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10.10.19

IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-868 of 2019

Alongwith C.P No. D-6303/2019

Muzzamil Mumtaz Meo Advocate .....Petitioner

Versus

Province of Sindh & Ors.....Respondents

ORDER

09.10.2019

Mr. Muzammil Mumtaz advocate petitioner in person in CP No.D-868/2019.

Mr. Hakil Ali Shaikh, AAG alongwith Mr. Shariq Ahmed, Law Secretary alongwith Nadeem, Assistant.

Mr. Siraj Ali Chandio, Addl. PG & Mr. Fahcem Hussain Panhwar, APG alongwith AIGP Legal Muhammad Habib Ahmed, DSP Legal Raza Mian and SSP Abdullah, ASI Muhammad Ayub, PS Zaman Town.

Mr. Ifran Ahmed Memon, DAG.

Mr. Nasir Ahmed advocate for respondent No.8.

M/s. Rasheed Ashraf Mughal, Ehtishamullah and Salahuddin Chandio, advocates.

Dr. Ghulam Haider, Incharge Cancer Department, JPMC, Dr. Khalil Ahmed Mehar, consultant, Cancer Department, JPMP, Dr. Altaf Hussain Shaikh, ODS Litigation, Health, Dr. Syed Zafar Mehdi, Irshad Khokhar Deputy Secretary (General), Imran Shehzad & Aneel Mumtaz, Social Activists.

*[Handwritten signatures and initials on the left margin]*

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Pursuant to order dated 03.10.2019 Secretary Law present submits statement appended with notification dated 5<sup>th</sup> October 2019 which shows that on Saturday 5<sup>th</sup> October 2019 Bill No.XXI of 2019 regarding legislation on *gutka*, *mainpuri* and other hazardous articles based on tobacco, betel nuts and other poisonous material has been referred to standing committee on law and parliamentary affairs with the terms of reference to examine the bill and report back to the Provincial Assembly Sindh within one week.

2. At this juncture Incharge Dr. Jinnah Hospital submits break up with regard to cancer patients. According to the chart in five years total table shows 18614 patients having ~~cancer~~ were treated

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Received *[initials]*

out of them 9453 patients were having mouth cancer. Relevant portion of the chart is that :-

Year	Total	H&Neck	%
2014	2573	1750	68
2015	2570	1700	66
2016	3257	1860	57
2017	4166	1930	46
2018	6048	2213	36

3. As per doctor, reason of mouth cancer in Pakistan is mainly use of *gutka, mainpuri, mawa* etc. It is further stated that there are other hospitals which are Kiran, Ziauddin, Agha Khan, Betul Sukoon, Civil hospital, Rahat kada, Almeera Tibbi Imdad, Cancer Foundation Hospital, S.I.U.T. and in interior Sindh Nimra at Jamshoro, Noreen at Nawabshah, Linar and civil hospital at Larkana. It is also contended that Dr. Yasmin Bharguri was working to survey the cancer patients in Sindh but due to her death her work remained incomplete. However Cancer doctors have formed cancer registry and they are focusing to examine the causes and facts including patients having ailment of cancer. At this juncture doctor / Incharge Cancer Ward, Jinnah hospital contends that betel nut is also reason of cancer hence province of Sindh may be directed to impose ban and betel nut may also be made part of legislation. Here, it is needful to clarify that the **'Doctors'** are the best persons to report consequences/effects of anything including that falling within mean of *'foods'*. If they come to a *definite* conclusion of any article being cause of such fatal consequence then the **legislatures** are required to make legislation thereon *least* to bring such article / thing under some regulatory authority. Accordingly, the Health Department is





required to make legislation keeping in view the referred opinion of the **Cancer Registry** onto **betel nuts**.

4. Additional compliance report is submitted on behalf of IGP Sindh which shows lodgment of FIRs against illegal use of *gutka*, *mainpuri*, *mawa*, betel nuts. At this stage learned counsel for respondent contends that raw material for preparation of *gutka*, *mainpuri*, *mawa* and imported *gutka*, *mainpuri* and other such type of tobacco chewing products are coming from other countries by smuggling and Pakistan coast guards and other law enforcing agencies are privy and they are not taking any action hence law enforcing agencies posted at borders may be directed to ensure and stop smuggling of these articles. When confronted to learned DAG, he contends that Pakistan Rangers may be directed to start crack downs against manufacturers and smugglers in the aid of police as well in their departmental capacity. Learned DAG contends that Rangers will also provide every assistance to the police. Such stand of the learned DAG, being worth appreciation, is taken on record as such. Accordingly, D.G. Rangers shall ensure complete assistance to police in cracking down such *menace* and the Pakistan Rangers may, *independently*, take actions against '**smugglers' manufacturers**, which action, however, shall be confined to arrest of culprits seizure of property etc while the law, *later*, shall take its own course as provided by procedure. As well Coast Guards agency shall ensure that strict action is taken against smugglers.

5. Mr. Imran Shehzad, social activist intends to join in this petition; petitioner extends no objection for joining him, however he will be at liberty to file application under order 1 rule 10 CPC. Mr. Shehzad contends that DG Sindh Food Authority may be directed to ensure raids on different places with regard to illegal sale and



purchase of above said articles. He contends that police officials are involved in this menace, according to him <sup>10</sup> <sup>10</sup> Million is per day monthly at Mochko police which is at the Balochistan and Sindh border; according to him at same place around 17000 tons of gutka and like nature articles were apprehended but only 6000 kg were shown; he further contends that *gutka, mainpuri, mawa* users are mainly poor persons and around 70% in Karachi, Tharparkar, Badin, Hyderabad, Mirpurkhas, Sujawal are addict of these dangerous substance.

6. At this juncture learned AAG has highlighted the punishment provided for the manufacture, sale and purchase of above articles which provides maximum six years' sentence for the manufacturers, one year's sentence for the user. Though he admits that such punishment is not sufficient to cause deterrence and since gravity of the situation is that masses have become handicapped and are compelled to use these articles without active knowledge of its consequences. The manufacturers are the ones who, for *financial* benefits, brought up such *menace* and even motivated *responsible* to become *irresponsible / negligent*. Such *ill-gotten* money at the cost of young blood of the *nation* also requires to be attached and used for cleaning of such *blood*. Thus, it is hoped that while making legislation such aspect shall be considered and quantum of punishment shall be determined, as such and status of such *ill-gotten* shall also be kept in view. Mr. Muzammil Mumtaz contends that abettor shall also be involved in the new legislation. *Legally*, an abettor is equally responsible for the offence, committed in consequence to such *abetment* therefore, such person cannot be left alone *legally*. Here, it is added that any act or omission which is likely to consequence into





happening of such **offence** is an act of *abetment* which is not limited, but includes a '**phone call**' for or in favour of such an '**accused**' or articles **recovered**. Such like persons are, *in fact*, are *silent* perpetrators who even use their influence for violation of Article-4 of Constitution i.e compelling police officer not to do what the law demands from him. Thus, it is the time to expose such persons and to appreciate those officials who take such **dare**. We are living in 21<sup>st</sup> Century hence such '**record**', including CDR be made helpful to expose (bring them before law) such like people for which the Police Officers are always competent.

7. AIGP report contends that users are not aware with regard to consequences hence public messages through different means including print and electronic media will be beneficial and Province of Sindh may be directed to ensure such campaign. The Sindh Government, being direct custodian of *lives* of its people, was always obliged to make its *subjects* aware of consequences of all **threats** including use of *gutka* therefore, it is directed that necessary publication shall be made so as to aware people of Sindh about consequences of such *menace* as well punishments. All modes of publication, hopefully, shall be used.

8. Since report reflects that 10,000 patients of mouth cancer were provided treatment at Jinnah Hospital whereas we have not yet called report from other hospitals therefore we direct DG Health and District and Sessions Judges of all districts where cancer wards and hospitals are referred in para No.3, that they shall call details of outdoor and indoor patients of last five years while patients having mouth cancer shall be categorized separately. MIT of this

court shall submit report within one week on admission side.



9. Mr. Ehtishamullah and Salahuddin Chandio advocates contend that this is an open secret and every citizen knows about sale and purchase of gutka and involvement of police, even it is pointed out that there is monthly system at every police station as stated above when it is not disputed and repeatedly government has imposed ban on same articles and seized as well, but there is no deterrence.

10. Since it is highlighted that 17,000 tons gutka, mava and other articles were seized but only 6000 were shown which appears to be in continuity of plea of *monthly* system raised. The allegation surfaced that there had been recovery of '**1000 tons gutka**' but only **600 kgs** were shown. If the allegation has a *little* truth in it then it could only result into conclusion that '**sale of such huge quantity of gutka**' was made by the police *itself* because, it (*remaining quantity*) was never brought to light. Such conclusion, we have to acknowledge, is very **grave**. It is needless to insist that recovery, by law, is required to be made in *specified* manner which includes preparing an '**inventory**' known as '**mashirnama of recovery**' and even those things, seized during personal search, are also be taken under an '**inventory**'. The law, needless to add, does provide mechanism for restoration of seized property (51 Cr.P.C) as well disposal of those, recovered as '**crime property**'. At this juncture, before making further comments Here, is needless to insist that recovery, by law, is required to be made in *specified* manner which includes preparing an '**inventory**' known as '**mashirnama of recovery**' and even those things, seized during personal search, are also be taken under an '**inventory**'. Before commenting further on such *allegations*, we feel it appropriate to say that happening of



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offences / crimes is, *in fact*, direct or indirect failure of some duties by quarter concerned which is not limited but includes failure of **STATE** as a whole in assuring discharge of duties by every single **ORGAN** of the **STATE**. However, confining to present issue i.e *sale of gutkha* we shall have to *first* admit that *gutka*, normally was / is, sold in shops / cabins etc and was / is easily available to every hand carrying required amount without keeping in view the **age** and **gender** thereof. If so, this could have never happened unless:

- i) it is believed that police failed in performing their duties;
- ii) it is believed that such sale was being done with *implied* consent / permission of police.

Either of them, we are sorry to say, is not worth appreciating rather begs for an action against *guilty* of negligence or those who chooses to be *perpetrator*. Therefore, requires an *explanation* from all incharges of police station (s) for their undeniably concluded failure which (*gutka like things*), per record of Jinnah Hospital, resulted into sending '**10,000**' (*ten thousand*) mouth cancer patients in **last five years**. Accordingly, IGP direct Additional IGPs to call explanations from all S.H.O(s) with rider that continuity of **manufacturing & sale** within their defined territory may expose them to an explanation but after **reasonable** time, so framed for **crackdown**. While continuing we would add that happening of crime may be consequence of some *individuals* but increase and repeating thereof is nothing but failure of law enforcing agencies. It, in short, is a failure of law enforcing agencies which allows the crime or criminal to grow. It may be added that none ever chooses to be guilty of *criminal negligence* or becoming a perpetrator except against some *illegal* consideration / motive. Since,



the State is known of its *representation* which is its *officials* (public servants), therefore, **living beyond means** is *itself* an allegation requiring the **public servant** to render a *plausible* explanation. Here, example of *Hazrat Umer-e-Farooque* (Razi-Allah-Anho) is suffice that he, despite being the **strongest ruler (Khalifa)** preferred to answer such an allegation without being annoyed on the *ordinary* man (public).

11. Resuming, in view of above legal position, it is the time to remind police official (s) regardless of their **position (s)** that such like allegation is always **answerable** to quarter concerned (*Agencies dealing with charge of corruption / corrupt practice*) which (agencies) are also under an obligation to perform their such obligations even without waiting for one to come forward. Seeking such an *explanation*, however, should never be a sword to harass or harm *dignity* of the man rather should *preferably* be made as **between** two only unless:

- a) either fails to satisfy / explain thereby requiring further *probe/investigation*;
- b) or refuses to explain thereby strengthening allegation;

Hopefully, both **ends** shall take notice of their obligations as well **duties**. Needless to add that any such *failure* in discharge of a legal duty shall always be opened to be hammered by this Court.

However, since there is direct allegation of dealing with such **huge** quantity of **gutka** in an illegal manner therefore, we are compelled to order that IGP Sindh shall conduct enquiry. Moreover, there is no mechanism of internal policing to check police officers in criminal activities and assess police involvement in such like





activities. Hopefully, this shall also be looked into by legislature and till such time the IGP Sindh is expected to come forward with some mechanism so as to eliminate **grave** charge of **monthly system**.

12. With regard to treatment of petitioner Naseem Hyder, Secretary Health Department has submitted report which shows that a board has been constituted and complete treatment shall be provided to the petitioner.

13. Learned counsel for petitioner contends that under section 337-J though there is direction to join the user as witness but police is not joining them as witness. Law *itself* permits mechanism for making one as a *witness* and investigating officer legally can't deny need of making one as a witness whose evidence/statement, if appears necessary into matter, under investigation. Accordingly, if investigating officer or Court finds anybody, including *user* a necessary witness, they are expected to act per commandment of law and procedure to secure attendance and evidence of such person.

To come up on 18.11.2019 at 9.30 am when Secretary Law, Secretary Health and D.G. Food Authority shall be in attendance. This order shall be communicated to IGP Sindh, Chief Secretary, Secretary Law, Secretary Health and D.G. Rangers, for compliance.

Sd/= Judge  
Sd/= Judge

Certified to be true copy

Assistant Registrar (Writ)

Const. Petition No. D-868 of 2019

dated 10.10.2019 Karachi

Copy of above order forwarded for information and necessary complies to:

1. The Chief Secretary, Government of Sindh, Sindh Secretariat, **Karachi**
  2. The Secretary Law, Government of Sindh, Sindh Secretariat, **Karachi**
  3. The Secretary Health, Government of Sindh, Sindh Secretariat, **Karachi**
  4. The Director General, Food Authority at **Karachi**
  5. The IGP Sindh at **Karachi**
  6. The Director General Rangers, Jinnah Courts, **Karachi**
  7. The Director General Health
  8. The Learned and Sessions Judges (all)
- \*\*\*The Learned MIT of this Court at Karachi \*\*\*  
\*\*\*The Learned PG Sindh at Karachi \*\*\*  
\*\*\*The Learned AG Sindh at Karachi \*\*\*  
(Now matter is fixed in Court on 18.11.2019 at 9.30a.m)

Assistant Registrar (Writ)

