

THE HIGH COURT OF SINDH, KARACHI

Spl. Cr. Misc. Appl. 04 of 2015

[Muhammad Saleem Channa and another v. The State]

Applicants : (i) Muhammad Saleem Channa son of Najamuddin Channa (ii) Muhammad Aslam Khan son of Sikandar Hayat Khan through Mr. Darvesh K. Mandhan, Advocate.

The State/Respondent : Through Mr. Muhammad Khalil Dogar, Advocate.

Mr. Muhammad Khalid Javed Raan, DAG.

Date of hearing : 29-04-2025

Date of decision : 06-05-2025

ORDER

Adnan Iqbal Chaudhry J. - The Applicants are Customs officers. Under section 561-A Cr.P.C., they pray for quashing an FIR lodged against them for committing offences under section 156(1) of the Customs Act, 1969. FIR No.153(I)DCI/Import/Memon/2014, lodged on 20-12-2014, was still under investigation when the Applicants approached this Court and were granted protection against coercive action by an interim order dated 12.02.2015, thus halting investigation, which order continues till date.

2. The FIR was in respect of two containers of motor-cycle parts imported by Memon Motors (Pvt.) Ltd. from China and entered for transshipment from KICT, Karachi to Dry Port NLC, Hyderabad. It was alleged that at the KICT, Karachi, the total weight of the consignments was recorded as 84.37 M. Tons; whereas upon arrival at Dry Port Hyderabad the clearing agent of the importer filed a GD to declare a lesser weight of 80.36 M. Tons, which was nonetheless cleared by Customs officers at the Dry Port Hyderabad. At the time, the Applicants were posted at the Dry Port, Hyderabad.

3. Learned counsel for the Applicants attempted to mitigate the role of the Applicants as Customs officers in the examination and appraisal of the consignment. However, such facts were never investigated due to the restraining order passed in this case at the Applicants' instance.

4. Nevertheless, and without prejudice to the Applicants' contentions on the merits, it is settled law that jurisdiction of a High Court under section 561-A Cr.P.C. can be exercised only in respect of judicial orders and proceedings, not in respect of executive or administrative action or functions such as police investigation, which can however be checked in the exercise of writ jurisdiction under Article 199 of the Constitution of Pakistan provided the investigation is *malafide* or without jurisdiction. That had been laid down by a larger Bench of the Supreme Court as far back as *Shahnaz Begum v. The Hon'ble Judges of the High Court of Sind and Balochistan* (PLD 1971 SC 677) as follows:

“If an investigation is launched mala fide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding either under Article 98 of the Constitution of 1962 or under the provisions of section 491 of the Criminal Procedure Code, if the applicant is in the latter case in detention, but not by invoking the inherent power under section 561-A of the Criminal Procedure Code.”

The case of *Muhammad Ali v. Additional I.G. Faisalabad* (PLD 2014 SC 753) reiterated the same as follow:

“The law is quite settled by now that the jurisdiction of a High Court under section 561-A, Cr.P.C. can be exercised only in respect of orders or proceedings of a court and that the provisions of section 561-A, Cr.P.C. have no application vis-a-vis executive or administrative orders or proceedings of any non-judicial forum or authority.”

5. The ratio of the aforesaid pronouncements by the Apex Court is that the inherent power of the High Court under section 561-A Cr.P.C. is not intended to stifle criminal investigation nor to serve as a substitute for proceedings before the trial court.

6. Even where police investigation is complete and a challan is submitted to the trial court, the High Court does not ordinarily exercise jurisdiction under section 561-A Cr.P.C. unless the accused person has availed remedy before the trial court under section 249-A or section 265-K Cr.P.C., as the case may be. That too was reiterated by the Apex Court in *FIA v. Hamid Ali* (PLD 2023 SC 265) as follows:

“First of all, we want to make it clear that a High Court has no power under section 561-A, Cr.P.C. to quash an FIR or an investigation proceeding; therefore, the criminal miscellaneous applications filed under section 561-A, Cr.P.C. by some of the accused persons in the High Court for quashing the FIR and investigation proceeding in the present case were not maintainable. This is because jurisdiction of a High Court to make an appropriate order under section 561-A, Cr.P.C. necessary to secure the ends of justice, can only be exercised with regard to the judicial or court proceedings and not relating to proceedings of any other authority or department, such as FIR registration or investigation proceedings of the police department. This has been authoritatively held by a five-member bench of this Court in *Shahnaz Begum*. A High Court, therefore, can quash a judicial proceeding pending before any subordinate court under section 561-A, Cr.P.C., if it finds it necessary to make such order to prevent the abuse of the process of that court or otherwise to secure the ends of justice; however, it should not ordinarily exercise its power under section 561-A, Cr.P.C. to make such order unless the accused person has first availed his remedy before the trial court under section 249-A or 265-K, Cr.P.C. Where before the submission of the police report under section 173, Cr.P.C. to the court concerned, the accused person thinks that the FIR has been registered and the investigation is being conducted without lawful authority, he may have recourse to the constitutional jurisdiction of the High Court under Article 199 of the Constitution for judicial review of the said acts of the police officers.”

7. In view of the law cited above, this application for quashing an FIR and its investigation under section 561-A Cr.P.C. is not maintainable. That being so, the submission by the Applicants' counsel that adjudication proceedings before the department have since culminated in favor of the importer, can best be considered by the trial court. The application is dismissed.

JUDGE

Karachi

Dated: 06-05-2025

SHABAN*