

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

**C.P. No.D-2179 of 2021.**

Date	Order with signature of Judge
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1. For hearing of Misc. No.12242/2022.
2. For order as to maintainability of petition.

**27.05.2022.**

Petitioner is present in person.  
 Mr. Sarwar Khan, Additional Advocate General.  
 Mr. Irshad Ali, Assistant Attorney General.  
 Mr. Iqbal Awan learned APG.  
 Mr. Muhammad Ahmed alleged contemnour.  
 Mr. Badar Alam, Advocate for the alleged Contemnour.

**Mohammed Karim Khan Agha J.** The learned advocate General Sindh has filed an application for review of order dated 12.04.2022.

2. The brief facts of the case are that Mr. Muhammed Ahmed, the alleged contemnour's reply to show cause notice was rejected by this court vide order dated 03.12.2021 and vide order dated 18.01.2022 this court fixed the matter for the framing of the charge on 23.02.2022 against the alleged contemnour however the charge could not be framed due to the absence of the learned Additional Advocate General (AAG) who was to act as prosecutor. The matter next came up for hearing once again on 09.03.2022 for framing of the charge when once again the learned AAG was called absent, however on the next date it was ordered that the learned AAG and DAG should address this court on who should actually prosecute this case as there appeared to be some confusion in that regard. Vide order dated 14.03.2022 this court ordered the office of the advocate general to act as prosecutor. Vide order dated 28.03.2022 learned AAG as prosecutor sought time to prepare the documents to be served on the alleged contemnour. On 12.04.2022 learned advocate general appeared and pursuant to an application under S.151 CPC contended that the prosecutor should be from the attorney General's office. This court passed the following order on 12.04.2022 in respect of this aspect of the case which is now the order under review which is set out below for ease of reference;

"12.04.2022.

M/s. Salman Talibuddin, Advocate General Sindh and Sarwar Khan, Additional Advocate General.

Mr. Khaleeq Ahmed, Deputy Attorney General a/w Mr. Irshad Ali, Assistant Attorney General.

Mr. Muhammad Ahmed alleged contemnor.

Mr. Alimullah, Assistant Chief of Protocol, Ministry of Foreign Affairs.

Mr. Muhammad Asif, Assistant Director, FIA Immigration, Karachi.

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*Pursuant to earlier orders in this case, Assistant Director FIA as well as Ministry of Foreign Affairs have filed their responses which are taken on record. Mr. Badar Alam files Vakalatnama on behalf of alleged contemnor Muhammad Ahmed. Vide earlier orders we had requested the Advocate General's office and the D.A.G. to assist us that who should be the Prosecutor in this case. Vide order dated 14.03.2022 after hearing the parties, this Court appointed the Advocate General Sindh to act as Prosecutor in the contempt case against alleged contemnor Muhammad Ahmed. Vide order dated 28.03.2022 Mr. Sarwar Khan, Additional Advocate General Sindh appeared before this Court and stated that he has been appointed as Prosecutor in this case by the Advocate General Sindh and that he needed further time to gather necessary relevant documents and witnesses which he may wish to call so that they could be handed over to the alleged contemnor to go through the same prior to framing of the charge. Today, Mr. Salman Talibuddin, learned Advocate General has appeared and filed application under section 151 CPC whereby he has stated that it is the Attorney General for Pakistan who should prosecute this case as opposed to the Advocate General Office as this matter concerns with FIA.*

*We have considered his application which is CMA No.10117/2022 and firstly note that it is belated and also ought to have made on the last date of hearing. In our view this matter is proceeding before this Court and within the jurisdiction of this Court and concerns breach of undertaking of this Court and as such all necessary required papers/documents for the prosecution are already in the file of this Court, certified copies of which can be obtained from the office of this Court. Learned Advocate General Sindh has referred to authority 2013 SCMR 161 that it should be the Attorney General's office who should prosecute this matter. We have gone through the authority and find it distinguishable from the facts and circumstances of this case, as such the Miscellaneous Application is dismissed and the Advocate General is directed without further delay to either prosecute this case himself or continue with the appointment of Mr. Sarwar Khan, Additional Advocate General as Prosecutor to prosecute this case. Prior to the next date of hearing, learned Advocate General Sindh or his nominee shall obtain all necessary documents required to prosecute this case which ought to be available in the office and produce a list of witnesses (if any), which are needed to prosecute this case.*

*Mr. Badar Alam, the newly appointed counsel states that he is going on General Adjournment from 15.04.2022 to 05.05.2022, as such at the request of learned counsel for the alleged contemnor and Mr. Sarwar Khan, learned Additional Advocate General Sindh this matter shall come up on 11.05.2022 at 08:30 a.m."*

3. We have heard the parties and perused the record.

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4. It is doubtful whether the review application is maintainable as an application under S.151 CPC being CMA 10117/22 dated 08.04.2022 had already been dismissed by this court and as such the applicant cannot lawfully have a third bite of the cherry.

5. None the less in order to avoid technicalities we shall put aside this aspect of the case and decide the review application on merits.

6. It is well settled by now that the scope of review is very narrow and in this case the application concerns an error floating on the face of the record. In this respect reliance is placed on the Judgment on review in the case of **Justice Qazi Faez Isa and others V The President of Pakistan and others** (Civil Review Petitions No.296 to 301,308,309 and 509 of 2020 and CMA No.4533 of 2020 dated 29.01.2022).

7. The main thrust of the arguments of the learned AAG is that under the S. 4-A of the Central Law Officers Ordinance 1970, it is the role of the Attorney General's office to prosecute contempt of court cases and not the Advocate General's office which is a clear error floating on the face of the record of the order under review which as such should be altered accordingly to make the DAG the Prosecutor which has the obligation to prosecute the contemnor. He also placed reliance on Government of Sindh Law Department (Sindh Law Officers Conditions of Service) Rules and Rules for the conduct of the legal affairs of the Government of Sindh. In his counter affidavit learned counsel for the alleged contemnor supported the contentions of the learned AAG however during oral submissions he declined to make any submissions on this aspect of the matter. The learned APG, on court notice, submitted that it was not the domain of the PG's office to prosecute contempt cases which should be either through the Advocate General's office or the Attorney General's office but on balance was of the view that the Attorney General's office should be the prosecutor. In support of his contentions he placed reliance on the cases of **Sayyed Hassan through Legal Heirs v. Chief Land Commissioner, Punjab, Lahore and others** (2000 SCMR 1440) and **Criminal Miscellaneous Application No.296 of 2008 in/and Criminal Original Petition No.38 of 2009** (2009 SCMR 780). On the other hand learned DAG has contended that it is the advocate General's office which should act as prosecutor. He relied on the cases of **The State v. Muhammad Akbar Cheema** (PLD 1993 Lahore 658), **Naushaba Kazi, XII**

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8. The learned AAG's contentions revolve almost entirely around S.4A of the Central Law officers Ordinance 1970 which is reproduced for ease of reference below;

*"4A. Central Law Officers to be deemed to be public prosecutors, etc. Notwithstanding anything contained in any other law for the time being in force all Additional Attorneys-General, Deputy Attorneys-General and [Assistant Attorney-General] shall be deemed to be public prosecutors and shall be competent to institute, file and conduct any proceedings, including appeal and revision, for and on behalf of the Federal Government before any court or tribunal, including a special court constituted under any law".*

9. It is notable that this section does **not** include contempt proceedings which are a different category of proceedings where by the prosecutor is usually a persona designate and appears to be a deliberate omission by the legislature. Even otherwise the Ordinance only relates to Federal law officers and does not cover the position of provincial law officers in such matters. Based on the particular facts and circumstances of this case where the original proceedings commenced before the family court in Malir Karachi, the petition was moved before this High Court, the cause of the original action arose in Karachi and the alleged contempt was made before the High Court of Sindh we find that the Prosecutor should be the advocate general of Sindh or a person designated by him from his office **especially as the alleged contemnor is a serving law officer in the Attorney general's office which may have a conflict of interest in prosecuting this case.** Before parting with this order we note that logically the prosecutor ought to be from the PG's office which has greater experience in prosecuting cases however this does not appear to be the legal position and perhaps this is an issue which the legislature in its wisdom may want to look into especially as the creation of the office of the PG is a relatively recent development **after** the Statutes/Ordinances/Rules etc relied upon by the various parties in this order.

10. We are fortified in our finding by the case of **Naushaba Kazi** (Supra) where by an advocate of this court who had allegedly committed contempt before a Family Court Judge in Karachi was prosecuted by the AAG which case was heard and decided **after** the insertion of S.4A of the Central Law officers Ordinance 1970.

11. As such since we find no error floating on the face of the record and as such the review application is dismissed and the learned Advocate General or a person designed by him amongst the AAG's working in his office is **directed** to prosecute these contempt proceedings and is **directed** to provide all necessary documents to the alleged contemnor and his counsel who shall both be present before this court on the next date of hearing without fail as sufficient time for this purpose has already been granted.

12. A copy of this order shall be sent to the Advocate General Sindh, Mr. Sarwar Khan, Additional Advocate General, Mr. Irshad Ali, Assistant Attorney General. Mr. Iqbal Awan learned APG, Mr. Muhammad Ahmed alleged contemnor, Mr. Badar Alam, Advocate for the alleged contemnor for information and compliance.

13. To come up on Friday 3<sup>rd</sup> June 2022 at 08.30 am for further proceedings.