

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.3750-2018

Dr. Syed Iqbal Raza

Vs.

Justice of Peace, Islamabad etc.

Petitioner by : Raja Rizwan Abbasi, Advocate
Respondents by : Raja Khalid Mahmood Khan, DAG
Mr. Wisal Fakhar Sultan Raja, Director,
FIA & Nadeem, Inspector/IO, FIA.

CASE NO. : W.P. NO.2633-2018

M/s Siemens Pakistan Engineering Co. Limited etc.

Vs.

Federal Investigation Agency etc.

Petitioners by : Mr. Salman Safdar, Advocate
Respondents by : Raja Khalid Mahmood Khan, DAG
Mr. Wisal Fakhar Sultan Raja, Director,
FIA & Nadeem, Inspector/IO, FIA.
Date of decision : 21.02.2019

AAMER FAROOQ J. This judgment shall decide instant petition as well as W.P. No.2633-2018, as common questions of law and facts are involved.

2. Dr. Syed Iqbal Raza filed application/complaint before Federal Investigation Agency for registration of a criminal case against the persons named therein (petitioners in W.P. No.2633-2018). The inquiry is pending before Federal Investigation Agency, which is the subject matter and has been challenged by Siemens Pakistan Engineering Company Limited and others in W.P. No.2633-2018. Meanwhile, Dr. Syed Iqbal Raza also filed an application under section 22-A Cr.P.C. before Justice of Peace, Islamabad, which was dismissed vide order dated 02.10.2018, which has been assailed in W.P. No.3750-2018.

3. Learned counsel for the petitioner in W.P. No.3750-2018, *inter alia*, contended that the order passed by learned Justice of Peace is not tenable in the facts and circumstances of the case; that bare perusal of complaint and the documents appended there-with, shows that criminal offence is made out by way of breach of copy rights of Dr. Syed Iqbal Raza. In this behalf, it was contended that petitioner conducted a study and subsequently developed Software which was called 'Dr. Sir 104'. He

registered the same in Pakistan but alleged violation thereof by a Company in USA, for which, litigation was initiated, which ultimately led to the settlement agreement between the parties; that settlement agreement was violated hence application/complaint was made. It was further submitted that FIA has the jurisdiction in the matter inasmuch as under the Federal Investigation Agency Act, the Authority has the jurisdiction to investigate into the matters which are mentioned in the Schedule to the Act. It was pointed out that at Sr. No.26, all matters pertaining to the copy rights have been mentioned therein hence the jurisdiction. Reliance was placed on cases reported as 'Shahbaz-ud-Din Chaudhry and 3-others Vs. The Director, FIA, CBC, Lahore and 2-Others' (1999 YLR 678), 'The State through P.S. FIA Corporate Crime Circle, Karachi Vs. Tahir Alam and Another' (2017 CLD 1535), 'Majad Ali Vs. Director General, FIA, Islamabad and 3-others' (K.L.R. 2016 Criminal Cases 190) and 'Mst. Bhaitan Vs. The State and 3-Others' (PLD 2005 Karachi 621).

4. Learned counsel for the petitioners in W.P. No.2633-2018, *inter alia*, contended that FIA has no jurisdiction in the matter in light of recent pronouncement of Hon'ble Supreme Court of Pakistan in case reported as 'Syed Mushahid Shah and others Vs. Federal Investigation Agency and others' (2017 SCMR 1218), 'Director General, FIA and Others Vs. Kamran Iqbal and Others' (2016 SCMR 447), 'The State through Deputy Attorney General Vs. Muhammad Amin Haroon and 14-Others' (2010 P Cr.LJ 518), 'Iftikhar Hussain and Others Vs. Government of Pakistan and others' (2001 P Cr. LJ 146) & 'The State Vs. Azmat Ali and Others' (2017 CLD 519). In light of above judgments, it was contended that FIA has the authority only in cases where Federal Government is involved in any way, which is not the case in the present matter. It was also contended that the parties reached the settlement agreement and in light of the same, Dr. Syed Iqbal Raza, withdrew all cases.

5. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. The Federal Investigation Agency was created under Federal Investigation Agency Act, 1974 (the Act.). The preamble of the referred Act shows that Agency was created for investigation of certain offences committed in connection with the matters concerning Federal

Government and for matters connected thereto. Under section 3 of the referred Act, it is provided that Federal Investigation Agency shall investigate the offences specified in the Schedule including attempt to commit conspiracy and abetment of any such offence. In clause 26 of the Schedule to the Act, it is provided that offences punishable under the Copy Right Ordinance, 1962 can be investigated by FIA. The authority to investigate matters by Federal Investigation Agency came under consideration in case reported as 'Director General, FIA and Others Vs. Kamran Iqbal and Others' (2016 SCMR 447), wherein the august Apex Court observed as follows: -

"4. There is no cavil to the proposition that the FIA has been established/constituted for investigation of certain offences committed in connection with matters concerning the Federal Government and in connection therewith. Such is discernable from the preamble of the Federal Investigation Agency Act ('The Act'), which reads as follows:-

'Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government and for matters connected therewith'

"It is equally well established principle that while interpreting a Statute, a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same".

"----- also in order to avoid a conflict of jurisdiction, the only conclusion that the Court may draw is that for exercising jurisdiction in the matter of the offences enumerated in the schedule to the Act there has to be some nexus between the offences complained of and the Federal Government or else there shall be overlapping of the jurisdiction of the local police and the FIA creating an anomalous situation which certainly is not the intent of the legislature"

"It is now well settled that an investigation launched beyond jurisdiction is mala fide without lawful authority and is liable to be struck down".

Similar view was expressed by Hon'ble Sindh High Court in case reported as 'The State through Deputy Attorney General Vs. Muhammad Amin Haroon and 14-Others' (2010 P Cr.LJ 518). In the referred judgment, the Hon'ble Sindh High Court, after discussing the case law and the provisions of FIA Act, 1974 as well as Copy Right Ordinance, 1962, concluded as follows: -

"I am of the view that FIR has jurisdiction to proceed in the cases pertaining to violation of Copy Right Ordinance, 1962 particularly after insertion of Entry No.26 in the Schedule to the FIA Act, 1974. However, the FIA having been given the concurrent jurisdiction, can taken cognizance of such cases where violation of some Government work is involved and has no jurisdiction in respect of infringement of Copyright between private parties or disputes, which are civil in nature".

Similar view was expressed by the Division Bench of Hon'ble Lahore High Court in cases titled 'Iftikhar Hussain and Others Vs. Government of Pakistan and others' (2001 P Cr. LJ 146) and 'Mian Hamza Shahbaz Sharif Vs. Federation of Pakistan and Others' (1999 P Cr.LJ 1584).

7. Learned counsel for Dr. Syed Iqbal Raza placed reliance on various judgments mentioned in his arguments hereinabove to show that FIA has the authority in the matter however the referred judgments are not in consonance with the recent pronouncement of Hon'ble Supreme Court of Pakistan hence do not depict the correct law.

8. Learned counsel for the petitioners in W.P. No.2633-2018 also contended that only the Tribunal created under Intellectual Property Organization of Pakistan Act, 2012 has the exclusive jurisdiction to try the offences with respect to Intellectual Property laws. In this behalf, Section 17 of the referred Act provides that Tribunal shall, in exercise of its criminal jurisdiction, try offences made punishable under this Act and for the said purpose, can exercise same power vested in the Court of Sessions under the Criminal Procedure Code, 1898. Under subsection (4) of Section 17, it is provided that no court, other than the Tribunal, shall have or exercise any jurisdiction with respect to any matter, to which, the jurisdiction of the Tribunal extends under this Act. By virtue of referred position, the Tribunal has been conferred with the power to try an offence. Similar exclusivity of jurisdiction is provided in subsection (2) of Section 18 of 2012 Act. Likewise, section 13 provides powers and functions of Intellectual Property Organization under sections 13(xix) & (xx), the Organization has the exclusive power to initiate and conduct inquiries/investigation/proceedings relating to the offences in the prescribed manner. This also shows that Intellectual Property Organization has the authority to investigate into the offences arising out of Copy Right Ordinance, 1962.

9. Even-otherwise, on the factual aspect, earlier there was litigation between the petitioner in W.P. No.3750-2018 and Siemens (Pakistan),

which originally was decided against the petitioner in United States of America however subsequently, the matter was settled by way of an agreement. The referred agreement was executed between the parties on 30.09.2013, by virtue of which, the petitioner agreed to withdraw all his claims and litigations, which accordingly was done. If there is any breach of agreement on behalf of one of the signatories, the matter has to be agitated accordingly in the court of competent jurisdiction.

10. In view of foregoing, no cognizable offence is made out hence the impugned order dated 02.10.2018 passed by learned Justice of Peace does not suffer from any error of law. Even-otherwise, as noted above, the inquiry conducted by Federal Investigation Agency is without lawful authority.

11. For the above reasons, W.P. No.3750-2018 is without merit and is accordingly dismissed, whereas W.P. No.2633-2018 is allowed and the inquiry being conducted by Federal Investigation Agency is declared to be without jurisdiction and lawful authority.

(AAMER FAROOQ)
JUDGE

Zawar

Approved For Reporting