

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. **D – 7827** of 2019

Date	Order with signature of Judge
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PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Chief Justice; &
Mr. Justice Abdul Mobeen Lakho

Priority

1. For orders on office objection.
2. For orders on Misc. No. 9249/2020.
3. For hearing of Main Case.
4. For hearing of Misc. No. 34541/2019.

08.04.2024:

Petitioner is called absent.

Mr. Muhammad Abu Bakar Khalil, advocate.

Mr. Saifullah, A. A. G. Sindh.

a/w. Mr. Saandeep Malani, A. A. G. Sindh.

Mr. Faheem Hussain, D.P.G. Sindh.

Mr. Bashir Ahmed Memon, Solicitor, Govt. of Sindh.

1. Petitioner is called absent, no intimation is received, whereas, Mr. Saifullah, learned AAG submits that petitioner is not coming forward to pursue the matter as the relief being sought through instant petition is misconceived for the reason that the office of the Advocate General Sindh is a constitutional office to deal with all the cases in Sindh High Court as well as the Hon'ble Supreme Court on the advice of the respective departments of Government of Sindh, and do not require any approval or sanction by the Solicitor Department in the view of Article 140 of the Constitution read with Rules 11 & 15 of the Sindh Law Officers (Conditions of Services) Rules, 1940 and Rules for the conduct of the Legal Affairs of Government of Sindh. Learned AAG has read out the provisions of Article 140 of the Constitution and Rule 11 and 15 of the above Rules, which read as follows:-

“140. (1) *The Governor of each Province shall appoint a person, being a person qualified to be appointed a Judge of the High Court, to be the Advocate General for the Province.*

(2) It shall be the duty of the Advocate General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Provincial Government.

(3) The Advocate General shall hold office during the pleasure of the Governor [and shall not engage in private practice so long as he holds the office of the Advocate General].

(4) The Advocate General may, by writing under his hand addressed to the Governor, resign his office.”

“11. Duties as adviser of Government—

The Advocate General is the Chief Legal Adviser of Government. He is bound to give his opinion in any matter upon which Government may think fit to consult him, including projects of legislation. He is not responsible for the correct preparation of the drafts of Bills, but when called upon to advise upon Bills which are under the consideration of Government. It is his duty to indicate any defect he may detect in the drafting thereof and to suggest such modifications as he may deem necessary therein, as well as to advise generally upon the proposed measures.

15. Duties as Advocate—

It is the duty of the Advocate General:

- (a) to appear for the Crown in all criminal cases on the appellate side of the Chief Court;*
- (b) to appear on the appellate side of the Chief Court in every suit or other civil matter to which Government is a party on in which it is interested;*
- (c) to appear, if required by Government, in any criminal case pending before a Magistrate in Karachi.*
- (d) to appear in all matters coming before the Chief Court of Sindh or the Federal Court of Pakistan, which involve a substantial question of Law as to the interpretation of the Government of India Act, 1935, or any Order in Council made thereunder, or as to the validity of a Provincial enactment.*

(2) *The Advocate General may in suitable cases transfer his work to the Public Prosecutor for Sindh.*

The Advocate General shall also discharge the duties imposed on him by any law for the time being in force.

2. Similarly, learned DPG has supported the contention of the learned AAG and submits that after creation of the Prosecutor General Office by virtue of special law i.e. Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, all the criminal cases in the Sindh High Court and the Hon'ble Supreme Court are being dealt with by the office of Prosecutor General Sindh, who act on the advice of the respective departments of Sindh Government and assign cases to their law officers to represent the State in the criminal cases, therefore, the Prosecutor General Office does not require any sanction or approval from the Solicitor's Department, which office only deals with the cases pertaining to the District Courts in the Sindh, therefore, instant petition is misconceived and not maintainable.

3. Both the learned AAG & DPG have placed reliance in the case of *Land Acquisition Officer and Assistant Commissioner, Hyderabad v. Gul Muhammad through Legal Heirs* [PLD 2005 SC 311] as recorded in the order dated 18.05.2023.

4. Mr. Bashir Ahmed Memon, learned Solicitor present in Court, does not dispute such factual and legal position and submits that the Solicitor Department has already filed comments to this effect, according to which, the Officers of the Advocate General and the Prosecutor General are now authorized to deal with the cases in Sindh High Court as well in the Hon'ble Supreme Court, to issue advice and file/defend the cases/appeals etc. on the advice of the respective departments of Government of Sindh. However, the cases relating to the District Courts are still being dealt with by the Solicitor Department, who on the advice of the

respective departments of Government of Sindh, files/defend the cases/appeals etc. in the District Courts, whereas, the matters pertaining to the High Courts or the Hon'ble Supreme Court, if received for the purposes of advice are forwarded to offices of the Advocate General Sindh or the Prosecutor General Sindh as the case may be.

5. Heard the learned Assistant Advocate General Sindh as well as the Deputy Prosecutor General Sindh and the Solicitor present in Court, and perused the relevant provisions as mentioned above, which prima facie support the contention of the learned Assistant Advocate General and learned Deputy Prosecutor General as well as the instance of the Solicitor, Government of Sindh. It appears that for this reason the petitioner is not coming forward to pursue the matter.

6. Accordingly, we do not find any substance in the instant petition, which is dismissed alongwith all listed applications.

CHIEF JUSTICE

JUDGE

A.S.