Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(JUDICIAL DEPARTMENT)

Writ Petition No. 80 of 2016

Khurram Iftikhar and others

Versus

The Federation of Pakistan through its Secretary, Interior Division, Islamabad and others.

Writ Petition No. 1946 of 2016

Amcap Securities (Pvt.) Limited and another

Versus

The Federation of Pakistan through its Secretary, Interior Division, Islamabad and others.

Writ Petition No. 180 of 2016

Khurram Shahzad Sindhu and others

Versus

The Federation of Pakistan through its Secretary, Interior Division, Islamabad and others.

Writ Petition No. 603 of 2016

Khurram Iftikhar and others

Versus

Federal Investigation Agency through its Director General, Islamabad and others.

Writ Petition No. 1048 of 2016

Pearl Securities Limited

Versus

The Federation of Pakistan through its Secretary, Interior Division, Islamabad and others.

Petitioners by:	M/s Munawar Us Salam, Salman Aslam Butt, Akram Shaheen, Hasnain Haider Kazmi, Ali Hussain Bhatti and Anique Salman Malik Advocates in their respective writ petitions.
Respondents by:	M/s Barrister Minaal Tariq, Syed Hamid Ali Shah, Khurram Mahmood Qureshi and Akhlaq Ahmed Bhatti, Advocates in their respective writ petitions. Mr. Saqlain Haider and Syed Nazar Hussain, Assistants Attorney General. Qaiser Masood, Additional Director Law, F.I.A, H.Q., Islamabad. Siraj Panhwar, Assistant Director / I.O., Sindh Zone, Karachi. Abdul Rehman, Assistant Director Legal, EOBI.
Dates of hearing:	01.06.2021 & 03.06.2021.

TARIQ MEHMOOD JAHANGIRI, J: Through the instant judgment I propose to decide the above captioned writ petitions, as they entail common questions of law and facts.

02. Through their respective writ petitions, the petitioners have challenged the impugned actions of the respondents / FIA, therefore, it is appropriate to reproduce the prayer of the main case i.e. (W.P. No. 80/2016) which is as under;

> "*It is therefore respectfully prayed that the impugned actions and proceedings initiated by respondents thereunder against the petitioners may kindly be declared illegal, unlawful, without jurisdiction and without lawful effect.*
>
> *It is further prayed that this honorable Court may kindly direct the respondent No. 2 and 3 to refrain from initiating any other proceedings against the petitioners, as the provisions of the PPC and the FIA Act are clearly not applicable in the present situation.*
>
> *It is further prayed that the respondent No. 2 and 3 be restrained from harassment / arrest / coercive / adverse actions against the petitioners in pursuance of the impugned actions and misuse of their powers.*
>
> *Any other order which this Honorable Court may deem fit and appropriate in the circumstance of the case may also be passed".*

03. Succinctly stated the facts of the matter are that the petitioners are Directors and Ex-Directors of different companies incorporating under the Companies Ordinance, 1984. That in the year 2011, the Directors of the company received notices, issued by the FIA stating that the FIA is conducting an enquiry No. 92/2010 of FIA/CCC, Karachi (*the* ***"First Enquiry"***) regarding investment by Employees Old Age Benefit Institution, (EOBI) in the shares of the company after its listing with Karachi Stock Exchange (KSE). The petitioner No. 1 being the Chief Executive of the company namely Amtex duly appeared before concerned official of FIA and got recorded his statement on 01.12.2011, with respect to the investment of EOBI in shares of the company. That thereafter, in the year 2013, the Directors of the Company again received

notices by FIA stating that FIA is conducting another enquiry bearing No. 40/2013 of FIA/CBC, Karachi *(the* ***"Second Enquiry"****)* regarding investment by EOBI in shares of the company. The petitioners again appeared before the FIA in the second enquiry and got recorded their statements. That the FIA undertaken another enquiry bearing No. 34/14 *(the* ***"Third Enquiry****")* in the matter, and consequently registered a case vide FIR No. 27 of 2015 dated 31.12.2015, offence under Section 409, 109 and 34 PPC read with Section 5(2)(47) of the Prevention of Corruption Act, 1947, registered at police station FIA/CCC, Karachi, on the allegations of causing loss of 290 Million to public exchequer / EOBI on the basis of purported conclusions drawn, as a result of the third inquiry. The petitioners have challenged the impugned actions of FIA in different writ petitions, the impugned actions are described as under:-

> "*the authorization for the initiation of the enquiries referred and the FIR recorded by respondent No. 1 and 2 (FIA) as well as enquiries conducted in the matter and the FIR are hereinafter collectively referred to as the* ***Impugned Actions****".*

04. That on the basis of illegal and unwarranted actions, the petitioners were being unnecessarily harassed by various public functionaries and the FIA was causing

substantial pecuniary damage and loss to the reputation and good will of the companies.

05. Learned counsel for the petitioners *inter alia* contends that the impugned actions are illegal, invalid and without lawful authority, have been undertaken due to extraneous considerations, as well are in violation of fundamental rights of the petitioners and well settled principle of law. It has further been contended that in terms of FIA rules, more specifically, Rule 5 thereof, initiation of any inquiry and registration of any criminal case by FIA involving any public servant over the Basic Pay Scale 19 requires prior authorization, approval and permission of Federal Anti Corruption Council.

06. That in terms of Section 3 of FIA Act, jurisdiction of FIA only extends to the offences duly specified in the schedule of FIA Act, whereas Section 409 of Pakistan Penal Code was not a scheduled offence in the year 2010 and the same was inserted in the schedule of FIA on 16.07.2013 and the subject matter of impugned actions admittedly relates to alleged events much before the insertion of Section 409 of PPC in schedule of the FIA Act, hence any proceeding initiated or undertaken on the basis of said provision of PPC in respect of the matter prior to the insertion of the same in the schedule of the FIA Act would amount to taking retrospective action or

imposing retrospective punishment, which action is in direct conflict with Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973.

07. That the constitutional protection and safeguards guaranteed under Article 4, 9, 10A and 14 of Constitution of Islamic Republic of Pakistan have been violated, the petitioners duly appeared before the FIA during the course of first inquiry and second inquiry, however, no notice of the third inquiry was given to the petitioners, the impugned FIR was registered in violation of the due process.

08. That the impugned actions are premised on totally incorrect interpretation of the laws involved, as well as distortion of the facts, the share of the companies have not been sold by the Directors and the petitioners have not gained benefits of the single right out of the investment of EOBI in the shares of the companies, nor such gain of illegal benefit has been attributed to the petitioners in the FIR.

09. The allegations leveled in the FIR can only be dealt with under the special enactments and not the general law of the land. SECP Ordinance provides the machinery for dealing with all the matters related to dealing in securities including the prosecution of offences. The special law supersedes the general law and the impugned actions are the excess of jurisdiction and in violation of law, by undermining the

significance and operation of the relevant provisions of special laws.

10. That the impugned actions reveal that same have undertaken / initiated / registered with malafide by abusing the process of law, just to blackmail, harass, arrest and cause humiliation to the petitioners and the impugned actions have been lodged in order to pressurize the petitioners and to camouflage the omission / illegalities of the officials of EOBI and the acts of the FIA are illegal, without lawful authority, without jurisdiction and the same are being acted upon due to extraneous consideration and the impugned actions and proceedings therein by the respondents are clear use of authority with malafide and is concrete proof of harassment being caused to the petitioners on account of ulterior motives of the officials of FIA designed on unjustified arrest of the petitioners.

11. That the Security and Exchange Ordinance 1969, the Securities and Exchange Commission of Pakistan Act 1997, the Company Ordinance 1984, and EOBI Rules, 1979, are the special laws having overriding effects, are the exclusive forums in dealing with the alleged offences and the petitioners under the right to be dealt accordingly, pray for acceptance of the writ petitions and setting aside the impugned actions of respondents / FIA.

12. Learned counsel for the petitioners have relied upon cases reported as ***PLD 2020 Sindh 601, 2017 SCMR 1218, 2004 SCMR 1397, PLD 1959 SC 322, 2013 SCMR 338.***

13. On the other hand, learned Assistant Attorney General, learned counsel for SECP and EOBI have controverted the arguments made by learned counsel for the petitioners *inter alia* stating that in compliance of orders passed by the Hon'ble Supreme Court of Pakistan, FIA registered eight (18) different FIRs for embezzlement / loss of public exchequer amounting to Rs. 34 Billion by EOBI. The Hon'ble Supreme Court of Pakistan, while taking stern action against the mega scam in EOBI passed the following directions in Para 08 of the order dated 01.07.2013 passed in Constitution Petition No. 35/2013:

> "*Para 8: In view of above narration of facts and having gone through the reports submitted by the secretary HR as well as the DG FIA, it is directed that:*
>
> *(1) That the Director General, FIA shall proceed further to conduct inquiry / investigation, as the case may be, in all the cases pertaining to the alleged corruption in making investment in the properties which are 18 in number as per list supplied by the Secretary along with the report.*
>
> *(2) DG, FIA would also be free to further probe into the affair in respect of any transaction of EOBI wherein it is noticed that the corruption or the corrupt practices*

have been committed by the responsible persons, whosoever he may be and without being influenced in any manner from the rank, status or the position, political or otherwise because the money, against which it is alleged that misappropriation has been committed by corruption and corrupt practices, belonging to tax payers, therefore, in terms of Article 9 of the Islamic Republic of Pakistan 1973, they as well as the beneficiaries of EOBI are entitled for the protection of their Fundamental Rights.

(3) Secretary interior shall strengthened the DG FIA by allowing him the services of the officers/officials from within or outside the cadre of FIA, in accordance with rules because we feel that allegations which have been unearthed called for, serious efforts to collect evidence immediately instead of allowing to spoil the same".

14. That Section 409 PPC was inserted in schedule of FIA on 24.10.2008 prior to registration of FIR, vide S.R.O. 1113(I)/2008, dated 24.10.2008.

15. That in the instant case / inquiry bearing No. 92/2010 of FIA/CCC Karachi which was accumulated with another inquiry bearing No. 40/2013, the Chief Executive of M/s Amtex Mr. Khurram Iftikhar recorded his statement during the course of enquiry, the said enquiries were not closed and enquiry No. 40/2013 merged with fresh enquiry bearing No. 34/2014 and after completion of the inquiry, the case vide FIR No. 27/2015 dated 31.12.2015 offence under Section 409, 109, 34 PPC read with Section 5(2)(47), PCA, 1947 police

station FIA/Corporate Crime Circle, Karachi was registered with the following allegations:-

i. EOBI purchased 11,700,000 Shares of M/S Amtex Limited on 16.08.2010 against Rs. 227,172,818/- at a price of Rs. 19.3716 per share.
ii. EOBI again purchased 5,650,000 shares of M/S Amtex Limited on 27.08.2010 against Rs. 110,487,106/- at a price of Rs. 19.51 per share.
iii. The total 17,350,000/- shares of M/S Amtex Limited were purchased by EOBI against PKR 337,659,914/-.
iv. The above shares were purchased on recommendation and approval of Investment Committee of EOBI comprising Kanwar Khursheed Wahid, the then DG Investment, and Zafar Iqbal Gondal the then Chairman EOBI.
v. The current value per share is PKR 2.73.
vi. The total loss to public exchequer / EOBI is PKR 290 million.

16. The respondent / FIA has submitted the report / Challan under Section 173 Cr.P.C which is pending in the Court of Special Judge Central, Karachi. That learned Assistant Attorney General on the instruction of Investigating Officer and the Additional Director, FIA states that all the petitioners are absconders and they have not joined the investigation by violating the orders and directions passed by this Court on 12.01.2016. It has further been contended that warrants of arrest against the petitioners have been issued by the learned

trial Court of Karachi and all the petitioners / accused are fugitives from law. That all the evidence of the case has been collected from the head office of EOBI, Karachi, SECP Karachi and other relevant departments of Karachi, the investigation has been conducted in Karachi, the head office of the EOBI and the registered offices of the companies are in Karachi, hence this Court has no jurisdiction to grant relief to the petitioners. It has further been contended that the Hon'ble Sindh High Court has taken cognizance of the matter and has quashed the FIR to the extent of ADK Securities and has dismissed the petition for quashing of the FIR to the extent of other parties / petitioners. As the Hon'ble Sindh High Court has taken cognizance, therefore, this Hon'ble Court has no jurisdiction to adjudicate upon the matter. Learned counsel for FIA has relied upon the cases reported as ***2014 SCMR 1376, 2016 SCMR 2084, PLD 2020 Supreme Court 282, PLD 2020 Supreme Court 427, PLD 2019 Supreme Court 250, PLD 2016 Supreme Court 55, PLD 1997 Lahore 385 and 1996 SCMR 186 etc.***

17. Learned counsel for the SECP has also challenged the jurisdiction of this Court on the ground that the whole transaction, subject matter of the sale of shares took place in Karachi within the territorial jurisdiction of Hon'ble Sindh High Court, hence this Court has no jurisdiction. Learned Counsel

has relied upon the cases reported as "***PLD 2008 Supreme Court 735, 2009 CLD 1498, 1996 CLC 539, 2012 PTD 1869, 1999 P Cr.LJ 1584 and 2011 YLR 337, etc".***

18. Learned counsel for the EOBI has also vehemently contended that as the inquiry was conducted in Karachi, the FIR was registered in Karachi and the challan has been submitted in the Court of competent jurisdiction in Karachi, therefore, this Court has no jurisdiction to adjudicate upon the matter.

19. That the cheque issued by M/s Amtex Limited bearing No. CDA22518631, dated 31.01.2016 amounting to Rs. 40 million, Soneri Bank Limited Main Branch, Faisalabad has been dishonored vide dishonor slip dated 08.02.2016, hence the petitioners are not entitled for any relief as prayed in the instant petitions. That alongwith above cheque, an undertaking was also executed by the authorized representative of M/s Amtex Limited namely Imran Afzal which is as under;

> ***RE: VOLUNTARILY PAYMENT OF RS. 40.00 MILLION TO EOBI THROUGH FIA.***
>
> *"It is stated that losses to EOBI in purchase of its shares by M/s Amtex, I hereby voluntarily submit cheque bearing No. 22518631, dated 31.01.2016 of Rs. 40.00 Million amount to EOBI through FIA Sindh Karchi. Further stated during the course of investigation, if any losses found on the part of M/s Amtex Limited, I hereby pledge that the same will be paid to EOBI through FIA, Sindh, Karachi".*

Further stated that the cheque was issued unconditionally, voluntarily in the name of EOBI through FIA, as such dishonor of said cheque amounts to another offence punishable under section 489-F PPC and the petition is liable to be dismissed.

20. Learned counsel has relied upon cases reported as "***2020 PCr.LJ 1307 (Islamabad), 2018 SCMR 802, 2017 PCr.LJ 1540 (Islamabad), 2016 PCr.LJ 1056 (Islamabad), 2016 PCr.LJ 693 (Islamabad), PLD 2001 Peshawar 7, PLD 1997 Lahore 643, 1996 CLC 539 Lahore and PLD 1975 Supreme Court 244, etc".***

21. Arguments heard record perused.

22. My point wise findings are as under;

1. NON-COMPLIANCE AND DISOBEDIENCE OF ORDER PASSED BY THIS COURT;

i. On 12.01.2016, order was passed by this Court in writ petition No. 80/16 that "subject to notice, petitioners shall join the investigation and provide relevant information to respondents No. 02 and 03, however referred respondents shall not harass the petitioners and shall not adopt any coercive measures". Same order was passed on different dates in all the writ petitions but the FIA has informed that the petitioners have not joined the investigation inspite of issuance of many notices and directions, even on 16.06.2016 Mr. Qaisar Masood,

Additional Director FIA has given statement in this Court that the petitioners are not joining the investigation.

ii. In Para-wise comments, FIA authority has categorically mentioned that the petitioners have not joined the investigation after passing the orders by this Court.

2. <u>DISOBEDIENCE OF ORDER PASSED BY HON'BLE LAHORE HIGH COURT, LAHORE</u>.

i. The respondent / FIA has mentioned in the written comments that petitioners / accused persons have neither joined the investigation nor surrendered themselves before the trial Court ever after taking protective bails from Hon'ble Lahore High Court, Lahore. The petitioners applied for protective pre-arrest bails in impugned FIR No. 27/2015 before the Hon'ble Lahore High Court, Lahore with the request to enable them to approach the Court of Competent jurisdiction for grant of pre-arrest bail at first instance, the petitioners have given assurance that they will remain present before the Court on each and every date of hearing of pre-arrest bail and the order dated 07.01.2016 of interim / transitory bails seized to exists by mid-day of 13.01.2016.

ii. The petitioners never applied for bail before arrest in the Court of Competent jurisdiction, hence violated

their commitment as mentioned in order dated 07.01.2016 passed by the Hon'ble Lahore High Court, Lahore.

3. PETITIONS BARRED BY LACHES.

i. The petitioners in **"impugned actions"** have challenged the inquiries conducted by FIA. "**First Enquiry"**, which was initiated in the year of 2010, by Corporate Crime Circle, Karachi bearing No. 92/2010, the petitioners have received notices in the year 2011 and also challenged the "**Second Enquiry"** bearing No. 40/13 of FIA/CBC, Karachi and "**Third Enquiry"** bearing No. 34/14. Whereas, the instant writ petitions were filed in the year 2016 i.e. almost after the delay of 05 years of the impugned actions.

ii. In the case of "***Ahmed and 25 others VS. Ghama and 5 others reported as 2005 SCMR 119",*** it is held by the Hon'ble Supreme Court of Pakistan that:-

> *"there is no cavil with the proposition that existence of laches is sufficient for dismissal in limine of petition".* It is further held that "*We have absolutely no hesitation in our mind that the petitioners failed to pursue their case vigilantly, vigorously and woke up from the deep slumber after 108 days which cannot be ignored without sufficient justification which is badly lacking in this case".* The same principle is

followed in "***2016 SCMR 183, PLD 2016 SC 872, 2019 SCMR 1720 and PLD 2016 SC 514***".

4. FUGITIVES FROM LAW.

i. The petitioners have neither joined the investigation nor surrendered themselves before the Court of Competent jurisdiction. Final challan was submitted on 22.05.2017 in the Court of Special Judge Central-II, Karachi. The petitioners have not appeared before the Court and have been declared absconders even the learned counsel for the petitioners have admitted that the petitioners are appearing in the Court through their counsel, whereas no order for the exemption under Section 540-A Cr.P.C has been passed by the learned trial Court.

ii. It has also transpired from the order sheets of the learned trial Court that petitioners are absconders, their non-bailable warrants of arrest have also been issued but the FIA officials are not arresting them as FIA has been restrained from arresting the petitioners vide order dated 24.05.2016 passed by this Court. Even the learned Special Judge Central, Karachi has mentioned in his order dated 19.05.2021 that after the registration of FIR the petitioners inspite of orders of this Court, have not joined the investigation and have not surrendered

themselves before the Court of law rather the counsel for the petitioners have challenged the filing of challan / report under Section 173 Cr.P.C in the learned trial Court which was dismissed vide order dated 19.05.2021.

5. <u>ALTERNATE REMEDY.</u>

i. As the challan / report under Section 173 Cr.P.C has been submitted in the Court of Special Judge Central-II, Karachi, so the petitioners have alternate remedy to file petition under Sections 265-k Cr.P.C for their acquittal in the Court of Competent jurisdiction. Guidance in this respect is taken from the case law reported as **<u>PLD 2013 SC 401</u>** ***(Director-General, Anti-Corruption Establishment, Lahore and others V. Muhammad Akram Khan and others)***, wherein it was held that:-

> *"The law is quite settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons challenged therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C to seek his premature acquittal if the charge against him is*

groundless or there is no probability of his conviction."

ii. It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled as ***"Mst. Kaniz Fatima V. Muhammad Salim"*** **(2001 SCMR 1493),** that:-

"*where a particular statute provides a self-contained machinery for the determination of questions arising under the Act and where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief any indulgence to the contrary by the High Court is bound to produce a sense of distrust in statutory Tribunals and constitution petition without exhausting remedy provided by the statute would not lie in the circumstances".* The same principle has been enunciated in a case titled as ***"Muhammad Abbasi V. S.H.O. Bhara Kahu and 7 others"*** (***PLD 2010 Supreme Court 969),*** wherein it was held that *"in our view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught completely, jurisdiction under Article 199 cannot be exercised".*

iii. In another case titled as, ***"Rana Aftab Ahmad Khan V. Muhammad Ajmal and another"*** **(PLD 2010 Supreme Court 1066)**, it was held that:-

"we have considered the above and are constrained to hold that the constitutional jurisdiction (reference Article 199) of the High Court in all the cases cannot be invoked as a matter of right, course or routine, rather such jurisdiction has certain circumventions which the Court is required to keep in view while exercising the extraordinary discretionary power".

6. <u>DECISION IN THE MATTER BY HON'BLE SINDH HIGH COURT.</u>

i. Two petitions bearing Nos. 23/16 and 06/17 titled as ***"Wahid Khursheed Kunwar Vs. The State"*** and ***"Muhammad Farid Alam and others Vs. The State",*** respectively filed before the Hon'ble Sindh High Court, Karachi for quashing of FIR No. 27/2015, were decided vide order dated 01.06.2018, wherein Criminal Miscellaneous Application No. 23/2016 was dismissed and Criminal Miscellaneous Application No. 06/17 was allowed, consequently the FIR No. 27/2015 was quashed only to the extent of AKD Securities. As the jurisdiction in the matter has already been assumed by the Hon'ble Sindh High Court, hence this Court lacks the jurisdiction to entertain the matter.

7. <u>LACK OF TERRITORIAL JURISDICTION UNDER ARTICLE 199 (a)(1) OF THE CONSTITUTION.</u>

i. Following are the reasons that this Court lacks the jurisdiction;-

a. The impugned transaction of sale and purchase of shares was made at Karachi.

b. The initial offer of purchase of shares was made at Karachi.

c. The sale price of shares was made at Karachi.

d. The seller company was listed at Karachi Stock Exchange.

e. The petitioner's companies are registered and incorporated at Karachi.

f. The whole transaction was completed at Karachi and no part of it was accomplished at Islamabad.

g. The inquiry was directed by the Director FIA at Karachi without any intervention of Head Office.

h. The FIR was lodged at Karachi and all relevant evidence lies there.

i. The illegal acts were committed at Karachi and dominant cause has accrued there.

j. There is no allegation against SCEP nor any relief has been claimed against it.

k. Nothing has been urged against any functionary at Islamabad.

l. Agitating grievance of filing writ petitions at Islamabad is wholly without any cause, hence this Court has no jurisdiction to entertain the petitions.

ii. In this regard reliance has been placed upon a case titled as ***"Sandalbar Enterprises Ltd. Vs. Central Board of Revenue"*** **(PLD 1997 Supreme Court 334).**

8. GUIDELINES OF HON'BLE SUPREME COURT FOR QUASHING OF FIR.

i. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as ***D.G, ANTI-CORRUPTION ESTABLISHMENT, LAHORE AND OTHERS VS. MUHAMMAD AKRAM KHAN AND OTHERS*** **(PLD 2013 SC 401)** that:-

> *"The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challenged therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction".*

ii. It has been held in a case titled as ***"Muhammad Mansha Vs. Station House Officer, Police Station***

City, Chiniot, District Jhang and others" **(PLD 2006 SC 598)** that:-

> *I. "This Court has been repeatedly reminding all concerned that determination of the correctness or falsity of the allegations levelled against an accused person; the consequent determination of the guilt or innocence of such an accused person and the ultimate conclusion regarding his conviction or acquittal, was an obligation cast on the Court prescribed by the Code of Criminal Procedure for the purpose on the basis of legal evidence led at the trial after a proper opportunity to both the parties to plead their causes. It is a principle too well-established by now that a resort to the provisions of section 561-A, Cr. P. C. or to the provisions of Article 199 of the Constitution seeking quashment of a criminal case was an extraordinary remedy which could be invoked only in extraordinary circumstances and the said provisions could never be exploited as a substitute for the prescribed trial or to decide the question of guilt or innocence of an accused person on the basis of material which was not admissible in terms of Qanun-e-Shahadat Order of 1984.*
>
> *II. No such extraordinary circumstances could be indicated to us which could have permitted the learned High Court to deviate from the normal course of law and to quash the F.I.R. by exercising the extraordinary constitutional remedy under Article 199 of the Constitution".*

iii. It has been held in a case titled as ***"Nasir Ali Vs. Munshi Mehar Khan"*** **(PLD 1981 SC 607),** that:-

"This Court has in more than one case set out the principle to be applied for quashing the initiation of criminal proceedings. In the case of Raja Haq Nawaz v. Muhammad Afzal and others (P L D 1967 S C 354) it was held that :-

Quashment of proceedings at so early a stage gives an unfortunate impression of stifling of criminal prosecution, by exercise of an extra ordinary power which is given for the dispensation of complete justice, in the forms provided by law.

In the case of Gianchand v. The State (1968 S C M R 380) it was held "that the determination of the guilt or innocence of the petitioner depends on totality of facts and circumstances revealed during the trial" such a determination at the complaint or before the evidence is concluded is neither possible nor to be preferred.

There is another aspect of the matter. There is a remedial provisio which has been introduced in the Criminal Procedure Code by Law Reform Ordinance, 1972. It is section 249-A. It enables an accused facing trial to obtain an order of acquittal from the Magistrate if at any stage the charge is found to be groundless or there is no probability of the accused being convicted of any offence. The substance of the claim made by the appellant in the application under section 561-A, Cr. P. C. is exactly the same on which he can claim an acquittal under section 249-A namely that the charge is groundless and that there is no probability of the accused being convicted of any offence. This is a relief still available to the appellant not in any manner in

curtailment of the power possessed by the Court under section 561-A, Cr. P. C. or in derogation of it".

iv. It has been held in a case titled as ***"Dr. Sher Afghan Khan Niazi Vs. Ali S. Habib and other"*** **(2011 SCMR 1813),** that:-

I. "In such view of the matter the learned single Judge of the Lahore High Court (Rawalpindi Bench) should have not quashed the F.I.R. and an opportunity be afforded to the police to complete its investigation. The order has been passed in oblivion of the fact that respondents could have invoked the provisions as enumerated in sections 63 and 551 of Cr.P.C., read with rule 24.7 of the Police Rules, 1934 and sections 249-A and 265-K of Cr.P.C. It is worth mentioning that at the time of quashment of the F.I.R., the respondents had not joined the investigation and their point of view could not be obtained by the police.

II. The learned High Court will have to consider in each case the following tests to be applied to determine the adequacy of the relief:-

(i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 199.

(ii) If the relief available through the alternative remedy, in its nature and

extent, is what is necessary to give the requisite relief, the 'adequacy' of the alternative remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.

(iii) In practice the following steps may be taken:-

(a) Formulate the grievance in the given case, as a generalized category;

(b) Formulate the relief that is necessary to redress that category of grievance;

(c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;

(d) If such a remedy is prescribed the law contemplates that resort must be had to that remedy;

(e) If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the

power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break clown under the strain;

(f) If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralise or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199;

(g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199.

If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply

because the party could have chosen another course to obtain the relief which is due.

III. The general practice of learned High Court which is well entrenched seems to be that no proceedings should be quashed ordinarily in view of the powers as conferred upon it under section 561-A, Cr.P.C. unless the trial court exercises its power under section 249 A, Cr.P.C. or section 265-K, Cr.P.C. However, in exceptional cases, the power as conferred upon High Court under section 561-A, Cr.P.C. could have been exercised. If any reference is required, the case titled State v. Asif Ali Zardari (1994 SCMR 798), Muhammad Khalid Mukhtar v. State (PLD 1997 SC 275) can be referred".

v. It has been held in a case titled as ***"Col. Shah Sadiq Vs. Muhammad Ashiq and others"*** **(2006 SCMR 276)** that:-

I. "It is a settled proposition of law that High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction as the law laid down by this Court in the following judgments:

(i) Muhammad Saeed Azhar v. Martial Law Administrator Punjab and others 1979 SCMR 484; (ii) Umar Hayat Khan v. Inayatullah Butt and others 1994 SCMR 572; (iii) Mst. Kaniz Fatima through Legal Heirs v. Muhammad Salim 2001 SCMR 1493; (iv) Secretary to the Government of the Punjab, Forest Department, Punjab, Lahore through Division Forest Officer

v. Ghulam Nabi and 3 others PLD 2001 SC 415; (v) Wazir Ali Soomro v. Water and Power Development Authority and others 2005 SCMR 37".

II. It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in A. Habib Ahmad v. M.K.G. Scott Christian PLD 1992 SC 353. The learned High Court had quashed the F.I.R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by trial Court. The learned High Court had no jurisdiction to quash the impugned F.I.R".

III. Respondents had alternative 'remedy to raise objection at the time of framing the charge against them by the trial Court or at the time of final disposal of the trial after recording the evidence. Even otherwise, respondents have more than one alternative remedies before the trial Court under the Cr.P.C. i.e. section 265-K, 249-A or to approach the concerned Magistrate for cancellation of the case under provisions of Cr.P.C. The respondents have following alternative remedies under Cr.P.C.:--

(a) To appear before the Investigating Officer to prove their innocence.

(b) To approach the competent higher authorities of the Investigating Officer having powers vide section 551 of Cr.P.C.

(c) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge them under section 63 of the Cr.P.C. in case of their innocence.

(d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.

(e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

(f) There are then remedies which are available to accused persons who claim to be innocent and who can seek relief without going through the entire length of investigations.

IV. The learned High Court erred in law in accepting constitutional petition by quashing the F.I.R. at the initial stage which was not in consonance with the law laid down by this Court in the following judgments:--

(i) Ghulam Muhammad v. Muzammal Khan and 3 others PLD 1967 SC 317; (ii) Mohsin Ali and another v. The State 1992 SCMR 229; (iii) Abdul Rehman v. Muhammad

Hayat Khan and others 1980 SCMR 311; (iv) Marghoob Alam and another v. Shamas Din and another 1986 SCMR 303; (v) Sheikh Muhammad Yameen v. The State 1973 SCMR 622; (vi) Bashir Ahmad v. Zafar-ul-Islaam and others PLD 2004 SC 298; (vii) Kh. Nazir Ahmad's case AIR 1945 PC p.18; (viii) Shahnaz Begum v. The Honourable Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677; (ix) Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142"

vi. It has been held in a case titled as ***"Ahmed Saeed Vs. The State and another"*** **(1996 SCMR 186),** that:-

I. "We have carefully attended to the arguments raised by the learned counsel for the parties. We feel persuaded to agree with the learned counsel A for the petitioner that the High Court, in exercise of its powers under section 561-A, Cr.P.C., was not competent to quash the F.I.R.

II. The High Court, under its inherent powers, may quash judicial proceedings, if it was of the view that the proceedings amount to an abuse of the process of Court. Since" no proceedings were pending in the Court by the time the quashment petition was filed in the High Court, the question of preventing the abuse of process of any Court did not arise in this case.

III. We are afraid that the High Court under section 561-A, Cr.P.C. could not quash F.I.R. on the ground of mala fide or on the ground that F.I.R. discloses civil liability. Since we have held that the High Court had no powers to quash the F.I.R. under section 561-A, Cr.P.C., we need not examine correctness of the reasons given by it for quashing F.I.R".

vii. It has been held in a case titled as ***"Ajmeel Khan Vs. Abdur Rahim"*** **(PLD 2009 SC 102),** that:-

I. "Quashment of F.I.R. during investigation tantamounts to throttling the investigation which is not permissible in law. However, F.I.R. can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are under a statutory duty under section 154 of the Code of Criminal Procedure and have a statutory right under section 156 of the Code of Criminal Procedure to investigate a congnizable offence whenever a report is made to it disclosing the commission of a congnizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police".

II. The conduct and manner of investigation normally is not to be scrutinized under Constitutional jurisdiction which might amount to interference in police investigation as the same could not be substituted by the Court".

III. Colonel Shah Sadiq v. Muhammad Ashiq and others 2006 SCMR 276, in which the following principle was laid down:--

It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court.

IV. Once an F.I.R. is registered, the superior courts, having constitutional, supervisory and inherent jurisdiction, have consistently restrained from directly interfering with police investigation of a criminal case as the Courts could not exercise its control over the investigation, which may be prejudicial to the accused as well as detrimental to the fairness of proceedings, apart from being without jurisdiction".

viii. It has been held in a case titled as ***"Dr. Ghulam Mustafa Vs. The State and others"*** **(2008 SCMR 76),** that:-

"I. The Courts have right to interpret the law and the High Court had no jurisdiction whatsoever to take the role of the investigating agency. There are several pronouncements of this Court that learned High Court has no

jurisdiction to quash the F.I.Rs. while exercising constitutional power under Article 199 of the Constitution or section 561-A of Cr.P.C. unless and until there are very exceptional circumstances existed.

II. Learned High Court was not justified to quash the F.I.R. in question. By accepting the constitutional petition the learned High Court erred in law to short circuit the normal procedure of law as provided by law while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in various pronouncements. Reference can be made to the IB following judgments:--

(i) Habib Ahmad's case PLD 1992 SC 353, (ii) Haji Sardar Khalid Saleem's case 2006 SCMR 1192 (iii) Col.Shah Sadiq's case 2006 SCMR 276".

ix. It has been held in a case titled as ***"Ghulam Muhammad Vs. Muzammal Khan and 4 other in Criminal Appeal No. 29 of 1966, "Ghulam Muhammad Vs. Muzammal Khan and 3 other in Criminal Appeal No. 30 of 1966 and "Ghulam Muhammad Vs. Muzammal Khan and 5 other in Criminal Appeal No. 31 of 1966 "*** **(PLD 1967 SC 317),** that:-

"I. It is, therefore, generally accepted that the inherent jurisdiction should not normally be invoked where another remedy is available. Inherent powers are preserved to meet a

lacuna in the Criminal Procedure Code in extraordinary cases and are not intended for vesting the High C Courts with powers to make any order which they are pleased to consider to be in the interests of justice. These powers are as much controlled by principles and precedents as are its express statutory powers".

II. If, in fact, an offence had been committed justice required that it should be enquired into and tried. If the respondents are not -guilty they have a right to be declared as honourably acquitted by a competent Court. On the other hand, if the evidence against the respondents discloses a prima facie case then justice clearly requires that the trial should proceed according to law".

III. The inherent jurisdiction given by section 561-A is not an alternative jurisdiction or an additional jurisdiction but it is a jurisdiction preserved in the interest of justice to redress grievances for which no other procedure is available or has been provided by the Code itself. The power given by this section can certainly not be so utilised as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute. The High Court should be extremely reluctant to interfere in a case where a competent Court has, after examining the evidence adduced before it, come to the view that a prima facie case is disclosed and has framed charges or summoned the accused to appear, unless it can be said that the charge

on its face or the evidence, even if believed, does not disclose any offence".

x. It has been held in a case titled as ***"Haji Sardar Khalid Saleem Vs. Muhammad Ashraf and others"*** **(2006 SCMR 1192),** that:-

"I. The contention of learned counsel for the respondent that dispute between the parties is of civil nature has no force in view of law laid down by this Court in Ahmad Saeed v. The State 1996 SCMR 186.

II. It is also settled law that criminal proceedings are not barred in presence of civil proceedings and that civil and criminal proceedings can be proceeded simultaneously. Reference can be made to the following cases:--

Talab Hussain v. Anar Gul Khan and 4 others 1993 SCMR 2177 and Deputy Inspector-General of Police v. Anees-ur-Rehman Khan PLD 1985 SC 134.

III. It is also settled law that if, prima facie, an offence had been committed, the ordinary course of trial before the Court should not to be allowed to be deflected by resorting constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred iii law to short circuit the normal procedure of law as provided by law B while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in Habib Ahmed v. M.K.G. Scott Christian PLD 1992 SC 353".

IV. The respondent had alternative remedy to raise objection at the time of framing charge against him by the trial Court or at the time of final disposal of the trial by the trial Court after recording the evidence. Even otherwise, respondent has more than one alternative remedies before the trial Court under the Criminal Procedure Code i.e. Section 265-K or 249-A. This fact was also not considered by the learned High Court. In case the contents of the writ petition and the F.1.R. are put in juxtaposition then it brings the case of respondent No.l in the area of disputed question of fact which cannot be decided by the learned High Court in constitutional jurisdiction which requires investigation and evidence of the parties to be recorded by the trial Court. Therefore, the learned High Court erred in law in accepting the constitutional petition by quashing the F.I.R. at the initial stage which was not approved by this Court in the following judgments:---

Ghulam Muhammad v. Muzamal Khan and 4 others PLD 1967 SC 317; Mohsin Ali and another v. The State 1972 SCMR 229; Abdul Rehman v. Muhammad Hayat Khan 1980 SCMR 311; Marghoob Alam and another v. Shams-ud-Din and others 1986 SCMR 303; Manzoor Hussain Shah v. The State 1986 SC 265; Sheikh Muhammad Yameen v. The State 1973 SCMR 622 and Bashir Ahmad v. Zafar-ul-Islam PLD 2004 SC 298.

V. In view of the aforesaid discussions the learned Lahore High Court erred in law to

accept the constitutional petition of respondent No.1 vide order, dated 23-10-2003 which is not in consonance with the law laid down by this Court".

23. In view of above discussion and laws laid down by the Hon'ble Supreme Court of Pakistan, all the petitions are not maintainable, hence ***dismissed being meritless.***

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in open Court on ***16.06.2021***.

JUDGE

Approved for reporting.

Bilal /-