

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)

W.P No.1243-M/2023

Sher Zaman and others Vs. The State through Additional Advocate General  
and others.

Present: Muhammad Nabi, Advocate for petitioners.  
Mr. Haq Nawaz Khan, A.A.G for official Respondents.

Date of hearing: 28.10.2024

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Sher Zaman alongwith two others, the petitioners, being accused of criminal case bearing FIR No.99 dated 20.05.2014 registered u/s 188 of Pakistan Penal Code, 1860 (P.P.C) at Police Station *Kalkot*, District Dir Upper at the instance of Muhammad Hayat Shah, the then Additional Assistant Commissioner/ Executive Magistrate, Dir Upper at Sheringal for making construction in the property, which was attached in terms of section 145 of the Code of Criminal Procedure, 1898 (Cr.P.C) by the Executive Magistrate on 02.05.2013, and have allegedly violated the said order, through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C are praying for quashing the *ibid* FIR, on the ground that same is illegal, unjustified, without jurisdiction and of no legal effect.

2. In view of the contents of the petition qua the facts of the case, the state was put on notice through learned Additional Advocate General to assist this court that when the proceedings initiated u/s 145 Cr.P.C against the petitioners have been terminated through legal process then whether the registration of the criminal case against the

petitioners would be justified and if not, could the proceedings be continued against them? In response to the notice, the learned Additional Advocate General is before us. We have heard the arguments of Muhammad Nabi, Advocate representing the petitioners and Mr. Haq Nawaz Khan, Additional Advocate General representing the official respondents and with their able assistance, record of the case perused.

3. The reminiscences of the instant petition was in that way back of the year 2014, when respondent No.2 namely Muhammad Hayat Shah, AAC/Executive Magistrate, Dir Upper has initiated the proceedings u/s 145 Cr.P.C against the petitioners and Misri Khan s/o Juma Khan r/o *Kalkot*, wherein the subject matter of the criminal case has been attached but despite the order of attachment, the petitioners/accused have violated the order on 22.04.2014 at 09:00 PM by cultivating and making construction in the property, which was witnessed by Haji Gul Rahman s/o Muhammad Essa r/o *Doan Serai* and Khanjar s/o Haji Mohabat Khan. In view of the grounds taken by the learned AAC in reporting the matter to the local police, the petitioners were charged u/s 188 PPC for alleged violation of the order of the Court. It appears from the record that Ramdad alias Mashoot etc., have questioned the validity of the order against dismissal of their application for dismissal of the complaint u/s 145 Cr.P.C before the learned Sessions Court by arraying Misri Khan, State and Syed Wazir as respondents. They contended that their application for dismissal of the proceedings and detachment of the property/ withdrawal of the order of attachment was illegally turned down. The learned Sessions

Judge, Dir Upper heard the parties and allowed the petition on 02.11.2016 when reached to the conclusion that there was no dispute regarding disrupting the peace and tranquility in the area, which was one of the main ingredients for initiating the proceedings u/s 145 Cr.P.C and continuance thereof, and no ground existed for the proceedings initiated u/s 145 Cr.P.C, as such, the attachment of the property was illegal, unjustified and against the law rather the jurisdiction could not be assumed in the matter. On 02.11.2016, the order of the learned Executive Magistrate dated 07.04.2014 was set aside and simultaneously the proceedings u/s 145 Cr.P.C before the Executive Magistrate were also terminated by the learned Sessions Judge, Dir Upper. Since, Misri Khan, as a private party, was also put on notice but neither he nor the State has questioned the correctness of the order of the learned Sessions Judge dated 02.11.2016, thus, it attained finality. Moreover, the petitioners Ramdad etc. before the learned Sessions Judge have impugned the order of the learned Executive Magistrate later approached to this Court through W.P No.1041-M/2019 by questioning therein order of the learned Member-II Board of Revenue KPK dated 12.09.2019, whereby the revision of Malik Misri Khan and others against the order of the learned Additional Commissioner Malakand Division dated 15.03.2015 was allowed and revived the orders of the learned ADC dated 21.06.2018 and of learned AAC/SDM, Sheringal dated 24.06.2018. In said petition, this Court had discussed the legal and factual aspect especially termination of the proceedings u/s 145 Cr.P.C on acceptance of the revision petition and directed the learned AAC to proceed with the matter of ejection but without being

Sabz Ali/\*

(D.B) HON'BLE MR. JUSTICE S.MATTIOUE SHAH  
HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR

influenced or making a reference to the proceedings initiated under the Cr.P.C or having a reference about the apprehension of breach of peace with respect to the property in question. The operative part of the order of this Court in referred to above writ petition dated 31.10.2022 is reproduced as under:

“5. There is no cavil with the proposition that in the application of the respondent seeking ejectment of petitioners on the ground of non-payment of produce/rent of the property, AC/SDM, *Sheringal* was competent to proceed with and to decide it in accordance with law. He was also empowered to decide the application for appointment of a receiver but on its own independent findings, without being influenced or making reliance of any order of his predecessor-in-office passed in the proceedings u/s 145 Cr.P.C, for simple reason that all those proceedings were set aside and were terminated by the learned Revisional Court/Sessions Judge, Upper Dir in Cr.R No.1/2014 on 02.11.2016, as such, the learned AC and ADC have acted in excess of their jurisdiction while not advertng to the order of the learned Sessions Judge, Dir Upper in Cr.R No.1/2014 (*supra*).

6. Therefore, with the consent of learned counsel for the parties, instant petition stands allowed, the impugned orders dated 12.09.2019, 21.06.2018 & 26.4.2018 passed by respondents No.5, 3 & 2 are hereby set aside. Resultantly, the application/suit filed by respondent No.1 for ejectment of the petitioners from suit property on the ground of default of payment of produce/rent shall be deemed pending before the AC/SDM *Sheringal*, who shall decide it and any other application therein, on his own independent findings on merits in accordance with law. Parties are directed to appear before the trial Court/Assistant Commissioner, *Sheringal* on 30.11.2022.”

4. It is indisputable that after acceptance of the criminal revision petition by the learned Sessions Judge Dir Upper on 02.11.2016, neither the order of attachment was in field nor the main proceedings u/s 145 Cr.P.C were pending before the learned SDM for further process in terms of apprehension of breach of peace whereas, the lodging of the

FIR against the petitioners has its roots in the proceedings u/s 145 Cr.P.C and alleged violation thereof, which has been scrambled down and admittedly, the order of termination of proceedings u/s 145 Cr.P.C has not been questioned or remained the subject matter of proceedings at any forum after the decision by the learned Revisional Court (Sessions Judge, Dir Upper) dated 02.11.2016, thus, it appears that the non-existence of dispute about breach of peace was accepted by Misri Khan etc. and even by the State as none of them has challenged the order of termination of the proceedings. When the basic/ initial order, on the basis of which, the criminal case bearing FIR No. 99 dated 22.05.2014 was registered against the petitioners is no more in field then the entire superstructure shall fall on ground in view of the dicta laid down by the apex Court in the cases of "Vice Chancellor Agriculture University Vs. Muhammad Shafiq" (2024 SCMR 527), "Pakistan People Party Parliamentarians Vs. Federation of Pakistan" (PLD 2022 SC 574), "Atta-ur-Rahman Vs. Umar Farooq" (PLD 2008 SC 663) and "Superintendent of Police Headquarters Lahore and others Vs. Ijaz Aslam and others" (2024 SCMR 1831), wherein it was held that:

"It is well settled law that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically".

5. Moreover, the initiation of the proceedings u/s 188 PPC under Scheule-II of Cr.P.C pertaining to the 'disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to person lawfully employed. If such

disobedience causes danger to human life, health or safety etc.,” has been shown in column No.3 as non-cognizable offence and the accused thereof shall not be arrested without warrant. Section 154 Cr.P.C provides the mode of information in the cognizable offences as defined u/s 4 (f) of Cr.P.C and its treatment, which reads as under:

“Every such information pertaining to cognizable offence if given orally to the officer in-charge of the police station shall be reduced into writing by him or under his dictation and be read over to the informant and every such information whether given in writing or reduced into writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf”.

The *ibid* provision of law casts a duty of officer in-charge of the police station to enter the information regarding commission of a cognizable offence, for which, he has no discretion to refuse registration of FIR. Taking cognizance of an offence by a Court of law (on a complaint) or lodging of FIR are two distinct legal remedies under criminal law. Likewise, law does not prohibit the lodging of FIR in respect of a cognizable offence. But when it comes to a non-cognizable offence as provided under section 155 of Cr.P.C it puts a clog on the power of Police for direct registration of case. The term “cognizable offence” has been defined in section 4 (f) of Cr.P.C, that the offence in which a police officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant. We have gone through from Schedule-II of Cr.P.C, where section 188 PPC in column No.3 provides “shall not arrest without warrant” as such, the offence u/s 188 PPC is a non-cognizable offence. When an offence

is non-cognizable then no FIR could be lodged in terms of section 195 (1) (a) Cr.P.C, which, for convenience, is reproduced as under:

“(1) No Court shall take cognizance: -

(a) Prosecution for contempt of lawful authority of public servants: of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.”

The above reproduced provision of law manifests that the Court shall not take cognizance of the prosecution for contempt of lawful authority of public servants of any offence punishable under sections 172 to 188 PPC, except on the complaint in writing of public servant concerned or of some other public servant to whom he is subordinate. In the instant matter, irrespective of passing of an order of attachment of property, which though was later on set aside by the learned revisional court, could not provide any justification to respondent No.2 (AAC, *Sheringal*) or any other public servant to get register an FIR and that too u/s 188 P.P.C, which in Schedule-II of Cr.P.C has been categorized as a non-cognizable offence. In non-cognizable offences no FIR could be lodged except as ordained in section 155 of Cr.PC. Reliance is placed on the cases of “*Bux Ali And 2 Others versus The State and Another*” (1980 PCr.LJ 626). “*Sabz Ali Khan and 2 others Versus Inspector General of Police, KPK and 3 others*” (2016 YLR 1279), “*Shahid Khan and 3 others Versus the State through Station House Officer (SHO) and 2 others*” (2017 YLR 2419), “*Muneer Ahmed Abbasi and 5 others Versus Sessions Judge/Justice of Peace Bagh, District Bagh and 5 others*” (2018 MLD

196), and “Aslam Pervaiz and another Versus Tameer Ali and 7 others” (2019 YLR 228).

6. When confronted with the above legal aspect, the learned A.A.G conceded at the bar that the registration of the criminal case in shape of FIR against the petitioners, in the circumstances, was illegal from its inception. Even otherwise, the respondents No.1 & 2, being public functionaries, were required to act in accordance, with proper and reasonable justification. In similar situation, in the case of “Akhtar Said Vs. Rozi Mul and others” (W.P No.515-M/2021) decided on 18.01.2022, this Court has directed to quash FIR registered u/s 188 PPC. Likewise, in W.P No.2208-P/2022 titled “Peshawar High Court Bar Vs. The State etc.” decided on 15.09.2022, this Court has also held that “lodging of FIR in non-cognizable offence is utter violation of the provisions of Cr.P.C and now it has been well settled that FIR can be quashed if from the bare reading of its contents, a cognizable offence is not made out”. Thus, the proceedings in terms of the FIR would be an abuse of the process of the court and when so, this Court has got the vast powers to quash the criminal proceedings. Reliance is also placed on the case of Ateeq-Ur-Rahman and others Versus The State through A.A.G and others in writ petition No. 1155-M of 2022 dated 18.10.22. The Powers of this Court in term of section 561-A CrPC have been discussed by the Honourable Supreme Court in the case of Muhammad Aslam (Amir Aslam) and others Vs. District Police Officer, Rawalpindi and others (2009 SCMR 141) wherein it was observed that there is no invariable rule of law and it depends on the facts of each case whether to allow the proceedings to continue or to nip in the bud.



especially when no offence has been made out and when the allegations from the face of it appears to be groundless and in such circumstances continuation of the proceedings would be a futile exercise and wastage of time.

7. The jurisdictional requirement for the exercise of the powers under section 561-A Cr.P.C. are (i) to give effect to any order under the Criminal Procedure Code, (ii) to prevent abuse of process of any Court (iii) to secure the ends of justice. In order to seek interference under section 561-A Cr.P.C. three conditions to be fulfilled, (i) the injustice which comes to light should not be of a trivial character (ii) the injustice which is noted is of a clear and palpable character and not of a doubtful character and (iii) there exists no other provision of law by which the party aggrieved could have sought relief. The purpose of invoking provisions of section 561-A Cr.P.C. is mainly to prevent abuse of process of Court and to secure the ends of justice and the circumstances of this case fully deserve the exercise of inherent powers conferred upon this Court under section 561-A Cr.P.C.

8. Thus, viewing the legal and factual aspect qua the principle laid down for exercising the powers of this Court under section 561-A CrPC in juxtaposition with the submission of the learned counsel for petitioners and learned AAG, as discusses above, the instant petition stands allowed, resultantly the FIR along with all subsequent proceedings are hereby quashed/ set aside.

**Announced**  
**28.10.2024**

Office  
30/10/2024

Sabz Ali/\*\*

(D.B) **HON'BLE MR. JUSTICE S.MATTIOUE SHAH**  
**HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR**

**JUDGE**



**JUDGE**