

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.2939/2020

Rana Muhammad Arshad  
Versus  
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03	03-11-2020	Mr Muhammad Sajid Khan Tanoli, Mr M. Aftab Alam, Mr Usman Warraich, Mr Khateeb Hussain, Mr Faheem Ahmed, Mr M. Haider Imtiaz and Mr Babar Hayat Samor, Advocates for the petitioner. Syed Muhammad Tayyab, Dy. Attorney General. Mr Qaiser Masood, Additional Director, FIA. Sh. Amer Sohail Anjum, A.D. (Legal), FIA. Mr M. Ayaz Mahar, A.D./I.O., FIA.

**ATHAR MINALLAH, C.J.-**

*"If liberty means anything at all, it means the right to tell people what they do not want to hear"*

*George Orwell*

The petitioner is a journalist and one of the most important functions of his occupation is reporting and informing the public regarding matters of public importance. He was summoned by the Federal Investigating Agency (hereinafter referred to the '**Agency**'), which served him an undated notice. The notice did not disclose the purpose for which he had been summoned. The latter alleges that officials of the Agency had also raided his house with the intent to arrest him in retaliation for his critical reporting. The

petitioner, through the instant petition, has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"), challenging the notice and the alleged actions of the officials of the Agency pursuant thereto.

2. The Investigation Officer who had served the notice and had allegedly raided the house of the petitioner has appeared today and has submitted a written report. He has informed that he had visited the house of the petitioner solely to verify the address. He has further stated that, during the course of investigation, no incriminating material whatsoever could be collected against the petitioner. In response to the query of this Court, he explained that the petitioner was summoned because the cellular number mentioned in the complaint was registered in his name. He could not give a plausible explanation for sending the undated notice or failure to disclose the purpose for summoning the petitioner. The Investigating Officer could also not satisfy this Court regarding any evidence amounting to the commission of an offence under the Prevention of Electronic Crimes Act 2016 (hereinafter referred to as the "**PECA 2016**") which authorized the Agency to proceed with such haste and recklessness and which had obviously caused harassment and intimidation, not only to the petitioner but his family members as well. The

explanation that the house of the petitioner was visited merely to verify the address is not persuasive because the undated notice had been sent to the same address.

3. The learned counsel, who has appeared on behalf of the petitioner, has argued that the undated impugned notice had caused unnecessary harassment to the latter. He has argued that it is a statutory obligation of the Federal Investigation Agency and its officials to disclose in the notice itself the purpose for which a person is being summoned. There is no cavil to the proposition that the Federal Investigation Agency, or any other entity empowered to investigate criminal offences, is obligated to disclose sufficient information in the notice so that the person knows the purpose for being summoned.

4. The august Supreme Court, in the case titled "*Dr Arsalan Iftikhar vs. Malik Riaz Hussain and others*", [PLD 2012 Supreme Court 903], while interpreting the provisions of the National Accountability Ordinance, 1999 has observed and held as follows:-

*"The clear and unambiguous pronouncements given in the case titled Ghulam Hussain Baloch and another v. Chairman, National Accountability Bureau Islamabad and 2 others (PLD 2007 Karachi 469) were violated by NAB in its two letters. In the cited precedent NAB has*

*been given express guidelines as to its responsibilities while summoning or requiring the attendance of persons/witnesses in an inquiry. As per ratio of the case, before summoning a person to attend, NAB was duty bound to identify and particularize the information sought from any witness etc. and to state the nexus between such information and the subject of the inquiry being conducted by NAB. It was observed by the Court that "while calling [for] the information from any person, the person must be informed of the fact, point, allegation, offence, name of accused, specified matter, if any, concerning the matters ... in the notice so that the person can furnish such information".*

5. It is noted that the above guidelines regarding the responsibilities of an investigating officer while summoning a person would also be attracted in case of proceedings relating to criminal offences dealt with by the Agency. The officials, particularly investigating officers of the Agency, are public functionaries vested with expansive powers to investigate and inquire into criminal offences. It is their duty to ensure that their actions are not in breach of the essential and elementary principles of fairness. It is their obligation to exercise coercive powers in such mode and

manner that does not appear to be arbitrary nor that powers are being used recklessly for other than bonafide purposes. The august Supreme Court, in the case titled "*Adeel ur Rehman and others vs. Federation of Pakistan and others*" [2005 SCMR 1], has observed that public functionaries disobey the command of the law when they exercise powers in derogation to the direction and intent of the law. Like any other public functionary, the officials of the Agency are obligated to act justly, fairly, equitably and reasonably. Their actions ought to be within the mandate of law and must demonstrably show lack of the elements of discrimination, partiality or malafide.

6. There is another crucial aspect of the case in hand i.e. the petitioners occupation. As a journalist, it is his professional function to report facts and disseminate opinions for the information of the public. The reporting by an independent and professional journalist could invariably be critical of or perceived to be such by the state functionaries or other powers to be. It is the case of the petitioner that the Agency had recklessly exercised its powers in an attempt to deter him from performing his functions as a journalist without fear or favour. Such an apprehension or fear in the mind of a person who is engaged in the occupation of reporting and dissemination of information to the public not only undermines the independence of the

occupation but is intolerable in a society governed under a Constitution. Freedom of speech and expression is the most cherished human right and fortifies the other constitutionally guaranteed rights.

7. Article 19 of the Constitution guarantees to every citizen the right to freedom of speech and expression and the framers have explicitly guaranteed that there shall be 'freedom of the press'. Article 19 A makes it a constitutional right to have access to information in all matters of public importance. Both these constitutionally guaranteed rights are not absolute but are subject to the exceptions clearly described in the respective Articles. When these rights are denied to the people, or are allowed to be breached by state functionaries, then other constitutionally guaranteed rights are also profoundly affected. The august Supreme Court, in the case titled "*Syed Mansoor Ahsan and others vs. Ardeshir Cowasjee and others*" [PLD 1998 SC 823], has eloquently highlighted the significance of protecting the right of free speech and expression by declaring it to be one of the pillars of individual liberty and has stressed on the duty of a Court to faithfully uphold its sanctity in terms of the constitutional mandate. The function and duty of a free press to act as a watchdog and disseminate information cannot be compromised. The benefits of protecting the right of having a free press are infinite. Freedom of the

press would be elusive and would become a mere farce if journalists lose their independence and function under fear of being exposed to harm or retaliation because of their reporting and performing of other occupational functions. Even such a perception created by the actions of the agents of the state would be enough to undermine and violate the constitutionally guaranteed rights under Articles 19 and 19 A of the Constitution. The threat, whether real or perceived, of direct or indirect censorship because of functions performed by an independent journalist would amount to a breach of the constitutionally guaranteed rights under Articles 19 and 19 A of the Constitution. The duty of the state to protect the independence of the individual journalist and that of the occupation is a constitutional obligation because it is an integral part of Articles 19 and 19 A.

8. It is noted that it is an acknowledged proposition that the protection of free press and free speech has a direct nexus with ensuring economic stability and growth. A society that values democratic principles and is committed to upholding the rule of law would manifestly advance the cause of protecting freedom of the press and free speech. The evils of corruption, inequality and injustice are alien to a state which demonstrably shows its commitment and will to jealously guarding any attempt of violating or undermining the freedoms enshrined under Articles 19

and 19 A of the Constitution. Free press is crucial for encouraging and ensuring creativity, innovation and socio political evolution of a society. A society that inhibits creativity and innovation recedes to the status of regression and morbidity. Blocking, inhibiting or limiting free speech and thus undermining freedom of the press are hallmarks of regressive states and are unacceptable in a society governed under a Constitution which guarantees fundamental rights. Free press is the key to development and progress and thus a panacea to evils like poverty, corruption and inequality. Freedom of the press ensures peace because it is the most effective antidote against violence, aggression, anarchy and extremism. It serves as a safety valve by enabling citizens, groups and sections of the society to vent grievances, anger and frustration. A free press functions as a bulwark against resolution of disputes through violent means. Poverty, corruption, injustice, discriminatory treatment of marginalized citizens and minorities, violence and extremism are all common characteristics of a repressive state that limits, restricts and undermines the freedom and independence of the press.

9. It is inherent in the constitutionally guaranteed rights under Articles 19 and 19 A that no citizen, group or section of the society would be denied access to a free press. No State or society can progress



or rid itself of evils such as poverty, corruption and violence if its citizens or members are unable to communicate and articulate ideas without fear or threat of retaliation. It denies to the people an opportunity of meaningful participation in the society when the state functionaries resort to intimidating the independent and professional journalist as retaliation for their work. The development of a nation and its prosperity depends on protecting the right of every citizen, group or section to have an equal voice and thus have the right to speak without fear or being intimidated. The lack of access of the people to a free press affects the weaker and marginalized segments of the society the most because it empowers the elite and makes them unaccountable. The most effective accountability of the state and its powerful elite is through an independent and responsible press. The state and its agents cannot be allowed to use power and authority to silence voices and to retaliate against critical reporting or dissent. Only informed citizens having access to an independent and free press can ensure progress, prosperity and security of the state. Nothing can inhibit the constitutionally guaranteed right under Article 19 of the Constitution more than the fear of an independent journalist that he or she, as the case may be, could be exposed to harm because of what the latter reports, says or writes. No one is above the law, not even a journalist, but if the

law is allowed to be used in a manner that has the effect of intimidation or creates the perception of retaliation against reporting which may appear to be critical to the public functionaries then it violates the constitutionally guaranteed rights. In such an eventuality it becomes a constitutional obligation of the state and the government to assure the people through its actions that they are not complacent. As a corollary, the state functionaries have to demonstrably show a clear will and commitment to protect the freedom of the press and the independence of journalists. There is wisdom in the words of James Madison, the fourth President of the United States of America who had stated that "a popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy, or perhaps both."

10. The reckless action of the Agency in the case in hand is not an exception. This constitutional Court has observed a surge in the filing of petitions wherein similar grievances have been raised. This creates a perception of abuse of the provisions of the PECA 2016. Either the provisions are being misinterpreted or they are being invoked in a reckless manner for other than germane considerations. It is not only the duty of the Agency but the government as well to demonstrably dispel any perception of abuse of coercive powers as retaliation against independent and free press and individual

journalists. In the case in hand, the apprehensions and fears of the petitioner for being targeted as retaliation for his work as a journalist were not misplaced because of the reckless and unprofessional manner in which the proceedings under the PECA 2016 were conducted by the Agency. The proceedings definitely amounted to an abuse of exercising of powers under the PECA 2016.

11. Keeping in view the above discussion and having regard to the paramount public importance of protecting the constitutionally guaranteed rights, particularly under Articles 19 and 19 A of the Constitution, it is observed and directed as follows;

- i. The Director General of the Agency is expected to formulate guidelines for the investigating officers, inter alia, having regard to the principles highlighted in the aforementioned judgment of the august Supreme Court. It is further expected that the Agency will consider prescribing special guidelines regarding proceedings against persons engaged in the profession of journalism on account of the profound effect on the freedom of press and independence of a journalist when the coercive powers are abused, giving rise to a perception of retaliation to professional functions

performed. In this regard the Agency may consult the key stake holders.

- ii. The Federal Government i.e. the Prime Minister and members of the Federal Cabinet are elected representatives of the people and this Court has no reason to doubt their will and commitment to jealously guard against any attempt to undermine the freedom of the press and the constitutionally guaranteed rights of the people of Pakistan whom they represent. It is their constitutional duty to dispel any perception of inhibiting, limiting or restricting freedom of the press through abuse of coercive powers by the state functionaries. This Court is confident that, as democratically elected representatives of the people, they would take prompt and effective action to prevent the abuse of coercive powers under the PECA 2016 in general and against independent and responsible journalists in particular.
- iii. A Bill titled 'Protection of Journalist Act 2014' was tabled before the lower House of the Majlis-e-Shoora (Parliament). The Federal Government may consider proposing similar legislation, inter alia, having the object of providing an effective forum for redressing

complaints of journalists, which relate to freedom of the press.

- iv. The Federal Government may also consider meaningful consultation with all the key stakeholders i.e. All Pakistan Newspapers Association, The Federal Union of Journalists, the Council of Pakistan Newspapers Editors etc regarding dispelling the perception of apprehensions and intimidation of independent journalists and abuse of coercive powers by public functionaries, particularly in relation to exercising powers under the PECA 2016.

12. The petition stands accordingly disposed of.

**(CHIEF JUSTICE)**

Approved for reporting.

Saeed /\*