

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.53631/Q/2024

Arshad Abbas

**Versus Anti-Corruption Establishment Sargodha,
etc.**

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
--------------------------------	-------------------------------	---

13.12.2024

M/S Barrister Umar Riaz, Barrister Ali Aoun Awan, Barrister Ch.Abu Bakar and Rana Rehan, Advocates for the petitioner.
M/S Sadam Abdullah Kasuri and Hasan Iqbal Warraich, Advocates for respondent No.2/complainant.
Mr. Shoaib Rehman Chattha, Advocate for respondent No.5.
Mr. Amir Saeed Rawn, Advocate for respondent No.7.
Ch. Muhammad Ishaque, Addl. Prosecutor General with Muhammad Khurram Anwar, DD/ACE.
Ch. Faza Ullah, A.A.G.

=====

Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner Arshad Abbas seeks quashing of impugned FIR No.13/2024, in respect of offence under Sections 409, 420, 468 & 471,477-A PPC read with Section 5(2) of Prevention of Corruption Act, 1947 (PCA), registered at P.S. Anti Corruption Circle, Sargodha.

2. Learned counsel for the petitioner submits that respondent No.2 (complainant) in connivance with respondent No.1 got lodged the impugned FIR with *malafide* intentions and ulterior motives; that allegation against the petitioner in the impugned FIR was that he while serving as *Halqa Patwari*, in order to extend undue favour to respondents No. 5 to 7 (co-accused), in connivance with Munshi, Girdawar and Naib Tehsildar, prepared a forged and fictitious *Tatima* in a joint *Khata*, for which he was

not legally authorized; that according to Paragraph No.7.8 of Chapter No.7 of the Land Record Manuals, if a co-sharer is in possession of land in joint *Khata*, a *Tatima* can be carved out, even without any partition proceedings; that co-accused were in possession of the land, as such by preparing *Tatima*, the petitioner has not committed any kind of crime; that neither the petitioner prepared any forged and fictitious document, nor there was any allegation against him for receiving illegal gratification, as such the offences levelled in the impugned crime report are not made out; that the matter between private parties was purely of civil nature; that the complainant also filed an appeal U/S 161 of the Land Revenue Act, 1967 before the Assistant Commissioner/ Collector, Sub-Division, District Sargodha regarding disputed *Tatima* which is pending adjudication, as such regarding same subject matter, launching of criminal proceedings is not permissible under the law; that first Inquiry Officer recommended to file the complaint of the complainant but second Inquiry Officer in active connivance with the complainant, recommended registration of impugned FIR; that there is no likelihood of conviction of the petitioner, as such the impugned FIR is liable to be quashed.

3. On the contrary, learned counsel for the complainant submits that the petitioner, while serving as *Halqa Patwari*, in order to deprive the complainant from his valuable land, incorporated his land into the land of co-accused through *Tatima* in a joint *Khata*, for which he was not legally authorized; that co-accused on the basis of said *Tatima* took over the possession of the land of the complainant; that the petitioner has committed

a cognizable offence, as such impugned FIR was rightly lodged in accordance with the relevant provisions of law.

4. Learned Law Officer submits that the petitioner is named in the crime report with a specific role; that investigation is under progress; that quashing of FIR during process of investigation amounts to hamper and jeopardize the entire investigation process prior to its finalization; that this Court in exercise of its Constitutional jurisdiction cannot assume the role of Investigating Officer; that the petitioner may be directed to raise all these grounds before the Investigating Officer.

5. Learned counsels for co-accused, however, supported the submissions of the learned counsel for the petitioner while elaborating that impugned FIR is a result of concocted facts; that infact co-accused Khawar Hayat, got lodged FIR No.462/18, in respect of offence U/S 427, 506, 147 & 149 PPC, P.S. Satellite Town, Sargodha against the father of the complainant, in which co-accused Farooq Hayat was the eye-witness; that due to that very reason the complainant got lodged the impugned FIR, which is liable to be quashed.

6. Arguments heard. Record perused.

7. By way of this petition the petitioner has invoked extraordinary Constitutional jurisdiction of this Court for quashing of aforementioned impugned FIR. Ordinarily, time and again this Court has shown reluctance in interfering in the ongoing investigating process on the well cherished principle that the functions of Investigating Agency and judiciary are complementary and not overlapping and the

combination of individual liberty with due observance of law and order can only be achieved if both the organs are allowed to function independently. However, this principle in any way cannot be construed an absolute bar on the power of this Court in quashing of FIR in cases where the Court is satisfied that investigation is launched with malafide intention and without jurisdiction. Reliance is placed on case reported as "*Shahnaz Begum ..Vs.. Hon'ble Judge of the High Court of Sindh and Balochistan*" (PLD 1971 SC 677), wherein it has been laid down as under:-

“If an investigation is launched mala fide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the Investigating Agencies to be corrected by proper proceedings either under Article 98 of the Constitution of 1962 or under the provisions of section 491 of the Criminal Procedure Code, if the applicant is in the latter case in detention, but not by invoking the inherent power under section 561-A of the Criminal Procedure Code.”

Similarly, in case reported as "*Anwar Ahmad Khan ..Vs.. The State (1996 SCMR 24)*", it has been laid down as under:-

“ It is well settled principle that where investigation is malfide or without jurisdiction, the High Court in exercise of its Constitutional jurisdiction under Article 199 is competent to correct such proceedings and pass necessary order to ensure justice and fair play. The Investigating Authorities do not have the entire and total authority of running investigation according to their whims”.

In case reported as *Raja Rustam Ali Khan ..Vs.. Muhammad Hanif (1997 SCMR 2008)*, it has been observed as under:-

“It would, therefore, be seen that if an investigation is launched malafide by the Investigating Agencies, the same is open to correction by invoking the constitutional jurisdiction of the High Court under Article 199 of the Constitution.”

In case reported as “*Muhammad Irshad Khan ..Vs.. Chairman, National Accountability Bureau and 2 others (2007 P Cr. LJ) 1957*” the learned Division Bench of Sindh High Court, observed as under:-

“ Thus the consensus of the Honourable Supreme Court of Pakistan from the year 1971 and onward is that High Court has jurisdiction under Article 199 of the Constitution and competent to correct such proceedings and pass necessary orders to ensure justice and fairplay. The Investigating Authorities do not have the entire and total authority of running investigation according to their whims, therefore, if the investigation is launched malafidely or beyond the jurisdiction of investigating agency, then the same can be corrected and appropriate orders can be passed.”

The question what is “ malafide” has been answered by the Apex Court in case reported as “*The Federation of Pakistan through Secretary Establishment Division, Government of Pakistan, Rawalpindi .V.. Saeed Ahmad Khan (PLD 1974 SC 151)*” in the following way:-

“ Mala fides” literally means “in bad faith”. Action taken in bad faith is usually taken maliciously in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. Action taken in colourable exercise of powers, that is to say, for collateral purposes not authorized by the law under which the action is taken or action taken in fraud of

the law are also malafide. It is necessary, therefore, for a person alleging that an action has been taken mala fide to show that the person responsible for taking the action has been motivated by any one of the considerations mentioned above.”

Recently, in case reported as “*F.I.A. through Director General, FIA and others Vs. Syed Hamid Ali Shah and others (PLD 2023 SC 265)*”, the Apex Court has observed as under:-

“Article 199 (1)(a)(ii) of the Constitution empowers the High Courts to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority and if find such acts or proceedings to have been done or taken without lawful authority, to declare them to be so and of no legal effect. The registration of an FIR and the doing of an investigation are the acts of officials of the police department (a provincial law enforcement agency) who perform functions in connection with the affairs of a Province and are thus amenable to the jurisdiction of the High Court under Article 199 (1)(a)(ii) of the Constitution. The High Courts can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceedings.”

8. On the touchstone of above criteria, I have to determine the fate of instant case. Gist of the allegations against the petitioner contained in the crime report is that he while serving as *Halqa Patwari* prepared a *Tatima Shajra* in a joint *Khewit* in favour of co-accused, for which he was not legally authorized/competent. Main emphasis of the learned counsel for the complainant was that

no *Tatima* can be carved out in favour of a co-sharer in a joint *Khata*. In order to determine legal basis of this submission, I have gone through Land Record Manuals, para No.4.23 of said Manual envisaged the procedure for preparation of *Tatima Shajras* on permanent basis, relevant portion of said para which deals regarding transactions based on registered deed is reproduced for ready reference:-

“In the case of a transaction based on a registered deed the revenue officer should immediately on receipt of the registration of memorandum from the Registration Office (paragraph 7.23), direct the Kanungo and the Patwari to proceed to the spot and prepare a tatima shajra, if one is necessary, on the basis of material given in the registration memorandum and that alone. On the completion of the tatima shajra it shall be submitted by the Kanungo to the revenue officer.”

It is thus manifestly clear that in cases where the transaction was based on registered deed, it was incumbent upon the Revenue Officer to ensure that Kanungo and Patwari must visit the spot and prepare *Tatima shajra*, if necessary, on the basis of material given in the registration memorandum alone. No prohibition was shown that in case of joint *Khata Tatima* could not be carved out. Similarly, to deal with the eligibility of the petitioner for carving out *Tatima Shajra* paragraph No.7.8 of Chapter 7 of said Manual is of pivotal importance, which reads as under:-

“Transfer of portion of field: If the part or a share of a field has been transferred and separate possession has been taken, draw on the back of the mutation sheet and its counterfoil a map of the

whole field and show as a sub-number the part transferred. No partition proceedings are necessary. The field Kanungo must attest the correctness of the map after personal examination of the field on the spot and satisfy himself as to the fact of possession. He must also see that the field as drawn on the back of mutation sheet is an exact copy of the field as shown in the shajra Kishtwar. Further details in regard to the preparation, check and use of these maps on the mutation sheets are given in chapter 4 of the manual. The attesting officer must defer the passing of an order sanctioning a mutation if he finds that these instructions have not been carried out exactly.”

Moreso, Board of Revenue, Punjab vide letter No.4149-2009/1565-LR(II) dated 12.12.2009 has issued instructions to all the concerned including patwaris to follow the provisions of Land Record Manuals, reproduced supra, regarding preparation of *Tatima Shajra*, in case the transaction is based on registered deed, after personally verifying the possession of the party. Here in the instant case, transactions in favour of co-accused were made through registered deeds and the revenue authorities including the petitioner after verifying their possession on the spot carved out *Tatima Shajra* and this fact was confirmed by the successor of the petitioner by appearing before the First Inquiry Officer that at the time of carving out *Tatima* co-accused were in possession over the said land, otherwise, it would never happen. First Inquiry Officer gave sound reasons for recommending filed of the complaint of the complainant. Second Inquiry Officer, who observed that the act of the petitioner and other revenue officials for carving out *Tatima Shajra* in a joint *khata* without partition, calls for action

against them, appears to be unaware of the relevant guidelines incorporated in the Land Record Manuals for preparation of *Shajra Tatima*.

9. Another important factor which needs consideration is that according to the contents of impugned crime report, the complainant came to know that the co-accused pursuant to disputed *Tatima Shajra* took over the possession of his land in the early days of year 2023 but he for the first time moved application for registration of case against the accused persons on 05.12.2023 i.e. with an unexplained and inordinate delay of eleven months. Had the complainant was dispossessed from the land as alleged in the impugned crime report, he would knock the door of relevant authorities at the first instance. Silence of the complainant for such a considerable period of time leads me to an irresistible conclusion that the story alleged in the crime report was concocted by him subsequently just to entangle the accused in criminal litigation.

10. Last but not the least, controversial question as to whether *Tatima Shajra* can be carved out in a joint *khata* without partition, is a controversial question, which can only be determined by the Civil / Revenue Courts and the record is indicative of the fact that the complainant has already availed such remedy by way of filing appeal U/S 161 of Land Revenue Act before the Assistant Commissioner/ Collector and the matter is still *subjudice* at the said forum. Neither in the crime report the complainant raised any allegation that the petitioner prepared *Tatima* after receiving illegal gratification from the co-accused nor during the course of investigation, Investigating Agency

collected any incriminating material in this regard. In such an eventuality, even if for the sake of arguments, it is presumed that the petitioner was not authorized in carving out *Tatima* in a joint *Khata* without partition, even then in the absence of any allegation of receiving bribe in doing so, at the most it can be considered as an irregularity on his behalf while performing his official duty and he can be proceeded departmentally but in no manner, act of the petitioner constituted any criminal offence, as such Anti-Corruption Authority has any role to investigate the same. Reliance is placed on case reported as "*Rashid Mirza ..Vs.. Regional Director and 2 others (2009 MLD 25)*", wherein it has been laid down as under:-

“The Anti-Corruption Establishment have very limited and special functions, and powers. The only object of the creation of this special criminal investigating agency was to combat corruption, bribery and embezzlement of public money and, therefore, the main focus of the Anti-Corruption Establishment should have been eradication of corruption. In the recent past, I have noted with concern that Agency has been encroaching upon the functions and powers of other government departments. It has also been noted in a number of cases that irregularities committed by government functionaries were treated as offences by the Agency. In the circumstances it has become essential to direct the Anti-Corruption Establishment not to go beyond, their mandate.”

11. It is worthwhile to mention here that earlier co-accused Malik Khawar Hayat got lodged FIR No.462/18 dated 26.09.2018, in respect of offence U/S 427,506,147 & 149 PPC, at P.S. Satellite Town, Sargodha against the father of the

complainant, as such possibility cannot be ruled out that the complainant in order to settle score with the co-accused prompted to lodge the impugned crime report with fabricated facts.

12. Learned counsel for the complainant was asked time and again, how from the contents of crime report the offence levelled in it is made out, but he could not answer satisfactorily. Apparently, the complainant has got lodged impugned FIR for achieving some mysterious objectives and keeping in view above facts and circumstances of the case, I am of the firm view that allowing the investigating agency to investigate the case would amount to abuse of process of law.

13. In view of above, instant writ petition is allowed as a consequence thereof impugned FIR No.13/24, in respect of offence under Sections 409, 420, 468,471 & 477-A PPC read with Section 5(2) of Prevention of Corruption Act, 1947 registered at P.S. Anti Corruption Circle, Sargodha is quashed.

**(Asjad Javaid Ghural)
Judge**

Announced in open Court on 18.12.2024.

**JUDGE
Approved for Reporting**

JUDGE