

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ Petition No: 503/2022.

Date of Institution: 10.06.2022.

Date of Decision: 28.09.2022.

Kamran Suleman S/o Muhammad Suleman R/o Pothi Tehsil and District Bhimber.

.....*Petitioner*

**Versus**

1. Superintendent Police Bhimber having its office at District Courts Complex Bhimber AJK.
2. Station House Officer Police Station Chowki Samahni Bhimber, A.K.
3. Investigation Officer Police Station Chowki Samahni Bhimber Azad Jammu & Kashmir.
4. Muhammad Ijaz S/o Abdul Aziz R/o Photi Rajgan Tehsil and District Bhimber.
5. District Health Officer District Bhimber, AJK.
6. Deputy Commissioner Bhimber, A.K.

.... *Respondents*

**WRIT PETITION**

***Before: Justice Syed Shahid Bahar, J.***

**PRESENT:**

Nemo for the petitioner.

Kamran Raiz Butt, Advocate on behalf respondent No.4.

Ahmed Saad Khan, A.A.G for official respondents.

**Judgment:**

The titled writ petition has been filed under Article 44 of Azad Jammu & Kashmir Interim Constitution, 1974, read with section 561-A, Cr.P.C for quashment of F.I.R bearing number 121/22 dated 17.05.2022 registered at Police Station City Bhimber, under offences 147/148, 139/337-A, 337/F, 337/A/F-1, 337/A-2-3 APC against the accused/petitioner alongwith other co-accused.

Brief facts as per petition are that the aforementioned FIR has been registered by respondent No.2 on the complaint of respondent No.4, Muhammad Ijaz, against the petitioner etc., wherein the complainant levelled allegation against the petitioner and others

that on 17.05.2022 he alongwith other accused launched an attack and injured the complainant and other victims by using sticks and firearm. Through the instant petition, the petitioner is seeking quashment of the impugned FIR.

I have gone through the case with the assistance of the learned counsel for respondent No.4 and the learned A.A.G.

It may be mentioned here that petitioner has nominated in the impugned FIR with a specific role, hence, at this initial stage, it cannot be said that the petitioner has not committed any offence as the some of the persons were injured in the incident.

It is settled principle of law that FIR cannot be quashed in extraordinary constitutional jurisdiction except in extraordinary circumstances where violation of any law or bar under law for initiation of criminal proceedings or the F.I.R has been registered without lawful authority but in the case in hand no such eventuality has been existed.

The Apex Court of Azad Jammu & Kashmir in case titled “Perveen Azam & others Vs. S.S.P District Mirpur & 4 others (2015 SCR 837) held that:-

“7. According to the spirit of the constitution, writ jurisdiction can be exercised where there is violation of law or principle of law. In this case, no such situation exists for interference in the domain of Investigating Agency. The extraordinary writ jurisdiction is very limited and can be exercised in extraordinary circumstances.”

The aforesaid law laid down by the Apex Court finds further supports from case titled “Shan Muhammad V. Muhammad

Younis and 04 others” [2014 SCR 183]. The relevant caption of the judgment is reproduced as under:-

“The registration of F.I.R. and investigation of case is the sole duty of the police. After registration of a cognizable case, the police has to collect the material and after thorough investigation it has to submit a report to the Magistrate whether the offence has been committed or not. If the police reaches the conclusion that from the material collected, the accused are connected with the crime, then challan has to be submitted. If the police reaches the conclusion that there is no evidence, it may make a request in its report under section 173, Cr.P.C. to the Magistrate for cancellation of case.”

Falsehood and truthfulness of the contents of the FIR cannot be determined by this Court in writ jurisdiction. It is for the investigating agency and the trial Court to resolve the question of fact.

As far as the registration of F.I.R is concerned the learned counsel failed to point out that there is a bar for registration of F.I.R. The investigating agency after collecting evidence can conclude this matter.

Law is also settled that factual controversy cannot be resolved through the writ petition. The other forums available for redressal of grievance of petitioners if the Police has not investigated the matter in accordance with law and facts. In case reported in 2001 SCR 447, titled “Khadim Hussain Vs. Abdul Basit & 6 others” the Hon’ble Apex Court held that:-

*“The High Court in exercise of writ jurisdiction is not competent to assume the role of investigating agency or the trial Court to give verdict as to whether an accused person has committed an offence or not. It is the ordinary Court to decide the matter under the relevant law.”*

In a horizontal precedent 2015 P.Cr.L.J 1667 (Islamabad)

general principles have been summarized and articulated as under:-

- (i) The High Court is not vested with the power to quash an FIR under section 561-A of Cr.P.C on the grounds of mala fide or disclosing a civil liability.
- (ii) Resort to the provisions of section 561-A of Cr.P.C or Article 199 of the Constitution for quashing a criminal case is an extraordinary remedy, which can only be granted in exceptional circumstances.
- (iii) As a general rule powers under Article 199 of the Constitution cannot be substituted for the trial, nor can any deviation be made from the normal course of law.
- (iv) The consideration to be kept in view for quashing of a criminal case is whether the continuance of the proceedings before the trial Court would be a futile exercise, wastage of time and abuse of the process of the Court, and whether an offence on the admitted facts is made out or not.
- (v) The exercise of powers and jurisdiction under Article 199 of the Constitution is discretionary in nature; however, the same are to be exercised in good faith, fairly, justly and reasonably, having regard to all relevant circumstances.
- (vi) While considering quashing of a criminal case in exercise of powers vested under Article 199 of the Constitution, the High Court is required to take into consideration the various alternate remedies available to a petitioners before a trial Court, inter alia, under sections 249-A and 265-K of Cr.P.C.
- (vii) Besides the above, the other alternate remedies available under the law have been enumerated by the august Supreme Court in the case of Col. Shah Sadiq v. Muhammad Ashiq and others [2006 SCMR 276] as follows:--
  - (a) To appear before the Investigating Officer to prove their innocence.
  - (b) To approach the competent higher authorities of the Investigation Officer having powers vide section 551 of Cr.P.C.
  - (c) After completion of the investigation, the Investigation Officer has to submit the case to the concerned Magistrate, and the concerned Magistrate has the power to discharge them under section 63 of the Cr.P.C in case of their innocence.
  - (d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.
  - (e) Rule 24.7 of the Police rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

- (f) There are then remedies which are available to the accused person who claims to be innocent and who can seek relief without going through the entire length of investigation.
- (viii) A criminal case registered cannot be quashed after the trial Court has taken cognizance of a case, as the law has provided an aggrieved person with efficacious remedies for seeking a premature acquittal, if there is no probability of conviction or a case is not made out.
- (ix) Prior to exercising jurisdiction under Article 199 of the Constitution, the High Court has to be satisfied that the trial Court has neither passed an order nor any process issued.
- (x) Courts exercise utmost restraint in interfering with or quashing investigations already in progress, pursuant to statutory powers vested in the police or other authorities. Courts do not interfere in the matters within the power and jurisdiction of the police, particularly when the law imposes on them the duty to inquire or investigate.

17. The above principles of law have been enunciated and laid down in the cases of 'Director General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others' [PLD 2013 SC 401], 'Rehmat Ali and others v. Ahmad Din and others' [1991 SCMR 185], 'Miraja Khan v. Gul Ahmed and 3 others' [2000 SCMR 122], 'Muhammad Mansha v. Station House Officer, Police Station City, Chiniot, District Jhang and others' [PLD 2006 SC 598] 'Col. Shah Sadiq v. Muhammad Ashiq and others' [2006 SCMR 276], 'Emperor v. Kh. Nazir Ahmad' [AIR 1945 PC 18] and 'Shahnaz Begum v. the Hon'ble Judges of the High Court of Sindh and Balochistan and another' [PLD 1971 SC 677]."

The crux of above mentioned settled law and facts of the matter, instant petition failed to make out any case of admission, therefore, the writ petition is devoid of any force, hence, stands dismissed in limine.

Announced.

Muzaffarabad.  
28.09.2022.

-Sd-  
**JUDGE**