

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

Writ Petition No.4586-P/2020

Kaleem Ullah son of Mir Aslam Khan,
r/o village Bar Ghazi Kalan,
District Kohat.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner (s) :-	<u>Mr. Furqan Ahmad, Advocate.</u>
For State :-	<u>Mr. Umar Farooq, AAG.</u>
For respondent No.1 to 5.	<u>Mr. Amir Ajam Khattak, Advocate.</u>
Date of hearing:	<u>17.12.2020</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Kaleem Ullah, the petitioner, seeks setting-aside of order dated 26.09.2020, passed by the learned Additional Sessions Judge/Justice of Peace, Kohat as well as quashment of FIR No.245 dated 01.10.2020 under sections 324/337-F(ii)/337-F(iii)/34 PPC at Police Station Shakar Dara Kohat, registered on the basis of the aforesaid order of the Justice of Peace.

2. Arguments of learned counsel for the parties heard and record perused.

3. It appears from record that FIR No.172 dated 24.06.2020 under sections 302/324/148/149 PPC and

section 15 KP Arms Act, has been registered against respondents No.1 to 5, on the report of petitioner Kaleem Ullah in Police Station Shakar Daraa Kohat, wherein he has charged the respondents for murder, attempt to commit murder and causing injuries to him as well as PWs. About the same incident, on the report of respondent/accused, namely, Aqib Khan daily diary report No.21 dated 24.06.2020, has also been registered wherein he has charged present petitioner and his co-accused for attempt to commit murder and causing injuries to him and PWs. Complainant of Mad report No.21 requested the local police for registration of separate FIR, but his request was turned down, resultantly, he filed an application under section 22-A(6) Cr.P.C. before the learned Justice of Peace Kohat, which was allowed vide impugned order dated 26.09.2020, on the basis whereof, the impugned FIR No.245 (ibid) was registered against the present petitioner and his co-accused.

4. In both the FIRS, the day, date, time and place of occurrence coupled with the parties are one and the same. In this view of the matter, the two versions of the rival complainants are about one and the same incident accusing each other. The Hon'ble Supreme Court in its recent judgment, rendered in casee titled, *"Mst. Sughran Bibi Vs the State"* (PLD 2018 Supreme Court 595), after an elaborate and thorough discussion has resolved the issue,

namely, *“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 police and an FIR already stands registered in that regard or not? If no separate FIR can be registered for any new version of the same incident then now can such new version be recorded and investigated by the Police?, as under:-*

“As a result of the discussion made above we declare the legal position as follows:-

- (i) According to section 154 Cr.P.C., an FIR is only the first information report to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.
- (ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.
- (iii) Upon registration of an FIR a criminal “case” comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.
- (iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.P.C. in the same case. No separate FIR is to be recorded for any new

version of the same incident brought to the notice of the investigating officer during the investigation of the case.

- (v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the version of the incident brought to his notice and as required by Rule 25.2(3) of the Police Rules, 1934 “It is the duty of an investigation officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.”

(vi)

(vii).....

5. Probably, the judgment (supra) of the august Supreme Court was not brought into the notice of the learned Justice of Peace, therefore, he reached to an erroneous conclusion directing the police to register separate FIR vide impugned order dated 26.09.2020, as a result, the impugned FIR No.245 dated 01.10.2020 under sections 324/337-F(ii)/337-F(iii)/34 PPC was registered in PS Shakar Darra.

6. Accordingly, this petition is allowed. The impugned order dated 29.09.2020 of the learned Justice of Peace and consequential FIR No.245 (ibid) registered on the basis thereof, are hereby quashed. The version of complainant of FIR No.245 and the PWs shall be recorded in the shape of statements under section 161 Cr.P.C. and the Investigating Officer shall proceed with the

investigation in accordance with the observations and directions of the Hon'ble Supreme Court in its judgment rendered in Mt. Sughran Bibi's case (PLD 2018 Supreme Court 595).

Announced:

18.12.2020

M.Siraj Afridi PS

JUDGE

JUDGE

**DB of Hon'ble Mr. Justice Rooh ul Amin Khan; and
Hon'ble Mr. Justice Muhammad Nasir Mehfooz**