

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

C.P No. D- 2626 of 2019

***Present:-***

***Mr. Justice Abdul Maalik Gaddi***

***Mr. Justice Adnan-ul-Karim Memon***

Petitioner. : Through Mr. Ishrat Ali Lohar, Advocate.

Respondents No.8 & 9 : Through Mr. Kamaluddin, Advocate

Respondents. : Through Mr. Allah Bachayo Soomro,  
Addl. Advocate General, Sindh.

Date of hearing. : 02.09.2020  
& decision.

**ORDER**

**ABDUL MAALIK GADDI, J:-** Through this petition, petitioner Khairullah Qureshi s/o Muhammad Aalam, seeks jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for quashment of F.I.R bearing Crime No.127 of 2019 dated 18.11.2019 registered under Section 409 PPC at police station Taluka Nawabshah, District Shaheed Benazirabad.

**2.** Facts of the case as narrated by complainant Naveed Ali s/o Khuda Bux Dehraj in the said F.I.R in his verbatim are as under:

*“Complaint is that I am Transport Officer at Quaid-e-Awam University Nawabshah. One Khairullah s/o Muhammad Aalam Qureshi r/o House No.33/B, Phase-II, Sindh University Employees Housing Society Jamshoro is posted as Project Director at Quaid-e-Awam University Nawabshah, whom the University was provided a Government Car No.BKF-156, Cultus detail below mentioned for its using at the time of his duty. On 07.10.2019 Khairullah Qureshi has been suspended in Departmental Inquiry and his office has been sealed then Khairullah Qureshi along with Government vehicle went away after committing disbursement and same was not handed over as per law. Thereafter, I being superintendent Transport Mukhtiar Hussain s/o Zanwar Ghulam Hussain Khokhar and Assistant Transport Section Khan Muhammad s/o Leemon Khan Lashari, disclosed such facts to respected Vice Chancellor on which respected V.C issued order dated No.QUEST.N.H.2924 dated 14.11.2019 for lodgment of F.I.R. now appear and complaint that Khairullah Qureshi disbursed the Government Vehicle after his suspension. I am complainant investigation be held”*

3. We have heard the learned counsel for the parties and have perused the material available on record with their able assistance.

4. We have noticed that in the present case F.I.R has already been registered against the petitioner and investigation is in progress. At this stage, case of the petitioner cannot be considered under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Moreover, this Court would refrain from rendering any finding on the merits of the case, which may prejudice case of the either side in any manner whatsoever and considers that legal and factual issues raised in the present petition can be taken by petitioner in the first instance before the investigating officer and then even before framing of the charge by the trial Court has the power to discharge the petitioner or otherwise.

5. Moreover, the august Supreme Court of Pakistan in case titled Nasreen Bibi v. Farrukh Shahzad and others (Criminal Appeal No.280 of 2013 decided on 04.02.2014 while dilating upon, similar question of law has upheld its earlier view which reads as under:

*“During the hearing of this appeal a consensus has developed between the learned counsel for the appellants the learned, the learned counsel representing respondent No.1 and learned Additional Advocate General, Khyber Pakhtunkhwa to the effect that the impugned judgment passed by a learned Judge in Chamber of the Peshawar High Court, Abbottabad Bench is not sustainable in law because the criminal case in hand was still at its investigation stage of a criminal case the provisions of section 561-A, Cr.P.C. do not stand attracted. This consensus of opinion between the learned counsel for the parties and the learned Law Officer finds support from the cases of Emperor v. Khwaja Nazir Ahmed (AIR (32) 1945 Privy Council 18), Shahnaz Begum v. the Hon’ble Judges of the High Court of Sindh and Baluchistan and another (PLD 1971 SC 677) and Nazir Ahmed and others v. Muhammad Shafi and another (PLD 1980 SC 6). In this view of the legal position this appeal is allowed and the impugned judgment passed by the learned Judge in Chamber of the Peshawar High Court, Abbottabad Bench on 27.08.2013 is set-aside”.*

6. During course of arguments we have specifically asked a question from learned counsel for the petitioner that whether in this matter case has been challaned, to which he replied in negative and submitted that matter is still under investigation. It appears that the investigation in the matter is pending and stopped due to pendency of this petition. In our view the Court cannot stop the investigation of the crime especially when no *mala fide* is alleged against

Investigating Officer of the case. In view of the factual controversy involved in this case, the redressal of the grievance of the petitioner to place his case before the Investigating Officer and if not accepted by the Investigating Officer then to the concerned Magistrate.

7. So far as prayer clause 'E' of the petition is concerned, the same cannot be exceeded because of the reason that official respondents could not be restrained from registration of the case as the same does not come within the domain of this Court. It is settled law that it is the duty of the Law Enforcement Agency that if a cognizable offence is made out against any person then off-course law would come into motion therefore, no blanket cover could be granted to the petitioner through prayer clause "E".

8. In view of above, since the case is still under investigation, therefore, we find no merit in this constitutional petition, which is **dismissed** along-with pending application(s). Office is directed to immediately send a copy of this order to SSP Shaheed Benazirabad and concerned Judicial Magistrate for information and compliance.

9. Before parting with the order, we observed that it is the case of petitioner that after suspension of the petitioner from his job by the competent authority the foresaid F.I.R has been lodged therefore, official respondents may be directed not to harass him. In this connection it is hereby ordered that official respondents would act strictly in accordance with law.

10. This petition was dismissed in earlier part of the day in open Court after hearing learned counsel for the parties and these are the detained reasons thereof.

**JUDGE**

**JUDGE**

**\*Hafiz Fahad\***