

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Bench]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.273 of 2018

(Filed on 17.11.2018)

Mubashar Nawaz s/o Muhammad Nawaz Khan, r/o
Chowki, District Bhimber.

.....APPELLANT

VERSUS

1. Shafique ur Rehman s/o Fazal ur Rehman,
caste Rajput r/o Chowki, Tehsil & District
Bhimber.

.....RESPONDENT

2. SHO Police Station Chowki, District Bhimber.
3. SSP Bhimber, District Bhimber.

..... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court
dated 18.09.2018 in writ petition No.312/2016]

FOR THE APPELLANT: Mr. Abdul Hameed,
Advocate.

FOR RESPONDENT NO.1: Raja Inamullah Khan,
Advocate.

Date of hearing: 18.02.2019.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned appeal by leave of the Court has been filed against the judgment of the High Court dated 18.09.2018, whereby the writ petition filed by respondent No.1, herein, has been accepted.

2. The brief facts of the case are that on the report of the respondent, herein, an FIR No.15/2016 dated 13.02.2016, in offence under section 489-F, APC was registered at police Station Chwoki, District Bhimber, against the appellant, herein. After investigation, the police submitted "*Ikhtitami*" report before the learned Civil Judge/Magistrate first class, Samahni for conclusion of the FIR for want of proof. The learned trial Court vide order dated 14.05.2016 concurred with the police report. Feeling aggrieved, the respondent, herein, filed a writ petition before the High Court. Through the impugned judgment dated 18.09.2018, the learned High Court while quashing the order passed by the trial Court along with all the other

proceedings directed the police to re-investigate the case, hence, this appeal by leave of the Court.

3. Mr. Abdul Hameed, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the impugned judgment of the High Court is without lawful authority. According to the enforced law and principle of law enunciated by the constitutional superior Courts such like proceeding can only be challenged under the provisions of section 561-A, Cr.P.C. and writ petition is not competent. Moreover, the learned High Court has travelled beyond its legal jurisdiction while issuing direction for reinvestigation of the case. In the impugned judgment not a single sentence reason is advanced for setting aside the order passed by the Magistrate. He further argued that the complainant neither appeared before the investigating officer nor got his statement recorded or produced any sort of proof during the investigation. The investigating agency rightly cancelled the FIR. Therefore, while

accepting this appeal the impugned judgment of the High Court be set-aside.

4. Conversely, Raja Inamullah Khan, Advocate, the learned counsel for respondent No.1 submitted that the allegation of committing serious offence relating to huge amount is involved. The complainant got FIR registered which is duly signed by him, thus, it is lame excuse that he failed to get his statement recorded before the investigation officer or produce the supporting evidence. The learned High Court has rightly directed for reinvestigation as the serious offence has been committed, thus, this appeal is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record. So far as the argument of learned counsel for the appellant relating to competency of writ petition is concerned, it appears to be misconceived as on this point there is a plethora of judgments which have already been mentioned in leave granting order. The learned High Court is vested with the powers to determine

the validity of such order either in writ jurisdiction or while exercising the inherent powers under section 561-A, Cr.P.C. Moreover, according to celebrated principle of law both are inter-alia convertible, therefore, it is mere academic discussion that whether order should have been passed in an application under section 561-A, Cr.P.C. or in writ jurisdiction.

6. Although the parties have also attempted to discuss the merits and demerits of the case but in our considered opinion, it is irrelevant and premature as the Magistrate while passing the order has not advanced any legal justification or reason. Same like, the impugned judgment of learned High Court is also lacking the same. In this state of affairs, the argument of learned counsel for the appellant has substance that the direction for reinvestigation in vacuum is not sustainable.

7. In view of the above stated facts, in our considered opinion, the proper course to meet the ends of justice is to accept this appeal, modify the impugned judgment of the High Court and remand

the matter to the Magistrate first class, Samahni. The learned Magistrate, Samahni after hearing the complainant, accused, the investigating agency, scrutinizing the record and applying the mind, shall pass speaking order.

This appeal is disposed of in the above terms with no order as to costs.

Mirpur,
18.02.2019

CHIEF JUSTICE

JUDGE