

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI
 Constitution Petition No.D-5497 of 2024
 (Muhammad Naseer Raees Vs. P.O Sindh & others)

Before:
Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order. **21-11-2024.**

Mr. Ayatullah Khawaja advocate for the petitioner.
 M/s Sagheer Abbsai & Irshad Ahmed Shaikh, AAG along with Asif Ali Rajper, Assistant Director ACE West Zone.
 Mr. Ali Hyder Saleem, APG.
 Mr. Shehryar advocate for respondents No. 2 & 3.

ORDER

Adnan-ul-Karim Memon, J: Petitioner was/is a Circle Officer of Provincial Anti-Corruption Establishment (ACE) Hyderabad and has impugned the order dated 23.10.2024 passed by the learned Special Judge Anti-Corruption (Provincial) Karachi in Special Case No. 29/2020 (Re-*The State v. Bhashani Multan and others,*) whereby the Presiding officer ordered the suspension and criminal prosecution of the petitioner for criminal intimidation, hindering Court proceedings, and bribery. The Director Anti-Corruption Establishment, Sindh was also directed to initiate an inquiry against him. An excerpt of the order is reproduced as under:-

"Today, Mr. Farhan Ali Jatoi Mukhtiarkar, Qasimabad, Hyderabad appeared who is one of the witness in subject title case & so also in Special Case No. 16 of 2020 at that time, he was Mukhtiarkar Bin Qasim Town. Due to non-appearance, this Court issued bailable warrant of arrest on 04.10.2024 for the appearance in this Court. Mr. Farhan Ali Jatoi informed that Circle Officer of Ace Hyderabad namely Naseer Ahmed Sheikh received One Lac Rupees cash from him as a bribe amount instead of he must have to take surety bond in the sum of Rs. 25,000/- as directed by this court. Circle officer also admitted in bail bond that the amount that was given will be forfeited if he failed to appear in Court. This statement amounts to an admission that Circle Officer received cash amount from the witness.

In view of above, the statement of Farhan Ali Jatoi reflects that Circle Officer ACE Hyderabad with Criminal intimidation and just to create hindrance in Court proceedings and forcibly took bribe amount in the name of this Court. Director Anti-Corruption Establishment, Sindh is hereby directed to immediately suspend the Circle Officer and initiate Criminal Proceedings against the Circle Officer and recommend his case for issue major penalty not below the suspension/removal from service by adopting the procedure. Bailable warrant issued by this court is hereby withdrawn as he surrendered in this court and request mercy. Director Anti-Corruption Establishment is hereby directed to submit compliance report within 02 weeks. A copy of this order shall be sent to Chief Secretary, Government of Sindh and Chairman Enquires & Anti-Corruption Establishment for information and necessary action Orders accordingly."

2. Mr. Ayatullah Khawaja, learned counsel for the petitioner argued that the trial court's order was based on a misunderstanding and misconception and thus liable to be set aside. He claimed that the bail bond was proof of

respondent No.5, paying the bail amount, not a bribe as such the petitioner cannot be saddled with penalty/criminal action. The counsel highlighted the petitioner's qualifications and career, arguing that he was unfairly accused of bribe and suspended from service without a hearing; consequently, the department of ACE has acted upon the direction of the trial court and issued him the show cause notice. He emphasized that the trial Court cannot issue a suspension of a civil servant in collateral proceedings in a criminal matter. He emphasized that the trial Court cannot step in the shoes of the competent authority and orders the suspension of a civil servant while directing the initiation of departmental proceedings without hearing/evidence. The learned counsel requested this court to remove the strictures and directions issued against the petitioner, arguing that these violate the principles established in different pronouncements of the Supreme Court. He pointed out the specific strictures and directions, was/is based on the statement of respondent No.5 Mukhtiarkar who is biased against the petitioner as the petitioner served upon him the notice of the trial court and obtained bail bond as directed by the trial court who felt humiliated and complaint to the trial court to the effect that the petitioner is involved in criminal intimidation, obstruction of court proceedings, and bribery and the trial court without unearthing the truth acted upon his assertions and directed severe action against the petitioner which was/is uncalled for and the Director of the Anti-Corruption Establishment, Sindh was ordered to suspend the petitioner from service and initiate criminal proceedings against the him by recommending a major penalty (suspension or removal from service). He emphasized that publicly reprimanding civil servants by the courts, harms public trust, and negatively impacts the civil servants' morale and confidence. He argued that this practice is not suitable under the law. He further asserted that the powers of a Special Judge Anti-Corruption (Provincial) are limited under the relevant provincial laws. These powers include trying offenses related to corruption within designated jurisdiction as such he cannot issue any such direction in criminal matters by taking action outside of the main criminal case, beyond the limits of the law. He prayed for setting aside the impugned order.

3. The learned Law Officers assisted by the learned counsel for Respondent No.5 controverted the above contentions opposed this petition and argued that the Anti-Corruption Establishment had already taken action

against the petitioner by suspending him and initiating disciplinary proceedings. He claimed that the court's order to halt further action was received after these actions were taken. They requested the dismissal of the petition.

4. We have heard learned counsel for the parties and perused the material available on record with their assistance.

5. The issues for determination in the present proceeding are whether the learned trial court has valid justification to direct the Director Anti-Corruption Establishment to suspend the services of the petitioner and initiate the criminal/departmental proceeding without a hearing. And whether the trial court's powers are limited to corruption cases within its jurisdiction and cannot take actions outside the main case or beyond the law's limits, such as issuing directions in criminal matters.

6. To address the claims, we will first examine the facts of the case. The petitioner, a Circle officer, was tasked with serving warrants on a witness, Farhan Ali Jatoi. After serving the warrants and releasing Jatoi on bail, the petitioner claims to have returned the bail amount to the Malkhana. However, Mukhtiarkar Jatoi alleges that the petitioner received a bribe of Rs. 100,000 not as a bail bond. The trial court, based on Jatoi's allegations, passed an adverse order against the petitioner by treating it as an admission of bribery and criminal intimidation. The Director of the Anti-Corruption Establishment was ordered to Suspend the Circle Officer and Initiate criminal proceedings against the petitioner by recommending a major penalty (suspension or removal), which triggered the cause to the petitioner to approach this Court.

7. Petitioner has refuted the claim of respondent No.5 with the narration that the bailable warrants of arrest were served upon Respondent No.5 and he was allowed to be released on bail upon furnishing bail bond such cash amount as disclosed in the warrants was deposited in Malkhana and such Roznama Entry was kept in the police station; that on 23.10.2024 when both cases were fixed before the trial court, petitioner could not put his appearance due to his official engagement at Provincial Anti-corruption Court at Hyderabad and on his behalf, police constable Atif Ali was assigned the duties to attend the trial court to submit warrant of execution report along with collected bail amount, however, the constable could only submit

warrant execution report and returned the bail money with him and deposited in Malkhana. In the intervening period, Respondent No.5 made allegations against the petitioner that he had received Rs. 100,000/- cash from him as a bribe and the learned Presiding Officer drew adverse inference against the petitioner and passed the impugned order dated 23.10.2024. Such documentary proof has been annexed with the memo of petition.

8. Principally, Courts should avoid pejorative remarks against non-parties and unjust criticism of parties, vilifying them should also be avoided. Judges can criticize relevant matters and witnesses but should avoid criticizing those in official positions without valid justification that is subject to jurisdiction. A presiding officer of the Court must give a person the opportunity to explain condemnatory facts before criticizing him/her. This is especially important for public servants, who should be given a chance to defend themselves before being criticized. Criticizing someone without giving them a chance to respond is unfair and may be considered outside the judge's jurisdiction. Judges must be independent, but also fair and restrained. They should only criticize people if they have a chance to defend themselves if there is evidence to support the criticism, and if it is necessary for the case. Judicial pronouncements should be sober, moderate, and reserved. On the aforesaid proposition, we are guided by the decisions of the Supreme Court in the cases of Nusrat Yasmin v. Registrar, PHC, (PLD 2019 SC 719) and Aijaz Ahmed v. State. (PLD 2021 SC 752).

9. The Court in collateral proceedings could not order the suspension of a civil servant while directing the initiating of departmental proceedings in a criminal case in terms of the ratio of the judgment passed by the Supreme Court in the case of IMAD ALI KHAWAJA Versus The STATE and others (2016 SCMR 2057), while it can recommend an inquiry if misconduct is suspected, the decision to suspend rests with the relevant authority, therefore this court disagrees with the findings of the trial court to the extent that the Circle Officer admitted in the bail bond that he received cash from the witness and this was/is considered an admission of guilt for the reason that an admission of guilt must be clear and unambiguous. Even in a plea guilty case, a trial should commence to ensure the accused understands the charges and the consequences of his plea. This process allows for the court to verify the voluntariness of the plea and to ensure due process is followed. In law, suspension should be a discretionary decision based on specific factors, such

as the officer's potential influence on the inquiry. Instead of observing and potentially prejudicing the case, the matter should be left open for the competent authority to investigate the conduct of the officials.

10. This court emphasizes that the Court's role is limited in such matters and that it cannot directly order the suspension of civil servants for the simple reason that a person being criticized by a judge should be given a chance to explain himself. However, in this case, the petitioner was not given that opportunity, instead, his silence was interpreted as an admission of guilt which factum needs through inquiry by the competent authority as the petitioner has placed on record certain documents along with his memo of petition to show his innocence about bail bond obtained from the respondent No.5 for his appearance in court and the allegations leveled by the respondent No.5 requires thorough probe by the competent authority on the administrative side without being influenced by the observation of the trial court in the impugned order.

11. This court order for the removal of harmful remarks against the petitioner, subject to the independent inquiry of the allegations by the official respondents, without being influenced by the observation of the trial court, after providing a meaningful hearing to the parties concerned. The remark recorded above shall not prejudice the case of either party.

12. This Petition is disposed of in the above terms.

JUDGE

JUDGE