



**C.P. NO.D- 4857 OF 2023****FARAZ ALI** ... **PETITIONER****VERSUS****SINDH BUILDING CONTROL AUTHORITY  
& OTHERS** ... **RESPONDENTS****C.P. NO.D- 4909 OF 2023****FAISAL HASHMANI** ... **PETITIONER****VERSUS****SINDH BUILDING CONTROL AUTHORITY  
& OTHERS** ... **RESPONDENTS****16.10.2023**

Mr. Salman Hamid, Advocate for the Petitioner in C.P. No.D-4789/2023.

Mr. Kh. Muhammad Azeem, Advocate for the Petitioner in C.P. No.D-4790/2023.

Mr. Naseer Nehal Hashmi, Advocate for the Petitioner in C.P. No.D-4811/2023.

Mr. Aizaz Ahmed holding brief for Syed Zaeem Hyder, Advocate for the Petitioner in C.P. No.D-4857/2023.

None present for the Petitioner in C.P. No.D-4909/2023.

M/s. Dhani Bux Lashari and Syed Anwar Ali Shah, Advocates for SBCA.

Mr. Zeeshan Asad Advocate holding brief for Mr. Nadir Khan Burdi, Advocate files power on behalf of SBCA.

Mr. Mehran Khan, Assistant Advocate General Sindh a/w. SIP Tahir Habib P.S. Azizabad, Karachi, SIP Zulfiqar Ali P.S. Nazimabad, Karachi.

SIP Nazeer Ahmed P.S. Taimooria, Karachi.

SIP Junaid Ashraf P.S. Shahrah-e-Noor Jehan, Karachi.

ASI Mirza Hassan.

**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.** In each of these Petitions, the Petitioners have impugned a common letter dated 26 September 2023 (hereinafter referred to as the “Impugned Letter”) issued by the Director General / Chief Executive of the Sindh Building Control Authority (hereinafter referred to as the “SBCA”) to the Additional Inspector General Police Range KPO Karachi requesting that an FIR be lodged against each of the Petitioners for being involved in:

- (i) massive illegal construction,
- (ii) running an illegal mafia, and
- (ii) demanding a bribe in the name of officers of the SBCA.

2. The Petitioners contend that each of them are respectable people carrying on their businesses at Karachi. Mr. Salman Hamid led arguments and stated that the Petitioners have never been implicated in any criminal activity whatsoever. He submitted that each of the Petitioners were shocked and alarmed to have got sight of the Impugned Letter and specifically contend that they are not and have never been involved in any form of:

- (i) massive illegal construction,
- (ii) running an illegal mafia, or
- (ii) demanding a bribe in the name of officers of the SBCA.

3. Mr. Salman Hamid further contended that the SBCA is an authority constituted under Section 4 of the Sindh Building Control Ordinance, 1979, which is *inter alia* responsible for the regulation of

construction of buildings in the Province of Sindh. He further submitted that while the SBCA clearly has a mandate to regulate the construction of buildings in the Province of Sindh and even to register criminal complaints for violation of the provisions of the Sindh Building Control Ordinance, 1979, they cannot exercise their jurisdiction to register a Criminal Complaint without first issuing a notice under Section 7A of the Sindh Building Control Ordinance, 1979 to the Petitioners. He submitted that as no compliance had been made of Section 7A of the Sindh Building Control Ordinance, 1979 the Impugned Letter dated 26 September 2023 issued by the SBCA to the Additional Inspector General Police has as such been issued in excess of the jurisdiction of the Director General of the SBCA and with mala fide intent and was liable to be struck down by this Court in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In this regard, he relied on the decision reported as **M/s. Digri Sugar Mills Karachi Limited Vs. Main Kamran Ellahi & others**.<sup>1</sup> He finally contended that the Petitioners had been falsely implicated and each of their fundamental rights as guaranteed under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973, to be subjected to the due process of law, has been violated rendering the Impugned Letter at naught. M/s. Khawaja Muhammad Azeem, Naseer Nehal Hashmi and Syed Zaeem Hyder, who were also appearing for the others Petitioners adopted the arguments of Mr. Salman Hamid, Advocate.

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<sup>1</sup> PLD 2020 Sindh 678

4. We have heard the counsel for the Petitioners and have perused the available record. Section 6 of the Sindh Building Control Ordinance, 1979 reads as under:

“ ... 6. Approval of plan.-

*(1) No building shall be constructed before the Authority has, in the prescribed manner, approved the plan of such building and granted No Objection Certificate for the construction thereof on payment of such fee as may be prescribed.*

*Provided that in case of a building the construction whereof has commenced before coming into force of this Ordinance, the Authority's approval of the plan and No Objection Certificate shall be obtained not later than six months after the enforcement of the Ordinance.”*

Section 7A of the Sindh Building Control Ordinance, 1979 stipulates as under:

“ ... 7-A. Violation of certain provisions.-

*Where the provisions of sub-section (1) of Section 6 are violated the building may without prejudice to any other action including sealing of the building or ejection of the occupants be ordered by the Authority or any officer of the Authority authorized in this.”*

As is apparent, wherever there is a violation of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979, the SBCA has the requisite jurisdiction to act under Section 7A of the Sindh Building Control Ordinance 1979 *inter alia* to seal a property where the construction being undertaken thereon is in violation of the provisions of Sub-Section(1) of Section 6 of the Sindh Building Control Ordinance, 1979 i.e. without having secured an approved plan from the SBCA or having constructed in deviation of an approved plan issued by the SBCA. Such action on the part of the SBCA being “without prejudice” to any other action that they wish to take must be construed so as to mean that they have the requisite jurisdiction to

even demolish illegal construction on that property or to institute criminal proceedings against errant persons.<sup>2</sup>

5. The jurisdiction conferred on the SBCA under Section 7A of the Sindh Building Control Ordinance, 1979 is independent of a jurisdiction conferred on the SBCA under Section 19 of the Sindh Building Control Ordinance, 1979, which reads as under:

“ ... 19. Penalty.-

**(1) Whoever contravenes any provision of this Ordinance, shall be punished with simple imprisonment for a term not exceeding three years or with fine not less than Fifty thousand rupees or with both and if the offence is a continuing one, further fine not exceeding five hundred rupees for each day after the date of the first commission of the offence.**

*(1-A) The Authority or any person authorized by it in this behalf may compound an offence relating to building works of a building plan which was approved prior to the promulgation of the Sindh Building Control (Amendment) Ordinance, 2001 on payment of the existing composition fee enhanced by fifty percent to three hundred percent for the different areas as categorized in the property valuation table issued by the Board of Revenue Sindh as mentioned in the table below and other fees as prescribed, on production of a certificate of structural Engineer on such terms and conditions as may be prescribed:*

*Provided that no offences shall be compounded in respect of a building constructed within ¾ mile (1.2 km) radius of Quaid-e-Azam’s Mausoleum above a podium level of 91 feet (27.72 m) from the mean sea level.*

*Explanation.-For the purpose of this sub-section “building works” include excess covered area, violation of compulsory open spaces or height restrictions.*

TABLE

*For the areas mentioned in Category VI of the said valuation table. 50%*

*For the areas mentioned in Category V of the said valuation table 75%*

*For the areas mentioned in Category IV of the said valuation table 150%*

<sup>2</sup> See *Dr. Pervaiz Mehmood Hashmi vs. Province of Sindh through Secretary Sindh Local Department* PLD 2016 Karachi 114; *Abdul Latif vs. Province of Sindh 2013 CLC 63*, *Muhammad Hanif vs Karachi Building Control Authority* PLD 2007 Karachi 102; *Muhammad Asif vs. Controller of Buildings K.B.C.A, Karachi* PLD 2002 Karachi 405; *Muhammad Saleed vs. Administrator Karachi Metropolitan Corporation KBCA (KMC) Karachi* 2000 SCMR 1748

*For the areas mentioned in Category II & III of the said valuation table 250%*

*For the areas mentioned in Category A1 & 1 of the said valuation table 300%*

*1-B. Notwithstanding the provisions of sub-section (1-A), no offence shall be compounded in respect of the building-*

*(a) which have environmentally degrading activities such as manufacturing, storage of dangerous or inflammable materials, or cater to the service of transport sector until such activities are removed;*

*(b) where parking space is used for other purposes until such space is restored to its original purpose;*

*(c ) which have been constructed in violation of the reservation of road widening scheme or property line, or are in any hazardous use.*

*(1-C) The Authority or any person authorised by it in this behalf may compound any offence relating to the works commenced or carried out in violation of the regulations in respect of foot print, compulsory open space, excess covered area and projections of the building on payment of the existing composition fee enhanced by four hundred percent and other fees, if the deviation does not exceed beyond twenty percent of the permissible limits on the terms and conditions, as prescribed by the Authority.*

**(2) No court shall take cognizance of an offence under this Ordinance except upon a complaint in writing made by the Authority or any person authorised by it."**

(Emphasis is added)

For the trial of offences under the provisions of Sub-Section (1) of Section 19 of the Sindh Building Control Ordinance, 1979 a Special Court has been constituted under the provisions of Section 18A of the Sindh Building Control Ordinance, 1979 and which when read with Sub-Section (2) of Section 19 of the Sindh Building Control Ordinance, 1979 only take cognizance of an offence having been committed under that statute on a complaint made by the SBCA or any person authorised by the SBCA. It is therefore apparent that the SBCA has a variety of powers under the provisions of the Sindh Building Control Ordinance, 1979 to regulate

construction e.g. to institute proceedings under Section 7A of the Sindh Building Control Ordinance, 1979, or to institute criminal proceedings under Section 19 of the Sindh Building Control Ordinance, 1979.

6. Keeping in mind the jurisdiction that is vested in the SBCA under the provisions of the Sindh Building Control Ordinance, 1979, it is to be noted that the offences that have complained about by the SBCA are that of:

- (i) being involved in massive illegal construction;
- (ii) running illegal mafia
- (iii) demanding bribe in the name of officers of the SBCA

Considering each of these alleged offences separately, while it can be considered that illegal construction in violation of the provisions of Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 should be treated as conferring jurisdiction of the SBCA to act under Section 7A of the Sindh Building Control Ordinance, 1979, clearly this would not take anything away from the jurisdiction of the SBCA to institute criminal proceedings under the provisions of Sub-Section (1) of Section 19 of the of the Sindh Building Control Ordinance, 1979 for such a violation. The remaining two offences being crimes independent of the provisions of the Sindh Building Control Ordinance, 1979 would not be prosecuted under the provisions of Sub-Section (1) of Section 19 of the of the Sindh Building Control Ordinance, 1979 but under the provisions of other statutes, including, but not limited, to the provisions of the Pakistan Penal Code, 1860. That being the case the Director General of the SBCA clearly had the requisite jurisdiction in his capacity under Sub-Section

(2) of Section 19 of the Sindh Building Control Ordinance, 1979 to maintain a complaint regarding the offence committed in respect of the alleged illegal construction purportedly being undertaken by the Petitioners and in his capacity as the primary officer of the SBCA to register an FIR as against the Petitioners in respect of the remaining two classes of offences.

7. The question that therefore remains to be answered before this Court is whether in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 we can quash a complaint such as the Impugned Letter and prevent both an investigation and the registration of the FIR as against the Petitioners. This issue has been considered by the Supreme Court of Pakistan in the decision reported as **A Habib Ahmed vs. M.K.G Scott Christian**<sup>3</sup> wherein while setting aside a decision of this Court, when it had exercised its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to quash the cognizance of offences taken by the Presiding Officer, Special Court of Sindh (Banks) Karachi, it was held that:

“ ... *Undoubtedly one primary question which the High Court had to face immediately on entertaining a case like the present one is: whether, the ordinary course of trial before the Court concerned should be allowed to be deflected through an approach to its special of inherent jurisdiction -- the writ' jurisdiction under Article 199 of the Constitution is one of them. The basic rule was laid down by this Court in the well known case of Ghulam Muhammad v. Muzammal Khan PLD 1967 SC 317 and it was ruled that if prima facie the offence had been committed justice required that it should be enquired into and tried. If the accused are not as a result of the trial found guilty they have a right to be declared as "honourably acquitted by a competent*

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<sup>3</sup> PLD 1992 SC 353

*Court". On the other hand if the evidence against the accused discloses a prima facie case then ' justice clearly requires that the trial should proceed according to law". It was also held that the inherent jurisdiction of the High Court is not an alternative jurisdiction or additional jurisdiction. It is only in the interest of justice to redress grievances for which no other procedure is available. The power given by section 561-A, Cr.P.C., it was held can certainly not be so utilised as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute.' Undoubtedly, the case of Ghulam Muhammad had come before the Supreme Court through an interruption by the High Court under section 561-A, Cr.P.C. The order of the High Court quashing the proceedings before the trial Court was set aside and it was directed that the criminal cases were to proceed before the Court concerned in accordance with the normal law.*

*The aforestated view and principle was reiterated by the Supreme Court in other cases as well, which came before it through the jurisdiction of. The High Court other than section 561-A, Cr.P.C. They included revisional and writ jurisdictions. See Abdur Rehman Bajwa v. Sultan and 9 others PLD 1981 SC 522 and Abdul Aleem v. Special Judge (Customs), Lahore 1982 SCMR 73. The case of Abdul Aleem had arisen out of a similar case. A learned Special Judge/Customs notwithstanding the legal objections raised from the accused side with regard to the competency of the criminal proceedings before him formally charged the accused: A criminal revision filed by him having been dismissed he sought relief for quashment of the criminal case through a Writ Petition and the same had to be dismissed mainly on the ground that the High Court would not "in its discretionary- jurisdiction short circuit the normal procedure of trial as provided by law." This Court refused to grant leave to appeal. It was observed as follows:-*

*"We are of the view that the approach of the learned Single Judge in the High Court in refusing to deflect the normal course of a criminal case through exercise of writ jurisdiction is not only salutary but also in accord with the principles laid down by this Court in Ghulam Muhammad v. Muzammal Khan and 4 others PLD 1967 SC 317, although the case dealt with therein " .*

*In a very recent case which had arisen out of the same law relating to Offences in Respect of Banks (Special Courts) this Court again emphasized the same principle. See Muhammad Aslam v. The State 1991 SCMR 600, para.26.*

*All the points which have been noted above are such which the Special Court (Banks) could have decided and if it would have decided them the subject-matter involved herein fell within its jurisdiction. This decision by itself would not have been without jurisdiction*

*because if such decision is wrong it does not mean that it is necessarily without jurisdiction. In this particular case there is an additional support for this view: namely, that section 4 (6) of the Ordinance, (No.IX of 1984) provides that in the course of the trial before the 'Special Court if it is of the opinion that any of the offences which the accused is alleged to have' committed is not a scheduled offence the Court shall record such opinion and try the accused only for such offence, if any, as a scheduled offence. Therefore, if the Special Court would have been allowed by the High Court, without interrupting the normal course of the case, to proceed with it, there was no bar to the respondents to have invoked the power under subsection (6) of section 4 to seek the same remedy from the trial Court as was sought from the High Court. The difference would have been only this that in that eventuality it would have taken few weeks or at the most few months; while in the present situation where the normal course has been deflected by the High Court the time that has already been consumed is about 4 years. Such like inherent and consequential elements in the interference by the High Court, as has been demonstrated in this very case, instead of advancing the course of justice sometimes prove counter productive.*

*It is often said that if a Court has no jurisdiction it is better for the High Court to interfere in its extraordinary jurisdiction to provide swift and efficacious remedy. Experience has shown and it has now been recorded as opinion in a large number of cases, that in practice even if it was so few decades ago, it is no more so in the present circumstances."*

A similar opinion was given by the Supreme Court of Pakistan in the decision reported a **Col. Shah Sadqi vs. Muhammad Ashiq**<sup>4</sup> wherein it was held that:

“ ... 7. It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction which is not in consonance with the law laid down by this Court in *A. Habib Ahmad v. M.K.G. Scott Christian* PLD 1992 SC 353. The learned High Court had quashed the F.I.R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by trial Court. The learned High Court had no jurisdiction to

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<sup>4</sup> 2006 SCMR 276

quash the impugned F.I.R. by appreciation of the documents produced by the parties without providing chance to cross-examine or confronting the documents in question. Respondents had alternative 'remedy to raise objection at the time of framing the charge against them by the trial Court or at the time of final disposal of the trial after recording the evidence. Even otherwise, respondents have more than one alternative remedies before the trial Court under the Cr.P.C. i.e. section 265-K, 249-A or to approach the concerned Magistrate for cancellation of the case under provisions of Cr.P.C. The respondents have following alternative remedies under Cr.P.C.:--

(a) To appear before the Investigating Officer to prove their innocence.

(b) To approach the competent higher authorities of the Investigating Officer having powers vide section 551 of Cr.P.C.

(c) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge the under section 63 of the Cr.P.C. in case of their innocence.

(d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.

(e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

(f) There are then remedies which are available to accused persons who claim to be innocent and who can seek relief without going through the entire length of investigations.

8. The learned High Court erred in law in accepting constitutional petition by quashing the F.I.R. at the initial stage which was not in consonance with the law laid down by this Court in the following judgments:--

(i) Ghulam Muhammad v. Muzammal Khan and 3 others PLD 1967 SC 317; (ii) Mohsin Ali and another v. The State 1992 SCMR 229; (iii) Abdul Rehman v. Muhammad Hayat Khan and others 1980 SCMR 311; (iv) Marghoob Alam and another v. Shamas Din and another 1986 SCMR 303; (v) Sheikh Muhammad Yameen v. The State 1973 SCMR 622; (vi) Bashir Ahmad v. Zafar-ul-Islaam and others PLD 2004 SC 298; (vii) Kh. Nazir Ahmad's case AIR 1945 PC p.18; (viii) Shahnaz Begum v. The Honourable Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677; (ix) Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142.

9. According to provisions of Cr.P.C. it is for the Investigating Officer to collect all the facts connected with the commission of offence and if he finds that no offence is committed, he may submit a report under section 173, Cr.P.C. to the Allaqa Magistrate. On the other hand, if on the basis of his investigation he is of the opinion that the offence has in fact been committed, he has to submit report accordingly. However, the report of the Investigating Officer cannot be the evidence in the case. The investigation is held with a view to ascertaining whether or not an offence has been committed. The inquiry, or trial, as the case may be has to be conducted by the Magistrate. If the police is restrained from investigating the matter, their statutory duty, it will in our opinion be tantamount to acting against the law as held in *Kh. Nazir Ahmad's* case AIR 1945 PC. p.18. The relevant observation is as follows:

*"Just as it is essential that everyone accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in the matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police under sections 154 and 156 to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court under section 561-A. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491, Criminal Procedure Code, to give direction in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then."*

8. To summarise while this Court can exercise its jurisdiction in exceptional circumstances under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to interfere with the registration of an FIR it should generally refuse *"to deflect the normal course of a criminal case through exercise of writ jurisdiction."* On the facts we do not find there to be anything exceptional in the Impugned Letter which would lead us to

believe that the Director General of the SBCA was acting outside his jurisdiction or with mala fide intent. The offences outlined therein either all relate to the functions of the SBCA under the Sindh Building Control Ordinance, 1979 and pertain to the office of the SBCA being purportedly abused by the Petitioners of which cognizance can and should be taken by the SBCA and on which, at the very least, an investigation is warranted. The Petitioners reliance on the decision of a learned Single Judge of this Court in the decision reported as **M/s. Digri Sugar Mills Karachi Limited Vs. Main Kamran Ellahi & others**<sup>5</sup> is also misplaced. In that matter cheques had been issued as security to perform on certain obligations and which, despite the obligations having purportedly been performed, were not returned. The *lis* was therefore maintained for the cancellation of those instruments. The defendants to that *lis* had countersued for specific performance pleading that the obligations still remained performable. The learned Single Judge was on the facts inclined to grant the injunction restraining the presentation of the cheques pending the resolution of a civil dispute as between the parties and notwithstanding the fact that final injunctive relief would have been barred under the provisions of Section 56 (d) of the Specific Relief Act, 1877. The Judgement relied on by the Petitioner is clearly distinguishable. Firstly, in our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 we do not grant injunctive relief under the Specific Relief Act, 1877 rather we issue orders in the nature permitted under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and hence the finding of the learned Single Judge is clearly not applicable to us in our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Secondly, the registration of an FIR against the presentation of cheques is in stark contrast to illegally constructing on a property, acting as a “mafia” or “impersonating public officials” and under cover of which monies are

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<sup>5</sup> PLD 2020 Sindh 678

purportedly being extorted from the general public as has been alleged. We are therefore not inclined to follow the Judgement relied on by Mr. Salman Hamid.

9. In addition, as has been held by the Supreme Court of Pakistan, the Petitioners would have the following remedies available to them to prove their innocence under the provisions of the Code of Criminal Procedure, 1898 during the investigation:

- (i) To appear before the Investigating Officer to prove their innocence;
- (ii) To approach the superior officers of the Investigating Officer having powers under section 551 of of the Code of Criminal Procedure, 1898;
- (iii) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge the under section 63 of the of the Code of Criminal Procedure, 1898 in case of their innocence;
- (iv) In case the Magistrate finds the Petitioners innocent, he would refuse to take cognizance of the matter; and
- (v) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

Each of these remedies would, to our mind, not only secure the Petitioners rights under Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973 only be alternate efficacious remedies but would also allow a more complete examination of the facts by the Investigation Officer and the Magistrate, as opposed to us in exercising our jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. For the foregoing reasons, we are of the opinion that this Petition is not maintainable under the provisions of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 before this Court and on account of which we had dismissed this Petition on 16 October 2023 and these are the reasons for that Order.

JUDGE

JUDGE

Karachi dated 20 October 2023