

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.808-Q of 2020

Fatima Mehmood
Vs
SSP, Islamabad & others

Date of Decision: 27.04.2020

Petitioner By: Malik Khalid Mansoor Advocate.

State by: Zohaib Hassan Gondal, State
Counsel with Asif Raiz SI.

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“It is, therefore, most humbly prayed that by accepting the instant constitution petition, the FIR No. 327/2019 dated 28.07.2019, U/S 496-A PPC P.S. Bhara Kahu, Islamabad, that has been registered against the petitioner and others may kindly be quashed by exercising Section 561-A of Cr.P.C favouring the innocent petitioner.

”It is further prayed that all the proceedings against the accused may kindly be suspended with an express direction to the respondents from arresting, harassing, threatening, pressurizing or interfering in the freedom and liberty of the petitioner in any manner whatsoever till disposal of the instant writ petition.

Any other relief, which this Hon’ble Court may deem fit and proper, may also be awarded.”

2. Briefly stated facts of the case are that respondent No.3, Malik Sajid Mehmood lodged FIR No.327 dated 28.07.2019 with the police station Bhara Kahu, under Section 496-A PPC with the averments that his sister aged about twenty five years married his first cousin namely Faheem Sultan on 20.07.2019, but on 22.07.2019 she returned to her parent's home; that on 24.07.2019 at about 5.30 AM, when he woke-up, he saw his sister was not present at home, he started search, but could not found her. The complainant suspected that her sister had been abducted and detained by Mudassar Abbasi, Mubashar Abbasi and their sister Fatima Bibi, as they demanded hand of his sister for Mudassir Abbasi before her marriage for, hence the above said FIR.

3. Learned counsel for the petitioner contended that no offence has been committed by the petitioner; that sister of the complainant has contracted marriage with Mudassar Abbasi with her own free will, consent and without any coercion; therefore, the impugned FIR is liable to be quashed.

4. Conversely, learned State counsel opposed the contention of learned counsel for the petitioner and contended that the petitioner and others are nominated in the FIR; that challan has already been submitted before the learned Trial Court; that the petition is not competent and is liable to be dismissed.

5. Arguments heard, record perused.

6. The arguments advanced by learned counsel for the petitioner that this case is based on malafide on the part of respondent No. 3/ complainant and it is a case of no evidence, therefore, the FIR ought to be

quashed. 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.PC, or to the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking quashment of a criminal case is an extra ordinary 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 and others in the FIR is an obligation cast on 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 extra ordinary circumstances have been indicated in the present case which can permit this Court to deviate from the normal course of law and to quash the FIR by exercising extra ordinary constitutional remedy under Article 199 of the Constitution of Islamic Republic of Pakistan. 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 and the petitioner can seek alternate remedy under section 249-A or 265-K Cr.P.C as the case may be. 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. 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.

7. In view of what has been discussed above, this Court is not inclined to quash the FIR. This petition being without merits is, therefore, **dismissed**.

Ghulam Azam Qambrani
Judge

S.Akhtar