

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Constitutional Jurisdiction)

Const. Petition No. D – 1914 of 2015

Present:

**Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Aziz-ur-Rehman**

Wali Muhammad Shaikh..... Petitioner

Versus

Federation of Pakistan & others..... Respondents

Petitioner: *Through Mr. Khalid Javed Khan, advocate.*

Respondents: *Through: Mr. Salman Talibuddin,
Additional Attorney General
O/w Mumtaz-ul-Hassan, Deputy Director;
Ms. Lubna Tiwana, Assistant Director;
Inspector Gulsher Mugheri;
Inspector Deedar Ali Shaikh;
Inspector Abdul Jabbar Mendhro; &
Inspector Nabil Mehboob of
Federal Investigation Agency {FIA}.*

Date of hearing: 28.02.2018.

Date of Order: 19.07.2018.

ORDER

AQEEL AHMED ABBASI, J:- Through instant petition, petitioner has impugned the order dated 10.12.2014 passed by the Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.37/2010 {The State v. Muhammad Aslam Khan & others}, Crime No. 49 of 2008 under Sections 409/419/420/468/471/109/34 PPC at FIA, Crime Circle, Karachi, whereby, the application under Section 249-A Cr.P.C. filed by the petitioner, seeking quashment of the FIR and proceedings against the petitioner, has been dismissed. The petitioner has sought the relief in the following terms:-

- I. *Declare that the trial of the Petitioner before the trial Court being in violation of law and without any basis or grounds and the petitioner is liable to be acquitted;*
- II. *Declare that the respondent No.2 and its officers have no lawful authority or jurisdiction under the law to take any action in respect of matters falling within the ambit of the provisions of the Income Tax ordinance, 2001;*
- III. *Set-aside the impugned order dated 10.12.2014;*
- IV. *Pass order of acquittal of the petitioner from the Case No.37/2010 before learned trial Court initiated vide FIR No. 49/2008 registered by respondent No.2;*
- V. *Prohibit and restrain the respondent No.2 and 3 from proceeding with the trial/prosecution of the petitioner lodged vide FIR No. 49/08 or taking any adverse action against the petitioner;*
- VI. *Grant any other relief deemed just and appropriate in the circumstances of the case;*
- VII. *Grant costs of the petition.*

2. Briefly, the facts as noted by the learned Presiding Officer in the impugned order, while dismissing the application filed by the petitioner under Section 249-A Cr.P.C are, that an FIR No.49/2008 was registered at P.S. FIA Crime Circle, Karachi under Section 409/419/420/468/471/109/34 PPC against accused persons nominated therein, whereas, petitioner has been nominated subsequently in the final Charge Sheet submitted by the prosecution before the trial Court. Petitioner is an employee of Federal Board of Revenue [FBR], presently working as Deputy Commissioner, Inland Revenue, Audit Unit-01, Zone-II, RTO-II, Karachi has been implicated on the allegations that the petitioner alongwith other accused persons working on various posts under FBR, during the course of their

employment and postings in the Inland Revenue Department, opened fake and fabricated bank accounts in the name and style of non-existing parties and companies, and by misusing their authority and powers, issued 3063 refund cheques during the year 2005, 2006 and 2007, and deposited the said refund cheques in fake accounts and got the same encashed in connivance with bank officials, hence caused loss of revenue to the tune of Rs.83 million by their fraudulent act to the public exchequer. Accordingly, the aforesaid FIR was registered against the accused persons, including the petitioner, whereafter, challan against all the accused persons has been submitted before the Special Court (Offences in respect of Banks) at Karachi where all accused are facing trial. Charge was framed against the petitioner on 27.05.2011 and since then, petitioner is facing trial.

3. It is pertinent to mention that prior to filing instant petition, petitioner had filed another petition being C.P.No.D-4280/2012, seeking declaration to the effect that FIA has no jurisdiction to investigate the matter against the officers of Income Tax Department, who were under the Federal Board of Revenue [FBR] to administer taxation laws, whereas, several other grounds were also raised in the said petition by the petitioner for seeking quashment of the FIR and proceedings emanating therefrom. However, in view of the fact that an application filed by the petitioner under Section 249-A Cr.P.C. before the trial Court, seeking quashment of FIR/Proceedings

was already pending, therefore, above petition was disposed of vide order dated 21.10.2014 in the following terms:-

“ The petitioner has prayed to this court to declare that the FIA has no jurisdiction to investigate the matters against the officers of Income Tax Department, who work under Income Tax Ordinance, 2001. He further prayed for quashment of Crime No.49/2008 lodged under section 408, 419, 420, 468, 471, 109 and 34 PPC at PS FIA, Crime Circle, Karachi. During the course of arguments, learned counsel for petitioner informed the court that he has already moved application under section 249-A Cr.P.C., which is pending in the trial court without any decision. Learned Standing Counsel submits that directions may be issued to trial court to decide this application expeditiously to which learned counsel for petitioner is agreed. Since proper application is already pending and petitioner has directly approached this court without first waiting the decision of trial court. The petition is disposed of along with pending applications with the directions to trial court to decide application moved under section 249-A Cr.P.C., within a period of one month and compliance shall be submitted to this court through MIT-II.”

4. Pursuant to aforesaid order passed by this Court, learned Presiding Officer has been pleased to dismiss the application of the petitioner under Section 249-A Cr.P.C. through impugned order dated 10.12.2014, which has been assailed by the petitioner through instant petition, while raising several legal grounds, including the ground regarding jurisdiction of FIA, who according to petitioner cannot proceed against the

petitioner while performing his duties under the Federal Board of Revenue (FBR) as an Officer of Inland Revenue, in respect of Assessment Proceedings under the Income Tax Ordinance, 2001. It has been vehemently argued by learned counsel for the petitioner that petitioner is innocent, who has been falsely implicated in the aforesaid proceedings by the FIA Authorities on the basis of a complaint wherein, there is no allegation whatsoever against the petitioner nor even in the FIR name of the petitioner has been mentioned. Per learned counsel, even no role whatsoever has been assigned to the petitioner by the prosecution while submitting the interim challan, however while submitting the final challan, the petitioner has been falsely implicated on the charges which are groundless and have no factual or legal basis to support the frivolous allegations against the petitioner. Learned counsel for the petitioner has argued that the aforesaid FIR was registered in the year 2008, whereas, the case was challaned in the year 2010 and since then, the prosecution has failed to examine any prosecution witness nor could produce any evidence or material, which may implicate the petitioner with the alleged crime, however, the petitioner is facing the agony of prolonged trial since last eight years and has to attend the Court on each and every date of hearing, however, without any progress whatsoever in the case. According to learned counsel, the only allegation against the petitioner, as detailed in the final charge sheet submitted by the prosecution before the learned trial Court which also reflects in charge framed against the petitioner

on 27.04.2011 by the trial Court is, that petitioner has issued/sanctioned six cheques of refund in the names of different persons, who were not entitled to such refund, with connivance of other accused persons, and has caused loss to the public exchequer in the sum of Rs.5,27,000/-. According to learned counsel, about 124 witnesses have been cited as prosecution witnesses, whose statement have been recorded by the Investigating Officer, however, none of the witness has implicated the petitioner nor there has been any connection of the petitioner with the cheques which according to prosecution were issued in the name of fake parties by the petitioner. Per learned counsel, prosecution could not produce a single document that petitioner has any role whatsoever in respect of the allegations as contained in the FIR, which has been registered against some account holders who are all private persons, as well as against the bank officials, who according to prosecution story, have managed to encash the refund cheques by depositing the same in bogus bank accounts with the connivance of the bank officials. Per learned counsel, not a single document or evidence has been produced by the prosecution against the petitioner to show that petitioner was either the Assessing Officer or has signed or issued any of the Refund Cheques in the name of fake parties, however, inspite of such fact, the prosecution is dragging the petitioner in the above frivolous proceedings for the last about ten years and have failed to examine a single witness, which amounts to abuse of process of law. Per learned counsel, the prosecution

has to prove the allegations against the petitioner to the effect that petitioner has processed the refund cases of non-existing companies, or has issued refund cheques in respect of such non-existing companies, or encashed the same by depositing the same in bogus accounts with the connivance of bank officials. However, according to learned counsel, prosecution is not in possession of a single document or evidence, including Assessment Order, Refund Cheque etc. which may bear signatures of the petitioner. Learned counsel further argued that the entire proceedings initiated against the petitioner, pursuant to aforesaid FIR, besides having no legal or factual justification, are tainted with malice, as the prosecution has never confronted the petitioner with any material, including the assessment order refund cheques, which according to prosecution, have been passed or processed by the petitioner in violation of law and in respect of non-existing taxpayers.

5. Learned counsel further submits that according to prosecution story, the case against the petitioner and other accused persons, is based on documentary evidence and the official record of the Income Tax Department, as well as the record of Allied Bank Limited, Hyderi Branch, Karachi. However, prosecution has failed to examine a single prosecution witness to support prosecution story, inspite of lapse of more than ten years from the date of registration of FIR and eight years from the date of submission of final charge sheet, which fact alone is sufficient to prove that the case

against the petitioner is of no evidence, and there is no possibility of conviction of the petitioner in the aforesaid FIR, which is otherwise based on false and frivolous allegations. Per learned counsel, charge against petitioner is groundless and there is no possibility of conviction of the petitioner in above crime. Learned counsel for the petitioner has submitted that the prosecution has not even recorded statements of such parties in respect of whom, the alleged refund cheques were issued by the petitioner, nor any one of them has come forward with a complaint that their refund cheques(s) have been deposited in some fake accounts and got encashed by the petitioner. Learned counsel has further argued that the petitioner is being otherwise, discriminated by the prosecution, as according to learned counsel, prosecution has already withdrawn cases against six officers of the Inland Revenue under Section 294 Cr.P.C, who according to prosecution, have issued refund cheques for an amount upto Rs.5,00,000/- on the pretext that the amount is meager, therefore, no officer would risk his career for such meager amount. Whereas, according to learned counsel, the total amount of six cheques attributed to the petitioner as per the charge framed against him by the learned trial Court is Rs.5,27,000/-, however, instead of according similar treatment to the petitioner, the prosecution intends to drag the petitioner in the aforesaid frivolous proceedings for an indefinite period, just to humiliate the petitioner, and to cause serious mental agony and injury to the reputation of the petitioner, who is a Public Servant in grade-18, and has never been charged for any such offence, nor has ever been issued any

notice from his department for misconduct throughout his career.

6. While referring to the impugned order passed by the learned trial Court, learned counsel for the petitioner has vehemently argued that the reason, which has been assigned by the learned trial Court, while rejecting the application under Section 249-A Cr.P.C, is totally erroneous, and contrary to the settled legal position, as according to learned counsel, the burden of proof lies against the prosecution to establish the allegations against an accused by producing evidence before the learned trial Court, and not upon the accused to prove his innocence, whereas, according to learned counsel, in the impugned order passed by the learned trial Court, such burden has been shifted upon the accused while observing “*that petitioner Wali Muhammad Shaikh, who as per charge sheet, issued six cheques, has not brought any document on record or attached with the application under Section 249-A Cr.P.C., to show that he had lawfully sanctioned refund cases of 6 persons or companies, which according to prosecution are non-existing parties.*”

7. While concluding his arguments, learned counsel for the petitioner has argued that the I.O. of the case present in Court, may be directed to produce any material document or evidence or may refer to any such statement of PWs, which may somehow connect or implicate the petitioner with the alleged crime in the aforesaid FIR or the allegations as contained the

charge framed by the learned trial Court against the petitioner, so that it may be ascertained as to whether there is any possibility of conviction of the petitioner in the aforesaid crime if such evidence is produced by the prosecution before the trial Court. Per learned counsel, this is a classical case of harassment and abuse of the process of law, particularly, when all the charges against the petitioner are groundless, whereas, inordinate unexplained delay of the trial, has otherwise rendered the proceedings against the petitioner as illegal, therefore, the FIR and proceedings against the petitioner, namely, Wali Muhammad Shaikh, are liable to be quashed.

8. In support of his contentions, learned counsel for the petitioner has placed reliance on the following cases:

- i) *Miraj Khan v. Gul Ahmed and 3 others* {2000 SCMR 122};
- ii) *The State v. Asif Ali Zardari and another* {1994 SCMR 798};
- iii) *Safdar Ali v. Ghulam Mustafa* {1995 MLD 595};
- iv) *Abdul Qadir Motiwala v. The State* {2000 P.Cr.L.J. 1734};
- v) *State of Islamic Republic of Pakistan v. Kenneth Marshal and 2 others* {2003 PTD 675}.

9. Conversely, Mr. Salman Talibuddin, Additional Attorney General, duly assisted by the officers of FIA including the Deputy Director (Law) and I.O. of the case, has controverted the submissions made by the learned counsel for the petitioner and has raised an objection as to maintainability of instant petition, on the ground that the case of the petitioner and other co-accused is pending before the trial Court for decision in

accordance with law, after recording of evidence, whereas, there are specific allegations against the petitioner, therefore, the request of the petitioner, seeking quashment of FIR and proceedings, is misconceived, hence instant petition is liable to be dismissed in limine. It has been further contended by the learned Additional Attorney General that quashment of FIR and proceedings emanating therefrom in respect of one of the several accused in piecemeal is otherwise misconceived and not permissible, as according to learned Additional Attorney General, the trial has to be concluded in respect of all the accused persons, whereas, the entire case has to be decided through one combined order after recording evidence. Moreover, according to learned Additional Attorney General, the role assigned to the petitioner in the FIR and the final charge sheet is similar of the role assigned to some of other co-accused persons, who are officers of Inland Revenue [FBR] and have also been charged on the same set of allegations that they have fraudulently issued refund cheques in respect of non-existing taxpayers on bogus NTN which have been encashed while depositing the same in fake accounts with the connivance of private account holders and bank officials, therefore, have caused loss to the public exchequer. Per learned Addl. Attorney General, if the request of the petitioner at this stage, seeking quashment of FIR and proceedings is accepted, it will adversely affect the case of the prosecution against other co-accused persons before the learned trial Court, and the case against the petitioner would not be decided on merits, after recording of

evidence. According to learned Additional Attorney General, as per his instruction, one of the prosecution witness, namely, PW-Ms. Rema Jamil has been recently examined, whereas, prosecution has filed list of 124 witnesses to be examined in the instant case, therefore, requests that learned trial Court may be directed to record the evidence of the remaining prosecution witnesses and to decide the case at an early date, instead of acceding to the request of the petitioner for quashment of the FIR and proceedings pending adjudication before the learned trial Court. It has been prayed that instant petition may be dismissed for being not maintainable for the above reasons.

10. We have heard the learned counsel for the parties, perused the record with their assistance and have also gone through the impugned Order passed by the learned trial Court. We have also examined the material placed before us by the Deputy Director [Law] and the Investigating Officer of the instant case through statement, which included case diaries of the trial Court, list of the prosecution witnesses and deposition of the solitary prosecution witness, namely, Ms. Reema Jamil in the instant matter.

11. Through instant petition, the petitioner has impugned the order dated 10.12.2014 passed by the Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No. 37/2010 {The State v. Muhammad Aslam Khan & others}, Crime No. 49 of 2008 under Sections 409/419/420/468/471/109/34 PPC at FIA, Crime Circle,

Karachi, whereby, the application under Section 249-A Cr.P.C. filed by the petitioner, seeking quashment of FIR and the proceedings before the trial Court, has been dismissed. Grounds agitated before the learned trial Court for seeking quashment of FIR and the proceedings are, firstly, the FIA has no jurisdiction to lodge an FIR against the petitioner, who is an officer of Inland Revenue, FBR, in respect of matters relating to Assessment of Income tax liability under the Income Tax Ordinance, 2001, which includes creation of Refund as well, particularly, in the absence of any allegation of corruption, or the allegation that petitioner has acquired assets, which are unexplained and beyond the known sources of his income. Secondly, the charge against the petitioner is groundless, and there is no possibility of his conviction, as the prosecution is not in possession of any material or evidence, which may connect the petitioner with the alleged crime.

12. From perusal of FIR No. 49/2008, registered at P.S. Crime Circle, FIA, Karachi dated 20.08.2008, it has been observed that pursuant to a complaint dated 19.08.2008 lodged by one Sarfraz H. Siddiqui, Regional Head, ABL, Nazimabad Region, Karachi to the Deputy Director, FIA, Crime Circle, Karachi, against Muhammad Aslam Khan, Chief Manager; Kashif Shahid, Teller/Cashier of ABL, Hyderi Market Branch, Karachi; Muhammad Azeem Khan, his wife Mrs. Nishat Fatima and others, the aforesaid FIR was registered, while incorporating the complaint of Sarfraz H. Siddiqui, verbatim in

the said FIR. After incorporating the complaint, the Inspector, FIA, Crime Circle, Karachi has made endorsement to the effect that **“acts of the accused persons named in the complaint, attract the commission of offences punishable under Section 408/419/420/468/471/109/34 PPC, hence registration of case against the above accused persons and others under orders contained in letter No. 6544-45 dated 20.08.2008 of the Deputy Director, FIA, Crime Circle, Karachi, investigation is taken up by the undersigned.”** From tentative perusal of the allegations contained in the complaint incorporated in the aforesaid FIR, it has been noted that the accused persons named in the complaint have been charged with an offence **to defraud the original bonafide beneficiary of State Bank of Pakistan [SBP] cheques with intention to deceive, hence committed an offence of criminal breach of trust and the banks’ operation manual**, whereas, there seems no direct allegation against the petitioner, namely, Wali Muhammad Shaikh, in connection with the offence committed by the accused persons named in the aforesaid FIR, who are either private account holders or the bank officials of Allied Bank Limited. However, after investigation, interim challans were submitted before the learned trial Court, wherein, the role of the petitioner does not appear, whereas, petitioner has been implicated by the prosecution at the time of submitting Final Charge Sheet No.08/2010 dated 04.02.2010, wherein, alongwith other private accused persons and bank officials, name of the petitioner and other officials of Inland Revenue has been inserted at Serial No.

25, wherein, it has been alleged that **“during examination of the record of income tax, it transpired that accused income tax officers, after having issued bogus income tax refund cheques had fraudulently with common objective and criminal intention destroyed the complete record concerning such issuance, which they were bound to retain being Government Record”**. It has been further stated in the charge sheet that from the investigation, it has been established that the accused persons, in connivance with each other being bankers, private persons and public servants, have intentionally and deliberately embezzled a total amount of 5,25,18,742/- during the year 2007 through wrongful issuance of refund cheques, deposited in the account of Muhammad Azeem Khan, Mrs. Nishat Fatima, Muhammad Sohail Siddiqui, Muhammad Sharfuddin and Nadeem Akhtar and others causing wrongful loss to the government exchequer and corresponding wrongful gain to themselves, which act on the part of said accused persons rendered them liable for prosecution under Section 409/420/468/471/473/109/34 PPC read with Section 5(2) PCA-II, 1947.

13. It is pertinent to mention that during the course of hearing instant petition, the Investigating officer of the case was summoned from time to time with the directions to produce the relevant record and the material or evidence, if any, against the petitioner, which may connect the petitioner with the alleged offence i.e. having processed the refund case or issued subject

refund cheques in the name of non-existing taxpayer(s), however, the Investigating Officer, inspite of having shown appearance along with senior officers of FIA on number of occasions before this Court, could not place on record any requisite document(s) or statement of any witness recorded by him during the investigation, to support the allegation against the petitioner as contained in the Final Charge Sheet or the Charge framed by the learned trial Court against the petitioner in the instant case. The Investigating Officer of the case was also inquired as to how many prosecution witnesses, have so far been examined out of 124 PWs during last nine (9) years' before the learned trial Court, in response to which, he has candidly stated that only one PW, namely, Ms. Reema Jamil has been examined recently, copy of whose deposition has been placed on record alongwith statement dated 28.02.2018 signed by one Mumtaz-ul-Hassan, Deputy Director (Law), FIA, Sindh, Karachi. Alongwith above statement, copy of Case Diaries of the trial Court, List of Prosecution Witnesses, has also been filed. Perusal of the case diaries of the trial Court, starting from 29.06.2010 to 06.01.2018, shows that the prosecution has taken no efforts whatsoever to get the prosecution witnesses examined before the learned trial Court, whereas, it further appears that even the complainant of the FIR, namely, Sarfraz H. Sidduqi has not been produced so farbefore the trial Court for recording his evidence in support of the allegations as contained in the FIR or in the charge sheet submitted by the prosecution. The above FIR No. 49/2008 was registered on

20.08.2008, thereafter, interim challan(s) were filed, whereas, final challan has been submitted on 30.03.2010, wherein, role has been assigned to the petitioner, however, no explanation for such delay has been furnished by the Investigating Officer, nor any document or material has been produced to support the allegations against petitioner. Similarly, the senior officers of FIA present in Court, could not explain as to why during the last more than eight (8) years, the prosecution has not been able to produce and examine any witness out of 124 Prosecution Witnesses, nor any material has been placed on record before this Court or referred to by the Investigating Officer, which may otherwise connect the petitioner with the alleged offence(s) punishable under Section 409/420/468/471/473/109/34 PPC. The Investigating Officer and the officers of FIA present in Court were specifically inquired as to whether, any record has been taken into possession from the Income Tax Department, which could establish that the petitioner, namely, Wali Muhammad Shaikh has either passed an assessment order creating refund, or issued any refund cheques, which according to prosecution, were issued fraudulently in the name of non-existing taxpayer, and were deposited in the bogus accounts, however, Investigating Officer has candidly stated that prosecution has not been able to collect such evidence, which according to him, has been destroyed by the accused persons. Learned Additional Attorney General was also inquired as to whether on the basis of mere allegations as contained in the above FIR and final charge sheet, and in the absence of

evidence or material to support such allegations, is there any possibility of conviction of the petitioner, namely, Wali Muhammad Shaikh, on the aforesaid charges, in response to such query of the Court, learned Additional Attorney General has submitted that unless the prosecution presents the case before the learned trial Court, and examine the prosecution witnesses, it cannot be ascertained as to whether the petitioner will be found guilty of such offence or may be acquitted in above case.

14. It is regretted to note that the manner in which the investigation in respect of the aforesaid FIR has been conducted, the inordinate delay occurred in submission of final charge sheet and the prolonged trial before the learned trial Court, without recording any prosecution witness out of total 124 prosecution witnesses, in the instant case during last more than eight (8) years, not only reflects upon the inefficiency and non-serious attitude of the prosecution towards prosecuting the accused persons nominated in the aforesaid FIR, but also creates serious doubts on their good faith, while implicating the petitioner in the instant crime, particularly, in the absence of any direct evidence or material to support such allegations. The respondents have not been able to produce any evidence or material, even before this Court inspite of repeated opportunities provided for such purpose, which could prima-facie connect the petitioner with the alleged offence punishable under the sections as mentioned in the aforesaid FIR. It appears

that a matter relating to violation of Banking Laws and the offence committed by some private persons with the connivance of the bank officials, petitioner has been roped in the aforesaid crime, however, without any evidence or material, and being dragged in criminal case for the last more than eight (8) years, however, without making any efforts to get prosecution witnesses examined before the learned trial Court. Moreover, the prosecution has not been able to produce or refer to any material, document or evidence, which may connect the petitioner, namely, Wali Muhammad Shaikh with the alleged offence, whereas, allegations against the petitioner are otherwise vague and generalization in nature. The learned trial Court, while passing the impugned order, has failed to examine this aspect of the matter, which is eminent from the record and has also erred while holding that the burden is upon the accused/petitioner to disprove the allegations, whereas, it is settled legal position that the burden of proof is upon the prosecution to establish the charges against an accused by producing evidence. It is further regretted to note that the learned trial Court has not taken cognizance of the fact that aforesaid case is pending since 2010, whereas, not a single prosecution witness has been examined so far, except a solitary witness, namely, Ms. Reema Jamil, whereas, the petitioner is facing the agony of a criminal trial for the last more than 8 years, as he is required to appear on each and every date of hearing before the learned trial Court, whereas, there is no

possibility that trial may be concluded in near future as prosecution has to examine 124 witnesses in the instant case.

15. Under similar circumstances, in the case of *Zaheer Ahmed v. Directorate General of Intelligence and Investigation-IR and 4 other* [2015 PTD 349], this Court has been pleased to quash the FIR/proceedings, while exercising the inherent powers and has been pleased to hold as under:-

“8. Under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973, High Court is responsible for the entire administration of justice, and being charged with responsibility of supervising all Courts subordinate to it, this Court is competent to take all appropriate measures for preventing mal-administration of justice and abuse of the process of law in appropriate cases. When the case is of no evidence or very registration of the case is proved to be malafide or the case is of purely civil nature or when there is unexceptional delay in the disposal of the case causing deplorable mental, physical and financial torture to the person proceeded against, this Court is competent to take cognizance of the matter and by exercising inherent powers under Section 561-A Cr.P.C, to correct a wrong by ordering quashment of FIR and proceedings emanating therefrom. Powers vested in High Court under section 561-A Cr.P.C. are co-extensive with the powers vested in trial Court under section 249-A and 265-K Cr.P.C, and in appropriate cases, can be invoked directly without resorting to decision by the trial Court under section 249-A and 265-K Cr.P.C to void abuse of process of Court.

9. In the case of *The State v. Asif Ali Zardari & another* 1994 SCMR 798, the Hon’ble Supreme Court while examining the scope of inherent powers under Section 561-A Cr.P.C vested in High Court has held as under:

“9. Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such

orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by the High Court at any time. Ordinarily High Court does not quash proceedings under section 561-A, Cr.P.C. unless trial Court exercises its power under section 249-A or 265-K, Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment of proceedings as envisaged under section 561-A, Cr.P.C. In exceptional cases High Court can exercise its jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

This judgment was also followed in the case of Muhammad Khalid Mukhtar v. The State PLD 1997 275.

10. *In the case of Miraj Khan v. Gul Ahmed and 3 others 2000 SCMR 122, the Hon'ble Supreme Court has held as under:*

“There is no absolute bar on the power of the High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A, Cr.P.C. It is cordinal principle of law that every criminal case should be adjudged on its own facts. The facts of one case differ from the other and, therefore, no rule of universal application can be laid in a certain case so as to be made applicable to other cases. Even in the case reported in PLD 1997 SC 275, relied on by the learned counsel for the petitioner this principle has been recognized that the High Court in exceptional cases can exercise jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C., if the facts of the case so warrant. The main consideration to be kept in view would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of process of Court or not. It on the basis of facts admitted and patent on record no offence can be made out then it would amount to abuse of process of law to allow the prosecution to continue with the trial.

11. *In the case of Maqbool Rehman v. The State and others* 2002 SCMR 1076, it has been held as follows:

“9. In law, there is no warrant for the argument that since the charge had been framed by the trial Court, proceedings could not be buried by way of quashment. The petitioner appears to be laboring under a misconception of law that in all cases where the accused persons are summoned by a Court of law, it is incumbent upon the Court to record the evidence. There is no invariable rule of law and it will depend on the facts of each case whether to allow the prosecution to continue or to nip in the bud.”

12. *In the case of Mian Munir Ahmad v. The State* 1985 SCMR 257, it has been held as under:

“that the powers of the trial Court under section 249-A, Cr.P.C. and 265-K, Cr.P.C. are co-extensive with the similar powers of the High Court under section 561-A, Cr.P.C., and both can be resorted to.

It would, of course, be proper to approach the trial Court in the first instance but there is nothing to bar the High Court from entertaining, in appropriate cases, an application under section 561-A, Cr.P.C., directly.”

13. *In the case of Raees Ahmad Khan v. The State* 1991 P.Cr.L.J 1381, it has been held as under

“No doubt the powers of trial Court under section 249-A or 265-K, Cr.P.C, as the case may be, are co-extensive with similar powers of the High Court under section 561-A, Cr.P.C., and both can be resorted to. The case of *Mian Munir Ahmed v. The State*, reported in 1985 SCMR 257, is a guiding authority on this subject.”

14. *In the case of Ch. Pervez Ellahi v. The Federation of Pakistan* 1995 MLD 615 (Lahore), it has been held as under:

“We have heard the arguments of the learned counsel for number of days, perused the record and evidence collected by the investigating agency besides the documents produced and shown by the learned counsel for the petitioner. In principle, there is no dispute to say that on the following grounds a criminal case can be quashed by the High Court exercising its Constitutional jurisdiction:

(a) When the case is of no evidence;

- (b) when the very registration of the case is proved to be mala fide on the face of record;
- (c) when the case is of purely civil nature, criminal proceedings are not warranted in law, especially to harass the accused;
- (d) when there is serious jurisdictional defect; and
- (e) when there is unexceptional delay in the disposal of the case causing deplorable mental, physical and financial torture to the person proceeded against.”

15. In the case of *Muhammad Hassan v. Manzoor Ahmad* and another 1991 P.Cr.L.J 2177, it has been held as under:

“Following principles can be concluded from the case-law cited by the learned Advocates for the parties with regard to the exercise of the powers by the trial Court under sections 249-A and 265-K and the High Court under section 561-A:-

- (i) Mere pendency of a civil suit, does not absolve a party from a criminal charge if the facts of the case established the same but if the facts of the case do not disclose mens rea or commission of criminal offence, the criminal proceedings will be an abuse of the process of the Court and cannot be allowed to be used as an instrument of harassment or coercion for attainment of unlawful purpose.
- (ii) The power to quash the criminal proceedings cannot be exercised where the case set up by the complainant prima facie shows a plausible case, unless some evidence is recorded to establish that the dispute is of a civil nature or where the appraisal of the evidence by the trial Court is desirable in the first instance looking at the facts and circumstances of the case.
- (iii) The exercise of jurisdiction by the High Court under section 561-A is controlled by the principles and precedents as much as the express statutory powers.
- (iv) The powers under section 561-A cannot be exercised to stifle the proceedings where prima facie case is disclosed but there is no bar in exercise of such powers when the charge on its face does not disclose any offence.

(v) The powers of the High Court under section 561-A Cr.P.C., and those of the trial Court under sections 249-A and 265-K, Cr.P.C. are co-extensive."

16. After having examined the peculiar facts and circumstances of the instant case, contents of the complaint and FIR as well as final charge sheet submitted by the prosecution against the petitioner Wali Muhammad Shaikh, we have reached to the conclusion that there have been no specific allegations, which may directly connect the petitioner with the alleged offences falling under Section 409/419/420/468/471 PPC as there has been no reference to any specific forged document prepared by the petitioner with intent to cause damage or injury to any person, nor there seems any material or evidence in possession of the prosecution, which may otherwise, suggest that the petitioner has dishonestly committed misappropriation or converted public property to his own use or has dishonestly disposed of such property. On the contrary, it has been conceded by the Investigating Officer and the Prosecutor, FIA, present in Court, that they are not in possession of any Assessment order or Refund cheques issued by the petitioner, which according to prosecution, have been deposited in the fake accounts at Allied Bank Limited, Hyderi Market Branch, Karachi. As regards the allegation of abetment, the prosecution is also required to spell out the element of criminality and connivance of the accused in commission of the alleged offence, whereas, in the instant case, the prosecution has miserably failed to even suggest or to establish any

connection of the petitioner, with the allegations against the co-accused persons, who are private persons and account holders, and the bank officials of Allied Bank Limited, who as per prosecution story, have committed fraud, cheating and misappropriation by depositing the Refund cheques issued in favour of some other parties, in the fake bank accounts, and have benefitted themselves.

17. In view of the facts and circumstances of the instant case, we are of the opinion that the prosecution has miserably failed to disclose or make out a prima-facie case against the petitioner, whereas, there is no material or evidence available with the prosecution, which may possibly connect the petitioner with the alleged offence. Moreover, there is unexceptional delay in conclusion of the trial which cannot be attributed to the petitioner, whereas, the prosecution has not examined a single witness out of 124 Prosecution Witnesses during last more than 8 years. If the proceedings against the petitioner, are allowed to be continued, it will amount to abuse the process of law and will result in deplorable mental, and physical torture, besides destroying his service career, which cannot be permitted in terms of hereinabove cited judgment of this Court.

18. Accordingly, while exercising inherent jurisdiction vested in this Court under Section 561-A Cr.P.C, Article 199 and 203 of the Constitution, and in order to prevent the abuse of the process of law, we hereby set-side the impugned order, and quash the proceedings against the petitioner, namely, Wali

Muhammad Shaikh, in the aforesaid FIR, and also direct the Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi, to record the prosecution witnesses, and conclude the trial in respect of remaining accused persons, preferably, within a period of six (06) months from the date of receipt of this order, which shall be sent by the Office to the trial Court within one week for compliance.

JUDGE

JUDGE

Nadeem