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CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

Saturday, 07 November 2026

Upload Window: Judgments approved for reporting and uploaded on 5, 6 and 7 November 2026, with stragglers from 3 and 4 Novembe

FCC: 2 judgments | SC: 5 judgments | LHC: 5 judgments | SHC: 3 judgments | IHC: no new entries

2	5	5	3	15
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Window and method. This issue covers judgments approved for reporting and uploaded by the Supreme Court, the Federal Constitutional Court and the Lahore High Court on 5, 6 and 7 November 2026. Sunday 8 November does not arise; the preceding Sunday, 1 November, fell in the last window. Stragglers that appeared after the 4 November scan closed have been swept in: two Federal Constitutional Court judgments bearing 4 November upload dates (C.P.L.A. 3829/2025 and C.P.L.A. 2130 and 2136 of 2023) and three Sindh High Court judgments of 3 and 4 November. Two Lahore High Court judgments expressly held over from the 4 November issue for want of space rather than merit are digested here: 2026 LHC 8341 on warrantless search under section 163 of the Customs Act, 1969, and 2026 LHC 8457 on the trial jurisdiction of a Magistrate invested under section 30, Cr.P.C. An unusual Supreme Court window: seven in-window uploads, all approved. Every one of the seven Supreme Court judgments uploaded on 5 November carries a positive reporting endorsement, read in each case rather than keyword-matched. This is the reverse of the 4 November window, in which five of eleven uploads were marked "Not Approved for Reporting". Two of the seven are held over to the next issue for want of space, not merit: C.P.L.A. 422/2025 (Kifayat Ullah v. Kiramat Ullah, Shahid Bilal Hassan, J, 27 October 2026), on Order VII Rule 11 C.P.C. and a 1931 mutation, holding that inheritance devolves on death and that an heir's entitlement passes to that heir's own legal representatives, with the express caveat that not every inheritance claim is immune from limitation; and the second of the two files comprising the lead entry. A reasoned 2:1 split at the Supreme Court. The lead entry, Civil Appeals 1285 to 1288 of 2021, is served from two separate files on the Court's portal: c.a._1285_2021_wdn.pdf, which carries the majority judgment and the Order of the Court, and c.a._1285_2021_dn.pdf, which carries the dissenting note of Muhammad Shafi Siddiqui, J. Both opinions have been read in full and both are digested in the single entry; the hyperlink in that entry leads to the majority file. Practitioners downloading the judgment

should take both files. Two superior courts on the same customs proviso in one window. The Supreme Court in C.P.L.A. 5420/2025 and the Sindh High Court in 2026 SHC KHI 2155 both hold that the Customs Appellate Tribunal has no jurisdiction to extend the option under section 181 of the Customs Act, 1969 where the Board has excluded the class under the first proviso - the former as to conveyances under clauses (b) and (ba), the latter as to smuggled goods themselves under clause (a). Read with 2026 LHC 8341 on section 163, this issue carries three decisions on the limits of customs enforcement powers. Federal Constitutional Court: one negative endorsement. F.C.P.L.A. No. 2392 of 2026, an order of the Chief Justice uploaded on 5 November, is marked "Approved for Reporting: No" in the Court's listing and is accordingly omitted. It is the only Federal Constitutional Court item bearing an in-window upload date. A note on the Federal Constitutional Court's own precedential claim. The entry on C.P.L.A. 2130 and 2136 of 2023 should be read by anyone citing authority before any court in Pakistan. At paragraph 14 the Court states that, under Article 189(1) as it now stands, its judgments bind all other courts including the Supreme Court, and that the binding effect extends to obiter dicta as well as the ratio decidendi; it also records that judgments of the Supreme Court are not binding upon it but carry persuasive value. The proposition is reproduced verbatim in that entry without comment. Lahore High Court. Thirteen judgments carry 5 or 6 November upload dates; none is dated 7 November. Five are digested, together with the two held-over items. Four further in-window items of narrower compass are not taken up: 2026 LHC 8604 (execution of a family decree against a surety under section 145 C.P.C. and section 128 of the Contract Act, 1872), 2026 LHC 8471 (a Magistrate entertaining an application for medical re-examination acts as persona designata, so that the order is administrative and not amenable to revision under sections 435, 439 and 439-A Cr.P.C.), 2026 LHC 8476 (Article 199 and the direct allotment of state land) and 2026 LHC 8573 (interim relief in a suit for specific performance). Two older-citation items, 2019 LHC 5285 and 2022 LHC 9865, were also uploaded on 6 November. Islamabad High Court nil for a third consecutive window. The listing of judgments of sitting justices stands unchanged at the same eight items recorded in the 30 October and 4 November scans, the most recent of which bears a decision date of 30 September 2026. No fresh reported judgment has appeared in three windows. Sindh High Court. Twenty judgments bear order dates of 3, 4 or 5 November. Eight carry an assigned citation, which on this portal is the marker of approval for reporting; the remaining twelve, including five constitutional petitions on contract regularisation and conditional offer letters, do not and are omitted. Three of the eight are digested. The five not taken up are 2026 SHC KHI 2157 (closure of evidence in guardianship proceedings and the bar in section 14(3) of the West Pakistan Family Courts Act, 1964, which does not exclude Article 199 but circumscribes its exercise), 2026 SHC LAR 2153, 2026 SHC MPK 2150, 2026 SHC MPK 2160 and 2026 SHC MPK 2162. Carry-forward queue. Three image-only Supreme Court scans remain unread for want of a text layer: C.P.L.A. 1157/2021, C.P.L.A. 788/2018 and C.A. 1468/2018 (Commissioner Inland Revenue, Lahore v. M/s. MCB Limited). Also carried forward: C.P.L.A. 422/2025 of the Supreme Court and the four Lahore High Court items listed above.

Federal Constitutional Court of Pakistan

2 judgments

CONSTITUTIONAL - APPOINTMENTS MADE UNDER A LAPSED ORDINANCE - ARTICLES 89 AND 264 OF THE CONSTITUTION AND SECTION 6 OF THE GENERAL CLAUSES ACT, 1897 - PRECEDENTIAL VALUE OF FEDERAL CONSTITUTIONAL COURT JUDGMENTS UNDER ARTICLE 189(1)

Islamabad Capital Territory, Private Educational Institution Regulatory Authority (ICT-PEIRA) v. Imtiaz Ali Qureshi and others; and v. Waqas Mahmood and others

APPROVED FOR REPORTING (LISTING MARKED 'YES'). PETITIONS CONVERTED INTO APPEALS AND ACCEPTED.

C.P.L.A. Nos. 2130 and 2136 of 2023 · Bench: Amin-ud-Din Khan, Chief Justice, Aamer Farooq and Ali Baqar Najafi, JJ (judgment of the Court by Aamer Farooq, J) · Decided: 18 September 2026 · Uploaded: 4 November 2026 (straggler)

FACTS

By an advertisement dated 13 July 2009 the then Ministry of Education invited applications for permanent appointment to posts in ICT-PEIRA. A four-member Selection Board recommended Mr. Imtiaz Ali Qureshi as Member (Academics) and Mr. Waqas Mahmood as Member (Registration), and both were appointed on a permanent basis in reliance on section 7 of the ICT-PEIRA Ordinance, 2006. Their appointments were challenged under Article 199. The High Court directed on 13 January 2020 that the matter be placed before the Federal Cabinet; the Law and Justice Division opined that the Rules of 2015 operated prospectively. On 16 November 2021 the Ministry of Federal Education and Professional Training submitted a summary stating the appointments to be illegal for want of rules and recommending termination, without mentioning the Law and Justice Division's opinion or the Establishment Division's O.M. of 18 November 2015. The Cabinet approved the proposal on 23 November 2021 and the services of both were terminated by notifications dated 3 December 2021 with effect from 23 November 2021. The Judge-in-Chambers allowed their writ petitions on 22 July 2022 and the Division Bench dismissed the Intra-Court Appeals on 27 March 2023. The Court traced the statutory chronology: the Ordinance of 2006 lapsed, the Ordinance of 2007 was promulgated and re-promulgated, the Provisional Constitutional Order purported to grant permanence, the Supreme Court struck down the emergency and the P.C.O. on 31 July 2009 allowing 120 days, the 2007 Ordinance lapsed on 27 November 2009, the Ordinance of 2009 was promulgated the same day and lapsed on 26 March 2010, and no statute governed ICT-PEIRA until the Act of 2013 was enacted on 19 March 2013 - a gap of almost three years - with no saving clause.

LEGAL ISSUE

Do appointments made on a permanent basis under a temporary Ordinance survive the lapse of that Ordinance and the subsequent enactment of a permanent statute which contains no saving clause; and are the protections of Article 264(b) and (c) of the Constitution and section 6 of the General Clauses Act, 1897 available to rights claimed under a lapsed Ordinance?

HOLDING

Such appointments do not continue. Article 264(b) and (c) and section 6 of the Act of 1897 exist to preserve rights acquired and acts done under a law that no longer holds the field and are available in full measure where a vested right was acquired under a permanent statute subsequently repealed. They cannot, however, be used as a lifeline to assert permanent status under a temporary instrument which has lapsed, for that would give the Executive absolute authority to legislate at will and would negate the will of Parliament. A temporary instrument cannot create an indefeasible permanent right or liability unless that permanence is validated by an Act of Parliament with retrospective effect. Had Parliament intended these appointments to be permanent, it would have expressly saved them under the Act of 2013. The allegation that the appointments were procured through manipulation was a disputed question of fact not capable of decision on documents, and the Division Bench's focus on the absence of rules was not the crux of the controversy.

LEGAL SIGNIFICANCE

Two matters of first importance. First, the Court adopts and applies Pakistan Medical and Dental Council v. Muhammad Fahad (2018 SCMR 1956) to appointments, holding that re-promulgation of Ordinances is a fraud on the Constitution and that the Ordinance-making power under Articles 89 and 128 does not constitute the President or a Governor a parallel source of law-making. Second, and of general application to every court in the country, the Court states its own view of the precedential architecture after the Constitution (Twenty-Seventh Amendment) Act, 2025: Supreme Court judgments are not binding upon the Federal Constitutional Court under Article 189 but carry persuasive value, while Article 189(1) as it now stands renders the Federal Constitutional Court's own judgments binding on all other courts in Pakistan including the Supreme Court - and, the Court holds, that binding effect extends not only to the ratio decidendi but also to obiter dicta, drawing on Dr. Iqrar Ahmad Khan (2021 SCMR 1509), Shahid Pervaiz (2017 SCMR 206), Justice Khurshid Anwar Bhinder (PLD 2010 SC 483) and Irshad Ahmad Shaikh (2000 SCMR 814). Anyone citing or resisting authority before any Pakistani court should read paragraph 14 of this judgment.

LEGAL PROPOSITIONS (VERBATIM)

— It is pertinent to observe that the Act of 2013 contains no express saving clause to validate or protect the appointments, employment arrangements, rules, rights, or liabilities created under the earlier, temporary Ordinance(s) which had already lapsed upon expiry period prescribed under the Constitution.

— We concur with the view taken by the Supreme Court of Pakistan, as the said judgment is not binding upon us under Article 189 of the Constitution but the principles laid down therein are cited with approval as, in our opinion, they depict the correct position of the law.

— stipulates clearly that the judgments of this Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan including the Supreme Court.

— In this context the binding effect of the judgments of this Court is not only confined to the ratio decidendi but also obiter dicta.

— The very purpose of Article 264(b)& (c) of the Constitution and section 6 of the Act of 1897 is to preserve rights acquired and acts done under a law which no longer holds the field, and it is only for certainty in the system.

— In our constitutional scheme, Parliament is the exclusive law-making institution, and the power to promulgate the Ordinance is an exception reserved solely for emergencies.

— The repeated re-promulgation of the Ordinance(s) defeats the broader legislative purpose and directly encroaches upon the exclusive prerogative of the legislature to enact laws through the regular processes prescribed by the Constitution.

— Article 264 (b) & (c) of the Constitution cannot be used as a lifeline by Mr. Qureshi and Mr. Mahmood to assert permanent status or to continue in office perpetually, as any such continuation would stand in direct negation of the will of Parliament.

— In the instant case, however, the purported rights were acquired under a temporary statute which has since lapsed. To grant these rights perpetual existence would tantamount to giving the Executive absolute authority to legislate as and when it pleases. A temporary instrument cannot create an indefeasible, permanent right or liability unless that permanence is subsequently validated and adopted through an Act of Parliament with retrospective effect.

LEGAL PRINCIPLES EXPOUNDED

Judgments of the Federal Constitutional Court are, under Article 189(1) as it now stands, binding on all other courts in Pakistan including the Supreme Court, and that binding effect extends to obiter dicta as well as to the ratio decidendi; judgments of the Supreme Court are not binding on the Federal Constitutional Court but carry persuasive value.

Source: *In this context the binding effect of the judgments of this Court is not only confined to the ratio decidendi but also obiter dicta.*

Authority: *C.P.L.A. 2130 and 2136 of 2023, para 14; Article 189(1) of the Constitution as amended by the Constitution (Twenty-Seventh Amendment) Act, 2025; Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf, 2021 SCMR 1509; Shahid Pervaiz v. Ejaz Ahmad, 2017 SCMR 206; Justice Khurshid Anwar Bhinder v. Federation of Pakistan, PLD 2010 SC 483; Irshad Ahmad Shaikh v. The State, 2000 SCMR 814*

Article 264(b) and (c) of the Constitution and section 6 of the General Clauses Act, 1897 preserve rights acquired and acts done under a law that no longer holds the field, but they do not confer permanence on rights claimed under a temporary Ordinance which has lapsed.

Source: *The very purpose of Article 264(b)& (c) of the Constitution and section 6 of the Act of 1897 is to preserve rights acquired and acts done under a law which no longer holds the field, and it is only for certainty in the system.*

Authority: *C.P.L.A. 2130 and 2136 of 2023, para 16; Article 264 of the Constitution; s. 6 of the General Clauses Act, 1897*

A temporary instrument cannot create an indefeasible, permanent right or liability unless that permanence is validated and adopted through an Act of Parliament with retrospective effect.

Source: *A temporary instrument cannot create an indefeasible, permanent right or liability unless that permanence is subsequently validated and adopted through an Act of Parliament with retrospective effect.*

Authority: *C.P.L.A. 2130 and 2136 of 2023, para 18; following Pakistan Medical and Dental Council v. Muhammad Fahad, 2018 SCMR 1956*

Parliament is the exclusive law-making institution; the Ordinance-making power under Articles 89 and 128 is an exception reserved for emergencies, and repeated re-promulgation encroaches on the legislature's exclusive prerogative.

Source: *In our constitutional scheme, Parliament is the exclusive law-making institution, and the power to promulgate the Ordinance is an exception reserved solely for emergencies.*

Authority: *C.P.L.A. 2130 and 2136 of 2023, para 16; The State v. Zia-ur-Rehman, PLD 1973 SC 49; Pakistan Medical and Dental Council v. Muhammad Fahad, 2018 SCMR 1956*

OPERATIVE ORDER

For the above reasons, the instant petitions are converted into appeals, which are accepted; consequently, the impugned judgments of the High Court are set aside and the writ petitions filed by Mr. Qureshi and Mr. Mahmood stand dismissed. No order as to costs.

■ **View Full Judgment**

CIVIL - ORDER VII, RULE 11, C.P.C. - WHETHER A PLAINT MAY BE REJECTED PARTIALLY AGAINST SELECTED DEFENDANTS - REVIEW AND RECALL UNDER SECTION 114 AND ORDER XLVII, RULE 1, C.P.C.

Rana Muhammad Sher v. Shujah Akber Khan and others

APPROVED FOR REPORTING (LISTING MARKED 'YES'). LEAVE GRANTED; PETITION CONVERTED INTO APPEAL AND ALLOWED.

C.P.L.A. No. 3829 of 2025 · Bench: Amin-ud-Din Khan, Chief Justice and Ali Baqar Najafi, J (judgment by Amin-ud-Din Khan, CJ) · Decided: 28 October 2026 · Uploaded: 4 November 2026 (straggler)

FACTS

The petitioner sued for specific performance of an agreement to sell dated 17 November 2016 concerning land measuring 31 Kanals and 3 Marlas in District Sargodha, together with cancellation of a subsequent sale deed executed in favour of respondent No. 1. During the pendency of the suit the Trial Court, by order dated 3 December 2020, dismissed the application for temporary injunction and, suo motu, partially rejected the plaint against defendants Nos. 2 to 5. The application for recall was dismissed on 1 March 2022 and the civil revision on 24 March 2022. The Lahore High Court dismissed the constitutional petition on 16 June 2025, holding that the order partially rejecting the plaint was appealable and could not be challenged by review or recall. Following the Constitution (Twenty-Seventh Amendment) Act, 2025, the matter stood transferred to the Federal Constitutional Court. Respondent No. 4 was an alleged attesting witness to the prior agreement, raising a question of his knowledge of the antecedent obligation and its effect on the subsequent transfer.

LEGAL ISSUE

Does the jurisdiction under Order VII, Rule 11, C.P.C. admit of selective or piecemeal rejection of a plaint against certain defendants while permitting its prosecution against another; and does the availability of an appeal from an order rejecting a plaint bar review under section 114 read with Order XLVII, Rule 1, C.P.C.?

HOLDING

No, on both counts. The expression 'plaint' denotes the pleading as a whole, and the jurisdiction under Order VII, Rule 11 does not authorise its partial rejection against selected defendants or in respect of particular reliefs. Where the plaint read in its entirety discloses a legally cognisable cause of action arising from interconnected transactions, selective rejection exceeds the statutory confines of the Rule and amounts to premature adjudication of substantive rights. The plea of bona fide purchase for valuable consideration without notice under section 27(b) of the Specific Relief Act, 1877 is a substantive defence requiring evidence, not a ground for rejection at the threshold. A subsequent transferee whose registered title is directly challenged is ordinarily a necessary party under Order I, Rule 10(2). On review, section 114 read with Order XLVII, Rule 1 expressly permits review of an appealable decree or order where no appeal has been preferred, so the mere availability of an appeal does not ipso facto bar review jurisdiction; the High Court erred in treating appealability as an absolute bar without examining the statutory grounds invoked. The Trial Court also erred in converting a provisional assessment on a temporary-injunction application into a conclusive determination.

LEGAL SIGNIFICANCE

A thorough statement of the indivisibility of the plaint for the purposes of Order VII, Rule 11, and a corrective to a practice encountered with some frequency in the subordinate courts, namely rejection of a plaint qua some defendants while the suit continues against others. The judgment also restores the orthodox position on review of an appealable order where no appeal has been filed, distinguishes an erroneous decision within jurisdiction from an order vitiated by inherent jurisdictional infirmity for the purposes of recall under section 151, and reaffirms that the nomenclature of an application does not govern its maintainability. The treatment of joinder under Order II, Rule 3 with Order I, Rules 3, 9 and 10, and of the interdependence of specific performance with cancellation of a subsequent conveyance, will be useful in drafting and in resisting threshold objections.

LEGAL PROPOSITIONS (VERBATIM)

— The exercise of such jurisdiction necessitates a meaningful and holistic examination of the averments contained in the plaint, which must be read in their entirety, without recourse to the defense or premature adjudication of disputed questions of fact.

— A fundamental juridical distinction must, therefore, be maintained between the disclosure of a cause of action and its eventual proof; the former falls within the domain of pleadings, whereas the latter constitutes a matter for evidentiary adjudication.

— The jurisdiction under the said provision is confined to rejection of the plaint on expressly prescribed statutory grounds and does not authorize its partial rejection against selected defendants or in respect of particular reliefs.

— The legislative expression "plaint" denotes the pleading as a whole, rather than its individual claims or parties.

— The rationale underpinning this principle lies in the indivisible character of the plaint for purposes of Order VII, Rule 11 CPC, which mandates its consideration as a whole rather than through artificial segregation of claims, reliefs or defendants.

— Consequently, the plea of bona fide purchase without notice constitutes a substantive defense involving disputed questions of fact, rather than an independent ground for rejection of the plaint under Order VII, Rule 11 CPC.

— In disputes involving competing contractual and proprietary rights, a subsequent transferee whose registered title is directly challenged ordinarily constitutes a necessary party, as any determination affecting such title cannot effectively be made in his absence.

— Thus, the mere availability of an appeal does not, ipso facto, bar review jurisdiction.

— Consequently, the maintainability of an application for recall must be determined by the nature of the defect alleged and the substance of the relief sought, rather than its nomenclature.

— The jurisdiction governing interlocutory relief is distinct from that under Order VII, Rule 11 CPC.

LEGAL PRINCIPLES EXPOUNDED

A plaint is indivisible for the purposes of Order VII, Rule 11, C.P.C.; it must be read as a whole and cannot be rejected partially against selected defendants or in respect of particular reliefs.

Source: *The jurisdiction under the said provision is confined to rejection of the plaint on expressly prescribed statutory grounds and does not authorize its partial rejection against selected defendants or in respect of particular reliefs.*

Authority: *C.P.L.A. 3829/2025, paras 6-7 and 22*

Disclosure of a cause of action and proof of it are distinct inquiries; conflating them converts a preliminary scrutiny of maintainability into an adjudication on merits.

Source: *A fundamental juridical distinction must, therefore, be maintained between the disclosure of a cause of action and its eventual proof; the former falls within the domain of pleadings, whereas the latter constitutes a matter for evidentiary adjudication.*

Authority: *C.P.L.A. 3829/2025, para 5*

The protection of section 27(b) of the Specific Relief Act, 1877 for a bona fide purchaser for value without notice is conditional upon proof of its ingredients and is therefore a substantive defence, not a ground for threshold rejection.

Source: *Consequently, the plea of bona fide purchase without notice constitutes a substantive defense involving disputed questions of fact, rather than an independent ground for rejection of the plaint under Order VII, Rule 11 CPC.*

Authority: *C.P.L.A. 3829/2025, para 11; Specific Relief Act, 1877, ss. 12, 21, 22, 27(b), read with ss. 39 and 42*

Section 114 read with Order XLVII, Rule 1, C.P.C. permits review of an appealable decree or order where no appeal has been preferred and a statutory ground exists; appealability is not an absolute bar to review.

Source: *Thus, the mere availability of an appeal does not, ipso facto, bar review jurisdiction.*

Authority: *C.P.L.A. 3829/2025, paras 15 and 21; C.P.C., s. 114(1)(a) and Order XLVII, Rule 1(1)(a)*

The maintainability of an application for recall is determined by the nature of the defect alleged and the substance of the relief sought, not by its nomenclature; and inherent jurisdiction under section 151 cannot override express statutory provisions.

Source: *Consequently, the maintainability of an application for recall must be determined by the nature of the defect alleged and the substance of the relief sought, rather than its nomenclature.*

Authority: *C.P.L.A. 3829/2025, para 17; C.P.C., s. 151*

OPERATIVE ORDER

Consequently, leave to appeal is granted, the petition is converted into an appeal and allowed. ... The suit shall stand restored against all defendants. The learned Trial Court shall frame appropriate issues and decide the controversy in accordance with law, after affording the parties due opportunity to adduce evidence, preferably within six months. Any pending application for temporary injunction shall be decided independently on its own merits. The observations herein shall not prejudice the substantive rights of the parties. No order as to costs.

■ **View Full Judgment**

Supreme Court of Pakistan

5 judgments

WEALTH TAX - EXEMPTION FOR ONE RESIDENTIAL HOUSE - WHETHER EACH SPOUSE, AS AN INDEPENDENT ASSESSEE, MAY EXCLUDE A SEPARATELY OWNED HOUSE

Commissioner Inland Revenue v. Mst. Bushra Aitzaz Ahsan and others

APPROVED FOR REPORTING. APPEALS DISMISSED BY MAJORITY OF TWO TO ONE.

Civil Appeals Nos. 1285, 1286, 1287 and 1288 of 2021 · Bench: Yahya Afridi, CJ, Muhammad Shafi Siddiqui and Miangul Hassan Aurangzeb, JJ (majority judgment by Miangul Hassan Aurangzeb, J; Muhammad Shafi Siddiqui, J dissenting) · Decided: 6 October 2026 (heard); judgment released 5 November 2026 · Uploaded: 5 November 2026

FACTS

The respondent purchased House No. 10, Street No. 16, Sector F-6/3, Islamabad by sale deed dated 13 May 1996 and claimed exemption from wealth tax under Clause 12(1) of Part-I of the Second Schedule to the Wealth Tax Act, 1963 on the ground that the house was owned and occupied by her. The assessing officer refused the claim by order dated 29 May 2006 because her husband, himself an assessee, had already claimed the same exemption for the tax years 1997-98 to 2000-01 in respect of a house owned and occupied by him at No. 5, Zaman Park, Lahore, and because the first proviso to Clause 12(1) permits the option to be exercised by either of the spouses only. The Commissioner Income Tax dismissed her appeal on 31 July 2006 and the Income Tax Appellate Tribunal dismissed her further appeal on 27 February 2007. The Lahore High Court, by order dated 28 October 2019, allowed her wealth tax appeals, holding that each spouse is an independent assessee and that the proviso operates only where husband and wife reside in the same house. Leave to appeal was granted on 21 September 2021.

LEGAL ISSUE

Where a husband and wife are each assessees in their own right and each individually owns a separate residential house occupied for residential purposes, does the first proviso to Clause 12(1) of Part-I of the Second Schedule to the Wealth Tax Act, 1963 - 'such option may be exercised by either of the spouse' - permit each spouse to exclude his or her own house from his or her own net wealth, or does the exercise of the option by one spouse disentitle the other?

HOLDING

By majority, each spouse may exercise the option in respect of the house owned and occupied by that spouse. The proviso identifies who may exercise the option; the substantive provision identifies the assets which may be excluded. Marriage does not, absent express statutory direction, merge separately owned assets into a single taxable estate, and the word 'either' does not by itself extinguish the other spouse's entitlement in respect of a different house. The appeals were accordingly dismissed. Muhammad Shafi Siddiqui, J dissented: the proviso carves spouses out as a 'class' entitled to one election per matrimonial unit, operates in a fiscal statute as a condition precedent with the force of a non-obstante clause, and must be strictly construed with the burden on the taxpayer; he would have allowed the appeals and restored the concurrent findings of the three statutory forums.

LEGAL SIGNIFICANCE

The first reported Supreme Court construction of the spousal proviso to the residential-house exemption under the Wealth Tax Act, 1963, and a rare reasoned split on the interpretation of a fiscal exemption. The majority applies the ordinary rule that a proviso cannot cut down a substantive entitlement which the legislature has not expressly restricted, and declines to treat a married couple as a single assessable unit. The dissent sets out, with equal care, the competing fiscal canon that exemptions are strictly construed, that a proviso in a taxing statute may operate as the driving force, and that the burden of establishing entitlement lies on the taxpayer. Practitioners in wealth tax, and more generally in the construction of provisos to exemption clauses in fiscal statutes, will find both opinions of direct assistance. The reasoning also bears on the construction of spousal-aggregation language in the Income Tax Ordinance, 2001, to which the majority expressly contrasts the clearer language of the erstwhile Clause 114AA.

LEGAL PROPOSITIONS (VERBATIM)

— The distinction between the person entitled to exercise the option and the property in respect of which that option is exercised is material. The proviso identifies who may exercise the option, whereas the substantive provision identifies the assets which may be excluded from the assessee's wealth.

— The proviso cannot be construed in isolation so as to introduce a restriction upon the substantive entitlement which the legislature has not clearly expressed.

— The fact that the two owners/assessees are married to each other does not, in the absence of an express statutory direction, merge their separately owned assets into a single taxable estate for the purpose of the exemption under Clause 12(1) ibid.

— Marriage, by itself, does not render the wife incapable of exercising a statutory option available to her as an independent assessee, nor does it transfer to the husband an exclusive right to determine which separately owned property the wife may exclude from her wealth.

— The word "either" ordinarily identifies each of the two persons as capable of exercising a choice.

— The words "owned and occupied" reinforce the connection between the particular house and the individual assessee seeking the exemption.

— since the statutory language of Clause 12(1) ibid is clear, it must be given effect to and courts cannot add words or conditions which the legislature had not enacted.

LEGAL PRINCIPLES EXPOUNDED

A proviso identifies the person who may exercise a statutory option; it does not redefine the subject-matter to which the substantive exemption attaches.

Source: *The distinction between the person entitled to exercise the option and the property in respect of which that option is exercised is material. The proviso identifies who may exercise the option, whereas the substantive provision identifies the assets which may be excluded from the assessee's wealth.*

Authority: *C.A. Nos. 1285 to 1288 of 2021 (majority, Miangul Hassan Aurangzeb, J), paras 15-16*

A proviso cannot be read in isolation so as to engraft on the substantive provision a restriction which the legislature has not clearly expressed.

Source: *The proviso cannot be construed in isolation so as to introduce a restriction upon the substantive entitlement which the legislature has not clearly expressed.*

Authority: *C.A. Nos. 1285 to 1288 of 2021 (majority), para 15*

Marriage does not, without express statutory direction, merge the separately owned assets of spouses into a single taxable estate, nor does it disable a wife from exercising a statutory option available to her as an independent assessee.

Source: *Marriage, by itself, does not render the wife incapable of exercising a statutory option available to her as an independent assessee, nor does it transfer to the husband an exclusive right to determine which separately owned property the wife may exclude from her wealth.*

Authority: *C.A. Nos. 1285 to 1288 of 2021 (majority), para 16; read with ss. 2(3), 2(16), 3 and 4 of the Wealth Tax Act, 1963*

Where the statutory language is clear, the court may not add words or conditions which the legislature has not enacted; a contrast with language elsewhere in the fiscal code showing how aggregation is expressly achieved is a legitimate aid to construction.

Source: *since the statutory language of Clause 12(1) ibid is clear, it must be given effect to and courts cannot add words or conditions which the legislature had not enacted.*

Authority: *C.A. Nos. 1285 to 1288 of 2021 (majority), para 19, contrasting proviso (c) to the erstwhile Clause 114AA of Part-I of the Second Schedule to the Income Tax Ordinance, 2001*

OPERATIVE ORDER

By majority of two to one (Justice Muhammad Shafi Siddiqui dissenting), the appeals are dismissed. ... Since we have been given no reason to interfere with the impugned order dated 28.10.2019, the appeals are all dismissed.

■ **View Full Judgment**

CUSTOMS - REDEMPTION FINE IN LIEU OF CONFISCATION OF A CONVEYANCE - EFFECT OF THE BOARD'S EXCLUSION UNDER THE FIRST PROVISO TO SECTION 181 OF THE CUSTOMS ACT, 1969

Collector of Customs (Enforcement), Model Customs Collectorate, Custom House, Peshawar v. Azad Shah and others

APPROVED FOR REPORTING. PETITION CONVERTED INTO APPEAL AND ALLOWED.

C.P.L.A. No. 5420 of 2025 and C.M.A. No. 15792 of 2025 · Bench: Yahya Afridi, CJ, Muhammad Shafi Siddiqui and Miangul Hassan Aurangzeb, JJ (order by Muhammad Shafi Siddiqui, J) · Decided: 8 October 2026 · Uploaded: 5 November 2026

FACTS

On 16 February 2025 a Hino Mazda truck bearing registration No. TKK-500 was intercepted at the JCP Tunnel, Kohat, and foreign-origin spare parts were recovered from it. The driver, respondent No. 1, could not produce documents evidencing lawful import. The goods were seized under section 168 of the Customs Act, 1969 and the vehicle under section 157(2). The adjudicating authority ordered outright confiscation of both the goods and the vehicle, and the Collector of Customs (Appeals) dismissed the appeal. The Customs Appellate Tribunal, by judgment dated 30 July 2025, modified the order so as to permit release of the vehicle against a redemption fine equal to 40 per cent of its appraised value, and the Peshawar High Court maintained that order by judgment dated 13 November 2025 in Customs Reference No. 261-P of 2025.

LEGAL ISSUE

Where the Federal Board of Revenue has, in exercise of the power conferred by the first proviso to section 181 of the Customs Act, 1969, excluded a class of conveyances from the option to pay a fine in lieu of confiscation, does the Customs Appellate Tribunal retain jurisdiction to order release of a conveyance of that class against payment of a redemption fine?

HOLDING

No. Liability to confiscation under section 157(2) does not of itself confer a right to redemption contrary to a restriction imposed under section 181. The redemption rates in the table appended to S.R.O. 499(I)/2009 cannot be read independently of the exclusion in the preamble or invoked to circumvent it. The seizure having occurred after the insertion of clause (ba) by S.R.O. 1619(I)/2024, the question of redemption fell to be determined under the notification as amended, and the Tribunal's reliance on the asserted use of the truck for carriage of goods for hire, without giving effect to the applicable statutory restriction, was legally unsustainable. The High Court likewise erred in maintaining that order.

LEGAL SIGNIFICANCE

A short but important restatement of the limits of the Tribunal's power to grant redemption in customs matters, and a convenient chronology of the Board's notifications: S.R.O. 499(I)/2009 (clause (b)), the limited and conditional relaxation introduced by S.R.O. 1280(I)/2024 dated 20 August 2024, and its rescission by S.R.O. 1619(I)/2024 dated 3 October 2024, which inserted clause (ba) covering lawfully registered conveyances other than those falling under clause (b) seized and found carrying smuggled goods. Read with the Sindh High Court's judgment in 2026 SHC KHI 2155, digested below, this issue carries two superior-court decisions to the same effect, one on conveyances under clause (b)/(ba) and the other on smuggled goods themselves under clause (a). Practitioners should note that the date of seizure determines which version of the notification applies.

LEGAL PROPOSITIONS (VERBATIM)

— The distinction is material as liability to confiscation under section 157(2) does not, by itself, confer a right to redemption contrary to a restriction imposed under section 181.

— In exercise of the aforesaid power, the Board issued S.R.O. 499(I)/2009 dated 13.06.2009. Clause (b) excludes from redemption lawfully registered conveyances, including packages and containers, found carrying goods in false cavities or used wholly or exclusively for transporting goods involved in smuggling.

— Section 157(2) makes a conveyance used in the movement of goods liable to confiscation, whereas section 181 provides for an option to pay a fine in lieu of confiscation. The latter discretion is, however, subject to its first

proviso, which empowers the Board to specify goods or classes of cases in which such an option shall not be given.

— where the Board has excluded a class of conveyances from redemption, the Tribunal has no jurisdiction to order their release against payment of fine.

— That relaxation was rescinded by S.R.O. 1619(I)/2024 dated 03.10.2024, which introduced clause (ba) in respect of lawfully registered conveyances, including packages and containers, other than those falling under clause (b), if seized and found carrying smuggled goods.

— It further held that the plea that a vehicle was hired for public transport could not override the express statutory restriction, which otherwise made no such distinction.

— The Tribunal's reliance on that circumstance, without giving effect to the applicable statutory restriction, was legally unsustainable.

LEGAL PRINCIPLES EXPOUNDED

Liability to confiscation and entitlement to redemption are distinct; the former does not generate the latter where the Board has withdrawn the option.

Source: *The distinction is material as liability to confiscation under section 157(2) does not, by itself, confer a right to redemption contrary to a restriction imposed under section 181.*

Authority: *C.P.L.A. 5420/2025, para 3; Customs Act, 1969, ss. 157(2) and 181*

Once the Board has excluded a class of conveyances from redemption under the first proviso to section 181, neither the adjudicating officer nor the Tribunal has jurisdiction to order release against a fine.

Source: *where the Board has excluded a class of conveyances from redemption, the Tribunal has no jurisdiction to order their release against payment of fine.*

Authority: *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), FBR, Peshawar, 2025 SCMR 684, followed*

The option to pay a fine in lieu of confiscation under section 181 is a discretion subject to the first proviso, by which the Board may specify goods or classes of cases in which no option is to be given; the rate table appended to such a notification cannot be read independently of its exclusions.

Source: *The latter discretion is, however, subject to its first proviso, which empowers the Board to specify goods or classes of cases in which such an option shall not be given.*

Authority: *C.P.L.A. 5420/2025, paras 3-4; Customs Act, 1969, s. 181 first proviso; S.R.O. 499(I)/2009 dated 13 June 2009*

A plea that the conveyance was hired out for public transport does not override an express statutory restriction which draws no such distinction.

Source: *It further held that the plea that a vehicle was hired for public transport could not override the express statutory restriction, which otherwise made no such distinction.*

Authority: *Director, Intelligence and Investigation (Customs), FBR, Peshawar v. Muhammad Ishaq, 2026 SCMR 885, reaffirmed*

OPERATIVE ORDER

For the foregoing reasons, this petition is converted into an appeal, and the same is allowed. The impugned judgments of the High Court and the Customs Appellate Tribunal are set aside, and the order of the adjudicating authority directing outright confiscation of the vehicle is restored. The listed CMA is accordingly disposed of.

■ View Full Judgment

CRIMINAL - CANCELLATION OF PRE-ARREST BAIL UNDER SECTION 497(5), CR.P.C. - DOCTRINE OF COMPLICITY - THEFT AND PRIVATE SIPHONING OF ELECTRICITY

Ali Asghar Khokhar v. Anwar Ali Kori and others

APPROVED FOR REPORTING. PETITION DISPOSED OF; BAIL ORDER LEFT UNDISTURBED.

Crl.P.L.A. No. 207-K of 2025 · Bench: Muhammad Ali Mazhar and Irfan Saadat Khan, JJ · Decided: 5 August 2026 · Uploaded: 5 November 2026

FACTS

The complainant lodged an F.I.R. under sections 336, 337-L(i) and (ii), 506 and 34, P.P.C. alleging that WAPDA officials, including respondent No. 1, were supplying electricity to shops by drawing a special line from the disposal phase and crossing the line over his shops. On 3 March 2024 a PVC wire broke, converged with a high-tension wire and electrocuted his brother, Noor Hussain, who was treated at a trauma centre and then at the Burns Centre, Karachi. The F.I.R. was lodged after a delay of nine months. Respondent No. 1's application for pre-arrest bail was dismissed by the 1st Additional Sessions Judge, Larkana on 30 January 2025, but the High Court granted and confirmed bail on 20 October 2025, principally on the ground of the unexplained nine-month delay, the role of mere negligence attributed to respondent No. 1, his plea of mala fide implication, and the Investigating Officer's statement that he had no contact with WAPDA officials. Before the Supreme Court the complainant, appearing in person, conceded that he had been purchasing electricity through a contractor and ultimately stated that he did not wish to press the petition.

LEGAL ISSUE

What are the grounds on which pre-arrest bail confirmed by a High Court may be cancelled under section 497(5), Cr.P.C.; and where theft and private siphoning of electricity is alleged, does the doctrine of complicity require examination of the role of the utility and its officials?

HOLDING

The grant of bail and its cancellation are regulated by different legal principles, and once an accused is clothed with free life his liberty cannot be truncated perfunctorily. The yardstick under section 497(5) is characterised into two fundamental scaffoldings, elaborated by seven settled grounds. The Supreme Court does not ordinarily interfere with a High Court's bail-granting order unless the discretion appears fanciful, arbitrary, or outside the bounds settled by precedent. On the facts the case required further inquiry and the bail order called for no interference. The Court went on to observe that electricity could not have been supplied without the knowledge of WAPDA and its officials, and that the doctrine of complicity, founded on the maxim qui facit per alium, facit per se, required the role of all persons involved in the theft, unlawful sale and private siphoning of electricity to be examined microscopically by WAPDA and the utility company, to which a copy of the order was directed to be transmitted.

LEGAL SIGNIFICANCE

A compact restatement of the law on cancellation of bail, drawing together the two 'fundamental scaffoldings' with the seven grounds settled in Sami Ullah, Sharif Khan and Zafar Iqbal, and a useful statement of the threshold for interference with a High Court's exercise of bail discretion. Of wider interest is the Court's application of the doctrine of complicity to the private siphoning of electricity: the observation that supply could not occur without the knowledge of the utility, coupled with the direction that a copy of the order go to the Chairman, WAPDA, is likely to be relied upon in electricity-theft prosecutions and in disciplinary proceedings against utility staff. The order also records, in passing, a serviceable summary of the ingredients and punishments of sections 336, 337-L, 506 and 34, P.P.C.

LEGAL PROPOSITIONS (VERBATIM)

— *The grant of bail and its cancellation, both are regulated by different legal principles.*

— *Once an accused person is clothed with free life, his liberty cannot be truncated perfunctorily or on implausible justifications.*

— By and large, this Court does not interfere with bail granting orders of the High Court unless the discretion exercised by the High Court seems to be fanciful, arbitrary, or outside the precise bounds established by dint of judicial precedents

— The yardstick for the cancellation of bail under Section 497 (5) of the Cr.P.C are characterized into two fundamental scaffoldings such as that the bail was granted in violation of mandatory statutory provisions or established legal principles; ignoring overwhelming incriminating material; prompted by factors incongruent to the judicial norms of a tentative assessment or failing to rationalize a case of further inquiry; substantial and supportable evidence is available to demonstrate that the accused has abused or misused the concession of bail; intensely making efforts to alter, hide, or destroy prosecution materials or pressuring, coercing, or intimidating victims and prosecution witnesses.

— The doctrine of complicity holds a person legally responsible for a crime committed by someone else when he aids and abets the main offender which is construed a share liability for a completed offense.

— This doctrine is originated on the principle qui facit per alium, facit per se, that a person cannot escape liability merely because the criminal act was carried out through another person.

— the role of all persons otherwise involved in the theft, unlawful sale, and private siphoning of electricity, rather than through the authorized route is required to be examined microscopically by the WAPDA and the concerned Utility Company.

LEGAL PRINCIPLES EXPOUNDED

Grant of bail and cancellation of bail are governed by distinct principles, and liberty once granted is not to be withdrawn perfunctorily or on implausible justification.

Source: *The grant of bail and its cancellation, both are regulated by different legal principles. Once an accused person is clothed with free life, his liberty cannot be truncated perfunctorily or on implausible justifications.*

Authority: *Crl.P.L.A. 207-K/2025, para 7; Cr.P.C., s. 497(5)*

Interference with a High Court's bail-granting order is confined to cases where the discretion appears fanciful, arbitrary or beyond the bounds settled by precedent.

Source: *By and large, this Court does not interfere with bail granting orders of the High Court unless the discretion exercised by the High Court seems to be fanciful, arbitrary, or outside the precise bounds established by dint of judicial precedents*

Authority: *Crl.P.L.A. 207-K/2025, para 7*

The settled grounds for cancellation of bail are that the order is patently illegal, erroneous or factually incorrect and has caused a miscarriage of justice; misuse of the concession; hampering of prosecution evidence; likelihood of absconsion; interference with investigation; indulgence in a similar offence while at liberty; and fresh material tending to establish guilt.

Source: *This Court in various dictums including those laid down in the case of Sami Ullah v. Laiq Zada (2020 SCMR 1115), Sharif Khan v. State (2021 SCMR 87) and Zafar Iqbal v. State (2021 SCMR 1909), already settled the principles for cancellation of bail*

Authority: *Sami Ullah v. Laiq Zada, 2020 SCMR 1115; Sharif Khan v. State, 2021 SCMR 87; Zafar Iqbal v. State, 2021 SCMR 1909*

The doctrine of complicity, resting on qui facit per alium, facit per se, attributes responsibility to a person who intentionally causes, directs or participates in an unlawful act through another.

Source: *This doctrine is originated on the principle qui facit per alium, facit per se, that a person cannot escape liability merely because the criminal act was carried out through another person.*

Authority: *Crl.P.L.A. 207-K/2025, para 10*

OPERATIVE ORDER

As a result of above discussion, the bail granting order passed by the learned High Court does not require any interference. Since the petitioner himself conceded and is not inclined to press this petition moved for cancellation of bail, therefore this criminal petition is disposed of accordingly. The observation made by us in this Order shall not prejudice the case of either party and the pending criminal case shall be decided by the learned trial Court on its own merits in accordance with law. However, copy of this order may be transmitted by the Office to the Chairman WAPDA for information.

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KHYBER PAKHTUNKHWA ENFORCEMENT OF WOMEN'S PROPERTY RIGHTS ACT, 2019 - SCOPE OF THE OMBUDSPERSON'S SUMMARY JURISDICTION - REFERENCE TO THE CIVIL COURT UNDER SECTION 6

Mst. Naheed Shah Afridi and another v. Muzaffar Shah Afridi and others

APPROVED FOR REPORTING. PETITIONS CONVERTED INTO APPEALS AND ALLOWED.

C.P.L.A. Nos. 2630 and 2639 of 2026 · Bench: Mrs. Ayesha A. Malik and Muhammad Shafi Siddiqui, JJ (judgment by Ayesha A. Malik, J) · Decided: 29 October 2026 · Uploaded: 5 November 2026

FACTS

The petitioners, the daughters and wife of the late Rehmat Shah Afridi, complained to the Khyber Pakhtunkhwa Ombudsperson under section 4 of the Act of 2019 seeking recovery of possession of approximately 39 Kanals at Mandai Khas, Ilam Gudar, near Dogra Hospital, Bara, District Khyber. The Ombudsperson allowed the complaint on 22 October 2024 and directed the Deputy Commissioner, Khyber to separate the complainants' shares and deliver possession. On respondent No. 1's appeal under section 8, the Peshawar High Court set aside both orders on 17 January 2025 and remanded the complaint. The Ombudsperson again decided in the petitioners' favour by final order dated 2 October 2025 in Complaint No. 6-2022/2024, declaring the petitioners owners of the disputed property, and that order was in turn set aside by the High Court by judgment dated 3 July 2026 in R.F.A. No. 797-P of 2025, which dismissed the complaint outright. The Deputy Commissioner's report, based on verification of documents and a spot inspection, showed that the petitioners were not in possession, that the only title document produced was a Property Certificate dated 15 March 2015 in the name of the late Rehmat Shah Afridi, that neither the gift deed dated 14 November 2023 nor any inheritance document was before the Ombudsperson, that the disputed property lay in a FATA area with no revenue record of ownership or possession, and that a competing suit by respondent No. 1 was pending.

LEGAL ISSUE

What are the limits of the Ombudsperson's summary jurisdiction under the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019; and where intricate questions of title arise, or civil proceedings are pending, must the matter be referred to the competent Civil Court rather than decided summarily or dismissed outright?

HOLDING

The Act of 2019 is an enforcement law, concerned with giving effect to ownership and possession that are clear and readily established, and not with resolving intricate disputes of fact. The Ombudsperson must, at the threshold and by way of preliminary assessment under section 4(2) or section 7(2), examine two matters: clear title, and possession or entitlement to possession. Neither was established here, so the declaration of ownership could not validly be reached through the summary procedure. The High Court erred in three material respects: it misread section 7, which permits a complaint even where court proceedings are pending; it wrongly treated the local commission and the Deputy Commissioner's inquiry as parallel exercises; and, sitting in appeal with the same powers as the Ombudsperson, it ought to have referred the matter to the competent Civil Court under section 6 rather than dismissing the complaint altogether.

LEGAL SIGNIFICANCE

The leading statement to date of the architecture of the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019: the two procedural mechanisms under sections 4 and 7, the Ombudsperson's powers under section 5, the mandatory reference under section 6 where intricate questions arise, and the forty-five-day appeal to the High Court under section 8. The judgment is of immediate practical value to anyone advising a woman considering a complaint under this or the cognate provincial statutes: a claim resting on a contested gift, an unproved verbal family arrangement, or land without a revenue record will not survive the preliminary assessment, and the proper course is a reference to be tried as a regular civil suit. The Court's insistence that the appellate High Court inherits the Ombudsperson's own powers, and must refer rather than dismiss, closes off the outcome that would otherwise drive a complainant back to fresh litigation.

LEGAL PROPOSITIONS (VERBATIM)

— The Act of 2019 is, in essence, a law for the enforcement and protection of property rights that are already established or readily ascertainable, and not a mechanism for creating, conferring, or adjudicating disputed rights in property.

— Where a woman's right is clear and requires no evidence or investigation, the Act of 2019 offers her an easy means of securing it.

— The jurisdiction under Section 4 of the Act of 2019 is accordingly summary and essentially restorative in nature. To invoke it, the complainant must establish, at the threshold, first her ownership and second her possession or entitlement to possession from which she has been illegally dispossessed.

— However, the summary jurisdiction of the Ombudsperson is neither intended nor designed to substitute the ordinary jurisdiction of a competent Civil Court.

— Where the controversy involves intricate questions of title, or complex questions of law and fact requiring detailed investigation, an elaborate inquiry, or the recording and appreciation of evidence, the matter falls beyond the scope of summary adjudication.

— It is a well-settled principle of law that an appeal is a continuation of the original proceedings. Sitting in appeal, the High Court was thus vested with the same powers as the Ombudsperson under the Act of 2019, and it ought to have examined those powers in light of the pending civil litigation.

— Under Section 6 of the Act of 2019, where a complaint under Section 4 requires detailed judicial inquiry, the statutory mandate commands that the matter be transmitted via a formal reference to the competent Civil Court to be tried as a regular civil suit.

— Further, Section 7 also confirms that the existence or pendency of civil proceedings calls for statutory coordination between the Ombudsperson and the Civil Court, not the automatic dismissal of the complaint.

LEGAL PRINCIPLES EXPOUNDED

The Act of 2019 is an enforcement statute: it protects rights already established or readily ascertainable and does not create, confer or adjudicate disputed rights in property.

Source: *The Act of 2019 is, in essence, a law for the enforcement and protection of property rights that are already established or readily ascertainable, and not a mechanism for creating, conferring, or adjudicating disputed rights in property.*

Authority: *C.P.L.A. 2630 and 2639 of 2026, para 4; Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019*

At the threshold the Ombudsperson must satisfy herself, by preliminary assessment under section 4(2) or section 7(2), of two matters: clear title, and possession or entitlement to possession from which the complainant has been dispossessed.

Source: *The jurisdiction under Section 4 of the Act of 2019 is accordingly summary and essentially restorative in nature. To invoke it, the complainant must establish, at the threshold, first her ownership and second her possession or entitlement to possession from which she has been illegally dispossessed.*

Authority: *C.P.L.A. 2630 and 2639 of 2026, para 4; ss. 4(2) and 7(2) of the Act of 2019*

Where intricate questions of title or complex questions of law and fact requiring evidence arise, the matter falls outside summary adjudication and section 6 commands a reference to the competent Civil Court, to be tried as a regular civil suit.

Source: *Under Section 6 of the Act of 2019, where a complaint under Section 4 requires detailed judicial inquiry, the statutory mandate commands that the matter be transmitted via a formal reference to the competent Civil Court to be tried as a regular civil suit.*

Authority: *C.P.L.A. 2630 and 2639 of 2026, para 6; s. 6(1) of the Act of 2019*

The pendency of civil proceedings calls for statutory coordination between the Ombudsperson and the Civil Court under section 7, not the automatic dismissal of the complaint; and the High Court, sitting in appeal under section 8, is vested with the same powers as the Ombudsperson.

Source: *It is a well-settled principle of law that an appeal is a continuation of the original proceedings. Sitting in appeal, the High Court was thus vested with the same powers as the Ombudsperson under the Act of 2019, and it ought to have examined those powers in light of the pending civil litigation.*

Authority: *C.P.L.A. 2630 and 2639 of 2026, para 6; ss. 7 and 8 of the Act of 2019*

OPERATIVE ORDER

In view of the aforesaid, these Civil Petitions are converted into appeals and allowed, and the judgments of the High Court and the Ombudsperson are set aside with the following directions: ... where it shall be treated as a reference under Section 6 of the Act of 2019. Consequently, the Reference may be treated as a suit of the Petitioners and be decided by Civil Court as per law; ... On receiving a copy of the Reference, along with a copy of our judgment, the Civil Court shall issue notices to all parties to appear before it within fifteen days; and

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CIVIL - REJECTION OF PLAINT UNDER ORDER VII, RULE 11, C.P.C. - RES JUDICATA UNDER SECTION 11 AND THE BAR UNDER ORDER II, RULE 2, C.P.C. AS MIXED QUESTIONS OF LAW AND FACT

Syed Aley Sadquain Naqvi v. Matco Rice (Pvt.) Ltd. and others

APPROVED FOR REPORTING. APPEAL ALLOWED; MATTER REMANDED TO THE TRIAL COURT.

C.A. No. 353-K of 2025 · Bench: Muhammad Ali Mazhar and Shahid Bilal Hassan, JJ (judgment by Shahid Bilal Hassan, J) · Decided: 22 October 2026 · Uploaded: 5 November 2026

FACTS

The dispute concerns leasehold rights in Plot No. C-10, measuring 10 acres, classified as NA Class No. 89, at Deh Tehsil Town, Gadap Town, Karachi, allotted to Ali Baqar Naqvi in 1979-80 for agricultural purposes and extended in 1982 for thirty years for poultry farming. The appellant claimed to have acquired the leasehold rights under a registered general power of attorney dated 17 March 2003 and to have continued the poultry business under an Ijazatnama dated 28 June 2011. He alleged that respondent No. 1, to whom some 1,000 acres had been allotted in 1992 subject to a development condition, threatened to dispossess him and eventually took over three acres. Three suits followed: Civil Suit No. 95 of 2009 for permanent injunction, in which the plaint was rejected for non-compliance with section 79, C.P.C., the appeal dismissed, and the revision withdrawn on 22 September 2014 with permission to file a suit; Civil Suit No. 1635 of 2009 instituted by respondent No. 1; and Civil Suit No. 2141 of 2015 following the alleged actual dispossession, in which the plaint was rejected, the First Appellate Court by judgment dated 12 September 2018 allowed the appeal and remanded for evidence, and the High Court of Sindh, by judgment dated 4 August 2025 in Second Appeal No. 157 of 2018, allowed the second appeal and restored the rejection of the plaint.

LEGAL ISSUE

Can a third suit be held barred by res judicata under section 11, C.P.C. or by Order II, Rule 2, C.P.C., and the plaint rejected under Order VII, Rule 11, C.P.C., merely because two earlier suits concerning the same property were instituted, where the first was held premature and the second was withdrawn with permission to sue afresh?

HOLDING

No. Neither circumstance, without examination of the pleadings and orders in the earlier litigation, was sufficient to establish that the claim in the third suit was barred. Section 11 requires that the matter directly and substantially in issue have been heard and finally decided; in the absence of a determination on the substantive controversy, res judicata cannot be presumed from the mere institution of previous suits. Order II, Rule 2 does not depend on a decision on merits, but its application turns on whether the subsequent suit rests on the same cause of action and seeks relief which ought to have been included earlier - a mixed question of law and fact requiring examination of the plaints in all three suits, particularly where a subsequent act of trespass may furnish a fresh cause of action. The High Court ought not to have restored the rejection of the plaint without that examination.

LEGAL SIGNIFICANCE

A clear and serviceable separation of two pleas that are frequently conflated in applications under Order VII, Rule 11: res judicata under section 11, which requires a prior final decision on the matter directly and substantially in issue, and the bar on splitting a cause of action under Order II, Rule 2, which does not. The judgment confirms that identity of parties and subject-matter is not identity of cause of action, that an actual

dispossession following an earlier apprehension of dispossession may constitute a fresh infringement, and that both pleas ordinarily require a factual foundation in the pleadings and an issue tried on the record of the former suit. The Court also marks the limited, persuasive status of Indian authority on the point. Counsel resisting a threshold rejection founded on earlier litigation now have a direct Supreme Court authority to cite.

LEGAL PROPOSITIONS (VERBATIM)

— In the facts and circumstances of the present case, the question whether the third suit was barred by the principle of res judicata or Order II, Rule 2, CPC, could not have been determined

— It was necessary to determine what reliefs had been claimed in the earlier suits, what causes of action had been pleaded, what circumstances had given rise to the subsequent suit, and what legal effect followed from the orders passed in the previous proceedings.

— The principle recognised in Muhammad Saleem Ullah and others v. Additional District Judge, Gujranwala and others (PLD 2005 SC 511), as discussed in subsequent jurisprudence, is that a matter not substantially decided in earlier litigation does not operate as res judicata, actually or constructively.

— Thus, in the absence of a determination on the substantive controversy, the bar of res judicata could not be presumed merely from the institution of previous suits.

— The provision prohibits the splitting of a claim arising from the same cause of action and precludes a plaintiff from subsequently suing for a portion of the claim or relief omitted from the earlier suit, subject to the terms of the Rule.

— rather, the decisive question is whether the subsequent suit is founded upon the same cause of action and seeks a claim or relief that ought to have been included in the earlier proceedings.

— the identity of the cause of action requires examination of the facts giving rise to the right claimed as well as the infringement complained of, and recognised that a subsequent act of trespass may give rise to a fresh cause of action.

— The mere identity of the parties and the subject property could not, by itself, establish that all three suits arose from an identical cause of action.

— Although these are Indian authorities and are persuasive rather than binding in Pakistan, the principles stated therein reinforce the need to establish the factual foundation of the objection before applying the legal bar.

— We emphasis that the remand does not foreclose either party from raising any legally available objection, nor does it pre-determine the outcome of such objections.

LEGAL PRINCIPLES EXPOUNDED

Res judicata under section 11, C.P.C. requires that the matter directly and substantially in issue have been heard and finally decided; a matter not substantially decided in earlier litigation does not operate as res judicata, actually or constructively.

Source: *The principle recognised in Muhammad Saleem Ullah and others v. Additional District Judge, Gujranwala and others (PLD 2005 SC 511), as discussed in subsequent jurisprudence, is that a matter not substantially decided in earlier litigation does not operate as res judicata, actually or constructively.*

Authority: *Muhammad Saleem Ullah v. Additional District Judge, Gujranwala, PLD 2005 SC 511*

Order II, Rule 2, C.P.C. is directed against splitting a cause of action; its application does not depend on the former suit having been decided on merits but on whether the subsequent suit rests on the same cause of action.

Source: *rather, the decisive question is whether the subsequent suit is founded upon the same cause of action and seeks a claim or relief that ought to have been included in the earlier proceedings.*

Authority: *Matloob Ellahi Paracha v. Raja Arshad Mahmood, PLD 2024 SC 663; C.A. 353-K/2025, para 8*

Identity of cause of action requires examination of the facts giving rise to the right claimed and the infringement complained of; a subsequent act of trespass may give rise to a fresh cause of action.

Source: *the identity of the cause of action requires examination of the facts giving rise to the right claimed as well as the infringement complained of, and recognised that a subsequent act of trespass may give rise to a fresh cause of action.*

Authority: *Abdul Hakim v. Saadullah Khan, PLD 1970 SC 63*

A plea of res judicata or of the Order II, Rule 2 bar is founded on proof of facts followed by the application of law; the foundation must be laid in the pleadings and the plea tried on the record of the former suit, so that identity of parties and subject-matter alone will not sustain a threshold rejection.

Source: *The mere identity of the parties and the subject property could not, by itself, establish that all three suits arose from an identical cause of action.*

Authority: *Ram Harakh (Dead) by LRs. v. Hamid Ahmed Khan (Dead) by LRs., (1998) 7 SCC 484; Smt. V. Rajeshwari v. T.C. Saravanabava, 2004 (1) SCC 551, both treated as persuasive only*

OPERATIVE ORDER

Consequent whereof, the impugned judgment dated 04.08.2025 passed by the High Court of Sindh at Karachi is set aside, and the judgment dated 12.09.2018 passed by the First Appellate Court, whereby the order rejecting the plaint was set aside and the matter was remanded to the Trial Court, is restored, the suit between the parties will be deemed to be pending before the trial Court. ... The parties shall appear before the learned District Judge concerned on 16.11.2026, without awaiting any further notice.

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Lahore High Court

5 judgments

SERVICE AND PENSION - FAMILY PENSION UNDER THE PUNJAB CIVIL SERVICES PENSION RULES, 1963 - LIMITS OF DELEGATED LEGISLATION AND DEPARTMENTAL CLARIFICATION - ENTITLEMENT OF AN UNMARRIED OR DIVORCED DAUGHTER

Zahida Yasmeen v. Government of the Punjab and others (with Mst. Nosheen Malik and Mst. Falak Shah)

APPROVED FOR REPORTING. ALL THREE PETITIONS ALLOWED; REFUSALS SET ASIDE AND CLAIMS REMITTED FOR FRESH DETERMINATION.

2026 LHC 8584 (Writ Petition No. 26 of 2026, with W.P. Nos. 3426 and 4050 of 2026, Rawalpindi Bench) · Bench: Syed Ahsan Raza Kazmi, J · Decided: 28 October 2026 (heard) · Uploaded: 6 November 2026

FACTS

Three petitioners challenged the refusal of family pension on the strength of Finance Department Notification No. FD-SR-III-4-244/2023(B) dated 2 December 2024, which substituted sub-rules (1) to (6) of Rule 4.10 and restricted family pension to the spouse for ten years or until remarriage; a clarification No. FD-SR-III-4-237/2024 dated 30 May 2025; and a further notification dated 20 August 2025 substituting Rule 4.10(1) to provide pension to the spouse for life or until remarriage. Zahida Yasmeen is the unmarried daughter of the late Shah Nawaz Khan, a regular employee of PRTC, Lahore, who died on 23 April 2025. Mst. Nosheen Malik is the divorced daughter of the late Ibrar Hussain, an Assistant in BPS-11 in the Food Department/Punjab Food Authority, who retired on 1 January 2002 and died on 13 April 2026, her mother having predeceased her father; her claim was declined on 24 August 2026. Mst. Falak Shah, whose marriage was dissolved by khula, advanced claims arising from the deaths of both her parents, a retired teacher in BPS-16 who died on 27 December 2024 and a retired employee of the Municipal Corporation, Rawalpindi in BPS-14 who died on 24 September 2025.

LEGAL ISSUE

May the Finance Department, by notification under section 23 of the parent Act or by administrative clarification, restrict entitlement to family pension to the surviving spouse alone, where section 18(2) of the Act recognises the 'family' of a deceased civil servant as the beneficiary; and may an unmarried daughter receive family pension in respect of both deceased parents?

HOLDING

The clarification dated 30 May 2025 cannot independently alter the scope of Rule 4.10, introduce a new disqualification or extinguish an entitlement available under the statutory framework. The notifications of 2 December 2024 and 20 August 2025, though made under the rule-making power, are not beyond judicial

scrutiny: to the extent they operate as an absolute exclusion of all otherwise eligible family members, without regard to the class of beneficiaries and the substantive entitlement contemplated by section 18(2), they travel beyond the permissible limits of delegated legislation. The petitioners' marital statuses cannot by themselves furnish a lawful basis for rejecting their claims without examining the prescribed eligibility conditions. Following Province of Punjab v. Kanwal Rashid (2021 SCMR 730), claims arising from the deaths of both parents are two distinct pensionary entitlements, and receipt of one cannot be presumed to extinguish the other absent an express statutory prohibition. The refusals were set aside and the claims remitted for fresh determination by speaking orders within sixty days.

LEGAL SIGNIFICANCE

The most complete treatment to date of the Punjab family-pension amendments of December 2024 and August 2025, and directly relevant to a large class of pending claims. The judgment carefully distinguishes an administrative clarification, which cannot amend rules at all, from a formal amendment made under the rule-making power, which is nevertheless subject to the limits of the parent enactment; and it declines to invalidate the amended Rule 4.10 wholesale, confining the declaration to the spouse-only exclusion. The Court also canvasses the expression 'family' by reference to Rule 4.7(1) and ordinary usage, while cautioning that 'family' does not confer an automatic right on every relative. The collected authorities on the limits of delegated legislation - NEPRA v. FESCO (2016 SCMR 550), Suo Motu Case No. 13 of 2009 (PLD 2011 SC 619), Suo Motu Case No. 11 of 2011 (PLD 2014 SC 389), Khawaja Ahmad Hassan (2005 SCMR 186), Aryan Petro Chemical (2003 SCMR 370) and Mian Ziauddin (1985 SCMR 365) - make this a convenient citation for any ultra vires challenge to rules or regulations.

LEGAL PROPOSITIONS (VERBATIM)

— The governing principle is that subordinate legislation may supplement the parent statute but cannot supplant it.

— A departmental clarification cannot amend the Rules or independently create a disqualification.

— neither delegated legislation nor executive instructions can travel beyond the authority conferred by the parent statute or defeat a substantive entitlement recognised therein.

— A clarification cannot amend the Rules or introduce a condition not contemplated therein. A formal amendment, even when made in exercise of the statutory rule-making power, is equally subject to the limitations of the parent enactment.

— The mere invocation of Section 23 of the Act does not confer unrestricted authority upon the delegate to alter the substantive scope of the entitlement recognised by Section 18(2).

— The principle emerging therefrom is that an executive instrument cannot introduce an additional disqualification or impose a temporal condition which the governing law does not contemplate.

— The rule-making authority is empowered to supplement the statute for carrying out its purposes, but cannot supplant, contradict or enlarge the substantive provisions of the enactment.

— At the same time, the expression "family" cannot be construed as conferring an automatic right upon every relative of a deceased civil servant, irrespective of the eligibility requirements lawfully prescribed under the Rules.

— Their respective marital statuses, by themselves, cannot furnish a lawful basis for rejecting their claims without examining the eligibility conditions prescribed under the governing statutory framework.

— In the absence of an express statutory prohibition or a lawful condition governing concurrent receipt, the entitlement in respect of one parent cannot be presumed to extinguish the entitlement arising from the death of the other.

LEGAL PRINCIPLES EXPOUNDED

Subordinate legislation may supplement the parent statute but cannot supplant it; a provision inconsistent with the parent statute must yield.

Source: *The governing principle is that subordinate legislation may supplement the parent statute but cannot supplant it.*

Authority: *2026 LHC 8584, para 23; NEPRA v. Faisalabad Electric Supply Company Ltd., 2016 SCMR 550; Suo Motu Case No. 13 of 2009, PLD 2011 SC 619*

An administrative clarification cannot amend statutory rules, introduce a condition not contemplated therein, or create a disqualification.

Source: *A clarification cannot amend the Rules or introduce a condition not contemplated therein. A formal amendment, even when made in exercise of the statutory rule-making power, is equally subject to the limitations of the parent enactment.*

Authority: *2026 LHC 8584, para 24; Province of Punjab v. Kanwal Rashid, 2021 SCMR 730*

Invocation of the rule-making power does not place an amendment beyond judicial scrutiny; the power to prescribe the manner and conditions of payment does not extend to defeating the substantive statutory entitlement.

Source: *The mere invocation of Section 23 of the Act does not confer unrestricted authority upon the delegate to alter the substantive scope of the entitlement recognised by Section 18(2).*

Authority: *2026 LHC 8584, paras 24 and 28*

An executive instrument cannot introduce an additional disqualification or a temporal condition which the governing law does not contemplate, such as making a daughter's entitlement depend on her marital status at the precise moment of the pensioner's death.

Source: *The principle emerging therefrom is that an executive instrument cannot introduce an additional disqualification or impose a temporal condition which the governing law does not contemplate.*

Authority: *Province of Sindh v. Mst. Sorath Fatima, PLD 2025 SC 856*

Family pension in respect of each deceased parent constitutes a distinct entitlement; receipt of one is not an independently acquired regular source of income and does not, without express statutory prohibition, extinguish the other.

Source: *In the absence of an express statutory prohibition or a lawful condition governing concurrent receipt, the entitlement in respect of one parent cannot be presumed to extinguish the entitlement arising from the death of the other.*

Authority: *Province of Punjab v. Kanwal Rashid, 2021 SCMR 730, applied*

OPERATIVE ORDER

For the foregoing reasons, all three constitutional petitions are allowed in the above terms. The clarification dated 30.05.2025, bearing No.FD-SR-III-4-237/2024, is declared to be without lawful authority and of no legal effect insofar as it purports to introduce an independent disqualification, alter the scope of Rule 4.10 or restrict an entitlement contrary to Section 18(2) Act. ... Consequently, the impugned communications/orders declining the petitioners' claims solely on the basis of the aforesaid unlawful restriction are hereby set aside.

■ **View Full Judgment**

CRIMINAL - COMPETENCE OF A MAGISTRATE INVESTED UNDER SECTION 30, CR.P.C. TO TRY AN OFFENCE SHOWN IN THE EIGHTH COLUMN OF SCHEDULE II AS TRIABLE BY THE COURT OF SESSION - SECTIONS 28 TO 32, 190(2), 346, 347 AND 530(P), CR.P.C.

Ahmad Saeed Akhtar v. The State and others

APPROVED FOR REPORTING. PETITION DISMISSED.

2026 LHC 8457 (Crl. Misc. No. 49393-M of 2026) · Bench: Muhammad Jawad Zafar, J · Decided: Announced 8 September 2026; completed and signed 7 October 2026 · Uploaded: 3 November 2026 (held over from the 4 November issue)

FACTS

The complainant, respondent No. 2, instituted a private complaint against the petitioner and others for offences under sections 420, 467, 468 and 471, P.P.C., which proceeded to trial before a Judicial Magistrate, Section 30, Lahore. By order dated 2 June 2026 the trial Court, exercising its power to alter the charge under section 227, Cr.P.C., added an offence under section 498-A, P.P.C. and continued with the trial. The petitioner's criminal revision, contending that the trial Court had ceased to be competent, was dismissed by the Additional Sessions Judge, Lahore on 9 July 2026. The petitioner invoked section 561-A, Cr.P.C.

LEGAL ISSUE

Does an offence shown in the eighth column of Schedule II to the Cr.P.C. as triable by the Court of Session lie beyond the competence of a Magistrate invested with powers under section 30, Cr.P.C.; and does the addition of such an offence to the charge during trial oust that Magistrate's jurisdiction?

HOLDING

No. The entry in the eighth column states the ordinary forum only and is subject to the other provisions of the Code, including section 30, which vests a Magistrate specially invested thereunder with jurisdiction to try all offences not punishable with death. Offences punishable with death, and offences which a special law reserves to the Court of Session or withholds from a section 30 Magistrate, are triable exclusively by that Court, and a trial held by a Magistrate in such a case is void under section 530(p). Competence to try is distinct from the power to sentence: the seven-year ceiling under section 32 is addressed through sections 346 and 347, which turn on the Magistrate's own opinion formed on the case before him, and not by denying jurisdiction at the outset. Sending a case to the Court of Session solely because the eighth column names that Court is itself an illegal exercise of jurisdiction. Section 498-A, P.P.C. carries a maximum of ten years and a minimum of five, is not punishable with death, and is not reserved by any special law; the minimum lies within the section 32 ceiling, so no incongruity arises.

LEGAL SIGNIFICANCE

The authoritative clarification the Court itself identified as needed on an issue of recurring importance in the subordinate criminal courts. The judgment sets out the Code's three independent axes for determining the forum of trial - subject-matter jurisdiction under sections 28 to 30 with the eighth column, the power to sentence under section 32 with the safety valve of sections 346 and 347, and territorial jurisdiction under sections 177 to 189 - and warns against conflating the cognizable, bailable and compoundable classifications with the forum of trial. The seven-point summary at paragraph 20 is a ready-made checklist. The anchoring of the analysis in Article 175(2) of the Constitution, with the three consequences drawn from it, including that a court on which jurisdiction has been conferred is bound to exercise it and cannot decline on a restrictive reading of other provisions, gives the reasoning wider application. Practitioners should note the corollary that an objection going to the competence of the trial court may be entertained under section 561-A even after a revision has been availed.

LEGAL PROPOSITIONS (VERBATIM)

— The classification of an offence as cognizable, bailable or compoundable does not determine the forum of trial. The forum is governed by Sections 28 to 30, Cr.P.C., read with the eighth column of Schedule II.

— The eighth column of Schedule II states the ordinary forum. It is subject to the other provisions of the Code, including Section 30.

— A Magistrate invested under Section 30, Cr.P.C. may try any offence not punishable with death, notwithstanding that the eighth column shows it as triable by the Court of Session.

— Competence to try is distinct from the power to sentence. The limit on a Section 30 Magistrate's sentencing power under Section 32 does not curtail the class of offences he may try. Where the minimum sentence prescribed for the offence lies within that limit, no question of incongruity arises at all.

— Sending a case to the Court of Session solely because the eighth column names that Court is an illegal exercise of jurisdiction.

— The eighth column therefore states the ordinary forum. It is not exhaustive, because both Sections 28 and 29 open with the words "subject to the other provisions of this Code".

— A trial held beyond this limit is void, not merely irregular.

— The obligation arises only once the Magistrate forms that opinion on the case before him, for example where the gravity of the facts suggests that a sentence beyond his powers may be warranted. It is not triggered automatically by the entry in the eighth column of Schedule II where the Magistrate is otherwise competent under Section 30.

— jurisdiction is not inherent in a court by virtue of its existence, but is a creature of the Constitution and of statute alone.

— Secondly, jurisdiction cannot be created by the consent, acquiescence or waiver of the parties, nor can it be enlarged or curtailed by judicial inference beyond the terms of the conferring law.

LEGAL PRINCIPLES EXPOUNDED

The forum of trial is governed by sections 28 to 30, Cr.P.C. read with the eighth column of Schedule II; the cognizable, bailable and compoundable classifications serve other purposes and do not determine it.

Source: *The classification of an offence as cognizable, bailable or compoundable does not determine the forum of trial. The forum is governed by Sections 28 to 30, Cr.P.C., read with the eighth column of Schedule II.*

Authority: *2026 LHC 8457, para 20(i)*

A Magistrate invested under section 30, Cr.P.C. may try any offence not punishable with death, notwithstanding that the eighth column shows it as triable by the Court of Session; the entry is not exhaustive because sections 28 and 29 are expressly subject to the other provisions of the Code.

Source: *A Magistrate invested under Section 30, Cr.P.C. may try any offence not punishable with death, notwithstanding that the eighth column shows it as triable by the Court of Session.*

Authority: *2026 LHC 8457, para 20(iii); Cr.P.C., ss. 28, 29 and 30*

Competence to try and the power to sentence are distinct; the section 32 ceiling does not curtail the class of offences a section 30 Magistrate may try, and the remedy where a higher sentence appears warranted lies in sections 346 and 347, which turn on the Magistrate's own opinion.

Source: *Competence to try is distinct from the power to sentence. The limit on a Section 30 Magistrate's sentencing power under Section 32 does not curtail the class of offences he may try. Where the minimum sentence prescribed for the offence lies within that limit, no question of incongruity arises at all.*

Authority: *2026 LHC 8457, para 20(v); Hassan v. The State, PLD 2017 Lahore 106*

A trial held by a Magistrate of an offence punishable with death, or of an offence reserved by a special law to another court, is void under section 530(p), not merely irregular, and section 537 does not cure it.

Source: *A trial held beyond this limit is void, not merely irregular.*

Authority: *2026 LHC 8457, para 14; State v. Mukhtar Ahmad, 1981 PCr.LJ 1335; The State v. Muhammad Ismail, 1968 PCr.LJ 1092; The Crown v. Ghulam Muhammad, PLD 1955 Sindh 431*

Jurisdiction is a creature of the Constitution and of statute alone under Article 175(2); it cannot be assumed where not conferred, cannot be created by consent or waiver, and where conferred must be exercised rather than declined on a restrictive reading of other provisions.

Source: *jurisdiction is not inherent in a court by virtue of its existence, but is a creature of the Constitution and of statute alone.*

Authority: *2026 LHC 8457, para 17; Article 175(2) of the Constitution*

OPERATIVE ORDER

For the foregoing reasons, the learned Judicial Magistrate, Section 30, Lahore, remained competent to try the case after the addition of Section 498-A, PPC to the charge, and was under no obligation to send it to the Court of Session. The orders dated 02.06.2026 and 09.07.2026 suffer from no jurisdictional defect. This petition, being devoid of merit, is dismissed.

■ View Full Judgment

NEGOTIABLE INSTRUMENTS - SECURITY CHEQUE - SECTION 46 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 - DISPLACEMENT OF THE PRESUMPTION UNDER SECTION 118 - SECONDARY EVIDENCE UNDER ARTICLE 74 OF THE QANUN-E-SHAHADAT ORDER, 1984

M/s Nizami Feeds (Pvt.) Ltd. v. Muhammad Ahtisham

APPROVED FOR REPORTING. APPEALS DISMISSED.

2026 LHC 8612 (R.F.A. No. 51711 of 2025, with R.F.A. Nos. 51948 and 51714 of 2025) · Bench: Asim Hafeez, J · Decided: Announced 6 November 2026 (heard 27 October 2026) · Uploaded: 6 November 2026

FACTS

The appellant invoked the summary procedure under Order XXXVII, C.P.C. and claimed recovery on the basis of a cheque arising from a supply-cum-sale and purchase of feed. The respondent approached the Civil Court seeking declaration cum rendition of accounts, damages, and a declaration that the cheque was ineffective; that suit was transferred to the Additional District Judge, Lahore, where the recovery suit was pending and leave to defend had been granted. The cheque bore an indorsement on its back expressed as 'security cheque', a fact affirmed by PW-5, an officer of the Bank. The appellant relied on Exh.P-9, claimed as a ledger, which PW-4 produced while admitting that the underlying record was not available with him and that the respondent's signatures did not appear on it; Exh.P-9 was in fact the ledger of an entity named M.A. Farm, and it was not the appellant's case that M.A. Farm was a proprietorship concern of which the respondent was the sole proprietor. The trial Court dismissed the recovery claim after evidence and partly decreed the suit for declaration, rendering the cheque ineffective.

LEGAL ISSUE

Where a cheque bears an indorsement describing it as a 'security cheque', is it per se enforceable on proof of delivery; and what is the effect of such conditionality on the statutory presumption under section 118 of the Negotiable Instruments Act, 1881?

HOLDING

No. The second paragraph of section 46 is attracted: as between parties standing in immediate relation, and as against a holder other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only. The indorsement has a two-fold significance: the drawee's right to enforce the cheque is subjected to a condition, so that until the condition is fulfilled there is no question of presenting it for encashment; and the conditionality removes the statutory presumption otherwise claimable under section 118. The condition here was proof of liability under the principal contract, which constitutes an encumbrance over the drawee's right to enforce. Mere production of witnesses to prove that the cheque was issued was insufficient. Exh.P-9, being a copy or reflection of a register or books of accounts, was secondary evidence under Article 74 of the Qanun-e-Shahadat Order, 1984, no permission to adduce secondary evidence having been sought, and was therefore inadmissible; it also failed the tests of credibility and probability, being the ledger of a different entity and unsupported by the purchase orders to which it referred.

LEGAL SIGNIFICANCE

A compact and practical authority on security cheques, a feature of commercial dealing encountered constantly in Order XXXVII suits and in prosecutions under section 489-F, P.P.C. The judgment locates the defence squarely in the second paragraph of section 46 rather than leaving it to general principle, and draws the consequence that the drawee bears a higher burden of proving the underlying liability precisely because the section 118 presumption is displaced. The observation that the drawer of a cheque indorsed 'security

cheque' need not lead independent evidence to establish conditionality - the indorsement itself doing that work - is likely to be relied on frequently. The treatment of a ledger copy as secondary evidence requiring permission under Article 74, and the refusal to treat an entity's ledger as proof of an individual's liability absent a pleaded case of sole proprietorship, are useful points on proof of accounts.

LEGAL PROPOSITIONS (VERBATIM)

— This is one of those unusual cases where respondent, the drawer of cheque, was not required to bring an independent and convincing evidence to prove that delivery of cheque was conditional, which in commercial parlance is called a security cheque.

— Firstly, drawee's right to enforce cheque was subjected to a condition and unless condition was fulfilled there is no question of presenting it for encashment. Secondly, conditionality attached removes the statutory presumption otherwise claimable under section 118 of the Negotiable Instruments Act 1881.

— This constitutes an encumbrance over drawee's right to enforce alleged obligation under the cheque.

— Exh.P-9 is a private document, which is a copy or reflection of sale/purchase register or books of accounts, and is treated as a secondary document in terms of Article 74 of Qanun-e-Shahadat Order 1984. Apparently, no permission was sought to produce secondary evidence, therefore, Exh.P-9 is not legally receivable in evidence and same is inadmissible.

— Mere production of witnesses to claim that cheque was issued was not sufficient but fulfilment of condition attached must be proved to seek enforcement of cheque.

— Paragraph second of section 46 is aptly attracted. Indorsement on the cheque implies delivery with a condition or for a special purpose, which dismisses claim of per se enforcement of the cheque

— And benchmark of proof of proving liability, under a cheque, is higher when presumption under section 118 of Negotiable Instruments Act 1881 is not available in context of condition attached.

LEGAL PRINCIPLES EXPOUNDED

The second paragraph of section 46 of the Negotiable Instruments Act, 1881 gives statutory footing to the defence that an instrument was delivered conditionally or for a special purpose, so that a cheque indorsed as a security cheque is not per se enforceable.

Source: *Paragraph second of section 46 is aptly attracted. Indorsement on the cheque implies delivery with a condition or for a special purpose, which dismisses claim of per se enforcement of the cheque*

Authority: *2026 LHC 8612, paras 6-7; Negotiable Instruments Act, 1881, s. 46*

An indorsement qualifying a cheque as a security cheque both subjects the drawee's right of enforcement to a condition and removes the statutory presumption otherwise available under section 118.

Source: *Firstly, drawee's right to enforce cheque was subjected to a condition and unless condition was fulfilled there is no question of presenting it for encashment. Secondly, conditionality attached removes the statutory presumption otherwise claimable under section 118 of the Negotiable Instruments Act 1881.*

Authority: *2026 LHC 8612, para 5*

Where the section 118 presumption is displaced by an attached condition, the benchmark of proof of the underlying liability is correspondingly higher, and proof of delivery alone will not sustain enforcement.

Source: *And benchmark of proof of proving liability, under a cheque, is higher when presumption under section 118 of Negotiable Instruments Act 1881 is not available in context of condition attached.*

Authority: *2026 LHC 8612, para 7*

A copy or reflection of a sale and purchase register or books of accounts is secondary evidence under Article 74 of the Qanun-e-Shahadat Order, 1984 and is inadmissible unless permission to adduce secondary evidence has been obtained.

Source: *Exh.P-9 is a private document, which is a copy or reflection of sale/purchase register or books of accounts, and is treated as a secondary document in terms of Article 74 of Qanun-e-Shahadat Order 1984. Apparently, no permission was sought to produce secondary evidence, therefore, Exh.P-9 is not legally receivable in evidence and same is inadmissible.*

Authority: *2026 LHC 8612, para 5; Qanun-e-Shahadat Order, 1984, Article 74*

OPERATIVE ORDER

This and connected appeals are meritless and same are, hereby, dismissed. No order as to the costs.

■ View Full Judgment

CUSTOMS - WARRANTLESS SEARCH UNDER SECTION 163(1) OF THE CUSTOMS ACT, 1969 - RELATIONSHIP WITH SECTION 162 - NOTICE UNDER SECTION 171 - SCOPE OF REFERENCE JURISDICTION UNDER SECTION 196

Director, Directorate of Intelligence and Investigation - Customs v. Habib Ullah and others

APPROVED FOR REPORTING. REFERENCE APPLICATION DISMISSED.

2026 LHC 8341 (Customs Reference No. 5289 of 2025) · Bench: Hassan Nawaz Makhdoom and Muhammad Ajmal Zahid, JJ · Decided: Reference decided 2026 · Uploaded: 30 October 2026 (held over from the 4 November issue)

FACTS

On 19 December 2022 at about 1700 hours the department received information that smuggled or non-duty-paid goods had been stored in a godown at Kacha Khiali Road, opposite Ali Sher Wala Gala, Gujranwala City, and that delay might result in the goods being shifted. Considering that obtaining a search warrant from the Judicial Magistrate under section 162 might not be practicable, the Deputy Director, Intelligence and Investigation-Customs, Gujranwala recorded the grounds and authorised an Intelligence Officer to search the premises under section 163(1). The party reached the premises at about 1830 hours after making an entry in the Roznamcha of Police Station Khiali vide Report No. 48 dated 19 December 2022, served the grounds of search on one Habib Ullah who was present, and recovered 7,300 kilograms net weight of foreign-origin aluminium ingots. A show-cause notice dated 27 January 2023 was issued and the Additional Collector of Customs (Adjudication), Lahore, by Order-in-Original No. 151/2023 dated 14 April 2023, ordered release against a redemption fine of 20 per cent. On appeal the Member (Technical) remanded the matter while the Member (Judicial) dissented; the Referee Judge/Chairman concurred with the Member (Judicial) on 19 August 2024 and allowed the appeal. The reference was admitted on 29 January 2025 on three questions, all directed to the justification for immediate action under section 163 given that the Magistrate's court was said to be closed at 1700 hours and that a furnace or burner was installed adjacent to the godown.

LEGAL ISSUE

What must the department establish to justify a warrantless search under section 163(1) of the Customs Act, 1969; does the receipt of information after ordinary court hours, or the risk that goods may be transformed into other articles, satisfy the statutory condition; and what is the scope of the High Court's reference jurisdiction under section 196?

HOLDING

Section 163 is not an independent power of search but an exception to section 162. The officer dispensing with a warrant must strictly comply with four conditions: the search must be conducted by an officer not below the rank of Assistant Collector; the grounds of belief must be recorded in writing before the search; a copy of the grounds must be left at the place searched and served on the occupier; and the search must be conducted in accordance with the applicable provisions of the Cr.P.C. Failure to follow these mandatory conditions renders the assumption of jurisdiction illegal and void. The statutory test is the danger of removal before a search can be effected under section 162; receipt of information after court hours does not by itself dispense with the requirements, and the possibility that aluminium ingots might be converted into utensils is not legally synonymous with the danger of removal. The recovery of 7,300 kilograms cannot retrospectively validate the exercise of the power. Conversely, the absence of a warrant does not itself render a search unlawful where the section 163 conditions are established.

LEGAL SIGNIFICANCE

The most careful recent analysis of the boundary between sections 162 and 163 of the Customs Act, 1969, and of the evidentiary burden the department carries when it dispenses with a warrant. The judgment is

notable for its even-handedness: it rejects both the department's reliance on bare urgency and the suggestion that the absence of a warrant is itself fatal, insisting that the question is whether the particular search complied with the procedure authorised by the Act. The four mandatory conditions distilled at paragraph 21, supported by a long line of Supreme Court authority from Muhammad Munir (1989 SCMR 311) through Universal Gateway Trading Corporation (2005 SCMR 37) to Haq Cotton Mills (2007 SCMR 1039), give defence counsel a checklist and the department a compliance standard. The Court also separates the section 171 notice requirement from the section 163 obligation to record and deliver the grounds of search, and restates the limits of reference jurisdiction under section 196 with the collected authorities.

LEGAL PROPOSITIONS (VERBATIM)

— Section 163(1), on the other hand, provides a mechanism for a warrantless search in circumstances falling within its prescribed conditions. The latter provision is not an unrestricted alternative to the warrant procedure.

— Section 163 cannot be invoked merely because a customs officer considers immediate action convenient or desirable.

— It follows that the legality of a warrantless search must be determined by reference to the circumstances existing when the power was exercised. The officer's belief must have an objective and reasonable foundation in the material available at the relevant time. The requirement is not satisfied by a bare assertion of urgency or by merely recording a conclusion in the authorization.

— The receipt of information after ordinary court hours does not, by itself, dispense with the requirements of Section 163.

— A generalized apprehension that the goods might be converted into marketable articles cannot, on its own, confer authority to conduct a warrantless search.

— The fact that the search resulted in the recovery of 7,300 kilograms of foreign-origin aluminium ingots cannot, by itself, retrospectively validate the exercise of the search power.

— Conversely, the absence of a warrant does not, in itself, render the search unlawful.

— Section 163 of the Act is not an independent power of search; rather, it is an exception to Section 162 of the Act.

— failure to follow the mandatory statutory conditions governing the exercise of the power of search renders the assumption of jurisdiction under Section 163 as illegal and void.

— The statutory safeguards cannot be diluted merely because the action was undertaken in the course of preventing smuggling or resulted in the recovery of a substantial quantity of foreign-origin goods.

— Where service of a statutory notice is disputed, a general recital in a Show-Cause Notice or an adjudication order does not necessarily establish compliance.

LEGAL PRINCIPLES EXPOUNDED

Section 163 of the Customs Act, 1969 is not an independent power of search but an exception to section 162, and failure to comply with its mandatory conditions renders the assumption of jurisdiction illegal and void.

Source: *Section 163 of the Act is not an independent power of search; rather, it is an exception to Section 162 of the Act.*

Authority: *2026 LHC 8341, para 21; Collector of Customs, Lahore v. Universal Gateway Trading Corporation, 2005 SCMR 37; Khalid Mehmood v. Collector of Customs, 1999 SCMR 1881; Collector of Customs (Preventive) v. Muhammad Mahfooz, PLD 1991 SC 630*

The legality of a warrantless search is judged by the circumstances existing when the power was exercised; the officer's belief must have an objective and reasonable foundation and cannot rest on a bare assertion of urgency or a recorded conclusion.

Source: *It follows that the legality of a warrantless search must be determined by reference to the circumstances existing when the power was exercised. The officer's belief must have an objective and reasonable foundation in the material available at the relevant time. The requirement is not satisfied by a bare assertion of urgency or by merely recording a conclusion in the authorization.*

Authority: *2026 LHC 8341, para 14; Customs Act, 1969, s. 163(1)*

The statutory condition is the danger of removal before a search can be effected under section 162; the closure of the court at a particular hour and the possibility of transformation of the goods are relevant circumstances but cannot replace that test.

Source: *A generalized apprehension that the goods might be converted into marketable articles cannot, on its own, confer authority to conduct a warrantless search.*

Authority: *2026 LHC 8341, paras 16-18 and 32*

A successful recovery cannot retrospectively validate an unlawful exercise of the search power, and the statutory safeguards are not diluted by the anti-smuggling purpose of the action.

Source: *The statutory safeguards cannot be diluted merely because the action was undertaken in the course of preventing smuggling or resulted in the recovery of a substantial quantity of foreign-origin goods.*

Authority: *2026 LHC 8341, paras 19 and 33*

Where service of a statutory notice is disputed, a general recital in a show-cause notice or adjudication order does not establish compliance; the record must disclose the recipient, the document served and the manner of service.

Source: *Where service of a statutory notice is disputed, a general recital in a Show-Cause Notice or an adjudication order does not necessarily establish compliance.*

Authority: *2026 LHC 8341, para 24; Customs Act, 1969, s. 171*

OPERATIVE ORDER

Consequently, the questions of law are answered against the applicant-department and in favour of the respondent. The instant Customs Reference Application is dismissed, and the order dated 19.08.2024 passed by the learned Referee Judge/Chairman shall remain undisturbed. There shall be no order as to costs.

■ **View Full Judgment**

CONSTITUTIONAL - SEPARATION OF POWERS - WHETHER A WRIT MAY ISSUE DIRECTING THE FEDERAL OR PROVINCIAL GOVERNMENTS TO ENACT LEGISLATION - SECTIONS 375 AND 376, P.P.C.

Areej Sohail Bhutta v. Federation of Pakistan and others

APPROVED FOR REPORTING. PETITION DISMISSED.

2026 LHC 8548 (W.P. No. 927 of 2026) · Bench: Abher Gul Khan, J · Decided: 3 November 2026 · Uploaded: 5 November 2026

FACTS

The petitioner, a practising advocate, invoked Article 199 as a public-spirited citizen, stating that in the course of her practice she had encountered female clients who narrated experiences of non-consensual sexual conduct within their matrimonial relationships, and that these disclosed a deficiency in the legal framework governing the offence of rape, particularly the absence of distinct statutory treatment of sexual violence within marriage. She sought directions to the Federal and Provincial Governments to undertake legislative measures, including amendments to sections 375 and 376 of the Pakistan Penal Code, 1860, so as to provide a specific legal framework, and asserted that the existing position required reconsideration in the light of fundamental rights, principles of natural justice and the Injunctions of Islam.

LEGAL ISSUE

Can a constitutional court, in exercise of its jurisdiction under Article 199, direct the Federal Government or a Provincial Government to introduce or enact legislation of a particular content?

HOLDING

No. The matter falls within a legislative field in which Article 142(b) recognises the competence of both Parliament and the Provincial Assemblies, and the necessity, scope, ingredients, safeguards and consequences of any proposed amendment are for the competent legislative forum to examine. Whether an additional offence, a separate statutory provision or a further protective mechanism is required is essentially a matter of legislative policy, involving evidentiary requirements, procedural safeguards, protection of complainants, prevention of misuse and the relationship between criminal law and matrimonial rights and

obligations. A constitutional court cannot substitute its own legislative judgment for that of Parliament or a Provincial Assembly. The petitioner had not challenged any statutory provision as violative of fundamental rights, nor demonstrated any specific unlawful action or failure to perform an existing statutory obligation; the relief sought was in substance a direction to undertake a legislative exercise of her choosing, which would be inconsistent with the constitutional distribution of powers.

LEGAL SIGNIFICANCE

A measured application of the separation of powers to a petition seeking legislative reform through the constitutional jurisdiction, with express reliance on Tika Iqbal Muhammad Khan (PLJ 2008 SC 500) for the proposition that no mandamus lies to compel the legislature to enact a particular law, and on Jurists Foundation (PLD 2020 SC 1) for the requirement of judicial restraint in the domain assigned to the elected branches while preserving judicial review where constitutional limits are transgressed. The Court was careful to add, in terms that should be read alongside the dismissal, that the decision is not an endorsement of violence, coercion or abuse within marriage, is not a declaration that a woman's dignity, bodily integrity or constitutional rights are diminished by marriage, and does not preclude Parliament or any Provincial Assembly from legislating on the subject. The judgment is useful authority on the proper framing of a public-interest petition: a challenge to a specific provision, or to a specific failure to discharge an existing statutory duty, is maintainable where a request for legislation is not.

LEGAL PROPOSITIONS (VERBATIM)

— A constitutional Court cannot substitute its own legislative judgment for that of Parliament or a Provincial Assembly.

— The question whether an additional offence, a separate statutory provision or a further protective mechanism is required is essentially a matter of legislative policy.

— It is for the competent legislative forum to examine the necessity, scope, ingredients, safeguards and consequences of any proposed amendment, keeping in view the constitutional scheme and the requirements of justice. The Executive may initiate or facilitate legislative proposals, but the enactment of primary legislation remains the function of the competent Legislature.

— the august Supreme Court recognized the principle that a Court cannot issue a mandamus compelling the Legislature to enact a particular law.

— The principal relief sought is, in substance, a direction to the Federal Government and Provincial Governments to undertake a particular legislative exercise and introduce a legislative model of the petitioner's choice. Such a direction would amount to judicial interference in the legislative process and would be inconsistent with the constitutional distribution of powers.

— It is, however, clarified that decision of the instant petition shall not be construed as an endorsement of any form of violence, coercion or abuse within matrimonial relationships, nor shall it be interpreted as a declaration that the dignity, bodily integrity and constitutional rights of a woman stand diminished by reason of marriage.

— Equally, this judgment shall not preclude Parliament or any Provincial Assembly from examining the matter and undertaking appropriate legislative measures, if considered necessary, in accordance with the Constitution and the Injunctions of Islam.

LEGAL PRINCIPLES EXPOUNDED

A court cannot issue a mandamus compelling the legislature to enact a particular law, and a constitutional court cannot substitute its own legislative judgment for that of Parliament or a Provincial Assembly.

Source: *A constitutional Court cannot substitute its own legislative judgment for that of Parliament or a Provincial Assembly.*

Authority: *Tika Iqbal Muhammad Khan v. General Pervez Musharraf, PLJ 2008 SC 500; Jurists Foundation v. Federation of Pakistan, PLD 2020 SC 1*

Whether an additional offence or further protective mechanism is required is a matter of legislative policy, involving ingredients, evidentiary requirements, procedural safeguards, protection of complainants and prevention of misuse, all requiring deliberation by the competent legislature.

Source: *The question whether an additional offence, a separate statutory provision or a further protective mechanism is required is essentially a matter of legislative policy.*

Authority: *2026 LHC 8548, para 11; Article 142(b) of the Constitution*

The Executive may initiate or facilitate legislative proposals, but the enactment of primary legislation remains the function of the competent Legislature.

Source: *It is for the competent legislative forum to examine the necessity, scope, ingredients, safeguards and consequences of any proposed amendment, keeping in view the constitutional scheme and the requirements of justice. The Executive may initiate or facilitate legislative proposals, but the enactment of primary legislation remains the function of the competent Legislature.*

Authority: *2026 LHC 8548, para 10*

A petition under Article 199 which neither challenges a statutory provision as violative of fundamental rights nor identifies a failure to perform an existing statutory obligation, but seeks a legislative exercise of the petitioner's design, discloses no case for a constitutional direction.

Source: *The principal relief sought is, in substance, a direction to the Federal Government and Provincial Governments to undertake a particular legislative exercise and introduce a legislative model of the petitioner's choice. Such a direction would amount to judicial interference in the legislative process and would be inconsistent with the constitutional distribution of powers.*

Authority: *2026 LHC 8548, para 13*

OPERATIVE ORDER

The relief sought falls within the domain of the competent Legislature and cannot be granted through the exercise of constitutional jurisdiction. Consequently, the instant petition, being devoid of merit to the extent of the relief claimed, is dismissed. There shall be no order as to costs.

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Sindh High Court

3 judgments

PROFESSIONAL DISCIPLINE - CHARTERED ACCOUNTANTS ORDINANCE, 1961 - PROPORTIONALITY OF PENALTY UNDER SECTION 20D - APPEAL AND REVISION UNDER SECTION 20K - DUTY TO GIVE REASONS FOR SELECTING THE SEVEREST SANCTION

Salman Masud v. Institute of Chartered Accountants of Pakistan

APPROVED FOR REPORTING. APPEAL ALLOWED AS TO QUANTUM; REMOVAL FROM THE REGISTER SET ASIDE AND A FORMAL REPRIMAND SUBSTITUTED.

2026 SHC KHI 2166 (Miscellaneous Appeal No. 112 of 2025) · Bench: Sana Akram Minhas, J · Decided: 4 November 2026 · Uploaded: 4 November 2026 (straggler)

FACTS

The appellant, a chartered accountant of over four decades' standing and sole proprietor of Salman & Co., Chartered Accountants, received a show-cause notice from ICAP on 30 August 2024 under section 20B(1) of the Ordinance. By order dated 19 July 2025 the Council found him guilty of professional misconduct under clause (3) of Part 4 of Schedule I, for failure to produce the audit working-paper file supporting the audit opinion issued on 2 December 2023 in respect of Khan Engineers & Contractors Gilgit (Pvt) Ltd for the financial year ended 30 June 2023, and removed his name from the Register of Members for one year from 19 July 2025 to 18 July 2026. Of the four audit engagements initially examined, three were excluded because the relevant provisions of the APRSP framework were not applicable when their audit reports were issued, and the Investigation Committee did not sustain the separate charge under clause (8) of Part I of Schedule II. The appellant explained the circumstances relating to the maintenance of working papers, referring to computerised audit processes and audits conducted at clients' premises, and expressed willingness to ensure future compliance. He did not challenge the finding of misconduct, confining the appeal to the quantum of penalty.

LEGAL ISSUE

Where the Council of ICAP selects removal from the Register, the severest category of penalty under section 20D(1) of the Chartered Accountants Ordinance, 1961, must its order disclose reasons explaining why the

lesser sanctions were insufficient; and may the High Court, under section 20K(2), substitute a proportionate penalty?

HOLDING

Yes. The establishment of misconduct and the determination of the appropriate sanction are distinct matters, and the former does not by itself determine the measure of punishment. Statutory discretion, however widely conferred, must be structured and exercised reasonably, in good faith and on relevant considerations. Where the severest category of sanction is selected, merely recording the finding of misconduct and announcing the penalty, without explaining why that sanction was warranted, does not discharge the obligation to give reasons. Proportionality is assessed against the misconduct actually established, not the allegations originally levelled; the statutory maximum is only the outer limit and a penalty below it is not thereby proportionate. Having regard to the limited scope of the misconduct, the appellant's advanced age, four decades of practice, unblemished record, explanation and expressed willingness to comply, and the absence of any finding of fraud, dishonesty, deliberate falsification or actual financial loss, removal for one year was excessive and disproportionate. Exercising the power under section 20K(2)(a) and (b), the Court set aside the removal and recorded a formal reprimand - rather than a warning, which is merely cautionary - as the sole and final disciplinary sanction.

LEGAL SIGNIFICANCE

A substantial judgment on proportionality in professional discipline, and the leading recent authority on section 20D of the Chartered Accountants Ordinance, 1961. Its value lies in two places. First, the Court identifies the deficiency not as a failure to exhaust lesser sanctions in a prescribed sequence but as a failure to disclose reasons for selecting the severest, a formulation that will apply to any regulator choosing among statutory penalties. Second, it collects and applies the Supreme Court's proportionality jurisprudence - WAPDA v. Muhammad Yousaf (1997 PLC (C.S.) 424), Auditor-General v. Muhammad Ali (2006 SCMR 60), Khalid Hussain Hamdani (2013 SCMR 817), Postmaster General Sindh v. Syed Farhan (2022 SCMR 1154), Ijaz Badshah (2023 SCMR 407), Shahida Siddiqa (2024 SCMR 92), Faisal Ali (2025 SCMR 92), National Bank v. Roz-ud-Din (2025 SCMR 160) and Muhammad Nasir Ismail (2025 SCMR 708) - together with Chairman, RTA v. Pakistan Mutual Insurance (PLD 1991 SC 14) on structured discretion, and the Court's own earlier decision in ICAP v. Abu Baker Bilwani (2009 CLD 735). The distinction drawn between a warning and a reprimand within section 20D(1)(a) is itself a point of some nicety.

LEGAL PROPOSITIONS (VERBATIM)

— the establishment of misconduct and the determination of the appropriate sanction are distinct matters, and the former does not, by itself, determine the measure of punishment warranted.

— The requirement to give reasons assumes particular significance where the exercise of statutory discretion has substantial consequences for an individual's professional life.

— Where the severest category of sanction is selected, merely recording the finding of misconduct and announcing the penalty, without explaining why that sanction was warranted, does not adequately discharge the obligation to give reasons.

— The proportionality of the penalty falls to be assessed in the light of the misconduct actually found established against the Appellant, rather than by the full range of allegations originally levelled against him.

— The statutory maximum represents the outer limit of the Council's authority; the fact that the penalty imposed falls below that limit does not, by itself, render the penalty reasonable or proportionate.

— The present interference is not founded merely upon the availability of another possible sanction, but upon the Council's failure to justify its selection of removal from the Register in the context of the misconduct actually established and the relevant circumstances.

— The question is not whether the Appellant ought to have been subjected to disciplinary action, but whether the measure of punishment imposed was commensurate with the misconduct actually sustained.

— A warning is generally cautionary in nature, whereas a reprimand conveys a more formal expression of censure for misconduct already established.

LEGAL PRINCIPLES EXPOUNDED

The establishment of misconduct and the selection of the sanction are distinct inquiries; a finding of misconduct does not by itself determine the measure of punishment.

Source: *the establishment of misconduct and the determination of the appropriate sanction are distinct matters, and the former does not, by itself, determine the measure of punishment warranted.*

Authority: *2026 SHC KHI 2166, para 16; Chartered Accountants Ordinance, 1961, s. 20D*

Statutory discretion, however widely conferred, is not unfettered: it must be structured and regulated by appropriate standards and exercised reasonably, in good faith, fairly and on relevant considerations.

Source: *In the leading judgment of Chairman, Regional Transport Authority v. Pakistan Mutual Insurance Company (PLD 1991 SC 14), the Supreme Court held that statutory discretion, however widely conferred, is not unfettered but must be structured and regulated by appropriate standards, principles or rules.*

Authority: *Chairman, Regional Transport Authority v. Pakistan Mutual Insurance Company, PLD 1991 SC 14*

Where the severest category of sanction is selected, the order must disclose reasons explaining why that sanction was warranted and why the lesser sanctions expressly provided were insufficient.

Source: *Where the severest category of sanction is selected, merely recording the finding of misconduct and announcing the penalty, without explaining why that sanction was warranted, does not adequately discharge the obligation to give reasons.*

Authority: *2026 SHC KHI 2166, para 34; ICAP v. Abu Baker Bilwani, 2009 CLD 735*

Proportionality is tested against the misconduct actually established, not the allegations originally levelled, and a penalty below the statutory maximum is not thereby reasonable or proportionate.

Source: *The statutory maximum represents the outer limit of the Council's authority; the fact that the penalty imposed falls below that limit does not, by itself, render the penalty reasonable or proportionate.*

Authority: *2026 SHC KHI 2166, paras 22 and 36; Muhammad Nasir Ismail v. Government of Punjab, 2025 SCMR 708*

A warning is cautionary in nature whereas a reprimand is a formal expression of censure for misconduct already established; the two are not interchangeable merely because they appear in the same clause.

Source: *A warning is generally cautionary in nature, whereas a reprimand conveys a more formal expression of censure for misconduct already established.*

Authority: *2026 SHC KHI 2166, para 41; Chartered Accountants Ordinance, 1961, s. 20D(1)(a)*

OPERATIVE ORDER

For the foregoing reasons, the Miscellaneous Appeal is allowed to the extent of the challenge to the quantum of penalty. The portion of the Impugned Order dated 19.7.2025 directing removal of the Appellant's name from the Register of Members of ICAP for a period of one year is hereby set aside, and a formal reprimand is recorded in its place, with effect from 19.7.2025, being the date of the Impugned Order. ... The formal reprimand recorded by this Court shall constitute the sole and final disciplinary sanction in respect of that misconduct.

■ **View Full Judgment**

CUSTOMS - OPTION TO PAY FINE IN LIEU OF CONFISCATION UNDER SECTION 181 - CLAUSE (A) OF THE PREAMBLE TO S.R.O. 499(I)/2009 - EFFECT OF AN OFFER TO PAY DUTY AND TAXES AFTER SEIZURE

The Collector of Customs (Enforcement), Karachi v. M/s. Muhammad Kamran and another

APPROVED FOR REPORTING. REFERENCE ALLOWED; OUTRIGHT CONFISCATION RESTORED.

2026 SHC KHI 2155 (Special Customs Reference Application No. 11 of 2026) · Bench: Agha Faisal and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: 4 November 2026 · Uploaded: 4 November 2026 (straggler)

FACTS

On 24 February 2025, acting on information that the Arbaz Travels bus stand near the Passport Office, Saddar, Karachi was being used to transport smuggled goods, an Anti-Smuggling Organisation team found a large quantity of assorted foreign-origin goods in and around a passenger bus bearing registration No. BSA-738 (Quetta), booked from Balochistan for delivery at Karachi. No document of lawful import or possession was produced and the goods were seized under section 168 for violation of section 2(s) read with sections 16, 17, 178 and 187, punishable under clauses (8) and (89) of section 156(1). A notice under section 171 was displayed on the notice board and a show-cause notice dated 7 April 2025 was issued to Lal Khan and Daro Khan, the owners of the bus stand, who did not appear and who later pleaded guilty before the Special Judge and were sentenced on 13 September 2025. By Order-in-Original No. 302/2024-25 dated 5 May 2025 the Collector of Customs (Adjudication-I) confiscated the unclaimed goods outright and imposed a penalty of Rs. 1,000,000 on the owner of the bus stand. Respondent No. 1 then appealed, with an application for condonation of delay, claiming cream, bubble gum, two brands of soap, chocolates and coffee at serial Nos. 7, 13, 14, 15, 22 and 23 of the schedule as purchased in the local market. The Tribunal condoned the delay and, observing that the goods were seized far from the border, were on the free list and were available in the open market, and that the appellant was willing to deposit duty and taxes, allowed redemption on payment of a fine of 20 per cent of the customs value in addition to duty and taxes.

LEGAL ISSUE

Where goods have been confiscated as smuggled goods falling under section 2(s) of the Customs Act, 1969, and clause (a) of the preamble to S.R.O. 499(I)/2009 directs that no option to pay fine in lieu of confiscation shall be given in respect of such goods, does the Customs Appellate Tribunal retain jurisdiction to order their release on payment of duty, taxes and a redemption fine?

HOLDING

No. An option under section 181 presupposes an order of confiscation, and a fine levied in addition to any duty and charges payable presupposes goods on which duty has not been paid. By directing redemption on payment of a fine together with duty and taxes, the Tribunal necessarily proceeded on the footing that the goods remained liable to confiscation; it did not set aside the confiscation, nor find that the goods were not smuggled within section 2(s), nor that respondent No. 1 had shown the lawful excuse which clause (89) of section 156(1) and section 187 require. The finding that the goods were smuggled therefore remained undisturbed, and once that was so the option under section 181 was unavailable. The Board having exercised its power under the first proviso, the prohibition is binding and leaves no discretion with the adjudicating officer or the Tribunal. The authorities on conveyances under clause (b) apply with equal force to clause (a). An offer to pay duty is not an admission of smuggling - it may be made for other reasons, the goods here being perishable - but payment of duty after seizure does not convert smuggled goods into lawfully imported goods, and is no substitute for the lawful excuse the possessor must establish. The second question, as to locus standi, was rendered academic.

LEGAL SIGNIFICANCE

The companion authority to the Supreme Court's order in C.P.L.A. 5420/2025, digested above, extending the same analysis from clause (b) conveyances to clause (a) smuggled goods. The judgment is notable for the care with which it reads the Tribunal's operative direction: the Court declines to infer a finding that the goods

were lawfully imported from observations about the free list and market availability, pointing out that such a finding would have led to release without any fine at all. The treatment of a willingness to pay duty is a useful corrective in both directions - it is neither an admission of smuggling nor a route to release - and is supported by Abdul Karim (2025 SCMR 969) and Shahzad (2025 SCMR 1912). The footnoted references to Squibb Pakistan (2017 SCMR 1006), Haseeb Waqas Sugar Mill (2026 SCMR 833) and Middle East Construction (2023 SCMR 838) on deciding a reference on the facts as recorded, and to Qazi Ziauddin (PLD 1962 SC 440) and Sikander A. Karim (1995 SCMR 387) on the presumption as to goods seized far from the border, make the judgment a convenient collection on this branch of customs practice.

LEGAL PROPOSITIONS (VERBATIM)

— An option under section 181 presupposes an order of confiscation, and a fine levied "in addition to any duty and charges payable" presupposes goods upon which duty has not been paid.

— Once the goods stood confiscated as smuggled goods, the option under section 181 was not available in respect of them.

— the Board having exercised its power under the first proviso to section 181, the prohibition so prescribed is binding and leaves no discretion with the adjudicating officer or the Tribunal to grant release upon a redemption fine in respect of goods or conveyances falling within the excluded classes.

— Those cases concerned conveyances; the principle upon which they rest applies with equal force to clause (a), which excludes the smuggled goods themselves.

— The learned Tribunal was accordingly not competent to extend the option to the goods claimed by Respondent No.1, whether against a fine of 20% or at all.

— We do not think it necessary to go so far, for an offer of that kind may be made for reasons other than a consciousness of smuggling, the goods here being perishable.

— Payment of duty after seizure does not convert smuggled goods into lawfully imported goods, and an offer to pay it is no substitute for the lawful excuse which the person in possession must establish before the forum which finds the facts.

— In view of the answer to the first question, the release of the goods cannot stand whoever their owner may be, and the second question is rendered academic.

LEGAL PRINCIPLES EXPOUNDED

An option under section 181 presupposes an order of confiscation, and a fine in addition to duty and charges presupposes goods on which duty has not been paid; a direction to redeem on payment of fine plus duty therefore concedes that the goods remained liable to confiscation.

Source: *An option under section 181 presupposes an order of confiscation, and a fine levied "in addition to any duty and charges payable" presupposes goods upon which duty has not been paid.*

Authority: *2026 SHC KHI 2155, para 8; Customs Act, 1969, s. 181*

Where the Board has exercised its power under the first proviso to section 181, the prohibition is binding and leaves no discretion with the adjudicating officer or the Tribunal to grant release against a redemption fine in respect of the excluded classes.

Source: *the Board having exercised its power under the first proviso to section 181, the prohibition so prescribed is binding and leaves no discretion with the adjudicating officer or the Tribunal to grant release upon a redemption fine in respect of goods or conveyances falling within the excluded classes.*

Authority: *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs), FBR, Peshawar, 2025 SCMR 684; Director, Intelligence and Investigation (Customs), FBR, Peshawar v. Muhammad Ishaq, 2026 SCMR 885*

The authorities on the exclusion of conveyances under clause (b) of the preamble to S.R.O. 499(I)/2009 apply with equal force to clause (a), which excludes the smuggled goods themselves.

Source: *Those cases concerned conveyances; the principle upon which they rest applies with equal force to clause (a), which excludes the smuggled goods themselves.*

Authority: *2026 SHC KHI 2155, para 9; M/s Panjgur Goods Transport Co. v. The Collector of Customs, C.Ps. 6064 to 6066 of 2021, decided 16 July 2026; Collector of Customs, Peshawar v. Wali Khan, 2017 SCMR 585*

Payment of duty after seizure does not convert smuggled goods into lawfully imported goods, and an offer to pay duty is neither an admission of smuggling nor a substitute for the lawful excuse

which the person in possession must establish.

Source: *Payment of duty after seizure does not convert smuggled goods into lawfully imported goods, and an offer to pay it is no substitute for the lawful excuse which the person in possession must establish before the forum which finds the facts.*

Authority: *The Intelligence Officer, Directorate of Intelligence and Investigation, FBR v. Abdul Karim, 2025 SCMR 969; Shahzad v. The Collector of Customs, Model Collectorate of Customs (Preventive), Karachi, 2025 SCMR 1912*

OPERATIVE ORDER

This Special Customs Reference Application is accordingly allowed. The judgment dated 15.12.2025 passed by the learned Customs Appellate Tribunal in Customs Appeal No. K-1094 of 2025 is set aside, and Order-in-Original No. 302/2024-25 dated 05.05.2025, to the extent of the outright confiscation of the goods at serial Nos. 7, 13, 14, 15, 22 and 23 of the schedule, is restored. There shall be no order as to costs.

■ **View Full Judgment**

FEDERAL EXCISE - MAINTAINABILITY OF A REFERENCE UNDER SECTION 34A OF THE FEDERAL EXCISE ACT, 2005 AGAINST AN ORDER ANNULLING THE ORDERS BELOW - NO ADVERSE ORDER IN THE FIELD

Paxar Pakistan (Pvt.) Limited v. Deputy Commissioner of Inland Revenue Zone-II and another

APPROVED FOR REPORTING. REFERENCES DISMISSED IN LIMINE AS NOT MAINTAINABLE; ALL QUESTIONS LEFT OPEN.

2026 SHC KHI 2149 (Special F.E.R.A. Nos. 53 and 54 of 2017) · Bench: Agha Faisal and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: 3 November 2026 · Uploaded: 3 November 2026 (straggler)

FACTS

The applicant manufactures labels and tags and is a group company of an international concern. It has a Corporate Services Agreement dated 29 December 2010 and an Intercompany Technical Services Agreement of January 2012 with two non-resident group entities. By notice dated 24 March 2014 the Deputy Commissioner Inland Revenue treated payments made under these agreements between July 2012 and February 2014 as franchise fee or royalty chargeable to federal excise duty and proceeded under section 14A to recover the amount by attaching the applicant's bank accounts, recovering Rs. 11,785,196. The Commissioner Inland Revenue (Appeals), by combined order dated 12 December 2014, found that section 14A was not the provision to be invoked and that the department ought to have confronted the applicant, but did not annul the notice, holding instead that the services acquired were in the nature of royalty or franchise and directing the department to invoke the relevant provisions. The Appellate Tribunal Inland Revenue, by order dated 25 October 2016, annulled the orders of both forums below, observing that the correct legal procedure had not been followed and that a proper opportunity of hearing had not been given, and expressly reserving liberty to the department to initiate fresh proceedings without discussing the applicability of federal excise duty. The applicant was confronted on maintainability on 27 March 2017 and again at the hearing.

LEGAL ISSUE

Does a reference under section 34A of the Federal Excise Act, 2005 lie against an order of the Appellate Tribunal which annuls the orders of both forums below, so that no adverse order or finding remains in the field against the applicant?

HOLDING

No. The reference jurisdiction extends to a question of law arising out of the order of the Tribunal, and the source of the question must be that order. A question argued before the Tribunal on which it gave no finding may also be a question arising from its order, but that does not make a reference maintainable where the order, read as a whole, leaves no adverse order or finding against the applicant. Here the annulment meant that the notice and order under section 14A, and with them the finding that the payments were in the nature of royalty or franchise, no longer existed; the applicant obtained the relief it sought on grounds of procedure and hearing. The liberty reserved to the department does not alter this: the Tribunal neither held the applicant liable nor directed any outcome. The authorities cited on remand address the restraint with which a court

should order remand in the appeal itself, not whether a reference lies from the resulting order. The constitutional question whether the Federation may levy federal excise duty on services after the Eighteenth Amendment is of some importance but is not before the Court in a form calling for an answer, no liability having been determined.

LEGAL SIGNIFICANCE

A clean statement of a recurring threshold point in tax references. The judgment reaffirms the settled position of the Sindh High Court in Siddiq Traders (2015 PTD 134) and Philip Morris (2026 PTD 1147) that no reference lies where the Tribunal has set aside the orders below and left nothing adverse in the field, and distinguishes the remand authorities relied upon - Secretary Railways (2026 SCMR 807), Shahida Zareen (2010 SCMR 1119), Pramatha Nath Chowdhury (PLD 1965 SC 434) - as concerning the exercise of the power of remand rather than the maintainability of a reference from the resulting order. Two further points deserve attention: the Court holds that whether the Tribunal was justified in leaving a matter for fresh determination rather than deciding it itself is the one question that can arise from such an order, and that whether payments answer the statutory definition of franchise is a question of fact which cannot be raised in a reference, following C.M. Pak (2013 SCMR 749). The Court's closing observation that a reference filed in January 2017 remained pending for nearly a decade against an order that could not found a reference, and its call for scrutiny of maintainability at the threshold, is a pointed reminder for both the bar and the registry.

LEGAL PROPOSITIONS (VERBATIM)

— The jurisdiction of this Court in a reference under section 34A of the Act extends to a question of law arising out of the order of the Tribunal.

— Learned counsel for the Applicant is right that a question argued before the Tribunal, on which the Tribunal gave no finding, may also be a question arising from its order.

— It does not hold that a reference is maintainable where the order, read as a whole, leaves no adverse order or finding against the applicant.

— The liberty reserved to the Department does not alter this. The Tribunal has neither held the Applicant liable nor directed any outcome.

— a party cannot be treated as an aggrieved party nor there remains anything to be decided by this court

— They concern the exercise of that power in the appeal itself, not whether a reference lies from the resulting order.

— No liability has been determined against the Applicant, and the Department may or may not proceed. To answer it now would be to answer in the abstract a question that may never arise out of an order affecting the Applicant.

— Such references call for scrutiny of maintainability at the threshold, so that the parties are not kept away for years from the forum where the controversy can actually be decided.

LEGAL PRINCIPLES EXPOUNDED

The reference jurisdiction extends to a question of law arising out of the order of the Tribunal; the source of the question must be that order, and what is required is a tangible and substantial question of law on the rights and obligations of the parties founded on the Tribunal's decision.

Source: *The jurisdiction of this Court in a reference under section 34A of the Act extends to a question of law arising out of the order of the Tribunal.*

Authority: *Collector of Sales Tax and Central Excises, Lahore v. M/s Qadbros Engineering (Pvt.) Ltd., 2023 SCMR 939; Federal Excise Act, 2005, s. 34A*

A question argued before the Tribunal on which it gave no finding may arise from its order, but that identifies which questions may be raised; it does not render a reference maintainable where no adverse order or finding remains in the field.

Source: *It does not hold that a reference is maintainable where the order, read as a whole, leaves no adverse order or finding against the applicant.*

Authority: *F.M.Y. Industries Ltd. v. Deputy Commissioner Income Tax, 2014 SCMR 907, distinguished*

Where the Tribunal has annulled or set aside the orders below, no adverse order remains in the field, the applicant is not an aggrieved party, and a reference is not maintainable; a liberty reserved to the department does not alter that position.

Source: *a party cannot be treated as an aggrieved party nor there remains anything to be decided by this court*

Authority: *Siddiq Traders, 2015 PTD 134; Philip Morris, 2026 PTD 1147; E.M. Oil Mills, 2011 PTD 2708; Bank Al-Habib, 2016 PTD 2548; RIY Metals, 2026 PTD 86*

Authorities counselling restraint in ordering remand concern the exercise of that power in the appeal itself and do not determine whether a reference lies from the resulting order.

Source: *They concern the exercise of that power in the appeal itself, not whether a reference lies from the resulting order.*

Authority: *Secretary Railways, 2026 SCMR 807; Shahida Zareen, 2010 SCMR 1119; Pramatha Nath Chowdhury, PLD 1965 SC 434, all distinguished*

A constitutional or substantive question which has not yet arisen out of an order adverse to the applicant will not be answered in the abstract, and remains open at every stage if the department proceeds afresh.

Source: *No liability has been determined against the Applicant, and the Department may or may not proceed. To answer it now would be to answer in the abstract a question that may never arise out of an order affecting the Applicant.*

Authority: *2026 SHC KHI 2149, para 14*

OPERATIVE ORDER

For these reasons, the references are not maintainable and are dismissed in limine. All questions are left open, and nothing in this judgment is an expression of opinion on their merits or shall prejudice the rights and contentions of either side before the competent forum in any proceedings that may be taken afresh.

■ **View Full Judgment**