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Pakistan Superior Courts — Verified Judgment Digest

Monday, 21 September 2026

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Coverage and exclusions: twenty-four candidates were identified across the five courts (six Supreme Court, one Federal Constitutional Court, six Lahore High Court, eleven Sindh High Court approved for reporting, nil Islamabad High Court); eleven were curated for reporting. (a) C.P.L.A. No. 1971 of 2022 (Bashir Ahmad v. Javed Iqbal, specific performance of an agreement to sell, uploaded 18 September) is expressly marked NOT APPROVED FOR REPORTING on the face of the judgment and has accordingly been excluded, notwithstanding that it decides a point of some practical interest on the severability of a composite agreement to sell executed by two vendors in respect of their separate properties. (b) The remaining Supreme Court items not carried forward are J.P. No. 384 of 2023 (Ali Raza Siyal v. The State) and CrI.P.L.A. No. 647 of 2026 (Abdul Hadi Chattha v. The State), both of which turn on their own facts. (c) A portal defect affects one Sindh High Court listing: the entry described as Spl. Sales Tax Ref. A. No. 135 of 2025 (Sindh Revenue Board v. M/s The Coca-Cola Export Corporation, Lahore) serves, under its own hash, an entirely different judgment — the twelve connected references headed Spl. Sales Tax Ref. A. No. 86 of 2025 (Sindh Revenue Board v. M/s Itecknologi Tracking Services (Pvt) Ltd), decided 21.08.2026 and carrying citations 2026 SHC KHI 1756, 1757 and 1759. The Coca-Cola judgment is therefore not presently retrievable from that listing. The Itecknologi judgment is authentic, approved for reporting, and is

digested below in its own right; it is the section 44 counterpart to the section 43 decision (Sindh Revenue Board v. Fumicon Services) reported in the briefing of 8 September 2026, and the two together now complete the scheme. (d) Sindh High Court items approved for reporting but not carried into this issue are M.A. No. 66 of 2023 (Syed Liaquat Ali v. Syed Ishtiaq Ali, 2026 SHC KHI 1790), Spl. Cus. Ref. A. No. 247 of 2024 (2026 SHC KHI 1785), Spl. Cus. Ref. A. No. 1264 of 2023 (2026 SHC KHI 1755), I.T.R.A. No. 306 of 2024 (2026 SHC KHI 1758), Criminal Appeal No. 785 of 2024 (2026 SHC KHI 1762), Const. P. No. 320 of 2025 (2026 SHC LAR 1771), Cr. Appeal No. 357 of 2010 (2026 SHC HYD 1760) and Cr.J.A. No. 35 of 2021 (2026 SHC LAR 1772); each is available on request. (e) Lahore High Court items not carried forward are Civil Revision No. 9 of 2023 (Ghulam Muhammad v. Muzammil Hussain) and R.F.A. No. 2 of 2017 (Mst. Noor Bibi v. Waryam), both turning on their own facts. (f) No Islamabad High Court judgment met the reporting threshold; that court's public listing still shows no reported upload after 18 March 2026, a gap now of six months. (g) The long-standing defect in Const. P. No. 875 of 2025 (National Bank of Pakistan v. Mirza Hamayun, 2026 SHC KHI 1583) remains unresolved.

Federal Constitutional Court of Pakistan

1 judgment

WEST PAKISTAN CIVIL COURTS ORDINANCE, 1962 S. 12A; KHYBER PAKHTUNKHWA CONSUMERS PROTECTION ACT, 1997; CODE OF CIVIL PROCEDURE, 1908 S. 9; CONSTITUTION OF PAKISTAN, 1973 ARTS. 175F(1)(C), 199 — SECTION 12A IS AN INDEPENDENT, CASE-SPECIFIC SOURCE OF JURISDICTION FOR A TRANSFEREE SPECIAL COURT; THE DEEMING PROVISION ATTACHES TO THE TRANSFERRED LIS AND DOES NOT TRANSFORM THE COURT'S INSTITUTIONAL CHARACTER

Dr. Azhar Khan Jadoon v. Registrar, Peshawar High Court and others

LEAVE REFUSED AND PETITION DISMISSED; JUDGMENT OF THE PESHAWAR HIGH COURT MAINTAINED SUBJECT TO MODIFICATION AND CLARIFICATION OF ITS REASONING; APPROVED FOR REPORTING

F.C.P.L.A. No. 810 of 2026, Federal Constitutional Court of Pakistan (against the judgment dated 21.02.2026 of the Peshawar High Court in W.P. No. 274-P of 2026) · Bench: Syed Hasan Azhar Rizvi and Muhammad Karim Khan Agha, JJ (judgment by Syed Hasan Azhar Rizvi, J) · Decided: 21.08.2026 · Uploaded: 18.09.2026

FACTS

The petitioner is President of the Professional Education and Promotion Society, which runs the Women Medical & Dental Colleges, Abbottabad. The pro forma respondents sued him for declaration, permanent and mandatory injunction and rendition of accounts, questioning their ouster from the Society's executive and general bodies. The suit was being tried by the Additional District Judge, Abbottabad, where the petitioner had entered appearance, filed his written statement and a number of the plaintiffs' witnesses had been examined. While the proceedings were pending, the Peshawar High Court, exercising the power in section 12A of the West Pakistan Civil Courts Ordinance, 1962 — inserted by the West Pakistan Civil Courts (Amendment) Act, 2025 — issued Notification No. 324-J dated 08.09.2025 transferring certain cases, including this suit, to Special Courts with a view to expeditious disposal in terms of Article 37(d). The suit went to the Consumer Court, Abbottabad. The petitioner applied for its return; the Consumer Court declined on 18.12.2025, holding that as the transfer was made under the High Court's order it could not transfer the case back. A Division Bench of the High Court dismissed his writ petition, holding among other things that the notification, being an administrative act of the High Court itself, was not amenable to Article 199.

LEGAL ISSUE

Whether the legislature may, by a separate statutory enactment, confer additional jurisdiction upon a Special Court to entertain and decide a case transferred to it, notwithstanding the limits of that court's parent statute; and what is the legal effect of the deeming provision in section 12A(3).

HOLDING

Leave was refused, but the High Court's reasoning was modified. The Court accepted the general proposition that a Special Court is a creature of statute and cannot travel beyond its parent enactment, but held this did not resolve the controversy. Section 12A(1) opens with a non obstante clause and speaks of 'any case'; sub-section (3) then deems the transferee forum to be the court in which the case was originally instituted and vests it with 'all the powers and jurisdiction' of that court; sub-section (4) requires it to proceed from the stage reached. Read together these are one integrated scheme: the Consumer Court's jurisdiction over this suit does not emanate from the Act of 1997 but flows directly from section 12A. The Court declined, however, to endorse the High Court's view that the Special Court is thereby elevated to the 'Principal Court of Civil Jurisdiction' or that the arrangement produces a 'hybridization' of jurisdictions — a legal fiction cannot be extended beyond the purpose for which it was created. It also rejected the reasoning that competence flowed from the fact that the court is presided over by a District Judge. Finally it declined to endorse the broader proposition that every administrative act of a High Court is immune from judicial scrutiny, deciding the case on the narrower statutory ground.

LEGAL SIGNIFICANCE

Important for anyone whose case has been moved under the new section 12A regime, and instructive well beyond it. The Court separates three things that the High Court had run together: the source of jurisdiction (the statute, not the notification), the identity of the forum (unchanged by the deeming provision), and the rank of the presiding officer (irrelevant). Its statement that jurisdiction is determined by law and not by the

designation or personal capacity of the judicial officer presiding is a proposition of general application. Equally notable is the Court's restraint on the constitutional question: rather than endorse a blanket immunity for the administrative acts of High Courts following *Gul Taiz Khan Marwat* (PLD 2021 SC 391), it held that constitutional questions of such amplitude ought not to be determined more broadly than necessary — a passage worth citing whenever a court is invited to decide more than the case requires. The clarification that section 12A confers no general jurisdiction beyond the parent statute for untransferred cases keeps the holding within bounds.

LEGAL PROPOSITIONS (VERBATIM)

— *These words are neither incidental nor redundant; rather, they constitute the very foundation of the transferee forum's competence to proceed with and decide the transferred case.*

— *That principle, however, has little application where the legislature itself intervenes and expressly enlarges the jurisdiction of the special forum for a specified purpose.*

— *The constitutional questions of such amplitude ought not to be determined more broadly than is necessary for resolution of the controversy before the Court.*

— *Thus, the notification is the instrument through which the transfer is effected, whereas the statute itself is the source of the jurisdiction exercised by the transferee Court.*

LEGAL PRINCIPLES EXPOUNDED

The jurisdiction of a transferee Special Court over a case transferred under section 12A flows from that provision and not from its parent statute.

Source: *Thus, the jurisdiction of the Consumer Court over the above suit does not emanate from the Act of 1997; rather, it flows directly from Section 12A.*

Authority: Section 12A, West Pakistan Civil Courts Ordinance, 1962; *Major (Retd.) Barkat Ali v. Qaim Din* (2006 SCMR 562)

A legal fiction cannot be extended beyond the purpose for which it was created, and a deeming clause does not permit the assumption of an imaginary state of affairs that did not exist.

Source: *However, it is equally well settled that a legal fiction cannot be extended beyond the purpose for which it has been created.*

Authority: *Multiline Associates v. Ardeshir Cowasjee* (1995 SCMR 362); section 12A(3), West Pakistan Civil Courts Ordinance, 1962

Jurisdiction is determined by law, not by the designation, rank or personal capacity of the judicial officer presiding over the court.

Source: *The jurisdiction of a Court is determined by law and not by the substantive designation, rank or personal capacity of the judicial officer who presides over it.*

Authority: Section 12A, West Pakistan Civil Courts Ordinance, 1962

A provision must be read as a whole and effect given to every word so as to advance rather than defeat the object of the enactment.

Source: *It is a settled principle of statutory interpretation that a provision must be read as a whole and, as far as possible, effect must be given to every word employed*

Authority: *Saif-Ur-Rehman v. Additional District Judge, Toba Tek Singh* (2018 SCMR 1885); *JS Bank Limited v. Province of Punjab* (2021 SCMR 1617)

OPERATIVE ORDER

For the reasons discussed above, leave to appeal is refused and the petition is dismissed. The impugned judgment is maintained, subject to the modification and clarification of the reasons recorded hereinabove. These are the reasons for our short of even date.

■ [View Full Judgment](#)

KHYBER PAKHTUNKHWA PRE-EMPTION ACT, 1987 SS. 13, 32 — TALB-E-MUWATHIBAT AND TALB-E-ISHHAD ARE ESSENTIAL CONDITIONS OF THE STATUTORY RIGHT, NOT FORMALITIES; A PRE-EMPTOR WHO DOES NOT PLEAD AND PROVE FAILURE OF THE PUBLIC NOTICE CANNOT DISPLACE THE STATUTORY ATTRIBUTION OF KNOWLEDGE

Muhammad Niaz v. Raja Khush Dil Abbasi

APPEAL ALLOWED; JUDGMENTS AND DECREES OF THE COURTS BELOW SET ASIDE AND THE PRE-EMPTION SUIT DISMISSED; APPROVED FOR REPORTING

Civil Appeal No. 915 of 2020, Supreme Court of Pakistan (against the judgment dated 13.12.2017 of the Peshawar High Court, Abbottabad Bench in C.R. No. 141-A of 2017) · Bench: Shahid Waheed, Naeem Akhter Afghan and Ishtiaq Ibrahim, JJ (judgment by Shahid Waheed, J) · Decided: 17.09.2026 · Uploaded: 21.09.2026

FACTS

The respondent sued to pre-empt a sale of land made in favour of the appellant. The sale was effected on 20.10.2009 through Mutation No. 7389; the respondent claimed to have made his first Talb on 16.01.2010, more than eight weeks after the sale mutation was sanctioned. He did not plead — either in the plaint or in his statement — that the authority concerned had failed to issue the public notice contemplated by section 32 of the Act, nor did he lead evidence to that effect. On the second Talb, the appellant-vendee specifically denied service of the notice. To prove service the respondent produced PW-2, Zahid Mehmood, a postman of Katchehri Post Office, who merely produced the counter-file record and Registry No. 1190; he was not the postman who had allegedly taken the notice to the vendee's residence and delivered it. The trial Court decreed the suit and that decree stood until the High Court's judgment of 13.12.2017. Leave was granted primarily to examine whether the pre-emptor had established performance of the requisite Talbs.

LEGAL ISSUE

Whether a pre-emptor who asserts a date of knowledge more than eight weeks after the sale mutation, without pleading or proving that the public notice under section 32 was not issued, can be said to have made Talb-e-Muwathibat within section 13; and what is required to prove service of the notice of Talb-e-Ishhad where the vendee denies receipt.

HOLDING

The appeal was allowed and the suit dismissed. On the first Talb, the law attributes knowledge of the sale to the pre-emptor after the expiry of the period prescribed by section 32, and in the absence of a plea and proof that the requisite public notice was not issued there was no basis on which the respondent could displace that statutory consequence; a declaration made more than eight weeks after sanction of the mutation could not be treated as a prompt assertion of the right. On the second Talb, where Talb-e-Ishhad is made by written notice attested by two truthful witnesses and sent by registered post with acknowledgement due, the pre-emptor must prove not merely the making and dispatch of the notice but its due service on the vendee; where service is sought to be proved through postal delivery, the evidence of the person who actually delivered the notice assumes particular significance. The postman produced established at best the existence or dispatch of the article, not its delivery. The Court declined to be constrained by the concurrent findings below, which had resulted from misreading and non-reading of evidence and an erroneous application of the Act.

LEGAL SIGNIFICANCE

A crisp restatement of two points that decide most pre-emption suits. The first is evidentiary in a way that is easily overlooked: where the statute provides for a public notice of the sale, the period for Talb-e-Muwathibat runs from the statutory attribution of knowledge, and a pre-emptor who wishes to postpone that starting point must plead the failure of the notice and prove it — asserting a later date of actual knowledge is not enough. The second is the proof of service of Talb-e-Ishhad: producing the postal counter-file and the registry number will not do where the vendee denies receipt; the person who effected delivery must be produced. Practitioners should note the Court's willingness to interfere with concurrent findings where they rest on misreading and misapplication of the Act, and its characterisation of the Talbs as essential conditions rather than procedural formalities.

LEGAL PROPOSITIONS (VERBATIM)

— *The law attributes knowledge of the sale to the pre-emptor after the expiry of the period prescribed therein.*

- The very object of Talb-e-Muwathibat is that, upon acquiring knowledge of the sale, the pre-emptor must manifest his intention to exercise the right of pre-emption without undue delay.
- His testimony, therefore, could establish, at best, the existence or dispatch of the postal article; it did not prove its actual delivery to, or receipt by, the vendee.
- Failure to establish either of them is fatal to the suit.

LEGAL PRINCIPLES EXPOUNDED

A later date of knowledge cannot be asserted so as to extend the statutory period unless the pre-emptor pleads and proves why the statutory presumption of knowledge should not operate.

Source: A subsequent assertion of a later date of knowledge, unsupported by a corresponding plea and proof showing why the statutory presumption of knowledge should not operate, cannot extend the period prescribed by law or revive a right that has not been exercised with the promptitude required by the statute.

Authority: Sections 13 and 32, Khyber Pakhtunkhwa Pre-emption Act, 1987; Bilal Ahmed v. Abdul Hameed (2020 SCMR 445)

Where Talb-e-Ishhad is made by registered notice, the pre-emptor must prove not merely its making and dispatch but its actual service on the vendee.

Source: The mere production of the postal record, in the absence of the evidence of the person who actually effected delivery, could not, particularly in the face of the vendee's specific denial, be treated as sufficient proof of service.

Authority: Section 13, Khyber Pakhtunkhwa Pre-emption Act, 1987; Allah Ditta v. Muhammad Anar (2013 SCMR 866); Khan Afsar v. Afsar Khan (2015 SCMR 311)

The Talbs are essential conditions for the exercise and preservation of the statutory right of pre-emption, not procedural formalities.

Source: These are not mere procedural formalities; they constitute essential conditions for the exercise and preservation of the statutory right of pre-emption.

Authority: Sections 13 and 32, Khyber Pakhtunkhwa Pre-emption Act, 1987

OPERATIVE ORDER

For the foregoing reasons, this appeal is allowed. The judgments and decrees passed by the Courts below are set aside, and the suit instituted by the respondent-pre-emptor is dismissed. There shall be no order as to costs.

■ View Full Judgment

CUSTOMS ACT, 1969 SS. 2(S), 139, 156(1), 171, 181, 187 — WHERE A PASSENGER HAS COMPLETED THE SUCCESSIVE STAGES OF INTERNATIONAL DEPARTURE AND IS INTERCEPTED AT THE FINAL SECURITY CHECK, HIS CONDUCT HAS PASSED BEYOND PREPARATION AND CONSTITUTES AN ATTEMPT TO SMUGGLE CURRENCY

Collector of Customs, Model Customs Collectorate, Islamabad v. Javed Iqbal Malik and another

PETITION CONVERTED INTO APPEAL AND ALLOWED; JUDGMENTS OF THE ISLAMABAD HIGH COURT AND THE CUSTOMS APPELLATE TRIBUNAL SET ASIDE AND THE ORDER-IN-ORIGINAL RESTORED; APPROVED FOR REPORTING

Civil Petition No. 3837 of 2023 (converted into appeal), Supreme Court of Pakistan (against the judgment dated 10.08.2023 of the Islamabad High Court in Customs Reference No. 04 of 2020) · Bench: Yahya Afridi, CJ, Naeem Akhter Afghan and Muhammad Shafi Siddiqui, JJ (judgment by Muhammad Shafi Siddiqui, J) · Decided: 17.08.2026 · Uploaded: 18.09.2026

FACTS

On 17.11.2017 the respondent was travelling from Benazir Bhutto International Airport, Islamabad to Sweden. State Bank Notification No. F.E.1/2015-SB dated 01.06.2015 then limited the carriage of foreign currency out of Pakistan to US\$10,000, any excess requiring a No Objection Certificate. Acting on information, Customs alerted their staff in the International Departure Hall. The respondent passed the baggage declaration counter, the Customs baggage search counter, the ANF search counter and the FIA immigration counter — at each of which the amount could have been disclosed — had his luggage checked, obtained his boarding card and had an exit stamp affixed to his passport. At the last ASF checking counter, situated after immigration, his jacket was scanned and US\$40,000 was detected concealed in its inner pocket. He was arrested after notice under section 171 and an FIR was registered. The Collector of Customs

(Adjudication) ordered outright confiscation. The Customs Appellate Tribunal allowed his appeal, and the Islamabad High Court answered the reference in the negative, treating the question whether he had attempted to smuggle as one of fact which it could not disturb in reference jurisdiction. The respondent pleaded that he had been unaware of the NOC requirement.

LEGAL ISSUE

Whether the respondent's conduct amounted to an 'attempt' to take foreign currency out of Pakistan within the meaning of 'smuggle' in section 2(s) of the Customs Act, 1969, notwithstanding that the currency was detected at the last security counter before departure; and whether ignorance of the NOC requirement furnishes an answer.

HOLDING

The appeal was allowed. Section 2(s) expressly includes currency among the goods to which the definition may apply and extends 'smuggle' to an attempt, so completion of the prohibited movement is not an indispensable condition. Applying the four stages identified in *Central Board of Revenue v. Khan Muhammad* (PLD 1986 SC 192) — intention, preparation, attempt and completed act — and the analysis in *Asghar Ali v. State* (PLD 2003 SC 250), the Court held the decisive question to be whether the acts actually undertaken were sufficiently proximate to the prohibited taking-out. *Khan Muhammad* was distinguished: there the passenger was intercepted boarding a domestic flight to Karachi, so a further independent journey remained necessary. Here the respondent had embarked upon and substantially completed the process of international departure, passing several stages at which disclosure could have been made, and was intercepted only at the final security stage. His plea of ignorance was described as 'too innocent': *ignorantia juris non excusat*, he was a dual national with a history of frequent international travel, and in any event the plea could not retrospectively alter the character of the acts undertaken. His failure to declare under section 139 assumed significance alongside the other circumstances.

LEGAL SIGNIFICANCE

The leading modern statement on where preparation ends and attempt begins in currency-smuggling cases, and one that will govern airport seizures. The Court is careful to reject a mechanical test based on the point of interception or the number of formalities completed — those circumstances matter not in themselves but because they demonstrate the stage the conduct had reached when interrupted. The practical consequence is significant: a traveller who has cleared immigration and holds a boarding pass is, on this reasoning, well past preparation, and the recovery of undeclared currency at the final security check will support confiscation. The judgment also confirms that ignorance of the State Bank limit is no defence, and its treatment of the section 139 declaration obligation as a circumstance supporting the inference of attempt is worth noting when advising travellers or contesting confiscations.

LEGAL PROPOSITIONS (VERBATIM)

- *The express inclusion of currency in clause (i) establishes that currency is within the class of goods to which the definition may apply; it does not, however, by itself render every possession or movement of foreign currency an act of smuggling.*
- *The statutory language consequently does not make completion of the prohibited movement an indispensable condition where an attempt to undertake that movement is established.*
- *The distinction between preparation and attempt cannot, however, be reduced to a mechanical test based upon the location of interception or the number of formalities completed.*
- *More importantly, the plea of ignorance cannot retrospectively alter the character of the acts actually undertaken by him.*

LEGAL PRINCIPLES EXPOUNDED

An attempt is an act done with the intention of committing the offence, forming part of a series of acts which if uninterrupted would result in its commission, and immediately rather than remotely connected with it.

Source: An attempt involves an act done with the intention of committing the particular offence and forming part of a series of acts which, if uninterrupted, could result in its actual commission.

Authority: Central Board of Revenue v. Khan Muhammad (PLD 1986 SC 192); section 2(s), Customs Act, 1969

The decisive question is whether the acts undertaken were a deliberate step sufficiently proximate to the prohibited act, not where the interception occurred.

Source: The decisive consideration remains whether the acts actually undertaken constituted a deliberate step sufficiently proximate to the prohibited taking-out of the currency.

Authority: Section 2(s), Customs Act, 1969; Asghar Ali v. State (PLD 2003 SC 250)

Ignorance of the law furnishes no defence to an act otherwise prohibited.

Source: The well-established maxim *ignorantia juris non excusat* embodies the principle that ignorance of law does not furnish a defence to an act otherwise prohibited by law.

Authority: Trio Industries (Pvt.) Limited v. Babu Sher (2026 SCMR 152)

OPERATIVE ORDER

For the foregoing reasons, the finding recorded by the Customs Appellate Tribunal, and affirmed by the Islamabad High Court, cannot be sustained. The impugned judgment dated 10.08.2023 passed by the Islamabad High Court in Customs Reference No.04/2020, as well as the judgment dated 05.09.2019 passed by the Customs Appellate Tribunal, Islamabad, are accordingly set aside. The Order-in-Original No.42/2018 dated 26.04.2018 passed by the Collector of Customs (Adjudication), Islamabad, is restored. The petition is converted into an appeal and the same is allowed in the aforesaid terms.

■ View Full Judgment

CODE OF CRIMINAL PROCEDURE, 1898 SS. 94, 161, 265-C, 265-F, 540; QANUN-E-SHAHADAT ORDER, 1984 ARTS. 129(G), 161; CONSTITUTION OF PAKISTAN, 1973 ART. 10-A — SECTION 540 MAY BE INVOKED AT ANY STAGE AND IS NOT BARRED BY THE ABSENCE OF A SECTION 161 STATEMENT; MID-TRIAL SUMMONING DOES NOT AUTOMATICALLY REQUIRE A DE NOVO TRIAL

Shahzad Ahmad v. The State through Prosecutor General Punjab, Lahore and another

LEAVE REFUSED AND PETITION DISMISSED; ORDERS OF THE LAHORE HIGH COURT AND THE ADDITIONAL SESSIONS JUDGE MAINTAINED, WITH DIRECTIONS TO THE TRIAL COURT; APPROVED FOR REPORTING

Criminal Petition No. 569-L of 2026, Supreme Court of Pakistan (against the order dated 15.04.2026 of the Lahore High Court, Lahore in Criminal Revision No. 71628 of 2025) · Bench: Muhammad Hashim Khan Kakar, Salahuddin Panhwar and Ishtiaq Ibrahim, JJ (judgment by Salahuddin Panhwar, J) · Decided: 12.08.2026 · Uploaded: 18.09.2026

FACTS

The petitioner faces trial in FIR No. 794 of 2024 registered at Police Station Sarai Mughal, District Kasur under sections 302, 324, 337-F(v), 201 and 34 PPC. He was arrested on 04.06.2024; copies under section 265-C were supplied on 07.10.2024 and charge was framed on 21.10.2024. A co-accused was arrested in January 2025, a supplementary challan followed, copies were supplied and the charge was amended on 01.03.2025. Three prosecution witnesses were examined. On 13.09.2025 the prosecution applied under section 540 to summon Muhammad Imran and Yasmeen Bibi; the trial Court allowed the application on 20.09.2025 — an order the petitioner did not challenge. He instead sought supply of the statements and material relating to the newly summoned witnesses and recommencement of the trial. That application was dismissed on 29.10.2025 and the High Court maintained the order. Muhammad Imran was not in the calendar of witnesses and no section 161 statement of his was on the record; Yasmeen Bibi was not named in the FIR or the original witness list. The High Court noted that on 26.03.2026 the available material relating to both was supplied.

LEGAL ISSUE

Whether the adversarial character of a criminal trial disables the Court from taking an active role in obtaining evidence necessary for a just decision; and how section 540 operates alongside the disclosure requirements of section 265-C where a witness is summoned mid-trial and no section 161 statement was recorded — in particular whether such summoning requires a de novo trial.

HOLDING

Leave was refused. Although the ordinary structure of a Pakistani criminal trial is adversarial, that description does not displace powers the legislature has expressly vested in the Court: sections 94 and 540 Cr.P.C. and Article 161 of the Qanun-e-Shahadat. Section 540 contains a controlling distinction — its first part is permissive, its second mandatory once the Court, on judicial application of mind, concludes the evidence is essential to a just decision. Following *Muhammad Azam v. Muhammad Iqbal* (PLD 1984 SC 95) and *Ansar Mehmood* (2011 SCMR 713), 'at any stage' bears its ordinary meaning, and carelessness or delay by a party does not prevent the Court from acting. Applying *Sajid Mehmood* (2022 SCMR 1882), the absence of a section 161 statement is no bar to examination under section 540; it goes to fairness, weight and prejudice. Section 265-C requires supply of existing disclosable material and does not require production of a statement never recorded. Here the petitioner had received the section 265-C material, knew the identity of the new witnesses, and had been supplied the available material. A de novo trial is an exceptional curative course, not the automatic consequence of every procedural defect; the remedy must correspond to the prejudice.

LEGAL SIGNIFICANCE

A judgment of general importance, closing with a seven-point summary of principles which practitioners will find immediately usable. It settles that mid-trial recourse to section 540 does not of itself unravel proceedings already validly conducted — a proposition of real practical consequence, since the contrary view would convert a remedial power into a mechanism for routinely erasing trials. Equally valuable is the Court's harmonising of sections 265-C, 265-F and 540: disclosure prevents unfair surprise, section 265-F regulates production by the parties, and section 540 equips the Court to obtain evidence necessary for a just decision, none to be read so broadly as to destroy the others. The Court is careful to mark the limits: section 540 is not a licence to become a second prosecutor, to shift the burden of proof, or to rehabilitate a case which remains deficient after all admissible material is considered. The safeguards it directs — disclosure of existing material, reasonable time to prepare, and full and effective cross-examination — are the practical protection for an accused faced with a late witness.

LEGAL PROPOSITIONS (VERBATIM)

- *These provisions are not decorative. They not only empower but also impose a duty upon the Judge to seek the truth.*
- *A lacuna is an inherent weakness in a party's case. It is not synonymous with every oversight or every failure to place relevant material on the record.*
- *The power exists for the Court, not for the improvement of a party's case.*
- *The remedy must correspond to the prejudice.*

LEGAL PRINCIPLES EXPOUNDED

The first part of section 540 is discretionary and the second mandatory; the duty arises only once the Court concludes that the evidence is essential to the just decision of the case.

Source: Section 540 itself contains the controlling distinction. Its first part is permissive and discretionary; its second part is mandatory.

Authority: Section 540, Code of Criminal Procedure, 1898; *Muhammad Azam v. Muhammad Iqbal* (PLD 1984 SC 95); *The State v. Muhammad Yaqoob* (2001 SCMR 308)

Section 265-C requires supply of the statements and documents specified therein which have been recorded or prepared; it does not presuppose that a section 161 statement exists for every person who may later be found necessary to testify.

Source: It does not create a legal fiction that a statement under Section 161 must exist for every person who may later be found competent or necessary to testify.

Authority: Section 265-C, Code of Criminal Procedure, 1898; *Muhammad Tanveer v. The State* (2020 MLD 62)

The absence of a statement under section 161 goes to fairness, weight and prejudice; it does not extinguish the jurisdiction to examine the witness under section 540.

Source: Absence of a Section 161 statement therefore goes to fairness, weight and prejudice; it does not, by itself, extinguish jurisdiction.

Authority: *Sajid Mehmood v. The State* (2022 SCMR 1882); *Wasiullah v. Ali Mohseen* (2016 P.Cr.L.J. 1124)

The criminal court is neither a silent spectator nor a substitute prosecutor; the contest belongs to the parties and the burden of proving guilt remains on the prosecution.

Source: we deem it necessary to reiterate that the criminal Court is neither a silent spectator nor a substitute prosecutor.

Authority: Nawabzada Shah Zain Bugti v. The State (PLD 2013 SC 160); Chairman, NAB v. Muhammad Usman (PLD 2018 SC 28)

OPERATIVE ORDER

For the foregoing reasons, leave is refused and the petition is dismissed. The judgment dated 15.04.2026 of the Lahore High Court, Lahore, and the order dated 29.10.2025 of the learned Additional Sessions Judge, Pattoki, are maintained. The trial Court shall proceed with the trial expeditiously and strictly in accordance with law.

■ View Full Judgment

Lahore High Court

4 judgments

PREVENTION OF ELECTRONIC CRIMES ACT, 2016 S. 14; PREVENTION OF ELECTRONIC CRIMES (AMENDMENT) ACT, 2025; CODE OF CRIMINAL PROCEDURE, 1898 S. 160; ICC ANTI-CORRUPTION CODE FOR PARTICIPANTS ARTS. 1.11, 6.1.2; CONSTITUTION OF PAKISTAN, 1973 ART. 199 — THE ICC'S DISCIPLINARY FRAMEWORK SUPPLEMENTS THE CRIMINAL LAW AND DOES NOT BAR AN INQUIRY BY A COMPETENT STATE AGENCY INTO ONLINE BETTING AND GAMBLING

Muhammad Rizwan v. Federation of Pakistan, etc.

PETITION DISMISSED; PETITIONER DIRECTED TO JOIN AND COOPERATE WITH THE INQUIRY, WITH A DIRECTION THAT HE NOT BE HARASSED; APPROVED FOR REPORTING

Writ Petition No. 53969 of 2026, Lahore High Court, Lahore (2026 LHC 5855) · Bench: Aalia Neelum, Chief Justice · Decided: 17.09.2026 · Uploaded: 21.09.2026

FACTS

The petitioner challenged a call-up notice issued to him under section 160 Cr.P.C. on 08.09.2026 by the National Cyber Crime Investigation Agency in Inquiry No. ENQ-CCRC-LHR-3780/26, requiring him to appear on 10.09.2026, and the inquiry proceedings themselves, seeking their quashment, return of seized articles and restraint against coercive action. The inquiry concerns online betting and gambling relating to cricket in Pakistan. The Law Officer submitted that it presently concerns allegations of electronic fraud within section 14 (Wrongful Gain) of PECA, arising from information obtained during cyber patrolling. The petitioner had complied with the notice, appeared on 10.09.2026 and submitted a written reply on 14.09.2026. His counsel contended that the Anti-Corruption Unit of the International Cricket Council is responsible for protecting cricket from corruption, that the matter had not been reported to that Unit, and that the ACU was the relevant authority to deal with such allegations.

LEGAL ISSUE

Whether the existence of the ICC's Anti-Corruption Code and its Anti-Corruption Unit ousts or bars an inquiry by a competent state agency under the Prevention of Electronic Crimes Act into allegations of online betting and gambling in cricket; and whether a call-up notice and an inquiry at their inception may be interfered with under Article 199.

HOLDING

The petition was dismissed. Article 1.11 of the ICC Anti-Corruption Code states in terms that the Code does not establish criminal laws but disciplinary rules of professional conduct, that Corrupt Conduct may also be a criminal offence or a breach of other applicable laws, and that the Code is intended to supplement such laws and not to prejudice or undermine their application. Read with section 14 of PECA, it follows that a participant cannot avoid criminal proceedings by relying on the Code. On the contrary, to qualify for Substantial Assistance under Article 6.1.2 a Participant must fully disclose the information in his possession and reasonably cooperate, on request, with the Prosecuting Authority, the ICC, any Designated Anti-Corruption Official or any criminal or regulatory authority. On the notice itself, a call-up notice is not an accusation of

wrongdoing but a procedural mechanism for gathering information; the proceedings were neither coram non judice nor tainted by malice, and an inquiry into corruption in sport cannot be interfered with at its infancy where the competent authority has yet to complete it. The petitioner retains his remedy against any final outcome, and may pursue the return of seized articles before the competent court.

LEGAL SIGNIFICANCE

Notable both for its subject and for the Chief Justice's reasoning. It is, so far as we are aware, the first Pakistani judgment to construe the ICC Anti-Corruption Code against the domestic criminal law, and it answers a submission that will recur as investigations into corruption in sport increase: a sport's private disciplinary framework supplements rather than displaces the criminal law, and Article 1.11 is explicit to that effect. The Court's observation that the very Code relied on obliges a Participant to cooperate with criminal and regulatory authorities turns the argument back on itself. The judgment is also a useful short authority on the nature of a call-up notice under section 160 Cr.P.C. — a procedural instrument for gathering information rather than an accusation — and on the reluctance of the constitutional jurisdiction to interrupt an inquiry at its inception, subject to the direction that the person summoned not be harassed and that the inquiry proceed strictly in accordance with law.

LEGAL PROPOSITIONS (VERBATIM)

— *When Section 1.11 of the ICC Anti-Corruption Code is read in conjunction with Section 14 of the PECA, it becomes apparent that a participant cannot seek to avoid criminal proceedings by relying upon the provisions of the said Code.*

— *The existence of the ICC's disciplinary framework, therefore, does not, at this stage, operate as a bar to an inquiry by a competent state agency under the applicable law.*

— *A call-up notice is a written instrument through which an inquiry or investigation requires a suspect, witness, or custodian of relevant material to appear in connection with a pending inquiry or investigation.*

— *It does not, by itself, constitute an accusation of wrongdoing; rather, it is a procedural mechanism for gathering information, examining persons acquainted with the facts, and, where necessary, requiring the production of relevant documents or material.*

LEGAL PRINCIPLES EXPOUNDED

The ICC Anti-Corruption Code obliges a Participant to assist and cooperate with the prosecuting authority or any competent criminal or regulatory authority, and so cannot be used as a shield against criminal inquiry.

Source: *Thus, the very Code upon which the petitioner seeks to rely, obligates a Participant to assist and cooperate, upon request, with the prosecuting authority or any competent criminal or regulatory authority.*

Authority: Articles 1.11 and 6.1.2, ICC Anti-Corruption Code for Participants; section 14, Prevention of Electronic Crimes Act, 2016

An inquiry which is neither without jurisdiction nor tainted by malice will not be interfered with at its inception, where the competent authority has yet to complete it and determine whether further action is warranted.

Source: *Inquiry proceedings are neither coram non judice i.e. without jurisdiction nor tainted with any malice or malafide intent, rather for uncovering and eradicating corruption in the sports, hence, same cannot be interfered at its infancy, particularly where the competent authority is yet to complete the process of inquiry and determine whether any further action is warranted.*

Authority: Article 199, Constitution of Pakistan, 1973; section 160, Code of Criminal Procedure, 1898

OPERATIVE ORDER

For the foregoing reasons, the instant petition stands dismissed. There shall, however, be no order as to costs.

■ [View Full Judgment](#)

RECOGNITION AND ENFORCEMENT (ARBITRATION AGREEMENTS AND FOREIGN ARBITRAL AWARDS) ACT, 2011 S. 6; NEW YORK CONVENTION, 1958 ART. V(1)(B), V(2)(B); CODE OF CIVIL PROCEDURE, 1908 O. XXI R. 10 — THE ARTICLE V GROUNDS ARE EXHAUSTIVE; A PARTY WHO ABSTAINS FROM THE ARBITRATION CANNOT RELY ON ITS OWN NON-PARTICIPATION, AND PUBLIC POLICY IS NOT A ROUTE TO MERITS REVIEW

M/s Mughal Iron & Steel Industries Limited v. Metro Metals Northwest

INTRA-COURT APPEAL DISMISSED; RECOGNITION AND ENFORCEMENT OF THE FOREIGN ARBITRAL AWARD UPHELD; APPROVED FOR REPORTING

I.C.A. No. 17021 of 2025, Lahore High Court, Lahore (2026 LHC 5799) (against the judgment dated 29.01.2025 of the learned Single Judge in C.O.S. No. 42300 of 2022) · Bench: Ahmad Nadeem Arshad and Justice Ms. Shireen Imran, JJ (judgment by Ahmad Nadeem Arshad, J) · Decided: 09.09.2026 · Uploaded: 18.09.2026

FACTS

The parties entered into a Sales Contract dated 24.02.2020 under which the appellant was to purchase approximately 30,000 MT of scrap metal from the respondent. The contract contained an arbitration clause. Disputes arose concerning payment, letters of credit and the appellant's obligation to receive the cargo. Proceedings were instituted before the United States District Court for the District of Oregon, Portland Division, the dispute was referred to arbitration and a final award was rendered in the respondent's favour. The respondent applied under section 6 of the Act of 2011 for recognition and enforcement. The appellant resisted on grounds referable to Article V: that the award was unenforceable absent confirmation by the competent United States court; that it travelled beyond the scope of the arbitration agreement; that the proceedings were conducted without proper notice; and that the tribunal failed to take account of its position on the letters of credit and its contractual obligations, including reliance on the COVID-19 lockdown and the contractual force majeure clause. The learned Single Judge recognised the award, granted judgment in the award amount with costs, and converted the proceedings into execution under Order XXI Rule 10 CPC.

LEGAL ISSUE

Whether the objections advanced — absence of prior confirmation in the country of origin, excess of jurisdiction, want of notice, force majeure and contractual performance — fall within Article V of the New York Convention so as to justify refusal of recognition and enforcement of a foreign arbitral award.

HOLDING

The appeal was dismissed. On the notice objection under Article V(1)(b), the record disclosed that notices of the appointment of the sole arbitrator and of the proceedings were sent, the appellant furnished no convincing evidence to displace that material, and the findings of the United States court as to service were taken into account; a party cannot deliberately or negligently abstain from an arbitral process and then use its own non-participation to defeat enforcement, the maxim *nemo ex suo delicto meliorem suam conditionem facere potest* being attracted. On public policy under Article V(2)(b), the Court followed Taisei Corporation, holding that recognition may be refused only where enforcement would offend the most basic notions of morality and justice prevailing in Pakistan, and that the ground cannot be used to examine the merits or to create defences the Convention does not contain. Whether the circumstances constituted force majeure, whether the contractual requirements were satisfied and what followed were matters for the tribunal. The objections collectively sought to enlarge the limited statutory grounds into a general equitable jurisdiction, which would defeat the legislative scheme.

LEGAL SIGNIFICANCE

A Division Bench authority that sits alongside the Sindh High Court's decision in TRG International (2026 SHC KHI 1634, reported in the briefing of 8 September 2026) and gives Pakistan a consistent appellate line on enforcement. Its survey of the public-policy exception — from the 'unruly horse' through Parsons and Whittemore, the Privy Council in *Betamax*, and the Pakistani authorities from *Nan Fung Textiles* onward — makes it a convenient single source. Three propositions will be relied on in practice: a party that absents itself from the arbitration cannot found an Article V(1)(b) objection on that absence; the enforcing court's jurisdiction is supervisory, not appellate, so contractual defences already considered by the tribunal cannot be re-agitated; and an intra-court appeal will not succeed merely because another view was theoretically

possible. The Court's observation that requiring a successful party to litigate the same dispute twice would deprive arbitration of finality states the commercial rationale plainly.

LEGAL PROPOSITIONS (VERBATIM)

— *A party cannot deliberately or negligently abstain from participating in an arbitral process, and thereafter seek to use its own non-participation as a basis for defeating enforcement of the resulting award.*

— *To permit such objections to be recast as matters of public policy would enlarge the limited supervisory jurisdiction of the enforcing Court into a merits review, contrary to the statutory scheme and the authoritative guidance of the Hon'ble Supreme Court.*

— *A generalized allegation of injustice, incorrect appreciation of evidence, contractual error or erroneous conclusion is not sufficient.*

— *The Court's task is to protect the limited safeguards expressly preserved by law, not to substitute its own assessment for that of the arbitral tribunal.*

LEGAL PRINCIPLES EXPOUNDED

The public policy ground is exceptional and may not be used to examine the merits of a foreign award or to create defences the Convention does not provide.

Source: *The public policy ground cannot be used to examine the merits of a foreign arbitral award or to create more grounds of defence that are not provided for in the Convention, such as misapplication of the law of Pakistan by the arbitrator in making the award or the arbitrator's decision being contrary to the law of Pakistan.*

Authority: *Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd. (2024 SCMR 640); Article V(2)(b), New York Convention, 1958*

The objections advanced sought to convert the limited statutory grounds of refusal into a general equitable jurisdiction to reconsider whether the award was right or wrong, which would defeat the legislative scheme.

Source: *The objections advanced before us, taken collectively, disclose a common difficulty: the appellant seeks to enlarge the limited statutory grounds of refusal into a general equitable jurisdiction enabling the enforcing Court to reconsider whether the award was right or wrong.*

Authority: *Article V, New York Convention, 1958; section 6, Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011*

Re-agitating before the enforcing court every contractual defence already considered by the tribunal would deprive the arbitral process of finality.

Source: *If every contractual defence already considered by the arbitral tribunal could be re-agitated before the enforcing Court, the arbitral process would cease to provide finality.*

Authority: *New York Convention, 1958; Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011*

OPERATIVE ORDER

In view of the above, this Intra-Court Appeal being devoid of merit is dismissed. No order as to costs.

■ [View Full Judgment](#)

PAKISTAN PENAL CODE, 1860 SS. 302(B), 34; CODE OF CRIMINAL PROCEDURE, 1898 S. 544-A; QANUN-E-SHAHADAT ORDER, 1984 ART. 164; PUNJAB FORENSIC SCIENCE AGENCY ACT, 2007 S. 9(3) — A USB SAID TO CONTAIN CCTV FOOTAGE PROVES NOTHING WHERE THE INSTALLATION OF THE CAMERAS IS UNPROVED, THE RECORDING DEVICE IS NOT SECURED AND THE MAKER IS NOT PRODUCED

Muhammad Farhan v. The State (with Murder Reference No. 111 of 2023)

APPEAL ALLOWED AND CONVICTION AND SENTENCE SET ASIDE; APPELLANT ACQUITTED; DEATH SENTENCE NOT CONFIRMED AND MURDER REFERENCE ANSWERED IN THE NEGATIVE; APPROVED FOR REPORTING

Criminal Appeal No. 40490-J of 2023 and Murder Reference No. 111 of 2023, Lahore High Court, Lahore (2026 LHC 5836) · Bench: Farooq Haider and Amir Ajam Malik, JJ (judgment by Farooq Haider, J) · Decided: 10.09.2026 · Uploaded: 18.09.2026

FACTS

The appellant was convicted under section 302(b) PPC for the murder of Amjad Ali and sentenced to death with compensation of Rs. 1,000,000 under section 544-A Cr.P.C., in a case arising from FIR No. 971/2022 registered at Police Station Nishatabad, Faisalabad. The prosecution relied in part on physical recoveries and in part on a USB flash drive (P-3) said to contain CCTV footage of the place of occurrence. The recovery memo for a metallic rod was contradicted by the prosecution's own Forensic Science witness, who spoke of securing a pipe and did not mention blood staining or swabs; the recovery memo was signed by no member of the PFSA Crime Scene Team; and no iron rod, stand or sheet appeared in the site plan or the application for registration of the case. As to the USB, it was not prepared by the Investigating Officer on the day of occurrence but produced by the complainant on 07.10.2022. Neither the application for registration nor the site plan mentioned any CCTV camera, and the draftsman deposed that had a camera been pointed out he would have shown it. Neither the cameras, nor the DVR, nor the original recording were secured; no factory official was produced to prove installation; no one who prepared the USB was produced; the USB was not before the trial court; and it was never sent for forensic analysis or compared against controlled recordings.

LEGAL ISSUE

Whether a USB said to contain CCTV footage of the occurrence can be relied upon where the installation of the cameras is not proved, the recording device and original recording were never secured, the maker of the copy was not produced and the device was not subjected to forensic analysis.

HOLDING

The appeal was allowed and the appellant acquitted. The physical recoveries were doubtful: the recovery of the metallic rod, iron stands and iron sheet from the place of occurrence could not be relied upon, safe custody and safe transmission to the PFSA were unproved, and a partial DNA profile from an iron stand — a mixture of at least three individuals including the deceased and the appellant, both of whom worked in the same factory — was no incriminating material, particularly as its use was not alleged by the complainant or the eyewitness. As to the USB, since the installation of CCTV cameras at the place of occurrence was not established, it could not be said with certainty that the device contained footage of that place; no one who prepared it was produced; and it was never forensically examined. Applying the checklist in *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675), the USB was of no legal worth. A single circumstance or doubt in the prosecution case is sufficient for acquittal.

LEGAL SIGNIFICANCE

A practical and stringent application of the *Ishtiaq Ahmed Mirza* requirements to a USB, in a case where the consequence was the reversal of a death sentence. It repays close reading by anyone tendering or resisting electronic evidence. The Court's approach is sequential: first prove that the recording system existed at the place in question — which here failed because no camera appeared in the FIR application or the site plan and the draftsman said none was pointed out to him; then secure the original device and recording rather than a copy; then produce the person who made the copy; then have it forensically examined for authenticity and editing, and compared against controlled recordings of the persons and place. The observation that forensic analysis obtained now would not assist because installation itself was unproved is a useful reminder that the foundation cannot be repaired after the event.

LEGAL PROPOSITIONS (VERBATIM)

- *So, installation of CCTV cameras at the place of occurrence has not been proved.*
- *Therefore, USB (flash drive/P-3) is of no avail to the case of prosecution.*
- *No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.*
- *Safe custody of the audio tape or video after its preparation till production before the court must be proved.*

LEGAL PRINCIPLES EXPOUNDED

The accuracy of the recording must be proved and satisfactory evidence produced to rule out any possibility of tampering.

Source: Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, has to be produced so as to rule out any possibility of tampering with the record.

Authority: *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675); Article 164, Qanun-e-Shahadat Order, 1984

A single circumstance or doubt in the prosecution case is sufficient for acquittal.

Source: It is well established principle of law that single circumstance/doubt in case of prosecution is sufficient for acquittal

Authority: *Muhammad Bilal v. The State* (2025 SCMR 1580); *Muhammad Asghar v. The State* (2025 SCMR 1616)

Where recovery and safe custody of an article are not established, a forensic report relating to swabs taken from it is of no avail to the prosecution.

Source: Similarly, when recovery and safe custody of the metallic rod as well as swabs from the stained and unstained area of the same have not been established, then DNA report regarding swabs taken from stained section and unstained section of iron rod mentioned in the report of PFSA (Ex.PM), is of no avail to the case of prosecution.

Authority: Punjab Forensic Science Agency Act, 2007; Qanun-e-Shahadat Order, 1984

OPERATIVE ORDER

In view of, what has been discussed above, Criminal Appeal No.40490-J/2023 filed by Muhammad Farhan (appellant), is allowed; conviction recorded and sentence awarded to the appellant through impugned judgment dated: 30.03.2023 passed in aforementioned subject case, are hereby set aside. Appellant is acquitted of the charge, he shall be released from the jail forthwith, if not required in any other case. Resultantly, death sentence awarded to Muhammad Farhan (appellant) is NOT CONFIRMED and Murder Reference (M. R. No.111 of 2023) is answered in NEGATIVE.

■ [View Full Judgment](#)

PAKISTAN PENAL CODE, 1860 SS. 405, 409; PREVENTION OF CORRUPTION ACT, 1947 S. 5(2); PAKISTAN CRIMINAL LAW ACT, 1958 S. 10; PUNJAB CIVIL SERVANTS (EFFICIENCY AND DISCIPLINE) RULES, 1999 — A DEPARTMENTAL INQUIRY REPORT IS INADMISSIBLE IN A CRIMINAL TRIAL WITHOUT FORMAL PROOF, AND A DEPARTMENTAL FINDING OF NEGLIGENCE NEGATES THE MENS REA REQUIRED FOR CRIMINAL BREACH OF TRUST

Muhammad Khalid Rasheed v. The State and another

APPEAL ALLOWED; CONVICTION AND SENTENCE SET ASIDE AND APPELLANT ACQUITTED; APPROVED FOR REPORTING

Criminal Appeal No. 234815 of 2018, Lahore High Court, Lahore (2026 LHC 5821) · Bench: Muhammad Amjad Pervaiz, J · Decided: 11.09.2026 · Uploaded: 18.09.2026

FACTS

The appellant, while posted as Ahlmad in the Court of a Civil Judge at Chunian, was alleged to have received the file of a decided civil suit from the Copying Branch and not handed it over for consignment to the record room. He was convicted by the Special Judge, Anti-Corruption, Lahore Camp at Kasur under section 409 PPC and section 5(2) of the Prevention of Corruption Act, 1947 and sentenced to two years' rigorous imprisonment on each count with fines, to run concurrently. There was no ocular account. PW-1 chalked out the FIR; PW-2 attested a seizure memo through which the Investigating Officer secured Exh.P1 (an order of the District and Sessions Judge under the Efficiency and Discipline Rules) and Exh.P2 (a departmental inquiry report); the record did not disclose who produced those documents to the Investigating Officer; PW-3 was the complainant; and PW-4 and PW-5 were investigating officers. The letter purportedly authorising the complainant to lodge the complaint was never exhibited. The concluding paragraph of the inquiry report found the appellant guilty of 'inefficiency and negligence' and proposed the withholding of one increment. The Investigating Officer admitted in cross-examination that he had recommended judicial action because the Sessions Judge had already found the appellant inefficient and guilty of misconduct.

LEGAL ISSUE

Whether a conviction for criminal breach of trust by a public servant can rest on a departmental inquiry report and a consequential administrative order whose authors were neither examined during investigation nor produced at trial; and whether a departmental finding of negligence can supply the mens rea required by sections 405 and 409 PPC.

HOLDING

The appeal was allowed and the appellant acquitted. The trial court had convicted on the strength of Exh.P1 and Exh.P2 although their authors neither joined the investigation nor appeared as witnesses; both documents were inadmissible for want of formal proof, and no reliance could be placed on them without an opportunity of cross-examination, being hit by the exclusionary rule. Even examination of the inquiry officer would not have sufficed, because the material forming the basis of the inquiry finding had to be independently proved at trial. Applying Muhammad Ajmal and the line from Mst. Naseer Begum v. Sain (1972 SCMR 584), even the judgment of a civil court cannot per se establish facts constituting an offence before a criminal court, and an inquiry report stands on a weaker footing still. In any event the documents, taken at face value, destroyed rather than supported the prosecution: a finding of inefficiency and negligence negates the hypothesis of mens rea, which was sine qua non. The evidence of the investigating officers did not assist, an investigating officer being no substitute for the witnesses not produced, and the record showed the officer had proceeded with a predisposed mind.

LEGAL SIGNIFICANCE

A valuable authority wherever a criminal prosecution is built on the back of a departmental proceeding — a common pattern in anti-corruption cases against public servants. Two propositions are of general use. The first is evidentiary: an inquiry report and the administrative order founded on it are not proved merely by being produced through an investigating officer, they are hit by the exclusionary rule absent their authors and cross-examination, and even producing the inquiry officer will not do because the underlying material must itself be proved at trial. The second is substantive: a departmental finding of negligence or inefficiency is, in terms, inconsistent with the dishonest intention that sections 405 and 409 require, so the very document

relied on by the prosecution may defeat it. The judgment opens with the maxim *actus non facit reum nisi mens sit rea* and its reasoning follows that discipline throughout. The Court's criticism of an investigating officer who proceeded from a predisposed mind, rather than investigating the matter from all angles, is a further useful passage.

LEGAL PROPOSITIONS (VERBATIM)

- *actus non facit reum nisi mens sit rea*
- *both the documents were liable to be ruled out of consideration, being hit by the Exclusionary Rule*
- *Even the judgments of a Civil Court cannot per se be used to establish facts constituting an offence before a Criminal Court.*
- *The above admission tends to show that the investigating officer proceeded in the matter with a predisposed mind*

LEGAL PRINCIPLES EXPOUNDED

A departmental finding of inefficiency and negligence negates the mens rea which is a sine qua non of criminal breach of trust by a public servant.

Source: *The above finding of negligence and inefficiency reacts upon the gravamen of the charge in terms of section 409 P.P.C. and 5(2)47 PCA and negates the hypothesis of any mens rea, which was sine qua non.*

Authority: Sections 405 and 409, Pakistan Penal Code, 1860; section 5(2), Prevention of Corruption Act, 1947

Producing the author of an inquiry report does not cure the defect; the material forming the basis of the inquiry finding must itself be independently proved at trial.

Source: *Even examination of the author of Exh P1 (inquiry officer) as PW could not have sufficed because the material forming the basis of the finding in the inquiry was to be independently proved in accordance with law before the court during trial.*

Authority: *Muhammad Ajmal v. State (PLJ 2004 Lahore Cr.C 734); Pir Mazharul Haq v. The State (PLD 2005 SC 63)*

The statement of an investigating officer is relevant only as to the material he collected and the witnesses who ultimately depose; he cannot prove a document of which he is not the author or act as proxy for witnesses not produced.

Source: *He cannot prove a document of which he is not the author, nor play proxy to the witnesses who are not produced during trial without any cogent reason.*

Authority: *Farrukh Javed Ghumman v. The State (PLD 2004 Lahore 155); Moonda v. The State (PLD 1958 SC (Pak.) 275)*

OPERATIVE ORDER

Careful appraisal of the entire evidence and the above-mentioned legal principles have led me to an irresistible conclusion that the prosecution failed miserably to discharge the onus of proof, and this is a case of no evidence. Hence, the instant criminal appeal is allowed; the conviction and sentence awarded vide impugned judgment by the learned trial court are hereby set aside, and the appellant is acquitted of the charge; he is on bail, and his surety(ies) stand discharged.

■ [View Full Judgment](#)

Sindh High Court

3 judgments

SINDH SALES TAX ON SERVICES ACT, 2011 SS. 9, 17, 17(3), 18, 44, 45, 63, 65(1)(B), 83A; SINDH COVID-19 EMERGENCY RELIEF ACT, 2020 SS. 3(2)(E), 5, 6 — DEFAULT SURCHARGE UNDER SECTION 44 IS A STRICT, COMPENSATORY LIABILITY ATTRACTED UPON DEFAULT 'WHETHER WILFULLY OR OTHERWISE'; NO OFFICER, COMMISSIONER (APPEALS) OR TRIBUNAL MAY WAIVE IT ON GROUNDS OF HARDSHIP

Sindh Revenue Board, Karachi v. M/s Itecknologi Tracking Services (Private) Limited (and eleven connected references)

QUESTION OF LAW ANSWERED IN FAVOUR OF THE BOARD AND AGAINST THE RESPONDENTS; ORDERS OF THE APPELLATE TRIBUNAL MODIFIED ACCORDINGLY; APPROVED FOR REPORTING

Spl. Sales Tax Reference Applications No. 86 of 2025 and eleven others, High Court of Sindh at Karachi; 2026 SHC KHI 1756, 1757 and 1759 · Bench: Agha Faisal and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: 21.08.2026 (heard 18.08.2026) · Uploaded: 17.09.2026

FACTS

Twelve connected references by the Sindh Revenue Board raised a single recurring question. In each, the respondent taxpayer had paid the tax but paid it late; default surcharge was demanded under section 44 at Inter-Bank Rate plus three per cent; and in each the Appellate Tribunal deleted the demand on the reasoning that the default had not been shown to be wilful and that absent mens rea no surcharge could be imposed. The respondents advanced five defences: the disruption caused by the COVID-19 pandemic; that a shortfall had arisen from an arithmetical error; that liability lay with the recipient under the reverse-charge and withholding regime; that payment had been restrained by an order of Court obtained by the recipient in proceedings to which the registered person was not a party; and that section 5 of the Sindh COVID-19 Emergency Relief Act, 2020, read with its non obstante clause in section 6, extended the time for performance. In Reference No. 86 of 2025 the demand covered tax periods from January 2019 to February 2024, some sixty-two months, with late payments both well before the pandemic and long after normal commercial activity had resumed, and no bank statement, ageing of receivables or correspondence was produced.

LEGAL ISSUE

Whether the liability to default surcharge under section 44 of the Sindh Sales Tax on Services Act, 2011 requires the department to establish that the default was wilful; and whether hardship, arithmetical error, contractual withholding arrangements, an interim order binding another party, or the COVID-19 relief legislation relieve a registered person of that liability.

HOLDING

The question was answered in favour of the Board. The liability under section 44 is a strict statutory liability of a compensatory character, attracted upon non-payment or short payment by the due date, whether the default be deliberate, unintentional or inadvertent; proof of wilfulness is not a condition of its imposition. The power to grant relief resides in the Board under sections 45 and 17(3) and in a committee under section 65, and not in the officers, the Commissioner (Appeals) or the Tribunal, which is a creature of statute possessed of no equitable jurisdiction. Each defence failed. Sympathy is not a source of jurisdiction and *lex non cogit ad impossibilia* is attracted by impossibility, not difficulty; the respondents had in fact paid the principal during the period said to be impossible. An arithmetical error is the paradigm case of a default 'otherwise' than wilful. A statutory liability cannot be transferred by private arrangement, the withholding regime being machinery for collection which does not displace section 9. An interim order operates in personam and did not restrain the registered person from paying. The Act of 2020 dealt with provincial taxes specifically in section 3(2)(e), leaving relief to be notified, and section 5 is not an exempting provision in a fiscal statute.

LEGAL SIGNIFICANCE

This is the companion to *Sindh Revenue Board v. Fumicon Services* (2026 SHC KHI 1646, reported on 8 September 2026), and together the two complete a coherent scheme which the same Bench has now stated twice: surcharge under section 44 is compensatory and strict, penalty under section 43 is punitive and requires mens rea. The registered person who pays late but innocently answers in surcharge; he answers in penalty only when his default is his fault. Several passages have wider use. The observation that sales tax on

services is an indirect tax, so that money collected from the recipient is not the taxpayer's working capital and surcharge merely charges him for retaining public money, supplies the rationale. The holding that a statutory liability cannot be transferred by private arrangement will apply to every withholding dispute. And the treatment of the interim order — that an order in personam obtained by another party affords no defence, and that the remedy was to apply to be joined and seek clarification — is a caution worth passing on to clients who assume a stay binds the revenue.

LEGAL PROPOSITIONS (VERBATIM)

- *But sympathy is not a source of jurisdiction, and there is no equity about a tax.*
- *An assertion from the Bar is not evidence.*
- *Money so collected is not the taxpayer's working capital.*
- *An interim order operates in personam.*

LEGAL PRINCIPLES EXPOUNDED

Default surcharge under section 44 is a strict statutory liability of a compensatory character, attracted upon default whether deliberate, unintentional or inadvertent.

Source: *The liability to pay default surcharge under section 44 of the Sindh Sales Tax on Services Act, 2011 is a strict statutory liability of a compensatory character.*

Authority: *Section 44, Sindh Sales Tax on Services Act, 2011; Commissioner Inland Revenue v. M/s Byco Petroleum Pakistan Ltd.*

Proof of wilfulness or mens rea is not a condition of the imposition of default surcharge, and no adjudicating forum may waive, reduce or defer it on grounds of hardship or equity.

Source: *Proof of wilfulness, or of mens rea, is not a condition of its imposition.*

Authority: *Sections 44, 45, 17(3) and 65(1)(b), Sindh Sales Tax on Services Act, 2011*

The maxim *lex non cogit ad impossibilia* is attracted by impossibility and not by difficulty, and the burden of establishing impossibility lies on the party asserting it.

Source: *The maxim *lex non cogit ad impossibilia* is attracted by impossibility, not by difficulty, and the burden of establishing impossibility lies upon him who asserts it.*

Authority: *Section 44, Sindh Sales Tax on Services Act, 2011*

A statutory liability cannot be transferred by private arrangement; the withholding regime is machinery for collection at source and does not relieve the person on whom section 9 fastens liability.

Source: *a statutory liability cannot be transferred by private arrangement*

Authority: *Sections 9 and 18, Sindh Sales Tax on Services Act, 2011; Sindh Sales Tax on Services Rules, 2011*

OPERATIVE ORDER

For the foregoing reasons, the question framed in paragraph 2 above is answered in favour of the applicant Board and against the respondents, in the following terms. The liability to pay default surcharge under section 44 of the Sindh Sales Tax on Services Act, 2011 is a strict statutory liability of a compensatory character. It is attracted upon the occurrence of default, that is to say, upon the non-payment or short payment of the tax due by the due date, whether the default be deliberate, unintentional or inadvertent. Proof of wilfulness, or of mens rea, is not a condition of its imposition. ... It follows that the learned Appellate Tribunal fell into error in requiring the Board to establish that the default was wilful, and its orders proceeding upon that footing cannot be sustained. In terms of section 63(5) of the Act, 2011, the orders of the learned Appellate Tribunal, Sindh Revenue Board impugned in these references shall stand modified accordingly. ... The reference applications stand disposed of in the above terms, with no order as to costs.

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PREVENTION OF ELECTRONIC CRIMES ACT, 2016 SS. 20, 21, 24, 29, 30, 43, 44; PREVENTION OF ELECTRONIC CRIMES (AMENDMENT) ACT, 2025; CODE OF CRIMINAL PROCEDURE, 1898 SS. 63, 155(2), 173, 561-A; CONSTITUTION OF PAKISTAN, 1973 ARTS. 13(A), 199 — WHERE THE LOCAL POLICE COULD NOT LAWFULLY INVESTIGATE PECA OFFENCES, THE FIR LATER REGISTERED BY NCCIA IS THE FIRST INFORMATION OF THOSE OFFENCES AND THE RULE AGAINST A SECOND FIR IS NOT ATTRACTED

Shahida Parveen v. Federation of Pakistan and others

PETITION FOR QUASHMENT DISMISSED; OBSERVATIONS RECORDED AS TO AVOIDANCE OF TWO PROCEEDINGS ON THE SAME ALLEGATIONS; APPROVED FOR REPORTING

C.P. No. D-2066 of 2025, High Court of Sindh, Bench at Sukkur; 2026 SHC SUK 1761 · Bench: Arbab Ali Hakro and Muhammad Osman Ali Hadi, JJ (order by Arbab Ali Hakro, J) · Decided: 15.09.2026 · Uploaded: 15.09.2026

FACTS

A press reporter lodged FIR No. 44/2025 at Police Station Agra, District Khairpur on 27.05.2025 under sections 502, 504 and 506(ii) PPC, alleging that an abusive video, a video of him undressed and photographs of his family had been uploaded to a Facebook ID and made viral, and that three named persons had intercepted him, demanded money and threatened him. During investigation sections 20 and 21 of PECA were added. The District Public Prosecutor opined that the case was exclusively triable by the Court of FIA. By order dated 17.06.2025 the Magistrate held the matter fell under PECA and outside his cognizance, returned the file for placement before the proper agency and court, and discharged the three accused under section 63 Cr.P.C. on fresh personal bonds conditioned on appearance before any court or agency. NCCIA Circle Sukkur registered an enquiry on 03.07.2025, in which the complainant named the petitioner and three others; notices under section 160 issued; two co-accused appeared and forensic examination of their phones was said to confirm the accounts and posts; the petitioner did not appear; and FIR No. 40/2025 was registered against all four under sections 20, 21 and 24 of PECA. The petitioner sought quashment, contending the allegations were identical to the earlier FIR in which the accused had been discharged.

LEGAL ISSUE

Whether the FIR registered by NCCIA is a second FIR in respect of the same occurrence and therefore unsustainable under Mst. Sughran Bibi; whether the discharge under section 63 Cr.P.C. in the earlier FIR bars the present proceedings; and whether the FIR was registered without lawful authority or discloses no offence.

HOLDING

The petition was dismissed. The Court has no power under section 561-A to quash an FIR or investigation, though registration and investigation are amenable to review under Article 199(1)(a)(ii) in exceptional cases. The rule in Sughran Bibi presupposes that the registered case is one the investigating agency is competent to investigate; when the earlier FIR was lodged, section 30 of PECA already confined investigation of offences under that Act to NCCIA, so the local police could not investigate sections 20 and 21 within the earlier FIR and the allegations regarding online content were never lawfully investigated there. The impugned FIR is therefore the first information of PECA offences recorded by the only competent agency, not a fresh version of an incident already under investigation by it; and the earlier FIR concerned Penal Code offences and an interception by three named persons, of whom the petitioner is not one. A discharge under section 63 concerns release of the accused and is not a verdict on the accusation; a discharge is not an acquittal, and Article 13(a) is attracted only where the earlier prosecution has ended in conviction. On the contents of the FIR, the allegations attract sections 20 and 21, both cognizable. Section 24 being non-cognizable, whether the report may proceed on that count is for the trial court.

LEGAL SIGNIFICANCE

A carefully structured judgment on a question that will recur constantly now that NCCIA has replaced the FIA's cyber wing under the 2025 amendments. Its central insight is that the rule against a second FIR has a precondition which is easily missed: it applies only where the agency investigating the registered case was competent to investigate the offences in question. Where jurisdiction over the offence was exclusive to another agency, the later FIR is the first information of those offences. The judgment is also a compact

statement of three further points — that section 63 discharge is a release and not an adjudication, that Article 13(a) requires a prior conviction, and that whether a cognizable offence is made out is judged from the contents of the FIR. The closing observation, directing that the online-content allegations be dealt with only in the PECA FIR and the remainder of the earlier FIR by the competent agency so that no accused faces two trials on the same facts, is a practical solution worth borrowing.

LEGAL PROPOSITIONS (VERBATIM)

- *This Court has no power under section 561-A Cr.P.C. to quash an FIR or an investigation.*
- *A discharge under this provision concerns the release of the accused; it is not a verdict on the accusation.*
- *A direction restraining the submission of the challan would stifle a lawful investigation, which is impermissible.*
- *Whether the material was false, whether it falls within section 21, and whether the petitioner uploaded it, are matters of evidence.*

LEGAL PRINCIPLES EXPOUNDED

The rule in *Sughran Bibi* presupposes that the registered case is one the investigating agency is competent to investigate; where it was not, the later FIR is the first information of those offences.

Source: *The impugned FIR is thus the first information of offences under PECA, 2016 recorded by the only agency competent to investigate them; it is not a fresh version of an incident already under investigation by that agency.*

Authority: *Mst. Sughran Bibi v. The State (PLD 2018 SC 595); sections 29 and 30, Prevention of Electronic Crimes Act, 2016*

A discharge is not an acquittal, and the constitutional protection against double jeopardy is attracted only where the earlier prosecution has culminated in a conviction for the same offence.

Source: *A discharge is not an acquittal, and Article 13(a) of the Constitution is attracted only where the earlier prosecution has culminated in a conviction for the same offence.*

Authority: *Article 13(a), Constitution of Pakistan, 1973; Raja Tanveer Safdar v. Mrs. Tehmina Yasmeen (PLD 2024 SC 795); Bahadur v. The State (PLD 1985 SC 62)*

Whether a cognizable offence is made out is to be judged from the contents of the FIR.

Source: *Whether a cognizable offence is made out is to be judged from the contents of the FIR; as held in Hamid Ali Shah, "it is the contents of an FIR which are to be seen to ascertain whether a cognizable offence is made out of the allegations contained therein".*

Authority: *F.I.A. through Director General v. Syed Hamid Ali Shah (PLD 2023 SC 265)*

Where the same act falls within a special law, the special law prevails over the general law.

Source: *Where the same act falls within a special law, the special law prevails over the general law.*

Authority: *Syed Mushahid Shah v. Federal Investment Agency (2017 SCMR 1218); Prevention of Electronic Crimes Act, 2016*

OPERATIVE ORDER

For the foregoing reasons, no case for quashment of the impugned FIR is made out. Accordingly, the petition is dismissed. The observations made herein are tentative and confined to the disposal of this petition; they shall not prejudice the case of either party before the trial court.

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CUSTOMS ACT, 1969 SS. 25, 25-A, 32(1), 32(2), 79(1), 80, 156(1)(14), 181, 196; S.R.O. 499(I)/2009 — A DECLARATION OF WEIGHT WRONG BY MORE THAN HALF IS FALSE IN A MATERIAL PARTICULAR WHERE GOODS ARE ASSESSED ON WEIGHT, AND THE CREDIBILITY OF THE EXPLANATION IS A QUESTION OF FACT BEYOND REFERENCE JURISDICTION

Sayyed Engineers Limited v. The Collector of Customs, Appraisement East, Karachi and others

REFERENCE APPLICATION DISMISSED; ALL FOUR QUESTIONS ANSWERED IN THE NEGATIVE, IN FAVOUR OF THE DEPARTMENT; INTERIM ORDER VACATED; APPROVED FOR REPORTING

Spl. Customs Reference Application No. 849 of 2024, High Court of Sindh at Karachi; 2026 SHC KHI 1766 · Bench: Mohammad Abdur Rahman and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: 18.09.2026 (heard 15.09.2026) · Uploaded: 18.09.2026

FACTS

The applicant, a manufacturer of stationery articles at Lahore since 1965 and a regular importer of sharpener blades and screws, filed a Goods Declaration on 02.10.2020 declaring 3,500,000 and 2,800,000 pieces of blades and 2,000,000 screws at a total invoice value of RMB 139,900, and a net weight of 1,531 kilograms. The tariff headings prescribe the kilogram as the unit of measure for assessment. The declaration went through the Yellow channel and was cleared without physical examination. On the applicant's own pleading, the cargo agent intimated during de-stuffing that the particulars did not tally, the clearing agent applied for examination, and on full weighment the consignment was found to weigh 3,640 kilograms — an excess of some 137 per cent. The show-cause notice put the evaded duty and taxes at Rs. 4,961,233 and the offending value at Rs. 5,876,794. The applicant said the weight came from a packing list prepared by its foreign supplier, who had apologised in writing, and that the invoice value was unaffected by weight. The Tribunal found that two packing lists bearing the same invoice number were annexed to the applicant's own memorandum of appeal — one showing about 1,531 kilograms and the other about 3,700 kilograms — and that the assessment module provides separate columns for assessment, statistical and internationally traded quantities.

LEGAL ISSUE

Whether a declaration of weight wrong by more than half is false in a material particular within section 32(1) of the Customs Act where the goods are assessed on the basis of weight; and whether the applicant's explanation of inadvertence was one the forums below were bound to accept.

HOLDING

The reference was dismissed and all four questions answered against the applicant. The first question was one of law; the second was not. The Tribunal had found, upon material it identified — principally the two conflicting packing lists in the applicant's own file — that the misdeclaration was deliberate, and that finding is not open to re-appreciation in reference jurisdiction under section 196, which is appellate in nature but confined to questions of law. On valuation, there was no enhancement under section 25 to be tested against its parameters: the declared transaction value was not rejected, no valuation ruling under section 25-A was applied, and what was computed was the offending value of the excess quantity for the purpose of the redemption fine. The per-kilogram figure applied was simply the applicant's own invoice divided by the weight it chose to declare. The earlier Goods Declarations relied on established nothing beyond the fact of their acceptance without verification. The election-law authorities on mis-declaration assist only where the explanation offered is credible, which the Tribunal found it was not; and there the sanction in contemplation was disqualification, of an altogether different order from a redemption fine.

LEGAL SIGNIFICANCE

A disciplined judgment that separates three things customs practitioners frequently conflate: mis-declaration of quantity, rejection of declared value, and the computation of offending value for a redemption fine. Where the declared transaction value has not been rejected, the safeguards that attend a section 25 valuation exercise simply do not arise — a point that disposes of a commonly raised ground. The Court's treatment of the explanation of supplier error is instructive: the document disclosing the true weight was in the applicant's own file, which is what made the explanation incredible, and credibility is a question of fact the Tribunal

decides. Its distinction of the election-law line on mis-declaration, on the footing that those cases concerned disqualification under Article 62(1)(f) rather than a fiscal penalty, is a useful answer when that authority is pressed in a revenue context. Note too the holding that subsequent recovery of the duty does not undo the mis-declaration which made evasion possible.

LEGAL PROPOSITIONS (VERBATIM)

- *A declarant cannot complain that the unit value generated by his own understatement of quantity is too high.*
- *A declaration accepted without verification establishes nothing beyond the fact of its acceptance.*
- *The safeguards which attend the rejection of a declared value do not arise where the declared value has not been rejected.*
- *That the duty and taxes were thereafter recovered does not undo the mis-declaration which made their evasion possible.*

LEGAL PRINCIPLES EXPOUNDED

Where goods are assessed on the basis of weight, a declared weight found on weighment to be less than half the true weight is false in a material particular and is not a matter of opinion.

Source: *Here the goods were not as declared. Their weight was found to be more than double what the applicant had stated it to be, and the difference was not a matter of opinion but of the weighbridge.*

Authority: Sections 32(1) and 79(1), Customs Act, 1969; Serial No. 1(g), Table to S.R.O. 499(I)/2009

The principle that not every mis-declaration is fatal, and that purpose and intention must be examined, assists a party only where the explanation offered is credible.

Source: *But it assists a party only where the explanation which he offers is a credible one, and that is precisely what the learned Tribunal found, upon material, that the applicant's explanation was not.*

Authority: *Shamona Badshah Qaisarani v. Election Tribunal, Multan (2021 SCMR 988); Muhammad Hanif Abbasi v. Imran Khan Niazi (PLD 2018 SC 189)*

The reference jurisdiction is appellate in nature but confined to questions of law; the facts as found by the Tribunal are taken as recorded.

Source: *The application to this Court must state "any question of law arising out of" the order of the Appellate Tribunal; what this Court decides is the question of law so raised; and the order of the Tribunal stands modified by the judgment delivered upon it.*

Authority: Section 196, Customs Act, 1969; *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax (2017 SCMR 1006); Haseeb Waqas Sugar Mill Limited v. Government of Pakistan (2026 SCMR 833)*

OPERATIVE ORDER

For the foregoing reasons, this Special Customs Reference Application is dismissed. The interim order dated 15.10.2024 stands vacated. The Nazir of this Court shall, subject to any order to the contrary in C.P. No. D-3013 of 2021, release to the respondent Department the amounts secured before him in terms of the order dated 25.05.2021 passed in that petition, together with any profit accrued thereon, to be adjusted against the fine and penalty adjudged. Nothing in this judgment shall preclude the applicant from seeking credit for any amount already deposited with the Department. The listed applications, if any, stand disposed of. There shall be no order as to costs.

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