

**PESHAWAR HIGH COURT,
PESHAWAR**

FORM OF ORDER SHEET

Date of Order or Proceedings	Order/Proceedings with Signature of Judge.
15.08.2022	<p data-bbox="699 486 1219 559"><u>C.M No.1521-P/2022 in WP No.2194-P/2022.</u></p> <p data-bbox="699 602 813 634">Present:</p> <p data-bbox="873 634 1198 930">Mr. Abdul Lateef Afridi, Advocate, for the petitioners. Syed Arif Jalal, AAG for the State. Mr. Sahibzada Riazat-ul- Haq, Advocate for respondent No.1.</p> <p data-bbox="938 970 1003 997" style="text-align: center;">****</p> <p data-bbox="699 1032 1256 1553"><u>SHAHID KHAN, J.</u> Through the instant petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have prayed this Court for issuance of an appropriate writ, in the following manner: -</p> <p data-bbox="792 1602 1219 2045"><i>“It is, therefore, most humbly prayed that on acceptance of instant writ petition; A. The impugned order dated 11.06.2022 of the learned Sessions Judge, Khyber may please be declared without jurisdiction, contrary to law, against the principle of natural justice and violative of the fundamental rights of the petitioners.</i></p> <p data-bbox="699 2085 1256 2198">2. In essence, respondent No.1 (Zulfat Shah an Afghan national)</p>

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through an application under section 22-A Cr.P.C approached the Court of learned Sessions Judge, Khyber at Jamrud (Justice of Peace) with set of allegations followed by registration of FIR against Akbar Shah SHO P.S Jamrud, Zulfiqar, ASHO, Irshad Retired constable FC (Bhigyari Check Post) & Adil constable FC (Bhigyari Check Post) to the effect that on the fateful date, day & time on his arrival to the check post, he was deboarded from the coach and shifted to the Dera/Police Station followed by entry in the Daily Diary and recovery of \$50,000/- (Fifty Thousand Dollars) from his possession. However, respondent No.1 (Zulfat Shah) claimed the subject currency as valid & genuine currency duly declared by the quarter concern, custom authorities at Torkham in the name of Zeeshan. The subject currency was entrusted to respondent No.1 (Zulfat Shah) for its onward transmission to Peshawar.

3. The learned Justice of Peace put

the respondents on notice and vide order, 11.06.2022, after hearing the parties through their counsel, allowed the request of the respondent No.1 (Zulfat Shah) followed by registration the event through FIR against Zulfiqar Addl: SHO P.S Jamrud, Khyber, Irshad Retired constable FC Bigyari Check Post and Adnan Khan SI.

4. It obliged the respondent No.1 (Zulfat Shah) to call in question the aforesaid proceedings through subject petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

5. Arguments heard and record perused.

6. Learned counsel for the petitioners is focal & consistent of the preposition that the petitioners, personnel of the law enforcing agencies/police and the respondent No.1 (Zulfat Shah) on his entry to Pakistan, was confronted with them. Added, in discharge of their official obligations, the US dollars in sum of

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\$50,000 was secured from respondent No.1 (Zulfat Shah), the same was transmitted to the State Bank for examination vide endorsement dated 11.04.2022, however, it was declared as *forged & fake*. Further added, it is crystal clear from the record that the dollars in question per record of the custom authorities at Turkham were in the name of Zeeshan followed by its entrustment through Khadim and then to Rauf, whereas, Rauf handed over the same to respondent No.1 (Zulfat Shah) for its onward transmission to Peshawar. Also added, the aforesaid facts & circumstances have not been taken into consideration by the learned Sessions Judge, Khyber followed by an erroneous, illegal & unlawful order u/s 22-A Cr.P.C to opt for the impugned order. Concluded, the impugned order of the learned Justice of Peace is illegal, unlawful, ultra-varies and not tangible, as such, on acceptance of the petition in hand the same needs to be set aside accordingly.

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7. Learned counsel for the respondents is of the view that dollars in question were cleared by the quarter concerned, custom hierarchy on entry of Zeeshan, at Turkham border followed by its delivery to Khadim who subsequently delivered the same to Rauf, (brother of respondent No.1 Zulfat Shah) and ultimately the same were delivered to Zulfat Shah to carry it to Peshawar. Concluded, the currency in question being declared at Turkham border with the custom authorities, its seizure and misappropriation by the petitioners' amounts to cognizable offence under the law on subject and order of the learned Justice of Peace does not need any interference at all.

8. A bare look of the record made available would transpire that the event in hand has taken place in the vicinity of Pak Afghan border, Turkham. There is no denial at all that Zulfat Shah, the respondent No.1 on his arrival at Bigyari check post at about 02:00 p.m. \$50,000 (Fifty thousand dollars) have

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been secured from him so reflected in Daily Diary No.13 dated 11.04.2022 scribed at 17:40 hours. The legal status of the currency in question also glittering on surface of the record to be *forge & fake* per report of NBP Exchange Company Ltd dated 18.04.2022.

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9. The petitioners being members of the law enforcing agencies were under obligations to check & countercheck what to say of the considerable quantum of currency carried by the immigrants on the border but to keenly observe the actions of the immigrants.

10. The record prima facie speak of the currency in question seized by the petitioners in discharge of their official obligations is not valid & genuine. On face of the record malafide, ill will, personal vendetta is lacking rather prima facie the petitioners have discharge their official obligations in the national interest, therefore, it would be unwise to proceed the petitioners u/s

22-A Cr.P.C for the registration of criminal case against them.

11. Resultantly, on acceptance of the petition in hand, impugned order of learned Justice of Peace/Sessions Judge, Khyber dated 11.06.2022 u/s 22-A Cr.P.C for registration of FIR against the petitioners is not based on proper appraisal of law on subject, as such, not tangible and stands set aside.

Announced
15.08.2022


JUDGE


JUDGE