

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.4055-Q of 2017

Dr. Riaz Hussain
Vs
The Director General, Federal Investigation Agency, and others.

Petitioner by: Mr. Saeed Khursheed Ahmed, Advocate.

State by: Ch. Abdul Jabbar, Assistant Attorney
General with Wasiq Saeed S.I, F.I.A.

Date of Hearing: 08.06.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner 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 view of the above, it is most respectfully prayed that this petition may kindly be accepted under the relevant provision of the law and the impugned FIR No.14/2017 dated 09.08.2017 at Police Station F.I.A, SIU Circle Islamabad U/S 3, 4, 420, 468, 471, 109 PPC r/w 5 (2) 47 PCA, lodged by the respondent NO.6 against the petitioner may be quashed for securing the ends of Justice.

Any other or further relief as the court deems fit in the given facts and circumstances may also be granted in the interest of justice."

2. Briefly stated facts of the case are that respondent No.6 Munir Ahmad Ranjha CEO M/s Hertz International Overseas Employment Promoter lodged F.I.R No.14 dated 09.08.2017 under Section 3, 4, 420, 468, 471, 109 P.P.C read with section 5 (2) 47 PCA with the Police Station FIA, SIU Circle, Islamabad, with the allegations that he met with one Hammad alias Abuzar at Dubai who offered 75 vacancies of overseas employment as Office Boy and Messenger. The offer was accepted by the complainant with the condition to provide attested/ certified copy of Demand Letter from Consulate General of Pakistan, Dubai-UAE. Accordingly, Hammad alias Abuzar provided photocopies of Manpower Recruitment- Demand Letter & Power of Attorney dated 20.10.2015 of M/s Speed Trans Corporation L.L.C. Ajman- UAE duly attested by Dr. Riaz Hussain Laang, Community Welfare Attatche (Welfare), Consulate

General of Pakistan- Dubai UAE vide Reg. No.86/2015 dated 22.10.2015. The complainant after verification from Consulate General of Pakistan, Dubai- UAE paid 75,000/- UAE dirham to Hammad alias Abuzar and advertised the above mentioned posts in daily newspapers and started recruitments in accordance with emigration laws of Pakistan. Later on, one Sami Khan Baloch telephonically informed the complainant that the said Demand Letter & Power of Attorney were fake/ forged.

3. Learned counsel for the petitioner contended that the petitioner is Doctor by profession and he is serving as Deputy District Officer Health Shujaabad, District Multan, he also served the Diplomatic Mission of Pakistan as Community Welfare Attache-II (CWA) Consulate of Pakistan in Dubai-UAE from 26.02.2011 to 10.07.2016. Further contended that the Federal Investigation Agency without obtaining mandatory sanction of the Federal Government of Pakistan U/S 188 Cr.P.C 1898 lodged the impugned F.I.R against the petitioner; that the petitioner was part of Diplomatic Mission of Pakistan having legal protections provided in the Vienna Convention on Diplomatic Relations of 1961; that the offences mentioned in the F.I.R are not attracted against the petitioner from the bare reading of F.I.R in conjunction with the legal definition provided in the reference penal statutes and lastly prayed for quashment of the instant F.I.R.

4. On the other hand, learned State counsel opposed the contention raised by the learned counsel for the petitioner and submitted that the challan has already been submitted before the learned trial Court on 02.01.2018 and that the petitioner has 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. I have heard the arguments advanced by both the learned counsels and perused the record.

6. The stance of the petitioner that he has committed no offence and receiving of benefit from anyone is not even alleged in the complaint, 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 petitioner 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 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. 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 the learned Trial Court. In the present case, challan has already been submitted before the learned Trial Court on 02.01.2018 and the petitioner 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

Announced in open Court on this 30th day of June, 2020.

~~—Judge~~