

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-5072 of 2023

(Faisal Malik v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: 03.09.2025

Ms. Wajiha M. Mehdi, Assistant Attorney General

Nemo for the respondents.

ORDER

Adnan-ul-Karim Memon, J. – The petitioner, Faisal Malik, has filed the captioned constitutional petition under Article 199 of the Constitution of Pakistan. He is asking this court to accept his petition and quash the show-cause notice issued to him on June 10, 2023, by the learned Accountability Court-II in Karachi.

2. In his capacity as a Section Officer for the Ministry of Law & Justice, the petitioner, who oversees all Accountability Courts, issued a letter on May 4, 2023, to address a financial discrepancy. The letter focuses on Judge Aaliya Latif Unar of Accountability Court-II, Karachi, who was/is accused of continuing to receive a salary and benefits equivalent to a High Court Judge after her eligibility period expired on June 2, 2022. The petitioner's letter also alleged that the presiding officer has improperly taken on the role of Drawing and Disbursing Officer (DDO) herself, preventing the two designated officials from doing so, and requested the AGPR to assess the judge's pay and recover any excess amount, with the High Court of Sindh and other relevant divisions being notified. Following a letter dated May 4, 2023, the presiding officer issued a show cause notice to the petitioner under Section 16-B of the National Accountability Ordinance (NAO) 1999. The presiding officer alleged that the petitioner's letter contained unsubstantiated and contemptuous accusations, intended to bring her into "hatred, ridicule, and contempt." She claimed that the petitioner overstepped his authority by asking the Admin Judge to assess her salary, clarifying that the Admin Judge had no such power over other judges. The presiding officer further alleged that the letter was an attempt to undermine her authority and create conflict among judges. The petitioner was directed to appear in person to explain his conduct within seven days, with the warning that failure to comply would lead to legal consequences.

3. In his reply to the show cause notice, the petitioner stated that his actions were part of his official administrative duties to ensure financial discipline. He explained that his office discovered, during a routine audit, that a judge at Accountability Court-II was still receiving a High Court Judge's salary despite the relevant ordinance expiring on June 2, 2022. The petitioner maintained that the communication was a purely administrative matter, not intended to offend anyone. He clarified that he only conveyed factual information with the approval of the Secretary of Law & Justice and directed the matter to the appropriate authorities, including the senior-most judge and the High Court of Sindh, to ensure proper procedure. He requested that the notice be dismissed, as his actions were a result of performing his official duties.

4. The learned Assistant Attorney General representing the petitioner is arguing that the show-cause notice for contempt of court may be dropped on the premise that the National Accountability Ordinance (NAO), which granted special salaries to Accountability Court judges, expired on June 2, 2022. After this date, no Accountability Court judge should have been receiving that higher pay, which was required to be recovered if received in excess. The petitioner and the Ministry were simply performing their official administrative duty to point out a financial irregularity; however, this triggered the cause to the learned presiding officer of the Accountability court to issue a show cause notice to the petitioner to the effect that harsh language was used in the letter about recovery of excess amount, if any received by the learned presiding officer after lapse of the law. As per learned AAG, this action does not constitute contempt of court as the petitioner simply performed his duty to point out the illegality, which action is protected under the law. She further argued that since the NAO had lapsed, any provisions within it, including Section 16-B, were/are no longer in effect. Therefore, the contempt charge cannot be based on a non-existent law. The AAG cites a Supreme Court case, *Ikramullah v The State*, to support her argument that contempt of court charges should be used sparingly and only to uphold the administration of justice. She prayed for allowing the petition.

5. We have considered the arguments of the learned AAG on the maintainability of this petition under Article 199 of the Constitution.

6. Whether the assertions made in the letter issued by the petitioner constitute the offence of contempt as enumerated in the Contempt of Court

Ordinance 2003, and if so, whether there is sufficient evidence to support the assertion so made in the petition to order for withdrawal of the show cause notice.

7. Challenges to show cause notices are permissible, in cases, if the notice lacks jurisdiction, is barred by law, constitutes an abuse of process, or is issued by an authority without jurisdiction (coram non-judice) as held in the case of Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92).

8. Contempt of court is a matter between the court and the accused, but an exception exists: anyone who provides false information about a judicial contempt can be prosecuted for contempt themselves. The law has no exemptions from contempt proceedings. Furthermore, a person commits criminal contempt if they act with the intent to divert the course of justice. This is a key part of the criminal contempt definition. The petitioner responded that his actions were part of his administrative duties to ensure financial discipline. He explained that his office, during a routine audit, found that an Accountability Court-II judge was still receiving a High Court Judge's salary after the authorizing ordinance expired on June 2, 2022. He stated that he was simply conveying factual information with the approval of the Secretary of Law & Justice and had no intention of offending.

9. Based on the petitioner's actions in his official capacity, the show cause notice is no longer necessary. There is no evidence that the petitioner interfered with the administration of justice.

10. This petition stands disposed of in the aforesaid terms.

JUDGE

Head of Const. Benches