

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

CIVIL PETITION NO.1575 OF 2024

(On appeal against the order dated 08.03.2024 passed by the Lahore High Court, Lahore in Writ Petition No.1684 of 2024)

Ayesha Tayyab Petitioner

VERSUS

Station House Officer, Police Station Cantt. District Sialkot, etc.	Respondents
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For the Petitioner : Junaid Jabbar Khan, ASC
(through video link from Lahore)

For the Respondents : N.R.

Assisted by : Mian Johar Imam, Law Clerk
Mr. Habib, Law Clerk

Date of Hearing : 13.05.2025

JUDGEMENT

Sardar Tariq Masood, J. The petitioner seeks leave to appeal against judgement of the Lahore High Court, Lahore dated 08.03.2024, whereby the High Court while accepting the writ petition of respondents No. 3 and 4, quashed FIR No. 1783/2024 dated 12.08.2023 registered at Police Station Cantt, District Sialkot u/s 406 Pakistan Penal Code (**PPC**); hence, this petition for leave to appeal.

2. The brief facts of instant case are that the petitioner lodged FIR No. 1783/2024 under section 406 PPC against respondents No. 3 and 4, namely Sheikh Muhammad Zahir Sethi and Muhammad Imtisal, alleging therein that the accused persons, being close relatives of the petitioner, visited her residence at Sialkot on 17.03.2023, expressed financial distress and requested them that some amount may be given to them as 'Loan' because they had suffered financial loss in their business. Upon their persistent request for monetary assistance, the petitioner obtained an amount of Rs. 40,00,000/- (rupees forty lac only) from her husband and handed over the same to the accused. It is impertinent to mention

that the FIR initially mentions that the said amount was handed over as a loan/trust (اَدھار یا امانت), but in the last part of the FIR it is stated that the amount in question was given as a trust. The implications of this contradiction will be discussed hereinafter. Be that as it may, the petitioner alleged that the accused persons dishonestly misappropriated the said amount, thereby committing criminal breach of trust punishable under section 406 PPC, which led to the registration of the FIR. Subsequently, the matter was investigated by the police but the respondents No. 3 and 4 filed a writ petition before the Lahore High Court for quashment of FIR No.1783 on the ground that the offence of criminal breach of trust as defined under section 405 PPC was not made out from the contents of the impugned FIR. The High Court found merit in the contention and quashed the FIR through the impugned judgment. Hence, the petitioner/complainant has filed the present petition for leave to appeal.

3. Learned counsel for the petitioner contended at the very outset that respondents No. 3 and 4 were found guilty during investigation but the FIR in question was quashed through the impugned judgment. He argued that an FIR cannot be quashed by the High Court once challan has been submitted and the trial court has taken cognizance. In this regard, the learned counsel placed reliance on a two-member bench judgment of this court reported as **DG Anti-Corruption, Establishment Lahore v. Muhammad Akram Khan and others** (PLD 2013 SC 401). He has also argued that the amount in question was given as a trust and asserted that while the word 'loan' has been used in the FIR, as per the dictum of **Muhammad Ali v. Samina Qasim Tarar** (2022 SCMR 2001), the expression 'entrustment' is to be broadly interpreted, so the circumstances in which the petitioner gave the money to the respondents No. 3 and 4 amounted to an entrustment.

4. Before evaluating the merits of the instant case, we find it appropriate to iterate that there is a distinction between quashment of criminal proceedings and the quashment of FIR, and the High Court has rightly observed the same in the impugned judgement. Section 561-A Cr.P.C confers powers upon the High Court to make

orders as may be necessary to prevent abuse of process of any court or otherwise secure the ends of justice. The power given under this provision can be exercised by the High Court with regard to judicial or court proceedings. Thus, the High Court can quash criminal proceedings by exercising the inherent powers under section 561-A Cr.P.C, but cannot quash proceedings of the police department, such as registration of FIR or investigation. This view was authoritatively laid down by a five-member bench of this Court in the judgement reported as ***Shahnaz Begum v. High Court of Sindh and Baluchistan*** (PLD 1971 SC 677). Recently, this Court has endorsed the dictum laid down in ***Shahnaz Begum*** (supra), in judgement reported as ***FIA, Director General FIA, and others v. Syed Hamid Ali Shah and others*** (PLD 2023 SC 265). It has been a consistent view of this Court that the High Court should not exercise the wide powers conferred by section 561-A Cr.P.C. as a matter of routine and in a mechanical manner. Ordinarily, such jurisdiction ought to be exercised only after the remedy available under sections 249-A or 265-K Cr.P.C. has been exhausted before the trial court. It is only in exceptional circumstances, where the interest of justice so demands, that the High Court may exercise its inherent powers under Section 561-A Cr.P.C. without waiting for the trial court to pass orders under sections 249-A or 265-K Cr.P.C. For reference in this regard recourse may be made to judgments of this Court reported as ***The State v. Asif Ali Zardari and another*** (1994 SCMR 798), ***Muhammad Khalid Mukhtar v. The State*** (PLD 1997 SC 275), ***Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others*** (2011 SCMR 1813) and ***FIA, Director General FIA, and others v. Syed Hamid Ali Shah and others*** (PLD 2023 SC 265). On the other hand, Article 199(1)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 confers powers on High Court to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority. Where such acts or proceedings are found to be without lawful authority, the High Court is fully competent to declare them as such and of no legal effect. The registration of FIR and investigation are the acts of the police department which is part of the provincial law enforcement apparatus. Therefore, the High Court, under Article 199 of the Constitution of the Islamic Republic of Pakistan, possesses the

constitutional jurisdiction to quash an FIR, but as held by this Court on numerous occasions, such power must be exercised sparsely and in the most exceptional circumstances. The High Court can quash an FIR under Article 199, in cases where no offence is made out against the accused from the facts on record, or where the registration of FIR reflects misuse of legal authority or lacks sound legal justification because prosecution under such conditions would be tantamount to abuse of the process of law, or where FIR is registered without proper authority or in clear violation of established laws. However, if a prima-facie case is made out against the accused from the facts of FIR, High Courts should refrain from invoking their constitutional powers under Article 199 of the Constitution. Reliance can be placed on ***Ajmeel Khan v. Abdul Rahim and others*** (PLD 2009 SC 102), ***FIA, Director General FIA, and others v. Syed Hamid Ali Shah and others*** (PLD 2023 SC 265) and ***The State thr Prosecutor General Punjab, Lahore v. Chaudhry Mohammad Khan and others*** (PLD 2025 SC 254). It is also pertinent to mention that where any of the aforementioned exceptional circumstances justifying the quashment of an FIR are established, the mere submission of a police report under section 173 Cr.P.C. before the trial court does not constitute a bar to the exercise of constitutional jurisdiction of the High Court.

5. Coming to the merits of the present case, the High Court observed that no offence under section 406 PPC was made out from the contents of the FIR and proceeded to quash the same under its constitutional jurisdiction conferred by Article 199. In our considered view, there is no legal infirmity in the said observation; rather, it is well-founded and premised upon settled principles of law. In order to establish the offence of criminal breach of trust as defined under section 405 PPC and punishable under section 406 PPC two requisite elements must be present, namely entrustment of property and dishonest misappropriation of entrusted property. The scope of term 'entrustment' has been defined in multiple judgments of this Court. An 'entrustment' is said to exist when possession of a property is temporarily given to a recipient who holds that property as trust for the giver because the **same** property must be returned to the giver. Therefore, a fiduciary relationship exists between the giver and recipient regarding the entrusted property. Reference in

this respect may be made to the cases reported as ***Zahid Jameel v S.H.O. and 2 others*** (2008 YLR 2695 Lahore), ***Shahid Imran v The State and others*** (2011 SCMR 1614) and ***Muhammad Ali v. Samina Qasim Tarar and others*** (2022 SCMR 2001). This Court has also held that there is no entrustment in certain transactions such as investments, loan, sale, promises of profit, breach of promises etc. As per this authoritative interpretation, it is clear that a loan does not qualify as an entrustment. Where entrustment is made a fiduciary relationship arises between the giver and recipient, and the specific property entrusted is expected to be returned in its original form to the giver. However, such elements are absent in a loan where the relationship between the lender and borrower is purely contractual and there is no expectation of return of the **same** exact property, but rather something of the same value is returned. The judgment relied upon by the learned counsel for the petitioner, titled ***Muhammad Ali v. Samina Qasim Tarar*** (2022 SCMR 2001) does not recognize a loan as a transaction involving entrustment, rather enumerates various circumstances in which entrustment may arise. All of the circumstances mentioned therein are characterized by a relationship of trust or fiduciary obligation. Additionally, the judgment does not refer to a loan as a situation where entrustment is deemed to exist, therefore, the cited judgment is of no assistance to the learned counsel for the petitioner. Even otherwise, there is a gross contradiction in the contents of the FIR, wherein it is first claimed that the amount was given as a loan but then it is alleged that the property was given as a trust. It appears that the term '*Amanat*' has been employed merely as a tool to attract the application of section 406 PPC and to secure the registration of an FIR against the respondents No. 3 and 4. The High Court was correct in placing reliance on the judgment reported as ***Miraj Khan v. Gul Ahmed and 3 others*** (2000 SCMR 122), as the facts of that case are materially similar to the instant one. In ***Miraj Khan*** (supra), the High Court had similarly quashed an FIR in which the offence under section 406 PPC was not made out, despite the complainant's attempt to characterize a "*Qarz-e-Hasna*" as an "*Amanat*" to justify an FIR under section 406 PPC. Subsequently, this Court upheld and affirmed the High Court's decision to quash the FIR in ***Miraj Khan*** (supra). Similarly, in ***Imtiaz Ali v. Bismillah Khan and another*** (1974 PCrLJN 22), it was held that mere mention of word '*Amanat*'

cannot change a transaction of business loan into a trust. It is well-settled that the contents of FIR determine whether a cognizable offence is made out or not, and the mere mentioning of a provision of PPC or any other statutory offence is not, by itself, conclusive for such determination. Reliance in this regard can be placed on ***FIA, Director General FIA, and others v. Syed Hamid Ali Shah and others*** (PLD 2023 SC 265). Additionally, no documentary evidence is available on the record which proves or shows that the petitioner gave the amount of Rs. 40,00,000/- (rupees forty lac only) to the respondents No. 3 and 4, and the same has been noted by the High Court.

6. The necessary implication of such legal interpretation, factual inconsistencies in FIR and non-availability of any documentary proof is that the offence punishable under section 406 PPC is not made out from the contents of the quashed FIR. As offence u/s 406 PPC is not made out against the respondents No. 3 and 4 from the contents of FIR, the decision of High Court to quash the FIR was in accordance with law. As far as learned counsel's argument that the High Court could not quash the FIR after submission of challan as per ***DG Anti-Corruption, Establishment Lahore v. Muhammad Akram Khan and Others*** (PLD 2013 SC 401) is concerned, the same is misplaced because in that case the High Court had decided to partially quash the concerned FIR, and this Court intervened in the matter as the order passed by the High Court was a legal impossibility and untenable in law. No such circumstance is present in the instant case. Consequently, leave to appeal is declined and this petition is dismissed.

Judge

Judge

Islamabad
22.05.2025
*Mian Juhar Imam***