Article 10-A of the Constitution and, therefore, cannot be allowed to be deflected.

8. No doubt, this Court under Article 199 of the Constitution and Section 561-A of Criminal Procedure Code retains power to quash the FIR but this power is required to be exercised in exceptional and rare cases. The exercise in routine will not only crumble down the process but also result in devastating the exercise carried on by the Investigating Agency and the complainant as well before its logical conclusion i.e. the culmination of trial which is the ultimate object of criminal justice system. It does not seem proper to bulldoze the process and brush aside the exercise with one stroke of pen. This would also amount to lay the complainant in chaos and uncertainty that he had been deprived of the right to prove his case which if allowed would have been proved. After submission of report under section 173 Cr.PC before the Court of competent jurisdiction, it would not be appropriate to halt the normal course where the defence i.e. the accused would also have an opportunity to lead evidence. If the accused succeeds to get an order of quashing of FIR by way of filing writ petition, it would amount to defeat the criminal trial system. Guidance in this respect is taken from the law laid down by the Hon'ble Apex Court of the Country in PLD 2016 SC 55 {Muhammad Farooq Vs. Ahmed Nawaz Jagirani and others} wherein it was held that: -

> "*the High Court in exercise of inherent jurisdiction cannot strangulate the trial by overstretching its jurisdiction under Section 561-A, Cr.PC (see Noor Muhammad case, supra) and embark upon to examine adequacy and or inadequacy of evidence, which stage will only reach after charge is framed and complainant is given an opportunity to prove his case beyond reasonable doubt*."

9. As observed above, the case in hand is at initial stage, challan has been submitted and the prosecution has to prove its case by producing evidence of unimpeachable character. The trial, ultimately would reach to a final conclusion, either in favour of prosecution or the defence. In presence of disputed questions of facts and availability of efficacious alternate remedy, normal course would not be allowed to be deflected. If at any stage, after taking cognizance by the Court, accused is of the view that he is innocent, he has a remedy under Section 249-A Cr.PC/265-K Cr.PC. Guidance in this respect is taken from the case law reported as PLD 2013 SC 401 {Director-General, Anti-Corruption Establishment, Lahore and others. Vs. Muhammad Akram Khan and others} wherein it was held that:-

> "*The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/ 265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction*."

10. In the light of above, the instant writ petition is without merits and is accordingly dismissed, however, the petitioner shall be at liberty to avail all remedies available to him under the law, if so advised.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Approved for reporting.

JUDGE