

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Misc. Application No. 961 of 2024

[Millat Industrial Products Ltd. & another v. The State & another]

Applicants : Millat Industrial Products Ltd. & Sikandar Mustafa Khan, through M/s. Mayhar Kazi and Zahid Ali Sahito, Advocates.

Date of hearing : 03-10-2024

Date of order : 03-10-2024

ORDER

Adnan Iqbal Chaudhry J. – Urgency granted. By this application under section 561-A Cr.P.C., the Applicants have invoked the inherent jurisdiction of this Court for quashing FIR No. 01/2022 dated 14.06.2022 lodged by the Directorate of Internal Audit (Southern Region) Inland Revenue, Karachi for an offense under section 37(A) read with section 37(D) of the Sales Tax Act, 1990. The 4th interim challan dated 06.07.2023 included the Applicant No.1 as a beneficiary of the sales tax fraud; whereas the 5th interim challan dated 31.07.2023 also implicated the Applicant No.2 as the Director of the Applicant No.1. Since quashment of the FIR is prayed without availing the remedy under section 265-K Cr.P.C., the office has raised an objection to the maintainability of this application in view of the case of *Muhammad Farooq v. Ahmed Nawaz Jagirani* (PLD 2016 SC 55).

In *Muhammad Farooq*, the Supreme Court of Pakistan had set aside an order passed by the High Court to quash a private complaint in exercise of section 561-A Cr.P.C., which application had been moved directly to the High Court without resort to the remedy available before the trial Court under section 249-A Cr.P.C. While relying on the cases of *Maqbool Rehman v. State* (2002 SCMR 1076) and *Bashir Ahmed v. Zafar-ul-Islam* (PLD 2004 SC 298), the Supreme Court reiterated the circumstances in which the High Court could exercise inherent jurisdiction under section 561-A Cr.P.C. and held that the

remedy thereunder was not an alternate or a substitute of the express remedy provided before the trial Court by sections 249-A Cr.P.C. or 265-K Cr.P.C.; that where two Courts have coextensive or concurrent jurisdiction, then in ordinary circumstances the rule of propriety demanded that the jurisdiction of the lower Court be invoked first; and that in such cases the inherent jurisdiction of the High Court should not be exercised as a routine but only in extraordinary circumstances which warrant the exercise of such jurisdiction by bypassing the alternate remedy available.

Learned counsel for the Applicants submits that quashment is being sought on the ground that the Directorate of Internal Audit (Southern Region) Inland Revenue, Karachi did not have jurisdiction to lodge the FIR; and that in such circumstances it is not necessary that an aggrieved person should first exhaust the remedy before the trial Court.

There is no cavil to the proposition that in the exercise of its inherent jurisdiction under section 561-A Cr.P.C. the High Court is empowered to quash an FIR notwithstanding that the remedy under sections 249-A or 265-K Cr.P.C. has not been availed; but the question is under what circumstances does the High Court exercise that inherent jurisdiction ? That has been discussed in the cases of *Muhammad Farooq, Maqbool Rehman and Bashir Ahmed*. The ratio of said judgments is that where the remedy under section 265-K Cr.P.C. is available before the trial Court, the High Court should not exercise its inherent jurisdiction under section 561-A Cr.P.C except in extraordinary circumstances which warrant such an action. Needless to state that each case turns on its own facts and whether those facts present extraordinary circumstances that warrant the exercise of inherent jurisdiction, is something that is decided on a case-to-case basis.

The argument that the FIR is without jurisdiction can well be taken before the trial Court under section 265-K Cr.P.C., and therefore does not present extraordinary circumstances that warrant the

exercise of inherent jurisdiction under section 561-A Cr.P.C.
Therefore, this application is dismissed *in limine*.

JUDGE

*PA/SADAM