

2024 S C M R 599

[Supreme Court of Pakistan]

Present: Amin-ud-Din Khan, Jamal Khan Mandokhail and Musarrat Hilali, JJ

JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI, JUDGE SUPREME COURT OF PAKISTAN and others---Petitioners

Versus

FEDERATION OF PAKISTAN through Secretary Ministry of Law and Justice, Islamabad and others---Respondents

Constitution Petitions Nos.43 to 46 of 2023, decided on 9th January, 2024.

Supreme Court Rules, 1980---

---O. XXV, R. 9---Civil Procedure Code (V of 1908), O.I, R. 10---Constitution of Pakistan, Arts. 209(5)(b) & 184(3)---Proceedings against a Judge of the Supreme Court before the Supreme Judicial Council---Constitutional petitions under Article 184(3) of the Constitution filed by the Judge, and the complainant/informers of the complaints against the Judge---Whether the informers of the complaints against the Judge on the basis of which the Supreme Judicial Council was proceeding against the Judge were necessary or proper party as respondents in the petitions filed by the Judge, and whether the Judge was also to be impleaded as a respondent in the petitions of the complainant/informers or not---Held, that as the informers had been attending the proceedings of the Supreme Judicial Council and were directed to substantiate their complaints with evidence, therefore, at least they were proper party for adjudication of the present petitions before the Supreme Court---If with regard to any of the complaints any observation was made by the Supreme Court or even as per the pleadings of the petitioner-Judge it was presumed that same were mala fide, frivolous and politically motivated, to consider these pleadings on the basis of which prayer for quashment of proceedings before Supreme Judicial Council was claimed, these could be considered only if complainants/informers were party before the Supreme Court---In the interest of justice, it was necessary in the peculiar circumstances of the present case that the complainants/informers who filed complaints before the Supreme Judicial Council against the petitioner-Judge being proper person be made party as respondent and be heard to satisfy the maxim that no one should be condemned unheard, if the Supreme court wanted to comment upon their complaints---When all the pleadings in the body of the present petitions revolved around the complaints/information by the informers, their impleadment as respondent in these petitions would serve the purposes of justice---Supreme Court gave directions for impleading the complainants/ informers and the Judge as respondents in their relevant petitions.

Muhammad Makhdoom Ali Khan, Senior Advocate Supreme Court and Saad Mumtaz Hashmi, Advocate Supreme Court for Petitioners (in Constitution Petitions Nos. 43 and 44 of 2023).

Anwar Mansoor Khan, Senior Advocate Supreme Court,

Pervaiz Abid Haral, President District Bar Gujranwala, Mrs. Bushra Qamar, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Petitioners (in Constitution Petition No. 45 of 2023).

Nemo for Petitioners (in Constitution Petition No. 46 of 2023).

Malik Javed Iqbal Wains, Additional A.G. for Federation.

Date of hearing: 9th January, 2024.

ORDER

We heard the learned counsel for the petitioners on the point that whether the informers of the complaints against the petitioner Judge on the basis of which the Supreme Judicial Council is proceeding against the learned Judge are necessary or proper party as respondents in these petitions as well as in a petition filed by the District Bar Association, Gujranwala or not. Whether the learned Judge/petitioner of C.Ps. Nos.43 and 44 of 2023 is also to be impleaded as respondent in C.Ps. Nos. 45 and 46 of 2023 or not. Mr. Makhdoom Ali Khan, learned Senior ASC has advanced lengthy arguments and has referred Contempt of Court Act to strengthen his arguments to state that petitioner is not willing to implead the complainants/persons who filed the complaints before the Supreme Judicial Council/the informers. One of the arguments of learned Makhdoom Ali Khan for not impleading the complainants was that under the principle of Order I, Rule 10 of the C.P.C. if a necessary party is not impleaded, suit cannot be dismissed. We agree with the argument of learned counsel to the extent that on the basis of non joinder of necessary parties suit cannot be dismissed. But we have gone through the pleadings with the assistance of the learned counsel for the petitioner and also noticed that petitioner in C.P. No.44 of 2023 has appended Photostat copies of the complaints as Annexure-A 1 to Annexure-A 10 at page 46 to 108. It would be beneficial to quote below the relevant extract from the pleadings to reach at a conclusion on the instant point:

A paragraph at Page No. 3 of C.P. No.43 of 2023 just before the 'Questions of Law' is as follows:-

"The complaints against the Petitioner are mala fide and non-est. The proceedings of the SJC and the SCN are without jurisdiction, coram non iudice and void ab initio. These are without lawful authority and of no legal effect. These gives rise to the following questions of public importance with reference to the enforcement of Fundamental Rights guaranteed under the Constitution."

Question Nos. VI, VII and VIII available at Pages Nos. 4 and 5 of the petition are reproduced:-

VI. Whether any declared asset be made basis to proceed against a judge in a complaint by a person who is an alien to the alleged transaction when no notice or proceeding has been initiated by the registering or taxation authority?

VII. Whether the contents of the complaints are no more than bald allegations which too are highly speculative in nature and, as such, the SCN issued on the basis of these complaints is without jurisdiction and of no legal effect?

VIII. Whether the complaints filed against the Petitioners are mala fide, and as such, SCN issued on the basis thereof merit quashment on this ground as well?

Likewise, in C.P. No.44 of 2023 last paragraph at page 4 is reproduced:

"It is evident that the so-called complaints filed against the Petitioner before the Supreme Judicial Council ("SJC") are politically motivated. These were filed simply because the Petitioner in performance of his solemn duty to protect and safeguard the Constitution highlighted the constitutional violation in delaying general election to the Punjab Provincial Assembly."

At page No.5, first paragraph just before the Questions of Law is also reproduced:

"The proceedings initiated by the SJC, inter alia, on the basis of these politically motivated complaints are without jurisdiction, mala fide and coram non judice. It gives rise to the following questions of public importance relating to the enforcement of Fundamental Rights."

Question Nos. V, VI and VII are also reproduced:

V. Whether disclosing the Petitioner's income tax returns to the complainants is in violation of his Fundamental Rights to liberty and privacy under Articles 9 and 14 of the Constitution as well as in contravention of Section 216 of the Income Tax Ordinance, 2001 ("ITO, 2001") and such material is illegal and inadmissible?

VI. Whether the contents of the so-called complaints are no more than bald allegations which too are highly speculative in nature and, as such, the Revised SCN issued on the basis of these so-called complaints is without jurisdiction and of no legal effect?

VII. Whether the so-called complaints filed against the Petitioner are politically motivated and mala fide, and as such, the Revised SCN issued on the basis thereof merit quashment on this ground as well?

Ground-I at Page No. 37 is reproduced:

"None of the so-called complaints disclose any case against the Petitioner. These cannot form the basis of a show cause notice. Had the SJC examined the so-called complaints it would have been obvious that no case for issuing a show cause notice was made out."

Ground-M at Page No. 38 is reproduced:

"That the co-called complaints against the Petitioner and frivolous and politically motivated. They are all based on conjecture and false allegations. None are supported by evidence. They are, therefore, liable to be dismissed. The Petitioner, however, reserves the right to submit a reply to the show

cause notice, if issued, after relevant materials and information are made available to him by the reconstituted SJC."

In C.P. No.45 of 2023 Question of Law framed at Serial No. 6 is reproduced:

"Whether the commencement of proceedings by the respondent No. 1, pursuant to flimsy, flippant and frivolous complaints malevolently contrived against the hon'ble Judgepartake of wreaking onslaught, albeit unabashedly and without any pangs of conscience upon the security of tenure, inviolability and independence of the Honourable Judge, in particular, with reference to the exercise of judicial functioning/powers, while rendering the decision(s) independently and impartially?"

And in the prayer clause (i) it is stated as under:

"..... , and all acts leading upto the issuance of Show Cause Notice and, the Revised Show Cause Notice are unlawful, unconstitutional, without jurisdiction"

2. It has been informed to the Court that the informers were attending the proceedings of the Supreme Judicial Council and they were directed to substantiate their complaints with evidence. Learned counsel states that even their presence and production of evidence was objected to before the SJC and therefore, in his view they cannot be made party before this Court in these proceedings under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973.

3. We are conscious of the fact that as the informers have been called to substantiate their complaints through evidence, therefore, in our view at least they are proper party for adjudication of the instant matter before this Court. Even question was posed to learned counsel for the petitioner that if with regard to any of the complaints any observation is made by this Court or even as per the pleadings of the petitioner it is presumed that same are mala fide, frivolous and politically motivated, to consider these pleadings on the basis of which prayer for quashment of proceedings before Supreme Judicial Council is claimed, these can be considered only if complainants/informers are party before this Court. In the interest of justice we think, it is necessary in the peculiar circumstances of this case that the complainants/informers who filed complaints before the SJC against the petitioner being proper person be made party as respondent and be heard to satisfy the maxim that no one should be condemned unheard, if this court wants to comment upon their complaints. For reaching a conclusion that the informers are to be impleaded in the instant petitions the provisions of Rule 9 of Order XXV of the Supreme Court Rules, 1980 are also in our consideration, at least the informers in these petitions are proper persons to be impleaded as respondents. The argument on the basis that in the light of Contempt of Court Act, 2003 in present proceedings the informers cannot be impleaded has no relevance.

4. In the peculiar circumstances of this case, when all the pleadings in the body of the petitions revolve around the complaints/information by the informers, in our view their impleadment as respondent in these petitions would serve the purposes of justice, therefore, petitioners of C.Ps. Nos.43, 44 and 45 to implead all the complainants/informers as respondents in the said petitions. Petitioner in C.P.

No.45 of 2023 to also implead learned petitioner of C.P. No.43 of 2023 as respondent in his petition and Petitioner in C.P. No.46 of 2023 to implead the petitioner of C.Ps. Nos. 43 and 44 of 2023 as respondent in his petition.

5. At this stage Mr. Makhdoom Ali Khan submitted a Photostat copy of the interim order of this Court dated 7.5.2007 passed in Constitution Petition No. 21 of 2007 and C.M.A. No. 963 of 2007 titled 'Mr. Justice Iftikhar Muhammad Chaudhry, HCJ v. President of Pakistan through its Secretary and others' and prayed that an injunctive order be issued against the Supreme Judicial Council to stay the proceedings against the petitioner. We note that the instant C.P. was fixed for hearing on 15.12.2023 when learned counsel raised the objection with regard to constitution of the Bench and prayed that he wants to file an application to raise this objection so that this bench may consider the same and prayed for fixation of the petitions for 8.1.2024 and on his request the case was adjourned for the said date. When the case was fixed for 8.1.2024, no written application was filed and during the hearing learned counsel stated that he wants to withdraw the objection noted on the last date of hearing. As the petitioner's counsel was not willing to implead the complainants as respondent in these petitions, then a question was posed to the learned counsel whether without impleading the complainants/informers we can proceed with the matter and on this point some of the arguments were advanced on 8.1.2024 and further arguments we heard today and passed the order of impleadment as respondent in these petitions. Photostat copy of the order cited is not applicable to the facts of this case. In these circumstances, the prayer for stay of proceedings before the Supreme Judicial Council against the petitioner in C.Ps. Nos. 43 and 44 of 2023 is not tenable at this stage.

6. Amended petitions be filed. When the needful is done, office to fix the matters for hearing thereafter.

MWA/J-2/SC Order accordingly.