

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.2615-Q of 2018

Fazal Aman

Versus

Senior Superintendent of Police (SSP), Islamabad, etc...

Petitioner by: Raja Muhammad Farooq, Advocate.

Respondent No.5 by: Mr. Zia ur Rehman, Advocate.

State by: Mr. Zohaib Hassan Gondal, State
Counsel alongwith Ch. Akhtar, Sub-
Inspector.

Date of Hearing: 16.12.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner, Fazal Aman, has invoked the constitutional jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C with the following prayer:-

“In the circumstances, it is, therefore, very humbly prayed that by allowing/ accepting the instant constitutional petition case F.I.R No.197/18 registered with P.S. Koral, Islamabad, may very graciously be declared as illegal, unlawful, without lawful authority, jurisdiction and replete with malafides be quashed in the interest of justice.

2. Briefly stated facts giving rise to the filing of this petition are that respondent No.5/ complainant lodged abovementioned F.I.R, against petitioner and two others with the allegations that the petitioner, being a property dealer, sold his single story house measuring 04 Marlas located at House No.620, Street No.D-10, Ghouri Phase-V, Islamabad, through an agreement dated 04.07.2016 to one Shah Hussain, whereby, an amount of Rs.11,40,000/- has been delivered to him and remaining Rs.23,60,000/- was decided to pay of till 05.01.2017. Now accused persons, with the connivance of each other, grabbed said house of the complainant and straightway refused to pay of outstanding amount while extending threats for dire consequences.

3. Learned counsel for the petitioner contended that registration of instant F.I.R is tainted, replete with malafides and ulterior motives of the complainant; that whole transaction amount has been paid to the respondent; that if respondent requires any remedy, his relief is a matter of either specific performance or declaration, which in no way can be converted into criminal proceedings; that registration of F.I.R is illegal and not warranted by law to convert a civil transaction into criminal act; that ingredients of Section 406 P.P.C are not attracted. Further contended that three out of six witnesses have been recorded hence, the impugned F.I.R is liable to be quashed.

4. *Per Contra*, learned State counsel assisted by learned counsel for respondent No.5/ complainant opposed the contentions raised by the learned counsel for the petitioner while relying upon the judgment reported as **PLD 2013 SC 401** contending that partial quashing of an F.I.R is legal impossible; that alternate remedy is available to the petitioner, hence, prayed for dismissal of the instant petitioner.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the challan has been submitted before the learned trial Court and statements of three out of six prosecution witnesses have been got recorded. Stance of the petitioner that he has committed no offence and a false F.I.R has been lodged against him and that whole transaction has been made to the complainant but he has been malafidely involved in the instant case, is a question to be determined by the learned trial Court after recording of evidence, which exercise cannot be done by this Court in exercise of its Constitutional Jurisdiction. It is settled law by now that scope of quashing of F.I.R or interfering in the investigation by this Court is limited while exercising powers in jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan. Resorting to the provisions of Section 561-A Cr.P.C, or to the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking quashment of a criminal case, is an extraordinary remedy, which can be invoked only in exceptional circumstances and the said

provisions can never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused. The learned trial Court is competent to determine correctness or falsity of the allegations levelled against the petitioner in the F.I.R as is prescribed by the Code of Criminal Procedure for the purpose, on the basis of legal evidence, led at the trial, after a proper opportunity to both the parties to plead their causes. No such extraordinary circumstances have been mentioned in the instant case, which can permit this Court to deviate from the normal course of law and to quash the F.I.R by exercising extraordinary constitutional remedy under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C 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. Furthermore, the petitioner is seeking partial quashment of the F.I.R to his extent whereas, two other accused persons are also involved in the instant case, who are not party before this Court, therefore, partial quashment of FIR is not permissible under the law. In this regard, I am fortified by the law laid down in the case reported as Director General, Anti-Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401) wherein it has been held as under:-

"We have found that through the impugned order the learned Judge-in-Chamber of the Lahore High Court, Lahore had partially quashed the relevant F.I.R. to the extent of respondent No.1 whereas partial quashing of an F.I.R. to the extent of some of the accused persons mentioned therein is a legal impossibility. Apart from that the impugned order had been passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore at a time when a Challan in the relevant criminal case had already been submitted before the learned trial court and the learned Trial court had already taken cognizance of the case. The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. 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 rigours of a 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 probability of his conviction.”

8. Moreover, challan has already been submitted and the learned trial Court has already taken cognizance of the case. Statements of three out of six prosecution witnesses have already been got recorded. While considering quashing of a criminal case in exercise of powers vested under Article 199 of the Constitution, this Court is also required to take into consideration the various alternate remedies available to a petitioner before the learned trial Court under Section 249-A or 265-K Cr.P.C.

9. For the foregoing reasons, I am not inclined to partially quash the impugned F.I.R. at this belated stage. This petition being without any force, is hereby **dismissed**. However, the learned trial Court is directed to conclude the trial of the case preferably within a period of three months after receipt of the copy of this judgment.

(Ghulam Azam Qambrani)
Judge

Announced in open Court on this _____, 2021.

Judge