

*Judgment Sheet***PESHAWAR HIGH COURT, ABBOTTABAD BENCH**

JUDICIAL DEPARTMENT

**Writ Petition No.1048-A/2023****Gul Khan etc...** (Petitioners)**versus****The State...** (Respondent)

**Present:** Mr.Muhammad Asjad Parvez Abbasi,  
Advocate for petitioners.

Mr.Wajahat Hussain Shah, Assistant  
Advocate General for State.

**Date of hearing: 01.11.2023.**

**JUDGMENT**

**MUHAMMAD IJAZ KHAN, J.-** Through this single judgment, we intend to dispose of this writ petition as well as connected writ petition **No.1047-A/2013** titled “**Khawaja Akbar vs. The State**”, as both these petitions have arisen out of the same First Information Report (FIR).

2. Through the instant petition filed under Article 199 of The Constitution of Islamic Republic of Pakistan, 1973, petitioners namely

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Gul Khan and Bakht Rawan seek the quashment of an FIR registered against them with the following prayer:-

**“On acceptance of the instant writ petition, FIR No.193 dated 09.08.2023 under section 409, 379, 411, 34 PPC may graciously be ordered to be quashed, being illegal, and against the law, without jurisdiction, and any other relief which would be deemed fit and proper in the circumstances of the case may also be granted to the petitioners.”**

and through the connected writ petition No.1047-A/2023 filed under Article 199 of The Constitution of Islamic Republic of Pakistan, 1973, petitioner namely Khawaja Akbar seeks the custody of the vehicle which was taken into possession by the local police in the instant FIR as a case property with the following prayer:-

**“On acceptance of the instant writ petition, the vehicle in question, may graciously be ordered to be handed over to the petitioner. Any other relief which this honourable court deems fit and necessary, keeping in view the**

**circumstances of the case may also be granted.”**

3. Precisely, the facts of the case as per contents of the instant petition are that petitioner No.1 is a civil servant/public servant and is since being performing his duties as Chowkidar at Government Primary School Ranwaliya Kohistan, whereas petitioner No.2 is a private person (which fact is wrongly mentioned in the petition as as per record petitioner No.2 namely Bakht Rawan is a civil servant, whereas petitioner No.1 namely Gul Khan is a private person). It was on 26.08.2022 that due to unprecedented flood, the said school got damaged, as all its construction has razed to the ground so as per direction of the principal concerned, petitioners were going to shift iron sheets and other materials from the premises of the school to a safe place when in the meanwhile the local police raided the school premises,

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arrested both the petitioners and registered the instant case FIR No.193 dated 09.08.2023 under sections 409/379/411/34 PPC.

4. Thereafter petitioners approached to the local Magistrate for the grant of bail, however, he refused to entertain bail application of the petitioners on the ground that since as one of the accused is a civil servant and thus the matter relates to the Anti-Corruption Establishment. In view of the above, respondent No.2 sent the case file to respondent No.3 i.e. Circle Officer Anti-Corruption Establishment Mansehra for proceeding with the investigation/enquiries of the case. Thereafter the petitioners under compulsion approached to the court of Special Judge, Anti-Corruption for the grant of bail, however, who too expressed its lack of jurisdiction due to there being no FIR registered by the Anti-Corruption Establishment against the petitioners, therefore, their application was

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dismissed being withdrawn. Now the petitioners have approached to this court for the quashment of the aforesaid FIR and as an interim relief for the grant of bail.

**5.** When this case was taken up for hearing, notices were issued to the respondents and today arguments of the learned counsel for the parties were heard in considerable detail and record perused with their valuable assistance.

**6.** Perusal of the record would indicate that petitioner No.2 namely Bakht Rawan is a civil/public servant, while petitioner No.1 namely Gul Khan is a private person, whereas the local police of Police Station Dobair District Kohistan has registered an FIR against the petitioners under sections 409/379/411/34 PPC and thereafter the present petitioners approached to the learned Judicial Magistrate for the grant of bail, however, he refused to entertain their bail application and referred the matter to the Anti-Corruption Establishment. In view of the above,

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the petitioners also approached to the Special Judge, Anti-Corruption (Provincial), however, since till that date, no FIR was registered by the Anti-Corruption Establishment, therefore, he too, showed his inability to entertain their bail application and when the petitioners were confronted and meted out with the aforesaid situation, they under compulsion have approached to this court for the quashment of the instant FIR and as interim relief have prayed for the grant of bail which has already been granted to them by this court vide order dated 19.09.2023.

7. It is an admitted fact that petitioner No.2 is a civil servant and he has been charged for the offences as punishable under sections 409/379/411/34 PPC, therefore, it is to be seen that as to whether an FIR can be registered or not in ordinary Police Station against a civil servant/public servant who has allegedly committed an offence(s) which is/are found

mentioned in the Schedule attached to The West Pakistan Anti-Corruption Establishment Ordinance, 1961 (hereinafter called the **Ordinance of 1961**).

**8.** In order to answer the above question, it would be appropriate to reproduce the Preamble and relevant provisions of the **Ordinance of 1961** which are as under:

**"Preamble.** Whereas it is expedient to provide for the constitution of a special agency for the investigation of certain offences relating to corruption by public servants and for holding preliminary inquiries against such servants in West Pakistan.

**Section 2. Definitions.** In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:-

- (i) ...;
- (ii) ...;
- (iii)...;
- (iv) "**Public servant**" means a public servant as defined in section 21 of the Pakistan Penal Code; and
- (v) "**Schedule**" means a Schedule appended to this Ordinance.

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**Section 3. Constitution and powers of Anti-Corruption Establishment.** (1)

Not notwithstanding anything contained in any other law for the time being in force, Government may constitute an establishment to be known as the Anti-Corruption Establishment, for the investigation of Offences set forth in the Schedule, and for holding preliminary inquiries for determining whether such offence shall be investigated or departmental inquiries into the conduct of any public servant concerned in such offences shall be held;

(2) ...

(3) ...

(4) Subject to any orders or rules which Government may make in this behalf, the [Director General], officers and members of the Establishment shall, for the purpose of any preliminary enquiry or investigation under this Ordinance have throughout the Province of West Pakistan all the powers of search, arrest of persons and seizure of property and all other powers, duties, privileges and liabilities which a Police Officer has or is subject to in connection with the investigation of offences under the Code of Criminal Procedure, 1898.

(5) Subject to any orders of Government in this behalf any officer of

the Establishment of or above the rank of a Sub-Inspector may, in relation to the offences mentioned in the Schedule, exercise any of the powers of the officer in charge of a police station within the meaning of clause (p) of sub-section (1) of section 4 of the Code of Criminal Procedure, 1898, in the area in which he is for the time being posted, and charge of a police station discharging the functions of such an officer within the Limits of this station.”

Similarly, The Schedule to **the Ordinance of 1961** is also reproduced below for ready reference:

#### THE SCHEDULE

- (a) Offences punishable under sections 161 to 166, 168, 217 and 218 of the Pakistan Penal Code and as attempts, abetments and conspiracies in relation thereto or connected therewith.
- (b) Offences punishable under sections 186 to 188, 189, 201, 332, 353, 379 to 382, 403 to 409, 411, 417 to 420, 465 to 468, 471 and 477-A of the Pakistan Penal Code, and as attempts, abetments and conspiracies in relation thereto or connected therewith, when committed by any public servant as such, or by any person acting jointly with or abetting or attempting to abet

or acting in conspiracy with any public servant as such; and

(c) Offences punishable under the Prevention of Corruption Act, 1947 and as attempts, abetments and conspiracies in relation thereto or connected therewith.

The aforesaid Preamble of **the Ordinance of 1961** and its provisions unmistakably speak that the said law was enacted by the Legislature to constitute a special agency for the investigation of certain offences relating to corruption by public servants. The term Public Servant has also been defined in section 2 of **the Ordinance of 1961** which reads that a Public servant means a public servant as defined in section 21 of the Pakistan Penal Code, whereas subsection (1) of section 3 of **the Ordinance of 1961**, mandates (which provisions of law is also a non-obstante clause and thus is having a super imposing effect) that the Government may constitute an establishment to be known as the Anti-Corruption Establishment, for the

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investigation of offences set forth in the Schedule and the appended Schedule therein would show different offences which offences are to be investigated by the Anti-Corruption Establishment where all the offences for which the present petitioners are charged i.e. sections 409, 379, 411 of the Pakistan Penal Code, are specifically mentioned, therefore, the case of the petitioners absolutely qualifies the aforesaid mandatory requirement of **the Ordinance of 1961** and thus in such state of affairs, an FIR could only be registered by the Anti-Corruption Establishment and not by an ordinary Police Station.

**9.** It is also relevant to mention here that the Government of Khyber Pakhtunkhwa while exercising powers conferred upon it under section 6 of **the Ordinance of 1961** has also made Rules namely "**the Khyber Pakhtunkhwa Anti-Corruption Establishment Rules, 1999**" (hereinafter called **the Rules of 1999**) where a



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special procedure has been provided for the enquiry/investigation of the offences for which a public servant is charged. Rules 3, 4 and 10 of the same being relevant are reproduced as under:

**"3. Preliminary/Open enquiries against Public Servants.**

1) Preliminary inquiries and investigation against public servants shall be initiated by the Establishment on complaints received from Government, Head of Departments or other reliable sources.

(2) The Director shall initiate preliminary/open enquiries in order to ascertain the identity of the complaint or informer and geniuses of the complaint or information.

(3) It shall be incumbent on the Head of concerned Department/Office to provide the relevant record required in connection with enquiries/investigations as soon as a request is made by the Establishment.

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Provided the enquiry against the District Co-ordinate Officers in the Districts, Secretaries to the Provincial Government, Head of Attached Departments and other officers in BPS-

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19 and above shall be initiated by the Director with prior permission of the Chief Secretary.

**4. Registration of cases/arrest of accused.**

(1) Criminal cases shall be registered by the Establishment under the Prevention of Corruption Act 1947 and under such sections of Pakistan Penal Code, as have been set forth in the Schedule to the Ordinance.

(2) Criminal cases shall be registered against accused public servants under the written orders of the officers mentioned below:-

- (a) Public Servants in BPS-18 & below -- Director
- (b) Public Servants in BPS-19 & above -- Chief Secretary

Provided that ....

Provided further that ...

(3) If the competent authority under sub-rule (2) above decides not to register a case, he shall record reasons therefor.

(4) While making a request for registration of a case against the accused public servant, a simultaneous request may be made by the Establishment to the authorities

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specified below if the arrest is so required during the investigation:-

- (a) Public Servants upto BPS-16 -
  - Director
- (b) Public Servants in PBS-17 &
  - above --- Chief Secretary

Provided that no prior permission shall be necessary for the arrest of a public servant caught as a result of a trap as mentioned in the last proviso to sub-rule (2) of Rule-4

#### **10. Police Station of Establishment.**

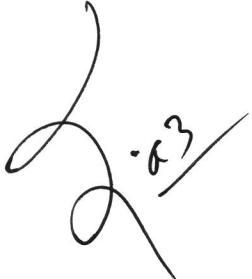
Cases shall be registered by the Establishment at the Police Station of the Establishment having the jurisdiction.

The aforesaid Rules provide a total different procedure for the investigation of criminal cases as against the procedure as provided under the Code of Criminal Procedure, 1898 as the aforesaid Rules mandate that preliminary inquiry/investigation shall be initiated by the Establishment upon a complaint and the Director Anti-Corruption Establishment has to direct a preliminary enquiry and the same is to

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be followed by an open enquiry and if any case is made out against a public servant on the basis of materials collected during these enquiries, then Director has to accord sanction for the registration of the case and such cases are to be registered by the Anti-Corruption Establishment at the Police Station of the Establishment having the jurisdiction, therefore, with such mandate of the law, the local police of ordinary Police Stations other than the Police Station of Anti-Corruption Establishment are not authorized to register an FIR again a civil/public servant for certain offences as set forth in the Schedule attached to **the Ordinance of 1961**. It is settled since long that whenever the law requires something to be done in a particular mode and manner then it must be done in that mode and manner or else it will lose its sanctity.

  
**10.** Now advertig to the facts of this case since petitioner No.2 is a civil servant/public servant and he has allegedly committed offences which are punishable under sections

409/379/411 PPC which offences are duly mentioned in the Schedule attached to **the Ordinance of 1961** and then the instant FIR has been registered in the ordinary Police Station namely Police Station Dobair District Kohistan, therefore, the subject FIR has illegally and unlawfully been registered and thus the same cannot legally sustain. This court in the case titled "**Haji ROOH-UL-AMIN vs. SAEED and others**" reported as **2018 PCr.LJ 50**, has categorically held that where a civil servant/public servant is charged for any offence(s) which is/are found mentioned in the Schedule appended to **the Ordinance of 1961** then such an FIR could not be registered in the ordinary Police Station and the same has to be registered by the Police Station of Anti-Corruption Establishment. It has further been held in the aforesaid case that a special procedure of enquiry has been provided under **the Ordinance of 1961 and the Rules of 1999** where on receiving a complaint, the Director



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would sanction the initiation of preliminary enquiry and then of open enquiry and then if any material is collected during the enquiry then Director has to accord sanction for the registration of FIR. Similarly, in the case titled

**"Dr.ISHTIAQ HUSSAIN and another vs.**

**SPECIAL JUDGE ANTI-CORRUPTION**

**(PROVINCIAL), RAWALPINDI DIVISION,**

**RAWALPINDI and 3 others"** reported as **2004**

**YLR 716**, it has been held that The West

Pakistan Anti-Corruption Establishment

Ordinance, 1961 is in addition to other laws for

the time being in force and thus provides the

special procedure for the registration of FIR

with respect to certain offences mentioned in the

Schedule. It has further been held that when the

law had prescribed a particular manner and

procedure in which things were required to be

done, same must be done in that way and not

otherwise at all. In the case titled "**BASHIR**

**AHMAD vs. THE STATE**" reported as **2002**

**MLD 746**, it was held that where the complaint,

investigation report or other steps either in lodging an FIR or prosecution of criminal case, were patently against the provisions of law or otherwise, no case could possibly be made out, then High Court had been clothed with the jurisdiction to quash the same as no useful purpose would be served to keep the matter lingering on.

11. In view of the above discussions, the instant FIR No.193 dated 09.08.2023 under sections 409/379/411/34 PPC has since been illegally and unlawfully registered by the local police of Police Station Dobair District Kohistan, therefore, this Writ Petition No.1048-A/2023 is allowed and consequently the instant FIR (detailed above) is quashed and the same shall have no legal effect against the present petitioners. Bail bonds furnished by the petitioners in consequence of the bail granting order of this court dated 19.09.2023 stand cancelled and sureties thereof are also discharged from their liability.

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**12.** As far as the connected writ petition No.1047-A/2023 for the custody of vehicle bearing Registration No.D-830, Engine No.218, Chassis No.YN850042368, is concerned, since we have allowed the instant Writ Petition No.1048-A/2023 and have quashed the FIR in question, therefore, the subject vehicle which was taken into possession by the local police in the instant FIR, is no more a case property of the aforesaid FIR for the time being.

**13.** Accordingly, the connected writ petition No.1047-A/2013 titled “**Khawaja Akbar vs. The State**” is also allowed and SHO Police Station Dobair District Kohistan is directed to hand over the possession of the subject vehicle bearing Registration No.D-830, Engine No.218, Chassis No.YN850042368 to petitioner Khawaja Akbar son of Malik Dostum Khan resident of Ranwaliya, Pattan Kohistan forthwith upon receipt of attested copy of this order.



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14. Before parting with this judgment, it may be clarified that the Anti-Corruption Establishment shall not be prejudiced with the aforesaid findings and they may proceed with the enquiry/investigation of the case against the present petitioners as per the provisions of **the Ordinance of 1961** and **the Rules of 1999** made thereunder or any other relevant law on the subject.

ANNOUNCED.  
01.11.2023.

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