

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN

Cr.P.L.A. NO. 05/2009

**Before:- Mr. Justice Syed Jaffar Shah,
Mr. Justice Muhammad Yaqoob,**

**Faqir Muhammad, Sub Inspector Police,
Posted at Police Station Astore.....**

Petitioner

Versus

- 1. The State through Police Station Astore**
- 2. Chief Court Gilgit-Baltistan GilgitRespondents**

PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60(12) OF GILGIT-BALTISTAN (AMENDMENT AND SELF GOVERNANCE) ORDER 2009 READ WITH ORDER 23 SUPREME APPELLAE COURT GILGIT-BALTISTAN AGAINST THE ORDER DATED 26-11-2009 PASSED BY HE CHIEF JUDGE CHIEF COURT GILGIT-BALTISTAN IN CR.MISC. NO. 130/2009 WHEREBY AN FIR BY THE POLICE AND ENQUIRY BY THE DEPARTMENT AGAINST THE PETITIONER HAS BEEN ORDERED TO BE LODGED AND CONDUCTED FOR RECORDING OF INCORRECT STATEMENTS IN CRIMINAL CASE NO. 51/2009 POLICE STATION ASTORE.

FOR SETTING ASIDE THE IMPUGNED ORDER HOLDING THE SAME AGAINST THE LAW, FACTS, WITHOUT JURISDICTION AND VOID AND FOR QUASHMENT OF FIR NO. 54/2009 SECTION 193 CR.P.C., POLICE STATION ASTORE FOR THE LARGE INTEREST OF JUSTICE, LAW AND EQUITY.

**Present:- Mr. Johar Ali Advocate for the petitioner
Advocate General for the state.**

Date of hearing 05-04-2010.

O R D E R.

Syed Jaffar Shah.....J. This

petition for leave to appeal is directed against order dated 26-11-2009 passed by Single Bench of Chief Court Gilgit-Baltistan in Criminal Misc. No. 130/2009, whereby the learned Judge Chief Court has issued direction for registration of a case Under Section 193 PPC against the petitioner for his alleged commission of offence of perjury.

1. The brief facts leading to the present petition are that one Muhammad Khan complainant, lodged the report with police station Astore alleging therein that on 15-11-2009 he along with Muhammad Nazim, Raj Mulook, Kasim Iqbal, Adnan and others was sitting near the house of one Abdul and were busy in gossip, in the meanwhile 11 persons including one Abdul Bari suddenly appeared thereon, holding sticks and stones in their hands, they suddenly pelted stones on complainant party and also attacked them with sticks and in the meantime one of the accused party namely Abdul Bari S/O Muhammad Khan, fired with a pistol which hit one of complainant party namely Ibadat Shah S/O Muhammad Khan, on his forehead resultantly he fell down injured and was taken to Hospital for treatment.

2. On the information given by the complainant the S.H.O. Police Station Astore registered FIR No.51/2009 under Section 148,147/324 PPC and there after started investigation of the case.

3. The main accused namely Abdul Bari approached the learned Chief Court for his pre-arrest bail having declined the same by the Additional District and Sessions Judge Astore. Which came to be heard by Raja Jalal-ud-Din Chief Judge Chief Court Gilgit-Baltistan.

4. The learned single judge granted interim bail to the said accused Abdul Bari, however vide order dated 26-11-2009 declined to confirm the interim bail and also directed arrest of the said accused Abdul Bari, the learned Judge while passing the orders on bail application also issued directions for registration of a case Under Section 193 PPC against the petitioner who was I.O. of the case for recording the statement of one Firdous who in his statement Under Section 161 Cr.P.C. charged one Abdul Muheed to have fired on the injured Ibadat Shah, the learned Single Judge viewed that this statement of witnesses Firdous has weakened the prosecution case, the learned Judge while rejecting the application for grant of pre-arrest bail gave the following directions in the impugned order.

**The I.O. Faqir Muhammad should be charged for perjury
That the matter has been conducted with malafide intention
As such it is directed that an FIR be recorded against him
Under Section 193 PPC.**

5. We have heard the learned counsel for the petitioner and Advocate General for the state/respondent at length and on their valuable assistance have perused the relevant record as well as relevant provisions of law and tentatively assessed the statement of P.W Firdous, in his statement Under Section 161 Cr.P.C. recorded by the petitioner the said witness no-doubt, implicates one Abdul Muheed for causing fire arm injury to Ibadat Shah but in his subsequent statement recorded before the successor of the petitioner he does not nominate any person out of the accused party for opening fire at the injured Ibadat Shah, however he admits to have made a statement before the petitioner implicating one Abdul Muheet. From the above facts it transpires that the P.W. Firdous appears to be a double minded man and whatever he stated in his statement Under Section 161 Cr.P.C. the petitioner reduced the same into writing so this act of petitioner does not constitute an offence of perjury within the mischief of Section 193 PPC as observed by the learned Single Judge.

6. In order to reach a proper conclusion it would be necessary to go through the relevant provision of law on the subject Under Section 191 PPC defines perjury or making false evidence which reads as under:-

Section 191. Giving false evidence.

Whoever being legally bound by an oath or by an express provision of law to state truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true is said to give false evidence.

Explanation 1. A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2. A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Section 193 PPC. Punishment for false evidence. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

And whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either

description for a term which may extend to three years and shall also be liable to fine.

Explanation 1. A trial before a Court martial is a judicial proceeding.

Explanation 2. An investigation directed by law preliminary to a proceeding before a court of justice, is a stage of a judicial proceeding, though that investigation may not take place before a court of justice.

The perjury has been defined in Black Laws Dictionary Eighth Edition as under:-

“That an act or an instance of a person deliberately making material false or misleading statement while under oath”

punishment for making perjury has been provided under Section 193 PPC which has already been reproduced herein above.

7. The careful examination of the above section would show that any action Under Section 193 PPC can only be taken against any person after conclusion of trial, it means that any action taken during trial or at investigation stage would be violative of law. In the case in hand neither the petitioner has given any false statement on oath before any court of law nor he has resiled from

any previous statement made by him. The petitioner as an investigation officer has only recorded a statement of witness under section 161 Cr.P.C. and mere recording of a statement given by a witness does not in any way constitute an offence punishable under section 193 PPC nor it is scheme of law to launch a prosecution of perjury against any person before conclusion of trial from perusal of impugned order it reveals that in the present case even trial has not commenced and the case is still at investigation stage. The learned judge chief court ought to have differentiated the investigation and trial before taking any action or giving his findings, unfortunately it has not been done in the present case and the learned Judge Chief Court has not appreciated the relevant provision of law properly and has pre-determined the guilt of the petitioner.

For the foregoing reasons we convert this petition into appeal, the impugned order dated 26-11-2009 is set aside to the extent of Directions regarding registration of a case Under Section 193 PPC against petitioner. Consequently quash the FIR bearing No. 54/2009 registered with Police Station Astore on the basis of said order/direction.

Petition converted into appeal and allowed.

JUDGE

JUDGE