

HIGH COURTOF AZAD JAMMU & KASHMIR

Writ Petition No.4106/2021
Date of Institution. 29.11.2021;
Date of hearing. 27.07.2022;
Date of decision. 03.08.2022

1. Syed Tauqeer Hamdani;
2. Syed Sajid Hamdani S/o Syed Khamad Shah
R/o Amra Sawan, Tehsil Hattian District Jhelum
Valley, Azad Jammu & Kashmir.

..... Petitioners

VERSUS

1. State through Advocate General Azad Jammu
& Kashmir, Muzaffarabad;
2. Station House Officer, Police Station Chinari
District Jhelum Valley, Azad Jammu &
Kashmir;
3. Syed Akhlaq Hussain Shah S/o Ghulam
Sarwar Shah R/o Amra Sawan Tehsil Hattain
Bala District Jhelum Valley, Azad Jammu &
Kashmir.

.....Respondents

WRIT PETITION

.....
Application No.215/2021
Date of Institution. 11.08.2021;

1. Usman Dar;
2. Hassan Dar s/o Fazal Hussain Dar;
3. Zeeshan Dar s/o Zakir Hussain Dar;
4. Israr Ahmed s/o Muhammad Rafiq;
5. Abdul Qayyum s/o Samad Joo;
6. Junaid Qayyum s/o Abdul Qayyum;
7. Tauqeer Ahmed Dar s/o Zahid Hussain
Dar;

8. Safeer Ahmed s/o Khalil Ahmed;
9. Yasin Ali Butt;
10. Moazam Ali Butt s/o Nazakat Ali;
11. Muhammad Munir Butt Advocate s/o Jan Muhammad;
12. Khawaja Mehmood s/o Maqsood Ahmed;
13. Abdul Wahid s/o Altaf Hussain;
14. Azhar Zahid;
15. Khizer Zahid s/o Zahid Hussain;
16. Aftab Ahmed s/o Muhammad Shafi;
17. Imtiaz Ahmed s/o Muhammad Nawaz;
18. Muhammad Azam s/o Lal Khan, r/o Parrat, Islampura Tehsil Pallandri District Sudhnooti.

..... Petitioners

VERSUS

1. SHO, Police Station Pallandri, A.K.;
2. Ajmal Mehmood s/o Muhammad Ashraf r/o Parrat Islampura, Tehsil Pallandri District Sudhnooti;
3. State through Advocate General, Azad Jammu & Kashmir, Muzaffarabad.

..... Respondents

APPLICATION UNDER SECTION 561-A CR.PC.

**Before: Justice Muhammad Ejaz Khan, J.
Justice Chaudhary Khalid Rasheed, J.**

PRESENT:

Syed Sharafat Hussain Naqvi, Advocate for the petitioners in writ petition.

Mr. Asghar Ali Malik, Advocate for the applicants in application.

AAG for official respondents/State.

JUDGMENT:

(Chaudhary Khalid Rasheed, J.) The above titled writ petition filed under article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 and petition under section 561-A Cr.P.C. raise common question of law, hence were heard together and are the subject matter of this judgment.

The petitioners have challenged FIR No.110/2021 registered at Police Station Chinari in the offences under sections 430/427, 34-PC and 14 EHA on 21.11.2021 through writ petition No.4106/2021 and FIR No.164/2021 registered at Police Station Pallandri in the offences under sections 341/427, 147/148, 149/506 and 337-A1-APC on 09.08.2021 has been called into question vide application No.215/2021 on the ground that the impugned FIRs are subsequent regarding the incident which have already been reported to the Police and Police had taken cognizance of the offences after registration of first information report, thus the impugned FIRs being second one are liable to be quashed.

The learned counsel for the petitioners reiterated the facts narrated in their pleadings and

while relying upon a judgement of the apex Court of Pakistan reported as PLD 2018 SC 595 zealously pressed into service that second FIR cannot be registered regarding an incident which has already been registered and if any conflicting version is agitated before Police with regard to the same occurrence then police is duty bound to investigation the said in the already registered FIR instead of registration of second FIR, thus, they solicited the quashment of FIRs on the basis of Ratio Decidendi of the Supreme Court of Pakistan, supra.

The learned AAG has controverted the stance taken by the petitioners and submitted that there is no bar regarding registration of the second FIR as per dictum of the apex Court of Azad Jammu & Kashmir.

We have heard the learned Counsel for the parties and gone through the record of the case with utmost care and caution.

In the light of the pleadings of the parties and arguments advanced at bar, the question which emerges for resolution by this Court is, whether second FIR can be registered if divergent version is

brought before police concerning commission of cognizable offences regarding which already an FIR has been registered by the police in exercise of powers conferred under section 154 Cr.PC. or not. This question has already been resolved by the learned Supreme Court of Azad Jammu & Kashmir in the judgments reported as 2011 SCR 50 and 2014 SCR 1049 and held that when a counter version regarding commission of cognizable offence is brought before the police, the In-charge Police Station has no option except to enter the same in the relevant register and conduct investigation as required by law. It is further observed by the apex Court that directions contained in section 154 Cr.PC. are mandatory in nature, thus SHO is bound by law to follow the same in letter and spirit. Under Article 42(b) of the AJK Interim Constitution 1974, decisions of the Supreme Court have got binding force on all Courts including the High Court. When the Supreme Court interpreted the effect of any provision of the Constitution or a law or its own judgment, it becomes the law of the land hence, not open to the Courts subordinate to the Supreme Court to differ from such interpretation and

all the Courts have to examine a controversy in the light of such interpretation, unless the Supreme Court itself overrules it through its subsequent decision but as long as a judgment of the Supreme Court remains in field, it has to be given effect to by all the Courts including this Court. Reliance can be placed on 2005 SCR 314 and 2006 SCR 120. In presence of a blatant dictum of the Hon'ble Supreme Court in the supra referred judgments that when an aggrieved party brings a version that accurate facts have been suppressed and occurrence did not take place in the manner as alleged in the previous FIR, it is the duty of concerned SHO to register a second FIR, this Court cannot interpret the provisions of law in derogation to the interpretation of the Hon'ble Supreme Court and could not held that registration of second FIR is illegal or misuse of powers by police.

The learned Counsel for the parties have mainly based their stance on judgment of the Honourable Supreme Court of Pakistan reported as PLD 2018 SC 595, wherein, the Honourable Supreme Court of Pakistan observed that when an FIR is registered regarding commission of cognizable offence

then no sperate FIR is required to be recorded for any new version of the same incident brought into the notice of Investigating Officer and all subsequent or divergent versions of the same occurrence have to be recorded and investigated in the same FIR. Guidance can be taken from the judgments recorded by the Supreme Court of Pakistan but every observation of the Supreme Court of Pakistan has got no binding force on Courts in Azad Kashmir especially when the view taken by the Supreme Court of Pakistan is divergent to the version laid down by the Supreme Court of Azad Jammu & Kashmir because any interpretation made by this Court divergent to the interpretation made by the Supreme Court of Azad Jammu & Kashmir would tantamount to violate the provisions of the Interim Constitution, 1974 which is not warranted by law. (PLD 1978 SC (AJK) 161). So in view of above stated position and clear interpretation of the provisions of law by the Supreme Court of Azad Jammu & Kashmir, the judgement of the Supreme Court of Pakistan cannot be followed and FIR cannot be quashed on the pretext of judgment of the Supreme Court of Pakistan.

It is also pertinent to write here that writ petition No.4106/2021 is also liable to be dismissed on the ground that an alternate remedy in shape of application under section 561-A Cr.P.C. was available to the petitioners and in presence of an alternate remedy writ petition is not maintainable.

The sum and substance of the above discussion is, finding no essence the captioned writ petition as well as petition under section 561-A Cr.P.C are hereby dismissed.

Muzaffarabad,
03.08.2022.

**-Sd-
JUDGE**

**-Sd-
JUDGE**

Approved for reporting.

**-Sd-
JUDGE**