

THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Misc. Application No. 710 of 2024

Applicants/ Accused : Mr. Baber Waheed son of Muhammad Rafique through Mr. Aqil Ahmed, Advocate.

Respondents : Nemo.

Date of hearing : 20-01-2025

Date of order : 20-01-2025

ORDER

Adnan Iqbal Chaudhry J. - This application under section 561-A Cr.P.C. is for quashing FIR No.01/2023 lodged for offences under the Sales Tax Act, 1990, presently seized by the Special Judge (Customs & Taxation & Anti-Smuggling) Karachi in Case No. 140/2023. The office has raised an objection to the maintainability of this application in view of the case of *Muhammad Farooq v. Ahmed Nawaz Jagirani* (PLD 2016 SC 55)

2. In *Muhammad Farooq*, the Supreme Court of Pakistan had set aside an order passed by the High Court to quash a private complaint in exercise of section 561-A Cr.P.C. which application had been moved directly to the High Court without resort to the remedy available before the trial Court under section 249-A Cr.P.C. There, the Supreme Court reiterated the circumstances in which the High Court could exercise inherent jurisdiction under section 561-A Cr.P.C. and held that the remedy thereunder was not an alternate or a substitute of the express remedy provided before the trial Court by sections 249-A Cr.P.C. or 265-K Cr.P.C.; that where two Courts have coextensive or concurrent jurisdiction, then in ordinary circumstances the rule of propriety demanded that jurisdiction of the lower Court be invoked first; and that in such cases the inherent jurisdiction of the High Court should not be exercised as a routine but only in extraordinary

circumstances which warrant the exercise of such jurisdiction by bypassing the alternate remedy available.

3. When confronted with the legal position set out above, learned counsel submits that the FIR was lodged without lawful authority as it has been held by the High Courts that criminal prosecution under tax statutes can only follow after adjudication of tax liability. However, the judgments relied upon by learned counsel have been passed in Criminal Acquittal Appeals brought against orders of acquittal passed under section 265-K Cr.P.C., not under section 561-A Cr.P.C. There is no explanation as to why the Applicant cannot avail the same remedy before the trial Court.

4. The case does not bring forth any extraordinary circumstance that may convince this Court to exercise inherent jurisdiction to quash the FIR. The Applicant is free to avail the remedy before the trial Court under section 265-K Cr.P.C. With that observation, the office objection is upheld and the application is dismissed.

JUDGE