Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Intra Court Appeal No.546 of 2021

Mamoon ur Rasheed

Versus

Hamid Khan and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	12.06.2024	Mr. Adnan Iqbal, Advocate for the appellant.

TARIQ MEHMOOD JAHANGIRI, J:

The appellant filed this Intra Court Appeal ('**ICA**') under section 3 of the Law Reforms Ordinance, 1972 ('**LRO**'), against the order dated 21.10.2021 ('**Impugned Order**') passed by a learned single Judge in Chamber, whereby the Writ Petition No. 2581 of 2021 filed by the respondent No. 1 was allowed.

2. The brief facts of the instant case are that the Respondent No.1 allegedly issued three bank cheques to the Appellant which were returned for insufficient funds by the relevant bank. Consequently, the

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Appellant/complainant reported the matter to police whereupon the FIR No. 442, dated 28.9.2020, under section 489-F of PPC, P.S. Kohsar, Islamabad, was lodged, second FIR No. 324/2021, dated 5.7.2021, under section 489-F PPC, police station Kohsar, Islamabad was also registered based on same set of allegations. The Respondent No. 1 assailed the second FIR through the Writ Petition No. 2581 of 2021 which was allowed, and FIR was quashed by order dated 21.10.2021, which has been impugned through instant ICA.

3. Learned counsel for the appellant, *inter alia*, contends that impugned order is based on misinterpretation of law and facts; the instant ICA is maintainable against the impugned order and the precedents which forbid it, are not applicable to this case; the criminal procedural laws do not prohibit registration of a second FIR when an accused commits same offence again; the constitutional jurisdiction was wrongly assumed by the

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honorable Court since an adequate alternate remedy was available to the Respondent No. 1 under relevant provisions of law; the lenient view shown by courts to an accused would encourage criminals to commit and repeat offences which in turn cause mess in the society; and lastly submits that impugned order is liable to be set aside.

4. We have heard the arguments of learned counsel for the appellant and record has been perused with his able assistance.

5. At the very outset, learned counsel for the appellant is confronted as to how this ICA is maintainable in terms of the proviso to section 3(2) of LRO, to which we have received no satisfactory reply. The central point which needs consideration of this Court is that whether an ICA is maintainable or not, in view of the proviso to section 3(2) of LRO, against an order passed in constitutional jurisdiction by a single judge to quash an FIR.

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6. The remedy of intra court appeal is provided under section 3 of LRO. For the purposes of present case, sub-section 2 of section 3 of LRO is relevant and it is reproduced below for ease of reference:

> *"**3. Appeal to High Court in certain cases**.—(1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single Judge of that Court in the exercise of its original civil jurisdiction.*
>
> ***(2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under [clause (1) of Article [199] of the Constitution of the Islamic Republic of Pakistan] not being an order made under sub-paragraph (i) of paragraph (b) of that clause**:*
>
> ***Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article [199] arises out of any proceedings in which the law applicable provided for at least one appeal [or one revision or one review] to any court, tribunal or authority against the original order**."*

The section 3(2) of LRO provides for the remedy of appeal before a Bench of two or more judges of high court against an order

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of single judge of that court passed under clause 1 of article 199 of Constitution of Islamic Republic of Pakistan, 1973 ('Constitution') except an order passed under article 199 (1)(b)(i). However, the right of ICA is subjected to certain conditions. The scope of aforesaid section has been recently interpreted by the Supreme Court in the case titled as *National Bank of Pakistan through President and another* ***versus*** *Muhammad Adeel and others* (**2024 SCMR 982**), its relevant part reads as under:

> *"4....**The main test to determine whether an ICA is available under the proviso to Section 3(2) of the Ordinance is to see whether the proceedings, in which the original order has been passed, provide for an appeal, revision or review** (collectively referred to as "appeal," for convenience) **to any Court, Tribunal or authority against the original order**. Applying this test what needs to be seen and verified is whether the proceedings provided for an appeal against the original order and not whether parties to the proceedings enjoyed the right to appeal against the original order. **The proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific. So it matters less if***

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> ***one of the parties to the proceedings is not entitled to right of appeal against the original order passed in the said proceedings.*** *See Karim Bibi v. Hussain Bakhsh (PLD 1984 SC 344) and Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I, Lahore (PLD 1985 SC 107).*"

Similarly, the Supreme Court in another case titled as *Rehm Dad* ***versus*** *Province of Punjab through Chief Secretary, Lahore and others* (**PLD 2024 SC 499**) further expounded the scope of said section while reiterating the legal position as expressed in the seminal case of *Mst. Karim Bibi and others* ***versus*** *Hussain Bakhsh and another* (**PLD 1984 SC 344**) in the following manner:

> *"7. Section 3(2) of the LRO has been subject to judicial scrutiny and interpretation.* ***The essential requirement to invoke the proviso to Section 3(2) of the LRO is to see whether the right of at least one appeal, revision or review is available to the original order in a proceeding where the relevant law is applicable****.*[1] *Terms* ***original***

[1] International Islamic University v. Syed Naveed Altaf (2023 SCP 362).

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order[2] *and* ***proceedings***[3] *in the said proviso have been* ***interpreted by this Court in Karim Bibi, which declares the significance of the original order and the law applicable to the original order as follows:***

> *[8].* ***After giving our anxious consideration to the arguments urged in support of this appeal we are, however, not impressed by any of the contentions raised. The test laid down by the Legislature in the proviso is that if the law applicable to the proceedings from which the Constitutional Petition arises provides for at least one appeal against the original order, then no appeal would be competent from the order of a Single Judge in the constitutional jurisdiction to a Bench of two or more Judges of the High Court. The crucial words are the "original order". It is clear from the wording of the proviso that the requirement of the availability of an appeal in the law applicable is not in relation to the impugned order in the Constitutional Petition, which may be the order passed by the lowest officer or authority in the hierarchy or an order passed by higher authorities in appeal, revision or review, if any, provided in the relevant***

[2] Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I (PLD 1985 SC 107), Muhammad Aslam Sukhera v. Collector Land Acquisition (PLD 2005 SC 45) and Karim Bibi.
[3] Karim Bibi v. Hussain Bakhsh (PLD 1984 SC 344) (Karim Bibi).

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statute. Therefore, the relevant order may not necessarily be the one which is under challenge but the test is whether the original order passed in the proceedings subject to an appeal under the relevant law, irrespective of the fact whether the remedy of appeal so provided was availed of or not. *Apparently the meaning of the expression "original order" is the order with which the proceedings under the relevant statute commenced. The word "proceedings" has been used in different enactments and has been subject to judicial interpretation in a number of cases wherein it has received either restricted or wide meaning according to the text and subject-matter of the particular statute. ... In the latter case reference was made to the definition of the term "proceedings" in the book "Words and phrases" which may usefully be reproduced as under;*

> *"The term* ***'proceedings'*** *is a very comprehensive term, and, generally speaking,* ***means a prescribed course of action for enforcing a legal right, and hence it necessarily embraces the requisite steps by which judicial action is invoked****. A* ***'proceeding'*** *would include every step taken towards the further progress of a cause in Court or before a Tribunal, where it may be pending.* ***It is the step towards the objective to be achieved, say for instance the judgment in a pending suit. The proceeding commences with the first step by which the machinery of the law is put***

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> ***into motion in order to take cognizance of the case****. It is indeed a comprehensive expression and includes all possible steps in the action under the law, from its commencement to the execution of the judgment. (**Emphasis added**)"*

> *"8. **In relation to the applicability of the law, the determining factor, as held in Karim Bibi, is the order with which the proceedings under the relevant statute commenced**.[4] Karim Bibi gives meaning to the phrase original order with respect to the concerned law under which the legal proceeding has been initiated or commenced. **Hence, in terms of the proviso to Section 3(2) of the LRO and ruling in Karim Bibi, the settled principle is that the law applicable shall be the law by which the proceeding started or commenced, which forms the basis of the original order**."*

7. The Supreme Court has already settled the legal controversy involved in this case. An ICA under proviso to section 3(2) of LRO is not maintainable against an order passed by a single judge under clause 1 of article 199 of Constitution in respect of quashing an FIR. This precise

[4] Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I (PLD 1985 SC 107), Muhammad Aslam Sukhera v. Collector Land Acquisition (PLD 2005 SC 45) and Karim Bibi.

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issue came before the Supreme Court in a case titled as *Nawazul Haq Chowhan* ***versus*** *The State and others* (**2003 SCMR 1597**) wherein it relied upon the case of *Mst. Karim Bibi* (*Supra*) and held that:

> *"31. Civil Appeal No.553 of 1994 with the leave of this Court arises out of a counter-case viz. F.I.R. No.495 of 1991 registered under sections 324, 148 and 149, P.P.C. at the behest of acquitted accused Manzoorul Haq against Malik Anjum Farooq Paracha and seven others.* ***Appellant Malik Anjum Farooq Paracha and others sought quashment or the said F.I.R. in Writ Petition No.178 of 1993 before the Lahore High Court, Rawalpindi Bench, Rawalpindi under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, which was allowed against which I.C.A. No.7 of 1993 was filed by acquitted accused Manzoorul Haq and others which was accepted*** *and the order passed by the learned Single Judge of the Lahore High Court for the* ***quashment in writ petition was set aside***. ***This order, however, was challenged by Malik Anjum Farooq Paracha appellant in Civil Petition No. 129*** *of 1994 in which leave to appeal was granted, inter alia,* ***on the ground as to whether or not ICA lie against the order passed in writ petition by the learned Single Judge and as to whether or not the word `proceedings' mentioned in the proviso of section 3 (1) of Law***

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> ***Reforms Ordinance, 1972, includes the F.I.R.*** *On this aspect of the matter, we have given our anxious consideration to the contentions raised at bar.* ***The above controversy have been resolved by this Court*** *in the case of Mst. Karim Bibi and others v, Hussain Baksh and another (**PLD 1984 SC 344**) and Settlement Commissioner (L) and others v. Mauj-Din and others (**1989 SCMR 1351**)* ***while holding that in view of section 3(2) of the Law Reforms Ordinance, 1972, I.C.A. is not maintainable. Accordingly Civil Appeal No.553 of 1994 is allowed and order****, dated 14-3-1993* ***passed in I.C.A.*** *No.7 of 1993 by the learned Division Bench of the Lahore High Court, Rawalpindi Bench,* ***is set aside****."*

8. Moreover, a Division Bench of this Court in the case of *Junaid Maseeh* ***versus*** *The State through PS CTW, FIA, Islamabad and 2 others* (**2023 MLD 47**) reaffirmed the legal position laid down in the case of *Nawazul Haq Chowhan* (*Supra*). It also approvingly cited relevant excerpts from the case of *Hussain Can Company (Pvt.) Limited through Chief Executive* ***versus*** *Federal Board of Revenue through Collector Customs, Lahore and 2 other* (**2017 YLR Note 386**) wherein a Division Bench of Lahore High Court held that:

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> *"11. After analytical study of word "proceedings, with reference to dictionaries and considering the interpretation of the said word by the Hon'ble Supreme Court of Pakistan in the above referred cases, we have no doubt in our mind to hold that* ***the word "proceedings" in fact carries a vast manifestation covering almost every stage heading towards advancement of an issue before a court or tribunal, right from its inception till its conclusion.*** *In legal parlance this word would mean institution, continuation and conclusion of an action in law. To be more precise, the word "proceedings" would connote the manner in which judicial business is to be carried out before a court, tribunal or judicial officer, including all steps and actions right from commencement of such judicial business, its determination and then its implementation or execution.* ***Whereas, the F.I.R., being just first information report about commission of an offence, does not carry such significance so as to be covered by the scope of word "proceedings." Hence, the Intra Court Appeal against an order for quashing of FIR or refusing to quash an FIR passed in a writ petition, is not maintainable****."*

Reliance is also placed on *Mian Touseef* ***versus*** *District Police Officer and 2 others* (**2017 PCrLJ 1140**); *Manzoor Ahmad and 2 others* ***versus*** *Muhammad Nawaz and 18 others* (**PLD 2013 Lahore 123**); and *Pervaiz Akhtar and 3 others* ***versus*** *The*

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State through Circle Officer Anti-Corruption Department T.T. Singh (**2005 PCrLJ 1219**).

9. Therefore, it is our considered opinion that, in terms of proviso to section 3(2) of the LRO, an ICA is neither available nor competent before a bench of two or more judges of high court against an order of a single judge made under clause 1 of article 199 of the Constitution, because the FIR is not included in the term "proceedings" as has been explained in the above-mentioned precedents.

10. In view of the above-stated reasons and discussion, this ICA is not maintainable against the impugned order dated 21.10.2021 passed by the learned Judge in Chamber. Thus, the instant ICA stands ***dismissed in limine***.

(CHIEF JUSTICE) **(TARIQ MEHMOOD JAHANGIRI)**
JUDGE

Ahmed Sheikh

Approved for Reporting

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