

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Appn. No. 263 of 2021.

Abdul Ghaffar vs. The State & Habib ur Rehman
Sub-Inspector, FIA/ACC/Karachi.

Applicant: Through Khawaja Shams-ul-Islam,
Advocate.

State: Through Mr. Tariq Ahmed Khan,
Assistant Attorney General a/w Inspector
M. Rashid Bhatti, FIA, ACC and
Sub- Inspector Habib-ur-Rehman, FIA,
Anti-corruption Circle, Karachi.

Date of Hg. 30.04.2021

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ARSHAD HUSSAIN KHAN-J, Through instant Criminal Miscellaneous application, the applicant has called in question order dated 27.04.2021, passed by learned III-Judicial Magistrate, Karachi South, whereby she, upon the application, granted 04 days physical remand of the applicant to Investigating Officer of Crime No. 08/2021 for offences under Sections 3 & 4 of Anti Money Laundering Act, 2010, Amended in the month of Sep-2020 [AMLA], registered at P.S. Anti-Corruption Circle, Karachi.

2. Briefly, the facts giving rise to the present application are that FIR No. 04/2021 dated 20.03.2021 was registered at FIA Anti-Corruption Circle, Karachi, under Sections 161/165/165-A/109 PPC read with Section 5(2) PCA-II Act, 1947, wherein interim charge sheet No. 12/2021 dated 06.04.2021 was submitted against 06 accused persons including applicant Abdul Ghaffar son of Muhammad Sharif and report received from Investigation Officer of predicate offence. During investigation of predicate offences, it transpired that applicant/accused Abdul Ghaffar-Deputy Director/Forensics Expert (FE) during his posting as Incharge Cyber Crime Reporting Centre (CCRC) Karachi, extended undue benefit/favour in Enquiry No. 560/2020 to M/s. ABTACH (PVT) Ltd., against receipt of illegal remuneration/bribe. Further that an amount of Rs.14 million given as illegal gratification is ascertained out of which Rs.4 million was transferred/handed over at Lahore to Najma Hafeez on 25.01.2021 through contact person of P.W. Amin son of Abdul Sattar. The same is corroborated

by subsequent cash deposit of Rs.1 million in bank account bearing No.1025-79001305-03 with title Najma Hafeez deposited by herself at HBL-Fortress Branch Lahore on 26.01.2021. Besides, Rs. 10 million was transferred through contact person of PW Amin to one Asim Mansoor on 28.10.2021 at Lahore upon directions of accused Abdul Ghaffar. Meantime, accused Abdul Ghaffar (cell No.0321-4448011) was in frequent cell phone contact with Asim Mansoor (Cell No. 0333-4215962) to whom Rs. 10 million were handed over by contact person of PW Amin. Disposal/transfer/conversion of proceeds of crime of Rs.14 million to some other form is to be ascertained during investigation and upon successful trace, codal formalities for attachment will be commenced as per law. Such facts leads to presume that accused Abdul Ghaffar in the capacity of public servant by misusing his position, acquired the crime proceeds obtained from commission of predicate offence, offences under Sections 161/165/165-A/109 PPC read with 5(2) PCA-II, 1947 as specified in Schedule I of AML Act, 2010, and the above property [questioned amounts in the bank accounts of Najma Hafeez] is property involved in money laundering as defined in Section 2(xxx) of AML Act, 2010, thus committed offence of Money Laundering under Section 3 of Anti Money Laundering Act, 2010 punishable under Section 4 of AML Act, 2010. Consequently, an FIR No.08 of 2021 under Sections 3, 4 of AMLA was registered with Police station FIA Anti-Corruption Circle, Karachi, and the applicant/accused was arrested. Upon expiry of mandatory period of 24-hours, the Investigating Officer produced the applicant before the Judicial Magistrate, Karachi, South with an application seeking physical remand of the applicant/accused as the investigation was not yet completed. The learned Judicial Magistrate, vide its order dated 27.04.2021, granted 04 days physical remand. The said order is impugned in the present proceedings.

3. Learned counsel for the applicant has contended that the remand order on the FIR No.8 of 2021 cannot be passed as the applicant was already granted bail before arrest by this Court on 05.04.2021 in FIR No. 04/2021 registered under Sections 161,165, 165-A, 109 PPC r/w Section 5(2) PCA-II, 1947, PS FIA ACC, Karachi, dated 20.03.2021, therefore, second FIR under Sections 3&4 of AMLA cannot be registered and the same is in violation of the case reported in PLD 2018 SC 89. Further argued that the applicant has already joined the investigation and he was in their office on 26.04.2021 and was arbitrarily and illegally arrested in the

second FIR, which cannot be maintained as for the purpose of AMLA, the Court has been defined as Sessions Court and unless Sessions Court granted permission, no one can be arrested nor FIR can be registered unless the Federal Government allowed and in the present case, neither the Federal Government nor the Sessions Court has granted any permission to the Prosecution to arrest the applicant or to lodge the FIR, thus the second FIR is totally void and liable to be declared as such. It is also argued that in terms of sub-Section (2) of 24 of AMLA only the authorized officer on behalf of the Federal Government by general or special order can arrest the person, however, Sub-Inspector the I.O in the present case was never authorized to arrest the applicant. Further argued that in terms of Section 24 of AMLA, it is the duty of the Federal Government by special or general order empower an officer not below the rank of BPS-18 of the Federal Government or the Provincial Government to act as an Investigation Officer. Further argued that learned Judicial Magistrate Karachi South has violated Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, as well as violated the principle laid down by the Hon'ble Supreme Court in Sughra Bibi case as well as the bail granted by this Court dated 05.04.2021, therefore, entire remand is liable to be set aside. In support of his contention, he has relied upon 2016 P.Cr.L.J. 1773, 2000 MLD 921, PLD 2007 597 and 2016 PTD 365.

4. Conversely, learned Assistant Attorney General for Pakistan, while supporting the impugned order has contended that according to AML Act, 2010 (Second Amendment) Act, 2020, there is no provision for special notification under AMLA to empower Judicial Magistrate to give remand and as such Judicial Magistrate is fully empowered u/s 167 Cr.P.C. to grant remand under AMLA, thus, no notification is required in this regard. Learned Assistant Attorney General further contended that second FIR has been registered after fulfilling all requisites and codal formalities and neither any malafide can be attributed nor it can be said that the FIR is void. In this regard through statement in writing dated 30.04.2021, he filed nomination of investigating Officer in instant crime and copy of relevant portion of the law in respect of jurisdiction of Sessions Court to try and adjudicate all matters punishable under AMLA.

5. I have heard the submissions of learned counsel for the applicant and learned Assistant Attorney General for Pakistan, perused the case laws cited above and the material available on the record.

6. It is an admitted position that under Section 20 of AMLA, the court of Sessions established under the code of Criminal Procedures, 1898 (V of 1898) shall within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offences punishable under the Act and all matters provided in, related to or arising from this Act. And as such the Judicial Magistrate under relevant Sessions Judge shall have the power under Section 167 of Cr.P.C to grant physical remand of the accused. Insofar as the contention of learned counsel for the applicant that learned Judicial Magistrate-III, Karachi South was not the authorized Magistrate by the relevant Sessions Judge to deal with remand is concerned, the relevant Sessions Judge would be competent to look into the matter as to whether it has authorized the Judicial Magistrate for said purposes or not. In absence of any report/comments in this respect from the relevant Session Judge, this Court cannot pass any order in this regard. Furthermore, there is no provision in the AMLA, which requires any special notification empowering a particular Judicial Magistrate to deal with the remand of accused tried under the AMLA.

7. It is also the contention of learned counsel that the action against the applicant has been taken without the permission of the court. Section 14 of AMLA deals with search and seizer, proviso whereof states that (1) Subject to sub-Section (2), where the investigating officer, on the basis of information in his possession, has reason to believe that any person (a) has committed any act which constitutes money-laundering; (b) is in possession of any property involved in money laundering; or (c) is in possession of any record which may be useful for or relevant to proceedings under this Act, he may either himself, or authorize any officer subordinate to him to,-- (i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such record or properties are kept; (ii) break open the lock of any door, box locker, safe, almirah or other receptacles for exercising the powers conferred by clause (i) where the keys thereof are not available; (iii) seize any such record or property found as a result of such search; (iv) place marks of identification on such record or make, or cause to be made, extracts or copies therefrom; (v) make a note of any inventory of such record or property; or (vi) examine any person, who is found to be in possession or control of any such record or property, in respect of all matters relevant for the purposes of any investigation under this Act.; (2) The powers to search under sub-Section (1) shall be exercisable by the

investigating officer with prior permission of the Court: Provided that where immediate action is required, the powers of search and seizure shall be exercisable with prior permission of the senior officer of the concerned investigating or prosecuting agency not below the rank of an officer of BS-20. Whereas, Section 24 (1) of AMLA states that the investigating or prosecuting agencies may nominate such persons as they think fit to be the investigating officers under this Act from amongst their officers.

8. In the present case from letter dated 26.04.2021, placed before the Court through a statement dated 30.04.2021, it appears that the required permission for registration of separate case under Section 3 & 4 of AMLA against the applicant and other along with permission for arrest was accorded by Director, FIA Sindh, Zone-I and sub-inspector Habib-ur-Rehman is nominated as Investigation Officer. Besides, above, in view of omission of Section 16 from the Act no more prior permission of the Court is required to arrest a person under the Act.

9. It may be observed that Section 61 of Cr.P.C. stipulates that a Police Officer cannot detain a person in his custody more than twenty-four hours in absence of any specific order of Magistrate under Section 167, Cr.P.C., which enables a Magistrate to pass an order extending the detention of an accused for a term not exceeding fifteen days and shall record his reason for doing so. Simultaneously, Section 344, Cr.P.C. postulates that no Magistrate shall remand an accused person to custody for a term exceeding fifteen days at a time. It further explains that if sufficient evidence has been obtained to raise a suspicion that the accused might have committed an offence and it appears likely that further evidence may be obtained by a remand this is reasonable cause for remand.

10. It is an established principle of law that remand is not to be granted mechanically on the request of the police, rather a Magistrate is expected to perform his duty with eyes and ears open as required under the law after judicious application of mind and not in a perfunctory manner. A Magistrate before granting a remand is under legal obligation to satisfy himself if under the circumstances remand is to be granted or not. Needless to mention that liberty of a person cannot be compromised merely on a formal request of a police officer. It is sacred duty of a Magistrate to safeguard the fundamental rights of life and liberty of a person as enshrined under Articles 9 and 10 of the Constitution of Islamic Republic of Pakistan.

11. Keeping in view of the above, when the impugned order has been examined, it transpires that learned Judicial Magistrate examined the documents placed before it, heard counsel for the accused and after dealing with his objections granted 04 days physical remand of the applicant/accused till 01.05.2021, whereas, the IO of the case had requested for remand of the applicant/accused upto 10.05.2021. Such fact reflects that the learned Judicial Magistrate did not pass the impugned order in a mechanical manner.

12. It may also be observed that after registration of a criminal case, the Investigating Agency has a statutory duty and obligation to investigate a cognizable offence and any order, at this stage, would amount to throttling the investigation process, which is not permissible under the law and if such process is scrutinized under 561-A Cr.P.C, then it would amount to interference in the investigation of a criminal case. In the present case, a proper FIR has been registered against the applicant regarding a cognizable offence, therefore, he cannot be allowed, at this stage, to avoid ordinary course of investigation. Since the question urged before this Court being contentious, therefore, at this stage, this Court would not like to interfere with the investigation of the case and that, too, when the Applicant has available adequate remedies under the law.

13. The case laws cited by learned counsel for the applicant has been perused and considered with due care and caution but are found distinguishable from the facts of the present case and hence the same are not applicable to the present case.

14. In view of the above referred facts and circumstances no perversity, illegality and incorrectness have been found in the impugned order and as such no case for interference by this Court in the impugned order in the exercise of its inherent jurisdiction under Section 561-Cr.P.C is made out. Accordingly, the present Criminal Miscellaneous being bereft of merit is dismissed.

JUDGE