

Form No: HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, BENCH AT RAWALPINDI
JUDICIAL DEPARTMENT

W.P.No.1549-Q of 2013

Waheed Akhtar Satti *versus* *The State, etc.*

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
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22.10.2013 Sardar Asmat Ullah Khan, Advocate for the petitioner.

Mr. Yousaf Khan Naul, Advocate for the complainant.

Mr. Saif ur Rehman, AAG alongwith Atif Malik, S.I.

By means of instant petition, the petitioner seeks quashing of FIR No.302 dated 18.04.2012, offence under Section 489-F, PPC, Police Station Sadiqabad, Rawalpindi lodged at the instance of Muhammad Aslam Sales Officer, ICI Pakistan Ltd/respondent No.3.

2. Succinctly facts of the case necessary for disposal of the matter in hand arising out of the instant petition are that the petitioner being the proprietor of New Al-Asif Hardware and Paint Store issued 10 cheques in favour of ICI Paint Company amounting to Rs.76,00,000/- which on presentation were dishonoured.

3. Learned counsel for the petitioner contends that according to the circumstances no case is made out against the petitioner. It is further argued that even otherwise facts of case do not attract the provisions of Section 489-F, PPC. It is further contended that civil suit regarding the matter is also pending and the FIR has been lodged just to

pressurize the petitioner and his family. In the end learned counsel contended that the petitioner has also been declared innocent during the course of investigation and his name has been placed in coloumn No.2 of the report under Section 173 Cr.P.C. Learned counsel further stated that as in the given circumstances there is no chance of any conviction of the petitioner/accused, therefore, pendency of the FIR would be nothing but abuse of process of law and wastage of valuable time of the court.

4. On the other hand, learned Additional Advocate General assisted by learned counsel for respondent No.2 has vehemently opposed this petition. It is contended that the High Court has no jurisdiction whatsoever to take the role of Investigating Agency and to quash the F.I.R while exercising constitutional powers under Article 199 of the Constitution of the Islamic Republic of Pakistan or under Section 561-A, Cr.P.C., unless and until very exceptional circumstances exist, which surely are missing in the instant case. It is also contended that challan of the case has been before the trial court and the petitioner has an alternate remedy to move application under Section 249-A Cr.P.C.

5. Learned counsel for the parties has been heard. I have also gone through the record available on file as well as relevant law on the subject.

4. This Court in a reported judgment Ch. Pervez Ellahi Vs. The Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 3 others (1995 MLD 615) has laid down following

parameters on the basis of which a criminal case can be quashed while exercising Constitutional jurisdiction:-when the case is of no evidence;

- (a) when the very registration of the case is proved to be mala fide on the face of record;
- (b) when the case is of purely civil nature, criminal proceedings are not warranted in law, especially to harass the accused;
- (c) when there is serious jurisdictional defect; and
- (d) when there is unexceptional delay in the disposal of the case causing deplorable mental, physical and financial torture to the person proceeded against.

No ground has been substantiated by learned counsel for the petitioner falling within realm of above parameters. Moreover, after perusing the contents of FIR, I don't find that offence as narrated in the F.I.R is not made out. It is settled principle of law that the prosecution of a case cannot be quashed at the initial stage, which is the jurisdictional parameters of the trial court to decide the guilt or otherwise of the petitioner (s) after sifting and evaluating the prosecution evidence.

6. Similarly, in the dictum of law of the august Supreme Court of Pakistan reported as “Col. Shah Sadiq vs. Muhammad Ashiq & others” (2006 SCMR 276), it was held that:-

“High Court would err in law to short circuit the normal procedure of law as provided under Criminal Procedure Code, 1898--- Party seeking the quashing of FIR had alternative remedy to raise objection at the time of framing the charge against them by the trial Court or at the time of final disposal

of the trial after recording the evidence--- Said party had more than one alternative remedies before the trial Court under Sections 265-K & 249-A, Cr.P.C. or to approach the concerned Magistrate for cancellation of the case under the provisions of Cr.P.C.---Alternative remedies available to the party enlisted”.

7. For the foregoing reasons and in view of *ratio decidendi* of the august Supreme Court of Pakistan reported in the above quoted judgments, I hold that the contentions advanced by learned counsel for the petitioner are devoid of force, therefore, the instant petition is **DISMISSED**.

(SHEZADA MAZHAR)
Judge

Approved for Reporting

Judge

Sharif