

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revision Application No.05 of 2015

Applicant: State through Gulsher Mugheri Inspector FIA, Corporate Crime Circle through M/s. Peer Riaz Muhamamd & Shaikh Liaquat Hussain Standing counsel alongwith Mr. Israr Ali, Additional Director (Law) of FIA.

Complainant: Sobho Mal through Mr. Shafiq Ahmed Advocate.

Respondent No.1: Altaf-ur-Rehman Bughio through Mr. Riaz Ahmed Phulpoto Advocate.

Respondent No.2. 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.23/2014 of police station FIA, Corporate Crime Circle, Karachi, whereby learned trial court while passing the impugned order, directed the I.O. of the case to produce the accused/ Respondent No.1 (in judicial custody) before Anti Corruption Establishment within 24 hours for registration of fresh FIR even without passing any order for disposal of FIR No.23/2014 so also

for accused, who is in custody beyond the control of I.O. Hence this Revision Application.

2. Brief facts of the case are that on 23-12-2014 on the basis of written complaint received from one Sobho Mal, FIR No.23/2014 of FIA, CCC, Karachi was registered on the allegation that accused Altaf-ur-Rehman Bhugio while posted as Deputy Secretary (law) Government of Sindh, in connivance with absconding accused Atif Ali S/o Imdad Ali by abusing his official position had demanded and received Rs.16,00,000/- from the complainant for providing a job as ASI in FIA to his son Ajeet Kumar and thereby committed offences punishable under Section 161/420/109/34 PPC R/w Section 5(2) of PCA 1947.

3. It is contended by the learned counsel for the Applicant that the order of learned Presiding Officer, Anti-Corruption is not a speaking order and appears to announced without applying her judicial mind; that the learned Presiding Officer has failed to appreciate that the Bail Application filed by the Respondent No.1 has already been dismissed by the Court (Link Judge) vide order dated 02-01-2015 and the accused was remanded to judicial custody, therefore, the Applicant/I.O was not empowered to obtain the custody of the accused person from Central Prison, Karachi; that the learned Presiding Officer has also failed to appreciate the guide lines provided by 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; that the learned presiding officer has simply relied upon section 11 subsection (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, where impugned order was set aside.

4. On the other hand, learned counsel for the Respondent No.1 has supported the impugned order by arguing that the impugned order has been passed by the learned Trial Court after considering all material facts available on record however, he has admitted that in the impugned order, nothing is mentioned with regard to disposal of the FIR as well as the accused, who is in the judicial custody.

5. Learned APG has adopted arguments of the learned counsel for Respondent No.1.

6. I have heard the learned counsel for the parties at length. Perused the record.

7. It is an admitted fact that bail plea of Respondent No.1 has already been rejected by the Trial Court vide order 02-01-2015 but nothing on record to show that the same was challenged or not before any higher forum. Admittedly, Respondent No.1 is in Judicial custody. Impugned order appears to have been passed in hasty manner without going through the record available before the learned Presiding Officer. Even the impugned order is lacking regarding disposal of FIR No.23/2014 of FIA, CCC, Karachi as well as the fate of the accused already in judicial custody. From the record, it appears that there is the dispute in between two authorities with regard to jurisdiction of the Court. It is contended by the learned counsel for the Applicant that the point of view of the FIA authority has not been taking into consideration in the impugned order, therefore, they have been seriously prejudiced by this order. As observed above that the impugned order has been passed in hasty manner without considering the point of view of the FIA authority with regard to jurisdiction of the Court, thus it appears that the same has been passed in slipshod manner. Even the order is silent with regard to disposal of the FIR as well as

accused, who is in judicial custody, therefore, the same is liable to be set aside.

8. I accordingly allowed this criminal revision application, set aside the impugned order, remand the case to the Trial Court with direction to decide the point of jurisdiction afresh in accordance with the law after giving proper and fair opportunity of hearing to all the parties as early as possible.

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

JUDGE

SHAHBAZ