

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Revision Application No. 62 of 2013

Date of hearing : 17.04.2013.

Applicant/accused A. Rehman Malik through : Mr. Moulvi Iqbal Haider, Advocate.

ORDER

IRFAN SAADAT KHAN, J: This Criminal Revision Application has been filed under Section 435 read with Section 561-A Cr.P.C. against the order dated 12.04.2013, passed by the District & Sessions Judge, Karachi South in Direct Complaint No.500/2012 whereby the application for grant of exemption from personal appearance was dismissed and the applicant/accused was directed to appear before the Court on the date fixed so that charge may be framed and the application under Section 265-K Cr.P.C. would also be heard and decided.

2. Briefly stated the facts of the case are that the applicant/accused is a Senator and had worked as Federal Minister for Interior. Since there were some complaints against the Members of the Parliaments/Provincial Assemblies that they have made false declaration before the Election Commission while filing their nomination papers and as such were guilty of corrupt practices in terms of Section 78 of Representation of Peoples Act, 1976, therefore, the Election Commission was directed by the Hon'ble Supreme Court of Pakistan to institute legal proceedings against them under Section 82 of the Act read with Sections 193, 196, 197, 198 & 199 PPC in accordance with law, and the applicant/accused was also found by the Hon'ble Apex Court to have made a false declaration in this regard. Thereafter the Hon'ble Apex Court observed that a reference is required to be made to the Chairman Senate under Article 63(2) in view of the provisions of Section 99(1)(f) of the Act of 1976. The Hon'ble Apex Court after finding that the applicant/accused had made a false declaration directed the Election Commission to institute legal proceedings against him. The Election Commission thereafter initiated legal proceedings against the applicant/accused

and filed a complaint against him bearing Direct Complaint No.500/2012 before respondent No.2, who issued summons to the applicant/accused under Section 68 of the Senate (Election) Act, 1975, read with Sections 193, 196, 197 & 199 PPC and registered the Direct Complaint vide order dated 02.10.2012 and directed the applicant/accused to appear before the said Court on 09.10.2012 and to furnish surety of Rs.50,000/- and P.R. Bond in the like amount. On 08.10.2012 the applicant/accused appeared before the Court and furnished the said surety and thereafter the matter was adjourned to 01.11.2012. On the said date the applicant/accused appeared in the Court and filed an application for adjournment for engaging a counsel, which application was allowed and the matter was adjourned to 29.11.2012. As on the said date the applicant/accused had to appear before the Hon'ble Supreme Court, he moved an application for adjournment and the learned Court adjourned the matter for 13.12.2012 but on 12.12.2012 an application under Section 265-K Cr.P.C. alongwith application for exemption from appearance was preferred. On 13.12.2012 the applicant/accused was present and the matter was adjourned to 04.02.2013. On the said date the applicant/accused was not present, however, an application for condonation of his absence was moved, which application was allowed and case was adjourned to 15.03.2013 for hearing of application under Section 265-K Cr.P.C. Thereafter, the matter was adjourned to 09.04.2013 and then to 19.04.2013. On 11.04.2013 the counsel for the applicant/accused filed three applications, one for separation of case from other identical cases, second for providing foolproof security to the applicant/accused and third regarding exemption for appearance of the applicant/accused on 19.04.2013. The said applications were fixed for hearing on 12.04.2013 on which date the learned Court dismissed the application for exemption from personal appearance. It is against the said order that the present Criminal Revision Application has been filed.

3. Mr. Moulvi Iqbal Haider, Advocate has appeared on behalf of the applicant/accused and submitted that the learned trial Court was not justified in dismissing the application for exemption from personal appearance since the applicant apprehends imminent danger from Taliban and other quarters. He

submitted that the learned trial Court was not justified in dismissing the said application in a summary manner without discussing the same on merits. He in this regard read out the provisions of Section 265-K and 435 Cr.P.C. and stated that by looking to the peculiar circumstances of the case the applicant/accused may be granted exemption from personal appearance. In support of his contentions the learned counsel has relied upon the following decisions:

1. *Haleem Shah Vs. The State (PLD 1996 Karachi 306)*
2. *Haider Abbas alias Munna Bhai & another (2008 S.L.J. 656)*
3. *State through Advocate-General, Sindh Vs. Asif Ali Zardari (PLD 1999 Karachi 144)*

4. I have heard the learned counsel at considerable length and have perused the record. For the better understanding of the case it would be pertinent if relevant findings of the Hon'ble Apex Court are reproduced:

(d) All the Members of the Parliament/Provincial Assemblies noted above had made false declarations before the Election Commission while filing their nomination papers and as such appear to be guilty of corrupt practice in terms of Section 78 of Representation of Peoples Act, 1976, therefore, the Election Commission is directed to institute legal proceedings against them under section 82 of the Act read with sections 193, 196, 197, 198 and 199 PPC in accordance with law.

(e) The members of Parliament/Provincial Assemblies noted hereinabove, being disqualified persons are directed to refund all monetary benefits drawn by them for the period during which they occupied the public office and had drawn their emoluments etc. from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation along with other perks which shall be calculated in terms of money by the Secretaries of the Senate, National Assembly and Provincial Assemblies accordingly.

(f) The amount, so recovered from all of them by respective Secretaries shall be deposited in the public exchequer within a period of two weeks and compliance report shall be sent to the Registrar.

(g) As regards the case of Senator A. Rehman Malik, it may be noted that at the time of filing of nomination papers for election to the Senate held in the year 2008, he had made a false declaration to the effect that he was not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the Parliament/Provincial Assembly, therefore, reference will be required to be made to the Chairman Senate under Article 63(2) in view of the provision of section 99(1)(f) of the Act of 1976, which lays down that a person shall not be qualified from being elected or chosen as a member of an Assembly unless he is sagacious, righteous and non-profligate and honest and ameen. Mr. A. Rahman Malik, in view of the false declaration filed by him at the time of contesting the election to the Senate held in the year 2008, wherein he was elected, cannot be considered sagacious, righteous, honest and ameen within the contemplation of section 99(1)(f) of the Act of 1976. Therefore, for such purposes Article 63(p) is to be adhered to because the disqualification incurred by him is envisaged under the law, referred to hereinabove in

view of his own statement that he had renounced his citizenship of UK whereas the fact remains that such renunciation along with declaration can only be seen as having been made on 29.05.2012.

(h) Senator A. Rehman Malik is directed to refund all monetary benefits drawn by him upto 11.7.2012 for the period during which he occupied the public office in the same manner as directed in the case of other Parliamentarians noted above.

(i) As Mr. A. Rehman Malik had made false declarations while filing his nomination papers before the Election Commission in the election held in the year 2008, therefore, the Election Commission is directed to institute legal proceedings against him as it has been directed in the case of above said parliamentarians.

21. The Election Commission of Pakistan is also directed to examine the cases of the Parliamentarians and the members of Provincial Assemblies, individually, by obtaining fresh declaration on oath from all of them that they are not disqualified under Article 63(1)(c) of the Constitution.

22. The titled Constitution Petition is disposed of in the above terms. However, the Criminal Original Petitions are adjourned to a date in office.

5. Perusal of the above findings of the Hon'ble Apex Court would reveal that the Hon'ble Supreme Court after finding that the applicant/accused had filed a false declaration and had exposed himself for disqualification under the relevant provisions of law referred the matter to the Election Commission for instituting legal proceedings against him and thereafter the Direct Compliant bearing No.500/2012 was filed against the applicant/accused by the Regional Election Commissioner. Counsel for the applicant/accused was asked a specific question that whether the applicant/accused enjoys exemption from personal appearance as envisaged under Article 248 of the Constitution, which facility has been provided to certain personalities holding certain offices and only those personalities occupying the said offices to which exemption from appearance before the Court has been made are, in my view, entitled to the said exemption from appearance or where the Court comes to the conclusion, by looking at the peculiar circumstances of the case, that exemption from personal appearance is required. No plausible reply in this regard was furnished by the learned counsel for the applicant.

6. It is an admitted fact that the applicant/accused is no more an Interior Minister. Learned counsel appearing before me has also failed to establish as to what was the legal justification available with the applicant/accused to claim said

exemption facility when it is an admitted position that the applicant/accused is facing trial before different Courts. When the Hon'ble Apex Court has categorically observed that the applicant/accused has been found to be guilty of making false declaration and a complaint in this regard has also been filed by the Election Commission, the applicant/accused has to appear before the Court and until and unless very strong reasons and grounds are given he cannot be dispensed with or exempted from personal appearance. The District & Sessions Judge has fixed the matter for hearing on 19.04.2013 for framing of charge and on which date the applicant/accused has to appear before the Court since his signatures are required on the said charge. Another question was asked from the learned counsel for the applicant/accused whether any application under Section 540-A Cr.P.C. has been moved by him or not, to which he candidly replied that he was required to move such an application but since he has moved the application under Section 265-K Cr.P.C., hence, he does not deem it necessary to move such application. The decisions relied upon by the learned counsel are found to be on totally different footing and do not support his version. If the applicant/accused apprehends imminent danger to his life that aspect has already been taken care of, since it is an admitted position that in the light of the directions given by the Hon'ble Supreme Court of Pakistan, as mentioned by the Court below, he has been provided foolproof security, hence, there cannot be any impediment or hindrance for him to appear before the said Court. Since the applicant/accused has been given foolproof security, as specifically mentioned by the Court below, which aspect has not been denied by the counsel of the applicant, this Criminal Revision Application is found to be wholly misconceived, devoid of any merit and not maintainable. Therefore, the same is dismissed in limine alongwith the pending applications.

Above are the reasons of my short order.

Karachi.

Dated: .04.2013.

JUDGE