

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Misc. No. 956/M/2018

Raja Ansar Mehmood

Versus

The State and others.

Petitioner by: Sardar Nasir Ahmed Saghir, Advocate

Respondent No.1 by: Raja Muhammad Aftab Ahmed, AAG.
Tahir Khan, A.D, F.I.A/I.O, CCC, Islamabad.

Respondent No.2 by Mr. Khalid Mehmood Khan and Mr. Muhammad
Zafar Khokhar, Advocates.

Date of Decision: 07.09.2020.

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MOHSIN AKHTAR KAYANI J. Through the instant petition, the petitioner has prayed for initiation of proceedings in terms of Section 476 Cr.P.C read with Sections 193/196 to 199 PPC against the respondent No.2/Ansar Mehmood Gondal and to award punishment for making false statement as well as submission of false affidavit in the Court.

2. Learned counsel for the petitioner contends that respondent No.2 is an accused in case F.I.R No. 01 dated 30.01.2017, under Section 109, 409, 420, 468, 471 PPC read with 5(2) 1947 PCA, P.S F.I.A/CCC, Islamabad, which is pending adjudication before learned Special Court, Islamabad. However, during the course of proceedings respondent No.2 filed Crl. Misc. 297/BC/2018, Crl. Misc. No. 288/BC/2018, Crl. Misc. No. 207/BC/2018 and Crl. Misc. No. 208/BC/2018 titled as **“Ansar Mehmood Gondal Vs. The State and another”** against the different individuals for cancellation of their pre-arrest bails granted to them vide order dated 07.03.2018 by claiming himself to be the complainant of the F.I.R, however, the said criminal miscellaneous petitions have been dismissed as withdrawn vide orders dated 16.04.2018 and 10.09.2018 respectively from this court. It has further been argued that respondent No.2 was never complainant in the abovementioned F.I.R, rather the said criminal case has been registered on

the source report of the F.I.A Department dated 16.11.2012 referred by Rana Abid Hussain, Inspector, F.I.A/CCC and as such the claim of respondent No.2 is based upon false statement and even his affidavit is false, therefore, he is liable to be prosecuted in terms of Section 476 Cr.P.C read with Sections 193/196 to 199 PPC in accordance with the procedure prescribed in summary trial in chapter XXII of Code of Criminal Procedure.

3. Conversely, learned counsel for respondent No.2 contends that he had initially filed a complaint to the F.I.A Authorities being President of Civilian Employees Cooperative Housing Society, which was made basis of the source report and as such he was though not actual Complainant, but he being custodian of the society is duty bound to proceed against the accused persons, who have extended loss to the society and misappropriated huge amount by creating 57 commercial plots and 158 residential plots in violation of the CDA by-laws as well as layout plan.

4. Arguments heard and record perused.

5. Perusal of record reveals that the entire case revolves around the conduct of respondent No.2, who has filed four bail cancellation petitions i.e. Crl. Misc. 297/BC/2018, Crl. Misc. No. 288/BC/2018, Crl. Misc. No.207/BC/2018 and Crl. Misc. No. 208/BC/2018 titled as **"Ansar Mehmood Gondal Vs. The State and another"** against Chaudhry Adeel Shafiq, Ex-President of Civilian Employees Cooperative Housing Society and Raja Ansar Mehmood (present petitioner) Ex-General Secretary of the Society by claiming himself to be the complainant of the case i.e. F.I.R No. 01 dated 30.01.2017, under Section 109, 409, 420, 468, 471 PPC read with 5(2) 1947 PCA, P.S F.I.A/CCC, Islamabad, despite the fact that he was not Complainant of the said F.I.R.

6. In order to resolve the controversy, Para-1 of the cancellation petition is reproduced hereunder:-

"That the petitioner was elected President of M/s civilian Employees Co-operative Housing Society, Office At House No. 18, Street No. 4, Block-F, Soan Garden Housing Scheme Islamabad Highway, Islamabad in election 2015

and is actual complainant of above captioned case, which was got registered consequent upon an inquiry conducted on his application. Copy of FIR is annexed as Annexure 'A'."

7. While considering the above paragraph of the petition, respondent No.2 has been confronted as to whether he has claimed himself the Complainant of the said F.I.R, whereby he has taken a categorical stance that he had initially filed a complaint to the F.I.A Authorities against respondent No.2 and others for causing loss to the society through fraud and other means and he was also arrayed as witness by the FIA authorities in the final challan submitted in the Court of Special Judge.

8. I have also gone through the record of F.I.A regarding the said criminal case, which reveals that a source report was generated on 16.11.2012 by the F.I.A Authorities regarding corruption and malpractice in the Soan Garden Housing Society, whereby Regular Inquiry No. 44/12 was initiated by the F.I.A, which remained pending till the registration of F.I.R No. 01/2017 dated 30.01.2017, although a fresh complaint was also received by the F.I.A authorities from the President of the Society i.e. respondent No.2, which was recorded in the minute sheet of the F.I.A by Iftikhar Ahmad Khan, A.D/CCC dated 30.11.2016, this fact if placed in juxtaposition with the stance taken by the petitioner in Para-1 of the cancellation petition, the term **"actual complainant of the abovementioned case"** stand justified, whereby respondent No.2 bonafidely claims to be the complainant of the said FIR or considered to be the complainant by himself, although the matter was initiated on the source report of the F.I.A, much prior to filing of his complaint.

9. It has not been denied by the F.I.A Authorities that respondent No.2 is the star witness of the criminal case being present President of the society and as such he is the custodian of the record. In this backdrop, it has to be observed that whether it is a fit case to proceed against respondent No.2 in terms of Section 476 Cr.P.C read with Sections 193/196 to 199 PPC, which deals with the cases of those individuals, who have intentionally given false

evidence at any stage of judicial proceedings or fabricates the false evidence to secure the conviction of any accused or person or using evidence known to be false, but present case does not figure out in these provisions, even the intention of respondent No.2 is to help out the prosecution i.e. F.I.A Authorities to proceed against the petitioner on bonafide basis.

10. While scanning the record as well as law, I found no malafide on the part of respondent No.2, even he has not managed or secured any false evidence rather he has filed bail cancellation petition believing that being President of the Civilian Employee Cooperative Housing Society, it is his professional duty to approach this Court against the accused persons for cancellation of their pre-arrest bails, later on which were withdrawn on different dates as such neither any illegality has been observed, nor any offence is made out against the respondent No.2, even there is no misstatement except the bonafide belief of the respondent No.2 to be the complainant of the said case, such aspect gives rise to extend benefit of doubt to the respondent No.2.

11. For what has been discussed above, instant criminal miscellaneous petition is meritless and same is hereby **DISMISSED**. However, learned Trial Court seized with the matter is directed to conclude the trial within Eight (08) months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN