Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.9024/2021

Dr.Iqrar Ahmad Khan etc. **Versus** *Director General, Anti Corruption Establishment, etc.*

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

09.07.2024

Mr. Abid Saqi, Advocate for the petitioners.
M/S Muhammad Ahsan Bhoon and Muhammad Imran Sulehria, Advocates for respondents No.5 & 6.
M/S Shan Saeed Ghumman and Sardar Haider Naeem, Advocates for respondent No.4/University of Agricultural, Faisalabad.
Rana Umair Abrar Khan, A.A.G.

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Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners Dr. Iqrar Khan and Ch. Muhammad Hussain have sought quashing of impugned FIR No.41/2020, in respect of offence under Sections 409,468,471 & 420 PPC read with Section 5(2) of Prevention of Corruption Act, 1947 (PCA), registered at P.S. ACE, Region Faisalabad.

2. Learned counsel for the petitioners submits that the impugned FIR is a result of malafide and ulterior motives; that petitioner No.1 served as Vice Chancellor of the University of Agriculture, Faisalabad (University) for two terms consecutively; that during his term University went through an exceptional growth phase; that enrollments of students went up from 8000 to 25000, the recurring budget rose from rupees 700 million to 7 billion, research fund grew from rupees 300 million to 3000 million and the University ranking went up in the top 100 QS World subject category, a distinction that no other University in the country has achieved

yet; that after completion of his two tenures, the University has advertised the post of Vice Chancellor again and the petitioner also applied for the said post; that respondent No.5 was also contesting candidate for the said post; that Government of the Punjab constituted a Search Committee to consider suitability of the candidates, and the petitioner stood at Sr.No.1 of the merit list; that the Chief Minister in derogation of merit, appointed respondent No.5, who was lower in merit as Vice Chancellor of the University; that the petitioner challenged the appointment of respondent No.5 before this Court by way of Writ Petition No.34743/2019; that due to that grudge respondent No.5 while holding the post of Vice Chancellor, in order to tarnish the image of the petitioner and influence upon the judicial proceedings, constituted an unlawful probe committee under the convenorship of respondent No.6 vide notification dated 03.06.2019; that the said committee without issuing any notice to the petitioners and affording them an opportunity to explain their position by preparing forged and fictitious record, held the petitioners guilty of making adhoc/contract/ regular appointments, abuse of official powers and drawing of honorarium without the permission of competent authority/Chancellor within eleven days of the constitution of the committee, that on the basis of findings of probe committee initially respondent No.8 filed a complaint before Anti Corruption Establishment, (ACE), who subsequently withdrew the same by filing an affidavit; that thereafter respondent No.9, who has nothing to do with the internal affairs of the University was managed by respondent No.5, who again filed application before

the ACE on the similar charges; that the inquiry remained pending for a considerable period of time and in the meanwhile, this Court vide judgment dated 17.01.2020 passed in aforesaid writ petition declared the appointment of respondent No.5 for the post of Vice Chancellor as illegal and unlawful and direction was issued to the competent authority to notify the petitioner as Vice Chancellor; that respondent No.5 challenged the order of learned Single Judge in Chamber in the Intra Court Appeal, which was accepted by the learned Division Bench vide judgment dated 05.03.2020 and respondent No.5 was restored as Vice Chancellor; that being aggrieved the petitioner challenged the vires of judgment of the learned Division Bench before the Apex Court, by filing C.Ps. No.916-L and 1768 of 2020; that the Apex Court while granting leave to appeal suspended the operation of the orders of the learned Division Bench vide order dated 07.09.2020; that on smelling success of the petitioner, respondent No.5 while using his influence just after nineteen days of leave granting order of the Apex Court got lodged the impugned FIR; that sole purpose of lodging of impugned FIR was just to influence the judicial proceedings before the Apex Court and creating hurdle in the way of the petitioner for the post of Vice Chancellor; that prior to lodging of FIR, ACE coerced the petitioner to withdraw the CPs from the Apex Court; that regarding the same allegations the matter has already been thoroughly investigated by the NAB authorities, who vide letter dated 28.08.2018 recommended closure of investigation; that launching of investigation on the same allegations by the Anti Corruption Establishment is in clear

contravention of Section 18(d) of the National Accountability Ordinance, 1999; that the impugned FIR tantamounts to double jeopardy, which is barred under Article 13(a) of the Constitution; that even otherwise during two consecutive investigations, one conducted by the JIT, constituted by the order of learned Special Judge, Anti Corruption, Faisalabad, the petitioners have been found innocent and the cancellation report, duly approved by the Director General, ACE and forwarded by the prosecution department has been submitted before the Trial Court; that despite elapse of almost eleven months the Trial Court has not decided the fate of said cancellation report; that after giving clean chit to the petitioners during investigation, there is no chance of their conviction, as such impugned FIR is liable to be quashed.

4. On the contrary, learned counsels for respondents No.5 & 6 submitted that impugned FIR was lodged against the petitioners, pursuant to the recommendations of the Probe Committee; that sufficient incriminating material in the shape of documentary evidence is available against the petitioners; that the allegations mentioned in the impugned FIR were neither investigated nor were the same subject matter of the investigation conducted by the NAB, as such there is no bar for the ACE to investigate into the allegations; that the cancellation report has already been submitted in the Trial Court and fixed for hearing, as such the petitioners may be advised to follow said proceedings. In the end, a prayer has been made for dismissal of instant writ petition.

5. Learned Assistant Advocate General, while conceding the fact that the petitioners have been

given clean chit by the ACE in two consecutive investigations has submitted that since the cancellation report is pending before the Trial Court, the right course for the petitioners was to approach the said court for early decision of the cancellation report and then if aggrieved avail alternate remedy of filing application before the said Court for their pre-mature acquittal.

6. I have heard the arguments advanced by the learned counsel for the petitioners, learned Assistant Advocate General assisted by learned counsel for respondents No.5 & 6 and gone through the record.

7. By way of this petition the petitioners have 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. In 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. From the contents of the impugned FIR, the allegations mentioned therein can be bifurcated in three parts. *Firstly*, petitioner No.1 (hereinafter shall be called as VC) made irregular appointments without advertisement in the press. *Secondly*, VC received honorarium of Rs.9.12 million without the approval of the Chancellor. *Thirdly*, VC draw double salary at a time as VC and as Project Director, USP, CAS, AFS.

9. It is very shocking to note that there was no allegation against petitioner No.2, former Registrar of the University, who undisputedly neither has any role in appointments of the employees in the University nor there was any allegation against him qua financial embezzlement or misuse of authority but despite this fact he was booked in this case. Apparently, at the time of lodging of impugned FIR, arms of the ACE were twisted by

some unknown power, who without taking note of above aspect of the matter booked petitioner No.2 in the instant case.

10. Now coming to the case of VC. First of all, I would like to discuss the allegation against him qua making of irregular appointments without advertisement in the newspapers. It is an admitted fact that the University is an autonomous body and its affairs are governed under the University of Agriculture, Faisalabad Act, 1973. Section 15 (4) of the Act deals with the powers of Vice Chancellor. Its clauses (i),(ii) and (viii) relevant for resolving the dispute reads as under:-

i. to create and fill temporary posts for a period not exceeding six months;
ii. to sanction all expenditure provided for in the approved budget and to re-appropriate funds within the same major head of expenditure.
iii. to appoint employees in National Pay Scales 1 to 16

Similarly, by way of Section 15(3) of the Act ibid certain emergency powers were also conferred upon the Vice Chancellor which provides as under:-

> 15(3) "Subject to such conditions as may be prescribed, the Vice Chancellor may, in an emergency, take an action which is not otherwise in the competence of the Vice Chancellor but is in the competence of any other Authority".
>
> 15(3a) The Vice Chancellor shall, within seven days of taking an action under sub-Section (3), submit a report of the action taken to the Pro-Chancellor and to the members of the Syndicate; and the Syndicate shall, within forty-five days of such an action of the Vice Chancellor, pass

such orders as the Syndicate deems appropriate".

It is thus manifestly clear that under the University Act the Vice Chancellor is not only empowered to create and fill temporary posts not beyond the period of six months, sanction all expenditures but also appoint employee in National Pay Scale 1 to 16. Similarly, in emergency the law has empowered him to take action which is even not in his competence. During two consecutive investigations, one conducted by the JIT constituted by the order of learned Special Judge, Anti Corruption, Faisalabad, it came on surface that out of the list of 608 alleged irregular appointments, there was double entry of nine employees, whereas, out of the rest 599 employees 126 employees were appointed by the former Vice Chancellors. It further came on surface that though certain appointments were made by the VC on temporary/adhoc basis, while exercising his powers conferred under the Act but he did not made even a single appointment on regular basis without the advertisement in the press or deviating the proper procedure during his tenures.

A lot of emphasis was laid on the point that though the VC is empowered to make adhoc appointments but only for a period of six months but he extended the period of various employees beyond the period of six months. During investigation, it came on surface that it was long standing policy of the University approved by the Syndicate that the Adhoc arrangements are renewable after six months for another six months. However, Investigating Teams could not find even a single instance where the VC had made regular

appointment without the approval of the Syndicate, as such there left no room to assume that the VC while making any appointments has derogated any law or misused his authority. It is a very unfortunate situation. Impugned FIR was lodged pursuant to the findings of Probe Committee of the University, who was constituted by the then Vice Chancellor, whose eligibility to hold the post was challenged by the petitioner before this Court and said committee within eleven days of its constitution held the VC guilty without even affording him a single opportunity to explain his position. Had it been done so the material presented by the VC to the Investigating Officer/ JIT showing that all what has been done in the process of appointments of the employees was within the parameters of law, then there might be no reason for involving the VC in the instant criminal case on such a fake charge. The conduct of the probe committee headed by respondent No.6 lacks transparency and it seems that it played in the hand of incumbent Vice Chancellor/ respondent No.5 and in order to please him recorded the findings which were contrary to the record. It is also important to note that neither any employee came on surface complaining that he obtained the job after giving money to the VC nor any contesting candidate lodged any complaint that his selection was not made despite falling on merits. In the absence of above, I am unable to understand how the offence U/S 409 PPC and Section 5(2) of PCA is attracted in the instant case. In case of FIA through D.G. FIA supra the Apex Court has observed as under:-

> "The argument of the learned counsel for the petitioner is totally misconceived, that the authority conferred upon the accused officers, who granted the illegal upgradations, was a trust and by misusing that authority, they have committed the offence of criminal breach of trust punishable under section 409 P.P.C. and the offence of criminal misconduct punishable under section 5(2), P.C.A. No doubt, the powers of the public servants are like trust conferred upon them and they should exercise them fairly, honestly and in good faith as a trustee; but the entrustment of the power to upgrade his subordinate officials is not equivalent to the entrustment of property as mentioned in section 405, P.P.C. and its misuse, or use in violation of the relevant rules and regulations, does not constitute the cognizable offences punishable under section 409 P.P.C. and section 5(2), P.C.A."

From the above discussion, it is manifestly clear that the VC has not committed any criminal act for making appointments and apparently for this reason in two successive investigations, he was given clean chit.

11. Next allegation set out in the impugned FIR is that he received honorarium of Rs.9.12 million without the approval of the Chancellor. The case of the prosecution was that according to the terms and conditions of the appointment of VC only the Chancellor is vested with an authority to grant any perks and privilege to him, but he on its own draw the honorarium. I think the prosecution has intermingled term 'perks and privileges' with the 'Honorarium' which has entirely and distinct feature. The term 'Honorarium' has been explained by the Apex Court in case reported as "*Mirza Muhammad Tufail ..Vs..District Returning Officer and others (P L D 2007 Supreme Court 16)*" in the following manner:

> "The honorarium has been defined in Corpus Juris Secundem Vol. 44 at page 325 as under:--
>
> In common understanding, the word means a voluntary reward for that for which no remuneration could be collected by law, hence **a voluntary payment for a service rendered**, **an expression of gratitude** for which an action cannot

> be maintained, a voluntary donation, in consideration of services which admit of no compensation in money. While it has been said to denote a compensatory payment, it may, be context, be construed as a gift. (emphasis supplied)"

On the contrary, term 'privilege' has been explained by the Apex Court in judgment reported as "*Karamat Hussain and others ..VS.. Muhammad Zaman and others P L D 1987 Supreme Court 139*" in the following manner:

> "A privilege is ***some particular benefit or advantage*** conferred on a person or a class of persons which other citizens do not enjoy. (emphasis supplied)"

In the light of the above definitions, we may conclude that perks and privileges are peculiar benefits for which the Vice Chancellor was entitled while holding such post, whereas, honorarium is not given to a Vice Chancellor by virtue of his post, but the same was a voluntary payment being made in recognition of meritorious services of an employee. Even otherwise, admittedly, the budget of the University was sanctioned by the Syndicate and Senate which was headed by the Chancellor and undisputedly the budget for the period in which the VC drew honorarium was duly sanctioned by the Syndicate and Senate, as such it cannot be said that the honorarium was drawn by him without the sanction of the Chancellor. Moreover, during investigation it came on surface that it was a long standing practice in the University that the Vice Chancellors alongwith others drew honorarium without the sanction of the Chancellor. JIT pointed out names of former Vice Chancellors Prof. Dr. Riaz Hussain Qureshi, Prof. Dr. Bashir Ahmad, Prof. Dr. Muhammad Iqbal Zafar, Prof. Dr. Zafar

Iqbal and Prof. Dr. Muhammad Ashraf, who in their respective tenures received honorarium, therefore, singling out the petitioner in this charge is not only discriminatory but also shows malafide and ulterior motive on the part of the authority, who launched probe in this regard.

12. Now coming to third allegation that the VC drew double salary at a time as Vice Chancellor and Project Director of "U.S Pakistan, Center for Advanced Studies in Agriculture and Food Security, University of Agriculture, Faisalabad" (CAS). During investigation, it came on surface that the aforesaid project was started in the year 2014 and in the agreement with the Government it was written that the VC shall took over the charge of said project as Chief of Party (COS) on completion of his tenure as Vice Chancellor on 22-01-2017 with an overlapping period of one month to transition which started in December 2016. The tenure of the VC was going to expire on 22.01.2017; therefore, he took over the charge as COS in December 2016. After expiry of his tenure as Vice Chancellor, the Governor/ Chancellor assigned him look after charge of the Vice Chancellor of the University. There is nothing on the record to suggest that duties of look after charge were assigned to the VC on his desire or request. In such an eventuality, VC was left with no option except to continue his services as COS and the Vice Chancellor simultaneously in compliance of the orders of the Governor/ Chancellor. During investigation, Treasurer of the University appeared before the Investigating Teams and in categorical terms denied that the VC ever received salaries of two posts at a time. After

consulting with the record, Investigating Teams opined that the VC only drew single salary for the post of Vice Chancellor and till the holding of temporary charge of said post, he did not secure even a single penny as COS. Record further evinces that the VC relinquished the charge of the office of Vice Chancellor on 08-08-2017. The said project was supposed to continue till December 2019 but due to change of hierarchy in USA the same was terminated within seven months of taking over its charge by the VC and due to that very reason USAID gave severance pay to all the employees of project including the VC, who at the time of receipt of said salary was not even employee of the University. During investigation, it also came on surface that all the financial transactions were directly made by the US Embassy and not even a single penny was paid to the VC or other employees of USAID Project through the public account. There was not even a single iota of material from which it could be inferred that while holding the office of VC, he received any salary as Incharge of CAS, therefore, in two consecutive investigation, the Investigating Agency recommended droppage of the proceedings against the VC.

13. Moreso, despite being on merit the then Chief Minister denied appointment of the petitioner as Vice Chancellor, *inter-alia*, on the ground of lack of financial and administrative control during his previous tenures, which was challenged by the petitioner before this Court and finally the matter went to the Apex Court, who vide judgment dated 07.12.2020 passed in Civil

Appeals No. 326-L & 327-L of 2020 brush aside such findings in the following manner:-

> " The record further reveals that the Secretary Agriculture Department, Government of the Punjab was part of the Search Committee. The said Secretary is the Principal Accounting Officer of the Government of Punjab. He was a member of the Search Committee that placed the Appellant at Serial No.1 of the merit list. It is worth mentioning that the same Secretary has given the Appellant 10 out of 10 marks in the category of " Administrative and Financial Management". Further the Appellant was given 45 marks in the Interview. As against this, the Respondent was given only 31 marks in the Interview. The same Secretary was part of the interview as well. Therefore, when the representative of the Government who had first hand knowledge of all material and relevant facts also gave highest marks to the Appellant and low marks to the Respondent, we do not see why the Appellant was not appointed and that too without cogent and convincing reasons."

The purpose of highlighting the above para is that if the VC has committed any financial embezzlement or misuse of authority in his previous tenures, the representative of the Government i.e. Secretary Agriculture, who had the first hand knowledge, was not supposed to award him ten out of ten marks in the "Administrative and Financial Management".

14. Besides above, it is evident from the record that regarding the same allegations the matter was thoroughly inquired by the National Accountability Bureau (NAB), who vide letter dated 28.08.2018 recommended closure of the inquiry. Now the question arises whether after closure of the inquiry by the NAB authorities, on the same allegations, ACE is vested with any power to re-open/ re-investigate the same. Before proceeding further it is appropriate to go through the provisions of Section 18(d) of NAO, 1999 which reads as under:-

> " The responsibility of inquiry into and investigation of an offence alleged to have been committed under the Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman NAB or by an officer of the NAB duly authorized by him."

Bare perusal of above section makes it abundantly clear that NAB authorities have exclusive jurisdiction to inquire into and investigate any offence which has been committed under the NAO, 1999 and once it assumes the jurisdiction, no other agency is empowered to investigate the same subject matter, unless directed by the Chairman NAB or an officer authorized by him in this regard. Learned counsel for respondents No.5 & 6 argued that the investigation being conducted by the ACE is regarding the offences which were not subject matter of NAB Ordinance. I am not convinced with this argument. Impugned FIR was registered against the petitioner, under sections 409, 420,468 & 471 PPC read with Section 5(2) PCA, 1947. Sections 9(ix) & 9(xii) covered the offence under Sections 420 & 409 PPC respectively. Similarly, the Schedule attached with the NAO, 1999 covers the offences committed under Section 468 & 471 PPC, whereas, Section 5(2) of PCA, 1947 is akin to the offences under Section 9(a) of the NAO, 1999, therefore, in any eventuality it cannot be said that the ACE had conducted investigation other than the offences upon which the NAB has already taken cognizance. In the above circumstances, I am of the considered view that launching of investigation by the ACE regarding the same subject matter, which has already been adjudicated upon and closed by the NAB, is in clear

contravention of Section 18(d) of the Ordinance ibid and cannot be approved by this Court.

15. Learned counsel for respondents No.5 & 6 time and again argued that cancellation report of the impugned FIR is pending adjudication before the Trial Court and this Court vide order dated 11.12.2023 passed in W.P.No.42718/23 filed by the complainant of the FIR, directed the Trial Court to decide the same after considering the findings of Special Judge, Anti Corruption in para No.21 of the order dated 08.05.2023, as such cancellation report ought to have been decided by the Trial Court. I am not convinced with this submission. Cancellation report and petition for quashing of FIR are entirely two different subjects falling under the jurisdiction of two different Courts, as such merely due to the pendency of Cancellation report before the Trial Court, proceedings in the quashment petition cannot be halted.

16. Learned counsel further while placing on record copy of order of this Court dated 12.01.2021 passed in Writ Petition No.47510/20 laid much emphasis that regarding the self same relief earlier the petitioner's petition has been dismissed. I have anxiously gone through the said order and observed that subject matter in the said petition was not quashing of impugned FIR rather proceedings initiated against the VC by various departments. Moreso, said application was not dismissed on merits rather this Court disposed of the same while observing that impugned proceedings have been initiated against the VC during the pendency of his CP before the Apex Court and he was advised to approach the said

Court for redressal of his grievance. Civil Appeal filed by the petitioner before the Apex Court has already been allowed in his favour and presently no proceedings are pending in the said Court, as such the referred order of this Court stands nowhere in deciding of instant petition.

17. So far as the argument of the learned Law Officer that cancellation report has already been submitted in the trial Court, therefore, the petitioners must approach to the said Court, suffice it to say that it is well settled by now that once the Court arrived at a conclusion that the impugned FIR was lodged against an accused for some ulterior motive and continuance of proceedings before the trial forum would be a futile exercise, wastage of precious public time and there is no likelihood of conviction of the petitioner in any eventuality, it can quash the same notwithstanding the fact that even the challan has been submitted in the Court. Reliance is placed on cases reported as " *The State ..Vs.. Asif Ali Zardari and another (1994 SCMR 798), Miraj Khan ..Vs.. Gul Ahmed and 3 others (2000 SCMR 122), Maqbool Rehman ..Vs.. The State and others (2002 SCMR 1076)* and *Muhammad Aslam (Amir Aslam) and others ..Vs.. District Police Officer, Rawalpindi and others (2009 SCMR 141)*. In the latter case, where even the formal charge has been framed, the Hon'ble Apex Court has observed as under:-

> " In the facts and circumstances of the case, we feel that continuation of the proceedings would be a futile exercise and wastage of time. In view of the material on file no offence has been made out and the charge on the face of it appears to be groundless and there is no possibility of conviction. In law, nothing warrants for the argument that since charge has been framed by the trial Court, the

> proceedings could not be buried by way of quashment. There is no invariable rule of law and it was dependent on the facts of each case whether to allow the proceedings to continue or to nip in the bud."

18. From the above discussion, it has been established on record that the entire proceedings against the petitioners were orchestrated by respondent No.5 with malafide intention and ulterior motive, whose eligibility to hold the office of Vice Chancellor being lower in merits, was challenged by the petitioner in this Court. Apparently, an attempt was made to coerce the VC to lay his hand off for contesting his legitimate right for the post of Vice Chancellor being on merit and unfortunately respondent No.6, being the convener of the Probe Committee extended full help to respondent No.5 for achieving his ulterior goals, while recording findings against the petitioners contrary to the record. Due to their malafide act not only the petitioners were humiliated before the NAB, who closed the inquiry, but here in the ACE they faced the inquiries/investigations on the so called charges of their rivals continuously. The petitioners have been given clean chit by the ACE in two consecutive investigations and cancellation report has been prepared which was duly forwarded by the Prosecution Department, which means that there was no substance in the allegations against the petitioners but unfortunately, the Trial Court is sitting over it for the last more than eleven months. The petitioners cannot be made shuttle cock to run from one Court to the other merely on the ground of pendency of cancellation report. Referring them again to the Trial Court to pursue cancellation

report would amount to continuation of the harassment caused by respondents No.5 & 6 by initiating the criminal proceedings against them.

19. In view of above, instant writ petition is **allowed** as a consequence thereof impugned FIR No.41/2020, in respect of offence under Sections 409,468,471 & 420 PPC read with Section 5(2) of Prevention of Corruption Act, 1947 registered at P.S. ACE, Region Faisalabad is ***quashed***.

(Asjad Javaid Ghural)
Judge

Approved for Reporting

Judge

*Azam**