

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. 5- 236 of 2021

[Salamat Ali Lakho v. I.G. Sindh and others]

Mr. Muhammad Hashim Leghari, Advocate for petitioner

Nemo for private respondents.

Mr. Muhammad Ismail Bhutto, Addl. A.G. along with SIP Nasir Rao PS A-Section Tando Allahyar, SIP Nooruddin SHO PS Missan, SIP Muhammad Aslam Mahesar PS Dasori Tando Allahyar, SIP Abdul Wahid Baloch Ex-SHO Piyaro Lund, Insp. Muhammad Rahim I.O PS B-Section Chamber, Insp. Fateh Muhammad PS Old Mirpur and ASI Ghulam Muhammad Solangi PS Pinyari & I.O of Crime No. 6 of 2021

Date of hearing and order: 23.9.2022

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant petition, the Petitioner approached this court complaining of police harassment and registration of 21 false F.I.Rs against him at the behest of private respondents.

2. Brief facts of the case are that the petitioner launched a housing scheme under the name and style of 'Bahrain Golden City Mirpurkhas'; that respondent No.9 is a businessman of Mirpurkhas whereas respondent No.10 is a local politician; that respondents 2 & 6 are sleeping partners and close friends of respondent No.9; that due to tremendous response received by the petitioner from the general public in the above scheme, as such, respondents 2, 6, 9 & 10 demanded share/ extortion from the petitioner and on his refusal, they threatened him for killing and involvement in false cases through official respondents 3, 4, 5, 7 & 8; that the petitioner to protect his civil rights filed F.C Suit No.102 of 2021 against respondents 9 & 10 in the Court of 2nd Senior Civil Judge Mirpurkhas & Cr Misc. App. No. 449 of 2021, seeking order for protection; that due to the above, respondent No.9 malafidely lodged false FIR bearing Crime No.43 of 2021 at Police Station Cantonment Hyderabad against the petitioner, his gunman and brother; whereas respondent No.10 also malafidely lodged false FIR No.12 of 2021 at Police station Sultanabad District Tando Allahyar against the brother of petitioner and his gunman; that respondent No.10 also filed Cr. Misc. Appl. No. 448 of 2021 against the petitioner and his brother in the court of Sessions Judge / Ex-officio Justice of Peace Mirpurkhas which was disposed of vide order dated 23.4.2021; that due to highhandedness and harassment of respondents 2 to 10 in connivance with each

other the petitioner and his family members are under mental distress and are unable to perform their ordinary pursuits of life and unless speedy cognizance is taken by this Court there is every likelihood that respondents 2 to 10 in connivance with each other may kill the petitioner, his family members or involve them in false cases.

3. Mr. Muhammad Hashim Leghari learned counsel for the petitioner has submitted that under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 to enjoy the protection of law and to be treated under the law is the inalienable right of every citizen and in particular, no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except under the law. He further submitted that number of false cases has been registered against the petitioner by the police officials at the behest of private party and they have become a party in the proceedings just to facilitate the political figures, who have their moto to compel the petitioner to succumb to their illegal demands thus police is being used in this regard and if the private respondents have any claim against the petitioner and / or have any evidence in this regard, it must be investigated under the law; therefore the police shall not be their stogies, therefore the petitioner has very legitimate right to raise a voice and it must be investigated by an honest police officer, who shall not be influenced by the political regime and/or the private respondents. He further submitted that there is a violation of fundamental right of the petitioner due to police misconduct, which could give rise to a liability under public law, apart from criminal and tort law; and the Government of Sindh is equally liable for such conduct of the police. He prayed that high power committee may be constituted to re-investigate the cases lodged against the petitioner and till such report come forward no fresh F.I.R shall be lodged against the petitioner, without permission of this court.

4. Private respondents though served are not in attendance to submit their point of view.

5. At the outset I asked learned Additional Advocate General to apprise this court as to why so many F.I.Rs have been registered against the petitioner; he referred to different provisions of Code of Criminal Procedure, 1898 and the Police Rules, 1934 and has maintained that the statutory scheme of criminal law in vogue in the country envisages registration of FIR regarding an incident involving commission of a cognizable offense; and police is duty bound to record every fresh version of the incident brought to its notice. He submitted that the investigating officer is legally obliged to investigate the case from every possible angle and to probe into every version of the incident brought to his notice and then he is to submit his final report on the matter in terms of the facts found by him and not in terms of any particular version of the incident advanced by any person.

6. After hearing the counsel for petitioner, learned AAG, and the police officers present in court, attending to all the statutory provisions relevant to the legal issue involved, and perusing the precedent cases available on the subject I find that for proper resolution of controversy at hand it is imperative to correctly understand the scheme of the Code of Criminal Procedure, 1898 and the Police Rules, 1934 regarding registration of criminal case through an FIR and its investigation by the police.

7. In principle the primary purpose of F.I.R. is to inform about the commission of a cognizable offense that a police officer is empowered to investigate under Section 156 Cr.P.C. The Police Officer receiving that information may question the informant to find out his source of information about the names of offenders and the witnesses and whether the informant himself was an eye-witness as laid down in Police rule 21.1(4). However, where the FIRs are regarding independent and distinct offenses, registration of subsequent FIR cannot be prohibited on the ground that some other FIR had been filed against the petitioner in respect of other allegations made against him. Besides in cases where the same group of people similarly commit offences in different localities falling under different jurisdictions. Even if these incidents are committed close to time, there can be separate FIRs. Section 154 Cr.P.C. places an unequivocal duty upon and gives discretion to the police officer in charge of a police station to register FIR on receipt of information that a cognizable offence has been committed. Non- registration of crime is a violation of law and the Constitution. However, the Constitution, of 1973 ensures the right to the procedure established by law and inunct that a person shall not be deprived of his dignity, life, and liberty except under the fair procedure established by law.

8. The statutory rights and duties of police officers to 'register' information relating to the commission of a cognizable offense, to investigate a case where the commission of a cognizable offense is suspected, and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offense upon a police report, are not circumscribed by any power of superintendence or interference by the Magistrate. Neither any sanction is required from a Magistrate to empower the Police to investigate a cognizable offense nor should judicial authorities interfere in matters which are within the province of police officers and into which the law imposes upon them the duty to inquire. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with the due observance of law and order is only to be obtained by leaving each to exercise its function always, of course, subject to the right of Court to intervene in an appropriate case.

9. It is no doubt true that this Court should exercise due circumspection and caution, and not unnecessarily interfere when a complaint into a cognizable

offense is still under investigation, as the possibility of another incident, giving rise to a similar or a different set of offenses, coming to light during such an investigation cannot be ruled out. It cannot, however, be lost sight of that in cases where multiple investigations into the very same offense may result in the possibility of fundamental right of an accused, under the Constitution, being violated non-interference may well fail in this Court to discharge its constitutional obligations of safeguarding the fundamental rights of citizens. The right to life and liberty of a citizen imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right except under the procedure prescribed by law. In other words, conferring the right on a citizen involves the compulsion on the rest of society, including the State, not to infringe that right. It would be wholly inappropriate for the Court, in cases where multiple complaints are registered in different police stations concerning the very same incident, to exercise restraint, await completion of the investigation, and permit violation of the fundamental rights of a citizen under the Constitution of Pakistan.

10. It appears from the record that 21 FIRs in one month have been registered against the petitioner and his immediate family members. Primarily acts of wrongful restraint and detention, planting weapons to show fake recoveries, tampering with or framing incorrect records, the commission of crime etc. are neither acts done nor purported to be done in discharge of official duties. No sanction of Government is required in ordering the prosecution of such public officials. There is no doubt that the Government can be held accountable under private law through a civil suit for compensation, for violation of fundamental rights caused by police misconduct. But precedents suggest that it is a constitutional petition under public law that has been used as a remedy to the exclusion of private law. The superior courts have repeatedly clarified that in cases of violation of fundamental rights, the remedy of compensation is available under writ jurisdiction and in addition to the available ordinary processes under a private law remedy. Besides, the police can be held liable for violating laws and rules through internal mechanisms of remedial action such as those established under the Police Act, 1871, or any of the other laws regulating them.

11. The Police officials present in Court submit that no harassment is caused to the petitioner, nor they intend to do so in the future.

12. Prima-facie there is the force in the contention of learned counsel for the petitioner. In such circumstances as discussed above, I do feel persuaded to direct IGP Sindh to carry out probe faithfully of such state of affairs through Mr. Ali Sher Jakhri AIGP, as multiple F.I.Rs have been lodged by the police against the petitioner at the behest of private parties and fix responsibility upon the delinquent officers/officials after hearing them; and ensure that no further F.I.Rs

against the petitioner are to be registered without permission of concerned Judicial Magistrate of the area.

13. Petition stands disposed of in the above terms. Office to send a copy of this order to the IGP compliance.

JUDGE

Karar_Hussain/PS*