

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

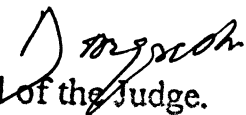
(REVISED FORM OF BLUE SLIP)

Case No. Crl Misc. 2024 M-2011

Titled Pervaiz Ashfaq Raja Vs The state etc.

- (a) Judgment approved for reporting ☒ Yes / No
- (b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made. Yes / ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).


Initial of the Judge.

- NOTE**
1. If the slip is used, the Reader must attach on top of first page of the judgment.
 2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
 3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Cr. M. No.202-M/2011

Pervez Akhtar Raja

Vs.

The State & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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08)

18.04.2012

Mr. Muhammad Ilyas Siddiqui, Advocate
for the petitioner along with petitioner.
Dr. Sagheer Ahmed Rana, Advocate for
respondent No.2 along with respondent.
Mr. Zafar Ranjha, ASI.

Through the present petition,
petitioner seeks quashment of
proceedings pending before the learned
Judicial Magistrate, Islamabad in
connection with FIR No.342/2009 dated
29.08.2009 u/s 506 PPC, Police Station
Kohsar, Islamabad.

2. As per the facts narrated in FIR,
whereby the petitioner, Raja Pervez
Akhtar, Ex-Deputy Commissioner,
Income Tax, with whom, the company
entered into an agreement of lease for a
plot located at Dhoke Hassu, Rawalpindi
for developing a CNG station. Since
terms and conditions of the agreement
could not be complied with by lessor,
which resulted delay in establishing the
CNG station. Allegedly, the petitioner
visited their office, started demanding an
advance amount of Rs.10 million against
the lease agreement. Complainant
informed him clearly that no permit is
due, as he has failed to comply with the

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terms and conditions of the agreement. Even the plot has not been handed over to him, therefore, the petitioner threatened to take possession of the company property. Raja Pervaiz Akhtar, the petitioner, threatened that he had an excellent connection with Inspector General of Police, Islamabad, Babar Awan and one Mr. Nadeem Gillani related to the Prime Minister, warned Petrosin to treat the threats as serious. At about 7:20 p.m. and later at 7:45 p.m., the petitioner accompanied with two persons in police uniform visited company property at 01-Hill Road, F-6/2, Islamabad in vehicle and tried to forcibly enter the premises. He was stopped by the company guards. On resistance, those who were in police uniform, asked the guards to tell the complainant for coming tomorrow, else company property will be taken over. Therefore, he lodged FIR.

Earlier, before submission of challan, the petitioner had filed W.P. No.2117/2010 before Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi, which was decided in view of the undertaking given by learned counsel for the petitioner that he does not press this petition for the time being, if direction is issued to the police to immediately submit the challan before the court of law enabling the petitioner to move an application u/s 249-A Cr.P.C.

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After disposal of the said petition, in compliance with the directions of Hon'ble High Court, final report u/s 173 Cr.P.C. was moved.

After submission of challan, an application u/s 249-A Cr.P.C. was moved before learned trial court, which was dismissed vide order dated 02.11.2011, therefore, instant petition for quashment has been filed seeking the relief as stated above.

3. From perusal of record, it reveals that prosecution, at the time of submission of final report u/s 173 Cr.P.C., deleted Sections 452/511 PPC in view of statements of PWs examined u/s 161 Cr.P.C. by the police, who have not supported such allegations levelled by the complainant, which constitute offences falling u/s 452/511 PPC.

4. By deleting both the above referred Sections, the police has only applied Section 506 PPC, therefore, the petitioner has moved such application u/s 249-A Cr.P.C. before the learned trial court mainly on the ground that applied Section 506 PPC is even not made out.

5. Learned counsel for the petitioner argued that there is no iota of evidence available on record to connect the petitioner with the commission of offence.

Learned trial court has erroneously failed to appreciate the material available

on record, when it is the duty of the learned trial court to take into consideration the requirements of Section 249-A Cr.P.C. and 265-K Cr.P.C., as to whether the charge, whatever either framed or going to be framed, is groundless and there-upon, there is no probability of accused being convicted.

6. On queries raised by the Court when it is a settled principle of law in view of case law reported in PLD 2004 298, on dismissal of application u/s 249-A Cr.P.C. or 265-K Cr.P.C., whatever the case may be, revision is to be preferred to next higher forum. In case, an application is allowed as a result whereof, the accused is acquitted, there require filing of acquittal appeal u/s 417 Cr.P.C., learned counsel for the petitioner has relied upon following case law: -

- i) 1995 MLD 511
- ii) 1987 SCMR 1371
- iii) NLR 1988 CLC 33
- iv) PLD 1993 Quetta 113
- v) PLD 2006 SC 298

7. The case law referred above lead towards an aspect that if the case is exceptional, quashment could be directly invoked by exercising inherent jurisdiction with application of Section 561-A Cr.P.C.

8. While going through the authorities referred above, view of learned counsel for the petitioner is fully supported. However, the same requires

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scrutiny of record available, as to whether the present case is exceptional one and comes within such criteria.

9. While referred the final report submitted by the police u/s 173 Cr.P.C., it appears that Section 452/511 PPC have been deleted on the basis of statement of PWs recorded u/s 161 Cr.P.C.

10. So far the concern of remaining evidence respecting alone Section 506 PPC applied in the final report, neither any evidence is available on record, nor the same transpires from the story narrated in FIR.

11. Another legal aspect requiring very important and crucial legal point while referring Section 504 PPC, which defines criminal intimidation, it appears that no such ingredient is available to constitute offence falling under Section 506 PPC.

12. Learned counsel for respondent No.2 was put to such queries, as to what type of evidence is available on record to connect the petitioner with the commission of offence to which, he could not reply satisfactorily. However, he emphasized that since challan has been submitted, therefore, it has to be finally decided.

13. Another query when raised, as to whether on the basis of evidence available with the prosecution, can petitioner be convicted? to which, he

again could not reply satisfactorily. However, he requested that in case, the proceedings are quashed, the complainant might not be deprived of from his legitimate right of filing a direct complaint.

14. In view of above legal position, there is no reason to continue the proceedings, which in my humble view, is a hanging sword entangling over the head of the petitioner, which might continue for an indefinite period by protracting and prolonging the proceedings from the complainant side, as there is no iota of evidence available on record, which could be the basis for seeking conviction of the accused. As such, the continuity of the proceedings before the learned Trial Court not only a futility, but would be an abuse of process of law.

15. In view of above observations, the proceedings initiated against the petitioner are hereby quashed. However, the complainant will be at liberty to seek prosecution of the petitioner/accused by filing a direct complaint, if so advised.

16. Instant petition stands allowed.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Approved for report

W Zawar

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