

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH**
(Judicial Department)

W.P No.320-B of 2017.

Gohar Ayub

Vs

The State etc.

JUDGEMENT/ORDER.

Date of hearing _____ 06.3.2019 _____

Appellant-Petitioner: **Haji Hamayun Khan**
Wazir, Adevocate.

Respondent(s) : **By Mr. Inam Ullah Khan**
Mandra Khel, Advocate,
State by Mr. Shahid Hameed
Addl: AG.

MUHAMMAD NASIR MAHFOOZ, J.- Petitioner seeks quashment of FIR No.724 dated 12.12.2013 registered under sections 468/419/420/471/409/406 PPC on the application of respondent No.2 filed under section 22-A Cr.P.C before the learned Justice of Peace, vide impugned order dated 11.12.2013.

2. As per averments in the instant petition respondent No.2 had already filed an application dated 23.10.2012 to the District Police Officer, Lakki Marwat for registration of FIR, which was referred to Director Anti-Corruption, Khyber Pakhtunkhwa and the matter was sent for inquiry to

the Anti-Corruption Establishment, therefore, the application under section 22-A Cr.P.C was not maintainable.

3. We have heard learned counsel for the parties, learned AAG for the State and perused the record with their assistance.

4. Before discussing the factual and legal aspects of this case, it requires to be mentioned that the present petitioner had earlier filed writ petition No.413-B/2013, challenging the instant order dated 11.12.2013, passed by learned Justice of Peace, which was filed on 16.12.2013 but the same was dismissed on 25.02.2015 on the ground that the petitioner was absconder in another FIR No.424 dated 28.5.2014 registered under sections 302/324/34 PPC. The instant FIR was lodged on 12.12.2013 and the said writ petition was filed later on but perhaps the fact of lodging of FIR was concealed from this Court.

5. Record also reveals that the present petitioner has lodged FIR No.54 against respondent No.2 under section 489-F PPC that is still pending investigation. No record of the Anti-Corruption

office has been annexed with the present petition, in order to be acquainted with the present stage of the proceedings therein. On facts as alleged, the present petitioner is a Government servant and has purportedly used the National Identity Card of respondent No.2 and got him appointed on the post in addition to receiving salary on his behalf but without informing him which led to the lodging of the instant FIR. The correctness or incorrectness of the allegations as contained in the FIR are yet to be put to trial before the Anti-Corruption Establishment as well as before the learned trial Court in pursuance to the instant FIR, so we need not go into the depth of details of the allegations contained therein.

6. Learned counsel for the petitioner led much stress on the legal ground, that once a Government servant is involved in the case under the Prevention of Corruption Act, 1947 then the local police has got no jurisdiction to register a fresh FIR on the same allegations and relied on PLD 2008 Peshawar 162. Learned counsel for the respondent No.2 and learned A.A.G for the State vehemently resisted the arguments of learned counsel for the petitioner and relied on judgment reported as 1981

SCMR 1101, 2005 YLR 1329, PLD 1999 Lahore 109 and 2005 MLD 1647.

7. Before analyzing the question of involvement in the said judgment, it would be worthwhile to refer sub-section 4 of section 5 of the Prevention of Corruption Act, 1947, which provides as follows:-

“5 (4) The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.”

8. Similar contentions were considered by Hon’ble Supreme Court of Pakistan in judgment reported **1981 SCMR 1101 titled Abdul Latif Vs. M. Paracha and others**” and any overriding effect of the Act of 1947 was not held to prevail and another FIR lodged against the appellant therein under the Anti-Smuggling (Rice and paddy) Law was held valid as section 8 of the West Pakistan Anti-Corruption Establishment Ordinance, 1961 are also *pari materia* to sub-section 4 mentioned above.

9. To embark on factual controversy involved in the instant case would tantamount to exceeding jurisdiction as conferred by Article 199 of the Constitution of Pakistan, that was also considered in the judgment reported as (2006 SCMR 276) titled “**Col. Shah Sadiq Vs. Muhammad Ashiq and others**” and the relevant portion is reproduced below:-

“ It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in A. Habib Ahmad v. M.K.G. Scott Christian PLD 1992 SC 353. The learned High Court had quashed the F.I.R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by trial Court. The learned High Court had no jurisdiction to quash the

impugned F.I.R. by appreciation of the documents produced by the parties without providing chance to cross-examine or confronting the documents in question.”

10. The case of petitioner would also be looked into from this angle vis-à-vis section 561-A Cr.P.C, whereby High Court is also vested with the power to pass an order to secure the ends of justice, suppress the mischief, and if non-interference with the impugned order would perpetuate injustice. Though the ultimate object is to prevent abuse of process of law and similarly, in constitutional petition under Article 199, the order for quashment of FIR could be passed, if it meets the said requirements. No detailed examination of facts could be made in the instant constitutional petition as it would have the trappings of a final order as held by Hon’ble Supreme Court in Shah Sadiq’s case. Sub-section 4 explicitly lays down that no public servant shall be exempted from any proceedings which might be instituted against him, apart from section 5 of the Act of 1947.

11. In the presence of sub-section 4 of section 5 of the Act of 1947 and section 8 of the

Ordinance of 1961, the instant FIR lodged against the petitioner by the local police does not constitute a case of overlapping with the case of the Anti-Corruption Establishment and the same could proceed together in accordance with law. Hence, the instant petition is dismissed with no order as to cost.

Announced.

06.03.2019

Ihsan.*/-

J U D G E

J U D G E

(D.B) Hon'ble Mr. Justice Muhammad Nasir Mahfooz and Hon'ble Mr. Justice Shakeel Ahmad.