

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1212-P/2021

Muhammad Sohail

.....Petitioner.

Versus

Station House Officer and others.

.....Respondents.

For the Petitioner:

Mr. Rashid Rauf Swati,
Advocate.

For the Respondents:

M/s Shumail Ahmad Butt AG,
Nasir Ahmad Khan AAG &
Liaqat Ali Khan Advocate/PP
PESCO.

Date of Hearing:

01.12.2022

JUDGMENT

SYED ARSHAD ALI, J:- Muhammad Sohail son of Muhammad Farooq, who has been nominated in the case FIR No. 84 dated 08.02.2021 registered under Section 462-I PPC at Police Station PESCO, Peshawar, has approached this Court through the instant constitutional petition, seeking quashment of the said FIR.

2. The learned counsel appearing on behalf of the petitioner has argued that the offences contained in Chapter-XVII-B of the Pakistan Penal Code, 1860 ("PPC") are non-cognizable albeit the Court can only take cognizance of the matter on a complaint in terms of Section 462-O of the PPC, therefore, the registration of FIR be quashed. He has placed reliance on **PESCO through Chief Executive Officer vs. The State and 43 others** (2020 P.Cr.LJ 249).

3. The learned Advocate General, while rebutting the arguments of learned counsel for the petitioner, has argued that though under Section 462-O PPC, the Court cannot take cognizance of the matter on police report, however, this does not mean that the police cannot investigate the matter and register the case as the offences under Chapter-XVII of the PPC are admittedly cognizable offences. In support of his arguments, he placed reliance on the cases of Zeeshan Anjum vs. State etc (PLJ 2022 Cr.C 1152), Atta Muhammad Deshani vs. District Police Officer, Haripur and 2 others (2019 PCr.LJ 275) and Muhammad Nazir vs. Fazal Karim and others (PLD 2012 SC 892).

4. Arguments heard and record perused.

5. It is evident from record that on the basis of complaint filed by the Muhammad Sohail SDO, the Incharge Police Station PESCO has registered the FIR wherein the petitioner has been nominated for the theft of electricity and has been charged under Section 462-I PPC. Chapter-XVII-B was inserted in the PPC through Criminal Law (Amendment) Act, 2016 ("*Act, 2016*"), whereby theft of electricity, obstruction and tampering with transmission lines etc were made offences punishable under Sections 462-H, 462-I, 462-J, 462-K, 462-L and 462-M. Similarly, through Act, 2016, the second schedule to the Code of Criminal Procedure, 1898 ("*Cr.P.C.*") was also amended whereby Section 462-H to Section 462-M PPC were also inserted being non-bailable and

cognizable by the police as it envisages that the police may arrest the accused charged for such offences without warrant.

6. The phrase 'cognizable offence' and 'cognizable case' has been defined under Section 4(f) of Cr.P.C. to mean an offence in which the police officer may in accordance with the second schedule of Cr.P.C. or under any law for the time being enforced arrest without warrant.

7. Section 154 Cr.P.C. further envisages that when an Incharge of Police Station receives any information regarding the commission of cognizable offence, he shall reduce the same into writing or under his direction the First Information Report ("**FIR**") to be entered in a book to be kept by such officer. Thus, as evident from the word 'shall' used in Section 154 Cr.P.C. it is manifest that the intention of legislature is that the said provision is mandatory and on receiving the information regarding the commission of a cognizable offence, the police officer is required to register the FIR. **Muhammad Bashir vs. Station House Officer Okara Cantt (PLD 2007 SC 539)**. Similarly, Section 173 Cr.P.C. envisages that on completion of investigation, the Incharge of Police Station shall through Public Prosecutor forward the matter to a Magistrate empowered to take cognizance of offence or send the same for trial to the competent court in terms of Sections 190/193 Cr.P.C.

8. The procedure for trial before the Sessions Court is provided under Chapter-XXII-A of Cr.P.C. whereas the

place of trial/jurisdiction of criminal court and inquiry has been provided under Chapter-XV of the Cr.P.C. In the case of non-cognizable offence the procedure of receiving information and investigation has been provided under Section 155 Cr.P.C. Therefore, in view of the above, the law is clear that the registration of FIR, investigating the offence and taking cognizance of cases by the Courts are two distinct and independent concepts under the criminal law.

9. In view of the clear mandate of Section 173 Cr.P.C. any cases in which the police has taken cognizance, the final challan is to be submitted before the competent court of law by the Incharge Police Station in terms of Section 173 Cr.P.C., however, the offence of criminalizing the theft of electricity and other ancillary matters through Act, No. VI of 2016 there is a slight departure relating in taking cognizance of the matter by the trial Court as provided under Section 462-O PPC inserted through the aforesaid Act, which reads as under:-

"462-O Cognizance.- (1) The Court shall try an offence punishable under this Chapter.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Court shall not take cognizance of an offence under this Chapter except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be".

10. The effect of insertion of Section 462-O PPC would be that the police after registration of the case and completion of investigation would not be competent to file a

challan before the Court in terms of Section 173 Cr.P.C. but the Court would take cognizance of the matter on the complaint made by the authorized officer of the Distribution Company not below Grade-17 by recording reasons for submission of complaint, therefore, it is evident from the aforesaid procedure that the police officer on receiving any complaint regarding the theft of electricity shall register a case, investigate the matter, however, for submission of the final report; instead through the mechanism provided under Section 173 Cr.P.C. he will place the same before the authorized officer of the PESCO, who after scrutinizing the investigation report shall submit a complaint before the competent court of law. It is because that Section 462-O PPC starts with non-obstante clause which means that the mechanism of taking cognizance before the Court would be through filing of a complaint and not by submitting of challan in terms of Section 173 read with Section 190 Cr.P.C.

11. The mechanism of taking cognizance through a complaint by a Court in cognizable and non-cognizable cases is not novice to our legal dispensation. Under Section 196 Cr.P.C. where cognizance of certain offences is barred except on complaint by Central or Provincial Government or authorized officer, however, the offences referred in Section 196 Cr.P.C; for example Sections 123-B, 171-J, 153-A and 505 are cognizable, therefore, the FIR is registered under such sections against a person charged for the said offences.

However, for taking cognizance, Court requires complaint/sanction of a Central or Provincial Government or authorized officer at the time of framing charge. In the case of

Malik Shaukat Ali Dogar and 12 others vs. Ghulam Qasim

Khan Khakwani and others “ (PLD 1994 SC 281), the Apex

Court while dealing with a similar issue has held that:-

“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 in the case of Zafar Awan PLD 1992 SC 72”.

Similarly, in the case of **Industrial Development**

Bank of Pakistan and others vs. Mian Asim Fareed and

others (2006 SCMNR 483), the Apex Court was also faced

with a similar circumstances. In the said case, the FIR was registered under Sections 420/406/379 PPC at the instance of an officer of the Bank, which was quashed by the Hon'ble High Court on the ground that Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance No. XLVI of 2001 prescribed that it was only a Banking Court which could take cognizance of the offence under the Ordinance and that also on a complaint in writing made by a person authorized by the Bank in that behalf and that in the circumstances, recording of the FIR could not be sustained. However the Apex Court while dealing the matter has held that:-

"In the absence of any finding that the above mentioned offences mentioned in the FIR were false and malicious and in the absence of a finding that if a particular forum or mode had been prescribed with respect to the taking of cognizance of an offence then the same also implied prohibition regarding the registration of an FIR, no such order could be passed nor the same could be approved. Needless to add that the registration of an FIR and taking of cognizance of cases were two distinct and independent concepts under the criminal law; that if the intention of the law-maker was to put any clog on the registration of an FIR, then the Legislature would have said so specifically and that if the law put a condition only on the taking of cognizance then it can never be read to imply prohibition on registration of FIRs".

Somehow similar view was also expressed by the Apex Court in the case of **Muhammad Nazir vs. Fazal Karim and others** (PLD 2012 SC 892), which reads as under:-

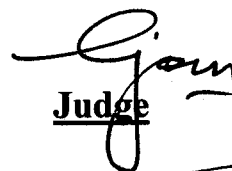
"We may observe with respect that the learned Judge-in-Chamber of the Lahore High Court, Lahore seems to have confused the expression 'cognizance' appearing in Section 195, Cr.P.C. with the expressions 'cognizable' and 'non-cognizable' finding mention in Sections 154 to 157 Cr.P.C. and had also failed to appreciate that taking of cognizance of an offence by a court is a thing quite distinct from investigation of a reported offence by the police of any other investigation agency. The learned Judge-in-Chamber ought to have appreciated that the provisions of section 195(1) (c), Cr.P.C. deal only with taking of cognizance of an offence by a court and the same do not place an embargo upon reporting such an alleged forgery to the police, registration of an FIR in that regard or conducting of an investigation in respect of such an allegation. There may be situations where a court before whom an allegation has been levelled regarding production or giving in evidence of a forged or tampered document may in the first instance like to get the matter of alleged forgery required into or investigated by a trained investigating agency or it may require the party levelling the allegation to report the matter to the investigating agency for an inquiry or investigation before making up its mind whether to lodge any complaint in writing under section 195(1) (c), Cr.P.C. before the trial Court or not".

12. Having said that the police was competent to register the case against the petitioner then in such a circumstances on factual ground, this Court has no

jurisdiction to interfere with the police investigation or take the role of investigation agency and to quash the FIR, while exercising constitutional powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 or Section 561-A Cr.P.C. Shahnaz Begum vs. The Hon'ble Judges of the High Court of Sindh and Baluchistan and another (PLD 1971 Supreme Court 677), Brig. (Rtd) Imtiaz Ahmad's case (1994 SCMR 2142) and Dr. Ghulam Mustafa vs. The State (2008 SCMR 76).

13. In view of the above, we find no merit in this petition which is accordingly dismissed.

ANNOUNCED.
01.12.2022


Judge


Judge


Judge

=====