

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.2490/2019.**

**Muhammad Safdar                      VS                      Babar Ali etc**

Petitioner by:                                      Ch. Abdul Khaliq Thind, Advocate.

Respondent No.1 by:                              Bilal Hassan Sabri, Advocate.

Respondents No.2 & 3:                              Barrister Ayesha Siddique Khan,  
State Counsel.

Tahir Khan Niazi, S.I, P.S Aabpara,  
Islamabad alongwith record.

**Date of Decision:                                      03.02.2020.**

**MOHSIN AKHTAR KAYANI, J:-** Through the instant writ petition, the petitioner has prayed for quashing of FIR No.176/2019, dated 12.06.2019, U/S 408 PPC, P.S Aabpara, Islamabad.

2.        Brief facts referred in the instant writ petition are that FIR No.176/2019 was lodged on the complaint of respondent No.1/complainant with the allegations that he and his mother being Directors of Khurshid Printers Pvt. Ltd, situated at Plot No.15, Khayaban-e-Suharwardi Aabpara Market engaged services of the petitioner being Accountant, who was given two cheques No.11523394-A, dated 13.05.2014, amounting to Rs.7,00,000/- drawn at Meezan Bank G-9, Markez Branch Islamabad and cheque No.00024344, amounting to Rs.5,00,000/- drawn at Askari Bank Ghosia Plaza Aabpara, Islamabad for encashment, who after encashment failed to pay the amount as such committed offence of criminal breach of trust.

3.        Learned counsel for the petitioner contends that services of the petitioner were hired as consultant by respondent No.1 and his mother and he was paid through different cheques directly in his name for his services and the cheques in question were given in this regard; that from the bare reading of FIR, the alleged offence does not constitute as the cheques were issued in name of the petitioner; that alleged incident of encashment of cheques took place on 13/14.05.2014, whereas the FIR was lodged on 12.06.2019 after the elapse of five years without any justification; that claim of respondent No.1 and his

mother is not justified; that respondent No.1/Babar Ali did not issue any such cheque to the petitioner nor the said cheques were signed by him, therefore, he cannot lodge the FIR under the law.

4. Conversely, learned counsel for respondent No.1 contends that the petitioner was accountant of company of respondent No.1 and his mother and he was paid monthly salary in shape of Rs.25,000/- through cheque issued in the name of Khurshid Printers Pvt. Ltd and the amount, which was encashed by the petitioner was not due against respondent No.1 nor the petitioner was allowed to convert the amount for his personal use; that the petitioner acknowledged that he was servant of respondent No.1 as such he has committed criminal breach of trust; that challan has been submitted before the Court, therefore, instant writ petition is not competent.

5. I have heard the arguments and perused the record.

6. Perusal of record reveals that respondent No.1/complainant Babar Ali lodged criminal case FIR No.176/2019, dated 12.06.2019, U/S 408 PPC, P.S Abpara, Islamabad on the allegation that his mother namely Asima Khurshid gave cheques No.11523394-A, dated 13.05.2014, amounting to Rs.7,00,000/- drawn at Meezan Bank G-9, Markez Branch Islamabad and cheque No.00024344, amounting to Rs.5,00,000/- drawn at Askari Bank Ghosia Plaza Aabpara, Islamabad to the petitioner, who was stated to be accountant of the company and the petitioner after encashment of these cheques misappropriated the amount.

7. The entire case is based upon the claim that the petitioner was accountant and employee of Khurshid Printers Pvt. Ltd. in terms of section 408 PPC. In order to resolve the controversy, the prosecution i.e. in this case respondent No.2/complainant has to establish that he entrusted the amount to the petitioner, who being his servant has misappropriated the same in violation of his direction. The minimum requirements of criminal breach of trust in terms of section 405 PPC are as under:-

- (a) entrustment of the property.
- (b) dishonest misappropriation.
- (c) or convert the property to his own use.

(d) Dispose of the property in violation of any direction of law or contract.

8. Besides the above referred minimum ingredients, there is no denial by the petitioner side that he did not encash those cheques, however, he has different explanation, whereby he contends that both the cheques were issued to him being tax consultant of the company for his services and he provided his services to the company under the name of SF Consulting, Islamabad through different invoices. Learned counsel for the petitioner has also drawn attention of this Court towards the petitioner's professional charges and services rendered w.e.f. July, 2007 to July, 2017. It is also stance of the petitioner that the company appointed him as special attorney to deal with its cases before all tax forums vide special attorney for the years 2009, 2012 and 2015 and the said attorney was also given by mother of respondent No.1, which was cancelled on 20.05.2017, in which respondent No.1 signed the same as witnesses. This entire background clearly reflects that SF Consultants, Islamabad known as Synchronous Consulting, Islamabad was engaged by the Khurshid Printers Pvt. Ltd. company as tax consultant, which is represented by the petitioner, however, question arises as to whether the two instruments referred in the FIR of Rs.7,00,000/- and Rs.5,00,000/- were given to the petitioner against his services or was directed to encash the cheques and return the cash amount have to be considered in the light of the Negotiable Instruments Act, 1881, whereby section 3(c) defines bearer, which means "*a person who by negotiable comes into possession of a negotiable instrument, which is payable to bearer*". Similarly, the cheque has been explained in section 6 of the Act, which refers "*is a bill of exchange drawn on a specified banker and not expressed payable otherwise than on demand*". It is trite law that when cheque is transferred to any person so as to consider that person holder that of, the instrument is said to be negotiated as defined in section 48 of the Act, therefore, the cheques in question clearly spell out name of the person, in whose name it were issued i.e. Muhammad Safdar (present petitioner) issued by respondent No.1/Babar Ali and Asima Khurshid, hence, plea raised by the petitioner that he is holder in due course and the amount referred in the said instruments was given for clearance of liability

of respondent No.1 and his mother in terms of sections 9 & 10 of the Negotiable Instruments Act, 1881. Even otherwise, section 118 of the Act lays down certain presumptions, which are as under:-

***“Presumptions as to negotiable instruments--- Until the contrary is proved, the following presumptions shall be made:-***

- (a) ***of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;***
- (b) ***as to date: that every negotiable instrument bearing a date was made or drawn on such date;***
- (c) ***as to time for acceptance: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;***
- (d) ***as to time of transfer: that every transfer of a negotiable instrument was made before its maturity;***
- (e) ***as to order of endorsement: that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;***
- (f) ***as to stamp: that a lost promissory note, bill of exchange or cheque was duly stamped;***
- (g) ***that holder is a holder in due course: that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him”.***

9. In view of the above referred position, the presumption lies in favour of the petitioner that two cheques claimed by the respondent No.1 were given to the petitioner against consideration and the petitioner was entitled for their encashment, which he did and no other circumstances have been referred in any manner or can be considered separately unless it has been proved contrarily. This position has been considered on the touch stone of 2004 CLC 384 Irfan Fazal vs. Zahid Iqbal, PLD 1963 SC 163 (Fines Textile Mills Ltd. Karachi vs. Haji Umar) & 2000 CLC 296 (Muhammad Ramzan vs. Muhammad Yahya Khan). It is also trite law that once execution is admitted then it is

for the maker to disprove the consideration. Reliance is placed upon 2002 CLD 1545 (Muhammad Sabir vs. Khalil ur Rehman), whereas the very presumption is in favour of the petitioner that the instruments were issued against some consideration. Reliance is placed upon 2002 CLD 107 (EFU General Insurance Ltd. vs. Messrs Security and Management Services Pvt. Ltd.).

10. In view of above position, this Court is of the view that the petitioner was holder in due course of the negotiable instruments i.e. two cheques, which were given by respondent No.1 and his mother being Directors of the company and their claim is that the amount was to be returned by the petitioner after their encashment from the banks but such contention can only be proved in the competent Court of law and as such the dispute is entirely of civil nature, which has been converted into criminal case through FIR in question although respondent No.1 is under obligation to discharge his onus that he and his mother have not given the cheques in question against the consideration and such factors require declaration from competent Civil Court, which is missing in this case.

11. The entire record reflects that there is no entrustment to the petitioner by respondent No.1 nor he misappropriated the property of respondent No.1 in any manner rather he has provided his services to respondent No.1 and his mother and as such last power of attorney was cancelled by respondent No.2 and his mother on 18.05.2017, even though the same is silent qua any fraud, misappropriation or criminal breach of trust, therefore, this Court believes that the FIR has been lodged with delay of five years without any justification and no offence is made out, although the I.O has submitted the challan in the Court but this Court is empowered to protect rights of a person, even though challan has been submitted in the Court. It is trite law that quashing of FIR can be sought when the case is of no evidence or registration of the case is based upon malafide or the offence is of civil nature or there is jurisdictional defect or there is violation of some provisions of law. Reliance is placed upon 2014 YLR 429 Karachi (Bashir Ahmed vs. VIIIth Family Judge, District West, Karachi). Even the FIR can be quashed when police has no jurisdiction to register the case or civil dispute has been converted into criminal proceedings, which tantamounts abuse of process of law and Court. Reliance is

placed upon **2016 P Cr. L J 1144 (Faisal Iqbal vs. State)**. The entire background of the case disclosed above clearly spells out that the petitioner was holder of the cheques in due course as the cheques were issued by respondent No.1 and his mother in terms of section 118 of the Negotiable Instruments Act, 1881 presumption lies in favour of the petitioner and the petitioner received those cheques against some consideration, therefore, extra ordinary exceptional circumstances exist in favour of the petitioner to save him from un-necessary harassment and abuse of process of law, which are key factors to exercise powers U/S 561-A, Cr.P.C as no offence is made out from entire record. Even this Court is equipped to quash the FIR, when charge has been framed. Reliance is placed upon **2009 SCMR 141 (Muhammad Aslam (AmirAslam) vs.District Police Officer, Rawalpindi)**.

12. In view of above discussion, I hold that entire proceedings from registration of the FIR till cognizance by the concerned Court are illegal, therefore, instant writ petition is **allowed**. Resultantly, FIR No.176/2019, dated 12.06.2019, U/S 408 PPC, P.S Aabpara, Islamabad is hereby **quashed**. However, respondent No.1 is at liberty to get redressed his grievance, if any, against the petitioner by invoking jurisdiction of competent Civil Court, if so, advised.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam