

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.3684/2013

AZHAR IQBAL, ETC.
VERSUS
GOVERNMENT OF PAKISTAN, ETC.

Petitioner by : **Mr. Imran Shafiq Advocate**
Respondents by : **Mr. Tariq Mehmood Khalid and Mr. Tariq Mirza Advocate**
Malik Faisal Rafique, Deputy Attorney General.
Mr. Asjad Mehmood, Inspector.
Date of Hearing : **22-01-2015.**

ATHAR MINALLAH, J.- The petitioners are members of the National Institute of Electronics Employees' Cooperative Housing Society (*hereinafter referred to as the 'Society'*). The petitioners and some other members jointly sent an application addressed to the Chief Justice of Pakistan, seeking to invoke the jurisdiction of the Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*). The application was registered by the Human Rights Cell of the Supreme Court as HRC No.10489-G/2011 (*hereinafter referred to as the "application"*). The Human Rights Cell (*hereinafter referred to as "HRC"*) sought comments from the concerned officials. After some correspondence an inquiry was also conducted by the Registrar, and his report was sent to the HRC (*hereinafter referred to as the "Inquiry Report"*). The latter vide letter dated 14-12-2012 informed the respondent No.3, i.e the Registrar as follows.-

"Take notice that in pursuance of the order of the Hon'ble Chief Justice of Pakistan the above application is forwarded to you for disposal of application according to law under the recommendations of the inquiry report."

2. It is obvious from the above that the HRC had sent the application of the petitioners to the Registrar for disposal. However, one *Mohammad Haq Bab*, one of the signatories to the application and claiming to be President of the Action Committee of the Society filed a complaint in the Police Station, Industrial Area, Islamabad, for registration of a criminal case, and as a result FIR No.93, dated 13-03-2013 was registered (*hereinafter referred to as the "FIR"*). It is apparent from the contents of the FIR that the complainant not only misconstrued the letter dated 04-12-2013, but used it for registration of the FIR, despite the fact that it was not addressed to him or any other applicant. Simultaneously, the Society assailed the Inquiry Report by filing a revision petition under Section 64-A of the Cooperative Societies Act, 1925 (*hereinafter referred to as the 'Act of 1925'*). The respondent No.2, in exercise of his revisional powers, remanded the case for initiating *de novo* inquiry. It is noted that as a consequence of the order passed by the respondent No.2, the Inquiry report which was sent to the Human Rights Cell of the Supreme Court was found unsatisfactory. The petitioners have, therefore, assailed the order dated 22-03-2013 passed by the respondent No.2 in exercise of revisional powers vested under Section 64-A of the Act of 1925 and the letter dated

11-09-2013 issued by the respondent no. 4 for including the names of the petitioners in the FIR pursuant to the recommendations made in the FIR.

3. Mr. Imran Shafiq Advocate High Court, the learned counsel for the petitioners contended that; after the registration of a criminal case on the direction of the Supreme Court, the respondent No.1 could not have exercised his powers under Section 64-A of the Act; the impugned order has the effect of setting aside the inquiry report confirmed by the Supreme Court and, therefore, is illegal and without jurisdiction; the petitioners were a necessary party and, therefore, they ought to have been heard by the respondent No.2 before passing an order; the impugned order mentions that it has been passed under Section 64 of the Act; the criminal trial pursuant to the registration of the case at Police Station Industrial Area is pending before the Trial Court and, therefore, the respondent No.2 had no jurisdiction to pass the impugned order.

4. Mr. Tariq Mehmood Khalid, Advocate High Court appearing for Mohammad Haq Bab adopted the above arguments and vehemently argued that the FIR was registered pursuant to the orders of the Supreme Court and, therefore, the same was lawful. It was argued that Mohammad Haq Bab, the complainant in the F.I.R. had not named the petitioners as they had no role and as a consequence the letter dated 11-9-2013 issued by the respondent No.4 is without lawful authority and jurisdiction.

5. On the other hand, the learned counsels for the respondents contended that no order has been passed by the Supreme Court, and the

correspondence made by the Human Rights Cell cannot be treated as the orders of the august Supreme Court. The impugned order has been passed under the Act and mentioning of a wrong provision in the title is of no consequence; the correspondence of the Human Rights Cell established in the Supreme Court cannot have an overriding effect over the provisions of the Act, nor can it influence or prejudice the proceedings there under; the internal proceedings of the Human Rights Cell cannot prejudice the rights of a citizen; the Human Rights Cell had merely forwarded the application of the petitioners to the Registrar of the Society; the Human Rights Cell did not pass a direction for registration of a criminal case; the contents of the F.I.R. also reflect that the same was registered assuming that the order had been passed by the Supreme Court; neither the Registrar nor the Society has registered the F.I.R. and, therefore, its registration by a third person on the basis of the letter of the Human Rights Cell of the Supreme Court is a travesty of justice.

6. The learned counsels have been heard and the record perused with their able assistance.

7. The questions which need to be considered and answered in the instant petition are, whether the impugned orders dated 22-03-2013 and 11-09-2013, passed by respondent no. 2 and 4 respectively, suffer from jurisdictional errors or were passed by committing any illegality, warranting interference by this Court and, whether the conduct of the petitioners in the circumstances entitles them equitable discretionary relief vested in this Court under Article 199 of the Constitution of the Islamic

Republic of Pakistan, 1973 (*hereinafter referred to as the "Constitution"*). Moreover, whether the FIR and Inquiry Report have attained finality, pursuant to the letter of the HRC dated 14-12-2012?.

8. The Cooperative Societies Act, 1925, is a comprehensive law which deals with matters relating to societies registered there under. The respondents No.3 and 4 are appointed under section 4 of the Act of 1925. Section 43 confers the power of holding an inquiry into the constitution, working and financial condition of a society. The two sub sections of section 43 envisage different situations for exercising the power. Sub section 1 vests a discretion in respondent No.3 to exercise the power *suo moto*, while sub section 2 provides for the pre conditions specified under clauses (a) and (b) thereof. Sub sections 1 and 2 are independent of each other. This is how the Sind High Court has interpreted these provisions in the cases of '*Saddar Cooperative Market Ltd. through Honorary Secretary versus Province of Sindh, Department of Cooperation*' [2009 CLC 143] and '*Shahbaz Qalandar Cooperative Housing Society Limited through Chairman versus Province of Sindh through Secretary Cooperative Department*' [2011 CLC 783]. The Supreme Court in the case of '*Maqsoodul Hussain v. Government of Pakistan*' [1968 SCMR 423], while interpreting these provisions, has held that the Registrar can act under sub section 1 on his own motion. Even otherwise, a plain reading shows that the two provisions cannot be construed as having the effect of making sub section 1 subject to the fulfilment of the conditions mentioned in sub section 2. As a corollary, the Registrar may hold an inquiry or cause an inquiry to be held under sub section 1, if any material information is

available to him. It vests a discretion in him/her independent of the conditions mentioned in sub section 2. However, like any other discretion, it has to be exercised in accordance with the settled principles. The Registrars must act *bonafide*, on the basis of reasonable grounds and without extraneous and irrelevant considerations. Sub section 2, on the contrary, does not leave the holding of an inquiry to the discretion of the Registrar once a requisition or request has been made under clause (a) and (b) respectively. The legislative intent is obvious from the expressions "*may*" in sub section 1 and "*shall*" in sub section 2. However, as the statute vests the power in the Registrar, it is for him/her to exercise this statutory power independently, uninfluenced by any extraneous pressure or consideration, and for the purposes germane to the statute. An order passed by the Registrar under section 43 is not appealable under section 64 of the Act of 1925. However, under section 64-A, powers are vested in respondent No. 2 to call for and examine the record of any inquiry or proceedings of any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and the regularity of the proceedings of such officer. It is, therefore, obvious, that an inquiry, order or report under section 43 can be set aside, annulled or modified under section 64-A. Having discussed the relevant provisions of the Act of 1925, this Court would now advert to the arguments raised by the learned Counsels.

9. The order dated 22-03-2013 has been passed by the respondent No.2 in exercise of revisional powers vested under Section 64-A of the Act of 1925. A wrong section i.e section 64 has been mentioned

in the title of the order. By now it is settled law that ordinarily mentioning of a wrong provision will not affect the legality of an order or a decision. It is neither fatal nor would vitiate the proceedings, and reference in this regard may be made to the case of '*Rauf B. Kadri v. State Bank of Pakistan*' [PLD 2002 SC 1111]. The title unambiguously mentions that the power of revision is being exercised, but obviously it is a mere error in mentioning section 64 instead of 64 A. The authority was, however, conscious of exercising powers under section 64-A of the Act of 1925, and this is further affirmed by explicitly mentioning that he was exercising powers of revision and disposing of a 'revision petition'.

10. The circumstances which led to the holding of the inquiry have been lucidly mentioned in the Inquiry Report. It is important to note that neither were any proceedings pending in the Supreme Court, nor had the application of the petitioners, dealt with by the HRC, been converted into a petition under Article 184 (3). The correspondence by the HRC, and calling for comments, have been wrongly construed by the respondents as orders and directions of the august Supreme Court pursuant to article 184 (3) of the Constitution. It appears that the respondents felt threatened by a news item accusing them of misinforming the Supreme Court, and a reference in this regard is also made to the said news report in the Inquiry Report. However, after receiving the Inquiry Report, the Hon'ble Chief Justice, instead of entertaining the application of the petitioners under Article 184 (3) of the Constitution, sent it back to the Registrar, as is apparent from the HRC's letter dated 14-12-2012. The letter was by no stretch of the imagination a judicial order of the august Supreme Court.

The letter merely sent or forwarded the application of the petitioners to the respondent No. 3 i.e the Registrar, for its disposal according to law. Questions to be considered by this Court are, what was the effect of the direction under the recommendations of the inquiry report? Was the Registrar bound to carry out this instruction? Did the Inquiry Report attain finality, as argued by the petitioner's counsels, and whether the HRC was vested with power or jurisdiction to override or supersede the powers under section 64-A of the Act of 1925? In order to answer these questions it would be beneficial to further elaborate whether any letter or order passed by the HRC can be construed as a judicial order passed under Article 184 (3) of the Constitution?

11. Article 176 of the Constitution has established the Supreme Court and provides that it 'shall consist of a Chief Justice, to be known as the Chief Justice of Pakistan, and so many other judges as may be determined by an Act of the Majlis-e-Shoora (Parliament) or, until so determined, as may be fixed by the President'. Article 184(3) of the Constitution provides as follows.-

"(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article"

12. It is settled law that in order to be entitled to invoke the jurisdiction under the above provision, the Supreme Court must be satisfied that a question of public importance has been raised, and that it has reference to the enforcement of fundamental rights. Public importance has been interpreted by the Supreme Court in several judgments. It is a question which is determined by the Supreme Court with reference to the facts and circumstances in each case. In exceptional cases, even individual grievance may be treated as raising a question of public importance. The test is, whether the question is affecting 'legal rights and liberties of people at large, even though the individual who may have brought the matter before the Court is of no significance'. Reference may be made to the cases of '*Anzoor Elahi versus Federation of Pakistan*' [PLD 1975 SC 66], '*Benazir Bhutto (Miss) Versus Federation Of Pakistan*' [PLD 1988 SC 416], '*Shahida Zahir Abbasi Versus President of Pakistan*' [PLD 1996 SC 632], '*Zulfiqar Mehdi Versus Pakistan International Airlines Corporation*' [1998 SCMR 793], '*Sh. Riaz-ul-Haq Versus Federation of Pakistan through Ministry of Law*' [PLD 2013 SC 501], '*Syed Mehmood Akhtar Naqvi Versus Federation of Pakistan Through Secretary Law*' [PLD 2012 SC 1089], '*Baz Muhammad Kakar Versus Federation of Pakistan through Ministry of Law and Justice*' [PLD 2012 SC 923].

13. Pursuant to powers conferred under Article 191 of the Constitution, the Supreme Court has made rules regulating the practice and procedure of the Court, called the Supreme Court Rules, 1980 (*hereinafter referred to as the "Rules"*). Order-XXV of the Rules provides for the procedure relating to applications and petitions invoking

jurisdiction under Article 183(4) of the Constitution for the enforcement of fundamental rights. The Rules are reproduced as follows. -

*"ORDER XXV
APPLICATIONS FOR ENFORCEMENT OF FUNDAMENTAL
RIGHTS*

- 1. An application for a writ of habeas corpus shall be filed in the Registry and shall be accompanied by an affidavit by the person restrained, stating that the application is made at his instance and setting out the nature and circumstances of the restraint. The application shall also state whether the applicant has moved the High Court concerned for the same relief and, if so, with what result: Provided that where the person restrained is unable owing to the restraint to make the affidavit, the application shall be accompanied by an affidavit to the like effect made by some other person, which shall state the reason why the person restrained is unable to make the affidavit himself.*
- 2. The application shall be heard by a Bench consisting of not less than two Judges.*
- 3. If the Court is of opinion that a prima facie case for granting the application is made out, a rule nisi shall be issued calling upon the person or persons against whom the order is sought, to appear on a day to be named therein to show cause why such order should not be made and at the same time to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.*

4. *On the return day of such rule or any day to which the hearing thereof may be adjourned, the Court shall, after hearing such parties as are present and wish to be heard, make such order as in the circumstances it considers to be just and proper.*

5. *In disposing of any such rule, the Court may, in its discretion, make such order for costs as it may consider just.*

6. *An application for the enforcement of any other fundamental right shall be filed in the Registry. It shall set out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and shall be accompanied by an affidavit verifying the facts relied on, and at least eight copies of the said application and affidavit shall be lodged in the Registry. It shall also state whether the applicant has moved the High Court concerned for the same relief and, if so, with what result. The application shall be made by notice of motion, but the Registrar may in appropriate cases put up the application before the Court for orders as to the issue of notice.*

7. *Such application shall be heard by a Bench consisting of not less than two Judges of the Court. Unless the Court otherwise directs, there shall be at least eight clear days between the service of the notice of motion and the day named therein for the hearing of the motion.*

8. *Copies of the said application and the affidavit in support thereof shall be served with the notice of motion*

and every party to the proceeding shall supply to any other party, on demand and on payment of the proper charges, copies of any affidavit filed by him.

9. The notice shall be served on all persons directly affected, and on such other persons as the Court may direct: Provided that on the hearing of any such motion, any person who desires to be heard in opposition to the motion and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with the notice of motion and shall be liable to costs in the discretion of the Court.

10. The Court may in such proceedings impose such terms as to costs and as to the giving of security as it deems fit.

11. The provisions of Order XVII relating to petitions shall, so far as may be applicable, apply to applications under this Order.”

14. The above provisions and the relevant Rules determine when and how proceedings are initiated, and whether such proceedings would come under Article 184(3) or not. Only if the Supreme Court is satisfied that the conditions prescribed in this regard are fulfilled, then an application will be entertained and proceedings will ensue under the Rules. It is, therefore, obvious that proceedings of, or letters/orders passed by the HRC, are only for the purpose of satisfying whether the application fulfils the mandatory requirements for treating it as an

application to be placed before the Court under Article 184(3) and, thereafter, proceed in accordance with the above Rules. Under Rule-XXV, Rule-7, the application is heard by a Bench of not less than two Hon'ble Judges of the Supreme Court. Proceedings undertaken by the HRC are administrative in nature, to facilitate the general public, and cannot be construed or treated as proceedings of the Supreme Court under Article 184 (3) of the Constitution. The proceedings remain as such till converted into an application placed before the Supreme Court for hearing. In the instant case, it is evident that the Hon'ble Chief Justice was not satisfied that the application of the petitioners fulfilled the conditions mentioned in Article 184(3) of the Constitution and, therefore, instead of entertaining the same, it was sent to the Registrar for its disposal in accordance with law. As the letter dated 14.12.2012 was not a judicial order passed by the Supreme Court in exercise of its powers under Article 184 (3) of the Constitution, therefore, at best it can be treated as a letter addressed to the Registrar, forwarding the application of the petitioners as per orders of the Hon'ble Chief Justice on the administrative side, rather than a binding judicial order. The Registrar, after independent application of mind, and uninfluenced by the letter dated 14-12-2012, was required to exercise powers vested in him under the statute. Furthermore, by no stretch of the imagination could the letter of the HRC override or supersede the powers under Section 64-A of the Act of 1925. Likewise, the right of an aggrieved person to assail the Inquiry Report, by invoking the jurisdiction vested in respondent no. 2 under section 64-A of the Act of 1925, could not have been affected, nor in any manner diminished by the HRC's letter dated 14-12-2012. The letter and its contents were indeed to be considered

carefully, and with application of mind, but they were not binding on the Registrar, as he was bound by the provisions of the Act of 1925.

15. In any case, the Registrar was directed to dispose the application *"in accordance with law"*. As a consequence, the Inquiry Report did not attain finality by virtue of the HRC's letter dated 14-12-2012, nor did it in any manner affect the powers under section 64-A of the Act of 1925, or the right of an aggrieved person to invoke the said jurisdiction for modifying or annulling the same. That is exactly what happened in the present case. The Society, being aggrieved, invoked the jurisdiction under section 64-A of the Act of 1925 and the respondent No.2 remanded the case back to the Registrar for holding proceedings a fresh. No jurisdictional error has been pointed out in passing the impugned order, nor could it be demonstrated before this Court that respondent No. 2 had acted in exercise of jurisdiction illegally or with material irregularity. There is also no force in the argument of the learned counsel for the petitioner that the respondent No. 2 was required to give notice and an opportunity of hearing to the petitioners before passing an order as the Society was aggrieved and the petitioners were its members. The order, dated 22-03-2013, is fair, just and in accordance with law.

16. The facts and circumstances of this case certainly require a thorough probe in a fair, just and transparent manner, uninfluenced by any extraneous pressure or consideration. This Court has, therefore, not been persuaded to interfere with the impugned order dated 22-03-2013. It is, however, expected that the Registrar shall proceed strictly in

accordance with law and comply with the directions of the respondent No.2, and complete the *de novo* inquiry preferably within three months.

17. This Court will now advert to the second impugned order dated 11-09-2013 passed by the respondent No.4, whereby a request was made for including the names of the petitioners in the FIR. It is pertinent to note that some of the accused named in the FIR had invoked the jurisdiction of this Court for quashment. Their petitions were dismissed on technical grounds, *inter alia*, due to their conduct and the fact that the trial court had already taken cognisance. It is interesting to note that the sole edifice of the arguments, on behalf of the petitioner, for impugning the order dated 22-03-2013 rests on the finality attained by the Inquiry Report pursuant to the letter dated 14-12-2012, addressed by the HRC to the Registrar. On the basis of the recommendations made in the same Inquiry Report, the respondent no. 4 issued the letter dated 11-09-2013, requesting that the names of the petitioners may also be included in the FIR, as they had also remained part of the Managing Committee of the Society. In order to understand the issue in its correct perspective, it is important to discuss what the record reveals regarding the FIR, registered by *Mohammad Haq Bab* and impleaded as a respondent in the instant petition.

18. The FIR was registered by one of the signatories of the application filed with the HRC. The other signatories were the petitioners. It appears from the HRC's letter dated 14-12-2012 that when the Hon'ble Chief Justice was not satisfied that a case was made out for entertaining

the application under Article 184 (3) of the Constitution, it was sent, or in other words forwarded to the Registrar for its disposal in accordance with law. The letter was addressed to the Registrar, and only he was authorised to dispose of the application and take action in accordance with law. Instead, one of the signatories of the application, namely *Mohammad Haq Bab*, filed a complaint, and accordingly the FIR was registered. Perusal of the FIR reveals quite a disturbing situation. An impression was given by the complainant as if the Hon'ble Chief Justice of Pakistan had passed directions for the registration of a criminal case. The FIR makes several unwarranted and unpleasant references to the Hon'ble Chief Justice of Pakistan and the Supreme Court. The official who registered the FIR appears not to have applied his mind, otherwise he would have either sought the permission of the Registrar, Supreme Court or at least confirmed whether such directions were issued by the Hon'ble Chief Justice of Pakistan before converting the complaint into a FIR. The complainant appears to have been deliberately omitted, naming the petitioners who were co applicants with him before the HRC. The complainant appears to have played a fraud on the Supreme Court. The letter, dated 14-12-2012, issued by the HRC, was flagrantly misused for registering a criminal case, by misstating the facts and concealing that the HRC had asked the Registrar to dispose of the application in accordance with the law.

19. It has been observed by this Court in several cases that unwarranted and unauthorised references of the courts, particularly the High Courts and the august Supreme Court, is a major cause for denying

the other contesting or affected parties of their right to a fair trial. In reality the authorities, investigating agencies and even at times the courts get influenced. We live in a real world, and that is the reason why so much importance is given to the adage that justice is not only to be done but must be seen to be done. The right to a fair trial is an inviolable right, and references to the Courts in FIRs are a cause of denial of access to justice, as the affected parties have reason to believe that they would not be able to get justice in the circumstances. It is not necessary that such a belief is actually held, but even a mere apprehension in the mind of an affected person is sufficient to deny to him or her, the right of access to justice and a fair trial. The Courts cannot divorce itself from reality and assume that every person and office holder will rise to such levels that references to courts will neither prejudice their minds nor would they be influenced. Even if one person gets influenced, irreparable damage will be done and such a probability cannot be precluded.

20. This case is a classic example reflecting what has been discussed and observed above. The entire edifice built by the petitioner is on the sole premise of the finality of the Inquiry Report and the FIR pursuant thereto. Such arguments and emphasis has caused enormous miscarriages of justice. However, the petitioners take a u-turn when it comes to the impugned letter dated 11-09-2013. The averments made in the petition and arguments advanced during the hearing tantamount to contempt of Court, as the names of the august Supreme Court and the Hon'ble Chief Justice of Pakistan have been used over and over again despite the fact that the letter of H.R.C. was neither addressed to the

petitioners nor to *Mohammad Haq Bab*. Facts have been misstated, and the learned counsel, enrolled as an Advocate of the High Court, ought to have known that the Hon'ble Chief Justice of Pakistan had not entertained the application of the petitioners by converting it into petitions and placing it before a Bench of the Supreme Court for proceedings under Article 184 (3) of the Constitution. Not a word has been said about any illegality or material illegality committed by the respondent no. 4 in requesting the inclusion of the petitioners' names in the FIR. The only ground taken is that at the relevant time the petitioners were not part of the Managing Committee. This is a disputed question of fact, and in any case a matter subject to investigation and subsequently of trial. The petitioners also failed to avail remedies under the Act of 1925 and directly invoked the jurisdiction of this Court, by assailing the order dated 11-09-2013. Besides the petition being liable to be dismissed to the extent of the prayer sought in respect of the letter dated 11-09-2013, nothing has been placed on record or argued before this Court, which would require interference with the letter dated 11-09-2013 as well.

21. It may also be noted that after the Inquiry Report was set aside, and the matter remanded for *de novo* enquiry vide order dated 22-03-2013, the fate of the FIR had also become relevant as it was solely based on the Inquiry Report and the unauthorised misstatements made by the complainant at the time of registering the FIR. However, as adequate alternate remedies are available to the petitioners, inter alia, under sections 249-A and 265-K of the Cr.P.C, therefore, on this ground, as well

the instant petition to the extent of assailing the order dated 11-09-2013, is not maintainable.

22. For what has been discussed above the instant petition is neither maintainable nor has any merit and, therefore, it is accordingly dismissed. Moreover, their heavy reliance and stress on the use of the names of the Hon'ble Chief Justice of Pakistan and the Supreme Court is deprecated. They have caused miscarriages of justice and played fraud on the august Supreme Court by misstating material facts. One of the co-applicants before the HRC and an impleaded respondent in the instant petition made improper, excessive and unwarranted use of the names of the Supreme Court and the Hon'ble Chief Justice in his written complaint. The petitioners vehemently defended the contents of the FIR, and the same has been brazenly argued before this Court. The conduct of the petitioners cannot be ignored. Besides causing miscarriages of justice, the acts and omissions of the petitioners and *Mohammad Haq Bab* are contemptuous. They have dragged the present respondents into unnecessary and frivolous litigation. They have stalled lawful proceedings under the law by obtaining an injunctive order through misstatement and false statements made in the memo of petition on the first day of hearing i.e 27-09-2013 and, thereafter, no one appeared on their behalf on several hearings, as is evident from the order sheets.

23. The next question which needs to be answered is, as to what consequences a petitioner may face if he/she has resorted to a frivolous litigation by suppressing and concealing material facts and attempted to play fraud on the letter of the HRC dated 14-12-2012, as in

the present case. The principles and law as enunciated in this regard may be summarized as follows:-

- (i). It is recognized as a duty of the Court to take effective measures against obstinate litigants who resort to frivolous or fraudulent litigation.*
- (ii). Though Civil Procedure Code, 1908 (hereinafter referred to as "CPC") is applicable to writ jurisdiction ("Hussain Bakhsh vs Settlement Commissioner, Rawalpindi", PLD 1970 SC 1), yet being extra ordinary constitutional jurisdiction, the High Court has ample power to do justice and to prevent misuse or abuse of its process.*
- (iii). Section 35-A of CPC, in no way limits the constitutional jurisdiction of a High Court and in appropriate cases can impose costs, while exercising jurisdiction under Article 199, "Notwithstanding the parameters" of the said provision. Thus costs in excess of the amount prescribed under Section 35-A, can be imposed.*
- (iv). Petitioners wasting public time and exchequer should be burdened with heavy costs.*
- (v). Courts can award heavy costs for harassing others or dragging them in frivolous litigation.*

(vi). *High Court under its constitutional jurisdiction under Article 199 can award, in appropriate case, costs to compensate a party made to suffer unnecessarily through frivolous litigation.*

(vii). *Imposition of suitable costs is one of the mode to deter or eliminate frivolous litigation.*

(viii). *In appropriate cases proceedings under the law of contempt can be initiated against the litigant and the person who drafted the petition.*

24. For the above principles, reliance is place on "*Inayatullah vs Sh. Muhammad yousaf and 19 others*", 1997 SCMR 1020, "*S.M. Sohail vs Mst. Sitara Kabir-ud-Din and others*", PLD 2009 SC 397, "*Muhammad Azam vs Muhammad Iqbal and others*", PLD 1984 SC 95, "*Shahid Orakzai and another vs Federation of Pakistan*", PLD 2008 SC 77, "*Mir Sahib Jan vs Janan*", 2011 SCMR 27, "*Muhammad Anwar and others vs Mst. Ilyas Begum and others*", PLD 2013 SC 255, "*Khurshid Ahmad Naz Faridi vs Bashir Ahmad and 3 others*", 1993 SCMR 639, "*The Postmaster-General, Northern Punjab and (AJ&K), Rawalpindi vs Muhammad Bashir and 2 others*", 1998 SCMR 2386, "*Muhammad Zia vs Ch. Nazir Muhammad, Advocate and 4 others*", 2002 CLC 59, "*Kawasb. AGA and another vs City District Government, Karachi (CDGK) through Nazim-e-Ala and others*", PLD 2010 Karachi 182, "*Smt. Satya vs Teja Singh*", AIR 1975 SC 105, "*Hindustan Transport Co. and another vs State of U.P and others*", AIR

1984 SC 953, "The Election Commission of India vs Shivaji and others",
AIR 1988 SC 61.

25. It may be noted that the petitioners and *Mohammad Haq Bab*, have on account of their conduct, made themselves liable to imposition of special costs. The petitioners have abused the process of this court, besides wasting the precious time of other *bonafide* litigants. In these circumstances special costs of Rs.100,000/- (Rupees One Hundred Thousand only) each is imposed on the petitioners, whereas, Rs.200,000/- (Rupees Two Hundred Thousand only) is imposed on *Mohammad Haq Bab*, for using the name of the Honourable Chief Justice of Pakistan and the Supreme Court for registering a criminal case without having any authority in this regard. The application i.e. CM No.5780/2013 praying for impleading him as a respondent was in fact to support the petitioners in their frivolous litigation. The costs shall be remitted to the respondents unless they consent to deposit the same in the fund meant for payment of fee to lawyers engaged for prisoners on State expense.

26. Before parting with this judgment, this Court cannot turn a blind eye to the unwarranted prevalent practice of naming the Courts, particularly the Supreme Court in complaints, which are made part of the FIR by the concerned Police Stations without an application of mind. As observed and held above, this practice, noticed by this court in several cases, is a major cause of thwarting the rule of law, thereby denying rival affected parties of their respective rights of access to justice and a fair trial. It is in violation of the fundamental rights guaranteed under the

Constitution. Therefore, the same is illegal and without lawful authority or jurisdiction, unless the written permission of the concerned Registrar of the court intended to be named has been obtained, or the place of occurrence is the Court itself, or the complainant produces a certified copy of the court giving direction. Except in the latter two situations, a court or the designation of an Hon'ble Judge shall only be mentioned if written permission has been obtained from the respective Registrar of the Court.

27. The office is directed to send a copy of this judgment to the Inspector General of Police, Islamabad Federal Capital Territory for compliance with paragraph-26 above. The Inspector General is directed to circulate these directions to all the Police Stations within his jurisdiction. The office is further directed to send a copy to the Registrars of the august Supreme Court and this Court. They may consider preparing guidelines for the Police Stations to follow in this regard.

28. A copy of this order shall also be sent to the Registrar, i.e the respondent No.3 for giving effect to the directions given in order dated 22-03-2013. It is expected that a fair, independent and transparent *de novo* inquiry shall be held, and concluded preferably within three months, so as to ensure that the rights of the members of the society are safeguarded.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 12-03-2015.

JUDGE

Approved for reporting.

*Luqman Khan/