

No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.216/2021

KanwalShauzab
Versus
Learned Justice of the Peace, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21-03-2022	Mr Rabi Bin Tariq, MrUsamaKhawar, Barrister Jannat Ali, MrSajid Khan Tanoli, MrAftabAlam, Mr Muhammad UsmanWarraich, Mr Babar Hayat Samor, MrSikandarNaeemQazi, MrMumtazArif Khan, SardarLatif Khan Khosa, MrAdil Aziz Qazi, MrKashifHussain Shah, Advocates for petitioners. Syed Muhammad Tayyab, Deputy Attorney General.

AtharMinallah, C.J.-Muhammad Abdul Rehman

and his wife, Mrs Fatima Abdul Rehman, have impugned the proceedings initiated by the Cyber Crime Wing of the Federal Investigation Agency (*hereinafter referred to as the "FIA"*) by invoking the constitutional jurisdiction of the court through W.P. no.3107/2020. They are senior citizens, about seventy years old and the husband is a pensioner having retired as a Deputy Chief Scientist. The proceedings were promptly initiated by the FIA and it is reflected from the record that the Director General had also granted permission to proceed on a complaint filed by the husband of a public office holder i.eMs Kanwal Shauzab, MNA. An inquiry was registered and notices were issued to the petitioners under section 20 of the Prevention of Electronic Crimes Act 2016 (*hereinafter referred to as the "PECA"*). The Court, vide order dated

20-10-2020, had restrained the FIA from harassing the petitioners because, prima facie, it appeared to be a case of extreme abuse of powers by the FIA.

2. In the meanwhile, W.P. No.216/2021 was filed by Ms Kanwal Shauzab challenging the order, dated 18-01-2021, passed by the learned Additional Sessions Judge. The learned court, after accepting the petition of Muhammad Abdul Rehmani, the petitioner in the aforementioned petition, had ordered the registration of a criminal case against Ms Kanwal Shauzab and her guard for allegedly assaulting the latter's elderly wife. Ms Kanwal Shauzab is a public office holder. She is a member of the National Assembly and belongs to the ruling political party. As already noted, prima facie it appeared that the dispute was between a public office holder and her neighbors. Since Ms Kanwal Shauzab was an elected member of the National Assembly, therefore, the Court was mindful of the fact that registration of a criminal case may cause extreme embarrassment to her and, therefore, the operation of the order, dated 18-01-2021, was suspended on the first date of hearing. The Court had advised the parties to endeavor to settle the dispute because they were neighbors. However, in the meanwhile several other petitions were filed which, prima facie, highlighted grave abuse of power by the FIA while dealing with cases under section 20 of PECA. The

common characteristics in all the pending cases was abuse of power upon complaints filed by public office holders while 95000 complaints filed by private citizens remained pending. Moreover, in almost all the cases the actions of FIA officials, prima facie, appeared to have been either in excess of or bereft of jurisdiction vested in it under PECA. It was obvious that the abuse of powers by the FIA, prima facie, had the effect of violating the constitutionally guaranteed rights of private citizens and, simultaneously, creating a chilling effect to silence critical and dissenting voices. The petitions in hand appeared to be a classic example of grave abuse of power by the FIA while dealing with complaints filed under section 20 of PECA.

3. The dispute between Ms Kanwal Shauzab and her neighbors started when, after the latter had shifted to her house in F-11, the Capital Development Authority and Metropolitan Corporation, Islamabad started cleaning the area and initiated construction work on the rain water ravine. It appears from the record that the neighbors approached the Environment Wing of the Capital Development Authority as well as the Metropolitan Corporation, Islamabad so as to restrain them from felling the trees. The retired pensioner, Muhammad Abdul Rehman and his wife assert that they are environmental enthusiasts and that they were

exercising their right to ensure that no damage was caused to the trees and the environment. It was alleged that on 18-01-2021, MsKanwalShauzab and her guard had assaulted Mrs Fatima Abdul Rehman, a senior citizen. The latter's complaint was not entertained by the Incharge of the concerned Police Station and, therefore, a petition was filed under section 22-A of the Code of Criminal Procedure, 1898 (*hereinafter referred to as the 'CrPC'*). The petition was allowed and a criminal case was ordered to be registered against MsKanwalShauzeb, which was subsequently stayed by this Court.

4. As already noted, several other petitions were filed highlighting extreme abuse of powers by the FIA in relation to complaints under section 20 of PECA. In the case of the petitions in hand, the FIA could not place on record any material whatsoever to even remotely show that Muhammad Abdul Rehman or his wife had posted indecent or defamatory material on the social media against MsKanwalShauzab, a public office holder. On the last date of hearing, the Director Cyber Crimes was asked to place on record the material posted on social media, which had led to the approval of an inquiry by no less a person than the Director General of the FIA. He had candidly conceded that no such material was available. He could also not satisfy the Court as to why the case of a public office holder was given preference

when 95,000 complaints were pending unattended and, that too, without any material available with the Investigating Officer.

5. The material brought on record in the petitions in hand definitely raises questions of paramount public importance i.e. grave abuse of powers by the FIA while dealing with complaints relating to section 20 of PECA. Ms Kanwal Shauzab was afforded an extraordinary opportunity to address the Court despite the fact that she was represented by an able counsel, Mr Mohammad Azhar Siddiqui, learned ASC. However, she preferred not to say a word about the pending petitions and, rather, referred to matters which were not before the Court. She was heard in the presence of the learned Attorney General. It appeared that she did not realize that she was a public office holder and not an ordinary citizen. The Court has been informed that a vilification campaign on the social media ensued after the hearing, so much so that the Supreme Court Bar Association had to issue a public statement which was widely published in the daily newspapers. This Court has never and cannot be influenced by such campaigns on social media platforms because, otherwise, it would be in breach of the oath of this exalted office. Even otherwise it is an attribute of this judicial office to show magnanimity

towards litigants because of the duty to remain impartial, fair and dispense justice.

6. The issue before the Court is of paramount public importance i.e. abuse of powers by the FIA and that too to protect the reputations of public office holders resulting in creating a chilling effect to silence dissenting and critical voices. The significance of the petitions in hand is the fact that MsKanwalShauzeb holds an important public office and simultaneously represents the political party in power i.e. Pakistan Tehreek-e-Insaf. There was admittedly an extraordinary activity by public entities i.e. the CDA and the MCI when she moved to her house in Sector F-11. Both the public bodies started activities that also involved expense from the public exchequer. There was significant activity and construction work to make the rain water ravine and the area around the house more presentable. Any public spirited and active citizen would likely have questioned the activities by public bodies and raised concerns for damage to the environment and the trees. Neither on behalf of MsKanwalShauzeb nor the FIA has any material been placed on record to even remotely suggest that the latter was justified in the registration of an inquiry or subjecting senior citizens to harassment. It also appears to the Court that the pensioner citizen has been unjustifiably burdened with the expense of litigation,

besides causing the elderly couple mental agony and trauma.

7. Article 19 of the Constitution guarantees to every citizen the right to free speech but it is not absolute, rather, it is subject to reasonable restrictions. Defamatory statements could give rise to a claim for damages as a civil remedy. Section 20 of PECA has criminalized defamation and the FIA has been designated as the agency to prosecute a defamer. However, the settled law in the context of defamation and free speech draws a distinction between the rights of a private citizen and a person who falls in the category of 'public official'. This distinction is significant to uphold the right of free speech on the one hand and, on the other, to encourage public discourse as the most effective mode of accountability of public office holders and public figures. The Supreme Court of the United States of America, in the case reported as *Rosenblatt versus Baer* 383 U.S 75 (1965), has described a public figure as including 'those among the hierarchy of government employees who have or appear to the public to have, substantial responsibility for or control over the conduct of the government affairs'. The elected public office holders are definitely covered under the expression 'public figures'. In the case of a civil remedy regarding defamation claims, the burden of proof is far

higher for a public office holder than for a private citizen while, in case of criminalized defamation, it is even higher because the prosecution is in the hands of the State through a government controlled agency e.g under PECA it is the FIA.

8. The principles and standard of proof for a public office holder are different because of the voluntary position of the latter. A person voluntarily assumes the role of a public official by offering himself or herself, as the case may be, to run for elections and thus hold a public office. It is because of this position that a public figure becomes exposed to public scrutiny. It could lead to criticism of character or reputation or conduct. A public figure voluntarily and willingly accepts being in the spotlight of public scrutiny. The democratic values essentially includes uninhibited and open debate regarding public figures. The elected public office holders seek the attention of the people and, therefore, they are expected to tolerate even unpleasant and caustic criticism from the citizens who are the real stake holders. The standard of proof and principles in the case of defamation claims are different from private citizens on the premise that public figures have access to channels of communication and media to rebut or combat defamatory statements. Moreover, public office holders are elected to serve the people and they are not

expected to drag the citizens to courts nor harass them through state controlled agencies.

9. The facts and circumstances of the petitions in hand, prima facie, highlights a classic case of abuse of powers by the FIA against an elderly pensioner couple in order to purportedly protect the reputation of an elected public figure belonging to the political party in government. The Director, Cyber Crime, FIA has candidly conceded that no allegedly defamatory material posted on the social media by the elderly couple was available with the investigation officer nor was provided by the complainant. Admittedly, extraordinary attention and activities of the CDA and MCI were witnessed to 'beautify' the area around the house of an elected public office holder involving public funds. Concerns appear to have been raised by the neighbors which led to the apparent abuse of powers by the FIA under PECA. An elderly couple was harassed and has been unjustifiably burdened with the cost of litigation. The FIA has been established to serve the people and not the public officials. Nonetheless, the FIA has widely abused its powers in relation to complaints received under section 20 of PECA. The grave and widespread abuse has definitely created a chilling effect which has profound consequences for free speech and public scrutiny of public office holders and the government. The

conduct of the FIA and abuse of its powers, as highlighted in the case in hand, while dealing with complaints under section 20 of PECA has raised questions of paramount public importance, inter alia, whether criminalization of defamation is violative of the Constitution and the fundamental rights guaranteed there under.

10. The public office holder in the petitions in hand is one of the prominent leaders of a political party. This Court had granted her interim relief by suspending the order whereby a direction was given by a competent court to register a criminal case against her. The Court has been informed that a vilification campaign was started on various platforms by the public office holder while her cases were sub judice. The interference in sub judice matter definitely attracts contempt proceedings but, simultaneously, it is an attribute of the Court to be magnanimous. But the conduct of MsKanwalShauzabin the cases in hand highlights the widespread abuse of social media platforms by elected leaderships, particularly the political parties. Instead of discouraging misuse of social media platforms, it is an undeniable fact that political parties have their respective organized social media teams to manage the platforms. The emergence of social media has provided an opportunity to the citizens to engage in informed public debate and

hold the government, its institutions and public office holders accountable. It is the duty of each political leader and political party to educate its followers regarding the values and norms of engaging in political debates or public issues and to discourage them from abusing the social media platforms. The mischief or fault cannot be attributed to the phenomenon of social media but what happens on the platforms is regrettably a reflection of the values and attitudes of a society and its political culture. Rather than blaming the social media platforms to justify repressive measures to silence dissenting voices, political parties are expected to introspect and demonstrably show a resolve and the will to encourage and inculcate democratic values, particularly those of tolerance and accountability through informed debate. The language used or attitudes reflected on social media platforms manifests the ethos and values of political leaders and the political parties.

11. In order to ensure fairness, transparency and to meet the ends of justice, the Court appoints Mr Asad Umer, Minister for Planning and Senator Syed Ali Zafar, learned ASC as amici curiae to assist the Court. Both are respected members of the Majlis-e-Shoora (Parliament) and the Court has always reposed its confidence in their wisdom, sagacity and fairness. An application has been filed by Ms Kanwal Shauzab praying the withdrawal of her

petition. The amici curiae are expected to justify the powers exercised by the FIA in the case in hand and whether the conduct of an elected public office holder and the vilification campaign against the Court is in accordance with democratic values. They shall also assist the Court as to why the application filed by MsKanwalShauzab may not be allowed by ordering payment of exemplary costs to the two senior citizens who were subjected to abuse of powers by the FIA. The investigating officer and Director, Cyber Crime, FIA are also put to notice to explain why they may also not be ordered to pay exemplary costs.

12. The office is directed to send copies of this order and memorandums of the petitions to the amici curiae appointed by the Court. They are expected to appear before the Court on the date fixed. Mr. Muhammad Abdul Rehman and his wife, Mrs Fatima Abdul Rehman, shall be at liberty to file their affidavit of costs under the Cost of Litigation Act 2017

13. Relist the petitions on 04-04-2022.

(CHIEF JUSTICE)