

HIGH COURT OF AZAD JAMMU AND KASHMIR.

*Writ Petition No.1653/2017.
Date of institution 09.10.2017.
Date of decision; 10.03.2021.*

1. Muhammad Tariq S/o Imam Din R/o Komi Kot presently Residing at Ambore District, Muzaffarabad.
2. Mohammad Safeer S/o Imam Din R/o Komi Kot presently Residing at Ambore District Muzaffarabad.
3. Syed Sadiq Hussain Shah S/o Sabir ;Hussain Shah Gillani R/o Jalalabad District Muzaffarabad.

...Petitioners.

VERSUS

1. Justice of Peace/Sessions Judge, Muzaffarabad.
2. Senior Superintendent of Police District Muzaffarabad,
3. Station House Officer city Police Station, Muzaffarabad.
4. Mohammad Shakeel Mughal s/o Mohammad Miskeen Mughal, r/o Village Majhoi, District Muzaffarabad...

.... Respondents.

WRIT PETITION.

Before:- Justice Sadaqat Hussain Raja, J.

PRESENT:

*Syed Zulqarnain Raza Naqvi, Advocate for the petitioners.
Mr. Saqib Javed, legal advisor for Police department,
Mr. Mohammad Pervez Mughal, Advocate for respondent No.4*

JUDGMENT:

Through this writ petition, filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, read with section 561-A, Cr.P.C. the petitioners have assailed the order passed by respondent No.1 dated 07.10.2017, whereby SHO/respondent No.3 has been directed to register FIR against the petitioners.

2. Facts narrated in the instant case are that respondent No.4 filed an application under section 22-A,Cr.P.C before Justice of

Peace/Sessions Judge, Muzaffarabad, on 21.03.2017, seeking direction for registration of FIR against the petitioners on the ground that respondent No.4 submitted applications before respondent No.2 in which it was alleged that petitioners illegally occupied the rented shop situated at Ghari Pan and that the petitioner not only trespassed the rented shops of the respondent No.4 but also stole some money from the shop of respondent No.4. On the aforesaid application of respondent No.4, respondent No. 1/Justice of Peace directed respondent No.2 to register FIR against the petitioners vide order dated 07.10.2017, hence, by accepting this petition, the impugned order passed by respondent No.1 dated 07.10.2017, may be set aside and FIR be quashed.

4. The writ petition was resisted by official respondents No.2 & 3 through written statements/comments, wherein, it was alleged that petitioners are guilty of misstatement as well as suppression of the material facts from this Hon'ble Court, thus they did not come to this Hon'ble Court with clean hands, therefore, they are not entitled to any discretionary relief, hence, writ petition is liable to be dismissed. Whereas, private respondent No.2 in his written statement, averred that petitioner No 1 has no locus standi to file the instant writ petition because he is not an aggrieved person as defined in Article 44 of the Interim Constitution 1974, hence, order dated 07.10.2017 passed by learned Sessions Judge/Justice of Peace is quite legal and perfect which has been

acted upon by official respondents, and petitioners failed to point out the malafidely of relevant police, hence the petition is liable to be dismissed.

4. Syed Zulqarnain Raza Naqvi, the learned counsel for the petitioners reiterated the facts and grounds enumerated in the petition and argued that respondent No.1 while deciding the application under section 22-A,Cr.P.C has ordered the SHO, City Police Station, Muzaffarabad for registration of FIR against the petitioners and travelled beyond the jurisdiction conferred upon Justice of Peace who did not appreciate the evidence that was brought on record by the petitioners before his office, as such the impugned order is not maintainable in the eye of law for the reasons that application filed by respondent before respondents No.2 & 3 on the same date are self-contradictory bear different contents which makes the case of the respondents fake and concocted. In the 1st application it was submitted to SHO, states about stealing of Rs.2,77,000/- while the 2nd application filed on the same date before respondent No.2 does not state any such thing. Moreover, in 1st application the respondent No.4 states about the physical assault by a number of people including the petitioners whereas in 2nd application the stance of respondent No.4 is totally different which shows whole story of the respondent No.4 is doubtful but counterblast to the FIR which was lodged against him on the date of occurrence whereas the Apex Courts of the state and

Pakistan have held in various judgments that the registration of counter FIR would tantamount to quashment of first FIR and would be counterblast to the 1st FIR, hence, impugned order passed by learned Sessions Judge/Justice of peace is liable to be set aside and FIR registered on his direction is liable to be quashed.

5. On the other hand, Saqib Javed, Legal Advisor for Police department and Mohammad Pervez Mughal Advocate, appearing on behalf of respondent No.4, while controverting the arguments raised by learned counsel for the petitioners, submitted that petitioners are guilty of misstatement as well as suppression of the material facts from the this Court, thus, they did not come to this Court with clean hands. They further argued that petitioners have failed to point out any violation of law, rules or regulation on the subject, therefore, the writ jurisdiction cannot be exercised merely so as to decide a question of fact. The petitioners are stopped by their own acts and conduct by filing of above writ petition and same is not maintainable. The learned counsel finally craved for dismissal of the application. In support of arguments the learned placed reliance on a judgment passed Hon'ble Supreme Court of Pakistan in case titled "Mst.Sughran Bibi Vs.The State" on 23.05.2018.

6. I have heard the learned counsel for the parties and have perused the record made available on the file.

7. The controversy before me, is very simple, as whether a separate FIR can be registered for every new version of the same

incident when commission of the relevant cognizable offence already stands reported to the police and an FIR already stands registered in that regard or not. An additional issue is that if no separate FIR can be registered for any new version of the same incident then how can such version be recorded and investigated by the Police. I have heard elaborate arguments on these issues and have carefully gone through all the precedent cases cited before me on the subject. It is relevant to note here that the language employed by the legislature in Section 154, indicates that a police officer on receiving such information, relating to the commission of a cognizable offence, is bound to enter the substance thereof in the book maintained for such purpose at the police station. However, the main question, that requires to be determined is, if such information has already been recorded by Police Officer in charge of a Police Station, whether he would be bound to record a second FIR at the instance of an aggrieved party. As regards the precedent cases available on the subject there appears to be an utter confusion prevailing in the field and different views have been taken on the issue of registration of multiple FIRs in respect of commission of the same offence through different versions advanced in respect of the same occurrence. It has been declared quite categorically that there is to be only one FIR in respect of an occurrence wherein a cognizable offence has been committed and any other version of the same incident advanced by any person during the investigation

of the case is to be recorded under section 161,Cr.P.C. In a case reported Mansur Ali & 2 others Vs.The State[1970 P.Cr.L.J 287] it was observed that:-

“Another thing to be pointed out here is that there cannot be two first information reports in a case. it appears that the learned Additional Sessions has both the reports as first information report in this case and marked them as Exhs.1 and 3. Section 154, contemplates only one first information report and only one such report can go into evidence in a case. law never permits two first information reports to be admitted in evidence...

In Kaura V.the State [NLR 1979 Criminal 3] It was observed that:-

“It is quite obvious from the above that the primary purpose of the FIR is to inform about the commission of a cognizable offence which a Police Officer is empowered to investigate under section 156,Cr.P.C... All other informations with regard to that occurrence coming out later in point of time have to be taken does as statements of those persons before the Police under section 161,Cr.P.C...The order to register a second FIR in that situation, was not justified in law, even if there was a concession made on the part of the State.”

Similar view was taken in “Mushtaq Ahmed V.The S.H.O Police Station, Munawan [1984 P.Cr.L.J 1454] by a division Bench of Lahore High Court, wherein it was held in the said case that:-

“When a case had been registered in respect of an occurrence, no second case had been registered in respect of an occurrence; no second case could be registered giving a counter version thereof by the accused persons.

It was further observed in said case that an aggrieved party also had an alternate remedy by way of filing a complaint.

Reference may also be made to the case of *Atta Mohammad V. Inspector-General of Police* [PLD 1965 Lah.734] It was observed in this case that the statutory functions of the Police and the Courts to find out the truth in respect of the crime were complementary to each other and in case the previous investigation had been given in certain result, the same should not act as a hurdle or a deterrent for the police in reaching the truth. If additional and additional circumstances brought to light could help in their discovery, there was no bar to the investigation by the Police after the submission of a final, report under section 173, of the Criminal Procedure Code. It was further observed that the police was competent to file, if it was so disposed, a second report as a result of a subsequent investigation into the case. In *Sadiq Masih V. S.H.O & others* [1994 P.Cr.L.J 295], the Lahore High Court declined to issue directions for registration of a second FIR. Based on cross-version of the case put forth by the complainant. It was held that, if the police found that free fight had taken place and that both the parties to the case ought to be challaned, then it could do even in the absence of registration of a second FIR.

In the present case, stance of the petitioners was that an FIR No.51/17 in offences under sections 147,148,149,337,PC and 14, EHA was registered at Police Station, Muzaffarabad on 28.02.2017 against the respondent No.4, however, to counter-blast and make

infructuous the said FIR, he preferred an application before justice of peace/Sessions Judge, Muzaffarabad for registration of case against the petitioners. The application was allowed and respondent SHO is directed to register an FIR, upon which FIR bearing No.363/2017 in offences under section 427/454,PC was registered whereas from perusal of the record reveals that after investigation of FIR No.51/2017, challan has been submitted before competent Court. No doubt, as has been pointed out by the learned counsel for the respondents, Section 154 of the Criminal Procedure Code postulates registration of only one FIR and even the first FIR registered at the instance of the petitioners according to their counsel was sufficient to set the criminal law into motion. Therefore, continuation of second FIR is abuse of process of the Courts only then it can make order for quashment of proceedings. The matter of registration of multiple FIRs in respect of the same offence stems from a misunderstanding that an FIR is the version of the incident reported to the police whereas the legal position is that an FIR is to be registered under Section 154 Cr.P.C is only an information about commission of a cognizable offence and not an information about the circumstances in which such offence was committed or by whom it was committed. The Investigation Officer is to collect every possible information about the facts and circumstances of the case, he is to receive or record any information in that regard becoming available from any source, whatsoever, he

is not to prematurely commit himself to any particular version of the incident and after finding out the actual facts the final report under Section 173 Cr.P.C is to be submitted.

In the result subject to the observations made by me in this petition is allowed and impugned order passed by learned Justice of Peace is hereby set aside as a result of which the FIR bearing No.363/2017 dated 07.10.2017 registered against the petitioners is hereby quashed.

**Muzaffarabad,
10.03.2021,(An)**

(Sd)
JUDGE

Recommended for reporting.

(Sd)
JUDGE