

**PESHAWAR HIGH COURT, PESHAWAR**  
**ORDER SHEET**

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
17.02.2021	<p><b><u>Writ Petition No.4799-P/2020.</u></b></p> <p>Present:     <b>Mr. Muhammad Muazzam Butt,</b>                   <b>Advocate for the petitioner.</b></p> <p>                  <b>Mr. Arshad Ahmad, AAG for the</b>                   <b>respondents.</b></p> <p style="text-align: center;">*****</p> <p><b><u>MUHAMMAD NAEEM ANWAR, J.-</u></b> By</p> <p>invoking constitutional jurisdiction of this Court, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following relief: -</p> <p>“It is therefore, very humbly requested that this Honorable Court may please grant an appropriate writ, as submitted hereinafter:</p> <p>a. To declare that the life, reputation, property, liberty and movement are the fundamental rights as guaranteed in Article 4, 9, 14 and 19 of the Constitution of Pakistan and as he is facing group of individuals involved in interest based transaction therefore it would be for the enforcement of his fundamental right and in view of circumstances being faced by him, it would be lawful if joint investigation team is appointed including financial experts to inquire into such transaction and fix the responsibility and charged them according to law.</p> <p>b. The respondent No.2 may be directed to form a joint investigation team including the financial experts to fix the</p>

	<p>responsibility upon the individuals involved in interest based transaction in contravention of Provision of Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 (Khyber Pakhtunkhwa Act No. XVII of 2016).</p> <p>c. To direct the respondents to provide security to the petitioner to save his life, reputation, property, liberty and movement.</p> <p>d. Any other relief found appropriate may also be granted to the petitioner.”</p> <p><b>02.</b> Learned counsel for the petitioner contended that petitioner is the sole owner, founder and Chief Executive of the school system known as Institute of Computer and Management Sciences, which has its branches and franchises throughout the province and for the achievement of its targets / goals such as quality education on modern standards, the petitioner has invested a huge amount to develop the infrastructure, marketing and in doing so, he was trapped by money launders on interest based transactions wherefrom the petitioner has returned the capital amount and huge profit thereon but even then he is facing harassment by the money launders from whom Muhammad Ayub Khan, Muhammad Javed, Izzat Khan, Imtiaz, Hameed, Pir Tahir and Ismail have fraudulently obtained number of cheques on account of management of schools through facilitator and now they are pressurizing him through</p>
--	--

	<p>different means regarding which he has filed an application before Ex-Officio Justice of Peace under section 3 (1) of Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 which is still pending adjudication. He added that a civil suit was also instituted against Haji Abdul Nawaz Afridi for declaration, perpetual injunction and compensation for the loss allegedly caused for harassment of staff and management of school. He contended that petitioner is entitled for protection of his fundamental right as enshrined in Articles 4, 9, 14 &amp; 19 of the Constitution of the Islamic Republic of Pakistan, 1973 and while making reliance on the judgment of this Court rendered in <u>Writ Petition No.2173-P/2016</u> titled “<u>Sajid Ali vs. DPO Mardan</u>” dated 15.06.2016 requested that joint investigation team may be appointed for resolution of the controversy and fixation of the responsibility.</p> <p><b>03. Arguments heard and record perused.</b></p> <p><b><u>CMs No.172-P/2021.</u></b></p> <p>This application / CMs was filed for impleadment of (i) Muhammad Ayub Khan (ii) Muhammad Javed (iii) Izzat Khan (iv) Imtiaz (v) Hameed (vi) Pir Tahir (vii) Ismail (viii) Hussain Shah (ix) Arif Gul (x) Zahid Jan and (xi) Sameen Gul in the panel of</p>
--	--

	<p>respondents. The application / CM is allowed. Office is directed to make necessary entries in the relevant record and in the heading of the petition as well.</p> <p><b>04.</b> Perusal of record reveals that the petitioner has filed a complaint under section 200 of the Code of Criminal Procedure, 1898 for allegedly committing breach of trust, extortion, cheating by personation, fraud and blackmailing etc. against Muhammad Ayub Khan and Muhammad Javed wherein it was contended that Muhammad Javed was the Accountant and was trusted by the petitioner and on the basis of his trust, the petitioner used to sign blank cheques for its future utilization, necessary payments of ongoing projects. During the course of day to day business in connection with ongoing affairs of the Institute, the petitioner through respondent No.2 met with respondent No.1 who happened to be very humble, respectful, needy and work loving person who could be depended for the purpose of out sourcing the finance. In such scenario, respondent No.1 introduced one Izzat Khan, who has lent Rs.11.5 million and has been paid Rs.11.082 million, however, he is further demanding Rs.8 million and he is in his possession of the cheques of the following amounts i.e. (i) 2.4 million (ii) 2.3</p>
--	--

	<p>million (iii) 2.6 million (iv) 3 million and (v) 1.2 million with compound interest thereon such as (i) 3.5 million (ii) 3.5 million (iii) 4.2 million and (iv) 1.95 million. Record depicts that the said complaint was filed on 30.09.2020 before the learned Judicial Magistrate at Peshawar. It is also an admitted fact that a complaint under section 6 of Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 was filed with almost same facts, however, in which Hameed, Tahir and Ismail were also impleaded as respondents. Para No.14 of the complaint filed under section 200 Cr. P.C. and the application filed under section 6 of Khyber Pakhtunkhwa Prohibition of Interest on Private Loans Act, 2016 is almost the same and both were drafted on 30.09.2020. In order to augment, the petitioner has annexed the copy of regular civil suit filed before Senior Civil Judge, Peshawar against Haji Abdul Nawaz Afridi for declaration, injunction, compensation etc., which is pending in adjudication. Apart from above, a civil suit before District Judge, Peshawar against Muhammad Ayub Khan, Private Schools Regulatory Authority, Peshawar Board under the provision of Trade Marks Act, 1940 has also been instituted by the petitioner on 20.01.2020,</p>
--	--

	<p>which was entrusted to learned Additional District Judge-IX, Peshawar in which 15.02.2021 was the last date of hearing.</p> <p><b>05.</b> At this juncture, admittedly, for seeking the redressal of his grievance, he has approached to the Court of Judicial Magistrate, Ex-Officio Justice of Peace, to the civil Court through regular civil suit, to the Court of learned District Judge under the provision of Trade Marks Act, 1940, all the matters referred to above are still pending adjudication and none of them has been finalized. Insofar as the contents of this petition is concerned, it appears that there are intricacies and multifarious litigation against added respondents and the private respondents who are parties before different forums and the questions raised in the instant petition are intricate questions of law and facts which require recording of pro and contra evidence, to un-earth the truth, of course, the same could only be done before the Court of competent jurisdiction but in no way, the instant petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 could be a substitute for proposed redressal of the petitioner. We do not deem it appropriate to discuss the facts with respect to prayers of petitions,</p>
--	---

	<p>suits filed by the petitioner against respective respondents for the reasons that those are still in process of their logical conclusion. Be that as it may, the petitioner in para No.7 of the instant petition contended that his complaint u/s 200 of Cr. P.C, u/s 6 of Khyber Pakhtunkhwa Prohibition of Interest on Private Loans, Act, 2016 are not sufficient to provide the relief to the petitioner as the petitioner has been defrauded by the private respondents, therefore, through joint investigation team, the responsibility could be fixed in accordance with the judgment rendered in Writ Petition No.2173-P of 2016 dated 15.06.2016. Suffice it to say that for the infringement of statutory rights, the petitioner is before civil court u/s 42, 53 of the <b>Specific Relief Act, 1877</b> u/s 25, 73 &amp; 76 of <b>Trade Marks Act, 1940</b> before special court, u/s 6 of the <b>Khyber Pakhtunkhwa Prohibition of Interest on Private Loans, Act, 2016</b> and for the offences under the provision of <b>Pakistan Penal Code, 1860</b> such as breach of trust, extortion, cheating of personation, fraud, blackmailing, nuisance and harassment, the petitioner has already approached to the appropriate forum, therefore, the instant petition cannot be entertained on the basis of the principle as laid by the</p>
--	--

	<p>apex Court in case titled “<u>Commissioner of Income Tax, Companies-II and another vs. Hamdard Dawakhana (Waqf) Karachi</u>” (PLD 1992 SC 847), wherein it was held:</p> <p>“in cases where statute provides alternate and efficacious remedy up-to High Court, cannot be approved or encouraged.”</p> <p><b>06.</b> Similarly, the Hon’ble Supreme Court in case titled “<u>Khalid Mehmood vs. Collector of Customs, Customs House, Lahore</u>” (1999 SCMR 1881), has observed:</p> <p>“As to bar of jurisdiction, it is to be noted that Article 199 of the Constitution opens with word to the effect that the High Court may exercise its powers under such Article only "if it is satisfied that no other adequate remedy is provided by law". Adequacy of the alternative remedy, therefore, if there is another remedy available, should always attract the attention of the High Court”</p> <p><b>07.</b> Another intriguing aspect of the instant petition is the intricate question of law and fact which while exercising constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 cannot be resolved as enunciated by the apex Court in case titled “<u>Miss Asma Ghafoor vs. Principal, King Edward Medical College, Lahore and 3 others</u>” (2011 SCMR 1131) by observing that: -</p> <p>“Moreover, there is a factual controversy between the parties and the same cannot be resolved without elaborate inquiry”</p>
--	--



	<p><b>08.</b> Reliance can be placed on case(s) titled <u>“<i>Lugman Sajid vs. Returning Officer and 5 others</i>”</u> (2018 YLR 2319), <u>“<i>Mst. Robina and others vs. District Police Officer and others</i>”</u> (2018 YLR 665), <u>“<i>Ali Nawaz Shahwani and brothers through Proprietor and another vs. Government of Balochistan through Secretary C&amp;W Department Quetta and 2 others</i>”</u> (PLD 2020 Quetta 21), <u>“<i>Muhammad Soomar vs. Province of Sindh through Secretary Irrigation Department, Sindh and 7 others</i>”</u> (2020 YLR 1044), <u>“<i>Nadeem Aftab Sindhu vs. F.O.P through Secretary of Law, Justice and Parliamentary Affairs and others</i>”</u> (PLD 2013 Lahore 405), <u>“<i>A.M Construction Company (PVT) Limited through Chief Executive Officer and another vs. The National Highway Authority through Chairman and 2 others</i>”</u> (2015 CLD 130), <u>“<i>Muhammad Anwar Khan and another vs. Khalid Mahmood and others</i>”</u> (2015 MLD 1090), <u>“<i>Akbar Ali vs. District Police Officer and 5 others</i>”</u> (2013 YLR 222).</p> <p><b>09.</b> The law laid down by this Court in Writ Petition No.2173-P/2016 dated 15.06.2016 for the purpose of constitution of joint investigation team</p>
--	---

	<p>cannot be applied as the petitioner has already approached to different forums for redressal of his grievance, as such, no relief can be extended to the petitioner.</p> <p>10. For the reasons discussed above, the instant petition being bereft of any merit is hereby dismissed with no order to cost.</p> <p><b><u>ANNOUNCED.</u></b> <b>17.02.2021.</b></p> <p><b>SENIOR PUISNE JUDGE</b></p> <p><b>J U D G E</b></p>
--	--