

HIGH COURT OF AZAD JAMMU & KASHMIR

Petition No.344/2024.

Date of institution 16.08.2024.

Date of decision 27.08.2024.

Jawad Muzaffar s/o Malik Muzaffar Ali Khan r/o Gahoter
District Muzaffarabad Azad Jammu & Kashmir.

Petitioner

VERSUS

1. State through Advocate General of the State of Azad Jammu & Kashmir Muzaffarabad;
2. Station House Officer (SHO) Police Station City Muzaffarabad;
3. Sheikh Waqas s/o Sheikh Fiaz r/o Gahoter Muzaffarabad Azad Jammu & Kashmir;
4. Investigation Officer/DSP Shafique, DSP Muzaffarabad.

Respondents

PETITION UNDER SECTION 561-A CR.PC

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Haroon Abbasi Advocate, Junior to Saqib Ahmed Abbasi, Advocate for the Petitioner.

M/S Shahzad Shafi Awan/Mehmood Baig, Advocates for Respondent No.3.

Ch. Mohammad Manzoor, AAG for the State.

JUDGMENT:

The instant petition has been filed under Section 561-A Cr.PC by the petitioner for annulment of the FIR bearing Illat No.322/2023 dated 10.07.2023.

2. The main grounds of attack raised by the petitioner in the memo of writ petition are that impugned

FIR has been lodged against the petitioner with mala-fide intention and on the basis of fake and fabricated claim, therefore, the investigation agency in cahoots with complainant and on the instigation of the latter chalked the impugned FIR which is outrageous, preposterous and egregious; hence the same is liable to be set-aside.

3. Notices were issued to the other side for filing objections and objections on behalf of complainant have been filed.

4. Mr. Haroon Abbasi advocate, junior to the learned counsel for petitioner reiterated the grounds already taken in the writ petition, he vehemently contended that the criminal proceedings against the petitioner are not sustainable. The matter is even otherwise of civil nature which could be only agitated and adjudicated by the competent Court of civil jurisdiction. The criminal law could not be set in motion at random pertaining to case of civil nature. Furthermore, he submitted that the alleged occurrence otherwise has taken place in Islamabad, thus, investigating agency dealing with the matter has got no jurisdictional competence to chalk the FIR and investigate the matter. The learned counsel strongly contended that the FIR is liable to be quashed.

5. While on the other side the learned AAG contended that all the proceedings in shape of FIR and investigation are being carried out completely in accordance with law and in line with the direction of the Hon'ble Supreme Court given in the judgment dated 06.12.2023. He submitted that the application is otherwise in the eye of law is not maintainable and is liable to be dismissed.

6. Mr. Shahzad Shafi Awan and Mehmood Baig appearing on behalf of complainant Sheikh Waqas by controverting the arguments advanced by the learned counsel for petitioner strongly contended that the petition under Section 561-A Cr.PC is not competent. They contended that the petitioner has previously challenged the same FIR by filing writ petition before this Court which was decided on 25.08.2023. They drew the attention of the Court towards facsimile of the judgment of this Court appended with the parawise comments. The learned counsel further contended that the aforesaid judgment of this Court was challenged by the petitioner before the Hon'ble Supreme Court by way of filing PLA which was dismissed with the direction to the relevant agency to

probe and finalize the investigation in accordance with law. Finally, they prayed for dismissal of the petition.

7. Heard, record perused. After going through the judgment rendered by this Court in writ petition No.2444/2023 dated 25.08.2023, it transpires that the petitioner previously has challenged the FIR No.322/23 by invoking extraordinary jurisdiction of this Court conferred under Article 44 of the AJ&K Interim Constitution, 1974 and the aforesaid petition was dismissed by this Court. Subsequently, PLA was also dismissed by the Hon'ble Supreme Court vide order dated 06.12.2023 with the direction to the investigating agency to probe into the matter. Keeping in view the overall circumstances of the case, it transpires that the petitioner has twice attempted to get indulgence of this Court into the matter previously by filing writ petition and subsequently by filing the instant petition under Section 561-A of the Code of Criminal Procedure, 1898;

Constitutional Jurisdiction or Remedy under Section 561-A, Cr.P.C for Quashment of an FIR.

8. It is abundantly clear from bare reading of Section 561-A Cr.P.C that High Court cannot embark upon the investigation proceedings in order to annul the same, suchlike application asking for quashment of investigation

proceedings per se is not maintainable. Jurisdiction of High Court to make an appropriate order under Section 561-A Cr.P.C requires to secure the ends of justice and it can only be exercised pertaining to judicial or Court proceedings while rest of the proceedings relating to proceedings of any other authority or for that matter department such as registration of an FIR or investigation proceedings of the Police Department is immune from interference by this Court under Section 561-A Cr.P.C. ¹. Where before submission of police report (whether interim or complete) under Section 173 Cr.P.C to the Court concerned, the accused person thinks that an FIR has been registered and the investigation is being conducted, without lawful authority, he/she may have recourse to the **constitutional jurisdiction** of the High Court under Article 44 of the Interim Constitution for judicial review of the said acts of the police officers ².

9. Another important aspect of the jurisdictional compass of this Court is when police report (whether interim or complete) under Section 173 Cr.P.C is submitted before the Court concerned, question of annulment/quashment of an FIR becomes irrelevant and redundant for all its practical purposes, thereafter, proper recourse and remedy available to an accused is to invoke the jurisdiction of the trial Court to get

¹. Shahnaz Begum Vs. High Courts of Sindh and Balochistan PLD 1971 SC 677.

². Federal Investigation Agency Vs. Syed Hamid Ali Shah PLD 2023 SC 265.

himself/herself exonerated under Section 249-A, Cr.P.C (in case of trial by Magistrate) or under Section 265-K, Cr.P.C (in case of trial by Sessions Court) as chapter of quashment of FIR stands closed after submission of police report under Section 173 Cr.P.C³.

(emphasis supplied)

10. With due respect point quo maintainability of quashment of sole FIR (which is yet not in progress) has not yet been resolved specifically. Hon'ble Supreme Court in the case titled "Atta-ur-Rehman Vs. Anjum Javid & others" [2014 SCR 493] while dealing with the proposition whether direction could be given by High Court under Section 561-A Cr.P.C for registration of an FIR held;

"A direction under Section 561-A Cr.P.C cannot be issued for registration of a case. The High Court has general powers of superintending and controlling under Section 46 of the AJ&K Interim Constitution, 1974 and direction for registration of a case can be issued by the High Court in writ jurisdiction. The provisions of Section 561-A Cr.P.C can be invoked for preventing the abuse of process of the Court and make such orders which are necessary for doing substantial justice."

Similarly it has been held in the Shah Mehmood case that the Shariat Court is not empowered to quash the FIR at investigation stage while exercising powers under Section 561-

³. Mohammad Abbasi Vs. SHO, Bhara Kahu PLD 2010 SC 969; Director General Anti-Corruption Establishment, Lahore Vs. Mohammad Akram Khan PLD 2013 SC 401 and Shahid Iqbal Vs. Station House Officer 2020 PCr.LJ 1201.

A Cr.P.C⁴. Until the case completes its investigation phase, the High Court cannot intervene and quash the proceedings⁵.

11. Be that as it may, short circuit of normal procedure of law and termination of investigation already underway by the investigating agency is not warranted by law, only in exceptional cases extraordinary aid can be provided under Article 44 of the Interim Constitution. It reflects from the bare perusal of Section 561-A Cr.PC that indulgence of this Court can be asked for against any judicial proceedings and admittedly an FIR is a legal instrument chalked out by the investigating agency. It is not a judicial proceedings under Section 561-A Cr.PC, thus, I am of the view that petition under Section 561-A Cr.P.C is not a proper course or remedy for seeking indulgence of this Court qua quashment of an FIR.

For the above multiple reasons, the petition at hand is meritless, devoid of any force and not maintainable, which is hereby dismissed with no order as to costs.

Announced.

Muzaffarabad.

27.08.2024 (Saleem)

VACATIOIN JUDGE

Approved for Reporting

JUDGE

⁴. Shah Mehmood Vs. Mohammad Younis 2014 SCR P 183.

⁵. Mumtaz Hussain Vs. The State 2021 SCR 605.