

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO.4515-Q-2019

NOSHAD AHMAD ZADA.

Vs.

STATION HOUSE OFFICER, P.S. I-9, ISLAMABAD, ETC.

Petitioner by : Mr. Muhammad Ahmad Tariq Fani, Advocate.

Respondents by : Nemo for Respondent No.4.
Mr. Sadaqat Ali Jahangir, State Counsel.
Zafar Janjua, S.I.

Date of hearing : 21.01.2020

LUBNA SALEEM PERVEZ, J. Through instant Writ Petition u/s 561-A Cr.P.C., Petitioner seeks quashment of FIR No.401/19, dated 06.08.2019, registered under Sections 149, 506, 342 and 147 PPC, at Police Station I-9, Islamabad, on the application filed under Section 22-A/B Cr.P.C by Respondent No.4/Complainant.

2. Learned Counsel for the Petitioner submitted that Respondent No.4 is his real brother who had lodged fake and frivolous FIR against him by invoking Sections 149, 506, 342 and 147 of PPC. Learned counsel pointed out that the alleged occurrence took place on 17.07.2018 at 01:30 am but the FIR was registered on 06.08.2019 at 06:35 pm. Learned counsel submitted that Respondent No.4/Complainant of the case has alleged in FIR that the Petitioner along with Muhammad Ilyas Khan, Inam Ullah, Malik Zada, Usman, Uryadzai, Aqeel Jan, Faheem Jan, Fiaz, Ameen Jan, Imrtiaz, Ismaeel, Bahramand Jan and Adel Naveed kidnapped him on 17.06.2018, at about 11:30 am (mid-night), he was brutally beaten by them and tortured on heart, liver, head and other sensitive parts of the

body and when he became unconscious, the accused persons threw him at I-9 grave yard, however, reported the matter through a complaint to SHO I-9 Police Station on 18.06.2018, on the very next day of alleged occurrence. Learned Counsel contended that on the one hand the Complainant alleged that he was badly tortured and thrown at grave yard when unconscious but, on the other hand, very next day of the alleged occurrence he was able to personally appear and lodge complaint in the Police Station. Learned Counsel stated that neither Complainant/Respondent No.4 informed 15 for emergency nor there is any medical report available on record to support his contentions. Learned Counsel vehemently argued that the impugned FIR has been lodged merely on the basis of a photograph which also appears to be taken in the winters as Complainant/Respondent No.4 is wearing a woolen scarf in it, whereas, as per contents of the FIR, the alleged offence occurred in the month of June when the summer season was on its peak. Learned Counsel submitted that the FIR is fake frivolous and has been instituted to involve the Petitioner and other co-accused, who are cousins of present Petitioner, with *malafide* intentions and personal animosity, therefore, same is liable to be quashed.

3. Learned State Counsel submitted that the petitioner has joined the investigation and is on bail. Challan under Section 173 Cr.P.C. has already been filed in the Court with the report that no incriminating evidence is available or found against the petitioner so as to involve him in the alleged offence and his name has been placed in Column No.2 of Challan, however, learned State Counsel submitted that other co-accused nominated in the FIR are absconders, therefore, Challan in respect of them is incomplete. Learned State Counsel further submitted that an

alternate remedy is available to the petitioner under Section 249-A Cr.P.C. before the learned Trial Court, hence, this petition filed under Article 199 of the Constitution is not maintainable. Learned State Counsel contended that as under Section 249-A Cr.P.C., Magistrate has power to acquit the accused at any stage of the trial, therefore, the relief sought under Article 199 of the Constitution for quashing of FIR under Section 561-A Cr.P.C. is without merit. Learned State Counsel further contended that there are 13 accused nominated in the above FIR, therefore, relief on the said FIR sought by the Petitioner cannot be granted and so far as the petitioner is concerned his grievance can be redressed by the concerned trial Court while exercising powers under Section 249-A Cr.P.C.

4. I have heard the learned Counsel for the petitioner as well as learned State Counsel and have also perused the relevant record with their able assistance.

5. Arguments of the learned State Counsel are convincing as the petitioner is on bail and Challan to his extent has already been filed before the concerned Trial Court with the report that no incriminating evidence of his involvement in the alleged offence has been found, therefore, proper forum for redressal of his grievance would be the concerned trial Court where the report of the Investigating Officer is pending.

6. After going through Section 249-A, I am of the view that under the law, an alternate remedy before the Magistrate is available to the Petitioner who has the power to acquit the accused on the basis of report of Investigating Officer filed under Section 173 Cr.P.C. Guidance has been

taken from the law laid down in case reported as **Director General Anti Corruption versus Muhammad Akram (PLD 2013 SC 401)**, wherein

The Honourable Supreme Court of Pakistan has observed as follows:

"The law is settled by now that after taking of cognizance of a case by a trial court the FIR 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 rigors of the 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 possibility of conviction.

Similar view has been taken by a learned Single Bench of the Hon'ble Lahore High Court, Lahore in case of **Muhammad Shoaib versus S.H.O. Police Station new Multan and another (2005 PCr.LJ 1681)**, by holding that:-

"It has also been held in Ghulam Muhammad Vs. Muzammal Khan and others PLD 1967 SC 317 that when the alternative remedy is available to the petitioner under section 249-A or 265-K, Cr.P.C. Constitutional petition would not lie. No illegality or malafide and jurisdictional error has been found in this case. Instant writ petition having without substance is dismissed."

Further, this Court in case reported as **Sajid Javed versus SHO PS Sabzi Mandi (2016 PCr.LJ 693)** observed that the petitioner has alternative efficacious remedy in terms of sections 249-A and 265-K Cr.P.C., which can be applied at the appropriate stages, even at the initial stages of trial.

3. In addition to above, at this stage quashment of FIR would cause prejudice to the investigation of the offence reported through the said

FIR as Petitioner was not the sole alleged accused in the FIR but was named along with 12 others alleged co-accused who are still absconders, whereas, no prejudice would be caused to the Petitioner through dismissal of this petition as investigation to his extent is completed with favorable report of Investigating Officer.

9. In view of above, I am of the firm view that instant writ petition is not maintainable as the petitioner has an adequate, alternate remedy available to him under Section 249-A Cr.P.C., hence, same is dismissed, accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

M. JUNAID USMAN