

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.376/2020

Zainab Qasim Tarar

versus

Director General, FIA, Islamabad & 3 others

Petitioner by: Raja Rizwan Abbasi, Advocate.

Respondents by: Mr. Khurram Mehmood Qureshi, Advocate for
Respondent No.3.
Barrister Muhammad Mumtaz Ali, AAG.
Jair Nasrani, Asst. Director FIA, Respondent No.2
in-person.

Date of Decision: 25.06.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has called in question order/notification of the Director General, FIA, dated 19.12.2019, whereby direction for re-opening of Enquiry No.38/2017 has been issued.

2. Brief facts referred in the instant writ petition are that Zainab Qasim Tarar (petitioner) is working as Unit Head Corporate in Al-Baraka Bank, Blue Area Branch, Islamabad since November, 2018, against whom Musarrat Qasim Jaura (Respondent No.3) submitted complaints on different pretexts and on 11.12.2017, the latter moved an application to D.G. FIA regarding embezzlement of bank account followed by submission of complaint before the S.H.O. P.S. Shalimar on 08.02.2018 regarding dishonoring of cheque, on which FIR No.235/2018 was registered, and lastly on 08.02.2018, Respondent No.3 moved another application to S.H.O., P.S. Shalimar regarding allegation of misappropriation of household articles and taking into possession registration book of her vehicle by the petitioner, about which case FIR No.279/2018 was registered. However, the said applications/complaints culminated into fruitless exercise. Later on, D.G. FIA,

has ordered re-opening of the said inquiry vide impugned order/notification dated 19.12.2019. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that Respondent No.3 had already challenged the enquiry before this Hon'ble Court without arraying the petitioner as a party in order to get ex-parte order for registration of FIR against the petitioner; that re-opening of inquiry will lead to multiple and unending inquiries, which in turn will jeopardize the rights of the petitioner; that action of Respondent No.1 (DG FIA) regarding re-opening/new inquiry is highly illegal, unlawful and reckless exercise of discretion, even otherwise, not a single reason whatsoever has been mentioned as to why a new inquiry has been ordered, as such, it is evident from the perusal of Federal Investigation Agency Act, 1974 coupled with Inquiry and Investigation Rules, 2002 that no new inquiry, re-inquiry or another inquiry can be ordered by the Authority, therefore, the order/notification of Respondent No.1 for re-opening of inquiry may be declared illegal, unlawful and contrary to law.

4. Conversely, learned State Counsel as well as learned counsel for respondent No.3 opposed the filing of instant writ petition on the grounds that Section 5(2) of the FIA Act, 1974 empowers the FIA officers to initiate the process of inquiry or investigation for ascertainment of facts, therefore, initiation of process for re-inquiry of matter is well within the law, as such, FIA (Inquiry and Investigation) Rules, 2002 do not prohibit conducting of re-inquiry or re-investigation; that there is no legal bar on re-investigation even after submission of final report as also held in many celebrated reported case laws, therefore, instant writ petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner is mainly aggrieved with the reopening of Enquiry No.38/2017 by FIA CBC, Islamabad Zone ordered by the Director General FIA on the complaint of respondent No.3 filed against the

petitioner for embezzlement in her account in Dubai Islamic Bank, F-10 Markaz Branch, Islamabad, whereby she allegedly deprived him from millions of rupees whereas present petitioner was working as Bank Manager in the said bank. The matter was initially not entertained by the respective agency and respondent No.3 approached the learned Additional Sessions Judge, who passed the direction to the FIA to inquire into the matter and if any offence is made out the FIA shall proceed in accordance with law. On the direction of Court, Enquiry No.38/2017 was ordered and Capt. (R) Muhammad Shoaib, Director Cyber Crime Wing, Islamabad inquired the matter, who submitted a detailed report dated 08.04.2019 to the D.G FIA and recommended the closure of proceedings against the petitioner. Feeling aggrieved with the said findings, respondent No.3 challenged the said report through separate writ petition before this Court and claimed that fresh inquiry be initiated where-after, D.G. FIA has passed the order dated 19.12.2019 and directed the FIA CBC, Islamabad Zone to investigate the same afresh to ensure justice whereupon present petitioner who was exonerated in the previous inquiry has challenged the re-opening of inquiry.

7. It is trite law that scope of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in such type of cases is very limited and High Court can only interfere in those proceedings where actions and orders are without jurisdiction or attempted with malafide, although there is no legal bar existed for re-inquiry or re-investigation in any case, even after submission of final report under Section 173 Cr.P.C. Reliance is placed upon 2006 SCMR 373 (Bahadur Khan Vs. Muhammad Azam and 2 others) and 2014 SCMR 474 (Raja Khurshid Ahmed Vs. Muhammad Bilal and others).

8. I have confronted the learned counsel for the petitioner to demonstrate from FIA Act, 1974 and the Federal Investigation Agency (Inquiries and Investigations) Rules, 2002 as to whether there is any statutory prohibition against re-inquiry or re-investigation in FIA matter, whereby it has candidly been

conceded that no such bar is existed under the law where FIA cannot embark on a fresh inquiry or investigation of the case after the conclusion of the first inquiry in any matter. However, it is the prerogative of competent authority to pass an order for fresh inquiry or investigation after a report which reflects certain flaws or defects which might have detected subsequently but when there is no bar on re-inquiry, the competent authorities can pass appropriate orders if they are not satisfied with the earlier recommendations or report.

9. The object of an inquiry is to determine the truth or falsity of a certain fact. Similarly investigation is different from inquiry which usually consists of ascertainment of facts/circumstances of the case, discovery and arrest of suspected offenders, collection of evidence relating to commission of offence, and formation of opinion as to the trial of the case. The investigation of the case is to be held with view to ascertain whether or not an offence has been committed and the investigation agency is bound to act fairly and conduct impartial investigation within the framework of the procedural provisions of the Cr.P.C. without any fear and favour, whereas inquiry is prior to the investigation considered to be initial probe to *prima-facie* detect the allegations under FIA Rules, in this case.

10. It is trite law that there is no embargo for re-inquiry or re-investigation even after submission of final report U/S 173 Cr.P.C. Reliance is placed upon PLD 1983 SC 103 (Abdul Ghafur Vs. Mukhtar Ali) and 2000 SCMR 453 (Muhammad Yousaf Vs. The State).

11. Keeping in view the above case laws, the petitioner has failed to demonstrate any jurisdictional defect or illegality in the re-inquiry order of D.G FIA at this stage, even otherwise disputed question of facts could only be settled in the elaborated inquiry, factual inquiry could not be undertaken by the High Court in its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Interference in the statutory duties of

investigation agency to investigate any crime is not recommended under any circumstances, nor it is the role of High Court to interfere in fact finding inquiry and probe. Reliance is placed upon 2011 MLD 398 (Ameer Abdullah Khan and 2 others Vs. D.P.O Mianwali and 4 others) and 2015 YLR 2728 (Amanullah Khan Vs. Government of Khyber Pakhtunkhwa).

12. For what has been discussed above, instant petition is misconceived and the same is hereby dismissed. However, inquiry officer is directed to conclude the inquiry within period of 60 days under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid.