

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Bench:**

Mr. Justice Ijaz ul Ahsan  
Mr. Justice Jamal Khan Mandokhail  
Mr. Justice Shahid Waheed

**Crl. Petition No. 225 of 2023**

*(Against the judgment of the Islamabad High Court, Islamabad dated 14.02.2023 passed in Crl. Revision No. 07 of 2023)*

Ammad Yousaf

**.....Petitioner(s)**

**Versus**

The State and another

**....Respondent(s)**

For the Petitioner(s): Sardar M. Latif Khan Khosa, Sr. ASC  
Syed Iqbal Hussain Gillani, ASC  
Ms. Suzain Jehan Khan, AHC

For the State: Raja Rizwan Abbasi, Special Prosecutor  
Islamabad  
Mr. Ayyaz Shaukat, AG Islamabad  
M. Ghouse, SI  
Khalid Awan, SP

Date of hearing: 14.09.2023

**JUDGMENT**

**Jamal Khan Mandokhail, J.**- Facts of the case are that a Pakistani news channel, ARY News, telecasted a live program on 08.08.2022, wherein one Shahbaz Gill was a guest, who in response to a question expressed his views. The Magistrate 1<sup>st</sup> Class (City), Islamabad (“**Executive Magistrate**”) considered that the alleged views on national television against the armed forces constituted serious cognizable offences. Consequently, the Magistrate sought permission from the Deputy Commissioner, Islamabad Capital Territory (“**DC, ICT**”) *vide* application dated 08.08.2022 to register an FIR against Shahbaz Gill. The DC, ICT sought guidance from the Chief Commissioner, ICT, who through a letter dated 09.08.2022, obtained permission from the Secretary,

Ministry of Interior (“**Secretary**”) and conveyed the same to the Magistrate who registered an FIR bearing No. 691 under sections 120-B, 121-A, 124, 131, 153, 153-A, 505, 506, 201, and 109/34 of the Pakistan Penal Code (“**PPC**”) on 09.08.2022 at Police Station Kohsar, Islamabad against Shahbaz Gill (“**main accused**”) and other unknown persons. The petitioner was subsequently implicated in the case during the investigation, on the pretext that as Director, ARY News Desk at Karachi, he conspired with the main accused for the commission of the alleged offences. After conclusion of the investigation, a report under section 173 of the Code of Criminal Procedure (“**Code**”) was submitted before the Court of the Additional Sessions Judge, Islamabad (West) (“**Trial Court**”). Before the Trial Court could frame the charge, the petitioner filed an application under section 265-D of the Code, alleging therein that the Trial Court could not take cognizance of the matter nor is there any material to frame of charge against him, therefore, requested for his acquittal. The application was dismissed by the Trial Court *vide* order dated 12.12.2022. A Criminal Revision filed thereagainst by the petitioner was dismissed by the Islamabad High Court, Islamabad (“**High Court**”), through the impugned judgment dated 14.02.2023, hence, this petition for leave to appeal.

2. Arguments heard and have perused the record. In our criminal justice system, the provisions of Chapter XXII-A of the Code are mandatory in nature, which provide a procedure for the Courts to ensure a just and fair trial for the accused, the prosecution as well as the complainant, therefore, the same must be complied with in their true letter and spirit. One of the provisions of the said chapter is section 265-D, which casts a duty upon the Trial Court to frame a charge. A charge is a gist and precise statement of the allegation(s) made against a person(s), which is the foundation of a criminal trial. It specifies the offence with which an accused is charged, by giving a specific name, if any, and the relevant provision(s) of law(s). Section 265-D provides that before framing of a charge, the Court must consider the FIR,

the police report, all the documents, and the statements of the witnesses filed by the prosecution available before it in order to determine whether it has jurisdiction to take cognizance of the matter. If the Court is of the opinion that it is competent to take cognizance and *prima facie* reasonable grounds exist for proceeding with the trial of the accused, only then, charge has to be framed. Its object and purpose are to enable the Court to initiate judicial proceedings against an accused. It is a fundamental right of the accused to know the exact allegation(s) and offence(s) with which they are charged, in order to defend themselves so as to prevent prejudice. Upon considering all the material available before it, if the Court is of the opinion that it lacks jurisdiction and sufficient material or there exist no grounds for proceeding with the trial of the accused, it should refrain itself from framing charge, so as to avoid a purposeless and frivolous prosecution and abuse of process of the Court.

3. The Code has granted an inherent jurisdiction by virtue of sections 249-A and 265-K to the trial courts, as the case may be, to acquit any or all accused at any stage of the judicial proceedings for reasons to be recorded, after providing an opportunity of hearing to the parties. The words “any stage” used in both the sections include the stages before or after framing of the charge or after recording of some evidence.<sup>1</sup> Such power can only be exercised where the Court is of the opinion that no charge could be framed because of lack of jurisdiction; because the material available before it is insufficient for the purposes of constituting an offence; that if charge is framed, but the Court considers it to be groundless and to allow the prosecution to continue with the trial would amount to an abuse of process; or that in all circumstances, where there is no probability of conviction of the accused, even after a full-fledged trial. Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused, provided that an opportunity of hearing is afforded to the

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<sup>1</sup> *The State v. Raja Abdul Rehman*; 2005 SCMR 1544

parties before making any order.<sup>2</sup> The power assigned to the Courts by the legislature is to avoid the abuse of process of the Court; to protect the integrity of the criminal justice system; to safeguard a person involved in the case from the agony of a purposeless, malicious, and frivolous criminal prosecution; or otherwise, to secure the ends of justice. The exercise of the inherent powers is mandatory in nature, therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality. If the Court considers that the available material is sufficient to proceed with the trial and refuses to quash the judicial proceedings, it does not preclude the Court from exercising its inherent power subsequently after recording some evidence or surfacing any material for the purpose of quashing the proceedings. However, the exercise of such power by the Courts must be in exceptional circumstances, with great caution and by applying its mind judiciously.

4. The offences under sections 121-A, 124, 153-A, 505 of the PPC, mentioned in the FIR, relate to *waging of war against Pakistan; assaulting President, Governor etc; promoting enmity between different groups; and abetting mutiny, etc.* These offences are part of the offences of the PPC mentioned in section 196 of the Code. Before prosecuting any person under the offences, mentioned therein, a special procedure is required to be followed, which is reproduced below:

**196. Prosecution for offences against the State**— No Court shall take cognizance of any offence punishable under Chapter VI or IX-A of the Pakistan Penal Code (except Section 127), or punishable under Section 108-A, or Section 153-A or Section 294-A, or Section 295-A or Section 505 of the same Code, unless upon complaint made by order of or under authority

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<sup>2</sup> *Zahoor-ud-Din v. Khushi Muhammad and others*; 1998 SCMR 1840,

from, the Federal Government or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments.

The legislature was mindful of the heinousness, gravity, and sensitivity of the offences, therefore, the above mechanism has been provided. According to the said section, cognizance can only be taken by a Court upon a complaint made by the Federal Government, the Provincial Government concerned or some officer empowered in this behalf in respect of the offences mentioned therein. As per Articles 90 and 129 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”), “Federal Government” consists of the Prime Minister and the Federal Ministers, whereas the “Provincial Government” consists of the Chief Minister and the Provincial Ministers, respectively. The word “Government” has been further interpreted by this Court on the basis of the stated constitutional provisions in *Mustafa Impex*.<sup>3</sup> The principle of *Delegatus Non-Potest Delegare* is a Latin legal maxim that generally applied to the delegation of power or authority by one person or entity to another. According to this Maxim, if a person or entity to whom a power or authority is delegated, cannot himself further delegate that power or authority to someone else. However, such power can be delegated in circumstances where the law expressly permits to do so, or in the absence of a law, where the original delegation explicitly authorizes it. In such view of the matter, section 196 of the Code mandates that no person or authority other than the Federal Government or the Provincial Government or any officer empowered by the respective Governments in this behalf is competent to file a complaint in respect of the offences mentioned in section 196. Chapter XVI of the Code provides a forum and procedure for filing of a complaint and authorizes the Court to conduct a preliminary inquiry and, if need be, to investigate the matter in order to ascertain its veracity. If the Court finds that no case is to be made out from the material

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<sup>3</sup> *Mustafa Impex and others v. Government of Pakistan and others*; PLD 2016 SC 808

available on the record, it has to dismiss the complaint by exercising powers under section 203 of the Code. Where the Court is of the opinion that there are sufficient grounds to take cognizance of the matter upon the complaint, only then the judicial proceedings can be commenced by adopting a method as provided under Chapter XVII of the Code.

5. The intent of the legislature is to limit a Government to prosecute a person for offences mentioned in section 196 of the Code, only upon a complaint in Court, instead of registration of an FIR, to ensure transparency and impartiality. A complaint is filed before a Judicial Magistrate, who being a judicial officer, is free from the Government's influence. He is supposed to perform his functions fairly, efficiently, without any pressure and interference. On the other hand, the police officials, who are part of executive, are admittedly in subordination to the Government(s) concerned, therefore, an independent investigation cannot be expected. However, prosecution in offences other than those mentioned in section 196 of the Code can be initiated through an FIR, as provided by section 154 of the Code.

6. It is a well settled principle of law that when a law stipulates that some thing has to be done in a prescribed manner, it must be done in that manner and should not be done otherwise. The object and purpose of giving power only to the Government concerned or an officer empowered in this behalf for filing a complaint is to prevent unauthorized persons from initiating judicial proceedings in respect of State prosecution regarding the stated offences. This is to ensure prevention of human rights violations and to ensure prevention of purposeless, malicious, and frivolous prosecutions. Thus, in order to prosecute a person for offences mentioned in section 196, firstly, there must be a complaint only by an order of the Federal Government or the concerned Provincial Government or by an officer empowered in this behalf by either of the two Governments. Secondly, the complaint must contain the name of a person(s), against whom proceedings are required to be initiated and all the details in respect of the alleged offence(s). Moreover,

after filing a complaint, if subsequently, it surfaces that some person(s) other than the one(s) named in the complaint is/are also connected in commission of the offences, the Federal Government, the Provincial Government or an officer empowered by either of the two Governments, as the case may be, may pass an order for filing of a supplementary complaint against them with all the stated details. In any case, before submitting a complaint, the authorities concerned must conduct a preliminary inquiry in order to avoid frivolous, malicious and purposeless prosecution. Similarly, the Magistrate upon receiving a complaint and before assumption of the jurisdiction, must cross the threshold by applying his mind and analysing the evidence, in order to determine its jurisdiction and to ascertain that on the basis of the available material, charge can be framed. The Magistrate, if satisfied, that *prima facie* case against the nominated person is made out, he can then initiate judicial proceedings against the person nominated in the complaint. If he reaches a conclusion that the complaint or the supplementary complaint has been filed by an unauthorized person or that the same suffers from mandatory requirements of section 196 or he lacks jurisdiction, he should not issue process in a mechanical manner, rather, should refrain himself from initiating judicial proceedings. The exercise of inherent powers assigned to the Courts to preserve and protect the rights of the citizens is a mandate of the Constitution, whereas, non-exercise of such powers is a violation of the Constitution and law, hence, is an illegality. The Courts instead of becoming an apparatus for malicious and purposeless judicial prosecution by entertaining baseless and frivolous complaints must exercise their powers in accordance with law, without fear and favour. If the Courts overlook such constitutional mandate and fail to exercise their inherent powers, it will harm the integrity, impartiality, and independence of our criminal justice system. It will undermine and erode the public trust and confidence in our Courts.

7. Our Constitution is a sacred document and a social contract. The Constitution makers incorporated in it the principle of

freedom, equality and justice. The preamble to the Constitution communicates the intention of its framers and purpose of the highest law of the land as under:

*Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;*

*And whereas it is the will of the people of Pakistan to establish an order;*

*Wherein the State shall exercise its powers and authority through the chosen representatives of the people;*

*Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;*

The above portion of the preamble enshrines that the State shall exercise its powers and authority through the chosen representatives of the people, who represent them in parliament and the assemblies. Every citizen has a right of political and social justice, freedom of speech and thought, subject to a reasonable restriction imposed by law. In order to protect and promote such rights, the State must exercise its power and authority in accordance with the Constitution. Print and electronic media are the means of receiving and providing such information to and from the people. We have observed that upon exercise of such right, politically motivated FIRs are being registered for offences mentioned in section 196 of the Code, mostly against politicians, political workers, media persons, and human rights activists, and in some cases against their family members as well. It is hard to believe that the chosen representatives of the people, political activists, right activists and media persons can indulge themselves in anti-State activities. The act of indulging its citizens in malicious



and frivolous prosecution by the Government without any substance on the plea that the thoughts are anti-State, amounts to undermining the constitutional command and as such, depriving citizens from their fundamental rights of freedom of movement, assembly, speech, and right to information. Such misuse of authority creates a sense of fear and insecurity in the society, which result into hatred against the State's institutions. When citizens are put in fear, they cannot perform their functions freely, which amounts to preventing them from contributing towards the society in accordance with the Constitution, law and as per their conscience. In such a hostile atmosphere, the media cannot also perform its functions freely, rather it will undermine the freedom of speech, expression, and access to information of the citizens, as guaranteed by the Constitution, resulting into mistrust in the institutions. A democratic Government is considered to be *by the people, of the people and for the people*. It must, therefore, develop an atmosphere of tolerance, to promote political and social justice; to create a habit of listening to healthy criticism, which is the beauty of democracy. Thus, the Government must accept the will of the people, instead of considering its critics and political opponents as enemy of the State, to avert hatred and mistrust of citizens upon the institutions, by refraining itself from misusing the power and authority and to avoid malicious, baseless and frivolous prosecution against its citizens.

8. The record reflects that *vide* a Notification No.8/85/2020-Law dated 14.12.2020, the Federal Government has empowered the Secretary to file complaints on its behalf, against a person(s) for the offences mentioned in section 196. Admittedly, the Secretary did not file any complaint against the petitioner, rather, the FIR was registered against the main accused under the said sections by the Magistrate after getting permission from the Secretary, through a letter dated 09.08.2022. The Secretary being a delegate himself, has no jurisdiction to redelegate the authority to anyone else. In the present case, the FIR was registered with permission of the Secretary without considering the provisions of

section 196 of the Code that no Court shall take cognizance of any offence punishable under the above-referred sections of the PPC. Neither an FIR can be registered nor can a permission from the Secretary justify the act of the Magistrate. As contemplated in section 196 of the Code, no Court shall take cognizance of the offences of the PPC, mentioned therein, unless upon a complaint filed by the authorities concerned, therefore, the Trial Court had no jurisdiction to take cognizance of sections 121-A, 124, 153-A and 505 of the PPC, on the basis of the FIR, hence, the judicial proceedings initiated by it to the extent of such offences are *coram non judice*. However, rest of the offences incorporated in the FIR, which are outside the purview of section 196 of the Code, are cognizable by the Court.

9. Without prejudice to the above, admittedly, the petitioner was not nominated in the FIR. During the investigation, the I.O reached a conclusion that the petitioner is a conspirator along with the main accused, therefore, subsequently through a supplementary statement he was involved in this case. The main evidence against the petitioner is the transcript allegedly recovered on the pointation of the main accused from his house, when he was in custody. The petitioner has specifically denied the existence and authenticity of the transcript, therefore, its evidentiary value to the extent of the petitioner is not free from doubt. Besides, if the alleged views orally expressed by the main accused during the live telecast are believed to be true and in violation of any reasonable restriction imposed by law, a question arises as to how the petitioner, can be held responsible for the act of the main accused, merely on the ground that he being a member of the administration of the broadcaster, is equally responsible. It is a settled principle of law that each person is responsible for his deeds and actions, hence, holding the petitioner responsible for the act of the main accused, without *prima facie* cogent evidence, is unjustified. Consequently, in the absence of a complaint by a competent authority to the extent of the offences of PPC, mentioned in section 196 of the Code and because of lack of the

required material, initiating judicial proceedings against the petitioner is an abuse of the process of the Court. The manner in which the petitioner was proceeded against, amounts to inciting fear not only amongst the entire administration of the broadcaster, but will also have an impact upon rest of the print and electronic media, which will certainly obstruct their constitutional right. On the basis of the material available on the record, no case was made out against the petitioner. The *fora* below have ignored these constitutional, legal, and factual aspects of the case and have failed to exercise their mandatory inherent powers in favour of the petitioner, which is an illegality.

Thus, in view of the above, the petition is converted into an appeal and is allowed. The impugned judgment of the High Court and that of the Trial Court are set aside. The proceedings initiated against the petitioner, pursuant to the above referred FIR are quashed to his extent. He is acquitted from the case.

Judge

Judge

Judge

Islamabad,  
14.09.2023  
K.Anees/Ammar Ahmed Cheema, LC  
APPROVED FOR REPORTING