

*ORDER SHEET*

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

C. P. No. D – 2901 of 2016.  
C. P. No. D – 474 of 2018.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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21.06.2018.

FOR KATCHA PESHI.

**Mr. Ayatullah Khowaja, Advocate for the petitioners in C. P. No. D – 2901 of 2016.**

**Mr. Raja Hans Raj Naurang, Advocate for the petitioners in C. P. No. D – 474 of 2018.**

**Mr. Hasan Feroz, Advocate has filed Vakalatnama on behalf of alleged contemners in C. P. No. D – 2901 of 2016.**

**Mr. Allah Bachayo Soomro, A.A.G. along with Inspector Manzoor Ali Sodhar, on behalf of DIGP Hyderabad, SIP Syed Manzoor Ali on behalf of SSP Hyderabad.**

These are two connected petitions wherein somewhat similar relief is being sought by the petitioners in the following terms:-

**C. P. No. D – 2901 of 2016.**

- a) Declare the act of Respondents No.6 to 9 i.e. stopping the cargo vehicles (betel nuts) of petitioners and demanding illegal gratification as illegal, unjust, unlawful, malafide, harassment, and exercised the power in excess without lawful authority which is not sustainable in the eye of law.
- b) Declare the act of Respondents No.6 to 9 i.e. harassing, threatening the Petitioners and restraining the Petitioners from doing their lawful business as illegal, unjust, unlawful, malafide, harassment, and exercised the power in excess without lawful authority which is not sustainable in the eye of law.
- c) Declare that the Petitioners are carrying on their business of betel nuts which is permissible under the law.
- d) Restrain the Respondents from harassing, threatening the Petitioners.
- e) Restrain the Respondents from creating any hindrance in carrying / doing said lawful business of Petitioners.
- f) Direct the Respondents to provide the protection to Petitioners and to their lawful business which is also protected under the constitution.

**C. P. No. D – 474 of 2018.**

- a) Direct the Respondents No:4 to 17, not to harass and pressurize the Petitioners, and All Businessmen of Betel Nuts, Powder of betel nuts, cardamom, Khatta etc their servants, workers and family members, by imposing self-made and unlawful restrictions upon their legal business/livelihood, in any manner without due course of law, in collusion with each other's as which is against the Article 18 of Constitution of Islamic Republic of Pakistan-1973.
- b) Restrain the Respondents No.4 and 17 not to impose self-made illegal restrictions upon the lawful business of the Petitioners and all businessmen of betel nuts, betel nuts powder, cardamom, cloves, khatta etc without due course of law.
- c) Direct the Respondents No.1 and 2 for providing protection of life, property, and honour of the petitioners and their business/livelihood.
- d) Declare that forcing the Petitioners and all businessmen of Faqir ka Pir, Hyderabad, to close down their shops by the Respondents No.3 to 17 is their illegal and unlawful act and actions, which is against the basic fundamental rights of the petitioners as envisaged by the Constitution of Pakistan-1973.

Mr. Ayatullah Khowaja learned Counsel for petitioner in C.P.No.D-2901 of 2016, submits that the petitioners are engaged in private business of betel nuts in Hyderabad Division and enjoy good reputation and respect amongst the business community, whereas, they are registered as taxpayers and are also members of their Association and Chamber of Commerce and Industry; that while conducting their business in buying and selling betel nuts time and again harassment has been caused by the police officials / respondents of various Districts; that earlier C.P. No.D-407 of 2008 was filed and was disposed of through an order dated 17.12.2008 and despite this the police officials are time and again detaining their vehicles carrying such goods and are registering F.I.Rs by falsely implicating the petitioners in violation of the Court orders; that in this petition twice orders have been passed directing respondents to act strictly in accordance with law but despite such orders further F.I.Rs have been lodged and still the vehicles are being detained against which contempt applications have also been filed; that on 31.05.2018, regarding the allegation of the petitioners against respondents / alleged contemnors directions were given to file specific comments but they have failed to do so; that in view of such position petition be allowed as prayed and respondents be restrained. His arguments have been adopted by the other learned Counsel in C.P. No.D-474 of 2018.

On the other hand learned A.A.G. pursuant to orders dated 31.05.2018 has filed a detailed report of inquiry as well as comments and submits that the petitioners are engaged in unlawful business of "Gutka" and "Manpuri", whereas, according to the inquiry report false allegations have been leveled by the petitioners regarding demand of bribe, therefore, no case is made out; that this Court has earlier passed a detailed order in C.P. No.D-343 of 2017 whereby certain directions were issued to the police officials and, therefore, the respondents are only acting in accordance with law and the directions of the Court.

We have heard all the learned Counsel and learned A.A.G. and perused the record.

It appears that the case of the petitioners is to the effect that they are engaged in local buying and selling of betel nuts and to substantiate their claim certain documents relating to import of goods have been annexed with the memo of the petition. However, we had confronted the learned Counsel for the petitioner to show any nexus of these documents with the petitioners before this Court like any sales tax invoice or other documents; but the learned Counsel was unable to refer to any such document on record. It further appears that there are twenty (20) petitioners before this Court and all have filed instant petition by stating one common address of their Association, whereas, no substantial documents have been placed on record to first justify as to their lawful ownership of betel nuts in question. Secondly, it may be observed that betel nuts is an imported commodity and for such commodities, it is but necessary, to be in possession of some lawful documents to substantiate that the goods in question are lawfully imported and are not smuggled. If a person claims to be an importer by himself, he must be in possession of proper goods declaration and receipts of payment of duties and taxes and so also a laboratory report to the effect that the betel nuts in question are not infected and are fit for human consumption. It is settled law that question of public health cannot be left at the discretion of persons who, for their vested interest, can go to any extent. It is further settled that pollution, environmental degradation and

impure food items also fall in the category of deprivation of life. Reliance in this regard may be placed on the case of ***Adeel-Ur-Rehman v Federation of Pakistan*** (2005 SCMR 1). On the other hand if a person has purchased lawfully imported goods (locally), then in addition to such documents, he must also be in possession of a sales tax invoice of exactly the same goods which are found in his possession to discharge the initial burden as to the lawful import of the goods. Once such burden is discharged, only then it is shifted to the prosecution. However, in this case no such documentation is on record except some import documents of a third party which is not before the Court and there is nothing on record to substantiate any co-relation of these documents with the petitioners before the Court.

As to the prayer being sought in these petitions they are very generalized in nature and have been sought against the police officials of the entire Division and so also in respect of various cause of actions. Even cause of action which have accrued after filing and of the petition, have been brought before the Court through contempt applications. It may be of relevance to observe that merely for the fact that Court has already passed an order directing the respondents to act strictly in accordance with law does not ipso facto entitles the petitioners to take benefit of such orders for all times to come. Even otherwise an order directing respondents to act strictly in accordance with law does not mean that respondents have been restrained in any manner. If a fresh cause of action has accrued and the respondents are acting in accordance with law, including registering an F.I.R., it does not give a cause to file contempt applications against respondents and so also other officials who are not even respondents before the Court on the basis of directions to act strictly in accordance with law. In fact it is the responsibility and duty of every Government official, while discharging his official duties, to act strictly in accordance with law, and for that even no order is required to be passed in each and every case.

It further appears that during pendency of these petitions allegations were leveled against some of the respondents that bribe has been demanded in crime No.69 of 2018, registered at P.S. City Hyderabad by the Investigation

Officer and on 31.05.2018 concerned SSP was directed to conduct inquiry. Today detailed report along with relevant documents has been placed on record and perusal thereof reflects that the petitioners have failed to substantiate their claim and allegations. In the report Court has been informed that there are various F.I.Rs registered against the petitioners and other shopkeepers under various sections including section 302, 324, 337 of PPC etc; whereas while conducting inquiry full opportunity was provided to the petitioners to substantiate their case and so also the inquiry officer called information from independent inhabitants of the area who disclosed that petitioners are involved in the business of manufacturing / selling of "Gutka" and "Manpuri" and they are main suppliers of the same in Hyderabad and adjoining areas. It has been further reported that they also supply various material used in preparation of "Gutka" and "Manpuri". The final conclusion has been drawn in the inquiry report to the effect that petitioners have failed to substantiate their allegations and in perusal of the report we are of the view that in this Constitutional jurisdiction we can't go any further to appreciate the factual controversies in the matter. The question that whether they are selling "betel nuts" as claimed or "Gutka" and "Manpuri" as alleged, is not a question which could be decided by this Court in this jurisdiction. If the petitioners are selling lawfully imported betel nuts which are not injurious to health and are fit for human consumption, they should be in possession of relevant documents as stated above and shall produce the same before the respondents, who are required to act in accordance with law, whereas, the petitioners are also at liberty to approach the trial Court, for redressal of grievance, if so advised. Some allegations were leveled and inquiry was ordered which has come against the petitioners and therefore, no further indulgence can be granted to the petitioners while exercising Constitutional jurisdiction.

It further appears that earlier a Petition bearing No.D-343 of 2017 was filed before this Court by one of the manufacturer and trader of "Chalia Masala" and had sought somewhat similar relief against the police officials not to cause harassment or to interrupt in his lawful business and this Court through a

detailed Judgment dated 20.10.2017 has been pleased to hold that petitioners have no case to seek any indulgence from the Court as apparently the business in which they are engaged is not lawful. Further directions were also issued to the police officials to stop such trade and take action accordingly.

Therefore, we are of the considered view that in this matter the petitioners have not been able to make out any prima facie case compelling us to exercise any discretion under Article 199 of the Constitution to grant relief as prayed for. Accordingly, both these petitions are hereby dismissed.

JUDGE

JUDGE

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