

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**PRESENT:-**  
**MR. JUSTICE SHAMSUDDIN ABBASI**  
**MR. JUSTICE ADNAN IQBAL CHAUDHRY**

**Constitutional Petition No.D-3084 of 2019**

Petitioner Jango son of Dost Muhammad through  
Mr. Muhammad Tariq, Advocate.

Respondents Province of Sindh & 13 others

Mr. Jan Muhammad Khuhro,  
Assistant Advocate General, Sindh.  
Mr. Hussain Bux Baloch, Additional  
Advocate General, Sindh.  
Respondent No.11/SIP Muhammad Aslam,  
P.S. Site Super Highway Industrial Area,  
District Malir, Karachi.

Dates of hearing 24.09.2019

Date of order **30.09.2019**

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**ORDER**

**SHAMSUDDIN ABBASI, J:-** By means of instant constitutional petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, the petitioner has prayed following relief{s):-

*{a} To declare that FIRs No.256/2019 is quashed against the petitioner {Jango} and other persons as malafide, ultra vires, ab initio and null and void.*

*{b} To direct the respondents No.1 & 2 to initiate inquiry against respondents No.3, 6, 8, 10, 11 & 14 and after inquiry punish them accordingly.*

*{c} Pass ad interim order not to arrest the petitioner and his attorney till the finalization of petition.*

*{d} To grant any other equitable relief/s deemed proper under the circumstances of this petition.*

2. Notices were issued to SHO P.S. Site Super Highway, District Malir, Karachi, as well as A.G. and P.G.

3. It is, inter-alia, contended on behalf of the petitioner that there is a civil dispute between petitioner and respondent No.13 and a civil litigation is pending against them before this Court vide Suit

No.787 of 2004 titled as “*Jango v Fasahatullah Khan & 13 others*” wherein interim order has been passed and based on such litigation the respondent No.13 has registered a false case vide FIR No.256 of 2019 against petitioner and others in league with police, hence the same is liable to be quashed. In support of this submission, the learned counsel for the petitioner has placed photographs and a C.D. It is next submitted that the lodgment of FIR is the result of malafide and dishonest intention on the part of respondent No.13 as otherwise the petitioner and others have nothing to do with the allegations leveled therein. It is also submitted that the respondent No.13 just to pressurize the petitioner and to achieve his ill goals has involved the petitioner and others in a false criminal case. Lastly submitted that there is no effective and efficacious remedy available to the petitioner except to invoke the extra ordinary constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, 1973.

4. In response to notice, respondent No.11 SIP Muhammad Aslam of P.S. Site Super Highway, District Malir, Karachi, appeared and filed a statement mentioning therein that after usual investigation case vide FIR No.256 of 2019 had been challaned before the Court of competent jurisdiction vide Charge Sheet No.269 of 2019 dated 21.06.2019, whereby the learned Magistrate has taken the cognizance of offence and now the matter is pending adjudication before the learned trial Court.

5. In contra, the learned A.A.G. and Additional A.G. have submitted that the case has been challaned and the petitioner has alternate remedy in law for redressal of his grievances.

6. Heard and perused the record.

7. A bare perusal of record reflects that respondent No.13 has lodged FIR No.256 of 2019 under Section 420, 468, 471, 448, 384, 385, 506-B and 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 at P.S. Site Super Highway District Malir, Karachi, against petitioner & others and after completing the usual investigation a report under Section 173, Cr.P.C. was filed in Court whereby the learned Magistrate has taken the cognizance of offence. Based on this position, the counsel for the petitioner was asked to satisfy this Court

on the point of maintainability of this petition in view of the decisions rendered by Hon'ble apex Court in the cases of *Director General, Anti-Corruption Establishment Lahore and others v Muhammad Akram Khan and others* {PLD 2013 Supreme Court 401} and *Muhammad Farooq v Ahmed Nawaz Jagirani and others* {PLD 2016 Supreme Court 55}, but he failed to offer any submission.

8. At this juncture, it would be conducive to refer the case of *Director General, Anti-Corruption Establishment Lahore* {supra}, wherein it has been observed as under:-

*“Apart from the impugned order had been passed by the learned Judge-in-Chamber of the Lahore High Court, Lahore at a time when a Challan in the relevant criminal had already been submitted before the learned trial court and the learned Trial court had already taken cognizance of the case. The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under section 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction”.*

In the case of *Muhammad Farooq* {supra}, the Hon'ble apex Court held that:-

*“It is now well entrenched legal position that where a power is coextensive with two or more Courts, in ordinary circumstances, propriety demands that the litigant must first seek remedy in the Court of the lowest jurisdiction”.*

9. Learned counsel for the petitioner has placed bundle of documents pertaining to civil litigation for which it would suffice to say that while exercising constitutional jurisdiction, this Court is not supposed to stamp legality or otherwise to a document or a claim particularly when same is subjudiced before original side of this Court.

10. For the foregoing reasons and placing reliance on the citations, referred herein above, we find this petition meritless inasmuch as the learned Magistrate has already taken a cognizance

in the matter and the petitioner may avail an alternative remedy of invoking the jurisdiction of the learned trial Court under the provision of Section 265-K, Cr.P.C., if he is so desired. If such an application is filed, the same shall be decided on its own merits.

11. Foregoing are the reasons for our short order dated 24.09.2019, whereby we had dismissed this petition.

JUDGE

JUDGE

Naeem