

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

**CP D 6447 of 2020  
CP D 890 of 2021**

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on office objection
2. For hearing of Misc. No.27723/2020
3. For hearing of main case

**19.05.2025**

Ms. Naveen Merchant, advocate for the petitioner  
Mr. Khalid Mehmood Rajpar, advocate for respondent  
Mr. Muhammad Aqeel Qureshi advocate holds brief for Ms. Masooda Siraj, advocate for respondent  
Ms. Alizeh Bashir, Assistant Attorney General  
Mr. Muhammad Akbar Khan, Assistant Attorney General

Per learned counsel, the Customs department executed a search and seizure at the petitioner's premises and consequent thereto prosecution was initiated. Direct recourse was sought to the civil tax bench of this Court, impugning the search and seizure and quashing of FIR was also sought. Interestingly, the prayer clause<sup>1</sup> sought that this court quash any proceedings including future FIR in respect of the present case.

On the first date of hearing<sup>2</sup>, while issuing notice, the respondents were precluded from taking any adverse action against the petitioner and it was specified that he would not be arrested. This unsecured restraint upon the arrest of the petitioner subsisted from 2020 till today.

Learned counsel for the petitioner articulated that the actions of the respondent department were contrary to law. Upon being specifically queried as to whether the said defense was available to the petitioner before the court of competent jurisdiction presently seized with the matter, she replied in the affirmative, however, stated that since this court exercises supervisory / Constitutional jurisdiction, hence, it may be just and proper for the determination to be rendered by this court.

Learned counsel for the respondent department stated that the proceedings with respect to the impugned actions are pending before the court of competent jurisdiction, hence, no case is made out for parallel concurrent recourse to writ jurisdiction.

Heard and perused. The pivotal question before this Court is whether the ordinary course of contextual criminal proceedings could be allowed to be deflected by resort to writ jurisdiction.

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<sup>1</sup> Prayer clause h in CP D 890 of 2021.

<sup>2</sup> In the respective petitions.

It appears that while the FIR/s had been lodged and the matter is required to be determined by the Court of the Special Judge (Customs & Taxation) Karachi ("Special Court"), however, proceedings are fettered due to *ad interim* orders bestowed herein.

Examination of the applicable law demonstrates that the Special Court has been conferred with exclusive jurisdiction to entertain and proceed with regard to the relevant statutory offences and such jurisdiction includes the domain to determine the viability of proceedings and the regulation of custody of the accused. A special bench, being the Special Appellate Court (Customs & Taxation) ("Special Bench"), is also constituted at the High Court with exclusive jurisdiction to determine matters pertaining *inter alia* to appeals, references and revisions arising out of the Special Court. The governing statute also envisages a bar upon any court, other than the Special Court and the Special Bench, to entertain any application or petition or pass any order or give any direction with respect *inter alia* to bail, in regard to the relevant statutory offences.

The law also empowers the Special Court to dismiss a complaint, on its own accord, if found to be insufficient. In addition thereto, an accused may also prefer an application seeking acquittal if it can be demonstrated that there is no probability of the accused being convicted of the cited offence. The orders so rendered are further assailable in appeal / revision before the Special Bench of the High Court. In the presence of such adequate remedy the condition precedent per Article 199 of the Constitution, being the absence of remedy, is *prima facie* not satisfied<sup>3</sup>.

The august Supreme Court had illumined in *Ghulam Muhammad*<sup>4</sup>, back in 1967, that if an offence had been committed justice required that it should be enquired into and tried by the competent court. In the absence of a finding of guilt the accused had a right to be honorably acquitted by the competent court and vice versa. Abjuring the recourse to regular proceedings by deflection to the High Court was duly deprecated. *Ghulam Muhammad* was relied upon in *Bajwa*<sup>5</sup> and *Aleem*<sup>6</sup> and the Supreme Court considered refusal of the High Court to deflect the normal course of a criminal case, through exercise of writ jurisdiction, as salutary. It is pertinent to mention that the edict of the honorable Supreme Court in *Aleem*<sup>7</sup> is applicable on all fours to the present facts and circumstances as the invocation of the writ jurisdiction of the High Court was deprecated in a matter where the trial was pending before the learned Special Judge (Customs & Taxation).

*Muhammad Afzal Zullah CJ.*, while, approving the authority cited supra, observed in *Habib Ahmed*<sup>8</sup> that if *prima facie* an offence had been committed, the ordinary course of trial, before the competent court, was not to be allowed to be deflected through an approach to the High Court. The august Supreme Court, while allowing an appeal against an order of the High Court, held in *Sardar Khalid*<sup>9</sup> that by allowing recourse to writ the High Court erred in law by short circuiting the normal procedure of law, while exercising equitable jurisdiction which is not in consonance with the law.

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<sup>3</sup> *Muhammad Abbasi vs. SHO Bhara Kahu & Others* reported as PLD 2010 Supreme Court 969.

<sup>4</sup> Per Hamoodur Rehman J. in *Ghulam Muhammad vs. Muzammal Khan & Others* reported as PLD 1967 Supreme Court 317.

<sup>5</sup> Per Aslam Riaz Hussain J. in *Abdul Rehman Bajwa vs. Sultan & Others* reported as PLD 1981 SC 522.

<sup>6</sup> Per Muhammad Afzal Zullah J. in *Abdul Aleem vs. Special Judge (Customs) Lahore & Others & Others* reported as 1982 SCMR 522.

<sup>7</sup> A leave refusal order; however cited with approval by the Supreme Court in *Habib Ahmed*.

<sup>8</sup> *A Habib Ahmed vs. MKG Scott Christian & Others* reported as PLD 1992 Supreme Court 353.

<sup>9</sup> Per Chaudhry Ijaz Ahmed J. in *Haji Sardar Khalid Saleem vs. Muhammad Ashraf & Others* reported as 2006 SCMR 1192.

In view of the preponderance of binding authority, cited supra, it is our considered view that the ordinary course of criminal proceedings could not be allowed to be deflected by resort to writ jurisdiction. The statutory fora, being the Special Court and / or the Special Bench, are competent to determine the viability of the relevant criminal proceedings and regulate the custody of the accused. No case has been set forth before us to merit the invocation of the discretionary<sup>10</sup> writ jurisdiction of this Court in such regard; hence, these petitions, along with pending applications, are hereby dismissed. The office is instructed to place a copy hereof in the connected petition.

Judge

Judge

Amjad

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<sup>10</sup> *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.