

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

As requested by Shehri- Citizen for a Better Environment A Shehri Aon
The O. for Paper
10/10/19

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19/10/19

Civil Review Petition No. 120 /2019
In
Civil Appeal No.148 of 2018

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Aon

Province of Sindh,
Through the Home Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi.....Petitioner

Versus

1. Shehri- Citizen for a Better Environment (CBE),
A Non-Governmental Organization,
Registered as a Society under the Societies Registration Act, 1860,
Through its authorized person,
Having its registered office at
88-R, Block-2, P.E.C.H.S.,
Karachi - 75400
2. Sheema Kirmani
Daughter of Salahuddin Ahmed Kirmani,
Muslim, adult, Resident of GF-3, Block-78,
Sea View Apartment,
DHA-5, Karachi
3. Tasneem Ahmed Siddiqui,
Son of Zamir Ahmed,
Muslim, adult, resident of
KDA Officer Housing Society,
Karachi.
4. Arif Hassan
Son of Sarwar Hasan,
Through his lawfully appointed Attorney,
Muslim, adult, resident of 37-D,
Muhammad Ali Society,
Karachi.
5. Naeem Sadiq,
Son of Mohammad Sadiq Malik,
Muslin, adult, resident of F-15/2,

4thGizri Street, DHA,
Karachi.

6. Federation of Pakistan,
Through the Secretary,
Ministry of Interior,
Pakistan Secretariat, R Block,
Islamabad.
7. Federation of Pakistan,
Through the Secretary,
Ministry of Law and Justice,
Islamabad.
8. Pakistan Rangers,
Through Director General,
Head Quarters Pakistan Rangers (SINDH),
Muslim Jinnah Courts Buildings,
Dr. Zia ud Din Ahmed Road,
Karachi.
9. Allah Dino Khawaja, PSP,
Former Inspector General of Police,
Sindh Police, C.C.P.O., Office,
I.I Chundrigar Road,
Karachi.....Respondents.
1. Province of Sindh,
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi.....Proforma Respondent

**CIVIL REVIEW PETITION UNDER ARTICLE 188 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN,
1973 READ WITH ORDER XXVI RULE 1 OF THE
SUPREME COURT RULES FOR REVIEW OF ORDER OF
THIS HONOURABLE COURT DATED 22.03.2018 IN CIVIL
APPEAL NO.148 OF 2018**

Respectfully submitted:

Being aggrieved and dissatisfied by the Order of this Hon'ble
Court dated 22-03-2018 authored by Mr. Justice Umer Ata
Bandial in Civil Appeals No.148 to 150 of 2018 ("Impugned
Order") whereby this Hon'ble Court, inter alia, declared

"Police is concurrently subject to legislative and executive competence of the Federation and the Provinces", the petitioner prefers the instant Review Petition, inter alia, on following questions of law, facts and grounds amongst others:

QUESTIONS OF LAW:

- A. Whether the impugned order commits an error on the face of record in that it is contradictory to the Order dated 22.3.2018 authored by the then Chief Justice Mian Saqib Nisar?
- B. Whether the impugned order erred in not addressing, deciding or dilating upon grounds on which leave was granted?
- C. Whether no appeal was preferred against Hon'ble High Court's Judgment dated 07.09.2017 by the respondents therein, thereby making the observation that 'police' is exclusively a provincial subject final and conclusive?
- D. Whether the Impugned order commits an error floating on the face of record in that the subject of Police has been held to be 'concurrent' whereas a prayer to declare the same made in C.A No. 150/2018 which was dismissed vide Order dated 22.3.2018 authored by Hon'ble Chief Justice Mr. Justice Mian Saqib Nisar?
- E. Whether the impugned order has committed a grave error departing from the Order dated 22.3.2018 ibid?

- F. Whether the impugned order is contradictory insofar as it upholds Judgment dated 7.9.2017 which declares 'police' to be a provincial subject yet in the same breath, the impugned order, declares 'police' to be a concurrent subject?
- G. Whether the impugned order, even otherwise, erred in holding that 'police' is a concurrent subject and the legislative and executive competence lies with the Federation as well as the Province?
- H. Whether the impugned order erred in holding that the subject of police is concurrent especially keeping in mind that there was an express entitlement given by the Hon'ble Supreme Court vide Order dated 23-3-2018 ibid to the petitioner, to frame a new law conforming with the modern need and also keeping into view the observation made in the impugned Judgment?
- I. Whether the Impugned order has committed an error on the face of record in relying upon Article 142(b) and 240 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution") in order to determine that the subject of 'police' is 'concurrent'?
- J. Whether the impugned order erred in going against the spirit and ethos of the 18th amendment to the Constitution?

- K. Whether the impugned order erred in failing to distinguish between the legislative sphere of criminal law and criminal procedure with that of 'police' which is essentially an administrative subject?
- L. Whether the impugned order has committed an error on the face of record by failing to appreciate that the subject of 'police' has always been an exclusively provincial subject whilst the entry pertaining to 'criminal law' and 'criminal procedure' has appeared in the concurrent list in previous constitutional dispensations?
- M. Whether the impugned order commits an error floating on the face of record insofar as it includes crime prevention, detection and investigation within the ambit of **criminal law and criminal procedure which are** distinct fields as noted in the Judgment dated 07-09-2017 actually upheld by the impugned order?
- N. Whether parallels of 'police' are drawn with **Federal Agencies such as NAB, FIA, ANF and Railway Police** which are **prima facie erroneous**?
- O. Whether the impugned order commits an error floating on the face of record in implying/holding that the NAB Ordinance, 1999 derives its competence from article 142(b) of the Constitution?

- P. Whether the impugned order commits an error by observing that the Federal Government carries out different policing function throughout Pakistan, including within the territories of Provinces?
- Q. Whether the impugned order erred in holding that the source of Federal policing power can be identified as Article 142(b) of the Constitution read with the overriding effect given to federal legislative by Article 143 of the Constitution?
- R. Whether paras (4) and (5) of the impugned Judgment are erroneous insofar as it departs from the concept of provincial autonomy and exclusive competence of the Province within its Constitutional domain and moreover the contents of para (5) are presumptive thus erroneous?
- S. Whether paras (4) and (5) of the impugned order are against the structure of governance envisaged in the Constitution and the Constitutional guarantee of Provincial autonomy?
- T. Whether the impugned order erred in not properly appreciating Articles 141,142,143,144,145,146 and 147 of the Constitution 1973?
- U. Whether the impugned order misconstrues an authority granted by the province pursuant to an Agreement

between the province and the Federation as concurrency of competence?

- V. Whether the references made to Article 240 in the impugned order are erroneous and misconceived?
- W. Whether the contents of Para 7 of the impugned order has the effect of overturning the Judgment of the High Court of Sindh dated 07.09.2017, whereas the same has been upheld in Order dated 22.3.2018 authored by the then Chief Justice Mian Saqib Nisar?
- X. Whether paras 4, 5, 6, 7, 8 and 9 of the impugned order are self-contradictory?
- Y. Whether the impugned order cannot go beyond or depart from the Order dated 22.3.2018 rendered by the then Chief Justice Mian Saqib Nisar however the impugned order purports to do the same?
- Z. Whether Para 4 of the impugned order, in an error floating on the face of record, implies that if the federation legislates on the subject of 'police' the same would be immutable given the overriding effect under the Article 143 of the Constitution?
- AA. Whether the impugned order erred in not properly appreciating the reasoning as to why the order dated 07.09.2017 had declared the subject of 'police' as falling within the exclusive Provincial competence?

- BB. Whether the impugned order erred in failing to appreciate the historical evolution pertaining to the legislative and executive competence of the subject of 'police' and the distinction between the subject of criminal law, criminal procedure and the subject of police in previous Constitutional dispensations?
- CC. Whether the impugned order erred in failing to distinguish and appreciate the principle and doctrine of "policing" in a State from the concept of combating specialized crimes?
- DD. Whether the reference to Police Service of Pakistan (PSP) in determining the subject of 'police' to be concurrent is unwarranted and misconceived?
- EE. Whether the impugned order erred in not considering that administrative postings and transfers from one service to another cannot be equated with the principle and doctrine of policing?
- FF. Whether the impugned order has erred in interpreting and relying upon Agreement dated 19.09.1993 in order to reach its conclusion?
- GG. Whether the impugned order commits an error floating on the face of record by not appreciating previous Judgments of this Hon'ble Court on the same subject?

HH. Whether this Hon'ble Court having not considered the aforesaid has committed an error floating on the face of record thus the impugned order is liable to be recalled/reviewed?

FACTS

1. That for the sake of brevity the facts stated in Civil Appeal No. 148 of 2018 are reiterated, however certain facts are reproduced herein for the sake convenience.
2. That the respondents No. 1 to 5 are private persons and a non-governmental organization who preferred C.P No. 131 of 2017 against the petitioner and the respondent 6 to 9 before the Hon'ble High Court of Sindh at Karachi praying therein:
 - A. *"Declare that 'The Sindh (Repeal of the Police Order, 2001 & Revival of the Police Act, 1861) Act 2011', is unconstitutional, without jurisdiction, illegal and of no legal effect.*
 - B. *Declare that the Police Order, 2002, is constitutionally and legally valid and in force and has not been repealed by 'The Sindh (Repeal of the Police Order, 2002 & Revival of the Police Act, 1861) Act, 2011'.*
 - C. *Permanently restrain the Respondent No.1 to 4 from implementing 'The Sindh (Repeal of the Police Order, 2001 & Revival of the Police Act, 1861) Act 2011', in the province of Sindh.*

- D. Permanently restrain the Respondent No.1 to 4 from taking any adverse action against the Respondent No.6, including but not limited to sending him on forced leave, his removal/transfer etc., except in accordance with the Police Order, 2002.*
- E. Direct the Respondent No. 1 to 4 to ensure the effective implementation of the Police Order, 2002, including the formation of all institutions/commission/authority/committee, envisaged under the Police Order, 2002, within a period of six months from the date as set by this Honorable Court, and to file a compliance report in this regard before this Honorable Court for further orders.*
- F. Direct the constitution of broad based independent Commission, headed by a retired High Court Judge or Supreme Court Judge and comprising of relevant and respected civil society persons as nominated by this Honorable Court (at the cost of the Provincial Government) and direct this broad based independent Commission to supervise the effective implementation of the Police Order,2002, including the formation of all institutions/commission /authority/committee, envisaged under the police Order,2002, with in a period of six months from the date as set by this Honorable Court, and further direct this broad based Commission to inquire and give recommendation regarding further Police reforms to be initiated for a modern, autonomous , accountable and service oriented police which ensures the protection of the fundamental rights of the citizens of Sindh, and for the effective implementation of the Rule of Law, and to submit a*

compliance report in this regards before this Honorable Court for further orders.

G. Grant such further, additional or alternative relief, as this Honorable Court may deem fit and proper.”

3. That the aforesaid Constitution Petition bearing No.131 of 2017 was heard along with C.P. No. 7097 of 2016 and disposed of vide Judgment dated 7.9.2017 in the following terms as stated in para 103 of the Judgment dated 7.9.2017.

“103. In view of the foregoing discussion and analysis, these petitions are disposed of in the following terms:

- a. It is declared that the legislative competence of “Police” is in the exclusive Provincial domain.*
- b. It is declared that the Sindh (Repeal of the Police Order, 2002& Revival of the Police Act, 1861) Act 2011 is intra vires the Constitution and that therefore the Police Act, 1861, as revived and restored by the said Act is the law in force in this Province and not the Police Order, 2002.*
- c. The Respondents, and all authorities and bodies of the Provincial Government, and also as appropriate the Federal Government and all authorities and bodies thereof, are directed to give full and immediate effect to the orders made and directions given in this judgment and to act only in accordance and conformably with the same*
- d. Without prejudice to the generality of the foregoing, the Respondents as aforesaid are directed to give full and immediate effect to the orders made and directions given in Para 101 of this judgment and to act only in accordance and conformably with the same.*

e. The Respondent as aforesaid are restrained from acting in any manner that is inconsistent with, or which contradicts, any orders made or directions given in this judgment and, without prejudice to the generality of the foregoing, from issuing acting upon or giving effect to any circular, notification guideline, instruction, order or direction that is inconsistent with, or contradicts, this judgment.

f. There will be no order to costs.

4. That it was the contention of the petitioner that even though the Hon'ble High Court of Sindh at Karachi vide Order dated 7.9.2017 rejected the prayers No. (a) to (f) of the respondents therein and declared the subject of 'police' to fall within the provincial legislative domain, the judgment proceeded to impose unwarranted restriction on the appointment removal, transfer and posting of the Inspector General of Police. Moreover the said Judgment dated 7.9.2017 put unlawful fetters on the petitioner to amend/repeal and promulgate new subordinate legislation which is its constitutional duty and right.

5. That the petitioner contended that the directions contained in Para 101 to 103 (e) of the Judgment dated 7.9.2017 are illegal, unlawful and implementable hence petitioned this Hon'ble Court through CPLA No. 4279/2017.

6. That on 18.1.2018 the aforesaid CPLA No.4279 of 2017 was heard and leave was granted to consider as to whether:

*“1. Relief granted beyond the prayer is illegal;
 2. Restraint on Legislature is illegal;
 3. Inclusion of Federal Government in appointment of Provincial Police Officers is illegal;
 4. Directions to make Rules in presence of valid Laws and Rules are illegal;
 5. Directions as to the tenure of Current Provincial Police Officer are illegal;
 6. Wrong Model of Interpretation Adopted;
 7. Breach of Provincial Autonomy is against spirit of the 18th Amendment of the Constitution of Pakistan, 1973 (the Constitution);
 8. The petitions were barred and not maintainable in view of Article 8(3) of the Constitution;
 9. Discrimination has been made amongst Provinces in matter of Superintendence, Appointment, posting and Transfer of Police;
 10. The petition before High Court was barred under Article 184(1) of the Constitution 1971; and
 11. The terms and conditions of service were camouflaged to circumvent bar under Article 212 of the Constitution, 1973.”*

7. That more over the leave was granted in a connected matter bearing CMA No.8442 of 2017 in order to additionally consider the following:

“As leave has been granted in the connected matters, therefore, leave is also granted in this case additionally to consider whether:

1. *The legislative competence over the field of "police" is within the exclusive domain of the Federation, the provinces or both; and*
 2. *The Sindh (repeal of the Police Order, 2002 and Revival of the Police Act, 1861) Act, 2011 is ultra vires the Constitution, 1973."*
8. That accordingly CPLA No.4279 of 2017 was converted into Civil Appeal No.148 of 2018 and CPLA No.4280 was converted into Civil Appeal No.149 of 2018 and CMA No. 8442 of 2017 was converted into Civil Appeal No. 150 of 2018 which were heard and dismissed vide common order dated 22.3.2018 authored by Hon'ble Chief Justice Mr. Justice Mian Saqib Nisar in the following terms:
- "For the reason to be recorded later, these appeals having no merit are accordingly dismissed. However, the province of Sindh (appellant) shall be entitled to make new laws conforming with the modern needs and also keeping in view the observation made in impugned judgment.*
- 2. On account of dismissal of instant appeals, order dated 18.1.2018 passed by this Court restraining transfer of Mr. A.D Khawaja, Inspector General of Police Sindh. Obviously would not remain in field..."*
9. That the petitioner applied for a certified copy of the detailed order forthwith, however the copy was supplied on __.01.2019.

10. That the Impugned Order authored by Mr. Justice Umar Ata Bandial has been pronounced/ issued under a date of 22.3.2018 which has, inter alia, held that "Police is concurrently subject to the legislative and executive competence of both the Federation and the Provinces." It is pertinent to mention here that another order dated 22-03-2018 was pronounced in open court by the Hon'ble Chief Justice Mr. Justice Saqib Nisar and also authored by him whereby all the appeals including C.A No.150/2018 were also dismissed, wherein prayer was sought to "Declare that the legislative competence of "Police" is concurrent i.e. in both the federal and provincial domain".
11. Being aggrieved of the aforesaid impugned order dated 22.3.2018 the petitioner prefers the instant review petition inter alia on the following grounds.

GROUND

- A. That the impugned order commits an error on the face of record in that it is contradictory to the Order dated 22.3.2018 authored by then Chief Justice Mian Saqib Nisar.
- B. That the impugned order erred in not addressing, deciding or dilating upon grounds on which leave was granted.

- C. That no appeal was preferred against Hon'ble High Court's Judgment dated 07.09.2017 by the respondents therein, thereby making the observation that 'police' is exclusively a provincial subject final and conclusive.
- D. That the impugned order commits an error floating on the face of record in that the subject of Police has been held to be 'concurrent' whereas a prayer to declare the same made in C.A. No. 150/2018 was dismissed vide Order dated 22.3.2018 authored by Hon'ble Chief Justice Mr. Justice Mian Saqib Nisar.
- E. That the impugned order has committed a grave error departing from the Order dated 22.3.2018 *ibid*.
- F. That the impugned order is contradictory insofar as it upholds Judgment dated 7.9.2017 which declares 'police' to be a provincial subject yet in the same breath, the impugned order declares police to be a concurrent subject.
- G. That the impugned order, even otherwise, erred in holding that 'police' is a concurrent subject within the legislative and executive competence of the Federation as well as the Provinces.
- H. That the impugned order erred in holding that the subject of police is concurrent especially keeping in mind that there was an express entitlement given by the

Hon'ble Supreme Court vide Order dated 23.03.2018 ibid to the petitioner to frame a new law conforming with the modern needs and also keeping into view the observation made in the Judgment dated 7-9-2017.

- I. That the impugned order has committed an error on the face of record in relying upon Article 142(b) and 240 of the Constitution in order to determine that the subject of 'police' is 'concurrent'.
- J. That the impugned order erred in going against the spirit and ethos of the 18th amendment to the Constitution of Pakistan.
- K. That the impugned order has committed an error on the face of record by failing to appreciate that the subject of 'police' has always been an exclusively provincial subject whilst the entry pertaining to 'criminal law' and 'criminal procedure' has appeared in the concurrent list in previous constitutional dispensations.
- L. That the impugned order erred in failing to distinguish between the legislative sphere of criminal law and criminal procedure with that of police which is essentially an administrative subject.
- M. That the impugned order commits an error floating on the face of record insofar as it includes crime prevention, detection and investigation within the ambit

of criminal law and criminal procedure which are distinct fields as noted in the Judgment dated 7-9-2017 actually upheld by the impugned order.

- N. That parallels are drawn between 'police' and Federal Agencies such as NAB, FIA, ANF and Railway Police which are prima facie erroneous.
- O. That the impugned order commits an error floating on the face of record in implying/holding that the NAB Ordinance, 1999 derives its competence from article 142(b) of the Constitution.
- P. That the impugned order commits an error by observing that the Federal Government carries out different policing function through Pakistan, including within the territories of Provinces.
- Q. That the impugned order erred in holding that the source of Federal policing power can be identified as Article 142(b) of the Constitution read with the overriding effect given to federal legislative by Article 143 of the Constitution.
- R. That paras (4) and (5) of the impugned Judgment are erroneous insofar as it departs from the concept of provincial autonomy and exclusive competence of the Province within its constitutional domain and moreover

the contents of para (5) are presumptive, thus erroneous.

- S. That paras (4) and (5) of the impugned order are against the structure of governance envisaged in the Constitution and the Constitutional guarantee of Provincial autonomy.
- T. That the impugned order erred in not properly appreciating Articles 141, 142,143,144,145,146 and 147 of the Constitution 1973.
- U. That the impugned order misconstrues an authority granted by the province pursuant to an Agreement between the province and the federation as concurrency of competence.
- V. That the references made to Article 240 in the impugned order are erroneous and misconceived.
- W. That the contents of Para (7) of the impugned order has the effect of overturning the Judgment of the High Court of Sindh dated 07.09.2017, whereas the same has been upheld in Order dated 22.3.2018 authored by the then Chief Justice Mr. Justice Mian Saqib Nisar.
- X. That paras 4, 5, 6, 7, 8 and 9 of the impugned order are self-contradictory.

- Y. That the impugned order cannot go beyond or depart from the short order dated 22.3.2018 rendered by the then Chief Justice Mian Saqib Nisar however the impugned order purports to do the same.
- Z. That Para 4 of the impugned order in an error floating on the face of record implies that if the Federation legislates on the subject of Police the same would be immutable given the overriding effect under the Article 143 of the Constitution.
- AA. That the impugned order erred in not properly appreciating the reasoning as to why the order dated 07.09.2017 had declared the subject of 'police' as falling within the exclusive Provincial competence.
- BB. That the impugned order erred in failing to appreciate the historical evolution pertaining to the legislative and executive competence of the subject of 'police' and the distinction between the subject of criminal law, criminal procedure and the subject of police in previous Constitutional dispensations.
- CC. That the impugned order erred in failing to distinguish and appreciate the principle and doctrine of "policing" in a State from the concept of combating specialized crimes.


- DD. That the reference to Police Service of Pakistan (PSP) in determining the subject of 'police' to be concurrent is unwarranted and misconceived.
- EE. That the impugned order erred in not considering that administrative postings and transfers from one service to another cannot be equated with the principle and doctrine of policing.
- FF. That the impugned order has erred in interpreting and relying upon Agreement dated 19.09.1993 in order to reach its conclusion.
- GG. That the impugned order commits an error floating on the face of record by not appreciating previous Judgments of this Honorable Court on the same subject.
- HH. That this Hon'ble Court having not considered the aforesaid has committed an error floating on the face of record thus the impugned order is liable to be recalled/reviewed.
- II. That the petitioner craves leave to raise any other ground at the time of hearing of this petition or after release of the detailed Judgment/Order by this Hon'ble Court.

PRAYER

It is accordingly prayed that this Hon'ble Court may kindly be pleased to recall and review the Impugned Order dated 22.03.2018.

DRAWN AND SETTLED BY**FILED BY**


(FAROOQ H. NAEK)
Senior Advocate Supreme Court.


(Syed Rifaqat Hussain Shah)
Advocate on Record
Islamabad

CERTIFICATE

It is certified that this is the first Review Petition against the impugned Order dated 22.03.2018.


(Advocate on Record)