

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

**W.P No.1015 of 2019**

Ch. Ehsan Ellahi  
**Vs**  
Ex-Officio Justice of Peace, etc

Petitioner By: Karim Nawaz Abbasi Advocate.  
State by: Mr. Zohaib Hassan Gondal, State  
Counsel with Zafar Janjua ASI.  
Date of Hearing: 19.03.2020

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***Ghulam Azam Qambrani, J.*** Through this petition, the petitioner has invoked the jurisdiction of this Court by filing Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

*"It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to accept the instant petition and the impugned order dated 16.02.2019 passed by learned respondent No.1 may kindly be declared illegal, void ab initio, against the law, facts, null and void and set aside the same in the interest of justice and equity by directing the local police to probe/investigate the FIR lodged by the petitioner against snatching of his car along with cash amounting to Rs.63,00,000/- by one Raja Talat in league with his co-accused Aamir Habib and others during a jirga proceedings, the CCTV footage of incident is available to promote the cause of justice.*

*Any other relief which this Hon'ble Court deems just and proper, in the circumstances may also be awarded to the petitioner."*

2. Briefly stated facts of the case as narrated by the petitioner are that he has old business relations with one Aamir Habib and respondent No.3. They all were doing the business of property dealing jointly as well as severally. Said Aamir Habib entered into an agreement deal with respondent No.3 and thereby paid an amount of Rs.63,00,000/- to him and against said payment Mr. Aamir Habib took a cheque amounting to Rs.75,00,000/- from respondent No.3 as guarantee in case he fails to transfer the land as agreed. In this connection, a jirga was held on 10.10.2018 at the office of Aamir Habib known as A & H Rent-A-Car PWD, where it was agreed by respondent No.3 that he will return the amount of Rs.63,00,000/- till 31<sup>st</sup> December, 2018, subject to return of original agreement and cheque. On stipulated time, respondent No.3 contacted the petitioner and requested for extension of time between the petitioner and said Aamir Habib, the petitioner requested Aamir Habib and accordingly time was extended for a few days. On 04.01.2019, the petitioner contacted said Aamir Habib at Car Avenue, I-8 Markaz, Islamabad with the advice to bring original cheque and the stamp papers and receive his amount back. At about 7/30 PM respondent No.3 along with his brother Shahid and two other persons named Hameed and Gul Fayyaz reached at the venue, where said Aamir Habib along with Tabraiz, Faizan, Rizwan, Aamir Butt and Shafique were present. Meanwhile, Faizan called the petitioner outside and offered him a sum of Rs.500,000/- on the condition that they will took the amount of Rs.63,00,000/- without giving back the original cheque and stamp paper to said Tariq/ respondent No.3 and this was witnessed by Fayyaz Gul, who was standing nearby. The petitioner

refused to do so, and went inside the office and told said Aamir Habib about the offer of Faizan. Upon this, Mr. Aamir Habib said that he would return the originals, if respondent No.3 gives him the amount of Rs.63,00,000/-. At this, respondent No.3 along with Gul Fayyaz brought the cash in a shopper, whereupon the petitioner asked Mr. Aamir Habib for the return of original documents, but he started putting off the matter and finally tried to snatch the cash, whereupon the petitioner asked his office boy to keep the cash in his car. Meanwhile said Aamir Habib and his companions started altercation, with criminal intimidation, they used filthy language and tried to attack upon respondent No.3 and his persons named above. The petitioner was trying to solve the matter amicably and he let respondent No.3 and his persons to go. Thereafter, the companions of said Aamir Habib possessed the office and started quarrelling with the petitioner, they beat the petitioner and tried to kidnap him, but could not succeeded, meanwhile one Raja Tallat, who was jirga member of said Aamir Habib, dragged the petitioner towards behind the office, snatched the keys of petitioner's vehicle and run away by depriving the petitioner from his car bearing Chassis No. PK0129986 along with entrusted cash amount of Rs.63,00,000/-. The petitioner tried his level best to settle the issue by calling and requesting said Aamir Habib and his companion Raja Tallat, but remained unsuccessful, hence he reported the matter to the police station Industrial Area (I-9) Islamabad, whereupon case FIR No.52 dated 04.02.2019 under sections 382/34 & 506 PPC was registered. Respondent No.3 filed an application under sections 22-A Cr.P.C for registration of a criminal case against the proposed accused

whereby the learned Ex-Officio Justice of Peace, Additional Sessions Judge-West, Islamabad, vide order dated 16.02.2019 directed the SHO, Police Station Industrial Area, Sector I-9, Islamabad, to record the version of the petitioner in the relevant register and proceed further as per mandate of Section 154 Cr.P.C or under section 155 Cr.P.C and 182 PPC, if need so. Hence, the instant petition.

3. Learned counsel for the petitioner contended that the impugned order is based on assumption, which is not tenable in the eyes of law and the order is patently illegal, perverse and seriously caused prejudice to the petitioner; that the impugned order has been passed without hearing the proposed accused persons, as such, the same is liable to be set aside.

4. Conversely, learned State counsel opposed the contention of learned counsel for the petitioner and supported the impugned order; that the cancellation report has been prepared by the police in the case FIR No.52/2019 lodged by the petitioner, being baseless and registered on false story and lastly contended that the petition is not competent and is liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the petitioner took the shopper bag containing Rs.63,00,000/- in the presence of the witnesses and asked his showroom office boy namely Muhammad Saeed son of Aziz ur Rehman to put the said shopper bag in his applied for Mehran Car, and thereafter lodged FIR No.52/2019, in order to usurp the amount of respondent No.3, but after thorough inquiry/ probe conducted by the Superintendent of Police,

Investigation, Islamabad, the police has come to the conclusion that the said FIR was lodged on the basis of a false and baseless story and a cancellation report has been prepared in the said FIR No.52/2019. The petitioner intentionally did not join the inquiry proceedings and his phone was found switched off or unattended. The I.O. has further mentioned in the inquiry report that the petitioner/ complainant of FIR No.52/2019 did not pursue the matter and that the crime scene has also not been visited due to non-pursuance by the complainant. The said Muhammad Saeed son of Aziz ur Rehman in his statement before the Inquiry Officer deposed as under:-

*“That on 04.01.2019 Ch. Ehsan gave him a blue colour shopper and told him to put it in his applied for Mehran Car. Further, he gave the keys of car and directed to take it away. Subsequently, I kept the shopper of amount below the front seat and parked the car near Muslim Commercial Bank. Approximately 30 minutes latter at about 8.30 pm, Ch. Ehsan called me at my number i.e. 0341-9416802 and I handed over his car in front of Habibi Restaurant and left towards Faizabad side. On the very next day i.e. 05.01.2019, he called me again and asked me that if someone asks him in this regard, I may told the name of Tallat instead of his name. I made it clear on him that I cannot tell a lie. Upon this he disconnected his phone. Later, he neither made any contact, nor visited our office.”*

7. From further perusal of record and the statement of M.Saeed, it reveals that during the inquiry proceedings, it was proved that the said amount of Rs.63,00,000/- was received by the petitioner and put it in his car and later on lodged the false and baseless FIR No.52/2019, wherein the police after thorough investigation has prepared a cancellation report. It is a 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, 1973.

8. In the case reported as “Muhammad Farooq Vs. Ahmed Nawaz Jagirani and others” (PLD 2016 S.C. 55), it has been observed by the Hon'ble Supreme Court of Pakistan as under:-

*“Exercise of jurisdiction under Section 561-A, Cr.P.C. by this Court is akin to the exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; exercise of such jurisdiction is not to be exercised in routine and or as a matter of course merely because such jurisdiction is available and or could be exercised. Exercise of inherent jurisdiction is dependent on non-availability of alternate and efficacious remedy and or exercise of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by this Court. Another rule of propriety, that has evolved by precedent law must not lose sight is that where two courts have coextensive or concurrent jurisdiction, then propriety demands that jurisdiction of Court of the lower grade is to be invoked in the first instance.*

*The remedy under Section 561-A, Cr.P.C. is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, Cr.P.C. as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event.”*

9. In the case reported as “Maqbool Rehman Vs. State” (2002 SCMR 1076), it has been held as under:-

*“High Court does not exercise inherent jurisdiction unless there is gross miscarriage of justice and interference by the High Court seems to be necessary to prevent abuse of process of Court or to secure the ends of*

*justice. Jurisdiction under Section 561-A, Cr.P.C is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction."*

10. In view of the above facts and circumstances, I do not find any illegality, irregularity, or jurisdictional defect in the impugned order dated 16.02.2019, passed by the learned Additional Sessions Judge- West, Islamabad. The instant petition having no force, is **dismissed**.

**Ghulam Azam Qambrani**  
**Judge** ✓

Announced in Open Court, on this 06<sup>th</sup> day of April, 2020.

**Judge** ✓

Rana.M.Ift