IN THE HIGH COURT OF SINDH AT KARACHI

Present: Ahmed Ali M. Sheikh, CJ and Omar Sial, J

Crl. Misc. Application No. 506 of 2020

Syed Ali Zaidi & others v. The State

Mr. Muhammad Ashraf Kazi, Advocate for the applicants.
Mr. Gulfaraz Khattak, Assistant Attorney General a/w Abdul auf Shaikh, Deputy Director Legal FIA and Bilal Ahmed SIP of FIA.

ORDER

Omar Sial, J: The applicants were all employees of Allied Bank of Pakistan. Some of them were posted at the Civic Centre Branch of the Bank while others were serving at its Hassan Square Branch.

2. On 21-3-2014, the then Commissioner Karachi filed a complaint before the F.I.A. in which he stated that Karachi Municipal Corporation had opened bank accounts with various banks in which money connected to its employees' pension, provident fund and other welfare heads was deposited. One such bank was the Allied Bank of Pakistan. At some stage it came to the notice of KMC that a fraud had occurred in the Hassan Square Branch of the Allied Bank. It was subsequently discovered that KMC's investment in term deposit receipts aggregating approximately Rs. 1.5 million were not showing in the books of accounts of the Bank. Subsequent probes by KMC revealed that the investments made by KMC in the Civic Centre and Hassan Square branches of the Bank had been encashed unauthorizedly. It was alleged that the Bank staff, which included the applicants, were involved in this scam.

3. Upon the aforementioned complaint an inquiry was initiated by F.I.A., which inquiry culminated in the registration of F.I.R. No. 30 of 2014 against the applicants. The F.I.R. was registered under sections 409, 420, 467, 468, 471, 109 and 34 P.P.C. read with section 3 and 4 of the Anti-Money Laundering Act, 2010 as well as section 5(2) of the Prevention of Corruption Act, 1947.

4. On 13-6-2014, the F.I.A. submitted an interim challan before the learned trial court which reflected that the accused were guilty of the same offences as listed in F.I.R. No. 30 of 2014. A supplementary challan was filed on 17-9-2014 which also showed the same offences (as contained in the F.I.R. and the Interim Challan). On 31-5-2015, the investigating officer of the case once again moved an application for extension of time to finalize investigation, however, this time the

learned trial court did not expect the request and ordered that the supplementary challan be treated as the final challan. A year later, the F.I.A. filed yet another challan terming it as the final challan, however, the learned trial court did not accept the same vide its order dated 19-11-2015 on the ground that the trial court had earlier i.e. on 31-5-2015 treated the supplementary challan as final.

5. The order of 31-5-2015 was challenged before this Court by the prosecution (through Criminal Misc. Application No. 159 of 2015) and a stay of proceedings was ordered by this Court vide its order dated 28-4-2016. It appears from the record that the learned trial court was not informed about this court's order dated 28-4-2016 and that's why it proceeded to frame the charge against the accused. The accused were charged under sections 409, 420, 467, 468, 471, 477-A, 109 and 34 P.P.C. read with section 3 and 4 of the Anti-Money Laundering Act, 2010 as well as section 5(2) of the Prevention of Corruption Act, 1947. In the meantime this Court decided Criminal Misc. Application No. 159 of 2015 in favour of the prosecution and directed the trial court to accept the final challan filed by the prosecution.

6. After the decision of Criminal Misc. Application No. 159 of 2015, an amended charge was framed by the learned trial court on 23-4-2019, for offences under sections 409, 420, 467, 468, 471, 477-A, 109 and 34 P.P.C. read with section 3 and 4 of the Anti-Money Laundering Act, 2010 as well as section 5(2) of the Prevention of Corruption Act, 1947.

7. On 19-3-2020, the accused filed an application under sections 222(2), 233, 234, 235 and 239 Cr.P.C. read with Article 10-A of the Constitution in which they prayed that the learned trial court should frame separate charges for the different category of offences with which the accused were charged. This application was dismissed by the trial court on 26-9-2020. The accused preferred a revision application (Criminal Revision Application No. 159 of 2020) against the order dated 26-9-2020. The stance of the accused was accepted and their application was allowed vide this Court's order dated 20-11-2020. It was ordered that 2 separate challans be filed against the two sets of accused persons belonging to the 2 different branches of the Bank and hold separate trials in respect of each charge. This order was complied to by the learned trial court

which on 30-11-2020 framed 2 separate charges. Both charges were however famed for offences under sections 409, 420, 468, 471, 477-A, 109 and 34 P.P.C. read with section 3 and 4 of the Anti-Money Laundering Act, 2010 as well as section 5(2) of the Prevention of Corruption Act, 1947.

8. The record further reveals that earlier on 4-5-2020 (i.e. before the order passed by this Court in Criminal Revision Application No. 159 of 2020), the investigating officer of the case filed an application under section 155(2) Cr.P.C. read with section 21 of the Anti-Money Laundering Act, 2010 for conducting an investigation into offences under section 3 and 4 of the Anti-Money Laundering Act, 2010. The learned trial court allowed the application on 5-5-2020. It is this order of 5-5-2020 which has been impugned in these proceedings.

9. Learned counsel for the applicants/accused has argued that the order dated 5-5-2020 should be set aside for the following reasons:

(i) The application was an after-thought and an outcome of malafide because the applicants/accused had earlier in the charges dated 2-5-2016, 23-4-2019 and 30-11-2020 were charged with offences under the anti-money laundering legislation. The primary thrust of the learned counsel for the applicants/accused has been that section 21 of the Act of 2010 makes offences under the act non-cognizable and as section 155(2) of the Code prohibited an investigation officer to conduct an investigation into non-cognizable offences without an order of a magistrate, which order was admittedly not obtained, the investigation, as far as the offences under the Act of 2010 was concerned was unlawful and at a belated stage i.e. on 4-5-2020, permission for investigation, could not be sought. The application under section 21 of the Act of 2010 could not have been filed after the trial had commenced.

(ii) That it was not a speaking order as required by section 24-A of the General Clauses Act.

10. The learned A.A.G. has supported the order of the trial court.

11. We have heard the learned counsel for the applicants/accused as well as the learned A.A.G.

12. Section 21 of the Anti-Money Laundering Act 2010 when enacted provided that all offences under the Act were to be non-cognizable and non-bailable. However (while it was not brought to our attention either by the learned counsel for the applicants/accused nor by Mr. Khattak), in our own research, we have found that the offences under the Act of 2010 were made cognizable and non-bailable by an amendment to section 21 through the Anti-Money Laundering (Second Amendment) Act, 2020, which came into effect on 22-9-2020.

13. The application by the investigating officer of the case seeking permission of the Court was filed by the investigating officer on 4-5-2020 i.e. before the amendment to section 21, there could have been force in the argument of the learned counsel that the same was filed at a belated stage and after the commencement of the trial – because a charge including offences under the Act of 2010 had been framed. The position however changed with the amendment in section 21 of the Act of 2010 as well as the order of this Court dated 20-11-2020 which resulted in 2 separate amended charges being filed on 30-11-2020. The trial therefore commenced on that date. When trial commenced there was no requirement of a permission being sought from a magistrate to investigate the offences. The impact and correctness of the impugned order, in view of the above observations becomes an academic exercise in the circumstances.

14. The application is dismissed for the reasons given in this order.

JUDGE

CHIEF JUSTICE