

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE SARDAR TARIQ MASOOD.  
MR. JUSTICE FAISAL ARAB.

**CIVIL PETITIONS NO. 781 AND 896 OF 2016 AND C. M. A. NO. 1986 OF 2016 IN CIVIL PETITION NO. 781 OF 2016 A/W CIVIL PETITIONS NO. 207-K TO 208-K OF 2016.**

*(On appeal against the judgment dated 07.03.2016 passed by the High Court of Sindh at Karachi in C. P. No. D-7769 of 2015).*

The Federation of Pakistan through Collector of Customs,  
Model Custom Collectorate, Islamabad.

(CPs. NO. 781 & 896/16 & CMA. 1986/16 IN CP. 781/16)

Sindh Education for Institution Development Society thr. its  
General Secretary, Karachi.

(CP. 207-K OF 2016)

Mahboob Ali Abro.

(CP. 208-K OF 2016)

**...Petitioner(s)**

**Versus**

Ayyan Ali and others.

**...Respondent(s)**  
(in all cases)

For the petitioner(s) : Mr. Farhat Nawaz Lodhi, ASC.  
(in CP.781/16)

Syed Nayyab Hussain Gardezi,  
Standing counsel.  
(in CP.896/16)

Nemo. (in CPs. 207-K to 208-K of 2016)

Shahid Orakzai, in person.  
(in CMA.1986/16)

For the respondent(s): Sardar M. Latif Khan Khosa, Sr. ASC.  
(in CP.781/16)

Date of Hearing: 06.04.2016 (Judgment Reserved).

**J U D G M E N T**

**EJAZ AFZAL KHAN, J.-** These petitions for leave to  
appeal have arisen out of the judgment dated 07.03.2016 of a

Division Bench of the Sindh High Court, whereby it allowed the Writ Petition filed by respondent No. 1 and directed the Ministry of Interior to immediately remove the name of respondent No. 1 from Exit Control List (ECL) and allow her to travel abroad if she so desires.

2. The learned ASC for the petitioners contended that where the respondent is charged under Section 156(1)(viii) read with Section 2(s)(ii) of Customs Act, Section 8 of FER Act and Section 3(1) of Import and Export (Control) Act, 1950, removal of her name from the ECL would amount to letting her off for good notwithstanding the case against her is still pending in the Customs Court. The learned ASC next contended that where Section 3 of the Exit from Pakistan (Control) Ordinance, 1981 provided alternate remedy by way of review, resort could not be had to the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan. The learned ASC next contended that it is the prerogative of the Government to place the name of any person on the ECL if he or she is involved in corruption and misuse of power and authority causing loss to the government's funds or property; economic crimes where large government's funds have been embezzled or institutional frauds have been committed; acts of terrorism or its conspiracy, heinous crimes threatening national security; case of key directors of a firm, in default of tax or liabilities of not less than ten million rupees; case of two or more key or main directors of a firm, in default of loan or liabilities exceeding one hundred

million rupees; any case in which his or her name has been forwarded by the Registrar of a High Court, Supreme Court of Pakistan or Banking Court; or drug trafficking, therefore, the High Court could not have interfered therewith.

3. As against that learned ASC appearing on behalf of the respondent contended that the movement of the respondent, who has been charged under Section 156(1)(viii) read with Section 2(s)(ii) of Customs Act, Section 8 of FER Act and Section 3(1) of Import and Export (Control) Act, 1950, could not be prohibited by placing her name on the ECL that too when she has not committed any of the crimes listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010. The learned ASC went on to argue that remedy of review could not be insisted upon when it is inadequate and even illusory, nor could the remedy granted by the High Court through a petition under Article 199 of the Constitution be recalled or rescinded on this score. The learned ASC to support his contention placed reliance on the case of **Muhammad Aslam Vs. Senior Member (Colonies), Board of Revenue, Punjab and others (2004 SCMR 1587)**. He lastly contended that mere pendency of a criminal case cannot furnish a justification for prohibiting the movement of any citizen in contravention of the provisions contained in Article 15 of the Constitution of the Islamic Republic of Pakistan.

4. We have gone through the entire record carefully and considered the submissions of the learned ASCs for the parties.

5. Respondent No. 1, no doubt, has been charged in a case mentioned above which is still pending adjudication in the competent Court of law. But mere pendency of a criminal case cannot furnish a justification for prohibiting her movement. It has never been the case of the petitioners that the respondent is involved in any of the cases listed in Rule 2 of the Exit from Pakistan (Control) Rules, 2010 in general or Rule 2(1)(b) in particular, inasmuch as she has not been charged to have embezzled a large government's funds or committed institutional fraud. In the absence of any such allegations, we don't think the respondent's movement could be prohibited under the Ordinance or the Rules mentioned above. We, however, don't agree with the argument of the learned Sr. ASC for the respondent that remedy by way of review is inadequate or illusory because such argument would tend to defeat the letter and spirit of Section 3 of the Ordinance. Such argument would also tend to defeat the letter and spirit of Article 199 of the Constitution which provides that "*a High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any aggrieved party, make an order.*" The words used in the Article cannot be lightly ignored or overlooked. Though we don't feel inclined to recall and rescind the relief granted to the respondent by the High Court on this score at this stage, when we don't see any tenable ground for prohibiting the movement of the respondent, all the same we would not approve of bypassing a forum provided by law.

6. The apprehension of the learned ASC for the petitioners that where the respondent has been charged for committing serious offences as mentioned above, removal of her name from ECL would amount to letting her off for good, is misconceived as despite removal of her name from ECL, her attendance could still be enforced or dispensed with by the Trial Court in conformity with the relevant provisions of the Cr.P.C.

7. For the reasons discussed above, these petitions being without merit are dismissed and the leave asked for is refused.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on 13.04.2016.

JUDGE

'Not Approved For Reporting'  
M. Azhar Malik