

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Applications No.451 and 452 of 2026

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Applicants:- M/s. Palstic World (Pvt) Limited
[in Cr. Misc. Application No.451/2026]
and M/s. Yasir Brothers (Pvt) Limited
[in Cr. Misc. Application No.452/2026]
through Mr. Furqan Ahmed Siddiqui,
advocate.

Respondents:- The State through FIA/CBC & others through
Mr. Khaleeq Ahmed, DAG a/w IO
Nabeel Mehboob, AD, FIA CBC, Karachi.

M/s. Abras Ahmed Yar Khan, Mohammad Mehmood
Ali and Mohammad Aaqib, advocates for respondent
No. 2.

Date of hearing:- 11.09.2026.

Date of decision:- 29.09.2026.

O R D E R

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MUHAMMAD IQBAL KALHORO J: These two connected Cr. Misc. Applications have been filed against impugned orders passed by a Banking Court, Karachi in two Direct Complaints (the DCs) filed against applicants by respondents alleging commission of offences u/s 20(1)(a)(b)(2) and (5) of the Financial Institution (Recovery of Finance) Ordinance, 2001 [FIO, 2001].

2.By the impugned orders, the Banking Court has entertained the DCs, has referred the matter to Federal Investigation Agency (CBC) to conduct an inquiry and submit a report within thirty days. Applicants have exceptions to this order on three grounds:(i) initially such complaints were filed but were dismissed, hence second complaints on the same facts and alleging the same offence are barred;(ii) the offence alleged against the applicants u/s 20(5) of FIO, 2001 does not come within the schedule of the FIA Act, 1974, and hence FIA has no jurisdiction to make an inquiry into it; and (iii) since the hypothecated stock, the misappropriation of which has been alleged, was kept in District Hub Balochistan, the Banking Court

here in Karachi has no territorial jurisdiction to entertain the said complaints. Yet the Banking Court has assumed jurisdiction, and referred the matter to FIA for enquiry.

3. When the learned counsel for applicants started his arguments to address the said three points, we first asked him about maintainability of the applications in hand reminding him that still the Banking Court had not taken cognizance of the offence and the notices had not been issued to the applicants. We also refreshed his memory by citing a well-known proposition that unless a notice is issued to the accused and the direct complaint is admitted for a regular hearing, the accused has no right of audience before the court. Learned counsel did not seem to contest it but in order to enforce his view on this point, he relied upon certain decisions¹ of the superior courts. His main contention was that when the court, apparently without territorial jurisdiction, entertains a direct complaint and proceed further by passing certain orders, like the ones in hand, that are likely to cause prejudice to the proposed accused when if ultimately he is summoned, he would have a right to challenge the same before the next high forum. His main stress however was on the point that he was before this Court and this Court had inherent powers u/s 561-A CrPC to pass such orders so as to arrest abuse of process of the court, not the least, when it is so glaringly available on the record. He next submitted that in the cited cases, the right of audience was afforded to the accused by the courts, even before the direct complaint was admitted.

4. The Second limb of his arguments was in respect of dismissal of the first complaint that he insisted would beget a bar to filing of the second complaint containing the same facts and the same cause of action. He expressed that the Supreme Court in one case² has held that until and unless exceptional circumstances existed, the second complaint (on the same facts) would be barred. These exceptional circumstances mentioned in the said decision are enumerated as under.

If previous order was passed on an incomplete record.

Or nature of the complaint was misunderstood by the court.

Or the complaint was manifestly absurd, unjust or foolish.

Or where new facts, which in the previous proceedings could not have been brought on the record with reasonable diligence, have been alleged.

¹ Syed Wahid Bux Shah v. The State and another (1968 PCrLJ 1105); Mst. Bashir Begum and 2 others v. Ghulam Nabi and another (PLD 1972 Lahore 185); Ahmed v. The State (2004 PCrLJ 304)

² Zahoor and others v. Said-ul-Ibrar (2003 SCMR 59)

5. He further emphasized that when a judicial mind is applied in dismissing the first complaint, the second complaint (on the same facts) would be barred. The Banking Court in the impugned order has made a mention of dismissal of the first complaint, yet it entertained the second complaint and assumed territorial jurisdiction and referred the matter to FIA for an enquiry. He said that such approach of the Banking Court was illegal and warranted termination of the proceedings before it.

6. Learned counsel next stated that FIA's jurisdiction was governed by the FIA Act, 1974. Section 3 (1) thereof confers powers on FIA to conduct an inquiry or investigation of the offences specified in the schedule of the said Act. The offences under the FIO, 2001 are not included in the schedule, hence, FIA could not initiate an inquiry into any alleged offence under the said law. He urged that only the Federal Government can amend the schedule. And that the Federal Government has done it only in respect of wilful default by amending FIA Rules, 2018. This offence has been included in the schedule of the FIA Act, 1974 and now FIA can mount an inquiry but only in that offence. As no allegation of such kind has been leveled against the applicants; referring the matter to FIA by the Banking Court suffers from an apparent illegality which this Court u/s 561-A CrPC has the jurisdiction to look into and pass appropriate orders to stop it in the bud.

7. In respect of territorial jurisdiction of the Banking Court, his objection was that hypothecated stocks were housed in a factory situated in Hub Balochistan. So, even if misappropriation of the hypothecated stock is assumed, the offence happened within the limits of Hub Balochistan, and not in Karachi. The Banking Court in Karachi could not assume territorial jurisdiction on any ground to try the offence alleged to have been committed in Balochistan. The Banking Court through the impugned order had assumed jurisdiction by referring to sections 177 and 179 CrPC, the scheme of which was not attracted. He said section 179 CrPC would come into play when the aftermaths of the offence committed at some other place spill into a given place.

8. According to him, the Banking Court had assumed jurisdiction on the basis of some so-called agreements executed ostensibly by the applicants at Karachi. Such agreements might give a rise to a cause of action for pursuing a civil remedy against the applicants in Karachi. But, he maintained, for assuming jurisdiction to try a criminal case, the Court had

to strictly see first the place of offence and then whether or not the aftershocks thereof had reached Karachi. In this case, the Banking Court was required to see where the hypothecated stock was kept, or where any alleged misappropriation thereof took place.

9. He next submitted that in terms of section 201 CrPC, the Court is required to first determine its jurisdiction and if the reply comes in negative, it has to refer the matter to the relevant Court before proceeding further in the matter u/s 202 CrPC.

10. Lastly, learned counsel urged that even if this Court concluded that since the direct complaints had not been admitted for the regular hearing and no process had been issued, the applicants had no right of audience, this Court u/s 561-A CrPC could look into the matter and exercise its inherent powers to cater for a situation where no remedy was available to the applicants. In such case, the question whether the aggrieved person had any *locus standi* or not would become irrelevant and immaterial. His view was that the powers u/s 561-A CrPC were intended to protect and safeguard the interests of justice and to redress grievances against which otherwise no remedy was available in the law to the aggrieved person. This Court under the said powers could not let abuse of process of the Court continue after the same was brought to its notice on the excuse that aggrieved party had no right of audience. When through the impugned orders, the Court had apparently assumed territorial jurisdiction illegally, referred the matter to FIA, this Court under the same provision had ample powers to pass orders over and above the view admitting no right of audience to the proposed accused before the Court holding preliminary enquiry (PE). Learned counsel, in support of his arguments, has relied upon various decisions mentioned in the footnote³.

11. On the other hand, learned counsel for respondent No. 2 and DAG have supported the impugned orders. They however raised the same concerns which we had already expressed regarding maintainability of the applications. In addition, they referred to section 202 CrPC to remind us that under the said provision, the Court had powers to refer the matter to any Agency etc. for the purpose of inquiry, or investigation irrespective of the fact whether such agency had the jurisdiction to inquire into such matter.

³ 2019 PCrLJ 665, 2017 SCMR 1218, PLD 2025 SC 53, PLD 2016 SC 55, PLD 1994 SC 486, 2001 PCrLJ 628, 2011 YLR 816, 2020 YLR 578, PLD 1979 Quetta 69, 2018 MLD 26.

12. We have considered contentions of the parties and perused record made available before us. Firstly, we would like to analyze the conclusion drawn by the Banking Court regarding its territorial jurisdiction to entertain the DCs. In this regard, it has made a reference to sections 177 and 179 CrPC. Section 177 CrPC confers jurisdiction to a Court in whose jurisdiction an offence is committed to try the same, while section 179 CrPC in addition extends such jurisdiction also to a Court in whose jurisdiction any consequence of the offence has ensued. But in the cases of criminal misappropriation and criminal breach of trust, a specific provision is there. It is section 181 (2) CrPC. It says mainly that such offence can be enquired into or tried by a Court within local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or by the Court in whose jurisdiction the offence was committed. This section authorizes the Court in whose limits the property, alleged to be misappropriated, was either received or retained to try such offence besides the Court where misappropriation or criminal breach of trust is alleged to have actually been committed.

13. Section 20 FIO, 2001, alleged in the DCs to have been committed is almost *pari materia* and *akin* to an offence of misappropriation and criminal breach of trust as defined in section 405 PPC. As per this provision, entrustment of the property, misappropriation thereof, or its conversion by the accused for his own use, or its dishonest use in violation of any direction of law, dealing with the mode of discharge of such trust, or of any legal contract, would make out the said offence.

14. When we read the DCs, we find that main accusations are more or less the same: misappropriation of hypothecated stock and criminal breach of trust as defined above. A brief reproduction of the facts would confirm this fact. It is alleged that the applicants availed financial facilities from the banks against certain conditions. The said facilities were revised from time to time at their request, until applicants executed letters of hypothecation respecting movables and receivables for a certain amount. One such letter along with SECP certificate executed in the year 2019 was in respect of present & future goods, merchandise, stocks, stock in trade, raw material, etc. stored at some plots located in district Lasbella, Baluchistan. In a stock report filed by the applicants in the year 2022, when the banks found shortfall in the charged stock, they first resorted to correspondence with the applicants demanding inspection &

reconciliation of the stocks. When neither of the request was conceded, and no fresh stock report was communicated. The banks got alarmed and knocked the doors of the Court by filing the DCs.

15. The second complaint alleges that the applicants in connivance of each other committed the breach of their obligation in respect of trust receipt and undertaking on the basis of which, the bank had issued them loan. That the applicants after having fully availed the finance facility have deliberately failed to adjust their outstanding liabilities and committed default and breached their representation and warranties under the Offer Letter and the finance agreements and security documents. That the applicants have failed to meet their repayment commitments and discharge their obligations as defined u/s 2 (e) of FIO, 2001 towards the bank.

16. This brief reproduction indicates impeccably all the necessary constituents defining the offence u/s 405 PPC. When we keep this in mind, two apparently irresistible assumptions appear on the horizon: section 181 (2) CrPC is the most relevant here, besides section 177 and 179 CrPC for determining territorial jurisdiction; and that the charged assets all along remained, or were retained in district Lasbella, Baluchistan.

17. But before we rush to deprecate the Banking Court for failing to note the most relevant provision while determining territorial jurisdiction in the cases. We need to take a holistic view of the entire situation unfolded before us. No doubt, the Banking Court's reference to only section 177 and 179 CrPC, and not citing section 181 (2) CrPC with relevant facts, to justify entertaining the DCs is shortsighted. But whether it should scuttle the entire exercise, and warrant termination of the whole process. Not the least, when admittedly, the Banking Court has not yet decided to take cognizance and issue notice to the applicants. In the following paras, we are attempting to find answer to this dichotomy.

18. Our research has led us to several decisions of the Supreme Court that are germane to finding the answers. In one of which⁴, the Supreme Court, among other issues, had to decide whether a Court or tribunal can initially determine jurisdictional fact upon which its authority depends and whether such determination is conclusive. It is said in para 3, that if at the inception of an inquiry by a tribunal, a challenge is made to its

⁴ 2016 SCMR 2186.

jurisdiction, the tribunal has to make up its mind whether to act or not, and it can give a ruling on the preliminary or collateral issue; but such ruling is not conclusive and remains open to examination through the appropriate legal process. The same view has been reiterated by the Indian Supreme Court in many cases⁵ while dealing with the same situation that preliminary jurisdictional ruling is not conclusive.

19. In fact, the view expressed by the superior courts that initial ruling on jurisdiction is indecisive has been borrowed from para 68 of Halsbury's Laws of England (Fourth Edition. Reissue). This para reads as under:

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs that state of affairs may be described as preliminary to, or collateral to the merits of, the issue, or as jurisdictional. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the jurisdictional issue, but that ruling may be reviewed by the court”.

20. Although from a reading of the aforesaid case law and para, an impression is created that the subsequent challenge would be before the next higher forum. But when it is held that the *initial* ruling is inconclusive and it can be *reviewed*, it would posit infallibly at the same time that a ruling made at the beginning qua jurisdictional-issue stays tentative. It would be always subject to, and amenable to, a subsequent challenge in regular proceedings either before the same forum (if it happens to be so), or in the Court where after preliminary stage the matter is sent for a trial.

21. Therefore, it is clear to us that the Banking Court's opinion that it has territorial jurisdiction to entertain the DCs is not final. In case, it decided to admit the DCs after PE and summon the applicants to stand the trial, they would be well within their right to contest its territorial jurisdiction and get a decision on the merits of this issue. But before that, when admittedly in law the applicants have yet no right of participation in the proceedings before the Banking Court, they have no right to indirectly gain such access to this Court u/s 561-A CrPC either.

⁵ (2007) 1 SCC 732; 2006 INSC 619; MANU/SC/3995/2006 (SC of India)
AIR 2008 SC 187; (2007) 8 SCC 559; MANU/SC/3938/2007 (SC of India)

22. In order to fortify above opinion, we may refer to a decision⁶ of the High Court of Delhi. In this case, the Magistrate on an application filed by the accused in PE had ordered return of the complaint, filed in offenses under the Income Tax Act, 1961, for want of territorial jurisdiction, with observation to present it before the Court of competent jurisdiction. While hearing applications for stay of the same order, the High Court of Delhi in paras 102 and 107 has said, and we quote herein under.

“102. Upon scrutiny and appreciation of the law as laid down by the aforesaid judgment, it is clear that so far as an accused person is concerned, till the stage when the accused has been summoned by the Criminal Courts, he has no locus to interject or interfere with the proceedings before a Magistrate. The reason is not far to see, in as much as till the cognizance of the offence is taken the accused is not a person who is identified as such for him to be vested with any right of audience, apart from the fact that it is possible that even after the preliminary inquiry u/s 202 CrPC, the magistrate may dismiss the complaint, without even calling upon the accused.

“107. Thus, so far as issue (i) is concerned, this Court is of the firm opinion that the respondent had no locus to either file an application or raise objections qua territorial jurisdiction, conspiracy or bias etc. at the pre-cognizance stage. Equally, the learned Magistrate had, by entertaining the said application and retaining the arguments on such objections and considering the same vide the impugned order, acted with material irregularity necessitating entertaining of the present petition.”

23. As to the argument that this Court u/s 561-A CrPC can look into the matter and exercise its inherent powers to remedy the wrong when it is brought to its notice, particularly when otherwise no remedy is available to the aggrieved person in the law. We may say that the scope of this provision does not allow this Court to interfere in PE. The PE is held solely to discover the truth behind the allegations, and to decide whether there is sufficient material to admit the DC or not. The research on this point has led us to many decisions of the superior courts confirming such position: the object of holding an enquiry u/s 202 CrPC is limited to find out existence of a *prima facie* case; it is to ensure that no person shall be compelled to answer a criminal charge, unless the Court is satisfied that there is *prima facie* case against him; in the process of enquiry, the accused has no right of participation, and he is not summoned to contest the accusations.

24. It is clear to us in the light of above that this whole exercise by its nature and implication is a pre judicial process. It is undertaken to analyze record already available, and, if necessary, to collect extra material offered in support, in order to decide about cognizance. In fact, from this

⁶ CRL.M.C.2757/2023 (Income Tax Office vs. Anil Tuteja & ORS) decided on 08.01.2024.

decision onwards, the judicial process, strictly speaking, begins. If the decision is to take cognizance and summon the accused, it is an order u/s 204 CrPC. The contrary should lead to dismissal of the complaint u/s 203 CrPC. Both the orders are counted as judicial orders and are amenable to revisional jurisdiction before the next forum, because now the parties' position giving rise to some rights has been determined. In the enquiry, the accused has no right to participate, because he is still not the accused. But when the Magistrate takes cognizance and decides to issue process u/s 204 CrPC, against him⁷, his status morphs. Now, he is accused and has a right to participate and/or call into question the proceedings pending against him, in accordance with law.

25. Further, the enquiry is the first informal step taken before a full investigation or trial. It is basically asking questions, collecting essential facts, and then deciding if there is really some material to proceed further or not. When such exercise is done under oath by the Court, it is called a judicial enquiry. A judicial enquiry is not a judicial process in *stricto sensu*. Particularly, in the context where question of granting right of hearing or participation to the accused in it hinges upon its positive interpretation. The judicial enquiry is preliminary, limited to fact-finding to determine if sufficient grounds exist to initiate the trial (the judicial process). In a broader sense, when such process is supervised by a judicial officer and statements are recorded on oath, the exercise may resemble judicial proceedings. But in essence, it is distinct, and quite different from the judicial process (that comprises the entire adjudicatory mechanism between the two or more parties leading to a final judgment), especially when an accused on such hypothesis seeks entry in the realm of PE and raise objection over jurisdiction of the Court to entertain the complaint.

26. As against it, the judicial process means pendency of a *lis* (dispute) in the competent Court of law between the two or more parties, where each party is afforded a fair right of hearing and participation. In this process, evidence (oral and/or documentary) is recorded on oath, and the other party is given a chance to cross-examine him/her, and *vice versa*. At the end, the Court gives a decision deciding the dispute between the parties. Particularly in criminal cases, the trial means determination of guilt of an accused and affording him a matching opportunity to defend himself against the charge brought out against him.

⁷ PLD 1960 Lahore 247.

27. Although, the judicial process is not defined anywhere in law. However, this whole method, the Court uses to hear both the parties and render a decision, is called judicial process. Our Supreme Court in a case⁸ has however described essential steps of a judicial process as under:

“ascertainment of facts; determination of the law applicable to the facts found or admitted; an inference as the existence or otherwise of a right or obligation from the determination of the law; and a decision as to the final order to be made in respect of such right or obligation”.

28. While keeping the above position in mind, we come to see what is in section 561-A CrPC. The words “*to prevent abuse of the process of any Court or otherwise to secure the ends of justice*” occurring in the said provision are significant. The Supreme Court of Pakistan⁹ commenting upon the same words has said that they signify *the judicial process*, and *the justice* administered through the judicial process . This would essentially mean that the inherent powers of this Court to right the wrong shall come into play only when it is shown that *the judicial process* of the Court is being abused, and/or *the justice* administered through *the judicial process* is being denied. It would also imply that the other wrongs would be left to the competent (judicial) forums to take care of and remedy them as per relevant laws.

29. Although it may not be pertinent here, but in order to further elucidate, we may refer to a recent decision¹⁰ on this point. The Supreme Court in this case has commented that the words “abuse of process” connote an unwarranted or irrational use of legal proceedings or process which also includes the presence of ulterior motives for activating the process for unjustified arrest or groundless criminal prosecution. Or when the proceedings are oppressive or vexatious and violate the fundamental principles of justice underlying the community’s sense of fair play and decency, abuse of process would be established.

30. From a reading of above, it would appear as if expression “abuse of process” has been differently interpreted. However, a closer look would make it clear that this explanation engrosses the entire expression with more emphasis on word ‘abuse’ than ‘process’. Whereas, in the previous

⁸ PLD 1959 SC (Pak.) 387.

⁹ PLD 1971 SC 677; PLD 1965 SC 287.

¹⁰ PLD 2025 SC 53.

judgments (PLD 1971 SC 677; PLD 1965 SC 287), the word ‘process’ has been defined to mean *judicial process*.

31. The Supreme Court in yet another case¹¹ has gone on to observe that the High Court has no power u/s 561-A CrPC to quash FIR or an investigation proceedings. However, it can quash *judicial proceedings* pending before a subordinate Court where necessary to prevent abuse of that court’s process. From a different angle, the Supreme Court¹² has said that the inherent jurisdiction of the High Court under u/s 561-A CrPC is curative in nature and would only be available if no other remedy provided in Criminal Procedure Code is attracted in *a given case*. Further that such remedy is neither alternative nor additional. A party cannot be allowed to bypass an express remedy and invoke the said provision as a substitute.

32. In a different case¹³ in which the High Court had quashed the proceedings of a direct complaint after the Court had taken cognizance and had summoned the accused, the Supreme Court set aside the said ruling and observed that the remedy u/s 561-A CrPC is not an alternate or substitute for an express remedy as provided in law. Resultantly, the case was remanded to the trial Court where the accused was advised to approach first u/s 249-A or 265-K CrPC or under revisional jurisdiction against the order u/s 204 CrPC being a judicial order whereby the cognizance was taken and process was issued against him.

33. The above analysis indicates that the applicants have no case u/s 561-A CrPC on this point, because the remedy u/s 561-A is not alternative, or additional or substitute in nature. It would not arise just because there is no remedy in CrPC to cater for the given situation, unless it relates to *judicial process* or the *justice* rooted in the said process. Nonetheless, as the remedy is curative in nature, it would be attracted when apparently, the *judicial process* is being abused, or when the *justice* administered through some *judicial process*, is being denied through the impugned order, and there is no remedy available in law against such order. This also means that where although abuse is alleged in some judicial process, but remedy is available, the High Court would not interfere under the inherent powers. Here, neither the judicial process has yet begun in *stricto sensu* (as we have already held that in the given context process

¹¹ PLD 2023 SC 265.

¹² PLD 2020 SC 427.

¹³ PLD 2016 SC 55.

of PE is not a judicial process, as defined u/s 561-A CrPC), nor is the question of justice being denied the motto of the applicants.

34. Next is applicants' objection over FIA's authority to enquire into this matter. Their stance is that as per schedule in the FIA Act, 1974 the offences under the FIO, 2001 do not come within the domain of the said Agency. Under section 3 of the *ibid* law, FIA is constituted and conferred with the powers to inquire into and investigate the offences specified in the schedule.

35. Be that as it may, in our view, the issue in hand is not of powers of FIA, but the powers of the Banking Court u/s 202 CrPC. Independently, FIA may not be competent to look into the offences specified in the FIO, 2001, when the matter is directly tabled before it. However, when a Court of competent jurisdiction refers the matter to FIA, the situation in law would be different. The moot point would not be independent powers of FIA to determine whether it can enquire into the matter or not. The question would be whether the Court can refer the matter to FIA to hold an enquiry in a matter which it has jurisdiction to try.

36. The Banking Court's authority is rooted in section 7 of the FIO, 2001 that says that in the exercise of its civil jurisdiction, it shall have all the powers vested in a civil Court under the Code of Civil Procedure Code, 1908. Whereas, in criminal jurisdiction, it shall have the same powers as are vested in a Court of Sessions under CrPC to try the offences under the Ordinance. This provision indicates clearly that the Banking Court has the jurisdiction to try the alleged offence and adopt the procedure enshrined in CrPC to further the process. Section 202 CrPC lays down that the Court, on whose file a complaint is pending in an offence triable by it, could postpone issuance of process to the accused, and instead refer the matter for an enquiry or investigation to any justice of peace, or to a police officer, or to any other person as it thinks fit for ascertaining the truth or falsehood of the complaint.

37. The language is plain and easily comprehensible. This provision confers ample powers to the Banking Court to direct any person including a police officer or a justice of peace to enquire or investigate into the truthfulness or otherwise of the complaint filed before it. No bar or a condition that the Court shall direct a police officer of a particular genre, stature, or Agency to do the needful has even been implied. In fact, it is not even necessary to direct a police officer, the Court can refer the

matter to any other person which it views is fit to dig out the truth behind the curtain of allegations in the complaint.

38. Further, the members of Agency, u/s 5 of the FIA Act, 1974 have the same powers which the officers of Provincial Police enjoy for investigating the offences under Criminal Procedure Code. Hence, for all purposes and intentions, the members of the Agency are considered as police officers and the Court under 202 CrPC is empowered to refer the complaint for an enquiry to any member of the Agency.

39. The above is not the only aspect of the case upon which we differ with the applicants over authority of the Agency to enquire into the complaints. The other feature putting up a barrier before the applicants is the alleged nature of the offence itself. It would seem that the banks have accused the applicants of committing wilful default impliedly. To explain it, again a cursory reading of the allegations is necessary. Allegedly, applicants stock reports in respect of hypothecated stock demonstrated a shortfall; when the bank officials tried to verify the stocks, they were denied access to the premises where the stock was stored establishing its misappropriation which got confirmed when the applicants defaulted in paying their outstanding liabilities and obligations charged under varied warranties, representations, offer letters etc. executed by them with the bank.

40. In the second complaint, the bank has alleged that the applicants in connivance of each other committed the breach of their obligation in respect of trust receipt and undertaking on the basis of which, the bank had issued them loan. The applicants after having fully availed the finance facility have deliberately failed to adjust their outstanding liabilities and committed default and breached their representation and warranties under the Offer Letter and the finance agreements and security documents. The applicants have failed to meet their repayment commitments and discharge their obligations as defined u/s 2 (e) of FIO, 2001 towards the bank.

41. A closer look on these allegations would reveal that the same are, more or less, identical to that of section 2 (g) (i) and (iii) defining the offence of wilful default in the FIO, 2001 that as per amendment in the

schedule¹⁴ is undisputedly within the domain of FIA to either enquire into or investigate. For a ready reference, they are reproduced herein under.

Wilful default means:

- (i) deliberate or intentional failure to repay any finance, loan, advance or any financial assistance received by any person from a 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)
- (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.

So, from this angle too, it is evident that the Banking Court has not committed any error in directing FIA to make an enquiry into this matter in order to make up its mind whether there is sufficient material to take cognizance of the offence or not.

42. Yet, a different argument was mounted on the authority of FIA to enquire into the matter. Learned counsel insisted that as in the DCs offence u/s 20 of the FIO, 2001 had been alleged and not the offence of willful default. Power of FIA for enquiry would be determined only through the prism of that offence. Offence of the willful default is distinct and has not been cited in the DCs, hence FIA has no jurisdiction to enquire into the matter.

43. We may say firstly that the allegations have strong overtones matching with the offence of wilful default, as explained above; secondly in section 20 (1) (a) also, the offence of wilful default, as defined above, is implied starkly. A reading of its components would confirm this fact. They are breach of terms of letter of hypothecation in respect of the assets, retained by the accused, but offered as security for repayment of financial obligations, etc.

44. But, if this idea is construed a bit far too stretched. The fact that it is settled that the offence mentioned either in FIR or a complaint is not final is sufficient to say that the Banking Court has not committed any error in directing FIA to enquire into this matter. It always lies with the Court to resolve, based on allegations and material produced in support thereof, the exact nature of the offence and the relevant provisions of law attracted for holding a trial against the accused, regardless of what

¹⁴ In rule 5 of the Financial Institutions (Recovery of Finance) Rules, 2018.

has been referred to it in this connection in the FIR, the challan or the complaint. In these matters also, a probability cannot be ruled out that the Banking Court on examination of the nature of allegations and supporting material forms an opinion that the applicants have in fact been alleged commission of wilful default and based on such view charge them for that offence.

45. Last but not the least is the point of dismissal of the first complaint filed by the banks alleging the same offence that as per learned counsel would bar filing of the second complaint on the same facts. We have seen the orders dated 11.03.2024 (available in the files) dismissing the earlier DCs. It is apparent that the main reason which weighed with the Banking Court to dismiss the DCs was the so-called dearth of relevant facts and paucity of necessary details mentioned in them. They were not dismissed on merits. It happened, even before an order to issue process against the applicants, was passed. It is already stated above that the Supreme Court in one decision¹⁵ has enumerated exceptions to this rule. One of which is that if previous order of dismissal was passed on an incomplete record, the second complaint would not be barred. This exception is fully attracted in the present cases, and therefore, we do not find any error in the impugned orders in this respect as well.

46. The summary of above discussion would be as under:

The applicants have no *locus standia* to raise any objection to territorial jurisdiction either before the Court seized with the matters or before this Court u/s 561-A CrPC at the pre-cognizance stage.

Section 181 (2) CrPC is the most relevant provision, besides section 177 and 179 CrPC for determining territorial jurisdiction in an offence of criminal misappropriation and criminal breach of trust.

The Banking Court's positive ruling regarding territorial jurisdiction, based on 177 and 179 CrPC, is inconclusive and tentative. And, if it decides to take the cognizance of the offence and issue process against the applicants, they will have a right to contest it, and the Banking Court would be obliged to decide it first.

¹⁵ Zahoor and others v. Said-ul-Ibrar (2003 SCMR 59)

The words “*to prevent abuse of the process of any Court or otherwise to secure the ends of justice*” occurring u/s 561-A CrPC signify *the judicial process*, and *the justice* administered through the judicial process .

The remedy u/s 561-A CrPC is neither alternative nor additional nor substitute. It is curative in nature and would be attracted where the judicial process is being abused or the justice administered through the judicial process is being denied in the proceedings.

This Court under inherent powers u/s 561-A CrPC would interfere in the alleged wrong only when it is in respect of a judicial process, and the aggrieved party has no remedy available in law against it.

The judicial enquiry (PE) *per se* is not a judicial process in *stricto sensu*. Particularly in the context when a question of granting right of hearing/participation to an accused in a direct complaint depends on such interpretation.

The judicial process means the entire adjudicatory mechanism between two or more parties disputing over some issue(s) leading to final resolution through a judgment.

In terms of section 202 CrPC, the Court, on whose file a direct complaint is pending in an offence triable by it, can postpone issuance of process to the accused, and refer the matter for an enquiry or investigation to any justice of peace, a police officer, or to any person it thinks fit for ascertaining the truth or falsehood of such complaint.

No bar or a condition that the Court shall direct a police officer of a particular genre, stature, or Agency to do the needful in this regard. It is not even necessary to direct a police officer, the Court can refer the matter for enquiry to any other person which it thinks is fit to dig out the truth behind the veil of allegations in the complaint.

Independently, FIA may not be competent to look into the offences specified in the FIO, 2001, when the matter is directly filed before it. However, when a Court of competent jurisdiction to try a particular offence refers such matter to FIA, it can make inquiry into it.

The allegations against the applicants in the DCs are impliedly of committing wilful default, as defined in the FIO, 2001, as they

pertain to misappropriation of hypothecated stocks by them and stopping repayments to the banks of the amounts taken through various financial facilities.

Such allegations (willful default) are independently within domain of FIA to probe in view of amendment in rule 5 of the financial institutions (Recovery of Finance) Rules, 2018.

Section 20 (1) (a) the FIO, 2001, alleged in DCs, has implied overtones/lead-up to the offence of wilful default as defined in the same law.

Therefore, (in addition to above) keeping in view nature of allegations in DCs implying commission of willful default, or offence u/s 20 the FIO, 2001 (a lead-up to offence of wilful default), alleged in DCs, referring the matter to FIA by the Banking Court is not found illegal.

It is not mandatory upon the Court to take cognizance in the offence referred to it in an FIR, the challan or a direct complaint and try the accused only under that offence.

It is within the power of the Court to determine, on the basis of allegations and material produced in support, the actual nature of the offence and relevant provisions of law attracted against such offence for trying the accused in.

If the first direct complaint is dismissed on the ground of insufficient or incomplete record produced in the court, the second direct complaint in respect of the same offence on the same facts and against the same accused would not be barred under the law.

47. We in view of above discussion conclude that these applications, being devoid of merits, are not competent, and hence are dismissed accordingly.

Both the applications are accordingly disposed of in above terms.

JUDGE

JUDGE