

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

**Writ Petition No.152-P/2017**

Seyar Zeb s/o Khan Zada,  
r/o Mohallah Ibrahim Top District Swabi.

Petitioner.

**Versus**

The State and others.

Respondents.

For Petitioner :- Mr. Zeeshan Gohar, Advocate.  
For respondents :- Syed Sikandar Hayat Shah, AAG.

Date of hearing: **07.02.2018**

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** Through this common judgment, we, propose to decide the instant writ petition, filed by petitioner Seyar Zeb and the following connected writ petitions, as identical question of law is involved therein. Particulars of the connected writ petitions are as under:-

- 1. Writ Petition No.160-P/2017**  
Arif Mohammad vs The state etc
- 2. Writ Petition No.161-P/2017**  
Muhammad Fawad Vs the State etc.
- 3. Writ Petition No.191-P/2017**  
Qasim Khan Vs Mian Nasrumminallah etc.

2. In essence, grievance of the petitioners is that FIRs registered against them under section 3 of the Khyber Pakhtunkhwa Prohibition Interest on Private Loans Act

(Act No.XVI of 2016), (*hereinafter to be referred as the Act of 2016*), in Police Station Topi Swabi and Mardan, being in utter violation of section 6 of the Act of 2016, are coram non judice, void abinitio and illegal hence liable to be quashed.

3. Allegations against the petitioners in the impugned FIRs are that they were found dealing in the illegal business of advancing loan to the people for the purpose of receiving high interests, which is an offence punishable under section 3 of the Act of 2016.

4. Argument of learned counsel for the parties heard and record perused with their able assistance.

5. The main thrust of the arguments of learned counsel for the petitioners was that the Station House Officers, were not competent to register the impugned FIRs of their own because of the bar under section 6 of the Act of 2016, which provides a proper mechanism for registration of FIR by the orders/directions of the Justice of Peace on the application or complainant of any person, which course has not been adopted, therefore, the impugned FIRs being nullities in the eyes of law, are liable to be quashed.

6. The argument of learned counsel for the petitioners is unpersuasive as section 9 of the Act of 2016, provides that an offence under this Act shall be **cognizable**, **non-compoundable** and **non-bail able**. For the sake of

convenience and ready reference section 9 is reproduced below:-

**“S.9 Cognizance of offences:-** Notwithstanding anything to the contrary contained in the Code or any other law for the time being in force an offence under this Act shall be cognizable, non-compoundable and non-bail able.”

According to section 2 of the Act of 2016, the Code of Criminal Procedure has been made applicable to the Act. Under section 2 sub-clause (c ) **“Code”** has been defined as under”-

“Code” means the Code of Criminal Procedure, 1898 (Act No.V of 1998)”.

In section 4 under sub-clause (f) of the Code of Criminal Procedure, 1898, **“cognizable Offence”** and **“cognizable case”** have been defined as under:-

**“(f) “Cognizable Offence”;**  
**“Cognizable case”.** “Cognizable Offence” means an offence, for and “cognizable case” means a case in, which a police-Officer may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant;”.

Keeping in view the mandate of section 9 of the Act of 2016, coupled with the definition of **“cognizable offence”**, as provided under the Code, the Station House Officer is competent to register an FIR under this Act and make

arrest without warrant. Section 6 of the Act of 2016 provides an extra remedy in addition to action under section 9, in the shape of an application or complaint by an aggrieved person to the Justice of Peace with regard to commission of the offence under the Act for registration of an FIR for the commission of an offence under the Act of 2016. For the sake of convenience and ready reference section 6 of the Act is reproduced below:-

**“S.6 complaint:-** A Justice of Peace shall, within three days on receipt of any application or complaint with regard to the commission of an offence under this Act, order the local police to register a case against such person or group of person.”

The language of section 6 quoted above is very simple and unambiguous, which as stated earlier speaks about an extra relief to an aggrieved person in the shape of filing an application or complaint. Otherwise, the police on the commission of offence under this Act, the offence being cognizable under section 9 of the Act of 2016, have powers to register FIR and arrest without warrant.

7. So far as the next arguments of learned counsel with regard to innocence of the petitioners and their false implication is concerned, the prosecution has leveled serious allegations against the petitioners, who are allegedly dealing in the nefarious business of interest, in contravention of the Act of 2016, which has to be answered and rebutted by the petitioners before the learned

trial Court through adducing evidence, hence, being a factual controversy cannot be undertaken in a writ jurisdiction under the constitutional jurisdiction. Moreso, on commencement of trial, the petitioners have an alternate and efficacious remedy in the shape of invoking the provisions of section 249-A or 265-K Cr.P.C, as the case may be before the learned trial Court, in case the prosecution evidence is deficient and there is no probability and possibility of their conviction. In this view of the matter, the petitioners cannot press into service the constitutional jurisdiction of this Court under article 199 of the Constitution as such jurisdiction can only be invoked when the aggrieved person has no alternate and efficacious remedy under the law.

8. For the reasons discussed above, all the petitions stand dismissed.

**Announced:**

07.02.2018

*Siraj Afridi P.S.*

**JUDGE**

**JUDGE**