

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

MR. JUSTICE MAQBOOL BAQAR

Criminal Petition No.1099 OF 2016

(On appeal from the judgment dated 17.10.2016 passed by the Peshawar High Court, Peshawar in Crl.Misc. No.2381-P of 2016)

Haji Shahid Hussain and others

... **Petitioners**

VERSUS

The State and another

... **Respondents**

For the petitioners: Mr. Ghulam Mohayuddin Malik, Sr. ASC

For the State: Mr. Zahid Yousaf Qureshi, ASC
Zahir Shah, SI

Date of hearing: 22.2.2017

JUDGMENT

Dost Muhammad Khan, J.— The petitioners are seeking leave to appeal against the order of the learned Single Judge of the Peshawar High Court dated 17.10.2016.

We have heard Mr.Ghulam Mohayuddin Malik, Sr. ASC for the petitioners and Mr. Zahid Yousaf Qureshi, ASC for the State.

2. Petitioners alongwith other co-accused were booked for crimes u/Ss.419, 420, 468 PPC vide FIR No.333 dated 29.8.2016.

3. Precisely, the allegations against the petitioners and their co-accused are, that with mutual collaboration, they were running a fake travel agency by trade name, ***“M. Mustafa Manpower Travel Agency”*** office of which was located in **Japan Chowk, Shakoor Bazaar**, within the jurisdiction of PS **Mandni**, District **Charsadda**.

They deceitfully induced a large number of people, desirous to perform **Hajj** of the last season and in this way collected huge sum of money in millions fraudulently however, the complainant and few others reported the crime to the police. After defrauding the people, all the partners of the said agency including one **Qari Ameer Ahmed Shah** disappeared with the collected money. Neither those, from whom the money was collected, were sent to KSA for **Hajj** nor they were returned the money. After registration of the case, local police's investigations revealed that even the said agency was not registered with the Tourism Department of Government of KPK. All the receipts about the collected money from the public, were purportedly executed under the signatures of **Qari Ameer Ahmed Shah** on the letterheads of the said agency, however, all these were containing the phone numbers of all the petitioners, which they never denied.

4. We have gone through the materials on record/evidence collected so far, and are of the considered view that, at the moment the petitioners are well connected with the crime because no malice or *mala fide* was attributed to the complainant and other victims, as to why they were falsely implicated in this case, thus this petition deserves out right dismissal and order accordingly.

5. This nature of frauds have become so common that, every year, before the **Hajj Season** commences, innocent and rustic peoples are looted by various so called agencies including the unauthorized tour operators, of which judicial notice is required to be taken to curb the increasing menace of frauds practiced in religious and pious

matters, therefore, Courts are required to treat these cases differently and such frauds must be brought to halt.

Accordingly, by tentative assessment, we are of the view that the petitioners are not entitled to the concession of grant of bail, in the peculiar circumstances, therefore, **this petition is dismissed** and leave to appeal is refused.

6. During the course of hearing, the investigating officer and the law officer for the State, were asked, whether offences under the **Human Trafficking Law** are not constituted including those under **Immigration Law** and whether it was not a fit case, to be investigated into by the FIA? They both stated at the bar that such a request has been conveyed to the D.G. NAB, KPK through proper-channel but so far no action has been taken in this regard. A photocopy of the letter bearing No.1/GB dated Charsadda the 17/02/2017, written by DPO Charsadda and sent to the Deputy Inspector General of Police, Mardan Region I, Mardan has been placed before us, which reads as under: -

"Memo:

Enclosed kindly find herewith a detailed report submitted by SP Investigation Charsadda regarding the transfer of investigation of the said case to NAB Khyber Pakhtunkhwa Peshawar, for further necessary action. Please."

It is surprising, rather shocking that till date the NAB Regional Office, KPK has taken no action by laying hands on the further investigation of the case.

7. During the course of hearing we have straightaway observed that for the last many years, similar rather more serious

frauds have been committed in this fashion by a well organized **Mafia**. The notorious case of **"Double Shah"** is the example, may be cited with bold letters. Unauthorized **Hajj and Umrah Tour Operators** have swindled millions of money of the poor public in the past. All the **watch dogs** to prevent such corruption, corrupt practices and fraud remained in deep slumber till the time the crimes were fully consummated and then, on the complaint of the aggrieved community/people they started investigation. Prevention of such crimes is the constitutional and statutory obligation of the NAB, FIA, Anti-Corruption Establishment, the Police and all the relevant Ministries/Authorities/Statutory bodies within the Provinces and the Federal Government but they have been found consistently inconsistent in performing such obligatory duties well in time and allowed the fraudsters to commit such crimes with impunity, who operate openly in the big cities and public places but all such authorities, referred to above have turned deaf ears and added salt to the hurts and agony of the poorest amongst poor, albeit they are paid handsome emoluments, perks and privileges from the tax payers' money. This phenomenon of laxity and negligence on their part would not and should not be tolerated anymore.

8. We have also straightaway noticed that the **Ministry of Religious Affairs and Inter Faith Harmony** is also not performing its statutory obligations. We are, therefore, constrained to direct it to create awareness in the public, particularly of the far flung areas, through wide range publicity, both through electronic and print media, at the District, Tehsil and Union Council level indicating the approved & authorized Hajj and Tour Operators, listed on the approved list of the

Ministry with a fixed quota, also indicating that how much money/fee they can collect from each individual, to be sent for performing “**Hajj**” or “**Umrah**” and what facilities they are required to provide at the holly places in KSA during the period of performing **rituals** including travel and transport facilities of a particular category. This negligence on the part of the Ministry provides golden opportunities to the **Mafia** involved in the detestable business of running fake Tour and Hajj Operator Agencies, without little fear of grip of law, while defrauding the people. Thus, it has become imperative to issue directions within the powers vested in the Court under Articles 184 (3) and 187 of the Constitution to the relevant authorities within the Federation and the Provinces to do what is required by the law and the Constitution to do.

9. Under Article 5(2) of the Constitution it is the obligatory duty of the authority including every citizen, to be obedient to the Constitution and the law of the land. This obligation has been made inviolable and this Court in many cases, particularly in the case of **Nazar Hussain v. The State** (2002 P Cr. L J 440) and the Full Court Bench’s decision, rendered in the case of **Muhammad Nawaz Sharif v. President of Pakistan** (PLD 1993 SC 473) has exercised such powers though, it was not directly a point in issue in those petitions. Another living example is the case of **Dr. Mubashir Hassan v. the Federation of Pakistan** (PLD 2010 SC 265), whereby, the clean chit given to corrupt elements under the law, famous for its notoriety called, “**NRO**” was struck down to bring to naught the provision of the said law, so that corruption and corrupt practices are plugged forever.

Accordingly, we will direct the **Ministry of Religious Affairs and Inter Faith Harmony, Government of Pakistan** to update its website in English, Urdu and all local languages, conveniently readable and understandable by the illiterate poor people, showing all the details about the duly approved **Hajj & Umrah Tour Operators**, warning the public at large that except those mentioned on the website, no other agency or Tour & Hajj Operator is authorized to make booking or collect money for sending people to perform **Hajj or Umrah**. At the same time, the said Ministry shall give wide publicity to such lists through electronic and print media and also through handbills/notifications in different languages, which shall be sent to the DCOs/Deputy Commissioners and DPOs of each and every District of each Province and ICT. Similarly, such handbills/pamphlets/booklets duly authenticated with the stamp and the signatures of the competent authority of the said Ministry shall be sent to the **Nazims and Naib Nazims** of each District in the Provinces and ICT; **Tehsil Nazims, Naib Nazims** as well as the **Nazims and Naib Nazims of the Union Councils**; the Regional Offices of the NAB, FIA, Anti Corruption Establishment of the Provinces and the Federation and the **Information Ministries**, of the Federal Government and all the Provinces, to give repeatedly wide publicity to the same through print media and electronic media for early information of the public at large, so that they are not defrauded in future in such manner as has been continuously done in the past. After receiving such lists/booklets/handbills by the local authorities and Anti-corruption watchdog, it shall be their responsibility to keep watchful eye on the **Hajj & Umrah Tour Operators** and other similar agencies so that no

unauthorized person/agency is able to operate and practice fraud upon innocent citizens in future. In case of any negligence or default on the part of such agencies, they would be liable for prosecution under the relevant provision of law, besides departmental action has to be taken against them, whenever in future such case comes to the notice of the Court.

Copies of this judgment be sent to:

- (I) The Ministry of Religious Affairs & Inter Faith Harmony, Government of Pakistan, Islamabad.
- (II) Ministry of Information and Broadcasting, Government of Pakistan, Islamabad.
- (III) All the Chief Secretaries of the Provinces and the Chief Commissioner, ICT and to
- (IV) All the Agencies/authorities, referred to above by the office and all of them shall acknowledge receipt of the copy of the judgment to the Additional Registrar (Judicial) of this Court, which shall be placed before us in Chambers for our perusal and be made part of the present case file.

Similarly, the duly authorized/approved **Hajj & Umrah Tour Operators** of the Ministry of Religious Affairs, Government of Pakistan shall display on their offices, the authority letter/license number, date of issue, the quota allotted and the amount chargeable by them, permitted by the Ministry of Religious Affairs, Government of Pakistan and they shall be further made liable to execute a guaranty/indemnity bond that they will publish a booklet/handbill, to be handed over to each applicant, desirous to perform **Hajj and Umrah**, which shall

contain all details of expenses, chargeable and all the facilities , to be provided to them during transit from Pakistan to KSA and within KSA while performing **Hajj or Umrah** including transport, lodging boarding, provision of food and other facilities required of them. The services of NADRA and PTA be availed to provide multiple Universal Access Number(s) (UAN), cell phone & landlines facilities and public be informed to get verification and authentic information from the **Ministry of Hajj** about every "**Hajj**" and "**Umrah**" private operators including the amount of money chargeable.

Needful be done positively within two months and this campaign should be vigorously carried out at least three months before **Hajj Season** of the next year commences. Any fault or default/negligence on the part of the **Ministry of Religious Affairs and Inter Faith, Government of Pakistan** and those, to whom such information is conveyed by it, shall be deemed to have violated the law and the Constitution and besides departmental action to be initiated, they would be liable to be prosecuted under the law, whenever such case is reported to the Court.

Judge

Judge

Judge

Islamabad, the
22nd February, 2017
Nisar /-

Approved For Reporting.