

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

W.P.No.232-B/2017

Sajid Khan

Versus

The State etc.

JUDGMENT

Date of hearing: **04.02.2019.**

Petitioner(s) by: **Mr. Noorzada Ahmadzai Advocate.**

Respondent(s) **by: Mr. Shahid Hameed Qureshi, Addl:**

AG along with SHO Said Ayaz.

MUHAMMAD NASIR MAHFOOZ, J.- The petitioner through instant writ petition has invoked the constitutional jurisdiction of this Court, praying that:-

“It is, therefore, most humbly prayed that on acceptance of this writ petition, this Hon’ble Court may very graciously be pleased to set aside the impugned order of ASJ-II/Justice of Peace dated 20.02.2017 and to direct the respondents No.1 and 2 to register an FIR of the commission of cognizable offence about the injuries on the person of the petitioner and his brother and also to direct the respondent No.3 to conduct the

*investigation of the case in accordance
with law to meet the ends of justice.”*

2. Brief facts of the case are that petitioner and his brother Bakhtaj Khan was running tea shop at New Adda Bannu. On 13.02.2017 one Nekmat Ullah along with three unknown persons came to their shop and demanded “*Batha*” from the petitioner. On refusal Nekmat Ullah made firing at him and his brother due to which both of them got injured and thereafter his three companions whom he could identify on seeing also made firing at them as a result of which Nekmat Ullah got injured and died. Said Ayaz SHO of police station Saddar came to the spot and took him and his brother in injured condition along with deceased Nekmat Ullah to hospital. The petitioner and his brother were having injuries on their persons, the police drafted injury sheets and were escorted by one constable to KGN hospital Bannu they were examined by a doctor. Thereafter brother of the petitioner namely Bakhtaj was taken by respondent No.2 from the KGN hospital to some unknown place. The respondent No.2 with mala fide intention registered case FIR No.87 dated 13.02.2017 under sections 302/34 PPC of police station Saddar, wherein the petitioner along with his two other brothers were charged for the murder of deceased Nekmat Ullah. Petition under section 491 Cr.P.C was filed before learned Sessions Judge, Bannu for recovery of injured Bakhtaj, who was taken by respondent No.2 from

hospital on 13.02.2017. On 16.02.2017 the petitioner filed an application under section 22-A(6) Cr.P.C for registration of case to learned ASJ-II/Justice of Peace, Bannu was dismissed vide order dated 20.02.2017, hence the instant writ petition.

3. We have heard arguments of learned counsel for the parties and perused the record.

4. When brother of petitioner Aftabullah submitted application on 16.02.2017 under section 491 Cr.P.C for recovery of his brother Bakhtaj Khan the same was dismissed on the same day by learned Sessions Judge, Bannu after bailiff of the Court failed to find him detained in police station, Saddar Bannu. On the same day i.e. 16.02.2017 present petitioner submitted application under section 497 Cr.P.C for release on bail after arrest in case FIR No.87 dated 13.02.2017 that was dismissed on 04.3.2017 by learned Additional Sessions Judge-II, Bannu. Even on the same date i.e. 16.02.2017 present petitioner drafted the application under section 22-A Cr.P.C that was submitted on 17.02.2017 alleging that he and his brother Bakhtaj Khan were fired upon by Nekmat Ullah Khan with the attempt to commit Qatl-e-Amd, resulting in their injuries and some other three persons fired upon said Nekmat Ullah Khan that resulted in his death.

5. Officer incharge of police station Saddar, Bannu

submitted his inquiry report on 19.02.2017, wherein he stated that at the time of occurrence no other person came forward to lodge an FIR so he lodged FIR No.87 and on 16.02.2017. Mst. Amina Bibi, widow of deceased Nekmat Ullah in her statement recorded under section 164 Cr.P.C , recorded before Judicial Magistrate, charged the present petitioner and his brother for the murder of her husband. Thus the application under section 22-A was dismissed.

6. Learned counsel for petitioner referred to judgment reported as **PLD 2018 SC 391 titled Mst. Sughran bibi vs. State** and submitted that police is legally bound to register an FIR as per his version for the injuries sustained by him and his brother. The arguments of learned counsel are misconceived, however, while deriving wisdom from the said judgment his grievance can be easily redressed after referring to various parts of the said judgment. While interpreting section 160 Cr.P.C the Hon'ble Supreme Court held as under:-

“This section clearly dispels the impression that the investigating officer is to be guided or controlled by the contents of the FIR or that the investigation to be conducted by him is driven by any duty to establish that the story of the incident contained in the FIR is correct. In fact, to the contrary, after registration of the FIR the investigating officer is to embark upon an exercise to discover the actuality of the matter

irrespective of the version of the incident narrated by the first informant through the FIR and in the process he is expected to collect information from any number of persons who appear to him “to be acquainted with the circumstances of the case”. Every new information received by him during the investigation of the case or every new circumstance in which the relevant offence was committed coming to his notice during the investigation of the case is not to require registration of a separate FIR because such further information or knowledge is a part of investigation of the same case which had taken birth at the time of registration of the FIR.”

7. In another part of the same judgment it is held that any fresh information after the lodging of FIR may also be considered, relevant part is quoted below:

“This Rule should suffice to dispel any impression that investigation of a case is to be restricted to the version of the incident narrated in the FIR or the allegations leveled therein. It is quite evident from this Rule that once an FIR is registered then the investigating officer embarking upon investigation may not restrict himself to the story narrated or the allegations leveled in the FIR and he may entertain any fresh information becoming available from any other source regarding how the offence was committed and by whom it was committed and he may

arrive at his own conclusions in that regard. The final report to be submitted under Section 173, Cr.P.C. is to be based upon his final opinion and such opinion is not to be guided by what the first informant had stated or alleged in the FIR.”

8. It is further held that under the Rule 25.2(3) of the Police Rules, 1934, the investigating officer is free to entertain any number of versions and he shall not commit himself prematurely to any view of the facts for or against any person. While further elucidating the *ratio decidendi* of case reported as 1983 SCMR 436 it was held, that the Court did not interfere in the matter primarily because the case had already reached the trial Court. Further elaborating the subject, Hon'ble Supreme Court stressed that it is erroneous to assume that the police are to investigate the case only as asserted in the FIR and then to lead evidence in the trial Court on the accusations leveled therein. Investigating officer is to collect every possible information about the occurrence and submit report under section 173 Cr.P.C not in terms of the allegation of FIR but in accordance with the actual facts discovered during investigation. Explaining the issue it is held as under:-

“In this paragraph of the judgment the scheme of the law did not appear to be correctly presented before the Court and the Court was led to understand that investigation of a case by the police is to be driven exclusively or

predominantly by the FIR originally registered whereas the legal position, as already discussed by us above, is to the contrary. As a matter of fact the scheme of the law did not support the Court's observation that the version of the first informant advanced through his FIR is to "non-suit" any other version of the same incident advanced by any other person or party to the case. In the same vein, the reference made by the Court to the so-called "ground realities", a subjective notion, could have been avoided while interpreting legal provisions and enunciating the law."

9. This possibility has been totally ruled out of consideration in the said judgment that if a separate FIR is registered then the accused nominated would automatically be arrested as the law does not permit arrest of a person merely on the basis of bald allegation levelled against him. The arrest of a person is not to be as a matter of course and it is conditional upon fulfillment of requisite legal requirements. Finally concluding Hon'ble Supreme Court held as under:-

"27. 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 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 versions 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 investigating 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) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.

(vii) Upon conclusion of the investigation the report to be submitted under Section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the

version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.”

10. The net result of what has been held above is that this petition fails as the trial of the case has commenced but the learned trial Court shall be bound to follow the same in letter and spirit.

Announced
04.02.2019.

JUDGE

JUDGE