

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W.P.NO. 2222 OF 2011.

MUHAMMAD IRFAN TUFAIL *VERSUS* *I.G..POLICE ETC.*

S. No. of order/ proceedings	Order with signature of judge, and that of parties or counsel, where necessary
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<u>03.02.2011</u>	Mr. Amjad Farouck Bismell Rajpout, Advocate for the petitioner.
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The petitioner, Muhammad Irfan Tufail, has been involved in an FIR No.930 of 2010, registered on 29.12.2010, at Police Station, Aroop, district Gujranwala, for the offence under section, 406 of PPC. The FIR has been lodged at the instance of one Muhammad Rasheed contending that the complainant claimed to be an American as well as a Pakistani national resides at Faisalabad and was operating a business office by the name of Fine Fabrics in America. The complainant further alleged that for exporting different items of textile from Pakistan for American markets he placed an order for the purchase of cotton from Malik Mehmood Akhtar co-accused and the petitioner, who were running a firm by the name of Eden Enterprises. The cotton quantity supplied by the firm of the accused involved in the case contained defective bales of cotton which fact was detected by the complainant.

2. The accused were alleged to have undertaken to return an amount of Rs.35,02,000/-against the defective delivery of cotton to the complainant and a cheque equivalent to Rs.15,00,000/-was given to the complainant in the presence of witnesses mentioned in the FIR on 03.08.2010 when the complainant came to visit the office of the accused persons. However a little later the complainant was asked to return back

the cheque of Rs.15,00,000/-so that a cheque of Rs.25,00,000/-be given to the complainant. The complainant returned the cheque to the accused Malik Mehmood Akhtar, who immediately after receiving the cheque torn down the cheque and threatened the petitioner to do whatever he wants to do. On the basis of the above mentioned allegations the above mentioned FIR was registered on the ground that the two accused have committed criminal breach of trust.

3. The instant writ petition has been instituted for the quashment of the FIR No. 930/2010.

4. It is contended by the learned counsel for the petitioner that the complainant should bring back the defective bales of cotton supplied to him in America alongwith its documents which act has not been done by him. It is further contended that no entrustment of any property is constituted from the facts and circumstances of the case which is necessary for constituting the offence under section, 405 of PPC punishable under section, 406 of PPC, therefore, the registration of the case is illegal and the FIR, in question, thus be quashed. The learned counsel for the petitiouer has relied upon the judgments reported as **(MUHAMMAD ASLAM (AMIR ASLAM) and others VERSUS DISTRICT POLICE OFFICER, RAWALPINDI) 2009 SCMR 141** and **(MUHAMMAD SHAHID MAQBOOL BHATTI VERSUS SAJID HUSSSAIN and others) 2010 MLD 722** in support of his arguments.

5. I have considered the arguments of the learned counsel for the petitioner and have perused the record.

6. In the FIR it is alleged that on the basis of defective supply of the cotton the petitioner undertook to return Rs.35,02,000/-and first a cheque of Rs.15,00,000/-was given to the complainant which was immediately taken back and was

torn down on the plea that a new cheque of Rs.25,00,000/- will be given. The provisions of section 405 PPC visualize a number of eventualities for defining the offence of criminal breach of trust which is reproduced below:-

“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 use or disposes of that property in violation of any direction of law of 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 wilfully suffers any other person so to do, commits “criminal breach of trust”.”

7. The accused named in the FIR are alleged to have given an undertaking to return Rs.35,02,000/- to the complainant in consideration of the return of defective bales allegedly supplied to the complainant by the firm of the accused persons and they failed to fulfil the obligations as narrated in the FIR. Then the accused are alleged to have given a cheque of Rs.15,00,000/- to the complainant and then got back this cheque upon an assurance to give another cheque of Rs.25,00,000/- and alleged to have been given back the cheque of Rs.15,00,000/- by the complainant which they torn away. *Prima facie* the provisions of section 405 PPC are attracted in the case. The Honourable Supreme Court of Pakistan in the judgments cited as THE STATE through Prosecutor General, Punjab, Lahore vs. SULTAN AHMED and others (PLD 2007 SC 48) and Col. SHAH SADIQ vs. MUHAMMAD ASHIQ and others (2006 SCMR 276) has laid down the law that an FIR making out a *prima facie* case cannot be quashed in exercise of jurisdiction of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The case law relied upon by the learned counsel is distinguishable. In the reported judgment 2009 SCMR 141 the following facts

and circumstances were considered important and are reproduced: -

---S. 9 (c) --- Criminal Procedure Code (V of 1898), Ss. 561-A, 173 & 344--- Constitution of Pakistan (1973) Art. 185(3)--- Quashing of proceedings ---Accused was in jail for the last over eight months---Not a single witness had so far been examined in the case and the trial was being delayed on one pretext or the other---Examination of the accused conducted by the Medical Board pursuant to Court's order had revealed a number of multiple injuries on his person and fracture of his one leg, which showed the atrocities committed by the police---No traces of "Charas" were found in the initial report of the Chemical Examiner who had asked for further sample, for examination of which extraordinary reasons were required--- Formalities of Ss. 173 and 344, Cr.P.C. had not been complied with and challan against the accused had not been submitted within the stipulated period, resulting in grave miscarriage of justice---Material on file did not make out any offence against the accused, charge on the face of it was groundless and possibility of conviction of accused was present---charge having been framed by trial Court was no bar in the way of quashment of proceedings, continuation of which would be a futile exercise and wastage of time--- Petitions for leave to appeal were consequently converted into appeals and allowed and impugned F.I.Rs. were quashed accordingly, with the direction to Jail Authorities to release the accused.

The other judgement by a learned Judge of this court is not only distinguishable on its facts but, speaking with all my humbleness, does not discuss the law laid down by the Supreme Court of Pakistan reported as PLD 2007 SC 48 and 2006 SCMR 276. I am however bound to follow the law laid down in the two Supreme Court's Judgments noted above.

8. In exercise of writ jurisdiction by me, I am not persuaded to interfere at this stage in the matter. The writ petition is accordingly **dismissed** *in limine*.

(NASIR SAEED SHEIKH)
JUDGE.

*AMJAD

Approved for reporting