

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-712 / 2021

Date

Order with signature of Judge

PRIORITY.

- 1) For orders on office objections No. 14 & 18.
- 2) For hearing of Misc. No. 2929/2021.
- 3) For hearing of main case.

22.08.2024

Mr. Aqeel Ahmed, Advocate for Petitioner.
Mr. Kashif Nazeer, Assistant Attorney General.
Mr. Syed Ahsan Ali Shah, Advocates for Respondents No. 2 & 3.

Through this Petition, the Petitioner seeks quashment of FIR No. 13 of 2020 dated 31.08.2020 on the ground that the same has been registered without lawful authority and jurisdiction. It appears that on the very first date of hearing, while entertaining this Petition, an ad-interim order has been passed whereby, the Petitioner has been granted pre-arrest bail in the following terms:-

“Let pre-admission notice be issued to the Respondents as well as DAG to be served through first three modes for 17.02.2021; when comments, if any, shall be filed with advance copy to learned Counsel for the Petitioner. In the meanwhile, respondents may not take any coercive action against Petitioner, who shall cooperate with the prosecution. However, petitioner will not be arrested pursuant to impugned FIR No. 13 of 2020 dated 31.08.2020, subject to furnishing solvent surety in the sum of Rs. 1,00,000/- (Rupees One lac Only) each and P.R. Bond in the like amount to the satisfaction of the Nazir of this Court till the next date of hearing.

Record further reflects that thereafter, the Petitioner stopped entering appearance before this Court from 29.03.2021 despite being on ad-interim bail and this Court was compelled to pass an order on 16.02.2024 for his appearance; but despite this, the order sheet does not reflect that the Petitioner was ever in attendance. Today, Petitioner’s Counsel has been confronted as to entertaining this Petition directly in our constitutional jurisdiction for quashment of FIR and learned Counsel has contended that since the very registration of the FIR and the authority exercised is without lawful jurisdiction a direct Petition is maintainable. He has also placed

reliance on order dated 23.09.2020 in CP No.D-4151 of 2020 passed by a Division Bench of this Court in the case of Popular Juice industries (Pvt.) Limited v Federation of Pakistan.

However, we are not impressed by such submissions since 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 officers¹. 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.², and in view of availability of alternate/adequate remedies and at 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.³. 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

¹ FIA v Syed Hamid Ali Shah (PLD 2023 SC 265)

² Sher Afghan Khan Niazi v Ali S Habib (2011 SCMR 1813)

³ Sher Afghan Khan (Supra)

*Muhammad Ali*⁴. 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 remedy⁵. 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 1984⁶. It is worth mentioning that FIR has already been registered; 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 265-K, Cr.P.C. would be more efficacious, appropriate and beneficial⁷. 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 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 jurisdiction⁸. 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 itself⁹. 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

⁴ Muhammad Ali v Samina Qasim Tarar (2022 SCMR 2001)

⁵ Muhammad Farooq v Ahmed Nawaz Jagirani (PLD 2016 SC 55)

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

⁷ Muhammad Abbasi v SHO Bhara Kaho (PLD 2010 SC 969)

⁸ Muhammad Abbasi (Supra)

⁹ Director General Anti-Corruption v Muhammad Akram Khan (PLD 2013 SC 401)p

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 265-K Cr.P.C. 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. These are the reasons for our short order passed in the earlier part of the day.

J U D G E

J U D G E

Arshad/