

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT,**  
**PESHAWAR.**

**(Judicial Department)**

**W.P No.1087-P/2013 with I.R.**

Date of hearing:..... 20.09.2017.

Petitioner (s) *Mr. Qazi Jawad Ehsanullah Advocate.*

Respondent (s) *Mr. Istiaq Ahmad & Abdeek Rauf Rohaila Advocates  
and Moinuddin Humayun A A G.*

**IJAZ ANWAR, J.-** Petitioner through the instant

writ petition has prayed that the office order/ letter No. 2214/ACE, dated 28.3.2013 issued by respondent No.2 be declared as illegal, unreasonable and uncalled for and respondents No.1 to 3 be restrained from taking or demanding original mortgage/loan documents from the petitioner-bank.

2. Background of the case is that the petitioner is Banking Company, incorporated under the Banking Companies Ordinance, 1962, while the respondent No.4 is a public limited company, incorporated and registered under the Companies Ordinance, 1984. The latter had availed various finance facilities in the form of running finance, letter of credit and finance against trust receipts from the former. It was in the year, 2007 when dispute

arose between the parties and respondent No.4 filed a suit No. 02/2007 before the Banking Judge of this Court, against the petitioner for rendition of account but since the substantial amount of the aforesaid finance facilities was unpaid, therefore, the latter also filed a recovery suit No.01/2008. Since both the parties, i.e., the bank and the loanee/customer, had filed suits against the same subject matter, therefore, the same were consolidated. During pendency of the suits, respondent No.5 submitted an application before the police which was forwarded to the Director, Anti Corruption Establishment, Peshawar, for enquiry under section 156(3) Cr. P.C and it was on 28.4.2013 when respondent No.2, Assistant Director (Revenue) Anti-Corruption Establishment, Peshawar, issued a letter No. 2214/ACE to the petitioner-Bank to provide original mortgage deed, which, according to the petitioner, is nothing but to protect the matter pending before the Banking Judge of this Court as the question of genuineness or otherwise of the mortgage deed is *sub judice* before the Judge, Banking Court, hence, the present writ petition.

3. Learned counsel for the petitioner argued that approach of respondent No. 5 to respondents No. 1 to 3 for initiation of criminal proceedings against the petitioner is

based on *mala fide* and ulterior motive. He next argued that both the parties have filed their suits regarding the same subject matter and the Banking Judge of this Court, after consolidating both the suits, framed a specific issue regarding the mortgage deed. He further argued that the Provincial Anti-Corruption Establishment has got no jurisdiction to interfere in the banking matters as the petitioner is neither Govt. Bank nor its officers can be termed as public servant within the meaning of Section 21 of the Pakistan Penal Code, 1860. Learned counsel argued that the issue regarding the authenticity of the mortgage deed is *sub judice* before the Banking Judge of this court, therefore, the criminal liability is dependent upon the result of the civil litigation, hence, the action of the Anti-Corruption Establishment requires to be put on hold till the outcome of the suit. Learned counsel placed reliance on the cases of Muhammad Akbar vs the State (1968 SC 281), Abdl Haleem Vs. The State and others (1982 SCMR 988) and Mst. Kausar Zafar Ullah and another vs. the State and others (2013 P Cr. L J, Peshawar, 301).

4. Conversely, learned counsel for the respondents 6 to 12 argued that the original mortgage deed is not in possession of the petitioner and only certain


documents have been demanded by the Anti Corruption Establishment, therefore, it cannot be questioned. He next argued that both, criminal and civil proceedings, can go simultaneously, therefore, this petition being based on *mala fide* may be dismissed, while learned counsel for the respondents 4 and 5 argued that since the petitioner has other alternate remedies by approaching to the Magistrate, therefore, the writ petition is not maintainable. They placed reliance on the cases of Muhammad Tufail vs. The State and another ( 1979 SCMR 437), A. Habib Ahmad vs. M.K. G Scott Christain and 5 others (PLD 1992 S.C 353), Akhlaq Hussain Kayani vs. Zafar Iqbal Kiyani and others ( 2010 SCMR 1835), and Riaz ul Haq vs. Muhammad Ashiq Jorah and others (2000 SCMR 991).

5. We have gone through the available record and considered the submissions made by learned counsel for the parties.

6. Perusal of the record reveals that respondent No.4 being a public limited company availed different finance facilities in the form of running finance, letter of credit and finance against trust receipts from the petitioner. Subsequently, dispute arose between the parties as a result of which the former filed a suit bearing No. 02/2007 for

rendition of account while the latter filed suit No.01/2008 for recovery of the outstanding amount before the Banking Judge of this Court. Since both the suites were regarding the same subject matter, therefore, the same were consolidated and, thereafter, consolidated issues were framed including the issue with regard to the disputed mortgage at S. No.8, which is reproduced as under:-

**“Whether the property at Serial No.9 of paragraph 4 of plaint in Suit No. 1/2000 has been correctly and legally mortgaged in favour of ABL? OPP**



The record further speaks that an interim decree amounting to Rs. 27.180 Million under section 11 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, has been passed in favour of the petitioner-Allied Bank, vide order dated 20.9.2010, while rest of the claim is still pending adjudication before the Banking Judge of this Court. We find that the impugned letter dated 28.3.2013 pertains to the transaction, the authenticity of which is subjudice before the Banking Judge of this Court. In the said letter, not only specifically certain questions were raised but the original mortgage deed was sought to be provided. The relevant paragraph of the letter reads as under:-

**“Beside the original mortgage deed may be provided for verification of the signature/thumb impression of mortgage and witnesses through FSL Forensic Science laboratory.”**

7. There is no cavil with the proposition that both, civil and criminal proceedings, can go side by side and that criminal proceedings should not be kept pending till decision of civil litigation pending regarding the same subject matter, but here the situation is entirely different. Allowing the Anti-Corruption Establishment to proceed with the matter and give certain findings about the disputed mortgage would certainly affect the outcome of the civil suits pending before the Banking Judge of this Court and thereby grave injustice would be done to the parties. When civil suits are pending adjudication Court, wherein regarding the authenticity of the mortgage deed, a specific issue has been framed, therefore, the question could be thoroughly thrashed out by the Banking court. The august supreme court of Pakistan in the case titled *Muhammad Akbar vs The State (PLD 1968 S.C 281)* hold that where it is clear that the criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in the case if there be a conflict of decision between the civil court and the criminal court then in such event it is equally clear that the criminal court has not

only the right to but should also stay its hands until the civil litigation is disposed of, for, it is not desirable that when the title to the property itself is in dispute, the criminal courts should give a finding in respect of the same question.



8. There is yet another important aspect of the case. The petitioner is a purely a private bank and the Provincial as well as the Federal Government has no share or interest therein. The West Pakistan Anti-Corruption Establishment Ordinance, 1961, is the ordinance to provide for the constitution of a special agency for the investigation of certain offences relating to corruption by public servants. The word "public servant" has been defined in the Ordinance, *ibid*, which means a public servant as defined in section 21 of the Pakistan Penal Code, hence, the interference in such a matter by the Provincial Anti-Corruption Establishment is also questionable.

9. For the above said reasons, we hold that since civil litigations regarding the loan facility is pending adjudication before the Banking Judge of this Court, therefore, initiating criminal proceedings simultaneously would definitely affect the result of the civil litigations, particularly, when (the validity of the mortgage) is in dispute. Therefore, this writ petition is accepted and the inquiry

initiated on the complainant of respondents shall remain  
suspended till the final decision of the suits.

Announced.  
Dt. 20.9.2017

*office*  
23/9/2017

  
**JUDGE**  
  
**JUDGE**

(M.Zafra P.S) (DB of Hon'able Mr. Justice Waqar Ahmad Seth and Mr. Justice  
Ijaz Anwar.)