

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Criminal Original Petition No. 70 of 2012.
(Contempt proceedings against 'Weekly Pulse')

For the prosecution: Mr. Shah Khawar, ASC/Prosecutor
Dr. Faqir Hussain, Registrar, SCP
Mr. Shahid Hussain, PRO, SCP
Mr. Umar Salman, DPM, SCP (witnesses)

For the alleged contemnors: Dr. A. Basit, Sr. ASC
Mohsin J. Baig, Editor-in-Chief (Weekly Pulse)
Samar Rao, Editor Production, Pulse.

Date of Hearing: 04.06.2013

ORDER

Jawwad S. Khawaja, J. When this case was called, we asked Mr. Shah Khawar to proceed with the case, call the witnesses for the prosecution because the hearing today had been fixed for this purpose. Dr. A. Basit, learned Sr. ASC, however, intervened and insisted that Crl. MA 329 of 2013 be heard. When he was to proceed with the case, he refused and instead recorded the following statement:-

"Having been refused to argue on the basis of Crl.MA 329/2013 which was filed consequent to decision of the Judge-in-Chambers whereby certain affidavits which have been attempted to be placed earlier were returned in original by the Office and the Judge-in-Chambers had allowed the petition to be documented whereafter the relevancy of those affidavits were to be first decided by this Court. Since my entire case is based on the premise that the email allegedly fabricated by me was in fact originated from a computer under the control of the Registrar from a previous address, I will not be in a position to effectively discharge my professional obligations unless Crl.MA No. 329/2013 is first permitted to be presented and adjudicated".

2. Learned counsel for the respondents also subsequently filed a statement in his own hand writing which has been placed on record.
3. This case has been pending before us since 26.7.2012. The order sheet shows that the respondents were repeatedly given adjournments at their request. Such adjournment requests appear to have been made with the object of delaying the adjudication of this petition. This is evident from the contents of the order sheet which are summarized below:

- a) On 1.8.2012 further time for submitting the reply was given to the respondent Mohsin J. Baig and the case was ordered to be re-listed thereafter.
- b) On 11.9.2012 at the request of Mohsin J. Baig and in the interest of justice, the case was adjourned.
- c) On 25.9.2012 (i.e. more than 8 months ago) the charge against the respondents was framed and the case was fixed for recording of evidence on 3.10.2012.
- d) On 3.10.2012 learned counsel representing the respondents made a request for adjournment on the ground that he had not been able to prepare the case and needed some time. This request though unjustified was allowed in the interest of justice and the case was adjourned.
- e) On 17.10.2012 we observed that both respondents will *"have their right to due process and fair trial"*. The respondents sought another adjournment. In order to meet the ends of justice and to ensure due process to the respondents, the case was again adjourned for recording of evidence of witnesses on both sides. We also made it clear to the respondents *"that further adjournment shall not be allowed because it is in the interest of the alleged contemnors and the administration of justice that this matter is brought to an early conclusion"*.
- f) On 4.12.2012 we once again reiterated that the proceedings be concluded at an early date as this would be in the interest of respondents and the administration of justice. We also noted that on 17.10.2012, learned counsel for the respondents had sought an adjournment as he had to go for some surgical procedure and was to be available after 5 days. The case was adjourned for a period longer than that requested to ensure *"that the alleged contemnors are not prejudiced in any manner"*.
- g) On 18.12.2012 yet another request for adjournment was made on behalf of the respondents. Although we noted that the request for more time was unjustified, we adjourned the case *"in order to ensure that the respondents/alleged contemnors are not prejudiced in any manner"*.
- h) On 9.1.2013 we observed *"we would like to emphasize that the matter has already remained pending for an inordinate period since 26.7.2012. In our order dated 18.9.2012, we had noted that it would be in the interest of the respondents and also in*

the interest of justice that this matter is proceeded with and decided without unnecessary delay". We also ordered that "further adjournment will not be allowed".

- i) On **28.3.2013** we noted that *"the charge in this case was framed more than six months ago but the trial has not commenced".* We yet again observed that *"in order to ensure that the respondents are not prejudiced in their defence and have adequate opportunity of hearing in the case",* the case was adjourned.
- j) On **9.4.2013** we once again noted the delay in adjudication of these contempt proceedings and observed that *"no progress whatsoever has been made despite lapse of more than six months".* However, at the request of the respondents once more the case was adjourned in the interest of justice and in order not to prejudice the respondents in their defence.
- k) On **30.4.2013** we had noted that the order sheet *"gives an indication that the respondents/alleged contemnors do not wish that this case should proceed".* However, in order to ensure once again that prejudice is not caused to the respondents and to further the interests of justice, the case was adjourned yet again. It was also ordered that *"the case will proceed on the next date of hearing and the respondents should, therefore, ensure attendance of their learned counsel on the said date".*

4. From the above excerpts and references to the order sheet in this case, it is abundantly clear that the respondents have been making all out efforts to delay the adjudication of this case. Such delays are not conducive to the administration of justice. Today in furtherance of the same dilatory tactics, learned counsel referred to Criminal Misc. No. 329/2013, which had been filed on behalf of the respondents on 1.6.2013. This Crl. M.A. purports to be an *"application under Order XXXIII Rule 5 and 6 Supreme Court Rule [sic] 1980 read with all other enabling provision [sic] to make appropriate orders to prepare the ground work for cross-examination of the prosecution witnesses in order to prevent miscarriage of justice".* It may be noted that the Crl.MA was filed on 1.6.2013 although it could have been filed much earlier if indeed an order was to be sought as prayed. No valid reason has been given for this delay. Reference made by learned counsel to Criminal Misc. Appeals No. 5 and 6 of 2013, is inapt in this matter

as is evident from the Order dated 5.4.2013. The said Order is reproduced, for ease of reference, as under:

“Dr. A. Basit, Sr. ASC for the Appellant in both appeals.

Through these appeals filed under Order V Rule 3 of the Supreme Court Rules, 1980, the appellant has questioned the orders of the Institution Officer of this Court dated 28.1.2013 & 4.2.2013 whereby the applications filed by the appellant in Crl. O. P. No. 70 of 2012 were returned being not maintainable. The objections so raised alleged that the affidavit of the appellant contains “scandalous language”, that the affidavit sworn by Mr. Shahid Iqbal and Mr. Alexander Carte were not attested by the High Commission in England and that of Mr. Sajid Bashir sent from England was not sworn before an Oath Commissioner. The authenticity, validity, admissibility of the affidavits and the relevance of their contents to the Crl. O. P. No. 70 of 2012 would be best judged by the learned Bench before which the said contempt proceedings are pending. The appeals are therefore allowed, the impugned orders are set aside and the Criminal Misc. Appeals be numbered and placed before the Hon’ble Bench hearing Criminal Original Petition No. 70 of 2012.

*Sd/-
NASIR-UL-MULK
JUDGE”*

5. The contents of Crl.MA 329/2013 identify areas of evidence e.g. Report of IT Expert Alexander Carte. The probative value of such evidence will be considered if and when it is properly brought on record.

6. We have gone through the application (Crl. M.A. 329/2013). It is clear from the same that it represents an attempt, to delay the proceedings of this case. The concluding paragraph containing the prayer in the application is worth reproducing. It is as under:

“In view of the above, it is prayed that prior to any substantive step is taken in the contempt proceedings, the following points may be taken up for consideration and adjudication:

- (i) Relevancy of the expert report as also other documents sought to be adduced on the record.*
- (ii) Direction to the Registrar of Supreme Court to arrange for access of the same type to the aforesaid Expert as was granted to him by Copperstones Limited in U.K.*

(iii) *Any other relief suited to the peculiar facts of this Case may also be granted".*

7. It is obvious from the application and the prayer therein that the relevance of any report as also other documents is a matter to be dealt with once evidence is adduced. The respondent Mohsin J. Baig was asked if the IT expert mentioned in the Crl. M.A. No. 329/13 namely Alexander Carte was presently available for the purpose of accessing the computer in the office of the Registrar. He stated clearly that the expert was not available. The respondent was, therefore, told that the expert should be made available before the next date of hearing and then he could be provided access to such computer because the object of the Court in these proceedings was to ascertain the facts. It is clear that no request for access to the computer in question was sought at any time during the past many months, nor has the availability of the IT expert been assured either today or at any earlier occasion. The respondents were once again informed that the imperatives of fair trial and due process will be assured in this case but they could not be permitted to delay the proceedings any further.

8. Statements of Dr. Faqir Hussain, Registrar, Supreme Court (PW 1), Mr. Shahid Hussain Kamboyo, PRO (PW 2) and Mr. Omar Salman, DPM (PW 3) have been recorded. The documents produced by the witnesses have been duly exhibited.

9. Mr. Mohsin J. Baig requested that his right of cross examination be reserved. Normally such request is not allowed, however, to provide yet another opportunity to the respondents, the matter is adjourned to 10.9.2013 as requested by the respondent on which date the respondent, if he so desires, can cross examine the PWs and also produce his witnesses including the IT expert in defence. The next date has been fixed at the express request of Mr. Mohsin J. Baig who sought the specific date after ascertaining the availability of his witnesses, including the IT expert he seeks to examine as his witness. As such further adjournments will not be allowed.

Judge

Judge

Islamabad, the
4th June, 2013.
A. Rehman/*

Witness No. 1. (PW 1)

Dr. Faqir Hussain s/o Ghulam Bahadur aged 63 years, presently posted as Registrar, Supreme Court of Pakistan, resident of House No. 3, St. No. 36, F-7/1, Islamabad.

(On oath)

That I produce my affidavit which bears my signatures Ex.P-1 sworn on 8.12.2012. That whatever is stated in the said affidavit, is correct. I produce downloaded copy of email Ex.P-1/1. I produce publication of news in weekly 'Pulse' dated 22.6.2012 which includes news item with the heading "*SC Registrar oversteps jurisdiction*" as Ex.P-1/2. That on my instructions Mr. Shahid Hussain Kamboyo, Public Relations Officer vide letter dated 21st July, 2012 called upon Mr. Samar Rao, Editor Production to contradict news item published in their Magazine Weekly 'Pulse'. I produce the same as Ex.P-1/3. I produce copy of news item dated 22-28/6/12 published in the magazine weekly 'Pulse' under the heading "*Unanswered Questions*" as Ex.P-1/4. I produce copy of news item dated 21-27/6/12 published in the magazine weekly 'Pulse' under the heading "*When truth is at fault*" as Ex.P-1/5. I produce copy of news item dated 28.9.2012 published in the magazine weekly 'Pulse' under the heading "*The emperor has no clothes*" as Ex.P-1/6.

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Respondent stated that in view of the statement made by his counsel, he is not in a position to cross examine the witness and requested that his right of cross examination may be reserved.

RO&AC
4.6.2013

Judge

Judge

Witness No. 2. (PW 2)

Mr. Shahid Hussain Kamboy s/o Wali Dad aged 31 years, presently posted as Public Relations Officer in the Supreme Court of Pakistan resident of House No. 464, St. No. 17, Shahzad Town, Islamabad.

(On oath)

That I produce my affidavit which bears my signatures Ex.P-2 sworn on 8.12.2012. That whatever is stated in the said affidavit, is correct. Under the instructions of the Registrar of this Court, I addressed a letter dated 21st July, 2012 to Mr. Samar Rao Editor Production (respondent) through fax and email to publish contradiction of news item to set the record right on the news published in weekly 'Pulse' dated 22.6.2012 under the heading "*SC Registrar oversteps jurisdiction*". This letter bears my signatures as Ex.P-2/1. Mr. Samar Rao, in reply sent an email on the basis of which news item was published in their magazine and I produce the same as Ex.P-2/2.

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Respondent stated that in view of the statement made by his counsel, he is not in a position to cross examine the witness and requested that his right of cross examination may be reserved.

RO&AC
4.6.2013

Judge

Judge

Witness No. 3. (PW 3)

Mr. Omar Salman s/o Salman Absar aged 30 years, presently posted as Data Processing Manager, in the Supreme Court of Pakistan resident of House No. 171, Lane-6, Askari 10, Rawalpindi.

(On oath)

That I produce my affidavit which bears my signatures Ex.P-3 sworn on 8.12.2012. That whatever is stated in the said affidavit, is correct. After I came to know about the alleged email published in weekly 'Pulse', I conducted an inquiry being the DPM and I produce my report as Ex.P-3/1. I concluded that the email could not possibly have been originated from the email address i.e. registrar@supremecourtpakistan.com

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Respondent stated that in view of the statement made by his counsel, he is not in a position to cross examine the witness and requested that his right of cross examination may be reserved.

RO&AC
4.6.2013

Judge

Judge