

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

Case No.3 of December 2021

Writ Petition Nos. 3381/2021 & 2962/2021
and
Misl. Petition Nos. 1382/2021 & 299/2021
Date of Institution: 14-10-2021 & 15-09-2021
and 21-04-2021 & 05-10-2021

Title: Sidra Alam and others
Versus
State and others

Date of Decision: 11-12-2021

Before: **JUSTICE SADAQAT HUSSAIN RAJA, C.J.**

Facts:

The writ petitions/petitions have been filed for quashing of FIR.

Issues:

Whether an investigation agency can be stopped from investigating into a criminal offence by way of filing a writ petition or not?

Analysis:

Following analytical observations were made:

- (a) **Matter relates to factual controversy which cannot be resolved in exercise of petition (Page 5).**
- (b) **.....Section 154 Cr.P.C of 1898.....** In-charge of concerned Police Station is duty bound to register FIR on receiving information of any cognizable offence and conduct investigation in accordance with law. The officer in-charge of the Police Station is required by law to record the same in writing, irrespective of the fact that the information which he had received is correct or otherwise **(Page 6).**
- (c) Question of fact, which cannot be determined at this forum **(Page 6).**
- (d) **..... Section 156 Cr.P.C of 1898** clearly array that the investigation regarding the commission of offence is the duty as well as the prerogative of the police to investigate into the matter whenever a report is made to it and it is for the Investigation Officer to conclude the matter in view of oral and documentary evidence. **(Page 8).**
- (e) High Court has no role at investigation stage unless some glare violation of law is pointed out. If it is allowed, then every accused would like to come in the Court for quashing of every case registered under Section 154 Cr.P.C and the whole scheme of law

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

would be frustrated which should not be allowed at any cost. **(Page 10).**

- (f)** This Court does not interfere into the investigation proceedings and hamper the investigation agency to investigate into the matter. **(Page 10 and 11). (2020 SCR 336).**
- (g) Legal points determine by the Court regarding quashment of FIR.** No doubt this Court is vested with powers to quash FIR if on the face of it no offence appears to have been committed or it appears that the FIR has been lodged with mala-fide intention and there is no likelihood of conviction of accused. However, quashing of FIR during investigation is not permissible under law. FIR can be quashed by this Court in its extraordinary constitutional jurisdiction in the following cases according to the guidelines of the Apex Court of Pakistan and Azad Jammu and Kashmir.
- (i) If it has been registered by unlawful authority and there is any jurisdictional defect.
 - (ii) If from perusal of contents of FIR, no cognizable offence is constituted or made out.
 - (iii) If the civil liability has been converted into a criminal liability and to be enforced through criminal machinery.
 - (iv) If on the face of it, even remotely there seems no connection of the alleged accused with the offence and there is no probability of the conviction of the accused and the criminal proceedings would be an abuse of the process of the law or Court.
 - (v) If there is a patent violation of any provision of law or gross misuse of powers of an authority.
 - (vi) If the offender and victim arrived in a settlement. **(Page 12, 13 and 14).**

Final Crux:

The Hon'ble Single Bench of the Court held as under:

The petitioners failed to point out any such eventuality and the allegations leveled in the FIRs relate to facts and the matter can only be resolved after detailed investigation. Hence, at this stage this Court cannot declare the accused innocent and cannot quash the FIRs. An investigation agency cannot be stopped from investigating into a criminal offence by way of filing a writ petition.

Conclusion:

Finding no force in the above titled writ petitions/petitions, hence, the same are dismissed with no order as to the costs.

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

Case No.4 of December 2021

Writ Petition No. 3417/2021
and
Misl. Petition No. 331/2021

Date of Institution: 16-10-2021 and 28-10-2021

Title: Insha Manzoor and others
Versus
The State and others

Date of Decision: 08-12-2021

Facts:

The writ petition has been filed under section 561-A, Cr.P.C for quashing **F.I.R. No.99/2021**, registered against petitioners at Police Station, Chinari, on 11.10.2021, in offences under sections 10, 11, 19, ZHA, 419, 420, 468 & 471, APC, whereas Miscellaneous Petition has been moved by Muhammad Manzoor Kiani father of Insha Manzoor, under section 491,Cr.P.C for producing Insha Bibi before the Court.

Issues:

Whether an FIR under section 561-A, Cr.P.C in offences under sections 10, 11, 19, ZHA, 419, 420, 468 & 471, APC can be lodged against a Sui Juris lady and whether Miscellaneous petition under section 491 Cr.P.C can be filed for producing the petitioner before the Court or not?

Analysis:

Following analytical observations were made:

- (a) This Court in exercise of writ jurisdiction is not competent to assume role of investigating agency or the trial Court to give verdict as to whether an accused-person has committed an offence or not. **(Para 6, Page 6).**
- (b) **Section 561-A Cr.P.C. 1898.....** this Court while acting under section 561-A Cr.P.C. has no power to take the role of investigating agency and declare that the F.I.R. was not correctly registered; however, it has powers to interfere under the aforesaid Section for implementation of order of the Court and to secure the ends of justice. **(Para 6, Page 7).**
- (c) **Section 2(a) of the Offence of Zina (Enforcement of Hadood Act, 1985.... Adult means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years or has attained puberty". (Para 7, Page 9).**
- (d)**Section 299 APC** an 'adult' has been described that an "adult' means a person who has attained, being a male, the age of eighteen years, or being a female, the age of sixteen years, **or** has attained puberty, whichever is earlier", in this manner, between the words "**age of eighteen/sixteen years**" and "**puberty**" the word "**or**" has been used, which clearly indicates that out of the aforesaid two conditions, the

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

condition whichever comes earlier, will be considered to declare a person adult. **(Para 7, Page 9).**

- (e) **Puberty**“a female attains puberty when she starts menstruating” (PLD 1987 SC 5) “a male attains puberty when he starts secreting semen” (PLD 1991 SC 172). Moreover, the question of attaining puberty earlier than 18 years has also been determined by the Federal Shariat Court in a case titled *Khan Zaman v. The State* [1991 P.Cr.L.J (FSC) 928] wherein it has been observed as under:-

“Relying on the above symptoms of adulthood the Shariat Appellate Bench of the Supreme Court has made the following observations in the case of *Abdul Jabbar v. State* PLD 1991 SC 172: -

”قرآن و سنت اور اسلامی فقہ کے مذکورہ بالا حوالوں سے جو بات واضح ہو کر سامنے آتی ہے۔ وہ یہ ہے کہ لڑکے کے بلوغ (Puberty) کی فیصلہ کن شرط انزال (ejaculation) ہے اور لڑکی کی صورت میں اس کے علاوہ حیض یا حاملہ ہو جانا جب کبھی ان میں سے کوئی علامت پائی جائے تو لڑکے یا لڑکی کو بالغ (Adult) تصور کیا جائے گا۔“

(Para 7, Page 10).

- (f) **School Record and Form-B as documentary evidence....** mere presentation of documentary evidence such as Form-B as well as School record etc... is not sufficient to declare a male/female as minor or adult. **(Para 07, Page 10 and 11).**

- (g) **Quashment of FIR.....** normally F.I.Rs are not quashed; however, in the cases where it is found that a sui juris lady contracted 'Nikah' with her free consent and F.I.R has been registered against such couple on account of revenge, then such like F.I.Rs ought to be quashed in order to secure the ends of justice because marriage is a civil contract and every Muslim of sound mind, who has attained puberty, can enter into contract of marriage and according to the injunctions of Islam, the consent of adult sane couple is sufficient for proving a valid Nikah and according to principle of Muhammadan Law the presumption of valid marriage can be ascertained from the fact of acknowledgement by a man or a woman as husband and wife; however, it is void only when it is solemnized without his/her consent. **(Para 08, Page 11 and 12).**

Final Cruz:

The Hon'ble Single Bench of the Court held as under:

It is abundantly clear that petitioners in the writ petition being sui juris have lawfully married to each other and in these circumstances the offences alleged in the impugned F.I.R are not made out against them and continuance of investigation by the police and dragging them in the Court would be a futile exercise, which may amount unnecessary harassment to them; therefore, I arrived at the conclusion that the impugned F.I.R is liable to be quashed.

Conclusion:

The writ petition is admitted and accepted; therefore, it is ordered that the impugned **F.I.R. No.99/2021**, registered against petitioners at Police Station, Chinari, on 11.10.2021, in offences under sections 10, 11, 19, ZHA, 419, 420, 468 & 471, APC etc, is hereby quashed. The petition moved by Muhammad Manzoor Kiani, under Section 491, Cr.P.C, stands dismissed. The copies of the instant order shall be sent to official respondents for compliance. A copy of the instant order shall be annexed with other relevant file.

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

Case No.5 of December 2021

Writ Petition No. 2781/2021

Date of Institution: 01-09-2021

Title: Mohammad Junaid Khan
Versus
AJK University and others

Date of Decision: 23-12-2021

Before: **JUSTICE SADAQAT HUSSAIN RAJA, C.J.**

Facts:

The titled writ petition has been filed for a direction to be sought against the respondents to issue promotion order of the petitioner against the vacant post of Junior Clerk in the light of fitness/typing test held on 30.03.2021 against 25% quota which is reserved for employees of Grade-1 to Grade-4.

Issues:

Whether a direction can be sought through writ petition against the respondents to issue promotion order of petitioner against the Post of Junior Clerk in order to protect the petitioner from malafide intentions and to safeguard his constitutional right against discrimination or not?

Analysis:

Following analytical observations were made:

- (h) *Right against discrimination*.....The right against discrimination is a fundamental right guaranteed by the Constitution. Reliance in this regards can be placed upon (2019 SCR 766) and (2015 PLC CS 537) **(Para 09, Page 8).****
- (i) *The University*** is not at par to the other departments because it is the institution which provides education to the people who construct the society and Country. So, the institutions like Universities and Courts should be aboveboard and any illegality or discrimination in such like institutions tantamount to ruin the whole system of the country **(Para 12, Page 10).**
- (j)Courts** are duty bound to provide justice where any discrimination is found **(Para 12, Page 11).**
- (k)Article 15 of The Azad Jammu and Kashmir Interim Constitution, 1974,.....** all the State Subjects are equal before law and are entitled to equal protection of law. **(Para 13, Page 11).**
- (l)Article 17 of The Azad Jammu and Kashmir Interim Constitution, 1974,..... Safeguard against discrimination in service.** No state Subject otherwise qualified for appointment in the service of Azad Jammu and Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, residence, sex or place of birth **(Para 13, Page 11).**
- (m) Constitutional Jurisdiction of High Court where violation of fundamental right guaranteed by the Constitution is found then**

**BULLETIN OF HIGH COURT OF AZAD JAMMU & KASHMIR
DECEMBER 2021**

constitutional jurisdiction of this Court can be invoked. (PLD 2002 Lahore 521). **(Para 13, Page 12).**

Final Crux:

The writ petition is accepted and the respondents are directed to issue promotion order of the petitioner.

Conclusion:

Respondents-University are directed to issue promotion order of the petitioner being at serial No.1, of merit against the vacant post of Junior Clerk in the light of fitness/typing test held on 30.03.2021 against 25% quota reserved for employees of Grade-1 to Grade-4, within a period of one month from the receipt of the instant judgment.