

[(2015) 111 Tax 389 (H.C. Kar.)]
[IN THE SINDH HIGH COURT, KARACHI]
ZAHEER AHMED

Versus

**DIRECTORATE GENERAL OF INTELLIGENCE &
INVESTIGATION-IR & 4 others**

*Present: Aqeel Ahmed Abbasi and Muhammad Junaid
Ghaffar, JJ.*

**Constitutional Petition No. D-3337 of 2013,
decided 11-6-2014 .**

*Sales Tax Act, 1990 (VII of 1990) - Sections: 2(9), 2(17), 2(20), 2(33), 2(37), 3, 6, 7, 8, 8A, 22, 23, 26, 33 & 73 - Federal Excise Act, 2005, Sections 2(8a), 2(9a), 2(11), 2(16), 2(21), 3, 4, 17, 18 & 19 - Criminal Procedure Code, 1898, Sections: 249A, 265K & 561A - Constitution of Pakistan, 1973, Articles 199 & 203 - Constitutional Petition - Quashment of FIR, Prayer for - Accused/Petitioner carrying on business of chewing tobacco - Personnel of Directorate of Intelligence - IR raided house of petitioner, arrested him and seized various documents - FIR lodged against petitioner who secured bail from special Judge (Customs and Taxation) subject to his furnishing solvent surety - Case pending for trial before Special Judge - Petition for quashing of proceedings u/s 2(37) pending in Court, declaration that respondents have no jurisdiction to initiate any criminal proceeding against petitioner and that they cannot impose Sales Tax upon agricultural product - Declaration that petitioner is entitled for exemption from payment of Sales Tax or Federal Excise Tax as his business for sale of manufactured chewing tobacco and his turnover is less than Rs.5,000,000 per annum - To restrain Respondents 1 to 4 from harassment, threats and from encashment of cheques, which were secured from petitioner and kept as security - To direct respondents to release/hand over two blank cheques, books of accounts, receipts of purchase of goods and other documents/registers and record of his Factory which was forcibly taken into custody by Respondents No. 1 to 4 - **Scope** - Counsel for petitioner contended before High Court that petitioner is not registered person with Sales Tax Deptt. as he does not carry on any business of manufacturing or any taxable activity, which may require imposition of Federal Excise Duty or Sales tax*

thereon, that entire exercise undertaken by Directorate of Intelligence and Investigation IR including illegal raid, seizure of goods and sealing of premises of petitioner and subsequent registration of FIR and arrest of petitioner is based on malafide and amounts to abuse of process of law and that in view of material and evidence available with prosecution there is no possibility of conviction of petitioner, hence in order to avoid any further abuse of process of law and humiliation, injury and proceedings pending before special Judge (Customs and Taxation) may also be struck down - Synopsis - Whether before raid at premises of petitioner, seizing goods and sealing premises, admittedly, petitioner was neither issued any Show Cause nor any opportunity has been provided by respondents to petitioner to explain his position with regard to allegations as contained in FIR lodged by Directorate of Intelligence and Investigation I.O - Held yes - Whether neither any Show Cause Notice has ever been issued to petitioner nor any assessment in terms of section 11 of Sales Tax Act, 1990, has been made to determine liability of petitioner in respect of Sales Tax or in terms of Section 12 of Federal Excise Duty, 2005 to determine liability of petitioner in respect of excise duty - Held yes - Whether impugned FIR and proceedings emanating there from are without lawful authority, whereas officials of Directorate of Intelligence and Investigation IR in instant case have acted without jurisdiction and in violation of express provisions of law - Held yes - Whether while exercising inherent jurisdiction vested in High Court and in order to avoid abuse of process of law, FIR and proceedings pending before special judge (Customs and Taxation) since 2012 without any useful progress are quashed - Held yes - Whether respondents are directed to immediately de-seal properties of petitioner and hand over seized goods, documents and relevant record as well as cheques obtained from petitioner while he was in their custody - Held Yes.

We have heard both the learned counsel as well as Standing Counsel and perused the record with their assistance. In the instant case, admittedly, the petitioner is not a registered person either under Section 13 of Federal Excise Act, 2005 or under Section 14 of the Sales Tax Act, 1990, nor the petitioner has any history of being assessed to pay duty under the Federal Excise Act or to pay

sales tax under the Sales Tax Act, 1990. Before the raid at the premises of the petitioner, seizing the goods and sealing the premises, admittedly, the petitioner was neither issued any show cause nor any opportunity has been provided by the respondents to the petitioner to explain his position with regard to the allegations as contained in the FIR lodged by the Directorate of Intelligence and Investigation I.O. No adjudication proceedings whatsoever have so far been initiated against the petitioner by the respondents nor any assessment or even determination of liability of the petitioner, if any, towards Federal Excise Duty or Sales Tax has been made by the respondent as provided in the Federal Excise Act, 2005 and the Sales Tax Act, 1990. Respondents have not even yet determined as to whether the petitioner is engaged in the business of producing or manufacturing any goods in Pakistan or has imported goods into Pakistan or is providing services in Pakistan, which may attract liability of any duty in terms of Section 3 of the Federal Excise Act, 2005, nor it has been determined by the respondents as to whether the petitioner is a registered person, who makes any taxable supplies, which are liable to Sales Tax in terms of Section 3 of the Sales Tax Act, 1990. Neither any show cause notice has ever been issued to the petitioner in this regard nor any assessment in terms of Section 11 of the Sales Tax Act, 1990, has been made to determine the liability of the petitioner in respect of Sales Tax or in terms of Section 12 of the Federal Excise Duty, 2005, to determine the liability of the petitioner in respect of excise duty. No recovery Notices have ever been issued to the petitioner in respect of the alleged liability of duty and taxes as mentioned in the impugned FIR and the interim challan submitted by the respondents before the Special Judge (Customs & Taxation), Karachi, in the instant case. It is pertinent to note that even in the impugned FIR there has been no specific allegation of tax fraud or willful default in payment of duty and sales tax by the petitioner, whereas, the officials of Directorate of Intelligence and Investigation I.R. have presumed that petitioner is liable to pay Sales Tax and Federal Excise Duty as he is engaged in the business of manufacturing and trading of tobacco without payment of duty and taxes, whereas, they are not even authorized under the law to either determine the liability of duty and taxes or to make any adjudication in this

regard. It appears that the case against the petitioner, besides suffering from jurisdictional error and legal infirmity, is also groundless and there is no possibility of conviction on the basis of material or the evidence available on record. [Page 399]A

Under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973, High Court is responsible for the entire administration of justice, and being charged with responsibility of supervising all Courts subordinate to it, this Court is competent to take all appropriate measures for preventing mal-administration of justice and abuse of the process of law in appropriate cases. When the case is of no evidence or very registration of the case is proved to be malafide or the case is of purely civil nature or when there is unexceptional delay in the disposal of the case causing deplorable mental, physical and financial torture to the person proceeded against, this Court is competent to take cognizance of the matter and by exercising inherent powers under Section 561-A Cr.P.C, to correct a wrong by ordering quashment of FIR and proceedings emanating therefrom. Powers vested in High Court under section 561-A Cr.P.C. are co-extensive with the powers vested in trial Court under section 249-A and 265-K Cr.P.C, and in appropriate cases, can be invoked directly without resorting to decision by the trial Court under section 249-A and 265-K Cr.P.C to void abuse of process of Court. [Page 400]B.

opinion that the impugned FIR and the proceedings emanating there from are without lawful authority, whereas, the officials of the Directorate of Intelligence and Investigation I.R. in the instant case have acted without jurisdiction and in violation of express provisions of law. Accordingly, while exercising inherent jurisdiction vested in this Court and in order to avoid abuse of the process of law, we have quashed the FIR and the proceedings pending before the Special Judge (Customs and Taxation), Karachi, since 2012 without any useful progress, vide our short order dated 11.06.2014 and these are the reasons for such short order. [Page 404]C.

The respondents are directed to immediately de-seal the properties of the petitioner and handover the seized goods, documents and relevant record as well as the cheques obtained from the petitioner while he was in their custody. [Page 404]D.

Cases referred to:

Shah Nawaz and 2 others v. Birjilal and others (2011 MLD 956); *Sadaqat Ali Khan through L.Rs. and others v. Collector Land Acquisition and others* (PLD 2010 SC 878); *State v. Asif Ali Zardari and another* (1994 SCMR 798); *Muhammad Amin v. Master Bashir Ahmed and others* (2006 SCMR 969); *Shah Muhammad v. Haq Nawaz and another* (PLD 1970 SC 470); *Mohammad Ashraf v. Faiz Ali and 11 others* (PLD 1975 SC 556); *Abdul Razzaq v. S.H.O. and others* (2008 P.Cr.L.J 812); *Abdul Rashid and another v. The State* (1983 P.Cr.L.J 42); *Senator Asif Ali Zardari and another v. The State* (PLD 2008 Karachi 381); *Miraj Khan v. Gul Ahmed* (2000 SCMR 122); *Khurshed Ahmed v. The State* (2011 YLR 2368); *Muhammad Aslam Baig v. The State* (NLR 1994 Cr.L.J 549); *Quaid Johar v. Murtaza Ali and another* (PLD 2008 Karachi 342); *Muhammad Khalid Mukhtar v. The State* PLD 1997 275; *Miraj Khan v. Gul Ahmed and 3 others* 2000 SCMR 122; *Maqbool Rehman v. The State and others* 2002 SCMR 1076; *Mian Munir Ahmad v. The State* 1985 SCMR 257; *Raees Ahmad Khan v. The State* 1991 P.Cr.L.J 1381; *Ch. Pervez Ellahi v. The Federation of Pakistan* 1995 MLD 615 (Lahore) and *Muhammad Hassan v. Manzoor Ahmad and another* 1991 P.Cr.L.J 2177.

Tariq Mehmood, for the petitioner.

S. Mohsin Imam, and M. Azam Nafees, I.R, A.O/I.O Mr. Asfaq Rafiq Janjua, Standing Counsel, for the Respondent.

Date of hearing: 11-06-2014.

ORDER

[The Order passed by Aqeel Ahmed Abbasi, J.] – Through instant petition, the petitioner being aggrieved by registration of the FIR No.AD(Hqrs)I&I-IR/STFE/Khi/2012-13/01 under Section 2(9), 2(17), 2(20), 2(33), 2(37), 3, 6, 7, 8, 8A, 22, 23, 26 & 73 of the Sales Tax Act, 1990 punishable under Section 33 ibid and Section 2(8a), 2(9a), 2(11), 2(16), 2(21), 3, 4, 17 & 18 of the Federal Excise Act, 2005 punishable under Section 19 ibid by the Directorate General of Intelligence & Investigation-IR, and the proceeding pending before the Special Judge (Customs & Taxation), Karachi, has sought quashment of the aforesaid FIR and the proceedings emanating there from with the following prayer:-

- a) To quash the proceedings initiated and/or arising out of FIR No. AD(Hqrs)I&I-IR/STFE/Khi/2012-13/01 under Section 2(37) of the Sales Tax Act by the respondents No.1 to 4 against the petitioner and the Special Case No.148/2012 pending before respondent No.5 may be quashed.
 - b) To declare that the respondents have no jurisdiction to initiate any criminal proceeding against the petitioner and they cannot impose sales tax upon the agricultural product hence the FIR and case against the petitioner is an abuse of process of law and liable to be quashed and declare null and void F.I.R. and challan.
 - c) To declare that the petitioner is entitled for exemption from payment of allegedly claimed sales tax or Federal Excise Tax as his business for sale of manufactured chewing tobacco and his turn-over is less than Rs.50 lacs per annum, more over his previous sales tax Registration is already de-activated since long.
 - d) To restrain the respondents No.1 to 4 from harassment, threats and from encashment of cheque No.CD-1392171 dated 13.12.2012 for Rs.81,01,588/- which was secured from the petitioner and kept as security with the Nazir of the Hon'ble High Court as the respondents No.1 to 4 are trying to get encashed the said Cheuqe of the petitioner.
 - e) To direct the respondents No.1 to 4 to release/handover two blank cheques, books of accounts, receipts of purchase of goods and other documents/registers and record of his factory etc. to the petitioner which were forcibly taken into custody by respondents No.1 to 4.
 - f) Any other/further relief which this Hon'ble Court may deem fit and proper in circumstances of this case.
2. Brief facts as stated in the Memo of Petition are that petitioner is respectable and law abiding citizen and has been carrying on the business of chewing tobacco under the name and style of Qutub Tobacco having factory at CB-251, Sector 16-B, Gabool Town, North Karachi, vide NTN #0896075-5 and makes payment of due taxes in accordance with law.
3. That between the night of 10th/11th November, 2012 the personnel of Directorate of Intelligence and Investigation-I.R. raided the house of the petitioner at about 12.00 P.M. in the night, arrested him and extorted from the petitioner two blank cheques,

mobile phone set and various documents including rent agreement, bilties, cess and tobacco collection receipts, registers, cash book etc, whereas, an FIR was lodged against the petitioner as referred to hereinabove.

4. That the petitioner was kept in wrongful confinement of the Directorate of Intelligence and Investigation-I.R. and was interrogated and thereafter remanded to judicial custody after completion of investigation and interim challan was furnished before the Special Judge (Customs and Taxation), Karachi. The petitioner moved bail application before the learned Special Judge (Customs and Taxation), Karachi, for release from jail but the same was declined, whereafter, the petitioner filed Spl. Crl. Bail Application No.122/2012 before this Court, which was granted on 13.12.2012 subject to his furnishing solvent surety in the sum of Rs.500,000/-, however, a further cheque bearing No.CD-1392171 dated 13.12.2012 for Rs.81,01,588/- was also secured from the petitioner, which was kept as security with the Nazir of this Court (being 25% of the disputed demand). It has been further stated that the respondents have raided at three premises without any notice or complying with the legal provision of the Sales Tax Act, Federal Excise Act, or the provisions of Criminal Procedure Code applicable while conducting raids, including factory premises i.e. CB-251, Sector 16-B, Gabool Town, North Karachi, where the respondents seized the entire raw material of the petitioner and also sealed the factory premises by putting their locks and deputed their watchmen, whereas, the other two properties i.e. F-2-AD, SITE, Karachi and E-46/47, Block-B, North Karachi, which in fact are lying vacant and wherein no business activity whatsoever is being carried out, were also sealed without complying with the legal requirements. The petitioner moved an application before the learned Special Judge (Customs and Taxation), Karachi, for de-sealing of the premises after collecting samples of goods, however, the said application was dismissed vide order dated 19.04.2013, whereafter, the petitioner filed Constitution Petition No.D-1976/2013 before the Divisional Bench of this Court, who converted the same into Spl. Crl. Revision being No.02/2013 to be heard by a learned Single Judge of this Court and the said Revision Application was allowed vide order dated 28.06.2013. However, as per petitioner, pursuant to order passed by the learned Single Judge

of this Court in the aforesaid Spl. Criminal Revision Application, the respondents malafidely de-sealed only the factory premises of the petitioner and did not allow the de-sealing of other two premises and demanded illegal gratification, failing which, the petitioner was threatened that his entire family will be involved in the instant case or some other criminal cases. The entire business activity of the petitioner came to a halt, which has financially broken the petitioner, whereas, the case pending before the Special Judge (Customs and Taxation), Karachi, has not even proceeded as no material prosecution witness has been examined so far, therefore, the petitioner has filed instant petition, seeking quashment of the FIR and the proceedings emanating there from on the grounds that entire proceedings and the acts of the officials of Directorate of Intelligence & Investigation-IR, in the instant case are without jurisdiction, patently illegal, false and frivolous, and there is no possibility of conviction of the petitioner in the alleged offence.

5. It has been contended by the learned counsel for the petitioner that the petitioner is not a registered person with the Sales Tax Department as he does not carry on any business of manufacturing or any taxable activity, which may require imposition of Federal Excise Duty or Sales Tax thereon. It has been further contended by the learned counsel that before conducting of the raid by the officials of the Directorate of Intelligence and Investigation-I.R. and registration of impugned FIR, no show cause Notice either for Sales Tax Registration under the Sales Tax Act, 1990 or the Federal Excise Act, 2005 was issued, nor the taxability of the petitioner's business under the Federal Excise Duty and Sales Tax has ever been determined, whereas, in spite of lapse of about more than two years, no proceeding of adjudication and determination of taxability or creation of any demand against the petitioner in respect of Federal Excise Duty or Sales Tax has been initiated by the concerned authority, and in spite of such fact, the respondents have registered FIR against the petitioner on the false and frivolous allegation of evasion of duty and taxes, which are not payable by the petitioner at all. Per learned counsel, no case of imposing any Sales Tax or the Federal Excise Duty has been made out by the respondents against the petitioner in respect of the alleged tobacco

leaves, which in fact is an agriculture product which is purchased by the petitioner from Attock City, whereafter, the same is sold out by the petitioner in gunny bags at wholesale market without any process of manufacturing or producing, which may attract the provision of Federal Excise Act or the Sales Tax Act, in the instant case. It has been further contended by the learned counsel for the petitioner that the entire exercise undertaken by the Directorate of Intelligence and Investigation-I.R. in the instant case, including illegal raid, seizure of goods and sealing of the premises of the petitioner and subsequent registration of FIR and arrest of the petitioner is based on malafide and amounts to abuse of the process of law which has already caused serious injury and financial losses to the petitioner, who is a law abiding and respectable citizen and has never committed any default in payment of his tax liability and other government dues in this regard. It has been further contended by the learned counsel for the petitioner that the prosecution has not produced any material or evidence before the learned Special Judge (Customs and Taxation), Karachi, which may connect the petitioner with the alleged offence and in view of the material and evidence available with the prosecution there is no possibility of conviction of the petitioner in the instant crime, hence requests that in order to avoid any further abuse of process of law and the humiliation, injury and financial losses to the petitioner, this Honourable Court, while exercising inherent powers, may quash the FIR and the proceedings pending before the learned Special Judge (Customs and Taxation), Karachi. Learned counsel for the petitioner has readout the contents of FIR, interim challan and other relevant documents to show that the case against the petitioner is also groundless and cannot be sustained in law. In support of his contention, the learned counsel has placed reliance in the following reported cases.

1. *Shah Nawaz and 2 others v. Birjlal and others* (2011 MLD 956)
2. *Sadaqat Ali Khan through L.Rs. and others v. Collector Land Acquisition and others* (PLD 2010 SC 878)
3. *The State v. Asif Ali Zardari and another* (1994 SCMR 798)

4. *Muhammad Khalid Mukhtar v. The State through Deputy Director, FIA (CBA), Lahore* (PLD 1997 SC 275)
5. *Muhammad Amin v. Master Bashir Ahmed and others* (2006 SCMR 969)
6. *Shah Muhammad v. Haq Nawaz and another* (PLD 1970 SC 470)
7. *Mohammad Ashraf v. Faiz Ali and 11 others* (PLD 1975 SC 556)
8. *Abdul Razzaq v. S.H.O. and others* (2008 P.Cr.L.J 812)
9. *Abdul Rashid and another v. The State* (1983 P.Cr.L.J 42)
10. *Senator Asif Ali Zardari and another v. The State* (PLD 2008 Karachi 381)
11. *Miraj Khan v. Gul Ahmed* (2000 SCMR 122)
12. *Khursheed Ahmed v. The State* (2011 YLR 2368)
13. *Muhammad Aslam Baig v. The State* (NLR 1994 Cr.L.J 549)
14. *Quaid Johar v. Murtaza Ali and another* (PLD 2008 Karachi 342)

6. While confronted with the submissions made by the learned counsel for the petitioner, material available on record and the case law relied upon by the learned counsel for the petitioner on the subject controversy, learned counsel for the respondent has candidly stated that the raid conducted, the seizure and sealing of the premises of the petitioner made by the officials of Directorate of Intelligence and Investigation I.R. and Registration of FIR and the proceedings emanating there from are not sustainable in law as the legal requirements have not been complied with by the respondents. The Appraising Officer, who is the I.O. in the instant case and present in Court has also candidly acknowledged that the impugned FIR and the proceedings emanating there from are not sustainable in law as according to him while conducting raid, making seizure of the goods and sealing the premises of the petitioner legal requirements of Sales Tax Act, 1990, Federal Excise Act, 2005 and the relevant provisions of Cr. P.C. have not been complied with in the instant case. Learned counsel for the respondent and the I.O. present in Court were also confronted as to whether, in view of the material available with the prosecution in the instant case, is there any possibility of conviction of the petitioner in the alleged offence of tax fraud, etc. in response of

which, both have candidly stated that there is no possibility of conviction of the petitioner in the instant case, hence, did not object if the FIR and the proceedings pending before the learned Special Judge (Customs & Taxation) Karachi may be quashed. Learned Standing Counsel also did not support the Registration of FIR and the proceedings emanating there from in the instant case and submitted that this Court has the authority to quash the frivolous proceedings at any stage by exercising inherent powers under Article 199 or 561-Cr.P.C. in appropriate cases.

7. We have heard both the learned counsel as well as Standing Counsel and perused the record with their assistance. In the instant case, admittedly, the petitioner is not a registered person either under Section 13 of Federal Excise Act, 2005 or under Section 14 of the Sales Tax Act, 1990, nor the petitioner has any history of being assessed to pay duty under the Federal Excise Act or to pay sales tax under the Sales Tax Act, 1990. Before the raid at the premises of the petitioner, seizing the goods and sealing the premises, admittedly, the petitioner was neither issued any show cause nor any opportunity has been provided by the respondents to the petitioner to explain his position with regard to the allegations as contained in the FIR lodged by the Directorate of Intelligence and Investigation I.O. No adjudication proceedings whatsoever have so far been initiated against the petitioner by the respondents nor any assessment or even determination of liability of the petitioner, if any, towards Federal Excise Duty or Sales Tax has been made by the respondent as provided in the Federal Excise Act, 2005 and the Sales Tax Act, 1990. Respondents have not even yet determined as to whether the petitioner is engaged in the business of producing or manufacturing any goods in Pakistan or has imported goods into Pakistan or is providing services in Pakistan, which may attract liability of any duty in terms of Section 3 of the Federal Excise Act, 2005, nor it has been determined by the respondents as to whether the petitioner is a registered person, who makes any taxable supplies, which are liable to Sales Tax in terms of Section 3 of the Sales Tax Act, 1990. Neither any show cause notice has ever been issued to the petitioner in this regard nor any assessment in terms of Section 11 of the Sales Tax Act, 1990, has been made to determine the

liability of the petitioner in respect of Sales Tax or in terms of Section 12 of the Federal Excise Duty, 2005, to determine the liability of the petitioner in respect of excise duty. No recovery Notices have ever been issued to the petitioner in respect of the alleged liability of duty and taxes as mentioned in the impugned FIR and the interim challan submitted by the respondents before the Special Judge (Customs & Taxation), Karachi, in the instant case. It is pertinent to note that even in the impugned FIR there has been no specific allegation of tax fraud or willful default in payment of duty and sales tax by the petitioner, whereas, the officials of Directorate of Intelligence and Investigation I.R. have presumed that petitioner is liable to pay Sales Tax and Federal Excise Duty as he is engaged in the business of manufacturing and trading of tobacco without payment of duty and taxes, whereas, they are not even authorized under the law to either determine the liability of duty and taxes or to make any adjudication in this regard. It appears that the case against the petitioner, besides suffering from jurisdictional error and legal infirmity, is also groundless and there is no possibility of conviction on the basis of material or the evidence available on record.

8. Under Article 203 of the Constitution of Islamic Republic of Pakistan, 1973, High Court is responsible for the entire administration of justice, and being charged with responsibility of supervising all Courts subordinate to it, this Court is competent to take all appropriate measures for preventing mal-administration of justice and abuse of the process of law in appropriate cases. When the case is of no evidence or very registration of the case is proved to be malafide or the case is of purely civil nature or when there is unexceptional delay in the disposal of the case causing deplorable mental, physical and financial torture to the person proceeded against, this Court is competent to take cognizance of the matter and by exercising inherent powers under Section 561-A Cr.P.C, to correct a wrong by ordering quashment of FIR and proceedings emanating therefrom. Powers vested in High Court under section 561-A Cr.P.C. are co-extensive with the powers vested in trial Court under section 249-A and 265-K Cr.P.C, and in appropriate cases, can be invoked directly without resorting to decision by the trial Court under section 249-A and 265-K Cr.P.C to void abuse of process of Court. B

9. In the case of *The State v. Asif Ali Zardari & another* 1994 SCMR 798, the Hon'ble Supreme Court while examining the scope of inherent powers under Section 561-A Cr.P.C vested in High Court has held as under:

"9. Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by the High Court at any time. Ordinarily High Court does not quash proceedings under section 561-A, Cr.P.C. unless trial Court exercises its power under section 249-A or 265-K, Cr.P.C. which are incidentally of the same nature and in a way akin to and correlated with quashment of proceedings as envisaged under section 561-A, Cr.P.C. In exceptional cases High Court can exercise its jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

This judgment was also followed in the case of *Muhammad Khalid Mukhtar v. The State* PLD 1997 275.

10. In the case of *Miraj Khan v. Gul Ahmed and 3 others* 2000 SCMR 122, the Hon'ble Supreme Court has held as under:

"There is no absolute bar on the power of the High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A, Cr.P.C. It is cardinal principle of law that every criminal case should be adjudged on its own facts. The facts of one case differ from the other and, therefore, no rule of universal application can be laid in a certain case so as to be made applicable to other cases. Even in the case reported in PLD 1997 SC 275, relied on by the learned counsel for the petitioner this principle has been recognized that the High Court in exceptional cases can exercise jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C., if the facts of the case so warrant. The main consideration to be kept in view

would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of process of Court or not. It on the basis of facts admitted and patent on record no offence can be made out then it would amount to abuse of process of law to allow the prosecution to continue with the trial.

11. In the case of *Maqbool Rehman v. The State and others* 2002 SCMR 1076, it has been held as follows:

“9. In law, there is no warrant for the argument that since the charge had been framed by the trial Court, proceedings could not be buried by way of quashment. The petitioner appears to be laboring under a misconception of law that in all cases where the accused persons are summoned by a Court of law, it is incumbent upon the Court to record the evidence. There is no invariable rule of law and it will depend on the facts of each case whether to allow the prosecution to continue or to nip in the bud.”

12. In the case of *Mian Munir Ahmad v. The State* 1985 SCMR 257, it has been held as under:

“that the powers of the trial Court under section 249-A, Cr.P.C. and 265-K, Cr.P.C. are co-extensive with the similar powers of the High Court under section 561-A, Cr.P.C., and both can be resorted to.

It would of course be proper to approach the trial Court in the first instance but there is nothing to bar the High Court from entertaining, in appropriate cases, an application under section 561-A, Cr.P.C., directly.”

13. In the case of *Raees Ahmad Khan v. The State* 1991 P.Cr.L.J 1381, it has been held as under

“No doubt the powers of trial Court under section 249-A or 265-K, Cr.P.C, as the case may be, are co-extensive with similar powers of the High Court under section 561-A, Cr.P.C., and both can be resorted to. The case of *Mian Munir Ahmed v. The State*, reported in 1985 SCMR 257, is a guiding authority on this subject.”

14. In the case of *Ch. Pervez Ellahi v. The Federation of Pakistan* 1995 MLD 615 (Lahore), it has been held as under:

“We have heard the arguments of the learned counsel for number of days, perused the record and evidence collected by the investigating agency besides the documents produced and shown by the learned counsel for the petitioner. In principle, there is no dispute to say that on the following grounds a criminal case can be quashed by the High Court exercising its Constitutional jurisdiction:

- (a) When the case is of no evidence;
- (b) When the very registration of the case is proved to be mala fide on the face of record;
- (c) when the case is of purely civil nature, criminal proceedings are not warranted in law, especially to harass the accused;
- (d) when there is serious jurisdictional defect; and
- (e) when there is unexceptional delay in the disposal of the case causing deplorable mental, physical and financial torture to the person proceeded against.”

15. In the case of *Muhammad Hassan v. Manzoor Ahmad and another* 1991 P.Cr.L.J 2177, it has been held as under:

“Following principles can be concluded from the case-law cited by the learned Advocates for the parties with regard to the exercise of the powers by the trial Court under sections 249-A and 265-K and the High Court under section 561-A:-

- (i) Mere pendency of a civil suit, does not absolve a party from a criminal charge if the facts of the case established the same but if the facts of the case do not disclose mens rea or commission of criminal offence, the criminal proceedings will be an abuse of the process of the Court and cannot be allowed to be used as an instrument of harassment or coercion for attainment of unlawful purpose.
- (ii) The power to quash the criminal proceedings cannot be exercised where the case set up by the complainant prima facie shows a plausible case, unless some evidence is recorded to establish that the dispute is of a civil nature or where the appraisalment of the evidence by the trial Court

is desirable in the first instance looking at the facts and circumstances of the case.

- (iii) The exercise of jurisdiction by the High Court under section 561-A is controlled by the principles and precedents as much as the express statutory powers.
- (iv) The powers under section 561-A cannot be exercised to stifle the proceedings where prima facie case is disclosed but there is no bar in exercise of such powers when the charge on its face does not disclose any offence.
- (v) The powers of the High Court under section 561-A Cr.P.C., and those of the trial Court under sections 249-A and 265-K, Cr.P.C. are co-extensive."

16. In view of hereinabove facts and circumstances of this case and the candid statement of the learned counsel for the respondents as well as by the I.O. of the case, and by respectfully following the ratio of the case law as referred to hereinabove, we are of the opinion that the impugned FIR and the proceedings emanating there from are without lawful authority, whereas, the officials of the Directorate of Intelligence and Investigation I.R. in the instant case have acted without jurisdiction and in violation of express provisions of law. Accordingly, while exercising inherent jurisdiction vested in this Court and in order to avoid abuse of the process of law, we have quashed the FIR and the proceedings pending before the Special Judge (Customs and Taxation), Karachi, since 2012 without any useful progress, vide our short order dated 11.06.2014 and these are the reasons for such short order. C

17. The respondents are directed to immediately de-seal the properties of the petitioner and handover the seized goods, documents and relevant record as well as the cheques obtained from the petitioner while he was in their custody. D
Petition stands allowed in the aforesaid terms along with pending application(s).

Petition allowed.