

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.2585/2021;
Date of Institution. 10.08.2021.
Date of decision. 02.09.2021

Khurrum Shahzad Son of Mohammad Younis Caste
Bhense R/o Yagal Check Tehsil Dudyal Mirpur, Azad
Jammu and Kashmir.

..... Petitioner

VERSUS

1. Senior Superintendent Police District Mirpur Azad Kashmir;
2. SHO Police Station Dodyal District Mirpur Azad Kashmir;
3. Yasir Son of Abdul Majeed Butt R/o Yagal Check Tehsil Dodyal District Mirpur, Azad Jammu and Kashmir.

Respondents

WRIT PETITION

Before: Justice Sadaqat Hussain Raja, Chief Justice

PRESENT;

Mirza Kamran Baig, Advocate for the petitioner.

Sajid Hussain Abbasi, Advocate for private respondent.

Mr. Khursheed Anwar Mughal, AAG for the official respondents.

ORDER:

The captioned writ petition has been filed under Section 44 of Azad Jammu and Kashmir Interim Constitution, 1974 whereby a direction has been sought to quash FIR No. 180/2021 dated 01.08.2021 in offences under Sections 337

AF, 324, 341 APC registered at Police Station Dudyal. The petitioner sought quashment of FIR on the ground that the case registered against him is false and he has not committed any offence.

Facts forming the background of the instant writ petition are that complainant Yasir filed a written application at Police Station Dudyal by stating therein that he was going to his home when he reached near Yagal Chak Tehsil Dudyal, the accused Khurram Shahzad stopped him and attacked upon him and caused injuries at his head and face with brick etc. On this report, FIR No. 180/2021 dated 01.08.2021 in offences under Sections 337 AF, 324, 341 APC has been registered at Police Station Dudyal.

Learned counsel for the petitioner argued that the petitioner has good reputation in the society and there is no criminal charge against him. The FIR has been registered on the basis of political pressure and mala-fide intention. Learned counsel further argued that no allegations have been proved against the petitioner and the petitioner was not involved in any crime or offence. Learned counsel maintained that from the contents of FIR no offence

has been committed by the petitioner. The FIR was lodged only for the harassment of the petitioner, hence, FIR is liable to be dismissed.

On the other hand, learned counsel for respondent No. 3 argued that the petitioner may appear before Investigation Officer and put his claim before him. He further argued that the matter in hand relates to factual controversy, hence, FIR cannot be quashed against factual controversy. Learned counsel prayed for dismissal of writ petition and placed reliance on an unreported judgment of Supreme Court of Azad Jammu and Kashmir titled "**Nazia Bibi and another Vs The State and 3 others**" decided on 24.08.2021.

Learned Assistant Advocate General appeared on behalf of official respondents also supported the version as taken by the learned counsel for respondent No. 3.

I have heard learned counsel for the parties as well as the learned AAG and gone through the record of case.

A perusal of record shows that FIR has been registered against the petitioner in offences under Sections

324/341, 337 AF, APC at Police Station Dadyal. According to law, the Station Officer can register FIR under Section 154 Cr.P.C . Section 154 is reproduced as under:

154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.

A perusal of abovementioned reproduced section reveals that Incharge of concerned Police Station is duty bound to register FIR on receiving information of any cognizable offence and conduct investigation in accordance with law. The officer incharge of the police station is required by law to record the same in writing, irrespective of the fact that the information which he had received is correct or otherwise. After registration of the case/FIR, any Officer Incharge of Police station will investigate the matter according to Section 156 Cr.P.C. It is relevant to reproduce the section 156 of Cr.P.C as under:

156. Investigation into cognizable case(1) Any officer incharge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limit of such station would have power to inquire into or try under the provision of Chapter XV relating to the place of inquiry or trial.

(2) No proceedings of a police officer in any such case shall at any stage be called in question on the ground that he case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

I have gone through the abovementioned reproduced provisions of law, which clearly shows that the investigation regarding the commission of offence is the duty as well as the prerogative of the police to investigate into the matter whenever a report is made to it and it is for the Investigation Officer to conclude the matter in view of oral and documentary evidence.

No doubt this Court is vested with powers to quash FIR if on the face of it no offence appears to have been committed or it appears that the FIR has been lodged with mala-fide intention and there is no likelihood of conviction of accused. However, if the case required

detailed probe, this Court does not interfere into the investigation proceedings and hamper the investigation agency to investigate into the matter. This view finds support from a case titled Arsalan Raja & 5 others Vs The State and 3 others [2020 SCR 336], wherein para 6 has observed as under:-

6. I have heard the learned counsel for the parties and have gone through the record appended with the petition. It appears that after obtaining the ex-parte decree of dissolution of marriage, Umara Sarshar contracted second marriage with Raja Babar Ishtiaq Khan. Umara Sarshar has not owned the ex-parte decree of dissolution of marriage rather she appeared before the police and got recorded her statement under Section 164 Cr.P.C. In my opinion some controversial facts regarding genuiness of the Nikah of Umara Sharif with Raja Babar Ishtiaq Khan are involved by the case which are liable to be resolved by the appropriate forum after recording the evidence. The resolution of such like controversial questions cannot be made in the writ petition. It has rightly been argued by the learned Advocate General that in presence of alternate remedy the writ petition was not maintainable. It may be stated that an FIR which is based on mala fide of course can be quashed but no such eventuality is available in the case in hand, therefore, the police cannot be stopped from investigating the matter. No any legal question of public importance is involved in the case, therefore, leave cannot be granted in routine.

Recently, the Supreme Court of Azad Jammu and Kashmir in a case titled "**Nazia Bibi and another Vs The State and 3 others**" has observed as under:

"I have considered the arguments of the learned counsel representing the parties and have perused the record. A perusal of record reveals that the police registered a case in the offences under Sections 16/19, ZHA and 14 EHA against the petitioners, herein, on the application of respondent No. 3, herein on 08.05.2021, which is at investigation stage. According to the spirit and scheme of law, it is the duty of the investigation agency to conclude the investigation and thereafter draw the conclusion whether in the light of evidence, a case for commission of the alleged offences is made out or not. The petitioners herein filed a writ petition before the High Court for quashment of FIR, registered against them. The learned High Court rightly dismissed the writ petition in limine. If such practice is allowed, it may amount to interfere in the domain of investigation agency which is an abuse of the process of law."

In the instant case, FIR has been registered on 01.08.2021 whereas, the instant writ petition has been filed on 10.08.2021 and allegations leveled in the FIR relates to 3 facts and the matter can only be resolved after detailed investigation. Hence, at this stage this Court cannot declare the accused innocent and cannot quash the FIR. Moreover, the matter is being investigated by the Investigation Agency

and it is well settled now that this Court cannot interfere into the investigation proceedings and cannot stop the same. An investigation agency cannot be stopped from investigating into a criminal offence by way of filing a writ petition.

In light of what has been discussed above, finding no substance in this writ petition, hence, the same is dismissed in limine.

Muzaffarabad:
02.09.2021

(Sd-)
CHIEF JUSTICE