

ORDER SHEET
IN THE LAHORE HIGH COURT
JUDICIAL DEPARTMENT

WRIT PETITION NO. 5568 OF 2014.

Basit Nadeem

Vs. Additional Sessions Judge, etc.

| Sr. No. of order/ proceeding | Date of order/ proceeding | Order with signature of Judge, and that of parties or counsel, where necessary. |
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**08.02.2016 Ch. Aish Muhammad Khan Sra, Advocate for the petitioner.
Rana Kamran, Assistant Advocate General with
Muhammad Shoaib ASI, ACE.**

Through this writ petition, the petitioner has prayed that the respondent No2 (Circle Officer, Anti-Corruption Establishment, Pakpattan Sharif), respondent No.3 (Director Anti-Corruption Establishment, Sahiwal) and respondent No.4 (Director General Anti-Corruption Establishment, Punjab, Lahore) be directed to register a criminal case against the proposed accused persons in accordance with law and then investigate the matter fairly, honestly and without being influenced by the previous inquiry conducted by the respondents under Rule 6 and 7 of the Anti-Corruption Establishment Rules, 1985.

2. The brief facts giving rise to filing this writ petition are that the petitioner's mother owned agricultural land in Mauza Mari Hazara Tehsil Arifwala District Pakpattan Sharif which was being cultivated by Akhtar Rasool and Safdar Rasool as tenants and share of the produce was paid to the mother of the petitioner. After the death of the mother of the petitioner Akhtar Rasool and others remained tenants and started giving share of the produce to the petitioner but after lapse of three years they refused to give the

share of the produce to the petitioner and declared themselves owners of the land belonging to the petitioner. The petitioner contacted the concerned Patwari who informed him that the land had been alienated in the name of Akhtar Rasool etc through mutation No.516 dated 02.01.1993. The petitioner then moved an application under section 154 Cr.P.C. to the Anti-Corruption Establishment for the registration of a criminal case against the proposed accused i.e. Akhtar Rasool, Safdar Rasool and Patwari Muhammad Ahmad but did not succeed. After that the petitioner moved an application under sections 22-A and 22-B Cr.P.C. before the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Arifwala/respondent No.1 for registration of a case against the proposed accused which was accepted vide order dated 04.01.2014. Thereafter, the petitioner approached the Circle Officer/respondent No.2 to register a case against the proposed accused in compliance to the order of the Justice of Peace but he refused. The petitioner then moved an application before the learned Ex-Officio Justice of Peace, Arifwala for compliance of the said order. During pendency of the compliance application of the petitioner the respondent No.2/Circle Officer appeared before the learned Justice of Peace and made a statement that version of the petitioner had been recorded and the order of the learned Justice of Peace had been complied with. On the statement of the respondent No.2 the said compliance petition of the petitioner was disposed of by the learned Justice of Peace.

3. Learned counsel for the petitioner has argued that the petitioner moved an application before the learned Justice of Peace on 21.12.2013 which was accepted vide order dated 04.01.2014; that the Anti-Corruption authorities were under an obligation to register a FIR under section 154 Cr.P.C. and an inquiry prior to the registration of the FIR was illegal. Hence, this writ petition be accepted and a criminal case be registered against the proposed accused.

4. The learned Law Officer has stated that after passing of the order dated 04.01.2014 by the learned Justice of Peace, the petitioner had moved an application for compliance of the said order before the learned Justice of Peace in which an order was passed on 23.01.2015 by the learned Justice of Peace stating that statement of the petitioner had been recorded and order passed by the learned Justice of Peace had been complied with; that as the grievance of the petitioner has been redressed hence this writ petition has become infructuous and be dismissed.

5. The officer representing the Anti-Corruption Establishment has stated that the matter was inquired into and vide Zimni No.465-CO-ACE dated 26.08.2015, it has been declared that the allegations levelled by the petitioner have been found to be false.

6. Arguments have been heard and the available record has been perused.

7. In the case in hand the learned Justice of Peace in his order dated 23.01.2014 has mentioned that the Circle Officer,

Anti-Corruption Establishment had recorded the statement of the petitioner and the application of the petitioner was disposed of by the Justice of Peace to which the petitioner did not object. Before this Court the petitioner has not challenged the order of the learned Justice of Peace disposing of the compliance petition of the petitioner admittedly at that time FIR had not been registered and only statement of the petitioner was recorded in compliance to the order of the Justice of Peace but the petitioner remained satisfied that his statement was recorded.

8. The Circle Officer, Anti-Corruption Establishment appeared before this court and stated that after recording of the statement of the petitioner, the matter was inquired into as per The Anti-Corruption Establishment Rules, 1985 and the allegations levelled by the petitioner were found to be false hence no FIR was registered against the proposed accused Patwari and the other private persons.

9. Admittedly, one of the proposed accused is a Revenue Patwari hence is a Public Servant as envisaged in section 21(10) of The Pakistan Penal Code, 1860 and section 2 of The Prevention of Corruption Act, 1947 which are reproduced as under:-

SECTION 21(10) OF THE PAKISTAN PENAL CODE, 1860.

“Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate of tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;”

SECTION 2 OF THE PREVENTION OF CORRUPTION ACT, 1947.

“Interpretation. For the purpose of this Act, “Public Servant” means a public servant as defined in section 21 of the Pakistan Penal Code [and includes an employee of any corporation or other body or organization “set up controlled or administered by, or under the authority of]” the Central Government].”

10. When a public servant is alleged to have committed a scheduled offence jointly with other private persons then a criminal case against them could be registered only under the orders of the officers mentioned in Rule 8 of The Punjab Anti-Corruption Establishment Rules, 1985, which is reproduced as under:-

8. Registration of cases.---(1) Criminal cases shall be registered by the Establishment under Prevention of Corruption Act, 1947 and under such sections of the Pakistan Penal Code, as have been set forth in the Schedule to the Ordinance.

(2). Criminal cases shall be registered against accused public servants under the written orders of officers of Establishment mentioned below:-

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| a | Public Servants in BPS 1-16 | Not below a Deputy Director |
| b | Public Servants in BPS 17 and 18. | Not below an Additional Director |
| c | Public Servants in BPS-19 and above. | Director |

Provided that no case shall however be registered by the Director against public servants of the status of commissioner, Secretary to Provincial Government, Heads of Attached Departments and, other officers of BPS-20 and above without the prior permission of the Governor:

Provided further that for those public servants mentioned in the first proviso who are in BPS-19, such permission shall be accorded by the Chief Secretary:

Provided further that no prior permission shall be required for registration of a case against a public servant caught as a result of trap arranged by the Establishment under the supervision of a Magistrate, in the act of committing an offence specified in the

Schedule to the Ordinance. In such a case, a report shall immediately be made to the Chief Secretary, the Administrative Secretary and immediate superior of the public servant concerned if he is in BPS-16 and above and to the appointing authority and immediate superior if the public servant is in BPS-1S and below.

(3). If the competent authority under sub-rule (2) decides not to register a case, he shall record reasons therefor.

Reliance is placed upon “Muhammad Afzal and 2 others versus Muhammad Siddique Girwa, Additional Sessions Judge, Gujranwala and 3 others” (1992 M L D 311), “Muhammad Hafeez and 2 others versus The State and another” (1999 M L D 1174), “Riaz Ahmad Tahir versus State and others” (PLJ 1996 Cr. C. (Lah.) 80) and “Mehboob Ali versus The State and 3 others” (PLD 1996 Lahore 454).

11. In a recent judgment of the Hon’ble Supreme Court of Pakistan reported as “Saleem Ullah Khan versus The State” (2008 S C M R 1465), it has been held that :-

“The mere non-recovery of bribe money would not be of any consequence in the facts and circumstances of the case. The case was registered against the petitioner after thorough inquiry by the Anti-Corruption Department. The impugned judgment of the Lahore High Court does not suffer from any legal infirmity so as to warrant interference by this Court.

For the foregoing reasons, we do not find any merit in this petition which is dismissed and leave to appeal is refused accordingly.

Leave refused.”

Hence, it is now settled by the Hon’ble Supreme Court of Pakistan in the aforementioned case that before registering a case the Anti-Corruption Department has the right to first make a thorough inquiry as prescribed in the Ant-Corruption Establishment Rules 1985. The wisdom behind this is that public

servants should be given some protection from false and frivolous cases registered against them as it is a general trend of our society to register false cases.

12. As reiterated above, this writ petition has no merits and resultantly, it is dismissed.

[ERUM SAJAD GULL]
Judge

S_AJJAD

Approved For Reporting

Judge