JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO. 213-Q OF 2025

MUHAMMAD IMRAN ASGHAR

VS

S.H.O P.S SABZI MANDI & ANOTHER

Petitioner by : **Mr. Muhammad Ikhlaque Awan, Advocate.**

Respondents by : **Ch. Muhammad Khan Gondal, Advocate for the Respondent No.2.**
Mr. M. Taimoor Janjua, State Counsel.
Mr. Waqar Ahmed SI, P.S Sabzi Mandi.

Date of hearing : **12.2.2025**

MUHAMMAD AZAM KHAN, J.

1. The Petitioner [Muhammad Imran Asghar] has filed the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, **(hereinafter referred to as the "Constitution")** for the Quashment of FIR No. 962/2024 dated 20.12.2024 registered under Section 406, Pakistan Penal Code, 1860 **("PPC")** registered against him with P.S Sabzi Mandi, Islamabad **("Subject FIR")**.

2. The brief facts of the case in hand as per the Memo of Petition are that the Petitioner contracted marriage with the Respondent No. 2 [Nosheen Mumtaz] on 14.10.2017. The Petitioner was serving in SNGPL, Islamabad as Supervisor Computer Operator in Islamabad while the Respondent No. 2 was serving as Primary School Teacher in Government Girls Higher Secondary School Khayaban-e-Sir Syed Sector-I, Rawalpindi. After the marriage, some issues took place between the spouses and on 23.7.2024, the Petitioner divorced the Respondent No. 2 through Divorce Deed dated 23.7.2024. Thereafter, the Respondent No.2 moved an application to the Respondent No. 1 [Station House Officer, Police Station Sabzi Mandi, Islamabad] for registration of FIR against the Petitioner on account of some dowry articles, Honda City Car bearing Registration No. LZQ-5182 and plot measuring 5 Marlas situated in Faisal Town Phase-II, Islamabad. On the application of the Respondent No. 2 **("Respondent**

No. 2/Complainant"), the Subject FIR was registered on 20.12.2024 against the Petitioner and through the instant Writ Petition the Petitioner seeks Quashment of the Subject FIR.

3. The learned counsel appearing on behalf of the Petitioner argued that from the bare perusal of the Subject FIR, the claims of the Respondent No. 2/Complainant are that (i) she had given loan to her husband (Petitioner) for purchase of Alto Car and the Petitioner subsequently sold out the same and purchased Honda City Car bearing Registration No.LZQ-5182; (ii) she paid the whole amount for the purchase of the plot situated in Faisal Town, Phase-II; and (iii) that some of the dowry articles were sold by the Petitioner and some are in custody of the Petitioner. The learned counsel for the Petitioner in respect of the said vehicles argued that both vehicles were purchased in the name of the Petitioner and Honda City bearing Registration No. LZQ-5182 is still in the name of the Petitioner; that plot also exists in the name of the Petitioner in the relevant record and the civil court has the jurisdiction to decide these issues; that the learned Family Court has the jurisdiction regarding claim of the Respondent No. 2/Complainant qua dowry articles; that none of the claims, allegations, or issues qualify as a cognizable offence in any manner, as there is no entrustment involved, and thus, the question of misappropriation does not arise; that Section 406, PPC does not apply to the Petitioner in any way, and the registration of the subject FIR is unlawful, unconstitutional, and a clear example of the misuse of power which amounts to an abuse of the legal process and, therefore, warrants quashing; that the Subject FIR is nothing but illicit and illegal instrument for harassment with the purpose to damage the reputation of the Petitioner and to grab the amount from the Petitioner and to get the revenge of pronouncement of '*Talaq*'; that further proceedings in the subject FIR will constitute abuse of process of the court, therefore, the same is liable to be quashed.

4. The learned counsel on behalf of the Respondent No. 2/Complainant argued that the Respondent No. 2/Complainant was the wife of the Petitioner and during the subsistence of marriage, she paid the sale consideration of the vehicles which were purchased in the name of the Petitioner and it was in the shape of loan and entrustment. Similarly, the plot situated in Faisal Town, Phase-II, Islamabad was also purchased with the amount of the Respondent No.

2/Complainant. He further stated that the Petitioner pay was below Rs. 17,000/- and in that pay, he could not purchase the said vehicles and the plot. The learned counsel further stated that the Respondent No. 2/Complainant also claimed her dowry articles and cash amount of Rs.1,00,000/- which are in the possession of the Petitioner.

5. I have heard the learned counsel for the parties and have also perused the available record with their able assistance.

6. The Respondent No. 2/Complainant was wife of the Petitioner and they remained as husband and wife for some time. On 23.7.2024, the Petitioner executed a Divorce Deed on a stamp paper and pronounced '*Talaq*'. It was only then that the Respondent No. 2/Complainant on 20.12.2024, after lapse of five months, claimed that she had entrusted a certain amount of money and property to her ex-husband, although she was unable to specify the date or location, as evident from the FIR. The Petitioner submitted his pay slip, which clearly shows that he is drawing net salary of Rs. 75,000/-. Therefore, the allegation made by the Respondent No. 2/Complainant in the Subject FIR, stating that his salary is below Rs. 17,000/-, is completely false.

7. In order to reach a fair conclusion, it is essential to examine the provisions of Section 405, PPC. For the convenience of this Court, Section 405, PPC is reproduced below:-

> "***405. Criminal breach of trust.*** *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust*".

8. A bare perusal of the above-mentioned Section makes it clear that from any stretch of imagination can the elements of Section 405, PPC be inferred from the subject FIR as there is no indication of entrustment that would suggest the Petitioner has committed a criminal breach of trust. It is evident that due to *mala fide*, the Respondent No. 2/Complainant registered the instant case against her ex-husband without any proof and justification which is not warranted under the

law. The Respondent No. 2/Complainant asserts that the Petitioner purchased vehicles and a plot, with the sale consideration paid by her. For such claims, there is a legal provision for filing civil suits under the laws governing *benami* transactions. Similarly, she has claimed her dowry articles, alleging that they were entrusted to her ex-husband. However, if she believes this to be the case, she can approach the appropriate courts under the relevant civil laws and the remedy, however, does not lie within the framework of criminal law.

9. I am conscious of the fact that this Court in its inherent powers under Section 561-A, Code of Criminal Procedure, 1898 **("Cr.P.C")**, ordinarily not interfere with the police investigation in a cognizable offence and more particularly when alternate course of action is available under Section 249-A or 265-K, Cr.P.C, before the trial court, however, simultaneously it is the prime duty of the High Court to guard the citizen from any abuse of process of law. Even from the plain reading of the Subjet FIR, no offence has been made out. Reliance in this regard is placed on the cases of *Malik Zulfiqar Ahmed Vs. The State and 2 others,* **(2024 YLR 185)**, *Muhammad Azam Khan Swati Vs. Inspector General of Police, Balochistan and others,* **(PLD 2024 Balochistan 62)**, *Naseem Khan Kasi Vs. Station House Officer, Police Station Quetta and another*, **(2022 P Cr.LJ 887)** and *Miraj Khan Vs. Gul Ahmed & 3 others***, (2000 SCMR 122)**. The relevant portion of the case of *Miraj Khan (supra)* is reproduced hereunder: -

> *"---S. 406/419/420---Constitution of Pakistan (1973), Art. 185(3)---High Court had quashed the F.I.R. lodged by the complainant---Validity---Complainant in the F.I.R .which was based on his written application had admitted that the disputed amount was given to the accused as "Qarze Hasna"---Addition of the word "Amanat" with "Qarze Hasna" was ridiculous and appeared to have been added so as to justify the registration of the criminal case---No offence even on admitted facts could be made out against the accused as the dispute was entirely of civil nature which with ulterior motive had been converted into criminal proceedings--Further proceedings in the Trial Court on the basis of impugned F.I.R. would have been sheer wastage of time---High Court, therefore, had rightly quashed the F.I.R. and the impugned order was not open to any exception---Leave to appeal was refused accordingly."*

10. Based on the above discussion and the case law referred, I am of the considered opinion that the High Court while exercising its inherent powers under Section 561-A, Cr.P.C, has the jurisdiction to prevent the abuse of the legal process, which is evident from the record. The claim and dispute between Respondent No. 2/Complainant and the Petitioner are purely of civil nature,

which has been wrongly converted into criminal proceedings with ulterior motive. Since the matter in dispute is purely of civil nature, no limit can put a clog on the exercise of inherent powers of this Court in order to secure the ends of justice.

11. In view of the above, the instant Writ Petition under Article of 199 of Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C, is hereby **allowed** and impugned proceedings in the Subject FIR dated 20.12.2024 are quashed. Needless to add that quashing of FIR shall not affect the civil rights of the Respondent No.2/Complainant if any, against the Petitioner in any manner.

(MUHAMMAD AZAM KHAN)
JUDGE

Adnan