

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 537/2018.

Amir Munshi, etc.

Versus

Federation of Pakistan, through the Secretary M/o Interior, Islamabad, etc.

Petitioners by: Malik Omair Saleem, Advocate.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Nadeem, Inspector, FIA.

Date of Decision: 23.10.2019.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioners have prayed for the following relief:-

- a) *In the above circumstances, it is therefore, respectfully prayed that FIR No. 04/2017, Dated 21.03.2017, Offences under sections 419, 420, 468, 471 & 109 PPC, Police Station, F.I.A. (SIU) Islamabad, may kindly be quashed in the best interest of justice.*
- b) *Any other, further or additional relief which this Honourable Court may deem fit, proper and allow in the circumstances of this case.*

2. Brief facts referred in the instant case are that FIA authorities on the complainant of Mirza Khalid Mehmood, Section Officer, Security-I, Ministry of Interior, Islamabad/respondent No.4 has initiated the inquiry whereby it revealed that M/s Beltexco Ltd. got retrofitted (bullet proof) the vehicle Toyota VIGO Registration No.CT-0005 on the basis of fake/ forged NOC purportedly issued by Ministry of Interior bearing No.F.5/21/2010-Security-I, dated 18.10.2010 from M/s Omar Jibran Armoring, A Division of Omar Jibran Engineering Ltd. Karachi whereby Ministry of Interior declared the above NOC as fake/ forged. As per FIR Rana Ahmed Hafeez S/o Fazal Muhammad, Coordinator of M/s Beltexco Limited Karachi was found involved in fake NOC

No.F.5/21/2010-Secrity-I, dated 18.10.2010 and vehicle was for use of Mustafa Kasam Samoji. The role of Omar Khan, Manager M/S Omar Jibran Armoring Division/ Engineering Karachi and the role of Minister of Interior and other private persons have been thrashed out during the course of investigation. The FIR was registered after approval of competent authority and the subject matter was inquired vide Enquiry No.44/2016 FIA/ ACC, Karachi which was later on transferred to FIA/SIU, Islamabad and registered as Enquiry No.10/2017, the same was converted into FIR No.04, dated 21.03.2017, U/S 419, 420, 468, 471, 109 PPC, P.S. FIA/SIU, Islamabad, whereby statements of witnesses U/S 161 Cr.P.C. were recorded and the NOC was found bogus during the course of investigation as no record in the Ministry of Interior Islamabad was available in this regard. The I.O after completion of his investigation arrested the accused persons who were granted bail and final report U/S 173 Cr.P.C. was submitted in the Court of Special Judge Central, Islamabad after placing the names of Omer Feroz Khan and Major (Rtd) Amir Munshi in column No.2, whereas names of Rana Ahmed Hafeez and Muhammad Nafees were placed in column No.3 of the final report U/S 173 Cr.P.C.

3. Learned counsel for petitioners contends that there is no direct evidence against the petitioners regarding preparation of any fake NOC, even otherwise the Ministry of Interior has not prepared any policy for armoring vehicles and there is no requirement under the law to obtain NOC from Ministry of Interior for retrofitting of the vehicle; that this Court has already decided similar question in W.P No.1997/2017 titled Omer Khan Vs. FOP & others vide judgment dated 08.12.2017.

4. Conversely, learned AAG as well as Inspector FIA contends that challan has been submitted in the Court and petitioners are at liberty to approach the said Court for alternate remedy provided under the law in terms of Section 65-K Cr.P.C. or 249-A Cr.P.C. as the case may be.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioners have been nominated as accused in case FIR No.04/2017, dated 21.03.2017, U/S 419, 420, 468, 471, 109 PPC, P.S. SIU, FIA, Islamabad on the complaint of Mirza Khalid Mehmood, Section Officer Security-I, Ministry of Interior, Islamabad whereupon an inquiry was conducted by the FIA authorities and during the course of inquiry it transpired that firm M/s Beltexco Limited got retrofitted (bullet proof) the vehicle Toyota VIGO Registration No.CT-0005 on the basis of fake/ forged NOC purportedly issued from Ministry of Interior bearing No.F.5/21/2010-Security-I, dated 18.10.2010 from M/s Omar Jibran Armoring, A-Division of Omar Jibran Engineering Ltd. Karachi, and as such Ministry of Interior declared the above said NOC as fake/ forged. As per FIR Rana Ahmed Hafeez S/o Fazal Muhammad, Coordinator of M/s Beltexco Limited Karachi was found involved in fake NOC No.F.5/21/2010-Security-I, dated 18.10.2010 and vehicle was for use of Mustafa Kasam Samoji, whereas, name of Major (Rtd) Amir Munshi has been placed in column No.2 of the challan and other petitioners were appointed after the issuance of NOC.

7. FIA authorities submitted the challan and placed the petitioners in column No.2 of the challan while leaving the petitioners at the mercy of the Court. The core question before the Court is that as to whether there was any policy for retrofitting or armored vehicle notified by the Government of Pakistan, Ministry of Interior, the answer is no. This Court has put serious efforts to call the concerned officials of Ministry of Interior, whereby Section Officer, Ministry of Interior as well as Additional Director and I.O of this case have put appearance on number of dates of hearing and they were directed to produce any policy document through which it could be demonstrated that Government of Pakistan has notified any policy for retrofitting of the vehicles, despite best efforts no answer has been placed on record and as such it shows their conduct and they

have no legal authority to ask for any NOC from any individual to conduct any such business or to allow any individual before retrofitting his vehicle in Pakistan.

8. This Court has already dilated upon the question of quashing of FIR No.04/2017, dated 21.03.2017, U/S 419, 420, 468, 471, 109 PPC, P.S. SIU, FIA, Islamabad in W.P No.1997/2017 titled Omer Khan Vs. FOP & others and has quashed the said FIR to the extent of said petitioner whereby following observations have been noted:-

10. *I have asked the Investigation Officer as well as Deputy Director (Law) FIA and the learned State Counsel regarding the status of vehicle in question and the completion of investigation and other co-accused whereby they have placed the record of C.P. No.D-2819/2017 whereby Hon'ble Sindh High Court has passed restraining order against FIA authorities from taking any coercive action against Mustafa Kassam Samoji and the said petition is still pending. However, in the instant matter role of the petitioner is altogether different who is not involved in the preparation, or managing the affairs of fake NOC issued in favor of Beltexco Limited Karachi, even it has not been denied by the Investigation Officer as well as Deputy Director (Law) FIA regarding the status of present petitioner as there is no evidence of his involvement in the entire case.*

11. *In such like situation, power U/S 561-A Cr.P.C. are meant to rescue innocent person from abuse of process who is facing agony of trial, incompetent investigation and who is being humiliated in the society. It has not been denied by the FIA officials that petitioner is highly educated person dealing with his business affairs has obtained his NOC in accordance with law as well as requirements laid down by the Government of Pakistan whereas it is not his duty to verify the credentials of any client from Ministry of Interior as to whether NOC issued by Ministry of Interior, Government of Pakistan to a customer who approaches the petitioner's Company is genuine or otherwise.*

12. *The entire case revolves around the NOC issued in favor of Mustafa Kassam Samoji, Director, Beltexco, Pvt. Limited and the inquiry was also initiated by the Ministry of Interior and the same was not initiated on the basis of any issue concerning present petitioner.*

13. *The above referred resume of the discussion clearly demonstrates that prima facie no offence has been committed by the petitioner and the*

record available with the FIA favors the stance of petitioner and situation requires exercise of jurisdiction in terms of section 561-A Cr.P.C. although there is no denial to a situation that party seeking quashment of FIR has alternate remedy to raise objection regarding the framing of charge or apply alternate remedies under section 265-K and 249-A Cr.P.C. for the cancellation of said case but the circumstances referred before this Court clearly demonstrate that this is a classic case of abuse of process of law and it is the fundamental duty of the Courts to protect citizens from abuse of process of law. Reliance is placed upon 2017 P.Cr.L.J 1104 [Lahore] "Khalid Mehmood and 03 others versus Safdar Iqbal and another", & PLD 2017 Islamabad 64 "Ali Raza & another versus Federation of Pakistan and another". Moreover, there is no incriminating evidence available against the petitioner and continuation of the proceedings before the learned trial Court to the extent of petitioner would be a futile exercise and wastage of time. In such like situation FIRs have been quashed. Reliance is placed upon 2009 SCMR 141 "Muhammad Aslam (Amir Aslam) & others versus District Police Officer, Rawalpindi & others".

14. In view of above this Court is convinced that the very registration of case in particular to the extent of petitioner is based upon abuse of process of law, without evidence and FIA authorities have no evidence to connect the petitioner with the alleged crime, therefore, while exercising powers U/S 561-A Cr.P.C. FIR No.04/2017, dated 21.03.2017, U/S 419, 420, 468, 471, 109 PPC, P.S. SIU, FIA, Islamabad is hereby quashed to the extent of present petitioner only, however, the FIA authorities are at liberty to proceed against other accused subject to decision of Hon'ble Sindh High Court. The observations made in this judgment shall not bar further investigation of the case in any manner.

15. Instant petition stands allowed in above terms.

9. Besides the above referred position the I.O in final report U/S 173 Cr.P.C.

has observed the following:-

During the course of investigation and detail interrogation during physical remand of the accused, it came on record that accused Rana Ahmed Hafeez Executive Coordinator Beltexco (Pvt) Ltd Karachi moved a letter on 17.08.2010 to Ministry of Interior Islamabad for obtaining NOC for armouring of Toyota Vigo. This letter has no record in Ministry of Interior and one fake NOC in the name of Mustafa Kassam Samoji

Executive Director Beltexco (Pvt) Ltd Karachi vide Notification No.F.5/21/2010-Security-1 dated 18.10.2010 with signature of Amjad Mehmood Kayani Section Officer Security-1 Ministry of Interior Islamabad was taken by one Muhammad Nafees who is Manager Admn of Beltexco (Pvt) Ltd. Karachi. This fake NOC was carried by Muhammad Nafees for armouring of bullet proof vehicle to Omer Feroz Khan owner Omer Jabran Armouring (Pvt) Ltd Karachi on 5th of April 2011. This agreement was signed by Omer Feroz Khan and Muhammad Nafees Manager Admn on behalf of Beltexco (Pvt) Ltd Karachi. On this agreement, Omer Feroz Khan started his work as per agreement and completed his work within three months and handed over vehicle to company. The company owner accused Mustafa Kassam Samoji has been detailed summon u/s 160 Cr.P.C. on 14.07.2017 along with 07 questions to reply in person on 18.07.2017 in the light of Hon'ble Sindh High Court Karachi orders that petitioner is bound to reply the questions asked by the Investigation Officer. The reply is awaited. Being beneficiary of fake NOC is required in the subject FIR. So far as the role of accused is concerned after detail interrogation and going through all record of the subject case, it came on record that Omer Feroz Khan was not in picture when NOC was processed and received. All forgery and tempering was done before his agreement. He made agreement being license holder by Ministry of Interior and this fake NOC was provided by another accused Muhammad Nafees, so his name has been placed in Column No.2 at the mercy of court. While accused Muhammad Hafeez who moved a letter for obtaining NOC for bullet proof vehicle of Toyota Vigo and Muhammad Nafees who signed an agreement on fake NOC by producing it as genuine to Omer Jabran Armouring (Pvt) Ltd Karachi are also found guilty in the subject FIR while the beneficiary accused Mustafa Kassam Samoji is also required in the subject FIR for interrogation, against his arrest restraining order has been passed by Hon'ble Sindh High Court Karachi till 22.08.2017. The accused Maj (R) Amir Munshi has joined the company Beltexco (Pvt) Ltd Karachi on 18.06.2015 prior to this fake NOC, so his name also along with name of Omer Feroz Khan is placed in Column No.2 at the mercy of court while accused Rana Ahmed Hafeez (arrested), accused Muhammad Nafees Admn Manager Beltexco (Pvt) Ltd Karachi are found guilty in this FIR while beneficiary owner accused of Beltexco (Pvt) Ltd Karachi Mustafa Kassam Samoji is also guilty but restraining order by Hon'ble Sindh High Court Karachi against his arrest are till 22.08.2017. Accused Muhammad Nafees S/o Muhammad Afzal has been arrested on 17.07.2017. Tomorrow

he will be produced in the Court for his physical remand. After joining the investigation and replying the questions put up in summon to accused Mustafa Kassam Samoji, it will be determine that who is involved from Ministry of Interior and how much amount paid for this fake NOC to whom, it will be clear after joining investigation of accused Mustafa Kassam Samoji who is beneficiary of this NOC. Incomplete Challan u/s 173 Cr.P.C. is submitted to the extent of arrested accused mentioned in column above. It is requested that trial of the case may kindly be initiated against the accused persons.

10. The above referred investigation to the extent of present petitioners clearly spells out that entire case revolves around one document i.e. fake NOC which was allegedly prepared in the name of Section Officer Security-1 Ministry of Interior namely Amjad Mehmood Kayani, however, only photocopy of the said document has been placed in the challan in the trial Court and statement of the said Section Officer was recorded.

11. The trial Court has not yet framed the charge and no further progress has been made in this case before the Special Judge Central, Islamabad and as such role of each individual has to be dealt separately whereby petitioner No.2 Mustafa Kassam Samoji was a customer who owns a vehicle and entered into agreement with company M/s Omar Jibran Armoring, A-Division of Omar Jibran Engineering Ltd. Karachi for retrofitting. The contract was signed between the parties for armoring of the said vehicle against Rs.27,00,000/-, however, there is nothing on record with challan or with investigation officer to demonstrate that document was prepared by the petitioners rather a photocopy has been used as such the primary document is missing despite the fact that there is no policy to obtain NOC for armoring of the vehicle.

12. Record further reflects that, no civil servant has been nominated as accused in this case from the Ministry of Interior and the question of jurisdiction of the Special Court has been assumed by the FIA through submission of challan despite the fact that the primary document as well as public servant are missing

in this regard, however, at this stage this Court cannot separate the role of each and every individual from the list of accused, although one of the accused was already given relief through W.P No.1997/2017 titled Omer Khan Vs. FOP & others. Similarly, a connected writ petition is also pending before the Hon'ble Sindh High Court, Karachi vide C.P No.D-4896/2014 regarding declaration of NOC.

13. In view of above, petitioners can raise all their legal grounds including the facts noted by this Court in preceding paragraphs, through alternate remedy U/S 265-K Cr.P.C. or U/S 249-A Cr.P.C. before trial Court, whereas, learned trial Court seized with the matter is directed to conclude the same in accordance with law within period of 02 months.

14. Instant writ petition stands disposed of in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

 Zahid