

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.120/2022

Applicant : Rafiq Bhojani son of M. Suleman
Through Mr. Raj Ali Wahid Kanwar, Advocate.

Respondents : The State
Through Mr. Sharafuddin Jamali, DAG.

Date of hearing : 07.05.2025

Date of order : 12.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J;- Through the instant application, the applicant seeks quashment of FIR No.20/2021, for offence under section 406/420/468/471/109 PPC read with Section 13 of P.E.C.A., 2016 registered at P.S FIA, CCC Karachi.

2. The learned counsel for the applicants contended that the present FIR has been lodged with mala fide intent and constitutes an abuse of the process of law. He submitted that the allegations contained therein are not only false but are rooted in a longstanding business dispute between the parties, which has already been investigated in earlier proceedings. The complainant, it was argued, had previously lodged two separate FIRs bearing No.132/2020 and No.322/2021 involving the same transaction and set of facts. Both FIRs, after due investigation by the concerned agencies, were declared to be without substance, the former having been classified as “C-Class” and the latter as “A-Class”. This, the learned counsel asserted, reflects the complainant’s consistent pattern of misusing the criminal justice system for ulterior motives. Elaborating on the nature of the dispute, the learned counsel submitted that the matter pertains to the lawful transfer of shares and change in the directorship of M/s Pakchina Fertilizers Limited (PCFL), which was executed in accordance with the Companies Act and relevant SECP regulations. He pointed out that the transfer of management took place after duly convened board meetings and general meetings held on 05.03.2018 and 26.03.2018 respectively, which were not only attended by but also facilitated with the knowledge and participation of the complainant himself. The outgoing directors, including the complainant and his associates, had

voluntarily submitted their resignations, which were duly forwarded to their known addresses and subsequently filed with the Securities and Exchange Commission of Pakistan (SECP). The learned counsel argued that the SECP, being the regulatory authority, after proper scrutiny and verification of documents, recorded the change in directorship and ownership in its official records. If any forgery or illegality had been committed, it would not have been possible for such changes to be recorded without objection from the SECP. He further contended that the complainant's allegations of tampering and fabrication of documents are wholly unsubstantiated and bereft of merit. No forged document was ever created or submitted by the applicants, and the record of SECP and other statutory filings would bear this out. It was further argued that the entire transaction of sale and transfer of shares is supported by documentary evidence, including a Sale Agreement dated 05.01.2018 and an Addendum dated 20.12.2018, executed between the Schon Group and one Mr. Babar Nawaz. The income tax returns of Nasir Hussain Schon for the years 2017 to 2020 also reflect the receipt of the sale consideration, thereby evidencing a genuine commercial transaction. In view of such material, it was contended that no criminality can be inferred from what is essentially a corporate matter. The learned counsel submitted that even if the allegations made in the FIR are taken at face value, they do not disclose the requisite mens rea necessary to attract the offences under Sections 406, 420, 468, 471, and 109 of the Pakistan Penal Code, 1860 or Section 13 of the Prevention of Electronic Crimes Act, 2016. He emphasized that the entire dispute, at best, constitutes a civil liability or a matter falling within the jurisdiction of the Company Law Courts, and no elements of criminal breach of trust, cheating, or forgery are made out. In support of this contention, the learned counsel also highlighted that during the course of inquiry conducted by the FIA, notices were issued to the complainant and other individuals including Nasir Hussain Schon and Amir Hussain. However, none of these individuals responded to the queries nor cooperated with the investigating agency, which reflects their mala fide intent and lack of bona fide in pursuing the matter through lawful means. The learned counsel thus urged that the lodging of the present FIR is clearly intended to harass the applicants and to pressurize them into a business settlement. The continuation of criminal proceedings in such circumstances, he argued, would not only be an abuse of process but would also amount to unnecessary harassment, particularly when earlier

proceedings on the same cause of action have already been declared false. On these premises, he prayed for the quashment of the impugned FIR.

3. Investigation officer Inspector Muhammad Sohail of FIA, CCC Karachi appeared on behalf of answering respondents No.1 & 2 and he submitted his parawise comments/reply, for convenience the same is reproduced as under; -

“1. It is respectfully submitted that in response to para (1) to (07) on the complaint of Syed Tahir Hussain, an enquiry No. 41/2019 was registered at FIA, CCC, Karachi which later transformed into case FIR No. 20/2021 against the petitioner (Rafiq Bhojai) and thers. In this respect final challan was already been submitted in the court of law. (Photocopy of FIR s enclosed as annex-A).

2. The Mr. Nasir H. Schon s/o Syed Ather Hussain also filed recovery SUIT No. 977/2021 against Muhammad Rafiq Bhojani & others in the court of Senior Civil Judge-II Karachi South and on 26-04-2022 both parties filed joint application u/s XXIII Rule of 3 CPC r/w Section 151 CPC supported affidavit of the parties for consent/ compromise decree on the ground of settlement agreement dated: 25-04-2022, regarding they have settled their dispute outside of the court, therefore on 26-04-2022 the Honorable Court issued decreed in terms of compromised entered into in between the plaintiff and defendant. It is pertinent co mentioned here that during scrutiny of settlement agreement dated: 04-02-2022, it is admitted facts that the same Settlement agreement also signed by the complainant of case FIR No. 20/2021 of FIA, Corporate Crime Circle. (photocopy enclosed as annex-B).

3. That on 12-10-2022 the Honorable Judge & Judicial Magistrate-1 South Karachi allowed/granted application u/s 249-A CrPc filed by the accused persons and the proceeding of case against accused persons stopped U/S 149 Cr.P.C. (Photocopy enclosed as annex-C).

4. As the matter has been settled out of the court and Honorable Court of Judicial Magistrate-I South Karachi also stopped the proceeding against accused persons in case FIR No. 20/2021 of FIA Corporate Crime Circle Karachi.

Prayers:-

It is humbly prayed/ requested that order may kindly be passed for disposing off the proceedings in respect of Cr. Misc. Application No. 120 of 2022 as the matter has been settled out of the court and the Honorable Court of Judicial Magistrate-I South Karachi also stopped the proceeding against accused person in case FIR No. 20/2021 of FIA Corporate Crime Circle Karachi.”

4. Upon considering the arguments advanced by the learned counsel for the applicant and the report submitted by the Investigation Officer (I.O.), it is clear that the application in hand is meritless and not maintainable under the law.

5. The allegations raised by the applicant regarding the FIR No. 20/2021, involving offences under sections 406, 420, 468, 471, and 109 PPC, read with Section 13 of the Prevention of Electronic Crimes Act, 2016, do not appear to have sufficient legal ground for quashing the FIR. The applicant's contention that the FIR was lodged with mala fide intent and that the dispute pertains to a longstanding business matter, which has already been investigated in previous proceedings, does not outweigh the necessity of proceeding with the current investigation.

6. It is pertinent to note that the report by the I.O. indicates that the matter related to the same dispute was addressed through legal proceedings, including civil suits and settlement agreements between the parties. Furthermore, the Judicial Magistrate-I South Karachi had halted proceedings against the accused in FIR No.20/2021 due to a settlement reached between the parties. However, this fact does not absolve the accused of the criminal proceedings, as such settlements do not preclude the determination of criminal liability, which must be evaluated on its merits by the competent criminal court.

7. Thus, the application for quashing the FIR is found to be without merit, and the same is dismissed. The learned trial court is hereby directed to reopen the case and proceed with the matter by adducing the evidence of the complainant through video recording as learned counsel submitted that the complainant had proceeded to U.S.A. and there are less or no chances of him to come and proceed the case. This is the reason that proceeding of the case has been stopped in pursuance of Section 249 Cr.P.C. The case should be decided after reviewing the available evidence in accordance with the law. The trial court must ensure that the matter is adjudicated fairly and on its merits, as per the applicable legal provisions.

8. The application being devoid of merits stands dismissed with all pending application(s) if any.

J U D G E