

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD**

C.P No. D-1627 of 2025

[Riaz Hussain and another v. Commissioner Division Hyderabad and others]

Before:

Mr. Justice Arbab Ali Hakro
Mr. Justice Riazat Ali Sahar

Petitioners	:	Riaz Hussain and another through Mr. Irfan Ahmed Qureshi, Advocates.
Respondents No.1to4&6	:	Through Mr. Rafique Ahmed Dahri, Assistant Advocate General Sindh.
Respondent No.5	:	Through Mr. Muzamil Khan Bughio, Advocate.
Respondent No.7	:	Muhammad Faisal through Mr.Dileep J.Mulani, Advocate.
Date of Hearing		03.02.2026
Date of Judgment	:	03.02.2026

JUDGMENT

RIAZAT ALI SAHAR. J. - Through this petition, the petitioners have challenged order dated 07.08.2025 passed by the learned 1st Additional District & Sessions Judge/Green Court, Hyderabad, in Criminal Appeal No.22 of 2025 (Muhammad Faisal v. Commissioner Hyderabad & others), whereby the appeal filed by respondent under Section 30 of the Sindh Environmental Protection Act, 2014 was allowed and the business of the petitioners was ordered to be closed. The appeal was preferred against the complaint filed by respondent No.7 under Section 29 of the Sindh Environmental Protection Act, 2014, which was dismissed by the learned Trial Court/Judicial Magistrate-IV, Hyderabad. As such, the present Constitutional Petition has been

filed seeking setting aside of the impugned order after hearing the parties on merits.

2. The facts giving rise to the present petition are that Respondent No.7, Muhammad Faisal, instituted a complaint under Section 29 of the Sindh Environmental Protection Act, 2014, read with Section 200 Cr.P.C., before the learned Judicial Magistrate. In the said complaint, Respondent No.7 alleged that the petitioners are owners of M/s Bismillah Car Wash, situated at Waqar Town Phase-II, Qasimabad, Hyderabad and that the said establishment was operating in violation of environmental laws. It was further alleged that the service station is adjacent to the complainant's house, separated merely by a wall and that the operation of a generator, water pressure equipment and the alleged smell of oil and diesel were causing nuisance and environmental pollution, adversely affecting the health of the complainant and his family members.

3. Prior to filing the complaint under the Sindh Environmental Protection Act, Respondent No.7 had already initiated proceedings under Section 133 Cr.P.C. before the learned Magistrate on identical allegations. In those proceedings, after calling for reports, the learned Magistrate vide order dated 23.11.2024 directed stoppage of the operation of the service station.

4. The said order was assailed by the petitioners before the learned VIIth Additional District Judge, Hyderabad, in Criminal Application No.68 of 2024 (Riaz Hussain & another v. Muhammad Faisal & others). The learned Appellate Court modified the Magistrate's order and directed the petitioners to adopt proper measures for controlling sound, vibration, air and water pressure, and smell of diesel, so that the peace and comfort of the complainant may not be disturbed. Consequently, the petitioners were allowed to continue their business subject to

compliance, which order attained finality and was duly complied with.

5. Having failed in the first round of litigation, Respondent No.7 initiated a second round by filing a complaint under Section 29 of the Sindh Environmental Protection Act, 2014, on the same set of allegations. The learned Judicial Magistrate, after considering the facts and law, dismissed the complaint. However, the learned 1st Additional District & Sessions Judge, Hyderabad, while entertaining an appeal under Section 30 of the Act, vide impugned order dated 07.08.2025, set aside the Magistrate's order and directed closure of the petitioners' service station, which has given rise to the present petition with following prayers:-

- a) It be passed order and thereby set aside the impugned order dated 7.8.2025 passed by the 1st Additional District & Sessions Judge, Hyderabad, and restore the order passed by the IVth Civil Judge Hyderabad in complaint under section 29 of Sindh Environmental Protection Act, 2014.
- b) Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner may be granted.

6. Pursuant to the notice of this petition, respondents No.3 & 4 have filed their comments wherein they have stated that the complainant instituted Direct Complaint No.33 of 2025 under Section 29 of the Sindh Environmental Protection Act, 2014 read with Section 200 Cr.P.C. before the learned Civil Judge & Judicial Magistrate-IV, Hyderabad, which was dismissed on 27.06.2025 for want of material justifying cognizance. Prior thereto, proceedings under Section 133 Cr.P.C. resulted in a conditional order dated 23.11.2024 directing stoppage of the service station, which was subsequently modified by the learned VIIth Additional District Judge, Hyderabad, on 31.12.2024, permitting continuation of

business subject to adoption of adequate measures to control noise, vibration, air and water pressure and diesel emissions. It is further stated that the complainant challenged the dismissal order before the learned District & Sessions Judge/Green Court and the learned 1st Additional District & Sessions Judge, Hyderabad, vide order dated 07.08.2025, directed immediate closure of the service station in public interest on the observation that it was operating without requisite environmental approval and compliance, with directions for enforcement and for obtaining reports from the Sindh Building Control Authority. Respondents further stated that the Sindh Environmental Protection Agency had issued notice under Section 21 (1) of the Act, followed by an Environmental Protection Order under Section 21 (2), requiring the petitioner to conduct an environmental audit. Although an audit was conducted through a third-party consultant, it is stated that the same did not strictly comply with the Sampling Rules and that site inspections revealed absence of adequate mitigating measures, notwithstanding claimed conformity with Sind Environmental Quality Standards (SEQS). It is stated that while lawful business is protected under the Constitution, continuation of commercial activity without fulfilling mandatory environmental requirements cannot be regarded as lawful and that the impugned order directing temporary closure till final adjudication in accordance with law and in public interest.

7. Learned counsel for the petitioners contends that the impugned order dated 07.08.2025 has been passed without lawful jurisdiction and in disregard of settled law, as the complaint under Section 29 of the Sindh Environmental Protection Act, 2014 had already been rightly dismissed by the learned Magistrate for want of material justifying cognizance. He contends that the learned Appellate Court exceeded its powers by ordering closure of the service station despite the issue of alleged nuisance having already been adjudicated under Section 133 Cr.P.C., wherein continuation of business was permitted subject to compliance, which has

attained finality. Learned counsel contends that the petitioners are operating on a duly approved commercial plot with valid SBCA approvals and environmental NOCs and that the establishment does not fall within the regulatory threshold prescribed under the applicable notification. He further contends that no material was available on record to justify invocation of environmental jurisdiction or issuance of coercive directions, rendering the impugned order illegal, arbitrary and violative of the petitioners' constitutionally protected right to carry on lawful business.

8. Learned A.A.G. Sindh supports the impugned order and contends that environmental compliance is mandatory under the Sindh Environmental Protection Act, 2014, irrespective of the nature of business. He contends that the record reflects issuance of notices and an Environmental Protection Order by the Agency, which were not satisfactorily complied with by the petitioners. Learned A.A.G. contends that the Appellate Court acted within its jurisdiction in passing interim protective directions in public interest. He further contends that environmental considerations override private commercial interest and no illegality has been committed in directing temporary closure, as such, the petition is liable to be dismissed.

9. Learned counsel for Respondent No.5 contends that respondent No.5 merely acted in aid of lawful orders passed by the competent courts and environmental authorities. He contends that the directions contained in the impugned order were implemented in compliance with statutory obligations. Learned counsel points out that Respondent No.5 has no personal or direct interest in the dispute and has performed his duties strictly in accordance with law.

10. Learned counsel for Respondent No.7 contends that the petitioners are operating the service station without obtaining mandatory environmental approvals and in violation of the Sindh Environmental Protection Act, 2014. He contends that the

operation of generators, pressure equipment and discharge of pollutants has caused continuous noise, air and environmental pollution, adversely affecting the health and peaceful living of the respondent and his family. He contends that the environmental audit produced by the petitioners is defective, not conducted in accordance with prescribed Sampling Rules and does not reflect the actual ground realities. He further contends that despite repeated directions, the petitioners failed to adopt effective mitigating measures, compelling intervention by the Appellate Court. He contends that the impugned order has been passed in public interest to prevent environmental harm and does not suffer from any legal infirmity and therefore, the Constitution Petition is liable to be dismissed.

11. We have carefully examined the material available on the record and considered the respective contentions of learned counsel for the parties.

12. At the very outset, keeping in view of the issue involved in the instant petition, we would like to highlight the relevant statutory scheme i.e. The Sindh Environmental Protection Act, 2014 (“the Act”) is a special statute enacted to provide for the protection, conservation, rehabilitation and improvement of the environment and for the prevention and control of pollution. The Act casts mandatory obligations upon persons carrying on any activity which may cause or is likely to cause environmental pollution. Section 21 of the Act empowers the Sindh Environmental Protection Agency to ensure compliance with environmental standards. Under sub-section (1), where the Agency is of the opinion that any person has contravened or is contravening any provision of the Act, rules, regulations or environmental quality standards, it may issue a notice requiring such person to take specified measures within a stipulated time. Under Section 21(2), if the person fails to comply, the Agency may pass an Environmental Protection Order, including directions for closure, prohibition or regulation of the activity and for carrying

out an environmental audit or adoption of mitigation measures. These powers are preventive and remedial in nature and are exercisable in public interest. Section 29 of the Act provides for filing of a complaint before the competent court by the Agency or an aggrieved person in respect of commission of an offence under the Act. The Court is required to examine whether *prima facie* material exists to justify taking cognizance of the alleged environmental violation. Mere existence of a commercial activity or a civil dispute does not, by itself, oust the application of this provision where environmental harm is alleged. Section 30 of the Act confers a statutory right of appeal against an order passed by a Court subordinate to the Sessions Court/Green Court. The Appellate Court is vested with ample jurisdiction to examine the legality, propriety and correctness of the order under appeal and where circumstances so warrant, to pass appropriate directions to safeguard the environment, including interim or protective orders in public interest.

13. It is also a settled principle flowing from the scheme of the Act that environmental approval, compliance with Sindh Environmental Quality Standards (SEQS) and adherence to prescribed Sampling Rules and audit procedures are mandatory and cannot be substituted by approvals granted by other regulatory bodies functioning under different statutory regimes.

14. After careful examination of the entire record, the pleadings of the parties, the impugned order and the statutory framework governing environmental protection, we are of the considered view that the present Constitutional Petition is devoid of merit and does not call for interference in the exercise of constitutional jurisdiction. It is not disputed that Respondent No.7 initially invoked the jurisdiction of the Magistrate under Section 133 Cr. P. C. wherein conditional directions were passed and later modified by the learned Appellate Court permitting continuation of business subject to adoption of effective mitigating measures. However, proceedings under Section 133 Cr. P. C. are preventive

and summary in nature, intended to address immediate public nuisance and do not operate as a bar to invocation of jurisdiction under the Sindh Environmental Protection Act, 2014, which is a special statute enacted to address environmental harm on a broader and scientific footing. The plea of the petitioners that the complaint under Section 29 of the Act was barred due to earlier proceedings under Section 133 Cr. P. C. is, therefore, misconceived. The learned Appellate Court, while exercising jurisdiction under Section 30 of the Act, was fully competent to examine whether continued operation of the service station, in the absence of demonstrated and verified environmental compliance, posed a risk to the environment and public health.

15. We have found that much importance has been placed by the petitioners on the Completion/Occupancy Certificate [available at page-113 of the petition] issued by the Sindh Building Control Authority, Hyderabad Region. A careful perusal of the said document shows that the SBCA merely permitted occupation of the building in accordance with the approved plan. Significantly, the said certificate itself contains an express disclaimer, stating in unequivocal terms that:

“In case of any complaint/dispute or any court case raised regarding the said building, SBCA shall not be responsible and shall not be the party.”

This explicit condition clearly demonstrates that SBCA approval neither certifies nor guarantees compliance with environmental laws, nor does it shield the owner or occupier from proceedings under the Sindh Environmental Protection Act, 2014. Environmental compliance operates in a distinct statutory domain and must independently satisfy the requirements of the Act, rules and regulations framed thereunder.

16. The record further reflects that the Sindh Environmental Protection Agency had issued notices under Section 21 (1) of the Act and subsequently passed an

Environmental Protection Order under Section 21 (2), requiring the petitioners to conduct an environmental audit and adopt appropriate mitigation measures. The material on record supports the finding that the audit relied upon by the petitioners was disputed by the Agency for non-compliance with prescribed Sampling Rules and that site inspections raised concerns regarding adequacy of mitigating measures. While the Constitution protects the right to carry on lawful business, it is equally well-settled that no person has a vested right to carry on business in a manner that violates environmental laws or endangers public health. Environmental protection is a matter of public interest and courts are duty-bound to apply the precautionary principle where credible allegations of environmental harm exist. In these circumstances, the learned 1st Additional District & Sessions Judge/Green Court, Hyderabad, cannot be said to have acted without jurisdiction or in excess of authority in passing the impugned order dated 07.08.2025. The directions for closure were issued as a protective and regulatory measure, subject to compliance with environmental requirements and do not suffer from illegality, arbitrariness or perversity warranting interference under constitutional jurisdiction.

17. In view of the above facts and circumstances of the case, the instant petition is **dismissed**, with no order as to costs. The impugned order dated 07.08.2025 is maintained, with the observation that the petitioners shall be at liberty to seek revival of their business strictly in accordance with law, after obtaining and demonstrating full environmental compliance to the satisfaction of the competent authority.

JUDGE

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