

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP No. D-5370 of 2024

(Abid Khan & others v Province of Sindh & others)

Date

Order with signature of Judge

Before:-

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 31.10.2024

M/s. Ahmed Ali Ghumro & Abdul Samee advocate for the Petitioners.

Mr. Ali Hyder Saleem APG.

Mr. Altaf Ahmed Sahar, DAG

Mr. Jan Muhammad Khuhro, AAG

Mr. Hakim Ali DAG along with Inspector Habib-ur-Rehman, FIA, ALC Karachi.

ORDER

Adnan-ul-Karim Memon, J: The petitioners Abid Khan, Abdul Qadir Khuharo, and Zohaib Ahmed have challenged the legality of FIR No. 16 of 2024, registered by the Federal Investigation Agency (FIA) based on a court order dated 21.09.2022 passed by the learned single Bench of this Court (O.S) in Suit No. 653 of 2021 filed by the 28 members of Pakistan Audit Department Employees Cooperative Housing Society Karachi, an excerpt of the order is reproduced as under:-

“ ...v. The FIA will complete the Inquiry on the terms already mentioned in the above orders of C.P. No. D-4460 of 2017. It is clarified that the inquiry Report should also include the current state of affairs of the Society in which the present Management shall fully cooperate and the said report will be submitted before the Court for consideration.

vi. Addressing the apprehension of claimants/allottees, that in the intervening period, further third-party interest will be created in order to frustrate the Inquiry Proceeding. It is hereby ordered that the Management of Plaintiff's Society shall not register, or entertain any mutation or transfer in respect of any of the Plots in question”

2. The learned counsel for the petitioners argued that the FIA overstepped its jurisdiction by registering an FIR without this court's permission and lacked the authority to investigate provincial matters. He also claims the FIA abused its power by expanding the scope of its inquiry by culminating into a charge sheet. The counsel fears potential prejudice if the Special Court

(Central-II) takes cognizance of the case as it lacks jurisdiction, however, he agreed that the Provincial Anti-corruption Court has jurisdiction. He relies on a Supreme Court case that dismissed a similar FIA petition against a provincial government employee, holding that the FIA does not have jurisdiction in provincial matters. He prayed for allowing the instant petition by remitting the matter to the Provincial Anti-Corruption Court for taking cognizance of the alleged offense or otherwise.

3. Learned DAG argues that the FIA's investigation was initiated in compliance with a court order as discussed supra and that the subsequent FIR registration was also based on the court's direction. He denies any overstepping of jurisdiction or abuse of power by the FIA personnel. The Investigating officer, who is present in Court also points out that the petitioner No. 1 is an accused in another case filed by the FIA and that this court has dismissed a previous petition challenging the FIA's jurisdiction in similar matters. He concluded that the current petition is not maintainable and should be dismissed.

4. As per learned DAG the petitioner's claims are misleading and distorted. The petitioner's involvement in fraudulent activities and misuse of authority is evident, as demonstrated by the FIR filed against him. The court's orders and the FIA's investigation are legally sound, however when confronted the ratio of the judgment passed in the case of F.I.A Vs Syed Hamid Ali Shah (PLD 2023 SC 265). He agreed that the matter needs to be transferred to the Court of Provincial Anti-Corruption for further proceedings. The learned counsel for the petitioners agreed to that proposal and sought disposal of the matter in the terms of the statement of the learned DAG and AAG.

5. The Supreme Court in the case of Muhammad Khalid v. National Accountability Bureau (2017 SCMR 1340) has provided certain guidelines which need to be adhered to by the F.I.A. while probing the cases against the Housing Societies.

6. This Court, while exercising discretionary power under Article 199, of the Constitution is not an appellate court. Especially when alternative remedies exist under specific statutes and rules, and when the Court's discretionary powers remain unaffected.

However, in the present case question is whether F.I.A. has jurisdiction in Provincial employee cases in terms of the ratio of the judgment passed by the Supreme Court in the case of F.I.A. Vs Syed Hamid Ali Shah. An excerpt of the order is reproduced as under:-

“ In view of the above legal position, the acts of the FIA officers in regarding the FIR and carrying out investigation in the present case are certainly without lawful authority. We thus find no legal flaw in the impugned judgment. The present petition is not only meritless but also vexatious, as it amounts to the continuation of harassment caused to the respondents by initiating criminal proceedings against them in relation to their service matter, without any lawful authority. Additionally, these petitions being meritless and against the law settled by this court have unduly wasted the time of the Court depriving it of attending to more lawful and genuine claims pending before it. Such frivolous litigation clogs the pipelines of justice causing delay in the dispensation of justice, thereby impairing the right to expeditious justice of a genuine litigant. Such vexatious and frivolous petitions add to the pendency of cases which over-burdens the Court dockets and slows down the engine of justice. Such vexatious and frivolous litigation must be dealt with firmly and strongly discouraged. We, therefore, dismiss the present petition and decline the leave to appeal, with costs of Rs. 100,000/- under Order 28, Rule 3 of the Supreme Court Rules, 1980. The costs shall be deposited by petitioner No.2. Inspector Irfan Azim Burki, In-charge FIA, Corporate Crime Circle, Islamabad, who registered the FIR and was making the investigation against the respondents, from his own pocket with the Registrar of this Court within 30 days from today, and after the deposit, they shall be paid to the respondents. A compliance report, in this regard, shall be placed on the record of the case. In case of non-compliance, the matter shall be put up before the Court for appropriate orders.”

emphasis added

7. The Federal Investigation Agency is a government agency established to investigate specific offenses. FIA officers have powers similar to provincial police officers, including the power to register FIRs and conduct investigations.

8. To determine if the FIA's actions are lawful or otherwise, the court must examine the relevant provisions of the Cr.P.C., particularly sections 154 and 156, which deal with FIR registration and investigations, for the simple reason that initially, the dispute was a private matter within a cooperative society. However, the court's intervention, leading to an FIA investigation and subsequent FIR, transformed the matter into a criminal case and the charge sheet has been filed before the Special Court (Central-II)

Karachi and cognizance has been taken, by issuing notices to accused persons.

9. The Special Court (Central-II) is directed to examine the case in light of the Supreme Court's ruling in F.I.A. vs Syed Hamid Ali Shah. If the court finds the FIA's actions unlawful, the case should be remitted to the Provincial Anti-Corruption Court for further action. The court must issue a detailed order within two weeks.

10. This Petition stands disposed of in the above terms.

JUDGE

JUDGE

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