

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 1636/2021

M/s Aslam Construction Company

Versus

Director FIA, Islamabad, etc.

Petitioner by: Mr. Muhammad Aslam Chishti, Advocate.

Respondents by: Mr. Usman Rasool Ghumman, AAG.
Hafiz Arfat Ahmed Ch. and Ch. Tariq Zaman,
Advocates for respondents No.2 & 3.

Date of Decision: 13.02.2024.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the order dated 29.01.2021, passed by learned Ex-Officio Justice of Peace, Islamabad, whereby his application U/S 22-A/B Cr.P.C. for registration of criminal case against proposed accused has been dismissed.

2. Learned counsel for the petitioner contends that petitioner M/s Aslam Construction Company was given tender for streets pavement at Talhar Pahse-I & Phase-II based upon agreement/contract and for this process department has retained security of Rs.10,54,800/- in Phase-I and Rs.2,92,868/- in Phase-II but when petitioner filed application for return of security, it transpired that security amount has already been released in connivance with the officials of department to some un-authorized person; that learned Justice of Peace has not considered the facts and dismissed the complaint.

3. Conversely, learned AAG as well as learned counsel for the respondents have opposed the instant petition on the ground that FIA has enquired the matter, during which it has been proved on record that security amount has been released with the consent of petitioner to his partner (his brother in law) with whom petitioner has now developed serious animosity due to family affairs due to which petitioner has also divorced his wife and parties are litigating each other in different Courts at Islamabad, Jhelum, Hafizabad and even in Supreme Court of Pakistan, therefore, instant petition is not maintainable.

4. Arguments heard, record perused.

5. Perusal of record reveals that dispute revolves around the release of security amount of work order which has been received by XEN Local Government & Rural Development ICT against the two projects amounting to Rs.10,54,800/- and Rs.2,92,868/-. However, on filing of complaint that security amount has been released to a wrong person, matter was taken up by the FIA in Enquiry No.121/2018, whereby following facts have been recorded:-

Close scrutiny of record also reveals that complainant and complainee were co-partners in the same firm name Aslam and Co. and they were running the business jointly. They were also close relatives as complainant was brother in law of the complainee. At a later stage, due to matrimonial disputes, complainee's sister preferred a divorce and maintenance suit that has been decided in her favour. Consequently, complainant preferred this complaint to FIA authorities to make criminal case against the accused. Ejaz Ahmed Cheema, the complainee, carried out all acts on behalf of contractor for years but no dispute was ever raised. But now due to

matrimonial and domestic drudges, complainant is trying to use FIA shoulder for personal enmity.

Foregoing in view, I am of the opinion that close perusal of the record establishes that actions on the part of complainee and XEN Local Govt. and Rural Development lacks mens-reas. When Ejaz Ahmed Cheema withdrew the security, he did so as de-facto co-partner and thus this did not impersonate or cheat the local government authorities as he was the individual who used to carry out all acts on behalf of Aslam Construction Company. Furthermore, involvement of Local Govt. officials has not been established. So, as there is no cheating or personation is involved, I am inclined to prefer the matter as one of civil and private in nature which does not warrant the jurisdiction of FIA. The civil suit may be filed by the complainant in the civil court which is the appropriate forum for such like matter. I therefore recommend the closure of enquiry due to non-availability of prosecutable as well as plausible incriminating substantive evidence on record please.

6. The above mentioned facts have been supported with record and there is *prima-facie* no cognizable offence is made out, matter between the parties is of civil nature. As such it has been surfaced on record that security amount has been received by the petitioner/complainant as well as respondent No.3, who were both allegedly partner at the relevant time, even inquiry officer referred him as defacto co-partner and concluded that there was no element of impersonation and cheating rather everything has been done with the consent of petitioner. All these aspects have duly been appreciated by the learned Justice of Peace. Petitioner has dispute with his wife as well as his brother in law with whom multiple civil and family cases are pending in the courts, therefore, in this

backdrop, no case for interference of this court is made out. Hence, instant petition is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid