IN THE HIGH COURT OF SINDH KARACHI

Before:
Justice Muhammad Saleem Jessar
Justice Nisar Ahmed Bhanbhro

CP No.D-3991 of 2024

(Sohail Ahmed and 03 others v. the State and 03 others)

Date of hearing:	**29.01.2026**
Date of announcement:	**11.03.2026**
For Petitioners:	Mr. Imtiaz Ali Shah, Advocate
Respondent No 3:	Mr. Ahmed Ali Dewan, Advocate along with Mr Wasif Ali Mughal
Province of Sindh	M/s. Hakim Ali Shaikh and Sagheer Ahmed Abbasi, Additional Advocates General, Sindh Mr. Ali Haider Saleem, Additional Prosecutor General, Sindh

O R D E R

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioners claim following relief(s):-

> *"1. Declare that the impugned order dated 16.08.2024 passed by the learned XI-Additional Sessions Judge, Karachi East, is illegal, unlawful, unconstitutional and void ab initio.*
>
> *2. Declare that the act of registration of F.I.R by the respondent No.1 against the Petitioners is in contravention of the fundamental rights of the petitioners and the same is illegal, unlawful and unconstitutional.*
>
> *3. Declare that the FIR bearing No. 549 of 2024 of PS Ferozabad lodged by respondent No 1 is illegal, unlawful, and unconstitutional, as the same has been lodged in violation of the Companies Act, 2017*
>
> *4. Set aside the impugned order dated 16.08 2024 passed by the learned XI-Additional Sessions Judge, Karachi East for registration of FIR against the Petitioners*

5. Suspend the operation of order dated 16.08 2024 passed by the learned XI Additional Sessions Judge, Karachi East in complete ignorance and violation of the law

6. Quash the FIR No 529 of 2024 of Police Station Ferozabad, as the same was lodged in violation of the Sections 259, 203, and 496 of the Companies Act, 2017, and Articles 3, 4, 9, 10, 10-A, 14, 18 and 35 of the Constitution of Pakistan, 1973, and the learned Trial Court lacks the Jurisdiction to proceed with the case

7. Mandatory injunction to stop the proceedings commencing from FIR No. 529 of 2024, U/Ss 420, 468, 471 read with section 34 of PPC, Police Station Ferozabad, all the final adjudication of the instant application

8. Exempt the Petitioners from appearing before the trial Court, as the learned Trial Court lacks jurisdiction and comes within the domain of Security Exchange Commission of Pakistan."

2. Learned counsel for the petitioners contended that the Petitioners are the Chief Executive Officer, Director and Secretary of Bays International (Pvt.) Limited (**Company**) incorporated and registered with Securities & Exchange Commission of Pakistan (SECP) under the provisions of the Companies Act 2017 (**TCA, 2017**) and Securities & Exchange Commission of Pakistan, Act 1997 (**SECPA)**. He contended that Petitioner No.1 had merely agreed, on an informal basis, to associate Respondent No.3 as Legal Advisor of the Company. It was mutually understood that no legal services were required nor rendered, and consequently no remuneration, salary, or professional fee was ever agreed upon or payable to him. The company record does not reflect that Respondent No.3 was ever engaged for any legal work, nor does it evidence the existence of any contract or retainer arrangement. It was argued that such association was only nominal and was, in fact, beneficial to Respondent No.3 for professional exposure. For more than a decade, Respondent No.3 never raised any objection nor asserted any claim regarding the use of his name as Legal Advisor. The present demand of an exorbitant sum of Rs.Ten Million/- on account of alleged unlawful use of name and legal identity is wholly baseless, frivolous, and *prima facie* reflective of extortion intent. Learned counsel submitted that Respondent No.3 failed to place on record any material before the learned XIth Additional Sessions Judge, Karachi East, to establish actual loss or damages suffered by him. The petitioners have consistently maintained the highest legal and ethical standards and categorically denied allegations of fraud, cheating, or breach of trust. According to learned counsel, the impugned proceedings are nothing but an attempt to pressurize the petitioners through blackmail. It was further argued that Respondent No.3, through a legal notice dated 11.05.2024, demanded an unconscionable amount as damages,

which was duly replied by the petitioners vide letters dated 01.06.2024 and 08.06.2024, wherein all allegations were specifically denied. Learned Counsel emphasized that the legal profession carries sanctity and cannot be permitted to be misused as a tool for harassment or unlawful enrichment. The demand of Rs.6 crore, calculated at Rs.500,000/- per month, was described as shocking and beyond comprehension. It was asserted that Respondent No.3 never rendered any service, never visited the office, never advised the petitioners, nor drafted a single legal document on their behalf, therefore bill dated 20.05.2024, captioned as "Outstanding Legal Fees," was termed as devoid of substance. Even otherwise, respondent No.3, if having any genuine claim, had an adequate remedy by way of a civil suit for recovery; however, no stretch of law or jurisprudence permits conversion of a civil dispute into a criminal prosecution. Learned counsel pointed out that Respondent No.3 vaguely referred to provisions of the Pakistan Penal Code without specifying any offence, which reflects lack of legal foundation. The matter was also taken by respondent No.3 to the SECP, pursuant to which notice dated 03.06.2024 was issued, thereby demonstrating that the dispute, if any, is purely civil and regulatory in nature. Reliance was placed on Section 25 of the Contract Act, 1872, to contend that any agreement without consideration is void. As no services were rendered, Respondent No.3 is not entitled to claim any amount whatsoever. Even under the Companies (Appointment of Legal Advisers) Act, 1974, (**CALAA**) the prescribed retainer bears no nexus to the extravagant claim raised. It was further submitted that upon filing of Criminal Miscellaneous Application No.2831/2024, the learned Ex-Officio Justice of Peace called for a report from the concerned SHO, who categorically reported on 20.07.2024 that no cognizable offence was made out and the matter was civil in nature. Despite this, the learned XI-Additional Sessions Judge, Karachi East, vide order dated 16.08.2024, directed registration of FIR without proper appreciation of material on record. Learned counsel also highlighted that undue pressure was exerted upon the police authorities, resulting in registration of FIR No.529/2024 of P.S. Ferozabad. It was lastly contended that the impugned order is not sustainable in law, having been passed without due application of judicial mind, and has unnecessarily dragged the petitioners into criminal proceedings. Counsel relied upon the cases of **Muhammad Yasin v. SSP and others (2004 SCMR 868), Muhammad Nadeem Anwar v. Securities and Exchange Commission of Pakistan (PLD 2012 Peshawar 15), Muhammad Rafique and another v. Director General, Federal Investigation Agency, Islamabad and another (2023 PCrl. LJ 38) and unreported judgment dated**

30.06.2025 passed in Criminal Petition No.39-K/2025 (Syed Basit Hyder Taqvi v the State). Prayer was made for acceptance of the petition.

3. Learned counsel for Respondent No. 3 contended that Respondent No. 3 is a duly enrolled Advocate of the High Court since 2004 and a member of the Sindh High Court Bar Association. It was asserted that the petitioners, while registering their company in 2013, unlawfully used the name of Respondent No.3 as Legal Advisor in Form-29 submitted to SECP, without his consent, application, or any communication, in violation of the mandatory requirements of the Companies Ordinance, 1984 and the CALAA. It was argued that under the law, annual certification from the Legal Advisor is compulsory; however, the petitioners intentionally avoided obtaining such certificate and continued to submit false declarations to SECP from 2013 onwards, thereby deriving wrongful gain. Such false statements and documents, it was submitted, constitute offence of cheating, forgery, and fraud punishable under Section 496 of TCA, read with Sections 420, 468 and 471 PPC. Learned counsel further contended that the jurisdiction for trial of such offence vests in the competent criminal court, as envisaged under Sections 37 of the SECP Act, 1997 and 482 of TCA, and that the SECP itself lacks adjudicatory jurisdiction in respect of these offence. It was submitted that investigation by the local police in the instant matter is not barred, particularly where the aggrieved person is neither a member nor an employee of the company. It was asserted that the record prima facie discloses commission of cognizable offence, requiring investigation by the police. The constitutional petition, it was argued, is not maintainable, as it is based on suppression of material facts and a distorted narration intended to frustrate lawful criminal proceedings. Learned counsel denied the petitioners' assertions that Respondent No.3 sought appointment as Legal Advisor or furnished any documents on voluntary basis. It was submitted that in 2013 Respondent No.3 was an established Advocate, and it was the petitioners who utilized his name and professional standing to enhance their credibility in the market, without lawful authority. It was lastly contended that Respondent No.3 is legally entitled to seek damages for the unauthorized use of his name, status, and legal identity, and such claim cannot be termed extortion; the same is to be adjudicated by the competent court of law. It was further contended that since the report under section 173 CrPC was submitted before competent Court of Law, the Petitioners had an efficacious remedy to seek premature acquittal by filing an application under section 249 - A or 265 - K CrPC as the case may be. Counsel placed reliance

on the cases of **Saif ur Rehman Khan v. Chairman, NAB, Islamabad and others (PLD 2022 SC 409) and Director General, Anti-Corruption Establishment Lahore and others v. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401)**. Prayer was made to dismiss the petition.

4. Learned Additional Advocate General, Sindh assisted by Learned Additional Prosecutor General, Sindh supported the assertions of Respondent No 3 and prayed for dismissal of the petition, as it was averred, that after proper investigation sufficient incriminating material was found available against the Petitioners and as a result of investigation report under section 173 CrPC was filed before the concerned Court, therefore, proceedings cannot be quashed by invoking the writ jurisdiction of this Court. It was contended that Petitioners may approach the trial Court for a pre-mature acquittal by filing an application under section 249 - A CrPC.

5. Heard learned counsel for the parties and perused the material made available before us on record.

6. From meticulous perusal of record it revealed that the petitioners are the Chief Executive and Directors of Bays International (Pvt.) Ltd., a company incorporated under the provisions of the Companies Act 2017 and registered with 'SECP'. Respondent No 3 is a lawyer and admittedly he was placed at the roll of the Company as its legal advisor in compliance to the provisions of Companies (Appointment of Legal Advisors) Act 1975**.** Per Petitioners' contention that Respondent No. 3, had volunteered to retain his name on the company's profile as a legal advisor without any remuneration. It is further stance of the Company that Respondent No 3 was never requested to render any legal services, therefore any remuneration was not payable to him.

7. In contra, Respondent No. 3 contends that his name was incorporated into the company's profile through fraud, which constituted an offence of cheating and forgery punishable under Section 420, 468 and 471 of the Pakistan Penal Code (PPC). Consequently, Respondent No. 3 on knowledge of such an alleged illegal act, served notices upon the petitioners, which were replied offensively by them, therefore Respondent No 3 filed an application before the Ex-Officio Justice of Peace seeking registration of an FIR under Sections 420, 468, and 471 of the PPC. The application was allowed, and in compliance thereof, FIR No. 529 of 2024 was registered at PS Ferozabad.

8. It is the case of the petitioners, that the FIR was registered through a colorful exercise of powers, as the matter pertained to the affairs of a private limited company, the same fell within the ambit of the relevant regulatory authority (SECP) to investigate and prosecute and therefore the local police had no jurisdiction to register the FIR or conduct an investigation.

9. The crux of the controversy involved in the present *lis* leads to framing of the following points for determination:

POINT No. 1

Whether an offence of fraud was allegedly committed by the Company is cognizable by local police under section 154 CrPC and could be investigated by local police and was triable by an ordinary Court on a complaint or report under section 173 CrPC?

Or

POINT No. 2

Whether an offence of fraud allegedly committed by the Company incorporated under the Companies Act 2017, in relation to its affairs, would be exclusively investigated by SECP under the provisions of The Companies Act, 2017 or other enabling provisions of laws and triable by a court competent to take cognizance on a complaint filed by SECP?

10. A scanning of the record reveals that Respondent No 3 served legal notice dated 11.05.2024 upon the petitioners, language of the notice transpired that Bay International a private limited company applied for its registration by filing a Form No.29 with the SECP showing the respondent No .3 as its legal adviser, which per the respondent No.3 was done without consent and amounted to fraud and mis-declaration, and such practice was continued for a period of 10 years by the Company. Respondent No.3 in the said legal notice intimated the petitioners that it was an offence punishable under Sections 420, 468 and 471 PPC as such demanded the compensation of Rs.10-milliion for the alleged misuse of his name and fame. The petitioners responded the notice asserting that the Respondent No.3 retained the company's name to foster his credibility without any remuneration thereof and it was further asserted that legal notice dated 11.05.2024 was nothing but an attempt to extort money and blackmail the Company. Petitioners' harsh response led to registration of **FIR** as well as **a suit for recovery.**

11. The petitioners are the proprietors of the company incorporated under the **Companies Act, 2017.** It is mandatory for a company to appoint at least

one legal adviser under **Section** 3 of the CALAA, on retainer-ship basis. There is no concept of appointment of a legal adviser without fixing his legal fees. Had it been the case, the Petitioners ought to have entered into such agreement with Respondent No 3 for waiver in fees or retainer-ship as required under Section 3, in absence of such an agreement of volunteering the legal services it cannot be said that Respondent No 3 was appointed as a legal advisor without remuneration. The claim of the petitioners that no legal services were rendered by the Respondent No 3 even would not absolve the Company from payment of retainer ship amount. However, it is not the case here, as the Respondent No 3 alleges fraud and mis-declaration that constituted an offence as such the payment of retainer-ship amount is immaterial. Section 3 of CALAA requires the appointment of legal advisor by acknowledgment of terms and conditions through agreement. For the sake of convenience Section 3 is reproduced below:

> *"**3. Appointment of Legal Adviser. --** (1) Every company shall appoint at least one Legal Adviser on retainership to advise such company in the performance of its functions and the discharge of its duties in accordance with law and in accordance with the terms and conditions of agreement entered into by and between the company and Legal Adviser or required by law or prescribed by any rules, regulations governing the company,*
>
> *Provided that a company in existence immediately before the commencement of this Act shall be deemed to have complied with the provisions of this sub-section if it appoints a Legal Adviser before the expiration of three months from such commencement.*
>
> *(2) No person other than an advocate of High Court or a registered firm shall be appointed to be a Legal Adviser.*

12. Section 4 of the CALAA further elaborates the appointment of a legal adviser and envisages that a legal adviser appointed by a company shall be paid or allowed a retainer ship fee, which shall not be less than Rs.5,000 per mensum, or such higher amount as may be notified by the Federal Government. For the sake of convenience Section 4 of the said Act is reproduced herein below:-

> *"**4. Retainer.** – Every legal Adviser appointed by a company shall be paid a retainer which shall not be less than five thousand rupees per mensum or such higher amount as may be notified by the Federal Government in the official Gazette."*

13. The CALAA provides a remedy in case of contravention of any of its provisions. Section 7 of the Act, stipulates that if any person contravenes the provisions of the Act or the rules and regulations made thereunder, he shall be deemed to have committed an offence and shall be liable to a penalty

imposed by the SECP. Such penalty, in the case of contravention by an individual, may extend up to Rs. 100,000, and in the case of a company up to Rs. 200,000. It is pertinent to mention that section 7 was inserted and substituted through the Companies (Appointment of Legal Advisers) (Amendment) Act, 2017, since the alleged contravention as claimed by Respondent No. 3 spanned over a period of nearly ten years, from 2013 to 2023, the provisions of the amended Act shall equally apply to the instant case. For the sake of convenience Section 7 is reproduced hereunder:

> *"**7. Penalty adjudication of offence and appeal**.-- (1) Any person who contravenes any provision of this Act or rules or regulations made thereunder shall be guilty of an offence and shall be liable to a penalty to be imposed by the Commission as under:-*
> *(a) in the case of an individual including directors of the company, such sum which may extended to one hundred thousand rupees; and*
> *(b) in the case of company, such sum which may extend to two hundred thousand rupees.*
> *(2) The amount of penalty imposed under sub-section (1) shall be payable to the Commission and may be recovered as provided under section 162 of the Securities Act, 2015 (III of 2015).*
> *(3) Any person aggrieved by an order passed by the Commission or an officer authorized in this behalf may prefer an appeal to Appellate Bench of the Commission under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).*
> *(4) The Commission, before adjudication of contravention of, or failure in complying with, any provision of this Act, rules or regulations, shall give show cause notice and reasonable opportunity of being heard to the company or person.*
> *(5) From the date of coming into effect of this section, in respect of all prosecutions filed under the substituted section 7 the respective courts shall continue with the pending proceedings and may impose penalty as provided under section 7 as substituted.*

14. It is the case of Respondent No. 3 that the petitioners' company filed a false statement with the **SECP,** thereby caused injury to him, for which they are liable to prosecution. It is, however, an admitted position, that the alleged false statement referred to as by Respondent No. 3 was filed by the Petitioners before SECP. Section 7 - A of the CALAA provides the appropriate remedy in such eventuality, which reads as below:

> *"**7A. Penalty for false statement**.-- Whoever, in any return or document, required by or for the purposes of any of the provisions of this Act, willfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to two hundred thousand rupees or both."*

15. The CALAA further envisaged that the company shall maintain a register and record, as set out in Schedule I, regarding the appointment of legal advisers. Under Schedule I of Rule 3 of the Companies (Appointment

Of Legal Advisers) Rules, 1975, the particulars of the legal advisers, as the case may be, are required to be incorporated. For the sake of convenience, the Schedule No.I of Rule 3 of Rules 1975 is reproduced below:-

"***SCHEDULE I***
[See rule 3 (I)]
REGISTER OF LEGAL ADVISER

Name of the Legal Adviser (If the legal adviser is a firm, name of firm should be given).	*Number of partners in case of a firm*	*Remuneration*	*Address*	*Date of appointment.*	*Date of termination of appointment.*

16. Schedule II further provides that a certificate shall be obtained from the Legal Adviser to the effect that he is not working as a legal adviser for more than three companies simultaneously, in the following manner:

"***SCHEDULE II***
[(See rule 3(2)]
CERTIFICATE
(To be obtained annually from a legal Adviser)

I/We …….. certify that during the year ..... I/We was/were not engaged as legal adviser in more than three companies/ ..... companies. The particulars of the companies in which I/We was/ were the legal adviser during the year are as follows:-
*Name of the company*_____ *Address*_____
(1) *(2)*
*Signature*_____ *Name*_____

17. If the stance of the Petitioners is accepted to be true, they should be in possession of the agreement signed and Certificate issued under schedule II by the Respondent No 3, regarding the acceptance of service as Legal Adviser without remuneration. The Petitioners have not placed on record any such documents substantiating their claim. Respondent No 3 alleges fraud allegedly committed by a Company. In case of any grievance relating to Fraud etc. By a company, TCA provides a forum to agitate such plea. Section 476 lays down that an offence under TCA was cognizable. The Offence of false statement, falsification, forgery, fraud and deception was defined under section 496 of TCA and was punishable from one year to seven years. Section 482 of TCA articulated that that an offence under the provisions of TCA which was punishable with imprisonment was to be tried

by the Court of Sessions notified by SECP under section 37 of the SECP Act, 1997.

18. Since the Respondent No 3 alleges fraud against Petitioners, a matter which the SECP is empowered to adjudicate under Section 257 of TCA. The proper forum available to Respondent No. 3 was to file a complaint before the SECP. Upon receipt of such complaint, the SECP, after providing the Petitioners' company an opportunity of being heard, was required to proceed further in accordance with the law. For the sake of convenience Section 257 of the Act, 2017 is reproduced hereunder:-

> *"**257. Investigation of company's affairs in other cases**.— (1)Without prejudice to its power under section 256, the Commission —*
>
> *(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct, if —*
>
> *(i) the company, by a special resolution, or*
>
> *(ii) the Court, by order,*
>
> *declares that the affairs of the company ought to be investigated; and*
>
> *(b) may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct if in its opinion there are circumstances suggesting —*
>
> *(i) that the business of the company is being or has been conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or*
>
> *(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members or have been carrying on unauthorised business; or*
>
> *(iii) that the affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return; or*
>
> *(iv) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or*
>
> *(v) that any shares of the company have been allotted for inadequate consideration; or*
>
> *(vi) that the affairs or the company are not being managed in accordance with sound business principles or prudent commercial practices; or*
>
> *(vii) that the financial position of the company is such as to endanger its solvency:*
>
> *Provided that, before making an order under clause (b), the Commission shall give the company an opportunity of being heard.*
>
> *(2) While appointing an inspector under sub-section (1), the Commission may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise."*

19. In case, after investigation and on perusal of the inspector's report, if appointed, the SECP was of the view that the Company had committed an offence, it could have referred the case under Section 263 of TCA for prosecution of the responsible of the Company. Section 263 reads as under:-

> *"**263. Prosecution**.–(1) If, from any report made under section 262, it appears to the Commission that any person has, in relation to the company or in relation to any other body corporate, whose affairs have been investigated by virtue of sections 256, 257 and 258, been guilty of any offense for which he is criminally liable, the Commission may, prosecute such person for the offence, and it shall be the duty of all officers and other employees and agents of the company or body corporate, as the case may be, other than the accused in the proceedings, to give the Commission or any person nominated by it in this behalf all assistance in connection with the prosecution which they are reasonably able to give.*
> *(2) Sub-section (3) of section 261 shall apply for the purpose of this section as it applies for the purposes of that section."*

20. It appears from record that that Respondent No 3 filed a complaint with SECP, for which a notice dated 03.06.20224 was issued by the Additional Joint Registrar of SECP to the Petitioners (available at page 103). Respondent No 3 instead of pursuing the complaint, got registered an FIR, though per own contention of the counsel for the complainant (Respondent No 3) that the Petitioners had committed an offence within the definition of Section 482 of TCA which was triable by a Court of Sessions. The contention of the Counsel for Respondent No 3 is correct that an offence of fraud in relation to the affairs of company was triable by Court of Sessions but it was cognizable only on a complaint filed by SECP as envisaged under section 37 of the SECP, Act 1997 which reads as under:

> *37. **Cognizance of offences.** – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898) but subject to the administered legislation, no court other than the court of sessions shall take cognizance of any offence punishable with imprisonment or imprisonment in addition of fine under this Act or any administered legislation, except on a complaint by an officer authorized in this behalf by the Commission signed by a Commissioner:*
>
> *Provided that the Federal Government may, in consultation with the Chief Justice of the concerned High Court, notify any other court established under any other law presided by sessions judge or equivalent to take cognizance of any offences under this Act or any administered legislation.*
>
> *(2) Subject to sub-section (1), in case of transfer of case from court of sessions it will not be necessary to recall any witness or record any evidence a new that may have been recorded and the court to which the case is transferred shall continue proceedings from the stage before such transfer.*

21. Section 37 of the SECP Act 1997 grants an exclusive jurisdiction to Court of Sessions for Cognizance of offences on a complaint by SECP. It starts with a *non-obstante* clause that notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No. V of 1898) but subject to the administered legislation, no court other than the court of sessions shall take cognizance of any offence punishable with imprisonment or imprisonment in addition of fine under this Act or any administered legislation, except on a complaint by an officer authorized in this behalf by the Commission signed by a Commissioner. Section 37 reads as under:

22. From the discussion made herein above, it is crystal clear that mis-declaration, false declaration or fraud in relations to affairs of Company was an offence within the meaning and definition of provisions of CALAA and TCA, which were special enactments and Pakistan Penal Code 1860 (PPC) was a common law. It is trite law that the provisions of special law have the overriding effect upon the common law and in case an injury is caused to a person which covers the provisions of common and special law then the provisions of latter shall prevail and the aggrieved person shall agitate his grievance in accordance with the provisions enacted under the special law. The petitioners being the Directors and Secretary of Company i.e. Bay International Pvt. Ltd. Company were allegedly accused of fraud and filing of a false declaration which constituted an offence under the Special Law, under such circumstances, the appropriate remedy available to the Respondent No.3 was to invoke the provisions of TCA the Act and to pursue his complaint before SECP burdened with a responsibility of oversight upon the affairs of the Company incorporated under the provisions of TCA.

23. At the very inception, Respondent No 3 chose a wrong forum for prosecution of the Petitioners. The proceedings lodged before Learned Justice of Peace seeking directions for registration of an FIR in the matter with local police were not tenable under the law. Even the proceedings before learned Judicial Magistrate in the particular facts and circumstances of the case would be corum non judice, as such not sustainable under the law. Needless to observe that in the administration of justice determination of the jurisdiction by the Court seized with the matter is one of the important elements because if justice has been provided basing upon corum non judice orders, it would have no legal sanction behind it.

24. For the foregoing reasons, we are of the considered view that, in the presence of a special law, the Learned Ex - Officio Justice of Peace lacked jurisdiction to entertain an application under section 22 - A CrPC and to direct local police to record an FIR of the matters related to the affairs of a company. It was for the SECP to probe into the affairs of Company and in case, it surfaced that the company had contravened any of the provisions of CALAA or committed an offence under TCA then to prosecute the company under the relevant provisions of law. **Thus the point No 1 is answered in negative and Point No 2 is answered in affirmative.**

25. It is pointed out by Learned Additional Prosecutor General that a report under section 173 CrPC has been submitted before the concerned Court. In such situation when an investigation culminates in filing of report under section 173 CrPC and competent Court takes cognizance of the case, the appropriate forum available for the parties was to avail the remedy by filing an application under section 249 - A or 265 - K CrPC and seek premature acquittal, per the dicta laid down by the Honorable Supreme Court of Pakistan in the case of **Director General, Anti-Corruption Establishment Lahore and others v. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401).** Since the proceedings initiated in the instant case are corum non judice, therefore, it would not be in the fitness of things to ask the Court to assume the jurisdiction not vested in it.

26. Since the Ex-Officio Justice of Peace issued directions for the registration of the FIR and the Incharge of the Police Station recorded the FIR and investigated the same while discharging their duties/functions in connection with the affairs of the Province. Such actions were thus amenable to the writ jurisdiction of this Court. This view is fortified from the Dicta laid down by the Honorable Supreme Court in the case of FIA through Director General FIA and others Versus Syed Hamid Ali Shah and others reported as **PLD 2023 Supreme Court 265**, wherein in its Para 5 of the judgment it was held as under:

> ***"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 FIA in the exercise of its Constitutional Jurisdiction under Article 199 of the Constitution, therefore, the acceptance of the criminal miscellaneous application filed by some of the accused persons under section 561 – A CrPC, and the reference to section 561 – A 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 consequences. 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 the service of CDA employees, does not constitute the offence of misconduct punishable under section 5 (2) of PCA nor are the ingredients of the offence of Criminal Breach of Trust under section 409 PPC made out. The High Court has also 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."***

27. The case laws relied upon by the Learned Counsel for the parties though enunciated the principle of law but due reverence were on different footings, hence are distinguishable from the case in hand.

28. In view of the above discussion, a case for indulgence to exercise the powers of judicial review is made out. Consequently this petition is allowed. Order dated 16.08.2024 passed by Learned Additional Sessions Judge XI/ Ex - Officio Justice of Peace Karachi East, FIR No. 529 of 2024 lodged at PS Ferozabad for offences under Sections 420, 468, 471, and 34 of the PPC, and proceedings in criminal case No Nil of 2024 filed before the Court of Learned Civil Judge & Judicial Magistrate VI Karachi East stemming from the above referred FIR are declared to be illegal, ab initio void, and corum non judice and are hereby quashed.

29. Before parting with the order, it would be pertinent to mention that Respondent No. 3, had filed a complaint before SECP for investigation into the affairs of company regarding fraud. To the own contention of Petitioners that SECP was the only proper forum for adjudication of alleged fraud and mis-declaration. It is therefore ordered that the complaint filed by the Respondent No 3 shall be treated as an application for investigation under Sections 257 and 258 of the Companies Act, 2017 (TCA) read with Sections 7 and 7-A of the Act, of 1974 (CALAA) and shall be deemed to be pending before SECP. The complaint of the Respondent No 3 shall be decided by

SECP strictly in accordance with law preferably within a period of 60 days from the date of receipt of this order and without being influenced or prejudiced by any of the observations made in the instant order. If SECP concludes that an offence of fraud or that of filing of false statement or false declaration was committed by the Petitioners, the due process of law for prosecution shall follow.

19. The Petition stands disposed of in above terms. Office to send copy of this Order to SECP for compliance. Learned MIT - II to esnure compliance.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

MAK-Nadir
Approved for reporting