

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 1108 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.5189/2020
2. For hearing of main case

27.03.2025

Mr. Muhammad Jahangir, advocates for the petitioner

Ms. Mehreen Ibrahim, Deputy Attorney General

Ten (10) individuals filed this petition, in the Constitutional jurisdiction of this Court, in 2020; essentially impugning an FIR registered on 20.02.2018. Vide *ad interim* order dated 25.02.2020, the entire prosecution remained halted.

Irrespective of the *prima facie* bar of *laches* or the fact that the *challan* had also been filed in the relevant proceedings, the counsel was confronted with the aspect of maintainability, as to how / why this Court must interfere in a pending criminal investigation. In so far as the objections to the FIR were concerned, counsel was queried as to why the same could not be placed before the investigating officer and / or the concerned court. On the issue of preclusion of arrest, the counsel was queried as to why such relief was directly sought in writ jurisdiction, while eschewing the adequate remedy enshrined in the law. Respectfully, learned counsel remained unable to articulate a cogent response on either count.

The Supreme Court had illumined in *Ghulam Muhammad*¹, back in 1967 that if an offence had been committed justice required that it should be enquired into and tried by the competent forum. 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*² and *Aleem*³ 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. *Muhammad Afzal Zullah CJ.*, while, approving the authority cited supra, observed in *Habib Ahmed*⁴ 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 august Supreme Court, while allowing an appeal against an order of the High Court, held in *Sardar Khalid*⁵ that by allowing recourse to writ the High Court erred in

¹Per *Hamood ur Rehman J.* in *Ghulam Muhammad vs. Muzammal Khan & Others* reported as *PLD 1967 Supreme Court 317*.

²Per *Aslam Riaz Hussain J.* in *Abdul Rehman Bajwa vs. Sultan & Others* reported as *PLD 1981 SC 522*.

³Per *Muhammad Afzal Zullah J.* in *Abdul Aleem vs. Special Judge (Customs) Lahore & Others & Others* reported as *1982 SCMR 522*.

⁴A *Habib Ahmed vs. MKG Scott Christian & Others* reported as *PLD 1992 Supreme Court 353*.

⁵Per *Chaudhry Ijaz Ahmed J.* in *Haji Sardar Khalid Saleem vs. Muhammad Ashraf & Others* reported as *2006 SCMR 1192*.

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 in the present facts and circumstances. The statutory fora are competent to determine the viability of the relevant criminal proceedings and regulate the custody of the accused. No case has been set forth before us to merit the invocation of the discretionary⁶ writ jurisdiction of this Court in such regard; therefore, this petition is hereby dismissed, along with pending application/s, with costs of Rs. 100,000/-; to be deposited by each petitioner with the Sindh High Court Clinic within 7 days. In the event that the costs are not deposited as aforesaid, the same may be recovered as arrears of land revenue.

Judge

Judge

Amjad

⁶Per *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.