

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.155 of 1993**

Date	Order with Signature of Judge
Plaintiff	: Abdul Aziz. (Nemo).
Defendant No.1	: M. Ismail Shaikh.
Defendant No.2	: Khalil Masood. Through Mr. Wajahat Abbas, Advocate.
Defendant No.3	: Islamic Republic of Pakistan. (Nemo).
Date of hearing	: 12.12.2017
Decided on	: 12.12.2017

**JUDGMENT**

**NAZAR AKBAR, J.** Brief facts of this case are that the plaintiff has traveled by British Airways Flight No.BA-147 from London via Behrain to Karachi on **17.11.1990**. To be very precise, he was carrying with him 16 platinum bars which was prohibited in terms of **Section 2(s) Sub-Clause(i)** of the **Customs Act, 1969**, therefore, when he landed in Karachi, he was arrested by the Custom Authorities as the contraband items were found from the custody of the plaintiff. The FIR was lodged and he was prosecuted. His bail was declined by the Special Judge Customs as well as High Court. However, ultimately he was acquitted by the Special Judge, Customs and Taxation by judgment dated **30.10.1991**. The plaintiff, after acquittal, had filed this suit for Malicious Prosecution against the Custom Officers as well as Federation of Pakistan claiming damages of Rs.2,00,00,000/-. The defendant in their written statement have denied allegation of malice and claimed protection of **Section 217** of the Customs Act, 1969 for

their action in good faith in discharging their official duties. The Court on **08.3.2004** had framed the following issues:-

1. *Whether the suit is bared under Section 217 of the Customs Act, 1969?*
  2. *Whether the Complaint discloses any cause of action?*
  3. *Whether the Defendants acted in good faith in arresting and prosecuting Plaintiff in performance of their statutory duty under the Customs Act, 1969?*
  4. *Whether the Plaintiff brought platinum of 160 ounces concealed in bags?*
  5. *Whether the plaintiff did make a declaration in form "A" of the platinum?*
2. The plaintiff has examined himself and his wife in support of his claim of malicious prosecution. Defendant No.1 has appeared as witness on behalf of all the defendants. For the last 4 years the plaintiff's counsel has hardly taken any interest to argue the matter. However, with the help of learned counsel for defendants, I have gone through the evidence as well as record of the proceedings. Learned counsel for defendants No.1 and 2 has relied upon the cases of *Muhammad Nazir Khan vs. Muhammad Ameer* reported in **2012 CLD 649** and *Abdul Wadood and others vs. Muhammad Iqbal* and another reported in **2013 MLD 584**. My findings on the above issues are as under:-

3. The plaintiff in his evidence has categorically admitted that the Customs Officers, who have prosecuted him, were not known to him. It has also come on record that admittedly the plaintiff was carrying the contraband items as per his own statement stated in the cross examination in the following words:-

*I had not given any writing to the investigating officer in this case that 16 ounce platinum bar was given to me by my maternal uncle for taking it to Karachi. The platinum bars were 16 in number one ounce each. It is*

*not correct that 8 platinum bars were in one handbag and the other eight were in another handbag. It is not correct that the bars were in two bags and were concealed in the bottom thereof. Approximate value of these sixteen bars in Pakistan was about 20 lacs and not Rs.25,50,000/-. The bars were purchased by me but my maternal uncle had given me financial assistance as I was short of funds to some extent. I was taking platinum bars with me as I and my maternal uncle has learnt through Internet that the rates of platinum at Hong Kong were promising, therefore, I wanted to have the profit.*

4. The above evidence clearly indicates that he has brought the platinum bars which were prohibited and they have not been cleared by the Customs Authorities. The plaintiff has never claimed in his evidence that the platinum bars were lawfully brought by him. The very fact that his bail was rejected by the learned trial Court as well as High Court is prima-facie proof of the fact that Customs Officers have acted in good faith in discharge of their duties as Custom Officers. No malicious has been proved against the Customs Officers and admittedly the Custom Officers in the term of **Section 217** of the Customs Act, 1969 are protected for action taken by them in good faith in discharge of their official duty under the Customs Act. Their good faith has been proved by the orders of rejection of bail by the relevant Courts pending the trial.

5. In view of the above and keeping in view the case law relied upon by the learned counsel for the defendants No.1 and 2, all the issues are decided against the plaintiff. Consequently, the suit stands dismissed.

J U D G E

Karachi,  
Dated: 12.12.2017