

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Aqeel Ahmed Abbasi

Cr.P.L.A. Nos.48-K to 51-K of 2025

(Against the order dated 18.02.2025 passed
by the High Court of Sindh, Karachi in Cr.
Revision Application Nos.35 to 38 of 2025)

Syed Zakir Hussain		(in all cases) ...Petitioner(s)
	Versus	
		(in all cases)
The State and another		...Respondent(s)

For the Petitioner(s)	:	Syed Ghulam Shabbir Shah, ASC <i>Assisted by</i> Mr. Irtafa-ur-Rehman, AHC
For the State	:	Mr. Muntazir Mehdi, Acting P.G. Mr. Siraj Ali Chandio, Addl: P.G. Mr. Saleem Akhtar Buriro, Addl: P.G./AOR Mr. Zulfiqar Ali, Public Prosecutor Mr. Danish Qureshi, SHO, AVCC Inspector Muhammad Ali
On Court's Call	:	Mr. Sibtain Mehmood, Addl: A.G.
For the Complainant	:	Mr. Zain-ul-Abideen, ASC Mrs. Abida Parveen Channar, AOR <i>Assisted by</i> M/s. Mustafa Mamdani, Iftikhar Shah, Jahanzaib Aftab and Umair Usman, Advocates
For the Accused	:	<i>Nemo</i>
Date of Hearing	:	05.06.2025

Judgment

Muhammad Ali Mazhar, J:- The aforesaid Criminal Petitions for leave to appeal are directed against the impugned order dated 18.02.2025, passed by the learned Divisional Bench of the High Court of Sindh, Karachi, in Criminal Revision Application Nos. 35 to 38 of 2025.

2. According to the compendious facts narrated in the aforesaid Criminal Petitions, the petitioner before us, who is none other than the Presiding Officer, Anti-Terrorism Court ("**ATC**"), Karachi, was appointed by the Government of Sindh for a tenure of two and a half years *vide* Notification dated 11.12.2023, which was issued pursuant to Section 14 (2) of the Anti-Terrorism Act, 1997 ("**ATA**"). Earlier, the petitioner served in the subordinate judiciary and remained a District & Sessions Judge as well as the Additional Judge of the Sindh High Court. Besides performing the duties of Presiding Officer, ATC, the petitioner, *vide* Notification dated 11.12.2023, was also designated as Administrative Judge, ATC, Karachi Division, thereby exercising administrative powers under Section 21-E read with Section 13(2) of the ATA. In his administrative capacity, he was entrusted, *inter alia*, the powers relating to remand and custody of accused persons involved in the cases registered under the ATA. The petitioner passed orders dated 10.02.2025 and 11.02.2025 on the remand applications filed by the Investigating Officer ("**IO**") in Crime Nos. 01, 02, and 03 of PS AVCC/CIA and Crime No. 12 of 2025, lodged at PS Darakshan, Karachi, arising out of an incident involving an encounter between police officials and Armaghan (accused). On 10.02.2025, the IO, produced the accused before the petitioner, along with remand applications in respect of FIRs No. 01, 02, and 03 of 2025, wherein police custody was sought for further interrogation and recovery of evidence. However, during the hearing, the accused complained of maltreatment. Taking into consideration the complaint of maltreatment as well as the medical report, the petitioner declined police custody and remanded the accused to judicial custody ("**JC**") *vide* the order dated 10.02.2025. On 11.02.2025, another application for physical custody of the same accused was presented in Crime No. 12/2025 (kidnapping for ransom) but the petitioner ordered the constitution of a Joint Investigation Team ("**JIT**") *vide* order dated 11.02.2025, to ensure investigation. Being dissatisfied with the orders dated 10.02.2025 and 11.02.2025, the State challenged the orders by means of Criminal Revision Applications No. 35 to 38 of 2025 in the High Court of Sindh, Karachi, which were heard and *vide* the consolidated impugned order, were set aside. The High Court also recorded certain adverse observations and remarks implying judicial misconduct and procedural improprieties on part of the petitioner, based on oral

submissions of the prosecution, alleging the presence of the accused's father in the petitioner's chambers, creating a perception of impropriety, without giving the petitioner any opportunity whatsoever to clarify or respond to such serious allegations. Moreover, the High Court also directed the Registrar to place the matter before the Chief Justice and also referred the matter to the Home Department, Government of Sindh, and thereby implicitly inviting administrative action against the petitioner. As a consequence thereof, the Government of Sindh issued a Notification on 26.02.2025, whereby the petitioner's administrative powers as Administrative Judge were withdrawn, which caused him severe reputational harm and cast stigma on his lengthy and unblemished judicial career.

Transfer Applications:

3. Rather than moving on to the merits of the case, we would like to first take up and decide the **Cr. Misc. Application Nos.102-K to 105-K/2025**, filed by the Additional Prosecutor General, Sindh/AOR, with the request to transfer the aforesaid Criminal Petitions to the Constitutional Bench of this Court. In order to understand whether the case is germane to the Constitutional Bench or the Regular Bench, we invited him to explain how the matter arising out of a consolidated impugned Order passed in Criminal Revisions by the learned Divisional Bench of the High Court is required to be heard by the Constitutional Bench. It is well-known that a new Article 191A has been inserted in the Constitution of the Islamic Republic of Pakistan, 1973, ("**Constitution**") through the 26th Constitutional Amendment, which pertains to the Constitutional Benches of the Supreme Court, with the rider that no Bench of the Supreme Court other than a Constitutional Bench shall exercise (a) original jurisdiction of the Supreme Court under Article 184; (b) appellate jurisdiction of the Supreme Court under clause (3) of Article 185, where a judgment or order of a High Court passed under Article 199 involves constitutionality of any law or a substantial question of law as to the interpretation of the Constitution; and (c) advisory jurisdiction of the Supreme Court under Article 186. Both the learned Additional Prosecutor General as well the Acting Prosecutor General, Sindh, failed to satisfy us as to what substantial question of law, or constitutionality of law, or the

interpretation of the Constitution, is involved in the case at hand, which is required to be considered and decided by the Constitutional Bench of this Court under Article 191A of the Constitution. The matter simply relates to expunction of stricture/adverse remarks arising out of an order passed by the High Court while deciding the Criminal Revision applications, and has got nothing to do with the taxonomy or genus of cases required to be dealt with within the framework of Article 191A of the Constitution. No plausible or convincing ground was raised before us. The transfer applications were found to be misconceived and frivolous and while we were dismissing the aforesaid vexatious applications with cost, both the learned Additional Prosecutor General and the Acting Prosecutor General, Sindh, argued that they do not want to press Transfer Applications. Hence, at their request, the Cr. Misc. Application Nos.102-K to 105-K/2025 are dismissed.

On Merits:

4. The learned counsel for the petitioner argued that the impugned Order has unjustly cast a stigma upon the petitioner's judicial career which resulted in severe reputational harm and created an irreversible public perception. It was further argued that neither any right of audience was provided to him nor any comments/report was called in response to the allegations made against him, which constitutes violation of the principles of natural justice and due process as enshrined under Article 10-A of the Constitution which is not confined to accused persons alone but extends to all individuals, including judicial officers, who may be adversely affected. It was further contended that while setting aside the petitioner's orders, the High Court further directed that the matter be placed before the Chief Justice and the Home Department, which created a presumption of wrongdoing without allowing the petitioner any opportunity to clarify his position. Therefore, the observations recorded in the impugned order are liable to be expunged, which were made without procedural fairness and irreversibly stigmatized the petitioner's judicial career, professional integrity, and public standing. He further argued that the petitioner is no more interested in the revival of his charge of Administrative Judge of the ATC, but he requests that the adverse remarks made in Paragraph No.14 of the impugned order may be

expunged without setting aside Notifications dated 26.02.2025 and 27.02.2025.

5. The learned Acting Prosecutor General admits that while passing strictures or adverse remarks, no notice was issued to the petitioner for calling his comments or his point of view, and he further argued that since the petitioner's counsel categorically stated that the petitioner is not interested in the revival of his earlier notification as Administrative Judge, therefore, he has no objection if adverse remarks are expunged without prejudice to his right to file a complaint, if any, in accordance with the law, to the Acting Chief Justice/Chief Justice of the Sindh High Court on the administrative side.

6. Mr. Zain-ul-Abidin, learned counsel for the complainant, also endorsed his no objection to adverse remarks being expunged without upsetting the Notification dated 26.02.2025 and 27.02.2025, issued for the appointment of some other judicial officer as Administrative Judge, ATC.

7. Heard the arguments. As far as the merits of the case are concerned, the learned High Court, after jotting down certain facts of the case and discussing the relevant provisions germane to remand under the Code of Criminal Procedure, 1898 ("**Cr.P.C.**"), observed that after lodging the FIRs, the accused was produced before the Administrative Judge, ATC, for remand in four cases under Section 21-E of the ATA, which was declined by the Administrative Judge on the ground that the accused complained of maltreatment. Therefore, he was remanded to judicial custody and the Administrative Judge also passed an order for constituting JIT in Crime No. 12 of 2005. Without a doubt, under Section 435 read with Section 439 of the Cr.P.C., the High Court or any Sessions Judge may call for an examination of the record of any proceeding before any inferior Criminal Court situated within the local limits of its or his jurisdiction for the purpose of satisfying, itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the

record. The learned High Court after considering the pros and cons, observed that the Administrative Judge passed the order for remand of the accused but, afterward, through a correction pen/whito, the order for "police custody" was swapped to "JC". The oral statement of the learned Acting Prosecutor General was also incorporated in the impugned order that "at the time of remand, the father of the accused was sitting in the chamber of the Administrative Judge for two hours, and it was subsequent act of the latter, who changed his police custody remand orders in JC remand". As far as the order passed for the constitution of a JIT by the Administrative Judge is concerned, the learned High Court held that under the law, no such powers are vested in an Administrative Judge, as under Section 19(1) of the ATA, it is the prerogative of the Government, if it deems necessary, to constitute a JIT.

8. In a nutshell, while allowing all four Cr. Revision Applications, the learned High Court set aside the impugned orders dated 10.02.2025 and 11.02.2025 passed by the Administrative Judge and also issued directions to the Investigation Officer to produce the accused before the Judge, ATC No.II, Karachi, for passing orders afresh in accordance with law on all four Remand Reports under Section 21-E of the ATA. In tandem, certain directions were also issued under Paragraph No.14 of the impugned order, which is, for the ease of reference replicated as under:-

"14. Before parting with this Order, it would be in the fitness of the things to direct the learned Registrar of this Court to place copy of this Order before the Honourable Acting Chief Justice, High Court of Sindh and Home Secretary, Government of Sindh for passing appropriate order, if deem fit and proper in the circumstances of the case, for withdrawing the power of Administrative Judge for Anti-Terrorism Courts, Karachi Division, Karachi from the Court of Anti-Terrorism Court No. I, Karachi (by designation) and assign it to any other Anti-Terrorism Court of Karachi Division under section 13 (2) of the Act of 1997 in public interest and administration of justice".

9. Judicial strictures must be passed with the greatest wariness and circumspection because such condemnation and denunciations have never-ending or interminable impact on the credit of judicial officer. Rather, it always haunts him and causes severe hardship and disparagement to his name and reputation in judicial service. It not only creates serious impairment and a sense of guilt in the eyes of his subordinates, but the confidence of the

public at large in the judicial system is also deteriorated. There is a world of difference between a judicial stricture and a judicial outburst. The stricture figures in a considered judgment; the outburst is made during hearings of a case by a judge who is unable to control his tongue, restrain his anger, and curb his ego. Outbursts are sheer lapses in manners and taste and are soon forgotten. A stricture is remembered for long [Ref: frontline.thehindu.com/the-nation/article].

10. The rationale of affording a right of appeal, revision, or review in any statute or even in writ jurisdiction in the judicial hierarchy is meant to correct errors, slipups, and omissions crept up in judgments or orders rendered by the lower fora, which is based on the philosophy inundated in the phrase that "to err is human", which accentuates that it is quite natural and expected for people to make mistakes, which cannot be construed in all sets of circumstances, either intentional or motivated by malice or due to some extraneous considerations or recklessness but may also turn out to be due to human fallibility or inadequacy. It is very well said that "a judge who has not committed any error is yet to be born." Further, "Superior Court Judges are to act as friend, philosopher, and guide of subordinate judges," and "Judicial Officers deserve parent-like care from their High Courts" [Ref: Braj Kishore Thakur Vs. Union of India & others (1997) 4 SCC 65 & (2001) 3 SCC 54].

11. The illegality or irregularity in the order or judgment of a subordinate court can be rectified by the appellate court, which is in fact the premeditated underlying principle for creating the right of appeal or revisions in the superior courts under different statutes. Another important aspect that cannot be lost sight of is that a Judicial Officer against whom disparaging remarks or strictures are passed cannot come to defend his own judgment or order; therefore, the High Courts should exercise greater caution and judicial restraint. Higher courts, on a daily basis, stumble upon judgments and orders of the lower courts, and if such judgments and orders are found to be deficient or flawed either in law or in fact, are modified, remanded, or set aside. This is predominantly the role and function of the superior courts as appellate/revisional courts. An improper motive should not be attributed even to a serious error committed by a judicial officer without confronting him and seeking his comments in order to

maintain judicial comity and discipline. While doing so, the High Court should be mindful that the scornful and demeaning remarks/observations against a member of subordinate judiciary, even if expunged, would not totally reconstitute the defacement of esteem and dignity. The acid test is that criticism on a judgment or order must be judicial in nature, pointing out errors or flaws without deviating from temperance and equanimity. At the same time, in case of any doubt regarding conduct, the matter may be sent through a separate confidential note for the attention of the Chief Justice, who may then deal with the judicial officer in the exercise of his own fine sense of judgment.

12. In our view, the High Courts should remember that reproaches/strictures and deprecations on judgments or orders of the subordinate judiciary have many vulnerabilities; such as, the judicial officer is condemned unheard which is violative of the principles of natural justice. The principle of natural justice, due process, and fair play, and particularly the right to fair trial envisaged as fundamental rights in the Constitution applies across the board, including to judicial officers of subordinate judiciary, who being a member of the subordinate judiciary. They, too, being dispensers of justice, should be granted the right to a fair trial, rather than being condemned unheard. A stricture contained in a judgment or order, whether reported in law journals or not, is a verdict in an open court which becomes public and remains so in perpetuity unless expunged by a superior court or by the Court itself. Therefore, any disapproval expressed should be couched in temperate language, and before passing any stricture, at least comments may be called confidentially so that the judicial officer may not be condemned unheard and if the comments/report is not found satisfactory, then the matter may be referred confidentially to the Chief Justice for consideration on the administrative side.

13. In the case of Miss Nusrat Yasmin Vs. Registrar, Peshawar High Court, Peshawar and others (PLD 2019 SC 719), while taking into consideration local and foreign judgments on the issue/question of passing strictures by the High Courts, this Court held that High Courts, while exercising constitutional, appellate, or revisional jurisdiction under various laws, is to judicially examine and review the orders and judgments of the courts below on

questions of law and facts. What is under examination on the judicial side is the legal reasoning behind the order or the judgment. A Stricture recorded in a judgment, on the other hand, is "a severe" and a "sharp criticism or a censorious remark" and is akin to a "piece of censure" and passes for a "critical remark" regarding the conduct, integrity, diligence, behaviour, temperament, and competence of a judge. The High Court, while performing its judicial function, avoids passing strictures regarding the ability, competence, integrity, and behaviour of the judge whose judgment is under scrutiny before it. The High Court is not to assume the role of a critic of the personal attributes and abilities of a judge. However, in cases where a judge of the High Court espouses the view that a judge of the District Judiciary has exhibited grave incompetence or has misconducted himself in the discharge of judicial duty and needs to be warned or proceeded against, the appropriate process is to inform the competent authority on the administrative side through a confidential note addressed to the Chief Justice of the Court to take appropriate action. In the case of Aijaz Ahmed Tunio Vs. The State (PLD 2021 SC 752), this Court reiterated that the High Courts, under its judicial authority, should avoid passing strictures against a judicial officer of the District Judiciary, and any action, if at all warranted must be done in accordance with law, by exercising the supervisory control vested in the High Court. Whereas in the case of Hasnain Raza and another Vs. Lahore High Court, Lahore and others (PLD 2022 Supreme Court 7), it was again held by this Court that higher courts, every day, come across orders of the lower courts that are not justified either in law or in fact and modify or set them aside; that is the function of an appellate court. This applies to all judges, no matter how high or low in rank they may be. The intemperate or extravagant criticism on the ability of a person having a contrary view is often founded on one's sense of his own infallibility. While examining the decision of a court below, the higher court is to assess the reasoning and the legality of the decision challenged before it and not the ability or conduct of the author judge.

14. This Court in the aforesaid quoted judgments articulated well-structured guidelines *vis-à-vis* mannerisms and outcome of strictures against the sub-ordinate judiciary/judicial officers but unfortunately, the learned High Court while passing strictures did

not advert to the guiding principles explicated in the aforesaid judgments of this Court. In the case of Federation of Pakistan through Secretary, Ministry of Law and Justice Islamabad Vs. Muhammad Hamid Mughal (PLD 2024 SC 515 = 2023 SCP 293), one of us, speaking for the bench, explained that the doctrine of *Stare Decisis* is a Latin term that connotes “*let the decision stand*” or “*to stand by things decided*”, while another Latin maxim *Stare decisis et non quieta movere* means ‘to stand by things decided and not to disturb settled points’. These maxims represent an elementary canon of law that courts and judges should honour the decisions of prior cases on the subject matter. This promotes harmony, uniformity, and practicality in legal interpretation. The doctrine of binding precedent fosters firmness and uniformity and also supports the development of law. According to the *Treatise on the Constitutional Limitation* authored by Thomas M. Cooley, a solemn decision upon a point of law arising in any given case becomes an authority in similar cases, because it is the highest evidence which we can have of the law applicable to the subject, and the Judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case. If a decision has been made upon solemn argument and mature deliberation, the presumption is in favour of its correctness, and the community has a right to regard it as a just declaration or exposition of the law, and are to regulate their actions and contracts by it. It would, therefore, be extremely inconvenient to the public if precedents were not duly regarded, and implicitly followed. The doctrine of precedents and *stare decisis*, both have fundamental values engrained in our judicial system to ensure an objective of certitude and firmness. Judicial consistency advocates and encourages the confidence in the judicial system and to achieve this consistency, the Courts have evolved the aforesaid rules and principles which are grounded in public policy. In the case of Justice Khurshid Anwar Bhinder and others Vs. Federation of Pakistan and another (PLD 2010 SC 483), this Court held that where the Supreme Court deliberately, and with the intention of settling the law, pronounces upon a question of law, such pronouncement is law, declared by the Supreme Court within the meaning of Article 189 and is binding on all the courts of Pakistan. It cannot be treated as mere *obiter dictum*. It was further held that even *obiter*

dictum enjoys a highly respected position as if "it contains a definite expression of the court's view on a legal principle or the meaning of law."

15. The petitioner, in the present case, only prayed for expunction of stricture, which has nothing to do with the merits of the decision of the High Court. In such situations, what this Court is required to evaluate is whether the passage complained of is reprehensible; its preservation on record will cause disparagement to the credit of the petitioner; and its expunction will not affect the judgment or order on merits. In fact, Paragraph No.14 of the impugned order is predominantly based on the oral motion of the learned Acting Prosecutor General, Sindh, in court, that the father of the accused was sitting in the chamber of the Administrative Judge for two hours and it was the subsequent act of the latter to change it from police custody to JC remand [emphasis supplied]. If the Acting Prosecutor General, Sindh, was so confident that whatever he asserted was true and based on facts then such demur should have been moved by dint of a written motion along with an affidavit, rather than levelling serious allegations orally. Regrettably, whatever he stated was taken and accepted as gospel truth without verifying the authenticity of these serious allegations. Quite the reverse, what we feel forthrightly in our sagacity is that before passing any stricture on the demeanour and career of the petitioner, he should have given him an opportunity to submit his comments/report. However, in this case, no opportunity was provided to him by the learned Divisional Bench before passing the order in the Court. Even in the case of some lapses found to be surfaced on part of the judicial officer, the order or report may be sent to the Chief Justice for taking action on the administrative side through the Confidential Branch. Therefore, we are of the firm view that the remarks/directions made in the Paragraph No.14 of the impugned order which were essentially structured on the oral motion of the learned Acting Prosecutor General, Sindh, were unjustified, and without probing into the issue and without calling for comments from the Presiding Officer or without even affording him a right of audience.

16. The ATCs are established under Section 13 of the ATA for the purpose of ensuring speedy trials of cases under the ATA and the scheduled offences. According to the provisions of sub-section (2)

of Section 13, when more than one ATC is established in any area, the Government, in consultation with the Chief Justice of the High Court, is obligated to designate a judge of any such court to be an administrative judge and all cases tried under the ATA pertaining to the said area shall be filed before the said court and such judge may either try the case himself or assign any case or cases for trial to any other ATC at any time prior to the framing of the charge. *Vide* Notifications dated 26.02.2025 and 27.02.2025, the Administrative Judge has already been changed and the charge of Administrative Judge has been assigned to some other judicial officer. Mindful to the prevailing scenario, the learned counsel for the petitioner unwaveringly conveyed that the petitioner is in fact interested in and prayed for expunction of remarks only, but he is not sentient or interested in the charge of Administrative Judge which has already been assigned to some other judicial officer.

17. As a result of the above discussion, the aforesaid Criminal Petitions are converted into appeals. As a consequence thereof, and without disturbing or upsetting the Notifications dated 26.02.2025 and 27.02.2025, issued for substituting/switching the command of Administrative Judge, the remarks/directions contained in Paragraph No.14 of the impugned order are expunged.

18. Disposed of accordingly.

Judge

Judge

Judge

Karachi

5th June, 2025

B-K Soomro

Approved for reporting