

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Petition No.2231 of 2020
*(Against the order dated 1.9.2020 of the
Islamabad High Court, Islamabad passed
in W.P. No.2267/2020)*

Abdul Rehman Malik

...Petitioner(s)

Versus

Cynthia D. Ritchie, American National and others

....Respondent(s)

For the Petitioner(s) Sardar Muhammad Latif Khan Khosa, Sr. ASC

Mr. Shahbaz Ali Khosa, ASC

Ch. Abdul Rehman Hur Bajwa, ASC

Mr. Tariq Aziz, AOR

For Respondent No.1: Mr. Saif-ul-Malook, ASC

Mr. Sharif Janjua, AOR

Respondent No.1 in person

On Court's notice: Mr. Niazullah Khan Niaz, A.G. Islamabad

Umar, SP City

Naeem SP Investigation

Iqbal Khan, DSP

Haider Ali, SHO, PS Secretariat

Zahid Akhtar, S.I.

Date of hearing: 30.09.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- Synthia D. Ritchie, respondent herein, a U.S. blogger, residing in Pakistan since the year 2009, initially through a Face book video dated the 5th of June, 2020, alleged Senator Abdul Rehman Malik, a former Federal Minister and a Director General of Federal Investigation Agency, to have carnally assaulted her way back in the year 2011; she subsequently laid information with the police for registration of a criminal case, however, upon failure, approached a Justice of Peace at Islamabad who summoned

the both sides with a report from the local police; it is in this backdrop that in the face of a negative police report, the Justice of Peace vide order dated 05.08.2020 declined to issue direction for registration of a criminal case; the respondent assailed the refusal in the Islamabad High Court through W.P. No.2267 of 2020. The learned High Court vide impugned order dated 01.9.2020 remitted the complaint for hearing afresh with the following direction:

"The petition filed by the Petitioner shall be treated as pending. The learned Sessions Judge, Islamabad (West) is expected to assign the matter to a designated Ex-Officio Justice of Peace, other than the judicial officer who had passed the impugned order, dated 05.08.2020. This Court further expects that a date will be fixed by the learned Sessions Judge and the parties will be informed accordingly. The learned Ex-Officio Justice of Peace, after affording a reasonable opportunity to the parties, is expected to decide the petition filed by the Petitioner expeditiously, preferably within three weeks from the date of receiving a certified copy of this order, inter alia, having regard to the principles and law highlighted in the aforementioned judgments."

2. Learned counsel for the petitioner contends that the Justice of Peace, on the basis of factual reports furnished by the local police, through a detailed order, structured within the remit of law, had rightly declined to issue direction to the Station House Officer for the registration of a First Information Report for an offence that on respondent's own showing was allegedly committed as far back as in the year 2011, followed by an intriguing silence spanning almost over a decade; he next argued that entire exercise was calculated to malign and disrepute the petitioner who held high positions in the Government and is presently a member of the Senate of Pakistan, for purposes other than noble and, thus, there was no occasion for the High Court to exercise equitable jurisdiction to resurrect a dubiously scandalous pursuit. Reliance is placed on the cases reported as M. Anwar Barrister-At-Law Vs. The Station House Officer, Civil Lines, Police Station, Lahore and another (PLD 1972 Lahore 493), Muhammad Bashir Vs. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539), Younas Abbas and others Vs. Additional Sessions Judge Chakwal and others (PLD 2016 Supreme Court 581) and Mst. Sughran Bibi Vs. The State (PLD 2018 Supreme Court 595). The learned counsel went on to argue that a narrative disclosing commission of a cognizable offence, notwithstanding, under Rule 24.4 of the Police Rules,

1934, the Officer Incharge of a police station still could decline to investigate an accusation if he had reason to suspect that the alleged offence had not been committed. According to the learned counsel since the police officers to the hierarchy of Superintendent of Police had reasonably suspected the veracity of accusation, being dubious, refusal by the Justice of Peace to issue the direction was not open to exception. Learned counsel for the respondent contrarily defended the impugned order; he argued that since the accusation disclosed commission of a cognizable offence awfully serious in nature by a complainant apparently with no axe to grind, the Station House Officer was under a statutory duty to record the information to undertake investigative scrutiny. Similarly, according to the learned counsel, the Justice of Peace fell into error in undertaking an elaborate exercise through an exhaustive analysis of allegations so as to finally exonerate the petitioner from the charge and, thus, has transgressed far beyond his ministerial position. The Justice of Peace merely acts as a conduit between an aggrieved complainant and the police for the possible redressal of former's grievance and in no case can take upon himself adjudication of a criminal charge in the absence of any evidence before him, concluded the learned counsel. Mr. Niaz Ullah Khan Niazi, learned Advocate General Islamabad Capital Territory, has defended the impugned order; according to him, the police ought to have registered a criminal case so as to independently investigate the charge to find out the truth instead of short-circuiting the issue in a slipshod manner on subjective considerations.

3. Heard. Record perused.

4. Petitioner is certainly entitled to all statutory safeguards, available to any accused confronting accusation, nonetheless, he cannot claim immunity for having held high offices or on account of his current status of being a member of the Senate of Pakistan. The Constitution commands equality before law and extends equal protection thereof to the citizens regardless of their station, stature or status in life; the law is above them all. "*Be you ever so high the law is above you*". Immunity provided to the President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, a Chief Minister and a Provincial Minister is confined to the exercise of powers and performance of functions of their respective offices and for the acts done or purported to be done in exercise of powers and performance of their official functions. The President or the Governor can only escape prosecution on a criminal charge during incumbency in the office. Since the law does not authorize holder of any office, howsoever high to commit a crime or do anything inconsistent with law, even the limited functional immunity cannot

be pressed into service to hold the process of law in abeyance. This Court has consistently held the above view in the cases reported as Ch. Zahur Ilahi, M.N.A. Vs. Mr. Zulfikar Ali Bhutto and others (PLD 1975 Supreme Court 383), Abrar Hassan Vs. Government of Pakistan and respondents (PLD 1976 Supreme Court 315), Syed Masroor Ahsan and others Vs. Ardeshir Cowasjee and others (PLD 1998 Supreme Court 823), Brig. (Rtd.) Imtiaz Ahmad Vs. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others (1994 SCMR 2142), Aman Ullah Khan and others Vs. The Federal government of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1990 Supreme Court 1092), Baz Muhammad Kakar and others Vs. Federation of Pakistan through Ministry of Law and Justice, Islamabad and others (PLD 2012 Supreme Court 870) and Contempt Proceedings against Syed Yousaf Raza Gillani, The Prime Minister of Pakistan (2012 SCMR 909). It would not be out of place to mention that holders of public positions are under a heavier onus to live up to the highest standards of rectitude so as to command respect and inspire public confidence. "*There is no worse hearsay than that the office sanctifies the holder of it.....I cannot accept your canon that we are to judge Pope and King unlike other men, with a favourable presumption that they did no wrong. If there is any presumption it is other way against the holder of power, increasing as the power increases*" John Dalberg-Acton {1837-1869}. Therefore, the petitioner, his acclaimed position notwithstanding, like holder of any other office, ministerial, judicial or otherwise, is required to respond to the accusation before the designated tribunals so as to vindicate his position as he has successfully done in the previous round, before a Justice of Peace.

Petitioner's reliance on the case of Mst. Sughran Bibi Vs. The State (PLD 2018 Supreme Court 595) is beside the mark inasmuch as the law declared in the said case does not obstruct recording of a First Information Report on the premise of accusation of a cognizable offence being false; on the contrary, the relevant portion thereof "*....clearly dispels the impression that the investigating officer is to be guided or controlled by the contents of the FIR or that the investigation to be conducted by him is driven by any duty to establish that the story of the incident contained in the FIR is correct. In fact, to the contrary, after registration of the FIR the investigating officer is to embark upon an exercise to discover the actuality of the matter irrespective of the version of the incident narrated by the first informant through the FIR.....*". Similarly, judgment in the case of Younas Abbas and others Vs. Addl. Sessions Judge Chakwal and others (PLD 2016 Supreme Court 581) was rendered in a different contextual background wherein the *vires* of interference by the

Justice of Peace with the functionality of police/investigation had been questioned without success. We have also carefully examined Rule 24.4 of the Police Rules, 1934, referred to by the learned counsel to argue that once the police had definitely concluded the accusation as motivated and false, there was no occasion left to record a First Information Report so as to undertake a futile pursuit. The supra Rule possibly suspends the mechanism to be followed under section 154 of the Code of Criminal Procedure, 1898, however, commanding unambiguously to record a First Information Report upon receipt of information disclosing commission of a cognizable offence. The Rule *ibid* runs as follow:

"24.4. Action when reports are doubtful:- (1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated."

Rule 24.4 does not tyrannically foreclose doors to a complainant to voice his/her grievance nor it dogmatically empowers an Officer Incharge to terminate a prosecution before its inception on his subjective belief of its being false; its application is subservient to the scheme laid down in Part V of the Code *ibid* and, thus, has to be essentially read in conjunction with section 169 thereof. Therefore, an Officer Incharge can possibly invoke the Rule, that too, for reasons strong and manifest after registration of First Information Report. View taken by a learned Division Bench of Lahore High Court in the case of Zulfiqar Ali alias Dittu and another Vs. the State (1991 P.Cr.L.J. 1125) holding that "*The law requires that a police officer should first register a case and then form an opinion whether the facts stated in the FIR are true or not. In the present case, police officer has not acted in accordance with law; rather he has put the horse before the cart.....*", commends our approval. However, the said Rule certainly empowers the Officer Incharge to decline to take adverse action against an accused whom he justly and fairly considers, being hounded on a trump up charge for motives, obliquely calculated. Law declared in the Mst. Sughran Bibi Case confirms the above position.

5. In the above backdrop, we have not been able to find any jurisdictional error or flaw in the impugned order calling for interference in

remission of the issue to the Justice of Peace for a decision afresh within the framework of law declared by this Court. Petition fails. Leave declined.

Judge

Judge

Judge

Islamabad, the
30th September, 2020
Not approved for reporting
Azmat/-