

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. NO. D-2301 / 2023

---

Date Order with signature of Judge

---

**PRIORITY.**

- 1) For hearing of Misc. No. 11150/2023.
- 2) For hearing of main case.

**08.06.2023.**

Mr. Umer Farooq Khan, Advocate for Petitioner.  
Mr. Muhammad Iqbal Awan, Additional Prosecutor General.  
Mr. Ghulam Akbar Uqali, Assistant Advocate General Sindh.  
Ghulam Punhwar, DSP Quaidabad.  
SIP Ghulam Mughal on behalf of SHO P.S. Sharafi Goth.  
SI Muhammad Khan, I.O.

Pursuant to issuance of notice, response has been filed by DSP SDPO Quaidabad Sub-Division on behalf of SSP District Malir, SHO P.S. Sharafi Goth and I.O. ASI Muhammad Khan which are taken on record. It is informed that the case has been challaned / Report has been filed under Section 173 Cr.P.C. before the concerned trial Court. While confronted as to entertaining this Petition for quashment of FIR at this stage, learned Counsel for the Petitioner submits that even if challan has been filed, facts of this case require that this Court should exercise its powers under the Constitution as instant FIR is a counter blast by the private Respondents as earlier the Petitioner had lodged an FIR against them, and therefore, this Court must exercise its powers under the Constitution to stop abuse of the process of law.

However, we are not impressed by such submissions inasmuch as per settled law, the practice to entertain such Petitions for quashment of FIRs directly under the Constitutional Jurisdiction; more-so, when a challan / Report under Section 173 Cr.P.C. has already been submitted has not been appreciated by the Apex Court. At best, High Court, therefore, can quash a judicial proceeding pending before any subordinate court under Section 561-A CrPC, if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under Section 561-A CrPC to make such order unless the accused person has first availed his remedy before the trial court under Section 249-A or 265-K, CrPC. Where before the submission of the police report under Section 173 CrPC to the court concerned, the

accused person thinks that the FIR has been registered, and the investigation is being conducted, without lawful authority, he may have recourse to the constitutional jurisdiction of the High Court under Article 199 of the Constitution for judicial review of the said acts of the police officers<sup>1</sup>. The general practice of learned High Court which is well entrenched seems to be that no proceedings should be quashed ordinarily in view of the powers as conferred upon it under section 561-A, Cr.P.C. unless the trial court exercises its power under section 249 A, Cr.P.C. or section 265-K, Cr.P.C.<sup>2</sup>, and in view of availability of alternate/ adequate remedies and premature stage, no interference should be made by this Court in exercise of its Constitution Jurisdiction as conferred upon it under Article 199 read with section 561-A, Cr.P.C.<sup>3</sup>. Approaching this Court without first availing the alternate remedy as provided in the Criminal Procedure Code has never been appreciated and reliance in this regard may also be placed on the case of *Muhammad Ali*<sup>4</sup>. It is further settled that exercise of this jurisdiction was not to be done in a routine manner or as a matter of course merely because such jurisdiction was otherwise available and or could be exercised as it was dependent on the non-availability of alternate and efficacious remedy and or existence of some extraordinary circumstances warranting exercise of such jurisdiction by passing the alternate remedy<sup>5</sup>. It is a principle too well-established by now that a resort to the provisions of section 561-A, Cr.P.C. or to the provisions of Article 199 of the Constitution seeking quashment of a criminal case was an extraordinary remedy which could be invoked only in extraordinary circumstances and the said provisions could never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused person on the basis of material which was not admissible in terms of Qanun-e-Shahadat Order of 1984<sup>6</sup>. It is worth mentioning that challan has already been submitted and cognizance taken by the learned Court and in this view of the matter the alternate remedy as provided under section 249-A, Cr.P.C. would be more efficacious, appropriate and beneficial<sup>7</sup>. It may not be out of place to mention here that question of guilt or innocence cannot be decided by the High Court in exercise of Constitutional jurisdiction as such a function

---

<sup>1</sup> FIA v Syed Hamid Ali Shah (PLD 2023 SC 265)

<sup>2</sup> Sher Afghan Khan Niazi v Ali S Habib (2011 SCMR 1813)

<sup>3</sup> Sher Afghan Khan (Supra)

<sup>4</sup> Muhammad Ali v Samina Qasim Tarar (2022 SCMR 2001)

<sup>5</sup> Muhammad Farooq v Ahmed Nawaz Jagirani (PLD 2016 SC 55)

<sup>6</sup> Muhammad Mansha v. Station House Officer (PLD 2006 SC 598) and followed in Rana Shahid Ahmed Khan v Tanveer Ahmed (2011 SCMR 1937)

<sup>7</sup> Muhammad Abbasi v SHO Bhara Kaho (PLD 2010 SC 969)

fall within the jurisdictional domain of Court concerned by whom the entire evidence is to be scrutinized which cannot be done in exercise of Constitutional jurisdiction<sup>8</sup>. The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself<sup>9</sup>. The only way is that if the accused person deems himself to be innocent and falsely implicated, he has been provided remedy under Section 249-A or 265-K Cr.P.C. to seek his premature acquittal from the concerned trial court on the ground that there is no possibility of his conviction.

In view of the above discussion we do not see any reason to interfere in this matter on the allegation of the Petitioner as above. The Petitioner has an alternate and efficacious remedy by approaching the concerned trial Court under Section 249-A Cr.P.C or for that matter under Section 265-K Cr.P.C., as the case may be. Since, challan / Report has been filed, the prayer for quashment of FIR cannot be granted; hence, this Petition being misconceived is hereby dismissed, whereas, the Petitioner is at liberty to avail above remedy in accordance with law.

**J U D G E**

**J U D G E**

Arshad/

---

<sup>8</sup> Muhammad Abbasi (Supra)

<sup>9</sup> Director General Anti-Corruption v Muhammad Akram Khan (PLD 2013 SC 401)