

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 920 of 2014

Junaid Imam

Vs

The State, etc

PETITIONER BY: Mr. Sabah Mohy-ud-Din Khan, Advocate.
RESPONDENTS By: Ch. Gulfam Ashraf Goraya, Advocate.
Mr. Rabi Bin Tariq, State Counsel.
Mr. Waris, S.I.

DATE OF HEARING: 21-11-2019.

ATHAR MINALLAH, CJ.- Through this petition, the petitioner has assailed order, dated 18.12.2013, whereby the learned Judicial Magistrate Section-30 (West), Islamabad has accepted the report submitted by the Investigating Officer.

2. The facts, in brief, are that the petitioner filed a complaint and pursuant thereto FIR No.341 dated 08.11.2013, was registered at Police Station Shalimar, Islamabad (hereinafter referred to as the "**FIR**"). It was alleged in the FIR that the complainant i.e. the petitioner had business relationship with respondent no.4 namely, Owais Kamal s/o Kamal Din. It was asserted that he had kept some wedding gifts in the business premises. Later due to differences between the parties, the petitioner was evicted from the business premises. The Capital Development Authority evicted respondent no.4 from the business premises. However, the latter did not return to the petitioner the items which were kept in the business premises. The

petitioner filed a complaint and, thereafter, the Investigating Officer recovered the items belonging to the petitioner. After 63 days from the date of filing the complaint, the FIR was registered. The matter was investigated and the Investigating Officer concluded that no triable case was made out. Report was, therefore, submitted before the learned Magistrate and after taking into consideration the material placed on record, the report was accepted and consequently impugned order, dated 18.12.2013 was passed.

3. The learned counsel for the petitioner has stated that the impugned order was passed without notice to the petitioner as well as the prosecution. He has placed reliance on "Abdullah Jan Khan vs Saifur Rehman Khan and 6 others" **1997 P Cr.L J 973** and "Muhammad Khan alias Khalifa vs. Hayatullah Khan", **2011 MLD 181**. The learned counsel has laid great stress on letter, dated 20.11.2013, addressed by the petitioner to the Inspector General of Police. He has stated that the Investigating Officer was under the influence of respondent no.4 and, therefore, the criminal case was not properly investigated.

4. The learned counsel for the petitioner has been heard and the record perused with his able assistance.

5. The learned counsel has laid great stress on letter, dated 20.11.2013, which was addressed by the petitioner to the Inspector General of Police and wherein he had prayed for transfer of the investigation to another officer. A plain reading of the letter shows that admittedly, the items were recovered after the complaint was filed. However, the petitioner had not alleged in the said letter that all the items were not recovered. The learned Magistrate after taking into

consideration the material on record had accepted the report of the Investigating Officer. The learned counsel for the petitioner could also not show any misreading or non-reading on part of the learned Magistrate requiring interference by this Court while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Moreover, it is not the case of the petitioner that the impugned order suffers from jurisdictional error. The case law relied upon by the learned counsel is distinguishable on facts and circumstances of this case. The discretion exercised by the learned Court has not been found to be arbitrary or fanciful.

6. For what has been discussed above, this petition is devoid of merit and is, therefore, accordingly dismissed.

CHIEF JUSTICE

*Asif Mughal**