

IN THE SUPREME COURT OF PAKISTAN
 (Appellate Jurisdiction)

Present:

**Mr. Justice Umar Ata Bandial, HCJ
 Mr. Justice Munib Akhtar**

Criminal Petitions No. 240-K & 241-K of 2019

(On appeal from the judgment dated 30.10.2019 passed by
 the High Court of Sindh, Karachi in Crl.R.S-201 of 2018.)

Shahzad Riaz and another	:	(in Crl.P. 240-K/19)
Rana Muhammad Imran	:	(in Crl.P. 241-K/19)
... Petitioner(s)		

vs

The State through P.G. Sindh	... Respondent (s)
	(in both cases)

For the petitioner (s)	:	Khawaja Shams-ul-Islam, ASC (in Crl.P. 240-K/19)
		Mr. Yousuf Moulvi, ASC (in Crl.P. 241-K of 2019)
For the State	:	Mr. Saleem Akhtar Burero, Addl. P.G. Sindh
Date of hearing	:	11.02.2022

ORDER

Munib Akhtar, J.: At the conclusion of the hearing it was announced that these leave petitions were being converted into appeals and allowed in terms to be announced. The following are the reasons for our order.

2. The matter before us appears to have a somewhat long and tangled history, both litigation and otherwise, but for present purposes the facts can be stated with brevity. It appears that against the petitioners in both matters FIR No.29/2017 was got registered on 4.5.2017 by the State on the complaint of an Inspector of the Anti Corruption Department under sections 109, 409, 420, 467, 468, 471 and 34 PPC. Broadly speaking the petitioners stand accused of having entered upon a massive fraudulent scheme which has deprived the State exchequer of billions of rupees and which acts/scheme according to the State constitute the offences under PPC which have been set out above. Needless to say the petitioners strongly deny all charges. Rather unusually, it appears that the State

(i.e. the Province) soon after the registration of the FIR filed a suit on the Original Side of the High Court, being suit No. 1570/17, the plaint of which presented on or about 12.6.2017. The relief sought as per the prayer clause is as follows:

- a) Declare that the Defendant No.01 to 04 have cheated the Plaintiff and illegally gained Rs.1.45 billion in respect of Tractor Subsidy Scheme;
- b) Grant permanent injunction to the Plaintiff and restrain the Defendant No.01 to 04 from removing 600 Tractors from PQA and give into the Custody of this Hon'ble Court;
- c) Grant garnishee Order freezing all Bank Accounts of the Defendant No.01, as given in Annexure "H";
- d) Decree an amount of Rs.1.45 billion for defrauding the National Ex-cheque with the 14% interest from the date of the fraud till actual payment;
- e) Direct the Defendant No.01 to 04 to given security for the defrauded amount to the satisfaction of this Hon'ble Courrt in respect of Public Revenue of Rs.1.45 Billion;
- f) That as the criminal inquiry is ongoing the Hon'ble Court may grant permission to file additional documents of evidence of the claim as and when the same are readily available;
- g) Award cost of the Suit;

Grant any other / further / additional relief or reliefs as this Hon'ble Court may deem fit and proper under the circumstances of the case."

The said suit is still pending adjudication.

3. It appears that in the criminal case the petitioners (after final challan had been submitted) filed applications under s.249-A Cr.P.C., seeking their acquittal. On these applications the learned Trial Court by order dated 22.10.2018 held as follows:

"In view of the facts and circumstances, I am of the humble opinion that unless the issue of cheating and fraud is decided by Honourable Sindh High Court, this Court could not be able to reach at just and proper conclusion of any cheating and fraud committed by accused as alleged. Therefore, it would be appropriate to decide this case after disposal of the said suit, till then matter is adjourned sine die. All accused are present on bail except accused Ishfaq Shaikh and Muhammad Ayoob, their absence condoned on applications filed on their behalf.

So far as bail bonds of accused and sureties are concerned, same are not cancelled and discharges with the apprehension that accused will not peruse suit before Honourable Sindh High Court. Moreover, prosecution is at liberty to file application after the disposal of said suit for brining this case on the file of this Court, if so desirable."

Being aggrieved by this order the State filed revision applications before the learned High Court which were allowed by means of the impugned judgment in the following terms:

"26. The upshot of above discussion is that in view of aforesaid factual as well as legal position, instant Criminal Revision Application is allowed. Consequently, the impugned Order dated 22.10.2018, handed down by Special Judge Anti-Corruption (Provincial), at Karachi whereby he allowed five Cr. Misc. Applications bearing Nos.137, 138, 139, 140 and 141 of 2018, under sections 249/249-A Cr.P.C. filed by accused Muhammad Ahsan, Aamir Rafique, Rana Muhammad Imran, Abdul Mujeeb & Muhammad Ishfaque and Abdul Ghafoor respectively, thereby adjourning the Special Case No.35 of 2017 *sine die*, is hereby set aside and the matter is remanded back to the trial Court with direction to proceed with the trial of the case on merits against all the accused persons, including the respondents herein."

4. Before us learned counsel for the petitioners set out the facts as above, along with further elaboration which need not be reproduced for present purposes. The upshot of their submissions was that in view of the fact that the State (i.e. the Province) had itself instituted a recovery suit, which was still pending, meant that the criminal case against the petitioners could not proceed. It was submitted that the learned High Court had erred in coming to the contrary conclusion. The learned Additional PG on the other hand strongly supported the impugned order of the learned High Court. It was submitted that, as elaborately discussed therein, civil and criminal proceedings were different from each other even if they proceeded essentially on the same facts. The pendency of the one could not derail proceedings in the other. It was submitted that the learned High Court had rightly set aside the order of the trial court and directed that the criminal case ought to proceed.

5. After having examined the record and considered the two orders involved, we ultimately came to the conclusion that these leave petitions ought to be allowed. The learned High Court has correctly noted that a civil case on the one hand and a criminal matter on the other are distinct and separate even if they emanate from and are based on the same set of facts and can proceed simultaneously (subject to certain exceptions and conditions as set out in the case law, which need not detain us here). It is however also well settled, and indeed a necessary corollary from what has been just been said, that matters in each case are to be decided on their own respective merits and independently of the other. Therefore, we concluded that while the High Court was correct in directing that the criminal case could continue, it, with respect, failed to appreciate the



terms in which the learned trial court had purported to dispose of the applications under s.249-A Cr.P.C. that had been filed before it by the petitioners, i.e. the accused. Had the learned trial court disposed of the said applications on their own merits while confining its attention to the four corners of the criminal case, it would have been a different matter. However, the learned trial court itself intermingled the criminal case with the civil suit and instead of dealing with the matter before it on its own merits simply adjourned it *sine die* on account of the pendency of the suit filed by the Province. This was an error made by the learned trial court which ought to have been noticed and rectified by the learned High Court. However, this was not done. In our view, with respect, that was a mistake that goes to the root of the order of the learned High Court, which cannot therefore be sustained.

6. In view of the foregoing these leave petitions are converted into appeals and allowed in the following terms: both the order dated 30.10.2019 of the learned High Court and the order dated 22.10.2018 of the learned trial court are set aside. The applications filed by the petitioners (as accused) under s.249-A, Cr.P.C. shall be deemed to be pending before the learned trial court which shall after hearing the parties dispose of the same in accordance with law and strictly on their own merits within the four corners of the criminal case and without any reference to the civil suit filed by the Province. The learned trial court shall also not be influenced by anything said by the learned High Court in the order that now stands set aside. It is expected that the learned trial court shall expeditiously dispose of the applications. It shall then deal with the criminal case in accordance with law, in light of its decision on the said applications.

Chief Justice

Judge

Bench-I
Karachi, the
11th Feb, 2022
Nisar/*
Not Approved For Reporting.