

From No: HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P No.216 of 2021

Kanwal Shauzab
Versus
Learned Justice of Peace, etc

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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04.	01-09-2021	M/s M. Usman Warraich, Imaan Mazari Hazir, Qasim Nawaz Abbasi, and Babar Hayat, Advocates for the petitioners in their respective petitions. M/s Mian Haseeb Ali, Sabeeh ul Hassan, Saqib Bhatti, Advocates for the respondents in their respective petitions. Mr Qasim Wadood, Addl. Attorney General. Ms Sadia Shahzad, State Counsel. M/s Adnan Haider Randhawa and Daniyal Hassan, Amici. Mr Arbab Saeed, DD (Legal), FIA. Mr Ayaz Khan, DD, FIA, Islamabad. Sh. Amer Sohail Anjum, A.D (legal), FIA. Mr Wasim Skindar, S.I, FIA/CCRC, Islamabad. Syed Asim Zaidi, S.I, P.S Shalimar.
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ATHAR MINALLAH, C.J.- The petitions in hand have raised questions of paramount public importance in the context of exercise of the powers vested in the Federal Investigating Agency under section 20 of the Prevention of Electronic Crimes Act, 2016. The offence has criminalized defamation and the abuse of the powers by the Agency has profound consequences for the fundamental rights of the citizens, particularly relating to Articles 19 and 19-A of the Constitution. This Court vide

judgment, dated 03.11.2020 passed in W.P.No.2939 of 2020 titled 'Rana Muhammad Arshad vs. Federation of Pakistan, etc' had given specific directions so as to prevent the abuse of powers by the Agency and to safeguard the fundamental right of free speech and freedom of expression. However, regrettably no action seems to have ensued either by the Agency or the Federal Government. Despite repeatedly advising the Agency to exercise care, this Court has been receiving grievances regarding abuse of the powers by the Agency. The actions of the Investigating Officers while dealing with the complaints relating to section 20 of the Act of 2016 has, prima facie, created a perception as if powers were being exercised to suppress dissent or specific undesirable political opinions. The grievances brought before this Court have, prima facie, made it obvious that the complaints were not being dealt with fairly and in a professional manner. Such conduct was likely to have serious consequences for the constitutional guaranteed rights of the citizens, particularly under Articles 19 and 19-A of the Constitution.

2. On 30.06.2021, Mr Babar Barkat, Director of the Cyber Crime of the Agency had appeared. He had assured this Court that in order to ensure that

the powers are not abused, Standard Operating Procedures would be prepared to guide the Investigating Officers while dealing with complaints relating to section 20 of the Act of 2016. On the last date of hearing the Court was informed that the Standard Operating Procedures had been duly prepared and circulated throughout the country to prevent abuse of powers by the Investigating Officers.

3. This Court has been informed that persons engaged in the profession of journalism had been kept in illegal confinement and harassed by officials of the Agency in Lahore in violation of the assurances given before this Court and the Standard Operating Procedures prepared and circulated by the Cyber Crime Wing of the Agency. This Court cannot turn a blind eye because such conduct of the Agency undermines the proceedings before this Court besides strengthening the perception that abuse of powers by the Agency is aimed at achieving some extraneous purposes. The actions of the officials of the Agency ought to be within the mandate of law and must demonstrably show lack of the elements of malafide and abuse of power for achieving extraneous purposes. The reckless exercise of powers by the Agency in the context of the offence under section 20 of the Act

of 2016 has serious consequences for the guaranteed fundamental rights under Articles 19 and 19-A of the Constitution.

4. The learned Additional Attorney General has stated that he would seek a report from the Director General of the Agency regarding the alleged abuse of powers by officials in violation of the assurances given before this Court and the Standard Operating Procedures and whether any action has been taken against them. The learned Additional Attorney General shall also seek a report from the Secretary, Ministry of Interior regarding the actions taken in compliance with the directions given by this Court vide the judgment, dated 03.11.2020 passed in W.P.No.2939 of 2020.

5. The learned Additional Attorney General is directed to submit a report before the next date fixed, inter alia, explaining why proceedings may not be initiated against the Director, Cyber Crime of the Agency for, prima facie, misleading this Court and allowing the officials, directly or indirectly, to violate the prescribed Standard Operating Procedures. The learned Additional Attorney General shall also explain in his report whether the judgment, dated 03.11.2020 rendered in W.P.No.2939 of 2020 titled 'Rana Muhammad

Arshad vs. Federation of Pakistan, etc' was brought to the attention of the Federal Government i.e. the worthy Prime Minister and members of the Cabinet.

6. Re-list on 27.09.2021 for final arguments by the learned counsels for the parties.

(CHIEF JUSTICE)

*Asif Mughal/**