

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI
CP D 1083 of 2017

Date	Order with signature of Judge(s)
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1. For hearing of CMA No.5715/2017
2. For hearing of main case.

18.05.2022

Mr. Aqeel Ahmed Khan, Advocate for the Petitioner
Mr. Aqeel Ahmed Qureshi, Advocate for Respondent.
Mr. Irfan Ahmed Memon, Deputy Attorney General

The prayer sought in this petition seeks a direction / declaration that the petitioner stands abated from pending criminal proceedings and further directions that the petitioner may be excluded from the purview of an FIR specified therein. This matter has been pending since 2017 and *ad interim* orders are also operating herein.

At the very onset the learned counsel was confronted as to how a petition seeking such avoidance of criminal proceedings could be maintained, especially when the law prescribed adequate remedy / opportunity for redress of such grievance. The counsel remained unable to provide any justification in such regard. In the presence of adequate forum / remedy, the condition precedent per Article 199 of the Constitution, being the absence of remedy, is *prima facie* not satisfied¹.

Admittedly, criminal proceedings are pending in the matter under scrutiny. The honorable Supreme Court observed in *Ghulam Muhammad*² that an offence ought to be enquired into and tried by the competent court. In the absence of a finding of guilt the accused had a right to be honorably acquitted by the competent court and vice versa. Abjuring the recourse to regular proceedings by deflection to the civil writ jurisdiction was deprecated by the august Court in *Ghulam Muhammad*, placing reliance upon *Bajwa*³ and *Aleem*⁴.

In view hereof, this petition is found to be misconceived and no case for invocation of the discretionary⁵ writ jurisdiction is made out before us, hence, this petition is hereby dismissed along with all pending applications.

Judge

Judge

Amjad/PA

¹ *Muhammad Abbasi vs. SHO Bhara Kahu & Others* reported as PLD 2010 Supreme Court 969.

² Per Hamoodur Rehman J. in *Ghulam Muhammad vs. Muzammal Khan & Others* reported as PLD 1967 Supreme Court 317.

³ Per Aslam Riaz Hussain J. in *Abdul Rehman Bajwa vs. Sultan & Others* reported as PLD 1981 SC 522.

⁴ Per Muhammad Afzal Zullah J. in *Abdul Aleem vs. Special Judge (Customs) Lahore & Others & Others* reported as 1982 SCMR 522 – In *A Habib Ahmed vs. MKG Scott Christian & Others* reported as PLD 1992 Supreme Court 353, while approving *Aleem*, it was held that if prima facie an offence had been committed, the ordinary course of trial, before the competent court, was not to be allowed to be deflected through an approach to the High Court.

⁵ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.