

**IN THE PESHAWAR HIGH COURT, BANNU BENCH**

FORM OF ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
30.5.2024	<p><b><u>W.P.No.273-B/2024.</u></b></p> <p><b><u>Present:-</u></b> Mr. Muhammad Shoiab Khan, Advocate for petitioner.</p> <p style="text-align: center;">***</p> <p><b><u>KAMRAN HAYAT MIANKHEL, J.-</u></b> Through instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C, the petitioner has sought quashment of FIR No.245 dated 26.3.2024 registered under Sections 302/34 PPC at police station Saddar District Bannu.</p> <p>2. Arguments heard and record perused.</p> <p>3. The allegations against the petitioners, on the face of it, do disclose commission of a cognizable offence and the contentions of learned counsel for the petitioner relate to factual controversy, which can only be determined after recording pro and contra evidence and this exercise cannot be done in constitutional jurisdiction of this Court. The petitioner has the right to put his defence before the</p>



Investigating Officer and if the allegations put-forth by the complainant are found false, the Investigating Officer can proceed against him in accordance with law. Moreso, the complainant has come up with certain allegations and justice demands that he may be given an opportunity to prove the same. Thus, in the circumstances, ordinary course of trial is not to be deflected by resorting to quashment of the FIR.

4. Under Section 154 Cr.P.C police has statutory duty to register FIR regarding commission of any cognizable offence, and its purpose is only to set the criminal law in motion. The provisions of Section 154 Cr.P.C are mandatory in nature. When FIR is registered, then the local police under section 156 Cr.P.C have the statutory rights to investigate the case and interference by Court with duties of police is not permissible under the law, as FIR is not an encyclopedia of all the relevant facts, therefore, the image presented by the FIR will be clarified when all the incriminating material is brought on record during investigation and if the accused is found innocent during investigation, he can be dealt with in accordance with the provisions

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of sections 169 / 173 (3) Cr.P.C read with sections 249-A/265-K Cr.P.C, besides pressing into service the punitive proceedings by sending a complaint under section 182 PPC against informer / complainant of the FIR. Therefore, it would be injustice, if, before the real facts are collected by the investigating agency, the F.I.R. alleging the commission of cognizable offences, is nipped in the bud.

5. Of-course, this Court has the powers to quash FIR but in exceptional circumstances, i.e., where the allegations made in the FIR, on the face of it, do not constitute a cognizable offence, or the allegations made in the FIR are false or it reflects that an attempt has been made to convert the civil liability into a criminal case, or where there is an express legal bar in any of the provisions of the Code or the concerned Act, under which a criminal proceeding is instituted. In this behalf, reliance can be placed on the case reported as *Brig. (Retd.) Imtiaz Ahmad Vs. the Govt of Pakistan (1994 SCMR 2142)*, wherein the apex Court observed that:-

“The function 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, always of course, subject to the right of the court to intervene in an appropriate case. Control over the investigation exercised by the court was prejudicial to the accused and detrimental to the fairness of the procedure apart from being without jurisdiction. High court cannot assume the role of investigator. This could obviously not be done, for the authority to register and investigate a criminal case in law vests in the police and not in Court”.

6. Similar view was expressed in the case of

*Dr. Ghulam Mustafa Vs. State, etc (2008 SCMR*

76), wherein it has been observed 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”.

7. The available record further depicts that the instant writ petition for quashing of FIR was filed by only one of the accused persons, and allowing partial quashment of FIR for one accused was not permissible under law. In this respect reliance is placed on the case titled as **Director General,**



**Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others**

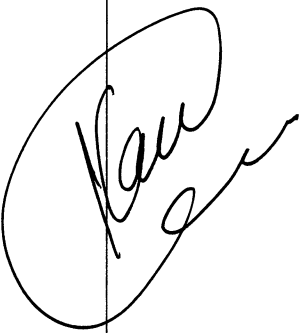
**(PLD 2013 SC 401)**, wherein it was held as under:

“After hearing the learned Additional Advocate-General, Punjab appearing for the appellants and the learned counsel for respondent No.1 and having gone through the record of the case with their assistance we have found that through the impugned order the learned Judge-in-Chamber of the Lahore High Court, Lahore had partially quashed the relevant FIR to the extent of respondent No.1 whereas partial quashing of an FIR to the extent of some of the accused persons mentioned therein is a legal impossibility.”

The verdict laid down by the apex court further reaffirmed by Lahore Court in case titled **Naeem Abbas Vs Federal Investigation Agency (FIA), Islamabad and 7 others (2015 P.Cr.L.J 1592 Lahore)**, wherein it was held that:-

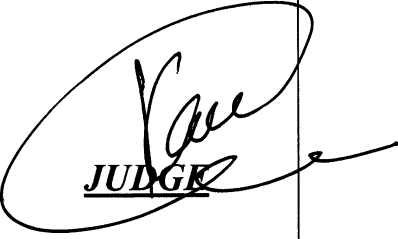
“There is yet another aspect of the case. The petitioner has alone approached this Court for quashment of FIR, although there are certain other co-accused of the petitioner, who have not been joined either as petitioners or respondents, therefore, allowing this petition will amount to partial quashment of FIR.”

8. For the foregoing reasons and discussion,



this petition being bereft of merit and substance, is hereby dismissed in *limine*.

Announced  
30.5.2024  
*Ihsan.*



JUDGE



JUDGE

(D.B)  
Hon'ble Mr. Justice Kamran Hayat Miankhel &  
Hon'ble Mr. Justice Dr. Khurshid Iqbal.

*Office*  
*06.6.2024*

SCANNED  
06 JUN 2024  
*Ihsan*