

## **JUDGMENT SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**W.P. No. 2209/2019.**

Sheikh Humayun Nazir

*versus*

The State, etc.

**Petitioner by:** Mr. M. Aslam Ch., Advocate.

**Respondents by:** Mr. M. Sohail Khurshid, State Counsel.  
Safdar Hussain and Javed, ASIs.

**Date of Decision:** 08.09.2020.

**MOHSIN AKHTAR KAYANI, J:** Through this Writ Petition, the petitioner has called in question the order dated 22.05.2019, passed by learned Judicial Magistrate Section 30 (West), Islamabad, whereby proceedings U/S 155 Cr.P.C. have been initiated.

2. Learned counsel for the petitioner contends that petitioner was nominated as accused in case FIR No.98, dated 09.03.2014, U/S 406 PPC, P.S. Shalimar, Islamabad registered on the compliant of Asif Fareed, however, after submission of challan before the competent Court, petitioner was acquitted from the charge in terms of Section 249-A Cr.P.C. vide order dated 19.07.2018 and petitioner has prayed for registration of FIR to the SHO concerned, on his refusal he filed application in terms of Section 22-A/B Cr.P.C. before learned Justice of Peace, Islamabad and the same was allowed vide order dated 25.04.2019, passed by learned Additional Sessions Judge/Justice of Peace, Islamabad but the SHO concerned has submitted report in terms of Section 155 Cr.P.C. to the concerned Judicial Magistrate, who has passed the impugned order dated 22.05.2019 and refused to register criminal case; that order passed by learned Judicial Magistrate is illegal and contrary to law and petitioner prayed for implementation of the

order passed by learned Justice of Peace, Islamabad in terms of Section 22-A/B Cr.P.C.

3. Conversely, learned State Counsel contends that order impugned before this Court has been passed within four corners of law while considering the proceedings of Section 155 Cr.P.C. in right manner; that SHO has rightly complied with the order of learned Justice of Peace, Islamabad and even submitted request before the Judicial Magistrate in terms of Section 155 Cr.P.C. as matter in hand is non-cognizable.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is mainly aggrieved with the order dated 22.05.2019, passed by learned Judicial Magistrate Section 30 (West), Islamabad and claims that separate FIR has to be lodged in compliance of order dated 25.04.2019, passed by learned Justice of Peace, Islamabad, therefore, in order to resolve the controversy, it is necessary to reproduce the operative para of order dated 25.04.2019, passed by learned Justice of Peace, Islamabad, which is as under:-

*I agree with the observations of the SP complaint and the police officer who submitted comments that prima facie offences are not cognizable offences but it does not mean that the police is not duty bound to register a criminal case on receiving the information of a non-cognizable offence which offences are register-able under Section 155 Cr.PC and it is in the competency of the authority of Section 22-A(6)(i) Cr.PC, for registration of criminal case, the direction may be passed. It is, therefore, the SHO, P.S. Shalimar is directed to register criminal case and proceed in accordance with law.*

6. The above referred order clearly spells out that police is duty bound to record and register the information even in non-cognizable offence in terms of Section 155 Cr.P.C. and in compliance of said order SHO P.S. Shalimar has submitted a report before learned Judicial Magistrate on 16.05.2019, whereupon detailed order has been passed while considering each and every aspect of this

case and there is no cavil to the proposition that complaint filed by petitioner discloses commission of non-cognizable offence, whereby FIR could not be registered in such like cases.

7. I have also gone through the provisions of Section 155 Cr.P.C. which deal with information in non-cognizable cases, whereby police is directed to enter the information in the relevant book and refer the information to the Magistrate concerned for the purpose of further investigation after seeking the permission/order of Magistrate in terms of Section 155(2) Cr.P.C. The record clearly reflects that SHO P.S. Shalimar submitted the request before the Judicial Magistrate who considered each and every aspect, including the application filed by the petitioner which has been recorded in *Naqal Rapat* No.24 dated 29.04.2019, whereby Judicial Magistrate has rightly observed that entire dispute revolves around civil remedy and separate FIR could not be lodged against the complainant of case FIR No.98, dated 09.03.2014, U/S 406 PPC, P.S. Shalimar, Islamabad, even directed the petitioner to avail civil remedy, if so, desired/instructed. This Court has also gone through the relevant provisions as well as the reported cases of 2005 P.Cr.LJ 899 (Waheed Ullah Habib Vs. State), PLD 2005 Karachi 528 (Mukhtiar Ali Vs. State) and comes to the irresistible conclusion that SHO has rightly registered the information in the relevant book on the direction of learned Justice of Peace and submitted report to the concerned Magistrate for further directions.

8. There is no cavil to the proposition that Sections 155, 156, 157 & 174 Cr.P.C. permit police officer to only investigate the case while remaining in the ambit of investigation as defined in Section 4(1)(i) Cr.P.C. which is the job of police officer to collect information and place the same before the competent Court and in this case SHO in his report clearly submitted that:-

رپورٹ میں جرم ناقابل دست اندازی پولیس اور سول نوعیت کا تحریر کیا۔

If the said position has to be considered in the light of provision U/S 182 PPC, which has been claimed by the petitioner, it has to be proved on record that FIR No.98, dated 09.03.2014, U/S 406 PPC, P.S. Shalimar, Islamabad was lodged on false pretext against the petitioner whereas in this case petitioner was acquitted in terms of Section 249-A Cr.P.C. and as such there is no adjudication on merit except that petitioner was acquitted due to non-probability of conviction, therefore, the question of falsity of FIR or complaint has not been adjudicated by the competent Court as of today, hence, learned Judicial Magistrate Section 30 (West) Islamabad has rightly observed and directed the SHO to file report/information U/S 155 Cr.P.C. and also directed the petitioner to avail civil remedy, if so desired/instructed. There is no illegality in the impugned order, hence, instant writ petition is hereby dismissed.

(MOHSIN AKHTAR KAYAN)  
JUDGE

Zahid