

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 1468 of 2023

Order with signature of Judge(s)

1. For orders on CMA No.7332/2023.
2. For orders on office objections No.12 & 18.
3. For orders on CMA No.7333/2023.
4. For orders on CMA No.7334/2023.
5. For hearing of main case.

28.03.2023

Mr. Raza Ahmed Cheema, Advocate alongwith Rana Mehrab,
Advocate for the petitioner.

1. Granted. 3. Granted, subject to all just exceptions. 2, 4 & 5. The petitioner, a private limited company, has essentially assailed criminal proceedings in the nature of a first information report¹ registered by the Anti-Smuggling Organization against an individual (Imran Rashid). At the very onset, learned counsel was confronted with respect to the maintainability hereof; *inter alia* as to how the petitioner was an aggrieved person and further as to why such proceedings were preferred directly before the civil tax bench of this Court.

The exercise of powers, per Article 199 of the Constitution, was required to be undertaken upon application of an aggrieved person². The petitioner, being a private limited company, could not be considered as aggrieved with respect to an FIR registered against an individual since the two legal entities are distinct *inter se*. The learned counsel did not articulate any cogent argument to befall the petitioner within the definition of an aggrieved person³.

In so far as the second issue, whether the ordinary course of contextual criminal proceedings could be allowed to be deflected by resort to writ jurisdiction, is concerned, the Supreme Court had illumined in *Ghulam Muhammad*⁴ that if an offence had been committed / alleged, justice required that it should 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 High Court was duly deprecated. *Ghulam Muhammad* was relied upon in *Bajwa*⁵ and *Aleem*⁶ and the Supreme Court considered refusal of the High Court to deflect the normal course of a criminal case, through exercise of writ jurisdiction, as salutary.

¹ FIR number ASO-160/2022-HQ dated 28.09.2022.

² Barring certain exceptions, i.e. writ of *quo warranto*, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

³ *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; *SECP vs. East West Insurance Company* reported as 2019 SCMR 532.

⁴ Per Hamoodur Rehman J. in *Ghulam Muhammad vs. Muzammal Khan & Others* reported as PLD 1967 Supreme Court 317.

⁵ Per Aslam Riaz Hussain J. in *Abdul Rehman Bajwa vs. Sultan & Others* reported as PLD 1981 SC 522.

⁶ Per Muhammad Afzal Zullah J. in *Abdul Aleem vs. Special Judge (Customs) Lahore & Others & Others* reported as 1982 SCMR 522.

Muhammad Afzal Zullah CJ., while approving the authority cited supra, observed in *Habib Ahmed*⁷ 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. The Supreme Court, while allowing an appeal against an order of the High Court, held in *Sardar Khalid*⁸ that by allowing recourse to writ the High Court erred in law by short circuiting the normal procedure of law, while exercising equitable jurisdiction which is not in consonance with the law.

In view of the preponderance of binding authority, cited supra, it is our considered view that the ordinary course of criminal proceedings could not be allowed to be deflected by resort to writ jurisdiction. The statutory fora are competent to determine the viability of the relevant criminal proceedings. No case has been set forth before us to merit the invocation of the discretionary⁹ writ jurisdiction of this Court in such regard; hence, this petition and listed application are hereby dismissed. in *limine*.

JUDGE

JUDGE

⁷ *A Habib Ahmed vs. MKG Scott Christian & Others* reported as *PLD 1992 Supreme Court 353*.

⁸ Per *Chaudhry Ijaz Ahmed J.* in *Haji Sardar Khalid Saleem vs. Muhammad Ashraf & Others* reported as *2006 SCMR 1192*.

⁹ 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*.