

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

W.P No.1155-M/2022

Ateeq-Ur-Rahman and others.....Petitioners.

Versus

The State through A.A.G and others.....Respondents.

Present: M/S. Asghar Ali and Syed Abdul Haq, Advocates for
Petitioners.

Mr. Alam Khan Adenzai, A.A.G for official Respondents.

Date of hearing: 18.10.2022.

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Attiq-Ur-Rehman and 21 others, the petitioners, through instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 have prayed for issuance of writ in terms of declaring F.I.R No.173 dated 07.10.2022 registered u/s 188 PPC at Police Station *Khal*, District Dir Lower against them at the instance of respondent No.2 (Mehran-Khan S.H.O) being based upon office order bearing No.16520-26/144 Cr.P.C/Reader dated 06.10.2022, as illegal, unwarranted, uncalled for, unjustified and against law and as such same be quashed/set aside without any further proceedings.

02. The nuts and bolts of this petition are that on 06.10.2022, respondent No.3 i.e., Deputy Commissioner/ District Magistrate, Dir Lower in consequence of the report of DPO, Dir Lower conveyed through letter No.17178/PA dated 04.10.2022, imposed a complete ban u/s 144 Cr.P.C for

a period of 30 days to avoid any untoward incident and to ensure peaceful atmosphere in respect of the following matters:

- i. Distribution of Sale and purchase of fire cracker;
- ii. Aerial firework;
- iii. Sale/purchase and transportation of chemicals;
- iv. One wheeling;
- v. Pillion riding;
- vi. Rising of provocative slogans and speeches;
- vii. Large assembly of people at public places except Mosques and other religious places;
- viii. Display of weapons, aerial firing and brandishing of firearms;
- ix. Use of loudspeakers except azans;
- x. Display/distribution of objectionable materials (posters/ pamphlets);
- xi. Installation of warning lights on private vehicles which are using by police L.E.As. These lights are allowed to Police/ L.E.As vehicles; and
- xii. Entry of Afghan Refugees to Bazar.

It is averred in petition that on 07.10.2022, the petitioners alongwith others have assembled near Medical College *Timergara* situated at *Rani* District Lower in order to get record their peaceful protest for violating their rights by the administration, which exacerbated their grievance, however, this protest was within the limits of law and within half an hour, the people gathered dispersed. Their assemblage resulted into issuance of a *murasila*, which was sent by Jawad FC No.69 to S.H.O of Police Station *Khal*, District Dir Lower with allegations that they have violated the order passed under section 144 CrPC, as such, the petitioners were charged u/s 188 P.P.C in FIR No.173 *ibid*, hence, this petition.

03. Mr. Asghar Ali, Advocate representing the petitioners, contended that the FIR was lodged for an alleged non-

cognizable offence, which could only be dealt with through complaint in term of section 4 (f) Cr.P.C read with Schedule II column 3, therefore, the lodging of FIR is illegal, against the law, unjustified, not sustainable, uncalled for and without any lawful authority in consonance with section 195 (a) CrPC. In support of his submissions, he placed reliance on the case of "Shahid Khan Vs. State through Station House Officer and 02 others" (PLJ 2017 Peshawar 354).

04. Contrarily, Mr. Alam Khan Adenzai, learned Assistant Advocate General while making a reference to notification No. Judl. -1-3(1)/69 dated 14.03.1969 published in P.L.D 1969 West Pakistan Statutes 52 submitted that offence committed u/s 188 PPC is cognizable, for which the petitioners were rightly charged through lodging of FIR as such, he prayed for dismissal of the instant petition.

05. Arguments heard and record perused.

06. Section 154 Cr.P.C provides the mode of information in the offences as defined u/s 4 (f) of Cr.P.C and its treatment, which reads as under:

"Every such information pertaining to cognizable offence if given orally to the officer in-charge of the police station shall be reduced into writing by him or under his dictation 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 such officer in such form as the Provincial Government may prescribe in this behalf".

The *ibid* provision of law casts a duty of officer in-charge of the police station to enter the information regarding commission of a cognizable offence for which he has no discretion to refuse registration of FIR. Taking cognizance of an offence by a Court of law (on a complaint) or lodging of FIR are two distinct legal remedies under criminal law, likewise, law does not prohibit the lodging of FIR in respect of a cognizable offence. But when it comes to a non-cognizable offence as provided under section 155 of Cr.P.C it puts a clog on the power of Police for direct registration of case. The term "cognizable offence" has been defined in section 4 (f) of Cr.P.C, that the offence 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. We have gone through from Schedule-II of Cr.P.C, where section 188 PPC in column No.3 provides "shall not arrest without warrant" as such, the offence u/s 188 PPC is a non-cognizable offence. When an offence is non-cognizable then no FIR could be lodged in terms of section 195 (a) Cr.P.C, which, for convenience, is reproduced as under:

"(1) No Court shall take cognizance: -

(a) Prosecution for contempt of lawful authority of public servants; of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate."

The above reproduced provision of law manifests that the Court shall not take cognizance of the prosecution for contempt of lawful authority of public servants of any offence punishable under sections 172 to 188 PPC, except on the complaint in writing of public servant concerned or of some other public servant to whom he is subordinate. In the instant matter, irrespective of this fact that respondent No.3 has passed an order by imposing ban in respect of the activities mentioned therein and procession by petitioners alongwith others on a particular date, after issuance of notification u/s 144 Cr.P.C, could not provide any justification to respondent No.3 (Duty Commissioner), SHO or any other public servant especially of Police Station *Khal*, District Dir Lower to get register an FIR and that too u/s 188 P.P.C, which in Schedule-II of Cr.P.C has been categorized as a non-cognizable offence. In non-cognizable offences no FIR could be lodged except as ordained in section 155 of Cr.PC. Reliance is placed on the cases of "*Bux Ali And 2 Others versus The State and Another*" (1980 PCr.LJ 626). "*Sabz Ali Khan and 2 others Versus Inspector General of Police, KPK and 3 others*" (2016 YLR 1279), "*Shahid Khan and 3 others Versus the State through Station House Officer (SHO) and 2 others*" (2017 YLR 2419), "*Muneer Ahmed Abbasi and 5 others Versus Sessions Judge/Justice*"

of Peace Bagh, District Bagh and 5 others” (2018 MLD 196), and “Aslam Pervaiz and another Versus Tameer Ali and 7 others” (2019 YLR 228).

07. Turning to the objection of the learned A.A.G, for which, he has referred to a notification u/s 10 (1) of Criminal Law Amendment Act, 1932 (Act No. XXIII of 1932), whereby the offence punishable under section 188 PPC in West Pakistan was regarded as a cognizable offence, regarding which, a note has been provided as pointed out by the learned A.A.G. When section 195 (a) Cr.P.C has provided a mechanism for taking the cognizance of a non-cognizable offence and likewise, section 54 Cr.P.C in cognizable offences and when no such amendment has been made either in section 195 or 154 Cr.P.C then on the strength of notification (*supra*), without any amendment in section 195 Cr.P.C and by the amendment only in column No.3 of Schedule-II of Cr.P.C, the offence u/s 188 PPC, by no stretch of imagination, shall be termed as a cognizable offence and when the offence is non-cognizable, no FIR could be lodged. Cognizance of such offence could only be taken when a complaint is made in writing by a public servant concerned or any of his subordinate, as such, mandatory provision of law was grossly violated by the police by registering the FIR against the petitioner in a non-cognizable offence without following the prescribed procedure provided in Cr.P.C,

lodging of FIR is unjustified, void ab-initio, uncalled for, unwarranted, violative to section 195 Cr.P.C and that too by responsible officer i.e., respondent No.2 on the basis of an order passed by respondent No.3 u/s 144 Cr.P.C. Both the responsible officers, being public functionaries, were required to act in accordance, with proper and reasonable justification. In similar situation, in the case of "Akhtar Said Vs. Rozi Mul and others" (W.P No.515-M/2021) decided on 18.01.2022, this Court has directed to quash FIR registered u/s 188 PPC. Likewise, in W.P No.2208-P/2022 titled "Peshawar High Court Bar Vs. The State etc." decided on 15.09.2022, this Court has also held that "lodging of FIR in non-cognizable offence is utter violation of the provisions of Cr.P.C 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".

08. In the case of "Muhammad Aslam (Amir Aslam) and others Vs. District Police Officer, Rawalpindi and others" (2009 SCMR 141) it was held by the apex Court that there is no invariable rule of law and it depends on the facts of each case whether to allow the proceedings to continue or to nip in the bud especially when no offence has been made out and when the allegations from the face of it appears to be groundless and in such circumstances continuation of the proceedings would be a futile exercise and wastage of time.

This Court can exercise the powers under section 561-A of Cr.P.C. Thus, for the reasons discussed above, instant petition succeeds, same stands allowed and resultantly FIR No.173 *ibid* is hereby quashed.

Announced.
18.10.2022.



JUDGE



JUDGE

office
26/10/2022