

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Abdul Mobin Lakho.**

**C.P. No.D-2774 of 2021
Wamiq Muhammad Yousuf**

Versus

The Federation of Pakistan & others

**For date of hearing
& order : 16.02.2022**

Mr. Moazam Ali, advocate for petitioner
Mr. Shahbaz Sahotra, Special Prosecutor, NAB
Mr. Irfan Ahmed Memon, DAG

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioner, an accused, in FIR No.02/2017, u/s 420, 409, 468, 471, 489-F and 109 PPC and FIR No.09/2021, u/s 3 & 4 of Anti-Money Laundering Act, 2010 (AMLA, 2010), both registered at Police Station Corporate Crime Circle (CCC), Karachi, is seeking quashing thereof on the grounds that both the FIRs are a result of malafide on the part of FIA; have been registered in respect of a dispute between two private individuals in which FIA has no jurisdiction; are based on one and same allegation; procedure as provided u/s 7 of AML Act, 2010 has not been followed in FIR No.09/2021, which makes the said FIR devoid of any legal force.

2. Learned counsel for the petitioner reiterating above points has relied upon following case law in support of his case **PLD 2021 Islamabad 323, PLD 2021 Baluchistan 1, PLD 2021 Islamabad 323 and PLD 2000 Karachi 181.**

3. On the other hand, learned DAG has opposed prayer of petitioner.

4. We have considered submissions of the parties and perused material available on record including the case law relied upon in defence. FIR No.02/2017 was registered on 06.02.2017 is in respect of allegations that the petitioner while acting as a Broker and a member of Karachi Stock Exchange lured public at large to entrust upon him money for investing in

equities in KSE/PSX accounts. But he instead of doing so deposited the sums so received in his personal account and issued them fake and fictitious receipts. When, subsequently, claimants demanded money back, he issued them cheques which were dishonored. Resultantly under relevant provisions the said FIR was registered.

5. In the trial, petitioner moved an application u/s 249-A Cr PC which was dismissed by the trial court i.e. IX-Judicial Magistrate South, Karachi, vide order dated 29.03.2021. A copy of order is available at page-67, which shows that trial has reached advanced stage and evidence of material witnesses has been recorded. The said order is challengeable in the revision application before the relevant Sessions Judge; instead of invoking said remedy available in law, the petitioner has directly filed this petition for quashing of the FIR, which in view of availability of such alternate remedy to the petitioner is not maintainable on the one hand. And on the other hand, the order passed by the learned Magistrate indicates that some witnesses examined in the trial have *prima facie* supported the allegations against the petitioner. In view of such legal and factual position on merit, the said FIR at this stage cannot be quashed. The offence of cheating public at large is *prima facie* an offence within the ambit of the Provision Corruption Act, 1947 which is included in the Schedule of FIA Act, 1974.

6. Whereas, FIR No.09/2021 registered on 17.02.2021 is an outcome of an enquiry conducted by the IO in FIR No.02/2017 coming across several properties purchased by the petitioner *prima facie* from the crime proceeds earned by him through commission of offences alleged against him in the first FIR. In the enquiry, fact of ownership of the petitioner of various properties purchased as such, duly mentioned in FIR, was confirmed that led to registration of the said FIR under Sections 3 & 4 of AML Act, 2010 against the petitioner. It has been reported that challan has been submitted in the case. The Honourble Supreme Court has laid down in the cases reported in **2006 SCMR 1957, 2011 SCMR 1813 and PLD 2013 SC 401** that after submission of challan, accused shall first approach the trial court and file application u/s 249-A Cr.PC and 265-K Cr.PC, as the case may be, for his acquittal, instead of directly moving the High Court u/s 561-A Cr.PC or under constitutional jurisdiction for the same relief.

7. Although, learned counsel for the petitioner has contended that FIR No.09/2021 was registered without following procedure provided under the AML Act, 2010 but has not explained the same to our satisfaction. The offences under the said Act in terms of Section 21 are cognizable and non-bailable. There are certain riders although therein to such proposition, which, among others, stipulate that a Court shall not take cognizance of any offence punishable u/s 4 case except upon a complaint in writing made by the IO. But it does not appear attracted here, for *prima facie* there appears no embargo over registration of FIR for investigation purpose first in an offence which is cognizable. And second learned DAG has informed that after investigation a proper complaint as stipulated u/s 21(2) of AML Act has been submitted to the learned trial court and it has taken cognizance of offence accordingly. Further, FIR No.02/2017 also includes Section 3 in addition to Section 4 of AML Act, 2010 in regard to which no embargo as above is provided under the law. Even otherwise, the trial court has taken cognizance of the offence after submission of the complaint. Therefore, the petitioner has an adequate remedy to agitate the point of jurisdiction, if at all attracted, before it, which it can competently entertain and decide in accordance with law.

8. The petitioner has filed instant petition directly for the same relief which we find not maintainable in law and not competent on merits as discussed above. On merits, it is not out of place to state that the allegations against the petitioner in view of his being owner of several properties allegedly purchased by him from crime proceeds entail an enquiry of a kind, which only the trial court can undertake competently as it involves recording of evidence, the exercise, which cannot be pursued by this court in exercise of constitutional jurisdiction. This being the position, this petition is dismissed.

JUDGE

JUDGE