

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]

Writ Petition No. 2206-P/2022.

Peshawar High Court Bar vs. the State etc.

Date of hearing 15.09.2022

Petitioner (s) (by) Barrister Amir Khan Chamkani. Advocate.

The Respondents (by) Muhammad Sohail. Addl: AG.

JUDGMENT

MUSARRAT HILALI 1. Peshawar High Court Bar Association through its General Secretary and Ali Zaman, the President, Peshawar Bar Association, and others have filed the instant petition and the connected writ petition No. 2207-P/2022 for quashing FIR No. 374, dated 4.6.2022, registered under sections 506/189/427/148/149 PPC at Police Station, East Cantt. Since both the petitions have been filed against one and same FIR, therefore, the same are being disposed of through this single judgment.

2. Facts of the case, in brief, are that Deputy Commissioner, Peshawar, wrote a letter to police highups for registration of FIR on the allegation of causing damages to government property inside Deputy Commissioner

Complex. The contents of the letter, for ready reference, are reproduced herein below:-

"On 04.06.2022, around 10.30 a.m, members of the lawyer's fraternity forcefully entered the premises of the Deputy Commissioner complex, Peshawar. They manhandled the security Staff deputed at the office. The lawyers chanted slogans and used abusive language not only creating ruckus but also bidding to undermine the sanctity of a government office. The mob being violent had pelted stones and vandalized government property including shattering the main entrance door. It has been reported that the protest was called under the aegis of District Bar Association, instigated by one advocate Ghufraan. The protest was led by the President District Bar, Peshawar, Advocate Ali Zaman and General Secretary of the District Bar. Video evidence is being attached to assist in identification of culprits. It is requested that the CCPO Peshawar may be contacted to register FIR against all involved in damages of Government property."

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3. On the basis of the letter issued by Deputy Commissioner, Peshawar, the above referred FIR was registered.

4. Arguments heard and record perused.

5. Under the Code of Criminal Procedure, 1898, "Cr.P.C", there are two types of offences, i.e., cognizable and non-cognizable. The word "cognizable offence" has been defined in section 4(f) Cr.P.C which 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, while the term "non-cognizable offence" has been defined under section 4((n) Cr.P.C which means a case in which a police officer may not arrest without warrant. In a case of "cognizable offence", under the provisions of section 154 Cr.P.C, every information, if given oral to an officer in charge of a police station, shall be reduced into writing by him or under his direction, and be read over to the informant, and every such information whether given in writing or reduced into writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by

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such officer in such form as the Provincial Government may prescribe in this behalf, which is called as the first information report "FIR" and if the information is relating to the "non-cognizable offence", under section 155 (1) Cr.P.C, such information shall be entered in a book, known as '*Roznamcha*' or "Daily Diary" and shall be referred to Magistrate.

6. There is key difference between the two terms, i.e, "cognizable" and "non-cognizable offences". In the former case, under section 156(2) Cr. P.C, police has the powers to investigate the case without formal permission of the Magistrate and can arrest accused without warrant, while in the latter case, such authority is not vested with police officer under sub-section (2) of section 155 Cr.P.C. If a police officer in the latter case arrest any person or investigate the case without permission of the court, such course will not only be in violation of the mandatory provisions of sub-section (2) of Section 155 Cr.P.C but also he will expose himself for penal consequences or prosecution under section 220 PPC.

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5. In the instant case, as per contents of the FIR, the mob was neither armed with deadly weapons nor caused injury to any person nor extended any threat to cause death or grievous hurt, therefore, the allegations made in the FIR, on the face of it, do not constitute cognizable offences, hence, lodging of the FIR in non-cognizable offences is in utter violations of the provisions of the criminal procedure Code and now it has been well settled that FIR can be quashed if from the bare reading of its contents, a cognizable offence is not made out.

6. For what has been discussed above, the instant petition as well as the connected writ petition No. 2207-P/2022 is allowed, resultantly, the impugned FIR is quashed.

Announced
15.09.2022
M.Zafra C.S


JUDGE


JUDGE

**(DB) Hon'ble Ms Justice Musarrat Hilali &
Hon'ble Mr. Abdul Shakoor.**