

## IN THE HIGH COURT OF SINDH, KARACHI

### **Criminal Revision Application No.04 of 2015**

Applicant: State through Ahmed Khan Mirani Sub Inspector FIA, Electricity, Gas/Oil Anti Theft Unit through M/s. Peer Riaz Muhammad & Shaikh Liaquat Hussain Standing counsel alongwith Mr. Israr Ali, Additional Director (Law) of FIA

Complainant: Mahmood Ahmed through Mr. Shafiq Ahmed Advocate.

Respondent No.1: Mukhtar Ali Jokhio through Mr. Asadullah Memon Advocate.

Respondents: Bashir Ahmed Balouch& others through No.2 to 5 Mr. Fareed Ahmed Dayo Advocate.

Respondent No.6. Through Mr. Shahzado Saleem APG.

Date of hearing: 22.01.2015

Date of Order: \_\_\_\_\_

### **JUDGMENT**

**ABDUL MAALIK GADDI, J:-** Through this criminal revision application the applicant has assailed the legality and propriety of the order dated 15.01.2015 passed by the learned Special Judge Anti-Corruption (Provincial), Karachi in the case FIR No.81/2014 of police station FIA, Electricity, Gas/Oil Anti Theft Unit, Karachi, whereby I.O. of the case was directed to produce accused persons (in judicial custody) before Anti-Corruption Establishment within 24 hours for registration of fresh FIR even without passing any order on the Challan dated 24.12.2014 submitted by applicant.

**2.** Brief facts for the disposal of this Criminal Revision Application are that on 11-12-2014 on the basis of written complaint received from K-Electric Karachi regarding theft of Electricity power at Water Filter Plant, Pippri, Karachi a raid was conducted and illegal connections were found allowed by the employees/Engineers of Karachi Water & Sewerage Board, Karachi. The illegal connections were disconnected and entire material was secured under proper seizure memo. According to the complainant, employees of provincial government were arrested in case FIR No.81/2014 under the Electricity Act 1910 r/w Section 409/420/379/109 PPC and Section 5(2) of Prevention of Corruption Act 1947. It is alleged that bail application of four arrested accused persons was entertained by the learned Presiding Officer and on merits, the same was finally dismissed vide order dated 08.01.2015 discussing the entire facts and evidence come on record including the point of the jurisdiction but all of sudden on 15.01.2015 the learned Presiding Officer even without notice to the Prosecution took up an application under Section 63 Cr.P.C. submitted on behalf of accused persons, passed the impugned order without hearing the Applicant. Hence this Criminal Revision Application.

**3.** It is contended by the learned counsel for applicant that official of K-Electric was not having any enmity with Respondents No. 1 to 5 to involved them in the case and raid was conducted in a proper manner and wires were seized by the member of raiding party to which meter so installed, FIA

was competent authority to register the case against accused persons. He further submitted that the bail plea of the respondents No.2 to 5 has already been rejected by the incharge Special Judge Anti Corruption (Provincial) Karachi vide his order dated 8.01.2015. Besides according to him, during course of hearing of bail application the point of jurisdiction has been taken but the same was not found valid but the Presiding Officer all of a sudden when the challan was presented before her has returned the challan without passing any order on it and order has been passed on application under Section 63, Cr.P.C., without hearing the applicant Trial Court passed impugned order in hasty manner without notice and hearing to applicant, therefore, through this revision application the applicant has challenged the impugned order by taking following grounds.

**(a)** That the impugned order is illegal, ultra virus and not maintainable, in law and facts, the learned presiding officer while passing the impugned order has ignored the material facts/ evidence came on record including guide lines provided by our Superior Courts.

**(b)** That impugned order appeared to have been passed in hasty manner without going through all record available before the learned Presiding officer. Even the impugned order is lacking regarding disposal of FIR No.81/2014 of FIA, NR3C,

Karachi, as well as the fate of accused persons lying in judicial custody.

**(c)** That before passing order U/S 63 Cr.P.C, on the application filed by the accused persons, the learned presiding officer has failed to appreciate the principle of law that no one can be condemned unheard While in the present case, Prosecutor FIA was very much present in the Court and made a request for providing opportunity to be heard, but the request was declined by the Presiding Officer.

**(d)** That the order of learned Presiding Officer is not a speaking order and appears to pass announced without applying its judicial mind. The learned presiding officer has failed to appreciate that the bail application filed by four accused persons have already been dismissed by the Court (link Judge) vide order dated 08-01-2015 and the accused persons were remanded to Judicial custody. Therefore, the applicant/I.O was not empowered to obtain custody of the accused person from central prison Karachi.

**(e)** That the learned Presiding Officer has also failed to appreciate the guide lines provided by our Superior Courts reported in 2004 SCMR 1766, according to which the defect in investigation of the case, if any, did not affect the jurisdiction of the Trial Court to try the case in the absence of any miscarriage of justice. The dictum has also been followed by judgments reported vide P. Cr. L. J Lahore page 677, 1999

P.Cr.L.J Karachi page 1549 & Lahore page 1584, PLD 1999 Lahore page 279.

**(f)** That the learned Presiding Officer has simply relied upon section 11 sub-section (4) of Sindh Enquiries and Anti-Corruption Rules 1993, but failed to appreciate the guide lines reported in 1981 SCMR 1101, which clearly provides that “a Police Officer attached to Anti Smuggling is competent to investigate into offences of Corruption, therefore, the contention that such offences could be investigated only by a member of Anti-Corruption Establishment Held, not correct. Similar decision was followed by 2007 YLR 1135 Lahore according to which investigation conducted by the local police was neither subservient to nor governed by subordinate legislation provided in Rules as S.8 of West Pakistan Anti-Corruption Establishment Ordinance 1961, was enacted in addition to all other provision of Law, impugned order was set aside, challan having been submitted in the Court, trial would commence from the stage of framing of charge.

**4.** Learned counsel for Complainant has supported the arguments of learned counsel for the Applicant.

**5.** Conversely, learned counsel for Respondent No.1 has challenged the maintainability of this criminal revision application and submitted that the impugned order passed by the trial court is administrative in nature, therefore, same could not be challenged and in this respect he further submitted that the present dispute is in between two

authorities and the respondent No.1 is nothing to do with the case/crime but he has been falsely implicated in this case just to harass him. However, he has admitted that respondent No.1 has been granted interim bail by the trial court; since offence under which respondents are booked are not scheduled offence do not fall within the ambit of jurisdiction of FIA, therefore, he has prayed for dismissal of this revision application. In support of his contention he has relied upon the case of (1). Mazhar Iqbal V/S The State reported in 1989 P.Cr.L.J 2241, (2). Muhammad Sharif and 8 others V/S The State and another reported in 1997 SCMR 304, (3). The State through Deputy Attorney General V/S Muhammad Amin Haroon and 14 others reported in 2010 P.Cr.L.J. 518, (4). Pakistan Engineering Company Ltd. through Managing Director and 2 others V/S Director General, FIA Islamabad and 3 others reported in 211 YLR 337.

**6.** Learned counsel for Respondents No.2 to 5 has supported the impugned order by arguing that the FIA has no authority to conduct the raid in a manner as has been done by them alongwith members of technical staff of K-Electric and the management of K-Electric was required to approach to the Anticorruption & Inquiries to initiate the action against the officials of KW&SB in case such state of incident was being done by the officials of KW&SB and he had submitted that note on the interim charge sheet to which was submitted by the I.O. of this case agitating the point of jurisdiction of the FIA to register or to investigate the crime and so also Section

39, 39-A of Electricity Act- 1910 and Section 379 PPC are not a scheduled offence of Prevention of Corruption Act, 1947. During the course of arguments much emphasis has been placed on the point that the FIA was not the competent authority in the circumstances to have registered the FIR and domain to register the FIR vests with the Provincial Government or the Anti-Corruption Police under the P.C.A. 1947 and so the very action of the FIA is not legal and proper. In support of his arguments he has relied upon Section 11 sub-section (4) of Sindh Enquires and Anti-Corruption Rules 1993 that the criminal cases related to corruption by provincial employees the cases shall be registered by the establishment at Anti-Corruption police station. In support of his arguments, he has relied upon the cases of (1). Muhammad Farooq Umar V/S Government Pakistan & others reported in 2007 UC 39 (2). Tehsil Nazim TMA, OKARA V/S Abbas Ali and 2 others reported in 2010 SCMR 1437, (3). The State through Deputy Attorney General V/S Muhammad Amin Haroon and 14 others, reported in 2010 P.Cr. L.J. 518.

**7.** Learned APG appearing for the Respondent No.6 has also supported the arguments of Mr. M. Fareed A. Dayo learned counsel for respondents No.2 to5.

**8.** Heard learned counsel for the parties and perusal the record.

**9.** It is an admitted fact that there is dispute in between two authorities regarding the jurisdiction of the court. It is

also admitted fact that bail after arrest application has been filed by the Respondent No.2 to 5 before the Trial Court, the same was dismissed and the said order has also been challenged. Respondent No.2 to 5 are in judicial custody. Record reveals that challan was submitted before the Trial Court but the same was returned to the I.O of the case without passing any order on it. Record further reveals that an application under Section 63 of Cr.P.C was filed by the Respondent No.2 to 5. Admittedly the notice of the said application was not given to the prosecution. The learned Trial Court before passing the order on application should not have passed the order impugned without hearing and examining the incriminating evidence collected by the prosecution. Thus, sullied the principle of natural justice i.e. Audi alteram partem. It is well settled law that principle of Audi alteram partem is applicable to the judicial as well as non-judicial proceedings and its read in every statute as its appears even if right of hearing has not been specifically provided therein. Reliance in this respect is placed on case of Abdul Hafeez and other V/S Managing Director Pakistan International Airlines Corporation, Karachi and others reported in 2002 SCMR 1034.

**10.** The main grievance of the Applicant is that before passing the impugned order, Complainant party has not been heard and the impugned order has been passed in his back. Nothing on record to suggest that before passing the impugned order, the Complainant party was heard. It appears



that the impugned order has been passed in his back. It is settled principle of law that no order could be passed at the back of a party, particularly against or person who may be affected by such an order or which deprived him of his vested right or interest. Reliance in this respect is placed on case of 1). Moulana Atta-ur-Rehman V/S Al-Hajj Saddar Umar Farooq and others reported in PLD 2008 Supreme Court 663 and 2). Mir Muhammad Ali Rind V/S Zahoor Ahmed and others reported in PLD 2008 Supreme Court 412. The impugned order do not indicate with regard to disposal of FIR No.81/2014 of FIA, NR3C, Karachi so also the fate of the Respondent Nos.2 to 5 who are in judicial custody, therefore it appears that the impugned order has been passed in hasty manner and without considering the material facts placed before her, therefore, liable to be interference in it.

**11.** As regards the objection raised regarding jurisdiction of this Court, the scope in revisional jurisdiction of this Court is very wide and it is to be exercised whenever facts calling for its exercise are brought to the notice of the Court and where the order of the trial Court is based on misconception of law and facts and contrary to the principles laid down for dispensation of justice. Thus the jurisdiction is to be exercised to correct the error and/or prevent gross miscarriage of justice. Since the valuable rights of the parties are involved in this case. Applicant has not been heard. No order has been passed on the challan sheet with regard to its

acceptance or otherwise, therefore the impugned order is liable to be set aside.

**12.** For the forgoing reasons, this criminal revision application is allowed, the impugned order is set aside, case is remanded to the trial Court with direction to the learned Trial Court to pass appropriate orders on challan sheet as well as on application under Section 63 Cr. P. C. as per law after hearing all the parties to the litigation as early as possible.

**13.** It may be mentioned here that since the case is being remanded to the Trial Court for deciding the Application under Section 63 Cr. P.C. filed by the Respondent No.2 to 5 afresh without touching the merit of the case and the case law cited by parties counsel is on merit of the case, therefore, the same have not been discussed, if the same is discussed would amount to touching the merit of the case.

This Criminal Revision Application is disposed of on the above terms.

**JUDGE**

SHAHBAZ