

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

W.P No. 970-B of 2017.

Nisab Ullah alias Gulap

Vs

The State etc.

JUDGMENT

Date of hearing 13.02.2018

Appellant-Petitioner _____

Respondent _____

SHAKEEL AHMAD, J.--- This order will dispose of Writ
Petition No.970-B/2017, through which petitioner Nisab Ullah
alias Gulap son of Rahmat Ullah Khan seeks quashment of FIR
No.819 dated 02.12.2017 registered under section 489-F PPC at
Police Station Mandan, District Bannu.

2. Brief facts of the case as disclosed in the FIR are
that on 28.11.2017, the respondent No.1 lodged a written report
to the SHO of Police Station Mandan, stating therein that he
had a joint business of construction work with the petitioner,

Ihsan (D.B) Mr. Justice Abdul Shakoor and Justice Shakeel Ahmad.

the income generated through said business was fraudulently swallowed by the petitioner, by committing embezzlement of Rs. Two Crores, the dispute was referred to the arbitration, who after rendition of accounts, held the petitioner liable to pay Rs. Sixty Lakhs to the respondent No.1, consequently, he issued a cheque of Rs. Fifty Lakhs to the respondent No.1, on 04.8.2017, but when the cheque in question was presented in the bank concerned, it was bounced, consequently, the report of the respondent No.1 was recorded vide Mud No.16, and after inquiry, it was incorporated into the FIR, hence, this writ petition.

3. The learned counsel for the petitioner in support of his contention submits that the petitioner is innocent and has falsely been implicated in the instant case; that the dispute between the parties is of civil nature, which can be resolved in the civil court, criminal proceedings could not have been initiated against the petitioner; that registration of the case is outcome of malafide, therefore, the FIR is liable to be quashed.

4. We have given anxious thought and consideration to the arguments advanced by the learned counsel for the petitioner and have perused the record with his able assistance.

5. No doubt, on the following grounds, the High Court can quash the FIR in its constitutional jurisdiction:-

- (1) When no offence whatsoever has been disclosed by the facts alleged in the FIR or the case is of no evidence.
- (2) Where on the face of it, investigation of the case is outcome of malafide.
- (3) When contents of FIR showed that matter was purely of civil nature and criminal proceeding is not warranted by law to cause harassment to the accused.
- (4) Where registration of FIR suffers from serious jurisdictional defect.

We are aware of the fact that powers under article 199 of the Islamic Republic of Pakistan, 1973 can be invoked to quash the FIR in exceptional cases as discussed above, but the Court ought to avoid to quash FIR, if on the basis of any allegation

made by the complainant/prosecution, a prima facie commission of a cognizable offence is made out against the accused. The powers vested in the Court under article 199 of the Constitution are meant to prevent harassment of an accused but within the premises to serve ends of justice and not to defeat the same. It is not the function of High Court to judge the innocence or guilt of accused by minute scrutiny of evidence rendered by investigating agency against the accused or by adjudging the credibility of the statements of the prosecution witnesses. The Court cannot sit as an investigator. Perusal of the FIR reflects that the allegations levelled against the accused/petitioner in the impugned FIR were purely factual in nature and rebuttal by petitioner of such allegations also necessarily requires holding enquiry by the High Court, which cannot be done in exercise of power conferred under article 199 of the Constitution. Even otherwise the impugned FIR is still at investigation stage, and the allegations levelled in the FIR, prima facie discloses commission of a cognizable offence,

inference at this stage would amount to throttle the investigation.

6. The upshot of above discussion is that no case for quashment of FIR is, thus, made out and writ petition is accordingly dismissed in limine.

Announced.
13.02.2018



JUDGE



JUDGE