

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

Criminal Appeal No.10-K of 2024

(Against the order dated 19.11.2024 passed by the High Court of Sindh, Karachi in H.C.A No. 484/2024)

Hira Rauf

... Appellant

Versus

Rear Admiral (Retd) Mushtaq Ahmed and others

... Respondents

For the Appellant:	Barrister Khawaja Naveed Ahmed, ASC a/w appellant Hira Rauf
For Respondent No.1 & 2:	Mr. Muhammad Ahmed Masood, ASC
For Respondent No.4:	Dr. Raana Khan, AOR
For Respondent No.5:	Mr. Abdullah Munshi, ASC
For Respondent No.6:	Mr. Mirza Sarfaraz, ASC
For Respondent No.3 & 7:	Mr. Sibtain Mehmood, Addl. AG. Sindh Mr. Muhammad Javed, SHO Clifton
Date of Hearing:	18.07.2025

ORDER

Muhammad Ali Mazhar, J.- Brief facts of the case are that the respondent No. 1 allegedly violated the order dated 03.09.2024 passed by the High Court in Suit No. 918/2024 in its original jurisdiction. The plaintiff No.1 who is respondent No.1 in this criminal appeal, moved an application for contempt of court under Article 204 of Constitution of Islamic Republic of Pakistan, 1973 and Section 3 and 4 of the Contempt of Court Ordinance, 2003 ("**Ordinance**"). After notice counter affidavit was filed. The learned Single Judge observed that Section 17(3) of the Ordinance requires date to be fixed for framing of charge and also fixed the date 11.12.2024 for framing of charge after

issuing notice to the learned Advocate General Sindh, for his appearance for the assistance of the Court. Being aggrieved the petitioner challenged the order in HCA No. 484/2024 which was disposed of on 19.11.2024 with direction to the parties to appear before the learned Single Judge to further proceed into the matter.

2. At the very outset, the learned counsel for the petitioner pointed out that learned Single Judge as well as the Divisional Bench of the High Court both misinterpreted the Section 17(3) of the Ordinance and no preliminary hearing was conducted before taking decision or taking cognizance in contempt proceedings. Learned counsel appearing for respondent No.1 and 2 states that the Nazir report was submitted to show some violation on the basis of which the court decided to take the cognizance in the matter but he admits that no preliminary hearing was conducted. The learned counsel for the respondent No. 5 submits that there were some procedural lapses occurred before passing the order by the learned Single Judge as well as the learned counsel for the KDA states that the procedure was not properly followed.

3. We have heard the arguments of the learned counsel and have also gone through the Section 17 of the Ordinance in which sub-section (3) is quite relevant which is reproduced as under:

“(3) If, after giving the alleged contemner an opportunity of a preliminary hearing, the court is prima facie satisfied that the interest of justice so requires, it shall fix a date for framing a charge in open court and proceed to decide the matter either on that date, or on a subsequent date or dates, on the basis of affidavits, or after recording evidence:

Provided that the alleged contemner shall not, if he so requests, be denied the right of cross examination in relation to any affidavit, other than that of a judge, used in evidence against him.”

4. The reading of the aforesaid section clearly accentuates that before taking cognizance or fixing the date for framing of charge the alleged contemnor was to be given an opportunity of preliminary hearing by the court and after due satisfaction if *prima facie* case is made out the court may fix the date for framing of charge in open court and proceed to decide the matter. But in this case the learned Single Judge on the face of it without providing an opportunity of preliminary hearing, directly set the date for framing of charge.

5. In our view, there are some lapses apparent on the face of record and this crucial question has also been overlooked by the learned Division Bench while disposing of High Court Appeal.

6. As a result of our discussion the order dated 30.10.2024 passed by the learned Single Judge of the High Court in Suit No. 918/2024 and the order dated 19.11.2024 passed by the learned Division Bench in HCA No. 484/2024 both are set aside to the extent of contempt proceedings and so far as the contempt application is concerned it will remain pending and if the court wants to initiate contempt proceedings then after providing opportunity of preliminary hearing on the basis of the contempt application and the counter affidavit filed by the alleged contemnor, may decide whether a *prima facie* case of contempt is made out for proceeding in accordance with law. The appeal is allowed in above terms.

Judge

Judge

Judge

Karachi,
18.07.2025.
Approved for Reporting
Tanveer Ahmed