

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Miscellaneous Application No.364 of 2019

Date	Order with signature of Judge
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For order as to maintainability of Cr. MA (As per order dated 14.10.2021)

**27.11.2023**

Syed Israr Ali advocate alongwith Ms. Humaira Junaid advocate for the applicant  
Mr. Gul Faraz Khatak, DAG  
Mr. Iqbal Shah advocate for respondent No.4

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The petitioner Jawed Iqbal initially filed a Constitution Petition which was converted into Criminal Miscellaneous Application No. 364 of 2019 vide order dated 05.09.2023, assailing the vires of order dated 25.04.2016 passed by learned VII th Judicial Magistrate/Civil Judge Karachi Central whereby the criminal case arising out of F.I.R No. 11 of 2016 under section 56,66-A, and 67 of Copy Right Act 1962 read with Section 420, 473, 109 PPC, at PS FIA/ACC Karachi was disposed of under C Class, with direction to the petitioner/complainant to approach the concerned authority having jurisdiction for redressal of his grievances meanwhile the respondent/accused was discharged from the subject crime. An excerpt whereof is reproduced as under:-

*“The I/O of the case, namely Inspector Jaffer Hussain, ACC, FIA, Karachi, submitted Interim report U/s 173 Cr. PC as charge sheet against the accused persons namely Waseem Nisar S/o Nisar Ahmed & Muhammad Farooq S/o Muhammad Ayub, however, despite given him number of opportunities no final report has been submitted by the 10, and as the accused persons are attending the Court on each date of hearing for a ascertaining the fate of investigation and contesting their case. However, the FIA has become inactive therefore, the interim report after hearing both parties is hereby decided being disposed of under the "C" class on the below-given reasons.*

*Heard the parties and gone through the Police paper. The learned counsel for the accused person raised objection upon the interim report on jurisdiction point as FIA does not have authority/jurisdiction to register the FIR against the dispute between the private parties. Learned AD Legal of FIA however, contented in rebuttal that the FIA is duly authorized by the law to register the FIR and conduct the investigation as per schedule. Learned counsel for the accused produced the case law 2010, PCRLJ 518 wherein it was clearly been established by the Honorable High Court of Sindh in the case titled State V/S Muhammad Anees S/o Haroon and 14 others that the FIA as per the preamble of its acts has concurrent jurisdiction with the Police to take cognizance where some Government works are involved. The said law further elaborates that insertion of entry No. 26 in the schedule of the FIA Act, 1974 may also be exercised only to the extent of some violation of Government work and the FIA has no jurisdiction in respect of any infringement of copyrights between private parties. The Learned AD Legal, however, could not clarify the above position and further that no evidence is available on record which shows that the FIA has agitated such decisions of the Honorable High Court at any superior forum. This is the report of u/s 173 Cr.PC instead of accepting as charge sheet as per recommendations, is hereby, disposed of under "C" Class. The complainant, however, may approach the concerned authority having jurisdiction to redressal of his grievances. Accused Wasim Nisar S/o Nisar Ahmed and Muhammad Farooq S/o Muhammad Ayub are present on bail.”*

2. It is inter alia contended by the learned counsel representing the applicant that the FIA has jurisdiction in respect of infringement of copyright being a scheduled offense under the FIA Act 1974. He further submitted that FIA is also entitled to investigate and prosecute the case relating to the copyrights, as such the learned Magistrate cannot refuse to entertain the case and discharge the accused by disposing of the case under C-Class. He prayed for allowing the application.

3. The learned Deputy Attorney General for Pakistan has contended that the Copyright Ordinance is mentioned at Serial No.26 in the Schedule of the Federal Investigation Agency Act, 1974 so the FIA is competent to inquire into and investigate all the offenses punishable under the said Ordinance.

4. Mr. Iqbal Shah advocate for respondent No.4, has supported the impugned order and argued that all matters and complaints related to offenses under the Copyright Ordinance are to be dealt with under the Intellectual Property Organization of Pakistan Act, 2012 and the FIA has no jurisdiction to register FIR in respect of the said offenses and investigate them. He further argued that the FIA can only entertain cases in which there is a violation of some copyright of the Government Infringement of copyrights and in the present case, the dispute is between two private individuals with respect purely to an intellectual property issue and the Government has nothing to do with the matter to attract the jurisdiction of FIA, as rightly declined to entertain the case and disposed of under C- Class by the trial Court with direction to the complainant to approach proper forum and returned the case to the complainant/Investigation officer, who failed and neglected to approach proper forum in time as directed by the trial Court rather he waited for decision of this Court. This is apathy on the part of the complainant just to waste the time of the government to pursue the remedy in time. He further contended that an investigation launched beyond jurisdiction is mala fide and without lawful authority and is liable to be struck down as rightly been done by the trial Court. He lastly prayed for dismissal of the instant Criminal Miscellaneous Application.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. The question raised in the present proceedings is whether FIA has jurisdiction to lodge the subject FIR under Sections 56, 66-A, and 67 of the Copy Right Ordinance and conduct an investigation thereunder or whether the concerned Tribunal has jurisdiction to entertain the case. The

learned trial Court found that as per the preamble of the FIA Act, it has concurrent jurisdiction with the Police to take cognizance where some Government work is involved. However, the FIA can exercise jurisdiction only to the extent of some violation of Government work and the FIA has no jurisdiction in respect of any infringement of copyrights between private parties. However, since the FIA has been established for the investigation of offenses committed in connection with matters concerning the Federal Government, and for matters connected therewith thus does not enjoy any power or jurisdiction to a purely private business dispute between the two individuals.

7. FIA is a Federal Force constituted under the Federal Investigation Agency Act, 1974 whose preamble reads as follows:

***"Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offenses committed in connection with matters concerning the Federal Government, and for matters connected therewith."***

8. The Preamble is a part of a statute though not its operative part. Nevertheless, it provides a useful guide to find out the legislative intent. Section 3 of the FIA Act 1974 provides for the constitution of the Federal Investigation Agency and describes its jurisdiction. It enacts:

**3. Constitution of the Agency.---**

***(1) Notwithstanding anything contained in any other law for the time being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into and investigation of the offences specified in the Schedule, including an attempt or conspiracy to commit and abetment of any such offense.***

***(2) The Agency shall consist of a Director-General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency.***

9. A plain reading of section 3, supra, shows that the FIA is empowered to inquire into or investigate the offenses specified in the Schedule of the FIA Act (which the Federal Government can amend by notification in the official Gazette under section 6). Albeit the language of section 3 and the Schedule is quite clear, the preamble has raised problems. There is a consensus of judicial opinion that the FIA does not have jurisdiction in matters between private individuals and that there must be some nexus between the offenses complained of and the Federal Government.

10. The Supreme Court's holding in the case of Director General, FIA, and others v. Kamran Iqbal and others (2016 SCMR 447) is also instructive.

11. There is almost a consensus that the FIA is competent to exercise jurisdiction when –

- i) the scheduled offence is committed by the employees of the Federation;*
- ii) the scheduled offence is committed by the employees of the corporation set up, controlled, and administered by the Federal Government;*
- iii) the scheduled offence is committed by public servants;*
- iv) the offence relates to a banking company*

12. The Supreme Court in the case of Syed Mushahid Shah and others v. Federal Investigating Agency and others (2017 SCMR 1218) has settled the subject issue which is at hand thus no further deliberation is required on my part.

13. S.R.O. No.321(I)/2005 dated 16.4.2005, by way of Entry No.26, included the offenses punishable under the Copyright Ordinance in the Schedule to the FIA Act. The question as to whether the FIA has general jurisdiction in respect of the offenses under the Copyright Ordinance or it is restricted to the complaints by the government about infringement of its copyright in some work has been very contentious and this court in the case of the State through Deputy Attorney-General v. Muhammad Amin Haroon and 14 others (2010 PCr.LJ 518) held that cases involving infringement of copyright between private parties are to be dealt with by the local police while those involving a work of the Federal Government by the FIA.

14. So far as the question raised by the learned counsel for the respondent that complaints related to offenses under the Copyright Ordinance are to be dealt with under the Intellectual Property Organization of Pakistan Act, 2012, and the FIA has no jurisdiction to register FIR in respect of the said offenses and investigate them. In principle Intellectual property is usually divided into two branches - industrial property and copyright. The industrial property comprises patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout designs of integrated circuits, commercial names and designations, geographical indications, and protection against unfair competition. On the other hand, copyright relates to works of authorship. The Parliament has enacted IPO-Pakistan Act (XXII of

2012) to establish the Intellectual Property Organization of Pakistan (the "Organization") to provide for institutional arrangement in the State setup for taking up exclusively and comprehensively all subjects and matters relating to intellectual property rights in an integrated manner and for matters connected therewith or incidental thereto. Clause (g) of section 2 of the IPO-Pakistan Act states that "'intellectual property' includes a trademark, patent, industrial design, layout-design (topographies) of integrated circuits, copyright and related rights and all other ancillary rights." IPO-Pakistan Act is a special law and section 39 thereof expressly states that it shall have effect notwithstanding anything contained in any other law for the time being in force. Section 13 describes the powers and functions of the Organization. Clauses (xix) and (xx) thereof are relevant for our present purposes which are reproduced below for ready reference:

***3. Powers and functions of the Organization.---The powers and functions of the Organization shall be to***  
***(xix) initiate and conduct inquiries, investigations, and proceedings related to offences in the prescribed manner;***  
***(xx) refer matters and complaints, related to offences under the laws specified in the Schedule, to the concerned law enforcement agencies and authorities as may be necessary for the purposes of this Act.***  
***Copyright Ordinance is mentioned at Serial No.2 of the Schedule to the IPO-Pakistan Act.***

15. Section 13(xix) read with section 39 confers exclusive jurisdiction on the Organization to initiate and conduct inquiries, investigations, and proceedings related to offenses under the laws specified in the Schedule. Thus, any person alleging infringement of his copyright must approach the Organization. Then, under section 13 (xx) the latter would refer his complaint to the concerned law enforcement agency or authority. It is thus clear that the FIA cannot entertain any complaint directly and register an FIR. This has a purpose. The organization is a bulwark against frivolous complaints and undue harassment. It is a specialized body that has the expertise and the requisite data to verify whether there is a case of infringement of intellectual property rights under the applicable law. The observations of the Supreme Court of Pakistan in the case of Messrs Farooq Ghee and Oils Mills (Pvt.) Ltd. v. Registrar of Trade Marks, Trade Mark Registry and others (2015 SCMR 1230) are instructive.

16. The Organization is required to exercise the powers and functions under section 13(xix) of the Copyright Act in the manner prescribed by the rules framed under section 34.

17. In my opinion, if the FIA had any complaint against the applicant regarding infringement of copyright, it was incumbent on them to approach the Organization in the first instance. They could not directly lodge an FIR with Police Station FIA/ACC, Karachi Circle.

18. In the circumstances, I am of the view, that the FIA has no jurisdiction in the matter and the learned trial court has rightly declined the request of the FIA to entertain the case, and the applicant may proceed against the respondent afresh in accordance with the law as elucidated in the impugned order, therefore, this the Criminal Miscellaneous Application is found to be misconceived and dismissed but with no orders as to cost.

JUDGE