

IN HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

C.P No.D-261 of 2025

[Shaukat Islam Kunbhar v. Province of Sindh and 6 others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioner :	Shaukat Islam Kunbher in person.
Respondents No.1to6:	Mr. Muhammad Sharif Solangi, A.A.G. Sindh along with Zulfiqar Ali Talpur, Excise & Taxation Officer, Tharparkar.
Respondent No.7:	Haresh Kumar Lohano through Mr.Zaheer-ud-Din Junejo, Advocate who filed his Vakalatnama today taken on record.
Date of Hearing :	<u>16.04.2025</u>
Date of Decision :	<u>16.04.2025</u>

JUDGMENT

RIAZAT ALI SAHAR J: -Through this petition, the petitioner contends that respondent No.7 is unlawfully operating a wine shop, H.S. Wine Shop, in a densely populated area near the Santosh Mandir in Sonara Bazar, Mithi, Tharparkar, despite being licensed for a different location. This, according to the petitioner, violates para 100 and sub-para 19 of para 282-A of the Sindh Excise Manual Vol. I. Despite multiple public complaints and a court order for its relocation, the shop continues to operate at the same location with the alleged collusion of officials. The petitioner further contends that respondent No.7 is selling wine not only to non-Muslims but also to Muslims, including school and college students, and supplying large quantities of liquor to unlicensed agents. These

agents run illegal mini-wine shops in towns and villages such as Chelhar, Diplo, Islamkot, and others, and distribute alcohol even during Ramadan, with the involvement of local police and excise officials. It is claimed by the petitioner that this widespread and unauthorized sale of alcohol is transforming the cultural and moral fabric of Tharparkar, which is contrary to Islamic principles, Article 17 of the Prohibition (Enforcement of Hudood) Order, 1979, and Article 37(h) of the Constitution of Pakistan. The petitioner contends that the actions of respondent No.7, with the support of officials, amount to blatant illegality and a violation of the law and Islamic values. He, therefore, prays with following prayers:-

- a) Direct the official respondents to seal/close the M/s H.S Wine Shop Mithi forthwith as well as mini wine shops at Chelhar, Islamkot, Diplo and other places at District Tharparkar.*
- b) Direct the official respondents to cancel the license of M/s. H.S Wine shop on violation of provision of Article 17 of Prohibition (Enforcement of Hadd) Order, 1979 and violation of para 100 and sub para 19 of para 282-A of Sindh Excise Manual Vol I.*
- c) Direct the respondent No.7 and official respondents to submit register of sale of M/s H.S Wine Shop Mithi and also provide CCTV record of said wine shop.*
- d) Direct the official respondents to submit detailed report of all wine shops and mini wine shops running in District Tharparkar and also submit particulars and record of sale of all wine shops running in District Tharparkar.*
- e) Any other relief/which this Honourable Court may deem fit and proper under the circumstances of the case, in the interest of justice.*

2. Notice of this petition was issued to the respondents No.3 to7 as well as learned A.A.G. Sindh for today. Today, a counsel of behalf of respondent No.7 appeared and filed

Statement along with certain documents, which includes copy of license of subject Wine Shop along with Challan issued by E.T.O. Tharparkar @ Mithi; copy of transport permit and FBR Income Tax. The statement and documents are taken on record.

3. The petitioner present in person while reiterating the contents of his petition contends that the respondent No.7 is unlawfully running H.S. Wine Shop at an unlicensed location near SantoshMandir, Mithi. He contends that this violates para 100 and sub-para 19 of para 282-A of the Sindh Excise Manual Vol. I. According to him, despite public complaints and a court order, the shop continues to operate with alleged official collusion and such operation is illegal and socially harmful.

4. On the other hand, the learned A.A.G. Sindh opposes the contentions raised by the petitioner and prays for dismissal of the petition. The learned counsel for respondent No.7 contends that respondent No.7 has been operating the wine shop in accordance with the terms and conditions of the license, which has been regularly extended. He contends that the current license is valid up to 30.06.2025 and therefore, the petition is without merit and liable to be dismissed. In support of his contention, he refers to the documents filed today along with his statement.

5. We have heard the learned counsel for the parties and have carefully perused the available record, including the documents placed on record by the parties.

6. From the record, it is evident that the core grievance of the petitioner revolves around the alleged unlawful operation of M/s

H.S. Wine Shop by respondent No.7 at a location near Santosh Mandir, Mithi, purportedly in violation of the licensing conditions stipulated under para 100 and sub-para 19 of para 282-A of the Sindh Excise Manual Vol. I. The petitioner has further alleged that despite public protests and even a judicial directive, the said shop continues to operate at the disputed site due to alleged collusion of local officials and that its operations have harmful social consequences. In support of his arguments, the petitioner has placed reliance on a common judgment dated 08.12.2021 passed in C.P. No.D-1931 of 2011 and C.P. No.D-503 of 2017. We have carefully examined the said judgment and find that the issues raised therein pertain to the very same wine shop, the subject matter of instant petition, including its legality, location, and the objections raised regarding its closeness to a place of worship, wherein the petitioner therein, Mr. Vishandas, had contended that the shop was duly sanctioned in accordance with law and situated at Shahi Bazar, Mithi a designated commercial area. It was further noted that, at the time of grant of license, there was no worship place or Mandir in the vicinity, and that the residents of the locality had submitted no-objection certificates. The prayers made in the instant petition are substantially similar to the issues already addressed in the aforesaid judgment, which has been relied upon and submitted by the petitioner himself. In the concluding paragraphs 9 and 10 of that judgment, this Court held as under:

“9. Prima facie, in the present case, certain factual controversies have been raised by the parties, which could not be determined under Article 199. However, to the extent of any objection falling within the scope of the regulatory framework for renewal of the license

or any complaint as to an alleged violation of the terms thereof, the petitioner could avail and exhaust remedy before the competent authority of the respondent department.

10. We have noticed that the impugned letters issued by the respondent authority directing the petitioner to shift his licensed wine shop are completely bereft of reasons. In this scenario, we deem it appropriate to direct the Director General, Excise, to provide a proper opportunity of hearing to the petitioner and private respondent before taking any punitive action, including shifting of the petitioner's shop or opening of a retail off shop at Mithi. In case of any violation of the applicable terms and conditions of the license, appropriate action ought to be taken under the law. Such exercise is to be carried out within 30 days from the date of this order."

7. It is a settled principle of law that once a matter has been judicially determined by a competent court, the same cannot be reopened under the garb of a fresh constitutional petition. The principle of *res judicata* bars re-agitation of an issue that has already been conclusively decided. In this case, the petitioner himself has relied upon the earlier judgment, and the subject matter and allegations are materially identical. Permitting repeated litigation on the same issue would not only render the earlier decision unimportant but also constitute an abuse of the process of law and waste judicial resources.

8. Furthermore, when a person invokes the jurisdiction of a constitutional Court to re-agitate an issue that was already within his knowledge and has been previously adjudicated, the **doctrine of estoppel** operates as a constitutional safeguard to uphold the integrity of judicial proceedings, preserve the sanctity of final judgments and prevent abuse of the legal process. Therefore, in the instant case, since the petitioner has already relied upon and

subjected himself to a judicial pronouncement on the same issue, he is liable to be estopped from questioning the same again before this Court. Hence, the instant petition is barred by law and is not maintainable.

9. In view of the above facts and circumstances, we find no merit in the instant petition. Accordingly, the petition is hereby **dismissed** with costs of Rs.50,000/- (Rupees fifty thousand only), to be deposited by the petitioner, in the Library of “Karachi Bar Association” through its General Secretary within thirty (30) days as the petitioner is by profession an Advocate and member of Karachi Bar Association.

Copy of this order be communicated to the General Secretary, Karachi Bar Association for information.

JUDGE

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