

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Intra Court Appeal No.162 of 2020

Zainab Qasim Tarar
Vs.
Director General, FIA and 3 others

Appellants by: M/s. Raja Rizwan Abbasi & Sher Afzal
Khan Marwat, Advocates.

Respondents by: Mr. Khurram Mahmood Qureshi, Advocate.
Khawaja Intiaz Ahmed, Deputy Attorney-
General.
Jamil Ahmed Jamil, Additional Director FIA
CBC, Islamabad.
Qaisar Masood, Additional Director
Law/Deputy Legal Advisor, FIA HQ.
Jair Nasrani, AD/I.O. FIA CBC, Islamabad.

Date of decision: 14.07.2020

AAMER FAROOQ, J.- This appeal is directed against
judgment dated 25.06.2020 whereby the petition under Article
199 of the Constitution of the Islamic Republic of Pakistan, 1973
(the Constitution) filed by the petitioner was dismissed.

2. The facts leading to filing of this appeal are that respondent
No.3 filed a complaint against the appellant with Federal
Investigation Agency (FIA). The referred application was made
on 26.12.2017 and was marked to one Shaukat Nawaz,
Inspector/Enquiry Officer. The enquiry changed hands and after
Shaukat Nawaz was entrusted to Nadeem Akhtar, Enquiry Officer
and then Kamran Ali, Enquiry Officer. An application was filed
for transfer of the enquiry on 17.11.2018 and pursuant to decision

on the same enquiry was entrusted to Capt. (R) Muhammad Shoaib, Director FIA Cybercrimes Wing, Islamabad. During the subsistence of enquiry before the referred Enquiry Officer, respondent No.3 filed various transfer applications which remained undecided and eventually the referred respondent filed petition under Article 199 of the Constitution (W.P. No.480/2019) seeking appropriate direction. The referred writ petition was disposed of by this Court on 07.02.2019 with direction to Director-General FIA. The said direction apparently was not complied with, hence respondent No.3 filed contempt petition (Crl.Orgl. No.127/2019). The Director FIA, Cybercrime seized of the enquiry tendered a report recommending closure of the enquiry after the approval by the competent authority; report is dated 08.04.2019. Pursuant to said recommendations the matter was placed before FIA Zonal Board, Islamabad Capital Territory which endorsed the recommendations by Capt. (R) Muhammad Shoaib, Director FIA Cybercrimes Wing, Islamabad, hence the enquiry was closed on 19.12.2019. The Director-General FIA ordered reopening of enquiry and it seems subsequently respondent No.3 also made an application for the same. The Additional Director, Commercial Banking Crimes, FIA entrusted the enquiry to another Officer which is pending. Meanwhile the appellant filed a writ petition under Article 199 of the Constitution (W.P. No.376/21020) challenging the reopening of enquiry. The

referred writ petition was dismissed vide the impugned judgment. Hence the appeal.

3. Learned counsel for the appellant, *inter alia*, contended that in light of the Standing Order No.01/2018 formulated by FIA pursuant to direction by the Hon'ble Supreme Court of Pakistan the competent authority to reopen the enquiry was the Zonal Board in the region of Islamabad Capital Territory and the Director-General FIA had no authority in the matter. It was further submitted that under Rule 3 of Federal Investigation Agency (Inquiries and Investigations) Rules, 2002 (the Rules) the FIA can only conduct one enquiry with respect to any matter as the word used in the Rules is "an enquiry". In the alternative it was contended that there is no justification or basis for reopening of enquiry inasmuch as the entire material was duly considered by the Enquiry Officer and on the basis thereof the recommendations were made which were approved by the competent authority.

4. Learned Deputy Attorney-General, *inter alia*, contended that respondent No.3 met the Director-General FIA and due to the same the order for reopening of enquiry was made. It was further contended that the Director-General FIA is competent to order for reopening of enquiry.

5. Learned counsel for respondent No.3, *inter alia*, contended that various transfer applications were made to the Director-General FIA for transfer of the enquiry and the same was being conducted by Capt. (R) Muhammad Shoaib, Director FIA

Cybercrimes Wing, Islamabad; however, these transfer applications were not decided. It was further submitted that despite categoric allegation of lack of faith on the Investigation Officer, since the needful was not done, hence the recommendations of Capt. (R) Muhammad Shoaib, Director FIA Cybercrimes Wing, Islamabad have no sanctity. It was further contended that respondent No.3 is an old woman aged about 72 years who has been deprived of her hard-earned money and the appellant in a capacity as Manager of Dubai Islamic Bank unauthorizedly made withdrawal from the account of respondent No.3, hence committed fraud and forgery.

6. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. The background leading to filing of the instant appeal has been mentioned in detail hereinabove, hence need not be reproduced. The grievance of the appellant is that the enquiry earlier conducted by the FIA (Enquiry No. RE-38/2017) was exhaustive and covered all aspects of the matter. In this behalf the thrust of the argument by the learned counsel for the appellant was that under Rule 3 of the Rules the words mentioned are “an enquiry”, hence the second enquiry is not tenable. We are unable to agree with the referred contention of the learned counsel; even otherwise the enquiry in question is not second rather the same enquiry which has been reopened.

8. There is no specific provision in Federal Investigation Agency Act, 1974 (the Act) or Rules made thereunder regarding the power/authority of the Director-General FIA to order reopening of enquiry.

9. Learned counsel for respondent No.3 though argued that under the Act it is possible that Director-General can order reopening of enquiry and also referred to Sections 5 & 9 of the Act. The bare reading of the referred provisions shows that they do not confer any such power on the Director-General FIA; however, the Standing Order No.01/2018 framed by the FIA does provide Zonal Board constituted thereunder to have such power. In this behalf the relevant clause is 4 of the referred Standing Order which for the sake of brevity is reproduced below:

“4. CONSTITUTION OF ZONAL BOARD:

A board comprising of the following officers shall be constituted in each FIA Zone to decide all the matters related to the field assignments I.e. initiation of verification, enquiry, registration of case or closure of verifications / enquires / cases or challenging of the cases, or reopening of the enquiry/case or filing of appeals/revisions etc.

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| 1. | Zonal Director | Chairman |
| 2. | Concerned Circle Head | Member |
| 3. | Deputy Director (Law) of the zone | Member |
| 4. | Law Officer of the concerned Circle | Member” |

10. The bare reading of the above clause shows that a Zonal Board does have the power of reopening the enquiry. In the instant case the Director-General FIA ordered the

reopening of enquiry on 19.12.2019 despite there being no formal request/application by the complainant. The application filed subsequently by respondent No.3 apparently for reopening of enquiry on 19.01.2020 also does not call for reopening of the same rather in essence fresh calls for enquiry. Learned counsel for respondent No.3 vehemently argued that there is fresh evidence available and new facts have come in light which call for reopening of enquiry and also the fact that transfer applications were filed with Director-General FIA seeking transfer of enquiry from Capt. (R) Muhammad Shoaib, Director FIA Cybercrimes Wing, Islamabad which was not done. Be that as it may, it is clear that Director-General FIA did not have the authority to order reopening of enquiry and this could only be done by the Zonal Board in accordance with the Standing Order No.01/2018. It is relevant to observe that though Standing Order No.01/2018 has no statutory footing and does not take precedence over the Act or even Rules made thereunder; however, since there is nothing contrary in law to clause 4 of the Standing Order No.01/2018 which has been formulated by FIA for its internal functioning, hence the same would be applicable in the facts and circumstance of the case. It is pertinent to observe that not in every case the enquiry is to be reopened especially where the earlier one has been conducted exhaustively by taking into consideration all the material.

The Zonal Board seized of the matter would have to see where there is fresh evidence or circumstances are such which call for reopening of the earlier enquiry and if it does decide to do so the same shall be with application of mind spelling out the reasons for doing so. The closure of enquiry does not amount to acquittal or discharge as it is an internal probe into the allegations by the FIA. The scheme which is followed by the FIA is that on the complaint it holds enquiry and if there is plausible material case is registered by means of First Information Report (FIR) and thereafter a detailed investigation is conducted and report is filed in the Court of competent jurisdiction for either trial or discharge of the accused. The conduct of the enquiry and the decision for its closure or reopening are all executive actions and the same standards are to be met with which generally are required in the executive actions.

11. An objection was also raised regarding maintainability of the writ petition filed by the appellant. Generally the High Court in its jurisdiction under Article 199 of the Constitution does not interfere with the pending enquiry; however, where the same is with *mala fide* or without jurisdiction the Court can interfere. Reliance is placed on **Anwar Ahmad Khan v. The State and another** (1996 SCMR 24), hence the objection raised by the learned counsel for respondent No.3 is spurned. Learned Single

Judge-in-Chamber while passing the impugned judgment did not take into account the competence of the Director-General FIA to order re-opening of the enquiry nor the learned Single Judge-in-Chamber took into account that it was Zonal Board which was competent to do so, hence the judgment impugned in the instant appeal is not sustainable.

12. For what has been stated above, the instant appeal is allowed and the impugned judgment dated 25.06.2020 is set aside; consequently, the writ petition (W.P. No.376/2020) filed by the appellant is allowed and the office order dated 19.12.2019 by Director-General FIA ordering reopening of enquiry is set aside. The application for reopening of enquiry filed by respondent No.3 on 09.01.2020 shall be deemed to be pending and decided by the competent authority taking into account the observations made hereinabove.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(AAMER FAROOQ)
JUDGE

M. Naveed