

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed
Mr. Justice Amin-ud-Din Khan

Civil Petition No.2420 of 2015

(Against the judgment dated 24.06.2015 passed by the Peshawar High Court Peshawar in W.P. No.2052/2008)

***Ikram Ullah Khan Yousafzai, Excise & Taxation
Officer, Peshawar and others***

...Petitioner(s)

Versus

Dr. Rizwan Ullah & others

...Respondent(s)

For the Petitioner(s): Syed Hammad Ali Shah, ASC

For Respondent Nos.1-2: Mr. Abdul Samad Khan, Sr.ASC
Muhammad Arif, SI

Date of Hearing: 10.02.2022.

ORDER

Qazi Muhammad Amin Ahmed, J.:- Ikram Ullah Khan Yousafzai, Sahibzada Daud Jan and Syed Naveed Jamal, petitioners herein, were, respectively, posted as Excise & Taxation Officer, Assistant Excise & Taxation Officer and Inspector Excise & Taxation at Peshawar. Dr. Rizwan Ullah, respondent, a medical officer, is an assessee of property tax relating to 132 shops located within the remit of Excise & Taxation Office Peshawar, allegedly in default; the assessed amount was Rs.182,365/- seemingly till the assessment year 2008 and it was for the recovery of said amount that the petitioners while executing a non-bailable warrant of arrest purportedly issued by the competent authority took him in custody on 16.6.2008 at 10:30 a.m. while he was present at Services Hospital. It is alleged that the respondent was not in default and he asked the raiding party to allow him an opportunity to clarify his

position, however, he was meted out a treatment rude and uncalled for whereafter forcibly shifted to the Excise & Taxation Office; he was kept in wrongful confinement till 5:00 p.m. when some advocates got him released. It is in this backdrop that the respondent approached Station House Officer Bhana Marree Peshawar for registration of a criminal case against the excise officials and upon refusal filed a petition under section 22-A of the Code of Criminal Procedure, 1898, declined by a Justice of Peace vide order dated 10.11.2008; a learned Judge-in-Chamber of the Peshawar High Court Peshawar vide impugned order dated 24.6.2015 directed registration of a criminal case, *vires* whereof, are being assailed through the present petition.

The case came up for hearing on 14.10.2015 when after issuance of notice, the apprehended arrest of the officials was ordered to be held in abeyance followed by order dated 6.11.2015 maintaining "*a meantime status quo*".

2. Learned counsel for the petitioners contends that there was no occasion for the learned High Court to issue the impugned direction inasmuch as the State functionaries tasked with the collection of public revenue were executing a command of law issued by the competent authority and as such respondent's arrest was an action taken under *due process of law*, admittedly interrupted by some lawyers through gross interference therewith. It is next argued that execution of warrant was in pursuance of an order within the contemplation of section 78 of the Pakistan Penal Code, 1860 and as such was covered by the statutory immunity under general exceptions enumerated Chapter-IV thereof; it is next argued that till date the respondent has not paid a single penny and, thus, interference by this Court would be most called for both in order to ensure realization of defaulted amount as well as restoration of bureaucratic independence and efficiency. The learned counsel for the respondent while defending the impugned direction argued that the petitioners with intentions, sinister and oblique, in gross abuse of official authority, hounded the respondent, practitioner of a most noble profession, while he was performing his official duties and, thus, committed a series of cognizable offences that statutorily required registration of a criminal case inasmuch as no one is above

the law and the Constitution guarantees dignity of man; he has vehemently denied any default in payment of property tax.

3. Heard. Record perused.

4. State authority is a sacred trust; it vests in its functionaries to accomplish purposes designated by law and no doubt while exercising such authority within remit thereof, the functionaries must act in a manner most benign with a degree of restraint, expedient to avoid transgression. At the same time, a reasonable freedom for the functionaries is most essential to effectively perform the duties they are tasked with. Any obstruction with the performance of State business is interference with the writ thereof and cannot be countenanced without grievously undermining its authority. Independence is not sole prerogative or attribute of any particular limb of the State as within the defined limits of law, each department, must be sovereign to effectively ensure its functionality so as to achieve statutory purpose, there being no sword of demolces hanging over the head. It is even more important for those who are assigned with the responsibility of enforcement of law or for collection of State revenue and, thus, while there must be an unblinking judicial vigil over alleged transgressions, the Court must simultaneously give effect to statutory presumption attached to official acts as contemplated by Article 129 (e) of the Qanun-i-Shahdat Order, 1984 as well as Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973.

Diametrically different positions, notwithstanding, what is evident on the record is issuance of multiple notices for the recovery of outstanding assessment of property tax, predating the incident; a warrant issued by an Assistant Collector 1st Class, though disputed as fake is, nonetheless, mainstay of the petitioners' case who in their official capacity were tasked to collect the assessed amount and, thus, *prima facie*, within the bounds of law to execute the impugned warrant; their rowdy behavior and inappropriate selection of time and venue for the execution of the warrant as alleged by the respondent though despicable, nonetheless, by itself does not expose them to criminal consequences. There is nothing on the record to view the purported non-bailable warrant as a fake instrument; similarly, it is not open for the respondent to unilaterally dispute the *vires* of impugned assessment, reportedly

stalled till date. We are also at loss to understand under what authority of law, the rescuing team that included some lawyers took away the respondent from custody apparently sanctioned by law, a criminal offence in itself. These are the issues that hinged upon factual controversies and as such could not have been attended in exercise of Constitutional jurisdiction in the face of multiple alternate statutory remedies available to the respondent.

For the foregoing reasons, the petition is converted into appeal and allowed; impugned direction/order dated 24.06.2015 is set aside, however, the respondent is certainly at liberty to dispute the *vires* of impugned assessment before the competent forum in accordance with law as well as to avail alternate remedy of private complaint to be attended on its own merits, if so advised.

Judge

Judge

Judge

Islamabad, the
10th February, 2022
Azmat/-