

# HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Naimatullah Phulpoto

Constitution Petition No.D-3708 of 2016

Ms. Ayyan Ali .....versus.....The Federation of Pakistan  
& others

Date of Hearing: 09.01.2017

Petitioner: Through M/s. Sardar Latif Khan Khosa and  
Qadir Khan Mandokhel, Advocates

Respondents Mr. Salman Talibuddin, Addl: Attorney General  
of Pakistan.

Ms. Seemi Zaidi, Asstt: Prosecutor General Sindh

## JUDGMENT

NAIMATULLAH PHULPOTO, J.— Constitution Petition No.D-3708/2016 was heard by a Division Bench of this Court, composed of by my learned brothers Ahmed Ali M. Shaikh, J. and Muhammad Karim Khan Agha, J., who vide their judgments dated 25.11.2016 being divided in opinion as to the decision of the petition on the issue of territorial jurisdiction of this Court to hear this constitution petition. Case was placed before the Honourable Chief Justice, who ordered that the matter may be heard by me as a Referee Judge.

2. The facts of the case have been mentioned in detail by my learned brothers in the judgment and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

3. I have had the privilege of reading the judgment prepared by my esteemed brother Mr. Justice Ahmed M. Shaikh. View expressed by my learned brother in paras 10 to 12 is reproduced as under:

"10. We have heard the learned counsel for the petitioner, Additional Attorney General of Pakistan and perused the material available on record. It is a matter of record and not disputed by either side that the impugned notification placing petitioner's name on ECL was issued after the order dated 17.5.2016 passed by the Lahore High Court, Rawalpindi Bench in writ petition No.1398 of 2016, which is reproduced hereunder:-

*"After arguing the case at some length, learned counsels for the petitioners feel satisfied if a direction is given to the respondent No.1 i.e. Secretary, Ministry of Interior, Islamabad to decide the*

application dated 12.5.2016 filed by the petitioner No.2 expeditiously and in accordance with law. The request is tenable.

2. The respondent No.1 is directed to decide the above-referred application of the petitioner No.2, if pending before him, after giving an opportunity of hearing to the petitioner and any other concerned person, strictly in accordance with law. Needful shall be done within ten days from the date of receipt of certified copy of this order. Learned Deputy Attorney General for Pakistan on court's call is directed to ensure the compliance of the order of this order."

3. With these observations, this writ petition stands disposed of. Copy dasti on the payment of usual charges."

11. Thereafter, on the recommendation of Home Department, Government of Punjab, which has decided application of Mst. Saima Ejaz, widow of Ejaz Mehmood, slain Customs Inspector/IO of the F.I.R. registered against petitioner, who was implicated as co-accused in the F.I.R. No.550/2015 registered at PS Waris Khan, Rawalpindi, impugned memorandum was issued by the Federal Government.

12. No doubt, this Court in the earlier round had twice struck down the memorandums controlling the petitioner's exit from the country, however, in wake of the fact that the Ministry of Interior, Government of Pakistan has issued impugned notification after the order of the Lahore High Court and on the recommendation of Government of Punjab, we are clear in our mind that this Court has no territorial jurisdiction to entertain instant petition.

For the foregoing reasons, we do not find any merit in the instant petition, which is accordingly dismissed."

4. I have now had the chance of reading the judgment of my learned brother Mr. Justice Muhammad Karim Khan Agha. After lengthy discussion, he came to following conclusion on the issue of territorial jurisdiction of this Court.

"7.(Page 37). In my view since the filing of an F.I.R. and the opening on an inquiry by NAB under the NAO have some similarities as in effect they both get the ball rolling in a criminal case and may or may not lead to the case going to trial depending on the evidence collected they should be given the same treatment vis a vis territorial jurisdiction.

8. In any event as the Memorandum placing the petitioner's name of the ECL has been issued by the Ministry of Interior the matter is a Federal issue and I remain of the view as found in the Judgment that the "take effect" test will apply and in the instant case as discussed above the third memo will take effect/have effect at the Jinnah International Airport Karachi and thus I find this petition maintainable in terms of territorial jurisdiction and can be taken by this Court notwithstanding the fact that the Islamabad High Court and the Lahore High Court may also have concurrent jurisdiction.

SAVITRAMMA versus CICIL NARONHA and another (1989 MLD 1133) [Supreme Court of India] and GIORGIO BEVERLY HILLS INC. versus COLGATE PALMOLIVE PAKISTAN LTD. and another (1999 MLD 3173) [Karachi].

7. I have carefully heard the learned counsel for the parties, perused the judgments of my learned brothers and case-law.

8. The law and principle on the point of territorial jurisdiction/concurrent jurisdiction of the High Court has been examined at length, in the case of LPG Association of Pakistan through Chairman versus Federation of Pakistan through Secretary, Ministry of Petroleum & Natural Resources, Islamabad and 8 others reported in 2009 CLD 1498. Relevant portion is reproduced as follows:

*"6. From the judgments cited at the Bar on both the sides, the portions whereof have been extensively reproduced, the following ratio is deducible:—*

*(A) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in, any of the Provinces, shall still be deemed to function all over the country.*

*(B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.*

*(C) This shall be moreso in the cases where a party is aggrieved or a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession, association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.*

*In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is maintaining the account at Lahore, though the Act/law has been passed at Islamabad, yet his right being affected where he maintains the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the*

9. Learned AAGP also contended that the petition was not maintainable as it had not been signed by the petitioner rather by an advocate instructed by her on her behalf and as such it warranted dismissal on this count alone. In this respect he placed reliance on the Indian case of Smt. Svitramma V Civil Naronha (1989 MLD 1133 Supreme Court of India). As is well known the Indian cases are only of persuasive authority and not binding on us. He did not produce any Pakistani authority on this point. Even in the Indian case, which concerned a contempt petition as opposed to a Constitution petition, it was held that although the petition was rejected the defect was in effect curable by the petitioners filing their own affidavits.

10. The question therefore emerges whether in our constitutional jurisdiction, bearing in mind the history of this case as alluded to above, we are bound to reject the petition because the affidavit had not been filed by the petitioner when in fact that petitioner, who is based in Karachi could very easily cure the defect within days. In my view this would only serve to further delay the matter especially keeping in view the Honourable Supreme Court order to decide the matter expeditiously on 03.10.2016. Furthermore, I view this defect as a technicality and the law has always preferred a matter not to be defeated by technicalities but decided on merits. I have also kept in view the chronology of events which have been metered out to the petitioner as narrated earlier in this order in her attempts to leave the Country and travel abroad in order to carry out her profession, her constitutional rights guaranteed by the Constitution in this respect and the requirement that we must do complete justice in our constitutional jurisdiction where often the might of the State is pitted against the individual. In such situation, is the Court supposed to close its eyes and ears to this matter and wash its hands of the matter as opposed to doing complete justice under the discretionary constitutional jurisdiction? Neither do I think so nor do I consider that the citizens of the State would expect us to do so. As it is we are under Oath to protect the rights of the citizens as guaranteed under the Constitution. We also cannot ignore the mala fide which was found against the respondent towards the petitioner in the Order which amongst other reasons lead to us striking down the second memo by the Order (and directing that the name of the petitioner should not again be put on the ECL without the permission of this Court so as to avoid any further malafide conduct on the part of the respondent which direction was completely ignored by the respondent despite him having full knowledge of it) and as it would appear once again the potential malafide conduct on behalf of both the respondent and Government of Punjab in respect of third memo which I shall turn to shortly in this order. As such for the reasons mentioned above I hold this petition to be maintainable on this score as well."

5. At the very outset, learned counsel for the petitioner contended that this Court does have the territorial jurisdiction to entertain the petition as cause of action arose to petitioner to agitate her grievance within the territorial jurisdiction of this Court. It is also contended that the petitioner resides at Karachi, she wanted to go abroad from Karachi Airport to fulfill

her contractual obligations and to see her ailing mother at Dubai but she was not allowed as her name has been placed on Exit Control List (ECL). Learned counsel for the petitioner further argued that prior to the filing of the instant petition name of petitioner Ayyan Ali was placed on ECL, two times. She filed petition before this Court, the same was allowed. Federation of Pakistan filed appeal and judgment of this Court was maintained by the Honourable Supreme Court of Pakistan. Mr. Khosa further argued that Miss Ayyan Ali has appeared before this Court in the petition and owned its contents. In support of his contention, he has also referred to the application under section 151 CPC dated 02.01.2017 filed by Miss Ayyan Ali. It is also argued that the petitioner cannot be deprived of her fundamental rights on technicalities. Lastly, it is argued that name of petitioner has been placed on ECL for third time by Ministry of Interior, for mala fide reasons. In support of his contentions, he has relied upon the following cases:

1. Wajid Shamsul Hassan vs. Federation of Pakistan through Secretary Ministry of Interior, Islamabad (PLD 1997 Lahore 617)
2. Khan Muhammad Mahar vs. Federation of Pakistan (PLD 2005 Karachi 252)
3. Mian Ayaz Anwar vs. Federation of Pakistan through Secretary Interior and 3 others (PLD 2010 Lahore 230)
4. Nazir Adenwala vs. Islamic Republic of Pakistan through Secretary, Ministry of Interior, Islamabad and 2 others (PLD 2013 Sindh 186)
5. Farrukh Niaz vs. Federal Government of Pakistan (PLD 2006 Karachi 530)
6. Mirza Muhammad Iqbal Baig vs. Federation of Pakistan & Others (2006 YLR 2797)
7. Higher Education Commission through Project Manager vs. Sajid Anwar and others (2012 SCMR 186)
8. Jehangir Mehmood Cheema vs. Government of Pakistan, Ministry of Interior through Secretary and 2 others (PLD 2015 Lahore 301)
9. Gen. (Retd.) Parvez Musharaf through Attorney Vs. Pakistan through Secretary Interior and others (PLD 2014 Sindh 389)
10. Muhammad Aslam Khan and 9 others Vs. Federal Land Commission through its Chairman, Central Secretariat, Islamabad and 3 others (PLD 1976 Pesh 66)
11. Trading Corporation of Pakistan (Pvt.) Ltd. vs. Pakistan Agro-Forestry Corporation (Pvt.) Ltd. and another (2000 SCMR 1703)

6. Learned Additional Attorney General of Pakistan argued that this Court lacks territorial jurisdiction to hear the petition as impugned Memorandum has been issued by Ministry of Interior Government of Pakistan on the recommendations of the Government of Punjab in pursuance of order passed by Lahore High Court, Rawalpindi Bench in Writ Petition No.1398/2016. He further argued that petition is not supported by affidavit of the petitioner verifying its contents. Learned Attorney General opposed the petition. In support of his contentions, he relied upon the cases of Smt.



enforcement of his right in any of the two High Courts.

(D) On account of the above, both the Islamabad and Lahore High Courts shall have the concurrent jurisdiction in certain matters and it shall not be legally sound or valid to hold that as the Federal Government etc. resides in Islamabad, and operates from there; the assailed order/action has also emanated from Islamabad, therefore, it is only the Capital High Court which shall possess the jurisdiction. The dominant purpose in such a situation shall be irrelevant, rather on account of the rule of choice, the plaintiff/petitioner shall have the right to choose the forum of his convenience."

9. As regards to the territorial jurisdiction of this Court is concerned, this Court in the case of Gen. (Retd.) Parvez Musharaf versus Pakistan, through Secretary Interior and others (PLD 2014 Sindh 389) entertained the petition of Parvez Musharaf, his name was placed on ECL by Ministry of Interior, as he was facing trial before Special Court, constituted under Article 6 of the Constitution at Islamabad and different criminal cases were registered against him in different provinces. Relevant portion of the judgment is reproduced as under:-

"37. Now we would like to take the issue of territorial jurisdiction. Learned Attorney General argued that this court lacks territorial jurisdiction. At present the petitioner is residing at Karachi though temporarily but it is also a fact that if he wants exit from Karachi, he would not be allowed to move due to his name on E.C.L. The respondents Nos.3 and 4 are the Director and Additional Director F.I.A. (Immigration) posted at Karachi. It is also a matter of record that it is not the first time or the first case which this court or we are entertaining on the question of E.C.L. but this court in number of cases not only entertained the petitions but also passed orders for removal of the name from E.C.L. In this case also, the orders were passed by the Ministry of Interior at Islamabad like other cases but since it is a matter of liberty of a person and infringement of his fundamental right, no austere or rigid view can be taken as to the territorial jurisdiction of this court. Clause (a) of Sub-Article (1) of Article 199 of the Constitution lucidly envisages that on the application of any aggrieved party, the High Court may direct a person performing within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do. The High Court can also declare that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect. If a stringent or inflexible view is taken on the question of E.C.L. that only the High Court at Islamabad is competent to take cognizance, then it would mean that no other High Court in the country can take up any issue against the Federation on the plea that Federation is located at Islamabad. It is not the case that order passed under the Exit from Pakistan (Control) Ordinance, 1981 does not apply in the Province of Sindh or this is not the case that if the petitioner wants exit from the territorial jurisdiction of this court, he would not be stopped.



38. In the case reported in 2009 CLD 1498 (LPG Association of Pakistan v. Federation of Pakistan). It was held that the Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Provinces, shall still be deemed to function all over the country. If such Government, body or authority passes any order or initiates an action at Islamabad but it affects the "aggrieved party" at the place other than the Federal Capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him. In the case of Muhammad Aslam Khan the Federal Land Commission was located out of jurisdiction but desiring to perform some function within territorial jurisdiction of that High Court, so it was found amenable to the writ jurisdiction. In the case of Al-Iblagh Limited, Lahore it was held that the copyright board performing functions in relation to the affairs of Federation in all Provinces, so that any order passed in relation to any person in any four provinces would give High Court of that Province jurisdiction to hear the case. In the case of Ghulam Haider Badini and others objection was taken that PTV Headquarters is located at Islamabad but the learned High Court of Balouchistan found the writ petition maintainable on the ground that the PTV has its network in Balochistan. In the case of Trading Corporation of Pakistan, the relief was claimed against the corporation as well as against the Federation so it was found that the courts at Karachi and Rawalpindi (Lahore High Court) both have concurrent jurisdiction. In the case of Fecto Belarus Tractors it was held that all the High Courts in Pakistan are exercising jurisdiction under Article 199 of the Constitution in respect of decisions/orders made by the Federation.

39. The learned Attorney General quoted the case of Sandalbar Enterprises (Pvt.) Ltd. which was referred to by the hon'ble Supreme Court in the case of Khurram Shahzad, (unreported case). In the case of Sandalbar Enterprises, hon'ble Supreme Court had observed that against the assessment order passed at Karachi, petitions are filed at Peshawar or Lahore or Rawalpindi or Multan by adding a ground for impugning a notification under which particular levy is imposed and this practice was deprecated. It was held that the court has to see what is the dominant object of filing the writ petition and in the Sandalbar case the dominant object was not to pay regular duty assessed at Karachi so leave was refused. Even in the case of Sandalbar guiding principle was to see the dominant object. In the case in hand, the dominant object is not to challenge any levy or the assessment order passed against the petitioner but the dominant object is to get free from the clutches of E.C.L. and naturally if the petitioner wants to exist from the territorial jurisdiction of this court he will not be allowed until his name is removed from E.C.L. Due to petitioner's abode at Karachi, the partial cause of action is also accrued at Karachi where the respondents Nos.3 and 4 are performing their duties while Federation of Pakistan is performing its functions all over Pakistan, hence the High Courts at Karachi and Islamabad both have concurrent jurisdiction in this matter. The objection of the learned Attorney General to the territorial jurisdiction of this court is misconceived.

40. As a result of above discussion, this petition is admitted to regular hearing and disposed of in the following terms:--

- (a) The Memorandum No.12/74/2013-ECL, dated 5th April 2013, placing the name of General (retired) Pervez Musharraf on Exist Control List is struck down.

*such an appeal/review being received by the Ministry of Interior so that the right of review/appeal is meaningful and effective rather than illusionary or rendered redundant.*

92. *We also, based on the facts and circumstances of this particular case, set aside and strike down the Memorandum as being passed without lawful authority and therefore being of no legal effect on the following grounds:*

(a) *The petitioner had no notice of the Memorandum, which was not based on a speaking order which is a requirement under S. 24(A) of the General Clauses Act, 1897 and she was deprived of her right to effectively appeal the same and*

(b) *The Memorandum was passed contrary to the ECL Policy relied upon by the Federal Government which did not include the offence of smuggling.*

93. *We therefore direct the Ministry of Interior to immediately remove the name of the petitioner from the ECL and allow her to travel abroad if she so desires.*

94. *This petition stands disposed of in the above terms."*

12. The Federation of Pakistan through Collector of Customs, Model Customs Collectorate, Islamabad filed Civil Petitions Nos.781 and 896 of 2016 against the judgment dated 07.03.2016 passed by this Court in C.P. No.D-7769/2015 Honourable Supreme Court by judgment dated 13.04.2016 dismissed the petitions for the following reasons:-

"5. Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioners that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's funds or committed institutional fraud. In the absence of any such allegations, we don't think the respondent's movement could be prohibited under the Ordinance or the Rules mentioned above. We, however, don't agree with the argument of the learned Sr. ASC for the respondent that remedy by way of review is inadequate or illusory because such argument would tend to defeat the letter and spirit of Section 3 of the Ordinance. Such argument would also tend to defeat the letter and spirit of Article 199 of the Constitution which provides that, "a High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any aggrieved party, make an order." The words used in the Article cannot be lightly ignored or overlooked. Though we don't feel inclined to recall and rescind the relief granted to the respondent by the High Court on this score at this stage, when we don't see any tenable ground for prohibiting the movement of the respondent, all the same we would not approve of bypassing a forum provided by law.



6. The apprehension of the learned ASC for the petitioners that where the respondent has been charged for committing serious offences as mentioned above, removal of her name from ECL would amount to letting her off for good, is misconceived as despite removal of her name from ECL, her attendance could still be enforced or dispensed with by the trial Court in conformity with the relevant provisions of the Cr.PC.

7. For the reasons discussed above, these petitions being without merit are dismissed and leave asked for is refused."

13. Again name of petitioner Ms. Ayyan Ali was placed on ECL and second Memorandum dated 19.04.2016 was challenged before this Court in Contempt Application No.10280/2016 in C.P. No.7769/2015. Vide orders dated 02.06.2016 second Memorandum dated 19.04.2016 was struck-down/set-aside by holding that it was based on mala fide.

14. In the present case, record reflects that in earlier two rounds Memorandum controlling petitioner's Exit from the country has already been struck down by this Court, it was held that this Court had territorial jurisdiction in the case of petitioner concerning ECL. Mere fact that Ministry of Interior, Government of Pakistan has issued impugned Memorandum in pursuance of orders of the Lahore High Court Rawalpindi Bench, on the recommendation of Government of Punjab, is not sufficient to hold that this Court has no jurisdiction to entertain and decide the instant petition. Moreover, Lahore High Court Rawalpindi Bench in Writ Petition No.1398/2016 has not clearly directed to the Ministry of Interior, Government of Pakistan to place the name of petitioner Ms. Ayyan Ali on ECL. Orders passed by Learned Lahore High Court Rawalpindi Bench in Writ Petition No.1398/2016 are reproduced as under:-

*"After arguing the case at some length, learned counsels for the petitioners feel satisfied if a direction is given to the respondent No.1 i.e. Secretary, Ministry of Interior, Islamabad to decide the application dated 12.5.2016 filed by the petitioner, No.2 expeditiously and in accordance with law. This request is tenable.*

2. The respondent No.1 is directed to decide the above-referred application of the petitioner No.2, if pending before him, after giving an opportunity of hearing to the petitioner and any other concerned person, strictly in accordance with law. Needful shall be done within ten days from the date of receipt of certified copy of this order. Learned Deputy Attorney General for Pakistan on court's call is directed to ensure the compliance of the order of this Court.

3. *With these observations, this writ petition stands disposed of. Copy dasti on the payment of usual charges."*

15. As regards to the territorial jurisdiction of this Court to hear this petition is concerned, according to Memorandum dated 15.06.2016, the name of the petitioner was placed on ECL by Ministry of Interior as she has been nominated as accused in F.I.R. No.550/2015, registered at police station Waris Khan, Rawalpindi. It appears that placement of name of petitioner on ECL was in pursuance of order dated 17.05.2016 of Lahore High Court Rawalpindi Bench in Writ Petition No.1398/2016 and on the recommendations of Home Department, Government of Punjab. Admittedly, Ms. Ayyan Ali is residing at Karachi. She needs to travel abroad to fulfill her contractual obligations, being a model. It is also a matter of record that third time, her name has been placed on ECL without the prior approval of this Court. This Court for the 1<sup>st</sup> time entertained her petition and struck-down Memorandum of placing her name on ECL. Honourable Supreme Court upheld the judgment of this Court. Clause (a) of Sub-Article (1) of Article 199 of the Constitution envisages that on the application of any aggrieved party, the High Court may direct a person performing within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything, he is not permitted by law to do, or to do anything he is required by law to do. The High Court can also declare that any act done or proceeding taken, within the territorial jurisdiction of the Court, by a person performing functions in connection with the affairs of the Federation, a Province or a local authority, has been done or taken without lawful authority and is of no legal effect. If a stringent or inflexible view is taken on the question of E.C.L. that only the High Court at Islamabad has jurisdiction, then it would mean that no other High Court in the country can take up any issue against the Federation on the plea that Federation is located at Islamabad. It is not the case that order passed under the Exit from Pakistan (Control) Ordinance, 1981 does not apply in the Province of Sindh or this is not the case that if the petitioner wants exit from the territorial jurisdiction of this court, she would not be stopped.

16. In the case law relied upon by my brother Muhammad Karim Khan Agha, J. it is held that Court has to see what is the dominant object of filing of the writ petition. In this case of Ms. Ayyan Ali dominant object is to get



free from the clutches of ECL. If petitioner wants to go abroad from the territorial jurisdiction of this Court, certainly she will not be allowed unless her name is removed from the ECL. As the petitioner resides at Karachi, cause of action accrued to her at Karachi. Concept of access to justice means access to justice at door step. Petitioner has right to choose the forum of her convenience, where her rights have been affected. Mere pendency of a criminal case against the petitioner at Rawalpindi cannot furnish a valid justification for prohibiting her movement. Moreover, she has not been charged to have embezzled a large Governments funds or property. In the impugned memorandum, it is mentioned that name of petitioner Ms. Ayyan Ali is placed on ECL on 15.06.2016, in pursuance of order dated 17.05.2016 of Lahore High Court, Rawalpindi Bench in the Writ Petition No.1398/2016 and on the recommendations of the Government of Punjab but in the order dated 17.05.2016 of Lahore High Court, Rawalpindi Bench, no such directions have been issued.

17. It is a matter of record that this Court has already entertained constitution petitions on the question of placing names on ECL and have passed several orders for removing of names from ECL.

18. Mr. Salman Talibuddin, learned Additional Attorney General of Pakistan further argued that the petition is not supported by the affidavit of the petitioner, verifying its contents but her counsel has filed affidavit in support of the petition, the petition is liable to be dismissed on this ground alone. My learned brother Muhammad Karim Khan Agha, J. rightly came to the conclusion that petition is maintainable. In paras 9 and 10 of his order he has mentioned as follows:-

*"9. Learned AAGP also contended that the petition was not maintainable as it had not been signed by the petitioner rather by an advocate instructed by her on her behalf and as such it warranted dismissal on this count alone. In this respect he placed reliance on the Indian case of Smt. Svitramma V Civil Naronha (1989 MLD 1133 Supreme Court of India). As is well known the Indian cases are only of persuasive authority and not binding on us. He did not produce any Pakistani authority on this point. Even in the Indian case, which concerned a contempt petition as opposed to a Constitution petition, it was held that although the petition was rejected the defect was in effect curable by the petitioners filing their own affidavits.*

*10. The question therefore emerges whether in our constitutional jurisdiction, bearing in mind the history of this case as alluded to above, we are bound to reject the petition because the affidavit had not been filed by the petitioner when in fact that petitioner, who is based in Karachi could very*

easily cure the defect within days. In my view this would only serve to further delay the matter especially keeping in view the Honourable Supreme Court order to decide the matter expeditiously on 03.10.2016. Furthermore, I view this defect as a technicality and the law has always preferred a matter not to be defeated by technicalities but decided on merits. I have also kept in view the chronology of events which have been metered out to the petitioner as narrated earlier in this order in her attempts to leave the Country and travel abroad in order to carry out her profession, her constitutional rights guaranteed by the Constitution in this respect and the requirement that we must do complete justice in our constitutional jurisdiction where often the might of the State is pitted against the individual. In such situation, is the Court supposed to close its eyes and ears to this matter and wash its hands of the matter as opposed to doing complete justice under the discretionary constitutional jurisdiction? Neither do I think so nor do I consider that the citizens of the State would expect us to do so. As it is we are under Oath to protect the rights of the citizens as guaranteed under the Constitution. We also cannot ignore the mala fide which was found against the respondent towards the petitioner in the Order which amongst other reasons lead to us striking down the second memo by the Order (and directing that the name of the petitioner should not again be put on the ECL without the permission of this Court so as to avoid any further malafide conduct on the part of the respondent which direction was completely ignored by the respondent despite him having full knowledge of it) and as it would appear once again the potential malafide conduct on behalf of both the respondent and Government of Punjab in respect of third memo which I shall turn to shortly in this order. As such for the reasons mentioned above I hold this petition to be maintainable on this score as well."

19. I agree with my learned brother Muhammad Karim Khan Agha, J. that the petition is maintainable. Miss Ayyan Ali has owned the contents of the constitution petition. She had also filed earlier petitions before this Court for removal of her name from the exit control list and appeared before this Court. Moreover, petitioner cannot be deprived of her fundamental rights on technicalities.

20. For the above stated reasons, I am unable to agree with the opinion of my learned brother Ahmed Ali M. Shaikh, J. that this Court lacks territorial jurisdiction to entertain the instant petition but I agree with my learned brother Mohammad Karim Khan Agha, J. that this Court does have territorial jurisdiction to entertain this petition. My brother Mohammad Karim Khan Agha, J. has come to following conclusion:

"31. In summary, based on the above discussion, I therefore:

- (a) Find that this Court does have the territorial jurisdiction to hear this petition and it is maintainable.
- (b) Strike down/set aside the third memo dated 15-06-2016 since it is based on malafide.



- (c) Strike down/set aside the third memo dated 15-06-2016 since it is based on bias.
- (d) Strike down/set aside third memo dated 15-06-2016 since it has been malafidely and biasly passed in violation of Articles 2(A), 4, 5, 9, 10(A), 14, 15, 18 and 25 of the Constitution.
- (e) Direct the respondent to immediately without any delay remove the name of the petitioner from the ECL within the next 48 hours failing which he will appear in person before this Court to explain his non-compliance.
- (f) Direct that the name of the petitioner shall not again be placed on ECL without the prior approval of this Court to ensure that it is not placed on the ECL on account of bias, malafide, discrimination or other ulterior motives (as we have found it to be so placed in the past) and is only so placed on valid legitimate bona fide legal reasons.
- (g) Direct the Ministry of Interior to comply with the directions as set out in Para's 61 and 62 of the Judgment which have reached finality and are set out below for ease of reference within 3 days of the date of this order:
- (i) We hereby direct the Ministry of Interior to place on its website all those persons who are currently on the ECL and who are thereafter added to the ECL within 3 days of their addition along with details of their CNIC, address, father's name and information as to what steps may be taken by them to appeal/review such decision.
- (ii) In addition the Ministry of Interior is further directed to ensure that each and every effectee within 7 days of his/her name being placed on ECL is served with a hard copy of the Memorandum together with a speaking order as to why he/she has been placed on the ECL and the procedure for appeal/review and to ensure that any such review or appeal through a speaking order is heard with a right of personal hearing and decided within 30 days of such an appeal/review being received by the Ministry of Interior so that the right of review/appeal is meaningful and effective rather than illusionary or rendered redundant.

21. In my considered view, my brother Mohammad Karim Khan Agha, J. has correctly appreciated the factual and legal position of the case. Case law has also been rightly applied on the crucial issue involved in the petition. Mala fide on the part of the Ministry of Interior, Government of Pakistan by placing the name of the petitioner third time on ECL has been highlighted in detail in Paras 26 to 28 of judgment. My brother rightly came to the conclusion to strike-down/set-aside 3<sup>rd</sup> Memorandum dated 15.06.2016 based on malafides and issued in violation of Articles 2(A), 4, 5, 9, 10 (A), 14, 15, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 as such, petition should be allowed.

22. Office is directed to place my opinion as a Referee Judge before Hon'ble Chief Justice to pass an appropriate order for returning the same to Worthy Division Bench to enable it to announce final decision.

10.1.2017

JUSTICE NAIMATULLAH PHULPOTO

Dated: 10.01.2017

Order of the Court

By majority view, Petition stands allowed. However at the verbal request of Mr. Saeed. A Memo on Learned Advocacy Council operation of this Judgment is suspended for 10 days as the respondent wants to assail this Judgment before Hon'ble Supreme Court.

19/01/2017  
Judge

19/01/2017  
Judge

**IN THE HIGH COURT OF SINDH AT KARACHI**

Before: Mr. Justice Ahmed Ali M. Shaikh  
Mr. Justice Mohammad Karim Khan Agha

C.P. No.D-3708/2016

Ms.Ayyan Ali

V

The Federation of Pakistan

Date of hearing:	28-06-2016, 05-08-2016, 16-08-2016, 29-08-2016 and 03.10.2016
Date of Order	25-11-2016
Petitioner:	Through M/s. Sardar Latif Khan Khoso, Qadir Khan Mandokhel and Ghulam Akbar Khan Jatoi Advocates
Respondents	Through Mr. Salman Talibuddin, Additional Attorney General of Pakistan on behalf of Federation.

**ORDER**

**Mohammed Karim Khan Agha, J.** I have had the great privilege and advantage of reading and considering the very precise and compelling Order passed by my learned senior brother (Mr. Justice Ahmed Ali M. Shaikh) dated 16-11-2016 in respect of this matter but after deep consideration and with up most respect and deference to my learned brother I find that I am unable to agree with his finding in respect of territorial jurisdiction and as such set out my own reasons for finding that based on the particular history of this case, its particular facts and circumstances and the relevant law that this Court does have the territorial jurisdiction to hear this petition and thereafter set out my findings vis-à-vis the legality of the memorandum dated 15-06-2015 placing the name of the petitioner on the ECL for the third time.

2. The above petition filed on behalf of the petitioner against the respondents contained the following prayers:-

*MS*

PRAYERS

"It is therefore respectfully prayed that the third memorandum in succession dated 15.06.2016 issued by Interior Ministry respondents No.1&2 may be declared as illegal, malafide, without jurisdiction, without lawful authority, arbitrary, whimsical, unconscionable, non-est. and no order in law and constitution and also judgment/orders being blatant violation of this Court and Hon'ble Supreme Court of Pakistan and manifestly attempting to over reach and nullify the constitutional mandate and authority of this Court and Hon'ble Supreme Court. The impugned order being nullity be quashed, the petitioner be saddled with heavy cost."

3. As per the petition the brief facts are that the petitioner is an artist/model of international repute who has many assignments abroad and therefore needs to travel outside of Pakistan in order to fulfill her professional engagements and earn her livelihood.
4. However by a memorandum dated 15-06-2015 the petitioner's name was placed on the Exit Control List (ECL) under S.2 of the Exit from Pakistan (Control) Ordinance 1981 by the respondents as she was a nominated accused in FIR 550/2015 registered at PS Waris Khan Rawalpindi (the third memo)
5. According to the third memo it was decided by the respondent to place the petitioner's name on the ECL largely on account of an order dated 17-05-2016 of the Lahore High Court Rawalpindi bench and a recommendation of the Home Department Government of Punjab vide letter dated 8<sup>th</sup> June 2016 under reference No.PS/SS (Home)1-7/2016.
6. By virtue of the third memo the petitioner was unable to travel abroad and perform her professional commitments and earn her livelihood as such she has moved this court to strike down the



third memo for the reasons mentioned in the above reproduced prayer clause in her petition.

7. Learned Counsel for the petitioner submitted that the third memo was illegal, without jurisdiction, malafide, ab-initio void, non-est, based on a total travesty of the facts and the crudest attempt to over reach and override the orders of this court.

8. He submitted that reference in the third memo to order dated 17.5.2016 of the Lahore High Court Rawalpindi bench in writ petition no.1398/2016 and FIR No. 550/2015 of police station Waris Khan Rawalpindi had been manipulated and created as a ruse for placing the name of the petitioner on the ECL. The said FIR which was registered by Riyaz Afzal on 02.06.2015 regarding firearm injury to his brother Ijaz Mahmood by unknown persons did not carry the name of the petitioner in any manner whatsoever and the said injured died in the hospital. That during the entire investigation it transpired that two young men carrying a pistol tried to rob Ijaz Mahmood who resisted and was fired at by the said unknown persons who fled away. The petitioner was not even remotely suspected in the matter. He submitted that at the time of the incident the petitioner was in Adyala Jail from where she was released through order dated 14.7.2015 passed by the division bench of the Lahore High Court in criminal misc. no. 9211B/2015.

9. According to the learned counsel for the petitioner all steps prior to the third memo were manipulated by the respondent and others for creating a justification for overriding anticipated orders in favor of the petitioner by the superior courts of the country who were at that time deciding whether or not her name should be removed from earlier memorandums which had placed her name of

the ECL. According to him the whole exercise was engineered to negate and defeat the orders of the superior judiciary vis a vis the petitioner's name being placed on the ECL.

10. Learned counsel for the petitioner further submitted that even the prerequisites provided in the rules as well as policy which have been thoroughly interpreted by this court earlier in its Judgment dealing with the first memo placing the name of the petitioner on the ECL do not seek to place the name of the petitioner on ECL for alleged involvement in a murder case as she had nothing to do with the murder. The involvement of the petitioner in the murder case has been manipulated and is a fabricated false story based on malafides as the petitioner was in jail under the heaviest surveillance when Ijaz Mahmood was assaulted and injured by two motorcyclists. Ijaz Mahmood statedly was employed as inspector custom at the state ware house AF-3, Building Benzair Bhutto Airport Islamabad where case property of all the criminal cases at the airport were stacked. The said Ijaz Mahmood was neither a witness to the arrest, nor recovery or involved in any phase of investigation concerning the petitioner and the recovered money was lawfully owned by her. Thus the question of the petitioner being adverse to Ijaz Mahmood whom she neither knows nor has even seen does not arise. Thus after a year such assertion itself is abhorrent to conscience and repellant to commonsense. It is with shameless impunity that the respondent and the high ups in the government hierarchy are trying to implicate the petitioner in this false case at a belated stage in order to keep her name on the ECL. In support of his contentions learned counsel placed reliance on **Suo Motu case No.4 of 2010 (Contempt proceedings against Syed Yousaf Raza Gillani, the Prime Minister of Pakistan regarding non-compliance of this**

Court's Order dated 16.12.2009) (PLD 2012 S.C. 553), Muhammad Azhar Siddiqui & others v. Federation of Pakistan & others (PLD 2012 S.C. 774), Adnan A. Khawaja v. The State (PLD 2012 S.C. 866) and Baz Muhamad Kakar & others v. Federation of Pakistan through Ministry of Law and Justice & others (PLD 2012 S.C. 923), Government of Sindh V Raeesa Farooq (1994 SCMR 1283) and Suo Moto Case 11/2011 (PLD 2014 SC 389)

11. Learned counsel also submitted that there were political motivations behind the third memo as according to him it is widely and commonly known that the Interior Minister who was very anxious in letting General @ Pervaz Musharaff to leave the country on the first available flight despite the pendency of most heinous offences punishable with death has given the fullest authority to the Federal and Punjab government to ignore the orders of superior courts and obstruct the petitioner from her fundamental rights and strip her of her rights of liberty, property, freedom and even her very life. Lastly he submitted that the third memo was bias, mala fide, quorum-non-judice, had been passed without lawful authority and should be struck down.

12. With regard to the maintainability of the petition he submitted that the memo had been issued by the Respondent from Islamabad and took effect in Karachi and this Court had already found that similar petitions were maintainable.

13. Learned Additional Attorney General for Pakistan (AAGP) submitted that this petition was not maintainable on two counts. Firstly, since the recommendation had come from the Government of the Punjab to place the name of the petitioner on the ECL the

petition ought to have been filed before the Courts of Punjab as such this court had no territorial jurisdiction to entertain the petition.

14. Secondly he contended that since the affidavit in support of the petition had not been sworn by the petitioner the case was not maintainable. In this respect he placed reliance on the Indian case of **Smt.Savitramma V Cicil Naronha** (1989 MLD 1133 Supreme Court of India). He also filed certain documents through statement dated 03.10.2016. According to parawise comments filed by the respondents all earlier orders of this Court had been complied with and there was no attempt to circumvent any order of this Court.

15. According to the respondents the name of petitioner was placed on ECL on 15.6.2016 in pursuance of Lahore High Court, Rawalpindi Bench Order dated 17.5.2016 in writ petition no.1398/2016 and on the recommendation of Home Department, Government of Punjab, being nominated accused in Case FIR No. 550/2015 of Police Station Waris Khan Rawalpindi in murder case of Ijaz Ahmed, Inspector Customs. According to the comments the placement of the name of the petitioner on the ECL by virtue of the third memo was completely above board. There was no manipulation of any sort or any malafide on the part of the respondent or any other party and the third memo had been passed strictly in accordance with the law and as such the petition was liable to be dismissed.

16. When asked by the Court whether he had anything further to add the learned AAGP on instructions stated that he did not.

14



17. I have carefully perused the record, considered the arguments of learned counsel, the relevant law and cases cited by them.

18. Firstly I observe that vide order dated 05.08.2016, the names of the respondents No. 02 to 09 were deleted on the statement of learned counsel for the petitioner and as such the only respondent is the federal Government through secretary Ministry of Interior Government of Pakistan which hereinafter shall be referred to as the respondent or respondents.

19. This is the third time that the question of the petitioner being placed on the ECL on three different occasions by three separate and different memorandum's by the respondent has come before this Bench of this Court and as such I am fully aware of the circumstances surrounding this case since this bench had earlier passed a detailed judgment and order striking down two separate memo's on two separate occasions.

20. In many ways this petition is a continuation of the story of the earlier petitions and as such in order to make this order more understandable and to enable it to be read and the petition decided in context I set out below a brief history of the cases/petitions concerning the petitioner and the respondent vis a vis the placement of her name on the ECL which include extracts from a Judgment passed by this Court dated 07-03-2016 in CP D 7769/2015 Ms Ayyan Ali V The Federation Of Pakistan (Judgment) and an Order passed by this Court dated 02-06-2016 in CA No. 10280/2016 in CP D 7769/2015 Ms Ayyan Ali V Arif Ahmed Khan and other (who at the time was Secretary Ministry of interior Government of Pakistan(The

MZ

Order) which Judgment and Order may be read as part and parcel of this Order.



The History behind this third memo is reproduced as under:

The First Petition impugning the First Memorandum dated 20-11-2015 (as taken from relevant excerpts of the judgment of this Court dated 07-03-2016 in CP D 7769/2015 Ms Ayyan Ali V The Federation Of Pakistan using the paragraph numbers as used in that judgment for ease of reference (the Judgment):

**Brief facts**

The brief facts of the case are that the Petitioner is an actress/model who on the night 13/14 March 2015 was proceeding to the Rawal Lounge of the Benazir Bhutto International Airport In Rawalpindi/Islamabad when she was intercepted by the Airport Security Force and found to have in her possession over US\$500,000. This led to her being booked in FIR No.10/15 dated 14-3-15 for offenses under the Customs Act 1969, the Foreign Exchange Regulation Act 1947 and the ICT 1950 and taken into custody on 14-03-15.

2. On 14-07-2015 the Petitioner was granted post arrest bail by a Divisional Bench of the Hon'ble Lahore High Court. On 25-11-2015 the Special Judge Customs Rawalpindi on an application by the Petitioner on account of her need to travel for business purposes and to see her ailing mother in Dubai allowed her passport to be returned to her. The Petitioner however apparently through electronic media came to know that her name was on the Exit Control List (ECL) which would have prevented her from traveling abroad. The Petitioner has therefore moved this Court for the removal of her name from the ECL.

3. Learned Counsel for the Petitioner on the point of maintainability and territorial jurisdiction of this Court submitted that the Memorandum dated 20-11-2015 (the first memo) placing the Petitioner on the ECL applied and had effect throughout Pakistan i.e. it would be applicable to all airports, ports and border crossing in any part of Pakistan including the Province of Sindh.

4. The Petitioner had a permanent residence in Karachi and she had every right to travel abroad via the Quaid-e-Azam international airport in Karachi if she so desired. Hence this Court,

*W*

since the first memo also had effect in Sindh, had the territorial jurisdiction to hear this matter despite the first memo emanating from the Ministry of Interior based in Islamabad. It was a case of concurrent jurisdiction whereby the case could either be heard before the Sindh High Court or the Islamabad High Court.

.....

6. At the outset he stressed that the action of placing the Petitioner on the ECL was malafide as were the whole proceedings against her. She needed to travel abroad to perform her professional engagements in order to financially support herself and to visit her ailing mother and as such her freedom of movement could not be denied to her in an arbitrary manner (bold added).....

8. More importantly, he submitted that the first memo which placed the Petitioner on the ECL specifically stated that the Petitioner's name had been placed on the ECL on the recommendations of the Federal Board of Revenue (FBR) on charges of money laundering when in fact the Petitioner had not been charged with money laundering and as such the first memo had been passed without lawful authority and was liable to be struck down.

9. He further submitted that the Petitioner had been given no notice of her name being placed on the ECL, no reasons through a speaking order had been given by the Ministry of Interior for placing her name on the ECL as was required by S.24 (A) of the General Clauses Act 1897 and she had been denied her right of being heard before her name was placed on the ECL all of which justified the first memo being struck down as unlawful.

He further submitted that the placement of the name of the Petitioner on the ECL was in violation of Articles 2(A), 4, 5, 9, 10 (A), 14, 15, 18 and 25 of the Constitution so on this count as well the first memo placing the Petitioner's name on the ECL was also required to be struck down as being unlawful.

#### Findings on Maintainability in the Judgment

26. It would therefore seem that the test for territorial jurisdiction has now been established as the "take affect" test. In this case the Petitioner has a permanent residence in Karachi and would like to leave Pakistan via the Quaid-Azam International Airport at Karachi which is the most convenient for her being the closest airport to her residence. If she attempts to leave Pakistan via the Quaid-e-Azam International Airport Karachi however she will not be able to



leave as her name has been placed on the ECL and the effect of the ECL Memorandum will take affect on her at Karachi at the Quaid-e-Azam International Airport Karachi in addition to any other airport in Pakistan.

27. In considering this aspect of territorial jurisdiction we must also take into account the concept of access to justice which is enshrined in our law and A.4 of the Constitution. Access to Justice means exactly what it says. Not only must a person have access to inexpensive affordable justice but also access to justice at their doorstep. If a person resides in Karachi is it fair on that person to have to travel all the way to Islamabad in order to challenge an order against them considering the cost (travel and accommodation) time and inconvenience (perhaps necessitating days off work or needing someone to look after young children) which that would cause when they can have access to justice closer to home where the order which they are subject to takes effect? We do not think it would be fair. As enumerated in numerous Judgments of the Hon'ble Supreme Court access to Justice is also a key component to the rule of law and the effective and good administration of Justice in contributing to inexpensive justice at the doorstep and enhancing due process of the law.

28. The superior Judiciary has in fact gone out of its way to ensure access to justice for its citizens. For instance, in the case of **Muhammed Ismail V Superintendent District Jail Shelkhpura** (2007 CLC 128) it was observed as under at P.131.

"6. Family Courts Act, 1964 has created a special procedure for decision of family matters and C.P.C. and Evidence Act are not applicable to a case before the Family Court for the reasons that the Family Courts are given inquisition jurisdiction through special procedure provided under the Act for regulating family matters. **The reason for exclusion of the provision of C.P.C. and Evidence Act is that the spouse may have easy access to justice.** The Family Courts are special Tribunals which regulates and supervise the rights of the parties under the provisions of the Family Courts Act. Reliance is placed on the cases of Muhammad Azam v. Muhammad Iqbal PLD 1984 SC 95 and Malik Khizar Hayat Khan Tiwana and another v. Zainab Begum and others PLD 1967 SC 402." (bold added)

29. Therefore on the current law on territorial jurisdiction which is based upon where the order "takes affect" test, the principle of access to justice and the fact that this Court regularly hears and decides cases relating to the names of citizens being placed on the ECL with such orders emanating from the Ministry of Interior based at Islamabad (without any challenge being made to the jurisdiction of this Court in such cases) we hold that this Court does have



territorial jurisdiction to hear this petition which is maintainable (bold added).

Turning to the question of violation of Certain Articles of the Constitution some of which are fundamental rights as found in the Judgment.

30. It had been submitted that the placement of the name of the Petitioner on the ECL was in violation of Articles 2(A), 4, 5, 9, 10 (A), 14, 15, 18 and 25 of the Constitution.

31. Although all the above cited Articles are relevant for the present purposes based on the facts and circumstances of the case i.e. placement of the Petitioner's name on the ECL we consider that the potential violation of A.15, 18 and 9 are the most relevant. Potential violations of A.4, 10(A) and 25 will be discussed later in this Judgment.....

43. The primary purpose of briefly dwelling on the above Constitutional provisions is to emphasize the importance of those Articles in a citizen's life and the need for the Federal Government or any other body to act cautiously and strictly in accordance with law before making decisions which may impinge on such Articles and in particular with respect to placing a citizen's name on the ECL

Turning to the notice of the Memorandum, the right to be heard and the need for speaking orders as found in the Judgment.

44. Although the Exit from Pakistan (Control) Ordinance 1981 is not under challenge it is to be observed that a person can be placed on the ECL without first being given a right to be heard. This may be on account of the need to move quickly in order to enable certain categories of persons as indicated in the Exit From Pakistan (Control) Rules 2010 (the Rules) or the Policy which we will come to later leaving the Country and escaping justice but the fact that a person can be put on the ECL without notice to them and before being given a right to be heard makes it even more important that such a person who is placed on the ECL is informed immediately that he has been placed on the ECL, why he has been so placed and how he may challenge such order placing them on the ECL.....

50. It has not been disputed that the Petitioner was not served with the first memo either by the Ministry of Interior or under S.3 of the Rules despite her whereabouts being well known nor was she informed of any right which she may have to appeal the first memo or the reasons why she was placed on the ECL. In fact

there was no way of her knowing that she was on the ECL or that she had any right of appeal which is of particular significance as her name was placed on the ECL without notice to her.

51. This could have been rectified by placing details of those on the ECL on the Ministry of Interior's website along with any appellat procedure which must be carried out in an expeditious manner as the person placed on the ECL is being penalized without the right of even being heard which is contrary to the settled principle of audi alteram partem.

52. In fact it is interesting to note that even when the Petitioner applied for the return of her passport she was not informed about her name being placed on the ECL and her ability to challenge it. Her application for the return of her passport made it absolutely clear that she intended to travel for business purposes and to see her ailing mother. **Such a situation raises doubts about the bona fides of the Respondents especially, as learned counsel for the Customs Collectorate state that they have only very recently applied for the Petitioner to be proceeded against on money laundering charges for reasons which it seems will become clearer later in this Judgment.** (bold added)

53. The failure to inform the Petitioner that she was on the ECL not only took away her right to appeal the same and denied her the right to be heard but could also have had other negative consequences for the person so affected. For example, a husband is planning to take his wife and three children on a visit abroad to the USA in order to attend his brother's daughter's wedding and he has purchased his tickets in advance and made all necessary travel arrangements (or perhaps even to perform Hajj or Umrah). He then arrives at the airport with his family and is told that he is on the ECL and cannot leave. In such a scenario both he and his family are likely to be put to a great deal of inconvenience and mental agony not to mention financial loss and personal embarrassment and shame.....

60. It would appear that the lack of notice, the lack of reasons, the lack of a right to be heard before placing a person on the ECL may lead to a violation of A.4, 10(A) and 25 in addition to the inconvenience to the affectee which we have discussed in Para 53 above

61. Therefore in order to prevent such a scenario as envisaged above and affectees such as the Petitioner having to move the Courts at first instance **we hereby direct the Ministry of Interior** to place on its website all those persons who are currently on the ECL and who are thereafter added to the ECL within 3 days of their

addition along with details of their CNIC, address, father's name and information as to what steps may be taken by them to appeal/review such decision.

62. In addition the Ministry of Interior is further directed to ensure that each and every effectee within 7 days of his name being placed on the ECL is served with a hard copy of the Memorandum together with a speaking order as to why he/she have been placed on the ECL and the procedure for appeal /review and to ensure that any such review or appeal through a speaking order is heard with a right of personal hearing and decided within 30 days of such an appeal/review being received by the Ministry of Interior so that the right of review/appeal is meaningful and effective rather than illusionary or rendered redundant.

63. Such directions we consider will to a certain extent strike a balance between the need to expeditiously stop people from leaving the country who may be wanted or on trial for very serious offenses as per Ministry of Interior ECL Policy without being heard whilst retaining the right to be heard through a review within the shortest possible time which may at least limit/reduce potential violations of A.4, 10(A) and 25 and other rights of due process.

#### Turning to the ECL Policy and the Legality of the Memorandum as found in the Judgment.

79. The offenses for which the Petitioner has been charged with as per FIR relate to smuggling. In the comments filed by the Federation it is stated that;

"the name of the Petitioner has been placed on ECL on 20-11-2015 under S.2 of the Exit from Pakistan (Control) Ordinance 1981 on the recommendation of the Federal Board of Revenue due to her involvement in **smuggling** of foreign currency US\$506,800". (bold added)

80. The learned AAG has also candidly conceded that the Petitioner has been placed on the ECL for **smuggling**.

81. Para 3 of the Collector of Customs comments states that the instant case against the Petitioner is of **smuggling** a huge amount of foreign currency abroad. At Para (b) of the grounds it is specifically stated that the Customs did not act under the provisions of the Money laundering Act since the Department is not vested with powers under the money laundering Act 2010.

82. The question is therefore whether under the Ministry of Interior's own Policy it had the power to place a person on the ECL for smuggling.....

85. A review of para 3 of the Policy reproduced above indicates that the Ministry of Interior had no such powers to place the Petitioner on the ECL as smuggling is not an offense included in para 3. The offense of smuggling is also not included in S.2 of the Rules. As such the first memo has been passed without lawful authority and the same is set aside.

**Findings on Malafides in the Judgment.**

86. Although we have not addressed the question of malafides in any detail as put forward by the learned counsel for the Petitioner, we observe that the Federal Board of Revenue/Customs Authorities appear now to be keen to press for a case of money laundering against the Petitioner. The reason to us seems apparent. Namely, that money laundering is covered under para 3 of the policy referred to above and would entitle the Ministry of Interior to place the Petitioner's name on the ECL if satisfied with the reasoning of any such recommendation.

87. Since almost a year has elapsed since the FIR and facts of the case came to light and no case has so far been registered against the Petitioner for money laundering we would expect that the concerned authorities act in a bona fide manner strictly in accordance with the law and in particular the Constitution in this respect. (bold added)

**Summary/conclusion of the Judgment.**

Based on the above discussion

90. We find that this Court does have the territorial jurisdiction to hear this Petition.

91. We direct the Ministry of Interior to comply with the directions as set out in Para's 61 and 62 of this Judgment which are set out below for ease of reference.....

92. We also, based on the facts and circumstances of this particular case, set aside and strike down the first memo as being passed without lawful authority and therefore being of no legal effect on the following grounds.....

93. We therefore direct the Ministry of Interior to immediately remove the name of the Petitioner from the ECL and allow her to travel abroad if she so desires.

We very graciously immediately suspended our Judgment for 15 days as we were informed that the Federation intended to appeal it.

**Federation's Leave to Appeal Application to the Hon'ble Supreme Court against the Judgment.**

The Judgment was challenged before the Hon'ble Supreme Court of Pakistan by the Federation of Pakistan through Model Custom Collectorate Islamabad and others. Both the petitions were dismissed by the Hon'ble Supreme Court vide judgment/order dated 13.04.2016 and the Judgment was upheld.

**The Judgment therefore reached finally.**

It is to be observed however that the directions contained in para's 61 and 62 as reproduced earlier in the Judgment were not complied with and remain uncomplied with till date despite the matter reaching finally in violation of the Courts direction.

**The Respondents second Memorandum dated 19-4-2016 was issued placing the name of the petitioner on the ECL for apparently failing to pay massive fines imposed by the FBR (the second memo).**

**The contempt Petition before the Supreme Court.**

Despite the first memo which had been struck down by this Court (and which decision was upheld by the Hon'ble Supreme Court) the petitioner was not allowed to leave Pakistan. Instead a second memo as alluded to above was issued by the respondents against the petitioner on 19-4-2016 again placing her name on the ECL and as such the petitioner moved the Hon'ble Supreme Court in contempt proceedings.

The Hon'ble Supreme Court by order dated 25-04-2016 held as under at Para 3 in respect of the Petitioners contempt petition;

"3. Since the original judgment was passed by the High Court, we would not like to entertain this petition simply because the judgment of the High Court merged into that of this Court. If such arguments is accepted, then we don't think this Court would be able to do any work other than to deal with the criminal original applications of this type as in almost every second case, this Court upholds the Judgments or orders of the High Courts. This is what we held in the case of Mian Zamir Ahmed Vs. Ismail decd. Thr. LRs and others (Criminal Original Petition No.15 of 2016 in Civil



Petition No.322-K of 2014 decided on 21.4.2016). This petition is also disposed of accordingly. The petitioner may if so advised, approach the High Court in this behalf. In view of the circumstances of the case it would be appreciated if the petition of the petitioner before the High Court is disposed of as expeditiously as possible preferably within ten days." (bold added)

Contempt Petition also seeking other reliefs pursuant to the above Supreme Court order was filed by the petitioner against Arif Ahmed Khan (Secretary Interior Government of Pakistan) before this Court No.10280/16 in CP D 7769/2015 which was decided by order of this Court dated 02-06-2016 (The Order) (extracts of such order for ease of reference are set out below as per numbering in that order)

#### PRAYER

It is therefore respectfully prayed that the Respondents may be directed to remove the name of the petitioner from ECL in the execution and implementation of the order of this Hon'ble Court dated 07.03.2016 passed in CP No.7769/2015 as confirmed by the Hon'ble Supreme Court of Pakistan vide judgment/order dated 13.04.2016 in CP No.896/2016. It is further prayed that the respondents having obstructed, ridiculed violated, defied and eroded the categorical mandate issued by this Hon'ble Court and the Hon'ble Supreme Court quashing the orders dated 20.11.2015 placing the name of petitioner on ECL may be punished for committing grossest contempt of this Hon'ble Court and the Hon'ble Supreme Court of Pakistan. It is also prayed the maliciously, mischievous order dated 19.04.2016 being a scandalous attempt to nullify the orders of the Hon'ble Court and Hon'ble Supreme Court and being per in curium, non-est and no orders in law be annulled and respondents be punished u/s 476 Cr.PC and personally saddled with heavy cost." (bold added)

1. At the outset of the hearing we held as under:

2. At the outset we would therefore make it clear that whilst deciding this matter in our view the application concerns both the memorandum dated 20-11-15 (the first memo) which was struck down by this Court and which judgment was upheld by the Hon'ble Supreme Court and the memorandum dated 19-4-2016 (the second memo).

3. We then recapped the chain of events which followed the striking down of the first memo

Once again the brief facts of the case concerning the second memo are relevant in understanding the continuing saga which are set out as under and form a part of the Order:

10. Learned counsel for the petitioner submitted that both the Judgment of this Court and that of the Supreme Court had been violated and in particular pointed to Para's 60, 68, 74, 78, and 93 of the Judgment of this Court. Furthermore as the petitioner had malafidely been prevented from leaving the Country by respondent No.1's refusal to remove her name from the ECL in defiance of both this Court and the Hon'ble Supreme Courts order to respondent No.1 to remove her name from the ECL the respondent No.1 had committed contempt of Court which had



also seriously damaged her career and opened her up to contractual liabilities.

11. According to learned counsel for the petitioner there is a concerted and malafide campaign by the respondent No1 and the Respondent No.6 (FBR) to prevent her leaving the Country at any cost for ulterior motives. (bold added)

12. In support of his contention learned counsel for the petitioner averred to the above narrated facts and the train of events as under:.....

13 Learned counsel submitted that the above mentioned conduct of the respondents No.1 and 6 (FBR) through their acts and orders were tantamount to over reaching the court orders, rendering them subservient and nullifying them through dubious and devious orders.

14. He further submitted that the latest order of respondent No.1 placing the name of the petitioner on the ECL on the request of respondent No.6 (FBR) does not fall within the rule criteria and parameter of ECL policy as adjudged and unequivocally determined by this Court and Hon'ble Supreme Court of Pakistan and as such the second order placing the petitioner on the ECL was not sustainable.

15. He also contended that the illegally swelled tax demands and the collector customs ex-party adjudication are all under challenge by the petitioner and stand judicially rejected and that the petitioner's life and liberty have been endangered as can be evidenced from the reign of terror let loose by the bureaucracy sheepishly and tamely dancing to the tunes of the government/ministry.

16. He lastly contended that the extreme malafide acts of the respondent No.1 and 6 (FBR) was tantamount to over reaching the order of this court and August Supreme Court and the whole judicial system stands ridiculed. The respondents have compounded the contempt, magnified and glorified their authority and rendered rule of law completely subservient to their whims. The acts and order dated 19.04.2016 passed by the respondent on the advice of respondent NO.6(FBR) is without application of mind. the suspended ex-party order of the Collector Customs adjudication in which an appeal had been filed and respondent No.6 (FBR) notice to pay penalty within 7 days is unconscionable. The order in any case having been injuncted and aborted in the presence of the standing counsel of the Federation could not be made the basis of placing the name of the petitioner

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on the ECL yet again. The order is thus, per in curiam, non-est, and non-existent in the eyes of law. (bold added)

Again I reproduce our findings along with the reasons for our findings in the Order so that the reader of this order can understand the chain of events which has lead to the petitioner challenging the third memo when placed in proper context:

21. In our view in order to reach a just decision and do complete justice in this case we need to take into consideration the history of this case and its current position.

22. This matter first came before this Court when the petitioner challenged the first memo. During oral arguments the learned counsel for the petitioner submitted that the actions of the respondents were based on malafide which in his view was evident from the chronology of events leading up to the petition where by the petitioner was in effect being hounded and victimized by the respondent No.1 and 6 (FBR). When we passed our judgment dated 7-3-2016 we attempted to deal with the petition in an elaborate manner by touching upon most points which had been raised including various applicable Articles of the Constitution. With respect to malafide we stated as under at Para's 86 and 87 of the Judgment:

**Malafides**

86. Although we have not addressed the question of malafides in any detail as put forward by the learned counsel for the Petitioner, we observe that the Federal Board of Revenue/Customs Authorities appear now to be keen to press for a case of money laundering against the Petitioner. The reason to us seems apparent. Namely, that money laundering is covered under para 3 of the policy referred to above and would entitle the Ministry of Interior to place the Petitioner's name on the ECL if satisfied with the reasoning of any such recommendation.

87. Since almost a year has elapsed since the FIR and facts of the case came to light and no case has so far been registered against the Petitioner for money laundering we would expect that the concerned authorities act in a bona fide manner strictly in accordance with the law and in particular the Constitution in this respect. (bold added)

23. We note that our concern proved correct and the respondents did immediately move an application against the petitioner for money laundering which was dismissed on 30-3-16 by the relevant Court. This was done in our view primarily to defeat the Judgment of this Court. (bold added)

24. We also recall that as a matter of grace we allowed our judgment to be suspended for 10 days to allow the respondents to approach the Supreme Court in appeal. Such concession was made in reliance on the bonafides of the respondents and them

approaching this Court with clean hands. Unfortunately as will be illustrated later in this judgment by the acts and conduct of the respondent No.1 and 6 (FBR) this was a misconceived assumption on our part

25. In our judgment we had also touched upon Articles 2(A), 4,5,9, 10(A), 14, 15, 18 and 25 of the Constitution largely for the purpose as explained in para 43 of our judgment in the following terms.....

"43. The primary purpose of briefly dwelling on the above Constitutional provisions is to emphasize the importance of those Articles in a citizen's life and the need for the Federal Government or any other body to act cautiously and strictly in accordance with law before making decisions which may impinge on such Articles and in particular with respect to placing a citizens name on the ECL". (bold added)

26. In essence we were making it clear that the executive authorities could not play around with people's lives in an arbitrary/whimsical or unlawful manner since every citizen of the State had certain rights under the Constitution which could not be usurped, denied or violated by the State.

27. In terms of malafide the case of **Chief Justice of Pakistan V President of Pakistan** (PLD 2010 SC 61) was referred to and relied upon at P.215.....

28. In determining the issue of malafide in this application a brief review of the chronology of events surrounding this case is both significant and relevant.

01. The first memo placing the petitioner on the ECL was dated 20-11-2015.
02. The first memo was struck down by this Court on 7-3-2016 whereby this Court indicated that there should be no malafide conduct i.e. by making a belated charge of money laundering in order to defeat the order of this Court by then bringing the case of the petitioner within the ambit of the ECL Policy.
03. After the judgment of this Court an application to charge the petitioner with money laundering was made which was dismissed by the concerned Court on 30-3-16.
04. The Hon'ble Supreme Court upheld the Judgment of this Court on 13-4-16. Notably on instructions learned AAGP has informed us that the respondent at that hearing did not bring to the attention of the Court the fact that steps were in motion to retain the petitioner on the ECL in the event that the judgment of this court was upheld on different grounds i.e. owing money to the government etc. It would therefore appear prima face that the respondent No. 1 and 6 (FBR) was attempting to conceal matters from the Hon'ble Supreme Court

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05. On 13-4-16 the respondent No.1 was aware that pursuant to Court orders the petitioner's name had to be removed from the ECL since they were a party to the proceedings and they were by way of abundant caution informed by counsel acting on behalf of the petitioner (In the event the first memo was not removed until 18-4-2016 i.e. 5 days after the order of the Hon'ble Supreme Court for reasons which will come apparent from the remainder of the chronology)
06. On 15-4-16 the petitioner attempted to leave Pakistan however she was deliberately and illegally stopped from doing so since it appears that quite deliberately the respondent No.1 notwithstanding the orders of the Hon'ble Supreme Court and being in full knowledge of the same had refused to take her name off the ECL in defiance of the Supreme Court's order. The respondent No.1 was also aware of the petitioner's contractual obligations which she needed to fulfill in Dubai or else be sued for millions of \$US which contracts were produced before the Supreme Court. In effect this act by the respondent No.1 of not removing the name of the petitioner from the ECL in defiance of the Supreme Court's order was damaging the petitioner's livelihood. This action by respondent No.1 appears not only to be in violation of the Supreme Court's order but also in violation of Articles 2(A), 4, 5, 9, 10(A), 14, 15, 18 and 25 of the Constitution which had been discussed in our judgment as mentioned earlier.
07. On 15-4-16 presumably after the respondent No.1 stopped the petitioner from leaving Pakistan respondent No.6 (FBR) wrote to the respondent No.1 asking it to place the petitioner's name on the ECL on account of personal liability to pay approx RS 52M.
08. On 18-4-16 the respondent No.6 (FBR) confirmed the outstanding amount and that the petitioner in effect had insufficient assets to meet the liability.
09. After receipt of the above correspondence from the respondent No.6 (FBR) the petitioner's name was taken off the ECL allegedly in compliance with the Supreme Court's order on 18-4-2016.
10. Almost immediately thereafter, apparently in a matter of hours according to the petitioner, the petitioner's name was put back on the ECL by respondent No.1 through the second memo due to her inability to meet her personal liabilities of RS 52M and the fact that if she was allowed to leave Pakistan the money would not be recovered. The petitioner was not immediately informed about this new decision to place her name on the ECL notwithstanding the directions given in our judgment at Para 91 which we will deal with later in this judgment. In essence respondent No.6 (FBR) are suggesting that the petitioner is going to abscond. Ironically according to respondent No.6 (FBR)'s assessment even if the petitioner stayed in Pakistan she could still not meet her liability which she is apparently disputing through litigation. In effect respondent No.6 (FBR) is suggesting that anyone owing the Government money cannot leave the country ever until it is paid even if it is the subject of litigation in the Courts which litigation may take years to decide by the concerned forum. In our judgment we deal with absconson at Para 89 in the following terms:

**Absconson.**

89. We have also in reaching our decision in light of the question of absconson considered the potential violations of the Constitution by the Respondents as discussed above, the fact that the trial is not likely to conclude in the near future which we understand is at the very initial stages, the fact that the Petitioner has already been prevented from leaving Pakistan for approx one year and cannot be prevented indefinitely from leaving the Country whilst on bail and having not been convicted of any crimes (in this respect a number of other citizens on the ECL have been allowed to travel abroad whilst facing trial) and that her detention in Pakistan may hinder her professional career, her need to see her ailing mother (a contention which has not been rebutted) and the principles laid down in **Wajid Shamas ul Hasan's case (Supra)** where it was held at P.631 as under:

**"Moreover, the petitioner has already been granted bail on 21.12.1996 in the said criminal case by order of the Sindh High Court, Karachi. The liberty of the petitioner could not be curtailed by mere registering a criminal case for which he may or may not be criminally liable. Mere registration of F.I.R. in a criminal case cannot be a ground for depriving a citizen of the exercise of all fundamental and other Constitutional rights. The registration of a criminal case has no nexus with and is extraneous to the object of the Statute. (bold added).**

The Hon'ble Supreme Court in its order upholding our judgment noted as under in respect of absconson at Para's 5 and 6.

"5. Respondent No.1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioner's that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's funds or committed institutional fraud. In the absence of any such allegations, we don't think the respondent's movement could be prohibited under the Ordinance or the Rules mentioned above."

"6. The apprehension of the learned ASC for the petitioners that where the respondent has been charged for committing serious offences as mentioned above, removal of her name from ECL would amount to letting her off for good, is misconceived as despite removal of her name from ECL, her attendance could still be enforced or dispensed with by the Trial Court in conformity with the relevant provisions of the Cr.P.C."

11. In continuing the chronology, on 20-4-2016 the petitioner for the second time attempted to leave Pakistan from the Jinnah airport and was prevented from doing so by the FIA officials apparently on the orders of their superiors. The petitioner was not informed that the first memo had been removed and replaced with the second memo.

12. The petitioner then moved the Hon'ble Supreme Court for contempt of its order as she had not been allowed to leave Pakistan apparently because her name was on the ECL. This hearing took place on 25-04-16 and on instructions learned AAGP has informed us that respondent No.1 at that hearing did not bring to the attention of the Court the various letters and maneuvering by respondent No.6 (FBR) to ensure that the petitioner's name



remained on the ECL and in fact the first memo had been removed and the second memo passed in its place. It would therefore appear prima facie that the respondent No.1 was attempting to conceal relevant matters from the Hon'ble Supreme Court. In our view at that hearing the respondent should have candidly told the Hon'ble Supreme Court that the judgment had been complied with and as such there was no contempt of the Supreme Court's orders and that a second memo had been passed replacing the name of the petitioner on the ECL after the removal of the first memo.

29. From the above chronology in our view it is quite apparent that respondent No.6 (FBR) and respondent No.1 were bent upon keeping the petitioner on the ECL at any cost for ulterior/extraneous reasons best known to themselves. When the first memo was struck down for not falling within the ECL policy respondent No.6 (FBR) immediately moved to put the petitioner in a money laundering case which fell within the ECL policy in order to defeat our judgment. However when this failed respondent No.6 (FBR) moved to use outstanding dues to the Government to place the petitioner's name on the ECL which as per Para 5 of the Supreme Court order cited above may not even qualify to place the name of the petitioner on the ECL.

30. In our view the respondent No.1 deliberately and mala fide did not take the petitioner's name off the ECL for 5 long days after the passing of the Hon'ble Supreme Court's order which respondent No.1 was well aware of and within that time illegally and mala fide stopped the petitioner from leaving the country to perform her professional commitments and as can be seen from the chronology the respondent No.1 kept her name on the ECL until they had in connivance with respondent No.6 (FBR) maneuvered a new reason to place her on the ECL which they hoped would come within the ECL policy.

31. Looking at the history of the case and the chronology of the events in the case it is in our view obvious to any reasonable man that this is a classic case of State functionaries using their might and power in order to bully and intimidate a citizen of this country. In our view, the only reasonable inference based on the conduct of respondent No.1 and respondent No.6 (FBR) in defying the Court orders by not removing the petitioner's name from the ECL immediately and then when finally belatedly removing her name from the ECL (5 days after they had knowledge of the court orders) and then almost immediately replacing the petitioner's name on the ECL was motivated by mala fides for ulterior motives/extraneous considerations for reasons best known to themselves. As in the Chief Justice of Pakistan's case (Supra) the mala fides of respondent No.1 and 6 against the petitioner was floating on the surface of the record through the circumstances which lead to the removal of the petitioner's name from the ECL and the subsequent replacement of her name on the ECL within a matter of hours on account of the maneuverings of respondents 1 and 6 (FBR) and such mala fide as shown from the record

is sufficient material to enable us to quash/strike down the second memo on account of malafides.

32. Furthermore, in our view the conduct of respondents No.1 and 6 in keeping the name of the petitioner on the ECL in defiance of the Court orders and trying to circumvent them through devious means had the effect of undermining the judiciary and trying to defeat its orders which is not expected of such senior Government officials. We observe that throughout this saga respondent No.1 and respondent No.6 (FBR) have not appeared before this Court or dealt with the case of the petitioner with clean hands and as such we are using our inherent powers to do complete justice as a matter of equity in our Constitutional jurisdiction to the petitioner.

33. On account of the malafide conduct of respondent No.1 and 6 the petitioner finds herself in the position of a person whom an FIR is registered against and is arrested and jailed and as soon as he is bailed out of jail in respect on that FIR a new FIR is immediately registered against him and he is arrested and returned to jail with such practice continuing in a vicious circle. In the example cited above the malafide objective is to keep the accused in jail at all costs while in the instant case the malafide objective is to keep the petitioner from leaving Pakistan at all costs. Such practices undermine the public's confidence in both State institutions and its functionaries and the judiciary and are clearly an abuse of the process of law and are to be stamped out by the Courts.

34. As such on account of the malafide and discriminatory conduct of the respondent No.1 and respondent No.6 (FBR) as narrated above we strike down the second memo on account of it being made on account of malafides.

35. We also find that on account of their malafide conduct as can be seen from the record read with our judgment dated 7-3-2016 the respondent No.1 and respondent No.2 (FBR) have violated the rights of the petitioner as enshrined under Article 2(A), 4, 5, 9, 10(A), 14, 15, 18 and 25 of the Constitution in replacing her name on the ECL through the second memo. (bold added)

In respect of bias of the respondent against the petitioner as found in the Order.....

41. In our view the bias of the decision maker (respondent No.1) floating on the surface of the record is sufficient to strike down and set aside the second memo and as such we strike down and set aside the second memo on the ground of bias.

42. One of the sacred roles of the Court is to uphold the Constitution and ensure that the rights of the citizens are guaranteed and protected and that those rights are not taken away or crushed by the power of State functionaries acting in a

whimsical, arbitrary, illegal, malafide or bias manner. In protecting those rights it is hoped that the public's faith and confidence in the judiciary and its fair and even handed administration of justice would be enhanced.

43. As was held in **Chief Justice of Pakistan's case** (Supra) at P.66.

"The critical indispensability of dispensation of justice in a society be it between men and men or between the governors and the governed, could never be over-emphasized. The fact that it is justice and justice alone which could ensure peace in a society and its consequent strength, security and solidarity, was one of the serious lessons taught to the civilization by its history. And history, be it ancient, biblical, medieval or contemporary, also tells us that societies sans justice had never been permitted to pollute this planet for very long and had either to reform themselves paying heavy costs usually in blood or had else been wiped off the face of this earth. The French, the Russian, the Chinese and more recently, the Iranian revolution are some such lessons. It is perhaps for this very reason that doing of justice is conceivably the most repeated Quranic Command after 'SALAAT' and ZAKKAT'.

44. In Summary we, therefore, for the reasons discussed above,

- (a) strike down/set aside the second memo dated 19-04-2016 since it is based on malafide.
- (b) strike down/set aside the second memo dated 19-04-2016 since it is based on bias.
- (c) strike down/set aside the second memo dated 19-04-2016 since it has been malafidely and biasly passed in violation of Articles 2 (A), 4; 5, 9, 10(A), 14, 15, 18 and 25 of the Constitution.
- (d) direct respondent No.1 to immediately without any delay remove the name of the petitioner from the ECL.
- (e) direct that the name of the petitioner shall not again be placed on the ECL without the prior approval of this Court.

**Events following the Order striking down the second memo.**

1. After passing the order we graciously decided not to proceed against the respondent for contempt by way of exercising judicial restraint but making it clear to him that such restraint may not be so forth coming in the event that the respondent continued to violate our orders in respect of the case of the petitioner and her placement on the ECL. We again gave the directions as mentioned above.

**2. The respondent was again directed to comply with the direction contained in para's 61 and 62 of the Judgment which had now reached finality. (bold added)**

3. Despite the malafides, bias and discriminatory conduct of the respondent vis a vis the petitioner which justified the striking down of the second memo we graciously once again suspended our order for the period of 7 days on the request of the respondents who wanted to appeal the same. It may be observed here that on both occasions when the Respondents requested suspension of

our Judgment and Order that they had not even read them to consider whether in fact an appeal was justified.

4. It is significant and quite shocking to see what happened after the passing of our order directing the name of the petitioner to be deleted from the ECL for a second time.

5. As per diary sheets when the matter came up for compliance of the above Order as per its directions on 9-06-2016 in essence the learned AAGP conceded that no appeal had been filed as yet but one day was left to do so and as such he requested time to seek instructions from the secretary interior in respect of compliance with the order.

The Order recorded as under.

*"As an indulgence the matter is adjourned to 10.6.2016 to be taken up at 11:00 a.m. However, it is clarified that if the order passed by this Court, as referred herein above, is not complied in letter and spirit, and no compliance is received, the Secretary Ministry of Interior, Government of Pakistan shall be in attendance, and shall explain as to why proceedings for contempt of Court's order may not be initiated against him for not complying the Court's order passed in the instant matter.(bold added)*

Copy of this order be transmitted to the Secretary Ministry of Interior, Government of Pakistan through fax whereas copy may also be provided cover-in-hand to the learned Additional Attorney General for onward transmission to ensure compliance".

6. As per Order sheet dated 10-06-16 i.e. the next day learned AAGP submitted that as per his instructions the name of the petitioner had so far not been deleted from the ECL, whereas the alleged contemnors were making efforts to obtain some interim orders from the Supreme Court of Pakistan against the Order of this Court dated 02-06-2016. The order went on as under at Para 3.

3. Attention of learned Additional Attorney General for Pakistan was drawn to the specific directions of a Division Bench of this Court as contained in Paragraphs-44 and 45 of the order dated 02.06.2016, as well as in the last order passed by this Court on 09.06.2016 as referred to hereinabove, whereby, as an indulgence and on his request the matter was adjourned for today, whereas, it was further observed that if the order passed by this Court, as referred to hereinabove, is not complied with in letter and spirit, and no compliance is received, the Secretary, Ministry of Interior, Government of Pakistan shall be in attendance and shall explain as to why proceedings for contempt of Court's order may not be initiated against him for not complying the Court's order passed in the instant matter, in response to which, Mr. Salman Talibuddin, learned Additional Attorney General for Pakistan requests for a short adjournment to call the Secretary, Ministry of Interior, Government of Pakistan to explain his position in this regard.

4. It has been observed that inspite of specific orders passed by this Court in the instant Petition (C.P.No.D-7769/2015) on 07.03.2016 and the order of the Honourable Supreme Court of Pakistan dated 13.04.2016 passed in C.P.No.781 and 896 of 2016, as well as the order passed by this Court on the Contempt of Court Application (CMA No.10280/2016) dated 02.06.2016, the alleged Contemnors have somehow deliberately attempted to flout the Court's orders, which are neither complied with nor the alleged Contemnors have the courtesy to submit any explanation or to appear

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In Court for such purpose. No comments have so far been received regarding compliance of Court's order as referred to hereinabove by any of the alleged Contemnors, including Secretary, Ministry of Interior, Government of Pakistan, who was specifically directed to either submit compliance and in case of non-compliance, to appear in person to explain his position.

- 5. In view of the above facts and circumstances, we would direct the Secretary, Ministry of Interior, Government of Pakistan to appear in person before this Court on 14.06.2016, at 11.30 a.m and to explain his position as to why the orders of this Court as well as the order of the Honourable Supreme Court of Pakistan as referred to hereinabove have not so far been complied with. He shall also explain as to why Contempt of Court proceedings may not be initiated against him for defiance of Court's orders with impunity.
- 6. We may further observe that if the needful is not done before the next date of hearing, this Court will constrained to proceed against Secretary, Ministry of Interior, Government of Pakistan and other alleged Contemnors, for violation of the Court's orders and no further opportunity in this regard will be extended to the alleged Contemnors in this regard. If the Secretary, Ministry of Interior, Government of Pakistan shall not appear before this Court on the next date of hearing, and the Court's orders will remain non-complied, Bailable Warrants will be issued against him for his appearance in Court. (bold added)

A copy of this order once again be communicated to the Secretary, Ministry of Interior, Government of Pakistan through Fax as well to ensure compliance".

7. It appears from the order sheets that pursuant to the above strongly worded caution contained in order dated 10-6-2016 Mr. Arif Ahmed Khan Secretary of interior Government of Pakistan appeared personally before the Court on 14-06-2016 at which time the Order dated 02-06-2016 had still not been complied with but apparently all possible efforts were being made to obtain a restraining order from the Hon'ble Supreme Court in respect of order dated 02-06-2016 and hence the order could not be complied with so far. The Order dated 14-06-2016 in the presence of Mr. Arif Ahmed Khan Secretary of interior Government of Pakistan continued as under:

"Such explanation by the Secretary, Ministry of Interior, Government of Pakistan, Islamabad is neither plausible nor acceptable for the reason that specific orders have also been passed in the instant matter with regard to the compliance of the Court's order whereas sufficient opportunity has been awarded to the alleged Contemnors either to comply with the Court's order or to obtain any restraining order from the Honourable Supreme Court of Pakistan, however, it appears that neither the order passed by this Court has been complied with nor the alleged Contemnors have been able to obtain any restraining order from the Honourable Supreme Court of Pakistan. Keeping in view the continuous defiance of Court's order by alleged Contemnor present in Court, we confronted him as to why show cause notice may not be issued for defiance of the Court's order, in response to which the Secretary, Ministry of Interior, Government of Pakistan requested that one day's time may be granted so that final effort may be made to obtain some restraining orders from the Honourable Supreme Court, failing which, the order passed by this Court on 02.06.2016 will be complied in its

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letter and spirit by tomorrow and compliance report will be furnished.

Keeping in view the request made by the Secretary, Ministry of Interior, Government of Pakistan, Islamabad, as an indulgence and last chance, we adjourn this matter for tomorrow, i.e. 15.06.2016, to be taken up at 01:00 p.m. However, it is clarified that if the alleged Contemnors fail to obtain any orders from the Honorable Supreme Court, the order dated 02.06.2016 passed by this Court shall be complied with in letter and spirit and compliance report shall be submitted by tomorrow, positively, failing which, the alleged Contemnor(s) shall expose himself/themselves to Contempt of Court proceedings, without any further opportunity. Mr. Arif Ahmed Khan, Secretary, Ministry of Interior, Government of Pakistan shall be in attendance, tomorrow. (bold added)

8. On the next date as per dairy sheet dated 15-06-2015 in the presence of Mr. Arif Ahmed Khan Secretary of interior Government of Pakistan the learned AAGP placed on the Courts record a memorandum dated 15-06-2016 deleting the name of the petitioner from the ECL in compliance with order dated 02-06-2016 passed by this Court. The order dated 15-06-2016 further observed as under,

**"Mr. Arif Ahmed Khan, Secretary, Ministry of Interior, Government of Pakistan, present in Court verifies such position and categorically states that pursuant to the order dated 02.06.2016 passed by the learned Division Bench of this Court, the name of the Petitioner has been deleted from ECL and there is no legal impediment for her traveling abroad, copies whereof have been supplied to the learned counsel for the petitioner. (bold added)**

Since the order dated 02.06.2016 passed by the learned Division Bench of this Court on Contempt Application (CMA No.10280/2016) has been duly complied with, though after expiry of the time allowed for such purpose, however, since the alleged Contemnors were making an effort to obtain appropriate orders from the Honourable Supreme Court of Pakistan pursuant to the order of this Court dated 02.06.2016 passed on the Contempt Application, therefore, we are persuaded not to draw any adverse inference in respect of delay which has been caused in this regard. However, while disposing of the matter, would direct the alleged Contemnors to be careful in future while dealing with the Court matters and to ensure that the orders passed by the Court shall always be complied with in its letter and spirit promptly". (bold added)

9. It seemed that the matter had finally reached its logical conclusion. However it was not to be the case.

10. Both parties approached the Hon'ble Supreme Court against order dated 02-06-2016. The petitioners main contention was that this Court should have proceeded against the Respondent for contempt rather than showing judicial restraint. On the other hand the Respondents main contention was that the directions given in order dated 02-06-2016 could not have been given in the said petition. The widow of Mr. Aijaz Mahmood who had been murdered which had lead to the filing of FIR 550/15 also applied to be a party to the proceedings before the Hon'ble Supreme Court and the petitioner filed this petition against the 3rd memo, mentioned earlier which again placed her name on the ECL on 15-06-2016 for different reasons the same day as the second memo placing the petitioners name on the ECL had been deleted on the orders of this Court.

11. By Order dated 30-06-2016 the Hon'ble Supreme Court in dealing with all the above applications/appeals (Cr.A 302/2016, Cr.MA No.1154/2016 in Cr.A No 283/2016 and Cr.A 283/2016) whilst recognizing that these applications/appeals raised issues which needed consideration at Para 11 of its order observed as under:

Para 11: Sardar Muhammad Latif Khan Khosa, learned Sr.ASC has also raised a grievance that pursuant to the earlier order of this Court, the proceedings in Constitutional Petition No.D-7769 of 2015 in the learned High Court of Sindh has been adjourned in the absence of any direction by this Court. No order staying such proceedings directly or indirectly has been passed by this Court. There is apparently a subsequent cause of action in favour of the Respondent i.e. Ms.Ayyan Ali whose name yet again placed on the ECL vide memorandum dated 15.06.2016, which even took place after the Order of the learned High Court of Sindh. **We expect that the learned High Court of Sindh shall proceed with the Constitutional Petition No.7769 of 2015 expeditiously and decide the matter, if possible, within two weeks. The interim order passed on the previous date of hearing shall continue, which at best only impacts the Contempt of Court proceedings before the learned High Court of Sindh.**(bold added)

To come up immediately after the summer vacations".

12. The instant petition had been proceeding before this Court but since a special bench had been formed it could not hear the case on a daily basis despite its best endeavors keeping in view that the petitioners counsel also had to come from Lahore and was proceeding in a cautious manner especially as it had been suggested by Learned AAGP that the case may be decided by the Supreme Court since as per order dated 30-06-2016 this matter was meant to come up after summer vacations.

13. If there were any ambiguities in this respect this was cleared up by order of the Hon'ble Supreme Court dated 21-09-2016 in this case where it was held as under:

"Learned Sr. ASC for Respondent No.1 has drawn our attention to the order dated 30.06.2016 to show that a clear observation was made by this Court that pending Constitutional Petition No.3708/2016 (mistakenly mentioned in the order as Constitutional Petition No. 7769/2016) shall be disposed of expeditiously, within two weeks. He submits that arguments on behalf of Respondent No.1 (Ms. Ayyan Ali) have already been concluded while learned State counsel has also partly made his submissions. However, the matter is still pending before the High Court of Sindh and now fixed on 03.10.2016.

Keeping in view the spirit of our earlier order dated 30.06.2016, we expect that on 03.10.2016 the matter will be finally heard and concluded before the High Court of Sindh and it will be disposed of in accordance with law."(bold added)

**XXXXXX End of History XXXXXX**

After setting out the above history/chronology of events in order to place the current petition in context I now come to determining the same which we reserved on 03-10-2016 in accordance with the Hon'ble Supreme Courts Order as mentioned above after hearing the parties.

1. Turning to the question of territorial jurisdiction. We must not lose sight of the fact that it is the third memo which is under challenge which is the placement of the name of the petitioner on the ECL for the third time. This petition does not concern contempt, which proceedings are pending before the Hon'ble Supreme Court, so at the outset I would observe that the authorities relied on by the petitioner are of little assistance in this matter.

2. We have already found in the Judgment referred to above that this Court does have territorial jurisdiction in cases concerning the ECL where the memo is issued from the Ministry of Interior in Islamabad and takes effect in Karachi for which elaborate reasons with reference to the relevant law was cited in the Judgment dated 07-03-2016 dealing with the first memo which discussion on territorial jurisdiction in large part is set out below using the paragraph numbers as used in the Judgment for ease of reference:

22. Further case law flowed under the bridge but in the case of **LPG Association of Pakistan V Federation of Pakistan (CLD 2009 1498)** after considering and exhaustively analyzing nearly all the relevant case law on territorial jurisdiction (both Supreme Court and High Court) and including Sandalbar (Supra), Al Iblagh (Supra), Trading Corporation of Pakistan (Supra) and Flying Kraft Paper Mills (Pvt.) Limited (supra) the following ratio was deduced from the authorities in relation to territorial jurisdiction at P.1514

"6. From the judgments cited at the Bar on both the sides, the portions whereof have been extensively reproduced, the following ratio is deducible:--

(A) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Provinces, shall still be deemed to function all over the country.

(B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal

capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him. (bold added)

- (C) This shall be moreso in the cases where a party is aggrieved by a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession, association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.

In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is maintaining the account at Lahore, though the Act/law has been passed at Islamabad, yet his right being affected where he maintained the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts.

- (D) On account of the above, both the Islamabad and Lahore High Courts shall have the concurrent jurisdiction in certain matters and it shall not be legally sound or valid to hold that as the Federal Government etc. resides in Islamabad, and operates from there; the assailed order/action has also emanated from Islamabad, therefore, it is only the Capital High Court which shall possess the jurisdiction. The dominant purpose in such a situation shall be irrelevant, rather on account of the rule of choice, the plaintiff/petitioner shall have the right to choose the forum of his convenience." (bold added)

23. Thus, it would seem that the old Sandalbar (Supra) test of dominant purpose has now finally been superseded by the "take affect" test. Namely if a Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other then the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.

24. The above reasoning and ratio in the LPG case was followed in the case of *Pervez Musharaff V Pakistan* (PLD 2014 Kar 389) which was specifically addressing the question of a



person's name being placed on the ECL which in addition at P.424 stated as under:

37. Now we would like to take the issue of territorial jurisdiction, Learned Attorney General argued that this court lacks territorial jurisdiction. At present the petitioner is residing at Karachi though temporarily but it is also a fact that if he wants exit from Karachi, he would not be allowed to move due to his name on E.C.L. The respondents No.3 and 4 are the Director and Additional Director F.I.A. (Immigration) posted at Karachi. It is also a matter of record that it is not the first time or the first case which this court or we are entertaining on the question of E.C.L. but this court in number of cases not only entertained the Petitions but also passed order for the removal of the name from E.C.L. In this case also, the orders were passed by the Ministry of Interior at Islamabad like other cases but since it is a matter of liberty of a person and infringement of his fundamental right, no austere or rigid view can be taken as to the territorial jurisdiction of this court, Clause (a) of Sub-Article (1) of Article 199 of the Constitution lucidly envisages that on the application of any aggrieved party, the High Court may direct a person performing within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do. The High Court can also declare that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect. If a stringent or inflexible view is taken on the question of E.C.L. that only the High Court at Islamabad is competent to take cognizance, then it would mean that no other High Court in the country can taken up any issue against the Federation on the plea that Federation is located at Islamabad. It is not the case that order passed under the Exit from Pakistan (Control) Ordinance, 1981 does not apply in the Province of Sindh or this is not the case that if the petitioner wants exit from the territorial jurisdiction of this court, he would not be stopped." (bold added)
25. It then considered the Sandalbar case (Supra) and found as under at P.426.

"39. The learned Attorney General quoted the case of Sandalbar Enterprises (Pvt.) Ltd. which was referred to by the hon'ble Supreme Court in the case of Khurram Shahzad, (unreported case). In the case of Sandalbar Enterprises, hon'ble Supreme Court had observed that against the assessment order passed at Karachi, petitions

are filed at Peshawar or Lahore or Rawalpindi or Multan by adding a ground for impugning a notification under which particular levy is imposed and this practice was deprecated. It was held that the court has to see what is the dominant object of filing the writ petition and in the Sandalbar case the dominant object was not to pay regulatory duty assessed at Karachi so leave was refused. Even in the case of Sandalbar guiding principle was to see the dominant object. In the case in hand, the dominant object is not to challenge any levy or the assessment order passed against the petitioner but the dominant object is to get free from the clutches of E.C.L. and naturally if the petitioner wants to exit from the territorial jurisdiction of this court he will not be allowed until his name is removed from E.C.L. **Due to petitioner's abode at Karachi, the partial cause of action is also accrued at Karachi where the respondents Nos.3 and 4 are performing their duties while Federation of Pakistan is performing its functions all over Pakistan, hence the High Courts at Karachi and Islamabad both have concurrent jurisdiction in this matter. The objection of the learned Attorney General to the territorial jurisdiction of this court is misconceived.** (bold added)

26. It would therefore seem that the test for territorial jurisdiction has now been established as the "take affect" test. In this case the Petitioner has a permanent residence in Karachi and would like to leave Pakistan via the Quaid-Azam International Airport at Karachi which is the most convenient for her being the closest airport to her residence. If she attempts to leave Pakistan via the Quaid-e-Azam International Airport Karachi however she will not be able to leave as her name has been placed on the ECL and the effect of the ECL Memorandum will take affect on her at Karachi at the Quaid-e-Azam International Airport Karachi in addition to any other airport in Pakistan.

27. In considering this aspect of territorial jurisdiction we must also take into account the concept of access to justice which is enshrined in our law and A.4 of the Constitution. Access to Justice means exactly what it says. Not only must a person have access to inexpensive affordable justice but also access to justice at their doorstep. If a person resides in Karachi is it fair on that person to have to travel all the way to Islamabad in order to challenge an order against them considering the cost (travel and accommodation) time and inconvenience (perhaps necessitating days off work or needing someone to look after young children) which that would cause when they can have access to justice closer to home where the order which they are subject to takes effect? We do not think it would be fair. As enumerated in numerous

Judgments of the Hon'ble Supreme Court access to Justice is also a key component to the rule of law and the effective and good administration of Justice in contributing to inexpensive justice at the doorstep and enhancing due process of the law.

28. The superior Judiciary has in fact gone out of its way to ensure access to justice for its citizens. For instance, in the case of **Muhammed Ismail V Superintendent District Jail Sheikhpura** (2007 CLC 128) it was observed as under at P.131

"6. Family Courts Act, 1964 has created a special procedure for decision of family matters and C.P.C. and Evidence Act are not applicable to a case before the Family Court for the reasons that the Family Courts are given inquisition jurisdiction through special procedure provided under the Act for regulating family matters. **The reason for exclusion of the provision of C.P.C. and Evidence Act is that the spouse may have easy access to justice.** The Family Courts are special Tribunals which regulates and supervise the rights of the parties under the provisions of the Family Courts Act. Reliance is placed on the cases of **Muhammad Azam v. Muhammad Iqbal** PLD 1984 SC 95 and **Malik Khizar Hayat Khan Tiwana and another v. Zainab Begum and others** PLD 1967 SC 402." (bold added)

29. Therefore on the current law on territorial jurisdiction which is based upon where the order "takes effect" test, the principle of access to justice and the fact that this Court regularly hears and decides cases relating to the names of citizens being placed on the ECL with such orders emanating from the Ministry of Interior based at Islamabad (without any challenge being made to the jurisdiction of this Court in such cases) we hold that this Court does have territorial jurisdiction to hear this petition which is maintainable".

3. It may be recalled that in the case of **General (Rtd) Pervaiz Musharraf V Pakistan through Secretary of Interior** (PLD 2014 Sindh 389) that at the time when the case was decided in the Sindh High Court cases, amongst others, were already pending against General (Rtd) Musharaff before the ATC Court Quetta based on an FIR, an ATC Court in Islamabad based on an FIR and before the Special Court in Islamabad which was trying him under Article 6 of the Constitution and it was held by this Court that the

take effect test was applicable and the matter could be heard, and was decided, by the Sindh High Court through its Order dated 12-06-2014.

4. That order by the Sindh High Court was not interfered with by a 5 member Bench of the Hon'ble Supreme Court on appeal in Civil Appeal No.870/2014 in the unreported case of **Federation of Pakistan through Ministry of Interior V General (Rtd) Pervez Musharaf** dated 16-03-2016 in terms of territorial jurisdiction.

5. I am further fortified by our finding in the Judgment on territorial jurisdiction in terms of the 'take effect test by a Judgment of the Lahore High Court in the case of **Inam Akther V Federation of Pakistan WP38431/2015** (unreported dated) 22-01-2016 where at the initial stages of an inquiry initiated by NAB Sindh against the petitioner, who had got his name placed on the ECL by the Ministry of Interior, despite the objections by NAB on the question of territorial jurisdiction of the Lahore High Court to hear the case as the inquiry was initiated and being conducted by NAB Karachi within the territorial jurisdiction of the Sindh High Court, the Lahore High Court held that it had jurisdiction to hear the case (and removed the name of the petitioner from the ECL) in the following terms **despite the NAB not even being impleaded as a party:**

4. On the other hand, learned Deputy Attorney General assisted by learned Special Prosecutor, NAB submits that this Court has no jurisdiction to deal with the matter, that NAB inquiry is pending against the petitioner but it has not been made party and if NAB has been made party, the case should have been put before the Division Bench rather than before the Single Bench; that there is every apprehension that if the name of the petitioner is removed from the ECL, he will flee from the country and will not come back as there are allegations of embezzlement of billions of rupees against him.....

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5. Arguments heard. Record perused.

6. So far as territorial jurisdiction of this Court is concerned, the petitioner is admittedly resident of Lahore. As per contention of learned counsel for the petitioner, the petitioner is a businessman and he was going abroad in connection with his business activities when he was not allowed to travel and was communicated that his name exists on ECL vide impugned order dated 25.11.2015. The fact that the petitioner was stopped, apprehended and disallowed to travel abroad at Lahore Airport has not been denied by the respondents. It is settled law that where the cause of action accrues to a person, he may invoke jurisdiction of the court situated in that area. Furthermore, the impugned order has been passed by F.I.A./Ministry of Interior which is a Federation Department / Ministry, therefore, the petitioner had every right to invoke jurisdiction of any of the High Courts. In the circumstances, I am of the considered view that this Court has ample jurisdiction to deal with the matter.

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8. The Constitution of Islamic Republic of Pakistan guarantees freedom of each and every citizen to move freely inside and go outside Pakistan and to do business of his choice. The case against the petitioner is yet at inquiry stage where there are mere allegations. So far neither any investigation has initiated nor any concrete evidence is available against him nor the case of the petitioner is in any court of law for adjudication of allegations against him. The allegations against the petitioner at this juncture appear to be based on suspicions as no material evidence is available against him as is clear from the report and parawise comments filed by the respondents. In my considered view, the freedom of



the citizen of travel abroad can only be restricted if anything against the law *stands proved* against him requiring such restriction. But in this case, there are only allegations against the petitioner and mere inquiry is being conducted by the NAB authorities so far. Neither investigation nor trial stage has yet reached. Therefore, the freedom of the petitioner to travel abroad cannot be curtailed by placing his name on the ECL as it would tantamount to abridge his fundamental right to travel abroad or restrict his right of free movement guaranteed by the Constitution of Islamic Republic of Pakistan 1973. In this regard, I am fortified by the dictums laid down by the Hon'ble Supreme Court of Pakistan in case reported as Messers United Bank Limited v. Federation of Pakistan and others (2014 S C M R 856).

9. It has been contended by the respondents that there is inquiry pending against the petitioner, therefore, if his name is removed from the ECL, he will run away and will never come back. They in this regard have referred letter No.3-2(I)(15)/K/NAB/Dy. Dir (ECL) dated 29.10.2015. The said order reads that inquiry is being conducted against officers/officials of Information and Archives Departments, *Government of Sindh and others*. The petitioner is not an officer/official of any of departments of government of Sindh but a business involved in advertising business though his name exists in said letter at Serial No.2. Admittedly, there are only inquiry proceedings continuing against the petitioner and others. As stated above, the freedom of a citizen cannot be curtailed merely on the basis of suspicion or any inquiry which ultimately may end with or without any result against him. (bold added)

6. NAB applied for leave to appeal the aforesaid Judgment of the Lahore High Court before the Hon'ble Supreme Court in the

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case of **National Accountability Bureau V Inam Akbar** (Civil Petition 487 of 2016) (unreported dated 06-10-2016). At the time of the appeal NAB submitted that it was on the verge of filing a reference against the respondent before the Accountability Court Karachi in Sindh in a mega corruption case and feared that the respondent would abscond if his name was not put back on the ECL. The Hon'ble Supreme Court denied NAB leave to appeal and upheld the Judgment of the Lahore High Court notwithstanding that the investigation being carried out in Karachi was almost complete and the NAB Sindh were on the verge of filing a reference before the Sindh High Court. **Thus, in effect it was found that the Lahore High Court on the take effect test had territorial jurisdiction to hear a matter which was before NAB Sindh in Karachi.**

7. In my view since the filing of an FIR and the opening on an inquiry by NAB under the NAO have some similarities as in effect they both get the ball rolling in a criminal case and may or may not lead to the case going to trial depending on the evidence collected they should be given the same treatment vis a vis territorial jurisdiction.

8. In any event as the Memorandum placing the petitioner's name of the ECL has been issued by the Ministry of Interior the matter is a Federal issue and I remain of the view as found in the Judgment that the "take effect" test will apply and in the instant case as discussed above the third memo will take effect/have effect at the Jinnah International airport Karachi and **thus I find this petition maintainable in terms of territorial jurisdiction and can be taken up by this Court notwithstanding the fact that**

*the Islamabad High Court and the Lahore High Court may also have concurrent jurisdiction.*

9. Learned AAGP also contended that the petition was not maintainable as it had not been signed by the petitioner rather by an advocate instructed by her on her behalf and as such it warranted dismissal on this count alone. In this respect he placed reliance on the Indian case of **Smt.Savitramma V Cicil Naronha** (1989 MLD 1133 Supreme Court of India). As is well known the Indian cases are only of persuasive authority and not binding on us. He did not produce any Pakistani authority on this point. Even in the Indian case, which concerned a contempt petition as opposed to a Constitutional petition, it was held that although the petition was rejected the defect was in effect curable by the petitioners filing their own affidavits.

10. The question therefore emerges whether in our constitutional jurisdiction, bearing in mind the history of this case as alluded to above, we are bound to reject the petition because the affidavit had not been filed by the petitioner when in fact that petitioner, who is based in Karachi could very easily cure the defect within days. In my view this would only serve to further delay the matter especially keeping in view the Hon'ble Supreme Courts Order to decide the matter expeditiously on 03-10-2016. Furthermore, I view this defect as a technicality and the law has always preferred a matter not to be defeated by technicalities but decided on merits. I have also kept in view the chronology of events which have been metered out to the petitioner as narrated earlier in this order in her attempts to leave the Country and travel abroad in order to carry out her profession, her constitutional rights guaranteed by the Constitution in this respect and the requirement that we must do

complete justice in our constitutional jurisdiction where often the might of the State is pitted against the individual. In such situation is the Court supposed to close its eyes and ears to this matter and wash its hands of the matter as opposed to doing complete justice under its discretionary constitutional jurisdiction? Neither do I think so nor do I consider that the citizens of the State would expect us to do so. As it is we are under Oath to protect the rights of the citizens as guaranteed under the Constitution. We also cannot ignore the malafide which was found against the respondent towards the petitioner in the Order which amongst other reasons lead to us striking down the second memo by the Order (and directing that the name of the petitioner should not again be put on the ECL without the permission of this Court so as to avoid any further malafide conduct on the part of the respondent which direction was completely ignored by the respondent despite him having full knowledge of it) and as it would appear once again the potential malafide conduct on behalf of both the respondent and the Government of Punjab in respect of the third memo which I shall turn to shortly in this order. **As such for the reasons mentioned above I hold this petition to be maintainable on this score as well.**

11. . Turning to the third memo. It would be instructive to set out the same which is reproduced as under:

(Computer # 16090)

**GOVERNMENT OF PAKISTAN  
MINISTRY OF INTERIOR**

No.12/208/2015 ECL                      Islamabad the 15<sup>th</sup> June 2016.  
 Subject:                      **Placement of Name on Exit Control List.**  
 In pursuance of order dated 17.05.2016 of Lahore High Court Rawalpindi Bench in the Writ Petition No.1398/2016 and recommendation of Home Department Government of Punjab Letter No.(PS/SS/HOME) 01.07.2016 dated 08.06.2016 regarding Miss. Ayaan Ali nominated in FIR NO.550/2015 registered of Police Station Waris Khan Rawalpindi, it has been decided to place the name of Miss Ayaan Ali daughter of Muhammad Hafeez CNI No.35201-94219526 Passport No.AA1109523 R/o. Flat

No.804 Creek Vista DHA Phase VIII Karachi on Exit Control List  
ECL U/s 2 of Exit from Pakistan (Control) Ordinance 1981.  
2-All concerned are requested to take immediate action in the  
matter.

Qalandar Khan  
(Section Officer ECL)  
Tel.9201535

Federal Investigation Agency (HQ)  
Director General I&AAHS  
Islamabad.  
DTA. Gen. Immigration & Passport  
Director General Islamabad.  
Federal Investigation Agency (HQ)  
Project Director/PISCES  
Islamabad.

Federation Investigation Agency (HQ)  
Assistant Director/PISCES  
Islamabad.

**Copy forwarded for information to above mentioned persons.  
Under notified review mechanism any person aggrieved by  
this order may file a representation within fifteen days after  
receipt of this order to the Federal Government for a review  
of the order setting out in the representation the ground on  
which he seeks the review. (bold added)**

12. In considering the third memo it needs to be dispelled that this memo was issued in pursuance of order dated 17.05.2016 of Lahore High Court Rawalpindi Bench in the Writ Petition No.1398/2016. This order does NOT order the placement of the petitioners name on the ECL.

13. What is of **greater significance**, in my view, is the recommendation of Home Department Government of Punjab Letter No.(PS/SS/HOME) 01.07.2016 dated 08.06.2016 regarding Miss. Ayaan Ali nominated in FIR NO.550/2015 registered at Police Station Waris Khan Rawalpindi which would appear to be the real reason for placing the name of the petitioner on the ECL.

14. The question that arises is whether it is the usual practice of the Government of Punjab to request the placement of a person on the ECL because they are nominated in a murder case? Have all persons nominated in that FIR or suspects in that FIR been placed on the ECL?

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15. I have not carried out an empirical analysis but in my considered and most humble view the answer is extremely likely to be, "no the Government of Punjab does not place all persons nominated in a murder case on the ECL". In fact it is trite law that the nomination of a person in an FIR does not justify placing their name on the ECL as was found in the case of **Wajid Shamas-ul Hassan V Federation of Pakistan** (PLD 1997 Lahore P.617) and was referred to in the Judgment. So what makes the case of the petitioner so special? It should not be forgotten that when a person who was being tried for violating Article 6 of the Constitution sought to leave the Country, despite his trial almost being concluded, the Ministry of Interior immediately took his name off the ECL so that he could, and did, leave Pakistan. Such actions would hardly seem to meet the requirements of A.4 and A.25 of the Constitution when compared with the case of the petitioner who has been accused of a lesser offense and who it would appear from the history of this case the respondent is bent on keeping on the ECL at all costs. Such conduct in my view by the respondent may prima facie be deemed to be discriminatory vis-à-vis the petitioner and tends to suggest a pick and choose policy. In my view the placing of names on the ECL falls within the purview of A.4 and 25 of the Constitution in all cases and if these Articles are not applied equally to all citizens in all cases across the board regardless of status the perception may arise in the mind of the people that not all people are equal before the law which in my view would tend to erode the public's confidence in the administration of justice and the rule of law.

16. I would at this juncture like to add that nothing mentioned in this order shall have any bearing on the FIR 550 dated 02-06-2015/investigation/challan or trial which the petitioner has been



belatedly involved in which shall all be carried out fairly on merits and be based upon the evidence collected.

17. So what of the murder case itself? Ms Ayyan Ali was not nominated in the original FIR 550 which was lodged on 02-06-2015 which was filed by the brother of the murdered Aijaz Mehmood (whilst the petitioner was confined in jail) and concerned two men on motor bikes carrying out the attack. The petitioner's name was not mentioned in the FIR and it only arose about a year later once she had been released from prison and her freedom of movement was restored. It also seems that the victim had little to do with the petitioner's smuggling case so there does not seem to be a link between them, especially as the victim was killed whilst the petitioner was in jail.

18. It is however **significant** that the Government of Punjab's letter which was relied upon was dated 08-06-2016 which conveniently/suspiciously (bearing in mind the history of this case) came **6 days after** the Order of this Court dated 02-06-2016 striking down the second memo which order was not complied with. It appears that the letter was dated, (time of arrival unknown) around the same time that the period of the Order dated 02-06-2016 suspension had expired and thus had to be complied with i.e. the petitioners name had to be removed from the ECL enabling her to travel abroad if she so desired.

19. As the diary sheets mentioned earlier in the history/chronology of this saga show it is quite apparent that the respondent only complied with the order to remove the petitioners name from the ECL for the second time when he was absolutely pressed by this Court to do so and had been called in person to explain his conduct in not complying with this Courts orders and

was on the verge of having contempt of court proceedings initiated against him by this Court.

20. The respondent however, finally relented and removed the name of the petitioner from the ECL pursuant to the second memo on 15-06-2016 and the court recorded in its order as under:

*“Mr. Arif Ahmed Khan, Secretary, Ministry of Interior, Government of Pakistan, present in Court verifies such position and categorically states that pursuant to the order dated 02.06.2016 passed by the learned Division Bench of this Court, the name of the Petitioner has been deleted from ECL and there is no legal impediment for her traveling abroad, copies whereof have been supplied to the learned counsel for the petitioner. (bold and italics added)”*

21. It is therefore, in my view, based on the above statement quite incredible that on the very same day the third memo was issued placing the name of the petitioner again on the ECL for a separate matter which had clearly been under discussion with the Ministry of Interior and the Government of Punjab since 08-06-2016 and **must** have been within the knowledge of the secretary Ministry of Interior (respondent) and was **not** mentioned by him to the Court. Furthermore, in my view, based on the diary sheets earlier reproduced in the history/chronology of this order, the only reasonable inference that can be drawn from the respondents conduct is that he deliberately delayed implementing the order dated 02-06-2016 of this Court to remove the name of the petitioner from the ECL **until** the third memo had been maneuvered and was ready to be issued. His conduct in this respect is apparent from the order sheets above. Needless to say the respondent made no mention of the third memo to the Court on 15-06-2016 the day it was issued and did not inform the petitioner about the third memo or provide her with a copy of it.

22. In my view once again as was found in order dated 02-06-2016 the respondent has acted in a malafide and bias manner in placing the petitioner on the ECL by virtue of the third memo with the aim and objective of willfully and deliberately again defeating the orders of this Court which had the effect of undermining the judicial system of the State. The law on malafide and bias has already been set out in the order dated 02-06-2016 which along with Judgment dated 07-03-2016 can be read as part and parcel of this order and clearly show the continuing malafide conduct of the respondent towards the petitioner.

23. The reason why this Court had directed in its order dated 02-06-2016 that the name of the petitioner shall not again be placed on the ECL without the prior approval of this Court was not done for the sake of it. The direction was passed because having heard the two earlier petitions we were of the view that on account of malafide and/or bias the petitioner's name may again be placed on the ECL in order to defeat the orders of this Court and violate her fundamental rights as guaranteed under the Constitution. Hence we wanted to satisfy ourself that the name of the petitioner was being placed on the ECL for bona fide reasons bearing in mind the past conduct of the respondent.

24. Para 33 of the Order is reproduced below for ease of reference:

33. On account of the malafide conduct of respondent No.1 and 6 the petitioner finds herself in the position of a person whom an FIR is registered against and is arrested and jailed and as soon as he is bailed out of jail in respect on that FIR a new FIR is immediately registered against him and he is arrested and returned to jail with such practice continuing in a vicious circle. In the example cited above the malafide objective is to keep the accused in jail at all costs while in the instant case the malafide objective is to keep the petitioner

from leaving Pakistan at all costs. **Such practices undermine the public's confidence in both State institutions and its functionaries and the judiciary and are clearly an abuse of the process of law and are to be stamped out by the Courts.**(bold added)

25. However despite being well aware of this categorical and specific direction not to again place the name of the petitioner on the ECL without the prior permission of this Court the respondent again quite incredibly on the very same day as taking the name of the petitioner off the ECL and stating before the Court that **there is no legal impediment for her traveling abroad** put her name back on the ECL by the third memo. Hence once again the orders of this court were deliberately and intentionally frustrated which is what we found in this Courts order dated 02-06-2016 in respect placing the name of the petitioner on the ECL by virtue of the second memo after this Court had struck down the first memo. Thus, our concerns were proved correct.

26. In fact the malafide and bias conduct of the respondent in this petition is almost a repeat of that in the order dated 02-06-2016 which we tried to safe guard against but failed as the respondent was it appears in no mood to comply with our directions and seems to have placed his obedience to others over that of orders of this Court and his duty as a public servant to safeguard the public against any attempted abuse of authority by the executive.

27. It seems to me a national tragedy that the respondent is expending so much time and energy in keeping the petitioners name on the ECL when such time could have been better and more productively spent on ensuring that the civilian aspects of the National Action Plan are implemented which time and energy could have also been more productively spent in devising polices and

strategies to better combat the militants and terrorists who are plaguing the citizens of this Country and threatening to destabilize the State. It seems that this responsibility has been left largely to the brave and patriotic soldiers of this country.

28. Despite the respondent being a very senior and experienced civil servant at this juncture I would most humbly like to take this opportunity to remind him, and indeed all Governments servants, of the words of wisdom given by the founder of our nation the Quaid-e-Azam Muhammad Ali Jinnah in his address to civil officers in Peshawar in April 1948 since his conduct in this ECL saga with the petitioner does not appear to be serving the public's interest but rather that of others. The address is set out below for ease of reference.

"The reason why I am meeting you is that I wanted to say a few words to you who are occupying very important positions in the administration of this province. The first thing that I want to tell you is that you should never be influenced by any political pressure, by any political party or any individual politician. If you want to raise the prestige and greatness of Pakistan you must not fall victim to any pressure but do your duty as servants of the people and the state, fearlessly and honestly.

**The services are the backbone of the state. Governments are formed. Governments are defeated. Prime Ministers come and go, ministers come and go, but you stay on. Therefore, there is a very great responsibility placed on your shoulders. You should have no hand in supporting this political party or that political party, this political leader or that political leader. This is not your business.**

Whichever government is formed according to the constitution, and who ever happens to be the prime minister or minister, coming into power in the ordinary course, your duty is only to serve that government loyally and morally but, at the same time, fearlessly, maintaining your high reputation, your prestige, your honour and the integrity of your service. If you start with that determination, you will make a great contribution to the building up of Pakistan of our conceptions and our dream-a glorious state and one of the greatest nations in the world.

While impressing this upon you, I wish also to take the opportunity of impressing upon our leaders and politicians in the same way, that if they ever try to interfere with you and bring political pressure to bear upon you, which leads to nothing but corruption, bribery and nepotism-which is a horrible disease and for which not only your province but others too are suffering-if they try to interfere with you in this way, I say they are doing nothing but disservice to Pakistan.

I hope that each of you will understand his own sphere of duty

and responsibility and act with others harmoniously in complete cooperation, keeping in mind that each has to do his duty within the sphere to which he belongs, if on your part start with that determination and enthusiasm - and I hope the other side will also realize what a terrible evil they are raising up and how it demoralizes the services to try and influence this department or that departments, this office or that officer-and if you stick to your determination you will have done a great service to your nation. Putting pressure on service people is, I know, a very common fault of politicians and those with influence in political parties, but I hope you will now, from today, resolve and determine to act according to the humble advice I am giving you.

May be some of you may fall victim for not satisfying the whims of ministers. I hope it does not happen, but you may even be put to trouble not because you are doing anything wrong but because you are doing right.

Sacrifices have to be made, and I appeal to you, to come forward if need be to make the sacrifice and face the position of being put on the black list or being otherwise worried or troubled. If some of you will give me the opportunity of your sacrifice, believe me we will find a remedy for that very soon. I tell you that you will not remain on the black list if you discharge your duties honestly, sincerely and loyally to the state. It is you who can give us the opportunity to create a powerful machinery which will give you complete sense of security.' (bold added)

29. In this case in my view based on the conduct of the respondents it would be more appropriate as suggested by the Supreme Court in its Judgment dated 04-06-2016 (Federation of Pakistan V Ayyan Ali in Civil Petition No.781 and 896 of 2016 and C.M.A. No.1986 of 2016 in Civil Petition No. 781 of 2016 a/w Civil Petitions No.207-K to 208-K of 2016 as referred to earlier) which upheld the Judgment of this Court in this case dated 07-03-2016 if it was left to the relevant Court to regulate its own proceedings including, if deemed necessary, placing the name of a person on the ECL having weighed this against the petitioners fundamental right of freedom of movement under Article 15 of the Constitution and the extensive Supreme Court case law on the ECL vis a vis persons facing inquiries, trials etc.

30. Without dilating further on this rather shocking state of affairs concerning the respondent continuously placing the name of the petitioner on the ECL on account of malafide, bias and discriminatory grounds in violation of various Articles of the



Constitution and in order to defeat and circumvent the orders of this Court I once again summarize my findings based on the above discussion and history of events in this case.

31. **In Summary**, based on the above discussion, I therefore:

- (a) Find that this Court does have the territorial jurisdiction to hear this petition and it is maintainable.
- (b) strike down/set aside the third memo dated 15-06-2016 since it is based on malafide.
- (c) strike down/set aside the third memo dated 15-06-2016 since it is based on bias.
- (d) strike down/set aside the third memo dated 15-06-2016 since it has been malafidely and biasly passed in violation of Articles 2 (A), 4, 5, 9, 10(A), 14, 15, 18 and 25 of the Constitution.
- (e) direct the respondent to immediately without any delay remove the name of the petitioner from the ECL within the next 48 hours failing which he will appear in person before this Court to explain his non compliance.
- (f) direct that the name of the petitioner shall not again be placed on the ECL without the prior approval of this Court to ensure that it is not placed on the ECL on account of bias, malafide, discrimination or other ulterior motives (as we have found it to be so placed in the past) and is only so placed on valid legitimate bona fide legal reasons.
- (g) direct the Ministry of Interior to comply with the directions as set out in Para's 61 and 62 of the Judgment **which have reached finality** and are set out below for ease of reference, within 3 days of the date of this order:

(i) We hereby direct the Ministry of Interior to place on its website all those persons who are currently on the ECL and who are thereafter added to the ECL within 3 days of their addition along with details of their CNIC, address, father's name and information as to what steps may be taken by them to appeal/review such decision.

(ii) In addition **the Ministry of Interior is further directed** to ensure that each and every effectee within 7 days of his / her name being placed on the ECL is served with a hard copy of the Memorandum together with a speaking order as to why he / she have been placed on the ECL

and the procedure for appeal / review and to ensure that any such review or appeal through a speaking order is heard with a right of personal hearing and decided within 30 days of such an appeal / review being received by the Ministry of Interior so that the right of review/appeal is meaningful and effective rather than illusory or rendered redundant.

32. A copy of this Order shall be immediately forwarded by fax and TCS by the Registrar of this Court to the Secretary Ministry of Interior Government of Pakistan Islamabad for immediate compliance.

33. This petition shall come up 10 days after the date of this order as per roster to ensure that this order has been complied with in both letter and spirit.

34. This Petition stands disposed of in the above terms.

  
JUDGE

JUDGE

Dated: 25-11-2016.

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Ahmed Ali M. Shaikh

Mr. Justice Muhammad Karim Khan Aga

Constitution Petition No.D-3708 of 2016

Miss Ayan Ali

Versus

Govt. of Pakistan through Ministry  
of Interior, Islamabad and others.

For hearing of main case.

Date of hearing: 03.10.2016

M/s. Sardar Latif Khan Khosa, Qadir Khan Mandokhel and Ghulam Akbar  
Khan Jatoi, Advocates for petitioner.

Mr. Salman Talibuddin, Additional Attorney General for Pakistan for  
respondents.

**AHMED ALI M. SHAIKH, J** By invoking the extra ordinary  
constitutional jurisdiction of this Court, petitioner has assailed the Memorandum  
No.12/208/2015 ECL dated 15.6.2016, issued by respondent No.1, which reads  
as under:-

**“Subject: Placement of name on Exit Control List**

In pursuance of order dated 17.5.2016 of Lahore High Court Rawalpindi  
Bench in the Writ Petition No.1398/2016 and recommendation of Home  
Department Government of Punjab letter (No.PS/SS/(Home) 1-7/2016  
dated 8 June, 2016) regarding Miss Ayyan Ali, a nominated accused in  
FIR No.550/2015 registered a Police Station Waris Khan Rawalpindi, it  
has been decided to place the name of Miss Ayyan Ali d/o Muhammad  
Hafeez (CNIC No.35201-94219526) Passport No.AA1109523 R/o. Flat  
No.804 Creek Vista DHA Phase VIII Karachi on Exit Control List  
(ECL) under Section 2 of Exit from Pakistan (Control) Ordinance, 1981.

2. All concerned are requested to take immediate action in the  
matter.”

2. From the pleadings it appears that instant petition has chequered history.  
On 14.3.2015 petitioner was arrested in FIR No.10/2015 registered at I&P  
Branch of Model Custom Collectorate, Islamabad, under the provisions of FER  
Act, 1947 and ITC Act, 1950. However, after grant of bail, she applied for  
superdari of her passport, which application was allowed by the trial Court vide  
order dated 25.11.2015. In the meanwhile, the Ministry of Interior, Government  
of Pakistan vide Memorandum dated 20.11.2015, on the recommendations of  
FBR, for charges of money laundering, placed her name on ECL.

3. Petitioner filed CP No.D-7769 of 2015, which was allowed by this Court  
vide Judgment dated 07.3.2016 directing the Ministry of Interior to immediately  
remove the name of petitioner from the ECL and allow her to travel abroad, if

she so desires. The said order was challenged by the respondents and the Honourable Supreme Court of Pakistan vide order dated 13.4.2016 passed in Civil Petitions No.781 and 896 of 2016 and CMA No.1986 of 2016 in Civil Petition No.781 of 2016 a/w Civil Petitions No.207-K to 208-K of 2016 refused to grant leave and dismissed the petitions. Consequently, vide memorandum dated 18.4.2016 petitioner's name was deleted from the ECL by the respondents.

4. Thereafter on 19.4.2016 another Memorandum again placing the name of petitioner on ECL to safeguard the public interest involving the claim of public exchequer to the tune of Rs.52,960,600/- was issued, which compelled the petitioner to file contempt application in CP No.D-7769 of 2015 and this Court vide order dated 02.6.2016 while striking down the Notification directed the respondents to immediately remove petitioner's name from ECL and not to place her name again without prior approval of this Court.

5. In wake of aforesaid order and its compliance by the respondents, the Petitioner proceeded to Jinnah International Airport Karachi for traveling abroad but the immigration officer offloaded her on the basis of Memorandum dated 15.6.2016 issued by the Respondents in terms of order dated 17.5.2016 passed by the Lahore High Court, Rawalpindi Bench in Writ Petition No.1398 of 2016 and the recommendation of Home Department, Government of Punjab vide letter dated 8.6.2016.

6. Earlier, on 02.6.2015 FIR No.550/2015 was registered at PS Waris Khan, Rawalpindi, regarding firearm injury to Customs Inspector Ejaz Mehmood, I.O. of dollar smuggling case, by unknown persons. Later, Ejaz Mehmood succumbed to his injuries. Subsequently, Mst. Saima Ejaz widow of Ejaz Mehmood, after dismissal of her application under Section 22-A CrPC by the Sessions Court, made Writ Petition No.1398 of 2016 before Lahore High Court Rawalpindi Bench and the Lahore High Court vide order dated 17.5.2016 directed the respondent to decide pending application dated 12.5.2016 of Mst. Saima Ejaz in accordance with law. Thereafter, though the petitioner was not nominated in the FIR, on the basis of aforesaid application of Mst. Saima Ejaz, was joined as co-accused in the FIR No.550/2015 registered at PS Waris Khan, Rawalpindi.

7. Learned counsel for the petitioner has submitted that the respondents are bent upon the curtail liberty as well as freedom of movement of the petitioner either by hook or crook. He submitted that in the first instance on 20.11.2015 her name was placed on ECL on the basis of FIR No.10/2015 relating to money

laundering, which memorandum was struck down by this Court vide Judgment dated 07.3.2016; then by virtue of memorandum dated 19.4.2016 which was again struck down by this Court vide order dated 02.6.2016 passed on contempt application and now her name was placed on ECL pursuant to order dated 17.5.2016 and the recommendations of Home Department, Government of Punjab. According to him the respondents have cooked up a cock and bull story and got implicated petitioner in FIR No.550/2015 registered at PS Waris Khan, Rawalpindi when at the time of murder of Custom Inspector Ejaz Mehmood she was confined in Adiyala Jail. According to learned counsel the detailed orders passed by this Court have been practically bypassed by the respondents, which smacks malafide on their part, therefore, the impugned notification be set-aside and she may be allowed to travel abroad.

8. Per contra, Mr. Salman Talibuddin, learned Additional Attorney General for Pakistan raised two fold objections as to the maintainability of instant petition. Firstly that the impugned memorandum was issued on the recommendations of Home Department, Government of Punjab, pursuant to an order passed by the Lahore High Court, Rawalpindi Bench in Writ Petition No.1398 of 2016; and secondly, that petition is not supported by the affidavit of the petitioner verifying its contents and instead her counsel has filed his personal affidavit in support, the petition is liable to be dismissed on this ground alone.

9. Mr. Sardar Latif Khan Khosa, Advocate, when confronted with above submissions of the learned Additional Attorney General, he submitted that as this Court has already struck down two memorandums placing name of petitioner on ECL, this Court has jurisdiction to entertain and strike down the third one also. As to the second submission, Mr. Khosa submitted that on mere technicalities the petition cannot be dismissed.

10. We have heard the learned counsel for the petitioner, Additional Attorney General for Pakistan and perused the material available on record. It is a matter of record and not disputed by either side that the impugned notification placing petitioner's name on ECL was issued after the order dated 17.5.2016 passed by the Lahore High Court, Rawalpindi Bench in writ petition No.1398 of 2016, which is reproduced hereunder:-

"After arguing the case at some length, learned counsels for the petitioners feel satisfied if a direction is given to the respondent No.1 i.e. Secretary, Ministry of Interior, Islamabad to decide the application dated 12.5.2016 filed by the petitioner No.2 expeditiously and in accordance with law. This request is tenable.

2. The respondent No.1 is directed to decide the above-referred application of the petitioner No.2, if pending before him, after

giving an opportunity of hearing to the petitioner and any other concerned person, strictly in accordance with law. Needful shall be done within ten days from the date of receipt of certified copy of this order. Learned Deputy Attorney General for Pakistan on court's call is directed to ensure the compliance of the order of this order.

3. With these observations, this writ petition stands disposed of. Copy dasti on the payment of usual charges."

11. Thereafter, on the recommendation of Home Department, Government of Punjab, which has decided application of Mst. Saima Ejaz, widow of Ejaz Mehmood, slain Custom Inspector/I.O. of the FIR registered against petitioner, who was implicated as co-accused in the FIR No.550/2015 registered at PS Waris Khan, Rawalpindi, impugned memorandum was issued by the Federal Government.

12. No doubt this Court in the earlier round had twice struck down the memorandums controlling the petitioner's exit from the country, however, in wake of the fact that the Ministry of Interior, Government of Pakistan has issued impugned notification after the order of the Lahore High Court and on the recommendation of Government of Punjab, we are clear in our mind that this Court has no territorial jurisdiction to entertain instant petition.

For the foregoing reasons, we do not find any merit in the instant petition, which is accordingly dismissed.

Karachi, dated  
the 16 November, 2016



**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Ahmed Ali M. Shalkh

Mr. Justice Muhammad Karim Khan Agha

CP No.D-3708 of 2016

For announcement of orders.

01.12.2016

Mr. Qadir Khan Mandokhel, Advocate for petitioner.

Mr. Salman Talibuddin, Additional Attorney General for Pakistan.

In view of the pronouncement of dissenting orders written and signed by us separately, office is directed to place the matter before the Honourable Chief Justice for appropriate orders.