

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revisions Applications Nos. 80 and 81 of 20222
&
Criminal Revisions Applications Nos. 11 and 18 of 2023

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Applicants: Ayesha Mirza daughter of Salim Mirza
in Cr. Revision Applications No. 11 of 2023 and
Cr. Revision Applications Nos. 80 and 81 of
2022 through Mr. Muhammad Jaffar Raza,
Advocate.
Fatima Lyba daughter of Muhammad Zeeshan,
in Cr. Revision Application No. 18 of 2023
through Mr. Muhammad Jaffar Raza,
Advocate.

Complainant: JSBL through Mr. Shahab Sarki, Advocate a/w
M/s. Wahaj Ali Khan & Abdul Rashid Rajar,
Advocates in Cr. Revs. Nos. 11 and 18 of 2023.
Mr. Zain A. Jatoi & Mustafa Younus,
Advocates for JSBL in Cr. Rev. Nos. 80 and 81
of 2022.

Respondent: Federal Investigation Agency
through Mr. G.M. Bhutto, Assistant Attorney
General.
Inspector Stephen Sharif, FIA AML/CFT
Circle, Karachi.

Date of hearing: 05.05.2023
Date of decision: 10.05.2023

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Through captioned criminal revision applications, applicants Ayesha Mirza and Fatima Lyba have challenged the impugned order dated 10.01.2023, passed by the learned Judge, Special Court (Offences in Banks) Sindh at Karachi in Case No. 41 of 2022 (*Re- The State v. Saima Fahad Tanwiri & two others*) emanating from FIR No. 09/2022 registered at P.S. F.I.A. (CCC), Karachi under sections 3/4 of the AML, Act 2010 (Amended in 2020). Through the impugned judgment, the application filed by the applicants for their acquittal u/s

249-A Cr.PC was dismissed while observing that, prima facie, sufficient material was available against the applicants to connect them with the offence they stood charged with. Order dated 16.03.2022 passed in Cr. Revision No. 289 and 290 of 2021 also stands challenged wherein the objections raised before this Court regarding the FIR being lodged by a private complainant was called in question, but the same were dismissed as well. Therefore, these revision applications are being decided through this common judgment with the only difference being that the FIRs are lodged by FIA in one case and by a private individual in another.

2. The allegations against the applicants are that they, in connivance with each other, deposited artificial gold with the JSBL under its Gold Financing scheme and took loans to the tune of Rs.208.589 million from JSBL, Gulshan-e-Iqbal, Block-13/B, University Road Karachi received into the joint account of applicant Ayesha Mirza and Fatima Lyba. These proceeds were then used by the applicants to purchase multitudes of assets abroad and in Pakistan in the shape of cars and immovable properties and shared with other aiders and abettors who purchased these properties for the applicants. Initially, FIR No. 987 of 2020 was lodged by one Zulfiqar Ali Abidi, ex-official of JSBL, for the offences punishable under section 409, 420, 48, 471, 477, 109 and 34 PPC. FIA's Corporate Crime Circle conducted an enquiry regarding the said allegations of money laundering whereafter following verification of the same, FIR No. 09 of 2022 was lodged by the Federal Investigation Agency Official. Following further developments in the investigation, two separate FIRs bearing No. 37 and 38 of 2021 were also lodged prior which were an off-shoot of FIR No. 763 of 2021 for the offences punishable u/s 380, 408 468, 471, 467, 109 and 34 PPC of Police Station Aziz Bhatti, East-Karachi.

3. The only contention raised by the learned counsel for the applicants is that the entire proceedings are based on FIRs lodged by a private person as well as FIA officials directly without receiving written complaint from a competent person/authority and therefore cannot be maintained under the Anti-Money Laundering Act 2010 in that it states that only a complaint can be lodged and is maintainable under the law and even if a complaint is to be considered in the shape of an FIR, it could not have been filed by a private individual and was only to be

filed by an authorized official of the Government. In support of such assertions, learned counsel for the applicants has cited the case law reported as 1986 PCr.LJ 1158, 1982 PCr.LJ 795, 1993 PCr.LJ 1448, PLD 2005 Lah 631, 2001 PLD Kar 112, 2018 YLR 1721, 1971 SCMR 686, 1984 PCr.LJ 1455, PLD 2018 SC 189, PLD 2018 SC 370, 1993 PCr.LJ 1307, 2012 MLD 114, 2020 PCr.LJ 249, 1988 PCr.LJ 2156, 2001 YLR 197, 2001 YLR 1758, 1979 PCr.LJ 941, PLD 1983 Lah 397, 2000 SCMR 785, PLD 2020 SC 427, 2011 PTD 1460, PLD 1976 SC 57, 1989 SCMR 392, PLD 1978 Quetta 191, PLD 1984 Kar 522, PLD 2015 SC 77, 2018 CLD 177, 2003 YLR 749, 2022 SCMR 566, 2019 PTD 2209, two cases of the Indian jurisdiction reported as 2021 SCC Online Mad 6134 and 2012 SCC Online Deh 3648.

4. Learned Assistant Attorney General assisted by the learned counsel for the complainant/JSBL has primarily contended that there is no illegality in the impugned orders passed by the Courts below, no illegality has been committed and that FIA could, even on its motion open its investigation and the FIR lodged by a person, not otherwise competent under the Act, did not prejudice the applicants in any way. Learned counsel for the complainant, in support of said assertions, cited the case law reported as PLD 2010 Lahore 692, 2011 SCMR 45, PLD 2016 Sindh 462 and 2023 PCr.LJ 38.

5. We have heard the learned counsel for the respective parties and perused the record available before us.

6. The incident stems from a FIR lodged by one Zulfiqar Ali Abidi, ex-official of JSBL, alleging nefarious activities of fraud and pecuniary chicanery on the part of the present applicants along with their aiders and abettors. Subsequent to a thorough inquiry conducted by the FIA, it was unveiled that the ill-gotten gains, acquired through fraudulent machinations involving JSBL's Gulshan-e-Iqbal branch, were subsequently utilized to procure both tangible and intangible assets overseas and within Pakistan. Consequently, the FIA registered separate FIRs pursuant to Ss. 3 and 4 of the Anti-Money Laundering Act of 2010 (*henceforth referred to as "AMLA 2010"*). The primary legal conundrum, or the issue necessitating resolution, pertains to the legitimacy of initiating proceedings under AMLA 2010 based on an FIR filed by a non-official, private individual. Should such initiation be deemed impermissible, it

behoves us to examine the potential ramifications and implications thereof.

7. The present legal impediment first needs a reference to the relevant provisions of AMLA 2010. S. 21 of the AMLA 2010 provides that the offences under this act shall be cognizable and that such cognizance may only be taken by a Court on a complaint in writing received by it through authorized officers. The same proviso of AMLA 2010 is reproduced herein for ready reference:

“(2) The Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by, – (a) the investigating officer; or (b) any officer of the Federal Government or a Provincial Government authorized in writing in this behalf by the Federal Government...”

8. Under the AMLA 2010, with reference to S. 4, the mandated authorities for the initiation and investigation of offenses are the Financial Monitoring Unit (FMU) and the investigating officers appointed thereunder. Now, could the proceedings have been initiated on the basis of an FIR when the statute requires for the same to be a written complaint instead? Can an FIR, in this circumstance, be equated with a written complaint? Both, FIRs and complaints, share the fundamental objective of catalyzing the legal apparatus into motion for the purposes of investigation. An FIR constitutes the initial report of a cognizable offense under Section 154 Cr.PC. It is evident that both FIRs and complaints seek to activate the legal machinery for investigative purposes. It was observed by the Hon’ble Apex Court in the case of *Mushtaq Hussain and another v. The State (2011 SCMR 45)* that lodging of an FIR ensures that fabrication of story or consultation is avoided and that it serves to set criminal law into motion. When the purpose of the FIR and a complaint is same, this could not be termed as an illegality. It is also pertinent to note that the Act does not explicitly preclude private individuals from lodging FIRs, nor does it delineate any limitations with respect to the initiation of proceedings by such persons. The lodging of an FIR by Zulfiqar Ali Abidi may be construed as an irregularity rather than an outright illegality. An irregularity typically pertains to procedural deviations, which, although not in strict compliance with the prescribed course of action, do not render the proceedings inherently void or illegal. In contrast, an illegality would imply a breach of

substantive law, thereby undermining the validity of the entire legal process.

9. The lingering query now pertains to whether the initiation of proceedings based on an FIR filed by a private individual, constituting an irregularity, possesses the capacity to invalidate the entirety of the proceedings or not. It is essential to assess the impact of such an irregularity on the merits of the case and the rights of the involved parties. The court may choose to overlook the irregularity if it determines that the due process rights of the accused and the overall integrity of the proceedings remain unaffected. Money laundering is a predicate offence; one that stems from a larger crime. The larger crime in this case was the fraud committed with JSBL for which an FIR was lodged by Zulfiqar Ali Abidi, an ex-official of JSBL. Once investigated by the FIA, it was revealed that these proceeds were allegedly laundered by purchasing various moveable and immovable properties and being a predicate offence, separate FIRs under Ss. 3 and 4 of the AMLA 2010 were lodged by FIA. AMLA 2010, being a Special law pertains to a distinct offence. It has already been established by this Court in the case of *Misbah Karim and others v. Fed. Of Pakistan through Secretary and others (PLD 2016 Sindh 462)* that FIA, even on its own, would have been competent to investigate the matter and did not even need an FIR or a complaint to set into motion such proceedings. Therefore, even if the impugned orders were to be set aside, it would not absolve the applicants of their liabilities, rather only delay the process until FIA was to lodge such standalone FIRs. In our view, no prejudice was caused to the applicants in taking cognizance of the matter based on an FIR filed by a private individual. Even otherwise, such irregularity has been cured as the investigating officer has submitted the interim challan and the Court has taken cognizance of the same on such basis. The rationale behind not allowing non-prejudicial irregularities to hinder the administration of justice is grounded in the principles of fairness, efficiency, and equity. Lord Denning, a leading jurist, underscored the importance of substance over form, stating, "*The course of justice should not be deflected or interfered with by any side-wind of prejudice or technicality*" (*Seaward v. Paterson [1897] 1 Ch 545*). Upholding the rights and interests of all involved parties is crucial in striking a balance between the accused, the victim, and societal needs for law and order. Ultimately,

the efficient functioning of the legal system and the pursuit of justice are best served when non-prejudicial irregularities do not obstruct the judicial process. In assessing the ramifications of a procedural irregularity, it is imperative to consider the legislative intent underpinning the relevant statute. Section 21 of the AMLA 2010 embodies the legislature's aspiration for a consistent framework to counteract money laundering and penalize non-compliant organizations (*known as reporting entities*) that neglect their duty to report suspicious transactions. The objective was never to obstruct or undermine this process by way of technicalities. Under the auspices of the Control of Narcotics Substances Act 1997, S. 21 empowers officers not below the rank of Sub-Inspector of Police to execute entry, search, seizure, and arrest without a warrant. When cases dismissed at preliminary stages due to this seemingly minor irregularity reached the Honorable Apex Court, it was determined in a landmark case, *The State v. Abadi (2009 SCMR 291)*, that such a procedural defect did not fatally compromise the prosecution's case and was curable under S. 537 Cr.PC. This elucidation highlights the importance of focusing on the overarching legislative intent when evaluating the impact of procedural irregularities, rather than allowing technicalities to impede the pursuit of justice and the effective enforcement of anti-money laundering regulations.

10. Not only this, the normal principles required for quashing of FIR are not applicable in cases pertaining to the AMLA 2010 and reference in this regard is made to the case of *Muhammad Rafique v. Director General FIA (2023 PCr.LJ 38)* wherein it has been observed that:-

“... all these principles are not applicable in cases pertaining to the Anti-Money Laundering Act, 2010, as the money laundering is a distinct offence, hence the cases require thorough probe and investigation qua the predicate offences or property or the proceeds of crime or the property obtained by the accused persons for which they have to discharge the burden under the law, therefore, the ground raised by the petitions for quashing of second FIR is not legally justiciable nor the very registration of subsequent FIRs under AMLA, 2010 seems to be contrary to the principles laid down in the case of *Mst. Sughran Bibi supra*, which has different context, meaning and interpretation if seen with legislative intent of AMLA, 2010 hence both the writ petitions are hereby dismissed.”

11. For what has been discussed above, the learned trial Court properly assessed the ramifications of non-compliance of S. 21 of the AMLA 2010 and passed the impugned orders appropriately and as such the same do not require any interference. Resultantly, instant criminal revision applications are dismissed being meritless.

JUDGE

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