

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 177/2021.
Date of Institution 18.01.2021.
Date of decision. ..24.01.2023.

Raja Muhammad Bashir Khan S/o Raja Muhammad Ayub Khan
caste Khakha Rajput R/o village Nimmah Tehsil and District
Muzaffarabad, Azad Jammu and Kashmir.

....Petitioner

Versus

1. Justice of Peace Muzaffarabad/ District and Session Judge Muzaffarabad.
2. Raja Basharat S/o Muhammad Aslam R/o Nagni Tehsil and District Muzaffarabad.
3. Station House Officer Police Station Chattar Muzaffarabad, Azad Jammu and Kashmir.

...Respondents

WRIT PETITION

Before:- *Justice Sardar Liaqat Hussain, J.*
 Justice Syed Shahid Bahar, J.

PRESENT:

Raja Gul Majeed Khan, Advocate for the petitioner.
Syed Tabish Hazoor Imam Kazmi, Advocate for respondent No.2.
Raja Saeed Ahmed, Addl.A.G for State.

Judgment:-

(Justice Syed Shahid Bahar, J) Through the titled writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the petitioner seeks infra relief:-

“It is, therefore, most humbly prayed that while accepting the captioned writ petition, the impugned order dated 14.01.2021 passed by the respondent No.1 may kindly be set-aside. It is further prayed that FIR registered, if any, in pursuance of order dated 14.01.2021 may kindly be quashed as being based on malafide and

counter blast and for harassment of petitioner as well as family of victim.”

PRECISE FACTS OF THE LIS IN HAND:-

2. A criminal case vide F.I.R No.3/2021 under sections 324/506, 34 PC, on the written complaint of Waleed Munir S/o Badar Munir R/o Halan Nagni Tehsil and District Muzaffarabad was registered against Attique Basharat S/o Basharat Khan R/o Nagni Mujahidabad Tehsil and District Muzaffarabad, on 02.01.2021, at Police Station Chater Kalass, Muzaffarabad. It is contended by the petitioner that on the same day i.e. 02.01.2021 at 04:05 PM, Attique Basharat Khan S/o Basharat Khan R/o Nagni Mujahidabad alongwith other had murdered Junaid S/o Jamal R/o Nagni Mujahidabad Tehsil and District Muzaffarabad, thus, another F.I.R bearing No.4/2021 under sections 302, 324, 427, 337, 147/148, 149 APC and 6 ATA was registered against Attique Basharat and others on 02.01.2021 at Police Station Chatter Kalass and all the accused nominated in aforesaid criminal cases were arrested except Qadir S/o Tariq, accused. It is contended that on 14.01.2021, respondent No.2 moved an application under section 22-A,Cr.P.C before District and Session Judge Muzaffarabad/Ex-Officio Justice of Peace, which was disposed of on the same day vide order dated 14.01.2021, wherein the learned Justice of Peace ordered the police to register a criminal case against the petitioner and others.

PETITIONER'S SUBMISSIONS:-

3. Raja Gull Majeed Khan, the learned counsel for the petitioner argued that the impugned order is against the law and facts, which is liable to be set-aside. The learned counsel contended that the impugned order dated 14.01.2021 has been passed without due application of judicial mind and without affording an opportunity of hearing either to the petitioner herein or the police, hence, the same is nullity in the eye of law. He vehemently contended that respondent No.2 with malafide intention, ill will and ulterior motive filed false and frivolous application before respondent No.1, which was liable to be dismissed, but respondent No.1 without any valid and legal reason has accepted the same. The learned counsel vigorously contended that 2nd F.I.R of one and same incident cannot be registered, hence, the order of Justice of Peace regarding registration of F.I.R is against the law and facts, thus, the same is liable to be set at naught. In support his version, the learned counsel referred to and relied upon the following case law:-

1. PLJ 2018 SC 391.
2. PLJ 2016 Cr.C. (Karachi) 286.
3. PLJ 2021 AJ&K 42.

ASSERTIONS OF RESPONDENT NO.2:-

4. Syed Tabish Hazoor Imam Kazmi, the learned counsel for respondent No.2 supported the impugned order passed by Justice of Peace and defended the same on all counts and prayed

for dismissal of the writ petition. The learned argued that police officer cannot refuse to register a formal F.I.R and it is the duty of Police Officer to record information and proceed to investigate matter as provided under Section 154,Cr.P.C. He further argued that even if an F.I.R has been registered on the basis of one sided version, registration of second F.I.R showing a different grievance could not be refused by the Police Officer in proper performance of his legal duty under section 154,Cr.P.C. The learned counsel finally prayed for dismissal of the writ petition.

5. The learned A.A.G supported the version of the learned counsel for respondent No.2 and prayed for dismissal of the writ petition.

6. We have heard the learned counsel for the parties and gone through the record of the case with due care.

DETERMINATION BY THE COURT:-

7. In the case in hand, Raja Basharat, respondent No.2 filed an application under Section 22-A,Cr.P.C before Session Judge/Justice of Peace (Ex-Officio) Muzaffarabad on 14.01.2021 wherein he prayed that the SHO Police Station Chatter Kalass Muzaffarabad, may be directed to register the case against the accused persons. The applicant/respondent No.2 took a stance in his application that on 02.01.2021 at about 3:15 PM, his son went to take Patrol from Kullian Bazar, where Waleed S/o Raja Munir,

Bashir S/o Muhammad Ayub, Rasheed, Sabeel, Basir sons of Muhammad Ayoub, Kashir S/o Saghir, Saghir S/o Khan Muhammad R/o Niman, Awais S/o Muhammad Riaz, Ehtisham Munir S/o Raja Munir, Sajeel S/o Ismail R/o Nagni, Basit S/o Abdul Majeed R/o Kakliot, accused with the common intention, thrashing and assaulting his son. After that his son and Raja Seemab went to Police Station Chatter Kalass to inform the police regarding the occurrence. After the said incident, at about 4:00 p.m, the accused Raja Muhammad Bashir blocked the road by standing his vehicle in the middle of road. It has been alleged that the aforesaid accused made aerial firing, created a fear and terror, while due to firing of accused persons, one person named Junaid S/o Jamil was injured, who later on succumbed to the injuries. It was further alleged that the accused Raja Muhammad Bashir S/o Ayub forcibly snatched 50,000/- rupees from Raja Muhammad Sharif by showing him fire arms. The other co-accused named Awais, Sabeel, Kashif, Waleed who armed with Kalashnikov fired aerial bullets and created fear and terror. It was averred that Awais accused snatched Seiko watch from his son, while Bashir accused snatched mobile phone Samsung from Raja Muhammad Shakil. The occurrence was witnessed by Nazakat S/o Naseer R/o Mithai and Amjad S/o Khatan R/o Kot Tarhala. The applicant/ respondent No.2 moved an application for registration of the criminal case against accused persons, but the Police/SHO Police Station Chatter Kalass did not register the same. Thereafter, the respondent No.2

filed an application under Section 22-A, Cr.P.C to Justice of Peace/Session Judge Muzaffarabad, who after perusal of application and hearing the applicant, ordered the concerned Police to register the criminal case against the accused persons and proceed further.

8. Be that as it may the Hon'ble Supreme Court of AJ&K has already dealt with the matter in so many cases. In the case titled "Ch. Muhammad Younas Arvi and 2 others Vs. Abdul Aziz and 04 others, [2011 SCR 50]", guide lines have been indicated. It is useful to reproduce the said guidelines herein below:-

- (i) Once an FIR has been filed before the Police Officer, he is under mandatory obligation to reduce the information in writing and commence investigation to determine truthfulness or otherwise of the information. If a counter version has been brought through second FIR, he should investigate the same as well to come to a definite conclusion and when, in his estimation, a case as per FIR is not made out, report the same to the Magistrate for dismissal of the case.
- (ii) If he fails to reduce the report in writing and commence the investigation, the complainant may file a private complaint, which in criminal cases is a remedy available to a person who reports commission of an offence.
- (iii) When on the report of a person a case is not challaned or for that matter second FIR lodged by the accused is not investigated, the maker of second FIR can also file a private complaint before the Court or Magistrate and in that eventuality the challn of the case of the first report and the private complaint shall be tried side by side.
- (iv) Despite the above we repeat it that writ jurisdiction of the High Court cannot be curtailed from where it comes to the conclusion that the remedy provided by law is not efficacious or for that matter a citizen wedded with fundamental rights requires aid of the High Court in writ jurisdiction.

Likewise in the case titled “Kh. Muhammad Naeem Vs. Justice of Peace” [2014 SCR 1049], the Apex Court reiterated the same view as taken in supra earlier Judgment.

9. Rational of registration of more than one FIRs or for that matter multiple FIRs is appearing and expounded in various judgments.

In this regard, in the famous case titled “Mrs. Ghanwa Bhutto and another Vs. Govt. of Sindh and another” [PLD 1997 Karachi 119], two FIRs were registered by the Police in murder case of Mir Murtaza Bhutto. The learned Sindh High Court accepted the writ petition filed for registration of third FIR (as in the year 1997, remedy under Section 22-A(6) of the Code of Criminal Procedure, 1898, was not available and the same was introduced in Cr.P.C in the year 2002 via Ordinance [CXXXI] of 2022) on the ground that the FIR has been registered by the police officer who himself is suspected of being an accused. The relevant excerpt of the Judgment is as under:-

“Is registration of third FIR warranted under the law? The circumstances of the present case, however, indicate that while the first FIR was registered at the instance of a police officer who was suspected by being an accused himself in the case by the petitioners, the second FIR was registered at the instance of Asghar Ali, the private servant of petitioner No.1, after four days of the occurrence when he was still in the

custody of the police. Therefore, the contention of the petitioners that the two FIRs registered by the police do not reflect the true facts of the case, does not appear to be unreasonable. It is also pertinent to point out that the petitioners wanted to name certain police officers as some of the culprits, who, according to the petitioners, had participated in the said crime and a definite role has been attributed to them in the proposed FIR, therefore, a prima-facie case appears to have been made out against the said persons for the purpose of recording an FIR.”

In the above referred judgment of the Apex Court handed down in the case **2014 SCR 1049**, it has been categorically laid down as under:-

“Normally, when an F.I.R. is registered in respect of cognizable offence and if the other party brings second version in respect of the same occurrence it is the duty of the police to investigate the counter version put-forth by the other party regarding the same occurrence but no hard and fast rule can be laid down that the second F.I.R. cannot be registered in respect of different version given by the other party. In a case where aggrieved party brings the version that true facts have been suppressed and occurrence did not take place in the manner, as alleged in the previously lodged F.I.R, then it is the duty of the S.H.O to register second F.I.R.”

Likewise, this Court in a case of Muhammad Baqar and 10 others V. The State and 6 others (Criminal Miscellaneous Petition No.359/2022, decided on 11.10.2022) held:-

“In a case where both the parties in an occurrence have succumbed injuries on account of a brawl amongst them and requisite medical reports are ex-facie corroborating the same then the investigating agency should not hesitate to register counter version and in such like eventuality, discarding counter versions for the purpose of entertaining second FIR is antithetical to the doctrine of dispensation of criminal justice system.”

Moreover, the learned Division Bench of this Court (comprising of our esteemed brothers i.e. Justice Muhammad Ejaz Khan and Justice Chaudhary Khalid Rasheed) in a case of Syed Tauqeer Hamdai. V. The State [PLJ 2022 AJ&K 119] held:-

“When a counter version regarding commission of cognizable offence is brought before the police, the In-charge Police Station has no option except to enter the same in the relevant register and conduct investigation as required by law.”

10. Squeezed answer of the proposition is very simple as whether second FIR of the same occurrence is permissible and maintainable under law, as criminal law has not placed any impediment in this regard qua filing second FIR of one occurrence, hence this door can be closed to the person who come forward with a counter version at random, particularly, where it a different angle has been portrayed? Section 154, Cr.P.C is a key in the hand of informer to get activated the investigation by the

police and noting more than that. Reference of Sughran Bibi's case **PLD 2018 SC 595** by learned counsel for petitioner is not entertainable as the facts narrated in the aforesaid case are totally distinguishable, that too, I am fortified by the ratio decidendi divulged by the Hon'ble Apex Court of AJ&K in the cases of Younas Arvi [**2011 SCR 50**] and Kh. Naheem [**2014 SCR 1049**]. Thus, the version of counsel for petitioner that 2nd FIR is not permissible, is discarded. Besides, Article 42-B of the Azad Jammu and Kashmir Interim Constitution, 1974, ordains every court of AJ&K including this Court to adhere to the ratio decidendi laid down by our Apex Court in letter and spirit. Excerpt of Article 42-B is as under:-

42-B. Decisions of Supreme Court binding on other Courts.—

Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other Courts in Azad Jammu and Kashmir.

Stare Decisis:-

Stare decisis is a latin term, which means “to stand by things decided.” It is the doctrine that courts will adhere to precedent in making their decisions. The doctrine of stare decisis is expressed in the maxim “stare decisis et non quieta movere”, which means “to stand by decisions and not to disturb what is settled.” In the case of *Kimble v. Marvel Entertainment, LLC* reported as [**576 U.S 446**] decided on June 22, 2015, the U.S. Supreme Court described the rationale behind stare decisis as

“promoting the evenhanded, predictable, and consistent development of legal principles, fostering reliance on judicial decisions, and contributing to the actual and perceived integrity of the judicial process.” In the case of *Justice Khurshid Anwar Bhinder v. Federation of Pakistan* [PLD 2010 SC 483], it was laid down that even obiter dictum of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoy a highly respected position as if it contains a definite expression of the Court’s view on a legal principle, or the meaning of law.

11. Having considered the matter from all angles we find no infirmity, illegality or judicial error, which could justify this Court to step in the matter in exercise of an extra ordinary jurisdiction, thus, order impugned herein is perfectly in accordance with law. After registration of 2nd FIR, the petitioner can avail the multiple remedies available under law to dislodge the counter version.

12. What emerges from the above discussion is that the order passed by the Court below does not call for interference in the aforesaid circumstances, thus, the petition in hand is merit less and the same is dismissed. No order as to cost.

Muzaffarabad,
24.01.2023.

JUDGE

JUDGE

Approved for Reporting

JUDGE

JUDGE