

IN THE HIGH COURT OF SINDH, KARACHI
Constitution Petition No. D- 944 of 2006

Date Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Justice Ms. Sana Akram Minhas.

Petitioner: Mrs. Aqeela Begum
Through Mr. Daniyal Muzaffar,
Advocate.

Respondent No. 1: Collector of Customs (Preventive),
Customs House, Karachi,
Through Mr. Pervaiz Ahmed Memon,
Advocate.

Respondent No.2: Federation of Pakistan
Through Ms. Mahreen Ibrahim,
Assistant Attorney General.

Date of hearing: 13.09.2023
Date of Judgment: 13.09.2023

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this petition, the Petitioner has prayed for the following relief(s):-

“It is therefore prayer that the Honourable Court may be pleased to declare that 8 gold bangles weighing some 0.465 kgs seized from the petitioner and later confiscated were not liable to seizure as the petitioner was a transit passenger and her destination as not Karachi.

That the petitioner being an Indian national under transit was in Custody of F.I.A and could not have gone to the City, therefore the Charge of smuggling was ill-founded and baseless.

That the act of search of the petitioner and seizure of her bangles was an illegal act.

And while granting such declarations, the Honourable Court may be pleased to Order that the 8 Gold bangles weighing 0.465 kgs seized from the petitioner at Karachi Airport while she was in transit under the Custody of F.I.A be returned to the petitioner immediately.

Any other relief which this Honourable Court may deem fit and proper in the circumstances of the case.”

2. The Petitioner’s Counsel was confronted by this Court on 27.04.2023 as to laches involved in this matter and the Counsel had relied upon the case of ***Muhammad Shafi***¹. The Court had further observed that

¹ Muhammad Shafi V/s Mushtaque Ahmed through legal heirs & others (1996 SCMR 856).

the said case is distinguishable on facts and he was given a chance to further assist the Court. Today he has filed a statement along with various other citations in support thereof² and has further argued that the Petitioner, being an Indian national, was denied a timely visa to visit Pakistan; hence could not challenge the order passed against her regarding confiscation of her luggage which had attained finality and in support he has read out para Nos. 7 & 8 of the Memo of Petition.

3. We have heard the Petitioner's Counsel as well as Counsel for the Respondent and perused the record. As to laches and the order passed by this Court on 27.4.2023, it does not seem to be in dispute that by way of instant petition filed in 2006, Order(s) passed by the departmental forums in the year 1993 have been impugned; whereas, the Petitioner had also availed remedy of appeal and revision against the first order in original whereby the goods in question were confiscated. Though an effort has been made to overcome the objection regarding laches as raised by this Court; however, mere argument to this effect does not suffice as it has to be supported by some cogent and substantiating material which the Petitioner has miserably failed to produce. It is a mere statement that the petitioner was unable to obtain Visa which was issued after twelve (12) years and this petition was filed to claim the confiscated goods. However, this could not, within and of itself be termed as sufficient to overcome laches, inasmuch as a petition could have been filed through an attorney. It is stated in Para-12 of the petition that now the Petitioner has given a power of attorney to someone for pursuing this petition, and in our view this could have been done earlier as well. Moreover, it has not been explained that since 1993, what steps were taken to pursue the matter or for that matter, when and how many time the Visa applied was refused.

² i.e. Pakistan Post Office Vs. Settlement Commissioner and others (1987 SCMR 1119), Masooda Begum through legal Heirs Vs. Government of Punjab through Secretary Forest, Lahore and 9 others (PLD 2003 SC 90), Umar Baz Khan through L.Rs. Vs. Syed Jehanzeb and others (PLD 2013 SC 268) and Asif Hassan and others Vs. Sabir Hussain and others (2019 SCMR 1720).

There are mere bald submissions in the petition which in our considered view are not sufficient to overcome laches in this case. There is no exception to the rule that a delay in seeking remedy of appeal, review or revision beyond the period of limitation provided under the statute, in absence of reasonable explanation, cannot be condoned and in the same manner if the remedy of filing a constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches³. Delay would defeat equity which aids the vigilant and not the indolent⁴. Laches in its simplest form means the failure of a person to do something which should have been done by him within a reasonable time⁵. If the remedy of constitutional petition was not availed within reasonable time, the interference could be refused on the ground of laches⁶. Question of laches in constitutional petition is always considered in the light of the conduct of the person invoking constitutional jurisdiction⁷.

4. In view of the above facts and circumstances we do not see any reason to entertain this petition as it is badly hit by laches; whereas, no case for exercising our discretion has been made out; hence the Petition, being misconceived and hit by laches, is hereby dismissed.

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³ Special Secretary-II (Law & Order) v Fayyaz Dawar (order dated 14.06.2022 passed in Civil Petition No.3750 of 2020-SC citation 2023 SCP 199)

⁴ As above

⁵ As above

⁶ As above

⁷ As above;

further reliance may also be placed on PLD 2013 S.C. 268 (Umar Baz Khan vs. Syed Jehanzeb and others), 2004 SCMR 400 (Farzand Raza Naqvi and others vs. Muhammad Din through Legal Heirs and others), PLJ 2012 SC 289 (State Bank of Pakistan vs. Imtiaz Ali Khan & others) and 2014 PLC (C.S.) 1292 (Asghar Khan and others vs. Province of Sindh and others)