

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.1932/2020.
Date of institution 29.12.2020.
Date of decision 07.03.2022.

Tahir Saleem Mughal s/o Mohammad Saleem r/o Flat No.202 Safe Plaza Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Petitioner

VERSUS

1. The State through Advocate General of Azad Jammu & Kashmir Muzaffarabad;
2. Superintendent of Police District Muzaffarabad, having his office at new District Complex Muzaffarabad;
3. Station House Officer (SHO) Police Station Saddar Tehsil & District Muzaffarabad, Azad Jammu & Kashmir;
4. Fozia Saleem w/o Shabaz Ellahi SP (KPK) r/o House No.5 Ward No.17 Madina Market District Muzaffarabad, Azad Kashmir, present Khanpur Town Union Council District Haripur Province Khayber Pakhtunkhawa (KPK) Pakistan.

Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Nasir Masood Mughal, advocate for the Petitioner.

AAG for the State.

Syed Zulqarnain Raza Naqvi, Advocate for the Respondent No.4.

JUDGMENT:

The petition in hand has been addressed by the petitioner under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974 for annulment of the FIR No.370/2020 dated 18.10.2020 registered against the

petitioner in offences under Sections 448/452 PC, at city Police Station Muzaffarabad by articulating in the writ petition that the impugned FIR has been chalked out by the investigation agency on behest of complainant/respondent No.4 with maneuvering and in light of concocted/baseless story as prayed by the respondent No.4. As per pleaded stance the matter between the parties is pertaining to the dispute of an undivided property and the parties have already approached the relevant revenue officer for partition of the inherited landed property in accordance with law. Hence, the instant writ petition for quashment of supra mentioned FIR.

2. Both the parties were directed to file their written arguments within 04 days and the needful has been done. It has been stated in the written arguments filed on behalf of the petitioner that petitioner and respondent No.4 are real siblings and besides them, there are two sisters and four more brothers. 'Banoo Saleem Plaza' was constructed by the progenitors with the insurance amount given to the heirs after the death of their father and the said Plaza was looked after by the petitioner with the consent of all the other heirs and the rent received from the shops was also equally divided between all the brothers and sisters as per their respective shares. It has further been alleged that

the claim of possession of respondent No.4 taken in the FIR is baseless and the proceedings pertaining to the partition of Plaza and other property is pending adjudication before the revenue officer besides the electricity bill and rent deed shown by the respondent No.4 in the written statement is also fake and fabricated and is against the facts. It has also been averred that after decision of the partition application the possession of the landed property may be handed over to respondent No.4 as per her fractional shares. Lastly, the petitioner prayed for quashment of the FIR as the same has been lodged with mala-fide reasons by respondent No.4 against the petitioner with connivance of the Police.

3. In the written statement filed on behalf of the State it has been averred that the petitioner is fully connected with the offences and the investigating agency is under legal obligation to collect sufficient evidence and the law is very much clear on this point that the FIR cannot be quashed during the course of investigation and in his support the learned State counsel also referred the case titled "Mumtaz Hussain & others VS. the State & others by submitting that the jurisdiction of High Court to quash an FIR is very limited and lastly it has been stated that the writ petition may kindly be dismissed with costs.

4. After giving due care/attention to the written argumentation from both sides and gone through the record appended with the writ petition and written statement pro and contra it transpires that the FIR dated 18.10.2020 has been chalked out on instance of the complainant Fozia Saleem respondent No.4, herein, under offences 448/452 PC. Crux of the argumentation indicates that although the matter between the parties basically pertains to the property dispute regarding the civil litigation/partition proceeding which is also pending adjudication before the proper forum and both the parties are actively participating in the proceedings in support of their respective stance but simultaneously when an alternate remedy has also been provided by the law against the prosecution by way of providing remedy under Sections 249-A and 265-K of Cr.PC for redressal of their grievances, therefore, in such like situation whether exercise of extraordinary writ jurisdiction available under Article 44 of Interim Constitution in order to embark upon the matter which is yet to be investigated by the relevant investigating agency to prove the veracity of the allegation any sort of indulgence is proper, justified and according to settled principle of criminal justice? This Court is blessed with powers under Article 44 of Interim Constitution to redress

the grievance of the petitioner who made an approach to the Court disclosing violation of law keeping in view the parameters of Article 44 of Interim Constitution but simultaneously if an alternate forum for the purpose is available in normal course of law then exercise of extraordinary jurisdiction is not desirable and proper. In this regard I am fortified to follow the vertical precedent of the Hon'ble Supreme Court in a reported case titled "Perveen Azam & others Vs. SSP District Mirpur & 4 others" [2015 SCR 837] as well as 2014 SCR 183 titled "Shah Mohammad Vs. Mohammad Younis. In a case titled "Perveen Azam Vs. SSP Mirpur & others" the Hon'ble Supreme Court has laid down as under:-

"According to the enforced law, the Investigating Agency is vested with the powers to investigate the matter impartially. Consequently, the Courts avoid to interfere with the investigation unless there appears any visible departure from law or violation of principles of law."
"It is the duty of the Investigating Agency to investigate the matter according to law without being partisan or misusing any process of law. The investigating agency has not only to consider the version of the complainant but is also duty bound at the same time to provide equal opportunity of defence to the accused-party and if there is any legal defence, that should also be properly considered according to law."

5. So far the contention of the learned counsel for the petitioner is concerned that civil case/partition

proceedings are on way and personal vendetta, in my estimation, it also leads the matter toward adjudication of disputed question of facts which is not permissible normally. At this juncture it is noteworthy to mention here that duty of the Court is to fashion a path of justice in accordance with law. Issuance of writ by setting at naught an FIR (in every case) amounts to short circuit the normal procedure of law. In the case titled Col. Shah Sadiq Vs. M. Ashiq 2006 SCMR 276, the Hon'ble Supreme Court of Pakistan divulged the reasons for keeping judicial restraint in this regard summarily:-

“it is pertinent to mention here that established practice before the creation of country was that the learned High Courts were very reluctant to quash the proceedings under constitutional jurisdiction. The object and reason behind this practice was that the High Courts had to quash the proceedings summarily which would create chaos due to the following reasons:-

- (i) All the procedure and authorities prescribed under Cr.P.C would become redundant.
- (ii) To interfere in the sphere allotted to the executive organ;
- (iii) There is every likelihood of injustice in a summary disposal;
- (iv) The cases are quashed at initial stages then it would create law and order situation as the people may resort to

- taking revenge from the opposite party;
- (v) Deviation from the past practice is always dangerous;
 - (vi) Superior Courts always keep judicial restraint in view of Article 4 of the Constitution read with Article 5(2) of the Constitution.”

in PLD 2009 SC 102 titled “Ajmeel Khan Vs. Abdul Rahim, a

similar view was taken as well:-

“Needless to emphasize, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamount to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal jurisdiction. The police are under a statutory duty under section 154 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police.”

6. On account of multiple reasons relief claimed in the lis in hand cannot be extended in favor of the petitioner as the petitioner is equipped with different alternate

remedies provided by law prior to knocking the door of this Court under its extra ordinary jurisdiction i.e. he is at liberty to put his grievance before the investigation officer of the case, likewise he can approach the High-up in the hierarchy on the investigation side in view of section 551 Cr.PC and thereafter another remedy is before the Magistrate under section 63 of the Cr.P.C, seeking discharge from the case. Magistrate can refuse to take cognizance if the case has not made out vis-à-vis moving further remedy under sections 249-A or 265-K is provided in the law i.e. Cr.PC as remedial purpose. Plethora of judge-made law on this subject. Both vertical and horizontal is available to indicate roadmap on the subject. Thus random exercise of writ jurisdiction amounts to fragile and paralyze the entire skeleton of criminal justice system.

7. Albeit constitutional window is open for interference in suitable cases where some gross violation of law itself is oozing from the record or criminal law has been set at motion at random or mala-fide reasons appearing or floating on the surface of record, quo quashment of FIR has been indicated police investigation. The vertical judgments from Pakistan jurisdiction are relied in this regard which are enumerated as under:-

- (1) Col. Shah Sadiq Vs. M Ashiq & others [2006 SCMR 276]
- (2) Dr. Ghulam Mustafa Vs. The State [2008 SCMR 76]
- (3) Ajmeel Khan Vs. Abdul Rahim [PLD 2009 SC 102].

In the supra relied cases quashment of an FIR by the High Court in writ jurisdiction has been viewed as legal anathema (meaning thereby that random exercise of powers has been abhorred in this regard). Constitutional remedy is a summary remedy which is discretionary and disputed question of facts cannot be resolved under said jurisdiction. This remedy is hedged and conditioned and it can only be availed as a last resort. in such like eventuality by jumping over and keeping aside the bulk of alternate remedies resort to constitutional remedy is premature attempt which imbalances the concept of trichotomy of powers as well.

8. Therefore, in this view of the matter be that as it may at this juncture, the FIR has already stood chalked out and even initial probe on part of the investigating agency has not been initiated and carried out, how this Court can bury and set at naught the FIR in its extraordinary writ jurisdiction. Every sort of

allegations and offences attributed to any person as per canon of criminal justice are liable to be probed/inquired and investigated. Any embargo or extraordinary indulgence amounts to curb the due course of law which requires to be adopted. In my estimation, the petitioner whatever narrated and articulated in the writ petition quo his innocence may have weightage but it is not the proper forum to dig out and adjudicate the same, therefore, writ is premature as well. The petitioner is at liberty to prove his innocence before the investigating agency without any apprehension and hesitation and if he successfully makes out his case by proving his innocence then definitely he will be dealt with in accordance with law. It is also in the fitness of things to state here that **mere registration of an FIR is not suffice and not a license in the hands of investigating agency to arrest every accused person mere in the garb of FIR unless and until his corpus is not required by the investigating agency for the investigation or if any recovery is likely to be made from him.** In my considered view, if no such like detailed inquiry or probe from the accused is necessary

and he himself is cooperating with the Investigating Agency then despite fact FIR has been lodged, arrest of the petitioner is not sine qua non (keeping in view the nature of offences). We expect that the relevant investigation agencies dealing with the matter shall duly take into consideration this legal aspect of the matter.

In backdrop of the above discussion finding no force in the instant writ petition, the same is hereby dismissed.

Muzaffarabad.
07.03.2022 (Saleem)

-Sd-
JUDGE

(Note). Judgment is written and duly signed. The office is directed to announce the judgment in presence of the parties or their counsel.

-Sd-
JUDGE

(Approved for Reporting)

-Sd-
JUDGE