

JUDGMENT SHEETIN THE PESHAWAR HIGH COURT, PESHAWAR.JUDICIAL DEPARTMENTWP/Q No: 4619-P of 2019JUDGMENT

Date of hearing...23.08.2019.....

Appellant(s)/Petitioner (s) By: Taimur Haider Khan, Advocate.....

Respondent/State etc In Motion.....

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**MUHAMMAD NAEEM ANWAR,J:-** Mst.

Dilara Bibi has sought the jurisdiction of this Court under Article 199 of the Constitution Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.PC for quashment of FIR No.392 dated 22.07.2019 under Sections 365-B/109 PPC Police Station Topi, Swabi.

2. I have heard learned counsel for petitioner and perused the available record with his valuable assistance.

3. Perusal of the record reveals that the grievance of the petitioner alleged by here is that she has falsely been implicated in the FIR with malafide intention.

4. It is settled principle of law that this Court has limited scope and jurisdiction under

the Provision of Article 199 of the constitution of Islamic Republic of Pakistan, 1973.

5. Obviously, criminal cases are decided on the basis of material so collected by the prosecution during the course of investigation and the evidence so recorded by the trial Court and that too after appraisal of evidence by it in accordance with law. In the present case FIR has already been registered against the petitioner and investigation is in progress. At this stage case of the petitioner cannot be considered under Section 561-A Cr.PC. Moreover, this Court would refrain from rendering any finding on the merit of the case at this stage, which may prejudice the case of the petitioner in any manner whatsoever and considers that the legal and factual issues raised in the present petition can be taken by the petitioner in the first instance before the investigating officer and then even before the framing of charge before the trial Court, if at all challan is submitted against the petitioner and the learned trial Court has the power to discharge the petitioner.

6. The apex Court has held in Col. Shah Sadiq's case (2006 SCMR 276) in unequivocal terms:

"7. It is also a settled proposition of law that if prima facie an offence has been

committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in *A. Habib Ahmad v. M.K.G. Scott Christian* PLD 1992 SC 353. The learned High Court had quashed the F.I.R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by trial Court. The learned High Court had no jurisdiction to quash the impugned F.I.R. by appreciation of the documents produced by the parties without providing chance to cross-examine or confronting the documents in question. Respondents had alternative 'remedy to raise objection at the time of framing the charge against them by the trial Court or at the time of final disposal of the trial after recording the evidence. Even otherwise, respondents have more than one alternative remedies before the trial Court under the Cr.P.C. i.e. section 265-K, 249-A or to approach the concerned Magistrate for cancellation of the case under provisions of Cr.P.C. The respondents have following alternative remedies under Cr.P.C.:--

- (a) To appear before the Investigating Officer to prove their innocence.
- (b) To approach the competent higher authorities of the Investigating Officer having powers vide section 551 of Cr.P.C.
- (c) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge them under section 63 of the Cr.P.C. in case of their innocence.
- (d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.

(e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

(f) There are then remedies which are available to accused persons who claim to be innocent and who can seek relief without going through the entire length of investigations.

A similar proposition under consideration before the Supreme Court of AJK in case titled Khadim Hussain Vs Abdul Basit and 6 others (2002 MLD 1250) wherein it was held that:

“The High Court has no jurisdiction to quash criminal proceedings at the stage of investigation. It was further opined that High Court in exercise of writ jurisdiction is not competent to assume the role of investigating agency or the trial Court is to give verdict as to whether an accused person has committed an offence or not”

7. In view of the above dictum held by the Hon'ble Supreme Court, it is held and factual Controversy involved in the present case cannot be resolved in constitutional jurisdiction and similarly deviation from normal procedure of law as provided in Cr.PC, it is not inconsonance with principle besides when an alternate remedy under the law available to the petitioner constitutional jurisdiction cannot be exercised.

8. The petitioner has adequate alternate remedy available to her and thus, it would be appropriate that the petitioner should agitate all these legal and factual points before the trial Court.

9. Accordingly for the reason stated hereinabove, this petition being without any force is hereby dismissed in limine.

**Announced:**  
**23.08.2019**

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Hon'ble Mr. Justice Lal Jan Khattak.  
Hon'ble Mr. Justice Muhammad Naeem Anwar.