

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 1840 of 2009

Date	Order with signature of Judge
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Present :

1. Mr. Justice Irfan Saadat Khan
2. Mr. Justice Nadeem Akhtar

1. For orders as to non-prosecution of CMA No.6131/2014 :
2. For orders on Nazir's Report dated 22.10.2009 :
3. For orders on office objection :
4. For Katcha Peshi :
5. For hearing of CMA No.9254/2009 :

Mr. Iftikhar Javed Qazi, advocate for the petitioner.

Mr. Umar Hayat Sandhu, advocate for respondent No.4.

Mr. Jaffar Raza, advocate for respondent No.8.

Mr. Farrukh Zia G. Shaikh, advocate for respondents 12, 13 and 14.

Date of hearing : 07.05.2014.

ORDER

NADEEM AKHTAR, J. – This Constitutional Petition has been filed by the petitioner praying *inter alia* that the order passed on 26.04.2009 by a learned Single Judge of this Court in SMA No.119/1999 be set aside and be declared as *ultra vires*, *void ab initio* and against the fundamental rights of the petitioner as well as the principles of natural justice.

2. At the very outset, we confronted the learned counsel for the petitioner to satisfy us about the maintainability of this petition as the petitioner has impugned the order passed by a learned Single Bench of this Court, and has prayed for issuance of a writ against the said Bench. The learned counsel was unable to give any satisfactory reply in this behalf. It is well-settled that no Bench of the High Court can issue a writ against another Bench of the same High Court, or for that matter against another High Court, and no writ lies either against High Court or the Supreme Court. This view expressed by us is fortified by the cases of *Abrar Hassan V/S Government of Pakistan and another* **PLD**

1976 SC 315, and Muhammad Imran V/S Peshawar High Court, Peshawar, through Registrar and two others 2011 PLC (C.S.) 1465.

3. In the case of Abrar Hassan (supra), the Hon'ble Supreme Court was pleased to hold *inter alia* that the policy of law that no writ will issue to a High Court and Supreme Court is based on sound principles ; and, if one Judge of a High Court were to issue a writ to another Judge under Article 199, the Judge to whom the writ is issued, may in exercise of the same jurisdiction nullify the writ. In the case of Muhammad Imran (supra), it was held *inter alia* by a learned Division Bench of the Peshawar High Court that Article 192 of the Constitution emphatically specify the constituents of a High Court, the Chief Justice and the Judges of the High Court ; it is well settled that each Judge of the High Court acts as High Court, and any direction or order by the Single Bench or for that matter by the Division Bench, would amount to its issuance against a Judge who is the component of a High Court ; the jurisdiction exercised by the High Court, whether in a Bench of a Single Judge or the Bench of more Judges, the order would be expressed in the name of High Court and not in the name of individual Judge ; while interpreting Article 199(5) of the Constitution with regard to the definition "person", included Supreme Court or High Court or a Tribunal under the law relating to the Armed Forces of Pakistan from its purview, no writ or order can be issued to the High Court or Supreme Court under Article 199 of the Constitution, as it amounts issuance of the same against the Supreme Court or High Court itself ; and, the administrative or executive orders passed by the Chief Justice of the High Court or the Registrar while acting under the orders of the Hon'ble Chief Justice, also enjoy the protection falling under the ambit of Article 199(5) of the Constitution.

4. In view of the well-settled law discussed above, there is no doubt that this petition is not maintainable, and in fact is a clear and gross abuse of the process of this Court. On our query, the learned counsel for the petitioner conceded that no appeal was filed by the petitioner against the order impugned herein. Under the inherent powers of this Court, we would have exercised the discretion by considering the option of converting this petition into an appeal, but the petitioner does not deserve such discretion or concession as the impugned order was passed on 21.02.2001 and this petition was presented on 28.08.2009. Therefore, if this petition is converted into an appeal, the same would be miserably barred by time.

5. This petition should not have been entertained or registered by the office in the first instance. The Registrar of this Court is directed to place a copy of

this order before the Hon'ble Chief Justice for his lordship's perusal and for taking action, if his lordship deems fit and proper, against such negligent staff / employees of this Court who were responsible for entertaining and registering this Constitutional Petition against the order passed by the learned Single Judge of this Court.

Foregoing are the reasons of the short order announced by us on 07.05.2014, whereby this petition and the listed applications were dismissed.

J U D G E

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