

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Yahya Afridi  
Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Shahid Waheed

**Civil Petition No.671-L-672-L of 2017**

[Against the Order dated 21.12.2016 passed by the Lahore High Court, Multan Bench in  
Writ Petitions No.15518 and 15634 of 2012]

***The State through*** *...Petitioner(s)*  
***Prosecutor General Punjab, Lahore***  
***Versus***  
***Chaudhry Mohammad Khan etc*** *...Respondent(s)*  
***Ameer Ahmed Shah***

For the Petitioner(s) : Mr. Irfan Zia, Additional Prosecutor  
(in both cases) General, Punjab

For the Respondent No.1 : Mr. Shakeel Javed, ASC  
(in both cases)

Date of Hearing : 27.09.2024

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.** Through this petition, the petitioner has called in question the order dated 21.12.2016 passed by the Lahore High Court, Multan Bench in Writ Petitions No. 15518 and 15634 of 2012 whereby the High Court while accepting the writ petitions of the respondents has quashed FIR No. 58/2012 dated 02.08.2012 registered against them under Section 471, 467, 468, 420, 409 PPC read with Section 5 of Prevention of Corruption Act, 1947 at Police Station A.C.E Multan.

2. The brief facts of the case are that FIR No. 58/2012 was registered against the respondents for the alleged illegal fraudulent transfer of state land (located in Khewats No. 328/316 (5284 Kanals & 8 Marlas) and Khewat No. 329/316 (1778 Kanals & 3 Marlas) in Chak No. 83/M (Urban and Rural Area), Tehsil Jalalpur) to the private persons. The said land was allegedly transferred through fake orders of the

Deputy Settlement Commissioner allegedly passed in 1993. As a result, thereof, the said land was transferred to Muhammad Yaseen and Ameer Ahmed Shah via mutations No. 918 and 919 dated 26.09.1998. In 2009, two fabricated fard-e-Badars (No. 4 and 5) with forged signatures of the Revenue Officer were prepared by the Patwari and Girdawar, in pursuance of which the alleged mutations were entered in the Register Haqdaran-e-Zameen for 2010-2011. In this regard, after conducting an inquiry, the Assistant Commissioner Jalalpur, Pirwala District Multan sent a complaint/reference dated 26.07.2012 to the Anti-Corruption Establishment, Multan stating that the inquiry report confirmed that mutations No. 918 and 919 were based on fraudulent orders dated 28.07.1993, allegedly issued by the Deputy Settlement Commissioner. The report recommended that an FIR be registered against the respondents. The said complaint was received by the ACE, Multan on 27.07.2012 upon which the Director, ACE, Multan initiated inquiry bearing No.1062 of 2012 under Punjab Anti-Corruption Rules. The inquiry report dated 01.08.2012 recommended the registration of an FIR against the respondents. Following the registration of the FIR, the respondents filed a writ petition, and by the impugned order, the FIR was quashed. Hence, this petition.

3. Learned counsel for the petitioner submits that impugned order suffers from illegality and infirmity; that FIR cannot be quashed based on the ground of civil controversy; that probability of conviction/otherwise is also no ground for quashment of FIR and prays that impugned order may be set aside.

4. On the contrary, learned counsel for the respondent has supported the impugned order and contends that FIR was registered with *malafide* and ulterior motives.

5. We have heard the learned counsel for the parties and perused the material available on the record.

6. The jurisdiction in terms of Article 199 of the Constitution for quashing an FIR can only be exercised in exceptional cases. In the case of *Ajmeel Khan v. Abdul Rahim and others (PLD 2009 SC 102)* it has been observed that:-

“6. Needless to emphasis, 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 tantamounts 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 justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 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.”

**[Emphasis added]**

7. Exercise of extra-ordinary jurisdiction for quashing an FIR under Article 199 is permissible only in cases when the facts on record unequivocally indicate that no offence can be established against the accused; or if registration of FIR reflects a misuse of legal authority or lacks any sound legal justification because allowing the prosecution to continue under such conditions would constitute an abuse of the process of law, justifying the quashing of the FIR; cases registered without proper authority or in clear violation of established laws must also be quashed to maintain the

integrity of the judicial system. However, the court should not invoke this provision if the allegations made by the prosecution establish a prima facie case against the accused.

8. More recently, this court in the case of FIA, Director General FIA and others v. Syed Hamid Ali Shah and others (PLD 2023 SC 265) reaffirmed the High Court's authority to quash an FIR under writ jurisdiction on the ground that allegations in the FIR did not constitute a cognizable offence, thus, acknowledged that an FIR can indeed be quashed if the allegations fail to establish the essential elements of the alleged offence or do not amount to a cognizable offence.

9. In the present case, material available on the record demonstrates that inquiry report confirmed the involvement of respondents in the illegal and fraudulent transfer of state land and preparation of forged and fake entries and documents of precious and valued land in pursuance thereof. It has been alleged that the state land could not be allotted against any claim of settlement and rehabilitation. Inquiry was carried out by the Additional District Collector Multan wherein vide inquiry order dated 24.07.2012 it was reported that mutations No.918 and 919 dated 26.09.1998 were attested on the basis of fake and bogus order allegedly passed by the Deputy Settlement Commissioner namely Syed Maqbool Hussain Shah. Thereafter, upon receipt of complaint, the then Director, Anti-Corruption Establishment, Multan constituted a team of two members to conduct inquiry No.1062/2012 under Punjab Anti-Corruption Rules. Said team submitted their final report dated 01.08.2012 and recommended registration of an FIR against the respondents.

10. Perusal of the impugned order reveals that the grounds that prevailed with the learned High Court while quashing the FIR are:

(i) That civil dispute is pending between the parties that has been given colour of the criminal case;

(ii) that impugned FIR was registered despite specific stay order dated 30.07.2012 passed by the High Court in W.P.No.9941/2012 restraining the ACE, authorities to lodge the FIR.

(iii) That even if impugned FIR is allowed to be continued there is no probability of the conviction of the accused persons.

(iv) That inquiry is tainted with *malafide* and ulterior motives.

11. With regards to the first ground, during the course of arguments, it was confirmed by the learned State counsel that at the time of decision of the writ petition no civil controversy was pending between the parties in any court. Even if it is assumed that a civil dispute was pending, FIR cannot be straightaway quashed based on the civil dispute between the parties. It is settled law that criminal proceedings are not barred in presence of civil proceedings and that civil and criminal proceedings can proceed simultaneously. In the case of Seema Fareed and Others Versus The State and another (2008 SCMR 839) it was held:-

“It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently because conviction for a criminal offence is altogether a different matter from the civil liability. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction.”

Therefore, action under criminal law can be taken against any individual if information contained in FIR discloses commission of a cognizable offence.

12. As far as ground of restraining order against registration of FIR is concerned, material available on the record reflects that prior to registration of FIR, during the course of inquiry proceedings, a writ petition (No.9941/2012) was filed by the Chaudhry Mohammad Khan (Tehsildar), Mohammad Amin (Ex-Girdawar), Mushtaq Ahmed Alvi (Girdawar), Mehboob Hussain (Ex-Patwari, Ghulam Sarwar (Ex-Patwari). The said petition sought direction in the name of Director ACE, Multan as well as Deputy Director, ACE, to refrain from registering an FIR without first conducting an inquiry as required by the applicable anti-corruption laws. In the said petition, High Court issued following interim order dated 30.07.2012:-

*“Notice to the respondents for the said date. Meanwhile no coercive measures shall be adopted against the petitioners.”*

However, it is important to mention that prior to this order, an Inquiry No. 1062/2012 was already ordered to be conducted by the Director ACE, Multan under Anti-Corruption Laws that was entrusted to the team comprising two officers of the ACE, Multan. The said inquiry report dated 01.08.2012 also confirmed the indulgence of the respondents in the alleged offence and recommended registration of FIR against the accused persons that was subsequently registered.

13. It is pertinent to recognize that the registration of an FIR is a fundamental step in the criminal justice process. The duty to register an FIR arises under Section 154 of the Code of Criminal

Procedure, 1898 (Cr.P.C), which mandates law enforcement agencies to record any information that discloses a cognizable offence. This statutory obligation is not discretionary therefore courts should not intervene prematurely to stay the registration of an FIR. An FIR serves as the starting point for any investigation, enabling the police to ascertain the veracity of the allegations and collect necessary evidence. The act of staying the registration of an FIR effectively halts this significant process, thereby preventing law enforcement from fulfilling its mandated duty under the law to investigate.

14. A careful examination of the foreign jurisdiction on this issue reveals that courts take strict approach in the matters of stay on FIR or investigation. In the case of Central Bureau of Investigation and others v. Thommandru Hannah Vijayalakshmi and others (AIR 2021 SC 5041) it was held by the Indian Supreme Court that:-

36. In a more recent decision of a three Judge Bench of this Court in Neeharika Infrastructure (supra), Justice M.R. Shah, speaking for the Bench consisting also of one of us (Justice D.Y. Chandrachud), enunciated the following principles in relation to the Court exercising its jurisdiction Under Article 226 of the Constitution or Section 482 of the Code of Criminal Procedure:

80 . In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, **whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted"**, during the pendency of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the Accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) "Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

**[Emphasis Added]**

15. Another ground that prevailed with the learned High Court while quashing the FIR was that there was no probability of



conviction of the respondents. In this regard, suffice is to state, that without delving in the facts and circumstances, it cannot be ruled out as to whether there is any probability of conviction/acquittal. Even otherwise, the question as to whether there is a probability of conviction or not may be properly addressed by the trial court under Sections 249-A or 265-K of Cr.P.C. Given the absence of any evidence of *malafide* on the part of the investigating authorities, quashing the FIR at this stage, in our view, was not appropriate.

16. Moreover, present case involves factual questions that require determination. High Court, in exercise of its constitutional jurisdiction under Article 199, cannot resolve factual controversies as held by this court in the cases of *Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another* (2023 SCMR 246), *Amir Jamal and others v. Malik Zahoore-ul-Haq and others* (2011 SCMR 1023) and *Fida Hussain v. Mst Saiqa and others* (2011 SCMR 1990).

17. Criminal cases are decided on the basis of material so collected by the prosecution during the course of investigation, and the evidence recorded in the trial Court, and that too, after appraisal of evidence by it in accordance with the law applicable thereto. High Court cannot assume the role of an investigation agency or of a trial Court without recording evidence to deliberate upon the factual controversies involved in the cases in exercise of its constitutional jurisdiction.

18. It is an established legal principle that when a *prima facie* offence has been committed, the usual course of trial proceedings in accordance with the law in a competent court of law

should not be bypassed by invoking the constitutional jurisdiction of High Court.

19. In view of the above discussion, we find that no legally valid ground existed for the High Court to quash the FIR in the present case under its constitutional jurisdiction.

20. Consequently, these petitions are converted into appeals and allowed. The impugned order dated 21.12.2016 passed by the Lahore High Court, Multan Bench is set aside. Above are the reasons for our short order of even date.

**JUDGE**

**JUDGE**

**JUDGE**

Islamabad  
27.09.2024  
**APPROVED FOR REPORTING**  
Paras Zafar, LC\*