

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3457/2019
Mirza Muhammad Ishaq
Versus
S.P. Investigation, Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	02.12.2019	Mr. Moazzam Ali Sheikh, Advocate for the petitioner Mr. Sadaqat Ali Jahangir, learned State Counsel with Abdul Sattar Baig, Inspector Police Station Ramna with Akram A.S.I. P.S. Ramna Sardar Abdul Raziq, Advocate for respondent No.3

The prayer clause of the instant writ petition is reproduced herein below:-

"Therefore most respectfully prayed that this Honorable Court and requested that direction to the respondents be given not to interfere with the investigation by which cancellation of FIR No.141/19 U/S 420/468/471 PPC, Police Station Ramna Islamabad is duly verified and forwarded by the concern S.D.P.O Shalimar Islamabad in the light of inquiries made by the Direction IGP Office Islamabad in the interest of justice good conscious and equity.

It is therefore prayed that suo moto inquiry made by SP (investigation) superseding the previous inquiry made the same SP (investigation) is to be declared null and void ab-initio in the interest of justice good conscious and equity.

It is therefore prayed for quashment of FIR as Twisted third witness of Agreement of sale of land situated at Sirwala Tehsil and District Attock become the complainant of FIR No.141/19 U/S 420/468/471 PPC police station Ramna, Islamabad. Witness cannot enforce agreement in the interest of justice, good conscious and equity."

2. Through the instant petition, the petitioner, Mirza Muhammad Ishaq, seeks quashment of F.I.R. No.141, dated 05.05.2019 under Sections 420, 468 and 471 P.P.C. at Police Station *Ramna*, Islamabad in which he is alleged to have committed fraud with the complainant by posing himself to be the owner of land situated *khasra* numbers 2169/137, 2167/132, 138/1 at *Mouza Sarag Salar* Tehsil Attock and as a

result, an agreement dated 25.11.2018 was executed between the petitioner and respondent No.3 for a sale consideration of Rs.52,00,000/- under which the former had to transfer the land in question in favour of the complainant but failed to transfer the same even though he had received the consideration of Rs.52,00,000/-.

3. Learned counsel for the petitioner submitted that after the lodging the said F.I.R. against the petitioner, he moved an application to the Inspector General of Police for inquiry; that the matter was investigated by the Assistant Inspector General and the Superintendent of Police (Investigation) and in both the inquiries, the petitioner's version has been proved; that as a result, the investigating officer concerned recommended cancellation of the F.I.R. and against the false complaint, proceedings against the complainant were also recommended to be initiated in terms of Section 182 P.P.C., however, the Superintendent of Police did not proceed in accordance with law; that the Superintendent of Police was misguided by the investigating officer without any cogent reason and changed his earlier stance of recommending cancellation of the F.I.R., which is illegal and without lawful justification; that the complainant of the F.I.R. in question alleged that he entered into a transaction of sale and purchase with accused and is relying on the document of agreement in which the accused/petitioner was the seller of landed property, but converse to his stand in the F.I.R., in the document of agreement his status is of a witness; that at the time of execution of the agreement there were only two witnesses, however, entry of the complainant/third witness in the agreement is a forgery; that the complainant being witness of the agreement cannot get the same

enforced as an executant of the agreement; that the landed property is situated beyond the territorial limits of the Islamabad; that the F.I.R. could not have been lodged in Islamabad as the transaction was made between the petitioner and Muhammad Fayyaz at Attock where the landed property is situated; that the matter is of a civil nature; and that from the contents of the F.I.R. no forged *fard* was alleged to have been given to the complainant. Learned counsel for the petitioner prayed for a direction to be given to the respondents not to interfere in the investigation and for the F.I.R. in question against the petitioner to be quashed.

4. On the other hand, learned counsel for respondent No.3 assisted by learned State Counsel submitted that the petitioner is nominated in the F.I.R. and was alleged to have committed fraud with the complainant. The petitioner had posed himself to be the owner of land situated *khasra* numbers 2169/137, 2167/132, 138/1 at *Mouza* Sarag Salar Tehsil Attock and wanted to sell the same. The petitioner was alleged to have shown a fake computerized *fard* to the complainant so as to show that the former was the owner in possession of 16 *kanals* of land situated in above said *khasras*. As a result an agreement dated 25.11.2018 was executed between the petitioner and respondent No.3 for a sale consideration of Rs.52,00,000/-. According to the F.I.R., the said amount of Rs.52,00,000/- had been paid by the complainant but the petitioner failed to transfer the said 16 *kanals* of land in favour of the complainant which resulted in the lodging the F.I.R. in question; that no legal bar exists for reinvestigation of a criminal case and police can carry out the fresh investigation; that the police had statutory duty in terms of Section 154 Cr.P.C. and

statutory right under Section 156 Cr.P.C. to investigate a cognizable offence; that the conduct and manner of investigation cannot be scrutinized under Constitutional jurisdiction which could amount to interference in police investigation; and that this Court has no jurisdiction to resolve the disputed question of fact in Constitutional jurisdiction. Learned counsel prayed for the petition to be dismissed.

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

6. The petitioner is alleged to have committed fraud with the complainant by posing himself to be the owner of land situated *khasra* numbers 2169/137, 2167/132, 138/1 at *Mouza* Sarag Salar, Tehsil Attock and wanted to sell the same. Furthermore, the petitioner was alleged to have shown a fake computerized *fard* to the complainant showing himself as the lawful owner in possession of 16 *kanals* of land situated in said *khasras*. An agreement dated 25.11.2018 was executed between the petitioner and respondent No.3 for a sale consideration of Rs.52,00,000/-. Under the said agreement, the petitioner had to transfer the land in question in favour of the complainant but the former failed to transfer the same even though he had received the consideration of Rs.52,00,000/-.

7. As regards the petitioner's contention that respondent No.1 may be directed not to interfere in the investigation and restrain him from superseding the earlier inquiry in which cancellation report of the F.I.R. in question was recommended, suffice it to say that Section 156(2) provides that the police has the statutory right to investigate the circumstances of an alleged cognizable crime without requiring any

permission from the judicial authorities and such statutory right cannot be interfered with by the judiciary. Reference in this regard may be made in the case of Muhammad Dildar Hussain Vs. The Civil Judge/Judicial Magistrate, Shujabad (2000 P.Cr.L.J 43). The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation is a statutory authority/right of the police. Section 156(2) Cr.P.C. deals with "investigation" of cases.

8. An Investigating Officer may exercise his statutory power of "further investigation" in several situations. For example; when new facts come to its notice; when certain aspects of the matter had not been considered; and when investigation officer found that further investigation was necessary to be carried out from a different angles keeping in view the fact that new or further material came to his notice. Apart from the aforementioned grounds, magisterial or Superior Courts can direct "further investigation", if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary for the ends of justice.

9. As regards the petitioner's ground that the petitioner has been falsely implicated in this case and in the earlier inquiry conducted by the Assistant Superintendent of the Police recommendation for the cancellation of the F.I.R. in question, suffice it to say that the petitioner has not categorically taken the stance of not receiving an amount of Rs.52,00,000/- as was alleged in the F.I.R. Furthermore, determination of guilt or innocence of accused depends upon the totality of facts and circumstances and same could be revealed during the course of trial and it is for Courts to decide determination of guilt or innocence. Reference in

this regard may be made in the case of Sheikh Mahmood Saeed Vs. Amir Nawaz Khan (1996 SCMR 839). Undoubtedly, the veracity of contents of the F.I.R. cannot be properly thrashed out at this stage.

10. Furthermore, as regards the petitioner's plea for quashment of F.I.R. in question, it is well settled that a party seeking quashment of F.I.R. has alternative remedy to raise an objection at the time of framing the charge against them by the Trial Court or at the time of final disposal of the trial after recording the evidence. The petitioner has more than one alternative remedies before the Trial Court under Section 249-A Cr.P.C. or to approach the concerned Magistrate for cancellation of the case under the provisions of Cr.P.C. In the case of The State Vs. Asif Ali Zardari and another (1994 SCMR 798), it has been held *inter-alia* that ordinarily High Court does not quash proceedings under Section 561-A Cr.P.C. unless trial Court exercised its powers under Section 249-A or 265-K Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment proceedings as envisaged under Section 561-A Cr.P.C. However, in exceptional cases, High Court can exercise its jurisdiction under Section 561-A Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In the case at hand, the allegations levelled in the F.I.R. *prima-facie* constitute a cognizable offence under the law, which require proper trial after evaluation of evidence available on record. In the case at hand, I do not find any exceptional circumstances to interfere in the matter at this stage.

11. In the case of Muhammad Khalid Mukhtar Vs. The State through Deputy Director, F.I.A. (C.B.A.), Lahore (PLD 1997 SC 275), it was held as follows:-

"The powers under section 561-A, Cr.P.C. can be exercised to prevent abuse of process of any Court or to secure the ends of justice. Such powers cannot be exercised mechanically or in every case where there is allegation of false implication or of the evidence being false. Exercise of such powers cannot further the ends of justice, if an exercise is undertaken at pretrial stage to determine whether the prosecution evidence likely to come on record is true or false. In the case of Raja Haq Nawaz v. Muhammad Afzal and others (PLD 1967 SC 354), it was held that quashment of proceedings at an early stage gives an unfortunate impression of stifling of criminal prosecutions, by exercise of an extraordinary power which is given for the dispensation of complete justice, in the forms provided by law. Similar view was taken in the case of Gian Chand v. State (1968 SCMR 380), where it was observed that determination of the guilt or innocence of an accused, depends on totality of facts and circumstances revealed during the trial, and when such a stage had not been reached, the application for quashment of the proceedings in the trial Court, was rightly rejected."

12. In the case of Ghulam Muhammad Vs. Muzammal Khan (PLD 1967 SC 317), it was held as follows:-

"The inherent jurisdiction given by section 561-A is not an alternative jurisdiction or an additional jurisdiction but is a jurisdiction preserved in the interest of justice to redress grievances for which no other procedure is available or has been provided by the Code itself. The power given by this section can certainly not be utilized as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute."

13. Even otherwise, the disputed question of fact regarding the forgery alleged to have been committed by the complainant in the agreement dated 25.11.2018 cannot be resolved in Constitutional jurisdiction of this Court. In the given circumstances as well pursuant to the case law referred to herein above, I am not inclined to allow this petition.

14. For what has been discussed above, the instant petition, being devoid of merits, is accordingly dismissed.

Qamar Khan*

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

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