

IN THE HIGH COURT OF SINDH AT KARACHI
Constitution Petition Nos.D-1649 & 1774 of 2025

Date	Order with signature of Judge
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- PRIORITY CASE:
1. For hearing of CMA No.8167/2025.
2. For hearing of Main Case.

Dated; 19th May 2025

Mr. Aneel Zia alongwith M/s. Arif Ali Manthar and Bilawal Solangi, Advocates for Petitioners in both Petitions.
Mr. Khalid Mehmood Rajpar, Advocate for Respondent alongwith Investigating Officer/Appraising Officer Noor-ul-Hassan, Customs Department.

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In both these matters a common question is involved that whether after submission of a final challan in respect of FIR's pending before the Special Judge (Customs, Taxation & Anti-Smuggling-I), Karachi, re-investigation can be started by an Investigating Officer through issuance of a Notice under sections 165 and 171 of the Customs Act, 1969 and without obtaining permission from the said Court.

On 29.04.2025 in C.P. No.D-1649 of 2025 the following order was passed: -

"Mr. Khalid Mahmood Rajpar, Advocate has affected appearance and has filed Vakalatnama on behalf of Respondent and needs time to file comments.

In this matter, it appears that after submission of challan in FIR No.02 of 2025, the Investigating Officer has re-started the investigation by way of notices under Sections 165 and 171 of the Customs Act, 1969. Based on such notices, he has also seized various documents from the premises of the Petitioner. Such act of the Investigating Officer does not appear to be justified in law as after filing of a final challan, if at all, any further investigation was to be made, permission ought to have been sought from the Special Judge (Customs & Taxation), Karachi for filing of a supplementary challan, but in no manner such seizure could have been made. Let Investigating Officer be in attendance with his explanation on the next date of hearing, whereas, status quo be maintained in respect of any further proceedings on the basis of action taken under Sections 165 & 171 of the Customs Act, 1969.

To come up on 19.05.2025."

Today, learned counsel for the Respondent department has filed vakalatnama in C.P. No.D-1774/2025 along with comments in both Petitions, whereby, Notices issued under section 165 of the Customs Act, 1969 by the Investigating Officer have been withdrawn. However, we are, for the time being not inclined to accept such withdrawal, as per the Petitioner's Counsel, not only this, the Investigating Officer of this case, namely, Noor-ul-Hassan has also issued a Notice on 26.04.2025 to him. The said notice reads as follows: -

GOVERNMENT OF PAKISTAN
COLLECTORATE OF CUSTOMS EXPORTS
PORT MUHAMMAD BIN QASIM

Customs Building, Export Processing Zone, Karachi. Tel #021-49208001

No. SI/MISC/27/2025/CUS/EPZ

Dated: 26.04.2025

Aneel Zia,
Advocate High Court,
Expert Law Associate,
Office #3, Jumbo Centre, Opp Customs House,
Karachi

Subject: **JUSTIFICATION AND REASON REGARDING THE
NOTICE OF SECTION 171 OF CUSTOM ACT 1969
TO MR AHMAD SHAHZAD KHAN.**

Please refer to the subject cited above.

02. At the outset, you have not provided any authorization from the accused or Vakalatnama in support in your letter to the undersigned, which is seen as an attempt to influence the investigation and therefore, punishable under Section 156(1)(85) of the Customs Act, 1969.

03. Moreover, the undersigned is an I/O in the FIR #02/2025 date 27.01.2015 and is empowered under Section 26(2) of Customs Act to direct any person to furnish documents to present himself before the undersigned. It is added that under Section 161 (9) of Act the undersigned has same power as Station Incharge of Police Station and doing an impartial investigation, which you have attempted to interfere with.

04. The undersigned seized official record from premises of M/s Mariaum Logistics Pvt Ltd under Section 168 and hence rightfully served notice under Section 171. Therefore, this is a criminal case which involves fraudulent attempt of smuggling and evasion of duty taxes worth Rs. 825 Million. **You are cautioned**

to refrain from impeding the investigation in future failing, which the undersigned being I/O shall be compelled to take necessary action against you.

Sd/- 26.04.25
(Noor-UI-Hassan)
Investigating Officer”

From perusal of the aforesaid notice, it reflects that the Investigating Officer concerned has even threatened the Counsel in this matter by cautioning him to refrain from impeding the investigation in future, failing which, he will be compelled to initiate action against the Counsel. Such threatening notice is not only unlawful and illegal, but also is based on the incompetence of the Investigating Officer inasmuch as The Lawyers Welfare and Protection Act, 2023 clearly provides to the contrary. Section 9 thereof, provides as under: -

“9. Privileged communication of advocate. --- Notwithstanding anything contained in any other law for the time being in force,----

- (a) no person, public servant or any authority shall have the power to arrest, detain, investigate any advocate under any law for the time being in force to obtain any document, material or any information from such advocate pertaining to his professional duties; and*
- (b) the violation of the clause (a) shall be deemed as act of violence within the meaning of section 2.”*

Similarly, Section 2 thereof, provides the definitions, wherein, it is provided as under: -

- (a) “act of violence” means any act committed by any person against an advocate with the intent to prejudice, affect or derail the process of impartial, fair and fearless conduct of cases before any court, tribunal or authority by which such advocate is engaged and shall include the following: --*
 - (i) harassment, coercion, assault, criminal force or threat impacting the living or working conditions of such advocate and preventing him from discharging his duties;*
 - (ii) harm, injury, hurt either grievous or simple, or danger to the life of such advocate, either within the premises of the courts or otherwise;*
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- (iii) *coercion by whatsoever means, by any person or authority to reveal or part with privileged communication or material which an advocate is bound to hold in confidence under the law;*
- (iv) *coercion by whatsoever means of an advocate not to represent or to withdraw his Vakalatnama or appearance to act, plead or appear on behalf of a client before any court, tribunal or authority;*
- (v) *loss or damage to any property or documents or material which such advocate is bound to hold under the law; or*
- (vi) *usage of derogatory language during the course of the judicial and quasi-judicial proceedings.”*

Section 2(h) thereof, also defines privileged communication. Therefore, the Investigating Officer under no circumstances can issue any such intimidating or threatening notice to the Counsel in such a manner by asking a Counsel to refrain from assisting his client(s). This is totally uncalled for, and prima facie appears to be an offence in terms of Section 2(a) *ibid*, liable for punishment under Section 3 *ibid*.

In view of such position, let the Investigating Officer of this case, namely, Noor-ul-Hassan, as a first step, be suspended by the Competent Authority, whereas he is directed to submit an explanation as to why further proceedings may not be directed against him under The Civil Servants (Efficiency & Discipline) Rules, 2020, through the competent authority; besides criminal proceedings under The Lawyers Welfare and Protection Act, 2023.

To come up on 29.05.2025. Orders passed earlier to continue.

ACTING CHIEF JUSTICE

JUDGE