

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No. D-508 of 2025

[Syed Momin Hussain Shah v. Federation of Pakistan & Others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioner : Syed Momin Hussain Shah through
Mr. Ishrat Ali Lohar, Advocate

Respondents : Nil.

Date of Hearing : **25.03.2025**

Date of Decision : **25.03.2025**

O R D E R

RIAZAT ALI SAHAR. J, - The petitioner, who is working as an Inspector in the office of Customs & Intelligence Department, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 whereby he is seeking following reliefs: -

A. That, this Honorable Court very graciously be please to declare the impugned call-up notice dated 11.02.2025 is null, void and without any lawful justification.

B. That, this Honorable Court very graciously be please to suspend the operation of the impugned call-up notice dated 11.02.2025 till the final adjudication of this instant Petition.

C. That, this Honourable Court may succinctly be pleased to direct the official respondents to act in accordance with the law and not to take any coercive measure / action against the petitioner.

D. That this Honorable Court may kindly be pleased to direct the respondent to bring the all pending inquiries against petitioner and his family members before this Honourable Court.

E. That, this Honorable Court may graciously be pleased to refrain from starting any criminal proceedings or actions against the petitioner till the out-come of this instant Petition.

F. Quash the ongoing proceedings of the petitioner in inquiry No.17 of 20204 having call-up notice dated 11.03.2025.

G. That any other relief(s) which this Honorable Court may deems fit and proper.

2. The petitioner contends that he being as an Inspector is serving in the office of Customs& Intelligence Department for decades with a spotless record, is now *nearing* retirement. However, due to departmental grudge and political *victimization*, he has been implicated in multiple cases: (i) Crime No.03 of 2022 under Section 5(c) of the Prevention of Corruption Act 1947, (ii) **Crime No.06 of 2022 under Sections 3, 4 of AMLA-2010 read with Section 109 PPC, and (iii) Crime No.20 of 2023 under Section 5(c) of the Prevention of Corruption Act 1947, Section 156 of the Customs Act 1969, read with Section 109 PPC, all registered at PS FIA Police Hyderabad.** Subsequent to the registration of FIRs, investigations were conducted, and the final report of Crime No.20/2023 was submitted to different Courts, namely, the Court of Anti-Corruption (Central) Hyderabad and the Court of Special Judge (Customs, Taxation & Anti-Smuggling)

Hyderabad. Subsequently, upon *submission* of the final report under Section 173 Cr.P.C., the learned judge of the Anti-Corruption Court (Central) Hyderabad acquitted all accused in Crime No.20/2023 vide order dated 15.02.2025. Despite this acquittal and the absence of any remaining charges, the FIA Circle Sukkur issued a **call-up** notice dated 11.02.2023 regarding an **AMLA** inquiry derived from FIR No.20/2023 of FIA CC Hyderabad. The petitioner contends that the *investigation* has not been conducted fairly or transparently, but rather in an extremely casual, perfunctory, and flawed manner, denying him the right to a fair investigation, which is an essential facet of a fair trial guaranteed under **Article 10-A** of the Constitution of Pakistan, 1973. He contends that the investigation agencies have engaged in gross *misappropriation*, failing to present any substantial material or evidence, thereby subjecting him to unwarranted *victimization*.

3. Mr. Ishrat Ali Lohar, the learned counsel for the petitioner *contended* that the petitioner has served in the department for decades with an unblemished record. However, he is now facing multiple *inquiries* and FIRs due to departmental grudge and political victimization. He contended that parallel proceedings and separate trials initiated against the petitioner on the same subject matter are *illegal* and amount to a *violation* of the Article 13 of the Constitution, which protects against *double jeopardy*. The initiation of new FIRs while an earlier inquiry is pending is alleged to be a well-planned malicious prosecution aimed at harassing the petitioner. The counsel further contended

that Article 10-A of the Constitution *guarantees* the right to a fair trial, which includes lawful *jurisdiction* of the investigating agency and trial court. The *inquiry* and *subsequent* actions by FIA and other agencies, despite the petitioner's acquittal in Crime No. 20 of 2023, were presented as clear violations of this fundamental right. He has also highlighted that Crime No. 03 of 2022 under Section 5-C of the Prevention of Corruption Act, 1947 and Section 109 PPC is already pending adjudication, and the initiation of FIR No. 20 of 2023 and an AMLA Inquiry is a continuation of personal grudge by the complainant (FIA-Respondent No.4). He has pointed out that all three FIRs have been *lodged* by the same respondent (FIA-Respondent No.4), which has created jurisdictional confusion and an abuse of process. It was *emphasized* that such actions are *malafide* and unjustified in the eyes of the law. By advancing such arguments, the learned counsel prayed for quashing the ongoing proceedings and for an order restraining the respondents from *initiating* further inquiries or taking any coercive action against the petitioner.

4. After considering the submissions of the learned counsel and perusing the record, this court find that these key points require following **determination**:

- (i) *Whether the initiation of multiple **FIRs** and inquiries **amounts to double jeopardy** and violates **Article 13** of the Constitution?*
- (ii) *Whether the Federal Investigation Agency (**FIA**) and other authorities have **acted with lawful jurisdiction** and authority?*

(iii) *Whether the petitioner has made out a case for **quashment** of proceedings in an **inquiry** under Article 199 of the Constitution?*

5. The learned counsel for the petitioner has argued that multiple FIRs have been lodged and parallel inquiries initiated on the basis of the same set of facts, resulting in concurrent proceedings before different forums. However, it is a well-settled principle of law that separate inquiries and criminal trials may lawfully proceed where each discloses distinct offences, even if arising from a common factual backdrop. The mere existence of an earlier FIR or pending inquiry does not, by itself, preclude the registration of a subsequent FIR, provided that the later proceedings pertain to separate ingredients of offence, involve different statutory provisions, or are grounded in newly surfaced evidence. The principle of *nemo debet bis vexari*: No body can be vexed twice for the same cause, this concept, though widely accepted across the globe, is rooted in the fundamental principle, safeguarded by the constitution against double jeopardy enshrined in Article 13 of the Constitution of Pakistan, is engaged only when an accused is **prosecuted** or **punished** twice for the *same* offence. *Secondly*, Section 403 Cr.P.C, which bars second trial as well, nevertheless, sub-clauses (2), (3), and (4) of the provision explicitly outline the circumstances under which an accused *can be retried* for the same act or omission, which constitutes a different offence in distinct circumstances. *Thirdly*, section 26 of the General Clauses Act, 1897 also provides that if an act or omission breaks multiple laws, the offender can be prosecuted and punished under

any one of those laws, but cannot be punished twice for the same offence. In the case of *Raja Tanveer Safdar v. Mrs. Tehmina Yasmeen and others* (PLD 2024 Supreme Court 795), the Supreme Court of Pakistan emphasized the principle of conclusiveness and finality, which dictates that once a court has taken cognizance of an offence, conducted a trial, and convicted an individual, that person cannot be tried again for the same offence. The fundamental criterion for determining double jeopardy is whether the second trial is based on the same set of facts as the first trial, which resulted in a conviction for the same offence and would require the same evidence to be presented before the court. Essentially, for double jeopardy to apply, the subsequent proceedings must be identical in substance to the prior case that led to a conviction. However, if the nature of the proceedings differs in terms of substance and legal framework, it would not constitute double jeopardy. Needless to say, in the present case, although multiple proceedings have been instituted, each appears to arise from independent **factual** narratives and **legal** provisions. FIR No. 03 of 2022 stems from Enquiry No. 54/2012 conducted by the **FIA** Crime Circle, Hyderabad, concerning allegations of corruption against the petitioner. FIR No. 06 of 2022, on the other hand, is a logical offshoot of **FIR** No. 03 of 2022, and was registered under Sections 3 and 4 of the Anti-Money Laundering Act, 2010 read with Section 109 PPC, on the premise that the petitioner allegedly acquired immovable properties through proceeds of crime referenced in FIR No. 03 of 2022. Conversely, FIR No. 20 of 2023

is factually and legally distinct, as it pertains to the accumulation of disproportionate assets allegedly beyond the petitioner's known sources of income and implicates him in acts of **smuggling**. In such circumstances, each of the FIRs stands on its own footing and does not violate the principle of legal finality or procedural fairness. As regards the validity of the impugned **call-up notice dated 11.03.2025** issued under Section 160 Cr.P.C. in Enquiry No. 17/2024 by the FIA AML/CFT Circle Sukkur, the question arises as to whether such notice, in light of the preceding events and existing inquiries, can be lawfully sustained. The answer would depend upon whether the said notice is connected to a matter distinguishable from the earlier allegations in substance and scope, and whether the petitioner's fundamental rights are preserved in accordance with established legal standards.

6. It is pertinent to observe, that under the constitutional scheme, the judiciary, executive, and legislature function within clearly defined boundaries. Law enforcement agencies, including the Federal Investigation Agency (FIA), derive their investigative authority from statutory provisions and operate as part of the executive branch. While the judiciary is entrusted with safeguarding constitutional rights, it must refrain from interfering in the functions of the executive unless a case of manifest mala fide, patent lack of jurisdiction, or infringement of fundamental rights is established. **Article 199** of the Constitution of the Islamic Republic of Pakistan *empowers* the High Court to exercise its jurisdiction of judicial review. However, such jurisdiction is to be

exercised *sparingly* and only in exceptional circumstances, so as not to *frustrate* or hinder the lawful *functioning* of investigative agencies acting within their statutory mandate. The **FIA**, established under the Federal Investigation Agency **Act**, 1974, is duly *empowered* to conduct inquiries and investigations relating to offences including but not limited to money laundering, corruption, *white-collar* crime, and financial impropriety. Specifically, under the **Anti-Money** Laundering Act, 2010 and the Prevention of Corruption Act, 1947, the FIA holds jurisdiction to initiate proceedings against persons allegedly involved in financial misconduct. In this context, the issuance of a **call-up notices** under **Section 160 of the Code of Criminal Procedure (Cr.P.C.)** is an investigative measure that forms part of procedural due process. It does not, by itself, constitute an adverse or punitive action against the notice. Rather, it serves to assist the Investigating Officer in ascertaining facts, gathering material, and affording the individual an *opportunity* to present his version of events. In principle, such a notice neither implies culpability nor infringes upon the recipient's fundamental rights under the Constitution. Upon careful examination of the record, it is apparent that the **FIA** has initiated **Enquiry No. 17/2024** in accordance with its legal competence. The impugned call-up notice dated **11.02.2025** has been lawfully issued under **Section 160 Cr.P.C.** as part of an ongoing inquiry by the **FIA AML/CFT Circle, Sukkur**, and seeks the petitioner's attendance for the purpose of securing information relevant to the subject matter of

the inquiry/investigation. At this nascent stage, the petitioner's apprehensions are **premature** and speculative. The mere summoning of the petitioner does not give rise to any cause warranting interference by this Court. The petitioner remains at liberty to seek *appropriate* legal remedy in the event that any coercive, **mala fide**, or unlawful action is subsequently taken against him. However, **in the absence of any exceptional circumstances**, there exists no justification for the invocation of this Court's extraordinary constitutional jurisdiction to interdict the **ongoing inquiry**.

7. It is a settled principle of law that the **investigation** of a criminal offence falls *exclusively* within the domain of the police. While the independence of the judiciary stands as a cornerstone of democratic governance, the *autonomy* of investigating agencies is *equally* vital for **upholding** the rule of law. Any unwarranted *interference* by the judiciary in investigative processes compromises the doctrine of separation of powers and significantly *undermines* the administration of justice. Reference may be made to the dictum laid down by the Honourable Supreme Court of Pakistan in Case of ***Muhammad Hanif v. The State (2019 SCMR 2029)***, wherein it was observed that: "*Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each others' roles destroys the*

*concept of separation of powers and works a long way towards defeating justice and this was so recognized in the case of Emperor v. Khwaja Nazir Ahmed (AIR 1945 Privy Council 18)”. In the case of **F.I.A. through Director General, FIA and others v. Syed Hamid Ali Shah and others (PLD 2023 Supreme Court 265)**, the Supreme Court of Pakistan ruled that the High Court lacks the authority under Section 561-A of the Code of Criminal Procedure (Cr.P.C.) to quash a First Information Report (FIR) or an ongoing investigation. Consequently, any applications filed in the High Court under this provision seeking to quash an FIR or investigation proceedings are not legally maintainable. The Apex Court clarified that the jurisdiction conferred upon the High Court under Section 561-A, Cr.P.C. is limited to passing appropriate orders necessary to secure the ends of justice strictly within the realm of judicial or court proceedings. It does not extend to actions undertaken by other authorities or departments, such as the registration of an FIR or investigative processes carried out by the police.*

8. With respect to the petitioner’s reliance on his acquittal in the earlier criminal case arising out of Crime No. 20/2023, it is well established in law that an acquittal in one case does not operate as a ***blanket bar*** against subsequent or parallel inquiries, particularly where such inquiries are premised upon distinct factual allegations or fresh evidence. The mere fact that the petitioner has been acquitted in respect of one aspect of FIR bearing Crime No.20/2023, while the remaining portion pertaining

to Customs offences is still pending adjudication, does not bar the Investigating Agency from carrying out its statutory functions. So long as such inquiries are undertaken in accordance with the law and adhere to principles of procedural fairness, the agency remains within its legal mandate to proceed with the investigation. In the present instance, the petitioner seeks a sweeping relief in the form of quashing an inquiry and restraining the continuation of any related proceedings. It must be emphasized that such relief constitutes an extraordinary remedy, to be invoked economically and only in cases where the legal process is demonstrably abused, or the underlying proceedings are patently without jurisdiction or tainted by mala fides. The superior Courts of Pakistan have consistently held that quashing of criminal proceedings or inquiries is warranted only in the most *exceptional* circumstances for instance, where the FIR or inquiry on its face is absurd, frivolous, or actuated by an ulterior motive. The petitioner's challenge in the present matter is primarily directed against a call-up notice issued during an ongoing inquiry by the FIA AML/CFT Circle, which is a routine procedural step aimed at eliciting the petitioner's version and collecting relevant information. At this stage, no coercive or punitive action has been taken, nor is there any indication that the agency is acting beyond its statutory mandate. Furthermore, the petitioner's assertion that the issuance of multiple FIRs infringes Article 13 of the Constitution which embodies the principle of double jeopardy is misconceived. The constitutional protection against double jeopardy is only attracted

where a person is prosecuted or punished twice for the same offence. In contrast, the record in this case demonstrates that each FIR is founded upon separate allegations, invokes distinct statutory provisions, and is supported by different sets of facts and evidence. Therefore, no violation of Article 13 arises. Lastly, the Federal Investigation Agency, as a specialized law enforcement body, is vested with jurisdiction under the Anti-Money Laundering Act, 2010, among other statutes, to investigate complex financial crimes, including money laundering, corruption, and illicit accumulation of wealth. The petitioner has not placed on record any evidence that would persuade this Court to conclude that the present inquiry is lacking in jurisdiction, conducted with mala fide intent, or is otherwise liable to be quashed.

9. At this preliminary juncture, it is evident that the petitioner has not been subjected to any *coercive* or **adverse** action other than mere issuance of a **call-up notice**, which *constitutes* a lawful procedural measure within the investigatory competence of the **Federal Investigation Agency (FIA)**. The issuance of such a call-up notice, pursuant to **Section 160** of the Code of Criminal Procedure, 1898, is designed solely to afford an individual the opportunity to present his version of events and submit any relevant documentation for consideration during the inquiry process. It is a settled principle that investigatory agencies must be permitted to perform their statutory duties without premature judicial intervention, unless there is a manifest breach of fundamental rights or a clear case of abuse of authority. The

petitioner remains at full liberty to respond to the notice, furnish any exculpatory material in his defence, and avail himself of due process during the inquiry. Should the inquiry culminate in the initiation of formal proceedings or the registration of a **FIR**, the petitioner shall retain all recourse under the law. This includes, inter alia: the right to challenge any adverse action before the competent trial Court; the right to seek quashment of proceedings under the inherent jurisdiction of the High Court; and the right to invoke constitutional remedies under **Article 199** of the Constitution of the Islamic Republic of Pakistan if any of his fundamental rights are infringed. At this stage, however, no such infringement has occurred, and the process remains at an investigatory stage, governed by procedural fairness and statutory authority. The **inquiry** pertains to the **accumulation of assets disproportionate to the Petitioner's known sources of income**. It seeks to ascertain the **financial position** of the Petitioner at the time of his induction into Government service, and to evaluate the nature and extent of both his present moveable and immoveable assets, including any property held in benami or undisclosed ownership, if any. The record reflects that no such specific inquiry has previously been conducted by any Investigating Agency.

10. The Federal Investigation Agency (**FIA**), under its statutory mandate, is fully empowered to conduct inquiries and investigations into matters falling within the purview of its jurisdiction as prescribed under the **FIA Act and relevant laws**.

The issuance of a call-up notice is a lawful *mechanism* to summon individuals for inquiry, *facilitating* due process and ensuring compliance with investigative procedures. Courts have consistently held that an investigation agency, including the **FIA**, has the authority to initiate an inquiry where reasonable grounds exist, and such an inquiry does not amount to harassment or lack of jurisdiction unless shown otherwise through cogent evidence. The petitioner's claim of being subjected to **double jeopardy** is **misconceived**, as the principle of double jeopardy under Article 13 of the Constitution and **Section 403 Cr.P.C.** applies only where an accused has already been **convicted** or **acquitted** by a competent court for the same offence. A mere inquiry or investigation by the FIA does not amount to trial or punishment and unless the petitioner establishes that he has been tried and punished for the same offence previously, his plea is unsustainable. It would be appropriate to refer a **Judgment** dated 06.03.2025 passed by this court in the *unreported* cases of **Rahim Bux Phulpoto & others v. Federation of Pakistan & others (C.P. No.D-275 of 2025)** and **Riaz Ahmed Mangi & others v. Federation of Pakistan & others (C.P. No.D-276 of 2025)**, whereby the petitioners therein challenged the **FIA's** functions relating to inquiries, investigation and registration of case, which have been elaborately discussed.

11. In view of the above facts and circumstances, it is not within the domain of this Court to *preemptively* halt or interfere in an ongoing inquiry conducted by a legally competent Investigating

Agency. The FIA has acted within its statutory mandate and the petitioner has legal remedies available to challenge any unlawful action at the appropriate stage. **Premature judicial intervention** would disrupt the legal process, hinder law enforcement, and set an undesirable precedent. Accordingly, this Court finds no justification to interfere with the ongoing inquiry at this stage. Thus, instant petition is **dismissed** in *limine* along with pending application(s). However, the petitioner shall be afforded a fair opportunity to present his case before the relevant authorities and no adverse action shall be taken against him without adherence to due process and applicable legal safeguards ensuring his fundamental rights coupled with his right to a fair hearing. Let a copy of this order be transmitted to the Director General, FIA, Islamabad, for information and necessary action.

JUDGE

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