IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Const. Petition No. D-3253 of 2026

(M/S Al- Rahim Trading Company (Pvt) Limited & 69 others v. Federation of Pakistan and others)

Petitioners	:	Through Mr. Murtaza Wahab
Respondent No 1	:	Through Ms. Shazia Ahmed Hanjrah Deputy Attorney General for Pakistan
Respondents No 2 to 4	:	Mr. Shahab Imam Advocate
Date of hearing & short Order	:	**18.06.2026**
Date of Reasons	:	**27 .06.2026**

JUDGMENT

MUHAMMAD SALEEM JESSAR, J:- Through this petition, the petitioner has claimed the following relief(s):

a. Declare that the actions of the Respondents are mala fide, unconstitutional and without lawful authority.

b. Declare that the Impugned FIR is illegal, unconstitutional and liable to be quahsed.

c. Quash the impugned FIR.

d. Restrain the Respondents from harassing, arresting, detaining, entering the premises of the Petitioner No 1 & 2, or taking any coercive action against (i) the owners/Directors of Petitioners No 1 and 2; and (ii) Petitioner No 3 to 70 and all other employees of the Petitioners, pending final decision of this petition.

e. Costs of this petition; and

f. Grant any other relief this Honorable Court deems fit.

2. Learned counsel for the petitioners contended that Petitioner No 1 is a petroleum terminal at 49, Oil Installation Area, Keamari Karachi; that

it receives, stores and releases petroleum products on behalf of clients against valid government issued documents; that Petitioner No 2 is a Petroleum procurement and distribution company; that Petitioners No 3 to 70 are employees of Company and they have filed this petition as they apprehend their prosecution by the Customs in a false FIR recorded on 18.05.2026. He contended that a false FIR was lodged by Customs officers alleging that Petitioners procured, stored and transported smuggled High Speed Diesel (HSD) under the cover of Delivery Order "the Coast Guard DO" issued by the Pakistan Coast Guard and gate passes of a second government entity and these documents were fraudulently re-used to transport approximately 891,931 liters of HSD in excess of authorized quantities. He contended that after registration of FIR customs officials on multiple occasions entered the premises of Petitioner No 1 without any warrant and physically removed employees without any search warrant and such CCTV recordings are available. He contended that impugned FIR discloses no offence as Petitioners received and stored the petroleum products in a lawful routine daily operation of a petroleum storage. He contended that the allegations of smuggling are without any proof and no offence under section 2(s), 16, 17, 178 or 187 of the Customs Act 1969 is made out. He contended that FIR was recorded with delay of 04 days and no explanation was furnished in that regard, thus deliberations and consultations to cook a false story cannot be ruled out. He contended that entire transaction underlying the impugned FIR was initiated, authorized, and executed by Government's own entities; that the auctions were conducted by Pakistan Coast Guard and the Anti Smuggling Organization (ASO); the delivery orders were issued by those entities and the payments were received by the Government against NGDP Challans with income tax duly deposited under section 236A of Income Tax Ordinance, 2000 (ITO). He contended that ASO which issued the delivery orders has recorded the impugned FIR. He contended that unlawful possession of stocks at M/s Al-Noor Terminal (Pvt) Limited are false as no such storage facility existed there. He contended that the FIR is colorful exercise of powers, recorded with mala fide intentions, in order to harass and humiliate petitioners. He placed on record the delivery orders and payment orders in support of his contentions. He contended that FIR is nothing but an attempt to restrict Petitioners' business activities and Respondents have offended the fundamental rights of petitioners guaranteed under 4, 9, 10-A and 18 of the Constitution of Islamic Republic

of Pakistan, 1973 (the Constitution). He lastly prayed for quashment of FIR and restore the confiscated HSD.

3. Learned Counsel for Respondents No 1 to 3 contended that on intervening night between 13-14 May 2026 two oil tankers were intercepted near Gate No 1 Kemari Karachi. That the drivers admitted that HSD covered by Coast Guard Delivery Order dated 11.05.2026 had already been transported on 12-13 May 2026 and unloaded at Petitioner No 1 premises. He contended that despite the Petitioners smuggled the HSD in violation of Customs Act, 1969 which was a cognizable offence, therefore, FIR was recorded. He contended that the Petitions were not maintainable as investigation was under process and petitioners had an efficacious remedy by way of filing an application under section 249 - A or 265 - K CrPC. He therefore prayed that investigation is being conducted in fair and transparent manner, during investigation no arrest shall be made and Petitioners will be granted ample opportunity of defending accusations. He contended that Petitioners have caused loss of millions of rupees by smuggling HSD by avoiding taxes. He contended that Petitioners' Counsel was an elected Mayor of Karachi Metropolitan Corporation, therefore cannot practice being debarred under Rule 175 of Pakistan Bar Councils & Practitioner Rules. He relied upon the case of Col. Shah Muhammad Ashiq (2006 SCMR 276), A. Habib Ahmed V. M.K.G Scott Christian (PLD 1992 SC 353), Muhammad Farooq v. Ahmed Nawaz Jagirani (PLD 2016 SC 55) and FIA V. Syed Hamid Ali Shah (PLD 2023 SC 265)

4. Learned Deputy Attorney General for Pakistan contended that Petitioner Company was involved into evasion of sales tax and illicit trade activities and Customs Authorities while conforming to the provisions of Customs Act seized the smuggled articles. She contended that compliance of section 162 for obtaining permission from concerned Magistrate was not possible as incident took place in the wee hours of night. She contended that there is no illegality in the proceedings conducted by Customs Authority and FIR was rightly recorded, therefore, no case for indulgence of this Court at this stage is made out. She prayed for dismissal the petition.

5. Heard arguments of the parties and perused the material made available before us on record.

6. Scanning of the material available on record revealed that in the intervening night between 13 - 14 May 2026 Mr. Mubashir Naveed Preventive Officer Collectorate of Customs (Enforcement) Karachi received credible information from Head Quarters that certain elements were engaged in the procurement, storage and illicit transportation of smuggled petroleum products from Keamari Karachi under the cover of legal auction documents. Complainant party proceeded to place of information and mounted surveillance and intercepted two oil tankers bearing Registration No TLR -040 and TLZ - 704. The drivers disclosed that they were transporting High Speed Diesel from M/S Caspian Oil by reusing Delivery Order issued by Government entity. The goods loaded in tankers were detained and inquiries thereafter were initiated at M/S Al Rahim Trading Company and the relevant movement, receipt and decanting records were procured under masheernama. Scanning of the record revealed that same two tankers had transported a total 398,913 liters of HSD (excluding 96000 liters found on board at the time of interception) from M/s Caspian Keamari filling point/barge Keamari Karachi to the Al -Noor/ Fuel XL storage facility within the Al Rahim premises located in the oil terminal Keamari Karachi during 11.05.2026 to 13.05.2026. The complainant part then verified the record of Al Caspian Oil facility which confirmed delivery of HSD through same oil tankers to the Al Rahim facility during the said period under the instructions of M/s Al-Noor Petroleum private limited. The record confirmed that M/s Al Noor Petroleum Private Limited and M/s Fuel XL limited in connivance with M/s Caspian Keamari transported 398,913 liters of HSD. Further scrutiny of record revealed that M/s Al-Noor Petroleum limited and M/s Fuel XL limited in connivance with M/s Caspian Keamari transported another quantity of 397,018 liters of HSD by misusing the gate passes issued by another government entity. The team also visited M/s Caspian Oil Barge and took dip of the tanker at the premises, but since the internal dimensions of tanker were not available the exact quantity of the stored POL could not be ascertained. The staff of the said company was not available and no assistance was provided.

7. It is further alleged that evidence gathered prima facie discloses two similar patterns of documents issued by two different government entities which were storing their confiscated smuggled Iranian POL products in M/s Capsian Kemari storage facilities. First auction documents authorizing 99,000 liters, were re-utilized to transport a total of 494,913 liters. Second government entity gate passes were allegedly misused to facilitate the movement of another 397,018 liters HSD. All record procured during the inquiry were taken into possession under proper masheernamas and made part of investigation file. The exact duty, tax impact, procurement source, financial trail and specific role of each accused person and entity shall be determined in the course of further investigation.

8. It is further alleged that in view of suspected smuggling activity, it was deemed necessary to physically inspect the storage tanks of M/s Al-Noor Petroleum Pvt. Limited M/s Fuel XL Petroleum (Pvt) Ltd., within Al Rahim premises. The complainant along with other members of ASO proceeded to the facility for inspection. Tank No ATC - 07 was found to contain 10,50,488 Liters HSD, and an oil tanker bearing No TMR - 896 parked on the premises was found loaded with an additional 21,000 liters of HSD. As no lawful import or procurement documents were produced the Tank No ATC 07 and oil tanker were seized pending production of documentary evidence. It is further alleged that team then proceeded to M/S Al Noor Terminal where tank No ATL -11 was found to contain 12,53,911 liters of PMO (Motor Gasoline). The tank was sealed pending the production of lawful import and procurement documents. The team also found four tankers parked their and were suspected to be loaded with smuggled HSD, hence sealed. The recovered tankers and all documents were sealed and samples were taken in presence of witnesses Naeem Ahmed and Usama Munir. Notices under section 171 of the Customs Act, 1969 were served upon Tasawar Abass, Muhammad Imtiaz, Muhammad Shoaib and Murtaza Hussain and Notices were additionally served upon m/s Caspian Oil, M/s Al-Rahim Trading, M/s Al-Noor Petroleum, M/s Fuel XL directing their presence.

9. It was alleged that on the basis of totality of facts, physical evidence, statements, decanting records, gate-out details and the pattern of repeated tanker movements it is prima facie evident that M/s Al Noor

Petroleum Limited, M/s Fuel XL, M/s Caspian Keamari and M/s Al-Rahim trading Company through their respective personnel were engaged in a coordinated scheme for the procurement, storage and transportation of suspected smuggled HSD under the guise of government auction documents hence committed offence under section 2(s), 16, 17, 178 and 187 punishable under section 156(1), 156(2) and 157(2) of the Customs Act, 1969.

10. From perusal of FIR, which has been recorded on 18.05.2026 with a delay of four days without any explanation, it transpires that the same lacks the necessary ingredients of criminal charge viz date and time of the offence. In absence of particular details an accused cannot be indicted for the charge. Section 222 CrPC defines charge in the following manner:

> *222.* ***Particulars as to time Place and person.*** *(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.*
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> *(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:*
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> *Provided that the time included between the first and last of such dates shall not exceed one year.*

11. In the case of Mumtaz Ali and another Versus The State reported as 2000 P Cr. L J 367 Learned Division Bench of this Court has held that:

> *It is mandatory that charge shall contain all material particulars as to time, place as well as specific name of the alleged offence, the manner in which the offence was committed and the particulars of the accused so as to afford accused an opportunity to explain the matter with which he is charged. The purpose behind giving such particulars is that the person against whom such charge is framed should prepare his case accordingly and may not be misled in preparing his defence. Charge is the very start of trial and it is at this stage that an accused comes across the accusation levelled by the prosecution against him, as such he will have to keep such material in his mind during the proceedings of the trial.*

12. On detention of oil tankers in the intervening night between 13 - 14 May 2026, during the period in between 14th May to 18th May 2026, the

complainant party conducted search of various petroleum storage facilities and seized the goods under suspicion being smuggled goods. Section 162 of the Customs Act, 1969 mandates the search of the premises on obtaining the search warrant from concerned magistrate. Section 162 reads as under:

> ***162. Power to issue search warrant.-*** *(1) Any Judicial Magistrate may, on application by a gazetted officer of customs stating the grounds of his belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceeding under this Act are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods, documents or things.*
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> *(2) Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure, 1898 (Act V of 1898).*

13. From perusal of FIR, it is crystal clear that goods were seized under suspicion being smuggled goods by invoking the provisions of section 163 of the Customs Act, 1969. Section 163 is closely tied in with section 162 which envisaged for issuance of a search warrant by Judicial Magistrate, on application by a gazetted officer of customs stating the grounds of his belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceeding under this Act are secreted in any place within the local limits of its jurisdiction. Learned Magistrate may issue a warrant to search for such goods, documents or things and such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure, 1898 (Act V of 1898). Resort to section 163 of Customs Act, 1969 was only merited, if the requirements laid out therein were satisfied. In the present case initially no search warrant was obtained to examine the premises as to availability of any smuggled goods. If we presume that information to Customs Authorities was conveyed in the night and there was no possibility of obtaining a search warrant, thus recourse to section 163 was rightly taken when first two tankers were seized on the first night. Recourse to section 163 can be made in the situations where there are reasonable grounds for believing that any goods liable to confiscation or any documents or things which will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected

under section 162, the officer of Customs may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place. But in the case of Petitioners search of the premises continued from 14th May until 18th May 2026 but no search warrant was obtained. Section 163 reads as under:

> ***163. Power to search and arrest without warrant.-*** *(1) Whenever any officer of customs not below the rank of an Assistant Collector of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place.*
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> *(2) An officer or person who makes a search or causes a search to be made under sub section (1) shall leave a signed copy of the aforementioned statement in or about the place searched and shall, at the time the search is made or as soon as is practicable thereafter, deliver furthermore a signed copy of such statement to the occupier of the place at his last known address.*
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> *(3) All searches made under this section shall be carried out mutatis mutandis in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).*
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> *(4) Notwithstanding anything contained in the foregoing sub-sections and subject to previous authorization by an officer of customs not below the rank of an Assistant Collector of Customs, any officer of customs or any person duly empowered as such may, with respect to an offence related to exportation of such goods as the Federal Government may, by notification in the official Gazette, specify in this behalf-*
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> > *(a) arrest without warrant any person concerned in such offence or against whom reasonable suspicion exists that he is about to be concerned in such offence;*
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> > *(b) enter and search without warrant any premises to make an arrest under clause (a),or to seize any goods which are reasonably suspected to be intended for exportation contrary to any prohibition or restriction for the time being in force, and all documents or things which in his opinion will be useful for or relevant to any proceeding under this Act; and*
> >
> > *(c) for the purpose of arresting, detaining or taking into custody or preventing the escape of any person concerned or likely to be concerned in such offence, or for the purpose of seizing or preventing the removal of any goods in respect of which any such offence has*

occurred or is likely to occur, use or cause to be used such force to the extent of causing death as may be necessary.

(5) The provisions of sub-section (4) shall apply only to the areas within five miles of the land frontier of Pakistan, and within a five miles belt running along the sea coast of Pakistan.

(6) No suit, prosecution or other legal proceeding shall be instituted, except with the previous sanction in writing of the Federal Government, against any person in respect of anything done or purporting to be done in exercise of the powers conferred by sub-section (1) or sub-section(2) or, in the areas specified in sub-section (5), by sub-section (4).

14. From perusal of above provisions of law it was necessary to obtain a search warrant from concerned magistrate so as to make search and seizure proceedings trust worthy. No material has been placed on record for this omission, which vitiated all the proceedings conducted by the ASO officers. Requirement of giving reasons is stated in subsection (1) of section 163 of the Customs Act, which reads that whenever any officer of customs not below the rank of an Assistant Collector of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceedings under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place. This makes the search warrant of the concerned magistrate mandatory.

15. In the case of COLLECTOR OF CUSTOMS (PREVENTIVE) and 2 others V. MUHAMMAD MAHFOOZ reported as PLD 1991 Supreme Court 630 it is held that:

Perusal of the statement of grounds reproduced above clearly shows that grounds for belief in support of danger as such were not mentioned specifically as is required under section 163 of the Customs Act. This is a statutory requirement and there is legislative wisdom behind it which is to the effect that ordinarily a place is to be searched only after search-warrant is obtained from the Magistrate as is contemplated under the preceding section of the Customs Act and only in extraordinary cases this section can be dispensed with as is permissible under section 163 of the Customs Act but then grounds are to be stated by the Customs Officer who is allowed this facility for his belief and decision in not obtaining the search warrant. He must state the grounds

which justify apprehension of danger of removal of goods. For example, information is received from such and such person that the party concerned has taken steps or is about to take steps for removal of goods and if search-warrant is obtained the same will consume time or the Magistrate is not available, hence there is no other way but to go for the search without warrant. By providing such statutory requirement, the intention of legislature is to provide safe-guard against mala ride interference with rights of citizens in respect of property and against violation of right of privacy. In the instant case in the statement of grounds reproduced above, reasons are not stated as to why and what danger was apprehended for removal of goods and it is not enough simply to say that "it is not expedient to obtain search-warrant". We are, therefore, in agreement with the finding of the High Court on the ground that search and seizure were defective and improper on account of non-compliance with the provisions of sections 162 and 163 of the Customs Act.

16. For taking any action related to seizure or confiscation of the goods, it was incumbent upon Officer of Customs to inquire about the status of goods. If during inquiry Petitioner Company failed to justify the entry of goods through valid channel then proceedings under section 163 ought to have been taken. Section 26 of the Customs Act empowers a designated officer to require any person concerned with the importation, exportation, purchase, sale, transport, storage or handling of any goods, which are being or have been imported or exported, to furnish such information relating to the goods as may be necessary for determining the legality or illegality of the importation or exportation of such goods. In the event that the department did have actionable information, it may have been appropriate to serve such a notice to determine the veracity of the information received. Section 26 of the Customs Act, 1969 reads as under:

26. Obligation to produce documents and provide information.- *(1) Any person, as and when required, in writing, by an officer of customs not below the rank of an Assistant Collector, shall,-*

(a) furnish information relating to importation, exportation, purchase, sales, transportation, storage or handling of any goods imported or exported;

(b) produce for examination, documents or records that the appropriate officer considers necessary or relevant to the audit, inquiry or investigation under the Act;

(c) allow the appropriate officer of Customs to take extracts from or make copies of documents or records; and

(d) appear before an officer of Customs and answer any question put to him concerning goods, documents, records and transactions relating to the audit or inquiry or investigation.

(1A) Subject to rules, the Board or any officer authorized in this behalf may require any person to provide such information as is held by that person which is required for the purposes of End Use Verification of goods specified under Program Global Shield.

(2) The appropriate officer of Customs conducting an audit, inquiry or investigation as the case may be, under this Act, may require in writing any person, department, company or organization to furnish such information as is held by that person, department, company or organization which in the opinion of the appropriate officer is required for the completion of such audit, inquiry or investigation.

(3) The Board may require in writing any person, department, company or organization, as the case may be, to provide information held by that person, department, company or organization, which in the opinion of the Board is required for purposes of formulation of policy or administering the laws of Customs, Sales Tax, Federal Excise or Income Tax.

(4) Every person, department, company or organization shall furnish the information requisitioned by the Board or the appropriate officer within the time specified in the notice.

17. It is an admitted fact that no such notice was ever issued or even an oral inquiry was made at the time of raid. Even there was no credible information available on record to say that stored goods were smuggled. It is ordinarily presumed that goods coming into the country have been filtered through the customs barrier and the relevant duties and taxes have been paid. The aforesaid presumption is judicially recognized in absence of an indication to the contrary. The law places initial burden upon the person to show that the goods in possession are in accordance with lawful authority; however, it is well settled law in customs matters that while the evidential and tactical burden is initially placed upon on the person, he only needs to show some evidence to prima facie discharge his evidential burden and thereafter the same shifts upon the customs authorities. Petitioner Company has placed on record OGRA Proforma dated 14.05.2026 and FIA inspection report dated 14.05.2026 regarding storage of 870,734 liters, Coast Guard Auction receipts No 3627/2026, 60/2026, 68/2026 dated 13.05.2026 for auction of 98,682 Liters, PRL Invoice No 1065 regarding stock movement of 358,738 liters dated 15.05.2026 of Pakistan Refinery Limited, Dispatch notes of 160,532 Liters dated 15.05.2026, Stock in

Tank ATC 07 10,68,940 Liters PWC ASR 5683 OGRA Proforma, Tanker TMR - 896 21,000 Liters loaded for dispatch and independent inspection report of A.F. Ferguson 963,496 as of April 30, 2026. Tank ATL - 11 745 tons equivalent to 10,11,890 liters PMG, dated 14.05.2026 OGRA report, 404,550 liters PMG Pakistan Refinery Limited receipt No 1065 dated 15.05.2026, stock movement of 54,820 liters and Independent verification by A.F. Ferguson & Co PWc Report ASR - 5683 stock of 933,923 liters as of 20.04.2026. When confronted to above piece of evidence, Learned Counsel for Respondents No 2 & 3 failed to repel the stance of Petitioner Company. Learned Counsel for the respondents submitted that since the said documentation was not provided at the time of raid, therefore, such documentation is doubtful. We are not convinced with the arguments as it not only incumbent upon the Officer of Customs but he was required to justify seizure action in lieu of the alleged suspicion for goods being smuggled, particularly when the goods were placed under a protected area notified by the government. When confronted as to the genuineness of documents, respondents failed to respond.

18. The Petitioner Company claims that seized goods have been duly purchased through auction and there is no re-usage of same auction slips. In support of claim, the petitioner Company has also provided the documentation, upon which their assertion is based to the respondents, so also annexed the same with petition. While the respondents have not denied the veracity of such documentation, therefore action of seizure of goods taken by the respondents cannot be validated. In absence of any evidence that seized articles were smuggled goods, action on the part of Respondents cannot be protected even in terms of section 217 of the Customs Act, 1969 by declaring the same as an action taken in good faith. Customs officials even failed to record statement of any responsible person of Pakistan Refinery limited and Pakistan Coast Guards. To the own showing of company that auction slips were used multiple times but no such proof has been furnished. To bring a charge under section 2(s) of the Customs Act 1969, the seized goods must be of foreign origin and brought in Pakistan through improper channel. Petitioners are accused of violation of Sections 2(s), 16, 17 & 178 of Customs Act, 1969 which are reproduced below for ease of reference:

2(s) "smuggle" *means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or in any way being concerned in carrying, transporting, removing, depositing, harbouring, keeping, concealing ,retailing or en route pilferage of transit goods, anywhere within the territorial jurisdiction of Pakistan or evading payment of customs-duties or taxes leviable thereon,-*

(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed five hundred thousand rupees in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs Station and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly; or

(iv) essential commodities, as notified by the Board;

16. Power to prohibit or restrict importation and exportation of goods.- *The Federal Government may, from time to time, by notification in the official Gazette, prohibit or restrict the bringing into or taking out of Pakistan of any goods of specified description by air, sea or land.*

17. Detention, seizure and confiscation of goods imported in violation of section 15 or section 16. *Where any goods are imported into, or attempted to be exported out of, Pakistan in violation of the provisions of section 15 or of a notification under section 16, such goods shall, without prejudice to any other penalty to which the offender may be liable under this Act or the rules made there under or any other law, be liable to detention, for seizure or confiscation subject to approval of an officer not below the rank of an Assistant Collector of Customs, and seizure for confiscation through adjudication, if required :*

Provided that the period of detention shall not exceed fifteen days which may be extended by the Chief Collector or Director General for a period not exceeding fifteen days.

178. Punishment of persons accompanying a person possessing goods liable to confiscation.- *If any two or more persons in company are found together and they or any of them, have goods liable to confiscation under this Act, every such person having knowledge of this fact is guilty of an offence and punishable in accordance with the provisions of this Act as if goods were found on such person.*

19. If the accusations contained in FIR are read in line with the above provisions of law, no offence as defined under section 2(s), 16, 17 & 178 of Customs Act 1969 is made out. For the reasons that all the

proceedings were undertaken in violation of section 162 and 163 of the Customs Act and Petitioners have given full account of the storage of POL products and two governments viz. Pakistan refinery and Coast Guards were not examined in support of the allegations.

20. To be dealt with in accordance with law is inviolable right, to afford an opportunity of fair trial and to do lawful trade and business has been guaranteed as fundamental rights under articles 4, 9, 10-A and 18 of the Constitution of Islamic Republic of Pakistan, of 1973 (the Constitution). It is Constitutional responsibility of this Court to take notice in situations where it appears that persons, mandated to perform functions in connection with the affairs of Federation or Province, were discharging their obligations in violation of the law. It is foundational duty of the functionaries to ensure that the powers conferred upon them are exercised in consonance with the provisions of the governing laws with utmost responsibility to make sure that the fundamental rights, inter alia with respect to livelihood and liberty, guaranteed in the Constitution are not impinged upon.

21. Under Article 199 of the Constitution this Court can make judicial review of the acts done or proceedings taken by the persons performing functions in connection with affairs of the Federation, a Province or a local authority. In the course of judicial review if Court concludes that such acts or proceedings to have been done or taken without lawful authority, to declare them to be so and of no legal effect. The registration of an FIR and the doing of an investigation are the acts of officers of the Customs Department (ASO) who perform functions in connection with the affairs of Federation and are thus amenable to the writ jurisdiction of this Court under Article 199(1)(a)(ii) of the Constitution. This Courts can declare such acts of the officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceeding. The acts of registering the FIR and conducting investigation by the officers of the Customs, in the present case, are also subject to said jurisdiction of this Court, as they have been done by the officers performing functions in connection with affairs of the Federation.

22. Powers vested in this Court under article 199 of the Constitution, in particular for quashing an FIR are exercised under exceptional circumstances, very sparingly and rarely, and only when the facts on record unequivocally indicated that no offence was committed by the accused; the registration of FIR was misuse of official capacity, there was no justification for allowing the prosecution to continue, the proceedings in the matter would amount to an abuse of the process of law, and the dispute from the face of facts narrated in FIR appeared to be of civil nature and it was converted into criminal proceedings to harass and humiliate the accused petitioners. It would be fallacy of thought to treat High Court as an Appellate Authority against the actions taken by the police and in the present case by customs authority. The powers of this Court under writ jurisdiction are curative and corrective in nature and Court is saddled with a balancing task to do complete justice between the parties. The recourse to the constitutional jurisdiction of this Court can be taken to correct the wrong done by an authority discharging its functions in connection with affairs of federation or province. If an FIR which from its face appears to be a colourable exercise is not quashed at initial stage and once the matter has been duly investigated and report under section 173 CrPC has been submitted before the concerned Court then the accused facing trial would undergo a long process of trial . Though proper and adequate remedy was available under the law to seek indulgence of Trial Court for acquittal by filing an application under section 249 - A CrPC or 265 – K CrPC as the case may be.

23. In the case of Muhammad Farooq Versus Ahmed Nawaz Jagirani and others reported in PLD 2016 Supreme Court 55 Honorable Supreme Court of Pakistan has been pleased to hold as under:

> *"11. The remedy under Section 561-A, CrPC is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, CrPC, as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event. In the case of Maqbool Rehman v. State (2002 SCMR 1076) in paragraph 6 thereof, it was held that "normally, High Court does not exercise inherent jurisdiction unless there is gross miscarriage of Justice and interference by the High Court seems to be necessary to prevent abuse of process of court or to secure the ends of justice. Jurisdiction under section 561-A, Cr.P.C is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of*

grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction."

23. From examination of record it transpired that no offence of smuggling defined under section 2(s), 15, 16, 17, 178 and 187 of the Customs Act, 1969 was made out and FIR was delayed by four days, time of alleged offence was not mentioned and all the proceedings were undertaken in violation of section 162 and 163 of the Customs Act, therefore, the impugned FIR, detention proceedings and investigation were nullity in the eyes of law and done without any lawful authority. Contrary the Petitioners discharged their burden to prove that POL products were purchased and stored lawfully as envisaged under section 187 of the Customs Act 1969, which reads as under:

187. Burden of proof as to lawful authority etc.- *When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, license or other document shall lie on him :*

Provided that any person, alleged to have committed an offence under this Act, shall bear the burden of proof that any property owned by him in his name or someone else name was not acquired from the proceeds of such crime:

Provided further that the procedure for forfeiture of such property shall be prescribed by the Board under the rules

24. Reliance in this regard is placed on the judgment of Honorable Supreme Court in the case of F.I.A. through Director General, FIA and others Versus Syed HAMID ALI SHAH and others reported as P L D 2023 Supreme Court 265, wherein it is held that:

6. In the present case, as the High Court was competent to judicially review the acts of registering the FIR and conducting the investigation by the officers of the FIA in the exercise of its constitutional jurisdiction under Article 199 of the Constitution, therefore, the acceptance of the criminal miscellaneous applications filed by some of the accused persons under section 561-A, Cr.P.C. and the reference to section 561-A, Cr.P.C. while quashing the FIR have no material bearing on the jurisdiction of the High Court while passing the impugned judgment. Even otherwise, if the reasons stated for passing the impugned judgment fall within the scope of the jurisdiction of the High Court under Article 199 of the Constitution,

the reference to a wrong or inapplicable provision of law will not by itself have any fatal consequence.[4] *The High Court has observed in the impugned judgment that the matter in issue, which relates to the violation of the terms and conditions of service of the CDA employees, does not constitute the offence of criminal misconduct punishable under section 5(2) of the PCA nor are the ingredients of the offence of criminal breach of trust under section 409, P.P.C. made out. The High Court has also specifically quoted the statement made before it by the Addl. Director, FIA that "FIA has concluded investigation and no element of bribery has been found in the entire inquiry against any official of CDA". With the said observations, the High Court has quashed the FIR, by holding that FIA authorities have failed to legally justify their actions of initiating the inquiry and registration of the FIR. These reasons squarely fall within the scope of the provisions of Article 199(1)(a)(ii) of the Constitution.*

7. The FIA has been established by the Federal Government under Section 3 of the Federal Investigation Agency Act, 1974 ("FIA Act"), for inquiry into, and investigation of the offences specified in the Schedule to the said Act, including an attempt or conspiracy to commit, and abetment of, any such offence. Under section 5 of the FIA Act, the officers of the FIA have such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to the investigation of offences under the Cr.P.C., and its officer not below the rank of a Sub-Inspector may, for the purposes of any inquiry or investigation under this Act, exercise any of the powers of an officer-incharge of a Police Station under the Cr.P.C.. That being so, one has to look at the provisions of sections 154 and 156 of the Cr.P.C., which relate to the registration of FIRs and conducting the investigations, for the purpose of examining whether the acts of registering the FIR and doing the Investigation by the FIA officers in the present case were with or without lawful authority.

8. Under section 154 of the Cr.P.C., a first information report (FIR) can be registered only with regard to the commission of a cognizable offence. Similarly, an investigation can be made by a police officer, without the order of a Magistrate, under section 156 of the Cr.P.C. only in respect of a cognizable offence. Needless to say that 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, and mere mentioning of a particular Section of the P.P.C. or any other offence under the law in the FIR is not determinative in this regard.[6] *However, the falsity or truthfulness of those allegations is not under examination for the purpose of determining the legal authority of the police officer to register the FIR. The precise question is: whether the allegations as contained in the FIR make out the commission of a cognizable offence; if so, what is that?*

9. When asked how the accused officers who processed and approved the alleged illegal upgradations have committed the cognizable offences of criminal breach of trust and criminal misconduct punishable

under section 409, P.P.C. and section 5(2), P.C.A. and how the officials who were granted the illegal upgradations are the abettors in the commission of those offences and are thus liable for the offence of abetment punishable under section 109, P.P.C., we got no plausible reply. The allegations as contained in the FIR do not involve the very essential ingredients of the offence of criminal breach of trust as defined in section 405, P.P.C., (i) the entrustment of, or dominion over, any property, and (ii) the dishonest misappropriation or conversion to his own use of that property, or the dishonest use or disposal of that property in violation of any direction of law or of any legal contract. Therefore, the cognizable offence of criminal breach of trust by a public servant punishable under section 409, P.P.C. mentioned in the FIR is not made out. Similar is the case with the cognizable offence punishable under section 5(2), P.C.A. mentioned in the FIR, which is also not made out of the allegations as contained in the FIR. The argument of the learned counsel for the petitioner is totally misconceived, that the authority conferred upon the accused officers, who granted the illegal upgradations, was a trust and by misusing that authority, they have committed the offence of criminal breach of trust punishable under section 409, P.P.C. and the offence of criminal misconduct punishable under section 5(2), P.C.A. No doubt, the powers of the public servants are like a trust conferred upon them and they should exercise them fairly, honestly and in good faith as a trustee; but the entrustment of the power to upgrade his subordinate officials is not equivalent to the entrustment of property as mentioned in section 405, P.P.C. and its misuse, or use in violation of the relevant rules and regulations, does not constitute the cognizable offences punishable under section 409, P.P.C and section 5(2), P.C.A. The misuse of such a power may constitute misconduct under the service laws, but does not attract criminal misconduct punishable under the criminal laws.

10. *In view of the above legal position, the acts of the FIA officers in registering the FIR and carrying out investigation in the present case are certainly without lawful authority. We thus find no legal flaw in the impugned judgment. The present petition is not only meritless but also vexatious, as it amounts to continuation of harassment caused to the respondents by initiating the criminal proceeding against them in relation to their service matter, without any lawful authority. Additionally, these petitions being meritless and against the law settled by this Court have unduly wasted the time of the Court depriving it from attending to more lawful and genuine claims pending before it. Such frivolous litigation clogs the pipelines of justice causing delay in dispensation of justice, thereby impairing the right to expeditious justice of a genuine litigant. Such vexatious and frivolous petitions add to the pendency of cases which over-burdens the Court dockets and slows down the engine of justice. Such vexatious and frivolous litigation must be dealt with firmly and strongly discouraged.*[7] *We, therefore, dismiss the present petition and decline the leave to appeal, with costs of Rs.100,000/- under Order 28, Rule 3 of the Supreme Court Rules, 1980. The costs shall be deposited by petitioner No.2,*

Inspector Irfan Azim Burki, In-charge FIA, Corporate Crime Circle, Islamabad, who registered the FIR and was making the investigation against the respondents, from his own pocket, with the Registrar of this Court within 30 days from today, and after the deposit, they shall be paid to the respondents. A compliance report, in this regard, shall be placed on the record of the case. In case of non-compliance, the matter shall be put up before the Court for appropriate orders.

26. The case laws relied upon by Learned Counsel for Respondents with reverence are distinguishable to the facts and circumstances of case in hand.

27. In view of the reasoning and rationale herein contained, a case to exercise the powers of judicial review under article 199 of the Constitution is made out. Consequently this petition is allowed. The search, seizure and detention proceedings conducted by the respondents are declared in dissonance with the law. As a result of the findings herein above the FIR No ASO- 31/2026-INT stands quashed. ASO is directed to restore the sealed and detained property to the Petitioners.

28. These are the reasons for short order dated 18.06.2026 vide which this petition was allowed. The order reads as under:

"1. Heard arguments and perused the material available on record. For the reasons to be recorded later on and subject to any modification(s) in the detailed order, this petition is allowed.

2. FIR No ASO-31/2026-INT recorded by Anti Smuggling Head Quarters N.M.B Wharf Karachi stands quashed and all the actions including confiscation of oil tankers and High Speed Diesel (HSD) are declared illegal.

3. Petitioner, however, may submit an application with the custom authorities for the release of confiscated goods and HSD which shall be released to him within a period of 10 days from the date of this order.

29. Office is directed to send copy of this Order to Respondents for compliance.

JUDGE

HEAD OF CONST. BENCHES

JUDGE

Approved for reporting