

**PESHAWAR HIGH COURT, PESHAWAR.**

**ORDER SHEET**

<b>Date of Order or Proceedings</b>	<b>Order or others Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary</b>
<b>1</b>	<b>2</b>
21.9.2017	<p><b><u>W.P No. 2577-P/2017.</u></b></p> <p><b>Present:</b> Mr. Abdul Hafeez, Advocate, for the petitioner. *****</p> <p><b><u>IJAZ ANWAR, J.-</u></b> Firdous Aziz, the petitioner, through the instant petition has asked for an appropriate writ declaring the order of justice of Peace/Additional Sessions Judge-VIII, Peshawar, as illegal and also prayed for the quashment of FIR No. 677 dated 18.5.2017, under Sections 489-F, PPC, registered at Police Station, Khan Raziq, Peshawar.</p> <p>2. The background of the case is that the respondent No.1 submitted an application before Justice of Peace for registration of case alleging that he was handed over with a cheque by the petitioner, which, on presentation before the concerned Bank, was dishonoured. The application was accepted, vide order dated 18.5.2017, consequently, the above referred FIR was lodged. Now, the petitioner through the instant writ petition has impugned the order of Ex Officio Justice of Peace and also sought for quashment of the FIR.</p> <p>3. Learned counsel for the petitioner argued that</p>

means rea is the essential element for constitution of any of the offence punishable under the law. He next argued that for constitution of offence under section 489-F PPC, issuance of a cheque must be with "dishonest intention". He while referring to the agreement deed argued that it was a business transaction and cannot be made basis for registration of a criminal case as for cancellation of agreement deed, a civil suit is pending adjudication between the parties. He was of the view that in such eventuality, the learned ex officio Justice of Peace should not have interfered in the matter by directing the police to register a case on the frivolous application of the private respondent, most particularly, in absence of pre-requisite ingredients required for the offence under which, the FIR has been registered. The learned counsel by concluding his arguments submitted that since the charge against the petitioner is not only false and mala fide but frivolous as well and there is no possibility of his conviction in it, therefore, the impugned order and the FIR, in the circumstances of the case, are liable to be quashed. He placed reliance on the cases titled Naseeb Gl vs. Amir Jan and another (2013 P Cr. L J 175), Sardar Muhammad Aslam vs SHO (2013 YLR 108) and Iftikhar Akbar vs the State ( 2008 MLD 159).

4. We have considered arguments of learned counsel for the petitioner and perused the available



record.

5. The perusal of record reflects that learned Justice of Peace while exercising his powers under section 22-A Cr.P.C issued direction to the SHO concerned for registration of the FIR against the petitioner as a cognizable offence was committed. We have perused the impugned order of Justice of Peace and found the same to have been passed in accordance with law keeping in view the allegations levelled against the petitioner, guiding towards a cognizable offence. The question of applicability of Section 489-F PPC in the present case being controversial requiring recording of evidence, therefore, this court while exercising constitutional jurisdiction, cannot entertain it.

6. Under Section 154 Cr.P.C police has statutory duty to register FIR regarding commission of any cognizable offence and its purpose is only to set the criminal law in motion. The provisions of Section 154 Cr.P.C are mandatory in nature. When FIR is registered, then the local police under section 156 Cr.P.C have the statutory rights to investigate the case and interference by Court with duties of police is not permissible under the law as FIR is not an encyclopedia of all the relevant facts, therefore, the image presented by the FIR will be clarified when all the incriminating material is brought on record during investigation. If the accused is found blameless

during investigation, he can be dealt with in accordance with the provisions of sections 169/ 173 (3) Cr.P.C read with sections 249-A/265-K Cr.P.C besides pressing into service the punitive proceedings by sending a complaint under section 182 PPC against informer/ complainant of the FIR. Therefore, it would be injustice, if, before the real facts are collected by the investigating agency, the F.I.R. alleging the commission of cognizable offences, is nipped in the bud.

7. Of course, this Court has the powers to quash FIR but in exceptional circumstances, i.e., where the allegations made in the FIR, on the fact of it, do not constitute a cognizable offence, or the allegations made in the FIR are so illogical on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, or where there is an express legal bar in any of the provisions of the Code or the concerned Act, under which a criminal proceeding is instituted. In a case titled Brig. (Retd.) Imtiaz Ahmad vs. the Govt of Pakistan (1994 SCMR 2142) the apex

Court observed that:-

“The function of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the court to intervene in an appropriate case. Control over the investigation exercised by the court was prejudicial to the accused and detrimental to the fairness of the procedure



apart from being without jurisdiction. High court cannot assume the role of investigator. This could obviously not be done, for the authority to register and investigate a criminal case in law vests in the police and not in Court.

Similar view was held in a case reported as (2008

SCMR 76) wherein it has been observed that

“High Court has no jurisdiction whatsoever to take the role of the investigating agency and to quash the FIR, while exercising constitutional power under Article 199 of the Constitution or under section 561-A Cr.P.C unless and until very exceptional circumstances existed.

8. The arguments of learned counsel for the petitioner that civil suit is pending between the parties having no force because mere filing of a civil suit is not bar to the registration of criminal case if same is made out from facts asserted that a criminal act is committed. In the case of Ghulam Muhammad vs. Muzamil Khan and four others (PLD 1967 SC 317), the apex Court held that civil and criminal cases can go side by side and there is no bar on the criminal proceedings in presence of the civil suit.

9. For the reasons discussed above, this writ petition being without substance is dismissed in *limine*.

Announced.

Dt. 21.9.2017

  
JUDGE

  
JUDGE