

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Miscellaneous Application No.256 of 2012

Date of hearing : 23.05.2013.

Applicant Muhammad Aslam Khan @ Niazi through : Mr. Raza Muhammad Raza, Advocate.

Respondent/State through : Mr. Wali Muhammad Jamari, Standing Counsel.

ORDER

IRFAN SAADAT KHAN, J: This Criminal Miscellaneous Application (Cr.M.A) has been filed against the order passed by the Special Judge (Central-I), Karachi dated 31.07.2012, whereby the application filed on behalf of the applicant for his acquittal under Section 249-A Cr.P.C. was dismissed.

2. Briefly stated the facts of the case are that an FIR bearing No.29/2010, under Sections 161, 162, 419 PPC read with Section 5(2) PCS, 1947, at P.S. FIA, Crime Circle, Karachi was registered by the complainant Abbas Baloch, Assistant Director, FIA, Crime Circle, Karachi, stating that while investigating the case in respect of FIR No.28/2010 of FIA, Crime Circle, Karachi, it revealed that the applicant who was Head Constable in Sindh Police detailed as Guard Commander at S.I.G. (now C.T.W.), F.I.A., Karachi has misused his official position by impersonating himself as Inspector FIA and had demanded and received Rs.80,000/- illegal gratification from one Muhammad Saleem through one Kamran on the ground that he will get one Waqas, who is an employee of Muhammad Saleem, released from the FIA. The applicant stated to the said Muhammad Saleem that the demanded gratification is for himself and for his high-ups both. The said Muhammad Saleem then brought the matter to the notice of FIA, Crime Circle, for interrogation. A raid thereafter, under the supervision of Judicial Magistrate, was made and the applicant was found to have received an amount of Rs.90,000/- from the said Muhammad Saleem and thereafter the instant FIR was registered.

3. Mr. Raza Muhammad Raza, Advocate has appeared on behalf of the applicant and stated that the learned Judge was not justified in dismissing the said

application as there is no evidence available as who is the person who has given the said bribe to the applicant. He further stated that the illegal gratification amount allegedly demanded by the applicant was Rs.80,000/- whereas the recovered amount is Rs.90,000/-, which belies the stand taken by Muhammad Saleem about the said illegal gratification. He stated that the matter has wrongly been proceeded by the FIA, which is a Federal government agency, whereas the matter should have been dealt by the provincial department as the applicant is a provincial government employee. He in this regard invited my attention to Section 5 of the FIA Rules. He submitted that no investigation or enquiry was held in the case as specifically provided under Section 3 of the Enquiry & Investigation Rules. He further submitted that neither any oral nor written complaint was made and as to how an action has been taken on an anonymous complaint has not been explained. He further submitted that why no information was given by the FIA to its high officials about the investigation of the case has also not been explained. He further submitted that cross examination of the witness would reveal that the aspect of giving bribe has already been denied and this FIR has illegally been registered. He further submitted that at the time of the raid no Magistrate was present, which is a primary requirement of the case and on this score also the applicant is liable to be acquitted and FIR be quashed. He stated that no amount was recovered from the possession of the applicant and no independent witness from the locality has been examined. He further stated that if the statement of Muhammad Saleem is examined, it would reveal that he has stated that some other person has given the said amount but no name of the said person has been mentioned. He further stated that the FIR has been registered with a considerable delay and only one witness in the present case has so far been examined. He, therefore, submitted that present FIR be quashed. In support of his above contentions the learned counsel has relied upon the following decisions:

1. *Muhammad Bashir Vs. The State* (1972 P.Cr.L.J. 836)
2. *Muhammad Rafique Qureshi Vs. The State* (2012 P.Cr.L.J. 303)
3. *Umer Din Vs. The State* (1999 A.C. 265)
4. *Mehboob Ali Vs. The State and 3 others* (PLD 1996 Lahore 454)
5. *Noor Muhammad Vs. The State* (PLD 1963 Supreme Court 38)
6. *Muhammad Sharif Vs. Station House Officer, Police Station City, Hafizabad and another* (PLD 1997 Lahore 692)

7. *Muhammad Fafeez and 2 others Vs. The State and another (1999 MLD 1174)*
8. *Abdul Kuddus Akanda Vs. The State (1970 P.Cr.L.J. 520)*
9. *Rehmat Ali and others Vs. Station House Officer and others (PLD 2004 Lahore 65)*
10. *Mst. Faiz Begum Vs. The State (1995 P.Cr.L.J. 1601)*
11. *Miraj Khan Vs. Gul Ahmed and 3 others (2000 SCMR 122)*
12. *Messrs Adam Sugar Mills Limited and 2 others Vs. Trading Corporation of Pakistan (Pvt.) Ltd. (2006 P.Cr.L.J. 263)*

4. Mr. Wali Muhammad Jamari, Standing Counsel has appeared on behalf of the State and supported the order passed by the lower Court and stated that since the applicant has misused his official post by impersonating himself as FIA Inspector, which is against all norms of law, and was caught red handed, hence, the FIR was rightly registered against him. He further submitted that the said amount was recovered from the possession of the applicant and whether the amount is Rs.80,000/- or Rs.90,000/- is of little significance. He stated that the present Cr.M.A is premature since the trial is underway and hence no case of the applicant is made out at present for quashing of the FIR. He further stated that the complainant in this case has duly been examined by the lower Court, who has supported the case and there is no enmity between the complainant and the applicant to falsely involve him. He further stated that the points now raised before this Court have not been raised before the trial Court. He further stated that the decisions relied upon, by the counsel for the applicant, are distinguishable. He, however, stated that he would have no objection if instructions are issued to the trial Court to conclude the trial within two months.

5. Mr. Raza Muhammad Raza, in his rebuttal, stated that since there was some personal grudge between the applicant and the complainant, therefore, the present case has been registered. He further stated that the said Waqas was not released by taking any gratification rather he was released on the intervention of the President of Medicine Association. He, therefore, prayed that this Cr.M.A may be allowed by quashing the FIR.

6. I have heard both the learned counsel at considerable length and have perused the record, the law and the decisions relied upon.

7. It is seen from the record that the case was registered with the permission of the Deputy Director, FIA, and final challan was submitted with the permission of the Director. The report was made by the Assistant Director, FIA, dated 02.12.2010 to the Deputy Director, FIA, against the applicant that he has received a verbal order from the competent authority to make an enquiry regarding obtaining of the alleged illegal gratification of Rs.80,000/- from one Muhammad Saleem on the pretext of releasing one Waqas from the custody of FIA. The statement of the said Muhammad Saleem was recorded in which he has categorically stated that a raid was made at his office and godown when he was not present and his employee Waqas was taken into custody and was brought to FIA office. Thereafter through one Kamran, the applicant was approached who promised to get Waqas released, by impersonating himself as Inspector of the FIA. As per the record the applicant demanded Rs.30,000/- for himself and Rs.50,000/- for his high-ups. Thereafter a sum of Rs.20,000/- was paid to the applicant through Kamran and subsequently a sum of Rs.60,000/- was also paid through Kamran to the applicant, where-after Waqas was released by the FIA. Subsequently, Muhammad Saleem came to know that Waqas was not released due to the amount paid by him to the applicant but on the intervention of the Medicine Union. Muhammad Saleem demanded back the amount from the applicant, who did not respond and thereafter the matter was brought to the knowledge of the FIA authorities, who registered the instant case against him. It is seen from the decisions relied upon by the learned counsel for the applicant that in those cases the Courts after thorough investigation came to the conclusion that the case of bribery against the applicant has not been proved due to certain reasons. These decisions, in my view, are of no help to the applicant at this level as it is an admitted position that in the present case only one witness has been examined so far, whereas other material witnesses are yet to be examined.

8. A perusal of Section 249-A Cr.P.C. would reveal that this authority has been given to the Magistrate to acquit a person at any stage of the case, if he considers that the charge is groundless and there is no probability of the accused being convicted of any offence. The applicant has filed an application on the

ground that no evidence implicating him with the commission of the offence has been made out hence he is liable to be acquitted. In my view, such stand is not available to the applicant as admittedly in the present case trial is yet to be concluded and a number of witnesses have got to be examined. It is not the case of the applicant that from the material available on the record and from the evidence of the witness recorded so far it has been proved that either the charge is groundless or there is no probability of the applicant to be convicted but the counsel for the applicant has conceded that so far only one witness has been examined and other material witnesses are yet to be examined but his only claim is that since the present case has illegally been foisted upon the applicant due to enmity hence the present FIR be quashed. In my view the said authority to acquit a person or not rests squarely with the Magistrate, who under given facts and circumstances of the case, after considering the application is fully authorized under the law to pass orders in this behalf. If the Magistrate is satisfied that the charge is groundless and there is no probability of a person being convicted of any offence then, while exercising such powers, he acquits such person but in case he does not come to the said conclusion, he has the authority under the law to dismiss the said application. Though the High Court has the authority under the law to quash the FIR but, as held by the Superior Courts, this exercise has to be exercised looking to the facts and circumstances of that case. In the present case the counsel for the applicant has failed to demonstrate what are the circumstances to quash the FIR and only the stand with regard to the fact that the amount recovered was not Rs.80,000/- and was Rs.90,000/- has been taken, which, in my view, is of little significance, as this is a matter of record, which could be decided only after recording the evidence of the witnesses and considering the facts available on the record. The objections now raised before this Court could be taken before the trial Court. This Cr.M.A, in my view, is premature and the same is, therefore, dismissed. However, before parting with the order, the trial Court is directed to conclude the trial within a period of three months.

JUDGE