

# ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. ICA 86-2012

Titled Tashfeen Qayyum  
Vs

Magistrate (Saddar) ICT etc

(a) Judgment approved for reporting

☒ Yes / ☐ No

(b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made.

Yes ☐ ☒ No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

D. M. R. S. H.  
Initial of the Judge.

## NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

# ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO.: INTRA COURT APPEAL NO.86 OF 2012.

**TASHFEEN QAYYUM**

**VERSUS**

**MAGISTRATE (SADDAR) ICT AND 2 OTHERS**

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

27.02.2012

Raja Inam Ameen Minhas, Advocate for the  
appellant.

**NOOR-UL-HAQ N. QURESHI J.-** The instant Intra Court appeal, directed against order dated 21.02.2012 passed by learned Single Judge in Chamber, accepted the writ petition filed by the appellant/ respondent in the writ petition.

2. The facts in brief as stated, the appellant is CEO of M/S Eastern Testing Services (Pvt.) Limited, is a Petroleum Engineer. Due to his capabilities, the said ETS Company started business in the field of oil. Appellant became CEO of the Company, who as per contention till today holding the same post performing his duty, made personal efforts and skill in establishing and developing the business of the Company. With the affairs of the company, he was out of country when other directors tried to remove the appellant from the post of CEO, therefore, he filed a suit for declaration and permanent injunction before the learned Civil Judge, Islamabad, who preliminary passed restraining orders not to hold an Extra Ordinary General Meeting by acting on the so called resolution dated 16.01.2011. The

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defendant filed an application under Section 34 of the Arbitration Act, 1940 for referring the matter to the Arbitrator, which was dismissed being not maintainable with observation to file afresh application under Section 34 of Arbitration Act, 1940 on behalf of authorized persons, if so advised. Such application was moved for staying the suit and referring the matter to Arbitrator. In pursuance thereof, the proceedings were stayed and directed the parties to resolve their dispute through Arbitrator. Appeal preferred to the District Judge, Islamabad, who vide order dated 16.3.2011 provided favour to the appellant. The said judgment was challenged before Islamabad High Court, Islamabad in Revision petition No.37 and after preliminary arguments, High Court vide order dated 13.4.2011 maintained the order, directed the parties to maintain status quo, while order of the learned Addl: District Judge, Islamabad has not been suspended. As per orders of the Hon'ble Courts, appellant is still CEO of the Company and has not been removed by any person unless the orders of the Courts are set aside. In the present writ petition, the petitioner has done impersonation and in violation of the orders of the Court, have mentioned that some body else is the CEO of the Company. Beside other allegations, it is also contended that FIR No.469 was registered on 19.02.2011 at Police Station Sabzi Mandi to pressurize and harass the appellant, when FIR No.271 was lodged on 18.4.2011 under Sections 420, 468, 471/34 PPC at Police Station Shalimar, Islamabad against Imran Qureshi, Fawad Zafar, and Abdul

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Razaq etc by brother of Chief Executive of ETS. On 19.4.2011, another false and fabricated FIR No.174 was also lodged against the appellant and his brother. Since there is dispute going on between shareholders of ETS and there is every likelihood of breach of peace and similar incidents have occurred in past. Therefore, Ilqa Magistrate, upon the request of police is conducting an inquiry, which process is going on. The facts in Intra Court Appeal are the same as before the Ilqa Magistrate, who after conducting detail probe, would pass an appropriate order. The moment the Ilqa Magistrate has passed the interim order after hearing both the sides, respondent No.3 assailed the said interim order through writ petition.

3. The writ petition was placed before his Lordship Mr. Justice Riaz Ahmad Khan, J, who decided the same vide order dated 21.02.2012, which being aggrieved has been challenged through the instant Intra Court Appeal.

4. Learned counsel for the appellant argued that the dispute is running between the parties though over post of CEO. Since the property was sealed by the police under the order of Ilqa Magistrate dated 30.01.2012, therefore, now question arises to whom the property will be delivered on its de-sealing and if de-sealing is ordered, it will create multiple litigation between the parties, as both are the claimants of post of CEO.

5. Learned counsel for the appellant also relied upon case law reported in **"2001 SCMR 290 (Bashir Ahmad Vs. M/S Roots School NetWork through Administrator/**

**owner and others), PLD 2006 Lahore 649 (Abdul Majeed Vs. Noor Muhammad and 2 others) and 1998 P.Cr.L.J. 1610**". Learned counsel for the appellant has also emphasized that there is breach of peace, therefore, the only way to resolve the dispute is of sealing property. But on raising query respecting action to be initiated by the police under Part IV Chapter 8 and Chapter 13 are required to be initiated against person found committing such act, provided therein for keeping peace and good behaviour, but the matter cannot be dragged under Section 145 Cr.P.C by adopting an illegal course, which in the instant case has been initiated.

6. Arguments heard. Record perused.

7. At the very outset, we would like to discuss the very order passed by concerned Ilaqa Magistrate, who after elaborating background of the dispute between the parties, in Para-3 of the order dated 30.01.2012 has given justification for taking cognizance or taking proceedings under Section 145 Cr.P.C. For convenience, Para-3 is reproduced hereunder:-

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 "After perusal of the record produced by the Police, it is clear that both the parties are taking different stances and claiming themselves to the Chief Executive Officer/Director/Owner of Company which is a bone of contention between the parties and the said dispute may likely cause breach of the peace in the premises. There is also a great apprehension that the parties shall fight with each other for the possession over the subject property which may cause bloodshed and breach of peace in the area."

8. From the above order, it transpires that learned Ilaqa Magistrate (Saddar), ICT, Islamabad has totally ignored very essential requirements of Section 145 of Cr.P.C, which requires the mandate of law to be enforced for even passing an interim order for sealing the property.

9. For the purpose of taking cognizance by the Ilaqa Magistrate on police report or other information satisfies the Magistrate that dispute likely to cause breach of peace concerning in land or water or the boundaries thereof, within the jurisdiction, but in the instant matter, neither any land, or water, or boundaries thereof, on which, dispute arose, which causes breach of peace has never alleged by either side but the version was recorded by both the sides is a dispute over the post of CEO, for which, they lodged FIR against each other as observed from the contents of the petition.

10. For the convenience, Section 145(1) is reproduced hereunder:-

**Procedure where dispute concerning land, etc., is likely to cause breach of peace.** (1)

Whenever a Magistrate of the 1st class is satisfied from a police-report or other information that a dispute likely to cause breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of being so satisfied, and requiring the parties concerned in such dispute to attend his court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statement of their respective claims as respects the facts of actual possession of the subject of dispute.

11. It is a mandatory requirement of law as envisaged by minute reading of the entire Section 145 Cr.P.C., leads to following principles, which are:-

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- (i) There must be a dispute.
- (ii) Such dispute is likely to cause a breach of peace.
- (iii) Dispute is concerning land, water, building, markets, fisheries, crops or other produce of land and the rents or profits of such property.
- (iv) Dispossession should be within two months prior to the interim order passed by the Magistrate, and
- (v) Dispute is within territorial jurisdiction of the Magistrate concerned.

12. From the above principles, generally envisages as a whole Section 145 Cr.P.C. provides and beyond that the jurisdiction cannot be exercised by the concerned Magistrate. From the perusal of the order, it become crystal clear that learned Magistrate while passing order of sealing the property, which is office of ETS and it is apparent from the very order itself that the dispute may likely cause breach of peace in the premises.

13. Apparently, there is no dispute on the possession of the office but dispute running between the parties is over the post of CEO, for which, already with the majority of shareholders by adopting legal course, the present appellant has already been removed as CEO and Director, such fact has also been confirmed by the official correspondence available in the file of writ petition.

14. The very Intra Court Appeal, facts narrated therein, the appellant himself has discussed pendency of civil litigation seeking declaration and permanent injunction for the post of CEO, therefore, such a dispute is already

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pending adjudication before the Civil Court. Hence, it is for the Civil Court to decide such issue raised before it and cannot be decided by the Ilaqa Magistrate while assuming jurisdiction through his order, which he passed. Otherwise, it is a settled principle of law that where dispute respecting any issue has been regulated by Civil Court, the matter falls outside the jurisdiction of Ilaqa Magistrate under Section 145 Cr.P.C. Therefore, under such circumstances, interference of the Ilaqa Magistrate is nullity in the eyes of law and the basic principle regulating Section 145 Cr.P.C. has been ignored, while passing order dated 30.01.2012 by the Ilaqa Magistrate, which has been, rightly annulled by the learned Single Judge in Chamber.

15. So far the concern of case law referred by the learned counsel for the appellant, we would like to discuss the case reported in "**2011 SCMR 290**", which enunciates with a question of fact liable to be answered on the basis of available record is questioned in the writ petition invoking jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan. It is observed that factual determination or interference in such order passed by the competent Courts vested with statutory powers in the exercise of their function, unless, there is a jurisdictional error or other legal infirmity such as arbitrariness etc. in the order assailed before the High Court.

16. We have already observed the jurisdictional error of the Magistrate while passing order ignoring the legal procedure envisages in Section 145 Cr.P.C. Therefore, the



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authority referred by the learned counsel is supporting our view. So far the concern of next authority reported in "**PLD 2006 Lahore 649**", which though discussing the interim order cannot be challenged in the constitutional jurisdiction of the High Court, but in the last lines of the order, the learned Court has also discussed that jurisdictional error if committed, the said order can be interfered by the writ jurisdiction.

17 So far the concern of third authority reported in "**1998 P.Cr.L.J. 1610**" is an authority discussing bail matter have no nexus with the present matter as no any authority available on its next page i.e. 1611.

18. In view of above discussion, we reached to the conclusion that the learned Single Judge in Chamber has rightly exercised the jurisdiction through writ petition while setting aside order dated 30.01.2012 passed by Ilaqa Magistrate, ICT, Islamabad finding jurisdiction error therein.

19. In view of above legal perspective, the present ICA merits no consideration, as such, the same is **dismissed in limine**, with no order as to costs.

(CHIEF JUSTICE)

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

\*AR.ANSARI/

*Approved for reporting.**Blue Slip is added.*