SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Civil Appeal No. 539 of 2020

(PLA Filed on 10.11.2020)

1. Shahroom Khan,
2. Maqsoom Khan, sons of Kal Khan r/o Nagni, Mujahid-Abad, Tehsil and District Muzaffarabad.

.... APPELLANTS

VERSUS

1. Justice of Peace/Sessions Judge, Muzaffarabad.
2. Senior Superintendent Police, Muzaffarabad.
3. Station House Officer, Police Station Chatter Kalas, Muzaffarabad.
4. Abid Majeed s/o Raja Gull Majeed Khan r/o Nagni Mujahid-Abad, Tehsil and District Muzaffarabad.

..... RESPONDENTS

(On appeal from the order of the High Court dated 20.10.2020 in Writ Petition No. 1156 of 2020)

APPEARANCES:

FOR THE APPELLANTS: Syed Nazir Hussain Shah Kazmi, Advocate.

FOR THE RESPONDENTS: Raja Waseem Khan, Additional Advocate General

and Ch. Muhammad
Mumtaz, Advocate.

Date of hearing: 10.9.2021

JUDGMENT:

Raza Ali Khan, J.— The captioned appeal by leave of the Court arises out of the judgment dated 20.10.2020 passed by the High Court of Azad Jammu & Kashmir, in civil appeal No. 1156 of 2020.

2. The brief facts forming the background of the captioned appeal are that the appellants, herein, filed a writ petition before the High Court of Azad Jammu & Kashmir on 19.9.2020 alleging therein, that the Justice of Peace, Muzaffarabad, reached at a wrong conclusion by directing the concerned police to register the F.I.R. It was stated that a civil suit is already pending before the Civil Court, wherein the same subject-matter is under dispute. It was further stated that Abid Majeed, respondent No.4, therein, previously filed an application for registration of an F.I.R. before the Justice of

Peace, Muzaffarabad on 4.3.2020, which was dismissed. It was prayed that a direction be issued to quash the proceedings under F.I.R. No. 127/2020, as registered on the order of the learned Justice of Peace. The learned High Court after hearing the preliminary arguments, has dismissed the writ petition in limine through the impugned order, dated 20.10.2020.

3. Syed Nazir Hussain Shah Kazmi, the learned Advocate appearing for the appellants argued that in presence of civil litigation between the parties, wherein, the affidavit in dispute is also a part of the suit, the direction for registration of the criminal case could not legally be issued and this point was agitated before the learned High Court, but was not taken into consideration in its true perspective, hence, the impugned judgment is liable to be set aside. The learned Advocate further argued that the appellants have annexed the photostate copy as well as original copy of the affidavit executed by the father of respondent No.4, herein, with the suit and also relied upon the same in para 5 of the

said suit, hence, the direction for registration of the criminal case without decision of the civil suit was not just and proper. The learned Advocate urged that impugned F.I.R. has been lodged by the complainant out of personal vengeance to counter the civil suit filed by the appellants. He submitted that if investigation is allowed to be continued in the impugned F.I.R., the same would result in abuse of process of law. He argued that the learned Justice of Peace/Sessions Judge, while passing the order dated 8.9.2020, mentioned that the S.H.O. has written in his comments that the appellants have prepared false affidavit and the original affidavit has been overwritten by erasing the previous writing, whereas the fact of the matter is that no such comments have been filed by the S.H.O., nor any such wording has been written therein, this point was also raised before the learned High Court, but the learned High Court while handing down the impugned order has overlooked the same, therefore, the impugned

judgment is not sustainable. Lastly, the learned Advocate argued that bare reading of the F.I.R. makes it abundantly clear that the F.I.R. has been lodged to vitiate the civil proceedings against the appellants. The learned Advocate in support of his contention while placing reliance on the cases reported as *State through Advocate General, Azad Jammu & Kashmir, Muzaffarabad and 2 others vs. Safeer Khan and another* (2013 SCR 42) and *Muhammad Aslam (Amir Aslam) and others vs. District Police Officer, Rawalpindi and others* (2009 SCMR 141) has requested for acceptance of appeal.

4. Conversely, Ch. Muhammad Mumtaz, the learned Advocate appearing for the private respondent argued that the appellants, herein, have committed act of forgery by preparing a fake affidavit and tampering with the affidavit executed by father of the private respondent in favour of Bashir Hussain Shah and others just to usurp the land of the respondent. He argued that when the respondent came to know about

the illegal act of the appellants, he moved an application to the Justice of Peace under section 22-A, Cr.P.C. and the Justice of Peace, vide order dated 4.3.2020 directed the respondent to approach the concerned S.H.O. The learned Advocate further argued that the civil litigation between the parties before Civil Court No. III is not dealing with the authenticity of the said fake affidavit, hence, the institution of the civil suit does not bar from registration of the criminal case and the learned Justice of Peace has not dismissed the earlier application filed by the private respondent, herein, vide order, dated 4.3.2020, rather directed the respondent to submit his grievance before the S.H.O. He further argued that the learned Justice of Peace rightly issued direction on the subsequent application to initiate criminal proceedings against the appellants vide order, dated 8.9.2020 and the learned High Court dismissed the writ petition filed by the appellants, herein, in accordance with law as the High Court cannot

assume the role of investigating agency while exercising its constitutional jurisdiction.

5. The learned Assistant Advocate General has supported the stance taken by the learned counsel for the respondents.

6. We have heard the learned Advocates representing the parties and have gone through the record of the case made available alongwith the impugned order. A perusal of the record reveals that the appellants, herein, filed a suit for declaration-cum-perpetual injunction as well as for cancellation of sale-deeds, dated 4.1.2000 and 27.12.2002, before the Civil Judge Court No. III, Muzaffarabad, on 8.2.2018. During the pendency of the suit, the private respondent, herein, moved an application to the Justice of Peace/Sessions Judge, Muzaffarabad on 7.9.2019, under section 22-A, Cr. P.C., seeking a direction to respondents No. 2 and 3, herein, to initiate criminal proceedings against the appellants, herein, for preparing a fake affidavit in the name of father of the respondent, herein,

as well as tampering with the affidavit executed by the father of the respondent in favour of one Syed Bashir Hussain Shah. On this application, the learned Justice of Peace vide order, dated 4.3.2020, directed the respondent to submit his grievance before respondent No.3, herein. On 26.7.2020, the respondent, herein, filed another application before the Justice of Peace under section 22-A, Cr.P.C. soliciting therein, that in the light of the direction of the Court order dated 4.3.2020, he submitted the application before the S.H.O. but he is procrastinating in lodging the F.I.R. against the appellants, herein, therefore, registration of F.I.R. may be directed. On the said application, the learned Justice of Peace vide judgment dated 8.9.2020, directed the S.H.O. to register F.I.R. against the nominated accused with a recorded statement of the complainant. Consequently, F.I.R. No.127/20, was registered against the appellants, herein. The said judgment of the learned Justice of Peace was assailed by the

appellants, herein, before the learned High Court through a writ petition for setting aside the impugned judgment and quashment of the F.I.R lodged in compliance thereof, which has been dismissed in limine vide impugned order dated 20.10.2020.

7. The points emerged from the facts and arguments of the learned counsel for the parties requiring resolution by this Court are as follows:-

1. Whether during pendency of civil suit between the parties regarding the same subject matter, criminal proceedings can be initiated?

2. Whether an F.I.R. can be quashed by the High Court while exercising the Constitutional jurisdiction under Article 44 of the Interim Constitution, 1974 ? and

3. Whether Justice of Peace is legally bound to provide the accused person a right of hearing before issuing direction to Police for registration of F.I.R. ?

So far as the first question formulated above is concerned, the proposition came under consideration before this Court in the case reported as *Raja Niaz Hussain vs. Muhammad Khurshid & 3 others* (2005 SCR 411). The facts of the cited case are that a case under section 427, 435, and 436, APC, was registered against the accused respondent on the complaint of the appellant which, after investigation was challenged before the magistrate 1st class Muzaffarabad. During the trial, an application was moved on behalf of the accused to postpone the proceedings till the decision of the civil suit. The trial Court while accepting the application postponed the proceedings. The order of the trial Court was challenged before the High Court through a revision petition and the High Court dismissed the revision petition. An appeal was filed before this Court and this Court while relying on the pronouncements of Supreme Court of Pakistan, accepted the appeal and declared the dismissal of the revision petition by

the High Court against law. The relevant portion of the referred case is reproduced as under:-

> "7. The present case cognizable offences were committed by the accused-respondents for which the trial was in progress when the learned trail Magistrate postponed the proceedings till the decision of civil suit. No grounds whatsoever were given by the trial Magistrate as well as by the learned Chief Justice in the High Court that how the fate of the case was dependent upon the decision of civil suit. As held above no such reason is found to postpone the proceedings. Both the proceedings are independent in nature. The criminal trial is being conducted on behalf of the State against the accused-respondents for committing the aforesaid offences, if proved the accused-respondents are to be convicted and punished. The other proceedings in the nature of civil suit were filed on behalf of father of the complainant claiming damage to his property by setting vehicle on fire. Though the Civil suit was filed on the basis of some acts which attracted the criminal offences. Therefore, challan was submitted. It would be relevant to mention that the proceedings of the challan or its ultimate decision would not bar the initiation of proceedings such as the suit for damages. Conversely, the civil suit would not be a bar for proceedings against an accused person against whom a challan has been submitted

under certain offences. The proposition came under consideration before a full bench case titled Adam vs. Collector of Customs, Karachi [PLD 1969 SC 446] were it was held as under:-

"…The proceedings taken by the Custom authorities for the confiscation of the goods are more in the nature of departmental proceedings which have been characterized in English and American Jurisprudence as proceedings in condemnation of the goods for purpose of revenue and are regarded as proceedings of a civil nature, despite their penal character. The Sea Custom Authorities are not a judicial tribunal in the strict sense of that term nor can their verdict of confiscation of the goods be regarded as punishment by the Court after regular trial for the purpose of supporting a plea of double jeopardy. On the other hand, the proceedings for the criminal prosecution of a person who commits an offence under the Act in relation to those goods fall in a separate category. They are judicial proceedings for the determination of the guilt of the person concerned for commission of the alleged offence and entailing a punishment for the same. Both are concurrent remedies but each is independent of the other. They cannot, therefore, be deemed to be mutually exclusive. The contention of the learned counsel for the appellant therefore that adjudication proceedings by the

Custom Authorities and the prosecution of the offender in a criminal Court both of which are based on a common single act amount to 'double jeopardy's wholly misconceived. The doctrine of 'double jeopardy' which is a term of American Law corresponding to the principle of *autere fois acquit and autre fois convict* of the English Law as embodied in section 403 of the Criminal Procedure Code, prohibits a duplicate trail and a duplicate punishment for the same offence. But it is quite clear that the adjudication proceedings for the confiscation of the goods under the Act neither involve a criminal prosecution nor a punishment for an offence. No trial of the offender takes place for any offence nor is any punishment awarded to the offender. Therefore, no question of double jeopardy arises when simultaneously or subsequently a trial is held to determine the guilt of the individual who has been concerned in the offence in respect of the goods which are the subject-matter of the adjudication proceedings. And since the proceedings for adjudication by the custom authorities and the criminal prosecution of the offender in the Court are not inter-dependent, they can proceed simultaneously and neither can remain under suspension for the sake of the other…'

The Supreme Court of Pakistan in a case subsequently coming before them, reiterated

the earlier view in a case reported as *Central Board of Revenue and another vs. khan Muhammad* [PLD 1986 SC 192] in the following words:-

> "11. The other contention advanced by the learned Deputy Attorney General was that the prosecution proposed to be launched against the respondent on the same facts has been seriously prejudiced by the High Court having interfered with the adjudication proceedings taken against the respondent. The apprehension entertained by the learned Deputy Attorney General is legally unfounded and untenable. It has been held by this Court in Adam vs. Collector of Customs (PLD 1969 SC 446) that the criminal prosecution of a person who commits an offence under the Sea Customs Act in relation to the goods which are seized under the said Act by the Customs Authorities falls in a separate category. While the confiscation proceedings taken by the Customs Authorities are in the nature of departmental proceedings in condemnation of goods for the purpose of revenue, the proceedings for criminal prosecution of a person who commits an offence under the Act in relation to those goods are judicial proceedings for determination of the guilt of the person concerned for

> commission of the alleged offence and entailing the punishment for the same. It was held that both are concurrent remedies but each is independent of the other and therefore, they cannot be deemed to be mutually exclusive. They can proceed simultaneously and neither can remain under suspension for the sake of the other. This decision is sufficient dispel any doubt entertained by the department in proceedings with the trial of the accused concerned with the goods involved in the case.'

The Supreme Court of Pakistan in recent case titled *Government of N.W.F.P through Finance Excise and taxation Department Peshawar and 2 others* [2003 SCMR 338] gave the following verdict:-

> "Even otherwise, the prosecution on criminal charge and departmental disciplinary proceedings were entirely different as one relates to enforcement of criminal liability whereas the other is concerned with the service discipline, as such, acquittal on criminal charge had no bearing on disciplinary proceedings. Reference may be made to Amir Abdullah vs. Superintendent of Police and other (1989 SCMR 333)."

Later on, this view has been consistently followed by the Supreme Court of Pakistan in the cases reported as *Haji Sardar Khalid Saleem vs. Muhammad Ashraf and others* (2006 SCMR 1192), *Seema Fareed and others vs. The State and another* (2008 SCMR 839) and *State through Prosecutor-General vs. Jahangir Akthar and others* (2018 SCMR 733). Thus, in light of the dictum laid down in the above reproduced legal precedents, it becomes clear that during the pendency of civil suit, criminal proceedings in the same matter, can be initiated, however, where a question of bona-fide claim may legitimately arise and civil suit has been started, it may be advisable to stay the criminal proceedings and result of the civil suit may be conclusive in matter, hence, the argument of the learned counsel for the appellants is misconceived, therefore, is hereby repelled.

8. Now, we come to the next question i.e. whether the High Court while exercising constitutional jurisdiction under Article 44 of

the Interim Constitution, 1974, can quash an F.I.R.? Article 44 of the Interim Constitution, 1974, confers very wide and vast powers on the High Court, but this vastness demands exercise of these powers sparingly and with great caution in accordance with judicial consideration and established principles of jurisprudence that too in rarest of the rare cases. Discretionary remedies available under the said Article of the Constitution are meant for doing justice and eradicating injustice not the other way around. The High Court has inherent powers to prevent the abuse of process of Court and law, because Courts are established for supremacy of law and to secure innocent people from abuse of process of law and prosecution. Legal position is absolutely clear and also settled by legal precedents that the Courts would not interfere with the investigation or during the course of investigation, which would mean that from the time of lodging the F.I.R. till the submission of report under section 173, Cr. P.C. in Court, this

domain is exclusively reserved for investigating agency and is not open to the High Court to interfere except in exceptional circumstances. It is made clear that the appellants should be at liberty to ventilate their grievance before the Investigating Officer and Investigating Officer is expected to consider the grievance of the appellants by ensuring a fair and impartial investigation in the matter strictly in accordance with law. In the present case, investigation is still incomplete and it is necessary to provide time to police to conclude the investigation and gather proof of appellants' involvement, if any, in the alleged offence. The FIR in the instant case was registered under section 420, 467. 468 and 471, APC., wherein it was alleged that appellants, herein, have prepared a forged and fabricated affidavit and pretended it to be genuinely executed by the father of the respondent. It may be stated that the Police have statutory right to investigate into an offence, as the function of the Court begins when report

under section 173, Cr.P.C. and charge is preferred before it and not before, except in exceptional cases, either to prevent abuse of process of law or to secure the ends of justice, though, no hard and fast rule may be determined by stretch of mere imagination, wherein such power should be exercised, however, the principles may be derived from the decision of the apex Courts. The Supreme Court of India in the case titled *M/S Neeharika, Infrastructure vs. The State of Maharashtra* dated 21.4.2021 (via http://indiankanoon-org/doc/199473647/, accessed on 21.9.2021) discussed plethora of decisions and relied upon the case titled *King-Emperor vs. Khawaja Nazir Ahmed* (AIR 1945 PC 18) which laid down categories of cases where constitutional jurisdiction and inherent power of High Court may be exercised for interference in investigation of quashing of F.I.R. The relevant part of the cited case is reproduced 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 proceeding sought 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 encyclopaedia 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) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an

onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely,

casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

> xviii) 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."

The High Court while exercising constitutional jurisdiction as well as the inherent powers under section 561, Cr.P.C. cannot assume the role of investigating agency or trial Court. Criminal cases are decided on the basis of material so collected by the prosecution and then evidence recorded by the trial Court. The High Court cannot deliberate upon the factual controversies involved in these cases while exercising constitutional jurisdiction. Our this view finds support from the case reported as *Khadam Husasin vs. Abdul Basit and 6 others* (2001 SCR 447), wherein, at page 453 of the report, it has been held as under:-

> "...It was in the aforesaid circumstances that the High Court

> quashed the proceedings in the said case. Irrespective of the view taken by the High Court in the aforesaid case, we are of the view that the High Court has no jurisdiction to quash criminal proceedings at the stage of investigation or thereafter as has been held in number of cases, referred to above, by the Supreme Court of Pakistan. It may be further pointed out here that the High Court in exercise of writ jurisdiction is not competent to assume the role of investigating agency or the trial Court to give verdict as to whether an accused person has committed an offence or not. It is for the ordinary Court to decide the matter under the relevant law."

This Court in a recent case titled *Abdul Ghafoor & others Vs Superintendent of Police and others* (Civil PLA No. 133/2021 decided on 10.6.2021) while dealing with the same proposition has observed as under:-

> "After hearing the learned Advocates representing the parties and going through the record of the case made available along with the impugned order of the learned High Court, I am of the view that as the matter is being probed and investigated by the Investigating Agency and a report under section 173, Cr.P.C. has been submitted before the Court of competent jurisdiction and it is yet to be decided whether the petitioners, herein, are innocent or not and it is a question of fact which can only be determined

> through evidence. It may be observed that criminal cases are to be decided on the basis of material facts so collected by the prosecution and evidence recorded by the trial Court. The High Court is not vested with powers to deliberate upon and resolve the factual controversies even in the cases of ordinary nature while exercising its Constitutional jurisdiction and also cannot assume the role of an Investigating Agency. This view has been consistently enunciated by this Court that the High Court ought to refrain from exercising its writ jurisdiction at the investigation stage of a criminal case except in exceptional cases. The observation made by the learned High Court in the impugned order is quite in accordance with law and the impugned order is unexceptionable, which hardly requires any interference by this Court. The petitioners have failed to point out any legal question involved in the case which is pre-requisite for grant of leave, hence, the leave is refused."

The supreme Court of Pakistan in the case reported as *Col. Shah Sadiq vs. Muhammad Ashiq and others* (2006 SCMR 276) has held as under:-

> "6. In case the contents of the writ petition and parawsie comments along with the aforesaid facts mentioned in chronological order are put in

juxtaposition then it brings the case of respondents Nos. 1 to 3 in the area of disputed questions of fact. It is settled proposition of law that High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction as the law laid down by this Court in the following judgments: -

(i) Muhammad Saeed Azhar v. Martial Law Administrator Punjab and others 1979 SCMR 484; (ii) Umar Hayat Khan v. Inayatullah Butt and others 1994 SCMR 572; (iii) Mst. Kaniz Fatima through Legal Heirs v. Muhammad Salim 2001 SCAMR 1493; (iv) Secretary to Government of the Punjab, Forest Department, Punjab, Lahore through Division Forest Officer v. Ghulam Nabi and 3 other PLD 2001 SC 415; (v) Wazir Ali Soomro v. Water and Power Development Authority and others 2005 SCMR 37."

While discussing the various provisions provided in Cr.P.C., it has further been held by the apex Court at page No. 280 of the same judgment as under: -

"7. It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of

law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in A. Habib Ahmad v. M.K.G. Scott Christian PLD 1992 SC 353. The learned High Court had quashed the F. I. R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by trial Court. The learned High Court had no jurisdiction to quash the impugned F.I.R. by appreciation of the documents produced by the parties without providing Chance to cross-examine or confronting the documents in question. Respondents 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. Even otherwise, respondents have more than one alternative remedies before the trial Court under the Cr.P.C. i.e. section 265-K, 249-A or to approach the -concerned Magistrate for cancellation of the case under provisions of Cr. P.C. The respondents have following alternative remedies under Cr. P.C.

(a) To appear before the Investigating Officer to prove their innocence.

(b) To approach the competent higher authorities of the Investigating Officer having powers vide section 551 of Cr.P.C.

(c) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge them under section 63 of

the Cr.P.C. in case of their innocence.

(d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter,

(e) Rule 24.7 Of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

(f) There are then remedies which are available to accused persons who claim to be innocent and who can seek relief without going through the entire length of investigations.

8. The learned High Court erred in law in accepting constitutional petition by quashing the F.I.R. at the initial stage which was not in consonance with the law laid down by this Court in the following judgments:--

(i) Ghulam Muhammad v. Muzammal Khan and 3 others PLD 1967 SC 317; (ii) Mohsin Ali and another v. The State 1992 SCMR 229; (iii) Abdul Rehman v. Muhammad Hayat Khan and others 1980 SCMR 311; (iv) Marghoob Alam and another v. Shamas Din and another 1986 SCMR 303; (v) Sheikh Muhammad Yameen v. The state 1973 SCMR 622; (vi) Bashir Ahmad v. Zafar-ul-lslaam and others PLD 2004 SC 298; (vii) Kh. Nazir Ahmad's case AIR 1945 PC p. 18; (viii) Shahnaz Begum V. The Honourable Judges of the High Court of Sindh and Balochistan, and another PLD 1971 SC 677; (ix) Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142.

9. According to provisions of Cr.P.C. it is for the Investigating Officer to collect all the facts connected with the commission of offence and if he finds that no offence is committed, he may submit a report under section 173, Cr.P.C. to the Allaqa Magistrate. On the other hand, if on the basis of his investigation he is of the opinion that the offence has in fact been committed, he has to submit report accordingly. However, the report of the Investigating Officer cannot be the evidence in the case. The investigation is held with a view to ascertaining whether or not an offence has been committed. The inquiry, or trial, as the case may be has to be conducted by the Magistrate. If the police is restrained from investigating the matter, their statutory duty, it will in our opinion be tantamount to acting against the law as held in Kh. Nazir Ahmad.'s case AIR 1945 PC. p. 18. The relevant observation is as follows:--

> "Just as it is essential that everyone accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in the matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police under sections 154 and 156 to investigate the circumstances of an alleged cognizable crime without

> requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under section 561-A. The 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, always of course, subject to the right of the Court to intervene in an appropriate case when moved -under section 491, Criminal Procedure Code, to give direction in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. "

10. This Court has reconsidered and approved the aforesaid judgment in Shahnaz Begum's case PLD 1971 SC 677 and again reconsidered and approved in Brig. Imtiaz's case 1994 SCMR 2142.

11. The question of law has also been considered by this Court in Kh. Fazal Karim's case PLD 1976 SC 461 and laid down the following principle:-

> "It is well-settled that the inherent jurisdiction of the High Court under section 561-A, Cr.P.C. is neither alternative nor additional in its character and is to be rarely invoked only in the interest of justice so as to seek redress of grievances for which no other

> procedure is available and that the provision should not be used to abstruct or divert the ordinary course of criminal procedure. Reference may be made in this regard to this Court's judgment in Ghulam Muhammad PLD 1967 SC 317. The same view was reiterated by this Court in Shahnaz Begum's case PLD 1971 SC 677. It was observed in the case of Ghulam Muhammad vs. Muzammal Khan. This Court had occasion to point out that the power given by section 561-A, Cr.P.C. can certainly not be utilized as to interpret or divert the ordinary course of criminal procedure as laid down in procedural statute. "

12. The contention of the learned counsel for the respondent that the dispute between the parties is of civil nature has no force in view of law laid down by this Court in Ahmad Saeed v. The State and another 1996 CMR 186.

13. It is pertinent to mention here that the learned High Court observed in the impugned judgment in para. 6 in the following terms—

> “the factum as who had placed the said Farad Malkeet on the file is still under inquiry by virtue of order, dated 2-2=2005 (Annexure "M). "

14. According to the scheme prescribed by the Cr. P.C., the determination of guilt or innocence of an offender is a serious business which commences with a pre-trial exercise to be judicially carried out by competent Magistrate under section 190 of the Cr. P.C. If these allegations levelled and the evidence collected are found worth a trial, then cognizance is

taken of the case and the offender is summoned for the trial. Subsequently, Chapters XX and XXII-A prescribe mode of inquiry as also held by this Court in the following judgments:--

(1) Bashir Ahmad v.-Zafar-ul-Islaam and others PLD 2004 SC 298 and (2) Bahadur and another v. The State and another PLD 1985 SC 62.

15. We have examined the case from all angles and are of the view that the learned High Court erred in law to quash the F. I. R. in question as we do not find any extra circumstances in the present case on the basis-of which learned High Court had exercised discretion in favour of respondents. It is the duty of the Investigating Agency not only to investigate the matter in a manner to connect the accused with the commission of offence but also to investigate the matter in such a manner so as to save the innocent persons from the agony of endless investigation and trial.

16. It is a settled proposition of law that when there are extraordinary circumstances, High Court is duty bound to protect life, liberty, honour and dignity of every citizen. It must, therefore, take extraordinary measures specially when the statute law is not sufficient to meet a situation and provide protection to the citizens. It is here that the extraordinary jurisdiction under Article 1999 of the Constitution must come to the aid of citizens.

17. In the present case, we do , not find any extraordinary circumstances

on the basis of which the learned High Court had exercised extraordinary jurisdiction.

18. No doubt, exercise of the jurisdiction under Article 199 of the Constitution is discretionary with the High Court but according to the principle laid down by the superior Courts, the discretionary powers must be exercised in good faith, fairly, justly and reasonably having regard to all relevant circumstances. Examining the case of the petitioner in the light of above principles, we are of the considered opinion that the High Court had not only exercised its jurisdiction improperly but also scrutinized the documents which were not proved and allowed the petitioner to rebut the same in terms of the provisions of Qanun-e Shahadat Order, 1984.

19. The scheme of our Constitution is based on trichotomy as is held by the Supreme Court in Zia-ur-Rehman's case PLD 1973 SC 49 and this judgment was reconsidered and approved by the Full Bench of this Court in Mian Nawaz Sharif's case PLD 1973 SC 473. In the system of trichotomy, the judiciary has the right to interpret, the right only to legislate and executive has to implement. The trichotomy of powers which is already delicately balanced in the Constitution, cannot be disturbed as it grants power to each organs to decide the matters in its allotted sphere.

20. It is pertinent to mention here that established practice before the

creation of country was that learned High Courts were very reluctant to quash the proceedings under constitutional jurisdiction. The object and reason behind this practice was that the High Courts had to quash the proceedings summarily which would create chaos due to the following reasons: --

(i) All the procedure and authorities prescribed under Cr.P.C. would become redundant.

(ii) To interfere in the sphere allotted to the executive organ.

(iii) There is every likelihood of injustice in a summary disposal.

(iv) The cases are quashed at initial stages then it would create law and order situation as the people may resort to taking revenge from the opposite party.

(v) Deviation from the past practice is always dangerous.

(vi) Superior Courts always keep judicial restraint in view of Article 4 of the Constitution read with Article 5(2) of the Constitution.

21. In view of what has been discussed above, the impugned judgment of the learned High Court is not sustainable in the eyes of law and is not in consonance with the law laid down by this Court in the aforesaid judgments, therefore, petition is converted into appeal which is allowed. The impugned judgment of the High Court is set aside. Let a copy of this order be sent to the S.H.O. concerned who shall

> proceed in the matter in accordance with law."

9. The question as to whether the Justice of Peace is legally bound to give the accused person right of hearing before giving the direction to police for registration of F.I.R., is concerned, in our considered opinion, if the Justice of Peace after examining the available information reaches at the conclusion that prima-facie a cognizable offence is made out, he is not required to issue notice to the persons against whom registration of case is solicited while deciding a case under section 22-A, Cr. P.C., rather he is required to summon the concerned police officer for giving him direction in relation to registration of a case. We are fortified in our view by the case reported as *Safdar Ali vs. S.H.O. Police Station Bahara-Kahu, Islamabad and 7 others* (2011 P Cr. LJ 913), wherein, while dealing with the identical proposition, the learned High Court of Islamabad at page 917 of the report has observed as under:-

"11. Keeping in view the principles laid down in the above said two judgments as well as judgment of the Hon'ble Supreme Court of Pakistan reported in PLD 2007 SC 539, it becomes clear that Justice of Peace in a petition under section 22-A(6), Cr.P.C. does not perform judicial function, rather he performs administrative function, so Justice of Peace in exercise of his powers under section 22-A(6), Cr.P.C. is not required to pass a detailed judicial order. Since requirement of law is that even administrative order should be a speaking order. But since he is not required to decide the rights of the parties, so in that sense he is not required to pass judicial judgment. It is also to be noted that Justice of Peace while deciding a case under section 22-A and B, Cr.P.C. is not required to issue notice to the persons against whom registration of case is required. In the ordinary circumstances, if a person wants to file report against another person then the person against whom report is to be lodged cannot be called and be asked to explain his position. As such Justice of Peace is only required to summon the concerned police officer, so that a direction may be issued to him to register a case provided, the justice of peace comes to the conclusion that on the basis of available information cognizable case is made out. Since the Justice of Peace does not exercise judicial powers, so there can be no question of holding inquiry or deciding the civil rights of the parties."

In another case reported as *Muhammad Aslam vs. Additional Sessions Judge and others* (2004 P. Cr. LJ 1214), the same proposition came under consideration of the learned High Court Lahore. The learned single Judge in the Lahore High Court while resolving the proposition held as under:

> "...It thus, flows that if there is information relating to the commission of a cognizable offence, it falls under section 154, Cr. P.C. and a police officer is under statutory obligation, without entering into inquiry and without hearing the accused persons, to enter it in the prescribed registrar. For this exercise, the only pre-condition need is that the information should disclose a cognizable offence, on the face of the allegations. Failure of the concerned Police Officer to register a complaint so made, amounts to failure to discharge statutory obligations, which attracts provisions of section 22-A, Cr. P.C. Since no hearing is needed for proceedings under section 154, Cr. P.C. consequently, there is no such obligation on the learned Additional Sessions Judge, seeking enforcement of those provisions."

Thus, in view of the above discussed legal precedents, the argument of the learned counsel for the appellants that the learned Justice of Peace erred in law while giving direction for registration of F.I.R. without hearing the appellants, is devoid of

force, hence, the same is hereby repelled. Keeping in view the overall facts and circumstances of the case as well as the survey of the case law on the subject, we are of the view that the learned High Court while dismissing the writ petition of the appellants, herein, through the impugned order, has committed no illegality or irregularity. The appellants have failed to point out any legal infirmity in the impugned order, rather the impugned order appears to have been passed in accordance with law, which warrants no interference by this Court.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed. No order as to costs.

JUDGE JUDGE.
Muzaffarabad.
29.9.2021