

THE HIGH COURT OF SINDH KARACHI

Cr. Misc. Application No. 154 of 2019

For orders on Maintainability of Cr. Misc. Appln.,
as well as M.A. Nos. 3446 & 3447 of 2019.

Applicant : Mrs. Farheen through M/s.
Shoaib Mohiuddin & Ameer Uddin,
Advocates.

Respondent 1/State : Through Ms. Seema Zaidi, Deputy
Prosecutor General.

Respondent 2 : Akifa Shfiq through Mr. Zeeshan
Hyder, Advocate.

Date of hearing : 18-12-2019

Date of order : 18-12-2019

ORDER

Adnan Iqbal Chaudhry J. - By this application under Section 561-A Cr.P.C., the Applicant has invoked the inherent jurisdiction of this Court to quash an FIR registered under section 406 PPC. Since such quashment has been sought without invoking the remedy before the Magistrate under section 249-A Cr.P.C., the office has raised an objection to the maintainability of this application in view of the case of *Muhammad Farooq v. Ahmed Nawaz Jagirani* (PLD 2016 SC 55).

2. In *Muhammad Farooq*, the Supreme Court of Pakistan had set aside an order passed by the High Court to quash a private complaint in exercise of section 561-A Cr.P.C. which application had been moved directly to the High Court without resort to the remedy available before the trial Court under section 249-A Cr.P.C. While relying on the cases of *Maqbool Rehman v. State* (2002 SCMR 1076) and *Bashir Ahmed v. Zafar-ul-Islam* (PLD 2004 SC 298), the Supreme Court reiterated the circumstances in which the High Court could exercise inherent jurisdiction under section 561-A Cr.P.C. and held that the remedy thereunder was not an alternate or a substitute of the express

remedy provided before the trial Court by sections 249-A Cr.P.C. or 265-K Cr.P.C.; that where two Courts have coextensive or concurrent jurisdiction, then in ordinary circumstances the rule of propriety demanded that the jurisdiction of the lower Court be invoked first; and that in such cases the inherent jurisdiction of the High Court should not be exercised as a routine but only in extraordinary circumstances which warrant the exercise of such jurisdiction by bypassing the alternate remedy available.

3. Learned counsel for the Applicant submitted that in the instant case quashment of the FIR was being sought on the ground that *ex facie* a civil dispute has been converted into a criminal case to harass the Applicant. He submitted that such circumstances are an exception to the rule laid down in the case of *Muhammad Farooq* and that much is apparent from para 15 of that case where the Supreme Court distinguished the cases of *Mazhar Ali v. Ali Khan* (1984 PCr.LJ 354) and *Miraj Khan v. Gul Ahmed* (2000 SCMR 122) on the ground that in those cases a civil dispute had been converted to a criminal case. Learned counsel relied on the case of *Mian Munir Ahmad v. State* (1985 SCMR 257) to submit that it is a misconception to state that the High Court cannot exercise jurisdiction under section 561-A Cr.P.C. to quash criminal proceedings simply because similar powers are conferred on the trial Court under section 249-A Cr.P.C., and since the power of the High Court under section 561-A Cr.P.C. is coextensive with the power of the trial Court under section 249-A Cr.P.C., it is not always necessary that an aggrieved person should first exhaust the remedy before the trial Court.

4. After going through the above mentioned case-law, it appears that learned counsel for the Applicant has not appreciated the *ratio decidendi* of the said judgments. There is no cavil to the proposition that in the exercise of its inherent jurisdiction under section 561-A Cr.P.C. the High Court is empowered to quash an FIR notwithstanding that the remedy under sections 249-A or 265-K Cr.P.C. has not been availed; but the question is under what

circumstances does the High Court exercise that inherent jurisdiction ? That is what has been discussed in the cases of *Muhammad Farooq*, *Maqbool Rehman*, *Bashir Ahmed* and also in *Mian Munir Ahmad*. The ratio of the said judgments is that where the remedy under section 249-A Cr.P.C. is available before the trial Court, the High Court should not exercise its inherent jurisdiction under section 561-A Cr.P.C except in extraordinary circumstances which warrant such an action. In other words, the question is not to the jurisdiction of the High Court, but the manner in which such jurisdiction is to be regulated by the High Court. Needless to state that each case turns on its own facts and whether those facts present extraordinary circumstances that warrant the exercise of inherent jurisdiction, is something that is decided on a case-to-case basis. That is also the *ratio* of *Miraj Khan* on which learned counsel had relied upon so vehemently.

5. Thus it is a misconception to state that in all cases where it is being contended that a civil dispute has been converted into a criminal case, an applicant need not approach the trial Court under section 249-A Cr.P.C. or 265-K Cr.P.C. None of the cases relied upon by learned counsel lay down the proposition that the conversion of a civil dispute to a criminal case by itself constitutes extra ordinary circumstances that warrant the exercise of inherent jurisdiction under section 561-A Cr.P.C.

6. On the query of the Court as to why an application under section 249-A Cr.P.C. cannot be moved by the Applicant before the trial Court to agitate the same point, learned counsel submitted that section 249-A Cr.P.C can only be invoked after a formal charge is framed by the trial Court under section 242 Cr.P.C. and not before; but at the same time he acknowledged that before such charge could have been framed, the Applicant had filed the instant application under section 561-A Cr.P.C. and obtained an order staying the proceedings before the trial Court. Be that as it may, the argument that section 249-A Cr.P.C. cannot be invoked until a formal charge is

framed under section 242 Cr.P.C., is misconceived. Section 249-A Cr.P.C. categorically states that the power thereunder can be exercised “at any stage of the case” (also see the case of *State v. Ashiq Ali Bhutto*, 1993 SCMR 523).

7. Thus, the case in hand does not bring forth any extraordinary circumstance that may convince the Court to exercise inherent jurisdiction to quash the FIR when a remedy is available to the Applicant before the trial Court under section 249-A Cr.P.C. Therefore, this application is dismissed.

JUDGE

SHABAN/PA*