

**IN THE HIGH COURT OF SINDH, KARACHI**

**Present:**

**Mr. Justice Muhammad Saleem Jessar**

**Mr. Justice Nisar Ahmed Bhanbhro**

**Const. Petition No. D-5167 of 2024**

*(Farhan Hanif & others v. Federation of Pakistan and others)*

Petitioners : Through Mr. Abid S. Zuberi a/w Mr. Nawaz  
Khan and Mr. Arif Ansari, Advocates

Respondents : Through Ms. Shazia Ahmed Hanjrah  
Learned Deputy Attorney General for  
Pakistan along with Inspector Zeeshan  
Shaikh

: Mr. Shumail Sikandar Advocate  
for Bank Islami

Date of hearing : 19.05.2026

Date of Order : **19.05.2026**

**JUDGMENT**

**NISAR AHMED BHANBHRO, J.** On last date of hearing, this matter was adjourned to a date on 21.05.2026 for arguments of parties. Learned Counsel for the Petitioners filed an urgent application seeking date to another day as he was committed before Honorable Federal Constitutional Court of Pakistan on the date fixed by Court, therefore, may not be able to appear and argue the case. Adjournment was strongly opposed by Learned Deputy Attorney General For Pakistan and Learned Counsel for Respondent Bank on the ground that restraining orders were in field since last about 18 months, due to which investigation in the case could not proceed. Learned Counsel for the Petitioner demonstrated his willingness to argue today. By consent of parties, Urgent Application CMA No 12413 /2026 is granted and matter is anti dated and heard on merits on today's date.

2. Through this petition, the petitioners have claimed the following relief(s):

*i. Declare the Enquiry No 98 and 99 of 2024 are illegal, arbitrary, mala fide, without jurisdiction and have been started in violation of inter alia sections 2g(i) read with Section 20(7) of the FIO 2001 and Articles 9, 14, 10-A, 19-A, 25 etc read with Article 4 of the Constitution of Islamic Republic of Pakistan, of 1973 and Quash the same.*

*ii. Declare the impugned notices dated 30.09.2024 and 10.10.2024 being reference No(s) FIA/CBC/ENQ-98/2024/19506-07, FIA/CBC/ENQ-99/2024/19504-05, FIA/CBC/ENQ-98/2024/20129-30, FIA/CBC/ENQ-99/2024/20181-32 respectively are illegal, arbitrary, malafide, without jurisdiction and have been issued in violation of inter alia Sections 2g(i) read with Section 20(7) of the FIO 2001 and Articles 9, 14, 10-A, 19-A, 25 r/w Article 4 of the Constitution of Islamic Republic of Pakistan, of 1973 and set aside the same.*

*iii. Restrain the Respondents No 2 and 3, its employees, officers, agents and / or assigns from taking any coercive action and / or adverse action in any manner whatsoever against the Petitioners, their employees agents and assigns, in pursuance of Enquiry No. 98 and 99 of 2024 and / or harassing or arresting the Petitioners.*

*iv. Exempt the Petitioners No 2, 3, 4, 5, and 7 from personal / physical appearance before the Respondents No 2 and 3*

*v. Grant any other relief(s) which this Honorable Court may deem fit and proper in the facts and circumstances of this case.*

*vi. Grant Costs.*

3. Learned counsel for the petitioners contended that Petitioner No 1 is the sole proprietor of M/S Denim Coy, he is also partner in M/S Hantex a partnership concern along with Petitioners No 2 and 7, both the companies are engaged in business of producing and manufacturing denim cloth products for export purposes. He contended that Petitioners have maintained a longstanding mutual business with Bank Islami. Petitioners were advanced loans through various sanction orders. He contended that Bank Islami through Two Separate Legal Notices dated 20.07.2024 invoking sections 20 and 2(g) of Financial Institutions (Recovery of Finance) Ordinance 2001 (FIO) demanded the payment of Rs 2577.292 Million and Rs

691.616 Million from M/S Denim Co. and M/S Hantex Co. respectively within a period of 30 days and in case of failure threatened to approach Federal Investigation Agency (FIA) for criminal proceedings under wilful default. He contended that the demands were baseless, made with mala fide intentions to coerce, intimidate and harass petitioners as no amount was due payable to the Bank. He contended that "wilful Default" refers to deliberate or intentional failure to repay amounts owed to the Financial Institutions within the agreed time frame and the wilful default is established when civil liability is determined. He contended that notices dated 20.07.2024 were issued without first establishing the civil liability, therefore, proceedings under section 20(7) of FIO were without legal justification. He further contended that Bank had already filed Suits No B - 23 of 2024 and B-24 of 2024 before this Court for recovery of loan amount and Petitioners have filed applications for leave to defend in the said suits challenging the legality of claims. He contended that Petitioners have furnished replies to notices issued by FIA. He argued that pending adjudication of suits, FIA cannot initiate an inquiry for alleged offence of "wilful default". He contended that inquiry was initiated with mala fide intentions and ulterior motives and it was a colorful exercise of powers. Lastly, he argued that no fruitful result would be achieved in the inquiry saving undue harassment to the Petitioners. He relied upon the cases of Messrs S.Q. Corporation through Proprietor and others V. Federation of Pakistan through Secretary Internal Affairs, Government of Pakistan Islamabad and others (**2022 CLD 128**), Misbahuddin Zaigham and 3 others V. Federal Investigation Agency through Assistant Director (FIA/CBC/LHR) and another (**2021 CLD 906**), Assistant Director Intelligence and Investigation Karachi V. M/s B.R. Herman and others (**PLD 1992 Supreme Court 485**), Ghulam Hussain Baloch and another V. Chairman National Accountability Bureau Islamabad and 2 others (**PLD 2007 Karachi 469**), Dr Arsalan Iftikhar V. Malik Riaz Hussain and others (**PLD 2012 Supreme Court 903**). He prayed to allow the petition.

4. Learned Deputy Attorney General for Pakistan contended that Offence of "Wilful Default" was cognizable, non-bailable and non-compoundable; that Federal Government has nominated Federal Investigation Agency to investigate the offence of Wilful Default. She contended that Petitioners obtained loan from Bank Islami by pledging

Stock and mortgaging property viz. Shops at Center Shopping Mall Abdullah Haroon Road Karachi, which were latter on removed and transferred. She contended that Petitioners by misappropriating the pledged stock and transferring the mortgaged property committed an offence of Wilful Default. She contended that offence of wilful default was independent of determination of civil liability. She placed reliance upon the case of Mian AYAZ ANWAR and others V. STATE BANK OF PAKISTAN and others (2019 C L D 375) and prayed to dismiss the Petition.

5. Learned Counsel for Bank Islami contended that Petitioners were advanced loan through various sanctions advice against the pledge of stocks and mortgage of property. He contended that Petitioners defaulted in repayment and committed breach of trust by removing the pledged stocks and transfer of mortgage property. He contended that notice of wilful default was issued to the Petitioners but they did not come forward to repay the loan, thus committed an offence of wilful default. He contended that complaint was lodged with FIA, a nominated agency to investigate the crime under FIO, which took cognizance of matter and initiated inquiry. He contended that at present Petitioners are under default of Rs 693 Million (principal amount plus accrual). He contended that stock pledged against loan was removed and mortgaged property was transferred, which constituted an offence within the definition of Section 2g of FIO. He contended that Suits were filed by Bank for recovery of amount. He contended that offence of wilful default was independent of determination of civil liability. He therefore prayed to dismiss the petition.

6. Heard arguments of the parties and perused the material made available before us on record.

7. The crux of controversy involved in the instant petition is that FIA has initiated an inquiry for an offence of "wilful default" pending adjudication of civil liability, which per Learned Counsel for the Petitioners was dependant upon the determination of civil liability. The inquiry was unlawful as exercise to determine civil liability was in pipeline, therefore,

criminal prosecution of the Petitioners for the offence of "Wilful Default" cannot be done.

8. The FIO is a special law promulgated in 2001 to provide effective remedy for the recovery of finances extended by Banks and for the fulfillment of obligation defined in section 2(e) of the FIO in favour of the financial institution. The FIO prescribes the procedure to be adopted for the purposes of invoking the jurisdiction of the Banking Court for recovery of amounts due to the financial institution or breach of any obligation as defined under the FIO. The law prescribes for a special procedure to be followed when filing a suit under the FIO and also prescribes for certain offences which are triable before the Banking Court. Hence the Banking Court is a specialized court to deal with the issues of recovery of Finance and trial of offences.

9. The 'default' under the FIO is a civil as well as criminal liability. "Willful Default" is defined as an offence under Section 2(g) of the FIO, which reads as follows:

***2(g) willful default***

*(i) deliberate or intentional failure to repay any finance, loan, advance or any financial assistance received by any person from financial institution after such payment has become due under the terms of any law or an agreement, rules or regulations issued by the State Bank of Pakistan;*

*(ii) Utilization of finance, loan advance or financial assistance or a substantial part thereof, obtained by any person from a financial institution for a purpose other than that for which such finance, loan, advance or financial assistance had been obtained and payment in part or full not made to the financial institution; or*

*(iii) Removal, transfer, misappropriation or sale of any assets collateralized to secure a finance, loan advance or financial assistance obtained from a financial institution without permission of such institution."*

10. Per above provisions of law, "willful default" constitutes under three separate situations. It is an intentional or deliberate failure to repay any finance, loan, advance or financial assistance received by a person which is due under the terms of an agreement or under a law. It also includes the wrongful use of finance other than the purpose for which it was given and the misappropriation or sale of collateral or security given to a financial institution.

11. To bring "willful default" under the purview of culpable criminal charge, the prosecution in addition to establishing default, has to prove that the default was willful, that is an intentional and conscious act. Consequently mere inability to repay loan will not constitute the offence of "willful default" meaning thereby that the element of willfulness must be present where there is a default.

12. Section 20 of the FIO envisaged the procedure to investigate the offence of "Willful Default", its punishment and consequences on conviction under the charge of offence. Sub sections 7, 8 and of Section 20 being relevant are reproduced below:

**20. Provisions relating to certain offences:**

(1)

.....  
.....

(7) *Notwithstanding anything to the contrary provided in any other law for the time being in force, action in respect of an offence of wilful default shall be taken by an investigating agency, to be nominated in this behalf by the Federal Government, on a complaint in writing filed by an authorized officer of a financial institution after it has served a thirty days notice upon the borrower demanding payment of the loan, advance or financial assistance.*

(8) *An offence of willful default shall be cognizable, non-bailable and non-compoundable and punishable with imprisonment which may extend to seven years or fine not exceeding the amount of default or with both.*

(9) *Any person convicted of the offence of willful default by a Banking Court shall not be eligible to receive*

*any loan, advance or finance from any financial institution for a period of ten years and shall not be permitted to contest any election as a member of the Majlis-e-Shoora (Parliament), any Provincial Assembly or a local body for a period of five years, after serving out a sentence after conviction.*

13. From the perusal of above provisions of law, it is crystal clear that an offence of wilful default shall be investigated by an investigating agency nominated by the Federal Government. The offence is non-bailable, non-compoundable and cognizable with punishment for an imprisonment that may extend up to seven years and fine not exceeding the loan amount. A person convicted of the offence of willful default by a Banking Court shall not be eligible to receive any loan, advance or finance from any financial institution for a period of ten years and shall not be permitted to contest any election as a member of the Majlis-e-Shoora (Parliament), any Provincial Assembly or a local body for a period of five years, after serving out a sentence after conviction.

14. The moot question as discussed supra before the Court is whether provisions of section 20 of FIO can be invoked prior to a determination on the civil liability of default or not. Section 2(g) of FIO captivated three distinct definitions of "Willful Default" meaning thereby that there are three separate situations to bring the charge of "Willful Default". Under section 2(g)(i) of the FIO, "willful default" is an intentional failure to repay the loan which is due to the financial institution. In all such cases, the element of "default" precedes the criminality of the offence of willfulness, meaning thereby that the question of default must be established first as per the prescribed procedure under the FIO, before it can be alleged that the default was deliberate or intentional. If there is a complaint that Customer has failed to repay the loan then before proceeding to the criminality, the determination that it was willful is mandated. Therefore, for charge of an offence under section 2g(i) determination of the civil liability was sine qua non. For the charge of an offence under section 2g(ii) that the finance, loan advance or financial assistance or a substantial part thereof, obtained by any person from a financial institution was utilized for a purpose other than that for which such finance, loan, advance or financial assistance had been obtained and

payment in part or full not made to the financial institution was independent of determination of civil liability and will require investigation through agency. In case of charge for an offence under Section 2g(iii) that is removal, transfer, misappropriation or sale of any assets collateralized to secure a finance, loan advance or financial assistance obtained from a financial institution without permission of such institution, that too was an independent of determination of civil liability. Both the situations describe an offence of criminal breach of trust, irrespective of the fact that loan was repaid or not. After the investigation agency completes its investigation, it shall tender its findings before the Banking Court for the offence stipulated in section 2(g)(i) or 2(g)(ii) or 2(g)(iii) of the FIO, as the case may be.

15. Adverting to the case of Petitioners. As spelt out from record Bank Islami advanced loan facilities to the petitioners against securities viz-a-viz hypothecation over stocks and receivables for PKR 1.867 Billion, Pledge of Cotton / Fabric amounting to PKR 334 Million, equitable / token registered mortgage of Rs. 0.100 Million over shops No B-15, B-52 etc., situated at Center Shopping Mall Saddar Karachi, equitable/ token registered mortgage of Office No 401, 402, & 403 in Bahadar Yar Jung Cooperative Society (Naheed Super Store Building) Karachi, equitable/ token registered mortgage over Plot No 119 Korangi Industrial Area Karachi and Personal Guarantees of Petitioners. The pledged stocks were placed at the place of Petitioners and M/S Al-Macca Enterprises was appointed as Mucaddum. Bank received suspicious reports about misappropriation of pledged stocks by Petitioners in collusion with Mucaddum, hence sought services of M/s Hunza Services (Pvt.) Limited for special inspection of stocks. It surfaced during inspection that stocks placed at the premises belonged to third party and complete inspection of stocks was also halted by Petitioners. Moreover, it also surfaced that mortgaged property viz. shops in Center Mall Saddar Karachi were sub-leased in favor of third party without the knowledge and consent of Bank. On knowledge of above affairs, Bank issued two separate notice dated 20.07.2024 to the Petitioners for repayment of loan and in case of failure warned them of initiation of criminal proceedings under the charges of "willful default."

16. In reply to the legal notices, petitioners did not countenance the obligation to repay the loan, however disputed quantum of additional amount in lieu of KIBOR (Karachi Inter Bank Offered Rates) charges. Petitioners did not demonstrate their willingness to oblige repayments as per terms and conditions of loan agreement or shown desire for settlement of accounts. On receipt of reply of legal notice Bank filed Suits No B - 23 of 2024 and B -24 of 2024 for security of pledged stocks and mortgaged property and for recovery of loan amount. Bank also lodged complaint to nominated agency FIA to initiate criminal proceedings for the offence of Wilful Default. FIA issued notices to the Petitioners which are subject matter of the instant petition.

17. Learned Counsel for the Petitioners mounted his arguments to justify quashing of inquiry on the sole ground that since Suit under Section 9 of FIO was filed for recovery of loan and Petitioners were contesting the same by filing an application under section 10 of FIO seeking leave to defend on legal grounds, therefore, until adjudication of civil liability, criminal proceedings cannot be initiated. The stance of Learned Counsel for the Petitioners had no substance, for the reasons that Petitioners' (Borrowers) took evasive stance in reply to legal notice to repay loan despite of its capacity to pay. This evasive stance on the part of Petitioners constituted "willful default" within the meaning and definition of Section 2g(i). It is also the case of the Bank that pledged stock was misappropriated and mortgaged property was transferred to a third party, this also constituted an offence within the definition of Section 2g(iii). Perusal of contents of petition manifested that allegations of criminal liability for an offence under section 2(g)iii are not denied and even no where in the petition it is stated that Petitioners were willing to pay the loan, therefore question of determination of civil liability first was of secondary importance.

18. The FIO is a special law, which confers exclusive jurisdiction to the Banking Court to establish whether or not there has been a "default" by a customer in the fulfillment of any "obligation" with regard to any finance as defined under section 2 and at the same time to try an offence of "Willful Default" under section 20 of the FIO. Legislature in its own wisdom has provided a single forum for determination of civil and

criminal liabilities. In the event that there are two different forums adjudicating or investigating on the question of "willful default" at the same time, there is a likelihood of conflicting judgments or findings before two different forums. The intent of legislature for parallel civil and criminal proceedings was to rescue the rights of a customer charged for willful default..

19. There is no cavil to the principle that the offence of willfulness will come after the civil liability of default, an obligation to pay, is determined as there has to be an obligation to pay before it can be alleged that the obligation to pay was deliberately avoided. But in the particular set of circumstances in the present case as surfaced from reply to legal notices and pleadings in the Petitions, it can be safely held that Petitioners were making a deliberate attempt to avoid payment of loan coupled with the fact of breach of trust by misappropriation of pledged stock and transfer of mortgaged property.

20. The agency can take cognizance of a complaint alleging deliberate failure to re-pay any finance, loan, advance or financial assistance received by a person which is due under the terms of an agreement or under a law or the wrongful use of finance being an offence where finance is not used for the purpose it was given and removing, transferring or misappropriating or selling any of the security provided to the financial institution to secure the loan by invoking the powers under section 20(7) of the FIO. Essentially this means that a customer can be tried for an offence of Wilful Default independent of determination of intention.

21. It is a settled principle of law that due process constitutes a fundamental Constitutional right and no proceedings may be lawfully initiated except in strict adherence to due process and the prescribed procedural formalities. It is a well-settled principle of law that any exercise conducted without due process of law is unconstitutional, illegal and void. It is also a well-settled and established principle of law that when the legislature requires the doing of a thing in a particular manner then it is to be done in that manner and all other manners or modes of doing or performing that thing are barred. In the present case, though petitioners

allege mala fides on the part of bank but no convincing material was brought on record to establish either the malice in law or malice in fact.

22. The case laws relied upon by the Counsel for Petitioners though laid down the principles for initiating criminal proceedings under section 2g(i) of FIO, but the instant case was on different facts thus with utmost regard were distinguishable and case law relied upon by Learned DAG fits to the facts of case in hand.

23. The Petitioners have failed to demonstrate any illegality or infirmity in initiation of inquiry by FIA, or any of the fundamental rights impinged upon, warranting interference by this Court to exercise the powers of judicial review conferred under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 .

24. In view of aforementioned discussion, this Petition therefore fails and is accordingly dismissed with no order as costs along with listed applications.

**JUDGE**

**JUDGE**

**HEAD OF CONST. BENCHES**

Approved for reporting