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**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR**  
(Judicial Department)

**W.P.No.3159-P of 2022.**

Date of hearing: 15.09.2022.

Petitioner in person.

Mr.Shumail Ahmad Butt, Advocate General  
and Mr.Sanaullah, DAG longwith Mr.Taj  
Muhammad Asif Ali, Deputy Secretary for  
the respondents.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** Through this judgment, we shall also decide the connected writ petition bearing No.3163-P of 2022 titled "Muhammad Jalal-ud-Din Vs. Government of Khyber Pakhtunkhwa etc" as common question of law is involved in both the petitions wherein the petitioners, who are practicing lawyers of this court, have called in question the legality of Notification No. SO(Cabinet) /AD/Cabit/Misc/M.Fr/2022 dated 19.08.2022 (the Notification) whereunder in exercise of powers conferred by Section 196 of the Code of Criminal Procedure, 1898 and in pursuance of Cabinet's decision dated 18.08.2022, the Government of Khyber Pakhtunkhwa has empowered Mr.Munir Ahmad, Additional

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Assistant Commissioner, D.I.Khan to receive written complaint(s) from Mr.Ali Amin Gandapur (MNA) or any other interested party and require the local police to lodge FIR(s) under Sections 108A, 153A and 505 PPC read with any other enabling provision of law and to sanction and pursue such cases within his respective jurisdiction w.e.f. 18.08.2002.

2. Petitioner Mr.Shabbir Hussain Gigyani, advocate himself argued his case while petitioner Jalal-ud-Din Khan, advocate was represented by Mr.Naveed Akhtar, advocate who submitted before the court that the Notification has been issued by the Provincial Government of Khyber Pakhtunkhwa with *mala fide* intention only to register criminal cases against its political opponents for which it has not been authorized under the law. They submitted that while issuing the Notification, the true intent, purpose and the spirit of law has not been taken into account by the respondents and on the intervention of a Member of National Assembly, the government machinery has been set into motion and that too on the wrong side. While summing up



their cases, they submitted that the Notification be set aside for its being illegal and unconstitutional and be declared as of no legal effect.

3. As against the above, the learned Advocate General submitted at the bar that the petitioners have no locus standi to impugn the Notification through their writ petitions as they are not aggrieved persons within the meaning of Article 199 (1) (a) of the Constitution. The learned AG further submitted at the bar that the Notification has legally been issued by the Government of Khyber Pakhtunkhwa quite in line with the provisions of Section 196 of Cr.P.C. The learned Advocate General also argued that the Notification has been acted upon as pursuant to the authorization of Mr. Munir Ahmad, Additional Assistant Commissioner, D.I. Khan, many FIRs have been chalked out against many persons under various sections of law who have not impugned their such nominations and that the petitioners cannot plead their case. In support of his arguments, the learned AG placed reliance on the following case laws:-



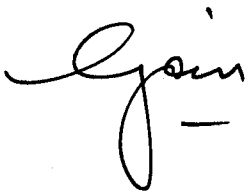
**"2019 P.Cr.L.J. 275, PLD 2017 Islamabad 64, 2016 P.Cr.L.J. 502, 2012 P.Cr.L.J. 396, 2012 P.Cr.L.J. 923, 2011 P.Cr.L.J. 1631, 2010 YLR 987, 2010 P.Cr.L.J. 1809, 2008 YLR 387, 2007 P.Cr.L.J. 342, PLD 2005 Lahore 631, 2003 YLR 3137, 1997 P.Cr.L.J. 836, 1992 P.Cr.L.J. 2346, 1993 SCMR 71, 1990 P.Cr.L.J. 1708, 1976 P.Cr.L.J. 184 and PLD 1960 Lahore 434."**

4. We have heard arguments of learned counsel for the parties and also gone through the Notification.

5. First of all, we would meet the objection of the learned Advocate General that the petitioners have no locus standi to impugn the Notification through their writ petitions as they are not aggrieved persons. No doubt, any personal or financial interest of the petitioners has been affected by the Notification so as to give them the status of an aggrieved party within the meaning of Article (1) (a) of the Constitution of Pakistan, 1973 but when a government functionary opts to act in derogation to what it has been mandated for and such transgression *prima facie* seems to be a mockery of law of the

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land then in such a situation strict and narrow interpretation of Article 199 (1) (a) of the Constitution, as argued by the learned Advocate General, is to be avoided in order to preserve the law of the land and a citizen cannot be restrained from approaching a High Court for declaring the transgression of law as unconstitutional and without any lawful authority as law of the land is always supreme and it is the duty of every citizen to protect and defend it irrespective of the fact that the transgression and departure from law has not directly violated his personal rights guaranteed to him under the Constitution or any other law, therefore, we turn down the objection of the learned Advocate General over the locus standi of the petitioners and hold that the petitions have competently been filed.



6. Moving on to merit of the case, we noted that the Notification was issued after a decision of the Provincial Cabinet taken in a meeting held on 17<sup>th</sup> August, 2022 which decision is reproduced herein below:-

“Cabinet hereby unanimously authorizes Mr.Munir Ahmad, the Additional Assistant Commissioner

D.I.Khan under Section 196 Code of Criminal Procedure, 1898 and other enabling provisions to receive written complaint(s) from Mr.Ali Ameen Gandapur or any other interested party and require local police to lodge FIR(s) under Section 108A, 153A read with Section 505 Pakistan Penal Code, 1860 together with any other enabling provisions of law against aforementioned accused persons and to sanction and pursue their case under the relevant law."

7. It is pertinent to mention that in the referred meeting of the Provincial Cabinet, Mr.Ali Ameen Gandapur, an MNA (underlining supplied) also participated on special invitation who, per decision of meeting, copy of which was provided to the court at the time of hearing, informed the cabinet members as under:-



"Mr.Ali Amin Gandapur, who attended on special invitation, while fully seconding the Chair, informed the House that it is really unfortunate that although it has been a known narrative of PDM leadership to malign Armed Forces publicly, the media cells of PDM parties and federal government are trying hard to create an impression

that PTI is against the Armed forces. He lighted that PTI Government before imported regime change had most cordial working relationship with Armed Forces. It was their strength but unfortunately now a negative impression has successfully been created."

8. Record shows that pursuant to the decision of the Cabinet mentioned above and in light of the Notification, many FIRs were then registered on the complaint of Mr. Munir Ahmad, Additional Assistant Commissioner, D.I. Khan against staunch political opponents of the Provincial Government and that too for the acts allegedly done or committed beyond the territorial jurisdiction of the complainant, copies of which FIRs were provided to the court at the time of hearing by learned counsel for petitioner Mr. Jalal-ud-Din, advocate which are placed on file.

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9. For better understanding of the issue, we deem it appropriate to reproduce Section 196 of Cr.P.C. here-in-below:-

**"196. Prosecution for offences against the State.** No Court shall taken cognizance of any offence punishable under Chapter VI or IXA

of the Pakistan Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments."

10. The *ibid* section of law envisages that no court shall take cognizance of any offence mentioned therein unless upon the complaint made by order of or under the authority from, the Federal Government or Provincial Government concerned or some officer empowered in this behalf by either of the two Governments. Not only Section 196 Cr.P.C. is meant for prosecution of the offence against the State by an officer authorized by either of the two Governments but nowhere it is stated in the section that recourse to it can be made by an officer on the complaints presented to it by a private person, who in the instant case is Mr. Ali Ameen Gandapur. So the Notification smacks *mala fide* on the part of the





respondents as through it they intend to come very hard on their political opponents by using the State machinery as is evident from para 8 and 11 of the minutes wherein names of the political opponents have been mentioned against whom FIRs were registered subsequently.

11. The decision made in the Cabinet meeting and issuance of the Notification is nothing but colourable exercise of the administrative powers and authority conferred on the Provincial Cabinet under the law which deviation on no count could be countenanced by this court in the exercise of its constitutional jurisdiction as same appears to be a sheer mockery of law and misuse of official powers.

12. For what has been discussed above, we admit and allow both the petitions and declare the Notification as illegal, unconstitutional and of no legal effect and, thus, set aside the same.

  
JUDGE

  
JUDGE

**Announced.**  
**15.09.2022.**

Sadiq Shah CS (DB) (Hon'ble Mr. Justice Lai Jan Khattak & Hon'ble Mr. Justice Shakeel Ahmad)