

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.205-Q of 2020

Muhammad Qasim & Another
Vs
The State, etc

Petitioners By: Qazi Khalil-ur-Rehman Advocate.

State by: Zohaib Hassan Gondal, State
Counsel with Basharat SI & Sabir Japa
A.S.I.

Date of Hearing: 14.05.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioners have 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 humbly prayed that the instant writ petition may kindly be accepted and FIR No. 502/2019 dated 04.11.2019 P.S. Tarnol District Islamabad under section 364-A PPC may kindly be declared to be registered without any lawful authority and the same may please be quashed by declaring the same void and ab-initio, in the interest of justice.

Any other relief which this Hon'ble Court may deems just and proper may also be granted to the petitioners in the interest of justice."

2. Briefly stated facts of the case are that respondent No.2, Safeer Ahmad s/o Jameel Akhtar lodged F.I.R No.502 dated 04.11.2019 under Section 364-A P.P.C with the Police Station Tarnol, Islamabad, with the averments that on 04.11.2019 at about 12:30 p.m his wife Sidra Bibi alongwith his daughter namely Zainab Bibi aged about three years went in the neighbourhood for "DUM" where his daughter went missing; his

wife searched for her daughter but failed, hence the above said F.I.R was lodged against unknown accused persons with the allegation of abduction of her daughter from the house of the petitioners. Subsequently, on suspicion, the petitioners were involved through supplementary statement but on 14.11.2019, the people of the area found the abductee near a bridge but even then the police did not discharge the petitioners.

3. Learned counsel for the petitioners contended that the petitioners have been involved through supplementary statement only on suspicion and after seven days of the alleged occurrence, the daughter of the complainant was found near the bridge; that no offence has been committed by the petitioners; and lastly prayed for quashment of the instant F.I.R.

4. On the other hand, learned State counsel opposed the contention ~~of~~ raised by the learned counsel for the petitioners and submitted that the challan has already been submitted before the learned trial Court and that the petitioners have alternative remedy of filing application under Section 249-A or 265-K Cr.P.C as the case may be before the learned trial Court. Lastly, prayed for the dismissal of the instant petition.

5. Arguments heard, record perused.

6. The stance of the petitioners is that they have committed no offence and they have been involved through supplementary statement only on suspicion basis, is a question to be determined by the learned trial Court after recording of evidence which exercise cannot be done by this Court. It is a fact that scope of quashing of FIR or interfering in the investigation 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. Determination of the

correctness or falsity of the allegations levelled against the petitioners in the F.I.R, is an obligation cast upon the Court 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.

7. 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 petitioners³ before the learned Trial Court. In the present case, challan has already been submitted before the learned Trial Court and the petitioners can seek alternate remedy under section 249-A or 265-K Cr.P.C as the case may be. 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.

8. In view of what has been discussed above, this Court is not inclined to quash the impugned F.I.R. at this stage. This petition having no force is, therefore, **dismissed**.

Ghulam Azam Qambrani
Judge

Rana.M.Ift