

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.1386-2018

Muhammad Idrees

Vs.

Colonel Joseph Emmanuel etc.

Petitioner by : Mirza Shahzad Akbar, Advocate
Respondents by : Raja Khalid Mahmood Khan, DAG
Malik Awais Haider, State Counsel
Abrar Hashmi, D.G. (State Protocol),
Ministry of Foreign Affairs and Khalid
Mahmood, Inspector.

CASE NO. : W.P. NO.1385-2018

Adnan Iqbal

Vs.

Federation of Pakistan etc.

Petitioner by : Petitioner in person
Respondents by : Raja Khalid Mahmood Khan, DAG
Malik Awais Haider, State Counsel
Abrar Hashmi, D.G. (State Protocol),
Ministry of Foreign Affairs and Khalid
Mahmood, Inspector.
Date of hearing : 07.05.2018.

AAMER FAROOQ J. This judgment shall decide instant petition as well as W.P. No.1385-2018, as common questions of law and facts are involved.

2. The facts, leading to filing of above mentioned petitions, are that petitioner in W.P. No.1386-2018, is the father of Attique Baig (deceased), who was killed by respondent No.1 in a car accident, which took place in Islamabad on 07.04.2018. Respondent No.1 is a citizen of United States of America and is posted as Air Defence Attaché at Embassy of United States in Pakistan. On the complaint of petitioner in

W.P. No.1386-2018, FIR was registered bearing No.168 dated 07.04.2018 under sections 320, 337(G), 279, 427 PPC at P.S. Kohsar, Islamabad. According to the contents of FIR, respondent No.1 hit the petitioner's son while driving Land Cruiser No.CD-64-48 (QP-058) at Margalla Road, Islamabad at about 2:55 p.m. on 07.04.2018, whereas the petitioner's son was riding Motorcycle bearing No.ARN/900-ICT. Attique Baig, the petitioner's son, died on spot, while his cousin namely Raheel Ahmad, suffered serious injuries. The entire accident has been recorded in Safe City Project Cameras and apparently, video footage of the accident is also available. The Traffic Police officials as well as officials of Islamabad Capital Territory Police, reached at the spot immediately. The police officials, including respondent No.2, took respondent No.1 to the Police Station, however did not formally arrest him. Allegedly, on verification from Ministry of Foreign Affairs, respondent No.1 was released.

3. Admittedly, neither formal statement of respondent No.1 was reduced in writing nor a '**breath test**' was conducted or blood or urine sample was obtained to determine, whether he was driving while drunk. Initially, the police made entry in Daily Diary (Entry No.19) recording the accident but on 08.04.2018, a formal report was registered i.e. FIR No.168.

4. Respondent No.2 claims that matter has been duly investigated and as a result whereof, report under section 173 Cr.P.C. has been filed before the competent forum. Meanwhile, respondent No.4 made a

request to respondents No.5 & 6 for placing the name of respondent No.1 on Exit Control List (ECL).

5. During the course of proceedings, learned Deputy Attorney General submitted that since respondent No.1 is a 'Diplomatic Agent' therefore due caution is to be exercised to verify the '**immunity**', he enjoys from arrest/investigation and placement of his name on ECL.

6. This Court, on 18.04.2018, directed respondent No.5 to proceed and decide the matter with regard to placement of name of respondent No.1 on ECL in accordance with law, pursuant thereto on 24.04.2018, Qalandar Khan, SO, Ministry of Interior, appeared in person and apprised the Court that request for placement of name of respondent No.1 on ECL is still pending meanwhile, he has been put on Black List.

7. This Court, after hearing preliminary arguments on 24.04.2018, framed six different questions in order to resolve the controversy involved in these petitions. For ease of convenience, said questions are reproduced below:-

- i. Whether the immunity provided in Article 31 includes the immunity from investigation?*
- ii. Since the immunity of diplomatic agent does not exempt him from the jurisdiction of the sending State, whether the investigation in the matter is to be conducted by the receiving State or the sending State?*
- iii. In order to investigate an accused whether request is to be made for the said purpose by the receiving State to the sending State?*
- iv. In case the investigation is conducted by the sending State whether it is their prerogative to commence prosecution of the accused before the competent courts of the sending State?*
- v. In case the investigation is conducted by the receiving State and during the investigation the accused is found prima facie responsible whether the government of receiving State shall accordingly make a request for prosecution of the diplomatic*

agent to the sending State and in case of refusal by the sending State the consequence?

vi. Whether travel restrictions by placing the name of any accused who is a diplomatic agent be imposed under Vienna Convention or laws of Pakistan?

8. Learned counsel for the petitioner in W.P. No.1386/2018, *inter alia*, contended that diplomatic immunity, from criminal and civil suits, has been an international practice and has been reduced in Vienna Convention on Diplomatic Relations, 1961. It was contended that under the Convention, Diplomats and their families, have ‘immunity’ in receiving State’s civil and administrative jurisdiction; that principle of diplomatic immunity cannot signify ‘impunity’. Reliance was placed on cases reported as ‘Dickinson Vs. Del Solar’ [1930] 1 K.B. 376’ and ‘Empson Vs. Smith’ 1 Q.B. 426 (1996). It was further submitted that under Article 31 of the Vienna Convention, the Treaty has to be incorporated in good faith in accordance with the ordinary meaning to be given in terms thereof. It was highlighted that the purpose of the Treaty is provided in its preamble to enforce the efficient performance of the functions of the Diplomatic Missions as representing states. Moreover, by virtue of Article 31 of the Convention, a ‘Diplomatic Agent’ enjoys ‘immunity’ from criminal jurisdiction of a State. In this behalf, jurisdiction over a fact, presupposes that a crime has taken place. It was contended that Author Rain Livojia has expressed in an Article that the ‘criminal jurisdiction of states’ is not a fact but a legal assessment of facts.

9. Learned counsel further submitted that bar provided with regard to prosecution under ‘The Diplomatic Immunities and Consular

Privileges Act, 1972' is procedural in nature and not substantive. Reliance was placed on case reported as 'A.N. Qureshi Vs. Union of Soviet Socialist Republic' (**PLD 1981 SC 377**). Learned counsel next contended that 1972 Act must be read in consonance with the Constitution of Pakistan, especially the fundamental rights enshrined therein by virtue of which, it is provided that fundamental rights of a citizen, cannot be curtailed or restricted.

10. Learned counsel further contended that since the '**immunity**' is enjoyed by a 'Diplomatic Agent' from criminal jurisdiction, it does not include investigation of the criminal offence. Since the bar is not absolute therefore the Agent can be prosecuted in the sending State. In this behalf, it was contended that it is the failure on part of respondent No.2 to investigate the matter properly by reducing the statement of respondent No.1 in writing and obtaining his blood and urine samples for verifying whether he was drunk at the time of accident. It was further contended that police officials investigated the matter negligently. Learned counsel further emphasized that investigation, of a criminal offence involving a 'Diplomatic Agent', is prerogative of the receiving State and is not hit by the '**immunity**' enjoyed by a 'Diplomatic Agent'. It was further submitted that since the matter, ultimately, is to be tried either in the receiving State or the sending State therefore criminal offence has to be investigated and all, including respondent No.1, have to cooperative for this purpose. Learned counsel contended that there is no express prohibition on travel restrictions, either internationally or locally, qua Diplomats, hence they are to be treated in accordance with

law. It was contended that in light of Section 2 of Exit from Pakistan (Control) Ordinance, 1981 read with Rule 2(c) of Exit from Pakistan (Control) Rules, 2010, the Federal Government is empowered to put any person, involved in a heinous offence, on Exit Control List. Reliance was placed on case reported as ‘Prime Minister’s Inspection Team, National Highway Authority Vs. Zaheer Mirza’ (**2011 SCMR 371**). It was also contended that Federal Government needs to devise a Comprehensive Code and Standard Operating Procedure (SOP) for enabling police authorities to act in such like situations.

11. The petitioner, in W.P. No.1385-2018, while appearing in person, *inter alia*, contended that provisions of ‘The Diplomatic Immunities and Consular Privileges Act, 1972’ and ‘Vienna Convention’ are in violation of the fundamental rights as guaranteed in the Constitution of Pakistan. It was requested that direction be issued to the Federal Government to take steps, to bring these provisions, in consonance with the Constitution of Islamic Republic of Pakistan. Apart from above, the petitioner adopted the arguments addressed by learned counsel for the petitioner in W.P. No.1386-2018.

12. Learned Deputy Attorney General, *inter alia*, contended that Vienna Convention, which was adopted by Pakistan and became of law of land under ‘The Diplomatic Immunities and Consular Privileges Act, 1972’, a ‘Diplomatic Agent’ enjoys certain immunities and protection. Learned Deputy Attorney General took the Court through the provisions of Vienna Convention, whereby diplomatic immunity can be claimed and enjoyed accordingly. He placed reliance on case reported as

‘Ghulam Muhammad Vs. United States Agency for International Development (US Aid) Mission, Islamabad & Another’ (1986 SCMR 907).

13. Respondent No.2, appearing in person, contended that statement of respondent No.1 was reduced in writing and after investigation, report under section 173 Cr.P.C. has been filed before the competent forum.

14. The arguments advanced by learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

15. Petitioner, in the instant petition, has sought the following relief:-

“That in view of the foregoing law and facts, it is humbly prayed that the Court may kindly:

- i. Direct Respondents No.2, 3 and 4 (SHO, IG and Chief Commissioner):
 - a) *to ensure that fair and transparent investigation is conducted with regard to the allegations contained in FIR No.168/2018 against the accused person;*
 - b) *to arrest the accused person unless they are satisfied, for reasons to be recorded, that such arrest is not necessary to secure the ends of justice;*
 - c) *complete the investigation of FIR No. 168/2018 at the earliest and submit Police Report under S. 173 Cr. PC (challan) before competent court at the earliest;*
 - d) *conduct disciplinary proceedings against those police officials who were responsible for the illegalities alleged in this Petition.*
- ii. Direct Respondents No. 5 and 6 (Federal Government and Secretary Interior) *to ensure that Respondent No. 1, accused in FIR No. 168/2018, is put on the Exit Control List forthwith and remains on it till the conclusion of the case against him.*
- iii. Direct Respondent No. 3 and 4 (IG and Chief Commissioner) *to submit a report to this Hon’ble Court regarding the investigation and fate of similar incidents in ICT involving the death of Pakistani citizens by rash driving of foreign diplomats.*
- iv. *Grant such relief as may be appropriate”*

Petitioner, in W.P. No.1385-2018, also seeks similar relief and in addition, direction to the Federal Government for amending the law on

the diplomatic immunity to bring it in harmony with the Constitution of the Islamic Republic of Pakistan, 1973.

16. Admittedly, Colonel Joseph Emmanuel, is working as Air Defence Attaché in U.S. Embassy in Pakistan hence is a 'Diplomatic Agent' for the purpose of Article 1 of Vienna Convention on Diplomatic Relations, 1961 (VCDR). Under Article 1 (e) of VCDR, a 'Diplomatic Agent' is the Head of a Mission or a Member of the Diplomatic Staff of the Mission. In 1961, to codify the immunities and privileges to be enjoyed by a 'Diplomatic Agent', VCDR was acceded to by signatory States, The provisions of VCDR, were duly made law of Pakistan through 'The Diplomatic Immunities and Consular Privileges Act, 1972'. In this behalf, section 2(1) of the Act, reads as follows: -

‘2. Provisions of Conventions to have force of law.-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the provisions of the Vienna Convention on Diplomatic Relations, 1961, set out in the First Schedule and the Vienna Convention on Consular Relations, 1963, set out in the Second Schedule shall, subject to the other provisions of this Court, have the force of law in Pakistan”.

The bare reading of the above Section shows that Articles of VCDR, mentioned in the first Schedule to the Act, have the force of law in Pakistan. The salient Articles, for the purposes of present controversy, are as follows: -

ARTICLES 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 30

1. *The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.*
2. *His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property shall likewise enjoy inviolability.*

ARTICLE 31

1. *A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:*

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. *A diplomatic agent is not obliged to give evidence as a witness.*

3. *No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a),(b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.*

4. *The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.*

ARTICLE 32

1. *The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.*

2. *The waiver must always be express.*

3. *The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim, directly connected with the principal claim.*

4. *Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in*

respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 37

1. *The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State enjoy the privileges and immunities specified in Articles 29 to 36.*

2. *Members of the administrative and technical staff of the mission, together with members of their families form part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of the Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36 paragraph 1, in respect of articles imported at the time of first installation.*

3. *Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.*

4. *Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. however, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.*

ARTICLE 39

1. *Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other Ministry as may be agreed.*

2. *When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such*

person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. *In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.*

4. *In the event of the death of a member of the mission, not a national of or permanently resident in the receiving State or of a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.*

The ‘immunity’, provided in the above mentioned Articles, is not absolute and can be modified or amended by the Federal Government under section 3 of the Act, which reads as follows:-

“Restriction of Privileges and immunities.- *If it appears to the Federal Government that the privileges and immunities, accorded to the mission or a consular post of Pakistan in the territory of any State, or to persons connected with that mission or consular post, are less than those conferred by this Act on the mission or a Consular post of that State or on persons connected with that mission or consular post, the Federal Government may, by notification in the official Gazette, withdraw such of the privileges and immunities so conferred from the mission of that State or, as the case may be from all or any of the consular posts of that State, or, as from such persons connected therewith as it may deem fit”.*

17. The crux of the above provisions is that, Articles of VCDR mentioned in Schedule-I to the Act, have the force of law in Pakistan. Under section 3 of the Act, the privileges and the immunities can be modified and even withdrawn by the Federal Government. A ‘Diplomatic Agent’ is not to be arrested or detained and his ‘person’ is inviolable. He shall enjoy the ‘immunity’ from the criminal jurisdiction

of the receiving State as well as civil and administrative jurisdiction thereof with three exceptions; the 'Diplomatic Agent' is not obliged to give evidence however the **'immunity'** of a 'Diplomatic Agent' is in respect of jurisdiction of the receiving State, and does not exempt him from jurisdiction of the sending State, meaning thereby that if there is a civil claim against him or he is to be tried for a criminal offence in the receiving State, which is not possible due to his **'immunity'**, he can still be tried in the sending State i.e. the country, on whose behalf, he is acting as a 'Diplomatic Agent'. Moreover, the **'immunity'** provided to the 'Diplomatic Agent' from jurisdiction, may be waived by the sending State however waiver must be express. The **'immunity'** enjoyed by a 'Diplomatic Agent', is also enjoyed by his family. In this regard, the 'immunities and privileges', are enjoyed by a person entitled to enjoy the same when he or she, enters the territory of the receiving State to take up his/her post and if already in its territory from the moment when his appointment is notified to the Ministry of Foreign Affairs or any such other Ministry. The 'immunities or privileges' end at the moment, the person leaves the country.

18. There is no case law on the subject of 'Diplomatic Immunities and Privileges' in Pakistan, which determines the extent and nature of such immunities and privileges. However, in case law reported as 'A.N. Qureshi Vs. Union of Soviet Socialist Republic' (**PLD 1981 SC 377**), the august Apex Court observed that statutes relating to Diplomatic Immunities and Privileges, are procedural statutes.

19. In order to determine the extent, scope and nature of Diplomatic Immunities and Privileges, benefit is drawn from case law propounded by the other jurisdictions, especially United Kingdom.

20. In case reported as ‘Dickinson Vs. Del Solar’ [1930] 1 K.B. 376, Lord Hewart C.J. observed that diplomatic agents are not, in virtue of their privileges as such, immune from legal liability for any wrongful acts. The accurate statement is that they are not liable to be sued in the English Courts unless they submit to the jurisdiction. Diplomatic privilege does not import ‘immunity’ from legal liability, but only exemption from local jurisdiction. The privilege is the privilege of the Sovereign, by whom, the diplomatic agent is accredited and it may be waived off with the sanction of the Sovereign or of the official superior of the Agent.

21. In case reported as ‘Empson Vs. Smith’ 1 Q.B. 426 (1996), the Court of Appeal of the United Kingdom, held as follows:-

“(1) that, as the law stood at the time that the proceedings were begun, the defendant was covered by diplomatic immunity, and the proceedings could not be lawfully maintained while that immunity remained, but that the action subsisted until struck out by the judge and the stay imposed by the registrar could have been removed and the action allowed to proceed if the immunity had been lost either by a valid waiver or, in respect of acts done by the defendant in his personal capacity, by the cessation of his diplomatic employment; that a change in the law similarly permitted the action to proceed, if not barred by the Limitation Act, 1939, if it removed the immunity previously enjoyed, which was probably the case here”

22. The International Court of Justice, in case reported as ‘United States and Diplomatic and Consular Staff in Tehran Vs. Iran (Judgment dated 24.05.1980), observed as follows:-

“There is no more fundamental prerequisite for the conduct of relations between States [...] than the inviolability of diplomatic envoys and embassies, so that

throughout history nations of all creeds and cultures have observed reciprocal obligations for that purpose [...]. The institution of diplomacy, has proved to be "an instrument essential for effective cooperation in the international community, and for enabling States, irrespective of their differing constitutional and social systems, to achieve mutual understanding and to resolve their differences by peaceful means."

23. The name of any person can be placed on Exit Control List by the Federal Government under section 2 of Exit from Pakistan (Control) Ordinance, 1981 read with rule 2(c) of Exit from Pakistan (Control) Rules, 2010. In case reported as ‘Prime Minister’s Inspection Team, National Highway Authority Vs. Zaheer Mirza’ **(2011 SCMR 371)**, the Hon’ble Supreme Court ordered that names of respondents, who were connected directly or indirectly with the collapse of Fly Over, were to be put on Exit Control List. The use of words ‘any person’ in 1981 Ordinance means that a person, who is residing temporarily in Pakistan and is likely to leave and never come back to evade law of Pakistan, even his/her name can be put on Exit Control List. For ease of convenience, Section 2(1)(2)(3) of the Ordinance is reproduced below: -

“2. Power to prohibit exit from Pakistan.— (1) The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.

(2) Before making an order under sub-section (1), the Federal Government shall not be necessary to afford an opportunity of showing cause to the person against the order.

(3) If, while making an order under sub-section (1) it appear to the Federal Government that it will not be in the public interest to specify the ground on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds”

Likewise, Rule 2 of the Exit from Pakistan (Control) Rules, 2010 is as follows:-

“2. Grounds to prohibit persons from proceeding from Pakistan to a destination outside Pakistan:- (1) The Federal Government may, by an order in writing under sub-section (1) of section 2 of the Exit From Pakistan (Control) Ordinance, 1981 (XLVI of 1981), prohibit any person from proceeding from Pakistan to a destination outside Pakistan notwithstanding the fact that any person is in possession of valid travel documents, if he is involved in:--

- a) Corruption and misuse of power or authority causing loss to the government's funds or property;*
- b) Economic crimes where large government's funds have been embezzled or institutional frauds committed;*
- c) acts of terrorism or its conspiracy, heinous crimes and threatening national security;*
- d) case of key directors of a firm, in default of tax or liabilities of not less than ten million rupees;*
- e) case of two or more key or main directors of a firm, in default of loan or liabilities exceeding one hundred million rupees;*
- f) any case and his name forwarded by the registrar of a High Court, Supreme Court of Pakistan or Banking Court only; or*
- g) Drug trafficking.*

2. Nothing in sub-rule (1) shall apply to-

- a) persons involved in private disputes where government interest is not at stake, except cases of fraud against foreign banks and reputable companies with significant foreign investments;*
- b) persons involved in crime like murder and dacoity etc., unless special grounds are furnished by the relevant home departments;*
- c) directors who represent foreign investment in business;*
- d) women or children undergoing Education who are appearing as directors merely due to their family relationship with major share holders; “*

24. Applying the above law to the present facts and circumstances, Colonel Joseph Emmanuel is a ‘Diplomatic Agent’ and enjoys **‘immunity’** from being arrested or detained. He also enjoys **‘immunity’** from appearing as a ‘witness’ or tried for the criminal charges levelled against him in FIR No.168 of 2018. The referred **‘immunity’** only protects him to be tried in the receiving State i.e. Pakistan however, he can still be tried for the said offence, with which he has been imputed in the sending State i.e. United States of America. In order to be tried in Pakistan, the Government of United States of America or the Head of

Mission of United States in Pakistan has to expressly waive off the exemption. The words, used in Article 31(1) of VCDR that the ‘immunity’, is with respect to criminal jurisdiction of the receiving State. Generally, this means that he cannot be tried for a criminal offence in Pakistan however it is not clear, whether this ‘immunity’ extends to the investigation of the offence. The word ‘jurisdiction’ as defined in Oxford Paper Pack Dictionary in 4th Edition, is ‘administration of justice’, ‘the official power exercised within a particular affairs of activity, ‘the extent or territory over which, legal or other powers extend’.

25. Investigation is defined in Section 4(l) Code of Criminal Procedure, 1898, in the following terms:-

“Investigation includes all proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf”

The Honourable Lahore High Court in case reported as ‘Abdul Latif versus Inspector General Police, etc’ (1999 P.Cr.L.J. 1357), elucidated the concept of investigation in the following words:-

“19. Thus, under the Code, Investigation consists generally the following steps; (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consists of (a) examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produces at the trial, and (5) Formation of the opinion as to whether on the trial, and if so, taking the necessary steps for the same by the filing of a charge sheet section 173.

From the scheme of the Code it is apparent that while it is permissible for an Officer Incharge of a Police Station to depute some subordinate Officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of Officer Incharge of the Police Station it having been clearly provided in section 168 that when a subordinate officer makes an investigation he should report the result to the Officer Incharge of the Police Station. It is also clear that the final step in the investigation, viz. the

formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the Officer Incharge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior Officer to supervise or participate under section 551.

20. The basic duty of the police is to keep law and order situation in the country in order. It is only possible if the offender is convicted and sentenced in a shortest possible time. This purpose can be achieved when the investigating Agency/Police perform its duties diligently, fairly and justly”

26. Since the **‘immunity’** from trial and punishment is not absolute and is only with respect to the courts of receiving State and a ‘Diplomatic Agent’ can still be tried for the offence in his country therefore one would conclude that there is no ‘bar or immunity’ qua the investigation of a criminal offence, meaning thereby that a ‘Diplomatic Agent’ can be interviewed by the Investigating Agency in the receiving State, however the **‘immunity’** exists from arrest and detention. Moreover, ‘Diplomatic Agent’ is to be treated with dignity and these aspects have to be kept in view while conducting the investigation of the matter.

27. In the present case, respondent No.2 in person, reported that investigation stands concluded and report under section 173 Cr.P.C. has been filed before the competent authority. It is felt that police, in the instant matter, acted with undue haste and performed its functions negligently.

28. Naturally, the trial cannot commence because of the **‘immunity’** enjoyed by respondent No.1. In this backdrop, the Federal Government can take up the issue with the Government of United States of America for waiver of **‘immunity’**, in case, it wishes that respondent No.1 should be tried for the alleged offence(s) committed in Pakistan. Otherwise, a

request can be forwarded to the Government of United States of America for trial of respondent No.1 for the offences mentioned in FIR No.168 of 2018 in United States of America. In case, the Government of United States of America refuses to try respondent No.1 or proceed further, the matter can be agitated before the competent forum for enforcing the terms of the Treaty i.e. VCDR and seeking remedies provided under the law, if any.

29. The use of words 'any person' in Exit from Pakistan (Control) Ordinance, 1981 and the Rules framed there-under, means that it is not confined only to citizens/nationals of Pakistan but any person, who is within Pakistan and his case falls within parameters laid down in Rule 2 *ibid*. Under the Rules, for offences like murder etc., name of a person is not placed on Exit Control List unless special grounds are furnished by relevant home departments.

30. The provisions of the Act as well as the Treaty are silent over the issue of placement of name of a 'Diplomatic Agent' on Exit Control List or with regard to restriction on his movement. However, it is also to be kept in view that under Article 29 of VCDR, a 'Diplomatic Agent' cannot be detained and his freedom or dignity is to be respected by the receiving State therefore restriction on his movement, should not be of the nature, which amounts to detention or otherwise curtails his freedom of movement.

31. The petitioner in W.P. No.1385-2018, if is not satisfied with the investigation so far conducted by respondent No.2, may move an appropriate application under the law seeking appropriate directions in

this behalf. In the instant petition, direction is sought for placement of name of respondent No.1 on Exit Control List. However, since application for placement of his name on Exit Control List is pending before respondent No.6, therefore it is just and proper that the same be decided by the Federal Government as provided in 1981 Ordinance and Rules framed there-under.

32. The courts generally refrain from entering the domain of Executive and take decisions on its behalf. In exercise of jurisdiction under Article 199 of the Constitution, the courts can examine the validity of executive decision on touchstone of accepted parameters. Though under the Rules of 2010, the Federal Government can place the name of any person on Exit Control List on the orders of a High Court, however, since the matter is already pending before the competent authority i.e. the Federal Government, hence it just and proper that the issue of placement of name of respondent No.1 be decided by it. Respondent No.6 is, therefore, directed to decide the application for placement of name of respondent No.1 on ECL in accordance with law, especially in light of observations made hereinabove expeditiously preferably within a period of two weeks from the date of this order. The compliance of this order shall be intimated to Deputy Registrar (Judicial) of this Court. In case, the needful is not done as directed, or the petitioners are, in any way, aggrieved of decision, they may seek appropriate remedy.

33. The request for issuance of direction to the Federal Government qua amendment of the Act, made in W.P. No.1385-2018, is turned down

W.P. No.1386-2018 & 1385-2018

inasmuch as no specific provision of the Act, was pointed out, which violates other laws of Pakistan or provisions of the Constitution.

34. In view of above, instant petition and W.P. No.1385-2018 are disposed off in terms of observations and directions made in the preceding paragraphs.

**(AAMER FAROOQ)
JUDGE**

Announced in Open Court on 11.05.2018.

JUDGE

Approved for reporting.

Zawar

Uploaded by: Zulqarnain Shah