

ORDER SHEET

**IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
(JUDICIAL DEPARTMENT)**

Crl. Misc. No. 1056-Q of 2017

Mst. Perveen Akhtar etc.

.....Petitioner

Versus

Muhammad Arif etc.

.....Respondents

ORDER.

Date of hearing:	06.06.2017
Petitioner by:	Syed Zulfiqar Abbas Naqvi Advocate.
State by:	Sheikh Istajabat Ali Deputy Prosecutor General.

Muhammad Tariq Abbasi, J – This petition, filed under Section 561-A Cr.PC, carries the following relief:-

"It is therefore, respectfully prayed that the instant petition may ordered to be accepted and the order dated 10.04.2017 may ordered to be set aside, in the best interest of justice."

2. Brief facts of the case are that the respondent No.1 has filed a private complaint under section 337-F(i)/427/447/506/147/149 PPC, against the petitioners and six others in which the learned Judicial Magistrate Section-30, Jand, District Attock, through order dated 10.04.2017, has summoned the petitioners and the others, named in the complaint, to face the trial. Hence the petition in hand.

3. Arguments heard. Record perused.

4. It is noted that the petitioners have invoked the jurisdiction of this Court under section 561-A Cr.P.C. The said

powers and jurisdiction are discretionary in nature and are exercised only if the Court is satisfied that no adequate remedy is provided by law. The principles and law enunciated by the august Supreme Court of Pakistan has narrowed down the scope of the exercise of power under the above mentioned provision to an extent that the same can only be exercised sparingly and under extraordinary and exceptional circumstances. Exercise of powers under Section 561-A Cr.P.C. is an exception and not a rule. The Apex Court in a number of cases had laid down a criteria for interference of the High Court, in exercise of its jurisdiction under section 561-A Cr.P.C which are summarized as under:-

- (i) The said provision should never be understood to provide an additional or an alternate remedy nor could the same be used to over-ride the express provision of law.**
- (ii) The said provision can ordinarily be exercised only where no provision exists in the Code to cater for a situation or where the Code offers no remedy for the redress of a grievance.**
- (iii) The inherent powers can be invoked to make a departure from the normal course prescribed only in exceptional cases of extraordinary nature and reasons must be offered to justify such a deviation.**

The Hon'ble Supreme Court of Pakistan while dealing with the question of exercise of jurisdiction under the above mentioned provision of law, in the case titled "**Chaudhary Munir Versus Mst. Surriya and others**" reported as **PLD 2007 Supreme Court 189**, held as under:-

"....The powers as conferred upon High Court in section 561-A Cr.P.C being extraordinary in nature must be exercised sparingly with utmost care and

caution and it should not be exercised in a casual and cursory manner because inherent jurisdiction as conferred upon the High Court pursuant to the provisions as enumerated in section 561-A Cr.P.C are neither "alternative" nor "additional" in its character and is to be rarely invoked only in the interest of justice so as to seek redress of grievances for which no other procedure is available and that the provisions should not be used to obstruct or divert the ordinary course of criminal procedure."

5. The contention of the learned counsel for the petitioners that the respondent No. 1 has filed the private complaint as a counter blast of FIR No. 194 dated 12.12.2012 got lodged by the petitioners' party and as such, the said complaint is not maintainable, is also without any substance because it is well settled proposition that when there are two versions of an incident, one version put forward by one party and counter version by its adversary, the trial Court while assessing evidence brought on record by the parties has to keep both versions in juxtaposition and then arrive at a final conclusion

6. The mere claim of innocence by an accused could never be considered sufficient to justify such a departure from normal procedure because if this is so permitted then every accused would opt to stifle the prosecution and to have his guilt or innocence determined under section 561-A Cr.P.C. The result would be decisions of criminal trials in a summary and cursory manner rendering the trials as a superfluous activity. This never was and could never been the intention of the law maker in adding section 561-A to the Code. Inherent powers can be invoked to make a departure from the normal course prescribed by law only and only in exceptional cases of extraordinary nature so that the powers meant to prevent the abuse of process of law, are not abused, themselves.

7. Reverting back to the present case, filing of a private complaint, recording cursory evidence in it and then on the basis of available evidence, order for summoning of an accused, could not be termed as abuse of process of law. In this way, such like proceedings, could not be challenged under section 561-A Cr.PC, rather may be called in question, through a revision petition and that too, before the revisional court of first instance. The petitioners, instead of adopting the above mentioned legal mode of challenging the summoning order, through a revision petition before the competent court, are seeking quashing of the said order by way of the instant petition under Section 561-A Cr.P.C, which being not competent and maintainable, is **dismissed in limine.**

(Muhammad Tariq Abbasi)
Judge

Abid/-

APPROVED FOR REPORTING