JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT
(*Judicial Department*)

W.P No. 891-M/2022
With Interim Relief.

Mufti Muhsin Mehmood.....(Petitioner)

vs

The State and another.....(Respondents)

Present: Muhammad Rahim Shah Khan, Advocate for the petitioner.

Hafiz Ashfaq Ahmad, Asstt: A.G for the State.

Date of hearing: 15.11.2023

JUDGMENT

SHAHID KHAN, J.- Mufti Muhsin Mehmood, the petitioner, has filed the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, read with section 561-A, Cr.P.C., with the following prayer:

> **"It is, therefore, most respectfully prayed that on acceptance of this writ petition, the impugned FIR No.140 of Police Station Timergara dated: 14.06.2022 registered by local police against the petitioner to be illegal without lawful authority and jurisdiction, discriminatory, ex-facie malicious, dishonest, unconditional, void ab-initio, null and void, hence to be quashed.**
>
> **Any other relief, though not specifically asked for, to which the petitioner is found entitle in the circumstances of the case may also be granted to the petitioner."**

2. In essence, the petitioner was charged in a criminal case vide FIR No.140 dated 14.06.2022 by Bakht Jamal Khan, Inspector/SHO of Police Station Timergara, District Dir Lower, registered under section 295-A & 506, PPC at the Police Station Timergara. Later on, section 398-C, PPC & section 3 of the Loud Speaker Ordinance, 1965, were further added in the aforementioned FIR. Allegations against the petitioner-accused are that he while addressing to the worshipers during *Juma* prayer in Abubakar Mosque situated at Qazi Plaza, Timergara, via loud speaker, has outraged the feelings of the worshipers, by recounting the following words:

> " مسجد کے پہلے صف میں بیٹھے ہوئے لوگوں کی اکثریت منافق ہوتے ہیں۔ خاص کر بوڑھے اور باریش لوگ سخت منافق ہوتے ہیں اور اِن بوڑھے لوگوں کو رائفل کے ذریعے گولی مارنا چاہیئے اور اُن کا خاتمہ ضروری ہے اور اُن کو مسجد آنا نہیں دینا چاہیئے۔ اُنکے وجہ سے علما کو تکلیف پہنچا رہا ہے۔"

3. It obliged the petitioner to approach this Court for quashment of the subject FIR through filing the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as no other adequate remedy was available to him.

4. We have heard arguments of learned counsel for the petitioner as well as learned A.A.G for the State and gone through the record with their valuable assistance.

5. The moot point raised herein before this Court is that the subject FIR was registered against the petitioner in violation of section 196 of the Cr.P.C and the same is liable to be quashed or otherwise. For this purpose, it would be appropriate to reproduced section 196 of the Cr.P.C as follows:

> **"196. Prosecution for offences against the State. No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Pakistan Penal Code (except section 127), or punishable under section 108-A, or section 153-A, or section 294-A, or section 295-A 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."**

6. The Court examined the case law referred to by the learned counsel for the petitioner and also searched out case law on the point. In most of the case law, it was held that case against an accused having been registered without the authority of Central or Provincial Governments or of some officer empowered in this behalf, is in violation of

section 196 of the Cr.P.C and the FIR was quashed. As in the case of ***"Malik Shaukat Ali Dogar and 12 others v. Ghulam Qasim Khan Khakwani and others"***, reported as **PLD 1994 Supreme Court 281**, the Apex Court has observed as follows:

> "6. So far as the question of registration of the case without prior sanction of the competent authority is concerned, in the case of Emperor v. Khawaja Nazir Ahmad (AIR 1955 Privy Council 18) the law laid down was that the prohibition contained in section 197, Cr.P.C against a prosecution without the necessary sanction is against the action of taking of cognizance by the Court. It does not prevent, preclude or otherwise interfere with the power of the police in the matter of registration of the case and the investigation thereof. The sanction required under section 197, Cr.P.C is even otherwise not required in view of decision of the case of Zafar Awan PLD 1992 SC 72."

7. In the case of ***Atta Muhammad Deshani v. District Police Officer, Haripur and 2 others,*** *reported as* **2019 PCr.LJ 275 (Peshawar High Court Abbottabad Bench)**, this Court has held as follows:

> "9. On examining the case law and section 196, Cr.P.C, it follows that the police have to perform the functions specifically assigned to them without any outside interference under Chapter XIV, Part V of the Criminal Procedure Code. The functions of the Court would commence only when a complete Challan is sent to it for trial of the accused. In the instance case, as we gathered from section 196, Cr.P.C, it is only after submission of Challan that the

> Court takes cognizance of the case and thus, the proceedings taken prior to this, cannot be held to be violative of section 196, Cr.P.C. We when examined the record, find that in the instant case the SHO concerned has submitted Challan under section 173 Cr.P.C. In routine without submitting it in the shape of complaint or seeking sanction of the Central Government, Provincial Government or any officer authorized by it thus, the proceedings to that extent are quashed and the trial Court cannot take cognizance on such defective Challan."

8. In the subject case, the Inspector/SHO concerned has directly took cognizance of the matter and lodged the abovementioned FIR against the petition in violation of section 196 of the Cr.P.C., whereas, he was to simply file a complaint against the petitioner before the Court of competent jurisdiction after ensuring compliance of section 196, Cr.P.C.

9. The Court would now advert to the law relating to quashment. Although there is a dominant judicial view that the High Court would normally restrain from quashing a criminal case exercising its powers u/s. 561-A, Cr.P.C read with Art. 199 of the Constitution, however, where no other adequate remedy is available to an aggrieved person, it may exercise such powers. Reliance is placed on the case ***Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others***, **(2011 SCMR 1813) [Supreme Court of Pakistan]**, in which, the order of quashment passed

by the High Court was set aside, certain guidelines were laid down which are as follows:

> "High Court will have to consider in each case the following test to be applied to determine the adequacy of the relief:–
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> (i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternate remedy is not an 'other adequate remedy' within the meaning of Article 199.
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> (ii) If the relief available through the alternate remedy, in its nature and extent, is what is necessary to give the requisite relief, the "adequacy" of the alternate remedy must further be judged with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternate remedy with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison, those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.
>
> (iii) In practice the following steps may be taken:
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> (a) Formulate the grievance in the given case as a generalized category;
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> (b) Formulate the relief that is necessary to redress that category of grievance;
>
> (c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;
>
> (d) If such a remedy is prescribed, the law contemplates that resort must be have to that remedy;
>
> (e) If it appears that the machinery established for the purpose of that remedy is not functioning properly, the correct step to take will be a

step that is calculated to ensure, as far as lies in the power of the court that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy and the organ that takes over will break down under the strain;

(f) If there is no other remedy that can redress that category of grievance in that way and to the required extent or if there is such a remedy but conditions are attached to itwhich for a particular category of cases would neutralize or defeat it so as to deprive it of its substance, the court should give the requisite relief under Article I99.

(g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance is not adequate to the relief that is essential in the very special category to which that belongs, the court should give the required relief under Article I99.

10. In view of the above stated position, the subject petition is allowed and the FIR No.140, dated 14.06.2022 u/ss. 295-A/506/398-C, PPC, and section 3 of Loud Speaker Ordinance, 1965, registered at Police Station Timergara, District Dir Lower, stands quashed.

Announced
Dt: 15.11.2023

JUDGE

JUDGE

OK
18/11/2023

Bakht Sher Ali/Steno*

(D.B.) Hon'ble Mr. Justice Muhammad Naeem Anwar
Hon'ble Mr. Justice Shahid Khan