

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No. 348 of 2021

Azneem Bilwani
son of Abdul Aziz
having his place of work at No.1
Plot D-18, The Residence
Chowdhry Khaliq uz Zaman Road
Block 8, Clifton
Karachi

PRESENTED ON
09-06-2021

[Signature]
Deputy Registrar (Judl.)

Applicant

2487

Versus

The State

Respondent

FIR No.04 of 2021
FIA Anti-Corruption Circle
Karachi

APPLICATION UNDER SECTION 561-A OF THE CRPC

1. The Applicant is an entrepreneur



IN THE HIGH COURT OF SINDH AT KARACHI

S.No	Cr. Misc. Application	Parties
1.	298/2021	Muhammad Arsalan vs. The State
2.	348/2021	Azneem Bilwani vs. The State
3.	668/2021	Salman Yousuf vs. The State and another
4.	10/2022	Muhammad Saad Iqbal vs. The State
5.	11/2022	Muhammad Amir vs. The State

Date of hearing : 5th and 14th October 2022.

Date of announcement : 31st October 2022

Mr. Muhammad Ahmed Masood advocate for applicants.
M/s. Ghulam Sarwar Baloch and Pir Riaz Muhammad Shah DAGs
I.O./S.I. Ghulam Murtaza Kaka, FIA, ACC, Karachi.

ORDER

SALAHUDDIN PANHWAR, J.- Through captioned Criminal Miscellaneous Applications, applicants seek quashment of FIR No.4/2021, registered under sections 161, 165, 165-A and 109 PPC read with Section 5(2) PCA-II 1947, at PS FIA, ACC, Karachi.

2. Relevant facts are that Enquiry No.05/2021 of FIA, Anti-Corruption Circle (ACC), Karachi was registered on the basis of *source report* against officers/officials of FIA, Cyber Crime, Karachi, who indulged into corruption in league with private parties. According to enquiry, FIA officers approached the CEO/Chairman of M/S ABTACH Ltd. blackmailed him by different means and demanded 5 (Five) lacs US \$ (PKR.80 million), *however*, an amount of Rs.63 million was paid by Azneem Bilwani and the FIA officials are still demanding remaining amount of Rs.17 million. The money was paid against an



enquiry in progress against ABTACH at Cyber Crime, Karachi. According to enquiry, Abdul Ghaffar, Deputy Director and other officials of Cyber Crime Karachi are directly involved in aforementioned corruption and harassment. During the course of enquiry, record of FIA CCRC Karachi was perused, which reveals that on 05.11.2020, five enquiries were registered at FIA Cyber Crime Reporting Centre (CCRC) Karachi against 5 alleged I.T. companies including Enquiry No.560/2020 against M/S ABTACH Ltd. All these enquiries were conducted by the then Incharge/Deputy Director, FIA CCRC Karachi namely Abdul Ghaffar himself and he kept all record and proceedings of enquires secret. The cell phones of concerned officers/officials of FIA including that of Abdul Ghaffar and other digital equipment from his house were seized and sent for forensic analysis and the report of digital equipment is awaited. The WhatsApp messages/voice memos shows correspondence of Abdul Ghaffar with Muhammad Saad Iqbal, President ABTACH Ltd. regarding private meetings, demand and acceptance of the bribe. The CDRs of Abdul Ghaffar and Muhammad Saad Iqbal were obtained, which are revealing matching of the mobiles' locations of the two at common sites on 12.12.2020. Besides that, chat dated 21.12.2020 shows that Muhammad Saad Iqbal requested for many times after 31st December 2020 to pay remaining/next installment of the bribe amount, but Abdul Ghaffar demanded one today or tomorrow and rest in first week of January, which was corroborated through various cash amounts withdrawn from various bank accounts of Azneem Bilwani on specific dates by his employees Muhammad Arsalan and



Muhammad Amir. Malafides of Abdul Ghaffar is also reflected from fact that he conducted raid on one I.T. company and registered FIR No.03/2021 at FIA, CCRC, Karachi, just to harass other I.T. companies whose enquiries were conducted by FIA, CCRC, Karachi. Resultantly, Abdul Ghaffar approached directly or indirectly to Azneem Bilwani, demanding and accepting bribe worth millions, he met with Saad Iqbal to demand, negotiate and accept bribe and upon confirmation of demand and offers, Azneem Bilwani withdrew cash amounts through his employees named above and paid it as bribe in cash through his sub-ordinates namely Salman Yousuf and Muhammad Saad Iqbal, thus; Azneem Bilwani and his employees are liable for offering and paying bribe to Abdul Ghaffar for getting undue favour in enquiry against ABTACH Ltd. These facts are corroborated/matched from the calling details of alleged persons and their banks record, hence Abdul Ghaffar, in capacity of public servant has committed offences under sections 161 and 165 R/w Section 5(2) PCA-II 1947 by demanding/accepting bribery from Azneem Bilwani along with his sub-ordinates/employees, therefore, he (Azneem Bilwani) is also liable under section 109 PPC for offering and paying bribe to Abdul Ghaffar for taking undue favour for his company, therefore, case was registered against (1) Abdul Ghaffar (Deputy Director/Forensic Expert FIA) (2) Azneem Bilwani (3) Muhammad Saad Iqbal (4) Salman Yousuf (5) Muhammad Arsalan and (6) Muhammad Amir.

3. Heard the learned counsel for the applicants and learned DAGs.



4. Learned counsel for applicant contended that ABTACH Limited is one of the largest I.T. companies in Pakistan, having its main office at Karachi as well offices in USA, China, Dubai, South Korea, and is growing. Such growth has been a bane in eyes of its competitors like Axact that is stultifying and damaging any competition in Karachi. For instance employees of Axact filed frivolous FIR No.161/2017 at PS Gizri of an alleged incident occurred on 09.11.2016 against persons who are now employees and senior management of ABTACH, in November 2020 two senior officers of ABTACH were approached by owner of Axact with offer to join back, both officers were informed that FIA is deployed for conducting raids on other I.T. companies in the city soon, such threats were materialized when I.T. companies came under raids; that the raiding officers of FIA approached sponsors of ABTACH and demanded extortion in return for a promise not to take any action against ABTACH, on complaint of ABTACH, in this matter enquiry No.06/2021 against FIA officers was initiated. He argued that on 16.02.2021 several officials of FIA conducted illegal and malafide raid on office of ABTACH without any warrants, staff confined and beaten, paraphernalia including laptops, computers, biometric machines, CCTV devices, ATM cards, credit cards of ABTACH used to make online payments, cheque books, customer date, employee date, their mobiles and cash were taken away, all was on behest of Axact while FIA working as a tool. He further argued that the ABTACH filed CP No.D-1242/2021 before this court challenging extra-judicial and illegal acts of FIA, direction was issued to FIA to conduct itself strictly in accordance with law, but the FIA instead of taking action against its



corrupt officers lodged a false FIR No.4/2021 not only against its own officers, but also against officers of ABTACH who are applicants herein. He further argued that the Investigating Officer in his Report dated 14.09.2022 has admitted that no incriminating evidence has been found against the accused persons except Muhammad Saad Iqbal as alleged. As per the learned counsel for the applicants, the FIA does not have jurisdiction to investigate present case as charging Sections 161, 165 and 165-A PPC were added to the FIA Schedule vide SRO No. 1097(1) of 2008 dated 24.10.2008, offences under PCA 1947 were also added to the FIA Schedule through the same SRO, said powers were to be exercised by the Federal Government in lieu of Section 6 of the FIA Act, 1974. As per pronouncement of Honourable Supreme Court in the Mustafa Impex's Case (PLD 2016 SC 808), the term Federal Government has been interpreted to mean both, the Prime Minister and the Cabinet collectively whereas the said SRO No.1097(1) of 2008 does not confer to the said Rule i.e. the Section 6 of the FIA Act, 1974 was not issued by the Federal Government and thus cannot be considered legally binding, this is because it is trite law that judicial pronouncements regarding interpretation of a law apply not from date of such pronouncement, but from the time when the law or provision in question was enacted. In this regard learned counsel relied upon PLD 2020 SC 233.

5. Further, as per the learned counsel offence of Section 165-A, itself is an offence of abatement, therefore, the accused cannot be charged in consonance with Section 109 PPC. This is evident from the



fact that the Section 109 PPC does not form part of the FIA Schedule and so the FIR is illegal on that account as well. As per the learned counsel Section 165-B serves as a defence for the charges under Sections 161 and 165 and admittedly the accused in FIR No.4/2021 who are applicants, before this court, were blackmailed and coercive into paying the alleged bribe; reliance is made upon PLD 1964 SC 266. As per the learned counsel the *requisite* sanction prior to lodging of the FIR is against the principle accused i.e. a public servant was not obtained as envisaged by Rule 2(g) read with Rule 10(6) of the FIA (*Inquiries & Investigation*) Rules 2002, hence entire proceedings are void ab-initio, further, requisite internal approvals including that for initiation of the underlying enquiry remained missing which too surmounts to an incurable procedural irregularity as held in PLD 2001 Karachi 311, 2017 PCLJ 706, 1991 SCMR 2136, PLD 2008 Karachi 38. The learned counsel argued that the authority to investigate the charges as levied in the FIR lies solely with the Anti-Corruption Establishment as both the FIA Act and the PCA 1947 contain non-obstante clauses, however, it is trite law that in deciding prevalence between two enactments the rule of special over general applies and a comparison of the FIA Act with the PCA 1947 clearly shows that it is the latter which specially deals with the subject matter as narrated in the FIR. In this regard the learned counsel relied upon PLD 2020 Karachi 601 and 2017 SCMR 1218. As per the learned counsel apart from the above, it is the stance of the applicants that the entirety of proceedings undertaken by the FIA as against the owner and employees of ABTACH have been conducted at the behest of a rival I.T. company i.e. Axact, the said stance is supported by the



fact that though it has been admitted recently vide the Report dated 14.09.2022 of the Investigating Officer, that no material evidence exists as against the owner and the employees of ABTACH; that the FIA illegally and malafidely, undertook numerous coercive actions, including illegal search and seizures and freezing of bank accounts of ABTACH. At the last he has further relied upon 2022 P.Cr.LJ 203, unreported judgment in W.P. No.1184/2021 (Muhammad Rafique vs. DG FIA), Cr. Revision Appeal No.194/1997 (High Court of Delhi) and Application No.6561/2019 (High Court of Allahabad).

6. In contra, learned DAG alongwith IO(s) are unable to controvert the opinion of FIA Law Officer available on record that only FIA officials can be arraigned, however they contended that they will submit that report before the trial court.

7. After hearing arguments of both sides I have gone through the record.



8. As per FIR, the role of applicants is that:-

"In view of above, it is established that Abdul Ghaffar in capacity of public servant has committed offences under sections 161 and 165 R/w 5(2) PCA-II 1947 by demanding/accepting bribery and Azneem Bilkwani along with his sub-ordinates/employees were liable U/S 109 PPC for offering and paying bribe to Abdul Ghaffar for taking undue favour for his company namely APTACH Ltd."

9. It is pertinent to mention that in the schedule [Sections 3 (1) and 6 of the Federal Investigation Agency Act, 1974-20, the offence punishable under Section 109 PPC does not find any place while the offences punishable under sections 161, 165 and 165-A PPC are mentioned which provides as follows

Section 161. Public servant taking gratification other than legal remuneration in respect of an official act. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, 2 [with the 3 [Federal], or any Provincial Government or Legislature], or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

Explanation. "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section. "Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money. "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the authority by which he is employed, to accept. "A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words. 2 ['Public servant'. In this section and in sections 162, 163, 164, 165, 166, 167, 168, 169 and 409, 'public servant' includes an employee of any corporation or other body or organization set up, controlled or administered by, or under the authority of, the Federal Government.

Section 165. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to



the person so concerned, shall be, punished with 3 [imprisonment of either description for a term which may extend to three years], or with fine, or with both.

Section 165A. Punishment for abetment of offences defined in sections 161 and 165. Whoever abets any offence punishable under section 161 or section 165 shall, whether the offence abetted is or is not committed in consequence of the abetment, be punished with the punishment provided for the offence.

10. Conversely, section 109 PPC is neither scheduled in the Act, nor take place of section 165-A, which provides as follows:

Section 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence;

[Provided that, except in case of Ikrah-i-Tam the abettor of an offence referred to in Chapter XVI shall be liable to punishment of ta'zir specified for such offence including death.

Explanation.— An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.



'Since, the petitioners implicated in the FIR, being an abettor, which has been defined and explained under Section 108 of PPC as follows;

Section 108. Abettor. A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2. To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C, B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3. It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

12. Nonetheless, the complainant and his *subordinates* were arraigned while they complained that FIA officials are compelling them for bribery on the pretext of enquiry against them. The FIA officials present on date of hearing were not in a position to controvert such factual and legal position and they further contended that they will submit the challan before the court as well.

13. I am fortified with the contention of the learned counsel for the applicants that the Section 109 PPC does not form part of the Schedule

to the Federal Investigation Agency Act, 1974, but rests of the sections are part of the FIA schedule, hence the FIR cannot be treated as partially illegal because after registration of the FIR, during course of investigation, any of the section(s) can be deleted or inserted, on the basis of material collected by the I.O. or on the basis of legal opinion.

14. It is the matter of record, that the investigation was carried out by the authorities and after investigation report was forwarded to the Chief Law Officer (Deputy Director, Law), FIA, Sindh Zone-I, Karachi, and the Deputy Director Law, FIA Sindh Zone-I, Karachi, has opined in his report that; "*in absence of sufficient oral/documentary evidence, prosecution of accused persons namely Azneem Bilwani, Salman Yousuf, Muhammad*



Amir and Muhammad Arsalan will not stand in court of law rather damage the case of the prosecution against principle accused Abdul Ghaffar and other FIA officials. Under these circumstances their names can be placed in final challan "being not sent up for trial at the time when final challan is put in the court of law." The report of the Investigating Officer clearly shows that there is nothing on record to connect the Applicants with the commission of the offences alleged. In such circumstances, the case of the prosecution against the Applicants is of no evidence, rather a material witness qua victim. In such a situation, the proceedings and trial against the Applicants is not warranted.

15. Under these circumstances when role of applicants as opined by the FIA Law Officer has not arraigned them, continuation of proceedings of FIR No.4/2021 against applicants will be nothing, but an abuse of the process of law. Accordingly, when the prosecution itself has not arraigned the applicants inter-alia then the instant case becomes a fit case for quashment of the proceedings against the applicants only. Hence proceedings against accused (applicants) in FIR No.4/2021, U/s 161, 165, 165-A, 109 PPC R/w Sec.5(2) PCA-II 1947, PS FIA, ACC, Karachi are hereby quashed. However proceedings against other co-accused shall proceed in accordance with law without prejudice to the observations made here-in-above in respect of the Applicants. Hence captioned Criminal Miscellaneous Applications are allowed in terms of above.



*For Saluddin Panwar
Judge*