

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**W.P No. 445 of 2020**

Jahangir Abbasi, etc  
***Versus***  
Director General FIA, Islamabad etc

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| Petitioners By:       | M/s Raja Rizwan Abbasi, Naila Noureen, Danish Ashfaq and Ghulam Ashraf, Advocates.                                  |
| Respondents 1 & 2 By: | Mr. Nazar Hussain Shah, Assistant Attorney General & Syed Shahid Hassan, Deputy Director ACC, FIA/ respondent No.2. |
| Respondent No.4 By:   | Raja Muhammad Aleem Khan Abbasi Advocate.   |
| Respondent No.5 By:   | Mr. Amanullah Kanrani Advocate.   |
| Date of Hearing:      | 03.03.2020  |

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**Ghulam Azam Qambrani, J:** Through the instant writ petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioners have sought following prayer.-

*“It is, therefore, respectfully prayed that instant writ petition may kindly be accepted and order for re-investigation or inquiry passed by respondent No.1 and entrustment of said inquiry/investigation to respondent No.2 may graciously be declared illegal, unlawful, void ab-initio, colourful exercise of authority and abuse of process of law in the best interest of justice”.*

2. Brief facts of the case are that the petitioners are affectees of fraud committed by respondents No. 4 & 5, who under the garb of providing foreign employment in Australia, obtained substantial amount from them and prepared fake documents, but did not arrange any foreign employment or visa for them. On 27.02.2019, a raid was conducted by respondent No.3 at Unique Property Advisor, I-8 Markaz, Islamabad. Respondents No.4 & 5 were caught red handed along with passports and fake documents, etc. After registration of F.I.R, matter was probed by the FIA authorities and consequently report under section 173 Cr.P.C was prepared and

submitted before the Court of learned Special Judge Central, Islamabad. The accused were found guilty and their names were placed in column No.03 of the said report. The accused party approached the petitioners and other affectees; consequently a compromise was affected between the parties. On the basis of said compromise, accused were granted bail. Both the accused/ respondents No. 4 & 5 were summoned by the learned trial Court, who after reading contents of compromise-deed endorsed their signatures, duly attested by the marginal witnesses and thus liability was categorically accepted by respondents No. 4 & 5. During course of investigation, many other affectees also appeared before the Investigating Officer and raised their grievances against respondents No. 4 & 5. Further averred that respondent No.1, in connivance of respondents No.3 and 4, being their relative has ordered for re-inquiry/re-investigation, which is illegal and unlawful, hence the instant writ petition.

3. The learned counsel for the petitioners has contended that interim report under Section 173 Cr.P.C has been submitted before the learned trial Court; the parties were entered into a compromise and their statements were recorded before the competent Court of jurisdiction; after a lapse of one year, order for reinvestigation has been passed, which is against the law; respondent No.2, in connivance with respondents No.4 and 5 wants to reinvestigate the matter, which has already been settled and statements to the effect of compromise have been recorded before the learned trial Court and there is no need for reinvestigation / re-inquiry into the matter; hence prayed for acceptance of the instant writ petition. Petitioner placed reliance on judgments "*Sheraz Asghar vs. The State*" (1995 PCRLJ 1456) ; "*Bazar Gul Vs. Balqiyas Khan*" 2018 PCRLJ Note 104 and "*Javaid Ali Vs. Riaz Ali*" NLR 2014 Criminal 500.

4. The learned counsel for respondent No.4 has contended that the writ petition is not maintainable; report under section 173 of Cr.P.C. has been submitted before the learned trial Court; the matter falls within the ambit of the learned trial Court and this Court has no jurisdiction to entertain the matter in hand; one Aqib Abbasi son of

Aurangzeb Abbasi at his own behalf entered in into the compromise with the alleged affectees namely, Aitbar Hussain, Muhammad Jahangir Abbasi and Maqsood Ahmed Abbasi; it transpires from the record that the above said alleged affectees sent money to the said Saqib Abbasi in the year 2016-2017 through 'Hundi'; later on the said Aurangzeb Abbasi returned back the amount to the affectees on behalf of his son and respondent No.4 has no responsibility or liability; respondent No.4 has no concern whatsoever with the compromise effected between the parties; case against respondent No.4 is false, frivolous and baseless and has been registered with the connivance of the complainant; order for re-inquiry or reinvestigation is as per law and no illegality has been committed while passing the said order; it is a separate inquiry, bearing separate number and being conducted by Anti-Corruption to probe into the veracity of FIR, hence prayed for dismissal of the instant writ petition. Respondent No.4 placed reliance on judgments "*Tahir Javed versus The State*" PLD 2018 Peshawar 162 and "*Muhammad Ashfaq vs. Amir Zaman and others*" 2004 SCMR 1924.

5. The learned counsel for respondent No.5 has contended that; the petitioners are not aggrieved and the instant petition is not maintainable; the Director General submitted his report/ para-wise comments, wherein it has been mentioned that respondent No.3 was not authorized to conduct raid at the office of respondent No.4; respondent No.2 recorded statements of twenty-three (23) witnesses including respondent No.4 & 5, whereas the petitioner did not join the inquiry proceedings despite repeated calls by the Investigating Officer; the petitioners had invested their money with Aqib Abbasi and they were in dispute over the said amount, when the petitioners failed to recover their amount; they managed a fabricated raid in connivance with respondent No.3 at the office of Hameed Ahmed and Saqib Abbasi to extract money through bogus case; respondent No.3 has planted passport and fake documents with the help of petitioner No.1 and also prepared a fake complaint and recovery memos with fake signatures of FIA constable, as such, Raja Muhammad Ishaque (Inspector) has misused his authority and

lodged a false and bogus case against the complainant (Hameed Ahmed Abbasi) and his nephew to extract money outstanding between the private persons and as such committed the offences of fraud, forgery under sections 420, 468 and 471 of PPC; witnesses of the recovery have denied their signatures and that they are not witnesses of the raid conducted by respondent No.3. Further, contended that a separate inquiry is being conducted against the FIA official to know the genuineness of the FIR. Hence, prayed for dismissal of the instant writ petition. Respondent No.5 placed reliance on judgments "*Notice to Police Constable Khizar Hayat s/o Hadait Ullah*" PLD 2019 Supreme Court 527 and "*Mian Muhammad Nawaz Sharif Vs. State*" PLD 2009 Supreme Court 814.

6. Learned Assistant Attorney General submitted that the prayer of the present petitioner is against the norms of criminal administration of justice, therefore, the instant petition is liable to be dismissed. The complaint of respondent No.4 was marked to respondent No.3, Deputy Director Anti-Corruption Circle, FIA Islamabad, who recorded the statements of 23 witnesses, but the petitioner wilfully did not join the inquiry proceedings before respondent No.2, who mentioned in his report that respondent No.3, Raja Muhammad Ishaque Inspector has misused his authority and lodged a false and bogus case against the complainant and his nephew to extract money outstanding between the private persons.

7. Respondent No.3 had been appearing before this Court on 14.02.2020 & 17.02.2020 in person but on subsequent dates of hearing i.e. 02.03.2020 and 03.03.2020, did not put appearance despite repeated calls, therefore, he is proceeded Ex-parte.

8. Respondents No.1 & 2 filed report /para-wise comments by raising preliminary objections that the High Court cannot assume the role of investigator, nor interfere into lawful process of investigation; that process of collecting the evidence into commission of cognizable offence could not be restrained by High Court in Constitutional Jurisdiction; that on the complaint of respondent No.4, the Deputy Director Anti-Corruption Circle FIA, Islamabad, has

recorded the statements of twenty-three (23) individuals (including respondent No.4 & 5), thus the Deputy Director has prepared confidential final report with the findings that the report of technical expert has established the signatures being fake on recovery memos; that Raja Muhammad Ishaque Inspector has misused his authority and registered a bogus case against complainant and his nephew to extract business money outstanding between private persons. In the process, he has not only committed the offences of fraud, forgery and criminal misconduct but also bring the institution into disrepute. It has been recommended that FIR may be registered against Inspector Raja Muhammad Ishaque and his accomplices for fraud, forgery, fabricating false evidence and criminal misconduct under Sections 193, 420, 468, 477 & 109 PPC read with 5 (ii), 47, PCA. Lastly, prayed that the petition may be dismissed being not maintainable.

9. Arguments of the learned counsel for the parties have been heard and available record perused with their able assistance.

10. Perusal of the record reveals that earlier a criminal case was registered by the Federal Investigation Agency. An interim report under Section 173 of Cr.P.C was submitted before the learned trial Court. During the trial a compromise got affected between the parties. Thereafter, one of the parties filed an application before the Federal Investigation Agency questioning the legality of the investigation and seeking an order for cancellation of the F.I.R. On the basis of this application a thorough probe took place. After completing the inquiry, it was concluded that the proceedings wherein the compromise was affected was abuse of authority on part of the F.I.A officials. Therefore, it was recommended that a separate case under the provisions of the Prevention of Corruption Act, 1947 be registered against the F.I.A officials. It is, in this background, the application for re-investigation of the matter was filed.

11. The Hon'ble Supreme Court of Pakistan in the case reported as "*Raja Khurshid Ahmed versus Muhammad Bilal and others*" [2014 SCMR 474] has held as under.-

*"There is no bar to the reinvestigation of a criminal case and the police authorities are at liberty to file a supplementary challan even after submission of the final report under Section 173 CrPC. However, this cannot be done after the case has been disposed of by the learned trial court".*

12. In another case reported as "*Muhammad Ashfaq versus Amir Zaman and others*" [2004 SCMR 1924] it has been held as under.-

*"There is nothing in the Criminal Procedure Code, which debars the police to re-investigate a case to unearth the truth. The law stands settled by this Court long ago, which had been reiterated in Aftab Ahmad v. Hassan Arshad and 10 others PLD 1987 SC 13 wherein at page 15 it has been held as under:--*

*"The law on the first point raised by the learned counsel, is settled. The first case coming to our notice in which the previous law was also discussed is Muhammad Niwaz v. The Crown 48 Cr.LJ 774, wherein a Division Bench of the Lahore High Court held that the number of investigations into a crime by a Police Officer is not limited by law and when one has been completed, another may be begun on further information received. And this was also possible even after the submission of the challan report, when the Court; has already taken cognizance of the case. This Court also in Muhammad Akbar v. The State and another 1972 SCMR 335, held that there is nothing in the Code of Criminal Procedure to prevent the Investigating Officer from submitting a subsequent report in supersession of his earlier one either on his initiative or on the direction of the superior Police Officer. There are other cases also. See Noor Nabi Agha v. The State PLD 1972 Kar. 292, Muhammad Hayat v. The Chief Settlement and Rehabilitation Commissioner and another PLD 1970 Lah. 679, Alam Din v. The State PLD 1973 Lah. 304---i.n this case also previous case-law was discussed and reliance was placed on very weighty observations in this behalf made in Atta Muhammad v. Inspector-General of Police, West Pakistan, Lahore and others PLD 1965 (W.P.) Lah. 734, no reason has been advanced for us to differ with these observations Muhammad Khan and others v. Inspector-General, Police Punjab, etc. PLD 1976 Lah. 574 and Muhammad Khan v. Inspector-General of Police, Punjab, Civil Secretariat, Lahore and 2 others PLD 1978 Lah. 731. Previous law was again discussed in the last mentioned case."*

*A Bench of Supreme Court Azad Jammu and Kashmir has also followed the aforesaid view in Mirdad Khan v. Zahir*

Shah and 3 others 2000 PCr.LJ 1739 wherein at page 1774 it was observed as follows:--

*“14. From the survey of the above referred case-law it becomes abundantly clear that there is no bar to the re-investigation of a case by the police even if they had submitted an earlier report under section 173, Cr.P.C. disclosing the fact to the Magistrate that no cognizance offence is made out against the accused. The police is fully competent to re-investigate and to submit a challan on the basis of subsequent investigation.”*

*The question of re-investigation has now been regulated for the first time by promulgation of Police Order 2002. However, there is no allegation that re-investigation was carried out in violation of the afore-referred law.”*

13. In another case reported as “Muhammad Hanif versus The State” [2019 SCMR 2029] The Hon’ble Supreme Court of Pakistan has held as under.-

*“Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each others' roles destroys the concept of separation of powers and works a long way towards defeating justice and this was so recognized in the case of Emperor v. Khwaja Nazir Ahmed (AIR 1945 Privy Council 18). The relevant paragraph from the judgment passed in that case is reproduced below:*

*"Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so, it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India there is a statutory right on the part of the police under Ss. 154 and 156, to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under S. 561-A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P.C., to directions in the nature of habeas corpus. In the case of a cognizable offence, the Court's functions begin when a charge is preferred before it and not until then and, therefore, the High Court can interfere under S. 561-A only when a charge has been preferred and not before. As the police have under Ss. 154 and 156, a*

*statutory right to investigate a cognizable offence without requiring the sanction of the Court to quash the police investigation on the ground that it would be an abuse of the powers of the Court would be to act on treacherous grounds."*

14. In another case reported as "*Muhammad Yousaf versus The State and others*" [2000 SCMR 453], It has been held as under:-

*"However, we may add that since there is no legal bar on the re-investigation of the case, even after the submission of final report under section 173, Cr.P.C., the A police may carry out fresh investigation and subnet its report to the Court. We stand fortified in this behalf by an illuminating judgment of a Division Bench of the Lahore High Court delivered in the case of Ata Muhammad v. Inspector-General of Police, West Pakistan, Lahore and others (PLD 1965 (W.P) Lahore 734), with regard to the competency of the police, to carry out further investigation in the same case even after submission of final report, the relevant portion whereof runs as under.---*

*"...There is no statutory prohibition in the Code of Criminal Procedure for the police not to embark on a fresh investigation of the case after the conclusion of the first and the submission of the final report whatever the defects in the first investigation or the flaws in the final report given in the wake of it, that might, subsequently be detected. The first investigation may be utterly unsatisfactory for many reasons. It may be due to non-availability of the evidence, or the successful induction of false evidence during the investigation or the reason may be, as alleged in this case, namely; the corrupt behaviour of the police officers concerned. To say that the same police officers or their superiors on receipt of further information or on the availability of better evidence cannot revive the investigation already done, leading to a contrary or a varied result, would, virtually amount to putting a seal on human errors and fragilities once committed, whether by design or by inadvertence, with no opportunity to make amends, although it be possible to do so. The police, as an agency of the State, should be as much interested as any other agency concerned in the administration of justice, to find out the truth in respect of a crime and lay the whole facts bare for determination by the competent Tribunals as honestly and correctly as possible. The statutory functions of the police and the Courts in this respect are complementary to each other and do not overlap. The fact that the previous investigation had yielded certain results should not act as a hurdle or a deterrent for the police in reaching the truth if additional facts and additional circumstances brought to light help in its discovery. The Magistrate himself does not have the legal powers to direct a further investigation by the police after he himself has taken cognizance of the case and has himself launched an inquiry or trial; but there is no bar for the police to pursue its own investigations and submit their results to the Court to find the guilt or innocence of the accused persons before it becomes too late."*



15. In view of the above referred dictum laid down by the Hon'ble Supreme Court of Pakistan, I have come to the conclusion that respondent No.1 was competent to pass order for reinvestigation of the case and under the law there is no legal bar for reinvestigation of a criminal case.

16. The authority to register and investigate a criminal case in law vests in the police and not in the Court. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan in case titled "*Brig. (R) Imtiaz Ahmad versus Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others*" [1994 SCMR 2142]. No direction can be given to the police officials as to how and in what manner investigation in a criminal case is to take place. Reliance in this regard is placed upon the case reported as "*Waris Ali Raza versus The State and 4 others*" [2013 PCrLJ 267].

17. In view of what has been discussed above, this Court has no jurisdiction to interfere in the matter while exercising powers under Article 199 of the Constitution of Pakistan, 1973. Respondent No.1, under Federal Investigation Agency (Inquiries & Investigations) Rules, 2002, is competent to call for the record of any case or inquiry for the purpose of satisfying himself as to the correctness or propriety of decision taken by a Deputy Director under these Rules and may pass such orders as he may deem fit. This petition being devoid of merits is hereby **dismissed**.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

Announced in open Court, on \_\_\_\_\_/ 2020.

**JUDGE**

*Rana.M.Ift*

**"APPROVE FOR REPORTING."**

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