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Judgement Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Crl. Misc No. 106558-M of 2017
(Muhammad Rashid v. ASJ, etc.)

JUDGEMENT

Date of hearing:	<u>08.10.2025</u>
Petitioners by:	Mr. Aftab Hussain Qureshi and Mirza Tayyab Baig, Advocates.
State by:	Mr. Moeen Ali, Deputy Prosecutor General.
Respondent by:	Mr. Abdul Hassam, Advocate.

MUHAMMAD JAWAD ZAFAR, J: Through this petition, filed under Section 561-A of the Code of Criminal Procedure 1898 (“**Code**” or “**Cr.P.C**”), Muhammad Rashid (“**petitioner**”) has assailed the *vires* of judgement dated 28.10.2017 passed by learned Additional Sessions Judge, Bhalwal (“**Court of Sessions**” or “**revisional court**”), whereby the learned Court of Sessions upheld the judgement dated 27.09.2017 passed by learned Illaqa Magistrate, Bhalwal (“**Magistrate**”).

2. The synoptical facts and circumstances, relevant, yet shorn of unnecessary details, as are necessary for deciding this *lis* are that the petitioner, being the lawful owner, was operating his snooker club situated at street No. 13, Mukhtar colony, Tehsil Bhalwal, District Sargodha (“**snooker club**” or “**club**”) in accordance and compliance with the relevant applicable laws. Through the snooker club, the petitioner was providing the general public with the services of playing billiards and snooker against the provision of the requisite charges. It follows that on 09.03.2017, an application, under Section 133 of the Code, was moved by respondent No. 3 before the learned Magistrate on the plea that public nuisance is being caused due to the operation of the snooker club at odd/late hours of the night, thereby attracting undesirable activities and elements. On receipt of notice, the petitioner filed his reply against the said application denying the

existence of public nuisance. The learned Magistrate also sought a report from the “jury”, the local police, and the Chairman, Municipal Committee, and based thereon, the learned Magistrate passed judgement dated 27.09.2017 against the petitioner. Feeling aggrieved, the petitioner invoked the revisional jurisdiction of the learned Court of Sessions, however, the learned revisional court refused to exercise jurisdiction vested in it by Section 439-A of the Code and dismissed the revision petition *vide* judgement dated 28.10.2017. Imperative to observe at this junction that both the aforementioned judgements 27.09.2017 and 28.10.2017, passed by the learned Magistrate and the learned Court of Sessions respectively, were assailed before this Court by invoking the inherent jurisdiction of this Court in terms of Section 561-A of the Code. After adjudicating the matter, this Court accepted the criminal miscellaneous petition bearing No. 106558-M of 2017 *vide* judgement dated 28.03.2019. The said judgement passed by this Court was impugned before the honourable Supreme Court of Pakistan in criminal petition for leave to appeal, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 (“**Constitution**”), bearing No. 909-L of 2019 and based on consent order dated 15.10.2020, the criminal petition was converted into appeal and allowed by setting aside judgement dated 28.03.2019 and remitting criminal miscellaneous petition bearing No. 106558-M of 2017. Operative part of the order of the honourable Supreme Court of Pakistan is reproduced, for brevity, *infra*:

‘3. With the concurrence of both the parties as well as learned Additional Prosecutor General, the instant criminal petition is converted into an appeal and the same is hereby allowed. The impugned order of learned High Court is set aside. Crl. Misc. No. 106558-M of 2017 shall be deemed to be pending before the Lahore High Court, Lahore, which shall be decided afresh after hearing the parties, in accordance with law.

Till the final decision of Crl. Misc. No. 106558-M of 2017 by the learned High Court, the business of snooker club being run by respondent No. 1 shall not be disturbed. The petitioner present in person undertakes that he will not intervene in the aforesaid business being run by respondent No.1 till final disposal of aforesaid miscellaneous application’.

3. Learned counsel for the petitioner has contended that both the judgements impugned by him contravene the principles of natural justice and in addition thereto, he has averred that the petitioner was lawfully operating and running his snooker club, which even otherwise does not fall within the confines of the prohibited activities as envisaged by Section 143 of the Code, so as to warrant closure of the business of the petitioner because the said provision is only meant to be invoked and jurisdiction granted thereunder is to be exercised in the scenario where there is an emergency situation which is threatening to public tranquility and public order. He further argued that the executive action of indefinitely closing the snooker club of the petitioner amounts to curtailment of the cardinal right of the petitioner to earn a livelihood and operate a business in terms of Article 18 of the Constitution, which has caused grave irreparable loss and injury to the petitioner, rendering him and his employees jobless, and that too without any lawful and just reason.

4. Conversely, the learned Deputy Prosecutor General and the learned counsel for the respondent have vigorously defended the judgements impugned herein on the plane that the impugned judgements were passed, on the complaint from the local residents, in the interest of public peace, public tranquility and morality and for the purpose of preventing potential disturbances/nuisance, by exercising the vast and wide-ranging powers bestowed on the learned Magistrate by the provision of Section 143 of the Code.

5. Arguments heard; Record perused.

6. According to Article 4 of the Constitution, every person is to be treated in accordance with the law. Likewise, each and every single person is guaranteed the right to life and liberty by Article 9 of the Constitution, which is inclusive of the quality of life.¹ This cardinal right, in turn, is inclusive of the right to livelihood,² when Article 9 of the Constitution is read in conjunction with Article 18 of

¹ See "Shehla Zia v. WAPDA" (PLD 1994 Supreme Court 693).

² Wisdom is drawn from the case of "Ghulam Sarwar Chang v. Province of Sindh" (2025 PLC (C.S.) 12 Sindh (dB)); and, "Muhammad Maqsood Aslam v. Province of Punjab" (2024 PLC (C.S.) 116 Lahore)

the Constitution. The latter Article of the Constitution grants every citizen of the Islamic Republic of Pakistan the freedom to enter into any lawful profession or occupation, with the caveat that the said freedom to business may only be barred by a reasonable restriction imposed by the law in the public interest.

7. In the present *lis*, the petitioner was operating and running his business of the snooker club and was providing the service to the general public to play the games of billiards and snooker against the payment of the requisite charges fixed for the said games, which games are a recreational activity, and the same are not prohibited by any law, nor are the said games immoral, or fall within the protected sphere as envisaged by Section 133 of the Code. The powers under Chapter X of the Code are special powers insofar as they are only to be exercised as a temporary measure in circumstances causing glaring public nuisance and there is imminent danger or threat to public peace and tranquility. The said powers cannot be, at any junction, be used to indefinitely, shut down a business which is being operated within the sphere of the law, based on vague complaints and allegations. Even otherwise, the prohibition order under chapter X of the Code is to be narrowly tailored so that the same may not infringe the economic rights of any individual without the due process of the law. In this regard, the entire material available on record was perused and it appears that no proof is available to substantiate the factum of public nuisance so as to justify the drastic actions taken against the petitioner. No iota of evidence is available which discloses that the prohibition of business of the petitioner was necessitated by a situation of emergency, thereby prompted the learned Magistrate to passed the impugned judgement and placing a blanket ban on the business of the petitioner.³ In absence of such material, both the impugned judgements are arbitrary, capricious, and amount to abuse of process of law, thereby warrant being set aside in this Court's inherent jurisdiction to secure the ends of justice. Further, under the same chapter of the Code, the prohibition orders could have

³ See "Muhammad Akram v. Government of Punjab" (1997 PCr.LJ 1820 Lahore).

been passed to direct the petitioner to adhere to specific operating hours or to regulate noise, as opposed to passing a blanket ban on his business.

8. The upshot of the deliberation made hereinabove is that the impugned judgement dated 27.09.2017 passed by the learned Magistrate and the impugned judgement dated 28.10.2017 passed by the learned Court of Sessions are fraught with serious infirmities and flaws, as both the learned courts have acted with impulse, based on misinterpretation and misapplication of law, instead of proceeding in accordance with safe principles of administration of justice. Consequently, this petition is **accepted**; the impugned judgement dated 27.09.2017 passed by the learned Magistrate and the impugned judgement dated 28.10.2017 passed by the learned Court of Sessions are **set-aside**; and, the petitioner is permitted to resume the operations of his snooker club forthwith, subject to compliance with all the applicable laws and regulations pertaining to the same.

(MUHAMMAD JAWAD ZAFAR)
JUDGE

Approved for reporting.

Judge

Ejaz/*