

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

W.P No.452-Q of 2020

Ehtisham Hussain
Vs
The State and another

Petitioner By: Ch. M. Naeem Ali Gujjar, Advocate.
Respondent No.2 by Nemo.
State by: Zohaib Hassan Gondal, State Counsel with
Kamal Khan, A.S.I.
Date of Decision: 07.05.2020

Ghulam Azam Qambrani, J: Through the instant petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C, the petitioner seeks quashment of FIR No.489, dated 18.11.2019 under Sections 420 P.P.C, registered with Police Station, Kohsar, Islamabad.

2. Briefly stated, the complainant/ respondent No.2 (Riasat Ali) lodged the above said F.I.R against the petitioner with the allegations that the petitioner demanded an amount of Rs.20,00,000/- from him for his job in some government department, as the complainant had good relations with the petitioner, the complainant paid an amount of Rs.15,00,000/- to the petitioner for the said purpose, but neither any job was arranged nor the petitioner has returned the amount of the complainant, as such, the petitioner has cheated the complainant.

3. Learned counsel for the petitioner submitted that he is totally innocent and false case has been registered against him; that the petitioner has no concern whatsoever with the commission of the alleged offence. Further, submitted that no

offence has been committed by the petitioner. Lastly, contended that the instant F.I.R as well as proceedings are sheer wastage of the precious time of the learned trial Court and, therefore, prayed for quashment of F.I.R.

4. On the other hand, learned State Counsel has contended that the petitioner is nominated in the F.I.R. with specific role; that the challan/report under section 173 of Cr.P.C. has been submitted before the learned trial Court; as such the instant petition is liable to be dismissed.

5. Arguments heard, record perused.

6. The challan in the instant case has been submitted before the learned trial Court and this Court is to exercise jurisdiction under article 199 of the Constitution of Islamic Republic of Pakistan, 1973 within certain settled parameters and is not supposed to enter into a factual controversy unless it is established that certain facts are not disputed between the parties and keeping in view the controversy between the parties, it is not fair to quash the impugned F.I.R at this stage.

7. The scope of quashing of F.I.R or interfering in the investigation is limited while exercising power of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In this regard the principles and laws as enunciated and laid down by the Hon'ble Supreme Court of Pakistan 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] & "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 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 a case, 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.*

8. In the light of above mentioned law and principles, this Court is not inclined to quash the F.I.R at this stage, as the Challan/ Report under Section 173 of Cr.P.C. has been submitted before the learned trial Court. Propriety would also require to exercise restraint in making any observation regarding the contents of the impugned FIR. Various adequate remedies are available to the petitioner. Therefore, it would be appropriate for the petitioner to approach the learned trial Court and avail other adequate remedies available to him under the law. This petition being without merits is accordingly **dismissed**.

~~—~~(Ghulam Azam Qambrahi)
Judge

Rana.M.Ift