

ORDER.

19.02.2022.

Present:

Accused persons Syed Faizan Raza, Haseem Uz Zaman, Mst. Fareeha Ayub, Ali Gull and Mst. Leena Ghani are on bail.
Accused persons Iffat Omar, Meera alias Meesha Shafi, Mst. Humna Raza and Mst. Maham Javaid are absent.
Learned counsels for the accused persons.
Learned counsel for the complainant.
Fresh power of attorney has been filed on behalf of accused Haseem Uz Zaman, Syed Faizan Raza and Mst. Fareeha Ayub.
AD legal FIA for the State.

Accused persons Mst. Iffat Omar, Meera alias Meesha Shafi and Mst. Maham Javed through their learned counsels have moved petitions for dispensation of their personal attendance for today due to their professional engagements. The reason mentioned in the petitions are not justifiable. So, the same are hereby dismissed.

2. Through this order, I intend to decide petitions under section 249-A Cr.P.C one filed by Ali Gul Pir and other filed by Mst. Leena Ghani on the ground that petitioners are innocent and had falsely been enroped in this case just to harass and blackmail them. No specific role has been attributed to the present accused petitioners. Petitioners belongs to respectable families having unblemished career and the complainant have involved them just to damage their reputation in the society. No incriminating material is available on record to connect them in this case. Therefore, there is no probability of conviction of the accused rather the pendency of this report under section 173 Cr.P.C is sheer wastage of precious time of the court. Moreover, proper procedure as mentioned in the section 40 of PECA and rule 6 (7) rule four and annexure A and B of PECIR has not been followed therefore, there is no probability of conviction of accused persons. They relied on 2019 PCRLJ 1249, PLD 2003 Karachi 148, 2019 CLD 107, 2016 MLD 1238, PLD 2008 Karachi 342, 2006 PCRLJ 476, PLD 2019 Supreme Court 675.

3. On the other hand learned AD legal FIA duly assisted by learned counsel for the complainant vehemently contested these petitions on the ground that sufficient incriminating material is available on record in the file against the

present petitioners to connect them with the commission of offences. Charge is yet to be framed and probability of conviction can only be decided after recording of evidence. Hence, prayed for dismissal of the petitions under section 249-A Cr.P.C filed by the accused/ petitioners.

4. Arguments heard record perused.

5. Perusal of the record reveals that not even a single ground mentioned u/s 249-A Cr.P.C has been agitated in this petition. Section 249-A Cr.P.C provides following grounds to acquit the accused at any stage which is reproduced as under:-

"Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence".

Section 249-A Cr.P.C provides only two grounds to acquit the accused i.e.

(i) Charge is groundless or

(ii) that there is no probability of the accused being convicted of any offence.

6. So far as the question of petitioner of Ali Gul Pir is concerned, he has not agitated even a single ground that why he should be acquitted from this case as no incrementing material is available on the file. The digital evidence attached with the file clearly transpires that he made defamatory remarks from his Twitter account against the complainant. Although, these remarks are yet to be proved but the whole file transpires that he has not denied the dissemination of that material on social media. He has also not denied the factum that he is using the said account till today. He was found guilty during enquiry and the present FIR was lodged against him. Thereafter, the report under section 173 Cr.P.C submitted before this Court against him. So far as the legal question of taking cognizance of the case in non cognizable offence is concerned which is raised by petitioner Mst. Leena Ghani in his petition, the same question have already been agitated by the accused petitioner Mst. Lena Ghani and other before the Hon'ble

Lahore High Court, Lahore in writ petition titled "*Meera Shafi alias Meesha Shafi etc Vs Federation Of Pakistan etc*" and the matter is still subjudice, therefore, no observation in this regard can be made during pendency of writ petition. The other question raised by the learned counsel for the accused during arguments on the petition for registration of FIR is that the complaint has not been signed by the complainant Ali Zafar. Admittedly, this lacuna is available on the file but he has recorded his statement before the investigating officer under section 161 Cr.P.C and submitted his affidavit during the course of investigation before the investigating officer in the enquiry that he has lodged this FIR and ready to pursue the case against the accused in this case, therefore, this lacuna has already been settled. The accused/ petitioner namely Mst. Leena Ghani has not denied the allegation that she has shared the post on Twitter from her Twitter account against Ali Zafar and has also not denied the factum that the Twitter account was not operated by her. There is no denial of the fact that the same Twitter account is being used by her till today. Not even a single ground is agitated in this petition from which the court can ascertained that no incriminating material is available on the file. Hence, the petitions filed by the accused Ali Gul Pir and Mst. Leena Ghani are meritless and the same are hereby **dismissed**.

7. So far as the petitions under section 205/540-A Cr.P.C filed by the accused petitioners Mst. Maham Javed and Mst. Meera alias Meesha Shafi are concerned, both the accused persons in their petitions stated that they are permanent residents of Canada and United States of America and remained busy in their professional engagements outside the country therefore it is hard for them to appear before the court on each and every date of hearing. They have appointed their pleader counsel who shall appear on each and every date of hearing on their behalf, therefore, their personal attendants may be dispensed with till the decision of the case and they may be allowed to appear before the court through their counsel. They have relied on 1980 PCRLJ 1, PLD 1988 Karachi 379, 2004 YLR 195, 2004 YLR 1917, 1980 PCR LJ 3 and 2015 PCR LJ 58.


8. On the other hand learned AD legal FIA duly assisted by learned counsel for the complainant opposed these petitions on the ground that both the accused persons put their appearance before the court for the first time on

04.12.2021 and remained present before the court only for four dates and again left the country and have never appeared before the court despite issuance of their bailable warrants of arrest. They are delaying the trial of the case due to their non appearance and their conduct has disentitled them from any discretionary relief from the court.

9. Arguments heard record perused.

10. Although, counsel for the accused/ petitioners have referred certain judgments of superior courts which allows the accused/ petitioner to be represented through their counsel/ pleader and proceedings of the case can be conducted in the absence of the accused/ petitioners but the perusal of the file reveals that report under section 173 Cr.P.C was submitted on 21.12.2020 and despite issuance of summons and bailable warrant of arrest the accused/ petitioners never turned up to appear before the court. For the first time they appeared before the court on 04.12.2021 and on the very first day they moved application under section 205 Cr.P.C and 540 Cr.P.C. Admittedly, three dates were taken by the complainant to argue these petitions but again on 31.01.2022 they moved an application for their personal dispensation of attendants for one day which was dismissed and after that they never appeared before the court to contest the case filed against them. They are playing hide and seek before the court and due to their absence, trial of the case has badly hampered. They are making mockery of process of law and process of court. In these circumstances, they are not entitled of discretionary relief from this Court. Hence, the same petitions are hereby dismissed. Let the absentee accused persons including the petitioners namely Mst. Meera alias Meesha Shafi and Mst. Maham Javed be summoned through bailable warrants of arrest of Rs.50,000/- each for 19.03.2021.

Announced:
19.02.2022


(Ghulam Murtaza Virk)
Judicial Magistrate Section-30,
District Courts, Lahore.