

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**CP D 3802 of 2024**

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For orders as to maintainability of petition

**17.12.2024**

Mr. Aqeel Ahmed Khan, advocate for the petitioner

The present petition has been filed in the civil Constitutional jurisdiction of this Court seeking to have criminal proceedings / FIR quashed. On the last date, the Court was pleased to confront the petitioner's counsel as to maintainability as follows:

*"Counsel for the petitioner is directed to satisfy as to how this petition is maintainable whereby, an FIR has been challenged"*

Today, the counsel was once again confronted with the aspect of maintainability, as to how / why this Court must interfere in a pending criminal investigation. In so far as the objections to the FIR were concerned, counsel was queried as to why the same could not be placed before the investigating officer and / or the concerned court. On the issue of preclusion of arrest, the counsel was queried as to why such relief was directly sought in writ jurisdiction, while eschewing the adequate remedy enshrined in the law. Respectfully, learned counsel remained unable to articulate a cogent response on either count.

The Supreme Court had illumined in *Ghulam Muhammad*<sup>1</sup>, back in 1967 that if an offence had been committed justice required that it should be enquired into and tried by the competent forum. In the absence of a finding of guilt the accused had a right to be honorably acquitted by the competent court and vice versa. Abjuring the recourse to regular proceedings by deflection to the High Court was duly deprecated. *Ghulam Muhammad* was relied upon in *Bajwa*<sup>2</sup> and *Aleem*<sup>3</sup> and the Supreme Court considered refusal of the High Court to deflect the normal course of a criminal case, through exercise of writ jurisdiction, as salutary. *Muhammad Afzal Zullah CJ.*, while, approving the authority cited supra, observed in *Habib Ahmed*<sup>4</sup> that if prima facie an offence had been committed, the ordinary course of trial, before the competent court, was not to be allowed to be deflected through an approach to the High Court. The august Supreme Court, while allowing an appeal against an order of the High Court,

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<sup>1</sup>Per *Hamood ur Rehman J.* in *Ghulam Muhammad vs. Muzammal Khan & Others* reported as *PLD 1967 Supreme Court 317*.

<sup>2</sup>Per *Aslam Riaz Hussain J.* in *Abdul Rehman Bajwa vs. Sultan & Others* reported as *PLD 1981 SC 522*.

<sup>3</sup>Per *Muhammad Afzal Zullah J.* in *Abdul Aleem vs. Special Judge (Customs) Lahore & Others & Others* reported as *1982 SCMR 522*.

<sup>4</sup>*A Habib Ahmed vs. MKG Scott Christian & Others* reported as *PLD 1992 Supreme Court 353*.

held in *Sardar Khalid*<sup>5</sup> that by allowing recourse to writ the High Court erred in law by short circuiting the normal procedure of law, while exercising equitable jurisdiction which is not in consonance with the law.

In view of the preponderance of binding authority, cited supra, it is our considered view that the ordinary course of criminal proceedings could not be allowed to be deflected by resort to writ jurisdiction in the present facts and circumstances. The statutory fora are competent to determine the viability of the relevant criminal proceedings and regulate the custody of the accused. No case has been set forth before us to merit the invocation of the discretionary<sup>6</sup> writ jurisdiction of this Court in such regard; therefore, this petition is hereby dismissed, along with pending applications, in *limine*.

Judge

Judge

Amjad

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<sup>5</sup>Per Chaudhry Ijaz Ahmed J. in *Haji Sardar Khalid Saleem vs. Muhammad Ashraf & Others* reported as 2006 SCMR 1192.

<sup>6</sup>Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.