

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No. 93 of 2019

Date	Order with signature of Judge
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For hearing of main case

Date of hearing: 16.11.2023

Date of Order : 30 .11.2023

Mr. Zeeshan Abdullah advocate for the applicant
Mr. Nadir Khan Burdi advocate for the respondent No.1
Mr. Gulfaraz Khattak, Assistant Attorney General

ORDER

Through this Criminal Revision Application under Section 435 & 439-A Cr.P.C., applicant Zahid ur Rehman authorized officer of Pakistan Industrial Development Corporation (PIDC) has questioned the order dated 29.03.2019 passed by the learned Judge Special Court (Central-I) Karachi in Case No. 25/2016, arising out of FIR No. 24/2016, under Section 409, 420, 468, 471 and 109 PPC read with Section 5(2) PCA-II 1947, Police Station FIA CBC Karachi, whereby the trial stemming out of FIR was adjourned sine die till disposal of Civil Suit No. 1714 of 2018, an excerpt whereof is reproduced as under:-

“I have also gone through the case law referred by the learned counsel for the complainant but the same having no complete relevancy to the facts of the instant case.

In view of the above discussion, proceedings of the case is adjourned sine die till disposal of Civil Suit No. 1714/2018, However, the complainant/prosecution is at liberty to file an application for bringing the case of file in this Court after disposal of the civil suit. Bail bonds and surety of the applicant/accused remain intact till further order. Application is disposed of accordingly”.

2. Mr. Zeeshan Abdullah learned counsel for the applicant has contended that Pakistan Industrial Development Corporation (Pvt) Limited, Karachi (P.I.D.C) has lodged subject FIR against the private respondent No.1 on 18.10.2016 with the allegation that he being DGM (Estate and Insurance) PIDC in connivance with Ashfaque Ali Ansari Director (Land) KMC & others, who were entrusted with public funds, committed fraud, criminal misappropriation and embezzlement of funds of PIDC, thus they were booked for offenses punishable under Section 409, 420, 468, 471, 109 PPC read with Section 5(2), Act II, PCA 1947. It is contended on behalf of the applicant that the impugned order has been passed without adhering to the settled principles of conducting trials in fraud and forgery cases and law on the subject; that the learned trial court for passing the impugned order wrongly took refuge in pendency of Civil Suit which provides no scope for sine die adjournment to the subject Trial; that once the accused is charge-sheeted, there is no other option for the trial Court but to decide the ultimate fate of the case; that the entitlement

to a fair trial and due process is the fundamental right of the complainant as well as accused under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and that since the impugned order is contrary to law on the subject and facts of the case, thus is liable to be set aside. He emphasized that the learned trial Court has failed to appreciate that it is by now a settled law that criminal and civil proceedings can be commenced parallel and there is no bar under the law that a criminal trial for the commission of an offense shall proceed simultaneously with the civil suit for recovery of misappropriated or embezzled amount; that the learned trial Court seriously fell in error by concluding that the criminal case has been registered against the accused to punish them as they had caused loss to the Government Exchequer by committing cheating and fraud by filing of civil suit before the trial Court. He further contended that the learned trial Court completely failed to appreciate that FIR of the crime was lodged earlier to the filing of the said civil suit; further prima facie offenses of forgery, fraud, and cheating for embezzlement of funds of the PIDC had been committed by the respondents and therefore the said culprits are liable to be punished for the offenses they have committed, however since no recovery of looted money could be affected in the aforesaid criminal proceedings, which is further endorsed from the fact that two accused persons namely Shahid Hussain and Waqar Hussain Chishsti who pleaded guilty before the trial court, and the learned trial Court convicted them for very less sentences and also punished them with the nominal amount of fine, hence the applicant was/is fully justified in filling recovery suit for the amount misappropriated. In support of his contention, he relied upon the cases of Seema Fareed v The State **2008 SCMR 839**, Muhammad Aslam v The State **2017 SCMR 399**, The State v Shahzad Riaz & others **2021 P. Cr. L.J 656**, Bibi Hijra v Govt. of KPK **2013 YLR 732** and Muhammad Akbar v The State **PLD 1968 SC 281**. He has also relied upon the unreported case of Salman Ashraf v Additional District Judge Lahore passed by the **Supreme Court dated 08.12.2020**, He lastly prayed that the case may be kept sine die to adjourn till the disposal of Civil Suit No. 1714/2018 pending before Court.

3. Mr. Nadir Khan Burdi learned counsel for respondent No.1 inter-alia contended that there is no express bar for sine die adjournment of a case thus no legal exception can be taken about the impugned order; that trial against co-accused will not meet the ends of justice as such the accused applied to the trial court for sine die adjourning the case till the disposal of Civil Suit No. 1714/2018 pending before Court. He argued that the instant case/ FIR was registered against the present accused and others under Section 409, 420, 468, 471, and 109 PPC read with Section 5(2) PCA-II 1947 for committing fraud, cheating, criminal breach of trust,

forgery, and misconduct and as such the trial court has no jurisdiction to proceed with the case against the accused in that court however he insisted that the Special Banking Court for offenses in respect of banks has jurisdiction to entertain the subject criminal case. He emphasized that civil courts have plenary jurisdiction to decide upon all matters of a civil nature unless it is shown that their jurisdiction is either expressly or impliedly barred as such the issue in hand is pending and the civil court may be allowed to decide the lis between the parties. He lastly prayed for the dismissal of the instant Criminal Revision Application.

4. Mr. Gulfaraz Khattak, learned Assistant Attorney General has submitted that the issue of jurisdiction needs to be decided first whether the learned Special Court (Central-I) Karachi has jurisdiction or Banking Court for offenses in respect of banks has jurisdiction to entertain the subject criminal case.

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

6. The charge against respondent No.1 in FIR No. 24/2016, under Section 409, 420, 468, 471 and 109 PPC read with Section 5(2) PCA-II 1947, Police Station FIA CBC Karachi is that in the year 2016, he while posted as DGM (Estate & Insurance) PIDC, Karachi) in connivance with accused Shahid Hussain while posted as Traffic Warden of KMC working as Driver, Ashfaq Ansari, Additional Director Land KMC and Waqar Hussain Chishti, being public servants by abusing his official positions received demand notes of Rs. 46,717,348/- in respect of Plot No D-6, D-7, D-8 of Bath Island Quarters, Clifton, Karachi of PIDC measuring 7,250 Sq. Yards PIDC arranged by accused Ashfaq Ali Ansari which were illegally claimed from PIDC through the fake/forged Demand Notes collected from KMC and submitted in the office of PIDC by the applicant, whereas such amount of Rs. 46.717,348/- was neither officially claimed by KMC nor such amount was deposited in official accounts of KMC, rather the same was deposited in a private account viz KMC A/c No 21928-6 account title "Klient Master Corporation" opened by the applicant and accused Shahid Hussain, Traffic Warden of KMC and attached with accused Ashfaq Ansari, Additional Director Land KMC as driver, whereas the said account was mainly operated with the signatures of the applicant and accused Shahid Hussain and that an amount of Rs 39,00,000/- approximately on account of official lease charges was withdrawn from another Account bearing No 2003234633 maintained with Silk Bank Ltd, Khayaban-e-Ittehad Branch, Karachi, account title: Klient Master Corporation, opened by the applicant and accused Shahid Hussain and operated by accused Waqar Hussain Chishti and subsequently the said

amount was deposited in official account of KMC (Karachi Metropolitan Corporation) and CVT (Capital Value Tax) account and the remaining amount of Rs. 42.7 million approximately was embezzled and distributed amongst the accused thus, all accused were booked for subject crime.

7. The trial court after assuming the jurisdiction framed the charge in the case and convicted two accused vide orders dated 15.06.2017 and 25.03.2017 and in the meanwhile, the applicant filed an application for adjournment of the case sine die, which was allowed by the learned Special Court (Central-I) Karachi vide order dated 29.03.2019 as discussed supra.

8. The applicant Zahid ur Rehman authorized officer of Pakistan Industrial Development Corporation (PIDC) being aggrieved by and dissatisfied with the aforesaid order has filed the instant revision application on the aforesaid grounds which has been resisted by the learned counsel for the respondent No.1 on the plea that Criminal proceedings can only be initiated by aggrieved party and not through attorney and in the instant matter, Applicant is neither aggrieved of any criminal acts/offences nor could file criminal case/complaint or instant criminal revision through attorney; thus the present Criminal Revision is not maintainable; that Criminal Liability and Civil Liability are distinct from one another for the reason that if the outcome of civil litigation is directly or indirectly going to affect criminal litigation than in such circumstances criminal litigation cannot proceed; that the main point involved in the present proceedings is the determination about the jurisdiction of the court whether Special Judge (Central) Karachi or that of Special Judge (Offence in respect of Bank) Karachi, which is yet to be determined by the civil court where the issue of jurisdiction has been raised and pending as such, criminal trial cannot proceed till decision in Civil Suit.

9. The questions involved in the present proceedings are whether civil and criminal proceedings regarding the veracity of the documents could be conducted simultaneously. And whether the criminal case can be adjourned sine die till decision of civil proceedings.

10. To address the first proposition, the Supreme Court has settled the aforesaid proposition in the case of *Salman Ashraf Vs Additional District Judge Lahore* **2023 SCMR 1292** and held that the decision of a civil court as to any right, title, or status, which only that court can finally decide, may have a substantial bearing upon a constituent ingredient of the offense being tried by the criminal court. On the other hand, any finding of a criminal court on a fact constituting the offense tried by

that court is irrelevant in a civil proceeding to decide the same fact in the course of adjudicating upon and enforcing civil rights and obligations. The standard of proof required in civil and criminal proceedings is different. In the former, a mere preponderance of probability is sufficient to decide the disputed fact but in the latter, the guilt of the accused must be proved beyond any reasonable doubt.

11. In view of such authoritative findings as discussed supra, this court is left with no option but to abide by the decision made by the Supreme Court in terms of Article 189 of the Constitution; as both the proceedings i.e criminal and civil proceedings could take place simultaneously; even otherwise, respondent No.1 has not brought to the notice of this Court any case law, wherein the question of staying criminal proceeding till the culmination of the civil proceeding has been made.

12. Keeping in view the genesis of the second legal question involved herein, primarily, it is to be seen what the term “sine die” means and whether in Sessions trials such an order can be passed or not.

13. The term “sine die” is a Latin word not defined anywhere in the Cr.P.C. It is the salutary principle of legal interpretation that if a word or expression is not defined in the Act from which the lis is arising, it is permissible to consult its dictionary meanings. On the subject proposition, the Supreme Court of Pakistan in the case of Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jahan Shah (PLD 2016 SC 534) has observed as under:-

“When a word has not been defined in the statute, the ordinary dictionary was to be looked at.”

In the backdrop of what is mentioned above, it is observed that in different dictionaries, various meanings are assigned to the term sine die. In the Black’s Law Dictionary 10th Edition, the term sine die is defined in the following manner:-

“without day - with no day being assigned - to end a deliberative assembly’s or court’s session without setting a time to reconvene.”

In Webster’s Unabridged Dictionary, 2nd Edition, the following meanings are assigned to sine die:- “without fixing a day for future action or meeting.”

14. The learned counsel for respondent No.1 vociferously argued that the order of sine die adjournment passed by the learned Additional Sessions Judge is protected under the law.

15. To appreciate the aforesaid analogy so put forward, in principle there is only one provision in Cr. P.C which is Section 249 Cr. P.C and to see whether applicable in the present proceedings or otherwise, the foregoing provision is required to be meticulously scanned, thus is referred hereunder:-

“Power to stop proceedings when no complaint. In any case, instituted otherwise than upon complaint, a magistrate of

the first class, or with the previous sanction of the Sessions Judge may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction may thereupon release the accused.”

16. According to the scheme of things provided in the Cr. P.C., the Sessions trials are to be carried out in consonance with the procedure laid down in Chapter XXII-A.

17. In the above Chapter, there is no express provision whereby a Sessions trial can be adjourned for an indefinite period, without an actual date. Though in Chapter XX of Cr. P.C., an enabling provision of Section 249 is incorporated to adjourn a trial for an indefinite period without pronouncing judgment, but such an order can only be passed by the Magistrate of the First Class.

18. A specific embargo is placed by the Legislature that an order in terms of Section 249 Cr. P.C. cannot be passed in respect of a trial stemming out from a complaint case and the foregoing provision is restricted only to the extent of State cases. Moreover, the trial proceedings can be stopped by the Magistrate with the mandatory previous sanction of the Sessions Judge concerned. Even otherwise, Chapter XX of Cr. P.C. exclusively pertains to the trial of cases by Magistrate, thus has no applicability upon a trial being conducted by Sessions Court, whereas the present case is of sessions trial thus the applicability of section 249 Cr. P.C. is restricted to the aforesaid point.

19. The perusal of the impugned order reveals that the case was adjourned sine die solely due to the fact that a civil suit is pending. For obvious reasons, due to the afore-mentioned fact the sine die adjournment of the case to the extent of respondent No.1 was/is uncalled for.

20. The expeditious decision of a criminal case is the right of a complaint and accused and the pending lis cannot be used as a sword of Damocles through a sine die adjournment on the parties.

21. About the reason, for which the order of sine die adjournment was passed, I am of the considered view that the continuation of trial in normal course would have served the ends of justice.

22. Last but not least, the Courts can only interpret the law by applying it in letter and spirit but run out of jurisdiction for giving a self-devised meaning or interpretation to a statutory provision that otherwise is not permissible.

23. It will be a fallacious approach to devise a procedural mechanism for the sine die adjournment of the case, more importantly when it goes contrary to the express provision of law.

24. Recasting of a procedure by a Court when it has no such power is destined to destroy the legal fabric of the law made by the Parliament. There are four rules of statutory interpretation first out of is literal rule, the second golden rule, the third mischief rule, and the fourth purposive approach. The literal rule enables the Court to interpret the legal provision in its literal and ordinary sense and cannot examine the intent of the Legislature. The golden rule can only be given effect if the literal interpretation gives rise to some irrationality. Under such a rule, the Court can look into the legislative intent of a provision or a statute. The third rule of mischief can be used to see the unconstitutionality of the legislation. The purposive rule can be set in motion to ensure the effectiveness of the law following the will of Parliament.

25. In the instant case, the rule of literal interpretation is to be followed for ascertaining the legislative wisdom of the provision of law and it can be held beyond a shred of ambiguity that an order of sine die adjournment, that too due to the pendency of civil suit, cannot be passed as has been done in the present case. So far as the issue of jurisdiction is concerned the trial Court has assumed the jurisdiction, framed the charge, and convicted co-accused of the same crime based on pleading guilty as such raising the issue of jurisdiction at this stage is irrelevant for the reasons discussed supra.

26. Before parting with this order it is observed that with the insertion of Article 10-A in the Constitution of the Islamic Republic of Pakistan, 1973 through the Eighteenth Amendment, the fair trial and due process is the entitlement of every person. The concept of due process rests in the idea that the legal proceedings be carried out in accordance with the established rules, express statutory provisions, and settled principles for deciding the rights of litigants. Unambiguously, the impugned order is contrary to the procedure laid down for the Sessions trials, thus by no stretch comes within the definition of due process.

27. The afore-mentioned discussion can be encapsulated to the effect that the impugned order dated 29.03.2019 passed by the learned Special Court (Central-I) Karachi in Case No. 25/2016, suffers from perversity, thus is set aside by accepting the instant Criminal Revision Application the trial court is directed to proceed with the case on merits and conclude the same within three months positively and compliance report shall be made accordingly through MIT-II of this court.