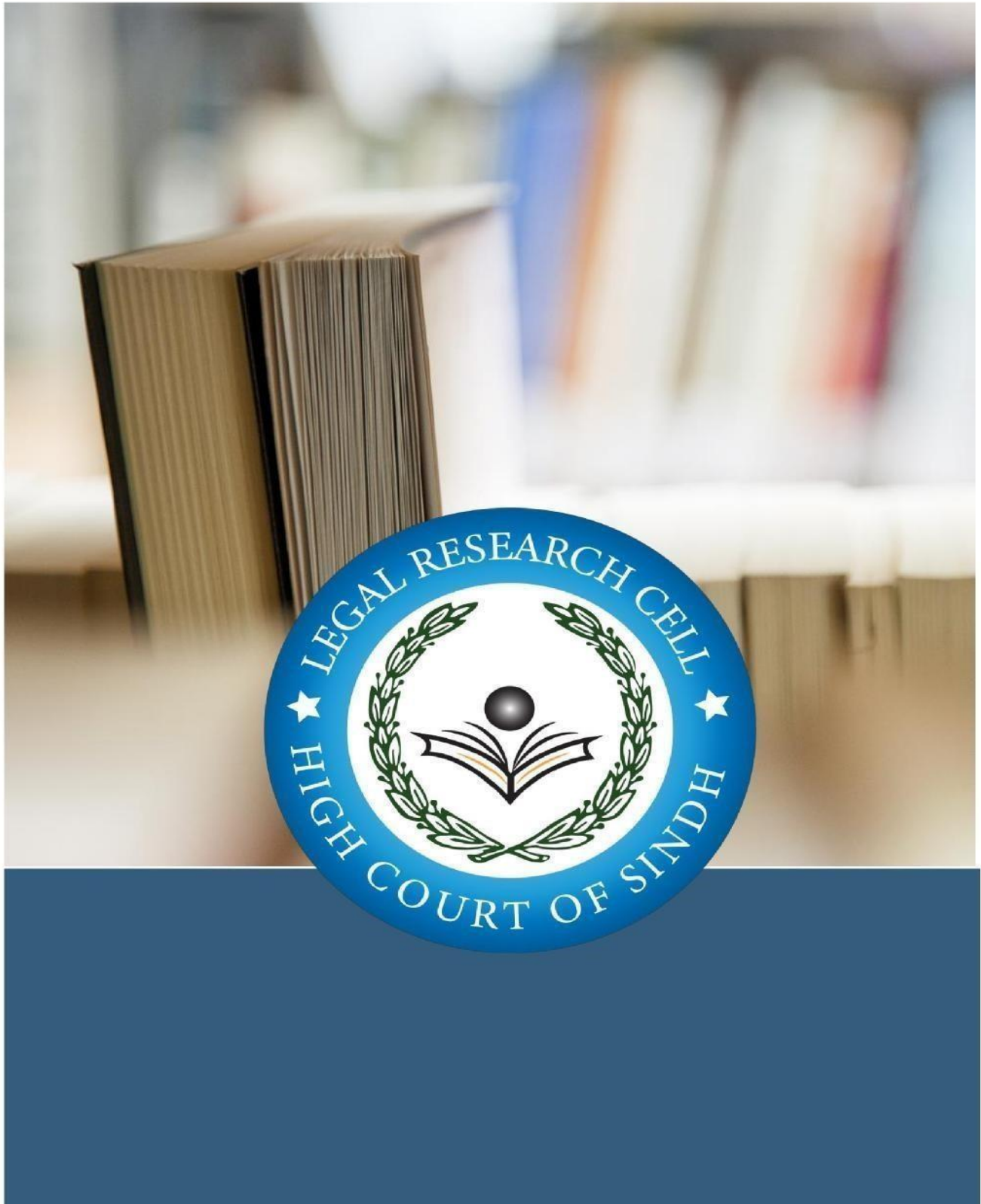


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(January to March 2025)**



Quarterly Case Law Report (Jan – March 2025)



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The Supreme Court of Pakistan

01. The Intelligence Officer, Directorate of Intelligence & Investigation, FBR & others vs Abdul Karim

Civil Appeal No. 1088 of 2013

Present: *Mr. Justice Yahya Afridi, CJ*
Mr. Justice Irfan Saadat Khan
Mr. Justice Muhammad Shafi Siddiqui

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.a._1088_2013.pdf

Facts: The factual background of this case revolves around the seizure and confiscation of vehicles by the Customs authorities under the suspicion that they were smuggled. The controversy stems from the allegations made by the Customs authorities regarding the lack of import documents for certain vehicles and the existence of tampered chassis and engine numbers. The key issues are whether the vehicles were indeed smuggled, whether they were lawfully registered, and whether the Customs authorities were justified in confiscating the vehicles based on the absence of documents and tampering concerns.

The Customs authorities initiated proceedings after issuing show-cause notices to the individuals in possession of the vehicles. The authorities claimed that the vehicles either did not have the necessary import documents or were acquired using fraudulent means, such as altered chassis or engine numbers, to match the details of vehicles brought into Pakistan through unauthorized routes. The department argued that the vehicles were either smuggled or their registration was based on fake documents. However, the respondents in these cases contended that the vehicles were lawfully purchased through official auctions conducted by the government or from previous owners who had valid registration books. They argued that, despite the absence of original import documents, they possessed the vehicles under legitimate circumstances, as evidenced by their registration with the Motor Registration Authority.

Issue: Whether vehicles seized by the Customs authorities, under the suspicion of being smuggled, were lawfully confiscated when the owners failed to provide import documents and when some vehicles had tampered chassis or engine numbers. The questions raised include whether such seizures were legally justified, and whether the burden of proof rests on the owner of the vehicle to establish the legality of possession under the Customs Act?

Rule: The rules governing this case are found in Sections 2(s) and 156 (1) (89) and (90) of the Customs Act, 1969. Section 2(s) defines "smuggling" and outlines conditions under which goods (including vehicles) can be considered smuggled. Section 156 deals with the seizure of smuggled goods and establishes penalties. Furthermore, Section 211 mandates the maintenance of import records and determines the time period within which such documents must be produced (five years as per the

Finance Act 2007). Additionally, the Motor Vehicle Ordinance, 1965 provides for the registration of motor vehicles, and Section 187 of the Customs Act imposes a burden of proof on the person claiming lawful possession of seized goods.

Application: In the present case, the Customs authorities seized vehicles under the suspicion that they were smuggled, citing the lack of import documents. The respondents, however, contended that the vehicles were registered through statutory processes, either via government auctions or subsequent ownership transfers. Some vehicles had chassis or engine numbers altered after registration, raising questions about their lawful status. The appellants (Customs authorities) argued that the vehicles were smuggled, as import documents were missing, and thus they were liable for confiscation. The Court examined whether the lapse of time (more than five years in some cases) under Section 211 of the Customs Act, which governs the production of import documents, could absolve the respondents of responsibility for providing such documents. The Court also considered the presumption of legality associated with the registration of vehicles, particularly when they were registered under the Motor Vehicle Ordinance, 1965, and whether the burden of proof rested on the appellants to demonstrate the fraudulent nature of the registration.

Conclusion: The Supreme Court concluded that the vehicles in question, which had been registered through statutory processes (e.g., auctions or Motor Registration Authority), were presumed to have lawful possession, and the lapse of the statutory period for providing import documents (under Section 211) constituted a lawful excuse. The Court emphasized that simply failing to produce documents after the statutory period did not necessarily imply smuggling. However, the Court also clarified that in cases where tampering with chassis or engine numbers was involved, the lawful excuse would not apply. Thus, the appeals were dismissed, and the Customs authorities' actions were upheld in cases where the vehicles were legally registered, but vehicles with tampered numbers could still be subject to confiscation.

02. The State through Prosecutor General, Punjab Lahore vs The Learned Judge ATC No. 1, Rawalpindi & others

Criminal Petitions No. 809 of 2024

Present: *Mr. Justice Yahya Afridi, CJ*
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Shakeel Ahmad

Source: https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 809_2024.pdf

Facts: The factual background of this matter revolves around a series of cases filed by the State against certain Presiding Judges of the Anti-Terrorism Court (ATC) seeking their transfer due to allegations of bias. These petitions were submitted to the Chief Justice of the Lahore High Court, requesting the transfer of cases from one Presiding Judge to another. The State argued that the Presiding Judge exhibited bias in the

handling of cases and that a transfer was necessary to ensure impartiality. The State's application was primarily based on a reference filed against the Presiding Judge, alleging misconduct and bias, but after an inquiry by the Administrative Judge, the allegations were deemed insufficient to warrant action. Despite this, the State filed an application for the transfer of cases, citing the existence of the reference.

Issue: Whether the Chief Justice of the Lahore High Court was justified in dismissing the State's application for transferring cases from one Presiding Judge of the Anti-Terrorism Court (ATC) to another. The application was based on allegations of bias, but the transfer was contested on the grounds that the allegations lacked sufficient evidence, and the Chief Justice's remarks on the conduct of the State functionaries in seeking the transfer were deemed inappropriate by the State?

Rule: The relevant rule here is found in Article 203 of the Constitution of Pakistan, which grants the Chief Justice of a High Court supervisory authority over the subordinate courts within the province. This authority includes making administrative decisions such as transferring cases between courts. Additionally, Section 156 of the Customs Act governs the processes for judicial oversight and transfer within the judicial hierarchy. The Chief Justice's authority to intervene in such matters is balanced by the requirement to act reasonably and avoid arbitrary decisions.

Application: In this case, the State had filed applications for transferring the cases from the existing Presiding Judge of the ATC, alleging bias. However, after considering the allegations and the Presiding Judge's response, the Administrative Judge dismissed the reference due to insufficient grounds. The Chief Justice, exercising his constitutional authority, upheld this decision and did not act on the transfer application. Despite the transfer being completed for some of the Presiding Judges, the State continued to contest the Chief Justice's remarks in the impugned order, specifically paragraphs 8 and 9, which commented negatively on the State's conduct. The Chief Justice was empowered under Article 203 to supervise the functioning of subordinate courts, including the ATC. The Court also emphasized that the remarks made in the order were not binding for future proceedings and should not be treated as determinative in assessing the conduct of judicial or state functionaries in future cases.

Conclusion: The Court concluded that the Chief Justice acted within his constitutional authority in not intervening further in the case transfer application, especially given that the allegations lacked sufficient evidence. However, it was also noted that the remarks made in paragraphs 8 and 9 of the impugned order, concerning the conduct of the State functionaries and judicial officers, should not have binding effects on future proceedings. The Court emphasized the importance of judicial propriety and clarified that future assessments of conduct should be based solely on merits and in accordance with the law. The petitions challenging the Chief Justice's decision were disposed of, with the order being upheld.

03. Zahida Parveen vs Government of Khyber Pakhtunkhwa through Secretary E & SE, Civil Secretariat, Peshawar & others

C.P.L.A No. 566-P of 2024

Present: *Mr. Justice Syed Mansoor Ali Shah*
Mr. Justice Athar Minallah

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._556_p_2024.pdf

Facts: The factual background of this matter involves Zahida Parveen, who was appointed as a Primary School Teacher under the deceased son/daughter quota, pursuant to Rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules, 1989. She was appointed on 17th March 2023. However, her appointment was later withdrawn by the District Education Officer (Female), District Karak, through an order on 15th May 2023, without issuing a show-cause notice. The reason for this termination was based on a clarification letter issued by the provincial government on 21st February 2020, which stated that the benefit of the deceased son/daughter quota would not apply to a female who had contracted marriage.

Furthermore, a subsequent clarification issued on 28th April 2023 specified that a married daughter could only be considered eligible for appointment if she had separated from her husband and was dependent on her parents. Based on this, Zahida Parveen's appointment was rescinded, as she was married and living with her husband. Zahida Parveen filed a departmental appeal against this termination, which went unanswered within the statutory period. She then filed an appeal before the Khyber Pakhtunkhwa Service Tribunal, challenging the termination. The Tribunal, however, dismissed her appeal on 3rd June 2024, leading to the filing of this petition for leave to appeal.

Issue: Whether the termination of Zahida Parveen's appointment under the deceased son/daughter quota, based on a clarification excluding married daughters from eligibility, was legally justified, or whether the clarification violated Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules, 1989, and the constitutional guarantees of equality under Article 25?

Rule: Rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules, 1989, allows for compassionate appointments to the children or spouse of a deceased or permanently incapacitated civil servant. The rule is gender-neutral and does not specify any conditions based on marital status. The impugned clarification issued by the Establishment Department of Khyber Pakhtunkhwa, however, sought to restrict this benefit by excluding married daughters, which was not part of the original rule. The rule of statutory interpretation states that executive clarifications cannot amend or override the provisions of a statutory rule. Additionally, under the Constitution of Pakistan, particularly **Article 25**, any classification based on gender or marital status must be reasonable and should have a rational connection to the objective of the law.

Application: In this case, Zahida Parveen’s appointment was terminated based on the clarification that married daughters were not eligible for compassionate appointments. The Court examined whether the clarification was legally valid. It was found that the clarification exceeded the powers of the executive, as it attempted to amend Rule 10(4) of the Civil Servants Rules, which had been enacted under statutory authority. The Court further noted that the clarification introduced a discriminatory practice, treating married daughters differently from married sons without a rational basis. This distinction was found to violate Article 25 of the Constitution, which guarantees equality before the law. The Court also emphasized that the clarification was issued by a Section Officer and lacked the necessary authority to modify the scope of the statutory rule.

Conclusion: The Court concluded that the clarification issued by the Establishment Department was ultra vires and unconstitutional as it attempted to modify Rule 10 (4) of the Civil Servants Rules. The exclusion of married daughters from the compassionate appointment scheme was discriminatory and violated constitutional guarantees of equality and non-discrimination. Therefore, the termination of Zahida Parveen’s appointment was declared void, and the Court ordered her reinstatement with all back benefits. The petition was allowed, and the impugned judgment was set aside.

04. Oil & Gas Regulatory Authority, Islamabad vs Gas & Oil Pakistan Limited, Lahore & another

C.R.P No. 540 of 2023

Present: *Mr. Justice Munib Akhtar*
Mr. Justice Jamal Khan Mandokhail
Mr. Ayesha A. Malik

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.r.p. 540 2023.pdf

Facts: The Oil and Gas Regulatory Authority (OGRA) initiated action against the contesting respondent, Gas and Oil Pakistan Limited, under the Pakistan Oil (Refining, Blending, Transportation, Storage, and Marketing) Rules, 2016. This action was based on statutory powers granted to OGRA under the 2002 Ordinance. As part of this process, samples had to be drawn from the petroleum products held by the contesting respondent. OGRA authorized the Hydrocarbon Development Institute of Pakistan (HDIP) to enter the respondent’s premises and take the samples on OGRA's behalf. Subsequently, OGRA imposed a fine on the contesting respondent based on the sample results. The Islamabad High Court heard a writ petition filed by the contesting respondent, which challenged the legality of OGRA's action and the subsequent fine. The core contention was that, under the law, the Institute (HDIP) could not have been authorized by OGRA to act on its behalf. The High Court ruled in favor of the contesting respondent, concluding that the Institute could not have been authorized by OGRA.

- Issue:** Whether the Oil and Gas Regulatory Authority (OGRA) was legally authorized to delegate its powers to the Hydrocarbon Development Institute of Pakistan (HDIP) to take samples on its behalf under the Pakistan Oil (Refining, Blending, Transportation, Storage, and Marketing) Rules, 2016, and whether the Islamabad High Court's interpretation of the relevant statutory provisions was correct in concluding that such authorization was not permissible?
- Rule:** The key rule in this case involves the interpretation of statutory provisions under the Pakistan Oil (Refining, Blending, Transportation, Storage, and Marketing) Rules, 2016 and the Oil and Gas Regulatory Authority Ordinance, 2002, specifically addressing whether the Hydrocarbon Development Institute of Pakistan (HDIP) could be authorized by OGRA to act on its behalf under the statutory framework. The review petition is governed by the rules of the Supreme Court regarding the review of judgments, where a review can only be granted if the decision was per incuriam or if the ground presented for review is legally sustainable.
- Application:** OGRA filed a review petition (CRP 540/2023) after the Supreme Court refused leave to appeal against the Islamabad High Court's decision, which had ruled that HDIP could not be authorized to take samples on behalf of OGRA, as the relevant statutory provisions did not support such an authorization. OGRA argued that the interpretation of these provisions was incorrect, but the Court held that merely disagreeing with the interpretation of law was not sufficient grounds for review. Since the judgment in question was based on statutory interpretation, and no grounds were provided that could establish the decision was made per incuriam, OGRA's review petition was dismissed. Regarding HDIP's application, it sought permission to file a review petition on the grounds that it had not been issued notice when OGRA's leave petition was heard. The Court noted that HDIP had been a party to the High Court proceedings and had not sought to appeal the decision. The Court further clarified that no notice was required for HDIP as a party to the original petition, and that their request was without merit.
- Conclusion:** The review petition filed by OGRA was dismissed because no valid grounds were presented to establish that the Supreme Court's decision was per incuriam. Similarly, HDIP's application was dismissed because they had not sought leave to appeal and had been appropriately included as a respondent in the original proceedings. Both matters were dismissed, and no further action was taken.
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05. Ahmed Ali Talpur vs Sub-Registrar Latifabad, Hyderabad and others

C.P.L.A No. 290-K of 2024

Present: *Mr. Justice Muhammad Ali Mazhar*
Mr. Justice Syed Hasan Azhar Rizvi

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 290 k 2024.pdf

Facts: The petitioner, Ahmed Ali Talpur, filed F.C. Suit No. 327/2023 in the IVth Senior

Civil Judge, Hyderabad, seeking a declaration of ownership over Bungalow No. A-26, Unit No. 3, Shah Latifabad, Hyderabad, alleging that it was gifted to him by his father (Respondent No. 4) through an oral gift on 8th October 2007. He also sought the cancellation of a lease deed dated 6th February 2023 in favor of his father and requested a permanent injunction against the respondents from transferring, alienating, or dispossessing him of the property.

In response, Respondent No. 4 filed an application under Order VII Rule 11 of the CPC to reject the plaint, arguing that the suit was not maintainable, lacked jurisdiction, and was barred by Sections 42 and 54 of the Specific Relief Act, 1877. He further claimed that the petitioner lacked standing, had no registered document, and that the suit was filed in bad faith. The Senior Civil Judge rejected the plaint on 28th February 2023. The petitioner's appeal was dismissed by the VIIIth Additional & District Judge, and the High Court also dismissed the second appeal, leading to the filing of the Civil Petition for Leave to Appeal.

Issue: Whether the rejection of the petitioner's plaint by the Trial Court, which was subsequently affirmed by the Appellate Court and the High Court, was lawful, and whether the petitioner is entitled to proceed with the suit regarding the authenticity of a gift deed, despite the plaint being rejected at the initial stage?

Rule: The relevant rule here is Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), which governs the rejection of plaints. This rule permits the rejection of a plaint if it fails to disclose a cause of action, is barred by law, or is improperly stamped or undervalued. Additionally, Section 42 of the Specific Relief Act, 1877 (SRA) provides the framework for filing suits related to declarations of legal rights or ownership, while Order VII Rule 11, CPC requires the Court to consider whether the plaint shows a justifiable cause of action before rejecting it.

Application: In this case, the petitioner filed a suit claiming ownership of a property based on an oral gift deed. The Trial Court rejected the plaint under Order VII Rule 11, CPC, stating that the petitioner lacked standing as the gift deed was not registered and that respondent No. 4, the petitioner's father, held a registered lease for the property. The petitioner challenged this rejection, arguing that the case involved triable issues that should be addressed in court, including the legitimacy of the gift deed. The Court also examined whether the rejection of the plaint was justified under the provisions of Order VII Rule 11, CPC, and whether the rejection was based on legal grounds that prevented further proceedings. The Court found that the issue of the gift deed's authenticity was critical and could not be dismissed at this stage without giving the parties an opportunity to present evidence.

Conclusion: The Supreme Court ruled that the rejection of the plaint by the Trial Court, and its subsequent affirmation by the Appellate and High Courts, was incorrect. The Court set aside the rejection orders and directed the Trial Court to proceed with the case. The Court ordered that a preliminary issue regarding the authenticity of the gift deed be framed and evidence be recorded. The Trial Court was tasked with resolving this

issue within a specified period, ensuring that the parties could present evidence and that the matter was decided on its merits. The petition was converted into an appeal and allowed in the terms set out above, with the case remanded for further proceedings.

06. Federation of Pakistan through Secretary Finance Division and another vs Abdul Rasheed Memon

C.P.L.A No. 1124-K of 2023

Present: *Mr. Justice Muhammad Ali Mazhar*
Mr. Justice Syed Hasan Azhar Rizvi

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._1124_k_2023.pdf

Facts: The brief facts of the case are that the respondent approached the learned Tribunal asserting that the President of Pakistan had sanctioned a 15% increase in pay effective from 01.07.2007 for civil employees of the Federal Government. The Finance Division, Government of Pakistan, accordingly devised and issued the Basic Pay Scales, 2007, which replaced the existing Basic Pay Scales, 2005. Since the point-to-point fixation of pay formula prescribed in para-3(i) of the Office Memorandum of Pay Scales 2007 failed to ensure a 15% increase in basic pay as sanctioned in para-1 of the memorandum, the respondent filed a service appeal, and prayed for directions to fix his pay in the light of earlier decisions of the Finance Division by allowing a specific increase at the correspondence stage equal to this pay, or, if no such stage existed, at the next higher stage in the relevant pay scale; and, further, that the orders of the President should be accorded a beneficial interpretation rather than causing financial loss.

Issue: Whether the Federal Service Tribunal's decision to direct the Finance Division to fix the respondent's pay in accordance with an earlier judgment was correct, despite the fact that the judgment had been set aside by the Supreme Court, and whether the Tribunal's reliance on that earlier judgment was valid after it was no longer in effect?

Rule: The relevant rule in this case governs the interpretation and application of the Point-to-Point Pay Fixation Formula under the Basic Pay Scales 2007 and Order No. F.1(1)/Imp/2007, as well as the application of Section 21 of the General Clauses Act, 1897. Additionally, the doctrine of stare decisis (the principle that previous judicial decisions should be followed) and the principle of per incuriam (where decisions are made in ignorance of binding statutes or previous case law) are applicable to the issue of judicial precedents and the Tribunal's reliance on an already set-aside judgment.

Application: In this case, the respondent, Abdul Rasheed Memon, sought the benefit of a 15% pay increase as sanctioned by the President, but argued that the pay had not been increased in accordance with the Basic Pay Scales 2007, leading to his appeal before

the Tribunal. The Tribunal had earlier directed the department to grant the respondent the benefit of the 15% increase and fix his pay accordingly, relying on its own previous judgment. However, this earlier judgment had been set aside by the Supreme Court in a subsequent case. Despite this, the Tribunal proceeded with the same direction, ignoring the fact that the judgment it relied upon was no longer valid. The Supreme Court considered the facts and found that the Tribunal's reliance on its earlier judgment, which was already overturned, was misplaced. The Court emphasized that, when a judgment is set aside, it is no longer in force and should not be relied upon. Furthermore, the Court reaffirmed the correctness of the department's point-to-point fixation formula, which adhered to international accounting standards and practices. The Court also addressed the doctrine of stare decisis, noting that judicial precedents must be followed to ensure consistency and stability in the law, but also made it clear that where a precedent is overturned, it should no longer guide future decisions.

Conclusion: The Supreme Court concluded that the Federal Service Tribunal's reliance on its earlier judgment, which had been set aside, was incorrect. The Court held that the judgment of the Tribunal was based on a flawed understanding of the law and that the earlier judgment no longer held any validity. As a result, the Court converted the Civil Petition into an appeal, allowed it, and dismissed the respondent's service appeal. The Court set aside the Tribunal's impugned judgment and clarified that the department's method for fixing the respondent's pay was in line with the relevant rules and legal precedents.

07. Mst. Ramzanu Bibi vs Ibrahim (deceased) through L.Rs, etc.

Civil Appeal No. 113-L of 2010

Present: *Mr. Justice Amin-ud-Din Khan*
Mr. Justice Shahid Waheed

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.a. 113 1 2010.pdf

Facts: Mst. Jimmy was Ibrahim and Shadi's cousin. She married Jummay Khan, and from that wedlock, the appellant, Ramzanu Bibi was born. Mst. Jimmy inherited 33 kanals and 16 marlas of land from her father, Nawaz Khan. Upon her death, her land devolved upon her husband, Jummay Khan (respondent No.6), daughter, Ramzanu Bibi, and sister, Mst. Millie. The land measuring 16 kanals and 18 marlas of Mousa Boharwal Kalan, Tehsil Chunian, District Kasur, came into the appellant's share. On 24th of September, 1974, the Revenue Officer sanctioned two mutations. The first was inheritance mutation No.913, by which Mst. Jimmy's land was devolved upon her legal heirs. This mutation was sanctioned on the identification of Toolay Khan, Lambardar, and Heera Khan, Patidar. This mutation does not reflect the presence of Ramzanu Bibi. The second was mutation No.914 (Ex.P-2), which reflected that Ramzanu Bibi's land was transferred to Ibrahim and Shadi based on an oral gift. This mutation was sanctioned on the identification of Rahim Khan, Lambardar (DW-4), and Gonga, Patidar (DW-3). It carried the thumb impression of Ramzanu

Bibi and Jummay Khan. The appellant first challenged the gift mutation No.914 (Ex.P-2) before the Collector, Chunian, but he, by his order dated 20th of January, 1979 (Ex.P-3), dismissed her appeal with the observation that she had a remedy before the Civil Court. Following this, the appellant, on 18th of February, 1979, instituted her suit and sought a declaration of title by declaring the mutation No.914 (Ex.P-2) illegal and ineffective upon her rights. By submitting a joint written statement, the respondents traversed the allegations. They posited that the appellant, of her free volition, appeared before the Patwari and recorded the fact of making a gift. Her statement was recorded by the Patwari on 14th of September, 1974, in his Roznamcha Waqiyati at serial No. 499 (Ex.D-1).

Issue: Whether the respondent's land mutation, which transferred property from the appellant to the respondents based on an alleged oral gift, was legally valid, and whether the appellant's challenge to this mutation, which was based on claims of fraud and collusion, was timely under the Limitation Act?

Rule: The relevant rule involves the application of Order VII Rule 11 of the Code of Civil Procedure, 1908, which allows the rejection of a plaint if it fails to disclose a cause of action, and the Limitation Act, 1908, particularly Article 120, which governs the time frame for filing a suit based on the accrual of the right to sue. Additionally, the law of gifts, especially the requirements for a valid gift and the importance of clear, convincing evidence to support claims of a gift, are applicable here. The legal principles around fraud and its effect on property transactions are also central.

Application: In this case, the appellant challenged the mutation No. 914 dated 24th September 1974, which allegedly recorded the transfer of property based on an oral gift from her mother to the respondents. The appellant argued that the gift was fraudulent and collusive, and that she was not present during the mutation process. The respondents claimed that the gift was legitimate and the mutation was valid. However, the appellant's key argument was that the respondents failed to meet their burden of proving the legitimacy of the gift, as the mutation was based on an oral gift without any concrete evidence to support it. Furthermore, the appellant argued that the mutation was fraudulent, citing the involvement of revenue officials in the process and the lack of any legitimate gift transaction. The courts below had dismissed the appellant's suit, citing time limitations, but the appellant argued that her suit was filed within the permissible period under the Limitation Act, as the cause of action arose when the respondents formally denied her rights.

Conclusion: The Supreme Court found that the appellant's suit was timely filed under Article 120 of the Limitation Act, 1908, and that the courts below had erred in dismissing the suit on the grounds of time limitation. The Court concluded that the respondents had failed to provide sufficient evidence to support the validity of the alleged gift and the mutation, particularly given the fraud allegations. The Court set aside the judgments of the lower courts and decreed the appellant's suit, granting her the requested relief. The respondents were ordered to bear the appellant's costs.

throughout the proceedings.

08. Muhammad Azam & others vs Muhammad Aijaz

Civil Appeal No. 99-K of 2022

Present: *Mr. Justice Irfan Saadat Khan*
Mr. Justice Muhammad Shafi Siddiqui

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.a. 99 k 2022.pdf

Facts: The facts of the case are that a suit for performance was filed by the respondent Muhammad Ejaz against the appellants. The suit was contested. The issues were framed and the evidence was recorded. The trial Court in consideration of the material before it decreed the suit for performance on 18.09.2015 in respect of three out of four plots which were subject matter of the suit. Aggrieved of it the three appellants/defendants then filed appeal against whom the suit was decreed whereas fourth defendant was arrayed in the appeal as respondent No.2 through her legal heirs. The Appeal under section 96 of CPC was then allowed by a judgment dated 10.01.2019 which reversed the findings of the trial Court. In result the suit of the respondent was dismissed by the First Appellate Court. The respondent then aggrieved of the judgment of the First Appellate Court filed a Second Appeal under section 100 CPC against all four defendants/respondents who contested the suit. The Second Appeal was allowed by virtue of impugned order hence this appeal.

Issue: Whether the High Court, in a second appeal under Section 100 CPC, was correct to interfere with the First Appellate Court's decision regarding the specific performance of a contract for the sale of land, considering that the First Appellate Court exercised discretion in awarding the relief and the scope of interference in a second appeal is limited to certain grounds under the Code of Civil Procedure?

Rule: The relevant rule is Section 100 of the Code of Civil Procedure, which allows for a second appeal only on the grounds of law, such as when the decision is contrary to law, a material issue of law has been overlooked, or there is a substantial procedural error that has affected the decision. Section 101 of the CPC further restricts the second appeal to the grounds specified in Section 100. The principle that discretionary relief like specific performance is governed by equitable considerations, which are within the discretion of the court, and the courts must act within their discretion when deciding whether or not to enforce such a contract.

Application: In this case, the appellant, Muhammad Azam, and other appellants filed a civil suit against the respondent, Muhammad Aijaz, for specific performance of an agreement regarding the sale of four plots of land. The trial court decreed the suit in favor of the respondent for three out of the four plots. The appellants, aggrieved by this, filed an appeal under Section 96 CPC, which was allowed, and the trial court's decision was reversed, dismissing the respondent's suit. The respondent then filed a second appeal under Section 100 CPC to the High Court, which allowed the appeal and

restored the trial court's decision. The High Court's decision was questioned in the present civil appeal, with the appellants arguing that the second appeal was not justifiable because the first appellate court had properly exercised its discretion in denying specific performance. The primary issue for the Supreme Court to consider was whether the High Court could interfere with the First Appellate Court's decision under the provisions of Section 100 CPC, as second appeals are generally limited to legal issues and should not revisit factual determinations unless they are contrary to law. The Court reviewed the decision of the High Court and examined whether the discretionary relief granted by the First Appellate Court was within its legal bounds and whether the second appeal was properly entertained.

Conclusion: The Supreme Court concluded that the High Court's interference was not justified. The Court emphasized that the second appeal under Section 100 CPC is restricted to legal issues and cannot be used as a tool for re-examining factual findings made by the First Appellate Court. Since the First Appellate Court had lawfully exercised its discretion in denying specific performance and the second appeal did not present any grounds for intervention based on law, the Supreme Court set aside the High Court's judgment. The appeal was allowed, and the decision of the First Appellate Court was restored.

09. Sher Afzal vs The State

Criminal Appeal Nos. 229 & 230 of 2021

Present: *Mr. Justice Muhammad Hashim Khan Kakar*
Mr. Justice Salahuddin Pamhwar
Mr. Justice Ishtiaq Ibrahim

Source: https://www.supremecourt.gov.pk/downloads_judgements/crl.a. 229 2021.pdf

Facts: The case arises from a brutal incident that occurred on 8th September 2007, where the appellants, Sher Afzal and Muhammad Latif, along with other co-accused, allegedly murdered five members of the complainant's family—Taj Muhammad, Shahbaz Khan, Sajjad Hussain, Mst. Afsar Jan, and Muhammad Ismail—during a land dispute. Sher Afzal was armed with a 12-bore double-barrel gun and fired at three of the deceased, while Muhammad Latif, armed with a single-barrel 12-bore gun, shot the remaining two victims. Following these events, Muhammad Latif was tried in 2007 along with other accused persons, whereas Sher Afzal, initially a proclaimed offender, was tried separately after his arrest in 2012. Both were convicted under Section 302(b) PPC and sentenced to death by the trial court. These sentences were upheld by the Lahore High Court through judgments dated 1st February 2016.

Issue: Whether the convictions and death sentences of Sher Afzal and Muhammad Latif could be sustained based on the prosecution's evidence, despite the defence's objections regarding minor contradictions in eyewitness testimonies, their close relationship to the deceased, and the applicability of the principle *falsus in uno*,

falsus in omnibus?

Rule: The rule of law relevant to the case revolves around several settled legal principles. Firstly, the standard in criminal trials is proof beyond reasonable doubt, and while an accused is indeed a “favourite child of the law,” this does not warrant undue leniency without basis. Secondly, the principle *falsus in uno, falsus in omnibus*—that if a witness lies in one part of their testimony, their entire testimony should be disregarded—has been modified in Pakistan. It is now limited to falsehoods in material particulars only, and the judge is still bound to sift the grain from the chaff. Thirdly, minor contradictions in the statements of eyewitnesses do not automatically invalidate their testimony if the core narrative remains consistent and credible. Lastly, motive evidence, especially in cases of direct evidence, holds significant value in corroborating the overall prosecution case.

Application: In the application of these principles, the Court examined the testimonies of the eyewitnesses Mumtaz Khan and Mst. Begum Jan, who were close relatives of the deceased. Despite being related, the Court found their testimonies consistent, detailed, and corroborated by medical evidence. The autopsies conducted confirmed the ante-mortem firearm injuries matched the eyewitness accounts of the assault. Furthermore, the supposed contradictions pointed out by the defence were considered immaterial and not of a nature to cast serious doubt on the prosecution's case. The Court observed that these discrepancies were natural, given the traumatic nature of the event and the lapse of time between the incident and recording of evidence. Moreover, the doctrine of *falsus in uno* was not applicable because there were no material falsehoods in the statements of the eyewitnesses. The Court emphasized that judicial duty demands careful evaluation of each fact, and total rejection of evidence is not warranted unless the contradiction is substantial. The motive, a land dispute, was clearly established and unshaken during cross-examination, further strengthening the prosecution's case. Additionally, the accused failed to present any defence or plausible explanation for their false implication, and no reason was shown as to why the complainant would falsely accuse them while letting the actual culprits go unpunished.

Conclusion: In conclusion, the Supreme Court held that the prosecution had proved its case against both appellants beyond any shadow of doubt. The evidential record, including consistent eyewitness testimony, corroborated medical evidence, motive, and supporting forensic reports, all pointed to the appellants' guilt. The Court ruled that the doctrine of *falsus in uno* did not apply as there was no falsehood in material facts and rejected the contention that close familial relation of witnesses affected their credibility. Thus, the convictions of Sher Afzal for three murders and Muhammad Latif for two murders were upheld, and their appeals were dismissed. The ratio decidendi of the judgment is that credible, corroborated eyewitness testimony, even from related persons, can form the basis for conviction, and that minor contradictions do not vitiate the prosecution's case unless they go to the root. The observations concerning witness conduct and cultural context of testimonial integrity constitute the obiter dicta of the judgment, guiding future courts on the

The High Court of Sindh

01. The Collector of Customs (West), Karachi vs M/s. Seminar (Pvt) Ltd., Sialkot

Special Customs Reference Application 562/2024 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ2MTM4Y2Ztcy1kYzgZ>

Facts: The appellant, Ameer Jan @ Bablu, was apprehended by the Counter Terrorism Department (CTD) Karachi on 07.06.2024, near Kashti Wali Masjid, Mirza Adam Khan Road. He was allegedly found in possession of three Avan rifle grenades (without launchers), two ball bombs, and a rubbed-number black pistol with three bullets. Consequently, two FIRs (Nos. 88 & 89 of 2024) were registered against him under Section 4/5 of the Explosive Substances Act, 1908, Section 7 of the Anti-Terrorism Act, 1997, and Section 23(1)(a) of the Sindh Arms Act, 2013. The Anti-Terrorism Court convicted him under the aforementioned provisions, sentencing him to 5 years and with fine in sum of Rs.25000 and in case of default to pay the fine to undergo simple imprisonment for one month under Section 4/5 of the Explosives Act, 14 years' R.I and with fine in sum of Rs.25000 and in case of default to pay the fine to undergo simple imprisonment for one month under Section 7(ff) of the ATA, and 3 years and with fine in sum of Rs.25000 and in case of default to pay the fine to undergo simple imprisonment for one month under the Sindh Arms Act 2013 with all sentences to run concurrently. The Appellant was also extended the benefit of section 382-CrPC.

Facts: The Respondent imported a textile consignment and declared its value as US\$ 2,366.82. During physical examination, Customs retrieved an invoice from the consignment showing a significantly higher value of US\$ 45,793. The Adjudicating Authority imposed penalty and fine under Section 156(1)(14) of the Customs Act, 1969 and ordered assessment on the basis of the retrieved invoice under the proviso to Section 25A(2). The Customs Appellate Tribunal set aside the order, holding that the retrieved invoice was irrelevant without further inquiry, and remitted both the fine and penalty. The Department challenged this before the High Court.

Issue: Whether the Tribunal correctly interpreted the proviso to Section 25A (2) of the Customs Act, 1969, and whether it was justified in setting aside the redemption fine and penalty imposed on the basis of the invoice retrieved from the consignment?

Rule: As per the proviso to Section 25A (2) of the Customs Act, 1969, if the value mentioned in the retrieved invoice is higher than the value determined under a Valuation Ruling, such higher value shall be the customs value. Once a document

with direct relevance to the importer is retrieved, Customs is not obligated to apply alternative valuation methods under Section 25. The principle laid down in *Junaid Traders v. Additional Collector* (2012 SCMR 1876) affirms that such retrieval constitutes a misdeclaration justifying penalties.

Application: The Court found that the retrieved invoice was issued by the same supplier and bore identical shipment details as the declared invoice, confirming its relevance. The Tribunal erred in relying on Urooj Autos and other precedents that were distinguishable due to materially different facts. The Tribunal further misunderstood the legal implications of Section 25A's proviso, which mandates assessment on the higher invoice value without requiring further inquiries when the invoice is established as genuine. Therefore, the Tribunal's decision to accept the declared value and remit penalties was contrary to the law.

Conclusion: The Reference Application was allowed, the Tribunal's judgment was set aside, and both questions of law were answered in favor of the Applicant Department.

02. The Collector of Customs Karachi vs M/s. Bilal Metals (Pvt) Ltd., Karachi

Special Customs Reference Application 638/2024 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI0NjU3Y2ZtcylkYzgZ>

Facts: M/s. Bilal Metals (Pvt.) Ltd. imported a consignment of battery scrap from Bahrain and declared its origin accordingly in the Goods Declaration. Upon examination, Customs authorities found that approximately 55% of the consignment consisted of batteries of Indian origin, which are banned under the Import Policy Order, 2022. The Collectorate confiscated this portion of the goods and imposed a penalty under Sections 16, 32(1), 79(1), and clauses 1, 9, and 14 of Section 156(1) of the Customs Act, 1969. The respondent challenged this action, and, on appeal, the Customs Appellate Tribunal allowed re-export of the confiscated goods as "frustrated cargo" under Section 138 of the Act. The Collectorate then filed this Reference before the High Court, challenging the legality of the Tribunal's decision.

Issue: Whether the Customs Appellate Tribunal was justified in permitting re-export of banned Indian-origin goods as frustrated cargo under Section 138 of the Customs Act, 1969, despite no application having been filed by the consignor or the in-charge of the vessel as required by law, and whether the imposition of penalty under Section 156(1)(9) was sustainable in the circumstances?

Rule: Section 138 of the Customs Act, 1969, read with Rules 86 to 89 of the Customs Rules, 2001, provides that goods may be treated as "frustrated cargo" if brought into Pakistan by inadvertence, misdirection, or where the consignee is untraceable or has

dishonored his commitments. The section requires a formal application to be submitted by the consignor or the person in charge of the vessel, and the goods must remain under customs custody. Section 156(1)(9) authorizes the imposition of penalties for misdeclaration or attempted clearance of prohibited goods. The Import Policy Order, 2022, prohibits import of Indian-origin goods, which is further reinforced by SRO 499(I)/2009.

Application: The High Court found that no application for re-export under Section 138 was filed by the consignor or vessel's in-charge, nor was any such plea raised before the Adjudicating Authority. The Tribunal exceeded its jurisdiction by granting relief under Section 138 on the basis of a plea first raised during appeal. The reliance on *Driveline Motors Ltd.* was held to be misplaced due to factual distinctions. However, the Court noted that the goods were industrial scrap and the importer's facility was approved for such use. There was no clear evidence of deliberate wrongdoing, justifying remission of the penalty, though the confiscation order was upheld.

Conclusion: The Tribunal erred in law by allowing re-export of banned goods under Section 138 without fulfilment of the legal prerequisites. Therefore, the impugned judgment of the Tribunal was set aside. However, considering the bona fide conduct of the importer and the industrial nature of the goods, the penalty imposed by the Adjudicating Authority was remitted.

03. **Hamayu Sultan vs Federation of Pakistan & others**

Constitutional Petition No. D-466 of 2025 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ1MTcwY2Ztcy1kYzgZ>

Facts: The Petitioners, who are licensed customs agents, challenged the suspension of their customs agent licenses through identical circulars dated 01.02.2025, issued by the Collectorate of Customs Appraisalment (West), Karachi. The suspension orders were executed without prior notice or recorded reasons. The Petitioners contended that this action was arbitrary, contrary to natural justice, and violative of precedents laid down in earlier cases like *K.G. Traders* (PLD 1997 Karachi 541) and *Docks (Pvt.) Ltd.* (2015 PTD 948).

Issue: Whether the suspension of customs agent licenses under Rule 102(4) of the Customs Rules, 2001, without notice and without assigning reasons, is lawful and sustainable?

Rule: Rule 102(4) of the Customs Rules, 2001, allows immediate suspension of a license *without notice* only when such immediate action is necessary. However, the law and judicial precedent require that such action be accompanied by recorded reasons and

exercised sparingly, in strict conformity with the principles of natural justice.

Application: The Court observed that although Rule 102(4) allows suspension without notice in urgent circumstances, this power must be used rarely and only with clearly recorded reasons. In this case, the impugned circular was entirely silent on reasons. The Court rejected the Respondents' contention that the order existed only in the computer system, holding that such a medium does not override the legal requirement of reasoned action. The Court also noted that the show cause notices issued after the suspension did not reveal any emergent circumstances justifying immediate action; rather, the allegations were vague and based merely on WhatsApp exchanges with a third party. Thus, no justification existed for such a drastic ex-parte measure.

Conclusion: The High Court allowed the petitions and suspended the suspension orders of the Petitioners' customs agent licenses. The Court directed the licensing authority to decide the pending show cause notices in accordance with law and after giving a proper hearing to the Petitioners. The suspension orders were declared unsustainable due to lack of notice and absence of recorded reasons.

04. M/s. ARY Communication Limited vs Federal Board of Revenue and others

High Court Appeal No. 324 of 2024 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI0Njc3Y2Ztcy1kYzgZ>

Facts: The appellant, ARY Communications Ltd., challenged audit notices issued under Section 177 of the Income Tax Ordinance, 2001, covering tax years 2017 to 2021. They claimed the notices were issued with mala fide intent, allegedly targeting them due to their editorial independence. Instead of responding to the notices or participating in the audit process, the appellant filed a civil suit seeking declaratory and injunctive relief before a learned Single Judge on the original side of the Sindh High Court. An interim order was initially granted. However, relying on the Supreme Court's judgment in *Allah Din Steel* (2018 SCMR 1328), the learned Single Judge rejected the plaint under Order VII Rule 11 CPC on the ground that the suit was barred by law and disclosed no cause of action. This led to the filing of the present High Court Appeal under the Law Reforms Ordinance, 1972.

Issue: Whether a civil suit challenging audit notices under the Income Tax Ordinance was maintainable before the High Court in its original civil jurisdiction. The Court also had to determine whether general allegations of mala fides were enough to overcome the statutory bar under Section 227 of the Ordinance, and whether the plaint could be rejected suo motu under Order VII Rule 11 CPC?

Rule: Under Section 177 of the Income Tax Ordinance, the Commissioner may lawfully

initiate audit proceedings based on reasons to believe that further examination is required. Section 227 bars civil suits against orders or notices issued under the Ordinance. The Supreme Court in *Allah Din Steel* has held that issuance of an audit notice is not an adverse action and does not create a cause of action. In *Searle IV Solution* (2018 SCMR 1444), the Court ruled that although the civil original jurisdiction of the Sindh High Court is not barred in fiscal matters, it must be exercised sparingly and not as a matter of routine, particularly in cases involving self-assessment under tax law. Order VII Rule 11 CPC empowers courts to reject a plaint if it appears on the face of it that the suit is barred by law or fails to disclose a cause of action, and this power may be exercised suo motu.

Application: The Court found that the appellant had failed to exhaust remedies available under the tax statute and had instead sought to bypass the audit process entirely by invoking civil jurisdiction. The notices under Section 177 were not shown to be illegal, without jurisdiction, or tainted by specific mala fides. The appellant's general assertion of discrimination due to political bias was unsupported by particular facts or pleadings, and no specific act of malice was attributed to any officer. The plaint did not seek damages, nor did it allege any actionable injury. The Supreme Court's jurisprudence clearly emphasized that mere selection for audit does not confer a cause of action. The learned Single Judge rightly held that such proceedings are part of a statutory scheme that provides due opportunity to taxpayers to justify their returns and defend their position before any adverse consequence arises. Additionally, the Supreme Court in *Searle IV Solution* had directed that fiscal suits should only be entertained if mala fides are clearly pleaded and 50% of the assessed tax is deposited as a condition. None of these requirements were met in this case.

Conclusion: The appeal was dismissed. The Court concluded that the suit was barred under Section 227 of the Income Tax Ordinance and did not disclose any actionable cause. The rejection of the plaint by the learned Single Judge under Order VII Rule 11 CPC was upheld as lawful and proper.

05. M/s. Fazlee Sons (Pvt) Ltd vs Federation of Pakistan & others

Constitutional Petition No. D-6280 of 2024 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI1MTAxY2Ztcy1kYzgZ>

Facts: The petitioner challenged a notice dated 11.10.2024 issued under Section 177(1) of the Income Tax Ordinance, 2001, initiating audit proceedings for Tax Year 2023. It was argued that under Clause (105A) of Part IV of the Second Schedule to the Ordinance, the petitioner was exempt from audit since their income tax affairs had been audited for Tax Year 2018, and this audit was completed on 28.06.2024. Counsel for the petitioner submitted that the next audit could only lawfully take

place after the lapse of four years from the completion date, i.e., after 28.06.2028. Reliance was also placed on an explanatory Circular issued by the FBR dated 21.07.2022.

- Issue:** Whether Clause (105A) of the Second Schedule to the Income Tax Ordinance, 2001 bars the issuance of a notice under Section 177 for Tax Year 2023, when the last audit was for Tax Year 2018 but completed in the calendar year 2024?
- Rule:** Clause (105A) provides that Section 177 and Section 214C shall not apply to a person whose income tax affairs have been audited in any of the “preceding four tax years.” The Clause does not refer to the date of audit completion. As per Section 2(68) read with Section 74, a “tax year” is a twelve-month period ending on 30 June and is denoted by the calendar year in which that date falls. Jurisprudence establishes that exemptions and concessions must be strictly construed and that redundancy cannot be attributed to legislative wording (see *Collector of Customs v. Mega Tech* and *PTET v. Federation*). Circulars issued by FBR are not binding on courts unless in conformity with the statute (see *CBR v. Sheikh Spinning Mills* and *Central Insurance Co. v. CBR*).
- Application:** The Court held that the petitioner’s argument was flawed, as Clause (105A) refers to the tax year audited, not the year when the audit concluded. Therefore, the audit conducted for Tax Year 2018 (despite being completed in 2024) counts as audit for 2018, and the subsequent audit may lawfully be initiated for Tax Year 2023. The interpretation urged by the petitioner would render the term “tax year” redundant, which is contrary to established principles of statutory construction. The Court also found that the FBR’s explanatory Circular suggesting otherwise lacked legal force and contradicted the plain meaning of Clause (105A). Accepting the petitioner’s view would enable taxpayers to delay audits and then claim extended protection under the Clause, undermining the statutory audit mechanism.
- Conclusion:** The Court dismissed the petition in limine, holding that it was misconceived and not maintainable. The issuance of the audit notice for Tax Year 2023 was found to be in accordance with Clause (105A) and the Income Tax Ordinance.
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06. Sohail Hameed vs Province of Sindh & others

Constitutional Petition No. D-546 & 558 of 2025 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3MjEwY2Ztcy1kYzgZ>

Facts: The petitioners filed constitutional petitions under Article 199 of the Constitution of Pakistan challenging the conduct of the executive in preparing and initiating a Bill to amend the Sindh Civil Courts Ordinance, 1962. At the time of filing, the Bill had not yet been passed by the Provincial Assembly. Despite this, notices were issued

and various applications for intervention were filed. During the pendency, it was argued that the Bill had since been passed, though no amendment was made to the petitions to reflect that.

Issue: Whether a constitutional petition is maintainable to challenge the executive's initiation or proposal of a Bill before it has been passed and enacted into law?

Rule: A Bill does not have the force of law until it is enacted by the legislature. Courts do not interfere in pending legislative processes. Jurisdiction under Article 199 arises only upon actual or imminent infringement of a legal or constitutional right. The Supreme Court has disapproved of challenges to proposed Bills in *Raja Amer Khan v. Federation of Pakistan* (C.P. No. 06 of 2023).

Application: The Court held that since the Bill was not enacted at the time of filing, there was no infringement of any right. The petitions sought to preemptively obstruct the legislative process, which is impermissible. Even if the Bill has since been passed, the petitions were not amended to challenge the resultant Act. Therefore, the petitions lacked justiciable cause.

Conclusion: The petitions were dismissed as premature and misconceived. The Court held that the petitioners may seek remedy after the Bill becomes law, but not before.

07. **Western Freight Shipping Pvt Ltd vs Federation of Pakistan & others**

Constitutional Petition No. D-609 of 2025 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5ODc0Y2Ztcy1kYzgZ>

Facts: Western Freight Shipping (Pvt.) Ltd. and others, duly licensed bonded carriers under Rule 638 of the Customs Rules, 2001, filed a constitutional petition under Article 199(1)(a)(ii) of the Constitution. They challenged Office Order No. 16/2025 dated 25.01.2025 issued by the Directorate General of Transit Trade, which implemented a decision dated 09.01.2025 of the Licensing Committee constituted under the Tracking and Monitoring Rules, 2023. This decision temporarily entrusted Respondent No.4 (NLC) with the transportation of Afghan Transit Cargo till 31.03.2025. The Petitioners contended that this created a monopoly in favor of Respondent No.4, who was also a tracking service provider, and unlawfully compelled Petitioners to work as subcontractors under them.

Issue: Whether the Licensing Committee's decision to assign Afghan Transit Cargo operations temporarily to Respondent No.4 was arbitrary, illegal, and beyond jurisdiction, thus violative of the Petitioners' rights as licensed bonded carriers under the Customs Rules, 2001?

Rule: Rule 1124 of the Customs Rules, 2001 (Tracking and Monitoring in Emergency Situations) allows the Licensing Committee to prescribe an interim procedure for not more than 90 days to track and monitor cargo in emergent situations to protect public revenue. This includes interim measures that do not override the existing licensing framework.

Application: The Court found that the impugned decision was made in the context of an emergent situation—over 2000 containers of Afghan Transit Cargo were stuck due to the cancellation of the previous tracker’s license and non-compliance with new SOPs by bonded carriers, including the Petitioners. The decision did not grant Respondent No.4 exclusive rights to transport or track; rather, NLC was coordinating the movement using trucks provided by the Petitioners themselves, without replacing or suspending their licenses. The Court noted that the Petitioners had participated in meetings and consented to the modalities agreed upon between the Association and NLC. The purpose of the decision was to resolve logistical bottlenecks temporarily. Further, there was no challenge to the vires of Rule 1124 or the Tracking and Monitoring Rules, 2023. Petitioners’ conduct of simultaneously participating in the process and later challenging it was seen as lacking bona fides and clean hands.

Conclusion: The High Court dismissed the petition, holding that the impugned Office Order and decision of the Licensing Committee were lawful, within jurisdiction, and justified under Rule 1124 of the Customs Rules, 2001. The Court emphasized that the decision was a temporary and reasonable administrative measure and did not create a monopoly. This formed the ratio decidendi of the judgment. Observations on the Petitioners’ participation and lack of clean hands were made obiter dicta.

08. M/s. Regus Executive Center Karachi (Pvt) Ltd. vs Assistant Commissioner (Unit-04) Karachi & another

Special Sales Tax Reference Application No. 07 of 2024 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar, ACJ*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUwNDk2Y2Ztcy1kYzgZ>

Facts: The Applicant, M/s Regus Executive Center Karachi (Pvt.) Ltd., challenged the order dated 12.12.2023 passed by the Appellate Tribunal, Sindh Revenue Board (SRB), whereby the Tribunal upheld a demand raised through a show-cause notice dated 01.07.2021 for the period July 2015 to June 2018. SRB alleged that the Applicant had failed to pay sales tax on services categorized as “Business Support Services.” The Applicant contended that it primarily provided rental space and ancillary services, with tax duly paid on the ancillary component at 3%, and that the renting of immovable property is not taxable under the governing statute, relying on the decision in *Young’s (Pvt.) Ltd. v. Province of Sindh* (2019 PTD 389) upheld by the Supreme Court.

- Issue:** Whether (i) mere renting of immovable property constitutes a taxable service under the Sindh Sales Tax on Services Act, 2011, in view of the Young’s judgment, and (ii) whether default surcharge and penalty were lawfully imposed on the Applicant for the relevant tax period?
- Rule:** Under Section 2(19) of the Sindh Sales Tax on Services Act, 2011, “Business Support Services” are taxable. However, the definition of “renting of immovable property” was introduced later through an amendment in 2017 (Section 2(72C)). The High Court in Young’s (Pvt.) Ltd. held that, under the pre-amendment law, mere renting of immovable property does not amount to a taxable service. This view was maintained by the Supreme Court, rendering any attempt to tax rental income under business support services for pre-2017 periods invalid.
- Application:** The Court found that the Applicant had issued bifurcated invoices, separately identifying charges for rental and ancillary services, and had paid the applicable tax on ancillary services. The Tribunal erred by treating the entire consideration as taxable under business support services without appreciating the documentary evidence. Moreover, SRB’s alternative reliance on “infrastructural support services” was not part of the original show-cause notice and thus could not form the basis of liability. The Tribunal’s reliance on the Applicant’s Memorandum and Articles of Association, as well as an Indian judgment, was declared irrelevant, given the statutory and factual distinctions. The Court held that tax liability arises from the nature of the actual service rendered, not from the category of registration or corporate documents.
- Conclusion:** The High Court held that mere renting of immovable property does not constitute a taxable service under the Sindh Sales Tax on Services Act, 2011, particularly for the tax periods prior to the 2017 amendment, as already settled in Young’s (Pvt.) Ltd.—a judgment affirmed by the Supreme Court. The Court further held that the Applicant had correctly distinguished between rental income and ancillary business support services by issuing separate invoices and paying sales tax on the latter at the applicable rate. The imposition of default surcharge and penalty was therefore unwarranted. Consequently, the Reference Application was allowed, and the orders passed by the lower forums were set aside.

09. Ameer Jan vs The State

Special Criminal Anti-Terrorism Appeal No. 128 of 2024 (D.B)

Present: *Mr. Justice Zafar Ahmed Rajput*
Justice Ms. Tasneem Sultana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ0MDg0Y2Ztcy1kYzgz>

Facts: The appellant, Ameer Jan @ Bablu, was apprehended by the Counter Terrorism Department (CTD) Karachi on 07.06.2024, near Kashti Wali Masjid, Mirza Adam

Khan Road. He was allegedly found in possession of three Avan rifle grenades (without launchers), two ball bombs, and a rubbed-number black pistol with three bullets. Consequently, two FIRs (Nos. 88 & 89 of 2024) were registered against him under Section 4/5 of the Explosive Substances Act, 1908, Section 7 of the Anti-Terrorism Act, 1997, and Section 23(1)(a) of the Sindh Arms Act, 2013. The Anti-Terrorism Court convicted him under the aforementioned provisions, sentencing him to 5 years and with fine in sum of Rs.25000 and in case of default to pay the fine to undergo simple imprisonment for one month under Section 4/5 of the Explosives Act, 14 years' R.I and with fine in sum of Rs.25000 and in case of default to pay the fine to undergo simple imprisonment for one month under Section 7(ff) of the ATA, and 3 years and with fine in sum of Rs.25000 and in case of default to pay the fine to undergo simple imprisonment for one month under the Sindh Arms Act 2013 with all sentences to run concurrently. The Appellant was also extended the benefit of section 382-CrPC.

- Issue:** Whether the conviction and sentence of the appellant under Section 7(ff) of the Anti-Terrorism Act, 1997 and Section 4 of the Explosive Substances Act, 1908 were legally sustainable in light of the nature of the recovered items, or whether his conduct more appropriately fell under Section 5 of the Explosive Substances Act, 1908?
- Rule:** Section 7(ff) of the Anti-Terrorism Act, 1997 criminalizes the use or possession of explosives with intent to cause terror or damage. Section 4 of the Explosives Act, 1908 applies where an individual possesses or makes explosive substances with intent to endanger life or cause injury/damage. Conversely, Section 5 of the 1908 Act punishes mere possession of explosive substances under suspicious circumstances, without lawful justification or intent to cause harm. Section 23(1)(a) of the Sindh Arms Act, 2013 deals with unauthorized possession of arms and ammunition.
- Application:** The Court noted that the grenades recovered from the appellant were non-functional without a launcher and thus not immediately capable of explosion, injury, or property damage. As such, the material did not satisfy the legal definitions of “explosives” under either Section 2(f) of the Anti-Terrorism Act or Section 4(1) of the Explosives Act, 1884. This rendered Section 7(ff) of the ATA and Section 4 of the 1908 Act inapplicable. However, under Section 2 of the Explosive Substances Act, 1908, such items—being parts of explosive apparatus—still fell within the definition of “explosive substances.” Since the appellant could not justify lawful possession, Section 5 of the 1908 Act applied. The prosecution did not prove any intent to endanger life or property, further supporting the application of Section 5 over Section 4. Moreover, considering the appellant had no prior convictions, the Court was inclined to show leniency in sentencing to allow for reformation.
- Conclusion:** The High Court modified the trial court’s judgment by setting aside the conviction and sentence under Section 7(ff) of the ATA and Section 4 of the Explosive Substances Act, 1908. The conviction was altered to one under Section 5 of the

Explosive Substances Act, and the sentence was reduced to three (3) years' rigorous imprisonment. The conviction and sentence under Section 23(1)(a) of the Sindh Arms Act was maintained. Both sentences were ordered to run concurrently, with the benefit of Section 382-B, Cr.P.C. (counting time served in pre-trial custody) also extended to the appellant. The appeal was dismissed with modification to the extent of sentence and applicable law.

10. Mumtaz Ali vs The State

Spl. Cr. A.T. Jail Appeal No. 40 of 2024 (D.B)

Present: *Mr. Justice Zafar Ahmed Rajput*
Justice Ms. Tasneem Sultana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3MjY0Y2Ztcy1kYzgZ>

Facts: The appellant, Mumtaz Ali s/o Qadir Bux, was convicted by the Anti-Terrorism Court No. XIX, Karachi, in Special Case No. 17 of 2023, arising from F.I.R. No. 649 of 2022 registered at P.S. Quaidabad. The prosecution alleged that on 21.11.2022, the complainant and his brother were intercepted by four armed individuals who snatched their motorcycle and documents at gunpoint. A police party from 15-Madadgar arrived at the scene, during which the culprits opened fire, injuring PC Gulsher. In retaliation, an exchange of fire took place, resulting in injuries to one accused, Suhno alias Laiq, who later died. The remaining accused, including the present appellant, fled. The appellant was later arrested in an unrelated arms case on 19.12.2022 and during interrogation, disclosed his involvement in the instant case. He was identified in a judicial identification parade conducted on 26.12.2022 by the complainant and was formally charged and tried. He was convicted under sections 397/34, 7(h) r/w 353, and 7(i)(b) r/w 324 PPC of the Anti-Terrorism Act, 1997 and sentenced accordingly.

Issue: Whether the conviction of the appellant was sustainable in light of the identification evidence, testimonial accounts of witnesses, and alleged procedural flaws in the conduct of the identification parade?

Rule: Under Article 22 of the Qanoon-e-Shahadat Order, 1984, facts that establish the identity of a person relevant to the incident are admissible. While identification tests are not substantive evidence per se, they serve as corroborative tools to support in-court identification. The Supreme Court of Pakistan, particularly in *Kanwar Anwar Ali v. The State* (PLD 2019 SC 488), emphasized the importance of strict adherence to procedural safeguards in identification parades to ensure fairness and avoid wrongful convictions. Further, Section 34 PPC provides joint liability when a criminal act is committed in furtherance of common intention.

Application: In applying these rules, the Court carefully examined the identification test conducted by the Judicial Magistrate, noting that the appellant was presented with nine dummies, properly documented with parentage and CNICs. The complainant

unambiguously identified the appellant and assigned him a specific role in the commission of the crime. The Magistrate confirmed due procedure was followed, and the defence failed to establish any prior enmity or motive for false implication. Additionally, testimony from the injured PC Gulsher and other police officials corroborated the sequence of events, including the robbery and police encounter. The medico-legal reports also aligned with the prosecution's version, confirming firearm injuries and the death of one of the accused. The defence argument of mistaken identity lacked merit as no substantial contradiction or evidence of procedural irregularity was shown. Moreover, the appellant neither produced any defence evidence nor examined himself to refute the prosecution's case. His claim of arrest from the Malir Court on an earlier date was unsubstantiated, and no documentary proof was brought on record.

Conclusion: The High Court concluded that the prosecution had successfully established the appellant's guilt through cogent, consistent, and corroborative evidence. The identification parade met legal standards, and the trial was free of material irregularities. Accordingly, the appeal was dismissed, and the conviction and sentence awarded by the trial court were upheld.

11. **Ali Muhammad vs The State**

Confirmation Case No.09 of 2024 &
Criminal Jail Appeal No. 616 of 2024 (D.B)

Present: *Mr. Justice Zafar Ahmed Rajput*
Justice Ms. Tasneem Sultana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3NzY4Y2Ztcy1kYzg>

Facts: The appellant, Ali Muhammad s/o Khamiso Jiskani, was tried in Sessions Case No.186 of 2023 arising from F.I.R. No.67/2023 registered at P.S. Chuhar Jamali, District Sujawal, under Sections 302/311 of the Pakistan Penal Code (PPC). He was convicted by the 1st Additional Sessions Judge, Sujawal, under Section 302(a), PPC, and sentenced to death through judgment dated 26.08.2024. The case was subsequently referred to the High Court under Section 374 of the Criminal Procedure Code (Cr. P.C.) for confirmation of the death sentence. During the appellate proceedings, it was revealed that the appellant was unrepresented by legal counsel during the examination of three key prosecution witnesses (PWs), namely Abdul Hameed (PW-2), Shabana (PW-3), and Allah Dito (PW-4), as his previous counsel had withdrawn, and no replacement had been appointed.

Issue: Whether the trial conducted partly in the absence of legal representation for the accused—especially in a capital punishment case—rendered the proceedings illegal and the conviction unsustainable under law and the Constitution of Pakistan?

Rule: Under Paragraph-6 of Chapter VII of the Federal Capital and Sindh Courts Criminal Circulars, it is mandatory that in cases involving capital punishment, the accused must be represented by a qualified legal practitioner—either one appointed by the

accused or by the court at state expense. This requirement is further supported by Section 340(1) Cr. P.C., and constitutional protections under Articles 4, 9, 10, and 10A of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantee the right to a fair trial, legal representation, and due process. The courts, including precedents like *Shafique Ahmed v. The State* (PLD 2006 Kar. 377), *Sadam Hussain v. The State* (2018 MLD 1025), and *Syed Waris Khan v. The State* (2018 MLD 422), have consistently held that trials involving the death penalty must not proceed in absence of counsel for the accused, and any violation of this renders the trial proceedings illegal and incurable.

Application: In the present case, the trial court failed to ensure the continued representation of the accused after the withdrawal of his original counsel. Despite the capital nature of the offence, no counsel was appointed at state expense, nor was the trial paused to secure proper legal representation. As a result, three material witnesses were examined and the appellant's statement was recorded under Section 342, Cr. P.C., without the benefit of legal advice or cross-examination, severely prejudicing his right to defend himself. This failure constitutes a breach of not only procedural law and judicial directives but also of fundamental rights enshrined in the Constitution.

Conclusion: In light of the above, the High Court allowed the appeal, set aside the impugned judgment, and remanded the matter to the trial court. The court was directed to ascertain whether the appellant wishes to appoint his own counsel or needs one at government expense, and to re-examine the three key prosecution witnesses in the presence of defense counsel. The appellant is also to be re-examined under Section 342, Cr. P.C., and given an opportunity to present his defense before the case is re-decided afresh in accordance with law. The connected confirmation reference was answered in the same terms.

12. The State vs The Administrative Judge, ATC Karachi & another

Criminal Revision Applications No. 35 to 38 of 2025 (D.B)

Present: *Mr. Justice Zafar Ahmed Rajput*
Justice Ms. Tasneem Sultana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3MDM4Y2Ztcy1kYzgZ>

Facts: The State, through the Acting Prosecutor General and the Additional Prosecutor General, filed Criminal Revision Applications Nos. 35 to 38 of 2025 against orders passed by the Administrative Judge, Anti-Terrorism Courts, Karachi. The cases stem from Crime No. 12/2025, registered under sections 365 and 365-A, PPC read with section 7 of the Anti-Terrorism Act, 1997 ("ATA"), and Crime Nos. 1, 2 & 3/2025 under sections 324, 353, PPC, read with section 7 of the ATA and sections 23(1)(a)/25 of the Sindh Arms Act, 2013. The accused, Armaghan @ Army, was arrested after a police raid during which he allegedly resisted with arms, injuring police personnel and leading to the recovery of arms and ammunition. Despite the police's request under Section 21-E of the ATA for remand into police custody for

further investigation, the Administrative Judge declined and instead remanded the accused to judicial custody, citing complaints of maltreatment. He also constituted a Joint Investigation Team (JIT), even though no such request was made by any party.

Issue: Whether the orders of the Administrative Judge declining police custody remand and constituting a JIT were lawful, justified, and within the scope of his authority under the Anti-Terrorism Act, 1997 and the Code of Criminal Procedure, 1898?

Rule: Under Section 21-E of the Anti-Terrorism Act, 1997, the Administrative Judge is deemed a Magistrate for the purpose of authorizing remand of an accused in cases involving scheduled offences. The provision is similar in function to Section 167 of the Criminal Procedure Code (CrPC), allowing remand where investigation cannot be completed within 24 hours and where reasonable grounds exist to believe the accusation is well-founded. Additionally, Section 19(1) of the ATA empowers only the Government to constitute a JIT if deemed necessary, and not the Administrative Judge. The Magistrate or Administrative Judge must exercise their powers judicially, assessing the nature of allegations, available evidence, and the necessity of police custody for effective investigation.

Application: In this case, the police had solid grounds for requesting remand, including the recovery of arms, the accused's violent resistance, injuries to police personnel, and the serious nature of charges involving kidnapping for ransom and terrorism. The refusal of police remand was based solely on the accused's complaint of maltreatment, despite the fact that the medical examination did not conclusively support recent torture during custody. Moreover, rather than balancing the need for investigation with protection of rights, the Administrative Judge overstepped by issuing judicial custody without examining the necessity of police remand and further compounded the legal error by constituting a JIT—a function strictly reserved for the Government. The records also reveal procedural impropriety in the remand order, where typed “police custody” was visibly changed to “judicial custody” with correction fluid, without proper endorsement or initials. These irregularities undermined both the remand process and the investigation.

Conclusion: The High Court found that the Administrative Judge's actions were arbitrary, legally flawed, and had the potential to obstruct the investigation of heinous offences. Consequently, the Court set aside the impugned orders dated 10.02.2025 and 11.02.2025 and directed the Investigating Officer to produce the accused before the Judge, Anti-Terrorism Court No. II, Karachi, for a fresh decision on the remand requests in accordance with law.

13. Pakistan State Oil Company Limited (PSO) vs M/s. Gillani (Pvt. Ltd.)

High Court Appeal No. 211 of 2018 (D.B)

Present: *Mr. Justice Muhammad Iqbal Kalhoro*

Mr. Muhammad Osman Ali Hadi

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ0NjkwY2Ztcy1kYzgZ>

Facts: The dispute arose when Pakistan State Oil Company Limited (PSO), the Appellant, entered into a sublease agreement with Respondent No.1, M/s. Gillani (Pvt.) Ltd., for a plot of approximately 19,338 square yards to construct a tank terminal and public bonded warehouse. PSO advanced Rs. 3.677 million as a security deposit. Subsequently, PSO alleged that Respondent No.1 had defaulted on its contractual obligations and, after serving a legal notice, filed Suit No. 1725 of 2000 for recovery of Rs. 25.4 million. Initially, the suit proceeded ex parte until Respondent No.1 filed an application under Section 34 of the Arbitration Act, 1940, requesting referral to arbitration. The application was allowed and the matter was stayed for arbitration, but the arbitration proceedings never commenced as Respondent No.1 failed to pay its nominated arbitrator's fee. In 2007, PSO filed CMA No. 2885/2007 under Section 151 CPC seeking restoration of the suit, which was allowed by the Trial Court. Despite Respondent No.1 remaining absent, the suit proceeded to final arguments. However, the Trial Court ultimately dismissed the suit in 2018, holding that the restoration order was void and that the court had no jurisdiction after referring the matter to arbitration.

Issue: Whether the Trial Court's restoration of the suit—after referring the matter to arbitration under Section 34 of the Arbitration Act—was lawful and whether the subsequent dismissal of the suit on grounds of lack of jurisdiction and procedural defects was sustainable in law?

Rule: The relevant statutory provisions include Section 34 of the Arbitration Act, 1940, which gives courts the discretion (not mandate) to stay proceedings upon a valid arbitration agreement if the applicant is ready and willing to arbitrate. Section 25 of the Act allows the Court to supersede the arbitration agreement if an arbitrator refuses to act. Furthermore, Section 151 of the Code of Civil Procedure provides for the inherent powers of the court to ensure the ends of justice, and Section 41 of the Arbitration Act confirms that civil courts retain certain procedural powers under the CPC. Established jurisprudence also holds that a mere mistake in quoting the wrong legal provision does not vitiate an otherwise valid legal action, provided the court has jurisdiction (e.g., PLD 2018 SC 40; PLD 2002 SC 1111).

Application: Applying these legal principles, the Division Bench found that Respondent No.1 had failed to demonstrate readiness and willingness to pursue arbitration, as required under Section 34, evidenced by its refusal to even pay its arbitrator's fee. The court held that the Trial Court acted within its lawful jurisdiction under Section 151 CPC and Section 25 of the Arbitration Act when it restored the suit and superseded the arbitration agreement. The learned Single Judge's decision to later hold the restoration order void amounted to the Trial Court sitting in appeal over its own earlier order—an act impermissible in law. Since Respondent No.1 did not file any appeal against the 2008 restoration order, it had attained finality. The appellate court

also noted that Respondent No.1's conduct amounted to abuse of process, as it first invoked arbitration and then refused to proceed, effectively stalling justice. The court also held that the technical objection regarding incorrect citation of legal provisions in the restoration application was not fatal to the case, especially when the court otherwise had jurisdiction and had acted to ensure justice.

Conclusion: In conclusion, the High Court of Sindh allowed the appeal, set aside the impugned judgment and decree of 2018, and remanded the matter to the Trial Court to be heard on merits at the stage of final arguments. The Division Bench reaffirmed that a civil court's jurisdiction is not ousted simply by the presence of an arbitration clause, especially where the party seeking arbitration fails to pursue it. The ratio decidendi of the judgment is that courts retain the jurisdiction to supersede arbitration agreements and restore suits when arbitration proceedings are frustrated due to a party's non-cooperation, and that jurisdiction is not ousted unless expressly barred by statute. The obiter dicta include the court's observation that filing an application under the wrong legal provision is not fatal to relief when the court has substantive jurisdiction, and the invocation of the maxim *actus curiae neminem gravabit*—that no one should suffer due to an act of the court.

14. **Muhammad Anis vs M/s. Pak Gulf Leasing Co. Ltd. & others**

High Court Appeal No. 211 of 2018 (D.B)

Present: *Mr. Justice Muhammad Iqbal Kalhoro*
Mr. Muhammad Osman Ali Hadi

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3MjkyY2Ztcy1kYzgZ>

Facts: Muhammad Anis, the appellant, was the owner of a residential property in Korangi Township, Karachi. In 2004, he provided the property documents as surety in a bail matter before a criminal court. While the accused were granted bail and the surety was discharged, the original property papers were never returned to the appellant. Subsequently, in 2007, he received a notice from Respondent No. 1 (a leasing company) informing him that the property was mortgaged to them and would be auctioned. Anis had no prior relationship with the company and alleged that the mortgage was fraudulent. He initially approached the civil court, which returned his plaint suggesting that the proper forum was the Banking Court. He then filed Suit No. 578/2007 before Banking Court No. V at Karachi. The case proceeded to trial, issues were framed, and evidence was recorded. However, at the stage of final arguments, the Banking Court raised an additional issue concerning its jurisdiction and eventually returned the plaint under Order VII Rule 10 CPC, stating that the plaintiff was not a "customer" under Section 2(c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (FIO 2001). Aggrieved by this decision, Anis filed the instant appeal.

Issue: Whether the Banking Court erred in returning the plaint for lack of jurisdiction after having conducted a full trial, and whether the appellant, though not a customer of

the financial institution, was entitled to judicial relief regarding his property rights within the procedural framework of law?

Rule: Under Section 7(4) of the FIO 2001, a Banking Court has jurisdiction to decide its own jurisdiction. However, jurisdiction under the FIO 2001 can only be invoked when a dispute exists between a financial institution and a “customer” as defined in Section 2(c) of the said Ordinance. The principle of *ubi jus ibi remedium*—where there is a right, there is a remedy—has long been recognized by courts, and procedural rules must not defeat substantive justice. Similarly, the maxim “*actus curiae neminem gravabit*” (an act of court should prejudice no one) and “*ex debito justitiae*” (a remedy as a matter of right) obligate courts to undo their own procedural wrongs. Additionally, Order 41 Rule 33 and Section 151 CPC grant appellate courts inherent powers to do complete justice, including transferring suits to the proper forum to avoid procedural injustice.

Application: The High Court noted that the appellant had been actively pursuing his remedy through courts since 2006 and had followed the guidance of the forums he approached. Both the civil and banking courts had returned his complaints without deciding the case on merits, effectively denying him any remedy. Though the Banking Court was technically correct in concluding that it lacked jurisdiction because the appellant was not a “customer” under FIO 2001, it erred in framing this issue only at the final stage—after trial and evidence had been completed. This procedural oversight caused unnecessary hardship, wasted judicial time, and prolonged the litigation. The High Court held that the situation called for judicial correction under the principles of “*actus curiae neminem gravabit*” and “*ex debito justitiae*.” Applying its inherent powers under Section 151 CPC and Order 41 Rule 33, the Court transferred the suit from the Banking Court to the competent civil court, directing it to proceed from the final argument stage using the already recorded evidence, without initiating a fresh trial. This remedied the procedural injustice and ensured that the appellant’s claim would not be thwarted by technicalities.

Conclusion: The appeal was allowed, and the High Court transferred Suit No. 578/2007 to the appropriate civil court, with directions to proceed from the final arguments stage and conclude the case within three months. The Court emphasized that the appellant should not be punished for judicial misdirection and procedural errors of the subordinate courts. Hon’ble Court observed that a litigant is misdirected by courts regarding forum and procedural law, appellate courts have the power and duty to correct such errors by invoking inherent jurisdiction, ensuring that justice is not defeated by technicalities. It is held that the courts must avoid raising jurisdictional issues at the final stage of trial; procedural fairness demands that such objections be addressed at the outset. A court should actively facilitate justice by using its transfer powers when faced with forum-related dilemmas.

Constitutional Petition No. 20 of 2025 (S.B)

Present: *Mr. Justice Zulfiqar Ahmad Khan*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUxNTU0Y2Ztcy1kYzgZ> .

Facts: Mst. Sidra, the petitioner, married respondent No. 4 (Zaib Hassan) on 22.07.2022, but he failed to fulfill his marital obligations, including paying the agreed-upon dower. Respondent No. 4 had previously been married to Mst. Hira (respondent No. 5), and after marrying Mst. Sidra, he reconciled with Mst. Hira and divorced Mst. Sidra in November 2022, while she was pregnant. On 25.04.2023, Mst. Sidra gave birth to a son, Ali Abbas. However, on 10.11.2024, respondent No. 4, along with respondents No. 5 and 6, forcibly took custody of the child and attempted to alter the birth records, falsely claiming that Mst. Hira was the mother. Mst. Sidra filed applications for the recovery of her son under Section 491, Cr.PC, but they were dismissed. She then sought the High Court's intervention to recover her child, claiming unlawful custody and fraudulent actions by the respondents.

Issue: Whether the petitioner, Mst. Sidra, is entitled to the return of her minor son, Ali Abbas, who was unlawfully taken from her custody by respondent No. 4, and whether the actions of respondent No. 4, including the manipulation of birth records, constitute violations of family law and criminal law provisions?

Rule: Under Section 491 of the Criminal Procedure Code (Cr.PC), the High Court has the authority to issue a writ of habeas corpus to ensure the return of a minor child to their lawful custodian. Additionally, failure to fulfill marital obligations, including the payment of dower (mehr), and the unlawful manipulation of birth records can be contested under the Muslim Family Laws Ordinance, 1961.

Application: The petitioner, Mst. Sidra, legally married respondent No. 4, who later failed to fulfill his obligations, including the payment of dower and the registration of the marriage. After forcibly evicting the petitioner from their marital home and pronouncing an invalid divorce while she was pregnant, respondent No. 4 unlawfully took custody of their son, Ali Abbas, and attempted to falsify the child's birth records. The Court found that respondent No. 4's actions were not only morally and legally improper but also amounted to criminal violations under Section 361 PPC. The Court emphasized that the petitioner, as the biological mother and natural guardian, had the legal right to seek the return of her child, and that the unlawful removal of the child from her custody was a violation of her rights.

Conclusion: The Court decided in favor of the petitioner, Mst. Sidra, and ordered the immediate return of her son, Ali Abbas. Furthermore, the Court directed the concerned authorities to register an FIR against respondent No. 4 for kidnapping and manipulation of documents and to monitor his actions closely due to his habitual pattern of forcibly removing children from the custody of their mothers. The petition was disposed of in the petitioner's favor, with further instructions for compliance

and investigation.

16. Ghulam Abbas & others vs Ind Addl: Distt: Judge Badin & others

First Appeal No. D-42 of 2017 (D.B)

Present: *Mr. Justice Mahmood A. Khan*
Mr. Justice Abdul Hamid Bhurgri

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUyNjk0Y2Ztcy1kYzg> _

Facts: The appellants' agricultural land (3-12 acres, Survey No. 84, Deh Kak, Taluka Tando Bago) was taken by the Irrigation Department on 18.08.1988 without lawful acquisition or notice for constructing Drain 5-R and Sim Nala, which damaged crops and rendered parts of the land uncultivable. Despite multiple complaints and a High Court order in 2010, compensation was delayed until 2011 when Rs. 438,500 was paid under protest. The appellants filed a reference seeking enhanced compensation and statutory benefits under Sections 28-A and 34 of the Land Acquisition Act, 1894, which was dismissed by the trial court, leading to the present appeal.

Issue: Whether the appellants were entitled to enhanced compensation for land acquired in 1988 by the Irrigation Department for the construction of Drain 5-R and Sim Nala, including the benefits under Sections 28-A and 34 of the Land Acquisition Act, 1894, considering the long delay in payment and the alleged damage caused to the appellants' agricultural land?

Rule: The rule laid down under Section 23 of the Land Acquisition Act mandates that compensation is to be calculated based on the market value prevailing on the date of the publication of the Section 4 notification. Section 34 further provides for interest at the rate of 8% per annum if compensation is not paid at the time of taking possession. However, Section 28-A, which previously provided for an additional compensation of 15% per annum, had been omitted through the Sindh Amendment Act 2009 (Act No. XVI of 2010), rendering it legally non-existent.

Application: Applying these rules to the present case, the court found that the Land Acquisition Officer correctly assessed the market value of the land as per the date of the Section 4 notification in 1988. The appellants' demand to calculate compensation at the 2011 rate was thus rejected. However, the court also observed that the authorities failed to pay compensation at the time of taking possession, which invoked the mandatory application of Section 34. The court held that the trial court had erred in not awarding interest for this delay and directed that interest be calculated from the date of possession (18.08.1988) until the date of payment (27.04.2011). As for the appellants' claim under Section 28-A, the court held that the said provision had been lawfully repealed and had no legal effect. Consequently, if any benefit had been granted under that provision, it was to be deducted from the award. Regarding damages, the court held that the appellants had failed to produce substantive or

credible evidence to support their claim, and thus, no additional compensation on that count could be awarded.

Conclusion: In conclusion, the High Court partially allowed the appeal. It held that while the land valuation was correctly made under the law, the appellants were entitled to interest under Section 34 for the delayed payment. The benefit of Section 28-A was denied, as it had been repealed, and any amount awarded under it was directed to be deducted. The claim for damages was rejected due to lack of proof. The ratio decidendi of this judgment is the mandatory entitlement to interest under Section 34 of the Land Acquisition Act when compensation is delayed, whereas the reference to Section 28-A serves as obiter dicta to reaffirm its repeal and inapplicability in Sindh.

17. Fatima Noor vs Dow University of Health Science and Others

Constitutional Petition No. D-642 of 2023 (D.B)

Present: *Mr. Justice Muhammad Karim Khan Agha*
Mr. Justice Adnan-ul-Karim Memon

Source <https://caselaw.shc.gov.pk/caselaw/view-file/MjI1NDcxY2Ztcy1kYzgZ>

Facts: The petitioner, Mst. Fatima Noor, was employed as a Medical Technologist in the Department of Biochemistry at Dow University of Health Sciences (DUHS). She was removed from service via an order dated 23.11.2022, after allegations surfaced that she was involved in operating an unauthorized financial scheme—commonly known as a *Bachat Committee* (BC)—within DUHS. The university initiated a fact-finding inquiry which found her explanation unsatisfactory and recommended her removal. This recommendation was approved by the DUHS Syndicate in its meetings, ultimately leading to her dismissal. Aggrieved, she filed a constitutional petition under Article 199 of the Constitution of Pakistan, 1973, challenging the legality and procedural propriety of her dismissal. Her counsel argued that the entire disciplinary process was vitiated by illegality, denial of due process, and violation of the principles of natural justice, particularly because no proper departmental inquiry was conducted, she was not afforded the right to cross-examine witnesses, nor was she given access to the complaint or the identity of the complainants.

Issue: Whether the petitioner's conduct in operating the Bachat Committee within the university could legally be categorized as “misconduct” warranting her removal from service; and secondly, whether the disciplinary proceedings culminating in her dismissal were held in accordance with the applicable statutes, rules, and constitutional guarantees of due process and natural justice?

Rule: The Court reiterated that under the Constitution of Pakistan—particularly Articles 4, 9, and 10-A—a civil servant is entitled to be treated in accordance with law, which includes the right to due process, a fair trial, and procedural fairness. In the service jurisprudence context, it is well-settled that if a public servant denies allegations

which entail disputed facts, a regular inquiry is mandatory. The judgments of the Supreme Court in *Basharat Ali v. Director, Excise and Taxation, Lahore* (1997 PLC [CS] 817) and *Abdul Qayyum v. D.G. Project Management Organization* (2003 SCMR 1110) provide that regular inquiry may only be dispensed with in exceptional cases where charges are either admitted or clearly established without requiring evidence. The Court also referred to *Ghulam Murtaza Shaikh v. Chief Minister Sindh* (2024 SCMR 1757) to emphasize that judicial review under Article 199 is limited to assessing the procedural regularity and fairness of administrative actions, and not to reappraise evidence or act as an appellate forum.

Application: Applying these principles, the Court held that the actions of the respondent-university in dismissing the petitioner were procedurally flawed and legally untenable. The allegations of financial misconduct through a Bachat Committee were denied by the petitioner in her written defense, and thus, necessitated a regular inquiry involving the framing of charges, appointment of a competent inquiry officer, and affording the petitioner the opportunity to cross-examine witnesses and produce evidence. However, no such inquiry took place. The university relied on a fact-finding report and the petitioner's partially recorded statements, which did not meet the legal standard of unequivocal admission. The inquiry committee failed to call any complainant or record formal evidence. The Court observed that the penalty of removal from service was imposed without following due process, thereby violating the petitioner's right to a fair hearing and natural justice. It also found that the disciplinary authority failed to justify why a regular inquiry was dispensed with, especially given the seriousness of the allegations and the petitioner's consistent denial. The absence of statutory safeguards and procedural fairness rendered the action ultra vires and unlawful.

Conclusion: In view of the above, the High Court concluded that the removal of the petitioner from service without holding a proper regular inquiry was unlawful, arbitrary, and in direct violation of her constitutional rights. The orders passed by the disciplinary authority and the Syndicate were quashed and set aside. The petitioner was directed to be reinstated to her original position with immediate effect. However, the issue of back benefits was left contingent upon the outcome of a fresh regular inquiry to be conducted by DUHS within four months, with the right of the petitioner to cross-examine witnesses and present her defense. The Court reaffirmed that participation in a voluntary financial arrangement like a Bachat Committee, without proof of personal gain or dishonest intention, does not automatically constitute misconduct.

18. Zafar Iqbal vs Mst. Qaisar Jehan & others

Civil Revision Application No.46 of 2014 (S.B)

Present: *Mr. Justice Muhammad Faisal Kamal Alam*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ0ODgyY2Ztcy1kYzgZ>

Facts: The controversy in this matter arose when respondent Mst. Qaiser Jehan filed a suit

for possession of a residential plot (Plot No. A-30, Survey No. 427, Model Colony), claiming ownership through a registered conveyance deed executed in 1981 by Mrs. Rasheeda Jilani, who had earlier obtained the plot through a registered lease in 1977 from Salman Limited. The applicant, Zafar Iqbal, contested the claim, asserting that he had purchased a larger land tract (including the suit plot) through a court auction in 1997 pursuant to a decree against Salman Limited. He argued that the respondent's title was extinguished by the auction and was hit by the doctrine of *lis pendens*. The key dispute was whether the respondent's prior registered ownership could be defeated by the applicant's subsequent auction purchase.

Issue: Whether the applicant, who had purchased a larger land area in auction proceedings held in execution of a banking court decree against the original land-owning company, Salman Limited, could lawfully claim ownership of the disputed plot already transferred by registered deed to the respondent's predecessor prior to the applicant's purchase, and whether the principle of *lis pendens* or fraudulent transfer applied to defeat the respondent's claim?

Rule: The applicable rule was found in Sections 41, 52, and 53 of the Transfer of Property Act. Section 41 protects a transferee who buys property in good faith and for valuable consideration without notice of any defect in the transferor's title. Section 52 enshrines the doctrine of *lis pendens*, preventing property transfers that affect the rights of parties during ongoing litigation. Section 53 prohibits transfers intended to defeat the rights of creditors. The Specific Relief Act's Section 27(b) also supports bona fide purchasers.

Application: The court observed that the respondent had derived title through a registered lease and conveyance deed executed in 1977 and 1981, respectively, which were not only valid but registered and publicly recorded. The applicant's auction purchase occurred much later in 1997. The courts below found that the respondent was a bona fide purchaser for value without notice. No fraud was attributed to the respondent or her predecessor, and the applicant had failed to conduct due diligence prior to the purchase. Furthermore, the official records confirmed mutation of the suit plot in the respondent's predecessor's name, and evidence showed that the applicant had previously recognized the legitimacy of other similarly situated occupants. Thus, neither the rule of *lis pendens* nor fraudulent transfer applied, and the respondent's right stood protected under Section 41 of the Transfer of Property Act.

Conclusion: Consequently, the court upheld the concurrent findings of the trial and appellate courts, dismissing the revision application. The ratio decidendi is that a registered conveyance made prior to the initiation of court proceedings and without knowledge of any dispute is protected under property law as a bona fide transfer, and subsequent auction purchasers cannot unsettle such rights without specific proof of notice or fraud. Observations distinguishing the case law cited by the applicant, which involved different factual and legal contexts, constitute the obiter dicta.

19. Athar Waseem & another vs Shaikh Anjum Rehmat

First Appeal No.35 of 2022 (S.B)

Present: *Mr. Justice Arshad Hussain Khan*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5NjQ2Y2Ztcy1kYzgZ>

Facts: The stated facts of the case are that the respondent/plaintiff is engaged in business of sale/supply of Ghee through his firm namely; Western Industries having place of business at C-38, Estate Avenue SITE, Karachi. Both the appellants/defendants are brothers and partners in their business viz. Azhar Karyana Store, Quli Bazar, Khanewal, Punjuab, and the respondent/plaintiff had business relationship with them and had been supplying / selling Banaspati Ghee to them since the year 2015 and most of the supplies / sales were based on credit purchase and the payments were to be settled on later dates given by the appellants/defendants and this practice had been done on mutual trust & faith and on account of such supplies during the year 2015 and 2016 an unpaid amount of Rs.33,59,300/- was outstanding against the appellants/defendants being their debt/liability towards the respondent/plaintiff, which was delayed by them on different pretexts. However, in discharge of their business liabilities and to secure the outstanding dues of respondent/plaintiff, both the appellants/defendants had handed over a cheque No.2267536855 dated 14.02.2017 the “subject cheque” amounting to Rs.33,00,000/- to the respondent/plaintiff to be utilized on or after its due date if the appellants/defendants failed to pay outstanding dues of respondent/plaintiff, thereafter they failed to pay the same despite repeated demands of respondent/plaintiff and upon deposit of the said cheque by the respondent/plaintiff in the bank account on 15.02.2017, it was dishonoured. Hence, the aforesaid suit No. 39 of 2019 was filed for recovery of Rs.33,00,000/- against the appellants/defendants. Pursuant to the notice of suit the appellants/defendants filed application for leave to defend the case which was allowed subject to furnishing the surety which was deposited.

Issue: Whether the appellants (Athar Waseem and another) can successfully challenge the trial court’s decision in a summary suit filed by the respondent (Sheikh Anjum Rehmat) for the recovery of Rs. 33,00,000 on the basis of a dishonored cheque?

Rule: The rule applicable is found under the Negotiable Instruments Act, 1881, particularly Section 118, which creates a presumption that a negotiable instrument (such as a cheque) is issued for consideration unless proven otherwise. Additionally, under Order XXXVII of the Civil Procedure Code (CPC), summary suits can be filed for the recovery of money based on a dishonored cheque.

Application: The trial court found that the cheque issued by the appellants was valid, as it was accepted as a form of payment for goods supplied to the appellants. The appellants admitted to issuing the cheque but argued that it was for security/guarantee purposes, not for encashment. However, the appellants failed to provide sufficient documentary evidence to prove this claim. The trial court also found that the

respondent had proven that the cheque was dishonored due to insufficient funds and that the appellants had previously been involved in similar cheque dishonoring cases. Additionally, the appellants did not present any independent evidence to counter the respondent's claims.

Conclusion: Resultantly, the High Court dismissed the appeal, affirming the trial court's decision. The court found that the trial court had properly evaluated the evidence and that no legal errors or irregularities were present. The judgment was based on sound reasoning, and the appellants were ordered to pay compensatory costs. The ratio decidendi is that a cheque, once issued, carries a presumption of consideration under Section 118 of the Negotiable Instruments Act, and the burden of disproving this lies on the party denying it.

20. Mazhar Ali Qazi/Kalhorro vs The Secretary, Local Govt. Dept. & Others

Constitutional Petition No. D-260 of 2018 (D.B)

Present: *Mr Justice Muhammad Saleem Jessar,*
Mr Justice Zulfiqar Ali Sangi

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI1MDgzY2Ztcy1kYzgZ>

Facts: The petitioner was appointed as "HELPER" in Municipal Committee, Ratodero (District Larkana) on Contract basis vide Order No.4641, dated 01.11.2013 and he had been working there on purely vacant post. He further stated that father of the petitioner was serving in the Municipal Committee Ratodero and after his death the petitioner was appointed on "Contract" basis. The petitioner moved an application before respondent No.4 (Chief Municipal Officer Ratodero) for regularization of his services, whereupon respondent No.4 vide his letter No.748 dated 26.4.2017 sought for permission for regularization of services of the petitioner from respondent No.2 (Director Local Government, Larkana Division). Thereafter, respondent No.2, vide his letter No.127 dated 03.5.2017 forwarded application of the petitioner duly recommended by respondent No.4, to the respondent No.1 (Secretary Local Government Department, Sindh), for grant of permission for regularization of his service, but respondent No.1 paid no heed to the request made by the petitioner as well as the recommendation of respondent No.4.

Issue: Whether the respondents have failed to honor their commitment to regularize the petitioner's services, as per the undertaking given by the Chief Municipal Officer, Ratodero, in 2019, and whether this constitutes contempt of court?

Rule: The key legal principles applied in this case are the Sindh Regularization of Adhoc and Contract Employees Act, 2013, which mandates the regularization of employees appointed on a contract or adhoc basis, and the principles of Constitutional Petition and Contempt of Court under Article 204 of the Constitution of Pakistan. This article holds individuals accountable for contempt when they defy court orders or fail to honor undertakings made before the court.

Application: The court emphasized the importance of fulfilling undertakings made in court. By recognizing that the petitioner had a legitimate right based on the commitment made by the respondents, the court upheld the principle that promises made before the court should be honored. The delay in regularizing the petitioner's services was deemed unjustifiable, as the petitioner had been performing satisfactorily in his role for several years. In line with Section 151 of the CPC, the court converted the contempt application into a request for action under its inherent powers, ordering the respondents to regularize the petitioner's services within two months. Overall, the court's ruling aligns with the principles of justice, equality, and administrative efficiency, ensuring that the petitioner's long-delayed right to regularization was finally recognized and enforced.

Conclusion: In Constitutional Petition No. D-260 of 2018, the court's decision to direct the regularization of the petitioner's services was grounded in the principles of justice and administrative fairness. The petitioner, who had worked on a contract basis for several years, was repeatedly assured by the respondents that his services would be regularized, but these promises were not honored. The court relied on key case laws to support its decision:

1. Dr. Iqbal Jan v. Province of Sindh (2014 PLC (C.S.) 1153): Emphasizing that the Sindh Regularization Act must be implemented equally for all eligible employees, without discrimination.
2. Hakim Ali Ujjian v. Province of Sindh (2012 P L C (C.S.) 127): Reinforcing that employees serving satisfactorily on permanent posts should not remain on contract indefinitely.
3. Chairman, Pakistan Railways v. Arif Hussain (2008 P L C (C.S.) 240): Affirming that employees on permanent posts, even if initially hired on a contract, have the right to regularization after years of satisfactory service.
4. Ayaz Ahmed Memon v. Pakistan Railways (2011 PLC (C.S.) 281): Stating that employees continuously employed on contract for permanent posts should be absorbed permanently to ensure job security.

These rulings affirmed the petitioner's right to regularization, leading the court to order his services be regularized within two months. The court's decision upholds the legal rights of the petitioner, ensuring fairness in the implementation of the Sindh Regularization Act, while also reinforcing the principle of equality before the law.

21. Abdul Wali Achakzai and others vs The State

Criminal Appeal No. D-50 & 51 of 2024 (D.B)

Present: *Mr. Justice Omar Sial*
Mr. Justice Khalid Hussain Shahani

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3MDY0Y2ZtcylkYzgZ>

- Facts:** The appellants Abdul Wali Achakzai Pathan, Abid Noor, and Naeem were convicted under section 9(c) of the Control of Narcotic Substances Act, 1997, by the learned 1st Additional Sessions Judge/Special Judge CNS Jacobabad for possession of 330 kilograms of charas concealed in a Hino truck. They were sentenced to life imprisonment and fined Rs.200,000 with six additional months in jail upon default of payment with the benefit of section 382-B CrPC. The case stemmed from a tip-off received on 06-03-2020 leading to their arrest and the registration of an FIR also implicating Mullah Abdul Majeed and Abdul Wali as the owner of the truck. During trial, Abdul Wali joined after securing bail and an amended charge was framed. The prosecution examined three witnesses: Inspector Abid Hussain (complainant), Constable Wazeer Ali (mashir of arrest and seizure), and Inspector Manzoor Ahmed (investigating officer). The defense argued primarily that the prosecution failed to establish the safe custody and safe transmission of the seized narcotics property which was critical to the prosecution's case.
- Issues:** Whether the prosecution proved the safe custody and safe transmission of the seized narcotics as required under the law and whether procedural defects entitled the appellants to acquittal on the benefit of doubt?
- Rules:** The prosecution must establish an unbroken, safe, and secure chain of custody for seized narcotics from the point of recovery to their examination in the chemical laboratory as held in multiple Supreme Court judgments including *Zahir Shah v The State* (2019 SCMR 2004), *Javed Iqbal v The State* (2023 SCMR 139), *Asif Ali & another v The State* (2024 SCMR 1408), *Muhammad Hazir v The State* (2023 SCMR 986), and *Qaiser Khan v The State* (2021 SCMR 363) Failure to establish safe custody or safe transmission results in benefit of doubt to the accused and the prosecution's case cannot be sustained.
- Application:** The Court observed that the prosecution failed to prove the safe custody and transmission of the seized narcotics property. Inspector Abid Hussain admitted during trial that after seizure, the property was resealed at Customs Office Sukkur and was re-handled without maintaining proper chain of custody. The warehouse in-charge who kept the seized material for two days was not examined. Form 22.70 of Register No. XIX of the Police Rules, 1934, which would have documented custody, was not produced. Furthermore, discrepancies appeared between the complainant and the mashir regarding who authored the seizure memo. There was no incriminating evidence against Abdul Wali except being the alleged owner of the Hino truck which he denied in his statement under section 342 CrPC. The delay of two days in depositing the sample at the chemical laboratory without explanation cast serious doubts about the integrity of the samples. Based on these material irregularities and relying on precedents, the Court found that the prosecution failed to prove the case beyond reasonable doubt against all appellants.
- Conclusion:** The prosecution did not prove the safe custody and safe transmission of the

narcotics seized and failed to establish an unbroken chain of custody which impaired the reliability of the forensic analysis and prosecution's evidence. Hence, benefit of doubt was extended to the appellants. Consequently, the appeals were allowed, and the convictions were set aside. The appellants were acquitted of the charges and ordered to be released forthwith if not required in any other custody case.

22. Muhammad Akram v. Province of Sindh & Others

Constitutional Petition No. D-1315 of 2025 (D.B)

Present: *Mr. Justice Yousaf Ali Sayeed*
Mr. Justice Sana Akram Minhas

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUxOTI2Y2Ztcy1kYzgz>

Facts: The Petitioner, Muhammad Akram, claims ownership of two parcels of land: 5-34 acres in Survey No. 3, Deh Halkani, Tapo Manghopir, and 36 acres in Goth Haji Mehmood. He asserts that these lands are inherited from his grandfather, Haji Mehmood. The Petitioner relies on documents, including sanction orders allegedly issued by the Deputy Commissioner under the Sindh Goth-Abad (Housing Scheme) Act, 1987. However, the documents are found to be inconsistent and contradictory, with no legal basis for the claim of 36 acres under the Act. The Petitioner also claims encroachment by private Respondents, but this is a private dispute outside the scope of constitutional jurisdiction.

Issue: Whether the Petitioner has valid ownership and legal entitlement to the claimed lands, and whether his claim falls within the jurisdiction of constitutional petitions under Article 199 of the Constitution?

Rule: Under the Sindh Goth-Abad (Housing Scheme) Act, 1987, the Deputy Commissioner can allot land for housing purposes, with a limit of 200 square yards per person. The Act does not authorize the allocation of large land parcels. The ownership of land must be established through legitimate and credible documents.

Application: The Petitioner claims to be a co-owner and legal heir of the lands, supported by sanction orders and Form-VII documents. However, these documents are inconsistent with the Sindh Goth-Abad Act, which only allows small land allocations. The Petitioner has failed to substantiate his heirship and has not provided credible evidence to support his ownership claims. The alleged encroachment by private Respondents is a private matter, outside the scope of constitutional jurisdiction.

Conclusion: The Court dismissed the Petition in limine, finding it frivolous and based on dubious documents. The Petitioner was ordered to pay exemplary costs of Rs. 100,000/- within 20 days, failing which further proceedings would follow.

23. Mst. Erum Suleman Ali vs The State & others

Criminal Miscellaneous Application No.701 of 2024 (S.B)

Present: *Mr. Justice Shamsuddin Abbasi*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUxMzg0Y2Ztcy1kYzgZ>

Facts: This case involves a Criminal Miscellaneous Application filed by Mst. Erum Suleman Ali, seeking to set aside an order issued by the learned Additional Sessions Judge-I, Karachi East, which issued Non-Bailable Warrants (NBWs) against the applicant. The applicant was neither named in the FIR nor included in the report under Section 173, Cr.PC, but was later arraigned as an accused in a supplementary challan. The background of the case is that on August 17, 2020, during a post-Valima celebration, a theft was reported by the wife of the complainant. Police shot and injured Zeeshan Ali, a friend of the complainant's son, who later died in the hospital. FIRs 254/2020 and 255/2020 were registered under various sections of the Pakistan Penal Code (PPC). After investigation, a supplementary challan was filed, naming the applicant, but the applicant's name was not included in the initial FIR or investigation report.

Issues:

1. Whether the trial Court can take cognizance of the applicant's involvement after the supplementary challan was submitted, even though the applicant was not named in the original FIR or report under Section 173, Cr.PC?
2. Whether the issuance of NBWs against the applicant was legal, considering she was not initially implicated in the FIR?
3. Whether the learned trial Court had the competence to take cognizance against the applicant at this late stage, based on the supplementary challan?

Rules:

1. Section 193, Cr.PC: A Magistrate or Sessions Court has the power to take cognizance of an offense at any stage based on supplementary reports or after receiving additional evidence.
2. Section 561-A, Cr.PC: Allows for the exercise of powers to quash orders or take appropriate actions in cases of miscarriage of justice or undue legal process.
3. Section 265-D, Cr.PC: Trial courts can issue summons or take cognizance if there is sufficient cause, and must provide clear reasons when issuing orders.
4. Section 265-C, Cr.PC: A trial court should pass an order and give directions on supplementary challans before proceeding further in the trial.

Application: The applicant argued that she was not named in the FIR or in the investigation report, and her inclusion in the supplementary challan was improper. She contended that the trial court lacked jurisdiction to take cognizance of her case at such a late stage, as the charge was framed against other accused, and no cognizance was taken against her before. However, the trial court, after receiving the supplementary challan, found that the Investigating Officer (IO) had gathered sufficient evidence implicating her, including her involvement in tampering with evidence in connivance with her husband. The trial court thus exercised its power under Section 193(1) of Cr.PC and took cognizance of the offense against her. The court also

noted that the issuance of NBWs was justified by the ongoing proceedings.

Conclusion: The court found that the trial court was competent to take cognizance of the case at any stage, as per Section 193, Cr.PC, and there was no illegality in issuing NBWs against the applicant. The applicant was admitted to protective bail for seven days, subject to furnishing a solvent surety, and the operation of the NBWs was suspended during this period. The application was disposed of in terms of the protective bail. The criminal miscellaneous application was converted to protective bail for the applicant, and the NBWs were suspended for seven days. The case was disposed of accordingly.

24. Syed Sarim Ahmed Burney vs The State

Criminal Bail Application No.2717of 2024 (S.B)

Present: *Mr. Justice Amjad Ali Sahito*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5MDk4Y2Ztcy1kYzgZ>

Facts: The Applicant, Syed Sarim Ahmed Burney, seeks post-arrest bail in connection with Crime No. 126/2024 under Sections 3(1)(2), 4, & 5 of the TIP 2018, r/w Sections 420, 468, 471, 109 PPC. The charges relate to human trafficking and the fabrication of false documents. The FIR was lodged after an inquiry initiated by the U.S. Embassy, which led to the Applicant being implicated in an adoption-related fraud orchestrated by the Sarim Burney Trust International. The Applicant claims innocence, arguing that he was not involved in any criminal activity and that the children in question were in the custody of the Trust. The learned XIVth Additional Sessions Judge previously denied bail, prompting the present revision application.

Issue: Whether the Applicant is entitled to post-arrest bail considering the nature of the charges, the evidence presented and whether the case meets the legal threshold for bail under Section 497(2) Cr.P.C?

Rule: Section 497(2) Cr.P.C. provides that bail may be granted in cases where the accused is not required for further investigation and where the offense is not punishable with death, life imprisonment, or imprisonment for more than 10 years. The applicant must establish that there is no material evidence to connect him to the commission of the alleged offense.

Application: The Applicant's counsel argues that the charges against the Applicant are baseless, highlighting that no fabricated documents were created by the Applicant and that the Trust was involved in legal adoption processes. The FIA's investigation, initiated by a complaint from the U.S. Embassy, alleges that the Applicant was part of a criminal network involved in human trafficking and fraud. However, the Applicant denies involvement and asserts that the criminal charges are the result of manipulated facts. The learned DPG and the Investigating Officer opposed the bail, presenting evidence of the organized criminal group's involvement in trafficking and fraud.

Conclusion: The Court, after considering the material on record, concluded that the Applicant failed to make a case for bail under Section 497 Cr.P.C. as there is sufficient evidence to connect him with the alleged crime. Consequently, the bail application was dismissed, and the trial court was directed to expedite the case and conclude it within 60 days.

25. Salman Iqbal vs Independent Newspapers Corporation (Private), Limited

Criminal Revision Application No.214 of 2022

Present: *Mr. Justice Amjad Ali Sahito*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUwNTgyY2Ztcy1kYzgZ>

Facts: The Applicant, Salman Iqbal, seeks to set aside the impugned orders passed by the learned Additional Sessions Judge-XI, Karachi South, in Direct Complaint No. 1979/2022. The trial Court took cognizance of the alleged offense punishable under Sections 500, 501, 502 R/W Section 499 of the Pakistan Penal Code (PPC) and issued bailable warrants against the Applicant. The Respondents (Independent Newspapers Corporation Pvt. Ltd. and others) filed complaints under Section 200 Cr.P.C. R/W Sections 500, 501, 502, and 502-A PPC, alleging defamation caused by the Applicant's media campaign.

Issues: Whether the learned Additional Sessions Judge erred in taking cognizance of the defamation charges and issuing bailable warrants against the Applicant, particularly in light of the arguments regarding the maintainability of the private complaint under Section 198 Cr.P.C., and the jurisdictional limitations of PEMRA Ordinance, 2002?

Rule: Section 198 Cr.P.C. stipulates the conditions under which a defamation complaint may be filed, limiting the right to file complaints to certain persons, unless explicitly authorized. PEMRA Ordinance, 2002, governs media-related complaints, but does not override the provisions of the Pakistan Penal Code (PPC) where criminal defamation is concerned. Section 200 Cr.P.C. allows a complainant to file a private complaint before the court, and the court may issue process based on the preliminary evidence provided.

Application: The Applicant's counsel argues that the defamation complaint is not maintainable under the PEMRA Ordinance, 2002, and that the Respondents are not aggrieved parties to file the complaint. The Applicant further contends that any grievance should have been addressed by PEMRA rather than in court. The Respondents, however, assert that the Applicant's statements in the media caused harm to their reputation and credibility, particularly with the misrepresentation of a court judgment. They argue that defamation proceedings are permissible under Section

200 Cr.P.C., and the court has the jurisdiction to entertain the complaint.

Conclusion: The court found that there was no procedural irregularity in the impugned orders. The Respondents were entitled to file the complaint as authorized representatives of the affected corporate entities. The Applicant's request for the revision application to be allowed was dismissed, and the trial court's decision to take cognizance and issue bailable warrants was upheld. The Applicant, however, retains the option to file an application for premature acquittal under Section 249-A or 265-K Cr.P.C. if they believe there is insufficient evidence.

26. The Director General I & I-R, Salex Tax House Karachi vs The State

Special Criminal Appeal No. 05 of 2022

Present: *Mr. Justice Adnan Iqbal Chaudhry*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5NjYyY2Ztcy1kYzgZ>

Facts: The Directorate General of Intelligence & Investigation-Inland Revenue (DG I&I-IR), through its Assistant Director (Appellant No.2), filed Complaint No. 09/2021 under section 21(2) of the Anti-Money Laundering Act, 2010 (AMLA), before the Special Judge (Customs, Taxation & Anti-Smuggling), Karachi. It was alleged that Respondent No.3 had, during the tax years 2019 to 2021, sold foreign currency amounting to Rs. 813,160,091 to various money changers without possessing a National Tax Number (NTN), without having filed any income tax return, and without holding any bank account. On the basis of these allegations, it was claimed that the funds used and generated in these transactions were unexplained, forming proceeds of crime, and that Respondent No.3 had committed the offence of money laundering under section 3 of AMLA. The Appellants further asserted that the acts of the respondent also constituted predicate offences under sections 192 and 192A of the Income Tax Ordinance, 2001 (ITO), which relate to making false statements in tax verifications and concealment of income, and since these offences are triable by the Special Judge (Customs), the money laundering offence was also triable by the same court pursuant to proviso (a) of section 20 of AMLA. However, the Special Judge returned the complaint by holding that, at best, the act amounted to unauthorized sale/purchase of foreign currency under the Foreign Exchange Regulation Act, 1947 (FERA), which is not triable by the Special Court (Customs), and hence the present appeal was filed before the High Court of Sindh.

Issue: Whether a complaint for the offence of money laundering under section 21(2) of the Anti-Money Laundering Act, 2010 (AMLA), could be validly filed and maintained before the Special Judge (Customs) when the alleged predicate offences under sections 192 and 192A of the Income Tax Ordinance, 2001 (ITO), had not been prosecuted or substantiated through proceedings under the ITO?

Rule: Under section 3 of AMLA, the offence of money laundering consists of dealing with proceeds of crime derived from a predicate offence. Section 2(xxvi) of AMLA and Schedule-I include offences under sections 192 and 192A of the ITO as predicate offences. According to proviso (a) of section 20 of AMLA, if the predicate offence is triable by a court other than the Sessions Court, the offence of money laundering must also be tried by the same court. Section 203 of the ITO authorizes the Special Judge (Customs) to try offences under the ITO. Section 21(2) of AMLA allows the initiation of proceedings for money laundering by complaint, but section 39(2) makes it clear that AMLA operates in addition to other laws, meaning prosecution for predicate offences must be separately commenced under the respective special law.

Application: In the present case, the Appellants alleged that Respondent No.3 had committed predicate offences under sections 192 and 192A of the ITO by concealing income and making false statements in tax matters. However, the Court found that Respondent No.3 had never filed an income tax return, nor was he issued a notice under section 114(4) of the ITO, so there was no proceeding under the ITO during which concealment or false verification could have occurred. Hence, the foundational requirements of sections 192 and 192A were not fulfilled. Furthermore, the Appellants had not initiated any proceedings under section 203B of the ITO for prosecuting the alleged predicate offences, nor was any FIR or charge sheet filed in that regard. As a result, the Special Judge (Customs) rightly returned the complaint, finding that the complaint failed to disclose the commission of any predicate offence a precondition for prosecuting the offence of money laundering under AMLA.

Conclusion: The Court held that the Section 192A of the Income Tax Ordinance penalizes concealment or furnishing of inaccurate income particulars with imprisonment up to two years, fine, or both if the revenue impact exceeds five hundred thousand rupees. Concealment includes suppression of taxable income, false deduction claims, or acts under section 111(1). However, Respondent No.3, not being an NTN holder and having never filed a tax return, did not furnish any false document under the Ordinance to attract section 192. Section 192A also applies only when concealment occurs during tax proceedings, which was not the case here. No notice under section 114(4) was served, and even if there was non-compliance, it would attract section 191 an offence not listed as a predicate offence under Schedule-I to the AMLA. The Court dismissed the appeal and held that the complaint filed under section 21(2) of the Anti-Money Laundering Act, 2010 (AMLA) was misconceived.

27. Mian Ahmed Akbar & others vs M/s. Al-Dahra Agriculture Co. Pakistan (Pvt) Ltd.

High Court Appeal No. 97 of 2020 (D.B)

Present: *Mr. Justice Adnan Iqbal Chaudhry*
Mr. Justice Abdul Mubeen Lakho

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjI1MzIzY2Ztcy1kYzgz>

Facts: The appellants, Mian Ahmed Akbar and others, shareholders of Brukfield Rice Pakistan (Pvt.) Ltd. (BRP), initiated Suit No.1604/2015 before the Sindh High Court against M/s. Al-Dahra Agriculture Co. Pakistan (Pvt.) Ltd. and others. The appellants sought declarations, specific performance, damages, and injunctions, alleging breach of multiple agreements: a Term Sheet dated 25.04.2011, a Share Purchase Agreement (SPA) dated 23.09.2011, a Shareholders Agreement (SHA) dated 21.03.2012, and a later Term Sheet dated 23.02.2015. The core dispute centered on shareholding, management of BRP, purchase obligations, and asset division after falling out between the two shareholder groups. The respondents applied under Section 34 of the Arbitration Act, 1940 to stay the suit, arguing the existence of arbitration clauses in the SPA and SHA covering the disputes.

Issue: Whether the learned single judge correctly exercised discretion under Section 34 of the Arbitration Act, 1940 to stay Suit No.1604/2015 and refer the parties to arbitration, despite appellants' objections regarding termination of the SHA, non-applicability of arbitration clauses to the Term Sheet dated 23.02.2015, and alleged procedural defects?

Rule: Section 34 of the Arbitration Act, 1940 empowers the court to stay a suit if it involves a matter agreed to be referred to arbitration, provided that the applicant has not taken steps in the proceedings and there is no sufficient reason to refuse arbitration. Established legal principles recognize:

(i) Arbitration clauses survive even the termination of the underlying contract (doctrine of separability).

(ii) Courts should not lightly relieve parties from arbitration agreements.

(iii) Filing an injunction response or independent constitutional petitions unrelated to the core dispute does not amount to 'taking steps in proceedings'.

Application: The Court carefully examined the nature of the disputes raised in the suit. The allegations regarding non-payment of consideration, wrongful third-party dealings, mismanagement, and breach of purchase obligations all arose from the SPA and SHA, both containing valid arbitration clauses. The appellants' contention that the SHA and its arbitration clause were terminated was rejected based on the separability principle, particularly reinforced by Clause 25.1 of the SHA preserving arbitration rights post-termination. Further, the Term Sheet dated 23.02.2015 was viewed as part of ongoing negotiations rather than replacing previous agreements, hence falling under the existing arbitration clauses. No procedural bar was found against the respondents because their prior filings did not amount to 'taking steps' under Section 34, and the authority of Muhammad Rashid, though initially doubted, was established through duly executed powers of attorney.

Conclusion: In this case, the court dismissed the appeal, holding that the disputes in Suit No. 1604/2015 were covered by the arbitration clauses in the SPA and SHA, the respondents had not taken steps in proceedings before invoking Section 34 of the Arbitration Act, and no sufficient reason was shown to avoid arbitration. The Court upheld the stay of the suit and modified the impugned order by affirming Muhammad Rashid's authority to file the stay application.

28. Miss Sana vs The Province of Sindh

Constitutional Petitions No. 1499, 1501, 1520, 1542 of 2025 (D.B)

Present: *Mr. Justice Agha Faisal*
Mr. Justice Abdul Mubeen Lakho

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNTEwY2Ztcy1kYzgZ>

Facts: The case involves a challenge to the amendment of Rule 8 of the Sindh Judicial Services Rules, 1994, which required a minimum of two years' active practice as eligibility for applying for posts of Civil Judge/Judicial Magistrate. The petitioners, who were excluded from the recruitment process due to their lack of the required experience, argued that the amendment infringed upon their fundamental rights under Articles 18 and 25 of the Constitution of Pakistan, and sought for it to be struck down.

Issue: Whether the amendment to Rule 8 of the Sindh Judicial Services Rules, requiring a minimum of two years' active practice for eligibility for the post of Civil Judge/Judicial Magistrate, violated the petitioners' fundamental rights under Articles 18 (freedom of trade, business, or profession) and 25 (equality before the law) of the Constitution?

Rule: Article 18 of the Constitution ensures the freedom of trade, business, or profession. Article 25 provides for equality of citizens but allows for differential treatment based on reasonable classifications. Rule 8 of the Sindh Judicial Services Rules, 1994, was amended to include a requirement for a minimum of two years of active legal practice as a qualification for applying to the judicial posts.

Application: The court analyzed whether the amendment to Rule 8 was a reasonable classification that had a nexus to the objective of improving judicial performance by ensuring that applicants had sufficient legal experience. It noted that the petitioners failed to demonstrate how the amendment unjustly discriminated against them. The court referenced previous judgments, particularly the ruling in Gul Taiz Khan Marwat (PLD 2021 SC 391), which emphasized that administrative decisions of the Chief Justice, such as the amendment to the rules, were immune from challenge under Article 199 of the Constitution. The court found that the administrative decision was a policy decision, and the

petitioners could not show that the classification was unreasonable or lacked a rational basis. Further, the petitioners' arguments that the amendment conflicted with the Sindh Empowerment of Persons with Disabilities Act, 2018, were dismissed as inconsistent with the record.

Conclusion: The petitions were dismissed as misconceived and without merit. The court ruled that the amendment to Rule 8 of the Sindh Judicial Services Rules was a valid administrative decision aimed at ensuring the quality of candidates for judicial posts, and that it did not violate the petitioners' constitutional rights. The court further concluded that the decision was protected under the principles laid down in the Gul Taiz Khan Marwat case, and was thus immune from challenge under Article 199 of the Constitution.

29. Muhammad Siddiq Majid & others vs Chairman NAB & another

Constitutional Petition No. 508 of 2025

Present: *Mr. Justice Agha Faisal*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5MTQ0Y2Ztcy1kYzgz>

Facts: In these connected petitions, the petitioners—who include several prominent individuals—challenged the order dated 01.02.2025 passed by the Accountability Court No. III, Karachi, whereby cognizance was taken of NAB Reference No. 01 of 2025 and summons were issued under Section 204 Cr.P.C. The petitioners contended that the said order was without lawful authority and sought its annulment under Article 199 of the Constitution. Initially, a Constitutional Bench assumed jurisdiction and granted interim relief on 04.02.2025 by restraining the petitioners' arrest, subject to furnishing surety. However, conflicting views emerged among benches: Justice Karim Khan Agha affirmed the Constitutional Bench's jurisdiction, while Justice Yousuf Ali Sayeed declined it and referred the matter to a Regular Bench. Due to this divergence, the matter was placed before a Referee Judge under Article 202A of the Constitution to determine the appropriate bench jurisdiction.

Issue: Whether constitutional petitions challenging an order of the Accountability Court admitting NAB Reference No. 01 of 2025 and issuing summons under Section 204 Cr.P.C., fall within the exclusive jurisdiction of the Constitutional Bench under Article 202A of the Constitution, or should be heard by a Regular Bench?

Rule: Following the insertion of Article 202A via the 26th Constitutional Amendment, only Constitutional Benches are empowered to hear matters falling under Article 199(1)(a)(i) (writs of mandamus or prohibition) and Article 199(1)(c) (enforcement of fundamental rights). All other jurisdiction under Article 199—including certiorari, habeas corpus, and quo warranto—may fall to Regular Benches, unless assigned otherwise. The “dominant object theory” determines which bench has jurisdiction: the dominant relief sought in the petition governs jurisdiction,

regardless of how the pleading is couched.

Application: Justice Agha Faisal applied the dominant object theory and found that the primary relief sought by the petitioners was a declaration that the Accountability Court's order was illegal and without jurisdiction, squarely falling under Article 199(1)(a)(ii)—i.e., in the nature of certiorari. Since such relief does not fall within the exclusive domain of a Constitutional Bench (limited to 199(1)(a)(i) and 199(1)(c)), the petitions were held to fall under the jurisdiction of a Regular Bench. The prior assumption of jurisdiction by earlier Constitutional Benches was held not to preclude the correct application of the law, particularly in light of the dominant object of the petitions.

Conclusion: The Referee Judge concluded that the petitions do not fall within the jurisdiction of the Constitutional Bench and must be placed before a Regular Division Bench for hearing. The earlier interim orders passed by the Constitutional Bench do not override the jurisdictional scheme post-26th Amendment. Matters seeking relief under Article 199(1)(a)(ii) (e.g., writs of certiorari) fall within the domain of Regular Benches, not Constitutional Benches, unless the dominant object relates to mandamus or enforcement of fundamental rights under Articles 199(1)(a)(i) or (c). Courts must guard against "masquerading of pleadings" to invoke a jurisdiction that otherwise does not lie. The dominant relief and its legal character—not the label or strategic pleading—determine the forum.

30. Zuhaib Ahmed vs The Province of Sindh & others

Constitutional Petition No. D-288 of 2025 (D.B)

Present: *Mr. Justice Zulfiqar Ali Sangi,*
Mr. Justice Nisar Ahmed Bhanbhro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUxOTI0Y2Ztcy1kYzgZ>

Facts The Petitioner was appointed as an Assistant Sub-Inspector (ASI) in Sindh Police in year 2020 on the recommendation of Sindh Public Service Commission. He served as office Superintendent in the office of SSP, Khairpur he was transferred and posted in SSP Office, Ghotki vide office order dated 01.10.2025 issued by Deputy Inspector General Police (DIGP) Sukkur Range/Respondent No 3. On 01.01.2025 Respondent No 3 issued show cause notice to the Petitioner under a statement of allegations. The petitioner replied to the show cause notice and gave all proofs and justification of his innocence. After submission of reply to show cause notice, Respondent No.3 constituted an enquiry committee by nominating DSP Waseem Mumtaz Kalwar/ Respondent No.5 as the Inquiry Officer. The Respondent No 5 conducted inquiry, forwarded recommendation to Respondent No 3 for imposing minor punishment. The Respondent No 3 did not agree with the findings of inquiry and ordered for Re inquiry and appointed Respondent No 6 as Inquiry Officer. The Respondent No 6 conducted inquiry and recommended to impose major

punishment. The Respondent No 3 issued final show cause notice dated 18.02.2025 to the Petitioner, hence the present petition seeking de novo inquiry through impartial officer.

Issue: The petitioner, Zuhaib Ahmed, challenges the disciplinary proceedings initiated against him by the Sindh Police for allegations of misconduct, arguing that the inquiry was biased and violated the principles of natural justice. He seeks the annulment of the inquiry and a de novo impartial inquiry, claiming that the re-inquiry was conducted with predetermination and without his proper participation.

Rule: The case is governed by the Sindh Police (Efficiency and Discipline) Rules 1988, which lay down the procedures for disciplinary actions against police officers, including the appointment of inquiry officers, conducting inquiries, and issuing punishments. The court also referenced Article 10-A of the Constitution of Pakistan, guaranteeing the right to a fair trial, and principles of natural justice as enshrined in Supreme Court precedents, particularly in *Zahid Malik v. Federation of Pakistan* (2023 SCMR 603).

Application: The court dismissed the petition in *Constitutional Petition No. D-288 of 2025*, finding no merit in the petitioner's claims of bias or unfairness in the disciplinary proceedings. It upheld the Sindh Police (Efficiency and Discipline) Rules 1988, which allow successive inquiries if the initial findings are unsatisfactory. The petitioner had participated in the inquiry, and the court found no evidence of bias or pre-determination by the authority. The court emphasized that disciplinary matters are within the police department's jurisdiction, and judicial intervention is warranted only in cases of clear violation of rights or law. Therefore, the petition was dismissed, reinforcing the autonomy of departmental proceedings.

Conclusion: Consequently, the court upheld the integrity of the disciplinary proceedings against the petitioner, emphasizing that the Sindh Police (Efficiency and Discipline) Rules 1988 permit re-inquiry and that the petitioner was given a fair opportunity to defend himself. The court rejected the allegations of bias, noting that the petitioner participated in the inquiry process and failed to provide evidence of any violation of natural justice. By affirming the department's authority to conduct internal disciplinary actions, the court underscored the limited role of judicial intervention in such matters, ultimately dismissing the petition for lack of merit.

31. Dr. Munir Ahmed Sharer vs Muhammad Asad

Second Appeal No. 317 of 2024 (S.B)

Present: *Mr. Justice Jawad Akbar Sarwana*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ2MjI4Y2Ztcy1kYzgZ>

Facts Dr. Munir Ahmed Sharer (Appellant) and Muhammad Asad (Respondent) were

parties to a Partnership Agreement dated 26.07.2017, which contained an arbitration clause. When Muhammad Asad filed Suit No.476/2020 for specific performance of the partnership and for a permanent injunction, Dr. Sharer invoked Section 34 of the Arbitration Act, 1940, resulting in the court referring the matter to arbitration. Subsequently, an Arbitral Award dated 03.09.2022 was passed in favour of Muhammad Asad and made a rule of the court on 03.08.2023. Dr. Sharer, however, filed this IInd Appeal challenging the award on three main grounds: (1) he was not heard before the award was made a rule of the court; (2) the original partnership agreement was not produced before the arbitrator; and (3) Muhammad Asad never deposited the court fee in Suit No.476/2020 despite the court granting time.

Issue: Whether the Arbitral Award dated 03.09.2022, made the rule of court in Suit No. 476/2020 without hearing the Award-Debtor, without production of the original partnership agreement, and in the absence of deposited court fee, could be enforced or was liable to be set aside?

Rule: Under the Arbitration Act, 1940, objections to an arbitral award must be raised in due time; failing which the award attains finality. A party relying on an arbitration clause cannot later deny the validity of the agreement underlying that clause (principle of approbate and reprobate). Under Section 149 CPC and Order VII Rule 11(c) CPC, if the court fee is not paid within the time granted by the court, the plaint is liable to be rejected. However, this defect is curable. Execution of a decree must be stayed if statutory formalities (such as court fee) are not complied with.

Application: The appellant, Dr. Sharer, raised three objections:
 (a) that he was condemned unheard;
 (b) that the original partnership agreement was not produced before the Arbitrator;
 &
 (c) that the court fee was never paid in Suit No.476/2020.

The Court found that Dr. Sharer was duly served notices via newspaper publication and bailiff reports. He failed to respond or seek condonation. His claim of not being heard was rejected as a deliberate choice.

On the second point, the Court held that Dr. Sharer had himself relied on the same partnership agreement in both his own Section 20 arbitration application (Suit No. 391/2020) and in resisting the original suit. Therefore, he could not challenge its existence or production after having invoked it multiple times.

Regarding court fee, the Court admitted that Muhammad Asad (Award Creditor) failed to deposit it despite an explicit one-month time allowed. This procedural lapse was acknowledged but treated as curable. The Court ordered that execution proceedings be suspended until the court fee of Rs.15,000 is deposited. If not paid within one month, coercive recovery measures are to be initiated. However, this defect did not nullify the arbitral award.

Conclusion: The Court declined to set aside the impugned judgment and decree dated 13.07.2024 and upheld the Arbitral Award. However, the execution proceedings were conditionally suspended until the court fee was deposited. Thus, while the appeal was technically dismissed, conditional relief was granted to ensure legal compliance.

Ratio decidendi: The failure to pay court fee is a curable defect and does not automatically render arbitral proceedings or decrees void. Obiter dicta: A party who invokes an arbitration agreement cannot later challenge the validity of that same agreement merely on grounds of non-production of the original document.

32. United Bank Ltd. vs Dr. Farooque Adil Abbasi

Civil Appeals No. S-11 & 12 of 2024 (S.B)

Present: *Mr. Justice Arbab Ali Hakro*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ1NjE0Y2Ztcy1kYzgZ>

Facts: The respondent, Dr. Farooque Adil Abbasi, a registered account holder of United Bank Limited, Jamshoro Branch, instituted two claims before the Consumer Protection Court, Jamshoro, alleging deficiency in service concerning ATM transactions. On 16.09.2023, the respondent attempted to withdraw Rs.6,000 from a Sindh Bank ATM; the transaction failed to dispense cash, yet the amount was debited from his account and reversed only on 06.10.2023. Similarly, on 17.06.2023, he attempted to withdraw Rs.20,000, which was also debited without disbursement and subsequently reversed on 27.06.2023. The respondent, after lodging complaints with the bank and serving legal notice, received no redress in terms of compensation for mental agony and inconvenience, prompting him to file Claim Nos. 11 and 07 of 2023 under the Sindh Consumer Protection Act, 2014. The Consumer Protection Court adjudicated in his favour, awarding compensation, which was challenged by the appellant-bank through the present appeals.

Issue: The primary legal issue in these appeals was whether the Consumer Protection Court had the jurisdiction to adjudicate disputes arising out of malfunctioning ATM transactions conducted by a consumer holding an account with a scheduled bank, or whether such matters exclusively fall within the purview of the Banking Court under Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The determination required interpretation of the terms “consumer” and “services” under Sections 2(e) and 2(q) of the Sindh Consumer Protection Act, 2014, in the context of banking services, particularly the issuance and operation of ATM cards. Additionally, the case raised the ancillary issue of whether the failure to dispense cash during an ATM transaction, despite a corresponding debit and delayed reversal, constituted a deficiency in service warranting compensation under the consumer protection framework, and to what extent such compensation should be proportionate to the actual harm suffered. The question of excessive award of

damages by the trial court was also central to the appellate determination.

Rule: The dispute engages Section 2(e) and 2(q) of the Sindh Consumer Protection Act, 2014, defining the respondent as a "consumer" and ATM services as "services." Section 32 of the Act empowers the Consumer Court to award compensation for deficient services, while Sections 13 to 15 govern liability and standards of service. The appellant relied on Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, which confers exclusive jurisdiction on Banking Courts in matters involving finance extended to a "customer" under Section 2(c).

Application: In applying the above laws to the facts, the respondent, having used the ATM card issued by the appellant-bank for personal banking transactions, clearly falls within the definition of a "consumer" under Section 2(e) of the Sindh Consumer Protection Act, 2014. The failure of the ATM to dispense cash, despite debiting the account, constituted a deficiency in service as defined under Section 2(q) of the Act. Since no finance facility was extended, the transaction does not attract the exclusive jurisdiction of the Banking Court under Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001. Therefore, the Consumer Protection Court was competent to entertain the claims and award compensation for the inconvenience and mental distress suffered by the respondent.

Conclusion: In strict legal terms, the respondent, being a consumer within the meaning of Section 2(e) of the Sindh Consumer Protection Act, 2014, and having availed banking services falling under Section 2(q) thereof, was entitled to seek redress before the Consumer Protection Court for deficiency in service. As the dispute did not involve the extension, recovery, or enforcement of a finance facility, the bar to jurisdiction under Section 7(4) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, was not attracted. Consequently, the Consumer Protection Court validly exercised jurisdiction, and the impugned services-related grievances were rightly adjudicated under the statutory framework governing consumer rights.

33. **Altaf Ahmed vs The State**

Criminal Bail Application No. S-767 of 2024 (S.B)

Present: *Mr. Justice Riazat Ali Sahar*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ3OTkyY2ZtcylkYzg>

Facts: The applicant, Altaf Ahmed, is accused in the murder of Mst. Aisha, who was allegedly killed by the applicant and his co-accused on the grounds of Karo-Kari (honour killing). The FIR, filed on 29.04.2021, alleges that the applicant, along with others, conspired to kill Mst. Aisha after she was accused of having an illicit relationship. The applicant is specifically named in the FIR and is alleged to have directly participated in the shooting, which resulted in the victim's death. The

applicant now seeks pre-arrest bail, arguing that he has been falsely implicated, and relying on the fact that the co-accused were granted bail.

Issue: Whether the applicant is entitled to pre-arrest bail considering the severity of the charges, his direct involvement as per the FIR, no-objection by Mst Hanifan (mother of the deceased) and the material evidence against him?

Rule: The court applied several principles, including that pre-arrest bail is an extraordinary relief, granted only in exceptional circumstances, which has been elucidated by the Hon'ble Supreme Court in Ghulam Farooq Channa v. Special Judge ACE-I (Karachi) and another (PLD 2020 SC 293). It emphasized that honour killings are grave crimes and do not warrant leniency in granting bail. The court rejected the principle of consistency, as the applicant failed to demonstrate mitigating circumstances. Affidavits, such as one from the deceased's mother expressing no objection to bail, cannot serve as sufficient grounds for granting bail in non-compoundable offence. Additionally, the court affirmed that serious crimes like honour killings must be addressed with caution and justice, and pre-arrest bail should not be used to bypass the legal process.

Application: The court rejected the applicant's request for pre-arrest bail, emphasizing the seriousness of the charge—honour killing—which is a grave offence. The court dismissed the Rule of Consistency, noting that each case must be assessed individually on merits. The involvement of the applicant in the crime was prima facie established. The court also found the affidavit from the deceased's mother, stating no objection to bail in a non-compoundable offence, insufficient to grant relief. It expressed concern that such affidavits could be influenced by societal pressures, particularly in the honour killing cases, making it unreliable at this stage. The court reiterated that pre-arrest bail is an exceptional remedy, granted only in cases with compelling reasons, and the severity of the crime and the lack of evidence for malice or ulterior motives led to the dismissal of the bail application.

Conclusion: The court rejected Altaf Ahmed's pre-arrest bail application in the honor killing case of Mst. Aisha, emphasizing the severity of the offense and his direct involvement. Despite arguments based on consistency with co-accused bail decisions and an affidavit from the deceased's mother, the court relied on Naseer Ahmed v. The State (PLD 1997 SC 347), stating that bail requires a tentative assessment of material, not affidavits that undermine the case of the prosecution. Citing Ghulam Farooq Channa v. Special Judge ACE-I (PLD 2020 SC 293), the court stressed that pre-arrest bail is an exceptional remedy, not applicable in serious crimes. Thus, the bail application was dismissed, and interim bail was recalled.

34. Muhammad Anwar vs Assistant Prosecutor General, Sindh

Criminal Miscellaneous Application No. S-787 of 2024 (S.B)

Present: *Mr. Justice Muhammad Hasan (Akber)*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ2MjUyY2Ztcy1kYzgZ>

Facts: The applicant, Muhammad Anwar, entered into a *nikah* with the proposed accused No.1, a widow, against a dower amount of Rs.50,000/-, and subsequently advanced a loan of Rs.500,000/- to her relatives (proposed accused Nos.2 to 4). Due to matrimonial discord and refusal of *rukhsati*, the proposed accused No.1 sought *khula*. Alleging harassment and threats by the proposed accused, the applicant claimed that on 27.10.2024 he was abducted and coerced to pronounce divorce, though later released upon raising alarm. He lodged complaints with the police but, being dissatisfied with their response, filed an application under Sections 22-A and 22-B Cr.P.C. before the Ex-officio Justice of Peace for registration of FIR, which was dismissed on the ground that the dispute was civil in nature and no cognizable offence was made out. The applicant challenged the said dismissal through the present Criminal Miscellaneous Application under Section 561-A Cr.P.C.

Issue: Whether the Ex-officio Justice of Peace was justified in declining to direct the registration of an FIR under Sections 22-A and 22-B Cr.P.C., where the underlying dispute was predominantly matrimonial and financial in nature, or whether the applicant's allegations disclosed the commission of a cognizable offence under Section 154 Cr.P.C?

Rule: Under Section 22-A(6) Cr.P.C., an Ex-officio Justice of Peace has discretionary jurisdiction to issue directions for the registration of an FIR where a cognizable offence is disclosed. However, the use of the term "may" confers discretion, not an obligation, upon the Justice of Peace. This discretion must be exercised judiciously, particularly in light of the growing misuse of criminal law for personal or collateral purposes. As established in *Khizer Hayat v. I.G. Punjab* (PLD 2005 Lahore 470) and reaffirmed in *Munawar Alam Khan v. Qurban Ali Malano* (2024 SCMR 985), courts must guard against abuse of process and ensure that applications under Sections 22-A and 22-B Cr.P.C. are not entertained in a mechanical manner. Moreover, under Section 561-A Cr.P.C., which is invoked to prevent abuse of process and secure ends of justice, the applicant must approach the Court with clean hands and full disclosure of material facts. Failure to meet these thresholds justifies the denial of relief.

Application: The Court applied the settled principle from *Khizer Hayat* and *Munawar Alam Khan* that the Justice of Peace must exercise discretion cautiously and not mechanically direct FIR registration. It noted that the applicant's allegations, even if taken at face value, disclosed no cognizable offence and instead arose from a civil and matrimonial dispute. The Court observed contradictions in the applicant's multiple applications and his concealment of earlier complaints, concluding that he approached the Court with mala fide intent and unclean hands. Thus, both under Section 22-A (6) and Section 561-A Cr.P.C the relief was rightly denied.

Conclusion: In view of the facts that the dispute between the parties was primarily matrimonial and financial in nature, involving claims of dower and loan, and that no cognizable

offence was disclosed within the meaning of Section 154 Cr.P.C., the Ex-officio Justice of Peace rightly exercised his discretion under Section 22-A(6) Cr.P.C. in refusing to direct registration of an FIR. The applicant's concealment of prior applications and inconsistent allegations demonstrated mala fide intent, rendering him undeserving of discretionary relief under Section 561-A Cr.P.C., which demands full disclosure and clean hands. Reliance on precedents including *Khizer Hayat v. I.G. Punjab* (PLD 2005 Lahore 470), *Munawar Alam Khan v. Qurban Ali Malano* (2024 SCMR 985), and *Haider Ali v. State* (2015 SCMR 1724) further justified the dismissal, ensuring that the criminal process is not misused for settling civil disputes or exerting undue pressure on the opposing party.

35. Abdul Khalique Rind vs. Raees Ali Akbar and others

Civil Revision Application No. S-49 of 2019 (S.B)

Present: *Mr. Justice Khalid Hussain Shahani*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUxNDgyY2Ztcy1kYzg>

Facts: The applicant Abdul Khalique Rind instituted a suit for Specific Performance of Contract and Permanent Injunction against the private respondents asserting that he entered into a sale agreement with Respondent No 1 for purchase of agricultural land measuring 32-38 acres situated in Deh Kurio Murad Ali Taluka Kamber District Kamber-Shahdadkot for a consideration of Rs 7039000 The applicant made an advance payment of Rs 1000000 through cheque and the agreement outlined structured payments with clear deadlines An addendum extended the deadline to January 2013 Despite partial payments amounting to Rs 4000000 the applicant alleged that the respondents failed to transfer the property and took unlawful possession of it The suit was dismissed by the learned Senior Civil Judge Kamber and the appeal was also dismissed by the II Additional District Judge Kamber leading the applicant to file this Civil Revision.

Issue: Whether the concurrent findings of the courts below dismissing the suit for Specific Performance of Contract suffered from misreading non-reading of evidence or any jurisdictional defect warranting interference under Section 115 CPC?

Rule: Under Articles 17 and 79 of the Qanun-e-Shahadat Order 1984 documentary agreements must be proved by examining attesting witnesses unless exceptions apply Secondary evidence like photocopies can only be used if conditions under Articles 75 and 76 are strictly met The burden of proof lies on the claimant to substantiate his claim through credible admissible evidence Section 115 of the Code of Civil Procedure 1908 limits Revisional Jurisdiction to cases involving jurisdictional errors misapplication of law or material irregularities.

Application: The applicant failed to produce the original sale agreement instead relying on incomplete photocopies without fulfilling the legal requirements for admissibility

He also failed to examine the attesting witnesses of the agreement choosing instead to rely on testimony of his son who was not a witness and a stamp vendor whose testimony did not meet legal standards. The courts below thoroughly examined the material facts and found that the applicant had not fulfilled the payment terms stipulated in the sale agreement thereby attracting penalty clauses agreed between the parties. The applicant's evidence was found deficient, incomplete and not meeting the threshold required by law. The lower courts' concurrent findings were based on a proper appreciation of evidence and were in line with the settled principles laid down by the Supreme Court of Pakistan. The legal framework regarding primary and secondary evidence was correctly applied and no procedural irregularity or jurisdictional defect was demonstrated by the applicant.

Conclusion: The Court concluded that the applicant failed to discharge the burden of proof required to succeed in a suit for specific performance of contract. The absence of the original agreement, the failure to prove execution through attesting witnesses and reliance on inadmissible secondary evidence rendered his claim legally untenable. The concurrent findings of the courts below did not suffer from any misreading, non-reading or jurisdictional defect warranting interference in Revisional Jurisdiction. The civil revision was accordingly dismissed; however, the Court directed Respondent No. 1 to refund the earnest amount of Rs. 4,000,000 to the applicant in accordance with the judgment and decree passed by the trial court. The ratio decidendi of the judgment is that the party seeking specific performance must strictly prove the agreement through admissible evidence, while mere deficiencies in the opposing party's case are insufficient. Obiter dicta relate to reiteration of standards for admissibility of documents under the Qanun-e-Shahadat Order 1984.

36. Zulfiqar Ali vs SIO P.S Mehar & others

Criminal Misc. Application No. S-378 of 2023

Present: *Mr. Justice Khalid Hussain Shahani*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5NjQ4Y2Ztcy1kYzgZ>

Facts: The applicant Zulfiqar Ali Khoso invoked the inherent jurisdiction of the High Court under Section 561-A Cr.P.C., challenging the order dated 28.10.2023 passed by the learned Judicial Magistrate-II, Mehar. The case stemmed from an incident dated 29.04.2023 where the applicant's wife underwent a caesarian section surgery at the hospital of the respondent doctor. Post-surgery, the patient experienced severe pain and the applicant alleged that the accused doctor negligently delayed her medical attention until early morning. Eventually, the patient was shifted to a hospital in Larkana where she expired. Consequently, FIR No.141 of 2023 under Section 319 PPC was registered. Upon investigation, the police concluded that no prosecutable criminal offence was made out and recommended disposal of the case under "C" Class, which was accepted by the learned Magistrate.

- Issues:** Whether the impugned order accepting the “C” Class final report and declining to take cognizance against the accused doctor was passed without application of judicial mind and in derogation of the law governing medical negligence cases?
- Rule:** Section 319 PPC criminalizes Qatl-i-Khata, or unintentional killings caused by negligent acts, but criminal liability demands proof of gross negligence beyond reasonable doubt. As clarified in PLD 2021 SC 123 and 2020 SCMR 456, civil negligence does not automatically lead to criminal culpability unless gross negligence is present. Furthermore, the Sindh Healthcare Commission Act, 2013 governs medical negligence issues, empowering the Commission to investigate medical malpractice under Sections 5, 6, and 7 while providing immunity to healthcare providers acting in good faith under Sections 27, 29, and 30. The Act explicitly applies to both private and government healthcare institutions as per Section 4.
- Application:** The learned Magistrate, after independent scrutiny of the police investigation, correctly accepted the recommendation of the “C” Class report. The complainant’s allegations, though serious, did not meet the threshold of criminal negligence under Section 319 PPC. No direct evidence was produced establishing gross negligence or mens rea attributable to the accused doctor. The mere delay in attending to the patient, absent specific evidence showing reckless disregard for life, falls within the ambit of civil liability rather than criminal culpability. The High Court observed that under the Sindh Healthcare Commission Act, cases of alleged medical malpractice should first be investigated by the relevant regulatory authority and not directly prosecuted under criminal law unless gross negligence is demonstrable. The applicant’s argument that the learned Magistrate acted hastily lacked force, as the Magistrate’s order was well-reasoned and aligned with binding precedents of the Hon’ble Supreme Court of Pakistan.
- Conclusion:** The Court concluded that there was no gross illegality or miscarriage of justice in the Magistrate’s acceptance of the “C” Class report. The allegations did not establish the ingredients required for attracting criminal liability under Section 319 PPC. The impugned order was thus legally sound and based on correct appreciation of law and facts. Accordingly, the criminal miscellaneous application was dismissed. The ratio decidendi of this case lies in affirming that mere allegations of medical negligence without proving gross negligence beyond reasonable doubt do not constitute a criminal offence under Section 319 PPC. Observations regarding procedural channels through the Sindh Healthcare Commission were part of the obiter dicta.

- 37. Khamiso & another vs Mangsigno & others**
Civil Revision Application No. S-60 of 2024 (S.B)

Present: *Mr. Justice Fiaz-ul-Hassan Shah*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5Mjk0Y2Ztcy1kYzgz>

Facts: This case arises from a dispute over the enforcement of a land sale agreement. The respondent, Mansigno (through his legal heirs), filed Suit No.124 of 2022 before the Senior Civil Judge, Umerkot, seeking specific performance of an agreement allegedly executed on 17.07.1986 for the sale of land by the applicant/defendant Khamiso. The plaintiffs claimed that their father had purchased the land and was in continuous possession. Despite repeated requests and local conciliatory efforts (nekmard faisla), the defendant failed to execute a registered sale deed, allegedly citing the absence of a sale certificate. Eventually, the defendant not only refused to perform the contract but also allegedly fraudulently sold the same land to a third party (applicant No.2) through a registered deed, thereby threatening the plaintiffs' possession. In response, the defendant filed an application under Order VII Rule 11(d) CPC for rejection of the plaint, arguing that the agreement was legally unenforceable because it was attested by only one witness, violating Article 79 of the Qanun-e-Shahadat Order, 1984, which requires at least two attesting witnesses for proof of such documents.

Issue: Whether a plaint seeking specific performance of a contract could be rejected at the preliminary stage under Order VII Rule 11(d) of the Civil Procedure Code, 1908, solely on the ground that the agreement annexed with the plaint was attested by only one witness, which allegedly failed to meet the evidentiary requirement of Article 79 of the Qanun-e-Shahadat Order, 1984?

Rule: The governing rule is that a plaint can only be rejected under Order VII Rule 11(d) CPC when, on the face of the pleadings, the suit appears to be barred by law. Article 79 of the Qanun-e-Shahadat Order stipulates that for documents required by law to be attested, at least two attesting witnesses must be called to prove its execution. However, this provision pertains strictly to the evidentiary phase of trial and not to the maintainability of a suit. Article 81 further carves out an exception by stating that if the execution of such a document is admitted by the executant, proof by attesting witnesses becomes unnecessary.

Application: The trial court had prematurely rejected the plaint on the basis that the agreement was not duly attested by two witnesses, thereby rendering it inadmissible. The appellate court, however, reversed this decision, observing that such objections fall within the realm of evidence and cannot be a ground to reject the plaint at the threshold. Justice Dr. Syed Fiaz ul Hasan Shah concurred with the appellate court, holding that the trial court erred in invoking Article 79 at the pre-evidence stage. He emphasized that the Qanun-e-Shahadat Order lays down a comprehensive procedure for proving documents, and any deficiency in attestation must be tested through trial, where parties are afforded an opportunity to lead evidence and face cross-examination. He further clarified that although the testimony of the scribe may serve a corroborative role, he cannot be treated as an attesting witness unless he signed the document specifically in that capacity.

Conclusion: The Court dismissed the revision application and upheld the order of the appellate court. It held that rejecting the plaint at such an early stage, based on a technical evidentiary objection, violated procedural fairness and the right to a fair trial under Article 10-A of the Constitution. The direction issued was to proceed with the suit on merits, thereby reaffirming the principle that evidentiary objections must be addressed during trial, not at the threshold. This constitutes the binding ratio decidendi of the judgment, while the clarification regarding the role of the scribe served as obiter dicta.

38. Arsalan Khan vs The State

Criminal Bail Application No. 2515 of 2024 (S.B)

Present: *Mr. Justice Jan Ali Junejo*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5MDE0Y2Ztcy1kYzgZ>

Facts: The First Information Report (FIR) details the complaint lodged by Niaz Muhammad, a Pakistan Navy employee residing at the provided address, who reported that on 20.10.2024 at 7:00 PM, his 16-year-old son Zainul-Abideen and 15-year-old Khubaib Khalid were coerced by accused Arsalan (a local resident) to accompany him to his office near Traffic Police Office, Family Quarters, Keamari, Karachi, under the pretext of retrieving documents. Upon arrival, Arslan allegedly locked the door, brandished a pistol, forced the minors to undress, and photographed/recorded them. He then demanded they engage in sexual acts with each other, threatening to assault them further and claiming prior sexual abuse of Khubaib. When the boys resisted, Arslan assaulted Zain, but they managed to escape, retrieve their clothes, and return home via rickshaw. Niaz Muhammad, after consulting Khubaib's father, sought legal action against Arslan for sexual coercion, intimidation, illegal confinement, and threats, prompting the FIR's registration.

Issue: Whether the applicant is entitled to pre-arrest bail in connection with an alleged case of sexual coercion, blackmail, and attempted sodomy under Section 377/511 of the Pakistan Penal Code (PPC), considering the seriousness of the allegations, contradictions in the testimonies, and lack of corroborative medical evidence?

Rule: Section 377/511 of the Pakistan Penal Code deals with the offense of attempted sodomy and sexual coercion, punishable by law. The granting of bail is governed by Section 497 of the Criminal Procedure Code, which mandates that bail may be granted if there is insufficient evidence to establish prima facie guilt or if the case qualifies for further inquiry. Bail can be denied if the charge is serious and the accused poses a risk of tampering with evidence or witnesses.

Application: The applicant's counsel argued that the prosecution's case had multiple inconsistencies, including contradictions in the testimonies of the minors, discrepancies in how the minors escaped, and the lack of medical or forensic evidence to corroborate the allegations. They further argued that the charges under

Section 377/511 PPC (attempted sodomy) were less serious and did not meet the threshold for denying bail. The applicant also contended that the FIR was a fabricated attempt to harass him, pointing to prior personal and property disputes.

In contrast, the prosecution highlighted the gravity of the charges, particularly the sexual exploitation of minors. The minors' testimonies, recorded under Section 164 Cr.P.C., were taken as credible, and the prosecution argued that any minor inconsistencies were irrelevant to the core act of coercion and attempted sodomy. The prosecution emphasized that the applicant's attempt to retrieve his mobile phone, which likely contained incriminating evidence, demonstrated a consciousness of guilt. Furthermore, the prosecution stressed the risk of witness tampering due to the applicant's proximity to the victims and his previous attempts to influence the case.

Conclusion: The court concluded that the applicant was not eligible for bail due to the serious nature of the charges. The evidence, including the minors' testimonies and video footage, strongly supported the allegations of sexual exploitation and coercion. The court found that the severity of the offense and the impact on societal values required the outright denial of bail. Therefore, the bail application was rejected, and the previously granted interim pre-arrest bail was revoked. The court clarified that these findings were limited to the bail application and would not influence the outcome of the trial, which would be determined solely on the merits of the case.

39. Arz Muhammad @ Arzoo Bhayo vs The State

Criminal Appeal No. S-38 to 41 of 2024 (S.B)

Present: *Mr. Justice Ali Haider 'Ada'*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjU4NTY4Y2Ztcy1kYzgZ>

Facts: Brief facts of the prosecution case are that Complainant Khan Muhammad lodged the FIR on 08-05-2017 alleging therein that Gul Bano aged about 27/28 years is his unmarried daughter. On the day of report at about 1500 hours she went in the neighborhood but did not come back, hence complainant along with his son Zahid Hussain and brother Muhammad Hassan went to search Gul Bano by a motorcycle. At about 4-00 pm when they reached near village Jindal Juno situated at link road leading from Nangreja to Ranipur, where they saw that accused Muhammad Qabil s/o Moula Bux along with two other male persons and one woman were forcibly restrained Gul Bano and made to sit in the car, but she was crying, but accused persons abducted away Gul Bano in the car. The complainant party was searching for his daughter and also contacted accused Muhammad Qabil through his mobile numbers 0303- 2946386 and 0303-3720181 but failed. Ultimately appeared at Police Station and lodged the above said FIR. After recovery of victim her statement u/s 164 Cr.PC was recorded, wherein she disclosed the names of other culprits as Adloo, Arzoo, Wahidoo, Ghous Bux and Ashiq Hussain. The PW Zahid Hussain

recorded his further statement and nominated accused namely Allah Rakhio, Ashiq Hussain, Khuda Bux, Adloo and Arzoo.

Issue: Whether the conviction and life sentence awarded to the appellants under Section 365-B of the Pakistan Penal Code, for allegedly abducting and forcibly marrying a woman named Gul Bano, could be sustained in light of contradictions in the prosecution's case, documentary evidence produced by the defense, and the legal standard of proof required in criminal trials?

Rule: The relevant rule is that under Section 365-B PPC, a person is guilty of kidnapping or abducting a woman with the intent to compel her into marriage or illicit intercourse, punishable by life imprisonment. However, in criminal jurisprudence, the prosecution is duty-bound to prove its case beyond reasonable doubt through credible and trustworthy evidence. The benefit of doubt must always go to the accused. Judicial principles further establish that any delay in the registration of FIRs, inconsistent witness statements, failure to investigate crucial leads, or unchallenged documentary evidence from the defense may cast doubt on the prosecution's case. The courts are also guided by precedents such as *Muhammad Siddique v. The State* (2019 SCMR 1048) and *Ahsan v. The State* (2024 YLR 578), which emphasize that a single material doubt can be sufficient to acquit an accused.

Application: The Court noted serious contradictions in the statements of prosecution witnesses, particularly concerning the identification of the accused. The abductee's statements were inconsistent and failed to implicate some of the appellants directly. The unexplained 15-day delay in lodging the FIR and the further delay in recording the abductee's statement under Section 164 CrPC further undermined the credibility of the case. The abductee had previously filed a constitutional petition before the Lahore High Court affirming that she had married accused Ashiq Hussain of her own free will and sought protection from her own family. This petition, along with a nikahnama and affidavits, was placed on record by the defense. Furthermore, the prosecution failed to take any effective investigative measures, such as tracing the accused through mobile data, despite having access to the relevant numbers. The contradiction about the presence of a female abductor mentioned in the FIR but absent in all later statements was another significant gap. Collectively, these factors created substantial doubts in the prosecution's version and lent credence to the accused's plea of false implication.

Conclusion: The Court found that the prosecution had failed to establish its case beyond reasonable doubt. The inconsistencies, evidentiary gaps, and supporting defense documents rendered the story of abduction and forced marriage legally unsustainable. Accordingly, the Court allowed the appeals and acquitted the appellants by extending them the benefit of doubt. This forms the ratio decidendi of the judgment, while the broader references to legal maxims and precedents concerning criminal justice protections serve as obiter dicta.

Suit No. 58 to 41 of 2014 (S.B)

Present: *Mr. Justice Muhammad Jaffer Raza*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjQ5MDkwY2Ztcy1kYzgZ>

Facts: The Plaintiff, Aamir Haider Butt, was appointed as Relationship Manager by Defendant No.1 under an employment contract dated 09.01.2012 with a monthly salary of Rs.75,000, performance-based commissions, and promises of other benefits such as a laptop, car, phone, and salary enhancement to Rs.200,000/month. He alleged that Defendants failed to fulfill contractual obligations, misrepresented terms, withheld dues including salary, fuel, and mobile expenses, and caused reputational harm and mental distress. After discovering systemic breaches and deception, the Plaintiff resigned on 21.03.2013 and sent a legal notice seeking compensation. The Defendants, though initially appearing, failed to contest the case and were proceeded against ex-parte.

Issue: Whether the Plaintiff, having resigned from employment, is entitled to compensation, commission, salary, and general damages on the grounds of constructive dismissal and breach of contract by the Defendants?

Rule: Under Section 73 of the Contract Act, 1872, compensation is awarded for losses directly caused by breach of contract. Furthermore, the doctrine of "constructive dismissal" recognized in common law jurisdictions like England (*Western Excavations Ltd. v. Colin Sharp*), India (*Ms. X v. Registrar General, MP*), and Canada (*Farber v. Royal Trust Co.*) holds that an employee may claim damages if the employer's conduct fundamentally breaches the employment contract, making continued employment intolerable. Pakistani jurisprudence in *Rafiq Ahmed v. Joint Venture, Basrah Airport* (PLD 1987 Karachi 552) supports that a resignation under employer-induced breach is not a bar to claiming damages.

Application: The Court applied the constructive dismissal test whether the employer substantially altered essential employment terms and whether the resignation was a consequence of that breach. The Court held that Plaintiff's resignation was not voluntary but coerced due to the Defendants' consistent failure to fulfill contractual promises, including salary payments, fuel and mobile reimbursements, and commissions. The Plaintiff's claims went unchallenged, as the Defendants failed to file a written statement or appear post-notice. The Plaintiff submitted ex-parte evidence and documents substantiating his claims. The Court noted the need to scrutinize even unopposed claims and held the general damages claim of Rs.60 million exaggerated. Instead, it awarded Rs.5 million as reasonable general damages based on precedents (*Habib Bank v. Mehboob Rabbani*, 2023 SCMR 1189; *Sufi Muhammad Ishaque*, PLD 1996 SC 737).

Conclusion: The Court held that the Plaintiff's resignation was not voluntary but was the result of the Defendants' continued breach of contractual obligations, including failure to

pay salary, reimburse expenses, and fulfill agreed employment terms. Applying the doctrine of constructive dismissal recognized in comparative common law jurisdictions and supported by Pakistani precedent the Court determined that the Plaintiff had no reasonable option but to resign. However, while the Plaintiff claimed Rs.60 million under various heads of mental distress, reputational harm, and fraud, the Court found this figure exorbitant and instead exercised its discretion to award a reasonable sum of Rs.5 million as general damages, in addition to specific dues including unpaid salary, commissions, and expenses. Thus, the suit was partially decreed for a total of Rs.6,623,182/-.

41. Anwar Majid vs Emirates Bank International PJSC & others

Suit No. 118, 199, 592, 593 of 1987 (S.B)

Present: *Mr. Justice Muhammad Jaffer Raza*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzNTIwY2Ztcy1kYzgZ>

Facts: Anwar Majid, the former General Manager of Dubai Bank (which later merged with Union Bank of the Middle East), instituted four separate civil suits claiming damages for malicious prosecution against the bank and its senior officials. These suits were based on four separate criminal proceedings initiated against him under various provisions of the Pakistan Penal Code and the Offences in Respect of Banks (Special Courts) Ordinance, 1984. In two of the cases, the criminal complaints were dismissed at the preliminary stage without any summons being issued or charges framed. In the remaining two, Anwar Majid was tried, and both cases ended in his acquittal—one outright and the other on the benefit of the doubt. The plaintiff alleged that all four complaints were motivated by malice and were intended to damage his professional standing, initiated without any reasonable or probable cause after disputes arose regarding his demotion and financial entitlements.

Issue: Whether the initiation of criminal proceedings by the bank and its officers against Anwar Majid amounted to malicious prosecution entitling him to damages?

Rule: To establish a claim of malicious prosecution, the plaintiff must prove five elements: first, that he was prosecuted by the defendant; second, that the prosecution ended in his favor; third, that the defendant acted without reasonable and probable cause; fourth, that the defendant acted with malice; and fifth, that the plaintiff suffered damages as a result of the prosecution. All these elements must be cumulatively established for the plaintiff to succeed.

Application: The Court individually assessed each of the four suits in light of the settled principles of malicious prosecution. In Suits No. 118 and 119 of 1987, it was observed that since the criminal complaints did not result in issuance of summons or framing of charges, no formal prosecution took place. Further, no proof of personal loss or reputational injury was offered, and thus the essential ingredients of malicious prosecution were not fulfilled. In Suit No. 593 of 1987, although charges

were framed and trial held, the plaintiff was acquitted on benefit of the doubt. The Court found that the bank's complaint in that case had been made after internal inquiry and with some basis to believe in the truth of the allegations. Therefore, malice could not be presumed, and reasonable cause was not negated. However, in Suit No. 592 of 1987, the Court found compelling evidence that the prosecution was initiated in the absence of any justification, as the financial transaction in question (purchase of prize bonds) was well documented and internally approved. Witnesses, including bank staff, confirmed that the prosecution was instigated out of hostility and lacked proper investigation. The case satisfied all five elements required to prove malicious prosecution. The plaintiff suffered humiliation, mental agony, and damage to his career as a result.

Conclusion: The Court dismissed Suits No. 118, 119, and 593 of 1987 as the plaintiff failed to prove that the prosecutions were without reasonable and probable cause or that they were initiated maliciously. However, Suit No. 592 of 1987 was decreed in favor of the plaintiff, as he successfully established that the prosecution was launched with malice, lacked reasonable cause, and resulted in significant personal and reputational harm. He was awarded Rs. 5,000,000 in damages along with 10% annual interest from the date of institution of the suit.

42. A comparative study has been conducted on the point of lifting the corporate veil between the cases *A. Qutubuddin Khan v. CHEC-Millwala Dredging Co. (Pvt.) Ltd.* decided by the High Court of Sindh, authored by Mr. Justice Jawad Akbar Sarwana, and a judgment from the jurisdiction of New Zealand, providing valuable reading material.

Comparative Table of Cases

Case Title	Pakistan: A. Qutubuddin Khan v. CHEC-Millwala Dredging Co. (Pvt.) Ltd.	New Zealand: Lewis Holdings Ltd v. Steel and Tube Holdings Ltd
Courts	High Court of Sindh	High Court of New Zealand
Judges	Mr. Justice Jawad Akbar Sarwana	Mr. Justice MacKenzie
Sources	https://caselaw.shc.gov.pk/caselaw/view-file/MjUwMjMwY2Ztcy1kYzgZ	https://www.nzlii.org/nz/journals/NZLawStuJl/2015/10.html
Facts	A. Qutubuddin Khan had an arbitral award against CHEC.- CHEC applied for dissolution under CEES 2012 without disclosure.- After dissolution, the decree-holder faced enforcement issues.- Directors were accused of fraud and misrepresentation.	Lewis Holdings owned property leased to Stube Industries, a subsidiary of Steel.- Stube was liquidated, and Lewis sought a contribution order against Steel for unpaid lease obligations.- Stube lacked independent corporate existence.
Issues	Can former directors of CHEC be held personally liable due to misrepresentation and concealment of dissolution?	Should the corporate veil be pierced to hold Steel liable for Stube's lease obligations?

Rules	Section 439(5) of the Companies Ordinance, 1984 (now Section 425(5) of the Companies Act, 2017) allows for directors' liabilities post-dissolution.	Section 271(1)(a) of the Companies Act 1993 allows contribution orders against parent companies for subsidiary debts.
Appl.	Justice Sarwana found evidence of fraudulent actions by directors, allowing the veil to be pierced.	Justice MacKenzie applied section 271(1)(a) and found Stube lacked independent existence, leading to a contribution order against Steel.
Outcome	The court pierced the veil due to fraudulent actions, imposing personal liability on directors.	The court pierced the veil, holding Steel liable for the lease obligations of its subsidiary.
Common Ratio Decendi	Courts may disregard separate legal personality when directors exert control to evade obligations or commit fraud.	Courts may disregard separate legal personality when a parent company uses its subsidiary to evade obligations or commit fraud.
Obiter Dicta	Justice Sarwana emphasized the moral wrong of suppressing information regarding dissolution.	Justice MacKenzie discussed the need for clearer guidelines to avoid ad hoc results.

SELECTED ARTICLES

REFORMING THE SINDH RENTED PREMISES ORDINANCE, 1979: A COMPARATIVE ANALYSIS WITH PUNJAB'S MODERN TENANCY LAW

Waseem Ahmed
(Additional Registrar Research)

This article critically examines the Sindh Rented Premises Ordinance, 1979 (SRPO) and its practical limitations in the context of modern urban tenancy challenges. Drawing a detailed comparison with the Punjab Rented Premises Act, 2009 (PRPA), it highlights how Punjab has adopted a more effective and modern legal framework to manage landlord-tenant disputes. The study explores differences in institutional structure, tenancy documentation, eviction procedures, rent recovery, grounds for eviction, and procedural mechanisms. It notes that PRPA introduces Rent Tribunals, mandates tenancy registration, ensures timely rent deposits during litigation, and grants robust execution powers to tribunals, unlike SRPO, which relies on conventional courts and outdated procedures. The article concludes by recommending legislative reforms for Sindh, including the establishment of Rent Tribunals, creation of a Rent Registrar's office, recognition of tenancy expiry as a ground for eviction, and procedural simplification by excluding CPC and QSO. The overall thrust is toward ensuring faster, fairer, and more accessible justice in tenancy matters in Sindh through comprehensive statutory reform inspired by Punjab's example.¹

¹ <https://www.academia.edu/resource/work/129390342>

Falsus in Uno Falsus in Omni Bus: Revival & Review in Criminal Justice System of Pakistan

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Madiha Arif
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The maxim “**falsus in uno, falsus in omnibus**” meaning “**false in one thing, false in everything**” is a Latin legal doctrine with deep roots in common law. It asserts that if a witness lies deliberately on one material point, their entire testimony becomes suspect. While historically treated as a strict rule, many modern jurisdictions now adopt a more flexible approach, recognizing susceptibility to error inherent in human testimony. Courts in the United Kingdom, United States, and Commonwealth nations have evolved towards evaluating testimony holistically, distinguishing between honest mistakes and willful deception.

In Pakistan, however, the doctrine was long considered inapplicable due to the belief that witnesses often mix truth with falsehood. This position, articulated in cases like *Ghulam Muhammad (PLD 1951 Lahore 66)*, emphasized judicial discretion to sift credible parts from fabricated elements. While this practical and pragmatic approach aimed to prevent wrongful acquittals, it also contributed to a decline in the integrity of witness credibility.

A turning point came in *Khizar Hayat Case (PLD 2019 SC 527)*, where the Supreme Court, led by the then Chief Justice Mr. Asif Saeed Khan Khosa, revived the doctrine as a binding principle of criminal jurisprudence. This was further clarified in *Sher Afzal Case (2025 SCP 94)*, which introduced a balanced interpretation focused on material falsehoods. This article traces the evolution, reaffirmation, and judicial moderation of the doctrine within Pakistan, alongside global comparisons.²

²https://www.academia.edu/129441486/Falsus_in_Uno_Falsus_in_Omni_Bus_Revival_and_Review_in_Criminal_Justice_System_of_Pakistan

- ## Disclaimer

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⁷ <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5praQ%3D%3D-sg->.....