IN THE HIGH COURT OF SINDH AT KARACHI

CR. MISC. APPLICATION NO.392/2018

Date | Order with signature of Judge

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1. For order on office objection at A
2. For hearing of main case.
3. For order on MA No.10753/2018.

27.02.2019

Mr. Sarmad Hani advocate for applicant.
Mr. Nasrullah Korai advocate for respondent No.2.
Mr. Faheem Hussain, DPG.

O R D E R

SALAHUDDIN PANHWAR, J: Through instant application, applicant seeks quashing of FIR No.602/2018, u/s 406, 420, 468, 471, 506 and 34 PPC, PS Darakshan.

2. Precisely facts as disclosed in the FIR are that complainant reported that he has his own business, in the year 2015 he met with Muhammad Akram Fahim who told the complainant that he is owner of Company of Pipeline Construction, matter whereof is going on with PARCO in which complainant was asked to help him, Muhammad Akram having prepared agreement gave to him, as per Agreement complainant started his work with PARCO and got completed, matter of remaining amount were not settled with PARCO, when he liked complainant's work he involved him as a partner in all his projects but after the completion of work, Muhammad Akram Faheem did not give him his due share. They are liable to pay him Rs.78 million in respect of this project which has not been paid to him yet although he invested in the construction of the project and had a share in the project. In addition to that two projects of PPL, two projects of Egrogen, on one project he worked in partnership with Muhammad Akram Faheem, his payment is being blocked on the PPL project and his share is not being given in the Egrogen project and by way of fraud Rs.1 crore BG was done from was

done from Bank Al Habib and tried to receive duplicate cheque and BG document from PPS by way of fraud in which he got succeeded. Did not pay salary to the employees and no labour were given their due remuneration, complainant was also not given any share from the project and no payment was made to him and no share or amount was paid to him in any previous project and Muhammad Akram is liable to pay him Rs.134 Million which were fraudulently received during 2015 till 2017 in respect of these projects with help of his other accomplices Shakeel, Miss Sayan, Miss Maryam, Amanat Mangi, Shamim Faiber, when he went for discussion he was told that he will not be paid anything and would be killed if went there again.

3. Learned counsel for applicant while referring case of 1968 SCMR 1256, PLD 2002 SC 590, 2000 SCMR 122, 2012 SCMR 94 and 2014 MLD 524 contends that issue involved in in question FIR is of civil nature hence from the face of it ingredients of any criminal offence are not available therefore further proceedings would be completely abuse of the process of law.

4. In contra, learned counsel for respondent as well DPG contend that FIR is only first information hence information cannot be quashed; it is right of investigation officer to investigate the matter, in case FIR is false he would be competent to recommend the proceedings of section 182 CrPC or if offence is made out, submit report under section 173 CrPC and only Magistrate is competent to decide to accept or disagree with the report.

5. Learned counsel for applicant was put on notice that he shall satisfy that under what manner any FIR can be quashed, though he has relied upon different cases showing therein that this court in inherent

jurisdiction is competent to quash such FIR which has consequence of arrest of the applicant.

6. Being fully conscious of the legal position that an FIR is meant to bring the law into motion only i.e ***'investigation'*** which, I shall insist, not necessarily make it mandatory to cause arrest of the nominated person. Reference may well be made to one of the *guiding & binding* instructions, detailed in the case of *Sughran Bibi v. State* PLD 2018 SC 595 as:-

> "**Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR** or in any other version of the incident brought to the notice of the investigation officer by any person **until the investigating officer feels satisfied that sufficient justification exists for his arrest** and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules,1934….

The above legal position is sufficient to eliminate the plea which is being pressed by the petitioner to seek quashment.

7. To properly attend other plea of the petitioner that matter is one of *civil* dispute and no **offence** is made out from contents of the FIR hence FIR to be quashed, it would be conducive to refer the provision of Section 154 of the Code which is that :-

> "**Information in cognizable cases**. Information relating to the, commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced writing by him or under his direction and then read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed 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."

Prima facie, the in-charge of a police station is left with no discretion to record an oral information, which is claimed to be one spelling out commission of cognizable offence. Per this provision the incharge is not required to make any *preliminary inquiry / assessment* regarding commission of a **cognizable offence** or **otherwise.** Since, there can be no denial to the fact that at such stage it is only the incharge of a police station who *legally* is authorized to bring the law into motion (*investigate)* or otherwise hence I am not inclined to take mere lodgment of FIR as start of investigation. To find substance to my such view, a little effort brought the provision of Section 157 of the Code before me which, for ease, is referred hereunder:-

> **157. Procedure where cognizable offence suspected:** (1) If from information received or otherwise, an officer incharge of a police-station **has reason to suspect** the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstance of the case, and, if necessary, to take measures for the 'discovery and arrest of the offender:
>
> Provided as follows: --
>
> > (a) Where local investigation dispensed with: When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer incharge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
> >
> > (b) Where police-officer incharge sees no sufficient ground for investigation: if it appears to the officer incharge of a police station that there is no sufficient ground for entering on an investigation, **he shall not investigate the case.**
> >
> > (2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer incharge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Provincial Government the fact that he will not investigate the case or cause it to be investigated.

From above referral, it should no more be confusing that mere recording of a statement in 154 Cr.PC book is not sufficient for initiating the **investigation** but it shall always be the satisfaction of incharge police station to see whether there is reasonable suspicion of commission of **cognizable offence** or otherwise?. I would insist that only such satisfaction can legally operate as trigger to start investigation and nothing else because *legally* such person (incharge of a police station) has been given such competence. It is not a matter of dispute that in instant matter the incharge police station is of such view i.e ***'suspicion of commission of cognizable offence'*** which has resulted into start of investigation. Since, there is another well settled legal position that even mere start of the investigation *legally* is not believed to result in sending up of the nominated or unknown person to face the ***trial*** but can well result in disposal thereof in **'B'** and **'C'** classes and even can well turn the *informant* into an **'accused'.** In the case of Sughran Bibi supra it held as:-

> This Rule should suffice to dispel any impression that investigation of a case is to be restricted to the version of the incident narrated in the FIR or the allegations levelled therein. It is quite evident from this Rule that once an FIR is registered then the investigating officer embarking upon investigation many not restrict himself to the story narrated or the allegations levelled in the FIR and he may entertain any fresh information becoming available from any other source regarding how the offence was committed and by whom it was committed and he may arrive at hi own conclusions in that regard. The final report to be submitted under section 173 Cr.P.C. is to be based upon his final opinion and such opinion is not to be guided by what the first information had stated or alleged in the FIR. **It is not unheard of that sometimes the final report submitted under section 173 Cr.PC. the first information is put up before the court as the actual culprit**.
> **(***Under lining is mine)*

Therefore, *normally* interference into **investigation** was never encouraged rather things were allowed to be properly unearthed by the competent

person, who, per law, was / is never believed to blindly go onto dotted line of informant or to be influence of view of incharge police station regarding **'suspicion of commission of cognizable offence'.** The investigation is a statutory obligation and has its own objectives not aimed to arrest nominated person and to *blindly* send him up to face trial. Such legal position, stood defined / detailed, by honourable Apex Court in the case of *Sughran Bibi* supra, hence would not go in further details, but would prefer to refer the same as:-

> "27. As a result of the discussion made above we declare the legal position as follows:
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> (i) **According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence**. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard;
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> (ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and **such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth**;
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> (iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter;
>
> (iv) During the investigation conducted after the registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.PC in the same case. **No separate FIR is to be recorded for any new version of the same incident brought to the notice of the**

investigating officer during the investigation of the case;

(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules 1934 "It is the duty of an investigating officer to …….**He shall not commit himself prematurely to any view of the facts for or against any person.**"

(vi) **Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigation officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules,1934….**

(vii) Upon conclusion of the investigation the report to be submitted under section 173 Cr.PC is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident , advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.

8. The above legal position and binding guidelines, compel me to conclude that the jurisdiction of this Court *normally* cannot be used to seek quashing of an FIR rather it shall always be appropriate to let the law take its own course by the very person, so empowered by the law and procedure *itself.* The lawful course of **'investigation'** legally is not limited to unearth the crime but includes a competence for initiation of appropriate action against false information which (*object)* cannot be achieved if such course is stopped or interfered. This has been the reason that while maintaining a balance the mere nomination of a person as **'accused'** has not been a sole ground for police to arrest him rather same stands subject to his (I.O) being satisfied that sufficient justification exists for arrest which, too, as guided by the relevant

provisions. The inherent jurisdiction of this Court, I would add, be not invoked for purpose of getting a view regarding commission of an offence or stamp *finality* or otherwise of a *mere* suspicion regarding commission of cognizable offence but could only be invoked rarely which, *too*, to secure ends of justice *only* for which there is no procedure available. Reference is made to case of *Asfandyar & another v. Kamran & another* 2016 SCMR 2084. The mere view of accused that such *suspicion* of commission of cognizable offence, viewed by competent person, is not correct would never be sufficient to deny *least* prevent the lawful course of investigation which, as already discussed, not meant to sent up nominated accused but was / is to let the law take action against accused or *informant*, if he is found so. I would also add here that even a positive conclusion by I.O in shape of 173 Cr.PC report is of no binding effect upon Magistrate nor legally causes any prejudice to presumption of innocence attached to a sent up accused *even.* **Thus, now, I can safely conclude that *normally* seeking quashing of an FIR is not available for an accused during course of investigation even by invoking inherent jurisdiction of this Court within meaning of Section 561-A Cr.PC *else* the balance, provided by law and detailed above, shall loose its significance.**

9. There appears no any *exceptional* circumstances in instant case rather allegation of fraud is yet to be investigated and even the Investigating office, *present,* contends that per his view case is made out against applicant. Needless to add that such view shall not allow the investigating officer to detract from his legal obligation to properly investigate the matter and to make a legal disposal of the FIR. If at the end of the day the FIR is found false, the I.O must resort the course, provided by the law against those who dare to use the law for their own purpose.

10. In consequence to what has been discussed above, I am of the clear view that instant petition is not sustainable and is dismissed accordingly. Interim order is recalled.

While parting, I shall add that the PG office shall ensure circulation of this order to all police station (s) with rider that guidelines, provided in case of *Sughran Bibi* supra, must be followed as well provision of Section 157 Cr.PC be strictly adhered to.

J U D G E

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