HCJD/C-121

JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

WRIT PETITION NO.4981-Q/2014

ZOHRA PIRZADA & 3 OTHERS

VERSUS

SSP, ISLAMABAD & 5 OTHERS

Petitioners by	:	**Raja Rizwan Abbasi, advocate.**
Respondents by	:	**Syed Javed Akbar Shah & Mr. Saif Ul Islam, advocates.**
		Malik Zahoor Awan, Standing Counsel.
Date of Hearing	:	**21-04-2015.**

ATHAR MINALLAH, J:- Through this consolidated judgment this Court shall decide the instant petition along with Crl. Misc. No.106-BC/2015 (Mansoor Akbar Versus Zohra Bibi etc) and Crl. Misc. No.107-BC/2015 (Mansoor Akbar Versus Jehanzeb Pirzada, etc). The instant petition has been filed by Ms Zohra Pirzada and her two sons and a daughter with the prayer to quash FIR No. 752 dated 28.10. 2014, registered on the complaint of Mansoor Akbar i.e. respondent No. 5. The latter two petitions have been filed by Mansoor Akbar, seeking cancellation of pre arrest bail granted to Ms Zohra Pirzada and her two sons and a daughter in the aforementioned FIR.

2. The facts, in brief, are that admittedly Ms Zohra Pirzada and Mansoor Akbar have been entangled in a protracted litigation regarding House No.5-A, Street No.61, Sector F-7/4, Islamabad(*hereinafter referred to as the 'Property'*). The Property is owned by the husband of Ms Zohra Pirzada. Mansoor Akbar had filed a

suit for specific performance in respect of an agreement to sell, executed by the husband of Ms Zohra Pirzada. While the suit was pending, the husband went missing in the year 2004. Ms Zohra Pirzada had also filed a suit. The litigation culminated in judgment and decree dated 16-07-2014, passed by the learned Civil Judge 1st Class (West), Islamabad. The suit filed by Mansoor Akbar was decreed in his favour, while the suit of Ms Zohra Pirzada was dismissed. After the judgment and decree was passed by the learned Trial Court, Mansoor Akbar filed a complaint for the registration of a criminal case against Ms Zohra Pirzada, her two sons and a daughter. Pursuant to the complaint, FIR No.752, dated 28-10-2014, was registered at Police Station Margalla, Islamabad (*hereinafter referred to as the 'FIR'*). The said FIR has been registered under Sections 420, 468, 471, 193 of Pakistan Penal Code, 1860 (*hereinafter referred to as the 'PPC'*). Perusal of the FIR reveals that the complaint relates to documents, which had been tendered as evidence or placed on record during the proceedings before the Trial Court. The learned Additional Sessions Judge (West) Islamabad, vide order dated 08-01-2015, confirmed the ad-interim pre-arrest bails granted to Ms Zohra Pirzada, her two sons and the daughter.

3. Raja Rizwan Abbasi, ASC, learned counsel for the petitioners has contended that; registration of the FIR is without lawful authority and jurisdiction; no offence has been committed by the petitioners; the documents were produced during the proceedings before the Trial Court and the facts narrated in the FIR are without basis, misconceived and no allegation of forgery has been made, reliance has been placed on the cases "Ch. Nadir Khan and Zafar Ahmad versus The

State" [NLR 1989 Cr L J 214], "State Government, Madhya Pradesh versus Hifzul Rahman and others" [AIR (39) 1952 Nagpur 12], "Zafar Iqbal versus The State" [NLR 1986 Cr L J 14]; the documents have been duly signed by Mr. Fazle Rab Pirzada, who has been missing since 2004; as far as the documents relating to NADRA are concerned, any offence in relation thereto has to be dealt with under the National Database and Registration Authority Ordinance 2000, particularly Section 30(2) thereof; Section 193 of the PPC has to be read with Section 195 and Section 476 of the Code of Criminal Procedure 1898 (*hereinafter referred to as the "Cr.P.C."*); the documents in respect of which the FIR has been registered are all suit documents, which had been produced before the Trial Court in the civil proceedings between the petitioners and the respondent No.5; there is a complete bar on the registration of a criminal case, except with the express approval of the competent Court; the FIR has been registered without lawful authority and jurisdiction and, therefore, it is void and liable to be quashed, reliance has been placed on the case "Muhammad Suleman and others versus Abdur Razzaque and others" [PLD 2005 Lahore 386]; for the principles of cancellation of bail he has relied on the cases "Miandad versus The State and another" [1992 SCMR 1286] and "Muzaffar Iqbal versus Muhammad Imran Aziz and others" [2004 SCMR 231].

4. Syed Javed Akbar Shah and Mr. Saif Ul Islam Sindhu, learned counsels for Mansoor Akbar, have submitted that Section 467 of the PPC was attracted, but the same was not included due to *malafide* of the officials of the concerned police station; the reasons for granting pre-arrest bail are perverse and invalid and, therefore, the bail granted is

liable to be cancelled, reliance has been placed on the case "Muhammad Rizwan versus The State and 03 others" [2007 P.Cr.L.J. 78]; the documents tendered in evidence were false and forged; the bare perusal of the record relating to NADRA shows that the same are forged; referring to the observations made by the learned Trial Court vide its judgment dated 16-07-2014, it has been contended that the documents have been declared as forged and, therefore, the respondent No.5 was justified in registration of the criminal case.

5. The learned counsels have been heard and record perused with their able assistance. The opinion of this Court is as follows:

W.P. No.4981-Q of 2014.

6. Ms Zohra Pirzada and her children are seeking quashing of the FIR through the instant petition. The questions raised essentially relate to the interpretation of Section 193 of the PPC and Section 195(1)(c), read with Section 476 of the Criminal Procedure Code 1898 (hereinafter referred to as "Cr.P.C"). In other words, whether the FIR could have been lawfully registered on the complaint of Mansoor Akbar when no complaint has been filed by the Court, as specified in Section 195(1)(c) of Cr.P.C. Whether taking 'cognisance' by a Court includes the stages of entering the information in the register under Section 154 of the Cr.P.C? The relevant provisions, for ease of reference, are reproduced below:-

Section 193 PPC.

Punishment for false evidence: Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine; and whoever, intentionally gives or fabricates false evidence in any other case, shall, be punished with imprisonment of either description" for a term which may extend to three years, and shall also be liable to fine.

195(1)(c) Prosecution for certain offences relating to documents given in evidence. No Court shall take cognizance of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding i.e. any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate".

> **476. Procedure in cases mentioned in section 195.** (1) When any offences referred to in section 195, sub-section (1) clause (b) or clause (c), has been committed in, or in relation to a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII".

7. Section 192 of the PPC defines 'fabricating false evidence'. Punishment for false evidence is provided under Section 193 and its ingredients are; (i) a person intentionally gives false evidence (ii) in any stage of a judicial proceeding or (iii) fabricates false evidence (iv) for the purposes of being used in any stage of a judicial proceeding. There is no cavil that any person alleged to have committed the acts mentioned in Section 193, in connection with judicial proceedings, commits the offence and is liable to be exposed to the consequences flowing there from. The learned counsel has raised an argument that such proceedings can be initiated solely on the complaint of the Court, specified under Section 195, read with Section 467 of the Cr.P.C.

8. A plain reading of Section 195 unambiguously shows that clauses (a) to (c) of subsection (1) are circumscribed by the phraseology 'No Court shall take cognizance'. Likewise, the provisions of Section 467 of the Cr.P.C specifically relate to the stage when the Court takes 'cognizance'. The expression 'cognizance' is not defined in the Cr.P.C. The Black's Law Dictionary, Sixth Edition, defines 'Cognizance' as 'Jurisdiction,

or exercise of jurisdiction, or power to try and determine causes; judicial examination of the matter, or power and authority to make it, judicial notice or knowledge, the judicial hearing of the cause. The Advance Law Lexicon defines the expression as 'indicates the point when a magistrate or a judge first takes judicial notice of an offence. It is an entirely different thing from the initiation of proceedings; rather, it is the condition precedent to the initiation of proceedings by a magistrate or a judge. Cognizance is taken of cases and not persons. It has, thus reference to the hearing and determination of the case in connection with an offence'. It would be beneficial to briefly examine the various stages or steps envisaged under the provisions of the Cr.P.C, so as to determine those stages which will precede the stage when the Court takes cognizance.

9. Chapter XIV of Part V of the Cr.P.C. prescribes the procedure regarding various stages, commencing with receiving information relating to the commission of an offence till the submission of a report after completing investigations. It, inter alia, includes the registration of an FIR, conducting investigations, examination of witnesses by a police officer, recording of statements and confessions by a Magistrate during the course of investigations, search by a police officer making an investigation, exercise of discretion vested in a police officer of either arresting an accused or releasing him/her if already in custody and submitting a report under section 173 of the Cr. P. C. Sections 190, 193 and 194 provides as to when a Magistrate, Courts of Session or a High Court, respectively, shall take 'cognizance' of an offence as the case may be. Section 190 provides that a Magistrate may take 'cognizance' upon the happening of an event, as specified in clauses (a) to (c) of subsection (1)

thereof. The august Supreme Court in the case "Muhammad Alam and 03 others versus The State" [PLD 1967 SC 259] held that trial before a Magistrate commences when Magistrate takes cognizance and not with placing of complaint or police report before Magistrate. The Lahore High Court in case "Alam Din versus State" [PLD 1973 Lahore 304] has held that 'It will appear that cognisance is taken not under Section 173 of the Cr.P.C but as a judicial act under Section 190 of the Code when the Magistrate takes a step indicating that he intends to commence the enquiry or trial in accordance with the provisions of the Code'. Reference may also be made to cases "Muhammad Nawaz Khan versus Noor Muhammad and others" [PLD 1967 Lah 176], "Ghulam Qasim versus Superintendent, District Jail, Multan and another" [1993 P.Cr.L.J. 2066], "Manu alias Menthar and other versus The State" [PLD 1964 Kar 34], "Ghulam Muhammad and 03 others versus The State" [PLD 1979 Quetta 1], "Wazir versus The State" [PLD 1962 Lahore 405], "Gopal Marwari and others versus Emperor" [AIR 1943 Patna 245], "The State versus Samiullah Khan and others" [PLD 1959 Kar 157] and "R.R. Chari versus The State of Uttar Predesh" [AIR 1951 S.C. 207].

10. It is, therefore, obvious that the Court takes 'cognizance' upon issuance of process after the report under Section 173 of Cr.P.C has been submitted. It has reference to that stage when the Court has consciously applied its mind and orders for an enquiry, or proceeds with the trial of the case with a view to determine the guilt of the accused. In other words, all steps or stages prior to the issuance of the process, or prescribed under Chapter XIV of Part V of the Cr.P.C, precede the stage when a Court takes 'cognizance'. The scope of Sections 195 and 467 of

the Cr.P.C are, therefore, restricted to the stage when the Court takes 'cognizance' of the offence, and there is no clog on any of the steps or stages preceding it.

11. The august Supreme Court has elucidated and settled the law in this regard in two judgments. The earlier judgment in this regard is "Industrial Development Bank etc Versus Mian Asim Farid etc" [2006 SCMR 283]. The relevant portion is reproduced as follows:

> *"Needless to add that the registration of an F.I.R. and taking of cognizance of cases were two distinct and independent concepts under the criminal law; that if the intention of the law-maker was to put any clog on the registration of an F.I.R. then the Legislature would have said so specifically and that if the law put a condition only on the taking of cognizance then it can never be read to imply prohibition on registration of F.I.Rs."*

12. The second case is titled "Muhammad Nazir Versus Fazal Karim and others" [PLD 2012 S.C. 892]. In the said case, the Supreme Court reaffirmed the law laid down in Industrial Development Bank etc, case supra. An analogy was also drawn on the basis of observations made in the case of "Federation of Pakistan through Secretary, M/O Law, Justice and Parliamentary Affairs, Islamabad Versus Zafar Awan, advocate, High Court" [PLD 1992 S.C. 72]. The relevant portion is reproduced below;

> *"An analogy from the last mentioned precedent case could be drawn to conclude that if the provisions of section 195(1)(c), Cr.P.C. place a prohibition against taking of cognizance of an offence by a court except in the given manner then all prior steps taken before the stage of taking of cognizance by a court could be deemed to be permissible. It appears that this aspect vis-a-vis the provisions of section 195(1)(c), Cr.P.C. had escaped attention of the learned Judge-in-Chamber of the Lahore High Court, Lahore while recording his observations contained in paragraphs numbers 2 and 3 of the impugned order which observations reflect a misconception of the real intent and import of the said provisions and that is why the present clarification has been considered by us to be necessary and called for."*

13. It is, therefore, settled law that Sections 195 and 476 of the Cr.P.C. when read together, do not place a bar or a clog either on the registration of an FIR or carrying out of investigations and taking all steps prior to the stage when the Court shall take cognizance. In other words, the bar is regarding the initiation of the trial of the criminal case. The learned counsel, during the course of his arguments, had stressed upon the effects of the registration of an FIR, particularly the fear of being

arrested. It is noted that the law provides for sufficient safeguards in the case of a person nominated in an FIR. While it becomes a mandatory obligation for an officer in charge to comply with the requirements of Section 154 of the Cr. P. C if its ingredients have been fulfilled, the matter of arrest throughout the course of investigations remains within his discretion, which has to be strictly exercised according to the settled principle of law. It is a misconceived notion that registration of an FIR renders the arrest mandatory. The law in this regard is settled in the judgment of the august Supreme Court, titled "Muhammad Bashir versus SHO Okara Cantt and others" [PLD 2007 S.C. 539] and the relevant portion is as follows:

> *"It must, therefore, be kept in mind that mere registration of an FIR could bring no harm to a person against whom it had been recorded. No one, consequently, need fear a false FIR and if a police officer arrested a person in the absence of the requisite material justifying the same and only on the pretext of such a person being mentioned in an FIR, then such would be an abuse of power by him and the remedy for such a misuse of power would not be to permit another abuse of law by allowing an unlawful exercise of collection of evidence to assess the veracity of allegations levelled through the information conveyed to a SHO before recording of an FIR. The remedy lies elsewhere".*

14. The upshot of the above discussion is that all steps prior to the stage when the Court has to take 'cognizance' are permissible. In the case of an information regarding a cognisable offence e.g. under Section 193 of the PPC, it is a mandatory obligation of the officer in charge to comply with the requirements of Section 154 of the Cr.P.C. if the ingredients thereof are fulfilled. He shall then proceed to investigate and take all steps in accordance with the law, and submit the report under Section 173 of the Cr. P. C, as there is no clog or bar under Section 195 read with Section 467 of the Cr. P. C. The wisdom and rationale behind circumscribing Section 195 to the stage when the Court is to take cognizance has been eloquently stated in the judgement of the Full Bench of the Lahore High Court, authored by Justice Fazal Karim, Judge of the Lahore High Court, as he then was, in the case of "Muhammad Shafi Versus Deputy Superintendent of Police, Narowal and 05 others" [PLD 1992 Lahore 178].

15. In the instant case, the complainant in the FIR was a party to the suit, wherein the documents alleged to be forged were tendered in evidence and relied upon. There was no bar on the registration of the FIR nor submission of the report under Section 173 of the Cr. P. C. There is, therefore, no force in the argument that Section 195, read with Section 467, places a clog on the registration of the FIR. However, if the complaint ultimately turns out to be false, then the consequences, as elucidated by the Supreme Court in Mohammad Bashir, supra, shall ensue against the complainant.

16. Next is the argument of the learned counsel appearing on behalf of Ms Zohra Pirzada that it is a case which stems from malafide and animosity on the part of Mansoor Akbar. Moreover, that the document was not executed by any person nominated in the FIR, and that it is a case of no evidence and, therefore, the FIR ought to be quashed. It is noted that the scope for quashing an FIR or interfering in investigations is limited while exercising powers and jurisdiction under Article 199 of the Constitution. In this regard, the principles and law, as enunciated and laid down by the august Supreme Court, are well settled by now and may be summarized as follows:-

i) The High Court is not vested with the power to quash an FIR under Section 561-A of Cr.P.C. on the grounds of *malafide* or disclosing a civil liability.

ii) Resort to the provisions of Section 561-A of Cr.P.C. or Article 199 of the Constitution for quashing a criminal case is an extraordinary remedy, which can only be granted in exceptional circumstances.

iii) As a general rule powers under Article 199 of the Constitution cannot be substituted for the trial, nor can any deviation be made from the normal course of law.

iv) The consideration to be kept in view for quashing of a criminal case is whether the

continuance of the proceedings before the trial Court would be a futile exercise, wastage of time and abuse of the process of the Court, and whether an offence on the admitted facts is made out or not.

v) The exercise of powers and jurisdiction under Article 199 of the Constitution is discretionary in nature; however, the same are to be exercised in good faith, fairly, justly and reasonably, having regard to all relevant circumstances.

vi) 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 a trial Court, *inter alia*, under Sections 249-A and 265-K of Cr.P.C.

vii) Besides the above, the other alternate remedies available under the law have been enumerated by the august Supreme Court in the case of *'Col. Shah Sadiq Vs. Muhammad Ashiq and others'* [2006 SCMR 276] as follows:-

a. To appear before the Investigating Officer to prove their innocence.

b. To approach the competent higher authorities of the Investigation Officer having powers vide section 551 of Cr.P.C.

c. After completion of the investigation, the Investigation Officer has to submit the case to the concerned Magistrate, and the concerned Magistrate has the power to discharge them under section 63 of the Cr.P.C. in case of their innocence.

d. In case he finds the respondents innocent, he would refuse to take cognizance of the matter.

e. Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

f. There are then remedies which are available to the accused person who claims to be innocent and who can seek

relief without going through the entire length of investigation.

viii) 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.

ix) Prior to exercising jurisdiction under Article 199 of the Constitution, the High Court has to be satisfied that the trial Court has neither passed an order nor any process issued.

x) Courts exercise utmost restraint in interfering with or quashing investigations already in progress, pursuant to statutory powers vested in the police or other authorities. Courts do not interfere in the matters within the power and jurisdiction of the police, particularly when the law imposes on them the duty to inquire or investigate.

17. The above principles of law have been enunciated and laid down in the cases of *'Director General, Anti Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others'* [PLD 2013 SC 401], *'Rehmat Ali and others Vs. Ahmad Din and others'* [1991 SCMR

185], *'Miraj Khan Vs. Gul Ahmed and 3 others'* [2000 SCMR 122], *'Muhammad Mansha Vs. Station House Officer, Police Station City, Chiniot, District Jhang and others'* [PLD 2006 SC 598] *'Col. Shah Sadiq Vs. Muhammad Ashiq and others'* [2006 SCMR 276], *'Emperor v. Kh. Nazir Ahmad'* [AIR 1945 PC 18] & *'Shahnaz Begum Vs. The Hon'ble Judges of the High Court of Sind and Baluchistan and another'* [PLD 1971 SC 677].

18. In the light of the above stated law and principles; this Court is not inclined to quash the FIR. The petitioners have been granted anticipatory bails and the competent Court will take cognizance subject to the condition precedent stipulated under Section 195 read with Section 467 of Cr.P.C. In the circumstance, the petition is without merit and, therefore, accordingly ***dismissed.***

Crl. Misc. No. 106/BC of 2015.
&
Crl. Misc. No. 107-BC of 2015.

Through the titled petitions, the petitioners seek cancellation of bail.

19. The respondents were granted ad-interim pre-arrest bail and the same were confirmed vide order dated 08-01-2015 by the learned Additional Sessions Judge, West, Islamabad. The order confirming the ad-interim pre-arrest bail is well reasoned and no legal infirmity has been pointed out by the learned counsel for the petitioner. It is settled law that the principles for the cancellation of bail are distinct and altogether separate from seeking bail. The petitioners in this case were entangled in a protracted litigation and, therefore, the element of causing harassment or humiliation cannot be ruled out. Ms Zohra Pirzada, her two sons and a

daughter are not signatories to the alleged document. In the first place, whether the alleged document is fake/forged or otherwise requires probe. It is a document which has been executed by the husband of Mst. Zohra Bibi and the father of the other respondents. It is not in dispute that the executant of the document is missing since 2004. There is nothing on record to show that the document in any manner is forged or had been fabricated.

20. It is settled law that the bail once granted will be cancelled only if the order granting bail on the face of it is perverse, patently illegal, erroneous, factually incorrect resulting in miscarriage of justice, passed in violation of the principles for grant of bail or the concession of bail has been misused. Reliance is placed on the cases The State / Anti Narcotics through Director General versus Rafiq Ahmad Channa" [2010 SCMR 580], "The State through Force Commander, Anti-Narcotics Force, Rawalpindi versus Khalid Sharif" [2006 SCMR 1265] and "Ehsan Akbar versus The state and others" [2007 SCMR 482].

21. Based on the above discussion, the petitions seeking cancellation of bail are without merit and consequently ***dismissed***.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on_____.

JUDGE

*Asad K/**

Approved for reporting.