

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-544 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on MA No.2201/2025
- 2. For orders on office objections
- 3. For orders on MA No.2202/2025
- 4. For orders on MA No.2203/2025
- 5. For hearing of main case.

08.04.2025.

Mr. Ghulam Mustafa Abbasi, advocate for the petitioner.
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J U D G M E N T

Syed Fiaz ul Hassan Shah, J: 1. Urgent application is disposed of.
2to5. Through this petition, the petitioner has prayed as under:

- “(a) That this Honorable Court may be pleased to quash the impugned FIR bearing Crime No.05 of 2025, U.S 353, 324 PPC, of PS Manjhand lodged by the Respondent No.3 being false, fabricated, concocted and manipulated story.
- (b) That this Honorable Court may be pleased to suspend/stay the impugned FIR bearing Crime No.05 of 2025, U.S 353, 324 PPC, of PS Manjhand lodged by the Respondent No.3 till the final disposal of the main petition.
- (c) That this Honorable Court may be pleased to issue direction to the Respondent No.2 to provide legal protection to the petitioner and her family members as at the hands of Respondent No.3 and other unknown police officials.
- (d) That this Honorable Court may be pleased to issue direction to the respondents No.3 to not lodged any false FIR against the petitioner and her family members at the hands of private respondents No.6 and further give

direction to the official respondents not to arrest the petitioner and her family members.

(e) Any other relief which the Honorable Court deems fit and proper in view of the above fact for protection of Petitioners and in the interest of justice.”

The Counsel for the petitioner has mainly argued that a false case has been registered by the police, therefore, it may be quashed. We have noticed that FIR No.05 of 2025 PS Manjhand District Jamshoro was registered for offence under Section 353, 324 PPC. Since, the FIR has been registered having statutory backing under Section 154 Cr.P.C, For the sake of convenience, the same is reproduced hereunder:

“154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer in-charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information whether given in writing or reduced to writing as aforesaid shall be signed by 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.”

Undoubtedly, the constitutional jurisdiction conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, a High Court can quash an FIR but such power cannot unstintingly and frequently exercise in the Constitutional or inherent jurisdictions by this Court to quash an FIR and it can exercise sparingly in exceptional cases within parameters settled by the Supreme Court

of Pakistan. The Hon'ble Supreme Court of Pakistan in case ***“Ajmeel Khan v. Abdul Rahim and others” (PLD 2009 SC 102)*** held:

“6. Needless to emphasis, that 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. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamount to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police.”

[Emphasis added]

In another case ***“Gulam Mustufa v. State” (2008 SCMR 76)*** the Supreme Court held that:

"High Court has no jurisdiction whatsoever to take the role of the investigating agency and to quash the FIR, while exercising constitutional power under Article 199 of the Constitution or under section 561-A Cr. P.C. unless and until very exceptional circumstances existed."

These exceptional grounds have been rendered down by the apex Court, for instance in case ***“FIA, Director General FIA and others v. Syed Hamid Ali Shah and others” (PLD 2023 SC 265)***, the

Supreme Court of Pakistan highlighted that High Court can quash FIR under its writ jurisdiction when FIR is patently illegal or contrary to law or it did not constitute a cognizable offence. Although, there is no restriction has put on the High Court to invoke the provision of writ jurisdiction for quashment of FIR, however, the said obstruction or rampart thrown up across a way or relief to check the balance and importance of provision of section 154 Cr.P.C and recognized principles that no disputed facts can be resolved in the constitutional jurisdiction and it must proceed within the operative statutes. Notably, the intent of legislatures is clearly understandable as various provisions are available under the Criminal Procedure Code, 1898 with the Investigation Officers or Prosecutor or even Judicial Magistrate of area while supervising investigation or even during the trial by the Court of Judicial Magistrate or Court of Sessions under the provisions of Sections 63, 249-A or 265-K and in the presence of such alternate remedies, the quashment of FIR in writ jurisdiction for the grievance which can conveniently be attributed under the statutory provision, cannot be invoked or this Court does not appreciate as per the settled legal principles of power and scope under the Constitutional jurisdiction. The Supreme Court of Pakistan has highlighted the fundamental points; “exceptional circumstances” and “alternate remedy” or “disputed facts”, where a High Court ought not to not interfere with the FIR and prefer to proceed the investigation or trial to its logical way, in a landmark case **“Col. Shah Sadiq versus Muhammad Ashiq and others” (2006 S C M R 276)**

“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-Islaam 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 W.P No. 1976-Q of 2022 7 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 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."

The mere statement of petitioner or assertion alone that a false case or FIR is registered against him is insufficient to establish constitutional jurisdiction and to adjudicate the *lis* under the Constitutional jurisdiction of this Court. The judicial propriety does not permit to quash the FIR of cases which are not squarely fall within defined parameters of the rules

laid down by the Supreme Court of Pakistan and which involve disputed facts or controversial facts requires a full probe, inquiry or investigation and such procedure culminated in the shape of police report under section 173 Cr.P.C. The involvement of disputed facts or factual controversies cannot be adjudicated in exercise of its constitutional jurisdiction under Article 199 as held by this court in the cases of ***“Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 246), “Amir Jamal and others v. Malik Zahoor-ul-Haq and others” (2011 SCMR 1023) and “Fida Hussain v. Mst Saiqa and others” (2011 SCMR 1990), “State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd.” (PLD 1983 SC 280).***

The other contraceptive barrier for the petitioner to establish the constitutional jurisdiction is alternative remedy. The constitutional jurisdiction can only be invoked if the petitioner has no other efficacious and effective remedy available under the statutory provisions. The operative statutes and sub-ordinated legislation provide alternative avenues for the reliefs what have urged before us. Under the scheme of criminal jurisprudence in every criminal case, a criminal investigation terminated into a police report¹ or charge sheet² or reference³ or confidential final report⁴ or challan solely depends upon formation of independent views by a Judicial Magistrate as required under section 190(3) Cr.P.C. or by a Anti-Terrorism Court while accepting or rejecting challan on evaluation of investigation report and material together collected thereto. Comparatively, the alternate remedy can

¹ As in the Criminal Procedure Code, 1898

² As in the Police Rules, 1934

³ As in the National Accountability Ordinance, 1999

⁴ As in the Federal Investigation Agency Act, 1974 or the Anti-Corruption Act, 1991 or its Rules of 1993

conveniently accomplish the purpose of petitioner and is equally effective and efficacious and in this situation it again effectively bars the constitutional jurisdiction of this Court. Reliance can be placed on cases entitled a ***“Gul Ahmed Textile Mills Ltd v. Collector of Customs Appraisement”***, (1990 MLD 126), ***“Pak. Metal Industries v. Assistant Collector”***, (1990 CLC 1022), ***“Allah Wasaya v. Tehsildar/AC 1st Grade”***, (1981 CLC 1202), ***“Syed Riaz Hussain Zaidi v. Muhammad Iqbal”***, (PLD 1981 Lah. 215) & ***“Abdul Hafeez v. Chairman, Municipal Corporation”*** (PLD 1967 Lah. 1251).

The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or police or Investigation Officer could be substantiated with the very action when it is patently illegal, unlawful or ultra vires or done or performed in colorable exercise of jurisdiction vested in such authority or officer or propriety demands or permit that it is without any convoluted inquiry or in other words when it does not involve disputed or controversial facts which may without any question assuredly avoid necessitation of adoption of normal course of trial or adjudication by a Court of law. The expression “adequate remedy” signifies an effectual, accessible, advantageous and expeditious remedy which obviously must have statutory adherence with or requirement of such statutory mandate which is generally called as “jurisdiction”. Since the statutes provides more adequate remedy ***remedium juris*** and expressive adequate remedy and ways are more efficacious, beneficial, convenient, effective, speedy and appropriate within criminal jurisdiction of the inferior courts, for instance the trial Court would have to reach at certain conclusion after recording of evidence, testimonies of prosecution witnesses

together with record, material or documents, if any, produce by prosecution side and during the course of trial, the statutes permit the court to grant bail as per recognized judicial principles or exemption from personal appearance, or discharge when charge is groundless or release as a case of further inquiry under section 497(2) Cr.P.C. or acquit under section 249-A or 265-K of the Cr.P.C., therefore, in the presence of adequate remedy which is more efficacious, speedy and effective, the petition is not entertainable. Reference can be placed on the case “**Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others**” (2011 SCMR 1813). To sum up the discussion, the petitioner has failed to point out any of the ingredients for the quashment that may modify this Court to quash the FIR. Therefore, the constitution petition stands dismissed in *limine*.

We are very well aware that in the cases of alleged police encounter and ineffective firing, the Honorable Supreme Court of Pakistan while hearing case of “**Zeeshan Shani v. The State**” (2012 SCMR 428) has ruled that standard of proof should be far higher in the case of police encounter and ineffective firing as compared to any other criminal case as well as the same police cannot be allowed to investigate the offences with obvious reason of impartiality. The Relevant para is re-produced hereunder:

“11. The standard of proof in this case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter. It was, thus, desirable and even imperative that it should have been investigated by some other agency. Police, in this case, could not have been investigators of their own cause. Such investigation which is woefully lacking independent character cannot be made basis for conviction in a charge involving capital sentence,

that too when it is riddled with many lacunas and loopholes listed above, quite apart from the after thoughts and improvements. It would not be in accord of safe administration of justice to maintain the conviction and sentence of the appellant in the circumstances of the case.”

Keeping into consideration the doctrine of “conflict of interest” and dictum, the Inspector General of Police being Head of Police has already framed a policy that the cases of police encounter with ineffective firing are to be investigated by the police of other district and police officers of same District when an alleged incident is taken place are barred to investigate the alleged offence(s). While dismissing the above-said petition, we direct the Deputy Inspector General of Police to depute the investigation constituting a JIT comprising officers other than the District Jamshoro where the instant FIR No.05 of 2025 has been registered.

The Constitution petition is dismissed with above observations.

JUDGE

JUDGE

Ahmed/Pa,