

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.3108 of 2021

Shahbaz Akmal

VS

S.H.O. Police Station Bhara Kahu, Islamabad and others.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	03.09.2021	Mr. Naveed Akhtar, Advocate for the petitioner.

Through the instant petition, the petitioner seeks quashing of F.I.R. No.471/2021, dated 24.08.2021, offence under Sections 420, 468, 471 P.P.C., registered at police station Bhara Kahu, Islamabad.

02. The facts, leading to the filing of instant petition, are that on the complaint of respondent No.2 / Muhammad Waris Khan, police station Bhara Khau, Islamabad registered above mentioned case against the petitioner and other co-accused. It is alleged in the FIR that the petitioner in connivance with the co-accused has sold the land by

preparing fake and forged documents, which was not owned by them and received a sum of Rs. 25,00,000/-. The actual owner of the said land informed the complainant that all the documents for transfer of land are fake and the land does not belong to the accused nominated in the FIR.

03. Learned counsel for the petitioner, *inter-alia*, contends that the petitioner is innocent; the complainant has not produced any evidence before the police regarding alleged crime committed by the petitioner, hence the FIR is liable to be quashed.

04. Arguments advanced by learned counsel for the petitioner have been heard and record has been perused with his able assistance.

05. Admittedly, the petitioner is nominated in the FIR, allegation leveled by the complainant against the petitioner / accused is that he alongwith co-accused sold the land on the basis of fake and forged documents and received a sum of Rs.

25,00,000/- from the complainant in presence of the witnesses.

06. As per contents of the FIR, the complainant has also deposited a sum of Rs. 1,00,000/- in the National Bank of Pakistan on directions of the accused party.

07. Investigation in the case is in progress, the petitioner is required to produce the documents / evidence before the investigating officer to prove his innocence and if no incriminating evidence is found against him, he can be discharged from the case, however, if the petitioner is not satisfied by the conduct of the I.O, he may file a petition under Section 22-A (6) Cr.P.C before the learned Justice of Peace for redressal of his grievance and if after conclusion of the investigation, challan / report under Section 173 Cr.P.C is presented before the learned trial Court, the petitioner / accused has remedy to file a petition under Section 249-A Cr.P.C to get acquittal order forthwith from the learned trial Court.

08. Guidance in this respect is taken from the law laid down by the Hon'ble Supreme Court of Pakistan in a case titled as "**Director General, Anti Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others**" (**PLD 2013 SC 401**), wherein it is held that:

"The law is quite settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons challenged 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 rigorous 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."

09. It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Mst. Kaniz Fatima Vs. Muhammad Salim" (2001 SCMR 1493)**

that:

"Where a particular statute provides a self-contained machinery for the determination of questions arising under the Act and where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief any indulgence to the contrary by the High Court is bound to produce a sense of distrust in statutory Tribunals and constitution petition without exhausting remedy provided by the statute would not lie in the circumstances".

The same principle has been enunciated in a case titled as **"Muhammad Abbasi Vs. S.H.O. Bhara Kahu and 7 others" (PLD 2010 Supreme Court 969)**, wherein it is held that:

"In our view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught

completely, jurisdiction under Article 199 cannot be exercised”.

10. In another case titled as **"Rana Aftab Ahmad Khan Vs. Muhammad Ajmal and another"** (PLD 2010 **Supreme Court 1066**), it is held that:

“We have considered the above and are constrained to hold that the constitutional jurisdiction (reference Article 199) of the High Court in all the cases cannot be invoked as a matter of right, course or routine, rather such jurisdiction has certain circumventions which the Court is required to keep in view while exercising the extraordinary discretionary power”.

11. As the alternate and adequate remedies are available to the petitioner, hence instant writ petition is not maintainable and the same is **dismissed in limine** being meritless.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE