P L D 2023 Supreme Court 265

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

F.I.A. through Director General, FIA and others---Petitioners

Versus

Syed HAMID ALI SHAH and others---Respondents

Constitutional Petition No. 1257 of 2020, decided on 6th February, 2023.

(Against the judgment of the Islamabad High Court, dated 04.02.2020, passed in W.P. No.2367/2018)

(a) Criminal Procedure Code (V of 1898)---

----Ss. 561-A & 154---Inherent power of High Court---Quashment of FIR or investigation of criminal case---Scope---High Court has no power under Section 561-A, Cr.P.C. to quash an FIR or an investigation proceeding, however, the High Court can quash a judicial proceeding pending before any subordinate court under Section 561-A, Cr.P.C.

High Court has no power under Section 561-A, Cr.P.C. to quash an FIR or an investigation proceeding; therefore, applications filed under Section 561-A, Cr.P.C. in the High Court for quashing an FIR and investigation proceeding are not maintainable. This is because jurisdiction of a High Court to make an appropriate order under Section 561-A, Cr.P.C., necessary to secure the ends of justice, can only be exercised with regard to the judicial or court proceedings and not relating to proceedings of any other authority or department, such as FIR registration or investigation proceedings of the police department.

Shahnaz Begum v. High Courts of Sindh and Baluchistan PLD 1971 SC 677 ref.

A High Court can quash a judicial proceeding pending before any subordinate court under Section 561-A, Cr.P.C., if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under Section 561-A, Cr.P.C. to make such order unless the accused person has first availed his remedy before the trial court under Section 249-A or 265-K, Cr.P.C.

Sher Afgan v. Ali Habib 2011 SCMR 1813 ref.

(b) Criminal Procedure Code (V of 1898)---

----S. 154---Constitution of Pakistan, Art. 199(1)(a)(ii)---Quashment of FIR or investigation of criminal case---Scope---Constitutional jurisdiction of the High Court---Registration of an FIR and the doing of an investigation are acts amenable to the jurisdiction of the High Courts under Article 199(1)(a)(ii) of the Constitution, thus, the High Courts can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and

can also make any appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceeding.

Where before the submission of the police report under Section 173, Cr.P.C. to the court concerned, the accused person thinks that the FIR has been registered, and the investigation is being conducted, without lawful authority, he may have recourse to the constitutional jurisdiction of the High Court under Article 199 of the Constitution for judicial review of the said acts of the police officers.

Shahnaz Begum v. High Courts of Sindh and Baluchistan PLD 1971 SC 677 ref.

Article 199(1)(a)(ii) of the Constitution empowers the High Courts to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority and if find such acts or proceedings to have been done or taken without lawful authority, to declare them to be so and of no legal effect. The registration of an FIR and the doing of an investigation are the acts of officers of the police department (a provincial law enforcement agency) who perform functions in connection with the affairs of a Province and are thus amenable to the jurisdiction of the High Courts under Article 199(1)(a)(ii) of the Constitution. The High Courts can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceeding.

R. SIM & Co v. District Magistrate PLD 1966 SC 650 ref.

(c) Criminal Procedure Code (V of 1898)---

----Ss. 154 & 156---Investigation into a cognizable offence---Scope---Contents of an FIR have to be seen to ascertain whether a cognizable offence is made out of the allegations contained therein, and mere mentioning of a particular Section of the P.P.C. or any other offence under the law in the FIR is not determinative in this regard.

State v. Sultan Ahmed PLD 2007 SC 48 ref.

(d) Supreme Court Rules, 1980---

----O. XXVIII, R. 3---Vexatious and frivolous petition---Imposition of costs---First Information Report registered and investigation carried out without lawful authority---Present petition was not only meritless but also vexatious, as it amounted to continuation of harassment caused to the respondents---Such petitions being meritless and against the law settled by the Supreme Court unduly waste the time of the Court depriving it from attending to more lawful and genuine claims pending before it---Such frivolous litigation clogs the pipelines of justice causing delay in dispensation of justice, thereby impairing the right to expeditious justice of a genuine litigant---Such vexatious and frivolous petitions add to the pendency of cases which over-burdens the Court dockets and slows down the engine of justice, thus, they must be dealt with firmly and strongly discouraged---Petition for leave to appeal was dismissed, and leave was declined with costs of Rs.100,000/- with the

directions that said costs shall be deposited by the Inspector, In-charge Federal Investigation Agency (FIA), who registered the present FIR and was making the investigation against the respondents, from his own pocket, with the Registrar of the Supreme Court within 30 days, and after the deposit, they shall be paid to the respondents.

Malik Javed Iqbal Wains, Addl. A.G.P. and Ch. Akhtar Ali, Advocate-on-Record for Petitioners.

Syed Naeem Bokhari, Advocate Supreme Court for Respondents.

Date of hearing: 6th February, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioners seek leave to appeal against a judgment of the Islamabad High Court, dated 04.02.2020 ("impugned judgment"), whereby the High Court while accepting the writ petition of the respondents, as well as a writ petition and two criminal miscellaneous applications of other accused persons, has quashed FIR No. 05/2018 registered against them at Police Station FIA, Islamabad, for offences punishable under sections 409/109 of the Pakistan Penal Code 1860 ("P.P.C.") and section 5(2) of the Prevention of Corruption Act 1947 ("PCA").

2. Briefly, the facts of the case are that on a news item published in a daily newspaper, reporting that a number of employees of the various directorates of the Capital Development Authority ("CDA") had been illegally upgraded in violation of the relevant rules and regulations during the years 2007 to 2013, the Federal Investigation Agency ("FIA") conducted an inquiry and found that prima facie a case of abuse of authority was made out against the officers who processed and approved those illegal upgradations as well as against the beneficiary officials of the CDA (including the respondents). With this finding, the FIA registered the above-mentioned FIR and initiated the formal investigation, which may have included the arrest and detention of the accused persons. The respondents and some other persons nominated as accused in the FIR as well as in the investigation proceeding, filed two writ petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution") and two criminal miscellaneous applications under section 561-A of the Code of Criminal Procedure 1898 ("Cr.P.C.") for quashing of the FIR, mainly on the ground that no offence was made out of the allegations recorded in the FIR. The High Court agreed with the ground pleaded, accepted the writ petitions and miscellaneous applications, and quashed the FIR vide the impugned judgment. Hence, the petitioners have filed the present petition for leave to appeal.

3. We have heard the learned counsel for the parties, read the cases cited by them and examined the record of the case.

4. First of all, we want to make it clear that a High Court has no power under section 561-A, Cr.P.C. to quash an FIR or an investigation proceeding; therefore, the criminal miscellaneous applications filed under section 561-A, Cr.P.C. by some of the accused persons in the High Court for quashing the FIR and investigation

proceeding in the present case were not maintainable. This is because jurisdiction of a High Court to make an appropriate order under section 561-A, Cr.P.C. necessary to secure the ends of justice, can only be exercised with regard to the judicial or court proceedings and not relating to proceedings of any other authority or department, such as FIR registration or investigation proceedings of the police department. This has been authoritatively held by a five-member bench of this Court in Shahnaz Begum.[1] A High Court, therefore, can quash a judicial proceeding pending before any subordinate court under section 561-A, Cr.P.C., if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under section 561-A, Cr.P.C. to make such order unless the accused person has first availed his remedy before the trial court under section 249-A or 265-K, Cr.P.C.[2] Where before the submission of the police report under section 173, Cr.P.C. to the court concerned, the accused person thinks that the FIR has been registered, and the investigation is being conducted, without lawful authority, he may have recourse to the constitutional jurisdiction of the High Court under Article 199 of the Constitution for judicial review of the said acts of the police officers.[3]

5. In the present case, as the High Court was competent to judicially review the acts of registering the FIR and conducting the investigation by the officers of the FIA in the exercise of its constitutional jurisdiction under Article 199 of the Constitution, therefore, the acceptance of the criminal miscellaneous applications filed by some of the accused persons under section 561-A, Cr.P.C. and the reference to section 561-A, Cr.P.C. while quashing the FIR have no material bearing on the jurisdiction of the High Court while passing the impugned judgment. Even otherwise, if the reasons stated for passing the impugned judgment fall within the scope of the jurisdiction of the High Court under Article 199 of the Constitution, the reference to a wrong or inapplicable provision of law will not by itself have any fatal consequence.[4] The High Court has observed in the impugned judgment that the matter in issue, which relates to the violation of the terms and conditions of service of the CDA employees, does not constitute the offence of criminal misconduct punishable under section 5(2) of the PCA nor are the ingredients of the offence of criminal breach of trust under section 409, P.P.C. made out. The High Court has also specifically quoted the statement made before it by the Addl. Director, FIA that "FIA has concluded investigation and no element of bribery has been found in the entire inquiry against any official of CDA". With the said observations, the High Court has quashed the FIR, by holding that FIA authorities have failed to legally justify their actions of initiating the inquiry and registration of the FIR. These reasons squarely fall within the scope of the provisions of Article 199(1)(a)(ii) of the Constitution.

6. Article 199(1)(a)(ii) of the Constitution empowers the High Courts to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority and if find such acts or proceedings to have been done or taken without lawful authority, to declare them to be so and of no legal effect. The registration of an FIR and the doing of an investigation are the acts of officers of the police

department (a provincial law enforcement agency) who perform functions in connection with the affairs of a Province and are thus amenable to the jurisdiction of the High Courts under Article 199(1)(a)(ii) of the Constitution. The High Courts can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision,[5] such as quashing the FIR and investigation proceeding. The acts of registering the FIR and conducting investigation by the officers of the FIA, in the present case, are also subject to said jurisdiction of the High Court, as they have been done by the officers performing functions in connection with the affairs of the Federation.

7. The FIA has been established by the Federal Government under Section 3 of the Federal Investigation Agency Act, 1974 ("FIA Act"), for inquiry into, and investigation of the offences specified in the Schedule to the said Act, including an attempt or conspiracy to commit, and abetment of, any such offence. Under section 5 of the FIA Act, the officers of the FIA have such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to the investigation of offences under the Cr.P.C., and its officer not below the rank of a Sub-Inspector may, for the purposes of any inquiry or investigation under this Act, exercise any of the powers of an officer-incharge of a Police Station under the Cr.P.C.. That being so, one has to look at the provisions of sections 154 and 156 of the Cr.P.C., which relate to the registration of FIRs and conducting the investigations, for the purpose of examining whether the acts of registering the FIR and doing the Investigation by the FIA officers in the present case were with or without lawful authority.

8. Under section 154 of the Cr.P.C., a first information report (FIR) can be registered only with regard to the commission of a cognizable offence. Similarly, an investigation can be made by a police officer, without the order of a Magistrate, under section 156 of the Cr.P.C. only in respect of a cognizable offence. Needless to say that it is the contents of an FIR which are to be seen to ascertain whether a cognizable offence is made out of the allegations contained therein, and mere mentioning of a particular Section of the P.P.C. or any other offence under the law in the FIR is not determinative in this regard.[6] However, the falsity or truthfulness of those allegations is not under examination for the purpose of determining the legal authority of the police officer to register the FIR. The precise question is: whether the allegations as contained in the FIR make out the commission of a cognizable offence; if so, what is that?

9. When asked how the accused officers who processed and approved the alleged illegal upgradations have committed the cognizable offences of criminal breach of trust and criminal misconduct punishable under section 409, P.P.C. and section 5(2), P.C.A. and how the officials who were granted the illegal upgradations are the abettors in the commission of those offences and are thus liable for the offence of abetment punishable under section 109, P.P.C., we got no plausible reply. The allegations as contained in the FIR do not involve the very essential ingredients of the offence of criminal breach of trust as defined in section 405, P.P.C., (i) the entrustment of, or dominion over, any property, and (ii) the dishonest misappropriation or conversion to his own use of that property, or the dishonest use

or disposal of that property in violation of any direction of law or of any legal contract. Therefore, the cognizable offence of criminal breach of trust by a public servant punishable under section 409, P.P.C. mentioned in the FIR is not made out. Similar is the case with the cognizable offence punishable under section 5(2), P.C.A. mentioned in the FIR, which is also not made out of the allegations as contained in the FIR. The argument of the learned counsel for the petitioner is totally misconceived, that the authority conferred upon the accused officers, who granted the illegal upgradations, was a trust and by misusing that authority, they have committed the offence of criminal breach of trust punishable under section 409, P.P.C. and the offence of criminal misconduct punishable under section 5(2), P.C.A. No doubt, the powers of the public servants are like a trust conferred upon them and they should exercise them fairly, honestly and in good faith as a trustee; but the entrustment of the power to upgrade his subordinate officials is not equivalent to the entrustment of property as mentioned in section 405, P.P.C. and its misuse, or use in violation of the relevant rules and regulations, does not constitute the cognizable offences punishable under section 409, P.P.C and section 5(2), P.C.A. The misuse of such a power may constitute misconduct under the service laws, but does not attract criminal misconduct punishable under the criminal laws.

10. In view of the above legal position, the acts of the FIA officers in registering the FIR and carrying out investigation in the present case are certainly without lawful authority. We thus find no legal flaw in the impugned judgment. The present petition is not only meritless but also vexatious, as it amounts to continuation of harassment caused to the respondents by initiating the criminal proceeding against them in relation to their service matter, without any lawful authority. Additionally, these petitions being meritless and against the law settled by this Court have unduly wasted the time of the Court depriving it from attending to more lawful and genuine claims pending before it. Such frivolous litigation clogs the pipelines of justice causing delay in dispensation of justice, thereby impairing the right to expeditious justice of a genuine litigant. Such vexatious and frivolous petitions add to the pendency of cases which over-burdens the Court dockets and slows down the engine of justice. Such vexatious and frivolous litigation must be dealt with firmly and strongly discouraged.[7] We, therefore, dismiss the present petition and decline the leave to appeal, with costs of Rs.100,000/- under Order 28, Rule 3 of the Supreme Court Rules, 1980. The costs shall be deposited by petitioner No.2, Inspector Irfan Azim Burki, In-charge FIA, Corporate Crime Circle, Islamabad, who registered the FIR and was making the investigation against the respondents, from his own pocket, with the Registrar of this Court within 30 days from today, and after the deposit, they shall be paid to the respondents. A compliance report, in this regard, shall be placed on the record of the case. In case of non-compliance, the matter shall be put up before the Court for appropriate orders.

MWA/F-5/SC Petition dismissed.

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