

Supreme Court: US\$40,000 at Final Airport Check Was Attempted Smuggling

The Supreme Court held that carrying undeclared US\$40,000 through immigration to the final airport security check crossed preparation and amounted to attempted smuggling.

Supreme Court of Pakistan judgment analysis
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Case: Civil Petition No. 3837 of 2023

Court and date: Supreme Court of Pakistan | 17 August 2026

Bench: Chief Justice Yahya Afridi, Justice Naeem Akhter Afghan and Justice Muhammad Shafi Siddiqui

Result: Appeal allowed; outright confiscation of US\$40,000 restored

The ruling in one sentence

The Supreme Court of Pakistan has held that a passenger who carried undeclared US\$40,000 through the principal stages of international departure and reached the final ASF security check had moved beyond preparation and attempted to smuggle foreign currency within section 2(s) of the Customs Act, 1969.

In Collector of Customs, Model Customs Collectorate, Islamabad v Javed Iqbal Malik and another, Civil Petition No. 3837 of 2023, the Court set aside the Islamabad High Court and Customs Appellate Tribunal decisions, restored outright confiscation, converted the petition into an appeal and allowed it. The judgment was approved for reporting.

How the dispute arose

On 17 November 2017, Javed Iqbal Malik was travelling from Benazir Bhutto International Airport, Islamabad, on Qatar Airways flight QR-633 for Sweden. At the time, State Bank of Pakistan Notification No. F.E.1/2015-SB dated 1 June 2015 allowed a passenger to take up to US\$10,000 in cash abroad; an amount above that limit required a valid State Bank no-objection certificate.

Customs officials had received information about an attempt to carry substantial foreign currency abroad. The passenger crossed the baggage declaration counter, Customs baggage search, ANF search and FIA immigration. His luggage was checked, a boarding card was issued and his passport received an exit stamp.

At the last ASF checking and scanning counter after immigration, US\$40,000 was detected in the inner pocket of his jacket. Customs seized the currency, arrested him after serving notice under section 171 of the Customs Act and registered FIR No. 66/2017.

The Collector of Customs (Adjudication), Islamabad, ordered outright confiscation through Order-in-Original No. 42/2018 dated 26 April 2018. The Customs Appellate Tribunal set that order aside on 5 September 2019. On a Customs reference, the Islamabad High Court declined to disturb what it regarded as the Tribunal's factual finding that an attempt to smuggle had not been established.

The legal question before the Supreme Court

The central question was whether the passenger's conduct amounted to an attempt to take foreign currency out of Pakistan within the statutory meaning of smuggle, even though ASF detected and recovered the money before the aircraft departed.

Section 2(s) of the Customs Act includes currency among the specified goods and covers bringing such goods into, or taking them out of, Pakistan in breach of an applicable prohibition or restriction. Importantly, the definition also includes an attempt, abetment or connivance in that prohibited movement.

The Court therefore rejected any test that would require the currency actually to cross Pakistan's border. Completion is not indispensable when the statute expressly includes attempt. The real inquiry is whether the acts performed were sufficiently proximate to the prohibited taking-out, rather than merely expressing an intention or making preparations for a future offence.

Intention, preparation, attempt and completion

The judgment applied the familiar four-stage progression identified in *Central Board of Revenue v Khan Muhammad* (PLD 1986 Supreme Court 192): intention, preparation, attempt and completed act.

Intention alone is not punishable. Preparation ordinarily remains outside criminal liability unless the law separately makes it an offence. An attempt begins when the accused performs an act with the required intention that forms part of a series which, if uninterrupted, could result in the offence. The act must be immediately, rather than remotely, connected to the intended offence.

The line cannot be drawn by a universal formula. It depends on the prohibited act, the steps already completed and the further acts that would still be required. Interruption need not occur at the penultimate moment. Equally, a distant step toward a possible future offence is not automatically an attempt.

Why Khan Muhammad did not protect the passenger

In *Khan Muhammad*, foreign currency was recovered while the passenger was proceeding to board a domestic flight from Peshawar to Karachi. Although he ultimately intended to travel abroad, an independent international journey and further acts were still required. The Supreme Court held that his conduct had not progressed beyond preparation.

The present case was materially different. Javed Iqbal Malik was already taking an international flight. He had crossed the relevant declaration and checking points, completed immigration, obtained a boarding card and exit stamp, and reached the final security stage. Had the currency not been detected, the international departure process would have continued without the need for a separate journey of the kind still outstanding in *Khan Muhammad*.

The Court did not convert the airport map into a rigid legal rule. It expressly explained that neither the location of interception nor the number of counters crossed is independently decisive. Their cumulative effect mattered because it showed the proximity between the passenger's completed acts and the prohibited export of currency.

Asghar Ali and the need for an overt act

The Court also examined *Asghar Ali v State* (PLD 2003 Supreme Court 250). That authority treats the boundary between preparation and attempt as a mixed question of law and fact. After intention and preparation, a deliberate overt act toward the specific offence is required.

In *Asghar Ali*, the Court separately considered Pakistani currency found near the seashore and foreign currency concealed in vehicle cavities. Presence near the coast with Pakistani currency did not, without positive evidence of a sufficiently proximate overt act, establish attempted export. Suspicion about what might occur later could not replace proof.

That reasoning supported, rather than defeated, the Customs case here. The passenger had not merely been travelling within Pakistan with money. He had substantially completed the formal process for international departure and passed several points where declaration could have been made. Those objective acts supplied the proximity missing in the earlier cases.

Failure to declare under section 139

Section 139 of the Customs Act requires a passenger carrying goods prohibited or restricted from export to declare them to the appropriate officer. The passenger made no declaration while passing through the relevant departure controls.

The Court considered that omission together with the amount, the absence of the required State Bank NOC, the placement of the currency in the jacket's inner pocket, completion of immigration and interception at the final ASF checkpoint. It was the combination of circumstances, not bare possession of foreign currency, that established the attempt.

The ruling accordingly does not criminalize every possession or movement of foreign currency. Currency falls within section 2(s), but the prosecution must still identify the applicable restriction and prove conduct directed toward breaching it.

Ignorance of the NOC requirement was no defence

The passenger argued that he did not know he required State Bank permission to carry more than US\$10,000. The Court applied the principle *ignorantia juris non excusat*: ignorance of law does not excuse an otherwise prohibited act.

It also treated the plea as implausible in context. The passenger was a dual national with a history of frequent international travel, and he carried four times the permitted amount. More fundamentally, an assertion of ignorance could not retrospectively change the objective legal character of the acts already performed.

The judgment cited *Trio Industries (Pvt.) Limited v Babu Sher* (2026 SCMR 152) for the proposition that a person cannot avoid legal consequences merely by claiming unawareness of the law.

The Supreme Court's final order

The Supreme Court held that the passenger's conduct had passed beyond possession and preparation and was directed toward taking the currency out of Pakistan in breach of the applicable restriction. It therefore constituted attempted smuggling under section 2(s).

The Court:

- set aside the Islamabad High Court judgment dated 10 August 2023 in Customs Reference No. 04/2020;
- set aside the Customs Appellate Tribunal judgment dated 5 September 2019;
- restored Order-in-Original No. 42/2018 dated 26 April 2018, which ordered outright confiscation of the recovered foreign currency; and
- converted the petition into an appeal and allowed it.

What the judgment means in practice

For outbound passengers, the ruling confirms that seizure before take-off does not prevent a finding of attempted smuggling. A court will examine the travel stage reached, the applicable currency limit, required permission, opportunities to declare, concealment or placement of the currency, and all surrounding conduct.

For Customs authorities, proof should reconstruct the departure sequence carefully. Records of declaration counters, baggage and security checks, immigration clearance, boarding documents, exit stamps, the exact recovery point and the operative State Bank restriction may be decisive.

For adjudicators and appellate courts, the question is not purely geographical. A person standing in an airport has not necessarily attempted to smuggle, while a person who has not yet boarded may nevertheless have progressed far enough. The correct test is the legal proximity of proven overt acts to the prohibited taking-out.

For counsel, Khan Muhammad and Asghar Ali must be applied through their facts. They do not establish that an offence remains preparatory until the passenger enters the aircraft. They require the court to distinguish remote arrangements from acts forming an immediately connected series toward export.

Limits of the ruling

The judgment does not hold that possession of more than US\$10,000 always constitutes smuggling. It concerns an international passenger who lacked the required NOC, did not declare the money, completed the principal departure controls and was intercepted only at the final ASF check.

It does not create a mechanical rule that crossing a particular airport counter conclusively proves attempt. The Court expressly required a cumulative assessment of the whole conduct.

It also does not decide the criminal trial arising from FIR No. 66/2017. The appeal concerned Customs adjudication and restoration of the confiscation order.

This commentary is independent legal analysis for research and general information. The complete judgment, current Customs Act, applicable State Bank rules and the facts of any particular case should be verified before reliance in proceedings.