JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.648-Q OF 2022

Muhammad Yasin Chaudhry
Vs.
The State and another

Petitioner by	**:**	**M/s Sardar Muhammad Latif Khan Khosa, Suzain Khattac, Syed Mehmood Hassan Gillani and Usman Zakir Abbasi, Advocates.**
Respondents by	**:**	**Rana Imran Farooq, AAG.**
Date of Hearing	**:**	**20.05.2022.**

SAMAN RAFAT IMTIAZ, J.:- Through the instant petition the Petitioner [Muhammad Yasin Chaudhy] seeks quashing of FIR No.01/2021 ("**Subject FIR**") dated 15.01.2021 under Sections 109, 409, 420, 468, 471, 477-A Pakistan Penal Code, 1860 ("**PPC**") read with Section 5(2) of the Prevention of Corruption Act, 1947 ("**PCA**") registered with Police Station FIA Corporate Crime Circle, Islamabad.

2. Facts of the case, as per the contents of the FIR, are that Muhammad Khaqan, Secretary of Jammu & Kashmir Cooperative Housing Society ("**Society**") filed a complaint stating therein that in September, 2012, Naseem Anjum, the then Treasurer; Muhammad Zaheer, the then Executive Secretary; Muhammad Fayyaz Awan, the then Secretary of Society; and the Petitioner, the then Chairman of the Society borrowed an amount of Rs.25,000,000/- from one Ali Waqar for purchase of land for the Society without prior approval of Management Committee and of the Registrar (Cooperative), ICT Islamabad in violation of law & rules. They purchased "Haqooq Shamalat" / land measuring 70 Kanals in Mouza Bhimber Tarar & Mouza Peja, Islamabad from one Gul Zaman. Later on, Naseem Anjum with active connivance of Muhammad Fayyaz Awan, the then Secretary of the Society, with criminal intent prepared a bogus agreement dated Nil with Ali Waqar falsely showing that the said land was purchased from him. They also falsely mentioned in the agreement that a double-story Poultry Farm measuring 29125 sq. ft., exists on the purchased land and showed compensation paid as Rs.27,668,750/- against Poultry Farm at the rate of Rs.950/-

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per sq. ft. Whereas, as per the evidence collected during the course of enquiry it was revealed that it was a ghost Poultry Farm and the accused had treacherously misappropriated R.27,668,750/-. The accused persons in complicity with one another dishonestly and deceitfully without approval of Management Committee of Society adjusted the compensation amount of the said ghost Poultry Farm against outstanding amount of 14 different Agro Farms while the amount received from allottees was embezzled by them. An amount of Rs.31,500,000/- (Principal and Profit) was returned to accused Ali Waqar from Society's fund by aforesaid accused persons. Thus, the above-named accused with active connivance of one another, dishonestly and treacherously, by abusing their official positions as public servants each (envisaged in Section 65-B, the Cooperative Housing Societies Act, 1925 read with section with 21 PPC) misappropriated huge amount of Rs.59,168,750/- (5 core, 91 lacs, 68 thousand & 750 rupees) on the pretext of purchase of land for Society and in the name of compensation of the said ghost double-story Poultry Farm (non-existent), thereby derived wrongful gains out of hard-earned money of the poor and innocent people, causing huge wrongful loss to the said Society. The Subject FIR further states that prima facie, a case under section 109, 409, 420, 468, 471, 477-A, PPC read with section 5(2)47 PCA are attracted against the above accused, namely, the Petitioner, the then Chairman of the Society, Muhammad Fayyaz Awan, the then Secretary of Society, Muhammad Zaheer, then then Executive Secretary of Society, Naseem Anjum, then then Treasure of the Society and Ali Waqar private person. Hence, a case is being registered against the culprits with the approval of the competent authority.

3. As per the Memo of petition the Petitioner is a resident of Islamabad, who belongs to a respectable family. Furthermore, that the Petitioner is a politician and Member National Assembly (AJK) and regular tax payer and that in 2011 the Petitioner was elected as a Chairman of the Society. During the entire period the Petitioner performed his duty with full dedication, devotion, honesty and sincerity without any complaint. In the year 2012, the management of the Society obtained loan from one Mr. Ali Waqar & thereafter Inquiry Committee was constituted by the managing committee vide order dated 25-10-2019 with the specific mandate to probe the said issue. The inquiry committee probed the issue in question and came to the conclusion vide their report dated 08-11-2019 that the Ex-Treasurer, Naseem Anjum and Ex-Executive Secretary, Muhammad Zaheer Khan misused their authority and power for their illegal personal gains causing colossal damage to the

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Society. Thereafter as per the Rule 30(c) of the Islamabad Cooperative Societies Rules, 2018, the Assistant Commissioner (Saddar) ICT was appointed as Inquiry Officer by the Registrar Cooperative Societies. A detailed and comprehensive inquiry was conducted and the Inquiry Officer concluded the inquiry dated 14-11-2020 while observing that the ultimate beneficiaries of the aforementioned corrupt transactions are Mr. Naseem Anjum, Ex-Treasure and Muhammad Zaheer Khan, Ex-Executive Secretary and that their names may be placed on ECL and blacklisted. Thereafter the inquiry was initiated in Corporate Crime Circle, FIA on the complaint of Muhammad Khaqan, Secretary of the Society. However the Society did not file any application/complaint against the present Petitioner despite which the inquiry No. 10/20 was registered and FIA authorities summoned the Petitioner. The Petitioner joined the inquiry and narrated all the facts to the Investigating Officer but even then Subject FIR was registered against the present Petitioner along with other accused. It is was further mentioned in the memo that the Petitioner is not nominated by the Society nor vide the inquiry reports which are available on the record which shows that the registration of Subject FIR against the present Petitioner is purely based on mala*fide*.

4. The learned counsel for the Petitioner argued that the Subject FIR is liable to be quashed as it is crystal clear that no offence is made out against the present Petitioner. He submitted that the departmental Inquiry Report as well as the Final Inquiry report submitted by the Assistant Commissioner (Saddar) ICT are in favour of the Petitioner. Most importantly, the learned counsel submitted that even otherwise Respondent No.2 has no authority or jurisdiction under the law to register such type of FIR. He relied upon an unreported judgment of another Single Bench of this Honourable Court passed in *Shuja Hussain Kiyani Vs. Director FIA, Islamabad*, W.P. No. 2406/2021, whereby notices by the Federal Investigation Agency ("**FIA**") under Section 160 Cr.P.C. were issued to an office holder of the Society. The learned counsel for the Petitioner highlighted that as recorded in the said judgment by the own admission of the Assistant Attorney General for Pakistan in order for FIA to assume jurisdiction in the matter two conditions need to be satisfied: one, that the offense being investigated was listed in the schedule to the Federal Investigation Agency Act, 1974 ("**FIA Act**"); and second that the investigation is in connection with matters pertaining to the Federal Government. He contended that neither of the two conditions is satisfied in the instant case as the offences being investigated are neither listed in the

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Schedule of the FIA Act nor are matters pertaining to the Federal Government. In similar circumstances in the aforementioned case the Court concluded that *"FIA is not vested with jurisdiction to investigate the conduct of the Petitioner in relation to transactions involving sale and purchase of land with other private citizens, where such land forms part of Jammu & Kashmir Cooperative Housing Society. The affairs of the Jammu & Kashmir Cooperative Housing Society and any offences committed in connection thereto are not matters concerning the Federal Government and consequently FIA is not vested with jurisdiction under the FIA Act to investigate the same. The investigation being undertaken by the respondents against the petitioner is thus devoid of jurisdiction and is liable to be quashed."* He, therefore, prayed on behalf of the Petitioner that the Subject FIR may be quashed to the extent of the Petitioner.

5. The learned AAG on the other hand submitted that the Petitioner is a public servant by virtue of Section 65-B of the Cooperative Housing Societies Act, 1925 read with Section 21, PPC. He stated that the judgment in case of *Shuja Hussain Kiyani (Supra)* is not applicable in the present case as no public servant was involved in such matter. He pointed out that the said judgment is also distinguishable because the impugned notices were issued under Section 160 Cr.P.C., whereas in the instant case the Petitioner is seeking quashing of Subject FIR in which case alternate remedy in the form of Section 265-K Cr.P.C., is available to the Petitioner. Finally, that there are accused persons involved other than the Petitioner in the Subject FIR whereas the FIR cannot be quashed piecemeal.

6. I have heard the submissions made by the respective legal counsel for the Petitioner as well as the learned AAG and have also carefully considered the record as well as the case law relied upon which leads me to the conclusion that, as pointed out by the learned AAG, one glaring difference between the facts of the instant case and that of *Shuja Hussain Kiyani (Supra)* is that the petitioner in the cited case was not an office holder of the Society whereas in the instant case the Petitioner was the Chairman of the Society and as such a public servant at the relevant time. The transaction involved in *Shuja Hussain Kiyani (Supra)* was regarding sale purchase of land forming part of the Society but between private citizens and as such it was held that the alleged offences were not matters concerning the Federal Government hence FIA has no jurisdiction to investigate the matter.

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7. In the instant case, on the other hand, the Petitioner was the Chairman of the Society at the relevant time, and as such a 'public servant' by virtue of Section 65-B of the Cooperative Housing Societies Act, 1925. For ease of reference, Section 65-B of the Cooperative Housing Societies Act, 1925 and the definition of 'public servant' provided in Section 2(e) of the FIA Act are reproduced herein below:

65.B of Cooperative Housing Societies Act, 1925:

65.B. Officers of societies to be public servants.- Every officer of a society, including a Co-operative bank, shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code.

Section 2(e) of the FIA Act:

"**Public Servant**" means a public servant as defined in Section 21 of the Pakistan Penal Code (Act XL V of 1860), and 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;

8. According to sub-section (1) of Section 3 of the FI A Act, the FIA has been constituted for inquiry and investigation of the offences specified in the Schedule to the FIA Act. Whereas, entry No. 1 under the Schedule lists various offences contained in the PPC including the offences in the Subject FIR and entry No. 5 includes offences punishable under the Prevention of Corruption Act. 1947.

9. The said provisions were considered by another Single Bench of this Court in the case titled *Federal Employees Cooperative Housing Society Vs. Director General, Federal Investigation Agency, Islamabad,* 2019 PCr.LJ 594, of which the relevant portion is reproduced herein below:

"13. The concept sanction for prosecution through Registrar is limited to the extent of those offences provided under Co-operative Societies Act, 1925. After careful perusal of the Co-operative Societies Act, 1925, I have reached to a firm conclusion that section 63 of the Act imposes restriction only to the extent of offences mentioned in sections 60, 61 and 62 of the Act and ***as such any offence committed by society's officer or a member, which falls within cognizance of police, FIA, NAB, Anti-Corruption, etc., he cannot take shelter of Co-operative Societies Act, 1925.*** *Moreover, offences mentioned in section 60 of the Co-operative Societies Act, 1925 only cover the conduct of members of the society to the extent of affairs of the society and are meant to smooth lining the functions of the society and as such are to regulate the functions of the society* ***but the same, in any manner, do not cover the offences of corruption and corrupt practices by any officer or member of the society.*** *Section 61 of the Co-operative Societies Act, 1925, in my humble view is same as E&D Rules of civil servants equip the departmental authorities to proceed against civil servants but on commission of cognizable offence by civil servant, the police, FIA, NAB and anti corruption establishment, etc. are free to proceed against the civil servants in accordance with criminal justice system.* ***I have also gone through the Federal Investigation Act, 1974, which deals with the investigation in certain offences committed in connection with matters concerning Federal Government and for the matters***

connected therewith and it deals with power of public servant defined in section 2(e), which is reproduced as under:-

"Public Servant" means a public servant as defined in section 21 of the Pakistan Penal Code (Act XLV of 1860), and includes an employee of any corporation or other body or organization set up, controlled or administered by the Federal Government."

14. ***The above referred definition empowers FIA throughout Pakistan to search and arrest a person or seizure of the property in terms of section 3 of the Act regarding those offences, which were specifically mentioned in the schedule*** *and the Federal Government may, by notification in official gazette, can amend, modify and omit any entry in the schedule in terms of section 6 of the Act. The schedule provides 38 kinds of enactments, in which FIA can exercise its jurisdiction, however, besides the said entries,* ***if offences under sections*** *120-B, 121, 122, 123, 123-A, 124, 124-A, 161, 162, 163, 164, 165, 165-A, 168, 169, 175, 182, 183, 186, 187, 188, 189, 201, 217, 218, 224, 225, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 263, 300, 301, 324, 323, 333, 334, 335, 336, 337, 337-A, 337-B, 337-C, 337-D, 337-E, 337-F, 342, 348, 353, 365-A, 366-B, 383, 402A, 402B, 402C, 403, 404, 406, 407, 408,* ***409, 411,*** *418, 419,* ***420,*** *435, 436, 440, 462A, 462B, 462C, 462D, 462E, 462F, 466, 467,* ***468, 471,*** *472, 473, 474, 475, 476,* ***477A,*** *489A, 489B, 489C, 489D, 489E, 489F, 499, 500, 501, 502, 506, 507* ***of Pakistan Penal Code, 1860 are committed by a public servant as covered in section 21 of P.P.C., it gives jurisdiction to FIA to inquire into such matters and no bar exists to restrict inquiry and investigation of FIA under the law.***

15. I have made comparison of sections 60, 61, 62 and 62A of Co-operative Societies Act, 1925 with the above referred offences of Pakistan Penal Code, 1860, whereby only few offences overlap with the mentioned offences of Pakistan Penal Code, however, their procedure in general is different vis-à-vis two laws. In Co-operative Societies Act, 1925, the Registrar has to make an inquiry in terms of section 43 and after inquiry, if he comes to the conclusion that certain offence provided in section 60 onwards have been committed, he may give sanction for prosecution of the said offences, however, no sanction is required in any other offence of P.P.C. or which were provided in schedule of FIA Act, 1974. Reliance is placed upon PLD 1992 Karachi 167 (Mubarik H. Siddiqu v. Sajjad Hassan Khan). ***Even otherwise, the officers of the society and members of executive committee fall within definition of public servants, therefore, any act on their part pertaining to corruption, misappropriation of funds, embezzlement, fraud, loss to the society falls within the ambit of section 5 of the Prevention of Corruption Act, 1947, which exclusively falls within schedule at entry No.5 of FIA Act, 1974, hence, the jurisdiction of FIA is wide and exclusive to deal with such kind of affairs,*** *however, FIA is at liberty to seek an appropriate help from inquiry conducted by the Registrar Co-operative Societies, ICT in terms of section 43 of the Act.* ***The Registrar Co-operative Societies, ICT by exercising his powers can at the most ensure the recovery of losses and passing of such orders to protect the society, which is trust of different individuals, who have initially established the society to protect established class of persons having common interest, therefore, while exercising powers in terms of sections 50, 50A, 52, 54, 55 and 59 of the Co-operative Societies Act, 1925, the Registrar can set aside the agreement, cancel the allotment, recover the amount after passing appropriate orders under the law and shall also exercise all powers of the execution of the orders, and all such powers give an impression that the same are meant to be treated as civil remedies to prevent loss to the society but it does not cover those criminal acts, which were defined in Pakistan Penal Code, 1860 and any individual, who has committed those offences, have to be dealt through inquiry/investigation of the FIA or Anti Corruption Establishment or NAB as the case may be under the relevant laws.*** *"* [Emphasis added].

10. The foregoing analysis of *Shuja Hussain Kiyani (Supra)* and *Federal Employees Cooperative Housing Society (Supra)* makes it abundantly clear that

the FIA has no authority or jurisdiction to investigate transactions involving private parties notwithstanding that the subject matter of such transaction may be land forming part of the Society, however, where the offences falling under the Schedule to the FIA Act including the offences under PPC as listed in entry No. 1 of the Schedule are alleged to have been committed by an office holder of the Society who is by virtue of such position a public servant under Section 65-B of the Cooperative Housing Societies Act, 1925 and in the case of offences under the Prevention of Corruption Act, 1947, the FIA certainly has the jurisdiction to investigate the matter. In the instant case, the Subject FIR has been registered against various officer holders of the Society including the Petitioner who was a public servant at the relevant time for various offences under the PPC included in entry No. 1 of the Schedule to the FIA as well as Section 5(2) of the Prevention of Corruption Act, 1947.

11. Therefore, I do not find that the Subject FIR is liable for quashing on the grounds raised by the Petitioner and no case for quashing has been made out by the Petitioner. Consequently, instant petition is **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on the 5th day of July, 2022.

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