

## **JUDGMENT**

**Before Shaukat Aziz Siddiqui, J**

**KAREEM KHAN---Petitioner**

**Versus**

**INSPECTOR-GENERAL OF POLICE ICT ISLAMABAD and 3 others---Respondents**

Writ Petition No.1584-Q of 2015, decided on 15th January, 2018.

**SHAUKAT AZIZ SIDDIQUI, J---**Petitioner invoked the constitutional jurisdiction of this Court by way of filing instant writ petition with the following prayer:-

"In light of the above stated facts and circumstances it is prayed that the following orders may kindly be passed:

- (i) An order declaring that the decision of transferring the FIR No. 91 dated 29.04.2015 from Islamabad to FATA made by the Respondent Chief Commissioner ICT, Islamabad in connivance with the other Respondents is devoid of any legal force and is, therefore, set aside;
- (ii) An appropriate order to the Respondent Police Authorities to incorporate the name of other accused John A. Rizzo in the said FIR as per application of the Petitioner dated 19 July, 2011;
- (iii) An order directing the Respondent Police Authorities to investigate the subject case in accordance with the law of land;
- (iv) Any such order as may be just and equitable in the given facts and circumstances of the case."

2. Brief facts involved in the matter are that Petitioner is resident of House No. 47-B, Street 38, F-10/4, Islamabad, whereas, his permanent address is village Achi Khel, Tehsil Mirali, North Waziristan Agency (NWA) Pakistan. On the night of December 31st, 2009, approximately around 2100 hrs, Petitioner's ancestral house situated at North Waziristan Agency (NWA) was hit by Drone attack, believed to be operated by the American Central Intelligence Agency (CIA), as a result whereof Petitioners' son and brother named Zahirullah Khan and Asif Iqbal died. Petitioner on December 14, 2010 submitted application to the SHO, Police Station Secretariat, Islamabad, for registration of FIR against Jonathan Banks, the then Station Chief of the Central Intelligence Agency (CIA) who was residing and functioning in the territorial jurisdiction of the said police station in Islamabad, Respondent No.3 received the said application but did not proceed to register the case as prayed for. Being aggrieved of the said inaction, Petitioner moved application under section 22-A, Cr.P.C. before the learned Ex-officio Justice of Peace on 11.02.2012, which was dismissed, vide order dated 02.12.2013, on the ground that the offence had been committed in

Federally Administered Tribal Area (FATA), hence, neither P.P.C. nor Cr.P.C was applicable. Petitioner challenged the said order through W.P. No.4700/2013 which was allowed by this Court, vide order dated 11.02.2014, earlier order of the learned ex-officio Justice of Peace was set aside and the learned judicial officer was directed to rehear the Petitioner's application under section 22-A, Cr.P.C. in the light of relevant provisions of Cr.P.C and Police Rules. However, Learned Justice of Peace once again dismissed the Petitioner's application, vide order dated 11.04.2014, against which W P. No.2157/2014 was filed in this Court which was accepted, vide order dated 05.06.2014, whereby, Respondent No.3 was directed to register a criminal case in accordance with law but, again no steps towards registration of FIR were taken by the Police and Petitioner was made to approach this Court through contempt petition No. 417/2014, during which proceedings Inspector General of Police, ICT was also summoned and finally, vide order dated 07.04.2015, I.G. Police was directed to immediately register a criminal case against the accused person and also to submit compliance report through Registrar of this Court. Contempt petition was disposed of with said direction. After lapse of almost 22 days of the final order of this Hon'ble Court FIR No.91 dated 29.04.2015 was registered by the Respondent No.3 with a note at its bottom that since, the offence had allegedly been committed in North Waziristan, therefore, after further proceedings under Rule 25-8(3) of Police Rules 1934, original documents would be transferred through Secretary FATA to the concerned Police Station in North Waziristan for registration of case and its investigation. Moreover, said FIR was lodged against one accused namely Jonathan Banks only and with mala fide intentions name of another accused John A. Rizzo, General Counsel of the CIA, against whom an application for registration of FIR was submitted by the Petitioner on July, 19, 2011 and who remained part of all the litigations before the learned Sessions Judge as well as Hon'ble High Court during the last three years.

3. Learned counsel for Petitioner, inter alia, contended that the act of transferring the case from Islamabad to FATA on the excuse that the alleged occurrence took place in North Waziristan is illegal, unwarranted and unjustifiable as under Chapter 25 of the Police Rules, 1934 investigation should be carried out at a District where it can more efficiently be carried out and transfer of a case can only be made to other District on this score coupled with keeping in view the public convenience, whereas, in the present case it is not so, as in FATA there is no organized force just like the police force exists and investigation in the matter cannot be carried out more efficiently than in Islamabad. Moreover, the Petitioner is also unable to join any type of proceedings in FATA as he is currently living along with his family in Islamabad rather witnesses in the present case also cannot join any proceedings carried out at FATA. Learned Counsel further stated that if during the investigation arrest of the proposed accused is to be carried out same can be effected through Interpol and for that purpose assistance of Federal Government shall be required so as to get International Warrants against the accused person. Moreover, in case of extradition of the accused person is sought same can only be availed through the help of Federal government. Learned Counsel contended that Respondent No.3 also overstepped his authority while dropping the name of another accused John A. Rizzo as he was not authorized to pick and choose rather under obligation to act in accordance with Court order dated 07.04.2015, passed in Crl. Original No. 417/2014. Learned Counsel lastly contended that the Respondents are treating the Petitioner in a manner violative of his fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan and norms of justice, therefore, impugned acts which actually are speaking volumes about mala fide on the part of Respondents are to be set aside as such.

4. On the other hand, SSP Police submitted report in writing stating therein that all the dead

bodies are buried in the North Waziristan and the crime spot as well as witnesses are resident of said area, hence, there is no jurisdiction under which Islamabad Police can investigate the matter. Moreover, in a similar matter Hon'ble Peshawar High Court, Peshawar has issued certain directions to the Government of Pakistan to take up the matter with the Security Council of the UNO and to file a proper complaint giving complete details of the losses sustained by the Pakistani civilian citizens both to life and properties due to drone strike to the UN Secretary General to constitute an independent War Crime Tribunal. The Petitioner was further directed to approach the concerned authority of government of Pakistan for redressal of his grievance.

5. Learned Counsel for Petitioner submitted objections in writing on the reply filed by the Respondents and while reiterating the same during arguments termed it just an eye wash as procedure prescribed in Rules 25 and 26 of the Police Rules has not been followed while making transfer of the case to FATA which is quite evident from the fact that the FIR was registered on 29.04.2015, and the media reported on the same day with reference to the statement of Respondent No.3 that case has been transferred to FATA Secretariat regarding which news reports of 30.04.2015 are also available, however, said fact was also confirmed by the Respondent No.3 when legal representatives of the Petitioner inquired from him on 30.04.2015. Thus it is impossible that the procedure mandatory for transfer of case as mentioned in the rules *ibid* could have been followed and it is established that no legal requirement has been fulfilled before transferring the case to FATA rather impugned act has been done in a hasty and unlawful manner while exercising the authority in a colorful manner. Learned Counsel while referring Rule 3 of the Chapter 26 Volume III of the Rules and orders of the High Court submitted that when Police Rule 25.8 is read together with the above said High Court rule ordinarily a case should be investigated in the same jurisdiction where it was first lodged, however, if the District Magistrate considers it necessary to transfer the same then he can do so by giving a reasoned order amply demonstrating the ingredient of public convenience in it, whereas, in the present case neither any of the witnesses nor Petitioner can join the investigation in FATA as most of the witnesses are either foreigner or locals based in the major metropolitan areas of Pakistan due to ongoing military operation and frequent terrorist attacks in FATA.

6. Learned DAG also supported the stance taken by the ICT Police and supported the impugned order of transfer of investigation while terming it just and lawful.

7. I have heard the learned Counsel for Petitioner as well as learned DAG and have also perused the report submitted by the Police.

8. Basic controversy involved in the present petition is regarding the transfer of investigation of case FIR No. 91/2015 under section 302 registered against the Jonathan Banks, Ex-State Chief of the Central Intelligence Agency (CIA) for committing murder of Petitioner's brother and son through a drone attack. The sole plea which the Respondents have taken as justification of impugned act is that the incident took place in FATA, where the witnesses of the incident are also present, whereas, on the contrary Petitioner termed the said act as arbitrary, based on mala fide intentions and aimed to sabotage the whole investigation process as well as violative of the relevant rules. In order to resolve the controversy Chapter 25 of the Police Rules, 1934 is of pivotal importance as it deals with the transfer of different criminal cases from one district to another and for ready reference same is reproduced hereunder:-

**"25.8---**Cases which may be lawfully investigated in more local areas than one: (1) If the case is one which the officer-in-charge of the police station may lawfully investigate, but which also be lawfully and more successfully investigated in another police station, such officer while continuing his investigation, shall refer the matter to the Superintendent, who shall transfer the case or not as he sees fit;

- (2) If it is desired to transfer the case to a police station in another district, the Superintendent shall refer the matter to the District Magistrate and move him to act according to the order contained in Chapter 26 Volume III, of the Rules and Orders of the High Court;
- (3) When an investigation has been transferred from one district to another the files with the original first information report shall be forwarded to the Superintendent of the district to which the transfer is made."

For taking a decision regarding transfer of a case from one district/police station to another sub-rule (1) *ibid* has direct relevance, perusal of which clearly depicts that for taking any such decision the first thing which is to be kept in mind is the investigation of the very case, whether it can effectively be carried out at that district where the case is to be transferred as compared to the District/Police Station where it has been registered, whereas, when matter in hand is passed through the said test it is quite obvious that the impugned decision is not supported by any such ground as admittedly there is no proper infrastructure available at FATA required to properly investigate the matter and no investigating agency or an institution like Police is working there. Moreover, it is also an admitted fact that the drone attacks in the tribal areas are being controlled and administered by the CIA authorities which run its affairs from Islamabad's area which is situated in the territorial jurisdiction of Police Station Secretariat, Islamabad. In addition to that it is also observed that it is a matter of sensitive nature which is directly linked with the affairs of the Federal Government as during the investigation support of the Federal Government shall be required at each and every stage either it is for procuring attendance of the accused or other witnesses.

Moreover, as the accused is currently out of Pakistan thus for locating or arresting shall have to be made through International Criminal Police Commission-INTERPOL which department operates in its member countries through National Central Bureaus (NCBs) which is also its coordinating body and in Pakistan NCB is attached with FIA as D.G. FIA is ex-officio head of NCB and his office is also located in Islamabad, however, for making any foreigner part of the investigation or for arresting such accused correspondence is always made through the Federal Government, meaning thereby that at each and every stage of the investigation role of Federal Government cannot be denied.

9. Another aspect of transferring a matter from one district to another is explained through sub-rule (2) of Rule 25.8 of the Police Rules *ibid* through which order contained in Rule 3 of Chapter 26, Volume III of the Rules and Orders of the High Court is made condition precedent for making such transfer which for ready reference is reproduced hereunder:- '

**"3. Cases triable in more than one district.** Forum to be determined with regard to public convenience.-The necessity for transfer of a case may arise purely on grounds of

jurisdiction or in the ends of justice. As regards the former, sections 179 to 183 of the Code should be consulted, when a case is to be instituted in Court. In carrying out the provisions of these sections, cases which are triable in more than one district should not be transferred unnecessarily from one district to another. A Magistrate should act under these sections solely with reference to the public convenience. Ordinarily, the proper district for the enquiry into, and trial of offences falling under those sections would be the district in which the witnesses could, with the least inconvenience, attend."

When above said provision of the Police Rules is read with Rule 3 of Chapter 26, Volume III of the High Court Rules and Orders, it entails presence of public convenience while making such transfer which is also not the case in the present matter as transfer made in the present case does not make it convenient either for Complainant or witnesses to join investigation at FATA. In this regard plea of the Petitioner is valid that the local witnesses who are living in different areas of the country as Internally Displaced Persons would also not be able to join the investigation rather the Complainant himself is residing with his family in the Federal Capital and it would also not be possible for him to visit the North Waziristan frequently where the incident took place due to deteriorated conditions of law and order as army operation is also going on there.

10. In this view of the matter, impugned act of transferring the investigation from Islamabad to FATA is not backed by any lawful reason except the plea of incident being taken place there which in my view is no reason to transfer the investigation there as better conditions and necessary infrastructure to investigate and sort out the matter is available here in Islamabad.

11. These are the reasons for my short order dated 15.01.2018, which is reproduced here-in-below:-

"For the reasons to be recorded later on, instant Writ Petition is allowed. Impugned order dated 22nd June, 2015, through which Chief Commissioner, Islamabad transferred case FIR No. 91 dated 29.04.2015, registered at Police Station Secretariat Islamabad to the concerned Police Station of North Waziristan, is hereby set aside being illegal, void and without jurisdiction."

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