

**HIGH COURT AZAD JAMMU AND KASHMIR**

*Writ Petition No.1477/2024.*

*Date of institution 15.06.2024.*

*Date of decision 17.10.2024.*

1. Mir Muhammad Farid S/o Mir Gulab Khan R/o Batmang Tehsil and District Muzaffarabad.
2. Mir Basharat Hussain.
3. Mir Tariq Bashir sons of Muhammad Bashir Hussain R/o Lower Plate Tehsil and District Muzaffarabad.

...Petitioners

**VERSUS**

1. Ex-officio Justice of Peace/Session Judge District Muzaffarabad, Azad Jammu and Kashmir.
2. Senior Superintendent of Police District Muzaffarabad, Azad Jammu and Kashmir.
3. Station House Officer, Police Station Kahori District Muzaffarabad, Azad Jammu and Kashmir.
4. Raja Amjad Mowaz S/o Gul Mowaz R/o New Lalazar Rawalpindi Pakistan.

... Respondents

**WRIT PETITION**

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

**PRESENT:**

*Nasir Masood Mughal, Advocate for the petitioners.*

*Ms. Aliya Abdul Rehman, Advocate for respondent No.4.*

*Raja Saeed Ahmed, A.A.G on behalf of official respondents.*

**JUDGMENT:**

1. Through the instant writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, infra relief has been solicited by the petitioners:-

“It is, therefore, very humbly prayed on behalf of the petitioners, that by accepting the writ petition, an appropriate writ may kindly be issued in favour of the petitioners against respondents, the impugned order passed by the learned Justice of Peace Muzaffarabad dated 04.06.2024 may kindly be set aside by declaring unlawful, unjust, arbitrary in nature, against record and also against

the fundamental rights of petitioners without appreciating the facts and procedural law and same may kindly be struck down. It is further prayed that FIR No.53/24 under Section 20 EHA, 506(2) APC at Police Station Kahori Tehsil and District Muzaffarabad, which is malafidely lodged against the law, record and fact of the case on the basis of victimization and directions of the high ups just to harass the applicants/petitioners during the pendency of the above titled writ petition and after receiving the status quo order of this Court ,the said FIR may kindly be set aside.”

2. Facts of the case are that the private respondent No.4, herein, filed an application before the SHO Police Station Saddar, Muzaffarabad on 18.05.2024 against the petitioners which was not entertained by the concerned SHO, thereafter, the private respondent No.4 filed an application before respondent No.1 under Section 22-A, Cr.P.C on 24.05.2024 and on filing of comments, lastly the application of the said respondent was dismissed on 27.05.2024 by declaring the same without jurisdiction. The petitioners contended that after that the private respondent No.4 filed another application having the same contents of early application before respondent No.3 and thereafter filed another application under Section 22-A Cr.P.C against petitioners before Justice of Peace Muzaffarabad on 29.05.2024. Respondent No.3 after receiving the status quo order dated 05.06.2024 malafidely and on the direction of his head of department/ I.G Police lodged the FIR No.53/24 under Section 20, EHA, 506(2) APC at police Station Kahori Tehsil and District Muzaffarabad which is against the law, rules record and on the basis of victimization, without lawful authority and to harass

applicants/petitioners just to accommodate the complainant. Petitioners contended that they are owner of crush machine and the complainant was partner and running the business of stone crusher. They further contended that in light of the direction of Supreme Court of Azad Jammu and Kashmir all the Crush machines installed in Kamsar were banned and stopped to work and due to the said reasons with the consent of the other partners, the parts of the Crush machine were shifted to safe side because the parts of the crusher were stolen by someone and one of the petitioners/applicants lodged an FIR, this is the reason the parts of the crusher machine were shifted from place of Kamsar to other place with the mutual consent of the partner. Petitioners contended that the respondent No.1 without considering the fact of the case ordered to lodge FIR against the petitioners, herein, which is against the law, facts and record and liable to be quashed.

3. During proceedings, interim order of this Court dated 05.09.2024 was challenged before the Hon'ble Apex Court of AJ&K by the private respondent No.4, herein, through petition for leave to appeal. The Hon'ble Apex Court vide order dated 24.09.2024 disposed of the same and directed this Court to decide the writ petition within 45 days, positively.

4. Case has taken up. Both the learned counsel for the parties argued the case at some length.

5. Nasir Masood Mughal, the learned counsel for the petitioners contended that the incident narrated in the application

under Section 22-A, Cr.P.C was never happened at all as the place of occurrence is situated near the capital city of Azad Jammu and Kashmir, whereas, the respondent No.4 in his application does not implead any witness of the said so called incident. He vehemently contended that private respondent No.4 and the petitioner alongwith other parties are co-sharers in the business of profit/loss since long being co-sharers both the parties have defined liabilities and rights upon each other, whereas, the case in hand pertains to single person/ party who filed an application under Section 22-A Cr.P.C for registration of FIR by ignoring other members of the agreement. He vehemently contended that in garb of the application under Section 22-A Cr.P.C, the private respondent No.4 wants to deviate from the liability and terms of agreement. The learned counsel forcefully contended that the learned Justice of Peace has not appreciated the relevant record and overlooked the matter and against the facts and record delivered an arbitrary order and official respondents are bent upon to arrest the petitioners if they are succeeded to do so then the fame and repute of the petitioners will be damaged, hence, order of Justice Peace Muzaffarabad is liable to be set aside.

6. Ms. Aliya Abdul Rehman, the learned counsel for private respondent contended that the respondent No.4 filed an application before SHO Police Station Kahori for lodging of an FIR but the SHO Police Station Kahori has also not lodged the FIR against the petitioners, the respondent No.4 then filed the application before

the Justice of Peace for lodging FIR against the petitioners, thus, finally an FIR was lodged on the direction of Justice of Peace against the petitioners vide order dated 04.04.2024 and same has been registered by the SHO Police Station Kahori on 05.06.2024, against the petitioners. She vehemently contended that the petitioners have committed heinous cognizable offences and they are liable to be arrested for further investigation after lodging F.I.R No.53/2024 dated 05.06.2024. The learned counsel defended the impugned order passed by Justice of Peace and prayed for dismissal of the writ petition as the same is not maintainable in the eye of law.

7. I have heard the learned counsel for the parties and gone through the record of the case with due care.

8. Trite that FIR is a cornerstone of the prosecution's case, but matter of registration of FIR regarding contractual obligation or any joint venture or business affairs should have been taken in the context of totality of the facts, circumstances and allegation of every case, with due care and caution, particularly, when the rival claims are pending adjudication before the Civil Court (having jurisdiction over the lis).

9. In the instant matter, it is reflecting from the record and an admitted position that complainant and petitioners were business partners having a joint venture of stone crush plants, after winding up the said business, business partner came forward with conflicting claim against each other. Record reveals that following civil suits are pending adjudication before the Courts below:-

- i. Suit for declaration alongwith perpetual injunction titled "Raja Amjad Mowaz vs. Mir Tariq Bashir and others"
- ii. Suit for rendition of account titled "Zaheer Hussain Shah vs. Raja Amjad Mowaz Khan and others."
- iii. Suit for recovery of Rs.6,50,00000/- alongwith perpetual injunction titled "Mir Muhammad Fareed vs. Amjad Mowaz and others"

10. In such cases it is advisable to wait for verdict of the civil Court which has the jurisdiction to direct the registration of the case if such court comes to the conclusion ultimately.

11. Object behind putting machinery of law against person accused of commission of criminal wrong is to get person punished for act illegal he had done.

12. No cavil to the proposition that FIR can be quashed by High Court in its writ jurisdiction when lodgment of the FIR ex-facie appears to be misuse of process of law, however normally criminal inquiry cannot be terminated.

13. FIR would be quashed by High Court in exercise of its writ jurisdiction when its registration is found to be malafide.

14. It is by now clear enough that criminal as well as civil pursuits may go side by side, however, another aspect come as barrier in the way of criminal proceedings, in a sense if parallel proceedings i.e. criminal and civil are simultaneously allowed to progress; it would be resulted in miscarriage of justice or abuse of process of law, in case where mischief of a penal provision is found to be inextricably connected with a cause of action through distinctly justiceable in civil jurisdiction; the distinction, nevertheless, is to be carefully observed for the reason that domains of justice in civil and

criminal jurisdictions are clearly demarcated, therefore inter-se intrusion must be avoided.

15. Application of punitive laws must be based upon strict construction and unless an act or omission clearly fell within the defined ambit of a penal provision its prosecution in criminal dispensation would tantamount to abuse of process of law. Exercise to subdue an adversary with divergent clause through engagement in criminal jurisdiction to settle civil scores cannot be suggested a bonafide pursuit under the law and thus needs to be discouraged.<sup>1</sup>

16. I am fortified to follow the dicta of Hon'ble Supreme Court ordained in the case titled "Khan vs. Justice of Peace."<sup>2</sup>

17. While dealing with the proposition Apex Court held as infra:-

"It becomes clear that during the pendency of civil suit, criminal proceeding in the same manner can be initiated, however, when a question of bonafide claim may legitimately arises and civil suit has been started, it may be advisable to stay the criminal proceedings and result of the civil suit may be conclusive in matter."

18. Thus, it can safely be held that if civil litigation pertaining to the matter is underway and the petitioners made out a bonafide claim, to be adjudicated by the civil court, instead of terminating criminal proceedings same could be stayed subject to final fate of the civil lis and verdict of the civil Court would be conclusive.

(Underling for emphasizes)

<sup>1</sup>. Sohail Ahmed vs. Justice of Peace 2017 P.Cr.LJ 1314.

<sup>2</sup>. Shahroom Khan v. Justice of Peace 2022 SCR 267.

19. Although civil liability is independent of the criminal liability and no invariable rule exists to the effect that pending decision of a civil suit, criminal proceedings must be stayed as it is purely a matter of discretion yet, while exercising the discretion the guiding principle should be to see as to whether the accused is likely to be prejudiced if criminal liability is dependent on the outcome of civil litigation, then criminal proceedings must be stayed, particularly when dispute is with regard to title of the property.<sup>3</sup>

20. Be that as it may I am not inclined to terminate the criminal proceedings or for that matter to embark upon the order passed by the Justice of Peace in this regard. But simultaneously as the complainant himself opted to file a civil suit asking for declaration and perpetual injunction regarding the same machinery vis a vis the accused party and some one other have also filed 2 suits pertaining to same moveable property (involved in the instant matter). Thus, conscious of this Court is attracted to stay the criminal proceedings awaiting verdict of the civil Courts and result of the civil proceedings be regarded conclusive in the matter. It is useful to reproduce the prayer clause of all the 3 suits as infra:-

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<sup>3</sup>. Akhlaq Hussain vs. Zafar Iqbal Kiani 2010 SCMR 1835 and Muhammad Akbar vs. The State PLD 1968 SC 281.



”لہذا معاملات بالا استدعا ہے کہ منظور کی دعویٰ بذال بعد از تحقیقات ضابطہ ڈگری استقرار حق مدعا علیہم شناسی دوائی و تاکید کی بحق مدعی بخلاف مدعا علیہم بدیں صراحت صادر فرمائی جائے کہ مدعی مشینری کا مالک، کامل و متصرف ہے۔ مدعا علیہم کا مشینری سے کوئی تعلق واسطہ نہ ہے۔ نیز مدعا علیہم مشینری کو نقصان پہنچانے و چوری کرنے، بدست دیکھراں منتقل کرنے سے دو لہا باز و منوع رہیں۔ نیز بنظر انصاف مدعی جس دیکھرا یا متبادل دادرسی کا مستحق ہو وہ بھی بنظر انصاف عنایت فرمائی جائے۔“

میں انصاف ہوگا۔

العارض

رابعہ امجد موز خان (مدعی)

بذریعہ کونسل

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معاملات بالا استدعا ہے کہ بعد از تحقیقات ضابطہ ڈگری نمیدگی حساب بحق مدعی بخلاف مدعا علیہم صادر فرماتے ہوئے بعد از حساب نمیں نیلیم ایگریٹ لیمیٹڈ کرش پلانٹ واقع موضع یادگار منٹک تحصیل ضلع مظفر آباد کے کاروبار میں بننے والی رقم کا مدعی حقدار قرار دیا جائے اور متذکرہ رقم کی ریکوری بذریعہ نیلای میٹریل کرش پلانٹ کیے جانے کے بھی احکامات صادر فرمائے جائیں۔

العارض

مدعی / ظہیر حسین شاہ

بذریعہ کونسل

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”لہذا معاملات بالا استدعا ہے کہ بعد از تحقیقات ضابطہ ڈگری دلا پانے مبلغ 6 کروڑ پچاس لاکھ روپے بحق مدعی بخلاف مدعا علیہم نمبر 15 تا 5 بیں صراحت صادر فرمائی جائے کہ مدعی اقرانہ جات نمبر 01.01.2010، 01.05.2005 اور Joint Venture agreement کی روشنی میں شراکت داری، بنیادی سرمایہ کاری، آمدن کر اور داری کی رقم کی ادائیگی، دیگر عدالتی متفرق اخراجات اور حصولی NOCs کے اخراجات کی پاداش میں بعد از حساب نمیں 3 کروڑ روپے کرایہ کی حد میں ایک کروڑ پچاس لاکھ اور مدعی کی عزت و شہرت کاروباری ساکھ کو نقصان پہنچانے ذی اذیت پہنچانے کی پاداش میں مبلغ 2 کروڑ کل مبلغ 6 کروڑ پچاس لاکھ روپے مدعی حاصل کرنے کا حقدار ہے دلائے جائیں نیز مدعا علیہم کو بدوں ادائیگی مبلغ ساڑھے 6 کروڑ متوقع سے مشینری اٹھانے، فروخت کرنے، مشینری کو کسی دیگر جگہ منتقل کرنے، کسی دیگر شخص کو کاروبار پلانٹ منتقل کرنے، نیز حقوق مدعی کے نقیض کسی نوع کے افعال سرانجام دینے سے ہمیشہ ہمیشہ سے باز و منوع فرمایا جائے۔“

العارض

میر محمد فرید

بذریعہ کونسل

21. Counsel for the respondent is fully in agreement with the stance of the petitioners that they remain engaged in the joint venture of crush plant, thus a joint premises where crush plant were installed obviously can be regard as a Joint property and rationally could not be regarded in sole possession of a sole partners among the troika of partners. Main ingredient of theft is defined in Section 2 of the Offences Against Property (enforcement of Haddood) Act, 1985 (Act XII of 1985) is Hirz (custody) which postulates an arrangement made for the custody of property, thus, in this sense removal of machinery from joint custody constitutes a cognizable offence or not is by now subject to findings of civil Court. Let the matter of

ownership of the moveable property i.e. Crush Plant be left to be decided by the civil Court. Finding of this Court is tentative and not binding upon the civil courts while deciding the pending suits.

22. In my estimation, in light of the facts of the case, criminal liability is dependent on the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in a case, if there is a conflict of decision between the civil court and the criminal court then in such event it is equally clear that the criminal court should also stay its hands off untill the civil litigation is disposed of.

23. Petitioners themselves asking for declaration to the effect that they should be declared owner of the Crush Plant itself means that there is some cloud upon their ownership requiring declaration of the Court.

24. Corollary, writ petition at hand No.1477/2024 is disposed of in infra manner:-

- (i) Relief claimed qua quashment of FIR and annulment of order of the learned Justice of Peace is declined.
- (ii) By moulding the relief criminal proceedings initiated in furtherance of the impugned FIR are stayed. FIR No. 53/24 is hereby put to hibernation till the decision of the civil suits from the relevant court of law. Writ petition stands disposed off accordingly. Parties are left to bear their own costs. File shall be kept in archive.

Announced.

Muzaffarabad,

17.10.2024.

JUDGE

Approved for reporting

JUDGE