

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Naeem Akhter Afghan
Mr. Justice Muhammad Shafi Siddiqui

Civil Petition No.3837 of 2023

*[Against judgment dated 10.08.2023 of
the Islamabad High Court, Islamabad
passed in Customs Reference
No.04/2020]*

*Collector of Customs, Model Customs
Collectorate, Islamabad.*

... *Petitioner*

Versus

Javed Iqbal Malik and another.

... *Respondents*

For the Petitioner: Mr. M.D. Shehzad Feroze, ASC.

For the Department: Mr. Irfan-ur-Rehman,
Member Customs, FBR.

For the Respondents: Mr. M. Zahid Mehboob Khan, ASC.
a/w Mr. Tauqeer Ahmed, ASC.

Date of Hearing: 17.08.2026.

JUDGMENT

Muhammad Shafi Siddiqui, J. This petition for leave to appeal filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 has arisen out of the judgment dated 10.08.2023 passed by the Islamabad High Court, Islamabad in Customs Reference No.04/2020.

2. The facts, in brief, are that on 17.11.2017, the respondent was proceeding to travel abroad from Benazir Bhutto International Airport, Islamabad, on Flight No. QR-633 destined for Sweden. At the relevant time, State Bank of Pakistan Notification No. F.E.1/2015-SB dated 01.06.2015

prescribed a limit of US\$10,000 for carrying foreign currency in cash out of Pakistan, and any amount exceeding the said limit required a valid No Objection Certificate (NOC) from the State Bank of Pakistan, failing which the consequences were to follow. The Customs authorities had received information regarding an attempt to take a substantial quantity of foreign currency abroad through the said flight and, accordingly, their staff posted at the International Departure Hall were alerted. The respondent proceeded through the departure process and crossed the baggage declaration counter, Customs baggage search counter, ANF search counter and FIA immigration counter where such amount could have been disclosed. His luggage was checked, his boarding card was issued, and an exit stamp was affixed to his passport. He thereafter reached the last ASF checking/scanning counter, situated after the immigration counter, where his jacket was scanned and US\$40,000 was detected concealed in the inner pocket thereof. The ASF staff thereupon informed the Customs authorities, who reached the spot and conducted the requisite search, resulting in the recovery and seizure of the said foreign currency. The respondent was arrested after service of notice under section 171 of the Customs Act, 1969, and FIR No.66/2017 was registered on the same date. The matter was thereafter placed before the Collector of Customs (Adjudication), Islamabad, who, vide Order-in-Original No.42/2018 dated 26.04.2018, ordered outright confiscation of the recovered foreign currency. Aggrieved thereof, the respondent preferred an appeal before the Customs Appellate Tribunal, Islamabad.

3. The Customs Appellate Tribunal, vide judgment dated 05.09.2019, allowed the appeal preferred by the respondent and set aside Order-in-Original No.42/2018 dated 26.04.2018. The Collector of Customs challenged the said judgment before the Islamabad High Court through Customs

Reference No.04/2020. The High Court, vide judgment dated 10.08.2023, answered the reference in the negative. The High Court noted that the Tribunal had examined the circumstances surrounding the recovery of the foreign currency, including the question whether the respondent had attempted to smuggle the same, and held that the question whether the respondent had actually attempted to smuggle the foreign currency was essentially a question of fact instead of intent. Referring to the limited jurisdiction of the High Court in a reference under the Customs Act, the High Court observed that it could not interfere with such finding of fact recorded by the Tribunal unless such finding was shown to be perverse or contrary to the record. Hence, the present petition.

4. Learned counsel for the petitioner contended that the Tribunal had erred in setting aside the confiscation of the foreign currency and in holding that the circumstances attending its recovery did not constitute smuggling. It was submitted that the respondent was proceeding to board an international flight carrying US\$40,000 without the requisite declaration and permission, and that, before being apprehended, he had crossed the baggage declaration counter, Customs baggage search counter, ANF search counter and FIA immigration counter and had reached the last ASF checking counter. Learned counsel submitted that the respondent's boarding card had already been issued and his passport had been stamped for exit, and that the foreign currency was detected only when his jacket was scanned at the last ASF checking point. According to learned counsel, these circumstances, taken cumulatively, demonstrated that the respondent had proceeded substantially towards taking the foreign currency out of Pakistan and that his conduct amounted to an attempt to smuggle within the meaning of section 2(s) of the Customs Act, 1969. It was further contended that the Tribunal had failed to

properly appreciate the requirement of declaration under section 139 of the Act and the restrictions applicable to the export of foreign currency. Learned counsel accordingly sought setting aside of the impugned judgments and restoration of the order of confiscation.

5. Conversely, learned counsel for the respondent No.1, supported the judgments of the Tribunal and the High Court. It was submitted that the recovery of US\$40,000 from the respondent, in the circumstances in which it was made, did not by itself establish an attempt to smuggle. Learned counsel referred to the respondent's position that his luggage had already been checked, his boarding card had been issued and his passport had been stamped for exit, whereafter the currency was detected when he reached the last ASF checking counter in the course of the departure process. It was further submitted that the respondent had not clandestinely concealed the currency in his baggage and had explained its source, including through the bank statement produced before the adjudicating authority. Learned counsel further submitted that the respondent was unaware of the requirement to obtain a valid NOC from the State Bank of Pakistan for carrying foreign currency in excess of US\$10,000 and that his failure to obtain such permission was attributable to his lack of knowledge of the applicable requirement, rather than any intention to smuggle the currency out of Pakistan. It was contended that the mere possession of foreign currency in excess of the prescribed limit, or the intention to take the same abroad, could not, without more, establish the requisite attempt to smuggle. Reliance was placed upon *Central Board of Revenue*¹, and it was submitted that the Tribunal had considered the relevant circumstances and that the High Court

¹ Central Board of Revenue v. Khan Muhammad (PLD 1986 Supreme Court 192).

had rightly declined to interfere with its factual determination in exercise of its reference jurisdiction. Dismissal of the petition was accordingly prayed for.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. The controversy before us is whether, in the facts and circumstances of the case, the respondent's conduct amounted to an "attempt" to take the foreign currency out of Pakistan within the meaning of "smuggle" under section 2(s) of the Customs Act, 1969, notwithstanding that the currency was detected and recovered at the last ASF checking counter before his departure.

8. For appreciating the controversy, it would be appropriate to first examine section 2(s) of the Customs Act, 1969, which defines the expression "smuggle" in the following terms:

“(s) **‘smuggle’** means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or en route pilferage of transit goods or evading payment of customs-duties or taxes leviable thereon,

(i) gold bullion, silver bullion, platinum, palladium, radium, precious stones, antiques, currency, narcotics and narcotic and psychotropic substances; or

(ii) manufactures of gold or silver or platinum or palladium or radium or precious stones, and any other goods notified by the Federal Government in the official Gazette, which, in each case, exceed one hundred and fifty thousand rupees in value; or

(iii) any goods by any route other than a route declared under section 9 or 10 or from any place other than a customs-station. and includes an attempt, abetment or connivance of so bringing in or taking out of such goods; and all cognate words and expressions shall be construed accordingly;

9. The provision, insofar as relevant to the present controversy, refers to bringing into or taking out of Pakistan, “in breach of any prohibition or restriction for the time being in force”, certain specified goods. Clause (i) expressly includes “currency” amongst the goods falling within the definition. The provision further extends the expression “smuggle” to include an

“attempt, abetment or connivance” of so bringing in or taking out such goods. Thus, in so far as currency is concerned, the statutory definition is attracted where the bringing into or taking out of Pakistan occurs in breach of a prohibition or restriction for the time being in force, and the statutory definition further encompasses an attempt to undertake such prohibited movement.

10. The language of section 2(s), therefore, requires the prohibited or restricted act of bringing into or taking out of Pakistan to be identified with reference to the prohibition or restriction said to have been breached. The express inclusion of currency in clause (i) establishes that currency is within the class of goods to which the definition may apply; it does not, however, by itself render every possession or movement of foreign currency an act of smuggling. The relevant question, where an attempt is alleged, is whether the conduct in question was directed towards the taking out of the specified goods in breach of a prohibition or restriction for the time being in force.

11. The concluding part of section 2(s) is of particular significance in the present context, as it expressly includes an attempt to bring in or take out the specified goods within the definition of “smuggle”. The statutory language consequently does not make completion of the prohibited movement an indispensable condition where an attempt to undertake that movement is established. At the same time, the provision does not define the precise point at which conduct directed towards the prohibited act becomes an “attempt”. That question must therefore be considered in accordance with the ordinary legal distinction between intention, preparation and attempt, having regard to the nature of the act sought to be accomplished and the circumstances in which the conduct occurred. We shall presently examine the jurisprudence on this aspect.

12. The expression “attempt to smuggle” has not been separately defined in the Customs Act, 1969. This Court considered the scope of the expression in the context of foreign currency in the *Khan Muhammad's* case (*supra*). In that case, the respondent, an Afghan national, had entered Pakistan through Torkham and, while travelling onwards to the United Kingdom, returned to Peshawar owing to an issue concerning his visa. On 18.03.1983, he booked a seat on a flight from Peshawar to Karachi and, while proceeding towards the aircraft for embarkation, was intercepted by the Customs authorities, who recovered foreign currency from his bag. The question before this Court was whether the conduct of the respondent constituted an attempt to smuggle the currency out of Pakistan. In considering the question, the Court identified four distinct stages in the course of conduct leading to the commission of an offence, namely: (i) intention; (ii) preparation; (iii) attempt; and (iv) completed act. The Court observed that intention by itself is not punishable, while preparation ordinarily does not attract criminal liability unless separately made an offence. Attempt represents a further stage in the progression towards the commission of the intended offence. The difficulty lies in determining the point at which preparation ends and attempt begins, which is to be determined in the circumstances of each case. An attempt involves an act done with the intention of committing the particular offence and forming part of a series of acts which, if uninterrupted, could result in its actual commission. Such an act must be a step towards the commission of the specific offence and must be immediately, and not merely remotely, connected with its commission. The Court further observed that the interruption which prevents the consummation of an offence need not necessarily occur at the penultimate act.

13. Applying the above principles to the facts before it, this Court in *Khan Muhammad*'s case held that the conduct of the respondent had not progressed beyond the stage of preparation. The respondent had been intercepted at Peshawar while proceeding to board a "domestic flight bound for Karachi". Although his ultimate destination was outside Pakistan, the flight he was about to board would terminate within Pakistan, and further acts would consequently have been required before the currency could be taken out of the country. The Court held that the act of boarding a flight at Peshawar which terminated at Karachi was not sufficiently connected with the actual commission of the offence of taking the currency out of Pakistan. In this context, the Court observed that if further acts had been undertaken by the respondent to board a plane which would have taken him out of the country along with the currency, "there might have been a case of an attempt." The Court accordingly held that the conduct established on the facts of that case fell short of an attempt to smuggle.

14. The distinction between preparation and attempt was further considered by this Court in *Asghar Ali*². While examining section 2(s) of the Customs Act, 1969, the Court noted that an attempt to smuggle had not been separately defined in the Act and considered the legal distinction between intention, preparation and attempt. The Court observed that intention, preparation, attempt and completion represent successive stages in the commission of an offence, and that an attempt arises when, following intention and preparation, a deliberate overt act is taken towards the commission of the offence. Whether the conduct has crossed the stage of preparation and assumed the character of an attempt was described as a mixed question of law and fact, dependent upon the circumstances of each case. The Court thus

² *Asghar Ali v. State* (PLD 2003 Supreme Court 250)

emphasised that the inquiry is concerned not merely with what the accused intended ultimately to accomplish, but with the nature of the acts actually undertaken towards the commission of the particular offence.

15. The application of this principle in *Asghar Ali's* case is instructive. The transaction before the Court involved, inter alia, Pakistani currency recovered from the petitioner's possession at the seashore and foreign currency recovered from secret cavities of the vehicle in which the petitioner and his companions were travelling. The prosecution alleged that the accused had been taking both Pakistani and foreign currency towards the seashore for the purpose of smuggling it out of Pakistan. The Court nevertheless examined the two components of the transaction separately. In relation to the Pakistani currency, it held that, apart from the petitioner's presence at the seashore with the currency, there was no positive evidence establishing an attempt to take it out of Pakistan. Even accepting the prosecution's version that the currency was being taken towards the seashore for that purpose, the Court held that the accused had not crossed the stage of preparation. Of significance was the fact that possession of Pakistani currency within the territorial limits of Pakistan was not itself prohibited; consequently, suspicion as to an intended subsequent act could not be substituted for positive evidence of the overt act necessary to constitute an attempt.

16. The Court's treatment of the foreign currency in the same case further demonstrates the significance of the circumstances surrounding possession and the evidence relied upon to establish the offence. The foreign currency had been recovered from secret cavities of the vehicle, and the Court treated that part of the transaction separately, holding that it constituted an offence under section 156(1)(8) of the Customs Act, 1969. The Court further observed that the failure of the petitioner to explain his lawful possession of the foreign

currency could give rise to the presumption under section 187, but only after the prosecution had discharged the initial burden of establishing illegal possession and after due consideration had been given to the explanation furnished by the accused. In discussing the authorities cited before it, the Court also considered the *Khan Muhammad's* case and *Muhammad Jehangir*³. The latter case concerned a passenger who was found in possession of foreign currency in the departure lounge at Karachi Airport, at the stage when he was ready for boarding. The Court distinguished that case from the facts before it, observing that, had the recovery not been effected, the offence of smuggling would have been completed. By contrast, in *Asghar Ali*, the petitioner had been intercepted while travelling on the road along the coastal belt within the territory of Pakistan.

17. The principles discussed above must be applied to the respondent's conduct as a whole, rather than to any isolated circumstance attending the recovery. The material question is whether, by the time of interception, the acts undertaken by him had acquired the requisite proximity to the specific offence of taking the currency out of Pakistan. On the record, the respondent had progressed through the successive stages of the international departure process, including the baggage declaration, Customs baggage search, ANF search and FIA immigration, and had thereafter obtained his boarding card and exit stamp recorded in the passport. He was intercepted only when he reached the last ASF checking/scanning counter after immigration, where US\$40,000 was detected in the inner pocket of the jacket worn by him. He passed several stages where such disclosure could have been made, but no such disclosure was made. These circumstances are material not because the completion of any particular airport formality, in isolation, is determinative of

³ *Muhammad Jehangir v. Chairman Central Board of Revenue* (1999 CLC 939)

an attempt, but because they demonstrate the stage which the respondent's conduct had reached when it was interrupted. Unlike a case where the accused is apprehended at an earlier stage, before the principal formalities governing international departure have been completed, the respondent had already passed through the controls which preceded his departure and had reached the final security stage at which the currency was detected.

18. The distinction between preparation and attempt cannot, however, be reduced to a mechanical test based upon the location of interception or the number of formalities completed. The decisive consideration remains whether the acts actually undertaken constituted a deliberate step sufficiently proximate to the prohibited taking-out of the currency. Viewed in that manner, the present case presents a materially different factual setting from *Khan Muhammad*, where the passenger was intercepted while proceeding to board a domestic flight to Karachi and a further independent journey remained necessary before the currency could be taken outside Pakistan and the requisite identified above stages, were yet to be passed. It is also distinguishable from the aspect of *Asghar Ali* concerning the Pakistani currency, where the Court found no positive evidence of an overt act towards taking the currency out of Pakistan and emphasised that its possession within Pakistan was not itself prohibited. Here, the respondent was not merely in possession of foreign currency at an earlier stage of his journey. He had embarked upon and substantially completed the process of international departure, and the currency was detected only at the last ASF checking point after immigration clearance. The significance of these circumstances lies in their cumulative effect: they place the respondent's conduct in much closer proximity to the specific act prohibited by section 2(s), and require it to be

assessed as conduct directed towards the taking out of the currency rather than as a mere preparatory arrangement for a future journey.

19. The respondent's plea that he was unaware of the requirement of obtaining an NOC for carrying foreign currency beyond the prescribed limit is too innocent. The well-established maxim *ignorantia juris non excusat* embodies the principle that ignorance of law does not furnish a defence to an act otherwise prohibited by law. As reiterated by this Court in *Trio Industries (Pvt.) Limited*⁴, a person cannot escape the consequences of a violation merely by pleading that he was unaware of the legal consequences of his conduct. The plea assumes significance in the present case having regard to the respondent's own circumstances. He was a dual national with a history of frequent international travel and was, on the occasion in question, undertaking an international journey himself. In these circumstances, his assertion of complete ignorance of the requirement cannot, without more, be accepted so as to displace the inference arising from the objective circumstances attending his conduct. More importantly, the plea of ignorance cannot retrospectively alter the character of the acts actually undertaken by him. The respondent chose to carry US\$40,000, an amount four times the permissible limit, through the successive stages of international departure and up to the last security checking point, without the requisite NOC. While the plea may be relevant to the assessment of his state of mind, it cannot, by itself, furnish a complete answer to the cumulative circumstances appearing on the record.

20. Section 139 of the Customs Act, 1969 further requires a passenger carrying goods which are prohibited or restricted from being taken out of

⁴ *Trio Industries (Pvt.) Limited v. Babu Sher* (2026 SCMR 152)

Pakistan to declare the same to the appropriate officer, and the respondent's failure to make such declaration assumes significance when considered alongside the other circumstances. Viewed cumulatively, these circumstances establish that the respondent's conduct had progressed beyond mere possession or preparation and was directed towards taking the foreign currency out of Pakistan in breach of the applicable restriction. We are, therefore, satisfied that the respondent had engaged in an attempt to smuggle the foreign currency within the meaning of section 2(s) of the Customs Act, 1969.

21. For the foregoing reasons, the finding recorded by the Customs Appellate Tribunal, and affirmed by the Islamabad High Court, cannot be sustained. The impugned judgment dated 10.08.2023 passed by the Islamabad High Court in Customs Reference No.04/2020, as well as the judgment dated 05.09.2019 passed by the Customs Appellate Tribunal, Islamabad, are accordingly set aside. The Order-in-Original No.42/2018 dated 26.04.2018 passed by the Collector of Customs (Adjudication), Islamabad, is restored. The petition is converted into an appeal and the same is allowed in the aforesaid terms.

Chief Justice

Judge

Judge

Islamabad:
17.08.2026

Approved for Reporting
[Simra Sohail, L.C.]