

**2016 Y L R 1279**

**[Peshawar]**

**Before Roohul Amin Khan and Syed Afsar Shah, JJ**

**SABZ ALI KHAN and 2 others---Petitioners**

**Versus**

**INSPECTOR GENERAL OF POLICE, KPK and 3 others---Respondents**

Writ Petition No.1014-P of 2014, decided on 28th October, 2014.

**(a) Criminal Procedure Code (V of 1898)---**

---Ss. 154, 155, 156, 4(f) & 4(n)---"Cognizable" and "non-cognizable" offence---Distinction---Cognizable offence was, where the Police was empowered to arrest accused without any warrant issued by the Magistrate---Non-cognizable offence was wherein the Police Officer had no power to arrest the offender without warrant from a Magistrate---In a cognizable offence, the Police had legal obligation to register a case under S.154, Cr.P.C., but if it was non-cognizable case, the substance of information provided to the S.H.O. concerned, would be entered in the register maintained under S.155, Cr.P.C.---Information with respect to the commission of cognizable offence was regulated by S.154, Cr.P.C.; whereas the information regarding commission of a non-cognizable offence was regulated by S.155, Cr.P.C.---Section 154, Cr.P.C. cast a statutory duty upon the S.H.O. to enter the information regarding commission of those offences which fell in the categories of "cognizable offences" in a register provided by Provincial Government, which in ordinary parlance was known as FIR.

**(b) Criminal Procedure Code (V of 1898)---**

---Ss. 154 & 200---Lodging of FIR, and filing of complaint---In order to set the criminal law into motion, two modes were provided one by way of lodging of a report with the Police under S.154, Cr.P.C. in respect of commission of a cognizable offence; the other by filing a complaint as provided by S.200, Cr.P.C.---Condition that necessitated the recording of an information, and setting the criminal law into motion under S.154, Cr.P.C. fairly were: firstly, that it must be an information; and secondly, it must be on the face of it relating to a cognizable offence.

**(c) Penal Code (XLV of 1860)---**

---Ss. 324, 34, 167 & 193---Criminal Procedure Code (V of 1898), Ss.154 & 155---Constitution of Pakistan, Art.199---Attempt to commit qatl-i-amd, common intention--Framing of an incorrect document by public servant with intent to cause injury, giving false evidence---Appreciation of evidence---Non-cognizable offence---Direction of Inspector General Police, to SHO to register case---Complaint under S.324/34, P.P.C.

against accused persons---Police Officials having been found negligent in the performance of their duties, on the report of Additional Inspector General, Inspector General of Police placed the officials under suspension; and directed S.H.O. concerned to register a criminal case against them, which case was registered accordingly--- Direction issued to the S.H.O., coupled with provisions of Ss.167 & 193, P.P.C., prima facie disclosed commission of a non-cognizable offence---SHO, in circumstances, had no authority to incorporate the given information in the register provided for registration of FIR---SHO had transgressed his power while making recourse straight away for registration of case; and had deviated from the legal course available to him-- -On receipt of information about commission of a non-cognizable offence, SHO ought to have made entries in the book maintained for the purpose (Roznamcha); and without any investigation, should have referred the case to concerned Magistrate---Police, in non-cognizable case, was not competent to investigate an offence under S.155(2), Cr.P.C. without prior permission of concerned Judicial Magistrate.

#### **(d) Criminal Procedure Code (V of 1898)---**

---Ss. 155(1) & 200---Non-cognizable case---Proceedings---Scope---Only course open for the Police by virtue of S.155(1), Cr.P.C., was to enter the received information in a book and refer it to the Judicial Magistrate, or at the most the complainant could redress his grievance under S.200, Cr.P.C.---In the present case, both the remedies available to the complainant, were not adhered to; and recourse had been made to a line of action contrary to the provisions of law---If a Police Officer would investigate a case of non-cognizable offence, without permission of a Magistrate, his act would amount to blatant violation of the mandatory direction of law; and its continuation would be an abuse of process of law.

Mst.Malka Jan v. IGP NWFP Peshawar and 2 others 2000 PCr.LJ 320; Haji Rehman SHO and 3 others v. Provincial Police Officer, Government of KPK Peshawar and 3 others 2012 PCr.LJ 1526 and Muhammad Shafi v. SHO and others 2012 YLR 828 ref.

#### **(e) Constitution of Pakistan---**

---Arts. 4 & 199---Protection of law and treatment in accordance with law--- Constitutional jurisdiction of High Court---Scope---Mandate of Art. 4 of the Constitution was that it was the inalienable right of every citizen to enjoy the protection of law, and to be treated in accordance with law---Where an order had been passed or action taken against a person by any forum, judicial or executive, which was patently illegal or against the mandate of law on the subject, specially the express provisions and the spirit of statute, which if allowed to stay intact, would tantamount to and would cause serious breach of the legal right of the citizen, High Court under its constitutional jurisdiction, could come for his rescue.

#### **(f) Administration of justice---**

---When law required anything to be done in a particular manner, it should be done in that manner, or not at all.

Muhamamd Anwar and others v. Muhammad Ilyas Begum and others PLD 2013 SC 255 ref.

**(g) Constitution of Pakistan---**

---Art. 199---Criminal Procedure Code (V of 1898), Ss.154, 155 & 200---Penal Code (XLV of 1860), Ss.167 & 193---Constitutional jurisdiction of High Court---Scope---Quashing of FIR---High Court exercises jurisdiction to review those proceedings, decisions or actions of Police Officials, which suffered from defects of jurisdiction---FIR, in the present case, had shown that prosecution had built the entire case on erroneous, and wrong foundation---Accused must be presumed to be innocent, unless proved guilty---Main consideration to be kept in view would be whether the continuance of proceedings before the Trial Court would be sufficient to bring home guilt to accused on the basis of facts admitted and patent on record---Prosecution, in the present case, had made departure from the mandatory provisions of Criminal Procedure Code; and the FIR registered against the accused, was the result of colourful exercise of the powers by the Police---Continuance of proceedings would amount to confer jurisdiction upon the Police for registration of the criminal cases against accused of non-cognizable offence, which was against the scheme of criminal justice, and not maintainable---Petition was allowed, FIR, registered against the petitioners under Ss.167 & 193, P.P.C., was quashed, in circumstances.

Ishtiaq Ibrahim for Petitioners.

Rab Nawaz Khan A.A.G. for Respondents.

Date of hearing: 28th October, 2014.

**JUDGMENT**

**SYED AFSAR SHAH, J.**---Through the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, Sabz Ali Khan and 2 others, the petitioners have made a prayer for quashment of FIR No. 197 dated 7.3.2014 registered against them under sections 167 and 193 of the Pakistan Penal Code in Police Station Khazana, Peshawar.

2. Briefly stated the facts of the petition as deciphered from the record are that on 6.8.2013 one Masood of Al-Noor Colony, Peshawar made a report to Rooh-ud-Din, Sub-Inspector in the casualty of Lady Reading Hospital, Peshawar to the effect that on the day of occurrence he and his family members were present in their house when in the meanwhile somebody threw hand grenades on his 'Hujrah and House' followed by indiscriminate firing by some unknown persons, that as a result of blast which took place near to the outer door of his house, he was injured. He charged accused Akbar Bacha, Gul Malook and Muhammad Yar along with two others for commission of the crime. On the report of the complainant, Masood, case vide FIR No. 429 dated 6.8.2013 was registered against the accused Akbar Bacha and 4 others under sections 324/34 Pakistan Penal Code read with section 3/4 of the Explosive Substances Act in Police Station Khazana, Peshawar. Being police officers/officials, the case was

investigated by the petitioners and since as per investigation report submitted by Addl. Inspector General of Police (Investigation), the petitioners were negligent in the performance of their duties, therefore, in light of the said report, respondent No. 1 (I.G.P., KPK) placed them under suspension and directed the SHO of Police Station, Khazana to register a criminal case against them. On the directions of the I.G.P, KPK (respondent No.1.), Muhammad Ibrahim Khan, SHO of Police Station Khazana (respondent No.3) registered the impugned FIR against the petitioners.

3. It is the contention of learned counsel for the petitioners that the petitioners are innocent and as such have falsely been implicated in the case with ulterior motive, that the accused of the case investigated by the petitioners are closed relatives of the high-ups of Police Department. He went on to say that acquisitions contained in the FIR are totally incorrect and against the facts and circumstances of case. Developing his arguments, learned counsel for the petitioners made reference to section 155 of the Criminal Procedure Code which provides that information in non-cognizable offences (as in the instant case) shall be entered in a book to be kept for such purpose and that such information to be referred to Magistrate. He further added that no police officer shall investigate in non-cognizable cases without order of the Magistrate having power to try such cases. By registering a case against the petitioners, respondent No.3 (S.H.O. of Police Station Khazana) in the given circumstances of the case has committed violence on the statute, learned counsel for the petitioners lastly added.

4. As against that, learned Addl. Advocate General while opposing the petition maintained that since there was negligence in the performance of duties on the part of the petitioners, therefore, respondent No.3 rightly got the case registered against them (petitioners) to which no exception can be taken, most particularly in the circumstances when the petitioners being accused can agitate all their grievances before the trial court.

5. We have considered the submissions of learned counsel for the parties, gone through the record of the case and perused the relevant law on the subject as well.

6. Perusal of record would divulge that Muhammad Ibrahim Khan, SHO, Police Station Khazana (Complainant) in compliance of the order of Inspector General of Police, Khyber Pakhtunkhwa passed on enquiry report of Additional IGP (Investigation) vide letter No. 154/C.R dated 3.3.2014, registered case FIR No. 197 dated 7.3.2014 under sections 167/193, P.P.C., on charge of trapping the accused Akbar Badshah, Gul Malook and Muhammad Yar in a fake FIR No. 429/2013 of Police Station Khazana with the connivance of one Masood complainant; There is no two opinion about the facts that sections of law i.e. 167/193, P.P.C. are non-cognizable, therefore, the proposition to be looked into in the instant petition is that; whether the police authority, under the scheme of Criminal Procedure Code is vested with the powers to lodge FIR against a person charged for a non-cognizable offence without prior permission of Magistrate. To answer the above said proposition, adherence shall be made to second schedule appended with the Criminal Procedure Code which makes distinction between a cognizable and non- cognizable offence. Cognizable offence means where the police is empowered to arrest the accused without any warrant issued by the Magistrate. Non-cognizable offence is defined in Criminal Procedure Code

which means an offence wherein the police officer has no power to arrest the offender without warrant from a Magistrate. Similarly, in a cognizable offence, the police has legal obligation to register a case under section 154, Cr.P.C. but if it is non-cognizable case, then substance of information provided to the Station House Officer of a Police Station shall be entered in the register maintained under section 155, Cr.P.C. and in this view of the matter, one can reach to an irresistible conclusion that the information with respect to the commission of cognizable offence is regulated by Section 154 Cr.P.C. whereas the information regarding commission of a non-cognizable offence is regulated by Section 155, Cr.P.C. For ready reference, Section 154 Cr.P.C. is reproduced as below:--

"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."

7. The opening sentence of the above quoted section cast a statutory duty upon the Station House Officer to enter the information regarding commission of those offences which fall in the categories of "cognizable offences", in a register provided by the Provincial Government which in ordinary parlance is known as FIR.

8. In order to set the criminal law into motion, two modes are provided, one by way of lodging of a report with the police under the section in respect of commission of a cognizable offence and the other by filing complaint as provided by section 200, Cr.P.C. The condition that necessitates the recording of an information and setting the criminal law into motion under section 154, Cr.P.C. are firstly, that it must be an information and secondly, it must be on the face of it relating to a cognizable offence. In the present case, the information provided to rather direction of the IGP, issued to the S.H.O., Police Station Khazana, coupled with section of law i.e. 167/193, P.P.C., prima facie disclosed commission of a non-cognizable offence, therefore, the S.H.O. was having no authority to incorporate the given information in the register provided for registration of FIR. He has transgressed of his power while making recourse straight away for registration of case and has deviated from the legal course available to him. As observed above on receipt of information about commission of a non-cognizable offence, the S.H.O. ought to have made entries in the book maintained for the purpose (roznamcha) and without any investigation should have referred the case to the concerned Magistrate. Simple is that the police officials in non-cognizable case are not competent to investigate an offence under section 155(2), Cr.P.C. without prior permission of the concerned Judicial Magistrate.

There is no cavil with the proposition that in non-cognizable case, the only course open for the police by virtue of section 155(1), Cr.P.C. is to enter the received information in a book and refer it to the Judicial Magistrate or at the most the complainant can redress his grievance under section 200, Cr.P.C. In the case in hand, both the remedies available to the complainant were not adhered to and recourse has been made to a line

of action contrary to the legal provisions of law. We are not hesitant to mention here that if a police officer investigate a case of non-cognizable offence without permission of a Magistrate, his act shall amount to blatant violation of the mandatory direction of law, and its continuation shall be an abuse of process of law. In this respect wisdom may be derived from the following precedents:--

"Mst.Malka Jan v. IGP NWFP Peshawar and 2 others 2000 PCr.LJ 320 (DB), "Haji Rehman SHO and 3 others v. Provincial Police Officer, Government of KPK Peshawar and 3 others" (2012 PCr.LJ Peshawar 1526), "Muhammad Ashiq and 2 others v. S.H.O., Police Station, Northern Cantt. Lahore and 3 others" (2005 YLR 1879) and "Muhammad Shafi v. S.H.O. and others" (2012 YLR 828).

9. It is the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 that it is the inalienable right of every citizen to enjoy the protection of law and to be treated in accordance with law and thus where an order has been passed, or action taken against him by any forum, judicial or executive which is patently illegal or against the mandate of law on the subject, specially the express provision and the spirit of statute, which if allowed to stay intact tantamounts to, and shall cause serious breach to the legal right of the citizen, the High Court in its constitutional jurisdiction can come for his rescue. In the instant case, as observed in the preceding paras, respondent No.3 has manifestly made deviation from the mandatory provision of Criminal Procedure Code and the illegality committed by the SHO, if allowed to stay, shall amount to serious breach to the legal fundamental right of petitioners guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. The respondents have not acted in the manner prescribed by law despite the fact that by now it is more than settled that when law requires anything to be done in a particular manner, it should be done in that manner or not at all. In support of the above view, reliance can be placed on a celebrated judgment of Apex Court reported in case titled "Muhammad Anwar and others v. Muhammad Ilyas Begum and others" (PLD 2013 SC 255)".

10. This Court has always exercised jurisdiction to review those proceedings, decisions or actions of police officials which suffer from defects of jurisdiction. In the present case, it is apparent from bare reading of FIR that prosecution has built the entire case on erroneous and wrong foundation. It is the rule in criminal cases that the accused must always be presumed to be innocent unless proved guilty. Similarly, main consideration, in criminal cases, to be kept in view would be whether the continuance of proceedings before the trial Court would be sufficient to bring home guilt to the accused on the basis of facts admitted and patent on record. As observed above, the prosecution has made departure from the mandatory provision of Criminal Procedure Code and the FIR registered against the petitioners is the result of colorful exercise of powers by the SHO of concerned Police Station, therefore, its continuance shall amount to confer jurisdiction upon the local police for registration of the criminal cases against the accused of non-cognizable offence which being against the scheme of criminal justice is not permissible.

11. For what has been discussed above and again while following the dicta laid down in the cases referred to *ibid*, the petition is allowed, resultantly, case FIR No. 197 dated

7.3.2014 registered against the petitioners under sections 167 and 193 Pakistan Penal Code in Police Station, Khazana Peshawar is quashed.

HBT/514/P Petition allowed.

;