JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No.4522/2016

Jahanzeb Ahmed	**Versus**	**The learned Judicial Magistrate (East) Islamabad & others.**
Petitioner by:		Mr. Azmat Ali Qureshi, Advocate.
Respondent No.4 by:		Mr. Waseem Sajjad Zafar, Advocate.
State by:		Mr. Yasir Barkat Chaudhry, State Counsel. Abdul Qadir S.I. P.S. Sihala, Islamabad.
Date of Decision:		23-05-2017.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through the instant writ petition, the petitioner has assailed the order dated 31.10.2016 passed by learned Judicial Magistrate, Section 30 (East) Islamabad whereby the learned Judicial Magistrate has agreed to the cancellation report submitted by the Investigation Officer and cancelled the FIR No. 279, dated 26.10.2015, U/S 489-F PPC, P.S. Sihala, Islamabad.

2. Brief facts of the instant case are that petitioner Jahanzeb Ahmed moved an application for registration of FIR against Ch. Nadeem, Ch. Fahad and Ch. Naveed in December, 2014 while alleging that accused had barrowed an amount of Rs.11,800,000/- in presence of witnesses and for repayment of the same, issued a cheque bearing No.CA-0056694142 dated 22.01.2015, amounting to Rs.11,800,000/-. It has further been contended in the FIR that the said cheque was dishonored on its presentation due to insufficient balance, finally the instant FIR has been lodged. During the course of investigation the police has recommended the cancellation of the said FIR mainly on the ground that cheque in question was not issued against a liability rather an oral agreement to sell had taken place between the parties for the sale of a commercial plot measuring 05-Marla in Bahria Town Karachi through Triangle Real Estate for the sale consideration of Rs.14,300,000/- however, it has been referred in the police report that amount of Rs.2,500,000/- was paid at different

occasions to the petitioner and a cheque of Rs.11,800,000/- was handed over to him however, the said sale was not confirmed latter on, as a result whereof the petitioner forfeited the amount of Rs.2,500,000/- but at the same time lodged a criminal case on the basis of said cheque. Learned Judicial Magistrate after hearing the parties agreed to the cancellation report through the impugned order.

3. Learned counsel for petitioner contends that the cheque in question was issued against a loan transaction but the same was not honored, therefore, FIR was lodged; that the petitioner has witnesses to prove that he has paid Rs.11,800,000/- in cash to respondent No.4; that learned Judicial Magistrate as well as the Investigation Officer have not appreciated the true facts on record.

4. Conversely, learned counsel for respondent No.4 as well as learned State Counsel contends that the petitioner could not produce any material evidence regarding his payment of Rs.11,800,000/- as loan to respondent No.4. Even otherwise he could not prove during the course of inquiry and investigation that an oral sale of commercial plot measuring 05-Marla situated in Bahria Town Karachi had taken place between the parties.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that the petitioner got lodged case FIR No. 279, dated 26.10.2015, U/S 489-F PPC, P.S. Sihala, Islamabad whereby he alleged that Ch. Nadeem, Ch. Fahad and Ch. Naveed S/o Ch. Abdul Azeem have received an amount of Rs.11,800,000/- as loan in December 2014 and handed over a cheque No.CA-0056694142 dated 22.01.2015 for the purpose of return of loan; that the cheque was issued by Ch. Naveed / respondent No.4 from his personal account but the same was dishonored on its presentation.

7. The Investigation Officer after investigation concluded that the stance taken by the petitioner is not verified and parties had entered into an oral sale regarding the commercial plot measuring 05-marlas situated in Bahria Town Karachi which was purchased against a total sale consideration of Rs.14,300,000/- and out of said amount Rs.200,000/- was paid on 01.01.2015 as earnest money, Rs.500,000/- on 03.01.2015 and total amount of Rs.2500,000/- was paid to the petitioner whereas the remaining balance of Rs.11,800,000/- was paid through cheque No.CA-0056694142 dated

22.01.2015, Faysal Bank, PWD Branch but the said deal could not be matured whereby the petitioner forfeited the earnest money of Rs.2,500,000/- and a Jirga was constituted among the parties whereby terms were agreed but subsequently, petitioner tendered said cheque before the bank and obtained the dishonor slip and got registered the instant FIR. The petitioner being dissatisfied with the said conclusion of the Investigation Officer filed a complaint for inquiry to the DSP CIA, Islamabad and SP (Investigation) Islamabad vide application dated 16.01.2016 wherein the DSP CIA has inquired the matter and submitted the following opinion:-

"دوران انکوائری فریقین کا فرداً فرداً موقف سنا گیا تفتیشی افسر کی رائے کے علاوہ مثل مقدمہ بھی ملاحضہ ہوئی دوران انکوائری الزام علیہان نے جرگہ کے دوران کی گئی آڈیو ریکارڈنگ بھی سنائی انکوائری کے مطابق الزام رئیل اسٹیٹ کی معرفت مدعی مقدمہ کے بھائی خواجہ مسعود کو کمرشل Triangle علیہان چودہری ندیم نے لاکھ روپے میں ہوئی جس 43 کروڑ 1 مڈوے بحریہ ٹاؤن کراچی میں پانچ مرلہ کا پلاٹ خریدنے کی کل ڈیل مبلغ لاکھ روپے کا چیک دینا پایا گیا مدعی مقدمہ کا 18 کروڑ 1 لاکھ روپے بیعانہ اور بقیہ رقم 25 میں سے الزام علیہ کا درخواست ہذا میں پیش کردہ یہ موقف کہ اس نے یہ چیک ادھار دی گئی رقم کے عوض لیا قطاً غلط ہے اور FIR Triangle مدعی مقدمہ اسے ثابت نہ کر سکا جبکہ الزام علیہان کی طرف سے اس دیے گئے چیک کا ثبوت رئیل اسٹیٹ کے مالک محمد فہیم خالد نے Triangle رئیل اسٹیٹ کی رسید اور گواہان سے ثابت ہوتا ہے جسکی تصدیق کی ہے پلاٹ کا مارکیٹ ریٹ کم ہونے کی وجہ سے اور الزام علیہ کی جانب سے بقیہ رقم کا بندوبست نہ ہونے کی وجہ سے الزام علیہ نے ایڈوانس دی گئی رقم بھی ضبط کروائی اس کے باوجود مدعی مقدمہ نے بقیہ رقم کے چیک کو اس پلاٹ کی ڈیل کے برعکس رقم ادھار ظاہر کر کے مقدمہ درج کروایا مگر اس کے ثبوت میں کوئی تحریر/ایگریمنٹ اور کوئی غیر جانبدار شہادت پیش نہ کی اس وقوعہ کی نسبت الزام علیہ کے بھائیوں چودہری نوید اور فہد عظیم کا کسی قسم کا تعلق نہ ہے دوران انکوائری پیش کردہ ریکارڈنگ جو جرگہ کے دوران کی گئی سے بھی الزام علیہان کے موقف کی تائید ہوتی ہے ریکارڈنگ میں ہونے گفتگو سننے سے الزام علیہ فریق کے موقف کی تصدیق ہوتی ہے اس وقوعہ کی نسبت قبل ازیں جناب ایس پی صاحب (رورل) زون نے بھی انکوائری رپورٹ تھانہ SHO بھجوا چکے ہیں (کاپی لف ہذا ہے) نیز مقدمہ میں 18.11.15 مورخہ 8512-R بذریعہ لیٹر نمبر

کو اخراج رپورٹ مرتب کر چکے ہیں میری رائے میں مقدمہ درست خارج ہوا15-12-15 سہالا بھی مورخہ

ہے سابقہ انکوائری رپورٹ اور رپورٹ اخراج سے مکمل اتفاق ہے۔"

After the said inquiry the I.O. recommended the cancellation of the said FIR. Even otherwise, the witness who have acknowledged the entire Jirga/ reconciliation meeting for settlement of dispute between the complainant/ petitioner and respondent No.4 i.e. Imran Saleem and Muhammad Faheem have submitted their affidavits and appeared before the inquiry officer to confirm that the cheque in question amounting to Rs.11,800,000/- was issued against the sale of plot but the said sale was not matured and matter was finalized whereby the cheque remained as *Amanat* but the petitioner utilized the same in order to extort money. I have gone through the impugned order whereby the learned Judicial Magistrate has discussed each and every aspect and passed order in the light of inquiry findings in terms of Rule 7 of Chapter 24 of the Police Rules, 1934 and agreed to the inquiry findings. The impugned order has been passed after appreciating the true facts from the record and no illegality has been committed by the learned Judicial Magistrate.

8. It is settled proposition of law that if the Investigation Officer, Agency or police failed to proceed in a criminal case and the complainant feeling aggrieved with the said working/investigation, he may approach the higher police officers, whereas in present case the petitioner approached DSP CIA who after inquiring the matter has submitted detailed findings against the petitioner. Moreover, nothing is available on record on the basis of which net conclusion drawn by the I.O. can be dissented.

9. It is also settled proposition of law that order passed by Judicial Magistrate on cancellation report submitted by the police can only be set-aside when the malafide and bias is apparent on record and there are reasons to believe that cancellation report has been prepared under any extraneous influence or on the basis of bias/prejudice. It is also settled proposition of law *ipse dixit* of police is not binding upon the Court, however, it would also be unfair to drag an innocent person in litigation to face hardship and agony of trial, prima facie offence is not made out against him, therefore, the police and the Magistrate are not prevented from exercising their jurisdiction specially when it has been proved in the inquiry as well as in

investigation that cheque in question has not been issued dishonestly and the same is not towards the re-payment of loan nor against some obligation rather the sale agreement was not completed between the parties.

10. Even otherwise, the petitioner if feels aggrieved can approach to the competent Court by way of filing a separate criminal complaint against the individuals for redressal of his grievance as an alternate remedy hence, I am convinced that no illegality has been committed and the questions raised by the petitioner are based upon disputed question of facts which cannot be resolved in constitutional jurisdiction, therefore, instant petition is devoid of merits and the same is hereby dismissed. However, petitioner is at liberty to approach the competent Court for redressal of his grievance by way of filing of criminal complaint, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

Irfan Ali

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