

**PESHAWAR HIGH COURT ABBOTTABAD**  
**BENCH**

JUDICIAL DEPARTMENT

**JUDGMENT SHEET**

**WP No. 991-A/2017.**

*Date of hearing 15.11.2022.*

*Petitioner/s (Sheikh Zahoor Ahmed) by  
Mr. Awais Khan Alizai, Advocate.*

*Respondent/s (The State) by Sardar Ali  
Raza, AAG and respondents No. 2 and 3  
(Muhammad Imtiaz & Muhamad Fiaz)  
by Mr. Muhammad Shafique Awan,  
Advocate.*

**FAZAL SUBHAN, J.** Through the instant  
petition filed under Article 199 of the  
Constitution of Islamic Republic of  
Pakistan, 1973, petitioner *Sheikh Zahoor  
Ahmed* son of *Sheikh Karam Bakhsh*, has  
invoked the jurisdiction of this Court with  
the following prayer:-

*“It is therefore, most humbly  
prayed that on acceptance of  
instant writ petition, the  
impugned order dated:  
26.04.2016 may graciously  
be set aside/ quashed and  
respondents No. 2&3 may  
kindly be directed to face the  
trial of the case”.*

2. Brief but relevant facts, giving rise to the instant writ petition, are that on the application of petitioner to District Police Officer, Abbottabad case FIR No. 902 dated 10.10.2015 under Section 489-F, 420, 506, 34 PPC of PS Mirpur, District Abbottabad was registered against respondents No. 2 & 3 and their brother Muhammad Khalid. After investigation two challans were submitted, one after another, and in the first challan, the names of respondents No. 2 and 3 were shown in column No. 2 but in the second challan their names were omitted. During trial petitioner was unaware of the factum of discharge of respondents No. 2 & 3, however, when the said respondents instituted a suit for damages and when he obtained copies of order dated 26.04.2016, he came to know that they have been discharged in the case. Petitioner being dis-satisfied with the said order approached this Court through instant

constitutional petition, under Article 199 read with Section 561 Cr.P.C.

3. Arguments of learned counsel for the parties heard as well as learned AAG heard and record perused.

4. Perusal of the record reveals that on the application of petitioner dated 08.10.2015, addressed to the DPO, Abbottabad, SHO Mirpur was directed for legal action, who after inquiry into the matter registered the above referred case. The contentions of petitioner in the referred application was that he had acquaintance with Muhammad Imtiaz and Muhammad Fayaz, respondents No. 2 & 3, who approached him for sale of his vehicle to their brother Khalid. On arriving to understanding, accused Khalid provided a cheque of 15,50,000/- of Summit Bank but on presentation, it was dishonored and when he demanded the amount, they started threatening him. That upon his application, FIR was registered but when

challan was submitted and case was put in court for trial, impugned order dated 26.04.2016 was passed whereby respondents No. 2 & 3 were discharged.

5. The record reveals that at the time of submission of first challan the names of respondents No. 2 and 3 were mentioned therein but later-on in the second challan their names did not figured there. Record depicts that as per report on challan form, the prosecution opined that the dishonored cheque was issued by Khalid accused and respondents No. 2 & 3 having no role in the offence of issuing cheque, were recommended for discharge under Section 169 Cr.P.C, and keeping in view the opinion of prosecution branch and facts arising from the record, the Ilaqa Judicial Magistrate on 26.04.2016, passed an order of their discharge and proceeded to try co-accused Khalid.

6. Though it is argued at length by learned counsel for petitioner that the

IO of the case was not supposed to assume the role of adjudicator and his duty was to investigate the case and submit challan and leave the sufficiency or otherwise, of evidence to the court, however, in our mind, this is not the situation in the present case. In the challan, the names of respondent No. 2 & 3 were included, however, on the opinion of prosecution their names were omitted from the challan and separate application for their discharge in the case was moved and the Ilaqa Judicial Magistrate while keeping in view the material on record ordered for their discharge. At the same time prosecution also omitted Section 420 506/34 PPC from the challan.

7. The preamble, which is integral part of the Constitution of Islamic Republic of Pakistan, has laid down the aim objective and purpose of constitution and it has been laid down therein that beside other rights and obligations the

object of constitution is to observed principle of democracy, freedom, equality, tolerance and social justice. Such an objective can only be achieved when laws are made in line with the above cherished goals. With the passage of time and dwindling social values, laws are flouted, molded or misused for personal gains and objectives. In such a scenario, the importance of an efficient Judicial System, especially at criminal side, has attained great significance to coop with ever changing circumstance, for the reason that it mainly effects the life and liberty of a person/citizen. In this respect Section 169 Cr.P.C is an important tool available to an investigation officer, conducting an investigation in a criminal case. This provision empowers the investigation officer to release an accused person, if, after investigation, he arrives to a conclusion that there is no sufficient evidence, reasons or grounds to justify

forwarding the accused to a Magistrate. In that case, the SHO/IO may forward the challan to the Magistrate and the Magistrate, so empowered, has to decide either to take cognizance on police report and try the accused or forward him for trial. Though the SHO/IO may report the insufficiency of evidence but final order of discharge is the domain of Magistrate. In the present case, the order passed by the Magistrate, in view of insufficient material on record against the respondents No. 2 & 3, is neither found to be illegal nor erroneous to call for interference and is quite in accordance with Section 169 Cr.P.C. In this respect reliance is placed on the judgment of this court in the case of *“Naseem Khan Vs Banaras Khan Jadoon and 3 others*, reported in 2019 P Cr.L J 154 Peshawar [Abbottabad Bench] wherein it was held that;

*“Perusal of record reveals that respondent No.1 has filed an application to the District Police Officer, Abbottabad for*

*registration FIR against the present petitioner, which was marked to SHO for registration of case and under section 154 of the Criminal Procedure Code, the Incharge of Police Station is bound to register FIR if the information received by him relates to commission of cognizable offence. The arguments of learned counsel for the petitioner that the contents of FIR are fake and the matter relates to a transaction regarding the sale of some property, which did not materialize, therefore, the cheque in question was never given regarding any outstanding liability, cannot be considered by the High Court for quashing an FIR. However, after registration of the FIR, the Investigation Officer has the authority to determine the truthfulness or falsehood of the allegations levelled against the accused but the same is subject to affirmation of the competent Court. If the Investigation Officer comes to the conclusion that the allegations contained in the FIR are incorrect, he may under section 63, Cr.P.C. refer the matter to the Magistrate for discharge of the accused. The Police Officer has also the authority to release accused in terms of section 169, Cr.P.C., if he comes to the conclusion that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of accused to the Magistrate, such Officer shall, if such person is in*



*custody, release him on executing of bond with or without sureties and direct him to appear, if and when required before the Magistrate empowered to take cognizance of the offence. It is then the Magistrate to pass such order as deemed appropriate under section 173, Cr.P.C. for discharge of such bond or otherwise he deems fit”.*

8. Similarly, in the case of “Basar Khan Vs the State and another”, reported in 2009 P Cr. L J Karachi 964, it was observed in the following words;-

*No doubt it is not the ipse dixit of police to decide the fate of the case and opinion of Investigating Officer is not binding upon the Court, but it would also be most unfair to drag an innocent person into Court and leave him to face hardships of criminal trial, though prima facie offence is not made out against him. The police and Magistrate are not prevented and precluded by any provision of law to act fairly and justly. On the contrary the law favours justice and fair play at every stage of the case.*

9. For the above reasons, we are of the considered view that the impugned order was neither illegal nor unjustified and the Magistrate, while keeping in view

the result of investigation and the allegations in the FIR, has passed a just and valid order, which cannot be disturbed in exercise of constitutional jurisdiction, hence, this petition being without any merits, is dismissed.

***Announced.***

***15.11.2022.***

*Tahir Saleem JSS\**

***J U D G E***

***J U D G E***

*Hon'ble Justice Wiqar Ahmad & Hon'ble Justice Fazal Subhan.*