

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No. 216 of 2021

Kanwal Shauzab

**Vs**

Learned Justice of Peace and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
04)	<u>01.02-2021.</u>	Barrister Qasim Nawaz, for petitioner in the instant petition and respondent no. 5 in W.P. No. 3107/2020. Mr Muhammad Saqib Bhatti Advocate, for respondents, in the instant petition and petitioners in W.P. no. 3107/2020. Syed Muhammad Tayyab, DAG. Mr Arshad, Inspector and Ghulam Abbas ASI, with record.

No one is in attendance on behalf of the Federal Investigation Agency [hereinafter referred to as the **"Agency"**].

2. The petitioner in the instant petition and respondent no. 5 in W.P. No. 3107/2020 [hereinafter referred to as the **"Respondent"**], is a public office holder i.e. member of the Lower House of the Majlis-e-Shoora (Parliament).

3. With the able assistance of the learned counsels the complaint filed by the husband of the Respondent has been carefully perused. It is obvious from a plain reading of the complaint that it was filed against a private citizen who happens to be a neighbour. The complaint did not disclose the contents of the messages so as to ascertain whether offences

under the Prevention of Electronic Crimes Act, 2016 [hereinafter referred to as the "**Act of 2016**"] were attracted. Despite the vague complaint the Agency took prompt action.

4. The Agency in its written comments has taken the stance that the complaint attracted the offence under section 20 of the Act of 2016. Section 20 of the Act of 2016 is reproduced as follows:

**"20. Malicious code.-** *Whoever willfully and without authorization writes, offers, makes available, distributes or transmits malicious code through an information system or device, with intent to cause harm to any information system or data resulting in the corruption, destruction, alteration, suppression, theft or loss of the information system or data shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one million rupees or with both."*

5. It appears from the record that the private citizen had raised his voice against felling of trees and damage caused to the green area at the end of the street. It is alleged that the Capital Development Authority [hereinafter referred to as the "**Authority**"] had acted because it was influenced by the Respondent who is a public office holder. It appears that the action taken by the Authority at the behest of the Respondent

had given rise to initiation of a public debate by the private citizen. The Respondent belongs to the political party in power. This petitioner has raised questions of paramount public importance. It has been observed by this Court in several cases that the Agency has been using its powers under the Act of 2016 in a reckless manner and in disregard to the fundamental rights guaranteed under the Constitution, particularly Articles 19, 19-A and 14.

6. The Respondent is an elected representative belonging to the party in power. The public officials, particularly elected representatives are chosen to serve the people. They are not immune from criticism and thus the applicability of the law relating to defamation, whether civil or criminal, is not the same as in case of a citizen.

7. In numerous cases this Court has observed that the provisions and offences under the Act of 2016 are exposed to abuse by the Agency. The instant petition also, prima-facie, shows that the complaint did not disclose any material to justify the prompt action which was taken by the Agency.

8. The Director General of the Agency is, therefore, directed to nominate an authorized officer to appear on the next date fixed and justify the action taken against a private citizen on the complaint of a public office holder. The nominated officer shall also inform this Court on the next date fixed the details of similar complaints received from other citizens and what action was taken pursuant thereto. The Act

of 2016 criminalizes acts which are in the nature of defamation. The offences under sections 18 and 20 of the Act of 2016, prima-facie, appear to be in violation of the fundamental rights guaranteed under Article 23 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"]. Moreover, in case of a public office holder the onus is much higher i.e. to show actual malice. The manner in which this case has been dealt with raises paramount questions of public importance including the vires of sections 18 and 20 of the Act of 2016.

9. Keeping in view the importance and public interest involved in the matter, this Court appoints the Vice Chairman, Pakistan Bar Council and the President, High Court Bar Association, Islamabad as *amici* to assist this Court. Mr Imtiaz Haider, Advocate and Mr Adnan Haider Randhawa Advocate are also appointed to assist this Court.

10. Relist, on 10.03.2021.

(CHIEF JUSTICE)