

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitution Petition No.D-373 of year 2025
(Aijaz Ahmed and others V. Province of Sindh and others)

1. For hearing on office objection
2. For hearing of M.A No 1376 of 2025
3. For hearing of main case

Before

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioners: Aijaz Ahmed and 03 others
Through Mr. Humail Rafi Mahessar

Respondents: Mr. Abdul Ghani Bijarani
President District Bar Association Kashmore
Chief Secretary Sindh and others
Through Mr. Liaquat Ali Shar, Additional Advocate General

Date of hearing: 20.05.2025
Date of Order: 20.05.2025

ORDER

Nisar Ahmed Bhanbhro, J. Petitioners before us are the members of Sindh Police, Petitioners No 1 to 3 are serving as Inspectors and posted as Station House Officers at different Police Stations of District Kashmore @ Kandhkot, Petitioner No 4 is serving as Senior Superintendent of Police Kashmore @ Kandhkot. They have filed this petition, seeking enforcement of fundamental rights guaranteed to them as the citizens of the Country and members of the Police Force. They are annoyed by the activities of most civilized faction of the Society, popular as the “CREAM OF SOCIETY”, the lawyers, the architects and founders of beloved country, the pioneers of democracy and democratic values. The Founder of the nation Muhammad Ali Jinnah (Quaid e Azam) was a lawyer and the Founder of Democracy in beloved motherland Shaheed Zulfiqar Ali Bhutto was a lawyer. This dignified profession is symbol of moral values, ethics, democracy, rule of law and supremacy of Constitution is complained by the Petitioners of vandalism, harassment, mobbing and obstructing them from performance of lawful duties. They seek assistance of this Court to ensure protection of their fundamental rights to perform duties in accordance with law without fear and favor to any particular class of Society.

2. The Petitioners submit that they have a very excellent and dynamic career to their credit as police officers, they have discharged their duties honestly, diligently and have risked their lives many a times in the line of their duties so that the people feel themselves secured. They contend that in a protest call given by lawyers of Sindh condemning excavation of Canals from River Indus sit-inns were held at National Highway Baberloi bypass Sukkur and Indus Highway at Golo Mor Kandhkot which continued for about 12 days and resulted into heavy blockade. The Road blockade paralyzed civic life of the province. Petitioners put in their maximum for the security and safety of the protestors, kept day night vigil to avoid any untoward incident. The sit – inns were held without seeking permission of government, which violated the mandatory requirement of law. On 26.04.2025 some miscreants with intention to create law and order situation planned to sabotage sit-inns and

they got mixed in the sit-inns as protestors carrying sophisticated weapons for which the security was beefed up; Police from entire district was moved to the place of sit-inn to avoid awkward happenings and foil attempts of expected sabotage. The miscreants transmitted fake video broadcast through social media that protest camps were under siege and incited public for a torture campaign against the police, since there were orders from high ups to remain peaceful so no retaliating action was taken by police. The Petitioners were surprised by a protest call given by Respondent No 4 (Sindh Bar Council), a statutory body supervising the affairs of lawyers in Province of Sindh, to mark a black day on 28.04.2025 across province of Sindh directing all the lawyers to restrict police officers from entering into Court premises. This protest call gave an open license to the miscreants to maltreat and torture the police officials, who attended the Courts in obedience and compliance of the Court Orders. The Petitioners complain that the lawyers instead of supporting them filed a Criminal Miscellaneous Application under section 22 A Cr.P.C. before the Court of Learned District and Sessions Judge Kashmore @ Kandhkot seeking directions of the Court for registration of FIR. Petitioners complain that by their untiring efforts the law and order situation in Kashmore District had improved and life was returning to normalcy, hotels and markets were open until late in night but due to the victimization and hatred campaign and targeted attempts of demoralizing police by lawyers, the small factions of criminal gangs which were busted have again started surfacing in the District and moral of police being kept down, they cannot perform job diligently causing an ultimate loss to peace. They complain that uncalled for sit – inns and road blockades have paralyzed the business and social activities and it is high time that Government and Society gather to resolute the uncalled for protests and police be treated at par with other citizens of the country. Petitioners complain that being police officials they enjoy the same fundamental rights as are enjoyed by other citizens. The granted to them under the constitution are in peril at the hands of the “Cream of the Society” which may be protected. They have prayed for following relief:

- a. To direct the Respondents No 1 and 3 to regulate the sit-inns protests and blockade of roads issue by making appropriate measures and Respondents No 4 to 6 may be directed to regulate the issue of mobbing and maltreating the police and mobbing over police stations through a due process of law.
- b. To direct the Respondent No 7 and 8 to deal petitioners in accordance with law and cause no harassment to them and further restrain them from passing any adverse orders against Petitioners in Criminal Miscellaneous Application.
- c. Direct the Respondent Sindh Bar Council and other Bar Associations not to act upon its illegal and unlawful directions/ circulars / memorandum of placing entry ban of police officials in Court premises being without lawful authority.
- d. To provide protection and save the police officials of District Kashmore from undue victimization at the hands of police so that they may be able to discharge duties in accordance with law.
- e. Declare the acts of lawyers and Bar Associations of rioting on police stations and causing harassment to the police for registration of false cases as illegal and without lawful authority.

3. On notice by this Court, Mr. Abdul Ghani Bijarani, President District Bar Association Kashmore @ Kandhkot who is also member of Erstwhile Sindh Bar Council appeared before this Court and stated that matter between the lawyers of Kashmore and District Police has been amicably settled, pursuant thereto, the application under section 22 – A Cr.P.C. filed against the Petitioners has been withdrawn. He made an assurance to the Court that in future lawyers of Kashmore @ Kandhkot will not create any hindrance to the

police officers which may deter them from performance of official duties, he also assured to take up the issue of mobbing by lawyers over police stations in the Executive Council / Committee of Sindh Bar Council to lay down code conduct for lawyer.

4. When confronted to above factual position that matter in between police and lawyers stands resolved and purpose of instant petition stands served, and same may be disposed of on account of subsequent developments. Learned Counsel for the Petitioners contended that Petitioners through instant lis have raised an important issue of law making to cope up with the situations of road blockades, sit – insns and mob-rule, as there is no statutory backing to take action under such situations and old provisions of law envisaged under Code of Criminal Procedure and Pakistan Penal Code were not catering to the present day needs, therefore this petition may be heard and decided on merits. The Counsel insisted to issue appropriate directions to the Respondent Provincial Government for law making to regulate sit – insns and protests in the province, as in the given situations any action taken by police lacks statutory backing and results in institution of criminal cases against them.

5. Police is one of the important public institutions which plays pivotal role in upbringing a peaceful society. They sacrifice lives in the line of duty to protect the citizens. The situation in northern Districts of Sindh is not hidden from anybody, paying the cost of their lives police are making it possible to maintain peace in District Kashmore and Jacobabad. When Police have tightened the loins to countenance outlaws in that situation Cooperation of Civil Society in particular lawyers in this part of the province would be much earned aspect to promote peace in the area. If the police would be targeted for one or other reasons the definite benefit would be taken by troublemakers. In the given circumstances it would be in the fitness of things that lawyers and police should be on the same page but unfortunately this is not happening.

6. The profession of law is regulated under the provisions of Pakistan Legal Practitioners and Bar Councils Act 1973 (the said Act). Pakistan Bar Council at Country Level and Sindh Bar Council at Provincial Level are the bodies regulating the affairs of enrolment, discipline and code of conduct of lawyers. The Pakistan Bar Council has enacted the 'Canons of Professional Conduct and Etiquette of Advocates' Rule 166 of Pakistan Legal Practitioners and Bar Councils Rules, 1976, (the code of conduct) stipulates that, "It is duty of the Advocates to appear in Court when a matter is called and make satisfactory alternative arrangements if he is unable to." This provision of rules (the code of conduct) debar Bar Association to call for the strikes and suspension of Court works. The Phenomenon of strikes of Courts took a new turn during the lawyers' movement in year 2007 when top judges of the Judiciary were deposed and Lawyers played an extraordinary role in ensuring compliance with the Constitution and the rule of law and the independence of the judiciary. This moment was wholeheartedly supported by civil society and political parties of the Country. Shaheed Mohatarrama Benazir Bhutto herself led the rallies in support of lawyers. To protect and ensure compliance with the Constitution for the benefit and protection of the people, democracy and rule of law strikes were called and courts were boycotted, but the situation is not the same today. The Court work is being called off as a routine practice over trivial issues, which has hampered the functioning of the Courts and resulted into heaped up record rooms, the backlog of cases and a state of despondency amongst the litigants. The media reports regarding the protest of lawyers in the country are not healthy, though constitution of the Country under articles 16 and 17 recognizes the right to form association and assembly as fundamental right meaning thereby that a peaceful protest against the ill actions of executive is fundamental right of the Citizen and State owes a responsibility to

respond such protest in a positive manner and resolve the issue within the four corners of law. But such a protest should never cost the fundamental rights of other citizens, should not result into closure of courts, business activities and mob-rule. This act on the part of individuals including lawyers is disobedience to the state and to be loyal and faithful to the State is the basic duty of every citizen enshrined under Article 5 of the Constitution. Part-II chapter-I of the Constitution (Article 9 – 28) guarantees the fundamental rights and this Court under Article 199 has been saddled with a responsibility to protect the fundamental rights of the citizens and if violated by any statutory/executive authority discharging its functions in connection with the affairs of Federation and Province this Court can issue a writ to rectify the wrong. Bar Councils being statutory bodies discharging functions in connection with affairs of Federation and Province are also required to ensure the compliance to Constitution and their role to protect the fundamental rights should be at higher pedestal to that of an ordinary organization. Undoubtedly the uncontrolled protests, mobbing of police stations and other public offices and sometimes the siege of Courts stains the white radiance of dignity of lawyers, it needs an end, a solution through law making.

7. No doubt lawyers are the protectors of Constitution and rule of law, but in the recent past the Bar Associations have failed to maintain decorum within their ranks and they have failed to implement the code of conduct and ethics, people have started pointing fingers on this noble profession, the lawyers being the symbol and guarantee of protection of fundamental rights have agitated protests which has resulted into blockades of road, offending the fundamental rights of individuals in a manner that due to the blockades the life in province of Sindh came to a grinding halt. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word "life" is very significant as it covers all facts of human existence. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. Blocking roads for long durations prevents citizens from exercising their right to freedom of movement guaranteed under Article 15 of the Constitution and results into closure of business activities offending the rights guaranteed under Article 23, blockade of litigants' access to courts offends their right to fair trial and due process guaranteed under Article 10-A of the Constitution. Abusing, threatening and attacking people offends the fundamental right to live a life of dignity guaranteed under Article 14 (1) of the Constitution. When shops and businesses are forced to shut, when businessmen cannot open their vocation or business, when daily wagers are denied earning of bread and butter their right to work guaranteed by Article 18 of the Constitution is offended. When property is damaged or destroyed the right to hold and enjoy property guaranteed under Article 23 of the Constitution undermines. The right to assemble peacefully is always subject to command of law and any reasonable restrictions and conditions imposed by law in the interest of public order. The right of assembly is recognized as a right to preserve the democratic order, but it cannot be used to paralyze the life wherein the entire traffic flow comes to a standstill.

8. The maintenance of public order is the paramount duty of the State. If anyone propagates, "hatred or contempt, or excites or attempts to excite disaffection or incites to mob-rule, rioting and the destruction of property, he in fact needs to be dealt with iron hands. We need to build a tolerable society with high standard of moral and social values. Public gatherings whether political, religious or social which create disturbances and nuisances, or threaten some tangible public or private mischief, are not covered by protection under Article 19(1). Civilized society encourages peaceful protests to convey message to the authority of public dissatisfaction over the purported action but noisy and

disorderly protest is never welcome and would offend the rights guaranteed under Article 19(1) (a) or (b). The protests and strikes of the lawyers and political parties need to be regulated and petitioners have rightly made an attempt to awaken the government for law making in that regard. The Federal and Provincial Governments are required to provide statutory backing to the police by framing laws and rules through legislative enactment by imposing reasonable restrictions, till such time the law takes field through enact. The state is required to ensure regulation of protests in following manner:

1. The peaceful Protest may be recognized as right, for carrying out protest a mechanism be drawn, a particular place be fixed in each District and Taluka Head Quarter level and some particular places in capital city of Karachi. Every citizen and political party intending to protest should inform about the protest to the head of District Administration and on accord of permission may carry out protest, provided such assembly and protest is peaceful and complies with the law imposing reasonable restrictions in the interest of public order. A responsible officer should listen to the protestors' grievance and assure its redressal in accordance with law.
2. There should be no any permission for protest on public road and thoroughfares. Protestors who obstruct traffic and block roads and damage or destroy public and private property must be proceeded against in accordance with the law and held accountable.

9. The proposal herein above is rendered as a guideline to coup up with the situations as an interim measure until a suitable law making takes filed. Since the Petitioners intend to seek law making / enactment by legislative process for regulation of protests for whole of the province which evidences from the prayer clause of the petition, and this Bench of the High Court enjoys territorial jurisdiction over Larkana Division Only, therefore, it would be appropriate to refer this matter to the Honorable Head of the Constitution Benches for constitution of a larger Bench at Principal Seat to address this important issue or otherwise as deemed fit.

Office to send copy of this Order to Chief Secretary Sindh, Home Secretary, IG Police by fax for information and compliance. Office is also directed to send the file of this Petition for placing the same before Worthy Head of the Constitution Benches for further orders.

JUDGE

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