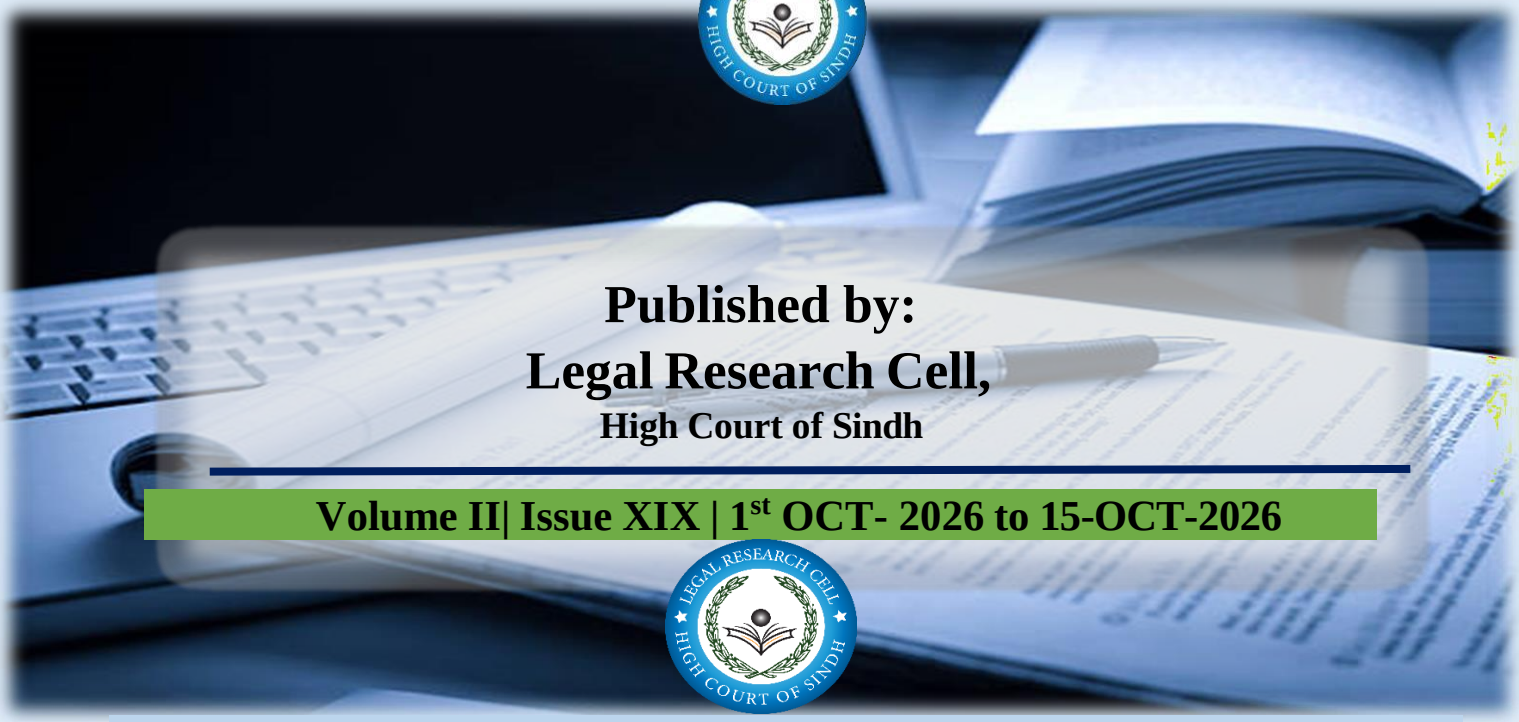
HIGH COURT OF SINDH

Case Law Review



Fortnightly Bench Update



Published by:
Legal Research Cell,
High Court of Sindh

Volume II| Issue XIX | 1st OCT- 2026 to 15-OCT-2026

An Overview of Recent Judgments of the Supreme Court of Pakistan, Sindh High Court, and Lahore High Court, Compiled and Published by the Legal Research Cell, High Court of Sindh, Karachi

NOTABLE JUDGMENTS

Sr. No.	Court	Subject	Area of Law	Page
01.	Federal Constitutional Court of Pakistan	Whether IIUI was required to consider the petitioner's request for extension under clause 3.12(iv) of the HEC Graduate Education Policy, 2023, notwithstanding expiry of the ordinary maximum period for completion of a PhD; and whether the University's decision-making process was amenable to judicial review without the Court intruding into academic evaluation.		
02.	Supreme Court of Pakistan	Whether the ocular account of the two eyewitnesses remained reliable despite a discrepancy between the number of shots described by them and the number of firearm wounds recorded medically; and whether the conviction or the High Court's reduction of sentence warranted interference.	Civil Law	
03.	Supreme Court of Pakistan	Whether the appellant established a legally enforceable title to the disputed land on the basis of revenue mutation entries whose cancellation had been ordered; and whether a suit for possession simpliciter was maintainable where the defendants contested the plaintiff's ownership.	Civil Law	
04.	Supreme Court of Pakistan	Whether the petitioner demonstrated an error apparent on the face of the record warranting review under Article 188 of the Constitution; and whether the principle of life expectancy or the alleged motive based on refusal of a marriage proposal justified commutation of the death sentence.	Constitutional Law	
05.	Supreme Court of Pakistan	Whether the prosecution proved the petitioner's guilt beyond reasonable doubt through reliable ocular or circumstantial evidence; whether the later-introduced eyewitness and forensic evidence could safely be relied upon; and whether the petitioner's failure to explain the death could sustain conviction under Article 122 of the Qanun-e-Shahadat Order, 1984.	Criminal Law	

06.	Supreme Court of Pakistan	Whether the tenants had defaulted in payment of rent under sections 10 and 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979; whether rent falling due during the ejectment proceedings or deposits made in the rent cases could be considered; whether the tenants' alterations were likely to impair the material value or utility of the premises under section 15(2)(iv); and whether the concurrent findings warranted interference by the Supreme Court.	Rent Law	
07.	Sindh High Court	Whether a third party who deposits an amount equivalent to the fine imposed upon a convict as a condition for suspension of sentence and release on bail is entitled to its return after the conviction and sentence attain finality, particularly when the convict subsequently dies?	Criminal Law	
08.		Whether the High Court should exercise its constitutional jurisdiction under Article 199 of the Constitution of Pakistan to quash an FIR after submission of the challan merely because the petitioners dispute the applicability of certain penal provisions of the Pakistan Penal Code, particularly when the criminal proceedings are pending before the competent Tribunal and the objections can be raised before that forum?	Criminal Law	
09.		Whether the Customs Appellate Tribunal had lawfully set aside the revocation of customs agents' licences and forfeiture of security due to insufficient particulars in the show-cause notices. The Court also considered whether an attempt to influence customs officers alone constitutes a violation of Rule 102(1)(k) of the Customs Rules, 2001; whether forensic verification of electronic evidence is mandatory; whether the evidence of alleged gratification could be reappraised in reference jurisdiction under Section 196 of the Customs Act, 1969; and whether the conditional nature of a customs agent's licence dispenses with compliance with prescribed procedural safeguards.	Customs Law	

10.		Whether the Commissioner Inland Revenue had validly invoked section 122(5A) of the Income Tax Ordinance, 2001, to amend the applicant's deemed assessment by shifting its profit on debt from the final tax regime to the normal tax regime, and whether the statutory requirements of an erroneous assessment prejudicial to revenue were established from the existing record. The Court also examined the applicant's entitlement to deduct and apportion expenditure under sections 40(1) and 67 of the Ordinance, read with Rule 13 of the Income Tax Rules, 2002, and whether the alleged absence of additional tax liability negated prejudice to revenue. Further, it considered whether the Appellate Tribunal Inland Revenue had rightly rejected the expenditure claim for want of supporting evidence and whether the applicant had been afforded a proper opportunity to substantiate that claim.	Income Tax Ordinance	
11.		The principal issue was whether default surcharge under section 205 of the Income Tax Ordinance, 2001, is payable automatically upon delayed deduction or deposit of tax, or whether the tax department must establish wilful default and consider the taxpayer's explanation before imposing it. The Court also examined the burden of proof regarding the occurrence of default and whether the taxpayer had reasonable grounds for the delay.	Income Tax Ordinance	
12.		Whether an accidental death during duty in 2015 entitled the deceased to Shaheed status under the applicable law, the 2023 amendment, or the principle of equal treatment.		
13.		Whether the testimony of a solitary injured eyewitness, corroborated by medical and circumstantial evidence, was sufficient to sustain the conviction of Kashan, and whether the prosecution had established the identity and participation of co-accused Kamran and Farhan beyond reasonable doubt despite the absence of a judicial identification parade and reliable independent corroboration.		

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

1. **Mst. Shehla Khaliq v. President, International Islamic University and anotherF.C.P.L.A. No. 59 of 2025**

Present: ***JUSTICE SYED HASAN AZHAR RIZVI;***
JUSTICE MUHAMMAD KARIM KHAN AGHA

Facts: The petitioner enrolled in the PhD (Law) program at the International Islamic University, Islamabad (IIUI), in Fall 2015 and completed coursework in Spring 2016. Delays occurred in the comprehensive examination and approval of her research synopsis. After marrying in 2017, she relocated to a remote area with limited internet and cellular connectivity and was responsible for caring for two children; the COVID-19 pandemic also affected access to research facilities. She completed her thesis and approached IIUI on 29 August 2024, but was informed that her registration had become time-barred. Her representation, supported by the thesis, plagiarism report and supervisor's confirmation, was rejected by letter dated 6 May 2025. The Islamabad High Court dismissed her constitutional petition, leading to the present petition for leave to appeal.

Issues: Whether IIUI was required to consider the petitioner's request for extension under clause 3.12(iv) of the HEC Graduate Education Policy, 2023, notwithstanding expiry of the ordinary maximum period for completion of a PhD; and whether the University's decision-making process was amenable to judicial review without the Court intruding into academic evaluation.

Rules: Section 10 of the Higher Education Commission Ordinance, 2002 empowers HEC to formulate policies, guiding principles and standards for higher education. Clause 3.12 of the HEC Graduate Education Policy, 2023 prescribes the PhD completion timeline and clause 3.12(iv) permits a university, through an appropriate authority, to examine the causes of delay and consider an extension where force majeure or circumstances beyond the student's control are established; it also contemplates corrective measures where delay results from institutional process or administrative reasons. University autonomy protects academic judgment, but does not exclude judicial review of the legality of administrative or regulatory decision-making. Judicial discipline also requires a Bench to follow a binding or co-equal Bench precedent unless the matter is referred to a larger Bench.

Application: The Court distinguished academic assessment of a thesis from the administrative decision whether to consider an extension request. The petitioner did not ask the Court to evaluate the thesis or substitute its academic opinion for that of the University; she challenged the failure to assess the causes of delay under the applicable HEC framework. The Court found that the University and the High Court had not adequately examined the operation and applicability of clause 3.12(iv), including the asserted institutional delays, personal circumstances and pandemic-related impediments. The discretion to grant an extension remained with the competent authority, but it had to be exercised by considering relevant circumstances and the governing policy through a lawful and reasoned process.

Conclusion: Leave to appeal was granted and the petition was converted into an appeal, which was allowed. The impugned High Court judgment and IIUI's regret letter rejecting the

extension request were set aside. The matter was remitted to the competent authority of IIUI for fresh consideration under clause 3.12(iv) of the HEC Graduate Education Policy, 2023. The petitioner is to receive a reasonable opportunity of hearing and may submit relevant material; the authority must pass an independent, reasoned order, preferably within 30 days of receiving a certified copy of the judgment, and communicate its decision to the Court through the Registrar. No order as to costs was made.

---

2. **THE SUPREME COURT OF PAKISTAN**

Muhammad Azhar and Muhammad Shahzad v. The State and another

J.P. No. 424 of 2021 a/w Crl.P.L.A. No. 1567-L of 2021

Present: ***JUSTICE MUHAMMAD HASHIM KHAN KAKKAR;***
JUSTICE SALAHUDDIN PANHWAR; JUSTICE ISHTIAQ IBRAHIM

Source: **https://www.supremecourt.gov.pk/downloads_judgements/j.p._424_2021.pdf**

Facts: Muhammad Azhar and co-accused Muhammad Abbas were charged under section 302 PPC for the murder of Mst. Sakhian Bibi in FIR No. 20 of 2017, registered at Police Station Minchinabad, District Bahawalnagar. The Trial Court convicted Azhar under section 302(b) PPC and sentenced him to death, while acquitting Abbas. The High Court maintained Azhar's conviction but converted the death sentence to life imprisonment. Azhar sought leave to appeal against his conviction, while Muhammad Shahzad sought leave to challenge the commutation of the sentence.

Issues: Whether the ocular account of the two eyewitnesses remained reliable despite a discrepancy between the number of shots described by them and the number of firearm wounds recorded medically; and whether the conviction or the High Court's reduction of sentence warranted interference.

Rules: In criminal cases, evidence must be assessed cumulatively and in the context of the circumstances of each case. Relationship to the deceased does not, by itself, make an eyewitness unreliable where the witness's presence is natural and testimony is otherwise confidence-inspiring. Minor discrepancies arising from a sudden, traumatic occurrence do not automatically destroy credibility. Courts must assess testimony in light of ordinary human conduct and perceptual limitations, rather than demand artificial or mathematically exact recollection. The prosecution must establish guilt through reliable evidence, and appellate interference depends on whether the findings are legally or factually unsustainable.

Application: The Court considered the presence of the complainant, the deceased's son, and the second eyewitness natural because the incident occurred at their residence and in daylight. Both witnesses consistently identified the petitioner, described the firearm and close-range firing, and assigned him the direct role. Medical evidence corroborated the principal firearm injuries and proximity of firing. The difference between the witnesses' account of five shots and the medical record of a greater number of wounds was not considered fatal in the circumstances: the occurrence unfolded within seconds, and a witness could not reasonably be expected to count and map every injury while witnessing his mother being shot. The Court stressed that eyewitness testimony should reflect genuine human

observation and that each case must be evaluated on its own evidentiary record.

Conclusion: J.P. No. 424 of 2021 was dismissed and leave to appeal was refused. The Court also dismissed Crl.P.L.A. No. 1567-L of 2021, finding no case for enhancement of the sentence and considering the High Court's reasons for converting death to life imprisonment plausible. The Court additionally cautioned against expecting eyewitnesses to describe the exact trajectory and anatomical impact of every bullet with microscopic precision in a sudden, high-stress attack.

---

3. **THE SUPREME COURT OF PAKISTAN**

Abdul Raheem (deceased) through legal representatives v. Government Normal School (now Government College Elementary Teachers), Kamalia, District Toba Tek Singh, through its Principal and others

Civil Appeal No. 253-L of 2010

Present: ***Justice Jamal Khan Mandokhail;***

Justice Shahid Waheed; Justice Irfan Saadat Khan

Source: **https://www.supremecourt.gov.pk/downloads_judgements/c.a._253_l_2010.pdf**

Facts: The appellant instituted a suit for possession of one kanal of land at Kamalia, claiming to have purchased it through a mutation dated 30 September 1985. The respondents maintained that Government Normal School, Kamalia, had been in exclusive and uninterrupted possession of the land since 1926. The Trial Court initially found in favour of the plaintiff, but the High Court reversed that decision and dismissed the suit. The appellant challenged the High Court's judgment before the Supreme Court.

Issues: Whether the appellant established a legally enforceable title to the disputed land on the basis of revenue mutation entries whose cancellation had been ordered; and whether a suit for possession simpliciter was maintainable where the defendants contested the plaintiff's ownership.

Rules: A revenue mutation is not, by itself, a document of title, and a claimant must establish ownership through the underlying sale instrument or other legally sufficient evidence. Under section 8 of the Specific Relief Act, 1877, the relief sought must be appropriate to the nature of the title dispute. As explained in Khurshid Ali v. Miangul Adnan Aurangzeb (2025 SCMR 34), where title is disputed or clouded, a plaintiff ordinarily must seek a declaration of title together with appropriate consequential relief; where the plaintiff is out of possession, possession should also be sought. A written statement must be read as a whole to determine the substance of the defence.

Application: The appellant relied on mutation entries that had been cancelled by the District Officer (Revenue) on 23 November 2004. Although cancellation of a mutation does not necessarily invalidate an underlying sale transaction, the original sale deeds had not been produced before the Trial Court or tendered as additional evidence before the First Appellate Court. The appellant therefore failed to discharge the burden of proving title. Independently, the respondents' assertion of longstanding possession and their resistance to recovery on the basis of the appellant's alleged ownership did not amount to an admission of title. Because ownership itself was in dispute, the controversy could not be resolved through a possession-only suit without seeking a declaration of title.

Conclusion: The Supreme Court found no ground to interfere with the High Court's judgment and dismissed the appeal. There was no order as to costs.

4. **THE SUPREME COURT OF PAKISTAN**

Muhammad Kamran v. The State and another

Criminal Review Petition No. 73 of 2025 in Criminal Appeal No. 91 of 2024

Present: ***Justice Muhammad Hashim Khan Kakar;***

Justice Salahuddin Panhwar; Justice Ishtiaq Ibrahim

Source: **https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p._73_2025.pdf**

Facts: Muhammad Kamran was convicted under section 302(b) PPC for murdering Mst. Memoona Shaheen by gunfire at her residence. The prosecution motive was that the deceased and her family had declined his marriage proposal. The Trial Court imposed the death sentence and the High Court maintained the conviction and sentence; the Supreme Court dismissed his appeal by judgment dated 16 May 2025. In review, the petitioner argued that he had spent approximately 14–16 years in custody and that the personal nature of the motive should mitigate the sentence and justify conversion of the death sentence to life imprisonment.

Issues: Whether the petitioner demonstrated an error apparent on the face of the record warranting review under Article 188 of the Constitution; and whether the principle of life expectancy or the alleged motive based on refusal of a marriage proposal justified commutation of the death sentence.

Rules: Article 188 of the Constitution, read with Part IV, Order XXVIII of the Supreme Court Rules, 2025, confines review jurisdiction to narrow grounds and does not permit a second appeal or a rehearing of matters already decided absent an apparent error or other exceptional basis. As discussed in Sher Afzal v. State (Criminal Review Petition No. 166 of 2025 in Criminal Appeal No. 229 of 2021), the life-expectancy principle is not automatically available to all condemned prisoners: the stated criteria include at least 25 years behind bars, additional compelling mitigation, and an offence that is not among the most aggravated. A rejected marriage proposal is not, by itself, a mitigating circumstance for murder.

Application: The petitioner had been arrested on 5 September 2012 and had spent approximately 14 years in custody, falling short of the 25-year threshold discussed in Sher Afzal. The Court rejected the argument that the period spent on death row entitled him to treatment equivalent to a prisoner serving life imprisonment, noting that the sentences are legally distinct. It further held that the deceased's refusal of a marriage proposal did not constitute sudden, grave provocation or mitigation; treating a woman's refusal as justification for murder would wrongly subordinate her autonomy to a suitor's preference. The nature and circumstances of the offence were regarded as grave and aggravated, rather than mitigating.

Conclusion: The review petitioner failed to identify an error apparent on the face of the record or another ground within the narrow scope of review jurisdiction. The Criminal Review Petition was dismissed and leave was refused.

5. **THE SUPREME COURT OF PAKISTAN**

Salman v. The State

Jail Petition No. 565 of 2022

Present: ***Justice Malik Shahzad Ahmad Khan;***

Justice Shakeel Ahmad

Source: **https://www.supremecourt.gov.pk/downloads_judgements/j.p._565_2022.pdf**

Facts: Salman was tried with co-accused Imran in FIR No. 68 dated 23 March 2013, registered under sections 302/34 PPC at Police Station Qasimabad, Hyderabad, for the murder of his wife, Mst. Tanvir Akbar alias Ayesha. The Trial Court convicted both men and sentenced them to life imprisonment with compensation; the High Court maintained Salman's conviction but acquitted Imran by extending the benefit of doubt. Salman challenged his conviction before the Supreme Court. The prosecution case included a claim that Salman telephoned his father-in-law and confessed, a subsequently introduced eyewitness, recovery of a pistol and a positive forensic report.

Issues: Whether the prosecution proved the petitioner's guilt beyond reasonable doubt through reliable ocular or circumstantial evidence; whether the later-introduced eyewitness and forensic evidence could safely be relied upon; and whether the petitioner's failure to explain the death could sustain conviction under Article 122 of the Qanun-e-Shahadat Order, 1984.

Rules: The prosecution bears the burden of proving guilt beyond reasonable doubt. Article 122 of the Qanun-e-Shahadat Order, 1984 does not relieve the prosecution of that burden and can operate only after the prosecution has first produced convincing and reliable evidence. A conviction cannot rest merely on the recovery of a body from the accused's home, an unexplained death, conjecture or high probabilities. Safe custody and integrity of recovered physical evidence must be established. A single material infirmity creating reasonable doubt may entitle an accused to the benefit of doubt.

Application: The FIR was lodged after a delay of approximately four hours and did not identify any eyewitness. Muhammad Riaz (PW-2), a relative who lived in another district, was introduced as an eyewitness later that night; his explanation for being at the scene was not satisfactorily established, and he neither immediately informed the complainant nor the police after the alleged occurrence. The Court found his testimony unreliable. The alleged telephone confession was not supported by the relevant phone numbers or call-detail records. The pistol and empties were deposited together at the forensic laboratory, and the prosecution did not produce the witness responsible for carrying them there to establish safe custody. The alleged matrimonial motive was vague and unsupported by evidence. In the absence of reliable foundational evidence, the petitioner's failure to explain the death could not cure the prosecution's deficiencies.

Conclusion: The petition was converted into an appeal and allowed. The judgments of the High Court dated 17 October 2022 and the Trial Court dated 7 November 2017 were set aside. Salman was acquitted by extending the benefit of doubt and ordered to be released forthwith unless required in another case.

6. **THE SUPREME COURT OF PAKISTAN**

M/s Universal Express (Pvt.) Limited and others v. Karachi Properties Investment Company (Pvt.) Limited and others

Civil Petitions Nos. 397-K and 399-K to 402-K of 2026

Present: ***Justice Yahya Afridi, Chief Justice of Pakistan;***

Justice Muhammad Shafi Siddiqui

Source: **https://www.supremecourt.gov.pk/downloads_judgements/c.p._397_k_2026.pdf**

Facts: Five tenants challenged the High Court of Sindh judgments dated 19 June 2026 affirming ejectment orders made in proceedings initiated by Karachi Properties Investment Company (Pvt.) Limited. The landlord relied principally on rent default, maintenance-charge default and impairment of the material value or utility of the premises under the Sindh Rented Premises Ordinance, 1979. The Rent Controller allowed the ejectment applications on 8 October 2024. The Appellate Court maintained findings of rent default and impairment but reversed the maintenance-default finding; in Universal Express's case, the High Court restored a finding relating to subletting. The High Court dismissed the tenants' constitutional petitions and directed them to vacate within 45 days, subject to deposit of rent for that period.

Issues: Whether the tenants had defaulted in payment of rent under sections 10 and 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979; whether rent falling due during the ejectment proceedings or deposits made in the rent cases could be considered; whether the tenants' alterations were likely to impair the material value or utility of the premises under section 15(2)(iv); and whether the concurrent findings warranted interference by the Supreme Court.

Rules: Sections 10(1) and 15(2)(ii) of the Sindh Rented Premises Ordinance, 1979 govern the time and obligation for payment or valid tender of rent, including the distinction between rent agreed to be paid in advance and rent for which no date has been fixed. Section 15(2)(iv) concerns acts likely to impair the material value or utility of the premises. Once a landlord gives evidence on oath that rent has not been received, the tenant must affirmatively establish payment or valid tender. Concurrent findings may be disturbed where they are perverse, based on misreading or non-reading of material evidence, or rest on an erroneous legal proposition; the mere possibility of another view is insufficient.

Application: The courts below had concurrently found that rent was payable in advance and that short payments or delays occurred, including for February and March 2018. The tenants produced no contemporaneous record showing that they had disputed the enhanced rent, and the unexplained short payments remained unpaid. The statutory periods applicable to rent payable in advance could not be displaced by relying on the different timeframe applicable where no advance-payment agreement existed. The Supreme Court also examined the tenants' objections concerning rent falling due during the proceedings, deposits in the rent cases and physical alterations to the premises. It found no material legal error or misreading/non-reading of evidence sufficient to displace the concurrent findings regarding rent default and impairment.

Conclusion: The Supreme Court found no justification to interfere with the High Court judgments maintaining the ejectment orders. All five civil petitions were dismissed and leave to appeal was refused.

7. SINDH HIGH COURT

Muhammad Younis Dawood v. The State
Criminal Appeal No. 833 of 2019

Present: Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Khalid Hussain Shahani

Source: ***https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzI2NDq1Y2Ztcy1kYzqz&citation=2026+SHC+KHI+1919***
2026 SHC KHI 1919

Facts: Muhammad Younis Dawood was convicted by the Special Court (Offences in Banks), Karachi, for fraud and forgery and sentenced to imprisonment along with a fine of Rs. 13,464,000. During the pendency of his criminal appeal, the High Court suspended his sentence and granted bail subject to deposit of the entire fine amount, besides separate surety of Rs. 100,000. Muhammad Haroon furnished both amounts on his behalf. Subsequently, the High Court dismissed the appeal and upheld the conviction and sentence. The convict died during the pendency of his petition before the Supreme Court, which was later dismissed as withdrawn and infructuous. Thereafter, Muhammad Haroon applied for return of the deposited amount, claiming that it belonged to him and that his surety obligation had ended. The complainant company opposed the application and sought payment of the amount as compensation for its loss.

Issue: Whether a third party who deposits an amount equivalent to the fine imposed upon a convict as a condition for suspension of sentence and release on bail is entitled to its return after the conviction and sentence attain finality, particularly when the convict subsequently dies.

Rule: Under Section 426, Cr.P.C., an appellate Court may suspend a sentence and grant bail subject to lawful conditions. Where an amount is voluntarily deposited to secure payment of a fine, its nature and purpose are determined by the terms of the bail order rather than the identity of the depositor. The Supreme Court in 2024 SCMR 749 held that an amount voluntarily deposited to secure an adjudicated financial liability cannot be reclaimed as ordinary surety once the conviction and liability attain finality. Section 6(4) of the Offences in Respect of Banks (Special Courts) Ordinance, 1984, provides for application of the recovered fine towards compensation in the circumstances contemplated by that provision.

Application: The High Court observed that the convict had voluntarily offered to deposit the entire fine amount to secure the complainant company's interest, expressly subject to the outcome of his appeal. The complainant had raised no objection to his release on bail on the strength of that undertaking. Since the appeal was dismissed and the conviction and fine remained undisturbed, the condition governing the deposit had been fulfilled. The subsequent death of the convict did not alter the financial consequences of the undertaking. The Court rejected Muhammad Haroon's contention that the amount should be returned merely because it originated from his personal bank account, holding that he had deposited it on

behalf of the convict. The Court further distinguished the fine deposit from the separate ordinary surety of Rs. 100,000, which was furnished solely to secure the convict's appearance and whose purpose had come to an end.

Conclusion: The High Court declined to return the pay order amounting to Rs. 13,464,000 and directed that Rs. 13,364,000, along with proportionate accrued profit, be paid to the complainant company as compensation, while the remaining Rs. 100,000 of the fine, together with its proportionate profit, be deposited in the Government Treasury. However, the Court ordered the return of the separate ordinary surety of Rs. 100,000, along with accrued profit, to Muhammad Haroon, holding that his obligation to secure the convict's appearance had terminated without forfeiture.

---

8. SINDH HIGH COURT

Shakeel Ahmed and another v. Province of Sindh and others
Constitutional Petition No.D-3663 of 2026

Present: ***Mr. Justice Muhammad Saleem Jessar***
Mr. Justice Abdul Hamid Bhurgri

Source: ***https://caselaw.shc.gov.pk/caselaw/view-file/MzI2MTcxY2Ztcy1kYzqz***
2026 SHC KHI 1908 2026 SHC KHI 1911

Facts: The petitioners filed a constitutional petition under Article 199 of the Constitution of Pakistan, challenging the legality of FIR No. 29 of 2026, registered at Police Station KW&SC East Zone, Karachi, under Sections 430, 427 and 34 of the Pakistan Penal Code (PPC), read with Section 39(2) and (3) of Schedule I/II of the Karachi Water and Sewerage Corporation Act, 2023. They sought quashment of the FIR and protection against coercive action, including arrest. The petitioners contended that Sections 430 and 427 PPC were not scheduled offences under the Act and that the alleged offence should have been prosecuted through a complaint before the competent Karachi Water and Sewerage Corporation Tribunal rather than through registration of an FIR by the police. During the proceedings, it emerged that the investigation had been completed and the challan had already been submitted before the Tribunal. The respondents opposed the petition on the ground that the petitioners had an adequate and efficacious remedy before the trial forum and had not yet challenged the applicability of the relevant penal provisions through an appropriate application before that forum.

Issue: Whether the High Court should exercise its constitutional jurisdiction under Article 199 of the Constitution of Pakistan to quash an FIR after submission of the challan

merely because the petitioners dispute the applicability of certain penal provisions of the Pakistan Penal Code, particularly when the criminal proceedings are pending before the competent Tribunal and the objections can be raised before that forum?

Rule: The constitutional jurisdiction of the High Court is extraordinary in nature and is ordinarily not exercised when an adequate and efficacious alternative remedy is available before the competent trial forum. In Director General, Anti-Corruption Establishment, Lahore v. Muhammad Akram Khan (PLD 2013 SC 401), the Supreme Court held that, after the trial Court takes cognizance of an offence, the fate of the prosecution should ordinarily be determined by that Court through remedies available under criminal law. The distinction between the inherent jurisdiction under Section 561-A Cr.P.C. and constitutional jurisdiction under Article 199 was explained in Shahnaz Begum v. The Honourable Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677) and FIA v. Syed Hamid Ali Shah (PLD 2023 SC 265). However, the submission of a challan does not absolutely bar constitutional interference. In exceptional circumstances, proceedings may be quashed where no offence is disclosed, the proceedings are manifestly unlawful, the action is without jurisdiction or mala fide, or continuation of the proceedings would amount to an abuse of the process of law. This principle was recognised in Aurangzaib Alamgir v. Muhammad Sajid (PLD 2025 SC 53), The State through Prosecutor General Punjab v. Chaudhry Mohammad Khan (PLD 2025 SC 254), and Muhammad Safeer v. Muhammad Azam (PLD 2024 SC 838). Therefore, the availability of an alternative remedy ordinarily governs the exercise of constitutional jurisdiction, subject to exceptional circumstances justifying intervention.

Application: Applying the above principles, the High Court observed that the investigation had been completed and the challan was pending trial before the Karachi Water and Sewerage Corporation Tribunal. The petitioners had failed to demonstrate any exceptional circumstance warranting the exercise of constitutional jurisdiction. Their principal objection was that Sections 430 and 427 PPC were not included in the Schedules to the Karachi Water and Sewerage Corporation Act, 2023, and therefore could not be invoked in the circumstances of the case. However, they were unable to identify any provision of the Act or other applicable law conclusively establishing that the PPC provisions were legally inapplicable. The Court held that the applicability of the penal provisions, compliance with the special procedure prescribed under Section 38 of the Act, and the jurisdiction of the Tribunal were legal questions that could appropriately be determined by the trial forum. The mere assertion that certain offences were not included in the Schedules to the Act did not, by itself, establish that the proceedings were unlawful or void. Since no patent illegality, mala fide action or manifest abuse of process had been established, the petitioners were required to

pursue the ordinary legal remedy before the Tribunal rather than invoke the extraordinary constitutional jurisdiction of the High Court.

Conclusion: The High Court dismissed the constitutional petition, along with the listed applications, holding that no exceptional circumstances had been established to justify quashment of the FIR under Article 199 of the Constitution after submission of the challan. However, the Court granted liberty to the petitioners to approach the trial Court/Tribunal through an appropriate application challenging the applicability of the penal provisions, the legality of cognizance or the jurisdiction of the Tribunal. The Tribunal was directed to decide any such application strictly in accordance with law, independently and without being influenced by the observations made in the order. The Court clarified that its decision did not express any opinion on the merits of the pending criminal proceedings.

---

9. HIGH COURT SINDH

The Collector of Customs (Hqrs), Karachi v. M/s Eagle Clearing & Forwarding Agency, Karachi and others,

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON (AUTHOR),

https://caselaw.shc.gov.pk/caselaw/view-file/MzI2NDQ1
2026 SHC KHI 1918

Facts: The Collector of Customs (Headquarters), Karachi, filed nine Special Customs Reference Applications under Section 196 of the Customs Act, 1969, before the High Court of Sindh at Karachi, challenging the judgments of the Customs Appellate Tribunal that had set aside the revocation of the respondents' customs agents' licences and the forfeiture of their security. The proceedings originated from allegations that the respondents had attempted to influence customs officers through illegal gratification, allegedly facilitated by Ayaz Ali, following an investigation into an Appraising Officer, Muhammad Ismail, and the registration of FIR No. 01/2025 on 30 January 2025. On 1 February 2025, the respondents' licences were suspended and show-cause notices were issued alleging attempts to offer bribes and influence the assessment of goods declarations, but the notices did not specify the relevant goods declarations, payment amounts, dates, persons involved or supporting electronic communications. Despite the respondents' denial of the allegations and requests for the supporting material, the Licensing Authority, through orders dated 13 March 2025, revoked their licences and ordered forfeiture of their security. Their departmental appeals were dismissed by the Chief Collector of Customs, whereafter the Customs Appellate Tribunal allowed their appeals and set aside the impugned orders, holding, inter alia, that the notices were vague, material particulars had not been disclosed, and the proceedings suffered from procedural defects. The Collector of Customs consequently approached the High Court, contending that the notices were

legally sufficient, the evidence established gratification, an actual benefit was not necessary to establish an attempt to influence a customs officer, and the Tribunal had improperly assessed the electronic evidence.

Issue: The principal issue before the High Court was whether the Customs Appellate Tribunal had correctly set aside the revocation of the respondents' customs agents' licences and the forfeiture of their security on the ground that the show-cause notices failed to disclose the material particulars of the alleged bribery and attempted influence of customs officers.

The Court was also required to determine whether Rule 102(1)(k) of the Customs Rules, 2001, requires proof that the customs agent actually obtained a favourable assessment or other benefit, or whether an attempt to influence a customs officer is sufficient to constitute a violation. Another question concerned whether a forensic report is invariably necessary to establish the authenticity of WhatsApp communications and other electronic evidence relied upon in licensing proceedings.

The Court further considered whether it could re-examine the evidence of alleged gratification in its reference jurisdiction under Section 196 of the Customs Act, 1969, and whether the conditional nature of a customs agent's licence permitted its revocation without strict compliance with the procedural safeguards prescribed by law.

Rule: Section 196 of the Customs Act, 1969, provides for the determination of questions of law arising from decisions of the Customs Appellate Tribunal. The High Court explained that the Tribunal is ordinarily the final forum of fact and that the High Court cannot reappraise the evidence merely because a party disagrees with the Tribunal's findings. Interference may be justified where a finding is based on no evidence, a misreading of the record or a misdirection in law. In this regard, the Court referred to Pakistan State Oil, 2006 SCMR 425.

Rule 101(m) of the Customs Rules, 2001, prohibits a customs agent from attempting to influence a customs officer in a matter pending before the customs authorities through an inducement, promise of advantage, gift, favour or other thing of value. Rule 102(1)(k) authorises the suspension or revocation of a customs agent's licence where the licensee attempts to influence a customs employee through bribery or by offering a special inducement or gift.

Rule 102(3) provides that a licence cannot be revoked unless the licensee is informed in writing of the allegations and afforded an opportunity of hearing. The notice must disclose the factual allegations constituting the alleged violation rather than merely state the conclusion that misconduct has occurred. The Court relied upon Muhammad Ismail, 2023 SCMR 1319, Khyber Electric Lamps, 2001 SCMR 838, and Fazal Hussain, 2026 SCMR 723, in considering the requirements of a legally sufficient show-cause notice.

Article 10-A of the Constitution of Pakistan guarantees the right to a fair trial and due process in the determination of civil rights and obligations. Accordingly, an administrative authority exercising the power to revoke a professional licence must observe procedural fairness and provide a meaningful opportunity to answer the allegations.

Article 164 of the Qanun-e-Shahadat Order, 1984, permits the production of evidence made available through modern devices and techniques. Electronic evidence is not inadmissible merely because it is electronic, nor is a forensic report invariably a

mandatory prerequisite. However, the material relied upon must be disclosed, its provenance must be established, and its attribution to the person concerned must be supported by cogent material.

Rule 98(9) of the Customs Rules, 2001, makes a licensee responsible for the acts of authorised representatives and persons holding customs permits on its behalf. Nevertheless, whether a particular person acted on behalf of a licensee is a question of fact that must be established in the proceedings.

Application: The Customs Department issued show-cause notices on 1 February 2025, alleging that the respondent customs agents had attempted to influence customs officers through illegal gratification, allegedly using Ayaz Ali as an intermediary. The notices referred to WhatsApp communications and alleged attempts to secure favourable assessments of goods declarations. However, they did not specify the relevant goods declaration numbers, the amounts allegedly offered or transferred, the dates and modes of payment, the persons acting on behalf of the licensees, or the communications relied upon to substantiate the allegations. The respondents denied the allegations and requested the material on which the department had relied. Nevertheless, the Licensing Authority proceeded to revoke their licences and order forfeiture of their security through orders dated 13 March 2025. The specific particulars of the alleged transactions appeared for the first time in those orders, while further material, including transfer screenshots, WhatsApp transcripts, voice notes and account statements, was introduced at later stages of the proceedings. The High Court held that Rule 102(3) requires the Licensing Authority to communicate the actual factual case against the licensee. Merely alleging that a person attempted to offer a bribe, without disclosing the material particulars and supporting communications available to the department, does not provide a meaningful opportunity of defence. The respondents could not reasonably be expected to answer allegations whose essential factual basis had not been disclosed before the adverse orders were passed. The Court therefore upheld the Tribunal's conclusion that the show-cause notices were legally deficient and that the proceedings founded upon them could not stand. Regarding the requirement of actual benefit under Rule 102(1)(k), the High Court disagreed with the Tribunal's interpretation. The Tribunal had reasoned that a violation required proof not only of an attempt to influence a customs officer but also of the nature and extent of the benefit obtained. The High Court held that the language of Rule 102(1)(k), read with Rule 101(m), prohibits the attempt itself. The violation is complete when an inducement is offered or paid with the intention of influencing a customs officer, irrespective of whether the officer is actually influenced, a favourable assessment is obtained, any benefit results, or revenue loss occurs. However, the Court emphasised that even an allegation of an unsuccessful attempt must be properly particularised in the show-cause notice. Consequently, the Tribunal was incorrect in requiring proof of actual benefit, but that error did not cure the independent procedural defect in the notices.As to electronic evidence, the department relied upon WhatsApp communications, voice notes, screenshots of transfers and account statements. The Tribunal had questioned the identities of the participants, ownership of the telephone numbers and authenticity of the communications. The High Court held that Article 164 of the Qanun-e-Shahadat Order, 1984, does not make a forensic report an invariable condition for relying upon electronic evidence. Nevertheless, where such evidence is relied upon to revoke a licence, it must be

disclosed to the licensee, its provenance must be established, and its attribution must be supported by cogent material. In the present cases, the principal difficulty was that the relevant material had not been fairly disclosed before revocation and its attribution to the respondents had not been adequately established in the proceedings as conducted. The Tribunal's assessment of the reliability and attribution of the evidence therefore disclosed no error of law warranting interference. The department further contended that money transfers and related communications established the respondents' involvement in bribery. The respondents disputed this allegation, and Eastern Agencies Corporation explained the transfer of Rs. 425,000 as payment of transport charges to M/s Overseas International Cargo on behalf of its clients. The High Court observed that an alleged admission must be read as a whole. Acceptance that a payment was made does not, by itself, establish that the payment constituted a bribe where an explanation is offered. Whether the transfers were bribes, whether the persons making them acted on behalf of the licensees, and whether the communications could be attributed to the respondents were factual questions. Under Section 196 of the Customs Act, 1969, the High Court could not simply substitute its own appreciation of the evidence for that of the Tribunal. Furthermore, once the notices were found not to comply with Rule 102(3), no valid finding of violation could be sustained in those proceedings. Finally, the Court accepted that a customs agent's licence is a conditional privilege and does not confer an unconditional vested right to continue conducting customs business irrespective of the licensee's conduct. However, the authority to revoke the licence is subject to the statutory procedure prescribed by Rule 102(3). The conditional nature of the licence therefore does not dispense with the requirement of written notice and an opportunity of hearing.

Conclusion: The High Court disposed of all nine connected Special Customs Reference Applications and maintained the Tribunal's judgments insofar as they set aside the show-cause notices, orders-in-original and orders-in-appeal and restored the respondents' licences. The Court held that the notices failed to satisfy Rule 102(3) because they did not disclose the essential particulars of the alleged misconduct or the material relied upon to substantiate the charges. The resulting proceedings were therefore legally unsustainable. The Court nevertheless clarified that Rule 102(1)(k) does not require proof of actual benefit or a favourable outcome. An attempt to influence a customs officer through bribery is itself sufficient to constitute a violation, whether or not the attempt succeeds. It further held that a forensic report is not invariably mandatory for electronic evidence, although disclosure, provenance and attribution remain essential considerations. The Court did not finally exonerate the respondents of the allegations of bribery. Rather, it held that the alleged violations could not validly be determined through proceedings founded upon defective show-cause notices. It expressly preserved the Licensing Authority's liberty to initiate fresh proceedings in accordance with law by issuing notices containing proper particulars and disclosing the material relied upon. Any such proceedings must be decided independently on their own merits.

10. HIGH COURT SINDH

Income Tax Reference Application No. 140 of 2026
M/s AMS Supplies, Karachi Versus The Commissioner Inland Revenue & another

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON (AUTHOR),

https://caselaw.shc.gov.pk/caselaw/view-file/MzI2MTA3
2026 SHC KHI 1902

Facts: The applicant, an association of persons engaged in export business, declared profit on debt of Rs. 149,827,742 in its income tax return for Tax Year 2024 and treated tax withheld at 15% as its final tax liability. The Additional Commissioner Inland Revenue initiated proceedings under sections 122(9) and 122(5A) of the Income Tax Ordinance, 2001, on the ground that the profit on debt exceeding Rs. 5 million was not eligible for the special tax regime under section 7B. As the applicant failed to submit a reply or supporting documents despite repeated adjournments, its assessment was amended on 24 October 2025, resulting in a tax demand of Rs. 29,287,845. The applicant's appeal before the Commissioner Inland Revenue (Appeals) was dismissed on 30 January 2026. Before the Appellate Tribunal Inland Revenue, the applicant claimed Rs. 84,396,716 as its share of general, administrative, financial and miscellaneous expenses, contending that such expenses should be apportioned against the profit on debt under sections 40 and 67 of the Ordinance read with Rule 13 of the Income Tax Rules, 2002. However, the Tribunal dismissed the appeal on 30 March 2026 because the applicant failed to substantiate the claimed deductions with adequate documentary evidence. The applicant subsequently filed a reference application before the Sindh High Court, which dismissed the reference on 7 October 2026 and maintained the Tribunal's order

Issue: The principal issue before the High Court was whether the Commissioner Inland Revenue had lawfully exercised jurisdiction under section 122(5A) of the Income Tax Ordinance, 2001, to amend the applicant's deemed assessment by bringing its profit on debt under the normal tax regime instead of the final tax regime. The Court was required to determine whether the original assessment was erroneous and prejudicial to the interest of revenue and whether these jurisdictional requirements were apparent from the existing record or required further inquiry.

Another issue was whether the applicant, after its profit on debt had been brought under the normal tax regime, was legally entitled to deduct expenditure under section 40(1) and apportion common expenditure under section 67 read with Rule 13 of the Income Tax Rules, 2002. The Court also considered whether the applicant's assertion that the deduction of apportioned expenditure would result in no additional tax liability, or potentially an excess tax payment, could negate the requirement of prejudice to revenue under section 122(5A).

The Court further examined whether the Appellate Tribunal Inland Revenue had correctly rejected the applicant's expenditure claim for want of supporting evidence and whether the applicant had been denied a proper opportunity to substantiate its claim during the

assessment and appellate proceedings.

Rule: Section 122(5A) of the Income Tax Ordinance, 2001, empowers the Commissioner to amend an assessment order where the assessment is erroneous insofar as it is prejudicial to the interest of revenue. The Court held that both conditions must coexist: the assessment must be erroneous, and that error must be prejudicial to revenue. An incorrect assumption of fact or an incorrect application of law may render an assessment erroneous. However, an assessment is not erroneous merely because the department prefers a different view where the view adopted is legally permissible. The error and prejudice must be discernible from the record on which the Commissioner acts, and the provision does not authorize a roving inquiry to discover an error that is not apparent from that record. Under section 7B(3)(b), profit on debt exceeding Rs. 5 million falls outside the scope of section 7B. Such income is chargeable under section 39(1)(c), under the head "Income from Other Sources," and is subject to the normal tax regime. Therefore, profit on debt exceeding the statutory threshold cannot lawfully be treated as income subject to the final tax regime merely because tax has been withheld at source. Section 40(1) permits a deduction for expenditure paid during the relevant tax year to the extent that the expenditure was incurred in deriving income chargeable under the head "Income from Other Sources," excluding expenditure of a capital nature. Consequently, where profit on debt is assessed under the normal tax regime, the taxpayer may claim qualifying expenditure against that income, provided the statutory requirements are fulfilled and the claim is supported by evidence. Section 67 requires expenditure, deductions and allowances relating to more than one head of income, or to different classes of income, to be apportioned on a reasonable basis, taking into account the relative nature and size of the activities to which the expenditure relates. Rule 13 of the Income Tax Rules, 2002, provides a method for allocating common expenditure. Relying on Coca Cola Pakistan Ltd. v. CIR, LTO Lahore [2026 PTD 669], the Court recognized that Rule 13 provides a reasonable basis where applicable but is not necessarily the only permissible method. A taxpayer may adopt another reasonable method if it can demonstrate its suitability. This principle applies to common expenditure that cannot clearly be allocated to a particular class of income. Section 136 places the burden on the taxpayer to establish that an assessment does not correctly reflect its tax liability or that a challenged decision is erroneous. A bare assertion of expenditure or a summary profit and loss account, without adequate supporting documentation, is insufficient to establish entitlement to a deduction. Under section 133, the High Court decides questions of law arising from the Tribunal's order. The Tribunal is ordinarily the final forum for findings of fact. Such findings may be examined in a reference where they are based on no evidence, ignore material evidence, or rest on a misreading of the record. Otherwise, the High Court does not ordinarily reappraise factual findings merely because a party disagrees with them.

Application: The applicant, M/s AMS Supplies, Karachi, was an association of persons engaged in export business. In its return for tax year 2024, it declared export proceeds of approximately Rs. 5.744 billion, dividend income of Rs. 933,234 and profit on debt of approximately Rs. 149.8 million. The profit on debt was shown under the final, fixed and reduced tax segment of the return, and tax withheld at 15%, amounting to approximately Rs. 22.47 million, was treated as the full tax liability. The return was treated as an

assessment order under section 120 of the Ordinance. On 8 September 2025, the Additional Commissioner Inland Revenue issued a notice under sections 122(9) and 122(5A), requiring the applicant to explain why its profit on debt should not be charged under the normal tax regime. The applicant sought three adjournments, stating that the requested details and documents were being compiled, but it failed to submit a substantive reply or supporting documents. Consequently, on 24 October 2025, the profit on debt was brought to tax under the normal regime, and a demand of Rs. 29,287,845 was raised. The applicant challenged the amendment before the Commissioner Inland Revenue (Appeals) and subsequently before the Appellate Tribunal Inland Revenue. Both appellate proceedings failed to provide relief. The Tribunal maintained the amendment on the ground that the applicant had incorrectly treated profit on debt exceeding Rs. 5 million as income subject to the final tax regime. The High Court agreed with the Tribunal's conclusion. It observed that the applicant's own return disclosed profit on debt substantially exceeding the statutory threshold under section 7B(3)(b). The law therefore required that income to be assessed under section 39(1)(c), under the normal tax regime. The deemed assessment had accepted a tax treatment that the law did not permit, and the error was apparent from the return itself. The Court also held that prejudice to revenue was apparent because the original assessment had treated the tax withheld on the gross profit on debt as the final tax liability, whereas the law required taxation under the normal regime. The applicant's argument that apportionment of expenditure might have resulted in no additional tax liability was rejected because no expenditure had been claimed against the profit on debt in the return, nor had any substantiated deduction claim been submitted when the assessing officer requested supporting evidence. The Court distinguished Coca Cola Pakistan Ltd. v. CIR, LTO Lahore [2026 PTD 669]. In that case, the taxpayer had already apportioned common expenditure in its return on a reasonable basis, and the department sought to replace that method with the formula in Rule 13. In the present case, the applicant had not claimed any such apportionment in its return. The Court therefore held that the principle protecting a taxpayer's reasonable allocation method did not apply to an assessment in which no allocation had been made. The applicant further contended that proceedings under section 122(5A) could not be maintained without additional inquiry into whether prejudice to revenue had actually occurred. The Court rejected this argument because the incorrect tax treatment and its prejudicial effect were apparent from the existing record. It held that no further inquiry was required to establish the error and prejudice in the circumstances of the case. With respect to the deduction of expenditure, the Court accepted the legal proposition that qualifying expenditure may be deducted under section 40(1) and common expenditure may be apportioned under section 67 read with Rule 13. However, it emphasized that a legal entitlement to claim a deduction does not automatically establish entitlement to a particular amount. The applicant was required to prove which expenses had been incurred in deriving profit on debt, which expenses were common to different income streams, and whether the proposed allocation method was reasonable. The record showed that the applicant had failed to substantiate its expenditure claim before the assessing officer despite receiving three adjournments. Before the Commissioner Inland Revenue (Appeals), it referred to sections 40 and 67 and Rule 13 without specifying the amount claimed, the allocation basis or the supporting evidence. Before the Tribunal, it claimed expenditure of Rs. 84,396,716, representing a share of general, administrative, financial

and miscellaneous expenses, but failed to produce adequate documentary evidence or a financial trail establishing the connection between the expenditure and the profit on debt. The Tribunal had afforded the applicant four opportunities, on 20 February 2026, 2 March 2026, 12 March 2026 and 25 March 2026, to produce the relevant record for examination. The applicant failed to substantiate its claim. The High Court found that the Tribunal's factual conclusion was supported by the record and did not warrant interference in reference jurisdiction. The applicant also relied on a letter dated 2 March 2026, bearing a receiving stamp of the Taxpayer's Facilitation Centre dated 3 March 2026, which enclosed an expense schedule and a summary profit and loss account. The High Court held that the letter did not establish that the necessary underlying evidence had been submitted to, or brought to the Tribunal's attention during, the appeal proceedings. The letter surfaced for the first time in the reference proceedings, and its enclosures did not provide the detailed documentary support necessary to verify the expenditure claim. The Court therefore rejected the contention that the applicant had been condemned unheard. It held that the applicant had received repeated opportunities at the assessment and appellate stages but had failed to utilize them to substantiate its claim. The Tribunal's finding that the expenditure claim was unproved was a factual finding supported by the record, and no ground existed for disturbing it under section 133. Finally, the Court rejected the argument that a possible excess tax payment following a later recomputation would negate prejudice to revenue. It held that the jurisdictional requirements of section 122(5A) had to be assessed on the record existing when the Commissioner exercised jurisdiction. Deductions neither claimed in the return nor substantiated during the assessment proceedings could not retrospectively eliminate the prejudice apparent from the original assessment

Conclusion: The High Court dismissed the income tax reference and maintained the order of the Appellate Tribunal Inland Revenue dated 30 March 2026. It held that the original assessment was erroneous and prejudicial to the interest of revenue because the applicant had treated profit on debt exceeding Rs. 5 million under the final tax regime, contrary to the applicable statutory provisions. The Court further held that the jurisdiction under section 122(5A) had been lawfully exercised because the error and prejudice were apparent from the existing record and did not require further inquiry. It recognized that a taxpayer whose profit on debt is assessed under the normal tax regime may, in law, claim qualifying expenditure under section 40(1) and apportion common expenditure under section 67 read with Rule 13. However, such a claim must be established by adequate evidence. Since the applicant had failed to substantiate the claimed expenditure despite repeated opportunities, the Tribunal's factual finding was maintained. The Court answered question A against the applicant, holding that the assessment was prejudicial to revenue while recognizing the legal availability of qualifying deductions subject to proof. Question B was held not to arise on the facts because the error and prejudice were apparent from the record. Questions C and D were answered in the negative and against the applicant because prejudice had not been merely presumed and a later, unsupported deduction calculation did not negate the original prejudice. The reference was dismissed, the Tribunal's order was maintained, the interim order passed at the time of admission was vacated, and there was no order as to costs.

11. HIGH COURT SINDH

Income Tax Reference Application No. 365 of 2022
Thal Nova Power Thar (Private) Limited, Karachi VS Commissioner of Inland Revenue CTO, Karachi

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON (AUTHOR),

https://caselaw.shc.gov.pk/caselaw/view-file/MzI1MTUz
2026 SHC KHI 1876

Facts: The applicant, a private limited company engaged in electric power generation, paid Rs. 4,641,227,500 to China Machinery Engineering Corporation, a non-resident contractor, in two instalments on 13 and 19 June 2019 as an advance under an engineering, procurement and construction contract without deducting tax at the time of payment. The applicant subsequently deposited the relevant tax on 15 June 2020. During monitoring proceedings for Tax Year 2019, the Deputy Commissioner Inland Revenue issued a show-cause notice under section 161(1A) read with section 205 of the Income Tax Ordinance, 2001, and imposed default surcharge of Rs. 11,946,860 on the ground of delayed payment of tax, although no principal tax remained outstanding. The Commissioner Inland Revenue (Appeals) dismissed the applicant's appeal on 1 April 2022, and the Appellate Tribunal Inland Revenue also dismissed the appeal on 31 August 2022, holding that proof of mens rea was not necessary for imposing default surcharge. The applicant challenged the Tribunal's decision before the Sindh High Court, contending that the surcharge could not be imposed automatically without examining the reasons for the delay. The applicant relied on the Pakistan-China tax treaty, the provisions of section 152 of the Ordinance, the offshore transfer of title to the equipment, and the proceedings relating to its application for deduction of tax at a reduced rate. On 1 October 2026, the High Court set aside the Tribunal's order and remitted the matter to it for reconsideration of the applicant's explanation and determination of whether the applicant was in default or had a reasonable ground for the delay

Issue: The principal issue before the Sindh High Court was whether default surcharge under section 205 of the Income Tax Ordinance, 2001, automatically becomes payable whenever tax is not deducted or deposited by the prescribed due date, or whether the tax department must establish wilful default and consider the taxpayer's explanation before imposing such surcharge. The Court also considered which party bears the burden of proving whether the default occurred and whether there was a reasonable ground for it.

Rule: Section 205 of the Income Tax Ordinance, 2001, provides for default surcharge where a person fails to collect or deduct tax, or fails to pay the collected or deducted tax by the due date. However, the expression "shall be liable for default surcharge" does not make the levy automatic. Relying upon the principles laid down in ICI Pakistan Ltd., D.G. Khan Cement Co., China Power Hub Generation Co., MCB Bank Ltd. and Chawla

Footwear, the Court held that the department must first establish the default through an objective, properly reasoned notice under section 161 read with section 205. Once the failure to deduct or deposit tax is established, the burden shifts to the withholding agent to demonstrate either that it was not in default or that there was a reasonable ground for the default. The officer must consider the explanation and record findings before deciding whether the surcharge is justified.

Application: In the present case, the applicant, a private limited company engaged in electric power generation, paid Rs. 4,641,227,500 to China Machinery Engineering Corporation, a non-resident contractor, in June 2019 without deducting tax at the time of payment. The tax was subsequently deposited on 15 June 2020. The Deputy Commissioner Inland Revenue issued a show-cause notice under section 161(1A) read with section 205 and imposed default surcharge of Rs. 11,946,860, although no principal tax remained outstanding. The Commissioner Inland Revenue (Appeals) upheld the surcharge, and the Appellate Tribunal Inland Revenue dismissed the applicant's appeal on the ground that mens rea was not required for imposing default surcharge. The High Court found that the show-cause notice sufficiently identified the relevant payments, applicable withholding provisions and amounts requiring reconciliation, thereby establishing the initial burden of the department. However, the applicant had advanced substantive explanations, including reliance on the Pakistan-China tax treaty, section 152(7), the offshore transfer of title to equipment, and the proceedings concerning an application for deduction at a reduced rate. These explanations had not been properly adjudicated by the lower forums. The High Court held that their factual validity and their relevance to the existence or duration of the default had to be examined by the Tribunal rather than determined by the High Court in its reference jurisdiction.

Conclusion: The Sindh High Court held that default surcharge under section 205 is not automatically attracted merely because tax was deducted or deposited late. The department must first establish the default through a valid notice and supporting material. Thereafter, the withholding agent must establish either that no default occurred or that a reasonable ground existed for it. The officer is required to consider the explanation and record a finding. Accordingly, the Court set aside the Tribunal's order dated 31 August 2022 and directed that the appeal be treated as pending before the Tribunal for the limited purpose of determining whether the applicant's explanation established that it was not in default or had a reasonable ground for the default during all or part of the relevant period. The reference application was disposed of without an order as to costs.

---

12. SINDH HIGH COURT

Irshad Khatoon v/s. The P.O Sindh & others
Const. P. 326/2026

Present: *Mr Justice Arbab Ali Hakro and Mr Justice Osman Ali Hadi.*
Source: https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzI3MjkzY2Ztcy1k Yzgz&citation=2026+SHC+LAR+1941
Sindh High Court Citation (2026 SHC LAR 1941)

Facts: Police Constable Abdul Hayee died on 06.08.2015 after being struck by a rashly and negligently driven car while performing traffic duty. His mother challenged the refusal to declare him a Shaheed, relying on departmental recommendations and similar declarations granted to other officers.

Issue: Whether an accidental death during duty in 2015 entitled the deceased to Shaheed status under the applicable law, the 2023 amendment, or the principle of equal treatment.

Rule: Section 2(f) of the Sindh Shaheed Recognition and Compensation Act, 2014, as applicable in 2015, required a connection with terrorism. The 2023 amendment enlarged eligibility but operated prospectively. Article 25 does not permit "negative equality", meaning an unlawful benefit granted to one person cannot establish another's entitlement.

Application: The FIR, investigation and medical record established death through negligent driving, without evidence of terrorism or a deliberate attack. Departmental recommendations could not override the statutory definition. The 2023 amendment did not govern a death occurring in 2015, and inconsistent declarations in other cases created no enforceable right. Although the departmental order contained errors and an irrelevant reference to financial cost, its decisive legal finding remained correct; remand would serve no purpose.

Conclusion: The Court dismissed the petition, holding that the constable's accidental death while on duty in 2015 did not satisfy the statutory definition of "Shaheed" applicable at that time. The 2023 amendment was prospective, and benefits wrongly granted in other cases created no entitlement to equal treatment.

---

13. HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeals Nos. 349 and 534 of 2020

Kashan and others Versus The State

Present: **Mr. Justice Miran Muhammad Shah**

Source: https://caselaw.shc.gov.pk/caselaw/public/reported-judgements-detail-all/1301/AFR/AFR

2026 SHC KHI 1923

Facts: The appellants, Kashan, Kamran Hussain alias Kami and Muhammad Farhan, challenged their conviction by the Additional Sessions Judge-I, Karachi East, in FIR No. 493/2012, P.S. Jamshed Quarter, under Sections 302, 324, 397, 337-D

and 337-F PPC. The prosecution alleged that Kashan, accompanied by two associates, entered the house of his relatives, Salahuddin and Tahira, and committed a violent attack involving knife blows, resulting in their deaths and serious injuries to their daughter, Sumaiya, who was seven months pregnant. The trial Court convicted all three accused and awarded, inter alia, imprisonment for life on two counts under Section 302(b) PPC. The prosecution principally relied upon the testimony of injured eyewitness Sumaiya, medical evidence, recovery of bloodstained knives and chemical examiner's reports. The appellants challenged the convictions on grounds of contradictions, improvements, defective identification, absence of independent corroboration and non-production of case property.

Issue: Whether the testimony of a solitary injured eyewitness, corroborated by medical and circumstantial evidence, was sufficient to sustain the conviction of Kashan, and whether the prosecution had established the identity and participation of co-accused Kamran and Farhan beyond reasonable doubt despite the absence of a judicial identification parade and reliable independent corroboration.

Rule: A conviction may lawfully rest upon the testimony of a solitary witness where such evidence is trustworthy, confidence-inspiring and withstands cross-examination, as quality rather than quantity of evidence is decisive (2001 SCMR 177; 2008 SCMR 917). Medical and forensic evidence may corroborate a reliable ocular account. However, the identity and criminal participation of each accused must independently be established beyond reasonable doubt. Where previously unknown accused are implicated without a reliable identification procedure or sufficient corroborative evidence, their involvement cannot be presumed merely from disclosure by a co-accused or association with the principal offender. Similarly, common intention under Section 34 PPC requires evidence supporting participation or a shared intention, and cannot be inferred merely from friendship or association (PLD 1985 Lahore 33).

Application: The High Court found the testimony of injured eyewitness Sumaiya reliable and confidence-inspiring against Kashan, who was her first cousin, a regular visitor to the family and personally known to her. She categorically identified him as having entered the house, participated in the occurrence and inflicted knife injuries upon her. Her evidence remained materially unshaken during lengthy cross-examination and was corroborated by medical evidence establishing injuries caused by sharp-edged weapons and the available chemical examiner's reports. However, regarding

Kamran and Farhan, the Court observed that neither was initially identified by the eyewitness, nor was any identification parade conducted before a Magistrate. The eyewitness subsequently disclosed their names without explaining how she had learned their identities, while the alleged identification by the knife seller was insufficient to establish their involvement. Their implication principally through the disclosure of Kashan and the absence of reliable independent corroboration rendered their participation doubtful. The Court further found that although circumstances indicated an attempted robbery, the offence under Section 397 read with Section 34 PPC had not been established against Kashan.

Conclusion: A conviction can be sustained on the trustworthy testimony of a solitary injured eyewitness where it withstands cross-examination and receives material corroboration. However, the identity and participation of each accused must be established independently beyond reasonable doubt, and mere implication by a co-accused, without reliable identification or corroboration, cannot sustain a conviction. The Court's observations regarding the possible underlying family dispute, matrimonial disagreement and concealed motive behind the occurrence were speculative contextual remarks rather than established findings essential to the decision. The High Court partially upheld the conviction and sentences of Kashan under Sections 302(b), 324 read with Section 34, 337-D and 337-F(iii) PPC, but acquitted him of the charge under Section 397 read with Section 34 PPC. Conversely, Kamran Hussain and Muhammad Farhan were acquitted of all charges after being extended the benefit of doubt, as their identities and participation had not been established beyond reasonable doubt.

Disclaimer

Due care and caution has been taken in preparing and publishing this bulletin. Where required, text has been moderated, edited and re-arranged. The contents available in this Bulletin are just for Information. Users are advised to explore and consult original text before applying or referring to it. Research Cell shall not be responsible for any loss or damage in any manner arising out of applying or referring the contents of Bulletin.