TABLE OF CONTENTS

Sr. #	Description	Page
i.	Foreword	xvii
ii.	Profile	xix
iii.	Notification as Additional Judge of Lahore High Court, Lahore.	xxi
iv.	Oath as Additional Judge of Lahore High Court, Lahore.	xxii
v.	Notification as Judge of Lahore High Court, Lahore.	xxiii
vi.	Oath as Judge of Lahore High Court, Lahore.	xxiv

REPORTED JUDGMENTS

Sr. #	Citation	Case Title	Area of Law	Page
2012				
1.	2012 PCr.LJ 1157; PLJ 2012 Cr.C 683	Abdul Hameed *vs*. State	Criminal Law	1
2.	2012 PCr.LJ 1216	Muhammad Boota *vs.* State	Criminal Law	3
3.	2012 PCr.LJ 1232	Zia Ullah *vs.* State	Criminal Law	5
4.	2012 PCr.LJ 1924; PLJ 2012 Cr.C 603	Abdul Sattar *vs.* SHO	Criminal Law	9
5.	2012 PLC (C.S) 1293	Tahir Abbas *vs.* Secretary Live Stock	Service Law	13
6.	PLD 2012 Lah. 415	Nadeem *vs.* State	Criminal Law	17
7.	2012 YLR 2777	Sagheer Ahmad *vs.* State	Criminal Law	21
8.	2012 YLR 2806; PLJ 2012 Lah. 628	Hazoor Bakhsh *vs.* Mst. Ameer Mai	Family Law	25

2013				
9.	2013 CLC 21	M. Noman Butt *vs.* Chairman, PCB	Constitutional Law	31
10.	2013 CLC 268; PLJ 2013 Lah. 124	Aymen Safdar *vs.* M. S. Ishrat Sadiq	Civil Law	37
11.	2013 CLC 276; PLJ 2013 Lah. 104	Mst. Mussarat Iqbal Niazi *vs.* Judge Family Court	Family Law	41
12.	2013 CLC 487	Shoaib Mushtaq *vs.* Muhammad Qasim	Civil Law	45
13.	2013 CLC 512	Muhammad Zia ur Rehman *vs.* UET	Civil Law	51
14.	2013 CLD 630; PLJ 2013 Lah. 120; 2013 MLD 1154	Syed Tahir Hussain Shah *vs.* Syed Saeed Anwar	Civil Law	55
15.	2013 CLD 2167; PLJ 2013 Lah. 439; PLD 2014 Lah. 424	Fauji Foundation *vs.* M/s. Chanan Din & Sons	Civil Law	61
16.	2013 MLD 1395; PLJ 2013 Lah. 344	M. Asif *vs.* M. Idrees	Criminal Law	69
17.	2013 MLD 1790; PLJ 2014 Cr.C Lah. 254	Imran alias Manoo *vs.* State	Criminal Law	75
18.	2013 PLC (C.S) 195 PLJ 2013 Lah. 127	Dr. Mobina Ehsan *vs.* Chairman PPSC	Service Law	79
19.	2013 PLC (C.S) 353; PLJ 2013 Lah. 211	Raja M. Nasir Khan *vs.* Acting V.C.	Service Law	85
20.	2013 PLC (C.S) 745; PLJ 2013 Lah. 109	Tibrak Masood *vs.* EDO	Service Law	91
21.	2013 PLC (C.S) 1369 PLJ 2013 Lah. 447	Fakhar Imam *vs.* Govt. Of Punjab	Service Law	95
22.	2013 PCr.LJ 1240	Saeed Ahmad *vs.* SHO, Saddar, Sangla Hill	Criminal Law	99
23.	2013 PCr.LJ 1394; PLJ 2013 Lah. 349	Javed Iqbal *vs.* SHO	Criminal Law	103
24.	2013 PCr.LJ 1402; PLJ 2014 Cr.C Lah. 226	Ghulam Abbas *vs.* State	Criminal Law	109

25.	2013 PCr.LJ 1544	Abdul Ghaffar *vs.* Syed Shabbir Shah Gillani	Criminal Law	115
26.	2013 PCr.LJ 1716; PLJ 2013 Cr.C Lah. 588	Azhar *vs.* State	Criminal Law	119
27.	PLJ 2013 Lah. 100; 2013 MLD 651	Dr. Malik Hafeez ur Rehman *vs.* Pakistan Medical Association	Administrative Law	125
28.	PLJ 2013 Lah. 107; 2013 YLR 942	Sardar Zulfiqar Ali Khan *vs.* Malik Sajjad Bashir	Civil Law	131
29.	PLJ 2013 Lah. 112; 2014 PLC (C.S) 504; 2014 PLC (C.S) 326	Pervaiz Akhtar *vs.* Federal Govt.	Service Law	135
30.	PLJ 2013 Lah. 147; 2013 PLD 464	Gakhar Hussain *vs.* Mst. Surayya Begum	Family Law	139
31.	PLJ 2013 Cr.C Lah. 203	Rao Muhammad Iqbal *vs.* State	Criminal Law	145
32.	PLJ 2013 Lah. 215	Muhammad Zaman *vs.* Province of Punjab	Service Law	147
33.	PLJ 2013 Lah. 336; PLD 2014 Lah. 414	M. Mehboob *vs.* Noor Elahi through Legal Heirs	Civil Law	153
34.	PLJ 2013 Lah. 399; PLD 2014 Lah. 154	M. Shiraz *vs.* ADJ, Gujjar Khan	Family Law	157
35.	PLJ 2013 Lah. 489; 2014 TD (Service) 358	Rashid Ahmad Khan *vs.* Govt. of Punjab	Service Law	161
36.	PLJ 2013 Cr.C Lah. 572	Waheed Khan *vs.* State	Criminal Law	163
37.	PLJ 2013 Cr.C Lah. 623; 2014 PCr.LJ 352	M. Ahmad Javed *vs.* State	Criminal Law	167
38.	PLJ 2013 Cr.C Lah. 732	Allah Jivaya *vs.* State	Criminal Law	171
39.	PLJ 2013 Cr.C Lah. 856; 2015 YLR 2316	Muhammad Asif Nadeem *vs.* DPO	Criminal Law	173
40.	2013 YLR 629; PLJ 2013 Lah. 115	Manzoor Ahmad *vs.* DPO	Criminal Law	179
41.	2013 YLR 1362	Javed Ahmad *vs.* ADJ, Lahore	Family Law	183

42.	2013 YLR 1881; 2013 YLR 2714	M. Pervaz *vs.* Addl. Rent Controller	Rent Law	187
43.	2013 YLR 2021; PLJ 2013 Lah. 338	Hafeez Fatima *vs.* Phul Peer Shah	Civil Law	191
44.	2013 YLR 2079; PLJ 2014 Cr.C 66	Sajjad Akhtar Kiani *vs.* State	Criminal Law	199
2014				
45.	2014 CLD 1323	State Life Insurance Corporation of Pakistan *vs.* Mst. Kaneez Bibi	Insurance Law	203
46.	2014 CLD 1351	State Life Insurance Corporation of Pakistan *vs.* Muhammad Ashraf	Insurance Law	207
47.	2014 MLD 69	Yaqoob alias Qobi *vs.* State	Criminal Law	211
48.	2014 MLD 353	Muhammad Nadeem Nasir *vs.* Chairman	Constitutional Law	215
49.	2014 MLD 1137	Saira Anjum *vs.* Rizwan Riaz	Guardian Law	219
50.	2014 PLC 403	Kot Addu Power Company *vs.* Al-Takbeer Kapco Company	Labour Law	225
51.	2014 PLC (C.S) 464; PLJ 2013 Lah. 118	Sajid Aziz *vs.* Secretary School	Service Law	229
52.	2014 PCr.LJ 76; KLR 2014 Cr.C 10; 2015 PCrR 27	Ahmad Khan *vs.* State	Criminal Law	233
53.	2014 PCr.LJ 456; PLJ 2014 Cr.C Lah. 257	Muhammad Imran *vs.* State	Criminal Law	237
54.	2014 PCr.LJ 956	Muhammad Javed *vs.* State	Criminal Law	243
55.	2014 PCr.LJ 1395	Bashiran Bibi *vs.* CPO, Faisalabad	Criminal Law	247
56.	2014 PCr.LJ 1695	Muhammad Rafique *vs.* State	Criminal Law	251
57.	2014 PCr.LJ 1716	Muhammad Riaz *vs.* State	Criminal Law	255

58.	PLJ 2014 Lah. 52	Umair Azeem Khan *vs.* Sharafat Ali Nasir, Judge Family Court, Mianwali	Family Law	259
59.	PLJ 2014 Cr.C Lah. 250	Muhammad Aslam *vs.* State	Criminal Law	263
60.	PLJ 2014 Lah. 376	Fiaz Riaz *vs.* SMEDA	Service Law	267
61.	PLJ 2014 Cr.C Lah. 484	Muhammad Junaid *vs.* State	Criminal Law	271
62.	PLJ 2014 Lah. 856	Usman Ali *vs.* State	Criminal Law	273
63.	PLJ 2014 Lah. 891	Abdul Hameed *vs.* Rana Safdar, Special Magistrate	Criminal Law	275
64.	PLJ 2014 Lah. 1181	Sadam Hussain *vs.* ASJ, Mian Channu	Criminal Law	279
65.	2014 YLR 590	Kaleem Ullah *vs.* ADJ	Family Law	281
66.	2014 YLR 2197	Asif Sohail *vs.* Mst. Sadaf Razzaq	Family Law	287
67.	2014 YLR 2527	Liaqat Ali *vs.* DPO Layyah	Criminal Law	291
		2015		
68.	2015 CLD 342	State Life Insurance of Pakistan *vs.* Mst. Bashiran Bibi	Insurance Law	293
69.	2015 MLD 502	Muhammad Arshad Kharal *vs.* Justice of Peace	Criminal Law	297
70.	2015 PLC (C.S) 1010; 2015 LN 379	Khan Bahadur *vs.* Govt. of Punjab	Service Law	303
71.	2015 PLC (C.S) 1026; KLR 2015 L&S.C 72	Aman Ullah *vs.* FOP	Service Law	307
72.	2015 PCr.LJ 73	Muhammad Saeed Ahmad *vs.* FOP	Criminal Law	313
73.	2015 PCr.LJ 547	Waqas Ahmad *vs.* State	Criminal Law	317
74.	PLD 2015 Lah. 231	Munas Parveen *vs.* ADJ/Ex. Officio Justice of Peace, Shorkot	Criminal Law	323

75.	PLD 2015 Lah. 500; PLJ 2015 Lah. 1022	Mst. Shamim Akhtar *vs.* ADJ	Family Law	329
76.	PLJ 2015 Cr.C Lah. 420; 2017 YLRN 378	Umer Din *vs.* State	Criminal Law	335
77.	PLJ 2015 Cr.C Lah. 501	Muhammad Abbas *vs.* State	Criminal Law	341
78.	PLJ 2015 Cr.C Lah. 594; PLD 2017 Lah. 23	Brig. ® Imtiaz Ahmad *vs.* State	Criminal Law	345
79.	PLJ 2015 Cr.C Lah. 612; 2016 PCr.LJ 193; 2016 CrLJ 679	Dr. Asghar Ali *vs.* State	Criminal Law	367
80.	PLJ 2015 Lah. 774	Farooq Ahmed *vs.* ADJ	Revenue Law	373
81.	PLJ 2015 Lah. 970; 2016 YLR 15	Syed Muhammad Ali Raza *vs.* Province of Punjab	Family Law	377
82.	PLJ 2015 Lah. 1009; PLJ 2015 Lah. 745; 2015 PLD 504	Mst. Samreen *vs.* Judge family Court	Family Law	381
83.	PLJ 2015 Lah. 1014; 2017 MLD 1713	Abid Hussain *vs.* Judge Family Court	Family Law	385
84.	2015 YLR 2202; PLJ 2015 Lah. 1017	Abdul Shakoor *vs.* Muhammad Hanif	Civil Law	389
2016				
85.	2016 CLC 81	Muhammad Nadeem *vs.* Aneesa Bibi	Family Law	397
86.	2016 MLD 1639	Ihsan Ahmed Khan *vs.* ADJ, Bhakkar	Family Law	401
87.	2016 PLC (C.S) 151; KLR 2015 L&SC 41	Raja Muhammad Mohsin Satti *vs.* G.M. Pakistan Railways HQrs.	Service Law	405
88.	2016 PLC (C.S) 319	Syed Irshad Hussain Abidi *vs.* Govt. of Punjab	Service Law	411
89.	2016 PLC (C.S) 928; 2015 LN 303	Muhammad Rafique *vs.* District Accounts Officer	Service Law	415
90.	2016 PCr.LJ 300	Sardar Muhammad Naseem *vs.* State	Criminal Law	419

91.	PLD 2016 Lah. 563; PLJ 2016 Lah. 349	Safdar Hussain *vs.* Mst. Noshi (Nishat) Gilani	Civil Law	425
92.	PLD 2016 Lah. 857; PLJ 2017 Lah. 14	Mst. Rukhsana Bibi *vs.* Govt. of Pakistan	Constitutional Law	433
93.	PLJ 2016 Lah. 436; 2016 CLC 1245	Zaka Ullah *vs.* Manzoor Hussain	Civil Law	443
94.	PLJ 2016 Lah. 493	Yad Ali Khan *vs.* Province of Punjab	Civil Law	451
95.	PLJ 2016 Cr.C Lah. 813	Muhammad Rafi *vs.* State	Criminal Law	459
96.	PLJ 2016 Cr.C Lah. 825	Rab Nawaz *vs.* State	Criminal Law	461
97.	PLJ 2016 Cr.C Lah. 855	Mumtaz Hussain *vs.* State	Criminal Law	463
98.	PLJ 2016 Lah. 858	FESCO *vs.* Javed Iqbal	Civil Law	465
99.	2016 YLR 1433; PLJ 2016 Lah. 433	Muhammad Ashraf *vs.* Mst. Uzma Qamar	Guardian Law	467
2017				
100.	2017 CLCN 25	Javed Iqbal *vs.* ADJ	Family Law	471
101.	2017 MLD 306	Allah Ditta *vs.* Muhammad Tehseen	Civil Law	475
102.	PLC 2017 139	Zafar Ali *vs.* Punjab Labour Appellate Tribunal, Lahore	Labour Law	479
103.	2018 PLC (C.S) 454; PLJ 2017 Lah. 476	Waseem Yaqoob *vs.* Govt. of the Punjab	Service Law	485
104.	2017 PLC (C.S) 1123	Shafique Ahmad *vs.* Minister for Law	Service Law	491
105.	PLD 2017 Lah. 896	Mst. Faiz Mai *vs.* Home Secretary	Constitutional Law	497
106.	PLJ 2017 Lah. 115	Mst. Afshan Bibi *vs.* Judge Family Court	Family Law	513
107.	PLJ 2017 Lah. 280	Zahir Hafeez *vs.* State	Criminal Law	517

108.	PLJ 2017 Lah. 289	Hameed Ullah Khan *vs.* DSP Railways Multan	Criminal Law	523
109.	PLJ 2017 Cr.C Lah. 455	Khalil Ahmed *vs.* State	Criminal Law	529
110.	PLJ 2017 Cr.C Lah. 457	Gulzar Khan *vs.* State	Criminal Law	531
111.	PLJ 2017 Lah. 542	Ameer Haider *vs.* General Manager (Punjab North) National Highway Authority	Service Law	535
112.	PLJ 2017 Cr.C Lah. 688	Riffat Akbar *vs.* State	Criminal Law	539
113.	PLJ 2017 Cr.C 710	Allah Yar *vs.* State	Criminal Law	541
114.	PLJ 2017 Lah. 1000	Ghulam Hussain @ Bhutto *vs.* ASJ	Criminal Law	545
115.	2017 YLRN 207	Pir Munir *vs.* State	Criminal Law	549
116.	2017 YLRN 266	Muhammad Irfan *vs.* Tehsil Municipal Administration	Criminal Law	557
117.	2017 YLRN 380	Kalsoom Bibi *vs.* Muhammad Irfan	Family Law	561
118.	2017 YLR 2347	Muhammad Khalid *vs.* Muhammad Yousaf	Civil Law	565
		2018		
119.	2018 CLC Note 60	Muhammad Ahsan Iqbal Hashmi *vs.* Chief Secretary Punjab, Lahore	Constitutional Law	569
120.	2018 CLD 711; PLD 2018 Lah. 418; PLJ 2018 Lah. 912	Muhammad Iqbal *vs.* Pakistan Federal Secretary	Civil Law	573
121.	2018 PLC (CS) Note 8	Muhammad Shabani *vs.* Sui Northern Gas Pipelines Ltd.	Constitutional Law	581
122.	2018 PLC (CS) Note 62	Muhammad Ismail *vs.* General Manager (Operations) Pakistan Railways	Service Law	583

123.	2018 PLC (CS) Note 76; 2017 LN 483	Muhammad Awais *vs.*DCO	Service Law	589
124.	2018 PLC 305	Sh. Shahbaz Akhtar *vs.* Factory Manager	Service Law	595
125.	2018 PLC (CS) 433	Atta ul Haq *vs.* The National Bank of Pakistan	Service Law	601
126.	2018 PLC (CS) 831	Jamat Ali *vs.* Govt. of Punjab through Secretary Home	Service Law	605
127.	2018 PLC (CS) 971; PLJ 2018 Lah. 639	Amir Hayat *vs.* PPSC	Constitutional Law	611
128.	2018 PCr.LJ 477	Muhammad Fakhar Javed *vs.* NAB	Criminal Law	615
129.	2018 PCr.LJ 1057	Ahad Khan Cheema *vs.* NAB	Criminal Law	621
130.	2018 PCr.LJ 1555	Major ® Muhammad Zulfiqar Ali *vs.* NAB	Criminal Law	629
131.	PLJ 2018 Lah. 116	Muhammad Taufiq Khan *vs.* Deputy Commissioner Multan/Chairman Overseas Pakistani Commission	Criminal Law	639
132.	PLJ 2018 Lah. 563	Syed Asghar Abbas Naqvi *vs.* Syed Qaswar Abbas	Election Law	641
133.	PLJ 2018 Lah. 1008	Sahibzada Muhammad Hussain Raza *vs.* Provincial Election Commission	Election Law	647
134.	PLJ 2018 Lah. 1158	Mahar Riaz Hussain *vs.* Mazhar Iqbal	Election Law	657
2019				
135.	2019 CLC 1621	Ghulam Hussain *vs.* D.G. NAB	Criminal Law	663
136.	2019 CLD 55	M/s. Shaheen Enterprises *vs.* Allied Bank Ltd. through Principal Office/General Attorneys	Civil Law	667
137.	2019 MLD 79	Famir Asghar *vs.* Asghar Ali	Election Law	673

138.	2019 PLC (CS) 783; PLJ 2019 Lah. 445	Kanwal Rasheed *vs.* Accountant General Punjab	Service Law	679
139.	2019 PLC (CS) 893	Muhammad Saeed *vs.* Secretary Finance	Service Law	689
140.	2019 PCr.LJ 1	Shaukat Ali *vs.* NAB	Criminal Law	695
141.	PLJ 2019 Lah. Note 49	Sajjad Ali Shah *vs.* Superintending Canal Officer	Civil Law	709
142.	PLJ 2019 Lah. Note 79	Asad Ramzan *vs.* B.Z.U Multan	Constitutional Law	713
143.	PLJ 2019 Lah. 581; 2020 YLR 359	Sajawal *vs.* Judge Family Court District Multan	Family Law	717
144.	2019 YLR 710	Hakeem Khadim Hussian *vs.* Member (Judicial-II) Board of Revenue Punjab Lahore.	Revenue Law	719
145.	2019 YLR 785	Zahida Tahira *vs.* Javed Iqbal	Guardian Law	727
2020				
146.	2020 CLC 693 Lah.	Messrs. LAC (Pvt) Ltd. *vs.* Govt. of the Punjab	Administrative Law	731
147.	2020 MLD 1484	Ansa Farrukh *vs.* Vice Chancellor	Civil Law	741
148.	2020 PLC 15 Lah.	Jameel Ahmad *vs.* Punjab Labour Appellate Tribunal, Lahore	Labour Law	747
149.	2020 PLC (C.S) 96	Mst. Chandni Asad *vs.* Federation of Pakistan	Service Law	753
150.	2020 PLC (CS) 505; PLJ 2020 Lah. 134	Firdous Shafiq *vs.* Inspector General of Police	Service Law	761
151.	2020 PCr.LJ 289	Hafiz Mian Muhammad Nouman *vs.* D.G. NAB	Criminal Law	765
152.	PLD 2020 Lah. 191	Muhammad Subtain Khan *vs.* NAB	Criminal Law	791
153.	PLD 2020 Lah. 205; PLJ 2020 Lah. 16	Maryam Nawaz Sharif *vs.* Chairman NAB	Criminal Law	811

154.	PLJ 2020 Lah. Note. 143	Mustafa Kamal *vs.* Secretary Labour	Service Law	843
155.	PLJ 2020 Lah. 467	Raja Gul Shahid Ahmad *vs.* Administration/Director General Phota Lahore	Criminal Law	849
		2021		
156.	2021 CLD 1441	The Univeral Insurance Company *vs.* Rana Basit Rice Mills (Pvt.) Ltd.	Insurance Law	853
157.	2021 MLD 808	Mst. Shahnaz Bibi *vs.* Siraj Din	Rent Law	857
158.	2021 PCr.LJ Note 21	Sammaya Ejaz *vs.* Saddat Muzaffar	Criminal Law	861
159.	2021 PCr.LJ 821; PLJ 2021 Cr.C Lah. 723	Muhammad Ayoub *vs.* State	Criminal Law	865
160.	2021 PCr.LJ 1485	Muhammad Shahbaz Sharif *vs.* NAB	Criminal Law	869
161.	PLD 2021 Lah. 473; PLJ 2021 Lah. 593	Syed Yasir Hassan *vs.* Home Secretary, Govt. od Punjab	Civil Law	895
162.	PLD 2021 Lah. 802; PLJ 2022 Lah. 10	Miss Shakeela Rana Advocate *vs.* Govt. of Pakistan	Criminal Law	903
163.	PLJ 2021 Lah. Note 49	Muhammad Ilyas *vs.* NAB	Criminal Law	907
164.	PLJ 2021 Cr.C Note 60 Lah.	Abdul Matten *vs.* State	Criminal Law	911
165.	PLJ 2021 Lah. Note. 70	Rashid Ashraf *vs.* NAB	Criminal Law	923
166.	PLJ 2021 Lah. 132	Rana Ghulam Abbas *vs.* Sidra Ghaus	Civil Law	927
167.	PLJ 2021 Law Note 139	Mst. Faiza Ashraf *vs.* Addl. District Judge	Family Law	931
168.	PLJ 2021 Cr.C Lah. 378	Ghulam Rasool @ Sana Ullah *vs.* State	Criminal Law	933

169.	PLJ 2021 Lah. 543	Munir Ahmad *vs.* LDA	Civil Law	939
170.	PLJ 2021 Cr.C Lah. 558	Mst. Zainab Bibi *vs.* State	Criminal Law	947
171.	PLJ 2021 Cr.C Lah. 575	Muhammad Khan *vs.* State	Criminal Law	953
172.	PLJ 2021 Lah. 790	Sohail Rana *vs.* ADJ	Revenue Law	957
173.	PLJ 2021 Cr.C 1097	Imran Faazal *vs.* State	Criminal Law	961
174.	PLJ 2021 Cr.C 1111	Maqbool Ahmad *vs.* State	Criminal Law	965
175.	PLJ 2021 Cr.C 1150 Lah.	Akram Ali *vs.* State	Criminal Law	969
176.	PLJ 2021 Cr.C 1344 Lah.	Tanvir Ahmad *vs.* State	Criminal Law	971
177.	2021 PCr.LJ (Note) 89	Saqib Khan *vs.* State	Criminal Law	977
178.	2022 YLR (Note) 15; PLJ 2021 Cr.C Note 1601	Abid Ali *vs.* State	Criminal Law	979
179.	2021 YLR 287; PLJ 2021 Lah. 237	Muhammad Masood ul Haq *vs.* Judge Family Court	Family Law	983
180.	2021 YLR 1989	Sarosh Sikandar *vs.* Guardian Judge, Lahore	Family Law	987
2022				
181.	2022 CLD 176	Messers. Shan's Cosmetics and Chemical through MD *vs.* Registrar of Trade Mark	Intellectual Property Law	993
182.	2022 MLD 584	Abdullah Khan *vs.* State	Criminal Law	999
183.	2022 PCr.LJ 976	Muhammad Ibrahim *vs.* State	Criminal Law	1009
184.	PLD 2022 Lah. 559; PLJ 2022 Cr.C 688	Ali Ikram *vs.* Mian Muhamad Ikram	Criminal Law	1017

185.	2022 PCr.LJN 55; PLJ 2022 Cr.C 949	State *vs.* Muhammad Hafeez	Criminal Law	1023
186.	2022 PCr.LJ 195	Usman Shahid *vs.* Govt. of the Punjab	Criminal Law	1029
187.	2022 PCr.LJ 833; PLJ 2022 Cr.C 913	Pacha Khan *vs.* State	Criminal Law	1033
188.	2022 PCr.LJ 1846; PLJ 2022 Cr.C 758	Tereze Hulskova *vs.* State	Criminal Law	1041
189.	PLJ 2022 Cr.C. Note 39	Usman Aleem @ Balli @ Kochi *vs.* State	Criminal Law	1051
190.	PLJ 2022 Cr.C Note 62	Maqbool Ahmed *vs.* State	Criminal Law	1053
191.	PLJ 2022 Lah. Note 127	Muhammad Asghar *vs.* LESCO	Service Law	1055
192.	PLJ 2022 Cr.C Note 150	Muhammad Aqeel Farooqi *vs.* State	Criminal Law	1061
193.	PLJ 2022 Lah. 160	Munawar Hussain, Ex. Junior Clerk *vs.* DG LDA	Service Law	1063
194.	PLJ 2022 Cr.C 1411 2024 PCr.LJ 671 2024 PCr.LJ 1135	Mansab Ali *vs.* State	Criminal Law	1071
195.	2022 YLR 632	Ijaz Ali *vs.* State	Criminal Law	1081
196.	2022 YLR 1678	Zubair Ahmed *vs.* Saima Anwar	Family Law	1085
2023				
197.	2023 MLD 395	Ali Sher alias Sheeri *vs.* State	Criminal Law	1089
198.	PLD 2023 Lah. 38; PLJ 2023 Law Note (Civil) 2	Syed Sajid Hussain Abidi *vs.* Iram Shehzadi Abidi	Family Law	1095
199.	PLJ 2023 Law Note (Civil) 111	Waheed Ahmad *vs.* Family Court Judge, Faisalabad	Family Law	1105
200.	PLJ 2023 Law Note (Civil) 116	Ghulam Farid *vs.* Khalida Bibi	Family Law	1109

201.	PLJ 2023 Lah. Note 138	Ahsan Farman *vs.* Federal of Pakistan	Service Law	1111
202.	PLJ 2023 Lah. Note 142	Ali Haider *vs.* Inspector General of Police	Criminal Law	1115
203.	PLJ 2023 Law Note (Criminal) 205	Muhammad Arshad *vs.* State	Criminal Law	1119
204.	PLJ 2023 Law Note (Criminal) 217	Muhammad Saleem *vs.* State	Criminal Law	1123
205.	PLJ 2023 Law Note (Criminal) 219	Nadeem Haider *vs.* State	Criminal Law	1129
206.	PLJ 2023 Cr.C 656	Muhammad Rafiq *vs.* State	Criminal Law	1139
207.	PLJ 2023 Lah. 753 2024 CLC 1359	Arzoo Textile Mills Ltd. Federation of Pakistan	Taxation Law	1143
		2024		
208.	2024 CLC 744	Muhammad Azhar Siddique *vs.* Federation of Pakistan	Constitutional Law	1157
209.	2024 CLC 1094	Salman Akram Raja *vs.* Returning Officer	Election Law	1407
210.	2024 CLC 1558	Pervez Akhtar *vs.* Ali Salman	Election Law	1421
211.	2024 MLD 1233	Ahsan Ullah *vs.* Muhammad Nasir Cheema	Election Law	1431
212.	2024 MLD 1257	Sardar Muhammad Awais Nakai *vs.* Rana Sikandar Hayat	Election Law	1437
213.	2024 PCr.LJ 1190	Dr. Atia Naz *vs.* Muhammad Ilyas Shah	Criminal Law	1441
214.	2024 PLC (C.S) 448	Syed Danish Hussain Shah *vs.* Province of Punjab	Service Law	1445
215.	PLJ 2024 Law Note (Criminal) 45	Atif Inayat *vs.* State	Criminal Law	1459
216.	PLJ 2024 Law Note (Civil) 47; 2024 PLC (C.S) 681	Arooj Hammad *vs.* DG, LDA	Service Law	1469

217.	PLJ 2024 Law Note (Criminal) 75	Mst. Maqbool Tahira *vs.* State	Criminal Law	1475
218.	PLJ 2024 Lah. 109 2024 PCr.LJ 1037	Mian Arif Said *vs.* Province of Punjab	Criminal Law	1477
219.	PLD 2024 Lah. 129	Ashfaq Ahmad Kharal *vs.* Provice of Punjab	Election Law	1491
220.	2024 YLR 161	Rehmat Ullah *vs.* State	Criminal Law	1583
2025				
221.	PLJ 2025 Civil (Note) 30	Imran Ahmed Khan Niazi *vs.* Election Tribunal	Election Law	1587
222.	PLJ 2025 Civil (Note) 60	Mst. Shagufta Parveen *vs.* Addl. District Judge	Family Law	1599

FOREWORD

PROFILE

Hon'ble Mr. Justice Ali Baqar Najafi was born on 15th September, 1963 at Lahore, completed basic qualification from Govt. Muslim Model High School, Urdu Bazar, Lahore, did his B.Sc. from the Government College, Lahore. Joined the Punjab University Law College Lahore and obtained LL.B Degree in 1989.

Joined the legal profession in the same year at Lahore and after completion of apprenticeship joined his father, Late Ali Huzoor Najafi, Advocate Supreme Court, enrolled as an Advocate of High Courts in 1990 and subsequently as an Advocate of Supreme Court of Pakistan.

Taught in Punjab University Law College Lahore for 12 years and other Private Law Colleges for 18 years and remained as Internal & External Examiner Punjab University Lahore for a long time. During this time he taught Constitutional Law, International Law, Islamic Law, Land Laws and Minor Acts.

Remained as Editor of Law Page, The News and also contributed legal & other law related articles in Magazines and Newspapers.

During the course of legal profession career conducted a large number of cases before the Lower Courts, Federal Shariat Court, High Court and Hon'ble Supreme Court of Pakistan.

Conducted more than 1000 cases including some reported judgments during 20 years standing in profession at Bar, on the sides of Constitution, Civil, Criminal, Corporate, Banking, Customs, Narcotics, Anti-Corruption, Labour, Immigration, and Islamic Laws including Private International Law. He also conducted the cases of public interest litigation and human rights etc.

He participated and represented in many Law Conferences, Peace Conferences, Seminars etc. and read research papers.

Since his elevation as a Judge of Lahore High Court, Lahore on 16th April, 2012, he decided more than thirty-seven thousand cases, in Criminal, Civil, Constitutional, Human Rights, NAB, Banking and Company, Anti-Corruption, Narcotics, Murder References, Family, Rent, Labour jurisdiction. He worked at principal seat and at its all benches, Multan, Rawalpindi, Bahawalpur. Also conducted a judicial inquiry on the incident of Model Town, Lahore (June, 17, 2014) in which fourteen persons lost their lives. He attended the workshop at South Africa Legal Aid at the Legal Aid Center Johannesburg, on 23rd January, 2017 and also attended Colloquium on "Integrating Environmental Law Training" in Johannesburg, South Africa from 25 January, 2017 to 27th January, 2017 and visited Istanbul, Turkey to attend ADR Training Session in March/April, 2021. He had also visited U.K, France, Germany, U.S.A, Iran, Iraq and Saudi Arabi.

GAZETTE BRANCH
Diary No. 1458
Dated 14-4-12

Government of Pakistan
Ministry of Law and Justice
*****

Islamabad, the 12th April, 2012

NOTIFICATION

No.F.5(1)/2012-A.II.- In exercise of the powers conferred by Article 197 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to appoint Mr. Ali Baqir Najfi as Additional Judge of the Lahore High Court for a period of one year with effect from the date he makes oath of his office:-

(IRFAN QADIR)
SECRETARY

The Manager,
Printing Corporation of Pakistan Press,
Islamabad- for favour of publication in
the Gazette of Pakistan, Extraordinary, Part-III

No.F.5(1)/2012-AII

Islamabad the 12th April, 2012

Copy to:-

1. Secretary General to the President, President's Secretariat, Islamabad.
2. Principal Secretary to the Prime Minister, Prime Minister's Secretariat, Islamabad.
3. Secretary, Parliamentary Committee Senate Secretariat, Islamabad.
4. Secretary, Judicial Commission of Pakistan, Islamabad.
5. Principal Secretary to Governor Punjab, Lahore.
6. Chief Secretary, Government of Punjab, Lahore.
7. Attorney General for Pakistan, Islamabad.
8. Registrar, Supreme Court of Pakistan, Supreme Court Building, Islamabad
9. Registrar, Lahore High Court, Lahore (with one spare copy for the Hon'ble Judge).
10. The Accountant General Punjab, Lahore.
11. P.S. to Secretary, Law and Justice Division, Islamabad.
12. Record.

(Sarfraz Ahmed)
Section Officer

Lahore High Court Lahore
Receipt No. 8824
Dated 13/4/12
General Diary Receipts

OATH OF ADDITIONAL JUDGE, LAHORE HIGH COURT, LAHORE

(In the name of Allah, the most Beneficent, the most Merciful)

I, Ali Baqir Najfi, *do solemnly swear that I will bear true faith and allegiance to Pakistan:*

That*, as Additional Judge of Lahore High Court for the Province of Punjab, I will discharge my duties, and perform my functions, honestly, to the best of my ability, and faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law:*

That *I will abide by the code of conduct issued by the Supreme Judicial Council:*

That *I will not allow my personal interest to influence my official conduct or my official decisions:*

That *I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:*

And that*, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.*

(May Allah Almighty help and guide me (A'meen)

ADDITIONAL JUDGE

OATH made before me, this 16th day of April, 2012.

CHIEF JUSTICE

TO BE PUBLISHED IN THE GAZETTE OF PAKISTAN PART-III

Government of Pakistan
Law, Justice and Human Rights Division
*****

Islamabad, the 18th September, 2013

NOTIFICATION

No.F.5(1)/2012-A.II.- In exercise of the powers conferred by Article 193 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to appoint the following Additional Judges of the Lahore High Court to be the Judges of the said Court with effect from the date they make oath of their offices:-

1. Mr. Justice Abdul Sami Khan
2. Mr. Justice Ibad-ur-Rehman Lodhi
3. Mr. Justice Shujaat Ali Khan
4. Justice Mrs. Ayesha A. Malik
5. Mr. Justice Shaikh Shahid Waheed
6. Mr. Justice Ali Baqir Najfi

JUSTICE (R)
(MUHAMMAD RAZA KHAN)
SECRETARY

The Manager,
Printing Corporation of Pakistan Press,
Islamabad.

No.F.5(1)/2012-AII

Islamabad the 18th September, 2013

Copy to:-

1. Secretary to the President, President's Secretariat, Islamabad.
2. Secretary to the Prime Minister, Prime Minister's Office, Islamabad.
3. Secretary, Parliamentary Committee Senate Secretariat, Islamabad.
4. Secretary, Judicial Commission of Pakistan, Islamabad.
5. Principal Secretary to Governor Punjab, Lahore.
6. Chief Secretary, Government of Punjab, Lahore.
7. Attorney General for Pakistan, Islamabad.
8. Registrar, Supreme Court of Pakistan, Supreme Court Building, Islamabad
9. Registrar, Lahore High Court, Lahore (with one spare copy for the each Hon'ble Judge).
10. The Accountant General Punjab, Lahore.
11. Sr. P.S. to Secretary, Law, Justice and H.R Division, Islamabad.
12. Record.

Lahore High Court Lahore
Receipt No. 19613
Dated. 20/9/13
General Diary Receipts

(Muhammad Mushtaq)
Section Officer

OATH OF JUDGE,
LAHORE HIGH COURT, LAHORE

(In the name of Allah, the most Beneficent, the most Merciful)

I, Ali Baqar Najafi, *do solemnly swear that I will bear true faith and allegiance to Pakistan:*

That*, as Judge of Lahore High Court for the Province of Punjab, I will discharge my duties, and perform my functions, honestly, to the best of my ability, and faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law:*

That *I will abide by the code of conduct issued by the Supreme Judicial Council:*

That *I will not allow my personal interest to influence my official conduct or my official decisions:*

That *I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan:*

And that*, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.*

(May Allah Almighty help and guide me (A'meen)

JUDGE

OATH made before me, this 20th *day of September, 2013.*

CHIEF JUSTICE

REPORTED JUDGMENTS

2012 P Cr. L J 1157

[Lahore]

Before Ali Baqar Najafi, J

ABDUL HAMEED---Petitioner

Versus

THE STATE and another---Respondents

Bail Petition No.5552/B of 2012, decided on 7th May, 2012.

Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), S. 489-F---Dishonestly issuing a cheque---Bail, grant of---Further inquiry---Complainant had advanced an amount to the accused against which the latter issued a cheque in favour of the complainant, which cheque was dishonoured on presentation---Contentions of the accused were that he was a photo account holder and the cheque in question was dishonoured due to reasons of personal withdrawal and not because of insufficient funds; that the accused was no more required for investigation, and that the alleged offence did not fall within the prohibitory clause of S.497, Cr.P.C.---Accused was an illiterate person and had opened a photo account---Dishonouring slip of the cheque in question showed that the cheque was returned on account of non-appearance of the accused (personal withdrawal)---Accused was no more required for the purpose of investigation---Question as to whether the dishonouring of a cheque due to personal withdrawal attracted S.489-F of P.P.C., called for further inquiry into the case---Liability of the accused could be determined at the time of the trial after recording of evidence---Further incarceration of the accused would not serve any useful purpose of the prosecution---Bail petition of the accused was accepted and he was admitted to bail.

Tahir Mehmood Ch. for Petitioner.

Rana Tassawar Ali Khan, Deputy Prosecutor-General along with Habib ur Rehman, S.-I. with record for the State.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this petition, seeks post-arrest bail in case F.I.R. No.422 of 2010 dated 24-5-2010, under section 489-F, P.P.C. registered at Police Station Model Town, Gujranwala.

2. Briefly prosecution version contained in the F.I.R. recorded on the written application of Muhammad Ashraf is that the complainant advanced Rs.1,13,000 to the petitioner on 4-10-2009 against which a Cheque

No.1569152 dated 4-10-2009, drawn on J.S. Bank Limited Model Town Gujranwala was issued in favour of the complainant, which when presented was bounced.

3. The learned counsel for the petitioner contended that the petitioner is photo account holder and the cheque was dishonoured due to the reasons of personal withdrawal and not for insufficient balance amount; that the petitioner is behind the bars since 19-1-2012 and is no more required for the purpose of investigation; that the offence alleged does not fall within the prohibitory clause of section 497, Cr.P.C.

4. On the other hand, learned D.P.-G. has vehemently opposed the prayer for grant of post-arrest bail by submitting that the petitioner is nominated in the F.I.R., who admittedly issued cheque involving the said amount with dishonest intention and when the same was presented it was bounced attracting the provision of law under which case has been registered. Further contended that the challan has been submitted in Court on 27-3-2012; that the petitioner remained fugitive of law for about one year and six months; therefore, he is not entitled to the concession of post-arrest bail.

5. I have heard the learned counsel for the petitioner as also the learned D.P.-G. on behalf of the State and gone through the record, with their able assistance.

6. Although, the petitioner has issued cheque of Rs.1,13,000 yet the fact remains that the petitioner being an illiterate person had opened photo account. Clause 15 of dishonouring slip shows that the cheque was returned on account of non-appearance of the petitioner (personal withdrawal). The petitioner is in judicial lock-up since 19-1-2012 and he is no more required for the purpose of investigation. The fact that offence under section 489-F, of the Pakistan Penal Code, 1860 attracts when the cheque was returned with objection of personal withdrawals, calls for further inquiry. Liability of the petitioner will be determined at the time of trial after recording of evidence. Further incarceration of the petitioner in jail will not serve any useful purpose of the prosecution.

7. For what has been discussed above, this petition is accepted and petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.50,000 with one surety in the like amount to the satisfaction of the learned trial Court.

M.W.A./A-94/L **Bail granted.**

2012 P Cr. L J 1216

[Lahore]

Before Ali Baqir Najafi, J

MUHAMMAD BOOTA---Petitioner

Versus

THE STATE and others---Respondents

Criminal Miscellaneous No. 4485-B of 2012, decided on 23rd April, 2012.

Criminal Procedure Code (V of 1898)---

----S. 498---Punjab Universities and Boards of Intermediate and Secondary Education Malpractices Act (XXXII of 1950), S.4 (as amended)---Pre-arrest bail, confirmation of---Malpractice during examination---Allegation against accused (student) was that another person was found sitting for him in the annual examination---Contentions of accused were that he was not apprehended from the spot; that he had already been charged as "Unfair Means Case (UMC)"; that future career of accused had to be taken into account; that co-accused had already been granted bail, and that no incriminating material was available against the accused to connect him with the alleged offence---Validity--- Although S.4 of Punjab Universities and Boards of Intermediate and Secondary Education Malpractices Act, 1950 (as amended), was non-bailable but said section did not fall within the prohibitory clause of S.497, Cr.P.C.---Police and authorities instead of controlling such malpractices through procedural efficiency, had registered a criminal case to show the public at large that they were working hard to check cases of malpractice; had the staff been efficient, there should not have been any instance of the commission of such an offence---Co-accused had already been granted bail---Bail petition of accused was accepted keeping in view his career at his present age, and pre-arrest bail already granted to him was confirmed.

Rana Zia Ullah Khan for Petitioner.

Ch. Muhammad Mustafa, Deputy Prosecutor-General along with Saif Ullah, A.S.-I. with record for the State.

ORDER

ALI BAQIR NAJAFI, J.---The petitioner, through this petition, seeks pre-arrest bail in case F.I.R. No.101 of 2012 dated 12-3-2012 registered under

section 5 of the University and Board of Intermediate and Secondary Education Mal-practices (Amendment Ordinance) 1999 at Police Station Ferozewala District Gujranwala.

2. Briefly the prosecution version contained in the F.I.R., recorded on the strength of written complaint of Javed Iqbal Arshad, Center Superintendent, is that one Muhammad Zikraya son of Manzoor Ahmad was found sitting for the petitioner and solving paper for annual examination of Matriculation (Roll number not mentioned).

3. The learned counsel for the petitioner contends that the petitioner was not apprehended at the spot; that he had already been charged, as UMC was prepared against him; that his future career must be taken into account;, that co-accused of the petitioner has been granted post arrest bail by the learned Judicial Magistrate, Gujranwala; that no incriminating material is available against the petitioner to connect him in the alleged offence; that the petitioner has been wrongly involved in this case; that the petitioner has joined the investigation, and nothing is to be recovered from him. Hence he is entitled to the concession of pre-arrest bail.

4. On the other hand, learned D.P.-G. has vehemently opposed the prayer for grant of pre-arrest bail by submitting that the commission of very serious offence has been alleged against the petitioner, who is a young person and he would learn a lesson if pre-arrest bail is refused.

5. Heard. Record perused.

6. Section 5 of the Ordinance ibid shows that although the offence is non-bailable but it does not fall within the prohibitory clause of section 497, Cr.P.C. The tendency of the police and the complainant is reflected from the very fact that instead of controlling the malpractices through their procedural efficiency, they have tried to register criminal cases to show the public at large that they are working hard to check cases of malpractice. Had the staff been efficient, there should not have been any instance of the commission of such an offence. Even Otherwise, co-accused has also been granted bail. Keeping in view the future career of the petitioner, at this stage of his age, this petition is accepted and petitioner's pre-arrest bail already granted vide order dated 5-4-2012 is hereby confirmed subject to his furnishing of fresh bail bonds in the sum of Rs.50,000 with one surety in the like amount to the satisfaction of the learned trial Court.

M.W.A./M-146/L **Bail confirmed.**

2012 P Cr. L J 1232

[Lahore]

Before Ali Baqar Najafi, J

ZIA ULLAH---Petitioner

Versus

THE STATE and others---Respondents

Criminal Miscellaneous No.4587-B of 2012, decided on 23rd April, 2012.

Criminal Procedure Code (V of 1898)---

----S. 497(2)---Punjab Prohibition of Private Money Lending Act (VI of 2007), Ss.2(c), 3 & 4---Prohibition of private money lending---Bail, grant of---Further inquiry---Word "interest"---Scope---Allegation against accused (lender) was that he was running a money lending business for interest against cheques---Complainant (lendee) took money from the accused and voluntarily provided a cheque as guarantee and also transferred a plot in the name of the wife of the accused---Accused allegedly started blackmailing the complainant and filed a case against him under S.489-F, P.P.C. for the cheque provided by the complainant---Contentions of the accused were that there was a delay in lodging the F.I.R.; that complainant wanted to escape his liability which he had undertaken in the form of the cheque provided to the accused; that no incriminating material was recovered from the accused during investigation, and that challan had been submitted against the accused, therefore, his further detention would not serve any useful purpose to the prosecution---Validity---Sections 3 and 4 of the Punjab Prohibition of Private Money Lending Act, 2007, prohibited the recovery of interest as defined therein, however, S.2(c) of the said Act did not prohibit other possible safeguards, which an accused might resort to in the form of excessive money---Transactions between parties were voluntary in nature which held both of them equally responsible--- Case

of accused was one of further inquiry and his further incarceration in jail would not serve any useful purpose of the prosecution---Gravity of offence could be determined at the trial and bail could not be refused to the accused as a punishment---Bail petition of accused was allowed and he was admitted to bail.

Ms. Bushra Qamar for Petitioner.

Ch. Muhammad Mustafa, Deputy Prosecutor-General for the State assisted by Abdul Khaliq Safrani for the Complainant.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this petition, seeks post-arrest bail in case F.I.R. No.80 of 2012 dated 8-2-2012, under sections 3/4 of The Punjab Prohibition of Private Money Lending Act, 2007 (Act VI of 2007) registered at Police Station, Ali Pur Chattha District Gujranwala.

2. Briefly the facts narrated in the F.I.R. are that the complainant was in need of money for his business, who contacted the petitioner to lend him Rs. 3,00,000 against which he had voluntarily handed over a cheque of Rs.6,00,000 as guarantee to him along with a plot of 10 Marlas transferred in the name of the wife of the petitioner. This concluded the business transaction. However, after a while the petitioner started blackmailing the complainant and filed an application for registration of criminal case under section 489-F, P.P.C. for the cheque already given by the complainant to the petitioner. According to the complainant the petitioner is running money lending business for interest against cheques.

3. The learned counsel for the petitioner has contended that there is delay in lodging the F.I.R.; that the complainant wanted to escape from his liability which he has undertaken in the form of cheque given to the petitioner. Further contended that the order for registration of criminal case in hand by the learned Ex-Officio Justice of Peace is subjudice before the Hon'ble Supreme Court of Pakistan in C.P.L.A. No.173-L of 2012. It was lastly contended that the petitioner is behind the bars since 3-3-2012 and no incriminating material was recovered from him during investigation at the instance of the petitioner; that further incarceration of the petitioner in Jail will not serve useful purpose of the prosecution as the challan has already been submitted in the trial Court.

4. Conversely, the learned D.P.-G. assisted by the learned counsel for the complainant has opposed the prayer for grant of post-arrest bail by submitting that money lending is against injunctions of Qur'an and Sunnah and that the petitioner is nominated in the F.I.R.; that the offence falls within the prohibitory clause of section 497, Cr.P.C.; therefore, the petitioner is not entitled to the concession of post-arrest bail.

5. Heard. Record perused.

6. The newly-introduced sections 3 and 4 of The Punjab Prohibition of Private Money Lending Act, 2007 (Act VI of 2007) totally prohibits the recovery of interest as defined therein. In section 2 clause (c) of the said Act it does not prohibit the other possible safeguards, which lender may be resort to in the form of excessive money. All these transactions being voluntary in nature hold both the parties equally responsible. In these circumstances, case of the petitioner has become that of further inquiry and his further incarceration in Jail will not serve any useful purpose of the prosecution. Needless to observe that gravity of offence can only be determined at the time of trial and bail cannot be withheld as a punishment.

7. For what has been discussed above, this petition is accepted and petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.1,00,000 with one surety in the like amount to the satisfaction of the learned trial Court.

M.W.A./Z-17/L **Bail granted.**

2012 P Cr. LJ 1924

[Lahore]

Before Ali Baqar Najafi, J

ABDUL SATTAR---Petitioner

Versus

THE STATE through S.-I/S.H.O.---Respondent

Criminal Miscellaneous No.5432-B of 2012, decided on 2nd May, 2012.

Criminal Procedure Code (V of 1898)---

----Ss. 497(2) & 103---Prohibition (Enforcement of Hadd) Order (4 of 1979), Arts.3/4---Manufacturing, owning or possessing intoxicant---Bail, grant of---Further inquiry---Prima facie, liquor was not recovered from the possession of accused, but according to the contents of F.I.R., huge quantity of liquor was recovered from the rickshaw, ownership of which would be determined by the Trial Court---Was not humanly possible that accused and his co-accused could run away from the spot in presence of already informed complainant and his subordinates, who were nine in numbers---Place of recovery though was thickly-populated area; and it was accessible for public, but no witness from the locality was associated to join the recovery proceedings---Requirement of law as contemplated under S.103, Cr.P.C., was missing---Offence under Art.4 of the Prohibition (Enforcement of Hadd) Order, 1979, was bailable, whereas offence under Art.3 of said Order, did not fall within the prohibitory clause of S.497, Cr.P.C.---Case of accused fell within the ambit of further inquiry in circumstances---Accused being entitled to the concession of post-arrest bail, he was admitted to bail, in circumstances.

Moeez Tariq for Petitioner.

Muqadass Tahira, Additional Prosecutor-General along with Munawar Hussain, A.S.-I. with record for the State.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this petition, seeks post-arrest bail in case F.I.R. No.1033 of 2011 dated 31-12-2011, under Articles 3/4 of the Prohibition (Enforcement of Hadd) Order 4 of 1979 registered at Police Station D-Type Colony, Faisalabad.

2. Briefly the prosecution story as contained in the F.I.R., recorded on the strength of written complaint of Muhammad Akram, S.I/SHO, is that he along with his subordinates was present at Karoshan Pull on patrolling duty where he received spy information that Abdul Sattar (present petitioner) and Zahoor Hussain, co-accused are doing the business of wine, who after a short while would be coming from Faisalabad City towards Mohallah Farooqabad and if apprehended, contraband article will be recovered from their possession. On this spy information the raiding party was constituted. As per information a rickshaw came from the pointed place which was stopped and the driver and the passenger sitting in the rear seat fled away from the spot. The name of the passenger was Abdul Sattar and the driver was Zahoor Hussain. On search of Rickshaw three white plastic bags in which 500 liter imported liquor (murree Beverages), six bottles of liquor (Kino-3), 8 plastic canes in which 30/30 liters liquor, four white plastic bags 20/20 liters, out of all these recovered liquor 6 ounce each were sent to the Chemical Examiner for analysis.

3. The learned counsel for the petitioner has contended that the petitioner has falsely been involved in this case with mala fide intention; that neither the petitioner is owner of said rickshaw nor driving the same and the story knitted by the police is very doubtful for the simple reason that the petitioner was not apprehended at the spot; that the petitioner is not involved in the business of liquor; that the place of occurrence is very thickly-populated area but no witness was associated in the recovery proceedings which is clear violation of section 103, Cr.P.C.; that Article 4 of the Prohibition (Enforcement of Hadd)

Order 4 of 1979 is bailable while offence under Article 3 ibid is not made out from the facts and circumstances of the case; that the petitioner is in the judicial lock-up since 1-3-2012 and is no more required for the purpose of further investigation; and lastly that it is not possible that huge quantity of liquor in the form of canes and bottles can be recovered from a rickshaw. In these circumstances case of the petitioner falls within the ambit of further inquiry, hence he is entitled to the concession of post-arrest bail.

4. Conversely, the learned Additional Prosecutor-General has vehemently opposed the prayer for grant of bail by submitting that the police has no enmity to falsely involve the petitioner in this case and plant huge quantity of liquor upon the petitioner; that from bare reading of F.I.R. offence under section 156 of Custom Act is also made out; that Chemical Examiner report is in positive, and that the petitioner is not entitled to the concession of post-arrest bail.

5. Heard. Record perused.

6. Prima facie liquor was not recovered from the possession of the petitioner but according to the contents of F.I.R. huge quantity of liquor was recovered from the rickshaw and the ownership of which will be determined by the trial Court. It is not humanly possible that the petitioner and his co-accused could run away from the spot in presence of already informed complainant and his subordinates who were 9 in numbers. Allegedly huge quantity of liquor was recovered from Rickshaw and on the place which is thickly-populated area and it was accessible for general public but no witness from the locality was associated to join the recovery proceedings, hence requirement of law as contemplated under section 103, Cr.P.C. is missing. Offence under Article 4 of the Prohibition (Enforcement of Hadd) Order 4 is bailable whereas offence under Article 3 ibid does not fall within the prohibitory clause of section 497, Cr.P.C. In such a situation, case of the

petitioner falls within the ambit of further inquiry, hence he is entitled to the concession of post-arrest bail.

7. For what has been discussed above, this petition is allowed and petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.1,00,000 with two sureties in the like amount each to the satisfaction of the learned trial Court.

HBT/A-118/L **Bail granted.**

2012 P L C (C.S.) 1293

[Lahore High Court]

Before, Ali Baqar Najafi, J

TAHIR ABBAS and 3 others

Versus

SECRETARY LIVE STOCK, GOVERNMENT OF PUNJAB, LAHORE and 6 others

Writ Petition No.9686 of 2012, heard on 9th May, 2012.

Constitution of Pakistan---

----Art. 199---Constitutional petition---Civil service---Appointment---Applicants (petitioners) applied to the District Livestock Officer for different posts in response to an advertisement, whereafter they were offered the posts they had applied for ---Said offers were cancelled unilaterally by the concerned department and the applicants approached the Provincial Ombudsman, who accepted their representation and directed the appointing authority to issue appointment letter to the applicants within 15 days---Said order of Provincial Ombudsman remained unattended and the applicants approached the High Court for a direction to the concerned officers and department to implement the order of the Provincial Ombudsman---Contentions of the department and concerned officers were that an appeal had been filed before the Governor against the decision of the Provincial Ombudsman, which was pending; that only an offer for appointment was made; that a large number of people remained unaware of the advertisement for the post and the department was going to re-advertise the posts, and that the applicants should wait for the decision of the appeal filed before the Governor---Contentions of the applicants were that the concerned department was duty bound to comply with the order of the Provincial Ombudsman and

issue appointment order; that filing of appeal before the Governor was no ground for non-compliance of the order of the Provincial Ombudsman and in case the decision of appeal was in favour of the department, it had every right to expel the applicants---Validity---Right had accrued in favour of the applicants when the Provincial Ombudsman issued direction to the concerned department for issuance of appointment letter in favour of the applicants---Department had conceded that offer letter for appointment was issued on merit--- Concerned department and officers were public functionaries and were under a duty to obey the order passed by the office of the Provincial Ombudsman in letter and spirit, unless implementation of the said order was stayed or set-aside by the appellate authority---Contention of the department was that office of Provincial Ombudsman misconstrued the offer letter and the same was not open to the High Court to interfere, as High Court was not court of appeal in the case---Constitutional petition was allowed and concerned department and officers were directed to comply with the order of the Provincial Ombudsman.

Ch. Anees ur Rehman for Petitioner.

Ms. Rabbiya Bajwa, A.A.-G. with Ghulam Mustafa District Officer Livestock.

Date of hearing: 9th May, 2012.

JUDGMENT

ALI BAQAR NAJAFI, J.--- Brief facts of the case are that the petitioners applied to the District Livestock Officer, Jhang for different posts in response to advertisement and were offered posts vide Order No.4276-88/DLO/JNG dated 24-5-2010 which were cancelled unilaterally prompting the petitioners to approach the Provincial Ombudsman Punjab for redressal of their grievance, who on 23-7-2010? accepted the representation and directed the

appointing authority to issue appointment letter within 15 days from the date of receipt of order. When the same remained unattended, the petitioners approached this Court for a direction to respondents Nos.3 to 5 to implement the order of? respondent No.6.

2. On 18-4-2012 respondent No.3 was directed to file report and parawise comments to this petition which was submitted by him. The stance taken by respondent No.3 in the report and parawise comments is that the respondent-department filed an appeal before the Governor Punjab against the decision of the Provincial Ombudsman which is pending; that only an offer for appointment was made; that number of complaints were received as large number of people remained unaware regarding the advertisement for the posts and the department is going to re?-advertise the posts. Lastly, it was reiterated that the petitioners should wait for the decision of the appeal filed by the department before the Governor Punjab.

3.Learned counsel for the petitioners argues that all the objections raised by the department by way of parawise comments have been duly dealt with by the office of Provincial Ombudsman constituted for the purpose and answered in favour of the petitioners. The respondent-department is duty bound to comply with the order and issue the appointment order. Further submits that filing of appeal is no ground to hesitate for its compliance and in case of decision in favour of the respondent? department in appeal, the respondent-department has every right to expel the petitioners.

4.On the other hand, learned Law Officer has strongly opposed the arguments advanced by the learned counsel for the petitioners and submits that no right has accrued in favour of the petitioners during the pendency of appeal. Further submits that the petitioners would suffer no loss in case of non-issuance of appointment letter rather the department has to follow certain coddle formalities in order to expel them in case the appeal of department succeeds.

She lastly submits that the Provincial Ombudsman while deciding the representation of the petitioners wrongly assumed the offer letters as appointment letters and prays for dismissal of the writ petition.

5.I have heard the learned counsel for the petitioners and learned Law Officer and perused the record annexed with the petition minutely.

6.The crux of the matter is that a right has been accrued in favour of the petitioners when the office of the Provincial Ombudsman issued direction to the department for issuance of appointment letters in favour of the petitioners. The department in its parawise comments conceded that the offer letter for appointment was issued on merit. The argument of the learned Law Officer that the petitioners should wait for the decision of appeal of the department has no weight as the order passed needs to be complied with unless its implementation is stayed or set-aside by the appellate authority. The last argument of the learned Law Officer that the office of respondent No.6, while deciding representation of the petitioners, misconstrued the offer letters as orders is not open to this Court as this Court is not exercising its jurisdiction as an appellate court. The respondents Nos.3 to 5, public functionaries, are under statutory duty to obey the order passed by the office of Provincial Ombudsman in letter and spirit.

7. For what has been discussed above, this petition is allowed and respondents Nos.3 to 5 are directed to comply with the order of respondent No.6 within a week from the receipt of judgment of this Court.

M.W.A./T-15/L **Petition allowed.**

P L D 2012 Lahore 415

Before Ali Baqar Najafi, J

NADEEM---Petitioner

Versus

THE STATE and others---Respondents

Criminal Miscellaneous No.5063-B of 2012, decided on 25th April, 2012.

(a) Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss. 392 & 411---Qanun-e-Shahadat (10 of 1984), Art. 22---Robbery, dishonestly receiving property stolen---Bail, grant of---Further inquiry---Identification of accused through a photograph instead of an identification parade---Validity---Contentions of accused were that he was not nominated in the F.I.R. and was involved in the offence on basis of supplementary statement of the complainant, which was recorded after one month and eleven days of the incident; that no identification parade was held and accused was allegedly recognized by the complainant on basis of a photograph; that alleged recovery was planted upon the accused, and that accused was not required for investigation anymore---Validity---Accused was neither named in the F.I.R. nor any identification parade was held to connect him with the commission of the alleged offence---Identification of accused through a photograph could not be a substitute for identification through an identification parade---Mere involvement of accused in other cases did not debar him from bail, if he was otherwise entitled for the same---Registration of F.I.Rs. against the accused was no ground to refuse bail unless same were accompanied by conviction orders---Alleged recovery of weapon at the instance of the accused was not significant, as weapon was allegedly not used during the occurrence--- Evidentiary value of recovered mobile phone and cash could be determined at the trial---Case of accused fell within the purview of S.497(2), Cr.P.C, and required further inquiry---Bail petition of accused was accepted and he was admitted to bail.

Zulfiqar Ali v. The State 1991 PCr.LJ 1125 rel.

(b) Qanun-e-Shahadat (10 of 1984)---

----Art. 22---Identification of accused through photographs/pictures as a substitute for an identification parade---Person's right perception of an object---Criteria---Mere photograph could not be a valid substitute for establishing identity of an accused through identification parade as required under Art.22 of Qanun-e-Shahadat, 1984---Person's right perception of an object, seen by him depended upon the criteria, (i) nearness to the object; (ii) capacity to see with distinctness; (iii) required light, and (iv) the three dimensional effect of the object--- Identification through snap/pictures did not properly meet such criteria.

Zulfiqar Ali v. The State 1991 PCr.LJ 1125 rel.

(c) Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), Ss. 392 & 411---Bail---Principles---Registration of other F.I.Rs. against the accused---Effect---Registration of other F.I.Rs. against the accused was no ground to refuse bail unless same were accompanied by conviction orders.

Basharat Ali for Petitioner.

Ch. Muhammad Mustafa, Deputy Prosecutor General for the State along with Muhammad Afzal, S.I. with record.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this petition, seeks post arrest bail in case F.I.R. No.302 of 2011 dated 11-9-2011, under sections 392/411, P.P.C. registered at Police Station Model Town, Lahore.

2. Briefly the prosecution story as contained in the F.I.R. is that two unknown persons riding on a motorcycle intercepted the complainant and snatched purse, mobile (Nokia) along with Rs.43,000 on gunpoint.

The complainant got recorded his supplementary statement under section 161, Cr.P.C. on 22-10-2011 wherein he named the petitioner along with Muhammad Usman alias Baba.

3. The learned counsel for the petitioner has contended that the petitioner was not nominated in the F.I.R. and involved only on the basis of supplementary statement got recorded after one month and 11 days; that no identification parade was conducted despite their description in F.I.R. and the petitioner was allegedly recognized by the complainant only on the basis of photographs; that the alleged recovery was planted upon the petitioner; that the petitioner is in the judicial lock up since 21-11-2011 and is no more required for the purpose of investigation. Hence, the petitioner is entitled to the grant of post arrest bail.

4. Conversely, the learned Deputy Prosecutor General has vehemently opposed the prayer for grant of post arrest bail by submitting that the petitioner is known as adverse record holder. Twenty F.I.Rs. were registered against him, some of which are of similar nature; that the recovery of .30 bore pistol, Nokia phone and currency notes was effected against him; that the offence with which the petitioner is charged is increasing day by day with an alarming pace creating panic in the minds of people at large. Hence the petitioner is not entitled to the concession of post arrest bail.

5. I have heard the learned counsel for the parties and gone through the record, with their able assistance.

6. Neither the petitioner named in the F.I.R. nor identification parade was ever held connecting him with the commission of alleged offence. Mere photograph cannot be valid substitute for establishing identity of the accused through identification parade as required under Article 22 of Qanun-e-Shahadat Order, 1984. It is well settled that a person's right perception of an object seen by him depends, inter alia, on (i) nearness to the object: (ii) capacity to see with distinctness (iii) required light (iv) the three-dimensional effect of the object. Therefore, viewed from that perceptive, identification

through snaps/pictures does not properly meet the above said criteria. Reliance can be had to Zulfiqar Ali v. The State (1991 PCr.LJ 1125 (D.B)). Mere involvement of the petitioner in other cases does not debar him from bail, if he is otherwise entitled. Only registration of F.I.Rs. is no ground to refuse bail unless accompanied by conviction orders. The alleged recovery of pistol at the instance of the petitioner is not of much significance, as it was allegedly not used during the occurrence. The evidentiary value of recovery of Nokia mobile and currency notes will be determined at trial. In these circumstances, case of the petitioner falls within the purview of subsection (2) of section 497, Cr.P.C. and requires further inquiry.

7. For what has been discussed above, this petition is accepted and petitioner is admitted to bail subject to his furnishing bail bonds in the sum of Rs.1,00,000 with one surety in the like amount to the satisfaction of the learned trial Court.

M.W.A./N-26/L **Bail granted.**

2012 Y L R 2777

[Lahore]

Before Ali Baqar Najafi, J

SAGHEER AHMAD---Petitioner

versus

THE STATE and others---Respondents

Criminal Miscellaneous No.11194-B of 2012, decided on 23rd August, 2012.

Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss. 381/411---Theft by clerk or servant of property in possession of master, dishonestly receiving stolen property---Bail, grant of---Further inquiry---Accused, who worked as an Assistant Manager at a shop was alleged to have stolen cloth from the shop and sold the same in the market--Father of the accused had allegedly produced Rs.25000 before the Investigating Officer as recovery of case property---Unexplained delay of 3/4 months in lodging of F.I.R. without date, time and place of occurrence---Offences alleged did not fall within the prohibitory clause of S.497, Cr.P.C---No recovery was carried out at the instance of accused---Amount produced by accused's father before Investigating Officer, could not be said to be recovery of case property at the instance of accused---Accused was no more required for further investigation---Case was one of further inquiry and accused was admitted to bail accordingly.

National Judicial Policy, 2009 ref.

Muhammad Inayat Ullah Cheema for Petitioner.

Muhammad Naeem Sheikh, Deputy Prosecutor General along with Zulfiqar Butt, A.S.-I. with record.

ORDER

ALI BAQAR NAJAFI, J.---The complainant was served but he is not in attendance.

2. The petitioner, through this petition, seeks post arrest bail in case F.I.R. No.93 dated 6-6-2012, under sections 381/411, P.P.C. registered at Police Station Cantt., Kharian District Gujrat.

3. Allegation levelled by the complainant, the manager of shop, against the petitioner is that he being Assistant Manager in the shop, with the help of his co-accused had stolen away 2613 meters cloth valuing Rs.19,22,880 from the shop and sold the same in the market.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case; that there is an unexplained delay of 3/4 months in lodging the F.I.R. without any date and time of occurrence; that no witness was mentioned who saw the occurrence; that a recovery of Rs.25,000 is no recovery in the eyes of law; that there is no incriminating evidence against the petitioner to connect the petitioner with the commission of alleged crime; that offences do not fall under the prohibitory clause of section 497, Cr.P.C.; that under the National Judicial Policy it has been laid down that if the offence do not fall under the purview of prohibitory clause, grant of bail is a rule and refusal is an exception; that the petitioner is in the judicial lock up since 11-6-2012 and is no more required for the purpose of investigation, hence the petitioner is entitled to the concession of bail.

5. Conversely, the learned D.P.G while opposing the application for post-arrest bail maintained that petitioner is nominated in the F.I.R.; that father of the petitioner has produced Rs.25,000 before the Investigating Officer as recovery of case property, hence the petitioner is not entitled to the concession of post arrest bail.

6. I have heard the learned counsel for the parties and perused the available record.

7. Admittedly, the petitioner is named in the F.I.R. but there is an unexplained delay of 3/4 months in lodging the F.I.R. without date, time and place of occurrence which makes case of the prosecution highly doubtful. The offences under which the petitioner has been involved do not fall within the prohibitory clause of section 497, Cr.P.C. The learned counsel for the petitioner makes reference to the National Judicial Policy, 2000 which is re-produced below:--

"To overcome the problem of congestion in Jails, the court should exercise powers under section 497, Cr.P.C. keeping in view the principles of grant of bail including the principle that if the offence does not fall under the purview of prohibitory clause, grant of bail is a rule and refusal is an exception."

No recovery was carried out at the instance of the petitioner Rs.25,000 produced at the instance of Rab Nawaz, father of the petitioner, cannot be said to be recovery of case property at the instance of the petitioner. The petitioner is in the judicial lock up since 11-6-2012. He is no more required for the purpose of investigation. In view of the National Judicial Policy, 2009 reproduced above coupled with the peculiar facts case of the petitioner has become that of further inquiry and as such the petitioner is entitled to the concession of post-arrest bail.

8. For what has been discussed above this petition is accepted and the petitioner is admitted to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.50,000 with two sureties in the like amount each to the satisfaction of the learned trial Court.

MWA/S-102/L **Bail granted.**

2012 Y L R 2806

[Lahore]

Before Ali Baqar Najafi, J

HAZOOR BAKHSH---Petitioner

Versus

Mst. AMEER MAI ---Respondent

Civil Revision No.221 of 1998, heard on 1st August, 2012.

(a) Islamic Law---

----Gift---Scope---Additional dower in the form of a gift, was not required to be mentioned in the Nikahnama---Proper healthy Muslim's gift could not be invalidated on the ground that his legal heirs were deprived of their share as such Muslim enjoyed unfettered powers to make a gift---In case of a gift by the husband to' his wife; even transfer of possession was not essential.

Falak Khursheed v. Fakhar Khurshid and others 2006 SCMR 595; Ghulam Akbar v. Muhammad Ilyas and others 1992 MLD 2279; Muhammad Ashraf v. Shehzada Javed Iqbal and 6 others 2001 PSC 765; Mian Aziz A. Sheikh v. The Commissioner of Income-Tax Investigation, Lahore PLD 1989 SC 613; Inayat Ullah v. Perveen Akhtar 1985 CLC 1454 and Mst. Charagh Bibi v. Mst. Mehraj Bibi and 2 others 1998 CLC 796 ref.

Mian Aziz A. Sheikh v. The Commissioner of Income Tax PLD 1989 SC 613; PLD 2006 SC 15; 2010 SCMR 342 and 2006 SCMR 50 rel.

(b) Civil Procedure Code (V of 1908)---

----S.12(2)---Specific Relief Act (I of 1877), S.42---Suit for declaration was decreed concurrently where after defendants made application under S.12(2) of the C.P.C. to set aside said decree---Effect---Evidence recorded during pendency of application under S.12(2), C.P.C. could not be treated as evidence in the suit on merits.

Muhammad Ashraf v. Javed Iqbal and 6 others 2001 PSC 765 and Falak khurshid v. Fakhar Khurshid and others 2006 SCMR 595 rel.

Aftab Alam Yasir for Appellant.

Malik Sharif Ahmad for Respondent.

Date of hearing: 1st August, 2012.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this civil revision the petitioners have challenged the order dated 27-6-1997 passed by the Civil Judge Rajanpur as well as the order dated 10-3-1998, passed by the Additional District Judge, Rajanpur, whereby the suit of the respondent was decreed.

2. The brief facts giving rise to filing of this civil revision is that Farid Bakhsh the husband of Ameer Mai respondent was the original owner of agricultural land measuring 113-kanals and 2 marlas. He contracted third marriage with Ameer Mai on 8-3-1959 in lieu of Rs.52 as dower. The said Farid Bakhsh transferred the disputed land in favour of Ameer Mai, being issueless, through oral gift as additional amount of dower.' On 25-9-1986 the respondent Ameer Mai filed a suit for declaration against her husband to the effect that she was owner in possession of the suit-land on the basis of gift in lieu of dower. On 29-9-1986 a counsel for the said Farid Bakhsh namely Muhammad Rafi Pachar, Advocate, submitted a power of attorney (Exh. P-1), who also submitted a consenting statement on 29-9-1980 (Exh.P-2) along with the list of legal heir showing the respondent as the only legal heir (Exh.P-3). On 3-12-1986 the respondent moved an application for recording the statement of Farid Bakhsh through a local commission upon which Malik Manzoor Ahmed Awan, Advocate, was appointed as a local commission who recorded his statement on 6-12-1986 which is on the file as Exh.DA/5.

Resultantly, on 28-7-1987 the suit was decreed. On 10-3-1988 said Farid Bakhsh died and on 9-5-1988 the petitioners moved an application under section 12(2), C.P.C. against the judgment and decree dated 23-7-1997 on the ground that it was the result of fraud and misrepresentation claiming that petitioners being the nephews of the deceased Farid Bakhsh were entitled to inherit his property as he was Shia by sect, therefore, respondent could not inherit his property for being issueless, and that the land was not gifted to her as additional dower. The property thus mutated on 19.5-1994 vide No.1068 to petitioners was valid. On 24-5-1992 the said application was allowed, the suit was restored and the petitioners were consequently arrayed as defendants. On 2-1-4993 issues were framed. In the suit neither the documentary nor the oral evidence was produced by the petitioner but evidence was given by the respondent. On 9-3-1994 the suit of the respondent was dismissed but the appeal was allowed on 18-9-1995 and the case was remanded for a fresh decision. During the remand proceedings two additional issues were framed by the trial Court and the parties were directed to produce their evidence. The respondent adduced her evidence but the petitioners relied upon their previous evidence.

3. The respondent appeared as P.W.4, Malik Manzoor Ahmad Awan, Advocate appeared as P.W.2, Murid Hussain as P. W .3 (tenant in cultivating possession of land in question) while petitioners did not produce any evidence on the issue framed but relied upon the earlier evidence. On 27-6-1997 the suit was decreed by the Civil Judge Rajanpur and the appeal was dismissed on 10-3-1998, by the Additional District Judge, Rajanpur. Hence this revision petition.

4. Learned counsel for the petitioners submits that issues were not properly framed on the question whether Farid Bakhsh remained in cultivating possession till his death; that different modes were provided for gift under Shia Law; that the stance of the respondent is changing as somewhere she has stated

the transaction as oral gift then it was described as additional' dower, then discovered it as grant and finally considered it as a will and as such the respondent is not sure about its nature; the inheritance of the petitioners is admitted by the respondent; the nikahnama Exh.A-6 does not contain any reference of this land in lieu of dower; that the trial Court had failed to frame separate issues and also failed to give issue-wise finding.

5. Conversely, learned counsel for the respondent submits that there is no scope of revision petition under section 115, C.P.C. against the concurrent finding, the application under section 12(2), C.P.C. filed by the petitioners was allowed where after there is hardly any question with regard to misreading or non-reading of evidence; that the evidence recorded during the pendency of application under section 12(2), C.P.C. cannot be treated as evidence; there is no requirement to prove the increase of dower by her husband through witnesses; that the three pre-requisites of a gift i.e. declaration, acceptance and delivery of possession are duly fulfilled and lastly submits that the questipn of faith of the deceased Farid Bakhsh is not relevant as during life time there is no difference in making of a gift by Muslim Shia or Muslim Sunni to the wife, whether issueless or otherwise, during his life time if he enjoys a proper health, no revision is entertainable against an order which was already appealed against; a compromise already signed and submitted in court is valid; increase of dower is not to be specifically proved; a gift by husband to wife is a Hiba-bil-Iwaz. He places reliance on Falak Khursheed v. Fakhar Khurshid and others (2006 SCMR 595); Ghulam Akbar v. Muhammad Ilyas and others (1992 MLD 2279 Karachi); Muhammad Ashraf v. Shehzada Javed Iqbal and 6 others (2001 PSC 765); Mian Aziz A. Sheikh v. The Commissioner of Income-Tax Investigation, Lahore (PLD 1989 Supreme Court 613),

Inayat ??Ullah ???v. Perveen Akhtar (1985 CLC 1454 (Lahore) and Mst. Charagh Bibi v. Mst. Mehraj Bibi and 2 others 1998 CLC 796. In rebuttal learned counsel for the petitioners submits that due to undue influence and

other facts the gift becomes void.

6. I have heard the learned counsel for the parties and have perused the record.

7. The pivotal question is whether the respondent was gifted the land in question by her deceased husband, Karim Bakhksh. The consenting written statement of the deceased husband as well as his statement through the local commission admitting the gift is on record as Exh.P2 and Exh.P5, respectively. As it was an additional dower, in the form of gift, therefore, it was not required to be mentioned in the nikahnama Exh.PA/5 and even this increase is also not required to be proved through evidence as held in Mimi Aziz A. Sheikh v. The Commissioner of Income Tax (PLD 1989 SC 613). A proper healthy Muslim cannot be invalidated on the ground that his legal heir were deprived of their share as he enjoys un fettered powers to make a gift as laid down in "PLD 2006 SC 15". All what he has to do is to fulfil the ingredients of gift i.e. offer, acceptance and transfer of possession. In case of a gift by husband to wife, even transfer of possession is not essential. I am guided by the two judgments of the Apex Court on this issue which are reported as 2010 SCMR 342 and 2006 SCMR 50.

8. Viewing from another perspective, the evidence recorded during the pendency of an application under section 12(2), C.P.C. cannot be treated as evidence in the suit on merits, as held by the Hon'ble Supreme Court in Muhammad Ashraf v. Javed Iqbal and 6 others (2001 PSC 765). Since this Civil Revision was filed against the order passed in an application under section 12(2), C.P.C. upheld by the appellate court, therefore, the same is not competent. I again draw strength from the Hon'ble Supreme Court of Pakistan in the judgment titled Falak Khurshid v. Fakhar Khurshid and others (2006 S C M R 595).

9. All questions raised in this Civil Revision are already correctly answered by the two courts below. No additional issues was required to be framed. I do not find any misreading/non-reading of evidence resulting into illegality or

any jurisdictional defect therefore, this civil revision has no force and is dismissed with no order as to costs.

KMZ/H-23/L **Petition dismissed.**

2013 CLC 21

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD NOMAN BUTT and 11 others----Petitioners

Versus

CHAIRMAN PAKISTAN CRICKET BOARD, LAHORE and 5 others----Respondents

Writ Petition No.21238 of 2012, heard on 18th September, 2012.

Constitution of Pakistan---

----Art. 199---Constitutional petition---Regional Cricket Associations---Vote of noconfidence---Petitioners were office-bearers of District Cricket Associations whomoved vote of no confidence but Election Commission, Pakistan Cricket Boarddismissed the resolution because two office-bearers of one Association had lost theirstatus---Subsequently when two new office-bearers had been elected, no confidenceresolution was again moved by petitioners but the Commission again dismissed theresolution on the ground that after failure of earlier resolution, second resolution couldnot be initiated before expiry of 12 months---Validity---Condition of 12 months expiryperiod could have been imposed, had the motion of vote of no confidence resulted intofailure after voting---Election Commission, Pakistan Cricket Board, illegally killed themotion in chamber not only without putting it in the motion but also without affordingopportunity of hearing to all concerned i.e. 12 office-bearers of District CricketAssociation---High Court declared letter/order of Election Commission, PakistanCricket Board having been passed without lawful authority and in disregard of law,rules and regulations as resolution of no confidence could only fail after voting washeld---High Court directed the authorities to immediately put motion of no confidencefor voting purposes---Petition was allowed accordingly.

Dr. Muhammad Ali Shah v. PCB 2010 MLD 1241 ref.

Ch. Amir Hussain for Petitioners.

Taffazal H. Rizvi for Respondents.

Date of hearing: 18th September, 2012.

JUDGMENT

ALI BAQAR NAJAFI, J.--- The petitioners (Presidents, Secretaries and FinanceSecretaries of District Cricket Association of Gujranwala, Sialkot, Sheikhupura andHafizabad) impugned order dated 31-7-2012 passed by respondent No.3 whereby herefused to entertain the move for no confidence presented by them, on the ground thatunder the Procedure for Elections of RCA if once resolution for no confidence failed, itcannot be re-initiated earlier than a period of 12 months and that since their earliermotion dated 29-6-2012 for no confidence against the named office-bearers of RCASialkot had already failed and intimated to them vide letter dated 5-7-2012, therefore,said period of 12 months have not been expired so far. They further pray for directionto respondent No.3 to fix the date on the said motion for no confidence againstrespondents Nos.5 and 6, for voting by intimating them and affording opportunity toparticipate in voting process. They also pray for issuance of direction to respondentsNo.1 to 4 regarding interim managements to run the affairs of RCA Sialkot as 2/3majority has already shown no confidence upon respondents' office-bearers.

2. Learned counsel for the petitioners contends that the impugned order is totallymisconceived and has been passed in the absence of the petitioners in disregard of theprinciple of nature justice; that the refusal to entertain the motion for no confidence isillegal as in order dated 5-7-2012 passed by respondent No.3 it was held that as theterms for the office-bearers of the DCA Gujranwala had expired on 26-12-2010,therefore, they became functus officio

as such they are not eligible to move for motionof no confidence. Further states that the motion means only "move or Vote of NoConfidence" when put to vote, it becomes resolution and as such the earlier movecannot be held to be a failed resolution; that grounds for rejection of earlier motion forVote of No Confidence in Chamber is totally illegal because unless and until the newoffice-bearers of DCA Gujranwala after being elected take the charge, the old office-bearers were entitled to work and move for Vote of No Confidence and in the firstmotion the old office-bearers of DCA Gujranwala were included; that in the presentmove, newly-elected office-bearers of DCA Gujranwala are also included; that out of18 office-bearers, 12 moved the motion for Vote of No Confidence against the office-bearers of RCA Sialkot, therefore, respondent No.3 is bound to entertain and fix thedate for voting; that respondent No.3 is prolonging the matter just to afford more timeto the office-bearers of RCA Sialkot to continue to enjoy their offices with all themalpractices and illegalities which is not in the interest of RCA Sialkot, DCAs fallingin the region and even in the Pakistan Cricket Board.

3. On the other hand learned Legal Advisor for the respondent, Pakistan Cricket Boardbesides contesting the arguments advanced by the learned counsel for the petitioners,has vehemently opposed the grant of prayer made by the petitioners by submitting thatthe order impugned in this petition has validly been passed following the rules framedfor the purpose which have statutory backing and also been upheld by the SupremeCourt of Pakistan. He places reliance on 2010 MLD 1241 "Dr. Muhammad Ali Shah v.PCB" and order dated 12-11-2010 passed in C.P.L.A. No.429-K of 2010. He prays fordismissal of the petition.

4. I have heard the arguments advanced by the learned counsel for the parties andperused the relevant rules.

5. The Regional Cricket Association is elected body consisting of ExecutiveCommittee and general body. The Executive Committee consists of elected office-bearers of Regional Cricket Association and one Executive Member represented byDistrict Cricket Association whereas the general body is comprised of ExecutiveCommittee and one representative of each district. Election of Regional CricketAssociation is conducted by the Election Commission of Pakistan Cricket Board toelect the President and Secretary. A senior Vice-President, Vice-President, GeneralSecretary and one Executive member represented by District Cricket Association areelected by the District Cricket bodies themselves. For the decision only voting process,the tenure of office-bearers and the procedure for vote of no confidence resolution arerelevant. The elected office-bearers of each District Cricket Association cast their votesfor President and Secretary of Regional Cricket Association. If elected, the office-bearers of Regional Cricket Association can enjoy two consecutive terms of three yearseach. Vote of no confidence is not to be initiated before the expiry of 18 months fromthe date of election of Regional Cricket Association. However the minimum of 2/3majority is required to pass the motion. It is also stipulation that if such resolution forvote of no confidence fails it cannot be re-initiated earlier than 12 months.

6. The question before this Court is whether the resolution of vote of no confidencewas ever initiated, if so whether it fails and if yes, can it be re-initiated earlier than theperiod of 12 months.

7. Record reveals that on 29-6-2012, 12 office-bearers of District Cricket Associationmoved a motion for no confidence before the Election Commission, Pakistan CricketBoard but they were informed that no confidence resolution has failed because the twooffice-bearers of District Cricket Association, Gujranwala have lost their status as such.However, on 24-7-2012 another motion of no confidence resolution was moved by

12office-bearers including those who were newly elected office-bearers in DistrictCricket Association, Gujranwala, which was now replied on 31-7-2012 by therespondents stating therein that as earlier resolution dated 19-6-2012 for no confidenceagainst office-bearers of Regional Cricket Board, Sialkot has already failed, therefore,no second motion of no confidence resolution can be initiated before the expiry of 12months. In my humble understanding, I have failed to appreciate that how can aresolution unless tabled/voted upon be termed as a failed resolution. Order dated 24-7-2012 was rightly passed on the ground that since earlier resolution dated 29-6-2012was moved by the office-bearers including outgoing office-bearers of District CricketAssociation; therefore, the same was not entertainable. But the subsequent stance byrespondent No.3 appears to be nothing but misinterpretation of the procedure forelection of Regional Cricket Association. The condition of 12 months expiry periodcould have been imposed, had the motion of no vote of confidence resulted into failureafter voting. Therefore, respondent No.3 illegally killed the motion in his chamber notonly without putting it in the motion but also without affording an opportunity ofhearing to all the concerned i.e.12 office-bearers of District Cricket Association, Gujranwala. I also draw inference from Rule 21 of the Rules of Procedure and Conductof Business in the National Assembly, 2007 which is the highest forum where thedemocratic norms are supposed to be observed. Needless to state that wheneverdemocratic values are ignored, adhocism comes into play. Pakistan Cricket Board is aseparate entity, a newly-created institution, which has its own rules of business andprocedure. This institution, in all fairness be allowed to stand but only under its ownmechanism. It is of a pivotal importance not only for strengthening nationalism butalso promoting positive image abroad. It should not and must not tilt towards nottransparent and conducted against the rules and regulations.

8. In this view of the matter, I allow this petition by declaring letter/order dated 31-7-2012 having been passed without lawful authority and in disregard of law, rules andregulation as resolution of no confidence can only fail after voting is held. Consequently, respondents are directed to immediately put motion of no confidencedated 24-7-2012 for voting purposes.

MH/M-295/L **Petition allowed.**

2013 C L C 268

[Lahore]

Before Ali Baqar Najafi, J

AYMEN SAFDAR and 4 others----Petitioners

Versus

M.S. ISHRAT SADIQ and others----Respondents

Writ Petition No.3249 of 2012, decided on 20th December, 2012.

Constitution of Pakistan---

----Art. 199---Constitutional petition---Educational institution---Eligibility for appearance in Board of Education examination---Internal policy of institution/school regarding minimum criteria for appearance in examination was different from the policy of the Education Board---Propriety---School/respondent did not forward admission forms of students/petitioners to the concerned Education Board for appearance in examination on the basis that they failed to obtain 75% marks in their internal test/send-up exams.---Said percentage of marks was set by the school as part of its internal policy to maintain its reputation---Education Board had set 33% marks as the minimum percentage to be obtained by a student in his/her internal exams. to qualify for appearance in the Board examination---Petitioners contended that they had scored 55% in their internal exams., whereas eligibility as determined by the Education Board was only 33%---Validity---School was entitled to impose only reasonable conditions on its students---Education Board had already accepted admission forms of students as they fulfilled the criteria that had been laid down by it for the examination---School of petitioners was under the misconception that they would increase the standard of the school by ignoring those students who could not do well in their internal exams.---School had to accept the responsibility for the educational standard of its students---Policy of school had to be for the benefit of its students so as to encourage them to

work hard and realize their weaknesses---Since Education Board had already accepted admission forms of students, therefore, school was just a post-office meant to forward admission forms of students---School in question was directed to submit admission forms of students to the Education Board, which was directed to accept the said forms and permit students to sit for the examination---Constitutional petition was disposed of accordingly.

Tahir Mehmood Abbasi for Petitioners.

Syed Sajid Shah, Accountant, for Respondents Nos.1 to 4.

ORDER

ALI BAQAR NAJAFI, J.--- Through this writ petition the petitioners seek a direction to respondents Nos.1 to 4 to send their admission forms to the office of respondent No.5, as they are already registered as students in Registration SSC Part-I for the Session 2012-2014 (Batch No.1).

2. Brief facts giving rise to the filing of this writ petition are that respondent No.5 announced the schedule for examination of Secondary School Certificate Part-I for Session 2012-2014 (Batch No.1) in which the petitioners' registration was made through Presentation Convent High School for Girls, Murree. The petitioners are their old students and have reached Class 9 but surprisingly their admission forms were not forwarded to respondent No.5. The parents of the petitioners were informed that as the petitioners could not obtain 75% marks in the internal tests; hence their admission forms will not be forwarded to respondent No.5 whereas the eligibility criteria for appearing in the examination by respondent No.5 is 33% marks as private student, hence this writ petition.

3. Learned counsel for the petitioners contends that the petitioners were ignored against law and their precious one year will be wasted; that the petitioners have already scored more than 55% marks in the internal tests whereas eligibility as determined by respondents is 33%; that the petitioners

were informed very late, which act of respondents Nos.1 to 4 by itself smacks mala fide; that to bring up to the level of the school is the job of administration for which they have been paid heavily.

4. Conversely, Syed Sajid Shah, Accountant, representative of respondents Nos.1 to 4 appeared and stated that as per the policy of school the petitioners have failed to score 75% marks in the first term, second term as well as in the send-up result, the petitioners could not do well, as they failed in various subjects which did not make them eligible to appear from the school as it will damage the reputation of the school, who have already proved outstanding.

5. I have heard the learned counsel for petitioners and the representative of respondents Nos.1 to 4.

6. Admittedly, respondent No.5 has already accepted the admission forms of the petitioners as they have fulfilled the criteria laid down by them for the forthcoming examination of Class 9 students. Respondents Nos.1 to 4 are under misconception that they will increase standard of the school by ignoring those students who could not do well in their internal send-up exams. Undoubtedly, it is the responsibility of any school to simultaneously give importance to the petitioners/students as they could not discard them in trash box. The school must accept the responsibility for the educational standard of a student. A student of Class 9 is expected to attend class, remain in the discipline of the school, work hard and attempt in all the required tests, and finally deposits the fee in time. In this modern era, ignored students have the tendency to pull back the outstanding students which is not good for institution. If weak student is left out she would go weaker as a direct result of inhuman policy of institution. The policy has to be for the benefit of its subject to encourage a hardwork and realization of weakness of student which is first step towards his brightness.

7. Since respondent No.5 has already accepted the admission forms

which is the sole exams. taking authority of the petitioners, therefore, respondents Nos.1 to 4 are just post office, precisely to forward their admission forms for taking examination. Needless to state that certificate of post office is a must who is entitled to impose only reasonable conditions.

8. In this view of the matter, I dispose of this writ petition directing respondent No.5 to accept admission forms of the petitioners, to be submitted through respondents Nos.1 and 4 and permit them to sit in the forthcoming examination of SSC Part-I for the Session 2012-2014 (Batch No.1).

MWA/A-173/L **Petition allowed.**

2013 C L C 276
[Lahore]

Before Ali Baqar Najafi, J

Mst. MUSSARAT IQBAL NIAZI----Petitioner

Versus

JUDGE FAMILY COURT and others----Respondents

Writ Petitions Nos.200 of 2008, 206 and 207 of 2010, decided on 18th December, 2012.

(a) West Pakistan Family Courts Act (XXXV of 1964)---

----Ss. 10(4), 5 & Sched.---Constitution of Pakistan, Art.199---Constitutional petition---Khula---Suit for dissolution of marriage on basis of Khula was decreed and wife was directed to return gold and land received from husband in lieu of decree of Khula---Contention of wife inter alia was that a specific amount of money was mentioned in column 13 of the Nikahnama which was to be the consideration for the Khula and that the gold was a bridal gift whereas the land was not Haq Mehr but a validly made gift in the wife's favour---Validity---Under Islamic Law marriage between a Muslim man and woman could be dissolved on basis of Khula for which some consideration is given in the form of dower which the wife was entitled to receive at the time of demand---Wife was also entitled to receive bridal gifts at the time of marriage which was solely the wife's property---Once gift of land was made, the title/ownership of the same departed from the original doner and vested to the donee which, without consent of the latter, could not be returned---Amount of money was mentioned in column 13 of the Nikahnama in the present case, and consideration for Khula was to be the said amount which was specifically mentioned in the Nikahnama---Gold and land were bridal gifts which were to remain in the ownership of the wife---High Court set aside findings of the courts below and directed that wife be allowed to retain the gold and land---Constitutional petition was allowed, in circumstances.

Tariq Mehmood v. Mst. Farah Shaheen 2010 YLR 349; Perveen Umar and others v. Sardar Hussain and others 2004 SD 215; Muhammad Hussain Munir and others v. Sikandar and others PLD 1974 SC 139; Abdul Rehman Bajwa v. Sultan and 9 others PLD 1981 SC 522 and State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others 2012 SCMR 280 ref.

2008 SCMR 186 rel.

(b) Islamic law---

----Gift---Once gift of land was made, the title/ownership of the same departed from the original doner and vested to the donee which, without consent of the latter, could not be returned.

Muhammad Aslam Malik for Petitioner.

Muhammad Amin for Respondents Nos.2-A to 2-G.

ORDER

ALI BAQAR NAJAFI, J.--- This judgment shall dispose of Writ Petition No.200 of 2008, Writ Petition No.206 of 2010 and Writ Petition No.207 of 2010 as common question of law and facts is involved.

2. Through this writ petition the petitioner challenges judgment and decree dated 22-1-2008, whereby the suit of the petitioner/plaintiff for dissolution of marriage was decreed under section 10(4) of the Family Courts Act, on the condition that she will return 15 tolas gold ornaments and 5 Marlas of land to the defendant as consideration for Khula given to her in lieu of dower at the time of marriage.

3. Brief facts giving rise to the filing of this writ petition are that the petitioner filed a suit for dissolution of marriage against respondent No.2 before the Judge Family Court at Rawalpindi in which written statement was filed. On failure of re-conciliation their statements were recorded. A decree for dissolution of marriage was passed conditionally on 22-1-2008 restoring 15 tolas gold ornaments and 5 Marlas of land in favour of respondent No.2 under section 10(4) of the Family Courts Act which is challenged in this writ petition.

4. Learned counsel for the petitioner contends that the imposition of

condition of return of 15 tolas gold ornaments and 5 Marlas of land is against law and facts; that Nikahnama reveals that Rs.50,000 as dower was mentioned in Column No.13 which was to be payable on demand and the same is not paid up till now which is consideration for Khula; that under Column No.16 of the Nikahnama land of 5 Marlas have been transferred as gift to the petitioner which is not Haq Mehr and cannot be restored; that gold ornaments weighing 15 tolas have been given as bridal gift which although already snatched by the respondent No.2 cannot be formed basis for Khula; that respondent No.2 appeared as DW-1 in the earlier case and admitted that she was turned out from his house. Places reliance on TARIQ MEHMOOD v. MST. FARAH SHAHEEN (2010 YLR 349) and PERVEEN UMAR AND OTHERS v. SARDAR HUSSAIN AND OTHERS (2004 SD 215) to argue that gold ornaments mentioned in Column No.16 are bridal gift which are not part of the dower and at least cannot be based as consideration for Khula.

5. Conversely, the learned counsel for the respondents submits that the suit for recovery of Rs.50,000 and recovery of maintenance were dismissed whereas suit for restitution of conjugal rights was decreed, against which the appeal was filed in which the same order was upheld on 14-6-2007. This order was challenged in Writ Petition No.206 of 2010 and Writ Petition No.207 of 2010 filed by the petitioner; that on 25-7-2007 i.e. immediately after the said judgment suit for dissolution of marriage on the basis of Khula was filed; that no strict principles of C.P.C. and Qanun-e-Shahadat Order, 1984 are applicable in the cases relating to matrimonial disputes; that Writ Petition No.206 of 2010 and Writ Petition No.207 of 2010 were filed on 15-1-2010 and as such the same are hit by laches. Places reliance on MUHAMMAD HUSSAIN MUNIR AND OTHERS v. SIKANDAR AND OTHERS (PLD 1974 Supreme Court 139), ABDUL REHMAN BAJWA v. SULTAN AND 9 OTHERS (PLD 1981 Supreme Court 522) and STATE BANK OF PAKISTAN through Governor and another v. IMTIAZ ALI KHAN and others (2012 SCMR 280).

6. I have heard the learned counsel for the parties and perused the available record.

7. Under Islamic Sharia the marriage between a Muslim man and woman

can be dissolved on the basis of khula for which some consideration is formed. This is in the form of dower which the wife is entitled to receive at the time of demand. Apart from that, a wife is also entitled to receive bridal gifts at the time of marriage which is solely her property. As the land of gift would go, once a gift is made the title/ownership of the same is departed from the original donor and vests to the donee which without consent of the latter cannot be returned.

8. In the instant case, an amount of Rs.50,000 mentioned in Column No.13 as dower money, 5 Marlas of land and 15 tolas gold ornaments are also mentioned meaning thereby that the land of 5 Marlas and the said gold ornaments are part of the bridal gift. Consideration for Khula can be the dower amount which is specifically mentioned to be Rs.50,000. I rely upon the judgment (2008 SCMR 186), wherein it was held that the marriage on the basis of khula can be dissolved on the basis of dower mentioned in Column No.13.

9. The impugned order in Writ Petition No.206 of 2010 and Writ Petition No.207 of 2010 upholding order dated 7-6-2006, whereby suit for recovery of dowry has been satisfied, therefore, no further order is required. Suit for maintenance was dismissed and as respondent No.2 is no more alive, no further proceedings would be required in that petition. Similarly, suit for restitution of conjugal rights was decreed in view of the judgment and decree dated 22-1-2008, the same has already become infructuous.

10. The learned counsel for the respondents under misconception that Writ Petition No.206 of 2010 and Writ Petition No.207 of 2010 were filed on 20-1-2010 whereas record reveals that these were filed on 8-9-2007, therefore, no question of laches is involved. In this view of the matter, Writ Petition No.206 of 2010 and Writ Petition No.207 of 2010 are dismissed whereas Writ Petition No.200 of 2008 is allowed with the result that it is declared that marriage between the petitioner and respondent No.2 dissolved on 22-1-2008, for a consideration of Rs.50,000 as Khula which she would forego. The property 5 Marlas and 15 tolas gold ornaments are bridal gifts and are ownership of the petitioner.

With the above terms these writ petitions stand disposed of.

KMZ/M-371/L **Order accordingly.**

2013 C L C 487

[Lahore]

Before Ali Baqar Najafi, J

SHOAIB MUSHTAQ----Appellant

Versus

MUHAMMAD QASIM and others----Respondents

Regular Second Appeal No.1 of 2005, decided on 1st February, 2013.

(a) Civil Procedure Code (V of 1908)---

----Ss. 99, 9 & Preamble---Specific Relief Act (I of 1877) Ss.54 & 8---Appeal from original decree---Filing of suit through general power of attorney---Non-mentioning in plaint of concise statement to the effect that suit was being filed through plaintiff's attorney---Effect---Suit for possession of immovable property and permanent injunction was filed by plaintiff through his attorney and was decreed by Trial Court---Appellate Court set aside decree on the ground that suit was filed by an incompetent person, as plaint did not contain a concise statement to the effect that the suit was being filed through plaintiff's attorney---Validity---No specific issue was framed regarding question of competency of plaintiffs attorney and no objection in that regard was raised by the defendants in their written statements---General power of attorney was exhibited in evidence before Trial Court---Court, under law, was required to give finding on questions formulated before it in the form of issues---Rules framed in the C.P.C. were made for advancement of justice and they should not, as far as possible, be allowed to operate so as to defeat the ends of justice---Under S.99, C.P.C. mere error or irregularity not affecting merit or jurisdiction was not sufficient for setting aside a decree---Since concise statement not mentioning the name of general attorney was a non-issue, the Appellate Court had committed material irregularity which had resulted in an injustice---High Court set aside impugned order of Appellate Court and restored decree of Trial Court---Appeal was allowed, in circumstances.

Messrs Gotco Trading Limited v. Government of Pakistan, and others

2004 CLC 205(sic); Abdul Hameed Khan v. Mrs. Saeeda Khalid Kamal Khan and others PLD 2004 Kar. 17; Messrs GETCO Trading Ltd. through Local Agent v. Government of Pakistan through Director-General and 2 others 2003 YLR 3309 distinguished.

Toor Gul v. Mst. Mumtaz Begum PLD 1972 SC 9; Ismail v. Bashir 1981 SCMR 687; 2003 YLR 3309; PLD 2004 Kar. 17 and PLD 1947 PC 180 rel.

(b) Civil Procedure Code (V of 1908)---

----Preamble---Object of Civil Procedure Code, 1908---Rules framed in the Civil Procedure Code, 1908 were made for advancement of justice and they should not, as far as possible, be allowed to operate so as to defeat the ends of justice. [p. 492] C

Toor Gul v. Mst. Mumtaz Begum PLD 1972 SC 9 rel.

(c) Interpretation of Statutes---

----Procedural law---Principles---All procedural laws were meant to foster the cause of justice and not to thwart it as it was more important that substantial compliance of procedural law was made and not its technical observance---Liberal view in procedural matters would save a party from a technical knockout and promote the cause of justice.

Rizwan Niaz for Appellant.

Muhammad Abdul Hayee Alvi for Respondents.

Date of hearing: 29th January, 2013.

JUDGMENT

ALI BAQAR NAJAFI, J.--- Through this Regular Second Appeal, the appellant seeks setting aside of the judgment and decree dated 7-12-2004 passed by the Additional District Judge, Rawalpindi whereby he reversed the findings of the trial Court.

2. The brief facts giving rise to filing of this Regular Second Appeal are that the appellant is residing abroad and therefore, the present appeal was filed

through his attorney under his authority. He filed a suit for possession, compensation and permanent injunction against the respondents regarding House No.E-187 Mohallah Qutub-ud-Din, Rawalpindi on the ground that he has purchased it from respondent No.2 vide registered Sale-deed No.4592, Book No.1, Volume No.99 dated 17-5-1990 who himself purchased this property from respondent No.1 in 1987 vide registered Sale-deed No.9479 Book No.1 Volume No.62.

3. Respondent No.1 did not contest the suit and he was proceeded ex parte by the trial Court on 13-3-1993. Out of the pleadings of the parties following issues were framed:---

ISSUES

(1) Whether the plaintiff purchased the suit property from defendant No.2, through registered sale-deed dated 17-5-1990? OPP

(2) Whether the plaintiff is entitled to recover compensation for the use and occupation of the suit property from the defendant No.1 who is in possession of this property? If so, at what rate and for what period? OPP

(3) Whether the suit is not maintainable? OPD

(4) Whether the plaintiff has no cause of action and locus standi to bring this suit? OPD

(5) Whether the plaintiff is estopped by his words and conduct to file this suit ? OPD

(6) Whether the sale-deed in favour of the plaintiff is based on fraud and collusion is without authority and is void? OPD

(7) Whether the suit property was transferred to the grand mother of defendant No.1 by the Settlement Department and it vested in the defendant No.1 and his sister? OPD

(8) Whether the defendant No.1 became exclusive owner of the suit property after his sister Shamshad Begum transferred her share to

him? OPD.

(9) Whether thumb-impressions of defendant No.1, were obtained in the premises of District Courts on 8-12-1987 on the pretext of getting some mortgaged deed from him which was later on converted into the sale-deed through fraud and collusion of one Brig. Mumtaz, the plaintiff and staff of Registration Branch? OPD

(10) Whether the suit is vexatious and the defendant No.1 is entitled to recover special costs under section 35-A, C.P.C. from the plaintiff? If so, to what extent? OPD

(11) Relief.

The appellant presented his attorney namely Brig. Mukhtiar Ahmad as P.W.-1 and exhibited his general power of attorney as Exh.P-1, registered sale-deed dated 17-5-1990 Exh.P-2, registered sale-deed dated 14-12-1987 as Exh.P-3, the original sale-deed as Exh.P-4, notice to vacate the suit property as Exh.P-5. Likewise respondent No.1 did not appear personally and presented his attorney, namely, Muhammad Naeem as DW-1, Muhammad Javaid Akhtar as DW-2 and exhibited general power of attorney as Exh.D-1. On 1-4-1998 the suit was decreed in favour of the appellant, while deciding all the issues in favour of the appellant except Issues Nos.7 and 8 which were not pressed by the appellant. Respondent No.1 impugned the said judgment in R.F.A. No.54 of 1998 which was transmitted to the District Judge, Rawalpindi for pecuniary jurisdiction. On 7-12-2004 the finding on Issue No.3 regarding maintainability was reversed by him holding that the suit was filed by an incompetent person as the plaint did not contain the concise statement to the effect that the suit was filed through his attorney. Hence this regular first appeal.

4. Learned counsel for the appellant submits that there is no express penal provision contained in the procedural law relating to the incorporation of concise statement in the body of the plaint requiring mentioning of name of the attorney through which it was filed; that the procedural law is meant for advancement of justice and not to penalize the litigant; that no specific objection was taken by the respondents in their written statement; that

respondents have never challenged the authority of the attorney of the appellant rather admitted the execution of the general power of attorney (Exh.P-1); that the general power of attorney was exhibited by the attorney himself while appearing as P.W.-1 who was not cross-examined on this aspect; that under section 99 of the C.P.C. the judgment cannot be reversed or substantially varied on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the court. Hence prays for the setting aside of the impugned order.

5. Conversely, learned counsel for the respondents submits that Issue No.3 was regarding maintainability and the suit was rightly found to be not maintainable; that clause-'A' of general power of attorney Ex.P-1 does not permit the appellant to give evidence or to file a suit but was specifically restricted to succession certificate; that under Order VI, Rule-14 of the C.P.C. the plaint was not signed by the authorized person. Places reliance on Messrs GOTCO TRADING LIMITED v. GOVERNMENT OF PAKISTAN, ETC. (2004 CLC 205(sic)) to argue that the suit was not filed in accordance with section 9 of the C.P.C. as the court cannot take cognizance in a suit which was not properly instituted; that the name of the attorney is not mentioned in the title of said suit. Places reliance on Abdul Hameed Khan v. Mrs. Saeeda Khalid Kamal Khan and others (PLD 2004 Karachi 17), Messrs GETCO TRADING LTD. Through Local Agent v. GOVERNMENT OF PAKISTAN through Director General and 2 others (2003 YLR 3309) to argue that instant RSA is liable to be dismissed.

6. I have heard the learned counsel for the parties and perused the record.

7. The learned appellate court reversed the finding of the trial Court on the issue of maintainability by holding that since the plaint does not mention the name of the attorney either in the title or in the body, therefore, the suit was not properly filed. However, no specific issue was framed regarding said question as no specific objection was raised in the written statement. Moreover, in his statement P.W.-1, the attorney was not questioned regarding

his status as an attorney. Even in the registered general power of attorney Exh.P-1, the power to initiate and defend all proceedings involving succession certificate arising out of the death of the father of the executant, have been atoned to Brig. (R) Mumtaz Ahmed Chaudhry. It is settled principle of law that court is required to give finding on the questions formulated before it in the form of issues. Moreover, in Toor Gul v. Mst. Mumtaz Begum, reported as PLD 1972 SC 9, the Full Bench of the Hon'ble Supreme Court had observed that rules framed in C.P.C. are made for advancement of justice and they should not, as far as possible, be allowed to operate so as to defeat the ends of justice. All procedural laws are meant to foster the cause of justice and not to thwart it as more important is that substantial compliance of procedural law, and not its technical observance. A liberal view in procedural matters would save the party from technical knockout, and promote cause of justice. This is precisely spirit of section 99, C.P.C. wherein mere error or irregularity not effecting the merit or jurisdiction, is not sufficient for setting aside a decree. Non-signing of plaint as held in Ismail v. Bashir (1981 SCMR 687) a curable irregularity which is rectifiable. The judgment 2003 YLR 3309 and PLD 2004 Karachi 17 by the learned counsel for the respondent is not attracted as there the general power of attorney was neither exhibited nor referred in the evidence but in the instant case it was not only exhibited as Exh.P-1 but was also admitted by respondent. Material facts were pleaded in the plaint fulfilling the requirements of Order VI, Rule 2, C.P.C., as laid down in PLD 1947 Privy Council 180.

8. Since the concise statement not mentioning the name of general attorney was a non-issue, therefore, the learned appellate court had committed material illegality in a procedural matter which has resulted in injustice.

9. I, in view of the above, set aside the judgment and decree dated 7-12-2004 and restore the judgment and decree dated 1-4-1998 by decreeing the suit.

KMZ/S-15/L **Appeal allowed.**

2013 C L C 512

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD ZIA-UR-REHMAN and others----Petitioners

Versus

UNIVERSITY OF ENGINEERING AND TECHNOLOGY and others----Respondents

Writ Petition No.1941 of 2012, decided on 27th September, 2012.

(a) Constitution of Pakistan---

----Art. 199---Constitutional petition---Educational institution---Dispute over issuance of degree---Change in affiliation status of institution during completion of course--- Responsibility of educational institution---Scope---Students (petitioners) successfully completed their Bachelors course from their College, which claimed to be affiliated with University of Engineering---College in question had changed its affiliation status from University of Languages to the University of Engineering---Students (petitioners) were provisionally registered by the University of Engineering---Subsequently University of Engineering cancelled affiliation with the College and provisional registration of said students were cancelled---Students contended that they took admission in the College with the firm understanding that they would receive a degree from the University of Engineering---Validity---Cancellation of provisional registration by University of Engineering prejudiced the status of students completing their course with a legitimate expectation to receive a degree from the said University---Changed criteria had to be specified prior in time so that students could possibly prepare themselves---Students were (only) expected to pay dues including payment of affiliation fee for appearing in examinations and to achieve required percentage, remaining matters were undoubtedly the responsibility of the institution (College) where they were studying, which was expected to look after their interest---Even otherwise cancellation of affiliation and provisional registration of students by University of engineering was to operate prospectively; more particularly when the actual stakeholders i.e. students were not taken into confidence---Since question of requisite minimum

standard of passing marks for a degree was involved, therefore, University of Engineering was directed to identify any discipline which was not studied by the students of the College and, if there was any, said University might put the students to an additional test, whereafter they might be asked to attend classes for awarding of a degree---Constitutional petition was disposed of accordingly.

University of Karachi v. Tariq Hussain and another 2012 SCMR 1694 rel.

(b) Educational institution---

----Change in criteria (of a degree/course)---Responsibility of educational institution---Scope---Changed criteria whether with reference to syllabus or standard of marking of exams. had to be specified prior in time so that students could possibly prepare themselves.

University of Karachi v. Tariq Hussain and another 2012 SCMR 1694 rel.

Raheel Akhter Khan Yousaf Zai for Petitioners.

Ch. Farhat Abbas for respondents Nos.1 to 4.

Malik Muhammad Pervaiz for respondents Nos.5 to 7.

Brig (R) Hubdar Ahmed Madni, Principal APCOMS.

ORDER

ALI BAQAR NAJAFI, J.--- The petitioners through this writ petition prays direction to respondents Nos.1 to 7 for issuance of degree of Bachelor of Science (Electrical, Telecommunication and Software in Engineering) by declaring their act as against law, discriminatory, ultra vires, void ab initio and without jurisdiction with a further direction to respondent No.8 to register the petitioners as Bachelor of Science in Engineering, being eligible.

2. The facts giving rise to this Constitutional petition are that respondent No.5, Army Public College of Management and Science (hereinafter referred to as APCOMS) opened admissions of session through publication, in Bachelor of Management and Bachelor of Science (Electrical, Telecommunication and Software) claiming to be affiliated with respondent No.1, University of Engineering and Technology, Taxila (hereinafter referred

to as UET) recognized by respondent No.8/Pakistan Engineering Council. The petitioners took admissions, studied there and qualified the examination in May 2012 and at present claiming eligible to be registered as Engineer in Science (Electrical, Telecommunication and Software) with respondent No.8 as they have also paid affiliation fee amounting to Rs.11,500/- and UET registration fee amounting to Rs.3000/-. Hence this writ petition.

3. It is contended by the learned counsel for the petitioners that the petitioners are being treated discriminatory as in the cases of similarly placed students the APCOMS issued the degree of Bachelor of Science (Electrical, Telecommunication and Software Engineering) from the UET but the petitioners have been refused without any rhyme or reason; that the APCOMS invited admissions in a specific field and the petitioners took admissions in response to the publication in the specific field with a firm understanding to receive a UET degree, therefore, the APCOMS is under obligation to issue the degree applied for by the petitioners from UET duly recognized by respondent No.8; that the petitioners approached respondents Nos.1, 5 and 8 number of times for redressal of their grievance but the respondents deliberately did not advert to their grievances.

4. This Court on 27-7-2012 directed respondents Nos.3, 4 and 8 to file report and parawise comments which have been submitted wherein it is stated that vide agreement dated 26-1-2011, the UET accepted the request of APCOMS for change of affiliation from National University of Modern Languages (hereinafter referred to as NUML) to UET Taxila in October, 2010 and on the request of APCOMS the UET changed its affiliation with the understanding that existing batches would be transferred to changed criteria rather to change the position of students enrolled with the previous University, NUML. Further added in the comments that UET provisionally registered the students of B.Sc. (Electrical Engineering) of Fall, 2007, therefore, APCOMS administration decided that students of Fall 2007 entry shall remain on the roll of the NUML as they have been enrolled by that University and on the request of APCOMS vide letter dated 31-5-2012, the UET cancelled the provisional registration and refunded the registration fee to the APCOMS.

5. I have heard the learned counsel for the parties and gone through the records appended with the petition.

6. Admittedly, the affiliating status of National University of Modern Languages (NUML) was changed to University of Engineering and Technology (UET), Taxila, on the request of Army Public College of Management and Sciences (APCOMS) in October, 2010, vide agreement dated 26-1-2011, whereby the then existing criteria of APCOMS was to be changed rather the status of the students. The students of Fall 2007, were retained at Roll of NUML and the provisional registration by UET was cancelled on 31-5-2012 which prejudiced the status of the students completing their courses with a legitimate expectancy to receive a UET degree. The changed criteria; whether with reference to syllabus or the standard of marking of the exams, had to be specified prior in time so that the students could possibly prepare themselves. I am fortified by a recent judgment rendered by the Hon'ble Supreme Court of Pakistan in case University of Karachi v. Tariq Hussain and another reported in 2012 SCMR 1694, wherein it is held that raising the objection on the eligibility of a student after the result smacks with mala fide as it slept for about 2 years permitting him to pass the exams.

7. For a student (i) the payment of dues including the payment of affiliation fee for appearing in exams, and (ii) achieving required percentage is what is expected. Rest of the matters are undoubtedly the responsibility of the Institution where they are studying which is expected to look after their interest.

8. Even otherwise the cancellation of the affiliation dated 31-5-2012 was to operate prospectively; more particularly when the actual stakeholders i.e. the students, were not taken into confidence.

9. Since the question of a requisite minimum standard of passing marks for the UET degree is involved, therefore, the respondent/UET is directed to identify (i) any discipline which was not studied by the student; of APCOMS and, if there is any (ii) may put the students to an additional test, whereafter they may also be asked to attend the special classes for awarding the UET degree. The said exercise shall be completed expeditiously and preferably within a period of three months.

10. With the above directions, this writ petition is disposed of.

MWA/M-327/L **Petition allowed.**

2013 C L D 630

[Lahore]

Before Kh. Imtiaz Ahmad and Ali Baqar Najafi, JJ

Syed TAHIR HUSSAIN SHAH---Appellant

Versus

Syed SAEED ANWAR and others---Respondents

Regular First Appeal No.81 of 2002, decided on 17th December, 2012.

(a) Contract Act (IX of 1872)---

----Ss. 182, 186 & 213---Specific Relief Act (I of 1877), S. 42---Civil Procedure Code (V of 1908), O.VII, R. 2---Partnership---Rendition of accounts by partner---Requirements---Suit for declaration and rendition of accounts and mense profits in respect of joint-property wherein a commercial cinema was being run, was decreed---Validity---Status of the partners/parties as co-owners was admitted, therefore, the plaintiff's entitlement to half of the shares was not challenged by defendant---Defendant had claimed that the cinema business was running in loss, however, some shares from profit had been paid to the defendants, which meant that claim of plaintiff in profit was correct---Settlement of accounts could be made with mutual consent of partners/sharers at any time or at time of conclusion of partnership---Status of a co-sharer who was running affairs of a business was of either of an agent or principle---In a suit for rendition of accounts, plaintiff was required to establish, firstly, the partnership, secondly, the share of each member in the partnership, thirdly, the profit or loss, fourthly, the type of business, fifthly the duration of the partnership and sixthly the accounts---Trial Court had acted according to said criteria---Status of Agent of a co-sharer running a joint business was that of an agent having authority expressly or impliedly who was bound to render proper accounts to his principal on demand, under Ss.182, 186 and 213 of the Contract Act, 1872---No interference was required in decree of the Trial Court---Appeal was dismissed, in circumstances.

Pakistan International Airlines Corporation v. Karachi Municipal Corporation through Chairman/Administrator, Karachi and another PLD 1994 Kar. 343 ref.

(b) Contract Act (IX of 1872)---

----Ss. 182, 186 & 213---Partnership---Co-sharers---Rendition of accounts, suit for---In a suit for rendition of accounts, plaintiff was required to establish, firstly, the partnership, secondly, the share of each member in the partnership, thirdly, the profit or loss, fourthly, the type of business, fifthly the duration of the partnership and sixthly the accounts.

(c) Contract Act (IX of 1872)---

----Ss. 182, 186 & 213---Partnership---Co-sharers---Status of a co-sharer running a joint business was that of an agent having authority expressly or impliedly who was bound to render proper accounts to his principal on demand, under Ss. 182, 186 & 213 of the Contract Act, 1872.

Altaf Elahi Sheikh for Appellant.

Sheikh Zamir Hussain for Respondents.

Date of hearing: 17th December, 2012.

JUDGMENT

ALI BAQAR NAJAFI, J.---This regular first appeal is directed against the judgment and decree dated 11-4-2002 recorded by the learned Civil Judge 1st Class, Rawalpindi, whereby he decreed the suit of the plaintiffs/respondents and a preliminary decree in the following terms was passed:--

(1) Plaintiffs are declared to be joint owners in suit property to the extent of 4 shares.

(2) They are entitled to decree in rendition of accounts regarding suit property since institution of this suit till final decision of suit.

Mr. Mukhtar Ahmad Chaudhry, Advocate was appointed local commissioner to visit the spot for proposing the partition of the suit property. He was also

directed to get accounts from defendant No.1, work out the accounts and submit his report as to how much amount was due against defendant No.1. Fee was to be paid by the plaintiffs.

2. Briefly, the facts giving rise to the filing of this Regular First Appeal are that the property bearing No.105A and B commonly known as Capital Cinema situated at Bank Road, Rawalpindi was acquired by respondent No.1, Syed Khurshid Anwar, Mrs. A. Ghafoor, and Syed Mumtaz Hussain vide deed of exchange registered at No.344, Book No.1, Volume No.80 at page 398 in the office of Joint Registrar, Rawalpindi on 13-4-1955. The shares of the parties in the suit property are as follows:--

(a) Plaintiff No.1 1/6th

(b) Plaintiffs Nos.2 to 11 1/3rd

(c) Defendants Nos.1 to 3 1/3rd

(d) Defendants Nos.4 to 8 1/6th

The plaintiffs and the defendants are in possession of the joint property and the affairs of the said property have been managing by defendant No.1 The income being derived from the cinema business and income including business and rental income has been under the control of defendant No.1 but he has been paying meager amount to the plaintiffs from time to time and he has always avoided to render proper accounts in order to pay the due shares of the plaintiffs in the business and as such it was derived and appropriated by him. The plaintiffs called upon the defendants to effect partition for separation of shares of the plaintiffs. Defendant No.1 was also called upon to render accounts and to pay up the share of plaintiffs but in vain. The plaintiffs sought decree for possession by partition of 1/2nd share in the suit property, rendition of accounts and for recovery of amount found due defendants, The suit was contested by the defendants stating therein that it is not maintainable in its present form; the plaintiffs were estoppped by their words and conduct, Defendant No.1 through his written statement submits that Cinema was running in loss and other partners were not prepared to share the losses and requested the answering defendants to run the cinema and to invest the money

all by himself and prayed for dismissal of the suit. The learned trial court framed the following issues:--

(1) Whether the suit is not maintainable in its present form? OPD

(2) Whether proper court fee is not affixed? OPD

(3) Whether defendant No.1 is entitled to get special costs? OPD

(4) Whether Cinema is not partitionable? OPD

(5) Whether legal heirs of Begum A. Gluifoor have not been impkaded correctly? OPD

(6) Whether property in dispute is joint property of the parties, if so, what are legal share of parties? OPP

(7) Whether the plaintiff is entitled to get possession of 1/2 share of suit property through partition against defendants as prayed for? OPP

(8) Whether the plaintiff is entitled to get decree for rendition of accounts and for mesne profits against defendants as prayed for? OPD

(8.A) Whether plaintiffs are estopped by their words and conduct to bring this suit? OPD

(8.B) Whether defendant No.1 has spent from his own pocket on construction, renovation, repairs, development, improvements and replacement of machinery etc., as detailed in schedule A, B & C? OPD-1.

(9) Relief.

3. Both the parties adduced their respective evidence oral as well as documentary. The learned trial court after hearing the parties passed the judgment impugned herein.

4. Learned counsel for the appellant/defendant No.1 contends that the Military Estate Officer has not been arrayed as necessary party; that there is no discussion on schedule A, B and C which were relevant for the issue No.8-B and the learned trial Court erroneously decided the said issue; that no specific amount was claimed; that issue No.8 is relating to the decree for rendition of account and for mesne profit which has been wrongly decided in

favour of the plaintiffs; that the defendant No.1 was not empowered to run any business, therefore, there is no liability of the appellant; the trial court has failed to exercise jurisdiction vested in it while deciding the case; that findings of the learned trial court on all the issues are not sustainable in the eyes of law and liable to be set aside; that the procedure adopted by the trial court in deciding the suit in question is also illegal and in violation of provisions of C.P.C.; that the learned trial court has acted in grave illegality in passing the decree of rendition of accounts against the appellant; that the remedy was the recovery of amount and not rendition of account. Places reliance on PAKISTAN INTERNTIONAL AIRLINES CORPORATION v. KARACHI MUNICIPAL CORPORATION CORPORAION through Chairman/Administrator, Karachi and another (PLD 1994 Karachi 343).

5. On the other hand, learned counsel for the respondents has vehemently opposed the appeal by submitting that admittedly, they are co-sharer in the joint property, a commercial cinema; that partnership is still intact; that nothing was paid to the respondents-plaintiffs; that the respondents are either co-sharer, or co-owners; that the appellant could only manage the property but nothing was paid; that the appellant is either acted as an agent or principal under sections 182, 186 and 213 of the Contract Act; that the appellant was bound to run the business under the customary law; that the commission will work out the amount on the basis of original documents.

4.(sic.) We have heard the learned counsel for the parties and perused the available record.

5(sic.) The status of the partners is admitted as co-owners; therefore, the first part of decree that plaintiffs/respondents are entitled 1/2 shares is not seriously challenged. The second part of the decree regarding rendition of accounts of suit property since institution is under challenge. The dispute is the claim in the profit of commercial cinema and related business, which according to the appellants, went in losses and even then some shares have been paid. It means that the claim of the respondents in the profit is net true. As far as the settlement of the account is concerned, it can be made with the mutual consent

of the partners /sharers at any time or at the time of conclusion of the partnership. Even otherwise, the status of a co-sharer who is running the affairs of commercial business is either an agent or a principal.

6. In a suit for rendition of account the plaintiff is required to establish (a) partnership (b) share of each member in the partnership (c) profit or loss (d) type of business (e) duration of partnership (f) accounts.

7. If this criteria is applied respondent/plaintiff has established the business of commercial cinema which had earned some profit or even loss at the end of the day which A can be ascertained on the basis of accounts. The finding of the trial court on issue No.8-B is based on evidence and an admitted position. Since a commission has been appointed to work out the accounts, therefore, no illegality is committed by the trial court. The agent of the co-sharer running a joint business is that of an agent having authority either expressly or impliedly who is bound to render proper accounts to his principal on demand, as mentioned in section 182, 186 and 213 of the Contract Act.

8. Even otherwise, the claim is not merely on the enjoyment of the immovable property simpliciter for which an ascertained claim of a specific calculated amount should have been filed.

9. The learned trial court has rightly appreciated the legal as well as factual points and therefore, no interference is called for.

10. In view of what has been stated above, the RFA is dismissed leaving the parties to bear their on costs.

KMZ/T-31/L **Appeal dismissed.**

2013 C L D 2167

[Lahore]

Before Ijaz Ahmad and Ali Baqar Najafi, JJ

FAUJI FOUNDATION through General Manager (Engineering)---Appellant

Versus

Messrs CHANAN DIN AND SONS through Attorney and others---Respondents

Regular First Appeal No.226 of 2011, decided on 3rd July, 2013.

(a) Arbitration Act (X of 1940)---

----Ss. 14, 20 & 30---Non-completion of work by respondent within agreed time---Award of fresh contract by applicant to a third party for completing remaining work--- Respondent's notice to appellant claiming Rs.1,13,78,207---Reference of dispute between parties to Arbitrator in terms of arbitration clause in contract---Submission of claim by respondent for Rs.2,24,18,619 instead of Rs.1,13,78,207---Award by Arbitrator for differential amount of Rs.4.9 million made rule of court by Trial Court---Validity---According to terms of contract, respondent's claim had to be confined to amount for which he had issued notice to applicant---Neither court nor Arbitrator was competent to enlarge scope of contract or application made under S.20 of Arbitration Act, 1940---Award for differential amount between respondent's contract and such third party's contract was beyond jurisdiction of Arbitrator---Arbitrator's function was not to be influenced by his imagination and opinion, rather he was obliged to apply agreed clauses of contract between parties---High Court set aside impugned judgment and remanded case to Trial Court for its decision afresh in terms of reference.

Fauji Foundation and another v. Shamim-ur-Rehman PLD 1983 SC 457 and Shamim-ur-Rehman v. Fauji Foundation, Rawalpindi and another

1992 SCMR 1496 ref.

House Building Finance Corporation v. Shahinshah Humayun Corporative House Building Society and others 1992 SCMR 19 and Shamim-ur-Rehman v. Fauji Foundation, Rawalpindi and another 1992 SCMR 1496 rel.

(b) Arbitration Act (X of 1940)---

----Ss. 17 & 30---Making award rule of court---Powers of court---Scope---Court while examining correctness and legality of award could neither act as a court of appeal nor undertake reappraisal of evidence recorded by Arbitrator in order to discern error or infirmity therein.

(c) Arbitration Act (X of 1940)---

----S. 30--- Award, setting aside of--- "Misconduct of Arbitrator"---Meanings.

In the judicial sense, the misconduct of an Arbitrator means his failure to perform his essential duty resulting in substantial miscarriage of justice between the parties.

Mian Corporation through Managing Partner v. Messrs Lever Brothers of Pakistan Ltd. through General Sales Manager, Karachi PLD 2006 SC 169 and Brooke Bond (Pakistan) Ltd. v. Conciliator Appointed by the Government of Sindh and 6 others PLD 1977 SC 237 rel.

Muhammad Azam Chattha for Appellant.

Waqar-ul-Haq Sheikh for Respondents.

Date of hearing: 6th June, 2013.

JUDGMENT

ALI BAQAR NAJAFI, J.---This regular first appeal is directed against the judgment and decree dated 20-9-2011 passed by the learned Civil Judge 1st

Class, Rawalpindi, whereby the award dated 5-8-2010 given by the learned Arbitrator was made rule of the court to the tune of Rs.49,00,000 along with the interest at the rate of 11 per cent per annum.

2. Brief facts giving rise to the filing of this appeal are that the appellant is a Charitable Trust registered under Charitable Endowments Act, 1890 created for the welfare of ex-servicemen of the Armed Forces of Pakistan (Army, Navy and Air Force) in the fields of education, health and all other welfare activities including the widows and orphans of the Martyr (Shaheeds) Army Personnel. The appellant awarded contract for Rs.2,66,92,065 to the respondent for the construction of 200 beds Hospital at Fauji Foundation Medical Centre, Rawalpindi. The date of commencement of the contract was 12-9-1984 and its completion period was within 24 months. As the respondent could not complete the construction work till 30-11-1987, therefore, on his request three extensions of 14 months and 19 days in total were granted to the respondent. The work still remained incomplete and the respondent again requested for 4th extension which was turned down as earlier extensions have earned bad name for the appellant and added to the miseries of the beneficiaries of the hospital.

3. Since the said contract contained the provisions of arbitration for resolution of the dispute, the respondent served a notice on the appellant and on 1-10-1987, whereby a claim of a sum of Rs.1,13,78,207 was made and the appellant has also asked for the appointment of arbitrator. Consequently, an application under section 20 of the Arbitration Act, 1940, for the appointment of arbitrator was moved to refer the matter to the arbitrator. With the agreement of the parties, initially, Mr. Justice (R) K.M.A. Samdani, a former Judge of the Lahore High Court, Lahore, was appointed as Arbitrator vide order dated 4-12-1988 by the learned Civil Judge Ist Class, Rawalpindi. As the respondent submitted claim of Rs.2,24,18,619 instead of Rs.1,13,78,207 therefore, the learned Arbitrator conveyed through his letter dated 1-10-1987

to the learned Civil Judge that the matter was beyond his jurisdiction. On 9-1-1992 the learned Civil Judge allowed the application under sections 32/33 of the Arbitration Act, 1940 directing the said arbitrator to consider all the claims submitted by the respondent. Being aggrieved, the appellant assailed the said order in Civil Revision No.124 of 1992 which was allowed by this Court on 15-6-1995, whereby the order dated 9-1-1992 passed by the learned Civil Judge Ist Class, Rawalpindi was set aside. The reasons advanced by this Court were that vide clauses 69 and 72 of the condition of contract, only the claim of the respondent to the extent of Rs.1,13,78,207 will be considered by the arbitrator, who was otherwise not competent to enlarge the scope of agreement between the parties. Later, the said learned arbitrator was substituted by Mr. Justice (Retired) Ghulam Ahmad. However, upon showing no confidence Mr. Justice Akhtar Hussain was appointed as arbitrator. The latter sent his award dated 5-8-2010 to the civil court without its formal pronouncement. The learned civil court made the said award as rule of the court on 20-9-2011 which is challenged in the instant appeal.

4. The learned counsel for the appellant submits that the impugned judgment and decree is not sustainable in law as the same is in violation of section 20(4) of the Arbitration Act, 1940 as no reference was sent by the civil court to the learned arbitrator; that under section 14 of the Act ibid the learned arbitrator was required to send a notice to the appellant before sending the award which was not complied with; that learned arbitrator has mis-conducted himself and mis-conducted the proceedings as apparent from the face of the award; that in Para-10 of the award the learned arbitrator has incorrectly mentioned that the witnesses of the respondent were cross examined at length which fact is not reflected from the record; that vide clause 38 of the agreement the time was essence of the contract which aspect was ignored while delivering the award; that under clause 48-A of the contract no escalation/ compensation could be awarded to the respondent-contractor; that the judgment rendered by this Court on 15-6-1995 in Civil Revision No.124 of 1992 was ignored while

passing the impugned judgment and decree whereby it was held that the scope of dispute was confined only to the amount for which notice under sections 69/72 of the condition of the contract was given to the appellant and no court was competent to enlarge the scope of reference; that the findings on the differential amount of Rs.4.9 millions was not based on any cogent evidence, as no issue in that respect was ever framed. Places reliance on FAUJI FOUNDATION AND ANOTHER v. SHAMIM-UR-REHMAN and (PLD 1983 SC 457) and SHAMIM-UR-REHMAN v. FAUJI FOUNDATION, RAWALPINDI and another (1992 SCMR 1496) and prays for setting aside the impugned judgment.

5. Conversely, learned counsel for the respondent submits that under section 17 of the Arbitration Act, 1940 the appeal is not competent as the decree was passed exactly in accordance with the award; that the arbitration was convened on the basis of notices which were issued in accordance with the terms of reference; that another agreement dated 3-9-1984 had supplemented the earlier agreement whereby claim on the basis of escalation/ compensation was made permissible; that the respondent accepted the contract with clear understanding that he will be fully protected; that the attitude of the appellant was adamant that they have failed to perform their part of the contract by fulfilling the responsibilities.

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

7. Although the time was essence of the contract, yet its period of 24 months was further extended to another 14 months and 19 days by the appellant at the request of the respondent. On the failure of the respondent to complete contract, (even after extended time), the work was completed by another contractor for which 03.05 million rupees was paid by the appellant. The award of the differential amount of 4.9 million was granted which was later made rule of the court under section 14 of the Arbitration Act, 1940; On

the other hand, a perusal of clause 40-A of the contract reveals that no claim for escalation/compensation due to rise in prices of material/labour and overhead will be acceptable by the employer for the completion of work. The respondent's claim that this clause of the original contract was modified/diluted by a supplementary agreement dated 3-9-1984, is not correct. Last clause of the said agreement specifically stipulates that the employer agreed to pay to the contractor in consideration of the construction, completion, maintenance of the work, contract price, and time in the manner prescribed by the original contract. This means that clause 40-A expressly stipulates that no claim of escalation/compensation can be allowed. We rely on the judgment of the honourable Supreme Court of Pakistan rendered in HOUSE BUILDING FINANCE CORPORATION v. SHAHINSHAH HUMAYUN CORPORATIVE HOUSE BUILDING SOCIETY and others (1992 SCMR 19) wherein it is held that stipulation not expressed in a written contract was not to be implied merely because the Court thought that it would be reasonable thing to imply. It was observed as follows:--

"A stipulation not expressed in a written contract should not be implied merely because the Court thinks that it would be a reasonable thing to imply it. Such an implication can be made only on consideration of the terms of the contract in a reasonable manner and if the Court is satisfied that it should necessarily have been intended by the parties when the contract was made. In documents of contracts where terms and conditions have been exhaustively specified dealing with all possible future and foreseeable contingencies but if certain fundamental contingencies have been left out which necessarily in the context, facts and circumstances of the case should have been incorporated and can be spelt out, then the Court may imply such conditions."

8. The observation passed in Civil Revision No.124 of 1992 vide order dated 15-6-1995 is to the extent that the agreement between the parties contained stipulation that contractor's claim would be confined only to the amount for which a notice under clauses 69 and 72 was given to the appellant,

neither the court nor the arbitrator was competent to enlarge the scope of the agreement or the application made under section 20 of the Arbitration Act. This means that the award of differential amount between the contract given to the respondent and those mentioned in the contract given to the 3rd party was beyond the scope of jurisdiction of learned arbitrator. Additionally, section 20 of the Arbitration Act requires that the court shall issue notice to the parties to the agreement requiring them to file agreement and if no sufficient cause is shown, the court shall order the agreement to be filed and make an order of reference to the arbitrator. This means that a notice in terms of reference to the arbitrator is the requirement of law, which was not complied with.

9. Under section 17 of the Arbitration Act 1940, an appeal shall lie on the ground that the decree is in axcess of or not in accordance with the award but this provision is attracted when the court finds no reason either to remit or to set aside the award. However, we find reasons to differ with the learned Civil Judge. It is true that court while examining the correctness and legality of award does not act as a court of appeal and cannot undertake reappraisal of evidence recorded by the arbitrator in order to discern the error or infirmity in the award. But when the award was given by the Arbitrator against the terms of the submissions made before him, adverse inference can be drawn against him. Misconduct of proceedings was not only alleged but proved against the learned arbitrator, for which it does not necessarily imply anything in the nature of moral turpitude. In the judicial sense the misconduct of an arbitrator means his failure to perform his essential duty resulting in substantial miscarriage of justice between the parties. We follow the dictum laid down by the apex Court in MIAN CORPORATION through Managing Partner v. Messrs LEVER BROTHERS OF PAKISTAN LTD through General Sales Manager, Karachi (PLD 2006 SC 169) and BROOKE BOND (PAKISTAN) LTD. v. CONCILIATOR APPOINTED BY THE GOVERNMENT OF SINDH AND 6 OTHERS (PLD 1977 Supreme Court 237).

10. Even otherwise, it is not the function of the arbitrator to be influenced by his own imagination and opinion ignoring relevant clauses of the contract between the parties as he is required to apply already agreed clauses of the contract. We, therefore, are of the opinion that the judgment and decree based on award is beyond the terms of reference for being without notice and was against the clause 40-A of the contract and is therefore, not sustainable in the eyes of law. We may observe and adopt the observation given by the Hon'ble Supreme Court of Pakistan in the case cited SHAMIM-UR-REHMAN v. FAUJI FOUNDATION, RAWALPINDI and another (1992 SCMR 1496) that Islam protects trust funds more and its protection, retrieval is justified by all means.

11. For what has been discussed above, we allow this appeal, set aside the judgment passed by the learned trial court and remand the case to the trial Court to decide it afresh in accordance with clear terms of reference and on the basis of contract between the parties.

SAK/F-29/L **Case demanded.**

2013 M L D 1395

[Lahore]

Before Ijaz Ahmad and Ali Baqar Najafi, JJ

MUHAMMAD ASIF---Appellant

Versus

MUHAMMAD IDREES---Respondent

R.F.A. No.132 of 2010, heard on 14th May, 2013.

(a) Qanun-e-Shahadat (10 of 1984)---

----Art.76(i)---Penal Code (XLV of 1860), S.489-F---Criminal Procedure Code (V of 1898), Ss.22-A & 22-B---Civil Procedure Code (V of 1908), O.XXXVII, Rr.2 & 3---Suit for recovery of amount on basis of dishonoured cheque---Registration of criminal case against defendant on plaintiff's application made to Ex-Officio Justice of Peace---Certified copy of such cheque tendered in evidence by plaintiff---Validity---Under Art. 76(1) of Qanun-e-Shahadat, 1984, secondary evidence might be given of existence or contents of a document, when its original was formed as part of judicial record and was not available and only a certified copy thereof was available---Certified copy of such cheque was admissible as secondary evidence---Absence of original cheque was not fatal to plaintiff's claim in circumstances.

(b) Oaths Act (X of 1873)---

----Ss. 9, 10 & 12---Defendant's offer made to plaintiff to take special oath in support of his claim in suit---Refusal of plaintiff to accept such offer---Effect---Plaintiff by refusing to accept such offer had rested his claim before court on basis of evidence---Court would decide case on its own merits.

Kh. M. Asghar Farooq for Appellant.

Qazi Ibrar Hussain for Respondent.

Date of hearing: 14th May, 2013.

JUDGMENT

ALI BAQAR NAJAFI, J.---This appeal has arisen out of judgment and decree dated 30-4-2010, whereby a suit for the recovery of Rs.6,60,000 filed by the respondent under Order XXXVII, C.P.C. was dismissed.

2. Brief facts giving rise to the filing of the present appeal are that the respondent filed a suit under Order XXXVII, C.P.C. for recovery of Rs.6,60,000 on the basis of cheque No.16919855 regarding Account No.2642-31 stating that he had paid the said amount as a loan in January, 2004 to the appellant in presence of witnesses, which he promised to repay in June, 2005. Upon expiry of the said period, the respondent contacted the appellant who issued the above said cheque with his signatures in presence of witnesses. The cheque (Exh. PA) so issued when presented was dishonoured by the bank and the dishonour slip (Exh. PA/1) was issued. Meanwhile, the appellant was arrested in some other criminal case. The respondent, therefore, had to file a petition under sections 22-A/22-B, Cr.P.C. before the Ex Officio Justice of the Peace, Chakwal where he appeared on 18-7-2006 in police custody and admitted to have issued the said (cheque, whereafter the concerned S.H.O. was directed to register the said criminal case. Consequently, F.I.R. No. 247 dated 8-8-2006 under section 489-F, P.P.C. was registered at Police Station City, Chakwal. The appellant was tried and on 23-2-2007 was convicted, whereafter he filed an appeal and the respondent also preferred a revision petition.

3. In the said suit, the appellant filed an application for leave to defend, which was accepted on 3-10-2009, whereafter he filed written statement and out of pleadings of the parties, the following issues were framed:--

ISSUES

(1) Whether the defendant borrowed an amount of Rs.6,60,000 from the plaintiff in January 2004 and issued Cheque No. 16919855 worth Rs.6,60,000 regarding Account No. 2642-31 in presence of the witnesses in the month of June 2006, which was dishonoured by the concerned bank? OPP

(2) Whether the plaintiff is entitled to the decree for recovery of

Rs.6,60,000 as prayed for? OPP

(3) Whether the plaintiff has got no cause of action and locus standi to file this suit? OPD

(4) Whether the plaintiff is estopped by his words and conduct to bring this suit? OPD

(5) Whether the suit is time-barred? OPD

(6) Whether the plaintiff is liable to be rejected under Order VII Rule 11, C.P.C.? OPD

(7) Whether the suit is false, frivolous and vexatious and the defendant is entitled to get special costs under section 35-A, C.P.C.? OPD.

(8) Relief

4. The appellant appeared as P.W.1 and produced copy of Cheque (Exh. PA), copy of dishonour slip (Exh.PA/1), copy of another cheque (Exh. P/2) and copy of dishonour slip (Exh. P2/1), copy of suit titled Asif Mehmood versus Muhammad Idrees (Exh.P-3), copy of order dated 9-10-2006 (Exh. P/4), copy of application filed under sections 22-A/22-B, Cr.P.C. (Exh. P/5) and copy of order-sheet (Exh. P/6) in support of his case. On the other hand, the respondent appeared as DW1 and tendered in evidence the documents Exh. D1 to Exh. D20 in support of his defence. The trial court decided issues Nos.1 and 2 jointly in favour of the respondent and decreed the suit on 30-4-2010 to the full claim of Rs.6,60,000.

5. The learned counsel for the appellant submits that the respondent failed to produce the witnesses, in whose presence the cheque in question was issued; no date, time and place for issuing of the cheque was mentioned in the complaint; the respondent had no enough sources to pay the said amount to the appellant; the respondent filed various suits, which were dismissed and this fact is evident from the documents Exh.D-1 to Exh.D-20; during the proceedings, the appellant offered the respondent in the court to solemnly affirm his oath on the Holy Qur'an in support of his claim, which he refused, therefore, adverse presumption be drawn against his claim; the original cheque was not presented and only its certified copy was presented; under the law, the burden of proof to deliver and execute the cheque was upon the respondent,

which he failed to discharge; even otherwise, the account of the appellant was already closed; the respondent has taken the advantage of his relationship with the appellant and manoeuvred and had stolen away the cheque and presented the same after its fabrication by practising fraud and forgery; that the appellant neither issued any cheque nor is liable to pay any amount; Reliance is placed upon the cases of United Bank Limited v. Ch. Ghulam Hussain (1998 CLC 816) and Syed Ali Hussain Naqvi v. Ali Sher Naqvi (2005 CLC 1751) and prays for setting aside of the decree.

6. Conversely, the learned counsel for the respondent submits that issuance of the cheque is admitted by the appellant as he appeared before the court of Additional Sessions Judge/Ex-officio Justice of the Peace on 18-7-2006 and admitted to have executed the cheque; that the said cheque was dishonoured and Exh.PA/1 is the copy of dishonour slip; the proceedings under Order XXXVII, C.P.C. are summary in nature, as already it stands established that the appellant issued a cheque of Rs.6,60,000, which was dishonoured; a criminal case was also stood registered against the appellant at the behest of the respondent, in which he has been convicted; earlier suit filed by the appellant was dismissed under Order VII Rule 11, C.P.C.; that no application of money laundering was ever filed by the appellant against the respondent. Therefore, prays for dismissal of the appeal.

7. We have heard the learned counsel for the parties and perused the available record.

8. Under section 118 of Negotiable Instruments, Act 1881, a presumption is drawn in respect of consideration, date, time of acceptance, time of transfer, endorsement, and holder in due course. The said provision is reproduced hereunder for ready reference:

"118. Presumptions as to negotiable instruments of consideration:

Until the contrary is proved, the following presumptions shall be made:

(a) of consideration: that every negotiable instrument was mare or drawn for consideration and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, endorsed negotiated or

transferred for consideration;

(b) As to date: that every negotiable instrument bearing a date was made or drawn on such date;

(c) As to time of acceptance: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) As to time of transfer: that every transfer of a negotiable instrument was made before its maturity;

(e) As to order of endorsement: that the endorsement appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) As to stamp: that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) That holder is a holder in due course: that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him".

The respondent has, therefore, discharged his liability, accordingly. Even otherwise, the respondent has also made a statement as P.W.1 to the extent that he was running a shop with a name earlier but at the time of his evidence he was not running any shop, meaning thereby that earlier he had the capacity to pay the amount to the appellant. The next argument is that the original cheque was not presented and that only its certified copy was presented. A perusal of the record in this behalf reveals that Exh.PA/1 mentions the stamp of the Additional District Judge, Chakwal who verified after its comparison with the original forming part of record of the file. Under Article 76(1) of Qanun-e-Shahadat Order, secondary evidence may be given of the existence or contents of a document when the original document has formed part of a judicial record, which is not available and only a certified copy thereof is available, which is admissible as a secondary evidence. The said provision of Qanun-e-Shahadat Order is also reproduced hereunder for

ready reference:--

"76. Cases in which secondary evidence relating to document may be given.---Secondary evidence may be given of the existence, condition or contents of a document in the following cases:--

"(i) When an original document forming part of a judicial record is not available and only a certified copy thereof is available, certified copy of that certified copy shall also be admissible as a secondary evidence----------."

Therefore, we conclude that absence of the original is not fatal to the claim of the respondent.

9. The next argument of learned counsel for the appellant is that an adverse presumption be drawn against the respondent when he had failed to take the oath on solemn affirmation. Under section 9 of Oaths Act, 1973, the court may ask a party or a witness whether he would make oath as proposed by opposite party and if he accepts such an offer, the oath shall be administered and after such an oath, the evidence so given shall be conclusive proof of the matter in issue. However, if the party or the witness refuses to take the oath or solemn affirmation, he shall not be compelled to make such an oath. The court shall record this fact as a part of the proceedings together with reasons, which may be assigned for such refusal. Since the oath offered by the appellant was not accepted by the respondent and he rested his claim before the court on the basis of evidence by showing enough confidence, therefore, the case was to be decided on its own merits and, thus, we conclude that the appellant has failed to discharge his burden as required under the law. The trial court has rightly passed the judgment and decree impugned before this Court in the present appeal. Moreover, the judgments cited at bar are not applicable to the facts of the case. The learned counsel for the appellant has not been able to point out any illegality and misapplication of law upon the facts on the basis of reappraisal of evidence. Therefore, we dismiss this appeal, with no order as to costs.

SAK/M-123/L **Appeal dismissed.**

2013 M L D 1790

[Lahore]

Before Ali Baqar Najafi, J

IMRAN alias MANOO---Appellant

Versus

The STATE---Respondent

Criminal Appeal No.1164 of 2010, decided on 8th May, 2013.

Penal Code (XLV of 1860)---

----Ss.365-B & 376---Kidnapping, abducting or inducing woman to compel for marriage and rape---Appreciation of evidence---Sentence, reduction in---Medical evidence---Hymen of alleged victim was old torn---Unexplained delay in registration of F.I.R.---Trial Court convicted accused and sentenced him to imprisonment for life---Plea raised by accused was that victim was habitual of sexual intercourse and her hymen was old torn---Validity---Statement of victim girl regarding her abduction reported with delay of eight days was not confidence inspiring on the basis of which it could not be said that prosecution proved the case beyond reasonable doubt---Evidence to attract provision of S. 365-B, P.P.C. was not available in which High Court acquitted the accused---In view of statement of lady doctor, coupled with positive test of DNA, Trial Court rightly convicted accused under S. 376 (i), P.P.C. High Court, however, took lenient view and reduced sentence to imprisonment for ten years.

2012 YLR 918 and PLD 2010 SC 47 ref.

Tahir Mehmood Gondal for Appellant.

Muhammad Naeem Sheikh, D.P.G. for the State.

Date of hearing: 11th March, 2013.

JUDGMENT

ALI BAQAR NAJAFI, J.---Appellant, Imran alias Manoo son of Muhammad Azam impugns judgment dated 16-4-2010 passed by the learned

Additional Sessions Judge, Bhalwal, District Sargodha in case F.I.R. No.219 dated 4-5-2007 registered under sections 365-B and 376, P.P.C. at Police Station Kot Momin, whereby the trial court convicted him under section 365-B, P.P.C. and sentenced to imprisonment for life with fine of Rs.50,000 in default of which for further 4 months.

He was also convicted under section 376(i), P.P.C. and sentenced to 25 years R.I. with fine of Rs.50,000 in default of which he will further undergo for 4 months S.I. He was further directed to pay compensation of Rs.50,000 under section 544-A, Cr.P.C. to the victim in default of payment to suffer for further 4 months. The appellant was given the benefit of section 382-B, Cr.P.C. and the sentences are directed to run concurrently.

2. The case of the prosecution as per Exh.PA is that on 26-4-2007 at 12-00 noon the complainant along with her husband while searching her daughter, namely, Mst.Kamal Farooq who went out to ease herself and did not come back, in the way met Muhammad Nawaz and Ijaz Ahmad who told them that her daughter was going to Kino garden of one Nazir Sheikh. They started her searching and when failed to locate, came back to their house where-after her daughter came and told that Imran alias Manoo committed zina forcibly with her. Hence this F.I.R.

3. A formal charge was framed against the accused under sections 365-B and 376, P.P.C. for abduction of Mst.Kamal Farooq for the purpose of committing zina-bil-jabr and thereafter he committed zina-bil-jabr with her to which the accused pleaded not guilty and claimed trial, whereupon the prosecution was directed to produce its witnesses. The prosecution examined as many as 7 witnesses and 2 witnesses were called as CWs.

4. The complainant appeared as P.W.1, Mst.Kamal Farooq, victim as P.W.2, Muhammad Nawaz as P.W.3, who saw the victim going to the Kinno garden, Lady Doctor appeared as P.W.4 who examined the victim, P.W.5 stated about the potency test of the appellant, P.W.6 produced the victim for medical examination, P.W.7 is Investigating Officer. CWI appeared stating that sealed parcel of worn clothes, vaginal swabs and blood were kept in Malkhana. In the statement under section 342, Cr.P.C., the appellant denied

the allegation and replied that he was involved on the basis of the political rivalry and enmity by the complainant.

5. Learned counsel for the appellant argues that the judgment of the trial court suffers from illegality and injustice, therefore, requires to be set aside; that the learned trial court failed to bring home the guilt of the appellant but awarded capital punishment; that the conviction passed by the trial court is severe, harsh and uncalled for in the facts and circumstances of the case; that the findings of the trial court are totally based on surmises and conjectures instead of evidence on record as P.W.3 Nawaz who saw victim going to Kinno garden did not raise hue and cry; that the conviction against the appellant is not borne out of the evidence produced by the appellant as no witness of occurrence is there; that prosecution story is not in line with the medical evidence as P.W.4, the Lady Doctor, stated that P.W.2 is habitual of sexual intercourse as hymen is old torn; that the victim is consenting party as there is no mark of violence on the person of P.W.2. Lastly, prays for acquittal of the appellant by placing reliance on 2012 YLR 918.

6. Learned Deputy Prosecutor General, Punjab, on the other hand, opposes the contentions raised by the learned counsel for the appellant by arguing that the findings are in line with the evidence produced by the parties and the medico legal report supports the allegation levelled against the appellant which has been proved through the deposition based on fact. Further submits that the contention of the learned counsel for the appellant that the victim is consenting party has no help to the appellant as the victim was minor at the time of occurrence, as such no force is required for kidnapping her from lawful guardianship. Further maintains that the daylight occurrence has duly been corroborated by the truthful witnesses and there is no exception to extend benefit of doubt to the appellant. The victim has narrated the whole story as it is; that the victim was 12 years of age at the time of occurrence. He prays for dismissal of the appeal by placing reliance on PLD 2010 SC 47.

7. I have heard the learned counsel for the appellant as well as learned Deputy Prosecutor General and perused the record.

8. The prosecution case is comprised of the statement of P.W.2, the statement of the Lady Doctor P.W.4 and the statement of Nawaz P.W.3. The

victim Mst.Kamal Farooq has stated that on the day of occurrence it was the appellant who caught hold of her and committed rape in three/four minutes in the Kinno garden at 12-00 noon and then confined her to Dera Nazir for five/six hours till evening. She also admitted that the accused party wanted to compromise the matter for which the delay was occasioned and after eight days the matter was reported to the police. Even after such a delay P.W.4 stated that she has experienced a sexual intercourse though no mark of violence was found but P.W.4 admitted that the hymen was torn and healed and vagina admitted two fingers and there was no bleeding. The age of the victim was given 12 years on the general examination and on the information supplied by the victim. However, no test was conducted to form the opinion about the age of the victim. But the victim was stated to be a fully matured girl. The DNA Test Exh.PJ was conducted, the result of which suggests that only the semen matched with the specimen found on the first portion of the torn of Shalwar of the victim. Obviously, after 8 days the vaginal swabs could not retain the semen. Such delay was occasioned due to the efforts being made for the compromise by the appellant. The defence of the appellant to this is that he was involved on the basis of political enmity.

9. In my humble opinion, the statement of the victim P.W.2 regarding her abduction reported with the delay of 8 days does not appear to be confidence inspiring on the basis of which it cannot be said that the prosecution had proved the case beyond reasonable doubt. Therefore, the evidence to attract the provision of section 365-B, P.P.C. is not available in which the appellant is acquitted but keeping in view the statement of lady doctor coupled with positive test of DNA the trial court has rightly convicted the appellant under section 376(i), P.P.C. However taking a lenient view for the above reasons, his sentence is reduced to 10 years' R.I.

10. In this view of the matter, the appeal is partially allowed and the appellant is acquitted of the charge of section 365-B, P.P.C. but convicted under section 376(i), P.P.C. and his sentence is reduced to 10 years' R.I. with fine of Rs.50,000 in default of which for 4 months' S.I. The compensation of Rs.50,000 as required under section 544-A, Cr.P.C. shall remain intact. The benefit of section 382-B, Cr.P.C. is extended.

MH/I-22/L **Order accordingly.**

2013 P L C (C.S.) 195

[Lahore High Court]

Before Ali Baqar Najafi, J

Dr. MOBINA EHSAN

Versus

CHAIRMAN, PPSC and 4 others

Writ Petitions Nos.3195 and 3109 of 2012, decided on 13th December, 2012.

Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

----Rr. 19, 29, 22 & 3---Constitution of Pakistan, Arts.199 & 25---Constitutional petition---Civil Service---Appointment on basis of domicile---Appointment on ad hoc basis---Petitioner impugned rejection of her application for the post of Professor on ground that petitioner was domicile of Islamabad which was Federal Territory, and only those domiciled in the Province could apply for the said post---Petitioner also impugned appointment made to said post on ad hoc basis---Contention of petitioner inter alia was that she had been a regular employee of the Province for 21 years and to restrict candidates domiciled outside the Province was discriminatory under Art.25 of the Constitution---Validity---Advertisement for recruitment to said post prescribed condition of domicile of the Province under head of "Qualification" and admittedly petitioner was a domicile of Federal territory---Under Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 appointment to the post could be made by promotion, transfer or initial recruitment---Vacancies could be filled with persons domiciled in the Province of Punjab in accordance with merit and ad hoc appointments may be made under strict compulsions---Contention that the petitioner was already in service of the Provincial Government, therefore, the condition of being domiciled in Punjab was required to be dispensed with; was to be repelled by the fact that advertisement did not prescribe any such concession or embargo to a government servant such as the petitioner---Retention of domicile was the right of an individual but so was its change depending on priorities and it was

mandatory for candidate to have domicile of the Province of Punjab and therefore, the Provincial Government was within its right to prescribe any criteria permissible under law---Provincial Government, if it considers its own domicile holders (inhabitants) for regular vacancies, does not infringe the Constitutional rights of the inhabitants of the Federal territory---High Court directed that letter of petitioner addressed to the Authorities was to be decided in accordance with law and Policy and observed that all requirements of ad hoc appointments as per the Rules must be strictly complied with---Constitutional petition was disposed of accordingly.

Arif Karim for Petitioner.

Saif-ur-Rehman, A.A.-G. with Dr. A.B. Saleem, APMO, RMC on behalf of the Principal, RMC.

ORDER

ALI BAQAR NAJAFI, J.--- Through this single order I intend to dispose of the instant petition (Writ Petition No.3195 of 2012) and Writ Petition No.3109 of 2012, as both involve common question of law and facts.

2. The brief facts giving rise to filing of this writ petition are that the petitioner has challenged order dated 20-11-2012 rejecting her application for recruitment to the post of Professor of Pathology in the Punjab Health Department and order dated 1-12-2012 on the ground that on her representation regretting to accede her request in the light of the relevant regulation/policy decision as the Punjab Public Service Commission has not considered the domicile of District Islamabad being Federal Territory after 2000. She prays direction to Punjab Public Service Commission to allow her to appear in forthcoming examination for the post stated above.

3. In Writ Petition No.3109 of 2012, the petitioner prays to declare the policy of the respondents to fill the post of Professor of Pathologist on ad hoc basis as illegal and fill the same on regular basis through Punjab Public Service Commission by promotion amongst the regular employees besides prayer that she be promoted for the post being eligible.

4. Learned counsel for the petitioner submits that the petitioner served the health department of Government of Punjab for more than 21 years as regular employee on the basis of domicile of Islamabad without any objection; even

after 2000 she was not asked either to retain or change it for her future prospects and their refusal to entertain the application for the post of Professor of Pathology now is hit by principle of estoppel and as such the order has been passed without lawful authority; that the candidate of other Provinces are working in Islamabad and to restrict the candidates having Islamabad domicile for employment in the other Province (including the Punjab) is discriminatory treatment which is not warranted under Article 25 of the Constitution of Islamic Republic of Pakistan; that the condition of "District Islamabad as Federal Territory in 2000" may be applied to those residents of Islamabad who got the domicile after the promulgation of above condition; that the said policy is not applicable to the employees already in service prior to the year of 2000 rather it may be enforced for the new candidates applying for the post; that after granting permission to the petitioner to appear in the examination of the Punjab Public Service Commission earlier, the Chairman of the Punjab Public Service Commission has no authority to reject the candidature of the petitioner; that prior to the commencement of dissolution of West Pakistan Order, 1970, the Islamabad was part of the Province of Punjab and its residents were eligible to apply for Federal Services as well as services in the Province of Punjab, therefore, the impugned orders are not sustainable in the eyes of law; that the policy of the respondents to fill the post on ad hoc basis is illegal. Lastly, he prays for acceptance of the writ petition.

5. Learned Assistant Advocate-General has opposed the grant of petition on the ground that the petitioner is not eligible to apply for the post of Professor of Pathology having domicile of Islamabad as it was specifically debarred. He further, by relying on Rule 20 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, submits that vacancies in various posts shall be filled from the persons domiciled in the Province of Punjab in accordance with merit as these are reserved for persons domiciled in such area; that under Rule 22 of the Rules ibid the respondents are within its competence to make appointment on ad hoc basis and that the petitioner being domiciled of Islamabad and is ineligible to apply for the said post; that the petitioner is not entitled to object the policy meant for candidates of Punjab Domiciled especially in the writ jurisdiction. He prays for dismissal of the writ petition.

6. I have heard the learned counsel for the parties and perused the record minutely.

7. Admittedly, the petitioner is a regular employee and already appointed as Woman Medical Officer in 1991 and then regular Assistant Professor in 1999, then promoted as Associate Professor in 2006 and is working in Rawalpindi Medical College as reflected in the Experience Certificate dated 4-10-2012 (No.PF/6803/RMC). Respondent No.3 has also been sent a "No Objection Certificate" dated 4-10-2012 (No.PF/6802/RMC) by the Principal of the said college, where-after no specific order was passed by him. The advertisement dated 23-9-2012 prescribes the condition of domicile of Punjab under the head of QUALIFICATION for recruitment against three regular posts and admittedly the petitioner has a domicile of Islamabad. The government servants are neither included nor excluded in the said advertisement, meaning thereby that they can apply. The sole question before this Court is as to whether a person possessing a domicile of a place other than Punjab may apply to the prescribed post notwithstanding fulfilling other qualifications.

8. To answer this it is important to peruse Rules 19, 20 and 22 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. Rules 3(1) and 3(3), Rule 19(1), Rule 20 and Rule 22 read as under:---

> "3. (1) Appointment to posts shall be made by promotion, transfer or initial recruitment, as may be prescribed by the Government in relation to the posts in a grade from time to lime:
>
> {Provided that where as a result of retrenchment in, or reorganization of a Government Department/office or an Autonomous or Semi-Autonomous Organization set up by the Government, certain posts or cadres are abolished and Government decides, by a special order, to absorb persons rendered surplus in consequence thereof, such person may be absorbed against such posts in such manner and on such terms and conditions as may be determined by the Government:
>
> Provided that absorption of such persons shall be made on recommendations of the Punjab Public Service Commission in case of posts carrying BS-16 and above and in case of other pasts on the recommendation of the Committee constituted by the Chief Minister

or any officer authorized by him in that behalf:

Provided further that for purposes of seniority, persons absorbed as above shall be treated as having been appointed by initial recruitment with effect from the date they take over charge in the absorbing functional unit/cadre}

(2) .....

(3) The appointment shall be made from among such persons possessing such qualifications and fulfilling such other conditions as may be prescribed by the Government from time to time.

19 (1) No person shall be appointed to a post unless he is a citizen of Pakistan, provided that this restriction may be relaxed by the Government in suitable cases.

(2) .....

20. Vacancies in various posts shall be filled from persons domiciled in the Province of the Punjab in accordance with merit: provided that for a period not exceeding (20 years) from the commencing day of Constitution of the Islamic Republic of Pakistan, such posts map be reserved for persons domiciled in such areas as may be specified.

22. (1) When a post is required to be filled, the appointing authority shall forward a requisition to the selection authority immediately after decision is taken to fill the post.

(2) After forwarding a requisition to the Selection Authority, the appointing authority may, if it considers necessary in the public interest, fill the post on ad hoc basis for a period not exceeding (one year) pending nomination of a candidate by the selection authority:

Provided: (1) The vacancy is advertised properly in the newspapers;

(2) the appointment is mode of a person duly qualified in accordance with the provisions of the rules and orders applicable to the post;

(3) the selection is made on the basis of merit determined by objective criteria;

(4) the appointment order certifies that a requisition has been sent to the selection authority; and

(5) the appointment is made subject to revocation at any time by

the competent authority:

Provided further that ad hoc appointment shall not confer any right on the persons so appointed in the matter of regular appointment to the same post nor the service will count towards seniority in the grade."

A perusal of the above provisions reveals that an appointment to the post is made either by promotion, transfer or initial recruitment as may be prescribed, among such persons possessing required qualification and fulfilling conditions prescribed by the Government from time to time. But the candidate must possess the prescribed educational qualification and experience for initial appointment. However, the vacancies in various posts are filled from persons domiciled in the Province of Punjab in accordance with merit. The only disqualification for appointment is that a person must be a citizen of Pakistan. However, ad hoc appointments may be made under strict compulsions.

9. The argument of the learned counsel for the petitioner that by virtue of being in service of Government in Punjab, the condition of domicile of Punjab is required to be dispensed with, is to be first answered by the Government/respondent No.5 as the advertisement dated 23-9-2012 does not prescribe any such concession or embargo to the government servant such as the petitioner. To retain a domicile is the right of the individual and so is its change depending on the priorities. Although, only a person not having citizenship of Pakistan is disqualified to apply for an appointment on regular basis but it is mandatory for him to have a domicile of Punjab. The Government is within its right to prescribe any criteria permissible under the law. If the Government wants to consider its domicile holders (inhabitants) for regular vacancies, no constitutional right of the inhabitants of Federal territory is infringed. Since the Letter No.PF/6802/RMC dated 4-10-2012 addressed by respondent No.5 to respondent No.3 has not been considered/decided determining the eligibility of the petitioner, therefore, it is observed that he may decide this letter strictly in accordance with law and the policy. It is further observed that all the requirements of Ad hoc Appointment as per rules must be strictly complied with.

In this view of the matter, these writ petitions are disposed of.

KMZ/M-2/L **Order accordingly.**

2013 P L C (C.S.) 353

[Lahore]

Before Ali Baqar Najafi, J

Raja MUHAMMAD NASIR KHAN

Versus

ACTING VICE-CHANCELLOR and others

Writ Petitions Nos.2431, 2063, 2680, 2485 and Criminal Original No.141-W of 2012, decided on 12th December, 2012.

University of Wah Act (IV of 2009)---

----Ss. 12, 10 & 18---Constitution of Pakistan, Art.199---Constitutional petition---Educational institution---Appointment of Vice-Chancellor---Distinction between "Acting Vice-Chancellor" and "tenure appointment of Vice-Chancellor"---Petitioners impugned the appointment of respondent as Acting Vice-Chancellor on the grounds that said appointment was not made in accordance with prescribed procedure and that post of Vice-Chancellor had been lying vacant for over two years---Validity---- Under the University of Wah Act, 2009 post of Vice-Chancellor was described as a tenure post whereas the post of Acting Vice-Chancellor was temporarily arranged until regular incumbent was made available and therefore, the post of Acting Vice-Chancellor was for an interim period---Exact powers of Acting Vice-Chancellor had to be defined in unequivocal terms for a definite period by the Board constituted under University of Wah Act, 2009---Disastrous consequence may ensure for a university being run without its Vice-Chancellor for an indefinite period and in the present case, a serious search of the Vice-Chancellor was lacking---Said two posts could not be equated as one was a tenure post described as an Officer of the University and the second (Acting Vice-Chancellor) was bound by the empowering instrument issued by

the Board constituted under University of Wah Act, 2009---Office of Acting Vice-Chancellor could not be dispensed with for a long period such as in the present case---During such period, Acting Vice-Chancellor would not be the substitute for the Vice-Chancellor---High Court declared appointment order of respondent as having been passed without lawful authority and without following the procedure and rules under the University of Wah Act, 2009---High Court further directed the concerned authority to appoint Vice-Chancellor in accordance with prescribed procedure---Constitutional petitions were allowed, accordingly.

Dr. Aftab Ahmad Malik v. University of Engineering and Technology and others 2005 PLC (C.S.) 80 and Board of Governor Aitchison College, Lahore v. Punjab Labour Appellate Tribunal and others 2001 SCMR 1928 ref.

Syed Nazim Hussain for Petitioner.

Abdul Rehman Khan, Legal Advisor for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- This single order disposes of Writ Petition No.2431 of 2012, Writ Petition No.2063 of 2012, Writ Petition No.2680 of 2012, Writ Petition No.2485 of 2012 and Criminal Original No.141-W of 2012, as common questions of law and facts are involved in all these cases.

W.P.No.2431 of 2012

The petitioners through this writ petition calls in question the appointment of respondent No.1 and all his orders/action, taken after 1-4-2010. He prays to declare his appointment as null and void and his orders to have been passed without lawful authority with the further prayer that the concerned authority be directed to make necessary arrangement for the appointment of Vice-Chancellor of Wah University in accordance with the University of Wah Act, 2009.

W.P.No.2063 of 2012

This petition challenges order dated 10-8-2012 transferring the petitioner, Raja Muhammad Nasir to Wah Engineering College (WEC) against the vacant post of Lecturer and his immediate relieving order 12-8-2012 without completing the process of handing/taking over charge, passed by newly appointed subordinates of respondent No.l Vice-Chancellor University of Wah, Wah Cantt.

W.P.No.2680 of 2012

Omer Nadeem, petitioner, who was appointed as Lab. Supervisor on 15-7-2006 on contract basis for one year impugns verbal order dated 31-8-2012 passed by respondent No.1 with the further direction to respondent No.1 to extend his contract and to regularize the his services in the respondent-University.

W.P.No.2485 of 2012

Ms. Shahla Riaz who is wife of Raja Muhammad Nasir Khan, petitioner in the connected writ petitions applied for the post of Principal Mashal Degree College, advertised in daily Urdu Newspaper on 20-8-2012 and has challenged notification dated 18-9-2012 appointing respondent No.1, Acting Vice-Chancellor, University of Wah, Wah Cantt. head/member of the penal for conducting interviews for the said post. She prays direction for change of respondent No.1 and appointment as head/member of the interview penal, some other competent and impartial person.

Crl. Orig No.141-W-2012

Raja Muhammad Nasir Khan, petitioner, has filed the instant contempt petition praying initiation of contempt proceedings against the respondents under sections 3/4 of the Contempt of Court Act for violating order of this court dated 17-8-2012 in Writ Petition No.2063 of 2012 as vide letter dated 11-10-2012 the respondents processed for approval of an agenda known as

"Approval of the Agenda of 1 of 2012 meeting of Board of Governors of the University of Wah, Wah Cantt.".

2. Learned counsel for the petitioner submits that respondent No.1 is not a legally constituted authority in terms of sections 2(p) (q), 12 and 18 (1)(a) of the University of Wah Act, 2009; that no rules were framed there under; that the Board constituted under section 18 of the Act ibid does not convene meeting and the consent/signatures of the members is received by circulation; that respondent No.1 is appointing and ousting number of teaching and other staff by using the powers of Vice-Chancellor which is illegal and not provided in the Act ibid as post of Vice-Chancellor has been lying vacant since April, 2010; that the tenure post is to be filled up in accordance with the rules and the policy, as huge funds are to be received by them. By placing reliance on Dr. AFTAB AHMAD MALIK v. UNIVERSITY OF ENGINEERING AND TECHNOLOGY and others (2005 PLC (C.S.) 80) and BOARD OF GOVERNOR AITCHISON COLLEGE, LAHORE v. PUNJAB LABOUR APPELLATE TRIBUNAL and others (2001 SCMR 1928).

3. Conversely, the learned Legal Advisor questions the maintainability of the writ petition and submits that the University does not have statutory rules; that no rules are framed under sections 26, 27 and 29 of the Act IV of 2009; that no fundamental rights of the petitioners are violated; that the petitioners have approached this Court with unclean hands as the facts were distorted; that the learned counsel on merits, submits that in the background of the fact that on 1-4-2010, the then Vice-Chancellor had abruptly resigned, therefore, in order to deal with the emergency situation the Acting Vice-Chancellor was appointed under section 10 of the Act; that the efforts of the Search Committee is underway and the post of Vice-Chancellor has already been advertised on 21-10-2012, where after the same is in process; that the petitioners have a personal interest, therefore, the petitions cannot be regarded as filed in the capacity of pro bono publico; that the petitioner himself remained posted as

Registrar from 2007 to 2010, therefore, he cannot put a blame upon the respondents solely for not taking steps for filling up the vacancy.

4. I have heard the learned counsel for the parties and perused the record.

5. The office of the Vice-Chancellor has been maintained as Officer of the University under section 7 of the University of Wah Act, 2009. The Government, on the recommendation of the Search Committee can appoint a person as Vice-Chansellor for three years on terms and conditions as determined by the Board constituted under section 18 ibid. However, under section 12 ibid if the office of the Vice-Chancellor is vacant, or he is absent or unable to perform functions due to illness, the Board may make arrangement for the performance of the duties of the Vice-Chansellor by any other person as it deems fit which in this case has not been done.

6. This means that the post of Vice-Chansellor is described as Tenure Post whereas the Acting Vice-Chancellor is a temporarily arranged post until the regular incumbent is made available. Surely, this is for the interim period. Moreover, the exact powers of such an official have to be defined in unequivocal terms for a definite period by the Board. This Court can easily visualize the disastrous consequences which may ensue for a university being run without its Vice-Chansellor for indefinite period. A serious search for a Vice-Chancellor is also lacking in the matter for the simple reason that there cannot be any dearth of an appropriate and duly qualified person for appointment as Vice-Chancellor.

7. The two posts cannot be equated as one being a tenure post described as the officer of the University and, second bound by the empowering instrument issued by the Board. The Office of the Acting Vice-Chancellor cannot be dispensed with even temporarily and definitely for a longer period such as in this case. Needless to state that during this period the Acting Vice-Chancellor will not be the substitute for the Vice-Chancellor.

8. For what has been discussed above, Writ Petition No.2431 of 2012 is allowed and appointment order of respondent No.1 as Acting Vice-Chancellor, University of Wah, Wah Cantt. is declared to have been passed without lawful authority and following the prescribed procedure/rules provided under the University of Wah Act, 2009. The concerned authority under the Act is directed to follow its own prescribed procedure and appoint Vice-Chansellor of the University. This exercise will be completed without further delay.

KMZ/M-19/L **Petition allowed.**

2013 P L C (C.S.) 745

[Lahore High Court]

Before Ali Baqar Najafi, J

TIBRAK MASOOD and others

Versus

E.D.O.(E) and others

Writ Petition No.2293 of 2010, decided on 25th September, 2012.

Constitution of Pakistan---

----Art. 199---Civil service---Appointment---Petitioners who applied for the post of Chowkidar and Naib Qasid, respectively in a Government School, claimed that they were better qualified than any one else, being the local residents; that their father had donated 25 Kanals of land for the school in the village; and that they should at least have a job at the lower level in said school; which was the minimum acknowledgment to which his family was entitled---Constitutional petition was disposed of with the direction to the authorities to accommodate the petitioners in the next seat falling vacant for the post against their eligibility; with a further direction to incorporate in recruitment policy a provision of such acknowledgment through some posts for those who had donated their land for the noble projects of the government schools.

Raja Abdul Rehman for Petitioners.

Khursheed Ahmad Satti, A.A.-G. with Shaimim Akhtar Kiani, Dy. D.E.O.(W) Sohawa for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this writ petition, the petitioners seek a direction to respondents Nos.1 and 2 for a chance to prove their worth as Naib Qasid and Chowkidar in Govt. Girls School, Dihali, Tehsil Sohawa, District Jhelum.

2. The brief facts giving rise to filing of this writ petition are that petitioners Nos.1 and 2 applied for the post of chowkidar and Naib Qasid in Govt. Girls School Dihali, Tehsil Sohawa, District Jhelum, for the reason that they considered themselves to be the local residents as well as duly qualifying the requisite academic qualification. The interviews were conducted on 28-5-2009 in response to the advertisement published in the newspaper, where after they did not receive any intimation of their result.

3. Learned counsel for the petitioners submits that the petitioners are more qualified than anybody else being the local residents as well as on the fact that their father namely Muhammad Anwar had donated 25 kanals of land for the school in the said village and they should have at-least a job at the lower level in the said school; the minimum acknowledgment of which his family is entitled.

4. The respondents have filed the report and parawise comments on 5-6-2010 wherein they disclosed that one Yasir Arfat stood at No.1, and, therefore, was appointed as Naib Qasid whereas Muhammad Tariq son of Muhammad Riaz was appointed as Chowkidar who also stood at No.1 in the separate list on merit. Respondents Nos.1 and 2 further informed this Court that the said two persons were senior in age who must be preferred, in order to secure their future, from any untoward incident of overage; the said post being non-teaching attracts different qualities of candidates; under the policy no provision of any preferential treatment is permissible to a family/person who donated the land for college/school in the village. Hence prays for dismissal

of this writ petition.

5. I have heard the learned counsel for the parties and perused the available record.

6. The record reveals that one Abdul Rasheed son of Muhammad Din having date of birth 9-2-1977, a Matric qualified secured 40 marks in interview and stood at serial, No.2, whereas petitioner No.2 stood at serial No.3, Sajjad Hussain son of Muhammad Banaras who secured 65 marks stood at serial No.1 whereas petitioner No.2 having date of birth 13-6-1979, Matric qualified could secure only 20 marks in Interview. Likewise petitioner No.1 having date of birth 2-2-1980, with primary qualification, secured only 15 marks in interview and stood at serial No.25. Without going into the question as to what objective criteria was available to the committee for awarding marks in interview; one fact cannot be ignored that promotion of education in the society for the children is not only a basic human right but also a fundamental right provided under the Constitution of Islamic Republic of Pakistan, 1973. There is no denial of the fact that through the education only the living standard and literacy can be improved. The villagers are the main stake holders, who are to be persuaded not only to send their children to the school but also to encourage them to facilitate for new schools. Obviously, this requires the resources as well as will on their part and a seat to acknowledge their aptitude is bound to encourage them to engage in such activities. Ultimately this will allow the nation building measures for those who donate their properties for this noble cause, for which they must not only be respected but also be given some sense of belonging. A simple token in the form of one seat at the level of chowkidar or Naib Qasid may be helpful in achieving this objective. In this view of the matter I dispose of this writ petition with the direction to the Secretary Education Government of Punjab as well as respondent No.1 to accommodate

the petitioners in the next seat falling vacant for the post against their eligibility, with a further direction to incorporate in recruitment policy a provision of such acknowledgement through some posts for those who have donated their land for these noble projects, of the government schools.

HBT/T-26/L **Order accordingly.**

2013 P L C (C.S.) 1369

[Lahore High Court]

Before Ali Baqar Najafi, J

FAKHAR IMAM

Versus

GOVERNMENT OF PUNJAB through Secretary and 3 others

Writ Petition No.14377 of 2013, decided on 20th June, 2013.

Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

----R. 17-A---Punjab Fisheries Department Service Rules, 2011, R.42---Constitution of Pakistan, Art.199--- Constitutional petition---Appointment---Mandatory appointment of child of government servant---Criteria---Disqualification from appointment on the basis of lack of required educational qualification---Scope---Father of petitioner was retired on medical ground---Petitioner/son of retired government servant applied for his appointment on the seat vacated by his father---Petitioner was refused the appointment by the department as he had passed Matriculation examination in "E-grade"---Qualification of the post in question was Matric with second division---Effect---One child of a government who had been declared invalidated/incapacitated of service should be provided a job against the post in BS-1 to BS-5 in the department without observance of formalities prescribed under the rules/procedure, if such child otherwise was eligible for the post---Perusal of the matric certificate of the petitioner revealed that he had obtained grade-E, but said certificate did not mention second or third division; in departmental rules, the word "second division" without prescribing grades was mentioned---Petitioner was not specifically disqualified in circumstances---Department was bound to appoint at least one child of such government servant---Department was directed to consider the petitioner for appointment in

circumstances.

Syed Muhammad Ahmad Abbas Bukhari, for the Petitioner.

Syed Abid Ali Tahir, A.A.-G. with Rukhsana Kausar, Law Officer, Forest Department, Bilal Ahmed, Assistant Director Fisheries and Tasawar Mehmood, ADF for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this constitutional petition the petitioner seeks direction to issue appointment letter to the petitioner and meanwhile restrain them to fill the post vacated by the father of the petitioner.

2. Brief facts giving rise to the filing of this writ petition are that father of the petitioner namely Muhammad Siddique served respondent department for about 26 years and retired on medical ground on 18-3-2013. The petitioner being entitled to the benefit of Rule 17-A of the Punjab Civil Servants (Appointment and Condition of Service) Rules, 1974, made an application for his appointment as Fisheries Watcher BS-1 on the seat vacated by his father on medical ground. He was asked to submit the requisite documents, whereafter the respondent No.4 wrote a letter refusing such appointment on the ground that the petitioner did not qualify as he passed the Matric in third division.

3. The learned counsel for the petitioner submits that the petitioner is entitled to have the benefit of Rule 17-A of the Punjab Civil Servants (Appointment and Condition of Service) Rules, 1974; that the father of the petitioner was the only source of livelihood for the family, who has already been retired on medical ground; that the petitioner being citizen of Pakistan is entitled to the equal protection of law and under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 he is required to be dealt with only in accordance with law.

4. Conversely, the learned A.A.-G. on the basis of parawise comments

submitted by respondent No.2 submits that the petitioner does not qualify for appointment as Fisheries Watcher BS-1 as he is Matric E-Grade/third division and under the Punjab Fisheries Department Service Rules, 2011 in Item No.42 the requisite qualification for the post is Matric with Science (Second Division) from a recognized board and the respondent Department is bound by rules and as such the petitioner is not entitled for the appointment.

5. I have heard the learned counsel for the parties and perused the available record.

6. Under proviso of Rule 17-A of the Punjab Civil Servants (Appointment and Condition of Service) Rules, 1974, one child of a government servant who has been declared invalidated/incapacitated of other services shall be provided a job against the post in the BS-1 to 5 in the department without observance of formalities prescribed under the rules/procedure, if such child otherwise is eligible for the post. Under Punjab Fisheries Department Services Rules, 2011, in Item No.42, the minimum qualification for Fisheries Watcher is Matric with Science (Second Division) from a recognized Board. However, the perusal of the Matric Certificate of the petitioner reveals that the petitioner obtained grade-E, but said certificate does not mention Second Division or Third Division. In my opinion, Item No.42 of the Rule ibid, only mentions the word second division without prescribing the grades either A, B, C, D or E having different percentages of pass marks which means that the petitioner is not specifically disqualified to be appointed under Rule 17-A of the Punjab Civil Servants (Appointment and Condition of Service) Rules, 1974. Additionally, it has been made mandatory for the respondent to appoint at-least one child of such a government servant. The petitioner has also completed his FA and the Rules ibid are silent as to the benefit/effect of his changed status after having improved his qualification. There is no other competitor for the said post, therefore, the Rule 17-A is required to be interpreted in order to advance benefit to the petitioner.

7. In this view of the matter, I dispose of this petition with the direction to respondent No.3 to consider the petitioner for his appointment under Rule 17-A of the Punjab Civil Servants (Appointment and Condition of Service) Rules, 1974 in view of the observations supra, as he cannot be disqualified on the basis of his educational qualification.

JJk/F-26/L **Petition accepted**.

2013 P Cr. L J 1240

[Lahore]

Before Ali Baqar Najafi, J

SAEED AHMAD---Petitioner

Versus

STATION HOUSE OFFICER POLICE STATION SADDAR, SANGLA HILL---Respondent

Criminal Miscellaneous No.963-H of 2013, decided on 11th June, 2013.

Criminal Procedure Code (V of 1898)---

----Ss. 491 & 498---Habeas corpus petition converted into protective pre-arrest bail---Petitioner filed present petition under S.491, Cr.P.C. seeking recovery and production of detenu from the illegal custody and confinement of a Station House Officer (SHO)---Plea of petitioner was that some persons made an assault on the detenu, whereafter he was medically examined at a health centre and that detenu moved an application for registration of F.I.R. but instead police arrested him without justification and cogent reasons---Plea of police was that detenu was arrested in connection with an F.I.R. in which he was nominated as an accused---Validity---Bailiff of High Court was deputed to recover detenu from the police station where he was detained---Bailiff could not find entry of arrest of detenu in the daily diary---Report of bailiff and medico-legal certificate of detenu revealed that he was brought to health center by the police---F.I.R. for which detenu was allegedly arrested, did not mention his name and instead name of some other person had been arrayed therein as an accused---Bailiff reported that file of said F.I.R. was also not available in the police station and was statedly in the custody of a police official, who was not present in the police station at the time of bailiff's visit---Neither complainant of said F.I.R. nor Station House Officer was present in court to account the veracity of said F.I.R.---Prima facie non-production of the record before the bailiff was not only disobedience of the order of the High Court but also an effort to show the arrest of detenu by concerned police official---Admittedly detenu was not produced before any court of law---Detention of detenu was illegal and unlawful in such circumstances---Since arrest of detenu was illegal, therefore, he was granted protective pre-arrest bail

and set at liberty---Habeas corpus petition was disposed of accordingly.

Nadeem Shibli for Petitioner.

Saif Ullah, S.-I./SHO along with Muhammad Imran Chohan, Advocate.

Jehangir S.-I. with Mian Imran Rahim, D.P.-G.

Muhammad Imran Bailiff.

ORDER

ALI BAQAR NAJAFI, J.--- Through this petition under section 491, Cr.P.C., the petitioner seeks recovery and production of the detenu namely Tariq Mahmood son of Abdul Rashid aged 33 years from the illegal, improper custody and confinement of respondent SHO.

2. Brief facts giving rise to the filing of this petition are that the petitioner is the real brother of the detenu. On 2-6-2013 at 8-00 a.m., the detenu was going to Bazar from his native village for encashment of Saudi Rayal, he was stopped by Shamas-ud-Din alias Qadeer, Chiragh, Aslam and Ashraf etc., who made murderous assault on him, whereby he was seriously injured and was sent to Rural Health Centre, Sangla Hill, where he was medically examined vide MLC No.201/13 dated 2-6-2013 at 11-00 a.m. An application to this respect was moved for registration of F.I.R. but on the contrary, he was detained in the police station ever-since without any justification and cogent reason. Meanwhile, the petitioner, his mother namely Irshad Bibi, Shahid Pervaiz and Shahnawaz have been visiting the police station but they were not allowed to see the detenu, hence this habeas petition.

3. On 10-6-2013, a Bailiff of this Court was deputed to recover Tariq Mahmood, detenu, from the illegal confinement of the respondent SHO. Today he was produced handcuffed and the Bailiff of this Court has submitted his report.

4. According to the said report, the Bailiff visited the Police Station, Sangla Hill, Nankana Sahib on 10-6-2013 at 7-30 p.m. He took the daily diary in his possession and made a search and found him in the lock up of the police station. The detenu told him that he was arrested by one Jehangir S.I about 8-10 days ago and was not produced before any court till 10-6-2013. He also

told him that his head injury was caused during a fight with the private persons. The Moharrar of the Police Station namely Ismail told the Bailiff that Tariq Mahmood detenu was arrested by Chowki Incharge Jehangir S.I on 10-6-2013 as he was required in case F.I.R. No.237/13 dated 2-6-2013 under section 324, P.P.C. Neither the SHO nor the said Jehangir, S.I/Chowki Incharge was present in the police station. Upon checking daily diary, the Bailiff could not find the entry of the arrest of the detenu in the said case. He also noted that in the said F.I.R., one Tahir was nominated. The file of the said case was also not available in the police station and was statedly in the custody of said Jehangir S.I, who had gone out for raid.

5. As the arrest of the detenu was not mentioned in the daily diary, therefore, the Bailiff took the custody of the detenu and moved back to the Lahore and lodged him in the Police Station, Anarkali, Lahore for safe custody.

6. The detenu has been produced in the Court by the Bailiff today in handcuff. However, SHO is not present, but he is represented by his learned counsel, namely, Mr. Muhammad Imran Chohan, Advocate.

7. The learned counsel for the petitioner seriously objects hiring the services of a private counsel by Jehangir S.I and non-appearance of the SHO. He has placed on record copy of the MLC dated 2-6-2013, wherein the detenu Tariq Mahmood was shown to have been medically examined by Doctor who was brought by Munawar Hussain Constable, vide Ruptt No.6 dated 2-6-2013 at 10-59 a.m. that the F.I.R. No.237/13 dated 2-6-2013 does not reflect the name of the petitioner but that of one Muhammad Tahir; that Mst. Irshad Bibi made an application to the SHO for the release of the detenu, which application is still pending with him; that the alleged arrest of the detenu was shown at 10-30 a.m. on 10-6-2013, which means that the habeas petition was filed in the morning, he was in the unlawful custody of the respondent SHO. Places reliance on "ARSHAD AZIZ v. S.H.O." (2009 YLR 1055), where in such like situation, the habeas petition was converted into bail petition and the detenu was allowed post-arrest bail.

8. Conversely, the counsel for the SHO submits that the petitioner was arrested in the F.I.R. in which he is nominated but was mentioned as Muhammad Tahir instead of Tariq Mahmood. The instant petition is just to

pressurize the police and is an effort to malign the police against performance of their lawful duties.

9. The learned DPG on the other hand, submits that non-appearance of the SHO and detention of Tariq Mahmood, detenu requires penal action under section 345, P.P.C. read with Article 155 C of Police Order, 2002.

10. I have heard learned counsel for the parties and perused the available record.

11. The report of Bailiff of this Court and MLC dated 2-6-2011 reveal that the detenu was brought to the Rural Health Centre, Sangla Hill, Nankana Sahib by Munawar Constable. Even in F.I.R. No.237 dated 2-6-2013 under section 394, P.P.C., registered at Police Station, Saddar Sangla Hill, Nankana Sahib, the name of the accused was mentioned as Muhammad Tahir. Today neither complainant of the said F.I.R. nor the SHO is present to account for the veracity of the said F.I.R. Prima facie, non-production of the record before the Bailiff was not only disobedience of the order by this court but also an effort to show the arrest of detenu by the concerned police official. Admittedly, the detenu was not produced before any court of law.

12. In this view of the matter, the detenu namely Tariq Mahmood is set at liberty as his detention is hereby declared as illegal and unlawful. Since his arrest is illegally shown now, therefore, the detenu Tariq Mahmood is granted protective pre-arrest bail subject to his furnishing bail bonds in the sum of Rs.one lac with two sureties each in the like amount to the satisfaction of trial Court till 17-6-2013 enabling him to approach the Court of competent jurisdiction.

13. Before parting with this order, it is appropriate that DPO, Nankana Sahib be directed to record the statement of Mst. Irshad Bibi, who shall look into the matter and proceed against the SHO and Jehangir S.I. in accordance with law. A report in this behalf shall also be submitted to this Court within a fortnight from today.

14. In view of the above, this petition stands disposed of.

MWA/S-63/L **Order accordingly.**

2013 P Cr. L J 1394

[Lahore]

Before Ali Baqar Najafi, J

JAVED IQBAL---Petitioner

Versus

The S.H.O. and others---Respondents

Writ Petition No.2222 of 2012, decided on 14th May, 2013.

Pakistan Army Act (XXXIX of 1952)---

----S. 143---Criminal Procedure Code (V of 1898), Ss. 345, 382-B & 401---Constitution of Pakistan, Arts. 2-A, 45 & 199---Constitutional petition---Court Martial---Compromise with legal heirs of deceased---Benefit of--=Scope---Remissions by the President of Pakistan--Entitlement-Accused murdered his colleague and after Field General Court Martial, he was awarded death sentence but on compromise with legal heirs of deceased, death sentence was converted into imprisonment for life---Plea raised by accused was that due benefit of compromise was not given to him and he was not released and he was entitled to remissions---Validity---Any policy decision was aimed at maintaining discipline in force in a situation, where fight between two armed personnel resulted into one's death by using Danda that too in an isolated place---Accused did not challenge provisions of S.143 of Pakistan Army Act, 1952, being ultra vires of Art. 2-A of the Constitution and Injunctions of Islam, therefore, High Court declined to give any observation in such respect---Accused was entitled to remissions including those granted under Art. 45 of the Constitution by the President of Pakistan---High Court directed to extend to accused those remissions which had been made permissible under Jail Manual as well as Criminal Procedure Code, 1898, and also under Art. 45 of the Constitution---High Court directed the authorities to also extend benefit of S.382-B, Cr. P. C. to accused---Petition was allowed accordingly.

Ex. Lt. Col. Shahid Bashir v. Federation of Pakistan and others Writ Petition

No.1534 of 2011; Shah Hussain v. The State PLD 2009 SC 460; Muhammad Ramzan alias Ramzani v. The State 1996 SCMR 906; Abdul Ghafoor v. The State 2000 PCr.LJ 1841; Muhammad Nazir alias Jeera v. The State PLD 2001 Lah. 212; Muhammad Ashraf v. The State PLD 1996 Lah. 46; Tariq Mehmood v. The State 2011 SCMR 1880; Mushtaq Ahmad and others v. Secretary, Ministry of Defence through Chief of Air and Army Staff and others PLD 2007 SC 405 and Muhammad Zaman v. The State PLD 2006 Pesh. 82 ref.

Muhammad Wasif Khan for Petitioner.

Sardar Maqbool, Standing Counsel for the Federation of Pakistan.

Lt. Col. Tahir, JAG Department, GHQ.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, a direction is sought in the form of a declaration against the respondents that the sentence commuted by the competent authority under the Pakistan Army Act was in excess of powers, without any backing of law and may be declared illegal and of no legal effect, with a further direction to count the sentence of the petitioner from the date of military custody, i.e. 17th of June, 2005 and to grant the petitioner all remissions entitled under the law from the said date.

2. The brief facts giving rise to filing of the present writ petition are that during the service of the petitioner in Headquarters Squadron 14 Independent Armored Brigade Group of the Pakistan Army at Bahawalpur Cantonment on the night between 13/14th June, 2005, the petitioner was abused by his fellow soldier, namely, Sowar Sadiq Shah, which infuriated the petitioner. The petitioner picked up a bamboo stick, lying close by and struck on the head of said fellow soldier, which led to his death. The petitioner was taken into military custody on 17th of June, 2005 and thereafter he was tried by a Field General Court Martial under the Pakistan Army Act. On 18-1-2006, he was awarded death sentence as Ta'zir, which was promulgated on 8-6-2006. The petitioner filed an appeal within the Military hierarchy, which was heard by

Court of Appeals constituted under section 133-B of the Pakistan Army Act who rejected the same on 7-8-2006. Subsequently, the petitioner entered into a compromise on 20th December, 2008 whereby the legal heirs of said fellow soldier forgave him, whereas for minor legal heirs, a sum of Rs.6,00,000 was deposited in the bank, in accordance with the injunctions of Islam. The said compromise was duly verified by Magistrate 1st Class, Shab Qadar, District Char Sadda, upon which on 6-3-2009 the competent authority commuted the sentence of death of the petitioner to fourteen years' R.I. as Ta'zir coupled with dismissal from service. In the month of September, 2011, the petitioner learnt that the Jail authorities have not counted the general remissions granted by the Government from time to time, where after on 3rd November, 2011 the GHQ Adjutant General's Branch sent a letter to the Jail authorities stating therein that conviction of the petitioner remained intact and that he was not entitled to any benefit under section 382-B, Cr.P.C. read with rule 53 of Pakistan Army Act Rules as the period of confinement has already been taken -into consideration while maintaining the sentence. The petitioner also claims acquittal in view of section 338-F read with section 338-E, P.P.C. and section 345 of Cr.P.C. notwithstanding section 311, P.P.C.

3. The learned counsel for the petitioner submits that under Verse Nos.178 and 179 of Sura Al-Baqra, it is ordained in Holy Qur'an that whenever a compromise is accepted, the convict is required to be acquitted; that after the compromise the conviction slides from section 302, P.P.C. to section 311, P.P.C. only in cases where all the legal heirs have not forgiven and principle Fisad-Fil-Arz was attracted; that such provisions are not attracted as the occurrence had taken place in Cantonment Area at night, not witnessed by anyone except the petitioner, who having performed Hajj in the year 2005, has a clean past record of service; that after the commutation of sentence, the petitioner has become entitled to all the remissions including Presidential remissions granted from time to time w.e.f. the date of custody; that the sentence has been made to start from 18-1-2006, i.e. the date when the death sentence was signed and not from the date when he was taken into custody,

i.e. 17-6-2005 and places reference to decision dated 9-7-2012 passed by this Court in Writ Petition No.1534 of 2011 titled Ex. Lt. Col. Shahid Bashir v. Federation of Pakistan,etc. ; that the respondents authorities have violated the Fundamental Rights of the petitioner as enshrined under Articles 4, 9, 25 read with 2-A and 227 of the Constitution of Islamic Republic of Pakistan, 1973. Places reliance on the cases of Shah Hussain v. The State [PLD 2009 SC 460], Muhammad Ramzan alias Ramzani v. The State [1996 SCMR 906], Abdul Ghafoor v. The State [2000 PCr.LJ 1841], Muhammad Nazir alias Jeera v. The State [PLD 2001 Lahore 212] and Muhammad Ashraf v. The State [PLD 1996 Lahore 46].

4. Conversely, the learned Standing Counsel for the Federation of Pakistan submits that this Court has no jurisdiction in view of an embargo under Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973 to adjudicate upon the matter in question; that the petitioner was tried under the Pakistan Army Act and the provisions thereof were correctly applied as under section 143 ibid, he was given the due benefit of the compromise; the petitioner filed appeal after a lapse of six years; that section 345, P.P.C. is not attracted to the Army Act; that the commutation cannot proceed from the date of detention and in the judgment referred to passed by this Court, a leave to appeal has been granted by the apex Court. Places reliance on the cases of Tariq Mehmood v. The State [2011 SCMR 1880], Mushtaq Ahmad and others v. Secretary, Ministry of Defence through Chief of Air and Army Staff and others [PLD 2007 SC 405] and Muhammad Zaman v. The State [PLD 2006 Peshawar 82] and prays for dismissal of this petition.

5. I have heard the learned counsel for the parties and perused the available record.

6. The ouster clause of Article 199(3) of the Constitution of Islamic Republic of Pakistan, 1973, wherein an embargo has been imposed for exercising the jurisdiction under Article 199 of the Constitution, is subject to three exceptions, namely the order was coram non judice, passed without lawful

authority and on mala fides. The contention of the learned counsel for the petitioner that the Jail authorities were required to acquit the petitioner in view of the compromise effected between the legal heirs of deceased, namely Sadiq Shah and the petitioner is not tenable as the sentence was commuted from death to 14 years' R.I. in view of the principle of Fisad-Fil-Arz as laid down under section 311, P.P.C. duly followed by the Hon'ble Supreme Court of Pakistan in the case of Tariq Mehmood v. The State [2011 SCMR 1880]. Secondly, no above said exceptional circumstances shown to have existed to interfere in the findings of comm., ion from death sentence to 14 years' R.I. Thirdly, the provisions of section 345, Cr.P.C. are not attracted to Army Act Rules, 1954, which law being related to- disciplinary force is a special law dealing with a classified persons. Additionally, the Armed Forces are custodian of the rights of its employees both of assailants and victims and both living and dead. Any policy decision is aimed at maintaining discipline in the force in a situation, where fights between two armed personnel has resulted into one's death even by using a Danda that too in an isolated place. The learned counsel for the petitioner has not challenged the provisions of section 143 of the Army Act being ultra vires of Article 2-A and injunction of Islamic Law, therefore, no observation can be given in that respect. The next contention of the learned counsel for the petitioner is that the petitioner is entitled to the benefit of section 382-B, Cr.P.C. This Court has already expressed its view in the judgment dated 9-7-2012 passed by this Court in Writ Petition No.1534 of 2011 titled Ex. Lt. Col. Shahid Bashir v. Federation of Pakistan, etc. based on a judgment rendered by the Hon'ble Shariat Appellate Bench in the case of Shah Hussain v. The State PLD 2009 SC 460 whereby the benefit of section 382-B, Cr.P.C. has been extended to the convicts under the Pakistan Army Act. There does not exist any exceptional circumstances to deviate from my already expressed view. As far as the last contention of the learned counsel for the petitioner at bar that the petitioner is entitled to the remissions including those granted under Article 45 of the Constitution by the 1 President of Pakistan is concerned, suffice it to say that those remissions,

which have been made permissible under the Jail Manual as well as Code of Criminal Procedure and also under Article 45 of the Constitution of Pakistan, 1973 may be extended to the petitioner in accordance with law.

7. For the foregoing reasons, this petition is partially accepted and consequently, a direction is issued to the respondents to extend the benefit of section 382-B, Cr.P.C. to the petitioner with a further direction to record the remissions earned by him from time to time, in accordance with law.

MH/J-9/L **Order accordingly.**

2013 P Cr. L J 1402

[Lahore]

Before Ali Baqar Najafi, J

GHULAM ABBAS---Petitioner

Versus

The STATE and another---Respondents

Criminal Miscellaneous No.4583-B of 2013, decided on 9th May, 2013.

(a) Criminal trial---

----Medical evidence---Polygraph Test--- Veracity--- Courts all over the world have not put much reliance on Polygraph Test to inculpate accused persons.

Muhammad Asif v. State 2008 MLD 1385 and United States v. Scheffer 523 U.S. 303 (1998) rel.

(b) Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss. 302, 377 & 201---Bail, grant of-Further inquiry---Polygraph and DNA tests---Investigating Officer conducted Polygraph Test of accused to ascertain his truthfulness and DNA test to compare specimens extracted from clothes of deceased---Validity---Veracity of Polygraph Test and effect of DNA Test was to be seen by Trial Court after recording evidence---Case of accused was one of further inquiry into his guilt as contemplated in S.497(2), Cr. P. C. ---Bail was allowed in circumstances.

Abid Saqi for Petitioner.

Muhammad Akhlaq, D.P.G. with Yaqoob, S.-I. for the State.

Ch. Qamar Javed Gujjar for the Complainant/Respondent No.2.

ORDER

ALI BAQAR NAJAFI, J.---Petitioner, Ghulam Abbas son of Muhammad Anwar, seeks post-arrest bail in case F.I.R. No.18 of 2012 dated 11-1-2012 under sections 302, 201, P.P.C. read with sections 377 added, 34 (deleted) P.P.C. registered at Police Station Jalalpur Bhattian, District Hafizabad.

2. As per, the story narrated in the F.I.R. the nephew of the complainant, namely, Muhammad Ikram used to work in the Marco Rice Mill for the last three years. On 10-1-2012 at 7-00 p.m. he went to the said mill for his duty and in the following morning at 5-30 a.m. Muhammad Akbar son of Muhammad Bashir informed him that he was further informed by one Nasir Sher on mobile phone that said Muhammad Ikram is dead. The complainant along with Muhammad Nawaz and Ahmad Khan went to the mill/factory and found his dead body lying under the "bin" of rice mill. He had shown his suspicion that he may have been killed after committing sodomy or after refusal to commit sodomy by Rashid Ali and Alamgir and some unknown persons, where after they tried to hide his dead body. Hence this F.I.R.

3. Learned counsel for the petitioner submits that it is an unseen occurrence and accused were nominated on the basis of suspicion; that the petitioner was not nominated in the F.I.R.; that on 21-7-2012 in the first supplementary statement he involved Naseer Ahmad and Waqas Azhar (son of the mill's owner); that in the second supplementary statement dated 7-1-2013 based on the statements of Liaquat Ali and Ashraf the petitioner was involved, who has stated that the petitioner had confessed his guilt through an induced extraordinary confession, which of course is not admissible in evidence; that during the investigation the DNA Test of the petitioner was conducted on 16-12-2012 to compare the specimens extracted from the clothes of the deceased which resulted into negative; that the cause of death as declared in the autopsy

is Asphyxia and act of sodomy; that to find out the truth the petitioner was subjected to Polygraph Test on 28-11-2012 in which the conclusion was given that the petitioner was a "deceptive" which by itself is not worth-reliance and in the absence of corroboration with substantive piece of evidence he cannot be connected with the commission of crime; that the instant test is employed world over for espionage and not to ascertain the guilt of the accused that too in a murder case; that such a test is against the spirit of Article 13(b) of the Constitution of Islamic Republic of Pakistan, 1973, wherein nobody can be compelled to become a witness of his own self; that other two co-accused, namely, Naseer Ahmad and Rashid Ali were tested who also gave negative result in the Polygraph Test but they were not involved. Lastly, submits that the above grounds 'are enough to establish that the case of the petitioner is that of further inquiry into his guilt and, therefore, he is entitled to the post-arrest bail.

4. Conversely, learned counsel for the complainant submits that the petitioner on the basis of extraordinary confession has released his tension, as a murder cannot be hidden; that the report of the autopsy is duly corroborated with the said extraordinary judicial confession; that the Polygraph Test was conducted by a highly sophisticated team of Forensic Experts who in a scientific manner dig out the truth by employing latest means of investigation which standards are followed all over the world; that on both questions of murder and sodomy the petitioner was found to have deceived the Examiner; that the Expert opinion cannot be substituted that too at the bail stage; that the offence falls within the prohibitory clause and no deeper appreciation of evidence is permissible as a tentative assessment is to be made on the basis of available record.

5. Learned Deputy Prosecutor-General adds that there is no mala fide on the

part of the complainant and they waited till the actual facts were brought forth on the basis of investigation results; that even otherwise only DNA Test is enough to connect the petitioner with the alleged crime.

6. I ,have heard the learned counsel for the parties and perused the available record.

7. It is a blind murder and the petitioner is not nominated in the F.I.R., so much so that he was not nominated in the first supplementary statement recorded on 21-7-2012 i.e. after 7 months. However, on 7-1-2013 i.e. after about a year, he was involved on the basis of the statements of Liaqat Ali and Ashraf. Surprisingly, the Polygraph Test was conducted on 28-11-2012, where after the DNA Test was conducted on 16-12-2012, which means that prior to involvement of the petitioner in the supplementary statements, these two tests were conducted. The result of the DNA Test otherwise does not match with the profiles of the petitioner (S-4) when compared with the specimen item No.1.11 and 1.16 taken from the trouser of Ikram deceased. However, item No.3.1 taken from the sweater of the deceased was found to have matched with the DNA profiles of two individuals.

8. The Polygraph Examination Report submitted by Punjab Forensic Science Agency dated 28-11-2012 shows that the total score of the examinee (the petitioner) was +3 indicating the "deception" on the question of murder of Ikram. Same was the result on the question of committing sodomy with the deceased. The conclusion drawn was that the petitioner/Ghulam Abbas was not truthful. The record further reveals that such a test was also conducted in respect of Naseer Ahmad and Rashid Ali (the nominated accused persons) in which the conclusion was "cannot be confirmed as truthful" and "no opinion", respectively.

9. On the veracity of Polygraph Test the courts all over the world have not put

much reliance to inculpate the accused persons. In our country, in the case titled "Muhammad Asif v. State" reported as 2008 MLD 1385, it was observed by the Division Bench of this Court that the Polygraph Test, which originated in the United States of America, is considered to be highly unreliable and normally this test is not administered to an accused charged with criminal offences. In United States v. Scheffer (523, U.S. 303 (1998)), it is held that there is simply no consensus that the polygraph evidence is reliable unlike other expert witnesses who testify about factual matters, such as the analysis of fingerprints, ,ballistics, or DNA found at a crime scene. A polygraph expert can Supply only with another opinion, as the said test did not enjoy general acceptance from the scientific community. It was concluded that the polygraphs measure physiological arousal which can pinpoint deception rather than lies. Such a test is normally used by enforcement and intelligence agencies in the United States and elsewhere but its admissibility is always subject to the discretion of the trial Judge.

10. In Europe the polygraphs are not considered reliable evidence and are not generally used by even law-enforcing agencies and generally such a test is inherently inconclusive and not admissible in court. In Canada such a test is rejected by the courts even as a piece of evidence. In Australia the evidence based on Polygraph Test was also rejected by the courts. In India, the Supreme Court declared the Polygraph Test on suspects as illegal and against constitution. This test has not been awarded a general acceptability by the courts, so it is not safe in Pakistan as well to rely totally upon such a result that too to connect an accused with the commission of crime not less than a murder.

At present the veracity of the Polygraph Test and the effect of DNA Test is to be seen by the trial Court after recording evidence. In view of what has been stated above, the petitioner has made out a case of further inquiry into his guilt

as contemplated in section 497(2), Cr.P.C. I, therefore, admit the petitioner to post-arrest bail subject to his furnishing bail bonds in the sum of Rs.2,00,000 with two sureties each in the like amount to the satisfaction of the learned trial Court.

MH/G-25/L **Bail allowed.**

2013 P Cr. L J 1544

[Lahore]

Before Ali Baqar Najafi, J

ABDUL GHAFFAR and another---Petitioners

Versus

Syed SHABBIR SHAH GILLANI---Respondent

Criminal Miscellaneous No.10-M of 2012, decided on 13th March, 2013.

(a) Criminal Procedure Code (V of 1898)---

----Ss. 200 & 561-A---Private complaint---Quashing of proceedings of a private complaint by High Court in exercise of its inherent powers---Scope---Private complaint counterblast of an F.I.R.---Said complaint filed belatedly and based only on oral evidence---Effect---Accused persons were summoned by Trial Court to face trial in a private complaint---Contentions of accused persons were that private complaint was a counterblast of an F.I.R.; that assertions made against them were only oral in nature, and that private complaint was filed with a delay of more than two years---Validity---Private complaint was a counterblast of an F.I.R., which was registered by one of the accused against two of the witnesses of the private complaint---Although no limitation was prescribed for criminal prosecution, yet longer the private complaint was delayed, lesser would become the chances of believing in its truth, particularly when the same was based entirely on oral evidence---No documentary record was brought on record against the accused persons---Petition was allowed and High Court exercising its inherent jurisdiction under S.561-A, Cr.P.C. set aside impugned order of Trial Court and acquitted the accused persons from the charge.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 154, 200 & 561-A---Private complaint/F.I.R.---Quashing of proceedings of a private complaint/F.I.R. by High Court in exercise of its inherent power---Scope---High Court might take into consideration any

special circumstance to arrive at a conclusion as to whether prosecution should be allowed to proceed with the case in the interest of justice, when there was no possibility of conviction of accused.

(c) Criminal Procedure Code (V of 1898)---

----Ss. 200 & 561-A---Private complaint---Quashing of proceedings of a private complaint by High Court in exercise of its inherent powers---Private complaint filed belatedly and based only on oral evidence---Effect---Although no limitation was prescribed for criminal prosecution, yet longer the private complaint was delayed, lesser would become the chances of believing in its truth, particularly when the same was based entirely on oral evidence.

A.D. Naseem for Petitioners.

Ch. Ijaz Akbar for Respondent.

ORDER

ALI BAQAR NAJAFI, J.---Through this petition under section 561- A, Cr.P.C. by invoking the inherent powers of this Court the petitioners seek setting aside of order dated 10-11-2010, whereby the petitioners were summoned to face trial in the private complaint filed by the respondent Syed Shabir Shah Gillani against Intizar and 6 others.

2. Brief facts giving rise to the filing of this petition are that the respondent filed a private complaint against the petitioners and 5 others under section 382, P.P.C. with the allegation that on 20-10-2007 at about 8-00 p.m. they cut the trees from the graveyard of Darbar Hazrat Meeran Shah which was witnessed by the complainant and two witnesses. Since the matter was reported to the police but no action was taken, therefore, a private complaint was filed. After recording the cursory statements of Syed Shabbir Hussain, Safdar Hussain and Syed Ibn-e-Ali Shah the petitioners along with others were summoned by the trial Court to face trial vide order dated 10-11-2012, hence this petition.

3. Learned counsel for the petitioners contends that the private complaint was filed just to harass, humiliate and blackmail the petitioners and others; that there is no incriminating or any corroborating piece of evidence to connect the petitioners and others with the alleged offence; that all the assertions are oral in nature; that the complaint was filed with the delay of more than two years and three months and 9 days; that no plausible justification for filing the complaint has been explained, that there is no possibility of conviction on the basis of such delayed private complaint; that the private complaint is counterblast of case F.I.R. No.276 dated 1-8-2008 under section 379, P.P.C. at Police Station Chak Baidi District Pakpattan Sharif got lodged by one of the accused persons in the private complaint against two witnesses mentioned in the private complaint for steeling trees of Rs.40,000 on the same graveyard as alleged in the private complaint; that although three persons were challaned but they were acquitted on 14-10-2011 which order has been assailed before this Court. Places reliance on State v. Muhammad Saleem Khan (2011 SCMR 863), ZAFAR v. UMAR HAYAT (2010 SCMR 1816), MST. NASREEN BIBI v. ABDUL WHAEED (2006 YLR 2934), GHULAM AKBAR v. RIAZ alias RIAZI (2006 YLR 286), MUHAMMAD FIAZ KHAN v. AJMER KHAN (2010 SCMR 105), MUHAMMAD DIN v. BASHIR AHMAD NASIR (2007 YLR 2195) and MUSHTAQ AHMAD v. AKHTAR HUSSAIN (2006 PCr.LJ 825) to argue that the complaint filed at this belated stage and that too as a counterblast is required to be dismissed.

4. Conversely, learned counsel for the respondent submits that out of all the accused persons only two have filed this petition whereas rest of five have not challenged this order and they have not been made party and after summoning order they become relevant party; that the petitioners had been filing different application before the different forum for redressal of their grievance and the complaint was filed as last resort; that the delay in tiling private complaint has been adequately explained; that the occurrence was narrated as it was without any exaggeration; that the petitioners have alternate remedy by filing application under section 249-A, Cr.P.C. for their acquittal.

Prays for dismissal of this petition.

5. I have heard the learned counsel for the parties and perused the record.

6. A perusal of the complaint reveals that it was filed on 9-2-2010 of the occurrence dated 20-10-2007 at 8-00 p.m. A reference was however given to the application before the police in paragraph No.3 thereof. Although reference was also given in the statements of Syed Shabbir Hussain, Safdar Hussain and Syed Ibn-e-Ali Shah but all such applications filed to the police hierarchy are without specific date without filing copy thereof along with the complaint. Even no reference of F.I.R. No.216 of 2008 dated 1-8-2008 under section 379, P.P.C. registered at Police Station Chak Baidi District Pakpattan Sharif was given in which the respondent and his companion have been acquitted of the charges of theft of cutting trees from the graveyard. To my humble understanding, this complaint was counterblast of the above said criminal case. This Court may also take into consideration any special circumstance to arrive at a conclusion as to whether prosecution should be allowed to proceed with the case in the interest of justice when there is no possibility of conviction of the accused. Although no limitation is prescribed in criminal prosecution, yet the longer the complaint is delayed the lesser would become the chance of believing in its truth, particularly when the same was based entirely on oral evidence. To consider this aspect is obligation of the Court. Moreover the evidence is comprised of only oral assertion and no documentary proof was brought on record against the petitioners.

7. In view of what has been said above, this petition is allowed and this Court while exercising the inherent jurisdiction under section 561-A, Cr.P.C. set aside the impugned order passed by trial Court and acquit the accused from the charge.

MWA/A-47/L **Petition allowed.**

2013 P Cr. L J 1716

[Lahore]

Before Ali Baqar Najafi, J

AZHAR and another---Appellants

Versus

The STATE---Respondent

Criminal Appeal No.133 of 2010, heard on 23rd May, 2013.

Penal Code (XLV of 1860)---

----S. 376/34---Criminal Procedure Code (V of 1898), S.265-D---Qanun-e-Shahadat (10 of 1984), Art.3---Rape and common intention---Appreciation of evidence---Allegation against the accused persons was that they committed rape with the niece of the complainant---Trial Court convicted the accused and sentenced them to imprisonment for life---Joint charge was framed against the accused but no specific allegation was made against one of the accused for committing Zina-bil-Jabr and requirements of S.265-D, Cr.P.C., to his extent were missing---Victim while appearing in the witness box was put specific question by the Trial Court on which the court observed that the witness did not understand the questions but in the interest of justice her statement was recorded in which she stated that one of accused committed Zina-bil-Jabr while other remained standing equipped with pistol and complainant reached outside the house (place of occurrence) but remained outside and did not come in the house and did not see the occurrence, however, she could not state the incident by narrating the necessary details---Statement of the victim was required to be recorded in accordance with Art.3 of Qanun-e-Shahadat, 1984, and interest of justice could not be given preference to express provisions of law based on fundamental law of administration of justice---Victim could not understand the question of vital importance being of tender age and otherwise victim of rape could not forget the agony of the series of actual acts for her entire life---Victim lost the most important occasion to narrate the actual act

necessary to convict the accused and even could not point out the accused present in the court to be those who committed the offence---Medical Officer stated that no marks of violence were detected on any part of the body of the victim except on the back of both hands---Genitalia vulva was found healthy, no swelling or scratch mark or injuries were noted over vulva region and vagina admitted two fingers with or without pain on genital examination and no discomfort was noted---Clothes of victim were not stained with blood, mud or any type of fluid---Medical Officer admitted that the victim could be habitual---One of the accused could not be convicted for Zina-bil-Jabr as no charge of the said offence was framed against him with specific allegation---Statement of the doctor was not corroborated by the statement of the victim who did not qualify the requirement of Art. 3 of Qanun-e-Shahadat, 1984, for being unable to understand her statement---DNA test of the vaginal swabs was not conducted which could have been good corroborative piece of evidence---Prosecution had failed to bring home the guilt against the accused by presenting evidence beyond shadow of doubt---Appeal was accepted and accused were acquitted from the charges.

Malik Nasrullah Awan for Appellants with Appellant in person.

Muhammad Yousuf, DDPP for the State.

Victim in person.

Date of hearing: 23rd May, 2013.

JUDGMENT

ALI BAQAR NAJAFI, J.---Azhar and Muhammad Iqbal appellants were convicted for an offence under section 376(2), P.P.C. vide judgment dated 18-2-2010 rendered by the learned Additional Sessions Judge, Pind Dadan Khan, District Jhelum in case F.I.R. No.194 dated 5-7-2009 registered at P.S. Pind Dadan Khan, District Jhelum for Offences under sections 376/34, P.P.C. and were sentenced to imprisonment for life. 'The benefit under section 382-B, Cr.P.C. was extended to them.

2. As per story, narrated by the complainant Muhammad Mansha in his written application (Exh. PE), his sister Mst. Sakina Bibi wife of Muhammad Aslam was living with him for the last about ten years. On the day of occurrence at about 3-20 p.m. his niece, namely, Rizwana daughter of Muhammad Aslam aged 10/11 years went to ease herself in the wild acacia trees. Fakhar Abbas, the son of the complainant, told that him that he heard the voice of weeping of Rizwana, whereafter he along with Fakhar Abbas and Snawar, his Chachazad reached in the deserted house of Jahangir son of Atta Muhammad and saw that Azhar appellant was committing Zina-bil -Jabr with the said Rizwana and Iqbal appellant armed with a pistol was standing nearby. On seeing them, the accused-appellants fled away.

3. The investigation was conducted, whereafter a Challan was submitted and the charge was framed against Azhar and Muhammad Iqbal appellants on 16-10-2009, to which they pleaded not guilty and claimed trial.

4. The prosecution produced as many as nine witnesses in its support. The victim, namely, Rizwana appeared as P.W.8 and reiterated the story. Muhammad Mansha/complainant appeared as P.W.5 who reiterated the statement (Exh. PE), for corroboration with the statement of Snawar (P.W.6) and Fakhar Abbas (P.W.7). Dr. Saleha Ibtisam Ali appeared as P.W.1 who examined the victim, namely, Rizwana. Dr. Muhammad Tariq Ghazi appeared as P.W.3 who examined potency of Azhar appellant. The Investigating Officer appeared as P.W.9. The accused made statements under section 342, Cr.P.C. and did not prefer to give evidence under section 340(2), Cr.P.C. in their defence.

5. The learned counsel for the appellants submits that the victim has sworn an affidavit exonerating the appellants; that even otherwise, the charge was framed against Azhar appellant of committing Zina-bil-Jabr and not against Muhammad Iqbal appellant; that no marks of violence were found on the person of victim Rizwana and she was found to have been a habitual; that statement of the victim Rizwana (P.W.8) is against Article 3 of Qanun-e-

Shahadat Order, 1984, wherein it is mandatory for being a witness that she must have the capacity of understanding; that even in her statement, the victim could not explain the actual act constituting the offence of Zina-bil-Jabr against the appellants; that no DNA test was conducted on the vaginal swabs collected from the victim; that there exists mitigating circumstances for acquittal of the appellants and prays for their acquittal.

6. Conversely, the learned DDPP submits that the statement of the victim is fully corroborated with the medical evidence and is further verified by the report of Forensic Science Laboratory (Exh. PJ), wherein vaginal swabs of the victim were stained with semen; that the minimum sentence under section 376(1), P.P.C. is ten years, which must be imposed upon the appellants; that the appellants have committed the most heinous crime against the minor girl and they do not deserve any leniency and prays for dismissal of their appeal.

7. I have heard the learned counsel for the parties and perused the available record.

8. The complainant as well as the victim Rizwana have appeared before this Court and exonerated the appellants from the charges and raised no objection against their acquittal. However, since the offence under section 376, P.P.C. is not compoundable, therefore, the compromise is being rejected.

9. On merits, it has straightaway been observed that joint charge was framed on 16-10-2009 against Azhar and Muhammad Iqbal appellants though no specific allegation made against the latter for committing Zina-bil-Jabr. Therefore, the requirements of section 265-D, Cr.P.C. to his extent are missing. The record further reveals that the victim while appearing as P.W.8 was put a specific question by the trial Court, on which the trial court observed that the witness does not understand all the questions but in the interest of justice, her statement was recorded, in which she stated that Azhar appellant committed Zina bil-Jabr while Muhammad Iqbal appellant remained standing equipped with a pistol. She further stated that the complainant, etc. reached outside the deserted house, i.e. the place of occurrence but remained outside

and did not come in the house, therefore, did not see the occurrence. However, she could not state the incident by narrating the necessary details. Her statement was required to be recorded in accordance with Article 3 of Qanun-e-Shahadat Order, 1984, which prescribes as under:--

"3. Who may testify. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years,, extreme old age, disease, whether of body or mind, or any other cause of the same kind:

Provided that a person shall not be competent to testify if he has been convicted by a Court for perjury or giving false evidence;

Provided further that the provisions of the first proviso shall not apply to a person about whom the Court is satisfied that he has repented thereafter and mended his ways;

Provided further that the Court shall determine the competence of a witness in accordance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Qur'an and Sunnah for witness, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available."

Since the trial Court has already observed that the witness had not understood the questions but still her statement was recorded but interest of justice cannot be given preference to any express provisions of law based on fundamental law of administration of justice. Obviously, P.W.8 could not understand the question of vital importance by tender years. Even otherwise, a rapped victim cannot possibly forget the agony of the series of actual acts for her entire life. To my understanding, the victim lost the most important occasion to narrate the actual act necessary to convict the appellants. Importantly, the victim could not point out the appellants present in the court to be those who committed the offence against her.

10. Reverting to the medical evidence, P.W.1 stated that no marks of violence were detected on any part of the body except on the back of both hands. On examination, genitalia vulva was found healthy, no swelling or scratch mark or injuries were noted over vulva region. There were no signs of any recent injuries or tears. On examination, vagina admitted two fingers with or without pain on genital examination and no discomfort noted. The doctor has also admitted that the clothes were not stained with blood or mud or any type of fluid. He also admitted that the victim could possibly be a habitual.

11. The above noted facts seriously dent the prosecution story. Muhammad Iqbal appellant cannot be convicted for Zina-bil-Jabr as no charge of the said offence was framed against him with specific allegation. The statement of the doctor (P.W.1), if accepted as a whole, is not corroborated by the statement of P.W.8 who does not qualify the requirement of Article 3 of Qanun-e-Shahadat Order, 1984 for being unable to understand her statement. Even the medical evidence does not show any marks of violence on the private parts of the victim. DNA test of the vaginal swabs was not conducted, though they were found to have been stained with semen. For the safe administration of justice, the DNA test could have been a good corroborative piece of evidence.

12. For what has been discussed above, in my humble view, the prosecution has failed to bring home the guilt against the appellants by presenting evidence beyond shadow of doubt, therefore, I allow this appeal and acquit the appellants of the charges. Azhar appellant be released from the jail forthwith, if not required in any other case. Sureties of Muhammad Iqbal appellant shall be discharged.

AG/A-76/L **Appeal allowed.**

PLJ 2013 Lahore 100

[Rawalpindi Bench Rawalpindi]

Present: Ali Baqar Najafi, J.

DR. MALIK HAFEEZ-UR-REHMAN etc.--Petitioners

versus

PAKISTAN MEDICAL ASSOCIATION JHELUM, etc.--Respondents

W.P. No. 3255 of 2012, decided on 20.12.2012.

Constitution of Pakistan, 1973--

----Art. 17--Eligibility for membership of Constitution and bye-laws of Pakistan Medical Association--Scope of--Entitlement of vote--Right of freedom of association guaranteed--Process of scrutiny--Violation of Constitution--Minority cannot hamper democratic process--Art. 17 of Constitution guaranteed right of freedom of association to every citizen who is well with in his right to form an association or union subject to any reasonable restrictions and that right to vote in such an association is right of basic nature of foremost importance--Such right cannot be derogated on some technical grounds as when late subscription was made as ground which debarred petitioners and others to cast their votes--High Court had ample jurisdiction to safeguard fundamental rights of individuals as against associations--It is not only a professional but also service for which association's members are presumably committed--High Court is also mindul of fact that to promote democratic order and encourage election process in such professional associations will buildup institutions in accordance with democratic norms--Perhaps right to form an association, contest elections and cast vote is as important a fundamental right as any other fundamental right enshrined in Constitution--Petition was allowed. [Pp. 103 & 104] A, B, C & D

Malik Abdul Ghafoor, Advocate for Petitioners.

Mr. Mujeeb-ur-Rehman Kiani, Advocate for Respondents No. 2 to 5.

Date of hearing: 20.12.2012.

Order

Through this writ petition the petitioners seek setting aside of termination letter dated 03.12.2012 (Annex-A) with the further direction to the respondents to incorporate the names of 53 members in the voters list (Annex-C) as shown in the subscription list (Annex-B).

2. Brief facts giving rise to the filing of this writ petition are that the Pakistan Medical Association Jhelum (hereinafter referred to as PMA Jhelum) is an affiliated body of Pakistan Medical Association Punjab and centrally with Pakistan Medical Association Centre; a registered body under the Societies Registration Act, 1860 with the Registrar, Joint Companies Karachi and Lahore. The petitioners are the medical practitioners at District Jhelum in Punjab, who as per their contention are entitled to vote under Article 6 (Eligibility for Membership) of the Constitution & Bye-Laws of Pakistan Medical Association Jhelum (Amended up-till 29th December, 1997). The PMA Jhelum has two main groups, namely, "Doctors' Amal Group" and "United Democratic Forum" and the petitioners are the members of the former whereas the respondents belong to the latter group. The existing elected body could not perform well and could induct only 14 new members till 30.06.2012 and managed to collect biennial renewal fee from 34 members only. In the General Body meeting convened in June 2012, a move to enhance the membership was adopted. Under Article 15(ii) ibid the eligibility of petitioners' members to vote or contest in election is subject to their being inducted as members three months prior to the election which date by convention is accepted as 30th of September of an election year. Respondents No. 1 to 3 took it personal and started a campaign to technically knock out their probable adversaries i.e. Petitioners No. 1 and 2 by leveling vague and

baseless allegations. They have gone to the level that they unilaterally terminated the membership of Petitioners No. 1 and 2 vide letter dated 03.12.2012 impugned in this petition being in violation of Article 17 of the Constitution of Islamic Republic of Pakistan, 1973. Surprisingly, Respondents No. 1 to 3 struck off the names of 53 members including the Petitioners No. 3 to 19 whose names appeared in the subscription list dated 15.10.2012 (Annex-B) for the period 2011-2012 and issued the impugned voter list dated 06.12.2012 (Annex-C) on the pretext that membership fee was received after 30.09.2012, whereas according to the petitioners the same was received by Respondent No. 3 well before 30.09.2012 i.e. the cut-off date. The amount of subscription of the doctors was presented through two cheques dated 20.09.2012 and 24.09.2012 amounting to Rs. 18000/- and Rs. 15000/- respectively to Respondents No. 2 and 3, who delayed in presenting the same for encashment. The petitioners to avoid late payment paid the amount in cash against receipts annexed with the petition but even the petitioners were debarred from casting vote. Hence this writ petition.

3. Learned counsel for the petitioners submits that right of freedom of association guaranteed under Article 17 of the Constitution of Islamic Republic of Pakistan, 1973, has been denied to the petitioners when they were free from casting votes even after their payment well in time; that the process of scrutiny implemented by Respondents No. 1 to 3 is in violation of the Constitution of PMA Jhelum; that under Clause 15(ii) of the Constitution ibid the yearly subscription has already been paid in time; that 53 votes have been mentioned in the subscription list (Annex-B) but not mentioned in the voter list (Annex-C); that the minority cannot hamper the democratic process; that as per election schedule last date for objections on the list was 15.12.2012 whereas the petitioners moved an application raising objections to the respondents within time to include the petitioners in the voter list but the same remained unattended; that the final voter list dated 17.12.2012 deprives the petitioners and others from their valuable right to cast vote; that the petitioners

do not fall in the disqualification criteria as defined in Article 10 of the Constitution of PMA Jhelum ibid. Places reliance on Khawaja Waseem Humayun Vs. Registrar Cooperative, Punjab, Lahore and 3 others (2010 YLR 2562) and prays for the acceptance of the writ petition.

4. Conversely, learned counsel for Respondents No. 2 to 5 questions the maintainability of the writ petition on the ground that the PMA Jhelum is not a person running the affairs of Federation but that of group of persons; that Respondent No. 6 is just arrayed in the list of respondents, whereas no claim is sought against it. Places reliance on Mrs.Kausar Iqbal Bhatti, Advocate High Court Bahawalpur Vs. Shafqat Atta and 25 others (2010 CLC 224), United Bank Limited Pensioners Welfare Association of Pakistan through President Vs. United Bank Limited through President and 5 others (2011 CLC 831), Mst.Umm-e-Roman Vs. Regulatory Authority Oil & Gas, Islamabad through Chairman and another (2009 MLD 759), Maqsood Ahmed Toor and 4 others Vs. Federation of Pakistan through the Secretary to the Government of Pakistan Ministry of Housing and Works, Islamabad and others (2000 SCMR 928), Federation Government Employees' Housing Foundation through Director General, Islamabad and another Vs. Muhammad Akram Alizai, Deputy Controller, PBC, Islamabad (PLD 2002 SC 1079) and 2011 SBLR-Sindh 1249 to argue that an association managing its own affairs does not come within the definition of a person dealing with the affairs of the Federation; that no statutory violation is alleged. He, however, does not address on merits of the case and has neither admitted the documents annexed with the writ petition nor denied the same.

5. I have heard the learned counsel for the parties and perused the record.

6. Admittedly, Respondent No. 1 is an association whereas Respondents No. 2 and 3 are its office bearers while Respondents No. 4 and 5 are the members of the Election Committee but Respondent No. 6 has issued a certificate of incorporation of the association. The subscription list (Annex-B) as well as

voter list (Annex-C) is also not denied by the respondents. The only reason available to the authority to terminate the membership of the petitioners and not to enroll them and others in the voter list is that they submitted their subscription after the due date. The available documents reveal that their subscription was deposited before the stipulated date through two cheques dated 20.09.2012 and 24.09.2012 to Respondents No. 2 and 3. If the same were not presented or not accounted in the accounts of the respondents, it was not the fault of the members.

7. Article 17 of the Constitution of Islamic Republic of Pakistan, 1973, guarantees the right of freedom of association to every citizen who is well within his right to form an association or union subject to any reasonable restrictions and that right to vote in such an association is the right of basic nature of a foremost importance. This right cannot be derogated on some technical grounds as in the present case when late subscription was made as a ground which debarred the petitioners and others to cast their votes.

8. As far as maintainability of this petition is concerned, this Court has ample jurisdiction to safeguard the fundamental rights of the individuals as against the societies/associations. I am fortified by the judgment rendered by this Court in Khawaja Waseem Humayun Vs. Registrar Cooperative, Punjab, Lahore and 3 others (2010 YLR 2562). The judgments cited at bar by the learned counsel for Respondents No. 2 to 5 do not relate to an association of doctors who are professionals and have a peculiar status in the society which they have attained by saving the lives of the people. It is not only a profession but also a service for which the association's members are presumably committed. This Court is also mindful of the fact that to promote the democratic order and encourage the election process in such professional associations will ultimately build up institutions in accordance with democratic norms. It will ultimately build up a democratic culture in our society which is the only way of survival of this nation. This Court time and

again has come forward in order to rescue an individual by protecting his fundamental rights. To my humble understanding, perhaps right to form an association, contest elections and cast vote is as important a fundamental right as any other fundamental right enshrined in Constitution of Islamic Republic of Pakistan, 1973.

9. In view of what has been discussed above, I allow this petition and direct Respondents No. 4 and 5 to incorporate 53 members in the voter list (Annex-C) as shown in the subscription list (Annex-B). The termination letter dated 03.12.2012 (Annex-A) is also set-aside as having been passed illegally.

A copy of this order be sent to Respondent No. 6 for Information and compliance.

(R.A.) **Petition allowed.**

PLJ 2013 Lahore 107
[Rawalpindi Bench Rawalpindi]

Present: Ali Baqar Najafi, J.

SARDAR ZULFIQAR ALI KHAN and 8 others--Petitioners

versus

MALIK SAJID BASHIR--Respondents

C.R. Nos. 490 & 491 of 2010, heard on 10.12.2012.

Court Fees Act, 1870 (VII of 1870)--

----S. 7(1)--Suit Valuation Act, 1887, S. 8--Value of Court fee for purpose of jurisdiction in matter of appeal--Recovery of possession and claimed recovery of damages for loss of business--Value of Court fee and jurisdiction was fixed beyond Rs. 200,000/- Validity--If the suit was for money including suit for damages or compensation or arrears of maintenance of annutaties as of other sums payable periodically, the amount of fee is payable according to value of subject matter--But u/S. 8 of Suit Valuation Act, in suits not attracting para (v)(vi)(ix)(x) and clause (d) of S. 7 of Court Fee Act, the value for Court fee and jurisdiction shall be the same--Since recovery of possession money was involved, therefore, subject matter will determine jurisdiction--Claims made went beyond jurisdiction of Addl. Distt. Judge hence appeals were rightly returned--Revisions were dismissed. [P. 109] A

Syed Zulfiqar Abbas Naqvi, Advocate for Petitioners (in C.R. Nos. 490 & 491 of 2010).

Qazi Muhammad Tariq and Malik Muhammad Iqbal, Advocates for Respondents (in C.R. No. 490 of 2010).

Mr. M. Bilal, Advocate for Respondent (in CR No. 491 of 2010).

Malik Sajid Bashir, Advocate for Respondents.

Date of hearing: 10.12.2012.

JUDGMENT

This judgment will dispose of titled civil revision as well as Civil Revision No. 491 of 2010, as both these matters have arisen out of one order dated 23.04.2010 passed by the learned Addl. District Judge, Fateh Jang, whereby he returned the memo. of appeals filed by the petitioners against the consolidated judgment and decree dated 06.02.2008. By filing these civil revisions the petitioners seek setting aside of the said order.

2. The brief facts giving rise to these civil revisions are that the predecessor-in-interest of the petitioners namely Sardar Asad Ali Khan died on 08.07.2006, where-after his legal heirs filed a suit under Section 39 of the Specific Relief Act, 1877 for cancellation of registered lease deed along with suit for declaration, whereas Malik Sajid Bashir/respondent filed a suit for declaration and recovery of damages, stating therein that he was lessee of the Petrol Pump under the name and style of "Iqbal and Sons PBS" situated in Khasra No. 866 comprising of land measuring 15 Marlas within the area of mauza Old Bus Stand Khoar Road, Fateh Jang District Attock along with the restoration of the petition, therefore, sought recovery of possession and also claimed recovery of damages for loss of business.

Both the suits were consolidated and consolidated issues were framed. The suit of the respondent was decreed to the effect that he (respondent) was held entitled to recover the possession of the suit property until the lease is cancelled and also to recover the mesne profit from the petitioners for the period they again put in possession. However, the suit of the petitioners stood dismissed. Later on the petitioners filed the appeals in both the suits before the learned Addl. District Judge who returned the memo. of appeals on the ground that he had no pecuniary jurisdiction to adjudicate upon the matter. Hence these civil revisions.

3. Learned counsel for the petitioners submits that the impugned order regarding the return of memorandum of appeals is against the law and facts of the case; that the pecuniary jurisdiction has to be determined on the basis of

fixation of the suit value for the purpose of Court fee and jurisdiction as mentioned in the plaint; that in para-11 of the plaint the value is fixed at Rs.200,000/- and as such the learned Addl. District Judge enjoyed the jurisdiction as he had the power to adjudicate upon the matters upto Rs.2.5 Million. Places reliance on Ilahi Bakhsh and others versus Mst Bilqees Begum (PLD 1985 S.C. 393) to argue that value of the Court fee for the purpose of jurisdiction in the matter of appeal is the same as in the plaint, for ascertainment of the forum of appeal and as such the determining factors would be the value of the original suit and not the market value of the sale price of the subject matter under Section 7 of the Court Fee Act 1870. Further places reliance on Mehtab Khan versus Faiz Muhammad (PLD 2003 Peshawar 46), to argue that under Section 18 of the West Pakistan Civil Courts Ordinance (2) of 1962 the forum of appeal is to be determined according to the value of suit as mentioned in the plaint.

4. Conversely, learned counsel for the respondent submits that no issue was framed on the subject and refers to Para No. 1 of the plaint wherein various claims were made beyond the jurisdiction of the Addl. District Judge. Places reliance on Budha Mal versus Rallia Ram and others (A.I.R. 1928 Lahore 157(2), to argue that the value of the appeal is the amount found due to plaintiff by Court and not the sum at which the value is claimed.

5. I have heard the learned counsel for the parties and perused the available record.

6. A perusal of the plaint of the respondent reveals that the claim of declaration and possession, recovery of Rs.2,00,000/- as loss, Rs.50,000/- as damages, recovery of price of diesel of Rs.9,22,640/-, Rs.5,00,000/- in cash, Rs.38,46,250/-, Rs.49,68,000/- as rent, Rs.20,00,000/- as loss to business, etc. and in Para-11, the value of Court fee and jurisdiction is fixed beyond Rs.200,000/-. Under Section 7(1) of the Court Fees Act, 1870, if the suit is for money (including suit for damages or compensation or arrears of maintenance of annutaties as of other sums payable periodically) the amount of fee is

payable according to the value of the subject matter. But under Section 8 of the Suit Valuation Act, 1887, in suits not attracting para (v)(vi) (ix)(x) and clause-d of Section 7 of the Court Fee Act 1870 the value for Court fee and jurisdiction shall be the same. In the instant case since the recovery of possession and money is involved, therefore, the subject matter will determine the jurisdiction. The claims thus made went beyond the jurisdiction of the learned Addl. District Judge, hence the appeals were rightly returned.

7. In view of the above, these civil revisions are dismissed.

(R.A.) **Revision dismissed.**

PLJ 2013 Lahore 112

Present: Ali Baqar Najafi, J.

PERVAIZ AKHTAR--Petitioner

versus

FEDERAL GOVERNMENT--Respondent

W.P. No. 1870 of 2012, heard on 4.9.2012.

Civil Servant Act, 1973--

----S. 9--Promotion Rules, 2010, R. 4--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Right of civil servant--Ante-dated promotion--Seniority list--Unblemished record of service with honesty, efficiency and compatibility--Non availability of record for promotion including ACRs--Validity--Condition of three years, working for promotion becomes open to exception if not followed in other similar cases--Right of civil servant as contemplated u/S. 9 of Civil Servants Act, was neither illusory nor perfunctory ritual and with holding of promotion of any officer was a major penalty in accordance with Rules, 1973--To be considered for promotion is a vested right of petitioner which was to be based on seniority cum fitness and best assessment of such tangible material can at all be made by competent authority--Secretary was directed to decide in accordance with law, rules, policy and precedents to cases to petitioner, expeditiously and preferably within a period from receipt of copy of the order. [P. 114] A & B

Mr. Sahibzada Anwar Hamid, Advocate for Petitioner.

Mr. Sajid Tanoli, Standing Counsel for Respondent.

Date of hearing: 4.9.2012.

Judgment

The petitioner, through this writ petition, seeks direction to the respondents to decide appeal of the petitioner under Rule FR 17 as per his seniority list prepared in May 2012 for ante-dated promotion in BS-21 without further loss of time in the light of the precedents quoted with further direction Respondents

No. 1 to 3 to convene the meeting of Special High Powered Board to consider the promotion of the petitioner in BS-22, as he qualifies for all other conditions of Rule 4 of Promotion Rules, 2010.

2. Briefly the facts relevant for the disposal of this writ petition are that the petitioner has joined the police service as ASP in 4th Common, in the year 1977, where after he acquired/good record for serving at various posts. In February, 2007 to October, 2008 he remained Officer on Special Duty without any complaint and during this period his ACRs remarks incomplete without his fault whereby he was deprived of his valuable rights when his promotion in the next grade was hampered. Meanwhile his other colleagues were promoted to BS-21 in the year 2009. On 01.02.2011 a seniority list was issued wherein the petitioner was mentioned at Serial No. 5 but on 26.04.2012 in the second seniority list he was placed at Serial No. 1. Meanwhile, vide clause-B of paragraph-4 of the working papers of FR 17 Committee was constituted for consideration of antedated promotion of the petitioner from BS-20 to BS-21 but the case of the petitioner was deferred on the ground of incomplete record allegedly on the part of the petitioner. An appeal was preferred before the Secretary Establishment, Government of Pakistan which is still pending without any progress, hence this writ petition.

3. The learned counsel for the petitioner submits that vide Rule 2.87 of A Guide to Performance Evaluation Report, the reports of the Officers on Special Duty who have been assigned any job, are to be written in the normal manner which benefit was not extended to the petitioner; that under Section 9(2)(a) of the Civil Servants Act, 1973; admittedly, the petitioner is entitled to promotion; Rule 4 of Promotion Rules, 2010, is ultra vires of the Civil Servants Act, 1973 and Article 25 the Constitution of Islamic Republic of Pakistan, 1973; that the August Supreme Court of Pakistan has encouraged the promotion on merits in suo moto case reported as TARIQ AZIZ-UD-DIN and others (2010 SCMR 1301); that the case of the petitioner is at par with his colleagues who have been granted ante dated promotion by the respondents under FR 17; that it is also an established principle of law that deferment does not deprive a government servant from his right from grant of promotion to

the next higher grade with effect from the date his juniors were promoted; that in view of the law laid down in Mirza Shamas ul Hassan vs. Secretary Establishment and others passed in Writ Petition No. 64 of 2007 vide order dated 13.10.2008 the supersession of government official on the basis of intelligence reports was held to be against law and as such promotion on the basis of seniority list was held to be the vested right of the petitioner; that the Writ Petition No. 10825 of 2012 challenging vires of the rules on the similar issue is pending at Principal Seat. He prays for decision on appeal of the petitioner after suspension of Rule-4 of Promotion Rules, 2010.

4. Conversely, the learned standing counsel has vehemently opposed the prayer made at the instance of the petitioner by submitting that eligibility of the petitioner for promotion is a question of fact which can not be probed into under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; that Section 9 of Civil Servants Act, 1973 is applicable to the case of the petitioner in view of the law laid down in re: Tariq Aziz-ud-Din and others (2010 SCMR 1301); and that the petitioner is not qualified for promotion as prayed for.

5. I have heard the learned counsel for the parties and perused the record.

6. Admittedly, petitioner has an unblemished record of service with honesty, efficiency and compatibility. Non availability of the record for promotion including ACRs by the Department was obviously not the fault of the petitioner for which he could not be made to suffer as recently held in Secretary Schools of Education and others vs. Rana Arshad Khan and others (2012 SCMR 12). Rule 2.87 ibid is attracted as admittedly the petitioner is now at No. 1 vide seniority list circulated on 26.04.2012 and has a fair chance of being promoted on the basis of FR 17 ibid. Even otherwise, Hon'ble Supreme Court of Pakistan in its wisdom always encouraged the promotion on merits, especially from Grade-21-22, which obviously will also be endeavour of the respondent- department. Reliance in this behalf can be placed upon in re-Tariq Aziz-ud-Din and others (2010 SCMR 1301). In my humble view the condition of three years service, working in Grade-21, for

promotion in grade-22 becomes open to exception, if not followed in other similar cases. Right of a Civil Servant as contemplated under Section 9 of Civil Servants Act, 1973 was neither illusory nor a perfunctory ritual and with-holding of promotion of any officer was a major penalty in accordance with Government Servants (E&D) Rules, 1973. To be considered for promotion is a vested right of the petitioner which is to be based on seniority cum fitness and the best assessment of such tangible material can at all be made by the competent authority.

7. Since the petitioner is approaching his superannuation and his appeal agitating all his grievances is pending before Respondent No. 1/Secretary Establishment Division since December 2011, therefore, he is directed to decide the same in accordance with law, rules, policy and the precedents/guidelines of the apex Court applicable to the case of the petitioner, expeditiously and preferably within a period of fortnight from the receipt of copy of this order, under intimation to the Deputy Registrar (Judicial) of this Court. With the above observations/ directions this writ petition is disposed of.

(R.A.) **Petition disposed of.**

PLJ 2013 Lahore 147

Present: Ali Baqar Najafi, J.

GAKHAR HUSSAIN--Petitioner

versus

Mst. SURAYYA BEGUM, etc.--Respondents

W.P. No. 2232 of 2012, decided on 10.12.2012.

Muhammadan Law--

----Ss. 367 & 370--Maintenance--Disobedient daughter--Entitlement to maintenance by father--Under S. 370, a father is bound to maintain his daughter until she is married and father is not bound to maintain a child which is capable of being maintained out of his or her own property. [P. 149] A

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Maintenance--Father is bound to maintain even a divorced daughter if she is living with her mother instead of father--Validity--A daughter is entitled to receive maintenance regardless of her age till such time she is married--Even on her attaining age of majority the father is responsible for her maintenance as she would lead an independent life and is always in need of protection her parents. [P. 150] B

Constitution of Pakistan, 1973--

----Art. 199--Constitutional Petition--Maintenance--Entitlement to maintenance by father--Mother of minor could not provide her maintenance due to limited sources--Validity--Father was admittedly living at U.K and notwithstanding his means of subsistence, he has been providing enough maintenance to other children from his other wives and as such he treated daughter with discrimination. [P. 150] C

PLD 2005 SC 24, ref.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional Petition--Maintenance--Disobedient daughter even assume for moment without conceding was entitled to maintenance by father--Daughter was entitled to maintenance by father--Validity--Contention--Disobedient daughter is not entitled to maintenance has no force for the reasons, (i) father was unable to show his love, affection or even intimacy for daughter and, therefore, cannot expect her to return, precisely when no instance was mentioned showing disobedience, (ii) that ever since he divorced his wife, he never turned up or saw face of his daughter, (iii) under Islamic law, there is no institution of abandonment (Aaq) for disgruntled son/daughter depriving her from inheritance and a daughter cannot be deprived of her right of maintenance by father during his life time. [P. 150] D

PLD 2001 SC 31, PLD 2006 SC 457, PLD 2007 CLC 656, PLD 1972 SC 302, PLD 2012 Lah. 154 & PLD 2005 SC 24, ref.

Ch. Muhammad Waris Khan, Advocate for Petitioner.

Mr. Abid Hussain Abid, Advocate for Respondents.

Date of hearing: 10.12.2012.

Order

Through this writ petition, the petitioner challenges two orders dated 09.07.2012 passed by Respondent No. 3 and that of dated 08.02.2012 passed by Respondent No. 4.

2. Brief facts giving rise to filing of this writ petition are that petitioner married Respondents No. 1 on 28.10.1981. Respondent No. 2 was born from their wedlock on 02.09.1983. The petitioner is foreign nationality holder and his earning exceeds Rs. 1 1/2 lac per month. He expelled the respondents in the year 1987 and married one Saadia Bibi who was his third wife. The respondents claim maintenance to the tune of Rs. 25,000/- each besides other expenses including educational expenses of Respondent No. 2.

Conversely, the petitioner filed written statement on 29.06.2011 through his attorney controverting the claim of the respondents on the ground of limitation, estoppel, concealment of facts and that Respondent No. 2 his daughter is disobedient as she refused to marry with his nephew proposed by him. Hence this writ petition.

3. Learned counsel for the petitioner submits that the impugned judgments and decrees are against law and facts; that Respondent No. 2 is an educated lady and is of earning hand and has been a school teacher whereas the petitioner is an ailing and sick old man depends upon his children and is at the mercy of the State in U.K.; that the grant of past maintenance for six years is not only harsh, excessive but also is illegal; that according to the Injunctions of Islam the children who were earning financially are bound to feed their sick parents to get the blessing of Allah Almighty; that Respondent No. 2 is earning her livelihood and asset of society, but unfortunately she is acting as a tool in the hands of his ex-wife who is exploiting his daughter/ Respondent No. 2. He gave reference to the statement of Respondent No. 2, frustrating his claim but no proof either documentary or oral was produced by Respondent No. 2 which could determine financial status of the father. Further submits that in Section 369 of the Mohammedan Law by D.F. Mullah's, Food, Raiment and lodging are defined for maintenance, as such the expenses for education are not covered. Places reliance on Mukhtarul Hassan Siddiqui versus Judge Family Court, Rawalpindi and 4 others (1994 CLC 1216(Lahore) in support of his argument that a disobedient daughter is not entitled to recover the maintenance; that the disobedient respondent being major should in-fact support the petitioner; that the maintenance for period of six years is not sustainable in the eyes of law.

4. Conversely, learned counsel for the respondents submits that the petitioner has married three ladies and is feeding and maintaining the children from other wives but Respondent No. 2 was not only discriminated but also ignored

totally; that she with a great difficulty could sustain and set up at the level of MA. (English Literature); that a disobedient daughter, even assume for a moment without conceding, is also entitled to the maintenance by the father; that Respondent No. 2 is also entitled to maintenance by the father; that the petitioner has abandoned the said respondent, however, since he divorced her mother and did not even bother to know as to whether they were surviving or dead. Places reliance on Article 120 of the Limitation Act, 1908; Abdul Rauf and others versus Mrs. Shereen Hassan (PLD 2001 Supreme Court 31), Muhammad Nawaz versus Mst. Khurshid Begum and others (PLD 1972 Supreme Court 302), Mst. Anar Mamana and another versus Misal Gul and 2 others (PLD 2005 Peshawar 194), Farkhanda Mumtaz versus Muhammad Sharif and 2 others (PLD 2006 Peshawar 96) & (PLJ 2006 Peshawar 206(DB), Mst. Farah Naz versus Judge Family Court, Sahiwal (PLD 2006 Supreme Court 457); Rasheed Ahmad versus Mst. Shamshad Begum and 3 others (PLD 2007 CLC 656) Arbah Mir Muhammad versus Mst. Iram Iltimas (PLD 2005 Supreme Court 24) and Muhammad Asadx versus Mst. Humera Naz and others (2000 CLC 1725 (Lahore), to argue that the respondent is legally entitled to the maintenance until she gets married or her custody is changed through process of law, which the petitioner has been avoiding.

5. I have heard the learned counsel for the parties and perused the record.

6. Under Chapter XIX of the Muhammadan Law by D.F. Mulla's, the authentic codified text (though a personal opinion) so far available, the maintenance as defined in Section 369 includes food, raiment and lodging. Under Section 370 a father is bound to maintain his daughter until she is married and the father is not bound to maintain a child which is capable of being maintained out of his or her own property. The definition of maintenance is to be liberally interpreted which includes the process of maintaining or being maintained and the provisions of the means to support life as held in Abdul Rauf versus Mrs. Shereen Hassan (PLD 2001 Supreme Court 31). The claim

for past maintenance is governed by Art. 120 of the Limitation Act which describes a period of six years from the date when the right to sue is accrued. The time during which the petitioner remained away from Pakistan would be excluded for reckoning the period of limitation as held in Mst. Farah Naz versus Judge Family Court Sahiwal (PLD 2006 Supreme Court 457). The said respondent is also entitled to past maintenance, six years prior to institution of the suit as already said that Article 120 of the Limitation Act is applicable to the suit for maintenance. Reliance can be placed on Rasheed Ahmad versus Mst. Shamshad Begum and 3 others (PLD 2007 CLC 656) and also Muhammad Nawaz versus Mst. Khurshid Begum and 3 others (PLD 1972 Supreme Court 302) wherein the past maintenance subject to limitation was held to be permissible in relevant circumstances of the case. Even in the recent judgment given by learned single bench of this Court in case Mian Muhammad Sabir versus Mst. Uzma Parveen and 2 others (PLD 2012 Lahore 154) it was held that father is bound to maintain even a divorced daughter if she is living with her mother instead of the father. Hence, by now, it can be safely said that a daughter is entitled to receive the maintenance regardless of her age till such time she is married. Even on her attaining age of majority the father is responsible for her maintenance as she would lead an independent life and is always in need of protection of her parents. In the instant case the mother of Respondent No. 2 could not provide her maintenance due to limited resources. The father is admittedly living at U.K., and, notwithstanding his means of subsistence, he has been providing enough maintenance to the other children from his other wives and as such he treated Respondent No. 2 with discrimination. Reliance can be placed on Arbab Mir Muhammad versus Mst. Iram Iltimas (PLD 2005 Supreme Court 24).

7. The contention of the petitioner that disobedient-daughter is not entitled to maintenance has no force for the reasons; firstly, the father was unable to show his love, affection or even intimacy for the daughter and, therefore, cannot expect her to return, precisely when no instance was mentioned showing

disobedience; secondly, that ever since he divorced his wife (mother) Respondent No. 1 he never turned up or saw the face of his daughter; thirdly, under Islamic Law there is no institution of abandonment (Aaq) for a disgruntled son/daughter depriving him/her from the inheritance and, therefore, a daughter cannot be deprived of her right of maintenance by the father during his life time. Even otherwise, the concurrent finding of facts cannot be interfered as the learned counsel for the petitioner could not point out any illegality, misreading or non-reading of evidence to substantiate that the petitioner had no resources to maintain his only ignored daughter ever since his birth.

8. For the foregoing reasons this writ petition being without any force, is hereby dismissed.

(R.A.) **Petition dismissed.**

PLJ 2013 Cr.C. (Lahore) 203

Present: Ali Baqar Najafi, J.

Rao MUHAMMAD IQBAL--Petitioner

versus

STATE, etc.--Respondents

Crl. Misc. No. 18313-B of 2012, decided on 23.1.2013.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497(2)--Pakistan Penal Code, (XLV of 1860), S. 489-F--Bail, grant of--Further inquiry--Dishonoured of cheque--Petitioner was behind the bars for the last 7« months and no more required for investigation purpose--Registration of criminal cases of similar nature if not accompanied by conviction orders would not disentitle the petitioner from the grant of bail--The question whether the cheques were issued with dishonest intent requires further inquiry--Application was accepted and the petitioner was admitted to post-arrest bail. [P. 204] A

2011 SCMR 1708 & 2009 SCMR 1488, ref.

Ch. Zulfiqar Ali, Advocate for Petitioner.

Ch. Muhammad Jahangir, D.P.G. for State.

Mr. Tahir Ahmad, Advocate for Complainant.

Date of hearing: 23.1.2013.

Order

Petitioner seeks post-arrest bail in case FIR No. 867/2011 dated 16.10.2011, for an offence under Section 489-F, PPC, registered at Police Station `A' Division, District Okara.

2. Briefly the facts as narrated in the FIR are that the petitioner issued two cheques amounting to Rs. 11.00,000/- and Rs.7,90,000/- which on presentation were dishonoured.

3. Learned counsel for the petitioner submits that the petitioner is behind the bars for the last 7« months and no more required for the purpose of investigation; he is aged about sixty year; that the cheques were issued as a guarantee cheques. Places reliance on Riaz Jafar Natiq versus Muhammad Nadeem Dar and others (2011 SCMR 1708), Zafar Iqbal versus Muhammad Anwar and others (2009 SCMR 1488) and prays for grant of post-arrest bail.

4. Conversely, learned D.P.G. assisted by the learned counsel for the complainant submits that three cases under Section 489-F, PPC were registered against the petitioner; challan was submitted in the Court on 12.06.2012; he is a retired banker and the bank has also filed a recovery suit against him. He prays for dismissal of the bail application.

5. I have heard the learned counsel for the parties and perused the record.

6. The petitioner is behind the bars for the last 7« months and no more required for investigation purpose. Registration of criminal cases of similar nature if not accompanied by conviction orders would not disentitle the petitioner from the grant of bail. The question whether the cheques were issued with dishonest intent requires further inquiry. In this view of the matter this application is accepted and the petitioner is admitted to post-arrest bail provided he furnishes bail bonds in the sum of Rs.500,000/- (five lac rupee) with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.S.) **Bail admitted.**

PLJ 2013 Lahore 215

[Rawalpindi Bench, Rawalpindi]

Present: Ali Baqar Najafi, J.

MUHAMMAD ZAMAN KHAN NIAZI--Petitioner

versus

PROVINCE OF PUNJAB, etc.--Respondents

W.P. No. 697 of 2012, decided on 1.2.2013.

Constitution of Pakistan, 1973--

----Art. 199--Punjab Medical and Health Institutions Act, 2003, S. 18--Quo warranto petition--Appointment of doctor on administrative posts in health department--Neither possessed requisite postgraduate qualification nor grade yet was posted as M.S.--Required to amend--Petitioner was interested person and was direct beneficiary, hence, cannot be a petitioner in writ of quo warranto--Quo-warranto petition was not maintainable by an interested person--Question of--Whether writ of quo warranto can be issued--Validity--Petitioner being a doctor but an interested person will be direct beneficiary of a writ of quo warranto--Petitioner had failed to amend writ petition after order was passed by High Court--Petition was motivated, therefore, writ of quo warranto cannot be issued. [Pp. 219 & 220] A & B

PLJ 2012 SC 73, 2010 CLD (Lah.) 1572 & 2007 SCMR 97, rel.

2012 PLC (CS) 1057, 2012 PLC (CS) 502, 2011 YLR 2899 & 2011 PLC (CS) 482 rel.

Sardar Asmatullah Khan, Advocate for Petitioner.

Mr.Rashid Hafeez, Assistant Advocate General for Resondents.

Mr. Kashif Ali Malik, Advocate with Respondent No. 3.

Syed Nayyar Hussain, Advocate/petitioner in person (in W.P. No. 2189-2012).

Date of hearing: 30.1.2013.

Order

This order shall dispose of the instant writ petition as well as W.P. No. 2189-2012 as both these matters involve common question of law and facts.

2. Through this writ petition, the petitioner has challenged the Notification No. SO(GC)M-226/99 dated 18.02.2012 (Annex-`C') and prayed for upholding of Notification No. S.O(GC)M-226/99 dated 16.02.2012 (Annex-`B') with further prayer to direct Respondents No. 1 & 2 to fill in the Administrative and Executive posts in the general cadre under the rules on merits amongst the eligible Principal Medical Officers (PMOs) possessing the requisite Post Graduate Qualification. While addressing the question of maintainability, learned counsel for the petitioner did not press the first part of prayer and confine only to the issuance of writ of quo-warranto vide order of this Court dated 4.10.2012.

3. In W.P. No. 2189/2012 the petitioner sought that the appointments of Respondents No. 3, 4, 5 & 6 may be declared as illegal, unlawful being non qualified and ineligible with further direction to Respondents No. 1 and 2 to appoint eligible and qualified doctors of BS-20 on all BS-20 administrative posts in the Health Department in accordance with the rules and merits without further delay.

4. The brief facts giving rise to filing of this writ petition as contained therein are that Respondent No. 3 is an Additional Principal Medical Officer (APMO) of BS-19. Vide Notification No. SOR-III-1-30/94 dated 21.11.1994 Respondent No. 2 created following four tier structure of general cadre doctors:--

S/No.	Designation	Grade
a.	Principal Medical Officer (PMO)	BS-20
b.	Additional Principal Medical Officer	(APMO) BS-19
c.	Senior Medical Officer(SMO)	BS-18
d.	Medical Officer(MO)	BS-17

In the said Notification at Serial No. 7 the qualification and postings of PMOs, a Principal Medical Officer(PMO) is mentioned as follows :--

(I) A Principal Medical (PMO) of BS-20 with an additional post graduate qualification will be designated as under :--

(a) MS of DHQ hospitals at Divisional Headquarters,

(b) MS, of DHQ Hospitals of 250 beds and above

(c) Director Provincial Health Dev Centre Lahore

(d) Director Health Services
(e) MS Teaching hospitals
(f) MS Punjab Institute of Cardiology, Lahore
(g) MS Government Mental Hospital, Lahore
(h) Surgeon Medico-legal Punjab, Lahore
(i) Executive Director Special Projects,
(j) Surgeon General, Punjab, Lahore
(k) Gen. Manger Government MSD, Lahore
(l) Director Blood Transfusion Services Punjab, Lahore, and
(m) Chief Chemical Examiner to Government of the Punjab Lahore.

The Government of the Punjab created 45 executive and 75 general duty posts for the doctors of the rank of Principal Medical Officer and as Respondent No. 3 is an APMO of BS-19 who neither possessed of the requisite Postgraduate qualification nor the grade yet was posted as Medical Superintendent DHQ Hospital, Rawalpindi on 09.02.2010 and after completing 2-years month and 7-days the petitioner was appointed in his place vide Notification No. S.O (GC) M-226/99 dated 16.02.2012. But only after two days of taking over the charge by the petitioner i.e. on 18.02.2012 vide Notification No. S.O(GC)M-266/99 Respondent No. 3 was reappointed at the place of the petitioner. The petitioner within this background seeks issuance of a writ in the nature of quo-warranto questioning his eligibility/ qualification to be appointed and hold the said post.

4. Learned counsel for the petitioner submits that Respondent No. 3 neither possesses B.S. 20 grade nor any requisite post graduate qualification, thus is not qualified to hold such post; that the Notification dated 18.02.2012 is ultra vires of constitution and needs to be set aside as the same is corum non-judice; that under Section 18 of the Punjab Medical and Health Institutions Act 2003 the government is required to appoint a whole time M.S. of Institution possessing such qualification on such terms and conditions as it may determine from a panel of three individuals recommended by the board and vide notification dated 15.09.2003 the board was constituted which was empowered to recommend the appointments against BS 17 and above that vide notification dated 21.11.1994 at Serial No. 7 of the schedule the requisite qualification for appointment of Principal Medical Officer or equivalent (BS-

20) is DHQ/DPH/DMCH/MPH/DHA/MCPS/FCPS in community medicine/M.Sc. (Med. Admn) and 5-years service as DHO/MS of the hospitals/Addl. Director Health services/MS THQ Hospital/AMS and In-service training at the provincial Health Development Centre but Respondent No. 3 did not possess such degrees. Places reliance on PLJ 2012 S.C. 73 (Original Jurisdiction); Muhammad Iqbal Khattak versus Federation of Pakistan (2010 CLD 1572(Lahore); PLD 2011 Supreme Court 927 (Suo Motu Case No. 18 of 2010); PAKISTAN TOBACCO BOARD and another versus Tahir Raza and others (2007 SCMR 97) to argue that in fact the merit is the qualification which is made basis for seniority-cum-fitness.

5. Conversely, learned Assistant Advocate General questions the maintainability of this writ petition on the ground that after order dated 4.10.2012 the petition was required to be amended, which was not; that the petitioner himself is interested person and is direct beneficiary, hence cannot be a petitioner in a writ of quo warranto; that earlier in Writ Petition No. 607/12 titled Muhammad Afzal Sajid versus Government of Punjab through Chief Minister & 2 others on the same subject matter was dismissed by this Court on 07.03.2012, where after ICA No. 32 of 2012 titled Muhammad Afzal Sajid versus Government of Punjab, etc. filed against the said order was also dismissed on 7.05.2012 by a Division Bench of this Court where after CPSLA No. 1306 of 2012 was dismissed by the Hon'ble Supreme Court of Pakistan on 10.08.2012, which fact was concealed from this Court; that in the writ of quo warranto it is the qualification of a person to hold the post is challenged and not the appointment; that in the subsequent Notification dated 18.10.2004 the Medical Superintendent can be appointed from BS-19 by a competent authority, which criteria is laid down for seats in District Headquarters Hospitals in Punjab for the Principal Medical Superintendents in the Punjab from B.S. 19/20. Learned A.A.G also argued that as per news items the Chief Minister of Punjab has expressed his strong resentment over the poor cleanliness arrangement in the hospitals and thereafter he immediately transferred the petitioner by posting him as OSD and initiated action against him while accompanying the sitting MNA, namely, Muhammad Hanif Abbasi and Malik Shakil Awan and the Commissioner Rawalpindi. Places reliance on Dr. Shazia Khawaja versus Chairman and Dean of Sheikh Zayed Post Graduate Medical Institute and Hospital, Lahore and 7 others (2012 PLC(C.S.)

1057 (Lahore), Asghar Ali and others versus Mansoor Muzaffar Ali and 3 others (2012 PLC(C.S.) 502 (Islamabad High Court), Tariq Mehmood A. Khan and 3 others versus Sindh Bar Council through Secretary and 3 others (2011 YLR 2899 (Karachi) and Arbab Imtiaz Khan versus Assim Jamil Zubedi and another (2011 PLC (C.S.) 482 (Sindh High Court) & prays for dismissal of the writ petition.

6. Learned counsel for Respondent No. 3 adds that the present writ petition was filed immediately after dismissal of earlier Writ Petition No. 607 of 2012 on 07.03.2012 and the matter has already attained finality when the Hon'ble Supreme Court of Pakistan had dismissed CP No. 1306/2012 after consulting the available record, which establishes that all the points now raised before this Court were raised and dealt with through an authoritative pronouncement. Places reliance on Syed Masood Alam Rizvi and others versus Dr. Muhammad Saeed (2009 SCMR 477), Amanul Mulk vs. Mian Ghafoor-Ur-Rehman and others (1997 SCMR 1796) and Muhammad Yasin Saqib versus Chairman, Pakistan Telecommunication Corporation, Islamabad and 7 others (2003 PLC(C.S.) 1105) to argue that repetitive writ petition by or on behalf of the litigant is deplorable and the matter is hit by the principle of constructive res judicata. Submits that the petition for quo warranto is not maintainable by an interested person.

On merits the learned counsel submits that the petitioner is duly qualified as per Notification dated 18.10.2004; that the petitioner has been in Grade-19 and occupies the post as M.S, he possesses the degree of Masters in Public Health which is required therefore, prays for the dismissal of the petition.

7. I have heard the learned counsel for the parties and perused the record.

8. The question before this Court is as to whether writ of quo warranto can be issued against Respondent No. 3. The petitioner remained Medical Superintendent of the concerned Hospital but was substituted by Respondent No. 3 on the indulgence of Chief Minister and the sitting M.N.A and the Commissioner, Rawalpindi Division, Rawalpindi. Respondent No. 3 occupies BPS-19 and holds a degree in Public Health. The earlier Writ Petition No. 607 of 2012 challenged the posting of BPS-19 as Principal Medical Officer was dismissed for the reason that the petitioner therein was not a doctor, hence not an aggrieved person which order has attained finality.

9. This leads me to the point that the petitioner being a doctor but an interested person will be the direct beneficiary of a writ of quo warranto. The petitioner has also failed to amend the writ petition accordingly after the order dated 04.10.2012 passed by this Court. The law on the scope of writ of quo warranto is based upon the illuminating judgments given by the august Court in Aziz-ur-Rahman Chowdhury vs. M. Nasiruddin etc. (PLD 1965 Supreme Court 236) when Court can inquire into conduct and motives and can dismiss the writ petition where information laid was of vexatious nature. In esteemed judgment given in Hafiz Hamdullah vs. Saifullah Khan and others (PLD 2007 Supreme Court 52), it is held that to invoke jurisdiction under Article 199 for quo warranto a person is not required to fulfill the conditions so as to bring him in to the meaning of an aggrieved person and is not required to establish his locus standi. He just has to show that the incumbent is not legally qualified to hold or remain in the office. In Pakistan Tobacco Board and another vs. Tahir Raza and others (2007 SCMR 97) the proceedings are held as primarily inquisitorial and not adversarial as the incumbent must be a person holding a public office without any legal warrant. View taken by the Division Bench of Sindh High Court in Arbab Imtiaz Khan vs. Assim Jamil Zubedi and another [2011 PLC (C.S) 482] and provides the condition i.e. holder of a public office, without requisite qualification not appointed by the competent authority. However, recent judgment of Single Bench of this Court in Dr. Shazia Khawaja vs. Chairman and Dean of Sheikh Zayed Post Graduate Medical Institute and Hospital, Lahore and 7 others [2012 P L C (C.S)1057], wherein this Court has held that the conduct of the petitioner is relevant.

10. Scanning of the above-referred judgments and applying the dicta laid down therein, it is safely concluded that the petition is motivated; therefore, the writ of quo warranto cannot be issued. However, Respondent No. 1 is directed to re-scrutinize the qualification and grade of Principal Medical Officers already posted in District Headquarter Hospitals throughout Province of the Punjab as per their eligibility criteria and intimate this Court through the Deputy Registrar (Judicial) of this Court.

Disposed of in the above terms.

(R.A.) **Petition disposed of.**

PLJ 2013 Lahore 336

[Rawalpindi Bench Rawalpindi]

Present: Ali Baqar Najafi, J.

MUHAMMAD MEHBOOB & another--Petitioners

versus

NOOR ELLAHI (deceased) through his Legal Heirs, etc.--Respondents

C.R. No. 297 of 2013, decided on 21.5.2013.

Civil Procedure Code, 1908 (V of 1908)--

----O. XLI, R. 27--Production of additional evidence--Neither birth certificate nor pedigreetable was produced--Question of parentage--Substantial cause by way of additional evidence--Validity--Although production of additional evidence was not normally encouraged but when some document was directed bearing on lis the Court could not close its eyes--Application for additional evidence was permissible at any stage of proceedings--Documents sought to be produced through additional evidence comprise of revenue record--Since very basis of claim of petitioner was parentage, therefore, documents were relevant in order to establish his parentage--This will certainly not fill up also not set up a new point--Case was remanded. [Pp. 337 & 338] A & B

1985 SCMR 1232, ref.

Mr. Muhammad Abdul Hayee Alvi, Advocate for Petitioners.

Ch. Nisar Ahmad Gujjar, Advocate for Respondents.

Date of hearing: 21.5.2013.

Order

Through this civil revision the petitioners challenge the order dated 27.02.2013 passed by the Additional District Judge, Rawalpindi, whereby the application of the petitioners for additional evidence was dismissed.

2. The brief facts giving rise to the filing of this revision petition are that the petitioners filed a suit for declaration, cancellation, mandatory and permanent injunction stating therein that their forefather, namely, Keema was owner of the land in question and after his death his estate was devolved upon his sons, namely, Bostan, Sultan and Dost Muhammad. Petitioner No. 1 is the son of Dost Muhammad and Petitioner No. 2 is the daughter of Sultan. The said Bostan died issueless and as such his estate devolved upon his widow Mst. Hussan Jan as limited owner, who was earlier married to Alaf Din and out of her said earlier wedlock Karam Ellahi (respondent) was born. After the death of Mst. Hussan Jan the estate of her deceased husband, namely, Bostan was illegally and fraudulently with the connivance of revenue staff transferred and mutated in favour of Karam Ellahi deceased, who was shown as son of Bostan. The written statement was filed and out of divergent pleadings of the parties nine issues were framed. The learned trial Court while deciding Issues No. 7 and 8 observed that neither the birth certificate of Karam Ellahi nor pedigreetable of Alaf Din was produced, therefore, the suit was dismissed. The petitioners preferred an appeal and during the pendency thereof they filed an application under Order XLI Rule 27, CPC for producing additional evidence in the form of Mutation No. 401 dated 05.08.1992, Mutation No. 411 dated 06.09.1992 and Register Haqdaran Zamin for the year 1989-1990 pertaining to Khewat No. 115, Khatooni No. 166 to substantiate that Karam Ellahi was son of Alaf Din and Mst. Hussan Jan was the widow of Alaf Din and that the respondents are the sons and daughters of Karam Ellahi, therefore, not entitled to inherit from the property of Bostan. The learned appellate Court while dismissing the application observed that in

the absence of birth certificate of Karam Ellahi and the pedigreetable of Alaf Din no case for additional evidence was made out.

3. Learned counsel for the petitioners submits that the said referred documents are relevant and also important for the just decision of the case as the question of parentage of Karam Ellahi will be finally decided.

4. Conversely, learned counsel for the respondents submits that the petitioners have failed to produce any evidence in the form of death certificate to prove his claim. Places reliance on Mst. Bibi Baghdiya Vs. Abdullah Khan and others (2012 CLC 165) and Fateh Muhammad through Legal Heirs and others (2012 CLC 1172).

5. I have heard the learned counsel for the parties and perused the available record.

6. Under Order XLI Rule 27, C.P.C. the appellate Court may require any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause by way of additional evidence. Although the production of additional evidence is not normally encouraged but when some document has direct bearing on the lis in question the Court cannot close its eyes. An application for additional evidence is permissible at any stage of the proceedings. The documents sought to be produced through additional evidence comprise of revenue record whereby the parentage of Karam Ellahi appears to Alaf Din and not Bostan. Since the very basis of the claim of the petitioners is the parentage of said Karam Ellahi, therefore, these documents are relevant in order to establish his parentage. This will certainly not fill up the lacuna in the plaintiff/petitioner's evidence and will also not set up a new point. Moreover, this Court feels that such documents need to be appreciated. I place my reliance Bashir Ahmad Vs. Ahmad-ul-Haq Sddiqui (1985 SCMR 1232).

7. In this view of the matter, I allow the instant civil revision and remand the case to the appellate Court and the application of the petitioners will be deemed to have been pending.

(R.A.) **Case remanded.**

PLJ 2013 Lahore 399

[Rawalpindi Bench Rawalpindi]

Present: Ali Baqar Najafi, J.

MUHAMMAD SHIRAZ--Appellant

versus

LEARNED ADJ, GUJJAR KHAN, etc.--Respondents

W.P. No. 4734 of 2010, heard on 24.5.2013.

Constitution of Pakistan, 1973--

----Art. 199--Muslim Family Courts Act, 1964, S. 5--Transfer of Property Act, S. 130--Clause 17 of Nikah Nama--Past maintenance allowance--Suit for restitution of conjugal rights and suit for recovery of maintenance allowance--Implementation of clauses 17 & 20 of Nikah Nama--Judgment and decree to extent of gold ornaments and recovery was challenged--Validity--In presence of decree for restitution of conjugal rights, condition of payment on desertion does not become operative--Clause 17 of Nikah Nama imposing such condition does not come within ambit of S. 130 of Transfer of Property Act as actionable claim--Petition was partly allowed to extent of imposition of condition of clause 17 and claim under Clause 20 of Nikah Nama and dismissed to extent of maintenance granted to wife for carrying marriage bond intact, since decree for restitution of conjugal rights, had already become final. [Pp. 401 & 402] A & C

Maintenance Allowance--

----Payment of past maintenance to wife--As long as wife carries name of husband, she was entitled to at least some acknowledgement in form of maintenance by husband. [P. 402] B

2003 SD 350 & 2002 CLC 1450, ref.

Raja Saghir-ur-Rehman, Advocate for Petitioner.

Mr. S. Mansoor Hussain Bukhari, Advocate for Respondents No. 3 & 4.

Date of hearing: 24.5.2013.

Judgment

Through this constitutional petition, the petitioner seeks setting aside of the judgment and decree passed by the learned Additional District Judge, Gujjar Khan, whereby Respondent No. 3 was granted past maintenance allowance at the rate of Rs. 2000/- per month and 10-Tolas of gold ornaments on the basis of clause-17 of Nikah Nama.

2. The brief facts giving rise to filing of the present petition are that the petitioner filed a suit for restitution of conjugal rights against Respondent No. 3 who, in turn, also filed a suit for recovery of maintenance allowance and for implementation of clauses-17 and 20 of the Nikah Nama, besides the maintenance of Respondent No. 4. Both the suits were consolidated and issues were framed out of the divergent pleadings of the parties. The documentary as well as oral evidence was led by both the parties, whereafter the learned Judge Family Court passed the judgment and decree dated 30.1.2010, whereby Respondent No. 3 was granted past maintenance allowance at the rate of Rs.2000/- per month from October, 2009 till decision of the suit whereas Respondent No. 4 was granted maintenance allowance at the rate of Rs.2000/- per month with 10% annually increase from December, 2009 till she married or custody is shifted. However, the suit for restitution of conjugal rights was also decreed in favour of the petitioner subject to the condition that petitioner would pay past maintenance for the purpose of marital obligations in future. However, the gold ornaments and, Rs.50,000/ were not granted to the said respondent. Respondent No. 3 and petitioner challenged the said judgment and decree to the extent of gold ornaments and recovery of Rs. 50,000/- which was granted by the learned Additional District Judge, Gujjar Khan. Hence, this writ petition.

3. The learned counsel for the petitioner submits that the grant of past and future maintenance to Respondent No. 3 is against law and facts; that Respondent No. 3 is leading a deserted life of her own and without any justification and, therefore, is not entitled to any maintenance, especially in the presence of decree for restitution of conjugal rights; that Respondent No. 3 herself admitted in the plaint that on the next day of marriage 7-Tolas of gold ornaments in the form of bangles were taken back by the petitioner and thereafter there is no evidence of snatching away the other gold ornaments; that the learned Additional District Judge passed his judgment on surmises and

conjectures and has also committed illegality; that the judgment of the learned Additional District Judge is arbitrary, capricious and in variation of the judgment and decree passed by the learned Judge Family Court; that an exaggerated quantum of maintenance was granted by the appellate Court and prays for setting aside of the said judgment. Places reliance upon the cases of Sakina Bibi v. Muhammad Latif, etc. [2003 S.D. 350], Arshad Ali v. Additional District Judge, Vehari and others [2002 CLC 1450], Muhammad Akram v. Mst. Hajra Bibi and two others [PLD 2007 Lahore 515] and Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and other [PLD 2011 S.C. 260].

4. Conversely, the learned counsel for the respondents submits that the petitioner has admitted in Paragraph No. 3 of the written statement that although Respondent No. 3 brought 10-Tolas of gold ornaments but had taken it back at the time when she accompanied her father; that in Paragraph No. 5 of the plaint of the suit for restitution of conjugal rights, the petitioner admitted that on 7.10.2009, Respondent No. 3 went to her parents by taking the said gold ornaments, leaving ten months' old daughter, which is not appealing to reason; that Respondent No. 3 had to file a habeas corpus petition to get the minor suckling baby; that in her statement, Respondent No. 3 categorically stated that the said gold ornaments were snatched by the petitioner; that conduct of the petitioner led Respondent No. 3 to file a suit for maintenance and recovery of 10-Tolas of gold ornaments and prays for dismissal of this writ petition.

5. I have heard the learned counsel for the parties and perused the available record.

6. In paragraph No. 6 of the plaint of the suit for recovery of maintenance and for implementation of clause-17 of the Nikah Nama, Respondent No. 3 has admitted that on the next date of the marriage, the petitioner has already taken 7-Tolas of gold bangles with a promise that he would purchase gold articles of equal weight for Respondent No. 3 in future but he could not do so. In the written statement to the suit for restitution of conjugal rights, Respondent No. 3 in Paragraph No. 4 stated that she was beaten and expelled by the petitioner on 5.10.2009 without the gold ornaments. She could not prove either through her pleadings or in her statement that apart from the said bangles, she had any other gold ornaments. On the other hand, her plea that vide clause-17 of

the Nikah Nama she was to retain 10-Tolas of gold ornaments were the same which, according to her, were given to her on the eve of marriage by the petitioner and were taken on the following morning. Admittedly, they were not purchased by the petitioner. Meaning thereby that they were not in her use since the wedding night. Under clause-20 of the Nikah Nama, the maintenance at the rate of Rs.2000/ per month and Rs.50,000/- were the conditions imposed which were made applicable only on the desertion by Respondent No. 3. Any such condition does not come within the category of Item No. 9 of the schedule under section 5 of the Muslim Family Courts Act, 1964. Moreover this condition was also required to be mentioned on a document before writing under the clause-20.

7. Admittedly, the stand of the petitioner is that he is willing to take the respondent back and will abide by all reasonable conditions imposed by Respondent No. 3 were not reciprocated her. In the presence of decree for restitution of conjugal rights, the condition of payment of Rs.50,000/- on desertion does not become operative. Moreover, clause-17 of the Nikah Nama imposing such condition does not come within the ambit of Section 130 of Transfer of Property Act as actionable claim. Reliance is placed upon the case of Syed Mukhtar Hussain Shah vs. Mst. Saba Imtiaz (PLD 2011 SC 260)

8. As far as payment of maintenance to the wife is concerned, suffice it to say that as long as wife carries the name of the husband, she is entitled to at least some acknowledgement in the form of maintenance by the husband. After all, in this case, Respondent No. 3 is bringing up Respondent No. 4, the minor who is his daughter. I, therefore, respectfully disagree with the judgments of Single Judge of this Court reported as Sakina Bibi v. Muhammad Latif. etc. [2003 S.D. 350], Arshad Ali v. Additional District Judge, Vehari and others [2002 CLC 1450].

9. For the foregoing reasons, this writ petition is partly allowed to the extent of imposition of condition of clause-17 and claim under clause-20 of the Nikah Nama and dismissed to the extent of maintenance granted to Respondent No. 3 for carrying the marriage bond intact, since the decree for restitution of conjugal rights has already become final.

(R.A.) **Petition allowed.**

PLJ 2013 Lahore 489

Present: Ali Baqar Najafi, J.

RASHID AHMAD KHAN--Petitioner

versus

SECRETARY, GOVERNMENT OF PUNJAB, etc.--Respondents

W.P. No. 17335 of 2013, decided on 10.7.2013.

Punjab Civil Servants Act, 1974--

----S. 8(2)--Constitution of Pakistan, 1973, Art. 199--Constitutional Petition--Promotion case--Retired civil servant might be considered for proforma promotion--Observation of department that proforma promotion cannot be claimed by any civil servant as of right and that civil servant being no longer in service ceases to be civil servant hence he cannot avail benefit of promotion--Validity--If department had delayed matter of promotion without any justifiable reason, then civil servant cannot be made to suffer and notwithstanding his retirement, department is required to promote him, if found entitled otherwise--High Court had also observed in same view that a retired government servant was directed to be considered for promotion as his case was not processed until superannuation--Petition was disposed of with direction to consider petitioner. [Pp. 490 & 491] A, B & C

2012 SCMR 126, rel.

Rao Farid ul Haque Khan, Advocate for Petitioner.

Date of hearing: 10.7.2013.

Order

Through this Constitutional Petition, the petitioner seeks setting aside of order dated 04.06.2013 passed by the Secretary Local Government and Community Development, Department and prays for direction to act upon in accordance with law and place the promotion case of the petitioner before the , concerned Departmental Promotion Committee in the light of Notification dated 19.4.2003.

2. Brief facts giving rise to the filing of this writ petition are that vide order dated 19.04.2013 passed by this Court in Writ Petition No. 9549 of 2013 a direction was issued to Respondent No. 1 to decide the pending application of the petitioner dated 15.04.2013 attached with the said petition as "Annex-B" in accordance with law through a speaking order after providing him an opportunity of hearing within one month of the receipt of the certified copy of

the said order but Respondent No. 1 was reluctant to decide the representation within a stipulated period and as such the petitioner was constrained to file a petition bearing Criminal Original No. 1224-W of 2013 for compliance of the said order. However, Respondent No. 1 has rejected the representation filed by the petitioner vide order dated 04.06.2013, hence this writ petition.

3. Learned counsel for the petitioner submits that the petitioner was inducted into the Punjab Local Council Service (L.C.S) as Sub Engineer BPS-11 and after qualifying the service for selection Grade BS-16; that being the senior most Sub Engineer the petitioner was entitled for promotion as Sub Divisional Officer BPS-17 as his juniors are promoted to the said rank; that the petitioner was neither promoted as SDO on permanent nor on officiating basis for several years but he was not regularized as such; that case of the petitioner is required to be considered for promotion by placing it before the concerned Departmental Promotion Committee; that in the light of Section 8 of the Punjab Civil Servants Act, 1974 the petitioner is also entitled to be promoted at the relevant time but his case was not processed before the concerned Departmental Promotion Committee; that even the retired government servant may be considered for proforma promotion, provided he files a representation to this effect during his service.

4. I have heard the learned counsel for the petitioner and perused the available documents attached with this petition.

5. Vide order dated 04.06.2013 passed by Respondent No. 1, it has been observed in Para-4 that as per clause 8(2) of the Punjab Civil Servants Act, 1974 promotion/proforma promotion cannot be claimed by any civil servant as of right and that civil servant being no longer in service ceases to be a civil servant, hence he cannot avail the benefit of promotion/proforma promotion. I am afraid this is against the dictum laid down in Secretary Schools of Education and others v. Rana Arshad Khan and others (2012 SCMR-126), wherein it is held that if the Department had delayed the matter of promotion without any justifiable reason, then civil servant cannot be made to suffer and notwithstanding his retirement, department is required to promote him, if found entitled otherwise. This Court has also observed the same view in the judgment dated 18.09.2012 passed in Writ Petition No. 21006 of 2012 titled "Mst.Shamim Usman, Associate Professor vs. Chief Secretary, etc." in which a retired government servant was directed to be considered for promotion as his case was not processed until superannuation.

6. In this view of the matter, this writ petition is disposed of with the direction to the respondents to consider the petitioner in the above terms.

(R.A.) **Petition disposed of.**

PLJ 2013 Cr.C. (Lahore) 572 (DB)
[Rawalpindi Bench Rawalpindi]

Present: Ijaz Ahmad and Ali Baqar Najafi, JJ.

WAHEED KHAN--Appellant

versus

STATE--Respondent

Crl. Appeal No. 62 of 2012, decided on 2.5.2013.

Control of Narcotic Substances Act, 1997 XXV of 1997)--

----S. 9(C)--Criminal Procedure Code, (V of 1898), S. 510--Conviction and sentence--Challenge to--Accused deals in business of charas and herion--Report of chemical examination was an unsigned document--Report of the Chemical Examiner has proved that samples sent were detected as Charas and heroin and all the analysis were in the positive as the: report of the Chemical Examiner does not bear the signature of the Chemical Examiner, who conducted the examination on its attested copy. Probably, the original copy of the record was lost and hence, another unsigned copy attested by his successor was produced in the Court, which is not admissible in evidence u/s 510, Cr.P.C.--Even otherwise, under Section 510, Cr.P.C. evidence of the Chemical Examiner has been dispensed with but with the condition that the document must be proved in accordance with the said requirement of law. Any document purported to be a report under the hand of any Chemical Examiner upon any matter submitted to him for examination or analysis may be used as evidence without calling him as a witness. However, the Court may in his discretion summon and examine such person by whom such report has been made but surely the report must bear the signature of the Chemical Examiner--Conviction, on this ground lone, is not sustainable as the recovery of the narcotic substance was not proved against the appellant in accordance with law--Appeal allowed. [Pp. 574 & 575] A, B & C

PLD 1977 Karachi 1019, ref.

Sh. Ahsan-ud-Din, Advocate for Appellant.

Mr. Muhammad Yousaf, DDPP for Respondent.

Date of hearing: 2.5.2013.

JUDGMENT

Ali Baqar Najafi, J.--The appellant, was convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997 in case FIR No. 30 registered at Police Station Sadar, Attock for an offence u/S. 9(c) of the Act ibid by the learned Additional Sessions Judge, Attock and was sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 30,000/- and in default of payment thereof to undergo simple imprisonment for two months. He was also extended the benefit of Section 382-B, Cr.P.C.

2. Briefly the facts giving rise to the present appeal are that Abdur Rashid, SI lodged complaint (Exh.PA) stating therein that Iftikhar Malik Inspector/SHO received information through his private sources that accused Waheed Khan deals in business of Charas and heroin. On this information, the SHO obtained search warrant from the Court of learned Judicial Magistrate and marked the same to him for proceedings. Later on, he alongwith other police officials remained on secret vigilance of the accused. On 19.4.2011, they received information that the accused has brought huge quantity of Charas and heroin for sale purposes, on which he alongwith his companions at 7.00 a.m. conducted a raid at the house of accused, who was found standing at the main gate of his house holding shoppers in his hands. They apprehended him. On search of one shopper, Charas weighing 1510 grams was recovered, out of which ten grams was separated for sample purposes (Exh.P3). On search of other shopper, a `Donga' of plastic was recovered. From inside the said Donga, heroin weighing 1110 grams in the shape of `Purris' was recovered, out of which ten grams (Exh.P2) was separated for sample purposes.

3. On further personal search of the accused, an amount of Rs. 600/- (Exh.P4) and I.D. Card (Exh.P5) were recovered. He recorded the statements of PWs u/S. 161, Cr.P.C., inspected the place of recovery and prepared unsealed site-plan (Exh.PE). He prepared complaint (Exh.PA) and sent the same to the

police station for registration of the FIR. He handed over the case property to Moharrir and confined the accused in lock-up. On 19.4.2011, he produced the accused before the trial Court and obtained his physical remand for two days. On completion of investigation, he got the accused challaned to the Court for trial.

4. On receipt of Challan against the appellant, charge was framed, to which he pleaded not guilty and claimed a trial and in order to prove its case, the prosecution produced as many as four witnesses who are all police officials. On completion of evidence, statement of the appellant u/S. 342, Cr.P.C. was also recorded, in which he has stated that he has been falsely involved in this case. However, he opted not to make any statement under Section 340(2), Cr.P.C.

5. The main emphasis of the learned counsel for the appellant was on non-fulfilment of the legal requirement and producing the original report of the Chemical Examiner, which was not exhibited and only an unsigned report with the word `duplicate' was produced by the learned DDPP. Reliance is placed on the cases of Zahoorul Islam and two others v. The State [1995 P.Cr.L.J. 484], Muhammad Siddique alias Bheria v. The State [2005 P.Cr.L.J. 726] and Gul v. The State [PLD 1977 Karachi 1019]. Lastly, submits that the appellant is behind the bars for the last about two and a half years since his arrest on 9.2.2012.

6. Conversely, the learned DDPP opposes the prayer on the ground that the trial Court has convicted the appellant on the basis of sufficient evidence and rightly sentenced him; the report of the Chemical Examiner was produced in duplicate, which duly fulfilled the requirement of law.

7. We have heard the learned counsel for the parties and perused the available record.

8. A perusal of the record reveals that the report of the Chemical Examiner dated 26.4.2011 (Exh. P/F) is an unsigned document, though attested by biochemist, which was tended in the statement of DDPP, on 23.1.2012. No reference of this exhibit was made by the investigating officer.

The trial Court has incorrectly observed that the report of the Chemical Examiner has proved that samples sent were detected as Charas and heroin and all the analysis were in the positive as the report of the Chemical Examiner does not bear the signature of the Chemical Examiner, who conducted the examination on its attested copy. Probably, the original copy of the record was lost and hence, another unsigned copy attested by his successor was produced in the Court, which is not admissible in evidence u/S. 510, Cr.P.C. Reliance is placed upon the judgment of a learned Division Bench of Karachi High Court reported as Gul v. The State [PLD 1977 Karachi 1019]. Even otherwise, under Section 510, Cr.P.C. evidence of the Chemical Examiner has been dispensed with but with the condition that the document must be proved in accordance with the said requirement of law. Any document purported to be a report under the hand of any Chemical Examiner upon any matter submitted to him for examination or analysis may be used as evidence without calling him as a witness. However, the Court may in his discretion summon and examine such person by whom such report has been made but surely the report must bear the signature of the Chemical Examiner.

9. The conviction, on this ground lone, is not sustainable as the recovery of the narcotic substance was not proved against the appellant in accordance with law.

10. For what has been discussed above, we hereby allow this appeal, set aside the conviction: of the appellant recorded by the learned trial Court and acquit him of the charge. He shall be released from the jail forthwith, if not required in any other case.

(A.S.) **Appeal allowed.**

PLJ 2013 Cr.C. (Lahore) 623

Present: Ali Baqar Najafi, J.

MUHAMMAD AHMAD JAVED--Petitioner

versus

STATE, etc.--Respondents

Crl. Misc. No. 5072-B of 2013, decided on 11.6.2013.

Criminal Procedure Code, 1898 (V of 1898)--

---S. 497(1)--Pakistan Penal Code, (XLV of 1860), Ss. 324/34 & 302--Bail, grant of--Petitioner was juvenile--Petitioner is juvenile and for this reason he may be granted post arrest bail. The Standing Medical Board has determined the age of the petitioner at less than 16 years which is also corroborated by his birth certificate according to which he is stated to be about 15 years and 3 months at the time of occurrence. He is behind the bars for the last nine months. The challan of the case has already been submitted and he is no more required for the purpose of investigation. The maturity of the mind of the petitioner in the environment and circumstances prevailing at the time of occurrence may be better appreciated by learned trial Court after recording evidence. Under Section 10 of the Juvenile Justice System Ordinance, 2002, a minor under the age of 16 years at the time of commission of offence is normally granted bail unless exceptional circumstances are found on the record. I do not see any such circumstances flouting on the record to disentitle the petitioner from the concession of bail set out for the persons like petitioner by legislature. [Pp. 624 & 625] A

1970 SCMR 30, ref.

Syed Nisar Ali Shah, Advocate for Petitioner.

Mian Imran Raheem, DPG for State.

Ch. Amin Rehmat, Advocate for Complainant.

Date of hearing: 11.06.2013

Order

Seeks post arrest bail in case FIR No. 989 dated 10.8.2012 registered under Sections 324/34, PPC subsequently added Section 302, PPC with Police Station, Batala Colony, Faisalabad.

2. The allegation against the petitioner is that on the day of occurrence at 2.15 p.m., the petitioner and Naveed Iqbal, returned after Juma prayer to their common house when a quarrel had taken place between the children of Naveed Iqbal and Javed Iqbal. Naveed went upstairs of the residence where the petitioner used to reside. Shafqat Bibi and the petitioner forbade him in the presence of Muhammad Imran, Jehanzeb and Shabbir. Mst. Shafqat Bibi raised lalkara to kill Naveed Iqbal. On this, the petitioner filed with his .12 bore gun at Naveed Iqbal hitting on his left flank, who died at the spot. The motive behind the occurrence is a dispute over the house between the petitioner and the deceased.

3. The learned counsel for the petition submits that the occurrence had taken place inside the portion of the house belonging to the petitioner; that there was a property dispute between the deceased who was the real uncle of the petitioner; that in fact, the mother of the petitioner was severely beaten, who remained unconscious after which the petitioner, being her son, tried to save her mother; that the petitioner is aged 15 years and 3 months as his date of birth is 30.4.1997; that report of the Medical Board reveals that the age of the petitioner is between 15 and 16 years which proves that he is juvenile and entitled to all the rights provided to him under the Juvenile Justice System Ordinance; that the petitioner is behind the bars for the last nine months and the trial has not yet commenced. Places reliance upon "Siraj Din vs Saghir-ud-Din alias Goga and another" (1970 SCMR 30), "Muhammad Anwar vs The State (1983 SCMR 1001), (2002 MLD 1566) and "Ghulam Mustafa and another vs The State" (1971 P.Cr.LJ 485) and prays for the post arrest bail.

4. Conversely, the learned counsel for the complainant assisted by learned DPG submits that the petitioner was involved on the basis of statement made under Section 161, Cr.P.C. by Jehanzeb and Imran, who was declared guilty by police during the investigation; that under Section 10 of the Juvenile Justice System Ordinance, 2002, the Court may refuse to grant bail even to a juvenile. The learned DPG adds that the deceased was 45 years of age and the age of the petitioner does not matter much in the offence for which the capital punishment is provided and prays for dismissal of the petition.

5. I have heard the learned counsel for the parties and perused the record.

6. The main emphasis of the learned counsel for the petitioner is that the petitioner is juvenile and for this reason he may be granted post-arrest bail. The Standing Medical Board has determined the age of the petitioner at less than 16 years which is also corroborated by his birth certificate according to which he is stated to be about 15 years and 3 months at the time of occurrence. He is behind the bars for the last nine months. The challan of the case has already been submitted and he is no more required for the purpose of investigation. The maturity of the mind of the petitioner in the environment and circumstances prevailing at the time of occurrence may be better appreciated by learned trial Court after recording evidence. Under Section 10 of the Juvenile Justice System Ordinance, 2002, a minor under the age of 16 years at the time of commission of offence is normally granted bail unless exceptional circumstances are found on the record. I do not see any such circumstances flouting on the record to disentitle the petitioner from the concession of bail set out for the persons like petitioner by legislature.

7. I am fortified by a leave refusing order passed by Justice A.R. Cornelius in case titled "Siraj Din vs Saghir-un-Din alias Goga and another" (1970 SCMR 30), the relevant portion of the order is reproduced as under:

"This accused, who has been granted bail by the High Court is evidently a minor. The age based on Ex-ray examination is between 16 and 17 years. That

is a ground on which bail may be granted even in a case of a capital offence, and it is clear that there has been no excess of power, or irregularity in the exercise of discretion."

8. In this view of the matter, the case of the petitioner falls in first proviso to sub-section (1) of Section 497, Cr.P.C. I, therefore, accept this petition and admit the petitioner to bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/-(Rupees two lac only) in the like amount to the satisfaction of learned trial Court.

(A.S.) **Bail admitted.**

PLJ 2013 Cr.C.732

Lahore

Before Ali Baqar Najafi, J

ALLAH JIVAYA---Petitioners

VS

STATE, etc---Respondent

Crl. A. No, 2207 of 2010 and Cri. Misc. No, 01 of 2013

11/03/2013

ORDER

Allah Jivaya son of Ghulam Abbas, has filed this petition under Section 426 Cr.P.C. seeking suspension of his sentence awarded by the learned Addl. Sessions Judge, Mianwali, vide judgment dated 30 07.2010. He was convicted and sentenced as under:

Under Section 302(c) PPC to undergo life imprisonment and to pay a fine of Rs,300,000/- to the legal heirs of the deceased as required under Section 544-A, Cr.P.C. in default thereof, to further undergo imprisonment for six months. He was held entitled to the benefit of Section 382-B Cr.P.C. However, he was acquitted of the charge under Section 324 PPC.

2. The allegation against the petitioner is that he along with other nominated accused persons committed qatl-e-amd of Amar Hussain son of Saeed Amir.

3. Learned counsel for the petitioner submits that out of five accused persons only the petitioner was awarded sentence whereas on the same evidence all other accused were acquitted; that an appeal was filed on 14.09.2010 and after a lapse of 2% years the same remained undecided; that the petitioner was arrested on 23.07.2009 and as such three years and seven months have already gone in detention; that the learned Addl. Sessions Judge, in Paragraph No 27 of his judgment, observed that the plea of the petitioner appears to be more reasonable, even in Paragraph No, 29 it was also observed that the petitioner has exceeded a little in his right of self-defence as the occurrence was inside

the haveli where the complainant party has assaulted; that the fire upon the deceased was in retaliation of fire upon the person of minor Ameer Hussain. Prays for the grant of suspension of sentence.

4. Conversely, learned counsel for the complainant submits that actual name of the petitioner is Allah Diwaya and not Allah Jivaya; that the offence was under Section 302(b) PPC whereas sentence was awarded under Section 302(c) PPC. He also filed a Revision Petition No, 1060 of 2010 for enhancement of the sentence in which no notice was issued but is pending before this Court; that an appeal against the acquittal has also been filed which is yet to be fixed for hearing.

5. I have heard the learned counsel for the parties and perused the available record:

6. Admittedly, the appeal was filed on 14.09.2010 and as such a period of 2% years has elapsed. The early fixation of the case is not in sight. Even, otherwise the petitioner was awarded maximum sentence of life imprisonment under Section 302(c) PPC for the offence committed inside his own house in self-defence. The evidence against the other co-accused has not been believed by the trial Court which has also observed that the plea of the petitioner was more convincing. In this view of the matter by accepting this application I suspend the sentence of the petitioner provided he furnishes bail bonds in the sum of Rs, 100,000/- with two sureties each in the like amount to the satisfaction of the Deputy Registrar (Judi.) of this Court. He is directed to appear in this Court on each and every date of hearing till the final disposal of this criminal appeal.

PLJ 2013 Cr.C. (Lahore) 856
Present: Ali Baqar Najafi, J.

MUHAMMAD ASIF NADEEM--Appellant

versus

DISTRICT POLICE OFFICER, etc.--Respondents

Crl. Appeal No. 909 of 2013, heard on 31.7.2013.

Prestige of Court--

-----A lawyer cannot take the advantage of his position and does not enjoy a licence to interrupt the judicial proceedings, whenever he desires--He should be mindful of the fact that prestige of the Court is a common object of both Bar and the Bench--In case the authority of the Court is challenged, a lawyer will obviously be the immediate victim. [P. 859] A

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 228--Conviction and sentence--Challenge to--Appeal against judgment--Benefit of doubt--High Court had noticed that the impugned judgment was passed in a hasty manner without recording the statements of even lawyers, present in the Court--No proper time even till rising of the Court was granted to the appellant to present his defence and explain the circumstances as well as the reasons behind his action--It is commonly observed that during the proceedings of a case, lawyers tend to address the clerk or the Court while somewhat halting or interrupting the proceedings temporarily on account of some emergency or on anticipation of an immediate response by the Court--However, if the Court does not permit, the lawyers should wait until the proceedings are over--It is a common experience that some lawyers adopt the high tones while addressing the Court, which may cause annoyance to the Presiding Officer, so they should be careful--Even otherwise, it is admitted that proceedings of the case continued but the appellant kept on using the

words--Provisions of Section 228, PPC are attracted to a case involving insult or interruption during a judicial proceeding but in the instant case, the insulting words are not stated and admitted no interruption in the proceedings had taken--Seeking adjournments does not constitute an offence under Section 228, PPC--Word `Ziadti' used to inform the Court with passion and sentiment is not held as an offence under Section 228, PPC--In this case the benefit of doubt goes in favour of the appellant as neither the witnesses were recorded nor enough time was granted to the appellant to file reply to the show-cause notice and put up his defence--The required procedure was not adopted--Therefore, Court inclined to grant the benefit of doubt to the appellant as the exact action of interruption or insult was not explained as required under Section 481(2), Cr.P.C.--Appeal allowed. [Pp. 859 & 860] B, C & D

2011 SCMR 1485, 2006 YLR 1442, 2005 MLD 613, 2000 SCMR 1856, PLD 2003 SC 19 & 2000 PCr.LJ 1329, ref.

Mr. M. Baleegh-uz-Zaman Chaudhry, Advocate for Appellant.

Mr. Saeed Ahmad Sheikh, Addl. P.G. for State.

Date of hearing: 31.7.2013.

Judgment

This appeal is directed against the judgment dated 01.07.2013 passed by the learned Additional Sessions Judge, Toba Tek Singh, whereby the appellant was convicted under Section 228, PPC and imposed a fine of Rs. 200/- or in default of payment thereof to undergo simple imprisonment for one month.

2. The brief facts giving rise to the filing of this appeal are that on 01.07.2013, the learned Presiding Officer was hearing a civil revision when the appellant interrupted the proceedings and started addressing the Court by using inappropriate words in a loudly voice alleging that the Court has not decided the petition under Sections 22-A/22-B, Cr.P.C. filed by the appellant by

watching his interest. The Court informed him that after hearing the said revision petition he will be heard but the appellant continued using inappropriate language in the Court. Consequently, after the proceedings, he was issued a show-cause notice through the Stenographer Mr. Muhammad Masood Ahmad but the appellant refused to accept the same and also declined to file any reply to the show-cause notice. He also threatened that he would see to it that how the Court continues to work. After that, the appellant escaped from the Courtroom. Since the occurrence was witnessed by M/s. N. A. Raza, Muhammad Tariq Gujjar and Sardar Muhammad Iqbal Dogar Advocates, therefore, no further evidence was needed and then the Court proceeded to convict the appellant as described and mentioned above. Hence, the present appeal before this Court.

3. The learned counsel for the appellant submits that he is apologetic and throws himself at the mercy of the Court that he regrets his conduct and undertakes that this will never be repeated; that the appellant holds the Courts at the highest esteem and respect them with the bottom of his heart; that the impugned judgment was passed in a hasty manner without observing the procedure as neither any witness was recorded nor any time was given to the appellant to put his defence; that the appellant being a professional lawyer will suffer badly if the conviction is not set aside; that the appellant has not insulted the Presiding Officer or caused interruption in the judicial proceedings as he simply asked the Court in a respectful manner to decide his petition filed under Sections 22-A/22-B, Cr.P.C. expeditiously; that no insulting words were ever used as observed by the learned trial Court; that tone of the appellant may have caused annoyance to the learned Presiding Officer, which was never aimed at delinquent conduct to the Court. Lastly, submits that it is the common practice that the lawyers, with the permission of the Court, interfere and ask or inform the Court regarding some emergent matters which do not, by any stretch of

imagination, can possibly constitute any offence, hence prays for setting aside of the impugned judgment.

4. Conversely, the learned Additional Prosecutor-General submits that the appellant was granted time to file reply to the show-cause notice but he opted not to file any reply; that the appellant, on the other hand, challenged the authority of the Court, which is not acceptable and hence, prays for dismissal of the appeal.

5. I have heard the learned counsel for the parties and perused the available record.

6. The appellant straightaway lays himself at the mercy of this Court and has surrendered himself unconditionally by submitting that any punishment given by this Court will be accepted to him and begs for a lenient view. However, this appears to be a serious matter, in which prestige of the Court is involved, therefore, the appeal will be decided on its merits.

7. A lawyer cannot take the advantage of his position and does not enjoy a licence to interrupt the judicial proceedings, whenever he desires. He should be mindful of the fact that prestige of the Court is a common object of both Bar and the Bench. In case the authority of the Court is challenged, a lawyer will obviously be the immediate victim.

8. After having said that, this Court has noticed that the impugned judgment was passed in a hasty manner without recording the statements of even lawyers, present in the Court. No proper time even till rising of the Court was granted to the appellant to present his defence and explain the circumstances as well as the reasons behind his action. It is commonly observed that during the proceedings of a case, lawyers tend to address the clerk or the Court while somewhat halting or interrupting the proceedings temporarily on account of some emergency or on anticipation of an immediate response by the Court. However, if the Court does not permit, the lawyers should wait until the

proceedings are over. If is a common experience that some lawyers adopt the high tones while addressing the Court, which may cause annoyance to the Presiding Officer, so they should be careful. Even otherwise, it is admitted that proceedings of the case continued but the appellant kept on using the words.

9. Seemingly in the judgments on the subject, it has been recently held in the case of Rab Nawaz v. The State [2011 SCMR 1485] that provisions of Section 228, PPC are attracted to a case involving insult or interruption during a judicial proceeding but in the instant case, the insulting words are not stated and admittedly no interruption in the proceedings had taken. Similarly, in the case of Fayyaz Hussain v. Tariq Mehmood Iqbal Khan [2006 YLR 1442], it is held that seeking adjournments does not constitute an offence under Section 228, PPC. In the case of Jahangir Akhtar v. The State [2005 MLD 613], word `Ziadti' used to inform the Court with passion and sentiment is not held as an offence under Section 228, PPC.

10. As per case reported as Haji Khawar Saleem v. The State [2000 SCMR 1856], procedure under Section 480, Cr.P.C. may be followed by the Court and in the judgment titled Muhammad Mushtaq v. The State reported as PLD 2003 S. C 19, the Court can proceed under Sections 228 and 496, PPC or under Section 480 or 482, Cr.P.C. In Agha Siraj Khan Durrani v. The State reported as 2000 P.Cr.L.J. 1329, the complaint can be lodged by the concerned Court or its superior Court.

11. In my humbly view, in this case the benefit of doubt goes in favour of the appellant as neither the witnesses were recorded nor enough time was granted to the appellant to file reply to the show-cause notice and put up his defence. The required procedure was not adopted. Therefore, I am inclined to grant the benefit of doubt to the appellant as the exact action of interruption or insult was not explained as required under Section 481(2), Cr.P.C.

12. In this view of the matter, this appeal is allowed, the impugned judgment dated 01.07.2013 passed by the learned trial Court is set aside and the appellant is acquitted of the charge.

(A.S.) **Appeal allowed.**

2013 Y L R 629

[Lahore]

Before Ali Baqar Najafi, J

MANZOOR AHMED---Petitioner

Versus

D.P.O. and others---Respondents

Writ Petition No.1203 of 2011, heard on 6th September, 2012.

Police Order (22 of 2002)---

----Art. 18---Constitution of Pakistan, Art. 199---Constitutional petition---Change of investigation---Scope---Complainant moved application before District Police Officer (DPO) showing lack of confidence in the investigating officer whereupon the Deputy Superintendent of Police (DSP) was deputed to conduct the inquiry---Legality---Under Article 18 of Police Order, 2002 investigation could only be changed by the Board constituted under the said Article, comprising of Senior Superintendent of Police (SSP) and two Superintendents of Police (SP); one being in charge of the investigation of the concerned district---Investigation conducted by the Deputy Superintendent of Police (DSP) in the present case was without lawful authority---Under Art. 18(5) of Police Order, 2002, the District Police Officer (DPO) himself had no power to interfere with the process of investigation, therefore, no question of its further delegation could possibly arise in respect of investigation---Constitutional petition was allowed and investigation conducted by Deputy Superintendent of Police (DSP) was declared as unlawful.

Mirza Jahangeer Baig v. D.I.G. of Police, Gujranwala Range and 7 others 2007 MLD 579; Aziz Ahmad v. Provincial Police Officer (I.G.P), Punjab Lahore and 6 others PLD 2005 Lahore 185 and 2006 MLD 501 ref.

Muhammad Ilyas Siddiqui for Appellants.

Saif-ur-Rehman, A.A.-G. with Dar Ali Khan, D.P.O. Jhelum and Zulfiqar Ahmed, DSP (Legal) for Respondents.

Zamir Hussain Malik for the Complainant.

Date of hearing: 6th September, 2012.

JUDGMENT

ALI BAQAR NAJAFI, J.---The petitioner, Manzoor Ahmad, seeks direction for constitution of Board under Article 18 of the Police Order, 2002 for transfer of investigation in case F.I.R. No.60 dated 23-3-2011 registered under sections 452/34, P.P.C. at Police Station Jalalpur Sharif District Jhelum besides further prayer for setting aside report of inquiry conducted by the Deputy Superintendent of Police (Legal) on 3-5-2011.

2. Brief facts of the case are that according to demarcation conducted by the Revenue authorities 9 marlas of land of Safdar Ali, complainant of the F.I.R. No.60 registered under sections 452/337-F(i)/ 337-F(v)/334 at Police Station Jalalpur Sharif District Jhelum, falls in the land possessed by Haji Fazal Hussain, who on 23-3-2011 at about 5-30 p.m. armed with danda., Muhammad Akbar son of Manzoor armed with hatchet and Masood son of Manzoor, armed with danda came to his house and said that if he agrees to have consideration of his land at the rate of Rs.5,000 per marla, he is ready to pay otherwise he would neither leave the land nor pay the amount. This resulted into exchange of hot words whereupon Haji Fazal Hussain, Muhammad Akbar and Masood Ahmed inflicted injuries with the respective weapons on the different parts of his (Safdar Ali) body. All the three accused chased the complainant and by entering into his house gave him beating.

3. Malik Afzaal, Assistant Sub-Inspector, respondent No.4 completed investigation and later on receiving final result of injuries kept under observation, sections 337-F(v)/337-L(2)/ 148/149, P.P.C. were added.

4. Fazal Ahmed, accused party in the F.I.R., on 22-3-2011 approached the Station House Officer, Police Station Jalalpur Sharif District Jhelum with a written application stating therein that at about 6-30 p.m. Amjad son of Yaqoob came there and by extending abuses said that he would possess his haveli tomorrow and on his forbidding to extend abuses, he flared and raised lalkara that Fazal Ahmed would not let off whereupon Fakhar armed with danda, Shaukat, Zafar, Ali Raza, Zeeshan, Kamran, Naveed-ul-Hasan, Ali, Raja Yaqoob, Raja Safdar and Iftikhar Haider with his gunman chased to beat

Fazal Ahmed who entered in his house to avoid fear of beating but the accused persons trespassed and gave him and women severe beating of kicks and fists resulting into registration of cross-version to the F.I.R. under sections 337-F(v)/337-L(2)/147/149, P.P.C. on receipt of Medico-legal Report of Fazal Ahmed, injured against the complainant party. Fazal Ahmed also filed petition under section 22-A/22-B of Cr.P.C. which was disposed of on 28-3-2011 with the direction to respondent No.1 to proceed in the matter strictly in accordance with law as the cross-version had been registered.

5. On 18-5-2011 this court directed submission of report from respondent No.1 who submitted the same vide Memo No.6581/M dated 18-6-2011 besides narrating the above averments in the report in the last it is stated that Zafar Ali also moved an application before respondent No.1 showing lack of confidence upon the Investigating Officer whereupon the Deputy Superintendent of Police (Legal) was deputed to conduct discrete enquiry. Safdar Ali and Fakhar Ali of first complainant party for the F.I.R. and Fazal Ahmed, Masood Ahmed and Muhammad Akbar, accused in cross-version were found guilty while the other have been let off in investigation. Fazal Ahmed, complainant of cross-version also approached the Regional Police Officer for transfer of investigation which was directed to be placed before the District Standing Board.

6. Learned counsel for the petitioner argues that the investigation conducted by the Deputy Superintendent of Police (Legal) is without any law and the only Article deals with the investigation in the Police Order, 2002 is Article 18 where the Deputy Superintendent of Police (Legal) has no power to conduct investigation. Further submits that the District Police Officer has no power to delegate power for change of investigation to any other police officer as he himself does not possess the power to change the investigation. He relies on Muhammad Farooq Khan v. The State (PLJ (sic) Cr.C. (Karachi) 195 (D.B.)), Mirza Jahangeer Baig v. D.I.G. of Police, Gujranwala Range and 7 others (2007 MLD 579) and Aziz Ahmad v. Provincial Police Officer (I.G.P), Punjab Lahore and 6 others (PLD 2005 Lahore 185) and (2006 MLD 501) to argue

that such investigation is without legal authority and therefore, is liable to be set aside.

7. Learned Assistant Advocate-General Punjab assisted by the learned counsel for complainant in the F.I.R. opposed the prayer by submitting that the investigation cannot be changed after submission of challan in the court. Further adds that vide order dated 29-6-2011, the District Standing Board unanimously disapproved the change of first investigation as challan has already been submitted in the cross-version, therefore, the petitioner has alternative remedy by filing of an appeal.

8. I have heard the learned counsel for the parties as well as learned Assistant Advocate-General and perused the record.

9. The arguments advanced by the learned counsel for the parties have brought two propositions; whether the investigation conducted by the Deputy Superintendent of Police (Legal) is without lawful authority and whether the District Police Officer respondent No.1 has any authority to further delegate a power which he himself does not possess. The only Article which deals with transfer of investigation is Article 18 of the Police Order and bare perusal of the same leads to an irresistible conclusion that the investigation can only be changed by the Board constituted under the said provision comprising of Senior Superintendent of Police and two Superintendents of Police; one being Incharge of the Investigation of the concerned district. Therefore, this court is of the considered view that the report/ investigation conducted by the Deputy Superintendent of Police (Legal) is without lawful authority and is hereby declared so.

10. So far as the delegation of powers by the District Police Officer for transfer of investigation is concerned, as under Article 18(5) of the Police Order, 2002, the District Police Officer himself has no power to interfere with the process of investigation, therefore, no question for its further delegation can possibly arise in respect of investigation.

11. For what has been discussed above, this petition is allowed in view of the above terms.

MWA/M-326/L **Petition allowed.**

2013 Y L R 1362

[Lahore]

Before Ali Baqar Najafi, J

JAVED AHMAD alias JAVED IQBAL---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE, LAHORE and others---Respondents

Writ Petition No.24637 of 2012, decided on 24th January, 2013.

West Pakistan Family Courts Act (XXXV of 1964)---

----S.5 Sched.---Constitution of Pakistan, Art. 199---Constitutional petition---Suit for recovery of maintenance allowance and dower was decreed concurrently---Contention of husband (petitioner) was that quantum of maintenance allowance was unreasonable as it was not according to his social status---Validity---Appellate Court had already reduced the quantum of the maintenance allowance keeping in view the social status of the husband thereby making the same affordable for him---Husband was bound to maintain his wife and children and since the marriage was still intact, payment of maintenance allowance may pave the way for cordial relations between the parties---No illegality existed in the orders of courts below---Constitutional petition was dismissed in circumstances.

Raja Muhammad Munir for Petitioner.

Adeel Mumtaz Mian for Respondents Nos.3 and 4.

ORDER

ALI BAQAR NAJAFI, J.---Through this writ petition, the petitioner challenges orders dated 5-11-2011 and 16-5-2012 passed by the Judge Family

Court and judgment dated 18-9-2012 passed by the learned Additional District Judge, Lahore respectively.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner and respondent No. 3 got married on 4-11-1994 and from their wedlock two minor children namely, Noor Saba (daughter) aged about 14 years and Babar (son) aged about 16 years were born, which are in the custody of respondent No.3. The father of respondent No.3 borrowed an amount of Rs.6,50,000 through respondent No.3 and at the time of handing over the amount the father as well as respondent No.3 promised with the petitioner that they will return the said borrowed amount to the petitioner at the earliest, but when demanded respondent No.3 became anguished and left the house of the petitioner in the year 2008 with her own sweet will. While leaving, she had taken along with her 6 tola gold ornaments and 4 tola silver ornaments. She then filed a suit for dissolution of marriage on the basis of Khula, recovery of dower amount, recovery of dowry articles and for the recovery of maintenance allowance on 30-6-2010. This suit was contested by the petitioner. During pre-trial reconciliation proceedings on 9-5-2011 the suit for dissolution of marriage was withdrawn. Interim maintenance allowance at the rate of Rs.1200 per month for respondent No.4 was fixed. Thereafter, issues were framed and ex parte evidence of the plaintiff was recorded. Resultantly, on 5-11-2011, the decree for maintenance allowance at the rate of Rs.8,000 per month was fixed in favour of respondent No.4/daughter. On 16-5-2012 suit for recovery of maintenance allowance and recovery of dower amount was decreed, whereby maintenance allowance was granted at the rate of Rs.10,000 per month while decree for Rs.1,50,000 as price of dowry articles and Rs.500 as dower amount was granted. Aggrieved of the said judgment and decree an appeal was preferred which was partly accepted by the appellate court vide judgment and decree dated 18-9-2012 reducing it from Rs.10,000 to 8,000

hence this writ petition.

3. Learned counsel for the petitioner submits that in one case two judgments and decrees cannot be passed; that the petitioner is a poor person and working in a shop as employee and earning Rs.7000 per month; that the petitioner has deposited Rs.30,000, Rs.3,000 and Rs.6,000 in compliance of the order and deserves leniency; that respondent No.3 went to her parent of her own sweet will; that huge increase of 25% in the maintenance allowance is harsh; that huge increase of maintenance from Rs.8000 to Rs.10000 is without any reason; that the trial Court has failed to determine the social status of the petitioner, hence he prays for acceptance of this writ petition.

4. Conversely, learned counsel for the respondent No.3 submits that concurrent findings of fact cannot be interfered with in exercise of constitutional jurisdiction of this Court; that Rs.90,000 is still outstanding; that the learned courts below have rightly passed the judgments and decree, hence prays for dismissal of the writ petition.

5. I have heard the learned counsel for the parties and perused the record.

6. Record reveals that respondent No.3 had withdrawn suit for dissolution of marriage for the betterment of the family. The maintenance allowance of respondent No.3 was rightly reduced from Rs.10,000 to Rs.8,000 keeping in view the social status of the petitioner, making it affordable to him. The petitioner is duty bound to maintain his wife and children. Since the marriage is intact and perhaps such payment may pave the cordial relations between both the parties.

7. As far as passing of two decrees is concerned, this court does not find any force for such apprehension as decree dated 16-5-2012 and 5-11-2012 of both the judgments were challenged in appeal before the appellate court and

are pertaining to the same parties. In this view of the matter, I do not find any illegality in the orders/ judgment passed by the courts below. Consequently, this writ petition is dismissed.

KMZ/J-27/L **Petition dismissed.**

2013 Y L R 1881

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD PARVEZ---Petitioner

Versus

ADDITIONAL RENT CONTROLLER, LAHORE and 2 others---Respondents

Writ Petition No.15184 of 2010, decided on 24th January, 2013.

a) Cantonments Rent Restriction Act (XI of 1963)---

----S. 17---Civil Procedure Code (V of 1908), O.I, R.10---Constitution of Pakistan, Art.199---Constitutional petition--Eviction proceedings---Necessary party---Scope---Person claiming to be impleaded as party on the ground that he had purchased rented property, was not necessary party to be impleaded in rent proceedings.

Raza Hussain v. District Judge, Vehari and others 1986 SCMR 1267 rel.

(b) Cantonments Rent Restriction Act (XI of 1963)---

----S.17---Specific Relief Act (I of 1877), S.42---Constitution of Pakistan, Art.199---Eviction of tenant---Relationship of land-lord and tenant was denied by tenant---Declaratory suit for determination of rights of the parties pending in civil court---Procedure---Tenant, in circumstances, was required to vacate the rented premises, if he claimed to have purchased the demise premises, as his claim was a subject-matter of a suit for specific performance of agreement to sell.

Abdul Rasheed v. Maqbool Ahmed and others 2011 SCMR 320 rel.

(c) Cantonments Rent Restriction Act (XI of 1963)---

----S.17---Specific Relief Act (I of 1877), S.42---Civil Procedure Code (V of 1908), O.I, R.10---Constitution of Pakistan, Art.199---Constitutional petition---Eviction of tenant---Recovery of possession---Denial of

relationship as tenant---Application by subsequent purchaser to be impleaded as party in eviction proceedings---Rent Controller accepted application of subsequent purchaser and impleaded him as party---Effect---If a tenant denied the relationship of the landlord and tenant he should first vacate the premises in his possession and then contest his proprietary rights---Tenant remained a tenant, he could not prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction---Tenant had no status to justify his possession and if he denied the relationship of landlord and tenant he would be an illegal occupant---Ejectment proceedings were between land owner and tenant and entry or interference by the third party was to be jealously guarded---Constitutional petition was allowed---Application filed by the subsequent purchaser was dismissed.

Barkat Masih v. Manzoor Ahmad through L.Rs. 2006 SCMR 1068 rel.

Raza Hussain v. District Judge, Vehari and others 1986 SCMR 1267; Abdul Rasheed v. Maqbool Ahmad and others 2011 SCMR 320; Barkat Masih v. Manzoor Ahmad (deceased) through L.Rs. 2006 SCMR 1068; Ghulam Fatima and others v. Rahim Bakhsh and others 1988 SCMR 250; Muhammad Naeem Butt v. Shaukat Ali and others 2008 SCMR 1024; Khawaja Ziaul Islam v. Alauddin Malik and another 2010 CLC 273; Mst. Khursheed Begum v. Malku and others 1983 SCMR 534 and Metropolitan Corporation of Lahore through Administrator v. Syed Bhais (Pvt.) Limited through Managing Director and 5 others 2004 MLD 1395 ref.

Fazal-ur-Rehman Butt for Petitioner.

K.J. Khattak for Respondents Nos.2 and 3.

ORDER

ALI BAQAR NAJAFI, J.---Through this writ petition, the petitioner challenges the order dated 1-6-2010 passed by respondent No.1 whereby he accepted the application under Order I, Rule 10, C.P.C.

2. The brief facts giving rise to filing of this writ petition are that on 9-7-2001 the petitioner filed an ejectment petition against respondent No.2 for vacation of House No.E-236, Street No.6, Gulbahar Colony, Lahore Cantt. before the Rent Controller. During pendency of the ejectment petition an

application under Order I Rule 10, C.P.C. was filed but dismissed on 20-3-2007. Respondent No.2 then moved an application under Order I Rule 10, C.P.C. on behalf of respondent No.3 on 26-5-2008, on which written reply was submitted. Another similar application was also filed. On 1-6-2010 the application under Order I, Rule 10, C.P.C. was accepted by the Rent Controller. Hence this writ petition.

3. Learned counsel for the petitioner submits that Order I, Rule 10, C.P.C. is not applicable in the rent proceedings as the proceedings are only between the landlord and tenant; that respondents should first vacate the premises as during pendency a suit for specific performance or declaration questioning the title do not affect the proceedings; the subsequent purchaser is not relevant party. Lastly submits that principle of lis pendens is not applicable in the instant case. Places reliance on Raza Hussain v. District Judge, Vehari and others (1986 SCMR 1267), Abdul Rasheed v. Maqbool Ahmad and others (2011 SCMR 320), Barkat Masih v. Manzoor Ahmad (deceased) through L.Rs. (2006 SCMR 1068), Ghulam Fatima and others v. Rahim Bakhsh and others (1988 SCMR 250), Muhammad Naeem Butt v. Shaukat Ali and others (2008 SCMR 1024) and Khawaja Ziaul Islam v. Alauddin Malik and another (2010 CLC 273) in support of his claim.

4. Conversely, learned counsel for the respondents submits that the impugned order was passed on the basis of sale deed and original power of attorney which create right in favour of the respondents; that F.I.R. No.924/2008 under sections 420, 468, 471, P.P.C. was registered by the petitioner against respondents Nos.2 and 3 which was cancelled on 19-6-2010 by the concerned Magistrate; that a suit for permanent injunction filed by the petitioner was dismissed on 26-1-2010; that a suit for declaration and cancellation of general power of attorney was also dismissed on 15-5-2009; that the document on the basis of which the respondents were made a party have not been declared as forged; that there is no rent agreement or any receipt of rent on record; that property has been sold out to one Qamar. Places reliance on Mst. Khursheed Begum v. Malku and others (1983 SCMR 534) and Metropolitan Corporation of Lahore through Administrator v. Syed Bhais (Pvt.) Limited through Managing Director and 5 others (2004 MLD 1395

Lahore), to argue that in order to avoid the multiplicity of litigation and to prove the valuable rights of the party the respondents were rightly made a party under Order I, Rule 10, C.P.C.

5. I have, heard the learned counsel for the parties and perused the record.

6. The impugned order reveals that on the basis of possession over the property respondents were made a party to the proceedings under Rent law. In the esteemed judgment titled Roza Hussain v. District Judge, Vehari and others 1986 SCMR 1267 it was held that a person having purchased the property was not held as necessary party to be impleaded under Order I Rule 10, C.P.C. in rent proceedings. In case Abdul Rasheed v. Maqbool Ahmed and others (2011 SCMR 320) supra it was also held that a tenant was required to vacate the rented premises if he claims to have purchased the demised premises, as his claim is subject-matter of a suit for specific performance of agreement to sell. In case Barkat Masih v. Manzoor Ahmad (deceased) through L.Rs. (2006 SCMR 1068) it is held that if a tenant denies the relationship of the landlord and tenant he should first vacate the premises in his possession and then contest his proprietary rights. By applying above said principles in the instant case the in-escapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant. The rent proceedings are between the land owner and tenant and entry or interference by the third party is to be jealously guarded. In this view of the matter, the impugned order is set aside and the writ petition is allowed. Resultantly application under Order 1 Rule 10, C.P.C. filed by respondents Nos.2 and 3 is dismissed.

JJK/M-68/L **Petition allowed.**

2013 Y L R 2021

[Lahore]

Before Ali Baqar Najafi, J

HAFEEZ FATIMA---Petitioner

Versus

PHUL PEER SHAH---Respondent

Civil Revision No.100 of 2005, decided on 16th May, 2013.

(a) Specific Relief Act (I of 1877)---

----S. 42---Suit for declaration---Gift mutation in favour of defendant alleged by plaintiff (an illiterate "pardahnashin" villager lady) to be fraudulent for being based on forged Deed of Hiba-bil-Iwaz---Proof---Marginal witnesses of such deed as defendant's witnesses had admitted that such transaction had not taken place in their presence and receipt of payment was already written---None of defendant's witnesses had deposed that plaintiff had been explained contents of such deed and receipts and consequences thereof---Factum of plaintiff having no male member in her family was admitted by defendant---Patwari as defendant's witness had deposed that defendant had presented suit mutation, while he denied to know about presence of plaintiff---Patwari and Tehsildar while deposing as defendant's witnesses had not produced in court original pert-sarkar of suit mutation---Plaintiff deposed that defendant got her thumb impression affixed on stamp paper on false pretext without explaining her its real purpose---Plaintiff had denied to have appeared before Revenue Officer for attestation of suit mutation---Plaintiff had not been identified at time of attestation of suit mutation by a person, who could advise or protect her interest---Revenue Officer had not attested suit mutation in open assembly---Defendant had not proved pre requisites of "Hiba-bil-Iwaz" i.e. payment of consideration and bona fide intention of donor to divest property to donee---Defendant had not proved declaration of gift, its acceptance and delivery of possession to him by plaintiff---Mere mutation would not be enough proof of delivery of possession of suit land---Suit was decreed in circumstances.

Malik Muhammad Khaqan v. Trustees of The Port of Karachi (KPT) and another 2008 SCMR 428; Abdul Sattar v. Mst.Anar Bibi and others PLD 2007 SC 609; Allah Ditta and 5 others v. Mst.Rasoolan Bibi through Legal Heirs and 6 others PLD 2006 Lah. 693; Fateh Khan, and others v. Surriya Begum 2006 SCMR 930; Muhammad Nazir v. Khurshid Begum 2005 SCMR 941; Noor Muhammad and others v. Mst. Azmat-e-Bibi 2012 SCMR 1373; Mst. Bhagni v. Manzur Hussain Shah PLD 1957 (W.P.) Lah. 574 and D.F. Mulla's Principles of Mohammedan Law at p.168 ref.

Syed Sharif-ul-Hassan through L.Rs. v. Hafiz Muhammad Amin and others 2012 SCMR 1258; Mst.Rasheeda Bibi and others v. Mukhtar Ahmad and others 2008 SCMR 1384 and Fida Hussain through Legal Heirs Muhammad Taqi Khan and others v. Murad Sakina 2004 SCMR 1043 ref.

(b) Islamic Law---

----Gift by pardahnashin lady---Pre requisites---Burden of proof would lie on beneficiary of gift in case of its denial by such lady---Principles.

Under the law, if the gift is denied by the lady, the onus to prove the same shifts upon those who claim such gift, which fact is required to be proved by maintaining the quality of evidence, including the requirement that the said lady should have been explained the nature of such transaction in detail.

In all the transaction in which the donor is a pardanashin lady though not observing pardah heavy onus lies upon the donee to show that the gift was made without exerting influence. The transaction with pardahnashin lady has four pre requisites namely, the proper advice before execution of the document, explaining the contents of documents, conscious mental act and lastly the entire transaction was to be free from any shadow of doubt or suspicion.

Muhammad v. Mst. Rehmon through Mst. Sharifan Bibi 1998 SCMR 1354 rel.

(c) Islamic Law---

----Hiba-bil-Iwaz---Prerequisites stated.

A "Hiba-bil-Iwiz" is sale in reality having two prerequisites namely,

payment of consideration and bonanue intention of the donor to divest property to donee.

(d) Civil Procedure Code (V of 1908)---

----S. 115---Concurrent judgments of Court below---Revisional jurisdiction of High Court---Scope stated.

Concurrent judgments can always be interfered with, if the same are contrary to law for the reason that they are not sacrosanct. Erroneous conclusion, if based on misreading and non-reading of documentary as well as oral evidence and wrong application of law, is always a ground to interfere with.

Fida Hussain through Legal Heirs Muhammad Taqi Khan and others v. Murad Sakina 2004 SCMR 1043 rel.

Ch. Imran Hassan Ali for Petitioner.

Ch. Muhammad Azam Minhas for Respondent.

ORDER

ALI BAQAR NAJAFI, J.---Through this Revision Petition the petitioner challenges both the concurrent judgments and decrees dated 26-10-2004 passed by the learned Addl. District Judge, Chakwal and 1-7-2004 passed by the learned Civil Judge 1st Class Choa Saidan Shah District Chakwal, whereby the suit of the petitioner was dismissed.

2. Brief facts giving rise to the filing of this revision petition are that the petitioner filed a suit for declaration of ownership and possession to the extent that gift Mutation No.4021 dated 18-12-1993 (Exh.D.7) was not at all made by her and as such the same was forged, fictitious and ineffective upon her rights with consequential relief of protection of possession. The property subject-matter of land measuring 56 Kanals, 16 Marlas fully described in the head note of the plaint was owned and possessed by the petitioner through her tenant and she being an illiterate, simple "Pardanashin" villager lady, was earlier married with Tahzeeb ul Hassan in the year 1967 but was deserted and ever since she was residing with her aged mother. The father of the petitioner had already died, who was a police employee, where after there was no male member in her family.

3. Since the pension of her father was not disbursed to her as well as her mother, therefore, the respondent, who is also her collateral, on the pretext to help them obtained her thumb-impressions on a stamp paper in her house. About three months before filing the suit she came to know that the impugned mutation (Exh.D.7) was prepared in his own name. It was further averred that she has not received an amount of Rs.2,60,000 in presence of the witnesses by making "Hiba-bil-Iwaz" and in alternate prayer if any gift is assumed the same has been revoked at her option. Written statement was filed and out of the divergent pleadings of the parties following issues were framed:--

(1) Whether the plaintiff is owner in possession of the suit-land? OPP.

(2) Whether the gift mutation pertaining to the suit-land bearing No.4021 attested on 18-2-1993 is an outcome of connivance between the defendant and revenue staff and is illegal, void and ineffective against the rights of the plaintiff? OPP

(3) Whether the suit is not properly valued for the purposes of court fee, if so, what is the correct valuation for the purpose? OP Party.

(4) Whether the plaintiff is entitled to the decree as prayed for? OPP

(5) Relief.

4. In support of her claim, the petitioner examined herself as P.W.1 and produced copy of Jamanbandi for the years 1992-1993 Exh.P.1 and Exh.P.2, whereas the respondent examined Haji Muhammad Bashir DW-1, Muhammad Lehrasab Patwari, DW-2, Mehboob Alam Tehsildar DW-3, Muhammad Liaqat DW-4, Hadi Hussain Shah, DW-5, Muhammad Aslam, Patwari DW-6, Muhammad Ashraf Patwari DW-7, Qazi Mehboob Alam, DW-8, Haji Muhammad Akhtar, DW-9 and the respondent-defendant himself appeared as DW-10. He also produced documents Exh.D.1 to Exh.D.10 in support of his claim. The learned trial Court while returning joint findings on issues No.1, 2 and 4 treating them interconnected, placed onus to prove upon the petitioner that the gift was not made, where affer the learned Civil Judge vide judgment dated 1-7-2004 dismissed the suit filed by the petitioner and appeal preferred by the petitioner also met the same fate vide judgment dated 26-10-2004 passed by the learned Addl. District Judge, Chakwal, hence this revision petition.

5. Learned counsel for the petitioner submits that the courts below have drawn erroneous presumption on facts contrary to the evidence on record by giving reference to inadmissible piece of evidence; that the impugned judgments are result of non-reading, misreading of the material on file; that onus to prove the existence of a valid gift was to be placed upon the respondent and not on the petitioner; that the said onus was not discharged by the respondent as he has failed to prove the ingredients of gift namely, declaration, acceptance of gift, transfer of possession and consideration; that the plea of "Hiba-bil-Iwaz" was just made in order to avoid pre-emption, which fact was even noted by the appellate court; that as the petitioner is a Pardanashin, illiterate and simple villager lady, the execution of document was not with her free will by understanding its contents; that the required independent evidence was lacking; that there are grave discrepancies in the statements of Muhammad Liaqat DW-4 and Hadi Hussain Shah, DW-5 the alleged witnesses of transaction, who denied the presence of the petitioner at the relevant time; that the original mutation was admittedly not on record as observed in Para-23 of the judgment of appellate court, which fact cannot be ignored especially without explaining any reason; that the transaction is not even "Hiba-bil-Iwaz" which lacks its pre-requisite. Lastly, submits that the findings of two courts below are not sacrosanct, which can be interfered with on the basis of illegality and material irregularity resulting into grave miscarriage of justice. Place reliance on Malik MUHAMMAD KHAQAN v. TRUSTEES OF THE PORT OF KARACHI (KPT) and another (2008 SCMR 428), ABDUL SAT'TAR v. Mst.ANAR BIBI and others (PLD 2007 SC 609), ALLAH DITTA and 5 others v. Mst.RASOOLAN BIBI through Legal Heirs and 6 others (PLD 2006 Lahore 693), Syed SHARIF UL HASSAN through L.Rs. v. Hafiz MUHAMMAD AMIN and others (2012 SCMR 1258), Mst.RASHEEDA BIBI and others v. MUKHTAR AHMAD and others (2008 SCMR 1384), FATEH KHAN, and others v. SURRIYA BEGUM (2006 SCMR 930), MUHAMMAD NAZIR V. KHURSHID BEGUM (2005 SCMR 941), NOOR MUHAMMAD and others v. Mst. AZMAT-E-BIBI (2012 SCMR 1373), Mst. BHAGNI v. MANZUR HUSSAIN SHAH (PLD 1957 (Writ Petition) LAHORE 574) and D.F. Mulla's Principles of Mahomedan

Law at page 168 and prays for setting aside of two judgments passed by the courts below.

6. Conversely, learned counsel for the respondent submits that revision petition is filed against the concurrent findings of fact, which cannot be concurrent findings of fact, which cannot be upset in exercise of section 115, C.P.C. by this court as there is neither any illegality nor irregularity which has been pointed out; that in para-3 of the plaint the petitioner herself has admitted to have thumb marked but narrated different unbelievable story that the documentations were required for the payment of pension of her late father for which such affixation of her thumb impression was required; that in para. 22, 27, 28 and 29 of the judgment of appellate court the possession of the respondent as a tenant has been admitted by the petitioner; that the respondent has produced cogent evident to prove his case believed as such by the courts below and prays for dismissal of the revision petition.

7. I have heard the learned counsel for the parties and perused the available record.

8. A perusal of Exh.D.1 reveals that no description of any property has been mentioned for which amount of Rs.2,60,000 was paid to the petitioner on 2-2-1993. Both marginal witnesses/ DW-4 Muhammad Liaqat, and Hadi Hassan Shah, DW-5 had admitted that the transaction had not taken place in their presence and that the said receipt was already written. They do not say anything as to whether the petitioner was explained the nature and contents regarding the transaction in question. The respondent appeared as DW-10, who himself has stated to have paid the amount of Rs.2,60,000 to the petitioner in presence of Hadi Hussain Shah DW-5, Muhammad Liaqat/DW-4 and Syed Asghar Shah but they have not corroborated his statement. He has also admitted that the petitioner appeared in the court by observing veil. He has also stated , that the petitioner herself came to his house in November, 1992 in order to sell the suit land as there is no male member in the family of the petitioner. However, none of the witnesses have explained anywhere that at the time when the petitioner affixed her thumb impression upon the receipt, she was explained about the contents of Exh.D.1 with regard to its nature and consequence which was necessary and mandatory requirement of law. DW.2

did not remain posted as Patwari at the relevant time, therefore his statement is not relevant. DW-3 is admitted not to have possessed record of pert sarkar which he was required to possess. DW-7 admitted that the said mutation in question was presented by the respondent himself. He has also admitted that he did not know whether the petitioner was present at the given time. DW-8, the Tehsildar, also admitted not to have possessed the pert sarkar and DW-9 has admitted that his signature is not affixed on pert sarkar.

9. On the other hand, the petitioner appeared as P.W.1 who has explained in her cross examination that she being an illiterate pardanashin and simple villager lady got her thumb impression affixed on the false pretext by the respondent and that she was not explained as to the real purpose behind. She also stated that she never ever appeared before the Revenue Officer for sanctioning of mutation in question.

10. Under the law if the gift is denied by the lady the onus to prove the same shifts upon those who claim such gift, which fact is required to be proved by maintaining the quality of evidence, including the requirement that the said lady should have been explained the nature of such transaction in detail. Reliance can be placed on MUHAMMAD v. Mst. REHMON through Mst. SHARIFAN BIBI (1998 SCMR 1354). In all the transactions in which the donor is a pardanashin lady though not observing parda heavy onus lies upon the donee to show that the gift was made without exerting influence. The transaction with pardanashin lady has four pre-requisite namely, the proper advice before execution of the document, explaining the contents of documents, conscious mental act and lastly the entire transaction was to be free from any shadow of doubt or suspicion. Such requirement of law have not been fulfilled in the instant case. The petitioner was not even identified by a person who could advise or protect her interest. Reliance can be placed on Mst.RASHEEDA BIBI and others v. MUKHTAR AHMAD and others (2008 SCMR 1384) and Syed SHARIF UL HASSAN through L.Rs. v. Hafiz MUHAMMAD AMIN and others (2012 SCMR 1258).

11. Reverting to the question of mutation suffice it to say that it is not a deed of title and is merely indicative of some previous oral sale between the parties. When challenged, the burden squarely lies on the beneficiary of the

mutation to prove not only the mutation but also the original, transaction which he is required to fall back upon. In the instant case the original pert sarkar was not produced, the revenue officials have not identified the petitioner. The mutation was not sanctioned in open assembly by the Revenue Officer. Reliance, therefore, can be placed on FIDA HUSSAIN through Legal Heirs Muhammad Taqi Khan and others v. MURAD SAKINA (2004 SCMR 1043).

12. A "Hiba-bil-Iwaz" is sale in reality, having two pre-requisite namely, payment of consideration and, bona fide intention of the donor to divest the property to donee. I am afraid, they are missing from the record.

13. As far as the proof of requirement of gift is concerned, suffice it to say that neither the declaration nor acceptance, transfer of possession for consideration on the exercise of free will is visible from the record. Departing the possession of property requires solid evidence and mutation simplicitor is not enough.

14. As to the concurrent judgments which can always be interfered with if the same are contrary to law for the reason that they are not sacrosanct. Erroneous conclusion if based on misreading and non-reading of documentary as well as oral evidence and wrong application of law is always a ground to interfere with. Reliance can be placed on FIDA HUSSAIN through Legal Heirs Muhammad Taqi Khan and others v. MURAD SAKINA (2004 SCMR 1043).

15. For what has been discussed above, this civil revision is allowed, the impugned concurrent judgments passed by the courts below are set aside, and consequently the suit of the petitioner-plaintiff is hereby decreed.

SAK/H-10/L **Revision accepted.**

2013 Y L R 2079

[Lahore]

Before Ali Baqar Najafi, J

SAJJAD AKHTAR KIANI---Petitioner

Versus

The STATE and others---Respondents

Criminal Miscellaneous No.490-B of 2013, decided on 21st May, 2013.

Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Bail, grant of---Further inquiry---Allegation against the accused was that he issued cheque for a huge amount on account of his share in ancestral property which was dishonoured---Ingredients of dishonest intention to issue cheque towards repayment of loan or fulfilment of an obligation were not apparent on the face of the record as cheque in question appeared to have been issued by way of security rather than for discharge of any liability---Investigation Officer had prepared a report in favour of the accused-petitioner which had been approved by the higher police official---True import of S. 489-F, P.P.C. would be seen by the Trial Court after recording evidence---Charge had been framed but no prosecution witness was recorded---Case fell within the non-prohibitory clause of S.497, Cr.P.C. and the concession of granting bail must favourably be considered and should only be declined in exceptional circumstances---Huge amount was not one of such circum-stances---Accused-petitioner was granted bail accordingly.

Zafar Iqbal v. Muhammad Anwar and others 2009 SCMR 1488; Riaz Jafar Natiq v. Muhammad Nadeem Dar and others 2011 SCMR 1708 and Mian Allah Ditta v. The State and others 2013 SCMR 51 rel.

Tariq Mahmood Musa for Petitioner.

Ch. Muhammad Yousaf, DDPP for the State with Sikandar, S.I. with record.

Malik Waheed Anjum for the Complainant.

ORDER

ALI BAQAR NAJAFI, J.---Through this petition, Sajjad Akhtar Kiani petitioner seeks post-arrest bail in case F.I.R. No. 726 registered at Police Station Airport, District Rawalpindi on 18-9-2012 for an offence under section 489-F, P.P.C.

2. The brief facts narrated in the F.I.R. are that father of the complainant, namely, Muhammad Khurshid Kiani left huge property, whereafter her brother Sajjad Akhtar Kiani decided to give her share from the said property in the form of money, which she accepted, therefore, a cheque bearing No.CA-0014921214 dated 3-7-2012 amounting to Rs.430,00,000 drawn at Faisal Bank, Sadiq Abad Road, Satellite Town, Rawalpindi was issued by the petitioner but when presented it was dishonoured thrice, i.e. on 4-9-2012, 7-9-2012 and 10-9-2012 due to insufficient funds. Hence, the F.I.R.

3. The learned counsel for the petitioner submits that complainant filed a civil suit for permanent injunction, etc. on 2-1-2009, which was dismissed as withdrawn on 5-1-2009 on the basis of a compromise with Parveen Begum, the mother of the complainant; a Jirga was convened, wherein a blank cheque was issued to the petitioner through their uncle Rashid Kiani; that the police during the investigation has found the petitioner innocent; that the Challan has been submitted on 4-9-2013 and the petitioner is no more required for the purpose of investigation and prays for bail.

4. Conversely, the learned counsel for the complainant submits that in the first investigation, the petitioner was found guilty; that on 8-11-2005 the complainant was taken by the mother and brother to District Courts, Rawalpindi where a false deed was prepared, a part of the property had been sold out and the part payment has also been received by the mother, for which the complainant is entitled to her share; F.I.R. No.291 of 2012 dated 27-1-2012 was registered at Police Station Morgah by her mother against the

husband of the complainant; that they have deprived the complainant from her entire share; that there was no business deal between the petitioner and the complainant, for which the cheque could have been issued as a guarantee and prays for dismissal of the bail petition.

5. The learned DDPP adopts the submissions of the learned counsel for the complainant and submits that as a Challan has been submitted, therefore, bail may not be granted.

6. I have heard the learned counsel for the parties and perused the available record.

7. The prosecution case is that the cheque was issued by the petitioner to the complainant with dishonest intention on the pretext that the stated amount was in lieu of the share in the property left by the deceased, namely, Muhammad Khurshid Kiani, father of the petitioner and the complainant. The recovery of inheritance share is within the domain of the civil court, where the complainant may ultimately approach, besides initiation of recovery proceedings under Order XXXVII, C.P.C. The ingredients of dishonest intention to issue cheque towards repayment of loan or fulfilment of an obligation are not apparent on the face of the record. The cheque appears to have been issued by way of security rather, than for discharge of any liability. The Investigating Officer vide Zimni No. 26 dated 8-4-2013 has prepared a report in favour of the petitioner, which has been approved by the higher police official. The true import of section 489-F, P.P.C. will be seen by the trial Court after recording evidence. The petitioner was arrested on 11-12-2012 and the charge having been framed on 20-9-2012, no prosecution witness was recorded uptil now. The case falls within the non-prohibitory clause and the concession of granting bail must favourably be considered and should only be declined in exceptional circumstances. Huge amount is not one of such circumstances. I place my reliance upon the cases of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488), Riaz Jafar Natiq v. Muhammad

Nadeem Dar and others (2011 SCMR 1708) and Mian Allah Ditta v. The State and others (2013 SCMR 51).

8. For what has been stated above, I am inclined to grant bail to the petitioner. This petition is, therefore, accepted and the petitioner is admitted to bail subject to furnishing bail bond in the sum of Rs.100,00,000 (Rupees ten millions only) with two sureties each of the like amount to the satisfaction of trial Court.

AG/S-55/L **Petition accepted.**

2014 C L D 1323

[Lahore]

Before Ali Baqar Najafi and Atir Mahmood, JJ

STATE LIFE INSURANCE CORPORATION OF PAKISTAN through Attorney---Appellant

Versus

Mst. KANEEZ BIBI---Respondent

R.F.A. No.786 of 2012, heard on 13th March, 2014.

Insurance Ordinance (XXXIX of 2000)---

----Ss. 115, 118 & 121---Claim arising out of insurance policy issued before commencement of Insurance Ordinance, 2000---Forum---Recovery of liquidated damages on late settlement of claim---Commencement date of Insurance Ordinance, 2000 was 19-8-2000---Insurance policy in question was issued on 1-7-2000, prior to commencement of said Ordinance---Claimant sought recovery of liquidated damages on late settlement of claim, which claim was allowed by the Insurance Tribunal---Legality---Section 118 of Insurance Ordinance, 2000 regarding payment of liquidated damages on late settlement of claim would not extend to policies issued before the commencement of the Insurance Ordinance, 2000, therefore, Insurance Tribunal set up under the said Ordinance would not have jurisdiction to adjudicate upon the matter---Claimant was permitted to go to the civil court for his claim--- Appeal was allowed accordingly.

Mst. Robina Bibi v. State Life Insurance and others 2013 CLD 477; Civil Appeals Nos.449-L of 2009, 284 to 286, 283-L, 586-L to 591-L, 609-L to 613-L, 637-L to 640-L and 767-L of 2013, 817, 818 of 2010, 56-L, 63-L of 2011, 623-L to 628-L, 723-L, 726-L to 731-L of 2013 and Civil Petitions Nos.1253-L of 2011 and 1516-L to 1521-L of 2013 rel.

Ibrar Ahmad for Appellant.

Liaqat Ali Butt for Respondent.

Date of hearing: 13th March, 2014.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this regular first appeal the judgment and decree dated 14-9-2012 is challenged whereby the claim of the respondent was accepted and she was held entitled to liquidated damages from the date of death of assured i.e. 5-1-1998 till the realization of Rs.5.,88,000 at the rate of 5% higher than the prevailing base rate.

2. The main argument of the learned counsel for the appellant is regarding maintainability of the application for recovery of the policy proceeds and payment of the liquidated damages under section 118 of the Insurance Ordinance, 2000 on the ground that in the judgment titled Mst. Robina Bibi v. State Life Insurance and others (2013 CLD 477) where in para 21 it has been held that the Insurance Policy issued after the commencement of the Ordinance, 2000 i.e. 19-8-2000 can be entertained by the Insurance Tribunal which judgment has been upheld by the apex Court on 4-2-2014, therefore, the insurance policy dated 1-7-2000 was issued prior to the commencement of the said Ordinance, thus should have been decided by the civil court.

3. Conversely, learned counsel for the respondent submits that under section 115 of the Ordinance since the claim has arisen out of the Insurance Policy after the commencement of the Ordinance on 19-8-2000 and upon the death of Major (Retd.) Muhammad Aslam Shah on 5-1-1998, therefore, the Tribunal has rightly proceeded and passed the impugned judgment.

4. Arguments heard. Record perused.

5. It is appropriate to reproduce section 115 of the Ordinance, which reads as under:--

"115. Application of Pakistan Law to policies issued in Pakistan.---The holder of a policy insurance issued by an insurer in respect of insurance business transacted in Pakistan after the commencement of this Ordinance shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in Pakistan of any sum secured thereby and to sue for any relief in respect of the policy in any Tribunal; and if the suit is brought in Pakistan any question of law arising in connection with any such policy, shall be determined according to the law in force in Pakistan:

Provided that nothing in this section shall apply to a policy of marine insurance."

Now it is equally important to reproduce para 21(1) of the judgment reported as Mst. Robina's case (2013 CLD 477):--

"Under section 115 of the Ordinance, only claims arising out of insurance policies issued after the commencement of the Ordinance i.e., on or after 19-8-2000 can be entertained by the Insurance Tribunal."

The above referred reported judgment of this Court was upheld by the apex Court on 4-2-2014 in Civil Appeals Nos.449-L of 2009, 284 to 286, 283-L, 586-L to 591-L, 609-L to 613-L, 637-L to 640- L and 767-L of 2013, 817 and 818 of 2010, 56-L and 63-L of 2011, 623-L to 628-L, 723-L, 726-L to 731-L of 2013 and Civil Petitions Nos.1253-L of 2011 and 1516-L to 1521-L of 2013, where in paragraph 3 it is observed as follows:--

"3. According to the learned counsel, this section despite its clear wording to the contrary, will also extend to the policies issued before the date of commencement of the Ordinance and consequently the Tribunals set up under the said Ordinance will have jurisdiction to adjudicate matters. The contention is not only misconceived but is also frivolous as it flies in the face of the express wording of the provision reproduced above."

6. The overall interpretation of the statutory provisions, the judgment of this Court as well as the apex Court is that section 118 will not extend to the policies issued before the commencement of the Ordinance and, therefore, the Tribunal set up under the Ordinance will not have jurisdiction to adjudicate upon the matter. This will leave us with only one option that is to allow this appeal and permit the respondent to go to the civil court under clause (iv) of the reported judgment (Supra), which is reproduced as under:--

"(iv) Claims arising out of insurance policies, prior to the commencement of the Ordinance may apply to the court of competent jurisdiction under the repealed Act, subject to the provisions of Limitation Act, 1908, which will be considered by the respective court on its merits in accordance with law."

7. For the foregoing reasons, this appeal is allowed with the observation that the respondent may approach the civil court to claim the liquidated relief.

MWA/S-25/L **Appeal allowed.**

2014 C L D 1351

[Lahore]

Before Ali Baqar Najafi and Miss Aalia Neelum, JJ

STATE LIFE INSURACNE CORPORATION OF PAKISTAN through Chairman and another---Appellants

Versus

MUHAMMAD ASHRAF---Respondent

Insurance Appeal No.5 of 2013, heard on 12th February, 2014.

Insurance Ordinance (XXXIX of 2000)---

----Ss. 122 & 124---Group Insurance---Appellant Insurance Company impugned the order of Insurance Tribunal, whereby it was ordered to pay life insurance claim to the father of deceased employee of Insurance Company---Contention of the appellant Insurance Company was that the deceased was only appointed as a Sales Officer and was not holding a valid license to work at the time of his death---Held, that deceased was a bona fide worker and it was noticeable in the vouchers that he held a licence---Appellant Insurance Company, it appeared, squashed the energies and capabilities of their employee till the date of his death, who netted financial benefits and clientage for the company, and only at the time of making the claim, it was found that he had no valid license---No illegality in the impugned order was found---Appeal was dismissed.

Mst. Robina Bibi v. State Life Insurance and others 2013 CLD 477 ref.

Rana Waqas Latif for Appellants.

Liaqat Ali Butt for Respondent.

Date of hearing: 12th February, 2014.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this Insurance Appeal, the judgment and decree dated 28-11-2012 passed by Insurance Tribunal, Punjab, Lahore under section 121(1) of the Insurance Ordinance, 2000 has been assailed, whereby the respondents were directed to pay Group Claims to the respondent, as prayed for.

2. Precisely, son of the respondent, namely, Waris Ali was Sales Officer under Code No.676996 with the State Life Insurance Corporation of Pakistan since 1-12-1998 who as a bona fide agent and a licensee during his lifetime and until his death on 10-1-2002 procured business as Field Worker in pursuance of agency created between the deceased and respondents. The deceased was bona fide agent of the respondents. A claim was lodged by the respondent before the appellants was not entertained, whereafter a complaint was filed before Wafaqi Mohtasib on 31-8-2002, which was decided in his favour on 28-4-2005. Thereafter, the respondent has been moving to the higher forum but on issuance of Notification of the Tribunal on 20-6-2006, a claim was filed before it containing policy proceeds under Group Policies as well as liquidated damages. The detail of Group Policies is as under:--

(i) Compulsory Group Insurance Scheme with ADB Rs.2,00,000.

(ii) Voluntarily Self Subscribed Group Insurance Rs.4,00,000.

(iii) Field Self Subscribed Groups Insurance Scheme Rs.6,00,000.

Total: Rs.12,00,000

3. The Reply was filed by the appellants raising preliminary objections on merits, therefore, on the basis of divergent pleadings of the parties, on 16-5-2007, the following issues were framed:--

(1) Whether this petition is not maintainable in its present form? OPR.

(2) Whether the petition is time-barred? OPR.

(3) Relief.

After framing of the said issues, the parties were directed to produce their respective evidence. The respondent produced Banaras Ali, Special Attorney (A.W.1), produced documents (Exh.A-1 to Exh.A-11) and closed his evidence. On the other hand, the appellants produced Muhammad Imtiaz Akbar as R.W.1 and closed their evidence. The learned Insurance Tribunal decided all the issues in favour of the respondent.

4. Arguments heard. Record perused.

5. The argument of the learned counsel for the appellants that as Waris Ali deceased was only appointed as Sales Officer on 1-12-1998 and was not holding any valid licence to work at his death, therefore, is not entitled for the benefits. Since 31-11-1999, he was required to renew his licence but he could not even apply. However, Muhammad Imtiaz Akbar (R.W.1) has admitted that although Rs.400 were deposited towards renewal of the licence but the application for this purpose was not on the record. It is also not denied that Waris Ali deceased being Field Worker had done his business with the permission of the appellants who was paid commission. It was also admitted by R.W.1 that the deceased procured second year premium of Rs.4,06,330 equivalent to 85 persistency ratio and also procured third year premium amounting to Rs.9,865. The second year premium for the period from 1-1-2001 to 31-12-2001 amounting to Rs.48,262 is also not denied. In total, he procured Rs.12,85,968 for the period from 1-12-1999 to 31-12-2001. Even otherwise, Waris Ali deceased is bona fide worker as denied in Office Order No.Marketing/PO/50/2002 dated 13-7-2002 under clause 2(a). It is also noticeable that in the Vouchers (Exhs.A1-1 to A-7), his date of expiry was continuously being mentioned as 30-11-1999, meaning thereby that according to their record, he held a licence. According to the respondent, Insurance Ordinance (No. XXXIX of 2000) was promulgated on 19-8-2000 and the grace period for renewal of the licence of Waris Ali deceased was to expire on 30-11-2000 but meanwhile the Insurance Ordinance, 2000 was promulgated on 19-8-2000 and under section 190 (claiming clause) thereof, the licence of the deceased was to be renewed, as required under the Insurance Act, 1938.

6. It will not be totally out of place to give reference to a recent judgment passed by this Court vide order dated 10-12-2013 in R.F.A. No.1024 of 2012, wherein the attitude of the Insurance Companies was disapproved. In this case, it appears that the Insurance Companies squash the energies and capabilities of their employee till the date of his death, who drew the financial benefits through the netted clientage and while the money was poring in, the violation of rules never pinched them. It was only at the time of making of the claim that they found that he had no valid licence.

7. Moreover, as the claim of the respondent was lodged after promulgation of the Ordinance dated 19-8-2000, therefore, it has to be decided under the new law. As observed in the case of Mst. Robina Bibi v. State Life Insurance and others [2013 CLD 477]. The relevant portion of this judgment is reproduced hereunder:--

"Under section 115 of the Ordinance; only claims arising out of insurance policies issued after the commencement of the Ordinance, i.e. on or after 19-8-2000 can be entertained by the Insurance Tribunal."

8. For what has been discussed above, we are of the considered view that there is no misreading or non-reading of evidence or illegality in the impugned judgment and decree dated 28-11-2012 passed by the learned Insurance Tribunal, which does not call for interference by this Court, Resultantly, .this appeal has no merits and the same is, therefore, dismissed.

KMZ/S-21/L **Appeal dismissed**.

2014 M L D 69

[Lahore]

Before Ali Baqar Najafi, J

YAQOOB alias QOBI---Petitioner

Versus

The STATE and another---Respondents

Criminal Revision No.479 of 2013, decided on 9th July, 2013.

Criminal Procedure Code (V of 1898)---

----S. 540---Constitution of Pakistan, Art.10-A---Penal Code (XLV of 1860), Ss.396, 397 & 412---Dacoity with murder, robbery or dacoity, with attempt to cause death or gravious hurt, dishonestly receiving property stolen in the commission of a dacoity---Re-summoning of prosecution witnesses for cross-examination---Right of fair trial as fundamental right of accused---Petitioner had sought setting aside the order passed by the Trial Court, whereby re-summoning of prosecution witnesses for cross-examination, was disallowed---Defence Counsel, appointed at the State expense, did not cross-examine certain prosecution witnesses---Right of fair trial had been guaranteed as a fundamental right under Art. 10-A of the Constitution which right was meaningless, unless the veracity of the prosecution witnesses was properly thrashed and weighed through the art of cross-examination---Article 10-A of Constitution was a living organism, and not a vague concept---Just by providing on Advocate to an accused at the State expense, evaluating his performance in the court, should not escape the attention of the court---Filling of lacunae, delay in making such an application, or even partiality, were ignorable technicalities, when compared to the concept of complete justice---Courts, could not be absolved of their responsibilities to ensure that accused were extended all possible legal help/assistance to defend their cases---Trial Court was directed by High Court to re-examine prosecution witnesses, who were not re-examined on behalf of accused/petitioner to be completed within a period of seven days from the receipt of order in that respect.

Nawabzada Shah Zain Bugti and others v. The State PLD 2013 SC 160; Pervaiz Ahmad v. Munir Ahmad and another 1998 SCMR 326; The State v. Muhammad Yaqoob and others 2001 SCMR 308 and Maqbool v. The State 2006 PCr.LJ 110 rel.

Pir Ali Raza Gilani for Petitioner.

Mian Imran Rahim, D.P.G. for the State.

Zafar Iqbal Klasson for Respondent No.2.

ORDER

ALI BAQAR NAJAFI, J.---Through this revision petition, the petitioner seeks setting aside of the order dated 17-6-2013 passed by the learned Additional Sessions Judge, Pattoki, District Kasur, whereby re-summoning of P.W.1 to P.W.8 for cross-examination was disallowed.

2. The brief facts giving rise to the filing of this revision petition are that the petitioner is facing trial in case F.I.R. No. 303 of 2010 dated 3-8-2010 registered at Police Station Sadar Pattoki, District Kasur under sections 396/397/412, P.P.C. After submission of the Challan, statements of prosecution witnesses (P.W.1 to P.W.14) were recorded, which according to the petitioner, were not cross-examined by the petitioner's counsel.

3. The learned counsel for the petitioner submits that the petitioner being a poor person could not arrange for his counsel and his case was partly conducted without any counsel; that Mr. Ashiq Javed Bhatti, Advocate was appointed as a Defence Counsel at the State expense when P.Ws. were not examined; that 20% case of the petitioner was cross-examined and gives a reference to Dr. Abdul Hameed (P.W.4), who was not cross-examined by the petitioner's counsel. Hence, prays for acceptance of this revision petition.

4. Conversely, the learned Deputy Prosecutor-General, assisted by the learned counsel for respondent No.2/complainant, submits that on 22-2-2012, Mr. Ashiq Javed Bhatti, Advocate was appointed at the State expense with the consent of the petitioner as his Defence Counsel; that cross-examination of all the P.Ws. was properly held and after sixteen months, the case was fixed for

recording of the petitioner's statement under section 342, Cr.P.C. and, therefore, there was no justification for any re-examination. Hence, prays for dismissal of this revision petition.

5. I have heard the learned counsel for the parties and perused the available record.

6. On 22-2-2012, the petitioner requested the trial court to appoint Mr. Ashiq Javed Bhatti, Advocate as his Defence Counsel at the State expense, whereafter he did not cross-examine P.Ws. 1 to 4, 8, 9 and 13 at all. The record further reveals that P.Ws. 5 to 7 and 10 to 12 were cross-examined.

7. In a recent judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Nawabzada Shah Zain Bugti and others v. The State (PLD 2013 SC 160), it has been held that:--

"for the purposes of section 540, Cr.P.C., the court even without any formal application from prosecution or accused, could summon any person as witness or examine any person in attendance as a witness or recall and re-examine any person already examined."

In the case of Pervaiz Ahmad v. Munir Ahmad and another [1998 SCMR 326], it was also held that:--

"Court under section 540, Cr.P.C. has plenary powers for summoning a person as witness or re-examining any person already examined at any stage of the proceedings if such evidence appears essential for just determination of controversy involved in the matter."

In the case of The State v. Muhammad Yaqoob and others [2001 SCMR 308], on delay for moving such an application, the criticism of filling up lacunae or partiality of the court has also been held to be ignorable keeping in view the concept of complete justice. The relevant portion is reproduced as under:--

"Calling of additional evidence under section 540, Cr.P.C. is not always conditioned on defence or prosecution making an application for this purpose. It is duty of court to do complete justice between the parties carelessness or ignorance of one party or other or delay that may result in conclusion of the case should not be a hindrance in achieving object of doing

complete justice by allowing additional evidence."

In a D.B. case of Peshawar High Court reported as Maqbool v. The State [2006 PCr.LJ 110], it has also been held as under:

"Provisions contained in section 540, Cr.P.C. in examining, recalling or summoning any witness are wide enough to give free hand to a court of law to see that the justice does not slip out of hand or is defeated only on the technicalities of law. The courts ought to make maximum endeavour for discovering the truth for arriving at a just decision."

Additionally, after insertion of Article 10-A of the Constitution of Islamic Republic of Pakistan, the right of fair trial has been guaranteed as a fundamental right of an accused person which right is meaningless unless the veracity of the prosecution witnesses is properly thrashed and weighed through the art of cross-examination.

8. Coming to the facts of the case, in a murder case, if the medical expert is not asked any question by the defence, I am afraid this right of the accused is seriously prejudiced. Article 10-A of the Constitution is a living organism and not a vague concept. Just by providing an advocate to an accused at the State expense without evaluating his performance in the court in order to watch interest of the accused should not escape from the attention of the court. Filling of lacunae, delay in making such an application or even partiality are ignorable technicalities when compared to the illuminating concept of complete justice. The courts, in my humbly opinion, cannot be absolved of their responsibilities to ensure that the accused are extended all possible legal help/assistance to defend their cases.

9. In this view of the matter, this revision petition is allowed and the trial court is directed to re-examine P.Ws. 4 to 7 and 9 to 13 for cross-examination on behalf of the petitioner to be completed within a period of seven days from the receipt of this order.

HBT/Y-8/L **Petition allowed.**

2014 M L D 353

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD NADEEM NASIR---Petitioner

Versus

CHAIRMAN, BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, LAHORE---Respondent

Writ Petition No.19664 of 2013, decided on 20th September, 2013.

Constitution of Pakistan---

----Arts. 25-A & 199---Constitutional petition---Right to education and appear in examination---Scope---Petitioner/student of F.Sc. appeared in examination of Intermediate and accordingly was issued date sheet for practical examination---Petitioner/candidate due to his illness failed to appear in practical examination on given date---Petitioner/candidate requested the Controller of Examination of Board of Intermediate and Secondary Education to allow him to appear in practical examination in second batch but his request was turned down---Contention of the petitioner was that earlier the petitioner failed to appear in practical examination on account of his illness for which he submitted medical certificate, therefore impugned order of Board of Intermediate and Secondary Education was illegal and violated his fundamental rights---Validity---In the event of missing one batch of practical, the Board authorities could permit a candidate to appear before the same examiner for which special slip could be issued subject to deposit of payment---Respondent/Board authorities had directed the petitioner/candidate to deposit the fee of practical examination after missing the first batch and the same was accordingly deposited---Delay in issuing of the slip for the second batch was due to the respondent/Board authorities for which the petitioner could not be held responsible---Petitioner/candidate was required to be accommodated in the second batch of practical examination---Right to education and to appear in examination under the rules and regulations was the fundamental right of a student---Any rule meant for conducting

examinations had to be beneficially interpreted to accommodate and facilitate the student---Respondent/Board authorities were directed to hold the practical examination of petitioner---Constitutional petition was allowed.

Fida Hussain Rana for Petitioner.

Mahboob Azhar Sheikh, Legal Advisor for Respondent.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner seeks setting aside of order dated 29-7-2013 passed by the respondent with a direction to make immediate arrangements for practical examination of the petitioner for the subject of chemistry without any further delay of time.

2. The brief facts giving rise to filing of this writ petition are that the petitioner is a student of F.Sc. Pre-Medical who appeared in a subject in Examination of Intermediate Pre-Medical in second year of Academic Session 2011-13. According to the date-sheet of the petitioner's practical examination, he was supposed to appear at the Centre of Division Public School and Inter College Model Town, Lahore on 27-6-2013 to 11-7-2013 but unfortunately on 28-6-2013 on the date when practical of the chemistry was scheduled, he fell ill and was admitted in the hospital, due to which he could not appear. He immediately approached the Controller of Examinations, BISE with an application to allow him to appear in any practical at any centre who directed him to deposit the fee of practical examination in UBL which he deposited. However, he was not conveyed any name of the centre where he was to appear for his practical. The petitioner filed Writ Petition No.17415 of 2013, which was decided by this Court on 12-7-2013 with a direction to the petitioner to approach the respondent with his application voicing his grievance and the circumstances beyond his control restraining him to appear in the Chemistry Practical held on 28-6-2013.

3. The grievance of the petitioner is that on 29-7-2013 the respondent while rejecting the application of the petitioner, though after hearing, on the ground that he could not provide any satisfactory reply about his illness, due

to which he missed his practical examination of chemistry. It was further observed in the impugned order that the petitioner fell in the first batch, under which he was to appear in the practical on 28-6-2013 which he could not whereafter in the second batch of the practical of chemistry starting from 2-7-2013 which was to be closed on 8-7-2013. Therefore, the office could not make the arrangements. Hence, this writ petition.

4. The learned counsel for the petitioner submits that admittedly the petitioner filed an application on 3-7-2013 and on the said date, he deposited an amount of Rs.1,000 in the bank through a Challan and his practical of chemistry was required to be conducted as he fell in second batch which was to end on 8-7-2013 and fundamental right of the petitioner has been infringed; and that the learned counsel for the respondent remained too harsh in the case of the petitioner and, therefore, prays for issuance of a writ.

5. Conversely, the learned counsel for the respondent submits that the petitioner has presented a medical certificate issued by a doctor at Nankana Sahib whereas he appeared on the date he fell ill which is not understandable; that the petitioner approached later in time and, therefore, could not be accommodated; that there is no ill-will towards the petitioner and the respondent has to follow the rules; that any person can deposit any amount in any head. Thus, Rs.5,000 deposited by the petitioner cannot be termed as the payment for the change of first batch to second batch for the purpose of practical of chemistry and hence, prays for dismissal of the writ petition.

6. I have heard the learned counsel for the parties and perused the available record.

7. The impugned order dated 29-7-2013 mentions that the petitioner could not give any satisfactory reply about his illness, due to which he missed his practical examination of chemistry. The said observation does not give any reference to the medical certificate dated 30-6-2013, in which it is mentioned that the petitioner remained ill from 27-6-2013 to 30-6-2013. Moreover, either the said certificate could be accepted or rejected but no specific finding was given by the respondent. The argument advanced by the learned counsel for the respondent is not convincing as the petitioner could have fallen ill after the

practical of Physics on 27-6-2013 and thereafter went to any of hospltals of his town for his treatment.

8. Admittedly, the petitioner applied to the respondent on 3-7-2013, i.e. when the practicals of chemistry were being conducted, though in the second batch which were to close on 8-7-2013. The respondent remained irresponsive to with the request on the ground that no conversion from first batch to second batch for chemistry practical was possible. However, no such embargo has been demonstrated by this Court by relying upon any rule of the BISE, Lahore. Such change of batch is possible under the compelling and compassionate circumstances as the academic career and future of a student not less than that of F.Sc. is at stake. Additionally, I have failed to understand the wisdom behind the argument that anybody can deposit any amount under any head in the bank account of Board of Intermediate and Secondary Education. Suffice it say that the word 'practical has been mentioned on the receipt of payment of Rs.1,000 dated 3-7-2013. Even in the impugned order, a reference is given to some rule, wherein in the event of missing a batch, the practical is made permissible but before the same examiner for which special slip can be issued against the payment of Rs.1,000. When the said amount was received on 3-7-2013, the first batch of the practical was already missed. The delay in issuing the slip in the second batch is due to the respondent, for which the petitioner cannot be held responsible, therefore, he was required to be accommodated in the second batch. The right to education and to appear in examination under the rules and regulations is the fundamental right of a student under Article 25A of the Constitution of Islamic Republic of Pakistan. Any rule meant for conducting the examinations has to be beneficially interpreted to accommodate and facilitate the students.

9. In this view of the matter, I allow this petition, set aside the order dated 29-7-2013 passed by the respondent and issue a direction to the respondent to immediately hold the chemistry practical of the petitioner on a specific date given by the respondent, on which the petitioner shall appear on the stated centre and stated time before the Examiner so appointed.

JJK/M-254/L **Petition allowed.**

2014 M L D 1137

[Lahore]

Before Ali Baqar Najafi, J

SAIRA ANJUM and 2 others---Petitioners

Versus

RIZWAN RIAZ SAIGAL and 2 others---Respondents

Writ Petition No.19120 of 2013, heard on 11th September, 2013.

Guardians and Wards Act (VII of 1890)---

----Ss. 12 & 25---Constitution of Pakistan, Art. 199---Constitutional petition---Interim custody of minors to the father during summer vacations---Propriety---Guardian Court settled a monthly schedule of meeting between the minors and their father---Subsequently Guardian Court permitted the custody of minor to the father for four additional days during summer vacations subject to surety bonds---Validity---Schedule of meeting of minor with the father during the summer vacation was a reasonable and just requirement of law through which the father could show his love and affection for the minor---In the backdrop of the type of education the minors received in an urban society, they could not develop their emotional attachment with the father if they were not permitted to live with him during the vacation period---Order passed by Guardian Court was neither illegal nor defective---Constitutional petition was dismissed accordingly.

Saima Ahmad v. Tanvir Ahmed and others 2009 SCMR 1062 distinguished.

Bilal Bashir Mian for Petitioners.

Farhad Ali Shah for Respondents.

Date of hearing: 11th September, 2013.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this Constitutional Petition, seeks setting aside the order dated 17-12-2012 passed by the learned Guardian Judge (respondent No.2) and that of the learned District Judge, Lahore (respondent No.3) dated 4-7-2013.

2. Brief facts giving rise to the filing of this writ it petition are that respondent No.1 filed a petition under section 25 of the Guardians and Wards Act, 1890 for the appointment of guardian of petitioners Nos.2 and 3 along with an application under section 12 of the said Act praying for the interim custody before respondent No.2. During the pendency of the proceedings, many applications were filed for interim custody of the petitioners Nos.2 and 3 on the eve of Eid and vacation. However, on 27-10-2011 respondent No. 2, learned Guardian Court settled a schedule of meeting with petitioners Nos.2 and 3 on 2nd and 4th Saturdays of every month from 10 a.m. to 12 p.m. Meanwhile, the case was transferred from Guardian Court No. I to Guardian Court II at Lahore and therefore another application for interim custody of petitioners Nos.2 and 3 was filed on 12-12-2012 during summer vacation which was contested by the petitioners. Petitioner No.1 also filed an application 23-11-2012 seeking permission to take petitioners Nos.2 and 3 abroad during the summer vacation, which application was also contested by respondent No.l. On 17-12-2012 the Guardian Court (respondent No.2) allowed interim custody of the minors to respondent No. 1. The application of the petitioner to take minors aboard was dismissed. The petitioner then filed two appeals which were decided by respondent No.3 while dismissing the same on 4-7-2013. Hence, this writ petition.

3. Learned counsel for the petitioner submits that since the question of interim custody has attained finality while deciding the application under section 12 of the Guardians and Wards Act, 1890, which order was upheld by

the learned Addl. District Judge (respondent No.1) therefore, the said order cannot be reviewed; that interim custody of the minors to the father was declared by the apex Court as not justified. Places reliance on Saima Ahmad v. Tanvir Ahmed and others (2009 SCMR 1062), Tanya Khitwear (Pvt.) Ltd. and others v. First Women Bank Ltd (PLD 2008 Karachi 29), Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 20911 Supreme Court 260), Mian Zameer Tufail through Attorney v. Ayesha Bibi and 2 others (2009 CLC 717), Mst. Shagufta Shaheen v. Muhammad Ismail Qureshi and 2 others (PLD 2011 Peshawar 238) and Mst. Farah Waqar v. Dr. Waqar Ahmad Khan (2000 YLR 3046).

4. Conversely, the learned counsel for respondent No.1 submits that writ is not maintainable against the concurrent findings of facts; that the application seeking permission to take the minors abroad filed by the petitioner was dismissed, therefore, the petitioner cannot blow hot and cold in the same breath; that no change in the schedule was made and there is no question of any review; that the order dated 17-12-2012 only permitted respondent No.1 to take the minors from 22-12-2012 at 10 a.m. till 26-12-2012 at 11 a.m. that too subject to furnishing surety bonds in the sum of Rs.5,00,000 to the satisfaction of the said Court for the safe return of the minors. Hence, this petition may be dismissed.

5. I have heard the learned counsel for the petitioner and perused the record.

6. Admittedly, the petition under section 25 of the Guardians and Wards Act, 1890 is pending in the Court of Guardian Judge (respondent No.2).

7. It is also not denied that a schedule of meeting had already been arranged. The question before this Court is that an a Guardian Court make some necessary changes in the schedule already decided between the parties which had attained finality up to the level of appellate Court to the extent of

permitting the custody of the minors to the father for four days during summer subject to the surety bonds. The main reliance of the learned counsel for the petitioner is on Saima Ahmad v. Tanvir Ahmed and others (2009 SCMR 1062), in which the schedule of meeting arranged by the learned Guardian Court was modified by the learned Addl. District Judge and further modification by the High Court was not appreciated. The relevant extract of Para-4 is reproduced as under:--

"4. We have heard the learned counsel for the parties and examined the available record. Learned Additional District Judge while modifying the order passed by the learned Guardian Judge allowed the respondent to meet his minor daughter on first and third Saturday of every month for a period of two hours, which order was further modified by the learned High Court, in exercise of its constitutional jurisdiction, whereby certain modalities were formulated, inasmuch as, the respondent was required to execute a surety bond in the sum of Rs. One million, the name of the minor was placed in Exit Control List, bailiff was to supervise the meeting and the venue of the meeting was fixed the house of the respondent in Lahore. Having given some thoughts to the arrangement proposed by the learned Judge in Chambers we feel that the said arrangement may lead to numerous complications as it may not be practicable in result to some mishap to the disadvantages of the minor girl, who is now aged nearly six years. The learned Additional District Judge in a straight forward manner provided reasonable and practical visitation rights to the respondent, which should have satisfied him, but the learned Single Judge, we say so with respect, further complicated the matter. The proposed arrangement made in the impugned order was neither just nor equitable and proper, as the agonies of both the parties were in fact multiplied. We are persuaded to maintain the said order. Under the circumstances, case of Shireen Qasim Khan (ibid) relied upon by the learned counsel for respondent is of no avail to the

respondent. We feel that under the circumstances, the arrangement made by the learned Additional District Judge was fair, equitable and was not only in the interest and welfare of the minor, but also reasonably protected the rights of both the parties, therefore, we while converting this petition into appeal are persuaded to set aside the impugned order."

8. However, in the instant case the additional four days during the summer vacation were granted by the learned Guardian Court to respondent No.1 which has been upheld by the learned Addl. District Judge on 4-7-2013 without even any minor modification. On the question of review of the order relating to schedule of meeting the reliance of the learned counsel for the petitioner on Mst. Shagufta Shaheen v. Muhammad Ismail Qureshi and 2 others (PLD 2011 Peshawar 238) and Tanya Khitwear (Pvt.) Ltd. and others v. First Women Bank Ltd., (PLD 2008 Karachi 29), wherein the powers to review the order has been made conditional to such provision available in the relevant statute. I am afraid, the said impugned order cannot be said to be an outcome of the review of the earlier order relating to schedule of meeting. The ,judgment cited at bar Mian Zameer Tufail through Attorney v. Ayesha Bibi and 2 others (2009 CLC 717) discourages making the child a rolling stone by various interim orders which was considered as inappropriate for his personality and well being. Obviously, in this case the interim custody has not been questioned.

9. A schedule of meeting of minor with the father during the summer vacation is a reasonable and just requirement of law through which the father can show his love and affection for the minor. Obviously, in the backdrop of the type of education the minors receive in our urban society, they cannot develop their emotional attachment with the father if they are not permitted to live with him during the vacation period.

10. In this view of the matter, I do not see any illegality or any constitutional defect in the two orders passed by the learned Courts below, which are hereby upheld, as a result thereof this writ petition is dismissed.

MWA/S-42/L **Petition dismissed**.

2014 P L C 403

[Lahore High Court]

Before Ali Baqar Najafi, J

KOT ADDU POWER COMPANY LIMITED KAPCO through Attorney and 2 others

Versus

AL-TAKBEER KAPCO EMPLOYEES' UNION through General Secretary and 7 others

Writ Petition No.8437 of 2013, heard on 21st January , 2014.

Punjab Industrial Relations Act (XIX of 2010)---

----S. 40 (6) & (7)---Constitution of Pakistan, Art.199---Constitutional petition---Industrial dispute---Award---Powers of Labour Court---Scope---Labour Court after hearing both the parties could make award within thirty days from the date of dispute---In the present case, the Labour Court had rightly refused to make an interim award without hearing other party but on revision, the same was suspended---Subsequently, the Labour Court, contrary to its earlier observations made the interim award and issued direction to implement the same in letter and spirit, which was violation of law---Labour Court was directed by High Court to decide the matter after hearing the parties---Constitutional petition was disposed of accordingly.

Riaz-ul-Hassan for Petitioners.

Malik Muhammad Tariq Rajwana for Respondents.

Date of hearing: 21st January, 2014.

JUDGMENT

ALI BAQAR NAJAFI, J.--- Through this writ petition the impugned orders dated 9-7-2013 and 10-7-2013 are sought to be cancelled with the direction to respondent No.8 to hear the petitioner and pass any order/award.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner No.1 is public limited company and the respondent No.1 is C.B.A. Union of the petitioner's company whereas respondents Nos.2 to 4 are its office bearers. Respondent No.5 is Conciliator appointed under section 35 of the Punjab Industrial Relations Act, 2010 (the PIRA). On 1-7-2012 respondent No.1 served a demand notice upon petitioner No.2 pertaining to the legal rights of workers, consequently, several meetings were held to resolve the matter amicably but upon their failure on 29-1-2013 respondent No.1 sent a strike notice to petitioner No.2 with its copy to respondent No.5 and others. Thereafter, on 6-2-2013 to 26-2-2013 conciliation proceedings were held in the office of the said respondent No.5 under section 38 ibid. Contrary to law, respondent No.5 sent some recommendations to the Director General, Labour Welfare Punjab instead of resolving the matter which cannot even form basis for any industrial dispute. Meanwhile, respondents Nos.1 to 4 filed a petition on 4-7-2013 under section 40(7) ibid before the Labour Court No.2, D.G.Khan/respondent No.8 to make award who while granting the stay order has rightly observed that the interim award cannot be announced without hearing the other party. Meanwhile, an appeal was filed before respondent No.7 who suspended the said order on 9-7-2013 but the said respondent No.2 announced interim award without hearing the petitioners on 10-7-2013 contrary to the earlier observation made on 4-7-2013, hence this writ petition.

3. The learned counsel for the petitioner submits that under section 40 subsection (6) of the PIRA award is to be announced after hearing the parties and that under sub-clause (7) interim award can be made and as such the petitioner was required to be heard.

4. On the other hand, learned counsel for the respondents submits that the demand of respondent No.1 were partially agreed and that the proceedings were legally initiated before the Labour Court/respondent No.8. Adds that they should be directed to pay admitted claim whereas remaining claim may be decided by them.

5. I have heard the learned counsel for the parties and perused the available record.

6. Under section 40(6) ibid the Labour Court can make award within 30 days from the date of dispute but after hearing both the parties and as such order dated 4-7-2013 was rightly passed. However, after when the revision petition was filed under section 46(5) ibid the order dated 9-7-2013 was passed suspending the earlier observation dated 4-7-2013 passed by the Labour Court whereby interim relief was refused. On the following date the interim Award was given as per recommendations of respondents Nos.1 and 2 with the direction to implement the same with its letter and spirit which appears to be violation of the said provisions of law. It is, with this background, learned counsel for the respondent had submitted that the Labour Court be directed to decide the matter and meanwhile the petitioner may be paid the undisputed claim as mentioned in chartered of demand for the years 2013-2014 which seems reasonable.

7. In this view of the matter I intend to dispose of this writ petition with the direction to the Labour Court/respondent No.8 to decide the matter expeditiously after hearing the parties. Meanwhile, undisputed demand of

respondents Nos.1 to 4 shall be released subject to final outcome of the dispute.

JJK/K-8/L **Order accordingly.**

2014 P L C (C.S.) 464

[Lahore High Court]

Before Ali Baqar Najafi, J

SAJID AZIZ

Versus

SECRETARY SCHOOLS and others

Writ Petition No.1972 of 2012, decided on 6th September, 2012.

Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976---

----R. 3(v)---Punjab Civil Servants Act (VIII of 1974), S.23---Constitution of Pakistan, Arts.179 & 199---Constitutional petition---Recruitment with an age limit---Relaxation of upper age limit for government employee---Scope---Recruitment of School Educators with age limit of 20 to 35 years---Application of candidate (petitioner), who was a government employee, was rejected as he was over age---Contentions of candidate were that he had been in Government service for 15 years and 5 months and as per R.3(v) of Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976 such time period had to be excluded for the purposes of considering his application and upper age limit for the post in question had to be relaxed in his case---Contentions on behalf of Provincial Government were that recruitment process was initiated on the basis of a recruitment policy, wherein no provision for relaxation of upper age limit for government servants was provided; that candidate had not challenged the said policy, therefore, he was not entitled to any relief, and that judgments of High Court relied upon by the candidate were pending adjudication in the Supreme Court---Validity---Right of government servant under R.3(v) of Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976 was always available to him and he could press the same into service for further employment on contract or permanent posts---Law and rules framed under

Punjab Civil Servants Act, 1974 had a higher value than policy letters--- Judgments of High Court relied upon by the candidate were impugned before the Supreme Court but they were not suspended and in the event of a final verdict of the Supreme Court the entire law would have to be changed without any reservation as contemplated under Art.179 of the Constitution--- Constitutional petition was allowed and concerned authority was directed to entertain the application of the candidate without raising objection as to upper age limit as he was fully entitled to the benefit of R.3(v) of Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976.

Shahid Akhter v. Secretary School, Education and others 2012 PLC (C.S.) 851 and Shahzada v. Secretary Education and others Writ Petition No.157 of 2012 ref.

Malik Muhammad Kabir for Petitioner.

Khursheed Ahmad Satti, A.A.-G. for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- The petitioner, through this writ petition, seeks direction to the respondents to entertain application of the petitioner for appointment as Secondary School Educator (English) as per rule No.3(v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976 by excluding 15 years 5 months period consumed in the services rendered by the petitioner in the Government departments and to relax the upper age limit.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner is continuously working as EST (V) in Government Elementary School Pira Janla, Tehsil Talagang, District Chakwal, with qualification of M.A (English) MED. Respondent No.3 invited applications for the recruitment of the post of Secondary School Educator (English) with the age limit of 20 to 35 years. He applied for the post but his application was rejected being over age. Even the petitioner sent application through proper channel

but the same was also not entertained and refused through letter dated 9-7-2012, hence this writ petition.

3. Learned counsel for the petitioner submits that he is still in service, therefore, under the rules framed under section 23 of the Punjab Civil Servants Act, 1971 and Rule 3(v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rule, 1976, the petitioner was to be considered for the purpose of upper age limit and an inaction on the part of the respondent is an illegality. Places reliance on various judgment including the judgment passed on 2-6-2011 in Writ Petition No.257 of 2011 titled "Shahid Akhter v. Secretary School, Education and others" and the judgment passed in Writ Petition No.157 of 2012 titled "Shahzada v. Secretary Education and others" to fortify his arguments and prays for the grant of relief.

4. Conversely, the learned Assistant Advocate-General has vehemently opposed the prayer made by the petitioner by submitting that to approach against the judgments cited are pending in the Hon'ble Supreme Court the recruitment process was initiated on the basis of Recruitment Policy, 2010, where under no such provisions for relaxation of upper age limit for government servant is provided; the petitioner did not challenge the policy is not entitled to the relief being government employee; the claim of the petitioner involves terms and condition of service; therefore, this Court has no jurisdiction in the matter.

5. I have heard the learned counsel for the parties and perused the record.

6. Rule 3 sub-rule (v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976, reads as under:---

"In the case of a candidate already working as a Government servant, the period of his continuous service as such shall for the purpose of upper age limit prescribed under any service rules of the post for which is a candidate, be excluded from his age."

This right of government servant is always available to him and he can always

press into service for his further employment on contract or permanent posts. The law and the rules framed under the Punjab Civil Servants Act, 1974 have certainly a higher value than the policy letters. The argument of the learned A.A.-G. that the reference case is still sub judice before the apex Court of this Country is not of much help to him as, firstly, the impugned order was not suspended and secondly, in the event of final verdict of Apex Court the entire law will have to be changed without any reservation as contemplated under Article 179 of the Constitution of Islamic Republic of Pakistan, 1973.

7. For what has been discussed above, this writ petition is allowed and the respondents are directed to entertain the application of the petitioner without raising objection as to upper age limit as he is fully entitled to the benefit of the rule 3(V) of the Punjab Civil Servants Act, 1974.

MWA/S-109/L **Petition allowed.**

2014 P Cr. L J 76

[Lahore]

Before Ali Baqar Najafi, J

AHMAD KHAN---Petitioner

Versus

The STATE and another---Respondents

Criminal Miscellaneous No.3279/B of 2013, decided on 2nd April, 2013.

Criminal Procedure Code (V of 1898)---

----S. 497---Penal Code (XLV of 1860), Ss. 324, 337-F(v) & 34---Attempt to commit qatl-e-amd, causing Hashimah, common intention---Bail, grant of---Accused though was specifically nominated in the F.I.R., but he was behind the bars since April 2012, and no useful purpose would be served for his continuous incarceration in jail---Case of accused was at par with the case of co-accused who had been granted bail---Injury attributed to accused was on the non-vital part of the body, and he did not repeat the fire shot---Accused being entitled to concession of bail, was granted bail, in circumstances.

Umar Hayat v. The State and others 2008 SCMR 1621; Muhammad Umar v. The State and another PLD 2004 SC 477 and Federation of Pakistan through Secretary, Ministry of Interior Islamabad v. Mrs. Amatul Jalil Khawaja and others PLD 2003 SC 442 ref.

Umar Hayat v. The State and others 2008 SCMR 1621 rel.

Sarfraz Khan Gondal for Petitioner.

Zahid Younas, DPP with Yousaf, S.-I. for the State.

M. Tanveer Choudhry for the Complainant/Respondent No.2.

ORDER

ALI BAQAR NAJAFI, J.---Petitioner, Ahmad Khan son of Muhammad Khan, seeks post-arrest bail in case F.I.R. No.124 of 2012 dated 17-3-2012 under sections 324, 337-F(v), 34, P.P.C. registered at Police Station Sahiwal, District Sargodha.

2. The allegation against the petitioner is that he along with his co-accused Allah Ditta while armed with .12 bore gun attacked upon the complainant's party and injured the son of the complainant, namely, Muhammad Sajid, hitting fire shot on the knee of his left leg, whereas the fire of pistol of the co-accused Allah Ditta hit the below side of right ankle of his feet. The motive behind the occurrence was that the petitioner used to tease the School girls outside the Aata Chakki of the complainant.

3. Learned counsel for the petitioner submits that the co-accused. Allah Ditta was granted post-arrest bail by this Court vide order dated 1-3-2013 passed in Criminal Miscellaneous No.878-B of 2013 and the case of the petitioner is at par with him; that the fire shot was not repeated by the petitioner; that the co-accused. Allah Ditta has filed a private complaint; that the petitioner is entitled to the grant of bail as the maximum punishment under section 337-F(v), P.P.C. is 5 years which does not fall within the prohibitory clause of section 497, Cr.P.C. Places reliance on Umar Hayat v. The State and others (2008 SCMR 1621) and Muhammad Umar v. The State and another (PLD 2004 SC 477); that the petitioner was arrested on 19-4-2012 and since his arrest he is behind the bars. Lastly prays for grant of post-arrest bail to the petitioner.

4. Conversely, learned counsel for the complainant submits that .12 bore gun has been recovered from the petitioner; that the trial has commenced; that

the case of the petitioner is not at par with the co-accused Allah Ditta as the motive is attributed to him and he being a. main accused is not entitled to the concession of bail; that the police have amended the section 337-F(v) to 337 F(vi), P.P.C. which entails punishment of 7 years. Places reliance on Federation of Pakistan through Secretary, Ministry of Interior Islamabad v. Mrs. Amatul Jalil Khawaja and others (PLD 2003 SC 442).

5. Learned District Public Prosecutor adopts the arguments advanced by the learned counsel for the complainant and adds that the trial has commenced and if the direction is issued for its conclusion the same can be concluded within a shortest span of time.

6. I have heard the learned counsel for the parties and perused the available record.

7. Although the petitioner is specifically nominated in the F.I.R., yet he is behind the bars since April 2012 and no useful purpose would be served for his continuous incarceration in jail. The case of the petitioner is at par with the case of co-accused Allah Ditta, who has been granted bail by this Court as the injury attributed to the petitioner is on the non-vital part of the body and he did not repeat the fire short, therefore, he is also entitled to the same concession. In such circumstances, the Hon'ble Supreme Court of Pakistan has granted bail in such like situation in case of Umar Hayat v. The State and others reported as 2008 SCMR 1621.

In view of the above, this bail petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail bonds in the sum of Rs.1,00,000 with two sureties each in the like amount to the satisfaction of the learned trial Court.

Before parting with the order, the learned trial Court is directed to conclude the trial expeditiously, preferably, within a period of three months.

HBT/A-132/L **Bail granted.**

2014 P Cr. L J 456

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD IMRAN---Petitioner

Versus

The STATE and others---Respondents

Criminal Miscellaneous No.3504-B of 2013, decided on 7th May, 2013.

(a) Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss.376 & 386---Bail, grant of---Rape and extortion---Case of further inquiry---Delay in F.I.R.---Complainant was a school teacher who alleged that accused had blackmailed him and called her to his house for return of her computer data, where he raped her---F.I.R. was registered after four months of occurrence on arrival of her husband from abroad---Validity---Occurrence was alleged somewhere in August, 2012, which was reported in December, 2012---Reason for such delay for an educated lady not less than a school teacher was not adequately explained as neither consent of her husband was required nor he was a witness of occurrence---Final opinion of doctor showed that as per statement of victim, she was subjected to sexual intercourse five and a half months ago with an additional observation that she committed multiple intercourses after return of her husband---Record did not show any recovery memo of nude photographs---Data of computer collected at the maximum established threats of blackmailing without any demand of money or any kind---Two witnesses also kept mum for a period of three months and no mention of any date and time of occurrence was given---Complainant herself went to the house of accused just to collect data of her computer, which up till then was of no value to complainant, and according to her nude photographs were taken in the house of petitioner on the day of occurrence---Case of petitioner fell within the ambit

of further inquiry, as contemplated under S.497(2) of Cr.P.C. into his guilt---Bail was allowed in circumstances.

Abid v. The State and others 2012 SCMR 647; Murtaza and another v. The State and another 2011 PCr.LJ 1619; Ali Hasnain Butt v. The State 2013 YLR 282; Mumtaz Imtiaz v. The State 2012 YLR 1110; Rafiq Ahmad v. The State and another 2012 PCr.LJ 1321; Khalil Yousuf and others v. The State PLD 1995 Lah. 486 and The State and others v. Abdul Khaliq and others PLD 2011 SC 554 ref.

(b) Criminal Procedure Code (V of 1898)---

----S. 497(2)---Bail, grant of---Heinousness of offence---Scope---Mere heinousness of offence cannot be deemed to be a ground to debar accused for grant of bail, if case is covered under S.497(2), Cr.P.C.---In such eventuality, accused is entitled to bail as a right and not by grace or concession.

Mst. Maria Khan v. The State and another 2013 SCMR 49; Abid Ali alias Ali v. The State 2011 SCMR 161 and Ehsan Ullah v. The State 2012 SCMR 1137 rel.

Muhammad Mumtaz Azad for Petitioner.

Muhammad Akhlaque, DPG for the State along with Haji Rab Nawaz, SI with record.

ORDER

ALI BAQAR NAJAFI, J.---Muhammad Imran petitioner seeks post-arrest bail in case F.I.R. No. 307 dated 30-12-2012 registered under sections 376/386, P.P.C. at Police Station Jauharabad Sadar, District Khushab.

2. The allegation against the petitioner is that according to the complainant she is a school teacher and was married to Masood Alam. About seven months ago, her husband after ten days of the marriage went to Italy and she starting living with her mother-in-law. After some days, her computer became out of order, upon which she called her distinctly related cousin, the

petitioner, at her home, who removed the fault of the computer and went away. Two days after, he telephoned the complainant and informed that the entire data of the computer has been saved, which will be published in the internet and thereafter started blackmailing her. About three months ago, he called the complainant in his house to receive the computer data and at about Asr time, she went to the house of the petitioner where he took out a pistol, locked the door and committed Zina-bil-Jabr with her. He also took her nude photographs and threatened her not to disclose it to anybody, otherwise nude photographs will be displayed on the internet. While leaving the house of the petitioner, Sher Muhammad son of Muhammad Nawaz and Allah Ditta son of Muhammad Ramzan saw her. She kept quiet since the day of occurrence and waited for the return of her husband from Italy and upon his arrival, lodged the instant F.I.R.

3. The learned counsel for the petitioner submits that there is an unexplained delay of three months in lodging the F.I.R.; that only the cell phone data in the month of November, 2012 was made the basis for lodging the F.I.R.; that the complainant led to the recovery of computer; that as per the medico-legal examination, the complainant had sexual intercourse about five and a half months ago, which does not corroborate with the story narrated in the F.I.R.; places reliance upon the cases of Mst. Maria Khan v. The State and another [2013 SCMR 49], Abid Ali alias Ali v. The State [2011 SCMR 161], Ehsan Ullah v. The State [2012 SCMR 1137], Abid v. The State and others [2012 SCMR 647], Murtaza and another v. The State and another [2011 PCr.LJ 1619], Ali Hasnain Butt v. The State [2013 YLR 282], Mumtaz Imtiaz v. The State [2012 YLR 1110] and Rafiq Ahmad v. The State and another [2012 PCr.LJ 1321].

4. Conversely, the learned DPG, assisted by the learned counsel for the complainant, submits that the delay in lodging the F.I.R. is not attributed to

the complainant as the same was lodged after the return of her husband; that the charge has been framed and the trial has commenced; that there are three P.Ws. but their statements have not been recorded on the adjournments of the Defence Counsel; section 386, P.P.C. attracts to this case, which entails ten years punishment; the cell phone data has been received, which shows that the petitioner was trying to blackmail the complainant. Reliance is placed upon the case of Khalil Yousuf and others v. The State [PLD 1995 Lahore 486] to argue that it is the nature of offence and not the quantum of punishment, which will be seen at the time of trial.

5. I have heard the learned counsel for the parties and perused the available record.

6. The occurrence is alleged somewhere in August, 2012, which was reported in December, 2012. Reasons for such a delay for an educated lady not less than a school teacher is not adequately explained as neither the consent of her husband was required nor he was a witness of the occurrence. The final opinion of the doctor shows that as per statement of the victim, she was subjected to sexual intercourse five and a half months ago but with an additional observation that she committed multiple intercourses after the return of her husband. The record does not show any recovery memo of the nude photograph. The data of the computer collected at the maximum establishes the threats of blackmailing without any demand for money or any kind. Another aspect of the matter is that two witnesses namely Sher Muhammad and Allah Ditta also kept mum for a period of three months. No mention of any date and time of the occurrence is given. This coupled with the fact that the complainant herself went to the house of the petitioner just to collect the data of the computer, which up till then was hardly of any value to the complainant, as according to her, the nude photographs were taken in the house of the petitioner on the day of occurrence.

7. At this stage, it will be appropriate to give a reference to the famous case of Mukhtaran Mai reported as The State and others v. Abdul Khaliq and others [PLD 2011 SC 554], wherein it has been observed that inferences drawn against the prosecution regarding delay in lodging the F.I.R. was against the settled law because in cases pertaining to gang-rape it was understandable that the victim or her family was/were hesitant to report the matter and in certain cases delay of even up to a month had not been considered fatal to the prosecution. In a case of an unmarried girl such delay is understandable, which situation could not be held at par with a grown-up married lady just to avoid Badnami which, of course, either way is a possible consequence. It was further observed as follows:--

"Violating the sanctity and chastity of a woman is a sordid, despicable, squalid act, which is considered abhorrent in any civilized society; any language falls short of vocabulary to condemn such heinous act and cases of this taxonomy must be strictly construed and dealt with. However, at the same time under criminal jurisprudence for the safe administration of criminal justice, the courts are required to follow certain settled principles, such as the innocence of the accused must be presumed, till he is proved to be guilty; sifting "the grain out of the chaff"; the defence may take a number of pleas and even if all are shown to be false, yet it is the duty of the prosecution to prove its case to the hilt; "better than ten guilty persons escape that that one innocent suffer."

8. Although the offence against the petitioner is heinous one yet mere heinousness could not be deemed to be a ground to debar the accused for grant of bail if the case is covered under section 497(2), Cr.P.C. In that eventuality, he is entitled to bail as of right and not by grace or concession. Mere commencement of the trial is no ground to refuse bail to an accused person, if made out otherwise. I hereby place my reliance on the cases of Mst. Maria

Khan v. The State and another [2013 SCMR 49], Abid Ali alias Ali v. The State [2011 SCMR 161] and Ehsan Ullah v. The State [2012 SCMR 1137].

9. For the foregoing reasons, I am convinced that case of the petitioner falls within the ambit of further inquiry, as contemplated under section 497(2), Cr.P.C. into his guilt. I, therefore, allow this petition and admit the petitioner to bail subject to furnishing bail bond in the sum of Rs.2,00,000 (Rupees two hundred thousand only) with two sureties each of the like amount to the satisfaction of the trial Court.

MH/M-122/L **Bail allowed**.

2014 P Cr. L J 956

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD JAVED alias JUNAID---Petitioner

Versus

The STATE and 3 others---Respondents

Writ Petition No.15420 of 2013, decided on 4th February, 2014.

Criminal Procedure Code (V of 1898)---

----Ss. 401 & 402-C---Penal Code (XLV of 1860), Ss.392 & 397---Pakistan Arms Ordinance (XX of 1965), S.13---Robbery, robbery or dacoity, with intent to cause death or grivous hurt, possessing unlicensed arms---Remission and running sentences concurrently---Petitioner/accused had sought direction to the effect that sentences awarded to him on different dates in different offences relating to different occurrences by courts at different places, to run concurrently; on the ground that facts and circumstances and nature of offences were not such which would not entitle him for the requisite relief---Validity---In the present case, sentence of seven years' R.I. was awarded under S.392, P.P.C. by the court of Additional Sessions Judge at place 'J' on 4-10-2011 on the basis of confessional statement; as well as the sentence of seven years' R.I. under S.397, P.P.C. was awarded by Judicial Magistrate at place 'T' on 7-6-2012; and seven years' R.I. under S.13 of Pakistan Arms Ordinance, 1961---Such sentences were not grave enough in their nature to persuade High Court to withhold its discretionary power to order regarding the said three sentences to run concurrently---High Court, in circumstances, directed that three sentences passed against the petitioner/accused would run concurrently, and not consecutively; and if whenever the petitioner had completed the sentences so declared, he would be released from the jail forthwith.

Ali Khan Kakar and 2 others v. Hammad Abbasi 2012 SCMR 334; Muhammad Ismail v. Superintendent, Central Prison, Peshawar and 3 others

2011 PCr.LJ 1340; Abdul Razzaq v. The State 2005 PCr.LJ 237 and Ghous Bakhsh and others v. The State 2012 PCr.LJ 1028 ref.

Ch. Iftikhar Ahmad for Petitioner.

Sittar Sahil, A.A.-G. for the State.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, a direction is sought to be issued to the respondents to grant remissions and count the sentences to run concurrently awarded to the petitioner on different dates in different offences relating to different occurrences by the court of Additional Sessions Judge, Taunsa Sharif, District Dera Ghazi Khan as well as Additional Sessions Judge, Jhelum on the ground that the facts and circumstances and the nature of offence were not such, which would not entitle him for the requisite relief, which is opposed by the State.

2. Briefly, the petitioner was tried in case F.I.R. No.229/2009, convicted under section 392, P.P.C. and sentenced to three years' R.I. with fine of R.10,000 and in default of payment thereof to undergo one month's S.I. He was also convicted under section 205, P.P.C. and sentenced to one year's R.I. He was further convicted under section 419, P.P.C. and sentenced to three years' R.I. with fine of Rs.10,000 and in default of payment thereof to undergo one month's S.I. together with the benefit of section 382-B, Cr.P.C. vide judgment dated 5-3-2011 handed down by Judicial Magistrate Section 30, Jhelum, though the said sentence under section 392, P.P.C. was enhanced to seven years' R.I. while maintaining the remaining sentence vide judgment dated 4-10-2011 passed by the revisional court. However, on 7-6-2012, the petitioner was also convicted in case F.I.R. No.98/2009 for an offence under section 397, P.P.C. and sentenced to seven years' R.I. with fine of Rs.2,00,000 and in default of payment thereof to undergo one year's S.I. along with the benefit of section 382-B, Cr.P.C. was extended to him by the Judicial Magistrate, Taunsa Sharif, District Dera Ghazi Khan. Meanwhile, the petitioner was also convicted in case F.I.R. No.68/2010 under section 13 of

the Arms Ordinance, 1965 by the court of Judicial Magistrate, Taunsa Sharif, District Dera Ghazi Khan and sentenced to seven years' R.I. with the benefit of section 382-B, Cr.P.C. on 22-1-2013 by Judicial Magistrate, Taunsa Sharif, District Dera Ghazi Khan, which sentences were ordered to run concurrently with the sentence passed on 7-6-2012 vide order dated 22-1-2013 passed by Judicial Magistrate Section 30, Taunsa Sharif, District Dera Ghazi Khan. Interestingly, the report submitted by the jail authorities reveals that they are treating the said three sentences to run consecutively and not concurrently.

3. The question whether the sentences awarded by different courts in different offences related to different occurrences can run concurrently is addressed and answered by the apex Court in the case of Ali Khan Kakar and two others v. Hammad Abbasi [2012 SCMR 334], wherein it has been held that the provisions of section 397, Cr.P.C. pertained to a situation (as in the present case) when an offender is tried, convicted and sentenced in other criminal transactions, the commencement of the subsequent sentence takes its effect at the expiry of the earlier imprisonment, has been made discretionary with the court and in the light of facts and circumstances of each case, depending on the gravity of the offence. It is observed that there was no opportunity for the court of Judicial Magistrate Section 30, Taunsa Sharif, District Dera Ghazi Khan to have taken into account this aspect while awarding the sentence on 7-6-2012, the petitioner was already sentenced by the Judicial Magistrate, Jhelum on 5-3-2011 in order to decide the question of running the three sentences concurrently or consecutively, therefore, the same can be discussed. I am fortified by the judgment of Division Bench of Peshawar High Court reported as Muhammad Ismail v. Superintendent, Central Prison, Peshawar and three others [2011 PCr.LJ 1340].

4. Now coming to the pertinent question as to whether the circumstances and gravity of the offence was such that this discretion cannot be exercised in favour of the petitioner, the State has relied upon a judgment of Division Bench of Karachi High Court reported as Abdul Razzaq v. The State [2005 PCr.LJ 237], wherein such benefit was not extended in the cases of 381-A,

P.P.C. on the theft of motorcycles, which was considered to be an alarming menace for middle class. In another judgment of Quetta High Court relied upon by the State reported as Ghous Bakhsh and others v. The State [2012 PCr.LJ 1028], as the sentences under sections 387/394/511/337-F(iv), P.P.C. were awarded to the minimum, then the same were not allowed to run concurrently.

5. Coming to the present case, the sentence of seven years' R.I. under section 392, P.P.C. awarded by the court of Additional Sessions Judge, Jhelum on 4-10-2011 on the basis of confessional statement as well as the sentence of seven years' R.I. under section 397, P.P.C. awarded by the Judicial Magistrate, Taunsa Sharif, District Dera Ghazi Khan on 7-6-2012 are seven years' R.I. under section 13 of the Arms Ordinance, 1965 are little harsh passed in the offences, which are not graver enough in their nature to persuade this Court to withhold its discretionary powers to order regarding the said three sentences to run concurrently.

6. In this view of the matter, this petition is allowed and it is directed that three sentences passed against the petitioner shall run concurrently and not consecutively and if whenever the petitioner has completed the sentences so declared, he shall be released from the jail forthwith.

HBT/M-36/L **Petition allowed.**

2014 P Cr. L J 1395

[Lahore]

Before Ali Baqar Najafi, J

BASHIRAN BIBI---Petitioner

Versus

CITY POLICE OFFICER, FAISALABAD and 5 others---Respondents

Writ Petition No.1249 of 2013, decided on 5th December, 2013.

(a) Police Order (22 of 2002)---

----Art. 134---Constitution of Pakistan, Art. 199---Constitutional petition---Power of police to make inventory of unclaimed property, etc.---Scope---Police took away cattle from petitioner's house claiming that same belonged to two accused persons of an F.I.R. who had absconded---Petitioner was the only claimant of the cattle---Nothing on record suggested that cattle belonged to the two proclaimed offenders except statement of police officials, who themselves failed to arrest the absconders---Petitioner had been moving from pillar to post for the cattle---No inquiry was conducted by concerned City Police Officer (CPO) to ascertain ownership of cattle---Constitutional petition was disposed of with the direction to CPO to call the concerned Station House Officer (SHO), take the cattle back from him and hand them over to the petitioner on her personal bond and also decide about the compensation, if any, to the petitioner---High Court further directed that an inquiry should be conducted against culprit/police officials who illegally detained the cattle without following the procedure prescribed under law.

Roshan Ali v. S.H.O. 2011 YLR 1609 ref.

(b) Police Order (22 of 2002)---

--- Art. 134---Power of police to make inventory of unclaimed property, etc.--- Scope---Under Art. 134 of the Police Order, 2002, police was empowered to make inventory of unclaimed property, which shall be sent to the City Police Officer (CPO), who will issue proclamation within a fortnight requiring the claimant to establish his claim within three months---Such property on satisfaction of its title, shall be given to such a claimant.

Rai Salah ud Din Kharal for Petitioner.

Sittar Sahil, A.A.-G. along with Aslam, S.-I. with record.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this Constitutional Petition, seeks the act of the respondents for removal of cattle of the petitioner from her Haveli under Article 134 of Police Order, 2002 and for the return of the same to the petitioner.

2. Brief facts giving rise to the filing of this writ petition are that on 4-6-2012 the local police of Police Station Khurrarianwala visited the house of the petitioner and took away animals i.e. 5 buffaloes, a cow etc. from her Haveli to the police station. Meanwhile, the petitioner moved an application for superdari of the cattle in which the learned Judicial Magistrate requisitioned the report wherein the stand was taken by the police that cattle were removed under section 134 of Police Order, 2002 as the same belonging to Muhammad Yar son of Allah Ditta and Muhammad Sabir son of Shahamat accused persons and absconders of F.I.R. No.289 dated 26-4-2010, under sections 302, 324, 148, 149, P.P.C. and F.I.R. No.350 of 2012 dated 3-6-2012 under sections 302, 148, 149, P.P.C. registered at Police Station Khurrarianwala, the petitioner then withdrew the application.

3. Learned counsel for the petitioner submits that the police has no jurisdiction to remove the cattle under Article 134 of the Police Order, 2002 which is not an unclaimed property and belongs to the petitioner; that earlier Writ Petition No.22675 of 2012 filed by the petitioner was withdrawn on 24-10-2012 for the time being, hence prays for the relief.

4. Report was requisitioned from SHO, Police Station, Khurrarianwala District Faisalabad who stated that the petitioner has no concern with the cattle and on his earlier application DSP, inquired the matter and concluded that she was not the owner; that earlier petition filed by the petitioner was withdrawn and the second petition is not competent.

5. I have heard the learned counsel for the petitioner and perused the available record.

6. Under Article 134 of the Police Order, 2002 the police is empowered to make inventory of unclaimed property which shall be sent to the C.P.O who will issue proclamation within a fortnight requiring for the claimant to establish his claim within three months. Such property, on satisfaction of its title, shall be given to such a person. However, in the instant case it is not denied that the petitioner is the only claimant of the cattle. Moreover, there is nothing to suggest that same belonged to two proclaimed 'offenders except the statement of the police officials, who themselves had failed to arrest the absconders in the said two F.I.Rs. On the other hand, the record reveals that the petitioner has been moving from pillar to post for the cattle. It is also noted that as per report and comments, recently no inquiry was conducted by the CPO concerned to ascertain the ownership of the said property. In this view of the matter, while following the view taken in Roshan Ali v. SHO reported as (2011 YLR 1609), this writ petition is disposed of with direction to the C.P.O, Faisalabad to call the concerned SHO, take the cattle back from him and hand

them over to the petitioner on her personal bond being the only claimant. An inquiry shall also be conducted against the culprits who illegally detained the said cattle without following the procedure prescribed under the law. The C.P.O. shall also decide about the compensation if any to the petitioner. The final outcome of the report shall be submitted to this Court through Deputy Registrar (Judicial) of this Court till 15-4-2014.

MWA/B-2/L **Petition allowed.**

2014 P Cr. L J 1695

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD RAFIQUE---Petitioner

Versus

The STATE and others---Respondents

Criminal Miscellaneous No. 1 in Criminal Appeal No.10-J of 2013, decided on 10th April, 2014.

Criminal Procedure Code (V of 1898)---

----S. 426---Penal Code (XLV of 1860), Ss. 320, 279 & 427---Qatl-e-Khata, rashdriving on public way and mischief causing damage---Suspension of sentence---Hardened, desperate and dangerous criminal---Rash and negligent driving---Statutoryperiod, exception to---Death of four persons---Accused was convicted and sentenced toimprisonment for seven years for causing death of four minor children---Accusedsought suspension of his sentence on statutory delay in decision of appeal---Validity---Exception under S.426, Cr.P.C. provided dismissal of application for suspension onstatutory period having been spent, if in the opinion of Court accused was hardened,desperate and dangerous criminal---Manner in which offence was committed showednot only callousness but also brutality on the part of accused as he had taken lives offour minor children due to rash and negligent driving of his tractor trolley duringschool timings which required special care---Statutory period did not apply to accusedand High Court declined to have deeper appreciation of evidence---Petition wasdismissed in circumstances.

Makhdoom Javed Hashmi v. The State 2008 SCMR 165; Liaqat and another v. TheState 1995 SCMR 1819; Masood Khan v. The State PLD 2004 Kar. 386; Safdar AliShah v. The State 1997 MLD 961; Abdul Manan v. The State and

others 2013 YLR1175; Zafar Iqbal alias Malanga v. The State 2011 YLR 1547 and Naveed alias Navidiv. The State 2011 PCr.LJ 1971 distinguished.

Manzoor Ahmed v. Fazal Ahmed and 3 others 2013 SCMR 1403 rel.

Prince Rehan Iftikhar Sheikh for Petitioner.

Dr. Muhammad Anwar Khan Gondal, A.P.-G. along with Tariq Awan, Inspector withrecord for the State.

Complainant in person.

ORDER

Criminal Miscellaneous No.1 of 2013

ALI BAQAR NAJAFI, J.---The petitioner namely, Muhammad Rafique was chargedin case F.I.R. No.89 dated 12-2-2009 under sections 320, 279, 427, P.P.C. registered atPolice Station City Depalpur District Okara. After conclusion of the trial the learnedJudicial Magistrate Section 30, Depalpur District Okara vide his judgment dated 11-1-2010 convicted the petitioner for committing Qatl-e -Khata of Tasawar Hussain,Husnain Ahmad, Nagina Bibi and Shumaila Bibi under section 320, P.P.C. andsentenced him to undergo R.I for seven years on four counts for each deceased andwith compensation of Rs.11,02,680 to the legal heirs of four deceased. He was alsoconvicted under section 279, P.P.C. and sentenced him to undergo R.I for two years,and also under section 427, P.P.C. and sentenced to undergo R.I for two years. All thesentences were directed to run concurrently with the benefit of section 382-B, Cr.P.C.Feeling aggrieved, the petitioner preferred Criminal Appeal No.18 of 2011 before thelearned Additional Sessions Judge, Depalpur who vide his judgment dated 25-5-2012dismissed the same. The appellant/petitioner preferred Jail appeal bearing No.10-J of2013 and during the pendency of this appeal he has filed this petition for suspension ofhis sentence.

2. The main arguments of the learned counsel for the petitioner is that the offenceunder section 320, P.P.C. is bailable; that the nature of offence is still

to be consideredat the time of hearing of appeal whereas the petitioner continuously remained behindthe bar since 16-2-2002 and that there is no likelihood of hearing of the appeal in thenear future, therefore, claims the statutory right for the suspension of sentence asprescribed under section 426, Cr.P.C. He also submits that, even otherwise, thepetitioner was convicted and sentenced to R.I for 7 years without any evidence onrecord as the motorbike was driven by a minor having no licence, who hit the tractortrolley due to which the accident had occurred. He further adds that according to thepostmortem examination, the minor deceased persons were not dragged by the tractortrolley which does not connect the petitioner with the alleged crime. Places reliance onMakhdoom JAVED HASHMI v. THE STATE (2008 SCMR 165), LIAQAT andanother v. THE STATE (1995 SCMR 1819), MASOOD KHAN v. THE STATE (PLD2004 Karachi 386), SAFDAR ALI SHAH v. THE STATE (1997 MLD 961), ABDULMANAN v. The STATE and others (2013 YLR Lahore 1175), ZAFAR IQBAL aliasMALANGA v. THE STATE (2011 YLR Lahore 1547) and NAVEED alias NAVIDI v.THE STATE (2011 PCr.LJ Lahore 1971).

3. Conversely, learned Additional Prosecutor-General representing the State submitsthat 4 minor children were killed by the petitioner in brutal and callous manner whenwhile driving the tractor trolley colliding with the motorbike and thereafter he escapedfrom the spot, whereafter due to the death of minors the complainant is renderedissueless. He further adds that the trial Court in its jurisdiction awarded the maximumpunishment to the petitioner, therefore, in the facts and circumstances notice ofenhancement be issued to the petitioner. He lastly submitted that case of the petitioner falls within the exception of section 426, Cr.P.C. for the manner in which he hascommitted the offence.

4. Heard. Record perused.

5. The allegation against the petitioner is that Tasawar Hussain aged 16 years, son ofthe complainant, was riding motorbike along with his other son namely,

Hasnain, aged10 years, Naila Bibi, his daughter aged 7 years and Shumaila Bibi, his niece aged 13years, who were going to the school at about 8-40 a.m. when they were hit with thetractor trolley which was being driven by the petitioner rashly and negligently,whereafter he also managed to escape from the place of occurrence. Resultantly,motorbike was totally destroyed. As per the side plan dead bodies were also foundlying away from the trolley showing the force through which they were hit. Thecomplainant lost his all children as a result of the incident. No infirmity in thejudgment could be pointed out by the learned counsel for the petitioner.

6. Exception under section 426, Cr.P.C. provides the dismissal of application forsuspension on statutory period having been spent if in the opinion of the Court thepetitioner is hardened, desperate and dangerous criminal. In the instant case, this Courtis of the opinion that the manner in which the offence was committed shows not onlycallousness but also brutality on the part of the petitioner as the petitioner had takenlives of four minor children due to rash and negligent driving of his tractor trolley inthe school timings requiring special case for the time of vehicles. None of thejudgment cited by the learned counsel for the petitioner applies in the present case asstatutory period does not apply to the petitioner. The arguments, even otherwise, touchthe deeper appreciation of Evidence, therefore, places reliance on MANZOORAHMED v. FAZAL AHMED and 3 others (2013 SCMR 1403). Resultantly, thispetition has no merits and is hereby dismissed.

MH/M-157/L **Petition dismissed.**

2014 P Cr. L J 1716

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD RIAZ---Petitioner

Versus

The STATE and 3 others---Respondents

Writ Petition No.33393 of 2013, decided on 13th March, 2014.

(a) Criminal Procedure Code (V of 1898)---

----S. 516-A---Constitution of Pakistan, Art. 199---Constitutional petition---Superdari---Case property---Scope---Property not subject matter of offence---Accused admitted tocharges of theft of cash and gold ornaments---Accused entered into a "salsi(arbitration) agreement" with the complainant and committed to give buffaloes to thecomplainant as compensation in lieu of case property---Accused allegedly refused tohonour his commitment, whereafter police took possession of buffaloes belonging toaccused---Complainant was given possession of said buffaloes on superdari---Legality---Police took possession of buffaloes during investigation of the case, and same couldnot be termed as case property as the same were not stolen and complainant neverclaimed to have owned the same---Said buffaloes were taken into possession despitenot being required in any case, therefore, they had to be returned to the accused fromwhom they were taken---Accused was entitled to superdari of buffaloes subject tosecurity fixed by the Magistrate concerned---Constitutional petition was allowedaccordingly.

Khalid Saleem v. Muhammad Jameel alias Billa and 6 others 1996 SCMR 1544 rel.

Ghulam Farid v. Muhammad Nawaz and another 1993 PCr.LJ 2252 distinguished.

(b) Criminal Procedure Code (V of 1898)---

----S. 516-A---Superdari of property---Principle---Case property---If property was notproved to be subject matter of offence, it should be returned to the person from whomit had been taken.

Sardara v. Boota PLD 1950 Lah. 97 rel.

Muhammad Ahsan Bhoon and Muhammad Imran Sulehria for Petitioner.

Muhammad Zafarullah for Respondent No.4.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner seekssetting aside of the order dated 29-8-2012 passed by the learned Area Magistrate,Arifwala and that of dated 14-9-2013 passed by the learned Additional Sessions Judge,Arifwala and to have 3 buffaloes on superdari.

2. Briefly, the necessary facts are that F.I.R. No. 172 dated 3-8-2013 was registeredunder sections 457, 380, 411, P.P.C. at Police Station Ahmed Yar, District PakpattanSharif, at the behest of one Zahoor Ahmed, respondent No.4 against petitioner forcommitting theft of cash Rs.1,00,000 and 6-1/2 Tolas of gold ornaments valuingRs.3,90,000 and 24 Tolas of silver ornaments valuing Rs.24,000 etc. Later, heconfessed his guilt and under took to give the buffalos mentioned in the F.I.R. alongwith stolen articles from which he backed out. On 6-8-2013 respondent No.4 wasgranted superdari on the basis of police report as the petitioner is the complainant ofF.I.R. and there is no rival claimant. Later, its cancellation was also moved by thepetitioner which was dismissed on 29-8-2012 whereas application of respondent No.4for seeking possession of Rs.20,000 recovered as case property, on superdari wasaccepted on 29-8-2012. The above said two orders were challenged in criminalrevision which was dismissed on 14-9-2013 with the observation that his order wouldhave no effect upon the final conclusion of case F.I.R. No.172.

3. The main argument of the learned counsel for the petitioner is that the buffaloeswere the personal property of the petitioner who cannot be directed to go to civil courtto clarify his title as the said buffaloes were not the part of

the case property. Placesreliance upon 1996 SCMR 1544 (Khalid Saleem v. Muhammad Jameel alias Billa and6 others) 1993 PCr.LJ 1004 [Lahore] (Haq Nawaz and 2 others v. S.H.O., PoliceStation Lalian, District Jhang and others) and PLD 1950 Lahore 97 [Single Bench](Sardara v. Boota).

4. Conversely, the learned counsel for the complainant vehemently opposes the petitionand submits that the said buffalos were the case property which the accused-petitioneradmitted to have purchased by selling the stolen articles and as many as 17 F.I.Rs.stood registered against him. Places reliance upon 1993 PCr.LJ 2252 [Lahore](Ghulam Farid v. Muhammad Nawaz and another). He also submits that this petition isnot maintainable as the order for superdari of Rs.20,000 was not challenged.

5. Arguments heard. Record perused.

6. Admittedly, the petitioner is an accused person in case F.I.R. No.172 of 2013 facingcharges of theft of cash and gold ornaments etc. According to the F.I.R., the petitionercommitted to, give buffaloes to the complainant for compensation in lieu of caseproperty while admitting his guilt. It was during the investigation when the above saidbuffaloes were taken into possession by the police, which in my humble opinioncannot be termed as case property as the same were not stolen and the complainant hadnever claimed to have owned the same. Since it is not a case property, therefore, samecannot be refused to the petitioner who is an accused person of theft. The said buffaloes are not required in any case and were taken into possession, therefore, samewere to be returned to the person from whom it was taken. My reliance is upon 1996SCMR 1544 (Khalid Saleem v. Muhammad Jameel alias Billa and 6 others) in which itwas held as under:--

".....Similarly the articles recovered by the police during the investigation of the caseallegedly belonging to Muhammad Ashraf alias Mehboob which are stated to havebeen purchased from the money which he had received by the sale of ornaments thesubject of dacoity in this case, which were later on given on Superdari to thecomplainant, along with Mazda Car and Honda Motorcycle belonging to Nain Sukhia,who had allegedly purchased it with the sale proceed

of the case property, all these areto be returned to their respective owners. If there is involved any question of title thesame shall be left to be determined by the Civil Court."

7. In my humble opinion, the Area Magistrate and the learned Additional SessionsJudge were required to satisfy that the buffalos were the case property in the criminalcase and the person Niko is entitled to the custody of the same. Even otherwise, theoriginal principle is that if the property is not proved subject matter of the offence itshould be restored to the person from whom it had been taken. My reliance is uponPLD 1950 Lahore 97 [Single Bench] (Sardara v. Boota).

8. The judgment cited by the learned counsel for the respondent 1993 PCr.LJ 2252[Lahore] (Ghulam Farid v. Muhammad Nawaz and another) is not applicable to thefacts of the instant case as in that case the property purchased from the stolen articleswas agreed to be handed over on the basis of a settlement which was taken intopossession by the police. In the instant case there existed only a 'Salsi agreement' dated15-7-2013 with terms to hand over the buffalos if the petitioner was found guilty bythe 'Punchayat' and admittedly the buffaloes were not handed over to the complainant.

9. In this view of the matter, I am of the opinion that the buffaloes were not the caseproperty, therefore, were required to be handed over to the owner with detailed inquiryand if subsequently the civil court found the title defective the law will to take its owncourse.

10 In view of the above discussion, I allow this petition and set aside the orders passedby the Area Magistrate and the learned Additional Sessions Judge. Resultantly, thepetitioner is entitled to superdari of buffaloes subject to the security to be fixed by thelearned Area Magistrate.

MWA/M-155/L **Petition allowed.**

PLJ 2014 Lahore 52

Present: Ali Baqar Najafi, J.

UMAIR AZEEM KHAN--Petitioner

versus

SHARAFAT ALI NASIR, LEARNED JUDGE FAMILY COURT, MIANWALAI and another--Respondents

W.P. No. 1178 of 2011, decided on 8.11.2013.

Maintenance--

----A wife carrying the name of her husband is entitled for maintenance from her husband. [P. 54] A

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Interlocutory order--Maintainability of petition--Interim maintenance--Impugned order is an interlocutory order which cannot be challenged in writ petition as it does not bear characteristics of a final order which is always subject to judicial scrutiny under Art. 199 of Constitution--Petition was dismissed.[P. 54] B

Sardar Faiz Rasool Khan Jalbani, Advocate for Petitioner.

Mr. Qaiser Nawaz Khan Niazi, Advocate for Respondent No. 2.

Date of hearing: 8.11.2013.

ORDER

Through this constitutional petition, the petitioner seeks setting aside of the impugned order dated 07.12.2010 whereby the interim maintenance of Rs. 3000/- per month was fixed in favour of the Respondent No. 2 by the learned Judge Family Court, Mianwali.

2. The brief facts giving rise to filing of this petition are that on 14.05.2005 the petitioner got married with Respondent No. 2 whereafter Rukhsati took place on 09.11.2008. Since 10.07.2009 the Respondent No. 2 went to her parents house with her brother and did not return. Consequently, the petitioner filed a suit for restitution of conjugal rights against her. The Respondent No. 2 also filed a suit for recovery of maintenance and dowry articles against the petitioner and after failure of pre-trial reconciliation the learned Judge Family Court fixed the interim maintenance @ Rs.3000/- per month vide order dated 7.12.2010.

3. The learned counsel for the petitioner submits that there was no stipulation in the Nikah Nama that if the Respondent No. 2 had failed to live with the petitioner, she will be provided the maintenance; that it was though, mentioned in the Nikah Nama that if relationship between the parties became soar the petitioner will be bound to pay Rs.20,000/- per annum which shows bona fides on his part; that the Respondent No. 2 is not ready to perform her marital obligations, therefore, she is not entitled for maintenance; that under the Islamic Law disobedient and disgruntled wife is not entitled for the maintenance. Places reliance upon Irfan Ahmed versus II-Judicial Magistrate East at Karachi and another (2006 MLD 135 [Karachi]), Muhammad Khalid Javeed versus Mst. Shahida Parveen and 4 others (2007 YLR 1366 [Lahore]) and Firozuddin Ahmad versus Trading Corporation Of Pakistan Ltd. and another (1987 MLD 124 [Karachi]) in support of his claim and prays for acceptance of the petition.

4. Conversely, the learned counsel for the Respondent No. 2 submits that the writ petition is not competent against an interim orders; that the order impugned in this writ petition has been suspended for the last three years, therefore, the Respondent No. 2 is in dire need of maintenance allowance; that:

as per the computerized salary slip petitioner earns Rs.22000/- per month at least and has enough financial capacity and prays for dismissal. Places reliance upon Mst. Tahira Perveen versus Syed Hasnain Raza Gillani and another (2011 YLR 266 [Lahore]) and Muhammad Irfan versus Judge Family Court, Sargodha and 2 others (2008 CLC 585 [Lahore]).

5. I have heard the learned counsel for the parties and perused the available record.

6. Admittedly, the relationship between the petitioner and Respondent No. 2 is that of husband and wife which exists even today. It is also admitted that interim maintenance fixed vide impugned order has not been provided to the Respondent No. 2. The grounds taken by the learned counsel for the petitioner that the disobedient wife is not entitled for maintenance under the Islamic Law may not be appreciated simply because in the impugned order itself the Respondent No. 2 has made a very reasonable demand of a separate house and maintenance allowance. As the suit, for restitution of conjugal rights is also pending showing intention of the petitioner to take the Respondent No. 2 back to his house, therefore, in my humble opinion the payment of maintenance will not only establish his bona fides but also provided him a good ground to persuade and prevail upon the Respondent No. 2 to change her mind. Even otherwise a wife carrying the name of her husband is entitled for maintenance from her husband.

7. The judgments cited by the learned counsel for the petitioner are not relevant to the facts of the case as none of those cases the maintenance to the wife by the husband was declined in total.

8. The impugned order is an interlocutory order which cannot be challenged in writ petition as it does not bear the characteristics of a final order which is always subject to judicial scrutiny under Article 199 of the Constitution.

9. In this view of the matter this petition has no merits and is, therefore, dismissed.

(R.A.) **Petition dismissed.**

PLJ 2014 Cr.C. (Lahore) 250

Present: Ali Baqar Najafi, J.

MUHAMMAD ASLAM--Petitioner/Appellant

versus

STATE and another—Respondents

Crl. Appeal No. 211-J of 2008 & Crl. Misc. No. 1 of 2013, decided on 19.9.2013.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 426(1-A)--Pakistan Penal Code, (XLV of 1860), S. 302(b)--Application for suspensation of sentence--Conviction and sentence--Challenge to--Appeal was pending for last more than two years--Under clause (c) of Section 426 (1-A), Cr.P.C. if the appeal for life imprisonment has not been decided within a period of two years of the conviction order, the sentence can be suspended, if the petitioner is not previously convicted for an offence punishable with death or imprisonment for life or to a person who, in the opinion of the Court, is not a hardened desperate or dangerous criminal--Additional Prosecutor-General has not been able to place on record anything which debars applicability of the said clause to the petitioner--The said provision is mandatory in nature and is fully applicable to was case as the petitioner was not responsible for the delay in deciding of his appeal--Legislation has inserted the word `shall' purposely to make it mandatory--Case falling within the purview of Section 426 (1-A), Cr.P.C. suspension of sentence is a rule and refusal is an exception--Petition was allowed--Sentence was suspended. [P. 252] A

Prince Rehan Iftikhar Sheikh, Advocate for Petitioner-Appellant.

Mr. Saeed Ahmad Sheikh, APG for State.

Ch. Zulfiqar Ahmad, Advocate for Complainant.

Date of hearing: 19.9.2013.

ORDER

Crl. Misc. No. 01 of 2013

Muhammad Aslam petitioner-appellant was tried alongwith others in a private complaint under Sections 302/34, PPC and was convicted by the learned Additional Sessions Judge, Depalpur, District Okara under Section 302(b), PPC vide judgment dated 30.04.2008 and sentenced to life imprisonment with compensation of Rs. 1,00,000/- u/S. 544-A, Cr.P.C., to the legal heirs of the deceased and in default of payment thereof to undergo simple imprisonment for six months. The benefit under Section 382-B, Cr.P.C. was also extended to him. Feeling aggrieved, the petitioner-appellant preferred the present appeal and during its pendency, he has filed the instant petition for suspension of his sentence.

2. As per FIR, on 14.10.2006 at about 6.00 a.m. the complainant and his mother Mst. Khurshid Bibi were putting earth on the roof of their house. Suddenly, Muhammad Aslam (petitioner), who was their neighbourer, started abusing them and asked to come down from the roof. In reply, the complainant and his mother also abused him, the petitioner and his co-accused climbed over the roof of their house and started throwing pieces of bricks towards the complainant and his mother. Muhammad Hussain co-accused caused Rorra blow which hit on the forehead of the complainant's mother. Muhammad Iqbal caused Rorra blow which hit on her left shoulder. Muhammad Aslam (petitioner) caused blow of full brick on her head, as a result of which she fell down from the roof and became seriously injured. The complainant was also injured in this occurrence. The mother of the complainant succumbed to her injuries on the way to the hospital. The local police got registered case FIR No. 872/2006 under Section 324/34, PPC and after the death of the complainant's mother, Section 302, PPC was added to the FIR. During the investigation, the local police declared all the accused persons as innocent, hence the private complaint was filed.

3. The learned counsel for the petitioner submits that as the petitioner was arrested on 18.12.2006 and filed his appeal through jail on 24.5.2008, therefore, the petitioner is entitled to the grant of suspension of his sentence on the statutory ground and places reliance upon the cases of Liaqat and another v. The State [1995 SCMR 1819], Naveed alias Navidi v. The State [2011 P.Cr.L.J. 1971] and Mehmood v. The State [2013 YLR 906]; that the petitioner is not a desperate and hardened criminal; that co-accused of the petitioner have been acquitted on the same evidence, which made the case of the appellant to that of even acquittal; that the motive has not been proved; that the ocular account did not tally with the police investigation and the medical account; that the trial Court has itself concluded that it is a case of lesser punishment and prays for dismissal of this petition.

4. Conversely, the learned Additional Prosecutor-General assisted by the learned counsel for the complainant has vehemently opposed the suspension of sentence on the ground that the main role is attributed to the petitioner as the injury attributed to him has been proved fatal.

5. I have heard the learned counsel for the parties and perused the available record.

6. Without commenting upon the merits of the case, the record reflects that the petitioner was arrested on 18.12.2006, the appeal was filed on 24.5.2008 and it was admitted for hearing on 7.3.2013 and by that time, a period of more than four years has already elapsed. Although, the petitioner is specifically nominated for causing an injury on the head of the complainant's mother yet it is the right of the accused that his appeal shall be decided expeditiously. The appeal of the petitioner is pending for the last more than two years. Under clause (c) of Section 426 (1-A), Cr.P.C. if the appeal for life imprisonment has not been decided within a period of two years of the conviction order, the sentence can be suspended, if the petitioner is not previously convicted for an offence punishable with death or imprisonment for life or to a person who, in

the opinion of the Court, is not a hardened desperate or dangerous criminal. The learned Additional Prosecutor-General has not been able to place on record anything which debars applicability of the said clause to the petitioner. The said provision is mandatory in nature and is fully applicable to this case as the petitioner was not responsible for the delay in deciding of his appeal. Legislation has inserted the word `shall' purposely to make it mandatory. Case falling within the purview of Section 426 (1-A), Cr.P.C. suspension of sentence is a rule and refusal is an exception.

7. In this view of the matter, this miscellaneous petition is allowed, the sentence passed by the trial Court against the petitioner is suspended and he is admitted to bail subject to furnishing bail bond in the sum of Rs. 2,00,000/- (Rupees two hundred thousand only) with two sureties each in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. He is further directed to appear before this Court on each and every date of hearing till the final decision of the main appeal.

(A.S.) **Petition allowed.**

PLJ 2014 Lahore 376

Present: Ali Baqar Najafi, J.

FIAZ RIAZ, EX-DEPUTY GENERAL MANAGER (SMEDA), LAHORE--Petitioner

versus

SMALL AND MEDIUM ENTERPRISES DEVELOPMENT AUTHORITY (SMEDA) through its Chief Executive Officer, Lahore and 6 others--Respondents

W.P. No. 15655 of 2013, decided on 21.6.2013.

Small and Medium Enterprises Development Authority--

----Rr. 30, 38 & 39--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Termination of employee on disciplinary grounds--Misconduct was requried detailed inquiry regarding allegations on basis of evidence--SMEDA was competent to conduct disciplinary action or proceedings--Validity--Whenever, serious allegations had been levelled against the civil servant, who denied it, a regular inquiry cannot be dispensed with in which the initial burden is on the department--Impugned order does not reveal any such inquiry having been, conducted before passing the impugned order--Since a regular inquiry was not conducted asking the petitioner to show that he was MBA for which the degree is sine-qua-non, therefore, he should have been granted the requisite time. [P. 378] A & B

Mian Bilal Bashir and Raja Tasawar Iqbal, Advocate for Petitioner.

Date of hearing: 21.6.2013.

ORDER

Through this constitutional petition the petitioner seeks setting aside of the order dated 10.6.2013, whereby the petitioner was dismissed from service.

2. The brief facts giving rise to the filing of this petition are that in the year 1998, the petitioner was selected as Business Councilor and ever-since he is performing the functions to the entire satisfaction of his superiors. He has also been acknowledged and awarded for his outstanding services. He was initially promoted as Assistant Manager and then Deputy Manager. That on 5.3.2013, the petitioner was served a show-cause notice, whereby he was required to submit MBA-Degree after which he submitted reply to the said show-cause notice explaining therein that due to GPA, the required MBA-degree could not have been issued and that he would be able to submit a copy of the degree: (HEC recognized and duly verified) latest by July 15, 2013. He also stated that he should not be discriminated as earlier similarly placed persons were granted a reasonable time of five years w.e.f. February, 2008 to improve their educational qualification. However, vide impugned order dated 10.6.2013, the petitioner was terminated from post of Deputy Manager on disciplinary grounds with immediate effect, hence this petition.

3. The learned counsel for the petitioner submits that he was entitled to regular inquiry as required by Supreme Court of Pakistan and places reliance upon "Executive Engineer, GEPCO Limited and another vs Liaqat Ali" (2010 SCMR 237); submits that even a misconduct requires a detailed inquiry regarding the allegations on the basis of the evidence. Places reliance upon "Basharat Ali vs. Director, Excise And Taxation, Lahore and another" (1997 SCMR 1543); that under Article 10-A read with Article-25 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has been deprived of his fundamental right to plead his defence on the basis of the evidence both oral as well as documentary and prays for setting aside of the impugned order.

4. I have heard the learned counsel for the petitioner and perused the file.

5. Under Rule 39 of the Chaper-VII of SMEDA, an employee aggrieved by decision given by competent authority under Rule 37 can file appeal to the appellate authority within a period of thirty (30) days and the appellate

authority has been described in Rule-3 sub-clause-A as next above the authority competent to conduct disciplinary action or proceedings as prescribed under Rule-30. Under Rule-36, an inquiry is required to be conducted regarding the allegations made in the show-cause notice in view of the reply submitted by the petitioner. Where-ever, the defence plea is supported by documents in total denial of the charges claiming mala fides on the part of the authority, such allegations become disputed and require inquiry. Whenever, serious allegations have been levelled against the civil servant, who denied it, a regular inquiry cannot be dispensed with in which the initial burden is on the department. The impugned order does not reveal any such inquiry having been, conducted before passing the impugned order.

6. I place my reliance upon "Executive Engineer, GEPCO Limited and another vs. Liaqat Ali" (2010 SCMR 237) and "Basharat Ali vs. Director, Excise Taxation, Lahore and another" (1997 SCMR 1543).

7. The main plea of the petitioner is that he is MBA qualified in Sessions 1991 to 1993 from the Pak American Institute of Management Sciences, Lahore (Pak-AIMS) with MAJORS in Marketing (Marketing Research International Marketing & Sales Management). The degree could not be issued as certain GPA requirements were to be fulfilled, therefore, transcript showing the complete credit hours required for MBA Degree Programme were issued. He, however, stated in his reply that he would be able to submit n copy of the degree (HEC recognized and duly verified) latest by July 15, 2013.

8. Since a regular inquiry was not conducted asking the petitioner to show that he was MBA for which the degree is sine-qua-non, therefore, he should have been granted the requisite time. I am fortified by "Executive Engineer, GEPCO Limited and another vs Liaqat Ali" (2010 SCMR 237) and "Basharat Ali vs. Director, Excise Taxation, Lahore and another" (1997 SCMR 1543).

9. In this view of the matter, I dispose of this petition with the direction to Respondent No. 1 to entertain the review petition of the petitioner under Rule

38 which will be taken up immediately after 15th of July 2013. Meanwhile, the impugned order shall remain suspended. The same shall be decided in accordance with law after verifying the degree of the petitioner as per his stand taken in the reply to the show-cause notice.

(R.A.) **Petition disposed of.**

PLJ 2014 Cr.C. (Lahore) 484
[Multan Bench Multan]

Present: Ali Baqar Najafi, J.

MUHAMMAD JUNAID--Petitioner

versus

STATE and anothers--Respondents

Crl. Misc. No. 3889-B of 2013, decided on 1.10.2013.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 337-A(iii), 452 & 34--Bail before arrest, confirmed--No fracture was visible in report of D.S.M.B--Injuries on vital part--Possibility of fabrication cannot be ruled out--Held: Although accused was specifically nominated in FIR with allegation of giving kassi blow upon the person yet first medical examination as well as report of D.S.M.B it was opined that possibility of fabrication cannot be ruled out--Bail was confirmed. [P. 485] A

Criminal Procedure Code, 1898 (V of 1898)--

----S. 498--Bail before arrest, confirmed--Mala fide on part of complainant--Cross version--Validity--During investigation, although cross version was rejected yet no reference was given to medical report of complainant--There was no statement on record regarding teasing of women folk of complainant from petitioner's side on basis of which entire occurrence had taken place--At present, mala fide was apparent on record--Bail was confirmed. [P. 485] B

Rana Muhammad Asif Saeed, Advocate for Petitioner.

Malik Riaz Ahmad Saghla, D.P.G for State.

Mr. Mudassar Altaf Qureshi, Advocate for Complainant.

Date of hearing: 1.10.2013.

ORDER

The petitioner, through this petition, seeks pre-arrest bail in case FIR No. 184 dated 30.04.2013, registered under Sections 337-A(iii)/452/34, PPC at Police Station, Harrappa District Sahiwal.

2. As per FIR, allegation against the petitioner is that on 28.04.2012 at 7:00 p.m he along with his co-accused while armed with Kassi, Sotas etc. injured the complainant with their respective weapons.

3. Learned counsel for the petitioner contends that the injury upon the person of the complainant has been described under Section 337-A(ii), PPC but the possibility of its fabrication was not ruled out; that no fracture was visible in the report of District Standing Medical Board; that the injuries of the petitioner were suppressed as he also sustained four injuries upon his person including one on the vital part, hence prays for confirmation of ad-interim anticipatory bail.

4. Conversely, learned counsel for the complainant submits that the petitioner is specifically nominated in the FIR with specific role of causing injury on the face, nose and eye of the complainant; that District Standing Medical Board approved the first medical examination unanimously; that the medical examination of the complainant was conducted on the same day i.e. 28.04.2013 whereas medical examination of the petitioner was conducted on 29.04.2013 and the possibility of fabrication was not ruled out; that cross version was rejected on 17.08.2013. The learned D.P.G adds that offence under Sections 452 and 337-A(ii), PPC are made out in which pre-arrest bail is not to be granted.

5. I have heard the learned counsel for the parties and perused the available record.

6. Although the petitioner is specifically nominated in the FIR with allegation of giving "kassi" blow upon the person of the complainant yet first medical examination as well as report of District Standing Medical Board it was opined that the possibility of fabrication cannot be ruled out. The injuries of the petitioner Junaid was suppressed as he has also sustained four injuries in total including the one on vital part though again it was opined that possibility of fabrication was also not ruled out. Mala fide on the part of the complainant is apparent as he firstly made aggression on the place of the petitioner in the immediate neighbourhood. During the investigation, although cross version was rejected yet no reference was given to the medical report of the complainant. There is no statement on record regarding the teasing of women folk of the complainant from the petitioner's side on the basis of which entire occurrence had taken place. At present, mala fide is apparent on record.

7. In this view of the matter, this petition is allowed and petitioner's ad-interim anticipatory bail already granted vide order dated 22.08.2013 is confirmed subject to his furnishing bail bond in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the trial Court.

(R.A.) **Petition allowed.**

PLJ 2014 Cr.C. (Lahore) 856

Present: Ali Baqar Najafi, J.

USMAN ALI alias ALI MUHAMMAD--Petitioner

versus

STATE and another--Respondents

Crl. Misc. No. 8848-B of 2014, decided on 4.7.2014.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497(2)--Pakistan Penal Code, (XLV of 1860), Ss. 337-F(v), 34--Bail, grant of--Further inquiry--Although petitioner was named in FIR yet offence with which petitioner was charged does not fall within prohibitory clause--Single blow was hit upon left hand of complainant but according to Medico Legal Report it was on right hand--Alleged injury u/S. 337-F (v), PPC entailing maximum punishment of five years which does not fall within prohibitory clause of Section 497, Cr.P.C. case of petitioner requires further inquiry under sub-section (2) to Section 497, Cr.P.C.--Petitioner was in judicial lock up and was no more required for purpose of investigation. [P. 856] A

Mr. Muhammad Nasir Mehmood, Advocate for Petitioner.

Mr. Muhammad Naseem Akhtar, Deputy District Public Prosecutor for State.

Nemo for Complainant.

Date of hearing: 4.7.2014.

ORDER

The petitioner, through this petition, seeks post-arrest bail in case FIR No. 45 dated 04.03.2014 registered under Sections 337-F (v), 34, PPC at Police Station, Cantt. Okara on the allegation that on 28.02.2014 at about 4:00 p.m.

the petitioner caused injury on the left hand of the complainant by giving sota blow.

2. Arguments heard. Record perused.

3. Although the petitioner is named in the FIR yet the offence with which the petitioner is charged does not fall within the prohibitory clause. Single blow was hit upon the left hand of the complainant but according to the Medico Legal Report it was on the right hand. The alleged injury under Section 337-F(v), PPC entailing maximum punishment of five years which does not fall within the prohibitory clause of Section 497, Cr.P.C. The case of the petitioner requires further inquiry under sub-section (2) to Section 497, Cr.P.C. The petitioner is in the judicial lock up since 10.4.2014 and is no more required for the purpose of investigation.

4. For what has been discussed above, this petition is allowed and petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the trial Court.

(A.S.) **Bail allowed.**

PLJ 2014 Lahore 891

Present: Ali Baqar Najafi, J.

ABDUL HAMEED—Petitioner

versus

RANA SAFDAR, SPECIAL MAGISTRATE, etc.--Respondents

W.P. No. 11420 of 2011, decided on 3.2.2014.

Constitutional of Pakistan, 1973--

----Art. 199--Criminal Procedure Code, (V of 1898), Ss. 145 & 435--Constitutional Petition--When Civil Court became seized of matter magistrate could not proceed u/S. 145, Cr.P.C.--Validity--Admittedly, impugned orders were directly challenged before this Court without availing alternate remedy by filing criminal revision under Section 435, Cr.P.C. before Court of Sessions which cannot be struck down as being illegal or mala fide because same is an order of Magistrate having jurisdiction and not an order of public functionary--It is, therefore, appropriate that Civil Court seized of matter of two lis be directed to expedite matter and decide same as expeditiously as possible and preferably within a period of 6 months from receipt of copy of that order during which it will be at liberty to pass any interim order for regulating possession of property in dispute. [Pp. 892 & 893] A & B

2004 SCMR 667, 2001 SCMR 209 & PLD 1970 SC 470, ref.

Mr. Muhammad Ikram Sheikh, Advocate for Petitioner.

Mr. Nasim Riaz Gorsi, Advocate for Respondent No. 3.

Respondents No. 4 & 5 in person.

Nemo for Respondent No. 6.

Date of hearing: 3.2.2014.

ORDER

Through this constitutional petition the petitioner challenges only the orders dated 17.05.2011 and 18.05.2011 of Respondent No. 1, whereby he sealed the Plot No. 419 Pak Block Allama Iqbal Town, Lahore under Section 145, Cr.P.C upon the report submitted by the SHO, Police Station, Allama Iqbal Town, Lahore passed on the ground that the petitioner as well as Respondent No. 3 etc. claim themselves to be the owners which has given rise to the law and order situation.

2. Briefly the facts are that the petitioner claims ownership with one Arshad Nadeem regarding Plot No. 419, Pak Block Allama Iqbal Town, Lahore on the basis of transfer Letter No. 002075 dated 03.08.2010 exempted to one Ghulam Muhammad son of Feroz Din, Nawab son of Sumanda, Azra Naseer wife of Naseer Ahmed, Feroz Din son of Massay Khan vide LDA Letter No. 4101 dated 27.04.1995 and they were granted possession on 22.07.1999. After depositing the necessary charges building plan was approved. The petitioner was General Attorney of Syed Karamat Ali Shah, who purchased the plot after when NOC was issued on 01.02.2002. Meanwhile, on 08.01.2004 the petitioner filed a suit for permanent injunction before the Civil Court at Lahore in which a restraining order was issued wherein Respondent No. 3 also submitted a written statement on 20.04.2011. by giving reference to the suit titled "Ch. Akram Ali Akhtar & another vs. L.D.A, etc." regarding the same property pending before the Civil Court. A local commission was however, appointed to verify the possession on 11.05.2011, and whereupon on 13.05.2011 a report was prepared and later submitted verifying that the petitioner was in possession of the plot. But Respondent No. 1 passed the impugned order of sealing the said premises on 17.05.2011 and on the following day report affirming sealing of the property was submitted, hence this writ petition.

3. The main argument of the learned counsel for the petitioner that after when the Civil Court became seized of the matter, Respondent No. 1 could not

proceed under Section 145, Cr.P.C. particularly, when the question of possession has been verified in the report of the Local Commission has been repelled by learned counsel for Respondent No. 3 by submitting that he also filed a civil suit which is also pending in which he also got a report of Local Commission verifying his possession as well and therefore, there was no illegality in the impugned order.

4. Arguments heard. Record perused.

5. Admittedly, the impugned orders dated 17.05.2011 and 18.05.2011 were directly challenged before this Court without availing alternate remedy by filing criminal revision under Section 435, Cr.P.C. before the Court of Sessions which cannot be struck down as being illegal or mala fide because same is an order of the Magistrate having jurisdiction and not an order of public functionary as decided in Government of the Punjab through Collector, Faisalabad and another vs. Hudabia Textiles Mills, Faisalabad through Chairman and 4 others reported as (2001 SCMR-209). This Court will interfere only when it was satisfied that in appreciation of evidence of lower Court gross miscarriage of justice had taken place amounting to abuse of process of Court. Moreover, the Magistrate has already determined the factum of actual physical possession of crucial date and the question of entitlement is to be decided by a Civil Court as decided in "Saleem-ur-Rehman vs. Faqir Hussain and others (2004 SCMR 667). There is no cavil to the proposition that the proceedings initiated under Section 145, Cr.P.C. are subordinate to the decree or order passed by a Civil Court in respect of the property in dispute before the Magistrate and that Section 145 Cr.P.C. proceed on the premises that the Magistrate will cease to deal with the possession, of `land' or `water' in dispute before him as soon as a Civil Court is seized with the dispute and has passed a decree declaring the rights of the parties therein or has passed an order regulating possession of the subject-matter of the suit as held in "Shah Muhammad vs. Haq Nawaz and another (PLD 1970 Supreme Court 470). The order of the learned Magistrate is, (sic) without (sic). However, in the instant case, up till now, no decree of the Civil Court is in existence though there are

interim orders in the form of status quo which according to the respective parties are still continuing in two suits titled Abdul Hameed vs. Ch. Akram Ali Akhtar etc. and Ch. Akram Ali Akhtar, etc. vs. Ghulam Muhammad, etc." pending before the same Civil Court at Lahore.

6. This Court, besides, is also conscious of the fact that the sealing order cannot continue for indefinite period. It is, therefore, appropriate that the Civil Court seized of the matter of two lis as mentioned above be directed to expedite the matter and decide the same as expeditiously as possible and preferably within a period of 6 months from the receipt of copy of this order during which it will be at liberty to pass any interim order for regulating the possession of the property in dispute.

Disposed of.

(R.A.) **Petition disposed of.**

PLJ 2014 Lahore 1181

[Multan Bench Multan]

Present: Ali Baqar Najafi, J.

SADAM HUSSAIN--Petitioner

versus

ADDITIONAL SESSION JUDGE, MIAN CHANNU, DISTRICT KHANEWAL and 3 others--Respondents

W.P. No. 11527 of 2013, decided on 7.10.2013.

Juvenile Justice System Ordinance, 2008--

----S. 7--Constitution of Pakistan, 1973, Art. 199--Constitutional Petition--Conflict of age written in birth certificate and school leaving certificate--Direction to reconstitute standing provincial medical board for determination age--Validity--Medical Board for determining age of accused has not legally been constituted is not tenable as Dental Surgeon is also a Member and Board had duly considered report of minor--Application for holding separate trial under Juvenile Justice System Ordinance was rightly filed without wasting of time. [P. 1182] A & B

Mr. Muhammad Shahid Khan Sherwani, Advocate for Petitioner.

Ch. Khalid Mehmood Arain-I, Advocate for Respondent No. 4.

Date of hearing: 7.10.2013.

ORDER

This petition calls in question order dated 5.1.2013 passed by the learned trial Court declaring Respondent No. 4 as juvenile and directing his separate trial and report of Medical Board dated 17.11.2012 with the direction to reconstitute Standing Provincial Medical Board for determination of the age of Respondent No. 4 as the earlier was not legally constituted.

2. Learned counsel for the petitioners contends that under Section 7 of the Juvenile Justice System Ordinance, 2000, inquiry is required to be conducted before declaring the age of accused; that the trial Court is required under the

law to follow the provisions of Qanun-e-Shahadat Order, 1984 before granting permission to place on record relevant documents; that there is conflict of age written in the Birth Certificate and the School Leaving Certificate. Hence prays for acceptance of the writ petition.

3. Conversely, learned counsel for Respondent No. 4 has opposed the grant of petition on the ground that the learned trial Court while passing the order impugned herein has followed the provisions prescribed in the statute and before declaring Respondent No. 4 as juvenile Ossification Test was conducted by the duly constituted Medical Board; that the documents produced by Respondent No. 4 before the trial Court have not been objected by the petitioner. Hence prays for the dismissal of this petition.

4. I have heard the learned counsel for the parties and perused the record.

5. The argument of the learned counsel for the petitioner that the Medical Board for determining the age of the accused has not legally been constituted is not tenable as the Dental Surgeon is also a Member and the Board had duly considered the report of the minor. The learned trial Court had rightly relied on the ossification test report by ignoring the documents i.e. Birth Certificate and School Leaving Certificate by following the dictum laid down in Muhammad Zakir Vs. The State and another (2004 SCMR 121). Since the charge in this case was framed on 10.08.2012, therefore, the application for holding separate trial under the Juvenile Justice System Ordinance was rightly filed on 25.09.2012 without wasting of time.

6. For the above reasons, this petition has no merits which is hereby dismissed.

(R.A.) **Petition dismissed.**

2014 Y L R 590

[Lahore]

Before Ali Baqar Najafi, J

KALEEMULLAH---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

Writ Petition No.2921 of 2010/BWP, decided on 22th July, 2013.

West Pakistan Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Constitution of Pakistan, Art. 199---Constitutional petition---Suit for recovery of maintenance allowance and dowry articles---Contention of husband was that wife had brought dowry articles with gold ornaments but had taken back in his absence, however, in presence of his mother---Trial Court decreed the suit which was maintained by the Appellate Court with certain modifications---Husband contested to the extent of grant of amount of gold ornaments as well as cash amount---Mother of husband-defendant did not appear before the Trial Court to prove that plaintiff-wife took away dowry articles along with gold ornaments with her---Plaintiff-wife was required to prove not only the bringing of gold ornaments to the house of defendant-husband but also leaving the same at the time of her desertion which onus she had failed to discharge---Plaintiff-wife had to prove her case rather to take the benefit of defendant's omission/admission--- No receipt of goldsmith was produced to prove the purchase of gold ornaments---Maternal uncle of plaintiff-wife prepared the list of dowry articles and mentioned gold ornaments in the same---Plaintiff-wife had entered with third Nikah with the defendant-husband and it was important for her to retain the gold ornaments which she had---Seven tolas of gold ornaments along with 25 tolas of silver were written in the list of dowry articles without any receipt from the shop---

Appellate Court had not recorded convincing reasons while setting aside the judgment of the Family Court---Constitutional petition was partly accepted, in circumstances.

Muhammad Tayyab Zameer Khan for Petitioner.

Muhammad Asim Khan for Respondents.

Date of hearing: 22nd July, 2013.

JUDGMENT

ALI BAQAR NAJAFI, J.---The petitioner seeks setting aside of consolidated judgment dated 12-4-2010 passed by the Additional District Judge, Khanpur/respondent No.1 whereby he granted maintenance of Rs.1,000 per month along with dowry articles valuing R.3.3,04,875 to respondent No.3 and dismissed the appeal of the petitioner filed against the judgment and decree dated 5-1-2010 passed by learned Judge Family Court, Khanpur/respondent No.2 whereby he decreed the suit of respondent No.3 to the extent of dowry articles amounting to Rs.1,20,000 while refusing her maintenance allowance. Aggrieved against the above two judgments, the petitioner filed writ petition which was dismissed in limine on 9-6-2010 by this Court.

2. The petitioner being aggrieved of the decision of this Court passed in the instant writ petition approached the Hon'ble Supreme Court of Pakistan, through C.P. No.1451-L of 2010 in which on 24-12-2010 with the consent of the learned counsel for the parties, order dated 9-6-2010 passed by this Court was set aside and the case was remanded for its decision afresh.

3. The brief facts giving rise to the filing of this petition are that respondent No.3 contracted marriage with the petitioner on 22-2-2008 who after four months of marriage expelled her by giving her beating. It was further asserted in the plaint that attitude of the petitioner always remained cruel and

even she was not granted her maintenance. She prays maintenance of Rs.5,000 per month in future along with dowry articles as per list mark-A or in alternate value of the dowry articles amounting to Rs.3,44,875 besides previous maintenance at the rate of Rs,5,000 for the period of last 10 months.

The suit was resisted by the petitioner by filing written statement narrating therein that respondent No.3 left his house in his absence with her maternal uncle and two real brothers namely Muhammad Athar and Muhammad Asghar and took her dowry articles along with gold ornaments and other articles of his first deceased wife which matter was compromised at the Dera of Sardar Rabnawaz Khan and it was promised that respondent No.3 will re-join the petitioner with all her as well as the dowry articles of his first deceased wife. He further averred in his written statement that respondent No.3 was previously married to one Abdul Hameed thereafter with Irshad Ahmed and lastly with him and she is in the habit of telling lie as she got written in the Nika Nama "Kanwari" having age of 18 years and receipts of dowry articles produced in the court are also forged and self made. He prays for dismissal of the suit.

4. The learned counsel for the petitioner submits that under section 7 of the West Pakistan Family Court's Act, 1964, no claim for maintenance can be granted in a suit for recovery of dowry articles in the absence of suit for dissolution of marriage. Places reliance upon CHAN ZEB V. Mat. KHALIDA SHAHEEN and another (2006 MLD 495); that respondent No.3 while leaving the house of the petitioner has already taken away the entire dowry articles along with the gold ornaments. Places reliance upon FAZAL SONS v. SHABBIR and others (1999 SCMR 2612), MADRESSA DARUL FAZAL HALANI v. MUHAMMAD RAMZAN KASHMIRI (2005 CLC 83) and SAKHA ULLAH V. Mst. TAHIRA ALMAS and another (2001 CLC 1641), that DW-2 Farman Ali from whom allegedly gold ornaments were purchased

has stated that he had stopped working as goldsmith about eight years ago; that 'Mamoo'/maternal-uncle of the respondent No.3, while appearing as P.W.2, has not admitted the factum of giving of gold ornaments. Lastly submits that petitioner will not agitate the decree to the extent of Rs.1,20,000 and maintenance till the date of desertion but will insist upon the value of the gold ornaments which the respondent No.3 had already possessed.

5. Conversely, the learned counsel for the respondent No.3 submits that no objection of consolidated prayer was ever raised in the written statement, therefore, cannot be raised at this stage; that under the law claim of dowry articles can be made jointly in a suit for recovery of maintenance; that petitioner while appearing as DW-1 admitted that the dowry articles were brought by respondent No.3 but were taken away in the presence of the mother of the petitioner, who admittedly, was never produced as a witness; that DW-2 was a witness of respondent No.3, who was won over by the petitioner and the proof of the fact is that affidavits of all the witnesses i.e. P.W.1 and 2 and DW-2 were purchased on one date through the entries in the register of stamp vendor made adjacent to each other; that no suit for restitution of conjugal rights was ever filed by the petitioner and the respondent No.3 has no knowledge of the divorce ever pronounced by the petitioner; that no misreading or non-reading of evidence was pointed out by learned counsel for the petitioner; that judgment of the appellate court cannot be interfered with while exercising writ jurisdiction as there is no jurisdictional error, hence prays for dismissal of the petition.

6. I have heard the learned counsel for the parties and perused the available record.

7. At the very outset the learned counsel for the petitioner has stated that he would not press the petition to the extent of Rs.1,20,000, the amount fixed in lieu of dowry articles which has already been deposited by in this court but

he contests for the grant of amount of gold ornaments as well as cash amount of Rs.40,000. The case of the petitioner is that respondent No.3, while living with the petitioner had brought dowry articles with gold ornaments, but taken her back in the absence of the petitioner but in presence of mother of the petitioner, who never appeared before the Civil Court to prove that respondent No.3 took the dowry articles along with gold ornaments with her. This stand is either to be accepted as a whole or rejected as a whole. This statement has to be read as a whole. In my humble opinion, the respondent No.3/ plaintiff was required to prove not only the bringing of gold ornaments to the house of the petitioner but also leaving it at the time of her desertion, particularly when the date of desertion is not given in the plaint, which onus she had failed to discharge. Even otherwise respondent No.3 has to prove her case rather to take the benefit of defendant's omission/admission. Additionally, on the question of gold ornaments amounting to Rs.1,67,275, no receipt of the goldsmith was produced in evidence to prove its purchase. P.W.2 maternal-uncle of the petitioner has stated that he prepared the list of dowry articles and has also mentioned the gold ornaments in his list. Admittedly, this is third Nikah of respondent No.3 and it would have been important for her to retain the gold which she did. There is a common practice in our society that women keep gold ornaments with them, particularly when the dispute arising between the spouses. DW-2 has stated that he has stopped his business of goldsmith about eight years ago before the marriage. The perusal of the list of dowry articles manifests that about seven tolas of gold ornaments along with 25 tolas of silver were written without any receipt from the shop. The appellate court had not found convincing reasons while setting aside the judgment of the Family Court as focus of discussion remained only as DW-2. Under section 7 of the West Pakistan Family Courts Act, 1962, the respondent No.3 was required to raise this objection immediately which she failed to do.

8. In this view of the matter, I accept this petition partly and set aside the

judgment of the appellate court dated 12-4-2010 as well as the judgment and decree of the Trial Court resultantly respondent No.3 is entitled to recover the value of dowry articles to the extent of Rs.1,20,000, which amount has already been deposited by the petitioner in the court along with maintenance of Rs.1000 per month till the subsistence of marriage. No order as to costs.

AG/K-31/L **Petition partly accepted.**

2014 Y L R 2197

[Lahore]

Before Ali Baqar Najafi, J

ASIF SOHAIL---Petitioner

Versus

Mst. SADAF RAZZAQ and others---Respondents

Writ Petition No.16549 of 2013, decided on 8th November, 2013.

West Pakistan Family Courts Act (XXXV of 1964)---

----Ss. 17-A & 5, Sched.---Constitution of Pakistan, Arts. 199 & 10-A---Constitutional petition---Suit for recovery of maintenance allowance and dowry articles---Striking off right of defence under S. 17-A of West Pakistan Family Courts Act, 1964---Scope---Contention of husband was that right of defence under S.17-A of West Pakistan Family Courts Act, 1964 could only be struck off to the extent of maintenance but not to the extent of recovery of dowry articles---Validity---Husband had not complied with the order for payment of interim maintenance allowance---Such non-compliance would deprive him from his right to defend the claim of maintenance allowance---No illegality or jurisdictional defect was pointed out in striking off right of defence of husband to the extent of recovery of maintenance allowance under S. 17-A of West Pakistan Courts Family Act, 1964---Section 17-A of West Pakistan Family Courts Act, 1964 was specifically enacted for the purpose of granting interim maintenance allowance and same was not applicable to the suit for recovery of dowry articles---Both the courts below had misapplied the law and non-suited husband with regard to claim of dowry articles by applying provisions of S. 17-A of West Pakistan Family Courts Act, 1964---Husband could not defend the claim for recovery of dowry articles which was violation of Art.10-A of the Constitution---Impugned decree to the extent of dowry articles was passed without fair opportunity of hearing to the husband to

defend the claim---Law envisaged decisions on merits but such right had been denied to the husband in the present case---Impugned judgment and decree passed by both the courts below to the extent of dowry articles were set aside and to the extent of recovery of maintenance allowance were upheld---Case was remanded to the Trial Court to decide the same to the extent of claim of dowry articles in accordance with law---Constitutional petition was partially allowed in circumstances.

Shahzad Hussain v. Judge Family Court, Lahore and 2 others 2011 CLC 820 and Muhammad Arif v. Uzma Afzal and others 2011 SCMR 374 ref.

Muhammad Arif v. Uzma Afzal and others 2011 SCMR 374 rel.

Rana Muhammad Aslam Nadeem for Petitioner.

Khalid Bashir for Respondents Nos. 1 to 3.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional Petition, the petitioner challenges the judgment and decree dated 3-6-2013 and 11-3-2013 passed by the learned Additional District Judge/ respondent No.5 and the learned Judge Family Court/respondent No.1 respectively, whereby the suit for recovery of dowry articles, maintenance allowance and delivery expenses were concurrently allowed.

2. Brief facts giving rise to the filing of this writ petition are that the suit for dissolution of marriage, recovery of dowry articles and alternate their price and maintenance allowance was filed by respondent No.1 against the petitioner. It was further stated that respondents Nos.2 and 3 were born out from the wedlock who were also not maintained by the petitioner. The suit was resisted and after failure of re-conciliation proceedings on 28-7-2012 the suit for dissolution of marriage was decreed. On 4-2-2013 right of the petitioner to cross-examine the witnesses was struck off under section 17-A of the Muslim Family Courts Act, 1964. On 11-3-2013 the suit was partially

decreed as per Exh.P.3 and in alternate Rs.6,00,000 was granted as their price along with delivery expenses of Rs.30,000. Maintenance allowance was also granted at the rate of Rs.7,000 per month per head since the institution of the suit with 10% annual increase. An appeal was preferred which too was dismissed, hence this writ petition.

3. Learned counsel for the petitioner contends that on 4-2-2013 after filing of the power of attorney time should have been granted for cross-examination of the witnesses; that the petitioner is a poor person and is burdened to pay Rs.21,000 per month is exorbitant maintenance allowance which is out of his financial capacity; that under section 17-A ibid only the right to defend in a suit for maintenance can be struck off but for the suit for recovery of dowry articles no such provisions arc available. Places reliance on SHAZAD HUSSAIN v. JUDGE FAMILY COURT, LAHORE and 2 others (2011 CLC 820).

4. Conversely, learned counsel for respondents Nos.1 to 3 submits that the petitioner submitted two times power of attorney one on 28-7-2012 and then on 4-3-2013 just to prolong the matter; that the respondents were not paid any maintenance. Places reliance on MUHAMMAD ARIF v. UZMA AFZAL and others (2011 SCMR 374).

5. I have heard the learned counsel for the parties and perused the available record.

6. This writ petition is preferred against the concurrent findings of fact recorded by the two courts below. No illegality or jurisdictional defect was pointed out by the learned counsel for the petitioner as the provisions of Article 17-A of the West Pakistan Family Courts Act, 1964 was rightly applied since the petitioner has not complied with the order of interim maintenance allowance. Such non-compliance will deprive the petitioner from his right to defend in the claim of maintenance allowance. To this extent the judgment of apex Court titled as MUHAMMAD ARIF v. UZMA AFZAL, and others

(2011 SCMR 374) was duly complied with.

7. However the order under section 17-A of the West Pakistan Family Courts Act, 1964 is specifically for the purpose of granting interim maintenance allowance and is not directly applicable to the suit for the recovery of dowry articles. In this way, both the courts below have misapplied the law when they non-suited the petitioner in the claim for dowry articles on account of the fact that since by applying section 17-A of the West Pakistan Family Courts Act, 1964 the right to defend had struck off, therefore, the petitioner cannot even defend the claim for recovery of dowry articles. This, I am afraid, is tantamount to violation of Article 10-A of the Constitution and the judgment and decree to the extent of dowry articles was passed without a fair opportunity of hearing to the petitioner to defend the claim. Moreover, the law envisages decision on merits but in the instant case this right appears to have been denied to the petitioner. Resultantly, this writ petition is partially allowed, the judgments and decree passed by both the courts below is set aside and as a result of which the suit for dowry articles will be deemed to be pending before the trial Court where the petitioner will be able to produce his evidence and the court will proceed in accordance with law. As far as decree for maintenance allowance is concerned, as already observed, the same is upheld which does not require for interference by this Court in exercise of constitutional jurisdiction.

8. In this view of the matter this writ petition is partly allowed and case is remanded to the trial Court to decide the suit to the extent of claim of dowry articles.

AG/A-71/L **Order accordingly.**

2014 Y L R 2527

[Lahore]

Before Ali Baqar Najafi, J

LIAQUAT ALI---Petitioner

Versus

DISTRICT POLICE OFFICER, LAYYAH and 2 others---Respondents

Criminal Miscellaneous No.278-HB of 2014, decided on 29th May, 2014.

Criminal Procedure Code (V of 1898)---

----S. 491---Habeas corpus petition---Bailiff, who had produced both detenus before the court, had reported that said detenus were found in the lock up, and were also tortured---Muharrar of Police Station concerned informed the bailiff that detenus were arrested in criminal case and F.I.R. registered at Police Station under Ss.381-A & 225, P.P.C.---Police file was not made available to bailiff---Alleged F.I.R. was registered two days after detenus were apprehended---Arrest of detenus appeared to be fake one and manipulated after bailiff had conducted raid---Petition was allowed and detenus were ordered to be set at liberty, in circumstances.

Makhdoom Mashooq Hussain Shah for Petitioner.

Malik Shahnawaz Khokhar for the Complainant.

Hassan Mahmood Khan Tareen, D.P.G. with Mahar Qayyum, Inspector and Muhammad Tahir, A.S.-I. for the State.

Detenus in Police Custody.

Zubair Ahmed, Bailiff.

ORDER

ALI BAQAR NAJAFI, J.---Through this petition under section 491, Cr.P.C., petitioner seeks recovery of his brother namely, Zafar Iqbal and Habib Khan son of Ramzan Khan, from the illegal/land improper custody of respondent No. 1.

2. Bailiff of this Court/deputed on 28-5-2014 who has produced above

said detenus before this Court and has reported that they were found in the lock up who stated that they were brought by the police on 20-5-2014, from PSO Petrol Pump Qaziabad, Layyah and they were also tortured. Muharrir informed the bailiff that Muhammad Tahir, A.S.-I., arrested the detenus in case F.I.R. No. 176 dated

26-5-2014 under sections 381-A, 215, P.P.C. registered at Police Station Fatehpur, and, arrest was entered at 5:30 a.m. on 28-5-2014 vide Rapat No. 28 as in the said F.I.R., Zafar Iqbal, detenu, was nominated whereas Habib Ullah, detenu, was involved on the basis of supplementary statement. However, the police file was not made available to bailiff and according to the report Muhammad Tahir, A.S.-I., had gone to Bhakkar for the arrest of some other accused persons. The learned DPG has also not supported the arrest of the detenus.

3. A perusal of F.I.R. 176 dated 26-5-2014 under sections 381-A, 215, P.P.C. registered at Police Station Fatehpur, Layyah reveals that date of occurrence was reported as few days ago and the detenus was though nominated in the F.I.R., who according to the complainant, had also admitted to have sold the stolen motorcycle to one Dr. Nazir whereafter he demanded Rs. 1200 which was paid but the motorcycle was not returned. It is also noticeable that bailiff of this Court was deputed yesterday and the arrest of the detenus was allegedly shown at 5:30 am. The police file was not made available to the bailiff as the said ASI was not traceable until this morning when he made appearance before this Court. Surprisingly, F.I.R. was registered on 26-5-2014 and the detenus were apprehended on 28-5-2014 from Adda Qaziabad without any effort of I.O. and it looks that detenus have voluntarily surrendered before him. The arrest of the detenus appears to be a fake one and manipulated after when bailiff had conducted the raid as the police file was not made available to him.

4. For the above stated reasons this petition is allowed and the detenus are set at liberty.

HBT/L-9/L **Petition allowed.**

2015 C L D 342

[Lahore]

Before Ali Baqar Najafi and Atir Mahmood, JJ

STATE LIFE INSURANCE CORPORATION OF PAKISTAN through Attorney---Appellant

Versus

Mst. BASHIRAN BIBI---Respondent

R.F.A. No. 1015 of 2012, heard on 13th March, 2014.

Insurance Ordinance (XXXIX of 2000)---

----Ss. 115, 118 (2) & 124---Insurance claim---Application of Pakistan law to insurance polices issued in Pakistan---Insurance Tribunal accepted insurance claim of respondent along with liquidated damages---Plea raised by appellant/insurance company was that Insurance Tribunal could only entertain insurance policy issued after commencement of Insurance Ordinance, 2000---Validity---Provisions of S.118 of Insurance Ordinance, 2000, could not be extended to policies issued before commencement of Insurance Ordinance, 2000, therefore, Insurance Tribunal set up under Insurance Ordinance, 2000, had no jurisdiction to adjudicate upon the matter---Insurance claim of such policies could only be filed before civil Court---Appeal was allowed in circumstances.

Mst. Ribina Bibi v. State Life Insurance and others 2013 CLD 477 and Civil Appeals Nos.449-L of 2009, 284 to 286, 283-L, 586-L to 591-L, 609-L to 613-L, 637-L to 640-L and 767-L of 2013, 817, 818 of 2010, 56-L, 63-L of 2011, 623-L to 628-L, 723-L, 726-L to 731-L of 2013 and Civil Petition No.1253-L of 2011 and 1516-L to 1521-L of 2013 reported as 2014 SCMR 655 = 2014 CLD 506 rel.

Ibrar Ahmad for Appellant.

Liaqat Ali Butt for Respondent.

Date of hearing: 13th March, 2014.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this regular first appeal the judgment and decree dated 22-11-2012 is challenged whereby the claim of the respondent was accepted along with liquidated damages under section 118(2) of the Insurance Ordinance, 2000 at monthly rate of 5% higher than the prevailing base rate.

2. The main argument of the learned counsel for the appellant is regarding maintainability of the application for recovery of the policy proceeds and payment of the liquidated damages under section 118 of the Insurance Ordinance, 2000 on the ground that in the judgment titled Mst. Robina Bibi v. State Life Insurance and others (2013 CLD 477) where in para 21 it has been held that the Insurance Policy issued after the commencement of the Ordinance, 2000 i.e. 19-8-2000 can be entertained by the Insurance Tribunal which judgment has been upheld by the apex Court on 4-2-2014, therefore, the insurance policy dated 1-7-2000 was issued prior to the commencement of the said Ordinance, thus should have been decided by the civil court.

3. Conversely, learned counsel for the respondent submits that under section 115 of the Ordinance since the claim has arisen out of the Insurance Policy after the commencement of the Ordinance on 19-8-2000 and upon the death of Muhammad Anwar on 7-6-2003, therefore, the Tribunal has rightly proceeded and passed the impugned judgment.

4. Arguments heard. Record perused.

5. It is appropriate to reproduce 115 of the Ordinance, which reads as under:--

"115. Application of Pakistan Law to policies issued in Pakistan.---The holder of a policy insurance issued by an insurer in respect of insurance business transacted in Pakistan after the commencement of this Ordinance

shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in Pakistan of any sum secured thereby and to sue far any relief in respect of the policy in any Tribunal; and if the suit is brought in Pakistan any question of law arising in connecting with any such policy shall be determined according to the law in force in Pakistan:

Provided that nothing in this section shall apply to a policy of marine insurance."

Now it is equally important to reproduce para 21(1) of the judgment reported as Mst. Robina's case (2013 CLD 477):--

"Under section 115 of the Ordinance, only claims arising out of insurance policies issued after the commencement of the Ordinance i.e., on or after 19-8-2000 can be entertained by the Insurance Tribunal."

The above referred reported judgment of this Court was upheld by the apex Court on 4-2-2014 in Civil Appeals Nos.449-L of 2009, 284 to 286, 283-L, 586-L to 591-L, 609-L to 613-L, 637-L to 640-L and 767-L of 2013, 817 and 818 of 2010, 56-L and 63-L of 2011, 623-L to 628-L, 723-L, 726-L to 731-L, of 2013 and Civil Petition No.1253-L of 2011 and 1516-L to 1521-L, of 2013, reported as 2014 SCMR 655 = 2014 CLD 506, where in paragraph 3 it is observed as follows:--

"3. According to the learned counsel, this section despite its clear wording to the contrary, will also extend to the policies issued before the date of commencement of the Ordinance and consequently the Tribunals set up under the said Ordinance will have jurisdiction to adjudicate matters. The contention is not only misconceived but is also frivolous as it flies in the face of the express wording of the provision reproduced above."

6. The overall interpretation of the statutory provisions, the judgment of this Court as well as the apex Court is that section 118 will not extend to the policies issued before the commencement of the Ordinance and, therefore, the

Tribunal set up under the Ordinance will not have jurisdiction to adjudicate upon me master. This will leave us with only one option that is to allow this appeal and permit the respondent to go to the civil court under clause (iv) of the reported judgment (supra), which is reproduced as under:--

"(iv) Claims arising out of insurance policies prior to the commencement of the Ordinance may apply to the court of competent jurisdiction under the repealed Act, subject to the provisions of Limitation Act, 1908, which will be considered by the respective court on its merits in accordance with law."

7. For the foregoing reasons, this appeal is allowed with the observation that the respondent may approach the civil court to claim the liquidated relief.

MH/S-121/L **Appeal allowed.**

2015 M L D 502

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD ARSHAD KHARAL---Petitioner

Versus

JUSTICE OF PEACE and others---Respondents

Writ Petition No.7223 of 2013, decided on 18th April, 2014.

Criminal Procedure Code (V of 1898)---

----Ss.22-A & 22-B---Constitution of Pakistan, Art.199---Constitutional petition---Cross version or second F.I.R.---Principle---Ex-officio Justice of Peace directed Station House Officer to register second F.I.R. as the occurrence was alleged to be a fake police encounter---Validity---Judicial inquiry was conducted, in which it was observed that deceased was killed by shots of police and none was injured from police side---Record of police did not show that he was a top class absconder, therefore, cross version in police encounter was not enough for the reason that F.I.R. earlier registered would be seen in its juxtaposition---Second F.I.R. was rightly ordered to be registered particularly when different eye-witnesses had accounted for the occurrence---No Constitutional defect was noticed in order passed by Ex-officio Justice of Peace and the same was well reasoned and legal---Petition was dismissed in circumstances.

Mushtaq Hussain and another v. The State 2011 SCMR 45; Muhammad Aslam v. S.H.O. and others PLJ 1997 Lah. 1453; Mst. Ghazala Aziz v. S.H.O. and others 1999 YLR 1388; Mumtaz Hussain v. Deputy Inspector General, Faisalabad and 7 others PLD 2002 Lah. 78; Noor Ahmad v. D.I.G., Police, D.G. Khan and 7 others 2005 YLR 1545; Muhammad Asif v. Umar Farooq Khan, Inspector Police and 5 others 2010 MLD 128; Wajid Ali Khan Durani and others v. Government of Sindh and others 2001 SCMR 1556; Musthaq Hussain and another v. The State 2011 SCMR 45; Muhammad Ali v. D.P.O. Writ Petition No.2795/2014 and Babra Sultana v. R.P.O., and others Writ Petition No.2795/2014 rel.

Muhammad Ahsan Bhoon for Petitioner.

Barrister Qasim Ali Chohan, Assistant Advocate General for Respondents Nos.1 and 2 on Court's Call.

Ch. Umer Hayat Kamran Rajoka and Ghulam Shabbir Shahid for Respondent No.3.

Date of hearing: 4th April, 2014.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the impugned order dated 21-3-2013 passed by respondent No.1/Ex-officio Justice of Peace on the petition filed by respondent No.3 for registration of F.I.R. upon the fake police encounter was recorded directing respondent No.2/S.H.O. to record criminal case on the application of respondent No.3 against proposed accused.

2. Brief facts as contained in the writ petition are that on police encounter F.I.R. No.90/2013 dated 18-2-2013, under sections 324, 353, 148, 149, P.P.C. and section 13 Arms Ordinance (XX of 1965) was registered at Police Station, Bhowana District Chiniot in which Imran alias Mani son of respondent No.3 was found killed and one Kalashnikov and a bag containing 150 bullets were lying besides his dead body which were taken into possession. Respondent No.3 moved an application to respondent No.2/S.H.O. for registration of F.I.R. for the murder of said Imran alias Mani, which was treated as cross version but she preferred a petition under section 22-A/22-B, Cr.P.C. before the Ex-Officio Justice of Peace to register a criminal case against the petitioner and others containing allegation that she along with Malik and her son namely, Imran alias Mani deceased was present in the house of her niece Maghlani and at about 2:00 p.m. one Sohna along with an unknown person came nearby the house who were armed with rifle made telephonic call in her presence. Muhammad Arshad Kharal, Faisal armed with rifles came from one side whereas Riaz Shahid Gujjar and Muhammad Ali emerged from the other side and all were armed with firearm, whereupon Imran alias Mani started running into a room by raising hue and cry. Ahmad Yar son of Akbar and Anwar Bibi

wife of Muhammad Yar also attracted there. Faisal Ali and Muhammad Ali threatened the others not to move and Muhammad Arshad Kharal, petitioner identified himself as S.H.O., Police Station, Langrana and they dragged Imran alias Mani out of the room whereafter Riaz Shahid fastened his arms on his back and Muhammad Arshad petitioner with the company of Imran alias Mani, whereafter the said Riaz Shahid and Muhammad Arshad Kharal commanded their company to start firing and talking someone on telephone that the police encounter was underway. They took Imran alias Mani towards the River Chanab followed by respondent No.3 by raising hue and cry. A number of local inhabitants were attracted at the spot. Meanwhile, they covered the eyes of son of respondent No.3. Riaz Shahid, Muhammad Arshad Kharal, Muhammad Ali and Sohna started indiscriminate firing hitting Imran alias Mani on his different parts of the body, who fell down. Faisal and Imran also fired upon him in fallen condition. After some time police vehicle reached there, took away the dead body with them. The motive behind the occurrence, as stated by respondent No.3 in the application, was that Sohna got Imran arrested without any justification who was found innocent but the latter started threatened him to take revenge. It was alleged that Sohna with the other police officials has committed the murder of her son but gave the colour of occurrence as police encounter.

3. S.H.O. submitted report before the Ex-officio Justice of Peace stating that Imran was required in case F.I.R. No. 90/2013 dated 18-2-2013, under sections 324, 353, 148, 149, P.P.C. and section 13 Arms Ordinance XX of 1965 was registered at Police Station, Bhowana District Chiniot but the impugned order was passed while holding that recording of cross version will not serve the purpose, therefore, a separate F.I.R. was ordered to be registered, hence this writ petition.

4. The main arguments of Mr. Muhammad Ahsan Bhoon, Advocate is that F.I.R. No.90/2013 dated 18-2-2013, under sections 324, 353,148,149, P.P.C. and section 13 Arms Ordinance (XX of 1965) at Police Station, Bhowana District Chiniot was already registered in which cross version of respondent No.3 has already been recorded and if she is dissatisfied she may file a private complaint as in the judicial inquiry conducted by Mr.Nadeem

Khizar, Enquiry Officer/ Judicial Magistrate section 30, Bhowana District Chiniot the occurrence was not found as fake police encounter. He also adds that the dictum laid down by the apex court Mushtaq Hussain and another v. The State (2011 SCMR 45) is not applicable as 2nd F.I.R. sought to be registered pertains to the same time and place of occurrence, therefore, the impugned order be set aside.

5. Conversely, Messrs Ch. Umer Hayat Kamran Rajoka and Ghulam Shabbir Shahid, Advocates for respondent No.3 submit that the police has labelled the murder of Imran alias Mani as police encounter which is just mockery of fact as the deceased received 14 shots in a fake police encounter conducted by 21 police men and the deceased was allegedly found in possession of Kalashnikov along with a bag containing 150 bullets. None of the police officials received even a single injury. It was further added that during the judicial inquiry the emphasis was laid down on single point that Imran alias Mani was killed by the police and that the story as narrated by the police, is nothing but a bundle of lie. It was concluded that Imran alias Mani was killed due to indiscriminate firing which needs probe and verification and therefore, prays for dismissal of this writ petition.

6. Arguments heard. Record perused.

7. The registration of second F.I.R., particularly, in the case of police encounter has been of particular importance for which superior courts have been handing down their judgments. It is, therefore, appropriate to scan the wisdom in the law laid down in the judgments relevant to the facts and circumstance of the case.

8. In Muhammad Aslam v. S.H.O. and others (PLJ 1997 Lahore 1453), a learned Single Judge of this Court has already held that filing of a private complaint in terms of section 190 of the Code of Criminal Procedure about the murder of son of the petitioner therein is not enough to deprive him of his legal right to get registered the F.I.R. in police encounter especially when the version contained eye-witness account. It was further observed that the very practice will certainly prompt the granting of free hand to the police against whom the citizens have their own grievances, out of which some are justified

and valid. In Mst.Ghazala Aziz v. S.H.O. and others (1999 YLR 1388), it was held that the wanted proclaimed offender was not even touched or apprehended and none of the police officers/officials received scratch on his body during the occurrence. It was also held that earlier F.I.R. by the police was essentially in the nature of a defence plea which may be examined in juxtaposition, therefore, F.I.R. was ordered to be registered. In Mumtaz Hussain v. Deputy Inspector General, Faisalabad and 7 others (PLD 2002 Lahore 78), it was held that the F.I.R. was directed to be registered as mere fact that in the judicial inquiry conducted by the Magistrate the cause of death of septicemia was not a bar for registration of F.I.R. for the murder of the deceased, who died during the police custody. In Noor Ahmad v. D.I.G., Police, D.G. Khan and 7 others (2005 YLR 1545), earlier F.I.R. recorded by the police declaring the incident as police encounter cannot be treated as gospel truth which is not sufficient to refuse registration of F.I.R. It was further held that the purpose of judicial inquiry is to find out the facts and mere pendency of same is not barred for registration of a criminal case, where the cognizable offence is made out. In Muhammad Asif v. Umar Farooq Khan, Inspector Police and 5 others (2010 MLD 128), it was held that as the place of occurrence, the stance of the parties was different the second F.I.R. was ordered to be registered as a distinct and separate cognizable offence was made out. In Wajid Ali Khan Durani and others v. Government of Sindh and others (2001

SCMR 1556), it was held that if information disclosed to the police constitute cognizable offence, then unless it was mere amplification of the first version the same F.I.R. must be registered, hence the 3rd F.I.R. was ordered to be registered. In Mushtaq Hussain and another v. The State (2011 SCMR 45), it was held that whenever counter versions are received by the police, separate F.I.R's. are to be chalked out. It was observed that by not registering an independent case, the petitioner seems to be oblivion of the fact that the statement if so taken in a criminal case after the registration of a case would be under section 161, Cr.P.C., therefore, proper course was to register a separate F.I.R. containing all the necessary ingredients of the F.I.R., i.e., the time of report, the time of occurrence, distance from the Police Station and the

statement be read over to the maker and then getting his thumb impressions or signature in token of its correctness. In an unreported judgment dated 19-3-2014 passed by this Court in Muhammad Ali v. D.P.O. (Writ Petition No.2795/2014) the Ex-officio Justice of Peace was directed to pass an appropriate order in the petition under section 22-A/22-B, Cr.P.C. as the writ petition was directly filed before this Court. In Babra Sultana v. R.P.O., and others (Writ Petition No.2795/2014) decided on 19-3-2014, this Court ordered for filing of complaint as the petitioner therein has participated in the inquiries which also concluded while observing that the inquiry was not fake. Scanning the above case law and applying the principles to the instant case where in the judicial inquiry conducted it was observed that the deceased was killed by the shots of the petitioner and that none was injured from the petitioner's side and the record of the deceased did not show that he was listed in the top class absconder therefore, a cross version in a police encounter is not enough for the reason that F.I.R. earlier registered will be seen in its juxtaposition, therefore, the second F.I.R. was rightly ordered to be registered particularly when different eye-witnesses have accounted for the occurrence, I could not see any constitutional defect in the impugned order which is well reasoned and legal one.

In this view of the matter, this petition having no merits in hereby dismissed.

MH/M-156/L **Petition dismissed.**

2015 P L C (C.S.) 1010

[Lahore High Court]

Before Ali Baqar Najafi, J

KHAN BAHADAR

versus

GOVERNMENT OF THE PUNJAB through Secretary Education School and another

W.P.No.3697 of 2012, decided on 3rd February, 2015.

Civil Service---

----Pension---Commutation of pension, payment of---Petitioner was appointed Stenographer in defunct Bureau of Education and after its abolition he was absorbed in Primary Education Cell of Curriculum Research and Development Center with condition that his earlier services would be counted towards his pension---Later, said department was also merged into Punjab Text-Book Board and services of petitioner were transferred with pay protection and pensionary benefits---Government also extended benefit of past service to all services excluding service in Punjab Text Book Board---Calculation of pension and commutation was to be worked out on last pay certificate issued to petitioner which included 50% medical allowance---Punjab Text-Book Board, on his retirement approved provident fund but his medical allowance on full pension was withdrawn---Validity---Merger of Curriculum Research and Development Center with Punjab Text Book Board was made subject to pay protection and unaffected pensionary benefits, therefore, burden of pension payment would be transferred to Punjab Text Book Board and employee would be entitled to medical allowance for all his Government service in various departments---High Court accepted constitutional petition in circumstances.

Muhammad Kamran Hassan Bhutta for Petitioner.

Syed Basharat Ahmed for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this constitutional petition,

petitioner seeks direction to respondents to pay regular monthly pension to the petitioner including the medical allowance @ 50% on full monthly pension calculated on entire service rendered by the petitioner under the Government of Punjab.

2. Brief facts giving rise to the filing of this petition are that petitioner was appointed as Stenographer in defunct Bureau of Education, Government of the Punjab on 4-11-1975 and since it was abolished on 1-7-1991, 37 officers/officials were placed at the disposal of surplus pool of S&GAD for their posting vide notification dated 11-7-1991. Meanwhile, petitioner was absorbed in Primary Education Cell of Curriculum Research and Development Center (CRDC) as urdu Stenographer in BS-12 on 15-2-1992 with the stipulation that his services rendered in parent department would be counted towards his pension. However, he was placed at the bottom of the seniority list. The said Curriculum Research and Development Center (CRDC) was merged into Punjab Text Book Board along with all assets moveable, immoveable and liabilities, therefore, the office of the petitioner stood transferred vide notification dated 16-10-2002 with the consent of the petitioner as he was provided pay protection and pensionary benefits. After serving Government of the Punjab for 34 years, petitioner stood retired on 18-11-2009 at the age of superannuation in BS-15.

3. Upon his retirement the calculation of pension and commutation of the petitioner was to be worked out on last pay certificate issued to the petitioner which included 50% medical allowance on full pay amounting to Rs.8,070. The Government of Punjab extended the benefit of his past service w.e.f. 4-11-1975 to 15-10-2002 vide letter dated 22-7-2010.

4. On 1-2-2010 Punjab Text Book Board, Lahore made partial notification which approved the G.P. Fund in favour of the petitioner for the period he worked with the Punjab Text Book Board, Lahore. However, his medical allowance @ 50% on full pension was withdrawn. Accordingly, a request was forwarded to Finance Department by the Punjab Text Book Board to transfer 25% share of the medical allowance in favour of the petitioner who observed that since the medical allowance to the petitioner has been introduced w.e.f. 1-7-2010, therefore, there is no right to ask for its proportionate share for the period he served for the Government of the Punjab i.e. 4-11-1975 to

15-10-2002. The petitioner moved Chairman Punjab Text Book Board on 2-7-2011 to claim 50% medical allowance on full pension on the whole service rendered by him but in vain, hence this writ petition.

5. In the report and parawise comments submitted by respondent No.2, it is contended that under West Pakistan Text Book Board Ordinance, 1962 as amended in 1971, Text Book Board was created as a statutory body with its fundamental functions to make arrangement for production and publication of Textbooks for Class 1 to Class 12. It is an autonomous body of the Government of Punjab under Rules of Business, 1974. It was admitted that pension contribution is to be borne by government for the period the employee (petitioner) of CRDC had worked under the administrative control of the government and the services rendered by the officers/officials will be counted towards the service in the parent department. Therefore, service of 7 years 1 month and 2 days which he rendered with the Board is calculated on the basis of which pensionary benefits comes to Rs.4310 per month which includes 50% of the medical allowance paid to the other employees initially appointed by the Board. On receiving Rs.13,62,443 from the parent department the petitioner's pension was revised including 50% of the medical allowance from 4-11-1975 to 15-10-2002 and from 16-10-2002 to 11-8-2009 which is Rs.12,713 per month w.e.f. 19-11-2009. According to the respondents since the pension received from the parent department i.e. CRDC was without medical allowance, therefore, it was requested on 7-2-2011 to transfer 25% of the medical allowance, the rate prescribed in the parent department in favour of the petitioner. However, Finance Department on 3-3-2011 refused the same on the ground that since the medical allowance for pensioner was introduced w.e.f. 1-7-2010 and the petitioner having absorbed on 16-10-2002, therefore, he has no right to ask for proportionate share for the period he served with the Government Department.

6. In nutshell, claim of the petitioner for monthly pension for the whole service with the government @ Rs.50% per month on full monthly pension cannot be allowed as the medical allowance can be granted for a period the petitioner served with the Board w.e.f. 16-10-2002 to 18-11-2009, therefore, prays for dismissal of the petition.

7. Arguments heard. Record perused.

8. On 28-1-2015, learned counsel for the respondents sought time to place on record letter dated 15-7-2010 whereby the medical allowance was not made applicable to petitioner having relieved on 15-10-2002, perusal of which reveals that Chief Minister Punjab sanctioned the medical allowance w.e.f. 1-7-2010 to all pensioner of Government of the Punjab @ 25 % of the pension drawn to the pensioner who retired in BPS 1 to 15 and @ 20% at the rate of pension drawn to the pensioners who retired or will retire between BPS-16 to 22. The medical allowance was also allowed with increase of pension, family pension and minimum pension notified under the said circular letters. This letter does not exclude the government servant having retired in the year 2002 but makes it mandatory to sanction medical allowance to all the civil pensioners @ 20% of the pension drawn to the petitioner as he retired in BS-15.

9. Besides, in the notification dated 16-10-2002 issued by Government of the Punjab, Education Department under Rule 3(2) of the Punjab Government Rules of Business, 1974 merger of Curriculum Research and Development Center (CRDC) to Punjab Textbook Board (PTB) was made subject to condition that those who opted for absorption in the PTB would be provided pay protection and their pensionary benefits would remain unaffected and that the burden of pension payment would be transferred to the PTB which shall incur this expenditure out of its own resources.

10. Additionally, the medical allowance includes the pensionary benefits, therefore, the petitioner is also entitled to 50% medical allowance on whole service of period of 34 years which he rendered to the Govt. of the Punjab. Needless to observe that a retiring government servant is entitled to pensionary benefits on the basis of service which he rendered in any of the government department which of course is his hard earned right and cannot be taken away on an illegal pretext.

11. In this view of the matter, this writ petition is allowed and the respondents are directed to release the 50% medical allowance on the length of full service as calculated for the purposes of pension in accordance with law.

MM/K-7/L **Petition allowed.**

2015 P L C (C.S.) 1026

[Lahore High Court]

Before Ali Baqar Najafi, J

AMAN ULLAH and 50 others

versus

FEDERATION OF PAKISTAN through Secretary and 4 others

Writ Petitions Nos.20304 and 28577 of 2013, decided on 13th January, 2015.

(a) Constitution of Pakistan---

----Arts. 199 & 25-A---Constitutional petition---Civil service---Termination of service---Scope---Feeder Teacher---Services of Feeder Teachers were dispensed with without backing of decision of competent authority---Case of petitioners was of discriminatory nature---Winding up of National Commission for Human Development---Constitutionality---Feeder Teachers were contributing to provide fundamental right of compulsory education to all children of the age of 5 to 16 years and had responsibility to safeguard the constitutional guarantees to the minor citizens of the country---Dispensing with straightaway jobs of petitioners was injustice to them---Impugned orders were set aside and petitioners were ordered to be restored to their jobs of Feeder Teachers---Constitutional petition was accepted, in circumstances.

Fiaqat Hussain and others v. Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and others PLD 2012 SC 224 rel.

(b) Constitution of Pakistan---

----Art. 25-A---Right to education---Scope---Compulsory education to all children of the age of 5 to 16 years to be ensured.

Malik Ejaz Hussain Gorcha for Petitioners.

Abid Hussain Chatta for Respondents Nos.3 and 4.

Muhammad Tahir Yaqub, Standing Counsel.

ORDER

ALI BAQAR NAJAFI, J.--- This order shall dispose of instant writ petition as well as Writ Petition No. 28577 of 2013 titled Muhammad Iqbal etc. v. Federation of Pakistan etc. as common questions of law and facts are involved in both these petitions.

2. Petitioners, through these writ petitions pray for setting aside their termination orders dated 17-6-2013 and 9-7-2013 and release of their salaries according to the enhancement made by the Cabinet Sub-Committee.

3. Brief facts giving rise to the filing of these petitions are that petitioners were appointed as Feeder Teachers by the Government of Pakistan/respondent No.1 through respondent No.5/Executive District Education Officer, Bhakkar in the 2007 on the fix salary of Rs.1500 per month and their job was to improve basic education in their respective areas under the terms of National Education Fund Ordinance, 2008. The main objective of National Commission for Human Development (NCHD) was to raise literacy rate up to 80% in Pakistan. Meanwhile, on 22-2-2013 the Cabinet Sub-Committee in its meeting decided to regularize the services but instead their services were terminated by respondent No.5 on 17-6-2013 and 9-7-2013, hence these writ petitions.

4. In the report and parawise comments submitted by respondents, objections regarding maintainability of these petitions in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 was raised. Besides, respondent No.3 opposed the petitions on the ground that under the scheme called "Universalisation of Primary Education" the commission would help a community and respective District Administration by capacity building of volunteers (Feeder Teachers) from the community to impart basic education

and offering them honorarium for their part-time voluntary services for a limited period of time. Soon after the arrangements of basic education have been made by the Provincial or District Government in a community or when the terms of NCHD operations in the community expired, the commission withdraws its support and deputes it to another area requiring such support. As keeping in view the financial constraint, it is not possible for the commission to continue funding local communities and to take over their inherent functions for a sustained period of time. In-short, it was an ad-hoc arrangement and was not based upon determining the academic qualifications, age and other requirement for selecting and appointing any person in the services of Pakistan.

5. It was also admitted in para 10 that in the decision taken in sub-committee dated 27-2-2013 the Feeder Teachers were not the employees of said respondent No.3. Consequently, the honorarium of the Feeder Teachers was enhanced from Rs.2500 per month to Rs.8000 per month from 1-7-2013.

6. Arguments heard. Record perused.

7. In the meeting of Cabinet Sub-Committee dated 27-2-2013 following decisions were made:---

The Cabinet Sub-Committee discussed the case of regularization of the employees of NCHD and decided as under:---

(i) The services of 3008 contract/SAA/daily wagers employees of National Commission of Human Development (NCHD) be regularized by transfer of their posts to non-development budget in consultation with the Planning and Development Division. (The NCHD shall provide list of their employees on the prescribed pro forma for regularization of their services to the Establishment Division for placing before the Cabinet Sub-Committee after transfer of the posts from development to non-development budget).

(ii) The Honorarium being provided to 10937 Feeder Teachers should be enhanced from Rs.2,500 to Rs.8,000 per month to be incorporated in the revised PC-1 with an annual cost of Rs.813 million.

(iii) The NCHD should be brought on permanent footing from the next financial year 2013-14.

The Cabinet Sub-Committee also discussed the case of regularization of employees of BECS and decided as under:---

(a) The services of 504 contract administrative employees of BECS be regularized by transfer of their posts to non-development budget in consultation with the Planning and Development Division subject to fulfillment of recruitment criterion. (The BECS shall provide list of their employees on the prescribed pro forma for regularization of their services to the Establishment Division for placing before the Cabinet Sub-Committee after transfer of the posts from development to non-development budget).

(b) The honorarium being provided to 13213 BECS teachers be enhanced from Rs.3,000 and Rs.4,500 to Rs.8,000 per month to be incorporated in the revised PC-1.

(c) The project of Basic Education Community Schools be brought on permanent footing from the next financial year 2013-14.

8. As a Consequence, the honorarium of 10937 Feeder Teachers was enhanced from Rs.2500 per month to Rs.8000 per month vide sub-clause (ii) of clause 4 of the decision whereas clause (iii) i.e. bringing the NCHD on permanent footing on next financial year 2013-14 as well as regularization of the daily wagers and contract employees was made. However, without any decision on the discontinuation of Feeder Teachers, their services were dispensed with on 30-6-2013 whereas the enhancement was made effective from 1-7-2013. This means that those who were terminated from service after

1-7-2013 i.e. 9-7-2013 were required to receive the said enhancement from Rs.2500 per month to Rs.8000 per month. As far as those who were declined the enhancement from the said date is apparently without support of decision taken in the said meeting of Sub-Committee of the Cabinet.

9. This is otherwise violation of Article 25 of the Constitution being discriminatory in nature. If the decision on the termination of the employment of Feeder Teachers had been made, the case of the petitioners would have been otherwise. This is the reason why Islamabad High Court in Writ Petition No.1184 of 2012 vide order dated 7-3-2013 and High Court of Sindh, Circuit Court, Hyderabad in C.Ps. Nos. D-102 and D-2049 of 2011 vide order dated 31-1-2013 gave some relief to the petitioners.

10. I am afraid that termination order of Feeder Teachers has neither been backed by the decision of Cabinet Committee dated 27-2-2013 nor by the judgment rendered by the Hon'ble Supreme Court of Pakistan in Fiaqat Hussain and others v. Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and others (PLD 2012 SC 224) wherein it was held that Establishment and Operation of Basic Education Community Schools must not be closed and that the winding up of the Commission is unconstitutional and, therefore, is allowed to continue to perform positive duty of providing basic human rights to the citizens of Pakistan.

11. Even Article 25-A of the Constitution ensures compulsory education to all children of the age of 5 to 16 years and it is worth mentioning that the Feeder Teachers are contributing a lot to provide this fundamental right to the children. In this perspective, the petitioners have special responsibility to directly safeguard the constitutional guarantees to the minor citizens of this Country. It is not encouraging for them to sustain a financial loss either by not providing the enhancement in their honorarium but also by straightaway dispensing with their jobs, which is perpetuated more injustice to them.

12. For the above stated reason, I allow this petition set aside the impugned orders dated 17-6-2013 and 9-7-2013 and restore the petitioners to their jots of Feeder Teachers and direct the respondents to pay enhanced honorarium from Rs.2500 per month to Rs.8000 per month.

AG/A-17/L **Petition allowed.**

2015 P Cr. L J 73

[Lahore]

Before Ali Baqar Najafi and Ch. Mushtaq Ahmad, JJ

MUHAMMAD SAEED AHMED---Petitioner

Versus

FEDERATION OF PAKISTAN through Ministry of Law, Islamabad Secretariat and 5 others---Respondents

Writ Petition No. 2494 of 2014, decided on 11th November, 2014.

Criminal Procedure Code (V of 1898)---

----Ss. 4(l), 173, 200 & 204---Constitution of Pakistan, Art. 199---Constitutional petition---Investigation---Object, scope and purpose---Finding of guilt---Jurisdiction of Investigating Officer---Scope---Petitioner was complainant of F.I.R. in question and was not satisfied with investigation report submitted by Investigating Officer for the reason that some nominated accused were made prosecution witnesses---Plea raised by accused was that Trial Court had started recording evidence and such application of complainant was dismissed by Trial Court---Validity---Investigating agency had no authority to give finding of guilt or innocence regarding accused persons under the provisions of Criminal Procedure Code, 1898, or Police Act, 1861, Police Order, 2002 and Rules framed thereunder---Prerogative of the Court to give finding after recording of evidence and statement of accused regarding guilt or innocence and such finding of police tantamount to debar powers of Court of law---Purpose of investigating agency was to collect evidence and not to hold any person guilty or otherwise---By converting some accused as witnesses, investigating officer did not transgress his authority---Evidence collected during investigation would be properly weighed and scrutinized by Trial Court--- Complainant, if not satisfied with investigation, could file private complaint---Petition was dismissed in circumstances.

Anwar Shamim and another v. The State 2010 SCMR 1791 rel.

Syed Muhammad Zahoor for Petitioner.

Raja Tanvir Akhtar, Standing Counsel.

Qazi Misbah ul Hassan for Respondent No.6.

Sheikh Alamdar Hussain Shah, Inspector, FIA with record.

ORDER

Petitioner Muhammad Saeed Ahmed through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, prays for setting aside the report under section 173, Cr.P.C. prepared by respondent No.5 on 11-6-2014 with a direction to respondent No.1 to re-investigate the matter by some competent and qualified officer.

2. Brief facts giving rise to this writ petition are that F.I.R. No.3 dated 8-4-2013 registered under sections 201, 218, 419, 420, 468, 471, 409, 109, P.P.C. read with section 5(2) of the Prevention of Corruption Act, 1947 at Police Station FIA/SIU, Islamabad against the nominated accused but only Bilal Ahmed, Abaira Khan, Saeed Ullah and Mumtaz Hussain accused persons were interrogated whereafter two reports under section 173, Cr.P.C. were submitted in court i.e. on 20-9-2013 and 9-1-2014. However, the investigation to the extent of respondent No.6 and other accused who were duly nominated in the said F.I.R. was not conducted. Later on those accused were summoned by the I.O. on 13-2-2014 through notice issued under section 160, Cr.P.C. which was challenged by respondent No.6 through Writ Petition No.4231-Q of 2014 in which its operation was suspended by this Court vide order dated 18-2-2014. Subsequently, respondent No.5/I.O. conducted the investigation of the case and ultimately he submitted report under section 173, Cr.P.C. Feeling aggrieved by that act of the I.O. petitioner-accused has approached this Court through the writ petition in hand.

3. In compliance with order of this Court report and para-wise comments have been submitted on behalf of respondents Nos.2 to 5 in which it was

categorically stated that only those persons were found accused against whom there was sufficient incriminating evidence had come on record whereas the remaining were exonerated being innocent.

4. Learned counsel for respondent No.6 emphasized that under section 204, Cr.P.C. petitioner has been nominated and evidence has been recorded and that earlier application was filed before the learned trial court which was dismissed on 2-11-2014. Lastly submits that a direction has been issued by the Hon'ble Supreme Court of Pakistan for concluding, the trial within a period of four months vide order dated 16-7-2014 in Criminal Petition No.306 of 2014 titled Syed Mumtaz Hasnain v. The State and another.

5. Arguments heard and record perused.

6. We subscribe to the arguments advanced by learned counsel for the petitioner that the Investigating Agency has no authority whatsoever to give finding of guilt or innocence regarding accused persons under the provisions of Criminal Procedure Code, 1898, Police Act, Police Order, 2002 and the Rules framed there under as it is prerogative of the court to give finding after recording evidence and statement of the accused regarding guilt or innocence and such finding of the police is tentamounts to debar powers of the court of law. This is so exactly reiterated in Anwar Shamim and another v. The State (2010 SCMR 1791).

7. The purpose of investigating Agency is to collect evidence and not to hold any person guilty or otherwise. In the instant case by converting some accused as witnesses the I.O. in our opinion, has not transgressed his authority. In our consented view evidence collected during investigating will be properly weighed and scrutinized by the trial court. However, the petitioner, if so advised, may file a private complaint. Since the Hon'ble Supreme Court has already issued direction to the learned trial Court to conclude the trial expeditiously, therefore, we would not like to hamper the proceedings of the trial and would therefore, like to dismiss this petition without commenting

upon the evidence so far collected by the Investigating Agency.

8. For the above said reasons this petition having no merits, is hereby dismissed.

MH/M-386/L **Petition dismissed.**

2015 P Cr. L J 547

[Lahore]

Before Ali Baqar Najafi, J

WAQAS AHMAD---Petitioner

versus

The STATE and another---Respondents

Criminal Revision No.308 of 2013, decided on 11th February, 2014.

(a) Criminal Procedure Code (V of 1898)---

----Ss. 4(c) & 221---Penal Code (XLV of 1860), Ss.302(b), 392, 396 & 411---Qatl-i-amd, robbery, dishonestly receiving stolen property---Deletion of offence---Application for deletion of offence under S.302, P.P.C. was filed by petitioner/accused on the ground that on the report of post-mortem as well as report of Forensic Histopathology, charge under S.302, P.P.C. was not made out---Said application having been dismissed, accused had filed revision petition---Deceased lady aged 80 years, was found dead, and the witnesses had seen the petitioner/accused leaving the house, who had subsequently been identified in the test identification parade---Court, in circumstances was required to frame charge under S.302(b), P.P.C.---If the charge under S. 392, P.P.C. was framed by the Area Magistrate; and subsequently the offence under S.302(b) or 396, P.P.C. was found to have been committed, case would be sent to the Court of Session---By merely framing a charge under S.302(b), P.P.C., would not make it mandatory for the court to convict the petitioner only under S.302(b), P.P.C. regardless of the insufficiency of the requisite evidence---Material in the form of FIR registered under S.302, P.P.C. the medical opinion, identification parade etc. were enough to frame a charge under S.302(b), P.P.C.

Jiand v. The State 1991 SCMR 1268; Muhammad Wakeel v. The State 2006 SCMR 1731; Muhammad Sultan v. The State 2008 YLR 1453 and Amir

Bakhsh v. The State PLD 1960 Lah. 15 ref.

M. Younus Habib v. The State PLD 2006 SC 153; Mst. Sughran Bibi v. Sajjad Hussain and 4 others 2009 MLD 13 and S.A.K. Rehmani v. The State 2005 SCMR 364 rel.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 4(c) & 221---Charge---Purpose of framing charge---'Charge', would include any head of charge, the purpose of which was to tell accused as precisely and concisely as possible about the matter, which the prosecution intended to prove against him in order to afford him an opportunity to defend himself---Framing of charge would call for application of judicious mind on the facts placed on the record by the prosecution on the basis of investigation---Mandatory under S.221, Cr.P.C. upon the court to state specific name of the offence, and its description so as to fulfil the legal requirements to constitute the offence charged in the particular case.

Asif Iqbal and others v. The State and others 2012 PCr.LJ 91 ref.

Malik Saeed Hassan for Petitioner.

Mian Imran Rahim, D.P.-G. for the State.

Aslam Nisar for the Complainant/Respondent No.2.

ORDER

ALI BAQAR NAJAFI, J.---Through this revision petition, the order dated 11-3-2013 passed by the learned Additional Sessions Judge, Chiniot is challenged by the petitioner seeks a direction to the trial court to delete the offence under section 302, P.P.C. and send the case to the Area Magistrate for trial.

2. Briefly, FIR No.418/2011 under sections 392/411/302, P.P.C. was got registered against unknown persons by respondent No.2, in which the petitioner along with three co-accused persons were arrested who were later

granted post-arrest bail. A report under section 173, Cr.P.C. was submitted before the Court of Session. Meanwhile, dissatisfied with the investigation, respondent No.2 filed a private complaint by adding one accused under section 109, P.P.C. in which charge has been framed on 30-7-2012. The petitioner filed an application for deletion of an offence under section 302, P.P.C. before the learned Additional Sessions Judge on the ground that on the report of post-mortem as well as report of Forensic Histopathology, charge under section 302, P.P.C. was not made out. However, the said application was dismissed. Hence, this revision petition.

3. The main argument of Malik Saeed Hassan, Senior Advocate Supreme Court of Pakistan, is that there was no mark of ligature from the neck of deceased and no sign of violence on any part of the body of the deceased-lady who was aged about 80 years and no poison was detected in the report of Chemical Examiner, therefore, section 302, P.P.C., was not made out. He further submits that two charges under sections 302 and 392, P.P.C. are not similar in nature and that the Judge is not to act as a post office but has to apply his judicious mind while framing the charge on the basis of the FIR and the material so far collected. Further adds that there was no motive behind the murder of a poor lady and she had died due to shock of dacoity and the same cannot be termed as homicide.

4. Mr. Aslam Nisar, Advocate for the complainant/respondent No.2 while opposing this revision petition submits that if after framing of charge under section 302, P.P.C. trial Court reaches on a conclusion that the same is not made out, then the petitioner may be acquitted but if the charge under section 392, P.P.C. is framed by the Area Magistrate while finding that the charge under section 302, P.P.C. is made out, then the case will have to be sent to the court of learned Additional Sessions Judge. Places reliance upon the cases of (Jiand v. The State) 1991 SCMR 1268 (Muhammad Wakeel v. The State) 2006 SCMR 1731, (Muhammad Sultan v. The State) 2008 YLR 1453 and (Amir

Bakhsh v. The State) PLD 1960 (W.P) Lahore 15.

5. I have heard the learned counsel for the parties and perused the available record.

6. The precise question which is cropped up before this Court is as to whether, in view of the final opinion submitted in the postmortem report declaring cause of death to be a Ischemic Heart Disease but not ruling out the possibility of psychic stress due to robbery, charge under section 302, P.P.C. can be framed.

7. To answer this, the word "charge" under section 4(c) of the Code of Criminal Procedure "includes any head of charge" the purpose of which is to tell the accused precisely and concisely as possible about the matter which the prosecution intends to prove against him in order to afford him an opportunity to defend himself as observed by a Division Bench of this Court in a case reported as 2012 PCr.LJ 91 [Lahore] (Asif Iqbal etc. v. The State etc).

8. The framing of charge thus calls for application of judicious mind on the facts placed on the record by the prosecution on the basis of investigation. Here it will not be out of place to reproduce section 265-D, Cr.P.C.

"265-D. When charge is to be framed.---If after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused."

9. As far as the contents of the charge are concerned, section 221, Cr.P.C. makes it mandatory upon the court to state specific name of the offence and its description so as to fulfil the legal requirements to constitute the offence charged in the particular case.

10. If the above stated test is applied in the case in hand where the deceased namely, Ummat-ul-Majeed, aged 80 years was found dead and the witnesses

namely, Shabbir Ahmed Butt and Mubashar Ahmad, had statedly seen the petitioner leaving the house who have subsequently been identified in the test identification parade dated 3-12-2011 requires the court to frame charge under section 302(b), P.P.C. This is being said also because if the charge under section 392, P.P.C. is framed by the Area Magistrate and subsequently the offence under section 302(b) or 396, P.P.C. is found to have committed, the case will be sent to the Court of Session. However, it is observed that by merely framing a charge under section 302(b), P.P.C. will not make it mandatory for the court to convict the petitioner only under section 302(b), P.P.C. regardless of the insufficiency of the requisite evidence as observed by the apex Court in PLD 2006 SC 153 (M. Younus Habib v. The State).

"----- If the High Court was of the view that the evidence was deficient to prove the charge or it was not a case of conviction, the Court could proceed a mandated in law.----"

It will not be out of context to reproduce 2009 MLD 13 (Mst. Sughran Bibi v. Sajjad Hussain and 4 others) in which it was held as under:--

"------The framing of charge does not per se means that the accused is held guilty. He is only made aware about the case of the prosecution borne out on the record referred to section 265 D, Cr.P.C. upon which he has to be prosecuted. The object of the charge being just to enable the accused to know about the precise accusations against him and nothing more. This does not preclude him from advancing his version neither a charge has ever constrained a Court nor does it place any clog on the Court to arrive at a judgment of conviction or otherwise. It, therefore, just enables the Court to start with the trial and after recording evidence decide whether a charge has been established beyond reasonable doubt against the accused. Consequently, it is the ultimate conclusions reached by the Court which are to determine as to what offence an accused had committed or whether at all a case has been made out against him. ------"

It will be equally important to refer to S.A.K. Rehmani v. The State (2005 SCMR 364) wherein it was held that:--

"----the main object of framing of charge is to ensure that the accused had sufficient notice of the nature of accusation with which he was charged and secondly to make the Court concerned conscious regarding the real points in issue so that evidence could be confined to such points---"

11. For what has been stated above, in my humble opinion the material in the form of FIR (registered under section 302, P.P.C.) the medical opinion, identification parade etc are enough to frame a charge under section 302-b, P.P.C.

12. In this view of the matter, this petition having no merits is hereby dismissed.

HBT/W-3/L **Petition dismissed.**

P L D 2015 Lahore 231

Before Ali Baqar Najafi, J

MUNAS PARVEEN---Petitioner

Versus

ADDITIONAL SESSIONS JUDGE/EX-OFFICIO JUSTICE OF PEACE, SHORKOT and others---Respondents

Writ Petition No.26632 of 2013, decided on 4th December, 2013.

(a) Criminal Procedure Code (V of 1898)---

---Ss. 22-A & 22-B---Penal Code (XLV of 1860), S. 494---Constitution of Pakistan, Art. 199---Constitutional petition---Marrying again during life time of husband---Divorce through telephone or SMS---Scope---Ex-husband of petitioner had allegedly divorced her orally through telephone and SMS---Petitioner contracted second marriage---Respondent/uncle of ex-husband moved application before Justice of Peace alleging that petitioner had married another man during subsistence of her marriage---Justice of Peace issued directions to Station House officer to register case against petitioner---Validity---Ex-husband of petitioner was neither impleaded as a party nor came forward before the court for his impleadment---Dowry articles of petitioner were returned to her on the order of the Family Court, which showed acceptance of separation---Procedure for pronouncing divorce had been prescribed by the legislature in its best wisdom in order to ensure the sanctity of institution of marriage recognizing divorce as a last option---Question was as to what would become of society if divorces were allowed to take effect merely on basis of SMS---Pre-requisite for pronouncing a divorce was peace of mind, and the purpose and objective of such act should be made known to the witnesses present at the spot by the husband---Wording of the SMS sent by the ex-husband, in the present case, did not categorically mention the said

pre-requisites---Constitutional petition was disposed of with the observation that factum of divorce would be properly addressed and adjudicated upon by the Family Court in the suit for restoration of conjugal rights filed by ex-husband.

(b) Qanun-e-Shahadat (10 of 1984)---

----Arts. 73 & 164---Preliminary evidence---Scope---Information conveyed over modern devices such as SMS--- Such information was means of communication validly accepted all over the world, however the witness in whose presence such information was conveyed or received was always important to prove a fact through its verification---Although under Art.73 of the Qanun-e-Shahadat, 1984 modern devices were legally acceptable yet in order to prove a fact, the required procedure had to be followed.

Arif Hashwani and 3 others v. Sadruddin Hashwani and 3 others PLD 2007 Kar. 448 and The State through Muhammad Arif Qureshi v. Kh. Abdul Rasheed Grista and another 2011 SLR 508 ref.

(c) Islamic law---

----Pronouncement of divorce---Prerequisites---Peace of mind, purpose and objective of act of divorce had to be made known to the witnesses present at the spot by the husband which were the prerequisites of pronouncing of divorce.

Ghulam Rasool Sial for Petitioner.

Khadim Hussain Qaiser, Addl. A.G. with Farooq ASI.

Syed Tanvir Bukhari and M. Maqbool Ahmad Naz for Respondent No.4.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional petition the petitioner seeks setting aside of the order dated 10-10-2013 passed by respondent No.1/Ex-Officio Justice of Peace, whereby petition under sections 22-A and 22-B Cr.P.C. filed by respondent No.4 was accepted by issuing direction to respondent No.3/SHO to register the case according to the application Mark-A.

2. The necessary facts for the disposal of this petition are that the petitioner was married with one Nasir Abbas son of Allah Ditta on 10-4-2012 and ultimately according to the petitioner she was divorced on 23-8-2012 in the presence of witnesses, namely, Haq Nawaz son of Ghulam Muhammad, Rizwan Haider son of Muhammad Nawaz and Muhammad Ramzan son of Ahmad telephonically and through SMS. Later on, the petitioner filed a suit for maintenance allowance and dowry articles on 15-9-2012 and also filed another suit for recovery of dower regarding plot measuring 5 Marlas on 26-9-2013 before the Judge Family Court, Shorkot. Likewise, the said Nasir Abbas filed a suit for restitution of conjugal rights on 13-11-2012. The said suits were consolidated and during the proceedings the dowry articles were recovered as per the list prepared by the local commission. Meanwhile, respondent No.4 maternal uncle (Maamun) of the said Nasir Abbas, filed a petition under sections 22-A and 22-B Cr.P.C. on 19-9-2013 stating that during the continuance of first Nikah second Nikah was contracted on 15-7-2013 with one Ali Nawaz son of Mehr Noor (respondent No.5), therefore, F.I.R. be registered. On 10-10-2013, the impugned order was passed. Hence, this petition.

3. Learned counsel for the petitioner submits that Nasir Abbas has already divorced the petitioner on 23-8-2012 telephonically and through SMS in the presence of the witnesses and whereafter the petitioner got contracted

marriage on 15-7-2013, therefore, has not committed any offence; that even otherwise the question whether such divorce has taken its effect may be decided in the suit for restitution of conjugal rights which is pending between the parties; that the Talaq was also well effected as the dowry articles have been returned to the petitioner by the said Nasir Abbas during the pendency of the suit for recovery of dowry articles; that respondent No.4 has nothing to do with the allegations as ex-husband of the petitioner is not willing to file such petition for the registration of F.I.R. that oral Talaq became effective in the presence of witnesses and on the basis of the Islamic Law for which no written procedure is mandatory. Places reliance upon the judgment of a Division Bench of Balochistan High Court, Quetta in Fida Hussain v. Mst.Najma and another (PLD 2000 Quetta 46); that copy of an electronic generated information can be used as a preliminary evidence provided in Article 73 of the Qanun-e-Shahadat Order, 1984. Places reliance on Arif Hashwani and 3 others v. Sadruddin Hashwani and 3 others (PLD 2007 Karachi 448); that the modern devices or techniques as computer are admissible in evidence and places reliance on The State through Muhammad Arif Qureshi v. Kh.Abdul Rasheed Grista and another (2011 SLR 508); that failure to send notice to Chairman, Union Council will not affect divorce which becomes effective in Shariah after its pronouncement and passing the period of Iddat. Places reliance upon Mst.Batool Bibi v. Muhammad Hayat and another (1995 CLC 724). Also places on record Fatwa by Dar-ul-Aftaa Jamia Sultania and Dar-ul-Aftaa Ahl-e-Sunnat.

4. Conversely, learned counsel for respondent No.4 submits that the divorce has not become effective as the witnesses in whose presence the divorce was pronounced are not available; that even the cell phone through which the SMS has been disowned by respondent No.4 does not belong to her husband; that the procedure prescribed under the law of the land is aimed at strengthening and dissolving the relationship of husband and wife, therefore, sending of three

notices to the Union Council coupled with the Iddat period has been mandated; that if such practice is legalize, it will ruin the institution of marriage.

5. I have heard the learned counsel for the parties and perused the available record.

6. In the instant case, respondent No.4 intends to lodge F.I.R. against the petitioner for marrying another person during the alleged subsistence of her marriage with his nephew, namely, Nasir Abbas, the latter was neither impleaded as party nor has come before this Court for his impleadment. The dowry articles of the petitioner have statedly been returned to the petitioner showing the acceptance of separation. The suit for restitution of conjugal rights filed by Nasir Abbas is pending against the petitioner where the questions raised in this petition can be answered.

7. The introduction of the modern devices including the SMS through computer is one of the means of communication which are validly accepted all over the world. However, the witnesses in whose presence the information is conveyed or received are always important to prove a fact through its verification. The procedure for pronouncing divorce has been prescribed by the legislature in the best of the wisdom in order to ensure the sanctity of the institution of marriage recognizing divorce as a last option. I am afraid, what is going to be the level of the society if divorces are allowed to take effect merely on the basis of SMS particularly in a patriarchal society like ours. Undoubtedly, the pre-requisites for pronouncing a divorce is the peace of mind, the purpose and objective of such act should be made known to him by the witnesses present at the spot. However, on perusal of the message in the instant case the wording of the SMS does not categorically mention the above said pre-requisites. Although under Article 73 of the Qanun-e-Shahadat Order, 1984 the modern devices are legally acceptable yet in order to prove a fact, the required procedure has to be followed.

8. For what has been stated above, I dispose of this petition with the observation that the factum of divorce will be properly addressed and adjudicated upon by the Family Court at Shorkot in the suit for restitution of conjugal rights. This writ petition, therefore, stands disposed of.

MWA/M-7/L **Order accordingly**.

P L D 2015 Lahore 500

Before Ali Baqar Najafi, J

Mst. SHAMIM AKHTAR---Petitioner

versus

ADDITIONAL DISTRICT JUDGE, GUJRANWALA and another---Respondents

Writ Petition No.25711 of 2013, decided on 23rd February, 2015.

West Pakistan Family Courts Act (XXXV of 1964)---

----S. 5---Constitution of Pakistan, Art.199---Constitutional petition---DNA test---Principle---Petitioner was wedded with respondent and out of the wedlock one son was born---Respondent entered into second marriage and relations between parties became strained---Petitioner filed suit for recovery of maintenance allowance for herself and for her son---Respondent resisted maintenance on the plea that son did not belong to him and asked for DNA test---Lower Appellate Court directed the parties to appear in hospital for DNA test---Validity---DNA profile test is always conducted with the consent of the person concerned and is normally applied in criminal cases---No such consent was available either by mother or by child himself---Where consent was not given, DNA test could not be conducted, though adverse inference might be drawn by Court of such refusal---High Court declared that there was no need for DNA test and set aside order passed by Lower Appellate Court---Petition was allowed in circumstances.

Aman Ullah v. The State PLD 2009 SC 542; Khizar Hayat v. Additional District Judge, Kabirwala and 2 others PLD 2010 Lah. 422; and Salman Akram Raja and another v. Government of Punjab through Chief Secretary and others 2013 SCMR 203 rel.

Mr. Shahid Nawaz Langrial for the Petitioner.

Syed Imran Haider for respondent No.2.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner, through this Constitutional Petition, seeks setting aside impugned order dated 24-9-2013 passed by the learned Additional District Judge, Gujranwala, whereby he directed the parties to approach the Medical Superintendent, DHQ, Hospital, Gujranwala to get managed DNA profile test within 7 days in order to determine the controversy arrived at between the parties.

2. Brief facts giving rise to the filing of this writ petition are that on 9-6-1988 the petitioner contracted marriage with respondent No.2 in lieu of dower amount Rs.25,000/-beside fixation of Rs.1,00,000/- for the construction of house for her within a period of two years which was not paid. The parents of the petitioner at the time of marriage graced her with dowry Articles valuing Rs.8,44,270/-. From their wedlock Muhammad Umair Tayyab was born on 2-3-1995 whose birth entry was recorded initially in the Union Council, Kot Inayat Khan Tehsil Wazirabad District Gujranwala and thereafter the entry was also recorded in the record of NADRA in the shape of "B" form. Respondent No.2 took the petitioner along with minor child who was at that time aged about 3 months to Saudi Arabia where he was employed and the Saudi Government also approved permanent family visa to respondent No.2. However, in the year 1996 respondent No.2 contracted second marriage after getting permission from the petitioner by making a commitment to fulfill his responsibilities to his wife as well as the minor child. But after the second marriage his attitude towards the petitioner was changed as he started ignoring her as well as minor and thereafter he sent forged divorce deed to the petitioner which was not made effective till filing of the petition. The petitioner filed a suit for maintenance allowance and dowry articles in which he submitted his written statement shockingly denying the parentage of the minor child. During the pendency of the suit, he moved an application for the DNA test of the minor which was dismissed by the learned Judge Family Court vide order dated 3-4-2008. The suit was partially decreed to the extent of maintenance allowance for the minor child at the rate of Rs.1500/- per month with 10%

annual increase vide judgment and decree dated 26-6-2008. The appeal was filed by the petitioner before the appellate court which was withdrawn vide order dated 1-9-2008. The petitioner consequently filed W.P. No.16838 of 2008 for setting aside the order dated 1-9-2008 passed by the learned Additional District Judge, which writ petition was allowed and case was remitted back to the appellate court with direction to proceed in the matter on merit after hearing the parties. The District Judge on 23-4-2009 while deciding appeals of both the parties after framing of two issues directed the parties to appear before the learned trial court on 13-5-2009. The petitioner aggrieved of order dated 23-4-2009 filed W.P. No.16904 of 2009 before this Court which was again remanded to the appellate court on 7-12-2011 by setting aside findings on issue No.3 and maintaining on other issues. The petitioner once again filed W.P. No.14960 of 2012 which was accepted and the case was remanded back vide order dated 18-10-2012 by setting aside judgment dated 17-3-2012 passed by the learned Additional District Judge on all issues, after compliance of direction contained in order dated 7-12-2011 passed in W.P. No.16904 of 2009. Meanwhile, on 24-9-2013 vide the impugned order the learned Additional District Judge directed the parties to approach Medical Superintendent, DHQ, Hospital, Gujranwala for DNA profile test of the minor, hence this writ petition.

3. Learned counsel for the petitioner contends that order dated 3-4-2008 refusing to conduct DNA profile test of the child passed by the learned Judge Family Court has not been challenged; therefore, it has attained finality and cannot be upset. The minor namely, Muhammad Umair Tayyab now is aged about more than 18 years and therefore, his DNA test may create complications. He further argues that in view of the stand taken by respondent No.2 on various occasions i.e. entry in the record of union council, entry in the record of NADRA and entry in Saudi Government he can not resile and deny his parentage. Places reliance on Aman ullah v. The state [PLD 2009 Supreme Court 542] and Khizar Hayat v. Additional District Judge, Kabirwala and 2 others [PLD 2010 Lah. 422] and prays for setting aside of the impugned order

passed by the appellate court.

4. Conversely, learned counsel for respondent No.2 submits that Muhammad Umair Tayyab was adopted son and to ascertain this truth DNA test is necessary. He claims that in the event of its affirmation he would not challenge his parentage.

5. Arguments heard. Record perused.

6. The main emphasis of the learned counsel for the petitioner is that since there is ample evidence on record to prove parentage of Muhammad Umair Tayyab, therefore, no DNA profile test is required whereas learned counsel for respondent No.2's view is that Muhammad Umair Tayyab is adopted son.

7. In this respect it is expedient to refer to section 128 of Qanun-e-Shahadat Order, 1984 which provides that a child born during the continuance of a valid marriage and within two years after its dissolution shall be conclusive proof that he is legitimate child of that man, unless the man denies the same. Section 128 of Qanun-e-Shahadat Order, 1984 is re produced as under:-

"Birth during marriage conclusive proof of legitimacy.--(1) The fact that any person was born during the continuance of a valid marriage between his mother and any man and not earlier than the expiration of six lunar months from the date of the marriage, or within two years after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless:

(a) the husband had refused, or refuses, to own the child; or

(b) the child was born after the expiration of six lunar months from the date on which the woman had accepted that the period of iddat had comes to an end.

(2) Nothing contained in clause (1) shall apply to a non-Muslim if it is inconsistent with his faith."

Noticeably, after taking stand at so many places like NADRA, Saudi

Embassy, etc, some strong and irrefutable evidence is required.

8. DNA profile test is always conducted with the consent of the person concerned and is normally applied in criminal cases as held by the Honble Supreme Court in Salman Akram Raja and another v. Government of Punjab through Chief Secretary and others [2013 SCMR 203]. In Khizar Hayat v. Additional District Judge, Kabirwala and 2 others [PLD 2010 Lahore 422], relevant extract is re-produced below:-

"Now I would like to dilate upon the question of conducting the DNA Test. DNA Test is not to be directed as a matter of routine in cases where the father refuses to acknowledge his child born during lawful wedlock, for the reason that otherwise the presumption under Articles 117, 118, 119 and 128 of Qanun-e-Shahadat Order, 1984 that a child born during the continuance of a valid marriage and within two years after its dissolution, provided the mother remaining unmarried during this period, shall be conclusive proof that he is legitimate child of that man, unless the man denies the same.

It has been observed by this Court that it has become a common practice that when the relationship between the parties become strained after marriage and even extreme hatred is developed between the spouses and the same is dissolved, the parties do not spare each other and even go to this extent that often father refuses to acknowledge the child for the reason either to evade maintenance or to deprive the child from inheritance of in case of his second marriage at the insistence of his second wife or pressure of the elders of the family and this trend is not only damaging but also very dangerous for the society and in such a situation request for DNA test is not proper."

In another case supra [PLD 2010 Lahore 422] it was held by this Court that, point of time at which father denied paternity was a relevant factor, so considerable delay in raising the plea of illegality was not permissible. The

judgment cited by the learned counsel for respondent No.2 titled as Mst. Shamshad Bibi v. Bushra Bibi and 3 others [PLD 2009 Islamabad 11] relates to the DNA test which was ordered to be conducted with the consent of the parties. However, no such consent is available either by mother or by child himself. Where the consent is not given this test cannot be conducted, though adverse inference may be drawn by the court of such a refusal.

9. In this view of the matter, this writ petition is allowed the impugned order is set aside and it is declared that in this case there is no need for a DNA test. However, the parties may prove their case before the learned Judge Family Court, where the case is still pending.

MH/S-40/L **Petition allowed.**

PLJ 2015 Cr.C. (Lahore) 420

Present: **ALI BAQAR NAJAFI, J.**

UMER DIN--Petitioner

versus

STATE, etc.--Respondents

Crl. Misc. No. 17119-B of 2014, decided on 10.3.2015.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497--Pakistan Penal Code, (LXV of 1860), Ss. 302, 148, 149, & 109--Bail, dismissal of--Statutory ground--Honor Killing--Post arrest bail on statutory ground is being sought by father of victim in an honor killing case--Petitioner stood nominated in FIR as one who was present at time of occurrence--In other words, as per record, offence was committed in his present in his house and he being head of family at least remains inactive to avoid offence--Before his eyes, at least her daughter was being mercilessly killed but he acts with desperation--Any father expected to be more careful and protective for daughter instead of son--Under Section 497, Cr.P.C. a statutory right is earned by an accused person for his post arrest bail after passage of period of 2 years continuously behind bars in an offence punishable with death or imprisonment for life only if in opinion of Court he is not a hardened desperate and dangerous criminal or is an accused of an act of terrorism punishable with death or imprisonment for life--Question as to whether petitioner is alleged to have, committed offence with an act and manner showing him to be hardened desperate and dangerous criminal needs to be discussed--In instant case, girl was murdered just because she contracted marriage of her own choice, and no body shed even single tear or scream for helpless victim who bled to death in front of eyes of her own mother, brother and above all father--Court do not find any reason to grant post arrest bail on

statutory ground as a result of which this petition having no merits was, dismissed. [Pp. 422 & 424] A, B, E & F

"Hardened", Desperate, or "Dangerous"--

----Words--Honor Killing--Three words "hardened" "desperate" or "dangerous" have different connotation of petitioner falling in any three of categories will exclude from entitlement of grant of post arrest bail--Question arises as to whether killing ones own daughter or to facilitate killing ones own daughter is an act of desperate hardened or dangerous criminal? Obviously, it shows a state of mind under which a person becomes so ruthless and callous that he takes a life of another human being regardless of his blood relationship--Act of killing ones own daughter is an act of desperation on account of fact that a daughter being physically infirm cannot offer required resistance to save her life--Besides, father being most powerful pillar supporting protective shelter if crumbled to ground annihilating their own daughters, God forbids, what will happen with our society--As this practice has been specifically prohibited at very inception of Islam which was prevalent as pre-Islamic custom but unfortunately, it is painfully shocking that even today in era of modern technology they are being followed under pretext of Ghairat or honor killing--In this era of woman emancipation and realization of women right Courts are required to have a broader interpretation of words "desperate hardened and dangerous" while dealing with case of honor killing, with reference to Section 497(2), Cr.P.C. on statutory grounds.

[Pp. 422 & 423] C

PLD 2001 SC 96, *ref.*

Honor Killing

----Bail--It is important to observe that in our society granting post-arrest bails in "honor killing" i.e. a violence against women will substantially increase

such incidents, which in most of cases is for gain property, demanding hand of a woman of choice, settling old scores and personal vendetta--Certainly, if such like act as committed by petitioner is approved, it would lead to an anarchie situation in society and lynching of women would become order of day. [P. 423] D

Malik Saeed Hassan, Advocate for Petitioner.

Dr. M. Anwer Khan Gondal, APG for State.

Mr. Zahoor-ul-Haq, Advocate for Complainant.

Date of hearing: 10.3.2015.

JUDGMENT

Umar Din, petitioner, seeks post arrest bail in case FIR No. 277 dated 08.10.2012 under Sections 302, 148, 149, 109, PPC registered at Police Station Chuchak, District Okara, on the statutory ground as has passed more than 2 years since his arrest and the trial is not nearing its conclusion.

2. Learned counsel for the petitioner contends that petitioner is an ordinary criminal and has not migrated into an exceptional criminal and, therefore, he be treated as such. For all intents and purposes he is not a desperate and hardened criminal, therefore, he be granted post arrest bail on statutory ground.

3. Conversely, learned counsel for the complainant submits that since the date of his arrest the charge has been framed on 02.01.2013 and the trial is in progress whereas the delay was occasioned on account of acts on behalf of petitioner. Places reliance upon *Khadim Hussain and another versus The State* (PLD 2012 Balochistan 179), *Amir Bux Machi versus The State* (2013 YLR 2190) and *Ghulam Mustafa versus The State and another* (2014 YLR 1560) and prays for dismissal.

4. Arguments heard. Record perused.

5. The post arrest bail on statutory ground is being sought by the father of the victim in an honor killing case. Petitioner stood nominated in the FIR as the one who was present at the time of occurrence. In other words, as per the record, the offence was committed in his present in his house and he being the head of the family at least remains inactive to avoid the offence. Before his eyes, at least her daughter was being mercilessly killed but he acts with desperation. Any father expected to be more careful and protective for the daughter instead of son.

6. Under Section 497, Cr.P.C. a statutory right is earned by an accused person for his post arrest bail after the passage of period of 2 years continuously behind the bars in an offence punishable with death or imprisonment for life only if in the opinion of the Court he is not a hardened desperate and dangerous criminal or is an accused of an act of terrorism punishable with death or imprisonment for life. The question as to whether petitioner is alleged to have, committed the offence with an act and manner showing him to be hardened desperate and dangerous criminal needs to be discussed.

7. The three words “hardened” '“desperate” or “dangerous” have different connotation of the petitioner falling in any three of categories will exclude from the entitlement of the grant of post arrest bail. The question arises as to whether killing ones own daughter or to facilitate killing ones own daughter is an act of desperate hardened or dangerous criminal? Obviously, it shows a state of mind under which a person becomes so ruthless and callous that he takes a life of another human being regardless of his blood relationship. In my humble understanding, the act of killing ones own daughter is an act of desperation on account of the fact that a daughter being physically infirm cannot offer required resistance to save her life. Besides, the father being the most powerful pillar supporting the protective shelter if crumbled to the

ground annihilating their own daughters, God forbids, what will happen with our society. As this practice has been specifically prohibited at the very inception of Islam which was prevalent as pre-Islamic custom but unfortunately, it is painfully shocking that even today in the era of modern technology they are being followed under the pretext of Ghairat or honor killing. In this era of woman emancipation and realization of women right Courts are required to have a broader interpretation of the words "desperate hardened and dangerous" while dealing with the case of honor killing, with reference to Section 497(2), Cr.P.C. on statutory grounds. Here it would be expedient to reproduce the beautiful extracts of the observations made by the Hon'ble Supreme Court of Pakistan in case titled as *Muhammad Akram Khan versus The State* (PLD 2001 SC 96).

> "….. Legally and morally speaking, no body has any right nor can anybody be allowed to take law in his own hand to take the life of anybody in the name of "Ghairat". Neither the law of the land or religion permits so-called honour killing which amounts to murder (*Qatl-i-Amd*) simplicitor. Such iniquitous and vile act is violative of fundamental right as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan which provides that no person would be deprived of life or liberty except in accordance with law and any custom or usage in that respect is void under Article 8(1) of the Constitution."

8. It is important to observe that in our society granting post-arrest bails in "honor killing" i.e. a violence against women will substantially increase such incidents, which in most of the cases is for gain the property, demanding the hand of a woman of choice, settling the old scores and personal vendetta. Certainly, if such like act as committed by the petitioner is approved,

it would lead to an anarchie situation in the society and lynching of women would become order of the day.

9. In the instant case, the girl was murdered just because she contracted marriage of her own choice, and no body shed even single tear or scream for helpless victim who bled to death in front of eyes of her own mother, brother and above all the father.

10. In this view of the matter, I do not find any reason to grant the post arrest bail on statutory ground as a result of which this petition having no merits is, therefore, dismissed.

(A.S.) **Bail dismissed.**

PLJ 2015 Cr.C. (Lahore) 501

Present: ALI BAQAR NAJAFI, J.

MUHAMMAD ABBAS--Petitioner

versus

STATE and another--Respondents

Crl. Misc. No. 3305-M of 2014, decided on 12.3.2015.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 426(2-B)--Pakistan Penal Code, (XLV of 1860), S. 302(b)--Suspension of sentence--Death of deceased was result of five injuries ascribed to different accused persons including petitioner which he sustained on his leg etc.--Cause of death was excess bleeding due to injuries sustained by deceased--However, on presence of eye-witnesses and time of occurrence being in dark night Hon'ble Supreme Court had already granted leave to appeal--Co-convict of petitioner has spent substantive sentence of 13 years 2 months and 12 days and if earned remission were calculated he has spent a total period of 21 years 18 days in jail--Since petitioner was in judicial lock up ever since arrest of his co-convict whose sentence has been suspended by High Court, therefore this petition was also allowed and sentence awarded to petitioner was suspended.

[P. 503] A & B

Prince Rehan Iftikhar, Advocate for Petitioner.

Dr. Muhammad Anwar Khan Gondal, A.P.G for State.

Date of hearing: 12.3.2015.

ORDER

Through this petition under Section 426(2b), Cr.P.C. the petitioner Muhammad Abbas, seeks suspension of sentence passed by the learned Additional Sessions Judge, Depalpur District Okara *vide* judgment dated 31.05.2003, whereby he convicted the petitioner alongwith others under Section 302(b), PPC and sentenced him to imprisonment for life and also held

liable to pay compensation of Rs. 1,00,000/- to the legal heirs of the deceased person as prescribed under Section 544-A, Cr.P.C. and in default thereof to further undergo S.I for six months. Benefit of Section 382-B, Cr.P.C. was also extended to him.

2. *Vide* judgment dated 14.01.2005 passed by this Court in Crl. Appeal Nos. 1860 & 15-J of 2004, the said conviction and sentence was upheld, whereafter the Hon'ble Supreme Court in Jail Petition No. 216 of 2013 granted leave to appeal on 08.10.2013, whereafter this petition was filed.

3. The main argument of the learned counsel for the petitioner is that the testimony of Abdul Ghaffar (PW-10) was discarded by the trial Court whereas Manzoor Ahmad (PW-11) just mentions the fact of presence of the name of the petitioner in the FIR. The deceased sustained five injuries which have been also ascribed to the co-accused persons and death was a cumulative effect of the said injuries. He submits that in Crl. Appeal No. 216-J/13 against the conviction passed *vide* judgment dated 14.01.2005 by this Court the Hon'ble Supreme Court of Pakistan granted leave for re-appraisal of entire evidence. He also adds that there remains only one year of sentence if remissions are calculated; therefore, he is entitled to be released on bail while suspending his sentence. Lastly submits that sentence of co-convict of the petitioner namely, Mian Khan having same role has been suspended by this Court and admitted to bail.

4. Conversely, the learned Additional Prosecutor General has vehemently opposed the petition and prays for dismissal of this petition.

5. Heard. Record perused.

6. The death of Nazir Ahmad was the result of five injuries ascribed to different accused persons including the petitioner which he sustained on his leg etc. The cause of death was the excess bleeding due to the injuries sustained by the deceased. However, on the presence of eye-witnesses and time of occurrence being in dark night the Hon'ble Supreme Court had already

granted leave to appeal on 08.10.2013, Para No. 3 of which is re-produced below for facility of reference:

> "Three eye-witnesses were produced at the trial, Muhammad Sharif (PW-9) Abdul Ghaffar (PW-10) and Manzoor Ahmad (PW-11), the latter are two brothers of the deceased. Abdul Ghaffar was not named in the F.I.R., whereas the complainant Manzoor Ahmad in cross-examination stated that while sitting in the mosque he was informed that a person had been murdered. That when he reached the scene, the accused had already fled. He further disclosed that the scene of occurrence was an acre away from the mosque. In view of the statement of the complainant and that the occurrence had been taken place after dark in a secluded area, in my opinion the evidence would require re-appraisal to examine whether the conviction and sentence of the petitioner can be sustained. The question of limitation can be considered later since the petitioners have questioned their conviction and sentence.
>
> NASIR-UL-MULK
> JUDGE

Opinion of second Judge

(Hon'ble Mr.Justice Mushir Alam)

On facts and circumstances, I agree with the opinion of Hon'ble Senior Judge, Mr.Justice Nasir-ul-Mulk that, evidence needs to be re-appraisal to meet the ends of justice.

(MUSHIR ALAM)
JUDGE

7. Jail report dated 08.03.2014 received on 10.03.2014 reveals that the co-convict of petitioner namely, Mian Khan has spent substantive sentence of 13 years 2 months and 12 days and if earned remission are calculated he has spent a total period of 21 years 18 daysin jail. Since the petitioner is in the judicial

lock up ever since the arrest of his co-convict on 15.12.2000 whose sentence has been suspended by this Court, therefore this petition is also allowed and the sentence awarded to the petitioner is suspended and he is admitted to bail subject to his furnishing bail bond in the sum of Rs. 2,00,000/- with two sureties each in the like amount to the satisfaction of the Deputy Registrar (Judicial) of this Court.

(A.S.) **Petition allowed.**

P L J 2015 Cr.C (Lah) 594

Before Ali Baqar Najafi and S.M. Kazim Raza Shamsi, JJ

Brig. (R) IMTIAZ AHMAD---Appellant

Versus

The STATE---Respondent

Criminal Appeal No.25-E of 2002, heard on 19th June, 2016.

(a) National Accountability Ordinance (XVIII of 1999)---

----Ss. 9(a)(v) & 14---Assets beyond known sources of income---Appreciation of evidence---Shifting of onus, principle of--- Applicability---Benami properties---Onus to prove---Accused was convicted by Trial Court and sentenced to imprisonment for 8 years with fine---Validity---Accused could not be held responsible for having owned the properties purchased through unknown sources of income or illegitimate means---Prosecution had not urged that accused was required to explain the specific source beyond known sources of income---Accused was made to explain his legal source of income and in response to the same, he not only produced his own defence witnesses but had also explained his entire assets and had reasonably explained the source to purchase those assets which were in the form of profits in various business which he had declared in his wealth statements and income tax returns as well as in declaration form prescribed for a government servant---Merely by showing details of assets and without disclosing source of income, prosecution was not successful in shifting onus to accused to prove his innocence---High Court set aside conviction and sentence passed by Trial Court and acquitted accused of the charge and also released properties in question---Appeal was allowed in circumstances.

Ghumman's case PLD 2004 Lah. 155; Ghani-ur-Rehman v. National Accountability Bureau and others PLD 2011 SC 1144 and Khan Asfandyar Wali v. Federation of Pakistan through Cabinet Division, Islamabad and others PLD 2011 SC 607 ref.

(b) National Accountability Ordinance (XVIII of 1999)---

----Ss. 9(a)(v) & 17(b)---Proceedings of Trial Court---Nature of proceedings-

--Inquisitorial/Adversarial---Assets beyond known sources of income---Scope---Trial Court on its own cannot adopt inquisitorial proceedings to calculate known sources of income in the judgment---Trial Court is simply required to weigh prosecution evidence and to see as to whether it has successfully proved the case against accused persons beyond reasonable doubt.

Ghani-ur-Rehman v. National Accountability Bureau and others PLD 2011 SC 1144 rel.

(c) National Accountability Ordinance (XVIII of 1999)---

----Ss. 9(a)(v) & 26---Approver, statement of---Properties in question were confiscated by the Trial Court on the statements of co-accused who were made approvers---Validity---Properties in question could not be confiscated on the statements of approvers who were not permitted to become approver by the order of the Chairman National Accountability Bureau, furthermore, vendors of the properties in questions were not produced before Trial Court.

(d) National Accountability Ordinance (XVIII of 1999)---

----Ss. 5(d)(a) & 14(a)(v)---Benami transaction---Proof---Possession of the property, the written transaction, and the circumstances under which benami transactions are made are required to be disclosed before Trial Court by prosecution.

Mst. Zahida Sattar and others v. Federation of Pakistan and others PLD 2002 SC 408 rel.

(e) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)(v)---Assets beyond known sources of income---Income Tax and Wealth Tax declarations---Source of income---Proof---Declaration for the purpose of income tax and wealth tax cannot be used to ascertain source of income to determine assets beyond means of accused by National Accountability Bureau.

(f) National Accountability Ordinance (XVIII of 1999)---

----S. 27---Power to seek assistance--- Intelligence Bureau, information from--- Scope--- National Accountability Bureau, under S.27 of National

Accountability Ordinance, 1999 can always probe and receive information from any government department including Intelligence Bureau to dig out the reality of funds which may have been utilized to purchase properties.

Kh. Haris Ahmad and Syed Maqsooma Zahra Bokhari for Appellant.

Muhammad Shoaib Khan, ADPG and Muhammad Shahid Mehmood, Senior Special Prosecutor for NAB.

Date of hearing: 19th June, 2015.

JUDGMENT

ALI BAQAR NAJAFI, J.---This judgment shall dispose of the instant appeal as well as Criminal Appeal No.24-E of 2002 titled "Adnan A. Khawaja v. The State", Criminal Appeal No.26-E of 2002 titled "Mrs. Nasreen Imtiaz v. The State" and Writ Petition No.20208 of 2010 titled "Brig. (R) Imtiaz Ahmad v. The State", as all the above matters arise out of Reference No.21 of 2000 and involve common questions of law and facts.

2. The appellants, Brig. (R) Imtiaz Ahmad, Adnan A. Khawaja and Mst. Nasreen Imtiaz, challenge judgment dated 31.07.2001 passed by the Accountability Court No.III Rawalpindi passed in Reference No.21 of 2000 whereby the learned Judge Accountability Court convicted and sentenced the appellants, Brig. (R) Imtiaz Ahmad and Adnan A. Khawaja, under section 10 of the National Accountability Bureau Ordinance, 1999 (hereinafter referred to as the Ordinance, 1999) to suffer 8 years' R.I. besides fine of Rs.70,00,000/- with the direction to pay the same within one month failing which the same shall be recovered in accordance with law. The appellant Adnan A. Khawaja was further sentenced to 2 years' R.I. with fine of Rs.2,00,000/- which shall be paid within one month failing which the same shall be recovered from him in accordance with law. The convicts were also extended the benefit of section 382-B, Cr.P.C. They were also disqualified for a period of 10 years, reckoning from the date of their release after serving sentence, from seeking or from being elected, chosen, appointed or nominated as member or representative of any public office, any statutory or local authority of Government of Pakistan and shall also be debarred to apply for or be granted or allowed any financial facilities in the form of any loan or advances or other financial accommodation

by any bank or financial institution owned or controlled by the government for a period of 10 years. The properties acquired by the appellants in their own name or in the name of their dependents or co-accused were also directed to be forfeited in favour of the Federal Government.

3. As per the allegations made in the reference filed by Chairman NAB, Brig. (R) Imtiaz Ahmad, accused served as Director Intelligence Bureau, Government of Pakistan from 31.03.1990 to 23.04.1993 and he had accumulated vast properties both movable and immovable which appear to be disproportionate to his known sources of income, therefore, it was deemed necessary to conduct investigation to ascertain the facts. The accused was arrested and remanded to custody of NAB and the case was accordingly investigated during which the allegations were found correct. It was also found that co-accused Nadeem Imtiaz, Abdul Ghaffar Chohan, Shamshad Ali and Adnan A. Khawaja aided and abetted principal accused Brig. (R) Imtiaz Ahmad in the acquisition of properties and assets for which they offered no explanation. Properties and assets are as under:--

I. Foreign Exchange Bearer Certificates which were encashed by Brig. (R) Imtiaz Ahmad, accused or his dependent family members of the value of Rs.20.08 million.

II. Unit No.9, 1-S, Plaza F-10 Markaz, Islamabad purchased in the name of Abdul Ghaffar Chohan, accused.

III. Unit No.8, 1-S, Plaza F-10 Markaz, Islamabad purchased in the name of Shamshad Ali, accused. Nadeem Imtiaz, accused actively participated in the purchase of this property and in fraudulently concealing that it was purchased for Brig. (R) Imtiaz Ahmad and with the money provided by him.

IV. Unit No.2, 1-S, Plaza F-10 Markaz, Islamabad purchased in the name of Adnan A. Khawaja, accused. Nadeem Imtiaz, actively participated in the purchase of this property and in fraudulently concealing that it was purchased for Brig. (R) Imtiaz Ahmad, accused and money was provided by him (Brig. (R) Imtiaz Ahmad).

V. House No.286, Sector F-10/4, Islamabad measuring 1022

Sq.yards purchased in the name of Shamshad Ali, accused and subsequently transferred in the name of Abdul Ghaffar Chohan, accused.

VI. House No.7, Street No.20, Sector F-7/2, Islamabad measuring 2000 Sq.yards purchased in his own name.

VII. House No.6, 9th Avenue, Sector F-8/2, Islamabad measuring 2000 Sq.yards purchased in the name of Nasreen Imtiaz, wife of accused. She is house wife and she has no source of income other than that of her husband.

During investigation it also revealed that appellant/Brig. (R) Imtiaz Ahmad, accused and his dependent family members had bank accounts in the Union Bank, Islamabad where heavy transactions had been made without any means. The appellant Brig. (R) Imtiaz Ahmad, remained in service of Pakistan and his source of income was the pay he derived from his service, but he acquired Foreign Bearer Certificates and assets in the shape of US Dollars and other properties through corruption and corrupt practices, therefore, he cannot claim immunity from criminal liability under Rule 4 of the Foreign Exchange Bearer Certificates Rules, 1985 or under Section 5 of the Protection of Economic Reforms Act, 1992.

The Chairman mentioned that earlier FIR No.10/94 dated 21.10.1994 was registered against accused (Brig. (R) Imtiaz Ahmad) with FIA/SIU, Islamabad regarding acquisition of assets and properties and later on challan was submitted against accused. He further mentioned that Brig. (R) Imtiaz Ahmad filed Writ Petition No.1379/97 before honourable High Court, for quashment of said case and the same was accepted vide judgment dated 04.07.1997. The Chairman also mentioned that properties which were subject of said case are not subject of this reference.

PW-34, Khalid Rasool is the Investigating Officer in this case. He stated that investigation of this case was entrusted to him by Chairman NAB. During investigation it came into his notice that case FIR No.10/94 was also registered against Brig. (R) Imtiaz Ahmad, accused. He collected documents pertaining to the said case. The allegation against accused in the said case was

that he acquired assets valuing Rs.2,65,00,000/- and FIR of said case is EXPS whereas report under section 173, Cr.P.C. is EXPT. Riaz Ahmed, PW produced before him notification regarding appointment of Brig. (R) Imtiaz Ahmad, accused on contract as OSD. He also obtained documents, Exh.PW34/1-5 regarding appointment and termination of accused as Director Intelligence Bureau by Government of Pakistan. Haq Nawaz, PW produced before him wealth tax documents of Brig. (R) Imtiaz Ahmad, accused and his family members and the same were taken into possession vide memo Exh.PH. Nasir Ali Qureshi produced before him income tax return etc. He also collected evidence of PEBC encashment regarding Brig (R) Imtiaz Ahmad, accused and his family members which were valuing Rs.20.08 million. During investigation it was found that aforesaid amount (Rs.20.08 million in the shape of FEBC encashment) was not detected during investigation of case FIR No.10/94 and the same was not included in its challan. The accused declared the said assets in their wealth tax statement during year 1996-97 (revised statement for the year 1990 to 1993). It was found that Brig. (R) Imtiaz Ahmad, accused purchased Unit No.9, 1-S Plaza in F-10 Markaz of Islamabad from Mst. Sharam Bibi for Rs.28,00,000/- in 1993 in the name of Abdul Ghaffar Chohan as Benamidar. Later on Brig. (R) Imtiaz Ahmad obtained General Power of Attorney to sell from Abdul Ghaffar Chohan in 1998-99. He recorded statement of son of Mst. Sharam Bibi in this connection. Brig. (R) Imtiaz Ahmad, accused also purchased Unit No.8, 1-S Plaza in F-10 Markaz, Islamabad from Irshad Ahmed in the name of Shamshad Ahmed for Rs.29,32,500/- in 1993 as Benamidar. Nadeem Imtiaz son of Brig. (R) Imtiaz Ahmad, accused paid Rs.16,00,000/- through pay order EXPW12/2. Later on Brig. (R) Imtiaz Ahmad sold the said property to Qasim Hafeez for Rs.70,00,000/- in year 2000. He paid Rs.5,00,000/- to Mehmood Ahmad for getting possession of the said property. Brig. (R) Imtiaz Ahmad, accused purchased House No.286 in F-10/4 Sector, Islamabad in the name of Abdul Ghaffar Chohan as Benamidar. He purchased this property in 1993 for Rs.63,00,000/- from Chaudhary Asif. During investigation it was found that Brig. (R) Imtiaz Ahmad, accused obtained General Power of Attorney with power to sell from Abdul Ghaffar Chohan. At the time of said sale Nadeem Imtiaz paid Rs.20,00,000/- to the vendor through pay order. The signatures of

Nadeem Imtiaz were sent to handwriting expert for comparison and the result was positive. Brig. (R) Imtiaz Ahmad, accused purchased Unit No.2 1-S Plaza in F-10 Markaz, Islamabad in the name of Adnan A. Khawaja, accused as Benamidar in 1996. He purchased this unit from Muhammad Zakria for Rs.30,48,000/- and Nadeem Imtiaz, accused paid sale price in court on behalf of vendee. He obtained certified copies of civil suit (Muhammad Zakria v. Nadeem Imtiaz) and order passed by civil court and Appellate Court. He also collected evidence from CDA about the aforesaid property. The Power of Attorney executed by Muhammad Zakria in favour of Adnan A. Khawaja, accused was obtained from CDA. During investigation employee of CDA, Syed Sabir Hussain Shah stated that original Power of Attorney was received by Mukhtar Hussain, servant of Brig. (R) Imtiaz Ahmad, accused after signatures. Nadeem Imtiaz, accused invested Rs.39,00,000/- in Ali Plaza, Blue Area, Islamabad for purchasing three shops in the name of Faisal Sakhi Butt as Benamidar. He purchased said property from Dr. Shaukat Ali and Faisal Sakhi Butt obtained Power of Attorney from the owner. Nadeem Imtiaz, accused had paid amount through pay order etc. Dr. Shaukat Ali has died. Brig. (R) Imtiaz Ahmad, accused purchased house No.6 in F-8/2, Sector 9th Avenue, Islamabad in 1999 in the name of his wife, Mst. Nadeem Imtiaz for Rs.80,00,000/-. He purchased house No.7 in F-7/2 Sector, Islamabad in 1999 for Rs.1,40,00,000/-. Brig. (R) Imtiaz Ahmad, accused and his family members had eight Pak currency accounts and eight Foreign currency accounts in Union Bank, Islamabad and there were huge amounts transactions in the said accounts. The accused used to avail loan facility and he gave collateral security in the shape of US dollars etc. Brig. (R) Imtiaz Ahmad, accused and his family members obtained loan from Deutsche Bank, Islamabad against FEBC worth Rs.90,00,000/-. They had also dolloars and against the same they received loan. The accused purchased aforesaid FEBC during 1990-91. The Investigating Officer obtained record from CDA of remaining properties also. He also obtained certified copies of Power of Attorney from the office of Registrar, Islamabad. During investigation it was found that accused had acquired/owned assets disproportionate to their known sources of income. Brig. (R) Imtiaz Ahmad, accused also acquired property/assets in the name of his co-accused and family members as

"Benamidar". The Investigating Officer recorded statements of PWs, completed investigation and challaned the accused.

The reference was filed against Brig. (R) Imtiaz Ahmad, accused and others. However, Nadeem Imtiaz, accused did not appear in court and he was declared proclaimed offender. Abdul Ghaffar Chohan and Shamshad Ali, accused became approver. Only Brig. (R) Imtiaz Ahmad and Adnan A. Khawaja, accused faced trial.

Brig. (R) Imtiaz Ahmad and Adnan A. Khawaja, accused appeared in this court and charge under section 10 of the Ordinance, 1999 was framed against them to which they pleaded not guilty and claimed trial whereupon prosecution evidence was recorded. The prosecution examined 34 witnesses in all to prove its case.

4. On 10.03.2001 the charge against both the appellants was framed as under:--

> "That during period from 1990 to 1999 you Brig.(R) Imtiaz Ahmad and Adnan A. Khawja accused acquired properties and assets at different places (detail whereof has been given in the reference) which are disproportionate to your known source of income; that you Brig.(R) Imtiaz Ahmad also acquired properties and assets (detail whereof has been given in the reference) in your name and in the name of your dependents and Adnan A. Khawaja and that you also acquired properties (detail whereof has been given in the reference) in the names of Abdul Ghaffar Chohan and Shamshad Ali Chohan (approvers) as benamidars and thereby committed offence of corruption and corrupt practices as defined in section 9 which is punishable under section 10 of NAB Ordinance, 1999 within the cognizance of this court."

5. In order to prove its case the prosecution has produced as many as 34 witnesses besides documentary evidence whereas the defence has produced as many as 8 witnesses besides documentary evidence and the court summoned and examined four witnesses i.e. CW1 to CW7 as court witnesses. In a statement under section 342, Cr.P.C. the appellant/Brig.(R) Imtiaz Ahmad has denied the allegations and in response to question No.11 regarding the deposit

of US Dollars 1,27,277 by his family members in Deutche Bank for obtaining loan of Rs.8.6 million, he replied as follows:--

> "It is incorrect. Initially account was opened with US Dollars 8,000/-. We used to receive loan from Pak rupee account for purchasing dollars from the market and deposited the same in said bank in foreign currency account. So there was amount of US Dollars 1,27,287. At that time our loan in Pak rupee account increased. We had only US Dollars 8,000 and profit earned from foreign currency account and the remaining amount was for he adjustment of Pak rupee loan account."

In response to question No.16 as to why this case against him and why the PWs deposed against him, he replied as follows:--

> "I had been serving in Army before my appointment as Direction I.B. During Army service too I had been performing duty relating to intelligence services in most sensitive areas. I also worked as Director ISI from 1977 to 1990. In 1994 I was involved in I.B.S.S. fund case, but I was acquitted. The case FIR No.10/1994 regarding assets was registered against me but the same was quashed by Hon'ble High Court. In this reference assets mentioned in case FIR No.10/1994 have been again included. My assets were declared lawful by Hon'ble High Court in Writ Petition No.1379/97. Different governments involved me in different cases due to their political designs. I was arrested by the present government on 17.10.1999 and kept me in illegal detention till 26.05.2000 and showed me arrest on 26.05.2000. However they took me to different hospitals for treatment but never produced before any Magistrate during said period. The approvers have made statements under pressure and promise because present government and NAB authorities have promised to exonerate them from Income Tax, wealth tax, banking circle and foreign exchange inquiries which are pending against them. The PWs have made statements against me under the pressure of NAB. The approvers made statements to save their contracts and business relating to government. They deposed against me to get crores of rupees from government."

6. Adnan A. Khawaja/appellant also denied the allegations against him and to a question why this case against him and why the PWs have made statements against him, he replied as under:--

> "The I.O. pressurized me to become a false witness against Brig (R) Imtiaz Ahmad co-accused but I refused. On my refusal he falsely implicated me in this case due to his mala fide. None of the PWs made statement against me."

After the evidence, the appellant was convicted as mentioned in para 2.

7. M/s. Kh. Haris Ahmad and Syeda Maqsooma Zahra Bokhari, Advocates for the appellants contend firstly, that the charge was defectively framed and necessary legal requirements of section 222 Cr.P.C. were not followed inasmuch as it was joint in nature, comprising of two paras and the precise allegations were not mentioned but only a reference was given to the report under section 173, Cr.P.C. Secondly, contend that the investigation was not properly conducted, the appellants were not given fair chance to incorporate his defence, therefore, violation of provision of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 was made. Places reliance upon Ghumman's case PLD 2004 Lahore 155. Thirdly, contends that in the statement under section 342 Cr.P.C., the evidence collected against him was not put to him in the form of questions, therefore, the prosecution had not been able to fulfill the legal requirements. Fourthly, contends that the requirement of section 26 of the Ordinance, 1999 for declaring a person as an approver was not fulfilled as there does not exist any order by the Chairman declaring PW1 and PW2 as approvers. Fifthly, contend that FIR No.10/1994 registered under section 5/2/47 at P.S FIA SIU, Islamabad, related to the period 1980-1993 on the same allegations of misappropriation of Rs.15/20 million, whereafter the investigation was conducted and the said FIR was quashed in W.P.No.1379 of 1997 titled "Brig. (R) Imtiaz Ahmad v. Federation of Pakistan" on 04.07.1997, therefore, the same allegations cannot be re-agitated, otherwise it would be violation of Article 13 read with section 403, Cr.P.C. Sixthly, contend that no illegal source of income was investigated by the NAB authorities, therefore, the question as to whether the assets built by the appellants were beyond the valid source of income cannot be proved.

Places reliance upon Ghani-Ur-Rehman v. National Accountability Bureau and others (PLD 2011 SC 1144). Seventhly, contend that the prosecution has not levelled any allegation of misappropriation of the government funds, therefore, in a case for assets beyond means, the allegations must have nexus with the allegation of misappropriation of government funds. Eighthly, contend that the income tax returns and wealth tax statement are for the purposes of tax collection and not for the purposes of making out a NAB case for which the NAB authorities have the exclusive jurisdiction to investigate and dig out any illegal source of income which they have failed to do. Ninthly, contend that there was no law stopping the NAB authorities to probe the source of income of the appellant who happened to be the former head of the Intelligence Bureau, Government of Pakistan, as under section 27 of the Ordinance, 1999 all the said agencies are bound to provide information to the NAB authorities. Finally contend that the involvement of appellant/Brig. (R) Imtiaz Ahmad has not been proved and Adnan A. Khawaja/appellant had successfully proved his valid source of income, therefore, pray for setting aside of the conviction order.

8. Conversely, M/s. Muhammad Shoaib Khan, Addl. Deputy Prosecutor General and Muhammad Shahid Mehmood, Senior Special Prosecutor for NAB contend that it is a fit case on the basis of the written admission by appellant made on the basis of documentary proof of declaration by appellant filed in his parent Department and in the income tax and wealth tax returns in which the appellants have categorically stated about their valid sources. Refer to para 33 of the judgment on the strength of their arguments. Also give reference to Exh.PW21/1-173 and letter Exh.PM as well as Exh.PW21/174-184 along with letter Exh.PN. Further contend that PW1 and PW2 were legally declared as approvers and finally pray for dismissal.

9. We have heard the learned counsel for the parties as well as learned Special Prosecutor and Addl. Deputy Prosecutor General for NAB and perused the record.

10. Under Section 222, Cr.P.C., the framing of charge has been explained which is reproduced as under:--

"222. Particulars as to time, place and person. (1) The charge shall contain such particulars as to the time and place of alleged offence, and the person (if any) against whom; or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and in the charge so framed shall be deemed to be charge of one offence within the meaning of section 234;

Provided that the time included between the first and last of such dates shall not exceed one year."

It reveals that the above said charge was not framed in accordance with its requirements.

11. Moreover, a perusal of above charges reveals that in all these charges, the known illegal source of income of the appellants has not been given and it was left to the defence to prove that they owned these properties out of their illegitimate sources of income. In order to understand whether this approach is legal, here it will be appropriate to reproduce section 9(a)(v) and sub-clause (vii) of the Ordinance, 1999.

Corruption and Corrupt Practices. (a) A holder of public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:-

(i) ----------

(ii) ----------

(iii) ----------

(iv) ----------

(v) If he or any of his dependents or benamidars owns, possesses, or has [acquired] right or title in any [assets or holds irrevocable power

of attorney in respect of any assets] or pecuniary resources disproportionate to his known sources of income, which he cannot reasonably account for; [or maintains a standard of living beyond that which is commensurate with his sources of income]

(vi) ----------

(vii) If he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or [attempts to grant] any [undue] concession or benefit in any taxation matter or law or otherwise so as to benefit himself or any relative or associate or a benamidar, [or any other person] or

12. The above clause of the Ordinance, 1999 has been abundantly made clear that disproportionate assets can only be ascertained with reference to the known source of income and the burden to prove this known source of income has been primarily upon prosecution as interpreted by the apex Court in Khan Asfandyar Wali v. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607), the relevant extract is as under:-

"Be that as it may, the prosecution has to establish the preliminary facts whereafter the onus shifts and the defence is called upon to disprove the presumption. This interpretation appears to be reasonable in the context of the background of the Ordinance and the rationale of promulgating the same notwithstanding the phraseology used therein. The above provisions do not constitute a bill of attainder, which actually means that by legislative action an accused is held guilty and punishable. For safer dispensation of justice and in the interest of good governance, efficiency in the administrative and organizational set up, it is necessary to issue the following directions for effective operation of section 14(d):

(1) The prosecution shall first make out a reasonable case against the accused charged under section 9 (a)(vi) and (vii) of the National Accountability Bureau Ordinance, 1999.

(2) In case the prosecution succeeds in making out a reasonable case to the satisfaction of the Accountability Court, the prosecution

would be deemed to have discharged the prima facie burden of proof and then the burden of proof shall shift to the accused to rebut the presumption of guilt."

13. The overall effect of the above provisions as well as the law laid down by the Supreme Court of Pakistan is that an accused person cannot be held responsible for having owned the properties purchased through unknown source of income or illegitimate means. We have scanned the entire evidence but could not find a word in the prosecution case under which the accused was required to explain the specific source beyond the known source of income.

14. The accused was made to explain his legal source of income and in response to which he has not only produced his own defence witnesses but has also explained his entire assets and has reasonably explained the source to purchase those assets which were in the form of profits in various business which he has declared in the Wealth Tax Statement and Income Tax Returns as well as in Declaration Form prescribed for a government servant. In our considered opinion by merely showing the details of assets and without disclosing the source of income, the prosecution has not been successful in shifting the onus to the accused to prove his innocence.

15. We have not been able to point out a single piece of evidence or even allegation either at the investigation stage or before the trial court to suggest that appellant Brig. (R) Imtiaz Ahmad, has allegedly misused his authority to earn the ill-gotten money in order to build up his assets illegally. The learned trial court on its own while adopting the inquisitorial proceedings has calculated the known source of income in the judgment whereas to our opinion the court was simply required to weigh the prosecution evidence and to see as to whether it had successfully proved the case against the appellants beyond reasonable doubt. To cater the situation we have been guided again by the Supreme Court of Pakistan in Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 Supreme Court 1144), wherein it was held that the prosecution must bring on record the misuse of authority of the public servant to show that the assets built by him is disproportionate to the known source of income. Relevant extract of said judgment is reproduced as under:--

"The law now stands settled that in order to prove commission of an offence under section 9(a)(v) of the National Accountability Ordinance, 1999 it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources or property of the accused person were disproportionate to his known sources of income and it is after such proof has been led and the necessary details have been provided by the prosecution that the onus shifts to the accused person to account for such resources or property because mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily to account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence. In the case in hand the appellant's sources of income had never been brought on the record by the prosecution and had never been quantified by it at any stage of this case and, therefore, it was not possible for the learned trial court to conclude or to hold that the appellant or his dependants or so-called benamidars owned or possessed assets or pecuniary resources disproportionate to the appellant's income. It is unfortunate that the investigating officer of this case as well as those responsible for prosecution of this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needful in this regard and it is regrettable that even the learned trial court as well as the learned appellate court had completely failed to advert to this critical aspect of the present case."

16. After having found the above said legal lacunas we still would like to discuss the prosecution as well as defence evidence.

17. PW-1, Abdul Ghaffar son of Abdul Rasheed and PW2/Shamshad Ali Chohan son of Abdul Rasheed are statedly the approvers. However, Section 26 of the Ordinance, 1999 requires the approval by the Chairman NAB even before trial prior to the amendment dated 23.11.2002 introduced by Ordinance No. CXXXIII of 2002. The power to decide an application by Chairman NAB for full or conditional pardon to a person with a view to obtain evidence against

a person supposedly concerned, directly or indirectly in or privy to the offence has not been found to have been examined as despite the best efforts by the learned prosecutor, we have not been able to dig out any such order passed by Chairman NAB allowing them to become the approver. Although there exists the order passed by this Court whereby the District Magistrate was directed to record the statements of said two witnesses as approver but as already said, the order of the Chairman was not available. Upon the insistence of learned prosecutor we have read the statements of PW-1 and PW-2 who stated that according to them, since they wanted to get NOC in order to get registration to work with Dr. Abdul Qadeer Khan Research Laboratory, therefore, through Mohsin Naqvi and Jafar Ali Mir, he contacted the appellant Brig. (R) Imtiaz Ahmed, who was working in ISI, whereafter his name was cleared. Since then he developed relations with him. In 1993 he statedly purchased plot No. 1-S-9, F-10 Markaz Islamabad for Rs.28,00,000/- and paid Rs.5,00,000/- to Mst. Sharam Begum. According to him, appellant Brig. (R) Imtiaz Ahmed, paid Rs.28,00,000/- but the property was transferred in the name of PW-1 as Benamidar. In 1998-99, he received an irrevocable power of attorney from this witness. However, Mst. Sharam Begum, who sold off the plot did not appear anywhere as a witness. The appellant Brig. (R) Imtiaz Ahmed, also statedly purchased a house in F-10 Sector, Islamabad for Rs.63,00,000/- in 1993 from one Asif Ali etc. but the said Asif Ali, did not appear as a witness. Rs.33,00,000/- was paid from the account of this witness whereas Rs.33,00,000/- was paid by the appellant Brig. (R) Imtiaz Ahmed. Later, this property was transferred in the name of PW-1 after when the appellant paid Rs.33,00,000/- to this witness and again irrevocable power of attorney was issued in his name. However, he admitted that CDA has not transferred this plot in his name on the request of FIA but later plot was transferred on the pursuance of the appellant. Although he admitted that he had no copy of above said power of attorney. He admitted that his company namely, Rexo Engineering Works was registered in 1986 at Kamra Complex. He admitted that although he went to the office of NAB but nobody recorded his statement. He has also admitted that he opted on his own to become an approver in October or November 2000 as he along with PW-2 his brother Shamshad Ali Chohan, filed applications in the court. He admitted that while recording his

statement before the District Magistrate, Adnan A. Khawaja, co-appellant was not present. This witness also admitted that Rs.15 million was outstanding against the Government since 1997 and only Rs.20,00,000/- was received in the previous 16 months. This witness later in his statement denied the execution of irrevocable power of attorney Exh-DA and Exh-DB though admits his signatures but was affixed on the blank papers. His statement, otherwise, does not appear to be confidence inspiring. Likewise, Shamshad Ali Chohan son of Abdul Rashid, PW-2 also admitted that Unit No. 8 situated in F-10 Markaz, Islamabad was purchased by the appellant Brig. (R) Imtiaz Ahmed, in his name as Benamidar for total price of Rs.29,32,500/- paid by him in 1993 to Irshad Ahmed, the previous owner. The deal was struck through Abdul Ghaffar, PW-1, brother of this PW-2. Irrevocable power of attorney Exh-PC was procured from said Irshad Ahmed. This property was sold off in 1999 to Qasim Hafeez, for Rs.70,00,000/- but only Rs.36,00,000/- was mentioned through Rana Iftikhar Ahmed, property dealer. He admitted that he neither paid the amount nor was in possession of the same. He admitted that another plot was purchased by PW-1 Abdul Ghaffar, in the name of Munshi Khan and PW-2 which was sold off in the year 1997. This witness has admitted that a cheque was issued to Umer son of Imtiaz Ahmed, which was dishonored later and a car was handed over to him and thereafter they decided to become approver. While getting his statement recorded before the District Magistrate, he has also explained that proper procedure regarding consent, undue pressure, willing statement could not be followed. He has also shown his lack of knowledge on the declaration of Unit No.8 in amnesty scheme. PW-3, Brig. (R) Iftikhar Muhammad son of Ch. Sultan Muhammad, a friend of M. Zikria, who lived in London and holder of power of attorney on his behalf in respect of Unit No.2, I-S Plaza, F-10 Markaz, Islamabad, as Nadeem Imtiaz, was a tenant of shop No.2, when he failed to pay the rent he was asked to vacate but upon his refusal a suit for ejectment was filed. During its pendency, he agreed to pay the rent and this witness agreed to sell the same for a consideration of Rs.30,48,000/- as arrears of rent in June 1996, meanwhile, said Zikria, returned from U.K. who was not happy with the sale but preferred to execute a separate agreement with Adnan A. Khawaja, later. This witness in cross-examination denied that in his presence the amount was paid in the bank and

in fact M. Zikria, transferred the property to Adnan A. Khawaja. He admitted that Adnan A. Khawaja, owned a factory in Hattar and is running a phone shop. He admitted that he moved an application to Ministry of Interior in 1994 for the payment of rent but admittedly in this year he was not a Government servant. However, he denied that any inquiry was pending against the appellant Brig. (R) Imtiaz Ahmed, in the year 1994. PW-9/Azhar Islam, Manager Operation, Union Bank, admitted that Account No.CD0063480009 (Umar Imtiaz and Nasreen Imtiaz) was opened in December 1997, and the opening debit balance was Rs.49,00,000/- and later further amounts were added. He admitted that Account No. CD0078580001 belonged to the appellant Brig. (R) Imtiaz Ahmad, and admitted that there was no credit balance in the said account. He admitted that the appellant used to purchase foreign currency after drawing money from his loan accounts and deposited the same in the foreign currency account as the same was legal transaction. PW-21/Nasir Ali Qureshi, Deputy Commissioner, Income Tax, Rawalpindi, produced the income tax till assessment years 1997-98 and record of wealth tax till assessment years 1998-99. He did not produce any wealth tax statement of the appellant from 1989 to 1997. PW-23/M. Kishwar Kiani, Hand Writing Expert, FIA Headquarters, Islamabad, stated that signatures of Nadeem Imtiaz, shown on the pay order slips dated 19.12.1993, Exh.PW-23/2 and dated 15.12.1999, Exh.PW-23/1 were found genuine though admitted that said signatures were not procured either in the court or by the orders of the court. PW-25/Tasawar Hussain, Assistant Accounts Officer, Federal Treasury Office, Islamabad who had not brought the original bank challan Exh.PW-25/2, therefore, he could not be appreciated. PW-27/Mehmood Ahmed, son of Meraj Din, a tenant of shop who admitted that rent receipts used to be provided by Mst. Parveen wife of Ghaffar Chohan through Nadeem Imtiaz and has also admitted that 2/3 times he paid the rent to Tahir Amer Khan in the absence of Ghaffar Chohan and Nadeem Imtiaz. It shows that property was not in the name of Nadeem Imtiaz. PW-29/Raza Munawwar, Additional Commissioner, Income Tax, admitted that Abdul Ghaffar Chohan, had declared the Unit No.9, F-10 Markaz, Islamabad in the wealth tax statement and that US $ 93,987/- and Sterling Pounds 55,789/- were assessed during the year 1995-96 of said Abdul Ghaffar Chohan. PW-30/Nisar Ahmed Kiani, Manager Deutsche Bank,

Islamabad admitted that Umer Imtiaz and Nasreen Imtiaz, opened dollar account on 07.08.1997 by depositing US $ 8000/- cash and according to the record there was withdrawal and subsequent increase in dollar account which was legitimate money as per State Bank Rules. PW-31/Sohail Ali Khan, Press Attachee, who was posted as income tax Assistant Commissioner, Islamabad, from February 1996 to June 1997. During his posting FEBC were produced for explanation which were valuing Rs.20.08 million. The appellant and his family members produced wealth tax statement and reconciliation statement as Exh.PW-16/1-24 and according to his order, the income tax statement was cleared as the source has been explained but as far as wealth tax declaration is concerned, he directed them to pay Rs.18,00,000/- as wealth tax. He admitted that FIA initiated the case on the report in the year 1994 against the appellant and his family members. According to this witness, he examined the record pertaining to the appellant and his family members starting from 1994 i.e. when the appellant was no more in government service. He admitted that reconciliation statement from 1990 to 1997 was produced by the appellant. This witness has also admitted that assessment order was challenged in the year 1989 to 1997 which was set aside and the case was remanded for fresh decision. Khalid Rasool, Inspector, FIA appeared as PW-34 who deposed that the allegation against the appellants was that they acquired assets valuing Rs.2,65,00,000/- upon which FIR No. 10 of 1999 was registered (Exh.PS) and report under Section 173 Cr.P.C. was submitted Exh.PT. He admitted that during the investigation of above said FIR, Rs.20.08 million FEBC encashment could not be detected. He admitted that entire allegation in FIR No. 10 of 1999 pertained to appellant Brig. (R) Imtiaz Ahmad, and his family members which included moveable as well as immoveable assets. He as I.O. was required to collect the documents regarding the sale price of Rs.70,00,000/- of Unit No.8 but he did not record the statement of Qasim Hafeez, who purchased the property and Mst. Sharam Bibi, who sold the property nor the statements of Sarfraz and M. Hassan was recorded, no document was collected to show the price of House No.286, Unit No.2, Unit No.1 and Unit No.9. No evidence was produced to show that the appellant Brig. (R) Imtiaz Ahmed, purchased the property. He did not cross-examine this witness regarding loan, over drafts and payments which were between

1995 to 1999. He did not record the statement of M. Zikria, who sold the property to alleged Benamidar. He further admitted that Rs. 30,48,000/- deposited with the Civil Court did not contain signatures of Nadeem Imtiaz. He admitted that he remained under suspension for 4 months in the year 1999. DW-3/Mukhtar Hussain, who purchased House No.589, St. No. 30 in G-10/2 Sector, Islamabad from Umer Imtiaz, for a consideration of Rs.53,00,000/- which he paid in cash. DW-4/Rana Mehboob Ahmed, who accompanied Nadeem Imtiaz, in the office of CDA for transfer purposes of the above said plot. DW-8/Tahir Khan, stated that he purchased plot No.19. St. No. 60, Sector F-11/4, Islamabad from the appellant Brig. (R) Imtiaz Ahmad, for a consideration of Rs.55,00,000/- paid on 14.09.1998 and obtained the possession of plot whereafter the said plot was transferred in his name. There were 7 court witnesses who were government functionaries showing different transactions taken place in the account of the appellant Brig. (R) Imtiaz Ahmad.

18. The learned Accountability Court vide its impugned judgment dated 31.07.2001 forfeited the following properties in favour of the Federal Government:-

I) House No.286, F-10/4 Sector, Islamabad.

II) Unit No.9,1-S Plaza F-10 Markaz, Islamabad.

III) Unit No.2, 1-S Plaza F-10 Markaz Islamabad.

IV) House No.7, Street No.20, Sector F-7/2, Islamabad.

V) House No.6, 9th Avenue Sector F-8/2 Islamabad.

Property No.1 was forfeited on the ground that the approver namely, PW-1 and PW-2 fully supported the prosecution case stating that the appellant Brig.(R) Imtiaz Ahmad purchased the said property, though not in his own name but in the name of Shamshad Ali and Abdul Ghaffar Chohan i.e. PW1 and PW2. A reference was given to the irrevocable power of attorney in the name of appellant and pay order slip Exh.PW-12/1-6. A reference was also given to the Amnesty Scheme but the learned trial court has failed to appreciate that the property purchased in the year 1999 could hardly be forfeited for the simple reason that it was not built during the period of service

of the appellant. Additionally, benefits and privileges of the Amnesty Scheme were not even disclosed to the Court. In order to prove the assets beyond means, assets must be built during the period when holder of the public office remained in the office. The entire prosecution case rests upon the statements of the approver and as already stated when the order of the Chairman, NAB that the statement of approver cannot be wholly relied on, therefore, confiscation of the said property was illegal. Property No.2, Unit No.9, 1-S Plaza F-10 Markaz, Islamabad was statedly purchased by the appellant Brig.(R)Imtiaz Ahmad from Mst.Sharam Bibi in the year, 1993 for a consideration of Rs.20,00,000/- in the name of Abdul Ghaffar Chohan as Benamidar. The said Sharam Bibi was not produced either before the Investigating Officer or before the Court. Rest of the evidence is that of approver. The learned trial court has forfeited the property only on the ground that he did not disclose his source of income of Rs.20,00,000/- out of which he purchased the property; suffice it to say, that mere possession of assets unless it has nexus with the ill-gotten money does not mean to constitute an offence. It is also reiterated that these properties were statedly built after 1993, which means that the appellant was out of service. Property No.3, Unit No.2, 1-S Plaza F-10 Markaz, Islamabad is the property which was sold off by Muhammad Zikraya but the said vendor did not appear in the witness box to support the prosecution version. No registered sale deed was produced to show that the property was in the name of Adnan A. Khawaja and Nadeem Imtiaz. Property No.4, is a House No.7, Street No.20, Sector F-7/2, Islamabad which was statedly purchased in the year 1999, whereas his services were ended in the year 1993, which was again built during the period outside of his service. Property No.5, House No.6, 9th Avenue, Sector F-8/2, Islamabad is again the property built in the year 1999 after when he was not in service.

19. Scanning the above evidence as well as findings of the trial court, we are constrained to hold that the said properties cannot be confiscated for the simple reason that the findings were based on the statements of approvers who were not permitted to become as such by the order of the Chairman, NAB and in case of the above said properties, the vendors were not produced. Moreover, the ingredients of Benamidars transactions as held in the dictum laid down by

the apex Court in Mst. Zahida Sattar and others v. Federation of Pakistan and others (PLD 2002 SC 408) could not be produced. The possession of the property, the written transaction, the circumstances under which Benamidar transactions were made were required to be disclosed before the court by the

20. As already observed, the appellant was made to discharge the burden of his innocence which is against law. The declaration for the purpose of income tax and wealth tax could not be used to ascertain the source of income to determine the assets beyond the means of the appellants by the NAB authorities. There is not an iota of allegation against the appellant Brig. (R) Imtiaz Ahmad that he has misused his authority, therefore, there was no nexus of ill-gotten money for the built of the above said assets/properties.

21. Under section 27 of the Ordinance, 1999 the NAB authorities could always probe and receive information from any government departments including the Intelligence Bureau to dig out the reality of the funds which may have been utilized to purchase the properties even by its head. To receive information about the ill-gotten money in our opinion would hardly affect national interests rather it will further promote them. Undoubtedly, any act to eliminate corruption cannot by any stretch of imagination be considered as an act against national interest. We are conscious that the corruption is rampant in our society and its deadly poison has severely affect not only the common man but also the State functionaries.

22. For the above stated reasons, we allow these appeals, set aside the impugned judgment of conviction passed by the Accountability Court, Rawalpindi/Islamabad and acquit the appellants namely, Brig. (R) Imtiaz Ahmad and Adnan A. Khawaja and also release the above said five properties forthwith. The appellants are on bail and their sureties are discharged from the liabilities of bail bonds. Writ Petition No.20208 of 2010 is also allowed in view of our findings in the instant appeal.

MH/I-26/L **Appeal allowed.**

PLJ 2015 Cr.C. (Lahore) 612 (DB)

***Present*: SYED MUHAMMAD KAZIM RAZA SHAMSI AND ALI BAQAR NAJAFI, JJ.**

Dr. ASGHAR ALI--Appellant

versus

STATE, etc.--Respondents

Crl. Appeal No. 1059 of 2006, decided on 6.5.2015.

National Accountability Bureau Ordinance, 1999 (XVIII of 1999)--

----Ss. 32, 9(a) & 10 conviction and sentence--Challenge to--While admitting sale of Rahwali Sugar Mills for Rs. 33,67,3000/- in favour of PCFC by signing sale deed as marginal witness and delivery of its possession and operating Accounts as well as withdrawal of slips, appellant has committed no offence--Admittedly, appellant remained a front man under direct instructions and control of co-accused who has entered into a plea bargain--Investigation does not reveal as to what benefit appellant had drawn out of his status in company--Losses of company were not properly based on any Audit Report--Importantly, when sale of Mill was approved by Hon'ble Judge of Supreme Court, then Cooperative Judge, for a consideration of Rs. 114611091/- as evident from judgment, and liability of Mill was calculated as Rs. 109611091/-, Court failed to understand as to what loss was caused to Mill--It could have been very easy for complainant to have approached cooperative Judge for fixation of liability of appellant--In this case, plea bargain of co-accused has been approved and, therefore, liability of appellant does not appear to be based on any solid footing--Co-accused PW in his cross-examination has admitted that Central Registrar Cooperative Societies became Administrator of PCFC and during this period entry with regard to transfer of amount of Rs. 38638981/- and amount of Rs. 23,16,000/- in Account was made at verbal instruction of Area Mananger--Admittedly, at that time appellant and was not holding charge of society--Original copies of SMRs were not produced as prosecution produced its photocopies out of which 26 were in name of

appellant--These SMRs at this stage for purposes of determination of guilt cannot be relied upon for reason that they are photocopies and, secondly, acknowledgment on back through signature of appellant could not be proved by prosecution either by comparison of signatures or by recording statement of its custodian--Moreover, question whether appellant himself was beneficiary of such transaction is shrouded in mystery--Prosecution has failed to discharge its responsibility of proving case against appellant beyond any shadow of doubt--Appeal was allowed.

[Pp. 616 & 617] A, B & C

Ch. Shaukat Ali Saqib, Advocate for Appellant.

Mr. Nadir Manzoor Duggal, ADPGA for NAB for State.

Date of hearing: 6.5.2015.

JUDGMENT

Ali Baqar Najafi, J.--This appeal under Section 32 of the National Accountability Bureau Ordinance, 1999 is directed against judgment 06.06.2006 passed by learned Accountability Court No. II, Lahore whereby the appellant was convicted under Sections 9(a) & 10 read with schedule of NAO, 1999 and sentenced to undergo R.I. for four years with fine of RS. 4,64,87,000/- and in case of default of payment, to further undergo R.I. for two years with benefit of Section 382-B, Cr.P.C. He was also declared disqualified for a period of 10 years to be reckoned under the law, he was to forthwith ceased to hold public office, if any, and also stood disqualified for the period of ten years from being elected, chosen, appointed or nominated as member or representative of any public body or any statutory or local authority in service of Pakistan or of any province. The accused was also not allowed to apply for or be granted or allowed any financial facility in the form of any loan or advance or other financial accommodation by any bank or financial institution owned or controlled by the Government, for a period of ten years from today.

2. The allegations contained in Reference No. 34 of 2002 against the appellant is that after when Pasban Cooperative Finance Corporation Society (PCFC) had decided to sell Rahwali Sugar Mills Limited G.T. Road, Gujranwala to Sh. Muhammad Mansoor, co-accused, an MNA and Managing

Director of PCFC for consideration of Rs. 33,67,3000/-, in the year 1987 and he got the possession of Mill on 29.02.1988 and handed it over to appellant who was appointed its Managing Director. A sale deed was executed on 08.08.1990. On 25.07.1989 they floated a fake/bogus public limited company in the name of Rahwali Sugar Mills and applied to Pakistan Industrial Credit and Investment Corporation (PICIC) for loan claiming that Rahwali Sugar Mills has sold of the fixed assets of the Sugar Mill to him. During the investigation, conducted by Anti-Corruption Establishment, Lahore, it transpired that Account No. 867 was opened in the name of Rahwali Sugar Mills in the month of May 1988 and another Account No. 872 in the name of Director Funds Rahwali Sugar Mills was opened on 07.05.1988, in the PCFC Branch, G.T. Road, Gujranwala. Two months later on 06.07.1988 the appellant changed Account No. 872 in his own name and started using in his individual capacity. From May 1988 to 30 March 1992, he continued to operate both the accounts himself during which an amount of Rs. 2,28,31,755/- was received through bank drafts, telegraphic transfers and cash, etc from different cities as sale price of sugar sold by Rahwali Sugar Mills. He partially deposited the amounts in Account No. 867 and deposited the major amount in Account No. 872. On 30.03.1992, it was incorrectly declared that Rahwali Sugar Mills had suffered a loss of Rs. 53,654,624/-. He issued cheques in the name of Haji Siraj ul Haq, a lessee of Zinco Floor Mills, owned by Sh. Muhammad Mansoor, and substantial released huge amounts of cash himself, thereby causing misappropriation of the amount of RS. 2,28,31,755/- causing total loss of Rs. 6,39,28,914/- (including the mark up). On 12.04.1989, co-accused Sh. Muhammad Mansoor and Asif Ali, issued SMRs No. 58593 in the name of appellant for a sum of Rs. 1,00,00,000/- (one crore) and on 07.06.1989 said Sh. Muhammad Mansoor, issued SMRs Nos. 63742 to 63776, in the name of family members of the appellant in the sum of Rs. 1,00,00,000/- (one crore), thereafter appellant fraudulently and deceitfully made payment of these SMRs.

3. Meanwhile, Asif Ali and the appellant offered a plea bargain before filing of reference which was accepted and the plea bargain of Sh.

Muhammad Mansoor, was accepted and approved by the Accountability Court in which appellant faced the trial.

4. The prosecution had produced 11 prosecution witnesses and the documentary evidence whereas 2 Court witnesses appeared, each one from prosecution and the defence. After the closure of prosecution evidence, the statement of accused was recorded under Section 342, Cr.P.C. and according to him Sh. Muhammad Mansoor, was the Managing Director of the corporation who ran these projects and admitted that there were 7 other Directors and that the possession of the Mill was handed over to the corporation on 29.02.1988 whereas Mill was sold through registered sale deed (Exh.CW-2/1) dated 08.08.1990 by the Government of Punjab through Managing Director PIDB for a consideration of Rs. 33673000/- in which he stood as a marginal witness. He also alleged to have floated a public limited company named Rahwali Sugar Mills and also admitted that on 15.11.1989, he in the capacity of Director submitted an application for sanction of the loan of 22.7 million rupees to PICIC by mis-statement that sold fixed assets of the Mill has been sold off to M/s PCFC. However, he also admitted that loan facility was allowed by PICIC to the company. He also admitted to have operated Account Nos. 867 and 872 which remained under the control of PCFC. He admitted to have issued the SMRs, and also admitted that Liquidation Board had sold off the Mill for consideration of Rs. 118000000/- whereas the same was sold to corporation for Rs.33673000/- which deal was approved by the then Co-operative Judge and total liability of Rahwali Sugar Mills came to Rs. 109611051/-.

5. Learned counsel for the appellant contends that neither appellant nor his family ever applied for issuance of SMRs and in fact SMRs were prepared by said Muhammad Saeed, Manager PCFC. The appellant was not the beneficiary of said SMRs. Adds that Account Nos. 867 and 872 were not opened in his personal capacity but as representative of PCFC who was the owner of Rahwali Sugar Mills and that whatever he did was under the direction and management of PCFC. Further adds that sale of Mill was made on the basis of order of Cooperative Judge for a consideration of

Rs.114611091/- whereas total liability of the Mill was109611091/-, therefore, there was no loss.

6. Conversely, learned ADPGA for NAB contends that admittedly the appellant became the marginal witness of the sale deed dated 08.08.1990 and Account Nos. 867 and 872 were opened by the appellant in March 1988, who operated the same since there opening and in fact he acted as Chief Executive. He argues that Rahwali Sugar Mills was not registered as Public Limited Company as there was no title of property vested in the company who was just holding its possession as a proposed vendee.

7. Arguments heard. Record perused.

8. While admitting the sale of Rahwali Sugar Mills for Rs. 33,67,3000/- in favour of PCFC by signing the sale deed as marginal witness and delivery of its possession on 29.02.1988 and operating Account Nos. 867 and 872 as well as withdrawal of slips, the appellant has committed no offence. Admittedly, the appellant remained a front man under the direct instructions and control of Sh. Muhammad Mansoor, the co-accused who has entered into a plea bargain. The investigation does not reveal as to what benefit the appellant had drawn out of his status in the company. The losses of the company were not properly based on any Audit Report. Importantly, when the sale of the Mill was approved by Mr. Justice Saeed-uz-Zaman Siddiqui, Hon'ble Judge of Supreme Court, the then Cooperative Judge, for a consideration of Rs. 114611091/- as evident from Exh.D/1, the judgment, and the liability of the Mill was calculated as Rs. 109611091/-, we failed to understand as to what loss was caused to the Mill. It could have been very easy for the complainant to have approached the cooperative Judge for fixation of liability of the appellant. In this case, plea bargain of Sh. Muhammad Mansoor, has been approved and, therefore, the liability of the appellant does not appear to be based on any solid footing. We have straight away observed that PW-1 in his cross- examination has admitted that Central Registrar Cooperative Societies became Administrator of PCFC from 01.09.1990 to 31.12.1990 and during this period the entry with regard to transfer of amount of Rs. 38638981/- and amount of Rs. 23,16,000/- in Account No. 867 was made on 06.12.1990 at the verbal instruction of

Muhammad Saeed, Area Mananger. Admittedly, at that time the appellant and Sh. Muhammad Mansoor, was not holding the charge of the society.

9. The original copies of SMRs were not produced as prosecution produced its photocopies as Exh.P-3/1-16 out of which 26 were in the name of appellant. These SMRs at this stage for the purposes of determination of guilt cannot be relied upon for the reason that they are the photocopies and, secondly, the acknowledgment on the back through the signature of the appellant could not be proved by the prosecution either by comparison of signatures or by recording statement of its custodian. Moreover, the question whether the appellant himself was the beneficiary of such transaction is shrouded in mystery.

10. For the above stated reasons we have come to the conclusion that prosecution has failed to discharge its responsibility of proving the case against the appellant beyond any shadow of doubt.

11. In view of the above discussion, we allow this appeal; set aside the impugned judgment of conviction passed by learned Accountability Court No. II, Lahore and the appellant is acquitted of the charges levelled against him. He is on bail and is hereby discharged from the liability of the bail bonds.

(A.S.) **Appeal allowed.**

PLJ 2015 Lahore 774

Present: ALI BAQAR NAJAFI, J.

FAROOQ AHMED & another--Petitioners

versus

ADDITIONAL DISTRICT JUDGE, SAMUNDARI, DISTRICT FAISALABAD and 5 others--Respondents

W.P. No. 15567 of 2014, decided on 22.4.2015.

Civil Procedure Code, 1908 (V of 1908)--

----S. 52--Land Revenue Act, (XXV of 1967), S. 80--Constitution of Pakistan, 1973, Art. 199--Execution proceedings--Responsibility of attorney and surety with judgment debtor is coextensive--Execution of decree can be effected by procedure for recovery of arrears of land revenue--Under Section 52 of C.P.C. executing court can adopt five measures including arrest, detention and prison--Judgment debtor, his attorney as well as his surety cannot frustrate execution of decree for reason that Family Court's proceedings are special in nature, therefore, executing court will try and put in all efforts to execute decree--Courts are well aware of their powers to ensure execution of their judgments and decrees which are not passed in vacuum and have full support of law and procedure of country.

[P. 776] A & C

Family Courts Act, 1964--

----S. 13(3)--Execution proceedings--Responsibility of attorney and surety with judgment debtor--Procedure for recovery--Under Section 13(3) of Family Courts Act, 1964 money decree can be executed through process for recovery of arrears of land revenue.

[P. 776] B

Mr. Abdul Hameed Rana, Advocate for Petitioners.

Mian Waqas-ul-Haq, Advocate for Respondents No. 3, 4 & 5.

Sardar Faiz Rasul Khan Jalbani, Advocate/*amicus curiae* assisted by *Mr. UsmanNawab,* Advocate for Respondents.

Date of hearing: 22.4.2015.

ORDER

Through this Constitutional petition the petitioners seek setting aside of order dated 02.01.2014 passed by the learned Executing Court/Civil Judge 1st Class and order dated 26.05.2014 passed by the learned Additional District Judge whereby Petitioner No. 1, the brother of judgment debtor, Farooq Ahmed was kept in jail for one year i.e. 06.09.2013 who was to be released on the payment of the amount or after the expiry of the said period.

2. Brief facts giving rise to the filing of this writ petition are that a decree dated 26.09.2011 was passed against Qamar-uz-Zaman and during the execution proceedings his attorney/brother (Farooq Ahmed) was sent to the civil prison but released on the payment of Rs. 1,00,000/- and by submitting the surety bond of one Mehboob Ahmed/Petitioner No. 2 to the extent of remaining amount by Farooq Ahmed the general attorney. Meanwhile, Qamar-uz-Zaman returned back from abroad and sent a notice to his brother to cancel the power of attorney by claiming that he has nothing to do with the judgment debtor and also filed an application for his release before the learned Executing Court. The said application was contested on the ground that the balance amount of Rs. 1,40,000/- is his responsibility. Another application for release of the surety filed by Farooq Ahmad/Petitioner No. 1 which was also contested. On 02.01.2014 the learned Executing Court dismissed the application on the ground that since the attorney has been pursuing the case on behalf of judgment debtor throughout and resultantly the decree for the maintenance allowance was passed in favour of the minor i.e. the real son of the judgment debtor and that since he is the real brother of the judgment debtor who paid Rs.1,00,000/- out of total amount of Rs.4,00,000/- with an

undertaking to give Rs. 1,00,000/- on the next date of hearing and, therefore, on account of failure the judgment debtor and the attorney have to face legal consequences. The other application for absolving Mehboob Ahmed/Petitioner No. 2 as surety was also dismissed. The appeal also met the same fate. Hence this writ petition.

3. Arguments heard. File perused.

4. Admittedly, Farooq Ahmed/Petitioner No. 1 is the attorney of Qamar-uz-Zaman (Respondent No. 6), his real brother, who has been defending him throughout in a suit for recovery of maintenance allowance by the minor before the Family Court. It is also not denied that Mehboob Ahmed/Petitioner No. 2 is the surety of the attorney, namely, Farooq Ahmed/Petitioner No. 1. It is also not denied that some amount was paid and as a consequence the judgment-debtor was released. The responsibility of the attorney and surety with the judgment-debtor is coextensive and the execution of a decree can be effected by following procedure for recovery of the arrears of land revenue. Under Section 80 of the Land Revenue Act, nine modes have been provided to effect the recovery of such arrears, namely, service of notice, arrest and detention, distress and sale of movable property, by transfer of the holding, attachment of property, by annulment, by sale of holding and by proceedings against other immovable property of the defaulter. Under section 52 of the C.P.C the Executing Court can adopt five measures including arrest, detention and prison. Under Section 13(3) of the Family Courts Act, 1964 the money decree can be executed through the process for recovery of the arrears of land revenue. This special procedure for the recovery of the arrears prescribed under Section 13 of the above Act has been approved in *Syed Muhammad versus Mst. Zeenat and others* (PLD 2001 SC 128) upheld in *Muhammad Sadiq versus Dr. Sabria Sultana* (2002 SCMR 1950). The liability of the judgment debtor has been described and upheld by the Hon'ble Supreme Court while interpreting Section 13 of the Family Courts Act in *Muhammad Pervez*

versus Mst. Nabila Yasmeen and 2 others (2004 SCMR 1352). The liability of the surety to receive the decretal amount was made voluntarily and was also acted upon.

5. Scanning the above case law I am convinced to hold that the judgment debtor, his attorney as well as his surety cannot frustrate the execution of the decree for the reason that the Family Court's proceedings are special in nature, therefore, the Executing Court will try and put in all efforts to execute the decree. In my humble opinion, the Courts are well aware of their powers to ensure the execution of their judgments and decrees which are not passed in vacuum and have full support of the law and the procedure of the country.

6. For the above stated reasons, this petition has been found meritless and is, therefore, dismissed.

(R.A.) **Petition dismissed.**

PLJ 2015 Lahore 970

***Present*: ALI BAQAR NAJAFI, J.**

***Syed* MUHAMMAD ALI RAZA--Petitioner**

versus

PROVINCE OF PUNJAB, through D.C.O. Lahore etc.--Respondents

W.P. No. 26026 of 2014, decided on 19.5.2015.

Muslim Family Laws Ordinance, 1961 (VIII of 1971)--

----Ss. 7 & 8--Muslim Family Rules, R. 3(b)--Marriage was contracted under Shia Sect--Delegated powers of divorce--Mode of divorce--Question of--Whether woman while exercising delegated right of divorce, is required to send notice to union council where marriage was registered--Determination--In case of divorce by wife she must send a notice to a union council of her own residence--Since Union Council of residence of bride is one where marriage is performed, therefore, respondent rightly sent divorce to union counsel where nikah nama was registered--Shia Personal Law of divorce is not so strict so as to make a woman slave of the man who would always remain unable to get divorce without his permission--Wife who has been delegated the right of divorce by the husband, can pronounce divorce by invoking the provisions of Section 7 and under sub-section (1) of which a notice in writing has to be sent to the Chairman--Such notice has to be sent to the union council of the union where the wife in relation to whom *talaq* has been pronounced was residing at the time of the pronouncement of *talaq*--In case of divorce by wife with delegated powers by husband notice has to be sent to union counsel where nikah was registered--Since it is not case of petitioner that notice should have been sent to union council where husband was residing as *talaq* was pronounced by wife to husband. [Pp. 972 & 973] A, B, C, D, E & F

Mr. Ijaz Ali Akbar Sabzwari, Advocate for Petitioner.

Mr. Saad Rasool, Advocate for Respondent No. 3.

Date of hearing: 19.5.2015.

ORDER

Through this Constitutional petition the petitioner challenges the certificate dated 28.06.2014 issued by Respondent No. 2, giving effectiveness of the divorce as having been issued in excess of jurisdiction.

2. Brief facts giving rise to the filing of this writ petition as contained in paragraphs thereof are that Respondent No. 3 and the petitioner contracted marriage under "Shia" sect of the religion on 02.06.2013 and the Nikahnama was registered with Union Council No. 59, of Shah-Kazmain Mosque, Al-Faisal Town, Lahore. Shortly after the marriage their relationship became strained, therefore, Respondent No. 3, while exercising the delegated powers of divorce contained in Column No. 18 of the Nikahnama issued an undated divorce deed and sent it to Respondent No. 2. The petitioner challenged the said mode of divorce through a suit for declaration on 03.02.2014 which was contested by Respondent No. 3 by filing a written statement. On 27.06.2014 the said divorce became effective whereafter the certificate was issued on 28.06.2014, which has been challenged through this writ petition.

3. Learned counsel for the petitioner contends that under Sections 7 & 8 of the Muslim Family Laws Ordinance, 1961 read with Rule 3(b) of the Rules made thereunder, Respondent No. 2 had no territorial jurisdiction in the matter of divorce as the Union Council No. 59 was not the place of residence of Respondent No. 3. Submits that in Fiqa-e-Jafferia a divorce takes place only if the required "Segheas" in Arabic are read in the presence of the parties, therefore, prays that the said divorce certificate be declared illegal and without jurisdiction. Places reliance upon *Khawaja Muhammad Shoaib versus Nazim Union Council and others* (2010 YLR 1), *Syed Asad Raza Naqvi versus Mst. Saima Fatima and another* (2014 MLD 254), *Maj. Zahid Hussain versus Chairman, Arbitration Council, Cantonment Board, Lahore and 3 others* (2005 SLR 626), *Syed Ali Nawaz Shah Gardezi versus Lt. Col. Muhammad Yusuf Khan, Commissioner, Quetta Division* (PLD 1962 (W.P.) Lahore 558) and *Syed Ali Nawaz Gardezi versus Lt.-Col. Muhammad Yusuf* (PLD 1963 SC 51).

4. Conversely, learned counsel for Respondent No. 3 submits that the Muslim Family Laws Ordinance, 1961 was promulgated for the convenience of the women which has to be interpreted for the benefit of the women. Adds that the judgments cited by the learned counsel for the petitioner do not override the intention of the legislature which encourages the women to conveniently go through the procedure of the divorce. Submits that the *ex*

parte divorce was pronounced after when the petitioner has failed to join the efforts for reconciliation by the council. Refers to Sura-e-Baqra the Holy Verse of The Holy Quran in which it is provided that the women should not be compelled for undue advantage. Places reliance upon *Minas Parveen versus Additional Sessions Jupge/Ex-Officio Justice Of Peace, Shorkot and others* (PLD 2015 Lahore 231), *Mst. Khurshid Mai versus the Additional District Judge, Multan and 2 others* (1994 MLD 1255), *Inamul Haque versus Mst. Sharifan Bibi and 2 others* (1993 CLC 46), *Mst. Ghulam Zohra versus Faiz Rasool and others* (1988 MLD 1353). Also submits that the petitioner has been issued a Fatwa from Dar-ul-efta & Shareat Board, Idara Minhaj-ul-Hussain, Muhammad Ali Johar Town, Lahore declaring that required Segheas had been read and the *Talaq* has been issued.

5. Arguments heard. File perused.

6. The proposition raised before this Court is as to whether the woman while exercising delegated right of divorce, is required to send a notice to the union council of a place where she resides or to a union council where the marriage was registered as required under Sections 7 & 8 of the Muslim Family Laws Ordinance, 1961 read with Rule 3(b) of the Rules framed thereunder. To find the answer to this legal question, learned counsel for the petitioner has referred to *Khawaja Muhammad Shoaib versus Nazim Union Council and others* (2010 YLR 1) and *Maj. Zahid Hussain versus Chairman, Arbitration Council, Cantonment Board, Lahore and 3 others* (2005 SLR 626), in which it was held that the divorce notice has to be sent by the husband to the union council where the wife resides but nowhere it was held that in case of divorce by the wife she must send a notice to a union council of her own residence. Under Section 8, the provisions of Section 7 *mutatis mutandis* applies to a woman pronouncing the divorce on herself under delegated authority would mean that since the Union Council of the residence of the bride is the one where marriage is performed, therefore, the respondent rightly sent the divorce to the union counsel where Nikahnama was registered. In *Syed Asad Raza Naqvi versus Mst. Saima Fatima and another* (2014 MLD 254), it was held that the divorce pronounced by a Shia husband without reading "Segheas" will not be effective against the wife. However, in the instant case there exists a certificate dated 20.10.2014 issued by Dar-uI-Efta & Shareat Board, Idara Minhaj-ul-Hussain, Muhammad Ali Johar Town, Lahore, declaring that the relevant "Seghea" has been read on 20.10.2014. The

view in *Syed Ali Nawaz Gardezi versus Lt.Col. Muhammad Yusuf Khan, Commissioner, Quetta Division* (PLD 1962 (W.P.) Lahore 558) upheld in PLD 1963 SC 51 (same parties) is that the reading of "Segheas" in presence of parties is a part of substantial law, which has been followed by reading the "Segheas" before an "Alim" under authority since, keeping the facts and circumstances of the case, the petitioner has been hiding and creating hurdles against the mandatory provision of law. In my humble view, Shia Personal Law of divorce is not so strict so as to make a woman slave of the man who would always remain unable to get divorce without his permission.

7. Under Section 8 of the Muslim Family Laws Ordinance, 1961 a wife who has been delegated the right of divorce by the husband, can pronounce divorce by invoking the provisions of Section 7 and under sub-section (1) of which a notice in writing has to be sent to the Chairman, Union Council and under Rule 3(b) of the West Pakistan Rules made under the Muslim Family Laws Ordinance, 1961, such notice has to be sent to the union council of the union where the wife in relation to whom *Talaq* has been pronounced was residing at the time of the pronouncement of *Talaq*. The interpretation of the above clause leads this Court to an irresistible conclusion that since it is the place of residence of the wife where the Nikahnama is registered, therefore, in case of divorce by the wife with delegated powers by the husband the notice has to be sent to the union counsel where Nikah was registered. More so, since it is not the case of the petitioner that notice should have been sent to the union council where the husband was residing as the *Talaq* was pronounced by the wife to the husband. The only objection raised by the petitioner is that it is the place of residence of the wife where the notice has to be sent under the delegated right of divorce by the wife herself. I am afraid, this interpretation is not in accordance with the spirit of the statute and in line with the intention of the legislature as it will be entirely against the convenience of a woman.

8. In this view of the matter, no illegality was committed by Respondent No. 2 who has issued the certificate of effectiveness of the divorce which does not require interference while exercising the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as a result of which this petition is dismissed.

(R.A.) **Petition dismissed.**

PLJ 2015 Lahore 1009

Present: ALI BAQAR NAJAFI, J.

***Mst.* SAMREEN BIBI--Petitioner**

versus

JUDGE FAMILY COURT, etc.--Respondents

W.P. No. 11470 of 2013, decided on 4.3.2015.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Dowry articles--Value was ascertained in view of wear and tear and financial status of parents--Question of--How wear and tear of dowry articles can be ascertained when marriage remained intact only for 3 months--Validity--Wear and tear for electronic items are different than furniture, life span of kitchen utensils are greater than decoration pieces of dining room, seasoned wearing clothes of daily use have less value than those used on special occasions--Present market value of such articles can be ascertained through traders/shop keepers dealing with second-hand dowry articles--A time of filing suit for recovery of dowry articles, a local commission can be appointed to conduct a physical verification of dowry articles which may help Court arrive at just conclusion--Family Court can employ any other mode for assessment but it cannot be based on its sole discretion unsupported by facts on grounds.

[Pp. 1010 & 1011] A, B, C & D

Mr. Muhammad Qadeer Khan, Advocate for Petitioner.

Rai Muhammad Tufail Khan Kharal, Advocate for Respondent No. 3.

Date of hearing: 4.3.2015

ORDER

Through this constitutional petition, petitioner challenges the judgments and decrees dated 19.09.2011 and 24.05.2012 passed by learned Judge Family Court as well as Addl. District Judge, Tandlianwala respectively whereby Rs. 70,000/- in lieu of dowry articles was concurrently decreed.

2. Brief facts giving rise to the filing of this petition are that at the time of marriage between petitioner and Respondent No. 3, she allegedly brought dowry articles worth Rs. 2,64,800/- mentioned in the list (Mark-A) which included gold ornaments worth Rs. 25000/- and boxes worth Rs. 18000/- alongwith other useable items. According to the plaint, the marriage was contracted 4 months before filing of suit for recovery of dowry articles on 23.09.2010. The suit was resisted by filing written statement whereafter the issues were framed and the evidence was recorded. *Vide* judgment and decree dated 19.09.2011, Rs. 70,000/- as alternate price of dowry articles was awarded on the ground that petitioner's parents must have granted the dowry articles as per custom in our society and that its value was ascertained in view of wear and tear and financial status of her parents. The learned appellate Court has also concurred with the findings of learned Judge Family Court on additional ground that father of the petitioner being a retired army official and also an agriculturist had given the dowry to the petitioner being the elder daughter and the value of which was rightly ascertained by the learned Judge Family Court, hence this writ petition.

3. Learned counsel for the petitioner submits that while granting the dowry articles by the Courts below its value was to be calculated keeping in view the wear and tear as its price could not be as low as Rs. 70,000/- just after 3 months of marriage whereas learned counsel for Respondent No. 3 submits that on the other hand a buffalo was given to the parents of the petitioner who never gave any dowry articles to the petitioner.

4. Arguments heard. File perused.

5. Both the Courts below have taken into account the wear and tear of the dowry articles as their delivery was admitted with reference to their numbers and the nature, therefore, the sole question before this Court would be as to how wear and tear of said dowry articles can be ascertained when the marriage remained intact only for 3 months.

6. There can be no generalized formula under which the wear and tear of dowry articles can be exactly determined as it depends upon multiple factors, like nature and quality of the dowry articles, its use by the woman, the relationship level between the spouses during the marriage, the retaliatory attitude after separation, the period during which they remained under use of the woman, the period after which the claim for dowry articles was made, etc.

7. Obviously, the wear and tear for electronic items are different than furniture, the life span of kitchen utensils are greater than decoration pieces of dining room, seasoned wearing clothes of daily use have less value than those used on special occasions. Therefore, they all have different rate of depreciation.

8. A tentative assessment should not be presumptive but has to be based on subjective analysis of dowry articles on physical verification based on visuals which can be procured through different modes like on-line video calling, video footages, still photographs, clippings, factual report by a local commission or employing modern Information Technology. Moreover, the present market value of such articles can be ascertained through traders/shop keepers dealing with second-hand dowry articles.

9. One of the safe modes is that at the time of filing the suit for recovery of dowry articles, a local commission can be appointed to conduct a physical verification of the dowry articles which may help the Court arrive at just conclusion.

10. However, in addition to the above, the learned Judge Family Court can employ any other mode for assessment but it cannot be based on its sole discretion unsupported by facts on grounds.

11. Since none of the above said modes was adopted, therefore, this writ petition is allowed, and the judgments and decrees of the two Court below are set aside to the extent of tentative assessment of Rs. 70,000/-, as a result of which the learned Judge Family Court is directed to asses the tentative value by adopting any of the above means.

(R.A.) **Petition allowed.**

PLJ 2015 Lahore 1014

***Present*: ALI BAQAR NAJAFI, J.**

ABID HUSSAIN--Petitioner

versus

JUDGE FAMILY COURT, etc.--Respondents

W.P. No. 30814 of 2012, decided on 2.6.2015.

***Ex-parte* decree--**

----Negligence of Counsel--Negligence of counsel was not a valid ground to set aside *ex-parte* decree. [P. 1016] A

2011 SCMR 1341, *rel*.

Family Courts Act, 1964 (XXXV of 1964)--

----S. 9(6)--Limitation Act, (IX of 1908), S. 5--Constitutional of Pakistan, 1973, Art. 199--Dower amount was awarded on basis of *ex-parte* evidence--Application for setting aside *ex-parte* proceeding, dismissed--Negligence of counsel--Validity--Order of dismissing application of petitioner filed under Section 9(6) of Family Courts Act, 1964 was hereby set aside as a result of which suit for recovery of maintenance allowance, dowry articles, dower amount, was deemed to be pending before Family Court at where case was remanded subject to payment of specific amount by petitioner which may be adjusted subsequently in form of maintenance allowance and payable by petitioner when parties shall appear before Family Court, who shall proceed strictly in accordance with law and decide family suit expeditiously, preferably within a period of three months from receipt of copy of instant order. [P. 1016] B

Ch. Muhammad Yousaf, Advocate for Petitioner.

Mr. Nayyar Iqbal Ghauri, Advocate for Respondent No. 3.

Date of hearing: 2.6.2015

ORDER

Through this Constitution Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner challenges *ex-parte* orders dated 15.12.2011, *ex-parte* judgment and decree dated 06.01.2012, order dated 26.06.2012 and the judgment and decree dated 08.11.2012, whereby suit for the recovery of maintenance allowance @ Rs. 5,000/- per month with 10% annual increase from 20.06.2010 till to date and in future till her legal entitlement, dower amount to the tune of Rs. 1,99,000/-, dowry articles as per list valuing Rs. 10,13,681/- as alternate price and 5 ½ *tola* gold ornaments or its price as per prevalent rate was decreed and the application filed by the petitioner to set aside the *ex-parte* judgment as well as appeal were dismissed.

2. Learned counsel for the petitioner contends that the *ex-parte* judgment and decree was passed on account of failure of learned counsel for the petitioner to inform him about the date of hearing when he was supposed to appear and as such counsel remained negligent in the performance of his professional duty, therefore, was warned by the Disciplinary Committee of the Punjab Bar Council. Further submits that even otherwise the trial Court was required to pass order on the basis of evidence instead of allowing claim to the fullest.

3. Conversely, learned counsel for Respondent No. 3 submits that the decree was passed on the basis of evidence and the negligence of counsel, if any, would not help out the petitioner, who himself otherwise was bound to pursue the case on the dates of hearing.

4. Arguments heard. Record perused.

5. The suit was filed by Respondent No. 3 on 27.07.2011 and the written statement was filed by the petitioner on 30.11.2011, whereafter, on 15.12.2011 the case was fixed for pre-trial reconciliation proceedings on which date Respondent No. 3 entered appearance and got recorded her statement that she was ready to rehabilitate with the petitioner if he paid her

dower and provide maintenance allowance. However, the petitioner did not appear, therefore, *ex-parte* proceedings were taken against him and *ex-parte* evidence was recorded. In the suit Respondent No. 3 has claimed maintenance allowance @Rs. 20,000/- per month as past maintenance allowance since June, 2010 as well as future maintenance allowance alongwith Rs. 1,99,000/- and 5½ *tolas* gold ornaments as dower and Rs. 10,13,681/- as alternate price of dowry articles and birth expenses of Rs. 90,000/-. However, maintenance @ Rs. 5,000/-per month with 10% annual increase, dowry articles of Rs. 10,13,681/- and 5½ *tola* gold ornaments as dower amount was awarded on the basis of *ex-parte* evidence *vide* order dated 06.01.2012. On 13.02.2012, just after a month the petitioner moved an application under Section 9(6) of the West Pakistan Family Court Act, 1964 alongwith application under Section 5 of the Limitation Act which was resisted but was dismissed on 26.06.2012 on the ground that negligence of counsel was not a valid ground to set aside the *ex-parte* decree and places reliance upon *Amanullah Soomro v. P.I.A. through Managing Director/Chairman and another* [2011 SCMR 1341]. However, before passing order dated 26.06.2012 the Disciplinary Committee of the Punjab Bar Council has already warned the learned counsel namely Mrs. Shabnam Naz Tariq, Advocate but this fact was not mentioned in the order dated 26.06.2012. The Disciplinary Committee of Punjab Bar Council referred to the pendency of appeal before the competent Court of law against the said order dated 06.01.2012. The appellate Court in its order dated 08.11.2012 while dismissing the appeal has not appreciated the proposition in the dictum laid down in the above cited judgment that the proceedings of the Disciplinary Committee had not resulted into warning to the counsel and that the Disciplinary Committee in its order dated 05.05.2012 had already referred to the pendency of the appeal.

6. Since due to the negligence of the counsel the petitioner has not been informed about the progress and the order passed by the Family Court,

therefore, in my humble view, case of the petitioner has been seriously prejudiced.

7. As far as rights of Respondent No. 3 regarding claim of maintenance is concerned, I am of the firm view that some amount must be paid by the petitioner to her immediately which may be subsequently adjusted by the Family Court, if a decree is passed.

8. In this view of the matter, order dated 26.06.2012 dismissing the application of the petitioner filed under Section 9(6) of the West Pakistan Family Courts Act, 1964 is hereby set aside as a result of which suit for recovery of maintenance allowance, dowry articles, dower amount, etc. is deemed to be pending before the Family Court at Lahore where the case is remanded subject to payment of Rs. 1,00,000/- by the petitioner which may be adjusted subsequently in the form of maintenance allowance and payable by the petitioner on 15.06.2015 when the parties shall appear before the Judge Family Court at Lahore, who shall proceed strictly in accordance with law and decide the family suit expeditiously, preferably within a period of three months from the receipt of copy of this order.

(R.A.) **Case remanded.**

2015 Y L R 2202

[Lahore]

Before Ali Baqar Najafi, J

ABDUL SHAKOOR through L.Rs. and others---Petitioners

versus

MUHAMMAD HANIF through L.Rs. and others---Respondents

Civil Revision No. 431 of 2004, decided on 19th May, 2015.

Civil Procedure Code (V of 1908)---

----O. XXII, R. 10, O.I, R. 10 & S.115---Specific Relief Act (I of 1877), Ss. 12 & 39---Specific performance of oral agreement---Procedure in case of assignment before final order in suit---Revision---Maintainability---Locus standi---Parties to revision---Impleadment of assignee in revision---Permissibility---Petitioner filed present revision on basis of assignment of claim---Predecessor of plaintiffs had purchased suit property from predecessor of defendants under general power-of-attorney through sale deed after oral agreement to sell---Legal representatives of vendor, defendants, filed suit for declaration seeking cancellation of said sale deed claiming that the general power of attorney had automatically revoked on death of vendor before execution of sale deed, which trial court decreed and the sale deed was cancelled---Plaintiffs, being legal representatives of first purchaser, filed suit for specific performance against vendors, which was dismissed both by trial court and appellate court---During pendency of first suit, suit property had been purchased by third person, who assigned his claim to the present petitioner during pendency of second suit, who had introduced himself by way of filing present revision petition on basis of assignment---Respondents took plea that petitioner had no locus standi as legal heirs of his vendor had been proceeded ex parte---Validity---After cancellation of sale deed, suit property had been reverted back to original owners---Petitioner was bound by decree as he had never become party to suit or appeal regarding suit for specific

performance and as he had stepped into shoes of assignor, who after losing appeal had not filed revision---High Court observed that assignee, present petitioner, could have filed application to either become party under O. I, R. 10, C.P.C., or for his substitution in place of assignor during suit or appeal--- If assignee chose not to file any application for his impleadment in proceedings, decision against assignor would be binding upon the assignee--- Revision petition was dismissed in circumstances.

H.M. Saya and Co., Karachi v. Wazir Ali Industries Ltd., Karachi and another PLD 1969 SC 65; Government of Sindh v. Abdul Sattar Sheikh and others 2003 SCMR 819; Rehmatullah and others v. Saleh Khan and others 2007 SCMR 729; Bashir Ahmad and 21 others v. Shah Muhammad and another 2010 CLC 734; Muhammad Nawaz through L.Rs. v. Haji Muahmamd Baran Khan through L.Rs. and others 2013 SCMR 1300; Muhammad Hussain and others v. Dr. Zahoor Alam 2010 SCMR 286; Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited PLD 2012 SC 247; Bashir Ahmad through L.Rs. and another v. Muhammad Ali through L.Rs and another 2007 SCMR 1047; Atlas Khan and others v. Muhammad Nawaz Khan through L.Rs. and others 2010 SCMR 1217; Shakeel Ahmed v. Mst. Shaheen Kousar 2010 SCMR 1507; Hashim Khan v. National Bank of Pakistan, Head Office At I.I. Chundrigar Road, Karachi and Branch Office at M.A. Jinnah Road, Quetta PLD 2001 SC 325; Mrs. Irene Wahab v. Lahore Diocesan Trust Association 2002 SCMR 300; Iqbal Sultan v. Miss Chand Sultan and 2 others 1990 CLC 366; Ch. Shujat Hussain and another v. Mian Aslam Riaz Hussain and others 1994 MLD 2079; Abdul Aziz and another v. Mst. Sikandar Jan and others PLD 1969 Pesh. 220; Fatima Girls High School v. Government of The Punjab through Member, Board of Revenue (Settlement), Lahore and 2 others 2002 SCMR 1361; Sardar Muhammad and another v. Akram and others 2002 SCMR 807; Allah Dad and 3 others v. Dhuman Khan and 10 others 2005 SCMR 564; Sahib Dad v. Province of Punjab and others 2009 SCMR 385; Rashid Ahmad v. Mst. Jiwan and 5 others 1997 SCMR 171; Mst. Surraya Begum and others v Mst. Suban Begum and others 1992 SCMR 652 and

Farzand Ali and another v. Khuda Bakhsh and others PLD 2015 SC 187 rel.

Malik Noor Muhammad Awan for Petitioners.

Ch. Muhammad Ashraf, Syed Mubashar Raza and Mehboob Ahmad for Respondents Nos.24 to 28.

ORDER

ALI BAQAR NAJAFI, J.---Through this Civil Revision, the petitioner has challenged the judgment and decree dated 12-10-1995 passed by the learned Civil Judge, Pakpattan Sharif and the judgment and decree dated 10-4-2000 passed by the learned Additional District Judge, Pakpattan Sharif, whereby the suit for specific performance of an oral agreement to sell was concurrently dismissed.

2. Brief facts giving rise to the filing of this civil revision are that land in dispute belonged to the Provincial Government which was sold through public auction in favour of Fazal, Rustam and Hanif in equal share. Since the land was barren, comprised of "tibajat" and the owners namely, Hanif and Rustam lived in different chaks, i.e. Chah Chakki Muzaffar Wala, Tehsil Sahiwal, therefore, Hanif and Rustam made oral agreement with Fazal to sell their shares for a consideration of Rs.25,000 which was paid to Fazal. Since the mutation was not sanctioned therefore, the sale could not be given effect to. However, it was agreed between the parties that after paying the whole consideration amount the land would be transferred and for this purpose one Basharat Ali was appointed as general attorney (Exh.P.1) on 24-1-1972. On 17-7-1982, the proprietary rights were granted whereafter on

27-11-1982 the sale deed was executed accordingly. However, on 18-12-1982 the successors of Rustam filed a suit for declaration contending that before execution of the said sale Rustam had already expired on 12-9-1982 and the general power of attorney (Exh.P.1) had automatically been revoked. Meanwhile, during the pendency of the suit one Shafi purchased the suit land. The suit was decreed on 25-1-1988 and the appeal was dismissed on 3-2-1990

as a result of which sale deed was cancelled. Cancellation of general power of attorney was made which was not known to Fazal.

3. On 14-2-1990 a suit for specific performance of oral agreement was filed by the legal representatives of Fazal against Hanif and Rustam in which Basharat, the attorney, gave his consenting statement. Importantly, during the pendency of the said suit the said land was purchased by the petitioner from the said Shafi on 21-2-1994. Meanwhile, on 12-10-1999 the suit was decided in favour of respondents Nos.24 to 28, heirs of Fazal and the appeal filed was also dismissed on 10-4-2000. The petitioner has filed this civil revision on the basis of assignment of claim.

4. Malik Noor Muhammad Awan, Advocate, learned counsel for the petitioner contends that the petitioner has been assigned the claim under Order II Rule 10 of C.P.C. and with permission of the Court he can always step in and contest the suit. Places reliance on H.M. Saya and Co., Karachi v. Wazir Ali Industries Ltd., Karachi and another (PLD 1969 Supreme Court 65) to define himself as aggrieved party and on Government of Sindh v. Abdul Sattar Sheikh and others (2003 SCMR 819) to claim the benefit of lis pendens. On merit, he contested that the agreement was oral in nature without time, date, place or any consideration, therefore, on the strength of Rehmatullah and others v. Saleh Khan and others [2007 SCMR 729] and Bashir Ahmad and 21 others v. Shah Muhammad and another [2010 CLC 734] the oral agreement is not to be relied upon. Places reliance on Muhammad Nawaz through L.Rs. v. Haji Muahmamd Baran Khan through L.Rs. and others (2013 SCMR 1300) to submit that it was time barred suit as laid down in Muhammad Hussain and others v. Dr. Zahoor Alam (2010 SCMR 286) and Abdul Karim and others v. Messrs Florida Builders (Pvt.) Limited (PLD 2012 Supreme Court 247). Adds that discretionary relief for specific performance of the agreement was not to be granted. Places reliance on Bashir Ahmad through L.Rs. and another v. Muhammad Ali through L.Rs and another (2007 SCMR 1047) and Atlas Khan and others v. Muhammad Nawaz Khan through L.Rs. and others (2010 SCMR 1217), Shakeel Ahmed v. Mst. Shaheen Kousar (2010 SCMR 1507), Hashim

Khan v. National Bank of Pakistan, Head Office At I.I.Chundrigar Road, Karachi and Branch Office at M.A. Jinnah Road, Quetta (PLD 2001 Supreme Court 325) and Mrs. Irene Wahab v. Lahore Diocesan Trust Association (2002 SCMR 300).

5. Conversely, Messrs Ch. Muhammad Ashraf, Syed Mubashar Raza and Mehboob Ahmad, Advocates, learned counsel for the respondents submit that the petitioner has no locus standi as heirs of Hanif and Rustam i.e. respondents Nos.1-A to 1-E, heirs of Shafi i.e., respondents Nos.7 to 19 and 20 to 22, 23 have been proceeded ex parte who have not come forward either to admit or contest claim of the petitioner. Submits that the petitioner never got possession of the land, therefore, he cannot be impleaded in appeal. Places reliance on Iqbal Sultan v. Miss Chand Sultan and 2 others (1990 CLC 366), Ch. Shujat Hussain and another v. Mian Aslam Riaz Hussain and others (1994 MLD 2079), Abdul Aziz and another v. Mst. Sikandar Jan and others (PLD 1969 Peshawar 220) and Fatima Girls High School v. Government of The Punjab through Member, Board of Revenue (Settlement), Lahore and 2 others (2002 SCMR 1361). Further adds that right of appeal is a substantive right and that the petitioner cannot be substituted for heirs of Rustam and Hanif. Places reliance on Sardar Muhammad and another v. Akram and others (2002 SCMR 807).

6. Arguments heard. Record perused.

7. Admittedly, the petitioner came into picture on 21-2-1994 when he statedly purchased the land from Muhammad Shafi but the fact remains that on 25-1-1988 the sale deed dated 27-11-1982 was cancelled meaning thereby that the property reverted back to Hanif and Rustam. It was during the pendency of the suit for specific performance of oral agreement that the said land was allegedly purchased by the petitioner from Shafi but he never become party either during the pendency of the suit or appeal. He came forward for the first time by filing the present civil revision on 24-6-2000. The question raised is as to whether the person not being party in the litigation before the courts

below can file civil revision on his own on the strength of assignment of claim by the aggrieved person.

8. To answer this question it is important to reproduce Order XXII Rule 10 of C.P.C, which is as follows:--

"Procedure in case of assignment before final order in suit.---(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

9. It has been argued by the petitioner's side that in H.M. Saya and Co., Karachi v. Wazir Ali Industries Ltd., Karachi and another (PLD 1969 Supreme Court 65), a stranger to suit or proceedings is competent to file appeal if adversely affected by an order, but admittedly, the present petition is a Revision Petition under section 115 of C.P.C. In Allah Dad and 3 others v. Dhuman Khan and 10 others (2005 SCMR 564) the petitioner therein was already made a party in the proceedings but in the present case the petitioner has filed the revision petition without being a party to the proceedings. In Sahib Dad v. Province of Punjab and others (2009 SCMR 385), the facts are very much identical, therefore, the relevant extract is as under:--

"According to the petitioner, Abdul Ghafoor during the pendency of the suit assigned his rights in the disputed land in his favour. In the said scenario the case of the petitioner was adequately covered under the provisions of Order XXII, Rule 10(1), C.P.C., but he did not choose to file any such application and felt satisfied on defending the proceedings by Abdul Ghafoor. Learned counsel has although relied upon the judgment of Surraya Begum (ibid), yet the in-depth perusal amply shows that it does not help the petitioner. It has been held in the said case that assignee may file an application to either become a party under Order I, Rule 10, C.P.C., or for his substitution in place

of the assigner and if the assignee chooses not to file any application for his impleadment in the proceedings then the decision against the assignor would be binding upon him."

It will be equally expedient to reproduce Rashid Ahmad v. Mst. Jiwan and 5 others (1997 SCMR 171), in which it was held that:--

"The doctrine of lis pendens contained in section 52 of the Transfer of Property Act, 1882 merely provides that a transfer of immovable property during pendency of a suit, which is not collusive in nature, in which the right to such immovable property is directly and specifically in question, cannot defeat or affect the rights of any party to the proceedings under any decree or order which may be made in such suit. This provision does not preclude the transferee pendente lite from being made a party to the pending proceedings on the basis of such transfer. Order XXII Rule 10, C.P.C., which regulates the proceedings of a suit provides that in cases of assignment, creation or devolution of any interest during pendency of suit, the suit may be continued by or against the person to or upon whom such interest has come or devolved. Another provision which is relevant in such situation is section 146 of C.P.C. which provides that where any proceedings may be taken or application made by or against any person, then the proceedings may be taken or the application may be made by or against any person claiming under him. Provisions of section 146 and Order XXII, C.P.C. apply equally to appeals".

In Mst. Surraya Begum and others v Mst. Suban Begum and others 1992 SCMR 652 assignee can be impleaded as party only in the appeal.

In Farzand Ali and another v. Khuda Bakhsh and others [PLD 2015 Supreme Court 187], the principle of lis pendence is discussed. Relevant portion is reproduced as under:--

"Considering the plea of lis pendens raised by the appellants' learned counsel, it may be mentioned that the scope, the principle and the application of rule of lis pendens has been elaborately dilated in the judgment reported as Muhammad Ashraf Butt and others v. Muhammad Asif Bhatti and others

(PLD 2011 SC 905). The ratio of the above law is that a subsequent transferee cannot sustain his transfer (e.g. the sale) if he has purchased the property during the pendency of the suit. He is bound by the outcome of the suit, obviously that shall be so if the case is decided against the transferor from whom he is purchasing the property or against the transferee if he is a party to the case, but if the lis is decided in his favour, there shall be no question about the application of the rule of lis pendens."

10. Since the petitioner has neither become party in the suit nor at the appellate stage, therefore, he is bound by the decree as he has stepped, at the most, into the shoes of appellant who after losing the appeal did not file the revision petition.

11. In this view of the matter, this civil revision having no merits is dismissed.

SL/A-79/L **Petition dismissed**.

2016 C L C 81

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD NADEEM----Petitioner

Versus

ANEESA BIBI and others----Respondents

W.P. No.17141 of 2015, decided on 6th October, 2015.

West Pakistan Family Courts Act (XXXV of 1964)---

----Ss. 14 & 17-A----Constitution of Pakistan, Art. 199---Constitutional petition---Suitfor maintenance---Appeal---Appellate court upheld decree of maintenance of rupeesthirty-five hundred per month on ground that no appeal was maintainable againstmaintenance for less than rupees five thousand---Validity---Maintenance as a wholewould determine pecuniary jurisdiction of appellate court---Under S.17-A of WestPakistan Family Courts Act, 1964, if defendant had failed to pay interim maintenancefixed by trial court, then not only right of defence could be struck off but decree couldalso be passed---Appellate court had incorrectly found that order of maintenancepassed by Family Court was interim order under S.14(3) of West Pakistan FamilyCourts Act, 1964, therefore no appeal could be preferred against the same---HighCourt, setting aside impugned judgment and decree, directed appellate court to decidedappeal on merits---Constitutional petition was allowed in circumstances.

Muhammad Naseer v. Fatima through her mother and 2 others 2000 MLD 802rel.

Shaigan Ijaz Chadhar for Petitioner.

Rana Muhammad Afzal for Respondent No.1.

ORDER

ALI BAQAR NAJAFI, J.--- Through this Constitutional petition the petitionerchallenges order and decree dated 20.04.2015 and order dated 08.05.2015 whereby thedecree of Rs.3500/- each for the three minors (respondents Nos.2 to 4) with 15%annual increase granted by the learned Judge Family Court was upheld on the groundthat no appeal was maintainable against the maintenance for less than Rs.5000/-.

2. Arguments heard. File perused.

3. Respondent No.1 filed a suit for dissolution of marriage and recovery ofmaintenance as well as dowry articles in which the written statement was submittedadmitting the dowry articles to the extent of Rs.50,000/- and also admitting theparentage of the said two minors and had stated that he has the earning of onlyRs.5000/- to Rs.6000/- in a month. On 11.09.2014, an interim maintenance of Rs.900/-per month was fixed by the learned Judge Family Court. On 20.04.2015, it wasobserved by the learned Judge Family Court that the petitioner has already paidRs.9000/- up-till 16.06.2014 whereafter the maintenance of Rs.1000/- was fixed and assuch total maintenance payable by the petitioner was Rs.30,000/-, out of which he hadpaid only Rs.12,000/- including Rs.3000/- which was paid on 20.04.2015.Consequently, defence of the petitioner was struck off under section 17-A of the WestPakistan Family Courts Act, 1964 and Rs.3500/- per month each for the two minorswith 15% annual increase was fixed as maintenance. However, the case was adjournedto determine the remaining part of the claim. A separate decree sheet was preparedwithout specifying the amount of the decree. The appeal filed against the saidjudgment was dismissed being not maintainable as the maintenance of

Rs.3500/- wasconsidered not appealable under section 14(3) of the West Pakistan Family Courts Act,1964.

4. Precisely, two legal propositions have been raised before this Court i.e. whether themaintenance of the two minors at the rate of Rs.3500/- each with 15% annual increasewas an appealable order under section 14(3) of the Act ibid and as to whether thedecree in respect of maintenance of the minors could be passed without deciding theentire case. In order to find answer of these questions, I have been assisted by thelearned counsel for the petitioner who relied upon the case reported as MuhammadNaseer versus Fatima through her mother and 2 others (2000 MLD 802) in which theSingle Bench of this Court has interpreted section 14(2)(c) of the West Pakistan FamilyCourts Act, 1964 (Amendment Act, 2015) by holding that it would be the maintenanceas a whole which would determine the pecuniary jurisdiction of the appellate court.This view is based on correct interpretation of the statutory provision, therefore, is re-enforced. However, the appellate court in its judgment dated 08.05.2015 hasincorrectly held that it was an interim order under section 14(3) of the West PakistanFamily Courts Act, 1964 which was passed by the Family Court, therefore, no appealcould be preferred against the same. To my understanding, under section 17-A, if thepetitioner had failed to pay an interim maintenance fixed by the court, not only thedefect could be struck off but a decree could also be passed. Without discussing aboutthe merits of the case as it would prejudice the case of either party, it is appropriate thatthe appellate court be directed to decide the appeal by setting aside the judgment dated08.05.2015 passed by it.

5. For the foregoing reasons, by allowing this writ petition the impugned judgment ofthe appellate court is set aside the case is remanded to it to decide the appeal on merits.

SL/M-330/L **Case remanded.**

2016 M L D 1639

[Lahore]

Before Ali Baqar Najafi, J

IHSAN AHMED KHAN---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE, BHAKAR and 2 others---Respondents

Writ Petition No.17659 of 2013, decided on 11th December, 2015.

Civil Procedure Code (V of 1908)---

----S.11---Family Courts Act (XXXV of 1964), S. 5, Sched.---Suit for recovery of dowry articles---Res judicata, principle of---Applicability---Words "litigating under the same title" in S.11, C.P.C.---Scope---Suit for recovery of dowry articles was dismissed being premature during subsistence of marriage---Wife filed fresh suit for recovery of dowry articles after dissolution of marriage---Family Court rejected the plaint on the basis of res judicata but Appellate Court remanded the case for decision afresh holding that res judicata was not applicable---Validity---Whether dowry articles were still lying in the house of husband after divorce needed to be proved on the basis of evidence---Cause of action accrued from the date of desertion as it was the breakage of marriage which necessitated the litigation of matrimonial nature---Parties were the same and subject matter was also same but present litigation was not under the same title---Constitutional petition was dismissed in circumstances.

Malik Matee Ullah for Petitioner.

Imtiaz Hussain Khan Baloch for Respondent No.3.

Date of hearing: 1st December, 2015.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the judgment and decree dated 07.05.2013 has been challenged whereby appeal of respondent No.3 filed against the judgment and decree dated 26.09.2012 passed by the Judge Family Court dismissing the suit for recovery

of dowry articles, was allowed and the case was remanded to the Family Court to decide it afresh as principle of res judicata was not applicable to this case.

2. Brief facts giving rise to the filing of this petition are that respondent No.3 filed a suit for recovery of dowry articles worth Rs.3,93,300/- with the background that earlier suit for the same relief filed by her was concurrently dismissed i.e. both by Family Court and Appellate Court as premature since the marriage was found intact. The suit was resisted by filing the written statement by the petitioner as a result of which following issues were framed:-
-

ISSUES.

1. Whether the plaintiff is entitled to recover dowry articles from the defendant as prayed for? OPP

2. Whether the instant suit is barred by principle of res judicata? OPD

3. Relief.

3. Vide judgment and decree dated 26.09.2012 the issue No.2 was decided in favour of the petitioner and against the respondent No.3 who filed an appeal which was allowed by the appellate court and remanded the case to the Family Court by observing that issue of dowry articles is yet to be finally and conclusively decided after discussing the evidence on record, therefore, the case be decided keeping in view the ingredients of res judicata, hence this writ petition.

4. Learned counsel for the petitioner contends that earlier suit filed by respondent No.3 for the recovery of dowry articles was dismissed concurrently whereafter she cannot file a fresh suit as it will be directly hit by Section 11 of the Code of Civil Procedure under which no second suit can be filed between the same parties on the same subject matter.

5. Conversely, learned counsel for respondent No.3 submits that dissolution of marriage provides fresh cause of action and that the issue of recovery of dowry articles was not conclusively decided on the basis of evidence between the parties. Prays for the dismissal of the writ petition.

6. Arguments heard. File perused.

7. The precise legal question raised before this Court is about the

applicability of principle of res judicata enshrined in Section 11, C.P.C., which is reproduced as under for ready reference:--

11. Res Judicata.---No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

(Underline is for emphasis).

8. A perusal of said section amply demonstrate that if a matter in a subsequent suit was directly and substantially the same as in earlier suit between the same parties litigating under the same title if decided by the court of competent jurisdiction it cannot be re-challenged. Here for the purpose of decision of this case, "litigation under the same title" is of great significance.

9. Admittedly, first suit of respondent No.3 for recovery of dowry articles and maintenance allowance was filed on 02.04.2010 in which while giving finding on issue No.2, i.e. "Whether the plaintiff is entitled to recover dowry articles as detailed in the list annexed with the plaint or value thereof Rs. 3,93,300/-? OPP," it was observed that since respondent No.3 was given a separate house in which the dowry articles were placed, therefore, the petitioner was not in possession of the same. The claim for the recovery of dowry articles was, therefore, dismissed and the suit for restitution of conjugal rights was decreed it was observed as follows:--

...."In other words, she was provided with residence and gold ornaments by the defendant as agreed through nikahnama Ex.P1.She is in the possession of the same. The dowry articles always follow the residence of spouse. Therefore, court is of the view that defendant is not in possession of any dowry articles as demanded by the plaintiff. For the reason and as discussed above, the instant issue is answered against the plaintiff."

10. However, the appellate court while deciding the appeal on 07.07.2011 observed that during the subsistence of marriage the filing of suit for recovery of dowry articles was premature and was rightly dismissed. According to the position taken by the parties the matter was subsequently reconciled and they started living together as husband and wife but on 18.06.2012 another suit for

recovery of dowry articles was filed taking the ground in paragraph No.2 that after the dissolution of marriage on the basis of Khula on 10.04.2012 from the Family Court, the said suit was filed.

11. In other words the question as to whether the dowry articles are still lying in the house in possession of petitioner after the divorce, needs to be proved on the basis of evidence, as the facts and circumstances have been changed between the parties. The cause of action, invariably in the suit for recovery of dowry articles accrues from the date of desertion as it is the breakage of marriage which necessitates the litigation of matrimonial nature. It is always possible that during the subsistence of marriage, certain rights may not be claimed by a wife for the sake of saving her marriage. However, the dissolution of marriage gives rise to an antagonizing situation where the parties have to take adverse stands in order to agitate their respective rights relating to the custody of minor, recovery of maintenance allowance for Iddat period, recovery of dower, or recovery of dowry articles, etc. If the arguments of the learned counsel for the petitioner that a decree passed during the subsistence of marriage, cannot be challenged after reconciliation and divorce, is accepted, it will become a common practice that whenever matrimonial suits are decided in favour of either party, the divorce or separation would be meaningless for the purpose of determining a cause of action. In all societies matrimonial relations are very sensitive in nature as they are mostly based on emotions but the fabric of our society is based on the strength of relationship between the immediate members of a united family. Needless to observe the fact that strength of family relationship is a distinguished feature of our society which has exalted us from the western world.

12. In the instant case undoubtedly the parties are the same, the subject matter of recovery of dowry articles is the same and the jurisdiction of the Family Court was also rightly exercised, but now the litigation is not under the same title as respondent No.3 has become the ex-wife for the petitioner and the petitioner has become ex-husband for respondent No.3. In other words the title of the litigants have now changed to ex-wife and ex-husband.

13. For what has been stated above, this petition has been found meritless and is, therefore, dismissed.

ZC/I-3/L **Petition dismissed.**

2016 P L C (C.S.) 151

[Lahore High Court]

Before Ali Baqar Najafi, J

Raja MUHAMMAD MOHSIN SATTI

Versus

GENERAL MANAGER PAKISTAN RAILWAYS HEADQUARTER, LAHORE and 3 others

W.P. No.27409 of 2011, decided on 3rd February, 2015

Constitution of Pakistan---

----Art. 199---Constitutional petition---Civil service---Absence from duty---Dismissal from service---Reinstatement by the Service Tribunal---Extension of same relief to the other employees---Scope---Petitioner along with other employees were dismissed from service through consolidated order---Departmental appeal filed by the petitioner was dismissed---One of the employees preferred appeal which was accepted by the Service Tribunal declaring the dismissal order as against the principles of natural justice---Petitioner filed representation to the department to grant him same relief which application was dismissed---Validity---Dismissal of employee on absence from duty would require a subjective approach involving evidence---Petitioner appeared to be habitual absentee from duty---Order of Service Tribunal was with regard to the employee whose date of absence was 2-10-2001 whereas that of petitioner was 30-10-2001---Case of petitioner was on different premises---Service Tribunal had not held that any employee absented himself on any ground might be reinstated in service by treating his absence as authorized absence---Benefit of judgment passed by the Service Tribunal could not be extended to the petitioner as it was the judgment in persona where specific relief had been allowed---Constitutional petition was dismissed in circumstances.

Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others 2009 SCMR 1; Ahmad Din and another v. Government of Khyber Pakhtunkhwa Agricultural, Live Stock and Cooperatives Department Peshawar through Secretary and 3 others 2014 PLC (C.S) 806; Prof. Dr. M. Islam Gouhar v. University of Peshawar through Registrar and 5 others 2014 PLC (C.S) 265; Dr.Iqbal Jan and others v. Province of Sindh and others 2014 PLC (C.S) 1153; Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others PLD 2013 SC 195; Sadaqat Ali Khan v. Collector Land Acquisition and others PLD 2010 SC 878; Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185; Muhammad Sarwar Khan and others v. Government of Pakistan and others 1998 SCMR 2197 and Marvi Memon v. Federation of Pakistan and others PLD 2011 SC 854 ref.

Ch. Muhammad Ayub for Petitioner.

Suleman Kazmi for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- The petitioner, through this Constitutional Petition, seeks setting aside order dated 06.09.2011 passed by respondent No.4, whereby petitioner's representation dated 18.06.2011, 18.08.2011 against the dismissal from service was considered by the authority and rejected as he has already availed the right of appeal with further prayer to re-instate him into service.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner was appointed as "Mauwan" on 13.09.1989 and ever since was performing his duty. Due to the collapse of the residential house of his parents on account of heavy rain he went to his village Kotli Sattian District Rawalpindi on 30.10.2001 but reported on 10.11.2001. He was allowed to resume duty by respondent No.3 but was issued a show cause notice later on under Removal

from Service (Special Powers) Ordinance, 2000 for absence from duty since 30.10.2001. The petitioner replied to the show cause notice by explaining his absence from duty. Subsequently, without issuing any prior notice and giving any personal hearing, on holding inquiry the petitioner along with his other 8 employees were dismissed from service on 08.01.2002 through a consolidated order passed by respondent No.3/Workes Manager Signal Shops vide order dated 11.01.2002. The departmental appeal filed by the petitioner before the General Manager/respondent No.1 was dismissed vide order dated 20.06.2002, whereafter, one of the dismissal employee namely Farman Shah (Muawan) preferred Appeal No.620-L.C.S (2000) before the Federal Service Tribunal whereas the petitioner along with 2 other employees instituted a petition before NIRC, Lahore which was dismissed on account of wrong forum in the year 2005. However, on 08.11.2008 the appeal of said Farman Shah was accepted by the Federal Service Tribunal declaring the dismissal order dated 11.01.2002 as violative of provisions of Removal from Service (Special Powers) Ordinance, 2000 and also against the principle of natural justice. He was reinstated into service w.e.f. the date of his dismissal and his 56 days absence was treated as extra ordinary leave without pay and he was taken on duty vide office order dated 27.11.2008. The petitioner, after coming to know, about the order dated 27.11.2008 filed representation to respondent No.4 to grant him the same relief, which was rejected on 06.09.2011, hence this writ petition.

3. In report and parawise comments submitted by the respondents, it is stated that the petitioner was a regular absconder and has been punished on four occasions on similar account in service. Gives reference to the order dated 09.04.1997 in which he was dismissed from Service, whereafter the appeal was accepted on 04.09.1998 and in the years 1995, 1998, 1999 he was mentioned as un-authorized absentee but his appeal was allowed and he resumed his duty on 22.11.2001. He prays for dismissal of the petition.

4. Arguments heard. Record perused.

5. Main contention of the learned counsel for the petitioner that since the dismissal order dated 11.01.2002, whereby 9 officials including the petitioner were dismissed from service under the Removal from Service (Special Powers) Ordinance, 2000 by treating their absence period as absence without leave, whereafter Farman Shah filed his appeal against the said order in which his date of absence was mentioned as 02.10.2001 and the same was allowed, therefore, the petitioner is also entitled to the same relief in view of the judgment of the apex Court titled "Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others [2009 SCMR-1]. However, on the other hand, learned counsel for the respondents submits that such benefit cannot be extended to the petitioner.

6. Farman Shah as well as the petitioner along with others were dismissed from service on account of absence from duty through a consolidated order which was challenged before the Federal Service Tribunal where his appeal was allowed, termination order was set aside and Farman Shah was ordered to be re-instated. Question as to dismissal on absence from duty required a subjective approach involving evidence. The petitioner appears to be habitual absentee from duty as is reflected from the record presented by the respondents mentioning that at least twice he was dismissed from service but was reinstated. Even in this Court or before the NIRC, no documents were presented to substantiate that the petitioner remained absence on account of demolition of the house of the parents of the petitioner. In the judgments cited by the learned counsel for the petitioner at bar titled as "Ahmad Din and another v. Government of Khyber Pakhtunkhwa Agricultural, Live Stock and Cooperatives Department Peshawar through Secretary and 3 others [2014 PLC (C.S] 806], Prof. Dr. M. Islam Gouhar v. University of Peshawar through Registrar and 5 others [2014 PLC (C.S) 265], Dr.Iqbal Jan and others v.

Province of Sindh and others [2014 PLC (C.S) 1153], Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others [PLD 2013 Supreme Court 195], Sadaqat Ali Khan v. Collector Land Acquisition and others [PLD 2010 Supreme Court 878], Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others [1996 SCMR 1185], Muhammad Sarwar Khan and others v. Government of Pakistan and others [1998 SCMR 2197] and Marvi Memon v. Federation of Pakistan and others [PLD 2011 Supreme Court 854], it was held that if the court or authority has decided a question of law the benefit of which can be extended to the persons who are not required to approach the said court for the relief as it will increase the agony of such person and will over-burden the court, therefore, benefit of such decision can be extended to that individual. If the absence from duty the government servant has been regularized he can be penalized by imposing penalty but in the instant case his absence from duty was not regularized as per record. It was held in "Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others v. Sameena Parveen and others" [2009 SCMR-1], which reads as under:-

> **"Administration of justice.**--- If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servant also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum."

7. The order of the Federal Service Tribunal was an order relating to the appellant namely, Farman Shah in which his date of absence is 02.10.2001 whereas that of the petitioner is 30.10.2001, therefore, case of the petitioner is

on different premises and nowhere it was held by the Federal Service Tribunal that any employee absented himself on any ground may be reinstated in service by treating his absence as authorized absence. In my humble view benefit of the judgment passed by the Federal Service Tribunal cannot be extended to the petitioner as it is the judgment of persona where specific relief was allowed to Farman Shah.

8. In this view of the matter, this writ petition having no merit is dismissed.

ZC/M-79/L **Petition dismissed**.

2016 P L C (C.S.) 319

[Lahore High Court]

Before Ali Baqar Najafi, J

Syed IRSHAD HUSSAIN ABIDI

Versus

GOVERNMENT OF PUNJAB through Chief Secretary, Lahore and 2 others

W.P.No.252y of 2011, decided on 10th December, 2014.

West Pakistan Government Servants (Medical Attendance) Rules, 1959--- ----Rr. 6 & 13---Constitution of Pakistan, Art.199---Constitutional petition---Reimbursement of medical charges incurred on treatment abroad---Plea of petitioner-employee was that he incurred 18560 US Dollars on treatment abroad---Government turned-down request of employee for reimbursement of medical charges on the ground that there was ban on treatment abroad---Validity---Letter with regard to ban on treatment abroad was issued after the sanction accorded in favour of employee, said letter was not retrospective---Government servant was entitled to receive from government any amount paid by him on account of medical attendance on production of certificate in writing by the authorized medical attendant---Reimbursement of medical charges was permissible if a Government servant was sent abroad on duty---Petitioner went abroad on duty with permission from the Government---Employee incurred medical expenses on emergency basis which he claimed and was allegedly permitted but subsequently said sanction was cancelled---Such act of department was unwarranted under the law as earlier sanction had neither been set aside nor it was the case of department that petitioner was not entitled to the medical expenses---Impugned orders were set aside and respondents were directed to reimburse the expenses already incurred by the petitioner within a specified period---Constitutional petition was accepted in circumstances.

Irshad Hussain v. Secretary, Ministry of Finance and others PLD 2002 SC 387 rel.

Syed Qalb-i-Hassan for Petitioner.

Wali Muhammad Khan, A.A.-G. with Ejaz Farrukh, Senior Law Officer for Health Department for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner challenges letters dated 27.01.1998 and 28.02.2006 of Government of Punjab, Health Department, to be void and without lawful authority and prays for issuance of direction to the respondents to release 8500- Pounds Sterling in his favour as reimbursement of his medical charges already incurred by him.

2. Brief facts giving rise to the filing of this writ petition are that in the year 1988 the petitioner was posted as Additional District and Sessions Judge, Khushab, and during summer vacation he went to United States of America (USA) on Ex-Pakistan Leave to see his ailing mother (who later died) with the permission of the Government. During his stay in the USA, he complained of a severe chest pain whereafter he consulted the Cardiologist who found that the petitioner was suffering from critical coronary artery disease and was advised to undergo surgery immediately. Of course, he was left with no option except to follow the advice, therefore, on 19.08.1988 he got himself admitted in Buffalo General Hospital Buffalo, New York and underwent the open heart surgery by incurring expense of 18560 U.S Dollars which he borrowed from his brother with the commitment to repay after its reimbursement from the Government of Punjab. On return he applied before the authority on 03.12.1988 to reimburse the medical charges which was also recommended by the Lahore High Court to the Government of Punjab vide letter dated 09.04.1989 and on 09.03.1992 the Government of Punjab sanctioned the reimbursement of 8500 Pound Sterling in lieu of his claim of 18560 US Dollars which was also conveyed to the Ministry of Health. The petitioner got

verified the vouchers from the Embassy of Pakistan and USA and requested for expeditious reimbursement of the medical expenses. However, on 27.01.1998 the sanction for reimbursement of medical charges incurred by him has been turned down since there was a ban on treatment abroad. Consequently, the petitioner filed W.P.No.2861 of 1998 which was disposed of on 27.01.2004 with the direction to the Health Secretary, Government of the Punjab, to accord personal hearing. to the petitioner but the petitioner being dissatisfied approached Hon'ble Supreme Court, where his petition was decided on 24.11.2005 with the observation that if the petitioner's representation has been turned down, he could challenge it before the appropriate forum.

3. In the report and parawise comments submitted by the respondents it is reiterated that since a ban has already been imposed on the reimbursement of medical funds on account of treatment abroad vide some letter issued in March, 1997, therefore, no relief can be granted.

4. Arguments heard. Record perused.

5. Admittedly, the letter issued in the month of March, 1997 is subsequent to the sanction accorded to the petitioner in the year 1992 which also does not make it operative retrospectively as laid down in Irshad Hussain v. Secretary, Ministry of Finance and others (PLD 2002 SC 387). Under section 6 of the West Pakistan Government Servants (Medical Attendance) Rules, 1959, a Government servant is entitled to receive from the Government any amount paid by him on account of medical attendance on production of certificate in writing by the authorized medical attendant in this behalf. Under section 13 such reimbursement is also permissible if a Government servant was sent abroad on duty. Section 13 is reproduced as under:-

> "13. Government Servants who are sent abroad on duty by Government shall be allowed the following facilities for purpose of medical treatment during the period they are on duty abroad:-
>
> (i) Reasonable costs of treatment will be met by the Government,

if a Government servant actually falls ill while he is on duty abroad. The treatment will be on the scale laid down in the above rules.

(ii) No routine check-up will be permitted at Government expense nor would Government accept liability for treatment of any disease from which a Government servant may have been suffering while in Pakistan and for which he may take the opportunity of his visit to a foreign country to receive treatment. Cases in which a disease from which a Government servant may have been suffering while in Pakistan, takes a turn for the worse and requires urgent treatment, may be considered on merits.

(iii) The treatment would be limited to the country and the place to which the Government servant has been sent on duty."

6. A scanning of the above provisions of law and the principle of law laid down by the Hon'ble Supreme Court, it is abundantly clear that the petitioner who went abroad on duty with a permission from the Government had to incur the medical expense on emergency basis which he claimed and was allegedly permitted but subsequently by misinterpreting the letter of March 1997, a retrospective effect was extended as a result of which the said sanction was cancelled. I am afraid, these acts are unwarranted under the law as the earlier sanction has neither been set aside nor it is the case of the respondents that the petitioner is not entitled to the medical expenses prior to the letter issued in March 1997. The West, Pakistan Government Servants (Medical Attendance) Rules, 1959 are explicit and unambiguous requiring the reimbursement of the expenses incurred by the petitioner.

7. For the above said reasons, I allow this petition and set aside orders dated 27.01.1998 and 28.02.2006 and direct the respondents to reimburse the expenses already incurred by the petitioner within a period of one month from today.

ZC/I-38/L **Petition allowed.**

2016 P L C (C.S.) 928

[Lahore High Court]

Before Ali Baqar Najafi, J

MUHAMMAD RAFIQUE

Versus

DISTRICT ACCOUNTS OFFICER, FAISALABAD and another

W.P.No.23288 of 2012, decided on 21st January, 2015.

(a) Punjab Civil Servants Act (VIII of 1974)---

----S. 12(ii)---Constitution of Pakistan, Art.199---Constitutional petition---Compulsory retirement---Reinstatement of civil servant---Recovery of interest on the amount received by the employee due to such retirement---Scope---Petitioner was compulsory retired from service in disciplinary proceedings but he was reinstated in service by converting the same into stoppage of one increment for two years by the Service Tribunal---Petitioner was directed to pay interest on the amount which he received due to retirement---Validity---Petitioner had returned the entire amount which he received---Reinstatement of government servant retired under S.12(ii) of Punjab Civil Servants Act, 1974 would be conditional to return of pension, gratuity and commuted value of pension drawn by him which had to be treated as advance to him and would be recoverable along with interest at the rate applicable at the time of reinstatement---Judgment passed by the Service Tribunal did not reveal any such recovery of interest which had excluded the petitioner for the purposes of recovery of interest---Judgment of Service Tribunal would be operated prospectively and would be applied to the civil servant on the date when it was announced---No payment of interest was mentioned in the judgment of Service Tribunal and the same could not be recovered from the petitioner---Nothing was on record that at the time of receiving amount petitioner committed that he would pay it back with interest at the event of his reinstatement in service---Authorities were restrained from recovering the amount of interest from the petitioner as he had paid back the entire received amount---Constitutional petition was accepted, in circumstances. A, B, C, D & E

(b) Punjab Civil Servants Act (VIII of 1974)---

----S. 12(ii)---Constitution of Pakistan, Art.199---Constitutional petition---Compulsory retirement---Reinstatement---Recovery of amount paid in lieu of such retirement---Scope---Reinstatement of government servant retired under S.12(ii) of Punjab Civil Servants Act, 1974 would be conditional to return of pension, gratuity and commuted value of pension drawn by him which had to be treated as advance to him and would be recoverable along with interest at the rate applicable at the time of reinstatement---Government should not sustain any loss for any payment made on account of inflation of money which was subsequently found to have made unnecessary---Such event might arise either when appeal against compulsory retirement was allowed by the departmental authority or by the Service Tribunal---Order permitting reinstatement would have to be followed while ascertaining as to whether any interest was specifically mentioned as recoverable from such employee---Such situation might also arise when government servant retired before its superannuation was subsequently reinstated in service---Government servant would not be able to claim interest on the delayed payment of his post retirement benefit as said amount was to be paid at the time when it was found payable. B, C & D

Ch. Muhammad Ikram Zahid for Petitioner.

Khawaja Salman Mehmood, Asstt. A.-G. for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner seeks a direction to the respondents not to recover the amount of Rs.3,69,346/- paid to the petitioner on account of his retirement as a consequence of reinstatement in service and also not to recover any interest over and above this amount.

2. Brief facts giving rise to this writ petition are that the petitioner was compulsorily retired from the government service w.e.f. 22.09.2010 under the proceeding taken under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 and the appeal filed before the Punjab Service

Tribunal, the petitioner was reinstated in service by converting compulsory retirement into stoppage of one increment for two years provided he will pay back all pensionary benefits, gratuity etc in easy installments within two years received already according to law. The intervening period during which he remained out of service will be treated as leave without pay. Writ Petition No.7761 of 2012 filed for the implementation of the said judgment and as per order, the petitioner joined duty on 22.05.2012 and returned the original service book as well as the original pension book to the respondents. As he received Commutation to the tune of Rs.2,91,328/-, monthly pension up to 30.04.2012 at Rs.78,018/- which he had returned to the respondents in easy installments. But an amount of Rs.97,795/- as interest is being illegally recovered, hence this writ petition.

3. In paragraph-9 of the report and parawise comments submitted by respondent No.1, it was stated that on the reinstatement of the petitioner he has to pay interest on the amount which he retained but returned as provided in the instruction of Finance Department dated 24.03.1987 and 22.03.2007.

4. Arguments heard. Record perused.

5. The Punjab Service Tribunal vide judgment dated 16-1-2012 accepted the appeal partially and the order of compulsory retirement from service dated 22.09.2010 was modified and converted into stoppage of one increment for two years which the petitioner was re-instated in service from the date of compulsory retirement provided he paid back all pensionary benefits, gratuity etc. in easy installments within two years; and the intervening period was to be treated as leave without pay. It is also not denied by the respondents that he has returned [the entire amount in easy installments which he received from the respondents.]A

6. However, as to the recovery of interest reference is made by respondent No.1 to the office circular dated 24.03.1987 as well as in circular dated 22.03.2007 wherein it has been provided that reinstatement of government servant retired under section [12(ii) of the Punjab Civil Servants Act, 1974 will be conditional to return of pension, gratuity and commuted value of pension drawn by him which would be treated as advance to him and

would be recoverable along with interest, at the rate applicable at the time of reinstatement.]B

7. [Wisdom behind such circular is that on account of inflation of money government should not sustain any loss for any payment made which was subsequently found to have made unnecessarily. Such event may arise either when the appeal against compulsory retirement is allowed by the departmental authority or by the Punjab Service Tribunal. In the latter, order permitting reinstatement will have to be followed while ascertaining as to whether any interest is specifically mentioned as recoverable from such employee. A perusal of the judgment passed by the Punjab Service Tribunal does not reveal any such recovery of interest. Therefore, in my humble view, excludes its application to the petitioner for the purposes of recovery of interest.]C

8. [Such a situation may also arise when the government servant compulsory retired before its superannuation if was subsequently reinstated in service, he would not be able to claim interest on the delayed payment of his post retirement benefit for the simple reason that said amount is to be paid at the time when it is found payable. In the present case, the judgment of the Punjab Service Tribunal as mentioned therein, as obviously has to be operated prospectively and will be applied to the petitioner on the date when it was announced. Besides, such payment of interest was not found direct liability of the petitioner at the time when he was paid the benefit immediately after retirement therefore, cannot be recovered from the petitioner. Lastly, record does not reveal that at the time of receiving the amount he committed that he would pay it back at the event of his reinstatement in service with interest.]D

9. [For the foregoing reasons, this petition is allowed as a result of which respondents are restrained from recovering the amount of interest from the petitioner as he has admittedly paid back the entire received amount in easy installments.]E

ZC/M-58/L **Petition allowed.**

2016 P Cr. L J 300

[Lahore]

Before Syed Muhammad Kazim Raza Shamsi and Ali Baqar Najafi, JJ

SARDAR MUHAMMAD NASEEM---Appellant

Versus

The STATE---Respondent

Criminal A. No. 370 of 2004, decided on 11th May, 2015.

National Accountability Ordinance (XVIII of 1999)---

----Ss. 5(da) & 9(a)(v)---Assets beyond known sources of income---Appreciation of evidence---Benami properties---Sources of income---Proof---Accused was holder of public office and was convicted and sentenced by Trial Court for seven years imprisonment along with fine---Validity---No notice was issued to alleged Benamidar prior to confiscation of property, the same was fatal to prosecution case---In a case of assets beyond means, prior to discussing assets, the known source of income both legal and illegal had to be brought on record---Trial Court fixed value of properties but nowhere salary of accused for last 41 years, his savings and his other emoluments were even discussed---Court had no formula to apply in order to ascertain as to what were the assets beyond means---High Court disagreed with the findings of Trial Court and set aside conviction and sentence awarded to accused, resultantly he was acquitted of the charge---Appeal was allowed in circumstances.

Syed Zahir Shah and others v. National Accountability Bureau and others 2010 SCMR 713 rel.

Muhammad Saleem Shehnazi and Muhammad Aslam Khan Buttar for Appellant with Appellant as bail.

Arif Mehmood Rana, Additional Deputy Prosecutor General for NAB.

ORDER

This single judgment shall dispose of the instant appeal and W.P. No.9763 of 2004 as both involve identical question of law and facts.

2. Through the present appeal the appellant challenges judgment dated 03.03.2004 whereby he was convicted under sections 9 and 10 of the National Accountability Bureau Ordinance, 1999 for the offence of corruption and corrupt practices and sentenced to 7 years punishment of rigorous imprisonment extending the benefit of section 382-B, Cr.P.C. besides imposing a fine of Rs.25,00,000/- as equal to the price/gain of the aforesaid lands acquired or purchased. Six different properties are also forfeited in favour of the Government out of which five properties were confiscated, whereas sixth was excluded. He was also disqualified from being in service. The properties mentioned at serial No.I to VI of para 43 supra, shall be forfeited to the Government of the Punjab. Property at serial No.VI has been excluded from forfeiting as it has been further sold out to some persons other than the dependents of accused. Its price has been considered for the purpose of fine. As a consequent of above conviction, the accused shall cease to hold public office and further he shall stand disqualified for seeking or from being chosen, appointed or nominated as a member or representative of any public body or any statutory authority or in service of Pakistan for period of 10 years to be reckoned from the date he is released after serving the sentence. He shall not be allowed to apply for or be granted or allowed any financial facility in the form of any loan, or advances, or other financial accommodation by any Bank or financial institution owned or controlled by Government for a period of 10 years from the date of conviction. The amount of fine imposed today shall be recoverable as arrears of land revenue.

3. Briefly the allegations as contained in Reference No.14/2001 against the appellant are that while posted as Junior Clerk, D.C. Office, Lahore, from 1966-2000, he indulged in the acts of corruption and corrupt practices and acquired properties in his own name and in the name of his different dependents which were disproportionate to his own known source of income. The details of the properties are as follows:-

(i) 250 Kanals 18 Marlas agricultural land in village Barka Khurd, Tehsil Cantt, District Lahore, purchased in 1990, in his own name.

(ii) 154 Kanals 6 Marlas agricultural land in village Hadyara, Tehsil Cantt., District Lahore, purchased in 1990, in his own name.

(iii) 102 Kanals 14 Marlas agricultural land in village Barka Khurd, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his wife Mst. Naseem Akhtar.

(iv) 204 Kanals 11 Marlas agricultural land in village Barka Kallan, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his wife Mst. Naseem Akhtar.

(v) 2 Kanals 2 Marlas residential plot in Harbanspura, Tehsil Cantt, District Lahore, purchased in 1989 in the name of his wife Mst. Naseem Akhtar.

(vi) 88 Kanals 13 Marlas agricultural land in village Barka Kallan, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his two sons Khalid Mahmood land Asif Mahmood.

(vii) 241 Kanals 11 Marlas agricultural land in village Hadyara, Tehsil Cantt, District Lahore, purchased in 1988 in the name of his sons Arif Ali, Imran Mahmood, Tariq Mahmood and daughter Shabana Naseem.

(viii) 88 Kanals 13 Marlas agricultural land in village Barka Kallan, Tehsil Cantt, District Lahore, purchased in 1989 in the name of his daughter Shabana Naseem.

After the submission of reference the trial court framed charge, whereafter 12 prosecution witnesses were examined. The statement of the accused/appellant under section 342, Cr.P.C. was recorded and the appellant produced 6 DWs in respect of his defence. The trial court confiscated the above said five properties and sentenced the appellant as stated above. Hence this appeal.

4. Learned counsel for the appellant submits that the allegations against the appellant could not be proved before the learned trial court as the appellant himself and his family members already owned enough properties either through inheritance or through purchase, therefore, source of income was adequately explained. Further submits that NAB has no jurisdiction to probe any property prior to 1999, therefore, any transaction of 1974 in the name of the appellant or his family members is outside the domain of the NAB authorities. Adds that the income from the Jhar Padawar of the land owned or

calculated by the appellant, his father and sons were not taken into account which is Exh.DW23/C to Exh.DW23/L. Further adds that the other sources of earning like dairy farming, tractor trolley hiring, water selling and business run by Khalid Mehmood were not considered.

5. Conversely, learned Additional Prosecutor General for NAB submits that the prosecution has amply proved that the appellant had properties much beyond his known source of income.

6. Arguments heard. Record perused.

7. Out of eight properties alleged to have been purchased/acquired by the appellant and his family members, the prosecution could prove only four properties before the Accountability Court No.I, Lahore.

8. Firstly, the land measuring 44 Kanals 5 Marlas in Barka Khurd is alleged to have been purchased by the appellant for Rs.2,50,000/- but the appellant claims that the same was purchased by Khalid Mehmood his son in the name of the appellant which plea was believed by the trial court by holding that he may have sufficient sources. Secondly, the land measuring 85 Kanals 5 Marlas in Barka Khurd was purchased on 04.04.1990 in the name of the appellant for a consideration of Rs.3,50,000/-. The same plea taken by the appellant in defence was not relied upon by the learned court. Thirdly, property is land measuring 144 Kanals 8 Marlas in Hadyar was allegedly to have been in the name of the appellant on 28.01.1990 for an amount of Rs.6,00,000/- which the appellant claims to have purchased from the money in the bank account of his son, namely, Khalid Mehmood. The bank statement of Account No.380 Exh.DW2/A, Account No.426 Exh.DW7/A and Account No.312 Exh.DW7/A which are in the name of Khalid Mehmood but the learned court held that the transaction from the said account was not possible as balance in Account No.380 was Rs.59934/-, Account No.426 Rs.145010/- and Account No.312 was not operative after December 1987. Fourthly, the land measuring 112 Kanals 18 Marals was purchased in Barka Khurd on 14.05.1990 for a consideration of Rs.3,50,000/- and the same plea was raised by the appellant that the said property was purchased by his son. The land measuring 204 Kanals 11 Marlas in Barka Kalan was purchased in the year 1988 from one

Masood Abbas in the name of wife of the appellant, namely, Naseem Akhtar for Rs.2,00,000/-, which according to the appellant was paid by Khalid Mehmood after selling of the trolley. However, neither Naseem Akhtar nor Khalid Mehmood appeared either as a witness.

9. The appellant produced Khushi Muhammad/DW20, Mohsin/DW21 and Muhammad Ilyas/DW22, who categorically stated that the land was purchased by Khalid Mehmood but the learned trial court did not believe their statements on the ground that the said Khalid Mehmood did not appear and that it was not stated by them that the money was paid by Khalid Mehmood. A close perusal of the statements of the DWs reveals that the money was paid to the seller and the appellant was not required to establish that he paid the money from his own personal resources. The prosecution could have brought the seller of the said land as a witness to show that the amount of Rs.2,50,000/- was received actually from the appellant.

10. To prove the said transaction as Benamidar, the question arises as to what was the prime responsibility of the prosecution and after that what was the duty of the appellant to show that the said property was a Benami transaction. But before we look into this aspect, it is worth mentioning that the appellant had already retired in the year 2001 and for the last 20 years since the allegation of purchasing properties from unknown sources of income, no agency or authority had ever probed about such allegation. The learned trial court basically construed the nonappearance of the wife of the appellant and his son as a proof of the fact that the property was purchased by the appellant.

11. Admittedly, no notice was issued to the alleged Benamidars prior to confiscation of the property, which is fatal to prosecution case. Reliance is placed upon Syed Zahir Shah and others v. National Accountability Bureau and others (2010 SCMR 713). The relevant extract from para 18 is reproduced as under:-

> "18. It is an admitted feature of the case that the stated Benamidars and the dependents of the appellant, in view of the accusation and the allegations, as well as; contained in the Reference and the report filed in the trial Court under section 173, Cr.P.C. supported by the

incriminating material; notice was not directed to be issued to the alleged Benamidars by the trial Court nor they were heard obviously before passing of the final judgment in the case although, it was evident that they were fully aware and in the knowledge of the proceedings before the trial Court, which related to the assets and properties in which right and interests have been claimed by the petitioners before us in these two civil petitions for leave to appeal, as well as; interesting to note that out of the alleged Benamidars Mst. Tasneem Begum and Yasir Shah wife and son respectively of the appellant had appeared as D.Ws. before the trial Court yet, their appearance as D.Ws. for the accused would not by itself be a valid substitute of notice to Benamidars, affording them opportunity of hearing and leading evidence if so deemed proper by them in support of their claims to be the legitimate owners as having rightful interest in such properties .."

12. Shockingly, in the entire judgment we have not been able to read a single line in which the income of the appellant since 1960 to 2001, his regular and normal expenses and his additional source of income were ever discussed. In a case of assets beyond means, of course, prior to discussing the assets, the known source of income both legal and illegal has to be brought on the record. As observed by the learned trial court Rs.2,50,000/- for 44 Kanals 5 Marlas, Rs.3,50,000/- for 85 Kanals 5 Marlas, Rs.6,00,000/-, 144 Kanals 14 Marlas, Rs.3,50,000/- for 112 Kanals 18 Marals and Rs.2,00,000/- for 204 Kanals 11 Marlas make it Rs.17,50,000/- but nowhere the salary of the appellant for the last 41 years, his savings and his other emoluments were even discussed. The court had no formula to apply in order to ascertain as to what are the assets beyond means. We have left with no option but to disagree in the most definite terms with the findings of the learned trial court.

13. As a result of which, we allow this appeal, set aside the judgment of the trial court and acquit the appellant of the charges. His sureties shall be discharged at once and the properties so confiscated shall also stand released.

MH/S-62/L **Appeal allowed**.

P L D 2016 Lahore 563

Before Ali Baqar Najafi, J

SAFDAR HUSSAIN---Appellant

Versus

Mst. NOSHI (NISHAT) GILLANI and others---Respondents

R.F.A. No.268 of 2009, decided on 11th December, 2015.

(a) Copyright Ordinance (XXXIV of 1962)---

----Ss 14 & 28---Contract Act (IX of 1872), S. 2 (j)---Civil Procedure Code (V of 1908), O.VII, R. 11---Claim for exclusive right of publication---Agreement barred by law---Plaint, rejection of---Scope---Exclusive right of publication was given to the plaintiff-publisher through agreement by the defendant-author---Agreement which was not conflict with any statute could only be enforced---Author might not specify the period of agreement but by operation of law its life could be curtailed to a definite period---Alleged agreement could bind the parties only for ten years---Almost seventeen years had lapsed since the agreement was executed---Plaint of a suit which was barred by law should be rejected---Appeal was dismissed in circumstances.

Shakeel Adilzadah v. Pakistan Television Corporation Ltd. and 2 others 1989 CLC 2447 and Jogendra Nath Sen and another v. State and another AIR 1991 Calcutta 3081 distinguished.

2014 SCMR 513 rel.

(b) Contract Act (IX of 1872)---

----S. 2(j)---Agreement---Scope---Agreement which was not in conflict with any statute could be enforced.

(c) Copyright Ordinance (XXXIV of 1962)---

---S. 3(a)---"Copyright"---Meaning.

Rana Farman Ali Sabir for Appellant.

Muhammad Waseem Sindhu for Respondents.

Date of hearing: 23rd November, 2015.

JUDGMENT

ALI BAQAR NAJAFI, J.---This appeal is directed against the judgment and decree dated 18.02.2009 passed by the learned Addl. District Judge, Lahore whereby the plaint of suit for declaration and permanent injunction under the Copyrights Ordinance, 1962 was rejected under Order VII, Rule 11, C.P.C., as barred by law under Section 14(1) of the Copyrights Act, 1962.

2. Brief facts giving rise to the filing of this appeal are that respondent No.1/Mst. Noshi (Nishat) Gillani, a writer of book published as "Mohabbatain Jub Shumar Karna" made an agreement dated 08.01.1993 with the appellant whereby she transferred all the legal rights in relation to publication and publicity of the said book in favour of the appellant. In order to fulfill his responsibility as a publisher, he invested huge amount, borne all the necessary expenses and paid the agreed royalty/compensation to respondent No.1. According to the appellant, since he has the exclusive and absolute right of publication of said book for indefinite period, therefore, respondents Nos.2 and 3 could not republish the said book in violation of the agreement.

3. During the pendency of said suit, the respondent No.1 filed an application under Order VII, Rule 11, C.P.C., read with Section 14 of the Copyrights Act, 1962 stating that the suit is barred under Section 14 of the Copyrights Act, 1962 as the life of the agreement between the parties is 10 years which was allowed and the plaint was rejected vide the impugned order dated 18.02.2009, hence this Regular First Appeal.

4. Rana Farman Ali Sabir, learned counsel for the appellant submits that under Section 3 of the Ordinance, a publisher has an exclusive right of publication and under Section 28 ibid, he can publish edition of work for 25 years. Adds that Section 14 of the Ordinance is not attracted as it is not the assignment of copy to right of publication. Places reliance upon Shakeel Adilzadah v. Pakistan Television Corporation Ltd. and 2 others (1989 CLC

2447) and Jogendra Nath Sen and another v. State and another (AIR 1991 Calcutta 308) and prays for setting aside of the impugned judgment.

5. Mr. Muhammad Waseem Sindhu, learned counsel for respondent No.1 on the other hand, submits that it was the agreement of copyright under Section 14 of the Ordinance under which the author as an owner of copyright can assign only for a period of 10 years from the date of assignment and, therefore, prays for dismissal of the appeal.

6. Arguments heard. File perused.

7. The precise legal question raised before this Court is as to whether an author of a book can give the rights of publication to a publisher for indefinite period or that such right is limited to specific period of 10 years. Here it will be essential to understand the true import and meaning of word "Copyright".

8. The word "Copyright" by now has been accepted all over the world as an exclusive right of a creator over the created work. But if we go a little deeper into the meanings and the connotation, we would find it to be very close to the nature. It is a very common observation that whosoever creates something is called its creator and is entitled to be recognized as such. The creation is named after the creator. Since ancient times for example, any momentum or any invention or even discovery had always been acknowledged with reference to a person. In more simplified form take the example of parents, who are responsible to bring a child into this world and that child after getting the birth, is called their child. Here the child will be named after the name of their parents. In bringing him up the parents are very jealous and possessive when it comes to his protection as they know how to groom them properly. Take another example of religions. The Christianity, for example, is named with reference to Hazrat Eisa (The Holy Christ), Jewishism as we know it because of its Prophet Hazrat Musa (A.S.) and last but not least the religion of Islam which is named after Hazrat Muhammad (P.B.U.H.) who introduced these religions to this world. Therefore, all these religions have been recognized through their Prophets.

9. Copyright is the modern form of acknowledgment of one's

invention/creation. The author of a book should be equally possessive and to be proud of its creation and this right has been acknowledged under the Copyright Ordinance, 1962.

10. For our purposes, Section 3 sub-clause (a) is relevant, which is reproduced as under:-

Meaning of Copyright.---(1) For the purposes of this Ordinance, "copyright" means the exclusive right, by virtue of, and subject to the provisions of this Ordinance:--

(a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely:-

(i) .....

(ii) to publish the work;

(iii) .....

Under Section 2 (n) "infringing copy" means,--

(i) in relation to a literary, dramatic or artistic work, a reproduction thereof otherwise than in the form of a cinematographic work:

ii) .....

The word Publication is defined in Section 4 and subsection (1)(a) will be relevant which is reproduced as under:-

Meaning of publication.---(1) For the purposes of this Ordinance, "publication" means :-

(a) in the case of literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities;

(b .....

(c) .....

(2) .....

Section 14 of the Ordinance, the benefit of which is being claimed by

respondent No.1 and has granted by the court is about the assignment of the copyright. Section 14 is reproduced as under:-

Assignment of copyright.--(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the, copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that, in case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

Provided further that, where the owner of the copyright in a work is the author of the work, no assignment of the copyright in the work or of any interest in such copyright shall be made, or if made shall be effective (except where the assignment is made in favour of Government or an educational, charitable, religious or non-profit institution) for a period of more than ten years beginning from the calendar year next following the year in which the assignment is made; if an assignment of the copyright in a work is made in contravention of this proviso, the copyright in the work shall, on the expiry of the period specified in this proviso, revert to the author (who may reassign the copyright in the work subject to the provisions herein contained), or if the author be dead to his representative in interest.

"Provided further that the copyright in an unpublished work assigned by its author to any person or organization for the specific purpose of its publication shall revert to the author if such work is not published within a period of three years from the date of its assignment,"; and

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the right not assigned, shall be treated for the purpose of this Ordinance as the owner of the copyright and the provisions of this Ordinance shall have effect accordingly.

"(2A) If the owner of a copyright, or the publisher to whom such right has been assigned, considers any of the terms of the assignment to be likely to effect his interests adversely, he may within one year of such assignment apply to the Board to consider such term and the Board may, after hearing both the parties, pass such order as it may deem fit; and the order of the Board shall be binding on both the parties."

(3) In this Section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

11. It will also be equally relevant to reproduce Section 28 ibid to weigh the contention of the respondent:-

Protection of typography and terms of protection.---The publisher of an edition of a work shall enjoy the right to authorize the making, by any photographic or similar process, of copies, intended for sale in commerce, or the typographical arrangement of the edition, and such right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the edition was first published."

12. Here the perusal of above statutory provision reveals that assignment of copyright includes the act of publishing a literary work and the meaning of publication is the showing of copies of work to the public in sufficient quantities. The maximum period of such assignment in cases other than Government, educational, charitable, religious and non- profitable institution is only 10 years, whereas the typographical arrangement in edition is protected for 25 years.

13. After having understood the legal position, it will equally beneficial to reproduce the:-

A perusal of agreement dated 08.1.1993 admitted between the parties reveals that the exclusive right of publication of the said book was exclusively given to the appellant. But any valid agreement is one

which is not barred by law, and only those clauses are enforceable which are not in conflict with any statute. The author of a book may not specify the period of agreement but by operation of law its life can be curtailed to a defined period, therefore, its enforceability can always be questioned. Under Section 2(j) of the Contract Act, 1872:

2. Interpretation clause.

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

The agreement, therefore, binds the parties only for 10 years. Interestingly, the suit was filed on 06.06.1998 i.e. after 5 years and on 08.06.1998 a restraining order was passed by the court which continued till the plaint was rejected under Order VII Rule 11, C.P.C., on 18.02.2009, and by that time almost seventeen years had lapsed since the agreement was executed.

14. Coming to the case law referred to by the learned counsel for the appellant as (AIR 1991 Calcutta 308) suffice it to say that it dealt the right of a assignee of a copyright in respect of the publication but it did not dilate upon the time period of the agreement which was not referred in Section 14 of the Indian Copyright Act, 1957. In Shakeel Adilzadah v. Pakistan Television Corporartion Ltd. and 2 others (1989 CLC 2447), Section 15 of the Copyright Act, 1962 was interpreted where the proposition was different than what we have in the present case, hence irrelevant.

15. Here we are also to embark upon the applicability of Order VII, Rule 11, C.P.C., which is reproduced as under for ready reference:-

11. Rejection of plaint.--The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-value, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is

written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law.

A plaint of the suit which is barred by law is to be rejected and the scope of this provision has been explained by the apex Court in case titled (2014 SCMR 513) in which following was held:-

-----"The object of the powers conferred upon the trial Court under Order VII, Rule 11, C.P.C. is that the Courts must put an end to the litigation at the very initial stage when on account of some legal impediments full fledged trial will be a futile exercise. In view of the above facts the suit of the plaintiff/respondents challenging the gift mutation was on the face of the record barred by time and there was no need for recording of evidence ...."

In view of what has been discussed above, the appeal filed by the appellant has been found meritless and is dismissed on merits.

ZC/S-23/L **Appeal dismissed.**

P L D 2016 Lahore 857

Before Ali Baqar Najafi, J

Mst. RUKHSANA BIBI and others---Petitioners

Versus

GOVERNMENT OF PAKISTAN and others---Respondents

Writ Petition No.5939 of 2006, decided on 18th May, 2016.

(a) Pakistan Citizenship Act (II of 1951)--

----S. 10(2)---Constitution of Pakistan, Art. 199---Constitutional petition filed by an alien/foreign national seeking directions for issuance of Pakistan passport---Alien male was not recognized as someone who could invoke the constitutional jurisdiction of the High court---Constitutional petition to the extent of such alien/foreign national was dismissed as being not maintainable.

(b) Pakistan Citizenship Act (II of 1951)--

----S. 10(2)---Constitution of Pakistan, Art.25---Universal Declaration of Human Rights (UDHR), Art.15---International Covenant on Civil and Political Rights (adopted on 23.03.1976), Art. 23---Beijing Declaration and Platform for Action of 1995, Art. 232---Foreign male national migrating to Pakistan and marrying a Pakistani woman---Right of such foreign male national to acquire Pakistani nationality---Discrimination---Alien male who had migrated to Pakistan and married a Pakistani woman was not granted a right to acquire Pakistani Nationality under S.10(2) of the Pakistan Citizenship Act, 1951---Denial of such right was discriminatory and violated not only Art.25 of the Constitution but also various instruments of international law, which the State of Pakistan was bound to follow in view of the commitments it had made to the International community---High Court directed concerned authorities to grant citizenship to the foreign national/husband of the petitioner after following the relevant procedure.

Under section 10(2) of the Pakistan Citizenship Act, 1951 alien female had been given the right to acquire the Pakistan nationality on her marriage

with a man having Pakistani nationality but an alien male who had migrated to Pakistan and married a Pakistani woman was not granted a right to acquire Pakistani Nationality.

Denial of citizenship to a foreign national having a Pakistani wife appeared to be arbitrary and not founded on any rational basis and had no nexus to the object to be achieved by such classification. Constitution of Pakistan did not recognize gender discrimination.

Suo Motu Case No.1/K of 2006 PLD 2008 FSC 1 ref

Sharifan and 6 others v. The Federation of Pakistan through Secretary Ministry of Interior and Narcotics Control, Interior Division, Islamabad PLD 1998 Lah. 59 distinguished.

Both petitioner and her foreign national husband had been living together ever since they married during which a child was also born in their family in Pakistan. Husband's mother also died in Pakistan, where she was buried.

Jamal-ud-Din and others v. National Database and Registration Authority (NADRA) through Deputy Director (Verification), Islamabad and 5 others PLD 2015 Bal. 117 distinguished.

Under Article 15 of the Universal Declaration of Human Rights everyone had a right to a nationality and also to change his nationality. Further under Article 23 of International Covenant on Civil and Political Rights adopted on 23.03.1976 the right of men and women of marriageable age to marry and to form a family was recognized which was natural and fundamental group unit of the society. Article 232(2) of the Beijing Declaration and Platform for Action of 1995, the Governments were required to review national laws including customary laws and legal practices in the areas of family, civil, penal, labour or commercial law in order to ensure the implementation of the principles and procedure of all relevant international human rights instruments by means of a national legislation, revoke any remaining laws for discrimination on the basis of sex and removing gender bias in the administration of justice. The State of Pakistan was bound to

adopt/follow these relevant laws keeping in view the commitments it had already made to the International Community.

Denying right of Pakistani citizenship to petitioner's husband under section 10(2) of the Pakistan Citizenship Act, 1951 was discriminatory and in violation of Article 25 of the Constitution. High Court directed concerned authorities to grant citizenship to husband of the petitioner after following the relevant procedure.

(c) Constitution of Pakistan---

----Art. 25---Right of woman to marry person of her own choice --- Such right was a basic human right---In acknowledging such right no discrimination was to be observed against Art.25 of the Constitution.

Syed Sajjad Haider Naqvi for Petitioners.

Wajid Nawaz Bhatti, Standing Counsel along with Mian Riaz Hussain, Assistant Director, Passport Office, Multan for Respondent.

Date of hearing: 20th April, 2016.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this Constitutional Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners seek direction to the respondents to prevent discrimination and grant citizenship to petitioner No.2, husband of petitioner No.1, enabling them to live together in Pakistan with the further direction to register petitioner No.2 as citizen of Pakistan and restrain the respondents from the extradition of the petitioner No.2 from the territory of Pakistan.

2. Precise facts giving rise to the filing of this writ petition are that Mst.Rukhsana/petitioner No.1 is SST teacher serving in the Education Department for the last 26 years. Her husband died in the year 2002 and from him, there was no child. Petitioner No.2 is an Indian National presently residing at Multan who had come to Pakistan on 09.08.2003 along with his son, namely, Danyal Hassan and mother, Khurshid Bano, later died on

16.10.2005 and was buried at Multan. Sister of petitioner No.2, Mashkoor Bano, was also an Indian National who too migrated in the year 1962 to Pakistan and was married to one Syed Hassan Mian Zaidi and both are living in Multan as husband and wife, as she was already granted a Pakistani nationality.

3. With this background, and with legitimate expectation that he would start his life in this territory created in the name of Islam, on 16.02.2004 petitioner No.1 got married with petitioner No.2 and from their wedlock one daughter namely, Hamyal Zehra was born on 06.06.2005. Petitioner No.2 moved for citizenship of Pakistan but respondent No.2 directed petitioner No.2 to deposit Rs.50,00,000/- for processing the citizenship application. He continued to move for extension of visa and on 19.09.2006 his visa was finally extended for 90 days which was to end on 18.12.2006 hence this writ petition.

4. Syed Sajjad Haider Naqvi, Advocate, learned counsel for the petitioners contends that the State of Pakistan is bound to amend all discriminatory provisions available in the statute and law particularly, section 10(2) of the Citizenship Act, 1951. Further contends that a child is not to be separated from her parents but the respondents are forcing deportation of petitioner No.2 back to India which will deprive minor Himayal from the love and affection of her father. Refers to an order passed in Constitutional Petition No.1415 of 2004, "Mst. Najma Bano v. Government of Pakistan, etc." passed by Sindh High Court at Karachi. Also submits that when the sister of petitioner No.2 had been conferred the Pakistani Nationality on the basis of marriage with a Pakistani male, refusal on the part of the respondents to grant nationality to petitioner No.2 being married with a Pakistani woman/petitioner No.1 is discriminatory. Refers to the judgment on the same question given by the Federal Shariat Court in Suo Motu case No.1/K of 2006 (GENDER EQUALIY) PLD 2008 Federal Shariat Court 1] and prays for relief.

5. Mr.Wajid Nawaz Bhatti, learned Standing Counsel assisted by Mian Riaz Hussain, Assistant Director, Passport Office, Multan, contends that the petitioner No.2 has no locus standi to file the writ petition as he is not the

citizen of this country. Further contends that the act of the respondents is not discriminatory but is in accordance with the prevalent law. Adds, that the stay of petitioner No.2 in Pakistan is illegal, as his visa was not extended after 18.12.2006. Submits that if the petitioner No.2 is interested in Pakistani citizenship he can initiate the process and deposit a sum of five millions rupees as required under circular dated 16.01.1997 issued by the Ministry of Interior. Places reliance on Sharifan and 6 others v. The Federation of Pakistan through Secretary, Ministry of Interior and Narcotics Control, Interior Division, Islamabad [PLD 1998 Lahore 59] and Jamal-ud-Din and others v. National Database and Registration Authority (NADRA) through Deputy Director (Verification), Islamabad and 5 others [PLD 2015 Balochistan 117] and prays for dismissal of this petition.

6. Arguments heard. Record perused.

7. At the very outset, it is noted that petitioner No. 2 is an alien male who has not been recognized as the one who could invoke the constitutional jurisdiction of this court, therefor to his extent, this writ petition is dismissed as not maintainable. However, the case of the petitioner No.1 is examined also with reference to the human right and discrimination aspects.

8. After hearing the learned counsel for the parties and perusing the available file, it is observed that said provisions of section 10(2) of The Pakistan Citizenship Act, 1951 have been made the topic of discussion they be reproduce below for ready reference:--

> S.10(2).....
>
> Subject to the provisions of subsection (1) and subsection (4) a woman who had been married to a citizen of Pakistan or to a person who, but for his death would have been a citizen of Pakistan ,under section 3,4 or 5 shall be entitled, on making application therefor, to the Federal Government in the prescribed manner, and, if she is an alien, on obtaining a certificate of domicile and taking the oath of allegiance in the form set out in the Schedule to this Act, to be registered as a citizen of Pakistan whether or not she has completed twenty one year of her

age and is of full capacity."

9. A perusal of the said section reveals that alien female has been given the right to acquire the Pakistan nationality on her marriage with a man of having Pakistani nationality but an alien male migrated to Pakistan and married a Pakistani woman is not granted a right to acquire Pakistani Nationality.

10. This section was discussed in Suo Motu Case No.1/K of 2006 in re (Gender Equality) [PLD 2008 Federal Shariat Court 1] where it was held by the Federal Shariat Court on 12.12.2007 that suitable steps for amendment of Section 10(2) of Pakistan Citizenship Act, 1951 be taken for the grant of Pakistani nationality to an alien male married to a Pakistani woman. It was held as follows:-

"In view of the above, we are of the view that section 10 of the Citizenship Act, 1951 is discriminatory, negates gender equality and is in violation of Articles 2(a) and 25 of the Constitution of Islamic Republic of Pakistan and also against International commitments of Pakistan and, most importantly is repugnant to Holy Qur'an and Sunnah."

However, Civil Shariat Appeal No.1 of 2008 has been filed against the said judgment before the Hon'ble Supreme Court of Pakistan (Shariat Appellate Bench) and on 23.12.2014 notices have been issued.

11. The discrimination under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 has also been discussed in various judgments of the Hon'ble Supreme Court. Before referring to some of the relevant case law, it is appropriate to reproduce Article 25 of the Constitution of Islamic Republic of Pakistan, 1973:-

Article 25

"Equality of citizens.--(l) All citizens are equal before law and are entitled to equal protection of law."

2. There shall be no discrimination on the basis of sex 1(xxx)

3. Nothing in this Article shall prevent the State from making any

special provision for the protection of woman and children.

This article was basically interpreted in I.A. Sharwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others [1991 SCMR 1041], later re-enforced in Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others [2013 SCMR 1687], Para 26 of the former judgment is relevant, which is re-produced as under:-

"26. From the above cited cases the following principles of law are deducible:-

(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rationale nexus to the object sought to be achieved by such classification.

It lays down that persons similarly situated or similarly placed to be treated alike. Different laws can be validly enacted for different financial standings and persons accused of heinous crime. Surely marriage by petitioner to a foreigner male will not be covered in that category. The discussion regarding discriminatory application of Citizenship Act, 1951 is confined to the facts of the present case under which denial of citizenship to a foreign national having a Pakistani wife appears to be arbitrary and not founded on any rational basis and has no nexus to the object to be achieved by such classification. Above all, our constitution is specific about the person and do not recognize the gender discrimination.

12. The judgment titled "Sharifan and 6 others v. The Federation of Pakistan through Secretary, Ministry of Interior and Narcotic Control, Interior Division, Islamabad [PLD 1998 Lahore 59] from respondent's side relates to the situation in which male husband was not granted Pakistani nationality, since after marrying a woman of Pakistani nationality, he took her to his country where she delivered a child but in the present case both spouses have been living together ever since they married during which a child was also born in their family in Pakistan. Mother-in-law of petitioner No.1 also died who was buried in Pakistan. Moreover, with due respect to the view expressed by the single bench of this Court in the year, 1998, this world has changed and the concept of discrimination against the weaker sex of our society has come a long way and by now male discrimination is also being viewed seriously.

The other judgment Jamal-ud-Din and others v. National Database and Registration Authority (NADRA) through Deputy Director (Verification), Islamabad and 5 others [PLD 2015 Balochistan 117] does not relate to this case as here the question of admission by husband of the petitioner to any educational institution is not involved.

13. Learned Standing Counsel have pleaded that the grant of citizenship right will increase the rate of divorce, increase unemployment ratio, grant a blanket approval to the foreign nationals who may act as spy of their countries maintaining their earlier allegiance which would be against the security of Pakistan and is likely to jeopardize the Indo-Pak relationship.

14. However, this issue can be addressed by categorization of citizenship into various types after conducting a verification based on close watch and survey, whereafter such person can be declared fit for the citizenship.

15. It is pertinent to mention here that right of a woman to marry of her own choice is the basic human right and to acknowledge this right no discrimination is to be observed against Article 25 of the Constitution of Islamic Republic of Pakistan.

16. Under Universal Declaration of Human Rights Article 2, everyone is entitled to the right of freedom irrespective of race, colour, sex, language, religion political or other opinion, national or social origin, property, birth or other status and under Article 13 everyone has right to freedom of movement and residence within the borders of each States and also a right to live in country including his own. Under Article 15 everyone has a right to a nationality and also to change his nationality.

Under International Covenant on Civil and Political Rights adopted on 23.03.1976, everyone is free to leave any country including his own and will not be subjected to any restrictions except provided under the law, and necessary to protect national security, public order, public health or moral or the rights and freedom of others as provided under Article 11 thereof. Under Article 13 of the said Covenant, an alien person unlawfully in a territory of a States may be expelled in pursuance of a decision reached in accordance with law and except where compelling reasons of national security otherwise required, will be allowed to present the case and have represented before the competent authority.

Under Article 23 thereof the right of men and women of marriageable age to marry and to form a family is recognized which is natural and fundamental

group unit of the society. Under resolution 34 of 180 dated 18.12.1979 on convention of elimination of all forms of discrimination of women adopted by General Assembly under Article 9 States are bound to grant women equal rights with men to acquire, change or retain their nationality. They shall ensure that their marriage to an alien or change of nationality of their husband during marriage shall not automatically change the nationality of the wife or force her to get the nationality of her husband and that States shall also grant women equal rights with respect to the nationality of their children. Under Article 16 the States shall ensure same rights to the women to enter into the marriage, choose their spouses and to continue with the marriage and its dissolution.

Under Article 232(2) of Beijing Declaration of 1995, the Governments were required to review national laws including customary laws and legal practices in the areas of family, civil, penal, labour or commercial law in order to ensure the implementation of the principles and procedure of all relevant international human rights instruments by means of a national legislation, revoke any remaining laws for discrimination on the basis of sex and removing gender bias in the administration of justice. The State of Pakistan is bound to adopt/follow in the relevant law keeping in view the commitments it had already made to the International Community.

17. For what has been discussed above, this petition is allowed and respondents Nos.1 and 2 are directed to grant citizenship to Hassan Asghar s/o Ali Asghar husband of the petitioner after following the procedure as denying this right under section 10(2) of the Citizenship Act is declared as discriminatory being in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

MWA/R-17/L **Petition allowed.**

PLJ 2016 Lahore 436

***Present*: ALI BAQAR NAJAFI, J.**

ZAKA ULLAH etc.--Petitioners

versus

MANZOOR HUSSAIN (deceased) etc.--Respondents

Civil Revision No. 891 of 2011, heard on 8.12.2015.

Qanun-e-Shahadat Order, 1984 (10 of 1984)--

----Art. 79--Sale deed--Execution--Two attested witnesses--Proof of--Non-production of PW was neither explained by petitioners nor any serious effort was made to produce him before Court through process of law. [P. 439] A

Qanun-e-Shahadat Order, 1984 (10 of 1984)--

----Art. 17--Competency of a witness--Scope of--Except for a will, no document can be used in evidence until it is proved by two attesting witnesses. [P. 439] B

Civil Procedure Code, 1908 (V of 1908)--

----O. XVI, R.1--Witness of signing of document by witnesses--Not qualify to be witness--A witness cannot be introduced to prove a document unless his name exists on document, or was referred by any of witnesses in their statements or was named as such in plaint, therefore, at least his name was required to be mentioned in list of witnesses under Order XVI, C.P.C.--If tendency is allowed to prevail, any person at any time will come forward to be considered as witness to prove any document which will be against spirit of law relating to proof of a document. [P. 441] C & D

PLD 2007 Lah. 254 & PLD 2011 SC 241, *rel*.

Mirza Hafeez-ur-Rehman, Advocate for Petitioners.

Mian Subah Sadiq Klasson, Advocate for Respondents No. 1 (1-A to 1-G).

Date of hearing: 8.12.2015

JUDGMENT

This civil revision is directed against the concurrent findings of fact recorded by the Courts below whereby the suit of the petitioners for specific performance of the agreement dated 01.09.2004 in respect of 11 *Kanals* 8 *Marlas* for a consideration of Rs. 3,42,000/- was dismissed on the ground that the said document was not proved on the basis of the two witnesses.

2. Brief facts giving rise to the filing of this revision petition are that on 01.09.2004 an agreement was executed between the petitioners and Manzoor Hussain, the predecessor of Respondents No. 1-A to 1-G, in respect of 11 *Kanals* 8 *Marlas* of agricultural land situated in Chak No. 286/G.B., Tehsil and District Toba Tek Singh in the presence of Khalid Javaid son of Muhammad Sadiq and Zawar Hussain son of Muhammad Bakhsh (PW4). An amount of Rs. 3,42,000/- was also paid and the possession of the property was handed over to the petitioners. As the property was mortgaged with the Agricultural Development Bank of Pakistan, therefore, it was also agreed that the same will be redeemed within 6 months and the registered sale-deed will be executed in favour of the petitioners. Upon his failure, a suit for specific performance of the agreement was filed by the petitioners on 12.06.2006. The suit was resisted by filing the written statement upon which the followings issues were framed:--

ISSUES:

1. Whether Manzoor Hussian deceased predecessor-in-interest of Defendant No. 1-A to 1-G agreed to sell property measuring 11 *kanals* 8 *marlas* out of Khewat No. 283/279 Khatooni No.

681 rectangle No. 53 situated in the area of Chak No. 286/GB, Toba Tek Singh at the rate of Rs. 2,40,000/- per acre *vide* agreement dated 1.9.2004? OPP

2. Whether the plaintiffs paid Rs. 3,42,000/- as consideration to Manzoor Hussain and the possession of Killa No. 14/2 measuring 4 *kanals* 9 *marlas*, 15/2 measuring 2 *kanals* , killa No. 16/1 measuring 3 *kanals* 11 *marlas* killa No. 16/2 measuring 5 *kanals* 7 *marlas* was delivered to the plaintiffs by the predecessor-in-interest of the defendant? OPP

3. Whether plaintiff has no cause of action and locus standi to institute the suit? OPD

4. Whether suit is not maintainable in its present form? OPD

5. Whether suit is bad due to misjoinder of parties? OPD

6. Whether suit is false, frivolous, vexatious and the same is liable to be dismissed with special costs? OPD

7. Whether the impugned agreement is false, baseless result of forgery, without consideration and the same is liable to be cancelled? OPD

8. Relief.

The learned trial Court while giving its finding on Issue No. 1 observed that the said agreement Exh.P-1 was attested by Khalid Javaid and Zawar Hussain but only Zawar Hussain was produced as PW-4 and the second witness Khalid Javaid was not produced without any explanation of either summoning him through the process of the Court, therefore, the said document is not proved under Article 17 and 79 of the Qanun-e-Shahadat Order, 1984. It was also observed that PW-2/Muhammad Munir Arshad was a scribe who even admitted that the document did not contain either his name or his signatures. It was also observed that the witness did not prove the payment of

consideration for the said transaction and Issue No. 2 was also decided against the petitioners. The learned appellate Court concurred with the findings of the learned trial Court and upheld the reasons given by it. Hence this civil revision.

3. Mirza Hafeez-ur-Rehman, Advocate, learned counsel for the petitioners contends that a document can be proved by two witnesses who attested the document and not by the two marginal witnesses. Adds that PW-4/Zawar Hussain is as good as any other witness of the document despite being a vendor. He places reliance upon *Mst. Sakina Bibi and another versus Muhammad Anwar alias Mujahid and others* (PLD 2007 Lahore 254) and *Sana Ullah and another versus Muhammad Manzoor and another* (PLJ 1996 SC 526) and prays for setting aside of the two judgments passed by the two Courts below.

4. Conversely, Mian Subah Sadiq Klasson, Advocate, learned counsel for the legal heirs of Manzoor Hussain/Respondent No. 1 (1-A to 1-G), however, contends that the agreement to sell Exh.P1 was required to be proved by Khalid Javaid, the other marginal witness and that stamp vendor/scribe cannot be substituted for other marginal witness. Further contends that even the name of Muhammad Munir Arshad/PW-2, the alleged vendor, is not mentioned anywhere in the plaint or in the alleged agreement to sell, Exh.P-1, therefore, he cannot be considered as a witness of the document. The date of the execution was not mentioned on the document Exh.P1 and Article 17 of the Qanun-e-Shahadat Order, 1984 duly applies requiring the proof of a document by two witnesses. Places reliance upon *Hafiz Tassaduq Hussain versus Muhammad Din through Legal Heirs and others* (PLD 2011 SC 241) and also submits that the judgment cited by the learned counsel for the petitioners in the case of *Mst. Sakina Bibi and another versus Muhammad Anwar alias Mujahid and others* (PLD 2007 Lahore 254) does not relate to an agreement to sell as it deals with the case of a will.

5. Arguments heard. File perused.

6. The petitioners' case as put forthwith by Mirza Hafeez-ur- Rehman, Advocate is that the agreement to sell dated 01.09.2004, Exh.P-1 was duly executed between the petitioners and the predecessor of the Respondents (1-A to 1-G), namely, Manzoor Hussain which was proved on the basis of the statement of PW-4/Zawar Hussain and Muhammad Munir Arshad/PW-2 as both witnessed the execution of the document and that the latter despite being a scribe, was a marginal witness. However, the introduction of PW-2 as a witness was seriously objected by Mian Subah Sadiq Klasson, Advocate, learned counsel for Respondent No. 1 (1-A to 1-G) on the ground; firstly, that his name was not mentioned on the document; secondly, he was not a stamp vendor since he did not produce any valid license or any register showing entry of the said stamp paper and thirdly, he has not witnessed the transaction having been completed in his presence.

7. Admittedly, Exh.P1, the alleged sale-deed was executed in the presence of Khalid Javaid and Zawar Hussain as two witnesses. Non-production of Khalid Javaid was neither explained by the petitioners nor any serious effort was made to produce him before the Court through the process of law. Legally speaking, a document is required to be proved under Article 79 of the Qanun-e-Shahadat Order, 1984, which is reproduced as under:--

> **"79. Proof of execution of document required by law to be attested.** If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses [at] least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of giving evidence:
>
> Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provision of the Registration

Act, 1908, (XVI of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied."

The competency of a witness has been laid down in Article 17 of Qanun-e-Shahadat Order, 1984 which is also reproduced as under:--

> **"17. Competence and number of witness.--**(1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.
>
> (2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,
>
> (a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary and evidence shall be led accordingly; and
>
> (b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant."

A perusal of the above said two provisions of the Qanun-e- Shahadat Order, 1984, clearly demonstrates that except for a will, no document can be used in evidence until it is proved by two attesting witnesses.

8. In the instant case, Zawar Hussain and Khalid Javaid were the two attesting witnesses and mere production of one i.e. Zawar Hussain in evidence as PW-4 will not discharge the burden upon the petitioners to prove the said document when its execution was specifically denied by the respondent. Interestingly, neither in the agreement to sell (Exh.P-1) nor in the plaint name of Muhammad Munir Arshad was mentioned in any capacity. He himself admitted that though he witnessed the signing of the document but remained ignorant about the payment having been made in his presence. He claims to be

a witness of the signing of the said document by two witnesses, therefore, he cannot be considered as a witness of the transaction mentioned in the document. PW-4 though admitted that the payment was made in his presence to Manzoor Hussain yet he does not mention anywhere that Muhammad Munir Arshad was a witness of the document. He just said that some scribe signed the document.

9. A witness cannot be introduced to prove a document unless his name exists on the document, or was referred by any of the witnesses in their statements or was named as such in the plaint, therefore, at least his name was required to be mentioned in the list of witnesses under Order XVI, C.P.C. I am afraid, even the statement of Muhammad Munir Arshad cannot support the petitioners as he does not qualify to be a witness on the basis of the above said criteria. If this tendency is allowed to prevail, any person at any time will come forward to be considered as witness to prove any document which will be against the spirit of law relating to the proof of a document. The judgment relied upon by the learned counsel for the petitioners in case of *Mst. Sakina Bibi and another versus Muhammad Anwar alias MUJAHID and others* (PLD 2007 Lahore 254) also supports this point of view. However, I am fortified by the recent judgment of apex Court in case of *Hafiz Tassaduq Hussain versus Muhammad Din through Legal Heirs and others* (PLD 2011 SC 241), where it was held as follows:--

> "…..Therefore, in my considered view a scribe of a document can only be a competent witness in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 if he has fixed his signature as an attesting witness of the document and not otherwise; his signing the document in the capacity of a writer does not fulfil and meet the mandatory requirement of attestation by him separately, however, he may be examined by the concerned party for the corroboration of the evidence

of the marginal witnesses, or in the eventuality those are conceived by Article 79 itself not as a substitute."

10. Even otherwise, the concurrent findings of fact recorded by the learned Courts below cannot be interfered with in the exercise of revisional jurisdiction in the absence of any illegality or glaring irregularity, as a result of which this revision petition has been found meritless and is, therefore, dismissed.

(R.A.) **Petition dismissed.**

PLJ 2016 Lahore 493 (DB)

Present: ALI BAQAR NAJAFI AND SHAHID WAHEED, JJ.

YAD ALI KHAN--Appellant

versus

PROVINCE OF PUNJAB through Secretary L&M Department and others--Respondents

R.F.A. 193 of 2012, heard ecided on 2.12.2015.

Punjab Civil Service Rules--

----R. 7.3--Constitution of Pakistan, 1973, Art. 212--Civil Procedure Code, (V of 1908), S. 80--Arrears of salary--Recovery of damages--Not entitled any benefit--Suit was relating to terms and conditions of service--Benefit for period he remained in service and continued to work but cannot draw any salary for period during which he remained absent and did not work--Claim cannot be granted--Guilty of willful absence from duty--Validity--Order of PST treated that period as extra ordinary leave without pay, therefore, it cannot be considered as period spent on duty for purpose of salary--If *mala fide* act has resulted into suffering of Government servant in form of dismissal from service he is entitled to the damages--He was held entitled to receive damages on account of *mala fide* act for his compulsory retirement--Claim of damages is based upon individual wrongs committed by Government functionaries but no such observation was given in order of PST which has already attained finality. [Pp. 499 & 500] A, B, C & D

1988 PLC (C.S.) 602; KLR 1992 Civil Cases 56; PLD 2012 SC 80 & 2003 SCMR 228 *ref.*

Mr. Awais Ahmad Khan, Advocate for Appellant.

Mr. Naveed Saeed, Addl. A.G. and *Mr. Masood Anwar,* Deputy Manager in person for Respondents No. 1(a) to 1(c).

Raja Tasawar Iqbal, Advocate for Respondent No. 2.

Nemo for Respondents No. 1(d) & 3.

Date of hearing: 2.12.2015.

JUDGMENT

Ali Baqar Najafi, J.--This appeal under Section 96, C.P.C. is directed against the judgment and decree dated 19.12.2011 passed by the learned Civil Judge 1st Class, Lahore, whereby Civil Suit No. 629/1 /2010 filed by the appellant for declaration with consequential relief and recovery of damages was dismissed with costs.

2. Brief facts giving rise to the filing of this appeal are that the appellant worked as Senior Instructor (Plumber) BPS-16 under the administrative control of Respondent No. 1(d)/ Director Manpower & Training, Punjab and Respondent No. 1(b)/Industries and Mineral Development as well as Respondent No. 1(c)/Chairman, Technical Education and Vocational Training Authority, (TEVTA). In the month of September, 1988 due to illness of his father he went on long leave w.e.f. 26.09.1988, upon which Respondent No. 2/Afzal Ahmad, Joint Director (Technical Training) Directorate of Manpower & Training, Punjab became personal who passed order dated 25.02.1990 imposing major penalty of removing from service. The appellant made departmental representation and also preferred Appeal No. 787 of 1995 before the Punjab Service Tribunal where the said order of removal from service was set aside and the case was remanded for holding a de-novo inquiry. The appellant was reinstated by the respondents and was directed to join as Senior Instructor (Plumber), Technical Training Centre, Mianwali where he reported in compliance of order.

3. On 18.11.1997 he was again issued a charge sheet and the statement of allegation akin to the previous one. An inquiry was conducted by the Director, Manpower & Training, Punjab and others against the appellant and as a consequence whereof the appellant was imposed major penalty of removal from service with effect from 03.05.1990 by treating the period of absence from 26.09.1988 to 03.05.1990 as extraordinary leave without pay *vide* order dated 09.07.1998. The said order was challenged before the Punjab Service Tribunal through Appeal No. 1444 of 1999 which was partly accepted. The order treating the period of absence from 26.09.1988 to 03.05.1990 as extraordinary leave without pay was upheld whereas removal from service was ordered to take effect from 09.07.1998 instead of 03.05.1990. The

appellant has frankly admitted that he did not challenge the said order before the apex Court because of insufficient funds; and, the fear that he would be further penalized for exposing the *mala fide* of the respondents. Due to his illegal removal from service the appellant allegedly sustained mental torture, financial difficulties, health hazards, humiliation, etc. therefore, according to him the damages amounting to Rs. 2,800,000/- were to be awarded besides payment of salary from 04.05.1990 to 09.07.1998. Notice under Section 80 of CPC was served upon the respondents but after when he got no response from the respondents, the civil suit for declaration, consequential relief with damages was instituted.

4. The suit was resisted by filing written statement. The respondents in the written statement pleaded preliminary objection of limitation; and, bar of jurisdiction etc. The allegations of the plaint were also traversed.

5. On pleadings following issues were framed:-

Issues:

1. Whether the act/omission of the defendants in avoiding to pay the salary in the BPS-16 for the period 04.05.1990 to 09.07.1998 are illegal, unlawful and tantamount to denial of the legal character of the plaintiff? OPP

2. Whether the tortoise act of the defendants against the plaintiff, entitled the plaintiff to decree for damages to the tune of Rs. 28,00,000/-? OPP

3. Whether the plaint is about the terms and conditions of Civil Service, hence the jurisdiction of this Court is barred? OPD

4. Whether the plaintiff is entitled to the decree as prayed for? OPP

5. Relief.

Vide order dated 09.03.2010 following issues were re-framed:

1. Whether the act/omission of the defendants in avoiding to pay the salary in the BPS-16 for the period 04.05.1990 to 09.07.1998 are illegal, unlawful and tantamount to denial of the legal character of the plaintiff? OPP

2. Whether the tortoise act of the defendants against the plaintiff, entitled the plaintiff to decree for damages to the tune of Rs. 28,00,000/-? OPP

3. Whether the plaint is about the terms and conditions of Civil Service, hence the jurisdiction of this Court is barred? OPD

4. Whether the suit has been filed with *mala fide* intention just to harass and blackmail the answering defendant? OPD

5. Whether the plaintiff has no cause of action to file the suit? OPD

6. Whether the plaintiff is entitled to the decree as prayed for? OPP

7. Relief.

On 15.04.2010, following additional issues were settled:

6-A. Whether the plaintiff was dismissed from the service due to misconduct and willful absent from duty? OPD

6-B. Whether the Defendant No. 2 was having delegate authority and acted upon the direction of the Government in accordance with law and relevant rules? OPD

6-C. Whether the instant matter is hopelessly time barred? OPD

6-D Whether the order of the Punjab Service Tribunal attained finality and what would be the affect of the same? OPD.

6. The appellant appeared as PW-1 and produced order of Punjab Service Tribunal, Exh.P.1, order of Secretary Labour and Manpower, Exh.P.2, order dated 9th July, 1998 of Director, Manpower of Training Punjab, Exh.P.3 and judgment of Punjab Service Tribunal, Exh.P.4 and notice under Section 80 of C.P.C. as Exh.P.5. On the other hand, Afzal Ahmad appeared as DW-1, Rana Muhammad Ilyas, DW-2, Masood Anwar, DW-3, Muhammad Suleman, DW-4 and Shabbir Ahmad, DW-5.

7. On consideration of the matter the suit was dismissed by the learned trial Court *vide* judgment and decree dated 19.12.2011 primarily on the ground that under Rule 7.3 Chapter VII of the Civil Service Rules (Punjab) it was only the appellate authority who could grant the salary and since no such order was passed, therefore, the appellant was not entitled to any benefit. Hence this appeal.

8. Mr. Awais Ahmad, Advocate/learned counsel for the appellant contends that the order of the Punjab Service Tribunal dated 16.01.2001 passed in Appeal No. 1444 of 1999 clearly permits the extraordinary leave without pay only for the period from 26.09.1988 to 03.05.1990 and not for subsequent period i.e. 04.05.1990 to 09.07.1998 for which he is also entitled to draw the salary as he remained on duty, further contends that the prayer in the suit for declaration was neither regarding terms and conditions of service nor he had emphasized on their enforcement but demanded his right determined by the Punjab Service Tribunal for the reason that it was not vested with powers to execute its decision. Adds that Rule 7.3 Chapter VII of the Civil Service Rules (Punjab) referred to in the judgment is not applicable to the appellant. Also contends that tortuous acts of the Government functionaries are amenable to the jurisdiction of the civil Court in the suit for the recovery of damages. Lastly, submits that the appellant has faced extreme hardship and difficulties besides mental torture at the hands of the respondents/Government functionaries who withheld his salary, therefore, prays for setting aside of the impugned judgment and decree. Places reliance on *Federal Ministry of Railways and others* vs. *Zafarullah Khan* [1988 PLC (C.S.) 602], *Mian Ansar Hayat* vs. *Punjab Mineral Development Corporation through Managing Director and 4 others* [2001 YLR 2670], *Dr. Surraya Javed* vs. *Director General, Health Services and another* [2000 SCMR 141], *Abdul Majeed Khan* vs. *Tawseen Abdul Haleem and others* [PLD 2012 Supreme Court 80] and *Nazir Ahmad* vs. *Islamic Republic Of Pakistan* [KLR 1992 Civil Cases 56].

9. Conversely, Mr. Naveed Saeed Khan, learned Addl. Advocate General assisted by Raja Tasawar Iqbal, Advocate/learned counsel for Respondent No. 2 contends that the appellant has already drawn salary/benefit for the period he remained in service and continued to work but he cannot draw any salary for the period during which he remained absent and did not work. Adds that the Punjab Service Tribunal has not specifically permitted the appellant to claim such salary/benefit, therefore, the same could not be allowed. Adds that the prayer made in the suit was relating to the terms and conditions of service which was not proceedable under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. Also adds that under Rule 7.3 Chapter VII of the

Civil Service Rules (Punjab) such claim cannot be granted, therefore, appeal be dismissed.

10. Arguments heard. Record perused.

11. Our findings on Issue No. 1 are as under:

> The appellant while appearing as PW-1 reiterated the contents of the plaint. Afzal Ahmad/ DW-1, had also referred the documented facts to the extent that after reinstatement in service a fresh inquiry was conducted, where after the appellant was removed from service *vide* order dated 09.07.1998 (Exh.P.3) against which appeal i.e. Appeal No. 1444 of 1999 was filed before the Punjab Service Tribunal where the departmental order was upheld. Here, it would be expedient to reproduce operative Para of the judgment dated 16.01.2001 of the Punjab Service Tribunal (Exh.P.4).
>
> "As a sequel of the above, the appeal is partly accepted in the following terms:--

i) the impugned orders treating the period of absence from 26.09.198 to 03.05.1990 as extra ordinary leave without pay is upheld but

ii) the order of removal from service would take effect only from the date it was passed i.e.09.07.1998."

12. The Punjab Service Tribunal in its judgment (Exh.P-4) observed that the departmental authority rightly held the appellant to be guilty of willful absence from duty. However, the effect of order dated 09.07.1998 could not be extended retrospectively. The appellant could not point out from the record that he attended the office i.e. 26.09.1988 to 03.05.1990 for which period he could claim salary. This period, therefore, was rightly treated as extraordinary leave without pay. Order of the Punjab Service Tribunal did not say a word about the recovery of arrears of salary from 04.05.1990 to 09.07.1998.

The cases for payment of allowances etc. on reinstatement are dealt with under Rule 7.3 Chapter VII of Civil Service Rules (Punjab) which is reproduced below:-

> 7.3. When a Government servant who has been dismissed or removed from service, is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:-

(a) "If he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and by an order to be separately recorded and allowances of which he was in receipt prior to his dismissal or removal" or

(b) "If other, such proportion of such pay and allowances as the revising or appellate authority may prescribe."

> In a case failing under clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs."

13. A perusal of clause (b) reveals that the revising or appellate authority may prescribe proportionate payment of such salary and allowances. The order of the Punjab Service Tribunal dated 16.01.2001 (Exh.P.4) treats this period from 26.09.1988 to 03.05.1990 as extra ordinary leave without pay, therefore, it cannot be considered as period spent on duty for the purpose of salary. Admittedly, the appellant had not worked in that period though he claimed that he remained available to perform duty. To cater the situation guidance can be sought from *Syed Niaz Hussain Shah Bukhari, Technician (Process)* vs. *Oil And Gas Development Corporation Limited through Chairman, OGDC Head Office, Islamabad* [2003 SCMR 228], the relevant para is reproduced below:

> "We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his duties as mentioned hereinabove and recovery was rightly effected from him ...."

The findings on Issue No. 1 is therefore, upheld.

14. The appellant was not reinstated in service as he was held guilty of absence from duty; therefore, he would not be entitled for damages. In a suit for recovery of damages the cause of damages are to be specifically spelled out. Certainly if *mala fide* act has resulted into suffering of Government servant in the form of dismissal from servicehe is entitled to the damages. The citation *Abdul Majeed Khan* vs. *Tawseen Abdul Haleem and others* [PLD 2012 Supreme Court 80] and *Nazir Ahmad* vs. *Islamic Republic of Pakistan* [KLR 1992 Civil Cases 56], relied upon by the appellant's counsel, are not relevant in the facts and circumstances of this case as in those cases Government servant was reinstated in service, therefore, he was held entitled to receive damages on account of *mala fide* act for his compulsory retirement. In the instant case he was not reinstated in service by the Punjab Service Tribunal, therefore, the finding on Issue No. 2 by trial Court is also upheld.

15. The findings returned by the learned trial Court on Issue No. 3 also does not require any interference as the prayer was confined on the basis of judgment of Punjab Service Tribunal but for claiming salary of the period during which the appellant though did not work but claimed to have remained in service the said judgment is silent. The judgment cited by the learned counsel for the appellant as *Federal Ministry of Railways and others vs. Zafarullah Khan* [1988 PLC (C.S.) 602] is also not attracted to the facts and circumstances of the present case as claim of damages is based upon individual wrongs committed by the Government functionaries but no such observation was given in the order of Punjab Service Tribunal which has already attained finality since none of the parties went to apex Court.

16. Rest of issues i.e. Issues No. 6-(b), 6-(c), 4, 5 & 6 are therefore, ancillary in nature and need no proper adjudication.

17. For the above stated reason, this appeal fails and is hereby **dismissed.**

(R.A.)

PLJ 2016 Cr.C. (Lahore) 813

[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

MUHAMMAD RAFI--Petitioner

versus

STATE, etc.--Respondents

Crl. M. No. 241-B of 2016, decided on 21.3.2016.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497--Bail, grant of--Cross version--No pistol was recovered from possession of accused nor any evidence was collected to show that it was fired by petitioner--Delay in recording cross-version speaks volumes of its falsity--Petitioner was apparently involved into stretch the complainant version--Questions like injury sustained on the finger and absence of tattooing, blackening on head of two deceased persons were questions which may be appreciated by Court after recording evidence--Petitioner has made out a case for grant of post arrest bail. [P. 814] A

Kh. Qaiser Butt, Advocate for Petitioner.

Mr. Muhammad Ali Shahab, DPG for State.

Mr. Mudassar Altaf Qureshi, Advocate for Complainant/ Respondent No. 2.

Sardar Ghulam Abbas Dogar, Advocate for Muhammad Aslam.

Date of hearing: 21.3.2016.

ORDER

The petitioner seeks post arrest bail in the cross-version of dated 11.10.2014 recorded in case F.I.R No. 535 of 2013 dated 24.12.2013 registered under Sections 302, 148, 149, PPC at Police Station Kasowal, District Sahiwal.

2. As per cross-version the allegation against the petitioner/Muhammad Rafi is that the complainant (of the cross-version) namely, Amjad Javed, the brother of Khalid Javed (deceased), went to the house of Shamshad Bibi where Khalid Javed (deceased) had gone to fix some electric problem. The petitioner

allegedly questioned Khalid Javed (deceased) as to why he had come to see Alia Bibi. Munir Ahmad, co-accused allegedly fired upon Khalid Javed landing on his left part of the head whereas Muhammad Rafi fired with his pistol hitting on his left finger. Munir Ahmad along with the petitioner had also alleged to have fired upon Alia Bibi on her forehead and the chest and both died on the spot.

3. Arguments heard. Record perused.

4. This cross-version was recorded in case F.I.R No. 535 of 2013 dated 24.12.2013 registered under Sections 302, 148, 149, PPC at Police Station Kasowal, District Sahiwal recorded by Muhammad Aslam (the complainant of the F.I.R.) in which it was stated that Khalid Javed (deceased) came to his house and, now, on coming to know that Alia Bibi aged 18 years had not decided to marry him, therefore, she would not be able to marry anyone else. He first fired with his pistol upon her head and then fired second shot on her left side of the chest. He then committed suicide by tiring on his own head. During the investigation the cross-version was also investigated but recommended for cancellation on 06.02.2015. Whereafter on 06.01.2016, the complainant of the cross-version also filed a private complaint. No pistol was recovered from the possession of the petitioner nor any evidence was collected to show that it was fired by petitioner. The delay in recording the cross-version speaks volumes of its falsity. The petitioner was apparently involved just to stretch the complainant version. The questions like injury of Khalid Javed sustained on the finger and absence of tattooing, blackening on the head of two deceased persons are the questions which may be appreciated by the Court after recording evidence. At this stage, the petitioner has made out a case for the grant of post arrest bail.

5. Resultantly, this petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.A.) **Bail allowed.**

PLJ 2016 Cr.C. (Lahore) 825

Present: ALI BAQAR NAJAFI, J.

RAB NAWAZ and 2 others--Petitioners

versus

STATE and another--Respondents

Crl. Misc. 15676-B of 2015, decided on 22.1.2016.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 302, 147 & 148--Bail, grant of--Nominated in FIR--Specific role was attributed--Question of--Cause of death--Whether death of deceased was caused due to injuries mentioned in FIR will be answered by trial Court after recording of evidence--Co-accused had been granted bail by ASJ--Possibility cannot be ruled out that prosecution had widened net so as to involve them being closely related inter se--Bail was allowed. [P. 826] A

Mr. Qalandar Hussain Bhatti, Advocate for Petitioners.

Mr. Muhammad Naseem Akhtar Khan, D.D.P.P. for State.

Mr. Zafar Iqbal Chohan, Advocate for Complainant.

Date of hearing: 22.1.2016.

ORDER

The petitioner seeks post arrest bail in case FIR No. 282 dated 14.08.2015 registered under Sections 302, 147/148, PPC at Police Station, Langrana, District Chiniot on the allegation that they alongwith *Mst.* Afzal Bibi attacked upon the complainant party for taking revenge for expelling *Mst.*Afzal Bibi from their house. They allegedly caught hold of Sikandar Hayat (deceased) the father of the complainant, and started beating with fists and kicks blows resulting into his death on the spot. Motive behind the occurrence was that said Afzal Bibi was widow of brother of the complainant namely, Mulazim

Hussain, who has dispute with the complainant party and which made her left the house of the complainant.

2. Arguments heard. Record perused.

3. Although the petitioners are specifically nominated in the FIR with joint allegation of beating Sikandar Hayat (deceased) with their kicks and fists blows but the autopsy of the deceased conducted on 14.08.2015 reveals only two injuries i.e. abrasion below near the right elbow and incised wound on the left palm. The report of Pathologist does not show any extraordinary changes in the heart, lungs and brain of the deceased. Significantly, the complainant has also filed a private complaint on 7.9.2015 in which specific role has been ascribed to the petitioners of injuring the deceased with the help of sota and axe as improvement in the earlier said version. The question as to whether death of Sikandar Hayat, deceased, was caused due to injuries mentioned in the FIR will be answered by the trial Court after recording of evidence. *Mst.*Afzal Bibi, co-accused, the daughter, in law of the deceased has been granted bail by the Court of learned Additional Sessions Judge. The possibility cannot be ruled out that the prosecution had widened the net so as to involve them being closely related inter se, since Rab Nawaz is father of Muhammad Imran and Usman.

4. For what has been discussed above, this petition is allowed and the petitioners are admitted to bail subject to furnishing bail bonds in the sum of Rs.1,00,000/-each with two sureties each in the like amount to the satisfaction of the trial Court.

(A.A.) **Bail allowed.**

PLJ 2016 Cr.C. (Lahore) 855 (DB)
[Multan Bench Multan]

Present: ALI BAQAR NAJAFI AND SHEHRAM SARWAR CH., JJ.

MUMTAZ HUSSAIN--Petitioner

versus

STATE and another--Respondents

Crl. Misc. No. 2093-B of 2016, decided on 10.5.2016.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497(2)--Control of Narcotic Substances Act, (XXV of 1997), S. 89(c)--Bail, allowed--Further inquiry--Incarceration--Mere registration of other cases of similar nature without any conviction, is no ground to refuse bail to an accused if otherwise he is entitled to same--Investigation of case is complete, thus continuous incarceration of petitioner would not serve any useful purpose at such stage--Bail was allowed. [P. 856] A

Mr. Nadeem Ahmad Tarar, Advocate for Petitioner.

Malik Riaz Ahmad Saghla, D.P.G. for State.

Date of hearing: 10.5.2016.

ORDER

Mumtaz Hussain, petitioner seeks post arrest bail in case FIR No. 30/2016, dated 13.01.2016, offence under Section 9-C of theControl of Narcotic Substances Act, 1997, registered at Police Station Saddar Vehari District Vehari.

2. After hearing the learned counsel for the petitioner as well as learned Deputy Prosecutor General and going through the record, it has been noticed by us that this is a petition for bail after arrest and only tentative assessment is required at this stage. The petitioner was arrested on 13.01.2016 and since then, he is behind the bars. As per FIR, the petitioner was having one shopper bag containing *charas* weighing 1230 grams. Possibility cannot be ruled out

that the investigating officer had weighed the contraband *charas* alongwith the material in which it was wrapped in order to bring the case of the petitioner under the ambit of Section 9-C of the Control of Narcotic Substances Act, 1997. Mere registration of other cases of similar nature without any conviction, is no ground to refuse bail to an accused if otherwise he is entitled to the same. The investigation of the case is complete, thus continuous incarceration of the petitioner would not serve any useful purpose at this stage.

3. For what has been discussed above, the case of the petitioner becomes one of further inquiry covered by sub-section (2) of Section 497, Cr.P.C., therefore, the instant petition is allowed and the petitioner is admitted to post arrest bail, subject to his furnishing bail bond in the sum of Rs. 100,000/- (rupees one lakh only) with two sureties each in the like amount to the satisfaction of learned trial Court.

4. However, it is clarified that the observation made hereinabove are tentative in nature and strictly confined to the disposal of this bail petition.

(A.A.) **Bail allowed.**

PLJ 2016 Lahore 858

Present: ALI BAQAR NAJAFI, J.

FESCO, through Chief Executive Officer, Faisalabad and 4 others--Petitioners

versus

JAVED IQBAL and another--Respondents

C.R. No. 118 of 2016, decided on 13.1.2016.

Civil Procedure Code, 1908 (V of 1908)--

----S. 115--Civil revision--Suit for declaration--Demand of specific amount as charges for electricity consumed--Demand was made on basis of audit report which was not confronted--No notice was issued prior to making demand--Demanded bill for excessive until was not exhibited--Jurisdiction--Validity--On a particular portion of audit demand cannot be straightaway made to pay charges of consumed units particularly when report was not tendered in evidence in accordance with law--Being a non-judicial document cannot be read in evidence--No issue of jurisdiction was framed by trial Court and in matters of excessive bill, Civil Court has jurisdiction--Revision was dismissed.

[P. 859] A & B

PLD 2006 SC 328, *rel*.

Mr. Shahid Mehmood Maher, Advocate for Petitioners.

Date of hearing: 13.1.2016.

ORDER

This civil revision under Section 115, CPC is directed against the judgments and decrees dated 09.05.2014 and 26.08.2015 whereby suit of the respondents for declaration alongwith permanent injunction was concurrently decreed.

2. Arguments heard. File perused.

3. The respondents filed a suit for declaration alongwith permanent injunction on 10.12.2011 claiming that demand of Rs. 39,927/- as charges for electricity consumed in the month of September 2011 be declared as illegal on the grounds that earlier to said bill, the charged amount was being regularly paid, and that the said demand was made on the basis of an audit report which was not confronted with the respondents and that no notice was issued prior to making such demand. In the written statement submitted by petitioners it was specifically stated in Paragraph No. 3 that his meter was 33% slow and *vide* audit Para No. 577 dated 11.08.2011 it has been found the responsibility of the respondents. However, the petitioners produced the letter dated 07.12.2009 recommending for the laboratory test of the meter and the letter dated 01.04.2010 demanding the bill for excessive 2148 unit was not exhibited. Even the audit Para 577 could not be exhibited for the best reason known to the petitioners.

3. Solely, on a particular portion of the audit the demand cannot be straightaway made to pay the charges of the consumed units particularly when the said report was not tendered in evidence in accordance with law. This being a non-judicial document cannot be read in evidence.

4. No issue of jurisdiction was framed by the learned trial Court and in the matters of excessive bill, the Civil Court has the jurisdiction. Reliance is placed upon *MEPCO versus Muhammad Ashiq and others* (PLD 2006 SC 328). Relevant extract is reproduced as under:

> "Thus, as the law declared stands today, in cases of theft of electricity or illegal abstraction of energy, the Electric Inspector has no jurisdiction to adjudicate a dispute and it is only the Court of plenary jurisdiction who could resolve such a controversy".

5. In this view of the matter, this civil revision has been found meritless and is, therefore, *dismissed in limine*.

(R.A.) **Revision dismissed**

2016 Y L R 1433

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD ASHRAF---Petitioner

Versus

Mst. UZMA QAMAR and others---Respondents

W.P. No.26492 of 2014, decided on 17th December, 2015.

Guardians and Wards Act (VIII of 1890)---

----Ss. 9 & 12---Guardianship petition---Welfare of minor, determination of---Temporary custody of minors---Guardian Court, while dismissing the guardian petition, gave custody of two minor sons to the respondent/mother and allowed the petitioner/father to get their temporary custody on every Saturday for twenty-four hours, for three days on Eid-ul-Azha, for the month of July of every year during summer vacations and for the last week of December of every year during winter vacations---Appellate Court upheld the order of the Guardian Court with the modification that the minors were allowed to see the father only once a month on Saturday---Validity---Confidence shown, and achievements already made, by the minors were due to the care and attention by their mother---Mother had not contracted second marriage, and she appeared to be committed with the minors--- Development of child's personality was directly in proportion to the level of care and attention given by the mother---Mother should have been given the credit of the appreciable conduct of the minors---Best intention or acts of the father could not possibly substitute the company of the mother---High Court, maintaining the concurrent findings of the courts below, restored the meeting schedule as set out by the Guardian Court--- Constitutional petitions were dismissed in circumstances.

Shehzada Mazhar for Petitioner.

Mian Shahid Iqbal for Respondent No.1.

ORDER

ALI BAQAR NAJAFI, J.---This order shall dispose of the instant writ petition as well as W.P.No.26488 of 2014, titled, "Muhammad Ashraf v. Mst. Uzma Qamar etc." Crl. Original No.1883-W of 2015, filed in W.P.No.26492 of 2014, titled" "Muhammad Ashraf v. Mst. Uzma Qamar etc." and Crl. Original No.1882-W of 2015, filed in W.P.No.26488 of 2014, titled "Muhammad Ashraf v. Mst. Uzma Qamar etc." as common question of law and facts are involved.

2. Brief facts giving rise to the filing of these petitions are that the petitioner/Muhammad Ashraf married respondent No.1/Mst.Uzma Qmar, on 27.11.2004 and from their wedlock two minor sons namely, Muhammad Usman and Muhammad Subhan were born who are in the custody of respondent No.1. On 09.04.2010, respondent No.1 went to her parents' house with the promise to come back after 2/3 days but later on she refused. The petitioner time and again requested respondent No.1 to come back in his house for the welfare and proper upbringing of the minors but all in vain. She then filed a petition under section 491, Cr.P.C. before the learned Sessions Judge who handed over temporary custody of the minors to her/mother against which the petitioner filed W.P.No.19183 of 2010 before this Court in which it was observed that untill the final determination regarding custody of the minors by the Guardian Court the petitioner was allowed to have the custody temporarily of his son namely, Muhammad Usman only on every Saturday at 11:00 a.m. till 4:00. Thereafter, the petitioner filed guardian petition on multiple grounds which was contested by respondent No.1 who denied all the allegations leveled against her. Issues were framed, evidence was recorded and consequently, learned Guardian Judge, Okara, dismissed the petition by observing that the petitioner is entitled to get the custody of the minors on every Saturday at 3:00 p.m. and will return the minors on Sunday at 3:00 p.m. and also entitled to get minors for Eid-ul-Azha for three days, besides for the month of July of every year in summer vacations and in the last week of December of every year during winter vacation. The petitioner preferred

appeal against the order passed by the Guardian Judge which was dismissed vide order dated 30.08.2014, with modification that minor was allowed to see father only once a month on saturday which are being assailed through these writ petitions.

3. Arguments heard. Record perused.

4. In the instant case custody of the minors namely, Muhammad Usman (born on 11.09.2005) and Muhammad Subhan (born on 09.07.2008) is being sought by the petitioner being the real father. The courts below have concurrently given their custody to respondent No.1/mother but made out a schedule for their meeting with the father on every week end. Since marriage has been dissolved and the maintenance of the minor children is being paid regularly by the petitioner, but minor children are studying in class-1 and 4 respectively and their outstanding results have been shown to this Court which demonstrates that so far they are getting excellent education. Even otherwise, they appear to be very confident in their behaviour and respectful for their father. But this Court on the overall facts and circumstances has to ascertain whether the welfare of the children lies in the custody of the father or mother?. It is obvious that the confidence shown and achievements so far made by the minors are due to care and attention paid to them by their mother. She has also not contracted 2nd marriage and appears to be committed with the minor children.

5. By now it is universally accepted that the lap of the mother is the best protection for a minor on this earth as her incomparable love is the direct manifestation of the greatest attributes of Almighty Allah. Psychologically, the development of child's personality is directly proportion to the level of care and attention given by her mother. Any admiration of the minor in his academic or extra-curricular activities is quickly received by his mother, and likewise, any reprimand or condemnation will take no time to reach her mother. If the minors are appreciable in their conduct before this Court, the mother should be given credit rather than discredit and should not be deprived

from the custody of the minors for their further grooming. Even the best intention or acts of the father cannot possibly substitute the company of the mother. So, ignoring the conduct of the father, which he might have adopted out of his pure love for the minors, it is appropriate that he should be allowed to meet the minors as per schedule made out by the Guardian Court and not by the Appellate Court. The petitioner is entitled to get the custody of the minors on every Saturday at 3:00 p.m. and will return the minors on Sunday at 3:00 p.m. and also entitled to get minors for Eid-ul-Azha for three days, besides for the month of July of every year in summer vacations and in the last week of December of every year during winter vacation.

6. For the above stated reasons, all these petitions have been found meritless and are hereby dismissed with above modification.

SL/M-23/L **Petitions dismissed.**

2017 C L C Note 25

[Lahore]

Before Ali Baqar Najafi, J

JAVED IQBAL---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE FAISALABAD and another---Respondents

W.P. No.8469 of 2007 and C.M. No. 1 of 2014, decided on 4th March, 2015.

Family Courts Act (XXXV of 1964)---

----S. 5, Sched.----Constitution of Pakistan, Art.199---Constitutional petition---Suit for recovery of dowry articles---Custody of gold ornaments, presumption as to---No list of dowry articles or receipt was produced---Family Court decreed the suit for recovery of dowry articles to the extent of the list prepared by the local commission as per order of the Court---Appellate court modified the decree to the extent of all the dowry articles that wife had mentioned in her examination-in-chief on the ground that husband, having admitted some of the dowry articles, was to prove that dowry articles had been taken away by wife---Validity---Appellate court failed to appreciate the generally accepted principle that gold ornaments were always retained by woman in her personal possession and in absence of any evidence of its snatching away, the same were presumed to be with her---Wife did not state any snatching of the gold ornaments nor did she object to the report of local commission---Television and Sewing Machine were not mentioned in the report of local commission but their tables and covers were mentioned; the same should have been considered in the list of dowry articles since said items had proved their existence in the list of dowry articles---Appellate court was required to mention the dowry articles instead of granting the decree on the basis of examination-in-chief of wife, particularly when in her cross-examination she could not withstand the claim of full dowry articles---High Court accepting petition excluded gold

ornaments from the impugned judgment and decree and added television and Sewing Machine in the list of dowry articles which would be returned by the husband to the wife within a specified period. [Paras. 7 & 8 of the judgment]

Ch. Fayyaz Ahmed Sanghera Khan for Petitoner.

Ch. Ijaz Akbar for Respondent No.2.

ORDER

C.M. No.1/2014

ALI BAQAR NAJAFI, J.---For the reasons given in this application, which is supported by an affidavit, the same is allowed and the writ petition is restored to its original number. The main case is being taken up at the request of learned counsel for the parties.

MAIN CASE

2. Through this constitutional petition, petitioner seeks setting aside of judgment and decree dated 19.04.2007 passed by the learned Addl. District Judge whereby the judgment and decree dated 14.02.2006 passed by the learned Judge Family Court, Faisalabad was modified to the extent of granting full dowry articles as claimed by respondent No.2.

3. Brief facts giving rise to the filing of this petition are that at on 05.04.1996 petitioner married with respondent No.2 in lieu of dower Rs.500/- who were blessed with 2 minors. The dowry articles worth Rs.4,90,200/- was allegedly given to respondent No.2 but few days prior to the filing of suit for recovery of dowry articles on 09.9.2002, she was ousted. Meanwhile, respondent No.2 also filed an application under Section 25 of the Guardians and Wards Act, for the custody of minors namely, Junaid Iqbal and Muhammad Mehdi. Both the suits were contested and consolidated issues were framed. After recording of evidence both documentary as well as oral, the Judge Family Court granted the decree of dowry articles to the extent of Exh-C1, i.e. the list prepared by the local commission as per order of the court and dismissed the suit for custody of minors filed by respondent No.2. However, an appeal was filed against the

said judgment and decree which was modified only to the extent of all these dowry articles mentioned in her examination-in-chief, hence this writ petition.

4. Learned counsel for the petitioner contends that neither the list of dowry articles was produced nor receipts were presented to justify the full grant of dowry articles. Adds that after the grant of dowry articles as per Exh-C1 by the learned Judge Family Court, the learned appellate court was required to discus the findings before setting it aside.

5. Conversely, learned counsel for respondent No.2 submits that report of the local commission itself was prepared in connivance with the petitioner as articles like empty box of sewing machine and T.V. trolley without sewing machine and T.V. could not be part of dowry articles. Adds that in para 4 of the written statement dowry articles have been admitted, therefore, there is no illegality in the impugned order.

6. Arguments heard. Record perused.

7. Vide impugned judgment and decree, the learned appellate court observed that after delivery of dowry articles in the house of petitioner, the burden was upon the petitioner to prove that the same was taken away since some of the dowry articles were admitted by the petitioner. However, it has failed to appreciate a generally accepted principle that gold ornaments are always retained by the women in her personal possession and, therefore, in absence of any evidence of its snatching away the same are presumed to be with them. A perusal of statement of respondent No.2 who appeared as PW-1, reveals that 12 gold bangles, a necklace set, locket set and pearl set in total 25 tolas of gold were claimed as dowry articles but she has stated that after getting married in the year 1996 she was turned out from the house of the petitioner about 4 years prior to the recording of statement in 2010, and did not state any snatching away of the gold ornaments. Secondly, in paragraph 4 of the written statement it was admitted that a colour T.V., gold ornaments, a watch, tape recorder, Saree and other dresses were not retained by petitioner. This stand is further corroborated by the report of local commission dated 03.02.2006 prepared by the Ahlmed of the court in

presence of Nasir Mehmood, i.e. representative of respondent No.2 stating therein that in total 55 articles including fridge (Sr. No.39) dinning table, chairs, washing machine, two air coolers were returned and this report was never objected to by respondent No.2. Thirdly, the learned appellate court was required to mention the dowry articles instead of granting the decree on the basis of examination-in-chief of respondent No.2, particularly when in her cross-examination she could not withstand the claim of full dowry articles. Noticeably, since T.V. as well as sewing machine were not mentioned though their tables and covers were mentioned, therefore, the same should be considered in the list of dowry articles since they have proved the existence in the list of dowry articles.

8. For what has been stated above, the judgment and decree passed by learned appellate court to the extent of gold ornaments weighing 25-tolas as mentioned in the plaint as well as in the statement, is excluded whereas T.V. and sewing machine is added in the list Exh-C1 or in alternate Rs.1,00,000/- is fixed as its tentative value keeping in view the depreciation and the use of said articles which shall be returned by the petitioner to respondent No.2 within a period of one month from today.

SL/J-3/L **Order accordingly.**

2017 M L D 306

[Lahore (Multan Bench)]

Before Ali Baqar Najafi, J

ALLAH DITTA and others---Petitioners

Versus

MUHAMMAD TEHSEEN and others---Respondents

Civil Revision No.1073 of 2009, heard on 4th April, 2016.

Civil Procedure Code (V of 1908)---

----O. XLI, R. 27---Production of additional evidence in Appellate Court---Scope---Suit was decreed against which appeal was filed wherein an application for production of additional evidence was moved which was accepted by the Appellate Court---Validity---Suit was instituted in the year 1996 and evidence could be concluded after a long period of 8/9 years---Application for production of additional evidence was moved before the Trial Court on the day when judgment was about to be pronounced---Written statement did not mention the existence of document to be produced as an additional evidence---Application for additional evidence could be moved at any stage but applicant had to establish a good cause---Application for production of additional evidence was dismissed and case was remanded to the Appellate Court for decision of appeal on merits---Revision was allowed in circumstances.

Zar Wali Shah v. Yousaf Ali Shah and 9 others 1992 SCMR 1778; Moazam Majeed Bajwa v. Tariq Munawar and others 2012 MLD 417 and Province of Punjab through Chief Secretary and 5 others v. Malik Ibrahim and sons and another 2000 SCMR 1172 distinguished.

Muhammad Nazir v. Fazal Karim and others PLD 2013 SC 255; Faiz Hussain and 7 others v. Muhammad Din through Legal Heirs 1999 MLD 1386; Mumtaz Khan and 8 others v. Haji Nawab Khan 2003 MLD 399 and Muhammad Yousaf v. Mst. Maqsooda Anjum and others 2004 SCMR 1049 rel.

Ch. Khalil Asghar Sindhu for Appellants.

Muhammad Khalid Ashraf Khan for Respondents.

Date of hearing: 4th April, 2016.

JUDGMENT

ALI BAQAR NAJAFI, J.---This order shall dispose of the instant civil revision petition as well as Civil Revision No. 1074 of 2009 titled "Mst. Zaib un Nisa etc. v. Muhammad Tehseen etc." as common questions of law and facts are involved in both these revision petitions.

2. In both the civil revisions judgment and decree dated 10.09.2009 has been challenged whereby the appellate court allowed the appeal, set aside the judgment and decree passed by the learned trial court dated 30.01.2006 and remanded the case to the civil court to decide it afresh while allowing the application under Order XLI Rule 27, C.P.C. for additional evidence filed by respondent No. 1.

3. Brief facts giving rise to the filing of these revision petitions are that petitioners in both the civil revisions filed suits for declaration and permanent injunction on 12.09.1996 against respondents challenging the validity of mutation No. 1348 dated 28.01.1996 and mutation No. 466 dated 16.01.1996 for the land measuring 99 kanals 11 marlas situated in Chak No. 56/12-L Tehsil Chichawatni, District Sahiwal, to the extent of their 2/3rd share each as they were pardanasheen ladies and, therefore, the said mutations were void ab-initio. It was the case of the petitioners that they never appointed respondent No.2 as their attorney for the purposes of exchange or sale of the suit property. The suit was contested whereafter issues were framed and the evidence was recorded and the suit was decreed on 30.01.2006. However, on the same day i.e. 30.01.2006, respondents filed an application to produce Revocation Deed (Abtaalnama) dated 07.08.1996 as additional evidence to show that power of attorneys given by the petitioners to respondent No.2 was cancelled subsequently i.e. after 7 months. However, the said application was dismissed straightaway, without calling any reply, on the ground that the said document though in existence, was not referred either in written statement or in evidence and that evidence of defendants has been concluded on 24.09.2005 but the application was filed at the stage of final arguments (in fact the day the judgment was pronounced) just to prolong the matter pending since

12.06.1999. However, the appellate court vide its judgment and decree dated 10.09.2009 allowed the appeal and remanded the case to the civil court while allowing the application for additional evidence.

4. Learned counsel for the petitioners contends that without giving any reference to the said Abtaalnama either in the pleadings or in the evidence, it could not be produced in evidence.

5. Conversely, learned counsel for respondents submits that Abtaalnama is a registered document and that the respondents only have to show good cause why it could not be filed in the court under Order XLI, Rule 27, C.P.C.

6. Arguments heard. File perused.

7. Admittedly, both the suits were instituted in the year 1996. The evidence could be concluded after a long period of about 8/9 years and on the day when the judgments were about to be pronounced, the applications were filed for producing additional evidence. A perusal of the written statements filed by the respondents does not reveal the existence of any Abtaalnama dated 07.08.1996. Said document is not even in this file in negation of Section 115, C.P.C. Moreover, the evidence produced by respondents as defendants also does not show any case of cancellation of general power of attorney (Ex.D1). I am surprised to note what occurred to respondents to file an application for additional evidence just on the day when the judgment was pronounced. Undoubtedly, an application for additional evidence can be filed at any stage but the applicant has to establish a good cause. It has never been the case of the respondents that after the issuance of power of attorneys by the petitioners on 07.08.1996, the same was subsequently cancelled. The term good cause has been held to depend upon the facts of each case, but the party in default has to show a legally sufficient reason, why a request should be granted or the inaction/omission should be excused. In short, the judicial conscious of the Court should be satisfied with justifiable reasons, and such request should not be allowed as of right or as a matter of coarse. Reliance is placed upon Muhammad Nazir v. Fazal Karim and others (PLD 2013 SC 255). The case titled Zar Wali Shah v. Yousaf Ali Shah and 9 others (1992 SCMR 1778), pertains to different facts and circumstances as the provisions of C.P.C. were there to advance the cause of justice rather than injustice by setting up a new

case. The other judgment cited as Moazam Majeed Bajwa v. Tariq Munawar and others (2012 MLD 417), is not applicable as the document in question is not a public document as claimed by the petitioners.

8. In Province of Punjab through Chief Secretary and 5 others v. Malik Ibrahim and Sons and another (2000 SCMR 1172), it has been held that parties are bound to lead evidence on the point of controversy and the perusal of record reveals that real controversy was regarding transaction entered on the basis of power of attorney for which specific issue was also framed, therefore, this judgment will not help the petitioners. However, in Fiaz Hussain and 7 others v. Muhammad Din through Legal Heirs (1999 MLD 1386), it was held that no evidence can be led on the plea which was not raised in the pleadings as the parties cannot be taken by surprise. In Mumtaz Khan and 8 others v. Haji Nawab Khan (2003 MLD 399), it was held by the Single Bench of this Court that the parties cannot be allowed to depart from their own pleadings and to plead a ground which they have never raised in the written statement. Lastly, the judgment titled Muhammad Yousaf v. Mst. Maqsooda Anjum and others (2004 SCMR 1049), is fully applicable in which following has been held as under:--

> "3. We are not impressed. It is well-settled that additional evidence cannot be received to fill up the lacuna or provide for deficiency in the case of a party. It is also well settled that the additional evidence is permitted if, the Court needs the same for purposes of disposal of the case. By requesting the Court to permit him to produce private documents as additional evidence, the petitioner was clearly trying to fill up a lacuna and provide for the deficiency in the case. This cannot be permitted. If petitioner's counsel has been negligent, as contended, the petitioner may have to proceed against the counsel concerned. However, this is not a good reason for grant of permission to adduce additional evidence."

9. In this view of the matter, these civil revisions are allowed as a result of which application for additional evidence is dismissed and the case is remanded to the appellate court which shall decide the appeal on merits.

ZC/A-70/L **Case remanded.**

2017 P L C 139

[Lahore High Court]

Before Ali Baqar Najafi, J

ZAFAR ALI

Versus

The PUNJAB LABOUR APPELLATE TRIBUNAL, LAHORE and 3 others

Writ Petition No.24690 of 2016, decided on 23rd February 2017.

Payment of Wages Act (IV of 1936)---

----Ss. 23 & 15---Employees' Old Age Benefits (Contribution) Rules, 1976, Preamble---"Workman"---Claim arising out of deductions from wages---Payment of gratuity, salaries and bonus---Scope---Any adjustment/settlement compulsorily depriving an employee of any right under the Payment of Wages Act, 1936 would be void---Employee-company was in consultancy business having 80 or above persons as employees---Company had paid contribution to Employees' Old Age Benefits Institution under Employees' Old Age Benefits (Contribution) Rules, 1976---Said company was neither charitable nor social service establishment but in business activities for profit which was amenable to Labour Laws---Authority under S.15(1) of Payment of Wages Act, 1936 had the jurisdiction to decide the claim of an employee of such company---Employee had been paid bonus and gratuity---Status of employee was that of a "workman"---Bonus of three years only in proportionate to the monthly wages could be paid to the employee---If employee was paid the bonus for 2008 then he could not be deprived from the bonus for the years 2006-07---Amount paid at the time of Eid-ul-Azha or Eid-ul-Fitr were not the regular bonus---Authority under Payment of Wages Act, 1936 had rightly awarded amount of bonus to the employee---Impugned orders passed by the Courts

below were set aside and that of Authority was restored in favour of employee---Constitutional petition was allowed in circumstances.

Divisional Engineer, G.I.P. Railways v. MAHADEO AIR 1955 SC 295 and Ghulam Mustafa and another v. Pakistan Industrial Gases Ltd. and others 2002 PLC (C.S.) 52 rel.

Shahid Baig for Petitioner.

Bilal Kashmiri and Adeel Aftab Kashmiri for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, order dated 27.06.2016 passed by the Punjab Labour Appellate Tribunal as well as order dated 06.04.2015 passed by the Punjab Labour Court No-2, Lahore had been challenged whereby order dated 13.08.2010 passed by the authority has been set aside.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner was working as Senior Chief Accountant in the respondent-company since 19.09.1992 to 17.11.2008 for a period of 16 years. He resigned on 18.11.2008 due to intimidation, harassment and unworkable environment as claimed by the petitioner and the company made the following payments:-

1. Salary for the month of November, 2008.
2. Pending Medical Bills.
3. Bonus for the year, 2008.
4. Service Gratuity only for the year 2008.

At the assurance of making the balance payment the petitioner received Rs.88645/- vide cheque No.9504352 on 05.12.2008 and issued the receipt with the following writing.

"I have received cheque No.9504352 amounting to Rs.88645/ -against full and final settlement of all outstanding dues from M/s Engineering General Consultants (Pvt.) Limited dated 05.12.2008 and nothing is outstanding now and no other claim against the company".

However, the demand of

1. Payment of Gratuity for remaining 15 years for the period starting from 1993 and ending on 2007.

2. Payment of Leave Fare Assistance (LFA) for 16 years.

3. Payment of pending Bonuses up to year 2007 as per Financial Statements of the Company.

was refused by the Company vide letter dated 05.12.2008 which, according to the petitioner, the company has already received in the shape of Over Head and Social Charges and has already been paid to many persons of same status. A grievance notice was therefore, served upon the Managing Director of the respondent-company on 06.01.2009, and on 08.04.2009, a claim was filed before the authority under section 15 of the Payment of Wages Act, 1936 for payment of Rs.1,279,358/- under the following brake up figures:-

a.	Fifteen Gross Salaries as Gratuity	Rs.538,050/-
b.	Sixteen Basic Salaries as LFA.	Rs.382,608/-
c.	Ten Gross Salaries as Bonus of last 15 years	Rs.358,700/-

The claim was resisted by the respondent-company and after recording of evidence, the Authority, on 13.08.2010 partly accepted the claim of the petitioner to the extent of Rs.6,09,790/-. This order was assailed by the respondent-Company before the Punjab Labour Court No.2, Lahore under its appellate jurisdiction which was allowed on the ground that the petitioner was not a workman but the Court held that under section 1(4) of the Payment of

Wages Act it applies to person employed in a Factory, (Industrial Establishment or Commercial Establishment), etc., but allowed the appeal. This order was further upheld by the Labour Appellate Tribunal vide order dated 27.06.2016, hence this writ petition.

3. Arguments heard. Record perused.

4. After hearing the learned counsel for the petitioner as well as the respondent, it is noted that the question before this Court is as to whether the petitioner was entitled only to the amount he has received on 05.12.2008 as full and final settlement or under section 23 of the Payment of Wages Act, 1936 any payment received under duress can be considered as final payment. It is, therefore, appropriate to reproduce the said section:-

> **Section.23**: **Contracting out**.--- Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

It shows that any adjustment/settlement compulsorily depriving an employee of any right under the Act will be void. While interpreting this section, the Supreme Court of India in Divisional Engineer, G.I.P. Railways v. MAHADEO reported as [AIR 1955 SC 295] held that there is no question of relinquishment of right to claim allowances payable to an employee by the Rules through an agreement between the employer and the employee. Besides, this Court has the jurisdiction to adjudicate upon matter such as the present one in view of Ghulam Mustafa and another v. Pakistan Industrial Gases Ltd. and others [2002 PLC (C.S.) 52] in which it was held as follows:-

> "It may also be mentioned that the order passed in appeal by the Labour Court under the Payment of Wages Act, 1936 would be subject to review by the High Court under Article 199 of the Constitution. It may also be stated that Labour Court for the purpose of adjudicating and determining any industrial dispute is deemed to be a Civil Court within

the meaning of section 36 of Industrial Relations Ordinance, 1969."

5. The petitioner claims gratuity, LFA and bonuses outstanding towards the respondent- Company. To appreciate his claim it is found in evidence that respondent-Company/Engineering General Consultants (EGC) Pvt., 49/D-1, Gulberg-III, Lahore has been in the consultant business having 80 or above persons as employed and therefore, the Company pays the contribution to EOBI under EOBI, Rules, 1976. Besides, the record shows that it is neither charitable nor social services establishment but in business activities for profit. It is amenable to the Labour laws. It encourages and is indulged in human activity other than casual, recreational, or a part time, therefore, is a commercial establishment. It can therefore, be safely concluded that under the Payment of Wages Act, 1936, the Authority under section 15(1) had the jurisdiction to decide.

6. As far as the resignation followed by signing of receipt is concerned; suffice it to say that in evidence it has come that receipt was signed on 05.12.2008 (Mark-2) under protest as the fee of the children of the petitioner was required to be paid immediately, therefore, he was compelled to sign another receipt (Exh.P.2) written and signed by him with his hand.

7. The evidence of the respondent- company also shows that the petitioner was paid bonuses and gratuity meaning thereby that status of the petitioner is that of a workman. Under the law as held by the authority, a bonus of 3 years only in proportionate to the monthly wages could be paid to the petitioner. If he was paid the bonus for 2008, he cannot be deprived from the bonuses for the years 2006-2007 as the record does not show that the establishment did not earn any profit. Obviously, the evidence on the amount paid at the time of Eid-ul-Azha or Eid-ul-Fitr are not the regular bonuses. The Authority therefore, had rightly granted Rs.71,740/- as bonuses for the years 2006-2007, LFA of Rs.3,82,608/- was rightly deducted and as such an amount of Rs.6,09,790/- was lawfully awarded to the petitioner.

9. In view of what has been stated above, this writ petition is allowed to the extent that order of the Labour Appellate Tribunal and Labour Court are set aside and that of authority is restored amounting to Rs.6,09,790/- in favour of the petitioner.

ZC/Z-12/L **Petition allowed.**

2018 P L C (C.S.) 454

[Lahore High Court]

Before Ali Baqar Najafi, J

WASEEM YAQOOB

Versus

GOVERNMENT OF THE PUNJAB and others

Writ Petition No.18420 of 2016, decided on 2nd March, 2017.

Constitution of Pakistan---

----Arts. 199 & 3---Constitutional petition---Civil service---Advertisement for appointment of Constables in Police Department---Involvement of candidate in criminal case---Effect---Double jeopardy---Scope---Appointment of petitioner was refused due to his involvement in criminal case---Contention of candidate was that he had been exonerated and acquitted from the said criminal case---Validity---Every person was presumed to be innocent unless proved guilty---Person though involved in criminal case if acquitted was to be considered as a person against whom no case was ever registered---Any condition creating impediment on the job in the department on the basis of acquittal in criminal case would not and should not be read as disqualification---Impugned order passed by the department was set aside and Authority was directed to decide the representation of candidate in accordance with law which should be deemed to be pending before him---Constitutional petition was disposed accordingly.

Muhammad Nadeem Arif and others v. Inspector General of Police, Punjab, Lahore and others 2011 SCMR 408 and Asghar Ali and others v. Mansoor Muzaffar Ali and others 2012 PLC (C.S.) 502 ref.

Director-General, Intelligence Bureau, Islamabad v. Muhammad Javed and others 2012 SCMR 165; Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan PLD 2010 SC 695; Superintending

Engineer Gepco, Sialkot v. Muhammad Yousaf 2007 SCMR 537; Muhammad Aslam v. Sabir Hussain and others 2009 SCMR 985 and Dr. Muhammad Aslam v. Government of N.W.F.P through Secretary, Food, Agriculture, Livestock and Cooperative Department,. Peshawar and 2 others 1998 SCMR 1993 rel.

Muhammad Younas Bhullar for Petitioner.

Muhammad Ejaz, Assistant Advocate General on Court's call.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner calls in question order dated 20.04.2016 whereby appointment of the petitioner as security constable particularly meant for the security of foreigners specially Chinese was refused on the basis that the petitioner was involved in a criminal case.

2. Brief facts giving rise to the filing of this writ petition are that Notification for the recruitment of 131 posts of Security Constables for Special Protection Unit (SPU) District Kasur were advertised. The petitioner being eligible candidate applied for the post of Security Constable and after conducting physical test he was declared successful. He also appeared in the National Testing Service from where he got 73 marks and was declared as successful candidate and his name was figured in the final list of candidates. After conducting all the test, a character report of the petitioner was called from the local police who reported that the petitioner was involved in some criminal case vide FIR No.435 dated 17.08.2011 under sections 447/354/452/148/149, P.P.C. at Police Station, Khudian District Kasur on the basis of which the petitioner was not permitted to join. The petitioner conveyed to the authority that in the year 2011 case was although registered

against the petitioner on account of personal vendetta of the complainant yet after facing trial he was exonerated and acquitted by the learned Magistrate Section 30, Kasur on 24.07.2013. But on account of the letter dated 26.06.2014, any candidate found involved in criminal case (either under trial or acquitted on multiple grounds) would not be appointed in police department as constable, hence this writ petition.

3. Learned counsel for the petitioner contends that when the petitioner was of 15 years some criminal case was registered against him and after his honourable acquittal he has been and is enjoying good reputation in the vicinity and that such conditionality is against the dictum laid down by the apex Court in Muhammad Nadeem Arif and others v. Inspector General of Police, Punjab, Lahore and others [2011 SCMR 408] where the basic memorandum relating to the policy/rule which was issued by the Inspector General of Police in favour of the petitioner was not valid itself having any legal backing. He also adds that the petitioner is entitled to the benefit of acquittal order. Reliance is placed upon Director-General, Intelligence Bureau, Islamabad v. Muhammad Javed and others [2012 SCMR 165], Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan [PLD 2010 Supreme Court 695], Superintending Engineer Gepco, Sialkot v. Muhammad Yousaf [2007 SCMR 537] and Asghar Ali and others v. Mansoor Muzaffar Ali and others [2012 PLC (C.S.) 502].

4. Conversely, learned law officer on the basis of report and Parawise comments submitted by respondent No.2 submits that the committee minutely examined the case and is of the view that there is no need of any relaxation of rules/policy. In the report and Parawise comments submitted by respondent No.3 it was specifically mentioned that notwithstanding the acquittal of the petitioner in case FIR No.435 dated 17.08.2011 under sections 447/354/452/148/149, P.P.C. at Police Station, Khudian District Kasur it was

decided principally on 26.06.2014 vide letter No.SE-IV/7317-70/II that those candidates who were involved in criminal cases (either under trial or acquitted on multiple grounds) shall not be appointed in the police department as constable. The additional reasons given in the said order show that such involvement of the petitioner in criminal case will prohibit him to be recruited as security constable particularly for foreigner; specially Chinese. This specific observation seems to be directly in conflict with the basic principal of the criminal administration of justice under which a person is presumed to be innocent unless proven guilty and person though involved in criminal case, if acquitted shall also be considered as a person against whom no case was ever registered. It will be a great irony of our society that even an acquittal of a person did not restitute his previous position who would continue to live his entire life with an obsolete and baseless stigma that he once being involved in a criminal case that too relating to a personal vendetta. This is considered a serious threat to the criminal administration of justice and offensive to the judicial system as a whole which not only shows mistrust but also a clear disrespect to it. The said approach will also be in direct conflict with provision of section 403 Cr.P.C. and Article 13-A of the Constitution of Islamic Republic of Pakistan, 1973 under which double jeopardy has been prohibited. This Court seeks guidance from Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan [PLD 2010 Supreme Court 695], the relevant extract of which is reproduced below:--

> "Be that as it may, un ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis- -vis the criminal charge against him as is evident from the concept of autrefois acquit embodied in section 403, Cr.P.C and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic

> jurisprudence, Afw (waiver) of Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime."

The Hon'ble Supreme Court of Pakistan in Superintending Engineer Gepco, Sialkot v. Muhammad Yousaf [2007 SCMR 537] it was held that if civil servant has been acquitted he is to be reinstated when his dismissal order was based on this very ground. Even in Director-General, Intelligence Bureau, Islamabad v. Muhammad Javed and others [2012 SCMR 165] the apex Court went on to observe that the payment of Diyat money on the basis of compromise under section 435, Cr.P.C. cannot be considered as his disqualification for his reinstatement. Here, I seek guidance from Muhammad Aslam v. Sabir Hussain and others [2009 SCMR 985] and Dr. Muhammad Aslam v. Government of N.W.F.P through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others [1998 SCMR 1993] wherein it was held that accused civil servant in case of acquittal was to be considered to have committed no offence because the competent Criminal Court had freed/cleared him from an accusation or charge of crime. Relevant extract is reproduced below:--

> "The appellant was acquitted by the trial Judge as already pointed out above. It shall, therefore, be presumed that the allegations leveled against him are baseless. In consequence, he has not been declared guilty. In presence of above meaning of "acquittal" the appellant is held to have committed no offence because the competent Criminal Court has freed/cleared him from an acquisition or charge of crime. The appellant is, therefore, entitled to the grant of arrears of his pay and allowances in respect of the period he remained under suspension on the basis of registration of murder case against

him. This appeal succeeds and is allowed with no order as to costs."

5. Keeping in view the above discussion this Court is of the considered view to hold that any condition creating impediment on the job in the respondents/department on the basis of acquittal in criminal case would not and shall not be read as disqualification under the Constitution of Islamic Republic of Pakistan, 1973, therefore, this writ petition is allowed and the impugned order dated 20.04.2016 is hereby set aside and respondent No.2 is directed to decide the representation of the petitioner in accordance with law which shall be deemed to be pending before him.

6. **Disposed** of in the above terms.

ZC/W-4/L **Petition disposed of.**

2017 P L C (C.S.) 1123

[Lahore High Court]

Before Ali Baqar Najafi, J

SHAFIQUE AHMAD

Versus

MINISTER FOR LAW and others

Writ Petition No.34703 of 2016, decided on 1st March, 2017.

Punjab Privatization Board Act (IV of 2010)---

----Ss. 6(k) & 14---Recruitment by an autonomous body---Appointment of legal advisor by Punjab Privatization Board---Nature of recommendations of autonomous bodies---Objective criteria for appointment/recruitment---Scope---Petitioner impugned appointment of respondent as legal advisor to the Punjab Privatization Board on the ground, inter alia, that per recommendations made by the Punjab Privatization Board, petitioner was part of the top-3 candidates, and the respondent was on serial number 10 of the said list---Contention of Provincial Government was that recommendations of the Punjab Privatization Board, which was an autonomous body, were not binding upon it---Validity---Policy letter of the Provincial Governmental set procedure for appointment of legal advisors and under the same, an autonomous body was to forward recommendations for appointment of legal advisor and such recommendations were to be received and considered by a Selection Committee comprising of five members, including a representative of the autonomous body and the Provincial Government shall appoint the applicant recommended by the Committee---Minutes of the meeting for appointment of legal advisor, in the present case, revealed that member of the Punjab Privatization Board gave his consent to ignore recommendations sent by the Board---Word "shall be considered" in the Policy Letter of the Provincial Government had a binding effect for the purpose of consideration and not appointment, which meant that if someone below in numbers on merit list was

considered suitable, some well-founded reasons in support of such suitability should be given---In the present case, it was not mentioned whether representative of the Punjab Privatization Board ever actively participated/consented in the process---High Court observed that in all such appointments, an objective criteria was to be followed---Appointment of respondent to the post of Legal Advisor to the respondent Punjab Privatization Board was set aside with the direction to the Committee to consider the merit-wise names recommended by the Punjab Privatization Board and select the suitable candidate after giving reasons and applying an objective criteria---Constitutional petition was allowed, accordingly.

Secretary, Ministry of Law, Parliamentary Affairs and Human Rights, Government of Punjab and others PLD 2011 SC 7 and Dr. Mir Alam Jan v. Dr. Muhammad Shahzad and others 2008 SCMR 960 distinguished.

Ghulam Hassan M. Paryani v. Karachi Port Trust and 4 others 1992 MLD 1128 rel.

Petitioner in person.

Hamayun Rasheed for Respondent No.2.

Muhammad Shakil for Respondent No.3.

Muhammad Siraj-ul-Islam, Addl. A.G.

ORDER

ALI BAQAR NAJAFI, J.--- This order shall dispose of Writ Petition No.34094 of 2016 titled "Sarfraz Muhammad Bargatt v. Minister of Law etc." along with present writ petition as common questions of law and facts are involved in both these petitions.

2. Through this Constitutional petition under Article 199 of the Constitution of Republic of Pakistan, 1973 appointment of Mr. Shahid Ahmed Ranjha, Advocate/respondent No.4 as senior legal Advisor made vide order dated 04.10.2016 has been challenged on the ground that after advertising the post of Legal Advisor of the Punjab Privatization Board by respondent No.3

on 28.05.2016, in total 30 candidates applied for and merit-wise recommendation was made by the Board vide letter dated 12.07.2016 to the Law and Parliamentary Affairs Department Government of Punjab, Lahore with the following priority--

1. Mr. Sarfraz Muhammad Bargatt
2. Mr. Shafique Ahmed
3. Mr. Manzoor Hussain Dogar

However, on 04.10.2016, respondent No.4 was appointed as Senior Legal Advisor who stood at Sr. No.10. Adds, that a recommendation of the autonomous body has to be followed by respondent No.3 as mandatory. Adds that petitioner has 20 years of flawless judicial service career and has more than 5 years active practice as an Advocate of the High Court. Further adds that the act of Selection Committee constituted under para 3(5) of Engagement of Legal Advisors and Special Advocates by statutory/Autonomous Bodies under the Administrative Control of the Government of the Punjab on regular basis for two years is against Sections 6(k) and 14 of the Punjab Privatization Board Act, 2010 under which it is only the Board who can appoint the Lawyers and Advisors under the terms and conditions of employment.

3. The respondent No.2/Punjab Privatization Board has submitted contesting parawise comments. However, the report and parawise comments submitted by respondent No.1/Secretary Law and Parliamentary Affairs Department contested on the ground that respondent No.2 Punjab Privatization Board is an autonomous body but under the Administrative control of Colonies Department, Board of Revenue under the Rules of Business, 2011, under the policy dated 14.05.2011, regarding Engagement of Legal Advisor and special Advocate by Statutory/Autonomous Bodies under the administrative control of the Government of Punjab, the appointments are made on regular basis for a period of two years by a selection committee after advertisement in the newspaper. It was stated that out of two one seat was filled up and one is to be re-advertised where the petitioner can try his luck. While placing reliance upon

Secretary, Ministry of Law, Parliamentary Affairs and Human Rights, Government of Punjab and others (PLD 2011 SC 7), prays for dismissal of the writ petition by reiterating that recommendations of the respondent/Board are not binding upon the petitioners.

4. Arguments heard. File perused.

5. After hearing the learned counsel for the petitioner and the learned A.A.G., the situation is that respondent No.2 and the petitioner are supporting each other whereas the Government of Punjab has taken a stand that appointment of respondent No.4 was made after considering the recommendations by the Privatization Board, which has no binding effect upon the Government.

To appreciate the respective contentions, I have gone through the Punjab Privatization Board Act, 2010 and have found that Section 6(k) reads as follows:-

> "The Board shall appoint advisors, consultants, valuators, actuaries, lawyers, auditors and such other staff as may be necessary for the discharge of its functions under this Act, and determine the terms and conditions for such appointment".

Under Section 14 it can also appoint advisors, consultants and agent. Section 14 is reproduced is under:-

> **1. Advisors, consultants and agents.-** (1) The Board may employ any technical, professional and other agents, advisors and consultants including banked engineers, architects, valuators, accountants, auditors, lawyers, actuaries, assessors, auctioneers, and other persons to transact any business or to do any act required to be transacted or done in the exercise of its powers, the performance of its functions, or for better implementation of the purposes of this Act.
>
> (2) The Board shall determine the terms and conditions of the employment under subsection (1).

As per policy letter dated 14.05.2011 of the Government of the Punjab Law and Parliamentary Affairs under para 3 a procedure for appointment of the legal advisors. Under pana 3(4) the autonomous body shall forward recommendations and under para 3(5) such recommendations shall be received and consider by a Selection Committee comprising of 5 members, including a representative of the autonomous body not below the rank of an officer of BS-19 and under para 5(a) the Government shall appoint the applicant recommended by the committee as Legal Advisor for autonomous body on the terms fixed by said committee.

6. Under Rule 20 of the Rules Department shall consult the Law and Parliamentary Affairs Department and under Rule 20(8) no department shall engage a private counsel for representing it in any case before High Court, Federal Shariat Court or the Supreme Court of Pakistan except with the prior permission of the Law and Parliamentary Affairs Department and its Approval by the Advocate General. The Privatization Board is the department under the Colonies Department under serial No.4 of the schedule made with reference to Rules 2 and 3.

7. The minutes of the meeting dated 19.08.2016 reveals that Mr. Muhammad Ashraf, Secretary Punjab Privatization Board, attended as member of the committee marked at serial No.11 who consented to ignore the recommendations sent by the Board. Besides, no reasons were given to disagree with the merit list prepared by the Board. Needless to mention that the word "shall be considered" in para 3(5) has a binding effect but it cannot be equated with "shall be appointed" which means that if some one below the number in merit list is considered suitable, some well-founded reasons in support of such suitability should be given by observing an objective criteria. Besides, it is not mentioned in the record as to whether the representative of the Board ever actively participated/consented or even consulted in the process. No assenting or dissenting note was even recorded by him.

8. The judgment cited as Secretary, Ministry of Law, Parliamentary

Affairs and Human Rights Government of Punjab and others (PLD 2011 SC 7), is not applicable to the fact of this case, as it relates to the appointment of Advocate General, a constitutional post. The other judgment Dr. Mir Alam Jan v. Dr. Muhammad Shahzad and others (2008 SCMR 960), is also not helpful to respondents as in that case the merit was upheld, which this Court also intended to do.

9. In the facts and circumstances, the D.B. judgment titled Ghulam Hassan M. Paryani v. Karachi Port Trust and 4 others reported as (1992 MLD 1128), may have some analogy in which it was held that the Law Division cannot give a binding directions to any other division to appoint a Legal Advisor.

For what has been stated above, I am of the considered view that in the meeting dated 19.08.2016 the case of the petitioner was not considered as per recommendations made by respondent No.2/Punjab Privatization Board, therefore, this petition is partly allowed and the appointment of respondent No.4 is set aside. The committee shall however consider the merit-wise names recommended by respondent No.2 and select the suitable candidates by giving reasons and applying an objective criteria.

KMZ/S-32/L **Order accordingly.**

P L D 2017 Lahore 896

Before Ali Baqar Najafi and Abdul Sattar, JJ

Mst. FAIZ MAI---Appellant

Versus

HOME SECRETARY and others---Respondents

I.C.A. No. 455 of 2015, decided on 25th September, 2017.

(a) Police Order [22 of 2002]---

----Arts. 120 & 121---Police Act (V of 1861), Ss

(b) The corresponding section 30(a) of the Police Act, 1861 or the whole scheme of law did not mention the Home Secretary as competent authority to grant or refuse such license.

(c) Minority sects (having less population) w. 30 & 30A---Constitution of Pakistan, Art. 20---Right to take out a religious procession---Licnese for Muharram procession, issuance of---Principles.

Following are the principles relating to issuance of a license for Muharram procession:

(a) Under Article 120 of the Police Order, 2002 it was the head of District Police or Assistant or Deputy Superintendent of Police who was empowered to issue or refuse the license for the Muharram procession.

ere not debarred from indulging into lawful religious practices as it was the responsibility of the State to protect enforcement of Fundamental Right under Article 20 of the Constitution, as long as they did not infringe into the rights of other communities.

(d) In rare cases the license may be refused but such refusal could not be permanent and would be only for a particular occasion.

(e) The police was required to be vigilant in finding out the programme of procession being taken out.

(f) The requirement of license was for procession on new routes.

(g) The authorities while dealing with such applications (for issuance of license) shall apply their mind and abstain from dealing with it arbitrarily or capriciously and shall remain even handed strictly as mandated by law.

(h) As a requirement for taking out a procession, the licensee, organizer, manager, and the leader, could be identified with a view to prescribe the route, timing, halting places, the accompaniments and the conduct of the procession itself, only with the sole object of avoiding breach of peace.

Hakim Sher Ahmad Chishti v. Syed Abbas and 2 others PLD 1976 Lah. 85; Mian Muhammad v. Government of West Pakistan and another 1970 SCMR 645; Muhammad Aslam alias Muhammad Mehdi v. District Magistrate, Gujrat and another 1980 PCr.LJ. 707; Muhammad Hussain Bhatti v. District Magistrate, Gujrat 1985 PCr.LJ 301; Sharafat Hussain v. Deputy Commissioner, Kasur and another 1983 PCr.LJ 1485; Syed Sarfraz Hussain Bokhari v. District Magistrate, Kasur and others PLD 1983 SC 172; Kaneez Fatima v. District Magistrate, Sialkot and others 1985 PCr.LJ 2707; Dr. Muhammad Bashir and another v. District Magistrate Lahore and 2 others 1988 MLD 1400; Syed Tausif Hussain Shah and others v. District Magistrate, Chakwal and others 2000 MLD 199; Malik Ghulam Yusaf v. District Magistrate, Attock 1995 MLD 1510; Muhammad Siddique v. District Magistrate, Lahore and 3 others 1997 MLD 588 and Syed Manzoor Hussain Shah v. Government of N.-W.F.P. through Collector Dera Ismail Khan and others 2005 SCMR 995 ref.

(b) Police Order [22 of 2002]---

----Arts. 120 & 121---Constitution of Pakistan, Art. 20---License for Muharram procession, issuance of---Licensee---Pre-requisites---Not mandatory that a licensee must possess a certain property in the area for taking out the procession since it was the consent of the owner of the property which was required to carry out procession from his place---Even otherwise, participants of a procession walked on the public roads and streets, therefore, the ownership of any property for issuance of the license would be

meaningless.

(c) Police Order [22 of 2002]---

----Arts. 120 & 121---Constitution of Pakistan, Art. 20---License for Muharram procession---Right of daughter to inherit such license from her deceased (Shia) father---Nowhere in the scheme of (Shia) personal law a daughter was debarred from being substituted as a licensee provided her male family members were capable of fulfilling such responsibility.

Muhammad Yafis Naveed Hashmi for Appellant.

Malik Shahzad Hassan Awan and Malik Muhammad Azam Sandheela for Respondent No.5.

Muhammad Bashir Lakhesir, A.A.-G. with Umer Saeed Malik, DPO, Vehari, Muhammad Ajmal, Inspector Legal and Shahid Ishaq, Inspector, P.S. Saddar Mailsi.

ORDER

ALI BAQAR NAJAFI, J.---This order shall dispose of the instant appeal as well as Writ Petition No. 8634 of 2011 titled "Nasir Abbas v. District Police Officer, Vehari etc.", seeking the license of 10th Muharram procession as common questions of law and facts are involved in both appeal and writ petition.

2. Through this Intra Court Appeal under Section 3 of the Law Reforms Ordinance, 1972, the order dated 22.10.2015 passed by learned Single Judge in Chamber has been challenged whereby order dated 02.11.2013 dismissing the request to issue/renew the license of 10th Muharram procession passed by respondent No.1 /Home Secretary was upheld.

3. Brief facts giving rise to the filing of this appeal are that appellant and daughter of late Syed Manzoor Hussain Shah, a licensee of Tazia and Zuljinnah procession of 10th of Muharram who died in the year 2009, applied for taking out the said procession which was allowed and the license was issued to her in the year 2012. However, the procession could not be taken out

as respondent No.3/District Police Officer, Vehari made an agreement with her to the extent that the procession would be taken out in the following year. Meanwhile, said license was cancelled by respondent No.1 vide his impugned order dated 27.03.2013 on the application of respondent No.5/a private individual. She then filed W.P. No. 10255 of 2013 which was disposed of on 30.10.2013 by this Court directing respondent No.1/the Home Secretary, Punjab to decide the matter after affording an opportunity of hearing to the parties. But vide impugned order dated 02.11.2013 the respondent No.1 dismissed the request which order was challenged by the appellant before the learned Single Bench in the Constitutional petition. However, the learned Judge in Chamber dismissed the writ petition on the grounds that in view of the Home Secretary/respondent No.1, after the death of Syed Manzoor Hussain Shah, the original licensee, the procession could not be taken out since the residents of the village objected against it and that there was a possibility of a bloodshed if the permission for taking out the procession had been granted in favour of the appellant.

4. Mr. Muhammad Yafis Naveed Hashmi, Advocate, learned counsel for the appellant submits that it is the fundamental right of the appellant to profess religion and taking out of the Muharram procession is the basic part of her religious practice. Adds that respondent No.3/District Police Officer, Vehari is bound to own written commitment as per the agreement between the appellant and the District Police Officer to take out the procession in the following year. Adds that Home Secretary does not figure out anywhere in the scheme of Police Order 2002 and the Police Rules, 1934, therefore, it is the District Police Officer, Vehari who was to decide and give permission to take out the procession.

5. Conversely, learned law officer assisted by learned counsel for respondent No. 5 submits that the reports so far collected from different agencies do not permit the taking out of procession as there was a possibility of bloodshed, therefore, prays for dismissal of appeal.

6. Arguments heard. File perused.

7. After hearing the learned counsel for the petitioner, the respondent

No.5 and the learned law officer, it is straightway observed that in the present case the question is as to when a permission to take out the religious procession can be granted by the District Administration with the background of Article 20 of the Constitution which is reproduced as under:

> **20. Freedom to profess religion and to manage religious institutions**. Subject to law, public order and morality,-
>
> (a) every citizen shall have the right to profess, practise and propagate his religion; and
>
> (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

Before, the promulgation of Police Order, 2002, sections 30 and 30A of the Police Act, 1861 dealt with the issuance of license to take out the religious procession. Sections 30 and 30A of the Police Act, 1861 are reproduced as under:-

> **[30. Regulation of public assemblies and processions and licensing of same**. (1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.
>
> (2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in this judgment, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.
>
> (3) On such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such license.

Music in the streets. (4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.]

[30A. Powers with regard to assemblies and processions violating conditions of license.- (1) A District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding subsection shall be deemed to be an unlawful assembly.]

Under Articles 120 and 121 of the Police Order, 2002, it is prescribed that Head of the District Police or Assistant or Deputy Superintendent of Police may regulate the conduct of procession and assemblies on the public roads and even give the route and the time for such procession. However, if he is satisfied that such procession, if uncontrolled, may cause a breach of peace, the person who intends to take out the procession shall apply for the license. It is the duty of such police officer to issue a license specifying the name of that licensee, with conditions on which procession could be taken out with reference to time and route. Under Article 121, the said Police Officer may stop such procession only it violates such conditions may order it to dispense. However, if the procession neglects such order will be deemed to be an unlawful assembly. Articles 120 and 121 are reproduced as under:-

120. Regulation of public assemblies and processions and licensing of same.---(1) Head of District Police or Assistant or Deputy Superintendent of Police may as occasion require, direct the conduct of assemblies and processions on public roads, or in public streets or thoroughfares and prescribe the routes by which and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons

or class of persons to convene or collect any assembly in any such road, street or thoroughfare, or to form a procession which would, in his judgment, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such processions shall apply for a license.

(3) On such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this Article:

Provided that no fee shall be charged on the application for, or grant of any such license.

121. Powers with regard to assemblies and processions violating the conditions of license.---(1) Head of District Police or Assistant or Deputy Superintendent of Police or Inspector of police or an officer in-charge of a police station may stop any procession which violates the conditions of a license granted under the last foregoing Article, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly, which neglects or refuses to obey any order given under clause (1) shall be deemed to be an unlawful assembly.

8. Before further discussing the subject, here it would be expedient and therefore, enlightening to scan out the relevant case law of our jurisdiction on the subject. Before we do that, the standard meaning of word Procession as given in Oxford Dictionary is to be understood:-

The action of moving forward in an orderly way, or 'the fully robed civic dignitaries walk in procession'

2Theology, calling it is the emanation of the Holy Spirit.

It also means a line of people or vehicles that move along slowly, especially as part of a ceremony; the act of moving in this way a funeral

procession a torchlight procession. Groups of unemployed people from all over the country marched in procession to the capital. In Oxford Collocations Dictionary, it may be a number of people who come one after the other like a procession of waiters appeared bearing trays of food.

The above definitions clearly show that an orderly physical movement by people with a community of object are the pre-requisites of a procession. In our jurisdiction, the first judgment on the subject to take out religious procession is Hakim Sher Ahmad Chishti v. Syed Abbas and 2 others (PLD 1976 Lahore 85), in which it was held that taking of the procession cannot be outrightly barred. Para 15 is reproduced as under:-

> "15. Now I may sum up the principles which are clear from these authorities. These principles are that members of a religious sect have a right to take out processions provided they do not infringe the legal rights of others. This right is subject to the provisions of different laws. Section 30 only empowers some Police Officers to regulate the conduct of procession and in case of apprehension of breach of peace which must have the sanction of a Magistrate, to ask the promoters of the procession to take a licence. In rare cases the licence may be refused but that refusal cannot be permanent but can only be for a particular occasion since no general order can be passed under this section calling upon the members of the public to take a licence before taking out a procession. Unless called upon by the Superintendent of Police or the Assistant Superintendent of Police to obtain a licence in view of the circumstances prevailing as enumerated in subsection (2) of section 30, the Organisers of a procession have no obligation to submit any application for permission or licence. The Police is required to be vigilant in finding out the programme of processions being taken out and to act of its own under subsection (1) of section 30 on receipt of such information. But the law does not imply the necessity of making any application to the Police for invoking the regulation of the procession on the part of the citizens".

A license is required on the new route of the procession as held in para 16 of

the above cited case law which is reproduced as under:-

> ".....The form shown to me by the learned counsel for the Government proves that it is a licence issued under section 30 of the Act. It is also admitted that the licensing authority is the Superintendent of Police. In view of this, rule 21.22 cannot be read as creating an obligation on the part of a citizen to apply for a licence before taking out procession. Sub-rule (1) only places an embargo upon the use by a procession of new routes without sanction of the District Magistrate where the route for a procession is already sanctioned. 1, therefore, agree with the finding of the learned District Judge that no licence is necessary to be obtained from the District Magistrate. In view of this interpretation of rule 21.22, in my view the condition imposed by the learned trial Court which is similar to one imposed by the Privy Council in Saiyid Manzur Hassan and others v. Muhammad Zaman and others should not have been deleted."

The issuance of license can be refused rarely under exceptional circumstances. This view was also given in Mian Muhammad v. Government of West Pakistan and another (1970 SCMR 645), by the Supreme Court the relevant extract of which is reproduced as under:-

> "It is plainly clear from section 30 of the Police Act that processions cannot be banned altogether under the provisions of that section. But that does not mean that: licence to take out processions can never be refused to any one on any ground or that the number of processions to be taken out in any particular area cannot be regulated under any circumstances...."

While deciding about the grant or refusal of procession, the authority would be guided by following principles that authority would refrain from dealing it arbitrarily and capriciously as laid down in Muhammad Aslam alias Muhammad Mehdi v. District Magistrate, Gujrat and another (1980 PCr.LJ 707), para 9 is reproduced as under:-

> 9. Thus none of the above cases help the petitioner. It is quite clear that the respondents could even restrain the petitioner if the law and order

situation so warranted. However, the only restriction on the power of the respondents is, to apply their mind and abstain from dealing with the case arbitrarily or capriciously...."

In Muhammad Hussain Bhatti v. District Magistrate, Gujrat (1985 PCr.LJ 301), it was held that route falling in the area predominantly of residents of the followers of another sect, or an incident happened much before the application for taking out procession, will not debar the issuance of license. Paras 'a' and 'b' at page 305 is reproduced as under:-

"In the instant case there is nothing on the record to show that the petitioner in moving application for the third time, for the grant of licence to take out procession for participating in a religious ceremony or observance has acted mala fide or for some ulterior motive or for such purpose manifestly established in that behalf. Para. 5 of his application rather indicates that he has undertaken to abide by the regulatory conditions imposed by the administration on the conduct of the procession "

"..... The mere fact that the route which the procession has to follow as predominantly occupied by Sunnis opposed to the taking out of procession does not empower the District Magistrate to refuse grant of licence to the petitioner....."

"The mishap referred by the learned Assistant Advocate-General regarding the death of a Sikh police officer occurred over a period of three decades, earlier can hardly be pressed into service for entertaining reasonable apprehension leading to breach of peace after such a long time."

In Sharafat Hussain v. Deputy Commissioner, Kasur and another (1983 PCr.LJ 1485), it was again held that there can be no outright ban on taking of procession. Para 'B' is reproduced as under:-

"..... (1). However, if in the opinion of the Magistrate of the District or of a sub-division of the District a procession, if uncontrolled, is likely to cause breach of the peace, the Superintendent of Police or the Assistant Superintendent of Police can require by a general or special

notice that the persons intending to take out a procession should apply for licence. While issuing the licence the Superintendent of Police or the Assistant Superintendent of Police can inter alia lay down certain conditions. It will thus be seen that ordinarily no licence is required for taking out a procession. A licence becomes necessary only when the Superintendent of Police or the Assistant Superintendent of Police has issued a general or a special notice in this regard; further before the Superintendent of Police or the Assistant Superintendent of Police can issue such a notice there must be in existence a decision of the Magistrate of the District or of the sub-division that the procession if uncontrolled is likely to cause a breach of peace. In the present case so far the Magistrate of the District or of the sub-division has not formed any such opinion. Similarly there is no notice either general or special in existence requiring the petitioner to apply for a licence. The application made by the petitioner before the District Magistrate for the issuance of the licence was therefore an exercise in futility. Accordingly I would dismiss this application but make no order as to costs."

The right to take out procession was duly upheld by the Supreme Court in Syed Sarfraz Hussain Bokhari v. District Magistrate, Kasur and others (PLD 1983 Supreme Court 172), wherein it was held that:-

> "..... The general right of the public to assemble and take out processions on public streets or thoroughfares is manifestly recognized in this law. In recognition of such a right certain statutory powers have been conferred on the District Superintendent and Assistant District Superintendent and the Magistrate of the District in the matter of prescribing the route, the timing and imposing regulatory conditions on the conduct of the assembly or the procession. The very power to direct an application for a licence is dependent on the jurisdictional fact that "in the judgment of the Magistrate of the district or of the sub-division of a district" if such an assembly or procession is uncontrolled, it is likely to cause a breach of the peace. So the likelihood of the breach of peace, in the absence of control, provides the jurisdiction to

impose controls and conditions and that jurisdictional fact by itself cannot be made the ground for refusing the licence itself.

There has to be something else e. g. lack of bona fide, some ulterior motive or purpose manifestly established to account for refusal of a licence. In this view of the matter, as held in Mian Muhammad's case the law does not envisage a total prohibition, an outright refusal for all times to take out the procession, to participate in a religious ceremony or observance. By requiring the taking out of a licence, the organizers, the managers, the leaders of the group can be identified. They can be placed under control, with regard to the route, timing; halting places, the accompaniments, and the conduct of the procession itself. Such controls and regulatory conditions must have the sole object of avoiding breach of peace, and without such controls or regulatory conditions breach of peace must appear imminent or likely....."

This view was followed in Kaneez Fatima v. District Magistrate, Sialkot and others (1985 PCr.LJ 2707), in Dr. Muhammad Bashir and another v. District Magistrate Lahore and 2 others (1988 MLD 1400) and in Syed Tausif Hussain Shah and others v. District Magistrate, Chakwal and others (2000 MLD 199), holding that for such occasion, an application, for issuance of new license is to be filed. Para 3 at page 1401 of Muhammad Bashir's case is reproduced as under:-

"3. From the applications moved by the petitioners as also from the tenor of the order passed by the District Magistrate impugned herein, it is quite clear that the petitioners applied for grant of licence to take out 'Alam' procession during the Muharram falling in the year 1984 and the applications were also refused for that particular year. That being so, writ petitions have become infructuous with the lapse of time. Both the writ petitions are accordingly dismissed with the observation that the petitioners, if so advised, may file a fresh application for the grant of requisite licence which application, if filed, shall be finally decided by the competent authority within one month of the application being moved. No order as to costs."

In Malik Ghulam Yusaf v. District Magistrate, Attock (1995 MLD 1510), it was held that for the enforcement of a fundamental right through writ jurisdiction a hot-headed person of a different sect cannot create hurdle. Relevant extract of page 1514 is reproduced as under:-

> "..... To accept the proposition that the operation of fundamental right to profess or practise any religion is dependent upon the objection of a hot-head of a different religion or sect would make the fundamental right entirely a illusory without any substance. Therefore, we see considerable force in the argument that the permission to the petitioner to take out processions was refused rather lightly without taking into consideration that the permission was sought in relation to the performance of what is accepted by common consent as religious rite among, Shia Muslims, and which is guaranteed by the Constitution.
>
> "..... It cannot be gainsaid that the whole object of the writ petition is a vindication of the Fundamental Right guaranteed by the Constitution, which in its very nature is of a recurring character. If the refusal of the Executive Authorities is allowed to go unchallenged or is not declared invalid by an appreciate declaration then it may well-result in the perpetuation of the denial of this right in relation to the years to come."

In Muhammad Siddique v. District Magistrate, Lahore and 3 others (1997 MLD 588), it was held that Muharram procession could be taken out subject to condition to maintain law and order. Para 5 is reproduced as under:-

> "5. In the present case, the petitioner seeks permission to take out procession only for one day i.e. on 30th of Moharram or first of Safar after Maghrib prayer till Isha time, which request in the circumstances narrated above cannot be said to be mala fide or for some ulterior motive. The petitioner undertakes that the procession shall be taken out as per route mentioned in Annexure B appended with the petition and shall be taken out at the timings to be regulated by the District Magistrate and shall be peaceful."
>
> "For the foregoing reasons, the refusal of the District Magistrate to permit the petitioner to take out procession is not tenable in law and is

declared to be without any lawful authority and of no legal effect and in consequence, the petition is accepted and the petitioner is permitted to take out the religious procession from Azakhana 31-A, Rehmanpura, Lahore to Majlis-ul-Hussain at Imam Bara Road after Maghrib prayer till Isha time on 30th of Moharram or first of Safar, subject to the conditions, as may be imposed by the District Magistrate for the maintenance of law and order situation."

In Syed Manzoor Hussain Shah v. Government of N.-W.F.P. through Collector Dera Ismail Khan and others (2005 SCMR 995), it was held that Police Authorities would remain normal and proceed even handedly while dealing on application for grant of procession under section 30 of the Police Act, 1861 or under amended law pari materia to the said Act. Relevant extract of para 5 is reproduced as under:-

> "..... In these circumstances we are inclined to dispose of this petition with the observation that the judgment and decree of Additional District Judge referred to above still hold the field and while deciding an application for grant of permission under section 30 of the Police Act, 1861 or under any amended law pari materia to the said Act, the Superintendent of Police, D. I. Khan shall remain even-handed and proceed strictly as mandated in law."

9. After scanning the relevant statutory provisions and law the following legal points are amply clear:-

> (a) Under Article 120 of the Police Order, 2002 it is the head of District Police or Assistant or Deputy Superintendent of Police who is empowered to issue or refuse the license for the Muharram procession.
>
> (b) The corresponding Section 30(a) of the Police Rules, 1934 or the whole scheme of law does not figure out the Home Secretary as competent authority to grant or refuse such license.
>
> (c) Less population of a particular sect does not debar it from indulging into lawful religious practices as it is the responsibility of the State to protect enforcement of fundamental right under Article 20 of the Constitution, but obviously, as long as they do not infringe into the

rights of other communities.

(d) In rare cases the license may be refused but that refusal cannot be permanent and will be only for that particular occasion.

(e) The police is required to be vigilant in finding out the programme of procession being taken out.

(f) The requirement of license is for procession on new routes.

(g) The authorities while dealing with such applications shall apply their mind and abstain from dealing with case arbitrarily or capriciously and shall remain even handed strictly as mandated by law.

(h) As a requirement to take out the procession, licensee, the organizer, the manager, the leader, can be identified with a view to prescribe route, timing, halting places, the accompaniments and the conduct of the procession itself only with the sole object of avoiding breach of peace.

10. In the present case, the impugned order was passed by Home Secretary which is based on the report and opinion of the District Police Officer, Vehari but he cannot assume the jurisdiction of District Police Officer under Articles 120 and 121 of the Police Order, 2002. However, we are mindful of the fact that under the law license has to be renewed every year on the basis of the application presented to the District Police Officer. We are also conscious of the fact that earlier license has already been renewed in favour of the appellant and that this is not the first time that issuance or renewal of license of procession was requested. It is not denied that until 2009, said procession was being actually taken out. Besides, the impugned order passed by the Home Secretary does not mention the agreement dated 21.11.2012 which is electronically scanned as under

It was also incorrectly mentioned in the impugned order of respondent No.1 that it was a traditional procession as the fact reveals that for all intents and purposes it was a licensed procession. The other reasons advanced by respondent No.1 is that the appellant being the daughter of Syed Manzoor Husain Shah could not inherit the right of taking out procession and that she did not own any land in the area. However, it is not mandatory that a licensee

must possess a certain property for taking out the procession since it is the consent of the owner of the property which is required to carry out procession from his place. Even otherwise, participants of a procession walk on the public roads and streets, therefore, the ownership of any property for issuance of the license would be meaningless. It is also worth mentioning that nowhere in the scheme of Personal Law a daughter is debarred from being substituted as a licensee provided her male family members are capable of fulfilling this responsibility.

11. We may mention here that time is changing very rapidly and with the rise of education and awareness the level of tolerance in our society is increasing though at a very slow pace. Any single untoward incident may not create a permanent embargo in publically taking out the religious procession if the situation had significantly improved.

12. For what has been discussed above, we are of the firm view that order of the Home Secretary/respondent No.1 is not sustainable as it was passed without lawful authority and of no legal effect being against the scheme of Police Order, 2002. This appeal and the writ petition are, therefore allowed and the impugned order dated 22.10.2015 is hereby set aside. Resultantly, appellant may file an application for issuance of license before the District Police Officer, Vehari afresh and if such an application is made, the same will be decided by the District Police Officer, Vehari in accordance with law and in view of the observation made above.

MWA/F-22/L **Order accordingly.**

PLJ 2017 Lahore 115

[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

Mst. AFSHAN BIBI--Petitioner

versus

JUDGE FAMILY COURT/GUARDIAN JUDGE KABIRWALA DISTRICT KHANEWAL and 2 others--Respondents

W.P. No. 15670 of 2011, decided 14.4.2016.

Guardians and Wards Act, 1890 (VIII of 1890)--

----S. 25--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Custody of minors--Mother of minors has contracted second marriage with stranger--Custody of minors was given to grandmother depriving mother--Challenge to--Contracting second marriage *ipso fecto* is not enough to deprive grand mother from custody of minors--Even marriage of the mother with a stranger who is not within the prohibitory degree of daughter has also not been held to be a sole ground depriving mother from custody--Minors never lived with grand mother so there is no question of developing the affinity with her--Conduct of father himself deprived him from custody of minors as he neither paid the maintenance to them nor supported grand mother in the claim for custody of the minors--Welfare of the minor lies with the mother, therefore, petition was allowed. [P. 117] A, B & C

Haji Muhammad Tariq Aziz Khokhar, Advocate for Petitioner.

Mr. Najaf Ali Chawan, Advocate for Respondent No. 3.

Date of hearing: 14.4.2016.

ORDER

Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, orders dated 28.03.2011 passed by Guardian Court and dated 16.09.2011 passed by learned Addl. District Judge are challenged whereby custody of the minors namely, Zaiba Mai, now aged 8 ½ years and Arshad Ali, now aged 7½ years was given to the grandmother/Respondent No. 3 depriving the petitioner on the ground that mother of the minors as well as the son of Respondent No. 3 the father of the minors have re-married and settled in their own lives.

2. Arguments heard. Record perused.

3. Respondent No. 3 filed an application under Section 25 of the Guardian and Wards Act for custody of above said minors on 08.02.2010 taking the grounds that since petitioner has contracted second marriage with a stranger and her son i.e. father of the minors is confined in civil prison, and on account of relations established by petitioner with one Muhammad Khalid son of Haq Nawaz, whom she had got married later on 09.12.2009, she has deprived herself from the right of custody of the minors. The written statement was submitted by the petitioner denying the allegations made in the petition. After framing of issues, statement of Respondent No. 3/*Mst.* Saban Mai was recorded as AW-1, in which she has admitted that her son namely, Manzoor Hussain, has returned after serving the civil prison and has also shown her lack of knowledge about the payment of any maintenance by the father to the minors. AW-2, Allah Ditta, who is the grandfather of the minors also supports the case of Respondent No. 3. However, Manzoor Hussain, preferred not to appear in support of the petition for custody of the minors. On the other hand, petitioner appeared as RW-1 denying the factum of second marriage as according to her she was divorced 3 years prior to her statement recorded in the Court on 08.11.2010. She deposed that children are studying in the school.

RW-2 is Ali Akhtar, who admitted that in execution of decree for recovery of maintenance allowance Manzoor Hussain, spent one year in the civil prison. AW-3 is Ashiq Ali, Nikah Khawan, who has produced the record showing Nikah of the petitioner with one Muhammad Khalid, contracted on 09.12.2009.

4. The Courts below have allowed the application under Section 25 of the Guardian and Wards Act merely on the ground that petitioner has contracted second marriage. Both the Courts erred in law while holding that right of Hazanat is to be based upon preferential order to mother then the mother's mother, mother's father, sister and sister's daughter etc. In fact this order is to be followed in the absence of the father. This principle does not apply during the lifetime of the real father. As Manzoor Hussain, has neither supported the case of the petitioner nor claimed any custody of the minors, it appears that grandmother has filed custody petition in her own individual capacity which, I am afraid, is not a valid ground for the custody of the minors.

5. Contracting second marriage *ipso fecto* is not enough to deprive Respondent No. 3 from custody of the minors. Even marriage of the mother with a stranger who is not within the prohibitory degree of the daughter has also not been held to be a sole ground depriving the mother from the custody. It is also not denied that Manzoor Kussain, was a judgment debtor, and in execution of decree for the recovery of maintenance allowance he was sent to civil prison and on his return after one year, he preferred not to appear before the Court. The guardianship petition may have been filed in its counter blast.

6. It is also not denied that minors never lived with Respondent No. 3 so there is no question of developing the affinity with her. The conduct of father himself deprived him from custody of the minors as he neither paid the maintenance to them nor supported Respondent No. 3 in the claim for custody of the minors. The judgments cited by the respondent's side are not relevant.

7. Keeping in view all the facts, the welfare of the minor lies with the mother, therefore, this petition is allowed and the impugned orders passed by the Courts below are set aside.

(R.A.) **Petition allowed.**

PLJ 2017 Lahore 280 (DB)

Present: SYED MUHAMMAD KAZIM RAZA SHAMSI AND ALI BAQAR NAJAFI, JJ.

ZAHID HAFEEZ--Petitioner

versus

STATE and 2 others--Respondents

W.P. No. 3058 of 2015, decided on 6.4.2015.

Constitution of Pakistan, 1973--

----Art. 199--Travel Agents Act, 1976, Scope of--National Accountability Ordinance, 1999, Ss. 19 & 27--NAB reference--Bail, grant of--Harassment--Employee of travel agency--Suit for declaration, injunction and rendition of account for ascertaining actual liability--Tickets were issued under instructions of high ups of bank--Not beneficiary of any illegal transaction--Validity--Exact liability of petitioner on basis of minute scrutiny of air ticket issued and payment made has not been properly made by NAB authorities--Question like why payments were delayed, who consumed air tickets, how and in which circumstances payments were stopped and who authorized petitioner to release such amount in view of fact that she was working under nose of high-ups of bank, required further investigation and collection of evidence--Alleged amount were not traced out either in account of travel agency or personal account of petitioner raising question as to whether petitioners jointly of severely become beneficiaries of transaction--Allegation against petitioners relates to settlement of account, therefore, unless exact liabilities of petitioners are calculated, they cannot be held criminally responsible for their acts.

[Pp. 283 & 284] A, B, C & D

Ch. Sajid Ali Baig, Advocate for Petitioner.

Syed Faisal Raza Bukhari, Addl. D.P.G., NAB for State.

Date of hearing: 6.4.2015.

ORDER

This order shall dispose of W.P. No. 3058 of 2015 titled *Zahid Hafeez vs. The State,* W.P. No. 5191 of 2015 titled *"Humaira Rafique vs. Chairman, NAB* authorities as in both the petitions the petitioners have sought their release on bail. Writ Petition No. 6211 of 2013 filed by Zahid Hafeez has become infructuous as the petitioner was arrested on 21.01.2015.

2. Brief facts as contained in the writ petition are that the petitioner is Chief Executive of Air Borne Travels, Travel Agency bearing Licence No. 4260 issued on 13.11.2009 under Travel Agents Act, 1976. On account of his competitive rates and un-parallel services the travelling agency was able to make its presence felt in the travel business. Al-Baraka Bank was also of the petitioner's patrons who established its relationship with the travel agency in the year 2009 during which it purchased a number of tickets for domestic and International route in the name of various passengers. An amount of Rs. 1,503,010/- was outstanding against the said Al-Baraka Bank for the air tickets purchased by it but the said amount was not paid to the petitioner. Meanwhile, on 15.09.2012, a civil suit for declaration, injunction and rendition of accounts was filed by the petitioner against the Bank. During the pendency, the petitioner received a notice dated 28.01.2013 under Sections 19 & 27 of NAB, Ordinance, 1999 in respect of some inquiry in response to which the petitioner appeared before the NAB authorities and furnish the required details. On account of humiliating treatment the petitioner filed a W.P. No. 6211 of 2013 on 12.03.2013 seeking restraining order against the harassment in which Al-Baraka Bank also becomes a party. The petitioner was again served a notice on 09.09.2013. Meanwhile, the respondent-NAB authorities managed to record statement of the employee of Travel Agency namely, Hafiz Muhammad Bilal, who although denied making such statement under free will before the NAB authorities through separate affidavit or any statement under his free will. Thereafter, NAB authorities issued four notices to the petitioner freezing bank account of the petitioner. They sent another notice dated

04.10.2013 offering a voluntary return option. On 21.01.2015 both the petitioners were arrested and their physical remand was given to the NAB authorities and in view of the fact that civil suit was filed and the matter relates to rendition of account, the petitioner was sent to judicial lock up who seeks his release on bail through this constitutional petitions.

3. Learned counsel for the petitioner contends that Al-Baraka Bank has not filed a suit for recovery of amount against the petitioner and till pendency of the suit for declaration, injunction and rendition of account filed by the petitioner for ascertaining the actual liability, the petitioner be released. Submits that the petitioner in the operating with the NAB authorities by presens the entire documents which shows that under instructions the relatives of the high-ups of the bank were issued air ticket. Contends that the petitioner is not the beneficiary of any illegal transaction and during the remand, only Rs. 7,00,000/- was recovered from the petitioner. Places reliance on *Baig Muhammad vs. Chairman, National Accountability Bureau and others* [2002 MLD 703], *Muhammad Saeed Mehdi vs. the State* (PLD 2002 Lahore 124) and *The State and others v. M. Idrees Ghauri and others* [2008 SCMR 1118].

4. Conversely, learned counsel for the Bank contends that Zahid Hafeez being the proprietor of Air Borne Travel Agency connived with Humaira Rafique, who prepared the fake travel invoices and scanned the signatures of the competent, authority on the fake approval sheets, forwarded it to the Finance Department of the Bank and by misusing her official position she prepared pay orders in the name of Air Borne Travel Agency and credited in the Bank account of Zahid Hafeez. Meanwhile, Hafiz Muhammad Bilal became approver and, therefore, pardoned then 20.01.2015 by the D.G.NAB whose statement was recorded before the Magistrate and according to him he prepared the fake invoices on the instructions of Humaira Rafique. Further contends that Humaira Rafique prepared 36 pay orders amounting to Rs. 12.676 million in the name of Air Borne Travel Agency. According to the NAB, claim of the petitioner of having issued 146 air ticket amounting to Rs. 8 millions to the official of Al-Baraka Bank and their relatives was not found

correct as only 55 air ticket amounting to Rs. 2.7 millions approximately were issued to the official of Al-Baraka Bank but most of them were never presented before the Bank and in fact 37 air tickets amounting to Rs. 2.12 million approximately were issued in favour of official of Al-Baraka Bank and their relatives in the personal capacity but the official of Al-Baraka Bank who have already paid the amount in their personal capacity either to Humaira Rafique or to Zahid Hafeez and that the rest of the air ticket amounting to Rs. 3.285 million did not pertain to Al-Baraka Bank. In this way, in the year 2012 Zahid Hafeez received an amount of Rs. 12.676 million against the travel expenses of Rs. 2.7 million who was paid Rs. 9.9 million in excess.

5. Arguments heard. File perused.

6. The official of Al-Baraka Bank filed a complaint with the NAB authorities for legal proceedings under the NAB Ordinance, 1999 against Humaira Rafique (Ex-official of Al-Baraka Bank), Zahid Hafeez, (a proprietor of Air Borne Travel Agency) and Hafiz Muhammad Bilal (Accountant) relating to bank fraud in Al-Baraka Bank amounting to Rs. 12.00 million. According to the complaint, in the year 2012, Zahid Hafeez in connivance with Humaira Rafique prepared 36 fake invoices amounting to Rs. 12.676 millions mentioning incorrect and bogus air ticket numbers, passengers name, destination fare which was duly signed by Hafiz Muhammad Bilal (Accountant) on the instruction of Zahid Hafeez and sent to Humaira Rafique who scanned the signature of the competent authority namely, (Ahmad Shuja Kidwai, Khawajas Maaz Khairuddin & Shafqat Ahmed) on the approval sheet. Thereafter, she forwarded it to the Finance Department of the bank and then prepared pay orders in the name of Air Borne Travels. During investigation, Hafiz Muhammad Bilal (Accountant) was made approver who recorded his statement against the petitioner to the extent that all what he did was under the instruction of Zahid Hafeez.

7. According to NAB authorities, out of the claimed 146 air ticket of Rs. 8.00 millions issued to the official and the relatives of Al-Baraka Bank by Zahid Hafeez only 55 air tickets amounting to Rs. 2.7 millions were

scrutinized and most of them were never presented before the Bank. The amount of other 37 air tickets equal to Rs. 2.12 million was already paid in the account either to Humaira Rafique or Zahid Hafeez, therefore, had no dispute. However, rest of the air tickets amounting to Rs. 3.285 million approximately do not pertain to Al-Baraka Bank and therefore, the complainant cannot have any claim against the same. According to calculation by NAB authorities Zahid Hafeez received Rs. 12.676 million against their travel of Rs. 2.7 millions and thereby caused loss of 9.9 millions to the bank.

8. Significantly, such a calculation without verification by the professional auditors either by the bank or otherwise cannot be totally relied on. Morevoer, the exact liability of the petitioner on the basis of minute scrutiny of air ticket issued and the payment made has not been properly made by NAB authorities. Even if it was, the same can be adjudicated upon latter. So far no reference was filed against the petitioner. The question like why the payments were delayed, who consumed the air tickets, how and in which circumstances payments were stopped and who authorized Humaira Rafique, petitioner to release such amount in view of the fact that she was working under the nose of high-ups of the bank, required further investigation and collection of evidence.

9. During investigation, the alleged amount of Rs. 9.9 millions were not traced out either in account of travel agency or personal account of the petitioner raising question as to whether the petitioners jointly or severely become beneficiaries of the said transaction.

10. In our considered view, allegation against the petitioners relates to the settlement of account, therefore, unless exact liabilities of the petitioners are calculated, they cannot be held criminally responsible for their acts. We place our reliance on *The State and others vs. M. Idrees Ghauri and others* [2008 SCMR 1118], the relevant extract is re-produced below:

> "The prosecution of a person without distinction of criminal and civil liability in a transaction, is misuse of process of law and similarly stretching the law in favour of prosecution is unjust and unfair,

> therefore, the Courts without ascertaining the true character of the transaction and drawing the distinction in the civil and criminal liability, must not proceed to raise a presumption of guilt in terms of Section 14(d) of the NAB Ordinance."

In our humble view, the petitioners have made out a case for bail for which we place reliance on *Makhdoom Javed Hashmi vs. The State and 2 others* [2003 P.Cr.LJ 266] wherein it has been held, as under:

> "The concept of pre-trial release of the accused was developed on three presumptions; firstly the accused was presumed to be innocent till he was found guilty; secondly the accused should have a right to prepare his defence and prove his innocence before the Court of trial; and thirdly the accused should not be punished before the finding of his conviction was rendered by the Court."

11. In this view of the matter, the Writ Petition Bearing No. 3058 of 2015 titled *Zahid Hafeez vs. The State,* W.P. No. 5191 of 2015 titled *"Humaira Rafique vs. Chairman, NAB* authorities are allowed and the petitioners are admitted to bail subject to their furnishing bail bonds in the sum of Rs. 5,00,000/- each with two sureties each in the like amount to the satisfaction of the trial Court.

(R.A.) **Petitions allowed.**

PLJ 2017 Lahore 289 (DB)
[Multan Bench Multan]

Present: SYED MUHAMMAD KAZIM RAZA SHAMSI AND ALI BAQAR NAJAFI, JJ.

HAMEED ULLAH KHAN, etc.--Appellant/Petitioner

versus

DIVISIONAL SUPERINTENDENT PAKISTAN RAILWAYS, MULTAN and 3 others--Respondents

I.C.A. No. 311 and C.M. No. 2 of 2016, decided on 20.10.2016.

Limitation Act, 1908 (IX of 1908)--

----S. 5--Law Reforms Ordinance, 1972, S. 3--Intra Court Appeal--Condonation of delay--Delay in filing intra Court appeal was condoned--Sufficient cause--Policy for license of un-agricultural purposes where major efforts for investment is required--Question of extension of license period--Lease agreement--Opinion for renewal of agreement for 5 years--No intention to extend lease period for 5 years--Validity--Lease of shops initially granted for 10 years has already been extended to 5 years to similarly placed persons--Government is within its right to apply any beneficial terms and conditions in policy for leasing out land but it would not prejudice rights of existing lease holders already acknowledged as such by government--Prayer made in writ petition in respect of policy is to be allowed--Intra Court appeal, therefore, stands allowed. [P. 293] A, B & C

1992 SCMR 1652, *rel*.

Rana Asif Saeed, Advocate for Petitioner/Appellant.

Mian Muhammad Ishfaq Hussain, Advocate for Respondent.

Date of hearing: 20.10.2016.

ORDER

C.M. NO. 2/2016

As both the learned counsel for parties, have argued on the point of limitation, therefore, this application under Section 5 of the Limitation Act for condonation of delay is being taken, up first.

2. After hearing the learned counsel for the parties, we have noted that the office had sent the copy of the impugned order dated 07.06.2016 to respondents on 19.07.2016 after when it reached in the office during the summer vacation. The applicant applied for the issuance of certified copy on 28.07.2016 and on the same day it was prepared and delivered to the applicant and the ICA was filed on 04.08.2016. i.e. within 20 days and during the summer vacation. Since the file was transmitted to the office on 12.07.2016, though the applicant applied on 28.07.2016, therefore, delay in filing the ICA is condoned as there is sufficient cause to file the I.C.A. after the expiry of 20 days without any fault of the applicant. This C.M., therefore, is allowed.

I.C.A. No. 311/2016.

3. This single order shall dispose of the instant appeal as well as I.C.A. No. 312 of 2016 titled *"Ghulam Rasool etc. versus D.S. Pakistan Railways etc."* and I.C.A. No. 313 of 2016 titled *"Khalil-ur-Rehman etc versus D.S. Pakistan Railways",* as all these appeals have arisen out of one order deciding common question of law and facts.

4. This Intra Court Appeal under Section 3 of the Law Reforms Ordinance, 1972 is directed against order dated 07.06.2016 passed by learned Single Judge in Chamber whereby through a single; order the writ petition filed by the appellants was dismissed alongwith other Writ Petition Nos. 4262 and 4043 of 2016 praying for declaring the policy of 2014 as not applicable to them and also for holding that the impugned advertisement dated 25.02.2016 was illegal, without jurisdiction and lawful authority with a further prayer to restrain the respondents from auctioning the land interfering into the possession of the appellants.

5. Brief facts giving rise to the filing of this Intra Court Appeal are that respondent/Pakistan Railways put to auction the land for construction of shops in the year 2004 under the policy dated 24.04.2002 initially for a period of 10 years with a renewal option for one-time extension of 5 years with 5% increase every year. The appellant being the highest bidder in the public auction advertised through the newspaper, was declared the successful bidder who deposited the money including the annual increase as per schedule and policy as well as the security. According to the appellants, after the completion of initial period of 10 years, a request was made to respondents to further extend the period for 5 years but they had taken the stand that *vide* the then existing policy dated 14.04.2014, extension of the period beyond 10 years was banned and thereafter shops were put to auction. The appellant challenged the said policy through the writ petition on the ground that it could not operate retrospectively to their dis-advantage. However, the writ petition was dismissed by learned judge, in Chamber primarily on account of the fact that it involved disputed question of facts and that the arbitration clause was available in the agreement for resolution of such disputes-arising out between the parties.

6. Rana Asif Saeed, Advocate learned counsel for the appellants contends firstly, that no notice was issued to the appellants of termination of lease agreement; secondly; said policy of 2014 would not be applicable to the appellants as it had already been declared as policy without a retrospective effect *vide* order dated 15.04.2015 passed in Writ Petition No. 4644 of 2015; thirdly, the agreement between the appellants and respondents was made on the basis of policy of the year 2002 which clearly stipulates for one time extension for 5 years; fourthly, by accepting the lease amount by respondents subsequent to the expiry of 10 years and by retention of the possession by appellants and security by the respondents they had impliedly admitted the extension of lease period and fifthly, submits that appellants are being discriminated as against other similarly placed persons who have been granted 5 years extension *vide* Letter No. 469-W/Auction/SDK issued in the month of April 2015.

7. Conversely, Mian Muhammad Ishfaq Hussain, Advocate, learned counsel for respondents contends that the order passed by learned Judge in Chamber is legal. Adds that as per prevalent policy dated 09.05.2016, the property of Pakistan Railways is to be leased out, therefore, it needs to be dismissed straightway.

8. Arguments heard. Filed perused.

9. After hearing the learned counsel for the parties we have straightway observed that policy dated 24.04.2002 "for license of UN-CULTIVATED BARREN RAILWAY LAND FOR AGRICULTURAL PURPOSES WHERE MAJOR EFFORTS FOR INVESTEMENT IS REQURIED" the land was allotted to the appellants for 10 years, with 5 years renewal option. However, before the expiry of the said period the "REVISED POLICY FOR LEASING OF CULTIVABLE/BARREN AGRICULTURAL LAND" was promulgated on 14.04.2014 with immediate effect stipulating as follows:

> "The above said policy will be immediately enforced and no farther extension beyond ten (10) years will be granted in case of already leased barren land".

It signifies that it was immediately enforceable and no extension beyond the period of 10 years was to be granted to the existing lease holders. (underlining is for emphasis.)

10. We have also read the order dated 15.04.2015 passed by Single Judge of this Court in Writ Petition No. 4644 of 2015 titled *"Raja Riffat Hayat versus Pakistan Railways through Chairman etc."* wherein policy dated 10.7.2014 regarding Railways agricultural land measuring 4000 acres was already declared to operate prospectively. In this context, the learned counsel for the respondents has drawn the attention of this Court to "POLICIES FOR EXTENSION IN LICENSE PERIOD AND AUCTION OF ALREADY CONSTRUCTED PREMIUM SHOP" dated 09.05.2016 regarding the question of extension of license period of already constructed premium shops whose license was not extended to 5 years, permits

only subject to deposit of 50% of the DC rates of area as premium, with 30% increase in rent of the previously paid annual rent. However, as its vires is not challenged before us, therefore, we will-restrain commenting upon it.

11. As per clause 3 of the lease agreement between the parties, a lease period of 10 years was extendable to 5 years subject to enhancement, at the rate of 5% of last, year rental charges. Clause 3 of the agreement is reproduced as under:--

> 3. NOW THIS INDENTURE WITNESSTH that in pursuance of the said agreement and in consideration of the rent hereby reserved and the conditions and convents hereinafter contained and to be observed by the lessee, the lessor do hereby demise unto the lease of the said shop(s) hereinbefore mentioned to hold the same unto, the lessee for a period of 10 years extendable for another term of five years with the consent of both the parties, subject to enhancement of the rent @ 5% after the expiry of each year.

The option for renewal of agreement for 5 years was also provided in Clause 15 which is reproduced as under:

> 15. That the lessee shall have to apply with the lessor three month before the expiry of the agreement showing his intention for extension of the agreement for another term of five years. Lessor will consider the application of the Lessee on merit and according to rules of the department. If approved by the competent authority, the agreement will be renewed on enhanced rate of 5% of the last year's rental charges. The Lessee shall deposit the yearly rental charges in full, in advance, with Station Master/Divisional Accounts officer, Pakistan Railways under the authority letter issued by the Divisional Superintendent Pakistan Railways, Multan in this regard."

Importantly, nowhere in the agreement the unilateral change in the terms and conditions was allowed to respondents.

12. Admittedly, 10 years lease period of the appellants had already expired but they have retained the possession and have also been paying the

rent to the government treasury besides retaining their security in the account of respondents/department. We have also noticed that lease of the sops at Railway Market, Sadiqabad initially granted for 10 years has already been extended to 5 years to similarly placed persons *vide* Letter No. 469-W/Auction/SDK issued in the month of April 2015 from Pakistan Railways Sukkur, Division.

13. The respondents have not issued any notice to the appellants to vacate the shops or even intimated them that they have no intention to extend the lease period for 5 years. Under clause 15 of the agreement, although it was required of the appellants to have applied for such extension but their intention can also be ascertained and gathered through the above said admitted facts. The similarly placed persons were already extended the lease period for 5 years. Needless to observe that the government is within its right to apply any beneficial terms and conditions in the policy for leasing out the land but it would not prejudice the rights of the existing lease holders already acknowledged as such by the government. Here reliance can be placed upon *Messrs Army Welfare Sugar Mills Ltd. and others versus Federation of Pakistan and others* (1992 SCMR 1652).

14. Keeping in view the above facts, we are of the firm view that prayer made in the writ petition in respect of the policy dated 15.07.2014 is to be allowed and we hereby hold that it operates prospectively and not to the appellants. This Intra Court Appeal, therefore, stands allowed.

(R.A.) **I.C.A. allowed.**

PLJ 2017 Cr.C. (Lahore) 455
[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

KHALIL AHMED--Appellant

versus

STATE and another--Respondents

Crl. A. No. 27-J of 2014, decided on 17.11.2016.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 426(1-A)(c)--Pakistan Penal Code, (XLV of 1860), S. 302(b)--Suspension of sentence--Statutory ground--Period of more than two years has lapsed and the appeal has not been fixed for hearing on any single date--Significantly, even the appeal was admitted for regular hearing--Under proviso (1-A)(c) to Section 426 Cr.P.C in such like circumstances petitioner becomes entitled to suspension of sentence if he is not a desperate and hardened criminal. [P. 456] A

Mr. Nadeem Ahmed Tarar, Advocate for Appellant.

Mr. Muhammad Aslam Khan Dhukkar, Advocate for Complainant.

Syed Nadeem Haider Rizvi, DDPP for State.

Date of hearing: 17.11.2016.

ORDER

Crl. Misc. No. 1/2016

Petitioner, Khalil Ahmed, seeks suspension of his sentence on statutory ground under Section 426 Cr.P.C awarded by the learned Addl. Sessions Judge, Muzaffargarh *vide* judgment dated 29.04.2014 convicting him under Section 302(b) PPC and sentenced to life imprisonment with fine of Rs. 50,000/- and in case of default of payment of fine to further undergo simple imprisonment for six months, in case FIR No. 282 dated 05.07.2012 under Sections 302, PPC registered at Police Station Qureshi District Muzaffargarh.

2. Arguments heard. File perused.

3. After hearing the learned counsel for the petitioner as well as the complainant and the learned D.D.P.P., it is straightway observed that the allegation against the petitioner as per the complaint (Exh.PH), is that on 05.07.2012, complainant alongwith his brother, Khadim Hussain, was attacked by the petitioner who made straight fire at Khadim Hussain, hitting him on his chest, which shot went through and through. The motive behind the occurrence is the previous enmity. Although the petitioner is single accused person who is ascribed single fatal shot upon the deceased yet the fact remains that ever since filing of the appeal against conviction and sentence on 22.05.2014, the period of more than two years has lapsed and the appeal has not been fixed for hearing on any single date. Significantly, even the appeal was admitted for regular hearing on 15.03.2016. Under proviso (1-A)(c) to Section 426 Cr.P.C in such like circumstances petitioner becomes entitled to suspension of sentence if he is not a desperate and hardened criminal. Learned counsel for the complainant has not been able to place any material on record which could disentitle the petitioner from the grant of suspension of his sentence on statutory ground. Without going into the merits of theappeal, this petition is allowed, sentence of the petitioner is suspended during the pendency of appeal and he shall be released subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (One Lac Only) with two sureties each in the like amount to the satisfaction of the Deputy Registrar (Judicial) of this Court. However, the petitioner shall keep appearing before this Court on each and every date of hearing till the final disposal of this appeal.

(R.A.) **Petition allowed.**

PLJ 2017 Cr.C. (Lahore) 457
[Multan bench Multan]

Present: ALI BAQAR NAJAFI, J.

GULZAR KHAN--Petitioner

versus

STATE and another--Respondents

Crl. R. No. 118 of 2010, decided on 5.4.2016.

Pakistan Penal Code, 1860 (XLV of 1860)--

----Ss. 320 & 439--Criminal revision--Conviction and sentence--Challenge to--Appeal was filed against conviction which was dismissal and then filed this revision--It was van and truck crashed road accident, which was resulting into death of deceased--Evidence on record ingredient of Section 320 PPC has not been found they are speedy in voilative of traffic rules is not attracted--Position of truck and the crash of Suzuki wagon is also not brought on record--No evidence was produced that the appellant was rashly driving in violation of traffic rules--Even fast driving cannot be construed as rash driving as it was G.T, Road i.e. a Highway--Revision was allowed. [P. 459] A

2007 PCr.LJ 1393

M/s. Haji Tariq Azia Khokhar and *Muhammad Aslam Bhatti,* Advocates for Petitioner.

Mr. Abdul Qayyum, Addl. Prosecutor General for State.

Nemo for Complainant.

Date of hearing: 5.4.2016.

JUDGMENT

The petitioner was tried by the learned Judicial Magistrate Section 30, Burewala in case FIR No. 367 of 2004 dated 24.08.2004 registered under Section 320 PPC at Police Station, City Burewala D Kundian District Vehari.

After conclusion of trial *vide* judgment dated 17.12.2009, the petitioner was convicted and sentenced as under:--

Sr. No.	Name of the Accused	Conviction under sections
1	Gulzar Khan	Convicted under Section 320 PPC and sentenced him to undergo R.I for five years. He was also directed to pay diyat Rs.360209/- to the legal heirs of the deceased and till the payment of diyat amount he will remain in jail.

The appellant filed an appeal against his conviction and sentence, which came up for hearing before the learned Additional Sessions Judge, Burewala District Vehari who *vide* his judgment dated 02.02.2010 dismissed the appeal by maintaining the said conviction and sentence.

2. Briefly, the prosecution story as set forth in FIR, lodged at the instance of Asjad son of Shareef is that his brother namely, Amjad Pervaiz used to ply a Suzuki Van No. 877-304/86 Karachi 87 for pick and drop of the school children. On the fateful day i.e. 24.08.2004 at 5:45 a.m. his brother Amjad Pervaiz was driving the said Suzuki van towards Marzi Pura for brining children. On the way a Truck No. 6499/SGD was coming on G.T. Road which was driven by Gulzar Khan, the petitioner, very rashly and negligently. It tried to overtake the said van from wrong side hitting the front right side of the truck with the van and the later smashed with the road side fence. In that accident, his brother Amjad Pervaiz sustained multiple injuries on his head and other parts of body who was taken to the hospital by Muhammad Yaqoob Dar and Aftab Azeem in the injured condition but he succumbed to the injuries.

3. After completion of investigation, challan was prepared and submitted before the learned trial Court, copies were-distributed to the accused and

charge was framed against him to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution produced as many as 7 PWs during the trial. The appellant was examined under Section 342 Cr.P.C. but he did not opt to make a statement under Section 340(2) Cr.P.C. and to adduce defence evidence. In answer to a question about his involvement he deposed that the PWs are inter se related and he has been falsely implicated by the PWs. He is innocent in this case.

5. The main contention of the learned counsel for the petitioner is that neither the FIR nor the site-plan was exhibited which was the requirement of law to establish the prosecution case. Refers to the statement of PW-2/complainant who could not prove that the petitioner was rash and negligent in driving within the definition of Section 320 PPC. Also adds that he exercised maximum care and caution while driving the big loader/vehicle but the death was caused due to the negligent driving of deceased driver of Suzuki Van as he tried to over take the truck and struck the fence because of his over-speeding. The learned Additional Prosecutor General, however, opposed the submissions made by the appellant.

6. Arguments heard. Record perused.

7. A perusal of the record reveals that complaint was exhibited as Exh.PA but neither the FIR nor site-plan was exhibited. Dr.Amjad Shakeel appeared as PW-7 who described all 10 ante-mortem injuries sustained by the deceased causing his death. As per Post-mortem Examination (Exh.PB) the dead body was brought by some one named Saddar Din who was not produced as prosecution witness. PW-2/complainant and the eye-witnesses i.e. PW-2 (complainant) and PW-3 have appeared to prove the prosecution case but the former admitted that his Riksha was going behind the truck in slow speed but he could not ascertain whose mistake has caused the accident. It has also not been brought on record that truck was over loaded. The appearance of the eye-witnesses at the earlier hour of the morning at the place of occurrence is not

free from doubt. Besides, the eye-witnesses could not view the occurrence as they were much behind the truck.

8. Keeping in view the evidence on record ingredient of Section 320 PPC has not been found they are speedy in voilative of traffic rules is not attracted. The position of truck and the crash of Suzuki wagon is also not brought on record. No evidence was produced that the appellant was rashly driving in violation of traffic rules. Even fast driving cannot be construed as rash driving as it was G.T, Road i.e. a Highway. Places reliance on *Farman Ullah vs. The State and others* [2007 P.Crl.LJ 1393] wherein in Para-8 it is held as under:

> "To constitute offences under Sections 279/320,P.P.C it is necessary for the prosecution to prove that besides over speeding, the driver was also guilty of driving rashly and negligently."

9. For what has been stated above, this revision is allowed as a result of which the impugned judgment of conviction is set aside and the petitioner is acquitted of the charge. He is on bail; his sureties are absolved from the liability of surety bonds.

(A.A.K.) **Revision allowed.**

PLJ 2017 Lahore 542

Present: ALI BAQAR NAJAFI, J.

AMEER HAIDER and another--Petitioners

versus

GENERAL MANAGER (PUNJAB-NORTH), NATIONAL HIGHWAY AUTHORITY, SHAHPUR INTERCHANGE, THOKAR NIAZBEG, MULTAN ROAD, LAHORE and 9 others--Respondents

W.P. No. 5242 of 2013, decided on 30.1.2017.

National Highway Authority (Appointment and Promotion) Service Rules, 1995--

----Rr. 2 & 3--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Employment and recruitment of officials--Relaxation of rules--Domain of board--Power to control--Validity--N.H.A. (Appointment fie Promotion) Service Rules, 1995 competent authority means "Executive Board" and under Rule 3 it is the Executive Board which creates posts and their designation, and under Rule 6, the appointment to various post are made by designated authorities. [P. 543] A

Mian Bilal Bashir, Advocate for Petitioners.

Rai M. Javed Iqbal Kharral, Advocate for Respondents No. 1, 2, 4 and 5.

Mr. Abdul Rehman Khan, Advocate for Respondents No. 7 to 10.

Date of hearing: 30.1.2017.

ORDER

Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioners seek a declaration from this Court that the Executive Board's decision made in the 224th meeting dated 07.01.2013 regarding creation of 1976 posts in different

cadres was illegal on the grounds that Board is neither competent nor authorized to create such posts of BS-16, and, that, in this way, the right of promotion of the officials will be seriously prejudiced. Places reliance upon *Massrs Mehraj Flour Mills and others versus Provincial Government and others* (2001 SCMR 1806).

2. Brief facts giving rise to the filing of this writ petition are that in the year 2008, the National Highway Authority advertised recruitment of the posts in pay scales (BS-1 to BS-20) in different temporary projects. According to rules of business of Federal Government, BS-20 post could only be filled through Central Selection Board and not by any other authority but the executive board/Respondent No. 2 decided to relax the rules of appointment through written test. Since the National Highway Council, did not approve the relaxation of rules, therefore, its selection by the executive board and regularization of the employees were challenged.

3. In the report and parawise comments submitted, by Respondents No. 1, 3, 4,5 and 6, it was stated that regularization of the employees will not affect the seniority of the regular employees who will be promoted against their respective quotas. It was added that powers to control, manage and formulate the policy decision were within the domain of Board which include the provision of employment and recruitment of the officials. Further adds that respective High Courts of Peshawar, Karachi and Islamabad have dismissed such petitions, therefore, the same view be observed by this Court.

4. Arguments heard. File perused.

5. After hearing the learned counsel for the parties and perusing the available file, it is straightway observes that under Rule 2 of the National Highway Authority (Appointment & Promotion) Service Rules, 1995 competent authority means “Executive Board” and under Rule 3 it is the Executive Board which creates posts and their designation, and under Rule 6, the appointment to various post are made by designated authorities. Rules 2, 3 and 6 are reproduced as under:--

2. **DEFINITIONS**

(1) Unless there is any thing repugnant in the subject or context the terms used in the rules are defined hereunder:--

(a) "Authority"	Means National Highway Authority established under National Highway Authority Act 1991.
(b) "Competent Authority"	Means the Executive Board of National Highway Authority or any officer to whom powers under these rules are designated.
(c) "Employee"	Means a person regularly appointed by the competent authority for service of the Authority.

3. CREATION OF POSTS AND THEIR DESIGNATIONS.

The competent authority may create such permanent and or temporary posts and designate and or abolish the same as it may deem expedient for the efficient performance of function of the Authority within the orbit of powers originally held or delegated, subject to observance of instructions issued by Federal Government from time to time.

6. The authorities competent to make appointments to the various posts shall be as follows: -

S. No.	Post	Appointing Authority

1.	Posts in basic pay scales 20 and above	President National Highway Council.
2.	Posts in basic pay scales 18 & 19	Executive Board of NHA
3.	Posts in basic pay Scales 16 & 17	Chairman, NHA
4.	Posts in basic pay scales 11 to 15	Member (Admn)
5.	Posts in basic pay scales 1 to 10	(1) Regional GMs (2) Director (Admn) or nominee of of chairman NHA at head office.

6. In view of what has been stated above, this writ petition has been found merit less and is therefore dismissed.

(R.A.) **Petition dismissed.**

PLJ 2017 Cr.C. (Lahore) 688 (DB)
[Multan Bench Multan]

Present: ALI BAQAR NAJAFI AND SHEHRAM SARWAR CH., JJ.

RIFFAT AKBAR--Petitioner

versus

STATE and another--Respondents

Crl. Rev. No. 162 of 2016, heard on 25.4.2016.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 439--Criminal Revision--Negative report of chemical examiner--Re-sampling of Drug narcotics--Admittedly, one sample of 20 grams was separated from recovered narcotics weighing 1070 grams *charas* in case FIR was registered under Section 9(c) of Narcotic Substances Act, 1997 which was sent for chemical analysis and result of which has been found negative--Application was filed by District Public Prosecutor for re-sampling of narcotics without mentioning any reason--Obviously, if unscrupulous and professional litigants tried to change result of narcotics to get favourable result such reasons should, have been substantiated by showing some solid steps taken against responsible officials in order to ensure that correct results are issued by Punjab Forensic Science Laboratory on whole bunch--Facts and circumstances of case as in that case result on sample sent for chemical analysis was not questioned but issue was effect of mixing of recovered narcotic substance taken from different packets--Revision was allowed.

[Pp. 689 & 690] A & B

2007 PSC (Crl) 284 & 2013 SCMR 1538, *ref.*

Mr. M. Naeem Ullah Khan, Advocate for Petitioner.

Malik Riaz Ahmad Saghla, DPG for State.

Date of hearing: 25.4.2016.

JUDGMENT

Ali Baqar Najafi, J.--This Criminal Revision is directed against order dated 29.03.2016 passed by the learned Additional Sessions Judge, Taunsa Sharif, whereby the application submitted by District Public Prosecutor for re-sampling of the Drug Narcotics was allowed on the ground that since prosecution witnesses supported the version of the prosecution therefore, notwithstanding the negative report of Chemical Examiner on the sample taken at the time of recovery, the whole bunch of the narcotic drug lying in the police Malkhana be sent to the office of the Punjab Forensic Science Laboratory to furnish report within a month.

2. Arguments heard. Record perused.

3. Admittedly, one sample of 20 grams was separated from the recovered narcotics weighing 1070 grams *charas* in case FIR No. 108 dated 15.06.2014 registered under Section 9(c) of the Narcotic Substances Act, 1997 at Police Station, Ritra District D.G.Khan which was sent for chemical analysis and the result of which has been found negative. On 21.12.2015 the application was filed by the District Public Prosecutor for re-sampling of narcotics without mentioning any reason. Obviously, if unscrupulous and professional litigants tried to change the result of narcotics to get favourable result such reasons should have been substantiated by showing some solid steps taken against the responsible officials in order to ensure that the correct results are issued by Punjab Forensic Science Laboratory on whole bunch. Here reliance can be placed on The *State vs. Amjad Ali* [2007 P.S.C (Crl.)284]. The judgment *NADEEM ASHRAF vs. The STATE and others* [2013 SCMR 1538] is relatable to the different facts and circumstances of the case as in that case the result on the sample sent for chemical analysis was not questioned but the issue was the effect of the mixing of the recovered narcotic substance taken from different packets.

4. Learned Law Officer has not been able to convince this Court about the sustainability of order passed by the trial Court as a result of which this criminal revision is allowed and the impugned order is set aside.

(A.A.K.) **Revision allowed.**

PLJ 2017 Cr.C. (Lahore) 710

[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

ALLAH YAR--Petitioner

versus

STATE and another--Respondents

Crl. Misc. No. 1862-B of 2016, decided on 5.5.2016.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 376, 365-B & 380--Bail, grant of--Further inquiry--Allegation of rape--Victim made statement u/S. 164, Cr.P.C. before Judicial Magistrate--Stating that petitioner alongwith co-accused persons has made "Ziadti" but a negative Forensic DNA analysis report makes it clear that Buccal swabs standards of petitioner compared with internal, external vaginal swabs and Buccal swabs standards of which do not match with each other--This coupled with history given by before Medical Officer who conducted her medical examination reveals that allegation was only to extent of attempted rape--Petitioner was arrested and keeping in view above facts and circumstances of case offences under Sections 376, 365-B, 380 Pakistan Penal Code, 1860 needs further probe into matter as inconsistent statements given by victim, her initial version of attempted rape together with negative DNA report and voluntary return of victim make case of petitioner that of further inquiry into his guilt as contemplated under, Section 497(2), Cr.P.C.--Bail was allowed. [Pp. 711 & 712] A, B & C

Rana Jahanzaib Khan, Advocate for Petitioner.

Syed Nadeem Haider Rizvi, D.D.P. for State.

Syed Muhammad Qamar Nasik, Advocate for Complainant.

Date of hearing: 5.5.2016.

ORDER

The petitioner seeks his post-arrest bail in case registered *vide* FIR No. 113 dated 22.05.2015 under Sections 376,365-B, 380, PPC at police Station, Saddar Shujuabad District Multan on the allegation that *Mst.* Bhirawan Mai aged about 31/32 years daughter of the complainant and wife of Altaf Hussain aged about 45 years (without Rukhsti) was at home alongwith *Mst.* Tahira Bibi aged about 9/10 years, daughter of Altaf Hussain who was abducted by Nasir, Zahoor Ahmad, Ghulam Mustafa and Muhammad Ismail in two different cars. The abduction was witnessed by Muhammad Iqbal and Muhammad Mujahid who told this fact to the complainant who alongwith his wife was out of home for their work.

2. Arguments heard. Record perused.

3. This is 3rd bail petition, 1st petition for post arrest bail bearing Crl.Misc.No. 5471-B of 2015 was dismissed as not pressed after arguing at full length on 28.10.2015 whereas second petition for post arrest bail bearing Crl.Misc. No. 372-B of 2016 was also dismissed as withdrawn in order to agitate the fresh ground of negative DNA report submitted on 16.02.2016 before the trial Court and as such the said fresh ground is available to the petitioner.

4. The petitioner, who is maternal uncle of the victim, *Mst.* Bhirawan Mai is not nominated in the FIR. As per progress report prepared by the SHO, Police Station, Saddar Shujuabad District Multan on 05.06.2015 the victim on her own went to the petitioner, her maternal uncle. On 06.06.2015 the said victim made statement under Section 161, Cr.P.C. before the Investigating Officer

stating that she of her own went to the house of the petitioner. On 30.06.2015 the complainant named the petitioner in his supplementary statement. *Vide* case diary No. 24 dated 04.08.2015 police itself concluded that the petitioner alongwith other accused persons were found guilty to the extent of abduction only. A perusal of the police file reveals that *Mst.* Bhirawan Mai also filed a suit for jactitation of marriage against the said Altaf Hussain on 27.05.2015 before the Judge Family Court, Multan and had also filed a petition under Sections 22-A/22-B, Cr.P.C. before the Ex-officio Justice of Peace on which a direction has been issued to the SHO, P.S.Alpa Multan and SHO, Shujabad not to cause harassment to *Mst.* Bhirawan. However, on 19.06.2015, *Mst.* Bhirawan made statement under Section 164, Cr.P.C. before the Judicial Magistrate; Shujabad District Multan stating that the petitioner alongwith co-accused persons has made "Ziadti" but on 11.02.2016 a negative Forensic DNA analysis report makes it clear that the Buccal swabs standards of Allah Yar compared with the internal, external vaginal swabs and Buccal swabs standards of *Mst.* Bhirawan Mai which do not match with each other.

5. This coupled with the history given by *Mst.* Bhirawan Mai on 15.06.2015 before the Medical Officer who conducted her medical examination reveals that the allegation was only to the extent of attempted rape.

6. The petitioner was arrested on 05.07.2015 and keeping in view the above facts and circumstances of the case offences under Sections 376, 365-B, 380 Pakistan Penal Code, 1860 needs further probe into the matter as inconsistent statements given by the victim, her initial version of attempted rape together with the negative DNA report and voluntary return of the victim make the case of the petitioner that of further inquiry into his guilt as contemplated under, Section 497(2), Cr.P.C.

7. In view of the above, this petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one sureties each in the like amount to the satisfaction of the trial Court.

(A.A.K.) **Bail allowed.**

PLJ 2017 Lahore 1000 (DB)

[Multan Bench Multan]

Present: SYED MUHAMMAD KAZIM RAZA SHAMSI AND ALI BAQAR NAJAFI, JJ.

GHULAM HUSSAIN @ BHUTTO--Appellant

versus

ADDITIONAL SESSIONS JUDGE, MAILSI, DISTRICT VEHARI and 2 others--Respondents

I.C.A. No. 264 in W.P. No. 3835 of 2015, decided on 27.9.2016.

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 336--Constitution of Pakistan, 1973, Art. 199--Law Reforms Ordinance, 1972, S. 3(2)--I.C.A, *Itlaf-i-Slahiat-i-udv*, disformation on head damaging skull, constitution of medical board, charge was not framed--Question of--Whether eyesight of injured persons is permanently impared--Determination--It will be relevant for Court to know exact position about nature of injuries sustained by said injured persons with a view to impose compatible sentence--It should be medical Board comprising of professors of relevant specialized area at Nishtar Hospital, Multan so as to attach greater importance to medical opinion--Consequently, medical superintendent, Nishtar Hospital, Multan is directed to constitute required Medical Board to examine injured persons, and gives its opinion accordingly--Intra Court appeal was disposed of.

[P. 1001] A & B

Malik Altaf Hussain Rawn, Advocate for Appellant.

Mr. Nadeem Ahmed Tarar and Rana Muhammad Iqbal Noon, Advocates for Respondent No. 3.

Mian Adil Mushtaq, A.A.G. for State.

Date of hearing: 27.9.2016.

ORDER

This Intra Court Appeal under Section 3 of the Law Reforms Ordinance, 1972 is directed against the order dated 01.06.2015 passed by learned Judge in Chamber whereby the writ petition filed by the appeliarit against the order dated 03.01.2015 passed by learned Addl. Sessions Judge, allowing the application for constitution of Medical Board, was dismissed with the observation that the trial Court has clarified that the Medical Board will only report whether eyesight of Safdar and Yasin, have permanently been restored to reach at a just conclusion.

2. Learned counsel for the appellant submits that since Section 336, PPC has already been added, therefore, opinion of any Medical Board would not be relevant. He refers to the definition of Section 336, PPC regarding Itlaf-i-Salahayat-i-udw and argues that dis-formation on the head damaging the skull is visible which will be sufficient to constitute the offence.

3. Conversely, learned counsel for Respondent No. 3 contends that application for constitution of Medical Board was filed by him when the charge was not even framed, therefore, after recovery of the injured persons,

the Medical Board will be in a better position to give the opinion as to whether eyesight of Safdar and Yasin, injured persons is permanently impaired.

4. Arguments heard. File perused.

5. The application for constitution of Medical Board was filed by Respondent No. 3 on 23.01.2015 and the charge was framed on 20.04.2015 and as such said application was competently filed before Magistrate Section-30, Mailsi. Originally, the FIR No. 88/13 was registered under Sections 324, 337-A(i), 337-A(ii), 337-F(i), 143, 149, PPC on 19.03.2013 but Section 336. PPC was added on 12.05.2014, the application, therefore, was filed after about 8 months alleging that Safdar and Yasin, injured persons have not suffered permanently due to impairing the functioning power or capacity of eye and have also not suffered from permanent disfigurement. We have been taken through the file by the learned counsel for the appellant but could not locate any opinion of the Medical Board on the basis of which Section 336 PPC was added, rather a ward report given by Dr. Yasrab Habib, Medical Officer, T.H.Q Hospital, Mailsi, was mentioned as its basis Even therwise, at the time of pronouncemen of judgment by the learned trial Court, it will be relevant for the Court to know the exact position about the nature of injuries sustained by said injured persons with a view to impose the compatible sentence.

6. In our humble opinion, it should be the Medical Board comprising of the Professors of the relevant specialized area at Nishter Hospital, Multan so as to attach greater importance to medical opinion. Consequently, the Medical Superintendent, Nishter Hospital, Multan is directed to constitute the required Medical Board to examine the injured Yasin and Safdar, and give its opinion accordingly.

7. With this modification, we dispose of this Intra Court Appeal.

(Y.A.) **ICA disposed of.**

2017 Y L R Note 207

[Lahore (Multan Bench)]

Before Syed Muhammad Kazim Raza Shamsi and Ali Baqar Najafi, JJ

PIR MUNIR---Appellant

Versus

The STATE and another---Respondents

Criminal Appeal No.836 of 2012, heard on 1st November, 2016.

Penal Code (XLV of 1860)---

----Ss. 336-B, 324 & 34---Anti-Terrorism Act (XXVII of 1997), S.7(i)---Itlaf-i-salahiyyat-i-udw, attempt to commit qatl-i-amd, common intention, act of terrorism---Appreciation of evidence---Benefit of doubt---Prosecution case was that the accused along with co-accused persons threw acid on right arm and body of the complainant lady---Two witnesses including complainant furnished ocular account---Record showed that complainant had strained relations with her husband---Complainant contacted the accused to get rid of him by using extraterrestrial knowledge who allegedly extracted money from her and made an attempt to commit rape with her upon which FIR was registered against him---Trial of the said case was pending---Accused had filed complaint of Qazaf against her---Complainant had filed private complaint thereafter---Circumstances and facts of the case showed that it was a case of levelling criminal charge against the accused with the background of enmity---Record showed that burnt articles were not recovered from the place of occurrence by police as well as the lantern, which were required to support the ocular account---Circumstances established that prosecution had not been able to prove its case beyond any shadow of doubt---Accused was therefore, acquitted by setting aside the conviction and sentences recorded by the Trial Court. [Para. 8 of the judgment]

Waseem Sarwar Khan for Appellant.

Muhammad Ali Shahab, D.P.-G. along with Muhammad Ashraf, A.S.I. for the State.

Nemo for the Complainant.

Date of hearing: 1st November, 2016.

JUDGMENT

ALI BAQAR NAJAFI, J.---This appeal is directed against the judgment dated 30.11.2012 passed by the learned Judge, Anti Terrorism Court-II, Multan in a private complaint filed by respondent No.2 under sections 336-B/324/34, P.P.C. and section 7 of Anti-Terrorism Act, 1997 against the appellant and one Hasham Jutt who was acquitted whereas the appellant was convicted and sentenced as under:-

1	Pir Munir	under section 336-B, P.P.C.	The appellant was sentenced to 15 years R.I. along with fine of Rs.10,00,000/- and in default whereof to further undergo S.I. for two years.
2.	Pir Munir	under section 7(i)ATA, 1997	The appellant was sentenced to 5 years R.I. Both the sentences were directed to run concurrently.

2. Briefly, the complainant's case against the appellant is that the complainant, Mst.Zoha Kanwal/PW-4 an insurance agent on 15.09.2012 went to the Dera of one Muhammad Khan Langrah to convince him to purchase the insurance policy, where after his servant dropped her at Pull Mangan Wali. At about 6:15 p.m. when she was waiting for rickshaw, suddenly three persons,

including the appellant, and Hashim Jutt along with one unknown person on motorbikes appeared. They first demanded from the complainant to withdraw her case which she got registered against the accused persons. Upon her refusal the appellant allegedly threw acid on her right arm and right shin. On her hue and cry Muhammad Ramzan, Azhar, Ghulam Shabbir, Nasrullah and other persons of the vicinity attracted at the spot but the assailants succeeded to flee away. Rescue 1122 was called and she was brought to the hospital where FIR No.325 dated 16.09.2012 under section 324, P.P.C. and section 7 of the Anti-Terrorism Act, 1997 was registered against the accused persons but the police connived with them and did not investigate the case fairly, hence she filed the private complaint.

3. The appellant was summoned to face trial. The complainant produced Ghulam Shabbir/PW-5 as supporting eye-witness. Dr.Saima Hassan/PW-1 who initially medically examined her as well as Dr. Muhammad Bilal/PW-3 who admitted her in the Nishtar Hospital, Multan in the surgical emergency. The other formal witnesses appeared to substantiate registration of FIR.

4. In the statement recorded under section 342, Cr.P.C., the appellant as well as co-accused persons while denying the allegation stated that the case was registered against him just to blackmail in order to grab money from him as the complainant herself is not a lady of good character who cited different set of witnesses (than those of the FIR) and had made dishonest improvements. He also stated that the only injury upon the person of the complainant is Ghair Jaifah Damiya and that report of Chemical Examiner on the acid was negative. It was also stated by him that Ghulam Shabbir/PW-5, the eye witness, is closely related to her and he was found innocent during the investigation.

5. The learned trial court while acquitting co-accused Hasham Jutt convicted and sentenced the appellant as stated above.

6. Mr. Waseem Sarwar Khan, Advocate for appellant contends that after lodging of case FIR No.325 dated 16.09.2012 under section 324, P.P.C. and section 7 of the Anti-Terrorism Act, 1997 registered at Police Station Saray Sidhoo, District Khanewal, the appellant joined the investigation and was declared innocent by the police, where after the private complaint was filed by the complainant by citing only one witness as PW-5 namely, Ghulam Shabbir whose statement was also not corroborated to support the prosecution story. Adds that the complainant managed to procure medical report as she remained as "Nurse" for some time. Refers to the VITROLAGE the term used for acid which is not covered under section 336-B, P.P.C. Further adds that Dr. Muhammad Bilal/ PW-3 could not explain that the injury sustained by the complainant was due to the acid. He adds that conduct of the complainant is dubious as she lodged FIR No.231 dated 07.08.2012 under section 376/511, P.P.C. against the appellant the trial of which is still pending before the learned trial court where she has not been appearing. Further submits that it was after filing of complaint of Qazaf against her by the appellant that she filed the instant private complaint on 16.10.2012 which by itself speaks mala fide on the part of the complainant.

7. Conversely, Mr. Muhammad Ali Shahab, learned Deputy Prosecutor General assisted by Muhammad Ashraf, ASI submits that ingredients of section 336-B, P.P.C. had duly been constituted as according to the medical evidence her right arm and shin was found burnt therefore, conviction was imposed in accordance with the evidence. Adds that trial of case FIR No. 231 of 2012 was motive for throwing acid upon the person of the complainant and therefore, appeal merits dismissal.

8. After hearing the learned counsel for the appellant as well as learned Deputy Prosecutor General representing the State, we have straightway observed that it is a case of leveling criminal charge against the appellant with

the background of enmity. Our reasons are, firstly, the very fact that in view of her strained relations with her husband namely, Sarfraz Ahmad she contacted the appellant to get rid of him by using extraterrestrial knowledge who allegedly extracted money from her. Besides, according to the complainant/ PW-4 on 07.08.2012 the appellant made an attempt to commit rape with her upon which FIR No.231 dated 07.08.2012 under sections 376/511, P.P.C. was registered at City Kabirwala District Khanewal by the complainant against the appellant, and its trial remained pending even during this year. In Khadim Hussain v. The State [2000 SCMR 1531] it was held that a plausible explanation as to delay in examination of victim of acid throwing was that because of injuries she became unconscious and when she regained her consciousness her statement was recorded by police. But there is an enmity in the present case and ocular evidence was not supported by the recovery of the burnt articles from the place of occurrence by police as well as the lantern.

9. Academically, an act of acid throwing, acid attack, a vitriol attack or Vitriolage, is a form of violent assault defined as the act of throwing acid or a similar corrosive substance onto the body of another with the intention to disfigure, maim, torture, or kill." The most common types of acid used in these attacks are sulfuric and nitric acid. Hydrochloric acid is sometimes used, but is much less damaging. Commonly sulphuric acid (oil of vitriol) is most commonly used and for this purpose, therefore, the name given is Vitriolage. The use of caustricsoda, caustic potash, iodine, and marking nutjuice has also been recorded. In our society, a person who is jilted in love may throw acid on the woman to teach her a lesson as it causes permanent scar and produces severe chemical burns and discoloration and staining of skin and clothing, (brown or black in sulphuric acid and yellow in nitric acid), trickle marks, absence of vesication and red line of demarcation which shows presence of the chemical substance in the stains. In an acid attack the skin is the main organ of contact. The effects of acid on the skin may include redness, and burns. In

severe cases, it could lead to shock and death. Some other effects include permanent hair loss and scaring. Signs and symptoms are principally visible because of local effects. The externally exposed areas of the body such as skin of face, hands and feet are vulnerable and internally mucous membranes of stomach, intestines and respiratory passages. Strong alkalis mainly sodium or potassium hydroxide have similar effects as those of the mineral acids, more so on mucous membanes. Oxalic acid has both local and systemic action. Locally it acts as weak corrosive having milder effects than the mineral acids.

In "Medical Jurisprudence and Toxicology 24th Edition by MODI", the burns are classified in six degrees according to Dupuytren classification as per the nature of their severity. Modern classification (Heba's classification) accords three degrees only by grouping the first and second (epidermal), third and fourth (dermo-epidermal), and fifth and sixth (deep)degrees together. Another classification grades burns into superficial and deep burns at page 486.

(i) Epidermal Burns .

(a) First Degree ..

(b) Second Degree .

(ii) Dermo-Epidermal Burns .

(a) **Third Degree.---**Third degree burn refers to the destruction of the cuticle and part of the true skin, which appears horny and dark, owing to it having been charred and shriveled. Exposure of nerve endings gives rise to much pain. This leaves a scar, but no contraction, as the scar contains all the elements of the true skin.

(b) **Fourth Degree.---**In fourth degree burns, the whole skin is destroyed. The sloughs which form are yellowish-brown and

parchment-like, and separate from the fourth to the sixth day, leaving an ulcerated surface, which heals slowly forming a scar of dense fibrous tissue with consequent contraction and deformity of the affected parts. The burns are not very painful as the nerve ending are completely destroyed.

(iii) Deep Burns.

(a) **Fifth Degree**.---Fifth degree burns include the penetration of the deep fascia and implications of the muscles, and results in great scarring and deformity.

(b) **Sixth Degree.---**Sixth degree burns involve charring of the whole limb including the bones and ends in inflammation of the subjacent tissues and organs, if death is not the immediate result. This degree, it may be noted, is not necessarily related to danger to life. Charring of a limb may be compatible with recovery, once the initial shock is over come.

(iii) Extent of Total Body Surface Area. To estimate the amount of area affected by second or third degree burns in percentage, the body is divided into different area, each representing nine per cent. This is called the rule of nine. There is marked fluid loss resulting in shock when over 20 per cent of the body is affected and usually over 50 per cent is fatal.

With this classification it is imperative that the punishment on acid burn case must commensurate to the severity of injury. However, section 336-U, P.P.C. does not prescribe such distinction in Pakistan Penal Code. We, therefore, strongly recommend that some legislative reforms may be brought to cater for this deficiency.

11. Keeping in view the above discussion, we are of the considered view that the prosecution has not been able to prove its case beyond any shadow of doubt. Resultantly, this appeal is allowed and the appellant is acquitted of the charge leveled against him. The appellant is in custody. He be released forthwith if not required in any other case.

JK/P-5/L **Appeal allowed.**

2017 Y L R Note 266

[Lahore (Rawalpindi Bench)]

Before Ali Baqar Najafi and Ch. Mushtaq Ahmed, JJ

MUHAMMAD IRFAN---Petitioner

Versus

TEHSIL MUNICIPAL ADMINISTRATION TAXILA through Administrator/Assistant Commissioner and 2 others---Respondents

Writ Petition No.3090 of 2014, decided on 9th December, 2014.

National Accountability Ordinance (XVIII of 1999)---

----S. 12---Constitution of Pakistan, Art. 199--- Constitutional petition--- Freezing/sealing of property---Petitioner, was involved and arrested in Reference pending in Accountability Court, and respondent / Tehsil Municipal Administration, sealed office of petitioner along with relevant record--- Application filed by the petitioner against said sealing, was dismissed by the Accountability Court on the ground that NAB Authorities had not accepted the responsibility of sealing of the property of the petitioner---Petitioner, time and again requested Tehsil Municipal Administration to de-seal his premises, but in vain---Validity---Under S.12 of National Accountability Ordinance, 1999, freezing of property was permitted for fifteen days, and thereafter extension in time had to be made in accordance with the procedure prescribed therein---Required procedure was not adopted by the NAB Authorities, even after passing of sealing order---High Court declared that in presence of impugned order passed by Accountability Court, NAB had no lawful authority to seal the premises of the petitioner, which was ordered to be de-sealed forthwith, in circumstances. [Paras. 1, 2, 3, 4, 5 & 6 of the judgment]

Sardar Muhammad Ali for Petitioner.

Barrister Saeed ur Rehman, A.D.P.-G. for NAB.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, petitioner seeks declaration that the impugned order dated 17.07.2014 passed by the learned Accountability Court No.1 Rawalpindi sealing the office of the petitioner is illegal, unlawful, void ab initio and is based on mala fide.

2. Brief facts giving rise to the filing of this petition are that petitioner is engaged in business of development and construction of different projects under the name of Bolan Property Developers situated at Bolan City, First Floor, Jadoon Plaza near Sharif Hospital G.T. Road Wah Cantt Tehsil Taxila District Rawalpindi falling within the territorial limits of Cantonment Board, Wah. He was involved and arrested in reference No. 03 of 2014 titled The State v. Muhammad Irfan etc., pending in Accountability Court No.1, Rawalpindi. The respondent No.1 sealed the above said office along with the relevant record under the directions of DCO Rawalpindi and by the Investigating Officer of NAB as reflected from letter dated 18.07.2014. However, learned Accountability Court on the application of the petitioner recorded the statement of prosecutor of NAB to the extent that no proceedings of the sealing of the office have been carried out by the NAB authorities whereafter the order dated 17.07.2014 was passed wherein it was observed that since no proceedings for sealing of the office were conducted by the orders of NAB, therefore, application was incompetent and was dismissed. The petitioner time and again requested respondent No.1 to de-seal the premises but in vain, hence this petition..

3. Learned ADPG for NAB while filing the comments, submits that the premises was sealed on 05.06.2014 whereafter on 19.06.2014 the order was passed to TMO for its implementation and on 18.07.2014 inquiry was

initiated, therefore, prays for dismissal of the petition.

4. Arguments heard. Record perused.

5. Admittedly, learned Accountability Court No.1, Rawalpindi had dismissed the application on the ground that NAB authorities have not accepted the responsibility of sealing of property of the petitioner. If there was order dated 05.06.2014 in existence on the basis of which the property could have been sealed, the same was to be placed before the learned Accountability Court or at least the order dated 17.07.2014 was to be challenged by the NAB authorities. Additionally, under section 12 of the National Accountability Ordinance, 1999 freezing of property is permitted for fifteen days and thereafter extension in time has to be made in accordance with the procedure prescribed therein. Section 12 is re-produced as under: -

> **12. Power to freeze property.**
>
> (C) If the property ordered to be frozen is immovable, the freezing shall, in the case of land paying revenue, be made through the Collector of the district in which the land is situated, and in all other cases:--
>
> (1) by taking possession; or
>
> (2) by appointment of receiver; or
>
> (3) by prohibiting the payment of rent or delivery of property to the accused or to any other person on his behalf; or
>
> (4) by all or any such methods as the Chairman NAB or the Court may deem fit:
>
> Provided that any order of seizure, freezing, attachment or any prohibitory order mentioned above by the Chairman NAB, shall remain in force for a period not exceeding [fifteen] days unless confirmed by the Court, where the reference under this Order shall be sent by Chairman NAB.

6. A perusal of above said section reveals that required procedure was not adopted by the NAB authorities even after passing of order dated 05.06.2014 (if any). We, therefore, declare that in presence of order dated 17.07.2014 passed by the learned Accountability Court No.1 Rawalpindi, the respondent NAB have got no lawful authority to seal the premises of the petitioner which shall be de-sealed forthwith. This petition is allowed in the above terms.

HBT/M-30/L **Petition allowed.**

2017 Y L R Note 380

[Lahore]

Before Ali Baqar Najafi, J

KALSOOM BIBI and another---Petitioners

Versus

MUHAMMAD IRFAN and 2 others---Respondents

Writ Petition No.21501 of 2012, decided on 26th February, 2015.

(a) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.----Constitution of Pakistan, Art.199---Constitutional petition--Suit for recovery of dowry articles and maintenance---Wife contended that husband turned her out of his house while retaining all her dowry articles; whereas husband took a plea that no dowry articles were given as it was a marriage by choice---Family Court decreed both suits, but appellate court set aside the decree of dowry articles and upheld decree of maintenance on the ground that no list of dowry articles was produced---Validity---Appellate court incorrectly reversed the findings of Family Court regarding dowry articles for non-production of list of dowry articles---Wife, in her statement, had given details of dowry articles---List of dowry articles had been produced and receipts thereof were not essential to prove delivery of dowry articles---High Court reversed the findings of appellate court and decreed the suit for dowry articles.[Paras. 6, 9 & 10 of the judgment]

(b) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.----Delivery of dowry articles---Proof---Receipt of dowry articles, production of---Financial status of father---In a normal marriage where guests were entertained, the dowry articles were shifted at the time of Rukhsati---Delivery of dowry articles should have been seen with reference to the nature of the dowry articles whether they were of personal use or otherwise---Dowry articles mentioned in the statement of the wife did not appear to be exaggerated---Receipts of dowry articles were not essential to prove the delivery of dowry articles as in rural society such receipts were rarely retained at the time of marriage, as no bride or her parents ever thought

of her desertion so as to plan a pre-emptive defense---Father in his statement had categorically stated that he owned a house to show his capacity to give dowry---High Court reversed the findings of appellate court and decreed the suit for dowry articles. [Paras. 6, 8 & 9 of the judgment]

Muhammad Habib v. Mst. Safia Bibi 2008 SCMR 1584 and M. Jaffar v. Additional District Judge and others 2005 MLD 1069 rel.

(c) Family Courts Act (XXXV of 1964)---

----S. 5, Sched. & S. 11----Testimony of father---Admissibility---Father of wife, being the most natural witness, might have been somewhat interested but his testimony could not be ignored in the facts and circumstances of the case, as he had no enmity with the husband of his daughter. [Para. 6 of the judgment]

(d) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.----Constitution of Pakistan, Art.199---Constitutional petition---Custom of giving dowry---Guests were served with water only---Entertaining the guests with lavish food may not be a custom but giving dowry is---Where marriage was contracted without approval of the father, he would rather prefer to follow entire wishes of his daughter by giving dowry articles to her rather than entertaining the guests---Constitutional petition was accepted. [Para. 6 of the judgment]

Muhammad Irshad Chaudhry for Petitioners.

Raja Kamran Khaliq for Respondent No.1.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, petitioner challenges the vires of judgment and decree dated 24.05.2012 passed by learned Addl. District Judge Chinniot, whereby the decree for the grant of dowry articles or in alternate price of Rs. 1,00,000/- awarded to the petitioner by the learned Judge Family Court, Bhowana was set aside.

2. Brief facts giving rise to the filing of this petition are that at the time of marriage between the petitioner and respondent No.1, dowry articles mentioned in the list were given and during the subsistence of marriage, petitioner No.2 was born. However, thereafter the relationship between the

spouses got strained and about a year before filing of suit for recovery of dowry articles and maintenance on 18.03.2011 she was turned out by respondent No.1 while retaining all her dowry articles. On 23.11.2011 a decree was passed by the learned Judge Family Court awarding Rs. 1200/- per month to petitioner No.1 from the date of institution of suit till she was legally entitled and Rs. 1200/- per month was also awarded to petitioner No.2 with 10% annual increase along with maternity charges of Rs. 8000/- and recovery of dowry articles or in alternate their price Rs. 1,00,000/-. However, appeal was filed by respondent No.1 which was allowed as a result of which recovery of dowry articles was set aside while upholding the decree for maintenance allowance, hence this writ petition.

3. Learned Counsel for the petitioner contends that on the basis of overwhelming evidence regarding financial status of respondent No.1 as well as description of dowry articles given in her statement by the petitioner together with the social cultural background of giving dowry as a custom, the petitioner proved the dowry articles.

4. Conversely, learned counsel for respondent No.1 submits that it was a marriage by choice in which dowry articles were not given by the father of the petitioner as he stated in his evidence that entire Barat was only served with water. Also submits that order of the learned appellate court is well reasoned and, therefore, does not require any interference.

5. Arguments heard. File perused.

6. In the pleadings, the response to paragraph 7 of the plaint in which dowry articles were statedly brought by the petitioner, the respondent No. 1, gave only one liner defence of evasive denial in written statement though stated in paragraph No.2 that she did not bring any dowry articles. To prove her claim, petitioner herself appeared as PW-1 and produced her father as PW-2. Petitioner in her statement gave the details of dowry articles though did not place on record any receipt thereof. However, in his statement father of the petitioner namely, Haqnawaz/PW-2 has categorically stated that he owned a house showing his financial capacity to give dowry. He also stated that on the occasion of marriage of his daughter in the year 2008, about 500 persons attended the marriage function, who were given water. Needless to observe

that in such like situation where if marriage was contracted without approval of the father, he would rather prefer to follow entire wishes of his daughter by giving dowry articles to her rather than entertaining the guests. Besides, entertaining the guests with lavish food may not be a custom but giving dowry is. The father being the most natural witness may be somewhat interested but his testimony cannot be ignored in the facts and circumstances of the present case as he had no enmity with the respondent No. 1.

7. On the other hand, in his statement, respondent No.1 while appearing as DW-1 has admitted that petitioner went out of his house 2 months before birth of his son. DW2, a close friend of respondent No.1 though stated that only 10 persons attended the marriage function who were only served with water, but his said statement appears to be revengeful as he was not entertained by the father of the bride.

8. While scanning the case law cited by the parties in Muhammad Habib v. Mst. Safia Bibi and others (2008 SCMR 1584), it was held that delivery of dowry articles should also be seen with reference to the nature of the dowry articles whether they are of personal use or otherwise. Applying this principle statement of PW-1 showing the normal useable articles do not appear to be exaggerated. In M. Jaffar v. Additional District Judge and others (2005 MLD 1069) it was held that in a normal marriage where the guests are entertained, the dowry articles are shifted at the time of Rukhsati.

9. In view of the above, it is held that learned appellate court has incorrectly reversed the findings on issue No.3 that no list of dowry articles was produced. Ex-P1 is the dowry list and the receipt of dowry articles is not essential to prove the delivery of dowry articles as in rural societies such receipts are rarely retained at the time of marriage. No bride or her parents ever think of her desertion so as to plan a pre-emptive defence, otherwise considered as a bad omen.

10. In this view of the matter, the findings of the learned appellate court is reversed as a result of which suit for recovery of dowry articles stands decreed to the extent of dowry articles or in alternate their price Rs. 1,00,000/- while upholding the findings of learned Judge Family Court.

SL/K-9/L **Petition accepted**.

2017 Y L R 2347

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD KHALID alias KHALID MEHMOOD and others---Petitioners

Versus

MUHAMMAD YOUSAF and others---Respondents

Writ Petition No.22422 of 2010, heard on 17th October, 2014.

(a) Civil Procedure Code (V of 1908)---

----S. 12(2)---Specific Relief Act (I of 1877), S. 12---Constitution of Pakistan, Art. 199---Constitutional petition---Suit for specific performance of agreement to sell---Consent decree, setting aside of---Pecuniary jurisdiction---Effect---Pecuniary jurisdiction had been fixed at Rs. 55,00,000/ in the plaint---Trial Court dismissed application under S.12(2), C.P.C. for setting aside consent decree but the same was accepted by the revisional court---Validity---Jurisdiction could be determined on the basis of plaint of the original suit---Revisional Court had exercised pecuniary jurisdiction not vested in it as the value of suit set out in the plaint on the basis of which the consent decree was passed for Rs. 55,00,000/---Impugned judgment passed by the Revisional Court was set aside---Constitutional petition was accepted, in circumstances.

Abdul Haque and 3 others v. Sukhial and 2 others 2006 CLC 286 rel.

(b) Specific Relief Act (I of 1877)---

----S. 12---Suit for specific performance of agreement to sell---Consent decree---Pecuniary jurisdiction, determination of---Jurisdiction could be determined on the basis of plaint of the original suit.

Imran Ahmad Malik for Petitioners.

Sh. Ijaz-ur-Rehman and Aftab Hussain Bhatti for Respondents Nos. 1 to 8.

Date of hearing: 17th October, 2014.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner seeks setting aside of the judgment dated 17.09.2010 passed by the Additional District Judge, Gujranwala whereby he set aside order dated 11.01.2010 passed by the Civil Judge dismissing the application under section 12(2), C.P.C. filed by the respondents and remanded the case to the learned Civil Judge.

2. The brief facts giving rise to the filing of this writ petition are that petitioners filed a suit for specific performance of the contract on the basis of an agreement to sell which was decreed with the consent of the parties on 23.12.2004 by the learned Civil Judge, Gujranwala. However, the respondents filed an application under section 12(2), C.P.C. on the ground that respondent No.9/Zafar Iqbal had valid title to the extent of 924 sq. ft. but he had alienated 1685 sq. ft. on the basis of the said decree in favour of petitioner No.1. It was further averred that as a consequence of the execution of the consent decree, the sale deed was executed in favour of the petitioner No.1 which was to be executed in favour of petitioner No.2. However, the learned Civil Judge dismissed the same as not maintainable. A revision was preferred against the said order which was allowed and the case was remanded to the learned Civil Judge on 17.09.2010. Hence this writ petition.

3. I have heard the learned counsel for the parties and perused the record.

4. The main contention of the learned counsel for the petitioners that value of the suit for the purposes of pecuniary jurisdiction as set out in paragraph 15 of the plaint is fixed at Rs.55,00,000/-, therefore, the revision should have been filed before this Court and not before the Additional District Judge carries much weight as under section 115, C.P.C. such a revision petition has to be filed before this Court. I am not persuaded by the argument of the learned counsel for the respondents that the value of pecuniary

jurisdiction would be determined on the basis of the claim made by the respondents in the application under section 12(2), C.P.C. I have also seen order dated 31.10.2012 passed in C.R. No.1756 of 2012 titled "Muhammad Saleem Bhatti v. Irshad Ahmad" wherein against the rejection of plaint under Order VII Rule 11, C.P.C. filed in another suit, the revision petition was entertained by the court of Additional District Judge on the ground that if a fresh suit is filed to the extent of the share to a property, the pecuniary jurisdiction for the purposes of revisional court will be the one claimed by the plaintiff. However, in this case the consent decree has been challenged for which the jurisdiction will be determined on the basis of the plaint of the original suit. It will not be out of place to refer to the judgment of a Single Bench of Sindh High Court at Karachi in the case titled Abdul Haque and 3 others v. Sukhial and 2 others (2006 CLC 286), wherein reliance has been placed on Province of Punjab v. District Judge, Lahore (PLD 1984 Lahore 515) and following has been laid down:--

> "8. Under section 115, C.P.C., both the High Courts and the District Courts, can exercise revisional jurisdiction. There is, however, a limitation on the exercise of such jurisdiction by the latter. It can exercise revisional jurisdiction, only in those cases, wherein the value of the subject-matter, does not exceed its appellate jurisdiction. The appellate jurisdiction is regulated by section 18 of the West Pakistan Civil Courts Ordinance, 1962. It has already been stated, that under this section, if the "value" of the original suit is not more than Rs.50,000 the appeal from the judgment and decree passed therein, lies to the District Court and in other cases to High Court. As pointed out by the learned counsel for the respondents, the term "value" has been defined in section 2(h) of the Ordinance, which read as follows:--

"Value" used with reference to suit means the amount of value of the subject-matter of the suit."

5. In my humble view, the revisional court has exercised the pecuniary jurisdiction not vested in it as the value of the suit set out in the plaint on the basis of which the consent decree was passed was Rs.55,00,000/-. This being a single but an important reason is enough to interfere in the finding of the Additional District Judge in the exercise of constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, I allow this writ petition and set aside the judgment passed by the revisional court with no order as to costs.

ZC/M-17/L **Petition allowed.**

2018 C L C Note 60

[Lahore (Multan Bench)]

Before Ali Baqar Najafi, J

MUHAMMAD AHSAN IQBAL HASHMI---Petitioner

versus

CHIEF SECRETARY PUNJAB, LAHORE and 2 others---Respondents

W.P. No. 15323 of 2012, decided on 4th December, 2017.

Educational institution---

----Student of LL.B (Hons.) seeking direction for delivery of laptop---Contention of authorities was that petitioner was not eligible at the given point of time---Validity---Petitioner secured 3.11 out of 4.00 in the cumulative grade point (CGPA in the year 2012 by winning Grade-B---Result of petitioner was corrected by increasing his (GPA) to 3.23 at the given point of time---Authorities could not deny the benefits of said increase to the petitioner---Petitioner should have been issued laptop as he was awarded 3.23/4.00 GPA in the Semester Eight---Authorities were directed to issue laptop to the petitioner being an eligible student at the given point of time---Constitutional petition was allowed in circumstances. [Paras. 6, 7, 8 & 9 of the judgment]

Petitioner in person.

Muhammad Javed Saeed Pirzada, AAG.

Malik Muhammad Tariq Rajwana for Respondents Nos. 2 and 3.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973,

the petitioner has sought a direction to the respondents to issue the Laptop as per regulations.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner graduated B.A. LL.B (Hons) 5-Years Annual Programme in the year 2012 by securing 3.11/4.00 CGPA. During his said degree course, an advertisement was published by the Education Department to deliver the Laptop to eligible candidates. As per the criteria, candidates securing more than 60% marks in the annual examination or securing 70% or above marks in the case of semester system could get the Laptops. Accordingly, a list was prepared in which the name of the petitioner was shown at serial No.6 but he was not delivered the Laptop, hence this writ petition.

3. The petitioner present in person submits that the respondents have failed to perform their statutory duty, therefore, writ may kindly be issued against them with a clear cut direction to release the Laptop to the petitioner as being an eligible candidate.

4. In the report and parawise comments submitted by respondents Nos.2 and 3, it was admitted that the petitioner passed his B.A. LL.B (Hons.) Three Years Programme in the year 2012 with CGPA (cumulative grade point average) of 3.11 out of 4.00 but it was specifically stated that the University Teaching Department was required to submit the list of eligible candidates for Laptop Scheme within a day for onward transmission to the concerned quarters vide letter dated 26.11.2011. Accordingly, a list was prepared on the basis of the result declared on 22.06.2011 disclosing that the petitioner had secured 2.90/4.00 GPA and, therefore, he was not found eligible. However, he improved his performance in the 9th semester and secured 3.49/4.00 GPA

according to the result declared on 19.01.2012 and as such on the stated date he is not entitled to any Laptop.

5. Arguments heard. File perused.

6. It was admitted that the petitioner secured 3.11 out of 4.00 in the cumulative grade point (CGPA in year 2012) by winning Grade-B on the basis of the final transcript issued to petitioner on 02.07.2012 vide Serial No.7421 with Roll No.5-07-14, Registration No.2007-glm-19. Its result in Semester-08 shows that his GPA was 3.23. A comparative glance on the different results from Semesters:01 to 10 reveals a gradual increase from 2.81 in the Semester:01 to 3.81 in the Semester:10. The argument of the learned counsel for respondents Nos.2 and 3 that in Semester:08 he received 2.90 which was subsequently increased on the basis of the overall result is not supported on the basis of any formula or any mathematical calculation. On 26.11.2011 a letter was issued to the Principal of the Gilani Law College/respondent No.3 to give the names of the LL.B students with their marks, percentage, which was responded by issuing the result of the Semester:08 of the petitioner in which he was shown at serial No.11 with GPA 2.90 on the basis of the semesters result dated 22.06.2011. The case of the petitioner is that these marks were corrected by awarding 3.23 GPA much before the stipulated date of 26.11.2011, and that the proof of this fact is the transcript of the result of B.A. LL.B (Hons) 5-Years Programme of 2007 to 2012 declared on 02.07.2012. Surprisingly, the result of the petitioner for Semester:07 shows 2.59 CGPA but in the final transcript it has increased to 3.12.

7. Throughout his professional career the petitioner will be able to show the final result of the transcript showing 3.11/4.00 with Grade:B to assess his educational competence. At the given point of time i.e; before 26.11.2011 the result was corrected by increasing his GPA to 3.23 as the respondents own the contents and entries of the said final transcript and, therefore, they cannot deny

its benefit to the petitioner, particularly when the dates of passing the Semesters:01 to 10 were not mentioned in the said final transcript.

8. On the above stated reasons, the respondents could not deny issuance of Laptop to the petitioner as he was awarded 3.23/4.00 GPA in Semester:08 and, therefore, a writ is hereby issued to the respondents to forthwith issue the Laptop to the petitioner being an eligible student at the given point of time.

9. The writ petition stands allowed in the above terms.

ZC/M-6/L **Petition allowed.**

2018 C L D 711

[Lahore (Multan Bench)]

Before Ali Baqar Najafi, J

MUHAMMAD IQBAL and others---Petitioners

Versus

PAKISTAN FEDERAL SECRETARY and others---Respondents

Writ Petition No.6545 of 2011, heard on 11th October, 2017.

Defence Savings Certificates Rules, 1966---

----R. 2---Post Office Manual, Vol. VI, R. 547---Constitution of Pakistan, Art. 4---Reduction of rate of profit---Maturity of Defence Savings Certificates---Petitioners had purchased Defence Savings Certificates and were aggrieved of reducing rate of profit on their certificates offered to them at time of maturity---Validity---Authorities could not unilaterally change rate of profit to disadvantage of petitioners---Prior to such change, a notice was required to be served upon petitioners to ascertain consent so that they could encash certificates instead of sustaining financial loss---Any change in policy if made by authorities, had to be applied prospectively on certificates purchased subsequent to such policy unless it was otherwise provided therein---Authorities failed to show any such change in policy warranting withholding of agreed amount of profit to petitioners---Authorities were bound under Art. 4 of the Constitution to act in accordance with law and required to make payment on profit mentioned on certificates at time of their maturity---Unilateral reduction in agreed rate of profit was unconscionable, discriminatory, against public policy and unenforceable---High Court directed the authorities to make payments to petitioners on Defence Savings Certificates as mentioned on back of certificates at time of maturity---Constitutional petition was allowed in circumstances.

Makhdoomzada Syed Muhammad Najmul Saqib Mumtaz for Petitioners

Muhammad Wajid Ali Bhatti, Assistant Attorney General with Abaid Ullah, Assistant Superintendent, Post Office, Multan for Respondents.

Date of hearing: 11th October, 2017.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this constitutional petition the petitioners have made the following prayers:--

"In view of the above-said submissions, it is most respectfully prayed:

1. That the instant writ petition may very graciously be accepted with costs;

2. That the respondents may kindly be directed to refrain from reducing the above stipulated amounts payable to the petitioners respecting the above referred Defence Saving Certificates (DSCS).

3. That the respondents may very graciously directed to pay to the petitioners the above referred stipulated amount of Rs.5,25,500/- and Rs.2,62,500/- in respect of the Defence Saving Certificates (DSCS) of Rs.1,00,000/- each and Rs.50000/- each respectively, on presentation of said Certificates.

4. That any other appropriate relief which this Honourable Court deems fit in the circumstances of the case, be also awarded and accorded to the petitioner."

2. Brief facts giving rise to the filing of this writ petition are that in anticipation of a secured investment and to ensure the provision of money at the most needy time, petitioner No.1 purchased the following Defence Saving Certificates with the maturity period of 10 years on 19.04.2001:-

S. No.	Serial Number of Defence Saving Certificates	Value of Defence Saving Certificates	Date of Maturity	Payable Amount
1.	869725 KA	1,00,000/-	19.4.2011	Rs.5,25,000/-
2.	869726 KA	1,00,000/-	19.4.2011	Rs.5,25,000/-
3.	869727 KA	1,00,000/-	19.4.2011	Rs.5,25,000/-
4.	869728 KA	1,00,000/-	19.4.2011	Rs.5,25,000/-
5.	869729 KA	1,00,000/-	19.4.2011	Rs.5,25,000/-
6.	869730 KA	1,00,000/-	19.4.2011	Rs.5,25,000/-
7.	391895 JA	50,000/-	19.4.2011	Rs.2,62,500/-

3. Likewise, with the same intention the petitioner No.2 also purchased the following Defence Saving Certificates with the maturity date of 17.05.2011:-

No.	Serial Number of Defence Saving Certificates	Value of Defence Saving Certificates	Date of Maturity	Payable Amount
1	869731 KA	1,00,000	17-5-2011	Rs.5,25,000/-
2.	869732 KA	1,00,000	17-5-2011	Rs.5,25,000/-
3,	869733 KA	1,00,000	17-5-2011	Rs.5,25,000/-

4. However, after waiting for a long period of 10 years, the petitioners were shocked when they were paid only Rs.2,62,500 for each one lac amount

of the certificates by withholding Rs.3,71,000/- on each one lac rupees. Consequently, the petitioners immediately served a legal notice upon respondent No.2/Post Master, General Post Office, Mian Channu, District Khanewal for payment of the outstanding amount but of no avail, thus they filed the present writ petition with the above said prayer.

5. In the report and parawise comments submitted by respondent No.2 the stand of the petitioners has been admitted to the extent that they were issued 10 Defence Saving Certificates with 10 years maturity period. The Certificates were presented after the date of maturity and they were informed that they will be paid the rate of profit applicable on the said date of 19.04.2001; i.e. the date of issuance of the certificates, which has been disbursed and received by the petitioners without recording any protest, therefore they cannot demand the profits mentioned at the back of the Certificates. It is also stated by the respondent's side that as per the rule 547 of the Defence Saving Certificates Rules, 1966 the payable profit has already been disbursed to the petitioners, therefore, the writ petition be dismissed. Reliance was placed upon Regulation 547 ibid.

6. Arguments heard. File perused.

7. After hearing the learned counsel for the parties, it is straightaway observed that the Defence Saving Certificates were purchased by the petitioners and the date of maturity with reference to the payable amount of profit was also mentioned at the back of the leaf indicating in clear cut terms that after 10 years the amount of Rs.5,25,000/- was payable on each Rs.100000/- which fact is not denied by the respondents. The only argument advanced by the learned Law Officer that the petitioners have duly bound themselves to any change of the rules by the respondents and, therefore, they are not entitled to such payments, is a fallacious argument as the petitioners were made to believe about the rate of profit at the time of maturity of the certificates which they cannot unilaterally change to the disadvantage of the petitioners. Secondly, prior to such change a notice was required to be served

upon the petitioners to ascertain the consent so that they could encash them instead of sustaining financial loss. Thirdly, any change in the policy if made by the respondents, has to be applied prospectively on the Certificates purchased subsequent to such policy unless it is otherwise provided therein. Fourthly, no such changed policy was shown to the Court warranting the withholding of the agreed amount of profit to the petitioner.

8. Rule 547 prescribes the payment only if it is registered at the office at which it is presented after the date of maturity with the name of the purchaser corresponding with the name entered in the certificate, endorsed through the signature of the holder. Rule 547 (Discharge of certificates) taken from Volume VI of the Post Office Manual is reproduced as under:-

> **"547. <u>Discharge of certificates</u>**.---(1) When the holder of a certificate presents it for discharge at the post office where it is for the time being registered, payment will be made after the certificate is examined and it is found---
>
> (a) that it is registered at the office at which it is presented,
>
> (b) that the name of the holder appearing in the application for purchase, transfer or change of name of the holder, as the case may be, corresponds with the name entered on the certificate,
>
> (c) that the certificate bears on the reverse the endorsement "Received payment of Rs Ps. ..(Rupees in words and figures) over the signature of the holder,
>
> (d) that this signature below the endorsement agrees with that obtained at the time of purchase or transfer of the certificate or change of name of the holder, as the case may be, and
>
> (e) that it has been presented after the period of non-encashability."

9. Undoubtedly, a party, in whose favour statutory presumption is raised, need not prove the fact on which it is based and the onus to rebut statutory presumption lies on the party alleging a state of facts contrary to such

presumption. The argument of the respondents is, therefore, not appreciable.

10. Under rule 2 of Defence Savings Certificates Rules, 1966 a person who buys a certificate shall be bound by these rules. Under Chapter XI-PROFIT PAYABLE ON CERTIFICATES, thereof the exact amount is payable, which shall include profit and bonus on each denomination of certificate on completion of specific period from the date of issue of certificate. It is also prescribed that no profit on certificate will be encashed within first years and no profit will be payable on the encashment in excess of 10 years. The amount payable will be shown in the table year wise. Rule 44 is reproduced as under:--

> "44. The exact amounts (including profit and bonus) payable on each denomination of certificates on completion of specified periods from the date of issue of the certificates, are shown in the following table:--
>
> Note 1.---No profit is payable on any denomination of Defence Savings Certificates if encashed within the first year of issue.
>
> Note 2.---No profit or bonus is payable on any denomination of certificates for any period in excess of ten years. Amount (including profit and bonus, if any) payable on completion of each period specified in column 1.

Amount payable on completion of--	Rs.5 denomi-nation	Rs.10 denomi-nation	Rs.50 denomi-nation	Rs.100 denomi-nation	Rs.500 denomi-nation	Rs.1,000 denomi-nation	Rs.5,000 denomi-nation
	Rs. Ps.	Rs.Ps.	Rs. Ps.	Rs. Ps	Rs. Ps	Rs. Ps.	Rs/Ps
1. year	5.15	10.30	51.50	103.00	515.00	1,030.00	5,150.00
2. years	5.35	10.70	53.50	107.0	535.0	1,070.	5,350.

				0	0	00	00
3. years	5.60	11.20	56.00	112.0 0	560.0 0	1,120. 00	5,600. 00
4. years	6.00	12.00	60.00	120.0 0	600.0 0	1,200. 00	6,000. 00
5. years Amount (includin g profit and bonus pay- able on completi on of-	6.50	13.00	65.00	130.0 0	650.0 0	1,300. 00	6,500. 00
6. years	6.88	13.75	68.75	137.5 0	687.5 0	1,375. 00	6,875. 00
7. years	7.25	14.50	72.50	145,0 0	725.0 0	1,450. 00	7,250. 00
8. years	7.80	15.60	78.00	156.0 0	780.0 0	1,560. 00	7,800. 00
9. years	8.38	16.75	83.75	167.0 0	837.5 0	1,675. 00	8,375. 00
10. years	9.00	18.00	90.00	180.0 0	900.0 0	1,800. 00	9,000. 00

However, this table was changed into the one shown on the back of the leaf of the certificates. Besides, no where in The Government Savings Banks Act, 1873 or in The Post Office National Savings Certificates Ordinance, 1944, such provisions find their mention which could permit the respondents to unilaterally change the level of profit of the purchaser of the Defence Saving Certificate.

11. The respondents are bound under Article 4 of the Constitution to act in accordance with law and the law in the present case requires them to make the payment on the profit mentioned on the certificates at the time of their maturity. The unilateral reduction in the agreed rate of profit is unconscionable, discriminatory and against public policy, therefore, is unenforceable.

12. For what has been discussed above, this writ petition is allowed and the respondents are directed to make the payments to the petitioners on the Defence Saving Certificates as mentioned at Rs.5,25,000/- for each one lac rupees after 10 years.

MH/M-13/L **Petition allowed.**

2018 P L C (C.S.) Note 8

[Lahore High Court]

Before Ali Baqar Najafi, J

MUHAMMAD SHABANI

Versus

SUI NORTHERN GAS PIPELINES LIMIED through Chief Executive Officer/Managing Director and 3 others

W.P. No.25761 of 2016, decided on 16th May, 2017.

Civil service---

----Contract employees---Non-statutory rules---Effect---Employees of a non-statutory body claimed regularization of their services alleging discrimination against the employees---Articles 25 of the Constitution would be available to the employees at any forum where petitioners wanted to agitate their right preferably under Labour laws---Constitutional petition was not maintainable. [paras. 4, & 5 of the judgment]

Ms. Samra Malik for Petitioner.

Saleem Baig and Khurram Saleem Baig for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has sought a direction to respondents to regularize his services.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner is working as a Meter Reader, Customer Service Center in SNGPL Taunsa since 18.04.2005 on contract basis for two years and as a Casual Daily Wages Employee for the last 8 years. On 18.07.2012, the government decided to regularize the post of the petitioner whereafter the petitioner appeared in interview but due to the political influence, he was ignored. According to the petitioner, other Casual Daily Wages Employees have discriminated against,

therefore, he prays for regularization as he served 11 years in the department.

2. In the report and parawise comments submitted by respondents, maintainability of this petition was seriously questioned. Learned counsel for the respondents have referred to various judgments including the judgment passed by the Islamabad High Court in I.C.A. No. 228 of 2014 titled "Nasir Maqsood Qazi v. Federation of Pakistan and others" duly upheld by the Hon'ble Supreme Court in Civil Petition No.24 of 2015 wherein it was found that respondent/company is not statutory body against which writ petition does not lie. Refers to the other orders dated 21.09.2015 passed in W.P. No. 19150 of 2015 titled "Muhammad Riaz v. Federation of Pakistan etc.", and order dated 04.05.2016 passed in W.P. No. 23895 of 2015 titled "Muhammad Qamar v. OGRA and others", to argue that view of this Court is also that the writ petition is not competent against SNGPL.

3. Arguments heard. Filed perused..

4. After hearing the learned counsel for the parties and perusing the available record, it is straightway noted that petitioner's claim for regularization on the basis of discrimination against respondent/company which is non-statutory in nature cannot be acceded to in view of the consistent view held by this Court about the non-maintainability of the constitutional petition. Article 25 of the Constitution will be available to the petitioner, if so attracted, at any forum where the petitioner wants to agitate his right preferably under the Labour Laws. The judgments cited at bar by the learned counsel for the petitioner do not relate to the non-statutory body like Sui Northern Gas Pipe Lines.

5. In this view of the matter, this writ petition has been found not maintainable and is, therefore, dismissed.

ZC/M-101/L **Petition dismissed**.

2018 P L C (C.S.) Note 62

[Lahore High Court (Multan Bench)]

Before Ali Baqar Najafi and Abdul Sattar, JJ

MUHAMMAD ISMAIL

Versus

GENERAL MANAGER (OPERATIONS), PAKISTAN RAILWAYS, RAILWAY HEADQUARTERS, LAHORE and 4 others

I.C.A. No.114 of 2006 in W.P. No. 1311 of 2016, decided on 7th September, 2017.

Civil service---

----Contract appointment under Prime Minister Family Assistance Package---Regularization of service---Discrimination---Effect---Department did not regularize the employee and terminated his service---Constitutional petition of the employee was dismissed in limine by Single Judge of High Court on the ground that contract employment could be terminated at any stage---Validity---Petitioner had been discriminated as many other contract employees who were earlier appointed under Prime Minister Family Assistance Package had been regularized by the department---Equal treatment was a Fundamental Right of citizens---Impugned order passed by the Single Judge was not sustainable in the eye of law which was set aside---Intra court appeal was allowed in circumstances [paras 6 & 7 of the judgment]

Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs v. Muhammad Azam Chattha 2013 SCMR 120 distinguished.

Muhammad Yafis Naveed Hashmi for Appellant.

ORDER

No one has appeared on behalf of respondents inspite of several calls despite the fact that learned counsel representing the respondents department has appeared before this Court in some other case earlier. Respondents are therefore, proceeded against ex parte.

2. Through this Intra Court Appeal under section 3 of Law Reforms Ordinance, 1972 has been called into question impugned order dated 28.01.2016 passed by the learned Single Judge in Chambers of this court, whereby Writ Petition No.1311/2016 filed by the appellant has been dismissed in limine.

3. Relevant facts for the disposal of instant appeal are that appellant Muhammad Ismail after the death of his father a lower rank Railways employee was appointed as Gateman by the Pakistan Railways on contract basis under Prime Minister Family Package Scheme on 27.08.2008 and for regularization of his service under the above scheme, which was utilized by so many other employees, the appellant moved respondents' authorities but remained unsuccessful and he was callously terminated from the contract employment. In order to get justice appellant filed Writ Petition No.2876/2011, Crl. Org. No.14427 of 2015 but respondents' authorities did not treat him fairly and exhibited discrimination in his case, so appellant made the following ultimate prayer:

> In view of above submission, it is humbly prayed that by accepting this writ petition that the act/order of respondents to terminate the service of petitioner purportedly allegedly on 26.08.2010 as well as the order dated 19.11.2015 passed by respondent No.1 may kindly be declared without lawful authority and of no legal effect and the petitioner's services be reinstated with all back benefits and be also regularized.
>
> Any other relief which this Honourable court deems fit and proper may

kindly be granted to the petitioner.

After hearing arguments of learned counsel for the parties learned Single Judge in Chambers through the impugned order dismissed the writ petition of the appellant in limine by mainly observing that services of contract employees can be terminated at any stage with no remedy of reinstatement in view of dictum of law propounded in case reported as "Federation of Pakistan through Secretary Law, Justice and Parliamentary Affairs v. Muhammad Azam Chattha" (2013 SCMR 120), hence, this appeal.

4. Arguing the appeal learned counsel for the appellant submits that the impugned order passed by learned Single Judge in Chambers cannot be termed as apt response to the issue placed before the said Hon'ble Court as not covering all the aspects of the controversy because case of the appellant was quite different and distinguishable from case of the contract employees, whose rights and remedies are considerably weak and unprotected. Further argued that appointment of the appellant as Gateman on contract basis was in the backdrop of hardship circumstances faced by the appellant as his father, who was also Pakistan Railways employee had died in those days and Prime Minister Family Package Scheme was meant for the people in distress. Further argued that dozens of Pakistan Railways low paid employees recruited on contract basis were regularized by Pakistan Railways either at their will and caprice or under the orders passed by the High Court in several writ petitions and the Pakistan Railways filed several Civil Petitions Nos.626-L to 643-L, 650-L, 2897-L to 2912-L of 2015, 758-L, 1116-L and 1118 to 1122-L of 2016 before the august Supreme Court of Pakistan but lost vide order dated 08.06.2016 passed by the august Supreme Court of Pakistan and photo copy of said order has been placed before us for our perusal. Lastly submits that since the petitioner has been singled out by the respondents' department for imparting discriminatory treatment for some ulterior motive and mala fide

therefore, appeal be accepted.

5. Heard. Record perused.

6. As noted above, the respondents Railways authorities vide order dated 18.4.2017 were required to file their reply to the instant appeal within a fortnight but no such reply has been filed nor any of their representative or counsel have appeared today to answer the submissions from the appellant's side. As noted earlier, the writ petition filed by the appellant was dismissed in limine by the learned Single Judge in Chambers on a mere score that since the appointment of the appellant as Gateman was contractual in nature for a specific time, therefore, the appellant was not entitled to any relief except the one prescribed through several judgments of the superior courts to claim damages. On perusal of copies of record of temporary service of the appellant under the respondents Railways Department annexed with the writ petition file as well as the record of respondents Pakistan Railways inconsistent working or treatment towards other employees of appellant's category depicts a different story and hints towards discriminatory treatment to some and favour to others. There is annexed record of meeting of Cabinet Committee regarding regularization of contract of Class-IV employees pertaining to year 2012 (Annexure H) at pages Nos.29 to 31. Then there is notice of appointment under the directive of Ministry of Railways received through Chief Personnel Officer, Pakistan Railways Headquarters Office, Lahore vide letter No.803-E/7/4-X/1(APO-IV) dated 18.3.2013 regularizing as many as 12-employees on contract basis at page No.32 of the writ petition, who were earlier appointed under Prime Minister Family Assistance Package. Similarly there is another notice of such kind issued by the Chief Personnel Officer, Pakistan Railways Headquarters Office, Lahore under the directive of Ministry of Railways dated 5.3.2012 (Anneuxre M) at page No.49 of the writ petition regularizing the contract services of 35 low paid employees. Besides this, the respondents

Pakistan Railways had been taking inconsistent stance regarding the grievance of the appellant in the previous round of litigation that the services of the appellant were terminated on 26.8.2010 and that at the relevant time, the policy of regularization of contract service was not available for the benefit of appellant, the appellant has placed on record copies of his salary slips at Pages Nos.53 to 56 to indicate that he had been receiving salary from the Pakistan Railways till the month of January 2011. , There is also a copy of letter No.220-E/1/Apptt/P-2 dated 9.4.2012 issued from the office of Divisional Superintendent, Pakistan Railways, Multan available at page No.65 of the writ petition which reveals that Ministry of Railways had issued a directive on 5.3.2010 that the staff appointed on contract basis for a period of two years under Prime Minister Assistance Package whose services were terminated/discontinued on completion of two years contract period since December 2010 may be regularized.

6. In view of above detailed background clearly exhibiting inconsistent and discriminatory working of the respondents Pakistan Railways authorities, we feel compelled to remove the stain of discrimination nakedly employed upon the appellant by realizing duty of the Constitutional court. In this regard, it hardly requires to be emphasized that one of the fundamental right enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 under Article 25 is equality of the citizens, primacy of law and equal protection to every citizen and jealous watch on discrimination. In a situation as involved in this case, which manifestly distinguished the instant case of the appellant from the case discussed in the Hon'ble apex Court ruling relied by the learned Single Judge in Chambers noted above, the appellant could not have been meted out a treatment prohibited by Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. In this view of the background, the impugned order passed by the learned Single Judge in Chambers not found to be sustainable in the eyes of law is consequently set aside while allowing the instant appeal as a

result of which, the writ petition filed by the appellant shall be considered to be accepted as prayed for.

ZC/M-9/L **Appeal allowed.**

2018 P L C (C.S.) Note 76

[Lahore High Court]

Before Ali Baqar Najafi, J

MUHAMMAD AWAIS

Versus

D.C.O. and others

W.P. No.22054 of 2016, decided on 8th May, 2017.

Recruitment Policy (Punjab) 2013---

----Para. 13(c)---Advertisement for appointment of Ward Servant (PBS-1)---Seniority in age, principle of---Applicability---Petitioner was better qualified against the respondent---Petitioner-candidate who was a disabled person, was awarded lowest marks in interview---Grand total marks awarded to the petitioner were equal to the candidate who was appointed---Petitioner was younger than the respondent---Candidate who was senior in age was to be given preference in case of tie between the two or more candidates---Determination of merit had to be based on the principle of seniority in age where candidates had secured equal marks---Age was prime consideration in case of tie between candidate of equal merit notwithstanding the higher educational qualification---Constitutional petition was dismissed in circumstances. [paras.6, 6-A, 7 & 8 of the judgment]

Shweta Sadyal v. State of H.P. and others 2015(2) HIM. L.R. 1214 rel.

Altaf Hussain Qureshi Hashmi for Petitioner.

Muhammad Ejaz, A.A.G. with Muhammad Ammar Yasir, Health Educator on behalf of Respondents Nos.1 and 2.

ORDER

ALI BAQAR NAJAFI, J.--- Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner had made prayer for issuance of direction to respondents to appoint him as Ward Servant (BS-1) at District Sargodha being eligible for the said

post under the disabled quota.

2. Brief facts giving rise to the filing of this writ petition are that petitioner applied for the post of Ward Servant (BS-1) against disabled quota in different departments including the one available at DHQ Hospital, Health Department, Sargodha on the basic qualification of middle pass. After participating in the recruitment process, the petitioner claimed to have stood first in the merit list of the disabled persons but unfortunately he was ignored. His representation for the redressal of his grievance was also rejected on 07.12.2015. He had also filed an application before the Ombudsman, Punjab which was decided on 19.08.2015 directing the respondents to pass the order in the matter within 15 days but they did not, hence this writ petition.

3. In the report and parawise comments submitted by respondents Nos.1 and 2, it was stated that according to the preliminary merit list, the petitioner stood at No.1 but after the interview conducted on 21.04.2015 his name was placed at Sr. No. 6 of the final merit list. It was their stand that the petitioner did not appear in the interview held on 17.08.2015. In the report and parawise comments submitted by respondent No.4, it was stated that the order passed by the Ombudsman, Punjab has been implemented when the impugned order was passed.

4. A stand was taken before this Court by the learned law officer assisted by Muhammad Ammar Yasir, Health Educator that petitioner was placed at Sr. No. 6 with the following particulars.

Sr. No.	**Name with Father name**	**Address**	**Domicile**	**Date of Birth**	**Hafiz-A-Quran**	**Qualification Edu**
6	Muhammad Awais s/o Nazeer	House No.4/S/85, Block	Sargodha	20.09.1990		B.A.

	Ahmad	No.3, Sargodha 0332-7532309				
Marks	**Disability Certificate**		**Total Marks**	**Interview Marks**	**G. Total**	**Remarks**
50	Attached		50	15	65	Note selected

The final merit list reveals that 8 persons were awarded 65 marks each in total and only Umer Hayat was appointed. The case of the respondents side is that since Umer Hayat was born on 01.08.1994 whereas petitioner was born on 20.09.1990, therefore, he was appointed being senior in age. The stand taken by the petitioner side is that petitioner is B.A. and was the most educated competitor in the list, who was granted only 15 marks in interview which is minimum marks awarded to any candidate just to facilitate said respondent/Umer Hayat.

5. Arguments heard, available record perused.

6. Keeping in view the stand taken by the respective parties it is clear that:-

a. Education wise, the petitioner is highly qualified.

b Petitioner is disabled under recognized disability certificate.

c. He was awarded the lowest marks in the interview.

d. The grand total marks awarded to the petitioner were equal to the candidate who was appointed.

e. Petitioner is younger than Umer Hayat.

6. It would be relevant to refer, firstly, Recruitment Policy, 2013

prescribed for the induction of educators, under which in case of tie between two or more candidates the senior in age is to be given preference. Para 13(c) of the Recruitment Policy, 2013 is reproduced as under:-

> **13. MERIT LIST.**
>
> (a)
>
> (b)
>
> (c) The merit list will be arranged in descending order of the highest marks and in case two or more candidates have the same marks, then the senior in age will be given preference".

Secondly, under the Centralized Joint PG Induction System issued by Government of Punjab Special Health Care and Medical Education Department, determination of merit has to be based on the principle of seniority in age where candidates have secured equal marks. Relevant para is reproduced as under:-

> **DETERMINATION OF MERT:**
>
> The Merits shall be determined as per following formula:
>
> JCAT for MS, MD & MDS/FCPS Part-I Examination Marks=35 Academic and Experience Marks=50
>
> Entrance Test/ Part-1 Examination of MS/MD/FCPS-1 Marks:
>
> ..
>
> ..
>
> ..
>
> The candidates who secure equal marks but fall on merit, the preference shall be given to the candidate whose age is more than other candidates.

Thirdly, under para 20 of Punjab Public Service Commission General Instructions for total criteria for final merit wherever the interview and

screening test are equal the one who is older in age will be senior on merit, which is reproduced as under:-

20. CRITERIA FOR FINAL MERIT

Final merit list after the interviews for BS-16 and 17 posts would be prepared on the basis of interviews only in non-test cases and on the basis of aggregate marks of screening (MCQ) test and interview in test cases whereas for BS-18 and above posts, final merit list shall be based on aggregate of marks obtained in written (descriptive) test and the interview. The following criteria shall be followed for drawing final merit list:

(a) When aggregate marks of screening (MCQ) test/ written (descriptive) test and interview in respect of more than one candidate are equal, the one who gets higher marks in interview be treated as senior in merit.

(b) When marks of interview and screening (MCQ) test/ written (descriptive) test are also equal, one who is older in age be treated as senior in merit.

(c) When marks in interview and screening (MCQ) test/ written (descriptive) test are equal as well as date of birth is the same then the one who possesses higher academic qualifications such as M.Phil or Ph.D. in the prescribed field where minimum required qualification is Master's Degree, may be treated as senior in merit.

(d) In case of equivalence at (a), (b) and (c) above, the one who has acquired higher Grade/Division/higher percentage of marks in the minimum prescribed qualification may be treated as senior in merit.

(e) In case of equivalence at (a), (b), (c) & (d) above, the one who has acquired the minimum prescribed qualification earlier than the other candidate, may be treated as senior.

Fourthly, the most relevant case law under the Indian jurisdiction is the case titled "Shweta Sadyal v. State of H.P. and others. reported 2015(2) HIM. L.R. 1214, wherein it was held by the Himachal Pardesh High Court that candidate scoring high in interview will be given preference in case of tie. Relevant

extracts of para 9 is reproduced as under:-

> "9. Now what would be the relevance of these rules has been dealt with in detail by a learned Division Bench of this Court in Manish Kumar v. Himachal Pradesh Public Service Commission (supra), wherein the aforesaid provision was considered along with a circular issued by the State Government, which provided that the final order of merit of the candidates in the event of tie of marks would be determined on the basis of the fact that the candidate higher in age will be ranked senior."

7. Keeping in view the above discussion, I am of the considered view that age is the prime consideration in case of tie between candidate of equal merit, notwithstanding the higher educational qualification. The reason behind this may be the respect of human being for his experience and observation increasing his wisdom in life and the academic achievements cannot be its substitute. The other reason which can be adopted is that more opportunities are waiting for a person having the higher educational background as compared to the person senior in age who has exhausted his energies and may have the last opportunity for his employment.

8. In this view of the matter, this writ petition has been found meritless and is, therefore, dismissed.

ZC/M-80/L **Petition dismissed**.

2018 P L C 305

[Lahore High Court]

Before Ali Baqar Najafi, J

Sh. SHAHBAZ AKHTAR

Versus

FACTORY MANAGER and others

W.P. No.25073 of 2014, decided on 13th March, 2018.

Industrial Relations Ordinance (XCI of 2002)---

----S. 46(5)---Dismissal from service---Reinstatement---Possibility of strained relationship between employer and employee in case of reinstatement---Effect---Compensation in lieu of reinstatement---Scope ---Petitioner/employee contended that Labour Court had rightly reinstated him as the other employee whose overstay was alleged upon him, had already reinstated by the competent courts---Employer contended that in the wake of probable hostile atmosphere in future between the parties, Appellate Tribunal had rightly modified relief into maximum compensation in lieu of reinstatement---Validity---Possibility of enacting a law and order situation following reinstatement could be an easy excuse justifying compensation in lieu of reinstatement, however, such possible strained relationship would provide a new cause of action to proceed against such employee---Even otherwise, the record must reflect that the employee had been leveling ridiculous, outrageous, arrogant allegations against the employer adding to confrontment, haughtiness against the management, therefore, the reinstatement would amount to kicking them from behind and humiliation, disgrace and embarrassment, eventually enhancing the degree of disharmony and conflict against the object of law---Only allegation against the petitioner, in the present case, was that he had allowed the other employee's overstay while the petitioner contended that he was permitted/directed by the Shift incharge to do so---Said important witness i.e. Shift incharge was neither produced by the employee nor by the employer---Concurrent findings were that termination of the petitioner was unlawful---Petitioner was not alleged to

have either misbehaved or threatened the management or tried to disturb the working environment of the factory---Employee had been granted certain rights under the labour laws which needed to be protected and if such employee was dragged into litigation by employer, employee could not be said to have contributed in the strained relationship between the employee and the employer---High Court set aside the impugned judgment to the extent of payment of compensation which was converted into reinstatement in lieu thereof---Constitutional petition was allowed accordingly.

Ghulam Rasool Tahir v. IVth Sindh Labour Court, Karachi through Presiding Officer and another 2007 PLC 83; Khayal Muhammad v. Messrs Lucky Textile Mills through Managing Director/Occupier 2007 PLC 423; Khalid Mehmood v. State Life Insurance Corporation of Pakistan and others 2018 SCMR 376 and Inspector General of Police, Punjab v. Tariq Mahmood 2015 SCMR 77 ref.

Kh. Omer Masood for Petitioner.

Rafey Altaf for Respondent.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner has challenged the judgment dated 30.06.2014 passed by respondent No.2/Punjab Labour Appellate Tribunal, Lahore whereby the appeal filed by the respondent No.1 was partly allowed and the order passed by the Punjab Labour Court No.II, Lahore dated 04.06.2012 reinstating the petitioner was modified to the extent that for wrongful dismissal from service, the petitioner was awarded maximum compensation under section 46(5) of the Industrial Relations Ordinance, 2002 equivalent to 30 months' basic pay (last drawn) and house rent to be paid within one month, if admissible, in lieu of his reinstatement in service.

2. Brief facts giving rise to the filing of this constitutional petition are that the petitioner had joined the respondent No.1's factory on 23.06.1999 as a contractual employee, confirmed on 29.08.2000 and continued to work there to the entire satisfaction of his employer without giving any opportunity of complaint in respect of his conduct or performance of duties. However, on

23.04.2004 he was issued a show cause notice on the allegation that he extended an unauthorized stay to an employee, namely, Abdul Rauf in the factory beyond duty hours and had shown his presence as on overtimer. He replied while denying the said allegation whereafter an inquiry was conducted by one Nasir Bukhari in which he was found guilty and, therefore, was dismissed from service on 08.06.2004. He issued a grievance notice on 05.07.2004 and filed grievance petition on 17.08.2004 before the Labour Court No.2, Lahore which was replied by the respondent No.1. On 04.06.2012 the grievance petition was accepted on the basis of evidence produced by the parties and the wrongful dismissal from service of the petitioner was set-aside and the petitioner was reinstated in service with all back benefits. The respondent No.1 preferred an appeal before respondent No.2 which was partly allowed and the petitioner was granted maximum compensation, under section 45(6) of Industrial Relations Ordinance, 2002 instead of reinstatement, hence this petition.

3. Learned counsel for the petitioner submits that the learned Punjab Labour Appellate Tribunal/respondent No.2 has accepted all the contentions of the petitioner, therefore, it should have upheld the judgment of the Labour Court/respondent No.3. Adds that said Abdul Rauf was reinstated in service by the Supreme Court vide order dated 07.03.2013, therefore, prays for setting-aside the impugned order.

4. Conversely, learned counsel for the respondent submits that it is the discretion of the Punjab Labour Appellate Tribunal/respondent No.2 either to reinstate the petitioner in service as an employee after when his dismissal was found wrong or to grant compensation in order to ensure a smooth factory environment. Adds that in such facts and circumstances, the reinstatement in service is not the natural consequence.

5. Arguments heard. Record perused.

6. After hearing the learned counsel for the parties and perusing the file, it is straightaway observed that both courts below have consistently held that the petitioner was wrongly dismissed by respondent No.1. It is also not denied by the respondent No.1 that the allegation of giving unauthorized stay to

another employee namely, Abdul Rauf was also taken up by the Supreme Court of Pakistan in the Civil Appeals Nos.1471-L/2012 and 1503-L/2012 filed by him in which the order of the Labour Court for his reinstatement was upheld by withholding promotion for one year and 50% back benefits. It is not the allegation against the petitioner that he and Abdul Rauf indulged into any activity which was prejudicial to the peace and harmony within the industry concern. Extracts from para 2 of the order are reproduced as under:-

> "After hearing the learned counsel for the parties and going through the record with their assistance we have observed that the allegation levelled against Abdul Rauf petitioner regarding his overstay in Packages Ltd. For a few hours after performance of his duties was not accompanied by any further allegation that during those few hours of overstay he had indulged in any activity which was prejudicial to the interests of the industrial concern or its business. We have been informed that Abdul Rauf petitioner has served Packages Ltd. For a period stretching over many years and so far no formal proceedings against him have been initiated for any other misconduct."

7. In the present case the scope of section 46(5) of IRO, 2002 is to be seen in the light of the judgments by Superior Court of our jurisdiction. Section 46(5) of IRO, 2002 therefore is reproduced for ready reference as under:-

> "(5) The Labour Court, in case the termination of services of a workman is held to be wrongful, may award compensation equivalent to not less than twelve months and not more than thirty months basic pay last drawn and house rent, if admissible, in lieu of reinstatement of the worker in service."

The learned Labour Appellate Tribunal vide impugned judgment has held that a reinstatement should not be thrusted when the employee was litigating for three years or when such reinstatement would had to a law and order situation promoting a hostile atmosphere with the real prospect of conflict with the employer.

8. In "Balochistan Engineering Works Ltd. v. Abdul Hameed and others" reported as (2007 SCMR 1160), it was held that where an alternate prayer to

the re-instatement, compensation is sought, then with consent compensation can be awarded without back benefits. In "Messrs Ashraf Sugar Mills Ltd. through General Manager v. Manzoor Ahmed" reported as (2006 SCMR 1751), it was held that where reinstatement is not considered proper, compensation can be awarded. It was discussed therein that in case titled "Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others" reported as (PLD 1987 SC 447), the words "just" and "proper" under section 25(5) would mean right, fair or suitable and according to law and that the word "proper" means accurate i.e. adequate application of substantive provision of the Statute. Para 4 is reproduced as under:-

> "However, subsection (6) of the Ordinance, further enables a Labour Court to award compensation, "in lieu of reinstatement" of the worker in service where his termination is held to be wrongful. This is an alternate power which can be invoked in a particular case where the reinstatement of a worker is not considered to be proper. The mere fact that a Labour Court is also vested with power to award compensation does not take away its authority of reinstatement of a worker. The only restriction placed on the Labour Court is that it cannot award compensation in addition to the reinstatement of a worker."

The possibility of enacting a law and order situation following reinstatement may be an easy excuse justifying compensation in lieu of reinstatement. However, such possible strained relationship may provide a new cause of action to proceed against such an employee. Even otherwise, the record must reflect that the employee has been levelling ridiculous, outrageous, arrogant allegations against the employer adding to confrontment, haughtiness against the management, therefore, the reinstatement would amount to kicking them from behind and humiliation, disgrace and embarrassment, eventually enhancing the degree of disharmony and conflict against the object of law, as held in case titled "Ghulam Rasool Tahir v. IVth Sindh Labour Court, Karachi through Presiding Officer and another" reported as (2007 PLC 83). Such situation was discussed in case titled "Khayal Muhammad v. Messrs Lucky Textile Mills through Managing Director/Occupier" reported as (2007 PLC 423) and it was held that reinstatement would be undesireable. Para 7 is

reproduced as under:-

> "7. The bare perusal of the contents of letter of termination reveals that it contained the allegation that performance of the appellant was not up to the mark for considerable period of time. It was further alleged that appellant has failed to discharge his duty properly. Contents of termination letter sufficiently show that the appellant was terminated on account of unsatisfactory service and his inability to discharge his duty properly. Besides the respondents have produced in evidence an application bearing the signatures of the applicant addressed to the Admin. Manager containing allegation of quarrel between the workers to which the reference has also been made in the cross-examination of the appellant worker. This reveals displeasure of respondent management."

9. However, in the present case the allegation against the petitioner is only that he allowed Abdul Rauf overtime stay. His case is that he was permitted/directed by Mian Hanif, the shift incharge to do so. This important witness was neither produced by the petitioner nor by the respondent. Keeping in view all the circumstances, the concurrent findings were given to the extent that termination was found unlawful. There is no iota of allegation that either the petitioner misbehaved or threatened the management or tried to disturb the working environment of the factory. To the understanding of this court, under the scheme of Labour Laws, the employee has been granted certain rights which need to be protected and if such employee is dragged into litigation, he cannot be said to have contributed in the strained relationship between the employer and the employee.

10. For what has been discussed above, this writ petition is allowed and the impugned judgment is set-aside to the extent of the payment of compensation which is converted into reinstatement in lieu thereof as required in case titled "Khalid Mehmood v. State Life Insurance Corporation of Pakistan and others" (2018 SCMR 376) and case titled "Inspector General of Police, Punjab v. Tariq Mahmood" reported as (2015 SCMR 77) with back benefits, with no order as to cost.

MQ/S-21/L **Petition allowed.**

2018 P L C (C.S.) 433

[Lahore High Court]

Before Ali Baqar Najafi, J

ATTA-UL-HAQ

Versus

The NATIONAL BANK OF PAKISTAN through President and another

W.Ps. Nos.6251 and 6207 of 2016, decided on 31st May, 2017.

Constitution of Pakistan---

----Art. 199---Civil Procedure Code (V of 1908), S. 11---Constitutional petition---Maintainability---Res judicata, principle of---Applicability---Bank employee---Seeking regularization of service---Scope---Employees approached Service Tribunal but their service appeal was abated where after they approached Labour Court and matter was disposed of for being outside its jurisdiction---Appeal of employees was disposed of by the Supreme Court permitting them to approach Labour Court but they instead of filing petition before the said Court preferred constitutional petition directly before the High Court for the requisite relief---Validity---Employees had not moved the Labour Court ever since the order passed by the Supreme Court---Present constitutional petition had been preferred on the ground of discrimination which could be agitated before the Labour Court where employees might file grievance petition---Principle of res judicata was attracted in the present constitutional petition---Constitutional petition was dismissed being not maintainable.

State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan 2012 SCMR 280 and Muhammad Saleem Ullah and others v. Additional District Judge, Gujranwala and others PLD 2005 SC 511 ref.

Ms. Tabindah Islam for Petitioner.

Umer Abdullah for Respondents.

ORDER

ALI BAQAR NAJAFI, J.--- This order shall dispose of the instant writ petition as well as Writ Petition No. 6207 of 2015 titled "Imran Khan v. National Bank of Pakistan etc.", as common questions of law and facts are involved in both these petitions.

2. Both petitioners have sought a direction to the respondents/bank to grant them the benefit of the judgment passed by the Hon'ble Supreme Court of Pakistan in case reported as Ikram Bari and 524 others v. National Bank of Pakistan through President and another (2005 SCMR 100).

3. Brief facts giving rise to the filing of these writ petitions are that both petitioners namely, Atta-ul-Haq and Muhammad Imran, were appointed as godown Chowkidar/godown keeper on 18.12.1991 and 03.12.2001 respectively, but by showing the artificial breaks, their services were discontinued with mala fide intention and just to avoid their regularization in service. The petitioners approached the Federal Services Tribunal for the said purpose through a service appeal which had abated in view of Mubeen-ul-Islam's case (PLD 2006 SC 602) whereafter petitioners approached the Labour Court and the matter was disposed of for being outside its jurisdiction, against which the petitioners again filed appeal before the Federal Services Tribunal and when they remained un-successful, approached the Supreme Court where their appeal was disposed of on 25.08.2011 permitting them to approach the Labour Court but instead of filing the petition before the Labour Court, they preferred to directly approach this Court for the requisite relief.

4. In the report and parawise comments submitted by respondents, it is specifically alleged in paragraphs Nos.7 and 8, that Writ Petition No. 2973 of 2013 filed by the petitioners was allowed on 14.05.2014 but the said order was set aside by the Divisional Bench of this Court on 14.09.2015 which order was assailed before the Supreme Court where it was dismissed and as such the principle of resjudicata is attracted against the petitioners debarring him to file the instant writ petition. However, learned counsel for the petitioners, in

rebuttal, submits that petitioners have been discriminated against when similarly placed persons namely, Arshad Bhullar and Naveed Akhtar, have been regularized.

5. Arguments heard. Files perused.

6. Admittedly, the petitioners were appointed as members of godown staff on temporary basis and their services were extended from time to time. On 02.11.2011, petitioner/Atta-ul-Haq, filed Writ Petition No.22431 of 2011 in which a direction was issued to respondents to decide the grievance petition within one month keeping in view Ikram Bari's case reported as (2005 SCMR 100). On 30.11.2012, another Writ Petition No.9839 of 2012 filed by the petitioner/Atta-ul-Haq, was disposed of keeping in view the agreement by respondents to consider the petitioner's case with reference to the case supra whereafter the case was remitted to respondent No.1 to decide it within six weeks. He filed another Writ Petition No.2973 of 2013 which was disposed of on 14.05.2014 while observing that petitioner/Atta-ul-Haq, was appointed on 18.12.1991 and worked till 2003 without any break of more than 15 days between two consecutive appointments and as such he has completed more than 3 years of his service, therefore, the said writ petition was allowed in the light of judgment titled Ikram Bari and 524 others v. National Bank of Pakistan through President and another (2005 SCMR 100). However, an Intra Court Appeal No.542 of 2014 filed by the respondent-bank was allowed by a Divisional Bench of this Court and the writ petition was dismissed on the point of non-maintainability while specifically observing that when the writ petition was filed, the petitioner was not in service. This order was upheld by the Hon'ble Supreme Court of Pakistan in Civil Petitions Nos.3420 to 3430 of 2015 in which both petitioners were party as petitioners Nos.11 and 10 respectively. The said order is reproduced as under:-

> "With the intent to approach the learned Labour Court for redresssal of their grievance, learned counsel for the petitioners does not press these petitions. However, any observation made

by the learned High Court, which may be detrimental to the merits of the respondents' case would not come in their way. Dismissed accordingly."

7. It is also not denied by the petitioners that ever since the order passed by the Supreme Court, the petitioners had not moved the Labour Court but have preferred to file the present writ petitions on the ground of discrimination. However, such ground of discrimination may be agitated before the Labour Court where as per the order passed by the Supreme Court, the petitioners may file the grievance petition. The principle of resjudicata is fully attracted in these writ petitions. Reliance is placed upon State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan (2012 SCMR 280) and Muhammad Saleem Ullah and others v. Additional District Judge, Gujranwala and others (PLD 2005 SC 511).

8. In this view of the matter, these writ petitions have found non-maintainable and are, therefore, dismissed.

ZC/A-107/L **Petitions dismissed.**

2018 P L C (C.S.) 831

[Lahore High Court]

Before Ali Baqar Najafi, J

JAMAT ALI

Versus

GOVERNMENT OF PUNJAB through Secretary Home and others

W.P. No.73881 of 2017, decided on 7th May, 2018.

Police (Award of Compensation) Rules, 1989---

----Rr.6 & 12---Punjab Civil Services (Pension) Rules, 1995, R.4(10)---Death compensation---Entitlement of parents---Petitioner being father of Shaheed police constable had claimed legal share from the compensation given to the widow---Validity---Held, only widow and children of the Shaheed were entitled to financial assistance---Such compensation was to be paid not as a diyat money but as a direct consequence of Shahadat---Constitutional petition was dismissed in circumstances.

Mst. Hussan Jamala and another v. Government of Khyber Pukhtunkhwa through Secretary, Home and Tribal Affairs, Peshawar PLD 2013 Pesh. 1; Mst. Sabra Begum and another v. Mst. Iffat Shafique and 2 others 2006 YLR 2678; Mst. Ameer Khatoon v. Mst. Shamim Akhtar and others 2005 SCMR 512 and Zaheer Abbas v. Pir Asif and 6 others 2011 CLC 1528 ref.

Federal Government of Pakistan v. Public at Large and others PLD 1991 SC 731 rel.

Muhammad Younas Bhullar for Petitioner.

Ch. Iftikhar Iqbal Ahmad, Assistant Advocate-General Punjab.

Ch. Ishtiaq Ahmad for Respondents.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the order dated 14.07.2016 passed by Additional Inspector General of Police/respondent No.3 and the notification dated 25.04.1989 issued by the Secretary Home Department, Govt. of the Punjab, Lahore have been challenged whereby the claim of the petitioner for compensation being the legal heir of Shaheed, namely, Muhammad Ishaq was denied.

2. Brief facts giving rise to the filing of this constitutional petition are that petitioner being the real father of Muhammad Ishaq (Shaheed), driver/constable No.8453 of Punjab Highway Patrolling Police, Faisalabad, claimed the share of compensation out of Rs.50 lacs given to respondent No.5 Shagufta Yasmin, widow of Muhammad Ishaq on the ground that besides him and respondent No.5, there were other legal heirs, namely, Tayyab Ishaq Ali Ishaq, Fatima Ishaq and Amna Ishaq sons and daughters who may also be included as the legal heirs of Shaheed including Sughran Bibi, his mother. The case of the petitioner is that despite the fact that succession certificate had already been issued on 02.06.2016 by Civil Judge, Faisalabad, in the name of legal heirs of Shaheed Muhammad Ishaq, they are being deprived of their share of the said compensation. The petitioner made an application before Additional Inspector General of Police/respondent No.3 who was pleased to dismiss it on 14.07.2016 on the ground that under para 6 of Award of Compensation Rules, 1989, only widow could claim the compensation of Shaheed to the exclusion of any other legal heir. Hence this petition.

3. Learned counsel for the petitioner contends that the said policy has been reviewed w.e.f. 13.02.2017 but the claim of the petitioner being exactly in accordance with the Islamic law was to be granted as prayed for notwithstanding any policy to the contrary. Adds that as the compensation is the amount of Diyat which is to be payable to the legal heirs of deceased/shaheed. Places reliance upon case titled "Mst. Hussan Jamala and another v. Government of Khyber Pukhtunkhwa through Secretary, Home and Tribal Affairs, Peshawar" reported as PLD 2013 Peshawar 1, case titled "Mst. Sabra Begum and another v. Mst. Iffat Shafique and 2 others" reported as 2006

YLR 2678 and case titled "Mst. Ameer Khatoon v. Mst. Shamim Akhtar and others" reported as 2005 SCMR 512.

4. Conversely, learned law officer and the counsel for the private respondents submit that the death of Muhammad Ishaq (deceased) was dated 19.02.2016, therefore, the policy under Rule 4(1) of the Punjab Civil Services Pension Rules promulgated on 13.02.2017 will not have its retrospective effect as it past and closed transaction. Places reliance upon case titled "Zaheer Abbas v. Pir Asif and 6 others" reported as 2011 CLC 1528, case titled "Federal Government of Pakistan v. Public at Large and others" reported as PLD 1991 SC 731 and also the definition of Family and prays for dismissal.

5. Arguments heard. Record perused.

6. After hearing the learned counsel for the parties and perusing the record, it is noted that order dated 14.07.2016 challenged in the present writ petition was passed on the basis of direction issued by this court on 11.04.2017 passed in W.P.No.23344-2016 titled "Jamat Ali v. Inspector General of Police, Punjab and others". The impugned order specifically refers to para 6 of the Police (Award of Compensation) Rules, 1989, which is reproduced as under:-

> "6(i). The case of death shall be supported by the death certificate and the following information:-
>
> (a) Particulars of family members (widow/widows and children showing their ages, occupation and marital status.
>
> (b) Where there is no widow or children; the particulars of parents of deceased police officers/officials and their ages.
>
> (ii) In case of officer/official is incapacitated, a certificate of incapacitation shall be obtained from the medical board in the form prescribed in Annex. I-A. "

7. Under this rule a copy of death certificate and the particulars of the family members i.e. widow, widows and children with their ages, occupation and marital status, along with particulars of parents, their ages in case there is

no widow or children are required to be furnished. However, under notification dated 10.04.2017 Rule 12 of Rules ibid, the amount of compensation was increased from Rs.3 lacs to Rs.5 lacs. Under note thereof, the proportionate share (of lump sum amount only) for dependent parents of Shaheed will be 1/4 in case of him being sole Male issue (if married). In case of multiple male siblings of Shaheed, the share will be 1/6 of the lump sum amount.

8. The succession certificate already, issued on 02.06.2016 issued in the name of Shagufta Yasmin (widow), Tayyab Ishaq, Fatima Ishaq, Ali Ishaq and Amna Ishaq (sons and daughters), Jamat Ali and Sughran Bibi (parents).

9. The case of the respondent is that the financial assistance is admissible under Rule 4(10) of the Punjab Civil Services Pension Rules, which is reproduced as under:-

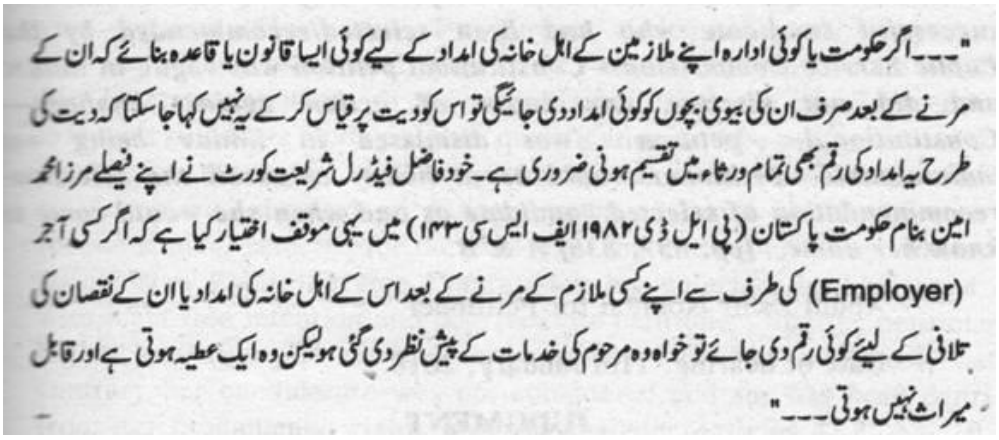
> **3. TO WHOM FINANCIAL ASSISTANCE IS ADMISSIBLE.**
>
> In case of death of civil servant a financial assistance will be granted to family as explained in Rule 4(1) of the Punjab Civil Services Pension Rules i.e.
>
> (a) To wife or wives in the case of male civil servant.
>
> (b) Husband in case of female civil servant.
>
> (c) Children of the Civil Servant.
>
> (d) Widow or widows and children of a deceased son of the civil servant.
>
> (B) In case the Financial Assistant is not payable under para-A above it may be granted
>
> (i) To father
>
> (ii) Failing the father, to the mother.
>
> (iii) Failing the father and mother, to the eldest surviving brother below the age of 21 years.

(iv) Failing 1 to 3 to the eldest surviving unmarried sister if the eldest sister married or dies then the next eldest.

(v) Failing 1 to 4 to the eldest surviving widowed sister."

10. Besides, under Rule 4(10) of the Punjab Civil Service Pension Rules, it is the widow and the children of the Shaheed who were entitled to all financial assistance.

11. The case of the petitioner is that since the policy has been changed, therefore, its benefits should be extended to the petitioner retrospectively. The judgment cited at bar by counsel for the petitioner case titled "Mst. Sabra Begum and another v. Mst. Iffat Shafique and 2 others", reported as 2006 YLR 2678 pertains to the benevolent fund which is apart of tarka. The other judgment titled "Mst. Ameer Khatoon v. Mst. Shamim Akhtar and others" reported as 2005 SCMR 512 is also related to benevolent fund and group insurance. The case titled "Mst. Hussan Jamala and another v. Government of Khyber Pukhtunkhwa through Secretary, Home and Tribal Affairs, Peshawar" reported as PLD 2013 Peshawar 1 pertains to the Shaheed package announced by the Government to the extent of awarding 60 salaries to the widow excluding the parents. This judgment is based on case titled "Federal Government of Pakistan v. Public at Large and others" reported as PLD 1991 SC 731, a Shariat Appellate Bench given by Full Bench, in which the following is held at page 748.



"۔۔۔اگر حکومت یا کوئی ادارہ اپنے ملازمین کے اہل خانہ کی امداد کے لیے کوئی ایسا قانون یا قاعدہ بنائے کہ ان کے مرنے کے بعد صرف ان کی بیوی بچوں کو کوئی امداد دی جائیگی تو اس کو دیت پر قیاس کر کے یہ نہیں کہا جا سکتا کہ دیت کی طرح یہ امداد کی رقم بھی تمام ورثاء میں تقسیم ہونی ضروری ہے۔ خود فاضل فیڈرل شریعت کورٹ نے اپنے فیصلے مرزا محمد امین بنام حکومت پاکستان (پی ایل ڈی ۱۹۸۲ ایف ایس سی ۱۴۳) میں یہی موقف اختیار کیا ہے کہ اگر کسی آجر (Employer) کی طرف سے اپنے کسی ملازم کے مرنے کے بعد اس کے اہل خانہ کی امداد یا ان کے نقصان کی تلافی کے لیئے کوئی رقم دی جائے تو خواہ وہ مرحوم کی خدمات کے پیش نظر دی گئی ہو لیکن وہ ایک عطیہ ہوتی ہے اور قابل میراث نہیں ہوتی۔۔۔"

12. Scanning the above case law, it is apparent that compensation is related to the death/killing in the line of duty, therefore, the state has announced the compensation to be paid not as a diyat money but as a direct consequences of Shahadat to wife and children.

13. Keeping in view the above discussion, this writ petition has been found meritless and is therefore, **dismissed on** merits.

ZC/J-5/L **Petition dismissed**.

2018 P L C (C.S.) 971

[Lahore High Court]

Present: Ali Baqar Najafi, J

AMIR HAYAT

Versus

PUNJAB PUBLIC SERVICE COMMISSION and others

W.P. No.31278 of 2016, decided on 15th February, 2018.

Punjab Public Service Commission Regulations, 2016----

----Reglns. 59 & 62---Appointment against the post of Sub-Inspector (Police)---Non-joining of post by the successful candidate---Effect---Three successful candidates could not join the service due to medical/personal reasons and Public Service Commission advertised the posts including the said three posts---Contention of petitioner was that he being next in the merit list should have been appointed against the vacant posts as per Rules---Validity---Substitute could be provided from the merit list during its validity period if so requested by the department---Merit list would remain valid for twelve months---Post could be advertised only if a suitable candidate was not available and it was mandatory that whenever vacancy occurred the post had to be re-advertised---Petitioner had promptly approached the High Court within said period of one year---Candidate had right to be dealt with in accordance with law---Authorities were directed to adjust the petitioner and issue him appointment letter for the post in question on the basis of merit list already issued---Constitutional petition was allowed accordingly.

Muhammad Saeed Anwar v. Punjab Public Service Commission C.P.No.602-L/2016 distinguished.

Ali Raza Gillani for Petitioner.

Salma Malik, Additional Advocate General Punjab.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, a direction is sought by the petitioner to the respondents to recommend him for appointment against the post of Sub-Inspector (BS.14) on open merit.

2. Brief facts giving rise to the filing of this writ petition are that in response to the advertisement published in the newspaper dated 01.11.2015 for 35 posts of Sub-Inspectors (BS.14), the petitioner applied and passed the written test held on 24.01.2016. In total 145 candidates including the petitioner were called for interview. He stood at No.32 in the merit list. As three candidates, namely, Muhammad Umar, Abdul Sattar and Hafiz Suboor-ul-Hassan did not join their service, it is submitted by the petitioner, these seats should fall to the next in line and as such the petitioner is required to be appointed as Sub-Inspector, as per rules of Punjab Public Service Commission.

3. In the report and parawise comments submitted by the respondent No.2, it is submitted that 35 posts of Sub-Inspectors of Faisalabad Region included 05 posts for women, 02 for minorities were advertised. In total 2763 applicants applied. It is admitted that petitioner stood at Sr. No.32 and one Mumtaz Hussain at Sr.No.31 (a petitioner who has already withdrawn petition to his extent). As no request was received from the respondent to the Commission, therefore, no recommendations were made against left out seats in open merit.

4. In the reply filed by respondent No.3, Regional Police Officer Faisalabad, it is stated that formal orders of appointment of 30 candidates for the post of Sub-Inspector were issued as 05 candidates could not pass the medical test.

5. In the report and parawise comments filed by IG/respondent No.2, it is submitted that 32 candidates were appointed whereas 03 candidates could not be appointed due to their personal and medical reasons. It was however stated that the department as a policy included the said unfilled three seats in the vacant posts of Faisalabad Region for which requisition have been moved to the respondent/Punjab Public Service Commission on 03.11.2016. Importantly, it was done within one year of the merit list dated 29.04.2016 and just after filing of the present writ petition on 05.10.2016 and 04 days before the filing of the comments dated 07.11.2016 by the Inspector General of Police.

6. Learned counsel for the petitioner submits that the petitioner, the next in the merit list, should be appointed as SI (BS.14) within one year and that requisition for recommendation from PPSC is after thought made during the pendency of the present writ petition.

7. Conversely, learned Additional Advocate General Punjab submits that the government is not bond to appoint the next candidate in line and can exercise its discretionary powers, therefore, places reliance on order dated 29.03.2016 passed in C.P.No.602-L/2016 titled "Muhammad Saeed Anwar v. Punjab Public Service Commission" and prays for the dismissal of the writ petition.

8. Arguments heard. File perused.

9. Admittedly, the facts are that under Sub-Inspector and Inspectors (Appointment and Conditions of Service) Rules, 2013, notified on 02.01.2014, 50% vacant posts in the rank of Sub-Inspectors were to be filled on merit by the initial recruitment through selection on the basis of police regions on the recommendations of the PPSC. Accordingly, a requisition for initial direct recruitment of 226 Sub-Inspectors including 35 from Faisalabad Region were forwarded to PPSC on 20.10.2015, which were advertised in the same year. On 29.04.2016, after following the due process, 35 candidates were forwarded by the office of I.G. to Faisalabad Region, but three candidates could not join due to medical/personal reasons. At this juncture, the present writ petition was filed on 05.10.2016 for the above said relief. However, on 03.11.2016 the posts including the said three posts were advertised, which fact was discussed in the comments filed by the respondent/I.G. Police on 07.11.2016.

10. Legally, under Regulation 59 of the Punjab Public Service Commission Regulations, 2016, a substitute can be provided from the merit list during its validity period if so requested by the department. Under Regulation 62 thereof, such merit list remains valid for twelve months. For convenience Regulations 59 and 62 thereof are reproduced as under:-

> "59. A substitute can be provided from the merit list during its validity period if so requested by the department concerned, in case a candidate:

a. Fails to join the post.

b. Tenders his/her resignation after joining.

c. Is declared unfit on medical or other grounds.

d. Requisitioned post has become vacant for any other reason."

"62. For recommending substitutes, the Merit List remains valid for twelve months from the date of issuance of first recommendation or till the date of receipt of next requisition in the commission for the same post, whichever is earlier, provided that where request for substitute is received within the validity period, the Chairman in his discretion may extend the validity period for the disposal of such request."

11. Here an analogy can also be drawn from case titled "Province of Sindh and others v. Ghulam Hassan Bughio" reported as 2014 SCMR 643, that a post can be advertised only if a suitable candidate is not available and that it is not mandatory that whenever the vacancy occurs, the post has to be re-advertised. Moreover, the view given in the order dated 29.03.2016 in C.P.No.602-L/2016 "Muhammad Saeed Anwar v. Punjab Public Service Commission" is not related to the Rule 62, but Rules 66 and 69 of the Punjab Public Service Commission Rules, 2016. Besides, the petitioner had smartly and promptly approached this court within the said period of one year, therefore, the discretion exercised by the respondent was apparently afterthought and to frustrate the already completed process. The petitioner has a right to be dealt with in accordance with law under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.

12. Keeping in view the above, this writ petition is allowed and the respondents are directed to adjust the petitioner and issue him the appointment letter for the post of Sub-Inspector (BS.14) on the basis of the list dated 29.4.2016.

ZC/A-18/L **Petition allowed.**

2018 P Cr. L J 477

[Lahore]

Before Ali Baqar Najafi and Tariq Saleem Sheikh, JJ

MUHAMMAD FAKHAR JAVED KHOKHAR and another---

Petitioners

Versus

NATIONAL ACCOUNTABILITY BUREAU (NAB) and others---

Respondents

W.Ps. Nos. 6578 and 31843 of 2017, decided on 22nd January, 2018.

National Accountability Ordinance (XVIII of 1999)---

----Ss. 9(a)(ix)(x), (b), 18 & 22(a)---Criminal Procedure Code (V of 1898), S. 497(2)---Constitution of Pakistan, Art. 199---Constitutional petition---Bail, grant of---Furtherenquiry---Standing Operating Procedures (SOP) of NAB---Authorization by ChairmanNAB, absence of---Arrest of accused already in custody---Cheating and criminalbreach of trust---Petitioners were accused facing trial under National AccountabilityOrdinance, 1999, on the allegation of cheating members of public at large and amountinvolved was Rs. 26,611,355---Plea raised by petitioners was that there was noauthorization of their investigation by Chairman NAB and they were already incustody when authorities arrested them---Validity---Various FIRs under Ss. 489-F, 406,457, 380, 379, 356, P.P.C. were registered against petitioners and their Challans werepending before ordinary criminal courts---Liability of petitioners was less than Rs.100million and as per clause 4(d) of Standard Operating Procedures (SOPs) under the headof "Operational Methodology" Volume-I, 2015, priority had been given to cases ofpublic at large where number of defrauded person was more than 50 persons andamount involved was not less than Rs.100 million---Approval of Chairman NAB wasrequired under clause 4(i) of Operational Methodology, Volume-I, in case fallingwithin the purview of NAB, if amount was less than Rs.100 million---Prosecutionwitnesses admitted

that they had contractual liability for which they were issuedcheques for repayment as guarantee and the same were dishonoured---Such contractualliability could be enforced under ordinary laws applicable to the situation---Prosecution failed to show accounts in which amount was stated to have beentransferred and thereafter in some other accounts---Prosecution evidence wascomprising of documents which could not be tampered and reasonable time would berequired by Trial Court to conclude the trial---Case of petitioners fell within the ambitof further inquiry into their guilt---Bail was allowed in circumstances.

Qazi Misbah-ul-Hassan for Petitioner (in W.P. No. 6578 of 2017).

Ch. Hamd-ur-Rehman Waseem Zafar for Petitioner (in W.P. No. 31843 of 2017).

Muhammad Ahsan Rasool Chattha, Special Prosecutor for NAB with WaheedAhmad Chaudhary, Assistant Director NAB Lahore.

ORDER

ALI BAQAR NAJAFI, J.---This order shall dispose of both the above titled writpetitions as in both writ petitions, the petitioners have sought their release from thecustody of NAB while invoking the constitutional jurisdiction of this court.

2. As per the prosecution case, the petitioners were arrested for commission of theoffence of corruption and corrupt practices by cheating public at large cognizableunder section 9(a) of National Accountability Ordinance, 1999 on the allegation thatduring the inquiry/investigation, it was revealed that Muhammad Fakhar JavedKhokhar (petitioner) during the period of 2013-14 was managing the business ofDiamond Foam/Nayyar Carpet distribution business named as "Diamond FR FoamCenter and Nayyer Carpet" at a rented business place situated at Shop No.B-2 KabriyaTown, Raiwind Road, Near Total Petrol Pump, Thokar Niaz Baig, Lahore. He wasalleged to have started

car committee/easy installment business and lured public atlarge on account of car booking business on easy/affordable installments, though,neither the car was delivered nor money was paid. He along with Rana Abdul Majeed(petitioner) vanished and absconded from the business. During investigationMuhammad Fakhar Javed Khokhar admitted that Rana Abdul Majeed was his managerand was working on his behalf as all receipts on the booking slips from Sr. Nos.1200 to1800 and onward were signed by Rana Abdul Majeed in his personal capacity withoutintimating him. In total 120 claimants have joined the investigation and total amount ofRs.2,64,92,355/- was claimed to have been cheated. The liability of MuhammadFakhar Javed Khokhar was Rs.23,844,355/- and of Rana Abdul Majeed wasRs.26,48,000/-.

3. In the report and parawise comments submitted by the NAB authorities, it was statedthat NAB Lahore received number of complaints against the petitioners that during theyear 2013-14 they were running/managing business in the name and style M/s.Diamond FR Foam Center and Nayyer Carpet, Shop No.B-2 Kabriya Town, RaiwindRoad, Near Total Petrol Pump, Thokar Niaz Baig, Lahore and under its garb, theyreceived payments on the pretext of car booking on easy installments on the lowmarkup to the public at large who offered them low interest rates and easy downpayment but they absconded without making any such payment or delivering thepromised vehicles. The inquiry dated 27.04.2016 was converted into investigation on17.10.2016 and thereafter ACR No.98/2016 was filed on 20.12.2016 in theAccountability Court-IV Lahore where it is pending. It was further stated that theclaimants were issued cheques by the petitioners as security against their advancepayments and in the beginning to win the interest of peoples some of them weredelivered cars but later their deliveries were delayed and all the cheques weredishonoured due to insufficient balance and subsequently they vanished. In total 120claimants joined investigation proceedings and total amount of Rs.26,611,355/- wasclaimed but the amount of Rs.26,492,355/- was verified and the liability was fixedagainst Muhammad Fakhar Javed Khokhar

as Rs.23,844,355/- and against Rana AbdulMajeed Rs.2,648,000/-. It was also claimed that they both issued receipts against thepayments received by them.

4. Learned counsel for the petitioner (Muhammad Fakhar Javed Khokhar) contendsthat petitioner was arrested when he was already in the custody of the police incriminal cases already registered by them. Adds that the Chairman NAB has notauthorized the inquiry, investigation and filing of reference by specifically delegatingthe powers. Further submits that during the trial only three PWs have deposed whohave not implicated the petitioners and that the petitioner was arrested on 20.09.2016and has passed sufficient time behind the bars.

5. Learned counsel for the petitioner (Rana Abdul Majeed) submits that after dismissalof his pre-arrest bail, he was arrested on 15.03.2017 and has also passed more than 10months behind the bars and therefore prays for grant of bail through theseconstitutional petitions.

6. Learned Special Prosecutor appearing on behalf of NAB submits that under section18(c) of the National Accountability Court Ordinance, 1999, has authorized the inquirywhereafter the investigation was upgraded and the reference was filed

7. Arguments heard. Record perused.

8. As per the investigation report, part of the Reference No.98 of 2016, total 120claimants have approached the NAB authorities in response to the advertisementpublished in the newspaper, the petitioner Muhammad Fakhar Javed Khokhar had fouraccounts in different banks i.e. Dubai Islamic Bank Raiwaind road Branch, Lahore,Meezan Bank, Thokar Niaz Baig Branch, Lahore, Askari Bank, Thokar Niaz BaigBranch, Lahore and UBL Thokar Niaz Baig Branch, Lahore showing no money in thesaid accounts. He was found to have owned three Honda motor bikes and one SuzukiBolan Car. The version of the petitioner Muhammad Fakhar Javed Khokhar recordedon 20.09.2016 that he had left the office and went to Saudi Arabia on 20.02.2016. Hehas taken

the stand that his co-accused Rana Abdul Majeed being his manager whoissued the receipts in his personal capacity without intimating him. The record revealsthat various FIRs under sections 489-F, 406, 457, 380, 379, 356, P.P.C. have beenregistered against the petitioners and their challans are pending before the ordinarycriminal courts.

9. Admittedly the liability of the petitioners is less than 100 million and as per clause4(d) of the Standard Operating Procedures (SOPs) under the head of OperationalMethodology Volume-I, 2015, the priority has been given to the cases of public at largewhere the number of defrauded persons are more than 50 persons and amount involvedis not less than 100 million and that under clause 4(i) thereof an approval from theChairman is required in case falling within the purview of the NAB of an amountlesser than 100 million.

10. The prosecution case is that the cheques against which various FIRs have beenlodged were given as guarantee. The prosecution could not show before this court as tohow many persons were delivered vehicles since the business was started in year 2013and continued till 2016. It has also not been brought before this court through therecord that it was not a contractual liability with different depositors/claimants fordelivery of vehicles against advance payments and regular installments. These wereready and available for the delivery of vehicles against car financing. NAB has also notbeen able to produce any record before this court showing the written understandingbetween the petitioners and the depositors regarding date of delivery against the moneyto be paid in advance. In statements of PW-1 Hafiz Muhammad Abdullah, MuhammadMustafa (PW-2) and Waheed-ur-Rehman (PW-3), it has been admitted by them thatthey have contractual liability for which they were issued the cheques for repayment asguarantee, which were dishonoured. To our understanding such a contractual liabilitymay be enforced under the ordinary laws applicable to the situation.

11. Besides, the prosecution has not been able to show the accounts in which the saidamount was statedly transferred and thereafter in some other accounts.

12. We are also conscious of the fact that the prosecution evidence is comprising ofdocuments which may not be tampered and that reasonable time will be required by thetrial court to conclude the trial.

13. For what has been stated above, we are of the considered view that the petitionershave made out a case for grant of bail as their case also falls within the ambit of furtherinquiry into their guilt. In this view of the matter, these petitions are allowed as a resultof which the petitioners are granted post arrest bail subject to their furnishing bailbonds in the sum of Rs.5,00,000/- each with two sureties each in the like amount to thesatisfaction of the Deputy Registrar (Judicial) of this court.

MH/M-32/L **Petition allowed.**

2018 P Cr. L J 1057

[Lahore]

Before Ali Baqar Najafi and Tariq Saleem Sheikh, JJ

AHAD KHAN CHEEMA---Petitioner

Versus

NATIONAL ACCOUNTABILITY BUREAU and others---Respondents

W.P. No. 169373 of 2018, decided on 27th March, 2018.

National Accountability Ordinance (XVIII of 1999)---

----S. 24---Constitution of Pakistan, Art. 199---Constitutional petition---Arrest---Physical remand---Petitioner who was arrested by NAB authorities assailed his arrest during physical remand---Plea raised by petitioner was that his arrest was in retaliation to a letter sent by him to the Chairman NAB---Validity---Warrants of arrest were issued by not less than Chairman NAB himself and he was facing inquiry of alleged corruption and corrupt practices in respect of a project---Allegation against petitioner related to the period when petitioner was Director General, Lahore Development Authority---Accountability Court had already extended remand of petitioner---High Court declined to consider plea of petitioner at such stage---Necessary legal requirements for grant of remand were complied with---Well reasoned order by Accountability Court was passed in satisfaction of judicial conscience as there were reasonable grounds for believing that accusations or information were well founded justifying custody of accused with NAB authorities---Information furnished before Accountability Court was not false which raised suspicion that accused committed offence under the provisions of National Accountability Ordinance, 1999---Prima facie, reasonable grounds existed to believe petitioner's involvement in alleged offence and thus his custody in connection with the case was neither illegal nor improper---High Court holding the Constitutional petition as not maintainable declined to interfere in the matter---Constitutional petition was dismissed in circumstances.

Abdul Qadir v. Federation of Pakistan through Secretary, Ministry of

Interior, Government of Pakistan, Islamabad and 5 others 2002 SCMR 1478 ref.

Hammad Khalid v. Chairman, National Accountability Bureau, Islamabad and others PLD 2003 Lah. 94 rel.

Azam Nazir Tarar for Petitioner.

Syed Faisal Raza Bukhari, Special Prosecutor for NAB with Muhammad Ikram, I.O. NAB Lahore.

ORDER

Through this constitutional petition, the petitioner has made following prayer:-

> "Under the circumstances, it is respectfully prayed that this writ petition may kindly be accepted and arrest of the petitioner may please be declared illegal, unlawful and void and petitioner may very graciously be directed to be released."

2. Brief facts giving rise to the filing of this constitutional petition as contained in its paragraphs are that the petitioner joined civil service in 2001 and served at different places including Director General (D.G.), Lahore Development Authority (LDA) and is presently serving as Chief Executive Officer, Quaid-e-Azam Thermal Power (Pvt.) Limited. The NAB initiated an inquiry for corruption and corrupt practices in Ashiana Iqbal Housing Project; a project assigned by Punjab Land Development Company (PLDC) to Lahore Development Authority (LDA) through agreement dated 20.01.2015 when the petitioner remained posted as its D.G. The allegation against the petitioner is that he, with a criminal intent and in connivance with other co-accused persons, further awarded the contract of the said project to Messrs Lahore Casa Developers as a joint venture, which was not eligible for the contract under Punjab Public Private Partnership Act, 2014 (PPPP Act, 2014). It was further alleged that the major shareholder of joint venture of Lahore Casa Developers was Messrs Bismillah Engineering Services (Pvt.) Ltd.; a proxy firm working on behalf of Messrs Paragon City (Pvt.) Ltd. The petitioner was alleged to

have received an illegal gratification in the form of 32 kanal land valuing Rs.30.090 million from the owners of Paragon City (Pvt.) Ltd., causing loss to government exchequer due to alleged corruption in Ashiana Iqbal Housing Project. Consequently, on 12.02.2018 the NAB issued a call-up notice to the petitioner under section 19 of the N.A.O., 1999 to join inquiry at NAB Headquarters, Lahore. He submitted a detailed reply seeking particulars/details of documents which were required by the Bureau through his letter dated 16.02.2018. In retaliation, it is alleged by the petitioner, the NAB illegally raided the office of the petitioner on 21.02.2018, humiliated and harassed the staff and also took the petitioner in the custody, hence this writ petition.

3. In the report and parawise comments submitted by the NAB authorities, it was specifically stated in preliminary objection that after his arrest on 21.02.2018, the petitioner was produced before Accountability Court-III, Lahore on 22.02.2018 where his physical remand was given till 05.03.2018 and, thereafter, he is in their custody up till 03.04.2018 under the court's order, therefore, writ petition was not competent; that the petitioner had come to court with unclean hands; there is an alternate remedy before the trial court.

In its details, it was stated that on 31.10.2017 the Chairman NAB received a complaint against the management of many public sector companies who were allegedly established in violation of the Constitution and without lawful authority. As allegedly the public money was being misappropriated and embezzled by the management of these companies, the Chairman authorized an inquiry on 07.11.2017 against such companies of Province of Punjab. He delegated his powers to the Director General NAB Lahore and accordingly an inquiry No.1(9)HQ/1826/NAB-L was initiated on 15.11.2017. Meanwhile, another complaint against the management of Messrs Paragon City (Pvt.) Ltd. and the management of Punjab Land Development Company (PLDC) was received on 17.11.2017 by NAB Lahore alleging therein that the former, in connivance with the later, illegally occupied State land measuring 3100 kanal proposed for Ashiana Iqbal Project. Accordingly,

the Director General NAB authorized an inquiry on 10.01.2018. It was also stated in the report that the responsibility of PLDC was to develop modern housing schemes for the low-income groups in various districts of the Punjab. Initially Ashiana Quaid Lahore, Ashiana Sahiwal and Ashiana Faisalabad were initiated under the said government mode. However, PLDC initiated another project, namely, Ashiana Iqbal, Barki road, Lahore in 2012 which could not be completed for which an inquiry is being conducted on the allegation of corruption and corrupt practices in the said project. It is also mentioned that the Chief Minister Punjab in a meeting held on 21.10.2014 at 96-H Model Town, Lahore directed the PLDC to entrust the projects of Ashiana Iqbal and Ashiana Quaid to LDA which proceeded with the planning, designing and execution in the province.

The allegation against the petitioner is that he being Director General LDA by misusing his authority, prepared, processed, recommended, presented and got approved fraudulent and illegal proposal and bidding documents to grant undue and illegal benefit by awarding contract of Ashiana Iqbal Housing Project of Rs.14.00 Billion to Messrs Lahore Casa Developers with the criminal intent. The petitioner allegedly started working on preparation of bidding documents of the project in September, 2014 well before the approval of transfer of project to LDA by Board of PLDC. The bidding documents were sent for legal vetting on 08.09.2014 whereas PLDC Board approved the transfer of project of Ashiana Iqbal on 12.11.2014 showing that petitioner had engineered this fraudulent act in a preplanned manner.

It was also mentioned in the comments that Lahore Casa Developers (also known as Messrs SPARKO Group) was a joint venture of three firms/companies namely Messrs Bismillah Engineering Services Co., Messrs SPARCO Construction Company and Messrs China First Metallurgical Group Co. Ltd. However, Messrs Bismillah Engineering Services Co., a C-4 Class company, had 90% shareholding was not eligible for the contract as its maximum limit of contract was Rs.150.00 million under Pakistan Engineering Council. Likewise, Messrs SPARCO Construction Company and M/s China First Metallurgical Group Co. have only 9% & 1% shareholdings,

respectively, in the joint venture. On 24.03.2015 the contract was awarded to Lahore Casa Developers under Public Private Partnership mode and under section 14(d)(h)(j) of the PPPP Act, 2014, whereas it was mandatory to obtain exact shareholding of all the firms in the joint venture at the pre-qualification stage. The petitioner in connivance with the other members of the group allegedly accepted a MOU without mentioning the respective shareholders in order to maliciously conceal the technical and financial capability of Bismillah Engineering Company. Messrs SPARCO Construction Company was shown as a lead member whereas in the joint venture, through an agreement dated 18.05.2015, it was Bismillah Engineering Services Company which had the leading role, which was not eligible for the contract.

As per parawise comments, this act has caused loss to national exchequer as the contractors willfully failed to initiate Ashiana Iqbal Project for the last three years during which 61000 poor applicants have submitted Rs.60.00 million as processing fee for the allotment of houses thereby government incurred Rs.190.00 million whereas Messrs Lahore Casa Developers had caused loss in the form of liquidation damages of Rs.455.000 million.

The inquiry further revealed that Messrs Bismillah Engineering Services Co. was a proxy firm working on behalf of Paragon City (Pvt.) Ltd. and that accused received illegal gratification in the form of 32 kanal land valuing Rs.30.090 million transferred in his name and in the name of his close relatives, the price of which was paid by accused Nadeem Zia through accounts of Messrs Paragon City (Pvt.) Ltd.

4. Mr. Azam Nazeer Tarar, advocate, learned counsel for the petitioner submits that petitioner was arrested by the NAB to satisfy their ego as he dared to seek the details of documents to ascertain the nature of information required from him which act offended the NAB authorities resulting into his mala fide arrest. It was further argued that the NAB had no material of any illegal gratification received by the petitioner pertaining to the said project; the land of measuring 32 kanal was legally acquired/transferred to the associates of the

petitioner which was duly declared in the declaratory form submitted by the petitioner; the contract was transparently awarded to Lahore Casa Developers (Pvt.) Ltd. as explained by its Chief Executive; that petitioner is not in possession of any relevant documents of LDA as he was posted out from the seat of Director General LDA on 28.04.2016; that the right of fair trial guaranteed under the Constitution is violated, therefore, prays that arrest of the petitioner be declared as illegal, unlawful and void. Also submits that the petitioner is being victimized by media hype.

5. Syed Faisal Raza Bukhari, learned Special Prosecutor for NAB submits that petitioner was fully aware of the nature of allegations against him which was also conveyed to him through 2nd and 3rd notices dated 19.01.2018 and 12.02.2018 and that he had tried to withhold the information for NAB, therefore, he prays for the dismissal of the petition.

6. Arguments heard. File perused.

7. After hearing the learned counsel for the parties and perusing the file, it is straightaway observed that the petitioner is still in the custody of the NAB authorities in remand until 03.04.2018 when his present remand period is going to expire. Interestingly, the remand orders have not been challenged in the present writ petition. The legal requirements of the grounds and substance of arrest were duly conveyed to the petitioner as guaranteed under section 24(a) of NAO, 1999 and Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Reliance is placed upon case titled "Abdul Qadir v. Federation of Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad and 5 others" reported as 2002 SCMR 1478.

8. The case of the petitioner is that it was a mala fide act on the part of the NAB authorities who adopted an egoistic approach against the petitioner after when he demanded the exact nature of allegations and the relevant documents from the NAB authorities. According to the petitioner, he provided all the requisite information and relevant documents in his possession to the NAB authorities. His stand is that since he remained a Director General of LDA few years ago therefore after when he had abandoned the charge, he

could not have any access to the documents exclusively possessed by the LDA. However, the case of the NAB authorities against the petitioner is that he received illegal gratification in the form of 32 kanal valuing Rs.30.090 million which was transferred in the names of his close relatives, the consideration of which was paid by Nadeem Zia through accounts of M/s Paragon City (Pvt.) Ltd. It is also alleged that he aided and abetted and provided assistance in awarding the contract to Messrs Lahore Casa Developers on the basis of technical and financial data, Messrs SPARCO Construction Company which had only 9% shareholding in the joint venture and presented the later as lead company whereas Bismillah Engineering Company which was not eligible for the contract having C-4 Class status having maximum limit of 150.00 million as per the rules of Pakistan Engineering Council. It is also alleged by the NAB against the petitioner that he prepared bidding documents of the project in the month of September, 2014, i.e. well before approval of the transfer to LDA by the board of PLDC and that the bidding documents were sent for legal vetting on 08.09.2014 before the approval of the project of Ashiana Iqbal on 12.11.2014. According to the NAB authorities, the requirement of section 14(d)(h)(j) of PPPP Act, 2014 were not complied with.

9. It is not denied by the petitioner that warrants of arrest were issued by not less than Chairman NAB himself. It is also admitted by the petitioner that he was facing an inquiry of alleged corruption and corrupt practices in respect of project Ashiana Iqbal Housing Project. The allegation against him related to the period when he was Director General, LDA. The Accountability Court-III, Lahore had already extended remand of the petitioner until 03.04.2018. The allegation of acting in retaliation to the letter sent by the petitioner to the Chairman NAB at this stage does not appear to be well founded for the reasons that state institutions do not function or act at the personal whims and desires of individuals having any kind of ill feeling for or against individuals of another institution.

10. Even otherwise the necessary legal requirements for the grant of remand appears to have been complied with. A well-reasoned order by Accountability Court No.III, Lahore was passed in satisfaction of its judicial

conscience as there were reasonable grounds for believing that accusations or information were well forwarded justifying custody of accused with NAB authorities. So far the information furnished before the Accountability Court was not false, which raised suspicion that accused committed the offence under NAB provisions. Prima facie reasonable grounds exist to believe the petitioner's involvement in the alleged offence and, thus, his custody in connection with the case neither will be termed as illegal nor improper for the purposes of maintaining a constitutional petition to declare his arrest as unlawful. Reliance is placed upon case titled "Hammad Khalid v. Chairman, National Accountability Bureau, Islamabad and others" reported as PLD 2003 Lahore 94.

11. As far as the vilification of the petitioner in the electronic and print media is concerned, suffice it to say that this court as a custodian of the fundamental rights of the individuals in general and of the accused in particular, expects that a responsible reporting will be made about the petitioner which would not give any impression to the public of carrying a parallel media trial.

12. In this view of the matter, we don't find any justification to declare the arrest of the petitioner unlawful or illegal, therefore, **dismiss this petition.**

MH/A-21/L **Petition dismissed.**

2018 P Cr. L J 1555

[Lahore]

Before Ali Baqar Najafi and Tariq Saleem Sheikh, JJ

Major (R) MUHAMMAD ZULFIQAR ALI---Petitioner

Versus

NATIONAL ACCOUNTABILITY BUREAU (NAB) and others---Respondents

Writ Petition No. 174343 of 2018, decided on 6th March, 2018.

National Accountability Ordinance (XVIII of 1999)---

----Ss. 9(a)(iii), (iv), (v), (vi), (ix), (x), (xii) & 17(d)---Criminal Procedure Code (V of 1898), Ss. 233 & 235---Consolidation of References---Separate offences---Petitioner was accused facing trial in two References pending before Accountability Court---Plea raised by petitioner was that both References would be consolidated and decided by one judgment---Validity---Petitioner and other two persons were accused of having committed criminal breach of trust of property of members of the Society and were charged for offences under S. 9(a)(iii), (iv), (x) and (xii) of National Accountability Ordinance, 1999; whereas other reference was against six accused including petitioner and allegation against them was of misuse of authority, fraud in allotment, cancellation, replacement of plots, making double/triple allotment of same plots, reducing size of plots and cheating members of public at large to get illegal gains further allegation was that of maintaining parallel bank account for the Society's funds and misappropriated public money---Petitioner, in the second reference was charged with offences under S. 9(a)(iii), (iv), (vi), (ix), (x) & (xii) of National Accountability Ordinance, 1999---Charges in two References were distinct and fell within the mischief of different provisions of National Accountability Ordinance, 1999---Number of accused persons was also different and set of witnesses cited by prosecution in two References also varied, therefore, both references must proceed

independently---Distinguishing features of the two References did not allow them to be clubbed or decided by a consolidated judgment and any attempt to do so would cause serious miscarriage of justice and the same could not be countenanced---High Court declined to interfere in the order passed by Accountability Court as the same was based on cogent reasons---Constitutional petition was dismissed in circumstances.

Sri Ram Varma v. The State AIR 1956 All. 466; Ramesh M. Udeshi v. The State 2002 PCr.LJ 1712; The State v. Mirza Azam Beg, P.C. and another PLD 1964 SC 120 and Ahmad Khan v. Commissioner, Rawalpindi Division and another PLD 1965 (W.P.) Peshawar 65 ref.

S.M. Zeeshan Mirza assisted by Zahir Abbas for Petitioner.

Arif Mehmood Rana, Special Prosecutor for NAB (on Court's call).

ORDER

This constitutional petition assails the vires of order dated 10.2.2018 passed by the learned Accountability Court No.3, Lahore, whereby he declined the request of the Petitioner to postpone the decision of ACR No.65/2008 till the maturity of ACR No.06/2010 and to decide both the references through a consolidated judgment.

2. Brief facts giving rise to this constitutional petition are that the NAB authorities received numerous complaints against the management of Punjab Small Industries Corporation Employees Cooperative Housing Society, Lahore (the "Society"). The competent authority authorized an inquiry into these complaints which was subsequently upgraded to investigation. The allegations against the management were not only of massive corruption but also of diverse nature. Nevertheless, they could be categorized under two heads, i.e. (a) illegal sale of the Society's land and misappropriation of sale proceeds, and (b) misuse of authority and commission of fraud in allotment of plots of the Society for which two independent investigations were ordered. Eventually, two separate references bearing ACR No.65/2008 and ACR

No.06/2010 were filed in the Accountability Court which are presently pending before Accountability Court No.3, Lahore. The Petitioner is the ex-General Secretary of the Society and an accused in both these references. He made an application before the learned Accountability Court with following prayers:

> "Under the expounded facts and submissions, it is most humbly prayed that in the greater interest of justice, both the references bearing No.06/10 and reference No.65/08 may be decided through a consolidated/single judgment or at least the judgments be pronounced simultaneously.
>
> It is further prayed that in compliance of the order passed by August Supreme Court and for the decision desired for qua the distinguished characters or similarities the instant reference which is at final stage may be adjourned till the similar stage of the connected Reference No.06/10 and both may be decided on the day."

The learned Accountability Court dismissed the aforesaid application vide impugned order dated 10.2.2018. Aggrieved, the Petitioner has filed the instant petition before this Court.

3. The learned counsel for the Petitioner contended that ACR No.65/2008 and ACR No.06/2010 were inter-connected and intertwined. NAB had no legal justification for filing separate references and they need to be consolidated. In the alternative he argued that even if a consolidated charge was not framed in the two references, they could go side by side and be decided through a single judgment. He added that ACR No.65/2008 was still at the stage of evidence and decision of that case be kept pending till the maturity of ACR No.6/2010.

4. The learned Special Prosecutor for NAB vehemently opposed this petition. He contended that the Petitioner's plea had no substance and was frivolous. The two references had no commonality and could not be clubbed. They proceeded on distinct facts and even the set of accused persons was

different. He further contended that the Petitioner had made a similar request in an earlier round which was declined by this Court and also by the Hon'ble Supreme Court of Pakistan. He prayed that this petition be dismissed.

5. Arguments heard. Record perused.

6. Broadly speaking, the question involved in the instant case is whether there can be a joint trial of ACR No.65/2008 and ACR No.06/2010 by framing a joint charge and, if not, whether proceedings in the two references can be allowed to proceed side by side and then they should be decided through a consolidated judgment. The answer to the first part of the question is contained in section 233 which is to be read in conjunction with sections 234, 235, 236 and 239 of the Code of Criminal Procedure, 1898 (the "Code"). The said sections are very much relevant for our present proposes on the authority of section 17 of the National Accountability Ordinance, 1999 (the "NAO"), which ordains that subject to the exceptions mentioned therein the provisions of the Code apply to the proceedings under the NAO unless they are inconsistent with it.

7. The general rule set out in section 233 of the Code is that there should be separate charge and a separate trial for every distinct offence. Section 233 is reproduced hereunder for ready reference:

> **233. Separate Charges for distinct offences**. For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

8. In Sri Ram Varma v. The State (AIR 1956 All. 466), a Full Bench of the Allahabad High Court explained the rationale behind section 233 as under:

> "The rules forbidding the joinder of charges have been framed for the benefit of the accused. The underlying idea is that if too many charges are grouped together against an accused person, he might be handicapped or embarrassed in conducting his defence. Moreover,

there is a likelihood of the jury or the Judge being unconsciously prejudiced against the accused when a large number of accusations are brought against him."

9. The expression "distinct offences" is not defined in the Code. However, the Illustration to Section 233 indicates that it means the offences which have no connection with each other. In Ramesh M. Udeshi v. The State (2002 PCr.LJ 1712) while dilating on this issue a Division Bench of the Karachi High Court observed that they may be classified under the following heads (though the list is not exhaustive):

(a) Offences falling under different sections of the same penal enactment.

(b) Offences falling under different penal enactments.

(c) Offences committed on different occasions even though they may fall under the same section.

(d) Offences committed against different persons.

(e) Offences committed by different persons individually though they may be of the same kind, as where three persons were charged with being drunk.

(f) Allegations of misappropriation against accused not in respect of any single amount but relating to different specific amounts received by him on different dates from different persons.

10. In the instant case, perusal of the record reveals that ACR No.65/2008 is against the Petitioner and two others and the allegation is that they sold the Society's land in Mauza Lidher and Chung Khurd without the approval of the Registrar Cooperatives and the General Body and thereby misappropriated sale proceeds amounting to Rs.13,837,750/- in aggregate. They are accused of having committed criminal breach of trust of the property of the members of the Society and are charged for offences under Clauses (iii), (iv), (x) and (xii) of Section 9(a) of the NAO. On the other hand, ACR No.6/2010 is against six accused, including the Petitioner, and the allegation against them is of misuse of authority, fraud in allotment, cancellation, replacement of plots, making double/triple allotment of same plots, reducing size of plots and cheating the

public-at-large to get illegal gains. Besides, there is an allegation of maintaining a parallel bank account for the Society's funds and misappropriation of public money amounting to Rs.35,83,475/-. In this reference the Petitioner is charged with offences under Clauses (iii), (iv), (vi), (ix), (x) and (xii) of section 9(a) of the NAO. It is thus evident that the charges in the two references are distinct and fall within the mischief of different provisions of the NAO. The number of accused persons is also different and the set of witnesses cited by the prosecution in the two references also varies. Therefore, they must proceed independently.

11. Section 234 of the Code stipulates that a person accused of more offences than one of the same kind may be charged with and tried at one trial subject to two conditions, namely, they were committed within the space of twelve months from the first to the last of such offences, and secondly, the number of said offences does not exceed three:

> **234. Three offences of same kind within one year may be charged together**. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, and number of them not exceeding three.
>
> (2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Pakistan Penal Code or of any special or local law:

However, clause (d) of section 17 of the NAO dispenses with both the aforementioned conditions in respect of offences tried by the Accountability Court and provides that it may be hold a joint trial for offences of the same kind committed during the space of any number of years. The said clause is reproduced hereunder:

> d. Notwithstanding anything in section 234 of the Code, a person accused of more offences than one of the same kind committed during

> the space of any number of years, from the first to the last of such offences, may be charged with and tried at one trial for any number of such offences.

The expression "offences of same kind" is defined in section 234(2) as offences which are punishable with the same amount of punishment under the Pakistan Penal Code or of any special or local law. One may argue that corruption and corrupt practices have myriad facets and different acts may constitute distinct offences under various clauses of section 9 of the NAO but they would be reckoned as "offences of the same kind" within the meaning of section 234(2) of the Code as they carry the same punishment under section 10(a) of the NAO. This may be true but the provisions of section 234 are not mandatory. The Court has discretion to try offences of the kind mentioned therein jointly but is not bound to do so. In The State v. Mirza Azam Beg, P.C. and another (PLD 1964 SC 120), the Hon'ble Supreme Court of Pakistan ruled:

> "The provisions of sections 235 and 239 of the Criminal Procedure Code vest, in our view, a discretion in the Court to try offences of the kinds indicated therein jointly in the circumstances therein mentioned, but there is nothing in them to indicate that the Court is bound to try such offences or persons together in every case. The discretion vested in the Court by these sections is expected like any other discretion vested in a Court of law to be exercised upon sound judicial principles and in the light of the facts and circumstances of each case."

Similarly, in Ahmad Khan v. Commissioner, Rawalpindi Division and another (PLD 1965 (W.P) Peshawar 65), the Court ruled that sections 234, 235, 236 and 239 are merely enabling provisions: they are permissive and not mandatory. It said:

> "It will be manifest from reading the language of the section that it has two parts and each part lays down a general rule. The first part lays down that for every distinct offence of which any person is accused there should be a separate charge, and the second part lays down that

every such charge shall be tried separately, except the cases mentioned in sections 234, 235, 236 and 239. It will, therefore, be plain that criminal cases cannot, like civil suits, be consolidated, and tried together on the same evidence, except within the limits as to the joinder of charges laid down in the Criminal Procedure Code (see Emperor v. Chamask Lal (1941 Bom. 156). Again, sections 234 to 239 are merely permissive and not mandatory, i.e., it is for the prosecution to try the accused for different offences in one trial as provided by those sections, but in case the prosecution decides to split the charges and try him separately on those charges the accused cannot insist on joinder of charges." [emphasis added]

12. In the instant case, the NAB decided to bifurcate the charges for valid reasons which we have already discussed. The Petitioner challenged its decision previously in Writ Petition No.6242/2010 and then in Writ Petition No.10271/2011 before this Court but both were dismissed. He filed CPLA No.1486-L of 2011 before the august Supreme Court against order dated 22.6.2011 passed in W.P. No.10271/2011 which was dismissed as withdrawn on 11.6.2014 with the permission to re-agitate the matter before the Accountability Court at an appropriate stage. The Apex Court's order dated 11.6.2014 was as under:

> "After making brief submissions, learned counsel for the Petitioner seeks permission to withdraw this petition with the observation that it may be left open for the Petitioner to agitate the same grounds before the Accountability Court at some appropriate stage. Such request is acceded to. This petition is accordingly dismissed as withdrawn with the above observation."

13. The Petitioner has not stated anything in the petition which may show that there is any change in the circumstances which may entitle him to re-agitate the matter before the learned Accountability Court. Even during the course of hearing his learned counsel could not refer to any such circumstance.

14. The second limb of the question that we need to determine is whether a consolidated judgment can be passed in two different trials. Section 366 of the Cr.P.C. deals with the mode of delivering judgment. It reads:

> **366. Mode of delivering judgment**.---(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced or the substance of such judgment shall be explained:
>
> (a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders; and

15. The word "judgment" has also not been defined in the Code but it is construed to be the decision of a Court which terminates judicial proceedings pending before it. Section 367 of the Code deals with the language and content of a judgment. It reads as under:

> **367. Language of judgment: Contents of judgment**.---(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the Presiding Officer of the Court or from, the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon; and the reasons for the decision; and shall be dated and signed by the Presiding Officer in open court at the time of pronouncing it and where it is not written by the Presiding Officer with his own hand, every page of such judgment shall be signed by him.
>
> (2) It shall specify the offence (if any) of which, and the section of the Pakistan Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.
>
> (3) Judgment in alternative. When the conviction is under the Pakistan Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same and pass judgment in the

alternative.

16. Section 367 of the Code ordains that a judgment must contain three things: (i) the points of determination, (ii) the decision thereon, and (iii) the reasons for the decision. The Code does not contain any provision for a consolidated judgment for different trials. Resultantly, there must be a separate judgment for every trial. More importantly, since ACR No.65/2008 and ACR No.6/2010 proceed on different allegations and the evidence recorded (or to be recorded) therein is also distinct they cannot be decided by a consolidated judgment.

17. In view of above, we are of the considered opinion that the distinguishing features of the two references do not allow them to be clubbed or decided by a consolidated judgment. Any attempt to do so would cause serious miscarriage of justice which cannot be countenanced. The impugned order is based on cogent reasons and does not warrant interference by this Court. This petition is devoid of merit and is hereby **dismissed.**

MH/M-100/L **Petition dismissed.**

PLJ 2018 Lahore 116
[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

MUHAMMAD TAUFIQ KHAN--Petitioner

versus

DEPUTY COMMISSIONER, MULTAN/CHAIRMAN OVERSEAS PAKISTANI COMMISSION CELL, DISTRICT, MULTAN and 3 others--Respondents

W.P. No. 11515 of 2017, decided on 25.8.2017.

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 406--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Direction to--Misuse of Authority--Recovery of possession--Lodging of FIR--Pendency of--Petitioner shall bring in notice of Respondent No. 1 of facts brought before this Court supported by documents and thereafter he shall pass appropriate order in accordance with law by ensuring that any proceedings pending before Court of law are not frustrated--Writ Petition Dispose of.

[P. 117] A

Mr. Muhammad Bilal Butt, Advocate for Petitioner.

Mr. Muhammad Javed Saeed Pirzada, AAG on Court's call for Respondents.

Date of hearing: 25.8.2017.

ORDER

Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has sought a direction to Respondents No. 1 to 3 not to misuse their authorities for the recovery of possession of property No. 888/9-E measuring 11 *Marlas* situated near Telephone Exchange, Bosan Road, Multan and the property measuring 7 *Marlas* situated in Gulgasht Colony, Multan. Further submits that FIR No. 381/2016 dated 18.08.2016 under Section 406, PPC at Police Station, B.Z, Multan lodged by *Mst*. Hina Hassan wife of Shahid Pervaiz (Respondent No.

4) regarding the said property which is subject matter of FIR, has been recommended for discharge. Also submits that prior to the registration of the said FIR a civil suit titled, *"Muhammad Taufiq Khan vs. Shahid Pervaiz"* in connection with property measuring 11 *Marlas* has been filed by the petitioner which is pending in the Court of Mr. Ibrar Ali Khan, learned Civil Judge, Multan and is fixed for hearing on 21.09.2017 whereas another suit of the same titled regarding the property measuring 7 *Marlas* has also been filed on the ground that the said property was rented out by Respondent No. 4 which is pending in the Court of Mr.Umar Bashir Sipra, learned Civil Judge, Multan and is fixed for hearing on 28.09.2017 and that during the pendency of the civil suits Respondent No. 1 could not order for dispossession of the petitioner from the said property.

2. The learned Law Officer who has enters appearance on Court's call submits that the file does not reveal that the petitioner ever appeared before Respondent No. 1 so as to bring into his notice the fact of pendency of the litigation and if these facts are brought into his notice he shall act strictly in accordance with law.

3. Be that as it may, I dispose of this writ petition with an observation that the petitioner shall bring in to the notice of Respondent No. 1 of the facts brought before this Court supported by the documents and thereafter he shall pass appropriate order in accordance with law by ensuring that any proceedings pending before the Court of law are not frustrated.

(M.M.R.) **Petition disposed of.**

PLJ 2018 Lahore 563

Present: ALI BAQAR NAJAFI, J.

Syed ASGHAR ABBAS NAQVI, etc.--Appellants

Versus

Syed QASWAR ABBAS, etc.--Respondents

Election Appeal No. 43 of 2016, decided on 5.12.2017.

Punjab Local Government Act, 2013--

----S. 46--Filing of nomination papers--Declaration of result--Returned candidates--Election petition--Accepted--Order of repolling--Application for re-counting of votes--Accepted--Appointment of local commission--Maintainability--Submission of report by local commission--No objection on report by both parties--Declaration of election void--Challenge to--Findings of Election Tribunal could not be entirely based on report of local commission particularly after framing of issues when case was fixed for evidence--Report of local commission might have added to reasons which may be given by presiding officer to reach his conclusion--It is not denied by parties that none of officials from Election Commission was summoned--It is not case of respondent that appellant have committed certain acts directly with narration of particular facts resulting into maneuving of votes--Appeal was allowed. [P. 568] A

Mr. Muhammad Ramzan Khalid Joiya, Advocate for Appellants.

Syed Muhammad Jaffar Tayyar, Advocate for Respondents.

Date of hearing: 14.11.2017.

ORDER

This election appeal under Section 46 of the Punjab Local Government Act, 2013 is directed against order dated 07.12.2016 passed by the Election Tribunal, Multan whereby the election petition filed by Respondents No. 1 and 2 was accepted and the election of the appellants was declared void and re-polling was ordered in U.C No. 76, Muzaffarabad, Multan.

2. Brief facts giving rise, to the filing of this appeal are that appellants being in the panel of chairman and Vice-Chairman jointly filed their nomination paper's for contesting the local bodies elections in U.C. No. 76 Muzaffarabad, Multan. Against the said seats, Respondents No. 1 and 2 also filed their nomination papers. After scrutiny of the nomination papers the elections were conducted and the appellants were declared as returned candidates. However, feeling aggrieved of the results, the said respondents filed an election petition before the Election Tribunal, Multan in which appellants appeared and contested, issues were framed and before recording of evidence Respondents No. 1 and 2 filed an application for re-counting of ballot papers and on 29.06.2016 the said application was accepted and Mr. Muhammad Siddique, ® District & Sessions Judge, was appointed as local commissioner for re-counting of the ballot papers. This order was assailed in W.P. No. 10376 of 2016 by the appellants which was dismissed on 14.07.2016 as non-maintainable, since no constitutional petition lied against an interim order passed by the Election Tribunal. The appellants joined the re-counting proceedings before the local commission who submitted his report on 18.07.2016 before the Election Tribunal. Both the parties did not raise any objection on the report of the local commission as according to the appellants re-counting did not matter much. The grievance is that despite the fact that local commission did not change the factual situation relevant for the results, the Election Tribunal *vide* impugned order dated 07.12.2016 declared the election of the appellants as void and ordered for re-polling in the constituency, hence this appeal.

3. Learned counsel for the appellants submits that election bags of Polling Station No. 5 (Government Boys Elementary School, Muzaffarabad) went missing yet the re-counting was conducted without probing and fixing the responsibility. Adds that local commission was only authorized to re-count the ballot papers but it proceeded beyond his mandate when he preferred to even check the seals and overall conditions of the polling bags on the basis of which Election Tribunal declared the whole election as void. He also submits that the appellants obtained 2463 votes at the time of election whereas Respondents

No. 1 and 2 obtained 2187 votes but the local commission proceeded to re-count the votes in the absence of said polling bags of Polling Station No. 5. He also submits that without recording of evidence the Election Tribunal had wrongly accepted the election petition. He further submits that even by excluding the bags of Polling Station No. 5, the appellants were successful by 195 votes and that while physically carrying of polling bags from one place to another their seals might have been broken, and that the protection of the poling bags was the responsibility of Election Commission's officials. The appellants in no way played any negative role. Places reliance upon *Jam Madad Ali versus Asghar Ali Junejo* **(2016 SCMR 251) and order dated 10.11.2016 passed in Civil Appeal No. 823 & 974 of 2014 titled "*Usman Dar etc. versus Khawaja Muhammad Asif etc.*"** and prays for the acceptance of the appeal.

4. Conversely, learned counsel for Respondents No. 1 and 2 submits that the impugned order is a balanced order and was rightly passed in the facts on record and that by not raising any objections on the report of the local commission, the appellants have conceded to its findings. Adds that there was no need to record any further evidence after when the report was submitted before the Election Tribunal exposing the illegalities committed for the benefit of the appellants. Places reliance upon *Muhammad Tariq Chaudhry versus Khalid Ahmad and 7 others* **(2007 MLD 1725),** *Sharjeel Khan and another versus Additional District & Sessions Judge, Kot Addu and 2 others* **(2006 CLD 1842)**, *Muhammad Naeem Kasi and another versus Abdul Latif and 7 others* **(2005 SCMR 1699)**, *Sheikh Iftikhar-ud-Din and another versus District Judge, Bahawalpur Exercising Powers Of Election Tribunal For Union Council Of District Lodhran and 8 others* **(2002 SCMR 1523)**, *Ch. Muhammad Ashraf Warraich and another versus Muhammad Nasir Cheema and others* **(2016 SCMR 998)**, *Kala Khan and another versus Qadir Bakhsh* **(1998 CLC 1861)**, *Messrs United Bank Limited versus Bashir Engineering Industries and others* **(1996 MLD 729)**, *Qaiser Hameed and another versus Ch. Ijaz Ahmed and 8 others* **(2007 MLD 1210)** and *Jam Madad Ali versus Asghar Ali Junejo* **(2016 SCMR 251)**.

5. Arguments heard. File perused.

6. After hearing the learned counsel for the parties and perusing the available record, it is noted that election petition was filed by the respondents in which the objections were filed by the appellants whereafter the following issues were framed on 27.04.2016 and the case was fixed for evidence on 11.05.2016.

ISSUES.

1. Whether this election petition is not maintainable as the same is based on wrong assumptions. (OPR)

2. Whether the petitioners have not come to.

3. Whether this election petition is not maintainable due to mis-joinder of necessary parties. (OPR)

4. Whether the Respondents No. 1 and 2 obtained the result & success in their favour on the basis of their political influence and due to reason that they got prepared polling scheme as they wished. (OPR)

5. Whether no ballot papers in the election were shown as rejected if so its effect (OPP)

6. Whether the ballot papers which had double stamps and cutting were counted in favour of Respondents No. 1 and 2 unlawfully. (OPP)

7. Whether the result of success of Respondents No. 1 and 2 was outcome of illegal and malpractice. (OPP)

8. Whether the petitioners are winning candidate instead of the Respondents No. 1 and 2. (OPP)

9. Whether the notification of the Election Commission of Pakistan dated 21.12.2015 to the extent of Respondents No. 1 and 2 is liable to be declared void being illegal. (OPP)

10. Relief.

On 19.05.2016 respondent filed an application for re-counting/re-examination which was contested by the appellants through their written reply dated 02.06.2016. On 29.06.2016, said application was allowed on merits after

hearing the parties and Mr. Muhammad Siddique, ® District & Session & Judge, was appointed as local commission for re-counting and verification *(Jaanch Partaal)* of the elections and the report was required to be submitted on 19.07.2016. Consequently, the report was submitted in which no objections were filed. It was total 10 Polling Stations, seals of the bags from 6 Polling Stations were broken whereas the election bags of Polling Station No. 5 (Government Boys Elementary School, Muzaffarabad) was lost and could not be located. It was also observed that prior to the re-counting the votes of the appellants was 276 more than that of the respondents and that even after re-counting the appellants had 195 votes more than that of the respondent.

7. Election Tribunal is fully empowered to nullify any elections on the basis that it was based upon malpractice. The respondent has been raising objections regarding the transparency and malpractices during the said elections. In the application for re-counting the reply was submitted by the appellants contesting the same and after submission of the report of the local commission no objection was raised owing to the fact that appellants still procured more votes than the respondent. The argument of the learned counsel for the appellants that in that situation evidence was required to be recorded and that non-appearance of the local commission and non-summoning of the officer of the Election Commission the responsibility of not protecting the polling bags cannot be fixed is convincing primarily for the reasons that Election Tribunal is fully empowered and therefore in this case is bound to record evidence. The minimum criteria or the essential pre-requisites for satisfying the conscience of the Court or Tribunal for permitting a re-counting was that there should be a specific allegation of tampering, manipulation and manoeuvering in very specific terms alongwith the necessary details and *prima facie* material supporting such allegations and that it should not be used for roving inquiry to fish out the material for reversing the election. In a **reported judgment i.e. Civil Appeals No. 823 & 947 of 2014 titled *"Usman Dar etc. versus Khawaja Muhammad Asif etc."*** it has been held that once the election material had been delivered to the election authority or an agency designated by it for safe custody of the polling bags after completion of the election

process, consolidation and announcement of the result, the requirement of law is presumed to have been fulfilled. Any subsequent events could not have materially affected the result of election so as to form the basis to set aside the election as a whole. Furthermor,

without clear and irrefutable evidence connecting the appellants to damage allegedly caused to the record, he cannot be held responsible. Even otherwise, the result after re-counting of the available record the appellants had a lead of 195 votes which could not reverse the result of election.

8. In the present case, I am of the view that findings of the Election Tribunal could not be entirely based on the report of the local commission particularly after framing of issues when the case was fixed for evidence. The report of the local commission might have added to the reason which may be given by the learned Presiding Officer to reach his conclusion. It is not denied by the parties that none of officials from Election commission was summoned. It is not the case of the respondent that appellants have committed certain acts directly with narration of particular facts resulting into manoeuvering of the votes. The precise details of malpractice have also not been mentioned in the election petition therefore, in the facts and circumstances it would be appropriate that while allowing this appeal the case should be remanded to the election Tribunal where the evidence may be recorded to see the effect of missing bags of polling Station No. 5 (Government Boys Elementary School. Muzaffarabad) and also of broken strips of other polling bags and non-filing of objections on the report of the local commission as well as his non-appearance.

9. order accordingly.

(Y.A.) **Appeal allowed.**

PLJ 2018 Lahore 1008

Present: Ali Baqar Najafi, J.

Sahibzada MUHAMMAD HUSSAIN RAZA--Petitioner

versus

PROVINCIAL ELECTION COMMISSION etc.--Respondents

W.P. No. 218242 of 2018, decided on 8.6.2018.

Constitution of Pakistan, 1973--

----Arts. 4, 199 & 219(a)--Election Act, 2017, S. 25-49--Constitutional petition--Name of petitioner was not included in voter list--Filling of application regarding inclusion of name in voter list--Application was not decided--Under Section 25 of Elections Act, 2017, National Database and Registration Authority is duty bound to transmit relevant data of every fresh CNIC issued by it to election electoral area in which his permanent and temporary address is located--Likewise, authority shall also transmit to election commission relevant data of every modified CNIC and such other details as required by Commission--After transmission of such data, election commission shall take steps for enrollment/correction in relevant electoral roll in accordance with procedure--In explanation of section, it has also been laid down that a fresh CNIC includes any card that has not been earlier made part of electoral roll data base due to any reason whatsoever--Authority is bound to transmit data of any CNIC which has been renewed if holder of which was not enrolled as a voter--This section clearly emphasis that a citizen of this country must not be disenfranchised in any circumstance--Above discussion clearly leads this Court to an irresistible conclusion that petitioner being citizen of country having valid CNIC duly mentioned in family registration certificate is entitled to vote and also contest election--Omission to enroll his vote is rectifiable since his failure to apply for enrollment as a voter, would

not absolve election commission to fulfill their responsibility to collect data from Registration Authority in order to modify voter list and make it compatible to existing position--For foregoing reasons, I am of considered view that omissions of including name of petitioner as a voter was not entirely due to acts of petitioner as it is responsibility of respondent as well as National Database and Registration Authority to transmit correct data to Election Commission to enroll petitioner as a voter in constituency No. 113 Faisalabad--Petition was allowed. [Pp. 1011, 1014 & 1015] B, C & D

Constitution of Pakistan, 1973--

----Art. 4, 219(a)--Protection of Law--Preparation of electroal roll--Under Article 4 of Constitution, petitioner enjoys protection of law and to be treated in accordance with law as his inalienable right being citizen of this country--Under Article 219-(a) of Constitution, election commission is duty bound to prepare electoral roll for election to National Assembly, Provincial Assemblies and revise such rolls periodically to keep them up-to-date under 22nd Amendment by Act dated 10.06.2016. [P. 1011] A

Ch. Shah Nawaz Dhillon, Advocate for Petitioner.

Mr. Amjad Ali Chattha, Additional Advocate General Punajb with Ali Abdullah Khalid District Election Commissioner-I, Faisalabad.

Date of hearing: 8.06.2018

ORDER

Through this constitutional petition, a direction is sought to the respondents to incorporate the name of the petitioner in voter list with a further prayer to direct the respondents to issue the nomination papers enabling him to contest the forthcoming elections as a candidate for the seat of MPA in his Constituency No. PP-113, Faisalabad.

2. Brief facts giving rise to the filing of this petition are that petitioner is the resident of Mohallah Nishtarabad, Tehsil and District Faisalabad, and was issued a renewed CNIC with No. 33100-8655201-9. He belongs to a strong political family as his father, namely, Haji Muhammad Fazal Karim Hamid remained former Minister and his brother, namely, Sahibzada Muhammad Hamid Raza is the leader of Sunni Ittehad Council. He is a twin brother of said Sahibzada Muhammad Hamid Raza, therefore, he had been facing some problems and one such problem is that his name could not be included in the voter list of the constituency. However, after realizing his national responsibility to caste vote in the forthcoming election and also to contest the election, he contacted Respondent No. 2 on 26.04.2018 and was informed that he has the vote in the voter list. He did not bother much until recently when he was shown the voter list in which the name of the petitioner was not included perhaps due to some typographical mistake or with bonafide act of the respondent whereas the votes of his brother and other family members were mentioned in the said list. He immediately filed an application on 05.06.2018 before the Provincial Election Commissioner/Respondent No. 1 requesting him to incorporate his vote on the basis of his CNIC, domicile certificate and family registration certificate which application has not been decided, hence this writ petition.

3. Learned counsel for the petitioner contends that it is the primarily responsibility of the respondents to incorporate the name of the petitioner in the voter list as admittedly, his other family members were already enrolled voters in the said constituency. Submits that the petitioner and his brother Sahibzada Muhammad Hamid Raza are twin brothers and due to this reason his vote could not be enrolled though he was informed that he had an enlisted vote, therefore, under Section 49 of the Elections Act, 2017, this is an exceptional circumstance in which the Election Commission can include the name of the petitioner so as to amend the electoral roll. He also submits that

under Section 25 of the said Act (ibid), the National Database and Registration Authority was required to transmit the data to the election commission so as to make necessary correction in accordance with such procedure already prescribed. Also submits that under Section 40, the Election Commission is empowered to modify the electoral roll to include the name of any person entitled to be enrolled in such electoral roll, therefore, prays that the writ petition be allowed.

4. Conversely, learned law officer assisted by District Election Commissioner-I submits that under Section 39 of the Elections Act, 2017, the petitioner was required to inform the election commission to be enrolled as a voter within the stipulated time but he failed to perform his national duty. Adds that at this stage, when the election process has already started, the inclusion of his name in the voter list will surely create inconvenience and put extra burden upon the election commission as the list will have to revive and the ballot papers modified accordingly. He also submits that under Sections 25 and 40 of the Elections Act, 2017, the electoral rolls can be modified but a voter cannot be included.

5. Arguments heard. Record perused.

6. After hearing the learned counsel for the parties, perusing the file and the relevant record, it is not denied by the respondent that petitioner is a permanent resident of constituency PP-113 Faisalabad having CNIC No. 33100-8655201-9 renewed on 05.07.2017 after the expiry of the earlier CNIC. It is also admitted by the respondent that other family members of the petitioner are already enrolled voters in the constituency. It is also fairly admitted by the respondent side that had the petitioner applied for enrollment of his vote in the list within time, the Respondent No. 2 would have no objection to enroll his vote. However, he submits that the required procedure had to be followed and if the petitioner had failed to take the benefit of the offer publically made by

the election commission to check the enrolled votes, the respondent commission is not responsible.

7. With this background, it will be important here to read and understand the related provisions of the Constitution. Under Article 4 of the Constitution, the petitioner enjoys the protection of law and to be treated in accordance with law as his inalienable right being the citizen of this country. Under Article 219-(a) of the Constitution, the election commission is duty bound to prepare electoral roll for election to the National Assembly, Provincial Assemblies and revise such rolls periodically to keep them up-to-date under 22nd Amendment by the Act dated 10.06.2016. Article 219 is reproduced as under:--

> *"219(a)….preparing electoral rolls for election to the National Assembly, Provincial Assemblies and local governments, and revising such rolls periodically to keep them up-to-date."*

8. Under Section 25 of the Elections Act, 2017, the National Database and Registration Authority is duty bound to transmit relevant data of every fresh CNIC issued by it to the election Commission for registration of the card holder as a voter in the electoral area in which his permanent and temporary address is located. Likewise, the authority shall also transmit to the election commission the relevant data of every modified CNIC and such other details as required by the Commission. After transmission of such data, the election commission shall take steps for enrollment/ correction in the relevant electoral roll in accordance with the procedure. In the explanation of the section, it has also been laid down that a fresh CNIC includes any card that has not been earlier made part of the electoral roll data base due to any reason whatsoever. The authority is bound to transmit the data of any CNIC which has been renewed if the holder of which was not enrolled as a voter. This section clearly emphasis that a citizen of this country must not be disenfranchised in any

circumstance. Section 25 of the Elections Act, 2017 is reproduced as under for ready reference:--

> **"25. National Database and Registration Authority to transmit data.**--(1) *In such manner as may be prescribed, the National Database and Registration Authority shall transmit relevant data of every fresh National Identity Card issued by it to the Commission for registration of the card-holder as a voter in the electoral roll of the electoral area in which his permanent or temporary address is located, in accordance with the option indicated by him in the application for issuance of the National Identity Card.*
>
> *(2) The Authority shall also transmit to the Commission relevant data of every cancelled or modified National Identity Card, information regarding deceased voters and such other details as may be required by the Commission for the purposes of this Act.*
>
> *(3) The Commission shall forward the data referred to in sub-Sections (1) and (2) to the Registration Officer concerned who shall take steps for enrolment or, as the case may be, correction in the relevant electoral roll in accordance with such procedure as may be prescribed."*

9. Under Section 39 of the Elections Act, 2017, 30 days time is provided before expiry of the term of the assembly during which such inclusion of voter is possible. This information was required to be made publically by the election commission. Under Section 40, the election commission is empowered to modify the electoral roll at any time by inclusion in the electoral roll the name of any person entitled to be enrolled through a valid order of course after hearing the person concerned. Sections 39 & 40 of the Elections Act, 2017 are reproduced as under for ready reference:

"39. No revision, correction or transfer after constituency called upon to elect.--*(1) No revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of an electoral area to the electoral roll of another electoral area shall be made nor shall any order under Section 38 be made in respect of any electoral roll during the period beginning thirty days before the day on which the term of an Assembly or a local government is due to expire (hereinafter referred to as "the cut-off date") till announcement of the results of the general election to the Assembly or the local government but it shall not apply to an election to fill a casual vacancy in an Assembly or a local government.*

(2) In case of an election to fill a casual vacancy to an Assembly or a local government, no revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of an electoral area to the electoral roll of another electoral area shall be made nor shall any order under Section 38 be made in respect of any electoral roll at any time after the constituency of which such electoral area forms part has been called upon to elect its representative and before such representative has been elected.

(3) The Commission shall, through press release and its website, inform the general public about the cut-off date for revision of or correction in an electoral roll of an electoral area or inclusion or transfer of a vote from the electoral roll of an electoral area to the electoral roll of another electoral area."

"40. Power of the Commission to modify electoral roll.--(1) Subject to Section 39, the Commission may, at any time, order--

(a) the inclusion in an electoral roll of the name of any person entitled to be enrolled on such electoral roll, and such name shall, from the date of such order, form part of the electoral roll;

(b) the exclusion from an electoral roll of the name of any person who has died or has become disqualified to be a voter, and such name shall, from the date of such order, stand excluded from that roll; and

(c) the removal of the name of any person from an electoral roll where such removal becomes necessary due to the repetition of the name in the same electoral roll or in the electoral rolls of more than one electoral area.

> *(2) Before taking decision under clause (b) or clause (c) of sub-section (1), the Commission shall afford a reasonable opportunity of being heard to the person likely to be affected and shall record reasons for its decision."*

10. Under Section 49 of the Act, the Election Commission may depart from the normal proceedings in exceptional circumstance, if it is satisfied that normal procedure cannot be followed for revision of electoral roll in respect of any electoral area. However, such exceptional circumstance be recorded by the commission. Section 49 of the Elections Act, 2017 is reproduced as under for ready reference:--

> ***"49. Departure from normal procedure in exceptional circumstances.--****(1) Where the Commission is satisfied that it is not possible to follow the procedure laid down for the preparation or revision of an electoral roll in respect of any electoral area, the Commission may, after recording the exceptional circumstances necessitating deviation from the laid down procedure, direct that an electoral roll for such electoral area shall be prepared in such manner as it deems fit.*

(2) The Commission shall immediately publish the direction issued under sub-section (1) on its website."

11. Under clause 2(xli), a voter means a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency and under Section 2(xx) electoral roll means a roll prepared, revised or corrected under this Act. Under Section 2(xvi), the electoral area in the urban area means, municipal ward or census block, or if there is no municipal ward or census block, the well-defined Mohallah or a street or well defined part. Otherwise, such other area which may be determined by the commission. Sections 2(xx) and Section 2 (xli) are reproduced as under for ready reference:-

"2(xx) "electoral roll" means an electoral roll prepared, revised or corrected under this Act and includes the electoral rolls prepared under the Electoral Rolls Act, 1974 (XXI of 1974), existing immediately before the commencement of this Act;

2(xli) "voter" means--

(a) in relation to an Assembly or a local government, a person who is enrolled as a voter on the electoral roll of any electoral area in a constituency; and 4

(b) in relation to the Senate, a person who--

I. for election to a seat from a Province, is a Member of the Provincial Assembly;

II. for election to seats from the Islamabad Capital Territory, is a Member of the National Assembly; and

III. for election to a seat from the Federally Administered Tribal Areas, is a Member of the National Assembly elected from the Federally Administered Tribal Areas."

12. The above discussion clearly leads this Court to an irresistible conclusion that the petitioner being citizen of the country having valid CNIC duly mentioned in the family registration certificate is entitled to vote and also contest election. The omission to enroll his vote is rectifiable since his failure to apply for enrollment as a voter, would not absolve the election commission to fulfill their responsibility to collect the data from Registration Authority in order to modify the voter list and make it compatible to the existing position.

13. Our country is passing through a very important phase of transfer of power to the new government through national election. This process must win the trust of all stake holders. The election laws are aimed at fair and free elections without any possibility of pre or post poll rigging. It is also intent of the Election Laws to provide equal level playing field for every person to vote for or become a possible representative having clean credentials.

14. For the foregoing reasons, I am of the considered view that omissions of including the name of the petitioner as a voter was not entirely due to the acts of the petitioner as it is the responsibility of the respondent as well as the National Database and Registration Authority to transmit the correct data to the Election Commission to enroll the petitioner as a voter in the constituency No. 113 Faisalabad. This petition is therefore **allowed** and the respondents are directed to forthwith enroll the name of the petitioner as a voter in the said constituency and on the basis of it issue him the nomination forms for the MPA without wastage of any further time.

Copy **Dasti** on payment of usual charges.

(Y.A.) **Petition allowed.**

PLJ 2018 Lahore 1158

[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

Mahar RIAZ HUSSAIN and another--Appellants

versus

MAZHAR IQBAL and 2 others--Respondents

Election Appeal No. 10 of 2017, decided on 5.12.2017.

Punjab Local Government Act, 2013--

----S. 46--Punjab Local Government (Conduct of Elections) Rules, 2013, Rr. 62 & 70--General election--Declaration as returned candidate--Election Appeal--Limitation Act, 1908--Application of--Corrigendum of election result de-notifying respondent was issued on 16.1.2016 which was rightly challenged before the Court--Supreme Court permitted to approach election tribunal--Neither condoning delay nor converted said constitutional petition as election petition. [P. 1160] A

Limitation Act, 1908 (IX of 1908)--

----S. 14--Punjab Local Government Act, 2013, S. 38--Application for condonation of delay--Election petition u/S. 38 of Act, 2013, be filed within 30-days--Limitation Act, 1908 is not applicable--Petition was dismissed. [Pp. 1162 & 1163] B

1999 SCMR 155, 1999 SCMR 1123 & PLD 2008 SC 663, *ref.*

Punjab Local Govt. Act, 2013--

----S. 38--Limitation Act, 1908--Election Petition--Be filed within 30-days from publication of result in official gazette--Limitation Act is not applicable, so Section 14 not attracted. [Pp. 1162 & 1163] B

Syed Riaz-ul-Hassan Gillani, Advocate for Appellants.

Mr. C.M. Sarwar, Advocate for Respondents.

Date of hearing: 16.11.2017.

ORDER

This election appeal under Section 46 of the Punjab Local Government Act, 2013 is directed against order dated 25.04.2017 passed by the Election Tribunal, Multan whereby the election petition filed by appellants was dismissed.

2. Brief facts giving rise to the filing of this appeal is that the appellants as well as the respondents filed their respective joint candidature for the 2 seats of Chairman and Vice-Chairman in U.C. No. 101, District Council, Khanewal, whereafter the election was held on 19.11.2015 and the appellants were declared as returned candidates by securing 2723 votes whereas the respondents secured 2474. The statement of count in form XI was also issued. The returning officer issued un-official result but at the time of consolidation of results respondents were declared as returned candidates. At that time the appellants approached the Election Commission of Pakistan which issued the corrigendum for the correction of the mistake *vide* letter dated 16.1.2016 declaring the appellants as successful. Respondents filed W.P. No. 757 of 2016 which was disposed of but the Intra Court Appeal No. 25 of 2016 filed by the respondents was allowed. The appellants filed C.P.L.A. No. 1719 of 2016 before the Hon'ble Supreme Court of Pakistan where the appellants did not press their appeal in order to approach the Election Tribunal *vide* order dated 30.08.2016. Later, appellants filed election petition under Section 38 of the Punjab Local Government Act, 2013 read with Rule 62 of the Punjab Local Government (Conduct of Elections) Rules, 2013 which was accompanied by an application for condonation of delay in filing the appeal. The respondents filed application under Rule 70 of the Punjab Local Government (Conduct of Elections) Rules, 2013 for dismissal of the election

petition and after hearing the arguments the election petition filed by the appellants was dismissed on 25.04.2017, which order is challenged in this appeal.

3. Learned counsel for the appellants submits that the impugned order dated 25.04.2017 of the election tribunal is self-contradictory and was passed in a slipshod manner by holding that the law of limitation is not applicable to the proceedings before the Election Tribunal. Adds that the Local Government Election Rules as well as Local Government Act, 2013 does not expressly debar the applicability of Limitation Act, 1908, therefore, by virtue of Section 29(2)(a) of Section 14 of the Limitation Act, 1908 would apply to the election tribunals. Adds that applicability of Section 14 of the Limitation Act, 1908 was not appreciated and the appeal was dismissed on technical grounds.

4. Conversely, learned counsel for the respondents supports the decision of the Election Tribunal and submits that the appeal was not filed within the scope of Rule 62 of the Punjab Local Government (Conduct of Elections) Rules, 2013, therefore, it was rightly dismissed under Rule 70 of the Punjab Local Government (Conduct of Elections) Rules, 2013. Adds that relief for setting aside the election was not claimed and only notification was challenged, therefore, the appeal merits dismissal.

5. Arguments heard. File perused.

6. After hearing the learned counsel for the parties and perusing the record, it is straightway observed that the corrigendum of the election results de-notifying the respondents was issued on 16.01.2016 which was rightly challenged before the Court in terms of dictum laid down in *Mian Waheed Ahmed versus The Election Authority, Punjab and others* (1999 SCMR 155). The Hon'ble Supreme Court permitted the appellants to approach the Election Tribunal neither by condoning the delay nor converted the said constitutional petition as election petition to be decided by the Election Tribunal within specific time as it could do in terms of law laid down in *Asghar Ali versus*

Punjab Local Council Election Authority, Lahore and 4 others (1999 SCMR 1123) to show that Hon'ble Supreme Court did not condone the delay deliberately. Relevant extract is reproduced as under:

> "... We would allow the above petition, convert into appeal and set aside the impugned judgment. However, keeping in view the difficulty pointed by Mr. Peracha, the writ petition field by Respondent No. 4 in the High Court should be remitted to the District and Sessions Judge, Gujrat (Election Tribunal Gujrat) with the direction to treat the same as election petition and decide the matter within a period of two months from the date of receipt of copy of this order ....."

7. Order of the Supreme Court dated 30.08.2016 passed in Civil Petition No. 1719 of 2016 titled *"Mazhar Riaz Hussain & another versus Mazhar Iqbal & others"* is reproduced as under to show that no such concession was extended to the appellants:--

> **"DOST MUHAMMAD KHAN, J**. After arguing the case at some length particularly by citing Rules 78 & 79 of the Punjab Local Government (Conduct of Elections) Rules, 2013 the learned counsel stated that the view held by the High Court by applying the principle laid down by this Court in the case of *Moulana Atta-urRehman vs. Haji Sardar Umar Farooq and others* (PLD 2008 SC 663) was not right on the point of law because the rules referred to above speak the other way which was not the case before this Court in the above titled case.
>
> 2. The learned ASC further stated that he will not press this petition provided the impugned order of the High Court would not influence the mind of the Tribunal with regard to taking cognizance if the petitioners approach the Tribunal as required under the law and so constituted and that because of the notification issued by the Election Commission of Pakistan subsequently de-notifying the petitioners and re-notifying the respondents as returning candidate was a just cause for

the delay of approaching the Tribunal and he will file an application for condonation of delay.

3. In view of the statement of the learned counsel, this petition is disposed of being not pressed."

8. In the present appeal, the corrigendum dated 16.01.2016 was disputed by the respondents which culminated into I.C.A. No. 25 of 2016 wherein it was decided that it was illegally issued and a direction was therefore, issued to Election Commission of Pakistan to nominate a Judicial Officer to administer the oath of respondents. Civil Petition No. 1719 of 2016 decided on 30.08.2016 shows that the appeal was disposed of as not pressed. In Paragraph No. 2 of the said order, it was mentioned that order of the Divisional Bench of this Court should not influence the Election Tribunal and that notifying and de notifying the appellants was a just cause for the delay in approaching the Tribunal. Importantly, this Court was not shown any notification whereby the appellants were denotified as returned candidates after the order of the Divisional Bench dated 27.04.2016, therefore, obviously at the most the time should have started running from the said date of order of the Divisional Bench. After the order passed by the apex Court on 30.08.2016, the election petition was filed before the Election Tribunal on 21.9.2016 beyond the period of 30 days of the said order passed in the said I.C.A. on 27.4.2016. The order passed by the Divisional Bench against the appellants straightway provided a cause of action to file the election petition but the appellants preferred to file C.P.L.A. before the apex Court where neither the delay was condoned nor the petition for leave to appeal was referred to the Election Commission treating it as election petition so as to condone the delay in approaching the Election Tribunal. Needless to observe that the election matters require quick disposal keeping in view their nature of decision.

9. Since 30 days period is already prescribed under Section 38 of the Punjab Local Government Act, 2013 to file the election petition, therefore,

under Section 29 of the Limitation Act, 1908 it could not be extended. In my humble view, the appellants were required to approach the Election Tribunal within 30 days from the date of decision of I.C.A. No. 25 of 2016 on 27.04.2016, but they filed election petition on 21.09.2016, therefore, the election petition was time barred.

10. Besides, the reasons advanced by the Election Tribunal are cogent which need no interference. Relevant extract of paragraph No. 8 is reproduced as under:--

The election petition under Section 38 of the Punjab Local Government Act, 2013 is required to be filed within 30 days from the publication in the official gazette the result of the election and the

Limitation Act, 1908 is not applicable, therefore, Section 14 of the Act ibid will obviously be not attracted.

9. In this view of the matter, this appeal is of no merit and is, therefore, dismissed.

(K.Q.B.) **Appeal dismissed.**

2019 C L C 1621

[Lahore]

Before Ali Baqar Najafi and Sardar Ahmad Naeem, JJ

GHULAM HUSSAIN----Petitioner

Versus

D.G. NAB and others----Respondents

W.P. No. 22945 of 2019, decided on 13th May, 2019.

University of Engineering and Technology, Lahore Act (V of 1974)---

----Ss.9, 23, 10 & 10A--- Public University---Officers of the University---Chancellor, duties and obligations of---Syndicate of the University---Powers and duties of---Advice sought by Syndicate from Chancellor of University---Governor of Province as officer of University in the capacity of Chancellor---Scope---Question before the High Court was whether advice sought by the Syndicate of the University on matters relating to appointment of officers of University, Chancellor was expected or bound to give prompt advice to the Syndicate, in order to enable it to proceed---Validity---When an advice was sought from Chancellor, who was also the Governor of the Punjab, the said Authority was expected to give a prompt advice on said matter referred to him---Syndicate of the University could not be presumed to fulfill such responsibility on its own and the Chancellor himself was an officer of the University---High Court observed that advice of the Chancellor as sought by the Syndicate should be given without wastage of unnecessary time whereafter the Syndicate would proceed in the matter accordingly---Constitutional petition was disposed of, accordingly.

Sheraz Zaka for Petitioner.

Ahsan Rasool Chatha, Special Prosecutor for NAB.

Sajjad Hussain for UET.

ORDER

Through this Constitutional petition under Article 199 of the Constitution of, Islamic Republic of Pakistan, 1973 petitioner has sought an appropriate direction respondent No.1 to take immediate action in the light of inquiry report prepared by the Inquiry Committee of Higher Education Department, Government of Punjab, Lahore and then decide the complaint/representation of the petitioner.

2. Brief facts, giving rise to the filing of this constitutional petition are that petitioner, being a retired Laboratory Supervisor from University of Engineering and Technology, 'Lahore had observing corruption and corrupt practices of the Registrar, during his service moved a complaint before the NAB authorities which recommended it to the Higher Education Department (HED) for proper action. Meanwhile, high-up's of the University had covered the illegalities of the said Registrar upon which the petitioner filed an application before the Higher Education Department (HED) for inquiry and also filed Writ Petition No. 177820 of 2018 before this Court which was disposed of on 12.03.2018 directing the Higher Education Department (HED) to proceed in the matter who issued a direction to the University of Engineering and Technology. According to .the petitioner, a meeting of the Syndicate of U.E.T., was convened on 30.03.2019 but neither the said Registrar was de-notified nor any action has been initiated against him, hence this writ petition.

3. In the report and parawise comments submitted by the NAB authorities the Secretary Higher Education Department (HED) had sent a letter to the Vice-Chancellor U.E.T. on 07.03.2019, also intimated to NAB, about the probe conducted in said matter and the Vice-Chancellor was

directed to de-notify the illegal appointments through the Syndicate and take disciplinary action against all the responsible officials/officers for such appointments. According to the NAB, an order was passed in Writ Petition No. 14631 of 2017 on 13.03.2019 wherein the matter was referred to Syndicate U.E.T. for taking appropriate action. According to the learned counsel appearing on behalf of U.E.T., the Registrar and Controller exams are appointed by the Syndicate under sections 15 and 17 respectively, of the University of Engineering and Technology Lahore Act, 1974 and, therefore, the matter has already been placed before the Syndicate. Vide meeting held on 30.03.2019 in Item No.30 it was concluded that Selection Board and Syndicate was the competent authority for appointment of officers and teachers as per the University Act, 1974 and, therefore, on the consistent stance of the representative of Higher Education Department, the matter was referred to the Chancellor for his advice whereafter the appointment was to be reviewed.

4. Arguments heard. File perused.

5. Importantly, the NAB is not in action so far, therefore, when an advice was sought from the Chancellor/Governor Punjab, the said authority is expected to give a prompt advice on the matter referred to him as in their wisdom the Syndicate thought it appropriate but they would not be presumed to have fulfilled their responsibility as the Chancellor himself is an officer of the University under section 9 and under Section 10 he exercises such powers as described therein. Under section 10-A of the Act, he has got a revisional power on the matter either on his own motion or otherwise in order to satisfy himself as to the correctness, legality or propriety of any finding and, thereafter, can pass any such order which he deems fit, of course after hearing the affected person.

6. In this view of the matter, we dispose of this writ petition with an observation an, expectation that advice by the Chancellor, as sought by the Syndicate, would be given without further wastage of un-necessary time whereafter the Syndicate will decide and. proceed in the matter accordingly.

ZC/G-8/L **Order accordingly.**

2019 C L D 55

[Lahore (Multan Bench)]

Before Ali Baqar Najafi and Shahid Mubeen, JJ

Messrs SHAHEEN ENTERPRISES through Partners and others---Appellants

Versus

ALLIED BANK LIMITED through Principal Office/General Attorneys and others---Respondents

Regular First Appeal No. 344 of 2014, heard on 23rd April, 2018.

Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

----Ss. 10, 9 & 22---Procedure of Banking Court---Suit for recovery---Application for leave to defend---Defendants impugned order of Banking Court whereby defendants' application for leave to defend was dismissed and suit was decreed---Contention of defendants, inter alia, was that impugned order was illegal and suit ought to have been dismissed---Validity---Defendants had not denied availing of finance facilities in their application for leave to defend and only alleged that suit was filed three years after expiry of the finance facility, which ground alone was not sufficient for granting leave to defend as suit could be filed by the plaintiff Bank from date of refusal to the defendants to make payments to the plaintiff Bank---Statement of entries were also not denied and therefore, no illegality existed in the impugned order---Appeal was dismissed, in circumstances.

Messrs Ahmad Autos and another v. Allied Bank of Pakistan Limited PLD 1990 SC 497 rel.

Syed Muhammad Asad Abbas for Appellants.

Muhammad Saleem Iqbal for Respondents.

Date of hearing: 23rd April, 2018.

JUDGMENT

ALI BAQAR NAJAFI, J.---This Regular First Appeal under section 22 of Financial Institutions (Recovery of Finances) Ordinance, 2001 is directed against the judgment and decree dated 22.04.2014 passed by learned Judge Banking Court-I, Multan whereby suit of the respondent/bank for recovery of Rs. 3,112,016/- titled "Allied Bank Limited v. M/s. Shaheen Enterprises and others" was decreed against the appellants on merits to the extent of Rs. 27,52,984/- while dismissing the application of the appellants for leave to contest/defend, with costs of suit and costs of funds. The operative part of the judgment is reproduced as under:-

> "Therefore, the suit of plaintiff bank is, hereby partially decreed in its favour and against the defendants jointly and severally for recovery of Rs. 27,25,984/- with cost of the suit and cost of funds to be charged on the decretal amount from the date of default i.e. 01.06.2010 regarding both the running finance facility as well as bank guarantee facilities till final realization of the entire decretal amount as certified by the State Bank of Pakistan from time to time while the suit of the plaintiff bank to the extent of remaining claim is dismissed. Decree-sheet be prepared in accordance with law. The defendants are directed to liquidate their liability within 30 days, whereafter, decree shall be executable against them".

2. Briefly, the facts giving rise to the filing of the present appeal are that respondent/bank filed a suit for recovery of Rs. 3,112,016/- calculated up to 25.06.2012 along with cost of funds and cost of suit and other expenses/charges from the default till the date of final realization of the decretal amount by the sale of mortgaged properties/hypothecated stock etc. against they appellants on the ground that appellant No.1 was a partnership concern and the appellants Nos. 2 and 3 were its partners

whereas appellants Nos. 3 and 4 were the guarantors/partners who availed fund based/non-fund based facilities by sanctioning, renewing and enhancing the same from time to time till 31.05.2009 up to Rs.44,00,000/- (Rs. 19,00,000/- for RF and Rs. 25,00,000/- for BG). It was also alleged that appellants requested the respondent/bank on 18.04.2009 for renewal of the existing funds; i.e. running finance facility of Rs. 19,00,000/- as a debit balance on Rs. 18,99,107/-. The bank in the light of Banking Arrangement Letter dated 18.06.2009, executed documents mentioned in para 7 of the plaint but the appellants did not adjust the liability, therefore, the suit was filed.

3. The appellants submitted their petition for leave to defend by raising preliminary objections to which the respondent/bank also submitted written reply.

4. The learned Banking Court No. I, Multan refused to grant leave to defend and proceeded to decide the banking suit on merits. It decreed the suit primarily on the ground that the appellants were served personally on 25.09.2013 whereas they submitted their leave to defend on 02.12.2013 much beyond the period of limitation of 30 days and that availing of finance facility and execution of loan document were also not disputed. It was further observed that application for closing of account allegedly filed by the appellants was also not shown to the banking court and that no entry in the statement of account was disputed by them which otherwise carried the presumption of truth. It was also observed that provisions of section 10(3)(4)(5) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 were not complied with while filing the application for leave to defend.

5. Learned counsel for the appellants submits that the application for leave to defend was filed within time yet it was dismissed being time barred and that the legally permissible mark-up was not imposed. Lastly, submits that appellants have already deposited the amount to the extent of Rs.

9,00,000/- and as such recovery suit ought to have been dismissed.

6. Conversely, learned counsel appearing on behalf of the decree holder/bank submits that no plausible defence was offered in the application for leave to defend which was also filed beyond the period of limitation yet the learned Banking Court No. I, Multan has decided the suit on merits keeping in view all the relevant documents as well as the relevant law.

7. Arguments heard. Record perused.

8. The suit for the recovery of amount of Rs.3,112,016/- was filed by the respondent/bank on 16.09.2013 before the Banking Court and the notices were issued to the appellants for 11.11.2013. On 11.11.2013 application for leave to defend was filed, though on 25.09.2013 appellant No.4/Riaz-ur-Rehman, was(sic.) reveals that other appellants also gained the knowledge about the pendency of the recovery suit same day since they all were closely related. The acknowledgment due also did not return to the court. The courier service receipts also revealed that it was sent on 18.09.2013. The advertisement in the newspaper was also published on 19.09.2013. With this reference filing of the application for leave to contest on 11.11.2013 was a delayed act which is beyond the prescribed period of 30 days. Under section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 such an application is to be filed within 30 days. Section 10 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 is reproduced as under:-

> 10. Leave to defend.-
>
> (1) In any case in which the summons has been served on the defendant as provided for in sub section (5) of section 9, the defendant shall not be entitled to defend the suit unless he obtains leave from the Banking Court as hereinafter provided to defend the same; and, in default of his doing so, the allegations of fact in the plaint shall be deemed to be admitted and the Banking Court may

pass a decree in favour of the plaintiff on the basis thereof or such other material as the Banking Court may require in the interests of justice.

(2) The defendant shall file the application for leave to defend within thirty days of the date of first service by any one of the modes laid down in sub section (5) of section 9:-

Here reliance can also be placed upon Messrs Ahmad Autos and another v. Allied Bank of Pakistan Limited (PLD 1990 Supreme Court 497). Relevant (sic.)

> "..... It is a matter of common knowledge that defaulter borrowers in suits brought against them particularly by the financial institutions used to delay the disposal of the suits by avoiding the service of the summons. In order to expedite the disposal of the suits to be brought by the Banking Companies the Ordinance was promulgated, which contains special provisions and which inter alia provide that a suit brought by a Banking Company for the recovery of loan is to be tried in summary manner under Order XXXVII. Section 15 of the Ordinance empowers the Federal Government by a notification in the official Gazette to make rules for carrying out the purposes of the Ordinance. In pursuance whereof the rules have been framed. The underlined object of Rule 8 is to avoid the delay in the service of the summons and, therefore, it has been provided that the summons are to be issued simultaneously in three different modes referred to hereinabove, which is the requirement of the above rule. Obviously for the reason that if the summons is not served through a bailiff or by a registered post acknowledgement due, it would be served in any case by publication. In other words, the service is to be held good if a defendant is served by any of the above three modes of service provided for in Rule 8...."

9. Besides, in the application for leave to contest the availing of

finance facility is not denied and it was only alleged in paragraph No. 4 of the application for leave to contest that after expiry of the loan on 15.05.2010 the suit was filed on 19.09.2013 after a period of 3 years. This ground alone was not sufficient for granting leave to contest as the same could be filed by the respondent/bank from the date of refusal by the appellants. Besides, the entries of the bank statement were not denied, the status of creditor and debtor is also admitted between the parties, the recovery suit was filed by the Manager who is a duly(sic.) therefore, has not committed any illegality warranting interference by this appellate Court.

10. Keeping in view the above, this appeal has no merits and is, therefore, dismissed.

KMZ/S-45/ **Appeal dismissed.**

2019 M L D 79

[Lahore]

Before Ali Baqar Najafi, J

FAMIR ASGHAR---Petitioner

Versus

ASGHAR ALI and 2 others---Respondents

Writ Petition No.211556 of 2018, decided on 6th September, 2018.

Punjab Local Government (Conduct of Elections) Rules, 2013---

----R. 65---Civil Procedure Code (V of 1908), O. XVI, Rr. 1 & 2---Election of Chairman of union council---Election petition---Witness, production of---Good cause---Scope---Petitioner's application seeking permission to submit the list of witnesses was dismissed by Election Tribunal on the ground that it was not submitted within the stipulated time---Plea of petitioner was that he had filed such application which somehow went missing---Validity---Election Tribunal could require the parties to file, within 15 days of the date on which the case was fixed for evidence, a list of witnesses whom they wanted to produce in evidence or to produce documents by such witnesses alongwith a precise evidence which they were expected to give through affidavit---Election Tribunal could call such witnesses for the purpose of examination---Under O. XVI, Rr. 1 & 2, C.P.C., within seven days of framing of issues, the list of witnesses were to be produced and that if such list was not presented, the evidence could be produced with permission of the court after showing good cause to produce the said witness from the list---Missing application could have been located through a probe by the Election Tribunal on the basis of relevant statements of Tribunal's functionaries but the same was not done---Order passed by Election Tribunal was not sustainable, being violative of R. 65 of Punjab Local Governments (Conduct of Elections) Rules, 2013 and O.XVI, R.1, C.P.C.---Application to produce the witnesses filed by the petitioner before

the Election Tribunal was allowed with direction to the Tribunal to decide the matter within three months---Constitutional petition was allowed, accordingly.

Umar Hayat v. Additional District Judge and others 2004 SCMR 1367 rel.

Ch. Ameer Hussain for Petitioner.

Muhammad Azam Chohan for Respondent.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner has challenged the order dated 19.03.2018 and 10.04.2018 passed by respondent No.3 whereby application of the petitioner seeking permission to submit the list of witnesses was dismissed on the ground that it was not submitted within the stipulated time.

2. Brief facts giving rise to the filing of this constitutional petition are that petitioner as well as respondents Nos.1 and 2 contested the election as candidate for Chairman Union Council No.60 Chak Amroo, Tehsil Shakargarh District Narowal. The election was conducted on 05.12.2015 and then copy of the result was issued to the agents of candidates. The respondent No.1 being dissatisfied moved an application to the Returning Officer seeking recounting of the entire votes as the petitioner allegedly influenced the election staff who prepared the result showing him as a successful candidate by 33 votes. On 21.12.2015 the District Returning Officer and the Election Commission of Pakistan notified the petitioner and respondent No.2 as a successful candidates. The said result was challenged by respondent No.1 through election petition under section 38 of the Punjab Local Government Act, 2013 in the month of January, 2016. However, the petitioner and respondent No.2 submitted the reply on 02.03.2016 raising number of objections alleging that sister of the petitioner was MNA on Women Reserved Seats exercised her influence but no list of witnesses was

presented. It was on 10.04.2018 i.e. after about two years, when an application was filed seeking permission to produce witnesses on the ground that earlier an application was filed but was somehow went missing and that when the witnesses were to be produced by him, it has transpired that the said list was no more available on the record, therefore, he sought permission to produce the witnesses named in the said application i.e. Famir Asghar, Chairman (petitioner), Javed Akhtar Vice-Chairman (respondent No.2), Faryad Ali polling agent, Govt. Boys P/S Sakmal Ward No.3 Union Council, Bashir Ahmad Councilor Ward No.1 Chak Amroo, Returning Officer U/C No.60 and Presiding Officers U/C No.60. This application was resisted by the respondent and on 19.03.2018, it was observed that since the application to produce the defence witnesses was not available, therefore, only petitioner and respondent No.2 could appear to record their statements. On 10.04.2018 it was observed that by not submitting the list of witnesses, section 68(R) was violated and that the official witnesses could be summoned even on its own by the Tribunal, hence this writ petition.

3. Arguments heard. File perused.

4. Admittedly, the application to produce the witnesses by the petitioner during the stipulated time is not on record. Under Rule 65(2)(b) read with clauses (3) and (4) of the Punjab Local Government (Conduct of Elections) Rules, 2013 the proceedings in election petition were required to be carried out as nearly as might be in accordance with the procedure of trial of suit under Code of Civil Procedure, 1908. The Tribunal, therefore, may require the parties to file within 15 days of the date on which the case was fixed for evidence, a list of witnesses whom they wanted to produce in evidence or to produce documents by such witnesses along with a precise evidence which they were expected to give through affidavit. It was also made permissible for the Tribunal that it could call such witnesses for the purpose of examination before it. Besides, under Order XVI, Rule 1 and 2, C.P.C., within seven days of framing of issues, the list of witnesses were to

be produced and that if such list was not presented, the evidence can be produced with permission of the court after showing the good cause to produce the said witness from the list. Order XVI, Rule 1 and 2 of C.P.C. is reproduced as under:--

> "1. Summons to attend to give evidence or produce document.--(1) Not later than seven days after the settlement of issues, the parties shall present in Court a [certificate of readiness to produce evidence, along with a] list of witnesses whom they propose to call either to give evidence or to produce documents.
>
> (2) A party shall not be permitted to call witnesses other than those contained in the said list, except with the permission of the Court and after showing good cause for the omission of the said witnesses from the list; and if the Court grants such permission, it shall record reasons for so doing."

5. This provision has already been interpreted by the Hon'ble Supreme Court of Pakistan in case titled "Umar Hayat v. Additional District Judge and others" reported as 2004 SCMR 1367, wherein it was held that if the relevant documents were mentioned in the pleadings without naming the witnesses unintentionally by mistake, the same may be summoned through court in accordance with law and justice, if their summoning was necessary. The relevant extract of the judgment is reproduced as under:--

> "We have heard the learned counsel and have also gone through the relevant provisions of the law i.e. Order XVI, rule 1 sub-rule (2), C.P.C. which provides that the Court is competent to grant permission to the petitioner for summoning any witness at any stage subject to showing good cause etc. Since in the instant case the learned Civil Judge vide order, dated 16.04.1999 has granted permission to summon the witnesses for recording evidence before the Court in exercise of its discretionary jurisdiction and the said order was maintained both by the A District Judge as well as the

High Court vide judgments, dated 10.03.1999 and 16.04.1999, respectively, therefore, we are of the opinion that no point for interference by this Court in exercise of jurisdiction under Article 185(3) of the Constitution of Islamic Republic of Pakistan, is made out."

6. Importantly, perusal of the file neither reveals any order passed after framing of issues by the court requiring the parties to produce list of witnesses nor it was argued at bar by the learned counsel for the respondent that such order was ever passed.

7. Interestingly, the argument of the learned counsel for the petitioner that he filed such application which somehow went missing, could be located through a probe by the court on the basis of relevant statements of the court functionaries but the same was also not done. This question remains, therefore, unanswered by the Tribunal which ought to have been dilated upon. Even otherwise, the interim order dated 19.03.2018 was not passed on the basis of cogent reasons supported by the relevant upto date case law, therefore, could not be relied upon by the Tribunal in his subsequent order dated 10.04.2018; both impugned in the present writ petition.

8. As far as, delaying of the matter is concerned, notably the written statement was filed after two years but such delayed filing of written statement cannot be used as a ground for punishing the petitioner as it would definitely debar him from defending himself, which would not be in true spirit of the Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

9. Last but not least is the fact that Presiding Officer, Returning Officer, or the Government officials could be summoned by the court under its discretion whereas petitioner and respondent No. 2, the private defenders would understandably defend themselves before the Tribunal. The statement of Bashir Ahmad Councilor and polling agent Govt. Boys

P/S Salami Ward No.3 would be relevant and important to decide the above said petition before the Election Tribunal.

10. Keeping in view the above, this court has no hesitation to observe that the order passed by Election Tribunal is not sustainable in the eyes of law, being violative of the said provisions of the Rule 65 of the Punjab Local Governments (Conduct of Elections) Rules, 2013 and the Order XVI, Rule 1, C.P.C. as interpreted by the superior courts. Resultantly, the impugned orders are set-aside and this constitutional petition is allowed. The application to produce the witnesses filed by the petitioner before the Election Tribunal is allowed. However, the Election Tribunal is directed to decide the matter within next three months positively.

SA/F-13/ **Petition allowed.**

2019 P L C (C.S.) 783

[Lahore High Court]

Before Ali Baqar Najafi, J

KANWAL RASHEED

Versus

ACCOUNTANT GENERAL, PUNJAB and others

Writ Petition No.24111 of 2017, decided on 15th February, 2019.

(a) Civil service---

----Notification---Retrospective effect---Effect of a notification would start from the date it was issued particularly if it was to take away certain rights, unless it was stipulated otherwise in the notification itself.

Mozaffar Ahmed v. Anwar Ali and others PLD 1965 Dacca 296; Collector of Central Excise and Land customs and 3 others v. Azizuddin Industries Ltd., Chittagong PLD 1970 SC 439; Badshah Gul Wazir v. Government of Khyber Pakhtunkhwa through Chief Secretary and others 2015 SCMR 43; Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others 2015 SCMR 630 and Messrs Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others 1992 SCMR 1652 ref.

(b) Words and phrases ---

----"Pension"---Definition. [p. 788] B

Khyber Zaman and others v. Governor, State Bank of Pakistan, Karachi and others 2005 SCMR 235 and Encyclopedia Britannica Vol.9, 15th Edition ref.

(c) Punjab Civil Services Pension Rules, 1963---

----R. 4.10(2A)---Notification No.FD-SR-III-4-471/2014, dated 11.9.2015-

--Family pension---Child of deceased parents who both were Government servants---Entitlement to two pensions simultaneously---In terms of the impugned Notification (No. FD-SR-III-4-471/2014 dated 11.09.2015) it was clarified that monthly family pension received by a pensioner was regular source of income, therefore, an unmarried daughter, such as the petitioner, could not draw the family pension of her father and mother simultaneously so as to grant her two family pensions --- Legality --- Relevant law on the subject of family pension [Punjab Civil Services Pension Rules, 1963] did not show that two pensions could not be withdrawn by a child of parents who both retired as government servants --- Withdrawal of pension was vested right of a child of a government servant, duly qualified, which could not be taken away through a notification that too with retrospective effect --- Two pensions were independent regardless of the fact that both deceased government servants were related inter-se---Withdrawal of pension was not a regular source of income in view of the fact that such entitlement would come to an end after certain changes in the status of the daughter---High Court set-aside impugned notification No. FD-SR-III-4-471/2014 dated 11.09.2015 and declared that child of deceased parents who were government servants was entitled to two pensions simultaneously according to their eligibility---Constitutional petition was allowed according.

Rule 54(11) of the Central Civil Servants Pension Rules, 1972 and Rukmani and Pradeep Kumar Kumawat v. The Union of India through its Secretary, Ministry of Home Affairs, New Delhi and others 211(4) SLR 257 ref.

Rana Asad Ullah Khan for Petitioner.

Raja Saleem Ullah Khan, Law Officer Finance Department.

Saeed ul Hassan Jaffrey, AAG with Ch. Asif Javaid, Accounts Officer.

ORDER

ALI BAQAR NAJAFI, J.----Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged the Notification No. FD-SR-III-4-471/2014 whereby previous Notification No. FD-SR-III-4-111/89 dated 22.07.1989, was clarified.

2. Brief facts giving rise to the filing of the present writ petition are that parents of the petitioner were government servants who had already died one after the other. After the death of her father, Professor S.A. Rashid, on 22.10.1983, his pension was transferred in the name of his widow, namely, Professor Mrs. Shamshad Rashid, a government servant, who after her retirement, started getting her own pension, along with the pension of her late husband, until her death on 12.08.2009. In the year 2012, the petitioner filed an application and the Accountant General, Punjab got the pension of her deceased parents disbursed in her account according to law. However, in May 2016, the old procedure was changed and now the pension was required to be withdrawn on-line. However, after great efforts, only the pension of her mother was released in October, 2016 but the pension of her father was not released, in view of the impugned clarification issued in the month of September, 2015, which according to the petitioner, did not apply to her. The respondents, on the contrary, demanded the recovery of Rs. 1.94 million from her vide letter dated 11.11.2016 after 7 years, hence this writ petition.

3. In the report and parawise comments submitted by respondents Nos. 1 to 3, it is specifically stated that under the Punjab Civil Services Pension Rules, 1963, the two pensions cannot be claimed by the petitioner as one pension is a sufficient source of income, and that purposely she did not inform the department about the drawal of second pension and that under the Notification No. FD.SR-III-4-471/2014 dated 11.09.2015, she cannot draw two pensions, therefore, the petitioner could not claim the future

pension, and was required to return Rs. 1.94 Million drawn by her vide PPO No. MNF/10005.

4. In the report and parawise comments submitted by the Finance Department/respondent No.4, it is stated that when the pension was put online, it came on the surface that petitioner was illegally drawing two pensions, as one pension is a regular source of income, therefore, second pension cannot be allowed, hence prays for dismiss of the writ petition.

5. Arguments heard. File perused.

6. According to the Notification No. FD.SR.III-4-111/89 dated 22.07.1989 of the Finance Department titled "LIBERALIZATION OF PENSION RULES CLARIFICATION FAMILY PENSION" the earlier circular letter No. FD-SR-III-4-54/83 dated 25.08.1983 was extended to widow for life or until re-marriage and in the case of death of widow, family pension is admissible to son until he attains the age of 29 years and un-married daughter until she is married or attains the age of 21 years, whichever is earlier. Later, it was modified in view of the decision taken by the Governor of Punjab on 01.07.1989, when the family pension in case of widow's death was admissible to the dependent sons until the age of 24 years or until they are gainfully employed whichever is earlier, and to unmarried daughter until their marriage or they acquired regular source of income whichever is earlier. This notification was further interpreted on 11.09.2015 vide Notification No.FD-SR-III-4-471/2014 under which it was observed that a monthly family pension received by a pensioner is construed as a regular source of income, therefore, the unmarried daughter cannot draw the family pension of her father and mother simultaneously so as to grant her two family pensions. Consequently, on 10.08.2016, 11.11.2016 and 26.01.2017 notices for recovery of Rs. 19,41,631/- was issued to the petitioner to provide original pension book. The petitioner replied the respondents by sending a letter on 22.08.2016 and also on 02.02.2017 but of no avail. She, therefore, filed the present petition in the

above said context.

7. In order to assess the possible retrospective effect the notification dated 11.08.2015 is reproduced as under:-

No.FD-SR-III-4-47/2017

GOVERNMENT OF THE PUNJAB

FINANCE DEPARTMENT

Dated Lahore, The 11th September 2015

To

1. All Administrative Secretaries to Government of Punjab.
2. The Principal Secretary to Governor of the Punjab.
3. The Principle Secretary to Chief Minister, Punjab.
4. The Military Secretary to Governor of Punjab.
5. All Commissioners in the Punjab.
6. All District Coordination Officer in the Punjab.
7. All Heads of attached Departments, Government of Punjab.
8. The Registrar, Lahore High Court, Lahore.
9. All District and Sessions Judge in the Punjab.
10. The Secretary, Punjab Public Service Commission, Lahore.
11. The Secretary, Punjab Provincial Assembly, Lahore.
12. The Secretary TEVTA Government of the Punjab.
13. The Director General Audit and Accounts (Works), Lahore.
14. The Chief Inspector of Treasuries and Accounts, Punjab, Lahore.
15. The Provincial Director, Local Fund and Audit, Punjab, Lahore.
16. The Chief Pilot, Flight Lahore.

Subject:- LIBERALIZATION OF PENSION RULES CLARIFICATION.

I am directed to refer to para 1 of this Department's letter No. FD-SR-III-4-111/89 dated 22nd July, 1989 and to state that a question has arisen as to whether an un-married daughter can draw family pension of her father and mother simultaneously. The matter has been examined and is observed that a monthly family pension being received by a pensioner is construed as regular source of income. Therefore, such pensioner is not entitled to receive another family pension.

Sd/-

(M. NAWAZ KHALID ARABI)

DEPUTY SECRETARY (SR)

Its close reading does not mention that it was drafted to have its effect from 22.07.1989. Secondly, said notification does not mention any power/authority in the exercise of which it was issued. Thirdly, drawing of a pension by the son or daughter was incorrectly considered as a regular source of income. Fourthly, it was not issued in accordance with the spirit of the Punjab Service Pension Rules, 1963.

8. The effect of the notification, unless so stipulated in the notification itself, will start from the date it was issued particularly if it was to take away certain rights. A guidance can easily be sought in this regard from Mozaffar Ahmed v. Anwar Ali and others (PLD 1965 Dacca 296) in which it was held that a statute cannot be construed to take away a vested right unless there are express provisions of law to that effect and unless such a result follows as necessary implication of the language in the statute. In Collector of Central Excise and Land Customs and 3 others v. Azizuddin Industries Ltd., Chittagong (PLD 1970 Supreme Court 439) it was observed at page 444 that if a notification is purported to completely take away the

vested rights, it will be interpreted in the context of exercise of executive authority of rule-making power which could not take away the vested rights of the citizen by law. In Badshah Gul Wazir v. Government of Khyber Pakhtunkhwa through Chief Secretary and others (2015 SCMR 43) a statutory provision, particularly one curtailing substantive rights, does not have retrospective operation unless the legislature elected to give it retrospective effect. In Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630) the purpose to exercise a legislative authority to an executive authority is intended to enforce the law and not to override it. They can fill in details but not vary the underlining statutory principles and in case of conflict they must yield to the legislative will. Similar was the view held in Messrs Army Welfare Sugar Mills Ltd. and others v. Federation of Pakistan and others (1992 SCMR 1652) in which it was held that only the beneficial notifications can operate retrospectively and not otherwise. In B.P. Biscuit Factory Ltd., Karachi v. Wealth Tax Officer and another (1996 SCMR 1470) it was held that when it comes to interpretation of statute, if the language is ambiguous and further interpretations are possible then doubt should be resolved in favour of the citizen. If Rule 4.10 clause 6 of the Punjab Civil Services Pension Rules, 1963 is interpreted in view of the above case laws, it would become that the family pension can be awarded and not refused according to priorities of the members and if there exists special circumstances for the beneficiaries a suitable interpretation should be made. Clause 6 of Rule 4.10 of the Rules ibid, is reproduced as under:-

> "(6) Government shall have discretion to make such modification in the mode of allotment or conditions of tenure set forth in sub-rules (2) to (5) above as they may consider desirable to suit the special circumstances of the beneficiaries."

9. In Khyber Zaman and others v. Governor, State Bank of Pakistan, Karachi and others (2005 SCMR 235) the word pension was defined in the

new Encyclopedia Britannica Vol. 9, 15th Edition, according to which it is a source of periodic money payments to a person who retires from employment because of age, disability or completion of agreed span of service. The payments usually continue for the rest of the natural life of the recipient and sometimes to a widow or other survivor in consideration of the past service or the relinquishment of rights, claims or emoluments. In Pakistan Telecommunication Employees Trust (PTET) through M.D., Islamabad and others v. Muhammad Arif and others (2015 SCMR 1472) it was held that pension is a part of civil servant's retirement benefit and not the bounty or an ex-gratia payment but a valid right acquired in consideration of his past services conferred by law which could not be arbitrarily abridged or reduced by executive except in accordance with law.

10. Now comes to the pivotal question as to whether a child of deceased government servants is entitled to draw two pensions. A son under the age of 21 years and the daughter unless married or until both acquired regular source of income can draw pensions. The Punjab Civil Services Rules, 1963 permitted the drawal of pension under Rules 4.10 (2A) 1 and 11.

11. The law in Pakistan and the judgments referred above do not show that two pensions cannot be withdrawn by a child of both parents who retired as government servants. However, Rule 54(11) of the Central Civil Servants (Pension) Rules, 1972 prevalent in India specifically provides that in case both husband and wife were government servants, who died while in service or after retirement, a family pension in respect of the deceased shall become payable to the surviving husband or the wife as the case may be and in the event of death of husband or wife the surviving child or children are entitled to two family pensions according to certain conditions. Rule 54(11) of the Rules ibid, is reproduced as under:-

> "In case both wife and husband are Government servants and are governed by the provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the

deceased shall become payable to the surviving child or children shall be granted the two family pensions in respect of the deceased parents, subject to the limits specified below, namely,-

(a) (i) if the surviving child or children is ore are eligible to draw two family pensions at the rate mentioned in sub-rule (3), the amount of both the pension shall be limited to [two thousand five hundred rupees] per mensem;

(ii) if one of the family pensions cases to be payable at the rate mentioned in sub-rule (3) and in lieu thereof the pension at the rate mentioned in sub-rule (2) becomes payable, the amount of both the pensions shall also be limited to [two thousands five hundred rupees] per mensem;

(b) If both the family pensions are payable at the rates mention in sub-rule (2), the amount of two pensions shall be limited to [one thousand two hundred and fifty rupees] per mensem.

In Rukmani and Pradeep Kumar Kumawat v. The Union of India through its Secretary, Ministry of Home Affairs, New Delhi and others (211(4) SLR 257) Rajasthan High Court had held that denial of the pension merely on the ground that father of the deceased was getting pension and that two members of family cannot receive family pension simultaneously was not approved in view of the fact that if they qualified to receive pension in their independent right, they cannot be deprived of their valid right. Para 10 is reproduced as under:-

"10 Even sub-rule (11) of Rule 54 of the Central Civil Services (Pension) Rules, 1972 provides that in case both wife and husband are Government Servants and are governed by provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving husband or wife and in the event of the death of the husband or wife, the surviving child or children shall be granted two

family pensions at a time .."

12. Last but not least is a reference which will be relevant here of order dated 06.12.2017 passed in W.P. No. 104972 of 2017 titled Mst. Saeeda Nasreen v. The Accountant General Punjab which was dismissed as withdrawn in view of the report and parawise comments submitted by the Accounts department stating that petitioner therein, was not entitled to payment of family pension as she was already drawing the pension as a regular source of income in form of her own pension. However, it was stated in view of the comments that pension would be re-started and then the writ petition was disposed of.

13. Keeping in view the above discussion, it is clear that drawal of the pension is vested right of the child of a government servant, duly qualified, which cannot be taken away through a notification that too with retrospective effect and that two pensions are independent regardless of the fact that both deceased government servants were related inter-se and that drawal of a pension is not a regular source of income in view of the fact that this entitlement will come to an end after attaining certain change in the status of the daughter.

14. In this view of the matter, this writ petition is allowed, impugned Notification No. FD-SR-III-4-471/2014 dated 11.09.2015 is set aside declaring that child of deceased parents who were government servants is entitled to two pensions simultaneously according to their eligibility.

MWA/K-9/ **Petition allowed.**

2019 P L C (C.S.) 893

[Lahore High Court]

Before Ali Baqar Najafi, J

MUHAMMAD SAEED and others

Versus

SECRETARY FINANCE and others

W.P. No. 57182 of 2017, decided on 6th February, 2019.

Civil Service Rules (Punjab), Vol. I, Part I---

----R. 4.10---General Clauses Act (X of 1897), S.21---Grant of advance increments---Withdrawal of---Locus poenitentiae, principle of---Applicability---Advance increments granted to petitioners, were deducted from pension and gratuity after their retirement---Validity---No show-cause notice was served before recalling the advance increments---Advance increments could not be withdrawn in violation of principles of natural justice---Withdrawal of salary and allowances paid in excess was not legally correct as it was released on the basis of an order passed by the competent authority---Principle of locus poenitentiae was applicable in the present case as no fraud / misrepresentation was played by the employees for drawing advance increments---Withdrawal of advance increments of the employees was declared illegal, unlawful and void ab-initio---Constitutional petition was allowed, in circumstances.

Private Secretary to the Commissioner, Punjab Employees' Social Security Institution, Lahore v. The Punjab Employees' Social Security Institution and another 1989 PLC (C.S.) 332; Controlling Authority, N.W.F.P. Board of Technical Education, Peshawar and another v. Abdul Salam Secretary, N.W.F.P. Board of Technical Education (presently

Chairman of the Board) PLD 1993 SC 200; Province of Punjab through the Chief Engineer, Highway Department and others v. Pervaiz Iqbal 2004 SCMR 309; Chief Secretary, Government of Sindh and another v. Sher Muhammad Makhdoom and 2 others PLD 1991 SC 973 and Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin PLD 1992 SC 207 rel.

Muhammad Ilyas Bhatti for Petitioners.

Saeed-ul-Hassan Jaffery, A.A.G.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition the petitioners have sought a declaration to the effect that recovery of the extra increment from the petitioners and others is absolutely illegal and unlawful, therefore, the respondents be directed not to effect its recovery.

2. Brief facts giving rise to the filing of this petition are that the petitioners joined the police department as Foot Constables in the year 1990 and some of them have already retired from service. Since the petitioners continued to draw extra increments but the respondent authority had deducted Rs.1,44,364/- from the pension and gratuity of Muhammad Saeed/petitioner No.1 and Rs.2,25,280/- from the pension and gratuity of Muhammad Anwar/petitioner No.2 for the reasons that such extra increments received by the petitioners after 01.05.1990 were required to be recovered. In paragraph-5 of the writ petition the names of a number of constables have been mentioned from whom the recovery is being effected. This act of the respondents is claimed as against the law declared by the superior courts.

3. In the report and parawise comments submitted by respondent No.1/Secretary Finance it was stated that the issue of increments of the posts is relating to terms and conditions of service, therefore, Article 212 of the Constitution is duly applicable. It was further stated that three advance increments were allowed to the constables who possessed matriculation qualification on 01.05.1990 and their new pay scale was to be fixed under Rule 9 of the Punjab Civil Servants Pay Revision Rules, 1977. It was stated that the constables who were recruited before 01.05.1990 without matric were not entitled to said three increments.

4. In the report and parawise comments submitted by respondents Nos.2 and 3 i.e. Accountant General Punjab and District Account Officer, respectively it was stated that the CCPO, Lahore/respondent No.4 had pointed out this fact, therefore, the said respondents withheld extra increments as not legally permissible. Prior to 01.05.1990 the basic qualification for appointment of the post of Foot Constable was middle and who possessed matric qualification were eligible for three increments for having higher qualification. Since on 01.05.1990 the scale of the Foot Constable was raised from BS-2 to BS-5 and so was the prescribed qualification from middle to matric, but the petitioners were appointed before 01.05.1990 in BS-5, therefore, inadvertently awarded three advance increments by treating matriculation as higher education.

5. In the report and parawise comments submitted by CCPO, Lahore/respondent No.4 it is stated that according to Notification dated 22.05.1990 the Matriculation Allowance in respect of police constables recruited before 01.05.1990 were to be paid three advance increments, therefore, three advance increments received by Muhammad Saeed and Muhammad Anwar being non-matriculation (both retired) is illegal.

6. Arguments heard. File perused.

7. As per Notification No.FD.PC.14-3/87, dated 22.05.1990, the Governor Punjab while exercising his powers under Rule 14 of the Punjab Civil Servants Pay Revision Rules, 1977 upgraded pay scale of the post of constable from BS-2 to BS-5 by giving three advance increments to those who had acquired matriculation qualification and in paragraph-2 it was provided that pay of the constables who were already in service on 30.04.1990 were to be fixed under the new pay scale under Rule 9 of the Punjab Civil Servants Pay Revision Rules, 1977. Rule 9 ibid is reproduced as under:-

> "Fixation of pay on transfer from a lower scale to a higher scale--. When a civil servant is allowed to draw pay in the next higher Revised National Pay Scale under rule 8 or of his post having been upgraded, his pay in the higher scale shall be fixed at a stage next above his pay in the lower scale".

8. In paragraph-1 of the writ petition no exact date of appointment of the petitioners was mentioned. So much so in report submitted by CCPO, Lahore/respondent No.4 the date of their appointments was not stated. Since the date of appointment of the petitioners was not conveyed to this Court either in affirmative or denial by the respondents, therefore, applicability of the said letter dated 22.05.1990 could not be withheld. Even otherwise, if the stand taken by respondent No.4 is presumed correct, the pertinent question would be as to what stopped the respondents from recalling these three increments during the entire service of the petitioners. Meaning thereby both the respondents and the petitioners acted bonafidely and without malice, by interpreting the above said Rule 9 which was correctly applied in favour of the petitioners.

9. In case titled Private Secretary to the Commissioner, Punjab Employees' Social Security Institution, Lahore v. The Punjab Employees' Social Security Institution and another reported as 1989 PLC (C.S.) 332, the learned Single Bench of this Court held that under Rule 4.10 of the Civil Service Rules (Punjab), Volume-I, Part-I, if show-cause notice was not given before recalling the advance increments, it could not withdraw in violation of principle of natural justice.

10. In case titled Controlling Authority, N.W.F.P. Board of Technical Education, Peshawar and another v. Abdul Salam Secretary, N.W.F.P. Board of Technical Education (presently Chairman of the Board) reported as PLD 1993 Supreme Court 200 withdrawal of salary and allowances in excess by the employee was not to be legally correct as it was released on the basis of an order passed by the competent authority.

11. In case titled Province of Punjab through the Chief Engineer, Highway Department and others v. Pervaiz Iqbal reported as 2004 SCMR 309 it was held that where the advance increment had been given on the basis of higher qualification any circular issued later could not be equated to that of a legitimate piece of legislation and therefore, cannot be extended retrospectively. Besides, principle of locus poenitentiae is duly applicable in the present case as no fraud/misrepresentation was played by the petitioners for drawing three advance increments which they continued to withdraw until retirement of petitioners Nos.1 and 2. Reliance is placed on PLD 1991 Supreme Court 973 Chief Secretary, Government of Sindh and another v. Sher Muhammad Makhdoom and 2 others and PLD 1992 Supreme Court 207 the Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin.

12. For the foregoing reasons, this petition is allowed and the act of respondents to withdraw already granted three increments in the year 1990 from the petitioners is hereby declared as illegal, unlawful and void ab-initio.

ZC/M-27/L **Petition allowed.**

2019 P Cr. L J 1

[Lahore]

Before Ali Baqar Najafi and Tariq Iftikhar Ahmad, JJ

SHAUKAT ALI---Petitioner

versus

NATIONAL ACCOUNTABILITY BUREAU (NAB) through Director General and others---Respondents

W.P. No. 189554 of 2018, decided on 27th June, 2018.

(a) National Accountability Ordinance (XVIII of 1999)---

----S. 33-C & Preamble---Preventive measures--- Object, scope and purpose--- Accountability laws neither monitor functionality of departments nor they even supervise or control decisions of government and its agencies---Certain essential precautionary measures have been introduced through these laws which may facilitate functionaries to play role of whistleblower to rule out or at least minimize possibility of corruption and corrupt practices---Scope of preventive measures for controlling and eradication of corruption and corrupt practices has been hallmark under different laws prevalent in many countries.

(b) National Accountability Ordinance (XVIII of 1999)---

----S. 33-C--- Constitution of Pakistan, Art. 199--- Constitutional petition---Prevention of corruption and corrupt practices---Measures---Petitioners were developers of private housing schemes and they were aggrieved of notices issued by National Accountability Bureau to Development Authority seeking details from them about their housing schemes---Validity---National Accountability Bureau was conducting inquiries in respect of 20 housing schemes on allegation of corruption and corrupt practices and misuse of authority---Tendency had grown of un-witnessed alluring public at large, seizing opportunities to exploit weaknesses of poor

and ignorant hence, there was need of preventive/precautionary steps---National Accountability Bureau did not proceed directly against the petitioners---Consequent to certain information to National Accountability Bureau by petitioners, National Accountability Bureau could or could not directly proceed against petitioners---High Court declined to restrain National Accountability Bureau from collecting information which could be relevant to allegation of corruption and corrupt practices---Constitutional petition was dismissed in circumstances.

Mrs. Imrana Tiwana and others v. Province of Punjab and others PLD 2015 Lah. 522; Lahore Development Authority through D.G. and others v. Mrs. Imrana Tiwana and others 2015 SCMR 1739 and Abdul Aziz Memon and others v. The State and others PLD 2013 SC 594 ref.

Ch. Mushtaq Ahmed Khan and Morris Nadeem for Petitioner.

Zahid Sultan Khan Minhas, Special Prosecutor for NAB.

Waqar A. Sheikh for LDA.

ORDER

This order shall dispose of the instant petition as well as Writ Petition. No. 209510 of 2018 titled "Omega Residentia (Pvt.) Ltd. v. NAB and others", as well as Writ Petition No. 204017 of 2018 titled "Waleed Iftikhar v. NAB and others", as common questions of law and facts are involved in all these petitions.

2. Through these constitutional petitions petitioners have challenged notice dated 19.03.2018 issued by respondent No.1/NAB Lahore to Chief Metropolitan Planner (CMP), LDA/respondent No.7 with a copy to "all concerned" under the heading of "Devising Preventive Measures to Prevent Corruption and Corrupt Practices", under which a committee namely, "Awareness and Prevention Regime for monitoring of actions being taken by Lahore Development Authority (LDA) against 33 illegal housing societies of District Sheikhupura", was constituted by the Director General,

NAB/respondent No.1, through which following informations were required by LDA from the petitioners:-

1. Detail of total land ownership.
2. Details of plot sold.
3. Accounts statements
4. Affidavit stating that no further sale/purchase, development, or advertisement will be carried out till final approval by the LDA.

3. Brief facts giving rise to the filing of these petitions are that petitioners being developers of private housing schemes purchased or inherited agricultural land and got prepared a formal location plan of the site and submitted it for approval before the competent authority. Vide letter dated 26.11.2013, the jurisdiction of the LDA was extended to Lahore Division in respect of the private housing schemes including District Sheikhupura. Meanwhile, Writ Petition No. 7955 of 2015 titled "Mrs. Imrana Tiwana and others v. Province of Punjab and others" was decided and reported as PLD 2015 Lahore 522 which has been approved by the Hon'ble Supreme Court in 2015 SCMR 1739 holding that LDA had no authority to usurp the functions of the local bodies as contained in Local Government Act, 2013. Meanwhile, notice dated 27.09.2017 was issued by the LDA under section 40(2) of the Lahore Development Authority Act, 1975 requiring the petitioners to demolish the temporary structure i.e. entry gate, demarcation wall and refrain from further proceeding/ processing, developing private housing scheme, was impugned in Writ Petition No. 89134 of 2014 which is pending before the learned Single Judge of this Court. As the processing of scheme was being delayed by Zila Council, Sheikhupura, Writ Petition No. 97733 of 2017 was filed before this Court which is also pending. Thereafter, the impugned notice was issued, hence this writ petition.

4. Learned counsel for the petitioners submit that Ajwa Garden,

Omega Residentia and Shadmaan Town, are still at pre-natal stage and their case is pending before the Zila Council, Sheikhupura for grant of the approval and that the competency of Zila Council has already been decided by this Court as well as the apex Court in Mrs. Imrana Tiwana's case. Adds that under section 33-C of N.A.O., 1999 respondents/NAB have no jurisdiction to issue such notice to LDA who illegally required the above said information from the petitioner. Adds that there is no bar in purchasing the land and developing the private housing scheme to be regulated by the concerned Zila Councils, hence prays for setting aside of the impugned notice.

5. In the report and parawise comments submitted by NAB authorities, it has specifically been stated that inspite of attending the meeting, the petitioners preferred to file instant petitions with mala fide intention; the questions raised in the writ petitions involve factual controversies. Adds that under section 3 the N.A.O., 1999 has over-riding effect on other Acts. On merits, it is submitted that keeping in view the gravity of the matter, chairman NAB constituted the "prevention Committee" vide noting dated 25.05.2012 with a mandate mentioned therein, pursuant thereto, list of the illegal housing schemes/societies was called from the regulators and it transpired that 751 housing schemes/societies were illegal, un-approved or are un-processed. Since the petitioner/society had committed the violation of relevant rules and regulations, therefore, they were called up for the investigation to determine the extent of illegal activities and, therefore, prays for dismissal of the writ petition.

6. In the reply submitted by the LDA, it was stated that LDA acted on the notice issued under section 33-C read with section 27 of N.A.O., 1999. They issued a pro forma to the housing societies to provide the necessary information and also prays for dismissal of the writ petition.

7. Arguments heard. File perused.

8. In the present writ petition, the question of extension of

jurisdiction/issuance of notice by the LDA officials to the petitioners requiring certain information has been challenged. The stand taken by the NAB is that it is exactly within the scope of sections 33-C and 27 of N.A.O., 1999. For convenience, said sections are reproduced as under:-

> 27. Power to seek assistance: The Chairman NAB, [or an officer of the NAB duly authorized by him,] shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or [inquiry or investigation] pending before the NAB, [or disposal of any property surrendered to or seized by the NAB], from any department of the Federal Government, Provincial Government, local authority, bank, financial Institution, person or any authority and institution or department in the public sector or the private sector as he may deem it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at any time, the [Chairman NAB's] decision shall be final.

A perusal of the said section makes it clear that NAB Chairman or any authorized person enjoys powers to seek full and complete assistance and call for any information/document relevant with connection to any matter pending before NAB from any department, institution or persons, authority in public and private sectors, but with maintaining secrecy.

9. Besides, this Court is guided by the observation given by the apex Court in Abdul Aziz Memon and others v. The State and others (PLD 2013 Supreme Court 594), in respect of the scope of N.A.O., 1999, when compared to Ehtesab Act, 1997 with reference to section 35-C. Relevant extract from relevant para 12 at page 630 is reproduced as under;-

> " .. The Preamble to the Ehtesab Act, 1997 manifested that the said law had been enacted only "for eradication of corruption and corrupt practices from the public offices" whereas the Preamble to the National Accountability Ordinance, 1999 does not even mention

"public offices" and instead it states the objects to be achieved as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices; to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions; recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to banks, financial institutions, governmental agencies and other agencies; recovery of State money and other assets from those persons who have misappropriated or removed such money or assets through corruption, corrupt practices and misuse of power or authority; to seek, obtain or give mutual legal assistance internationally in matters concerning corruption; and to educate the society about the causes and effects of corruption and corrupt practices and to implement policies and procedures for the prevention of corruption in the society. It is but obvious that the scope of applicability of the National Accountability Ordinance, 1999 is much larger than the scope envisioned in the Ehtesab Act, 1997 and, thus, it would be nave to examine the former through the narrow prism of the latter. The stated object of the National Accountability Ordinance, 1999 was to rid the whole society of the menace of corruption and that is why section 33C of the said Ordinance had provided as follows:

33C. Measures for the prevention of corruption and corrupt practices.- The Chairman NAB, shall from time to time as he deems fit, constitute committees comprising officers of the NAB or other persons or organizations from the private or public sectors to-

(a) educate and advise public authorities, holders of public office and the community at large on measures to combat corruption and corrupt practices;

(b) develope, arrange, supervise, participate in or conduct educational programmes or media campaigns, and generally to disseminate information on the detrimental effects of corruption and corrupt practices and the importance of maintaining the integrity of public administration;

(c) examine the laws in force, and also rules and regulations relating to the practice and procedure of various ministries, departments of the Federal Government or Provincial Government, statutory or other public corporations or bodies, and the conduct of holders of public office and to recommend amendments in such laws, rules or regulations, as the case may be, in order to eliminate corruption and corrupt practices;

(d) instruct, advise and assist any statutory or other public corporation or bodies or upon request, any organization in the private and public sector on measures for the reduction and elimination of corruption and corrupt practices; and

(e) monitor the implementation of the instructions and advice as aforesaid and to assess and evaluate the success or otherwise of such instructions and advice on the reduction and elimination of corruption and corrupt practices."

10. Perusal of the said section 33-C(d) reveals that committees can be constituted by Chairman NAB of other organizations from public or even private sector to assist, advise on measures for reduction and elimination of corruption and corrupt practices. In our considered opinion, section 33-C has to be interpreted dynamically for prevention of corruption and corrupt practices and to check this menace and to act as a whistle blower for the good of our society. Admittedly, no inquiry under section 19 of N.A.O., 1999 is pending before the respondent/NAB. It is also not denied by the petitioners that housing schemes were developed on agricultural land without approval of the LDA or the relevant Zila/Local Councils. Avoiding

any meeting with the LDA raises certain questions on the conduct of the petitioners. Even otherwise, perusal of the questionnaire reveals that LDA wants to update itself of certain information relevant for taking measures for the reduction and elimination of corruption and corrupt practices.

11. In "Lahore Development Authority through D.-G. and others v. Mrs. Imrana Tiwana and others" decided and reported as (2015 SCMR 1739), it has not been held that LDA cannot collect any information from the housing societies in Lahore Division but it laid down that if there is any conflict between LDA and the local Council, it will be resolved according to the prevailing laws. Para 74 of the judgment is reproduced for ready reference:-

> "74. The solution, therefore, lies in reading the provisions of the two statutes in harmony. The LDA Act, 1975 is to be regarded as an enabling statute. It allows LDA to act in support of and to complement the Local Government in the exercise of its functions and responsibilities. Where the Local Government is unable to act because of a lack of resources or capacity, or where the project is of such a nature that it spills over from the territory of one Local Government to another or where the size of the Project is beyond the financial capacity of the Local Government to execute; the LDA can step in and work with the Local Government. Economies of scale, spillovers and effectiveness are merely illustrative of the situations in which the LDA can act in the exercise of its functions to carry out developmental and other work and perform its statutory functions. These are not exhaustive. Life and time may throw up other situations and create circumstances which may warrant LDA action to be taken in consultation with the Local Government within the purview of PLGA, 2013. Closing the categories today will freeze growth and retard progress."

The pendency of the other referred writ petitions will not affect the present

proceedings as in the present case the information is sought from the petitioners on the basis of letter issued by the NAB authorities under section 33-C of N.A.O., 1999.

12. The accountability laws neither monitor functionality of the departments nor they even supervise or control the decisions of the government and its agencies. However, these laws introduce certain essential precautionary measures which may facilitate the functionaries to play the role of whistle blowers to rule out or at least minimize the possibility of corruption and corrupt practices. Accountability is one of golden concepts which no one can oppose since it guides in preparing policy documents and in the political discourse tends to show the image of transparency and trustworthiness. The accountability starts from accounting (book keeping). It ensures fair and equitable governance as the authorities are ultimately held accountable by the citizens. The shift from financial accounting to performance auditing and public accounting has been observed in almost all developed countries with high speed. Accountability is an icon; both instrumental and goal. Accountability is either broad or narrow. It is a conceptional umbrella and used as a synonym for transparency, equity, democracy, efficiency, and responsibility. Accountability is used interchangeably with good governance. However, accountability in the broad sense is a concept without specific termination of boundaries. Accountability is not just another political catchword, it also refers to complete practice of account giving. In the narrow sense, accountability refers to specific set of social relations. Accountability, therefore, can be defined as a relationship between an actor (individual or an organization) and a forum; the actor has to explain his conduct whereas the forum can pose questions, pass judgment including imposition of sanctions. The relationship between the actor and the forum is crucial as the former is supposed to inform the later about the performance, tasks, outcomes and procedures.

The conduct of public functionaries varies from budgetary scrutiny

to administrative fairness in the context of legal accountability. Such conduct involving interrogation and questioning the adequacy of information would establish a connection between accountability and answerability. To qualify the public accountability, there should be a public accessibility of account. Accountability is also about prevention. Accountability is to be rendered before many eyes. The political accountability within democracy, is exercised along with chain of principal-agent i.e. voters delegate their sovereignty to popular representative, who in turn, at least in parliamentary democracies, delegate their authority to cabinet of Ministers who delegate many of their powers to civil servants or independent, administrative bodies. The mechanism of political accountability operates precisely in the opposite direction to that of delegation.

The legal accountability is of immense importance because a great trust placed in courts than in parliament. Thus legal accountability is the most un-ambiguous as the legal scrutiny will be based on higher legal standards prescribed by civil, penal or administrative statutes or precedents. The constitutional perspective of accountability is to prevent corruption and abuse of powers. Preventing the tyranny of absolute rulers/elected leaders, expensive and 'privatized' executive power. The independent judiciary is placed next to the voter, parliament and political officials to request that the accounts be rendered over particular aspects. In the cybernetic perspective of public accountability, the emphasis is in learning capacity of the public administrators. Accountability is useful for check as well as for prevention. It offers a regular mechanism to confront administrators with information about their own functionality and forces them to reflect on the success and failures of their past policy.

On 31st October, 2003 in General Assembly resolution 58/4 adopted in United Nations Convention against Corruption, Chapter II has been assigned to preventive measures under which each State was required to establish and promote effective practice aimed at prevention of corruption,

periodically measures and evaluate the legal instruments with a view to determine their adequacy, prevent and fight corruption, increase knowledge about prevention of corruption. It applies to public sector, lays down code of conduct for public officials, lays down opportunity for public procurement and management of public finances, emphasis on public reporting, emphasis measures relating to the judiciary and prosecution services, lays guidelines for private sector, participation of society and prescribes measures to prevent money laundering. Articles 5 and 6 of Chapter II are reproduced as under for ready reference:-

> "Article 5. Preventive anti-corruption policies and practices
>
> 1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
>
> 2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
>
> 3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
>
> 4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this Article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.
>
> Article 6. Preventive anti-corruption body or bodies
>
> 1. Each State Party shall, in accordance with the fundamental

principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in Article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this Article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided."

The scope of preventive measures for controlling and eradication of corruption and corrupt practices has been hallmark under different laws prevalent in many countries. Tracing out the compatible legal provisions in the developed and under developed countries, Malaysian Anti-Corruption Commission Act, 2009 is worth refereing, under section 7 of which the adequate preventive measures through education have been prescribed. Section is reproduced as under:-

Preventive and educational functions of the Malaysian Anti-Corruption Commission provided for under section 7 paragraphs (c), (d), (f) and (g) of MACCA 2009 which are:

7 (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems, or procedures as in the opinion of the Chief Commissioner may be conductive to

corruption;

7 (d) to instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person

7 (e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption;

7 (f) to educate the public against corruption; and

7 (g) to enlist and foster public support against corruption.

Section 3 of Indian Central Bureau Act, 2010 prescribes the constitution of investigating agency called C.B.I. for prevention, investigate and prosecution of offences including the schedule.

In U.K., Scotland's, France and Germany, the Ministerial Court has laid down higher standards of accountability. In Hong Kong, Independent Commission against Corruption was established in 1974 with a mandate to pursue corrupt through effective detection and investigation eliminating opportunities for corruption by introducing corrupt-resistance practices and educate the public on the harms of corruption and faster their support in fighting corruption. In Singapore, Corrupt Practices Investigation Bureau established in 1952 also prescribes for prevention of corruption by examining the practice and procedure in the public services to minimize the opportunities of corrupt practices. In Croatia, Office for the suppression of Corruption and Organized Crime established in 2001, also prescribes preventive functions and is responsible for international cooperation and exchange of information in complex investigation. In France, Central Service for Prevention of Corruption increasingly provides training and assistance on code of conduct for public and private enterprises. The above example shows that prevention of corruption is essential for accountability laws.

Besides, we have also noticed that NAB, Punjab is conducting inquiries in respect of 20 Housing Schemes on the allegation of corruption and corrupt practices and misuse of authority which shows growing tendency of un-witnessed alluring the public-at-large seizing opportunities to exploit the weaknesses of poor and ignorant, hence the need of preventive/precautionary steps.

The above valuable research was provided by the Research Cell of Lahore High Court which is much appreciable.

13. To our considered view, NAB has not directly proceeded against the petitioners and that consequent to certain information provided to them by the petitioners, they may or may not directly proceed against the petitioners. This Court at this stage, cannot stop the respondent/NAB from collecting information which may be relevant to the allegation of corruption and corrupt practices.

14. For the above stated reasons, these writ petitions have been found meritless and are, therefore, dismissed.

MH/S-42/L **Petitions dismissed.**

PLJ 2019 Lahore (Note) 49

[Multan Bench, Multan]

Present: ALI BAQAR NAJAFI, J.

SAJJAD ALI SHAH--Petitioner

versus

SUPERINTENDING CANAL OFFICER L.B.D.C., SAHIWAL and 7 others--Respondents

W.P. No. 1017 of 2013, decided on 25.10.2017.

Constitution of Pakistan, 1973--

----Art. 199--Canal & Drainage Act, 1873, Ss. 20(2)(3)(4) & (5)--Constitutional petition--Site inspection by Divisional Canal Officer--Set aside inspection by junior officer--Violation of rule--Modification in order of DCO--Challenge to--Under Section 20 of Canal & Drainage Act, 1873, if any order is passed by Divisional Canal Officer (DCO), he will send record of case to Superintending Canal Officer (SC) for further proceedings--Any aggrieved person could file objection petition before said S.C.O. within 15 days, who would pass an appropriate order in 90 days of either moving objection petition or on receipt of record--However, if neither of two contradictions are found, order of D.C.O. shall be deemed to have been confirmed--Order of Canal Officer was based on cogent reasons and, therefore does not require any interference--Petition was dismissed. [Para 5 & 6] A & B

Mr. Ziad Ahmad Mufti, Advocate for Petitioner.

Mr. Muhammad Javed Saeed Pirzada, Additional Advocate General Punjab.

Syed Muhammad Jaffar Tayyar Bukhari, Advocate for Respondents No. 4 to 8.

Date of hearing: 25.10.2017.

ORDER

Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the impugned order dated 12.12.2012 passed by Respondent No. 1/SCO Sahiwal on the grounds that it was passed at the back of the petitioner in violation of Rule 2 of the Rules Under Canal & Drainage Act; and, that Divisional Canal Officer himself inspected the site but SCO/Respondent No. 1 being junior to him had set-aside his inspection observations in violation of the Rules, and, that the SCO/Respondent No. 1 enjoys the power of Civil Court, therefore, was required to pass a judicial order.

2. Learned counsel for Respondents No. 4 to 8 and the learned law officer appearing on behalf of Respondents No. 1 to 3 have vehemently contested this petition on the ground that the name of the petitioner was not mentioned in the water course record as it was in the name of the father of the petitioner, namely, Rasheed Shah who was personally issued notice on 14.07.2012 but had refused to appear before the Court and as such there is no violation of any rule under the Canal & Drainage Act.

3. Arguments heard. Record perused.

4. *Vide* impugned order dated 12.12.2012, the decision of the Canal Divisional, Officer dated 24.09.2012 was modified in appeal to the extent that transfer of 18.55 acres area from outlet RD No. 28000-R Minor to outlet RD No. 24830-R Minor was approved. This modification was made on the request of appellant, namely Gul Shad etc. filed against, Nazir Ahmad etc. and the petitioner was not the party either as appellants or as respondents. Besides, as per amended warabandi of outlet No. 24830-R of 6-R/10-R Mauza Thatha Sadiqabad, Tehsil Jehanian District Khanewal, name of Mubarak Shah the grandfather of the petitioner was mentioned at Sr.No. 13. Even otherwise, in the proceedings conducted by the Divisional Canal Officer, Rasheed Shah son of Mubarak Shah and the father of the petitioner, the owner of Square No. 55

was personally served on 14.07.2012 but he refused to appear before Respondent No. 2. According to me contents of the petition, he died later on and during his life time he did not contest the said order.

5. Under Section 20 of the Canal & Drainage Act, 1873, if any order is passed by Divisional Canal Officer (DCO), he will send the record of the case to Superintending Canal Officer (SC) for further proceedings. Any aggrieved person could file objection petition before the said S.C.O. within 15 days, who would pass an appropriate order in 90 days of either moving the objection petition or on receipt of the record. However, if neither of the two contradictions are found, the order of D.C.O. shall be deemed to have been confirmed. Section 20(2) to 20(5) are reproduced as under:

> "**20. Supply of water through Intervening water-courses or change of source of water supply.--**(1) ……
>
> (2) The Divisional Canal Officer shall, within fifteen days of passing the order, send the record of the case to the Superintending Canal Officer for further proceedings.
>
> (3) A person aggrieved by the order passed under sub-section (1) may file objections with the Superintending Canal Officer within thirty days of the passing of such order.
>
> (4) The Superintending Canal Officer, at his own or on the objections, shall pass such order as he deems fit within ninety days from the receipt of the record or receiving of the objections.
>
> (5) In case no objections are filed and the Superintending Canal Officer fails to pass an order within ninety days, the order of the Divisional Canal Officer shall be deemed to have been confirmed and the record shall be sent beck to the Divisional Canal Officer.
>
> (6) ……..
> (7) ……..
> (8) ……..

(9) ……..

6. Besides, the learned counsel for the petitioner could not point out any violation of the mandatory requirement under Rule 79 of the Canal & Drainage Act, 1873. The judgments titled *"Dost Muhammad and others vs. Superintendent, Canal Officer, Lahore and others"* reported as 1988 MLD 2489 and titled "*Ahmed Bilal Kahlon Bar-at-Law District T.T. Singh vs. Secretary Irrigation and Power Department Government of Punjab Lahore and 4 others"* reported as PLJ 2003 Lahore 849 are not applicable as the predecessor-in-interest of the petitioner was aware of the pending proceedings who preferred not to join them. The order of Superintending Canal Officer modifying the order of Divisional Canal Officer was based on cogent reasons and, therefore, does not require any interference.

7. Keeping in view the above discussion, this petition has been found meritless and is therefore **dismissed.**

(M.M.R.) **Petition dismissed.**

PLJ 2019 Lahore (Note) 79
[Multan Bench, Multan]

Present: ALI BAQAR NAJAFI, J

ASAD RAMZAN and 2 others--Petitioners

versus

B.Z.U. through Vice Chancellor and 4 others--Respondents

W.P. Nos. 13582 & 11258 of 2017 decided on 08.11.2017

Constitution of Pakistan, 1973--

----Art. 199--Constitutional Petition--Allegation of unfair means--Identification marks in papers--Violation of instructions--Disqualified by disciplinary committee--Appeal--Rejected--Challenge to--Respondents have already declared petitioners as passed in said subject, therefore, their disqualification period for one year will be considered which has already lapsed during which they did not appear in any examination conducted by universities--Purpose of putting identification marks' was not achieved when cases of UMC was made out prior to checking--However, normally after making UMC cases papers were required to be checked which could have bearing upon quantum of punishment; i.e. whether disqualified for one year or for two years from appearing in exams--Petitions are disposed of directing respondent to issue normal examination fee vouchers to petitioners within seven days from today by Controller Examinations. [Para 8, 9 & 11] A, B & C

Syed Muhammad Jaffar Tayyar Bukhari, Advocate for Petitioners.

Mr. Muhammad Ali Siddiqui, Advocate/Legal Advior for B.Z.U. for State.

Date of hearing: 08.11.2017.

ORDER

This order shall dispose of the instant writ petition as well as W.P. No. 11258-2017 titled *"Allah Rakha vs. B.Z.U. etc."* as common questions of law and facts are involved in both these petitions.

2. Through these constitutional petitions, the petitioners have challenged the order dated 15.07.2017 & 17.07.2017 as well as 27.07.2017 whereby petitioners of both the writ petitions were found guilty of unfair means cases and were disqualified by the Disciplinary Committee for one year two chances from passing 1st Annual Examination 2016 on the allegation that they have used different identification marks in the papers mentioned in their respective answer sheets.

3. Brief facts giving rise to the filing of these writ petitions are that all petitioners got admission in LL.B. in Muhammadan Law College Sahiwal which is a duly affiliated with Bahauddin Zakariya University (B.Z.U.), Multan and appeared in the 1st Annual Examination. 2016. However, they received letters dated 25.05.2017, 05.06.2017 and decision taken on 15.7.2017 whereby they were directed to appear before the Disciplinary Committee. The allegation levelled against them was that they used different identification marks in papers in violation of instruction No. 16 given on the leaf page of the answer book. The petitioners statedly replied in negative but subsequently they received the impugned letters. According to the petitioners they moved appeals before the Respondent No. 2/Vice Chancellor B.Z.U. Multan and they were informed that the appeals reviews have been rejected, hence these petitions.

4. Learned counsel for the petitioners submits that the findings in the impugned letters are based on malafide, discrimination and that the committee comprised of five members having two years tenure for each member and that only two members heard the matter. It was further submitted that Ms. Faryal Ali daughter of Muhammad Ali was granted the benefit whereas the petitioners were discriminated.

5. Conversely, learned counsel for the respondent-university submits that the petitioners were already considered passed in the above said papers and that their disqualification period for one year has already expired, hence they can appear in the examination, therefore, these petitions be dismissed.

6. After hearing the learned counsel for the parties and perusing the file, it is straightaway observed that the petitioners were disqualified for one year and two chances from appearing in 1st Annual Examination. 2016.

7. Under Rule 16 of the Regulation also printed on the back leaf of the answer sheet a candidate found guilty of disclosing his identity or making peculiar marks in his answer book to disclose his identity will be disqualified for one year if he has passed the examination. He will be considered disqualified for two years if he has failed in the 2nd Annual Examination. Rule 16 is reproduced as under:

> *"16. Any candidate found guilt of disclosing his identity or making peculiar marks in his answer-book for that purpose shall:--*
>
> *(a) if he is successful in the examination, be disqualified from passing the examination, that year; or*
>
> *(b) if unsuccessful in the examination, be disqualified for that year and the following year."*

8. Since the respondents have already declared the petitioners as passed in the said subject, therefore, their disqualification period for one year will be considered which has already lapsed during which they did not appear in any examination conducted by the universities.

9. The argument of the learned counsel for the petitioners that that they should not be required to appear in the subject papers in which they have already passed is not tenable as the concept of UMC is to punish the candidate for having violated the rules and regulations which may not be achieved if the argument is allowed to succeed. Undoubtedly, the purpose of putting identification marks' was not achieved when the cases of UMC was made out

prior to the checking. However, normally after making the UMC cases the papers were required to be checked which could have bearing upon the quantum of punishment; i.e. whether disqualified for one year or for two years from appearing in the exams.

10. This Court has already observed in W.P.No. 10799-2017 titled *"Muhammad Umar Farooq etc. vs. B.Z.U."* and W.P.No. 11143 of 2017 titled *"Waseem Khurshid vs. B.Z.U. etc."* that disqualification period of such students has already passed, the normal examination fee will be issued for the subject papers in which the petitioners have failed within seven days. Para 10 of the Said judgment is reproduced as under:

> *"10. It is to be observed here that higher standard in the university education can be fulfilled only with a foolproof and disciplined conduct of examination with a view to rule out any possibility of unfair means. As the disqualification period appearing in the examination is up to 2nd annual examination, 2016, the petitioners shall now be legible to appear in the subject in which he has failed with normal examination fee for which the voucher shall be issued to the petitioners by the Controller Examinations within seven days from today."*

11. In this view of the matter, these writ petitions are disposed of directing respondent to issue the normal examination fee vouchers to the petitioners within seven days from today by the Controller Examinations.

(Y.A.) **Petition disposed of.**

2019 Lahore 581

Before Ali Baqar Najafi, J

SAJAWAL---Petitioner

Versus

JUDGE FAMILY COURT, DISTRICT MULTAN and another---Respondents

Writ Petition No.3801 of 2019, decided on 8th March, 2019.

Family Courts Act (XXXV of 1964)---

----S. 9---Constitution of Pakistan, Art. 10-A---Right to fair trial---Written statement---Extension in time for filing written statement---Scope---Petitioner challenged order of Family Court whereby his right to submit written statement was struck off---Validity---Petitioner was given opportunities to submit written statement but he could not submit the same---Section 9(1) read with 9(5A) of Family Courts Act, 1964 provided a period of 15 days for filing written statement---Time could be extended where the defendant established sufficient reasons which prevented him from filing the same---High Court, keeping in view the valuable rights of petitioner to defend himself before the Family Court and in view of Art. 10-A of the Constitution permitted the petitioner to submit written statement subject to payment of cost.

Malik Tariq Javed Arain for Petitioner.

Date of hearing: 8th March, 2019.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner has challenged the order dated 6.2.2019 whereby the right to submit written statement of the petitioner was struck off on the ground that despite availing number of opportunities, he has failed to file written statement within the statutory period.

2. After hearing the learned counsel for the petitioner and perusing the file, it is straightaway observed that the respondent filed a suit for maintenance allowance and dower on 31.5.2018 in which the petitioner appeared on 15.9.2018 whereafter on 23.10.2018, 3.12.2018 and 5.1.2019 the petitioner was given opportunities to submit the written statement but he could not submit the same on account of unavoidable circumstances. Under section 9(1) read with section 9(5A) of the West Pakistan Family Courts Act, 1964, a period of 15 days is provided for the said purpose. However, if the petitioner could establish sufficient reasons which prevented him for filing the written statement, such time can be extended in the interest of justice. Learned counsel for the petitioner states that on two occasions the learned Presiding Officer was on leave and that he will file the written statement before the Family Court on the next date of hearing i.e. 5.4.2019 if so permitted by the Court against an appropriate cost.

3. In this view of the matter and keeping in view the valuable rights of the petitioner to defend himself before the Family Court and referring to Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 (Right to Fair Trial) prescribing right to defend as a fundamental right, I allow this writ petition, set-aside the order dated 6.2.2019 passed by the Family Court and permit the petitioner to submit written statement on 5.4.2019 subject to payment of cost Rs.5000/- to the respondent on the said date.

SA/S-83/l **Petition allowed.**

2019 Y L R 710

[Lahore (Bahawalpur Bench)]

Before Ali Baqar Najafi, J

Hakeem KHADIM HUSSAIN through legal heirs---Petitioners

Versus

MEMBER (JUDICIAL-II), BOARD OF REVENUE, PUNJAB LAHORE and 3 others---Respondents

W.P. No.158 of 2008, decided on 20th November, 2018.

Punjab Land Revenue Act (XVII of 1967)---

----Ss. 42 & 53---Mutation sanctioned on the basis of decree passed by the Court---Review of said mutation by the Revenue Authorities--- Effect---Revenue authorities cancelled mutation sanctioned on the basis of decree of Court---Validity---Alleged mutation sanctioned on the basis of judgment and decree was to sustain as long as the supportive decree was intact---Constitutional petition filed by the respondent had been dismissed by the High Court and leave had not been granted by the Supreme Court---Decree on the basis of which mutation was sanctioned had not been set aside and same was holding the field---Revenue authorities could not go against the decree passed by the Court---Sanction of mutation in pursuance of decree was formality and was not independent act and it had not created any independent right---Revenue authorities could not review the mutation sanctioned on the basis of a decree passed by the Court when said judgment and decree had been challenged and its final decision was yet to be made---Title of suit land could not be determined by the Revenue Authorities and it was within the jurisdiction of Civil Court to finally adjudicate the question of title---Impugned mutation had been cancelled without following the mandate of law---Constitutional petition was allowed, in circumstances.

Shahra and others v. Member, Board of Revenue, Punjab and others 2004 SCMR 117; Muhammad Aslam v. Collector and another 1992 CLC

851; Ataur Rehman Khan v. Dost Muhammad and others 1986 SCMR 598 and Muhammad Yousaf and 3 others v. Khan Bahadur through L.Rs. 1992 SCMR 2334 rel.

Malik Muhammad Aslam and Farooq Haider Malik for Petitioner.

Ijaz Ahmad Ansari and Muhammad Asif Usman Qureshi for Respondent No.4.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner has challenged the order dated 26.12.2007 passed by respondent No.1/Member Board of Revenue-II and the order dated 07.06.1990 passed by respondent No.3/Deputy Commissioner/ Collector Rahim Yar Khan with a further prayer to restore the order dated 25.10.1994 passed by respondent No.2/Commissioner Bahawalpur Division Bahawalpur.

2. Brief facts giving rise to the filing of this constitutional petition are that the predecessor of the petitioners purchased agricultural land measuring 16 kanals situated in Mauza Ghazi Pur Tehsil Liaqatpur District Rahim Yar Khan through an agreement to sell from one Hukam Din, the then owner on 22.10.1979. However, on account of some disputes, the suit for specific performance of agreement was filed by the predecessor of the petitioners against said Hukam Din on 08.11.1979 which was decreed on 29.01.1980 on the basis of consenting statement of Hukam Din. Consequently, mutation No.1155 was sanctioned in favour of predecessor of the petitioners on 06.04.1980. Meanwhile, respondent No.4 and others challenged the said judgment and decree dated 29.01.1980 by filing an application under section 12(2), C.P.C. on 14.11.1982 which was initially dismissed on 04.06.1990 after recording of evidence and hearing all the parties. Aggrieved of the said order, respondent No.4 and others filed a revision petition before the Additional District Judge who vide order dated 28.02.1996 accepted it and restored the application under section 12(2),

C.P.C. for further evidence and decision. Later, the learned Civil Judge received further evidence and allowed application under section 12(2), C.P.C. on 27.09.2000. Now the petitioner aggrieved of the above said order filed a revision petition before the Additional District Judge who vide his order dated 22.03.2006 allowed the revision petition and dismissed the application under section 12(2), C.P.C. Now it was respondent No.4 who assailed the order before this Court in W.P. No.1416-2006/ BWP in which the status quo was ordered to be maintained but it was finally dismissed on 29.06.2015. The respondent filed CPLA No.2292-L/2015 before the Hon'ble Supreme Court of Pakistan which is statedly pending but no leave to appeal was granted so far.

3. In the other round of litigation, respondent No.4 also filed an application before respondent No.3/Deputy Commissioner/Collector Rahim Yar Khan on 01.08.1999 for cancellation of mutation No.1155 dated 04.06.1980 passed in favour of the petitioner which was accepted on 07.06.1990 and the said mutation was reviewed. The petitioner aggrieved of the said order preferred a revision petition before the Commissioner Bahawalpur/respondent No.2 who allowed it on 25.10.1994 and set-aside the order dated 07.06.1990. Respondent No.4 filed ROR No.2718-94 before the Member Board of Revenue/respondent No.1 who vide order dated 26.12.2007 allowed it and set-aside the order dated 25.10.1994 passed by respondent No.2, consequent of which mutation No.1155 dated 04.06.1980 was cancelled. The petitioners assailed the order dated 26.12.2007 and 07.06.1990 and prays for restoration of order dated 25.10.1994 passed by respondents Nos.1 and 3 respectively by invoking the constitutional jurisdiction of this Court.

4. Learned counsel for the petitioners submits that the impugned order dated 26.12.2007 is not a speaking order and the mutation No.1155 was sanctioned on the basis of a decree passed by the Civil Court, therefore, the revenue Court cannot determine the question of title by extending the jurisdiction beyond the scope of said decree. Adds that respondent No.1

had not given any finding on five raised questions and that the document in possession of respondent No.4 was brought to the notice of the Court first time on 27.11.2007 which shows its lack of authenticity. Submits that Mst. Kaniz Mai shown as original owner of the disputed property had no concern with the disputed khata and, therefore, prays for setting-aside the impugned order.

5. Conversely, learned counsel for respondent No.4 submits that the decree was passed after the death of Hukam Din as reflected from entry in the death register (Exh.P-2) and that in register Haqdaran-e-Zamin (Exh.P-3) the owner is the Central Government and that Taj Ali, the predecessor of the respondent came in possession of the property on the basis of the document (Exh.P-4). Adds that on the basis of RL-II (Exh.P-11) the ownership was confirmed in the name of Hukam Din. It was also submitted on behalf of respondent that a suit is also pending and therefore prays for dismissal of the civil revision.

6. In rebuttal, learned counsel for the petitioners points out that all the grounds argued before this Court have already been incorporated in the writ petition already decided by this Court against which CPLA No.2292-L/2015 is pending before the Hon'ble Supreme Court and therefore, the relief may be granted.

7. Arguments heard. File perused.

8. After hearing the learned counsel for the parties and perusing the record, it has come on surface that mutation No.1155 dated 04.06.1980 sanctioned on the basis of consenting judgment and decree dated 29.01.1980 could sustain as long as the supportive decree remained intact. Admittedly, the W.P.No.1416-2006 filed by the respondent Ghazanfar Ali has been dismissed by this Court and as per instructions of the respondent's counsel, the leave has not been

granted so far in CPLA No.2292-L/2015. Meaning thereby, that the decree

has not been set-aside and still holds the field.

9. The revenue authorities cannot go against the decree passed by the Civil Court and that sanction of mutation in pursuance of the said decree is a formality and was not an independent act and therefore, had not created any independent right. A reference may be given to case titled "Shahra and others v. M.B.R., Punjab and others" reported as 2004 SCMR 117 the relevant extract of para 4 is reproduced as under:---

> "Sanction of mutation in pursuance of decree of a Civil Court was merely a formality and was not independent act and according to law did not by itself independently had the effect of creating any right. According to law, the revenue authorities were bound to make changes in the revenue record according to the decree of the Civil Court and in this case, admittedly decree passed in the pre-emption suit related to whole of the land about which mutation was sanctioned, therefore, no objection could be raised that in fact whole of the land had not been sold."

10. A reference may also be given from judgment of Single Bench of this Court titled "Muhammad Aslam v. Collector and another" reported as 1992 CLC 851 wherein it was held that the revenue authorities could not review the mutation sanctioned on the basis of a decree passed by the Civil Court, particularly, when the said judgment and decree has been challenged and its final decision is yet to be made.

11. Under Section 42 of the West Pakistan Land Revenue Act, the title cannot be determined by the Revenue Authorities and under section 53 of the said Act, it is within the jurisdiction of the Civil Court to finally adjudicate about the question of title. Sections 42 and 53 of the West Pakistan Land Revenue Act are reproduced as under:--

> "42. Making of that part of periodical records which relates to land-owners.---(1) [34] [Subject to the other provisions of this Chapter, a person] acquiring by inheritance, purchase, mortgage, gift, or

otherwise, any right in an estate as a land-owner, or a tenant for a fixed term exceeding one year, shall, within three monthsfrom the date of such acquisition, report his acquisition of right to the Patwari of the estate, who shall-

(a) record such report in the Roznamacha to be maintained in the prescribed manner;

(b) furnish a copy of the report so recorded, free of cost, to the person making the report;

and

(c) send a copy of the report, within a week of its receipt by him, to the [35] [office of the Union Administration) within which the estate is situated.

[36] [* * * * * * * *1

(2) ..

(6) A Revenue Officer shall, from time to time, inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the Patwari and entries made in that register, and, shall in each case make such order as he thinks fit with respect to any entry in the periodical record of the right acquired.

(7) Except in cases of inheritance or where the acquisition of the right is by a registered deed or by or under an order or decree of a Court, the Revenue Officer shall make the order under sub-section (6) in the presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lambardars or members of the [40][Zila Council, Tehsil Council or Town Council] concerned whose signatures or thumb-impressions shall be obtained by the Revenue Officer on the register

of mutations.

53. Suit for declaratory decrees by persons aggrieved by an entry in a record.---If any person considers himself aggrieved by an entry in a record-of-rights or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877)."

12. In somewhat similar circumstances, the guidance can be sought from the case titled "Ataur Rehman Khan v. Dost Muhammad and others" reported as 1986 SCMR 598, wherein till the pendency of application under section 12(2), C.P.C., the mutation was ordered not to be disturbed. In the case titled "Muhammad Yousaf and 3 others v. Khan Bahadar through L.Rs." reported as 1992 SCMR 2334, the Hon'ble Supreme Court of Pakistan has drawn a line of distinction between the matters to be determined by the Civil Court and the Revenue Court. Relevant extract is reproduced as under:--

"We have anxiously considered the relevant provisions of West Pakistan Land Revenue Act. Section 172 barred the jurisdiction of the Civil Courts in certain matters exclusively within the competence of the revenue officers which have been enumerated in subsection (2). Section 44 relates to the determination of disputes arising during the course of making, revision or preparation of record or in the course of any inquiry under Chapter VI relating to record-of-rights and periodical record. But once the inquiry is made or the entries recorded in the Revenue Record, a presumption of truth is attached to it under section 52 of the Act ibid until the contrary is proved or the new entries are substituted therefor. To dislodge this presumption a remedy is provided under section 53 of the said Act which provides that if any person considers himself aggrieved by an entry in a record-of-rights or in periodical record as

to any right of which he is in possession, he may institute a suit for declaration of his rights on in periodical record as to any right of which he is in possession, he may institute a suit for declaration of is rights under section 42 of the Specific Relief Act, 1877 Act (I of 1877). Apparently, the jurisdiction of the Civil Courts is not ousted to question the correctness of the entries of revenue record, or declaration of title under the Specific Relief Act, or claiming relief of possession of immovable property, rather aggrieved party has been invested with a right to challenge the entries made in the Land Revenue Act through a suit for declaration in Civil Court. The learned appellate Court not only misinterpreted the provisions of West Pakistan Land Revenue Act but omitted to take into consideration the provision of section 53 of the Act ibid and legally erred in holding that the Civil Court had no jurisdiction in the matter and, in consequence, ordered the return of plaint."

13. For what has been discussed above, this petition succeeds and therefore allowed since the mutation No.1155 dated 06.04.1980 was cancelled without following the mandate of law and the view taken by the superior courts.

ZC/K-23/L **Petition allowed.**

2019 Y L R 785

[Lahore]

Before Ali Baqar Najafi, J

ZAHIDA TAHIRA---Petitioner

Versus

JAVED IQBAL and others---Respondents

W.P. No.153370 of 2018, decided on 25th January, 2019.

(a) Guardians and Wards Act (VIII of 1890)---

----Ss. 12 & 25---Interim custody of minor sons---Mother a household lady---Schedule of meeting between minors and their father---Ages of the minors were 8 years and 6 years who needed proper care and attention of their real mother/ petitioner--- Father/respondent was a government servant who mostly remained on duty outside the house in view of the nature of his job in police department---Mother, on the other hand, was a household lady who stayed at home and could very well look after the minors even during the pendency of the guardianship petition---(Interim) custody of the minors was given to the mother till the decision on petitions under S. 25 of the Guardians and Wards Act, 1890 pending before the Guardian Court---High Court provided a schedule of meeting for the father to the effect that the mother shall ensure meeting of the minors with their father on first Saturday of every month from 11:00 A.M. to 1:00 P.M. through bailiff in visitation room; that on the occasion of Eid-ul-Fitar and Eid-ul-Azha, the father would be entitled to meet the minors on the second day of Eid from 11:00 A.M. to 2:00 P.M. and on the occasion of birthdays, father would be entitled to meet the minors from 11:00 A.M. to 2:00 P.M. in the visitation room---Constitutional petition was allowed accordingly.

(b) Guardians and Wards Act (VIII of 1890)---

----Ss. 12 & 25---Interim custody of minor sons---Interim schedule of meeting between minors and their father provided by Guardian court---Such interim schedule of meeting could always be modified/changed at the time of decision of application under S. 25 of the Guardians and Wards Act,

1890.

Petitioner in person.

Asim Nawaz Gujjar, Advocate along with Respondent No.1.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 orders dated 20.09.2017 and 02.12.2017 have been challenged whereby the Guardian Court disposed of the application under Section 12 of the Guardians and Wards Act, 1890 for interim custody of the minors namely, Ali Hashmi, aged 7 years and Zain Hashmi, aged 5 years while chalking out the meeting schedule and permitted the respondent No.1 to retain the custody of the minors.

2. Brief facts giving rise to the filing of this Constitutional petition are that respondent No.1 filed a petition under Section 25 of the Guardians and Wards Act, 1890 along with application under Section 12 of the said Act seeking interim custody of the minors. The petitioner filed reply to both the petitions under Section 25 as well as under Section 12 of the Guardians and Wards Act, 1890. Meanwhile, on 23.12.2016 petitioner also filed similar petition under Section 25 of the Guardian and Wards Act, 1890 along with application under Section 12 of the Act, in which reply was also filed by respondent No. 1. On 20.09.2017, a meeting schedule was made permitting the petitioner, the real mother, to meet the minors while disposing of the said applications on the ground that welfare of the minor could not be decided summarily without recording of evidence. Similar order was passed on 02.12.2017 on the petition under Section 12 of the Guardians and Wards Act, 1890 filed by the petitioner. Both these orders have been assailed through this writ petition. The notice was, therefore, issued in this case on 26.01.2018.

3. On 05.06.2018, respondent No.1 was summoned in person through special messenger who appeared on 07.06.2018. On 25.06.2018 the case was heard on merits and keeping in view the fact that marriage was still

intact, a chance of an amicable settlement was given to the parties. The children were allowed to accompany the petitioner being real mother as interim measure and respondent No.1 was also allowed to meet the minors and their mother without any hindrance. This Court adjourned the case to 26.07.2018 to monitor the conduct of the parties. On 26.07.2018, a joint request was made by the parties as their counsel were not available. Today, the case was fixed on which a compromise deed was placed on the record duly signed by the petitioner and respondent No.1 but the said respondent disowned his signatures as well as contents and prays for decision on merits.

4. Precisely, the case of the petitioner is that keeping in view the

ages of the minors their interim custody must remain with the mother and permanent custody may be decided while deciding the application under Section 25 of the Guardians and Wards Act, 1890 on the basis of evidence whereas the case of respondent No.1 is that the writ petition is not competent against the order passed on the application under Section 12 of the Guardians and Wards Act, 1890.

5. Arguments heard. File perused.

6. After hearing the learned counsel for the parties and perusing the file, I am of the view that ages of the minors are 8 years and 6 years who need proper care and attention of real mother. The respondent No.1 is admittedly a government servant who mostly remains on duty outside the house in view of the nature of his job in police department. The petitioner, on the other hand, is a household lady who stays at home and can very well look after the minors even during the pendency of the guardianship petition. The schedule so chalked out may be followed but after giving interim custody of the minors to the petitioner since they are also required to maintain and develop close proximity as well as intimacy with the petitioner, real mother. In my humble view, since the schedule of meeting is interim in nature and at the time of decision of application under Section 25 of the Guardians and Wards Act, 1890 on the basis of evidence can always be modified/ changed.

7. The judgment cited by learned counsel for respondent No.1 reported as Muhammad Anwar Khan v. Mst. Yasmin Zafar (1987 SCMR 2029), is a leave granting order so as to examine whether order passed on the application under Section 12 of the Guardians and Wards Act, 1890 was an appealable order or not which is obviously not a final decision. The other judgment cited as Dr. Kiran Qadir v. Maj. Dr. Muhammad Ali Yousaf Khan (PLD 2014 Lahore 17) is a judgment in a guardianship matter given by this Court in ICA dismissing it was obviously on the ground that said appeal was not competent since the appeal was provided against the order passed on the application under Section 12 of the Guardians and Wards Act, 1890. However, in the present case, schedule of meeting was challenged by the mother which can be decided on the basis of the welfare of the minors as it is always a prime consideration also for this Court exercising parental jurisdiction.

8. In this view of the matter, this writ petition is allowed impugned orders are set aside and the following schedule is made out for meeting of the minors with respondent No.1 while giving the custody of the minors to the petitioner till the decision on petitions under Section 25 of the Guardians and Wards Act, 1890 pending before the Guardian Court.

Schedule of meeting.

The petitioner shall ensure meeting of the minors with respondent No.1 on first Saturday of every month from 11:00 A.M. to 1:00 P.M. through bailiff in visitation room. On the occasion of Eid-ul-Fitar and Eid-ul-Azha, respondent No.1 will be entitled to meet the minors on the second day of Eidain from 11:00 A.M. to 2:00 P.M. and on the occasion of birthday, respondent No.1 will be entitled to meet the minors from 11:00 A.M. to 2:00 P.M. in the visitation room.

MWA/Z-5/L **Petition allowed.**

2020 C L C 693

[Lahore]

Before Ali Baqar Najafi, J

Messrs LAC (PVT.) LTD. through Authorized Representative---- Petitioner

Versus

GOVERNMENT OF PUNJAB through Secretary and 6 others---- Respondents

W.P. No.68072 of 2019, decided on 13th December, 2019.

(a) Punjab Procurement Rules, 2014 ---

----R.5---Foreign funded irrigation project---Technical bid and financial bid---Bid validity period, expiry of---Offer remaining non-responsive---Misprocurement---Held, that general and specific guidelines were required to be followed in internationally funded projects as mandatory to ensure fairness---In the present case, there were four pre-qualifications criteria; i.e. eligibility, pending litigation, financial status and construction experience and any bid was required to be assessed on its basis---Bid validity period had expired, therefore, the offer of petitioner remained non-responsive---Bid security period, in the present case, was extended and not the bid validity period, therefore, the offer had become invalid and any violation of the guidelines provided for the project might be considered a mis-procurement---However, its reasons could be communicated under guidelines of the project---As per the understanding between the parties the rate of exchange of US dollar was to be calculated on the date of signing of the contract and not the date of offer since it was experiencing unpredictable fluctuation---Reasons of the bid being non-responsive had been conveyed to the petitioner during the present proceedings, therefore, the petitioner, could avail his remedy in accordance with law (but not through present Constitutional petition)---Constitutional petition was

dismissed.

(b) Constitution of Pakistan---

----Art. 199---Constitutional petition---Maintainability---Disputed questions of fact---Such questions could not be resolved in Constitutional jurisdiction of the High Court.

Salman Akram Raja for Petitioner.

Saif Ullah Maan for Respondent No.3.

Muhammad Ahmad Pansota for Respondents Nos.6 and 7.

Muhammad Ejaz, AAG with Khalid Hussain, Project Director.

ORDER

ALI BAQAR NAJAFI, J.----Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged the letter dated 08.11.2019 while seeking a direction to respondent No.2/Project Director to conduct a fresh technical evaluation of the petitioner's bid, convey the reason for its rejection and then provide him an opportunity to satisfy about any specific objection raised in the bid submitted by the petitioner on 07.05.2019, with a further prayer to carry out fresh technical evaluation of the bid and revise it in view of the Rules 37 and 38(2)(b) of the Punjab Procurement Rules, 2014 and meanwhile, restrain them from taking any further step in the process including opening of financial bid and awarding of contract to any of the bidders and to examine in detail the reasons for purported qualification of the petitioner.

2. Brief facts giving rise to the filing of this constitutional petition are that petitioner is a registered private company with the name and style of Messrs LAC (Pvt.) Ltd. having experience in industry of construction and infrastructure having specialization in dams, highways, flyover, bridges, power and energy buildings. On 15.01.2019, an advertisement was published in the newspaper by respondent No.2 declaring that Asian

Development Bank (ADB) had funded the Jalalpur Irrigation Project, therefore, bids were invited by him for the construction of Main Canal (RD 52+000 to RD 225+500). The invitations of bids were published in public on 17.01.2019 with the deadline of 12.03.2019, for the bids, later extended to 07.05.2019. The para 4 of the advertisement inviting the bids is relevant, therefore, reproduced as under:-

> "4. Only eligible Bidders with the following key qualifications should participate in this bidding:
>
> - Participation in at least two (2) contracts that have been successfully or substantially completed within the last ten (10) years and that are similar to the proposed works, where the value of the Bidder's participation exceeds USD 65.6 million in the second contract.
> - Construction experience in key activities such as earthwork, reinforced concrete and concrete canal lining as detailed in the bidding documents.
> - Minimum average annual construction turnover of USD 30.8 million calculated as total certified payments received for contracts in progress or completed, within the last three (3) years.
> - Having sound financial position to successfully meet the monthly cash flow requirement equal or more than the amount given below: USD 5.1 million.
> - As a minimum, the Bidder's net worth calculated as the deference between total assets and total liabilities should be positive."

3. It was stipulated in the invitation that bid process was to be conducted in the manner provided in the following paragraph No.7, which is also reproduced as under:--

> "7. Technical bids will be opened immediately in the presence of Bidder's representatives who choose to attend, whereas the Financial Bids shall remain sealed and unopened and shall be placed

> locked. The Financial Bids of only Technically Responsive and Qualified Bidders shall be opened after Technical Bid Evaluation, whereas, the Financial Bids of those Bidders whose Technical Bids are not responsible and qualified shall be returned unopened after the contract is awarded."

On 02.04.2019, petitioner requested respondent No.2 to provide bidding documents of the project based on the well accepted bidding standard set by ADB (in December, 2016) for the procurement of work. Bidding documents were issued under clause 15.4 which relates to the conversion rates of currencies, reproduced as under:-

> "The rates of exchange to be used by the Bidder for currency conversion during bid preparation shall be the selling rates for similar transactions prevailing on the date 28 days prior to the deadline for submission of bids published by the source specified in the BDS. If exchange rates are not so published for certain currencies, the Bidder shall state the rates used and the source. Bidders should note that for the purpose of payments, the exchange rates confirmed by the source specified in the BDS as the selling rates prevailing 28 days prior to the deadline for submission of Bids shall apply for the duration of the Contract so that no currency exchange risk is borne by the Bidder."

The case of the petitioner is that he formed a joint venture with respondent No.4/Eren Insaat Tic Ve San. Ltd., a renowned entity of Turkey in the field of construction and infrastructure development through an agreement dated 30.04.2019. The submission of bid by the joint venture on 07.11.2019 included both technical and financial bid in accordance with the set requirement. He had filled up form Exh.P-1 pointing out the prior experience by giving the details of construction of Mardin Ceylanpinar Plains Irrigation Lower Mardin Main Channel in US$65,76,422/- and also the details for conversion, rehabilitation and upgrading of branch canal and

distributary system covering Sahiwal Division (Contract No.LBDC/ICB-05 for US$ 21.37 million) called Sahiwal Project. It is pertinent to mention that in the offer of Mardin project, the contract was awarded to the petitioner company (JV) with respect to foreign currency exchange rate applicable on 28.08.2008 and as such, if determined on this principle, the financial bid of the petitioner was on 25.09.2019 on US $ 96.2734/- million. However, if already approved principle in the Sahiwal project is applied, it would be US $ 87.3193/- Significantly, seven (7) companies submitted their bids and participated in the bidding process including respondent No.5/Descon Engineering Ltd., China Gezhouba Group Company Ltd. / respondent No.6 and Ghulam Rasool and Company/respondent No.7. On 20.05.2019, respondent No.2 asked different queries from the petitioner in relation to the currency conversion rates. On 28.05.2019, a clarification was sought from the petitioner and on 31.05.2019 respondent No.2 sought its definite compliance from the petitioner. On 10.06.2019, petitioner responded by replying that the calculation on the currency conversion should be carried out in accordance with the norms in Turkey but ever-since, the respondent did not communicate any reply. On 23.09.2019, a letter was addressed to respondent No.2, copy of which has been forwarded to ADB, explaining that earlier two projects i.e. Mardin Project and Sahiwal Project were completed in accordance with eligibility set out in the invitation for bids, therefore, same principle be applied now. However, on 08.11.2019 impugned order was passed conveying that bid offered by the petitioner has been substantially non-responsive to the requirements of bidding document, but without specifying any reason or spelling out the comparative responsiveness of the other competitors/bidders, i.e. respondents Nos. 5 and 7, hence this writ petition.

4. Learned counsel for the petitioner submits that respondent No.2 has not provided any technical evaluation report to the petitioner as bidder and that the impugned letter dated 08.11.2019 is without any reason. Adds that the respondent has not constituted any Grievance Redressal Committee

under Rule 67 of the Punjab Procurement Rules, 2014 as the project is governed by the Punjab Procurement Regulatory Authority, 2009. Further adds that respondent No.2 was required to inform the petitioner about the inadequacy in the bid documents. Contends respondent has violated the principle of natural justice as the benefit of Rule 38 of the Punjab Procurement Rules, 2014 for submitting of the revise technical proposal along with financial proposal was not granted to the petitioner. Further contends that Rule 27 of the Punjab Procurement Rules, 2014 was also violated and, therefore, prays for the claimed relief.

5. In the report and parawise comments submitted by respondents Nos. 1 and 2, Government of Punjab and the Project Director, respectively, it is stated that construction of Jalalpur Canal and allied works is to be taken up through three civil works contracts under International Contract Bidding (ICB) procedure as per Project Administration Memorandum (PAM) issued by ADB. The bid documents were procured in accordance with the standard bidding for the contract JIP/WKS/ICB-P-2 invited on one envelope basis. It was opened on 07.05.2019 by the Bid Opening and Evaluation Review Committee (BO and ERC) constituted by the Secretary Irrigation when eight (8) bids were received for the contract including the one from M/S EREN-LAC Joint Venture (JV). The Technical Bid Evaluation Report (TBER) prepared by PIC was sent to Review Committee for BO and ERC. On 08.11.2019, NOC letter was issued declaring the technical bid of 6 bidders including M/S EREN-LAC as non-responsive to the qualification and evaluation criteria of the bidding documents. They all were invited through letter dated 08.11.2019 while the two technically responsive bidders were informed about opening of their price bids on 14.11.2019 through a separate letter. According to the respondent, Article 1(t) read with schedule 4 of the Loan Agreement, stipulates all procurements are to be made according to the Guidelines provided by the ADB, (2015) and as per paragraph 1.12 thereof, any procurement, if made, under Loan Financing Project against the said guidelines will be declared as mis-

procurement and the ADB, would normally cancel that portion of the financing.

6. On preliminary objections, the maintainability of the writ petition was questioned since Messrs LAC (Pvt.) Ltd was not the sole bidder of the contract as the bid was made by the joint venture with Messrs EREN LAC and that the bidding documents were issued to the said joint venture and not to the petitioner alone. Adds that bid validity period had expired on 05.09.2019 as it was not extended. Further adds that under rule 5 of the Punjab Procurement Rules, 2014 in case of conflict with any commitment of the government, the obligations arising out of the international agreement would prevail, therefore, the disclosure of the ground of rejection of technical bid at this stage before opening of financial bid is against the procurement procedure of the financing institution (ADB). The said clause 26.1 (Confidentiality of bid) of instruction to bidder (ITB) the process of evaluation of bid was confidential which is reproduced as under:

> "Information relating to the examination, evaluation, comparison, and post-qualification of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other person not officially concerned with such process until information on the Contract award is communicated to all Bidders."

Accordingly, no bidder was informed about the reasons for being non-responsive in the technical evaluation and, therefore, notification was issued to six unsuccessful bidders. Under form EP-1 of Section 4 total contract amount was required to be mentioned in US Dollars without any exchange rate with the Pakistan Local Currency. Besides, there were four qualification criteria, i.e. (i) eligibility, (ii) pending litigation and arbitration, (iii) financial situation and (iv) construction experience. That is the reasons why on 20.05.2019 respondent No.2 asked the bidders to explain conversion rates dated 30.12.2017 for construction of Mardin Ceylanpinar plains irrigation lower main channel section 3 under which

contract was awarded on 23.12.2008 and was already completed by 07.05.2019. Adds that in case of confusion, petitioner could get a clarification in the pre-bid meeting with the bidders held by respondent No.2 on 06.02.2019. In second contract relating to Sahiwal, no such clarification was sought. It was, however, admitted by the petitioner that respondent No.2 sought the extension of bid security and also bid validity till 06.01.2020 to which the security was extended but the validity of the bid was not extended till date and, therefore, under clause 18.2 (period of validity of bids) of ITB, the bid had already become invalid under clause 26.1, the reasons for being non-responsive could not be communicated to the petitioner on the ground of confidentiality. Under clause 15 of the guidelines of bidders, after notification of the award if a bidder wishes to ascertain the grounds on which it was rejected, he is entitled to an explanation in the meeting with ADB which he may do by writing to the Director General (Operations) to arrange a meeting with the relevant staff.

7. Learned counsel for respondents Nos. 5 and 6 while placing reliance upon Messrs Power Construction Corporation of China Ltd. through Authorized Representative v. Pakistan Water and Power Development Authority through Chairman WAPDA and 2 others (PLD 2017 Supreme Court 83) argue that Rule 38 does not apply to the petitioner. Adds that contractual obligations cannot be enforced under Article 199 of the Constitution and that the penalty would be paid by the Government of Punjab in case of non-compliance of the contract and that JV Partner Messrs EREN had not authorized the petitioner to file the petition, therefore, it should be dismissed on this sole ground.

8. Today, respondent No.2/Director General has placed on record additional documents according to which the bid validity period was 120 days i.e. up to 4.09.2019, therefore, the petitioner was requested to extend bid validity up to 06.01.2020 and extend the bid security for 28 days beyond bid validity period through letter dated 19.08.2019 but Messrs EREN-LAC did not extend the validity period, therefore, after the said expiry of the

validity period i.e. 04.09.2019 Messrs EREN-LAC has become non-responsive. It was also admitted that for construction experience, sub-clause 2.4 of Qualification Criteria was applicable according to the rate of exchange to be issued to calculate the value of the contract date on the day of contract signing and in the referred earlier contract agreement the signing date was 12.10.2012. It was also stated that after preparation of the bid to be submitted by the bidder as per sub-clause 15.4 after instruction of bidders, the therefore, calculated value of US $ 21.37 million by the petitioner was beyond the period of 28 days, therefore, incorrect. The LAC being JV partner had only to meet the qualification criteria and resultantly bid made by the Messrs EREN-LAC had become non-responsive in technical bid evaluation.

9. After reading these additional documents, at this stage, learned counsel for the petitioner in rebuttal has placed on record the written statement and submits that general guidelines cannot supersede the specific guidelines prescribed for the bidding document and that exchange rate would prevail on the day according to the said rules.

10. Arguments heard. File perused.

11. Admittedly, the petitioner is one Joint Venture (JV) Partner with Messrs EREN-LAC, and bid documents were received by JV and the bid was submitted by JV, whereas its validity period was 120 days; already expired on 07.09.2019, therefore, the offer remained non-responsive. Secondly, as per the understanding the rate of exchange of dollar was to be calculated on the date of signing of the contract and not the date of offer since it was experiencing unpredictable fluctuation in increase. Thirdly, the general and specific guidelines are required to be followed in the internationally funded projects as mandatory to ensure fairness. Fourthly, the bid security period (under clause 27) was extended to 06.01.2020 and not the hid validity period (under clause 28), therefore, the offer had become invalid under clauses 26 and 18.2 and that any violation of the

guidelines might be considered a mis-procurement. However, its reasons could be communicated under clause 15 of the said guidelines in the meeting with Asian Development Bank (ADB) under clause 15 after the notification is issued as also stipulated under Rule 5 of Punjab Procurement Rules, 2014. Fifthly, under Form Exh.P1, the total contract amount was required to be mentioned in US Dollars without any exchange rate with Pakistani Local Currency. Sixthly, there were four pre-qualifications criteria; i.e. eligibility, pending litigation, financial status and construction experience and any bid was required to be assessed on its basis. Finally, since the reasons of the bid being non-responsive have been conveyed to the petitioner during the present proceedings, therefore, the petitioner, if so advised, may avail the remedy in accordance with law as the disputed questions of facts cannot be resolved in the constitutional jurisdiction of this Court.

12. In this view of the matter, this writ petition has been found meritless and is, therefore, dismissed.

MWA/L-2/L **Petition dismissed.**

2020 M L D 1484

[Lahore]

Before Ali Baqar Najafi, J

ASNA FARRUKH---Petitioner

Versus

VICE-CHANCELLOR and others---Respondents

Writ Petiiton No.8056 of 2020, decided on 3rd March, 2020.

Educational institution---

----Admission in medical college---Scope---Petitioner sought admission in the Medical College on the ground that the proforma respondent was selected on open merit, therefore, after his adjustment she deserved to be admitted on the basis of Under Developed District Quota---Validity---Emphasis of the policy of giving admission to the students from Under Developed District Quota was that such students should be encouraged to become doctors or dentists---Admission policy gave the students two options; either to compete in open merit or in the Under Developed District Quota in the area where they lived, but if there was choice before a candidate to get admission in open merit or Under Developed District Quota in the same college, he must be adjusted against the open merit so that the under developed area should not be deprived of one seat---Petitioner had a right to be admitted in the Medical College---Constitutional petition was allowed.

Maham Jahangir v. Government of Punjab and others 2018 CLC

Note 80 distinguished.

Muhammad Ashraf Nawaz Chheena for Petitioner.

Imran Muhammad Sarwar Chaudhary for UHS.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner has prayed for a direction to the respondents to admit her against the seat of MBBS Course of Under Developed District Quota for Bhakkar in Sheikh Zayed Medical College, Rahim Yar Khan.

2. Brief facts giving rise to the filing of this constitutional petition are that the petitioner submitted admission form of MBBS for Medical/Dental College's in University of Health Sciences (UHS) on open merit as well as in Under Developed District Quota (UDDQ). She submitted all relevant documents and was awarded the aggregate percentage of 91.2045. On 22.10.2019 a provisional merit list was displayed for UDDQ candidates in which the petitioner was mentioned at Sr.No.25 while Muhammad Hanzia Suleman, the pro forma respondent, was mentioned at Sr.No.22. On 15.11.2019 the open merit list was issued in which he was admitted in Sheikh Zayed Medical College, therefore, had deposited the dues on 15.11.2019 under challan No.1579. Surprisingly, on 06.12.2019 the list of UDDQ was issued in which the said respondent Muhammad Hanzia Suleman was mistakenly mentioned again at Sr.No.6 despite the fact that he has already been adjusted against open merit. The petitioner filed an application before respondent No.2/Director Admission UHS on 26.12.2019 with a request to issue the admission to the petitioner for UDDQ. Meanwhile, the respondent Muhammad Hanzia Suleman also filed an application before respondent No.3/Principal Shaikh Zayed Medical College, Rahim Yar Khan with a request that since he has already been

selected on open merit and had deposited the dues under Rule # 314, he wants to be admitted on open merit instead of being adjusted in UDDQ seat. The case of the petitioner is that the purpose of observing quota of such Under Developed Districts is to facilitate the students from such areas and if the petitioner is not adjusted against the said seat, the whole purpose would be destroyed.

3. Learned counsel for the UHS submits that since the petitioner had applied against the UDDQ and Muhammad Hanzia Suleman was adjusted against the Under Developed District Quota, therefore, she cannot be adjusted. It was also contended that in open merit list, the candidate immediately below the number was adjusted and that Muhammad Hanzia Suleman was granted admission in Shaikh Zayed Medical College, Rahim Yar Khan on the basis of UDDQ, therefore, the petitioner cannot be adjusted.

4. After hearing the learned counsel for the parties and perusing the file, it is noted that under Rules and Regulations for various categories of Seats, open merit seats, seats for disabled students and students belonging to Under Developed District Seats, six districts have been named as Under Developed Districts in which district Bhakkar falls at serial No.5 having 08 MBBS and 02 BDS allocated seats. According to clause 4 of the Rules ibid, the candidates from these seats can also apply against open merit seats and these reserved seats will be in addition to any number of candidates being admitted on open merits from these Districts. The candidates from each of the above six districts admitted or not admitted on open merit can compete within their districts for reserved seats. Under clause 6 thereof, the candidates eligible for admission against both open merits as well as reserved seats can avail only one seat, thereafter the admission Board will

allocate a seat to candidates purely on merit and in accordance with his/her preference. In the present case, the petitioner applied under the open merit policy as well as Under Developed District Quota for MBBS course. Likewise, the pro forma respondent Muhammad Hanzia Suleman also applied for the open merit as well as Under Developed District Quota. As per the provisional, merit-list for District Bhakkar MBBS course, respondent No.4 was placed at serial No.22 whereas the petitioner at Sr.No.25. This list was displayed on 22.10.2019, meanwhile, said respondent was admitted in open merit vide list dated 08.11.2019 in Shaikh Zayed Medical College, Rahim Yar Khan. Respondent No.4 stood at Sr.No.97 and on 15.11.2019 he deposited the fee of Rs.88230/-.

5. However, on 06:12.2019 the name of said respondent Muhammad Hanzia Suleman was again mentioned at Sr.No.6 of the 3rd selection list for Bhakkar of MBBS seats for Public Sector Medical Colleges of Punjab and was admitted again in Shaikh Zayed Medical College Rahim Yar Khan. According to the petitioner once the said respondent had deposited the dues in the open merit seat, he cannot be adjusted against the district wise seat of District Bhakkar. The case of the respondent-University is that whosoever was next in line on open merit was already adjusted.

6. The case of the petitioner is that on 13.10.2019 said Muhammad Hanzia Suleman filed a written application to the Vice Chancellor of the Medical College that he should be adjusted against open merit instead of the Under Developed District Quota, therefore, after said adjustment her name should be placed in the list of admitted students. One aspect of the case is worth noting that the whole emphasis of the policy of giving admission to the students from UDDQ is that such students should be encouraged to become doctors or Dentists. Obviously, admission policy

gives them two options; either to compete in open merit or in the UDDQ in the area where they live, but if there is choice before a candidate to get admission in open merit or Under Developed District Quota in the same college, he must be adjusted against the open merit so that the Under Developed area should not be deprived of one seat. If the university follows some other pattern, it is bound to defeat the purpose of the special area uplift policy.

7. Learned counsel for the respondent has relied upon the judgment of the Single Bench titled "Maham Jahangir v. Government of Punjab and others" reported as 2018 CLC Note 80, according to which if a candidate had applied on open merit as well as in the Under Developed District Quota seats and he was adjusted on open merit at a lower level college, he could be admitted to a higher level college under the UDDQ seat, if already opted for. Obviously, if the choice of the college varies with the option, he has a right to study in higher grade college on UDDQ seat. But in the present case both way, the college is the same for Muhammad Hanzia Suleman as either way he is getting admission in Shaikh Zayed Medical College, therefore, in my humble view, this judgment is distinguishable, and is not applicable to the present case.

8. After all, the aim of such policy is to grant admission in the medical college to the candidates of UDDQ, therefore, in my humble view, the petitioner has a right to be admitted in Shaikh Zayed Medical College, Rahim Yar Khan. This we say, because we have made to understand that if the Muhammad Hanzia Suleman respondent is adjusted against open merit, the petitioner will be granted admission in the medical college in UDDQ. As far as, the argument of the learned counsel for UHS that candidate on open merit would be deprived of his/her seat is concerned, needless to

mention that it is seat case of UDDQ which has to be protected under the guaranteed constitutional provision i.e. Article 37 "Promotion of social justice and eradication of social evils".

9. For what has been discussed above, this writ petition is allowed and the respondent-UHS is directed to grant admission to the petitioner under the policy of Under Developed District Quota immediately.

SA/A-29/ **Petition allowed.**

2020 P L C 15

[Lahore High Court]

Before Ali Baqar Najafi, J

JAMEEL AHMAD

Versus

PUNJAB LABOUR APPELLATE TRIBUNAL LAHORE and 3 others

Writ Petition No. 32356 of 2016, decided on 26th February, 2019.

Industrial Relations Act (X of 2012)---

---S.33---Grievance petition---Laboratory Attendant---Absence from duty---Termination from service---Grievance petition filed by the employee was dismissed concurrently---Validity---Petitioner was a regular employee who served the company for twenty years---Employee was served notice of absence from duty of certain days in the preceding three years---Nothing was on record whether these holidays were legally permissible or not and whether salary against those days had been deducted from the account of employee---Inquiry committee had not adverted to the period of absence or total number of days the employee had taken off without permission of employers---Employee was proceeded against in undue haste---Impugned findings were not based on evidence but on his admission of fault---Employee had not been confronted with precise allegations by the inquiry committee for defense---High Court observed that employee had twenty years of service and he should have been retired instead of dismissal---Impugned dismissal order was modified into compulsory retirement/removal from service---Constitutional petition was allowed,

accordingly.

Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others v. Farheen Rashid 2011 SCMR 1 and Agriculture Development Bank of Pakistan through Chairman and another v. Akif Javed 2005 SCMR 752 rel.

Saad Ullah for Petitioner.

Ch. Mukhtar Ahmad for Respondents Nos.3 and 4.

ORDER

ALI BAQAR NAJAFI, J.----Through this constitutional petition the petitioner has challenged the judgment dated 12.04.2016 passed by the Punjab Labour Court No.3, Ferozewala as well as the order dated 12.07.2016 passed by the Punjab Labour Appellate Tribunal, Lahore whereby the grievance petition filed by the petitioner against this dismissal order dated 23.07.2013 was concurrently dismissed.

2. Brief facts giving rise to the filing of this writ petition are that the petitioner was employed in the Factory of respondents Nos.3 and 4 on 05.07.1993 and continued to work as regular employee until 06.07.2013 as Lab Attendant. During the said period he worked honestly, diligently and efficiently to the entire satisfaction of the respondents and had not given any opportunity of any complaint from any corner. Surprisingly, on 07.07.2013 when he came to his duty, he was stopped to enter the premises of the factory and a notice dated 06.07.2013, was handed over to him without any charge sheet stating that he habitually remained absent from duty in the years 2011, 2012 and 2013. On 15.07.2013 after about seven days an inquiry committee was constituted which submitted its report on

23.07.2013 and on the same day he was dismissed from service without hearing. On 13.08.2013 the petitioner filed his grievance petition before the Punjab Labour Court No.3 which was dismissed on 12.04.2016 While holding that the petitioner had observed negligence as he remained habitually absent without leave. In. the appeal filed by the petitioner it was observed by the Punjab Labour Appellate Tribunal that the petitioner admitted his fault but did not mend his ways and the warning did not have any effect on his conduct and dismissed the appeal vide order dated 12.07.2016, hence this petition.

3. Learned counsel for the petitioner contends that the disciplinary proceedings were conducted against the petitioner in extraordinary haste without considering the fact that he had been serving the factory for the last 20 years without any complaint. Adds that he was not allowed to defend himself and that the findings given in the inquiry report have not touched upon the allegations made against the petitioner, therefore, cannot be relied upon. Also submits that keeping in view over all case, the punishment is too harsh. Places reliance on case titled "Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others v. Farheen Rashid" reported as 2011 SCMR 1 and case titled "Agriculture Development Bank of Pakistan through Chairman and another v. Akif Javed" reported as 2005 SCMR 752 and prays for setting aside the impugned orders.

4. Conversely the learned counsel for respondents Nos.3 and 4 submits that there is a history of the petitioner who continued to remain absent from duty as he is a rickshaw driver who worked at the night time and obviously could not perform his duty on the day time. He refers to the statement of the petitioner in which he has admitted this fact on the ground that he could not survive in the low salary which he received in the day time job. It was

also submitted that the petitioner did not receive the notice but had admitted his guilt and promised to reform himself but he did not even appear before the committee.

5. Arguments heard. File perused.

6. Admittedly, the petitioner was a regular employee who was working since 05.07.1993 as Lab Attendant and after exactly 20 years he was issued a notice of absence from duty of certain days in the preceding three years. It was not specified as to whether these vacations were legally permissible or not and that whether the salary against those days would be deducted from the account of the petitioner. Interestingly, after seven days i.e. on 15.07.201.3 an inquiry committee was constituted who in its half page findings had not adverted to the period of absence or total number of days he has taken off without permission of the respondents. Even more interesting is the fact that on the day when inquiry report was submitted, the petitioner was dismissed from service without giving him an opportunity to defend himself. Undoubtedly, in the case of absence from duty an inquiry is not mandatory provision of law but when inquiry was conducted, it had to be aimed upon the precise allegation against the petitioner. Punjab Labour Court as well as the Punjab Labour Appellate Tribunal while giving concurrent findings against the petitioner have also not taken, into account the reasons on which the petitioner was proceeded against in undue haste. Importantly, it is the case of the respondents that the petitioner had admitted his fault and promised that he would mend his ways but he did not. However, no time was granted to him to fulfil his promise, therefore, such conclusion is not based on evidence. Admittedly, the petitioner used to work for nominal sum salary at the day which was not sufficient for him and that is why he had to work at the night time to

meet his both ends.

7. In the case titled "Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others v. Farheen Rashid" reported as 2011 SCMR 1 it was observed that the nature of allegation must be precise so as to enable the accused to defend himself. In the present case there is no such precision in allegation. Relevant extract from the above referred judgment is reproduced as under:-

> "A charge-sheet is precise formulation of the specific accusation made against a person who is entitled to know its nature at the early stage. The object of the charge-sheet is to tell an accused as precisely or and concisely as possible the matter in which she is charged and must convey to her with sufficient clearances and certainty what the department intends to prove against her and of which she will have to clear herself during the disciplinary proceedings. The learned Service Tribunal did not advert to the contents of the charge-sheet, show-cause notice, inquiry report and dismissal order as the Inquiry Officer recommended for registration of criminal case against respondent with regard to recovery of stolen 8000 UAE Dirham of the complainant from respondent whereas the contents of the charge-sheet and show-cause did not contain such allegations."

8. In case titled "Agriculture Development Bank of Pakistan through Chairman and another v. Akif Javed" reported as 2005 SCMR 752 it has been held that keeping in view the service of an employee, his dismissal order was termed into compulsory retirement as in the present case also past 20 years' service was not taken into account while awarding harsh

punishment.

9. Keeping in view the above discussion, this writ petition is partly allowed while modifying the dismissal order of the petitioner from service into compulsory retirement/removal from service.

ZC/J-3/L **Order accordingly.**

2020 P L C (C.S.) 96

[Lahore High Court]

Before Ali Baqar Najafi, J

Mst. CHANDNI ASAD

Versus

FEDERATION OF PAKISTAN and others

Writ Petition No.21479 of 2016 and C.Ms. Nos.3 and 4 of 2019, decided on 15th July, 2019.

Civil Service Regulations, 1960---

----Reglns. 361, 418 & 420---Fundamental Rules, R.9.5---Leave without pay---Pension, grant of---Scope---Department refused to grant pensionary benefits on the ground that employee had not completed requisite length of service---Validity---Employee joined service on 26-10-1972 and resigned on 16-11-1999 and his resignation was accepted on 15-06-2000---Employee during his service remained on leave from 10-09-1979 to 10-09-1981 and rejoined the service without any reservations---No disciplinary proceedings were initiated during this period and employee was considered as regular employee entitled to the benefits as government employee---Petitioner remained on deputation and after his repatriation no disciplinary proceedings were initiated against him during his remaining period of service---Pensionary benefits, in circumstances, could not be deducted by refusing to count said period of absence from duty which was to be treated as leave without pay---Any interruption in service of employee would entail forfeiture of past service when it was due to an authorized leave or absence or when unauthorized absence was in continuation of authorized leave as long as the office of the absentee was not substantively filled---Employee was declared to be entitled to the pension after completing his twenty five years requisite qualifying service---Constitutional petition was allowed, in

circumstances.

Nisar Ahmad and others v. Town Committee, Khairpur Tamewali through Administrator 2004 PLC (C.S.) 382; Ministry of Defence, Government of Pakistan, through Secretary Defence, Rawalpindi and 6 others 2012 PLC (C.S.) 1223; The Government of N.-W.F.P. through the Secretary of the Government of N.-W.F.P. Communication and Works Departments, Peshawar v. Mohammad Said Khan and another PLD 1973 SC 514; Mrs. Riffat Sattar v. Government of the Punjab through Secretary and 6 others 2016 PLC (C.S) 472 and Nazeer Ahmed Chakrani and others v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Government of Pakistan and 2 others 2009 PLC (C.S.) 776 ref.

Haji Muhammad Ismail Memon, Advocate's case PLD 2007 SC 35 and Chief Engineer, Hydel (North) and Project Director, WAPDA, Warsak v. Zafrullah Shah and another 2003 SCMR 686 ref.

Sh. Imran Muhammad Naeem for Petitioner.

Muhammad Ali Farooq and Zeeshan Zafar Hashmi for Respondent/Pakistan Railways.

ORDER

C.M. No.3/2019.

ALI BAQAR NAJAFI, J.---This application to place on record certain documents is allowed subject to all just and legal exceptions.

C.M. No.4/2019.

Dispensation sought for is allowed subject to all just and legal exceptions.

MAIN CASE.

Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has made the following prayer:-

> "It is therefore respectfully prayed that the act of the respondents for refusing pensionary benefit to the petitioner, on account of services rendered by her husband, may kindly be declared as illegal and without lawful authority. It is further prayed that the petitioner, who is an old citizen and have no means to sustain herself, may kindly be given full pensionary benefit of her husband, who had rendered more than 27 years of meticulous service in Government Department, along with the all the past pensionary benefits accrued to the late husband of the petitioner before his death.
>
> Any other relief which this Hon'ble Court may deem fit and proper may also be granted".

2. Brief facts giving rise to the filing of this constitutional petition are that petitioner is widow of one Asad Ahmed Aziz, who was recruited in Transportation and Commercial Department of Pakistan Railways on 26.10.1972 and resigned on 16.11.1999 after serving for 27 years. During this period, he had also served in Pakistan Cricket Board on deputation and was also got repatriated to his parent department. After that, he sought an early retirement but when it was refused by the respondent/department, he had to resign from his office with an undertaking that he would be paid his outstanding emoluments. Consequently, his resignation was accepted. But despite putting in his best efforts to get the post- retirement benefits, including pension, he failed and met Almighty on 04.12.2005. The petitioner being his widow could only get Rs. 1,99,312/- as G.P. Fund that too after putting in great efforts. The petitioner approached the Federal Ombudsman where the respondent/department had taken a stance that

petitioner's husband did not complete the requisite length of service making him eligible for the grant of pension.

3. Learned counsel for the petitioner contends that under Clause 361 of Civil Service Regulations petitioner was entitled to the pensionary benefits. He places reliance upon Nisar Ahmad and others v. Town Committee, Khairpur Tamewali through Administrator (2004 PLC (C.S.) 382) Ministry of Defence, Government of Pakistan, through Secretary Defence, Rawalpindi and 6 others (2012 PLC (C.S.) 1223) Haji Muhammad Ismail Memon, Advocate complaint (PLD 2007 SC 35) The Government of N.-W.F.P. through the Secretary of the Government of N.-W.F.P. Communication and Works Departments, Peshawar v. Mohammad Said Khan and another (PLD 1973 SC 514) Mrs. Riffat Sattar v. Government of the Punjab through Secretary and 6 others (2016 PLC (C.S.) 472) Nazeer Ahmed Chakrani and others v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Government of Pakistan and 2 others (2009 PLC (C.S.) 776) and Chief Engineer, Hydel (North) and Project Director, WAPDA, Warsak v. Zafrullah Shah and another (2003 SCMR 686), to argue that petitioner is entitled to pensionary benefits.

4. Conversely, in the report and parawise comments submitted by respondent, the entitlement of the petitioner to get the pensionary benefits of her late husband was controverted inter alia on the ground of laches, deficiency in mandatory qualifying service of deceased husband of 25 years as he served for 22 years 6 months and 18 days as he had availed 4 years 5 months and 12 days leave without pay. It was also alleged that he had drawn double salary; i.e. from the Railway department as well as from the Pakistan Cricket Board and that even the house rent of Rs. 9000/- was also recoverable from him and that he had committed the huge bank default of Rs. 6012 million and that he was also a defaulter of loan advanced for house building purposes. It is also reiterated that under Fundamental Rule 9.5, a

25 years' service is mandatory for the grant of pensionary benefits and, therefore, prays for dismissal of the petition.

5. Arguments heard. File perused.

6. After hearing the learned counsel for the parties and perusing the file, it is straightway observed that admittedly, the late husband of the petitioner joined services on 26.10.1972 and resigned on 16.11.1999 which resignation was accepted on 15.06.2000, he died on 04.12.2005 after 5 years of his retirement. During his service, he remained on leave from 10.09.1979 to 10.09.1981 and thereafter on 30.05.1985, he rejoined the service without any reservations. Admittedly, during this period no disciplinary proceedings were initiated against him and he was considered as regular employee duly entitled to the benefits as government employee since he was permitted to resume his duty. It appears that late Asad Ahmed Aziz, decided to resign with some understanding as his pensionary benefits were calculated just 3 days after his resignation date and under Rule 418.(a) under the head of "Resignation and Dismissals of Chapter XVI.-Conditions of Qualifying Service of Civil Service Regulations, he was entitled to the pension. Relevant rule 418(b) is reproduced as under:-

> "418. (a) Resignation of the public service, [or dismissal] or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.
>
> (b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service. (underlining is for emphasis).

This clause has been interpreted in Chief Engineer, Hydel (North) and Project Director, WAPDA, Warsak v. Zafrullah Shah and another (2003 SCMR 686) at page 690. Relevant extracts is reproduced as under:-

" ..The contents of the regulation would clearly indicate the different kinds of resignations that entail upon different consequences. Though the case of respondent fell under sub-Regulation (b) of Regulation 418 yet for the purpose of contrast and comparison a careful perusal of both should be most appropriate. Regulation 418(a) highlights those resignations which arise from misconduct, insolvency, inefficiency and not due to age or failure to pass a prescribed examination and all such resignations entail forfeiture of post service" ..

He was authorized leaves from 10.09.1979 to 10.09.1981 of 24 months and it is not denied by the respondent that petitioner remained on deputation in Pakistan Cricket Board and after his repatriation, no disciplinary proceedings were shown to have been initiated against him during his remaining period of service. Pensionary benefits could not be deducted by refusing to count the said period of absence from duty which is to be treated as leave without pay, therefore, should be considered towards computation of pension. In Haji Muhammad Ismail Memon, Advocate complaint (PLD 2007 SC 35), it was severely observed by the Supreme Court that there should not be any delay in release of pension. Para 7 is reproduced as under:-

7. It is pathetic condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department had to die in a miserable condition on account of non-payment of pension/pensionary benefits etc. The responsibility, of course, can be fixed upon the persons who were directly responsible for the same but at the same time we are of the opinion that it is an over all problem mostly in every department, where public functionaries failed to play their due role even in accordance with law. Resultantly, good governance is

suffering badly. Thus every one who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. As their such lethargic action is in violation of Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973. Admittedly, it is against the dignity of a human being that he has to die in miserable condition and for about three years no action has been taken by the concerned quarters in finalizing the pension case and now when the matter came up before the Court, for the first time, they are moving in different directions just to show their efficiency and to clear their position before the Court. Such conduct on their behalf is highly condemnable and cannot be encouraged in any manner.

6. Article 420 of Civil Service Regulations, under the heading of Interruptions, it has been provided that an interruption in the service of an officer entails forfeiture of the past service, except when it was due to an authorized leave of absence or when the un-authorized absence is in continuation of authorized leave so long as the office of the absentee is not substantively filled. Article 420 (a)(b) is reproduced as under:-

420. An interruption in the service of an officer entails forfeiture of his past service, except in the following terms:-

(a) Authorised leave of absence:--

(b) unauthorised absence in continuation of authorized leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the past service of the absentee is forfeited.

In I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041) it is held at page No. 1096 that the right to receive the pension by a government

servant is property so as to attract Articles 23 and 24(1) of the Constitution and any illegal denial would affect his fundamental right guaranteed under the Constitution itself. It is not a bounty of the government which could be conferred upon its subject.

7. In this view of the matter, this writ petition is allowed and it is declared that petitioner is entitled to the pension of her late husband after completing his 25 years of service requisite as a qualifying service.

ZC/C-11/L **Petition allowed.**

2020 P L C (C.S.) 505

[Lahore High Court]

Before Ali Baqar Najafi, J

FIRDOUS SHAFIQ

Versus

INSPECTOR GENERAL OF POLICE and others

W.P. No. 232741 of 2018, decided on 27th January, 2020.

Constitution of Pakistan---

----Art. 199---Punjab Police Welfare Fund Rules, 2016, R.14(F)---Notification No. 7641/W-III, dated 30-05-2015---Appreciation of evidence---Petitioner sought declaration to the effect that her husband, who while on duty as Traffic Warden had met with an accident, be declared as "Shaheed" as against the declaration of Additional Inspector General of Police, Finance and Welfare---Validity---No reason had been given by the Additional Inspector General of Police, Finance and Welfare to disagree with the inquiry report which recommended declaration of deceased as "Shaheed"---Legal heirs of officers/officials killed in encounters, bomb blast, riots, watch and ward duties were entitled to be awarded Rs. 20,00,000/- as compensation under Notification No. 7641/W-III, dated 30-05-2015, however, the notification did not extend to the cases where death was caused by accident---Deceased had died during the watch and ward duties in an accident which was reported under S.302, P.P.C., therefore, it was not an accidental death and deceased was entitled to be declared as "Shaheed"---Constitutional petition was allowed and the husband of petitioner was declared as "Shaheed" with all consequential benefits.

Raja Rafaqat Ali for Petitioner.

Muhammad Ejaz, Assistant Advocate General Punjab with Imran Sharif DSP.

ORDER

ALI BAQAR NAJAFI, J.----Through this constitutional petition, the petitioner has sought a direction to respondent No.1 to produce the record of Mr. Muhammad Shafiq TWF/367 (late) with a further prayer to set-aside the order/letter dated 20.07.2018 issued by respondent No.1 whereby the late husband of the petitioner was not declared as "Shaheed" being an accidental case.

2. Brief facts giving rise to the filing of this constitutional petition are that on 19.06.2006 the petitioner's husband was appointed as Traffic Warden (BS.14) in District Faisalabad and served the department about 11 years. On 11.02.2017 the husband of the petitioner while on duty met an accident with a damper and succumbed to the injuries for which an FIR No.182/2017 was registered at Police Station Millat Town, District Faisalabad. The deceased left three daughters, two sons and one widow as his legal heirs. The petitioner submitted two applications to respondents Nos.1 and 2 respectively for declaration of deceased as "Shaheed" upon which a DSP was appointed as inquiry officer who on 28.03.2017 approved that the deceased (husband of the petitioner) was a "Shaheed". The said letter was forwarded by respondent No.4 to Additional Inspector General of Police.

The petitioner also submitted two other applications for declaring her husband as "Shaheed" upon which a SSP was appointed as Inquiry Officer who also held the husband of the petitioner as "Shaheed" and recommended his case for package # 3 for the welfare of his family. Thereafter the petitioner submitted all the required documents to the concerned quarters. On 29.01.2018 respondent No.2 sent a report to respondent No.1 clearly mentioning that the husband of the petitioner was a "Shaheed" but the Additional Inspector General of Police, Finance and Welfare Punjab, Lahore vide impugned letter awarded the compensation to the tune of Rs.6 lac and not declared the husband of the petitioner as "Shaheed", hence this petition.

3. Arguments heard. File perused.

4. A perusal of the file reveals that Muhammad Shafiq served the department for 11 years and 01 month who died on 11.02.2017 due to an incident took place near Bhaiwala Graveyard, Jhumra Road, Faisalabad and as per the report of Punjab Emergency Service (Rescue 1122), Faisalabad dated 04.04.2017 it was a road traffic accident on 11.02.2017 in which said Muhammad Shafiq expired and Muhammad Ali son of Nasrullah was injured. As per the detail, a dumper bearing Registration No.FDJ-2886 was coming towards Dry Port which hit said Muhammad Shafiq, Traffic Warden-367. FIR No.182/2017, dated 11.02.2017, under sections 302, 337-G, 279, P.P.C. was registered at Police Station Millat Town, Faisalabad. According to the postmortem report, the deceased sustained as many as 11 injuries, including lacerated wound 3 cm x 1 cm below chin and abraded area 26 cm x 7 cm on right side of face and right side of neck (facial bones fractured), abrasion 2cm x 2 cm on right eye brow outer part (skull bones fractured frontal side), hence ribs were also fractured as a result of which he died on the spot.

The incident report dated 11.02.2017 shows that dumper driver managed to escape from the scene. As per the death certificate Muhammad Shafiq died an unnatural death. Vide letter dated 24.04.2017, driving license No.247336/LHR/82 in the name of Muhammad Sharif, alleged driver of the dumper, was found bogus/fake for which FIR No.821/2017, dated 12.07.2017, under sections 420, 468, 471, P.P.C. was registered at Police Station Millat Town, Faisalabad. Muhammad Shafiq was survived by his widow Fardous Shafiq, daughters Kiran Shahzadi, Zunaira Jabeen, Hira Shahzadi and sons Muhammad Ahad Shafiq and Muhammad Fahad Shafiq. A succession certificate was also issued in their names. The widow of Muhammad Shafiq namely Fardous Shafiq/petitioner filed an application before the Inspector General of Police Punjab, Lahore dated 08.03.2017 to declare her late husband as "Shaheed". On 19.04.2017, the Chief Traffic Officer, Faisalabad recommended that since Muhammad Shafiq had died in the line of duty in best department interest, therefore, be declared as

"Shaheed".

The City Poice Officer, Faisalabad vide his letter dated 26.01.2018 also recommended that Muhammad Shafiq should be declared as "Shaheed". A report was prepared by the Senior Superintendent of Police, Investigation, Faisalabad/Inquiry Officer who also recommended for his declaration as "Shaheed" since he embraced death while performing his official duties actively on the fateful date and time and was intentionally hit by the driver Muhammad Sharif with his dumper. The Regional Police Officer, Faisalabad vide his letter dated 29.01.2018 had also recommended to declare him as "Shaheed", therefore, was entitled to the grant of compensation under Notification No.7641/W-III, dated 30.05.2015.

However, surprisingly on 20.07.2018, the Additional Inspector General of Police, Finance and Welfare Punjab, Lahore, on the basis of meeting dated 28.05.2018 did not declare him as "Shaheed" and had stated that he met with an accidental death and only six lacs rupees were recommended under Rule 14(F) of Punjab Police Welfare Fund Rules, 2016. In the meeting dated 28.05.2018 no reasons whatsoever were given to disagree with the inquiry report so far conducted recommending declaration of Muhammad Shafiq as "Shaheed".

5. Under Notification No.7641/W-III, dated 30.05.2015, the officer/official killed in encounters, including bomb blast, riots, watch and ward duties but not death caused in accident shall be awarded Rs.20,00,000/- as compensation. Admittedly, Muhammad Shafiq had died during the watch and ward duties in an accident which was reported under section 302, P.P.C., therefore, it was not an accidental death and in my humble view, he is entitled to be declared as "Shaheed".

6. In view of the above discussion, this writ petition is allowed and Muhammad Shafiq, husband of the petitioner is declared as "Shaheed" with all consequential benefits.

SA/F-2/ **Petition allowed.**

2020 P Cr. L J 289

[Lahore]

Before Ali Baqar Najafi and Sardar Ahmed Naeem, JJ

Hafiz Mian MUHAMMAD NAUMAN---Petitioner

Versus

DIRECTOR GENERAL NAB and others---Respondents

Writ Petition No. 581 of 2019, decided on 18th September, 2019.

(a) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)(iii)(vi)(xii)--- Constitution of Pakistan, Art. 199---Constitutional petition---Bail, grant of---Case of further inquiry---Subsequent developments---Plea bargain by co-accused---Effect---Accused persons were investigated and arrested on providing undue gratification and monetary misappropriation in parking contracts to companies---Plea raised by National Accountability Bureau (NAB) was that some accused persons entered into plea bargain therefore, commission of offence was established against petitioners---Validity---High Court declined to appreciate plea of NAB at bail stage as prosecution had to independently prove case against petitioners and not by taking advantages of developments made subsequent to investigation---Prosecution was not able to dig out any transfer of funds or receiving kickbacks by petitioners for executing agreement with parking companies to extend them any favour with corresponding loss to exchequer---Constitution of offences under S. 9(a)(iii)(vi)(xii) of National Accountability Ordinance, 1999 needed further inquiry in circumstances---High Court allowed constitutional petitions of accused persons and bail was granted.

Tallat Ishaq v. National Accountability Bureau through Chairman and others PLD 2019 SC 112; National Accountability Bureau through Chairman v. Murad Arshad and others PLD 2019 SC 250; Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division Islamabad and others PLD 2001 SC 607; Secretary Revenue Division and

others v. Muhammad Saleem 2008 SCMR 948; Government of Sindh through the Chief Secretary, Karachi and 4 others v. Raeesa Farooq and 5 others 1994 SCMR 1283; Regarding Corruption in Hajj Arrangements in 2010 2011 PLC (C.S.) 1489; Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Mrs. Amatul Jalil Khawaja and others PLD 2003 SC 442; Suo Motu Action Regarding Allegation of Business Deal Between Malik Riaz Hussain and Dr. Arsalan Iftikhar Attempting to Influence the Judicial Process PLD 2012 SC 664; Watan Party and another v. Federation of Pakistan and others PLD 2011 SC 997; Mustafa Ansari v. Deputy Commissioner, Chittagong Hill Tracts, Rangamati and others PLD 1965 Dacca 576; Corruption in Hajj Arrangements in 2010 PLD 2011 SC 963; Subhash Kumar v. State of Bihar and others AIR 1991 SC 420; Olas Khan and others v. Chairman NAB through Chairman and others PLD 2018 SC 40; Nadeem Majeed v. The State and others 2007 SCMR 1958; Chairman National Accountability Bureau, Islamabad and another's case 2004 SCMR 91; Mrs. Riaz Qayyum v. The State and another 2004 SCMR 1889; Haji Ghulam Ali v. The State through A.G. N.-W.F.P. Peshawar and another 2003 SCMR 597; Mst. Fatima Ismail v. The State 2003 SCMR 733; Muhammad Saeed Mehdi v. The State and 2 others 2002 SCMR 282; Dr. Mujahid Kamran v. Chairman National Accountability Bureau (NAB) and others 2019 PCr.LJ 34; Engineer Raja Qamar Ul Islam v. National Accountability Bureau through Chairman and others 2019 PCr.LJ 582; Syed Ather Hussain and others v. Chairman National Accountability Bureau and another 2019 YLR 788; Ghani-ur-Rehman v. National Accountability Bureau and others PLD 2011 SC 1144 and The State and others v. M. Idrees Ghauri and others 2008 SCMR 1118 rel.

(b) Bail---

----Power of court---Scope---Grant of bail lies with discretion of court---Granting or denial is regulated, to a large extent, by facts and circumstances of each particular case but bail can be withheld only in exceptional circumstances.

(c) National Accountability Ordinance (XVIII of 1999)---

----S. 9(b)--- Constitution of Pakistan, Art. 199---Constitutional petition---Bail---Scope---Statutory ouster of jurisdiction of all courts cannot affect jurisdiction of High Court to grant bail under Art. 199 of Constitution---Primary feature of Art. 199 of the Constitution is to provide a forum to an aggrieved person who has no other adequate remedy; secondary feature is protection of Fundamental Rights---When a citizen complaints violation of Fundamental Rights, High Court exercise its power under Art. 199 of the Constitution to investigate matter and pass such order as may be found just, legal and equitable---Scheme of Constitution makes it obligatory on part of superior courts to interpret the Constitution, law and enforce Fundamental Rights---Ultimate arbiter is court which is custodian of the Constitution---Extraordinary jurisdiction under Art. 199 of the Constitution is to be exercised with conceptive and caution just to advance cause of justice and not to frustrate or defy intent of law---Such exercise is made to prevent miscarriage of justice and abuse of National Accountability Ordinance, 1999 and it cannot be withheld as a punishment--- Court also cannot elaborate sifting of evidence but make a tentative assessment of material laid before court.

(d) Constitution of Pakistan---

----Arts. 10-A, 25 & 199---Constitutional jurisdiction of High Court---Equality of citizens---Due process of law--- All people are entitled to due process of law and are assumed to be innocent unless proved guilty---Every citizen must be treated with equality and his dignity, liberty, life and honor must be guaranteed as envisaged in the Constitution---High Court not only has a right but a fundamental Constitutional duty that Fundamental Rights are not infringed.

(e) Constitution of Pakistan---

----Art. 199---Constitutional jurisdiction of High Court---Judicial review---Scope---Every executive action of government or other public bodies, if found arbitrary, unreasonable or contrary to law, is amenable to

Constitutional jurisdiction of superior courts to be validly scrutinized on touchstone of Constitutional mandates.

Subhash Kumar Sharma v. State AIR 1991 SC 420 rel.

Syed Ali Zafar for Petitioner (in W.P. No. 581 of 2019 argued on 17.09.2019).

Muhammad Asad Manzoor Butt and Hafiz Nauman Zafar for Petitioner (in W.P. No. 220081 of 2018).

Ch. Ghulam Sarwar Nihang for Petitioner (in W.P. No. 229728 of 2018).

Syed Faisal Raza Bukhari, Special Prosecutor for NAB with Abdul Rehman, A.D/I.O.

ORDER

Earlier, these petitions have been dismissed by a Division Bench of this court, but on 02.08.2019 the Hon'ble Supreme Court had remanded these petitions before this court to be decided on merits. Order is reproduced as under:-

> "We have heard the learned counsel for the petitioners, more particularly, Syed Ali Zafar, learned ASC for the petitioner in Civil Petition No.1732/2019 and with his assistance, have examined the available record and the impugned order dated 18.2.2019 of the Lahore High Court passed in W.P. No.581/2019. It is clear and obvious that the said impugned order is based on wrong assumption of facts, which is totally contrary to the record and perhaps the real matter in controversy in this case as well as in the connected cases may have escaped the adjudication.
>
> 2. In order to avoid prejudice to either side and to avoid miscarriage of justice, it would be appropriate that the impugned orders dated 28.11.2018 and 18.2.2019 are set aside and the matter is remanded back to the learned High Court, where the Writ Petitions Nos.229728 of 2018, 220081 of 2018 and 381 of 2019 shall be

deemed to be pending, which shall be decided afresh on their own merits, after hearing both the parties. Since the petitioners are behind the bars, we are confident that the learned High Court shall decide the matter expeditiously preferably within a period of 30 days, after the receipt of this order.

3. In view of the above, these civil petitions are converted into appeals and the same are disposed of accordingly."

2. This order shall dispose of W.P. No.581-2019 titled "Hafiz Mian Muhammad Nauman v. Director General NAB and others" as well as W.P. No. 220081-2018 titled "Taseer Ahmad v. The State and others", and W.P. No.229728-2018 titled "Usman Qayyum v. Director General NAB and others" as all the petitioners have sought their post arrest bail by invoking the constitutional jurisdiction of this court in ACR No.87-2018 titled "The State v. Hafiz Mian Muhammad Nauman and others". However, all the three petitioners were arrested on their respective grounds of arrest which are reproduced as under:-

"Grounds of arrest against Hafiz Mian Muhammad Nauman,

1. The inquiry/investigation conducted so far reveals the prima facie involvement of Hafiz Nauman, being Chairman of Lahore Parking Company Limited in the commission of offences as defined under section 9(a) and Schedule of the National Accountability Ordinance, 1999.

2. Following facts form basis for immediate arrest of the accused:-

a. Accused Hafiz Mian Nauman, being chairman of Messrs Lahore Parking Company Limited actively participated in the operations of company and visited the parking sites of Messrs Green Parking Dubai (only parking company in the Joint Venture). Thereafter, accused Hafiz Nauman, being chairman received a letter from Messrs Green Parking Dubai that agreement had been signed without their participation and fraudulent misrepresentation by Messrs AGCN/NTG Pakistan (Pvt.) Limited. Despite having

knowledge of mis-representation by Messrs AGCN/NTG Pakistan (Pvt.) Limited, he being Chairman Board of Directors deliberately accorded the approval for illegal change of JV partner.

b. Accused Hafiz Nauman, being chairman despite having knowledge of illegal signing of agreement without approval of BODs, deliberately did not take any action which reflects his connivance in commission of offence.

c. Accused Hafiz Nauman, also actively participated in physical verification/inspection of illegal JV partner Messrs ZTE Corporation and proceeded to China as well.

d. That the accused Hafiz Nauman, being Chairman of Lahore Parking Company, failed to exercise his authority and deliberately did not took any action for not handing over all the Parking sites i.e. 246 as per agreement and only hand over 33 lucrative parking sites to NTG/AGCN Pakistan.

e. That the accused Hafiz Nauman, being chairman of Lahore Parking Company, failed to exercise his authority and malafidely did not ensure the capital Investment to be made by NTG/AGCN Pakistan and committed criminal negligence by compromising the projected revenues (Promised revenue) to be provided by NTG (co-accused) as per bidding documents.

f. That the accused Hafiz Nauman, being chairman of Lahore Parking Company, failed to exercise his authority and did not take over the parking site handed over by City District Govt. Lahore (CDGL) and let these sites operated illegally in connivance with other accused persons.

g. Accused Hafiz Nauman was given fair chance to explain the allegations levelled against him, however, he failed to submit any plausible reply.

h. It is likely that accused may escape underground himself and will

tamper the prosecution evidence through coercion, criminal inducement and criminal intimidation.

i. Arrest of accused is necessary for the recovery of corruption money, collection of evidence and concluding the investigation in accordance with law."

"Grounds of arrest against Taseer Ahmad.

1. The inquiry conducted so far reveals sufficient evidence to prove prima facie involvement of Taseer Ahmad, being Managing Director of Lahore Parking Company Lahore, in the commission of offences as defined under section 9(a) and Schedule of the National Accountability Ordinance, 1999.

2. Following facts form basis for immediate arrest of the accused:-

a. Accused Taseer Ahmad, being Managing Director signed the agreement between Lahore Parking Company and AGCN/NTG Pakistan for project "Parking operations and Management agreement for Lahore City" without the presence of foreign Joint Venture partners Messrs Green Parking Dubai in sheer violation of rules.

b. At the time of contract accused Taseer Ahmad dishonestly did not make the capital investment and projected revenue (Promised Revenue) as part of the agreement (the responsibilities which the contractor was bound to perform as per bid document).

c. Accused Taseer Ahmad, malafidely allowed the post bid changes of consequential nature in contradiction/violations of Punjab Procurement Rules and in violation RFP.

d. Accused Taseer Ahmad, being Managing Director at the time of signing agreement changed the penalty clause with respect to RFP from Rs.20000 to Rs.5000 per day for breach of execution timeline or the project plan and that too was never imposed on contractor.

e. The accused did not deliberately exercise his authority to ensure

actualization of capital investment by AGCN/NTG (co-accused) and committed criminal negligence by compromising the projected revenues (Promised Revenue) to be provided by NTG (co-accused) as per bidding documents.

f. The accused did not deliberately and with mala fide intentions hand over all the parking sites as per stages/zones in light of schedule-II of agreement rather hand over only 33 lucrative sites to the contractor (co-accused).

g. Accused Taseer Ahmad, was given fair chance to explain the allegations levelled against him, however, he failed to submit any plausible reply.

h. It is likely that accused may escape/underground himself and will tamper the prosecution evidence through coercion, criminal inducement and criminal intimidation.

i. Arrest of accused is necessary for the recovery of corruption money, collection of evidence and concluding the investigation in accordance with law."

"Grounds of arrest against Usman Qayyum,

1. The inquiry conducted so far reveals sufficient evidence to prove prima facie involvement of Usman Qayyum, being Managing Director and Chief Financial Officer (CFO) of Lahore Parking Company Lahore, in the commission of offences as defined under section 9(a) and Schedule of the National Accountability Ordinance 1999.

2. Following facts form basis for immediate arrest of the accused.-

a. Accused Usman Qayyum, being Managing Director/member of tender evaluation committee evaluated all the bids submitted by the bidders and recommended for physical verification of JV partners of AGCN (Green Park Dubai). He also visited Dubai and physically verified Green Park but at the time of contract deceitfully and

dishonestly did not get the contract signed with foreign JV partner i.e. Green Parking Dubai. Thus extended undue favour to AGCN by the award of contract.

b. That the accused Usman Qayyum as Chairperson of evaluation committee, malafidely approved the post bid changes of consequential nature in contradiction/violations of Punjab Public Procurement Rules and in violation of RFP.

c. That the accused Usman Qayyum being member of bid evaluation committee at the time of signing agreement changed the penalty clause with respect to RFP from Rs.20000 to Rs.5000 per day for breach of execution timeline or the project plan and that too was never imposed on contractor.

d. At the time of contract accused Usman Qayyum dishonestly did not make the capital investment and projected revenue (Promised revenue) as part of the agreement (the responsibilities which the contractor was bound to perform as per bid document.

e. That the accused Usman Qayyum as member of project committee did not deliberately and with mala fide intentions hand over all the parking sites as per stages/zones in light of schedule-II of agreement rather hand over only 33 lucrative sites to the contractor (co-accused).

f. Accused deliberately did not exercise his authority to ensure actualization of capital investment by NTG/AGCN Pakistan (co-accused) and criminally compromised the projected revenue as per financial bid of AGCN Pakistan.

g. Accused Usman Qayyum was given fair chance to explain the allegations levelled against him, however, he failed to submit any plausible reply.

h. It is likely that accused may escape/underground himself and will tamper the prosecution evidence through coercion, criminal

inducement and criminal intimidation.

i. Arrest of accused is necessary for the recovery of corruption money, collection of evidence and concluding the investigation in accordance with law."

3. Brief facts as contained in ACR No.87-2018 titled "The State v. Hafiz Mian Muhammad Nauman and others" are that the petitioners Chairman, Chief Executive Officer and Managing Director/Chief Financial Officer of Lahore Parking Company Limited (hereinafter to be called LPCL) whereas one Faizan Wali and Saad Rafiq were the General Manager Operations and Manager Accounts/Finance, respectively, and Muhammad Faisal Ahad Rao was the Chief Executive Officer of Messrs National Telecommunication Group Pakistan (Pvt.) Limited previously Messrs AGCN Pakistan (Pvt.) Limited. The said LPCL was incorporated on 10.08.2012 and started its business on 29.01.2013, with a view to bring Development and Modernization in the field of parking and to benefit the people living within territorial limits of Lahore City by providing sustainable, efficient and affordable parking service to them and also to generate income for the company. However, it decided to outsource the parking arrangement, therefore, the tender was publically floated and Messrs UCS Park Turkey and Messrs AGCN/NTG Pakistan (Pvt.) Limited were found as technically qualified firms. However, Messrs AGCN/NTG Pakistan (Pvt.) Limited allegedly deceitfully portrayed Messrs Green Parking Dubai and Messrs Inbox Technologies as its JV partners at the time of bidding. Messrs AGCN/NTG Pakistan (Pvt.) Limited qualified the technical bid on the basis of expertise and experience of Messrs Green Parking Company, Dubai in the field of parking. Latter denied its participation as member of JV and duly informed the accused/petitioner that the agreement was signed without their consent and knowledge. Messrs AGCN/NTG Pakistan (Pvt.) Limited also did not conduct any business transaction with Messrs Inbox Technologies Pakistan, therefore, the accused persons acted in league with management of Messrs AGCN/NTG Pakistan (Pvt.) Limited and gave undue favour to them by showing, and

only showed the said two firms for the purpose of securing the project as Messrs AGCN/NTG Pakistan (Pvt.) Limited had no experience in the field of parking management yet came out as a lead bidder for a project of parking. According to advertised tender in newspaper to hand over and modernize 246 parking sites of City Lahore, the contractors were responsible to make capital investment and modernize the parking sites and, thereafter, to collect revenue from the parking sites and, therefore, was required to share the revenue collected with the government @ 45.4%. But the investigation revealed that all the petitioners in active aid, abetment and connivance with each other, dishonestly and with mala fide intentions misused their authority in order to gain/render illegal benefit for themselves and their co-accused persons and willfully failed to exercise their authority in order to prevent the grant of contract to their co-accused while indulging in offences of corruption and corrupt practices. The evidence so far collected establishes that the accused/petitioners have fraudulently and dishonestly caused loss to the national exchequer to the tune of Rs.8,00,00,000/- through corrupt and dishonest means and have committed the offences of corruption and corrupt practices as defined under section 9(a)(iii)(vi) and (xii) punishable under section 10 of the National Accountability Ordinance, 1999 and schedule thereto. Pertinently, during the course of investigation, the accused Muhammad Faisal Ahad Rao, Faizan Wali and Saad Rafiq admitted their guilt and entered into plea bargain by offering to return the illegal pecuniary gains amounting to Rs.6,25,00,000/-, Rs.87,50,000/- and Rs.87,50,000/- respectively which were acquired by them as a consequence of commission of alleged offences and was approved by this Court on 21.05.2018.

4. Hafiz Mian Muhammad Nauman/petitioner Chairman of Messrs Lahore Parking Company Limited was alleged to have actively participated in the operations of the company and visited the parking sites of Messrs Green Parking Dubai (the only parking company in the JV) although who received a letter from Messrs Green Parking Dubai that agreement had been signed without their participation and through fraudulent misrepresentation

by Messrs AGCN/NTG Pakistan (Pvt.) Limited for a Joint Venture (JV) with Green Parking Company Dubai yet he executed the agreement with the approval of Board of LPCL and had failed to exercise his authority with mala fide and he did not ensure the capital investment by NTG/AGCN Pakistan on the parking sites by collecting the revenue in accordance with the bidding document/ agreement and had also handed over only 33 lucrative out of 246 parking sites and, therefore, failed to prevent losses caused to the national exchequer of LPCL. He is also indulged to have interfered in the operation of LPCL and deliberately did not hand over all 246 parking sites. According to the investigation report, the petitioner was arrested on 28.11.2018 after when his pre-arrest bail was dismissed by this court.

5. Taseer Ahmad accused/petitioner/Managing Director of LPCL was alleged to have signed the agreement for project titled "Parking Operations and Management Agreement for Lahore City" in the absence of the foreign Joint Venture partners Messrs Green Parking Dubai and that it did not make the capital investment in the project revenue as part of the agreement and also allowed the post bid changes in the contract in violation of PPRA Rules and the RFP and also reduced the penalty from Rs.20000 to Rs.5000. He was arrested on 26.04.2018.

6. Usman Qayyum accused/petitioner was alleged to have remained as Chief Financial Officer of Messrs LPCL from 24.12.2012 to 22.06.2017 and also served as acting Managing Director and Chief Executive Officer on two separate occasions. He actively participated in the execution of the agreement dated 06.02.2014 by Taseer Ahmad co-petitioner with Messrs AGCN/NTG Pakistan (Pvt.) Limited in absence of foreign Joint Venture namely Messrs Green Parking Dubai and, therefore, the CEO of Messrs Green Parking forwarded a letter to the Chairman of Messrs LPCL that there was no Joint Venture between Messrs Green Parking and Messrs AGCN Pakistan (Pvt) Limited and that the said project was scored by fraudulent misrepresentation. A legal opinion on the matter of change of Joint Venture partner was allegedly obtained by the Legal Advisor to

change the Messrs AGCN Pakistan and new JV partner Messrs ZTE China was introduced and approved on the recommendation of an evaluation committee in which the petitioner was a member. He also visited China with the co-petitioner Hafiz Mian Muhammad Nauman. The penalty clause of the agreement was changed from Rs.20000 to Rs.5000 per day for breach of execution timeline and secondly, a provision of notice was added in the termination clause before entering into the dispute resolution and thirdly, clause 26.2 of the agreement, the contract was amended permitting the change in the organizational form of the company but the new JV partner was added in violation of the contract. It was also alleged that the Messrs LPCL never imposed any penalty clause for breach of execution timelines of Messrs AGCN/NTG Pakistan who was alleged to have visited Dubai but did not sign the agreement with the JV partner. By changing the terms he allegedly caused loss to the national exchequer.

7. Learned counsel for the petitioners submit that there is no allegation of corruption against the petitioners as no substantial pecuniary loss or corresponding gain could be attributed by the prosecution against the petitioners and that the only allegation of misuse of authority has been levelled against them without any substantiation. Adds that the nature of job of the petitioners permitted the acts which they have done in good faith without the element of crime i.e. mens rea and actus rea which are clearly missing. Adds that mere orientation visits to Dubai and China and signing of the agreement as the responsible officials of the company duly approved by the Board would not constitute the offence under N.A.O., 1999. Adds that the Board meetings of the Board of Directors have been rectifying the decision taken by the petitioners and as such they cannot be solely held individually responsible for the decision collectively taken by the Board. Adds that the City District Government was earning money from the parking sites and they had not imparted with their possession so was not given to the company for its further handing over to the contractor. Adds that the speculative losses were calculated on hypothetical basis and no exact liability is determined against the petitioners, particularly after when

the co-accused Muhammad Faisal Ahad Rao, Faizan Wali and Saad Rafiq have cleared their liability under the plea bargain.

8. Arguments heard. File perused.

9. The Lahore Parking Company Limited (LPCL) was created under section 32 of the Companies Ordinance, 1984. It has its Article and Memorandum of Association and under clause 46 thereof, eight persons were appointed as the company's bearers.

1. Mr. Noor ul Amin DCO/Administrator, Lahore.
2. Muhammad Yousaf Secretary Transport.
3. Moazzam Iqbal EDO (F&P) CDGL,
4. Muhammad Nauman/petitioner MPA.
5. Usman Anwar/petitioner Chief Traffic Officer, Lahore.
6. Ramzan Siddique MPA.
7. Khawaja Haider Latif CEO LTC.
8. Mehmood Masood Tamana EDO (MS)CDGL

Under Clause 47, the Chairman was to be appointed by the Board from time-to-time, amongst the Directors of the company and continued at the pleasure of the Board. The powers and duties of the Directors were to manage the business of the company and they could exercise such powers prescribed under the Ordinance or any statutory modification made or through the decision made in general meeting. Under clauses 64 to 68, it was provided that the Directors shall appoint any person to be the Chief Executive of the Company and under sections 198 and 199 of the Ordinance who was to hold office for a period not exceeding three years. The whole business of the Company was to be carried out by the Chief Executive who enjoyed all powers, authorities and discretions given under the Ordinance. He was empowered to exercise such powers subject to the control of Board of Directors which, inter alia, included to take on lease, purchase, erect or otherwise acquire for the company any land, building and property etc, to

sell, let, exchange or otherwise dispose of absolutely or conditionally, all or any part of the property etc, to enter into, carry, rescind, or vary all financial arrangements or agreement with any banks, persons, corporations in connection with Company's business and affairs etc, to determine, who was to sign on Company's behalf the bills, cheques, notes, receipts, acceptance endorsements, release of contract and documents and to enter into such negotiation and contracts and rescind or vary all such agreements and to make advances for the business of the Company to such person upon such security or without security to control and manage expenditures etc. Clause "f" would be relevant for the purpose of decision which is reproduced as under:-

f) To enter into, carry, rescind, or vary all financial agreements or agreement with any banks, persons or corporations for, or in connection with the Company's business and affair and in connection with such arrangement to deposit, pledge, hypothecate any property or the Company or the document representing or relating to the same;

10. The appointment letter of the Chief Financial Officer, Usman Qayyum/petitioner, shows that he was responsible to develop finance organizational strategies, implement the proper personnel process and to act as Chief Authority on financial operations of the Company and was responsible for ensuring that appropriate advices were given to the Board on all financial matters. He was also responsible for overseeing the financial operations of the entire Company and to watch the financial interest of the business and to maintain the financial control of the Company. In other words, he was required to observe organizational objectives with reference to financial developments.

11. In order to outsource the parking facility in the city of Lahore, the LPCL advertised 246 sites to the general public. According to the NAB, AGCN with Green Parking Company came forward with an attractive offer who was also found technically qualified and therefore, their bid was

approved. On 06.02.2014, an agreement was executed between Lahore Parking Company with AGCN, Pakistan (Pvt.) Ltd. in which Taseer Ahmed, being Chief Executive Officer signed on behalf of LPCL and Faisal Arshad Rao, signed on behalf of AGCN, whereas Usman Qayyum/petitioner and one Noman Ahmed Said, were the two witnesses. It appears that clause 26.2 was provided under which the contractor was permitted to change the organizational form or status or contractual relationship and that with prior approval of LPCL, the contractor could change its members or change the joint venture partnership, but the principal company/lead bidder could not be changed. In case of default or non-performance of the joint venture partner or in case of dispute between the contractor or any of Company's joint venture partner under this agreement or under any other agreement between such joint partners, it was provided that if the joint venture partner had failed to perform their obligation, such responsibility could be assigned by the Directors to any other party of comparable expertise or experience as per request for proposal with prior approval of LPCL. Importantly, under clause 2.2 of the agreement, LPCL was responsible to provide parking facilities, parking zones and parking areas to the Company which fall with the territory, except parking areas, zones or sites owned and controlled by any government agency other than the MCL. Clause 2.2 is reproduced as under:-

> "2.2 For the purpose of this Agreement, LPCL shall be responsible for providing the Parking Facilities, Parking Zones and Parking Areas to the Contractor which fall within the Territory, except parking areas, zones, or sites owned, and controlled by any Government Agency other than the MCL, or which may subsequently be added in the purview of LPCL."

12. On 13.02.2014 AGCN, Pakistan wrote a letter to change the organizational structure by invoking clause 26.2 and to introduce another JV partner. On 26.02.2014, Messrs Future Link/Green Parking Company, Dubai had written a letter to Hafiz Mian Muhammad Nauman,

petitioner/Chairman stating that AGCN, Pakistan (Pvt.) Ltd. and Future Link/Green Parking Company, agreed to collaborate with each other to pursue award and operation of parking facilities for LPCL on 06.02.2013 for which a memorandum of understanding (MOU) was reached on 04.04.2013 for the joint submission of bid through which AGCN was the lead partner whereas Green Parking Company was to provide, inter alia, the equipment, consultancy and technical support for the Lahore Project. A representative of LPCL visited Dubai on their asking between 26.07.2013 to 30.07.2013 as part of the tender process who made various surveys on prominent places like Emaar Square, Down Town Burj Khalifa, Media City, Dubai and Al Majaz Park, Sharjah. It was mentioned in clause 10 of the said letter that agreement dated 06.02.2014 was signed by Faisal Rao (AGCN) without consent and knowledge of the Green Parking, therefore, in clause 15 it was conveyed that Company unequivocally denied that they were part of the joint venture in respect of Lahore Project as there was no final negotiation between AGCN and Green Parking in parking facilities in said district Lahore. It was, therefore, unanimously approved to replace Future Link Green Parking, Dubai with ZTE Corporation, China as JV Partner. On 17.10.2014, petitioner/Hafiz Mian Muhammad Nauman, was again proposed and elected as Chairman of the Company. According to the NAB, this permission to substitute JV Partner was granted ex-post facto in the above said 6th Board meeting. The AGCN/NTG Pakistan (Pvt.) Ltd. revised dates for handing over and to operationalize the project of these sites but it could not be completed as the parking sites were not handed over to the contractor and that only 33 sites were so handed over. In the 9th meeting of the Board it was decided to cap the project and in 13th meeting of the Board held on 11.12.2017, it was briefed to the Board that there was serious non-compliance of the terms and conditions of the agreement by the contractor Messrs NTG Pakistan Pvt. Limited (formerly AGCN Pakistan Pvt. Limited) and, thereafter, legal advice was sought to initiate the termination procedure, which was also granted.

13. The defence of Hafiz Mian Muhammad Nauman/petitioner is that

he was legally elected, MPA from constituency PP-148 Lahore in 2008-13 and that Lahore Parking Company was subsidiary of Lahore City District Company which owned all shares of the said company. It nominated him as a Director of LPCL in its meeting. On 11.08.2012 he was elected as Chairman of the Board and on 17.10.2014 in the 7th meeting he was re-elected as Chairman. Similarly, the defence of Taseer Ahmed/ petitioner is that he acted with approval of the Board as he signed the agreement on 06.02.2014 and complied with the directions made in the 5th meeting of Board of Directors held on 20.06.2013. He took the stand that all the parking sites were not handed over to the contractor due to their non-availability. Usman Qayyum/petitioner has also taken the similar stand.

14. We have straightway noted some very pertinent and relevant facts which are, inter alia, narrated as follows:-

(a) The exact calculated loss to the national exchequer allegedly caused by the petitioner could not be substantiated before us.

(b) The loss so far calculated against the co-accused person namely Muhammad Faisal Ahad Rao, Chief Executive Officer of NTGP (Pvt.) have been recovered through plea bargain duly approved by the Accountability Court.

(c) The competency of the petitioners being the office bearers of LPCL has not been questioned by the NAB.

(d) Awarding of contract after following the procedure and affording fair competition to the competitors has also been admitted by the NAB.

(e) The offer made by JV partner AGCN and Green Parking Company was admitted and the award of contract by company on the basis of record was not questioned.

(f) In the letter sent on behalf of Green Parking, memorandum of understanding (MOU) between them to make offer for the Lahore Project was not denied but it was stated that at the time of writing

the letter that they were no more JV partners.

(g) By invoking clause 26.2 the agreement was revised/modified so as to introduce ZTE China to substitute as new JV partner and before doing that, approval of the Board was accorded.

(h) Under clause 2.2 of the agreement the vacant sites were to be handed over by the Company to the contractor after getting its possession from the City District Government, therefore, the responsibility of the contractor would start after such change over on ground.

(i) The record does not show that City District Government had handed over the possession of said sites to LPCL for their further handing over to the contractor.

(j) Above all, we have not been able to keep our eyes off the fact that when the Green Parking Company had denied their status as JV partner, at least the statement of any representative was required to be recorded by the NAB to verify the veracity of said letter.

(k) None from it was cited as a prosecution witness in the reference against the petitioners.

(l) The agreement was signed by Usman Qayyum, as Chief Executive Officer whereas Hafiz Mian Muhammad Nauman, was not a witness there. The person who signed the agreement on behalf of AGCN has already made plea bargain.

15. To our humble understanding, the case of the prosecution is that agreement with Green Parking Company Future Link as JV partner should not have been signed in the absence of Green Parking Company and that the petitioners did not exercise due diligence to verify the capacity of AGCN as lead company for executing the contract. Whether this very act even if proved, would constitute any offence under NAB Ordinance under section 9(a)(iii)(vi)(xii) of N.A.O., 1999 or of criminal breach of trust require further evidence. The ground taken by the NAB that in view of the plea bargain the commission of offence is established against the

petitioners, cannot be appreciated at this stage since the prosecution has to independently prove the case against the petitioners and not by taking the advantages of development made subsequent to the investigation. The prosecution has not been able to dig out any transfer of funds or receiving of kickback by the petitioners for executing an agreement with AGCN Pakistan (Pvt.) Ltd. and Green Parking Company to extend them any favour with corresponding loss to the national exchequer. In this view of the matter, the constitution of offences under section 9(a)(iii)(vi)(xii) of N.A.O., 1999 needs further inquiry.

16. Section 9(b) of the National Accountability Ordinance, 1999 provides as follows:

> "All offences under this Ordinance shall be non-bailable and, notwithstanding anything contained in sections 426, 491, 497, 498 and 561-A or any other provision of the Code, or any other law for the time being in force no Court shall have Jurisdiction to grant bail to any person accused of any offence under this Ordinance."

Since the first hand remedy before trial court is specifically ousted, the natural question arises that whether this right is not available to an accused involved in NAB offence, when such right is available to persons accused of other offences. To find out such answer of this question, it is expedient to understand evolution of jurisprudential aspect of bail.

17. The concept of bail can be traced back to 399 BC, when Plato tried to create a bond for the release of Socrates. Circuit courts during medieval times in Britain held quarter sessions in different parts of country. This lead to evolve a series of laws for release of the under trial prisoners on securing a surety. The provision for bail can also be traced back to Magna Carta itself as follows:

> "No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful Judgment of his equals or by

the law of the land."

Thereafter, another great milestone in the history of England called the Petition of Right of 1628 during the reign of Stuarts, which though reluctantly accepted and acknowledged that no free man should be imprisoned or detained, except by authority of law. The concept was further evolved in shape of Habeas Corpus Act of 1679". This Act provided that many of the King's subjects have been long detained in prison in cases where, by law, they should have been set free on bail. The next great landmark in English history is the Bill of Rights of 1689 which provides that "excessive bail ought not to be required...." Thereafter, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus found its way into Article 1 Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution. The right to liberty is also guaranteed in the International Covenant on Civil and Political Rights (ICCPR), to which Pakistan is a party.

18. By now, the basic rule may perhaps be tersely put as bail and not jail, except where there are certain circumstances ..." and every man is deemed to be innocent until duly tried and duly found guilty. Thus the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As a presumably innocent person, an accused is, therefore, entitled to freedom. Punishment, by plain logic, has necessarily to follow a determination of guilt, accompanying conviction, and can never be anterior thereto. Bail is not to be withheld as a punishment. Incarceration during trial, therefore, can never be punitive in nature and is never intended to operate as a punishment. In civilized societies, deprivation of liberty must be considered a punishment, unless it is essential to ensure that an accused person will not stand his trial when called upon. Most important principle amongst all is that grant of bail is the rule and refusal is the exception. Therefore, the grant of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Obviously, it can be

withheld only in the exceptional circumstances.

19. The Constitution of Islamic Republic of Pakistan ensures the elimination of all forms of exploitations under Article 3. It also guarantees the protection of law and to be treated in accordance with law as unalienable right of every citizen with particular emphasis that no action detrimental to the life, liberty or body of the person shall be taken except in accordance with the law under Article 4. Further, "no person shall be deprived of life or liberty saves in accordance with law" as written in Article 9. The Constitution also guarantees that no person who is arrested shall be detained in custody without being informed of the grounds of his arrest and shall not be denied the right to consult and be defended by a legal practitioner of his choice as enshrined under Article 10. Right to fair trial and due process is also ensured under umbrella of Article 10-A of Constitution. Every citizen is also guaranteed freedom of movement to remain in, enter and move freely as defined in Article. With such Constitutional guarantees,-it would be quite contrary to the concept of personal liberty that a person should be punished without conviction or he should be deprived of his liberty on belief that he will tamper with the witnesses if left at liberty. Thus bail is the rule and committal to jail an exception warranted only in most extra ordinary circumstances.

20. The National Accountability Ordinance expressly ousts the jurisdiction of courts to grant an accused person bail, which means that accused people have to approach the High Courts for bail in their constitutional jurisdiction which may cause over burdening the courts but denial of their rights by the High Court, in our humble opinion, would perhaps make us guilty of breach of our oath as Judges of High Court.

A beautiful quote of Justice Cornelius is reproduced to emphasis on the sacredness of the High Courts exercising constitutional jurisdiction:-

> "The writ jurisdiction of this Court has always been there and shall continue to come at the rescue of those citizens of this country who have no alternate and efficacious

remedy available to them. It is one of the flowers of paradise and the whole length and breadth of Pakistan is not wide enough to contain there perfume. God fulfills Himself in many ways and that we (Judges) are the humble instruments of His fulfillment. The writ jurisdiction is the modern manifestation of God's pleasure and that God's pleasure dwells in the High Court".

Borrowed from Chief Justice Cornelius of Pakistan by Ralph Branbiti, published by Oxford in 1999 at Page 42-43.

21. Coming back to the question of grant of bail in offences in National Accountability Ordinance, 1999, it is by now well settled that a statutory ouster of jurisdiction of all Courts could not affect the jurisdiction of a High Court to grant bail under Article 199 of the Constitution. The primary feature of Article 199 of Constitution is to provide a forum to an aggrieved person who has no other adequate remedy. The Secondary feature of Article 199 of Constitution is the protection of fundamental rights. When a citizen complaints violation of fundamental right, High Court should exercise its power under Article 199 to investigate the matter and pass such order as may be found just, legal and equitable. The scheme of the constitution makes it obligatory on the part of superior Courts to interpret Constitution, law and enforce fundamental rights. There is no cavil with the proposition that ultimate arbiter is the Court which is the custodian of the Constitution. The rights against arbitrary detention as provided under constitution contemplates that every imprisonment without trial and conviction is prima facie unlawful. It is also basic principle that cornerstone of the administration of justice is that all people are entitled to due process of law and are assumed to be innocent unless proved guilty. Every citizen must be treated with equality and his dignity, liberty, life and honour must be guaranteed as envisaged in the Constitution. The High Court has not only a right but a fundamental constitutional duty that these fundamental rights are not fringed. With the expanding horizon of Articles dealing with Fundamental Rights, now every executive action of the Government or

other public bodies, if found arbitrary, unreasonable or contrary to law, is amenable to the writ jurisdiction of the Superior Courts to be validly scrutinized on the touchstone of the Constitutional mandates.

Here, it would be appropriate to refer to Subhash Kumar Sharma v. State on 20 June, 2018 reported as AIR 1991 SC 420 in which it is observed that:-

> "(iii) ....Curtailment of personal liberty during trial, has, therefore, to be limited to those cases in which it is absolutely essential, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the accused incarcerated, as incarceration would then assume a punitive avatar.
>
> (vi) .....It would be entirely impermissible for the court, at the stage of deciding the bail application of the accused, to subject him to a premature trial far less to return any finding, even tentative, regarding the justifiability of the charge against him.
>
> (vii) The Court cannot, however, while adjudicating a bail application, adopt an entirely accused-centric approach, unmindful of the prevailing public and societal interests hanging in the balance. The right of the accused to liberty, prior to his being found guilty of the charge against him has to be weighed against the public interest involved, in ensuring that the trial proceeds fairly and unhindered."

22. Undoubtedly, the extraordinary jurisdiction under Article 199 of the Constitution is to be exercised with conceptive and caution, just to advance the cause of justice and not to frustrate or defy the intent of law. Such exercise must be made to prevent miscarriage of justice and abuse of N.A.O., 1999. It cannot be withheld as a punishment. This Court also cannot elaborate the sifting of evidence but make a tentative assessment of the material laid before this Court. At this stage, an inquiry by this Court is

permissible to seek an answer to the question of the involvement of the petitioner without going into deeper appreciation of evidence. This right of the petitioner to approach this Court is not only a constitutional mandate but is independent of any source of jurisdiction such as section 497, Cr.P.C. or 9(a) of N.A.O., 1999. This ample powers of this Court are meant and reserved for the enforcement of the fundamental rights of the citizen of this country, particularly those who have been retained by the NAB authorities in offences, which according to the wisdom of this Court, calls for further inquiry. Reliance is placed upon Tallat Ishaq v. National Accountability Bureau through Chairman and others (PLD 2019 SC 112), National Accountability Bureau through Chairman v. Murad Arshad and others (PLD 2019 SC 250), Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division Islamabad and others (PLD 2001 SC 607), Secretary. Revenue Division and others v. Muhammad Saleem (2008 SCMR 948), Government of Sindh through The Chief Secretary, Karachi and 4 others v. Raeesa Farooq and 5 others (1994 SCMR 1283), Regarding Corruption in Hajj Arrangements in 2010 (2011 PLC (C.S.) 1489), Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Mrs. Amatul Jalil Khawaja and others (PLD 2003 SC 442), Suo Motu Action Regarding Allegation of Business Deal Between Malik Riaz Hussain and Dr. Arsalan Iftikhar Attempting to Influence the Judicial Process (PLD 2012 SC 664), Watan Party and another v. Federation of Pakistan and others (PLD 2011 SC 997), Mustafa Ansari v. Deputy Commissioner, Chittagong Hill Tracts, Rangamati and others (PLD 1965 Dacca 576), Corruption In Hajj Arrangements in 2010 (PLD 2011 SC 963), Subhash Kumar v. State of Bihar and others (AIR 1991 SC 420), Olas Khan and others v. Chairman NAB through Chairman and others (PLD 2018 SC 40), Nadeem Majeed v. The State and others (2007 SCMR 1958), Chairman National Accountability Bureau, Islamabad and another's caser (2004 SCMR 91), Mrs. Riaz Qayyum v. The State and another (2004 SCMR 1889), Haji Ghulam Ali v. The State through A.G. N.-W.F.P. Peshawar and another (2003 SCMR 597), Mst. Fatima Ismail v. The State (2003 SCMR

733), Muhammad Saeed Mehdi v. The State and 2 others (2002 SCMR 282), Dr. Mujahjid Kamran v. Chairman National Accountability Bureau (NAB) and others (2019 PCr.LJ 34), Engineer Raja Qamar Ul Islam v. National Accountability Bureau through Chairman and others (2019 PCr.LJ 582), Syed Ather Hussain and others v. Chairman National Accountability Bureau and another (2019 YLR 788), Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 SC 1144) and The State and others v. M. Idrees Ghauri and others (2008 SCMR 1118).

(Here we do acknowledge the valuable input given by the Research Cell of the Lahore High Court).

23. For the above stated reasons we have no hesitation to hold that although such powers are exercised exceptionally and not a routine as substituted of section 497, Cr.P.C. but it is now open and very well exposed to the people of this country that whenever the NAB has indulged in to denial of the fundamental right of freedom, against Article 15, there is only one silver lining in the sky of relief which can be clearly seen through the prism of a Judge of this Court exercising constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The denial of such right would make us less confident in discharge of our constitutional duties under the Constitutional mandate and oath we have taken under the Constitution to preserve, protect and defend different clauses including Article 199 of Constitution.

24. In this view of the matter, these petitions are allowed and the petitioners, Hafiz Mian Muhammad Nauman, Usman Qayyum and Taseer Ahmed, are admitted to post arrest bail subject to their furnishing bail bonds in the sum of Five Million Rupees (Rs.50,00,000/-) each with two sureties each in the like amount to the satisfaction of the learned trial court.

MH/M-151/L **Bail granted.**

P L D 2020 Lahore 191

Before Ali Baqar Najafi and Sardar Ahmed Naeem, JJ

MUHAMMAD SUBTAIN KHAN---Petitioner

Versus

NATIONAL ACCOUNTABILITY BUREAU through Chairman NAB and 3 others---Respondents

Writ Petition No.42682 of 2019, decided on 18th September, 2019.

(a) National Accountability Ordinance (XVIII of 1999)---

----S. 18(c)---Reopening of inquiry---Exercise of jurisdiction---Principle---Petitioner was aggrieved of reopening of inquiry which was previously closed by National Accountability Bureau (NAB)---Validity---Without bringing on record any fresh ground or to dig out any truth, inquiry was reinitiated on same allegations issued by the Authority---Reasons and circumstances were apparently, neither brought before Chairman NAB nor Authority had formed opinion on basis of material---Authority had just ordered reopening of inquiry without holding any official of NAB responsible for closure of the inquiry---Such was not whims and designs unsubstantiated by fresh disclosed facts on basis of which it could reopen closed inquiry---Inquiry was reopened in slipshod manner in circumstances.

(b) National Accountability Ordinance (XVIII of 1999)---

----S. 18(c)---Chairman National Accountability Bureau (NAB)---Exercise of powers---Principle---Powers of Chairman NAB are structured by law and conscience and must be guided by them and not by unperceived perception infatuated by his subjective approach.

(c) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)(iv)(vi) & (b)---Punjab Government Rules of Business, 1974, Rr.6 & 108---Criminal Procedure Code (V of 1898), S. 497(2)---Constitution of Pakistan, Art. 199---Constitutional petition---Bail, grant of-

--Misuse of authority---Causing loss to national exchequer---Reopening of investigation---Powers of National Accountability Bureau---Petitioner was Minister who was arrested by NAB in an inquiry which was earlier closed by the authorities---Plea raised by petitioner was that contract was awarded in due process of law, no loss was caused to national exchequer and he received no pecuniary advantage---Validity---Mere violation of some law or procedure at the most without any mens rea, case of prosecution needed further inquiry because petitioner was directed to follow procedure before awarding contract as decision was taken by Chief Executive of the Province upon summary whereafter contract was awarded--- Offence needed further probe as its ingredients were not prima facie reflected--- Extraordinary jurisdiction under Art.199 of the Constitution was to be exercised with conceptive and caution just to advance cause of justice and not to frustrate or defy intent of law---Such exercise was to be made to prevent miscarriage of justice and abuse of National Accountability Ordinance, 1999---Bail could not be withheld as punishment---Inquiry by High Court was permissible to seek an answer to question of involvement of accused without going into deeper appreciation of evidence---Right of accused to approach High Court was not only a Constitutional mandate but was independent of any source of jurisdiction such as S.497, Cr.P.C. or S.9(a) of National Accountability Ordinance, 1999---Powers of High Court were meant and reserved for enforcement of fundamental rights of citizens particularly those who were retained by NAB authority in offences, which called for further inquiry---High Court in exercise of Constitutional jurisdiction allowed post arrest bail of accused---Bail was granted in circumstances.

Tallat Ishaq v. National Accounability Bureau through Chairman, and others PLD 2019 SC 112; National Accuntability Bureau through Chairman v. Murad Arshad and others PLD 2019 SC 250; Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division,

Islamabad and others PLD 2001 SC 607; Secretary, Revenue Division and others v. Muhammad Saleem 2008 SCMR 948; Government of Sindh through the Chief Secretary Karachi and 4 others v. Raeesa Farooq and 5 others 1994 SCMR 1283; Regarding Corruption in Hajj Arrangements in 2010 2011 PLC (C.S.) 1489; Federation of Pakistan through Secretary, Ministry of Interior, Islamabad v. Mrs. Amatul Jalil Khawaja and others PLD 2003 SC 442; Suo Motu Action Regarding Allegation of Business Deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar Attempting to Influence the Judicial Process PLD 2012 SC 664; Watan Party and another v. Federation of Pakistan and others PLD 2011 SC 997; Mustafa Ansari v. Deputy Commissioner, Chittagong Hill Tracts, Rangamati and others PLD 1965 Dacca 576; Corruption in Hajj Arrangements in 2010 PLD 2011 SC 963; Subhash Kumar v. State of Bihar and others AIR 1991 SC 420; Olas Khan and others v. Chairman NAB through Chairman and others PLD 2018 SC 40; Nadeem Majeed v. The State and others 2007 SCMR 1958; Chairman. National Accountability Bureau Islamabad and another 2004 SCMR 91; Mrs. Riaz Qayyum v. The State and another 2004 SCMR 1889, Haji Ghulam Ali v. The State through A.G., N.-W.F.P., Peshawar and another 2003 SCMR 597; Mst. Fatima Ismail v. The State 2003 SCMR 733; Muhammad Saeed Mehdi v. The State and 2 others 2002 SCMR 282; Dr. Mujahid Kamran v. Chairman National Accountability Bureau (NAB) and others 2019 PCr.LJ 34; Engineer Raja Qamar ul Isalm v. National Accountability Bureau through Chairman and others 2019 PCr.LJ 582; Syed Ather Hussain and others v. Chairman National Accountability Bureau and another 2019 YLR 788; Ghani-ur-Rehman v. National Accountability Bureau and others PLD 2011 SC 1144 and The State and others v. M. Idress Ghauri and others 2008 SCMR 1118 rel.

(d) Bail---

----Genesis---Concept of bail can be traced back to year 399, BC when

Plato tried to create bond for release of Socrates---Circuit courts during medieval times in written held quarter sessions in different parts of country---Such led to evolve a series of laws for release of under trial prisoners on securing a surety---Provisions for bail can also be traced back to Magna Carta---Right to liberty is also guaranteed in Art.14, International Covenant on Civil and Political Rights, 1966 to which Pakistan is a party---Basic rule is bail and not jail except where there are certain circumstances---Every man is deemed to be innocent until duly tried and duly found guilty---Issue of bail is one of liberty, justice, public safety and burden of public treasury all of which insist that a developed jurisprudence of bail is integral to a social sensitized judicial process---Presumably as a presumably innocent person, an accused, is therefore, entitled to freedom---Punishment by plain logic has necessarily to follow a determination of guilt accompanying conviction and can never be anterior thereto---Bail is not be withheld as punishment as incarceration during trial can never be punitive in nature and is never intended to operate as punishment---In civilized societies, deprivation of liberty must be considered as punishment unless it is essential to ensure that accused person will not stand his trial when called upon---Most important principles of all, is that grant of bail is rule and refusal is exception---Grant of bail lies within discretion of court and granting or denial is regulated to a large extent by facts and circumstances of each particular case---With guarantees provided under Arts. 3, 4, 9 & 10-A of the Constitution it would be quite contrary to concept of personal liberty that a person should be punished without conviction or he should be deprived of his liberty on belief that he would tamper with witnesses if left at liberty---Bail is rule and committal to jail an exception warranted only

in most extraordinary circumstances.

Subhash Kumar Shrma v. State AIR 1991 SC 420 rel.

(e) National Accountability Ordinance (XVIII of 1999)---

----S. 9(b)---Constitution of Pakistan, Arts. 15 & 199---Criminal Procedure Code (V of 1898), S. 497---Bail, grant of---Constitutional jurisdiction of High Court---Scope---Statutory ouster of jurisdiction---Effect---Statutory ouster of jurisdiction of all courts could not affect jurisdiction of High Court to grant bail under Art. 199 of the Constitution---Primary feature of Art.199 of the Constitution is to provide a forum to an aggrieved person who has no other adequate remedy---Another feature of Art.199 of Constitution is protection of Fundamental Rights---When a citizen complaints violation of Fundamental Right, High Court exercise its power under Art.199 of the Constitution to investigate matter and pass such order as may be found just, legal and equitable; although such powers are exercised exceptionally and not as substitute of S.497, Cr.P.C.---Whenever National Accountability Bureau has indulged into denial of Fundamental Right of freedom against Art.15 of the Constitution there is only one relief which is exercise of Constitutional jurisdiction under Art.199 of the Constitution by the High Court.

(f) Constitution of Pakistan---

----Art. 199---Constitutional jurisdiction of High Court---Scope---Fundamental rights, protection of---High Court has not only right but a fundamental Constitutional duty that such Fundamental Rights are not infringed---With expanding horizon of articles dealing with fundamental rights every executive action of government or other public bodies if found arbitrary, unreasonable or contrary to law, is amenable to writ jurisdiction of superior courts to be validly scrutinized on touchstone of Constitutional

mandate.

Haider Rasool Mirza for Petitioner.

Syed Faisal Raza Bukhari and Muhammad Ali Chatha, Special Prosecutors for NAB with Abdur Rehman, I.O./A.D., NAB, Lahore.

ORDER

Petitioner seeks post arrest bail on the following grounds of arrest:-

a) Accused Muhammad Sibtain Khan, Ex-Minister, Mines and Mineral Department on unsolicited proposal of Arshad Waheed, CEO of M/s Earth Resources Private Limited (ERPL) malafidely initiated the process of the case of Joint Venture with Government of Punjab for establishment of Hematite and Magnetite mining operation at Chiniot and Rajoa through Secretary Mines and Mineral Department.

b) Accused Muhammad Sibtain Khan, Ex-Minister, Mines and Mineral Department, in connivance with other accused persons malafidely approved the note dated 14.07.2007 of Secretary, Mines and Mineral Department, Punjab, wherein it was proposed that M/s ERPL be asked to submit the terms and conditions for joint venture despite the fact that M/s PUNJMIN was not competent to enter into joint venture agreement with private company.

c) Accused Muhammad Sibtain Khan, being Chairman PUNJMIN chaired the 69th BoD meeting of PUNJMIN and malafidely decided to hold negotiation and draft of MOU with M/s ERPL.,

d) Accused Muhammad Sibtain Khan, Ex-Minster Mines and Mineral malafidely recommended the summary for approval of Joint Venture between M/s. ERPL and M/s. PUNJMIN for the approval of CM, Punjab despite the fact that neither the competitive bid was

initiated nor any auction process was adopted:

e) Accused Muhmmad Sibtain Khan was given fair chance to explain the allegation levelled against him, however, he failed to submit any plausible reply.

f) It is likely that accused may escape/underground himself and may tamper the prosecution evidence through coercion, criminal inducement and criminal intimidation.

2. Brief background of the case as presented by the NAB before this Court is that on 24.06.2010 an order was passed in W.P. No.10809/2008 directing the Chairman, NAB to hold a detailed inquiry regarding illegal award of contract to M/s Earth Resources Private Limited (ERPL) of Iron ore deposits at Chiniot and Rajoa by the Punjab Mineral Development Corporation (PUNJMIN) while declaring the contract as void ab-initio. Consequently, an inquiry was authorized on 09.02.2012 by the Director General NAB, Lahore whereafter on 17.01.2013 the Inquiry Officer recommended for up-gradation/conversion of inquiry into investigation while concluding that one Arshad Waheed, CEO, M/s. ERPL through misrepresentation of facts with ulterior motives tried to get the mining and lease rights, thus attempted to cause loss to national exchequer by committing a criminal breach of trust punishable under National Accountability Ordinance, 1999. However, on 14.02.2013 the said inquiry was closed in the Executive Board Meeting (EBM) of NAB and the closure report was submitted before the Lahore High Court, Lahore on 06.05.2014, which was consequently consigned to record on 12.11.2014. Significantly, it was after about five years that on 13.04.2018 the Chairman, NAB reopened/authorized the inquiry and just on 26.04.2018 in a fresh inquiry it was revealed that a joint venture agreement was made with ineligible firm, namely, ERPL by the PUNJMIN who was not competent to execute such contract and that it was done with mala fide to advance favour to the

firm. According to the prosecution, the petitioner misused his authority as Chairman of PUNJMIN and Minister of Mines and Mineral, Government of Punjab who approved the proposal to ask M/s ERPL to submit terms and conditions for joint venture and also directed to negotiate with M/s ERPL and to draft a memorandum of understanding and then approved joint venture between M/s ERPL and PUNJMIN, therefore, was held responsible for making a bad policy and also failed to conduct his department under the rules of business. He is alleged to have actively involved in the process of award of contract/joint venture agreement between M/s ERPL and PUNJMIN.

3. The stand of the NAB taken in the report and parawise comments is that the technical committee was constituted by the Secretary, Mines and Mineral Punjab which submitted its report on 31.07.2007 in which it did not verify the credential, financial standing or expertise of M/s ERPL in the mining sector as it did not possess the requisite qualifications and that no competitive procedure was adopted to award joint venture agreement. As per Rule 6 of Rules of Business, 1974, the policy matter and conduct of business were the responsibilities of the said Minister. The Law Department illegally made an observation that the respective parties were competent enough to enter into said agreement. According to NAB, the competency of PUNJMIN to make MOU or joint venture agreement with M/s ERPL, if was found, lacking, as it was specifically pointed out by the Law Department on 04.12.2007 that terms and conditions settled between the parties were responsibility of the administrative department. It was also alleged by the NAB that the petitioner directly received unsolicited application of Arshad Waheed/CEO of ERPL for a joint venture without adopting any official channel yet tthe petitioner gave a direction to the Secretary, Mines and Mineral to process and put up a detailed report within

seven days by treating it as most urgent case.

4. Learned counsel for the petitioner submits that the petitioner remained Minister of Mines and Mineral from 2004 to 18.11.2007 and under section 15(3) of Punjab Mineral Development Corporation Act, 1975, the petitioner had only one vote. On 23.03.2007 an application was presented to him by said Arshad Waheed, CEO of M/s ERPL on which he had put up a note i.e. "Please process and put up a detailed report within seven days treating as a most urgent case". The Secretary, Mines and Mineral prepared a note proposing that M/s ERPL might be asked to submit a detailed proposal containing their technical feasibility and capability with a plan of action to overcome the difficulties being faced by PUNJMIN and also to come up with the terms and conditions for joint venture leading to mining and utilization of iron ore. After such detailed proposal they may be asked to make representation in the meeting to be chaired by the petitioner and attended by Secretary and Director General, Mines and Mineral. This was signed on 24.07.2007 by the petitioner. On 31.07.2007, the General Manager, Technical Advisor and Chief Inspector of Mines wrote a letter to the Secretary Mines and Mineral Department Government of Punjab, Lahore conveying their considered opinion that by way of joint venture between PUNJMIN and M/s ERPL iron ore scheme at Chiniot and Rajoa will be successful and as per scope of work/TOR in the larger interest of work within the given time frame which would be a great significance in terms of employment, mechanization and transfer of technology, etc. A working paper was, therefore, prepared in the 69th meeting of the Board of Directors of Punjab Mines and Mineral Department held on 19-09-2007 which was chaired by the petitioner. In the table agenda item No.1 it was directed by the Board to PUNJMIN to hold negotiations with ERPL and put up the case to Secretary Mines with agreed MOU for further approval by the Government of the Punjab. On 16.11.2007, the Secretary Mines and Minerals prepared a summary for Chief Minister which was signed by the

petitioner being the Minister on 17.11.2007 with a separate note by the Chief Secretary. On 24.11.2007 the Principal Secretary to Chief Minister approved the proposal to enter into the joint venture agreement with M/s ERPL in terms of enclosed draft agreement. On 04.12.2007, the Law Secretary mentioned his opinion on the vetted copy that the parties were competent to enter into and sign the agreement. The petitioner resigned on 11.07.2007 but then on 06.12.2007 agreement was signed between M/s ERPL and PUNJMIN. On 10.03.2008 a note was put up by the Managing Director, Mineral Development Corporation proposing for increase in the bank guarantee of at least Rs.50 million, reduction in lockup period of shares of PUNJMIN from 10 years to 3 years, and TORs about technical equipment and services of PUNJMIN and time bound work plan from ERPL. On 31.05.2008 a note was put up by the Managing Director, Mines and Mineral Department to the Chief Secretary stating that on ground the Possession was not given to ERPL. Interestingly, on 07.07.2008 in the 70th Meeting of the Board of Directors, the minutes of 69th Board meeting were confirmed, meaning thereby that the decision of the board was adopted and approved. Meanwhile, a joint venture meeting between PUNJMIN and M/s ERPL was conducted on 02.08.2008 in which it was proposed that the legal remedies and negotiations with the ERPL in terms of clause (5) of the agreement be seen with the option to suspend the resumptions of work on its two iron ore mines after completing formalities. Meanwhile, Arshad Waheed filed W.P. No.10809/2008 against the Government of Punjab in which a report was submitted by the NAB authorities in paragraph-8 of which it was admitted that no loss was caused to the national exchequer as only an attempt was made since the contract was cancelled by the Government of Punjab. First Information Report No.21/2016 was later registered against the petitioner and others in which the petitioner was discharged on 17.08.2016. On 24.06.2010 a decision of dismissal of the said writ petition was made by the Single Bench of this Court and in para-

66 it was directed that a copy of judgment be placed before the Chairman, NAB and the compliance report be placed before the Deputy Registrar (judicial) of this Court. On 12.11.2014, the report was placed on record and the file was consigned to record. With this background the petitioner,prays for grant of post arrest bail.

5. Conversely, the learned Special Prosecutors for NAB submit that no procedure to conduct open auction was followed. Add that under Rule 108 of the Rules of Business, 1974 the procedure was not followed and that the inquiry was reopened upon the recommendations of the Chairman, NAB, therefore, the petitioner is prima facie alleged to have committed criminal breach of trust, therefore, this writ petition be dismissed.

6. Arguments heard. File perused.

7. After hearing the learned counsel for the petitioner and the learned Special Prosecutor for NAB, it is straightaway observed that the case of the prosecution against the petitioner is that he in the capacity of Provincial Minister for Mines and Minerals and as Chairman of PUNJM1N could not execute a contract with ERPL through the Chief Executive/Arshad Waheed but this inquiry was initiated after when the decision was made on 24.06.2010 by this Court in W.P.No.10809/2008 initially by Arshad Waheed, CEO holding that PUNJMIN could not make an agreement of the contract for exploration to lease out the lands to a company for exploration/excavation of mines and minerals i.e. iron ore. This was obviously to operate prospectively. Interestingly, in the said petition a report was submitted stating that "no loss was caused to the public exchequer only an attempt was made and the contract was cancelled by the Government of Punjab," and as a consequence thereof the earlier inquiry was dropped vide RBM dated 14.02.2013.

8. But surprisingly without bringing on record any fresh ground or to digging out any hidden truth, the inquiry was reinitiated on the same

allegations vide letter dated 26.04.2018 issued by the D.G. NAB. The reasons and circumstances were, apparently, neither brought before the Chairman NAB, nor he had formed opinion on the basis of material. He had just ordered the re-opening of inquiry without holding any official of the NAB responsible for closure of the inquiry. It is not the whims and designs unsubstantiated by the fresh disclosed facts on the basis of which it could re-open the closed inquiry in a slipshod manner. The reasons, if any, are shrouded in mystery. Needless to observe here that with greater powers always lies the greatest responsibilities. The powers of the Chairman are also structured by law and conscience, and therefore, he must be guided by them and not by unperceived perception infatuated by his subjective approach so as to use his discretion for taking some kind an imaginary blaming act. The prosecution has not alleged that the petitioner has got any kickbacks, made financial gains or caused any corresponding loss to the State. It is also not their case that the possession of the site was handed over to the ERPL who had started excavation and exploration of the minerals without giving any benefit to the State.

9. According to the prosecution, the matter started when an application was presented to the petitioner being the Minister/Chairman PUNJMIN by EPRL on which a note was given that a proper application through proper channel be given. It was then that the said application had been routed through the Secretary, Mines and Minerals and the summary duly forwarded by the petitioner was presented to the Chief Minister, Punjab and then was approved by him. Prior to the grant of contract, the petitioner relinquished the charge on 18.11.2007 and a positive advice was also solicited from the Provincial Law Secretary. The petitioner was not the signatory of the agreement and the decision so made in the 70th meeting of the Board was also subsequently approved by the Board. According to the NAB it was entirely the responsibility of the concerned Minister but the fact remains that prima facie he had followed the required procedure. An

FIR No.21/2016 was registered against the petitioner earlier at P.S. ACE, Faisalabad but the petitioner was discharged on 17.08.2016.

10. In the facts and circumstances, merely violation of some law or the procedure at the most, without any mens rea the case of the prosecution needs turther Inquiry. The record so far presented before this Court shows that the petitioner has directed to follow the procedure before awarding the contract. Obviously, the decision was taken by the Chief Executive of the province upon the summary whereafter the contract was awarded. The offence of cheating public-at-large, therefore, needs further probe as its ingredients are not prima facie reflecting on record.

11. Section 9(b) of the National Accountability Ordinance, 1999 provides as follows:

> "All offences under this Ordinance shall be non- bailable and, notwithstanding anything contained in sections 426, 491, 497, 498 and 561-A or any other provision of the Code, or any other law for the time being in force no Court shall have jurisdiction to grant bail to any person accused of any offence under this Ordinance."

Since the first hand remedy before trial court is specifically ousted, the natural question arises that whether this right is not available to an accused involved in NAB offence, when such right is available to persons accused of other offences. To find out such answer of this question, it is expedient to understand evolution of jurisprudential aspect of bail.

12. The concept of bail can be traced back to 399 BC, when Plato tried to create a bond for the release of Socrates. Circuit courts during medieval times in Britain held quarter sessions in different parts of country. This led to evolve a series of laws for release of the under trial prisoners on securing a surety. The provision for bail can also be traced back to Magna Carta

itself as follows:

> "No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land"

Thereafter, another great milestone in the history of England called the Petition of Right of 1628 during the reign of Stuarts, which though reluctantly accepted and acknowledged that no free man should be imprisoned or detained, except by authority of law. The concept was further evolved in shape of" Habeas Corpus Act of 1679". This Act provided that many of the King's subjects have been long detained in prison in cases where, by law, they should have been set free on bail. The next great landmark in English history is the Bill of Rights of 1689 which provides that "excessive bail ought not to be required...." Thereafter, the US Constitution borrowed the language of the Bill of Rights when the principle of habeas corpus found its way into Article 1 Section 9 of the US Constitution, followed by the Eighth Amendment to the Constitution. The right to liberty is also guaranteed in the International Covenant on Civil and Political Rights (ICCPR), to which Pakistan is a party.

13. By now, the basic rules may perhaps be tersely put as bail and not jail, except where there are certain circumstances ..." and every man is deemed to be innocent until duly tried and duly found guilty. Thus the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As a presumably innocent person, an accused is, therefore, entitled to freedom. Punishment, by plain logic, has necessarily to follow a determination of guilt, accompanying conviction, and can never be anterior thereto. Bail is not to be withheld as

a punishment. Incarceration during trial, therefore, can never be punitive in nature and is never intended to operate as a punishment. In civilized societies, deprivation of liberty must be considered a punishment, unless it is essential to ensure that an accused person will not stand his trial when called upon. Most important principle amongst all is that grant of bail is the rule and refusal is the exception. Therefore, the grant of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Obviously, it can be withheld only in the exceptional circumstances.

14. The Constitution of Islamic Republic of Pakistan ensures the elimination of all forms of exploitations under Article 3. It also guarantees the protection of law and to be treated in accordance with law as unalienable right of every citizen with particular emphasis that no action detrimental to the life, liberty or body of the person shall be taken except in accordance with the law under Article 4. Further, "no person shall be deprived of life or liberty save in accordance with law" as written in Article 9. The Constitution also guarantees that no person who is arrested shall be detained in custody without being informed of the grounds of his arrest and shall not be denied the right to consult and be defended by a legal practitioner of his choice as enshrined under Article 10. Right to fair trial and due process is also ensured under umbrella of Article 10-A of Constitution. Every citizen is also guaranteed freedom of movement to remain in, enter and move freely as defined in Article. With such Constitutional guarantees, it would be quite contrary to the concept of personal liberty that a person should be punished without conviction or he should be deprived of his liberty on belief that he will tamper with the witnesses if left at liberty. Thus bail is the rule and committal to jail an exception warranted only in most extra ordinary circumstances.

15. The National Accountability Ordinance expressly ousts the

jurisdiction of courts to grant an accused person bail, which means that accused people have to approach the high courts for bail in their constitutional jurisdiction which may causes overburdening them but demure of the laws of High Court, in our humble opinion, would perhaps make us guilty of breach of our oath as Judges of High Court.

A beautiful quote of Justice Cornelius is reproduced to emphasis on the sacredness of the High Courts:-

> "The writ jurisdiction of this Court has always been there and shall continue to come at the rescue of those citizens of this country who have no alternate and efficacious remedy available to them It is one of the flowers of paradise and the whole length and breadth of Pakistan is not wide enough to contain there perfume. God fulfills Himself in many ways and that we (Judges) are the humble instruments of His fulfillment The writ jurisdiction is the modern manifestation of God's pleasure and that God's pleasure dwells in the High Court".
>
> Borrowed from Chief Justice Cornelius of Pakistan by Ralph Branbiti, published by Oxford in 1999 at Page 42-43.

16. Coming back to the question of grant of bail in offences in National Accountability Ordinance, 1999, it is by now well settled that a statutory ouster of jurisdiction of all Courts could not affect the jurisdiction of a High Court to grant bail under Article 199 of the Constitution. The primary feature of Article 199 of Constitution is to provide a forum to an aggrieved person who has no other adequate remedy. The Secondary feature of Article 199 of Constitution is the protection of fundamental rights. When a citizen complaints violation of fundamental right, High Court should exercise its power under Article 199 to investigate the matter and pass such order as may be found just, legal and equitable. The scheme of the Constitution makes it obligatory on the part of superior Courts to interpret Constitution,

law and enforce fundamental rights. There is no cavil with the proposition that ultimate arbiter is the Court which is the custodian of the Constitution. The rights against arbitrary detention as provided under Constitution contemplates that every imprisonment without trial and conviction is prima facie unlawful. It is also basic principle that cornerstone of the administration of justice is that all people are entitled to due process of law and are assumed to be innocent unless proved guilty. Every citizen must be treated with equality and his dignity, liberty, life and honour must be guaranteed as envisaged in the Constitution. The High Court has not only a right but a fundamental constitutional duty that these fundamental rights are not infringed. With the expanding horizon of Articles dealing with Fundamental Rights, now every executive action of the Government or other public bodies, if found arbitrary, unreasonable or contrary to law, is amenable to the writ jurisdiction of the Superior Courts to be validly scrutinized on the touchstone of the Constitutional mandates.

Here, it would be appropriate to refer to Subhash Kumar Sharma v. State on 20 June, 2018 reported as AIR 1991 SC 420 in which it is observed that:--

> "(iii) ..Curtailment of personal liberty during trial, has, therefore, to be limited to those cases in, which it is absolutely essential, and in which, in the absence of such curtailment, the process of trial is likely to be hampered by the accused, whether by vanishing or by unduly influencing the trial process, by intimidating the witnesses, or otherwise. If no such apprehension can legitimately be expressed, there can be no reasonable ground to keep the accused incarcerated, as incarceration would then assume a punitive avatar.
>
> (vi) .....It would be entirely impermissible for the court, at the stage of deciding the bail application of the accused, to subject him to a premature trial, far less to return any finding, even tentative,

regarding the justifiability of the charge against him.

(vii) The Court cannot, however, while adjudicating a bail application adopt an entirely accused-centric approach, unmindful of the prevailing public and societal interest hanging in the balance. The right of the accused to liberty, prior to his being found guilty of the charge against him has to be weighed against the public interest involved, in ensuring that the trial proceeds fiarly and unhindered."

17 . Undoubtedly, the extraordinary jurisdiction under Article 199 of the Constitution is to be exercised with conceptive and caution, just to advance the cause of justice and not to frustrate or defy the intent of law. Such exercise must be made to prevent miscarriage of justice and abuse of NAO, 1999. It cannot be withheld as a punishment. This Court also cannot elaborate the sifting of evidence but make a tentative assessment of the material laid before this Court. At this stage, an inquiry by this Court is permissible to seek an answer to the question of the involvement of the petitioner without going into deeper appreciation of evidence. This right of the petitioner to approach this Court is not only a constitutional mandate but is independent of any source of jurisdiction such as section 497, Cr.P.C. or 9(a) of NAO, 1999. The ample powers of this Court are meant and reserved for the enforcement of the fundamental rights of the citizen of this country, particularly those who have been retained by the NAB authorities in offences, which according to the wisdom of this Court, calls for further inquiry. Reliance is placed upon TALLAT ISHAQ v. NATIONAL ACCOUNABILITY BUREAU through Chairman and others (PLD 2019 SC 112), NATIONAL ACCOUNTABILITY BUREAU through Chairman v. MURAD ARSHAD and others (PLD 2019 SC 250), KHAN ASFANDYAR WALI and others v. FEDERATION OF PAKISTAN through Cabinet Division, Islamabad and others (PLD 2001 SC 607, SECRETARY, REVENUE DIVISION and others v. MUHAMMAD

SALEEM (2008 SCMR 948), GOVERNMENT OF SINDH through The Chief Secretary Karachi and 4 others v. RAEESA FAROOQ and 5 others (1994 SCMR 1283), REGARDING CORRUPTION IN HAJJ ARRANGEMENTS IN 2010 (2011 PLC (C.S.) 1489), FEDERATION OF PAKISTAN through Secretary, Ministry of Interior. Islamabad v. Mrs. AMATUL JALIL KHAWAJA and others (PLD 2003 SC 442), SUO MOTU ACTION REGARDING ALLEGATION OF BUSINESS DEAL BETWEEN MALIK RIAZ HUSSAIN AND DR. ARSALAN IFTIKHAR ATTEMPTING TO INFLUENCE THE JUDICIAL PROCESS (PLD 2012 SC 664) WATAN PARTY and another v. FEDERATION OF PAKISTAN and another PLD 2011 SC 997), MUSTAFA ANSARI v. DEPUTY COMMISSIONER, CHITTAGONG HILL TRACTS, RANGAMATI AND OTHERS (PLD 1965 Dacca 576), CORRUPTION IN HAJJ ARRANGEMENTS IN 2010 (PLD 2011 SC 963), Subhash Kumar v. State of Bihar and others (AIR 1991 SC 420), OLAS KHAN and others v. CHAIRMAN NAB through Chairman and others (PLD 2018 SC 40), NADEEM MAJEED v. THE STATE and others (2007 SCMR 1958), CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU ISLAMABAD and another (2004 SCMR 91), Mrs. RIAZ QAYYUM v. THE STATE and another (2004 SCMR 1889) Haji GHULAM ALI v. THE STATE through A.G., N.-W.F.P., Peshawar and another (2003 SCMR 597) Mst. FATIMA ISMAIL v. THE STATE (2003 SCMR 733) MUHAMMAD SAEED MEHDI v. THE STATE and 2 others (2002 SCMR 282), Dr. MUJAHID KAMRAN v. CHAIRMAN NATIONAL ACCOUNTABILITY BUREAU (NAB) and others (2019 PCr.LJ 34), Engineer Raja QAMAR UL ISLAM v. NATIONAL ACCOUNTABILITY BUREAU through Chairman and others (2019 PCr.LJ 582), Syed ATHER HUSSAIN and others v. CHAIRMAN NATIONAL ACCOUNTABILITY BUREAU and another (2019 YLR 788), GHANI-UR-REHMAN v. NATIONAL ACCOUNTABILITY BUREAU and others (PLD 2011 SC 1144) and THE

STATE and others v. M. IDRESS GHAURI and others (2008 SCMR 1118).

(Here we do acknowledge the valuable input given by the Research Cell of the Lahore High Court).

18. For the above stated reasons we have no hesitation to hold that although such powers are exercised exceptionally and not a routine as substituted of section 497, Cr.P.C. but it is now open and very well exposed to the people of this country that whenever the NAB has indulged into denial of the fundamental right of freedom, against Article l5, there is only one silver lining in the sky of relief which can be clearly seen through the prism of a Judge of this Court exercising constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The denial of such right would make us less confident in discharge of our constitutional duties under the Constitutional mandate and oath we have taken under the Constitution to preserve, protect and defend different clauses including Article 199 of Constitution.

19. For what has been stated above, this writ petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs.5 million with two sureties in the like amount to the satisfaction of the learned trial court. However, the observations made hereinabove are tentative in nature.

MH/M-163/L **Bail granted.**

P L D 2020 Lahore 205

Before Ali Baqar Najafi and Sardar Ahmed Naeem, JJ

MARYAM NAWAZ SHARIF---Petitioner

Versus

CHAIRMAN, NAB and 2 others---Respondents

Writ Petition No.56733 of 2019, decided on 4th November, 2019.

(a) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)(iv)(xii) & (b)---Anti-Money Laundering Act (VII of 2010), S.3---Constitution of Pakistan, Art. 199---Constitutional petition--- Bail, grant of---Money laundering---Predicate offence, proof of---Layers of transactions---Foreign investment---Case of further inquiry---Petitioner was one of Directors in a Sugar Mill allegedly having received investment from abroad to launder ill-gotten money---National Accountability Bureau (NAB) arrested petitioner for receiving a sum of Rs.70,000,000/- in her account from account of said Sugar Mill---Validity---Petitioner had not actively participated, connived, abetted or aided to acquire assets disproportionate to known sources of income as no connection of petitioner was established with foreign nationals in order to persuade them to invest in Sugar Mill so as to attract provisions of National Accountability Ordinance, 1999 and Anti-Money Laundering Act, 2010---Question of making layers and becoming beneficial also required further probe as investments in real estate in UAE was not out of some crime proceeds in form of ill-gotten money---Money which had come from UAE was not black money having origin from some crime proceeds of internationally recognized crimes like terrorism, etc.---Attracting foreign investment had always been a perennial demand of every government and all governments would dream of it but great hurdles were always faced by them to make it a reality---Bank statement of petitioner had shown withdrawal of Rs.70,000,000/- from account---High Court directed petitioner to deposit sum of Rs.70,000,000/- in High Court and passed a conditional bail

granting order---Constitutional petition was allowed accordingly.

Brig.(R) Karrar Ali Agha v. National Accountability Court No.II, Lahore and another PLJ 2010 Lah. 78; The State through Chairman NAB and others v. Muhammad Asif Saigol and others PLD 29016 SC 620; Abdul Hameed Dogar v. Federal Government through Secretary Ministry of Interior and 2 others PLD 2016 SC 454; Muhammad Ikram and others v. The State PLD 1965 (W.P.) Lah. 461; Mst. Ramzan Bibi and another v. Hakim Muzaffar Hussain PLD 1967 Lah. 186; Ramesh M. Audeshi v. The State 2002 PCr.LJ 1712; Ch. Tanveer Khan v. Chairman, National Accountability Bureau and others PLD 2002 SC 572; Badar Alam Bachani v. The State through Chairman NAB and another 2010 PCr.LJ 1988; Noorshad v. Chairman National Accountability Bureau and 5 others 2017 PCr.LJ 1258. Chairman, National Accountability Bureau, Islamabad through Prosecutor General Accountability, Islamabad v. Mian Muhammad Nawas Sharif and 2 others PLD 2019 SC 445; Muhammad Zoonoon Khan v. Federation of Pakistan through Secretary Ministry of Law, Justice, Human Rights and Parliaments Affairs, Islamabad PLD 2014 FSC 63; Miss Shahla Raza v. The State 1991 MLD 1814;Mst. Afsar Bibi v. The State 2005 PCr.LJ 164; Khan Haroon Resikh v. The State and 2 others PLD 2003 Lah. 517; Messrs Hudaibya Paper Mills Ltd. and others v. Federation of Pakistan and others PLD 2016 Lah. 667; National Accountability Bureau (NAB) through Chairman v. Messrs Hudaibya Paper MiIlz Limited Lahore and others PLD 2018 SC 296; Asif Ali Zardari v. The State and another 1992 PCr.LJ 58; Tariq Sultan and another v. National Accountability Bureau through Chairman and 2 others 2012 PCr.LJ 1983; Dr. Asghar Ali v. The State and others 2016 PCr.LJ 193; PLD 2017 SC 692; Waseem Yaqoob v. Chief Commissioner, Income Tax, Lahore and 2 others 2012 PTD 1883; Abdul Aziz Memon and others v. The State and others PLD 2013 SC 594; Syed Mushahid Shah and others v. Federal Investment Agency and others 2017 SCMR 1218; Tallat Ishaq v. National Accountability Bureau through Chirman and others PLD 2019 SC 112; Abdul Aziz Khan Niazi v. The State through Chriman NAB Islamabad PLD

2003 SC 668; Muhammad Sabtain Khan v. National Accountability Bureau and others W.P. No.42682/2019; Hafiz Mian Muhammad Nauman v. Director General NAB and others W.P. No.581/2019 and Zohra Khanum v. The State 2009 SCMR 751 rel.

(b) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)(iv)---Pecuniary resources---Legality---Scope---Mere possession of any pecuniary resources of property is not an offence but its failure to satisfactorily account for such possession of pecuniary resources of property that makes possession objectionable and constitute relevant offence.

Ghani-ur-Rehman v. National Accountability Bureau and others PLD 2011 SC 1144 and Brig.(R) Imtiaz Ahmad v. The State PLD 2017 Lah. 23 rel.

(c) Anti-Money Laundering Act (VII of 2010)---

----S. 3---Money laundering, offence of---Preconditions---Some nexus with crime proceed and therefore, S.3 presupposes that some crime has been committed.

(d) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)(iv)---Assets beyond known sources of income---Benefit of any transaction---Principle---Benefit of any transaction was to be clear and visibly established and not shrouded in mystery---Withdrawal of any amount from Bank cannot be termed as illegal gotten money or an asset beyond known sources of income if source of money is shown in record.

Azam Nazeer Tarar, Muhammad Amjad Pervaiz, Barrister Momin Malik, Shan Saeed Ghuman, Khawar Ikram Bhatti, Muhammad Aurangzeb, Muhammad Nawaz Chaudary, Muhammad Adil Chatha, Salman Sarwar Rao, Sultan Mehmood Khan, Ch. Imtiaz Elahi and Hafeez ur Rehman for the Petitioner.

M/s Jahanzeb Bharwana, Ch. Khaliq uz Zaman, Addl. Prosecutors, Naeem Tariq Sanghera, Syed Faisal Raza Bukhari, Ahsan Rasool Chatha,

Yasir Siddique Mughal, Arshad Qayyum and Muhammad Ali Chatha, Special Prosecutors for NAB with Usman Iftikhar, I.O./A.D., Aftab Ahmed, Case Officer/Addl. Director and Zafar Hussain Ahmed, Addl. A.G. for Respondents.

ORDER

Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner seeks post arrest bail. She was served with following grounds of arrest:-

a That the accused is involved in the acts of corruption and corrupt practices as defined under Section 9(a) of NAO, 1999 and schedule thereto and AML Act 2010 as she aided and abetted co-accused persons namely Mian Muhammad Mawaz Sharif and others in acquisition and laundering the funds which were disproportionate to the known sources of income of accused Mian Muhammad Nawaz Sharif. The accused Maryam Safdar is also a beneficiary of assets disproportionate to known sources of income of the accused persons.

b That the accused Mian Muhammad Nawaz Sherif remained Finance Minister Punjab, CM Punjab and Prime Minister of Pakistan. Accused Maryam Safdar being daughter of accused Mian Muhammad Nawaz Sharif and being Director/Chief Executive Officer/shareholder of Sugar Mill namely M/s Chaudhry Sugar Mills Ltd. and M/s Shamim Sugar Mills Ltd. at various times, actively aided, abetted and facilitated in acquisition of two Sugar Mills namely M/s Chaudhry Sugar Mills Ltd. and M/s Shamim Sugar Mills Ltd. from the years 1992 to 2016 with the funds which are disproportionate to their known sources of income. That the accused Mian Muhammad Nawaz Sharif, Maryam Safdar and others accused persons/shareholders of said Sugar Mills could not account

for the investments of over Rs. 2,000 million in said companies.

c That the accused Maryam Safdar aided Mian Muhammad Nawaz Sharif in acquisition of 11.527 Million shares of M/S CSML worth Rs.400 Million (approx.) in her name which they cannot account for. That the said shares were fraudulently shown to be transferred from foreign nationals namely Saeed Saif Bin Jabar Al-Suweidi, Mr. Sheikh Zaka Ud Din and Hani Ahmed Jamjoom.

d That accused Maryam Safdar aided and abetted accused Mian Muhammad Nawaz Sharif, Yousaf Abbas and others, by layering through false and fictitious transfer of 11 Million shares of CSML in the name of foreigner namely Mr. Nasser Abdullah Hussain Lootah, in order to launder a foreign remittances of US $ 4.8 Million (approx.) by falsely representing it as consideration of 11 Million ordinary shares shown to be transferred to Mr. Nasser Lootah. That the said Mr. Nasser Abdullah Lootah was shown as shareholder in the M/s. CSML fictitiously as he had never acquired any shares in the CSML while the funds of $ 4.8 Million originally belonged to the said accused persons which had earlier been placed in Dubai, the sources of said funds have also not been explained so far.

e Accused Maryam Safdar in connivance with Mian Muhammad Nawaz Sharif and other acquired M/S Shamim Sugar Mills Ltd. for Rs.1,200 M (approx.) while the said accused persons had no sufficient/known sources of funds to acquire M/S Shamim Sugar Mills Ltd.

f That the evidence collected so far reveals that the accused committed offences as defined under section 9 (a) of NAO, 1999 and also under section 3 of AML Act. 2010, by way of aiding and abetting in the commission of offences and also by acquiring obtaining illegal pecuniary benefits through corrupt, dishonest and illegal means.

g That despite 2 x(sic) call up notices the accused has neither provided

the requisite record nor has offered any plausible defence."

2. Brief facts as presented by the National Accountability Bureau (hereinafter to be called NAB) are that Financial Monitoring Unit (hereinafter to be called as FMU) Govt. of Pakistan vide its letter No. FMU/A&D/499/2018 dated 12.01.2018 forwarded a Suspicious Transaction Report (hereinafter to be called as STR) and Currency Transaction Report hereinafter to be called CTR to the Chairman NAB regarding various suspicious transactions of huge amounts in the account of M/s Chaudhry Sugar Mills Limited (hereinafter to be called as M/S SCML), co-accused Mian Muhammad Nawaz Sharif and the petitioner/Maryam Nawaz and other employees/relatives and the co-accused persons. The competent authority authorized inquiry No.1(9)/HQ/2023/NAB-L on 14.11.2008 against the petitioner and others on the allegation of commission of offences of corruption and corrupt practices and money laundering as defined under Section 9(a) of National Accountability Ordinance, 1999 (hereinafter to be called as NAO, 1999) read with Anti-Money Laundering Act, 2010 (hereinafter to be called AMLA, 2010) and shedule thereto. According to the NAB, STR/CTR were carried out in respect of 45 following bank accounts of M/S CSML:-

Organization	Branch	Account No.	Title of Account
Habib Bank Limited	Chak No. 45 GB	6667100080303	Shamim Sugar Mills Pvt. Ltd.
Bank Al-Falah Ltd.	Gojra	1002801828	Choudhary Sugar Mills Ltd.
National Bank of Pakistan	Main Branch Gojra		Choudbry Sugar Mills Ltd.
United Bank	Gojra	101622	Choudhary Sugar Mills Ltd.
United Bank	Gojra	101622	Choudhary Sugar Mills Ltd.

Bank Al-Falah Ltd.	Gojra	1600290004	Choudhary Sugar Mills Ltd.'
Bank Al-Falah Ltd.	Gulberg, Lahore	0028-01037913	Choudhary Sugar Mdls Ltd.
Bank Al-Falah Ltd.	Gulberg, Lahore	0028-02923650	Choudhary Sugar Mills Ltd.
Bank Al-Falah, Ltd.	Gulberg, Lahore	1003565759	Choudhary Sugar Mills Ltd.
United Bank	Gojra	40401016229	Choudhary Sugar Mills Ltd.
NIB Bank	Old Race Course Road Branch, Lahore	4173037	CSML Sugar Division
National Bank of Pakistan	Model Branch Oulberg (Hub Branch)	22.6760-2	Choudhary Sugar Mills Ltd..
Allied Bank Ltd,	Tehsil Road Gojra, 'TT Singh	10000327420043	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/JB	10040003893203	Choudhary Sugar. Mills Ltd.
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/JB	10040002156103	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Chaudhary Sugar Mills Chak No. 282/JB	10040389203	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/JB	1004000389203	Choudhary Sugar Mills Ltd.

Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/jb	10197900419303	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/jb	10040002158103	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/jb	1004002156103	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/jb	10000000000000	Imprest A/C Ch Sugar Mills
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/jb	10040000000000	Imprest A/C Ch Sugar Mills
Habib Bank Ltd.	Choudhry Sugar Mills Chak No. 282/jb	-	Imprest A/C Ch Sugar Mills
Allied Bank Ltd.	Tehsil Road Gojra TT Singh	111500011	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Lahore Corporate Center	12420201055803	Choudhary Sugar Mills Ltd.
Habib Bank Limited	Lahore new Muslim Town	13150012144803	Choudhary Sugar Mills Ltd.
Bank A1-Falah Ltd.	Gojra	16002900004	Choudhary Sugar Mills Ltd.
Bank Al-Falah Ltd.	Gojra	16002900009	Choudhary Sugar Mills Ltd.
Habib Bank Ltd.	Gojra New Railway Road Distt. T.T. Singh	1080020806503	Choudhaly Sugar Mills Ltd

MCB Bank Ltd.	New Garden Town Lahore	108001010028601	Choudhary Sugar Mills Ltd
MCB Bank Ltd.	Gojra Main	33403010000013	Choudhary Sugar Mills Ltd
Faysal Bank Ltd.	Gojra Branch, Gojra	2800070000409	Choudhary Sugar Mills Ltd
Bank Al-Falah Ltd.	Gulerg, Lahore	00281003565760	Choudhary Sugar Mills Ltd
Allied Bank Ltd.	Garden Town, Lahore	10000327420037	Choudhary Sugar Mills Ltd
Habib Bank Ltd.	Lahore New Garden Town, Lahore	10607900267703	Choudhary Sugar Mills Ltd
Habib Bank Ltd.	Coudhary Sugar Mill Chak No. 282/jb	100440002156103	Choudhaly Sugar Mills Ltd
United Bank Ltd.	Liberty Market, Lahotre	96201123776	Choudhary Sugar Mills Ltd
Bank Al-Falah Ltd	Gulberg, Lahore	1003565760	Choudhary Sugar Mills Ltd
The Bank of Punjab	Gojra	0079BTA010327000	Choudhaty Sugar Mills Ltd
Allied Bank Ltd.	Bridge Colony, Lahore	10000327420050	Choudhary Sugar Mills Ltd
Habib Bank Ltd.	Pir Mahal	1747901254703	Choudhary Sugar Mills Ltd
Habib Bank Ltd.	Kot Samaba Main Bazar	9057900416003	Choudhary Sugar Mills Ltd.
MCB Bank Ltd.	Kot Samaba	868800041006967	Choudhary Sugar Mills Ltd..

Soneri Bank Ltd.	Sheikho Sugar Mills	2012906073	Choudhary Sugar Mills Ltd.
Bank Al-Falah Ltd.	Gulberg, Lahore	10033553480	Choudhary Sugar Mills Ltd

The allegations against petitioner/Maryam Nawaz Sharif is that she was appointed as Director of M/S CSML in 1992 and continued untill 1997 and she also served as Chief Executive Officer (CEO) of M/S CSML for the years 1995-96 by acquiring 864,000 ordinary shares which remained in her name till 2008. However, from 2008 to 2010 she became the major shareholder having over 12 Million Shares (47% ownership), whereas co-accused Mian Muhammad Nawaz Sharif, became the major shareholder in the company over 12 Million Shares (46% ownership) during the period 2014 to 2016 while he was the Prime Minister of Pakistan. The petitioner allegedly in connivance with co-accused Mian Muhammad Nawaz Sharif and Abbas Sharif, her uncle, acquired M/S Shamim Sugar Mills (hereinafter to be called as M/S SSML) in the year 2011 without explaining the origin of funds. The petitioner allegedly in aid and abetment with co-accused through illegal means, without disclosing the sources/origin of the funds obtained funds worth US $ 4.8 million. In addition, aided and abetted in obtaining another amount of Rs.230 million from UAE in the form of foreign payments for the ultimate benefit of herself and her co-accused persons without disclosing the source. She thus acquired assets worth Rs.2000 million from the years 2008 to 2018 through illegal means and money laundering by concealing the origin and nature, whereas she remained beneficiary of all such ill-gotten assets.

3. The petitioner was arrested on 08.08.2019 consequent to the warrant of arrest issued by the Chairman NAB and according to NAB during the physical remand she failed to explain the sources of funds for investments of Rs.260 million contributing to the sale price of Rs.1200 million shares, and admitted having acquired shares worth Rs.440 million but again could not explain her sources. She was also confronted with the Telegraph

Transfers (TT) of US$ 4.8 million on 25.11.2010 received from UAE in the account of co-accused Yousaf Abbas Sharif, which was transferred into the account of M/S CSML when she was the major shareholder, but she could not explain the sources of transactions. Likewise, her both cousins namely, Yousaf Abbas Sharif, and Abdul Aziz Abbas Sharif, received 12 payments of Rs.230 million originated from exchange companies based in UAE during the year 2013 and she being the direct beneficiary of foreign transaction could not justify it. According to the NAB, said co-accused/said cousins of the petitioner invested Rs.260 million for acquiring M/S SSML in the year 2011 increasing its worth to Rs.1200 million whereas, they only contributed Rs.230 million from their personal sources and the rest of the investment was not explained. According to Form-A dated 31.12.2008 issued by Securities and Exchange Commission of Pakistan (hereinafter to be called as SECP) in respect of M/s CSML Sheikh Zaka Ud Din was holding 2,021,760, Saeed Saif Bin Jabar Al-Suweidi, 9,409,090, and Hani Ahmed Jamjoon, 97,033 shares making them a total shares of 11,527,883. According to the SECP report, these shares were transferred to the petitioner on 21.05.2008 and the average price of share was Rs.38.17 per share and the shares held by the family were not enough to purchase the shares of above foreigners in the company. According to the Federal Board of Revenue (hereinafter to be called as FBR), record, the petitioner had declared the income of Rs.7,732,370/- between 1992 to 2008 whereas that of co-accused Mian Muhammad Nawaz Sharif, between 1985 to 2008 was 15,640,600/- and that of late Kalsoom Nawaz, of the said year was 6,075,454/- and the amount required to purchase 11,527,883 shares was Rs.440,019,294/-, therefore, they had the deficiency of funds of Rs.41,570,870/-.

4. According to the NAB, during the year 2010 co-accused Yousaf Abbas Sharif, received a telegraphic Transfer (TT) of US $ 4,88,000/- equivalent to PKR 417,472,100/- in his account No. 02809616 maintained at Bank Al-Falah Gulberg Branch, Lahore on 25.11.2010 from Naseer Lootah of UAE as foreign investment in lieu of 11 million original shares

of M/S CSML transferred in his name. However, Naseer Lootah, had denied having made any investment in M/S CSML for purchase of shares and he stated that US $ 4,885,000/ - was invested by Sharif family in 2010 in his real estate business in UAE which was returned to co-accused/Yousaf Abbas Sharif through TT of US $ 4.8 million. This amount of approximately 4.7 million was transferred by Yousaf Abbas Sharif, into the account of M/S CSML in Bank Al-Falah Gulberg Branch, Lahore and as such the petitioner and her father, Mian Muhammad Nawaz Sharif, the major shareholders had become the beneficiary of unexplained proceeds. Yousaf Abbas Sharif was holder of only 3% ownership and in one year he became the owner, of 45% shares as the major shareholder in order to whiten unaccounted funds received from UAE. During the year 2013, Yousaf Abbas Sharif, received 5 payments amounting to Rs. 130 million without declaring the source of income or investment in UAE in his account No.0490162781006118 maintained at MCB Bank Branch New Garden Town, Lahore which he further transferred to M/S CSML account No.0108001010028601 at MCB Bank Branch New Garden Town, Lahore. Likewise, in the year 2013, co-accused Abdul Aziz Abbas Sharif, another cousin of the petitioner, received 7 payments from the exchange companies of UAE amounting to Rs.100 million in his personal account No.516398571005976 maintained at MCB Bank Branch New Garden Town, Lahore without any source of income or investment in UAE from his another account No. 0490162781006118 transferred the amounts in M/s CSML in Account No.01080010110028601 both MCB Bank Branch New Garden Town, Lahore.

5. In nutshell, according to the NAB, the evidence so far collected revealed that petitioner with the co-accused Mian Muhammad Nawaz Sharif, Yousaf Abbas Sharif and Abdul Aziz Abbas Sharif, and others with active aid, abetment and, assistance of each other have accumulated assets disproportionate to their known sources of income in M/s SSM in the year 2011 and in form of huge investments/deposit of unexplained money in the bank account of M/S CSML from year 2008 to 2018, thus the assets

acquired through illegal means by concealing the origin and nature of aforesaid assets, and by creating multiple layers of transactions in order to launder unexplained funds, committed the offences as defined under Anti-Money Laundering AML Act, 2010 read with Section 9(a)(xii) of NAO, 1999.

6. To fortify the prosecution case, it has been emphasized in the report and parawise comments submitted by the NAB that the party of petitioner family Pakistan Muslim League (N) was sitting at the helm of affairs of Pakistan yet the inquiry was conducted and investigation made, and according to the information/record collected, revealed/disclosed from a PANAMA based law firm, namely, Mossack Fonseca commonly referred as "PANAMA PAPERS" the petitioner's family was found to have connections with offshore companies. The Hon'ble Supreme Court of Pakistan seized of the matter constituted a high profiled Joint Investigation Team (to be called JIT) to investigate, and after giving exhaustive hearings, the co-accused Mian Muahmmad Nawaz Sharif, was declared as not honest in terms of Section 99(1)(f) of the ROPA and Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 and disqualified to be a member of Parliament. The apex Court also directed the NAB to prepare and file Reference within six (6) weeks against the petitioner, her husband, father, brothers, amongst other relatives in respect of the Avenfield properties. Resultantly, ACR No. 19 of 2017 was filed and the co-accused Mian Muhammad Nawaz Sharif, was convicted and sentenced which shows that he was the real owner of the assets. According to the NAB, the JIT was constituted with the majority of 3 to 2 by the apex Court and the petitioner joined the proceedings and while admitting the ownership of Avenfield properties introduced certain claims regarding its acquisition. The JIT found that petitioner was the real beneficiary owner of BVI companies namely Nielson Enterprises Limited and Nescoll Limited and the documents presented were found forged/tampered. A Reference No.19 of 2017 was also filed against Mian Muhammad Nawaz Sharif and others regarding, Azizia Steel Company in which he was convicted and sentenced

and Reference No.18 of 2017 was also filed against Mian Muhammad Nawaz Sharif and others regarding 16 companies and Reference No.20 of 2017 was also filed regarding Avenfield properties.

7. Mr. Azam Nazeer Tarar and Mr. Muhammad Amjad Pervaiz, the learned counsel for the petitioner submit that the allegations levelled against the petitioner Maryam Nawaz Sharif is that of abetment and aiding the commission of offence under section 9(a) of NAO, 1999 and that she, is not the principal accused. Add that section 9(a)(xii) of NAO, 1999 was added on 23.11.2002 vide Ordinance No.CXXXIII of 2002 and in view of Article 13 of the Constitution of Islamic Republic of Pakistan, 1973 and the view given in case titled "Brig. (R.) Karrar Ali Agha v. National Accountability Court No.11, Lahore and another" reported as PLJ 2010 Lahore 78 (DB) and case titled "The State through Chairman NAB and others v. Muhammad Asif Saigol and others" reported as PLD 2016 SC 620 (para 12) it cannot be given a retrospective effect. Add that there is no deeming clause in the amending Ordinance, therefore, such amendment is prospective in nature and not retrospective in effect, thus, cannot be applied to the petitioner. Further added that the NAO, 1999 was promulgated on 16.11.1999 and under section 2 whereof it had effect from January, 1985, therefore, it could not be applied on the petitioner on the given allegations. They further contended that the petitioner was born on 28.10.1973 and was minor at the time when M/s CSML was incorporated on 05.04.1981. Argued that she just remained as a shareholder since it was the part of her family enterprise as reflected from Form A issued by SECP in 1983. She remained a Director from 1992 to 1997 and Chief Executive in the year 1995-96 at the time when her grandfather Mian Muhammad Sharif (died on 19.10.2004) had been controlling and supervising the M/s CSML and after his death his other son, namely, Mian Abbas Sharif managed it as CEO until his death on 11.01.2013 whereafter his son Mian Yousaf Abbas Sharif her cousin has been running the M/S CSML as CEO. Also argued that in violation of Article 13 of the Constitution as well as section 403 Cr.P.C., the petitioner is facing repeating prosecution as the JIT has already probed

the matter and Reference has been filed by the orders of Hon'ble Supreme Court of Pakistan in Avenfield, therefore, present investigation/inquiry is unjustified and legally not sustainable. Further argued that the charge was framed in Al-Azizia Reference in respect of the properties including M/S CSML, therefore, further inquiry is uncalled for. Add that the petitioner is not the beneficiary of M/S CSML and that being a mere beneficiary will not attract any offence under NAO, 1999 in view of the law laid down by the apex Court in case titled "Abdul Hameed Dogar v. Federal Government through Secretary Ministry of Interior and 2 others" reported as PLD 2016 SC 454. Added that the STR/CTR was prepared on the basis of surmises and conjectures and the correct figure of the alleged amount was not even mentioned. Add that the case of the petitioner is at the most of vicarious liability which could only be determined by the learned trial court after recording evidence at trial, therefore, she is entitled to post arrest bail. Lastly, submit that petitioner is a woman who is otherwise entitled to the bail keeping in view the various case laws. They relied upon case titled "Muhammad Ikram and others v. The State" reported as PLD 1965 (W.P.) Lahore 461, case titled "Mst. Ramzan Bibi and another v. Hakim Muzaffar Hussain" reported as PLD 1967 Lahore 186, case titled "Ramesh M. Audeshi v. The State" reported as 2002 PCr.LJ 1712, case titled "Ch. Tanveer Khan v. Chairman, National Accountability Bureau and others" reported as PLD 2002 SC 572, case titled "Badar Alam Bachani v. The State through Chairman NAB an another" reported as 2010 PCr.LJ 1988, case titled "Noorshad v. Chairman National Accountability Bureau and 5 others" reported as 2017 PCr.LJ 1258. Also relies upon case titled "Chairman, National Accountability Bureau, Islamabad through Prosecutor General Accountability, Islamabad v. Mian Muhammad Nawaz Sharif and 2 others" reported as PLD 2019 SC 445, case titled "Muhammad Zoonoon Khan v. Federation of Pakistan through Secretary Ministry of Law, Justice, Human Rights and Parliaments Affairs, Islamabad" reported as PLD 2014 Federal Shariat Court 63, case titled "Miss Shahla Raza v. The State" reported as 1991 MLD 1814, case titled "Mst. Afsar Bibi v. The State"

reported as 2005 PCr.LJ 164 and case titled "Khan Haroon Resikh v. The State and 2 others" reported as PLD 2003 Lahore 517. Also places reliance upon case titled "Messrs Hudaibya Paper Mills Ltd. and others v. Federation of Pakistan and others" reported as PLD 2016 Lahore 667 and case titled "National Accountability Bureau (NAB) through Chairman v. Messrs Hudaibya Paper Mills Limited Lahore and others" reported as PLD 2018 SC 296. Also relies upon case titled "Asif Ali Zardari v. The State and another" reported as 1992 PCr.LJ 58, case titled "Tariq Sultan and another v. National Accountability Bureau through Chairman and 2 others" reported as 2012 PCr.LJ 1983, case titled "Dr. Asghar Ali v. The State and others" reported as 2016 PCr.LJ 193.

8. Mr. Jahanzaib Bharwana, learned Additional Special Prosecutor for NAB submits that extra ordinary jurisdiction regarding grant of bail is to be exercised in extra ordinary circumstances and not in run of the mill case or as a matter of course, and only when the custody of the accused was shockingly, unconscionable or inordinately delayed and not otherwise, and that primary consideration for the grant of bail is undue hardship and, more often than not, prima facie merits of the case are also to be looked into. Also submits that High Courts have already been burdened with the bail application under Article 199 of the Constitution, therefore, such powers are to be exercised in circumspection and caution as extra ordinary jurisdiction is invoked and exercised to advance the cause of justice and not to frustrate it or to defeat the intent of law and just to prevent the miscarriage of justice and abuse of NAO, 1999 and not a substitute of power under Sections 426, 491, 497, 498 and 561-A, Cr.P.C. to be exercised liberally and indiscriminately as ordinary criminal jurisdiction. Adds that prima facie sufficient material is available on record to connect the petitioner with the commission of offence and that the purpose of NAO, 1999 is to curb is not commonplace and the offenders who indulged in it are not of the normal type as these are the crimes not against the individual but against the society, therefore, response has to be dynamic and punitive rather than benign or curative and it was also argued that it may be true that

an individual subjected to the rigours of this law may sometime suffer disproportionately but the greater good of the society emerging from stringent applications of this law may make this approach worth its while. According to the learned Prosecutor as stated in the parawise comments, there is a likelihood of her fleeing from the country or going underground or becoming unavailable like co-accused Yousaf Abbas Sharif, who tried to flee/abscond from the country. Adds that record does not show/substantiate the false, evasive, vague and unfounded allegations of malice or mala fide on the part of the NAB, therefore, petition does not qualify to be allowed since factual controversies have been raised. Also submits that Hon'ble Supreme Court of Pakistan had framed 13 questions to be probed by the JIT and vide order dated 28.07.2018, upon the receipt of the said JIT report, NAB was directed to file Reference against Mian Muhammad Nawaz Sharif, petitioner, Hussain Nawaz, Hassan Nawaz and Capt. (R) Muhammad Safdar, relating to Avenfield properties (Flats Nos. 16, 16-A, 17 and 17-A, Avenfield House, Park Lane, London, UK.

9. Arguments heard. File perused.

10. After hearing the learned counsel for the petitioner and the learned Prosecutors for NAB assisted by Investigating Officer/case officer and perusing the record placed before this Court, we have straightway noticed that petitioner being a woman had invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for the grant of her post arrest bail made on the allegation that she aided and abetted as CEO/Director/shareholder of M/s CSML and SSML to facilitate in acquiring of assets disproportionate to the known sources of income of the petitioner, her father namely, Mian Muhammad Namaz Sharif, and others since their investment of Rs.2000 Million was not accounted for. She has also been alleged to have aided her father to acquire 11.572 Million shares of M/S CSML worth Rs.400 Million statedly transferred by three foreign nationals namely, Saeed Saif Bin Jabar Al-Suweidi, Sh.Zaka-ud-Din and Hani Ahmed Jamjoom. Another UAE national, namely, Nasser Abdullah Hussain Lootah, made TT of US$ 4.8

Million as consideration for 11 Million ordinary shares was found false only in view of his statement recorded on 03.08.2019. She has also been alleged to have connived with her father to acquire assets of SSML of worth Rs.1200 Million without disclosing the sufficient funds and thus she aided and abetted her co-accused person to gain and extend pecuniary benefits through corruption and corrupt practices.

11. According to Section 9(a)(xii) of NAO, 1999 if someone aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office, accused of an offence defined in Section 9(a) (i) to (xi) of NAO, 1999, can be punished under Section 10 of NAO, 1999 for a term which may extend to 14 years. This Section was not originally in the Ordinance but was added through Ordinance No. CXXXIII of 2002 dated 23.11.2002 obviously without retrospective effect. However, the allegations were levelled for the period of the year 2008 onward, therefor, this section prima facie can be attracted in the present case with Reference to its existence at the time of alleged crime.

12. Since the case was argued before us with a well-known, background, therefore, it would be expedient to lay down some basic premise for the purposes of our discussion essential for the order in present case. In the judgment reported as PLD 2017 Supreme Court 692, a final order was announced under which NAB Rawalpindi/ Islamabad was directed to file Reference within a period of 6 weeks on the basis of material collected and referred to by the JIT in its report and such other material as may be available with FIA and NAB having any nexus with the assets mentioned or which may subsequently become available pursuant to the Mutual Legal Assistance Request sent by JIT to different jurisdictions. In clause "a" of the said order Reference was to be filed against the petitioner and others in respect of Avenfield properties in UK and under clause "c" on the basis of statements of Sheikh Saeed, Musa Ghani, Kashif Masood Qazi, Javaid Kiyani and Saeed Ahmed, made against the petitioner leading to the acquisition of assets beyond the known sources of income, and under clause "f" any supplementary Reference could also be filed. Notably, M/S

CSML was not mentioned anywhere. Relevant extract is reproduced as under:-

> "FINAL ORDER OF THE COURT.
>
> The National Accountability Bureau (NAB) shall within six weeks from the date of this judgment prepare and file before the Accountability Court, Rawalpindi/Islamabad, the following References, on the basis of the matrial collected and referred to by the Joint Investigating Team (JIT) in its report and such other nmterial as may be available with the Federal \Investigation Agency (FIA) and NAB having any nexus with assets mentioned below or which may subsequently become available including material that may come before it pursuant to the Mutual Legal Assistance requests sent by the JIT to different jurisdictions:-
>
> (a) Reference against Mian Muhammad Nawaz Sharif, (respondent No.1) Maryam Nawaz Sharif (Maryam Safdar), (Respondent No.6), Hussain Nowaz Sharif (Respondent No.7), Hassan Nawaz Sharif (Respondent No.8) and Capt. (Retd). Muhammad Safdar (Respondent No.9) relating to the Avenfield properties (Flats Nos. 16, 16-A, 17 and 17-A Avenfield House, Park Lane, London, United Kingdom). In preparing and filing this Reference, the NAB shall also consider the material alrady collected during the course of investigations conducted earlier, as indicated in the detailed judgments.
>
> (b)
>
> (c) ..
>
> (d) ..
>
> (e) NAB shall also include in the proceedings all other persons including Sheikh Saeed, Musa Ghani, Kashif Masood Qazi, Javaid Kiyani and Saeed Ahmed, who have any direct or indirect nexus or connection with the actions of respondents Nos.1, 6, 7, 8 and 10

leading to acquisition of assets and funds beyond their known sources of income.'

13. On 12.01.2018 STR/CTR were received in respect of politically exposed persons and linked individuals/entities on the basis of details in Volumes 1 and 2 of the report submitted before the Supreme Court and according to clause 5 thereof, in respect of M/S CSML, the petitioner was mentioned as one of the directors amongst many others; a status which is not denied by the petitioner. In the analysis of STR/CTR, a reference was given to the report submitted by HBL in respect of M/S CSML dated 22.09.2017 in respect of account maintained with their Corporate Center Branch since 24.10.1998 and under clause "5(a)" of CONCLUSION AND RECOMMENDATIONS a mention was made to the judgment of PANAMA Papers against Mian Muhammad Nawaz Sharif by the Supreme Court of Pakistan and it was stated that M/S CSML had maintained several accounts in the business name of HBL, some of them have been closed and some remained dormant since it was mostly for business transaction. One transaction in the MCB Bank account of Mian Muhammad Nawaz Sharif reflects transfer of Rs.18.019 Million to M/S CSML and Rs.2.335 Million transferred from SCB account to Mian Muhammad Nawaz Sharif and then to M/S CSML. But the name of the petitioner does not figure out anywhere. Relevant excerpt is reproduced as under:-

"5. The other STRs/CTRs received pertained to Chaudhary Sugar Mills Ltd, Mian Muhammad Shahbaz Sharif and some possibly linked individuals. The STRs were raised in the backdrop of the judgment on Panama Papers case against Mian Muhammad Nawaz Sharif by the Supreme Court of Pakistan.

a. Chaudhary Sugar Mills had been maintaining several accounts in the business name with HBL, some of which have been closed or become inactive over a period of time. However, the suspicion was not raised on any particular transaction in the accounts of Chaudhary Sugar Mills. The transactions in the accounts mostly

appear to be business transactions. One of the transactions in the MCB account of Mian Nawaz Sharif reflects transfer of Rs.18.019 M to M/s Chaudhary Sugar Mills Ltd Likewise, funds amounting to Rs.2,335 M were transferred from SCB account of Mian Nawaz Sharif to M/s Chaudhary Sugar Mills Ltd."

14. These two important foundations do not prima facie, expose the name of petitioner directly to suggest that she actively participated, connived, abetted or aided to acquire assets disproportionate to the known sources of income since no connection of the petitioner was established with said foreign nationals in order to persuade them to invest in M/S CSML to attract the provisions of NAO, 1999 and AMLA 2010.

15. It has also not been denied by either party that during the proceedings in the PANAMA case, M/S CSML never remained as a subject of discussion, therefore, in our considered view NAB can possibly probe and investigate into the matter and the question of double jeopardy would not prima facie arise in favour of the petitioner. Article 13 of the Constitution and section 403 Cr.P.C. and the judgment cited at bar do not support the petitioner, therefore, the judgments cited at bar titled "Muhammad Ikram and others v. The State" reported as PLD 1965 (W.P.) Lahore 461, case titled "Mst. Ramzan Bibi and another v. Hakim Muzaffar Hussain" reported as PLD 1967 Lahore 186, case titled "Ramesh M. Audeshi v. The State" reported as 2002 PCr.LJ 1712, case titled "Ch. Tanveer Khan v. Chairman, National Accountability Bureau and others" reported as PLD 2002 SC 572, case titled "Bader Alam Bachani v. The State through Chairman NAB and another" reported as 2010 PCr.LJ 1988, case titled "Brig. (R) Karrar Ali Agha v. National Accountability Court No.II, Lahore and another" reported as PLJ 2010 Lahore 78(DB), case titled "Noorshad v. Chairman National Accountability Bureau and 5 others" reported as 2017 PCr.LJ 1258 will not be attracted to the present case.

16. Likewise, the other argument raised from the petitioner's side is that at the time of incorporation of M/S CSML in the year 1981, the petitioner

was a minor, therefore, she cannot be held responsible for any such transaction but this argument cannot be appreciated at this stage for the simple reason that allegations against her pertain to year 2008 and onward when she was not only major but also shareholder with increased shareholding in M/S CSML.

17. However, as far as the ownership of share of Nasser Abdullah Hussain Lootah, a UAE national is concerned, the official record pertaining to SECP does not show that he was not the shareholder, therefore, ipso facto his denial of this fact mentioned in Form A dated 10.02.2012 needs further probe since correction of this record require some procedure to be adopted by him, which we have not noticed in the present case. Besides, presumption of truth is attached to the Form A as held in case titled "Waseem Yaqoob v. Chief Commissioner, Income Tax, Lahore and 2 others" reported as 2012 PTD 1883. The relevant extract is reproduced as under:-

> In the instant case it has done so and accordingly, the Company filed the Form A for the year 1997. Furthermore, section 155 of the C O 1984 provides that the registers referred to in section 156 shall be prima facie evidence of the matters contained therein. Section 156(4) provides that all the particulars to be submitted under section 156(1) and (2) shall have been entered in the register maintained with the company. Reading both these sections together means that the Form A is prima facie evidence of the matters contained therein and if the respondents refute or deny the information then, it should be through cogent evidence supporting their stance.'

Importantly, he has admitted before the NAB that he sent the money out of the investment made by the petitioner's family in real estate on their instructions back to them though he does not own any share in M/S CSML. In our considered view, the petitioner has prima facie shown her money trail linked to the said foreigners, leaving the prosecution to further probe into the matter of the allegation against the petitioner. We were informed

that Mr. Lootah had made a statement on 03.08.2019, photocopy of which was neither certified nor notarized by foreign office. However, a statement was recorded under Section 164, Cr.P.C. before the court of Waseem Ahmed Khan, Additional District Magistrate, Islamabad on 05.08.2019, repeating the said statement, in the absence of the petitioner and her learned counsel without permitting the right to cross-examine, therefore, its effect may be considered by the trial court after recording of evidence. Besides, the fact of TT US$ 4.885 Million sent to Yousaf Abbas Sharif's account in Pakistan as a profit/investment from real estate made by the family of the petitioner would shift the onus back to the prosecution to prove it as a dubious transaction. Importantly, statements of other three foreigners namely, Saeed Saif Bin Jabar Al-Suweidi, Sh. Zaka-ud-Din and Hani Ahmed Jamjoom, have not so far been recorded by the prosecution who were also mentioned as shareholder vide Form A dated 21.05.2008, therefore, calling for further probe into the guilt of the petitioner. In case titled "Abdul Aziz Memon and others v. The State and others" reported as PLD 2013 SC 594, it was held that even the foreign officer making transaction with the holder of public office may become accused and falling in any category of "accused persons" but in the present case such foreigners were not cited as accused persons.

18. Besides, in "Abdul Hameed Dogar v. Federal Government through Secretary, Ministry of Interior and 2 others" reported as PLD 2016 SC 454, it has been held that there is a difference between an aider/abettor and a beneficiary as the former abets or aids with another who is a privy to the acts itself but a beneficiary takes the benefit or advantage of the said act after the event. In the present case, as already discussed above, it has not come on record that the petitioner had in any manner aided, abetted to persuade the foreign nationals to send their money into M/s CSML account.. The relevant extract of the judgment at page 461 is reproduced as under:-

> "The difference between an aider/ abettor and a beneficiary is quite obvious. A person aiding or abetting another in an act is privy to the

act itself but a beneficiary takes benefit or advantage of the act after the event and he may not necessarily be a party to the act itself:"

19. Here a reference can also be given to case titled "Asif Ali Zardari v. The State and another" reported as 1992 PCr.LJ 58, passed by the Division Bench of Hon'ble Sindh High Court in which the offence of abetment was explained with reference to its ingredients which shows the elements of mens rea as sine qua non for the constitution of the said offence. The relevant extract from page 70 is reproduced as under:--

> "The offence of abetment has been defined by section 107 of the Pakistan Penal Code. The definition shows in the first instance, that a person abets the doing of a thing who instigates any person to do that thing. Secondly, a person is also said to abet the doing of a thing who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. Thirdly, a person is said to abet the doing of a thing if he intentionally aids, by any act or illegal omission, the doing of that thing. In Ballentine's Law Dictionary the word instigate has been defined to mean 'to stimulate or goad to an action, specially a bad act, to incite, to foment, specially the commission of a crime'. The same ward has also been defined by Black's Law Dictionary as 'to stimulate or goad to an action, specially a bad action'. 'Instigation' has been defined by the same Dictionary to mean 'incitation, urging, solicitation. The act by which one incites, another to do something, as to commit some crime or to commence a suit'."
>
> "We would like to point out that, as is evident from the definition of abetment contained in section 107, Cr.P.C. mens rea would be an essential ingredient of the said offence. Maxwell on the Interpretation of Statutes (12th Edn.) at page 123 observes: 'where an offence is created by Statute, however comprehensive and unqualified the language of the Statute, it is usually understood as

silently requiring that the element of mens rea should be imported into the definition 'of the crime, unless a contrary intention is expressed or implied'. The definition of abetment in section 107, P.P.C. relates to instigation, conspiracy and intentional aiding. An element of criminality must, therefore; be clearly spelt out before a person can be indicted for abetment."

20. On the question of assets beyond means, in case titled "Ghani-ur-Rehman v. National Accountability Bureau and others" reported as PLD 2011 SC 1144, it has been held that mere possession of any pecuniary resources of property is not an offence but its failure to satisfactorily account for such possession of pecuniary resources of property that makes the possession objectionable and constitute the relevant offence. This view has already been adopted by this court in case titled "Brig. (R) Imtiaz Ahmed v. The State" reported as PLD 2017 Lahore 23 for assets beyond means which has been upheld by the Hon'ble Supreme Court of Pakistan. The observations of their lordships read as under:-

"To cater the situation we have been guided again by the Supreme Court of Pakistan in Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 Supreme Court 1144), wherein it was held that the prosecution must bring on record the misuse of authority of the public servant to show that the assets built by him is disproportionate to the known source of income. Relevant extract of said judgment is reproduced as under:-

"The law now stands settled that in order to prove commission of an offence under section 9(a)(v) of the National Accountability Ordinance, 1999 it has to be proved by the prosecution as to what were the known sources of income of the accused person at the relevant time and that the resources or property of the accused person were disproportionate to his known sources of income and it is after such proof has been led and the necessary details have been provided by the prosecution that the onus shifts to the accused

person to account for such resources or property because mere possession of any pecuniary resource or property is by itself not an offence but it is failure to satisfactorily to account for such possession of pecuniary resource or property that makes the possession objectionable and constitutes the relevant offence. In the case in hand the appellant's sources of income had never been brought on the record by the prosecution and had never been quantified by it at any stage of this case and, therefore, it was not possible for the learned trial court to conclude or to hold that the appellant or his dependants or so-called benamidars owned or possessed assets or pecuniary resources disproportionate to the appellant's income. It is unfortunate that the investigating officer of this case as well as those responsible for prosecution af this case before the learned trial court had, probably on account of their sheer incompetence, utterly failed to do the needfid in this regard and it is regrettable that even the learned trial court as well as the learned appellate court had completely failed to advert to this critical aspect of the present case."

21. As far as section 3 of Anti-Money Laundering Act, 2010 is concerned, it will be expedient to reproduce the same:-

"3. Offence of money laundering.-A person; shall be guilty of offence of money laundering, if the person:- (a) acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime; (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime; (c) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or (d) participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c). Explanation-I.- The knowledge, intent or

purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984). Explanation II.- For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required."

Perusal of said Section reveals that there has to be some nexus with the crime proceeds and, therefore, it pre-supposes that some crime had been committed. According to the learned Prosecutor, the offence under NAO, 1999 is an "intended" crime, therefore, to attract the ingredients of this Section, further investigation will be required. In case titled "Syed Mushahid Shah and others v. Federal Investment Agency and others" reported as 2017 SCMR 1218, it has been held that in case of conflict between two special laws containing overriding clauses, the later-in-time would prevail over the statute prior in time but this is not automatic instead a host of other factors will be attracted. Obviously, AMLA 2010 is later in time which attracts lesser punishment, therefore, it would be interesting discussion before the trial court on this aspect.

22. The question of making layers and becoming beneficial also requires further probe since it is not the prosecution case that investments in the real estate in UAE was out of some crime proceeds in the form of ill-gotten money. It is also not the prosecution case that said money coming from UAE was black money having origin from some crime proceeds of internationally recognized crimes like terrorism, etc. Undoubtedly, attracting foreign investment has always been a perennial demand of every government and all governments would dream of it but great hurdles were always faced by them to make it a reality.

23. We have been shown the bank statement of Account No.0149056661004053 in the name of petitioner in which transaction of Rs.41,06,6200 and Rs.28,933800 were made in the month of November, 2011 and a sum about seven crores rupees were withdrawn in the same

month by the petitioner but on the face of it, it does not help out the prosecution for the simple reason that it is not the prosecution case that M/S CSML was bankrupt or was in loss, therefore, no money could be withdrawn by shareholder/CEO. However, this aspect of the matter can be probed by the NAB. It was held by this court in case titled "Dr. Asghar Ali v. The State and another" reported as 2016 PCr.LJ 193 that the benefit of any such transaction should be clear and visibly established and should not be shrouded in mystery. The withdrawal of amount of Rs.7 crore as alleged by the NAB, cannot be termed as illegal gotten money or an asset beyond known source of income since prima facie the source of money was shown in the official record of the M/s CSML with Reference to foreign investment.

24. The judgments cited by the prosecution as case titled "Tallat lshaq v. National Accountability Bureau through Chairman, and others" reported as PLD 2019 SC 112, does not totally oust the jurisdiction of this court under Article 199 of the Constitution for the simple reason that the constitutional jurisdiction which is always attracted where there is absence of alternate and efficacious remedy. However, besides considering the hardship of the case, merits of the case will always be taken into consideration at the time of deciding of bail application. It is true that corruption and corrupt practices are rampant in our society, therefore, needed to be curbed with iron hands but at the same time, this court cannot keep its eyes off the legal proposition that bail cannot be withheld as a punishment since this court would otherwise transgress into the power of the trial court to return its finding upon guilt on the basis of evidence. In case titled "Abdul Aziz Khan Niazi v. The State through Chairman NAB, Islamabad" reported as PLD 2003 SC 668, it was held that the ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of (woman) bail granted to him, but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run.

The relevant extract is reproduced as under:-

> "6. The grant of bail in Constitutional jurisdiction by High Court is entirely discretionary but there can be no deviation to the rule that discretion should not be exercised in violation of recognized principles of justice and if it is exercised only on the basis of presumption, inference, suspicion or bare allegation, it would defeat the very purpose of discretion. The High Court, in exercise of its discretion, should not proceed in departure to the recognized principles and in case such an error is committed, the Supreme Court is always empowered to interfere in the matter in the interest of complete justice. The law does not permit to detain the people in jail only on the basis of presumption and suspicion of commission of criminal acts, therefore, it is the duty of Court to administer the justice, prevent the abuse of law and protect the liberty of people. The High Court while considering the question of bail in its Constitutional jurisdiction can examine the nature of allegation on the basis of tentative assessment of the evidence in the hands of prosecution to ascertain prima facie, the question of guilt or innocence of an accused for the purpose of grant or refusal of bail and without expressing on the merits of the case, lest it should prejudice the accused or prosecution, should exercise discretionary jurisdiction in the interest of administration of justice. This is settled law that bail cannot be claimed as a matter of right but there can also be no departure to the rule that bail in non-bailable offences should not be withheld as punishment, therefore, the High Court while dealing with the question of bail in its Constitutional jurisdiction must consider it carefully and weighed in the scale of justice. The reasonableness of the grounds for withholding the bail to person accused of a non-bailable offence must be shown through the material and merely a suspicion may be sufficiently strong, is not enough to refuse the bail. There can be no cavil to the position that the High Court may or may not interfere in a matter in its

discretionary jurisdiction but refusal to interfere must not offend the spirit of law and cause of justice as the object of exercise of discretionary jurisdiction is always to foster the justice, preserve the rights and protect the liberties. This Court in Manzoor and 4 other v. State (PLD 1972 SC 81) held as under:--

"It is important to remember that bail is not to be withheld as a punishment. There is no legal or moral compulsion to keep people in jail merely on the allegation that they have committed offences punishable with death or transportation, unless reasonable grounds appear to exist to disclose their complicity. The ultimate conviction and incarceration of a guilty person can repair the wrong caused by a mistaken relief of interim bail granted to him but no satisfactory reparation can be offered to an innocent man for his unjustified incarceration at any stage of the case albeit his acquittal in the long run."

This judgment, with utmost respects, of the Honble Supreme Court, was neither discussed nor referred in Tallat Ishaq's case.

25. Besides, this court in W.P.No.42682-2019 titled "Muhammad Sabtain Khan v. National Accountability Bureau and others" and W.P.No.581-2019 titled "Hafiz Mian Muhammad Nauman v. Director General NAB and others", has decided that in appropriate cases the constitutional jurisdiction in respect of the grant of bail can be exercised and, therefore, fully attracted in the present case.

26. The petitioner had also filed an application for the interim bail so as to see her ailing father already hospitalized in which we have been informed by the State that she is accompanying her father in the hospital to look after his health, therefore, prayer to the extent of grant of interim bail has not been pressed by the learned counsel for the petitioner.

27. The petitioner also seeks bail on the ground that she is a woman and refers to the judgment given in case titled "Miss Shahla Raza v. The State" reported as 1991 MLD 1814 and case titled "Mst.Afsar Bibi v. The State"

reported as 2005 PCr.LJ 164, in which it was held that grant of bail to a woman is also discretionary but the courts have always been leaned towards such exercise, therefore, grant of bail to a woman should be a rule and discretion must be exercised in her favour in the absence of compelling circumstances disentitling her to the grant of bail. In the present case the exceptional circumstances do not appear to attract in favour of the prosecution, since she has neither absconded nor obstructed the process of law. A reference may also be given to case titled "Zohra Khanum v. The State" reported as 2009 SCMR 751 in which the Honble Supreme Court of Pakistan has held that showing the common intention/abetment by a woman even in a murder case required further probe, therefore, the bail was granted. Besides, in the judgment titled "Chairman, National Accountability Bureau, Islamabad through Prosecutor General Accountability, Islamabad v. Mian Muhammad Nawaz Sharif and 2 others" reported as PLD 2019 SC 445 it was already observed that the petitioner being a woman was rightly granted to concession of bail. Relevant extract of para 6 is reproduced as under:-

> 'One of the said respondents is already in jail after having been convicted and sentenced in connection with another criminal case, another of the said respondents is a woman and the law envisages concession for her in the matter of bail and the sentence of imprisonment passed by the trial court against yet another of the said respondents was quite short."

28. Since the prosecution has shown the bank statement of the account No.0149056661004053 of the petitioner in which on 28.11.2011 vide Cheque No.39438534, Rs.7 crores were withdrawn and the prosecution has apprehension of fleeing away of the petitioner, therefore, to satisfy our judicial conscience we would pass a conditional order.

29. Keeping in view the above discussion and the case law cited by the respective parties, while exercising the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 we

allow this petition and admit the petitioner to post arrest bail subject to furnishing of surety bonds in the sum of Rs.10 Millions with two sureties each in the like amount to the satisfaction of the learned trial court and to establish her bona fide would also deposit amount of Rs.7 crore with the Deputy Registrar (Judicial) of this court besides submitting her passport(s) with him.

MH/M-183/ **Petition allowed.**

PLJ 2020 Lahore (Note) 143

Present: ALI BAQAR NAJAFI, J.

MUSTAFA KAMAL--Petitioner

versus

SECRETARY LABOUR (LABOUR DEPARTMENT) LAHORE and 3 others--Respondents

W.P. No. 11035 of 2012, decided on 2.4.2013.

Constitution of Pakistan, 1973--

----Art. 199--Petitioners were serving as junior clerks in PESSI--Applications for post of assistant in PESSI--Merit list--Issuance of appointment letters--Cancellation of appointments--Unheard condemnation--Criteria for appointment--Principle of *locus poenitentiae*--Recruitment policy--Non-serving of show-cause notice--Non-conducting of preliminary inquiry--Principle of natural justice--Neither any show-cause notice was ever served upon petitioners nor any preliminary inquiry was conducted requiring petitioners to explain as to why their appointments should not be cancelled--There is no allegation against petitioners of tempering with record or making misstatement of committing any fraud as leveled against petitioners--Out of 12 candidates, petitioners were selected and after passage of two months their appointments were cancelled--Purpose of transparency of system does not give licence to authority to compromise on basic principle of natural justice--I may add here that principle not only perpetuates justice but also further make it beneficial to all concern--Any irregularity, whatsoever if committed by appointing department itself, appointee could not be harmed, damaged or condemned subsequently when it occurred to department that it had itself committed some irregularities *qua* any appointment--Authorities have passed impugned

older without hearing petitioners and in disregard of principle of law mentioned above--Petitions was accepted.

[Para 9, 10 & 11] A, B, C & D

2011 PLC (CS) 942 *ref.*

Mr. Muhammad Mumtaz Faridi, Advocate for Petitioner.

Mr. Rashid Saeed, Advocate for Respondents.

Ch. Nazir Ahmad Kamboh, Advocate for Applicant (in C.M. No. 3 of 2013).

Date of hearing: 2.4.2013.

JUDGMENT

This judgment shall dispose of Writ Petition No. 11035 of 2012, titled *"Mustafa Kamal vs. Secreiary Labour, etc"* and Writ Petition No, 12914 of 2012, tilled *"Azhar Mehboob, etc. vs. Secretary Labour, etc"* as common question of law and facts are involved in both these writ petitions.

2. The petitioners in both the Constitutional Petitions challenge order dated 28.4.2012 passed by Respondent No. 2, whereby the appointment of the petitioners was cancelled for the purpose of transparency of the system and for the redressal of the grievance of Respondent No. 4 by further directing to observe the policy and to proceed afresh in the light of provisions contained in the Recruitment Policy 2004 dated 29.12.2004.

3. Brief facts giving rise to the filing of this writ petition are that the petitioners were serving as Junior Clerks in the Directorate of Punjab Employees Social Security Institution, Shahdara, Lahore (PESSI). Respondent No. 3 *vide* circular dated 24.11.2011 invited the applications for filling of the posts of Assistants amongst the PESSI employees having qualification of DA/B.Sc against 25% quota for the posts of Assistants to be

filled through the initial recruitment. As the petitioners possessed Master degrees, and having requisite qualifications and experience, filed applications for appointment/ promotion as Assistants and out of 12 employees where-after the petitioners were selected against four posts. The petitioners were issued letter of interview and they were subjected to written test, wherein the combined merit list was prepared and Almas Gull was placed at Serial No. 1, Mustafa Kamal at Serial No. 2, Azhar Mehboob at Serial No. 3 and Rizwan Ali at Serial No. 4 and were declared successful candidates. Consequently, they were issued appointment letters *vide* order dated 23.02.2012 and they joined their new assignments.

4. Respondents No. 4 aggrieved of the appointments made filed representation before Respondent No. 1 and on 28.04.2012 Respondent No. 2 directed Respondent No. 3 to cancel the appointments of the petitioners vide the impugned order, hence this writ petition.

5. Respondents No. 1 & 2 filed their report and Parawise comments controverting the stance taken by the petitioners and pray for dismissal of both the writ petitions.

6. Learned counsel for the petitioners submits that the petitioners have been condemned unheard; that they were not afforded opportunity of hearing to explain the actual position; that the recruitment against the posts of Assistants were to be filled against 25% quota amongst the Punjab Employees Social Security Institution (PESSI); that the contestants were thoroughly scrutinized as to the objective criteria for the appointment after observing transparency and by legal and coddle formalities; that the appointment of the petitioners were not based on any fraud or mis-representation or mis-statement, therefore, the benefit of principle of *locus poenitentiae* is fully attracted to the case of the petitioners; that Respondent No. 1 wanted to accommodate the blue-eyed candidates having political backing; that the

Recruitment Policy 2004 was fully implemented in the case of the appointments of the petitioners; that all the marks were awarded on the basis of formula laid down by the department itself; that earlier Writ Petition No. 8547 of 2012 was disposed of on 6.4.2012, wherein a direction was issued to the respondents to provide necessary documents to the petitioners and even then the direction was not complied with. Places reliance on *District Coordination Officer, District Dir Lower and others v. Rozi Khan and others* (2011 PLC (CS) 942), *Mst. Msibah Fatima vs. Province of Punjab through Secretary and 4 others* (2011 MLD 1494), *Asghar Ali and another vs. Secretary, Local Government and Rural Development, Government of Punjab, Lahore and 4 others* (2000 PLC (CS) 366) and *Director, Social Welfare, N.W.F.P. Peshawar vs. Sadullah Khan* (1996 SCMR 1350).

7. Conversely, learned counsel for the respondents submits that *vide* merit list the numbers of the petitioners were incorrectly calculated; that the respondents-authorities have cancelled the appointment just to ensure transparency and after noting down the irregularities committed during this process; that both these writ petitions are not maintainable against the impugned order dated 28.04.2012 as the matter relates to the terms and conditions of service and also adequate remedy is available to the petitioners by filing representation and prays for dismissal of these petitions.

8. I have heard the learned counsel for the parties and perused the record.

9. The impugned order dated 28.4.2012 reveals that the appointment of the petitioners made were cancelled for the purpose of transparency of the system and for the redressal of the grievance of Respondent No. 4 (with further direction to observe merit policy and to proceed afresh in the light of the ft provisions contained in the Recruitment Policy, 2004). Admittedly, prior to passing of this order neither any show-cause notice was ever served upon

the petitioners nor any preliminary inquiry was conducted requiring the petitioners to explain as to why their appointments should not be cancelled. There is no allegation against the petitioners of tempering with the record or making misstatement of committing any fraud as leveled against the petitioners. Out of 12 candidates, the petitioners were selected and after passage of two months their appointments were cancelled.

10. I am constrained to observe here that the purpose of transparency of the system does not give the licence to the authority to compromise on the basic principle of natural justice. I may add here that the principle not only perpetuates the justice but also further make it beneficial to all concern. "I will be unjustified if I do not observe here that in order to redressal grievance of an individual complainant the appointment made on merits are struck down without hearing the other side i.e. the petitioners." This essentially requires the respondents to reach on definite conclusion after hearing the stake holders i.e. the petitioners. The appointments were made by the competent authorities after observing the due process of law. No proper inquiry such as issuing charge sheet, statements of allegation, show-cause notice have been issued to the petitioners. Needless to state that any irregularity, whatsoever if committed by the appointing department itself, the appointee could not be harmed, damaged or condemned subsequently when it occurred to the department that it had itself committed some irregularities *qua* any appointment. I place my reliance upon *District Coordination Officer, District DIR Lower and others v. Rozi Khan and others* (2011 PLC (CS) 942).

11. In this view of the mutter, I am convicted that the authorities have passed the impugned older without hearing the petitioners and in disregard of the principle of law mentioned above. Resultantly, both these writ petitions are accepted and the impugned order is set aside and Respondent No. 3 is

directed to proceed against the petitioners by issuing them proper charge sheet in accordance with law and re-decide the matter.

Civil Misc. No. 3 of 2013

12. In view of the finding given above, this civil miscellaneous having no merits, is dismissed.

(Y.A.) **Petitions accepted.**

PLJ 2020 Lahore 467

[Multan Bench, Multan]

Present: ALI BAQIR NAJAFI J.

Raja GUL SHAHID AHMAD--Petitioner

versus

ADMINISTRATOR/DIRECTOR GENERAL PHOTA LAHORE etc.--Respondents

W.P. No. 14189 of 2017, decided on 19.12.2017.

Transplantation of Human Organs & Tissues Act, 2010 (VI of 2010)--

----Ss. 10 & 14(iii)(d)--Punjab Transplantation of Human Organs and Tissues Rules, 2012, R. 14(iii)(d)--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Conducting of cornea transplant operation--Qualification for registration of transplant surgeon--Illegal transplantation of human organs--Challenge to--It is not denied by Respondents No. 2 and 3 that Respondent No. 3 is not a registered practitioner for cornea transplant as mentioned from his reply--In case of petitioner it appears that, matter was agitated by him but it was not pursued vigorously for reason best known to petitioner. However, a complaint before Punjab Healthcare Commission is pending where authority will be in a better position to appreciate grievance and give finding on allegations levelled by petitioner--Petition was disposed of. [Pp. 469 & 470] A & B

Petition in Person.

Mr. Muhammad Javed Saeed Pirzada, AAG with Imran Ahmed, Director Legal PHOTA.

Mahar Zameer Hussain Sandhal, Advocate for Respondent No. 3.

Date of hearing: 6.12.2017.

ORDER

Through this constitutional petition a direction is sought to be issued to the Respondents No. 1 and 2 to decide the complaint of the petitioner with a further direction to Respondent No. 2 to take legal action against Respondent No. 3.

2. Brief facts giving rise to the filing of this constitutional petition are that Respondent No. 3/Dr. Manzoor Hussain Malik conducted a cornea transplant operation of the petitioner on 02.02.2015 but it had failed which fact was not conveyed to the petitioner for more than 1½ years. The petitioner had to go to India where his second transplantation was successfully conducted by Dr. Neera Agarwal, Eye Surgeon at New Delhi India, on 22.7.2016 as a result of which the petitioner's vision of his left eye was recovered. The petitioner inquired and then came to know that Respondent No. 3 was not an authorized eye surgeon for the purposes of transplantation of eye under the Transplantation of Human Organs and Tissues Act, 2010. Aggrieved of the acts of Respondent No. 3, a complaint was filed before Respondent No. 1 to take legal action against Respondent No. 3 but it has not been decided, hence this writ petition.

3. In the report and parawise comments submitted by Respondents No. 1 and 2/Punjab Human Organs Transplant Authority (PHOTA) constituted to eradicate the menace of illegal transplantation of human organs and tissues by regulating the sphere of transplantation of human organs and tissues for therapeutic purposes. It was also admitted that a complaint was submitted by the petitioner upon which a show-cause notice was sent to Respondent No. 3 and the reply was received where he was only warned by Respondent No. 2 upon the direction of Respondent No. 1 with observation, to get himself registered with PHOTA and that in case any complaint is received against him, strict action was to be taken against him. However, it was also mentioned that a complaint was pending before the Punjab Healthcare Commission. It was also mentioned in paragraph 7 that Respondent No. 3 was not a registered transplant surgeon with PHOTA, therefore, his cancellation of registration is out of question, though he has undertaken in his reply that he had already left

transplantation since February 2015 and unless registered with PHOTA he would not practice human organ transplantation.

4. Learned counsel for Respondent No. 3 submits that the petitioner has already approached the Consume Court against the said respondent where the complaint has been dismissed, and that on 14.03.2017 a compromise was also effected between the parties resulting into the withdrawal of another private complaint by paying an amount of Rs. 1,50,000/- to the petitioner. It was also specifically alleged that a complaint before the Punjab Healthcare Commission has been filed on 02.01.2017 under Section 28(b) of the Punjab Healthcare Commission Act, 2010.

5. The stand of Respondent No. 3 is that after the dismissal of the complaint before the Consumer Court and withdrawal of the private complaint from the Court of Magistrate the matter was compromised and according to Respondent No. 3 a complaint before the Punjab Healthcare Commission is also pending.

6. Arguments heard and record perused.

7. Under the Punjab Transplantation of Human Organs and Tissues Rules, 2012 made under Section 9 of the Transplantation of Human Organs and Tissues Act, 2010 qualifications for registration of a transplant surgeon have been prescribed and under Rule 14(iii)(d) it is described that for cornea transplantation, FCPS, M.S. ophthalmology or equivalent qualification with at least one year post FCPS or M.S. with training at a recognized hospital carrying out corneal transplant operations is mandatory. Rule 14(iii)(d) of the Punjab Transplantation of Human Organs and Tissues Rules, 2012 is *reproduced* as under:--

> "(d) cornea transplantation: FCPS, M.S. ophthalmology or equivalent qualification with at least one year post FCPS or M.S. training in a recognized hospital canying out corneal transplant operations."

It is not denied by Respondents No. 2 and 3 that Respondent No. 3 is not a registered practitioner for cornea transplant as mentioned from his reply. Section 10 of the Transplantation of Human Organs and Tissues Act, 2010 prescribed the punishment for removal of human organs without authority.

Under Section 8(2) the Monitoring Authority is responsible to monitor transplantation and enforce the standards, investigate and hold the inquiry into the allegations of breach of any provision of the Act. This Act was promulgated on 18.3.2010. On 05.07.2014 vide Notification No. S.O. (H&D) 7-7/2012(HOTA) dated 27.06.2014 the Chief Minister, Punjab, has already constituted regional Divisional Level Committees headed by Commissioner of the Division with Regional Police Officer (RPO), Principal of Medical College, Director Health and one expert of the relevant field as its members with the power to examine and investigate the complaint regarding the alleged illegal transplants in their divisions. In the comments certain copies of the FIRs registered under Sections 10/11 of the PHOTA, 2010 have been enclosed.

8. From the perusal of the Transplantation of Human Organs and Tissues Act, 2010 and Punjab Transplantation of Human Organs and Tissues Rules, 2012 and Notification No. S.O. (H&D) 7-7/2012(HOTA) dated 27.06.2014, it is apparent that the Government has taken serious steps in curbing the illegal transplantation of human tissues and organs and such act has also been made an offence under Sections 10/11 of PHOTA, 2010. However, in the case of the petitioner it appears that the matter was agitated by him but it was not pursued vigorously for the reason best known to the petitioner. However, a complaint before the Punjab Healthcare Commission is pending where the authority will be in a better position to appreciate the grievance and give finding on the allegations levelled by the petitioner.

8. In view of the facts given by the respective parties and also the documents brought before this Court showing their conduct, it is appropriate that this writ petition is disposed of with an observation that the complaint before the Punjab Healthcare Commission, if pending, will be attended to and decided in accordance with, law at the earliest.

(M.M.R.) **Petition disposed of.**

2021 C L D 1441

[Lahore]

Before Ali Baqar Najafi, J

The UNIVERSAL INSURANCE COMPANY through Managing Director----Petitioner

Versus

RANA BASIT RICE MILLS (PVT.) LTD. through Chief Executive and 2others---Respondents

Writ Petition No. 44222 of 2021, decided on 6th July, 2021.

Insurance Act (IV of 1938)---

----Ss. 2(6) & 46---Civil Procedure Code (V of 1908), Ss. 15 & 20---Claimrelatable to a contract for insurance---Correct Court/forum for suing under theprovisions of the Insurance Act, 1938 [since repealed]--Scope---All claims, whetherdirectly arising from or relatable to a contract of insurance were covered under theprovisions of section 46 of the Insurance Act, 1938 and all such suits may beinstituted under S. 15 of C.P.C.

State Life Insurance Corporation of Pakistan through Chairman and others v.Mst. Sardar Begum and others 2017 SCMR 999 rel.

Mst. Robina Bibi v. State Life Insurance and others 2013 CLD 477 ref.

Rana Muhammad Arshad Khan for Petitioner.

Liaqat Ali Butt for Respondent No. 1 on watching brief.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional petition filed underArticle 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitionerhas challenged the order dated 24.06.2021 passed by the learned

Additional DistrictJudge-I, Lahore whereby an application under Order VII, Rule 10, C.P.C. filed bythe petitioner was dismissed on the ground that previously a petition filed byrespondent No.1 for recovery of insurance claim at Lahore on 05.06.2015 wasreturned to District Okara and by way of judgment dated 16.01.2021 the AdditionalDistrict Judge, Okara had returned it on the ground that he lacks jurisdiction.Consequently, a suit for recovery of marine cargo claim was filed before thelearned District Judge, Lahore in view of the law laid down in case titled "StateLife Insurance Corporation of Pakistan through Chairman and others v. Mst. SardarBegum and others" reported as 2017 SCMR 999 wherein it was held that the suitsunder section 46 of the Insurance Act, 1938 and under section 115 of the InsuranceOrdinance, 2000 were maintainable before the. District Court having originaljurisdiction.

2. Learned counsel for the petitioner contends that the judgment reported as2017 SCMR 999 titled "State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others" was not interpreted in itstrue sense as in paragraph-1 of the judgement ibid it was held that such claimscould be filed under Insurance Act, 1938 before the civil court. A reference wasgiven to case titled "Mst. Robina Bibi v. State Life Insurance and others" reportedas 2013 CLD 477.

3. Conversely, learned counsel for respondent No.1 refers to the said judgmentand argues that all such claims were to be filed before the learned District Judgehaving original jurisdiction.

4, Arguments heard. File perused.

5. Admittedly, the respondent earlier had filed an application for the recovery ofmarine cargo claim under Policy No.Ex-173-88-2-1-14, dated 22.01.2014 amounting 282397 Euros as on 12.05.2014, equivalent to 38,114,145 million rupeesas calculated on 12.05.2014 with 5% liquidated damages, which was found notmaintainable on 16.01.2021 by the learned Additional District Judge, Okara. Therespondent then filed RFA No.6665/2021 titled Rana Basit Rice Mills (Pvt.)

Ltd. v.The Universal Insurance Co. Ltd. and others" which was dismissed as withdrawnon reconsideration on 01.02.2021. It was then the respondent filed a suit forrecovery of marine cargo claim before the learned District Judge, Lahore.

6. In the judgment cited at the Bar by the learned counsel for the parties,reported as 2017 SCMR 999 titled "State Life Insurance Corporation of Pakistanthrough Chairman and others v. Mst. Sardar Begum and others. It was held thatunder section 2(6) of the Insurance. Act, 1938, "Court" means the principal CivilCourt of Original jurisdiction in a district and includes the High Court in exerciseof its ordinary original civil jurisdiction. This was also clarified in paragraph-10 ofthe judgment ibid that where a claim is not relatable to a contract of insurance thenthe forum would be under section 15 of the Code of Civil Procedure as jurisdictionof Civil Court will be ousted only in cases where the provisions of special law suchas the Insurance Act, 1938 is attracted, therefore, it was concluded that all claims,whether directly arising from or relatable to a contract of insurance will be coveredunder provisions of section 46 of the Insurance Act, 1938 'and all such suits may beinstituted under section 15 of C.P.C. Relevant extract from the judgment isreproduced as under:-

"10. We may also clarify there that where a claim is not relatable to a contract ofinsurance and for some other reason a person sues the insurance company,then obviously the forum provided under the Insurance Act, 1938 wouldhave no application to such suits. To such suits, the provisions of section 15of Code of Civil Procedure, where attracted can be applied. Likewise, theforum of appeal in cases where the matter is not relatable to the contract ofinsurance would also be the one that is available under the provisions ofCode of Civil Procedure. The jurisdiction of civil court is ousted only incases where the provisions of special law, such as the Insurance Act, 1938,are attracted which provide a separate forum for seeking legal remedy.

11. We, therefore, conclude that all claims,. whether directly arising from orrelatable to a contract of insurance are covered under the provisions of section

46 of the Insurance Act, 1938. All such suits are to be filed inDistrict Court of competent jurisdiction or depending upon the territorialjurisdiction and pecuniary value of the suit, in the principal seat of SindhHigh Court or the Islamabad High Court as the case may be instead of theDistrict Court. However, no such suit can be entertained in the Civil Court."

7. In view of the above stated reasons, this writ petition is found meritless and ishereby dismissed in limine.

KMZ/U-4/L **Petition dismissed**.

2021 M L D 808

[Lahore]

Before Ali Baqar Najafi, J

Mst. SHAHNAZ BIBI----Petitioner

Versus

SIRAJ DIN and 2 others----Respondents

Writ Petition No.6807 of 2016, decided on 23rd November, 2020.

Punjab Rented Premises Act (VII of 2009)---

----Ss.15 & 19---Ejectment of tenant---Mortgage deed (Girvee)---Petitioner was tenant in the premises owned by respondent---Eviction order passed by Trial Court was maintained by Lower Appellate Court---Validity---Neither petitioner/tenant filed any suit for redemption nor respondent/landlord filed suit for recovery of amount on the basis of usufruct mortgage--- For all intents and purposes it was a rent agreement and relationship of landlord and tenant existed notwithstanding title and terms of mortgage deed with regard to possession--- Petitioner/tenant was rightly ejected and two Courts below did not commit any illegality warranting interference by High Court in exercise of Constitutional jurisdiction, particularly in absence of suit for redemption or suit for right of foreclosure--- Constitutional petition was dismissed, in circumstances.

Asif Raza Mir v. Muhammad Khurshid Khan 2011 SCMR 1917; Abdus Salam and 2 others v. Ch. Noor Muhammad 1991 SCMR 2346; Abdul Haq v. Ali Akbar and others 1999 SCMR 2531; Mst. Maqbool and others v. Samandar Khan PLD 1969 Pesh. 216; Muhammad Abdullah v. Abdul Jabbar PLD 1967 Lah. 1000 and Raza Hussain v. Muhammad Ismail PLD 1973 Note 114 rel.

Syed Mazhar Hussain Shah for Petitioner.

Mian Zulfiqar Rahi for Respondent No.1.

ORDER

ALI BAQAR NAJAFI, J.----Through this Constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 concurrent findings recorded by the Special Judge (Rent) as well as by the learned Addl. District Judge, Lahore dated 18.05.2013 and 30.01.2016, respectively, have been challenged whereby the ejectment petition filed by respondent No.1 against the petitioner in respect of the property measuring 6-marla (described in the petition) situated at Maryam Siddiqa Colony, Shahdara Town, Lahore was allowed.

2. Briefly, the facts giving rise to the filing of the present petition are that the respondent No.1 hypothetically got the possession of said house of 6-marla from the petitioner through a Usufruct Mortgaged Deed dated 30.01.2009 against Rs.1,00,000/- but the said document also contained a condition that during the period of five years the petitioner would continue to pay Rs.6000/- as monthly rent before 16th of every month to the respondent No.1 from whom she got the possession as a tenant and that after re-payment of the said mortgage money to respondent No.1, petitioner will convert the possession of the said property as the owner. Meanwhile, the petitioner also received Rs.30,000/- from respondent No.1 as additional mortgage money on 13.02.2010 and the monthly rent was re-settled at Rs.8000/- per month payable by the petitioner to respondent No.1. But when it was not paid, ejectment petition was filed by the respondent No.1 against the petitioner on 29.04.2011 on the ground of default in payment of rent for 17 months; breach of terms of agreement as well as expiry of the period of tenancy and personal use. The petitioner, however, filed the application for leave to contest. The learned Special Judge (Rent) had proceeded ex parte against the petitioner on 20.09.2011 and the application to set aside the said ex parte order filed by the petitioner was dismissed on 17.04.2012, whereafter the ex parte evidence was produced by respondent No.1, and the ejectment order was passed on 18.05.2013 while granting 60 days to the petitioner to vacate the premises besides meanwhile, directing her to continue to pay rent @ Rs. 8000/- per month. The petitioner filed the appeal which too was dismissed on 30.01.2016, granting her 45 days for

vacation of premises, hence this writ petition.

3. Arguments heard. File perused.

4. After hearing the learned counsel for the parties and perusing the file, it is straightway observed that the recitals of the Mortgage Deed reveals it to be a Usufruct Mortgage with an additional clause of payment of rent, but this document was not registered. At the time of execution of the document, the West Pakistan Urban Rent Restriction Ordinance, 1959 was applicable and according to Section 2(c) thereof, the landlord includes " ..any person for the time being entitled to receive rent in respect of any building ." and under Section 2(i) of the said Ordinance, "any person by whom or on whose account rent is payable" is a tenant. However, at the time when the ejectment petition was filed, the Punjab Rented Premises Act, 2009, was in field (w.e.f. 17.11.2009) and under Section 2(d) landlord means the owner of premises and includes a person for the time being entitled or authorized to receive the rent and under Section 2(l), a tenant means a person who undertakes or is bound to pay rent as consideration for the occupation of the premises. These definitions under new law are exhaustive as they do not specify the existence of tenancy alone but the ground/reasons for occupation of the premises.

5. Here it would be important to dilate upon the said mortgage deed in view of the judgment passed in case titled Asif Raza Mir v. Muhammad Khurshid Khan (2011 SCMR 1917), in which it was held that it is not the title but the contents of the document which will determine its nature and that the true intention of the parties must be given effect. Admittedly, the title is which was written on a stamp paper issued in the name of the petitioner on 30.01.2009. It was not registered either as a mortgage deed or as Rent Agreement, until the learned Special Judge (Rent) ordered the respondent to deposit fine equivalent to 10% of the annual value of rent in terms of Section 9(b) of the Punjab Rented Premises Act, 2009 on 30.04.2011 whereafter the notices were issued to the petitioner. The court, therefore, acknowledged the status of document as a rent agreement which

was not challenged by the petitioner. Besides, the petitioner had admitted the execution of the said document which also contains the condition for the payment of rent @ 6000/- per month by the petitioner which was enhanced to Rs.8000/- per month on 13.12.2010 after receiving Rs.30,000/- as additional mortgage money by the petitioner which was also written on the back of the stamp paper, showing the intention of the parties to operate as rent agreement. Importantly, neither the petitioner had filed any suit for redemption nor respondent No.1 filed suit for recovery of amount on the basis of the usufruct mortgage, therefore, the irresistible conclusion is that for all intents and purposes it was a rent agreement and the relationship of landlord and tenant existed, notwithstanding the title and terms of mortgage deed with regard to possession. Reliance is placed upon Abdus Salam and 2 others v. Ch. Noor Muhammad (1991 SCMR 2346). Even otherwise, rent paid in the usufruct mortgage is the absolute acknowledgement of the status of the petitioner as tenant. Reliance is placed upon Abdul Haq v. Ali Akbar and others (1999 SCMR 2531). As regards to the possession of the property in usufruct mortgage, it can be termed as possession of the mortgagor as tenant as held forty years ago in Mst. Maqbool and others v. Samandar Khan (PLD 1969 Peshawar 216). Even before, in the case titled Muhammad Abdullah v. Abdul Jabbar (PLD 1967 Lahore 1000) it was held, that unlike in the present case, where two agreements i.e. mortgage and rent of different dates were simultaneously executed, it would be a mortgage, unlike held in case reported as Raza Hussain v. Muhammad Ismail (PLD 1973 Note 114) (Lahore) that such a mortgagee can eject the mortgagor in the ejectment proceedings (which are summary in nature) as the relationship of landlord and tenant existed between the parties. This view is respectfully followed and it is hereby held that the petitioner was rightly ejected and that two courts below have not committed any illegality warranting interference in the exercise of constitutional jurisdiction of this court particularly in the absence of suit for redemption or suit for right of foreclosure. The writ petition is, therefore, dismissed on merits.

MH/S-14/L **Petition dismissed.**

2021 P Cr. L J Note 21

[Lahore]

Before Ali Baqar Najafi, J

SAMMAYA EJAZ---Petitioner

Versus

SADDAT MUZAFFAR and others---Respondents

Criminal Misc. No. 65141-H of 2019, decided on 29th January, 2020.

Criminal Procedure Code (V of 1898)---

----S. 491---Habeas corpus---Custody of minor---Tender age of minor---Scope---Petitioner (mother) sought recovery of minor (daughter) aged four years, from the illegal and improper custody of respondent (father)---Respondent had filed a petition before the Guardian Court for the guardianship which was pending---Validity---Respondent (father) had contracted second marriage---Age of minor was so tender that she continuously needed proper care and protection of her mother---Contention of respondent that the snatching of minor was not recent, was not convincing---While exercising jurisdiction under S. 491, Cr.P.C., age of the female minor determined her custody until decision by Guardian Court was made---Temporary custody of minor was given to the mother (petitioner) till decision by the Guardian Court---Petition was allowed, in circumstances.

Muhammad Khalil-ur-Rehman v. Mst. Shabana Rahman and another PLD 1998 SC 633; Ahmed Sami and 2 others v. Saadia Ahmed and another 1996 SCMR 268 and Ms. Louise Anne Fairley through Special Attorney v. Sajjad Ahmed Rana and 2 others PLD 2007 Lah. 293 ref.

Muhammad Saleem Chaudhry for Petitioner.

Shamim-ur-Rehman Malik with minor Kaswa Sadaat for Respondent No. 1.

ORDER

ALI BAQAR NAJAFI, J.---Through this petition under section 491, Cr.P.C. petitioner has sought recovery of her daughter namely, Kaswa Sadaat, aged about 4 years from the illegal and improper custody of respondents Nos. 1 and 2 through respondent No.3/Station House Officer, Sabzazar, Lahore.

2. Brief facts giving rise to the filing this petition are that petitioner and respondent No.1 got married on 06.01.2015 whereafter respondent No.1 took the petitioner to Scotland where minor girl namely, Kaswa Sadaat, was born on 19.01.2016. The petitioner and respondent No.1 came back to Pakistan from Scotland but he left for Scotland with the minor, without the petitioner. The petitioner who is serving with some NGO visited Scotland and filed a maintenance and custody petition there in which respondent No.1 was directed to produce the minor for weekly overnight meeting with the petitioner and restrained from removing the minor from the territorial jurisdiction of Scotland by the court there whereafter the regular meeting were started. The respondent No.1 filed an application for removal of the minor to Pakistan from 14.09.2018 to 15.11.2018, but after its dismissal he illegally and fraudulently abducted the minor from Scotland and brought her to Pakistan. According to the petitioner, the courts at Scotland have already signed a Judicial Protocol with Pakistan under which all the courts in Pakistan should recover and return the minor. Earlier Writ Petition No. 246525 of 2018 filed by the petitioner before this Court was dismissed on 20.06.2019 on the grounds that petitioner was not present in Pakistan and since the petitioner is in

Pakistan and prays for the handing over of the minor, hence this writ petition.

3. Arguments heard. File perused.

4. After hearing the learned counsel for the parties and perusing the file, it is straightway observed that age of the female minor is about 4 years who was although admitted in school obviously at the prep level. Respondent No.1 has also filed a petition before the Guardian Court at Lahore which is pending. Petitioner is the real mother of the minor and admittedly respondent No.1 has contracted second marriage. The age of the minor is so tender that she continuously needs a proper care and protection of her mother. The argument advanced by the learned counsel for the respondent No.1 that it was not a recent snatching and, therefore, Guardian Court seized of the matter can decide the Guardianship matter in accordance with the evidence to be produced by the parties. However, this Court has not been able to find this argument as convincing for the simple reason that in the jurisdiction under section 491, Cr.P.C., it is the age of the female minor which will tentatively determine her custody until the decision is made by the Guardian Court where the petition is statedly pending.

5. This Court had given a chance to the minor to interact and associate with the mother, thereafter, she was found at ease with her mother. Keeping in view the above discussed factors, the temporary custody of the minor is given to the petitioner till the decision by the Guardian Court at Lahore. Reliance can be placed upon Muhammad Khalil-ur-Rehman v. Mst. Shabana Rahman and another (PLD 1995 Supreme Court 633) and Ahmed Sami and 2 others v. Saadia Ahmed and another (1996 SCMR 268), wherein it was held that petition under section 491, Cr.P.C., is competent during the guardianship petition and Ms. Louise Anne Fairley through

Special Attorney v. Sajjad Ahmed Rana and 2 others (PLD 2007 Lahore 293), where the habeas petition was allowed to a foreign national.

6. In this view of the matter, this writ petition is allowed and the custody of the minor shall remain with the petitioner/real mother until the decision of the Guardian Court.

SA/S-29/L **Petition allowed.**

2021 P Cr. L J 821

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD AYOUB---Petitioner

Versus

The STATE and another---Respondents

Criminal Miscellaneous No. 8424-B of 2021, decided on 4th March, 2021.

(a) Criminal Procedure Code (V of 1898)---

----S. 497(2)---Penal Code (XLV of 1860), Ss. 376 & 511---Rape, attempting to commit offences punishable with imprisonment for life or for a shorter term---Bail, grant of---Further inquiry---Delay in lodging of FIR---Possibility of false implication---Investigation finding accused as innocent---Matter was reported to the police about nine (9) days after the occurrence on the pretext that accused had been requesting the complainant not to lodge the criminal case but the latter did not agree and lodged the FIR---During investigation several inhabitants of the locality categorically stated that the FIR was falsely lodged on account of a monetary dispute between the complainant and the accused---Admittedly the accused was an employee of the complainant, therefore, the possibility of false implication on account of monetary dispute could not be totally ruled out---Investigating Officer prepared a discharge report in favour of the accused which although was not agreed to by the Judicial Magistrate, but as no second investigation was ordered, therefore, it was the final opinion of the police---Furthermore accused had spent about 3-1/2 months behind bars since his arrest---Case of the accused called for further inquiry into his guilt as contemplated under S. 497(2), Cr.P.C.---Accused was admitted to bail in circumstances.

Sharif Khan v. The State and another 2021 SCMR 87 ref.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 497(2) & 164---Penal Code (XLV of 1860), Ss. 376 & 511---Rape, attempting to commit offences punishable with imprisonment for life or for a shorter term---Bail, grant of---Further inquiry--- Significant improvements made by victim in her S. 164, Cr.P.C. statement---As per the statement of victim during lodging of FIR, she stated that when her parents had gone to a market, she was alone at home and when her father came back, the door was locked from inside and when he knocked the door she raised hue and cry which attracted two persons from the locality, who scaled over the wall and entered into the house and saw the accused trying to commit zina with her---However, in her subsequent statement under S. 164, Cr.P.C., the victim stated that on the date of occurrence the accused came into the house in the absence of her parents, made her an offer of Rs.50/- and when she went to take the money he grabbed her, pulled off her clothes and was also carrying a gun; whereafter, her parents came back home and the accused managed to escape---Improvements to the extent of Rs.50/- offered by the accused and then coming of both parents at home and accused taking off the victim's clothes were improvements which were significant even at the bail stage---In such circumstances case of the accused called for further inquiry into his guilt as contemplated under S. 497(2), Cr.P.C.---Accused was admitted to bail in circumstances.

Mian Arshad Ali Mahar for Petitioner.

Miss Umin-ul-Baneen, DDPP with Nusrat, ASI for the State.

Malik Tariq Yaseen Nonari for the Complainant/ Respondent No.2.

ORDER

ALI BAQAR NAJAFI, J.---The petitioner seeks post arrest bail in case FIR No.920/2020 dated 18.10.2020 under sections 376, 511, P.P.C. registered at Police Station Haveli Lakha, Tehsil Depalpur, District Okara on the allegation that on 09.10.2020 at 4/5:00 p.m. the complainant along

with his wife had gone in the Haveli Bazar for shopping whereas his daughter, namely, Mst. Umm-e- Aymon aged 8 years was at home; when the complainant came back the door was closed and when he knocked at the door he heard the hue and cry of his daughter upon which Zafar and Bashir Ahmad came on the spot. They went inside the house by scaling over the wall and saw that the petitioner was trying to commit zina with his daughter who was made naked. Upon seeing the complainant and the witnesses, the petitioner picked up-his dress and managed to escape, hence this FIR.

2. After hearing the learned counsel for the petitioner, learned Deputy District Public Prosecutor assisted by the learned counsel for the complainant and perusing the record, it is straightaway observed that the occurrence dated 09.10.2020 was reported to the police on 18.10.2020 on the pretext that the petitioner has been requesting the complainant not to lodge the criminal case but the latter did not agree and lodge the FIR though late in time. As per the statement of victim Mst. Umm- e-Aymon recorded on 18.10.2020 when her parents had gone to Bazar she was alone at her home and when her father came back to home the door was locked from inside and when he knocked the door she raised hue and cry which attracted Zafar and Bashir Ahmad. They scaled over the wall and entered into the house and saw that the petitioner was trying to commit zina with her. However, in the statement under section 164, Cr.P.C. recorded on 24.10.2020, she stated that on the date of occurrence the petitioner came into the house in the absence of her parents and made offer of Rs.50/- and when she went to take the money he grabbed her, and pulled off her clothes and that he also had the gun. Thereafter, her parents came to home and the petitioner managed to escape. The improvements to the extent of Rs.50/- by the petitioner and then coming of both parents at home and only taking off the clothes are the improvements which are significant even at the bail stage. Importantly, during the investigation the inhabitants of the locality, namely, Qari Ahmad Zia son of Ahmad Din, Muhammad Saleem son of

Muhammad Ramzan, Asghar Ali son of Bagh Ali, Istikhar Ahmad son of Muhammad Amin, Imdad Hussain son of Khurshid Ahmad Qari, Muhammad Ameer son of Muhammad Shahbaz, Ejaz Ahmad son Ghulam Rasul and Muhammad Sajid son of Muhammad Rafique had categorically and separately stated that on account of dispute of Rs.52,000/- which the petitioner owes from the complainant, a false FIR was lodged. Even otherwise, it is admitted by the complainant that the petitioner was his employee, therefore, the possibility of false implication on account of monetary dispute cannot be totally ruled out. This is the reason that the Investigating Officer prepared a discharge report on 19.01.2021 in favour of the petitioner which although was not agreed to by the learned Judicial Magistrate. Undoubtedly, no second investigation was ordered, therefore, it is the final opinion of the police. The petitioner was arrested on 19.11.2020 and has spent sufficient time behind the bars. In the facts and circumstances, the case of the petitioner calls for further inquiry into his guilt as contemplated under section 497(2), Cr.P.C.

3. By relying upon case titled "Sharif Khan v. The State and another" reported as 2021 SCMR 87 where the Investigating Officer investigated the matter at length and found the accused innocent the bail was granted, this petition is allowed and petitioner is admitted to post arrest bail subject to his furnishing fresh bail bonds in the sum of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of the trial court.

MWA/M-48-L **Bail granted.**

2021 P Cr. L J 1485

[Lahore]

Before Ali Baqar Najafi, Aalia Neelum, and Syed Shahbaz Ali Rizvi, JJ

Mian MUHAMMAD SHAHBAZ SHARIF---Petitioner

Versus

NATIONAL ACCOUNTABILITY BUREAU through Chairman and another---Respondents

Writ Petition No. 20793 of 2021, decided on 22nd April, 2021.

Per Ali Baqar Najafi, J

(a) Criminal Procedure Code (V of 1898)---

----S. 497---Bail---Medical ground---Principle---Medical claim cannot be accepted as claimed rather is required to be investigated by Medical Board comprising of experts in the subject to ascertain type and severity of ailment and availability of essential treatment inside jail.

Muhammad Arshad v. The State and another 1997 SCMR 1275; Malik Muhammad Yousafullah Khan v. The State and another PLD 1995 SC 58; Hanif Ahmed Bhatti v. Federation of Pakistan and others PLD 2005 Kar. 364; Imtiaz Ahmed v. The State through Special Prosecutor, ANF 2017 SCMR 1194 and Sharjeel Inam Memon v. National Accountability Bureau 2018 SCMR 2023 rel.

(b) National Accountability Ordinance (XVIII of 1999)---

----S. 9(b)---Criminal Procedure Code (V of 1898), S. 497---Bail---Delay in conclusion of trial---Vacant court---Effect---Vacancy of Accountability Court does not make it a case of incarceration as statutory ground is not available to a person under National Accountability Ordinance, 1999.

Mian Muhammad Nawaz Sharif v. NAB (W.P. No. 63511 of 2019 decided on 25.10.2019) rel.

(c) National Accountability Ordinance (XVIII of 1999)---

----S. 9(a)---Words "corrupt practices"---Scope---Words "corrupt practices" are succession of acts of a similar kind of spoiled, tainted, vitiated, depraved, debased and morally degenerated acts.

(d) National Accountability Ordinance (XVIII of 1999)---

----S. 5(c)---Transfer of Property Act (IV of 1882), S. 41---Assets---Benami transaction---Pre-conditions---In order to prove Benami Transaction, source of income; custody of title documents; possession of property; and motive of transaction, have to be proved through confidence inspiring evidence.

Din Muhammad Wagan v. Mst. Rashida Khatoon through Legal Heirs 2002 CLC 1573; Messrs Shalimar Ltd., Karachi v. Raisuddin Siddiqui and 3 others 1979 CLC 338; Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras PLD 1957 SC (Ind.) 188; Muhammad Sajjad Hussain v. Muhammad Anwar Hussain 1991 SCMR 703; Abdul Majeed and others v. Amir Muhammad and others 2005 SCMR 577 and Jane Margrete William v. Abdul Hamid Mian 1994 CLC 1437 ref.

(e) National Accountability Ordinance (XVIII of 1999)---

----S. 14---Corruption and corrupt practices---Onus to prove---Shifting of onus---Presumptions---Scope---National Accountability Bureau (NAB) is not absolved of its responsibility to prove case against accused as presumption of innocence always lies in favour of accused person---Onus shifts only after initial discharge of burden by prosecution.

Asfand Yar Wali's case PLD 2001 SC 607 rel.

(f) Good Governance---

----Public office holder---Conduct---Public office holder must command respect, honour, dignity and should be 100% "Mr. Clean"---Such is hallmark of democracy.

Per Ali Baqar Najafi, Aalia Neelum and Syed Shahbaz Ali Rizvi, JJ

agreeing with Sardar Muhammad Sarfraz Dogar, J. [Majority View]

(g) National Accountability Ordinance (XVIII of 1999)---

----Ss. 9(a) & 9(b)---Anti-Money Laundering Act (VII of 2010), Ss. 3 & 4---Criminal Procedure Code (V of 1898), S. 378---High Court (Lahore) Rules and Orders, Vol. V, Chapter 4, Part-H, R. 5---Constitution of Pakistan, Art. 199---Constitutional petition---Bail, grant of---Benefit of doubt---Larger Bench, constitutiin of---Case of further inquiry---Difference of opinion---Petitioner-accused was facing trial on the allegations of corruption and corrupt practices and money laundering---Full Court was constituted as Division Bench of High Court had difference of opinion---Validity---Court had to keep in view whether case of petitioner called for further inquiry into his guilt---In absence of any property purchased or owned in personal name of accused and in absence of direct proof that his family members were his dependents or vice versa and in absence of direct proof that money came through Foreign Telegraphic Transfers in account of accused as some crime proceed or money laundering, such allegation could not be accepted as gospel truth---Difference of opinions between Judges of Division Bench of High Court, on bail matter showed existence of reasonable grounds to connect accused with crime as doubtful---Such difference of opinion entitled accused to benefit of doubt, which was a factor essential for grant of bail---Bail was allowed in circumstances.

Ch. Zulfiqar Ali v. The State PLD 2002 SC 546; Tallat Ishaq v. National Accountability Bureau through Chairman, and others PLD 2019 SC 112; Hamza Shahbaz Sharif v. NAB and others W.P. No.7425 of 2021; Agha Massihuddin Khan Durrani and others v. Chairman, National Accountability Bureau, Islamabad and others PLD 2020 Sindh 365; Justice Qazi Faez Isa v. The President of Pakistan and others PLD 2021 SC 1; Mst. Zahida Sattar and others v. Federation of Pakistan and others PLD 2002 SC 408; Makhdoom Javed Hashmi v. The State and 2 others 2003 PCr.LJ 266l; Ghulam Sarwar Khan Lalwani v. The State 2016 PCr.LJ 1343 and Brig. (R)

Imtiaz Ahmad v. The State PLD 2017 Lah. 23 ref.

Maryam Nawaz Sharif v. Chairman, NAB and 2 others PLD 2020 Lah. 205; Khalid Aziz v. The State 2011 SCMR 136; Ghani-ur-Rehman v. National Accountability Bureau and others PLD 2011 SC 1144; Brig. (R) Imtiaz Ahmad v. The State PLD 2017 Lah. 23; Abdul Aleem Khan v. The State and others (W.P. No. 16630 of 2019) decided on 15.05.2019; Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minster of Pakistan/Member National Assembly, Prime Minster's House, Islamabad and 9 others PLD 2017 SC 265; Agha Massihuddin Khan Durrani and others v. Chairman, National Accountability Bureau, Islamabad and others PLD 2020 Sindh 365; Muhammad Shakil v. Sakhi Zaman and 3 others 1999 SCMR 32 and Muzammil Niazi and others v. The State PLD 2003 Kar. 526 rel.

Tariq Bashir and 5 others v. The State PLD 1995 SC 34 fol.

Azam Nazir Tarar, Muhammad Amjad Pervaiz, Attaullah Tarar, Khawaja Mohsin Abbas, Muhammad Nawaz Chaudhry, Zahir Abbas, Khawar Ikram Bhatti, Muhammad Nasir Chohan, Anwaar Hussain, Mian Naseem Saqlain and Muhammad Adil Chattha for Petitioner.

Syed Faisal Raza Bukhari, Barrister Usman G. Rashid Cheema, Naeem Tariq Sanghera, Special Prosecutors with Aftab Ahmad, Additional Director and Hamid Javaid, Assistant Director for NAB.

ORDER

This Full Bench constituted, under Rule 5, Chapter 4, Part-H of High Court Rules and Orders Volume-V read with section 378 of Code of Criminal Procedure, by the Hon'ble Chief Justice as Referee Judges after when the Justice Sardar Muhammad Sarfraz Dogar and Justice Asjad Javaid Ghural could not reach on consensus in the matter of grant of post arrest bail to the petitioner as the senior member of the Division Bench granted the post arrest bail and the other member refused. Rule 5 of Chapter 4, Part-H of High Court Rules and Orders Volume-V and section 378 of Code of Criminal Procedure, 1898 are reproduced as under:-

Rule 5, Chapter 4, Part-H of High Court Rules and Orders Volume-V

"When an appeal is heard by a Bench consisting of two Judges and the Judges composing the Bench being equally divided in opinion as to the decision on a point, state that point for reference to another Judge or Judges under clause 26 of the Letters Patent, the case shall be heard on that point by one or more Judges to be nominated by the Chief Justice. The Chief Justice may be such other Judge or one of such other Judges".

378, Cr.P.C.

"Procedure in case of difference of opinion. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgement or order shall follow such opinion."

Since the hon'ble brother Judges did not formulate their issue wise difference of opinion, after perusal of the two orders passed in the matter of bail dated 14.04.2021 the following points of dissent are found by us:-

a) Whether the petitioner is entitled to the grant of post arrest bail in ACR No. 22/2020 (State v. Mian Shahbaz Sharif and others) a reference under section 18(g) read with section 24(b) of the National Accountability Ordinance, 1999 pending in the Accountability Court No.2, Lahore on the allegation of assets beyond means under section 9(a), (iv), (v), and (xii) of NAO, 1999 and section 3 of Anti-Money Laundering Act, 2010, punishable under section 10 of NAO, 1999 and schedule thereto for earning assets beyond known source of income to the petitioner to the extent of 7328 Millions approximately through Fictitious Telegraphic Transfer (FTT) in the name of the co-accused family members and Benamidars and others?

b) Whether the petitioner is entitled to the post arrest bail in the ACR No. 22/2020 on medical grounds?

c) Whether the petitioner is entitled to the post arrest bail in ACR No. 22/2020 on the ground of delay in conclusion of the trial?

2. Before giving our opinion on the above three points of dissent it is appropriate to narrate some necessary facts.

3. Through this Constitutional petition, petitioner seeks bail after arrest in the Accountability Reference No. 22 of 2020 made under section 18(g) read with section 24(b) of the National Accountability Ordinance, 1999 on the allegation that on receipt of report from the Financial Monitoring Unit (FMU), Government of Pakistan regarding suspicious and currency transactions (STR/CTR) in the bank accounts of Mian Muhammad Shahbaz Sharif/petitioner and his other family members and business entities as owned by them and also of establishing 9 industrial units thereby acquiring billions of rupees from the year 2008 till 2018. During the inquiry, it was found that assets of the petitioner and co-accused family members and benamidars exponentially increased in value 412 times from 1998 to 2018 as it increased from Rs. 14.865 Million to Rs. 6112 Million without having the corresponding sources of income. The inquiry was upgraded into investigation conducted in respect of allegation of corruption and corrupt practices defined under section 9(a) of the NAO, 1999 punishable under section 10 of NAO, 1999 read with sections 3 and 4 of Anti-Money Laundering Act (AMLA) 2010 and the respective schedules thereto. During the investigation, it was revealed that petitioner remained a Member of National Assembly (1990-1993), Member of Provincial Assembly/Opposition Leader, Punjab (1993-1997), held of the office of the Chief Minister, Punjab (1997-1999) and then from 2008 to 2018 and in the year 2018 the petitioner was elected as MNA and presently is Opposition Leader in the National Assembly. Mst. Nusrat Shahbaz, his wife, Muhammad Hamza Shahbaz Sharif and Suleman Shahbaz Sharif, sons, Mrs. Rabia Imran Ali and Mrs. Javeria Ali, daughters and Mst. Tehmina

Durrani, second wife of the petitioner, were all close relatives and benamidars of the petitioner. Besides, co-accused/Nisar Ahmed, an employee in the Chief Minister Secretariat, Ali Ahmed Khan, an employee in the Chief Minister Office and Syed Muhammad Tahir Naqvi, an employee of M/s Ramzan Sugar Mills Pvt. Ltd and frontman of the petitioner, are also his benamidars. According to the allegations, accused/ Qasim Qayyum, an unregistered money changer, laundered the disproportionate funds of the petitioner and his family members. Co-accused/Rashid Karamat, Masroor Anwar, Muhammad Usman, Fazal Dad Abbasi and Muhammad Shoaib Qamar, the employees of Sharif Group of Companies also allegedly committed the predicated offences of money laundering and thereby actively aided and abetted the petitioner and his family members in the acquisition of assets disproportionate to their known source of income. Co-accused/Haroon Yousaf Aziz, son-in-law of the petitioner also committed the offence of money laundering who had falsely shown a loan extended to co-accused Suleman Shahbaz Sharif, without having proportionate source of income. Muhammad Mushtaq and Yasir Mushtaq, two private persons, in collusion with the petitioner, his two sons and others also laundered the disproportionate funds of the accused persons under the garb of fake loans. Said two persons became approver during the investigation. According to the NAB, the co-accused/Shahid Rafique and Aftab Mahmood, were the money changers at Lahore and U.K., respectively, who aided and abetted with the petitioner and his other family members who arranged Fictitious Telegraphic Transfer (FTT) showing the funds transacted from U.K. whereas no such amount was ever sent by any genuine remitter but by petitioner and his family members provided cash from unknown sources for the purposes of money laundering. During the period 2008 to 2018, huge multifold and disproportionate increase in the assets of the petitioner and his co-accused family members swallowed to Rs. 6122 Million whereas the present value of the assets is Rs. 7328 Million during the period when he was also the Chief Minister, Punjab and had no corresponding loan and proportionate source of income. The petitioner and

his family members established 13 companies in their own names and 4 benamidar concerns in the name of the employees/benamidars for the benefit of the petitioner and his co-accused family member. Acceding to the NAB investigation, petitioner had claimed the business and agriculture income but it could not be substantiated and was found fake. In other words, the total value of disproportionate assets and expenditures of the accused persons comes to Rs. 6122 Million whereas corresponding source of income from known source of income were insufficient and that the present value of asset was Rs. 7328 Million because the value of the shares in the companies increased to 1206 Million. To explain, the individual ownership, the detail of the assets of the petitioner and his family members is reflected from the following table:-

Sr.#	Disproportionate Assets Held	Amount (M)
1	In his own name (Mian Muhammad Shahbaz Sharif)	269.301
2	In the name of Wife Mrs. Nusrat Shahbaz Sharif	299.746
3	In the name of Son Muhammad Hamza Shahbaz Sharif	533.00
4	In the name of Son Suleman Shahbaz Sharif	2259.763
5	In the name of Daughter Mrs. Rabia Imran (Fake TTs)	57.517
6	In the name of Daughter Mrs. Javeria Ali (Fake TTs)	31.329
7	In the name of Benamidars (M/s Good Nature Trading Company Pvt. Ltd and M/s Unitas Steel Pvt.Ltd.)	1884.817

8	In the name of benamidars (M/s Nisar Trading Concern)	515.271
9	Undeclared / unjustified banking deposits through Benamidars / Benami Concerns	271.393
Disproportionate Assets acquired till the 30.06.2018		6,122.137
Current Value of Shares based on Net Assets of Companies		1206.000
Current Value of Disproportionate Assets		7,328.137

Details of Disproportionate assets held in the name of accused persons are enumerated below:

(a) Immovable Assets:

Sr.#	Description of Property	Ownership	Value (Rs.)
1	House Nos. 87 and 96, Block H, Model Town, Lahore Measuring 10 Kanal	Mrs. Nusrat Shahbaz Sharif	128,776,534
2	Nishat Lodges, DoongaGali, Abbottabad Measuring 9 Kanal 2.5 Marla	Mrs. Nusrat Shahbaz Sharif	57,804,850
3	House No. 8/7, Block A, Phase V, DHA, Lahore measuring 10 Marla	Mrs. Tehmina Durrani	24,000,000
4	Plot No 8/8, Block A, Phase V, DHA, Lahore	Mian Muhammad	14,500,000

	measuring 10 Marla	Shahbaz Sharif	
5	Cottage No. 23 and Villa No. 19 at Whispering Pines, Mauza Makhnial Measuring 13.5 Marla	Mrs. Tehmina Durrani	14,700,000
6	House No(s). 48-5L Judicial Employees Cooperative Society, Lahore measuring 06 Kanal, 09 Marla and 135-sq. Ft and House No(s).61A, 62, 63, 64, 65, 68, 69, 70, 71, Block K Johar Town, Lahore measuring 2 Kanal, 2 Marla	Muhammad Hamza Shahbaz Sharif	136,440,669
7	Agricultural land measuring 391 Kanal and 12 Marla located at Mauza Dorahtta, TehsilBhowana Chiniot	Muhammad Hamza Shahbaz Sharif and Suleman Shahbaz	95,773,702
8	2x Foreign Apartment in UK	Mian Muhammad Shahbaz Sharif	147,863,088
Total			619.858 Million

(b) Movable Assets:

Sr. #	Name of Company	Date of Incorp.	Name of Shareholder	2017	Value in PKR
1	Ramzan Sugar Mills	4/8/1990	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Mrs. Rabia Imran Mrs. Javeria Ali	4,617,000 2,679,000 6,441,000 120,000 120,000	Inheritance
2	European Asian Trading Corporation Pvt. Ltd	1/2/05	Suleman Shahbaz Sharif Mrs. Rabia Imran	10,000 10,000	100,000 100,000
3	Madni Trading Pvt. Ltd.	1/2/05	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz	1,000 1,000 800	10,000 10,000 8,000

4	Sharif Feed Mills Pvt Ld.	29/6/05	Hamza Shahbaz Sharif Suleman Shahbaz Sharif	9,999,800 10,000,000	99,998,000 100,000,000
5	Madina Constructio n Company Pvt. Ltd.	17/4/06	Hamza Shahbaz Sharif Suleman Shahbaz Sharif	1,000 1,000	10,000 10,000
6	Sharif Poultry Farms Pvt. Ltd	10/4/07	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Mrs. Rabia Imran	1,000 1,000 800 1,000	10,000 10,000 8,000 10,000
7	Sharif Dairy Farms Pvt. Ltd	27/11/08	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs.	1,000 9,998,000 800	10,000 99,980,000 8,000

			Nusrat Shahbaz		
8	Ramzan Energy Limited	12/5/10	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Sharif Feed Mills	10,000 4,010,020 8,000 5,289,677	100,000 40,100,200 80,000 52,896,770
9	Sharif Milk Products Pvt. Ltd.	07/09/11	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz	1,000 1,000 800	10,000 10,000 8,000
10	Crystal Plastic Pvt. Ltd.	02/07/12	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nustrat	1,957,500 1,957,500 434,800	19,575,000 19,575,000 4,348,000

			Shahbaz		
11	Chiniot Power Ltd.	26/08/13	Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Zainab Suleman	170,863,600 98,000 1,000	1,708,636,000 980,000 10,000
12	AG Energy Consultants Pvt. Ltd.	24/09/13	Suleman Shahbaz Sharif	51,000	510,000
13	Al-Arabia Sugar Mills Ltd	18/11/16	Hamza Shahbaz Sharif Suleman Shahbaz Sharif Mrs. Nusrat Shahbaz Ramzan Sugar Mills Sharif Feed Mills	155,000 155,000 1,000 269,990 29,000	1,550,000 1,550,000 10,000 2,699,900 290,000
14	Unitas Power Ltd.	7/10/2016	Hamza Shahbaz Sharif Suleman	175,000 175,000	1,750,000 1,750,000

			Shahbaz Sharif		
					2,157 Million

(c) Director's Loan to the companies by accused Muhammad Hamza Sharif and Suleman Shahbaz Sharif

Sr. No.	Companies Name	Director's Loan
1	M/s Sharif Feed Mills Pvt. Ltd.	79,139,279
2	M/s Sharif Dairy Farms Pvt. Ltd.	358,319,955
3	M/s Chiniot Power Ltd.	5,000,000
4	M/s Ramzan Sugar Mills Ltd.	27,482,375
5	M/s Madni Trading Pvt. Ltd.	6,286,600
6	M/s Madina Construction Pvt. Ltd.	9,335,770
7	M/s Sharif Poultry Farms Pvt. Ltd.	8,188,087
8	M/s Sharif Milk Products Pvt. Ltd.	112,267,235
9	M/s Crystal Plastics Ltd.	2,745,154
10	M/s Al-Arabia Sugar Mills Ltd.	5,000,000
	Total	613.764 Million

(d) Benami assets held in the name of employees-Rs. 2,400.088 Million

a. Messrs Good Nature Trading Company Pvt. Ltd---Rs.1,804.527 Million

b. Messrs Unitas Steel Pvt. Ltd.----Rs. 81.050 Million

c. Messrs Nisar Trading Concern----Rs. 515.271 million

4. According to the said reference, property No. 96-H Model Town, Lahore was notified as Chief Minister Camp Office by the petitioner and, therefore, became direct beneficiary of the said property. Rs. 4.900 Million were transferred by Mrs. Nusrat Shahbaz Sharif, in the account of the petitioner bearing No. 1019-79001146-03, maintained at Habib Bank Limited, New Muslim Town Branch, Lahore to pay custom duty of Toyota Land Cruiser owned by the petitioner. Another amount of Rs. 2.450 Million was also transferred by her in the account of the petitioner.

5. Co-accused/ Muhammad Hamza Shahbaz Sharif, received 23 fake foreign remittances of Rs. 181.611 Million from UAE and U.K. which was used as a source of seed money into the business owned by the petitioner and his family members. He also used said fake remittances to purchase property No. 96-H Model Town, Lahore for the benefit of the petitioner. Likewise, Suleman Shahbaz Sharif/co-accused received 111 fake foreign remittances of Rs. 803.907 Million from fake/bogus foreign remittances in his bank accounts maintained at Silk Bank, Faysal Bank, Bank Al-Falah and deposited 49 foreign pay orders amounting to Rs. 375.695 Million in his Account No. 1003371199 maintained at Bank Alfalah, Circular Road Branch, Lahore. He received Rs. 83.781 Million in his account at Silk Bank. He also received Rs. 647.954 Million fake foreign remittances with the aid and abetment of Muhammad Mushtaq, Yasir Mushtaq (approvers) and Syed Muhammad Tahir Naqvi (PO). Mrs. Rabia Imran Ali and Mrs. Javeria Ali, also aided and abetted the petitioner, their father, and received Rs. 57.516 Million and Rs. 31.329 Million fake foreign remittances for the benefit of the petitioner.

6. The petitioner alleged to have established a benami company Messrs Good Nature Trading Company (Pvt.) Ltd and Messrs Unitas Steel (Pvt.) Ltd in the year 2015-16 whereas Nisar Ahmed, Ali Ahmed and Syed Muhammad Tahir Naqvi, were shown its directors/ shareholders having entire shareholding to be divided amongst them. Nisar Ahmed, was

employed in relaxation of rules by the petitioner being the Chief Minister. Foreign remittances of Rs. 112.625 Million, Rs. 71.950 Million and Rs. 39.300 Million were received by him from UAE and U.K. through bank transactions whereas Nisar Ahmed, has no source of income. Likewise, M/s Waqar Trading Company was the other benamidar. Business was run in the name of Syed Muhammad Tahir Naqvi who was employee of Ramzan Sugar Mills (Pvt.) Ltd.

7. The petitioner and the co-accused persons alleged to have received Rs. 11 Million from Muhammad Mushtaq, of Al-Rehman Gardens, Rs. 2 Million from Nasrullah Khan Warraich, of Al-Jalil Town, Rs. 2.5 Million from Muhammad Iqbal Sajid, of ISUZU Motors. Rs. 15 Million from Raja Ali Akbar of Ghouri Town, Rs. 7.5 Million from Malik Saif ul Malook Khokhar, Rs. 1 Million from Altaf Hussain, of Gohar Publishers, Rs. 10 Million from Arshad Javed Warraich, MPA, Sialkot, Rs. 1 Million from Muhammad Abdullah, brother of Asadullah Arain, ex-MPA and Rs. 15 Million from Nawabzada Tahir ul Mulk, under the garb of party funds in the account of M/s Nisar Trading Concern. The petitioner and the co-accused persons thereby acquired benefit of Rs. 65 Million through dishonest means in addition to Rs. 460.271 Million which were deposited in the benami account without disclosing the source.

8. The petitioner and the co-accused persons also alleged to have aided and abetted benamidar/Suleman Shahbaz Sharif, for receiving Rs.603.064 Million from Muhammad Mushtaq, by concealing the true origin of the money.

9. According to the Reference filed by NAB, the foregoing facts and the evidence collected so far sufficiently establishes that the petitioner and the co-accused persons have acquired assets in their own names and in the name of benamidars/associates to the tune of Rs. 7328 Million disproportionate to their known source of income and for which they cannot reasonably account for. They were, therefore, involved in the commission of offence of corruption and corrupt practices as defined under

section 9(a)(iv)(v) and (xii) of NAO, 1999 read with section 3 of the Anti-Money Laundering Act (AMLA) 2010 punishable under section 10 of NAO, 1999 read with section 4 of Anti-Money Laundering Act (AMLA) 2010 and schedules thereto.

10. Learned counsel for the petitioner contend that the petitioner was arrested on 28.09.2020 and only 10 prosecution witnesses out of total 110 prosecution witnesses could be recorded and at present the learned trial court is vacant. Place reliance upon PLD 2002 SC 546, titled "Ch. Zulfiqar Ali v. The State", PLD 2019 SC 112 titled "Tallat Ishaq v. National Accountability Bureau through Chairman, and others" and the order passed in W.P. No.7425/2021 (Hamza Shahbaz Sharif v. NAB and others) to support their arguments on the delay in conclusion of trial. Submit that no tangible evidence is available against the petitioner as none of the PWs has ever stated that the money was sent or received by the petitioner directly for his own benefit. The petitioner has declared his assets in FBR at the relevant time, therefore, he cannot be asked to disclose other sources before the NAB. Place reliance upon PLD 2020 Lah. 205 titled "Maryam Nawaz Sharif v. Chairman, NAB and 2 others", PLD 2020 Sindh 365 (372) titled "Agha Massihuddin Khan Durrani and others v. Chairman, National Accountability Bureau, Islamabad and others", PLD 2021 SC 1 titled " Justice Qazi Faez Isa v. The President of Pakistan and others". They also argue that the allegation of benami transaction in respect of the co-accused person could not be proved on the basis that it lacked pre-requisites. Place reliance upon PLD 2002 SC 408 titled "Mst. Zahida Sattar and others v. Federation of Pakistan and others", 2003 PCr.LJ 266 titled "Makhdoom Javed Hashmi v. The State and 2 others", 2016 PCr.LJ 1343 titled " Ghulam Sarwar Khan Lalwani v. The State", PLD 2017 Lah. 23 titled "Brig. (R) Imtiaz Ahmad v. The State", 2011 SCMR 136 titled "Khalid Aziz v. The State", PLD 2011 SC 1144 titled " Ghani-ur-Rehman v. National Accountability Bureau and others". They pray for the grant of post arrest bail also on the ground that where there is dissent in grant of post arrest bail, case of further inquiry is made out.

11. Conversely, the learned Prosecutors appearing on behalf of the NAB submit that the allegation against the petitioner is that of assets beyond means and that in response to various call-up notices the co-accused persons did not appear. According to the allegation, in the year 1988-90, total declared assets of the petitioner and his entire family members were of rupees 2.1 million which increased to 14.8 million in 1998 through industrial business which he inherited but surprisingly when he became the Chief Minister Punjab in 1997 his assets started increasing and in the year 2018 it amounted to 7328 million which were declared by him. According to NAB, 96-H Model Town, which is comprised of 10-kanals was in the name of Nusrat Shahbaz, wife of the petitioner, purchased against 128.776 million. This is the place where the petitioner as Chief Minister made his Camp Office from 2010 to 2018. Their main emphasis is that all the properties were made after 2005 through Fictitious Telegraphic Transfer (FTT) and the money was received and not as a result of family settlement. Another property Nishat Lodges Donga Gali measuring 9-kanals 2.5-marlas was in the name of Nusrat Shahbaz which was valued Rs.57.804 but she had no sources of income of her own. A 6-kanal property in LDA Judicial Colony belonged to Hamza Shahbaz son of the petitioner and another house measuring 10 marlas at DHA was gifted to Tehmina Durrani against 38.5 million. One property in Islamabad valuing Rs.14.773 million of said Tehmina Durrani belonged to the petitioner was gifted to her. 391 kanals 12 marlas agricultural land belonged to Hamza Shahbaz and Suleman Shahbaz, two sons of the petitioner is valuing Rs. 95.773. Further submit that 13 industrial units were established from these Fictitious Telegraphic Transfer (FTTs). According to the learned Prosecutors Ikaram ul Haq, Nadeem Saeed and Ghulam Rasool Gorsi, recorded their statement under section 161, Cr.P.C. in which the family members of the petitioner were directly involved and since all were benamidars for the benefit of the petitioner, he is to be held responsible. The petitioner has not shown any business through which he could earn money Rs.26.9 million which is unaccounted money. They, therefore, pray for dismissal of the writ petition.

12. Arguments heard. File perused.

13. Our findings on the point of dissent mentioned in clauses "B and C" are as follows:-

14. The petitioner according to paragraph "t" of the grounds of his bail petition has stated that he is 70 years old and has prolapsed disc at L4-5 level with Retrolisthesis, a cancer survivor and is known case of Adenocarcinoid Tumor of Appendix and status post right hemi colectomy since January 2003 when he underwent a surgery. His yearly follow up CT with Ardenal Gland, cancer marker Chromogranin A and B level are conducted to examine the possibility of recurrence of cancer which were delayed because of his confinement in jail. The grant of bail on medical grounds has been well explained by the apex Court by giving guidelines on the following judgments followed in grant of bail to Mian Muhammad Nawaz Sharif on medical grounds on 25.10.2019 in Writ Petition No.63511 of 2019. Muhammad Arshad v. The State and another (1997 SCMR 1275), Malik Muhammad Yousafullah Khan v. The State and another (PLD 1995 Supreme Court 58), Hanif Ahmed Bhatti v. Federation of Pakistan and others (PLD 2005 Karachi 364), Imtiaz Ahmed v. The State through Special Prosecutor, ANF (2017 SCMR 1194) and Sharjeel Inam Memon v. National Accountability Bureau (2018 SCMR 2023).

In none of them, medical ground can be accepted as claimed rather is required to be investigated by the Medical Board comprising of the experts in the subject to ascertain the type and severity of ailment and the availability of essential treatment inside jail. The file does not reflect any such report. Besides, the delay in conclusion of trial is a ground agitated also in clause "t" as the petitioner was arrested on 28.09.2020 and as many as 110 witnesses have been cited in the volumes record of 58 volumes which were made part of the reference. There is no report from the learned trial court about the delay in trial and vacancy in the Accountability Court, needless to mention that in the presence of decision made by the authorities that the vacant Accountability Courts will be filled up soon, we are not

persuaded that it is a case of incarceration since statutory ground is not available to a person under National Accountability Ordinance, 1999, therefore, by referring the case of the brother of the petitioner namely, Mian Muhammad Nawaz Sharif v. NAB (W.P. No. 63511 of 2019 decided on 25.10.2019), we are of the considered and unanimous opinion that case of the petitioner for the grant of post arrest bail on medical ground as well as on delay in conclusion of the trial is not made out, therefore, we side with our learned brother Mr. Asjad Javed Ghural. J., on points b and c.

15. As far as point of dissent in clause "a" for the grant of bail on merits is concerned, it may be acknowledged that we have been enlightened by the valuable assistance rendered by the learned counsel for the petitioner as well as the learned Prosecutor for NAB and now well understand that the prosecution case is simply that petitioner being the public office holder has amassed money and had built up the assets in the name of his close relatives and the dependents as Beanamidars through fraudulent FTTs whereas the petitioner was the main beneficiary.

16. To further analyze the issue it is relevant to refer to the Dictionary meaning of the word "Corruption" which is an act done with an intent to give some advantage in-consistent with official duty and rights of others, and such act of official or fiduciary person who malafidely or wrongfully uses his situation to procure some benefits for himself or others contrary to his duty. The word corrupt practices are succession of acts of a similar kind of spoiled, tainted, vitiated, depraved, debased, morally degenerated acts.

A Benami Transaction is defined under Section 41 of the Transfer of Property Act, 1882, which is reproduced as under:-

> 41. Transfer by ostensible owner. Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: Provided that the transferee, after taking reasonable care to ascertain that the

transferor had power to make the transfer, has acted in good faith.

In such like situation, to prove the Benami Transaction certain facts are to be proved which are discussed in the case reported as Din Muhammad Wagan v. Mst. Rashida Khatoon through Legal Heirs (2002 CLC 1573). Burden is always upon a person who claims the Benami Transaction as held in Messrs Shalimar Ltd., Karachi v. Raisuddin Siddiqui and 3 others (1979 CLC 338). Starting from judgment given in Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras (PLD 1957 Supreme Court (Ind.) 188), Muhammad Sajjad Hussain v. Muhammad Anwar Hussain (1991 SCMR 703) up till Abdul Majeed and others v. Amir Muhammad and others (2005 SCMR 577) it has been held that in order to prove a Benami Transaction (i) Source of Income (ii) Custody of titled Document (iii) Possession of the Property (iv) Motive of the transaction. To prove this, the evidence should be confidence inspiring.

To establish a Benamidar, it must be shown that person is financially dependent upon his family members for his maintenance support and that he is the ostensible owner of the properties in the ownership of his family members. This is the most easy meaning traced from the common Dictionary meanings. Likewise, the Benamidar's status and responsibility have been explained in Jane Margrete William v. Abdul Hamid Mian (1994 CLC 1437), in which it was held that where any property was purchased by a husband in the name of his wife, the presumption was that the beneficiary was benamidar and if he claimed it her own by alleging that husband made a gift, burden would lie upon him to establish.

17. In order to prove their case, the prosecution has given the details of the assets and the inadequate resources disclosed by the petitioner and his family members utilized for the assets. Admittedly, neither of these assets were in the name of the petitioner nor the FTTs had come in his personal account. To prove the allegation of the beneficiary, the NAB has demonstrated before this Court; for example, House No. 96-H Model

Town, Lahore which became the office of the petitioner as the Chief Minister of Punjab for a good 9 years from 2009 to 2018 which is enough to establish that he had not only the possession over this property but also had enjoyed the ownership right and, therefore, was its beneficiary. It is, however, not denied that this property is owned by his wife namely, Nusrat Shahbaz, living with him. As already discussed that for a benami transaction the possession of actual owner (the wife) cannot be construed as the exclusive possession of the husband but a joint possession. The prosecution case is that this property was built up from the said amounts of FTTs sent to the wife by the petitioner. However, the answer to the questions; i.e. during which time this amount was sent for the property purchased are missing which are needed to connect the petitioner to make a good prosecution case to withhold the concession of bail. Besides, the NAB has also alleged that certain amounts were given in the party funds by the party political supporters which were utilized for the personal benefit of the petitioner. Had it been the case, it would have become a dispute, at the most, between two individuals or a matter to be considered by the Election Commission of Pakistan for collecting party funds from certain undesirable persons by suggesting a money trail.

18. In the investigation report of the NAB, it is stated that the valuable resources to purchase or build up such assets could not be provided by the petitioner despite various notices. In the table mentioned in paragraph No.3 of this order, the allegation is that petitioner had assets worth 269.301 Million in his name but its proof was not enclosed with the reference. No investigation was conducted to dig out the source of income of the petitioner. The other beneficiaries were either Hamza Shahbaz Sharif or Suleman Shahbaz Sharif. Likewise, in paragraph No.4 of this order the NAB case was narrated according to which the amount of Rs. 409 Million was given by Nusrat Shahbaz, to the petitioner to pay the custom duty of vehicle, and another amount of Rs. 2.45 Million was also transferred in his account. However, these assets may have been frozen by NAB, hence should have been secured from their further alienation. Besides, direct

remittances in the account of the petitioner are missing. We are afraid that half-hearted attempt by the NAB will not absolve them from their responsibility to prove the case against the petitioner as the presumption of innocence always lies in favour of the accused person and the onus shifts only after initial discharge of burden by the prosecution as held in Asfand Yar Wali's case reported as (PLD 2001 Supreme Court 607). Interestingly, the NAB has categorically admitted before us that petitioner is not alleged to have received any kickbacks or any such ill-gotten money in return to a favour extended to someone to build up the assets in the name of his family. These detailed explanations were to be provided by the co-accused persons; i.e. the sons, the daughters and the wives of the petitioner but since we are dealing with the case of the petitioner perhaps this does not appear to be his sole responsibility.

19. In the case of Brig. (R) Imtiaz Ahmed, the prosecution produced the income tax and wealth tax documents of the accused (therein) but failed to find his any other source of income and the ingredients of Benami Transaction of his wife could not be established. Reliance is placed upon Brig. (R) Imtiaz Ahmad v. The State (PLD 2017 Lahore 23) and order dated 26.06.2019 passed in Crl. Appeals Nos. 480, 481 and 482 of 2015 titled "National Accountability Bureau, Islamabad v. Brig. (Retd.) Imtiaz Ahmad, Mrs. Nasreen Imtiaz and Adnan A. Khawaja, respectively, upholding the said judgment. Hence, it is now law that transaction in the income tax return carries the presumption of truthfulness.

20. In Abdul Aleem Khan v. The State and others (W.P. No. 16630 of 2019) decided on 15.05.2019 the bail was granted by this Court also on the ground that the properties were declared in the income tax returns. Even the Hon'ble Judge (Asjad Javed Ghural) developing a difference of opinion in the present case has already granted bail in W.P. No. 3623 of 2021 (Mazhar Hussain Asif v. National Accountability Bureau and others) while referring to the source of money declared in the tax returns. Likewise, in Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minster of Pakistan/Member National Assembly, Prime Minster's House,

Islamabad and 9 others (PLD 2017 Supreme Court 265), it was also held that a married daughter (Maryam Nawaz) though living in a joint family in different houses in same compound, capable of surviving of her own cannot be called a dependent of father. The living together, therefore, is not a proof of dependability.

21. The case of the prosecution is also that being a public office holders the highest standard of morality is required to be exhibited since they play a role model for the general public and if a corrupt person is given the public seat of responsibility, the public confidence in a democratic system is bound to shatter. We fully subscribed to the argument that public office holder must command the respect, honour and dignity. In short, he should be 100 % Mr. Clean. This is of course a hallmark of democracy that whenever any public figure faces any such allegation he is bound to suffer politically which is a defeat of its own kind but here we are conscious of our limitations as we must deal with the cases only in accordance with law and not otherwise. At times, we are also guided and supported by the principles of morality but when it comes to the question of liberty of an individual, we are bound to take into account the basic principles under which the bail can be granted or refused. We cannot, however, keep our eyes closed of the principles for the grant of post arrest bail which is whether the case of the petitioner calls for further inquiry into his guilt. In the absence of any property purchased or owned in the personal name of the petitioner and in the absence of direct proof that his family members were his dependents or vice versa and in the absence of direct proof that the money came through FTTs in his account as some crime proceed or money laundering, we cannot accept the prosecution case as a gospel truth. We are also mindful of the fact that we are deciding a bail matter and not the appeal so as to appraise the entire evidence which is yet to be produced. The prosecution has yet to establish its case before the trial court on the basis of 110 witnesses. There is a possibility that the petitioner may be convicted and equal is the chance that he may be acquitted. In the event of acquittal the retribution of the time he spent behind the bar will not be

possible. Reliance is placed upon a hallmark judgment in Tariq Bashir and 5 others v. The State (PLD 1995 Supreme Court 34). While placing reliance upon Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 SC 1144), Khalid Aziz v. The State (2011 SCMR 136), Mst. Zahida Sattar and others v. Federation of Pakistan and others (PLD 2002 Supreme Court 408), Maryam Nawaz Sharif v. Chairman, NAB and 2 others (PLD 2020 Lahore 205) and Agha Massihuddin Khan Durrani and others v. Chairman, National Accountability Bureau, Islamabad and others (PLD 2020 Sindh 365), we have reached to the conclusion that the case of the petitioner for the grant of post arrest bail is made out.

22. Besides, the difference of opinions between judges on bail matter would clearly show the existence of reasonable grounds to connect the petitioner with the crime as doubtful which would entitle him to the benefit of doubt; a factor essential for the grant of bail. This view was given in para 10 of the judgment of the case of Tariq Bashir reported as (PLD 1995 Supreme Court 34). On the same point leave to appeal was granted by the Supreme Court in Muhammad Shakil v. Sakhi Zaman and 3 others (1999 SCMR 32), and later this case was disposed of without recalling the bail granting order on 28.02.2000 while deciding Crl. Appeal No. 192 of 1998. This view was lastly followed by a Full Bench of Karachi High Court in Muzammil Niazi and others v. The State (PLD 2003 Karachi 526), and is the law which we also follow.

23. For the foregoing reasons, we have found ourselves in agreement with our learned brother Sardar Muhammad Sarfraz Dogar, J., on the point "a" and hereby admit the petitioner to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 50,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial court.

MH/M-85/L **Bail allowed.**

P L D 2021 Lahore 473

Before Ali Baqar Najafi, J

Syed YASIR HASSAN and another---Petitioners

Versus

HOME SECRETARY, GOVERNMENT OF PUNJAB, LAHORE and 7 others---Respondents

Writ Petition No. 2051 of 2019, decided on 19th February, 2021.

Punjab Arms License Rules, 2017---

----Rr.35, 44 & 45---Arms business license, transfer of---Principles---Prospective legal heirs' willingness---Scope---Authorities declined to transfer arms business license in the name of petitioner---Validity---Sui juris and legally competent person could transfer or attorn his license during his lifetime to some other person---Prospective legal heirs were nothing but a heir in the waiting who could enjoy some rights with the contingency of death of predecessor and until that fact was materialized, they could not have any right except that of an advisor or a consultant---Actual licensee consented to transfer the license in the name of petitioner---Authorities could not refuse to grant the license within the parameters of Punjab Arms License Rules, 2017---High Court directed the authorities to transfer license in the name of petitioner, within the scope of R. 45 of Punjab Arms License Rules, 2017---Constitutional petition was allowed in circumstances.

Water and Power Development Authority, Lahore through Chairman and another v. Haji Abdul Aziz and others 2012 SCMR 965; Muhammad Tariq Badar and another v. National Bank of Pakistan and others 2013 SCMR 314 and Shahida Bibi and others v. Habib Bank Limited

and others PLD 2016 SC 995 ref.

Omer Farooq Khan for Petitioners.

Fayyaz Ahmad Mehr, A.A.G. with Tahir Farooq, Section Officer, Home Department, Lahore for Respondents.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged the order dated 12.12.2018 passed by respondent No.2/Additional Chief Secretary (Home) with the further prayer to allow the application of the petitioner dated 16.01.2016 and transfer the license No. 19-x-1983 dated 08.08.1983 issued by the District Magistrate, Lahore in the name of the petitioner No.1 as petitioner No.2 has no objection.

2. Brief facts giving rise to the filing of this Constitutional petition are that on 06.11.2006 petitioner No.1 entered into partnership agreement with petitioner No.2 whereby the later transferred his license of the business in the name of "Sports Arms" to the petitioner No.1 while retaining the rights of only 1% of the profit. The petitioner No.2 also executed power of attorney in favour of petitioner No.1 of selling arms, ammunitions, exchange the license etc. Ever since, the petitioner No.1 had been conducting the business successfully and also been paying the yearly renewal fee and taxes. Meanwhile, the address of the licensee was also changed to 16 YMCA Building, Mall Road, Lahore and the new name was given as "Arsenal Company". Additionally, he was appointed as Sales Agent on 16.10.2006, before the said agreement was executed. In the year 2014, The Punjab Arms License Rules, 2014 were promulgated and in view whereof, the petitioner filed application on 14.01.2016 for the transfer of license in his name. A report was requisitioned by respondent No.2 from respondent No.3; i.e. Home Department on the transfer of the arms business whereupon respondents Nos. 4 to 7 i.e. Deputy Commissioner, CCPO, SP

Civil Lines Division, Sub-Registrar Data Ganj Bakhsh Town, Lahore issued the NOC. Surprisingly, on 23.05.2018 petitioner No.1 was called by respondent No.2 who directed him to appear before respondent No.8/Assistant Commissioner (City) Lahore where he explained his view that since he had applied for the transfer of arms license under The Punjab Arms Rules, 2014, therefore, his case should be dealt with under the old Rules but respondent No.8 observed that under new Rules of 2017 in vogue the license could not be transferred in his name since he is not the "prospective legal heir" of petitioner No.2. He explained to the said authority that Majeed and Sons, National Traders, Imran and Company, Aadil Arms and Haider Arms etc. were transferred the arms license under the old Rules, therefore, petitioner may also be granted the same relief, but it was turned down, since these examples pertained to the years before 2017 when the new rules were not promulgated. The petitioner had to file Writ Petition No. 218752 of 2018 which was disposed of by this Court on 27.07.2018 directing respondent No.1 to decide the matter in accordance with law. On 12.12.2018, the impugned order was passed rejecting the application of the petitioner on the grounds that arms dealership license could not be transferred at that belated stage on "non-inheritance basis" though it was transferable under The Punjab Arms Rules, 2014, hence this writ petition.

3. In the report and parawise comments, the position taken in the impugned order was reiterated by the respondents.

4. Arguments heard. File perused.

5. Admittedly, petitioner No.2 is the licensee of Arsenal Company and petitioner No.1 is the major partner who is running the shop ever since the inception of the business and, therefore, has been paying all the taxes and dues and even the license has been continuously renewed up-to-date at his instance under The Punjab Arms Rules, 2017. In other words, he has been at the forefront of the business called "Arsenal Company." Importantly,

none of the prospective legal heirs of petitioner No.2 have come forward to contest the prayer of petitioner No.1 rather petitioner No.2 is supporting such transfers.

6. Under Part "E" of The Punjab Arms Rules, 2014, arms licenses are non-transferable but under Rule 22 thereof, in case of death or incapacitation of the licensee or "on account of other compelling circumstances", the transfer of license was possible through a No Objection Certificate by the prospective legal heirs. However, under part "C" titled "Transfer of license or place of business" in The Punjab Arms Rules, 2017 it has been provided under Rule 45 that transfer of the business arms license in cases other than death is possible only if a transferee has a legal heir and that too after fulfilling the requirements and eligibility criteria prescribed in Rule 35 of the 2017 Rules. Under Sub-Rule (4) of Rule 45 of Rules of 2017, the original licensee shall remain responsible for compliance of the provisions of the Ordinance and Rules, terms of the license and instructions issued by the Government from time to time and shall also be held responsible for any violation thereof. Interestingly, under Rule 44 of the Rules of 2017, in case of death of licensee, a license can be transferred to a legal heir if an affidavit is submitted subject to fulfilment of the criteria under Rule 35 of The Punjab Arms License Rules, 2017. For the convenience, rule 22 of The Punjab Arms Rules, 2014 and Rules 44 and 45 of The Punjab Arms Rules, 2017 are reproduced as under for ready reference:-

> 22. Transfer of license in case of death or incapacitation.---(1) Subject to sub-rule (2), the Government may, in case of death of a licensee or his being incapacitated to carry out business on account of mental or physical health or some other compelling circumstance, transfer his license in the following manner:
>
> (a) in case of death or incapacitation of a licensee due to loss of mental faculties, to a legal heir or any other person as may be

authorized by all legal heirs through a no objection certificate on a stamp paper in the amount of not less than Rs.100/- duly certified by a Notary Public; and

(b) in case of an incapacitated licensee who retains full mental faculties, to such person, including a legal heir, as may be authorized by him through a no objection certificate in the manner provided in clause (a).

(2) Transfer of license under sub-rule (1) shall be subject to the following conditions:

(a) all transfers shall be made on an application which shall not be considered unless a non-refundable processing fee, as may be prescribed by the Government, has been deposited;

(b) the legal heir or any other transferee shall meet the same eligibility criteria as specified under rules 7 and 8; and

(c) no application for transfer of license shall be considered if on the date of making that application a period of more than three hundred and sixty five days has elapsed since the death or incapacitation of the licensee.

(3) The transfer of license under this rule shall not be construed as a right and as such may be denied on any reasonable grounds.

44. Transfer of license in case of death.---(1) A business arms license may be transferred to a legal heir of a deceased licensee, as may be authorized by all legal heirs in the form of an affidavit attested by a judicial or revenue authority, subject to fulfillment of the eligibility criteria as mentioned in Rule 35 of the rules and subject to prescribed fee (Schedule-I).

45. Transfer of the business arms license in cases other than death.---(1) A business arms license may, in cases other than death of a

deceased licensee, be transferred to a legal heir, subject to the fulfillment of the eligibility criteria as mentioned in Rule 35 of the rules, and personal appearance of the original licensee, subject to prescribed fee (Schedule-I).

(2) An application for transfer of the business arms license under sub-rule (1) shall be submitted in writing to the Government on Form-V, along with the following documents:

(i) Copy of the business arms license; (ii) all documents mentioned in sub- rule (2) of rule 43 in respect of the proposed transferee; and

(iii) any other document that the Government may specify from time to time.

(3) The Government may, after ascertaining the eligibility of the proposed transferee and obtaining the report as to his credentials, general conduct, and criminal record, present as well as past, from the local police and, if required, from any other appropriate agency, may approve the transfer and forward the case to the DC/ NRC for further processing.

(4) The original licensee, where living, shall remain responsible for compliance of the provisions of the Ordinance and the rules, terms of the license, and instructions issued by the Government from time to time, and shall be held responsible for any violation thereof, till the completion of transfer process in the prescribed manner.

(5) The transfer of license under this rule shall not be construed as a right and as such may be denied on any reasonable grounds.

7. A comparative analysis of the above said Rules of 2014 and 2017 reveals that during the lifetime of the licensee, a license can be transferred to a legal heir without the authorization by the other legal heirs. However, it is nowhere prohibited that if prospective legal heirs or legal heir(s) may not agree to transfer the license to a person already conducting business in

partnership. Obviously, the inheritable right can be transferred with the consent of the prospective legal heirs. To put up an argument that a sui juris and legally competent person cannot transfer or attorn during his lifetime to some other person, would be a false argument. Prospective legal heirs are nothing but a heir in the waiting who may enjoy some rights with the contingency of the death of predecessor and until that fact is materialized. They cannot have any right except that of an advisor or a consultant. In the present case, as already stated the actual licensee has consented to the transfer of the license in the name of petitioner No.1. In other words, there is nothing on record to have adverse conclusion that petitioner No.2 has consented the transfer.

8. Another aspect of this case is that when the petitioner No.1 has applied for the transfer of arms license in his favour, The Punjab Arms Rules, 2014 were in existence and the Rules of 2017 were promulgated during its pendency. The reports/NOC has already been issued on the request of the petitioner No.1. It was after the promulgation of the said Rules of 2017 that impugned order was passed that too without giving any reference to any rule of The Punjab Arms Rules, of 2017. In such like situations, reference can be given to Water and Power Development Authority, Lahore through Chairman and another v. Haji Abdul Aziz and others (2012 SCMR 965), in which it was held that rules operated prospectively and if a right was created in favour of a person under the old rules, it could not be taken away on the grounds that rules were now against him, therefore, any amendment depriving a person of his right has to be construed prospectively. Relevant extract of para 7 is reproduced as under:-

> "7. We have heard the learned counsel and have also perused the record. It is an established law that the rules operate prospectively and if a right is created in favour of an employee under the old rules, it cannot be taken away, inter alia, on the ground that the amended rule has allowed others to compete ..Any amendment which

deprives a person of his right has to be construed prospectively ."

9. In the present case, the way the petitioner No. 1 has been conducting the business as a major partner by not only investing money but also by giving his precious and valuable time, his vested right has been prejudiced, therefore, reliance is placed upon Muhammad Tariq Badar and another v. National Bank of Pakistan and others (2013 SCMR 314), in which it was held that change in substantive law, which divested and adversely affected the vested rights of the parties should always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication such law had been made applicable retrospectively. Perusal of The Punjab Arms License Rules, 2017 does not reveal that it should operate retrospectively. Similarly, in Shahida Bibi and others v. Habib Bank Limited and others (PLD 2016 Supreme Court 995), it was categorically observed that unless the legislature enacted a new law with specific intention to operate retrospectively, that too with great particularity of language the courts were not to assume the effect of that law retrospectively.

10. Significantly, the present writ petition has been jointly filed by the actual licensee and the major partner who had applied for transfer of arms license in his name, therefore, in my humble view respondent No.1 could not possibly refuse the transfer of license and was required to grant it of course within the parameters of the Rules.

11. For the foregoing reasons, this writ petition is allowed impugned order dated 12.12.2018 is set aside and respondents are directed to transfer the arms license in the name of petitioner No.1 within the scope of rule 45 of The Punjab Arms Rules, 2017.

MH/Y-2/L **Petition allowed.**

P L D 2021 Lahore 802

Before Ali Baqar Najafi, J

Miss SHAKEELA RANA ADVOCATE---Petitioner

Versus

GOVERNMENT OF PAKISTAN and others---Respondents

Writ Petition No. 59314 of 2017, decided on 29th June, 2021.

Penal Code (XLV of 1860)---

----S. 123-B---Constitution of Pakistan, Art. 199---Constitutional petition---National Flag Protocols---Defilement of national flag---Petitioner assailed printing national flag in different colours with different shapes, portraits and cartoon etc.---Validity---National Flag Protocols prescribe officially that it must not touch the ground, shoes or feet or anything unclean and must not be flown in darkness and must not be marked with anything (including words, numerals or images)---National flag when raised or lowered must be saluted by all in uniform and the others must stand attention---National flag must not fly or be displayed upside down or with a crescent and star facing left and it must not be displayed where it is likely to get dirty---National flag must not be set on fire or trampled upon nor it can be buried or lowered in grave---Section 123-B, P.P.C. defines defilement of national flag an offence punishable with imprisonment for three years---High Court declared that printing of flags in different colours, on distorted shaped portraits, in ugly cartoons, its disgraceful imprint on clothes undermining national dignity were considered defilement---

Constitutional petition was disposed of accordingly.

Ms. Sidra Sehar, Vice Counsel for Petitioner.

Malik Asif Ahmed Nissoana, D.A.G. for Respondents.

Muhammad Ejaz, A.A.G.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has made the following prayer:-

> "In view of the submissions made above, it is therefore, most respectfully prayed that the instant writ petition may kindly be accepted and the respondents may graciously be directed to prohibit the printing of the different colour National Flag except original colour, printing of different shapes portraits, cartoons on the National Flag and any disgraceful printing on the legs of trousers etc. and any other disgraceful printing or acts towards that dignity of the National Flag may also kindly be directed to be prohibited, in the interest of justice, equity, and fair play.

2. Arguments heard. File perused.

3. After hearing the learned counsel for the petitioner, learned Deputy Attorney General as well as Learned Assistant Advocate-General and perusing the file, it is straightway observed that earlier petition (Writ Petition No. 15672 of 2009) filed by the petitioner was dismissed being infructuous vide order dated 17.03.2010. It is now after about 7 years that the petitioner has filed the instant petition almost on the same grounds taken in the earlier petition. The instant writ petition came up for hearing for the first time on 10.08.2017 and a direction was issued to respondents whereafter it was adjourned to 21.09.2017.

4. Importantly, our flag of a crescent and star (Parcham-E-Sitar-O-Hilal), like other national flags of any nation, has a unique importance for

it symbolizes our history, present as well as the national policy. It traces its roots from the battles in the initial days of Islam when Parcham-e-Islam was bestowed by the Holy Prophet (P.B.U.H) to Hazrat Ali (A.S) on the occasion of Badar, Khandaq and Ohad, is still being held high in the memory of Parcham-e-Abbas (A.S.) as a sign of Bravery. Our Parcham stands for freedom, liberty and equality for those who owe allegiance to it. It protects the legitimate rights of every citizen and up hold the integrity of the State of Pakistan. It is a mark that helps in maintaining peace throughout the world. It represents a State which has no special privileges or special rights for any particular community or interest but a State where citizens will have equal rights and equal opportunities and their share in privileges will be proportionate to their corresponding responsibilities. Our Pacham is not merely a piece of cloth. The white and dark green field represents peace and prosperity, the crescent on the flag progress and the five-rayed star signifies light and knowledge which symbolizes the Five Most Holy Personalities (Panjtan-e-Pak A.S.). Of course, the religious minorities of Pakistan have significant place in the flag duly acknowledged in the white colour.

5. As to the specification, the Pakistani Flag is a dark green, rectangular flag in the proportion of 3 x 2 with a white vertical bar, showing white crescent in the center and a five-pointed heraldic star. The size of the white portion is 1/4th size of the flag. Since the mast, the remainder is 3/4th being dark green. The dimensions of the five-pointed white heraldic star are determined by drawing a circle with radius equal to 1/10th of the width of the flag. Our flag is designed by Syed Amir-U-Din Kadwai and was stitched by Master Afzal Hussain. Today it is always held by the most pious and brave person who can protect it.

6. The flag should be flown in a way with the star on the flag never to

appear below the crescent. The specification of the flag is given as under:-

7. The flag should be like:-

8. Our highest esteem for the Parcham is visible from two important occasions; i.e. when in the month of August, 2004 a 173,400 sq.ft. Parcham was unfurled at the National Stadium Karachi and then on 22nd October, 2012, 24,200 people gathered in a stadium at Lahore to form the Parcham and set a new world record of world's largest national flag comprised of humans, certified by the Guinness World Records. And then on 15th February, 2014, total 29040 people gathered again in Lahore Stadium and got improved their own record of largest flag comprised of human beings.

9. According to the National Flag Protocols prescribed officially, it must not touch the ground, shoes or feet or anything unclean and must not be flown in the darkness and must not be marked with anything (including words, numerals or images) and when raised or lowered it must be saluted by all in uniform and the others must stand in attention. It must not fly or be displayed upside down or with a crescent and star facing left. It must not be displayed where it is likely to get dirty. It must not be set on fire or trampled upon. It must not be buried or lowered into a grave. In the Pakistan Penal Code, 1860 section 123-B defines the defilement of the national flag an offence punishable with 3 years' imprisonment. Obviously, the printing of flags in different colours, on distorted shaped portraits, in ugly cartoons, its disgraceful imprint on cloths undermining the national dignity may be considered defilement.

10. In this view of the matter, this writ petition is disposed of in the above terms.

MH/S-63/L **Order accordingly.**

PLJ 2021 Lahore (Note) 49

Present: ALI BAQAR NAJAFI AND MRS. ERUM SAJAD GULL, JJ.

MUHAMMAD ILYAS-Petitioner

versus

NATIONAL ACCOUNTABILITY BUREAU through Director General Lahore and 2 others--Respondents

W.P. No. 35886 of 2016, decided on 13.2.2017.

Constitution of Pakistan, 1973--

----Art. 199-Post-arrest bail--Grant of--Outstanding amounts of bills for consumption of electricity--Determination regarding question of willful default--General complaint for recovery--Scope of--Non-issuance of detection bill--Non-issuance of notice it was never a reference filed by head of company *i.e.* LESCO against petitioner individually--Besides, efforts put in by LESCO to recover said amount since 2010 was also not brought on record as no notice was issued to petitioner--Obviously, NAB authorities cannot be considered as recovering agency for outstanding amounts of bills for consumption of electricity by consumers and if they do so, they can proceed only against determined amount--In facts and circumstances, trial Court seized of matter will be in a better position to determine question of willful default in respect of outstanding amount--Case of petitioner for grant of post arrest bail is squarely made out--Petition was allowed. [Para 5 & 6] A, B & C

2005 SCMR 1666, PLD 2008 SC 645 and 2004 PCr.LJ 2012 *ref.*

Ch. Zaheer Abbas, Advocate for Petitioner.

Mr. Arif Mehmood Rana, Special Prosecutor for NAB with *Muhammad Ramzan Khan,* Deputy Director for State.

Date of hearing: 13.2.2017.

ORDER

Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner who was arrested on 20.08.2016 seeks his release on the allegation that Ministry of Water and Power through Government of Punjab requested the NAB for recovery of their amount due from the defaulting customers; who were not paying off their due defaulted amounts in respect of their bills being commercial consumer of electricity. The allegation against the petitioner is that he defaulted Rs. 74,13,722/- on account of electricity charges/bill of LESCO (WAPDA) and he has not joined inquiry proceedings inspite of call up notice, therefore, has been avoiding the payments of bill.

2. Learned counsel for the petitioner contends that case of the petitioner does not fall within the scope of Section 5(r) of the NAO 1999 read with item 5 of the schedule in the category of willful defaulter or deceitfully/fraudulently or dishonestly causing loss to a government department, a statutory body or authority established or controlled by the Federal Government. Adds that no detection bill was issued to the petitioner and that the load on the meter installed at the premises of the petitioner did not permit the excessive supply of electricity as claimed by the NAB authorities. Further adds that the outstanding amount has not been determined, against the petitioner.

3. Conversely, learned Special Prosecutor for NAB submits that the petitioner got installed the industrial electricity connection on 12.05.2009 for setting up a furnace factory and during the month of 2010, the petitioner willfully defaulted in payment of Rs. 7,413,722/-. He adds that his plea of selling the factory to another person namely, Fayyaz Masood, could not be proved as he failed to provide any evidence. The statement of Fayyaz Masood, was recorded stating that since the electricity supply was already disconnected for non-payment, therefore, he made an agreement to purchase the factory for

Rs. 31,00,000/- with the condition that petitioner would restore the electricity connection and that he did not take any possession of the factory. He adds that sales tax was paid off but the electricity dues were not and prays for dismissal of the application.

4. Arguments heard. File perused.

5. After hearing the learned counsel for the petitioner and perusing the available record, it is straightway observed that it was the general complaint made by the Ministry of Water and Power through Government of Pakistan forwarded to NAB for recovery of their amounts against the defaulting customers. It was never a reference filed by head of the company *i.e.* LESCO against the petitioner individually. Besides, the efforts put in by the LESCO to recover the said amount since 2010 was also not brought on record as no notice was issued to the petitioner. Obviously, the NAB authorities cannot be considered as recovering agency for the outstanding amounts of bills for consumption of the electricity by the consumers and if they do so, they can proceed only against the determined amount. In the facts and circumstances, learned trial Court seized of the matter will be in a better position to determine the question of willful default in respect of the outstanding amount of Rs. 7,413,722/-. Reference can also be given to order dated 08.11.2016 passed in W.P. No. 31309 titled *"Mushtaq Ahmed Nasir versus The State etc."* and also to judgments reported as *Aga Jehanzeb versus N.A.B. and others* (2005 SCMR 1666), and *Muhammad Nadeem Anwar and another versus National Accountability Bureau and others* (PLD 2008 Supreme Court 645), wherein it has been held that unless the amount is determined with exactitude, the defaulter cannot be termed as a willful defaulter under Section 5(r) of NAO 1999. Record does not reflect that petitioner acted fraudulently, deceitfully, or dishonestly to cheat LESCO as held in *Mian Munir Ahmed versus The State* (2004 P.Cr.L.J. 2012). Besides, the reference is filed before the competent

Accountability Court but at present the question of willful default by petitioner requires further probe.

6. In this view of the matter, case of the petitioner for the grant of post arrest bail is squarely made out. Resultantly, this petition is allowed and the petitioner, Muhammad Ilyas, is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 5,00,000/- (five lac) with two sureties each in the like amount to the satisfaction of the learned trial Court.

(Y.A.) **Petition allowed.**

PLJ 2021 Cr.C. (Note) 60

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI AND MASUD ABID NAQVI, JJ.

ABDUL MATEEN--Appellant

versus

STATE, etc.--Respondents

Crl. A. No. 71286 of 2017, decided on 6.11.2018.

National Accountability Bureau Ordinance, 1999 (XVIII of 1999)--

----Ss. 10(a) & 15--Criminal Procedure Code, (V of 1908), S. 265-H--Reference--Allegations--Accused with co-accused committed fraud and embezzled/misappropriated an amount of Rs. 298600 million--A ppellants faced trial before Accountability Court on charges as per framed charge and were convicted as stated above--Notably, conviction of Co-accused were pronounced under Section 10 of National Accountability Ordinance, 1999 but without imposition of fine which is mandatory as word "and" instead of "or" was used in said section--Section 10 of National Accountability Ordinance, 1999 is reproduced as under:

"10.(a) A holder of public office, or any other person who commits offences of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which extend to 14 years and with fine and such of assets and pecuniary resources of such holder of public office or person, as are found to be disproportionate to known sources of his income or which are acquired by money, obtained through corruption and corrupt practices whether in his name or in name of any of his dependents, or benamidars shall be forfeited to appropriate Government or concerned bank or financial institution as case may be. (emphasis is ours).

In paragraph 119 of said judgment an amount of Rs. 11.3 Million returned by Hameed Ghani, Sana Hameed and Israr Shah during one year proceedings in CO. No. 37/2010 cannot be considered as an amount

recovered in plea bargain, particularly when such application was already disallowed by trial Court--Court has incorrectly interpreted settlement between Bank and said appellants as a plea bargain on behalf of Hameed Ghani, Sana Hameed and Israr Shah, therefore, they could not be convicted under Section 15 of Ordinance without fixing liability--Under Section 265-H, Cr.P.C. after framing of charge accused are either found guilty or acquitted but in case of Zeeshan, Sajid Masood, Tasneem Akhtar and Nargis Tayyab no findings were given in said judgment--Section 265-H, Cr.P.C. is reproduced as under:

"**Acquittal or conviction.** (1) If in any case under this Chapter in which a charge has been framed Court finds accused not guilty, it shall record an order of acquittal.

(2) If in any case under this Chapter Court finds accused guilty Court shall, subject to provisions of Section 265-1, pass a sentence upon him accordingly to law"--Appeal were allowed.

[Para 10, 11 & 12] A, B & C

PLD 2003 SC 837.

Mr. Nasir Khan Afridi, Advocate for Appellant (in Crl. Appeal No. 71286-2017).

Ch. Zaheer Abbas, Advocate for Appellant (in Crl. Appeal No. 70876-2017).

Mr. Asad Manzoor Butt, Advocate for Appellant (in Crl. Appeal No. 67715-2017).

Ch. Abdul Rahman Jawan, Advocate for Appellant (in Crl. Appeal No. 65791-2017).

Mr. Javed Arshad Bhatti, Advocate for Appellants (in Crl. Appeal No. 81419-2017).

Ch. Muhammad Bashir, Advocate for Appellant (in Crl. Appeal No. 71201-2017).

Mr. Arif Mahmood Rana, Special Prosecutor NAB for Appellant (in Crl. Appeal No. 73765-2017).

Syed Sada Hussain Shah, Advocate for Respondents (in Crl. Appeal No. 73765-2017).

Qazi Misbah-ul-Hassan, Advocate for Petitioner (ABL) (in W.P. No. 103319-2017).

Mr. Nasir Khan Afridi, Advocate for Petitioner (in W.P. No. 219097-2018).

Barrister Syed Zakir Hussain, Advocate for Petitioner (in W.P. No. 218755-2018).

Ch. Zaheer Abbas, Advocate for Petitioner (in W.P. No. 218155-2018).

Mr. Arif Mahmood Rana, Special Prosecutor for NAB.

Date of hearing: 6.11.2018.

ORDER

This order shall dispose of Crl. Appeal No. 71286-2017 titled *Abdul Mateen vs. The State, etc.,* Crl. Appeal No. 70876-2017 titled *Shahid Tanvir vs. The State, etc.,* Crl. Appeal No. 67715-2017 titled *Faisal Hussain Butt vs. The State,* Crl. Appeal No. 65791-2017 titled *Saghir Iqbal Goraya vs. The State, etc.,* Crl. Appeal No. 81419-2017 titled *Hameed Ghani. etc. vs. The State,* Crl. Appeal No. 71201-2017 titled *Muhammad Tahir Awais vs. The State etc.*, Crl. Appeal No. 73765-2017 titled *National Accountability Bureau vs. Tasneem Akhtar, etc.,* W.P. No. 103319-2017 titled *Allied Bank Limited vs. Judge Accountability Court No. 2, Lahore, etc.,* W.P. No. 219097-2018 titled *Abdul Mateen vs. The State etc.,* W.P. No. 218755-2018 titled *Saghir Iqbal Goraya vs. The Chairman, NAB, etc.* and W.P. No. 218155-2018 titled *Shahid Tanvir vs. The State etc.* as all these appeals and writ petitions have been preferred against judgment dated 26.07.2017 passed by the learned Judge Accountability Court No. II, Lahore in AC Reference No. 38/2007 titled *"The State vs. Tasneem Akhtar, etc."* whereby the following punishments were imposed:--

131. "For what has been discussed above the accused Abdul Mateen Khan is found to have committed the offence of corruption and corrupt practices as defined under Section 9(a) of National

Accountability Ordinance, 1999 read with Para 5 of The Schedule thereto is liable to be convicted u/S. 10 of the Ordinance. He has also caused loss of Rs. 24.975 Million to ABL, Lahore Stock Exchange Branch. He is convicted and awarded rigorous imprisonment for 14 years and fine of Rs. 24.975 Million. In case of recovery of fine from him the same be given to Allied Bank Limited. In case of default the said amount is recoverable from him as arrears of Land Revenue.

132. For what has been discussed above the accused Tahir Awais is found to have committed the offence of corruption and corrupt practices falling within the mischief of Section 9(a) of National Accountability Ordinance, 1999 read with Para 5 of The Schedule thereto is liable to be convicted u/S. 10 of the Ordinance. He has also caused loss of Rs. 20 Million to ABL, Lahore Stock Exchange Branch. He is accordingly convicted and awarded rigorous imprisonment for 14 years and fine of Rs. 20 Million. In case of recovery of the said amount from him the same be given to Allied Bank Limited. In case of default the said amount is recoverable from him as arrears of Land Revenue.

133. For what has been discussed above the accused Faisal Hussain Butt is found guilty of offence of (sic) and corrupt practices as defined in (sic) National Accountability Ordinance, (sic) para 5 of The Schedule thereto is liable to be convicted u/S. 10 of the Ordinance. He is accordingly convicted and awarded rigorous imprisonment for 14 years. Since, the prosecution has not determined any amount misappropriated by him, so the Court does not award him punishment of fine.

134. For what has been discussed above the accused Shahid Tanvir is found to have committed an offence of corruption and corrupt practices falling within the mischief of Section 9(a) of National Accountability Ordinance, 1999 read with Para 5 of The Schedule thereto is liable to be convicted u/S. 10 of the

Ordinance. He is accordingly convicted and awarded rigorous imprisonment for 14 years. Since, the prosecution has not determined any amount misappropriated by him, so the Court does not award him punishment of fine.

135. For what has been discussed above the accused Saghir Iqbal Goraya is found to have committed an offence of corruption and corrupt practices falling within the mischief of Section 9(a) of National Accountability Ordinance, 1999 read with Para 5 of The Schedule thereto is liable to be convicted u/S. 10 of the Ordinance. He is accordingly convicted and awarded rigorous imprisonment for 14 years. Since, the prosecution has not determined any amount misappropriated by him, so the Court does not award him punishment of fine".

2. Briefly the prosecution case against the appellants is that FIR No. 1040/2006 was registered at Police Station Civil Line, Lahore on 24.09.2006 under Sections 477-A, 471, 468, 420, 409, 408, 109, PPC by the Chief Manager, Allied Bank Limited, Lahore Stock Exchange Branch on the allegations that the accused in the said FIR in connivance with other co-accused committed fraud and embezzled/misappropriated an amount of Rs. 298.600 Million. An inquiry was thus authorized on 12.10.2006 and was converted into investigation on 10.01.2007. As per the allegations, the officers of Allied Bank Limited, Lahore Stock Exchange Branch, Lahore misappropriated a sum of Rs. 202.068 Million. Precise allegations against the appellants were as follows:

That the investigation revealed that accused namely Tasneem Akhtar, Faisal Hussain, Saghir Iqbal Goraya and Tahir Awais as officers of Allied Bank Limited (ABL) LSE Branch Lahore in connivance and collusion with one another misappropriated a sum of Rs. 202.068 M.

(i) That accused brought the accounts of various people promising them to provide false inflated bank statements for visa purposes and other ancillary matters. The needy people were clutched into the netted plan of accused namely Tasneem Akhtar, Faisal

Hussain, Saghir Iqbal Goraya and Tahir Awais and they opened accounts with the bank and also gave them signed cheque books, which were subsequently utilized by the accused as instruments for the commission of fraud.

(ii) That accused Tasneem Akhtar in order to achieve his nefarious designs intentionally confirmed fake, false or fictitious KYC preforms through which succeeded in opening fraudulent pool accounts. Many fictitious debit/credit entries were ascertained from such pool accounts (Benami accounts).

(iii) Investigation confirmed that accused Faisal Hussain in connivance with accused Tasneem Akhtar used to prepare false drawing power (DP) of certain account holders, upon which accused Tasneem Akhtar would entertain the same and post them in routine bank system. The illegal act of the accused allowed huge withdrawal of amounts, which never existed in the balance of relevant account holders.

(iv) That above said four accused with *mala fide* and malicious intention, in order to camouflage their misdeeds and illegal practices, endorsed the flying entries in the ledgers but factually there was no cash corresponding the entries of the books.

(v) That active connivance of the said four accused is evident from the fact that they were also involved in such illegal and unwarranted business by giving money of bank to the customers unauthorizedly and illegal. The investigation reveals (relevant) said four accused besides other benefits also provided illegal pecuniary benefit of Rs. 24,975 (M) through abetment to one Abdul Mateen account holder No. 2005-1.

Thus accused committed the offence of criminal breach of trust by dishonestly and fraudulently misappropriation huge amount of the bank. The accused persons embezzled a sum of Rs. 202.068 Million by opening fake and fictitious accounts, by endorsing the flying entries in the ledgers, by conducting illegal business, by

forging bank record and by falsification of accounts. The accused thus committed offence as defined u/S. 9(a)(iii)(iv)(vi)(xi) and (xii) punishable u/S. 10 (a) read with schedule thereto of NAO, 1999".

3. Consequently, the above reference was filed on 4.2.2010 in which, besides the appellants (Tasneem Akhtar, Faisal Hussain, Saghir Iqbal Goraya and Tahir Awais), other persons were also arrayed as accused. As per the reference, appellants Tasneem Aljditar, Faisal Hussain, Saghir Iqbal Goraya, Tahir Awais, Asad Raza Naqvi, Mushtaq Ahmad Bajwa, Farrukh Fahim Ansari, Usman Qazi and Syed Shuja Hassan Rizvi in connivance with appellants Shahid Tanvir, Saeed Ahmad Waheed, Abdul Mateen Khan, Sajid Masood, Hameed Ghani and Zeeshan Dar prepared forged record, falsified accounts and misappropriated an amount of Rs. 202.068 Million of the bank. On 07.07.2009 a supplementary reference was also filed and the appellants Sana Hameed, Nargis Tayyab and Israr Shah were also cited as accused persons. Copies were distributed under Section 265-C, Cr.P.C. and the charge was framed against the appellants as follows:

"That you accused Tasneem Akhtar, Asad Raza Naqvi as Customer Services Managers, Mushtaq Ahmad, Syed Shuja Hassan Rizvi, Usman Qazi as Bank Officers, Faisal Hussain Butt as Current Deposit Incharge, Saghir Iqbal Goraya as Cash Deposit Officer, Tahir Awais as Cashier, Farruk Fahim Ansari as Chief Manager of Allied Bank Ltd, Lahore Stock Exchange Branch Lahore committed criminal breach of trust as bankers to the tune of Rs. 202.068 Million as defined u/S. 409 Pakistan Penal Code in respect of the deposits of the said bank, with connivance, assistance/abetment and in conspiracy with your co-accused Shahid Tanvir, Saeed Ahmad Waheed, Abdul Mateen Khan, Sajid Masood, Hameed Ghani, Zeeshan Dar, *Mst.* Sana Hameed, *Mst.* Nargis Tayyab, Israr Shah the Account Holders of your bank on the basis of forged and fake documentation during the period ending on 22.09.2006 caused a corresponding financial loss to your bank and, thus, you all committed a offence punishable u/S. 9(a)(xi)

(xii) of National Accquntability Ordinance, 1999 read with Section 10 of the said Ordinance and schedule thereto which is within the cognizance of this Court".

The appellants pleaded not guilty and claimed trial.

4. The prosecution produced as many as 40 witnesses. In the statement under Section 342, Cr.P.C. the appellants had taken the following stand:--

(i) Faisal Hussain Butt/appellant stated that he joined ABL in 1994 as Assistance, his duties were to supervise the entries made and had no interaction with cash or any other valuable security in any manner what so ever. As per rules and regulations of the ABL (Allied Bank Ltd) cashier is solely responsible for receiving and paying the cash and also receives the cheques. His version may be confirmed by perusing the written rules and regulations of ABL. He had had no access to the cash or any other valuable security therefore allegations of criminal breach of trust on me is totally out of question.

(ii) Saghir Iqbal Goraya/ appellant stated that he was innocent and was falsely been implicated in the case, under *mala fide* and malice of the complainant.

(iii) Tahir Awais/appellant stated that the case against him was false and he has been unduly involved in the case. All the PWs were bank employees and they were interested and biased. No loss has been caused to the bank due to my conduct.

(iv) Shahid Tanveer/appellant stated that none of the prosecution witnesses has deposed against him in support of the charge. No oral or documentary evidence could be brought against him through which the prosecution was able to connect him with the case. He was forced by the complainant bank and NAB to depose against other accused as per their wish and due to my denial of deposing falsely. He was arrayed as an accused at variance.

(v) Abdul Mateen/appellant stated that the prosecution in connivance with the bank authorities have made out this false

case against him with *mala fide* intention in order to usurp his amount of Rs. 11,67,00,000/-. If any fraud has been committed, the same is best known to the bankers. He was falsely implicated in this case so that the bank authorities could usurp my amount.

(vi) Hameed Ghani/appellant stated that he on behalf of H.S.Z. Securities instituted a Civil Suit C.O.S. 09/2007 before Hon'ble Lahore High Court, Lahore against the complainant bank. In reaction of the said suit he was falsely implicated in this case.

5. Zeeshan Dar since acquitted produced three witnesses. Syed Nadeem Anwar, Customer Service Manager, Allied Bank Lahore Stock Exchange Branch (DW-1), Muhammad Azam Khan (DW-2) and Muhammad Usman Nasir (DW-3) and also produced some documents. After taking into consideration the evidence available on the record the judgment was pronounced which has been challenged in these appeals.

6. Learned counsel for the appellants submit that Saeed Ahmad Waheed was acquitted and the case of Abdul Mateen appellant is at par with him as he was also an employee of Sajid Mehmood and was at the most a Benamidar, therefore, he was also entitled to the benefit of doubt. It was further argued that Hameed Ghani/appellant was convicted under Section 15 of the National Accountability Ordinance, 1999 and no question was put to him under Section 342, Cr.P.C. in respect of the allegation made in the charge which is violation of law laid down in PLD 2003 SC 837 titled *Syed Ali Nawaz Shah and 2 others versus The State and others*). Adds that the punishment under Section 15 of the NAO, 1999 was illegally awarded, as no plea bargain was entered with NAB. It was also argued that this appeal filed by NAB was time barred.

7. Conversely the learned counsel for the NAB submits that no fine was imposed upon the appellants, namely, Faisal Hussain Butt, Shahid Tanvir, Saghir Iqbal Goraya and Israr Shah which is violation of Section 10 of the National Accountability Ordinance, 1999. Also submits that conviction under Section 15 of National Accountability Ordinance, 1999 was made without reference to Section 25(b) of National Accountability Ordinance, 1999 which

is not in accordance with provisions of National Accountability Ordinance, 1999.

8. Learned counsel for the Allied Bank Limited also submits that the judgment is silent about Government loss and that Zeeshan Dar, Sajid Masood and Naeem Akhtar were neither convicted nor acquitted which is violation of Section 265-H, Cr.P.C. Refers to Para-48 under which the determination of liability was held in abeyance until the decision on the rendition of accounts by the Court. Adds that liability of the accused do not commensurate with the liability fixed by the NAB.

9. Arguments heard. Files perused.

10. The appellants faced trial before the learned Accountability Court on the charges as per framed charge and were convicted as stated above. Notably, conviction of Faisal Hussain Butt, Sahid Tanvir and Sagir Iqbal Goraya were pronounced under Section 10 of National Accountability Ordinance, 1999 but without imposition of the fine which is mandatory as word **"and"** instead of **"or"** was used in the said section. Section 10 of National Accountability Ordinance, 1999 is reproduced as under:

> "10.(a) A holder of public office, or any other person who commits the offences of corruption and corrupt practices shall be punishable with rigorous imprisonment for a term which may extend to 14 years and with fine and such of the assets and pecuniary resources of such holder of public office or person, as are found to be disproportionate to the known sources of his income or which are acquired by money, obtained through corruption and corrupt practices whether in his name or in the name of any of his dependents, or benamidars shall be forfeited to the appropriate Government or the concerned bank or financial institution as the case may be. (emphasis is ours).

11. In Paragraph 119 of the said judgment an amount of Rs. 11.3 Million returned by Hameed Ghani, Sana Hameed and Israr Shah during one year proceedings in CO. No. 37/2010 cannot be considered as an

amount recovered in plea bargain, particularly when such application was already disallowed by the trial Court. The Court has incorrectly interpreted the settlement between the Bank and the said appellants as a plea bargain on behalf of Hameed Ghani, Sana Hameed and Israr Shah, therefore, they could not be convicted under Section 15 of the Ordinance without fixing the liability. Section 15 of the National Accountability Ordinance, 1999 is reproduced as under:-

> "15.(a) Where an accused person is convicted of an offence under Section 9 of this Ordinance he shall forthwith cease to hold public office, if any, held by him and further he shall stand disqualified for a period of then years, to be reckoned from the date he is released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province.
>
> Provided that any accused person who has availed the benefit of sub-section (b) of Section 25 shall also be deemed to have been convicted for an offence under this Ordinance, and shall forthwith ceased to hold public office, if any, held by him and further he shall stand disqualified for a period of then years, to be reckoned from the date he has discharged his liabilities relating to the matter or transaction in issue, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any statutory or local authority or in service of Pakistan or of any Province.
>
> 15.(b) .....

12. Under Section 265-H, Cr.P.C. after framing of the charge the accused are either found guilty or acquitted but in the case of Zeeshan, Sajid Masood, Tasneem Akhtar and Nargis Tayyab no findings were given in the said judgment. Section 265-H, Cr.P.C. is reproduced as under:

"**Acquittal or conviction.** (1) If in any case under this Chapter in which a charge has been framed the Court finds the accused not guilty, it shall record an order of acquittal.

(2) If in any case under this Chapter the Court finds the accused guilty the Court shall, subject to the provisions of Section 265-I, pass a sentence upon him accordingly to law".

Here reliance can also be placed upon PLD 2003 SC 837 titled *(Syed Ali Nawaz Shah and 2 others versus The State and others)*. Relevant extract from Para-12 is reproduced as under:

"However, the concept of plea bargain in the Ordinance is slightly different as an accused can negotiate such plea during the course of inquiry/investigation or at any subsequent stage before or after the commencement of the trial or in appeal. The plea bargain is not like a civil contract between the parties rather it contains the elements of culpability of crime as result of which a person facing accusation under the Ordinance, on entering such plea saves himself from conviction and substantive sentence but entails the penalties provided in Section 15 of the Ordinance and this is well-known principle of criminal justice system that an accused cannot be held guilty merely on the basis of probabilities rather finding of guilt should rest squarely and firmly on the evidence".

13. In view of the above referred legal lacunas and consensus developed between the parties, learned counsel for the appellants, the Prosecutor as well as counsel for the Bank, the judgment is not sustainable in the eyes of law, therefore, the appeals of the appellants are **allowed,** impugned judgment is set aside and the case is **remanded** to Accountability Court No. II, Lahore where **A.C. Reference No. 38/2007** shall be deemed to be pending for its **decision afresh/rewriting** of judgment.

(A.A.K.) **Appeals allowed.**

PLJ 2021 Lahore (Note) 70

Present: **ALI BAQAR NAJAFI AND TARIQ IFTIKHAR AHMED, JJ.**

RASHID ASHRAF--Petitioner

versus

NAB through D.G. etc.--Respondents

W.P. No. 191565 of 2018, decided on 13.6.2018.

Constitution of Pakistan, 1973--

----Art. 199--National Accountability Ordinance, 1999, Ss. 9(a)(iii)(ix)(x) 10 & 31-A--Post arrest bail--Grant of--Misappropriation of amount--Agent was not nominated as co-accused--Defamation of cheating public-at-large--Allegation of--Individual agreement specimen shows that amount of 300 $ was received as a "consultancy of webmail market"--Question as to whether this amount was received as investment or entrustment as required under Section 406 PPC would require further probe into guilt of petitioner--Allegation of prosecution that M/s High Aim Business Solution (Pvt) Ltd. was not registered with any regulatory, authority, will become a subject of discussion before learned trial Court)--Petition allowed.

[Para 5] A

2015 SCMR 1575 and 2011 SCMR 1614 *ref.*

Ch. Zaheer Abbas, Advocate for Petitioner.

Mr. Ahsan Rasool Chatha, Special Prosecutor for NAB with *Ammara Munir*, I.O.

Date of hearing: 13.6.2018.

ORDER

Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has sought post arrest bail in supplementary Reference No. 49 of 2015 titled *"The State versus Rashid Ashraf"* on the allegation that the he misappropriated Rs. 14,819,500/- of 19 claimants through dishonest and illegal means. The role against him is that he established a firm namely, M/S HIGH AIM Business Solution (Pvt.) Ltd. and induced the public-at-large for investment in forex market on exaggerated profits. Consequently, the public-at-large was attracted to open trading account with the minimum of Rs. 3,00,000/- for the business of commodities (gold and crude oil) and issued receipts for the investment and fake profits were shown in their accounts but subsequently it was shown that due to the heavy losses the amount was withdrawn. He is alleged to have misappropriated the above said amount making out the offence under Section 9(a)(iii),(ix),(x) and 31-A punishable under Section 10 and 31-A of the NAO, 1999.

2. Learned counsel for the petitioner submits that no agent was nominated as co-accused and that statements of the prosecution witnesses do not attract the offence under NAB Ordinance as, at the most they had claim salaries and commissions. Further submits that total alleged loss is less than 100 million rupees and, therefore, it does not come within the definition of cheating public at-large and prays, for the grant of post arrest bail.

3. Conversely, learned Special Prosecutor for NAB submits that the petitioner remained proclaimed offender for two years and was arrested on 26.09.2017 and that 10 bank accounts were opened in which withdrawal was

made by the petitioner himself and, therefore, prays for dismissal of the petition.

4. Arguments heard. File perused.

5. Admittedly, the claims of the aggrieved persons that they were given the target to fetch the investors which they did but their commission with salaries were not given to them and the claim was filed only to that extent. The individual agreement specimen shows that the amount of 300 $ was received as a **"consultancy of the webmail market"**. The question as to whether this amount was received as investment or entrustment as required under Section 406 PPC would require further probe into the guilt of the petitioner. The allegation of the prosecution that M/s High Aim Business Solution (Pvt) Ltd. was not registered with any regulatory, authority, will become a subject of discussion before the learned trial Court as the claim of the petitioner has been that he received 12% amount from the broker as commission namely, **One Financial, Skooji, Global and ATI trading**.

6. It was held in *"Rafiq Haji Usman v. Chairman, NAB and others"* (2015 SCMR 1575) that in order to attract the definition of cheating public-at-large less than the claim of 100 million rupees would not be given priorities. Likewise, in "Shahid Imran v. The State and another" (2011 SCMR 1614) it is held that whenever the question of investment or entrustment is involved, the case requires further investigation since it is involved civil liability.

7. Keeping in view the above and while relying upon the above said case laws, this petition is **allowed** and the petitioner/Rashid Ashraf, is admitted to post arrest bail subject to his furnishing bail bonds in the sum of

one million rupees with two sureties each in the like amount to the satisfaction of the learned trial Court.

(Y.A.) **Petition allowed.**

PLJ 2021 Lahore 132

[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

Rana GHULAM ABBAS--Petitioner

versus

SIDRA GHAUS etc.--Respondents

C.R. No. 231 of 2019, decided on 4.4.2019.

Civil Procedure Code, 1908 (V of 1908)--

----S. 115 & O.XL R. 1(a)--Suit for partition of property--Decreed--Auction of property--Application for appointment of receiver for collection of rent--Allowed--Revision petition--Dismissed--Concurrent findings--Challenge to--Possession of property is with petitioner and Respondents No. 4 to 8 and nothing was so far paid to Respondents No. 1 to 5 and they also have not cooperated to internally auction of property on basis of reserved price--Argument advanced by counsel for petitioner that under Section 9 of Punjab Partition of Immovable Property Act, 2012, a receiver can be appointed only after consensus in writing amongst all co-owners for a time to be regulated by Court--However, such referee is appointed only for partition and not for collecting mesne profits, rent etc. for its distribution to others shareholders--Under Section 10, it can conduct internal auction and under Section 11, it can conduct an open auction, but referee in present case was appointed for collection of rent--While following judgments of Indian Supreme Court, that receiver has to be appointed where case of emergency is made out keeping in view conduct of parties aimed at constantly depriving other party for their right to share; profit in joint property--It was rightly appointed in a view to safeguard interest of all shareholders--For what has been discussed above, this Court has not found any illegality or defect to interfere into concurrent findings recorded by Courts below Resultantly, this civil revision is dismissed *in limine*--Revision was dismissed.

[Pp. 135 & 136] A & B

2014 YLR 1654 and PLD 2013 Peshawar 1.

Malik Muhammad Siddique Kamboh, Advocate for Petitioner.

Date of hearing: 7.3.2019.

ORDER

Through this civil revision under Section 115, CPC, the petitioner has challenged the orders dated 20.12.2018 and 6.2.2019 whereby the learned trial Court as well as the learned appellate Court have concurrently allowed the application under Order XL Rule 1(a) CPC and appointed the receiver.

2. Brief facts giving rise to the filing of this civil revision are that Respondents No. 1 to 3 filed a suit for partition of property, namely, Khewat No. 1761, Khatooni No. 1785 measuring 6 marlas 8 sarsai, Khewat No. 1756, Khatooni No. 1780 measuring 03 marlas 07 sarsai Sakni Tehsil and District Sahiwal to the extent of share of property left by the deceased; Ghulam Ghaus in their capacity as his legal heirs, against the petitioner and Respondents No. 4 to 8 in which a preliminary decree was passed on 05.11.2015" and the local commission was appointed to ascertain the divisibility or evaluation of the said and on the basis of his report filed on 4.1.2016 the learned trial Court fixed the reserved price of Rs. 5,00,00,000/- (five crore) on 09.02.2016, on the basis of the government schedule and passed the order dated 21.04.2016 which was however set-aside by the revisional Court on 23.05.2017, and the reserved price was changed to Rs. 6,42,00,000/-. However, the auction could not be conducted. Meanwhile, the Respondents No. 1 to 3 filed an application under Order 40 Rule l(a) CPC to appoint a receiver for collection of the rent of disputed property, which was allowed on 20.12.2018 and the revision petition preferred by the petitioner was also dismissed on the reasons that after the filing of the suit for partition in the year 2012, a preliminary decree was already passed exparte on 05.11.2015, whereafter on 04.01.2016 the local commission submitted a report about the indivisibility of the property but no serious efforts were made to auction the property comprises of 8/9 shops either internally or externally. However, nothing was paid to the respondent seeking partition since the preliminary decree of mesne profit was passed on 05.11.2015 showing their conduct. It was, therefore, observed that the

Respondents No. 1 to 3 being the legal heirs were deprived of their rights of receiving rent as per their share. The Civil Nazir was therefore appointed as Receiver for Rs. 5000/- as monthly fee to collect future rent as the Respondents No. 1 to 3 have made out a *prima-facie* case. The possession of the property with receiver was found essential to safeguard the interest of the shareholders since the possession of receiver is always considered as possession of the Court.

3. Learned counsel for the petitioner submits that Respondent No. 1 is not the widow of Ghulam Ghaus as she had got a divorce from him and that the inheritance mutation was illegally sanctioned. He adds that under Section 9 of the Punjab Partition of Immovable Property Act, 2012 only upon the agreement of all the shareholders of the immovable property a receiver can be appointed.

4. Arguments heard. File perused.

5. After hearing the learned counsel for the petitioner and perusing the record, it is found that the subject of discussion is the scope of Order 40 Rule 1(a) CPC which is reproduced as under:

> *"**1. Appointment of receivers.**--(1) Where it appears to the Court to be just and convenient, the Court may be order--*
>
> *(a) Appoint a receiver of any property, whether before or after decree;*
>
> *(b) Remove any person from the possession or custody of the property;*
>
> *(c) Commit the same to the possession, custody or management of the receiver; and*
>
> *(d) Confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit."*

6. A perusal of the said provisions reveals that if it is so justified, the civil Court can appoint a Receiver of property before or after the decree, and can

also remove any person from possession or custody of the property, and can also give the possession of such property to the Receiver by conferring powers for realization, management, protection, improvement of property, and to collect rents & profits and dispose of such rent and profits. However, if a party has no right to remove a person from the possession of the property, such possession shall not be taken.

7. Admittedly, the possession of the property is with petitioner and Respondents No. 4 to 8 and nothing was so far paid to the Respondents No. 1 to 3 and they also have not cooperated to internally auction of the property on the basis of the reserved price. The argument advanced by the learned counsel for the petitioner that under Section 9 of the Punjab Partition of Immovable Property Act, 2012, a receiver can be appointed only after the consensus in writing amongst all the co-owners for a time to be regulated by the Court. However, such referee is appointed only for partition and not for collecting mesne profits, rent etc. for its distribution to the others shareholders. Under Section 10, it can conduct internal auction and under Section 11, it can conduct an open auction, but the referee in the present case was appointed for collection of rent.

8. The impugned order was passed in line of the dictum followed by a Division Bench of Sindh High Court in case titled *'Pir Omar Khayyam vs. Mrs. Ruby Hameedullah and 7 others"* reported as 2014 YLR 1654 and case titled *"Mst. Hussan Jamala and another vs. Government of Khyber Pukhtunkhwa through Secretary, Home and Tribal Affairs, Peshawar"* reported as PLD 2013 Peshawar 1, wherein it was held, while following the judgments of the Indian Supreme Court, that receiver has to be appointed where the case of emergency is made out keeping in view the conduct of the parties aimed at constantly depriving the other It was rightly appointed in a view to safeguard the interest of all the shareholders.

9. For what has been discussed above, this Court has not found any illegality or defect to interfere into the concurrent findings recorded by the Courts below. Resultantly, this civil revision is **dismissed in limine.**

(M.M.R.) **Civil Revision Dismissed.**

PLJ 2021 Lahore (Note) 139

[Multan Bench Multan]

Present: ALI BAQAR NAJAFI, J.

Mst. FAIZA ASHRAF--Petitioner

versus

ADDITIONAL DISTRICT JUDGE etc.--Respondents

W.P. No. 3782 of 2014, decided on 14.10.2015.

Muslim Family Laws Ordinance, 1961--

----Ss. 9 & 10--Constitution of Pakistan, 1973, Art. 199--Bari articles--Barri articles are gifts given to bride at-the time of marriage from bridegroom side and such gifts must remain with bride--Petitioner could not prove *barri* articles before Family Court as well as appellate Court--No constitutional defect or any grave illegality could be pointed out--Petition was dismissed. [Para 5] A

Mr. Muhammad Zaman Bhutta, Advocate for Petitioner.

Ch. Khalid Pervez, Advocate for Respondent Nos. 3 and 4.

Date of hearing: 14.10.2015.

ORDER

This writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is directed against the judgment and decree dated 22.01.2014 and 26.03.2012 whereby petitioner was' held entitled for maintenance allowance @ Rs. 5000/- per month from 15.09.2009 till effectiveness of divorce besides the dower amount Rs. 1,00,000/- together with the alternate price of dowry articles to the tune of Rs. 2,14,600/- or barri articles or in lieu thereof Rs. 2,39,000/- and the amount of gold which was modified by declining the barri articles and the clothes.

2. Learned counsel for the petitioner contends that it was also admitted by Respondent No. 4 and DW-1 that he sent the petitioner to her parents house empty handed. Places reliance upon *Mst. Shahnaz Begum .versus Muhammad Shafi and others* PLD 2004 Lahore 290, to argue that she is also entitled for the *barri*, articles. Adds that wear and tear of dowry articles so calculated is not reasonable.

3. Conversely, learned counsel for Respondents No. 3 and 4 submits that no dowry articles could be granted, therefore, there is no illegality in the judgments and decrees passed by the Courts below.

4. Arguments heard. File perused.

5. Barri articles are the gifts given to the bride at the time of marriage from the bridegroom side and such gifts must remain with the bride. However, the petitioner could not prove these *barri* articles before the Family Court as well as the learned appellate Court. No constitutional defect or any grave illegality could be pointed out. For this reason, this petition has been found meritless and is, therefore, **dismissed**.

(Y.A.) **Petition dismissed.**

PLJ 2021 Cr.C. (Lahore) 378 (DB)

Present: ALI BAQAR NAJAFI AND SYED SHAHBAZ ALI RIZVI, JJ.

GHULAM RASOOL @ SANA ULLAH--Appellants

versus

STATE, etc.--Respondents

Crl. A. No. 224-J of 2014, heard on 22.1.2020.

Control of Narcotic Substances Act, 1997 (XXV of 1997)--

----S. 9(c)--Conviction and sentence--Challenge to--Recovery of opium, charas, .12 bore guns .9 Mm pistol and live bullets, Rs. 45,000/---Chemical examination report prepared in view of outdated/old interpretation of Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 as directory, under which its non-observance would not have invalidated trial--Rule 6 has now been declared as mandatory, non-observance of which shall invalidate result--Said Rule necessarily requires test and analysis by following protocols on alleged drugs by mentioning each test and names of all protocols applied to carry out result without which, report so prepared by Government Analyst shall be invalid--Report of Chemical Examiner said requirement was not fulfilled--Only test performed on receipt items were mentioned--Besides, Chemical Examiner's report does not bear number--No evidence to effect that sample was received by ASI (PW-1) from Excise & Taxation Officer (ETO) is on record--According to this witness, handed over 20 sealed samples parcels of charas and two packets of opium to him on 15.07.2011 but he deposited it on 19.07.2011 after four days, because stamp of Excise Office was missing but he personally retained contraband and did not deposit it in Malkhana raising the/chain of custody--Even otherwise, said report reveals that 20 received packets were of charas and 2 were of opium, but their separate analytical reports were not made--Lastly, said report did not contain signatures of Chemical Examiner but only of Assistant Chemical Examiner--These illegalities in ascertaining nature of contraband as charas and opium created

serious dents in prosecution story, benefit of which must goes\ to appellant--It cannot be safely said that conviction of appellant was based on prosecution case proved beyond any reasonable doubt--Appeal was allowed by giving him benefit of doubt.

[Pp. 381, 382 & 384] A, B, C, D, E & F

2018 SCMR 2039, 2019 SCMR 930, 2015 SCMR 1002.

Mr. Muhammad Mumtaz Faridi, Advocate for Appellant.

Mr. Nisar Ahmad Virk, DPG for State.

Date of hearing: 22.1.2020.

ORDER

Ali Baqar Najafi, J.--Through this appeal under Section 48 of Control of Narcotic Substances Act, 1997 read with Section 410, Cr.P.C., the judgment dated 16.05.2014 passed by the learned Additional Sessions Judge, Faisalabad has been challenged whereby the appellant was convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to imprisonment for life with fine of Rs. 1,00,000/- in default whereof to undergo further simple imprisonment for six months. Benefit of Section 382-B, Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case against the appellant are that on 11.07.2011, Bashir Ahmad, S.I. along with Muhammad Khalid No. 4908/C, Qamar Abbas No. 2615/C, Aziz Ullah No. 1582/C, Muhammad Haroon No. 5129/C were present near Bijli Ghar Jaranwala Road on patrolling where they received a spy information that Ghulam Rasool/appellant, a comrade of inter-divisional drug peddler, Arshad Kamoka @ Don, was coming on a car bearing Registration No. 564/LRJ from the side of link road 208/RB towards Dhudhi Wala, having huge quantity of narcotics substance. On receiving this information a raiding party was constituted and established a picket on bridge of Rajbah Dhudhi Wala. After some time, a Suzuki Mehran Car No. LRJ/564 came from the side of Ring road, 208/R.B. and on the pointation of the

informer the car was intercepted and the accused Ghulam Rasool *alias* Sana Ullah was apprehended two (2) packets of opium, one kilogram each and twenty (20) packets of charas of one kilogram each, two .12 bore guns, two magazines, a bag having 50 live cartridges of .12 bore gun, black box made of plastic having .9 MM pistol along with three magazines, having 48 live bullets and Rs. 45,000/- were recovered from the car and personal search of the appellant. From the recovered narcotics substance 10 grams of each charas and opium were separated for chemical analysis. Both samples and remaining Charas were secured through separate sealed parcels with recovery memo. (Exh.PB). The car Suzuki Mehran LRJ/564 was also taken into possession *vide* recovery memo. (Exh.PC) and recovered .12 bore guns, magazines, 50 live cartridges of .12 bore, pistol .9 MM, 3 magazines as well as 48 live bullets *vide* recovery memo. (Exh.PD). Thereafter a complaint (Exh.P.A) was drafted and sent to the police station for registration of formal FIR.

3. After due investigation, a report under Section 173, Cr.P.C. was submitted against the appellant. Copies of relevant documents were delivered to the appellant and charge was framed on 13.10.2011 to which he pleaded not guilty and claimed trial. The learned trial Court, after completion of trial, *vide* judgment dated 16.05.2014 found the appellant guilty, therefore, convicted and sentenced him as mentioned above.

4. Arguments decided. Record perused.

5. After hearing the learned counsel for the appellant and the learned prosecutor it is straightway observed that the chemical examination report (Exh-PF) prepared in view of the outdated/old interpretation of Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 as directory, under which its non-observance would not have invalidated the trial. Section 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 is reproduced as under:

> **"6. Report of result of test or analysis.--**After test or analysis the result thereof together with full protocols of the test applied, shall be

signed in quadruplicate and supplied forthwith to the sender as specified in Form-II."

However, it would be important to observe that in case titled *The State through Regional Director ANF versus Imam Bakhsh and others* reported as (2018 SCMR 2039), rule 6 has now been declared as mandatory, the non-observance of which shall invalidate the result. Para 15 of the judgment is reproduced as under:

> "15. Rule 6 on the other hand stands on a different statutory footing. It provides that the Report of the Government Analyst, after the test and analysis, is to furnish the result together with full protocols of the test applied. The accuracy of test and analysis and the correct application of the full protocols alone can determine if the recovered substance is a narcotic drug or a psychotropic or controlled substance. "Protocol" means an explicit detailed plan of an experiment, procedure or test or a precise step-by-step description of a test, including the listing of all necessary reagents and all criteria and procedures for the evaluation of the test data. Rule 6 requires that full protocols of the test applied be part of the Report of the Government Analyst. Every test has its protocols, which are internationally recognized and a test without the observance of its protocols has no sanctity. "Full protocols" include a description of each and every step employed by the Government Analyst through the course of conducting a test. Hence, the Report under Rule 6 must specify every test applied for the determination of the seized substances with the full protocols adopted to conduct such tests." (underlining for emphasis is ours)."

6. It was recently reiterated in case titled *Khair-ul-Bashar versus The State* reported as (2019 SCMR 930) that said Rule necessarily requires test and analysis by following the protocols on the alleged drugs by mentioning each test and the names of all the protocols applied to carry out the result without

which, the report so prepared by the Government Analyst shall be invalid. Page 935 of the said judgment is reproduced as under:

> "Imam Bakhsh purposively interprets the Act and finds Rule 6 to be a mandatory provision regarding information to be reflected in the Report of the Analysts. Hence, the argument that Imam Bakhsh is per incuriam, is hopelessly misconceived and rejected. For completion of record it is pointed out that review filed in Imam Bakhsh was also dismissed *vide* an earlier order dated 06.02.2019".

7. In the more recent judgment in Crl. Petition No. 733 of 2019 titled *"Qaiser Javed Khan vs. The State through Prosecutor General Punjab, Lahore & another"*, decided on 18.12.2019 the Hon'ble Supreme Court has reiterated the views expressed in *Ikramullah* (2015 SCMR 1002), *Imam Bakhsh* (2018 SCMR 2039) and *Khair-ul-Bashar* (2019 SCMR 930) while holding as follows:

> "8. The Report of the Government Analyst in the instant case does not specify the protocols of the tests applied and thus does not meet the requirements of the law as interpreted by this Court in the cases of Imam Bakhsh and Kair-ul-Bashar (supra). The said report cannot be relied upon for the conviction of the petitioner. Therefore, the petition is converted into appeal and allowed. The conviction and sentence of the petitioner are set aside. He shall be released forthwith if not required to be detained in any other case.
>
> 9. We have observed in a number of cases before us that the import of the above cited judgments have not been fully understood in the context of "protocols", which has been further clarified in this judgment. Therefore, it will be appropriate if a copy of this judgment is dispatched to all the High Courts for their reference and for further circulation to the Trial Courts dealing with such matters and to the Forensic Science Laboratories in their respective areas ".

8. Based upon the above latest law, we have noted that report of Chemical Examiner (Exh.PF) the said requirement was not fulfilled as required in *Imam Bakhsh's case supra*. Only the test performed on the receipt items were mentioned. The scanned copy of the report (Exh.PF) is as under:

9. Besides, the Chemical Examiner's report does not bear the number. No evidence to the effect that the sample was received by Tahir Mehmood, ASI (PW-1) from the Excise & Taxation Officer (ETO) is on the record. According to this witness, Khalid Akhtar/HC handed over 20 sealed samples parcels of charas and two packets of opium to him on 15.07.2011 but he deposited it on 19.07.2011 after four days, because the stamp of Excise Office was missing but he personally retained the contraband and did not deposit it in Malkhana raising the doubt in the chain of custody. Even otherwise, the said report (Exh-PF) reveals that 20 received packets were of charas and 2 were of opium, but their separate analytical reports were not made. Lastly, the said report did not contain the signatures of the Chemical Examiner but only of the Assistant Chemical Examiner. These illegalities in ascertaining the nature of contraband as charas and opium created serious dents in the prosecution story, the benefit of which must goes to the appellant.

10. Keeping in view the above, it cannot be safely said that the conviction of the appellant was based on the prosecution case proved beyond any reasonable doubt. For what has been discussed above, this appeal is **allowed,** conviction and sentence of the appellant is set aside and he is acquitted of the charge levelled against him by extending the benefit of doubt. He is in custody, be released forthwith if not required to be detained in any other case.

(A.A.K.) **Appeal allowed.**

PLJ 2021 Lahore 543

Present: ALI BAQAR NAJAFI, J.

MUNIR AHMAD--Petitioner

versus

LDA etc.--Respondents

W.P. No. 232398 of 2018, decided on 23.6.2020.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Ownership on basis of registered sale-deed--Non-sanctioning of mutation in favour of petitioner--Suit land was sold to some one--Application for review of mutation--Allowed--Appeal--Dismissed--Revision petition--Sanctioning of mutation in favour of petitioner by District Collector--Application for amendment of award--Allowed--Name of petitioner was added--issuance of allocation letters--Delivery of possession to petitioner--Civil suit was filed by petitioner and others--Compromise was effected--Issuance of show-cause notice--Sale-deed of petitioner was declared fake and fabricated document--Writ petition--Disposed of--Sale-deed was partially cancelled--Moving of reference by LDA for cancellation of award to LAC--*Bona fide* commission--Challenge to--As on today, sale deed in favour of petitioner has been partially cancelled, mutation has judgment of civil suit in respect of cancellation of sale deed has not been challenged by petitioner, background of litigation between petitioner and others was not brought to notice of this Court and even they were not impleaded as party against which relief is being claimed, therefore, certain raised questions of fact cannot be decided before this Court--Matter in hand squarely comes within purview of LDA Commission--These writ petitions are disposed of directing respondent to place case of petitioners in *bonafide* commission constituted under Lahore Development Authority Commission Rules, 2014 for decision in matter in accordance with law--Petition disposed of.

[Pp. 547 & 548] A & C

Lahore Development Authority (Amendment) Act, 2013--

----S. 32--Constitution of commission--Power of commission--A commission has been constituted to deal with *bonafide* purchasers, illegal construction and illegal housing schemes--Commission is comprised of Technical experts for all above referred three categories--Commission is empowered under Rule 5 to regulate its own procedure to ensure due process of law, therefore, not required to follow provisions of Qanun-e-Shahadat Order, 1984 and Code of Civil Procedure, 1908 (hereinafter to be called CPC)--In discharge of its duties, Commission will have same powers under CPC for summoning and enforcement of attendance of a person for examining on oath, recovery and production of documents, receiving evidence on affidavits, issuance of commissions for examination of witnesses or documents, dismissing an application for default or directing to proceed; ex-parte, and execution of its recommendations--All proceedings of Commission are considered as judicial proceedings conducted within meaning of Sections 193, 219 and 228 for purpose of Section 196 of the Pakistan Penal Code, 1860. [P. 547] B

Syed Anwar-ul-Haq Gillani, Advocate for Petitioner.

Sahibzada Muzaffar Ali, Senior Legal Advisor for LDA for Respondent.

Date of hearing: 18.2.2020.

ORDER

This order shall dispose of W.P. No. 232398-2019 titled *"Munir Ahmad vs. LDA etc."*, W.P.No. 226087-2018 titled *"Mian Muhammad Yasin vs. LDA etc."* as well as Crl. Org.No. 204750-2018 titled *"Munir Ahmad vs. Khurram Mukhtar etc."* and they all invoke a common question of law and facts.

2. Briefly, the facts giving rise to the filing of the constitutional petition are that the petitioners were the owner of land measuring 36 kanal 10 marlas bearing Khasra No. 1157/291, 1158/294, 1159/294. 1160/296 Mauza Ajhodia Pur Tehsil Cantt, District Lahore on the basis of registered sale deed dated 12.04.1980. However, he could not get the mutation sanctioned in his favour. The original vendor, taking its advantage had sold this land to someone else

through a registered sale deed dated 30.07.1980. He filed an application for the review of the said mutation which was allowed and it was reviewed on 23.09.2009. This order was challenged by the adversary before the Executive District Officer (Revenue), Lahore which was dismissed on 01.06.2010, upheld by the learned Member Board of Revenue while dismissing the revision petition on 14.10.2012.

3. Meanwhile, the District Collector, Lahore sanctioned the mutation Nos. 8565 & 8571 in favour of the petitioner on 30.09.2009, and on the basis of which, the petitioner applied before the Executive District Officer (Revenue), Lahore to amend the award which request was allowed on 10.10.2009 by adding the name of the petitioner. Consequently, LDA allocated two plots Bearing Nos. 170 and 171 Block-K, measuring 17 marlas each and also issued the allocation letters on 01.12.2011 and in pursuance thereto, also delivered the possession to the petitioner on 23.12.2011.

4. On the other hand, the aggrieved party had filed a civil suit against the petitioner and others, in which a compromise was effected between the parties, according to which the petitioner was ready to surrender the land measuring 19 kanal 1 marla in their favour, as he is entitled to another exempted plot measuring 15 marlas. He had also deposited Rs. 10,98,504/- against the demand notice dated 11.11.2011 on account of the development charges. For the released of his grievance, he filed W.P. No. 13453-2012 which was disposed of on 06.05.2015 as follows:

> *"In view of the consensus arrived at between the parties instant petition is disposed of with a direction to the Director Exemption LDA (Respondent No. 4) to proceed with the matter regarding exemption of plots against the remaining land of the petitioner measuring 14K-8M acquired by the LDA from Mauza Ajhodia Pur after decision of the suits filed by the junior vendees whose mutations have already been cancelled by the revenue authorities. In case grievance of the petitioner is not redressed, he would be at liberty to approach this Court afresh."*

5. To the surprise of the petitioner, the petitioner had received a show-cause notice on 25.05.2015 stating that in view of the judgment and decree dated 07.02.2012 the sale deed of the petitioner has been declared illegal being fake and fabricated document. The petitioner, therefore, filed W.P.No. 1926/2015 and Crl.Org.No. 1568- W-2015 which were disposed of on 30.12.2015 to the following effect:

> *"Mr. Khurram Mukhtar, Land Acquisition Collector, LDA Present in the Court, states that he withdraws the show-cause notice dated 25.05.2015 issued in the name of the petitioner. Further submits that the application filed by the petitioner pending with the authority shall be decided on its own merits strictly in accordance with law.*
>
> *2. In view of above, this writ petition is disposed of with the direction, that the application filed by the petitioner shall be adjudicated strictly in accordance with law on its own merits."*

6. Later, Crl. Org. No. 2-W-2017 was also filed which was disposed of on 26.01.2017 with a direction to LDA to decide the application within two months:

> *"In this view of the matter, this criminal original is dismissed as withdrawn. However, the concerned respondent is directed to decide the application of the petitioner within a period of two months positively and without any failure strictly in accordance with law from the date of receipt of order of this Court. "*

7. Yet another Crl. Org. No. 72466-2017 was filed by the petitioner but of no avail.

8. The case of the petitioner in W.P. No. 232398-2018 is that a meeting was convened and its minutes dated 28.03.2018 must be set- aside and in other petition bearing W.P. No. 226087 of 2018 the consequential actions have been challenged.

9. In the report and parawise comments submitted by the LDA, the facts narrated by the petitioners were although admitted, yet it was contended that

petitioner cannot be granted the exemption of 15 marlas, since "genuine" vendees were granted exemptions after due diligence since their ownership was found intact in the revenue record. Besides, the civil suit filed by one Pervaiz Iqbal had been decreed on 07.02.2012 declaring the sale deed of the petitioner as void ab-initio and, consequently, the mutations in his favour were also cancelled. Although, the sale deed was partially cancelled in violation of Section 40 of the Specific Relief Act, 1877, since different rights and obligations under the instrument are distinct or separate. Yet it was categorically stated that partial cancellation if registered sale deed cannot be implemented. According to the LDA, the said judgment of the civil Court, was not challenged by the petitioner, though the Director Land Development-I, LDA has also moved a reference to LAC for the cancellation of award. The decision of the committee is reproduced as under:

"DECISION:

> *The case of the petitioner/applicant is based on malafide, fraud, forgery, concealment of facts. Upon perusal of the entire circumstances it transpires that fraud is floating on the record. The petitioner/applicant has approached with unclean hands and is not entitled to any relief. The subject matter of the case has already been taken up in 1980 in the form of a civil suit filed by the present petitioner and the same was dismissed. Subsequently, the same has never been restored nor restoration has been revealed by the present petitioner before any Court of law. It is a cardinal principle of law that fraud vitiates all proceedings. The present petitioner failed to justify his ownership before the civil Court in 1981 and also in his civil revision before honourable Lahore High Court, Lahore. The present petitioner failed to prove his case for grant of exemption thus is not entitled to any relief."*

10. In the parawise comments, by the Commissioner, Lahore it has been admitted that Reference No. DLD-1/86 dated 05.05.2018 regarding

cancellation of award dated 12.10.2009 is pending before him but the petitioner was not attending it.

11. Arguments heard. File perused.

12. After hearing the learned counsel for the parties and perusing the file, it is straightaway observed that as on today, the sale deed in favour of the petitioner has been partially cancelled, the mutation has been revised the judgment of the civil suit in respect of the cancellation of the sale deed has not been challenged by the petitioner, the background of the litigation between the petitioner and others was not brought to the notice of this Court and even they were not impleaded as party against which relief is being claimed, therefore, certain raised questions of fact cannot be decided before this Court.

13. Learned counsel for the LDA has taken a stand that the matter can be referred to the Bonafide Commission of LDA where all the points raised before this Court can be resolved.

14. Under Lahore Development Authority Commission Rules, 2014, made under Section 32 of the LDA (Amendment) Act, 2013 (XXXVI of 2013) a commission has been constituted to deal with the *bonafide* purchasers, illegal construction and illegal housing schemes. This Commission is comprised of Technical experts for all the above referred three categories. The Commission is empowered under Rule 5 to regulate its own procedure to ensure due process of law, therefore, not required to follow the provisions of Qanun-e-Shahadat Order, 1984 and Code of Civil Procedure, 1908 (hereinafter to be called CPC). In the discharge of its duties, the Commission will have the same powers under CPC for summoning and enforcement of the attendance of a person for examining on oath, recovery and production of documents, receiving evidence on affidavits, issuance of commissions for the examination of witnesses or documents, dismissing an application for default or directing to proceed ex-parte, and execution of its recommendations. All proceedings of the Commission are considered as judicial proceedings conducted within themeaning of Sections 193, 219 and 228 for the purpose of Section 196 of the Pakistan Penal Code, 1860.

15. Under Rule 5 (Proceedings) the Commission may initiate the proceedings, if so requested, by or on behalf of an authority, or upon application of any person claims to be a bonafide purchaser, if his allotment/transfer of interest has been cancelled or called in question by the Authority, or who is owner in possession of an illegal construction, or is a developer or is a resident of an illegal housing scheme, for the purposes of consideration and recommendation.

16. The application before the Commission shall contain a precis of material facts, with full particulars of any illegal act committed by persons, with reference to date and place or practice, specifying the mode and the manner for regularization, with an effort to pay the amount for this purpose. Apart from the payment of Rs. 5000/- as processing fee, at the time of filing the application but during the proceedings, the Commission may require the applicant to deposit same as security. The Commission shall proceed with hearing of the case preferably on day-to-day basis and decide the matter within four (4) months and can also hear the applications at the places as ordered by the Government. The parties are permitted to be represented through attorney so authorized. The Chairman may assign the application to the full Court or to a bench. The quorum for proceedings shall be Chairman and a member, or two members without the Chairman.

17. Under Rule 8, The Commission can recommend by majority for retrieval of property in the name of authority, transfer in the name of the applicant subject to the payment to the authority, fixing the separate responsibility of the parties to share the loss. In the matter of illegal Housing Schemes, it can recommend for demolishing of structure and roads, approval of housing society with or without amended plan or payment of fine, fee or penalty as determined by the Commission. In the cases of illegal construction it can also recommend demolition by applicant or Authority, recovery of dues. Fines, rectifications of the illegal construction and apportionment of the cost by each party, partially demolish the construction and recover the cost thereof, determine the rights of the parties in that eventuality, and recommend for the

approval of construction plan subject to the payment of fine, fee and penalties to the Authority.

18. Since the matter in hand squarely comes within the purview of LDA Commission, therefore, these writ petitions are disposed of directing the respondent to place the case of the petitioners in the *bonafide* commission constituted under the Lahore Development Authority Commission Rules, 2014 for the decision in the matter in accordance with law.

(Y.A.) **Petition disposed of.**

PLJ 2021 Cr.C. (Lahore) 558 (DB)

Present: MALIK SHAHZAD AHMED KHAN AND ALI BAQAR NAJAFI, JJ.

Mst. ZAINAB BIBI--Appellant

versus

STATE and another--Respondents

Crl. A. No. 21021 of 2019, heard on 23.6.2020.

Control of Narcotic Substances Act, 1997 (XXV of 1997)--

----S. 9(c)--Control of Narcotic Substances (Government Analysts) Rules, 2001, R. 6--Conviction and sentence--Challenge to--Recovery of heroin--Chemical examination report prepared in view of outdated/old interpretation of Rule p 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 as directory, therefore, its non-observance would not have invalidated trial--Rule 6 has now been Declared as mandatory, non-observance of which shall invalidate result--Said Rule necessarily requires test and analysis by following protocols alleged drugs by mentioning each test and names of all protocols applied to carry out result without, export so prepared by Government Analyst shall be invalid--Based upon above latest law, we have noted that report of PFSA said requirement was not fulfilled as required in Imam Bakhsh's case supra--Only test performed on receipt items were mentioned which included top-load balance for weighing, chemical spot tests for presumptive testing and gas chromatography-Mass Spectrometry used for confirmation--Besides, Allah Rakha/Constable/PW-1 deposited simple to FSL whereas, as per FSL Report it was received in office by said police official but according to him he received this sample from Arif Hussain/Moharrir therefore, four (4) days are not explained--Even otherwise, PW-1 had failed to point our any other sample which he deposited before FSL alongwith sample of present case, hence safe custody becomes doubtful, especially when PW-1 could not narrate as to where he stayed in these 4 days and sample was not opened. [Pp. 560, 561 & 563] A, B, C, D & E

2018 SCMR 2039, 2019 SCMR 930, 2015 SCMR 1002.

Mr. Sajjad Hussain Tarar, Advocate for Appellant

Mr. Irfan Ahmed Malik, Special Prosecutor for ANF/State.

Date of hearing: 23.6.2020.

JUDGMENT

Ali Baqar Najafi, J.--

Crl. Misc. No. 2/2020.

Learned counsel for the petitioner, on reconsideration, does not press this petition provided the main appeal of the petitioner is fixed today.

2. In the light of the above, this petition is **dismissed as having been withdrawn.** However, the office is directed to fix the main appesil today after issuance of cause list.

MAIN APPEAL.

3. This appeal under Section 48 of CNSA 1997 is directed against the judgment dated 03.04.2019 passed by learned Addl. Sessions Judge, Faisalabad in case F[R No. 284 dated 29.04.2014 registered under Section 9(c) Control of Narcotic Substances Act, 1997 at Police Station Chak Jhumra, District Faisalabad, whereby the appellant was convicted under Section 9(c) CNSA, 1997 and sentenced to rigorous imprisonment for four (4) years with fine of Rs. 20,000/- and in default thereof, to undergo simple imprisonment for four (4) months. However, the appellant was awarded the benefit of Section 382-B, Cr.P.C.

4. Briefly, the prosecution case as disclosed by Muhammad Akram, S.I./S.H.O./complainant (PW-2) in his compliant (Exh.PB), on the basis of which formal crime report (Exh.PB/1) was registered, is that on 29.04.2014 he along with Abdul Waheed, SI, Muhammad Azam, ASI, Muhammad Aslam, Liaquat Ali, Zulfiqar Ali, Saeed Anwar, constables and Shahida Parveen, No.

506/LC was present in the area of Chak No. 104/JB in connection with patrolling duty when he received an information that the appellant with huge quantity of contraband was present at Pull Jhang Branch, upon which a raid was conducted, the appellant was apprehended and during her search 1043 grams of heroin from the shopping bag carried in her left hand along with sale proceeds of Rs. 1940/-way recovered.

5. After the investigation, report under Section 173, Cr.P.C. was submitted and the learned trial Court after observing the pre-trial codal formalities framed the charge against the appellant on 20.05.2014 to which she pleaded not guilty and claimed trial. The learned trial Court after recording the evidence, completed the trial, *vide* judgment dated 03.04.2019 found the appellant guilty, therefore, convicted and sentenced her as mentioned above.

6. Arguments heard. Record perused.

7. After hearing the learned counsel for the appellant, learned Special Prosecutor for ANF and perusing the record, it is straightway observed that Exh.PD is the chemical examination report prepared in view of the outdated/old interpretation of Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 as directory, therefore, its non-observance would not have invalidated the trial. Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 is reproduced as under:

> **"6. Report of result of test or analysis.--**After test or analysis the result thereof together with full protocols of the tes applied, shall be signed in quadruplicate and supplied forthwith to the sender as secified in Form-II."

However, it would be important to observe that in case titled The State through Regional Director ANF versus Imam Bakhsh and others reported as (2018 SCMR 2039). Rule 6 has now been declared as mandatory, the non-observance of which shall invalidate the result. Para 15 of the judgment is reproduced as under:

"15. Rule 6 on the other hand stands on a different statutory footing. It provides that the Report of the Government Analyst, after the test and analysis, is to furnish the result together with full protocols of the test applied. The accuracy of test and analysis and the correct application of the full protocols alone can determine if the recovered substance is a narcotic drug or a psychotropic or controlled substance. "Protocol" means an explicit, detailed plan of an experiment, procedure or test or a precise step-by-step description of a test, including the listing of all necessary reagents and all criteria and procedures for the evaluation of the test data. Rule 6 requires that full protocols of the test applied be part of the Report of the Government Analyst. Every test has its protocols, which are internationally recognized and a test without the observance of its protocols has no sanctity. "Full protocols" include a description of each and every step employed by the Government Analyst through the course of conducting; a test. Hence, the Report under Rule 6 must specify every test applied for the determination of the seized substances with the full protocols adopted to conduct such tests." (underlining for emphasis is ours)."

8. It was recently reiterated in case titled *Khair-ul-Bashar versus The State* reported as (2019 SCMR 930) that said Rule necessarily requires test and analysis by following the protocols on the alleged drugs by mentioning each test and the names of all the protocols applied to carry out the result without, the report so prepared by the Government Analyst shall be invalid, Page 935 of the said judgment is reproduced as under:

"…. Imam Bakhsh purposively interprets the Act and finds Rule 6 to be a mandatory provision regarding information to be reflected in the Report of the Analysts. Hence, the argument that Imam Bakhsh is per incuriam, is hopelessly misconceived and rejected. For completion of. record it is pointed out that review filed in Imam Bakhsh was also dismissed vide an earlier order dated 06.02.2019."

9. In the more recent judgment in Crl. Petition No. 733 of 2019 titled *"Qaiser Javed Khan vs. The State through Prosecutor General Punjab, Lahore and another"*, decided on 18.12.2019 the Hon'ble Supreme Court has reiterated the views expressed in Ikramullah (2015 SCMR 1002), *Imam Bakhsh (2018 SCMR 2039) and Khair-ul-Bashar* (2019 SCMR 930) while holding as follows:

> "8. The Report of the Government Analyst in the instant case does not specify the protocols of the tests applied and thus does not meet the requirements of the law as interpreted by this Court in the cases of Imam Bakhsh and Khair-ul-Bashar (supra). The said report cannot be relied upon for the conviction of the petitioner. Therefore, the petition is converted into appeal and allowed. The conviction and sentence of the petitioner, are set aside. He shall be released forthwith if not required to be detained in any other case.
>
> 9. We have observed in a number of cases before us that the import of the above cited judgments have not been fully understood in the context of "protocols", which has been further clarified in this judgment. Therefore, it will be appropriate if a copy of this judgment is dispatched to all the High Courts for their reference and for further circulation to the Trial Courts dealing with such matters and to the Forensic Science Laboratories in their respective areas."

10. Based upon the above latest law, we have noted that report of PFSA (Exh.PD) the said requirement was not fulfilled as required in Imam Bakhsh's case supra. Only the test performed on the receipt items were mentioned which included top-load balance for weighing, chemical spot tests for presumptive testing and gas chromatography-Mass Spectrometry used for confirmation. The scanned copy of the report Exh.PD is as unde

11. Besides, Allah Rakha/Constable/PW-1 deposited the simple to the FSL on 01.05.2014 whereas, as per the FSL Report (Exh.PD), it was received in the office by said police official on 02.05.2014, but according to him he received

this sample from Arif Hussain/Moharrir on 29.04.2014, therefore, four (4) days are not explained. Even otherwise, PW-1 had failed to point our any other sample which he deposited before FSL along with the sample of the present case, hence the safe custody becomes doubtful, especially when PW-1 could not narrate as to where he stayed in these 4 days and the sample was not opened.

12. Keeping in view the above, it cannot be safely said that the conviction of the appellant was based on the prosecution case proved beyond reasonable doubt. For what has been discussed above, this appeal is **allowed,** conviction and sentence of the appellant is set aside and he is acquitted of the charge leveled against him by extending the benefit of doubt. He is in custody, be released forthwith if not required to be detained in any other case.

(A.A.K.) **Appeal allowed.**

PLJ 2021 Cr.C. (Lahore) 575

***Present*: ALI BAQAR NAJAFI, J.**

MUHAMMAD KHAN, etc.--Petitioners

versus

STATE etc.--Respondents

Crl Misc. No. 69006-B of 2020, decided on 17.2.2021.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 498--Pakistan Penal Code, (XLV of 1860), S. 295-A--Pre-arrest bail, grant of--Litigation between parties--Allegation of--Malicious intention of outraging religion feelings--After hearing counsel for petitioners, Additional Prosecutor General assisted by counsel for complainant and perusing record it is straightaway observed that occurrence was reported on 12.11.2020 after more than one year and three months without explaining delay--As per contents of FIR, litigation is pending between parties and that in report prepared by Superintendent of Police (Investigation), petitioner/Munawar Nasreen had taken a stand that religion of complainant as Christian was written inadvertently--Even otherwise, this controversy was brought before Court--Besides, a perusal of Section 295-A, PPC reveals that deliberate and malicious intention of outraging religious feelings of any class of citizens of Pakistan, by words either spoken or written, shall be punishable with 10 years imprisonment--In facts and circumstances, question whether writing of religion on a particular application against fact, constitutes section 295-A, PPC, may be answered after further probe--At this stage, there is enough *malafide* available on part

of complainant to falsely implicate petitioners in view of background of litigation pending between parties--Bail was confirmed.

[Pp. 576 & 577] A

Mr. Sajjad Hussain Tarar, Advocate for Petitioners.

c, Additional Prosecutor General Punjab for State.

Sardar Zulfiqar Umar Khan Thaheem, Advocate for Complainant.

Date of hearing: 17.2.2021.

ORDER

Petitioners seek pre-arrest bail in case FIR No. 411/2020, dated 12.11.2020 for offence under Sections 501 & 506, PPC later on added Section 29S-A, PPC registered at Police Station Lalian, District Chiniot on the allegation that an application was filed on 06.08.2019 by Munawar Nasreen/Petitioner No. 3 with the consent of the other petitioners against the complainant in which the religion of the complainant was mentioned as Christian whereas he is a Muslim. On the said date, she had also filed a petition under Sections 22-A & 22-B, Cr.P.C. before the learned Ex-Officio Justice of Peace, Lalian in which a report was submitted by the Superintendent of Police (Investigation), Chiniot who informed that as per the statement of Ghulam Qamar-ud-Din, Imam Masjid, Jamia Masjid Faizan Ibrahim, Mohallah Tariqabad, Lalian, the complainant was a Muslim as he used to offer prayer behind him in the mosque. Upon this report dated 21.10.2019, on the same day, an order was passed with an undertaking from Munawar Nasreen/Petitioner No. 3 that she would not call the complainant as Christian in future. Meanwhile, an application was again filed by Munawar Nasreen/Petitioner No. 3 in which religion of the complainant

was again mentioned as Christian which has caused damage to his reputation, hence FIR under Sections 501 and 506, PPC was registered. However, on 01.12.2020, Section 295-A, PPC was added on the opinion of the Superintendent of Police (Investigation), District Chiniot.

2. After hearing the learned counsel for the petitioners, learned Additional Prosecutor General assisted by the learned counsel for the complainant and perusing the record it is straightaway observed that the occurrence dated 06.08.2019 was reported on 12.11.2020 after more than one year and three months without explaining the delay. As per the contents of the FIR, litigation is pending between the parties and that in the report prepared by the Superintendent of Police (Investigation), the petitioner/Munawar Nasreen had taken a stand that the religion of the complainant as Christian was written inadvertently. Even otherwise, this controversy was brought before the Court. Besides, a perusal of Section 295-A, PPC reveals that deliberate and malicious intention of outraging the religious feelings of any class of the citizens of Pakistan, by words either spoken or written, shall be punishable with 10 years imprisonment. In the facts and circumstances, the question whether writing of religion on a particular application against the fact, constitutes Section 295-A, PPC, may be answered after further probe. At this stage, there is enough *malafide* available on the part of the complainant to falsely implicate the petitioners in view of the background of litigation pending between the parties.

3. For what has been stated above, this petition is accepted and ad-interim pre-arrest bail earlier allowed to petitioners *vide* order dated 28.12.2020 stands confirmed subject to their furnishing bail bonds in the sum

of Rs. 1,00,000/- (Rupees one hundred thousand only) each with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.A.K.) **Bail allowed.**

PLJ 2021 Lahore 790

Present: ALI BAQAR NAJAFI, J.

SOHAIL RANA--Petitioner

versus

ADJ, etc.--Respondents

W.P. No. 23075 of 2019, decided on 19.4.2021.

Punjab Rented Premises Act, 2009 (VII of 2009)--

----Ss. 13 & 15--Constitution of Pakistan, 1973, Art. 199--Ejectment petition--Accepted--Appeal--Dismissed--Oral tenancy agreement--Default in payment of rent--Relationship of landlord and tenant--Compromise deed--Concurrent findings--Challenge to--Besides, in agreement dated 18.12.2000/Exh.R5 written between Rana Zahid Ismail and Kaleem Ullah, relationship of landlord and tenant was admitted and rent of Rs. 2000/- was mentioned which was for oven (تندور)--Importantly, AW2/Waqas Javed admitted that agreement dated 17.10.2015 was in his knowledge and was signed in his presence--Kaleem Ullah/RW1 however, admitted that it was got written in compromise deed that shop was to be vacated by 01.03.2018 and that he did not vacate because cousin of petitioner Azhar Bashir asked him not to do so--Relationship was admitted and rent Rs. 8000/- which was agreed between parties--Petition dismissed. [P. 792] A

Mr. Ali Nayyar Awan, Advocate for Petitioner (in W.P. No. 23075/2019 and for Respondent No. 3 in W.P. No. 41396/2019).

Mr. M. Mushtaq Ahmad Dhoon & *Mrs. Naila Mushtaq Dhoon,* Advocates for the Petitioner (in W.P. No. 41396/2019 and for Respondent No. 3 in W.P. No. 23075/2019).

Date of hearing: 19.4.2021.

ORDER

This order shall also dispose of W.P. No. 41396/2019 titled *"Kareem Ullah versus Additional District Judge, Sialkot, etc."* as both writ petitions have arisen from the same judgment and decree dated 19.12.2018 passed by the learned Special Judge Rent and order dated 12.03.2019 passed by the learned Additional District Judge, Sialkot whereby Kareem Ullah Respondent No. 3 was concurrently ejected from shop No. 1563 situated at Saddar Bazar, Sialkot with some modification regarding payment of rent while holding that instead of Rs. 25000/-the tenant shall pay Rs. 8000/- as monthly rent from 1.3.2018 till the date of eviction.

2. Brief facts giving rise to the filing of these petitions are that the petitioner, Sohail Rana, filed an ejectment petition on the ground that on 01.01.2015 an oral agreement was entered between the parties for monthly rent of Rs. 25000/- in respect of shop No. 1613 situated at Saddar Bazar Sialkot for a period of one year and after its expiry the rent was not paid, therefore, he became defaulter of 27 months from 01.01.2016 which amount is equivalent to Rs. 6,75,000/-. Leave to contest was filed by Respondent No. 3 on the ground that father of the petitioner Sohail Rana had let out shop No. 1563 to partner of the respondent namely, Muhammad Yaqub on 17.4.1997 for a period of 30 years and took Rs. 57000/- as security. As the partnership of respondent was dissolved, the father of the petitioner further took Rs. 1,00,000/- from respondent as an advance and another agreement dated 18.12.2000 was written and that afterwards, on 07.10.2015 Rs. 5,50,000/-were received by him when a fresh agreement was executed without mentioning any specific time since it was already rented out for 30 years. Leave to contest filed by the Respondent No. 3 was allowed and the issues were framed and the evidence was recorded. Learned Rent Controller while giving reference to agreement dated 07.10.2015/Exh.R4 determined that monthly rent of Rs. 25,000/- was fixed

and the relationship was not disputed, therefore, the ejectment order was passed. However, the appellate Court *vide* order dated 12.03.2019 dismissed the appeal while holding that Rs. 8000/- was the rent payable since 01.03.2018 till eviction on the ground that cross-examination of Waqas Javed/AW2 on agreement dated 17.05.2015 was conducted in which Rs. 8000/- was stated as monthly rent and this agreement was expired on 01.03.2018, therefore, the said amount was payable after the said date, hence this petition.

3. After hearing the learned counsel for the parties and perusing the file it is straightaway noted that admittedly the rented premises had been vacated and the possession has been given to the petitioner/Sohail Rana.

4. The case of the petitioner is that the shop was rented out @ Rs. 25000/- per month through an oral agreement dated 01.01.2015 and after one year the Respondent No. 3 became defaulter. However, a perusal of Exh.R4 reveals that tenancy agreement dated 07.10.2015 was executed between the petitioner and Respondent No. 3 for Rs. 8000/- per month and for six months' notice the said shop was to be vacated. Notably, the ejectment petition was filed on 24.03.2018 meaning thereby the relationship continued with mutual consent for a rent of Rs. 8000/- per month and that is the reason that the appellate Court had ordered the Respondent No. 3 to pay the rent from 01.03.2018 *i.e.* the month when the ejectment petition was filed. Besides, in the agreement dated 18.12.2000/Exh.R5 written between Rana Zahid Ismail and Kaleem Ullah, the relationship of landlord and tenant was admitted and the rent of Rs. 2000/- was mentioned which was for oven (تندور). Importantly, AW2/Waqas Javed admitted that the agreement dated 17.10.2015 was in his knowledge and was signed in his presence. Kareem Ullah/RW1 however, admitted that it was got written in compromise deed that shop was to be vacated by 01.03.2018 and that he did not vacate because the cousin of the petitioner Azhar Bashir,

asked him not to do so. It means, that relationship was admitted and the rent of Rs. 8000/- which was agreed between the parties.

5. For what has been discussed above, these writ petitions have been found meritless and are hereby **dismissed**.

(Y.A.) **Petition dismissed.**

PLJ 2021 Cr.C. 1097

[Lahore High Court, Lahore]

***Present*: ALI BAQAR NAJAFI, J.**

IMRAN FAAZAL--Petitioner

versus

STATE and another Respondents

Crl. Misc. No. 64321-B of 2020, decided on 29.12.2020.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497(2)--Control of Narcotic Substances Act, 1997 (XXV of 1997), S. 9(c)--Bail, grant of--Further inquiry--Conviction and sentence--Challenge to--Recovery of charas wrapped in shopper--Occurrence was narrated way it happened and, had police any grudge against petitioner, would not be registered and that petitioner was under lawful custody when he led to recovery of narcotics substance--However, this argument may be addressed by trial Court after record of evidence but at present it is not denied that petitioner had led to recovery of narcotics during police custody and that no reason to prepare a discharge report in said FIR was given except that no incriminating material was found against him--Obviously, he was apprehended under Section 54, Cr.P.C. due to suspicion in absence of any statement of complainant or witness and, therefore, no incriminating material was found against him--The prosecution case is that petitioner has voluntarily led to recovery of narcotics from his own rented house but fact remains that recovery was effected from a private place which was not a part of raid and search warrant was also not issued against petitioner--Importantly, place of recovery is inside house but no independent witness

was associated in recovery proceedings despite fact that it was a populated area--Significantly, if narcotics substance was recovered on 28.08.2020 as per case diary its recovery should have been mentioned same day but in present FIR it was mentioned at 1.15 a.m, of following night-- Case of petitioner calls for further inquiry into his guilt as envisaged under Section 497(2), Cr.P.C., notwithstanding positive report of Chemical Examiner-- Application is allowed. [Pp. 1098] A & B

Mr. Kamran Javed Malik, advocate for Petitioner.

Mr. Abdul Samad, Additional Prosecutor General Punjab for State.

Date of hearing: 29.12.2020

ORDER

The petitioner seeks, post arrest bail in case-FIR No. 1089/2020, dated 29.08.2020 under Section 9-C of CNSA, 1997, registered at Police Station Peoples Colony, District Gujranwala on the allegation that the petitioner during investigation of case FIR No. 868/2020 got recovered Charas wrapped in a shopper bag weighing 2210 grams from the iron lying under the clothes.

2. After hearing the learned counsel for the petitioner, learned Additional Prosecutor General Punjab and perusing the record, it is straightaway observed that the petitioner was apprehended in case-FIR No. 868/2020, dated 13.07.2020, registered under Section 392, PPC at Police Station Peoples Colony, District Gujranwala and although was discharged in the said case on 29.08.2020 with the orders of learned Magistrate concerned yet in the discharge report it was not mentioned that the petitioner had led to the recovery of 2210 grams of charas at 1.15 a.m., the same day from his own

rented house and that the present FIR was registered against him. The argument advanced by the learned Prosecutor is that the occurrence was narrated the way it happened and, had the police any grudge against the petitioner, the FIR No. 868/2020 would not have been registered and that the petitioner was under the lawful custody when he led to the recovery of narcotics substance. However, this argument may be addressed by the learned trial Court after record of the evidence but at present it is not denied that the petitioner had led to the recovery of narcotics during the police custody and that no reason to prepare a discharge report in the said FIR was given except that no incriminating material was found against him. Obviously, he was apprehended under Section 54, Cr.P.C. due to suspicion in absence of any statement of complainant or witness and, therefore, no incriminating material was found against him. The prosecution case is that the petitioner has voluntarily led to the recovery of narcotics from his own rented house but the fact remains that the recovery was effected from a private place which was not a part of raid and the search warrant was also not issued against the petitioner. Importantly, the place of recovery is inside the house but no independent witness was associated in the recovery proceedings despite the fact that it was a populated area. Significantly, if the narcotics substance was recovered on 28.08.2020 as per case Diary No. 4 dated 28.08.2020, its recovery should have been mentioned on the same day but in the present FIR it was mentioned at 1.15 a.m, of the following night.

3. For the foregoing reasons, the case of the petitioner calls for further inquiry into his guilt as envisaged under Section 497(2), Cr.P.C., notwithstanding the positive report of the Chemical Examiner. Resultantly, this application is **allowed** and petitioner is admitted to post arrest bail subject

to his furnishing bail bonds in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.A.K.) **Bail allowed.**

PLJ 2021 Cr.C. 1111

[Lahore High Court, Multan Bench]

***Present*: ALI BAQAR NAJAFI, J.**

MAQBOOL AHMAD--Petitioner

versus

STATE etc.--Respondents

Crl. Misc. No. 5785-B of 2020, decided on 30.4.2021.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 420, 468 & 471--Bail before arrest, grant of--Mutation was sanctioned in favour of the husband of the complainant but the dispute relates to the handing over of possession of said plot measuring 10 marlas is pending--Case of the petitioner is that he is not named in the FIR and has not alleged to have any forged document--Suit for possession of the said plot has been filed--These facts suggest that the possession can be taken on the basis of suit for possession if the said mutation is still intact--*Mala fide* of the complainant is apparent as the matter of civil litigation is stretched into criminal litigation--Bail was allowed. [Pp. 1111 & 1112] A, B & C

Khawaja Qaisar Butt, Advocate for Petitioner.

Mr. Shahid Aleem, Additional Prosecutor General for State.

Mr. Mumtaz Ahmad Bhatti, Advocate with Usman accused. *Sardar Muhammad Rafiq Dogar,* Advocate for Complainant.

Date of hearing: 30.4.2021.

ORDER

The petitioner seeks pre-arrest bail in case-FIR No. 174/2019. dated 13.03.2019, under Sections 420, 468, 471, PPC, registered at Police Station Saddar Burewala, District Vehari on the allegation that deceased husband of the Complainant, a police official died during service who had purchased 10 marla plot in Chak Nos. 259/EB, Tehsil Burewala out of Khewat No. 65/65, Khatooni Nos. 282 to 284 from co-accused Muhammad Usman who also executed an agreement on 04.11.2011 before the Sub-Registrar. A mutation No. 3259 was also entered but when the complainant demanded possession of said plot, he refused, hence this FIR.

2. After hearing the learned counsel for the petitioner, learned Additional Prosecutor General and perusing the file, it is straightaway observed that mutation No. 3259 was sanctioned in favour of the husband of the complainant but the dispute relates to the handing over of possession of said plot measuring 10 marlas is pending. Muhammad Usman was granted pre-arrest bail by the Court of learned Additional Sessions Judge but *vide* order dated 08.12.2020 passed by this Court in this petition, a notice was issued to him for recalling of the bail granting order. His case is that the possession was handed over to the complainant but later a suit for specific performance was filed by one Asif Mehmood against Maqbool Ahmad/petitioner in respect of mutation No 2335 of plot measuring 18 marlas,

therefore, possession can be taken in accordance with law. The case of Maqbool Ahmad petitioner is that he is not named in the FIR and has not alleged to have any forged document and that he had lodged FIR No. 179/2011, dated 17.05.2011, under Sections 448, 511, 148, 149, PPC, at Police Station Saddar Burewala, District Vehari against said Muhammad Usman. It is not denied by the complainant side that suit for possession of the said plot has been filed. It is also come on record that two mutations No. 2335 and 3259 are of two different years as later relating to the complainant was made in the year 2011. During the proceedings, a report was prepared by Liaqat Ali/SI on 08.04.2021 according to which Maqbool Ahmad was found in illegal possession of 10 marlas plot. These facts suggest that the possession can be taken on the basis of suit for possession if the said mutation is still intact. Muhammad Usman was granted bail on the basis of facts and record. Admittedly, a house has been constructed 5/6 years ago on the said 10 marlas plot. In the facts and circumstances, the offence under Sections 420, 468, 470 need further investigation. Mala fide of the complainant is apparent as the matter of civil litigation is stretched into criminal litigation as it is a case of taking possession of plot based on mutation of the property which has been occupied and utilized by Maqbool Ahmad/petitioner.

3. For the foregoing reasons, the case for grant of pre-arrest bail is made out. Resultantly, this bail petition is allowed and ad-interim pre-arrest bail already granted to the petitioner is confirmed subject to his furnishing fresh bail bonds in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial Court.

4. Notice issued to Usman co-accused by this Court on 08.12.2020 who was granted bail by the learned Additional Sessions Judge is withdrawn.

(M.A.B.) **Bail allowed.**

PLJ 2021 Cr.C. 1150

[Lahore High Court, Multan Bench]

Present: ALI BAQAR NAJAFI, J.

AKRAM ALI--Petitioner

versus

STATE and another--Respondents

Crl. Misc. No. 3004-B of 2021, decided on 3.6.2021.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 420/468/471--Prevention of Corruption Act, (of 1947), S. 5(2)--Post arrest bail grant of--No prohibitory clause--Petitioner was illegally appointed as his aggregate was not as required--An inquiry was conducted under disciplinary proceedings which recommended major penalty of termination of employment contract and to lodge FIR--It is yet to be proved, how petitioner was able to manage employment without verification of his documents--Those who were responsible for such criminal negligence were neither interrogated nor cited as accused--Even if petitioner was direct beneficiary, appointing authority was at least negligent and had failed in his duty--S. 420, PPC is bailable and Ss. 468/471, PPC are non cognizable--Case does not fall within prohibitory clause of Section 497, Cr.P.C.--Bail was allowed. [Pp. 1151 & 1152] A, B & C

Khawaja Qaisar Butt, Advocate for Petitioner.

Mr. Ashfaq Ahmad Malik, Deputy Prosecutor General for State.

Date of hearing: 3.6.2021

ORDER

The petitioner seeks post arrest bail in case-FIR No. 03/2021, dated 15.02.2021, under Sections 420, 468, 471, PPC, read with Section 5(2) of the Prevention of Corruption Act, 1947, registered at Police Station ACE District Vehari on the allegation that the petitioner got employment as ESE presenting the educational credentials showing high aggregate and by committing forgery had drawn salaries and allowances from the government treasury, hence this FIR.

2. After hearing the learned counsel for the petitioner, learned Deputy Prosecutor General and perusing the record, it is straightaway observed that as per the contents of FIR, the petitioner was selected as ESE (Arts) on 31.07,2017 and was adjusted at Govt. Elementary School, Shehtabgarh, Mailsi

under the recruitment policy of 2016-17. He attached the copies of SSC from BISE Multan passed with 711/850 marks in 2005, HSSC from BISE Multan passed with 782/1000 in 2008, B.A. from BZU Multan passed with 532/800 in the year 2011 and M.A. from Islamia University Bahawalpur with 673/1300 passed in the year 2016. Later the AEO Markaz Shehtabgarh reported that petitioner was illegally appointed as his aggregate was not 66.61 ratio rather it was 58.70 as he had the following educational documents.

i) Passed SSE from BISE Multan with 379/850 marks in 2005.

ii) Passed HSSE from AIOU Islamabad with 594/1000 marks in 2008

iii) Passed BA from AIOU Islamabad with 652/1100 marks in 2011

iii) Passed MA from Islamia University Bahawalpur with 676/1300 marks in 2016

iv) Passed B.Ed from AIOU Islamabad with 630/900 marks in 2013.

An inquiry was conducted under disciplinary proceedings which recommended the major penalty of termination of the employment contract and to lodge the FIR. However, it is yet to be probed that how the petitioner was able to manage the employment without the verification of his documents. Surprisingly, he has been drawing the salary without having genuine documents, but it is more shocking to see that those who were responsible for such criminal negligence were not neither interrogated nor cited as accused persons. Obviously, this alleged crime could not possibly be committed single handedly by the petitioner. If the petitioner was the direct beneficiary, the appointing authority was at least negligent and had failed in his duty to legally authenticate the recruitment process to the extent of the petitioner. It looks that there was no scrutiny. In the facts and circumstances,

prima-facie the learned trial Court will discuss how the provision of Sections 468, 471, PPC attracted against the petitioner. Section 420, PPC is bailable. Sections 468, 471, PPC are not cognizable and punishment under Section 5(2) of the Prevention of Corruption Act, 1947 does not fall within the ambit of prohibitory clause of Section 497(1), Cr.P.C. The petitioner was arrested on 25.03.2021 and no incriminating material used for the preparation of forged documents was recovered.

3. In this view of the matter, this application is allowed and petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial Court.

(K.Q.B.) **Bail allowed.**

PLJ 2021 Cr.C. 1344 (DB)
[Lahore High Court, Multan Bench]

Present: **ALI BAQAR NAJAFI AND SARDAR MUHAMMAD SARFRAZ DOGAR, JJ.**

TANVIR AHMED--Petitioner

versus

STATE etc.--Respondents

Crl. Misc. No. 150-M of 2020, decided on 3.6.2021.

Criminal Procedure Code, 1898 (V of 1898)--

----Ss. 426(2-B) & 561-A--Suspension of sentence--This is a case which mainly hinges on an order of the august Supreme Court of Pakistan passed in Jail Petition filed by the petitioner against the afore-referred judgment of High Court whereby his conviction under Section 302 (b), PPC had been upheld but his sentence reduced to imprisonment for life. The apex Court while referring the various contentions of the counsel for the petitioner in aforesaid Jail Petition has granted leave to leave against the judgment of High Court--There cannot two opinions about the argument of the Additional Prosecutor General that mere grant of leave to appeal did not necessarily mean that the petitioner had become entitled to suspension of his sentence as a matter of right, but it could not be brushed aside either that in a suitable case of alike nature the sentence of a convict may be suspended as envisaged by Section 426 (2-B), Cr.P.C.--Petition was allowed. [Pp. 1346 & 1347] A & B

Unexplained delay in lodging of crime report--

----Reverting to case in hand, unexplained delay in lodging of crime report and conducting of postmortem examination of deceased, belated recovery of knife, non-production of only injured witness who was brother of "deceased and

stated to have been present at spot, identification of accused during night time occurrence taking into possession of electricity bulb though was lit spot at relevant time, discrepant medical evidence with regard to injuries attributed to other acquitted co-accused, were factors pressed into service by learned counsel for petitioner, which persuaded apex Court to grant leave in above noted Jail Petition--All contentions made would be open to a detailed scrutiny by apex Court p and probability cannot be ruled out that prosecution case may fall through in long run--Petitioner after having been arrested on 12.9.2009 has been languishing in jail ever since--continued incarceration for indefinite period of time may not serve any useful purpose for prosecution's case. [Pp. 1347 & 1348] C

Syed Jaffar Tayyar Bukhari, Advocate for Petitioner.

Mr. Shahid Aleem, Addl. P.G. for State.

Date of hearing: 3.6.2021.

ORDER

Tanveer Ahmad (petitioner) has filed this petition under Section 426(2-B) read with Section 561-A, Cr.P.C. seeking for suspension of his sentence and consequential release on bail, pending disposal of his appeal before the Hon'ble Supreme Court of Pakistan.

2. A resume of the relevant facts would reveal that the petitioner was tried by the learned trial Court (Additional Sessions Judge, Burewala) in case FIR No. 267 dated 23.7.2009, registered under Sections 302/34, PPC, P/S Sahuka, Burewala. and he was held guilty for an offence under Section 302 (b), PPC for committing ***'qatl-i-amd'*** of Allah Ditta deceased and sentenced to death as ***Taz'ir*** with order to pay an amount of Rs. 2,00,000/- as compensation under

Section 544-A, Cr.P.C. to the legal heirs of the deceased, in default whereof to undergo another term of six months simple imprisonment, *vide* judgment dated 11.10.2012 passed by the said Court. The petitioner assailed his conviction through Criminal Appeal No. 784 of 2012, whereas the learned trial Court also sent Murder Reference No. 102 of 2012 under Section 374, Cr.P.C. for seeking confirmation or otherwise of the death sentence awarded by it to the petitioner. The appeal filed by the petitioner was dismissed by the learned Division Bench of this Court *vide* judgment dated 13.2.2017 by converting his death sentence to imprisonment for life as *'Taz'ir* The petitioner was also held entitled to benefit of Section 382-B, Cr.P.C. The Murder Reference was answered in the negative. The petitioner challenged the judgment of this Court before the Hon'ble Supreme of Pakistan by way of filing Jail Petition No. 426 of 2017, wherein leave to appeal has been granted by the apex Court on 12.12.2019. Hence, instant petition.

3. Heard. Record perused.

4. We find it a case which mainly hinges on an order of the august Supreme Court of Pakistan passed on 12.12.2019 in Jail Petition No. 426 of 2017 filed by the petitioner against the afore-referred judgment of this Court whereby his conviction under Section 302 (b), PPC had been upheld but his sentence reduced to imprisonment for life. The apex Court while referring the various contentions of the learned counsel for the petitioner in aforesaid Jail Petition has granted leave to leave against the judgment of this Court in the following manner:

> *"Learned counsel for the petitioner contended that the two Courts below have erred by not positively considering the crucial lapses in the prosecution case to prove beyond reasonable doubt the guilt of the present petitioner in the*

*instant case, **inter alia;** that the only injured witness, who was the brother of the deceased, and stated to have been present at the spot was not produced by the prosecution rendering a presumption in favour of the petitioner; that the best evidence has been withheld by the prosecution, as the same would have benefitted the present petitioner; that the crime was an unwitnessed night occurrence and there was no source of light for the so called witnesses to have identified the accused; that there was an unexplained delay in the lodging of the crime report and conducting the postmortem of the deceased, which clearly suggested prior deliberation in falsely nominating the petitioner as an accused in the crime report; that the belated recovery of blood stained knife even with positive serologist report was legally inconsequential, as the human blood by that time would have disintegrated beyond chemical recognition; that the ocular evidence contradicts the medical evidence, as there is no medical evidence of the injuries on the deceased attributed to the other co-accused; and that on the same set of evidence, the other four co-accused have been acquitted by the trial Court, and their acquittal has not been challenged by the complainant party; and thus, the present petitioner could not be convicted on the same set of evidence without there being any independent material corroborating evidence, which was wanting in the present case.*

2. The points raised needs consideration, therefore, we grant leave to appeal in the instant petition to reappraise the entire evidence"

5. There cannot two opinions about the argument of the learned Additional Prosecutor General that mere grant of leave to appeal did not necessarily mean that the petitioner had become entitled to suspension of his sentence as a matter of right, but it could not be brushed aside either that in a suitable case of alike nature the sentence of a convict may be suspended as envisaged by Section 426 (2-B), Cr.P.C. Reliance in this context is placed on *"Talib Hussain vs. The State"* (PLD 2014 Lahore 574), wherein it has been observed as under:

> *"When against any sentence, imposed or maintained by a High Court, a convicted person was granted special leave to appeal by the Supreme Court then under S. 426 (2B), Cr.P.C. a High Court, pending the appeal before the Supreme Court, may suspend the sentence or order ippealed against, and release the convict on bail."*

6. Reverting to the case in hand, the unexplained delay in lodging of the crime report and conducting of postmortem examination of the deceased, belated recovery of knife, non-production of the only injured witness who was the brother of deceased and stated to have been present at the spot, identification of the accused during night time occurrence without taking into possession of electricity bulb though was lit at the spot at the relevant time, the discrepant medical evidence with regard to the injuries attributed to the other acquitted co-accused, were the factors pressed into service by the learned counsel for the petitioner, which persuaded the apex Court to grant leave in the above noted Jail Petition. All the contentions made would be open to a detailed scrutiny by the apex Court and probability cannot be ruled out that the prosecution case may fall through in the long run. The petitioner after having been arrested on 12.9.2009 has been languishing in jail ever since. The

continued incarceration for indefinite period of time may not serve any useful purpose for the prosecution's case.

7. For the foregoing reasons, we feel persuaded to allow this petition, which we do accordingly. The sentence of the petitioner is suspended pending decision of his appeal before the Hon'ble Supreme Court of Pakistan and he shall be released from jail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (Rs. One lac only) with two sureties each in the like amount to the satisfaction of Deputy Registrar (Judl) of this Bench.

(A.A.K.) **Petition allowed.**

2021 P Cr. L J Note 89

[Lahore]

Before Ali Baqar Najafi, J

SAQIB KHAN---Petitioner

Versus

The STATE and others---Respondents

Criminal Miscellaneous No. 68381-B of 2020, decided on 29th December, 2020.

Criminal Procedure Code (V of 1898)---

----Ss. 498 & 497(2)---Penal Code (XLV of 1860), Ss. 337-F(vi), 337-L(2) & 34---Ghayr-jaifah-munaqqillah, causing hurt, common intention---Ad-interim pre-arrestbail, confirmation of---Further inquiry---Allegation against the accused-petitionerwas that he landed Danda blow on the middle finger of right hand of the daughterof complainant and second Danda blow hit on her head and back of the neck---Motive behind the occurrence was that the in-laws of victim wanted to grab hergold ornaments and upon her refusal the occurrence took place---Record showedthat the occurrence dated 24.10.2020 was reported to the police on 01.11.2020 andthe Medico Legal Report was prepared on the same date, i.e. 24.10.2020, however,the injury was declared to be under S. 337-F(vi), P.P.C., and possibility of itsfabrication could not be ruled out---On 18.11.2020, the Standing Medical Boardhad prepared a report in which possibility of fabrication was not ruled out inrespect of said injury---Besides, said injury was on non-vital part of the body andthe nature and dimension of the injury did not co-relate with the history and mannerof causation---No reminents of the injury at the corresponding locale was found---Although it was a case of domestic violence yet the nature of the injury and theobservation of the Medical Officer in respect of the first injury had raised doubt thebenefit of which must go to the accused---Second and third injuries were bailable innature---In such state of affairs, mala fide of the complainant to falsely implicatethe petitioner could not be ruled out---Ad-interim pre-arrest bail already granted tothe petitioner was confirmed, in circumstances. [Paras. 3, 4 & 5 of the judgment]

Malik Matee Ullah for Petitioner along with Petitioner.

Abdul Samad, A.P.G. with Khalid, ASI for the State.Nemo for the Complainant.

ORDER

ALI BAQAR NAJAFI, J.---Petitioner, Saqib Khan, seeks pre-arrest bail in caseFIR No. 250 dated 01.11.2020 registered under sections 337- F(vi), 337-L(2), 34,P.P.C. at Police Station Musa Khel, District Mianvvali on the allegation thatdaughter of the complainant namely, Samina Akhtar, got married with the petitionersix years ago and on 23.10.2020 at 05:30 p.m. when she was present in her home, aquarrel took place between the petitioner and the daughter of the complainant whenher father-in-law namely, Muhammad Aslam and Akthar, came there and on their instigation, petitioner landed Danda blow on the middle finger of her right handand second Danda blow hit on her head and back of the neck. Haji Khan Zaman andMalik Ghulam Hassan, the maternal uncles of daughter of the complainant who hadgone to visit her, indulged and saved Mst. Samina Akhtar. The motive behind theoccurrence was that Muhammad Aslam and Akhtar, wanted to grab the goldornaments of Mst. Samina Akhtar, and upon her refusal the occurrence wascommitted, hence this FIR.

2. Arguments heard. Record perused.

3. After hearing the learned counsel for the petitioner, learned Addl. ProsecutorGeneral and perusing the record, it is straightway observed that the occurrencedated 24.10.2020 was reported to the police on 01.11.2020 and the medico legalreport was prepared on the same date; i.e. 24.10.2020 yet the injury No.1 whichwas declared as 337-F(vi), P.P.C., was noted as an injury and possibility of itsfabrication could not be ruled out. On 18.11.2020, the Standing Medical Board hadprepared a report in which possibility of fabrication was not ruled out in respect ofinjury No. 1. Besides, this injury is on non-vital part of the body and the nature anddimension of the injury do not co-relate with the history and manner of causation. Itwas also observed that no ruminants of the injury at the corresponding locale wasfound 4. Although it is a case of domestic violence yet the nature of the injury and theobservation mentioned by the doctor in respect of the first injury have raised doubtthe benefit of which must go to the accused. The second and third injuries arebailable in nature.

5. For the foregoing reasons, mala fide of the complainant to falsely implicatethe petitioner cannot be ruled out. Resultantly, this bail petition is allowed and ad-interim pre-arrest bail already granted to the petitioner on 22.12.2020 is herebyconfirmed subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (One LacOnly) with two sureties each in the like amount to the satisfaction of the learnedtrial court.

JK/S-6/L **Bail confirmed.**

2022 Y L R Note 15

[Lahore]

Before Ali Baqar Najafi, J

ABID ALI---Petitioner

Versus

The STATE and others---Respondents

Criminal Miscellaneous No. 30279-B of 2021, decided on 7th June, 2021.

Criminal Procedure Code (V of 1898)---

----S. 497--- Control of Narcotic Substances Act (XXV of 1997), S. 9(c)---Possession of narcotics---Bail, grant of---Delay in conclusion of trial---Scope---Accused was alleged to have been found in possession of 1300 grams of contraband---Earlier petition for grant of bail was not pressed while a direction was issued to the Trial Court to conclude the trial within a period of three months---Report of the Trial Court revealed that the defence was not very much interested in cross-examination of the prosecution witnesses since 3/4 adjournments were sought by the accused---High Court observed that it was not a case in which direction was violated but a case in which the trial could not be concluded beyond the act on the part of the accused and, therefore, by now instead of three months more than 10 and a half months had passed---Petition for grant of bail was allowed, in circumstances.

Bilal Khan v. The State 2021 SCMR 460 distinguished.

Saeed Ahmed v. State through P.G. Punjab and another PLJ 2018 SC 812 ref.

Liaqat Ali Malik for Petitioner.

Abdul Samad, A.P.G. with Mazhar Sial, A.S.I. for the State.

ORDER

ALI BAQAR NAJAFI, J.---Petitioner, Abid Ali, seeks post arrest bail in case FIR No. 154 dated 29.04.2020 registered under section 9(c) of Control of Narcotic Substances Act, 1997 at Police Station Rajoa, District Chiniot, on the allegation that petitioner was apprehended with 1300 grams contained in two pieces weighing 1000 grams and 300 grams whereas 50 grams was taken from the bigger piece and 50 grams from the smaller piece and sent for chemical analysis along with sale proceed Rs. 2000/-, hence this FIR.

2. Arguments heard. Record perused.

3. After hearing the learned counsel for the petitioner, learned APG and perusing the record, it is noteworthy that earlier Crl. Misc. No. 29954-B of 2020 was filed for the grant of post arrest bail which was not pressed while issuing direction to the learned trial court to conclude the trial expeditiously and preferably within a period of 3 months vide order dated 14.07.2020. It is for this reason that a report was requisitioned from the learned trial court who informed that the case was entrusted to the court on 05.10.2020 and the copies under section 265-C, Cr.P.C. were delivered on the same date and the charge was framed on 12.10.2020 and the prosecution evidence was summoned for 26.10.2020. On 26.10.2020 no prosecution witness was present, on 11.11.2020 the learned Presiding Officer was on leave and on 26.11.2020 Saqlain Abbas, Akmal Shahbaz, Irfan and Ahsan Munir/ Constables were present but the lawyers were observing strike and, therefore, the case had to be adjourned for 17.12.2020. On 17.12.2020, the complete set of witnesses was not present and the case was adjourned to 18.12.2020 when all three PWs were present but the learned defence

counsel sought an adjournment. Again on 07.01.2021 lawyers observed strike. On 21.01.2021 lawyers observed strike though Ghulam Muhammad/ASI was present but the defence sought an adjournment as the complete set of witnesses was not present. On 11.02.2021 and 18.02.2021 lawyers observed strike. On 08.03.2021 all three prosecution witnesses were present but the defence side sought an adjournment and on 29.03.2021 Examination-in-Chief of Ghulam Muhammad and Akmal Shahbaz, was recorded as PW-1 and PW-2, respectively, but the defence sought an adjournment. On 01.04.2021 PWs could not appear. On 08.04.2021 lawyers observed strike and on 10.05.2021 holidays of Eid-ul-Fitr were there but again on 17.05.2021 the accused could not be produced from jail and on 28.05..2021 the case was fixed for prosecution evidence.

4. Perusal of the above report reveals that defence was not very much interested in cross-examination of the prosecution witnesses since 3/4 adjournments were sought by accused. The learned trial court has, therefore, sought 3 months further time.

5. On the other hand, learned Addl. Prosecutor General, has referred to a judgment reported as Bilal Khan v. The State (2021 SCMR 460), to argue that Supreme Court has now taken a view that contraband exceeding 1200 grams attracts section 51 of CNSA of 1997. However, in the said judgment, the accused had spent just 3/4 months behind the bars and the recovered contraband was amphetamine/ Ice which was considered as lethal contraband. However, in the present case, the petitioner has spent more than a year behind the bars during which a direction issued by this Court though remained affective as the case was adjourned for short dates yet the result is that on account of Covid-19 and the observance of strikes by the Bar, the trial could not be concluded.

6. It is not a case in which direction was violated but a case in which the trial could not be concluded beyond the act on the part of the accused and, therefore, by now instead of three months more than about 10 months have passed.

7. It is a case in which case titled Saeed Ahmed v. State through P.G. Punjab and another reported as (PLJ 2018 SC 812) can be applied wherein the bail was granted for the recovery of 1350 grams chars. Besides, it is not a case of violation of direction as already stated particularly when the earlier bail petition was dismissed not even on merits and without arguing the same at length.

8. In this view of the matter, this bail petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- (One Lac Only) with two sureties each in the like amount to the satisfaction of the learned trial court.

SA/A-47/L **Bail granted.**

2021 Y L R 287

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD MASOOD-UL-HAQ---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE, BHAKAR and 2 others---Respondents

Writ Petition No. 16084 of 2014, decided on 22nd October, 2020.

Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Suit for recovery of dowry articles, dower amount and maintenance---Scope---Petitioner assailed judgments and decrees passed by courts below whereby the suit for recovery of dowry articles, dower amount and a house as well as for the grant of maintenance allowance was concurrently decreed---Validity---Family Court had ordered the petitioner to pay Rs. 2000 per month as previous maintenance; return of gold ornaments was refused; 50% of the claimed dowry articles were allowed and the suit for restitution of conjugal rights was decreed subject to fulfillment of conditions mentioned in column Nos. 13 and 16 of the nikahnama, which the petitioner had not fulfilled---Judgments and decrees passed by courts below did not appear to be illegal as such the constitutional petition was dismissed. [pp. 287, 288] A, B, C & D

Dr. Asma Ali v. Masood Sajjad and others PLD 2011 SC 221 rel.

Malik Matee Ullah for Petitioner.

Muhammad Aslam Chaudhary for Respondents.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner has challenged the judgments and decrees dated 15.05.2010 as well as 06.01.2011 whereby the suit for recovery of dowry articles, dower amount and a house as well as for the grant of maintenance allowance was concurrently decreed by the learned Judge Family Court and the appellate court.

2. Brief facts giving rise to the filing of this constitutional petition are that the marriage between the petitioner and the respondent took place on 19.12.2005 and the respondent claimed to have brought dowry articles 'North Rs.7,02,700/- into the house of the petitioner. The dower amount of Rs.1 lac and a house was agreed in the nikahnama. However, soon their relationship got strained. Meanwhile, signatures of the respondent were procured on the blank papers by the petitioner. The respondent went to see her ailing mother with two clothes about 02 years 05 months before the institution of the suit and instead of settling the matter with the petitioner, the respondent contracted second marriage. The suit for recovery of past and future maintenance, dowry articles, dower as well as house and Rs.30,000/- cash was contested by the petitioner claiming that the respondent had already waived of her right of the dower amount and house vide agreement dated 11.02.2006. A civil suit for declaration was also filed and that a suit for restitution of conjugal rights was filed and had tried his level best to bring her back. The suits were consolidated and issues framed and the evidence was recorded. The suits were decided and appeals dismissed hence this writ petition.

3. Arguments heard. Record perused.

4. The learned family court while deciding issue No.1 ordered the petitioner to pay Rs.2000/- per month as previous maintenance from 24.05.2007 simply on the ground that petitioner was a low class salaried person. It was further observed under issue No.2 that since 24.05.2007 both spouses had no interaction and the gold ornaments were kept in possession by the woman, therefore, were refused. The court however granted 50% of the claimed dowry articles and determined it at Rs.1,70,390/-. Interestingly, on 21.01.2009 the suit for restitution of conjugal rights was decreed subject to fulfilment of condition of column Nos.13 and 16 of nikahnama the petitioner had not fulfilled. Besides, the petitioner has introduced an afterthought agreement dated 11.02.2006 to suggest that these conditions have been waived of, therefore, it was not appreciated. Importantly, it had attained finality.

5. The consolidated judgments and decrees interpreted that the said clauses of nikahnama do not appear to be illegal or irrational. Reliance can be placed upon case titled "Dr. Asma Ali v. Masood Sajjad and others" reported as PLD 2011 SC 221. Para 4 of which is relevant and is reproduced as follows:-

> "4. That once we decide that if the property/house mentioned in the Nikahnama on account of lack of sufficient description leading to its identification then its price, if mentioned in the Nikahnama, can be awarded then in the same way the value of the other property (agricultural), the price of which has not been mentioned in the documentation/Nikahnama, can also be granted if the evolvement of a mechanism for determination of value is possible, which is not in conflict with any provision of law rather in consonance with the

established principles for deter-mining the value of property, then the same be resorted to."

6. In this view of the matter, this writ petition has been found meritless and, is therefore dismissed.

SA/M-145/L **Petition dismissed.**

2021 Y L R 1989

[Lahore]

Before Ali Baqar Najafi, J

SAROSH SIKANDER and others---Petitioners

Versus

GUARDIAN JUDGE, LAHORE and others---Respondents

Writ Petition No. 248310 of 2018, decided on 23rd June, 2020.

(a) Guardians and Wards Act (VIII of 1890)---

----Ss. 8 & 12---Family Courts Act (XXXV of 1964), S. 5, Sched.---Interim custody of minor---'Parent'---Scope---Application moved by grandparent---Maintainability---Respondent (grand-mother of the minor) instituted application for interim custody and visitation rights of minor girl, whereas the petitioner (mother of the minor) filed application for rejection of the same on the ground of maintainability---Guardian Court rejected the application of petitioner---Petitioner invoked constitutional jurisdiction of the High Court contending that only the parents could request for the visitation right of the minor as the 'grandmother' was not covered in the definition of 'parent'---Validity---Record revealed that parents of the minor got married to each other but , soon after the birth of minor, the divorce was effected---Intensity of estrangement was so high that a criminal case was got registered on the behest of father of the petitioner which though was later cancelled---Father of the minor was a foreign national, who came back after the birth of child to see new-born child and to reconcile but the efforts failed and he returned abroad after pronouncing divorce---Petitioner had referred to definition of the word 'parent' from dictionaries, which included adoptive parents, but such concept was not recognized in Islam---Keeping in view the fact in the present case that neither the real father of the minor had come forward with any definite plea nor the effort was made to implead him as a party, his tacit approval could be presumed---Proceedings before the Guardian Court were for the visitation right of the minor only, therefore, the application filed by the grandmother was

competent---Constitutional petition dismissed, in circumstances.

(b) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Guardians and Wards Act (VIII of 1890), Ss. 8 & 12---'Parent'---Scope---Interim custody of minor---Application moved by the grandmother (respondent) before the Guardian Court---Maintainability---Contention of the petitioner (mother of minor) was that only the parents could request for the visitation right of the minor as the 'grandmother' was not covered in the definition of 'parent'---Held, that the word 'parent' used in S. 5 and the Sched. of the Family Courts Act, 1964, was wider in sense and was not restricted to its literal meaning particularly when the grandchild was entitled to inheritance from the grandparent---Application of the respondent (grandmother) was maintainable before the Guardian Court---Constitutional petition was dismissed, in circumstances.

Mst. Mahmooda Sultana v. Mst. Jainila Begum 1988 SCMR 538 ref.

(c) Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Family Court (Amendment) Ordinance, 2002 (LV of 2002), Preamble---Guardian and Wards Act (VIII of 1890), Ss. 8 & 12---Interim custody of minor---Application moved by the grandmother before the Guardian Court--- Maintainability--- 'Parent'---Scope---Respondent (grandmother of the minor) instituted application for interim custody and visitation rights of minor girl, whereas the petitioner (mother of the minor) filed the application for rejection of the same on the ground of maintainability--- Guardian Court rejected the application of petitioner---Contention of the petitioner was that the Family Courts Act, 1964, was promulgated as a special act for special class of people i.e. husband and wife in case of their custody---Validity---Although contention of the petitioner was correct but the Guardians and Wards Act, 1890, also dealt with the situation where only grandparents were contestants, therefore, the same would not stop the Guardian Court to adjudicate upon matter-in-hand---In the Family Court Act, 1964, the Schecule made under S. 5 thereof, prescribed "custody of the children" in clause (5), however, an amendment was made through Family Court (Amendment) Ordinance, 2002 and after

" custody of children" the words "and the visitation rights of parents to meet them" were added---Application of the respondent (grandmother) was maintainable before the Guardian Court---Constitutional petition was dismissed, in circumstances.

Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others 2011 SCMR 1361; Mst. Abeera Khan v. Adnan Jamil and another 2019 CLC 1478 and Mst. Maryam Masood v. Mughisuddin Mirza and 2 others 2009 CLC 1443 distinguished.

(d) Guardians and Wards Act (VIII of 1890)---

----Ss. 8 & 12---Family Courts Act (XXXV of 1964), Ss. 5, Sched. & 14---Constitution of Pakistan, Art. 199---Constitutional petition filed against an interlocutory order of Guardian Court---Maintainability---Interim custody of minor---Impugned order was just an interlocutory order holding that the application of interim custody/visitation right filed by the grandmother could proceed and the same was not even an order deciding the application filed by the grandmother, therefore, constitutional petition was not maintainable since an appeal could be filed against the final order---Constitutional petition was dismissed in circumstances.

Muhammad Shah Nawaz Khan for Petitioners.

Fahad Ahmad Siddiqui for Respondent No.2.

Zafar Raheem Sukhera, A.A.G. for Respondents.

Date of hearing: 31st January, 2020.

JUDGMENT

ALI BAQAR NAJAFI, J.--- Through this constitutional petition, the petitioner has challenged the order dated 12.09.2018 passed by learned Guardian Judge-II, Lahore whereby her application for rejection of petition filed by respondent No. 2 under section 5 of the Schedule attached with the Family Courts Act, 1964 read with section 8 of the Guardians and Wards Act, 1890, was dismissed.

2. Brief facts giving rise to file the present writ petition are that respondent No. 2 being the grandmother of the minor, namely, Rahmeen

Shoaib born on 15.9.2016 had filed petition under section 5 of the Schedule attached with the Family Courts Act, 1964 read with section 8 of the Guardians and Wards Act, 1890 on 31.10.2017 for the interim custody and visitation rights of the minor. However, the petitioner, being real mother, on 07.03.2018 filed an application for the rejection of the said petition on the ground of maintainability which was dismissed, hence this direct constitutional petition.

3. The argument advanced by the petitioner is that only the parents can request for the visitation right of the minor as required under section 8 the Guardians and Wards Act, 1890; that parents do not include grandparents of the minor; that under the Schedule (Part-1) and under section 7(2) of the Act ibid, the visitation request is only for the parents to meet their children; that in the presence of the petitioner being biological parent (mother) giving of the interim custody to anyone else would be against the welfare of the minor, particularly when she remained in the custody of the petitioner since her birth; that the logic that minors can directly inherit under Islamic Law from grandparents is not enough to give even the visitation right/interim custody to them particularly when the father is alive and living in U.K.

3. Conversely, the learned counsel for the respondent argues that the order was rightly passed, hence, seeks dismissal of the writ petition.

4. Arguments heard and file perused.

5. Admittedly, the petitioner and Shoaib Muhammad son of Rasheed Ullah and respondent No.2 got married on 20.12.2015, whereafter minor Rahmeen Shoaib was born on 15.9.2016 but unfortunately soon a divorce was effected between them on 30.10.2016. The intensity of estrangement was so high that FIR No. 582 dated 08.11.2016 under sections 363, 511, 354, 337-A(i), 337-F(i) and 337-L/2 of P.P.C. was got registered on 08.11.2016 at Police Station Model Town, Lahore on the behest of father of the petitioner which was although cancelled on 29.06.2017. Both father and brother of the respondent are U.K. national and to ensure the foreign nationality, the marriage was solemnized. After the birth of the child, the father of the minor came to Pakistan to see the new born child and to reconcile but the efforts failed and, therefore, he returned to U.K. on

02:11.2016 after pronouncing divorce to the petitioner. The above referred divorce was also registered.

6. The respondent No.2 had filed a petition under sections 5 and 8 before the Guardian Court on 31.10.2017 while relying upon case titled "Muhammad Tabish Naeem Khan v. Additional District Judge, Lahore and others" reported as 2014 SCMR 1365 and case titled "Malik Khizar Hayat Khan Tiwana and Malik Ghulam Muhammad Khan v. Mst. Zainab Begum, Ch. Aziz Ahmad Waraich, District Judge, Lahore and Qazi Muhammad Dastgir, Guardian Judge, Lahore" reported as PLD 1967 SC 402 and prayed for interim custody of half of the time by making a schedule. This application was contested by the petitioner on the ground that it is only the parents who are entitled to the custody, and the grandmother is not covered in the said definition of parents. However, on 12.09.2018, the said application filed by the respondent was found maintainable on the ground that the word parent used in section 5 of the Schedule is wider in sense and is not restricted to its literal meaning particularly when the grandchild is entitled to inheritance from her. Reliance was placed upon case titled "Mst. Mahmooda Sultana v. Mst. Jamila Begum" reported as 1988 SCMR 538. The argument advanced by the learned counsel for the petitioner that Family Courts Act, 1964 was promulgated as a Special Act for special class of people i.e. husband and wife and children in case of their custody is correct but the Guardianship Act also caters for the situation where only grandparents are contestants, therefore, it will not stop the Guardian Court to adjudicate upon such matters. The reliance is placed upon case titled 'Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others" reported as 2011 SCMR 1361 is therefore misplaced. The other reliance upon case titled "Mst. Abeera Khan v. Adnan Jamil and another" reported as 2019 CLC 1478 and case titled "Mst. Maryam Masood v. Mughisuddin Mirza and 2 others" reported as 2009 CLC 1443 are also irrelevant as in the said case, the controversy was between the father and the mother, and not the grandparents.

7. In the original West Pakistan Family Courts Act, 1964, Schedule made under section 5 thereof, prescribed "custody of the children" in clause

5. However, through an amendment made on 01.10.2002 after "custody of the children" following words were added through amending Ordinance of Family Court (Amendment) Ordinance, 2002 (LV of 2002):--

"and the visitation rights of parents to meet them".

8. The main thrust of the learned counsel for the petitioner was on the interpretation of the word parents, wherein according to him it does not include grandparents. He has referred to the various definitions of the word parent from different dictionaries. Notably, they include the adoptive parents, a concept not recognized in Islam. Keeping in view the fact that neither the real father of the minor has came forward with any definite plea nor the effort was made to implead him as a party, his tacit approval can be presumed. The proceedings pending before the Guardian Court are for the visitation right of the minors only, therefore, the application filed by the grandmother is competent. Even otherwise, the maintainability of such application does not guarantee that it would be allowed. However, it would be a matter of concern to read and appreciate the evidence which the respective parties would like to produce to support their respective claim. Notably, the impugned order is just an interlocutory order holding that application for interim custody/visitation right filed by the grandmother could proceed. It is not even an order deciding the application filed by the respondent, therefore, the-writ petition was not maintainable since an appeal lies against the final order.

9. At this stage, it is noted therefore much appreciated that both sides are fully loaded with the solid arguments in their favour, but at this stage giving any observation would prejudice their case before the Guardian Court where the question whether in the facts of the case, the grandmother can have the interim custody/visitation rights is pending. It is, therefore, observed that the application of the respondent will be decided expeditiously and preferably within six months but in accordance with evidence and the law. This writ petition is therefore, dismissed as not maintainable.

MQ/S-22/L **Petition dismissed.**

2022 C L D 176

[Lahore]

Before Ali Baqar Najafi, J

Messrs SHANN'S COSMETICS AND CHEMICALS through Managing Partner---Appellant

Versus

REGISTRAR OF TRADE MARKS and another---Respondents

F.A.O. No. 95 of 2008, decided on 7th May, 2021.

Trade Marks Ordinance (XIX of 2001)---

----Ss .8(a), 10(1)(2), 21 & 114---Registration of trade mark---Deception and confusion---Principle---Objection to registration of trade mark---Appellant claimed to be owner of registered trade mark "Soft Touch" and filed his objection to registration of trade mark "Sweet Touch" by respondent---Authorities dismissed the objection and application for registration of trade mark filed by respondent was allowed---Validity---Where two marks were not identical, the crucial point requiring consideration was that it should so nearly resemble that it would likely to deceive or cause confusion in course of trade---Unwary or incautious or careless or unguarded purchaser was likely to be misled or deceived into purchasing goods of person keeping in view the vast difference in literary ratio and condition of like in Pakistan as compared to developed countries---Appellant had been using trade mark "Soft Touch" since long which was not only distinctive but was continuously in use and respondent realizing such fact had copied it to "Sweet Touch" in order to deceive customers---High Court set aside the order passed by authorities---Appeal was allowed, in circumstances.

Messrs Burney's Industrial and Commercial Co. Ltd. v. Messrs Rehman Match Works PLD 1983 Kar. 357 and U.B. Chemical Industries Company Limited v. Ahmad Nawaz and others 2002 CLD 604 ref.

Messrs Hilal Confectionary (Pvt.) Ltd. v. Messrs Naveed Enterprises and another 2018 CLD 1; Messrs Mehran Ghee Mills (Pvt.) Limited and others v. Messrs Chiltan Ghee Mill (Pvt.) Limited and others 2001 SCMR 967; Muhammad Ashraf alias Makkhan v. Muhammad Akram 2016 CLD 437; Messrs Hero Motors Ltd. through Authorized Signatory v. Babar Auto Trading and Manufacturing Company through Proprietor 2010 CLD 22 and General Biscuit and another v. English Biscuit Manufacturers (Private) Limited through Chief Executive/Director/Manager 2004 CLD 680 rel.

Usman Nassir Awan and Babar Afzaal for Appellant.

Haider Afzal Khan and Ms. Nazima Kiran Chuhan for Respondent No. 2.

ORDER

ALI BAQAR NAJAFI, J.---This First Appeal from Order under section 114 of the Trade Marks Ordinance, 2001 is directed against the judgment dated 31.10.2007 passed by the Registrar of Trade Marks whereby the appellant's opposition No.310/05 to Application No.173601 in Class-3 dated 31.11.2007 against the registration of Trade Mark "Sweet Touch" in favour of respondent No.2 was dismissed.

2. Brief facts giving rise to the filing of this appeal are that the appellant is carrying on the business of manufacturing and selling the cosmetic goods and allied products since 1982. The appellant adopted the trademark "Soft Touch" for the goods in the year 1982 and ever since is being used by him for the sale of cosmetic goods. The said Trademark was registered under Registration No.140433 in class 3 and, therefore, by virtue of long extensive use the appellant has got exclusive right to use the said trademark in respect of the cosmetic goods. This trademark has become very popular and was distinguished amongst the traders, general public due to their high quality not only in Pakistan but also abroad. The appellant had

spent handsome amount on the introduction, marketing and publicity of the said goods. In fact the said trademark had become a distinction for the appellant's goods due to its substantial reputation and goodwill. However, in the Trade Marks Journal No.645, published in October, 2004, the appellant came to know that the respondent Registrar Trade Marks has provisionally accepted Application No.173601 in class 3 filed by respondent No.2 for the registration of Trade Mark "Sweet Touch". The appellant, therefore, filed notice under section 15(2) of the Trade Marks Act, 1940, Rule 30 of the rules made thereunder read with Article 10 of the Fourth Schedule of Trade Marks Ordinance, 2001 which was also numbered as Opposition No.310/2005 whereas respondent No.2 also filed counter statement (TM-6). Vide the impugned judgment dated 31.10.2007, the Registrar/respondent No.1 had dismissed the opposition and allowed the application for registration in favour of respondent No.2 which is impugned in the present appeal.

3. Learned counsel for the appellant contend that the appellant is original creator, developer, adopter and first user of the trade mark "Soft Touch" since 1982 which is known world over and, therefore has exclusive right to use it. Adds that respondent No.2 applied for registration of trade mark with prior knowledge that the appellant has a right in the said trade mark and that registered trade mark is similar in the famous and earlier registered trade mark of the appellant which is bound to cause confusion and deception amongst the buyers in public, therefore, is not entitled for registration under sections 8(a) and 10(1) of the Trade Marks Ordinance. Adds that respondent No.2 is not entitled to register the trade mark under section 10(2) of the Trade Marks Act, 1940. Adds that the impugned judgment is over stepping of the basic intention for registration of trade mark. Contend that only one affidavit of proprietor was placed on record and no other document was relied upon to form basis for passing the impugned judgment. Also contend that word touch is common to trade and as such the impugned judgment is not sustainable. Place reliance upon case

titled "Messrs Burney's Industrial and Commercial Co. Ltd. v. Messrs Rehman Match Works" (PLD 1983 Karachi 357), "U.B. Chemical Industries Company Limited v. Ahmad Nawaz and others" (2002 CLD 604), "Messrs Hilal Confectionary (Pvt.) Ltd. v. Messrs Naveed Enterprises and another" (2018 CLD 1), "Messrs Mehran Ghee Mills (Pvt.) Limited and others v. Messrs Chiltan Ghee Mill (Pvt.) Limited and others" (2001 SCMR 967) to argue that sections 46, 80(3) read with section 17 of the Act were misinterpreted while passing the impugned judgment, therefore, pray for setting aside the same.

4. Conversely, the learned counsel for respondents submit that the appellant's registration it being implied in the infringement proceedings as the trade mark must be unique and under section 21(c) of the Act the others can use the trade mark since "Soft Touch" is not unique. Place reliance upon "Muhammad Ashraf alias Makkhan v. Muhammad Akram" (2016 CLD 437), "Messrs Hero Motors Ltd. through Authorized Signatory v. Babar Auto Trading and Manufacturing Company through Proprietor" (2010 CLD 22), "General Biscuit and another v. English Biscuit Manufacturers (Private) Limited through Chief Executive/ Director/Manager" (2004 CLD 680) and pray for dismissal of appeal.

5. Arguments heard. File perused.

6. After hearing the learned counsel for the parties and perusal of record, it is straightaway observed that the Registrar vide his order has concluded that SOFT TOUCH and SWEET TOUCH are entirely different as the word TOUCH is common when SOFT and SWEET are distinguishable visually and phonetically within the meaning of section 21 of the Trade Marks Ordinance, 2001. It is, therefore, expedient to reproduce it hereunder:-

> 21. Registration subject to disclaimer.- If a trade mark contains-
>
> (a) any part not separately registered as a trade mark in the name of the proprietor;

(b) any part for the separate registration of which no application has been made; or

(c) any matter common to the trade, or otherwise of a non -distinctive character; the tribunal, in deciding whether the trade mark shall be entered or shall remain on the Register, may require, as a condition of its being on the Register, that the proprietor shall either disclaim any right to the exclusive use of such part or of all or any portion of such matter, as the case may be, to the exclusive use of which the tribunal holds him not to be entitled, or make such other disclaimer as the tribunal may consider necessary for the purposes of defining the rights of the proprietor under the registration:

Provided that no disclaimer shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

7. Admittedly, the word "Touch" was not exclusively used by the appellant. In case titled "Muhammad Ashraf alias Makkhan v. Muhammad Akram" (2016 CLD 437), in the trade mark "Makkhan Sweet and Bakers", Makkhan was not exclusively used by the claimant, therefore, was separable. In "Messrs Hero Motors Ltd. through Authorized Signatory v. Babar Auto Trading and Manufacturing Company through Proprietor" (2010 CLD 22), the word "Hero" was not used exclusively, therefore, "Asia Hero" was different, therefore, it can be registered separately. In "General Biscuit and another v. English Biscuit Manufacturers (Private) Limited through Chief Executive/ Director/Manager" (2004 CLD 680), the word "Zeera Plus" was not distinctive form Zeera.

In "Messrs Burney's Industrial and Commercial Co. Ltd. v. Messrs Rehman Match Works" (PLD 1983 Karachi 357), it was held that where two marks are not identical the crucial point required consideration is that it should so nearly resemble that it is likely to deceive or cause confusion in course of trade. Obviously, an unwary or incautious or careless or

unguarded purchaser is likely to be misled or deceived into purchasing goods of person keeping in view the vast difference in literary ratio and condition of life in Pakistan as compared to developed countries. The case of the appellant is that he was using the trade mark "SOFT TOUCH" since long which was not only distinctive but had been continuously in use and respondent realizing this fact has copied it to "SWEET TOUCH" in order to deceive the customers, therefore, while relying upon case titled "Messrs Mehran Ghee Mills (Pvt.) Limited and others v. Messrs Chiltan Ghee Mill (Pvt.) Limited and others" (2001 SCMR 967), this appeal is allowed and the impugned order is set aside.

MH/S-32/L **Appeal allowed.**

2022 M L D 584

[Lahore]

Before Ali Baqar Najafi and Sardar Muhammad Sarfraz Dogar, JJ

ABDULLAH KHAN ---Petitioner

Versus

The STATE and others---Respondents

Criminal Appeal No.7174 of 2019, heard on 6th September, 2021.

(a) Control of Narcotic Substances Act (XXV of 1997)---

----S.9(c)---Control of Narcotic Substances (Government Analysts) Rules, 2001, R.6---Possession of narcotics---Appreciation of evidence---Benefit of doubt---Scope---Allegation against accused was that he was apprehended from the street near Dera, who led the police party to his Dera wherefrom he got recovered charas weighing 08 kilograms---Patwari had admitted that the Dera was without boundary wall---Patwari had not recorded statement of respectables of the locality nor had he collected any document in the form of girdawari showing his control and supervision of the accused over the Dera---Complainant had admitted that he had arrested the accused from the street and then after his arrest accused had led to the recovery from the Dera---Dera, in the rural background, was a private place of common use by all the owners for agricultural affairs---Any co-owner can access the Dera, though some frequently visit there while others may not---Mere presence of accused on the place was not sufficient to hold him responsible for conscious possession---Samples were separately analyzed but the kind/type of protocols applied for the chromatography tests were not mentioned---Prosecution could not prove its case beyond any reasonable doubt---Appeal against conviction was allowed, in circumstances.

Hussain Shah and others v. The State PLD 2020 SC 132 and Mst.

Jameela and another v. The State PLD 2012 SC 369 rel.

(b) Control of Narcotic Substances (Government Analysts) Rules, 2001---

----R.6---Report of result of test or analysis---Mandatory provision---Scope---Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001, is mandatory, its non-observance shall invalidate the result.

The State through Regional Director ANF v. Imam Bakhsh and others 2018 SCMR 2039; Khair ul Bashar v. The State reported as 2019 SCMR 930; Qaiser Javed Khan v. The State through Prosecutor General Punjab Lahore and another PLD 2020 SC 57 and Ikramullah 2015 SCMR 1002 rel.

Naveed Afzal Basra for Appellant.

Zafar Iqbal Chohan, Special Prosecutor for ANF for the State.

Date of hearing: 6th September, 2021.

JUDGMENT

ALI BAQAR NAJAFI, J.----Through this appeal under section 48 of Control of Narcotic Substances Act, 1997, the judgment dated 17.01.2019 passed by the learned Judge Special Court CNS, Sialkot, passed in case FIR No.20/2016, dated 21.07.2016, under section 9(c) of CNSA, 1997 registered at Police Station Sialkot, has been challenged whereby the appellant was convicted under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to ten (10) years and (06); months R.I. with fine of Rs.50,000/- in default whereof to undergo further simple imprisonment for eight months. Benefit of section 382-B, Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case against the appellant are that on 20.07.2016, Anjum Shakeel Sub Inspector (PW-3) along with other police officials and informer, on receipt of spy information and upon the direction

of the high-ups constituted a raiding party, conducted raid and apprehended the appellant from the street near Dera who led the police party to his Dera wherefrom he got recovered charas weighing 08 kilograms contained in 08 white colour plastic bags (Torra) in presence of witnesses. 10 grams was separated from each packet as samples for chemical analysis and all said small eight packets and remaining eight packets were sealed as Exh.PB attested by Mian Bilal Ahmad/SI (PW-4) and Rizwan Ullah constable (given up PW). The recovered charas along with other articles i.e. ID Card, HBL Card, ATM Card were taken into possession through recovery memos (Exh.PC) and complaint (Exh.PA) was drafted and formal FIR (Exh.PA/1) was registered.

3. After completion of investigation by Anjum Shakeel SI (PW-3) he submitted challan against the accused-appellant before the trial court. On indictment, the appellant pleaded not guilty and claimed trial. The prosecution produced five witnesses, namely, Muhammad Ashraf ASI (PW-1), Ikram-ur-Rehman (PW-2), Anjum Shakeel SI (PW-3), Mian Bilal Ahmad SI (PW-4) and Munir Ahmad Patwari (PW-5). Thereafter, the accused/appellant was examined under section 342, Cr.P.C., whereby he professed his innocence and denied all the allegations levelled against him and claimed trial. He did not opt to depose within the scope of section 340(2), Cr.P.C. or adduce evidence in defence. In reply to the question as to why this case against him and why the PWs have deposed against him, he stated as under:-

> "I have been falsely involved in this case. I was serving in police department and working in intelligence wing, D.P.O. Office Gujrat. I made some reports to D.P.O. Gujrat regarding corrupt practices of difference police officials including S.H.O. P.S. Saddar Gujrat namely Arif Munir. On the basis of said reports D.P.O., Gujrat took serious actions against said corrupt police officials. The police

officials had grievance in their mind against me. After the transfer of DPO Gujrat namely Rai Zameer-ul-Haq, Arif Munir S.H.O. P.S. Saddar Gujrat, who is relative of Khalid ud Din, A.D. A.N.F. Sialkot dragged me in this false case in connivance with each other by planting false recovery upon me. The PWs remained miserably failed to prove the recovery against me and also failed to prove my exclusive possession and domain over place of recovery. P.Ws. also failed to establish their visit at the place of recovery."

After conclusion of the trial, the learned trial court pronounced aforementioned conviction and sentence.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. Mr. Naveed Afzal Basra, Advocate, learned counsel for the. appellant has attacked the prosecution case from all four sides, i.e. no conscious possession of the appellant, no safe custody of the samples to and from the laboratory, recording of the complaint on different dates, and non-observance of the protocols by the Chemical Examiner in the reports. However, Mr. Zafar Iqbal Chohan, the learned Special Prosecutor for ANF fully supports the judgment under judicial scrutiny before this court.

7. On conscious possession of the narcotics by the appellant, the prosecution has produced Anjum Shakeel SI (PW-3), as head of the raiding team who also conducted the investigation of the case. According to him, the raiding party had reached at street outside the Dera where he was overpowered and on asking about the narcotics, led the raiding party to his Dera and took out white coloured plastic bag (Torra) concealed in the fodders of the cattle and produced before him who opened it in the presence of witnesses and 10 grams was separated from each packet for samples. He prepared and sealed parcels of remaining bulk of Charas (Exh.P-1) and sealed all parcels with stamp "A.S.". He took it in possession vide recovery

memo (Exh.PB) and other articles ID card, HBL card, ATM card as recovery memo (Exh.PC) which were attested by Mian Bilal Ahmad SI (PW-4) and Rizwan Ullah Khan constable(given up PW). According to star witnesses he drafted complaint Exh.PA and sent it to police station through Zahid Iqbal/Constable (given up PW) for registration of FIR (Exh.PA./1). He handed over the case property to the Moharrir. He wrote a letter (Exh.PE) for obtaining record of properties owned by accused as well as the ownership of Dera. He interrogated the statements of Haji Ghulam Rasool, grand father of the appellant and Tauseef his brother in law. Vide letter (Exh.PF), the Assistant Commissioner concerned, deputed Patwari to visit the Dera and after his visit a rough site plan was prepared. During cross-examination, this PW-3 had admitted that there were construction on the southern and western sides and Abadi on the eastern side and that there is a street on the northern side, but then contradictory himself he stated that eastern and southern sides were open. He then admitted that there is no boundary wall around Dera and then denied the suggestion that no one can enter in the Dera easily. Importantly, Munir Ahmad Patwari Halqa (PW-5) also admitted that the Dera was without bound boundary wall, though he statedly prepared the report (Exh.PH) on the instructions of Anjum Shakeel SI (PW-3) but he also admitted that there was a discrepancy regarding the direction and place of construction on the western side of Dera. Surprisingly, he stated that as per statements of the respectables of the locality, the Dera was under supervision of the appellant. This witness has not denied that he neither recorded the statement of Ghulam Rasool, grandfather of appellant, respectables of locality nor had collected any document in the form of girdawari showing the control and supervision of the appellant over the Dera. He did not know whether cattles were present in Dera. Allah Ditta/Numberdar who was informed by the Patwari, was interrogated by PW-3. PW3. also admitted that he arrested the appellant from the street and then after his arrest he led to the recovery from the Dera.

He also admitted that he did not investigate the police service record of the appellant as an employee of the police department statedly working in intelligence department of police. Another important aspect of the prosecution case is that Mian Bilal Ahmad SI (PW-4) had stated that appellant was not arrested in his presence but he led to the recovery of narcotics himself. He also admitted that anyone can come and go in the Dera without any hindrance. The complaint was not registered on 20.07.2016, and that its date was changed at night. Importantly, no evidence was collected regarding the ownership of Dera. It is a common observation that in the rural background, Dera is a private place of common use by all the owners for agricultural affairs. Any co-owner may have access, though some frequently visit there while others may not. One of them may have a supervisory control over possession through tillers/servants who may also be responsible for any illegal activities. Here it is important to refer to case titled "Hussain Shah and others v. The State" reported as PLD 2020 SC 132 where it was held that direct evidence was required to establish conscious possession which is clearly lacking in the present case and mere presence of accused at a place of recovery of concealed narcotics would not be sufficient to convict him. Relevant extract from page 136 is reproduced as under:--

> "The law is settled by now that if the prosecution fails to establish conscious possession or knowledge in that regard then a passenger cannot be convicted solely on the basis of his availability inside a vehicle at the relevant time."

8. Even mere presence of the appellant on the place was not sufficient to hold him responsible for conscious possession as held in case titled "Mst. Jameela and another v. The State" reported as PLD 2012 SC 369. Relevant extract from page 370 is reproduced as under:-

> "The law on the subject is quite settled that there presence of a

passenger in a vehicle cannot be treated as sufficient to saddle him with the responsibility of possession of narcotic substance recovered from the vehicle unless the prosecution establishes through independent evidence that such passenger was conscious and aware of availability of narcotic substance in the vehicle."

The appellant, therefore, did not have the conscious possession.

9. On safe custody of recovered narcotics and samples, Anjum Shakeel SI (PW-3) gave parcel samples to Muhammad Ashraf/Moharrir (PW-1) on 21.07.2016 and on 22.07.2016 he delivered 08 sealed parcels to Ikram Ullah (PW-2), According to him the date of occurrence was disclosed at night on 21.07.2016 but his statement was not recorded on 21.07.2016 since as per FIR (Exh.PA/1) on 20.07.2016, Anjum Shakeel/SI (PW-3) left the police station at 8.30 p.m. and at 11.00, the recovery was effected. Ikram Ullah (PW-2) stated that he handed over the samples to him on 22.07.2016 who deposited it in the office of N.I.H. Islamabad but he does not know its address. However, this point cannot be appreciated since the address is not mentioned even on the report. It is, therefore, concluded that the chain of the safe custody is not broken.

10. On the non-observance of protocols, it is important to mention that although all eight samples were separately analysed but the kind/type of protocols applied for the chromatography tests were not mentioned rather international conventions were written.

11. Exh.PI is the chemical examination report prepared in view of the outdated/old interpretation of Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 as directory, therefore, its non-observance would not have invalidated the trial. Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 is reproduced as under"

"6. Report of result of test or analysis.--- After test or analysis the

result thereof together with full protocols of the test applied shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II."

However, it would be important to observe that in case titled The State through Regional Director ANF v. Imam Bakhsh and others reported as (2018 SCMR 2039), Rule 6 has now been declared as mandatory, the non-observance of which shall invalidate, the result. Para 15 of the judgment is reproduced as under:-

"15. Rule 6 on the other hand stands on a different statutory footing. It provides that the Report of the Government Analyst, after the test and analysis, is to furnish the result together with full protocols of the test applied. The accuracy of test and analysis and the correct application of the full protocols alone can determine if the recovered substance is a narcotic drug or a psychotropic or controlled substance. "Protocol" means an explicit, detailed plan of an experiment, procedure or test or a precise step-by-step description of a test, including the listing of all necessary reagents and all criteria and procedures for the evaluation of the test data. Rule 6 requires that full protocols of the test applied be part of the Report of the Government Analyst. Every test has its protocols which are internationally recognized and a test without the observance of its protocols has no sanctity. "Full protocols" include a description of each and every step employed by the Government Analyst through the course of conducting a test. Hence, the Report under Rule 6 must specify every test applied for the determination of the seized substances with the full protocols adopted to conduct such tests." (underlining for emphasis is ours). "

12. It was recently reiterated in case titled Khair ul Bashar v. The State reported as (2019 SCMR 930) that said Rule necessarily requires test and

analysis by following the protocols on the alleged drugs by mentioning each test and the names of all the protocols applied to carry out the result without which, the report so prepared by the Government Analyst shall be invalid. Page 935 of the said judgment is reproduced as under:-

> " Imam Bakhsh purposively interprets the Act and finds Rule 6 to be a mandatory provision regarding information to be reflected in the Report of the Analysts. Hence, the argument that Imam Bakhsh is per incuriam, is hopelessly misconceived and rejected. For completion of record it is pointed out that review filed in Imam Bakhsh was also dismissed vide an earlier order dated 06.02.2019".

13. In the more recent judgment in PLD 2020 SC 57 titled "Qaiser Javed Khan v. The State through Prosecutor General Punjab Lahore and another", decided on 18.12.2019 the Hon'ble Supreme Court has reiterated the views expressed in Ikramullah (2015 SCMR 1002), Imam Bakhsh (2018 SCMR 2039) and Khair-ul-Bashar (2019 SCMR 930) while holding as follows:-

> "8. The Report of the Government Analyst in the instant case does not specific the protocols of the tests applied and does not meet the requirements of the law as interpreted by this Court in the cases of Imam Bakhsh and Khair-ul-Bashar (supra). The said report cannot be relied upon for the Conviction of the petitioner. Therefore, the petition is converted into appeal and allowed. The conviction and sentence of the petitioner are set aside. He shall be released forthwith if not required to be detained in any other case.
>
> 9. We have observed in a number of cases before us that the import of the above cited judgments have not been fully understood in the context of "protocols", which has been further clarified in this judgment. Thereafter, it will be appropriate to a copy of this judgment is dispatched to all the High Courts for their reference and for further circulation to the Trial Courts dealing with such matters

and to the Forensic Science Laboratories in their respective areas".

14. Based upon the above latest law, we have noted that report of National Institute of Health, Islamabad (Exh.PI) the said requirement was not fulfilled as required in Imam Bakhsh's case supra. Only the test performed on the receipt items were mentioned which included top-load balance for weighing, chemical spot tests for presumptive testing and gas chromatography-Mass Spectrometry used for confirmation. The scanned copy of the report Exh.PI is as under:-

15. Keeping in view the above, it cannot be safely said that the conviction of the appellant was based on the prosecution case proved beyond any reasonable doubt.

16. For what has been discussed above, this appeal is allowed, conviction and sentence of the appellant is set aside and he is acquitted of the charge levelled against him by extending the benefit of doubt. He is in custody, be released forthwith if not required to be detained in any other case.

SA/A-97/L **Appeal allowed.**

2022 P Cr. L J 976

[Lahore]

Before Ali Baqar Najafi and Sardar Ahmad Naeem, JJ

MUHAMMAD IBRAHIM and others---Appellants

Versus

The STATE and others---Respondents

Criminal Appeal No. 8689 of 2021, decided on 19th January, 2022.

(a) Anti-Terrorism Act (XXVII of 1997)---

----Ss. 11-N, 11-H & 11-J---Funding arrangements---Fund raising---Appreciation of evidence---Scope---Allegation against accused was that he was collecting funds for a proscribed organization whereas case against co-accused was that he gave funds to a proscribed organization---Police officials, on information, had secretly parked their vehicle behind a shop and in their view co-accused had handed over Rs. 1000/- and obtained a receipt along with pamphlet---Accused persons were arrested red handed---Writing of the accused on subscription book was proved through handwriting expert's report---No mala fide of the police witnesses was even alleged to cause aspersion to their credibility---Display of different heads on the pamphlet was not essential as the fact remained that the proscribed organization had caused damage not only to the State institutions but targeted the State functionaries and had also intensified the wave of terrorism in the past which would not have been possible without the financial support---Prosecution had proved the case against the accused persons on the basis of direct evidence beyond reasonable doubt---Appeal was dismissed, in circumstances.

(b) Anti-Terrorism Act (XXVII of 1997)---

----Ss. 11-N, 11-H & 11-J---Funding arrangements---Fund raising---Scope-

--Inciting public to raise funds for Jihad is not allowed to individuals in an Islamic State as this may be considered as "Baghawat"---At the most it may be a job of the State to collect national funds for a declared war, if essential, which cannot be raised privately by any organization.

(c) Anti-Terrorism Act (XXVII of 1997)---

----S. 11-H---Fund raising---Scope---Under S. 11-H(2)(a) of Anti-Terrorism Act, 1997, a person who receives money or other property with an intention or reasonable cause to suspect that it be used for the purposes of terrorism or by terrorist organization concerned in terrorism will be convicted and sentenced under S. 11-N of Anti-Terrorism Act, 1997, for a term not less than 5 years and if a person professes to belong to a proscribed organization will be sentenced for imprisonment not exceeding 6 months.

(d) Anti-Terrorism Act (XXVII of 1997)---

----S. 11-H---Fund raising---Scope---Under S. 11-H(3) if a person provides money or other property for the purposes of terrorism or to a terrorist organization will be punished under S. 11-N for a term not less than 5 years and fine not exceeding 25 million rupees.

Javed Iqbal Malik-I and Intizar Hussain for Appellants.

Rai Iftikhar Hussain, D.P.G. with Muhammad Ashraf, Inspector CTD, Mianwali for Respondents.

Date of hearing: 19th January, 2022.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this appeal under section 25 of Anti-Terrorism Act, 1997, judgment dated 12.01.2021 passed by the learned Special Judge Anti-Terrorism Court, Sargodha in case FIR No. 08 dated 10.09.2020 registered under sections 11-N, 11-H(1-2-3), 11-J of Anti-Terrorism Act, 1997 at Police Station CTD. District Sargodha, has been challenged whereby the appellants were convicted and sentenced as

under:-

Muhammad Ibrahim.

1) Under section 11-F(2) of the Anti-Terrorism Act, 1997 to undergo six months' S.I with a fine in sum of Rs. 50000/- (fifty thousand), in default whereof accused shall further undergo two months' S.I.

2) Under section 11-H(2) read with section 11-N of the Anti-Terrorism Act, 1997 to undergo five years' R.I with fine amounting to Rs. 100000/- (one lac), in default whereof, he shall further undergo three months' S.I.

The sentences of imprisonment awarded to the accused for both the offences shall run concurrently and benefit of section 382-B, Cr.P.C. shall also be available to him.

Ubaid-ur-Rehman

Under section 11-H(3) read with section 11-N of the Anti-Terrorism Act, 1997 to undergo five years' R.I with fine amounting to Rs. 100000/- (one lac), in default whereof, he shall further undergo three months' S.I.

Benefit of section 382-B Cr.P.C. shall also be available to him.

2. Brief facts of the prosecution case against the appellants as narrated by Aamir Iqbal Corporal No. 1012 (PW-4) in complaint (Exh.PA) is that on 11.06.2020 he along with other officials in connection with arrest of proclaimed offenders of defunct organization were present at Sargodha More, Mianwali, where he received a spy information that a person who posed himself to be a mujahid of "Tehreek-e-Taliban Pakistan" (TTP), a banned organization, was present at Head Pakka Pul Nehar, inducing/inciting the people in the name of Jahad, distributing the pamphlets of the banned organization "Tehreek-e-Taliban Pakistan" (TTP) and raising funds for the organization, could be arrested, if raided. Upon

this information, the police party reached at the stated place and apprehended the appellants. The appellant/Muhammad Ibrahim, got recovered 136 pamphlets, one used subscription book, two unused subscription books of the aforesaid banned organization, a blue colour ball point and cash of Rs. 45,860/- whereas a receipt No. 540 was recovered from the appellant/Ubaid-ur-Rehman, which he obtained after donating Rs. 1000/- for banned organization from appellant/Muhammad Ibrahim, besides one pamphlet and cash of Rs. 15,940/-. The articles recovered from the appellants were taken into custody vide recovery memos (Exh.PF) and (Exh.PG). The complainant drafted the complaint (EXh.PA) and sent the same to Police Station through Muhammad Shoaib, 13/C.P.C., for registration of formal FIR whereafter the FIR (Exh.PA/1) was registered.

3. After completion of investigation, challan against the appellants was submitted before the trial court. The charge was framed on 09.11.2020 to which the appellants pleaded not guilty and claimed trial. The prosecution produced eight (8) prosecution witnesses, namely, Mazhar Abbas, ASI (PW-1), Muhammad Asghar, 64/CP (PW-2), Abdul Basit, 424/CP (PW-3), Aamir Iqbal, 1012/CP (PW-4), Sher Muhammad, ASI (PW-5), Muhammad Aktar, retired ASI (PW-6), Muhammad Imran Ashraf, Judicial Magistrate (PW-7) and Muhammad Ashraf, Inspector (PW-8) and by tendering the report of Punjab Forensic Science Agency (Exh.PN) and giving up Nasir Shaheen, 10/CP, closed the evidence. Thereafter, the appellant was examined under section 342, Cr.P.C., wherein he professed his innocence and denied all the allegations levelled against him. The appellants did not opt to depose within the scope of section 340(2), Cr.P.C. In reply to the questions as to why this case against them and why the PWs have deposed against them, they replied as under:-

Muhammad Ibrahim/Appellant.

"No such occurrence has even taken place while a false story

regarding recovery and arrest proceedings was concocted by CTD officials while sitting at CTD office. Nothing was recovered from my possession and a fake recovery has been planted upon me by the CTD officials to strengthen the prosecution's case on the asking of high ups. I have no nexus with any banned organization. My signatures on the receipts were forcibly obtained while sitting at the police station of CTD."

Ubaid-ur-Rehman/Appellant.

"No such occurrence has even taken place while a false story regarding recovery and arrest proceedings was concocted by CTD officials while sitting at CTD office. Nothing was recovered from my possession and a fake to strengthen the prosecution's case on the asking of high ups. I have no nexus with any banned organization."

4. After conclusion of the trial, the learned trial court pronounced its verdict against the appellant and awarded him punishment as aforementioned.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. Aamir Iqbal, 1012/CP (PW-4) is the complainant of the FIR and according to him he received an information that appellant belonging to banned organization; i.e. "Tehreek-e-Taliban Pakistan" (TTP) was present at Head Pakka Pul Nehar and instigating the people for Jahad, collecting funds and distributing pamphlets of the above banned organization. At 09:40 a.m. the police official secretly parked their vehicle behind the shop and in their view appellant No.2/Ubaid-ur-Rehman, handed over to him Rs. 1000/- and obtained a receipt No. 540 and also received pamphlet of the said organization. Consequently, both were arrested red handed and the appellant/Muhammad Ibrahim, got recovered 6 pamphlets (P-1 to P-6) of the banned organization from his right hand from a subscription book (P-

7) and ball point. The issued receipts were from leaf Nos. 501 to 540 while 60 receipts were intact. Every issued receipt had signatures of appellant/Muhammad Ibrahim, on it while name of the donors were mentioned on all the issued receipts. The pamphlets (P-10) to (P-130) and two new subscription books (P-11 and P-12) were also recovered and the sum of Rs. 45,860/- were also recovered from the right pocket of his shirt. In cross-examination, he admitted that it was a busiest place being MM Road near Mianwali and that 3/4 persons were also present near him at the time of his arrest but none of them had become a witness. According to this witness, they viewed the whole occurrence behind the shelter of the shop for two minutes. He further admitted that no card of the membership of (TTP) was recovered from the possession of the appellant/Muhammad Ibrahim, and that recovered pamphlets are without the name or photocopies of head of TTP. He also admitted that on the said pamphlets no designation of the appellant/Muhammad Ibrahim, was mentioned. PW-5/ Muhammad Akhtar, retired ASI, is the other witness who also corroborated material facts with Aamir Iqbal, 1012/CP (PW-4). PW-8/Muhammad Ashraf, Inspector, CTD/I.O. interrogated both the appellants and received their CNIC numbers. He submitted applications to different banks for receiving the account of the said appellants but he could not trace out any account number. The notification of the banned organization (Exh.PE) was received by him but he has not been able to interrogate the person to whom the funds used to be transferred by the appellant/ Muhammad Ibrahim.

7. Under section 11-H(2)(a) of Anti-Terrorism Act, 1997 a person who received money or other property with an intention or reasonable cause to suspect that it be used for the purposes of terrorism or by terrorist organization concerned in terrorism will be convicted and sentenced under section 11-N of the Act ibid for a term not less than 5 years and if a person professes to belong to a proscribed organization will be sentenced for imprisonment not exceeding 6 months. Likewise, under section 11-H(3) if

a person provides money or other property for the purposes of terrorism or to a terrorist organization will be punished under section 11-N for a term not less than 5 years and fine not exceeding 25 million rupees.

8. P-14 is the receipt No. 540 of Rs. 1000/- recovered from the appellant No.2/Ubaid-ur-Rehman and P-7 are leaf heads recovered from the appellant No.1/Muhammad Ibrahim, including that of receipt No. 540. It was a leaf head of the said corresponding receipt duly singed by appellant/Muhammad Ibrahim. As per PW/7 Muhammad Imran Ashraf, Judicial Magistrate, the signatures of the appellant/Muhammad Ibrahim, were duly verified with the obtained specimen signatures vide forensic report (Exh.PN).

9. The arguments of the learned counsel for the appellants that no other donors were arrested; no person to whom the funds were transferred was arrested; no membership card of the proscribed organization was recovered from the possession of the appellants, are the arguments relating to the cause and effect of the occurrence but under the provisions of sections 11-F and 11-H of Anti-Terrorism Act, 1997 mere receiving and donating of money as donation for any proscribed organization with a likelihood that it may be used for terrorism has been made punishable. The writing of the appellant/Muhammad Ibrahim, as sated is proved through handwriting expert's report (Exh.PN). No mala fide of the police witnesses were even alleged to cause aspersion to their credibility. The display of different heads on the pamphlet was not essential as the fact remains that "Threek-e-Taliban Pakistan" (TTP), is a defunct and proscribed organization which has caused damage not only to the State institutions and targeted the State high functionaries but also had intensified the wave of terrorism in the past which would not have been possible without the financial support. Inciting public to raise funds for Jahad is obviously not allowed to individuals in an Islamic State as this may be considered as "Baghawat". At the most it may

be a job of the State to collect national funds for a declared war, if essential, which cannot be raised privately by any organization. The prosecution, therefore, has proved the case against the appellants on the basis of direct evidence beyond reasonable doubt. The argument that appellants were already in police custody and they were previous non-convict might have persuaded this court for a lesser sentence but under section 11-N of Anti-Terrorism Act, 1997 five years is the minimum sentence which can be awarded after the proof of section 11-H of the Act ibid, hence not legally permissible.

10. For the foregoing reasons, this appeal has been found meritless and is, therefore, dismissed.

SA/M-27/L **Appeal dismissed.**

P L D 2022 Lahore 559

Before Ali Baqar Najafi, J

ALI IKRAM---Petitioner

Versus

Mian MUHAMMAD IKRAM and 3 others---Respondents

Criminal Revision No. 55303 of 2021, decided on 17th December, 2021.

(a) Protection of Parents Ordinance (XII of 2021)---

----S. 4---Parents' right to evict children---Pendency of civil litigation---Scope---Father (respondent) filed application before the Deputy Commissioner alleging therein that the son (petitioner) forcibly stopped his entry in the house owned by the former---Petitioner appeared before the Deputy Commissioner; contended that the respondent used to live separately in another house and that civil litigation in respect of the house was pending adjudication---Deputy Commissioner notwithstanding the availability of registered gift deed in favour of respondent directed the parties to seek remedy from concerned court of law---Appellate Court remanded the case and directed the Deputy Commissioner to follow the procedure prescribed in Chap. XX of the Code of Criminal Procedure, 1898---Validity---Order passed by the Deputy Commissioner was under subsection (5) of S. 4, therefore, it was an order on the civil side and Chap. XX of Code of Criminal Procedure, 1898, was not attracted---Deputy Commissioner had failed to exercise his jurisdiction on the pretext of pendency of civil litigation---Order was based on misinterpretation of subsection (5) of S. 4 wherein the word "irrespective of any defence put up by the child" was mentioned with further words "including the defences that the house was constructed or purchased through the funds of the child"---Said words excluded the pendency of civil suit---Protection of Parents Ordinance, 2021 was a special law which had to be given special status, therefore, the jurisdiction of Deputy Commissioner was well intact---Criminal revision was allowed, orders passed by forums below were set aside and the Deputy Commissioner was directed to exercise his

jurisdiction on the basis of the Protection of Parents Ordinance, 2021.

(b) Protection of Parents Ordinance (XII of 2021)---

----S. 3---Punishment for eviction of parents---Scope---Eviction of parents by child from a house, owned or rented by child, or in his possession by any other means, has been described as an offence, which may attract rigorous imprisonment for a term up to one year or with fine or with both.

(c) Protection of Parents Ordinance (XII of 2021)---

----S. 4---Parents' right to evict children---Scope---Parent may evict a child, his spouse or offspring, from a house owned or rented by such parent---If a child, his spouse or offspring, had failed to vacate the house after seven days of service of written notice of eviction by the parent, he may be punished with simple imprisonment for a term which may extend to thirty days or with fine of Rs. 50,000/-.

(d) Protection of Parents Ordinance (XII of 2021)---

----Ss. 4, 6 & 7---Parents' right to evict children---Trial---Appeal---Scope---Under subsection (2) of S. 4, if a child had failed to vacate the house a written complaint can always be filed before the Deputy Commissioner by such parent and upon receipt of such complaint, the Deputy Commissioner after his satisfaction and hearing the parties to the effect that ownership vests with parent shall pass an order of eviction of the house by a child, irrespective of the defence put up by the child including defence that he had constructed the house or purchased through funds of the child---Said order passed under subsection (5) as well as under subsection (2) of S.4 is appealable under S. 7---Order passed under subsection (5) does not need any recording of evidence as envisaged under Chap. XX of the Code of Criminal Procedure, 1898 but an order under subsection (2) which is a penal provision, the said procedure relatable to trial under Chap. XX of Code of Criminal Procedure, 1898 will be attracted---Under S. 6 the trial is to be conducted of a person who has been arrested or appeared or is brought

before the Magistrate.

(e) Protection of Parents Ordinance (XII of 2021)---

----S. 4---Parents' right to evict children---Scope---Complaint under subsection (2) of S.4 can be filed by parent before the Deputy Commissioner---Neither the word "complaint" has been defined nor provisions of Ss. 200 to 240 of Cr.P.C. are made applicable, meaning thereby that the procedure of complaint will not be followed.

Muhammad Maqsood Buttar and Mazhar Farooq for Petitioner.

Abdul Samad, A.P.G.

Hafeez-ur-Rehman Chaudhry and Mian Asif Iqbal for Respondent No.1.

ORDER

ALI BAQAR NAJAFI, J.---This Criminal Revision under Section 435/439 read with Section 561-A, Cr.P.C. is directed against order dated 30.08.2021 passed by the learned Addl. Sessions Judge, Faisalabad whereby order dated 13.07.2021 passed by respondent No.2/Deputy Commissioner, Faisalabad was set aside and the case was remanded to him while observing that procedure under Chapter XX of Cr.P.C. as ordained in Section 5 of the Protection of Parents Ordinance, 2021 be followed within 7 days.

2. Brief facts giving rise to the filing of this Criminal Revision are that petitioner is the son of respondent No.1 and the later filed an application under Protection of Parents Ordinance, 2021 (hereinafter to be referred as Ordinance) against the petitioner before the Deputy Commissioner, Faisalabad/respondent No.1 seeking registration of case against the petitioner on the grounds that father of respondent No.1 namely, Haji Muhammad Yousaf, died on 26.02.2021 who used to live in House No. 40-A Peoples Colony No.1, Faisalabad along with respondent No.1 as well as the petitioner but after his Rasm-e-Chehlum, the petitioner forcibly stopped his entry and established his illegal possession. A legal notice was sent on 24.05.2021 but of no avail, therefore, an application for registration of FIR

was filed before respondent No.2/Deputy Commissioner, Faisalabad on 29.06.2021. The petitioner filed the reply and categorically stated that his grandfather, the father of respondent No.1 namely, Haji Muhammad Yousaf, was a big textile owner who had left the property of billions of rupees and that respondent No.1 used to live separately in House No. 22, Raza Town, Faisalabad measuring 13 Kanals for the last 23 years and not with the petitioner. It was also asserted that civil suit titled "Mian Muhammad Ikram v. Ali Ikram" for possession and permanent injunction filed by respondent No.1 is pending since 28.04.2021 before the civil court and in the suit for declaration filed by the petitioner titled "Ali Ikram v. Mian Muhammad Ikram etc." against respondent No.1, a statement was recorded on 23.06.2021 to the extent that respondent No.1 had shown no intention to dispossess the petitioner otherwise than in due course of law. It was also stated by the petitioner that after attending the funeral of Haji Muhammad Yousaf, he did not attend any other ceremonial function. It was categorically stated that petitioner is owner in possession of the property in question. Vide order dated 13.07.2021, respondent No.2/Deputy Commissioner, Faisalabad had categorically mentioned that in view of pendency of civil suits between the parties, respondent No.1 was directed to seek remedy from the concerned court of law, notwithstanding the gift deed No. 6159 dated 30.05.2009 registered in the office of Sub-Registrar Urban-1, Faisalabad in favour of respondent No.1. However, the learned appellate court had allowed the appeal and remanded the case on the ground that the impugned order was not sustainable since it was not passed after following the procedure prescribed under Chapter XX of the Code of Criminal Procedure, 1898 and therefore, a direction was issued to respondent No.2/Deputy Commissioner, Faisalabad to follow the said procedure, hence this writ petition.

3. Arguments heard. File perused.

4. In order to understand the true and correct import of the Protection of Parents Ordinance, 2021, its objective may be perused which are reproduced as follows:-

"WHEREAS it is expedient to provide for the protection of parents

from being expelled or evicted from houses, to provide for offences and punishments in this regard and for matters ancillary thereto;"

Besides, Under Section 3 the eviction of parents by child from a house, owned or rented by said child, or in its possession by any other means, has been described as an offence, which may attract rigorous imprisonment for a term up to one year or with fine or with both.

Under Section 4 a parent may evict a child, his spouse or offspring, from a house owned or rented by such parent. However, if a child, his spouse or offspring, had failed to vacate the house after seven days of service of written notice of eviction by the parent, he may be punished with simple imprisonment for a term which may extent to thirty days or with fine of Rs. 50,000/-.

Under subsection (2) to Section 4, if a child had failed to vacate the house a written complaint can always be filed before the Deputy Commissioner by such parent and upon receipt of such complaint, the Deputy Commissioner after his satisfaction and hearing the parties to the effect that ownership vests with parent shall pass an order of eviction of the house by a child, irrespective of the defence put up by the child including defence that he had constructed the house or purchased through funds of the child. This order passed under subsection (5) as well as under subsection (2) of Section 4 of the Ordinance, is appealable under Section 7 of the Ordinance. However, the order passed under sub-section (5) does not need any recording of evidence as envisaged under Chapter XX of the Code of Criminal Procedure, 1898 but an order under subsection (2) which is a penal provision, the said procedure relatable to trial under Chapter XX of Code of Criminal Procedure, 1898 will be attracted. Under section 6 the trial is to be conducted of a person who has been arrested or appeared or is brought before the Magistrate.

5. Notably, under subsection (2) to Section 4 a complaint can be filed by parent before the Deputy Commissioner. In the said ordinance, neither the word "complaint" has been defined nor provisions of Sections 200 to 240 under Chapters XVI to XIX were made applicable, meaning thereby

that the procedure of complaint will not be followed.

6. In the present case, the order passed by the Deputy Commissioner was under subsection (4) to Section 4, therefore, in my humble view it was an order on the civil side, therefore, Chapter XX of the Code of Criminal Procedure, 1898 was not attracted.

7. As far as the order of the Deputy Commissioner is concerned, it is noted that he has failed to exercise his jurisdiction on the pretext that respondent No.1 should have his title declared from the civil court where the civil suits were pending. This appears to be a misinterpretation of subsection (4) of Section 4 wherein the word "irrespective of any defence put up by the child" was mentioned with further word "including the defences about the construction or purchase of house the property". This word, in my humble view, excludes the pendency of civil suit on the said subject before the civil court. The Protection of Parents Ordinance, 2021 is a special law which has to be given special status, therefore, the jurisdiction of the Deputy Commissioner is well intact.

8. For the foregoing reasons, this Criminal Revision is allowed, order dated 30.08.2021 passed by the learned Addl. Sessions Judge, Faisalabad is set aside and the order dated 13.07.2021 passed by the Deputy Commissioner, Faisalabad to the extent of referring the matter to civil court is also set aside and he is directed to exercise his jurisdiction on the basis of Ordinance and the observations made hereinabove.

SA/A-1/L **Case remanded.**

2022 P Cr. L J Note 55

[Lahore]

Before Ali Baqar Najafi and Sardar Muhammad Sarfraz Dogar, JJ

The STATE---Appellant

Versus

MUHAMMAD HAFEEZ---Respondent

Criminal Appeal No. 616 of 2013, heard on 27th October, 2021.

Control of Narcotic Substances Act (XXV of 1997)---

----S. 32--- Articles connected with narcotics---Scope---Prosecution assailed the release of vehicle which was used in transportation of narcotics to brother of convict---Validity---Since the respondent (brother) had shown to the Trial Court that he was the legal owner of the vehicle, its possession was rightly handed over to him after due verification---Respondent was although real brother of the convict but he had no knowledge of the commission of offence---Appeal was dismissed.

Badsha Zada v. The State and others 2019 PCr.LJ 1341 ref.

Javed Hayat and another v. The State PLD 2006 Lah. 167; Muhammad Hanif v. The State and others 2011 SCMR 1471; Allah Ditta v. The State 2010 SCMR 1181 and Amjad Ali Khan v. The State and others PLD 2020 SC 299 rel.

Zafar Iqbal Chohan, Special Prosecutor for ANF for the State.

Naveed Afzal Basra for Respondent.

Date of hearing: 27th October, 2021.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this appeal under section 48 of Control of Narcotic Substances Act, 1997, the order dated 19.04.2013 passed by the learned Judge, Special Court CNS, Lahore has been

challenged whereby the Car No. LWG-1415 was given to Muhammad Rasheed, brother of respondent/convict subject to receipt and identification in case FIR No. 36 dated 25.10.2012 registered under sections 9(c)/15 of CNSA, 1997 at Police Station RD ANF, Lahore.

3.(sic.) Brief facts of the prosecution case against the respondent as narrated by Azhar Himesh, S.I. in complaint is that on 25.10.2012 high ups of ANF received a spy information that respondent, inter-provincial smuggler, with huge quantity of charas in order to sell to some specific customer would come out from his house situated at Samsani Pind, near Jamia Masjid Qadria, Johar Town, Lahore Upon this information, a raiding party comprised of the complainant along with other officials under the supervision of Major Tariq, D.D. reached at the stated place at 03:00 p.m. and started secret surveillance. At about 04:15 p.m. a person sitting in Suzuki Alto silver coloured car was seen coming out of the house who, upon the pointation of the informer, was apprehended disclosed his name as Muhammad Hafiz/respondent and got recovered three packets of charas (one kilogram each, total 3 kilograms) and one packet of opium (460 grams) underneath the driving seat. Out of the recovered charas, 10/10 grams from each packet was separated for chemical analysis and three sample parcels and one parcel of the remaining charas with seal "AZ" was made and taken into custody along with silver colour Suzuki Alto Car No. LWG-1415 bearing engine No. 199524 chassis No. 503538 vide recovery memo. Likewise, out of the recovered opium, 10 gram was separated from chemical analysis and one sample parcel and one parcel of the remaining opium with seal "AZ" was prepared and taken into possession through recovery memo. PKR. 15000/-, registration book of car No. LWG-1415 in the name of respondent No. 3, online cash deposit slips of Bank Al-Habib, Photocopy of I.D. Card of the respondent and mobile phone Nokia with sim recovered from personal possession of the respondent were also taken into custody vide recovery memo. Positive report of the chemical examiner

dated 11.12.2012 was also made part of the challan vide order dated 21.01.2013. The charge was framed against the respondent on 12.12.2012 to which he pleaded not guilty and claimed trial whereafter the prosecution evidence was summoned whereupon examination-in-chief of Umar Draz/C (PW-1) was recorded on 01.03.2013. However, on 19.04.2013, respondent made a confessional statement admitting his guilt and placed him at the mercy of the court, therefore, a notice under section 342, Cr.P.C. was issued to him as to why he not be punished in accordance with law who stated that he is ready to face the consequences of the confessional statement, which was recorded separately, reproduced as under:-

> "I place myself at the mercy of the court while admitting my guilt that 3 kgs charas and 460 gms opium were recovered from me in vehicle No. LWG-1415 at Samsani Pind, near Jamia Masjid, Johar Town, Lahore. I am ashamed over the despicable act. I am behind the bars and have learnt a sufficient lesson. I am making this confession on my own and will remain careful in future. I may be forgiven.
>
> I am making the statement with my free will, without any inducement, pressure or under any legal advice."

4. The learned trial court convicted the respondent under section 9(c) of Control of Narcotic Substances Act, 1997 and sentenced to rigorous imprisonment for 2-1/2 years with fine of Rs. 15,000/-in default whereof to further undergo simple imprisonment for 30 days. Benefit of section 382-B, Cr.P.C. was also extended to him.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. After hearing the learned Special Prosecutor for ANF and the learned counsel for respondent, it is straightway observed that the vehicle was released by the learned trial court on the basis of confessional

statement given by the respondent by convicting him under section 9(c) Control of Narcotic Substances Act, 1997 and awarding sentence of rigorous imprisonment for 2-1/2 years with fine of Rs. 15000/- i.e. less than 3 years which prompted the learned trial court to release the vehicle and personal property belonging to him. The learned Special Prosecutor admitted before the trial court that confessional statement given by the respondent would not be reciprocated by handing over of the vehicle. Obviously, the confessional statement was given with the understanding of the prosecution and the trial court facilitates the accused and avoids wastage of un-necessary time. Reliance is placed upon Javed Hayat and another v. The State (PLD 2006 Lahore 167). Relevant extract of para 8 is reproduced as under:-

> " ..We have already observed above a vehicle can be seized under the Control of Narcotic Substances Act, 1997 only in three situations, i.e. firstly, where it carrying unlawful narcotics along with some lawful narcotics, secondly, where it is a part of the assets derived from narcotic offences and, thirdly, where narcotics have been recovered from its secret chambers, cavities or compartments, etc. The second situation may not be relevant for the present purposes as forfeiture of assets and seizure and confiscation thereof for that purpose come about after conclusion of the case and, thus, there is hardly any question of interim custody or superdari involved in such a situation. The discussion made above shows that it is only in the first and third situations that a vehicle can be seized at the time of or as an immediate consequence of recovery of narcotic and, therefore, in no other situation a vehicle can be seized under the Control of Narcotic Substances Act, 1997 at such a stage. If in other situations a vehicle cannot even be seized to start with then the provisions of section 74 of the Control of Narcotic Substances Act, 1997 forbidding granting of interim custody/superdari would hardly

come into play. The rigors of section 74 have already been softened down by the Hon'ble Supreme Court of Pakistan in case of Abdul Salam v. The State 2003 SCMR 246 and by this Court in the case of Niaz Ullah v. The State 2002 PCr.LJ 97 and through the discussion made above we have ventured to add a new dimension in this regard with reference to the provisions of the Control of Narcotic Substances Act, 1997 itself."

7. This view and the judgment was upheld in Muhammad Hanif v. The State and others (2011 SCMR 1471), where in paragraph No.3 it was held as under:-

" ..Admittedly nothing incriminating had been recovered from the relevant vehicle and the same had been taken into custody by the investigating agency merely because the same had allegedly been used by the accused person for travelling to the airport. Judged at the yardstick laid down by a Full Bench of the Lahore High Court, Lahore in the case of Javed Hayat and another v. The State (PLD 2006 Lahore 167) the vehicle in issue could not have been treated as case-property and, thus, the same could not have been taken into custody by the investigating agency. The petitioner happens to be 'a registered owner of the said vehicle and no other person has so far come forward to claim ownership or possession of that vehicle ."

8. Reference can be given on Badshah Zada v. The State and others (2019 PCr.LJ 1341), in this behalf and reliance is also placed upon Allah Ditta v. The State (2010 SCMR 1181). Relevant extract of para 8 is reproduced as under:-

"8. The proviso of section 32 of the Act, which deals with disposal of the conveyance used in commission of the crime at the conclusion of the trial, also provides as useful tip in interpreting the proviso of section 74 of the Act. Section 32 empowers the trial Court to order confiscation of the vehicle used in trafficking of narcotics, with a

proviso that the vehicle shall not be confiscated unless it is proved that the owner was aware that his vehicle was being used in the crime. Not only that an innocent owner of the vehicle is entitled to the return of the vehicle but the burden has been placed on the prosecution to establish that the owner had the knowledge of his vehicle being used in the crime .."

9. Since the respondent had shown to the learned trial court that he was the legal owner of the vehicle, its possession was rightly handed over to him after due verification. Reliance is placed upon Amjad Ali Khan v. The State and others (PLD 2020 Supreme Court 299), in which it was held that person seeking possession of such vehicle should not be an associate or a relative of the accused or an individual having nexus with the accused. The respondent was although the real brother, but was the owner prior to the commission of the offence and as per record had no knowledge that offence under CNSA, 1997 could be committed in that vehicle.

11. In this view of the matter, this appeal is dismissed on merits.

SA/S-112/L **Appeal dismissed.**

2022 P Cr. L J 195

[Lahore]

Before Ali Baqar Najafi, J

USMAN SHAHID---Petitioner

Versus

GOVERNMENT OF PUNJAB and others---Respondents

Writ Petition No. 64049 of 2021, decided on 23rd December, 2021.

Punjab Infectious Diseases (Prevention and Control) Act (XIII of 2020)

----S. 28-A---Penal Code (XLV of 1860) S. 188---Punjab Prevention and Control of Dengue (Temporary) Regulations, 2021, Reglns. 3, 15 & 5---Constitution of Pakistan, Art. 199---Constitutional petition----Quashing of FIR---Prevention and control of dengue---Registration of FIR by Dengue Control Teams against owners/occupiers of premises found to be in violation of dengue control regulations----Mandatory procedure before initiation of criminal proceedings---Scope---Petitioner sought quashing of FIR lodged against it under S. 188, P.P.C. read with Regln. 15 of Punjab Prevention and Control of Dengue (Temporary) Regulations 2021, after Provincial Government Dengue Control team inspected premises of petitioner and allegedly found dengue mosquitos at such premises---Contention of petitioner, inter alia, was that FIR was motivated by intention to blackmail petitioner and to obtain illegal gratification ---Validity---Record showed that authorities had not been able to show any positive report of specimen of water allegedly collected from premises of petitioner and it was not shown that the Provincial Government Authorities had made any effort to spray disinfectant on any pond, fountain or place of petitioner with notice to owner as required by Punjab Prevention and Control of Dengue (Temporary) Regulations 2021---No notice as required under Punjab Prevention and Control of Dengue (Temporary) Regulations 2021 was issued to petitioner to take appropriate measures as per the Standard

Operating Procedures for dengue control---In order to initiate criminal proceedings, the specific procedure required issuance of notice, site inspection, taking of specimen and getting report of laboratory and such requirements had not been fulfilled in the present case---First Information Report was therefore nothing but abuse of process of law and could not be sustained, and was quashed---Constitutional petition was allowed, accordingly.

Muhammad Asghar and 3 others v. Station Hous Officer and 2 others PLD 2020 Lah. 87 ref.

Sheraz Zaka for Petitioner.

Muhammad Ejaz, Assistant Advocate General Punjab with Pervaiz, SI and Muhammad Yasin, ASI for Respondents.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition, the petitioner seeks quashing of FIR No.1357/2021, dated 01.10.2021, under section 188, P.P.C. read with section 15 of the Punjab Prevention and Control of Dengue (Temporary) Regulations, 2021, registered at Police Station Larri Adda, District Lahore on the allegation that the complainant of the said FIR along with Dengue Team inspected the premises of petitioner being run as "Bilal Oil Stoke" at Shop No.3 Near Kashmir Tea Stall, Larri Adda, Lahore and found "Dengue Mosquitoes" in the room cooler lying there.

2. Learned counsel for the petitioner contends that the instant FIR has been lodged against the petitioner just to blackmail him and pressurize him for illegal gratification. Adds that no sample of water was taken from the premises and there is no positive report from recognizes laboratory to verify the Larva of mosquitos. Adds that the complainant has no authority to enter into the premises and search the premises without notice as it was the duty of Health Inspector. Places reliance upon case titled "Muhammad Asghar

and 3 others v. Station Hous Officer and 2 others" reported as PLD 2020 Lahore 87.

3. In the report and parawise comments submitted by the SHO/respondent No.2, it is stated that no Illegal harassment is casted to the petitioner and they acted in accordance with law. It is further stated that the challan under section 173, Cr.P.C. has been submitted in the court against the petitioner/accused, hence prays for dismissal of the writ petition.

4. Arguments heard. Record perused.

5. After hearing the learned counsel for the petitioner, learned Assistant Advocate General Punjab and perusing the file, it is straightaway observed that the respondents have not been able to show any positive report of the specimen of the water allegedly collected from the premises of the petitioner suggesting that it contain Larva/mosquitos causing Dengue. Under Rule 3 of the Punjab Prevention and Control of Dengue (Temporary) Regulations, 2021 made under section 28-A of the Punjab Infectious Diseases (Prevention and Control Amendment) Act, 2021, the owners or occupiers of the premises will be responsible to remove/destroy or dispose of open tins, bottles, boxes, tyres or any other container capable of holding water which maintain in good repair in a container of water to prevent the breeding of mosquitoes, remove debris another type of vegetation other than grown for fruit purpose or ornamental value. Under Rule 4, the Medical Officer or an Officer notified by the Deputy Commissioner will be required to spray any pond, cistern, fountain or any other place with a notice to the owner/occupier. The investigation does not reveal that any such effort was made by the Government on the premises in question. Under Rule 5, a notice was required to be issued to a person to take the measures; i.e. including repair of gutters, down-pipes, drains, tank, room cooler, artificial pond etc. Admittedly no such notice was issued to the petitioner. The Primary and Secondary Healthcare Department, Government of the Punjab had already issued Standard Operating

Procedures (SOPs) for Prevention and Control ,of Dengue, 2020, according to which, besides setting out the objective details of the activities at the end of the Government functionaries had been described including Alert Generation/System Generated Alerts. In short, the Government/District Government has rightly taken up the responsibility to take adequate measures to control and protect the citizens from this dangerous disease. However, they should be strictly followed under the law, to initiate a criminal proceeding, a specific procedure has been laid down which include issuance of notice, site inspection, taking out specimen and getting report thereon from the laboratory having the latest compatible equipment. The police file does not reveal that the said requirements of law have been fulfilled. Perusal of the police file further reveals the basis of report under section 173, Cr.P.C. is the only certificate dated 29.10.2021 issued by the Entomologist, Ravi Zone, Lahore after the last zimni No.5 dated 10.10.2021 was written which cannot be equated with the report showing the observance of protocol by the recognized laboratory to draw a conclusive inference about the presence of larva in the specimen.

6. In this view of the matter, the registration of FIR is nothing but abuse the process of law. Such FIR, therefore, cannot sustain in the eyes of law. The submission of challan in the court of law of a case which has inherent efficiency cannot be carried out. Resultantly, this constitutional petition is allowed and the FIR No.1357/2021 (supra) is quashed.

KMZ/U-12/L **Petition allowed.**

2022 P Cr. L J 833

[Lahore]

Before Ali Baqar Najafi and Sardar Muhammad Sarfraz Dogar, JJ

PACHA KHAN---Appellant

Versus

The STATE and another---Respondents

Criminal Appeal No. 1503 of 2015, heard on 13th December, 2021.

(a) Control of Narcotic Substances Act (XXV of 1997)---

----Ss. 9(c) & 36---Transportation of narcotics---Reports of Government Analysts---Appreciation of evidence---Benefit of doubt---Contradictory statements---Non-production of original report---Scope---Accused was alleged to have been apprehended while transporting 15 kilograms of heroin---Constable stated that he was given samples for onward submission to Forensic Laboratory by the Moharrir whereas Moharrir stated that he had given samples to another constable for onward submission to Forensic Laboratory---Investigating Officer admitted that he had not recorded the statement of Assistant Director ANF who had supervised the raid nor had he cited him as a witness---Investigating Officer had also admitted that accused had no previous record of any involvement in the criminal case, therefore, the prosecution case regarding his previous conduct as known inter-provincial drug-dealer was not supported---Chemical Examiner had admitted in cross-examination that possibility of causing intoxication in the substance was not mentioned and that if 1 gram heroin was mixed in 100 grams of other white colour powder even then the result of the laboratory would have been the same as in the instant report---Report of Chemical Examiner was not the original report which could not have even been tendered in evidence---Appeal against conviction was allowed, in

circumstances.

(b) Control of Narcotic Substances Act (XXV of 1997)---

----S. 36---Reports of Government Analysts---Original report, non-production of---Scope---Where report of Chemical Examiner was not on the prescribed paper, was not stamped, was prepared on a black and white photocopy of the format paper but was signed by the Chemical Examiner, such report was full of doubt and could not have been tendered in evidence.

Ikram Ullah and others v. The State 2015 SCMR 1002 rel.

(c) Control of Narcotic Substances Act (XXV of 1997)---

----S. 36---Reports of Government Analysts---Scope---Report of Chemical Examiner being an expert report has to be accepted as a whole but if it is not prepared and written according to the prescribed procedure and law, it can be discarded.

Taimoor Khan and another v. The State and another 2016 SCMR 621 ref.

Sardar Khurram Latif Khan Khosa and Bilalwal Ali Nawaz for Appellant.

Malik Muhammad Irfan, Special Prosecutor for ANF for the State.

Date of hearing: 13th December, 2021.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this appeal under section 48 of Control of Narcotic Substances Act, 1997, the judgment dated 23.07.2015 passed by the learned Sessions Judge/Judge Special Court, (CNSA), Mianwali, in case FIR No.06/2012, dated 11.06.2012, under section 9(c) of CNSA, 1997 registered at Police Station ANF, Mianwali has been challenged whereby the appellant was convicted under section 9(c) of

the Control of Narcotic Substances Act, 1997 and sentenced to life imprisonment with fine of Rs.3,00,000/- in default whereof to undergo further simple imprisonment for one year. Benefit of section 382-B, Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case against the appellant as narrated in the complaint (Exh.PE) by Nazim Shehzad Virk SI/PW-4 is that on 11.06.2012 the high ups of the ANF received spy information that one person, namely, Pacha Khan resident of Sawabi would pass from Mianwali along with huge quantity of narcotics in Toyota Car GLI No.ASF-716 Sindh as he used to bring the narcotics from Sawabi to Punjab for supply in different cities. Upon the said information, a raiding party was constituted comprising of complainant and other officials of ANF. The raiding party along with the informer arranged a picket (Nakka) near Nammal College, Tala Gang Road, District Mianwali under the supervision of Abdul Kabeer Khan, Assistant Director PS ANF Mianwali. At about 3.30 p.m., the said vehicle was seen coming towards Mianwali which was stopped. The complainant encircled the car and apprehended the driver who told his name as Pacha Khan/appellant. When asked about narcotics after some hesitation, he produced 05 packets containing heroin concealed under the driving seat. Thereafter, he also produced 5 packets of heroin concealed under the front seat of the car. Thereafter he produced 20 packets of heroin concealed behind the rear seat of the car and in this way, he produced 30 packets of heroin in toto. The packets were wrapped in yellow plastic tape, which were weighed and weight of each packet was found of 500 grams and in this way, the total quantity of the recovered heroin was found 15 kg out of which 10 grams was separated from each packet for chemical analysis. The recovered narcotics as well as sample were taken into possession vide recovery memo (Exh.PB). He drafted the complaint (Exh.PE) on the basis of which formal FIR (Exh.PA) was registered.

3. After completion of investigation by Nazim Shehzad SI/PW-4 he submitted challan against the appellant before the trial court. On indictment, the appellant pleaded not guilty and claimed trial. The prosecution produced five witnesses, namely, Tauseef Aslam Constable/PW-1, Taqqi Abbas Inspector/SHO/PW-2, Nusrat Ali Constable/PW-3, Nazim Shehzad Virk SI/PW-4 and Qasim Zafar Forensic Scientist/PW-5. Thereafter, the accused/appellant was examined under section 342, Cr.P.C., wherein he professed his innocence, denied all the allegations levelled against him and claimed trial. He did not opt to depose within the scope of section 340(2), Cr.P.C. nor adduced evidence in defence. In reply to the question "Why this case had been lodged against you and why the PWs had deposed against you", he stated as under:-

> "Nazim Shehzad PW-4 is the complainant, recovery witness and as well as the I.O. of this case. The PWs are subordinate to the I.O. PW-4. They deposed against me just to strengthen the fake case. The ANF officials booked me in this case just to grab money worth Rs.85000/- from me."

4. Imtiaz Ahmad Inspector appeared as CW-1 whose statement was cross-examined by the defence counsel but was not cross-examined by the Special Prosecutor for ANF.

5. After conclusion of the trial, the learned trial court pronounced its verdict against the appellant and awarded him aforesaid punishment.

6. We have heard learned counsel for the parties and perused the record with their able assistance.

7. Scanning the prosecution evidence, we have noted that Tauseef Aslam Constable/PW-1 stated that Moharrir, namely, Taqqi Abbas ASI/PW-2 handed over to him 30 sealed parcels of heroin weighing 10 grams each for their onward transmission to the office of PFSA, Lahore

which he deposed in the said office the same day. PW-2 Taqqi Abbas stated that he received 30 sealed sample parcels of heroin weighing 10 grams each and 03 sealed parcels of remaining bulk of heroin containing seal as "AA" sent by Nazim Shehzad Virk SI/PW-4 through Muhammad Afzal constable (not produced). Nazim Shehzad Virk SI/PW-4 stated that he being the complainant as well as investigating officer of this case weighed all the 05 packets recovered underneath the driving seat, 05 packets recovered underneath the front seat and 20 packets recovered from the rear seat, all total 30 packets with the weight of 15 kg, since each packet contained 500 grams of heroin. He statedly made 30 sealed parcels of samples and 03 sealed parcels of remaining bulk. He then stated that he lodged Pacha Khan/appellant in the lock up and handed over the sealed parcels as well as other case property to the Moharrir of the police station. He did not mention the name of Muhammad Afzal Constable (not produced) against the statement of Taqqi Abbas/PW-2. He admitted that he did not record any statement of Assistant Director, namely, Kabeer Khan who supervised the raid nor cited him as a witness. He also admitted that he firstly submitted the incomplete challan as the report of Chemical Examiner was awaited and then subsequently on 17.09.2012 he submitted the complete challan along with the report. He also admitted that during this tenure, he did not receive any correspondence from the office of Chemical Examiner regarding the loss of the report. He also admitted that Pacha Khan/appellant was not the owner of the vehicle/car (P-9) and that he had no previous record of any involvement in the criminal case, therefore, the prosecution case regarding his previous conduct as known inter-provincial drug-dealer has not been supported. According to him, one Farid Ullah was the owner of the recovered substance who was not interrogated. He admitted that he had conducted several investigations of heroin cases and he has noticed that the heroin is either in the powder form or in the crystal form and that it has

three colours; i.e. white, off-white and light brown but in the present case he has not mentioned the colour of the heroin allegedly recovered from the appellant. Besides, the case property was de-sealed in the court and some of the packets were found of white colour, some of off-white colour and some were dark colour. He also admitted that he did not state that after taking the sample from each packet he again wrapped the packets with the tape. Nusrat Ali Constable/PW-3 another recovery witness while supporting the statement of complainant, further narrated that the colour of the heroin was not mentioned in the recovery memo (Exh.PB) and that he has seen the case property present in the court and according to him it was off white colour in all 30 packets.

8. When the report of the Chemical Examiner was being tendered in evidence, before the trial court the learned defence counsel had raised objection that it was not an original report, therefore, could not be tendered in evidence. Learned Prosecutor, therefore, requested the court to summon Forensic Scientist, hence Qasim Zafar Forensic Scientist was produced as PW-5 who stated that no colour, aroma or any other description of case property is mentioned in report (Exh.PG). He also stated that the possibility of causing intoxication in the substance was also not mentioned. He went on to admit that if 1 gram heroin is mixed in 100 grams other white colour powder even then the result of the laboratory would have been the same as in this report. He also stated that heroin is mixture of different chemicals and was the salt of morphine derived from the poppy plant. According to him, any material containing 0.2% morphine can cause intoxication and that in the said report no percentage of the morphine was mentioned. Importantly, he admitted that the paper used for the written report in the office of PFSA is always a special type of paper having printed insignia/monogram and every such report bears PFSA serial number and a stamp but this practice was adopted since October, 2012. He admitted that

on the report (Exh.PG) neither any monogram nor any serial number was mentioned. On re-examination the witness again stated that if some quantity of heroin is mixed in other chalk powder of white colour our result would be the same as mentioned in the report (Exh.PG) and we will not mention any separate quantity of white colour powder or any other material nor it will come in our analysis. In other words, he had not given the intoxicating effect of heroin in the report.

9. Learned Prosecutor submits that in case titled "Taimoor Khan and another v. The State and another" reported as 2016 SCMR 621, the report has to be accepted and it cannot be questioned. With reference to this argument, there is no cavil to the proposition that a report of Chemical Examiner being an expert report has to be accepted as a whole but if it not prepared and written according to the prescribed procedure and law, it can be discarded by this court. In the present case, it is not denied by the prosecution that the report is not on the prescribed paper. It is also not admitted by the prosecution that it had a seal/stamp over it. It appears that this report is prepared on the black and white photocopy of the format paper but signed by the Chemical Examiner, therefore, it is full of doubt. By relying upon case titled "Ikram Ullah and others v. The State" reported as 2015 SCMR 1002, we hold that this report is not the original report which could not be even tendered in evidence. Obviously, if a report is not there, the narcotics cannot be proved. Relevant extract of para 4 is reproduced as under:-

> "Section 36 of the Control of Narcotic Substances Act, 1997 requires a Government Analyst to whom a sample of the recovered substance is sent for examination to the person submitting the sample a signed report in quadruplicate in "the prescribed form" and, thus, if the report prepared by him is not prepared in the

prescribed manner then it may not qualify to be called a report in the context of section 36 of the Control of Narcotic Substances Act, 1997 so as to be treated as a "conclusive" proof of recovery of narcotic substance from an accused person."

10. In this view of the matter, this appeal is allowed and the appellant is acquitted of the charge. He is behind the bars, therefore, he be released forthwith if not required in any other criminal case.

SA/P-1/L **Appeal allowed.**

2022 P Cr. L J 1846

[Lahore]

Before Ali Baqar Najafi and Sardar Muhammad Sarfraz Dogar, JJ

TEREZE HLUSKOVA and others---Appellants

Versus

The STATE and others---Respondents

Criminal Appeals Nos. 19382 and 23646 of 2019, decided on 1st November, 2021.

Control of Narcotic Substances Act (XXV of 1997)---

----S. 9(c)---Possession of narcotics---Withholding best evidence---Non-production of CCTV footage---Non-production of sample-bearer---Safe custody---Scope---Prosecution case was that the accused was apprehend at the airport while attempting to smuggle narcotics---Complainant had failed to show any official document on the basis of which he was permitted to perform his duties at the airport---Distance between Customs House and airport was 15 kilometers but he took almost 12 hours to reach there---Lady Constable who had searched the accused was not produced as a witness, as such, best evidence was withheld---Investigating Officer had not investigated as to how and when the luggage and narcotics were shifted from airport to Customs House---Investigating Officer had not taken CCTV footages at the airport during investigation though admitted that cameras were installed outside and inside of the airport---CCTV footage in such like incident was mandatory, which ruled out the possibility of false implication to a good extent---Investigating Officer had not stated that he had delivered the samples in the office of Chemical Examiner---Prosecution had failed to bring home the guilt against the accused---Appeal was allowed, conviction was set aside and the appeal filed by the prosecution against acquittal of

co-accused was dismissed, in circumstances.

Attaullah v. The State through A.G. Khyber Pakhtunkhwa and another 2020 SCMR 451; Mst. Sakina Ramzan v. The State 2021 SCMR 451; Faizan Ali v. The State 2019 SCMR 1649 and Akhtar Iqbal v. The State 2015 SCMR 291 ref.

Ikramullah and others v. The State 2015 SCMR 1002 rel.

Sardar Asghar Mehmood Dogar, Sardar Abdul Qudoos Dogar and Saif-ul-Malook for Appellants (in Criminal Appeal No. 19382 of 2019).

Major (Retd.) Aftab Ahmad Khan, Legal Advisor for Customs for the State.

Date of hearing: 1st November, 2021.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this single judgment, both the above titled appeals are decided.

2. Through these appeals under section 48 of Control of Narcotic Substances Act, 1997, the judgment dated 20.03.2019 passed by the learned Additional Sessions Judge/Special Judge (CNS), Lahore in case FIR No.01/2018, dated 10.01.2018, under sections 6, 7, 8, 9(c), 14, 15 and 16 of CNSA, 1997 registered at Police Station Investigation and Prosecution Cell, Customs House, Lahore has been challenged whereby the appellant, namely, Tereza Hluskova was convicted under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to 08 years 08 months' S.I. with fine of Rs.1,13,333/- in default whereof to undergo further simple imprisonment for eight months and twenty days by extending benefit of section 382-B, Cr.P.C. to her whereas co-accused Shoaib Hafeez Khan was acquitted by giving benefit of doubt. However, the State through Collectorate Customs has filed Criminal Appeal No. 23646-2019 against

acquittal of Shoaib Hafeez Khan/respondent No.2.

3. Brief facts of the prosecution case against the appellant/Tereza Hluskova as narrated by Pervaiz Ahmad Qazim, Inspector Customs, Lahore/PW-5 in complaint (Exh.PE) is that during the intervening night of 09/10.01.2018 at about 1.00 a.m., he got information from Collector, Customs (Preventive) Lahore that huge quantity of heroin was to be smuggled through Flight No.EY242, Etihaad Airways, from Lahore to Abu Dhabi upon which the passengers of said flight were being searched by the Customs Officials. The complainant was Counter Inspector at the Customs Counter in the airport. At about 1.35 a.m. a foreign lady arrived at his counter, after crossing ASF scanning and ANF Scanning Counter and handed over to him, her travelling documents and brownish coloured suitcase for customs clearance. The documents produced by the appellant/Tereza Hluskova reflected her name and she was asked about any contraband item like heroin in her possession or in her suitcase. She replied in negative. In presence of PWs, Din Muhammad Tahir Inspector customs/PW-7, Shahid Hussain constable Customs (PW not produced) and lady constable Naheed Akhtar (PW not produced), her suitcase was opened but he did not find anything therein except things of common use. However, he found that weight of the suitcase was abnormal, therefore, he checked the suitcase by opening/cutting its inner sheet and found off-white powder, packed in a transparent polythene bag (Theli). He tested the powder with Field Test Tube and found the same to be heroin. He weighed the recovered heroin which was found 8.5 kgs and he took the same into possession, separated five grams from recovered heroin for the purposes of chemical analysis and sealed the same as well as the remaining heroin (P-1) into separate parcels. He also took into possession the brownish coloured suitcase (P-2) through recovery memo (Exh.PC) and got signatures of the appellant/Tereza Hluskova and arrested her. He also took into possession

through recovery memo (Exh.PD) the other articles recovered from the appellant during her personal search. He drafted the complaint (Exh.PE) upon which formal FIR was registered. During investigation, Muhammad Ali Inspector/ PW-8, the investigating officer also found involved T @ Tariq (P.O.), Aftab Anwar Bhatti (P.O), Haroon Afridi alias Khayal Wali (P.O.) and Shoaib Hafeez Khan (acquitted co-accused) as abettor and facilitator of the appellant/Tereza Hluskova.

4. After completion of investigation, the challan against both the accused, namely, Tereza Hluskova and Shoaib Hafeez Khan was submitted before the trial court. On indictment, both the accused pleaded not guilty and claimed trial. The prosecution produced nine witnesses, namely, Saleem Ahmad Malik Inspector/PW-1, Muhammad Yousaf Khan Superintendent/PW-2, Ch. Muhammad Ishaq PW-3, Usman Ashraf PW-4, Pervaiz Ahmad Qazim Inspector/PW-5, Riaz Ali Shah Inspector/PW-6, Din Muhammad Tahir Inspector/PW-7, Syed Muhammad Ali Inspector/PW-8 and Husnain Ahmad PW-9. Thereafter, the appellant/Tereza Hluskova was examined under section 342, Cr.P.C., whereby she professed her innocence and denied all the allegations levelled against her. She did not opt to depose within the scope of section 340(2), Cr.P.C. or adduce evidence in defence. In reply to the question "Why this case had been lodged against you and why the PWs had deposed against you", Tereza Hluskova/appellant stated as under:-

> "I am admittedly a foreigner lady, had come to Islamic Republic of Pakistan to study the culture of Pakistan as well as seeing the generosity of the people to study Islam as I was writing a book thereon. No recovery of any type of narcotics was effected from me. Even the alleged bag do not belong to me. The Heroin and the bag belonging to some other influential person have been planted upon

me to save said person and also to show efficiency. There is no record of entry for any investigation by the I.O. in the Airport. The whole story has been concocted by the Customs Authorities while sitting in the Customs House. There are material contradictions in the statements of the PWs. What to speak of that even the person who got registered the FIR did not know as to what the said provisions are under which he has got this case registered. Even when I was shifted to the Customs House, there was no bag, either with me or with Customs Employees who were shifting me to Customs House. While I was being taken to Customs House I was told at the Airport that certain query was to be made from me but it was later on that I came to know of this plantation. I am quite innocent."

5. After conclusion of the trial, the learned trial court pronounced its verdict against the appellant/Tereza Hluskova and awarded her aforesaid punishment whereas Shoaib Hafeez Khan/respondent No.2 in Criminal Appeal No. 23646-2019 was acquitted.

6. We have heard learned counsel for the parties and perused the record with their able assistance.

7. While scanning the prosecution evidence with a view to see the safe custody of sample parcel and the case property, it is noted that Pervaiz Ahmad Qazim Inspector Custom, the complainant (PW-5) narrated the story of complaint (Exh.PE) in the court by stating that between night 09/10.01.2018 at 1.00 a.m. he received information from Collector Customs (Preventive), Lahore that huge quantity of heroin was to be smuggled through Flight No.Ey242 Etihaad AirWays, from Lahore to Abu Dhabi. At about 1.35 a.m. the appellant after crossing ANF scanning counter appeared before the Custom Counter handed over the travelling

documents and her brownish coloured suitcase for custom clearance. In view of the huge weight of the suitcase, he removed the inner sheet of the suitcase and recovered the heroin. It was weighed and found 8.5 kgs out of which 5 grams was separated for chemical analysis. The recovered heroin (P-1) and the suitcase along with the parcel (P-2) were taken into possession vide recovery memo (Exh.PC). He then proceeded to Customs House, Lahore along with complaint (Exh.PE) and other documents and handed over the same to Saleem Ahmad Inspector (I&P)/PW-1 over which the FIR was registered. He then went back at the place of duty on the said Airport. Surprisingly, he did not state a word whether he handed over the recovered heroin as well as the sample parcel (Exh.PC) at the Custom House. Even he did not inform any other agency or even local police regarding shifting of the accused to Custom House in the official vehicle. Muhammad Yousaf Khan Superintendent Customs Incharge Estate Warehouse Customs House, Lahore (PW-2) stated that on 10.01.2018 at 2.00 p.m. (not a.m.) Pervaiz Ahmad Qazim Inspector (PW-5) handed over to him sealed parcels of heroin weighing 8.5 kgs as well as sample parcel of 5 gram which he kept in safe custody in the Warehouse and on 12.01.2018 the said parcel was given to Pervaiz Ahmad Inspector Customs for onward transmission to the office of PFSA, Lahore which he deposited the same day. The statement of the said PW-2 did not corroborate with the statement of PW-5 who had not stated that he deposited the heroin parcel and case property to the Warehouse Custom House, Lahore. He did not even admit that he deposited the sample parcel in the office of Forensic Science Laboratory. This PW-5 had stated that he handed over the articles to Syed Muhammad Ali Inspector/Investigating Officer (PW-8) who did not state a word regarding handing over of the sample parcel by PW-5. Although, the narcotics analysis report (Exh.PM) reveals that it was 5.83 grams off white powder heroin (0.83 increased in weight of original sample

heroin) with name of PW-5 in the column of the official who submitted the sample. Here it will be relevant to refer the case titled "Attaullah v. The State through A.G. Khyber Pakhtunkhwa and another" reported as 2020 SCMR 451, case titled "Mst. Sakina Ramzan v. The State" reported as 2021 SCMR 451 and case titled "Ikramullah and others v. The State" reported as 2015 SCMR 1002. Relevant extract from para 5 of Ikram Ullah's case is reproduced as under:-

> "It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit."

Relevant extract from para 3 of Mst. Sakina Ramzan's case is reproduced as under:-

> "The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing.

This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner."

8. It is also worth mentioning that in the recovery memo the monogram was not affixed, therefore, while relying upon case titled "Faizan Ali v. The State" reported as 2019 SCMR 1649 and case titled "Akhtar Iqbal v. The State" reported as 2015 SCMR 291, the prosecution lacunas are fatal.

9. The complainant (PW-5) has not been able to show any official document on the basis of which he was permitted to perform his duties at the airport. He admitted that the distance between Custom House and airport is 15 kilometres, then how he took almost 12 hours to reach. He stated that the Shift Incharge at the airport retained cutter, manicure and monitor and also field Test Tube Kit but he has not stated a word regarding handing over the said articles by the previous shift incharge to him. This raised question of the availability of instruments to open the suitcase and kit for testing the off white powder. According to him, the appellant was searched through Naheed Akhtar/Constable but the said lady was not produced as witness and under Article 129(g) of Qanun-e-Shahadat Order, 1984 the best evidence was withheld. According to PW-8, investigation was entrusted to him on 10.01.2018 and about 9.00 a.m. he reached the

place of occurrence. He also admitted that when he reached the place of occurrence many persons had gathered but he did not ask anything from any of them. He also admitted that he did not investigate as to how and when the luggage and narcotics was shifted from airport to Custom House. He did not take CCTV footages at the airport during investigation though admitted that cameras were installed outside and inside of the airport. He admitted during cross-examination that appellant was working for some other accused as carrier but he did not make any effort to persuade appellant to narrate the name of the actual owner as a condition to become witness for tender of pardon. Besides, it is also notable that Muhammad Yousaf Khan Superintendent Customs Incharge Estate Warehouse/PW-2 could not even produce the keys to show that he in fact was the custodian of the articles contained therein. Meaning thereby that anyone could deposit anything any time in the Warehouse lying open to public.

10. In such like incident, the CCTV footages are mandatory which rule out the possibility of false implication to a good extent. Pervaiz Ahmad Qazim Inspector/PW-5 after giving the complaint (Exh.PE) in the office of Custom House went back to his place of duty without handing over the recovered narcotics. Muhammad Yousaf Khan Superintendent/ PW-2 could not produce the relevant portion of the register with specific reference to receive the parcels of sample as well as bulk of heroin. The investigating officer/PW-8 did not state that he delivered the samples in the office of Chemical Examiner. The complainant should have made his statement that he delivered the sample in the office of Chemical Examiner. The complainant should have stated that he has deposited the case property in the office of Custom House. The appellant whose suitcase allegedly contained heroin was searched by Naheed Akhtar lady constable who was not produced in evidence. Such are the lacunas in the prosecution case which cannot be ignored, therefore, obviously we can safely conclude that

the prosecution has failed to bring whom the guilt against the appellant.

11. In this view of the matter, the Criminal Appeal No.19382-2019 is allowed and sentence of the appellant/Tereza Hluskova is set aside as a result of which she is acquitted of the charge levelled against her and she be released forthwith if not required in any other case.

12. In view of acceptance of Crl.A.No.19382-2019 titled "Tereza Hluskova v. The State", the Criminal Appeal No. 23646-2019 titled "The State through Collectorate Custom Lahore v. Additional Sessions Judge and others" having been found meritless is therefore dismissed.

SA/T-17/L **Order accordingly.**

PLJ 2022 Cr.C. (Note) 39

[Lahore High Court, Multan Bench]

Present: ALI BAQAR NAJAFI, J.

USMAN ALEEM @ BALLI @ KOCHI--Petitioner

versus

STATE etc.--Respondents

Crl. Misc. No. 1734-B of 2021, decided on 27.4.2021.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 417(2)--Pakistan Penal Code, 1860 (XLV of 1860), S. 394--Bail after arrest, grant of--Further inquiry--During the police remand neither pistol nor motorcycle were recovered from his possession--As per the proceedings of test identification parade, the injured did not identify the petitioner--He was challaned but in none of them he is convicted--Case of petitioner calls for futher inquiry--Bail allowed. [Para 2] A & B

Hafiz Muhammad Abu Bakar Ansari, Advocate for Petitioner.

Mr. Shahid Aleem, APG with for State.

Rana Muhammad Nazir Saeed, Advocate for Complainant.

Date of hearing: 27.4.2021.

ORDER

Petitioner seeks post arrest bail in case FIR No. 218/2020, dated 18.03.2020, for offence under Section 394 PPC registered at Police Station Makhdoom Rasheed, District Multan on the allegation that on 16.03.2020 at 10:20 p.m. the son of the complainant namely, Attique-ur-Rehman, a student of Law was coming to home from 17-Kassi Adda when suddenly two unknown persons came on motorbike who tried to snatch the mobile phone from him and when he resisted they fired on his both legs. The complainant heard the sound of firing and along with Shahzaib and Muhammad Nasir came on the spot and saw the occurrence themselves. According to the complainant the assailants can be identified, hence this F.I.R.

2. After hearing the learned counsel for the petitioner, learned Additional Prosecutor General assisted by the learned counsel- for the complainant and perusing the record it is straightaway observed that the identification parade was conducted on 04.06.2020 and the petitioner was arrested on 13.06.2020 but during the police remand neither pistol nor motorcycle were recovered from his possession. As per the proceedings of test identification parade, the injured Attique-ur-Rehman did not identify the petitioner but the complainant Rana Muhammad Akram did with an allegation that the petitioner was driving the motorbike whereas the co-accused, Ali Raza allegedly had fired upon Attique-ur-Rehman. Besides, Nasir Siddique the eye witness did not identify the petitioner. According to the prosecution the petitioner was involved in as many as 12 cases of similar nature *i.e*. F.I.R No. 858/2019 Police Station Setal Mari, F.I.Rs Nos. 325/2020, 326/2020, 2076/2020, 5/2020, 176/2020, 155/2020, 254/2020, 210/2020, 41/2020, 425/2020 and 218/2020, Police Station Makhdoom Rasheed, District Multan but the fact remains that only in F.I.R No. 858/2019, 325/2020, 326/2020, 210/2020 and 425/2020 he was challaned but in none of them he is convicted. Notably, they did not include any murder case. His active role of allegedly accompanying the co-accused for the commission of Highway Robbery punishable under Section 394, PPC would be seen by the trial Court after recording of prosecution evidence. In view the above circumstances, the case of the petitioner calls for further inquiry into his guilt as contemplated under Section 497(2), Cr.P.C.

3. For what has been discussed above, this petition is allowed and petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.A.K.) **Bail allowed.**

PLJ 2022 Cr.C. (Note) 62

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI, J.

MAQBOOL AHMED--Petitioner

versus

STATE, etc.--Respondents

Crl. Misc. No. 29750-B of 2019, decided on 15.7.2020.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 498--Pakistan Penal Code, (XLV of 1860), S. 381--Pre-arrest bail, dismissal of--Allegation of--Stole feed of chickens--Rule of--Petitioner is named in FIR and he had admitted that he has been working with complainant at some point of time--Co-accused was granted post arrest bail while petitioner is seeking pre-arrest bail in criminal case involving allegation of theft, therefore, recovery is to be effected from petitioner--No *malafide* was alleged against complainant to falsely implicate petitioner--Bail dismissed.

[Para 2] A

Petitioner in person.

Rao Akhtar Hussain, DPG for State.

Mr. Javed Iqbal Malik, Advocate for Complainant.

Date of Hearing: 15.7.2020.

ORDER

The petitioner seeks pre-arrest bail in case FIR No. 210 of 2020 dated 04.04.2020 registered under Section 381, PPC at Police Station Alipur, District Gujranwala on the allegation that few days ago the complainant had made a control shed in which labour was employed, and Shakeel Ahmad and Imran both sons of Shaukat Ali were deputed as Supervisors and Maqbool

Ahmad/petitioner was appointed as Munshi. They were responsible to provide the feed to the broiler chicken. However, after few days it was noticed that the weight of the broilers had started reducing and when he consulted the doctor he came to know that they were not feeded adequately, as the feed sent to Shakeel and Imran was not properly given and that 290 sacks of feed valuing Rs. 3200/- for each feed sack was stolen. Hence this FIR.

2. After hearing the petitioner, learned Deputy Prosecutor General assisted by the learned counsel for the complainant and' perusing the file, it is straightaway observed that the petitioner is named in the FIR and he had admitted that he has been working with the complainant at some point of time. Co-accused Imran was granted post arrest bail while petitioner is seeking pre-arrest bail in criminal case involving the allegation of theft, therefore, the recovery is to be effected from the petitioner. No *malafide* was alleged against the complainant to falsely implicate the petitioner.

3. For the above stated reasons, this petition has been found meritless and is, therefore, dismissed as a result of which the pre-arrest bail already granted to the petitioner on 01.07.2020 is hereby recalled.

(A.A.K) **Bail dismissed.**

PLJ 2022 Lahore (Note) 127

Present: ALI BAQAR NAJAFI, J.

MUHAMMAD ASGHAR--Petitioner

versus

LESCO etc.--Respondents

W.P. No. 26025 of 2015, decided on 7.3.2022.

Constitution of Pakistan, 1973--

----Art. 199--Charge of misconduct--Termination from service--No show-cause notice was issued and no inquiry and conducted--Contractual service--Grievance petition--Dismissed--Petitioner was reinstated in service in appeal with direction for grant of back benefits--Entitlement for back benefits--During intervening period of termination petitioner remained employed or earned his livelihood, grant of back benefits was a grace--Dismissal of petitioner was declared illegal without attending to merits of case, entitlement of back benefits will be put off till the fault of petitioner and his working for gainful; employment during intervening period are determined through an inquiry--The full back benefits can be paid by authority as held by apex Court--Petition allowed.

[Para 4 & 10] A & B

2013 SCMR 752, 2021 PLC (CS) 762 & 2014 SCMR 1843 *ref.*

Raja Tasawar Iqbal, Advocate for Petitioner.

Ch. Fiaz Ahmad Sanghairah, Advocate for Respondents Nos. 1 and 2.

Date of hearing 7.3.2022.

ORDER

Through this constitutional petition, the petitioner has challenged the judgements dated 25.02.2013 and 23.04.2015 passed by Respondents No. 4

and 5, respectively to the extent of withholding of 50% back benefits with a further prayer to grant 100% consequential back benefits on his reinstatement.

2. Brief facts giving rise to the filing of this constitutional petition are that the petitioner being a workman was terminated from service without holding any inquiry and without his fault, therefore, he filed a grievance petition before the Punjab Labour Court No. 3, Ferozewala which was transferred to Punjab Labour Court No. 10, Sahiwal and *vide* order dated 25.02.2013 it was held that show-cause notice dated 04.05.2006 and termination order dated 05.05.2006 were illegal, declared it void and therefore, set it aside resulting into acceptance of the grievance petition and reinstatement of the petitioner in service but with 50% back benefits. Both the petitioner and Respondent No. 2 preferred appeals before the Punjab Labour Appellate Tribunal No. II, Multan. On 23.04.2015 both the appeals were dismissed upholding the reinstatement of the petitioner with 50% back benefits, hence this writ petition only by the petitioner.

3. Learned counsel for the petitioner contends that the petitioner is entitled to 100% back benefits and places reliance on case titled *"Independent Newspapers Corporation (Pvt.) Ltd. and another versus Chairman, Fourth Wage Board and Implementation Tribunal For Newspaper Employees, Government of Pakistan, Islamabad and 2 others"*(1993 SCMR 1533) and *"Sohail Ahmed Usmani versus Director-General Pakistan Civil Aviation Authority and another"* 2014 SCMR 1843).

4. Conversely, learned counsel for Respondents No. 1 and 2 contends that no independent and thorough inquiry was conducted to unearth the factum that during intervening period of termination the petitioner remained employed or earned his livelihood, therefore, even the grant of 50% back benefits was a grace.

5. Arguments heard. File perused.

6. Admittedly, the petitioner was appointed on contract basis as ALM in LESCO on 13.11.2003 and after 2½ years, the Deputy Manager (Operation) LESCO Division, Tehsil Depalpur, District Okara had lodged a complaint against him on the allegations as follows:

> "During the general checking on 04.05.2006 undersigned checked the meter of Ref: No. 07-01463-08499005 in the name of Shamas Ali son of Muhammad Ali R/o Chak No.08-D Maroof and found reading at site 9425 and 2547 units were pending. After consulting the record from Sub-Division it came to the notice of undersigned that in 03/2006 M/R Muhammad Imtiaz charged reading 9228 units advance 2375 whereas consumer was charged reading as 7038 with advance 175. In this way 2200 units were not charged. After investigating the matter it has been noticed that you firstly met the consumer and convince him for reversing the pending units with bad motive. Then you accept Rs. 1500/- as advance out of Rs. 7000/- (Total amount of agreement) as bribe. You also deliberately misplaced the kalamzoo card from kalamzoo book. You washed/cut the changed/billed units from CP-21 on both copies. Your this act tantamount to be misconduct at your part."

7. Without waiting for ten days to file a reply, the petitioner was terminated from service and his departmental appeal was also rejected on 18.07.2007 whereafter the grievance petition was filed. On 11.11.2009 the grievance petition was dismissed being barred by time against which an appeal was field by the petitioner before the Punjab Labour Appellate Tribunal, Lahore who *vide* order dated 15.06.2011 set aside the order of the Punjab Labour Court and remanded the case with a direction to decide it afresh. The case of the petitioner is that he was a workman, therefore, was amenable to the jurisdiction of the Labour Court.

8. Admittedly, neither any show-cause notice was issued to the petitioner nor he was associated with any regular inquiry and as such was condemned unheard. The question of misconduct was not properly probed into as no statement of an aggrieved person was recorded to prove the accepting of the bribe by the petitioner. Obviously, the allegation of misconduct can only be proved in an inquiry of facts which was not conducted at all. The petitioner was reinstated in service but was granted only 50% back benefits *vide* order dated 25.02.2013 passed by the Punjab Labour Court No. 10, Sahiwal. The learned Punjab Labour Appellate Tribunal also held the same view and dismissed the appeal while observing that no case for enhancement of back benefits from 50% to 100% could be made out.

9. Only controversy before this Court is as to whether in the event of reinstatement of a contractual employee can he be awarded 100% back benefits particularly, when the allegation of misconduct was levelled but neither any show-cause notice was issued nor any inquiry was conducted. Learned counsel for the petitioner has relied upon case titled *"Chairman, State Life Insurance Corporation of Pakistan, Karachi and others versus Siddiq Akbar"* 2013 SCMR 752) in which it was held in paragraph-7 that after exoneration from the charges of misappropriation the employee was reinstated in service since dismissal could not be attributed as his fault, therefore, absence from duty was not voluntary act on his part but he was restrained from attending the office. In *"Sohail Ahmed Usmani versus Director-General Pakistan Civil Aviation Authority and another"* (2014 SCMR 1843) it was held in paragraph-10 that whenever the reinstatement is made the back benefits should be allowed unless it was proved that the appellant had obtained a gainful employment during the period of dismissal or making some earnings and where the affidavit was not countered by the respondents, it should be accepted as a whole. In this behalf it is worth mentioning that no record is available to suggest that the petitioner was working or not working for gainful

employment during the period of dismissal. However, in case titled *"Muhammad Sharif and others versus Inspector General of Police, Punjab, Lahore and others"*(2021 PLC (C.S.) 762) it was recently held by the Hon'ble Supreme Court as follows:

> "20. We, therefore, hold that a civil servant on unconditional reinstatement in service is to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period.' In case, the dismissal/removal of a civil servant is declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry is conducted in the matter finally determining the fault of the civil servant. In case, where there is some fault of the civil servant, including a situation where concession of reinstatement is extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty is modified but not wiped off in a way that the civil servant is restored to his position, the back benefits will be paid as determined by the authority/Court in the manner discussed above in this judgment. We, however, reiterate that "gainful employment/profitable business" creates an overarching exception that would cover all cases involving the question of back benefits".

10. Admittedly, the dismissal of the petitioner was declared illegal without attending to the merits of the case, therefore, entitlement of back benefits will be put off till the fault of the petitioner and his working for gainful employment during the intervening period are determined through an inquiry. The full back benefits can be paid by the authority as held by the apex Court.

11. For the foregoing reasons, this writ petition is **allowed** to the extent of withholding of 50% back benefits but the matter is **remanded** to the Labour Court No. 10, Sahiwal to hold an inquiry in view of the above observations to determine as to whether the petitioner worked for gainful employment/profitable business during the intervening period to justify withholding of 50% back benefits.

(Y.A.) **Petition allowed.**

PLJ 2022 Cr.C. (Note) 150

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI AND ASJAD JAVAID GHURAL, JJ.

MUHAMMAD ADEEL FAROOQI--Petitioner

versus

STATE, etc--Respondents

Crl. Misc. No 27879-B of 2022, decided on 8.6.2022.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497(2)--Drugs Act, (XXXI of 1976), Ss. 23/27--Bail after arrest, grant of--Further inquiry--Allegation of--Petitioner was selling spurious drugs without DSL and invoice/warranty--Applicability of Ss. 23/27 of the Drugs Act, 1976 needs further probe--In the absence of statement of any customer or recovery of any sale proceed involving the petitioner, his case calls for further inquiry into his guilt as contemplated u/S. 497, Cr.P.C. particularly when owner of Medical Store was not cited as an accused person--Bail allowed. [Para 2] A

Malik Shahid Iqbal, Advocate for Petitioner.

Mr. Sana Ullah, DPG for State.

Date of hearing: 8.6.2022.

ORDER

Petitioner seeks post arrest bail in case FIR No. 47/2022, dated 16.03.2022 for offence under Sections 23/27 of the Drugs Act, 1967 registered at Police Station Kala Bagh, District Mianwali on the allegation that on 04.08.2021 at 11:40 a.m. the complainant visited Main Bazar Kalabagh where the petitioner was selling spurious drugs by way of peddle and hawk in front of Faisal Medical Store without DSL and invoice/warranty 10 vials of injection Risek 40 mg and 120 capsules of Velosef 500 mg, mentioned in Form-4 & 5 were recovered, hence this FIR.

2. After hearing the learned counsel for the petitioner, learned Prosecutor and perusing the record it is straightaway observed that although the petitioner was found in possession of spurious drugs outside Faisal Medical Store but his case is that one Mehrab Gul son of Aqal Baz dropped the said parcel from Peshawar which was to be given to the owner of Faisal Medical Store, therefore, he handed over the said parcel to Ramzan, father of the petitioner who runs Arian Hotel in Mianwali city. This fact is also reflected from the statement of said driver Mehrab Gul recorded before the police on 16.04.2022. He was not mentioned as an accused but a witness. In the facts and circumstances, applicability of Section 23/27 of the Drugs Act, 1976 needs further probe. In the absence of statement of any customer or recovery of any sale proceed involving the petitioner, his case calls for further inquiry into his guilt as contemplated under Section 497, Cr.P.C. particularly when owner of Faisal Medical Store was not cited as an accused person.

3. In this view of the matter, this bail petition is allowed and the petitioner is admitted to post arrest bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/-with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.A.K.) **Bail allowed.**

PLJ 2022 Lahore 160

Present: ALI BAQAR NAJAFI, J.

MUNAWAR HUSSAIN, Ex. Junior Clerk
(Anti-Encroachment Inspector), Lahore--Petitioner

versus

DIRECTOR GENERAL, LAHORE DEVELOPMENT AUTHORITY, LAHORE and 7 others--Respondents

W.P. No. 8565 of 2020, decided on 21.10.2021.

Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (XII of 2006)--

----Ss. 4(vi) & 13--Constitution of Pakistan, 1973, Art. 199--Initiation of disciplinary proceedings--Inquiry report--Allegation of illegal construction--Forfeiture of service of three years--Enhancement in major penalty--Non-issuance of notice before imposing of major penalty--Challenge to--Dismissal from service--Rejection of departmental appeal--Non-speaking order--Impugned order reflects that--It is a non-speaking order whereby findings given by his junior officials were adopted--Grounds raised before him in appeal were not discussed--High Court has noted that before enhancement of major penalty from forfeiture of service of three years to dismissal from service a notice was required to be issued to petitioner asking him to explain as to why major penalty should not have been imposed--This notice was neither part of file nor it was so asserted by respondents--Petition allowed.

[Pp. 163 & 165] A & B

2013 SCMR 572 *ref.*

Mr. Naveed Ahmed Khawaja, Advocate for Petitioner.

Sahabzada Muzaffar Ali, Advocate/Chief Legal Advisor, LDA.

Date of hearing: 21.10.2021.

ORDER

Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged office order dated 16.12.2019 passed by Respondent No. 1/D.G. LDA alongwith the order passed by the departmental authorities; *i.e.* dated 12.10.2017 passed by Respondent No. 3/ Director Administration, LDA whereby the petitioner was awarded major penalty of dismissal and order of the Appellate authority passed on 04.01.2018 rejecting his appeal with a further prayer to order for reinstatement of the petitioner from the date of dismissal with all back benefits.

2. Brief facts giving rise to the filing of this Constitutional petition are that petitioner was appointed as Junior Clerk but was later posted as Anti-Encroachment Inspector and during the said period Respondent No. 6/ Senior Estate Officer (EM-1) LDA prepared a report on 31.05.2017, disciplinary proceedings under PEEDA Act, 2006 were initiated against the petitioner and on 22.06.2017 Respondent No. 5 was appointed as the inquiry officer who observed that as per report prepared by Respondent No. 6/ Senior Estate Officer (EM-1) LDA, the petitioner was found responsible for illegal construction on a portion of Plot No. 10, J/3, M.A. Johar Town, Lahore. Said Respondent No. 3 was appointed as departmental representative in the disciplinary inquiry. In the inquiry report dated 31.08.2017 major penalty for forfeiture of service of three (3) years was recommended. *Vide* order dated 12.10.2017, Respondent No. 3/Director (Administration) LDA enhance the major penalty of dismissal from service without issuing any notice. The petitioner filed a department appeal before Respondent No. 1/Director General, LDA on 09.11.2017 against the order of dismissal, who rejected the same on 04.01.2018. Meanwhile, petitioner sent a reminder to Respondent No. 1/Director General, LDA to decide the representation but of no avail. The petitioner, therefore, was constrained to file W.P. No. 51057 of 2019 which was disposed of on 16.09.2019 directing D.G. LDA to decide the appeal of the

petitioner within a month. However, after the said period, a contempt petition was filed before this Court whereafter on 16.12.2019 the impugned order was passed. Hence, petitioner challenged both the orders dated 12.10.2017 passed by Respondent No. 3/Director (Administration) LDA as well as dated 04.01.2018 passed by Addl. Director (General) LDA.

3. Learned counsel for the petitioner contends that no prosecution witness was presented in the inquiry to support the imposition of major penalty of dismissal from service and that the revisional authority had failed to exercise its jurisdiction as envisaged in Sections 14 and 17 of PEEDA Act, 2006. Adds that neither oral nor documentary evidence was recorded on oath as stipulated under Article 1 of Qanun-e-Shahadat Order, 1984 as well as Section 12 of the PEEDA Act, 2006. It was further contended that in fact on ground a single story constructed building was already present on Plot No. 10, J/3, M.A. Johar Town, Lahore and the civil litigation was already pending between the private party and the LDA, therefore, he got recorded the Rapt Roznamcha on 29.12.2016 in the Police Chowki Shaheed Tariq Kamboh and also submitted many applications to the higher LDA officials but due to strong land mafia actively working to protect the said property who politically influenced the administration of LDA and, therefore, the bonafide efforts of the petitioner were bulldozed. Adds that petitioner had applied for allotment of official accommodation and on the basis of seniority accommodation No. 746 Block-F Jubilee Town, Lahore allotted to him on 22.01.2015 but the Director (Administration) LDA tried his best to dispossess the petitioner which led him to file suit for permanent injunction in the year, 2017 and therefor, on the basis of *mala fide* the process was illegally initiated against the petitioner to take his revenge, hence prays for the relief.

4. In the report and parawise comments submitted by Respondents No. 1 to 6, the allegations were denied. It was specifically argued that the procedure was validly adopted before imposition of the major penalty under Section 13(4) of

the PEEDA Act, 2006 since the petitioner being a responsible officer of Anti-Encroachment drive had failed in his duty by not stopping the illegal construction on the second floor of the house in question against the illegal gratification. Adds that under Section 4(b)(iii) of the PEEDA Act, 2006 the major penalty of forfeiture of service of three years was validly awarded. Further adds that petitioner was heard whereafter the impugned order was passed since he had nothing to say in his defence and prays for the dismissal.

5. Arguments heard. File perused.

6. After hearing the learned counsel for the parties and perusing the file, it is straightway observed that *VIDE* impugned order dated 16.12.2019 Director General, LDA in paragraph No. 5 observed as follows:

> "5. Thorough examination of the record shows that petitioner has been dealt with strictly in accordance with law. He has been provided every opportunity to plead his case as detailed in PEEDA Act, 2006. The petitioner has failed to bring forth any new evidence/arguments in his defence that can be made part of the proceedings to change the outcome of this case."

This order reflects that it is a non-speaking order whereby the findings given by his junior officials were adopted. The grounds raised before him in the appeal/representation were not discussed and as such this order is directly hit by Section 24 of the General Clauses Act, 1897. The questions; whether petitioner had committed criminal lapse permitting to carry on the illegal construction single handedly or whether this concession/ permission was reciprocated by the delinquents in the form of bribe either in cash and kind; and whether the other officials of LDA had connived or were privy to this inaction during the Anti-Encroachment drive, was not deliberated upon.

7. Here it will be important to refer Paragraph No. 4 of the order dated 12.10.2017 passed by Respondent No. 3/Director (Administration) LDA in

which the pertinent questions of fact were not addressed, which is reproduced as under:

> "4. AND WHEREAS, the accused was given an opportunity for personal hearing on 09.10.2017 wherein he has heard in detail in presence of Departmental Representative. The inquiry report and whole relevant record has been delved into. It has transpired that possession of Plot No. 10, Block-J/111, M.A. Johar Town, Lahore was handed over-to Mr. Rasheed Ahmed S/o Karam Din through GPA Muhammad Rasheed *vide* letter No. JT/NB-II/1348-M/1028 dated 07.07.2003. However, the same was cancelled *vide* Order No. DLD-11/2579 dated 28.04.2004. As per record, there existed a single story shop at the said plot which is illegal as the same has been cancelled. In December, 2016, a fresh construction was made by the encroachers at some portion of the said plot. This new construction activity was not reported by the concerned Anti-Encroachment Inspector *i.e*. the accused which clearly shows his involvement in the said illegal construction. The construction was pointed out through an application received in the office of Director Estate Management-1, LDA and subsequent upon which an Anti-Encroachment Operation was conducted on 29.12.2016 and the fresh construction was demolished. In addition, the accused being the concerned Anti-Encroachment Inspector, LDA was sternly directed to remain vigilant and keep watch and ward of the said plot.
>
> On 30.05.2017, another complaint was again received regarding fresh construction activity at the said plot. Subsequently, a visit was made to the site and the concerned officer observed that fresh construction had been done by the encroachers at some portion. Once again it was not reported by the accused. This time clearly proving that he is in cahools with the land encroachers and is completely

responsible for the fresh construction. The accused has tried to absolve himself from the blame with the contention that he was on leave from 20.04.2017 to 22.04.2017 but the fact that he did not report the illegal construction even after returning from leave clearly show his involvement. In fact, the construction was pointed out even the second time through a complaint received on 30.05.2017 almost a month after his 03-days leave. The accused has also tried to produce an application in his defence that was submitted to in-charge Choki, Block-L. M.A. Johar Town, Lahore on 24.04.2017. However, the same is neither signed by the Estate Officer nor the Senior Estate Officer, LDA. In addition to the application not being signed the accused completely failed to report it to his superiors within the office. Even if a lenient view is taken with regard to the construction made earlier in 2016, the accused cannot be absolved from intentionally not reporting the construction second time, by which time the matter had been highlighted and he had been specifically directed to keep watch and ward of the plot in question."

These questions/observations if seen in juxta position of the finding given by the inquiry officer *vide* impugned report dated 31.08.2017, it is clear that the finding was to the extent of committing negligence, misconduct and willful omission in performing his official duties and deliberately facilitating the encroachers to carry out illegal construction and that stand taken by the petitioner that construction was carried out in his absence since he remained on leave from 20.04.2017 to 22.04.2017 as such construction up to the rooftop was not possible within 4 days, was to be supported with some material/ evidence to make out a case for awarding major penalty of dismissal from service.

8 . Besides, this Court has noted that before enhancement of the major penalty from forfeiture of service of three (3) years to dismissal from service a notice

was required to be issued to the petitioner asking him to explain as to why major penalty should not have been imposed. This notice was neither part of the file nor it was so asserted by the respondents/LDA. In *Secretary, Government of Punjab (C&W) and others versus Ikramullah and 5 others* (2013 SCMR 572), it was held in paragraph No. 6 that competent authority without assigning any reason to disagree with the finding of the inquiry committee with reference to the evidence collected, could not enhance the penalty and converted the same into major penalty that too without issuing a notice. Relevant extract is reproduced as under:

> "The Competent Authority without assigning any reason to disagree with the findings of the Committee with reference to the evidence collected enhanced the penalty and converted the same into major penalties as indicated in column No. 4 of the chart referred in para 3 above. There is no cavil to the proposition that the competent authority on receipt of the report from the inquiry officer of the inquiry committee can proceed in any of the options available to him in terms of sub-section (2) to (8) to Section 12 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006. However, while doing so, it has to follow the procedure laid down therein and if it proposes to enhance the penalty it has to give reasons germane to the charges levelled and the evidence collected during inquiry and that too with reference to the liability of each of the officers who were inquired into. Unfortunately the competent authority did not give any reason whatsoever except that he had gone through the record and defence pleas of the respondents and had also personally inspected the road, defective construction of which was a moot point during inquiry. Mere deplorable condition of the road at site was not enough to hold each respondent guilty unless the Competent Authority specifically had referred to the role and liability of each one of the respondents in the light of material/evidence collected during inquiry. Learned law officer

on Court query, could not dispute the fact that the competent authority neither gave any reason for enhancing the penalty nor apportioned the liability of each of the respondents specifically."

9. For the foregoing reasons, this writ petition is **allowed** to the extent that order passed by the competent authority as well as Director General is set aside and the case is **remanded** to the competent authority to re-decide the matter keeping in view the legal requirements as well as material/evidence against the petitioner.

(Y.A.) **Petition allowed.**

PLJ 2022 Cr.C. 1411 (DB)

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI AND FAROOQ HAIDER, JJ.

MANSAB ALI--Petitioner

versus

STATE etc.--Respondents

Crl. Rev. No. 17417 of 2022, decided on 25.4.2022.

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 365-B--Kidnapping abducting--It is not case of prosecution that assailants demand some money and upon their failure, put them in illegal confinement and committ Zina bil-jabr--If interpretation made by Judge, Anti-Terrorism Court is allowed, that in every Zina bil-jabr case Section 365-A, PPC might be added--Forcing a woman to illicit intercourse has already been made an offence under Pakistan Penal Code, 1860 for life imprisonment.

[Pp. 1413 & 1414] A

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 365-A--Kidnapping or abducting--Under Section 365-A, PPC, element of extortion from person or kidnapping or abducting for purpose of any property movable or immovable, valuable security or other demand whether cash or otherwise for obtaining release of any kidnapped or abducted person was made punishable with death or imprisonment for life--The elements referred above are not available in FIR, therefore, Section 365-A, PPC would not be attracted. [P. 1415] B

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 365-A--Kidnapping and abduction--Whether facts narrated in FIR does constitute abduction for extorting property, valuable security etc. as defined under Section 365-A, PPC, purpose must be to compel either abductee or any

other individual person to give property, either movable or immovable or even valuable security, cash or otherwise as demand for his/her release--Such demand may be illegal act, commission of a crime etc. either from abductee or anyone interested in free mobility of abductee. [P. 1415] C

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 362--Abduction--A bduction is constituted if a person is forcibly compelled or induced through deceitful means just to go from any place--Section 362, PPC is reproduced as under:

> "362--Abduction--Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person." [P. 1415] D

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 365-A--Anti-Terrorism Act, (XXVII of 1997), S. 2(n)--Kidnapping and abduction--Abduction for ransom--What constitute an abduction for ransom is actual payment of ransom and its proof are essential--The offence under Section 365-A, PPC is constituted if there is an abduction for extortion of ransom or ransom is demanded for release as defined under Section 2(n) of Anti-Terrorism Act, 1997. [P. 1415] E

PLD 2011 SC 1135.

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 365-A--Criminal Procedure Code, 1898 (V of 1898), Ss. 435 & 439--Kidnapping and abduction for purpose of committing zina-bil-jabr--Criminal revision--Convicted and sentence--Offence under Section 365-A, PPC is constituted when abductee is recovered from accused and ransom has passed on to him as held in--Sometime mere demand of ransom for release of abductee constituted offence under Section 365-A, PPC--The statement of abductee is given value if it is made after his release against payment of ransom--Abduction, demand of ransom for release; of either property, cash or

otherwise was ingredients which must be present to attract provisions of Section 365-A, PPC--However, in instant case, there was no demand of ransom of cash either from complainant or her relative--The irrational interpretation of word "any other demand" by extending it to compel a woman for a sexual intercourse cannot be adopted by this Court particularly when offence under Section 365-B, PPC and Section 376, PPC exclusively deal with offence of rape; sexual intercourse with a woman against her will by putting her under fear of death, etc.--Revision allowed.

[Pp. 1416, 1417 & 1418] F, G, H & I

2008 SCMR 1572, 2006 SCMR 1230, 2006 SCMR 1257, 1999 SCMR 610 and PLD 1995 SC 1.

Ch. Waseem Ahmed Gujjar, Advocate for Petitioner.

Rai Akhtar Hussain, DPG for Respondents.

Date of hearing: 25.4.2022.

ORDER

Through this criminal revision under Section 435 read with Section 439, Cr.P.C. order dated 07.03.2022 passed by the Judge, Anti-Terrorism Court No. III, Lahore has been challenged whereby application under Section 23 of the Anti-Terrorism Act, 1997 filed by the petitioner for the transfer of trial of case FIR No. 2685 dated 23.08.2021 registered under Sections 365-A, 392, 376(ii), 376(iii), PPC & 7 of the Anti-Terrorism Act, 1997 at Police Station Chung, Lahore to ordinary Court was dismissed.

2. Brief facts giving rise to the filing of this revision petition are that FIR No. 2685/21 under Sections 365-A, 392, 376(ii), 376(iii), PPC & 7 of the Anti-Terrorism Act, 1997 was lodged at Police Station Chung, Lahore on 23.08.2021 on the allegation that on 23.08.2021 at 3:00 p.m. the complainant alongwith her 15 years old daughter namely, Iram, came to Lahore from her house Hassan Shah, Tehsil Mailsi District Vehari on a bus and disembarked at

Thokar Niaz Baig bypass at 10:00 p.m. They took green coloured Auto Rickshaw bearing Registration No. LEU-4882/013 to go to the house of her sister namely, Shameem wife of Muhammad Mazhar, situated at Sadar Cantt. Hud Officers Colony. The driver, accompanied by another man, took them to H-Block LDA Avenue-I in the darkness of night. These two persons committed Zina bil-jabr with her as well as her daughter. Meanwhile, a car stopped near them upon which they started making hue and cry whereupon the culprits ran away leaving their Rickshaw and taking her mobile phone and Rs. 5000/-with them. One boy made a call on 15 which was attended by the police. The assailants could be identified, hence the FIR.

3. On the same date, *vide* case Diary No. 1, dated 23.08.2021 Sections 376(ii), 376(iii), 365-A, 392, 34, PPC were added, therefore, the challan was submitted before Anti-Terrorism Court. Meanwhile, on 17.01.2022 petitioner filed an application before the Anti-Terrorism Court No. III, Lahore for transfer of trial of the said criminal case to the ordinary Court which was dismissed while observing that assailants extended the threats of dire consequences and compelled both ladies on gun point for sexual intercourse with them. It was also observed that complainant and her daughter were threatened that if their demand was not fulfilled and if they raised hue and cry, they will not be spared and will be murdered. According to the learned Judge, the victims were removed from one place to another under threat of loss of life in case of non-fulfilment of demand made by the assailants.

4. We have again looked on the contents of the FIR, but have not noticed any demand of property (movable or immovable) valuable security or to compelling the complainant or her daughter to comply with any other demand in cash or otherwise. It is not the case of the prosecution that the assailants demanded some money and upon their failure, put them in illegal confinement and committed Zina bil-jabr. If the interpretation made by the learned Judge, Anti-Terrorism Court No. III, Lahore is allowed, we are afraid that in every

Zina bil-jabr case Section 365-A, PPC might be added. Forcing a woman to illicit intercourse has already been made an offence under Pakistan Penal Code, 1860 for life imprisonment. Section 365-B, PPC is reproduced as under:

> **"365-B Kidnapping, abducting or inducing woman to compel for marriage etc.--**Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code, or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

Besides, under Section 376, PPC, such an act is made a separate offence. Section 376, PPC is reproduced as under:--

> **376. Punishment for rape.** (1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.
>
> (1A) Whoever commits an offence punishable under sub-section (1) or sub-section (2) or Section 377 or Section 377-B and in the course of such commission causes any hurt punishable as an offence under Section 333, Section 335, Clauses (iv), (v) and (vi) of sub-section (3) of Section 337, Section 337-C, clauses (v) and (vi) of Section 337-F shall be punished with death or imprisonment for life and fine.

(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.

(3) Whoever commits rape of a minor or a person with mental or physical disability shall be punished with death or imprisonment for life and fine.

(4) Whoever being a public servant including a police officer, medical officer or jailor, taking advantage of his official position, commits rape shall be punished with death or imprisonment for life and fine.

5. Under Section 365-A, PPC, the element of extortion from the person or kidnapping or abducting for the purpose of any property movable or immovable, valuable security or other demand, whether cash or otherwise, for obtaining release of any kidnapped or abducted person was made punishable with death or imprisonment for life. The elements referred above are not available in the FIR, therefore, Section 365-A, PPC would not be attracted.

6. To reach on a conclusion that whether the facts narrated in the FIR does constitute abduction for extorting property, valuable security etc. as defined under Section 365-A, PPC, the purpose must be to compel either the abductee or any other individual person to give the property, either movable or immovable or even valuable security, cash or otherwise as demand for his/her release. Such demand may be illegal act, commission of a crime etc. either from the abductee or anyone interested in the free mobility of the abductee. To understand the tenor of abduction for ransom, Section 365-A, PPC is reproduced as under:

> **"365-A. Kidnapping or abduction for extorting property, valuable security, etc**.--Whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property, whether movable or immovable, or valuable security, or to compel any

person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with (death or) imprisonment for life and shall also be liable to forfeiture of property."

and the abduction is constituted if a person is forcibly compelled or induced through deceitful means just to go from any place. Section 362, PPC is reproduced as under:

> **"362. Abduction.** Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."

What constitute an abduction for ransom is actual payment of ransom and its proof are essential. The offence under Section 365-A, PPC is constituted if there is an abduction for extortion of ransom or the ransom is demanded for the release as defined under Section 2(n) of the Anti-Terrorism Act, 1997. Reliance is placed upon *Junaid Rehman and others versus The State and others* (PLD 2011 Supreme Court 1135). Relevant Para 6 is reproduced as under:

> "6. From a bare reading of the provisions of Section 365-A, P.P.C. and Section 2(n) of the Anti-Terrorism Act, 1997 it is quite evident that in order to constitute an offence of abduction for ransom actual payment of ransom and proof thereof are not *sine qua non* and the said offence also stands constituted if there is an abduction and the purpose of abduction is extortion of ransom (Section 365-A, P.P.C.) or ransom is demanded for release of the abductee (Section 2(n) of the Anti-Terrorism Act, 1997). Section 365-A, P.P.C. reads as follows:
>
> "365-A. Kidnapping or abduction for extorting property, valuable security, etc.--Whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property,

whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with death or imprisonment for life and shall also be liable to forfeiture of property."

Section 2(n) of the Anti-Terrorism Act, 1997 provides as under:

"(n) "kidnapping for ransom" means the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from another person, as a condition of his release."

In the similar manner, the offence under Section 365-A, PPC is constituted when the abductee is recovered from the accused and the ransom has passed on to him as held in *Faheema Ahmed Farooqui versus The State* (2008 SCMR 1572). Relevant extract of Para 10 is reproduced as under:

"10….. The evidence produced by the prosecution is highly discrepant and suffers from serious infirmities and contradictions and except the bare allegations in the F.I.R., there is nothing incriminating on the file to connect the appellant with the commission of crime. It may be observed that neither Fahad Hamdani, alleged abductee has been recovered from the custody of the appellant nor there is evidence regarding passing of the ransom amount to the appellant. The mere assertion; of the complainant that appellant had a hand in the affair and he is author of the crime, without a positive attempt on his part to substantiate the same, is of no consequence. We find force in the submission of learned Counsel for the appellant that no cause of abduction or kidnapping is made out and ingredients of offences

punishable under Section 365-A, P.P.C. and Section 7(e) of the Anti-Terrorism Act, 1997 are not attracted in this case……"

Sometime mere demand of ransom for the release of the abductee constituted the offence under Section 365-A, PPC as held in *Muhammad Nabi and 4 others versus The State* (2006 SCMR 1230) and *State through Advocate-General, Sindh versus Mooso* (2006 SCMR 1257). The statement of the abductee is given value if it is made after his release against payment of ransom as held in *The State versus Nazir Ahmad and others* (1999 SCMR 610). Relevant extract from Para 15 is reproduced as under:-

> "…..In case of kidnapping or abduction unless there are strong reasons to discredit testimony of abductee/kidnapee, his statement carries substantial evidentiary value……"
>
> "….. The version of Hassan Mehboob when looked in the entire perspective and recovery of ransom amount which led to his release, appear to be truthful sufficient convincing and confidence inspiring….."

The object of abductee is of prime importance and a direct demand of ransom to relative of the abductee by particular member of this organized crime was not the requirement to constitute offence. Under Section 365-A, PPC since such criminals operates in a group having different assigned roles. Reliance is placed upon *State through Advocate-General, Sindh, Karachi versus Farman Hussain and others* (PLD 1995 Supreme Court 1).

7. The above referred judgments strongly suggest that abduction, demand of ransom for release; of either property, cash or otherwise was the ingredients which must be present to attract the provisions of Section 365-A, PPC. However, in the instant case, there was no demand of ransom of cash either from the complainant or her relative. The irrational interpretation of the word "any other demand" by extending it to compel a woman for a sexual intercourse cannot be adopted by this Court particularly when offence under

Section 365-B, PPC and Section 376, PPC exclusively deal with the offence of rape; sexual intercourse with a woman against her will by putting her under fear of death, etc.

8. For the above stated reasons, this criminal revision is **allowed,** order dated 07.03.2022 passed by the Judge, Anti-Terrorism Court No. III, Lahore is set aside. Resultantly, the trial of case FIR No. No. 2685 dated 23.08.2021 registered under Sections 365-A, 392, 376(ii), 376(iii), PPC & 7 of the Anti-Terrorism Act, 1997 at Police Station Chung, Lahore shall be referred back by the learned Judge, Anti-Terrorism Court No. III, Lahore to learned Sessions Judge, Lahore who shall either himself or will entrust it to any learned Additional Sessions Judge, Lahore for its trial.

(A.K.K.) **Revision allowed.**

2022 Y L R 632

[Lahore]

Before Ali Baqar Najafi and Sardar Muhammad Sarfraz Dogar, JJ

IJAZ ALI---Appellant

Versus

The STATE and another---Respondents

Criminal Appeal No. 63970 of 2020, heard on 8th November, 2021.

Control of Narcotic Substances Act (XXV of 1997)---

----S. 9(c)---Possession of narcotics---Appreciation of evidence--- Non-production of material witness---Non-production of Register No. XIX---Effect---Accused was allegedly found in possession of 2150 grams of heroin---Muharrir stated that he had received sample and case property from Investigating Officer and that he had deposited it in Malkhana, but the official who had produced it from the Malkhana was not produced by the prosecution---Register No. XIX maintaining the relevant entry was also not produced in evidence---Complainant had admitted in his cross-examination that his caste was Kalyar; that Loona were their political rivals and that the accused was a Loona by caste---Both accused and complainant belonged to the same area---Report of Forensic Laboratory revealed that net weight of the sample was 100.85 grams whereas 108 grams was separated--- High Court by placing reliance on "Ikramullah and others v. The State [2015 SCMR 1002]" convicted the accused to what he had already undergone as he had spent more than one year behind the bars.

Ikramullah and others v. The State 2015 SCMR 1002 and Ghulam Murtaza and another v. The State PLD 2009 Lah. 362 rel.

Malik Rab Nawaz for Appellant.

Muhammad Waqas Anwar, D.P.G. for the State.

Date of hearing: 8th November, 2021.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this appeal under section 48 of Control of Narcotic Substances Act, 1997, the judgment dated 05.11.2020 passed by the learned Sessions Judge, Chiniot in case FIR No. 144 dated 20.04.2020 registered under section 9(c) of CNSA, 1997 at Police Station Sadar Chiniot, has been challenged whereby the appellant was convicted under section 9(c) Control of Narcotic Substances Act, 1997 and sentenced to rigorous imprisonment for seven (7) years with fine of Rs. 50,000/- in default whereof to further undergo simple imprisonment for seven (7) months. Benefit of section 382-B, Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case against the appellant as narrated by Ubaid Ullah, S.I. (PW-1) in complaint (Exh.PC) is that on 20.04.2020 he along with other police officials was present at More Bhatti Wala Chak No. 127/JB Faisalabad Road, the appellant holding a blue colour shopper in hand, on seeing the police party tried to escape but was apprehended. Upon search, heroin weighing 2150 grams was recovered from the shopper held by the appellant, out of which 108 grams was separated for chemical analysis and prepared one sample parcel and one parcel for the remaining heroin. Upon personal search of the appellant, cash Rs. 1070/- and a mobile phone was recovered. The sample parcel and the parcel of remaining heroin along with cash was taken into possession vide recovery memos (Exh.PA) and (Exh.PB) attested by Sajjad Akbar, 225/HC and Tasawwar Iqbal, 713/C. The complainant drafted the complaint (Exh.PC) and sent the same to police station through Javed Iqbal, 65/C (given up) for registration of formal FIR whereafter the FIR (Exh.PC/1) was registered.

3. After completion of investigation, challan against the appellant was submitted before the trial court. On indictment of the appellant, he pleaded not guilty and claimed trial. The prosecution produced four (4) prosecution witnesses, namely, Ubaid Ullah, S.I. (PW-1), Sajjad Akbar, 225/HC (PW-2), Qamar Zaman, 1168/MHC (PW-3) and Sarfraz Khan, S.I. (PW-4) by giving up Tasawwar Iqbal, 713/C and Javed Iqbal, 65/C and by tendering report of PFSA (Exh.PE) closed its evidence. Thereafter, the appellant was

examined under section 342, Cr.P.C., wherein he professed his innocence and denied all the allegations levelled against him. The appellant did not opt to depose within the scope of section 340(2), Cr.P.C. In reply to the question as to why this case against you and why the PWs have deposed against you, he replied as under:-

> "I am innocent. I was returning from Sahiwal on 18.04.2020 after leaving my wife at Chak No. 84/5.L Tehsil and District Sahiwal. My motorcycle broke down at Faisalabad which I left there and took a lift with a biker of my village. No sooner did we reach KATCHA Road of Chak No. 131, the said biker escaped with his motorcycle leaving me there. Ubaid Ullah complainant apprehended me and illegally detained my in Chowki Pul Dingru overnight. Ubaid Ullah, S.I. visited police post Dingru at 2:00 a.m. and taking me in a private car kept on detaining me at unknown place till 20.04.2020. Ubaid Ullah S.I. had been threatened to involve me in serious offences, if I did not grease his palm. On 20.04.2020 I was taken to area of Chak No. 112/JB Ram Dulai at 2:00 p.m. and thereafter I learnt that I was involved in this case falsely. I, through my real brother presented an application to investigating officer for collection of CDR Mark-A of my telephone No. 03469564131 in support of my contention but he did not collect the CDR Mark-A. I, therefore, preferred a complaint to DPO, Chiniot for conducting an inquiry against Ubaid Ullah S.I. for false and vexatious arrest and recovery, upon which, SP Investigation was assigned the duty to inquire the matter. I was not associated in the said inquiry by the SP Investigation nor she had collected CDR Mark-A of my aforesaid telephone number in support of my plea of innocence, false involvement and vexatious recovery which he can be confirmed from record of the concerned telephone cellular company."

4. After conclusion of the trial, the learned trial court pronounced its verdict against the appellant and awarded him punishment as aforementioned.

5. We have heard learned counsel for the parties and perused the

record with their able assistance.

6. To begin with the safe custody of both sample parcels and case property is being discussed. Qamar Zaman, 1168/ MHC, Muharrir (PW-3) stated that on 20.04.2020 he received both the packets of heroin from Sarfraz Khan, S.I. (PW-4) and deposited it in Sadar Malkhana, but the official who produced it from said Malkhana was not produced by the prosecution. Register 19 maintaining the relevant entries was also not produced in evidence. On 21.04.2020, he gave the sample parcels to Ubaid Ullah, S.I. (PW-1) who deposited the same in the office of Punjab Forensic Science Agency. Obviously, in the absence of an important chain of the police official who produced the two parcels to the said Muharrir (PW-3), the safe custody is not proved. To substantiate the animosity, Ubaid Ullah, S.I. (PW-1) admitted in cross-examination that his caste is Kalyar and Loonas are their politically rivals and that the appellant is a Loona by caste. Both belong to the same area. Besides, the report of Punjab Forensic Science Agency (Exh.PE) reveals that the net weight of the sample was 100.85 grams whereas 108 gram was separated then how it decreased by 8 grams but the report is positive to the extent of this weight. By placing reliance upon Ikramullah and others v. The State (2015 SCMR 1002), conviction can be awarded only on 108 grams which is rigorous imprisonment for one year and 9 month with fine of Rs. 11000/- and in case of default of payment of fine to further undergo simple imprisonment for four (4) months as per sentencing policy as given in Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362).

7. For the above stated reasons, this appeal is dismissed while maintaining the conviction. However, the amount of fine shall remain intact but the sentence is reduced to what the appellant has already undergone. The appellant is behind the bars and had spent more than one year. He shall be released forthwith if he had paid the fine and not required to be detained in any other criminal case.

SA/I-28/L **Sentence reduced.**

2022 Y L R 1678

[Lahore]

Before Ali Baqar Najafi, J

ZUBAIR AHMED and another---Petitioners

Versus

SAIMA ANWAR and another---Respondents

Writ Petition No. 16611 of 2015, decided on 1st February, 2016.

Family Courts Act (XXXV of 1964)---

----S. 5, Sched.---Civil Procedure Code (V of 1908), O. XIV, R. 1---Suit for recovery of dowry articles---Framing of issues---Scope---Plea raised belatedly---Respondent (wife) filed a suit for recovery of dowry articles wherein she, inter alia, claimed the return of a vehicle---Family Court framed a generalized issue regarding the entitlement of respondent to claim dowry articles---Suit was decreed---During pendency of appeal, petitioner (husband) filed an application for framing additional issues regarding the ownership of vehicle---Appellate Court dismissed the application while holding that findings of Family Court on the issue were comprehensive and no additional issue was required to be framed---Validity---Vehicle in question was registered in the name of petitioner---Question whether it was sold off to the petitioner or was given by the father of respondent as part of dowry articles had already been dealt with by the Family Court---No sale receipt was produced by the petitioner to show that it was a sale---Petitioner had not denied that transfer of vehicle was made immediately after the marriage was contracted---Very fact that no application for framing of additional issues was filed during 3 years of pendency of suit and one and a half year of the pendency of appeal showed that petitioner had raised the plea after a fatal delay---Writ petition was dismissed.

PLD 1985 Pesh. 38; Nadeem Azam v. Additional District, Judge Shujabad, Multan and another 2010 CLC 1594 and Asghar Mehmood v.

Judge Family Court and another PLD 2002 Lah. 410 ref.

Hafiz Abdul Rehman Ansari for Petitioner.

Usama Ahmed for Respondent No.1.

ORDER

ALI BAQAR NAJAFI, J.---Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner challenges order dated 21.05.2015 whereby the appellate court dismissed the application for framing of additional issues in respect of vehicle No. 1026/ SLA Toyota Corolla Car Model 2007, as a part of dowry articles.

2. Learned counsel for the petitioner contends that in view of the specific plea raised by the petitioner in the written statement submitted on 24.03.2010, in response to the suit for recovery of dowry articles, a specific issue regarding purchase .of said vehicle was required to be framed as the said vehicle was transferred in the name of the petitioner subsequent to the marriage, therefore, it could not be consi-dered as a part of dowry articles. Places reliance upon (PLD 1985 Peshawar 38).

3. Conversely, learned counsel for respondent No.1 submits that since the issue of dowry articles was dealt with comprehensively by the learned Judge Family Court and without explaining the reason for such a delayed plea of framing of additional issues, the request cannot be acceded to. Places reliance upon (2010 CLC 1594).

3(sic). Arguments heard. Filed perused.

4. On 16.01.2010, respondent No.1 filed a suit for recovery of dowry articles as per list Ex.P6 valuing Rs. 40,73,900/- which was resisted by filing written statement on 24.03.2010 specifically alleging in paragraph No.3 of the preliminary objections that car No. 1026/ SLA was also off on 31.03.2007 for a consideration of Rs. 9,00,000/- by the father of respondent No.1 to him. However, on 27.09.2010 the following issues were framed:--

ISSUES.

1. Whether the plaintiff is entitled to a decree for recovery of dowry articles valuing Rs. 40,73,900/- as prayed for? OPP
2. Whether the plaintiff has no cause of action to file the instant suit? OPD
3. Whether the suit is false and frivolous and liable to be dismissed? OPD
4. Relief.

A perusal of the interim orders reflect that on 13.12.2010 an application for addition of witnesses namely, Muhammad Ishaq and Ch. Sarfraz, was moved which was allowed on the basis of judgment titled Asghar Mehmood v. Judge Family Court and another (PLD 2002 Lahore 410). An application was also filed by the petitioner to summon the record in respect of Car No. 1026/SLA Model 2007 from the office of Motor Registration Authority, Sahiwal but the said application was dismissed on 06.09.2012 as the case was fixed for evidence of the petitioner/ defendant. Another application of the petitioner for making an offer to respondent/plaintiff to take away the admitted dowry articles was also rejected on the ground that the case was fixed for evidence of petitioner/defendant. It was after the recording of the evidence of the parties that suit of respondent No.1 was decreed on the finding on issue No.l. The said judgment and decree is under challenge before the appellate court where it is still pending. Meanwhile, the application for framing of following additional issues was filed.

Additional Issues.

1. Whether Toyota Corolla car model 2007 was purchased by appellant No.1 vide transfer deed dated 31.03.2007 in exchange for Rs.9,00,000/-? OPD
2. Whether the car mentioned above does not become part of dowry? OPD

This application was dismissed vide impugned order dated 21.05.2015 on the ground that finding on issue No.1 is comprehensive and no additional issue was required to be framed.

5. Admittedly, the vehicle in question is registered in the name of the petitioner and the vehicle was mentioned on the top of the list of dowry articles. The question whether it was sold off to the petitioner or was given to him by respondent No.1 by her father as part of dowry articles was already dealt with by the Judge Family Court. The judgment cited by the learned counsel for respondent No.1 Nadeem Azam v. Additional District, Judge Shujabad, Multan and another (2010 CLC 1594) is applicable to the facts of this case as in the said judgment the framing of additional issue by the appellate court was disapproved by this Court as there was sufficient evidence to discuss whether the vehicle was the part of dowry articles. Admittedly, no sale receipt is produced by the petitioner to show that it was a sale. It is also not denied that said transfer of vehicle was immediately after when the marriage was contracted. The very fact that no application for framing of additional issues was filed during 3 years of pendency of suit and one and a half year of the pendency of appeal show that petitioner has raised this plea after a fatal delay.

6. In this view of the matter, this writ petition has been found meritless and is, therefore, dismissed.

SA/Z-15/L **Petition dismissed.**

2023 M L D 395

[Lahore]

Before Ali Baqar Najafi, J

ALI SHER alias SHEERI and others---Appellants

Versus

The STATE and others---Respondents

Criminal Miscellaneous No. 2 of 2021 in Criminal Appeal No. 917 of 2010, heard on 18th May, 2022.

Penal Code (XLV of 1860)---

----Ss. 302(b), 324, 337-A(i), 337-D, 148 & 149---Criminal Procedure Code (V of1898), S. 345---Qatl-i-amd, attempt to commit qatl-i-amd, shajjah-i-khafifah,jaifah, rioting armed with deadly weapon, unlawful assembly---Compounding ofoffence---Scope---Parties, during the trial, moved application under S. 345, Cr.P.C.,along with compromise deed and stated that they had amicably settled the matteroutside the court---None of the legal heirs of the deceased had contested thecompromise but prosecutor had raised objection that the compromise could not beeffected to the extent of the minors without payment to them of the differentialamount between the payable Diyat in the year 2012 and what was payable when thecompromise was being effected between the other legal heirs of deceased---Validity---Record showed that one widow and three minors were the surviving legalheirs of the deceased---According to the statement of natural guardian of the minorsbefore the Trial Court, she raised no objection if petitioners/appellants were alsoacquitted of charges, since she had already received amount of Rs.22,35,500/-in theshape of Defence Saving Certificates as Diyat on behalf of the minors of thedeceased in the year 2012---Diyat was not a punishment, its enhancement for thelegal heirs was not their legal right when it had already been exercised by themdrawing all the amount of Diyat to their share---No new right had accrued to them---Only exception through which a compromise could be recalled was

that it wasforcefully affected as free consent was the main ingredient of such ground whichwas apparently missing---Once a compromise always a compromise, therefore, itcould not be rescinded by any strange interpretation of law in order to proactivelyprotect the minors since the interest of the minors could not be watched over andabove their entitlement regardless of the fact that offence of murder was committedby more than one person and convicted though might have different financialstatus---In the absence of any documentary evidence to prove the financial status,no such finding could be given---In the present case, the compromise was not a newone but reaffirmation of the old compromise entered with other accused persons,the benefit of which could be extended to the present accused petitioner, therefore,the payment of differential amount to the minor was not legally permissible---Application was accepted as a result of which appeal was allowed and accusedwere acquitted of the charges levelled against them. Abdul Ghafoor and 3 others v. The State 1992 SCMR 1218 and Safdar Ali andothers v. The State and another PLD 1991 SC 202 rel.

Iftikhar Ahmad Mian for Appellants.

Abdul Samad, Additional Prosecutor General for the State.

Date of hearing: 18th May, 2022.

JUDGMENT

ALI BAQAR NAJAFI, J.---Through this application under section 345,Cr.P.C., the petitioners, Shahbaz son of Gul Muhammad Mohal and Daim son ofLal have sought compromise in appeal filed by them.

2. The petitioners were convicted by the learned Additional Sessions Judge,Kamalia, as under:-

"Under sections 148/149 read with section 302(b), P.P.C.

Sentenced to life imprisonment each.

Under section 324, P.P.C.

Sentenced to 05 years' R.I. each.

Under section 337-A(i), P.P.C.

Sentenced to pay Daman Rs.10,000/- each.

Under section 337-D, P.P.C.

Sentenced to pay Arsh each according to Diyat money as was on 1st July, 2008.

All the sentences shall run concurrently. Benefit of section 382-B, Cr.P.C. wasalso extended to them."

3. A report was requisitioned from the court of learned Additional SessionsJudge, Kamalia which was submitted on 24.11.2021 according to which none of thelegal heirs of Muhammad Sarwar (deceased) had contested the compromise but thelearned Prosecutor has raised the objection that the compromise could not beeffected to the extent of the minors without payment to them of the differentialamount between the payable Diyat in the year 2012 and what is payable now whenthe compromise is being effected between the other legal heirs of MuhammadSarwar (deceased) notwithstanding the fact that they had earlier pardonedMuhammad Mansha son of Hayat, Muhammad Mansha son of Jalal din andKhurshid the other acquitted persons by receiving the Diyat of Rs.22,33,500 in2012. He submits that to watch the interest of the minors is the responsibility ofthis Court and, therefore, the compromise be accepted conditionally.

4. Arguments heard. File perused.

5. Admittedly, on 22.10.2012, this Court had already accepted the compromisewith the legal heirs of Muhammad Sarwar (deceased) while deciding CriminalAppeal No.885/2010 (Mohammad Mansha and others v. The State) in whichMohammad Mansha son of Hayat, Muhammad Mansha son of Jalal Din andKhurshid son of Shahab Din have been acquitted under section 302, P.P.C., while maintaining the sentence under sections 324 and 337-A(i), P.P.C. since none of theinjured witnesses appeared before the court to compound the offence, therefore,maintained the sentence to their extent but reduced their sentence to what they hadalready undergone. It was also concluded by this Court that Mst. Naseem Akhtar,the mother of Arooj Bibi,

Shazia Bibi and Attiq-ur-Rehman minor daughters andson of the deceased Muhammad Sarwar had received Rs.22,33,500/- as share ofDiayat amount of the minors and invested in Defence Saving Certificates. TheState, therefore, had raised no objection at that time.

6. Meanwhile, the present Criminal Appeal No.917/2010 filed by Ali Sher aliasSheeri son of Lal Din, Daim son of Lal Din and Shahbaz son of Gul MuhammadMohal remained pending and through this application under section 345, Cr.P.C,prayer is made to also effect the compromise between Daim and Shahbaz since AliSher alias Sheeri who was granted death sentence had died in jail; a fact notdisputed by the prosecution. A report on compromise, therefore, was requisitionedfrom the learned trial court and on 24.11.2021 it was submitted according to whichthe legal heirs of Muhammad Sarwar alias Muhammad Masroor (deceased) weresummoned and as per report of the concerned SHO and Revenue Officer, NasimAkhtar, widow and Shazia, Arooj and Attique-ur-Rehman, minors are the survivinglegal heirs, since Muhammad Ishaque and Sifat Elahi, both parents of deceased haddied after the said compromise with other acquitted persons. According to thestatement of natural guardian of the minors before the learned court of AdditionalSessions Judge, she raised no objection if petitioners/appellants Daim and Shahbazare also acquitted of charges, since she had already received amount ofRs.22,35,500/-in the shape of Defence Saving Certificates as Diyat on behalf of theminors of the deceased in the year 2012. Even Abdul Ghafoor and NoorMuhammad injured have recorded their statements in the said court that they alsohad compounded the offence and that they have forgiven the appellants/petitionersin the name of Allah Almighty and waived their right of Qisas or recoverDiyat/Daman or Arsh from them, they, therefore, raised no objection on theiracquittal.

7. The question raised by the learned Prosecutor is (i) whether it is not a newcompromise and (ii) whether the legal heirs can get the Diyat of minors over andabove the amount already received by them now notwithstanding the

compromiseeffected in 2012. Both are answered in negative for the following reasons:-

i) Firstly, if the Diyat is not a punishment, its enhancement for the legal heirs isnot their legal right after when it has already been exercised by themdrawing all the amount of Diyat to their share. No new right had accrued tothem.

ii) Secondly, the only exception through which a compromise can be recalled isthat it was forcefully effected as free consent is the main ingredient of suchground which is apparently missing. The guiding principle for the court toeffect such compromise is laid down in judgment reported as Abdul Ghafoorand 3 others v. The State (1992 SCMR 1218) and, therefore, its extracts atpage 1232 is reproduced as under:-

"A note of caution warning is for the parties concerned that any doubt withregard to the free will of the parties in entering moo a compromise in caseslike the present one shall have to be resolved against the acceptance of thecompromise; because, it is not a question of the punishment of an accused asa result of the compromise that benefit of a doubt may be given to theaccused. On the contrary it is an accused/convict who seeks the favour ofthe other party. And if he is unable to satisfy the other party on all questionsrelating to compromise (which becomes a contract) that it is free fromblemish and doubt, it cannot be accepted. Similarly, if the Court has anydoubt whatsoever that the compromise is tainted with pressure, coercion,undue influence, blackmail, extortion or similar other infirmities, it shallhave to be rejected without much of arguments or discussion. Because onlythat compromise would qualify for acceptance which is above everyblemish, mild or strong."

iii) Thirdly, once a compromise always a compromise, therefore, it cannot berescinded by any strange interpretation of law in order to proactively protectthe minors since the interest of minors cannot be watched over and abovetheir entitlement t regardless of the fact that offence of murder wascommitted by more than one person and convicted though may

havedifferent financial status. In the absence of any documentary evidence toprove the financial status, no such finding can be given. Reliance is placedupon Safdar Ali and others v. The State and another (PLD 1991 SC 202).The relevant extract of page 209 is reproduced as under: --

"The last question which requires consideration namely whether the diyat ofRs.1,71,000/- can be regarded as an equitable and fair badal-i-sulah forcompounding the offence of Qatl-i-amd committed by the three offendersmay now be taken up. In this case the victim was a single individual anddespite the fact that three person were involved in his murder is hardly ofmuch importance when the heirs of the victim are satisfied with the amountof the diyat being paid to them. We too are of the opinion that keeping inview the financial position of the convicts as also of the heirs of the victimthe amount of diyat is quite appropriate. We consider the amount ofRs.1,71,000/- is a fair badal-i-sulah for compounding the offence."

iv) Fourthly, the present one is not a new compromise but reaffirmation of theold compromise entered with other accused persons the benefit of which isalso extended to the present appellants now, therefore, the payment ofdifferential amount to the minor is not legally permissible.

8. In this view of the matter, the application is accepted as a result of which theappeal filed by the appellants, namely, Shahbaz son of Gul Muhammad Mohal andDaim son of Lal, is allowed and they are acquitted of the charges levelled againstthem. They be released from jail if they are not required in any other case.

JK/A-105/L **Application allowed.**

P L D 2023 Lahore 38

Before Ali Baqar Najafi, J

Syed SAJID HUSSAIN ABIDI---Petitioner

Versus

IRAM SHEHZADI ABIDI and others---Respondents

Writ Petition No. 9471 of 2017, decided on 11th May, 2022.

Muslim Family Laws Ordinance (VIII of 1961)---

----S. 7---Family Courts Act (XXXV of 1964), Ss. 5, Sched. & 10---Suit for dissolution of marriage---Fiqah-e-Jafria--- Non-pronounce-ment of seegha---Effect---Petitioner assailed order passed by Family Court whereby the marriage between the petitioner and respondent was dissolved on the basis of Khula in view of their statements recorded on the same day---Contention of petitioner was that according to Shia personal law, the marriage could not be dissolved unless the "Seeghajaat" were read in presence of the parties wither by the husband or his representative/nominee/wakeel in presence of respondent or her representative/nominee/wakeel---Validity---Shia male could always pronounce divorce in accordance with Shia Law which would be protected only by reading the "Seeghajaat" directly or through a representative/wakeel in the presence of female or her representative/wakeel whereafter divorce could become effective---Such exercise could be undertaken in the present case even with retrospective effect, if need be---Writ petition was disposed of accordingly.

Naheed Fatima v. Syed Amir Azam Rizvi and others PLD 1987 Kar. 670; Mst. Sharifan v. Abdul Khaliq and another 1983 CLC 1296; Mst. Resham Bibi v. Muhammad Shafi PLD 1967 Azad J&K 32 and Mst. Maryam Bano v. Hussain Ali and another 1984 CLC 1961 ref.

Syed Ali Nawaz Shah Gardezi v. Lt.-Col. Muhammad Yousaf Khan, Commissioner, Quetta Division PLD 1962 (W.P.) Lah. 558; Syed Azharul Hussain Naqvi v. Hamida Bibi alias Eshrat Jahan and 3 others 1987 CLC 1041; The State v. Syedda Salma Begum and another PLD 1965 (W.P.) Kar. 185;

Mst. Asmat Nigar v. Sayed Ibrar Hussain Shah and 2 others 2004 YLR 111; Syed Asad Raza Naqvi v. Mst. Saima Fatima and another 2014 MLD 254; Mst. Zeba v. Abdul Ali 2002 SCMR 1315 and Mst. Kaneez Fatima v. Wali Muhammad and another PLD 1993 SC 901 rel.

Fida Hussain Matta for Petitioner.

Respondent No.1 ex-parte.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged judgment and decree dated 27.02.2017 passed by the learned Judge Family Court, Faisalabad whereby the marriage between the petitioner and respondent No.1 was dissolved on the basis of Khula in view of their statements recorded on the same date.

2. Brief facts giving rise to the filing of this Constitutional petition are that the petitioner got married to respondent No.1 on 28.08.2006 according to Sharia-e-Muhammadi by following Fiqa Jafria and from the wedlock three daughters namely, Syeda Nayab, Syeda Mubashira and Syeda Gulnaz, were born who are alive. Initially, relationship obviously remained cordial between the parties but later it got strained and respondent No.1 started keeping herself away from the petitioner. About 4/5 months ago from filing of suit on 02.11.2016, it was alleged by respondent No.1 that she was ousted from the house of the petitioner whereafter she started living with her parents. She, thereafter, filed a suit for dissolution of marriage on the basis of Khula which was disposed of on 25.01.2011 on the statement of the respondent dated 21.01.2011 to the extent that she wanted to live with the petitioner. However, yet another suit for dissolution of marriage along with claim of maintenance allowance was filed on 13.04.2013 and again a compromise was effected between the parties resultantly the same was dismissed as withdrawn on 13.07.2013. Finally, third suit for dissolution of marriage was filed on 02.11.2016 in which a written statement was submitted by the petitioner, whereafter the statements of the parties were recorded on 27.02.2017 in which the petitioner stated that he did

not want to divorce respondent No.1 and had wanted to welcome her back home but the respondent No.1 stated that she could not reconcile with the petitioner and demanded a Khula. Consequently, on the same date the marriage was dissolved on the basis of Khula by the order of the court, reproduced as under:-

"Today the case was fixed for pre-trial reconciliation. Statement of both the parties have been recorded. Defendant has stated that he wants to reconcile with the plaintiff even he is ready to accept any condition imposed upon him by the plaintiff. On the other hand plaintiff has stated that she does not want to reconcile with the defendant at any cost and wants her suit be decreed on the basis of khula. Therefore, keeping in view the present scenario, pre-trial reconciliation proceedings are declared as unsuccessful. It is settled principle of law that a wife unwilling to live with her husband cannot be compelled to do so. Hence, in the given circumstances, the suit of the plaintiff for dissolution of marriage is hereby decreed on the basis of Khula in terms of Sec. 10(4) of Family Courts Act, 1964 subject to return of 25% of prompt dower, if any, to the defendant. Decree sheet be drawn up accordingly. File be consigned to record room after its due completion."

3. Learned counsel for the petitioner has taken a ground that according to his personal law, the marriage does not dissolve unless the "Seeghajaat" are read in presence of the parties either by the husband or his representative/nominee/wakeel in presence of respondent No.1 or her representative/nominee/wakeel. Learned counsel for the petitioner has also referred to the amendment in Section 7 of the Muslim Family Laws Ordinance, 1961 through second Amendment Act, 2021, according to which the divorce will be pronounced in presence of two witnesses. The said amendment is reproduced as under:-

1. Short title and commencement.---(1) This Act shall be called the Muslim Family Laws (Second Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of section 7, Ordinance VIII of 1961.---In the Muslim Family Laws Ordinance, 1961 (VIII of 1961), in section 7,---

(i) in subsection (1), for the full-stop, occurring at the end, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:---

"Provided that where the parties belong to Fiqah-e-Jafria,---

(a) the man may voluntarily and with his free will pronounce himself or through duly authorized attorney (Vakil) Talaq uttering in literal Arabic words (seegha) in the physical presence of at least two witnesses qualifying the requirements of clause (1) of Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No. 1 of 1984);

(b) the pronouncement of Talaq shall be ineffective if it is done jokingly or under anger, intoxication, insanity, duress or coercion of any kind and from any corner whatsoever; and

(c) in case of dispute, with reference to clauses (a) or (b) arising due to difference of opinion, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the "Mujtahid-e-Alam" and the decision of Mujtahid-e-Alam shall have a status of an award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Explanation.---The expression "Mujtahid-e-Alam (Faqih-e-Azam)" means a juris-consult, religious scholar or doctor of Shia school of thought well versed with Shariah having international repute and of such recognition. The Council of Islamic Ideology shall maintain a panel of Mujtahid-e-Alam having aforesaid qualifications."; and

(ii) after subsection (1), amended as aforesaid, the following new subsection

"(1A) As enshrined in Article 227 of the Constitution of the Islamic Republic of Pakistan, the divorce and matters connected therewith or ancillary thereto shall be decided according to the personal law interpreted by Fiqah-e-Jafria (Shia school of thought).".

According to the learned counsel for the petitioner Seeghajaat must be read in the presence of the parties otherwise the marriage cannot be dissolved between the parties under Shia personal law. He has referred to Naheed Fatima v. Syed Amir Azam Rizvi and others (PLD 1987 Karachi 670), Mst. Sharifan v. Abdul Khaliq and another (1983 CLC 1296), Mst. Resham Bibi v. Muhammad Shafi (PLD 1967 Azad J&K 32), Syed Ali Nawaz Shah Gardezi v. Lt.-Col. Muhammad Yousaf Khan, Commissioner, Quetta Division (PLD 1962 (W.P.) Lahore 558), Mst. Maryam Bano v. Hussain Ali and another (1984 CLC 1961), Syed Azharul Hussain Naqvi v. Hamida Bibi alias Eshrat Jahan and 3 others (1987 CLC 1041), The State v. Syedda Salma Begum and another (PLD 1965 (W.P.) Karachi 185), Mst. Asmat Nigar v. Sayed Ibrar Hussain Shah and 2 others (2004 YLR 111), Syed Asad Raza Naqvi v. Mst. Saima Fatima and another (2014 MLD 254) and Mst. Zeba v. Abdul Ali (2002 SCMR 1315) to support his argument.

4. The respondent No.1 was proceeded against ex-parte on 11.04.2022.

5. Ex parte arguments heard. File perused.

6. Notably, both the parties have got their statements recorded in the presence of the Family Judge. The petitioner has not denied the presence of respondent No.1 in the court. His only argument is that Talaq will become effective only after Seeghajaat read by him. In this context, it will be important to mention that under the personal law of Fiqa Jafria the divorce takes effect when the Arabic sentences (Seeghajaat) are read in presence of two witnesses. To trace out the relevant judicial precedents, the first famous authority is in case titled Syed Ali Nawaz Shah Gardezi v. Lt.-Col. Muhammad Yusuf Khan, Commissioner, Quetta Division reported as (PLD 1962 (W.P.) Lahore 558) in which Single Judge of this Court had dealt with the proposition in detail and held in para 74 that two witnesses are not only required as a proof of divorce under Shia law but essential to the very act of divorce as it is related to substantive law. Relevant extract at page 626 is reproduced as under:-

" ..It will be noticed that it is not with regard to proof of divorce that the Shia law insists on two witnesses but to the very act of divorce and it cannot, therefore, be held that the matter related to proof and not to substantive law .."

In Syed Ali Nawaz Shah Gardezi v. Lt.-CoL. Muhammad Yousaf Khan, Commissioner, Quetta Division (PLD 1962 (W.P.) Lahore 558), same view (supra) was followed with a further reference to Mulla's Principles of Mohammadan Law that under Shia law a Talaq must be pronounced orally in the presence of two competent witnesses and Talaq communicated in writing will not be valid unless the husband is physically incapable of pronouncing it orally. Extract from para 5 is reproduced as under:-

"Mr. S. Anwarali has also invited my attention to Mulla's Principles of Mahommedan Law where it is again stated that a Talaq under Shia Law must be pronounced orally in the presence of two competent witnesses, and a talaq communicated in writing, is not valid unless the husband is physically incapable of pronouncing it orally."

Likewise, in The State v. Syedda Salma Begum and another reported as (PLD 1965 (W.P.) Karachi 185) same view was followed with a reliance upon Muslim Law as administered in British India by Saksena according to which

"Under Shia Law, a Talaq is of no effect unless it is pronounced:

(1) Strictly in accordance with Sunna

(2) in Arabic terms.

(3) in the presence of at least two adult male witnesses."

This follows that Talaq pronounced by respondent No.1 was not valid as it did not comply with the legal requirements prescribed by Sia Law. If a Shia is unable to pronounce Talaq in presence of wife in the prescribed manner then it cannot be pronounced in presence of two male witnesses and communicated to her in writing. There is nothing on record to show that the respondent No.1 was incapable of pronouncement in the prescribed form and manner before the witnesses."

In Syed Azharul Hassan Naqvi v. Hamida Bibi alias Eshrat Jahan and 3 others reported as (1987 CLC 1041) it was held that Talaq pronounced by a Shia male had to be heard by two "Adil" males if it has to result in breaking of ties. Relevant extract from para 3 is reproduced as under:-

"3. The precise question which came up for decision before the learned trial and appellate Courts as well as before this Court was whether or not the Talaq pronounced by the petitioner was valid. Whereas the petitioner insisted that Talaq pronounced by him was in consonance with the Muslim law as followed by Shias yet respondent No.1 asserted that no valid Talaq had been given by the petitioner and that the marriage continued to subsist. Admittedly, under Shia law pronouncement of Talaq by the petitioner was required to be heard by two adil males if it were to result in the breaking of marriage tie. The learned

trial court, on the basis of the evidence led by the parties, reached the conclusion that the pronouncement of Talaq made by the petitioner did not conform to the requirement of Shia law inasmuch as it was not heard by two adil males and, therefore, respondent No.1 could not be said to have ceased to be his wife. This finding of the learned trial Court having been endorsed by the learned Additional District Judge the petitioner has invoked the extraordinary jurisdiction of this Court."

In Mst. Asmat Nigar v. Sayed Ibrar Hussain Shah and 2 others reported as (2004 YLR 111), Division Bench of Peshawar High Court has given reference to the famous book; Muhammadan Law by Syed Amir Ali the Shia doctrine of Talaq was discussed. Relevant extract is reproduced as under:-

"The requirement of valid Talaq under Shia Law is that it shall have no effect unless it is pronounced strictly in accordance with Shia Law, in Arabic words in presence of two adult male witnesses and the wife but when the presence/attendance of the wife cannot be procured, then the husband can pronounce the Talaq in specific Arabic words which is known as "Khutba Talaq", but in presence of two male witnesses and the same can be reduced into writing and forwarded to wife or it may be intimated to her otherwise.

3. Amir Ali in his book Muhammadan Law, Vol. II, Seventh Edition has stated Shia Doctrine of Talaq as follows:-

"They do not allow a Talaq to be given in writing nor in any language other than Arabic when there is ability to pronounce the words necessary for a valid repudiation .Even an absent husband cannot effect a valid Talaq in writing. He must pronounce the words in the presence of witnesses, and the fact of his doing so may be recording in writing, which may be forwarded to the wife or it may be intimated to her otherwise."

In Syed Asad Raza Naqvi v. Mst. Saima Fatima and another (2014 MLD 254), a reference was given to Mst. Kaneez Fatima v. Wali Muhammad and another (PLD 1993 Supreme Court 901), while holding that Section 7 of the Ordinance, 1961 is to be applied and interpreted to the facts of the case. However, it was held that such Shia male can pronounce the divorce afresh. Para 14 is relevant and is reproduced as under:-

" ..Since, the valid Talaq is a precondition for exercise of jurisdiction under section 7(1) of the Muslim Family Laws Ordinance, 1961, or initiating proceedings under it and since the Talaq in question is invalid from the very face of it, therefore, the respondent No.2 was not liable to act upon such invalid Talaq and as such any proceedings, it initiated, on the basis of invalid talaq, would be illegal and without lawful authority and of no binding effect. So far as the case-law cited by learned counsel for petitioner in connection with the provisions of section 7 of Muslim Family Laws Ordinance, 1961, is concerned, a larger Bench of Hon'ble Supreme Court of Pakistan, examined such question in the case of Mst. Kaneez Fatima v. Wali Muhammad (PLD 1993 SC 901) and observed in its judgment at page 910 as follows:--

"The provisions of section 7 of the Ordinance have remained controversial from the very beginning and there are conflicting views in general about it. In view of the Constitutional restraints the Courts cannot give any verdict on the conflicting claims challenging or justifying the provisions of section 7 of the Ordinance. However, keeping in view the facts of each case the applicability and interpretation of section 7 has to be construed in that light."

15. In view of above, this petition is hereby disposed of accordingly. with the observation that the petitioner will be at liberty to pronounce fresh Talaq to his wife the respondent No.1, keeping in view the C requirements prescribed under the Shia law and thereafter, respondent No 2 shall act in accordance with law without any delay. The listed/pending application (C.M.A. No.4609) filed by petitioner with a prayer to restrain respondent party and police concerned, from causing him any harassment etc., and from interfering in the matter of his second marriage, is also disposed of with direction to the police concerned to ensure that the harassment, if any, is not caused to the petitioner in violation of law."

A reference may also be given to Mst. Zeba v. Abdul Ali (2002 SCMR 1315) a leave granting order. Paras Nos. 3 and 4 are relevant and, therefore, reproduced as under for ready reference:-

"3. Learned counsel appearing for petitioner, inter alia, contended that according to Shia School of thought, respondent Abdul Ali did not pronounce Talaq in Arabic in presence of two witnesses. To substantiate his contention, he referred to para.2517 (page 377) of the book . He also relied upon the cases of Syed Ali Nawaz Gardezi v. Lt. Col. Muhammad Yousaf (PLD 1963 SC 51) and Mirza Qamar Raza v. Mst. Tahira Begum and 14 others (PLD 1988 Kar. 169).

4. It was argued by the learned counsel that the Family Court decided the issue "whether defendant has divorced plaintiff on 26-8-1996?" against the respondent, after having appreciated the available evidence on record, according to the principle of Qanun-e-Shahadat Order, 1984, but learned High Court in its Constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan disturbed the findings of the fact contrary to the settled law that the findings of facts are intervened very rarely unless it is established that the trial Court has recorded the perverse findings and had drawn conclusion which is contrary to law.

We have heard the learned counsel appearing for petitioner and have also gone through the judgment cited by him as well as the book . In our opinion, the

contention raised by the learned counsel needs examination in depth. As question of public importance is involved in instant petition as such leave to appeal is granted."

Notably, the amendment recently introduced is exactly in accordance with the precedents of the superior Courts of this country and the law discussed hereinabove.

7. In view of the above discussion, it can safely be concluded that a Shia male can always pronounce divorce in accordance with Shia Law which will be protected only by reading the "Seeghajaat" directly or through a representative/wakeel in the presence of female or her representative/wakeel whereafter divorce can become effective. This exercise can be undertaken in the present case even now, even with retrospective effect, if need be. With this observation, instant writ petition stands disposed of.

SA/S-91/L **Order accordingly.**

PLJ 2023 Lahore (Note) 111

Present: ALI BAQAR NAJAFI, J.

WAHEED AHMAD--Petitioner

versus

JUDGE FAMILY COURT DISTRICT FAISALABAD AND ANOTHER--Respondents

W.P. No. 65285 of 2019, decided on 3.4.2023.

Constitution of Pakistan, 1973--

----Art. 199--Suit for recovery of maintenance allowance of minor--Interim order--Adopted daughter--Entitlement of maintenance allowance--Petitioner adopted a female child on her birth and continued to maintain her until 2017 when his wife, was divorced by him--The dispute has now been raised by petitioner that he is not responsible to pay maintenance allowance to minor--It is not denied by petitioner that it was an interim order which has yet to culminate into a final order in proceedings pending before family Court--Under law, adopted daughter is entitled to maintenance allowance--It will be unjust for petitioner to deprive minor daughter, once adopted for his emotional satisfaction, from maintaining her just because of divorce of his wife. Admittedly, since adoption both petitioner and his wife had been living together happily enjoying custody of minor seeing her grow--Petition dismissed. [Para 7 & 8] A, B & C

2010 YLR 1327 and 2018 MLD 407 *ref.*

Mian Tariq Hussain, Advocate for Petitioner.

Mr. Muhammad Waseem Sandhu, Advocate for Respondents.

Date of hearing: 3.4.2023.

ORDER:- Through this constitutional petition, the petitioner has challenged the order dated 02.10.2019 passed by Respondent No. 1/Judge Family Court, Faisalabad whereby the interim maintenance of the minor/Respondent No. 2, namely, Kainat was fixed @ Rs. 4000/-per month.

2. Brief facts giving rise to the filing of this constitutional petition are that the petitioner was married with one Shamim Akhtar on 20.04.1998 but according to her she was not given any maintenance allowance and, therefore, claimed it to the extent of Rs. 15000/- per month on the ground that petitioner earned Rs. 70,000/- to 80,000/- per month being owner of the property and running the business of power looms. The suit was contested by the petitioner who stated that on 20.02.2017 the mother of Respondent No. 2, namely, Shamim Akhtar had admitted that Respondent No. 2 was not her biological daughter and that she was adopted by her being the (sic) daughter of her brother, Muhammad Jamil. However, learned Family Court *vide* impugned order observed that it was admitted by the petitioner that Respondent No. 2 is an adopted daughter and she was taken in his custody at the time when she was just born (6/7 days age) and ever since she remained with the petitioner until Shamim Akhtar was divorced by the petitioner. The Court further observed that the interim maintenance could be fixed by the Court and of course, the final decision shall be taken by the Family/Guardian Court on the basis of evidence which the respective parties may produce.

3. Learned counsel for the petitioner submits that petitioner is not the biological father of Respondent No. 2, therefore, is not legally entitled to pay the interim maintenance allowance to her. However, learned counsel for Respondent No. 2 submits that she always thought of the petitioner as her real father and that it is not her fault if Shamim Akhtar had separated herself from the petitioner. It was also argued that according to the statement of said Shamim Akhtar she had not separated from the petitioner. It was also

argued that although in her statement made on 20.02.2017 she admitted that Respondent
No. 2 was not the biological daughter of the petitioner but an adopted daughter, could not be deprived of her interim maintenance according to law.

5. Arguments heard. File perused.

6. Admittedly in the suit for recovery of maintenance filed by Shamim Akhtar against the petitioner on 20.02.2016 she had not claimed that Respondent No. 2 was born during her wedlock with the petitioner and in this context she had made a categorical statement before the Court on 20.02.2017 admitting this position, whereafter, the spouses got separated. However, she filed a suit for recovery of the maintenance allowance against the petitioner for herself and for her daughter, Kainat which was dismissed for non-prosecution on 03.10.2018. Meanwhile, on 06.05.2019 said Kainat filed the suit against the petitioner claiming the maintenance allowance only for herself, which was contested by filing written statement wherein the petitioner stated that Respondent No. 2 is not entitled to any maintenance allowance being only an adopted daughter.

7. It is very strange to note that the petitioner adopted a female child on her birth and continued to maintain her until 2017 when Shamim Akhtar his wife, was divorced by him. The dispute has now been raised by the petitioner that He is not responsible to pay the maintenance allowance to the minor. It is not denied by the petitioner that it was an interim order which has yet to culminate into a final order in the proceedings pending before the family Court.

8. Under the law, the adopted daughter is entitled to maintenance allowance as observed in case titled *"Muhammad Aslam vs. Shazia Bano and 4 others"* reported as 2010 YLR 1327 particularly when it comes to the term of maintenance of the minor daughter during the interim period of pendency of family suit for recovery of maintenance allowance before the family Court.

It will be unjust for the petitioner to deprive the minor daughter, once adopted for his emotional satisfaction, from maintaining her just because of divorce of Shamim Akhtar Admittedly, since the adoption both petitioner and Shamim Akhtar, had been living together happily enjoying the custody of the minor seeing her grow. Learned counsel for the petitioner has failed to point out any illegality in the impugned order warranting interference by this Court. While relying in this behalf to case titled *"Mst. Tahira and, 4 others vs. Muhammad Irfan and another"* reported as 2018 MLD 407 where the constitutional petition was dismissed, this petition has been found meritless which is hereby **dismissed.**

(Y.A.) **Petition dismissed.**

PLJ 2023 Lahore (Note) 116

Present: ALI BAQAR NAJAFI, J.

GHULAM FARID--Petitioner

versus

KHALIDA BIBI etc.--Respondents

R.P. No. 51524 of 2022 in W.P. No. 51618 of 2019,decided on 14.9.2022.

Civil Procedure Code, 1908 (V of 1908)--

----S. 144 & O.XLVII R.1--Punjab Family Court (Amendment) Act, (XI of 2015), S. 17-A--Suit for recovery of maintenance allowance--No annual increa was fixed in final order of both Courts--Introducing of amendment in Family Court (Amendment) Act--Automatic mandatory annual increase in maintenance allowance--Suit was decreed on 7.7.2009--Amendment required to be applied from date of amendment--Consolidated order--In paragraph No. 2 of judgment contention regarding 10% annual increase notwithstanding amendment made on 18.03.2015 was raised--However, this plea was not specifically dealt in paragraph but-was deemed to be rejected with dismissal of writ petitions filed by respective parties--Both Courts did not-fix any annual increase--Meanwhile, amendment was introduced on 18.03.2015 in section 17-A through Punjab Family Court (Amendment) Act XI of 2015 whereby automatic increase @ 10% was mandatory--An amendment imposing a monitory liability has to be strictly construed, therefore, required to be applied from date of amendment *i.e.* 18.03.2015--The 10% annual increase will be available from said date and not date of filing of family suit--Review petition dismissed. [Para 3 & 4] A & B

PLD 1954 Privy Council 22 & PLD 1970 SC 80 *ref.*

Mr. Abdul Rauf, Advocate for Applicant.

Date of hearing: 14.9.2022.

ORDER

Through this petition under, Section 144 read with Order XLVII Rule-1 CPC, the consolidated order dated 23.06.2022 passed in W.P. No. 51618-2019 is sought to be reviewed on the ground that the points raised in the writ petition were not discussed in the order.

2. After hearing, the learned counsel for the applicant and perusing the file, it is straightaway observed that in the writ petition the prayer was made to the extent of grant of 10% annual increase in the maintenance from the date of institution of the suit. Although this was not discussed in the order but the writ petition was dismissed in the background of other connected writ petitions. Obviously, after the amendment of 2015 the annual increase in the maintenance allowance is mandated by the statute but on the exceptional grounds, depending on case to case basis, it can be increased to more than 10%. Prior to the amendment in the statute it was granted at any rate by the family Court.

3. In the Paragraph No. 2 of the judgment dated 23.06.2022, the contention regarding the 10% annual increase notwithstanding the amendment made on 18.03.2015 was raised. However, this plea was not specifically dealt in the paragraph but-was deemed to be rejected with the dismissal of the writ petitions filed by the respective parties.

4. However, admittedly, the family suit of the recovery of maintenance allowance was filed on 07.07.2009 and was decided on 29.04.2014 which order was assailed before the appellate Court, in continuation of the proceedings, but the appeal was dismissed on 29.07.2015. Both the Courts did not-fix any annual increase. Meanwhile, the amendment was introduced on 18.03.2015 in Section 17-A through Punjab Family Court (Amendment) Act XI of 2015 whereby the automatic increase @ 10% was mandatory. Of course, an amendment imposing a monitory liability has to be strictly construed, therefore, required to be applied from the date of amendment *i.e*. 18.03.2015. The 10% annual increase will be available from the said date and not the date of filing of the family suit. Reliance can be placed upon case titled *"Gondicalo Hypolito Constancio Noronha vs. Damji Devji and others"* reported as PLD 1954 Privy Council 22 and case titled *"The Income Tax Officer (Investigation) Circle I, Dacca and another vs. Sulaiman Bhai Jiwa"* reported as PLD 1970 SC 80.

5. With this observation, this review petition is hereby dismissed in limine.

(Y.A.) **Review petition dismissed.**

PLJ 2023 Lahore (Note) 138

Present: ALI BAQAR NAJAFI, J.

AHSAN FARMAN--Petitioner

versus

FEDERATION OF PAKISTAN etc.--Respondents

W.P. No. 27977 of 2016, decided on 22.2.2021.

Constitution of Pakistan, 1973--

----Art. 199--Contractual appointment--Regularization notification--Dismissal from service--Departmental appeal--Rejected--Regularization letter issue by NADRA--petitioner who was employed as Assistant Supervisor in (NADRA) on 18.02.2011 on contract basis and regularized *w.e.f.* 07.03.2012 under Notification referring letter--The existence of letter is not specifically denied by respondent in their report and parawise comments, hence admitted--petitioner is not, therefore, a contractual employee--Writ by him is maintainable--Petition allowed. [Para 1 & 2] A & B

Ch. Abdul Hamid Gujjar, Advocate for Petitioner.

Mr. Sarfraz Ali Khan, Deputy Attorney General for Respondent No. 1.

Mr. Haamid Rafique and Mr. Imran Zil Malik, Law Officers, NADRA.

Date of hearing: 14.2.2020.

ORDER

The petitioner who was employed as Assistant Supervisor in National Database and Registration Authority (NADRA) on 18.02.2011 on contract basis and regularized *w.e.f.* 07.03.2012 under the Notification dated

13.04.2012 referring letter No. NADRA/HR/Misc/ 27/Regularization dated 07.03.2012 impugns orders dated 10.12.2015 and 04.07.2016 passed by the Director General and respondent No. 1 respectively whereby he was dismissed from service and his departmental appeal had also met the same fate.

Learned counsel for the petitioner contends that since he was the beneficiary of the said letter, therefore, he may be considered as the regular employee. The letter reads as under:

"To: Director General
PHQ Lahore

Info: Chairman Secretariat
Deputy Chairman Secretariat

Subject: REGULARIZATION OF NADRA EMPLOYEES

Reference: Further to our letter No. NADRA/HR/Misc/ 27/Regularization dated 7th March 2012

1. The options received from employees presently serving within the administrative jurisdiction of PHQ Lahore have been examined and competent authority has been pleased to accept the option of all optee employees whose options have been found in order, as per following details:

a) All those employees who opted for BPS listed in (Annex-A), their services stand regularized in the BPS equivalent to their respective NADRA "O" or "T" Pay scales as mentioned in (Annex-B), with effect from their date of joining or rehiring (in case of break in service) in NADRA or 1st November, 2002, whichever is later. All these employees will be treated as regular employees of NADRA in the BPS equivalent of NADRA "O" or "T" Pay scales both in which they were originally hired and

subsequently promoted both with effect from the respective dates of first joining and date of promotion as NADRA contractual employee. All these employees will be the regular NADRA employees in BPS on permanent strength of NADRA and will be entitled to all eligible benefits of BPS employees of the autonomous bodies. Pay fixation for entire service period in BPS equivalent of all NADRA "O" and "T" pay scales will be carried out shortly. Further constitution of service books including maintaining of leave account will be carried out as soon as possible.

b) All those employees, who opted for open ended contract (up to superannuation) (listed in Annex-C) have also been converted from their existing contract to open ended contract with immediate effect. The terms and conditions of open ended contract (up to superannuation) will be applicable to all such employees.

c) There is no need for issuance of separate contract Letter to the above regularized employees as options Exercised by the employees and acceptance/approval Thereof by the competent authority serves the Purpose and shall be given effort accordingly.

2. Any error/omission/query in this letter may please be Communicated at the earliest.

Director General HR
(Tahir Maqsood Khan)"

The existence of this letter is not specifically denied by the respondent/ NADRA in their report and parawise comments, hence admitted. The

petitioner is not, therefore, a contractual employee. The writ by him is maintainable.

3. For the reasons recorded in my order of even date passed in W.P.No. 7128 of 2016 titled *"Khalid Mahmood vs. Federation of Pakistan etc."*, this petition is **allowed** and impugned orders dated 10.12.2015 and 04.07.2016 are hereby set aside.

(Y.A.) **Petition allowed.**

PLJ 2023 Lahore (Note) 142

***Present*: ALI BAQAR NAJAFI, J.**

ALI HAIDER--Petitioner

versus

INSPECTOR GENERAL OF POLICE, etc.--Respondents

W.P. No. 11571 of 2023, decided on 11.5.2023.

Constitution of Pakistan, 1973--

----Art. 199--Constitutional petition--Post of traffic assistant--Petitioner was declared successful--Petitioner was not appointed--Re-advertisement of post--Involving of petitioner in a criminal case--Acquittal of petitioner before applying for post--Registration of FIR and acquittal therein are facts which were not required to be disclosed as acquittal order has clearly nullified adverse effect of FIR--Acquittal order by Court has effect as if no FIR was ever registered against petitioner--Any other view is bound to undermine legal effect of Courts orders--Affidavit sworn at time when FIRs were registered, pending in Court would have different effect--Its involvement may have different adverse consequences which this Court cannot stop--Before applying for post petitioner was already acquitted, therefore, could not be disqualified for reason that FIR was registered against him--Petition disposed of.

[Para 3, 4 & 6] A, B & C

Malik Muhammad Riaz Awan, Advocate for Petitioner.

Mr. Falek Sher Bakhsh Gill, AAG with A.d. Dhakku, Inspector Legal, Muhammad Asif, SI & Muhammad Ashraf, ASI.

Date of hearing: 11.5.2023.

ORDER

Through this constitutional petition, the petitioner has challenged the recruitment process of 2020 conducted by the respondents for the post of Traffic Assistant (BPS-7) with a further prayer to declare the said act of the respondents illegal and unlawful and by re-advertising the post, the petitioner be allowed to participate in the written/typing test for the post of Traffic Assistant in Punjab Traffic Police.

2. Brief facts giving rise to the filing of this constitutional petition are that in response to the advertisement published in the newspaper for the appointment of Traffic Assistant (BPS-7), the petitioner being an eligible candidate applied. He was called for physical test and was declared successful by placing him at Sr No. 63 but he was not appointed on the ground of being involved in case FIR No. 283/2018, dated 07.09.2018, under sections 337-F(v), 337-F(vi), 34 PPC registered at Police Station Saddar Tandlianwala. The petitioner approached Respondents No. 1 & 2 and submitted that he has already been acquitted in the said case on 15.03.2019. The petitioner also filed W.P.No. 27646-2021 seeking a direction to Respondent No. 1 to decide the application of the petitioner which was disposed of on 26.04.2021 by this Court while directing Respondent No. 1/IG Police to decide the application of the petitioner but he turned down the request of the petitioner, hence this petition.

3. After hearing the arguments of the parties it is noted that in the petition it is not denied that before applying for the recruitment for the post in the police department, the petitioner had been involved in a criminal case which fact he failed to disclose in his application either inadvertently with bonafide mistake or with reasonable belief or misinterpretation of law relating to the acquittal in a criminal case. A close reading of the affidavit submitted by the petitioner reveals that when no FIR was disclosed, a scrutiny of the antecedents of the candidate was made which disclosed that a criminal case

was registered against him. A language of the affidavit will be relevant and particularly clause (2) is most relevant to the present case, therefore, is reproduced as under:-

میں حلفاً بیان کرتا/کرتی ہوں کہ مجھ پر کوئی مقدمہ کسی بھی تھانہ میں درج نہ ہے اور نہ ہی کوئی بھی مقدمہ کسی بھی تھانہ یا عدالت میں زیر سماعت/ زیر التوا ہے۔

The contents of the wording of the typed stereotyped affidavit does not require the applicant to submit the acquittal date/order, but merely requires the information of pendency of a criminal case. Therefore, in my humble view registration of FIR and acquittal therein are the facts which were not required to be disclosed as the acquittal order has clearly nullified the adverse effect of the FIR. The acquittal order by the Court has the effect as if no FIR was ever registered against the petitioner. Any other view is bound to undermine the legal effect of the Courts orders.

4. Obviously, the affidavit sworn at the time when FIRs were registered, pending in the Court would have different effect. Its involvement may have different adverse consequences which this Court cannot stop.

5. All the judgements/orders cited by the respondents relate to the acquittal orders earned after submitting the affidavits thus are not relevant to the present case. Even in order dated 01.11.2022 passed in C.P. No. 4709/2019 titled *"Zeeshan Ahmad versus Govt. of Punjab through Inspector General of Police, Punjab, Lahore and others"* the facts were different as the acquittal order seems to have been passed after the application for appointment was submitted. Para-2 is reproduced as under:

> "It is incumbent upon the petitioner to correctly disclose the solicited facts, including that a criminal case was registered against him. It was immaterial that he was subsequently acquitted in the said case. If the true facts had been disclosed the petitioner may have been selected and appointed provided he fulfilled the stated criteria and attained the requisite marks. By filing a false affidavit the petitioner had effectively

disqualified himself. By suppressing information, and having been found out, the petitioner has no one to blame but himself. Leave to appeal is declined and, consequently, this petition is dismissed".

6. Thus before applying for the post the petitioner was already acquitted, therefore, could not be disqualified for the reason that FIR was registered against him.

7. In this view of the matter, this writ petition is **disposed of** with a direction to the respondents to appoint the petitioner as constable, if otherwise, found eligible as the affect of previous FIR in which he had been acquitted, would not come in his way.

(Y.A.)

PLJ 2023 Cr.C. (Note) 205

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI, J.

MUHAMMAD ARSHAD--Petitioner

versus

STATE and another--Respondents

Crl. Rev. No. 415 of 2013, decided on 8.5.2023.

Criminal Procedure Code, 1898 (V of 1898)--

----Ss. 439/435--Criminal revision--The person from, whom fertilizers were purchased--Under Section 18(1) of Fertilizer Control Act, 1973 storing fake and adulterated fertilizer is an offence but it is also not deniable that at time of raid no person from market was asked to become a private witness--It was raid conducted only by departmental functionaries--Besides, it is also not denied by prosecution that petitioner remained in this fertilizer business for quite long and during which, he was never alleged to have sold spurious or adulterated fertilizers--He is first offender, therefore, his previous conduct is also to be considered at time of deciding present revision--He has also spent 7/8 month behind bars prior to suspension of his sentence by High Court--The arguments/ observations adopted by courts below that petitioner did not challenge findings of laboratory before higher forum which proves bis guilt, cannot be appreciated at this stage since he was not manufacturer of said adulterated fertilizers but a seller, dealer etc--Appeal allowed. [Para 3] A, B & C

Petitioner in person.

Mr. Ejaz Ahmed Pannun, DDPP with Ali Asghar, Deputy Director.

Date of hearing: 8.5.2023.

ORDER

Through this Criminal Revision under Section 439/435, Cr.P.C. petitioner challenges judgment dated 09.03.2013 passed by the learned trial Court as well as judgment dated 30.05.2013 passed by the learned Addl. Sessions Judge in case FIR. No. 419 dated 10.11.2010 registered under Sections 18(1), 10(1), 16(1) of the Punjab Fertilizer (Control) Order, 1973 read with Section 6(1) of the Punjab Essential Articles (Control) Act 1973 at Police Station Ahmad Nagar, District Gujranwala. The facts of the prosecution case as contained in complaint (Exh.PC) and FIR (Exh.FD) is that on 18.11.2010 on spy information that a suspected DAP Fertilizer is being sold at Warpal Chatha, Deputy District Agriculture Officer, Assistant Controller Fertilizer, Tehsil Wazirabad, along with Binyameen Agriculture Inspector and Muhammad Imran Agriculture Officer raided the dealer shop of the appellant and obtained sample of DAP Sona FFC, handed over one sample to the dealer, second sent to the laboratory of Soil Fertility, Gujranwala on 08.11.2010 and the third sample was sent to Director Soil Fertility, Lahore. The investigation was conducted and report under Section 173, Cr.P.C. was presented before the learned trial Court whereafter the charge was framed, copies were delivered and the prosecution presented Ali Asghar Cheem, (PW-1), Muhammad Binyameen (PW-2), Muhammad Arif (PW-3), Naveed Ahmed (PW-4) and Muhammad Aslam, SI/Investigation Officer (PW-5) whereas Imran Agriculture Officer and Ammar Aslam, were given, up. In the statement under Section 342, Cr.P.C., recorded on 25.07.2012 the petitioner denied the allegation. The learned trial court observed that it was a foolproof case as the raid was conducted and the petitioner was arrested from the spot read-handed and the recovered 38 sacks were found fake.

2. Arguments heard. File perused.

3. It is not the prosecution case that some complaint was received in the Department that the petitioner was selling spurious or adulterated fertilizers. No private witness appeared from the prosecution side to show that because of the use of said fertilizers the crop was damaged. It is also not the case of the prosecution that petitioner was manufacturer of the said fertilizers. The Investigating Officer/PW-5 did not investigate to find the source from where the said fertilizers were collected by the petitioner. The prosecution has not been able to show to the court that adulterated fertilizer has caused loss to any cultivator. The report (Exh.PB) from by Testing Laboratory, Gujranwala reveals the Nitrogen 2.28% instead of 18%, phosphors 0.62% instead of 46% and no invoice of Fauji Fertilizer Company was produced by the appellant showing that he purchased the said fertilizer from the said company. Therefore, as stated above, it was incumbent to find out the person from whom the fertilizers were purchased. Under Section 18(1) of the Fertilizer Control Act, 1973 storing fake and adulterated fertilizer is an offence but it is also not deniable that at the time of raid no person from the market was asked to become a private witness. In other words, it was raid conducted only by departmental functionaries. Besides, it is also not denied by the prosecution that petitioner remained in this fertilizer business for quite long and during which, he was never alleged to have sold spurious or adulterated fertilizers. He is the first offender, therefore, his previous conduct is also to be considered at the time of deciding the present revision. He has also spent 7/8 month behind the bars prior to suspension of his sentence by this Court on 05.08.20.13, The arguments/observations adopted by the courts below that the petitioner did not challenge the findings of the laboratory before the higher forum which proves his guilt, cannot be appreciated at this stage since he was not the manufacturer of the said adulterated fertilizers but a seller, dealer etc.

4. For the foregoing reasons, I am of the view that prosecution has failed to make out a case against the petitioner, therefore, this appeal is **allowed,** conviction and sentence awarded by the learned courts below is set aside. He is on bail, his sureties stand discharged from their liabilities.

(A.A.K.) **Appeal allowed.**

PLJ 2023 Cr.C. (Note) 217

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI AND ASJAD JAVED GHURAL, JJ.

Hafiz MUHAMMAD SALEEM etc.--Appellants

versus

STATE, etc.--Respondents

Crl. A. No. 67695-J of 2020, decided on 12.12.2022.

Explosive Substances Act, 1908 (VI of 1908)--

----Ss. 4/5--Arms Ordinance, (XX of 1965), S. 13--Anti-Terrorism Act, (XXVII of 1997), S. 7--Conviction and sentence--Challenge to--Allegation of--Possessing explosive substance with dilatators--Obviously, in such like cases public/private witnesses do not come forward who would not like to be a part of any recovery proceedings just to save their skin and not to be exposed either to terrorists or, frankly to CTD--The appellants have not produced any person of intimate relations with him before Court to show that they were picked up by some intelligence agencies and confined in some illegal captivity, therefore, mere statement that they were in custody of intelligence agencies will not help them out--Huge and high level explosives have been recovered from possession of appellants which could not possibly be planted u/S. 4 of Explosive Substance Act, 1908 possession of weapons of this nature is an offence which requires explanation from appellants which they--Could not offer--Prosecution has not come up with any plea of Previous conviction or criminal antecedents of appellants, therefore, in our humble view this factor is sufficient to consider appellants as first offenders section without any exceptional circumstances of previous criminal record, time spent from their arrest be considered period of more than 3 years for their sentence to meet ends of justice--Appeal dismissed. [Para 6 & 8] A & B

Mr. Aasim Sohaib, Mr. Javed Iqbal Malik and Rana Furqan Hussain, Advocates for Appellants.

Mr. Sanaullah, DPG for State.

Date of hearing: 12.12.2022.

JUDGMENT

Ali Baqar Najafi, J.--Through this Jail appeal under Section 25 of the Anti-Terrorism Act, 1997, judgment dated 18.11.2020 passed by the learned Special Judge, Anti-Terrorism Court, Sargodha in case FIR No. 51 dated 12.09.2019 registered under 4/5 of the Explosive Substances Act, 1908, read with Section 13 of the Arms Ordinance, (XX) 1965 and Section 7 of Anti-Terrorism Act, 1997 at Police Station CTD, Faisalabad has been Challenged whereby the appellants were convicted and sentenced as under:

Hafiz Muhammad Saleem.

Under Section 5 of the Explosive Substance Act, 1908 for having in possession of one hand grenade to undergo five (05) years R.I. and his whole property stood forfeited under Section 5-A in favour of the State.

Besides the benefits of Section 382-B Cr.PC.

Muhammad Iqbal.

i. Under Section 5 of the Explosive Substances Act, 1908 for having in possession of explosive material weighing 1430 grams, four detonators and safety wire to undergo five (05) years R.1. and his whole property stood forfeited under Section 5-A in favour of the State.

ii. Under Section 13 of the Pakistan Arms Ordinance, 1965 for having in possession un-licensed weapon viz. 30-bore alongwith six live bullets to undergo five (05) years R.I with fine amounting to Rs. 50000/-(fifty thousand), in default whereof he shall further undergo three months' S.I.

The sentences of imprisonment to the accused persons (for both offences in case of Muhammad Iqbal) were ordered to run concurrently besides the benefits of Section 382-B, Cr.P.C.

2. Briefly, the prosecution story against the appellants is that the complainant Muhammad Ali, Corporal No. 901 (PW-5) alongwith other police officials/corporals, in connection with arrest of proclaimed offenders, was present at More Bhagtanwala when he received a spy information that two suspicious persons having black colour bag who may have ammunition were standing at bridge towards Chak No. 69/south, can be arrested if raided. Upon this information a raiding party was constituted which reached at the stated place at 03:05 p.m. and arrested the said two persons when pointed out by the spy. Upon Checking of Black coloured bag held in Right hand of Appellant/ Muhammad Iqbal, a .30-bore pistol alongwith 6 (sic) bullets was recovered. Further checking of the bag led to the recovery of explosive material weighing 1430 grams wrapped in white coloured polythene shopper, a match box, four detonators and safety fuse wire measuring 7 feet. From his personal search, Rs. 2570/-were also recovered from his right side pocket. Likewise, upon checking of black coloured bag hanging on the right shoulder of Hafiz Muhammad Saleem/appellant, an un-numbered light green coloured hand grenade with writing ARGES was recovered. His personal search led to the recovery of Rs. 1630/-from his right side pocket. Three (3) grams of recovered explosive. Material, .30-bore pistol, three (3) inches safety fuse, match box and detonators recovered from Hafiz Muhammad Saleem/appellant were separated for chemical analysis and sealed into two parcels as (Exh.PD) whereas the hand grenade recovered from Muhammad Iqbal/appellant was taken into possession as (Exh.PB). The complainant drafted the complaint (Exh.PG) and sent the same through Qamar ul-Islam Corpora No. 846 to Police Station for recording of formal FIR whereafter the FIR (Exh.PG/1) was recorded.

3. The report under Section 173, Cr.P.C. was prepared and submitted before the learned trial Court whereafter the charge was framed on 28.11.2019. The prosecution produced six (6) prosecution witnesses namely Muhammad Riaz, Bomb Disposal Commander,(PW-1), Rashid Mahmood, Corporal No. 888 (PW-2), Mazhar Abbas, ASI Moharrar Malkhana (PW-3), Hafiz Muhammad Irfan, Corporal No. 500 (PW-4), Muhammad Ali, Corporal No. 901/complainant (PW-5) and Sohail Khan, Inspector (PW-6) and closed the

evidence by giving up PWs Muhammad Arslan Zahoor, Corporal No. 900, Muhammad Asif Malik, Deputy Director I.B. Sargodha, Shah Nawaz, Regional Officer CTD Sargodha, Haider Ali, Assistant Director ISI and Shahid Sultan being un-necessary and tendering reports of PFSA Lahore (Exh.PK) and Exh.PL) and sanction order (Exh.PM). Thereafter the appellants were examined under Section 342, Cr.P.C., wherein they professed innocence and denied all the allegations levelled against them. The appellants neither opted to depose within the scope of Section 340(2) Cr.P.C. nor produced any defence evidence. In reply to the questions as to why this case against them and why the PWs have deposed against them, they replied as under:

Hafiz Muhammad Saleem/appellant.

"The whole story as alleged by the prosecution is false rather I was already in illegal confinement of agencies and later I was falsely involved in this bogus case while planting a fake recovery after taking it from the Malkhana. Moreover, I have no connection with any banned organization and the said fact could not be proved by the prosecution during evidence or investigation."

Muhammad Iqbal/appellant.

"The whole story as alleged by the prosecution is false rather was already in illegal confinement of agencies and later I was falsely involved in this bogus case while planting a fake recovery after taking it from the Malkhana. Moreover, I have no connection with any banned organization and the said fact could not be proved by the prosecution during evidence or investigation."

After conclusion of the trial, the learned trial Court pronounced its verdict against the appellant and awarded Him punishment as aforementioned.

5. After hearing the learned counsel for the appellant, learned DPG and perusing the record, it is straightway observed that the appellants were convicted and sentenced under Section under Section 5 of the Explosive Substance Act, 1908 for five (5) years and under Section 13 of the Arms Ordinance, (XX) 1965 for possessing .03-bore pistol for a period of five

(5) years. By applying the wisdom behind Ghulam Hussain's case reported as PLD 2020 Supreme Court 61) appellants have been acquitted under Section 7 Anti-Terrorism Act 1997 keeping in view the fact that appellants have no nexus with any banned proscribed organization. They were also acquitted under Section 4 of the Anti-Terrorism Act, 1997. As far as the allegations of the prosecution about possessing the explosive substance with the relevant detonators and fuse from the appellant/Muhammad Iqbal, and possessing hand grenade from Hafiz Muhammad Saleem/appellant is concerned, the appellant has produced Rashid Mehmood, Corporal No. 888 (PW-2) who stated that they were present with the police contingents when they received information that some unknown persons possessing black coloured bag containing weapons were standing at bridge, towards Chak No. 69/SB. When they reached there they found Muhammad Iqbal/appellant and Hafiz Muhammad Saleem/appellant. They were checked up. The Appellant/Muhammad Iqbal, was found in possession of bag hanging on his shoulder which contained .30-bore pistol alongwith 4 live bullets and also the explosive material in the light brown colour with match box and 4 detonators with the safety fuse of 7 feet. Likewise, from the possession of Hafiz Muhammad Saleem/appellant a hand grenade was recovered. The material for chemical analysis was separated from the explosive substance and since the detonators as well as the hand grenade were live, therefore, Muhammad Riaz, Bomb Disposal Commander (PW-1) examined it and verified it to be of said nature. He defused the hand grenade and extracted the explosive and prepared a report (Exh.PA) with his handwriting. The recovery memo (Exh.PB) was attested by him. In the same manner, Muhammad Ali, Corporal. No. 901 (PW-5) is the recovery witness. Sohail Khan, Inspector (PW-6) is the Investigating Officer who recorded the statements of the prosecution witnesses and collected the report of the Forensic Science Laboratory (Exh.PK & Exh.PL). Mazhar Abbas, ASI, Moharrir Malkhana (PW-3)/ stated that on 12.09.2019 the Investigating Officer handed over to him case property which he handed back to him on 18.09.2019 i.e. three sealed sample parcels of explosive and safety fuse which he received from the Investigating Officer in the office of Forensic Science Laboratory.

6. Learned counsel for the appellant has not been able to point out any ill will or grudge of the prosecution witnesses against the appellants. Obviously, in such like cases the public/private witnesses do not come forward who would not like to be a part of any recovery proceedings just to save their skin and not to be exposed either to the terrorists or frankly to the CTD. The appellants have not produced any person of intimate relations with him before the Court to show that they were picked up by some intelligence agencies and confined in some illegal captivity, therefore, mere statement that they were in the custody of intelligence agencies will not help them out. Huge and high level explosives have been recovered from the possession of the appellants which could not possibly be planted Under Section 4 of the Explosive Substance Act, 1908 possession of weapons of this nature is an offence which requires explanation from the appellants which they Could not offer.

7. Besides, we have noted that as per report submitted on 12.12.2022 the appellants would be released from jail on 14.12.2022.

8. The prosecution has not come up with any plea of Previous conviction or criminal antecedents of the appellants, therefore, in our humble view this factor is sufficient to consider the appellants as the first offenders and without any exceptional circumstances of previous criminal record, the time spent from their arrest on 12.09.2019 be considered the period of more than 3 years for their sentence to meet the ends of justice.

9. In this view of the matter, this appeal is dismissed. While maintaining the conviction and the sentence is reduced to what the appellants have already undergone in lieu of fine. They shall be released forth with if not required in any other case.

(A.A.K.) **Appeal dismissed.**

PLJ 2023 Cr.C. (Note) 219

[Lahore High Court, Lahore]

Present: ALI BAQAR NAJAFI, J.

NADEEM HAIDER and another--Appellants

versus

STATE etc.--Respondents

Crl. A. No. 23637 & 17907 of 2020, heard on 21.3.2023.

Pakistan Penal Code, 1860 (XLV of 1860)--

----S. 302(b)--Qatl-e-amd--Conviction and sentence--Challenge to--It was an unseen occurrence as no one had seen deceased being burnt to death--The prosecution evidence is available only to extent that PWs had seen appellant coming out of home of deceased--If it was looked from outside then why he was not stopped and apprehended there and then--Interestingly, they did not try to go imide house to save their Bhabhi if she was being burnt Even PWs reached--Later-in-time--They did not state a word regarding illict relation of deceased with appellant--She also did not say a word about strange relationship of deceased with her in-laws--However, PW-2 admitted that this was second marriage of deceased and that she has two daughters and her husband used to live abroad for last 4/5 years This may had been a cause of frustration of deceased which probably had led to finish herself The investigating officer PW-13 never interrogated her husband or owner of house--Afzaal Tokeywala whose statements were relevant in unseen occurrence--The above facts are dent in prosecution story which is brought with motive and direct evidence--Why visibly would appellant kill deceased and what could be possible motive to do so is shrouded in mystery--The crime scene was compromised--The investigating officer did not collect any relevant CDR to directly connect appellant with crime--The call made to PW-2 was not recognized as she

knew voice of appellant so he did not call PW-2--All these are prosecution lacunas which are sufficient to disbelieve prosecution story, therefore Prosecution has not been able to prove case against appellant beyond reasonable doubt--No iota of evidence was brought against "M" to malign him in this case, hence was rightly acquitted--Prosecution has miserably failed to bring home guilt of appellant beyond reasonable shadow of doubt--The impugned judgment has been passed merely on conjectural and whimsical reasons, which cannot be approved of the impugned conviction and sentence of appellant, is set-aside and he is acquitted of charge--He shall be released forthwith if not required in connection with any other case--Appeal accepted. [Para 10 & 11] A, B, C & D

Mr. Muhammad Tahir Butt Saleh, Advocate for Appellants.

Mr. Ijaz Ahmad Pannun, DDPP for State.

Mr. Naveed Inayat Malik, Advocate for Complainant/Appellant (in Crl. A. No. 17907-2020).

Date of hearing: 21.3.2023.

JUDGMENT

The appellant, namely, Nadeem Haider was held guilty under Section 302(b), PPC by learned Additional Sessions Judge, Lahore after the trial of case-FIR No. 106/2016, dated 01.02.2016, registered under Section 302, 34, 440, 435 PPC, at police station Liaqatabad. District Lahore, *vide* judgment dated 28.02.2020 and was convicted and sentenced as under:

"**Appellant/convict, Muhammad Nadeem Haider.**

U/S. 302(b) PPC sentenced to life imprisonment with fine of Rs. 5,00,000/- and in default whereof, to further undergo SI for a period of six months.

Benefit of Section 382-B Cr.P.C. was given to the convict/ appellant.

2. The convict-appellant, namely, Muhammad Nadeem Haider has called in question the impugned judgment through Crl. A. No. 23637-2020. However, the complainant of FIR, namely, Kalsoom Bibi also filed Crl. A. No. 17907-2020 against judgment dated 06.05.2020 passed by Additional Sessions Judge. Lahore whereby the complainant was directed to pay Rs.25000/- as compensation to the Muhammad Nasrullah/Respondent No. 2 within 15 days otherwise it was to be recoverable as arrears of Land Revenue as well as the acquittal of Muhammad Nasrullah/Respondent No. 2. Both the appeals are being disposed of together through this single judgment.

3. Briefly, the prosecution case against the appellant/Nadeem Haider is that complainant/PW-1 Kalsoom Bibi submitted written application (Exh.PA) before the police by alleging that her daughter, namely. *Mst.* Abida (deceased) was married to one Shahid (not produced) and out of this wedlock two daughters were born who are alive and in her custody. Her son-in-law was employed in Dubai (Sharjah). *Mst.* Abida Bibi (deceased) was a tenant in the house of one Afzal (not produced) situated at Tokawala Chowk. On 01.02.2016, *Mst.* Abida Bibi (deceased) went out to drop her daughters in the school and thereafter was supposed to return to her house. At about 11.00 a.m. the complainant went to the house of her daughter but it was locked. She made a phone call to her but it was switched off. At about 2.30 p.m., an unknown person made a phone call from the cell phone of complainant's daughter at the cell phone of her other daughter *Mst.* Nazia (PW-2) and asked her to receive Abida's daughters from the school who were picked up by her. At about 7.30 p.m. Mohallahdars raised alarm that house of *Mst.* Abida (deceased) was set on fire whereupon the complainant (PW-1) along, with her said daughter *Mst.* Nazia (PW-2) immediately reached at the house of *Mst.* Abida (deceased) which was already burnt and the burnt dead body of *Mst.* Abida Bibi was lying on the bed. The motive behind the occurrence was that 4/5 days prior to the occurrence, Nadeem Haider/appellant went to the house of deceased at night time but was abused by her. For this grudge, he along with

Nasrullah (since acquitted) and two unknown persons put the house of *Mst.* Abida (deceased) on fire and burned her to death while committed her murder. On the basis of written application (Exh.PA) the FIR (Exh.PE) was registered under Section 302, PPC.

4. After completion of investigation by Muhammad Ansar Inspector/PW-13. The challan against the appellant was submitted before the trial court. On indictment, the appellant pleaded not guilty and claimed trial. The prosecution produced 15 witnesses, namely. *Mst.* Kalsoom Bibi/PW-1. *Mst.* Nazia Waheed/PW-2. Asif Fara//PW-3. Ghulam Rasool/PW-4. Shamshad Bibi/PW-5. Umar Farooq/PW-6. Muhammad Imran Constable/PW-7. Pervaiz Akhtar ASI PW-8. Syed Younas Bukhari draftsman/PW-9. Muhammad Qaisar HC/PW- 10. Dr. Faiza Munir Kazmi/PW-11. Muhammad Shahbaz Constable/PW-12. Muhammad Ansar Inspector/PW-13. Ghulam Hassan Forensic Scientist Finger/PW-14 and Aabad Ayoub Forensic Scientist/PW-15. Thereafter. Makhdoom Saad Junior Forensic Scientist was summoned by the court as CW-1 Thereafter, the accused/appellant along with acquitted person were examined under Section 342, Cr.P.C. whereby they professed their innocence and denied all the allegations levelled against them. They did not opt to depose within the scope of Section 340(2), Cr.P.C. nor they opted to produce evidence in defence. In reply to the question "Why this case had been lodged against you and why the PWs had deposed against you". Muhammad Nadeem Haider/ appellant stated as under:

> *"I am innocent in this case. I am not involved in this occurrence. All the PW's are related to complainant. There is no independent evidence in this case 1 neither visit the house of deceased nor did I abuse her before occurrence that deceased Mst. Abida Bibi committed suicide by setting on fire her house. Mst. Abida Bibi and her husband used to quarrel with each other because there was no male child. The*

husband of deceased Mst. Abida Bibi wanted to contract another marriage for the purpose of male child and she was stone in his way. Therefore, for said reason, Mst. Abida Bibi committed suicide. The complainant had strong suspicion that I had illicit relation with said Mst. Abida Bibi and 1 used to induce her against her husband."

5. The other acquitted co-accused Muhammad Nasrullah stated as under:

"I am innocent in this case. Police declared me innocent in this case during the course of investigation. All the PW's did not say anything about me."

6. After conclusion of the trial, the learned trial court pronounced its verdict against the appellant and awarded him aforesaid punishment.

7. After hearing the learned counsel for the appellant, learned Deputy District Public Prosecutor assisted by learned counsel for the complainant and perusing the record, it is straightaway observed that the star witness of this case is Kalsoom Bibi/PW-1, the complainant and mother of Abida Bibi/deceased and according to her she was married to Shahid who did not appear before the learned trial court. According to her she narrated the prosecution story as mentioned in complaint (Exh.PA). In the cross-examination she admitted that many peoples gathered in the house at the time when she reached and that the house of her deceased daughter which is located at the end of the street and when she reached the place of occurrence, the locks of the house were opened in her presence but peoples were gathered inside the house. According to her, the dead body of deceased was shifted to the hospital later. It suggests that people had already visited the crime scene and that she did not see anyone setting the house on fire. According to her, Mohalladars informed her that the deceased's house was set on fire. However, she did not name any such person. The post-mortem of the deceased was conducted on the next day but she identified the dead body, but admitted that she knew

Shamshad Bibi/PW-5 and Ghulam Rasool/PW-4. Before the occurrence. According to her, PW-3/Asif Faraz and PW-4/Ghulam Rasool were already present there. She also stated that Nadeem Haider/appellant was arrested on the night after occurrence and that neither *Mst.* Abida (deceased) had bad relation with her in-laws nor she had any doubt about illicit relationship of *Mst.* Abida (deceased) with the appellant. She had shown her lack of knowledge that Muhammad Nasrullah was declared innocent by the police. This suggests that there was no possible motive against the appellant to kill her. Likewise, Nazia Waheed/PW-2 made the supportive statement but she disclosed further information that it was the second marriage of Abida Bibi (deceased), the first was with her cousin, namely, Mehmood which remained for two years and there was no children from the said marriage as he was disabled. She volunteered that Nadeem Haider/appellant called Shahid, her husband in Dubai/Sharjah and informed him about the occurrence. This means that the appellant knew Shahid. Who did not allege the charge of murder against him. She also admitted that the deceased did not have illicit relation with Nadeem Haider appellant. She also admitted that her mother/complainant was at Sharaqpur at the time of occurrence then how could she be present simultaneously at Lahore. She did not witness who set the house on fire but had witnessed the dead body of *Mst.* Abida (deceased) in the house.

8. PW-3/Asif Faraz stated that he is the brother of Shahid and that he had seen in the morning that appellant was coming out of the house of Abida with speedy steps but he did not inquire about the well being of her Bhabhi who did not had a bad relation with her. He further stated that at the time of occurrence, he was present along with Umar Farooq (PW-6) and when they both entered into the street of the house of deceased, they noticed the fire. In the cross-examination he admitted that he is the son-in-law of the complainant (PW-1) which means that he is very closely related and that he reached the place of occurrence at 6.30 p.m. but the complainant (PW-1) reached after 7.30 p.m. where he met the complainant. The time of occurrence does not coincide.

Ghulam Rasool/PW-4 statedly accompanied Asif Faraz/PW-3 who had seen the appellant coming out of the house of the deceased. According to him, he knew the appellant Nadeem Haider. He had seen him coming out of the house of the deceased at 10.30 a.m. situated at a walking distance. But he did not suspect the appellant at that time showing that there was nothing to be suspected. PW-5/Shamshad Bibi, the wife of Ghulam Rasool/PW-4 also stated at that time she accompanied her husband who also did not say a word about any possible motive. PW-6/Umar Farooq stated that he and Asif Faraz (PW-3), دیور of Abida received the information at 6.30 p.m. that Abida was missing and when they reached the place of occurrence, the house was already burning and they tried to extinguish the fire and the police took into possession bottle (P-1) in his possession which smelled petrol through recovery memo (Exh.PB). He did not state whether it had any petrol and did not state the details as to how the fire was extinguish. It shows that he was not present at the spot.

9. Muhammad Qaisar/PW-10 did not know even the name of owner of Askari Tailor Shop which is statedly run by the appellant. He did not mention the empty bottle lying next to bed of deceased. PW-11 is the Dr. Faiza Munir Kazmi and according to her the cause of death was dry flame burn and her tongue was bitten between the teeth. The burn was ante-mortem because typical vital reactions were present. The death was 100% ante-mortem burns which ruled out the possibility of asphyxia. She also suggests that *Mst.* Abida (deceased) died because of burn and not due to strangulation. PW-12/Muhammad Shahbaz is the investigating officer who stated that he does not remember the make of mobile phone relating to the CDR. He admitted that the Askari Tailor Shop was situated in Rehmani Bazar but did not record statement of its owner or any other shopkeeper. PW-13/Muhammad Ansar/Inspector is the Incharge Homicide Model Town Circle. Lahore and according to him the place of occurrence belongs to Afzaal Tokeywala but his statement was not recorded. He had seen the burnt body of Abida/deceased

lying on the bed and in the room all articles were lying in the burnt condition which were taken into possession through recovery memo (Exh.PN). He also seized 1.5 liter empty pet bottle (P-1) and two burnt locks made of China (P-3 & P-3) through recovery memo (Exh.PB & Exh.PC) respectively. He prepared injury statement (Exh.PP). Inquest report (Exh.PQ) and application for post mortem examination (Exh.PR). He handed over the dead body to Qaisar and Shahbaz constables for postmortem which was conducted on 02.02.2016. He had arrested Nadeem Haider/appellant on 15.02.2016 which is against the statement of PW-1 who stated that he was arrested the same day of occurrence. He further disclosed in the cross-examination that when he reached the place of occurrence, the hoose was locked who also denied the suggestion that Abida committed suicide. He did not associate Afzaal Tokeywala in the investigation. He mentioned the name of Nasrullah in column No. 2 of report under section 173 Cr.P.C. as he was found innocent. PW-14/Ghulam Hassan, Forensic Scientist and according to him the finger prints on the bottle did not match with the finger prints of Nadeem Haider/appellant. PW-15/Aabad Ayoub, Forensic Scientist & Incharge of Polygraph who conducted polygraph test on the appellant who confessed the guilt before him. Such test is not the creating evidence against the appellant. Interestingly, such confession was not before any police officer, therefore, is not admissible CW-I/Makhdoom Saad is Junior Forensic Scientist. Crime Scene Investigation Department and according to him it is established that the scene was compromised when the processing of the scene was started and the search process was impeded due to intense smoke. He noticed unsafe conditions and no electricity at the scene. The details of the collected evidence was given in his statement. According to his observation the fire impact appeared as localized on the bed where the dead body was present. Heavy smoke was deposited on the walls and ceiling of the room. Fire initiation point could be the corner of the bed opposite to the entrance door of bed room. Heat damage was observed on the glass and metallic materials present in the bed room. No signs of short circuit were

identified. According to him, the burnt plastic bottle, match box etc., were collected from the spot. It indicates that the turning triggered of possibly by the deceased herself since match box and bottle was found near her reach.

10. All these facts discussed above lead this court to an irresistible conclusion that it was an unseen occurrence as no one had seen the deceased being burnt to death. The prosecution evidence is available only to the extent that Ghulam Rasool (PW-4) and Asif Faraz (PW-3) had seen the appellant coming out of the house of Abida/deceased at 6.30 pm. If it was looked from outside then why he was not stopped and apprehended there and then. Interestingly, they did not try to go inside the house to save their Bhabhi if she was being burnt Even PW-1 and PW/2 reached at 7.30 pm. Later-in-time. They did not state a word regarding illict relation of the deceased with the appellant. She also did not say a word about strange relationship of deceased with her in-laws. However, PW-2 admitted that this was the second marriage of the deceased and that she has two daughters and her husband used to live abroad for the last 4/5 years. This may had been a cause of frustration of the deceased which probably had led to finish herself. The investigating officer PW-13 never interrogated her husband Shahid or the owner of the house. Afzaal Tokeywala whose statements were relevant in the unseen occurrence. The above facts are the dent in the prosecution story which is brought without motive and the direct evidence. Why visibly would appellant kill the deceased and what could be the possible motive to do so is shrouded in mystery. The crime scene was compromised. The investigating officer did not collect any relevant CDR to directly connect the appellant with the crime. The call made to PW-2 was not recognized as she knew the voice of Nadeem Haider/appellant so he did not call PW-2. All these are the prosecution lacunas which are sufficient to disbelieve the prosecution story, therefore, it can safely be concluded that the prosecution has not been able to prove the case against the appellant Muhammad Nadeem Haider beyond reasonable doubt. No iota

of evidence was brought against Muhammad Nasrullah to malign him in this case, hence was rightly acquitted.

11. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of Nadeem Hinder/ appellant beyond reasonable shadow of doubt. The impugned judgment has been passed merely on conjectural and whimsical reasons, which cannot be approved of. The impugned conviction and sentence of the appellant, namely. Nadeem Haider is set-aside and he is acquitted of the charge. He shall be released forthwith if not required in connection with any other case. The Crl. A. No. 23637-2020 stands accepted However, the Crl.A.No. 17907-2020 filed by the complainant against acquittal of Muhammad Nasrullah/respondent and payment of compensation is dismissed.

(A.A.K.) **Appeal accepted.**

PLJ 2023 Cr.C. 656
[Lahore High Court, Multan Bench]

Present: ALI BAQAR NAJAFI, J.

MUHAMMAD RAFIQ--Petitioner

versus

STATE etc.--Respondents

Crl. Rev. No. 6973 of 2023, decided on 4.4.2023.

Criminal Procedure Code, 1898 (V of 1898)--

----Ss. 435/439--Muslim Family Laws Ordinance, 1961 (VIII of 1961), S. 6(5)(b)--Criminal revision--Polygamy--Second marriage permission of first wife--Suit for recovery of dowry articles--Court has gone through, evidence produced before trial court and has observed that in absence of a written permission for second marriage by Respondent No. 2 he was punished for one year--However, while determining culpability of petitioner, conduct of Respondent No. 2 will also be relevant--Had she filed private complaint immediately after contracting second marriage by petitioner, she would have been at a different footing--The court can understand why she had preferred not to file a case against her husband at relevant time but she should have also seen consequences of not exercising her legal right by accepting second marriage of her husband--By Single Bench of this court that contracting of second marriage without permission of Arbitration Council is a crime and must be punished--In present case, keeping in view acquiescence of Respondent No. 2 and very fact that no written permission was granted by Arbitration Council to petitioner to contract second marriage, High court is of view that sentence undergone by petitioner so far is sufficient to meet ends of justice--Obviously, case of petitioner was not dealt with by new amendment since complaint was filed in year 2021 *i.e*. after amendment of 2015.

[P. 659] A, C & D 2010 PCr.LJ 950.

Polygamy--

----Polygamy has not been declared "Haraam" in Islamic Shariah but has been regulated by law of land which has not been declared un-Islamic so far--Of course, contracting second marriage is not commanded but may be permissible under certain conditions--Infertility, sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of a decree of conjugal rights and insanity on part of existing wife may contribute as factor towards permission for second marriage. [P. 659] B

2011 YLR 1595.

Ch. Zulfiqar Ali Moazzam, Advocate for Petitioner.

Mr. Ijaz Ahmad Pannun, Deputy District Public Prosecutor for State.

Mr. Hassan Adnan, Advocate for Respondent No. 2.

Date of hearing: 4.4.2023.

ORDER

Through this criminal revision under Section 435/439 Cr.P.C., the order dated 22.01.2022 passed by learned Senior Civil Judge (Family Division) Kasur and the order dated 11.01.2023 passed by learned Additional Sessions Judge, Kasur have been challenged whereby the complaint filed by Respondent No. 2 was allowed and the petitioner was convicted under Section 6(5)(b) of Muslim Family Laws Ordinance, 1961 and sentenced to 06 months SI with fine of Rs. 5 lacs and in default whereof was to further undergo SI for a period of 30 days which sentence was modified by the learned appellate court in appeal filed by the petitioner by extending the period of imprisonment to 01 year but reduced the fine to Rs. 5000/-.

2. Brief facts giving rise to the filing of this criminal revision are that the petitioner got married with Respondent No. 2 on 21.06.1998 in lieu of dower of gold ornaments weighing 05 tolas or Rs. 40,00,000/- alternate which is unpaid. After the marriage, one daughter namely Hamna Rafiq was born who survived whereas other 03 children unfortunately died. According to the Respondent No. 2, the petitioner soleminized second marriage with one Azra Bibi on 10.09.2007 without her permission but she continued to live with her

husband as he did not divorce her. Meanwhile, a suit for recovery of dowry articles and maintenance allowance was filed by her and also filed a private complaint under Section 6(5) of Muslim Family Laws Ordinance, 1961 on 11.01.2021 against the petitioner and one Qari Muhammad Aslam Saqib, the Nikahkhawan on the ground that petitioner committed polygamy without her permission. The cursory statement of Respondent No. 2. was recorded who categorically stated that in the year 2007 the petitioner contracted second marriage with one Azra Bibi without her permission and that 14 years ago she was turned out from his house but during her stay, the petitioner contracted second marriage. She also produced Muhammad Sharif, her real brother. She has produced her own nikahnama as Mark-A whereas nikahnama of Azra Bibi as Mark-B. In the statement under section 342 Cr.P.C. the petitioner has admitted that he contracted marriage but with the permission of his first wife,

3. The above discussion has brought this court to the following facts with consensus of the parties:--

(i) The petitioner contracted second marriage during subsistence of marriage with Maryam Bibi/Respondent No. 2.

(ii) The second wife Azra Bibi remained with the petitioner and until filing of the private complaint she continued to live with the petitioner.

(iii) Respondent No. 2 did not raise any objection on second marriage of the petitioner until the filing of the private complaint by her after the passage of a period of more than 14 years on 11.01.2021.

(iv) The petitioner has not been able to produce written permission issued by the Arbitration Council and now he has claimed that Respondent No. 2 has given the permission.

(v) The conduct of Respondent No. 2 demonstrates that she permitted the second marriage to sustain and continue with her implied permission.

4. Keeping in view the above facts, this court has gone through, the evidence produced before the trial court and has observed that in the absence of a written permission for second marriage by the Respondent No. 2 he was punished for one year. However, while determining the culpability of the

petitioner, the conduct of Respondent No. 2 will also be relevant. Had she filed the private complaint immediately after contracting the second marriage by the petitioner, she would have been at a different footing. The court can understand why she had preferred not to file a case against her husband at the relevant time but she should have also seen the consequences of not exercising her legal right by accepting the second marriage of her husband.

5. Polygamy has not been declared "Haraam" in the Islamic Shariah but has been regulated by the law of the land which has not been declared un-Islamic so far. Of course, contracting second marriage is not commanded but may be permissible under certain conditions. Infertility, sterility, physical infirmity, physical unfitness for conjugal relations, willful avoidance of a decree of conjugal rights and insanity on the part of the existing wife may contribute as factor towards the permission for second marriage. It is not denied that Respondent No. 2 conceived three times but her new born babies died and only one daughter could survive luckily. In the judgment titled *"Raja Muhammad Azram vs. Mst. Jamila Banaras and another"* reported as 2011 YLR 1595, it has been observed by the Single Bench of this court that contracting of second marriage without permission of the Arbitration Council is a crime and must be punished. Likewise, in case titled *"Shamim Mai vs. Allah Ditta and others"* reported as 2010 P.Cr.L.J. 950, since there was a permission by Arbitration Council, therefore, complaint was dismissed.

6. In the present case, keeping in view the acquiescence of Respondent No. 2 and the very fact that no written permission was granted by the Arbitration Council to the petitioner to contract second marriage, this court is of the view that the sentence undergone by the petitioner so far is sufficient to meet the ends of justice. Obviously, the case of the petitioner was not dealt with by the new amendment since the complaint was filed in the year 2021 *i.e.* after the amendment of 2015. The punishment may extend to one year, therefore, while **dismissing** this criminal revision, the sentence already undergone by the petitioner is considered sufficient. He be released forthwith if not required in any other case.

(A.A.K.) **Revision dismissed.**

PLJ 2023 Lahore 753

Present: ALI BAQAR NAJAFI, J.

ARZOO TEXTILE MILLS LTD. etc.--Petitioners

versus

FEDERATION OF PAKISTAN etc.--Respondents

W.P. No. 23960 of 2023, decided on 12.7.2023.

Constitution of Pakistan, 1973--

----Art. 199--Petitioners were manufacturers and exporters of textile products--Category of consumer under B-3 and B-4 class tariff--Issuance of notification--Withdrawal of subsidy--A time subsidy--Policy decision--No Government can function if its policy is continuously reviewed without giving any permanence but no Government can earn a good reputation amongst its masses if it takes a decision without any economic viability--No Government can survive unless it is in a position to give economic benefits to its subjects and it is equally important that no Government is acceptable unless it properly appropriate funds for promotion of export oriented industry to compete with international commodities--But policy decisions are to be taken on basis of hard ground realities which cannot be interfered with by this Court--Besides, subsidy is to be merged into tariff before it is charged to petitioner-companies, hence its challenge is to be made before appropriate forum--This Court time and again asked counsel for petitioners to distinguish between subsidy and time-bound subsidy but he could not find it on basis of some authoritative case laws--Last but not least is that policy decision of Government cannot be interfered with--Petition dismissed. [Pp. 760 & 763] A, B & C

Mr. Salman Akram Raja, Mr. Arslan Riaz, Rai Amer Ijaz Kharal, Mr. Rabeel Safdar Tatla, Mr. Muhammad Omar Malik, Mr. Arslan Fazil, Mr. Mustafa Kamal, Malik Bashir Ahmad Khalid, Mr. M.A. Rizwan Kamboh, Mr. Qamar-uz-Zaman Cheema, Mr. Khalil-ur-Rehman, Mr. Hashim Aslam Butt,

Mr. Naveed Khalid, Ms. Samia Aslam, Mr. Saima Safdar Chaudhary, Ms. Uzma Firdous, Malik Farrukh Khurshid, Malik Ahsan Mehmood, Hafiz Muhammad Shehzad, Ch. Iqbal Ahmad Khan Dehangal, Mr. Nauman Aziz, Mr. Abdul Rehman Qadar Khan, Barrister Hassan Qadar Khan, Rana Sohail Ashraf, Malik Imran Khan Thaheem, Mr. Muhammad Ihtisham Arshad, Mian Mehmood Rashid, Mr. Irfan Ghaus Ghumman, Mr. Irfan Dogar, Mr. Hassan Raza, Mr. S.M. Ghaffar Khan, Mr. Iftikhar Gull Khan, Mr. Muhammad Amir Masood Niazi, Barrister Muhammad Hassan Anwaar Pannun, Rana Muhammad Imran Qamar, Mr. Muhammad Tariq Bashir, Mr. Muhammad Abu Bakar, Mr. Abdul Hameed Tahir Kasuri, Mr. Ali Akbar Rana, Mr. Tanveer Ahmad Gill, Mr. Abdul Waheed Habib, Mr. Muhammad Nauman Khurshid Mayo, Mr. Waseem Ahmad, Ch. Babar Waheed, Syed Tassadaq Mustafa Naqvi, Syed Tassadaq Murtaza Naqvi, Mr. Ali Naqi Zaidi, Mr. Muhammad Anwar Khan, Mr. Muhammad Usman Latif, Mr. Muhammad Arfan Randhawa, Mr. Muhammad Umar, Syed Muhammad Ali Abdullah Mashhadi, Mr. Omer Daraz Sheikh, Sardar Jehangir Hassan Dogar, Barrister Ch. Hasnain Yunus, Mr. Mujtaba Hassan Tatla, Mian Aqeel Chaudhary, Mr. Muhammad Nadeem Abbasi, Barrister Taimoor Malik, Barrister Maleeha Bukhari, Mr. Mohsin Iqbal, Barrister Maryam Hayat, Mr. Naveed Anjum, Mr. Muhammad Irfan Khan, Mr. Fazal Elahi Akbar, Mr. Muhammad Usman Rafiq, Mr. Muhammad Imran Mansha, Mr. Moiz Tariq, Mr. Riasat Noor Zaman, Mr. Muhammad Aslam Sheikh, Mr. Muhammad Shehzad Wattoo, Mr. Muhammad Naeem, Mr. Muhammad Tahir, Mr. Haris Iftikhar, Mr. Mustafa Haroon, Mr. Mohib Ghazi, Mr. R.A. Majid, Mr. Abdul Qadus, Rana Zohaib, Mr. Anees Sherwani, Mr. Sher Baz Ali, Mr. Muhammad Imtiaz Gujjar, Mr. Muhammad Saad, Mr. Muhammad Javed Arshad, Mr. Hammad-ul-Hassan Hanjra, Malik Ghulam Hassan Ahmad, Mr. Waqar Hassan, Mian Muhammad Hussain, Mr. Nauman Azeem Butt, Mr. Abuzar Hussain, Sardar Azam Mehmood Kasana, Mian Ijaz Latif, Mr. Anees-ur-Rehman, Malik Nadir Ali

Sherazi, Mehar Junaid Masood Ahmad, Mr. Faisal Zaffar, Ch. Ahsan Gujjar, Mr. Tanvir Abbas Bhatti, Mr. Muhammad Muzahir Chaudhary, Syed Alamdar Hussain, Mr. Muhammad Irfan Liaqat, Mian Subah Sadiq Klasson, Mr. Muhammad Faizan Sadiq, Syed Waqas Zafar, Mr. Aasim Sohaib, Mr. Muhammad Tahir Munir, Rana Muhammad Usama, Mr. Saad Waqas, Mr. Muhammad Imtiaz-ur-Rehman, Azeem Ullah Virk, Ch. Usman Latif, Mr. Sagheer Ahmad, Advocates for Petitioners.

Mr. Nasar Ahmad, Additional Attorney General for Pakistan, *Mr. Badar Munir Malik,* Deputy Attorney General and *Ch. Usman Ghani*, Assistant Attorney General.

Mr. Shoaib Rashid, Mr. Waleed Khalid, Advocates for LESCO.

Mr. Muhammad Bilal Munir, Advocate for LESCO/ FBR/NTDC.

Mehr Shahid Mehmood, Deputy Manager (Legal), Mr. Basharat Ali Mehmood, Deputy Manager (Legal) LESCO.

Mirza Aurangzeb and Mr. Muhammad Imran Naru, Advocates for GEPCO.

Mr. Waqar A. Sheikh, Muhammad Azeem Daniyal and Syed Faisal G. Meeran, Sarfraz Ahmad Cheema, Shehzad Ahmad Cheema, Advocates for FESCO.

Mian Muhammad Javed and Malik Asif Rafiq Rajwana, Barrister Kashif Rafiq Rajwana, Mr. Hammad Khan Babar, Mr. Ahtisham-ud-Din Khan, Muhammad Nauman Sarwar Advocates for MEPCO/GEPCO with Ansar Mehmood, Chief Law Officer GEPCO.

Mr. Shehzad Ahmad Cheema, Advocate for Respondent in W.P. No. 27763-2023 and W.P.No. 24401-2023.

Mr. Muhammad Saqlain Arshad and Ehsan Malik for NTDC.

Mr. Shahid Sarwar Chahil, Advocate for FBR Faisalabad.

Barrister Pirzada Muhammad Aurangzaib, Advocate for NEPRA.

Mr. Afaq Shaheen, Advocate for IESCO.

Mr. Muhammad Ijaz Jamal, Advocate for Model Town Society for Respondents.

Dates of hearing: 21.06.2023, 23.06.2023, 26.06.2023 and 27.06.2023.

JUDGMENT

Through all these constitutional petitions under Article 199 of the Constitution of Islamic Republic of Pakistan enumerated in Schedule (A), the petitioners have prayed for setting-aside the impugned notification No. PF-5-(02-ZR) 2020, dated 28.02.2023 being unconstitutional, illegal, unlawful, coram non-judice and without lawful authority with a declaration that the petitioner company be entitled to cape tariff of Rs.19.99 Kwh at least until 30.06.2023 as already committed. It is further prayed that DISCOs be directed to issue present and future electricity bills @ concessionary cape rate of Rs.19.99 Kwh until 30.06.2023 and that during the pendency of the writ petitions, the operation of the impugned notification be suspended and the Respondent Distribution Companies (LESCO, FESCO, GEPCO, MEPCO, IESCO etc.) be directed to issue to the petitioners with revised bills for the month of April, 2023 onward accordingly and they be also restrained from taking any adverse action against the petitioner-company.

2. **Briefly facts** giving rise to the filing of these constitutional petitions are that the petitioners are aggrieved of the notification dated 28.02.2023 issued in complete disregard of the obligation and the lawful promise made by the Respondent/Federal Government to the petitioners companies as they have already booked numerous export orders in contemplation of the subsidized energy charges. The impugned industrial tariff in electricity bills after withdrawal of subsidy for the month of April, 2023 onward have been challenged as the impugned actions. The case of the petitioners-companies are that they are the industrial consumers of electricity by DISCOs in the category of consumers under B-3 & B-4 class tariff. Being the members of All Pakistan Textile Association (APTA), the petitioners are the manufacturers and

exporters of textile products for the last many years. The facilitation of export and value added manufacturer goods have always been a preferred policy objective of the Federation since they are essential for economic growth as well as national dignity and economic strength of the country. In the last financial year, the textile sector alone had given 20 billion US dollars by its export to the country. It is, therefore, stated that without these earnings by export oriented sector it would become eventually impossible for the government to run the country and meet the financial obligation of the foreign currency rates. The Respondent/Federal Government has always been meeting requirements of the textile sectors from time to time as it granted various subsidy and exemptions schemes in order to make Pakistani export regionally and globally competitive. The export oriented textile sectors have been identified as viable manufacturing units, therefore, are allowed to benefit of exemptions in utility costs through subsidy schemes as it contributes to the export of finished goods. According to the learned counsel, the yarn manufacturer may not be a direct exporter but may affect the manufacturing and export of garments by other entities and, therefore, are exporters of goods. Keeping in view this fact the textile export industry was granted subsidies. A study was made whereafter the Federal Government realized that the tariff rates of electricity and gas in regional competitors contains China, India, Bangladesh and Sri Lanka are comparatively much lower than the tariff rates in Pakistan. The result of this exorbitant electricity rate is that the high price of finished products from Pakistan are not competitive in the other countries of the region. It was therefore considered inevitable that the exporters of Pakistan be given boost up. Keeping in view the remedial solutions for the exporters the Respondent/Federal Government issued concessionary notification dated 01.01.2019, No. 12(1)/2019 which reduced electricity rates for members of the export sectors called zero rated industrial consumers and directed all DISCOs (including LESCO & FESCO) to bill and receive

payment from zero rated industrial consumer at the rate 7.50 US $ per Kwh. The notification further provided that dollar exchange rate will be considered at the national bank day and dollar sold sale rate on the last working day of the preceding month. The difference between the payments from zero rated sector shall be paid to the DISCOs by the Federal Government. The petitioner company was notified under sales tax order with subsidized electricity tariff on account of being an export oriented sector. The fact regarding applicability of all inclusive tariff at the rate of 7.5 $ cent Kwh to the export sectors industry was clarified by the Federal Government through letters dated 08.02.2019 and 29.03.2019. It was finalized that no such charge will be levied to such exporters oriented sector and only tariff @ 7.5 US cent Kwh will be applicable to them by following the Economic Coordination Committee decision of the Cabinet on the revised concession rate for zero rated consumers/ export sector dated 09.09.2020 and the decision dated 16.08.2021 notified by the Federal Government on 24.08.2021 communicated to the Ministry of Commerce through office memo dated 31.08.2021. The Federal Government through its decision dated 19.10.2022 and office memorandum dated 14.12.2022 decided that the said subsidy shall continue untill 30.06.2023. The case of the petitioner is that it was on the basis of sovereign guarantees provided by the Federal Government that the petitioner-companies calculated the cost of finished textile products and, therefore, entered into various contracts for export of its products. The supply of the raw material like yarn, chemical colours of fabrics etc. were ordered for the export purposes since it was in the category of export sector. Meanwhile, vide impugned order the said subsidy was withdrawn w.e.f. 01.03.2023 as a result of which the export sector is now being charged normal industrial tariff rates which includes fixed charges. The obvious consequences of the said impugned notification is that the petitioner-company would pay for the electricity consumed at the rate of 45 per unit instead of 19.99 per unit. The definite result would be that it will not complete their

export contracts for which calculations have been made on the basis of lawfully extended promises by the Respondent/Federal Government. The threat is that it may result in immediate closure of the industries, hence these petitions.

3. **Learned counsel for the petitioners contend** that the sovereign guarantee has been violated in the impugned notification as the specific tariff of electricity has been provided until 30.06.2023 which cannot be withdrawn by neglecting the sovereign assurances. Adds that such sovereign commitment if extended to any segment of the society by the Federal Government are not to be ignored and that no government can be allowed to just revoke its undertaking unilaterally. It was further argued that the impugned action is against the rule of promissory stoppel under which the electricity tariffs were to be kept within certain rates. Adds that the export contracts made with the numbers of buyers from across the world are bound to suffer and, therefore, the Federal Government cannot back out from its stand. Further adds that the specially designed procedure for notifying the tariff of any category of consumers was made after tariff determination by the NEPRA but there was no such determination by NEPRA for withdrawal of subsidy through the impugned notification which was otherwise not issued under any provision of law. Adds that in contrast the SRO dated 01.01.2019 was issued after due compliance of Section 31 of the NEPRA Act. It is further added that the notification dated 01.01.2019 has not been rescinded or amended until today which is enforceable under the law. It was also argued that the actual cost of the electricity which will go to the Government is not Rs.45 per unit. It was, therefore, argued that the unjustified cross-subsidy is allowed by withdrawal of the subsidy from the petitioner-companies. It was also argued that the minor change from 7.5 Kwh to 9 Kwh was analyzed by the Institute of Development of Economic, Islamabad and was found sufficient for textile industries to oust them in the competition of the exporters from the competitive countries.

Finally argued that the impugned action is violative of Article 4, 10-A, 18, 24, 25 of the Constitution and therefore seeks the relief.

4. Conversely, learned Additional Attorney General appearing on behalf of Federation of Pakistan argues that the subsidy was not granted on the basis of any statutory powers but was a step considered economically feasible at the given time. It was also a policy decision which could be revoked by the Government on the basis of hard realities created due to subsequent developments. It was not a contract as there was not any proposal, acceptance and the consideration for creation of such type of legal right. A legal right has to be defined under a statute or created through a contract but none of the two pre-requisite are present in the present case. Adds that the subsidy was withdrawn with a view to give the benefits to the poor people of Pakistan like the recipients of Benazir Income Support Programme; etc. According to the learned Additional Attorney General even the subsidy granted to agriculture sector was also withdrawn. Adds that half-yearly withdrawn of subsidy was a hard decision made due to compulsive circumstances. Also submits that in the contents of the writ petitions no contract was shown to have executed on the basis of the subsidies to calculate the possible loss or profit. Submits that petitioner-companies did not get any profit. The learned Additional Attorney General has questioned whether the petitioner-companies had thoroughly acted upon the said subsidies and also questions the challenging of the policy decision of the Federal Government. According to him, the Federal Government had been short of sources as the initial commitment was made due to un-budgetary proposals and that the executive benefits cannot be granted for providing subsidies. Places reliance upon case titled *"K-Electric Limited through Chief Executive Officer, Karachi vs. Federation of Pakistan through Secretary, Ministry of Energy and Secretary, Ministry of Finance, Islamabad and others"* reported as PLD 2023 Supreme Court 412 and referred to Paragraph No. 20 to argue that subsidy can be withdrawn at any moment.

5. In rebuttal, learned counsels for the petitioners submit that grant of subsidy was supported by sovereign guarantees and that approximately 7,00,000/-people will become unemployed because of the withdrawal of the subsidy and that giving the benefits to needy as a charity is incomparable with the dignified employment which the petitioners/Textile Industries have generated. Giving the example he contends that subsidy in the form of laptop scheme was also continued. It was also argued that under Injunctions of Islam the promises are to be fulfilled and that the Court had the jurisdiction on the basis of case titled *"Al-Samrez Enterprise vs. The Federation of Pakistan"* reported as 1986 SCMR 1917.

6. **Arguments heard. Files perused.**

7. **After hearing the learned counsel for the parties and perusing the record**, it is straightaway observed that the question whether a time subsidy granted through the decision of the Respondent/Federal Government sent in Federal Cabinet can be withdrawn before the expiry of its term has been raised before this Court. The main emphasis of the arguments advanced by the learned counsels for the petitioners is that the Respondent/Federal Government works under a definite and permanent system of understanding and the decisions taken under the Constitutional mandate and on the basis of the command of the Parliament through the Cabinet which have to be followed. The principles of promissory estoppel and *locus poenitentiae* have been relied upon in support of the contentions. It is also the case of the petitioners that based on this time-bound subsidy, the petitioner-companies engaged in many contracts and, therefore, any change of tariff is bound to affect their working. The stand of the Respondent/Federal Government, on the other hand, is that it is not in a position to continue with the time-bound subsidy due to the fluctuation in Dollar rates as well as other geo-strategic and geo-political situations. Also it is their case that executive subsidies are not supported and approved by international donors who have seriously objected

to the said concessions granted to the petitioners. However, no Government can function if its policy is continuously reviewed without giving any permanence but no Government can earn a good reputation amongst its masses if it takes a decision without any economic viability. Similarly, no Government can survive unless it is in a position to give economic benefits to its subjects and it is equally important that no Government is acceptable unless it properly appropriate funds for the promotion of the export oriented industry to compete with the international commodities. But the policy decisions are to be taken on the basis of hard ground realities which cannot be interfered with by this Court. Besides, subsidy is to be merged into tariff before it is charged to the petitioner-companies, hence its challenge is to be made before the appropriate forum.

8. On the legal premise learned counsel for the petitioners has emphasized upon case titled *"Messrs Elahi Cotton Mills Ltd and others vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others"* reported as PLD 1997 SC 582 which relates to the taxation having different set of laws and principle whereas the tariff is a different term having another connotation which is imposed under Section 31 of the NEPRA Act, 1997 therefore, the citation is not applicable to the present case. In case titled *"Al-Samrez Enterprise vs. The Federation of Pakistan"* reported as 1986 SCMR 1917, it was held that the granting exemption in custom duty could not be taken away and destroyed by modification of earlier notification on ground that under Section 21 of the General Clauses Act, Government could exercise power of modification. However, the said judgment relates to the custom duty and of course it is dealt with under Customs Laws, as opposed to the word "tariff" which is always chargeable on the electricity and is comprised on many other components, therefore, the judgment is also not applicable to the present case. The concept of estoppel is discussed in case titled "National Saving Central Directorate, Islamabad through D.G. and

another vs. Muhammad Farooq Raja" reported as PLD 2021 SC 320 with reference to the change in "Bahbood Saving Certificate Scheme" which was the ownership of the aggrieved person and did not involve any additional executive subsidy benefit. On the other hand, in case titled *"Dossani Travels Pvt. Ltd. and others vs. Messrs Travels Shop (Pvt) Ltd. and others"* reported as PLD 2014 SC 1, the jurisdiction of this Court under Article 199 of the Constitution have been well defined which are not compareable to the jurisdiction of the apex Court of the country under Article 187 of the Constitution. The powers under Article 199 can be exercised and to enforce the fundamental right which are given in the judgment as under:-

(i) .....

(ii) *(a)* .....

(b) .....

(i) .....

(ii) .....

(c) *on the application of any aggrieved person, make an order giving such directions to any person or authority; including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the "enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II" (Fundamental Rights as interpreted by the Supreme Court of Pakistan).*

(iii) *The ambit and scope of the power of High Court under Article 199 of the Constitution is not as wide, as of the Supreme Court under Article 187 of the Constitution to pass any order or issue any direction or decrees for doing "complete justice".*

In a more recent judgment titled *"K-Electric Limited through Chief Executive Officer, Karachi vs. Federation of Pakistan through Secretary, Ministry of*

Energy and Secretary, Ministry of Finance, Islamabad and others" reported as PLD 2023 SC 412, the Hon'ble apex Court has held that tariff determination cannot be challenged under Article 199 of the Constitution since separate mechanism has been provided under the NEPRA Act. The judgment does not distinguishable between time barred subsidy and normal subsidy. The relevant extract from para 20 is reproduced as under:

> *"……. The Federal Government is well within its right to introduce, modify or withdraw subsidies. This is an integral part of its socio-economic policies, which NEPRA must give effect to as per Section 31 of the Act. So a consumer of electricity is entitled to a subsidy as long as it is offered by the Federal Government and is bound by any modifications or withdrawals made by the Government. To give effect to a subsidy it is built into the tariff, as its obvious outcome is to reduce the price of electricity. So a subsidy is given effect through the tariff. There is no vested right in favour of the consumer with reference to a subsidy, simply because the subsidy is built into the tariff. Effectively, a subsidy is a relief package offered to consumers and remains operative for as long as it is required as per Government policy. IN order to take the benefit of the subsidy, it has to be calculated in terms of the tariff, therefore, even if, it is reflected as a part of the tariff or separately it remains a subsidy and does not merge into the tariff. Essentially, it is based on a policy decision of the Federal Government and is not the outcome of a NEPRA determination. As per Section 31 of the Act, NEPRA is guided by government policies and must consider them, which means that it must reflect the subsidy through the tariff ……."*

Another judgment titled *"Peshawar Electric Supply Company Ltd. (PESCO) and another vs. SS Polypropylene (Pvt.) Ltd. Peshawar and others"* reported as PLD 2023 SC 316, in which it has been specifically held that this Court

does not interfere into policy matters. Extract from para 11 is reproduced for ready reference:-

> *"…… It is not the role of the Courts to determine policies and especially those, in which the Court lacks technical expertise. It is the mandate of the Constitution and, is also trite that Courts must confine themselves to legal interpretation. The learned High Court must satisfy itself that there is a breach of fundamental rights vested constitutional/legal rights before any direction is issued. Such directions must not be based on an understanding of the law which is contrary to the Constitution. Doing so goes against the principle of trichotomy of powers and is against the mandate of the Constitution. The High Court could not, therefore, have interfered with the matter and that too, based on personal view of what the policy should be without legal or constitutional basis or backing."*

Learned counsel for the petitioners have also relied upon case titled *"Mst. Fatima Faryad and others vs. Government of Punjab and others"* reported as 2020 CLC 836 to argue that the commitment made by the government must be honoured. However, there is no cavil to the proposition that the commitment if not based on thorough research input and, understanding reached between stakeholder made superficially and cosmetically but if it cannot be practically acted upon should not bind the Government. In the said judgment the proposition "change of tariff" was not discussed hence not relevant. He also places reliance upon case titled *"Dewan Salman Fibber Ltd. and others V. Federation of Pakistan, through Secretary, M/o Finance and others* reported as 2015 PLD 2304, in which the importance of the Government sovereign commitment have been made but such commitment must be given on a statutory basis and not merely in the decision of the cabinet, therefore, is not applicable to the present case. The legislative command is not supporting the case of the petitioners. The principles of *locus poenitentiae* or

promissory estoppel are not attracted in this case for the reasons. This Court time and again asked the learned counsel for the petitioners to distinguish between the subsidy and time-bound subsidy but he could not find it on the basis of some authoritative case laws. Last but not least is that policy decision of Government cannot be interfered with.

CONCLUSIONS

i. Policy decisions of the Government are the areas where jurisdiction under Article 199 cannot be exercised.

ii. Promissory estoppels are not attracted stricto senso since the Government has taken the decision not on its own but based on certain contingencies which were not in its control.

iii. Although the petitioner-companies have not played any fraud and the decision taken by the Government to offer subsidy has been partially acted upon until the time when the impugned notification was issued but the power to take decision includes power to recall, therefore, recalling of subsidy is with the prospective effect.

iv. The subsidies (time-bound or otherwise) is part of the tariff can be challenged under the NEPRA, 1997 through alternate remedies.

10. For the foregoing reasons, these writ petitions (mentioned in Schedule-A) have been found meritless and, therefore, are **dismissed.**

(Y.A.) **Petition dismissed.**

2024 C L C 744

[Lahore]

Before Ali Baqar Najafi, J

MUHAMMAD AZHAR SIDDIQUE and others----Petitioners

Versus

FEDERATION OF PAKISTAN and others----Respondents

Writ Petition No.50725 of 2022 (and others connected petitions), decided on 6th February, 2023.

(a) Interpretation of statutes---

----Proviso---Scope---Proviso is intended to qualify main part of the provision and cannot carve out an exception from the same---Such provision does not operate independently.

Collector of Customs Appraisement, Collectorate, Customs House, Karachi v. Messrs Gul Rehman, Proprietor Messrs G. Kin Enterprises, Ghazali Street, Nasir Road, Sialkot 2017 SCMR 339 rel.

(b) Civil Procedure Code (V of 1908)---

----O. XXVII---Notice to Authorities---Principle---When neither any legislative provision is under challenge nor interpretation of any constitutional provision is sought from High Court, then there is no legal justification for such notice.

(c) Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997)---

----Ss. 3 & 31---[Constitution (Eighteenth Amendment) Act (X of 2010)]---National Electric Power Regulatory Authority---Object, purpose and scope---Provincial autonomy---Under 18th Amendment of the Constitution, the Provinces have been given authority in the field of Electricity Generation to adopt different modes and maintain their

independence at different levels---Such platform is the NEPRA constituted in S. 3 of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, under which each province has to nominate one member to make it fully functional---Purpose is to provide opportunity to the federating units to sit and discuss on the issue and to evolve a policy with a participatory approval if not on consensus---Such unity in decision not only increases confidence of citizens of the country living in their respective provinces but also strengthens the Federation to determine and collect tariff with power and confidence---There is necessity of full strength of NEPRA---In determination, modification or revisions of rates, charges and other terms and conditions for the provision of electric power services, the Authority is guided by National Electricity Policy, the National Electricity Plan and such guidelines as may be issued by Federal Government in order to give effect to National Electricity Policy and National Electric Plan.

(d) Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997)---

----S. 3---Constitution of Pakistan, Arts. 184 (3) & 199---Fuel Cost Component and Fuel Cost Adjustment---Judicial review---Scope---Judicial review is conferred only upon High Courts and Supreme Court by virtue of the Constitution---Special Tribunals constituted to settle different matters between governmental departments do not have authority to exercise such power---Unfair regulations, bad workings and illegal / irregular proceedings of NEPRA and other Government institutions can be challenged before High Court also on the basis of mala fide---Process, methodology, assessment, observations, calculations of Fuel Cost Component (FCC) and claim of Fuel Cost Adjustment (FCA) in electricity bills which has been carried out without observance of procedure required by law deserve attention of High Court.

(e) Regulation of Generation, Transmission and Distribution of Electric Power Act (XL of 1997)---

----Ss. 3 & 31---Constitution of Pakistan, Art. 199---Constitutional petition---National Electric Power Regulatory Authority---Fuel Cost Component and Fuel Cost Adjustment---Principle---Circular debts---Reasons and causes---Petitioners assailed imposition of Fuel Price Adjustment and Quarter Tariff Adjustment---Validity---Tariff structure in Pakistan is not based on regional and consumer-specific long-run marginal costs---As such it is used as an instrument to achieve political and socio-economic objectives---Instead of regulating DISCOs, the burden is transferred to consumers---In NEPRA there is an abundance of lack of interest to fix the problem also due to engraved inadequate capabilities that do not match with the role of a good regulator---Regulator makes serious effort to minimize, if not eliminate, inefficiencies in public sector generation (GENCOs) and distribution companies (DISCOs)---Performance of GENCOs remained lacking in terms of all Key Performance Indicators (KPI) for the past many years---GENCOs are running below their net available capacities because desired maintenance and scheduled outages over the years (as per standard industry practices) are not in place---Lack of maintenance has increased their cost of generation---Such power plants have not only poor operational results, but also workforce, which is already on higher side on a per MW basis, and remained idle due to their closure and non-operation, contributing towards higher cost of generation---Framework of Economic Growth by PIDE (2020) reports a loss of Rs.251.6 billions due to inefficiency in public sector generation companies---National Electric Power Regulatory Authority s job as a regulator was to resolve all power sector problems, including system losses, rising costs, high tariffs, and generation capacity challenges---Outcome of regulatory oversight is that the circular debt emerged for the first time in 2006, since then, it has been there and rising---National Electric Power Regulatory Authority has not done anything to control this

debt from rising in so many years---Increasing costs of generation and sector inefficiencies, anomalies in tariff methods and delays in tariff determinations are responsible for circular debt issue---If NEPRA had played an effective role, the power sector scenario could have been different---Overall assessment of NEPRA regulatory performance and its effectiveness indicates that its de jure performance is high; a regulatory system having many necessary requirements for power sector---However, de facto performance highlights a significantly poor regulatory functioning in practice---Regulatory reform required to transition towards competitive market has historically been resisted in Pakistan---National Electric Power Regulatory Authority, an autonomous organization (by law), has not made serious efforts to improve regulatory infrastructure in power sector---National Electric Power Regulatory Authority has been unsuccessful in developing and pursuing regulatory framework to guarantee reliable, efficient, and affordable electricity---Effective regulation creates a balance in the interests of all stakeholders---When investors achieve fair returns, consumers receive quality service, and governments are not allowed political exploitation---National Electric Power Regulatory Authority failed in creating such balance---Only institutional capacity of a regulator can ensure that all its regulatory decisions and requirements are met effectively in timely and correct manner---This is possible only when regulator has qualified staff, well-coordinated organizational setup, sufficient funds, and powers to take decisions autonomously and balance all stakeholders---Regulator should also be accountable for all its decisions---High Court declared that demand of Fuel Price Adjustment, Quarter Tariff Adjustment, Change of status of tariff from Industrial to Commercial by NEPRA not constituted fully under S. 3 of Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997, was illegal, without lawful authority and coram non judice, having no legal effect---High Court directed NEPRA to inform consumers about charges on monthly basis and fuel price adjustment should not go beyond 07 days

and Quarter Tariff Adjustment should not go beyond statutory period---High Court restrained NEPRA from charging any exorbitant tariff beyond paying capacity of domestic consumers---High Court directed NEPRA to fix responsibility of over-charging on the basis of line losses and less efficient power plants and financial burden would be shared by the companies under a rational proportion---High Court further directed the Authority to explore cheap modes of producing electricity and evolve mechanisms for its quick availability---High Court also directed to ensure smooth supply of electricity based on demand---High Court restrained the Authority from unilaterally changing type of tariff from Industrial to Commercial without hearing such consumers---High Court directed Federal Government to provide maximum subsidy to domestic consumers of 500 units per month---High Court restrained Federal Government from demanding extra ordinary taxes having no nexus with consumption of energy which could be recovered through other modes---High Court further directed Federal Government to further explore Solar, Hydal, Nuclear and Wind sources of producing electricity and arrange for cheap purchase of sources of electricity from other countries---Constitutional petition was disposed of accordingly.

Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others PLD 2012 SC 132; Messrs Noorani Steel Mills v. Federation of Pakistan 2010 YLR 2872; Pakistan Flour Mills Association (Punjab Branch) through Vice Chairman v. Water and Power Development Authority (WAPDA) and others PLD 2013 Lah. 182; Flying Board and Paper Products Ltd. and others v. Government of Pakistan through Secretary Cabinet Division and others 2010 SCMR 517; The Collector of Sales Tax, Gujranwala v. Messrs Super Asia Mohammad Din and Sons 2017 SCMR 1427; State through Regional Director ANF v. Imam Bakhsh 2018 SCMR 2039; Federation of Pakistan through Secretary Finance, Islamabad and another v. E-Movers (Pvt.) Limited and other 2022 SCMR 1021; ICC Textiles Limited through Authorized Representative and

31 others v. Water and Power Development Authority (WAPDA), WAPDA House, Lahore through Chairman and 15 others 2009 CLC 1343; Naimatullah Khan Advocate and others v. Federation of Pakistan and others 2020 SCMR 622; LESCO and others v. North Star Textile Mills 2014 CLC 28; Flying Cement Co. Ltd. and others v. Government of Pakistan through Secretary, Ministry of Water and Power and others PLD 2015 Lah. 146; Ghani Global Glass Ltd. v. Federation of Pakistan through Secretary Energy (Power Division), Islamabad and others PLD 2020 Lah. 167; Flying Cement v. Federation of Pakistan PLD 2016 Lah. 35; Lahore Electric Supply Company Limited (LESCO) and others v. National Electric Power Regulatory Authority and others PLD 2018 Isl. 20; National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited 2016 SCMR 550; Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others 2011 SCMR 1813; Syed Imran Raza Zaidi, Superintending Engineer, Public Health Engineering Circle-I Gujranwala v. Government of the Punjab through Services, General Administration and Information Department, Punjab Secretariat, Lahore and 2 others 1996 SCMR 645; Ms. Shehla Zia and others v. WAPDA PLD 1994 SC 693; Muhammad Younas and others v. The State PLD 2005 SC 93; Dr. Mobashir Hassan and others v. Federation of Pakistan and others PLD 2010 SC 265; Watan Party and another v. Federation of Pakistan and others PLD 2011 SC 997; Alleged Corruption In Rental Power Plants and others 2012 SCMR 773; Al-Samrez Enterprise v. The Federation of Pakistan 1986 SCMR 1917; Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal 2021 SCMR 328; Commissioner Inland Revenue, Zone-II, Regional Tax Officer (RTO), Mayo Road, Rawalpindi and another v. Messrs Sarwaq Traders, 216/1-A, Adamjee Road, Rawalpindi and another 2022 SCMR 1333; Maj.-Gen. (Retd.) Mian Ghulam Jilani v. The Federal Government through the Secretary, Government of Pakistan, Interior Division, Islamabad PLD 1975 Lah. 65; Commissioner of Income Tax and others v. Mubashar Sheikh, City Towers 2017 PTD Lah. 795; West Pakistan Tanks

Terminal (Pvt.) Ltd. v. Collector (Appraisement) 2007 SCMR 1318; Collector of Customs Appraisement, Collectorate, Customs House, Karachi v. Messrs Gul Rehman, Proprietor Messrs G. Kin Enterprises, Ghazali Street, Nasir Road, Sialkot 2017 SCMR 339; Habibullah Energy case reported as PLD 2014 SC 47; Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others PLD 2016 SC 808; Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others PLD 1969 SC 42; Sindh Petroleum and CNG Dealers Association and 15 others v. Federation of Pakistan through Secretary and 3 others 2020 CLC 851; Messrs Gadoon Textile Mills and 814 others v. WAPDA and others 1997 SCMR 641; Ms. Imrana Tiwana and others v. Province of Punjab and others PLD 2015 Lah. 522; Ms. Krishna Poultry Farm v. State Of Orissa W.P. (C) No. 22202 of 2010 decided on 18.08.2015; Rajasthan Ice and Cold Storage v. The State of Rajasthan 1981 WLN 346; Commissioner of Income Tax v. Radha Nagar Cold Storage (P.) Ltd. 1980 126 ITD 66; Delhi Cold Storage Pvt. Ltd. v Commissioner of Income Tax, Delhi-1, New Dehli (1991) 4 SC 239; Commissioner of Income Tax v. Nandlal Cold Storage decided on 24.10.1991; Said Zaman Khan v. Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan Superintendent HSP, Sahiwal 2017 SCMR 1249 and Justice Qazi Faez Isa and others v. The President of Pakistan and others PLD 2021 SC 1 ref.

Muhammad Azhar Siddique, Khalil-ur-Rehman, Qamar-uz-Zaman Cheema, Mustafa Kamal, Muhammad Aslam Sheikh, Muhammad Naeem Sheikh, Adnan Tariq, Mian Ghulam Ali Chotya, Syed Tassadaq Mustafa Naqvi, Syed Tassadaq Murtaza Naqvi, Syed Ali Naqi, Barrister Muhammad Umar Riaz, Nauman Sarwar, Ahtisham-ud-Din Khan, Ch. Muhammad Ashfaq, Waqas Umar, Rana Rehan, Muhammad Amin, Maryam Sajjad, Irfan Ali Sheikh, Mian Mehmood Rashid, Miss Rohi Saleh, Mian Zulfiqar Ali, Muhammad Hassan Farooq, Abdul Hameed Tahir Kasuri, Muhammad Rizwan Ghumman, Tanzil-ur Rehman, Muhammad

Suleman, Sajid Sial, Zahid Farooq, Malik Muhammad Riaz, Muhammad Riaz, Hafiz Jamshaid Anwar, Tahir Muneer, Malik Asad Ali Awan, Ihsan-ul-Haq Sajid, Zain Sikandar, Zaman Khan Vardag, Mian Muhammad Sohail, Mushtaq Dhoon, Naila Mushtaq Dhoon, Muhammad Idrees Aslam Chohan, Raja Muhammad Faisal Ullah Khan, Amna Iqbal, Mamoon Nisar, Kamran Iftikhar, Nasir Mehmood, Falak Sher Khan, Javed Imran Ranjha, Arif Hussain Cheema, Qazi Zafar Abbas, Abdul Rehman Dar, Aetisam Ahmad, Sheraz Sultan, Shahid Mehmood Bhatti, Prince Naseem Raza, Afzal Hussain, Zahid Chaudhary, Muhammad Muzahir Chaudhary, Fateh Khan Malik, Mian Tariq Saeed Salotra, Adnan Saeed Chaudhary, Muhammad Zaheer Asghar Bhatti, Amir Aziz Khan, Maaz Sajjad, Hafeez-Ullah Gondal, Ch. Shakeel Gondal, Sardar Dilnawaz Cheema, Waqas Ahmad Aziz, Waqas Ali Bhutta, Muhammad Nauman Yahya, Muhammad Nadeem Abbasi, Mohsin Iqbal, Ch. Qamar-uz-Zaman, Muhammad Waqar Akram, Muhammad Farooq Khokhar, Rai Inam Qadir, Muhammad Khalid, Arif Munir, Zeba Munir, Ali Raza Cheema, Muhammad Bilal, Muhammad Irfan-ul-Haq, Khan Talib Hussain Baloch, Khurram Shehzad Chughtai, Muhammad Arfan Randhawa, Muhammad Umar, Saqib Haroon Chishti, Hammad Khan Babar, Adil Shabbir, Muhammad Imran Rana, Zaman Ali Dogar, Rao Muhammad Akmal, Adnan Rauf, Mahid Abdul Ghafoor, Nabeel Rafaqat, Saba Shaheen, Waqas Chaudhary, Mehar Alam Sher, Malik Asif Rafiq Rajwana, Tahir Abbas Bhatti, Sardar Muhammad Sadiq Tahir, Nasir Ali Gillani, Syed Zeeshan Hassan, Ahmad Yar Chawli, Mehar Muhammad Waqas, Jabran Ahmad Khan, Waqas Arfan Sandhu, Muhammad Shahid Iqbal Qureshi, Javed Iqbal Qureshi, Malik Muhammad Rafiq, Muhammad Anwar Khan, Aftab Hussain Qureshi, Pervaiz Ali, Abad-ur-Rehman, Umar Tariq Gill, Wajab Fareed, Haris Iftikhar, Mustafa Haroon, R.A. Majid, Muhammad Abdul Qadus, Mohib Ghazi, Mian Kashif Maqsood, Khurram Mehboob, Wajid Islam Hashmi, Muhammad Azwa Sultan, Fawad Ahmad Chishti, Muqit Ahmad Mohila, Waqar Ahmad Ranjha, Muhammad Osama Tariq, Muhammad Ahmad, Rao Javid-ul-Haq

Khan, Muhammad Nauman Qazi, Raza Ahmad, Imran Malik, Aakif Majeed Butt, Hassan Ismail, Asim Tufail Farooqi, Nida Aftab, Khaliq Ishaq, Faizan Ahmad, Faheem Gondal, Usman Nasir Awan, Abid Hussain Sial, Muhammad Osama Hanif, Syed Samir Sohail, Asad Ali Gondal, Malik Muhammad Iqbal, Atif Mumtaz Bhatti, Faiz Batool, Mirza Mubashir Baig, Abdul Waheed Habib, Mirza Bilal Zafar, Faisal Rasheed, Muhammad Imran Mansha, Mian Muhammad Mubin Saeed, Sadaqat Mehmood Butt, Faran Ahmad Cheema, Ch. Waseem Ahmad, Muhammad Shahbaz Rana, Muhammad Abbas Wattoo, Syed Waseem Haider Naqvi, Barrister Muhammad Imran Chaudhary, Sh. Muhammad Rizwan, Anwar-ul-Haq, Tanvir Abbas Bhatti, Imran Anjum Alvi, Rai Muhammad Usman, Muhammad Shehzad Hussain Sangla, Gulzar Hussain Sangla, Ch. Usman Sana, Rana Nadeem Ahmad, Nadeem Qaisar, Ch. Abdul Qayyum, Allah Nawaz Khosa, Sajid Iqbal Mohal, Syed Alamdar Hussain, Muhammad Farrukh Khan, Muhammad Ijaz Ali Bhatti, Muhammad Naveed Siyan, Mian Naveed Sadiq, Muhammad Shakeel Tajwani, Ch. Mumtaz Ahmad, Muhammad Alamgir Chaudhary, Tariq Mehmood Ansari, Muhammad Irshad Ali, Malik Bashir Ahmad Khalid, Hammad-ul-Hassan Hanjra, Rana Ali Akbar Khan, Muhammad Majid Saeed, Muhammad Tahir Habibi, Sher Baz Ali, Yasir Islam Chaudhary, Saira Zaffar, Faisal Zaffar, Arfan Ahmad Chattha, Ahmad Munir Khan, Mirza Ahmad Nadir, Azeem Ullah Virk, Muhammad Ali Siddiqui, Taimoor Akhtar Nida Aftab, Khalid Ishaq, Usman Nasir Awan, Malik Riaz Awan, Muhammad Rashid, Syed Imtiaz Hussain Shah, Muhammad Zahid Rafi, Sarmad Nawaz, Dil Nawaz Ahmad Cheema, Muhammad Faizan, Sohail Asghar, Ghulam Mustafa, Amjad Iqbal, Jam Khalid Farid, Amir Sohail Bosal, Ijaz Ahmad Awan, Sultan Ali Awan, Babar Riaz Sidhu, Qaisar Mehmood Sra, Rai Rafi, Uzma Firdos, Mehboob-e-Elahi, Muhammad Tahir Muneer, Ghulam Murtaza, Muhammad Akbar, Mudassar Ijaz, Barrister Muhammad Sohaib Ahmed, Mian Mohsin Mehmood, Malik Sajjad Ashraf Alvi, Shoukat Ali Tanweer, Muhammad Rehan Sarwar, Shah Jahan Khan, Tauseef Zada Khan, Syeda

Hamdia Haq, Abid Mehmood Mirza, Mirza Khalid Mehmood, Hassan Maqsood Ahmad Aujla, Azhar Yaseen Mahlra, Aftab Zafar, Muhammad Naeem Aziz, Muhammad Ilyas, Tanveer Ahmad Gill, Ch. Imran Arshad Naro, Muhammad Siddique Butt, Malik Hafiz Muhammad Arshad, Adeel Hussain Bhatti, Mian Waqas Khalid, Muhammad Irfan Liaqat, Saad Ayub Khan, Rana Qaisar Mehmood, Abdul Hanan Sarmad, Muhammad Nadeem Ashraf, Muhammad Shehzad Saleem, Ahmad Imran Ghazi, Dr. Ali Qazilbash, Ms. Nudrat B. Majeed, Ashhad Ali Azhar, Munir Ahmad, Irfan Mukhtar, Mian Shabbir Ismail, Amna Liaqat, Salma Riaz, Awais Butt, Tanveer Hussain Mirza, Barrister Zargham Lukhesar, Muhammad Hussam, Mian Asif Ali Maneka, Malik Azhar Iqbal, Waqar Hassan, Barrister Haris Azmat, Khawaja Ahmed Tariq Rahim, Hissan Tariq Rahim and Hashim Tariq Rahim for Petitioners.

Nasar Ahmad, Additional Attorney General for Pakistan, Asad Ali Bajwa, Deputy Attorney General, and Ch. Usman Ghani, Assistant Attorney General.

Shoaib Rashid, Mian Danish Quddous, Furqan Naveed, Ghulam Mujtaba, Muhammad Bilal Munir for LESCO.

Mehr Shahid Mehmood, Deputy Manager (Legal), Basharat Ali Mehmood, Deputy Manager (Legal) and Adnan Aslam Qureshi, Chief Law Officer, Yasin Badar, Legal Consultant, LESCO.

Mirza Aurangzeb for GEPCO.

Waqar A. Sheikh, Syed Faisal G. Meeran, Sarfraz Ahmad Cheema, Shehzad Ahmad Cheema, Malik Asad Akram Khan Awan for FESCO.

Barrister Malik Kashif Rafiq Rajwana and Malik Asif Rafiq Rajwana for MEPCO.

Mian Muhammad Javed for IESCO, MEPCO.

Amir Sikandar Ranjha for NEPRA.

Sh. Muhammad Ali, Muhammad Rizwan Nazar, Maryam Asad, Ali Usman, Abdul Hafeez Dhillon for CPPA.

Muhammad Saqlain Arshad and Ehsan Malik for NTDC.

Muhammad Bilal Munir and Naeem Khan, Shahjahan Khan for FBR.

Ch. Muhammad Ijaz Jamal for Model Town Society.

Dates of hearing: 30th, 31st August, 13th, 15th, 20th, 23rd, September, 3rd, 4th, 5th, 6th and 10th October, 2022.

JUDGMENT

IN THE NAME OF ALLAH, THE MOST BENEFICIENT, THE MOST MERCIFUL

وَأَنزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ {الحدید: 25}

"اور ہم نے لوہے کو اتارا، اس میں سخت قوت اور لوگوں کے لئے فائدے ہیں۔"

"And We sent down iron, wherein there is awesome power and many benefits for people,"

وَلِسُلَيْمَانَ الرِّيحَ غُدُوُّهَا شَهْرٌ وَرَوَاحُهَا شَهْرٌ ۖ وَأَسَلْنَا لَهُ عَيْنَ الْقِطْرِ ۖ وَمِنَ الْجِنِّ مَن يَعْمَلُ بَيْنَ يَدَيْهِ بِإِذْنِ رَبِّهِ ۖ وَمَن يَزِغْ مِنْهُمْ عَنْ أَمْرِنَا نُذِقْهُ مِنْ عَذَابِ السَّعِيرِ {السبا: ۱۲}

"اور ہم نے سلیمان کے لئے ہوا کو مسخر کر دیا کہ صبح کی منزل اس کی مہینہ بھر کی ہوتی تھی اور شام کی منزل بھی اور ہم نے ان کے لئے تانبے کا چشمہ بہا دیا اور اس کے رب کے حکم سے بعض جنات اس کی تابعی میں اس کے سامنے کام کرتے تھے اور ان میں سے جو بھی ہمارے حکم سے سرتابی کرے ہم اسے بھڑکتی ہوئی آگ کے عذاب کا مزہ چکھائیں گے۔"

"And to Solomon 'We subjected' the wind: its morning stride was a month's journey and so was its evening stride. And We caused a stream of molten copper to flow for him, and 'We subjected' some of the jinn to work under him by his Lord's Will. And whoever of them deviated from Our command, We made them taste the torment of the blaze."

ALI BAQAR NAJAFI, J.---- Through all these constitutional petitions enumerated in Schedules (A), (B), (C), (D) and (E) the petitioners domestic, industrial and commercial consumers herein have challenged the imposition of FUEL PRICE ADJUSTMENT (hereinafter to be called FPA) and QUARTER TARIFF ADJUSTMENT (hereinafter to be called QTA) etc. change of tariff from Industrial to Commercial by invoking the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and seek a direction to the National Electric Power Regulatory Authority (hereinafter to be called NEPRA) and Distributing Companies (hereinafter to be called DISCOs) not to charge them illegally in violation of Articles 4, 9 and 38 of the Constitution of Islamic Republic of Pakistan, 1973 by taking different favourable grounds.

2. The Almighty Allah created Noor/light/energy for the existence of the universe ever essential for the life on our planet, therefore, has to be made accessible for all of us since it is our basic human right so fundamental that it is guaranteed by our Constitution and the law.

3. At present the relevant law on the subject is National Electric Power Regulatory Authority Act, 1997 (hereinafter to be called NEPRA Act 1997) which needs to be read, understood and discussed.

NEPRA ACT, 1997

4. Since the entire discussion will revolve around the NEPRA Act, 1997 therefore, it will be expedient to read the original Act of 1997 and then study subsequent amendments introduced in the years 2011, 2018 and 2021. This will help to understand the legislative response due to the difficulties in the power sector.

5. The original Act promulgated on 16.12.1997 had a preamble for being just and expedient to provide any regulation, generation, transmission, and distribution of electric power and the connected matters. This preamble was changed through Amendment Act of XII of 2018 on 02.05.2018 and the preamble was drastically modified keeping in view the expediency to

ensure elimination of energy poverty in Pakistan and to ensure a transparency and to effectively regulate the electric power markets of the country and to provide a legal framework to develop and sustain the competitive market. It also aimed at providing and developing renewable electricity markets in line with the international commitments of the country while acknowledging the responsibility of Pakistan to support and encourage steps for effectively mitigating adverse climate change and to efficiently manage the conflict and interest of the states in relation to the electric power markets of the country. The preamble is reproduced as under:-

> AND WHEREAS it is expedient to ensure the elimination of energy poverty in the country to ensure the highest standards of transparent, certain and effective regulation of the electric power markets of the Islamic Republic of Pakistan, to provide the legal framework within which a competitive electric power market can develop and sustain, to make special provisions for development of renewable electricity markets in accordance with the international commitments of the Islamic Republic of Pakistan as well as the responsibility of Islamic Republic of Pakistan to support and encourage measures to effectively mitigate adverse climate change and to effectively manage conflict of interest of the State in relation to development of the electric power markets of the Islamic Republic of Pakistan.

6. The National Energy Power Regulatory Authority (NEPRA) created under section 3 of NEPRA Act, 1997 by Federal Government through a notification, was consisting of a Chairman directly appointed by the Federal Government and 4 members (one from each province) appointed by the Federal Government after considering the recommendations of the Provincial Governments. The vice Chairman of the Authority was appointed from the members for a period of one year by rotation in an alphabetical order. The qualification for Chairman was that he must be an eminent professional of known integrity and competence with 20 years of

related experience in law, business, engineering, finance, accounting, economics or the electric utility business. The qualification for the member was the same but with the slight difference of maximum experience reduced to 15 years instead of 20 years. The tenure of the Chairman and the member was 4 years each and their maximum age limit was 65 years. However, it was prescribed that any act or proceedings of the Authority would not be considered invalidated if there existed a vacancy or a defect in the constitution of the Authority. Under Section 5 three members out of total membership of 5, 6 and 7 would constitute a quorum of the Authority for taking a decision. The decision of the Authority was to be made by majority of the members present in the meeting and in case of a tie, the person presiding over the meeting would have a casting vote. The Authority was empowered to grant license for generation etc., prescribe procedure for investment performance standards, to establish a uniform system of accounts, prescribe fee for the grant of licenses and fine in case of contravention of the Act and perform any other function consequent thereto. The Authority was also empowered to determine tariff, rates, charges, terms and conditions of supply of electric power, renew organizational affairs, encourage uniform industry standards and develop code of conduct, tender advice to public sector projects, submit report about activities of the companies and to perform any other consequential functions. It was also given in the Act that before approving the tariff for supply of electric power by generation companies using hydroelectric plants, the Provincial Government s recommendation (where such generation facility was located), was also to be considered. It was specifically mentioned that in performing its functions under the Act, the Authority shall as far as practicable, protect the interest of consumers and companies providing electric power services in accordance with guidelines laid down by the Federal Government but not inconsistent with provisions of the Act. Under section 31, the tariff was to be determined by the Authority under the prescribed procedures and following standards for

determination, modification, revision of rates, charges and terms and conditions for generation of electric power, transmission, inter-connection, distribution services and power sales to the consumers. The Authority while determining above standards, was required to protect consumers against monopolistic and monopolistic prices, keeping in mind the research, development and capital investment program costs of licensees. It was also supposed to encourage efficiency in licensees operations and quality of service, economic efficiency in the electric power industry keeping in view the economic and social policy objectives of the Federal Government, thus was also responsible to determine tariff so as to eliminate the demand of exploitation and minimize the economic distortions. In order to determine the tariff, the procedure would ensure the timeframe to decide the tariff petitions to provide opportunity to consumers and other interested parties to participate meaningfully in the tariff approval process and protect the refund to the consumers during the pendency of the tariff decision. Once the tariff rates, charges and other terms for supply of electric services by the generation, transmission and distribution companies is approved by the Authority, it shall be notified in the official Gazette by the Federal Government upon intimation to the Authority. However, the Federal Government could require the Authority to reconsider its determination within 15 days and then Authority shall determine and renew after consideration and intimate the decision within 15 days to the Federal Government. Notably, the decisions of the Authority were to be enforced as decrees of the civil court. For our comparative analysis relevant Section 3, Section 5, Section 6, Section 7 and Section 31 are reproduced as under for ready reference:-

3. Establishment of the Authority. (1) As soon as may be, but not later than thirty days after the commencement of this Act, the Federal Government shall, by notification in the official Gazette, establish a National Electric Power Regulatory Authority consisting of a Chairman to be appointed by the Federal Government and four

members, one from each Province, to be appointed by the Federal Government after considering the recommendations of the respective Provincial Governments.

(2) There shall be a Vice-Chairman of the Authority, appointed from amongst the members for a period of one year, by rotation, in the following order, namely: -

(i) the member representing the Province of Balochistan;

(ii) the member representing the Province of North-West Frontier;

(iii) the member representing the Province of the Punjab; and

(iv) the member representing the Province of Sindh.

(3) The Chairman shall be an eminent professional of known integrity and competence with twenty years of related experience in law, business, engineering, finance, accounting, economics or the electric utility business.

(sic)

(5) The Chairman and a member shall, unless he resigns or is removed from office earlier as hereinafter provided, hold office for a term of four years and shall be eligible for reappointment for similar term:

Provided that the Chairman or a member shall not be appointed under subsection (1) if he has attained the age of sixty five years.

(6) No act or proceeding of the Authority shall be invalid by reason only of the existence of a vacancy in, or defect in, the constitution of the Authority.

(7) The principal office of the Authority shall be in Islamabad and it may set-up offices at such place or places as it may deem appropriate.

5. Meetings of the Authority, etc.--- [(1) The meetings of the Authority shall be presided over by the Chairman or, in his absence, the Vice-Chairman.

(2) Three members shall constitute a quorum for meetings of the Authority requiring a decision by the Authority.

(3) The members shall have reasonable notice of the time and place of the meeting and the matters on which a decision by the Authority shall be taken in such meeting.

(4) The decision of the Authority shall be taken by the majority of its members present, and in case of a tie, the person presiding the meeting shall have a casting vote.

6. Decisions of the Authority. All orders, determinations and decisions of the Authority shall be taken in writing and shall identify the determination of the Chairman and each member.

7. Powers and functions of the Authority. (1) The Authority shall be exclusively responsible for regulating the provision of electric power services.

(2) In particular and without prejudice to the generality of the foregoing power, only the Authority, but subject to the provisions of subsection (4), shall

(a) grant licences for generation, transmission and distribution of electric power;

(b) prescribe procedures and standards for investment programs by generation, transmission and distribution companies:

(c) prescribe and enforce performance standards for generation, transmission and distribution companies:

(d) establish a uniform system of accounts by generation, transmissions and distribution companies:

(e) prescribe fee including fee for grant of licences and renewal thereof:

(f) prescribe fines for contravention of the provisions of this Act; and

(g) perform any other function which is incidental or consequential to any of the aforesaid functions.

(3) Notwithstanding the provisions of subsection (2) and without prejudice to the generality of the power conferred by subsection (1) the Authority shall

(a) determine tariff, rates, charges and other terms and conditions for supply of electric power services by the generation, transmission and distribution companies and recommend to the Federal Government for notification

(b) review organizational affairs of generation, transmission and distribution companies to avoid any adverse effect on the operation of electric power services and for continuous and efficient supply of such services;

(c) encourage uniform industry standards and code of conduct for generation, transmission and distribution companies;

(d) tender advice to public sector projects;

(e) submit reports to the Federal Government in respect of activities of generation, transmission and distribution companies; and

(f) perform any other function which is incidental or consequential to any of the aforesaid functions.

(4) Notwithstanding anything contained in this Act, the Government of a Province may construct power houses and grid stations and lay transmission lines for use within the Province and determine the tariff for distribution of electricity within the Province.

(5) Before approving the tariff for the supply of electric power by generation companies using hydroelectric plants, the Authority shall consider the recommendations of the Government of the Province in which such generation facility is located.

(6) In performing its functions under this Act, the Authority shall protect interests of consumers and companies providing electric power services in accordance with the guidelines, not inconsistent with the provision of this Act, laid down by the Federal Government.

31. Tariffs. (1) As soon as may be, but not later than six months from the commencement of this Act, the Authority shall determine and prescribe procedures and standards for determination, modification or revision of rates, charges and terms and conditions for generation of electric power, transmission, inter-connection, distribution services and power sales to consumers by licensees and until such procedures and standards are prescribed, the Authority shall determine, modify or revise such rates, charges and terms and conditions in accordance with the directions issued by the Federal Government.

(2) The Authority while determining the standards referred to in subsection (1) shall-

(a) protect consumers against monopolistic and oligopolistic prices;

(b) keep in view the research, development and capital investment programme costs of licensees;

(c) encourage efficiency in licensees operations and quality of service;

(d) encourage economic efficiency in the electric power industry;

(e) keep in view the economic and social policy objectives of the Federal Government; and

(f) determine tariffs so as to eliminate exploitation and minimize economic distortions.

(3) The procedures established under subsection (1) shall include

(a) time frame for decisions by the Authority on tariff applications;

(b) opportunity for customers and other interested parties to participate meaningfully in the tariff approval process; and

(c) protection for refund, if any, to customers while tariff decisions are pending.

(4) Notification of the Authority's approved tariff rates, charges, and other terms and conditions for the supply of electric power services by generation, transmission and distribution companies shall be made, in the official Gazette, by the Federal Government upon intimation by the Authority:

Provided that the Federal Government may, as soon as may be, but not later than fifteen days of receipt of the Authority's intimation, require the Authority to reconsider its determination of such tariff, rates, charges and other terms and conditions. Whereupon the Authority shall, within fifteen days, determine these anew after reconsideration and intimate the same to the Federal Government.

LEGISLATIVE HISTORY OF NEPRA ACT, 1997

7. Initially, the Act did not provide a forum to challenge the decision against determination of tariff and other charges, therefore, the amendments were made according to the requirements of the time. The first amendment was made on 27.06.2008 in Section 31 by introducing a proviso according to which the Authority was required to renew and revise the approved tariff on monthly basis on account of any variation in the fuel charges and policy guidelines that the Federal Government might issue and then recommend the revised tariff to the Federal Government for notification in the official Gazette; whereafter the tariff is imposed. On 24.09.2011 Section 3 was further amended to improve the qualification of the Chairman to be a person who may have an experience of power industry. Section 7 was also amended and according to the amended position the Authority could also review its order, decisions or determinations, settle disputed between the licensees, issue guidelines and

Standards Operation Procedure (SOPs). Section 12A was inserted according to which a right of appeal was provided to any aggrieved person against the order of the single Member of the Authority or Tribunal, established under Section 11, before the newly constituted Tribunal within 15 days in the prescribed manner which was to be decided within 60 days. Section 31 was further amended by introducing the requirement that Authority could make adjustment in the approved tariff on monthly basis but not later than the period of 7 days. However, on 30.04.2018, substantial amendments were made by the Act of XII of 2018 under which in Section 3, the Khyber Pakhtunkhwa name was substituted for N.W.F.P. and the qualification of the Chairman as well as the members of the Authority was prescribed with an experience of not less than 12 years in the relevant field including law, business, engineering, finance, accounting or economics preferably in the electric power services business. However, the Authority as a whole was to comprise of the requisite range of skill, competence, knowledge and experience relevant to its functions. The maximum age for Chairman or Member was 60 years. Under Section 5, the Authority was further empowered to perform its functions and conduct its proceedings in accordance with the regulations made under the said Act. Now the maximum age limit of the Chairman of the authority was 65 years whereas the Member Finance and the Member Electricity, both of not more than 60 years, were to be appointed for a period of 3 years by rotation from each Provinces. In case of a vacancy of the member of the authority, the Federal Government would designate a new member and if the position of the Chairman was vacant, the Federal Government would appoint one of the existing members as acting Chairman only for a period of 3 months. The Federal Government was essentially required to fill up the vacancy of the tribunal within 3 months from the date when such vacancy occurred. The absence of Chairman or his temporary incapacity was not to affect the power of members to decide. In order to further strengthen and provide more efficient forum for the resolution of disputes the Appellate Tribunal

was established by the Federal Government with its members appointed by the Federal Government under section 12 and a former Judge of the High Court as Chairman for a period of 4 years whereas the members should be nominated by the Provinces or the Federal Government representing Federal Government and the Provinces. The decision of the Appellate Tribunal was to be taken by the majority. If there were less than 03 members in the Appellate Tribunal the presence of 02 shall constitute a quorum and the decision shall be taken by consensus. Importantly, the Appellate Tribunal at the most could remand a matter of tariff determination to the Authority with the relevant guidelines to review such determination within one month. The decision of the Authority was to be given full effect during the pendency of the appeal and against the decision of the said Tribunal further appeal was competent before the High Court having territorial jurisdiction. The Appellate Tribunal was deemed to be a Civil Court having same powers under Code of Civil Procedure including the power to enforce attendance, production of documents, issuing commissions and was also empowered to examine any record, require information of document from any person in relation to the matter under appeal. The appellate tribunal was also competent to maintain a panel of national and international experts in power sector to assist in its performance and functions. Sections 12G, 12H, 12I, 12J, 12K are reproduced as under:-

12G. Appellate procedures. (1) Any person aggrieved by a decision or order of the Authority or a single member thereof or a Tribunal established under section 11 may, within thirty days of the decision or order, prefer an appeal to the Appellate Tribunal in the prescribed manner and the Appellate Tribunal shall decide such appeal within three months after filing of the appeal.

(2) In examining an appeal under subsection (1), the Appellate Tribunal may make such further inquiry as it may consider necessary and after giving the Authority or the Tribunal and an appellant an

opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a decision or order appealed against:

Provided that if the decision under appeal is a determination of tariff by the Authority, then the Appellate Tribunal may in case of disagreement with the determination of the Authority, remand the matter back to the Authority with relevant guidelines, which shall be duly considered by the Authority which shall be bound to review its determination within one month of the receipt of such guidelines from the Appellate Tribunal.

(3) The decision of the Appellate Tribunal shall be in writing, detailing the issues raised in the appeal and the arguments adopted by the appellant and the Authority or Tribunal, as the case may be. The Appellate Tribunal shall also provide reasons for reaching its decision with reference to the provisions of this Act and the facts of the case.

(4) The Appellate Tribunal shall provide copies of its decision to all the appellants and the respondents including the Authority or Tribunal, as the case may be, not later than five days from the date of rendering its decision.

(5) A decision or order of the Authority or Tribunal, as the case may be, shall be given full force and effect during the pendency of any appeal of such determination.

(6) The decision of the Appellate Tribunal shall be appealable before the High Court having territorial jurisdiction.

12H. Disclosure of interest. The following shall apply to members of the Appellate Tribunal including the Chairman, namely:

(a) a member of the Appellate Tribunal shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in

such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions, so that his ability to consider and decide any question Page 19 of 46 impartially or to give any advice without bias, may reasonably be regarded as impaired;

(b) a member of the Appellate Tribunal having any interest in any matter to be discussed or decided by the Appellate Tribunal shall disclose in writing to the Secretary to the Appellate Tribunal, the fact of his interest and the nature thereof;

(c) a member of the Appellate Tribunal shall give written notice to the Secretary to the Appellate Tribunal of all direct or indirect pecuniary or other material or personal interests that he has or acquires in a body corporate involved in a matter before the Appellate Tribunal; and

(d) a disclosure of interest under clause (a) shall be made a part of the record of the Appellate Tribunal in that particular matter.

12I. Powers of the Appellate Tribunal. (1) The Appellate Tribunal shall, for the purpose of deciding an appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of

(a) enforcing attendance of any person and examining him on oath;

(b) compelling production of documents; and

(c) issuing commissions for examination of witnesses and documents.

(2) The Appellate Tribunal may call for and examine any record, information or documents from any person in relation to the matter under appeal before it for the purposes of enabling it to come to a decision.

12J. Panel of experts. The Appellate Tribunal may maintain a panel of national and international experts in power sector to assist it in performance of its functions under this Act as and when deemed fit by the Appellate Tribunal.

12K. Budget. The Appellate Tribunal shall have an independent budget which shall comprise__ (a) an initial grant from the Federal Government; and (b) fees and costs associated with appellate procedures as may be prescribed.]

8. Likewise on 11.08.2021, further amendments were made in Section 31 (Tariff) emphasizing upon the protection of public consumer interests and to determine the uniform tariff for distribution licensees wholly owned and controlled by a common shareholder. The Federal Government was empowered to require the Authority to reconsider determination of tariff to the extent of issues common to these licensees and upon which within 30 days the decision would be intimated to the Federal Government. Likewise, Authority is to make a quarterly adjustment within a period of 15 days from the approved tariff on account of capacity and transmission charges, impact of transmission and distribution losses, operation and maintenance variables and policy guidelines by the Government and to decide the same within 15 days. The electric power supplier was authorized to collect surcharges from any category of consumers as the Federal Government might charge and notify in the Gazette in respect of each unit of electric power to be sold and to deposit the said amount in the prescribed manner. Such surcharge will be considered as cost incurred by the electric power supplier to be levied for the purpose of funding of any public sector project of public importance, fulfilment of any financial obligation taken by the Federal Government with respect to the electric power.

9. On 04.12.2021, another amendment was made in Section 3 according to which the Authority was made to consist of a Chairman and 4 specialized members to be appointed by the Federal Government; called (1) Member

tariff, (2) Member Finance, (3) Member Technical and (4) Member Development with the prescribed qualification and each member from each Province was to act by rotation in the above said capacity. The age of the Chairman and for Member is now maximum 60 years (instead of 65) to be appointed for 3 years and now the appointment was to be finalized necessarily within 90 days prior to the retirement of the incumbent. The Federal Government could appoint an acting Chairman if the office of the Chairman becomes vacant due to death, resignation or removal of the Chairman or a member. The Chairman and two other members shall constitute a quorum for a meeting. Any member could be appointed as acting Chairman if the situation so arises.

NEPRA AUTHORITY AS IT EXISTS TODAY.

10. The purpose of tracing out the historical background of legislative reforms in the power sector is to understand the improvement in local generation and transmission and electricity supply which indicate that it had been responding to the requirements envisaged by the variables from time to time. The present status of the NEPRA Act, 1997 and the salient features for the purposes of our discussion are as follows:-

NEPRA is a body corporate which can acquire and hold property and can sue or be sued in its name. It comprises of a Chairman and 4 specialized members to be appointed by the Federal Government which shall be called (1) Member Tariff and Finance having degree in the field of economics, corporate finance or chartered accountancy and is a professional of known integrity and eminence with 12 years related experience in the field of business and chartered accountancy to be appointed by the Province or Federal Government, as the case may be by rotation as member Balochistan, Punjab, Khyber Pakhtunkhwa and Sindh. Likewise, the (2) Member Technical was to be a person holding an engineering degree in the field of electricity, energy or power and is a professional of known integrity and eminence with a 12 years experience in the related field to be appointed

by the Province or the Federal Government, as the case may be on rotation for all provinces. Likewise, the (3) Member Law must hold a degree in the field of corporate and economics law and is a professional of known integrity and eminence with 12 years experience in the field of corporate law and economics law, to be appointed by the Federal Government and the Province, as the case may be, on the same lines rotation from each 4 Provinces. The qualification for (4) Member Development was that he must possess a degree in the field of economics, charted accountancy or an engineering in electricity, energy or power and be a professional of known integrity and eminence with 12 years related experience in the field of public policy, renewable energy or electric power services business to be nominated by the Province or the Federal Government, as the case may be on the basis of rotation from each Province, to be appointed for a period of 3 years. Therefore, the Authority as a whole was to comprise of the requisite range of skills, competence, knowledge and experience relevant to its functions. The maximum age for Chairman and Member is 60 years. The process of appointment of new Chairman and member must start in advance. It was also provided that any act or proceeding of the Authority shall not be in-validated on the ground that the vacancy existed or the constitution of the Authority was defective. The Chairman and two other members was to constitute a quorum for the meeting of the Authority. The Authority was entitled to determine the tariff, rates, charges, review organizational affairs of generation, encourage uniform industry standards, submit report to the Federal Government, etc.

LEGAL STATUS OF THE NEPRA AUTHORITY.

11. It is clear that the NEPRA Act, 1997 has undergone substantial amendments through Act IX of 2018 and Act XIV of 2021 and interpretation by the Supreme Court in various judgments since its promulgation and the passing of the 18th amendment in the Constitution. The basic legal question raised before this court is the constitution of the authority defined under Section 3 after the said modification in the Act and

the judgments of the Supreme Court. As already noted that by means of the amendment in 2021, sub clause (2) of Section 3 has now made it obligatory upon the Federal Government to appoint a Chairman and 4 specialized Members experts in the field of tariff and finance, chartered accountant, etc., as discussed above. It is however to be pointed out that each of these Members are to be rotated so that the 4 Provinces of the Federation, namely Punjab, Balochistan, Sindh, KPK are continuously represented as a part of the Authority which would make it fully functional. This policy of rotational representation enumerated in subsection (2) is to ensure the equal and equitable representation of the Provinces. However, under section 31(2)(4a) the authority as a whole was to comply with the requisite range of skills. Admittedly, the Authority contemplated in section 3 had not been completed, since other than the Chairman and 02 Members rests were not appointed by the Federal Government for the reasons best known to them. Resultantly, at the time of the working out the adjustments in the approved tariff on account of variations in the fuel charges on monthly basis the authority was not fully functional. Obviously, the objectives of having members from each province is to carry forward the basic principle and rationale behind the 18th Amendment. After devolution of the power to the provinces it was important that national integration should be observed at the forefront of Power Sector Management as well, therefore, Provincial representation is essential not only to protect the national interest but also to ensure that none of the Provinces feels deprived of their role in contributing into the running of the affairs of the country/Federation. This important issue in my humble understanding goes to the root of Federalism, therefore, must be given its due importance and recognition by this court.

TARIFF DETERMINATION.

12. While determining the tariff it is the sacred duty of NEPRA to protect the interest of consumers, power generation and distribution companies, National Transmission and Dispatch Companies and then to fix, renew, revise or modify the tariff of energy after conducting a discrete

inquiry and thoroughly hearing them. Under Section 31(2) Tariff means a final cost of energy offered to consumer determined on the basis of reference fuel price and any subsequent difference in the fuel price, added by NEPRA, therefore, it should be in the knowledge of the consumer that they were required to pay the price of energy on the basis of tentative fuel price and that the actual price would be payable on the receipt of the actual invoice of the fuel. Thus, it was a pre-agreed but reasonably contemplated liability of the consumer payable as and when finally determined, therefore, no question of vested right and legitimate expectancy arises if it not unjust. Simultaneously, it is also the heavy responsibility of the NEPRA to adjudge against the power generation companies if they wrongly claimed fuel adjustment costs and other expenses in order to transfer its burden to the consumers. Federal Government and NEPRA will also be responsible to determine the transmission losses after holding detailed probe and to fix the responsibility and then to take appropriate action against the culprits as held in Muhammad Yasin s case.[1] Moreso as under section 31(2) the NEPRA is bound to protect consumers against monopolistic and oligopolistic prices as the electricity was a monopoly product of WAPDA thus it is required to examine each and every component used for generation and transmission of energy while determining the tariff as held in Noorani Steel Mills s case.[2] However, in paragraph No.3 of the judgment, it has been observed by the Single Bench of this Court that prior to a new decision, notice was to be given in the national press and if the petitioners did not choose to intervene, the estoppel would operate against them and that the tariff determination has to be calculated, say for the month of January, in the following month of February, and that it must be determined periodically on the basis of actual and not hypothetical consumption. The question of tariff determination was dealt with in details in Pakistan Flour Mills Association s case[3] wherein the case was sent to NEPRA to re-examine the determination and tariff as well as losses. It was further held that remanding the matter to NEPRA will not take away the rights of

DISCOs or power generation companies to participate, where they will be at liberty to object and raise any such objection not be attended to by the authority according to law. Obviously, the notification issued by the Federal Government is always based upon determination of tariff by NEPRA and if it had reached at a conclusion other than the one already arrived at then the Federal Government would be free to issue a fresh notification and until changed, the same will remain in field. However, the procedural defects in the price determination by NEPRA were to be covered through fresh determination in view of the guidelines and observations as decided in Flying Board and Paper s case.[4]

TARIFF DETERMINATION ON REGULAR BASIS

13. Under Section 3 the tariff is to be determined regularly and mandatorily on yearly, quarterly and monthly basis so as to demand the exact amounts from the domestic, industrial and commercial consumers. The broad reasoning is that the timely demand with legitimate expectancy is essential for the budgetary and to prepare a profit-loss balance sheet ever essential for payments, therefore, the timeframe so given in the said provision cannot be extended as it is mandatory and not directory. A reference to Super Asia s Case[5] in which the legislative object and purpose is held as the clearest indicator to ascertain the mandatory nature of statute. Para 6 of the judgment is reproduced as under:-

> 6. The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.

Reference may be made to the cases of Syed Zia Haider Rizvi and others v. Deputy Commissioner of Wealth Tax, Lahore and others (2011 SCMR 420), In Re. Presidential Election, 1974 (AIR 1974 SC 1682), Lachmi Narain v. Union of India (AIR 1976 SC 714) and Dinesh Chandra Pandey v. High Court of Madhya Pradesh and another [(2010) 11 SCC 500].

Similarly, the legislative intent has been held as the guiding principal to distinguish the mandatory or directory nature of the statutory provisions in Imam Bakhsh s case[6]. Relevant extract of para 11 is reproduced as under:-

..The duty of the court is to try to unravel the real intention of the legislature. This exercise entails carefully attending to the scheme of the Act and then highlighting the provisions that actually embody the real purpose and object of the Act .

The Due Process ever essential for tariff determination was emphasized in E-Mover s case[7] as the concept to be understood holistically by keeping in mind the entire constitution. It protects the citizens from arbitrariness. Relevant extract of para 24 is reproduced as under:-

.The right to be treated in accordance with law was invigorated and bolstered when the Constitution was amended to provide an additional Fundamental Right by adding Article 10A to the Constitution stipulating that, 'For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. The due process requirement must be met in the determination of rights and obligations. The Constitution does not define due process. Therefore, it would not be appropriate to limit its scope by defining it. But this does not mean that the due process requirement is a meaningless concept. Rather due process incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all encompassing expression which may not be

curtailed with reference to particular laws. Due process is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule.

JUDICIAL HISTORY OF NEPRA CASES

The development of the judicial history through various judgments handed down by the superior courts will show the trend of enforcement and protection of fundamental rights of the consumers of electricity. First of its kind was the judgment in 2009 by this Court in case ICC Textile s case[8] in which, besides discussing the immorality of short orders, the infirmities in the detailed order passed by NEPRA authority were also pointed out by observing that issues were required to be framed, evidence to be recorded and the substantial increase in tariff merely on the basis of previous long years expenditures was whimsical, irrational, and without reasons and that even depreciation of rate of return of investment with comparative risks were not discussed, hence the cost was held not prudently incurred. Since the procedure and the guidelines and standards were not followed ignoring the related law, in the said case the tariff petitions were remanded and were deemed to be pending before the NEPRA where they were to be decided. Relevant para 20 is reproduced as under:-

The overview of the provision of the Act and the Rules framed thereunder, referred to above reveal that NEPRA is vested with the power to determine the tariff, and in doing so, it is enjoined by law, as far as practicable to protect the interest of consumers and the companies providing service. More particularly NEPRA while determining the tariff must protect the consumer against monopolistic and oligarchical practices, encourage efficiency in the operation and quality of service and promote economic efficiency in the power industry. NEPRA must keep in view the economic and social policy objectives of the Federal Government, and more

importantly, eliminate exploitation and economic distortions. Furthermore, the tariffs should allow licensees (in the instant case DISCs) recovery of any and all costs prudently incurred. The tariff should also provide for a Rate of Return to the licensee of the capital investment which is commensurate to the Rate of Return earned by other investment or comparable risks and promote investments. The tariff should also include a mechanism to allow licensee benefits through improved efficiency and to improve the quality of service. Financial stability in the power sector should also be taken into account. Competition should be encouraged. Inter class and inter-region subsidies should be provided transparently, consumer with low consumption levels i.e. the lifeline consumers being provided with electricity at a below rate and appropriate arrangement for rural electrification should be built into the tariff. Discrimination inter se the consumer groups with similarly service requirements should be avoided. And most importantly, each tariff determination should be comprehensive and free of the possibility of misinterpretation and state explicitly each component thereof .

It was further held that the nature of the proceedings before NEPRA are inquisitorial, therefore, the rights of the interveners were also protected. Para 22 and 43 are reproduced as under:-

22. The fact that the proceedings conducted by NEPRA are inquisitorial in nature does not in any manner detract from the right of the intervener to have his objections adjudicated upon by invoking the various provisions vested in NEPRA, referred to above. In fact, the NEPRA should not hesitate to exercise such powers at the behest of the Intervener if so required so as to make the participation thereof meaningful in the tariff approval process as is enjoined by section 31(3)(b) OF THE Act. Any failure in this behalf would reduce the proceedings before NEPRA a sham and would denude of its validity.

43. It would have been appropriate for NEPRA to have permitted the consumers to have resort to intervention or otherwise participate in the proceedings. Of course, scope of the hearing would be limited to examine and test the veracity and accuracy of the change in the components of the formula already determined without permitting the interveners, if any, to reopen the matters settled through the previous final determination, whereunder, the adjustment was being effected. In this view of the matter determination through adjustment dated 23-08-2008 being violative of principle of natural justice is without jurisdiction and is liable to be set aside .

In another important judgment given in Pakistan Flour Mills Association s case (supra) a learned Single Judge of this Court held that the NEPRA was duty bound to protect the interest of both parties; i.e. consumers and the power generation companies and it was its responsibility to fix renew, revise and modify the tariff of energy after conducting an inquiry and hearing the stake holders which also include National Transmission and Dispatch Companies (NTDC). It was concluded that the tariff means the final cost of energy offered to the consumers, even if it was received provisionally since it was already a pre-agreed arrangement/terms by the consumers. However further held that it did not include the line losses as NEPRA determines the energy tariffs on the basis of referred fuel prices and any subsequent differences in fuel prices was added by NEPRA, therefore, it was in the knowledge of the consumers that they were paying the price of the energy which was arrived at on the basis of tentative fuel price and that the actual price would be payable as and when it is finally determined and, therefore, no vested right and legitimate expectancy could arise. A right is the one which is complete in all respects and did not depend upon any contingency However, it was decided that domestic consumers of less than 350 units were not to pay the fuel price adjustment price and the DISCO were bound to return the excess cost back to the consumers. The

observations are relevant in paras 41, 42, 43, 44, 45 and 46, therefore, are reproduced as under for our understanding of the issue:-

41. However this argument has a force to the extent of individual consumer. Every citizen of Pakistan is enjoying the right of life with dignity under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan. Pakistan is a Islamic State and Holy Quran says about the right of Basic needs; "And in their wealth the seeker and the deprived has due share "(al-Dhrriyat 51:" Give the Kinsman his due, and the needy and the wayfarer, and do not dissipate your wealth extravagantly . (Bani Isrial 17:26).

42. Now it has to be seen whether the right to get electricity with reference to Articles 9 and 14 is the basic need and is a right of life and if it is a right of life than the life line declared by the respondent for domestic consumers fulfill the minimum requirement of domestic consumer or not?

43. Right to Life has been dilated upon by the honourable Supreme Court of Pakistan in Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693).

"47. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word `life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally. The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be

inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to `life' under Article 9 and if both are read together, question will, arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. Such questions will arise for consideration which can be dilated upon in more detail in a proper proceeding involving such specific questions."

44. The Hon'ble Supreme Court again examined Article 9 of the Constitution in Arshad Mehmood and others v. Government of Punjab through Secretary, Transport Civil Secretariat, Lahore and others (PLD 2005 SC 193) and held as under:

"Word 'life' used in Art.9 of the Constitution includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally, Word 'life' in the Constitution has not been used in a limited manner; a wide meaning should be given to enable a man not only to sustain life but to enjoy it."

45. Again the word life has been examined in Dr.Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265), Bank of Punjab and another v. Haris Steel Industries (Pvt.) Ltd. and others (PLD 2010 SC 1109) and Watan Party and another v. Federation of Pakistan and others (PLD 2011 SC 997), Alleged Corruption in Rental Power Plants etc. case (2012 SCMR 773).

46. The Hon'ble Supreme Court of Pakistan examined the right of life with reference to electricity 2012 SCMR 773, Alleged Corruption in Rental Power Plants etc. and opined as under;

"15. It is to be clarified that the Government of the day under Article 29 read with Article 2A of the Constitution is bound to formulate policies for the promotion of social and economic well being of the people, which includes provision of facilities to the citizens for work and adequate livelihood with a reasonable rest and leisure, etc. Energy/electricity is essentially one of the significant facilities required by the citizens for manifold purposes, namely, uplifting of their social and economic status. Non-supply of electricity to the citizen regularly, is tantamount to depriving them of one of the essentials of the life including the security of economic activities, which are relatable to their fundamental rights protected under Articles 9 and 14 of the Constitution. In the cases of Bank of Punjab v. Haris Steel Industries (PLD 2010 SC 1109), Liaqat Hussain v. The Federation of Pakistan (Constitution Petition No.50/2011). In Re: Human Rights Case regarding fast food chain in F-9 Park (PLD 2010 SC 759), In Re: SMC No.13 of 2009 (Case regarding Multi-Professional Housing Schemes) (PLD 2011 SC 619) and Shehla Zia v. WAPDA (PLD 1994 SC 693), Article 9 has been interpreted and its scope has been enlarged to each and every aspect of human life. Therefore, whenever a policy is framed with reference to uplifting the socio-economic conditions of the citizens, object should be to ensure enforcement of their fundamental rights."

Importantly, the I.C.A. No.173-2013 is pending before a Division Bench of this Court.

14. To ascertain whether the State is providing or safeguarding fundamental right of its citizens, more recently the apex Court in Naimatullah Khan Advocate s case[9] re-emphasized upon the provision of electricity and held it as right to life which is to be protected by the State and its organs. Relevant extract from page 627 is reproduced as under:-

5. The provision of drinking water, is a right to life; provision of electricity, is a right to life; provision of education, is a right to life; provision of health facility, is a right to life; provision of civic infrastructure and civil infrastructure, is a right to life;

..The State and its Organs cannot, as per mandate of the Constitution, abdicate, ignore or abandon this most important function of theirs and leave the citizens to fend themselves, which only drives the citizen towards anarchy ..

In the year 2020 against the judgment of a Single Judge in Chamber of this court an Intra Court Appeal was decided by its Divisional Bench in North Star Textile s case[10] holding that fuel price adjustment was an operational costs imposed in addition to the cost of generation and not a surcharge with retrospective effect. To resolve the issue of providing the fuel for others purposes, the NEPRA was directed to keep vigilance on the weekly or fortnightly check on GENCOs and NTDC according to their capacity. A mechanism was therefore evolved on the interpretation of section 31 whereby the Federal Government was to notify the tariff within specific time. Para 44 is relevant and therefore reproduced as under:-

44. The plain reading of subsection (4) provides no time scale for issuance of the notification, but the Authority with regard to tariff, rates, charges and other term and conditions when approves tariff, it shall be made in the official Gazette by the Federal Government on intimation. Intimation communicated by the Authority, Proviso (2) of subsection (4) prescribed guidance with regard to the Federal. Government by using "may as soon as may" to consider the determination, of such tariff, rates, charges and other terms and Conditions for re-consideration and intimate the same to the Federal Government, such time scale of 15 days in the Federal Government to determine and issue guidelines to determine after intimation as required by subsection (4) of section 31 .

In the connected C.A.No.807 of 2014 filed by the private persons, the Hon ble Supreme Court on 02.05.2018 disposed them of by fixing a time frame and directed that the residential tariff on the basis of fuel price fluctuation shall be four months from the bill or notified tariff and the referred process be completed within two months. Para-5 is reproduced as under:-

> 5. After considering the questions raised by the learned counsel for the appellants, the response given by the learned counsel for NEPRA and with consent of both parties, we direct as follows:-
>
> (a) in future, the time fixed in terms of provisions of second proviso to Section 31(4) of Act XL of 1997 for claiming tariff revision on the basis of fuel prices fluctuation shall be four (04) months with reference to the bill/notified tax of any particular month;
>
> (b) For filing refund claims by consumers, which are based upon downward fluctuation of fuel price, we find that a period of two (02) months is reasonable for the purpose of processing and granting such refunds relatable to the bill of a particular month; and
>
> (c) The above timeframe would apply for future billing/refunds etc. However, fuel price adjustment surcharge already imposed and recovered/claimed on the basis of fuel price fluctuation having been permitted by the NEPRA in the past shall be paid/cleared by the appellants/consumers within a period of one (01) month .

Likewise, W.P. No.25437/2015 decided on 02.09.2015, Flying Cement s case[11] and lastly Ghani Global Glass s case[12], Single Benches of this Court had dismissed the writ petitions on the grounds that quarterly charged tariff or provisional type adjustment were valid since the presumptive

figures are to be actualized on the basis of verified data under a prescribed methodology in terms of law and the procedure.

CONTENTIONS AND REPELLENTS

15. Learned counsel for the petitioner Sh. Usman Riaz, Advocate on the maintainability of these writ petitions submits that the decisions taken by the NEPRA/Authority for tariff determination are without the full strength as mandated under Section 3 of NEPRA Act, 1997 since out of 4 only 2 members are functional along with the Chairman. Notwithstanding the availability of quorum, the Authority was not legally constituted, therefore, it did not have the full power to decide. Adds that each member of the authority is to be appointed for a period of 3 years and well before expiry of his turn, the process has to be initiated since the office is so vital that it could not be allowed to remain vacant even for a day. Thus vacancy in the office is not a mere irregularity but a glaring deficiency in the composition of the authority. The objectives set forth in the NEPRA Act, 1997 is the elimination of energy poverty through highest standards of transparency and effective regulation of the electric power market of the country and to provide a legal framework to develop and sustain the electric power market and also to provide for development to renewable electricity markets in accordance with the international commitments of the country to encourage effectively mitigate adverse effects of climate change and also to manage the conflict of interest of the country for development of the electric power markets could not be followed unless the Authority under Section 3 is fully constituted which is a sine qua non for the exercise of its effective powers. Further adds that the appeal before the Appellate Tribunal under Section 12-G will not be an adequate and efficacious remedy keeping in view the various constitutional points raised in the present petition as the Appellate Tribunal has the power to decide an appeal only if the order was passed by the Authority constituted under Section 3 that if it is not legally constituted, its decisions would be coram non judice that in this background there is no validly issued notification under Section 31-A by the Federal Government.

He further argues that levy is always prescribed and imposed by the Federal Government to cater or to shift such financial burden on to the consumers whether NEPRA has to justify it in all circumstances, therefore, it is a superfluous and cosmetic determination. He argues that from 2018 to 2021, there was no taxing provision under which such cost or tax could be recovered and, therefore, now the recovery of such charges with retrospective effect is illegal. Although against the judgment given by the Division Bench of this Court in Flying Cement s case[13] the leave has been granted by the Supreme Court but it is yet to be finally decided. He refers to Section 51; i.e. validation clause to argue that such a lacuna cannot be filled subsequently through this stereotype clause which is normally present in almost every statute.

16. M/s Khawaja Ahmad Tariq Raheem and Muhammad Azhar Siddique, Advocates, learned counsel for the petitioner have argued that in LESCO v. NEPRA s case[14] order determination of tariff passed by NEPRA can be set aside by this Court in its Constitutional jurisdiction. Even in Ghani Global Glass s case (already referred) upheld by the Supreme Court but the case was sent back to NEPRA, instead of Appellate Tribunal, to re-determine the tariff after associating the stakeholders. It is also argued that in NEPRA v. FESCO s case[15] the Hon ble Supreme Court held that full strength before the amendment made in 2021 of Section 31 provided the availability of quorum but after the said amendment not only the quorum but the full strength of the authority will meet the legal requirements.

It is argued that the decision made by the Authority was oblivious to certain facts and as such it did not protect the interest of consumers, therefore, obviously, the petitioner has the legitimate expectation not to pay the additional surcharges etc. which were not previously demanded from him at such a high rate.

Rai Ahmed Raza, Advocate, learned counsel for the petitioner in W.P. No. 54667 of 2022 and W.P. No. 55853 of 2022 submits that the agricultural tariff imposed upon the petitioner is un-called for.

Mian Faisal, Advocate, learned counsel for the petitioner in Writ Petition No. 52892 of 2022 correctly emphasizes upon the corporate culture supposed to be promoted in NEPRA which required timely decisions to reduce the Corporate Risk as referred in National Electricity Policy, 2021 and mentioned in Section 5 of the NEPRA Act, 1997 but is not being followed. He traces out the short history to demonstrate that the time fixed for determination was gradually reduced to the period of 7 days in the last amendment of 2021. He submits that the role of Chairman will come into play only in case of a tie, therefore, the authority if operates only on the basis of the quorum, would be an express violation of this Section. Section 5 is reproduced as under:-

5. Meetings of the Authority, etc. (1) Subject to the provisions of this Act, the Authority shall, in performance of its functions and exercise of its powers, conduct its proceedings in accordance with regulations made under this Act.]

(2) The Chairman and two other members shall constitute a quorum for a meeting of the Authority requiring a decision by the Authority:

Provided that the members of the Authority shall nominate a member amongst themselves to work as an acting Chairman in case of absence of the Chairman, as the case may be, for meeting of the Authority.

(3) The member shall have reasonable notice of the time and place of the meeting and the matters on which a decision by the Authority shall be taken in such meeting.

(4) The decision of the Authority shall be taken by the majority of its members present, and in case of a tie, the person presiding the meeting shall have a casting vote.

On the maintainability it is argued that in the present case there is no adequate and efficacious remedy as provided in Dr. Sher Afgan Khan Niazi s case[16] according to which certain laid down parameters have not been fulfilled in the present case.

17. Mr. Shoaib Rashid, advocate, learned counsel appearing on behalf of LESCO submits that the writ petitions are not maintainable in view of the fact that the petitioners herein have got an alternate adequate and efficacious remedy available to them. Adds that without participating in the process of determination of tariff the petitioners cannot challenge it before this court directly. Adds that under section 12(G) of the NEPRA Act, 1997, the Appellate Tribunal comprising of Chairman and 02 members have been specifically given the powers to decide the appeals filed against the decision of NEPRA. Further adds that the Appellate Tribunal has the vast powers of a civil court not only to uphold, modify but also to set-aside and refer back to the authority for re-determination of tariff. However, it is undesirable that the Appellate Tribunal cannot determine the tariff or cannot set-aside the decision of the authority and substitute its own finding in contravention of the original proceedings in the capacity of Appellate Authority. In other words, the Appellate Tribunal has no power to re-appraise the evidence/material placed before the NEPRA authority. Such powers do not, in the considered opinion of this court, provide efficacious and adequate remedy, as discussed in the preceding paras. He next argues that the provision of Service Tribunal Act 1974 has been borrowed mutatis mutandis and, therefore, had to be interpreted in view of the judgment of Syed Imran Raza Zaidi s case[17] in which it was held that the said Service Tribunal is also equipped with the powers under Order 39 of Code of Civil Procedure. In this context, suffice it to say that this court cannot read into so as to extend the scope of the statute in the context of granting of the stay

order when the pendency of appeal before the Appellate Tribunal will not affect the execution of the order of NEPRA authority. Obviously, any such interpretation would tantamount to legislate the provision of law not in the scope of this court s powers[18]. He adds that the Tribunal is fully constituted and functional since May, 2022 and that the filing of the appeal before the said Tribunal has already been found to be a valid remedy by two learned Single Benches of this Court. The said judgments have not touched the large canvas of the composition of the authority in the context of the Provincial Autonomy. He refers to NEPRA v. FESCO case (supra) to argue that notwithstanding the non-composition of the full authority, vital decision can still be taken if the quorum is available. However, it is pertinent to note that the said decision is with reference to scheme of law in NEPRA Act, 1997 before the amendment in Section 3 requiring the establishment of the authority by legal representation by all the provinces. Learned counsel is of the view that the objections and reservations mentioned by the Member Sindh under section 31 in the decision have been fully addressed and incorporated in the subsequent meetings, therefore, cannot be agitated before this court. Adds that the issues so highlighted are not tantamount to dissent and that the determination of tariff is too technical which requires expert opinions of various technical experts which opinion cannot be substituted by this court. This court agrees to the extent that tariff determination is a technically complicated issue within the domain of the NEPRA but this court is very much concerned about the applicability of broad principle of law such as good governance, corporate culture fairness, transparency, decision on the basis of facts keeping in view the recovery of tariff from the lower stratum of the society as well as the adequate constitutional protection guaranteed against the exploitation. He next submits that the advertisement was duly published in the newspaper/press for public hearing for the large scale participation of stake holders and public prior to following the procedure and the process transparently for tariff determination and therefore their interests have been duly watched

since as it is their lifeline. However it goes without mention that as the case may, the NEPRA has an onerous duty to determine the tariff fairly and keeping in view the input by all the stakeholders. Here one may question the status of the members as the domestic consumers who may have also faced unjust charges in the head of electricity tariff. Importantly, under Articles 4 and 14 of the Constitution right to receive electricity has already been held as fundamental right to life, therefore, it must be guarded by the Courts as already held in detailed in Shehla Zia s case[19], Muhammad younas s case[20], Dr. Mobashir Hassan s case[21], Watan Party s case[22] and in Rental Power s case[23].

ADJUSTMENT IN APPROVED TARIFF IN 07 DAYS

18. Learned counsel for respondents also contends that exceeding the period of 7 days will not violate the principles of legitimate expectancy in the minds of businessmen or domestic consumers (both rich and poor) for tariff determination who must have prepared a budget under immense financial constraints to cater for day to day running of their households and businesses, therefore, in view of this court slapping them with unexpected, unwarranted, disproportionately huge amounts under the garb of adjustments is unreasonable. The legitimate expectancy is equated to fairness and equity which is a rightful attribute of a public functionary. An executive authority cannot take away the rights which vest in the citizen as held in Al-Samrez Enterprise s case.[24] The other principle that would apply here is of good governance according to which citizens are entitled to place implicit faith on to government functionaries only if they act fairly in protecting their rights. In the present case, when the bills have been paid it is an implied understanding that no further unreasonable dues are payable especially when the statutory period had elapsed. Besides, the wording not later than a period of 7 days has to be seen in the perspective of the Act and the amendment made therein, therefore, the judgments prior to 2018 are not applicable stricto sensu. Section 31(7)(iv) from its very language is certainly mandatory in nature as it is clothed with prohibition. The

parameters laid down by the Supreme Court to see whether a provision is mandatory or directory is the intention of the Legislature. Obviously, the quick calculated/determined reasons are the clear objection of law. Reference is given to Javed Iqbal s case[25] and Messrs Sarwaq Traders case[26], therefore, the condition not later than a period of 7 days in all probabilities is mandatory and not directory. Therefore, it can be easily noted that not only the Authority was incomplete but also the mandatory provisions have been violated, therefore, principles of estoppel are attracted like the principle of legitimate expectancy. Section 31(7)(iv) of NEPRA Act, 1997 is reproduced for emphasis:-

31. Tariff.(1) .

(2) .

(3) .

(4) .

(5) .

(6) .

(7) ..

(i) ..

(ii) ..

(iii) ..

(iv) the Authority may, on a monthly basis and not later than a period of seven days, make adjustments in the approved tariff on account of any variations in the fuel charges and policy guidelines as the Federal Government may issue and, notify the tariff so adjusted in the official Gazette.

The plain reading of Section 31(7)(iv) shows the only factor to be taken into consideration is any increase in fuel prices. The present GENCO's use a number of fuel types i.e. nuclear, coal, furnace oil, RLNG, diesel etc. for

which a mechanism had been provided and if go through the decision given by 2 members of the Authority the two points which emerge are that CPPA did not meet its commitments and it is mentioned that the monthly adjustments are done on a method/formula that is worked out by the authority on annual tariff basis which indicates the non-compliance of the provisions of Section 31(7)(iv). It is interesting that paragraphs 17, 18, 19 and 20 of the said order be read in conjecture which take into account the factors other than increase in fuel prices. There is no discussion in the entire decision as to which fuel has registered an increase. The dissenting note described as an additional note by the Chairman is very important as it highlights that CPPA has consistently failed to obey the directions of the Authority and has not acquired economic procurement of electricity from efficient power plants, therefore, the merit order stands violated. Notably, paragraph 3 and 4 destroy the majority decision as electricity has been obtained from plants which had no generation licenses. Further in paragraph 5 the decision has been taken on account of the previous adjustments which amounts is more than Rs.6.5 billion. The more interesting feature is that in paragraph 6 of partial load adjustment charges amounting to Rs.3.9 billion was made and this is on account of the fact that the 3 most efficient RLNG power plants were not used to their maximum capacity inspite of fuel being supplied to them yet load shedding continued to the extent of 6-12 hours. Even transmission losses were included. Therefore, determined Rs. 3.9 billion does not appears to be justified. Further in paragraph 8 GENCO II has been considered as the worst performing entity and the cheapest power plant Guddu 747 Megawatt was not used. The loss in this respect is well over Rs.6.06 billion. But no material steps taken subsequently to rectify this omission so as to reduce the tariff. This court should also consider the nature of the fuel price adjustment provided in Section 31(7)(iv) as the electricity cost is a fee which is payable for services rendered. The adjustment is in the nature of a levy which cannot be left at the discretion of the Authority or permissible

under the law. The legislature may have given the power to the authority with some structured discretion which was not exercised as per law laid down by the Superior Courts. The guidelines for such periodical determination in any case, cannot derogate from the principles laid down by the Superior Courts. In essence the power exercised by the Authority is in the nature of a fiscal liability imposed on the consumers, therefore, the principles established in our jurisprudence would have to be followed which prima facie is lacking in the decision of NEPRA. As far as the legal position of a consent order by the Hon ble Supreme Court is concerned, the law is very clear that any judgment which does not decide the questions of law and is not based upon or enunciates a principle of law is not binding in terms of Article 189 of the Constitution, 1973 but operates inter se the parties as laid down as early as in Ghulam Jillani s case.[27] and Mubashar Sheikh s case[28]. In this context the order dated 02.05.2018 passed in C.A. No. 807/2014 by the Hon ble Supreme Court is clearly a consent order and not a decision on merits on the proposition of law on merits where 4 months were granted for payments. However, in any case the said order related to the period before 2018 amendments.

19. On the question of alternate remedy, the judgment of West Pakistan Tanks Terminal s case[29] cited by the NEPRA to argue that one who seeks equity must do equity and, therefore, in the presence of alternate remedy no discretionary relief can be granted by a constitutional court. Relevant para-14 is reproduced as under:-

> Further more in law, the petitioner seeking leave to appeal against the High Court order is not entitled to the discretionary and equitable relief from this Court in the exercise of constitutional jurisdiction as he has no approached this Court or the for a prescribed under the Constitution and the law with clean hands. Once who seeks equity must have equities in his favour. In the present case we are firmly of the opinion that the equities do not lean in favour of the petitioner

therefore in our considered view the impugned judgment does not warrant any interference by this Court.

However, keeping in view the legal questions this court does not see any element of unclean hand. The petitioners have not withheld any substantial information debarring them from seeking the equitable relief. To avail a legal remedy is obviously the right of the petitioner. Participation of each and every consumer in proceedings before the authority would be impossible, therefore, cannot be non-suited before this court, particularly, when their legitimate concerns were not addressed. The next important issue relating to the alternate remedy related to the existence of an Appellate Tribunal in terms of section 12G of the Act, 1997. The said section is qualified by a proviso to sub clause (2), which stipulates that the maximum power available to the Tribunal is to remand the case to the Authority for tariff determination. One of the issue raised before this Court is fuel adjustment and not the whole determination of tariff. It is a fundamental law that the proviso is intended to qualify the main part of the provision and cannot carve out an exception from the same. Under the recognized principle of Interpretation of Statute such provision does not operate independently. In this respect reliance is placed on Messrs Gul Rehman s case.[30] Relevant extract from para 6 is reproduced as under:-

Generally a proviso is an exception to or qualifies the main provision of law to which it is attached. Its purpose is to qualify or modify the scope or ambit of the matter dealt with in the main provision, and its effect is restricted to the particular situation specified in the proviso itself. Further, it is a settled canon of interpretation that a proviso is to be strictly construed and that it applies only to the particular provision to which it is appended. Whilst holding that a proviso is limited to the provision which immediately precedes it.

By now it is well settled principle of law in Habibullah Energy s case[31] that all public functionaries must exercise public authority specially

while dealing with public property, public funds and assets in a fair, just, transparent and reasonable manner untainted by mala fide without discrimination and in accordance with law keeping in view the constitutional rights of the citizens. Understandably, due process in terms of the Constitution of authority excludes arbitrary power, authoritarianism and autocratic rule as envisaged in section 24A of the General Clauses Act, 1897. It is, therefore, observed that under section (7)(IV) of the NEPRA Act, 1997, which deals with the monthly fuel adjustments while working out fuel adjustments, no other factor other than fuel changes can be considered and the decision has to take place not later than a period of 7 days from the date the application is made to the Federal Government as per the dictum laid down in the Mustafa Impex s case[32] which means the Prime Minister and the Cabinet, otherwise it will undermine the power of the Federal Government which is against the spirit of the law.

THE CONDITION OF QUORUM

20. Much emphasis was laid upon the dictum of the Supreme Court on case titled NEPRA v. FESCO (supra) which overturned the judgments of the Honourable Lahore High Court in W.P. and ICA but it was given in a completely different context and was not related to the present question of composition of the Authority under section 3 of the Act. In the said judgment, the composition of the body for review purpose was considered complete and full in terms of R.16(6) of NEPRA Rules, 1998 reproduced hereunder:-

> Within 10 days of a service of final order, determination or decision of the Authority, a party may file a motion for leave for review by the full strength of the Authority of such final order, determination or decision as the case may be.

The Honourable Supreme Court has clearly stated in paragraph 10 at page 558 of the above referred judgment that the controversy in the case revolves around the interpretation of Rule 16(6) and the court held in

paragraph 11 that since NEPRA Rules 1998 were framed by the Authority under the provision of the 1997 Act the said Rules could not run contrary to the provisions of the Act. Since under the Act the quorum was 3, therefore, the argument that the review should have been heard by the full strength (5 members) was not accepted. The above case is not applicable to present case as the argument raised before this court is that the Authority constituted under section 3 was not complete and not fully functional. The record shows that 1 or 2 members are yet to be appointed. In other words, there was no proper representation of all Provinces. Besides, the question of quorum arises only after when the Authority is complete. In absence of a member for being sick, or on leave or for some other reason is unable to attend the meeting and in that case the question of quorum will arise as stated in section 5 of the Act. Besides, the Federation has not taken the stand regarding the composition of authority, hence it can be concluded that no Authority is constituted under the law with the letter and spirit of section 3 of the Act ibid.

The learned counsel for the LESCO argues that the absence of a member/incumbent will not invalidate the body as a whole and refers to Dr. Kamal Hussain s case[33]. However, in the said judgment the constitution of the Bar Council for the purpose of convening a meeting to scrutinize nomination paper of the candidate for election was challenged on the grounds, inter alia that Advocate General was not real incumbent but was merely acting as incharge during the absence of the actual incumbent who had gone abroad temporarily, therefore, the body s decision could not be challenged. Notably, in the said judgment the office of the Advocate General was not vacant, therefore, held that this fact could not nullify the constitution of the body. However, in the present case authority lacked two important members who were not appointed and, therefore, the question of their temporary absence does not arise, notwithstanding the fact that Chairman was in place.

21. Next it was argued that since section 3 of Oil and Gas Regulatory Authority Ordinance (XVII of 2002) is identical to section 3 of NEPRA, 1997, therefore, in Sindh Petroleum and CNG Dealers Associations case[34] a Division Bench of Sindh High Court, it was held that quorum requirements are sufficient as the plain meaning of this section also has the same grammatical meaning, and therefore, vacancy in OGRA does not vitiate the process of determination of gas prices duly notified to the general public by the Federal Government. However, in the present case the 2021 amendment had made it different from the statute discussed in the said judgment since the question of provincial representation and participation was introduced deliberately to address many issues of provincial autonomy. The said judgment is therefore not attracted in the present case.

SUPREME COURT JUDGMENT RESERVED/ANNOUNCED.

(C.As.Nos.513 to 586 of 2014 and C.M.No.367 of 2014 in C.A.No.542 of 2014

22. Learned counsel for LESCO finally argues that C.A. Nos.513 to 586 of 2014 titled Peshawar Electric Supply Company Ltd. (PESCO v. The National Electric Power Regulatory Authority (NEPRA) has been reserved by the Supreme Court for announcement on 14.09.2022 in which the leave was granted way back on 01.04.2014 inter alia on the grounds whether the Fuel Price Adjustment levelled under section 31(4) of the NEPRA, 1997 could be declared ultra vires; whether the judgment of Peshawar High Court under challenge was in violation of Gadoon Textile Mills s case[35], Pakistan Flour Mills Association s case[36] and North Star Textile Mills s case[37]. However, as an interim relief the NEPRA was permitted to recover the FPA in 10 monthly installments. According to him similar questions have been raised before this court and, therefore, the expected decision by the Supreme Court is awaited. The office has provided the decision dated 14.09.2022 on the said case in which the question of Provincial Autonomy

and the composition of the full authority was not discussed. The apex court concludes:-

. In the instant case with all due respect, the learned High Court has overstepped its jurisdiction under Article 199 of the Constitution and, has overridden the policy/frame work of NEPRA which matter is beyond the jurisdictional parameters of the High Court. In such situation, the learned High Court was required to exercise self-restraint and defer the matter for determination to NEPRA.

Obviously, this court cannot determine the Tariff.

However, since the said Civil Petition filed in the year 2014 pertained to section 31 as it existed then and after the amendment made in the year 2018 and 2021 the Constitution of the authority under section 3 under NEPRA has been purposefully changed. Besides, the judgment Pakistan Flour Mills (Supra) also relates to the year 2012 wherein the NEPRA Act, 1997 was not amended.

As far as the question whether notice was required to be issued to the Authority under Order XXVII, C.P.C. is concerned, suffice it to say that neither any legislative provision is under challenge nor interpretation of any constitutional provision is sought from this court hence no legal justification for such notice.

ROLE OF THE FEDERAL GOVERNMENT.

23. It is pointed out that most of the arguments addressed by the learned counsel for LESCO, a Distribution Company, were to be raised by the Federal Government, which just adopted it. This may add strength to the argument that in fact the Federal Government had just instructed/ordered the NEPRA to collect the electricity charges as per its desire giving little independence and maneuverability, therefore, the unjustified and high tariff rates are charged. Strangely, it does conclusively include the line losses, which is not the responsibility of the petitioner consumer.

PROVINCIAL AUTONOMY

24. Learned counsel for the petitioner has rightly argued that under the 18th Amendment the Provinces have been given authority in the field of Electricity Generation to adopt different modes and maintain their independence at different levels and such platform is the NEPRA constituted in Section 3 of the Act of 1997 under which the each province has to nominate one member to make it fully functional. The purpose is to provide opportunity to the federating units to sit and discuss on the issue and to evolve a policy with a participatory approval if not on consensus. Such unity in decision does not only increase the confidence of the citizens of the country leaving in their respective provinces but will also strengthen the Federation to determine and collect the tariff with power and confidence. Hence the necessity of full strength of NEPRA.

STATE OF INDUSTRY REPORT.

(75 years of Pakistan)

25. According to the learned counsel for NEPRA, the fuel price adjustment variation is not a new phenomenon. However, during the last one year because of these fuel prices unprecedented hikes, the prices of different fuel sources almost jumped three times owing to the increase in international prices and the devaluation of Pak rupees. The price of the imported fuels is dependent upon global fuel price hike increasing the cost of generation which obviously had resulted into unparalleled monthly fuel cost adjustment (FCA) and had a great impact to the end-consumers. According to the learned counsel for the respondent, the government had given the relief against fuel price adjustment (FPA) at the rate of 5/kwh on fuel cost adjustment for a period of four months from March, 2022 to June, 2022 and the subsidies was around Rs.126 billion. It was, therefore, found necessary to develop the base load power plants on indigenous fuel like

Thar Coal, dedicated local wellhead gas, etc. and developed more renewable sources like Wind, Solar, bagasse for electricity generation preferably by distributed generations. According to the learned counsel, there is a lack of almost one month for the recovery of fuel cost adjustment (FCA) which is to be eliminated in view of the time valuation of money and sufficient cash flow to avoid borrowing cost. Learned counsel has referred to the subsidies given from 2018 to 2022 in different heads. The detail is given in tabulate form:

TABLE 81

Details of Subsidies to Electricity Consumers (Rs. in Million)

		TDS	ISP	AQTA	ZKIR	Others	Total
PESCO							
2017-18	Accrued	32,265.10	2,419.66				34,684.76
	Paid	18,595.27	7,642.00				26,237.27
2018-19	Accrued	51,590.89	6,785.36		257.00		58,633.25
	Paid	46,048.05					46,048.05
2019-20	Accrued	57,814.37	1,003.67	14,283.00	440.33		73,541.37
	Paid	40,055.32	816.06				40,871.38
	Accrued	36,877.96	2,125.74	17,087.72	420.10		56,511.52

	Paid	46,917.88	25,878		554.55		47,471.43
2021-22	Claimed	17,295.83	2,156.34	12,346.13		7532.96	40,330.23
	Received	36,015.88	1,348.94	16,706.13		1,098.62	55,161.58
				IESCO			
2017-18	Accrued	(10,418.09)	1,864.50				(8,553.59)
	Paid	(8,219.71)	5,908.00				(2,311.71)
2018-19	Accrued	(2,577.77)	5,088.60		489.03		3,099.86
	Paid	(4,125.00)					(4,125.00)
2019-20	Accrued	(7,659.10)	616.96	1,143.92	636.00		(5,262.22)
	Paid	(5,243.70)	501.92				(4,741.78)
2020-21	Accrued	(16,945.88)	1,193.86	(2,131.38)	635.34		(17,248.06)
	Paid	(18,184.85)			890.93		(17,293.92)
2021-22	Claimed	17,738.78	1471.85	(1,259.24)	1,458.97	41,495.71	60,906.07
	Received	13995.23	1335.3	(547.24)	772.62	0	14,955.91
				GEPCO			
2017-18	Accrued	21,424.17	2,995.01				24,419.18
	Paid	17,709.39	8,868.00				26,577.39
2018-19	Accrued	7,577.45	7,534.46		276.24		15,388.15
	Paid	2,555.94					2,555.94
2019-20	Accrued	19,438.47	740.10	2,761.96	513.96		23,454.49
	Paid	17,068.86	560.92				17,629.98
2020-21	Accrued	15,309.88	3,018.19	(287.30)	655.54		18,696.31
	Paid	13,028.34			801.86		13,830.20
2021-22	Claimed	7,695	2,299	(1,872)	1,457	8,431	17,887
	Received	6,956	2,853	(1,259)	855		8,506
				LESCO			
2017-18	Accrued	(19,736.64)	8,796.85				(10,939.79)
	Paid	(13,334.89)	25,329.00				11,994.91
2018-19	Accrued	5,917.86	21,854.59		4,769.85		31,741.80
	Paid	(2,464.48)					(2,464.48)
2019-20	Accrued	16,953.34	1,968.21	3,427.37	6,940.22		29,289.14
	Paid	13,812.84	1,375.40				15,188.24
2020-21	Accrued	(1,546.08)	8,395.55	(6,139.83)	5,790.69		4,497.33
	Paid	(10,698.31)			7,837.75		(2,861.56)
2021-22	Claimed	(1,684)	8,576	(9,444)	19681	11660	28,790
	Received	8,259	4,971	0	14,805	752	27,282
				PESCO			
2017-18	Accrued	(19,736.64)	8,796.85				(10,939.79)
	Paid	(13,334.89)	25,329.00				11,994.91
2018-19	Accrued	5,917.86	21,854.59		4,769.85		31,741.80
	Paid	(2,464.48)					(2,464.48)
2019-20	Accrued	16,953.34	1,968.21	3,427.37	6,940.22		29,289.14
	Paid	13,812.84	1,375.40				15,188.24
2020-21	Accrued	(1,546.08)	8,395.55	(6,139.83)	5,790.69		4,497.33
	Paid	(10,698.31)			7,837.75		(2,861.56)
2021-22	Claimed	(1,684)	8,576	(9,444)	19681	11660	28,790
	Received	8,259	4,971	0	14,805	752	27,282
				HESCO			
2017-18	Accrued	30,711.83	3,956.99				34,668.82
	Paid	16,134.29	10,043.00				26,177.29
2018-19	Accrued	62,405.43	7,914.80		1,971.45		72,291.75
	Paid	50,625.69					50,625.69
2019-20	Accrued	76,583.46	807.43	13,542.35	1,671.95		92,605.19
	Paid	53,108.87	547.71				53,656.78
2020-21	Accrued	69,026.14	3,348.62	5,291.92	1,848.16		79,515.84
	Paid	55,690.49			2,876.54		58,567.03
2021-22	Claimed	66,378.84	2,029.12	883.99		21,102.51	90,394.45
	Received	99,809.59	5,842.86	11,036.07		5,257.52	121,946.04
		TDS	ISP	AQTA	ZRIK	Others	Total
				PESCO			
2017-18	Accrued	32,265.10	2,419.66				34,684.76
	Paid	18,595.27	7,642.00				26,237.27
2018-19	Accrued	51,980.89	6,785.36		267.00		59,033.25
	Paid	46,048.85					46,048.85
2019-20	Accrued	57,854.17	1,080.67	14,283.80	448.33		73,541.37
	Paid	40,055.12	816.06				40,871.18
2020-21	Accrued	36,807.96	2,125.34	17,087.72	420.18		56,511.52
	Paid	46,917.88	25,878		554.55		47,471.43
2021-22	Claimed	17,295.83	2,156.34	12,346.13		7532.96	40,330.23
	Received	36,015.88	1,348.94	16,706.13		1,098.62	55,161.58
				IESCO			
2017-18	Accrued	(10,418.09)	1,864.50				(8,553.59)
	Paid	(8,219.71)	5,908.00				(2,311.71)
2018-19	Accrued	(2,577.77)	5,088.60		489.03		3,099.86
	Paid	(4,125.00)					(4,125.00)
2019-20	Accrued	(7,659.10)	616.96	1,143.92	636.00		(5,262.22)
	Paid	(5,243.70)	501.92				(4,741.78)
2020-21	Accrued	(16,945.88)	1,193.86	(2,131.38)	635.34		(17,248.06)
	Paid	(18,184.85)			890.93		(17,293.92)
2021-22	Claimed	17,738.78	1471.85	(1,259.24)	1,458.97	41,495.71	60,906.07
	Received	13995.23	1335.3	(547.24)	772.62	0	14,955.91
				GEPCO			
2017-18	Accrued	21,424.17	2,995.01				24,419.18
	Paid	17,709.39	8,868.00				26,577.39
2018-19	Accrued	7,577.45	7,534.46		276.24		15,388.15
	Paid	2,555.94					2,555.94
2019-20	Accrued	19,438.47	740.10	2,761.96	513.96		23,454.49
	Paid	17,068.86	560.92				17,629.98

2020-21	Accrued	15,309.88	3,018.19	(287.90)	666.54		18,696.21
	Paid	13,028.34			801.86		13,830.20
2021-22	Claimed	7,641	2,250	(1,872)	1,457	8,431	17,887
	Received	6,956	2,053	(1,259)	825		8,556
LESCO							
2017-18	Accrued	(19,736.64)	8,790.85				(10,945.79)
	Paid	(13,134.09)	26,129.00				12,994.91
2018-19	Accrued	5,917.36	23,854.59		9,769.85		39,541.80
	Paid	(2,464.48)					(2,464.48)
2019-20	Accrued	16,953.14	1,968.21	3,427.37	6,940.22		29,289.14
	Paid	13,812.84	1,375.40				15,188.24
2020-21	Accrued	(1,549.88)	8,395.55	(9,139.83)	5,760.69		4,467.33
	Paid	(10,696.21)			7,837.75		(2,858.46)
2021-22	Claimed	(1,884)	8,576	(6,444)	19685	11660	28,793
	Received	9,254	4,971	0	12,305	752	27,282
FESCO							
2017-18	Accrued	(19,736.64)	8,790.85				(10,945.79)
	Paid	(13,134.09)	26,129.00				12,994.91
2018-19	Accrued	5,917.36	23,854.59		9,769.85		39,541.80
	Paid	(2,464.48)					(2,464.48)
2019-20	Accrued	16,953.14	1,968.21	3,427.37	6,940.22		29,289.14
	Paid	13,812.84	1,375.40				15,188.24
2020-21	Accrued	(1,549.88)	8,395.55	(9,139.83)	5,760.69		4,467.33
	Paid	(10,696.21)			7,837.75		(2,858.46)
2021-22	Claimed	(1,884)	8,576	(6,444)	19685	11660	28,793
	Received	9,254	4,971	0	12,305	752	27,282
MEPCO							
2017-18	Accrued	30,711.83	3,956.99				34,668.82
	Paid	16,134.29	10,043.00				26,177.29
2018-19	Accrued	62,405.43	7,914.87		1,971.45		72,291.75
	Paid	50,625.69					50,625.69
2019-20	Accrued	76,583.46	807.43	13,542.35	1,671.85		93,605.19
	Paid	53,108.57	547.21				53,655.78
2020-21	Accrued	63,026.34	1,348.62	5,291.92	1,846.36		73,513.24
	Paid	55,680.49			2,876.54		58,557.03
2021-22	Claimed	66,378.84	3,039.12	882.99		21,100.51	91,384.45
	Received	99,800.59	5,842.86	11,036.07		5,257.52	121,946.04

		TDS	ISP	AQTA	ZRIR	Others	Total
HESCO							
2017-18	Accrued	6,258.79	950.89				7,208.68
	Paid	2,053.96	2,671.00				4,724.96
2018-19	Accrued	22,364.08	2,162.48		156.80		24,683.36
	Paid	21,026.01					21,026.01
2019-20	Accrued	20,862.71	266.71	3,866.67	289.90		24,886.99
	Paid	14,232.24	173.09				14,405.33
2020-21	Accrued	15,622.79	880.94	3,182.28	365.60		20,051.01
	Paid	14,911.81			447.56		15,359.36
2021-22	Claimed	25,870	820	1,297		2824	30,918
	Received	27,945	570	2,019		2065	32,599
SEPCO							
2017-18	Accrued	6,258.79	661.28				6,920.47
	Paid	2,899.12	1,594.00				4,493.12
2018-19	Accrued	10,077.43	1,238.80				11,316.23
	Paid	10,076.71					10,076.71
2019-20	Accrued	8,208.09	218.88	2,342.71			10,769.67
	Paid	5,786.46	179.83				5,976.29
2020-21	Accrued	8,585.96	333.08	2,118.86			11,037.90
	Paid	8,080.03					8,080.03
2021-22	Claimed	18,993	110	2,528		1,281	22,824
	Received	n.p	n.p	n.p	n.p	n.p	13,146
TESCO							
						FATA (Receivables)	
2017-18	Accrued	6,586.53	258.23			12,308.49	19,073.25
	Paid	4,857.12	977.20			8,123.70	13,857.82
2018-19	Accrued	2,044.12	952.46			16,774.87	20,490.24
	Paid	3,602.39				10,961.27	14,563.66
2019-20	Accrued	3,430.93	110.82	(4,318.32)			(776.57)
	Paid	1,586.71	99.14				1,630.85
2020-21	Accrued	2,312.76	513.32	(4,482.80)			(1,636.73)
	Paid	(2,910.07)					(2,910.07)
2021-22	Claimed	(2,510)	251	(3,881)		28,799	20,758
	Received					18,040	18,040
QESCO						QESCO (49%)	
2017-18	Accrued	11,535.24	177.48			7,261.99	19,096.62
	Paid	8,429.66	567.00				8,996.66
2018-19	Accrued	3,991.31	907.73			6,911.00	11,812.13
	Paid	3,665.56				4,852.00	8,517.56
2019-20	Accrued	11,966.71	95.96	471.70			12,534.37
	Paid	7,887.61	67.98				7,955.59
2020-21	Accrued	20,486.02	156.23	43.73			20,685.98
	Paid	13,542.24					13,542.24
2021-22	Claimed	28,243.02	175.33	(3,892.22)		8,462.23	32,928.13
	Received	-	132.76	4,089.37		5000	9,222.13
		TDS	ISP	AQTA	ZRIR	Others	Total
KE						KE (49%)	
2017-18	Accrued	12,096.82	12,369.58			191.95	24,658.36
	Paid	10,988.77	2,084.00			282.56	13,357.33
	Accrued	11,377.59	12,418.34			514.00	24,309.93

	Paid	10,849.52				493.38	11,342.90
2019-20	Accrued	(3,493.32)					(3,493.32)
	Paid	25,000.00					25,000.00
2020-21	Accrued	11,342.97					11,342.97
	Paid	10,000.00					10,000.00
2021-22	Claimed	137,619	4,753	4,617	334	8,504	155,495
	Received	56,001	6,949		-	10,276	73,225
		Total TDS	**Total ISP**	**Total AQTA**	**Total ZRIR**	**Total Others (FATA Receivable, QESCO 40% and KE 40%)**	**Grand Total**
2017-18	Accrued	100,083.85	39,161.84	-	-	19,794.34	159,040.03
	Paid	59,727.78	79,094.00	-	-	8,416.26	147,238.04
2018-19	Accrued	204,816.71	76,563.12	-	13,360.84	23,589.67	318,330.34
	Paid	160,442.03	-	-	-	16,314.65	176,756.68
2019-20	Accrued	247,587.19	6,889.56	41,818.80	18,111.32	-	314,406.87
	Paid	195,957.11	5,112.49	-	-	-	201,069.60
2020-21	Accrued	179,127.61	26,410.15	11,860.32	19,242.96	-	236,641.04
	Paid	150,592.50	-	-	25,836.82	-	176,429.32
2021-22	Claimed	348,705.47	29,129.41	-5,462.35	22,930.97	171,038.39	564,009.88
	Received	289,705.70	32,429.86	66,783.53	13,882.62	64,663.14	480,610.86

ANNUAL REPORT-2021-22.

According to section 13 of the NEPRA, the NEPRA authority is to be funded from grants from Federal Government and fees and fines collected. Any surplus of receipts over expenditure after payment of tax had to be remitted to the Federal Consolidation Fund and in case of any deficit, the Federal Government will have to make up the deficiency. According to section 14 of the NEPRA, 1997, the authority had to maintain books of accounts and have it audited by the Auditor General of Pakistan (AGP).

In the year 2007, all regulatory authorities including NEPRA was brought under the tax net in compliance of the Federal Board of Revenue (FBR) and, therefore, the annual return of income tax accompanied by audited financial statements is to be necessarily filed under the corporate taxation network. The annual accounts of NEPRA was later audited by external audit firms of Chartered Accountants and the Auditors Report and Audited Financial Statements are published at the part of the annual reports by NEPRA. The financial statements for the financial year 2021-22 ended 30 June, 2022 approved by the authority on 23.09.2022 is a part of the annual report. This contribution to the Government and PEER Organizations during the financial year ended on 30.06.2022.

VARIOUS DECISIONS OF THE AUTHORITY IN THE MATTER OF FUEL CHARGES ADJUSTMENT.

26. Learned counsel for NEPRA has placed on record various determinations to demonstrate before the court that the authority is functioning properly and has completed the due process and the prescribed procedure. The decisions dated 20.03.2015, 10.03.2022, 15.04.2022, 06.05.2022, 13.06.2022, 07.07.2022, 12.08.2022 and 12.09.2022 has been shown to this court. The last decision being the latest so far was perused and was found that the authority which was to be comprised of 05 members including the Chairman, only 03 members including the Chairman had attended it and Rafiq Ahmad Sheikh (Member) gave its additional note. According to the said majority decision the authority had reviewed the information provided by CPPA-G seeking monthly fuel cost adjustment (FCA) on which due diligence was done. The actual pool fuel cost for the month of July, 2022 was 10.9833/kWh against the reference fuel cost component of Rs.6.2879/kWh showing the increase of Rs.4.6954/kWh. The authority then conducted a public hearing for which advertisement was given along with the salient features and details of the proposed adjustments in the approved tariff on 20.08.2022 and also uploaded on NEPRA s website. On 31.08.2022 the public hearing was conducted and after hearing the representatives of CPPA-G, National Power Control Centre (NPCC)/NTDC, Media and General Public. By giving a reference to the previous 2002 Power Policy Plant, 1994 Power Policy Plants and relying upon the information supported by certification by CPPA-G was relied upon with a condition that in case of any variation, error, omission or misstatement, the CPPA-G was to be held responsible and will be subsequently adjusted. It was also observed that energy of 46.572 GWh was purchased from Tavanir Iran in July, 2022 at the cost of Rs.1,063.62 million despite the expiry of the agreement in December, 2021. The cost of the said electricity purchased was provisionally allowed subject to the extension of the contract. The fuel cost of the power plants, namely, Orient, Saif Power,

Saphire Power, QATPL, Haveli Bahadur Shah, Baloki and Lucky Electric Power Company Limited was mentioned for the adjustment to the tune of Rs.4,340,351,134 rupees. The CPPA-G also claims Rs.752 million as previous adjustment which was allowed for the month of July, 2022 to the tune of Rs.752,370,233/-. 16.924 GWh from Captive Power Plants (CPPs) during the month of July, 2022 was also purchased against actual fuel cost of this energy Rs.80.503 million. The authority however directed CPPA-G/NPCC/NTDC to examine the dispatch of generation plant(s) out of merit order and scrutinize the dispatch report and then prepare a report comprised of all dispatch deviation from merit order, plants available but not dispatched and dispatch deviation justified or unjustified with their financial impact. It was further observed by the authority that the data submitted by the CPPA-G for the month of July, 2022 was not in accordance with the requirements of the authority. Therefore, it was directed to submit the same on the desired format for consideration and in house analysis was made on account of financial impact based on information submitted before it. The financial impact due to system constraint was Rs.464.98 million and due to underutilization of efficient power plants was Rs.16.63 million. The authority calculated the fuel price as follows:-

Actual Fuel Charge Component for July 2022	Rs.10.6314/kWh
Corresponding Reference Fuel Charge Component	Rs.6.2879/kWh
Fuel Price Variation for the month of July 2022-Increase	Rs.4.3435/kWh

In the addition note submitted by Rafiq Ahmad Sheikh (Member) it was mentioned that the merit order was being prepared on old consideration but with indigenous natural (pipe line quality) gas which was not available to

the plants since last 2/3 years and thus a defective merit order was placed before the authority. It was also observed that three most efficient RLNG power plants in Pakistan Power Sector were Quaid-e-Azam Thermal Power Plant (QATPL), two power plants of National Power Parks Management Company Limited at Haveli Bahadur Shah (HBS) and Baloki which had the efficiency above 61% whereas their utilization factor were 26% QATPL, 62% HBS and Baloki around 57% during the month of July, 2022 and that its accumulated claim for load operation was Rs.5.086 billion. It was, therefore, recommended to fully utilize these three plants in order to meet the electricity shortfall and minimize the load shedding and to avoid part load charges of Rs.4.086 billion. It is also recommended that effort should be made to improve RLNG to fully utilize the most efficient RLNG power plants as 494 MMCFD against a demand of 900 MMCFD of Rs.6.938 billion. Due to the system constraints, the power plants operated in violation of EMO causing financial impact of 464.98 million which is due to the failure of relevant entities in performing their functions. It was finally observed that utilization factor of power plants at Central Power Generation Company Limited (CPGCL) including the newly commissioned Guddu 747 machine, remained very low despite availability of dedicated cheaper Gas resulting into financial loss due to operation of costlier power plants.

FUEL CHARGES ADJUSTMENT (FCA).

27. It is the case of NEPRA that fuel charges adjustment is a timeline phenomenon and by giving the example in the month of July it is submitted that distribution companies charged the consumers with the predictive fuel rate from July, 2021 to November 2021 and submitted bill of July on 15.08.2022 whereafter the CPPA-G filed difference of actual and predictive bills as fuel cost adjustment with NEPRA on 18.08.2022 after conducting the hearing and verifying the claimed data issued fuel cost adjustment decision on 10.09.2022 but during the month of September the distribution companies sent bill to the fuel cost adjustment consumers and then after collection the amounts were paid to the power producers.

According to NEPRA, fuel cost adjustment is mechanism for recovery of left over fuel cost component. It is determined and notified under section 31(7)(iv) read with sections 7(1) and 7(3)(a) of NEPRA, the fuel price adjustment was determined on monthly basis to settle the variation due to cost of fuel (major component of tariff) and as such one month bill represent the fuel price adjustment of that month only. The fuel price adjustment variations due to generation mix and prices. The variation is subject to the final adjustment and settlement of the obligation of the consumers to pay the fuel charges. The increase of fuel price adjustment is obviously on account of increase of fuel price in the international market.

FUEL PRICE ADJUSTMENT MECHANISM.

28. The actual fuel cost component is the fuel cost component in the pool price on which the DISCOs was charged by the CPPA-G in a particular month whereas the reference fuel cost component is the fuel cost component for the corresponding month projected for the purpose of tariff determination. According to NEPRA, the variable sources (1) Water/Hyrdo (2) Coal (3) Gas (4) Wind (5) Solar (6) RFO (7) Diesel (8) RLNG (9) Nuclear (10) Mix (11) Bagasse and (12) Import from Iran and according to the Energy Mix of Pakistan in 2020, 29% is received from Hydro, 24% from RLNB, 14% from Furnace Oil, 11% from Natural Gas, 10% from Imported Coal, 6% from Renewable, 4% from Nuclear and 2% from Local Coal. The province of Punjab consumed 61.7 Gwh, Sindh 20.6 Gwh, KPK 11.1 Gwh, Balochistan 5.5 Gwh and AJK 1.1 Gwh.

ADDITIONAL NOTE (PART-II)

29. Learned counsel for NEPRA has placed on record the guidelines for determination of consumer end tariff (2015) which is to be considered by the authority at the time of tariff determination. According to the said policy, there is a specific formula for tariff determination. In the cost categories, (a) Post tax rate of return on rate base, (b) Depreciation Expense (c) Operations, Maintenance and Repairs Expenses, (d) Salary, Wages &

other benefits, (e) Travel Expenses, (f) Vehicle Expenses, (g) other expenses and (h) Other Income which to be the guiding factors. In additional conditions, the minimum time was to be utilized to notify the annual and multiyear electricity and user tariff. Tariff methodology including intent of the tariff and the design principles, the power purchase price procedures, the generation plan, quarterly/Bi-Annual PPP Adjustment and also monthly fuel adjustment. According to clause 50 Monthly Fuel Adjustments , the same was to be made on fuel cost component which is to be mentioned in the bill as Fuel Adjustment Charges. In view of any abnormal changes the authority could review these references along with any quarterly adjustment. The guidelines also provided for multiyear tariff methodologies.

NATIONAL ELECTRICITY POLICY, 2021.

30. The policy was required to supply of reliable, secure, efficient and affordable electricity ever essential for the sustainable growth of a nation s economy. In the National Power Policy, 2013, generation, transmission and distribution were encompassed and the policy goals were set to target and provided guidelines for the sector. Therefore, under section 14A of the NEPRA Act, the National Electricity Policy was developed to reform, improve and sustain the power market and power sector. The vision was to develop the optimal utilization of indigenous resources, to introduce efficient, lucrative and competitive market design and affordable and environment friendly outcome for the consumers. The accessibility of electricity supply to all areas at affordable rates was prescribed in clause 3.1.1. which is reproduced as under:-

> 3.1.1. Accessibility of electric supply to all areas, including rural areas, at affordable rates is the cornerstone of socio-economic development. Making power available, when it is not affordable, has limited value. The Government shall strive to ensure that electricity is accessible to all consumers at rates which commensurate with

their ability to pay, coupled with development of an efficient and liquid market design. A liquid market design and affordable supply of electricity would also contribute vastly to the financial turnaround and commercial viability of the power sector.

Energy Security was also ensured for uninterrupted availability of energy sources. The key Guiding Principles was efficiency, transparency, competition, financial viability, indigenization, research and development and environmental responsibility.

The cost reflective tariff to the extent of feasibility and timely passing of the cost to the consumers and the recovery of such cost would make it financially viable. The generation, transmission and distribution of supply through an effective system market development and operation was also emphasized. The cost of service, tariff and subsidies was also emphasized. Clauses 5.6.1, 5.6.2, 5.6.3 and 5.6.4 are relevant which are reproduced as under:-

5.6.1. Financial sustainability of the sector is premised on the recovery of full cost of service, to the extent feasible, through an efficient tariff structure, which ensures sufficient liquidity in the sector.

5.6.2. The Regulator shall align adjustments in generation-end tariff with the consumer-end tariff, which shall be submitted by the licensees and determined by the Regulator in a timely manner, in respect of both quarterly and monthly adjustments.

5.6.3. In view of various parameters, including (a) the socio-economic objectives; (b) budgetary targets in field; and (c) recommendations of the Regulator with respect to consumer-end tariff for each state-owned distribution company, the Government may continue to propose uniform tariff across the consumers and regions. In pursuance thereto, the Regulator shall, in public consumer interest, determine a uniform tariff (inclusive of quarterly adjustments) for all the state-owned distribution companies. Additionally,

Government may maintain a uniform consumer-end tariff for K-Electric and state-owned distribution companies (even after privatization) through incorporation of direct / indirect subsidies.

5.6.4. In due course, financial self-sustainability will eliminate the need for Government subsidies (except for any subsidies for lifeline, industry or agriculture consumers, as per prevailing Government considerations). The subsidies that are to be provided by the Government shall be released in a timely manner to contribute to the financial sustainability of the power sector.

Last but not least was the Good Governance and Policy Implementation and Monitoring with regular review and updating was made essential component of the said policy.

COMMERCIAL CODE.

31. Under Section 35 of NEPRA Act, 1997 read with Rule 5 of the NEPRA (Market Operator, Registration, Standards and Procedure) Rules, 2015, the Commercial Code submitted by CPPA-G was approved according to which CPPA-G was responsible for administration, maintenance and implementation of the Commercial Code, supervision of compliance by Market Participants to ensure commercial transactions including transfer prices. According to the said Code, Energy Transfer Charge + Energy are without GST. It was CPPA-G which was to be provided with all the metering data collected from respective Market Participants and each energy unit is measured in kWh and monthly maximum demand or Peak Demand of each Market Participant is to be ascertained.

A process which guides decision making with related functions such as information on the consequences, programs and policies and their alternatives, so that the decision is influenced by such information and it ensures the provisions of a mechanism for ensuring the participation of potentially affected persons as held in Ms. Imrana Tiwana s case.[38] For

adequate and alternate remedy the test and guidelines for this court under Article 199 of the Constitution lies in efficacious, convenient, beneficial, effective and speedy, inexpensive and expeditious. The alternate remedy if allowed to be resorted to must be able to accomplish the same purpose, which depends upon the circumstances of each case. Obviously, the disputed questions of facts cannot be investigated by the High Court. Para 9 of Dr. Sher Afgan s case (supra) is reproduced as under:-

9. The learned High Court will have to consider in each case the following tests to be applied to determine the adequacy of the relief:-

(i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an other adequate remedy within the meaning of Article 199.

(ii) If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the adequacy of the alternative remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.

(iii) In practice the following steps may be taken:-

(a) Formulate the grievance in the given case, as a generalized category;

(b) Formulate the relief that is necessary to redress that category of grievance;

(c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;

(d) If such a remedy is prescribed the law contemplates that resort must be had to that remedy;

(e) If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break clown under the strain;

(f) If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralize or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199.

(g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199.

If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due. (Ibrahim T.M. Ltd. V. Federation of Pakistan PLD 1989 Lah. 47, Allah Ditta V. Muhammad Saeed Vatoo PLD 1961 Lah. 479. Shamas Din and

Bros. V. Income-tax and Sales Tax Officer PLD 1959 Lah. 955, Khaliq Najam Co. V. Sales-Tax Officer PLD 1959 Lahore 915.

FUEL PRICE ADJUSTMENT/QUARTER TARIFF ADJUSTMENT

32. Learned counsel for the respondent-NEPRA argues that under NEPRA Determination of Consumer-end-Tariff (Methodology and Process) Guidelines, 2015, the generation cost (Generation of Companies) as well as wheeling charges (for Transmission Companies) are recoverable in the bills generated by the Distribution Companies for the end consumers have been provided. Under clause 40, Power Purchase Price Procedures include fuel component, variable O&M, Capacity Charges and Transmission Charges and under clause 42, the authority will include each component of PPP in the revenue requirement of the company. Under clause 49, Quarterly/Bi-Annual PPP Adjustments, only the capacity and transmission charges, the impact of T&D losses, adjustment of variable O&M shall be taken into consideration but under clause 50, Monthly Fuel Adjustments on fuel cost variation would be done on monthly basis and shall be called as Fuel Adjustment Charges. The following formula shall be applied:-

Fuel Price variation = Actual Fuel Cost Component = Reference Fuel Cost Component

According to the learned counsel for the respondent-NEPRA in Fuel Price Adjustment mechanism, the total generation from different sources of fuel is accumulated for the purpose of calculated and distributed amongst the distribution companies (DISCOs) and this is called as Energy Pool . The electricity is then provided from the common delivery point (CDPs) which are 791 in total throughout the Pakistan. The consumer is charged the tariff after following the procedure and notification. The Power Purchase Price (PPP) is to be paid by the Distribution Companies. This determination is based on estimate of maximum demand of DISCOs (kw) and the Net Energy (kwh) produced and delivered varies at different time

of supply. The price so determined is regarded as sale of energy depending upon the prudent cost and market trend that is effected by external factors and variation in the estimates. It also depends upon the metering data of common delivery points (CDPs) and Fuel Cost Component (FCC) generated during a billing month. As soon as the data is collected, the CPPA sent a notice to NEPRA who gives 07 days for public hearing and give decision within that time.

This adjustment within the specific time of 07 days has been inserted after a valuable input given by various decisions by NEPRA and the Courts. Any consumer of any product has to make budget whether such commodity is affordable or not and what quantity would be essential for his purpose. This will be possible when only exact cost is calculated or slight permissible and acceptable variation would do harm to the consumer. But when it is exponentially and disproportionally high, the disturbance of the consumer is very natural. This may have been because of the less efficiency in collection of data or calculation of charges not attributed to the consumers default. If late demand of Fuel Price Adjustment is not against past and close transaction then at least it has to be rationalized for the reason that it was already agreed between the consumer and Distribution Companies. It is high time that the Distribution Companies should be efficient and strict on to the timeframe so that timely recovery is effected which shall ensure the smooth supply of the electricity to the consumers.

Keeping in view the above guidelines, the NEPRA authority is required to accord rehearing and then re-fix the charges recoverable from the consumers.

33. Vide Notification No. NEPRA/TRF-100/MFPA/15173-88 dated 12th August 2022 and 12.08.2022, fuel charges in the sum of Rs.36,052,728-30/- in respect of Ex-WAPDA distribution companies were demanded for the month of June, 2022. The aforesaid Notification has been

issued in the purported exercise of the Authority under sub-clause 7(iv) of Section 31 of the Act.

Obviously, the Authority shall in the determination, modification, or revisions of rates, charges and other terms and conditions for the provision of electric Power Services, be guided by the national Electricity Policy, the National Electricity Plan and such guidelines as may be issued by the Federal Government in order to give effect to the national electricity policy and national electric plan. Section 31(3)(i) provides that the "tariff" should be comprehensible, free of misinterpretation and shall state explicitly each component thereof; provided that the Authority shall strike a balance to the extent possible, among the general guidelines in order to optimize the benefits to all persons likely to be affected by the determination, modification or revision of rates, charges and terms and conditions.

The aims and objectives mentioned in the preamble of the Act shows that the main purpose is to provide for the regulation of generation, transmission and distribution of electric power and matters connected therewith and incidental thereto. In terms of Section 7(6) the Authority in performing its functions under the Act, has to protect interest of consumers and companies providing electric power services in accordance with the principle of transparency and impartiality. Section 31(7)(iv) also provides that the Authority may, on a monthly basis and not later than a period of seven days, make adjustments in the approved tariff on account of any variations in the fuel charges and policy guidelines as the Federal Government may issue and, notify the tariff so adjusted in the official Gazette.

In the manufacturing process electricity is the main component with regards to the determination of the costs of the products. Suffice to mention even the slightest change in cost of electricity has bearing on the end price of the product. According to the billing procedure the competent Authority of the FESCO record the meter reading of the petitioner's company on 10th

of the preceding month in presence of the representative of the petitioner's company. Thereafter, around 15 and 16 of the relevant month the bill is issued and delivered to the petitioner's company with the due date of payment around 26 and 27 of the said month. This is the reason that under section 31 (7)(iv) the Authority on monthly basis and not later than the period of 7 days must make adjustment of the fuel charges of the previous month. Meaning thereby that in the month of July we will receive the electricity consume for the month of June, and the unit consumed for the month of June has to be ascertained by the Authority within a period of 10 days. This is the reason that the charges of the fuel price adjustment under the relevant section has to be determined within a period of 7 days, so that when the bill of a month is issued in the subsequent month it includes the fuel price adjustment of the previous month. In the Corporate Sector, it is well established norms that the untimely decisions or negligence on part of one Corporate Company cannot be unilaterally passed on the consumer.

In terms of section 31(1), of the Act, the Authority is bound to follow the guidelines of the Federal Government particularly, in terms of paragraph No.4.4.1(c) of the National Electricity Policy, 2021, the Authority and relevant DISCO Company is bound to timely pass on the cost of the electricity to the consumers, while netting off any subsidies funded by the Government. Meaning thereby the provision of section 31(7)(iv) of the Act, 1997 is mandatory in nature. The fuel price adjustment for the month of June can only be claimed in the bill issued in the month of July, thereafter, it cannot be claimed.

COLD STORAGE AS INDUSTRIAL CONSUMERS

34. The status of petitioners as cold storages as industrial consumer has been denied by the respondents/ LESCO, MEPCO and NEPRA and had taken a specific stand that prior to change of their nature from industrial to commercial, they were issued notices but none of them participated in the proceedings before NEPRA. It was also contended that under the law if

cold storage/petitioners have some grievance they can file an application before the authority to change their status from commercial to industrial. It was argued that industrial supply means the supply for bonafide industrial purposes in the factories including supply for the offices inside the premises for normal working hours and as such poultry farms, fish hatcheries, fish farms, fish nurseries, breeding farms and software houses are entitled to the single metering arrangements which are the industrial consumers.

However, under the recognized definition of industrial business, the activity in which products are produced, manufactured, dismantled, altered, re-packaged, repaired or stored at a scale greater than defined by the retail business. Warehouses where the premises for storage of goods, merchandise, material, materials and large stock which does not include the retail business which displays the business activities. It also includes other than agriculture business or commercial business which also includes industrial parks, public utilities, development activities, conversion and storage without processing activities. The industrial property is a property for processing of finished or partially finished product from raw material or lay of parts involving capital and labour which also includes offices or accommodation. On the other hand, the commercial business involves selling of goods and service, repair of goods, commercial office functions including retail, household services, hotel rooms other than personal or non-personal services. This is the reason why under the Consumer Service Manual the basic document creating relationship between the electricity provider and the consumer and under Appendix V of the Consumer Service Manual titled Percentage of Load Factor for Different Type of Functions , the cold storages have been categorized for industrial supply at Sr. No. 7, and under clause 7.6 thereof, any application for the correction of tariff can be filed by either party but in the present case no such application was filed by the LESCO since they were earlier recognized as Industrial Consumers. Under clause 2.15 of the said Manual, certain documents for change of

tariff have to be filed by the Authority. However, it was also provided under clause 7.6 that in case where high tariff has been charged to the consumer, the adjustment/credit for six months be allowed retrospectively from the date of pointing out of such discrepancies. Clause 7.6 is reproduced as under:-

APPLICATION OF WRONG TARIFF.

> Application of a correct tariff is the responsibility of DISO (DISCO to insert its name) at the time of sanction of connection. In case of application of wrong tariff, which is lower than the applicable tariff, no differential bill will be debited against the consumer account. However, in case where high tariff has been charged to the consumer than adjustment/credit for six (6) months be allowed retrospectively, from the date of pointing out of such discrepancy.

The nature of cold storage as an industrial activity has also been recognized in Factories Act, 1948 and under Section 2(k)(iv) a manufacturing process means any process for preserving or storing any article in cold storage. It means that preservation and storage is not a commercial activity. In Ms. Krishna Poultry Farm s case[39] in clause 7 the Agro Industrial Consumers have been recognized as the category to supply of power in horticulture, floriculture, sericulture and other allied agricultural activities including animal husbandry, poultry and cold storage where it can be kept fresh or frozen until it is needed. In Rajasthan Ice & Cold Storage s case[40] commercial industry has been defined as a manufacturer, producer involving the processing of repair of goods and cold storage used to potatoes, fruits and other goods for refrigeration to keep at different temperature to prevent their decay to protect perishable items as an industry. In Radha Nagar Cold Storage s case[41], the expression cold storage used in the Webster s Third New International Dictionary is recognized as industrial company. In Delhi Cold Storage s case[42] it has been held in

paragraph No.12 that processing is an action which brings forth some change of alternation of the goods or material which is subject to act of processing whereas in the cold storage vegetables, fruits and several other articles requiring preservation by refrigeration are stored, therefore, it is not to be called as a process resulting into different substance from what a material was at the commencing of the process. In Nandlal Cold Storage s case[43] it was held that the manufacturer implies not only a change but transformation to a new and different articles with distinctive name and character, therefore, obviously the cold storage does not provide this results.

JUDICIAL REVIEW

35. The power of Judicial Review is conferred only upon the High Courts and Supreme Court of Pakistan by virtue of the Constitution of Islamic Republic of Pakistan, 1973 and therefore, the Special Tribunals constituted to settle different matters between Governmental Departments do not have the authority to exercise this power. Thus, the unfair regulations, bad workings and illegal/irregular proceedings of NEPRA and other Government Institutions can be challenged before this court also on the basis of mala fide.

The process, methodology, assessment, observations, calculations of Fuel Cost Component (FCC) and the claim of the Fuel Cost Adjustment (FCA) in the electricity bills which has been carried out without observance of procedure required by law; deserves the attention of this Honourable Court as held in Tariq Aziz-ud-Din s case (supra) by the apex Court held that all judicial, quasi-judicial and administrative authorities must exercise power in reasonable manner and also must ensure justice as per spirit of law and instruments regarding exercise of discretion.

NATIONAL ELECTRICITY POLICY AND NATIONAL ELECTRICITY PLAN

36. Section 14A of NEPRA (Amendment) Act, 2018 states that (1) The Federal Government shall, from time to time, with the approval of the Council of Common Interests, prepare and prescribe a National Electricity Policy for development of the Power Markets . As per sub-section (4) of 14(A) The Federal Government, in consultation with the Provincial Governments, shall prepare a National Electricity Plan in accordance with the policies prepared and prescribed under subsection (1) of NEPRA (Amendment) Act, 2018 and notify such plan once in five years . Further, under subsection (5) of Section 14(A) the Authority is obliged to perform its functions under the National Electricity Policy and National Electricity Plan. Given the above provision of the Act, National Electricity Policy and National Electricity Plan take the central importance around which the regulatory framework shall be developed. Till the writing of this report, National Electricity Policy and subsequent Plan has not been finalized. The National Electricity Policy and subsequent Plan is inevitable to set the directions for whole power sector and clarity for the investors and decision makers to move.

HIGH COST OF ELECTRICITY

37. The economic and social well-being of a country greatly depends on access to the affordable electricity by all segments of society. The availability of electricity and its indiscriminate access to everybody at affordable rates is hallmark of an efficient power sector. In Pakistan, a large part of the previous decade was plagued with excessive load-shedding due to non-availability of sufficient affordable generation capacity and inefficient transmission and distribution services. With the induction of substantial amount of generation capacity during last few years, though the availability of electricity has improved significantly but the cost of electricity for end-consumers has increased tremendously owing to various

reasons like high T&D losses, low recovery, circular debt, huge capacity payments, currency devaluation, fuel cost, under-utilization of efficient power plants etc. The situation indicates lack of integrated approach for planning and implementation of power sector expansion and demands to identify and resolve the basic issues leading to inefficiencies in the system. The efficiency of old GENCOs power plants has deteriorated overtime. Further, due to low efficiency, the plant utilization factors of these GENCOs have also come down to lower limits. During FY 2019-20, the total generation of GENCOs has been recorded as 7,907.91 GWh which is much lower than the previous year s generation of 13,016.93 GWh. Out of 7,907.91 GWh, two power plants i.e. 747 MW CCPP Guddu of GENCO-II and 567 MW TPS Nandipur of GENCO-III generated combined 5,791.68 GWh while the remaining power plants of GENCOs with 3,539 MW capacity only generated 2,116.23 GWh. GENCO-IV recorded nil generation for second consecutive year. The low efficiencies of GENCOs old plants causes inefficient burning of fuel and increases the cost of generation. Since the tariffs of GENCO-I, II and III are on Take or Pay basis; therefore, their low utilization on one hand is burdening the electricity consumers on account of capacity payment for idle capacity. On the other hand, utilization of GENCOs old power plants is increasing the cost of generation of CPPA-G basket due to their low efficiency. Further, operation of these power plants on part load also qualifies them for Partial Load Adjustment Charges (PLAC) which also adversely affects the cost of electricity. The CPPA-G has verified an amount of Rs.177.79 million and Rs. 157.35 million on account of PLAC to GENCO-I and GENCO-III respectively for the FY 2019-20 while the PLAC for the said GENCOs during FY 2018-19 was Rs. 894.87 million and Rs.431.23 million respectively. The operation of inefficient GENCO power plants is a continuous burden on the country. Retaining the old inefficient steam thermal power plants, while having sufficient capacity of efficient power plants, that too on Take or Pay basis is not desirable. It is noted that unlike

the IPPs, the control period of NEPRA determined tariff of GENCOs is not too long. NEPRA has repeatedly emphasized the need to retire the older power plants of GENCOs to reduce financial burden on the sector and diversion of precious fuel to the most efficient power plants.

CASE OF FIRST IMPRESSION

38. To sum up, the tariff structure in Pakistan is not based on regional and consumer-specific long-run marginal costs. It is used as an instrument to achieve political and socio-economic objectives. Instead of regulating DISCOs, the burden is transferred to the consumers.

When one focuses upon the working and role of NEPRA, one may find an abundance of lack of interest to fix the problem also due to engraved inadequate capabilities that do not match with the role of a good regulator. A regulator makes serious effort to minimize, if not eliminate, inefficiencies in the public sector generation (GENCOs) and distribution companies (DISCOs). The performance of (GENCOs) remained lacking in terms of all Key Performance Indicators (KPI) for the past many years. These GENCOs are running below their net available capacities because the desired maintenance and scheduled outages over the years (as per standard industry practices) are not in place. Lack of maintenance has increased their cost of generation. These power plants have not only poor operational results, the workforce, which is already on the higher side on a per MW basis, remained idle due to their closure and non-operation, contributing towards higher cost of generation. The Framework of Economic Growth by PIDE (2020) reports a loss of Rs.251.6 billion due to inefficiency in these public sector generation companies.

NEPRA s job as a regulator was to resolve all the power sector problems, including system losses, rising costs, high tariffs, and generation capacity challenges. Again, the outcome of regulatory oversight is that the circular debt emerged for the first time in 2006. Since then, it has been there and rising. NEPRA has not done anything to control this debt from rising in so

many years. Increasing costs of generation and sector inefficiencies, anomalies in tariff methods and delays in tariff determinations are responsible for the circular debt issue. If NEPRA had played an effective role, the power sector scenario could have differed. An overall assessment of NEPRA regulatory performance and its effectiveness indicates that the de jure performance is high; a regulatory system having many necessary requirements for the power sector. However, de facto performance highlights a significantly poor regulatory functioning in practice. The regulatory reform required to transition towards a competitive market has historically been resisted in Pakistan. NEPRA, an autonomous organization (by law), didn t make serious efforts to improve regulatory infrastructure in the power sector. NEPRA has been unsuccessful in developing and pursuing a regulatory framework to guarantee reliable, efficient, and affordable electricity. Effective regulation creates a balance in the interests of all stakeholders. When investors achieve fair returns, consumers receive quality service, and governments are not allowed political exploitation. NEPRA failed in creating this balance. Only the institutional capacity of a regulator can ensure that all its regulatory decisions and requirements are met effectively in a timely and correct manner. It is possible only when the regulator has qualified staff, a well-coordinated organizational setup, sufficient funds, and the powers to take decisions autonomously and balance all stakeholders. But at the same time, the regulator should also be accountable for all its decisions.

39. In Said Zaman Khan s case[44] the apex Court has referred not only the entire case-law on the subject but has also analyzed the essential yet different ingredients of both mala fide in law and malice in fact. The relevant portions from the said judgment are reproduce hereunder:-

> 82 . Where any action is taken or order passed not with the intention of fulfilling its mandate or to achieve its purpose but is inspired by a collateral purpose or instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from

malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive.

83 ..where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by the law under which it is purportedly taken malice will be implied and [the] act would be deemed to suffer from malice in law or constructive malice. Strict proof of bad faith or collateral propose in such cases may not be required.

In Justice Qazi Faez Isa s case[45], the Hon ble Supreme Court held:

mala fide in law involved more than errors of misreading the record or non-application of the law or lack of proportionality in the impugned action. Instead, this was a serious allegation of wanton abuse or disregard of the law.

BALANCE BETWEEN CONSUMER, INVESTOR AND OPERATOR.

40. NEPRA was mandated to create a balance between investors and consumers, where it failed therefore the problems faced in the power sector in the last two decades are un-exemplary. Consumers remained the worst suffers of the government fiscal and financial issues due to enormous and rising circular debt. While power sector policies allowed unreasonably very high profits to independent power plants, excess payments have been made to power producers because of either misreporting by the producers or regulatory oversight.

Pakistan has the highest cost of electricity across all major consumer groups in South Asia. Some of out low value-added exports rely heavily on electricity consumption. The high cost of electricity has reduced the competitiveness of our exports, thereby impacting the country s trade deficit and balance of payment. Large cross subsidies (especially in favour of domestic and agriculture consumers) and heavy tax incidence are

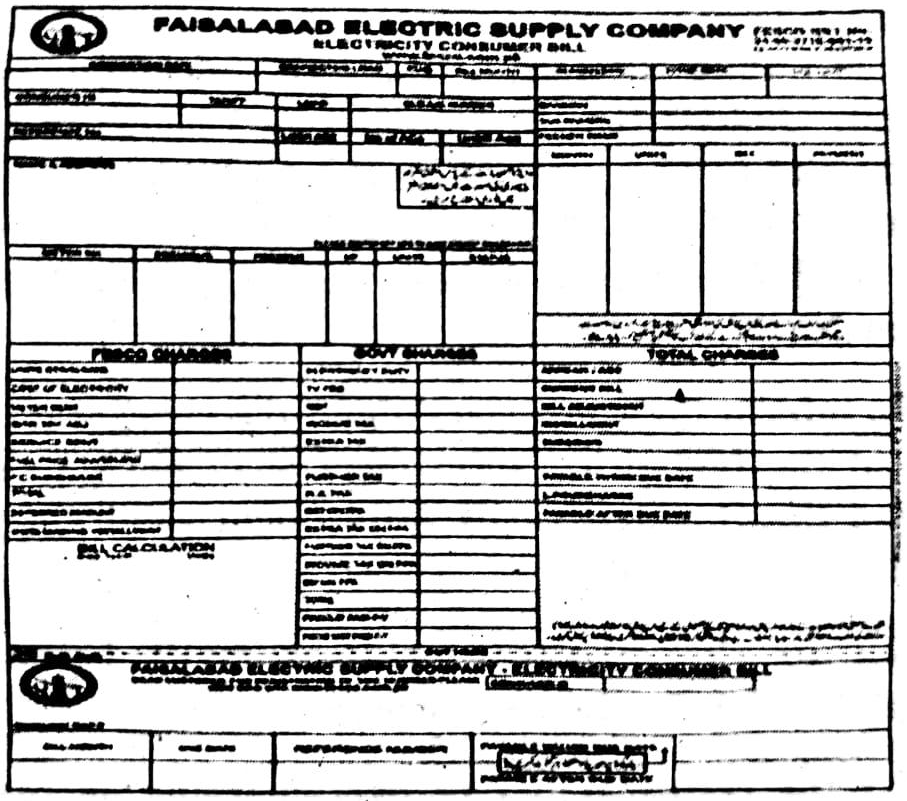
contributing to grid defection by large consumers (industry, commercial and high-end consumers).

41. The relationship of the consumer with the WAPDA is also created on the basis of Abridged Conditions of Supply and according to clause 19 the methods of charging for the supply shall be those prescribed in the authority s schedule of electricity tariff enforced from time to time and no consumer shall be entitled to asked for any change if the method of charging agreed to at the time of obtaining the supply. However, clause 27 the authority has a right to refuse the condition of supply, the schedule of the electricity tariff rates and schedule of service/general charges without giving any previous notice to the consumer to that effect. Meaning thereby that the schedule can be changed unilaterally depending on post of conditions which obviously are justiciable and supported by good reasons. Clause 19 is reproduced as under :-

19. CHARGES FOR SUPPLY

> The methods of charging for the supply given to the consumer by the Authority shall be those prescribed in the Authority s Schedule of Electricity Tariffs in force from time to time, and except provided therein, no consumer shall be entitled to ask for any change in the method of charging agreed to at the time of obtaining the supply

41-A. As per the specimen of bill in the heading of government charges Electricity Duty, TV fee, GST, Income Tax, Extra Tax, Further Tax, R.S. Tax, GST on FPA, Extra tax on FPA, Further tax on FPA, Income Tax on FPA, ED on FPA are charged from the consumer. The electricity bill is scanned below:-



42. The NEPRA determines the Fuel Price Adjustment for the end consumers on the basis of sale of electricity in advance sale and the consideration is recovered step by step from the consumer on the basis of Generation Transmission and Distribution as well as market operator fee as per the tariff. Besides, the generation tariff is comprised of energy charge; i.e. energy purchase price, a valuable component and relates to the cost born by the power producer. The fuel charges are affected by the price of fuel, thermal efficiency (aging and cleaning of unit) and the valuable parts and the maintenance component is the cost of lubricants and foreign support in the form of spare parts under maintenance. The second factor is capacity charge based on valuable capacity and, therefore, relates to the power producer to produce electricity. Besides, the transmission tariff is

also determined by NEPRA and distribution tariff as well as consumer end tariff are all determined by NEPRA.

HUMANITARIAN ELEMENT

43. The NEPRA authority must keep in mind while deciding about the tariff that interaction between the consumer and the producer should not be excited by the fiduciary relationship for the simple reason that to earn huge profit the performance of the producing company must increase and not the price be increased and, therefore, imposition of various taxes which can be recovered otherwise, amounts to economic strangulation of the consumers. A predatory and soaring price of electricity would be unbearable, therefore, a comprehensive plan must be prepared to address and counter the issues in order to prevent the society from an economic death.

RELIEF

44. For what has been discussed above, these writ petitions are disposed of while declaring that the demand of Fuel Price Adjustment, Quarter Tariff Adjustment, Change of status of tariff from Industrial to Commercial by the NEPRA not constituted fully under section 3 of the NEPRA Act, 1997 is illegal, without lawful authority and coram non judice, having no legal effect and the respondent/NEPRA is directed

A. To inform the consumers about the charges on monthly basis and the fuel price adjustment shall not go beyond 07 days and the Quarter Tariff Adjustment shall not go beyond the statutory period.

B. Not to charge any exorbitant tariff beyond the paying capacity of the domestic consumers.

C. Fix the responsibility of over-charging on the basis of line losses and the less efficient power plants and the financial burden will also be shared by the companies under a rational proportion.

D. To explore the cheap modes of producing electricity and will evolve mechanisms for its quick availability.

E. To ensure the smooth supply of electricity based on demand.

F. Not to unilaterally change the type of tariff from Industrial to Commercial without hearing such consumers.

Whereas the Federal Government is directed

G. To provide maximum subsidy to the domestic consumers of 500 units per month.

H. Not to demand extra ordinary taxes having no nexus with the consumption of energy which may be recovered through other modes.

I. Further explore the Solar, Hydal, Nuclear and Wind sources of producing electricity.

J. Arrange for cheap purchase of sources of electricity from other countries.

SCHEDULE A

(Fuel Price Adjustment/FPA)

SR.NO.	CASE NO.	TITLE
1.	W.P.No. 56512-2022	M/s Saleem Silk Factory and others v. Federation of Pakistan and others.
2.	W.P.No. 56742-2022	Nasir Flour Mills v. Federation of Pakistan and others.
3.	W.P.No. 56966-2022	Syed Baqar Abbas Naqvi v. Federation of Pakistan and others.
4.	W.P.No. 56706-2022	Engineering University Employees Co-Operative Housing Society Ltd. v. Federation of Pakistan and others.

5.	W.P.No. 56939-2022	M/s Grace Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
6.	W.P.No. 56766-2022	Aneela Ahmad v. Federation of Pakistan and others.
7.	W.P.No. 56920-2022	Nasir Flour Mills and others v. Federation of Pakistan and others.
8.	W.P.No. 56940-2022	H.M.Z Cold Storage v. Federation of Pakistan and others.
9.	W.P.No. 56715-2022	M/s Mehar Ice Factory v. Federation of Pakistan and others.
10.	W.P.No. 56903-2022	M/s City News Network (Pvt.) Ltd. v. Federation of Pakistan and others.
11.	W.P.No. 56733-2022	Mrs. Salma Yasmin v. Federation of Pakistan and others.
12.	W.P.No. 56906-2022	M/s PK Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
13.	W.P.No. 56946-2022	M/s Ali Foundry v. Federation of Pakistan and others.
14.	W.P.No. 56949-2022	M/s Model Paper and Board Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
15.	W.P.No. 56710-2022	M/s Nawab Ice Factory v. Federation of Pakistan and others.

16.	W.P.No. 56915-2022	M/s Shafi Ice Factory v. Federation of Pakistan and others.
17.	W.P.No. 56936-2022	M/s Pioneer Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
18.	W.P.No. 56722-2022	M/s Raza Ice Factory v. Federation of Pakistan and others.
19.	W.P.No. 56830-2022	Amir Fraz and others v. Federation of Pakistan and others.
20.	W.P.No. 56643-2022	Muhammad Afzal v. Federation of Pakistan and others.
21.	W.P.No. 56923-2022	M/s Musa Steel Casting and others v. Federation of Pakistan and others.
22.	W.P.No. 56881-2022	Al-Raheem Retail Ltd. and others v. Federation of Pakistan and others.
23.	W.P.No. 56896-2022	M/s City News Network Ltd. v. Federation of Pakistan and others.
24.	W.P.No. 56968-2022	M/s Metal Tech Engineering Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
25.	W.P.No. 56952-2022	Muhammad Imtiaz Hanif v. Federation of Pakistan and others.
26.	W.P.No. 56954-2022	Muhammad Iqbal v. Federation of Pakistan and others.

27.	W.P.No. 56010-2022	Ayesha Pipe Industry and others v. Federation of Pakistan and others.
28.	W.P.No. 56001-2022	M/s Z.A. Enterprises and others v. Federation of Pakistan and others.
29.	W.P.No. 56479-2022	Mazhar Steel v. Federation of Pakistan and others.
30.	W.P.No. 56440-2022	M/s MM Tower-2 v. Federation of Pakistan and others.
31.	W.P.No. 56249 -2022	Jan Muhammad v. Federation of Pakistan and others.
32.	W.P.No. 56250-2022	M/s Crystal Ice Factory v. Federation of Pakistan and others.
33.	W.P.No. 56355-2022	Anjum Arif and others v. Federation of Pakistan and others.
34.	W.P.No. 56488-2022	Aruj Garments Accessories and others v. Federation of Pakistan and others.
35.	W.P.No. 56431-2022	MM Tower-2 v. Federation of Pakistan and others.
36.	W.P.No. 56266-2022	Zulfiqar Ali Dogar and others v. Federation of Pakistan and others.
37.	W.P.No. 56490-2022	Hira Fabrics and others v. Federation of Pakistan and others.

38.	W.P.No. 56472-2022	Farooq Steel Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
39.	W.P.No. 56520-2022	M/s Lal Din Rickshaw (Pvt.) Ltd. v. Federation of Pakistan and others.
40.	W.P.No. 56967-2022	Talaat Mehmood Qureshi v. Federation of Pakistan and others.
41.	W.P.No. 56500-2022	Mst. Fafiya Shehzad v. Federation of Pakistan and others.
42.	W.P.No. 56239-2022	Javed Ahmad v. Federation of Pakistan and others.
43.	W.P.No. 56284-2022	M/s Park Lan Towers Ltd. v. Federation of Pakistan and others.
44.	W.P.No. 56734-2022	AAtta Mohy-ud-Din Berlas v. Federation of Pakistan and others.
45.	W.P.No. 56079-2022	Muhammad Malik and others v. Federation of Pakistan and others.
46.	W.P.No. 56477-2022	Irfan Yousaf v. Federation of Pakistan and others.
47.	W.P.No. 56244-2022	N.K.F. Industries and others v. Federation of Pakistan and others.
48.	W.P.No. 56525-2022	Munir Ahmad v. Federation of Pakistan and others.
49.	W.P.No. 56514-2022	M/s S.A. Brothers v. Federation of Pakistan and others.

50.	W.P.No. 56378-2022	M/s G.R. Metal Industry and others v. Federation of Pakistan and others.
51.	W.P.No. 56516-2022	M/s Chughtais Lahore Lab (Pvt.) Ltd. v. Federation of Pakistan and others.
52.	W.P.No. 56317-2022	M/s Asghari Begum (Pvt.) Ltd. v. Federation of Pakistan and others.
53.	W.P.No. 56380-2022	Pak Power Steel and others v. Federation of Pakistan and others.
54.	W.P.No. 56475-2022	M/s Nazir Steel Mills and others v. Federation of Pakistan and others.
55.	W.P.No. 56328-2022	U.E. (Pvt.) Ltd. and others v. Federation of Pakistan and others.
56.	W.P.No. 56459-2022	Samsol International (Pvt.) Ltd. v. Federation of Pakistan and others.
57.	W.P.No. 56506-2022	M/s Tazij Meats v. Federation of Pakistan and others.
58.	W.P.No. 56077-2022	M/s Lotte Akhter Beverages (Pvt.) Ltd. v. Federation of Pakistan and others.
59.	W.P.No. 56513-2022	Ghulam Rasool and others v. Federation of Pakistan and others.
60.	W.P.No. 56302-2022	M/s Madina Steel Mills and others v. Federation of Pakistan and others.

61.	W.P.No. 56369-2022	Muhammad Naeem Mirza v. Federation of Pakistan and others.
62.	W.P.No. 56484-2022	M/s Lahore Metal Fishing (Pvt.) Ltd. v. Federation of Pakistan and others.
63.	W.P.No. 56209-2022	Imran Nawab Oberoi v. Federation of Pakistan and others.
64.	W.P.No. 56305-2022	M/s Pro Foods v. Federation of Pakistan and others.
65.	W.P.No. 56502-2022	M/s Chawinda Roller Flour Mills and others v. Federation of Pakistan and others.
66.	W.P.No. 56451-2022	Amir Enterprises Engineering Works and others v. Federation of Pakistan and others.
67.	W.P.No. 56236-2022	Al-Wakil International (Pvt.) Ltd. v. Federation of Pakistan and others.
68.	W.P.No. 56347-2022	M/s Omar Hospital (Pvt.) Ltd. v. Federation of Pakistan and others.
69.	W.P.No. 56474-2022	Amtex Limited v. Federation of Pakistan and others.
70.	W.P.No. 56524-2022	M/s Prix Pharmaceutical (Pvt.) Ltd. v. Federation of Pakistan and others.
71.	W.P.No. 56238-2022	Bin Rasheed Colors and Chemicals Manufacturing Co. (Pvt.) Ltd. and others v. Federation of Pakistan and others.

72.	W.P.No. 49056-2022	Sapphire Fibers Ltd. and others v. Federation of Pakistan and others.
73.	W.P.No. 49040-2022	Mian Latif Paper and Board Mill (Pvt.) Ltd. and others v. Federation of Pakistan and others.
74.	W.P.No. 49036-2022	Riaz Cotton Waste Products and others v. Federation of Pakistan and others.
75.	W.P.No. 49025-2022	Bismillah Spinning (Pvt.) Ltd. and others v. Federation of Pakistan and others.
76.	W.P.No. 49192-2022	Karam-e-Kareem Spinning Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
77.	W.P.No. 49186-2022	Bismillah Steel Furnace and others v. Federation of Pakistan and others.
78.	W.P.No. 49190-2022	M/s Ideal Spinning Mills Ltd. and others v. Federation of Pakistan and others.
79.	W.P.No. 49583-2022	M/s Zeeshan Plastic Industry and others v. Federation of Pakistan and others.
80.	W.P.No. 49225-2022	Khurram Steel Mills and others v. Federation of Pakistan and others.

81.	W.P.No. 49233-2022	M/s Tayba Flour Mills v. Federation of Pakistan and others.
82.	W.P.No. 49270-2022	Rafiq Steel Mills and others v. Federation of Pakistan and others.
83.	W.P.No. 49262-2022	M/s Pakistan Tiles (Pvt.) Ltd. v. Federation of Pakistan and others.
84.	W.P.No. 49246-2022	M/s Prime Steel Re-Rolling Mills v. Federation of Pakistan and others.
85.	W.P.No. 49111-2022	Zafar Abbas and others v. Federation of Pakistan and others.
86.	W.P.No. 49173-2022	M/s Flying Cement Co. Ltd. and others v. Federation of Pakistan and others.
87.	W.P.No. 49324-2022	Monde Chemical Industry (Pvt.) Ltd. v. Federation of Pakistan and others.
88.	W.P.No. 49317-2022	Muhammad Irfan Bashir v. Federation of Pakistan and others.
89.	W.P.No. 49484-2022	Reliance Weaving Mills Ltd. and others v. Federation of Pakistan and others.
90.	W.P.No. 49274-2022	M/s Masood Cotton Reprocessing Unit v. Federation of Pakistan and others.

91.	W.P.No. 49243-2022	Baig Textile Mill (Pvt.) Ltd. v. Federation of Pakistan and others.
92.	W.P.No. 49100-2022	Shoaib Saroor and others v. Federation of Pakistan and others.
93.	W.P.No. 49067-2022	M/s AHN Synthetic (Pvt.) Ltd. v. Federation of Pakistan and others.
94.	W.P.No. 49061-2022	New Punjab Flour Mill and others v. Federation of Pakistan and others.
95.	W.P.No. 56420-2022	Sh. Kabir Ahmad v. Federation of Pakistan and others.
96.	W.P.No. 56494-2022	Mudassar Fakhar v. Federation of Pakistan and others.
97.	W.P.No. 56354-2022	M/s Bashir Pipe Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
98.	W.P.No. 56489-2022	M/s Lal Din Engineering (Pvt.) Ltd. v. Federation of Pakistan and others.
99.	W.P.No. 56509-2022	M/s Naveed Weaving Factory v. Federation of Pakistan and others.
100.	W.P.No. 56448-2022	M/s Ghafoor Power Loom v. Federation of Pakistan and others.
101.	W.P.No. 56480-2022	Majid Ashfaq v. Federation of Pakistan and others.

102.	W.P.No. 56461-2022	M/s Pakson International Plastic Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
103.	W.P.No. 56444-2022	M/s Varioline Intercool Pakistan (Pvt.) Ltd. and others v. Federation of Pakistan and others.
104.	W.P.No. 55691-2022	Zahida Munir v. Federation of Pakistan and others.
105.	W.P.No. 56508-2022	Shahid Hussain v. Federation of Pakistan and others.
106.	W.P.No. 56392-2022	M/s Mughal Ice Factory (Pvt.) Ltd. v. Federation of Pakistan and others.
107.	W.P.No. 56991-2022	Saif-ur-Rehman v. Federation of Pakistan and others.
108.	W.P.No. 49223-2022	Style Textile (Pvt.) Ltd. and others v. Federation of Pakistan and others.
109.	W.P.No. 49222-2022	Chaudhary Brothers Textile Mills and others v. Federation of Pakistan and others.
110.	W.P.No. 49217-2022	Oriental Woolen Mills and others v. Federation of Pakistan and others.
111.	W.P.No. 49213-2022	M.F. Fabrics and others v. Federation of Pakistan and others.

112.	W.P.No. 49179-2022	M/s Bashir Sons Steel Casting and others v. Federation of Pakistan and others.
113.	W.P.No. 49176-2022	Combined Fabrics Ltd. and others v. Federation of Pakistan and others.
114.	W.P.No. 49181-2022	Abedin International (Pvt.) Ltd. v. Federation of Pakistan and others.
115.	W.P.No. 51632-2022	Asif Malik v. Federation of Pakistan and others.
116.	W.P.No. 51067-2022	Silver Star Enterprises and others v. Federation of Pakistan and others.
117.	W.P.No. 51205-2022	Munazza Naeem v. Federation of Pakistan and others.
118.	W.P.No. 59547-2022	M/s SKC (Pvt.) Ltd. and others v. Federation of Pakistan and others.
119.	W.P.No. 59019-2022	Jehangir Paper Boards (Pvt.) Ltd. and others v. Federation of Pakistan and others.
120.	W.P.No. 59392-2022	Muhammad Usman Nawaz v. Federation of Pakistan and others.
121.	W.P.No. 59449-2022	M/s Ravi Sphero Cast v. Federation of Pakistan and others.
122.	W.P.No. 59577-2022	M/s Ravi Auto Mobile (Pvt.) Ltd. v. Federation of Pakistan and others.

123.	W.P.No. 59347-2022	Hannan Javed Butt and others v. Federation of Pakistan and others.
124.	W.P.No. 59307-2022	Haji Abdul Sattar v. Federation of Pakistan and others.
125.	W.P.No. 59161-2022	M/s Pakistan Pencils (Pvt.) Ltd. v. Federation of Pakistan and others.
126.	W.P.No. 59290-2022	Sir Engineering Enterprises (Pvt.) Ltd. v. Federation of Pakistan and others.
127.	W.P.No. 59180-2022	Ehsan Javed Chohan v. Federation of Pakistan and others.
128.	W.P.No. 59381-2022	M/s Hassan Integrated Traders v. Federation of Pakistan and others.
129.	W.P.No. 59751-2022	Ghulam Farid v. Federation of Pakistan and others.
130.	W.P.No. 59775-2022	M/s Aay Sharif and Sons Plastic Industry (Pvt.) Ltd. v. Federation of Pakistan and others.
131.	W.P.No. 59879-2022	Shoaib Khan Qureshi v. Federation of Pakistan and others.
132.	W.P.No. 59759-2022	M/s Waseem International v. Federation of Pakistan and others.
133.	W.P.No. 59886-2022	Liaqat Ali v. Federation of Pakistan and others.

134.	W.P.No. 51011-2022	Rizwan Ahmad and others v. Federation of Pakistan and others.
135.	W.P.No. 51004-2022	Muhammad Yaqoob and others v. Federation of Pakistan and others.
136.	W.P.No. 51008-2022	Ch. Muzaffar Ali Virk v. Federation of Pakistan and others.
137.	W.P.No. 51337-2022	Zafar Mehmood v. Federation of Pakistan and others.
138.	W.P.No. 51262-2022	Syed Mehboob Alam v. Federation of Pakistan and others.
139.	W.P.No. 51346-2022	Mirza Amir Baig and others v. Federation of Pakistan and others.
140.	W.P.No. 51347-2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
141.	W.P.No. 51539-2022	M/s Flying Cement Co. Ltd. v. Federation of Pakistan and others.
142.	W.P.No. 51343-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
143.	W.P.No. 51723-2022	Rana Cotton Processing Industry v. Federation of Pakistan and others.
144.	W.P.No. 51983-2022	M/s Khizra Fabrics (Pvt.) Ltd. v. Federation of Pakistan and others.
145.	W.P.No. 51344-2022	M/s Islamabad Farms (Pvt.) Ltd. v. Federation of Pakistan and others.

146.	W.P.No. 51338-2022	Hassan Raza v. Federation of Pakistan and others.
147.	W.P.No. 51662-2022	Ahmad Jawad Farooq v. Federation of Pakistan and others.
148.	W.P.No. 51641-2022	Manzoor Hussain Butt v. Federation of Pakistan and others.
149.	W.P.No. 51019-2022	Master Tiles and Ceramic Industries Ltd. v. Federation of Pakistan and others.
150.	W.P.No. 51236-2022	Ghulam Mustafa v. Federation of Pakistan and others.
151.	W.P.No. 55386-2022	Madina Steel Industry v. Federation of Pakistan and others.
152.	W.P.No. 55534-2022	M/s Alif Industry (Pvt.) Ltd. and others v. Federation of Pakistan and others.
153.	W.P.No. 55520-2022	M/s Symbol Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
154.	W.P.No. 55269-2022	M/s Prime Worsted Spinning Mills and others v. Federation of Pakistan and others.
155.	W.P.No. 55229-2022	M/s Al-Badar Engineering Co. (Pvt.) Ltd. and others v. Federation of Pakistan and others.

156.	W.P.No. 55175-2022	Ghulam Mustafa v. Federation of Pakistan and others.
157.	W.P.No. 55251-2022	M/s Nimir Industrial Chemicals Ltd. v. Federation of Pakistan and others.
158.	W.P.No. 55942-2022	Ali Hussain v. Federation of Pakistan and others.
159.	W.P.No. 55532-2022	Muhammad Sultan v. Federation of Pakistan and others.
160.	W.P.No. 55555-2022	Tehmina Aslam v. Federation of Pakistan and others.
161.	W.P.No. 55536-2022	Makhdoom Zeeshan Ahmad v. Federation of Pakistan and others.
162.	W.P.No. 55664-2022	Rehmat Ullah Butt v. Federation of Pakistan and others.
163.	W.P.No. 55506-2022	M/s Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.
164.	W.P.No. 55461-2022	Mushtaq Ahmad v. Federation of Pakistan and others.
165.	W.P.No. 55531-2022	M/s AM Enterprises and others v. Federation of Pakistan and others.
166.	W.P.No. 55660-2022	M/s S.B. Steel Mill and others v. Federation of Pakistan and others.
167.	W.P.No. 56264-2022	M/s Citi Pharma Ltd. v. Federation of Pakistan and others.

168.	W.P.No. 51022-2022	Abdul Mannan v. Federation of Pakistan and others.
169.	W.P.No. 51656-2022	Grace Impex (Pvt.) Ltd. v. Federation of Pakistan and others.
170.	W.P.No. 51258-2022	Muhammad Husnain Atif and others v. Federation of Pakistan and others.
171.	W.P.No. 51997-2022	M/s Abdullah Weaving Mills v. Federation of Pakistan and others.
172.	W.P.No. 51163-2022	Azeem Latif and others v. Federation of Pakistan and others.
173.	W.P.No. 55930-2022	Mst. Mubeen Ghafoor and others v. Federation of Pakistan and others.
174.	W.P.No. 55964-2022	Khan Garments Industries and others v. Federation of Pakistan and others.
175.	W.P.No. 55850-2022	Shehzad Ahmad and others v. Federation of Pakistan and others.
176.	W.P.No. 55881-2022	M/s Unicorn Prestige Ltd. v. Federation of Pakistan and others.
177.	W.P.No. 55872-2022	Munir Ahmad Steel Mill and others v. Federation of Pakistan and others.
178.	W.P.No. 55925-2022	M/s Moiz Steel Industry and others v. Federation of Pakistan and others.

179.	W.P.No. 55886-2022	Arsons Pharmaceutical Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
180.	W.P.No. 55781-2022	M/s Intermoda Brands (Pvt.) Ltd. v. Federation of Pakistan and others.
181.	W.P.No. 55862-2022	Muhammad Asim v. Federation of Pakistan and others.
182.	W.P.No. 55537-2022	Maqbool Hussain Sheikh v. Federation of Pakistan and others.
183.	W.P.No. 55839-2022	Haroon Rashid Chaudhary v. Federation of Pakistan and others.
184.	W.P.No. 55891-2022	Al-Qadir Cold Storage v. Federation of Pakistan and others.
185.	W.P.No. 55131-2022	M/s Dynamic Bravo Industries SMC (Pvt.) Ltd. v. Federation of Pakistan and others.
186.	W.P.No. 55842-2022	Haroon Rasheed Chaudhary v. Federation of Pakistan and others.
187.	W.P.No. 55919-2022	M/s Malik Polyprapylene and others v. Federation of Pakistan and others.
188.	W.P.No. 55928-2022	M/s Naveed Flour and General Mills and others v. Federation of Pakistan and others.

189.	W.P.No. 55835-2022	M/s Rashid Hospital v. Federation of Pakistan and others.
190.	W.P.No. 55841-2022	M/s Berger Paints Pakistan Ltd. and others v. Federation of Pakistan and others.
191.	W.P.No. 55910-2022	M/s Ramzan Flour Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
192.	W.P.No. 55685-2022	Zahid Farooq v. Federation of Pakistan and others.
193.	W.P.No. 55884-2022	Al-Qadir Rice Mill v. Federation of Pakistan and others.
194.	W.P.No. 55743-2022	M/s Waqas Weaving Factory and others v. Federation of Pakistan and others.
195.	W.P.No. 55973-2022	M/s Naubahar Bottling Company (Pvt.) Ltd. v. Federation of Pakistan and others.
196.	W.P.No. 55906-2022	M/s Bismillah Paper Board Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
197.	W.P.No. 55908-2022	Mian Toqeer Aslam v. Federation of Pakistan and others.
198.	W.P.No. 55711-2022	M/s Qadria Board Mills (Pvt.) Ltd. v. Federation of Pakistan and others.

199.	W.P.No. 55688-2022	M/s H&S Foundry v. Federation of Pakistan and others.
200.	W.P.No. 48334-2022	Monnoo Industries Ltd. and others v. Federation of Pakistan and others.
201.	W.P.No. 48235-2022	M/s Muhammad Yaqoob Weaving Factory and others v. Federation of Pakistan and others.
202.	W.P.No. 48714-2022	Shabbir Hussain v. Federation of Pakistan and others.
203.	W.P.No. 48352-2022	M/s Abdali Weaving Factory and others v. Federation of Pakistan and others.
204.	W.P.No. 48514-2022	M/s A.Z. Fabrics and others v. Federation of Pakistan and others.
205.	W.P.No. 48134-2022	M/s Indus Lyallpur Ltd. and others v. Federation of Pakistan and others.
206.	W.P.No. 48188-2022	Aruj Garments Accessories Ltd. v. Federation of Pakistan and others.
207.	W.P.No. 48204-2022	Classique Textile (Pvt.) Ltd. and others v. Federation of Pakistan and others.
208.	W.P.No. 48353-2022	M/s New Pak Spinning Industry and others v. Federation of Pakistan and others.

209.	W.P.No. 48368-2022	Ghulam Murtaza Textile Mills and others v. Federation of Pakistan and others.
210.	W.P.No. 48269-2022	M/s Qamar Weaving Factory and others v. Federation of Pakistan and others.
211.	W.P.No. 48274-2022	M/s STS Textiles and others v. Federation of Pakistan and others.
212.	W.P.No. 48343-2022	M/s Ammar Bilal Textile and others v. Federation of Pakistan and others.
213.	W.P.No. 48220-2022	M/s Ajwa Textile (Pvt.) Ltd. and others v. Federation of Pakistan and others.
214.	W.P.No. 57275-2022	Maryam Embroidery and others v. Federation of Pakistan and others.
215.	W.P.No. 57283-2022	M/s Tazij Meats and Food v. Federation of Pakistan and others.
216.	W.P.No. 57362-2022	Madni Poly Tex v. Federation of Pakistan and others.
217.	W.P.No. 57222-2022	Zircon Textile and others v. Federation of Pakistan and others.
218.	W.P.No. 57166-2022	Alhmad Textiles v. Federation of Pakistan and others.

219.	W.P.No. 57375-2022	Muhammad Altaf v. Federation of Pakistan and others.
220.	W.P.No. 57122-2022	M/s Indus Plus (Pvt.) Ltd. v. Federation of Pakistan and others.
221.	W.P.No. 57188-2022	Aqeel Asif Chatha and others v. Federation of Pakistan and others.
222.	W.P.No. 57324-2022	Imran Hafeez v. Federation of Pakistan and others.
223.	W.P.No. 57178-2022	Sharifan Bashir v. Federation of Pakistan and others.
224.	W.P.No. 57341-2022	Tanzeel Ahmad v. Federation of Pakistan and others.
225.	W.P.No. 57338-2022	M/s GMS Forging and others v. Federation of Pakistan and others.
226.	W.P.No. 57264-2022	Ghulam Murtaza v. Federation of Pakistan and others.
227.	W.P.No. 57369-2022	Liaqat Ali v. Federation of Pakistan and others.
228.	W.P.No. 57387-2022	Nadir Naseer v. Federation of Pakistan and others.
229.	W.P.No. 57329-2022	Muhammad Nasir and others v. Federation of Pakistan and others.
230.	W.P.No. 57328-2022	Bashir Ahmad v. Federation of Pakistan and others.

231.	W.P.No. 57861-2022	Mehr Muhammad Asim v. Federation of Pakistan and others.
232.	W.P.No. 57836-2022	M/s Kings Business Co. Engineering v. Federation of Pakistan and others.
233.	W.P.No. 57743-2022	M/s Zafar Steel Casting and others v. Federation of Pakistan and others.
234.	W.P.No. 57977-2022	Kalsoom Akhtar v. Federation of Pakistan and others.
235.	W.P.No. 57461-2022	M/s International Pharma Labs v. Federation of Pakistan and others.
236.	W.P.No. 57958-2022	Muhammad Shahbaz v. Federation of Pakistan and others.
237.	W.P.No. 58751-2022	Imran Ali Abbas v. Federation of Pakistan and others.
238.	W.P.No. 58758-2022	Muhammad Ramzan v. Federation of Pakistan and others.
239.	W.P.No. 58678-2022	Hayat Khan v. Federation of Pakistan and others.
240.	W.P.No. 58820-2022	Khalid Enterprises v. Federation of Pakistan and others.
241.	W.P.No. 58825-2022	S.D.M. Foundry v. Federation of Pakistan and others.
242.	W.P.No. 58834-2022	M/s Umer Nadeem Plastic Industries v. Federation of Pakistan and others.

243.	W.P.No. 58826-2022	Waqar Usman Auto Engineering v. Federation of Pakistan and others.
244.	W.P.No. 58813-2022	M/s Waqar Usman Auto Engineering v. Federation of Pakistan and others.
245.	W.P.No. 58815-2022	M/s Makkah Masoom Traders v. Federation of Pakistan and others.
246.	W.P.No. 58821-2022	E&Z Enterprises v. Federation of Pakistan and others.
247.	W.P.No. 58831-2022	M/s Ahmad Foundry v. Federation of Pakistan and others.
248.	W.P.No. 57831-2022	M/s Kam Engineering (Pvt.) Ltd. and others v. Federation of Pakistan and others.
249.	W.P.No. 57764-2022	Asghar Ali v. Federation of Pakistan and others.
250.	W.P.No. 57888-2022	M/s Madina Steel Mills v. Federation of Pakistan and others.
251.	W.P.No. 57806-2022	M/s Butt Steel Re-Rolling Mills v. Federation of Pakistan and others.
252.	W.P.No. 57649-2022	Muhammad Azam v. Federation of Pakistan and others.
253.	W.P.No. 57639-2022	Muhammad Afzal Butt v. Federation of Pakistan and others.

254.	W.P.No. 57899-2022	M/s Ashia Fan Gujranwala v. Federation of Pakistan and others.
255.	W.P.No. _57630-2022	Syed Hussain Zaidi v. Federation of Pakistan and others.
256.	W.P.No. 57959-2022	Asif Mehmood v. Federation of Pakistan and others.
257.	W.P.No. 57695-2022	Master Tiles and Ceramic Industries v. Federation of Pakistan and others.
258.	W.P.No. 57715-2022	Abdul Rauf v. Federation of Pakistan and others.
259.	W.P.No. 57737-2022	PMM Flour and General Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
260.	W.P.No. 57819-2022	Mian Shahid Mehmood v. Federation of Pakistan and others.
261.	W.P.No. 57913-2022	Punjab Poultry Breeders v. Federation of Pakistan and others.
262.	W.P.No. 57961-2022	M/s Prime Re-Rolling Mills v. Federation of Pakistan and others.
263.	W.P.No. 57839-2022	Umer Ijaz v. Federation of Pakistan and others.
264.	W.P.No. 58807-2022	M/s Kausar Fabrics (Pvt.) Ltd. v. Federation of Pakistan and others.

265.	W.P.No. 55621-2022	M/s Al-Karam Feed Mills v. Federation of Pakistan and others.
266.	W.P.No. 55345-2022	M/s Panther Tyres Ltd. v. Federation of Pakistan and others.
267.	W.P.No. 55542-2022	Zahid Hussain v. Federation of Pakistan and others.
268.	W.P.No. 55820-2022	Muhammad Razzaq Sahi v. Federation of Pakistan and others.
269.	W.P.No. 55992-2022	Muhammad Arif v. Federation of Pakistan and others.
270.	W.P.No. 55738 -2022	M/s Noliyavaid Pharmaceutical Company v. Federation of Pakistan and others.
271.	W.P.No. 55836-2022	M/s Mushtaq Cold Storage v. Federation of Pakistan and others.
272.	W.P.No. 55185-2022	Ghulam Mustafa v. Federation of Pakistan and others.
273.	W.P.No. 55377-2022	M/s Arsam Pulp and Paper Board Industries v. Federation of Pakistan and others.
274.	W.P.No. 55608-2022	M/s Chaudhary Steel Furnace and others v. Federation of Pakistan and others.

275.	W.P.No. 55585-2022	Ghani Glass Ltd. v. Federation of Pakistan and others.
276.	W.P.No. 55620-2022	M/s Moaz Textiles and others v. Federation of Pakistan and others.
277.	W.P.No. 55618-2022	Ahsan Mueen and others v. Federation of Pakistan and others.
278.	W.P.No. 55554-2022	Sheraz Javed v. Federation of Pakistan and others.
279.	W.P.No. 55081-2022	Atif Shehzad v. Federation of Pakistan and others.
280.	W.P.No. 55879-2022	Malik Umair Imtiaz v. Federation of Pakistan and others.
281.	W.P.No. 58808-2022	M/s Interlink Enterprises v. Federation of Pakistan and others.
282.	W.P.No. 58829-2022	Mehboob Foundry and Engineering Works v. Federation of Pakistan and others.
283.	W.P.No. 58835-2022	M/s STS Engineering Works v. Federation of Pakistan and others.
284.	W.P.No. 58836-2022	Sidra Steel Mills and others v. Federation of Pakistan and others.
285.	W.P.No. 58300-2022	Water Supply Scheme v. Federation of Pakistan and others.

286.	W.P.No. 58724-2022	Shukr Din v. Federation of Pakistan and others.
287.	W.P.No. 58694-2022	M/s Urban Developers v. Federation of Pakistan and others.
288.	W.P.No. 58982-2022	Muhammad Tahir Chaudhary v. Federation of Pakistan and others.
289.	W.P.No. 58983-2022	Umair Razzaq v. Federation of Pakistan and others.
290.	W.P.No. 58833-2022	Waseem Ismail v. Federation of Pakistan and others.
291.	W.P.No. 55632-2022	M/s Shaheen PVC Industries and others v. Federation of Pakistan and others.
292.	W.P.No. 55830-2022	Abid Mumtaz v. Federation of Pakistan and others.
293.	W.P.No. 55593-2022	M/s Specialists Group Inc. Ltd. and others v. Federation of Pakistan and others.
294.	W.P.No. 55589-2022	Ghani Value Glass Ltd. v. Federation of Pakistan and others.
295.	W.P.No. 55538-2022	Usman Tariq v. Federation of Pakistan and others.
296.	W.P.No. 55540-2022	M/s Waseem Stainless Steel v. Federation of Pakistan and others.

297.	W.P.No. 55633-2022	Khurram Shehzad and others v. Federation of Pakistan and others.
298.	W.P.No. 53928-2022	Muhammad Azam and others v. Federation of Pakistan and others.
299.	W.P.No. 53196-2022	Ali Husnain Cotton Waste v. Federation of Pakistan and others.
300.	W.P.No. 53450-2022	Pakistan Ex-Patriates Co-Operative Housing Society v. Federation of Pakistan and others.
301.	W.P.No. 53044-2022	M/s H.S. Enterprises and others v. Federation of Pakistan and others.
302.	W.P.No. 53673-2022	Shabana Munawar and others v. Federation of Pakistan and others.
303.	W.P.No. 53638-2022	Chenab Engineering Works v. Federation of Pakistan and others.
304.	W.P.No. 53458-2022	Ch. Imdad Hussain Tabassum v. Federation of Pakistan and others.
305.	W.P.No. 53845-2022	Asiya Khan v. Federation of Pakistan and others.
306.	W.P.No. 53905-2022	M/s Power Chemical Industries v. Federation of Pakistan and others.
307.	W.P.No. 53841-2022	Zaib-un-Nisa v. Federation of Pakistan and others.

308.	W.P.No. 53939-2022	James Patrick and others v. Federation of Pakistan and others.
309.	W.P.No. 53848-2022	Muhammad Nasrullah Baig v. Federation of Pakistan and others.
310.	W.P.No. 53169-2022	Muhammad Abdullah v. Federation of Pakistan and others.
311.	W.P.No. 53259-2022	Ali Enterprises and others v. Federation of Pakistan and others.
312.	W.P.No. 53639-2022	Khurram Saqlain and others v. Federation of Pakistan and others.
313.	W.P.No. 53457-2022	Waseem Yousaf and others v. Federation of Pakistan and others.
314.	W.P.No. 53537-2022	Ahmad Straw Board Co. (Pvt.) Ltd. and others v. Federation of Pakistan and others.
315.	W.P.No. 53542-2022	Rao Javed-ul-Haq v. Federation of Pakistan and others.
316.	W.P.No. 53580-2022	Rao Javed-ul-Haq Khan v. Federation of Pakistan and others.
317.	W.P.No. 53516-2022	Mian Tahir Feroz and others v. Federation of Pakistan and others.
318.	W.P.No. 53534-2022	Shehzad Hassan and others v. Federation of Pakistan and others.

319.	W.P.No. 53213-2022	Muhammad Masood Sabri v. Federation of Pakistan and others.
320.	W.P.No. 53588-2022	Muhammad Atif Zafar and others v. Federation of Pakistan and others.
321.	W.P.No. 53270-2022	Muhammad Shafique and others v. Federation of Pakistan and others.
322.	W.P.No. 53176-2022	Hamza Ibrahim Powerlooms v. Federation of Pakistan and others.
323.	W.P.No. 53590-2022	Kaneez Akhtar and others v. Federation of Pakistan and others.
324.	W.P.No. 53209-2022	M/s Rafiq Fibers (Pvt.) Ltd. v. Federation of Pakistan and others.
325.	W.P.No. 53541-2022	Muhammad Shamoon Iqbal v. Federation of Pakistan and others.
326.	W.P.No. 53844-2022	Muhammad Saleem Khan v. Federation of Pakistan and others.
327.	W.P.No. 53922-2022	Hamza Butt and others v. Federation of Pakistan and others.
328.	W.P.No. 52882-2022	M/s Muhammad Tariq v. Federation of Pakistan and others.
329.	W.P.No. 52632-2022	Saima Azhar v. Federation of Pakistan and others.
330.	W.P.No. 52388-2022	M/s Novatex Ltd. and others v. Federation of Pakistan and others.

331.	W.P.No. 52816-2022	Asif Imran Awan v. Federation of Pakistan and others.
332.	W.P.No. 52972-2022	M/s GAM Corp (Pvt.) Ltd. v. Federation of Pakistan and others.
333.	W.P.No. 52957-2022	M/s Malik Enterprises v. Federation of Pakistan and others.
334.	W.P.No. 52975-2022	Dr. Farooq Saeed Khan v. Federation of Pakistan and others.
335.	W.P.No. 52524-2022	M/s Mubarik Foundry and others v. Federation of Pakistan and others.
336.	W.P.No. 52820-2022	Qarni Enterprises v. Federation of Pakistan and others.
337.	W.P.No. 52963-2022	Muhammad Yasin and others v. Federation of Pakistan and others.
338.	W.P.No. 52817-2022	Fazal-ur-Rehman and others v. Federation of Pakistan and others.
339.	W.P.No. 52914-2022	M/s Muhammad Bilal Siddiqui v. Federation of Pakistan and others.
340.	W.P.No. 52890-2022	Muhammad Irfan v. Federation of Pakistan and others.
341.	W.P.No. 52053-2022	M/s Fine Star Processing (Pvt.) v. Federation of Pakistan and others.
342.	W.P.No. 52967-2022	Shahid Sarwar v. Federation of Pakistan and others.

343.	W.P.No. 52940-2022	Tahir Raza v. Federation of Pakistan and others.
344.	W.P.No. 52924-2022	M/s Aziz Flour Mills and others v. Federation of Pakistan and others.
345.	W.P.No. 52554-2022	Mst. Saba Javed and others v. Federation of Pakistan and others.
346.	W.P.No. 52540-2022	Sharif Board Mills v. Federation of Pakistan and others.
347.	W.P.No. 52538-2022	New Waince Cotton Processing Industries v. Federation of Pakistan and others.
348.	W.P.No. 52535-2022	Baqar Ali and others v. Federation of Pakistan and others.
349.	W.P.No. 56078-2022	Muhammad Riaz v. Federation of Pakistan and others.
350.	W.P.No. 52893-2022	Bashir A. Sheikh Raheem v. Federation of Pakistan and others.
351.	W.P.No. 52491-2022	Dr. Farooq Saeed Khan v. Federation of Pakistan and others.
352.	W.P.No. 52485-2022	Faisal Ice Factory and others v. Federation of Pakistan and others.
353.	W.P.No. 52741-2022	Rana Muhammad Yousaf v. Federation of Pakistan and others.

354.	W.P.No. 49356-2022	M/s Ansaar Textile Factory and others v. Federation of Pakistan and others.
355.	W.P.No. 49348-2022	M/s Ahmad Noor Steel Furnace and others v. Federation of Pakistan and others.
356.	W.P.No. 49541-2022	Sh. Faisal Rasheed v. Federation of Pakistan and others.
357.	W.P.No. 52536-2022	Waseem Yaqoob v. Federation of Pakistan and others.
358.	W.P.No. 50287-2022	Muhammad Amin and others v. Federation of Pakistan and others.
359.	W.P.No. 50306-2022	M/s M.D. Steel Furnace and others v. Federation of Pakistan and others.
360.	W.P.No. 50251-2022	M/s Ilyas Ali Silk Factory and others v. Federation of Pakistan and others.
361.	W.P.No. 50266-2022	Abdullah Riaz v. Federation of Pakistan and others.
362.	W.P.No. 50261-2022	M/s Alusys (Pvt.) Ltd. v. Federation of Pakistan and others.
363.	W.P.No. 50258-2022	Muhammad Imran v. Federation of Pakistan and others.
364.	W.P.No. 50507-2022	Maryam Embroidery v. Federation of Pakistan and others.

365.	W.P.No. 50127-2022	M/s S.S. Hassan Woolen Industries and others v. Federation of Pakistan and others.
366.	W.P.No. 50536-2022	M/s Ali Silk Factory v. Federation of Pakistan and others.
367.	W.P.No. 50323-2022	Muhammad Mohsin and others v. Federation of Pakistan and others.
368.	W.P.No. 50614-2022	Muhammad Hussain v. Federation of Pakistan and others.
369.	W.P.No. 50276-2022	M/s Awais Foundry and others v. Federation of Pakistan and others.
370.	W.P.No. 50717-2022	Faisal Naveed Chatha and others v. Federation of Pakistan and others.
371.	W.P.No. 50249-2022	Interwood Mobel (Pvt.) Ltd. v. Federation of Pakistan and others.
372.	W.P.No. 50022-2022	Mst. Noor Classic Dying Factory v. Federation of Pakistan and others.
373.	W.P.No. 50368-2022	Arshad Usman Textile Mills v. Federation of Pakistan and others.
374.	W.P.No. 50041-2022	M/s Al-Makkah Steel and others v. Federation of Pakistan and others.
375.	W.P.No. 50271-2022	M/s Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.

376.	W.P.No. 50164-2022	Asif Mehboob v. Federation of Pakistan and others.
377.	W.P.No. 50158-2022	M/s Unicorn Prestige Ltd. v. Federation of Pakistan and others.
378.	W.P.No. 50382-2022	Rizwan Chohan v. Federation of Pakistan and others.
379.	W.P.No. 50857-2022	Altaf Hussain and others v. Federation of Pakistan and others.
380.	W.P.No. 50278-2022	M/s Model Paper (Pvt.) Ltd. and others v. Federation of Pakistan and others.
381.	W.P.No. 52969-2022	Junaid Sattar Butt v. Federation of Pakistan and others.
382.	W.P.No. 52791-2022	Muhammad Sharif Khokhar v. Federation of Pakistan and others.
383.	W.P.No. 52505-2022	Ali Waqas v. Federation of Pakistan and others.
384.	W.P.No. 52102-2022	Mirza Muhammad Nadir and others v. Federation of Pakistan and others.
385.	W.P.No. 52116-2022	Nasir Mehmood Wattoo v. Federation of Pakistan and others.
386.	W.P.No. 52925-2022	Syed Anwar Hussain v. Federation of Pakistan and others.

387.	W.P.No. 52644-2022	Muhammad Yasin v. Federation of Pakistan and others.
388.	W.P.No. 52176-2022	Ubaid Ullah v. Federation of Pakistan and others.
389.	W.P.No. 52128-2022	Safdar Javed v. Federation of Pakistan and others.
390.	W.P.No. 52156-2022	Shaukat Ali v. Federation of Pakistan and others.
391.	W.P.No. 52023-2022	M/s Ali Brothers Ice Factory and others v. Federation of Pakistan and others.
392.	W.P.No. 56237-2022	M/s Imam Engineering Works v. Federation of Pakistan and others.
393.	W.P.No. 55478-2022	Muhammad Ashraf and others v. Federation of Pakistan and others.
394.	W.P.No. 55920-2022	Muhammad Mushtaq v. Federation of Pakistan and others.
395.	W.P.No. 55731-2022	Adnan Sarwar Sheikh v. Federation of Pakistan and others.
396.	W.P.No. 55482-2022	Haji Noor Muhammad and others v. Federation of Pakistan and others.
397.	W.P.No. 55413-2022	Vision Foods Packaging Ltd. and others v. Federation of Pakistan and others.

398.	W.P.No. 55635-2022	Muhammad Irfan Akbar v. Federation of Pakistan and others.
399.	W.P.No. 55292-2022	M/s Tabsih Steel Furnace and others v. Federation of Pakistan and others.
400.	W.P.No. 55238-2022	Ravi Autos Sundar v. Federation of Pakistan and others.
401.	W.P.No. 55082-2022	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
402.	W.P.No. 48845-2022	Standard Spinning Mills and others v. Federation of Pakistan and others.
403.	W.P.No. 48912-2022	MHA Weaving Mills and others v. Federation of Pakistan and others.
404.	W.P.No. 48914-2022	Royal Fibers and others v. Federation of Pakistan and others.
405.	W.P.No. 48926-2022	Zubair Akhtar and others v. Federation of Pakistan and others.
406.	W.P.No. 48828-2022	M/s I.R. Fabrics and others v. Federation of Pakistan and others.
407.	W.P.No. 48366-2022	Noon Textile Mills Ltd. and others v. Federation of Pakistan and others.
408.	W.P.No. 48367-2022	Karam Din Ghulam Sabir and Co. and others v. Federation of Pakistan and others.

409.	W.P.No. 48654-2022	M/s Bahoo Cotton Corporation and others v. Federation of Pakistan and others.
410.	W.P.No. 48592-2022	M/s Munawar Textiles and others v. Federation of Pakistan and others.
411.	W.P.No. 48587-2022	M/s Chaudhary Weaving and others v. Federation of Pakistan and others.
412.	W.P.No. 48581-2022	M/s Punjab Weaving Factory and others v. Federation of Pakistan and others.
413.	W.P.No. 48522-2022	Sabir Ali v. Federation of Pakistan and others.
414.	W.P.No. 48704-2022	SNA Export (Pvt.) Ltd. and others v. Federation of Pakistan and others.
415.	W.P.No. 48753-2022	Delight Industries v. Federation of Pakistan and others.
416.	W.P.No. 57288-2022	Muhammad Saeed v. Federation of Pakistan and others.
417.	W.P.No. 48993-2022	M/s Star Textile Industries and others v. Federation of Pakistan and others.
418.	W.P.No. 48988-2022	M/s Hussain Leather Industries and others v. Federation of Pakistan and others.

419.	W.P.No. 48974-2022	Samad Rubber Works (Pvt.) Ltd. v. Federation of Pakistan and others.
420.	W.P.No. 57269-2022	Faizan Saeed v. Federation of Pakistan and others.
421.	W.P.No. 48589-2022	M/s Cottonera (Pvt.) Ltd. v. Federation of Pakistan and others.
422.	W.P.No. 48755-2022	M/s Niazi Weaving Factory and others v. Federation of Pakistan and others.
423.	W.P.No. 48774-2022	M/s Tanveer Spinning and Weaving Mills and others v. Federation of Pakistan and others.
424.	W.P.No. 48807-2022	M/s Mohsin Weaving Factory and others v. Federation of Pakistan and others.
425.	W.P.No. 48791-2022	M/s Fazal Weaving and others v. Federation of Pakistan and others.
426.	W.P.No. 48767-2022	M/s Subhan Textile (Pvt.) Ltd. and others v. Federation of Pakistan and others.
427.	W.P.No. 48369-2022	United Textile and others v. Federation of Pakistan and others.
428.	W.P.No. 58492-2022	M/s Mian Foundry and Steel Industries and others v. Federation of Pakistan and others.

429.	W.P.No. 51036-2022	Muhammad Asif v. Federation of Pakistan and others.
430.	W.P.No. 54765-2022	Munir Ahmad v. Federation of Pakistan and others.
431.	W.P.No. 50398-2022	M/s Al-Shabbir Corporation Ltd. v. Federation of Pakistan and others.
432.	W.P.No. 48998-2022	M/s Masco Spinning Mills Ltd. and others v. Federation of Pakistan and others.
433.	W.P.No. 50895-2022	Muhammad Waseem Yaqoob v. Federation of Pakistan and others.
434.	W.P.No. 48677-2022	Hamza Ashraf and others v. Federation of Pakistan and others.
435.	W.P.No. 54858-2022	Makkah City Cash and Carry v. Federation of Pakistan and others.
436.	W.P.No. 54839-2022	Specialty Chemical Industries v. Federation of Pakistan and others.
437.	W.P.No. 54837-2022	Tayyab Mehmood v. Federation of Pakistan and others.
438.	W.P.No. 57354-2022	Bilquis Abbas v. Federation of Pakistan and others.
439.	W.P.No. 51982-2022	Muhammad Irfan-ul-Haq v. Federation of Pakistan and others.

440.	W.P.No. 58828-2022	M/s Chashni Crop v. Federation of Pakistan and others.
441.	W.P.No. 58819-2022	M/s Triumphant International v. Federation of Pakistan and others.
442.	W.P.No. 58816-2022	M/s Jubilant Foods (Pvt.) Ltd. v. Federation of Pakistan and others.
443.	W.P.No. 57363-2022	M/s Shamik Enterprises v. Federation of Pakistan and others.
444.	W.P.No. 52395-2022	Safdar Ali and others v. Federation of Pakistan and others.
445.	W.P.No. 52801-2022	Jamil Ahmad v. Federation of Pakistan and others.
446.	W.P.No. 52983-2022	M/s Cyber Internet Services (Pvt.) Ltd. and others v. Federation of Pakistan and others.
447.	W.P.No. 52938-2022	M/s Islamabad Farms v. Federation of Pakistan and others.
448.	W.P.No. 58042-2022	Muhammad Shafiq v. Federation of Pakistan and others.
449.	W.P.No. 58307-2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
450.	W.P.No. 58341-2022	M/s Dolphin Inox (Pvt.) Ltd. v. Federation of Pakistan and others.

451.	W.P.No. 58242-2022	Inam Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
452.	W.P.No. 58259-2022	Hafiz Rashid Hamid v. Federation of Pakistan and others.
453.	W.P.No. 58318-2022	M/s Country Paper and Board Mills v. Federation of Pakistan and others.
454.	W.P.No. 58391-2022	Taj Palace (Hotel) v. Federation of Pakistan and others.
455.	W.P.No. 58305-2022	M/s Islamabad Farms v. Federation of Pakistan and others.
456.	W.P.No. 58352-2022	Muhammad Sadique v. Federation of Pakistan and others.
457.	W.P.No. 58248-2022	Dr. Muhammad Tayyab and others v. Federation of Pakistan and others.
458.	W.P.No. 58270-2022	Muhammad Umar Farooq and others v. Federation of Pakistan and others.
459.	W.P.No. 60072-2022	China Mobile Pakistan Ltd. v. Federation of Pakistan and others.
460.	W.P.No. 60402-2022	Ali Sajjad v. Federation of Pakistan and others.
461.	W.P.No. 60015-2022	M/s New Hafiz Steel Furnace and others v. Federation of Pakistan and others.

462.	W.P.No. 49480-2022	M/s H.H. Cold Rolling and others v. Federation of Pakistan and others.
463.	W.P.No. 49782-2022	Mukarram Ali v. Federation of Pakistan and others.
464.	W.P.No. 49559-2022	Khokhar Rice Mills v. Federation of Pakistan and others.
465.	W.P.No. 55681-2022	Kabeer Ahmad v. Federation of Pakistan and others.
466.	W.P.No. 55905-2022	Ali Sufyan Khalid v. Federation of Pakistan and others.
467.	W.P.No. 55894-2022	Col. (Retd.) Javed Safdar Kahlon v. Federation of Pakistan and others.
468.	W.P.No. 55849-2022	M/s Tycoon Minerals v. Federation of Pakistan and others.
469.	W.P.No. 55907-2022	Muhammad Yunus and others v. Federation of Pakistan and others.
470.	W.P.No. 55965-2022	M/s United Dying and Finishing and others v. Federation of Pakistan and others.
471.	W.P.No. 55246-2022	Muhammad Ishaq Mirza v. Federation of Pakistan and others.
472.	W.P.No. 55804-2022	Riaz Cotton Waste Products and others v. Federation of Pakistan and others.

473.	W.P.No. 55418-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
474.	W.P.No. 55805-2022	M/s Paradise Grinding v. Federation of Pakistan and others.
475.	W.P.No. 55821-2022	Al-Wahab Flour Mills v. Federation of Pakistan and others.
476.	W.P.No. 55941-2022	M/s Progressive Engineers v. Federation of Pakistan and others.
477.	W.P.No. 55994-2022	Ch. Ilyas Ahmad v. Federation of Pakistan and others.
478.	W.P.No. 55394-2022	Saima Akhtar v. Federation of Pakistan and others.
479.	W.P.No. 55926-2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
480.	W.P.No. 55148-2022	Abdullah Malik v. Federation of Pakistan and others.
481.	W.P.No. 55118-2022	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.
482.	W.P.No. 55258-2022	Nasir Mehmood v. Federation of Pakistan and others.
483.	W.P.No. 55188-2022	M/s Zulfiqar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
484.	W.P.No. 55911-2022	Ittehad Chemicals Ltd. v. Federation of Pakistan and others.

485.	W.P.No. 55172-2022	Rizwan Ahmad and others v. Federation of Pakistan and others.
486.	W.P.No. 55921-2022	Syed Muhammad Adnan Bukhari v. Federation of Pakistan and others.
487.	W.P.No. 55916-2022	Ikram Ullah v. Federation of Pakistan and others.
488.	W.P.No. 55808-2022	Abdul Latif v. Government of Pakistan and others.
489.	W.P.No. 55982-2022	Muhammad Shabbir v. Government of Pakistan and others.
490.	W.P.No. 55070-2022	Muhammad Nasrullah Khan v. Federation of Pakistan and others.
491.	W.P.No. 55970-2022	Alam Zaib v. Federation of Pakistan and others.
492.	W.P.No. 55296-2022	Khalid Bashir and others v. Federation of Pakistan and others.
493.	W.P.No. 55062-2022	M/s Akhtar Saeed Medical College and others v. Federation of Pakistan and others.
494.	W.P.No. 55256-2022	Ghulam Mustafa v. Federation of Pakistan and others.
495.	W.P.No. 55875-2022	M/s Mehmood v. Federation of Pakistan and others.

496.	W.P.No. 55718-2022	M/s Al-Makkah Steels and others v. Federation of Pakistan and others.
497.	W.P.No. 55893-2022	Atlas Honda Ltd. v. Federation of Pakistan and others.
498.	W.P.No. 55993-2022	Zulfiqar Ali and others v. Federation of Pakistan and others.
499.	W.P.No. 55174-2022	Mumtaz Ahmad and others v. Federation of Pakistan and others.
500.	W.P.No. 55840-2022	Gujranwala Food Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
501.	W.P.No. 55548-2022	M/s Champion Paint Industries and others v. Federation of Pakistan and others.
502.	W.P.No. 49532-2022	Ali Foundry v. Federation of Pakistan and others.
503.	W.P.No. 49543-2022	Anees Textile Mills and others v. Federation of Pakistan and others.
504.	W.P.No. 49208-2022	Raja Silk Factory and others v. Federation of Pakistan and others.
505.	W.P.No. 49316-2022	Akhtar Saeed Medical College v. Federation of Pakistan and others.
506.	W.P.No. 49435-2022	M/s Aftab Silk Factory and others v. Federation of Pakistan and others.

507.	W.P.No. 49422-2022	Pakistan Steel Casting and others v. Federation of Pakistan and others.
508.	W.P.No. 54628-2022	M/s Asia Fane v. Federation of Pakistan and others.
509.	W.P.No. 54075-2022	M/s Bin Qasim Packages and others v. Federation of Pakistan and others.
510.	W.P.No. 54156-2022	M/s Tayyba Flour Mills v. Federation of Pakistan and others.
511.	W.P.No. 54293-2022	Zohaib Khawaja v. Federation of Pakistan and others.
512.	W.P.No. 54649-2022	Farhan Siddique and others v. Federation of Pakistan and others.
513.	W.P.No. 54496-2022	Muhammad Hassan Jalil v. Federation of Pakistan and others.
514.	W.P.No. 49498-2022	M/s Usman Steel Casting and others v. Federation of Pakistan and others.
515.	W.P.No. 49203-2022	Al-Hamd Spinning (Pvt.) Ltd. and others v. Federation of Pakistan and others.
516.	W.P.No. 49476-2022	M/s K.A. Enterprises (Pvt.) Ltd. v. Federation of Pakistan and others.
517.	W.P.No. 49479-2022	Muhammad Qasim v. Federation of Pakistan and others.

518.	W.P.No. 49351-2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
519.	W.P.No. 49198-2022	M/s Wali Weaving Factory and others v. Federation of Pakistan and others.
520.	W.P.No. 49407-2022	M/s Gujrat Flour and General Mills v. Federation of Pakistan and others.
521.	W.P.No. 49210-2022	Ali Enterprises and others v. Federation of Pakistan and others.
522.	W.P.No. 49204-2022	Muhammad Ilyas Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
523.	W.P.No. 49207-2022	M/s Tariq Shahzad Weaving Factory and others v. Federation of Pakistan and others.
524.	W.P.No. 49404-2022	Bhatti Cotton Links and others v. Federation of Pakistan and others.
525.	W.P.No. 49401-2022	M/s US Apparel Textile (Pvt.) Ltd. v. Federation of Pakistan and others.
526.	W.P.No. 54969-2022	M/s Perfect Plastic Industry v. Federation of Pakistan and others.
527.	W.P.No. 54903-2022	Rehan Nawaz v. Federation of Pakistan and others.

528.	W.P.No. 54523-2022	M/s Master Poly Plastic Industries v. Federation of Pakistan and others.
529.	W.P.No. 54370-2022	Faheem Ice Factory v. Federation of Pakistan and others.
530.	W.P.No. 54354-2022	Silver Star Enterprises and others v. Federation of Pakistan and others.
531.	W.P.No. 54289-2022	Syed Anwar Hussain v. Federation of Pakistan and others.
532.	W.P.No. 54230-2022	Saeed Akhtar v. Federation of Pakistan and others.
533.	W.P.No. 49529-2022	Pure Foods Company and others v. Federation of Pakistan and others.
534.	W.P.No. 49527-2022	Ali Foundry v. Federation of Pakistan and others.
535.	W.P.No. 56775-2022	M/s Kamal Industries v. Federation of Pakistan and others.
536.	W.P.No. 49395-2022	M/s US Denim (Pvt.) Ltd. v. Federation of Pakistan and others.
537.	W.P.No. 49423-2022	M/s Moiz Steel Industry v. Federation of Pakistan and others.
538.	W.P.No. 49442-2022	Muhammad Qasim v. Federation of Pakistan and others.

539.	W.P.No. 49470-2022	M/s Anayat Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
540.	W.P.No. 49531-2022	Jamil Ahmad and others v. Federation of Pakistan and others.
541.	W.P.No. 49473-2022	AIMS Hosiery Ltd. and others v. Federation of Pakistan and others.
542.	W.P.No. 49477-2022	Muhammad Abbas v. Federation of Pakistan and others.
543.	W.P.No. 49563-2022	Sagheer Ahmad and others v. Federation of Pakistan and others.
544.	W.P.No. 49550-2022	M/s Azam Flour Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
545.	W.P.No. 49530-2022	M/s Globe Silk Factory and others v. Federation of Pakistan and others.
546.	W.P.No. 49034-2022	Sharif Poultry Farm and others v. Federation of Pakistan and others.
547.	W.P.No. 49526-2022	Refine Steels Mills Ltd. and others v. Federation of Pakistan and others.
548.	W.P.No. 54914-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
549.	W.P.No. 54286-2022	M/s Fahid Weaving Factory and others v. Federation of Pakistan and others.

550.	W.P.No. 54358-2022	M/s New Modern Steel Industries and others v. Federation of Pakistan and others.
551.	W.P.No. 54725-2022	Zia-ul-Hassan v. Federation of Pakistan and others.
552.	W.P.No. 54692-2022	Muhammad Anwar Butt v. Federation of Pakistan and others.
553.	W.P.No. 54633-2022	Atif Raza and others v. Federation of Pakistan and others.
554.	W.P.No. 54371-2022	M/s Superkool Company and others v. Federation of Pakistan and others.
555.	W.P.No. 54302-2022	Shaheen Cloth Processing Mills and others v. Federation of Pakistan and others.
556.	W.P.No. 54297-2022	Frontier Foundry Steel (Pvt.) Ltd. v. Federation of Pakistan and others.
557.	W.P.No. 54298-2022	Dr. Muhammad Zaid Arif and others v. Federation of Pakistan and others.
558.	W.P.No. 54664-2022	Muhammad Tahir Mehmood v. Federation of Pakistan and others.
559.	W.P.No. 54967-2022	Shahid Sarfraz and others v. Federation of Pakistan and others.
560.	W.P.No. 54800-2022	H.H. Cold Rolling and others v. Federation of Pakistan and others.

561.	W.P.No. 54559-2022	Parveen Rashid v. Federation of Pakistan and others.
562.	W.P.No. 54970-2022	M/s Atlas Plastic Industry v. Federation of Pakistan and others.
563.	W.P.No. 54637-2022	Tanveer Ahmad v. Federation of Pakistan and others.
564.	W.P.No. 54365-2022	Muhammad Hussain v. Federation of Pakistan and others.
565.	W.P.No. 54291-2022	M/s Muhammad Saeed Weaving Factory v. Federation of Pakistan and others.
566.	W.P.No. 54090-2022	Ejaz Hussain v. Federation of Pakistan and others.
567.	W.P.No. 54353-2022	M/s Hammad Cotton Waste Factory and others v. Federation of Pakistan and others.
568.	W.P.No. 54215-2022	Ambreen Safdar v. Federation of Pakistan and others.
569.	W.P.No. 54743-2022	M/s Crimson Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
570.	W.P.No. 54534-2022	M/s Shuaa Weaving Factory and others v. Federation of Pakistan and others.

571.	W.P.No. 54648-2022	Mazuma Industries v. Federation of Pakistan and others.
572.	W.P.No. 49499-2022	Narowal Flour Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
573.	W.P.No. 49899-2022	M/s Silver Line Spinning Mills Ltd. v. Federation of Pakistan and others.
574.	W.P.No. 49958-2022	Steel (Pvt.) Ltd. and others v. Federation of Pakistan and others.
575.	W.P.No. 49568-2022	N/s Tata Textile Mills Ltd. v. Federation of Pakistan and others.
576.	W.P.No. 49713-2022	M/s Waheed Textile Industry v. Federation of Pakistan and others.
577.	W.P.No. 49716-2022	Ahmad Embroidery v. Federation of Pakistan and others.
578.	W.P.No. 49745-2022	M/s Izhar Woolen Mills and others v. Federation of Pakistan and others.
579.	W.P.No. 49736-2022	M/s Ittefaq Flour Mills v. Federation of Pakistan and others.
580.	W.P.No. 49740-2022	M/s Nafees Textile Industrial Services v. Federation of Pakistan and others.
581.	W.P.No. 49752-2022	Muhammad Siddique and others v. Federation of Pakistan and others.

582.	W.P.No. 49765-2022	Ch. Muhammad Sadiq v. Federation of Pakistan and others.
583.	W.P.No. 49759-2022	Ch. Muhammad Sadiq v. Federation of Pakistan and others.
584.	W.P.No. 49582-2022	Rana Nadeem Ahmad v. Federation of Pakistan and others.
585.	W.P.No. 49790-2022	Fawad Textile Mills Ltd. v. Federation of Pakistan and others.
586.	W.P.No. 49343-2022	M/s Mehmood Silk Factory and others v. Federation of Pakistan and others.
587.	W.P.No. 49342-2022	Ejaz Textile Mills and others v. Federation of Pakistan and others.
588.	W.P.No. 49333-2022	Muhammad Nasrullah Khan v. Federation of Pakistan and others.
589.	W.P.No. 49580-2022	Muhammad Ayaz Mehmood v. Federation of Pakistan and others.
590.	W.P.No. 49657-2022	M/s Mughal Iron and Steel Industries Ltd. v. Federation of Pakistan and others.
591.	W.P.No. 49655-2022	M/s Shahkam Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
592.	W.P.No. 49594-2022	Mazuma Industries v. Federation of Pakistan and others.

593.	W.P.No. 49586-2022	Khalid Mehmood v. Federation of Pakistan and others.
594.	W.P.No. 49585-2022	Rana Nadeem Ahmad v. Federation of Pakistan and others.
595.	W.P.No. 49915-2022	Fatima Embroidery and others v. Federation of Pakistan and others.
596.	W.P.No. 49950-2022	M/s Alfateh Woolen Industry v. Federation of Pakistan and others.
597.	W.P.No. 49920-2022	Muhammad Tufail and others v. Federation of Pakistan and others.
598.	W.P.No. 49938-2022	Al-Jhad CNG Station and others v. Federation of Pakistan and others.
599.	W.P.No. 49964-2022	Ashiq Hussain and others v. Federation of Pakistan and others.
600.	W.P.No. 49989-2022	M/s Super Tech Casting (Pvt.) Ltd. v. Federation of Pakistan and others.
601.	W.P.No. 49659-2022	Amtex Ltd. v. Federation of Pakistan and others.
602.	W.P.No. 49712-2022	M/s Qayyum Engineering Works and others v. Federation of Pakistan and others.
603.	W.P.No. 49922-2022	Hunbul Tex (Pvt.) Ltd. v. Federation of Pakistan and others.

604.	W.P.No. 49901-2022	AB Industry v. Federation of Pakistan and others.
605.	W.P.No. 49894-2022	M/s Sardar Steel Mills and others v. Federation of Pakistan and others.
606.	W.P.No.49897-2022	M/s Ansari Textiles v. Federation of Pakistan and others.
607.	W.P.No.49641-2022	Hafsa Foundry and others v. Federation of Pakistan and others.
608.	W.P.No.61195-2022	Malik Mukhtar Ahmad v. Federation of Pakistan and others.
609.	W.P.No.63147-2022	Tabassam Naz v. Federation of Pakistan and others.
610.	W.P.No. 63063-2022	M/s Unicorn Prestige Ltd. v. Federation of Pakistan and others.
611.	W.P.No. 62814-2022	Arzoo Textile Mills and others v. Federation of Pakistan and others.
612.	W.P.No. 63033-2022	White Pearl Rice Mills Ltd. and others v. Federation of Pakistan and others.
613.	W.P.No. 63087-2022	M/s New Modern Steel Industries and others v. Federation of Pakistan and others.
614.	W.P.No. 62719-2022	Naseem Shaukat v. Federation of Pakistan and others.

615.	W.P.No. 63040-2022	Ashiana Cotton Products Ltd. v. Federation of Pakistan and others.
616.	W.P.No. 55155-2022	M/s Ehsan Woolen Spinning Mills v. Federation of Pakistan and others.
617.	W.P.No. 55281-2022	Talib Hussain and others v. Federation of Pakistan and others.
618.	W.P.No. 55095-2022	M/s Prime Steel Re-Rolling Mills v. Federation of Pakistan and others.
619.	W.P.No. 55289-2022	M/s GAM Corp (Pvt.) Ltd. and others v. Federation of Pakistan and others.
620.	W.P.No. 61182-2022	Malik Mukhtar Ahmad v. Federation of Pakistan and others.
621.	W.P.No. 61141-2022	Bhaoo Ice Factory v. Federation of Pakistan and others.
622.	W.P.No. 61025-2022	Talaat Farooq Sheikh v. Federation of Pakistan and others.
623.	W.P.No. 52126-2022	Muhammad Arif v. Federation of Pakistan and others.
624.	W.P.No. 60762-2022	Muhammad Haroon Ghazi v. Federation of Pakistan and others.
625.	W.P.No. 60840-2022	Talish Mehmood Dhilu and others v. Federation of Pakistan and others.
626.	W.P.No. 60736-2022	Anis Associates (Pvt.) Ltd. v. Federation of Pakistan and others.

627.	W.P.No. 55918-2022	Sartaj Polysacks (Pvt.) Ltd. v. Federation of Pakistan and others.
628.	W.P.No. 53905-2022	M/s Power Chemical Industries v. Federation of Pakistan and others.
629.	W.P.No. 61280-2022	M/s Flying Cement Co. Ltd. v. Federation of Pakistan and others.
630.	W.P.No. 62438-2022	M/s Dfam (Pvt.) Ltd. v. Federation of Pakistan and others.
631.	W.P.No. 62335-2022	M/s The Rice Bowl Pakistan (Pvt.) Ltd. v. Federation of Pakistan and others.
632.	W.P.No. 62013-2022	Shahid Weaving Factory v. Federation of Pakistan and others.
633.	W.P.No. 61963-2022	Ahmad Weaving Factory v. Federation of Pakistan and others.
634.	W.P.No. 61814-2022	Faisal Ashraf Powerlooms v. Federation of Pakistan and others.
635.	W.P.No. 61966-2022	Muhammad Irfan v. Federation of Pakistan and others.
636.	W.P.No. 61971-2022	Mirza Muhammad Nadir and others v. Federation of Pakistan and others.
637.	W.P.No. 62020-2022	Saeed Akhtar v. Federation of Pakistan and others.

638.	W.P.No. 61763-2022	Noor Ahmad v. Federation of Pakistan and others.
639.	W.P.No. 62167-2022	Mubaraz Khan and others v. Federation of Pakistan and others.
640.	W.P.No. 62012-2022	Manzoor Qadir v. Federation of Pakistan and others.
641.	W.P.No. 62157-2022	Al-Hafiz Crystoplast (Pvt.) Ltd. v. Federation of Pakistan and others.
642.	W.P.No. 55605-2022	Nawaz Ahmad Sheikh v. Federation of Pakistan and others.
643.	W.P.No. 52550-2022	Hussain Ice Rice Factory and others v. Federation of Pakistan and others.
644.	W.P.No. 61425-2022	M/s Be Be Jan Pakistan Ltd. v. Federation of Pakistan and others.
645.	W.P.No. 50102-2022	United Dyeing and Finishing v. Federation of Pakistan and others.
646.	W.P.No. 50607-2022	Hafiz Muhammad Ishaq (deceased) v. Federation of Pakistan and others.
647.	W.P.No. 50369-2022	Talha v. Federation of Pakistan and others.
648.	W.P.No. 50464-2022	Muhammad Aslam v. Federation of Pakistan and others.
649.	W.P.No. 50296-2022	Usman Ali Nawaz v. Federation of Pakistan and others.

650.	W.P.No. 50521-2022	Mian Ghulam Rasool v. Federation of Pakistan and others.
651.	W.P.No. 50105-2022	Dawat Saraye v. Federation of Pakistan and others.
652.	W.P.No. 50103-2022	Unique Tanning Industries (Pvt.) and others v. Federation of Pakistan and others.
653.	W.P.No. 50350-2022	M/s Europa Restaurant v. Federation of Pakistan and others.
654.	W.P.No. 50427-2022	Muhammad Zaheer and others v. Federation of Pakistan and others.
655.	W.P.No. 50152-2022	M/s Lahore Regency (Pvt.) Ltd. v. Federation of Pakistan and others.
656.	W.P.No. 50090-2022	Imran Silk Factory and others v. Federation of Pakistan and others.
657.	W.P.No. 50096-2022	M/s Rauf Steel Furnace and others v. Federation of Pakistan and others.
658.	W.P.No. 50139-2022	Abdul Rauf v. Federation of Pakistan and others.
659.	W.P.No. 50532-2022	M/s City News Network (Pvt.) Ltd. v. Federation of Pakistan and others.
660.	W.P.No. 50109-2022	Phantom Plastic and others v. Federation of Pakistan and others.

661.	W.P.No. 50106-2022	Hafiz Muhammad Shoib and others v. Federation of Pakistan and others.
662.	W.P.No. 50431-2022	M/s Waseem Stainless Steel v. Federation of Pakistan and others.
663.	W.P.No. 50023-2022	M/s A.F. Steel Re-Rolling Mills v. Federation of Pakistan and others.
664.	W.P.No. 50015-2022	M/s Diamond Tyres Ltd. v. Federation of Pakistan and others.
665.	W.P.No. 50156-2022	M/s Continental Plastic Industries v. Federation of Pakistan and others.
666.	W.P.No. 50838-2022	Asif Ali v. Federation of Pakistan and others.
667.	W.P.No. 50834-2022	Masood Ijaz v. Federation of Pakistan and others.
668.	W.P.No. 50737-2022	Hakim Ali Bhatti v. LESCO and others.
669.	W.P.No. 50084-2022	M.M. Tower v. Federation of Pakistan and others.
670.	W.P.No. 50089-2022	Ehsan Cotton Products and others v. Federation of Pakistan and others.
671.	W.P.No. 50727-2022	Muhammad Aslam v. Federation of Pakistan and others.
672.	W.P.No. 50826-2022	Muhammad Abbas Mirza v. Federation of Pakistan and others.

673.	W.P.No. 50528-2022	M/s Tayyab Textile Industry and others v. Federation of Pakistan and others.
674.	W.P.No. 50540-2022	M/s Maaher Food Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
675.	W.P.No. 50999-2022	M/s Nimir Chemicals Pakistan Ltd. and others v. Federation of Pakistan and others.
676.	W.P.No. 50383-2022	Ali Ahmad v. Federation of Pakistan and others.
677.	W.P.No. 50424-2022	M/s Leiner Pak Gelatine Ltd. v. Federation of Pakistan and others.
678.	W.P.No. 50525-2022	Pakistan Kisan and Labour Party and others v. Federation of Pakistan and others.
679.	W.P.No. 50518-2022	M/s Kh. Nasiruddin and Sons (Pvt.) Ltd. v. Federation of Pakistan and others.
680.	W.P.No. 50546-2022	M/s City News Network Ltd. v. Federation of Pakistan and others.
681.	W.P.No. 50726-2022	Irshad Ullah and others v. Federation of Pakistan and others.
682.	W.P.No. 65358-2022	Narowal Flour Mills (Pvt.) Ltd. v. Federation of Pakistan and others.

683.	W.P.No. 65010-2022	Gujranwala Food Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
684.	W.P.No. 64726-2022	M/s Nazir Steel Mills and others v. Federation of Pakistan and others.
685.	W.P.No. 64722-2022	M/s Al-Badar Engineering Co. (Pvt.) Ltd. and others v. Federation of Pakistan and others.
686.	W.P.No. 64590-2022	M/s Moiz Steel Industry and others v. Federation of Pakistan and others.
687.	W.P.No. 64546-2022	M/s Malik Polyprapylene and others v. Federation of Pakistan and others.
688.	W.P.No. 65272-2022	M/s Pioneer Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
689.	W.P.No. 65462-2022	Al-Wakil International (Pvt.) Ltd. v. Federation of Pakistan and others.
690.	W.P.No. 64680-2022	M/s City News Network Ltd. v. Federation of Pakistan and others.
691.	W.P.No. 64809-2022	M/s Specialists Group Inc. Ltd. and others v. Federation of Pakistan and others.
692.	W.P.No. 64709-2022	Muaaz Embroidery and others v. Federation of Pakistan and others.

693.	W.P.No. 64535-2022	M/s Grace Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
694.	W.P.No. 65737-2022	M/s City Pharma Ltd. v. Federation of Pakistan and others.
695.	W.P.No. 64711-2022	M/s Pak Panther Spinning Mills Ltd. and others v. Federation of Pakistan and others.
696.	W.P.No. 64499-2022	M/s AHN Colloid Chemical (Pvt.) Ltd. v. Federation of Pakistan and others.
697.	W.P.No. 64549-2022	M/s Tayba Flour Mills v. Federation of Pakistan and others.
698.	W.P.No. 64607-2022	Mushtaq Ahmad v. Federation of Pakistan and others.
699.	W.P.No. 65061-2022	M/s Makkah Masoom Traders v. Federation of Pakistan and others.
700.	W.P.No. 64925-2022	M/s Hassan Integrated Traders v. Federation of Pakistan and others.
701.	W.P.No. 65745-2022	Zircon Textile and others v. Federation of Pakistan and others.
702.	W.P.No. 64667-2022	M/s Zar Plastic v. Federation of Pakistan and others.
703.	W.P.No. 64729-2022	Abid Mumtaz v. Federation of Pakistan and others.

704.	W.P.No. 65727-2022	Mian Sohail Mushtaq v. Federation of Pakistan and others.
705.	W.P.No. 65477-2022	M/s Madina Ice Factory and others v. Federation of Pakistan and others.
706.	W.P.No. 65487-2022	Umair Aslam v. Federation of Pakistan and others.
707.	W.P.No. 65003-2022	M/s Rana Brothers Engineering v. Federation of Pakistan and others.
708.	W.P.No. 65459-2022	Hafiz Rashid Hamid v. Federation of Pakistan and others.
709.	W.P.No. 65289-2022	United Dyeing and Finishing v. Federation of Pakistan and others.
710.	W.P.No. 65559-2022	Bismillah Steel Furnace and others v. Federation of Pakistan and others.
711.	W.P.No. 65007-2022	M/s Prime Steel Re-Rolling Mills v. Federation of Pakistan and others.
712.	W.P.No. 63610-2022	Abdul Majeed v. Federation of Pakistan and others.
713.	W.P.No. 63603-2022	M/s Al-Harmain Flour Mills and others v. Federation of Pakistan and others.
714.	W.P.No. 63597-2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.

715.	W.P.No. 63612-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
716.	W.P.No. 63608-2022	M/s Islamabad Farms v. Federation of Pakistan and others.
717.	W.P.No. 64937-2022	M/s STS Engineering Works v. Federation of Pakistan and others.
718.	W.P.No. 65005-2022	M/s Ahmad Foundry v. Federation of Pakistan and others.
719.	W.P.No. 65163-2022	M/s Abdullah Engineering Works and others v. Federation of Pakistan and others.
720.	W.P.No. 65563-2022	Allawasaya Textile and Finishing Mills Ltd. and others v. Federation of Pakistan and others.
721.	W.P.No. 64625-2022	M/s Micronizer and others v. Federation of Pakistan and others.
722.	W.P.No. 65015-2022	M/s Samsol International v. Federation of Pakistan and others.
723.	W.P.No. 55448-2022	H and H Fashion and others v. Federation of Pakistan and others.
724.	W.P.No. 64500-2022	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.

725.	W.P.No. 66313-2022	M/s Muhammad Hussain Gatta Factory and others v. Federation of Pakistan and others.
726.	W.P.No. 65034-2022	Muhammad Ishfaq v. Federation of Pakistan and others.
727.	W.P.No. 63634-2022	Muhammad Tufail v. Federation of Pakistan and others.
728.	W.P.No. 65418-2022	Muhammad Shahid Javed and others v. Federation of Pakistan and others.
729.	W.P.No. 64892-2022	M/s Dolphin Inox (Pvt.) Ltd. v. Federation of Pakistan and others.
730.	W.P.No. 64728-2022	Liaqat Ali Khan v. Federation of Pakistan and others.
731.	W.P.No. 65472-2022	M/s Spectrum Plastic Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
732.	W.P.No. 64536-2022	M/s Kamal Industries v. Federation of Pakistan and others.
733.	W.P.No. 64696-2022	Shehzad Ahmad and others v. Federation of Pakistan and others.
734.	W.P.No. 65532-2022	M/s Kam Engineering (Pvt.) Ltd. and others v. Federation of Pakistan and others.

735.	W.P.No. 65744-2022	Firdous Cloth Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
736.	W.P.No. 64658-2022	M/s Sangam Steel Furnace and others v. Federation of Pakistan and others.
737.	W.P.No. 64520-2022	Qaswar Abbas v. Federation of Pakistan and others.
738.	W.P.No. 64674-2022	M/s G.R. Metal Industry and others v. Federation of Pakistan and others.
739.	W.P.No. 64424-2022	Khalid Mustafa and others v. Federation of Pakistan and others.
740.	W.P.No. 64283-2022	M/s A.T.S. Synthetic (Pvt.) Ltd. and others v. Federation of Pakistan and others.
741.	W.P.No. 64430-2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
742.	W.P.No. 64347-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
743.	W.P.No. 64390-2022	Toyo Home Appliances v. Federation of Pakistan and others.
744.	W.P.No. 64413-2022	Green Cotton Products (Pvt.) Ltd. and others v. Federation of Pakistan and others.

745.	W.P.No.64399 -2022	White Pearl Rice Mills Ltd. and others v. Federation of Pakistan and others.
746.	W.P.No. 64235-2022	Blessed Textiles Ltd. v. Federation of Pakistan and others.
747.	W.P.No. 64359-2022	M/s Islamabad Farms (Pvt.) Ltd. v. Federation of Pakistan and others.
748.	W.P.No. 64209-2022	M/s Arsam Pulp and Paper Board Industries v. Federation of Pakistan and others.
749.	W.P.No. 64393-2022	N.K.F. Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
750.	W.P.No. 64320-2022	Pure Foods Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
751.	W.P.No. 64420-2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
752.	W.P.No. 64020-2022	M/s Aay Sharif and Sons Plastic Industry (Pvt.) Ltd. v. Federation of Pakistan and others.
753.	W.P.No. 64046-2022	M/s International Pharma Labs v. Federation of Pakistan and others.
754.	W.P.No. 64331-2022	M/s Mei Kong (Pvt.) Ltd. v. Federation of Pakistan and others.

755.	W.P.No. 64373-2022	M/s Waqas Steel Furnace and others v. Federation of Pakistan and others.
756.	W.P.No. 64435-2022	Al-Madina Poultry Farm v. Federation of Pakistan and others.
757.	W.P.No. 64336-2022	Zahoor Ahmad and others v. Federation of Pakistan and others.
758.	W.P.No. 63996-2022	M/s Indus Lyallpur Ltd. v. Federation of Pakistan and others.
759.	W.P.No. 63909-2022	Madina Steel Industry and others v. Federation of Pakistan and others.
760.	W.P.No. 64048-2022	M/s Al-Rehmat (Pvt.) Ltd. v. Federation of Pakistan and others.
761.	W.P.No. 64031-2022	Interwood Mobel (Pvt.) Ltd. v. Federation of Pakistan and others.
762.	W.P.No. 64082-2022	Faisal Mustafa and others v. Federation of Pakistan and others.
763.	W.P.No. 64006-2022	Hudabia Industries and others v. Federation of Pakistan and others.
764.	W.P.No. 64047-2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
765.	W.P.No. 64042-2022	M/s Crimson Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
766.	W.P.No. 64056-2022	M/s Prime Flour Mills v. Federation of Pakistan and others.

767.	W.P.No. 64029-2022	M/s Waseem International v. Federation of Pakistan and others.
768.	W.P.No. 63667-2022	Ghani Value Glass Ltd. and others v. Federation of Pakistan and others.
769.	W.P.No. 63885-2022	Talilb Hussain and others v. Federation of Pakistan and others.
770.	W.P.No. 63828-2022	Irfan Brother (Pvt.) Ltd. and others v. Federation of Pakistan and others.
771.	W.P.No. 63997-2022	M/s Ashraf Steels and others v. Federation of Pakistan and others.
772.	W.P.No. 63678-2022	M/s Zulfiqar Industries v. Federation of Pakistan and others.
773.	W.P.No. 63824-2022	M/s Fortress Square Services (Pvt.) Ltd. v. Federation of Pakistan and others.
774.	W.P.No. 63590-2022	Muhammad Nasrullah Khan v. Federation of Pakistan and others.
775.	W.P.No. 63974-2022	M/s H.H. Cold Rolling and others v. Federation of Pakistan and others.
776.	W.P.No. 63855-2022	M/s Symbol Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
777.	W.P.No. 63858-2022	M/s Diamond Tyres Ltd. and others v. Federation of Pakistan and others.

778.	W.P.No. 63983-2022	M/s Ehsan Woolen Spinning Mills Ltd. v. Federation of Pakistan and others.
779.	W.P.No. 67630-2022	M/s Maaher Food Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
780.	W.P.No. 65066-2022	Malik Umair Imtiaz v. Federation of Pakistan and others.
781.	W.P.No. 65212-2022	M/s Umer Nadeem Plastic Industries v. Federation of Pakistan and others.
782.	W.P.No. 63409-2022	Maqbool Hussain Sheikh v. Federation of Pakistan and others.
783.	W.P.No. 63371-2022	Siam Rubber Industry and others v. Federation of Pakistan and others.
784.	W.P.No. 65184-2022	Mazuma Industries v. Federation of Pakistan and others.
785.	W.P.No. 54753-2022	M/s Ghani Dairies (Pvt.) Ltd. v. Federation of Pakistan and others.
786.	W.P.No. 52892-2022	M/s Flying Cement Co. v. Federation of Pakistan and others.
787.	W.P.No. 54092-2022	Pakistan Expatriates Cooperative v. Federation of Pakistan and others.
788.	W.P.No. 48857-2022	State Life Insurance v. Federation of Pakistan and others.

789.	W.P.No. 55156-2022	Punjab Board of Revenue v. Federation of Pakistan and others.
790.	W.P.No. 30873-2022	Chenab Limited v. Federation of Pakistan and others.
791.	W.P.No. 48097-2022	Pakistan Interlining Processing and Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
792.	W.P.No. 54641-2022	Ittefaq Iron Industries Ltd. v. Federation of Pakistan and others.
793.	W.P.No. 50677-2022	Mian Iftikhar Hussain v. Federation of Pakistan and others.
794.	W.P.No. 50450-2022	Khawaja Ahmad Tariq Raheem and others.Vs. Federation of Pakistan and others.
795.	W.P.No. 50725-2022	Muhammad Azhar Siddique v. Federation of Pakistan and others.
796.	W.P.No. 52429-2022	Lahore Chamber of Commerce and others v. Federation of Pakistan and others.
797.	W.P.No.71870-2022	Usman Brother Foundry and others v. Federation of Pakistan and others.
798.	W.P.No.71914-2022	Frontier Foundry (Pvt.) Ltd. v. Federation of Pakistan and others.

799.	W.P.No.71964-2022	M/s SAEPN (Pvt.) Ltd. v. Federation of Pakistan and others.
800.	W.P.No.71959-2022	Al-Badar Poultry Form and others v. Federation of Pakistan and others.
801.	W.P.No.72024-2022	M/s Al-Badar Engineering Co. (Pvt.) Ltd. and others v. Federation of Pakistan and others.
802.	W.P.No.72033-2022	Mian Muhammad Arif v. Federation of Pakistan and others.
803.	W.P.No.71316-2022	Al-Hafiz Crystoplast (Pvt.) Ltd. v. Federation of Pakistan and others.
804.	W.P.No.71345-2022	M/s Islamabad Farms v. Federation of Pakistan and others.
805.	W.P.No.71132-2022	White Pearl Jute Mills Ltd. and others v. Federation of Pakistan and others.
806.	W.P.No.71341-2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
807.	W.P.No.81402-2022	M/s Shalimar Steel Re-Rolling Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
808.	W.P.No.81040-2022	M/s Waseem Stainless Steel v. Federation of Pakistan and others.
809.	W.P.No.81418-2022	M/s Black Gold Industry v. Federation of Pakistan and others.

810.	W.P.No.67572-2022	Manzoor Ahmad Shah v. Federation of Pakistan and others.
811.	W.P.No.73486-2022	Muhammad Ashraf v. Federation of Pakistan and others.
812.	W.P.No.74047-2022	Sheraz Altaf v. Federation of Pakistan and others.
813.	W.P.No.74046-2022	Mohtarma Naseema Habib v. Federation of Pakistan and others.
814.	W.P.No.74045-2022	Mohtarma Naseema Habib v. Federation of Pakistan and others.
815.	W.P.No.73992-2022	M/s Sardar Steel Mills v. Federation of Pakistan and others.
816.	W.P.No.80083-2022	M/s Malik Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
817.	W.P.No.80226-2022	Liaqat Ali v. Federation of Pakistan and others.
818.	W.P.No.80237-2022	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.
819.	W.P.No.80228-2022	Tri-Plast Industry v. Federation of Pakistan and others.
820.	W.P.No.80160-2022	M/s AHN Steel (Pvt.) Ltd. v. Federation of Pakistan and others.

821.	W.P.No.80102-2022	M/s AHN Colloid Chemicals (Pvt.) Ltd. v. Federation of Pakistan and others.
822.	W.P.No.80695-2022	M/s Mei Kong (Pvt.) Ltd. v. Federation of Pakistan and others.
823.	W.P.No.71904-2022	M/s Nimir Chemicals Pakistan Ltd. and others v. Federation of Pakistan and others.
824.	W.P.No.71902-2022	M/s Zulfiqar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
825.	W.P.No.72048-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
826.	W.P.No.74065-2022	Abdul Latif Natiq v. Federation of Pakistan and others.
827.	W.P.No.74060-2022	Asifa Ashraf v. Federation of Pakistan and others.
828.	W.P.No.74054-2022	Amer Bakht Azam v. Federation of Pakistan and others.
829.	W.P.No.74062-2022	Saweela Anees Khan v. Federation of Pakistan and others.
830.	W.P.No.79124-2022	Al-Hafiz Crystoplast (Pvt.) Ltd. v. Federation of Pakistan and others.
831.	W.P.No.79106-2022	Punjab Beverages Co. (Pvt.) Ltd. v. Federation of Pakistan and others.

832.	W.P.No.74736-2022	Yaseen Steel Furnace v. Federation of Pakistan and others.
833.	W.P.No.74592-2022	M/s Nimir Resins Ltd. v. Federation of Pakistan and others.
834.	W.P.No.74731-2022	M/s Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.
835.	W.P.No.79823-2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
836.	W.P.No.79946-2022	M/s Nimir Industrial Chemicals Ltd. and others v. Federation of Pakistan and others.
837.	W.P.No.64525-2022	Faizan Younas v. Federation of Pakistan and others.
838.	W.P.No.64705-2022	Al-Badar Poultry Farm and others v. Federation of Pakistan and others.
839.	W.P.No.64495-2022	M/s AHN Steel (Pvt.) Ltd. v. Federation of Pakistan and others.
840.	W.P.No.79728-2022	White Pearl Jute Mills Ltd. and others v. Federation of Pakistan and others.
841.	W.P.No.80597-2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
842.	W.P.No.80233-2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.

843.	W.P.No.80248-2022	Abdul Kareem v. Federation of Pakistan and others.
844.	W.P.No.80587-2022	M/s Zulfiqar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
845.	W.P.No.49337-2022	Punjab Beverages Co. and others v. Federation of Pakistan and others.
846.	W.P.No.52186-2022	Punjab Beverages Co. (Pvt.) ltd. v. Federation of Pakistan and others.
847.	W.P.No.65051-2022	Mehboob Foundry and Engineering Works v. Federation of Pakistan and others.
848.	W.P.No.65182-2022	Khalid Enterprises v. Federation of Pakistan and others.
849.	W.P.No.65595-2022	Muhammad Ahmad v. Federation of Pakistan and others.
850.	W.P.No.65604-2022	M/s Trust Pack Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
851.	W.P.No.64875-2022	Mehr Muhammad Asim v. Federation of Pakistan and others.
852.	W.P.No.65854-2022	M/s Asian Food Industries Ltd. v. Federation of Pakistan and others.
853.	W.P.No.65883-2022	Six-B Food Industries (Pvt.) Ltd. v. Federation of Pakistan and others.

854.	W.P.No.65890-2022	Six-B Food Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
855.	W.P.No.65840-2022	China Mobile Pakistan Ltd. v. Federation of Pakistan and others.
856.	W.P.No.66076-2022	Taj Palace Hotel v. Federation of Pakistan and others.
857.	W.P.No.66206-2022	A.H.Y. Plastic Industry (Pvt.) Ltd. v. Federation of Pakistan and others.
858.	W.P.No.66331-2022	Khurram Shehzad and others v. Federation of Pakistan and others.
859.	W.P.No.66276-2022	Afzaal Qadir and others v. Federation of Pakistan and others.
860.	W.P.No.66325-2022	Punjab Cold Store v. Federation of Pakistan and others.
861.	W.P.No.66272-2022	M/s Pakistan Tiles (Pvt.) Ltd. and others v. Federation of Pakistan and others.
862.	W.P.No.66183-2022	M/s Al-Makkah Steel and others v. Federation of Pakistan and others.
863.	W.P.No.67723-2022	Shabbir Paper and Board (Pvt.) Ltd. v. Federation of Pakistan and others.
864.	W.P.No.67750-2022	Muhammad Umar Ali v. Federation of Pakistan and others.

865.	W.P.No.67767-2022	Muhammad Naeem Shehzad v. Federation of Pakistan and others.
866.	W.P.No.67626-2022	Jan Muhammad v. Federation of Pakistan and others.
867.	W.P.No.67779-2022	Muhammad Akram v. Federation of Pakistan and others.
868.	W.P.No.67698-2022	Hassan Limited v. Federation of Pakistan and others.
869.	W.P.No.67581-2022	Awais Rauf v. Federation of Pakistan and others.
870.	W.P.No.67624-2022	Hassan Nisar v. Federation of Pakistan and others.
871.	W.P.No.47840-2022	Kausar Processing Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
872.	W.P.No.48769-2022	Ashiana Cotton Products Ltd. and others v. Federation of Pakistan and others.
873.	W.P.No.48378-2022	Niagara Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
874.	W.P.No.48219-2022	Majeed Fabrics (Pvt.) Ltd. and others v. Federation of Pakistan and others.

875.	W.P.No.82541-2022	M/s Mughal Iron and Steel Industries Ltd. and others v. Federation of Pakistan and others.
876.	W.P.No.49716-2022	Ahmad Embroidery v. Federation of Pakistan and others.
877.	W.P.No.55909-2022	Yasir Ali and others v. Federation of Pakistan and others.
878.	W.P.No.63801-2022	Punjab Beverages Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
879.	W.P.No.63421-2022	M/s Afaq Steel Mills and others v. Federation of Pakistan and others.
880.	W.P.No.63369-2022	Abdul Latif v. Federation of Pakistan and others.
881.	W.P.No.63268-2022	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
882.	W.P.No.63802-2022	M/s Triumphant Int. (Pvt.) Ltd. v. Federation of Pakistan and others.
883.	W.P.No.63803-2022	M/s Jubilant Food (Pvt.) Ltd. v. Federation of Pakistan and others.
884.	W.P.No.63397-2022	M/s Vinco Textiles and others v. Federation of Pakistan and others.
885.	W.P.No.63804-2022	M/s Chashni Crop v. Federation of Pakistan and others.

886.	W.P.No.63481-2022	H and H Fashion and others v. Federation of Pakistan and others.
887.	W.P.No.63368-2022	Husnain Plastic Works v. Federation of Pakistan and others.
888.	W.P.No.62759-2022	Ameer Saail Khan v. Federation of Pakistan and others.
889.	W.P.No.63176-2022	M/s Superkool Company and others v. Federation of Pakistan and others.
890.	W.P.No.63472-2022	M/s Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.
891.	W.P.No.63351-2022	Muhammad Asim v. Federation of Pakistan and others.
892.	W.P.No.63324-2022	Sultani Elasto Products (Pvt.) Ltd. and others v. Federation of Pakistan and others.
893.	W.P.No.65207-2022	S.D.M. Foundry v. Federation of Pakistan and others.
894.	W.P.No.65120-2022	E and Z Enterprises v. Federation of Pakistan and others.
895.	W.P.No.65360-2022	Colony Textile Mills Ltd. v. Federation of Pakistan and others.
896.	W.P.No.65021-2022	Shine Paper Mills and others v. Federation of Pakistan and others.

897.	W.P.No.73323-2022	M/s Nimir Industrial Chemical Ltd. and others v. Federation of Pakistan and others.
898.	W.P.No.72177-2022	Nasir Flour Mills and others v. Federation of Pakistan and others.
899.	W.P.No.72320-2022	New Shalmiar Steel Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
900.	W.P.No.73358-2022	Gujranwala Food Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
901.	W.P.No.73435-2022	Zircon Textile and others v. Federation of Pakistan and others.
902.	W.P.No.73267-2022	Punjab Cold Store v. Federation of Pakistan and others.
903.	W.P.No.73376-2022	M/s Wembly Sports v. Federation of Pakistan and others.
904.	W.P.No.73263 -2022	Javed Iqbal v. Federation of Pakistan and others.
905.	W.P.No.72727-2022	Narowal Flour Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
906.	W.P.No.73180-2022	Abdul Kareem v. Federation of Pakistan and others.

907.	W.P.No.72831-2022	Muhammad Shahid Javed v. Federation of Pakistan and others.
908.	W.P.No.73171-2022	M/s Waqas Woolen Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
909.	W.P.No.73331-2022	M/s SJ Re-Rolling Steel Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
910.	W.P.No.72766-2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
911.	W.P.No.72806-2022	Pure Foods Company (Pvt.) Ltd. v. Federation of Pakistan and others.
912.	W.P.No.72821-2022	Muhammad Khalid Anjum v. Federation of Pakistan and others.
913.	W.P.No.73028-2022	Muhammad Husnain v. Federation of Pakistan and others.
914.	W.P.No.72170-2022	M/s Arsam Pulp and Paper Board v. Federation of Pakistan and others.
915.	W.P.No.72745-2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
916.	W.P.No.50094 -2022	Madina Textile v. Federation of Pakistan and others.
917.	W.P.No.79407-2022	Nasir Flour Mills and others v. Federation of Pakistan and others.

918.	W.P.No.72658-2022	Interwood Mobile (Pvt.) Ltd. v. Federation of Pakistan and others.
919.	W.P.No. 81895-2022	M/s Karim Aziz Industry (Pvt.) Ltd. v. Federation of Pakistan and others.
920.	W.P.No.81869-2022	M/s Islamabad Farms v. Federation of Pakistan and others.
921.	W.P.No.81856-2022	M/s Islamabad Feeds v. Federation of Pakistan and others.
922.	W.P.No.81850-2022	M/s D.G. Khan Cement Co. Ltd. and others v. Federation of Pakistan and others.
923.	W.P.No.79329-2022	M/s Service Industries and others v. Federation of Pakistan and others.
924.	W.P.No.79284-2022	M/s S.S. Steel Furnace and others v. Federation of Pakistan and others.
925.	W.P.No.71540-2022	M/s S.S. Steel Furnace v. Federation of Pakistan and others.
926.	W.P.No.71586-2022	M/s Five Star Steel Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
927.	W.P.No.71574-2022	Faisal Mustafa Textile Mills (Pvt.) Ltd. v. Federation of Pakistan and others.

928.	W.P.No.71560-2022	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
929.	W.P.No.2015-2023	M/s Mei Kong (Pvt.) Ltd. v. Federation of Pakistan and others.
930.	W.P.No.7404-2023	M/s Ramzan Steel Industries v. Federation of Pakistan and others.
931.	W.P.No.3358-2023	Al-Qadir Cold Storage v. Federation of Pakistan and others.
932.	W.P.No.4332-2023	Saadia Javed v. Federation of Pakistan and others.
933.	W.P.No.4328-2023	Sheraz Altaf v. Federation of Pakistan and others.
934.	W.P.No.4323-2023	Saweela Anees Khan v. Federation of Pakistan and others.
935.	W.P.No.4253-2023	Saadia Javed v. Federation of Pakistan and others.
936.	W.P.No.4302-2023	Imtiaz Ahmad Khan v. Federation of Pakistan and others.
937.	W.P.No.3942-2023	Mst. Tehniat Hassan v. Federation of Pakistan and others.
938.	W.P.No.7664-2023	M/s Flying Cement Company Ltd. v. Federation of Pakistan and others.

939.	W.P.No.66741-2022	M/s Ravi Sphero Cast v. Federation of Pakistan and others.
940.	W.P.No.66765-2022	M/s Shamik Enterprises v. Federation of Pakistan and others.
941.	W.P.No.66684-2022	Muhammad Sufyan and others v. Federation of Pakistan and others.
942.	W.P.No.66445-2022	Ittefaq Iron Industries Ltd. v. Federation of Pakistan and others.
943.	W.P.No.72530-2022	M/s Madina Steel Industry v. Federation of Pakistan and others.
944.	W.P.No.72311-2022	M/s Waseem Stainless Steel v. Federation of Pakistan and others.
945.	W.P.No.72533-2022	M/s AHN Colloid Chemical (Pvt.) Ltd. v. Federation of Pakistan and others.
946.	W.P.No.66593-2022	M/s Ravi Auto Mobile (Pvt.) Ltd. v. Federation of Pakistan and others.
947.	W.P.No.66601-2022	Dr. Ghulam Sarwar v. Federation of Pakistan and others.
948.	W.P.No.66531-2022	Jamil Hussain v. Federation of Pakistan and others.
949.	W.P.No.66457-2022	Six-B Food Industries v. Federation of Pakistan and others.

950.	W.P.No.66746-2022	M/s Pakistan Pencils (Pvt.) Ltd. v. Federation of Pakistan and others.
951.	W.P.No.63614-2022	M/s D.G. Khan Cement Co. Ltd. and others v. Federation of Pakistan and others.
952.	W.P.No.66546-2022	Doctors Hospital v. Federation of Pakistan and others.
953.	W.P.No.66458-2022	M/s Shama Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
954.	W.P.No.72592-2022	M/s AHN Steel (Pvt.) Ltd. v. Federation of Pakistan and others.
955.	W.P.No.72517-2022	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.
956.	W.P.No.82035-2022	Saweela Anees Khan v. Federation of Pakistan and others.
957.	W.P.No.82036-2022	Abdul Latif Natiq v. Federation of Pakistan and others.
958.	W.P.No.82032-2022	Amir Bakhat Azam v. Federation of Pakistan and others.
959.	W.P.No.82419-2022	Sheraz Altaf v. Federation of Pakistan and others.
960.	W.P.No.82030-2022	Imtiaz Ahmad Khan v. Federation of Pakistan and others.

961.	W.P.No.82029-2022	Asifa Ashraf v. Federation of Pakistan and others.
962.	W.P.No.3801-2023	M/s ATS Synthetic (Pvt.) Ltd. and others v. Federation of Pakistan and others.
963.	W.P.No.3510-2023	Punjab Beverages Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
964.	W.P.No.63596-2022	M/s Bahria Town v. Federation of Pakistan and others.
965.	W.P.No.57962-2022	Arshad Usman Textile Mills v. Federation of Pakistan and others.
966.	W.P.No.72796-2022	Vision Foods Packaging Ltd. and others v. Federation of Pakistan and others.
967.	W.P.No.74956-2022	Shalimar Steel v. Federation of Pakistan and others.
968.	W.P.No.75574-2022	M/s Chashni Crop and others v. Federation of Pakistan and others.
969.	W.P.No.5094-2023	Khawaja Javed Ashraf v. Federation of Pakistan and others.
970.	W.P.No.73264-2022	Al-Qadir Rice Mill v. Federation of Pakistan and others.
971.	W.P.No.51236-2022	Ghulam Mustafa v. Federation of Pakistan and others.

972.	W.P.No.50295-2022	Jehangir Hussain Kharal and others v. Federation of Pakistan and others.
973.	W.P.No.75292-2022	Abdullah Engineering Works v. Federation of Pakistan and others.
974.	W.P.No.64719-2022	Tahir Abbas v. Federation of Pakistan and others.
975.	W.P.No.65303-2022	Naseeb Masih v. Federation of Pakistan and others.
976.	W.P.No.64405-2022	Azhar Munir and others v. Federation of Pakistan and others.
977.	W.P.No.64364-2022	Muhammad Akram v. Federation of Pakistan and others.
978.	W.P.No.54246-2022	Muhammad Saleem Akhtar v. Federation of Pakistan and others.
979.	W.P.No.65100-2022	M/s Continental Plastic Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
980.	W.P.No.62016-2022	Ijaz Ahmad v. Federation of Pakistan and others.
981.	W.P.No.64938-2022	Inam Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
982.	W.P.No. 77214-2022	M/s Flying Cement Company Ltd. v. Federation of Pakistan and others.

SCHEDULE B

(Quarter Tariff Adjustment/QTA)

SR.NO	CASE NO.	TITLE
1.	W.P. No. 56727 of 2022	Nasir Flour Mills and others v. Federation of Pakistan and others.
2.	W.P. No. 56351of 2022	M/s Usman Steel Casting v. Federation of Pakistan and others.
3.	W.P. No.56241 of 2022	M/s Inam Engineering Works Co v. Federation of Pakistan and others.
4.	W.P. No.56452 of 2022	M/s Nazir Steel Mills v. Federation of Pakistan and others.
5.	W.P. No.56176 of 2022	Zafar Iqbal and others v. Federation of Pakistan and others.
6.	W.P. No.56528 of 2022	Mazhar Steel v. Federation of Pakistan and others.
7.	W.P. No.56507 of 2022	Awan Steel Wire Works v. Federation of Pakistan and others.
8.	W.P. No.56515 of 2022	M/s Sakina Silk Factory and others v. Federation of Pakistan and others.
9.	W.P. No.56334 of 2022	Unique Tanning Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.

10.	W.P. No.56260 of 2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
11.	W.P. No.56460 of 2022	Shahzad Ahmad and others v. Federation of Pakistan and others.
12.	W.P. No.56340 of 2022	M/s Chugtais Lahore Lab (Pvt.) Ltd. v. Federation of Pakistan and others.
13.	W.P. No.56953 of 2022	M/s Metal Tech Engineering Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
14.	W.P. No.56924 of 2022	M/s Black Gold Industry and others v. Federation of Pakistan and others.
15.	W.P. No.56910 of 2022	M/s Grace Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
16.	W.P. No.56958 of 2022	Nasir Flour Mills v. Federation of Pakistan and others.
17.	W.P. No.56902 of 2022	M/s Anaya Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
18.	W.P. No.56956 of 2022	Aruj Garment Accessories Ltd. v. Federation of Pakistan and others.
19.	W.P. No.56959 of 2022	Al Rahim Retail Ltd. and others v. Federation of Pakistan and others.
20.	W.P. No.56261 of 2022	Moiz Nawab Paper Mills and others v. Federation of Pakistan and others.

21.	W.P. No.56964 of 2022	Jabar Ashraf v. Federation of Pakistan and others.
22.	W.P. No.55140 of 2022	Junaid Maqsood v. Federation of Pakistan and others.
23.	W.P. No.55922 of 2022	M/s AMK Steel Mill and others v. Federation of Pakistan and others.
24.	W.P. No.55914 of 2022	Madina Steel Industry and others v. Federation of Pakistan and others.
25.	W.P. No.55528 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
26.	W.P. No.55814 of 2022	Gujranwala Food Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
27.	W.P. No.55599 of 2022	M/s Specialist Group Inc. Ltd. v. Federation of Pakistan and others.
28.	W.P. No.55670 of 2022	M/s Al-Makkah Steel and others v. Federation of Pakistan and others.
29.	W.P. No.55746 of 2022	M/s Sozo Inn (Pvt.) Ltd. v. Federation of Pakistan and others.
30.	W.P. No.55934 of 2022	M/s RM Steel Industry and others v. Federation of Pakistan and others.
31.	W.P. No.55545 of 2022	M/s Champion Paint Industries (Pvt.) Ltd. v. Federation of Pakistan and others.

32.	W.P. No.55883 of 2022	M/s Unicorn Prestige Ltd. v. Federation of Pakistan and others.
33.	W.P. No.55810 of 2022	Star Plastic and others v. Federation of Pakistan and others.
34.	W.P. No.55876 of 2022	Muhammad Asim v. Federation of Pakistan and others.
35.	W.P. No.55963 of 2022	SMT Group v. Federation of Pakistan and others.
36.	W.P. No.58394 of 2022	Taj Palace (Hotel) v. Federation of Pakistan and others.
37.	W.P. No.49647 of 2022	Sharafat Ali and others v. Federation of Pakistan and others.
38.	W.P. No.58339of 2022	Dr. Muhammad Tayyab and others v. Federation of Pakistan and others.
39.	W.P. No.49481 of 2022	M/s H.H Col Rolling and Tube Mills v. Federation of Pakistan and others.
40.	W.P. No.52922 of 2022	Bashir A Sheikh Raheem v. Federation of Pakistan and others.
41.	W.P. No.50024 of 2022	M/s A.F. Steel Re-Rolling Mills v. Federation of Pakistan and others.
42.	W.P. No.50112 of 2022	M/s MM Tower v. Federation of Pakistan and others.
43.	W.P. No.50045 of 2022	M/s Rafique Steel v. Federation of Pakistan and others.

44.	W.P. No.50016 of 2022	Steel Private Ltd. and others v. Federation of Pakistan and others.
45.	W.P. No.50010 of 2022	M/s Diamond Tyres Ltd. v. Federation of Pakistan and others.
46.	W.P. No.50850 of 2022	M/s Five Star Steel Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
47.	W.P. No.50868 of 2022	Sher Ali and others v. Federation of Pakistan and others.
48.	W.P. No.50728 of 2022	Ejaz Spinning Mills Ltd. and others v. Federation of Pakistan and others.
49.	W.P. No.50709 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
50.	W.P. No.50315 of 2022	Muhammad Muhsan and others v. Federation of Pakistan and others.
51.	W.P. No.50291 of 2022	J.R. Dyeing and Textile Mlls (Pvt.) Ltd. v. Federation of Pakistan and others.
52.	W.P. No.50281 of 2022	M/s Awais Factory and others v. Federation of Pakistan and others.
53.	W.P. No.50257 of 2022	Muhammad Kashif v. Federation of Pakistan and others.
54.	W.P. No.50122 of 2022	Al-Fazal Industries v. Federation of Pakistan and others.

55.	W.P. No.50115 of 2022	M/s Al-Hadeed Foundry and others v. Federation of Pakistan and others.
56.	W.P. No.52915 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
57.	W.P. No.52921 of 2022	M/s Aziz Flour Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
58.	W.P. No.58070 of 2022	M/s MM Tower v. Federation of Pakistan and others.
59.	W.P. No.58325 of 2022	M/s Elite Embroidery v. Federation of Pakistan and others.
60.	W.P. No.49706 of 2022	M/s Qayyum Engineering Works and others v. Federation of Pakistan and others.
61.	W.P. No.58129 of 2022	Muhammad Hanif v. Federation of Pakistan and others.
62.	W.P. No.58316 of 2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
63.	W.P. No.54157 of 2022	M/s Tayba Flour Mills v. Federation of Pakistan and others.
64.	W.P. No.54552 of 2022	M/s Islamabad Feeds (pvt.) Ltd. v. Federation of Pakistan and others.
65.	W.P. No. 54738 of 2022	M/s Crimson Hospitality (Pvt.) Ltd v. Federation of Pakistan and others.

66.	W.P. No.54388 of 2022	M/s M N Enterprises Nawaz Foundry and others v. Federation of Pakistan and others.
67.	W.P. No.54748 of 2022	M/s Ghani Dairies (Pvt.) Ltd. v. Federation of Pakistan and others.
68.	W.P. No.54719 of 2022	Tayyeba Industries v. Federation of Pakistan and others.
69.	W.P. No.49425 of 2022	Arbaz Shahbaz v. Federation of Pakistan and others.
70.	W.P. No.32655 of 2022	Shabir Hussain v. Federation of Pakistan and others.
71.	W.P. No.54229 of 2022	Frontier Foundy (Pvt.) Ltd. v. Federation of Pakistan and others.
72.	W.P. No.46466 of 2022	M/s Bashir Sons Steel Casting v. Federation of Pakistan and others.
73.	W.P. No.46162 of 2022	M/s Five Star Steel Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
74.	W.P. No.38846 of 2022	Ali Re-Rolling Mill v. Federation of Pakistan and others.
75.	W.P. No.54153 of 2022	Ms Parveen Rashid v. Federation of Pakistan and others.

76.	W.P. No. 54299 of 2022	The National Silk and Rayon Mills Ltd. and others v. Federation of Pakistan and others.
77.	W.P. No.49201 of 2022	M Ilyas Steel Re-rolling Mills and others v. Federation of Pakistan and others.
78.	W.P. No.49202 of 2022	Muhammad Nasrullh Khan v. Federation of Pakistan and others.
79.	W.P. No.49189 of 2022	M/s Bashir Sons Steel Casting v. Federation of Pakistan and others.
80.	W.P. No.55514 of 2022	Shakeel Ishaq v. Federation of Pakistan and others.
81.	W.P. No.49029 of 2022	MHA Weaving Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
82.	W.P. No.56259 of 2022	Muhammad Abdul Rehman v. Federation of Pakistan and others.
83.	W.P. No.56322 of 2022	M/s Varioline Intercool Pakistan (Pvt.) Ltd. and others v. Federation of Pakistan and others.
84.	W.P. No.49475 of 2022	M/s Usman Steel Casting and others v. Federation of Pakistan and others.
85.	W.P. No.49884 of 2022	M/s Sardar Steel Mills and others v. Federation of Pakistan and others.

86.	W.P. No.54504 of 2022	M/s Continental Plastic Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
87.	W.P. No.54727 of 2022	Noor Muhammad v. Federation of Pakistan and others.
88.	W.P. No.55295 of 2022	M/s Tabish Steel Furnace and others v. Federation of Pakistan and others.
89.	W.P. No.51349 of 2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
90.	W.P. No.51746 of 2022	M/s Flying Cement Co. Ltd. v. Federation of Pakistan and others.
91.	W.P. No.59496 of 2022	M/s Ravi Auto Mobile (Pvt.) Ltd. v. Federation of Pakistan and others.
92.	W.P. No.59641 of 2022	M/s Ravi Sphero Cast v. Federation of Pakistan and others.
93.	W.P. No.55493 of 2022	Mushtaq Ahmed v. Federation of Pakistan and others.
94.	W.P. No.59586 of 2022	Waseem Ismail and others v. Federation of Pakistan and others.
95.	W.P. No.59538 of 2022	Hanan Javed Butt and others v. Federation of Pakistan and others.
96.	W.P. No.59984 of 2022	M/s Yaseen Steel Furnace v. Federation of Pakistan and others.

97.	W.P. No.56003 of 2022	Ayesha Pipe Industry and others v. Federation of Pakistan and others.
98.	W.P. No.49535 of 2022	M/s Gold Star Steel Industries and others v. Federation of Pakistan and others.
99.	W.P. No.49411 of 2022	M/s Pakistan Steel Casting and others v. Federation of Pakistan and others.
100.	W.P. No.49355 of 2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
101.	W.P. No.49346 of 2022	M/s Ahmed Noor Steel Furnace and others v. Federation of Pakistan and others.
102.	W.P. No.49325 of 2022	M/s Prime Steel Re-Rolling Mills v. Federation of Pakistan and others.
103.	W.P. No.49212 of 2022	M/s Flying Cement Co. Ltd. and others v. Federation of Pakistan and others.
104.	W.P. No.55087 of 2022	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
105.	W.P. No.48959 of 2022	M/s Kamalia Steel Furnace and others v. Federation of Pakistan and others.
106.	W.P. No.48483 of 2022	M/s Capital Steel re-rolling Mills and others v. Federation of Pakistan and others.

107.	W.P. No.57388 of 2022	Zircon Textile and others v. Federation of Pakistan and others.
108.	W.P. No.52514 of 2022	Ali Waqas v. Federation of Pakistan and others.
109.	W.P. No.52527 of 2022	M/s Mubarik Foundry and others v. Federation of Pakistan and others.
110.	W.P. No.54573 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
111.	W.P. No.55236 of 2022	M/s Al-Badar Engineering Company (Pvt.) Ltd. and others v. Federation of Pakistan and others.
112.	W.P. No.55525 of 2022	M/s Symbol Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
113.	W.P. No.55844 of 2022	M/s Saad Textile Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
114.	W.P. No.55913 of 2022	M/s Ramzan Flour Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.
115.	W.P. No.55837 of 2022	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.
116.	W.P. No.55923 of 2022	M/s Naved Flour and General Mills and others v. Federation of Pakistan and others.

117.	W.P. No.55915 of 2022	M/s Polypropylene and others v. Federation of Pakistan and others.
118.	W.P. No.55609 of 2022	M/s Al Karam Feed Mills v. Federation of Pakistan and others.
119.	W.P. No.51350 of 2022	M/s Islamabad Farms (SMC-PVT.) Ltd. v. Federation of Pakistan and others.
120.	W.P. No.51165 of 2022	Mudassar Ilyas and others v. Federation of Pakistan and others.
121.	W.P. No.57318 of 2022	Muhammad Abdullah v. Federation of Pakistan and others.
122.	W.P. No.57374 of 2022	Muhammad Nasir and others v. Federation of Pakistan and others.
123.	W.P. No. 57954 of 2022	Nabeel Industries (Pvt.) and others v. Federation of Pakistan and others.
124.	W.P. No.57838 of 2022	Mehr Muhammad Asim and others v. Federation of Pakistan and others.
125.	W.P. No.57966 of 2022	M/s Ejaz Brothers Steel Furnace and others v. Federation of Pakistan and others.
126.	W.P. No.53949 of 2022	Chenab Engineering Works and Foundries (Pvt.) Ltd. v. Federation of Pakistan and others.

127.	W.P. No.48683 of 2022	M/s Malik Steel Re-rolling Mills and others v. Federation of Pakistan and others.
128.	W.P. No.57303 of 2022	M/s GMS Forging and others v. Federation of Pakistan and others.
129.	W.P. No.57265of 2022	Ahmad Embroidery and others v. Federation of Pakistan and others.
130.	W.P. No.58769 of 2022	Sidra Steel Mills and others v. Federation of Pakistan and others.
131.	W.P. No.58319 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
132.	W.P. No.58449 of 2022	M/s H and S Foundry v. Federation of Pakistan and others.
133.	W.P. No.58539 of 2022	M/s Kasur Fabrics (Pvt.) Ltd. v. Federation of Pakistan and others.
134.	W.P. No.55616 of 2022	Ghani Glass Ltd. v. Federation of Pakistan and others.
135.	W.P. No.55587 of 2022	Sardar Ijaz Yousaf v. Federation of Pakistan and others.
136.	W.P. No.55610 of 2022	Ghani Value Glass Ltd. v. Federation of Pakistan and others.
137.	W.P. No.55558 of 2022	M/s Zulfqar Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.

138.	W.P. No.55368 of 2022	Orient Material (Pvt.) Ltd. v. Federation of Pakistan and others.
139.	W.P. No.55972 of 2022	Inter Market Knit (Pvt.) Ltd. and others v. Federation of Pakistan and others.
140.	W.P. No.55631 of 2022	M/s Alif Industry (SMC-PVT) Ltd. v. Federation of Pakistan and others.
141.	W.P. No.55088 of 2022	Muhammad Nasrullah Khan v. Federation of Pakistan and others.
142.	W.P. No.55102 of 2022	M/s Prime Steel Re-Rolling Mills v. Federation of Pakistan and others.
143.	W.P. No.55283 of 2022	M/s Novatex Ltd. and others v. Federation of Pakistan and others.
144.	W.P. No.55285 of 2022	Talib Hussain and others v. Federation of Pakistan and others.
145.	W.P. No.55419 of 2022	Vision Foods Packaging Ltd. and others v. Federation of Pakistan and others.
146.	W.P. No.31336 of 2021	M/s Khurshid Engineering Works and others v. Federation of Pakistan and others.
147.	W.P. No. 7503 of 2021	M/s Maratab Steel Works and others v. Federation of Pakistan and others.

148.	W.P. No. 2780 of 2021	Muhammad Abdullah and others v. Federation of Pakistan and others.
149.	W.P. No. 2223 of 2021	Hamza Ashraf v. Federation of Pakistan and others.
150.	W.P. No. 1826 of 2021	M/s Five Star Steel Industries (Pvt.) Ltd v. Federation of Pakistan and others.
151.	W.P. No. 3406 of 2022	Atif Raza and others v. Federation of Pakistan and others.
152.	W.P. No. 63183 of 2022	M/s M N Interprises Nawaz Foundry and others v. Federation of Pakistan and others.
153.	W.P. No. 63066 of 2022	White Pearl Rice Mills Ltd. and others v. Federation of Pakistan and others.
154.	W.P. No. 64707 of 2022	M/s Al-Badar Engineering Company (Pvt.) Ltd. v. Federation of Pakistan and others.
155.	W.P. No. 63998 of 2022	M/s Iftikhar Enterprises and others v. Federation of Pakistan and others.
156.	W.P. No. 63870 of 2022	M/s Ali Foundry v. Federation of Pakistan and others.
157.	W.P. No. 63981 of 2022	Muhammad Nasrullah Khan v. Federation of Pakistan and others.

158.	W.P. No. 63659 of 2022	M/s Muhammad Ali and Brothers v. Federation of Pakistan and others.
159.	W.P. No. 63978 of 2022	M/s H.H. Cold Rolling and Tube Mills and others v. Federation of Pakistan and others.
160.	W.P. No. 63886 of 2022	M/s Tayba Flour Mills v. Federation of Pakistan and others.
161.	W.P. No. 63869 of 2022	M/s Malik Poly Propylene v. Federation of Pakistan and others.
162.	W.P. No. 63785 of 2002	Sidra Steel Mills and others v. Federation of Pakistan and others.
163.	W.P. No. 63730 of 2022	M/s Zulfiqar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
164.	W.P. No. 63813 of 2022	Talib Hussain and others v. Federation of Pakistan and others.
165.	W.P. No. 63786 of 2022	M/s Naveed Flour and General Mills and others v. Federation of Pakistan and others.
166.	W.P. No. 63956 of 2022	M/s Allah Ditta Ice Factory v. Federation of Pakistan and others.
167.	W.P. No. 63822 of 2022	Muhammad Saeed v. Federation of Pakistan and others.
168.	W.P. No. 63709 of 2022	Ghani Glass Ltd. and others v. Federation of Pakistan and others.

169.	W.P. No. 64712 of 2022	Al-Badfar Poultry Form and others v. Federation of Pakistan and others.
170.	W.P. No. 65526 of 2022	M/s Rasheed Ice Factory v. Federation of Pakistan and others.
171.	W.P. No. 64840 of 2022	M/S SJ Re-Rolling Steel Mills (Pvt.) Ltd v. Federation of Pakistan and others.
172.	W.P. No. 64636 of 2022	Nasir Flour Mills and others v. Federation of Pakistan and others.
173.	W.P. No. 65011 of 2022	Toyo Home Appliances and others v. Federation of Pakistan and others.
174.	W.P. No. 64510 of 2022	M/s Yaseen Steel Furnace and others v. Federation of Pakistan and others.
175.	W.P. No. 65480 of 2022	M/s Elite Embroideries. v. Federation of Pakistan and others.
176.	W.P. No. 61823 of 2022	Faisal Ashraf Power Looms. v. Federation of Pakistan and others.
177.	W.P. No. 62160 of 2022	Al Hafiz Crystoplast ((Pvt.) Ltd. v. Federation of Pakistan and others.
178.	W.P. No. 62096 of 2022	Ahmad Weaving Factory v. Federation of Pakistan and others.
179.	W.P. No. 61987 of 2022	Shahid Weaving Factory. v. Federation of Pakistan and others.

180.	W.P. No. 61973 of 2022	Hamzas Ibrahim Power Looms. v. Federation of Pakistan and others.
181.	W.P. No. 61374 of 2022	M/s Novatex Ltd. v. Federation of Pakistan and others.
182.	W.P. No. 64379 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
183.	W.P. No. 64352 of 2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
184.	W.P. No. 64343 of 2022	M/s Islamabad feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
185.	W.P. No. 64349 of 2022	M/s Islamabad Fars (SMC-Pvt.) Ltd.. v. Federation of Pakistan and others.
186.	W.P. No. 64332 of 2022	Mujahid akbar and others v. Federation of Pakistan and others.
187.	W.P. No. 64079 of 2022	M/s Symbol Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
188.	W.P. No. 64025 of 2022	M/s Alif Industry (SMC-Pvt) Ltd. and others v. Federation of Pakistan and others.
189.	W.P. No. 64078 of 2022	M/s Crimson Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
190.	W.P. No. 64028 of 2022	Frontier Foundry (Pvt.) Ltd. v. Federation of Pakistan and others.

191.	W.P. No. 64085 of 2022	M/s Sozo Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
192.	W.P. No. 64362 of 2022	Pure Foods Company (Pvt.) Ltd. v. Federation of Pakistan and others.
193.	W.P. No. 63613 of 2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
194.	W.P. No. 63616 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
195.	W.P. No. 63601 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
196.	W.P. No. 64698 of 2022	M/s Varioline Intercool Pakistan (Pvt.) Ltd. v. Federation of Pakistan and others.
197.	W.P. No. 64532 of 2022	M/s AHN Steel (Pvt.) Ltd. v. Federation of Pakistan and others.
198.	W.P. No. 64683 of 2022	M/s City News Network (SMC-Pvt) Ltd. v. Federation of Pakistan and others.
199.	W.P. No. 64850 of 2022	M/s AMK Steel Mill and others v. Federation of Pakistan and others.
200.	W.P. No. 64708 of 2022	Malik Prince Ali v. Federation of Pakistan and others.
201.	W.P. No. 65293 of 2022	Muhammad Umer v. Federation of Pakistan and others.

202.	W.P. No. 64947 of 2022	M/s Prime Steel Re-Rolling Mills v. Federation of Pakistan and others.
203.	W.P. No. 65747 of 2022	Zircon Textile and others v. Federation of Pakistan and others.
204.	W.P. No. 65465 of 202	Muhammad Shahid Javed and others v. Federation of Pakistan and others.
205.	W.P. No. 64827 of 2022	M/s Al Madina Poultry Farm v. Federation of Pakistan and others.
206.	W.P. No. 64879 of 2022	M/s Grace Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
207.	W.P. No. 65105 of 2022	M/s Micronizer (Pvt.) Ltd. M/s Grace Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
208.	W.P. No. 63478 of 2022	Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.
209.	W.P. No. 63391 of 2022	Afaq steel Mills and others v. Federation of Pakistan and others.
210.	W.P. No. 63486 of 2022	National Silk and Rayon Mills Ltd. v. Federation of Pakistan and others.
211.	W.P. No. 63508 of 2022	Muhammad Asim v. Federation of Pakistan and others.
212.	W.P. No. 63318 of 2022	M/s S-S Steel Furnace and others v. Federation of Pakistan and others.

213.	W.P. No. 63280 of 2022	M/s Flying paper Industries v. Federation of Pakistan and others.
214.	W.P. No. 61279 of 2022	M/s Flying Cement Company Ltd. v. Federation of Pakistan and others.
215.	W.P. No. 81011 of 2022	Eiffel Industries Limited and others v. Federation of Pakistan and others.
216.	W.P. No. 81401 of 2022	M/s Farooq Steel v. Federation of Pakistan and others.
217.	W.P. No. 81413 of 2022	M/s Anmol Steel Mills and others v. Federation of Pakistan and others.
218.	W.P. No. 80941 of 2022	M/s Waseem Stainless Steel Co. v. Federation of Pakistan and others.
219.	W.P. No. 81415 of 2022	Atlas Honda Limited v. Federation of Pakistan and others.
220.	W.P. No. 81385 of 2022	M/s Nazir Steel Mills and others v. Federation of Pakistan and others.
221.	W.P. No. 81398 of 2022	M/s New Hafiz Steel Furnace v. Federation of Pakistan and others.
222.	W.P. No. 81039 of 2022	Muhammad Nadeem Butt and others v. Federation of Pakistan and others.
223.	W.P. 80942 of 2022	Hudaiba Industries v. Federation of Pakistan and others.
224.	W.P. No. 81072/2022	Narowal Flour Mills (Pvt.) Ltd. v. Federation of Pakistan and others.

225.	W.P. No. 81408 of 2022	Hafiz Muhammad Hamza v. Federation of Pakistan and others.
226.	W.P. No. 71644 of 2022	Aqib Latif and others v. Federation of Pakistan and others.
227.	W.P. No. 71682 of 2022	Toyo Home Appliances and others v. Federation of Pakistan and others.
228.	W.P. No. 71589 of 2022	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
229.	W.P. No. 71617 of 2022	M/s Husnain Plastic Works v. Federation of Pakistan and others.
230.	W.P. No. 71393 of 2022	M/s Maryam Bearing Industries v. Federation of Pakistan and others.
231.	W.P. No. 71605 of 2022	M/s SKC (|Pvt.) Ltd. v. Federation of Pakistan and others.
232.	W.P. No. 72229 of 2022	New Shalimar Steel Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
233.	W.P. No. 74080 of 2022	Muhammad Abdullah and others v. Federation of Pakistan and others.
234.	W.P. No. 73425 of 2022	Punjab Beverages Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
235.	W.P. No. 73634 of 2022	M/s M. Atif Steel Industries v. Federation of Pakistan and others.

236.	W.P. No. 72334 of 2022	M/s Unicon Prestige Limited v. Federation of Pakistan and others.
237.	W.P. No. 80236 of 2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
238.	W.P. No. 80647 of 2022	M/s Al-Badar Engineering Company (Pvt.) Ltd. and others v. Federation of Pakistan and others.
239.	W.P. No. 80619 of 2022	M/s Tariq Javid Ice Factory and others v. Federation of Pakistan and others.
240.	W.P. No. 80466 of 2022	Javed Iqbal v. Federation of Pakistan and others.
241.	W.P. No. 80546 of 2022	M/s Amir Mehboob Metal Casting and others v. Federation of Pakistan and others.
242.	W.P. No. 80478 of 2022	M/s Waqas Woolen Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
243.	W.P. No. 80652 of 2022	M/s Zar Plastic v. Federation of Pakistan and others.
244.	W.P. No. 80563 of 2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
245.	W.P. No. 80671 of 2022	Zaffar Iqbal and others v. Federation of Pakistan and others.

246.	W.P. No. 80547 of 2022	M/s Zulfiqar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
247.	W.P. No. 80699 of 2022	Nabeel Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
248.	W.P. No. 80242 of 2022	Muhammad Zain and others v. Federation of Pakistan and others.
249.	W.P. No. 80556 of 2022	M/s M.R. Foundry v. Federation of Pakistan and others.
250.	W.P. No. 80608 of 2022	M/s Kam Engineering (Pvt.) Ltd. v. Federation of Pakistan and others.
251.	W.P. No. 79035 of 2022	Talib Hussain and others v. Federation of Pakistan and others.
252.	W.P. No. 79020 of 2022	Sohail Mubeen and others v. Federation of Pakistan and others.
253.	W.P. No. 79185 of 2022	Punjab Beverages CO. (Pvt.) Ltd. v. Federation of Pakistan and others.
254.	W.P. No. 79043 of 2022	M/s King Steel Industries (Pvt.) and others v. Federation of Pakistan and others.
255.	W.P. No. 79059 of 2022	Al Hafiz Crystoplast (Pvt) Ltd. v. Federation of Pakistan and others.
256.	W.P. No. 74606 of 2022	M.B.S. Steel Furnace and others v. Federation of Pakistan and others.

257.	W.P. No. 74743 of 2022	Muhammad Kashif and others v. Federation of Pakistan and others.
258.	W.P. No. 74732 of 2022	Muhammad Nadeem Butt and others v. Federation of Pakistan and others.
259.	W.P. No. 74585 of 2022	M/s Yaseen Steel Furnace and others v. Federation of Pakistan and others.
260.	W.P. No. 79814 of 2022	M/s Usman Steel Industry and others v. Federation of Pakistan and others.
261.	W.P. No. 79713 of 2022	Muhammad Yaseen v. Federation of Pakistan and others.
262.	W.P. No. 79945 of 2022	M/s Anayat Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
263.	W.P. No. 79739 of 2022	M/s Diamond Tyres Limited and others v. Federation of Pakistan and others.
264.	W.P. No. 79990 of 2022	Abdul Kareem v. Federation of Pakistan and others.
265.	W.P. No. 79985 of 2022	Expert Advertising and Packaging (Pvt.) Ltd. and others v. Federation of Pakistan and others.
266.	W.P. No. 79959 of 2022	M/s Hafiz Steel Re-Rolling and others v. Federation of Pakistan and others.

267.	W.P. No. 79577 of 2022	M/s Maryam Bearing Industries v. Federation of Pakistan and others.
268.	W.P. No. 79613 of 2022	M/s Khawaja Steel Mills and others v. Federation of Pakistan and others.
269.	W.P. No. 79500 of 2022	Service Industries (Shoes) Limited and others v. Federation of Pakistan and others.
270.	W.P. No. 79651 of 2022	M/s Al-Makkah Steel and others v. Federation of Pakistan and others.
271.	W.P. No. 79569 of 2022	Abdul Majeed and others v. Federation of Pakistan and others.
272.	W.P. No. 79645 of 2022	M/s Health Med Steel Furnace and others v. Federation of Pakistan and others.
273.	W.P. No. 79676 of 2022	White Pearl Rice Mills Limited and others v. Federation of Pakistan and others.
274.	W.P. No. 79541 of 2022	Kamran Khalid and others v. Federation of Pakistan and others.
275.	W.P. No. 72860 of 2022	Waves Singer Pakistan Limited v. Federation of Pakistan and others.
276.	W.P. No. 72520 of 2022	Hudaibia Industries and others v. Federation of Pakistan and others.

277.	W.P. No. 72827 of 2022	Muhammad Shahid Javed and others v. Federation of Pakistan and others.
278.	W.P. No. 72518 of 2022	M/s Hafiz Steel Re-Rolling and others v. Federation of Pakistan and others.
279.	W.P. No. 73273 of 2022	Gujranwala Food Industries (Pvt.) Limited v. Federation of Pakistan and others.
280.	W.P. No. 73235 of 2022	Muhammad Zain and others v. Federation of Pakistan and others.
281.	W.P. No. 72988 of 2022	Abdul Kareem v. Federation of Pakistan and others.
282.	W.P. No. 72680 of 2022	M/s Asif Re-Rolling Mills and others v. Federation of Pakistan and others.
283.	W.P. No. 72786 of 2022	M/s Mehmood Steel Industry and others v. Federation of Pakistan and others.
284.	W.P. No. 73230 of 2022	M/s Waqas Woolen Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
285.	W.P. No. 73398 of 2022	M/s Mian Steel Costing and others v. Federation of Pakistan and others.
286.	W.P. No. 73213 of 2022	Javed Iqbal v. Federation of Pakistan and others.

287.	W.P. No. 72522 of 2022	M/s Specialists Group Inc. Limited and others v. Federation of Pakistan and others.
288.	W.P. No. 72739 of 2022	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
289.	W.P. No. 73316 of 2022	Zircon Textile and others v. Federation of Pakistan and others.
290.	W.P. No. 73285 of 2022	M/s Anayat Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
291.	W.P. No. 72817 of 2022	M/s Chaudhry Muhammad Akram Teaching and Research Hospital v. Federation of Pakistan and others.
292.	W.P. No. 72770 of 2022	M/s SOZO Inn (Pvt.) Ltd. and others v. Federation of Pakistan and others.
293.	W.P. No. 73050 of 2022	Muhammad Husnain v. Federation of Pakistan and others.
294.	W.P. No. 72355 of 2022	Sohail Mubeen and others v. Federation of Pakistan and others.
295.	W.P. No. 73251 of 2022	Waseem Shahbaz and others v. Federation of Pakistan and others.
296.	W.P. No. 73291 of 2022	M/s Nazir Steel Mills and others v. Federation of Pakistan and others.

297.	W.P. No. 72812 of 2022	Atlas Honda Limited v. Federation of Pakistan and others.
298.	W.P. No. 72515 of 2022	Nabeel Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
299.	W.P. No. 73129 of 2022	Alshaheer Foods v. Federation of Pakistan and others.
300.	W.P. No. 73295 of 2022	Talib Hussain and others v. Federation of Pakistan and others.
301.	W.P. No. 73195 of 2022	M/s Nazir Industry and others v. Federation of Pakistan and others.
302.	W.P. No. 79398 of 2022	Muhammad Ali and others v. Federation of Pakistan and others.
303.	W.P. No. 79374 of 2022	M/s Nimir Industrial Chemicals Limited and others v. Federation of Pakistan and others.
304.	W.P. No. 79279 of 2022	M/s S-S Steel Furnace and others v. Federation of Pakistan and others.
305.	W.P. No. 79420of 2022	M/s Prime Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
306.	W.P. No. 66143 of 2022	M/s Ashfaq Steel and others v. Federation of Pakistan and others.

307.	W.P. No. 68256 of 2022	Abdul Kareem v. Federation of Pakistan and others.
308.	W.P. No. 67738 of 2022	Shabbir Paper and Board (Pvt.) Ltd. v. Federation of Pakistan and others.
309.	W.P. No. 74344 of 2022	M/s Al Makkah Steel and others v. Federation of Pakistan and others.
310.	W.P. No. 74107 of 2022	M/s Qadri Brothers Steel Casting and others v. Federation of Pakistan and others.
311.	W.P. No. 65617 of 2022	Royal Elegance Hotel v. Federation of Pakistan and others.
312.	W.P. No. 82547 of 2022	Muhammad Shahzad v. Federation of Pakistan and others.
313.	W.P. No. 82508 of 2022	M/s New Shalimar Steel Mill and others v. Federation of Pakistan and others.
314.	W.P. No. 82370 of 2022	M/s Al-Mustafa Foundry v. Federation of Pakistan and others.
315.	W.P. No. 82113 of 2022	Alshaheer Foods v. Federation of Pakistan and others.
316.	W.P. No. 81803 of 2022	M/s Shalimar Steel Re Rolling and others v. Federation of Pakistan and others.

317.	W.P. No. 82297 of 2022	Gulshan Shahzad and others v. Federation of Pakistan and others.
318.	W.P. No. 82246 of 2022	M/s Mughal Iron and Steel Industries and others v. Federation of Pakistan and others.
319.	W.P. No. 82435 of 2022	Shabbir Ahmad v. Federation of Pakistan and others.
320.	W.P. No. 81808 of 2022	M/s Asad Traders and others v. Federation of Pakistan and others.
321.	W.P. No. 81813 of 2022	M/s Insaf Steel and others v. Federation of Pakistan and others.
322.	W.P. No. 65735 of 2022	Muhammad Abdullah v. Federation of Pakistan and others.
323.	W.P. No. 65857 of 2022	M/s Ijaz Steel Furnace v. Federation of Pakistan and others.
324.	W.P. No. 65159 of 2022	M/s Asia Industries and others v. Federation of Pakistan and others.
325.	W.P. No. 65975 of 2022	Ittehad Textile Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
326.	W.P. No. 66257 of 2022	M/s Al-Makkah Steel and others v. Federation of Pakistan and others.
327.	W.P. No. 66192 of 2022	M/s Future Fashion (Pvt.) Ltd. and others v. Federation of Pakistan and others.

328.	W.P. No. 66305 of 2022	Khurram Shahzad v. Federation of Pakistan and others.
329.	W.P. No. 66248 of 2022	Muhammad Ali and others v. Federation of Pakistan and others.
330.	W.P. No. 66069 of 2022	Taj Palace (Hotel) v. Federation of Pakistan and others.
331.	W.P. No. 69350 of 2022	M/s A.S Steel Mills v. Federation of Pakistan and others.
332.	W.P. No. 72011 of 2022	M/s Al-Badar Engineering Company (Pvt.) Ltd. and others v. Federation of Pakistan and others.
333.	W.P. No. 71985 of 2022	M/s SAEPN (Pvt.) Ltd. v. Federation of Pakistan and others.
334.	W.P. No. 71991 of 2022	Al-Badar Poultry Form and others v. Federation of Pakistan and others.
335.	W.P. No. 71898 of 2022	M/s Symbol Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others.
336.	W.P. No. 71899 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
337.	W.P. No. 71339 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
338.	W.P. No. 71276 of 2022	White Pearl Rice Mills Limited v. Federation of Pakistan and others.

339.	W.P. No. 71286 of 2022	M/s Capital Steel and others v. Federation of Pakistan and others.
340.	W.P. No. 71331 of 2022	M/s Islmabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
341.	W.P. No. 71195 of 2022	Al Hafiz Crystoplast (Pvt.) Ltd. v. Federation of Pakistan and others.
342.	W.P. No. 71234 of 2022	Haq Bahu Steel Furnace and others v. Federation of Pakistan and others.
343.	W.P. No. 71328 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
344.	W.P. No. 80060 of 2022	Ejaz Ahmed and others v. Federation of Pakistan and others.
345.	W.P. No. 80583 of 2022	Al-Qadir Cold Storage v. Federation of Pakistan and others.
346.	W.P. No. 80580 of 2022	Al-Qadir Rice Mill v. Federation of Pakistan and others.
347.	W.P. No. 80098 of 2022	TRI-PLAST Industry v. Federation of Pakistan and others.
348.	W.P. No. 80239 of 2022	M/s AHN Steel (Pvt) Limited v. Federation of Pakistan and others.
349.	W.P. No. 80232 of 2022	M/s AHN Collloid Chemicals (Pvt.) Ltd. v. Federation of Pakistan and others.

350.	W.P. No. 80104 of 2022	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.
351.	W.P. No. 80040 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
352.	W.P. No. 80108 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
353.	W.P. No. 80229 of 2022	Liaqat Ali and others v. Federation of Pakistan and others.
354.	W.P. No. 80042 of 2022	M/s Unicorn Prestige Limited v. Federation of Pakistan and others.
355.	W.P. No. 80706 of 2022	M/s Mei Kong (Pvt.) Ltd. v. Federation of Pakistan and others.
356.	W.P. No. 80133 of 2022	M/s Al Madina Poultry Farm v. Federation of Pakistan and others.
357.	W.P. No. 72042 of 2022	M/s Shams Grains (Pvt.) Ltd. v. Federation of Pakistan and others.
358.	W.P. No. 71885 of 2022	M/s Zulfiqar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
359.	W.P. No. 71772 of 2022	Frontier Foundry (Pvt) Ltd. v. Federation of Pakistan and others.
360.	W.P. No. 71800 of 2022	Muhammad Ashrif and others v. Federation of Pakistan and others.

361.	W.P. No. 71916 of 2022	M/s Alif Industry (SMC_PVT) Ltd. and others v. Federation of Pakistan and others.
362.	W.P. No. 72078 of 2022	M/s Ijaz Steel Furnace and others v. Federation of Pakistan and others.
363.	W.P. No. 81882 of 2022	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
364.	W.P. No. 81876 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
365.	W.P. No. 81864 of 2022	M/s Islamabad Feeds (Pvt.) Ltd. v. Federation of Pakistan and others.
366.	W.P. No. 81825 of 2022	M/s Karim Aziz Industry (Pvt.) Ltd. v. Federation of Pakistan and others.
367.	W.P. No. 81836 of 2022	M/s D.G. Khan Cement Company Ltd. and others v. Federation of Pakistan and others.
368.	W.P. No. 4207 of 2023	M/s Super Shaheen Flour Mills and others v. Federation of Pakistan and others.
369.	W.P. No. 4205 2023	M/s Ch. Steel Mills and others v.Federation of Pakistan and others.
370.	W.P. No.4175 of 2023	Fayyaz Ahmed v. Federation of Pakistan and others.

371.	W.P. No. 4146 of 2023	Atlas Honda Limited v. Federation of Pakistan and others.
372.	W.P. No. 4121 of 2023	M/s N.A, Foundry v. Federation of Pakistan and others.
373.	W.P. No. 4102 of 2022	M/s Waseem Stainless Steel v. Federation of Pakistan and others.
374.	W.P. No. 3961 of 2023	Malik Prince Ali v. Federation of Pakistan and others.
375.	W.P. No. 3012 of 2023	Expert Advertising and Packaging and others v. Federation of Pakistan and others.
376.	W.P. No. 2871 of 2023	Muhammad Ramzan and others v Federation of Pakistan and others.
377.	W.P. No. 2815 of 2023	Eiffel Industries Ltd. and others v. Federation of Pakistan and others.
378.	W.P. No. 2721 of 2023	Imran Farooq v. Federation of Pakistan and others.
379.	W.P. No. 2716 of 2023	M/s Ali Foundry v. Federation of Pakistan and others.
380.	W.P. No. 2667 of 2023	M/s Islamabad Feeds (Pvt) Ltd. v. Federation of Pakistan and others.
381.	W.P. No. 2617 of 2023	M/s Zulfiqar Industries v. Federation of Pakistan and others.

382.	W.P. No. 2540 of 2023	M/s Muhammad Akram Weaving Factory and others v. Federation of Pakistan and others.
383.	W.P. No. 2538 of 2023	M/s S-S Steel Furnace and others v. Federation of Pakistan and others.
384.	W.P. No. 2355 of 2023	M/s Bahria Town (Pvt.) Ltd. v. Federation of Pakistan and others.
385.	W.P. No. 2349 of 2023	M/s H.H. Cold Rolling and others v. Federation of Pakistan and others.
386.	W.P. No. 2344 of 2023	M/s Maryam Bearing Industries v. Federation of Pakistan and others.
387.	W.P. No. 2305 of 2023	Hafiz Muhammad Umar Aslam and others v. Federation of Pakistan and others.
388.	W.P. No. 2129 of 2023	Shabbir Paper and Board (Pvt.) Ltd. v. Federation of Pakistan and others.
389.	W.P. No. 2114 of 2023	M/s Kam Engineering (Pvt.) Ltd. v. Federation of Pakistan and others.
390.	W.P. No. 2051 of 2023	M/s Naveed Flour and General Mills and others v. Federation of Pakistan and others.
391.	W.P. No. 7662 of 2023	M/s Flying Cement Company Ltd. v. Federation of Pakistan and others.

392.	W.P. No. 2297 of 2023	Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.
393.	W.P. No. 2520 of 2023	M/s Park Lane Towers Ltd. v. Federation of Pakistan and others.
394.	W.P. No. 2521 of 2023	Abdul Kareem v. Federation of Pakistan and others.
395.	W.P. No. 2623 of 2023	M/s Islamabad Farms v. Federation of Pakistan and others.
396.	W.P. No. 3843 of 2023	Toyota Home Appliances v. Federation of Pakistan and others.
397.	W.P. No. 3640 of 2023	M/s Nazir Steel Mills and others v. Federation of Pakistan and others.
398.	W.P. No. 3627 of 2023	Al-Ghani Engineering Works v. Federation of Pakistan and others.
399.	W.P. No. 3514 of 2023	Nadeem Abbas and others v. Federation of Pakistan and others.
400.	W.P. No. 3497 of 2023	A H Engineering and others v. Federation of Pakistan and others.
401.	W.P. No. 3440 of 2023	Punjab Beverages C. (Pvt.) Ltd. v. Federation of Pakistan and others.
402.	W.P. No. 3332 of 2023	M/s Shafi Agro (Pvt.) Ltd. v. Federation of Pakistan and others.

403.	W.P. No. 3206 of 2023	M/s Al-Badar Engineering Company (Pvt.) Ltd. and others v. Federation of Pakistan and others.
404.	W.P. No. 3157 of 2023	Muhammad Shafique v. Federation of Pakistan and others.
405.	W.P. No. 3154 of 2023	Hasim Saeed and others v. Federation of Pakistan and others.
406.	W.P. No. 2983 of 2023	M/s Zam Zam Steel and others v. Federation of Pakistan and others.
407.	W.P. No. 4327 of 2023	Waheed Brothers (Pvt.) Ltd. v. Federation of Pakistan and others.
408.	W.P. No. 4252 of 2023	Abdul Latif Natiq v. Federation of Pakistan and others.
409.	W.P. No. 4296 of 2023	Muhammad Zahid Ishaq v. Federation of Pakistan and others.
410.	W.P. No. 4243 of 2023	M/s Al-Makkah Steel v. Federation of Pakistan and others.
411.	W.P. No. 4226 of 2023	M/s PK Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
412.	W.P. No. 2052 of 2023	M/s Diamond Tyres Ltd. and others v. Federation of Pakistan and others.
413.	W.P. No. 2014 of 2023	Faizan Younas v. Federation of Pakistan and others.

414.	W.P. No. 2010 of 2023	M/s Mei Kong (Pvt.) Ltd. v. Federation of Pakistan and others.
415.	W.P. No. 1943 of 2023	M/s AHN Steel (Pvt.) Ltd. v. Federation of Pakistan and others.
416.	W.P. No. 1944 of 2023	M/s Waqas Woolen Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
417.	W.P. No. 1949 of 2023	M/s AHN Colloids Chemicals v. Federation of Pakistan and others.
418.	W.P. No.1953 of 2023	Muhammad Ramzan v. Federation of Pakistan and others.
419.	W.P. No. 1957 of 2023	Service Industries (Shoes) Ltd. and others v. Federation of Pakistan and others.
420.	W.P. No. 1958 of 2023	Arshad Ali v. Federation of Pakistan and others.
421.	W.P. No. 1967 of 2023	M/s Highnoon Laboratories Ltd. v. Federation of Pakistan and others.
422.	W.P. No. 1926 of 2023	Javed Iqbal v. Federation of Pakistan and others.
423.	W.P. No. 1860 of 2023	Talib Hussain and others v. Federation of Pakistan and others.
424.	W.P. No. 1581 of 2023	M/s Aziz Flour Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.

425.	W.P. No. 1650 of 2023	Al Hafiz Crystoplast (Pvt.) Ltd. v. Federation of Pakistan and others.
426.	W.P. No. 1479 of 2023	Sohail Mubeen and others v. Federation of Pakistan and others.
427.	W.P. No. 1665 of 2023	Muhammad Shafique Weaving Factory v. Federation of Pakistan and others.
428.	W.P. No. 1498 of 2023	M/s King Steel Industry (Pvt.) and others v. Federation of Pakistan and others.
429.	W.P. No. 1492 of 2023	Ejaz Ahmed and others v. Federation of Pakistan and others.
430.	W.P. No. 5184 of 2023	M/s Adil Steel Furnace v. Federation of Pakistan and others.
431.	W.P. No. 4778 of 2023	M/s Power Steel Foundy v. Federation of Pakistan and others.
432.	W.P. No. 5108 of 2023	M/s SJ Re-Rolling Steel Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
433.	W.P. No. 2787 of 2023	Prime Steel Re-Rolling Mills and others v. Federation of Pakistan and others.
434.	W.P. No. 2995 of 2023	Muhammad Altaf v. Federation of Pakistan and others.

435.	W.P. No. 3108 of 2023	M/s New Shalimar Steel Industries (Pvt) Ltd. and others v. Federation of Pakistan and others.
436.	W.P. No. 3184 of 2023	Muhammad Ismail and others v. Federation of Pakistan and others.
437.	W.P. No. 3292 of 2023	Al-Qadir Rice Mill v. Federation of Pakistan and others.
438.	W.P. No. 3298 of 2023	S&N Foods (SMC) (Pvt.) Ltd. v. Federation of Pakistan and others.
439.	W.P. No. 2250 of 2023	M/s Asad Traders and others v. Federation of Pakistan and others.
440.	W.P. No. 74969 of 2022	M/s Shalimar Steel Rolling Mills Ltd. and others v. Federation of Pakistan and others.
441.	W.P. No. 74974 of 2022	Ittehad Textile Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
442.	W.P. No. 75179 of 2022	M/s Kausar Fabrics Private Ltd. v. Federation of Pakistan and others.
443.	W.P. No. 75300 of 2022	M/s Khalid Ashraf Steel v. Federation of Pakistan and others.
444.	W.P. No. 75159 of 2022	M/s Surgical Instruments v. Federation of Pakistan and others.
445.	W.P. No. 75269 of 2022	M/s Leiner Pak Gelatine. v. Federation of Pakistan and others.

446.	W.P. No. 75296 of 2022	M/s Mei Kong (Pvt.) Ltd. v. Federation of Pakistan and others.
447.	W.P. No. 72790 of 2022	Vision Foods Packaging Ltd. and others v. Federation of Pakistan and others.
448.	W.P. No. 65086 of 2022	Al-Qadir Storage and others v. Federation of Pakistan and others.
449.	W.P. No. 2000 of 2023	M/s Haji Asghar and Sons Cold Store and others v. Federation of Pakistan and others.
450.	W.P. No. 72519 of 2022	M/s Highnoon Laboratories and others v. Federation of Pakistan and others.
451.	W.P. No. 72521 of 2022	M/s AHN Colloid Chemical (Pvt.) Ltd. v. Federation of Pakistan and others.
452.	W.P. No. 72514 of 2022	M/s AHN Steel (Pvt.) Ltd. v. Federation of Pakistan and others.
453.	W.P. No. 72801 of 2022	Pure Foods Company (Pvt.) Ltd. and others v. Federation of Pakistan and others.
454.	W.P. No. 72217 of 2022	M/s Waseem Stainless Steel v. Federation of Pakistan and others.
455.	W.P. No. 72644 of 2022	Muhammad Nasrullah Khan. v. Federation of Pakistan and others.

456.	W.P. No. 82768 of 2022	Muhammad Ansar and others v. Federation of Pakistan and others.
457.	W.P. No. 66724 of 2022	Muhammad Shahid and others v. Federation of Pakistan and others.
458.	W.P. No. 63619 of 2022	M/s D.G. Khan Cement Company Ltd. and others v. Federation of Pakistan and others.
459.	W.P. No. 66767 of 2023	Punjab Beverages Co. (Pvt.) Ltd. v. Federation of Pakistan and others.
460.	W.P. No. 66738 of 2022	M/s Ravi Sphero Cast v. Federation of Pakistan and others.
461.	W.P. No. 66611 of 2022	M/s Ravi Auto Mobile (Pvt.) Ltd. and others v. Federation of Pakistan and others.
462.	W.P. No. 66710 of 2022	M/s Leiner Pak Gelatine Ltd. v. Federation of Pakistan and others.
463.	W.P. No. 66775 of 2022	Muhammad Sufyan and others v. Federation of Pakistan and others.
464.	W.P. No. 66708 of 2022	M/s Madni Ploytex v. Federation of Pakistan and others.
465.	W.P. No. 66474 of 2022	M/s Shalimar Steel Re-Rolling Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.

466.	W.P. No. 2074 of 2023	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
467.	W.P. No. 3838 of 2023	Ahmad Glass v. Federation of Pakistan and others.
468.	W.P. No. 3815 of 2023	M/s Al Rehman Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
469.	W.P. No. 3771 of 2023	Umair Ishtiaq and others v. Federation of Pakistan and others.
470.	W.P. No. 3722 of 2023	M/s Healthmed Steel Furnace and others v. Federation of Pakistan and others.
471.	W.P. No. 3641 of 2023	M/s Wembly Sports v. Federation of Pakistan and others.
472.	W.P. No. 3650 of 2023	M/s Master Tiles and Ceramic Industries v. Federation of Pakistan and others.
473.	W.P. No. 3635 of 2023	Shabbir Ahmed v. Federation of Pakistan and others.
474.	W.P. No. 3537 of 2023	Narowal Flour Mills (Pvt.) Ltd. v. Federation of Pakistan and others.
475.	W.P. No. 3594 of 2023	M/s Sozo Inn (Pvt.) Ltd. v. Federation of Pakistan and others.

476.	W.P. No. 3511 of 2023	Nabeel Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
477.	W.P. No. 3516 of 2023	Muhammad Abubakar Siddique v. Federation of Pakistan and others.
478.	W.P. No. 3207 of 2023	M/s SAEPN (Pvt.) Ltd. v. Federation of Pakistan and others.
479.	W.P. No. 3520 of 2023	M/s Gohar Enterprises (Pvt.) Ltd. v. Federation of Pakistan and others.
480.	W.P. No. 3045 of 2023	M/s Mughal Iron and Steel Industries Ltd. and others v. Federation of Pakistan and others.
481.	W.P. No. 3071 of 2023	M/s Unicorn Prestige Ltd. v. Federation of Pakistan and others.
482.	W.P. No. 3141 of 2023	Kamran Khalid and others v. Federation of Pakistan and others.
483.	W.P. No. 3183 of 2023	M/s Ch. Muhammad Akram Teaching and Research Hospital v. Federation of Pakistan and others.
484.	W.P. No. 3761 of 2023	Master Poly Plastic Industries Ltd. v. Federation of Pakistan and others.
485.	W.P. No. 3144 of 2023	M/s Husnain Plastic Works v. Federation of Pakistan and others.
486.	W.P. No. 3017 of 2023	Shehzad Iqbal and others v. Federation of Pakistan and others.

487.	W.P. No. 2218 of 2023	Muhammad Irfan v. Federation of Pakistan and others.
488.	W.P. No. 72567 of 2022	Kamran Khalid and others v. Federation of Pakistan and others.
489.	W.P. No. 72441 of 2022	Shahzad Shabbir v. Federation of Pakistan and others.
490.	W.P. No. 73875 of 2022	M/s Abdullah Engineering Works v. Federation of Pakistan and others.
491.	W.P. No. 80235 of 2022	M/s Wembly Sports v. Federation of Pakistan and others.
492.	W.P. No. 79798 of 2022	Muhammad Ismail and others v. Federation of Pakistan and others.
493.	W.P. No. 80252 of 2022	Jabar Ashraf . v. Federation of Pakistan and others.
494.	W.P. No. 72732 of 2022	Jabar Ashraf v. Federation of Pakistan and others.
495.	W.P. No.73048 of 2022	Abdul Waheed Khan Niazi v. Federation of Pakistan and others.
496.	W.P. No. 78144 of 2022	M/s Bismillah Cotton Factory v. Federation of Pakistan and others.
497.	W.P. No. 77969 of 2022	M/s Islamabad Farms v. Federation of Pakistan and others.
498.	W.P. No. 77273 of 2022	M.s Flying Cement Company Ltd. v. Federation of Pakistan and others.

499.	W.P. No. 77308 of 2022	M/s Novatex Ltd. v. Federation of Pakistan and others.

SCHEDULE C

(Fuel Price Adjustment + Quarter Tariff Adjustment/FPA+QTA)

SR.NO.	CASE NO.	TITLE
1.	W.P. No.57874 of 2022	Sir Engineering Enterprises (Pvt.) Ltd. v. Federation of Pakistan and others.
2.	W.P. No.59964 of 2022	Mrs. Shehla Yasin Qureshi v. Federation of Pakistan and others.
3.	W.P. No.56391 of 2022	Waseem Saeed v. Federation of Pakistan and others.
4.	W.P. No.56368 of 2022	Malik Prince Ali v. Federation of Pakistan and others.
5.	W.P. No.56361 of 2022	Waves Singer Pakistan Ltd v. Federation of Pakistan and others.
6.	W.P. No.56963 of 2022	M/s Naseer Plastic v. Federation of Pakistan and others.
7.	W.P. No.56248 of 2022	Orient Apparel (Pvt.) Ltd. v. Federation of Pakistan and others.
8.	W.P. No.56362 of 2022	Muhammad Kaleem v. Federation of Pakistan and others.

9.	W.P. No.56332 of 2022	Orient Electronics (Pvt.) Ltd. v. Federation of Pakistan and others.
10.	W.P. No.56073 of 2022	Kamran Khalid v. Federation of Pakistan and others.
11.	W.P. No.58793 of 2022	Dawat Saraye Kangniwala v. Federation of Pakistan and others.
12.	W.P. No.55828 of 2022	M/s Super Tech Casting (Pvt.) Ltd. v. Federation of Pakistan and others.
13.	W.P. No.55086 of 2022	Rashid Maqbool v. Federation of Pakistan and others.
14.	W.P. No.55966 of 2022	Amjad Elahi v. Federation of Pakistan and others.
15.	W.P. No.55903 of 2022	Muhammad Saeed v. Federation of Pakistan and others.
16.	W.P. No.56486 of 2022	M/s Sharif Oxygen (Pvt.) Ltd. v. Federation of Pakistan and others.
17.	W.P. No.56911 of 2022	Umar Asghar Plastic Works v. Federation of Pakistan and others.
18.	W.P. No.56960 of 2022	Nazeer Plastic Shopping Bag Maker v. Federation of Pakistan and others.
19.	W.P. No.56955 of 2022	M/s Gohar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
20.	W.P. No.56916 of 2022	Mian Plastic Works v. Federation of Pakistan and others.

21.	W.P. No.56907 of 2022	B.V.A. Plastic Pipe Works v. Federation of Pakistan and others.
22.	W.P. No.56838 of 2022	Muhammad Nawaz v. Federation of Pakistan and others.
23.	W.P. No.56927 of 2022	Mst. Atiya Ghias v. Federation of Pakistan and others.
24.	W.P. No.55614 of 2022	Mian Mehmood Hussain v. Federation of Pakistan and others.
25.	W.P. No.55613 of 2022	Mst. Maliha Zahid v. Federation of Pakistan and others.
26.	W.P. No.56254 of 2022	Babri Steel Industry v. Federation of Pakistan and others.
27.	W.P. No.56004 of 2022	Shakeel Rafique v. Federation of Pakistan and others.
28.	W.P. No.56482 of 2022	Rehman Ali Sheikh v. Federation of Pakistan and others.
29.	W.P. No.49219 of 2022	M/s Ramay Textile (Garments) (Pvt.) Ltd. v. Federation of Pakistan and others.
30.	W.P. No.56357 of 2022	Punjab Bar Council v. Federation of Pakistan and others.
31.	W.P. No.54677 of 2022	Mst. Kudsia Nahid v. Federation of Pakistan and others.

32.	W.P. No.54158 of 2022	Ch. Usman Sana v. Federation of Pakistan and others.
33.	W.P. No.54364 of 2022	Malik Muhammad Javaid Iqbal v. Federation of Pakistan and others.
34.	W.P. No.54277of 2022	M/s Prime Flour Mills v. Federation of Pakistan and others.
35.	W.P. No.54271 of 2022	Nasir Mehmood v. Federation of Pakistan and others.
36.	W.P. No.54166 of 2022	Mst. Seema Ramzan v. Federation of Pakistan and others.
37.	W.P. No.50119 of 2022	Ahmed Glass Industries v. Federation of Pakistan and others.
38.	W.P. No.58323 of 2022	Mst. Musarat Rafi v. Federation of Pakistan and others.
39.	W.P. No.58329 of 2022	Mumtaz Steel Mill v. Federation of Pakistan and others.
40.	W.P. No.58142 of 2022	Imran v. Federation of Pakistan and others.
41.	W.P. No.60454 of 2022	Begum Sabya Yaqoob v. Federation of Pakistan and others.
42.	W.P. No.55363 of 2022	Abdul Khaliq v. Federation of Pakistan and others.
43.	W.P. No.55373 of 2022	Mian Muhammad Arif v. Federation of Pakistan and others.

44.	W.P. No.55370 of 2022	Muhammad Saeed v. Federation of Pakistan and others.
45.	W.P. No.55904 of 2022	Mahfooz Ahmed v. Federation of Pakistan and others.
46.	W.P. No.55809 of 2022	Muhammad Naeem v. Federation of Pakistan and others.
47.	W.P. No.55860 of 2022	Umair Aslam v. Federation of Pakistan and others.
48.	W.P. No.55892 of 2022	M/s Al-Raheem Ice Factory v. Federation of Pakistan and others.
49.	W.P. No.55806 of 2022	Muhammad Naeem v. Federation of Pakistan and others.
50.	W.P. No.55887 of 2022	M/s Muhammad Ali and Brothers v. Federation of Pakistan and others.
51.	W.P. No.55628 of 2022	Muhammad Sabir and others v. Federation of Pakistan and others.
52.	W.P. No.55847 of 2022	Muhammad Tahir Rafique v. Federation of Pakistan and others.
53.	W.P. No.51940 of 2022	Syed Zille Hussain Shah v. Federation of Pakistan and others.
54.	W.P. No.59342 of 2022	Ghulam Sarwar and others v. Federation of Pakistan and others.
55.	W.P. No.55779 of 2022	Shahzad Shabbir v. Federation of Pakistan and others.

56.	W.P. No.59093 of 2022	Naeem Ullah v. Federation of Pakistan and others.
57.	W.P. No.59244 of 2022	Warda Liaqat v. Federation of Pakistan and others.
58.	W.P. No.59695 of 2022	Niaz Ahmad v. Federation of Pakistan and others.
59.	W.P. No.59739of 2022	Maqsood Hussain v. Federation of Pakistan and others.
60.	W.P. No.57366 of 2022	Imrana Altaf v. Federation of Pakistan and others.
61.	W.P. No.57135 of 2022	Muhammad Khalid Ishaque v. Federation of Pakistan and others.
62.	W.P. No.57108 of 2022	M/s Plasticans (Pvt) Ltd. v. Federation of Pakistan and others.
63.	W.P. No.57278 of 2022	Ammar Ahmed Khan v. Federation of Pakistan and others.
64.	W.P. No.57149 of 2022	Muhammad Zahid Ishaque v. Federation of Pakistan and others.
65.	W.P. No.57293 of 2022	Faizan Mahmood Rana v. Federation of Pakistan and others.
66.	W.P. No.57357 of 2022	Ghulam Rasool Bhatti v. Federation of Pakistan and others.
67.	W.P. No.57353 of 2022	Fawad Aslam Butt v. Federation of Pakistan and others.

68.	W.P. No.57928 of 2022	Muhammad Iqbal v. Federation of Pakistan and others.
69.	W.P. No.57976 of 2022	Muhammad Shahbaz v. Federation of Pakistan and others.
70.	W.P. No.57972 of 2022	Master Poly Plastic Industries Limited v. Federation of Pakistan and others.
71.	W.P. No.57794 of 2022	Muhammad Rashid v. Federation of Pakistan and others.
72.	W.P. No.58709 of 2022	Mehar Qaiser Amin v. Federation of Pakistan and others.
73.	W.P. No.53950 of 2022	Arshad Ali v. Federation of Pakistan and others.
74.	W.P. No.53029 of 2022	M/s Sun Shine Board v. Federation of Pakistan and others.
75.	W.P. No.58878 of 2022	Khawaja Mehmood Ayaz v. Federation of Pakistan and others.
76.	W.P. No.53750 of 2022	Azhar Ice Factory and Cold Storage v. Federation of Pakistan and others.
77.	W.P. No.55627 of 2022	M/s Al Rehman Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
78.	W.P. No.55583 of 2022	Muhammad Ameen v. Federation of Pakistan and others.

79.	W.P. No.56961 of 2022	M/s SGI Foundry (Pvt.) Ltd. v. Federation of Pakistan and others.
80.	W.P. No. 60597 of 2022	M/s Flour Mills (Pvt.) Ltd and others v. Federation of Pakistan and others.
81.	W.P. No. 60864 of 2022	M/s Bhalla Embroidery Textile Works v. Federation of Pakistan and others.
82.	W.P. No. 61332 of 2022	Muhammad Ismail and others v. Federation of Pakistan and others.
83.	W.P. No. 64672 of 2022	Muhammad Nadeem Sajjad v. Federation of Pakistan and others.
84.	W.P. No. 65484 of 2022	Muhammad Nauman Ijaz and others v. Federation of Pakistan and others.
85.	W.P. No. 64718 of 2022	Waseem Ismail v. Federation of Pakistan and others.
86.	W.P. No. 63012 of 2022	M/s Unicorn Prestige Ltd. v. Federation of Pakistan and others.
87.	W.P. No. 64640 of 2022	B.K.A. PVC Pipe Works v. Federation of Pakistan and others.
88.	W.P. No. 64648 of 2022	M/s MR PVC Pipe v. Federation of Pakistan and others.
89.	W.P. No. 63989 of 2002	Muhammad Shafique Anjam v. Federation of Pakistan and others.

90.	W.P. No. 63335 of 2022	M/s Al Rehman Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
91.	W.P. No. 63862 of 2022	Abdul Khaliq v. Federation of Pakistan and others.
92.	W.P. No. 65460 of 2022	Sarwar Ijaz v. Federation of Pakistan and others.
93.	W.P. No. 65356 of 2022	Services Hospital v. Federation of Pakistan and others.
94.	W.P. No. 65364 of 2022	M/s Gohar Enterprises (Pvt.) Ltd. v. Federation of Pakistan and others.
95.	W.P. No. 64664 of 2022	Orient Electronics (Pvt.) Ltd. v. Federation of Pakistan and others.
96.	W.P. No. 64660 of 2022	Orient Electronics (Pvt.) Ltd. v. Federation of Pakistan and others.
97.	W.P. No. 62436 of 2022	Muhammad Iqbal v. Federation of Pakistan and others.
98.	W.P. No. 60532 of 2022	Mst. Farkhanda Basshir. v. Federation of Pakistan and others.
99.	W.P. No. 62437 of 2022	Arshad Ali v. Federation of Pakistan and others.
100.	W.P. No. 61518 of 2022	Muhammad Ishaq Mirza v. Federation of Pakistan and others.

101.	W.P. No. 64344 of 2022	Bashir Ahmed v. Federation of Pakistan and others.
102.	W.P. No. 64376 of 2022	Muhammad Afzal Butt v. Federation of Pakistan and others.
103.	W.P. No. 64281 of 2022	Muhammad Iqbal v. Federation of Pakistan and others.
104.	W.P. No. 64007 of 2022	Shahzad Shabbir v. Federation of Pakistan and others.
105.	W.P. No. 64050 of 2022	Kamran Khalid and others v. Federation of Pakistan and others.
106.	W.P. No. 64012 of 2022	Friends Cold Storage and Ice Factory v. Federation of Pakistan and others.
107.	W.P. No. 64001 of 2022	Master Tiles and Ceramic Industries Ltd. v. Federation of Pakistan and others.
108.	W.P. No. 65567 of 2022	Mansoor Ahmed v. Federation of Pakistan and others.
109.	W.P. No. 64049 of 2022	Nasir Cold Storage and others v. Federation of Pakistan and others.
110.	W.P. No. 64011 of 2022	Muhammad Khalid Ishaque v. Federation of Pakistan and others.
111.	W.P. No. 64086 of 2022	M/s Plasticans (Pvt.) Ltd. v. Federation of Pakistan and others.

112.	W.P. No. 64016 of 2022	Muhammad Zahid Ishaq v. Federation of Pakistan and others.
113.	W.P. No. 64710 of 2022	Irshad Ullah Khan v. Federation of Pakistan and others.
114.	W.P. No., 64617 of 2022	Mian Nasir Plastic v. Federation of Pakistan and others.
115.	W.P. No. 64849 of 2022	Amir Hameed v. Federation of Pakistan and others.
116.	W.P. No. 65361 of 2022	Bash Pingal Flour Mills v. Federation of Pakistan and others.
117.	W.P. No. 64639 of 2022	Al Asar Plast, MR PVC Pipe v. Federation of Pakistan and others.
118.	W.P. No. 64697 of 2022	Muhammad Asif Javed v. Federation of Pakistan and others.
119.	W.P. No. 64681 of 2022	S.A.F. PVC Pipe v. Federation of Pakistan and others.
120.	W.P. No. 65527 of 2022	Nabeeel Mughal v. Federation of Pakistan and others.
121.	W.P. No. 64679 of 2022	Muhammad Usman Ghani v. Federation of Pakistan and others.
122.	W.P. No. 64653 of 2022	Farid Plastic Works v. Federation of Pakistan and others.
123.	W.P. No. 65483 of 2022	Shahzad Iqbal v. Federation of Pakistan and others.

124.	W.P. No. 65761 of 2022	Muhammad Khalid v. Federation of Pakistan and others.
125.	W.P. No. 64627 of 2022	Orient Apparel (Pvt.) Ltd. v. Federation of Pakistan and others.
126.	W.P. No. 63519 of 2022	M/s SGI Foundry (Pvt.) Ltd. v. Federation of Pakistan and others.
127.	W.P. No. 63521 of 2022	M/s Gohar Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
128.	W.P. No. 63518 of 2022	M/s Super Tech Casting (Pvt.)_ Ltd v. Federation of Pakistan and others.
129.	W.P. No. 55614 of 2022	Mian Mehmood Hussain v. Federation of Pakistan and others
130.	W.P. No. 55613 of 2022	Mst. Maliha Zahid v. Federation of Pakistan and others.
131.	W.P. No. 62663 of 2022	Ameer and others v. Federation of Pakistan and others.
132.	W.P. No. 60454 of 2022	Begum Sabya Yaqoob v. Federation of Pakistan and others.
133.	W.P. No. 78989 of 2022	M/s Naveed Flour and General Mills and others v. Federation of Pakistan and others.
134.	W.P. No. 78964 of 2022	M/s Tayba Flour Mills v. Federation of Pakistan and others.

135.	W.P. No. 78967 of 2022	M/s Iqbal Flour Mills v. Federation of Pakistan and others.
136.	W.P. No.79110 of 2022	New Itthad Flour Mills v. Federation of Pakistan and others.
137.	W.P. No. 80167 of 2022	M/s Al Rehman Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
138.	W.P. No. 79736 of 2022	Hafiz Muhammad Umer Aslam and others v. Federation of Pakistan and others.
139.	W.P. No. 79544 of 2022	M/s H.H. Cold Rolling and Tube Mills and others v. Federation of Pakistan and others.
140.	W.P. No. 79462 of 2022	Malik Prince v. Federation of Pakistan and others.
141.	W.P. No. 79421 of 2022	Shabbir paper and Board (Pvt.) Ltd. v. Federation of Pakistan and others.
142.	W.P. No. 79403 of 2022	M/s Flying Paper Industries and others v. Federation of Pakistan and others.
143.	W.P. No. 73057 of 2022	Fayyaz Ahmed v. Federation of Pakistan and others.
144.	W.P. No. 73483 of 2022	Shahzad Iqbal and others v. Federation of Pakistan and others.

145.	W.P. No. 72599 of 2022	M/s Al Rehman Hospitality (Pvt.) Ltd. v. Federation of Pakistan and others.
146.	W.P. No. 72778 of 2022	Ahmad Glass v. Federation of Pakistan and others.
147.	W.P. No. 72941 of 2022	Shabbir Paper and Board (Pvt.) Ltd. v. Federation of Pakistan and others.
148.	W.P. No. 73382 of 2022	M/s Moiz Steel Industry and others v. Federation of Pakistan and others.
149.	W.P. No. 72751 of 2022	Muhammad Zahid Ishaq v. Federation of Pakistan and others.
150.	W.P. No. 72712 of 2022	Malik Prince Ali v. Federation of Pakistan and others.
151.	W.P. No. 73360 of 2022	Combined Cold Storage (Pvt.) Ltd. v. Federation of Pakistan and others.
152.	W.P. No. 73349 of 2022	Master Tyles and Ceramic Industries Ltd. v. Federation of Pakistan and others.
153.	W.P. No. 72607 of 2022	Imran Farooq v. Federation of Pakistan and others.
154.	W.P. No. 73144 of 2022	M/s Gohar Enterprises (Pvt.) Ltd. v. Federation of Pakistan and others.
155.	W.P. No. 72758 of 2022	Muhammad Khalid Ishaque v. Federation of Pakistan and others.

156.	W.P. No. 72415 of 2022	M/s Ali foundry v. Federation of Pakistan and others.
157.	W.P. No. 72722 of 2022	Fiaz Ahmed Noorani v. Federation of Pakistan and others.
158.	W.P. No. 72762 of 2022	Kamran Zafar v. Federation of Pakistan and others.
159.	W.P. No. 71900 of 2020	M/s United Precision Works (Pvt.) Ltd. v. Federation of Pakistan and others.
160.	W.P. No. 71910 of 2022	M/s United Life Style (Pvt.) Ltd. v. Federation of Pakistan and others.
161.	W.P. No. 71928 of 2022	M/s United Life Style (Pvt.) Ltd. v. Federation of Pakistan and others.
162.	W.P. No. 72072 of 2022	M/s United Auto Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
163.	W.P. No. 71935 of 2022	M/s United Auto Industries (Pvt.) Ltd. v. Federation of Pakistan and others.
164.	W.P. No. 71984 of 2022	M/s United Motors (Pvt.) Ltd. v. Federation of Pakistan and others.
165.	W.P. No. 80650 of 2022	Imran Farooq v. Federation of Pakistan and others.

166.	W.P. No. 80655 of 2022	M/s Gohar Enterprises (Pvt.) Ltd. and others v. Federation of Pakistan and others.
167.	W.P. No. 80607 of 2022	Shahzad Iqbal and others v. Federation of Pakistan and others.
168.	W.P. No. 80606 of 2022	M/s Ali Foundry v. Federation of Pakistan and others.
169.	W.P. No. 80243 of 2022	Friends Cold Storage and Ice Factory v. Federation of Pakistan and others.
170.	W.P. No. 80512 of 2022	M/s Husnain Plastic Works v. Federation of Pakistan and others.
171.	W.P. No. 80251 of 2022	Faizan Younas v. Federation of Pakistan and others.
172.	W.P. No. 80247 of 2022	Master Tiles and Ceramic Industries Ltd. v. Federation of Pakistan and others.
173.	W.P. No. 80592 of 2022	Ahmad Glass v. Federation of Pakistan and others.
174.	W.P. No. 73701 of 2022	Master Poly Plastic Industries Limited v. Federation of Pakistan and others.
175.	W.P. No. 81180 of 2022	Muhammad Zahid Ishaq v. Federation of Pakistan and others.

176.	W.P. No. 81194 of 2022	Muhammad Khalid Ishaque v. Federation of Pakistan and others.
177.	W.P. No. 81578 of 2022	M/s Kausar Fabrics Private Limited v. Federation of Pakistan and others.
178.	W.P. No. 65985 of 2022	Ch. Barkat Ali v. Federation of Pakistan and others.
179.	W.P. No. 65071 of 2022	M/s Mian Asif Dyeing and Furnishing v. Federation of Pakistan and others.
180.	W.P. No. 64038 of 2022	Master Poly Plastic Industries Limited v. Federation of Pakistan and others.
181.	W.P. No. 66273 of 2022	Muhammad Salim and others v. Federation of Pakistan and others.
182.	W.P. No. 66270 of 2022	Water Supply Scheme v. Federation of Pakistan and others.
183.	W.P. No. 73040 of 2022	Ashfaq Ahmed v. Federation of Pakistan and others.
184.	W.P. No. 74435 of 2022	Muhammad Nadeem Sajjad v. Federation of Pakistan and others.
185.	W.P. No. 71445 of 2022	Faizan Younas v. Federation of Pakistan and others.
186.	W.P. No. 71696 of 2022	Irshad Ullah Khan and others v. Federation of Pakistan and others.

187.	W.P. No. 72149 of 2022	Hafiz Muhammad Umer Aslam and others v. Federation of Pakistan and others.
188.	W.P. No. 72328 of 2022	M/s Unicorn Prestige Limited v. Federation of Pakistan and others.
189.	W.P. No. 72356 of 2022	M/s H.H Cold Rolling and Tube Mills and others v. Federation of Pakistan and others.
190.	W.P. No. 72357 of 2022	M/s Al Rehman Ice Factory and others v. Federation of Pakistan and others.
191.	W.P. No. 71883 of 2022	M/s Naveed Flour and General Mills and others v. Federation of Pakistan and others.
192.	W.P. No. 71901 of 2022	M/s Tayba Flour Mills v. Federation of Pakistan and others.
193.	W.P. No. 71937 of 2022	Abdul Hameed and others v. Federation of Pakistan and others.
194.	W.P. No. 71780 of 2022	Friends Cold Storage and Ice Factory v. Federation of Pakistan and others.
195.	W.P. No. 71695 of 2022	Zeeshan Rasheed and others v. Federation of Pakistan and others.
196.	W.P. No. 81198 of 2022	Master Ply Plastic Industries Limited v. Federation of Pakistan and others.

197.	W.P. No.57667 of 2022	Muhammad Azeem. v. Federation of Pakistan and others.
198.	W.P. No.55917 of 2022	Fazal Hussain Bukhari Vs.Federation of Pakistan and others.
199.	W.P. No.56933 of 2022	Ashtaq Hussain v. Federation of Pakistan and others.
200.	W.P. No.56931 of 2022	Nabeel Mugal Ali v. Federation of Pakistan and others.
201.	W.P. No.56917 of 2022	Muhammad Afzal v. Federation of Pakistan and others.
202.	W.P. No.56912 of 2022	Khalil Ahmad v. Federation of Pakistan and others.
203.	W.P. No.56921 of 2022	Danish Raza Shah v. Federation of Pakistan and others.
204.	W.P. No.53225 of 2022	Rizwan Rashid and others v. Federation of Pakistan and others.
205.	W.P. No.50438 of 2022	Imran Zafar Chatta and others v. Federation of Pakistan and others.
206.	W.P. No.50853 of 2022	Waqas Fareed v. Federation of Pakistan and others.
207.	W.P. No.50049 of 2022	Tahir Abbas v. Federation of Pakistan and others.
208.	W.P. No.50321 of 2022	Royal Elegance Hotel v. Federation of Pakistan and others.

209.	W.P. No.55929 of 2022	M/s Madina Glass Manufacturing v. Federation of Pakistan and others.
210.	W.P. No.51016 of 2022	Muhammad Anar v. Federation of Pakistan and others.
211.	W.P. No.51653 of 2022	Muhammad Ali v. Federation of Pakistan and others.
212.	W.P. No.51061 of 2022	Farooq Foundry and Engineering Works (Pvt.) Ltd. v. Federation of Pakistan and others.
213.	W.P. No.59338 of 2022	Ameer Hussain and others v. Federation of Pakistan and others.
214.	W.P. No.59842 of 2022	Shoaib Khan Qureshi v. Federation of Pakistan and others.
215.	W.P. No.56984 of 2022	Muhammad Kashif Butt v. Federation of Pakistan and others.
216.	W.P. No.56914 of 2022	Imran Ali Abbas v. Federation of Pakistan and others.
217.	W.P. No.54667 of 2022	Anjuman-e-Kissan Ittihad Forum v. Federation of Pakistan and others.
218.	W.P. No.54287 of 2022	Muhammad Altaf and others v. Federation of Pakistan and others.
219.	W.P. No.52977 of 2022	Ali Asghar and others v. Federation of Pakistan and others.

220.	W.P. No.54246 of 2022	Muhammad Saleem Akhtar v. Federation of Pakistan and others.
221.	W.P. No.54350 of 2022	Ayesha Saqib v. Federation of Pakistan and others.
222.	W.P. No.50253 of 2022	Khadin Hussain Haidri v. Federation of Pakistan and others.
223.	W.P. No.50250 of 2022	Talib Hussain v. Federation of Pakistan and others.
224.	W.P.No.52024 of 2022	Muhammad Haroon Ghazi v. Federation of Pakistan and others.
225.	W.P. No.52886 of 2022	Shahid Akhtar and others v. Federation of Pakistan and others.
226.	W.P. No.50374 of 2022	Rana Anwar ul Haq v. Federation of Pakistan and others.
227.	W.P. No.52131 of 2022	Mohsin Rasool v. Federation of Pakistan and others.
228.	W.P. No.52945 of 2022	Muhammad Sher Afgan and others v. Federation of Pakistan and others.
229.	W.P. No.49924 of 2022	Syed Waqar ul Islam and others v. Federation of Pakistan and others.
230.	W.P. No.58241 of 2022	Umer Talal and others v. Federation of Pakistan and others.
231.	W.P. No.58180 of 2022	Muhammad Farooq Yousaf v. Federation of Pakistan and others.

232.	W.P. No.60098 of 2022	Khalid Mehmood v. Federation of Pakistan and others.
233.	W.P. No.60037 of 2022	Muhammad Azeem v. Federation of Pakistan and others.
234.	W.P. No.56962 of 2022	Punjab Cold Store CK. v. Federation of Pakistan and others.
235.	W.P. No.56900 of 2022	Shoaib Ullah Daula v. Federation of Pakistan and others.
236.	W.P. No.56965 of 2022	S&N Feeds (SMC) (Pvt.) Ltd. v. Federation of Pakistan and others.
237.	W.P. No.57320 of 2022	Asma v. Federation of Pakistan and others.
238.	W.P. No.57213 of 2022	Mst. Mehwish Mansha v. Federation of Pakistan and others.
239.	W.P. No.57330 of 2022	M/s AR Steel Industry and others v. Federation of Pakistan and others.
240.	W.P. No.57368 of 2022	Bashir Ahmed v. Federation of Pakistan and others.
241.	W.P. No.57865 of 2022	Khawar Javaid Malik v. Federation of Pakistan and others.
242.	W.P. No.57772 of 2022	Abdul Majeed v. Federation of Pakistan and others.
243.	W.P. No.57967 of 2022	Hassan Raza Butt v. Federation of Pakistan and others.

244.	W.P. No.57704 of 2022	Raja Sagheer Ahmed v. Federation of Pakistan and others.
245.	W.P. No.57964 of 2022	Muhammad Nasir v. Federation of Pakistan and others.
246.	W.P. No.57699 of 2022	Mazhar Saeed Butt v. Federation of Pakistan and others.
247.	W.P. No.57951 of 2022	Khurram Malik v. Federation of Pakistan and others.
248.	W.P. No.57705 of 2022	Rana Majid Hussain v. Federation of Pakistan and others.
249.	W.P. No.57436 of 2022	Uzma Rizwan v. Federation of Pakistan and others.
250.	W.P. No.57523 of 2022	Naeem Afzal Malik v. Federation of Pakistan and others.
251.	W.P. No.58492 of 2022	M/s Mian Foundry and Steel Industries and others v. Federation of Pakistan and others.
252.	W.P. No.58783 of 2022	Muhammad Akram v. Federation of Pakistan and others.
253.	W.P. No.53593 of 2022	Javed Iqbal v. Federation of Pakistan and others.
254.	W.P. No.53254 of 2022	Ahmad Naeem v. Federation of Pakistan and others.

255.	W.P. No.58880 of 2022	Waqas Fareed v. Federation of Pakistan and others.
256.	W.P. No.53967 of 2022	Nosheen Haroon v. Federation of Pakistan and others.
257.	W.P. No.58890 of 2022	Abdul Rehman and others v. Federation of Pakistan and others.
258.	W.P. No.55249 of 2022	Shehzad Nisar v. Federation of Pakistan and others.
259.	W.P. No.55818 of 2022	Muhammad Tufail v. Federation of Pakistan and others.
260.	W.P. No.55189 of 2022	Mst. Nasreen Bibi v. Federation of Pakistan and others.
261.	W.P. No.80456 of 2022	M/ Abdullah Engineering Works v. Federation of Pakistan and others.
262.	W.P. No.71558 of 2022	Abdul Islam and others v. Federation of Pakistan and others.
263.	W.P. No.71527 of 2022	Ch. Muhammad Rafique and others v. Federation of Pakistan and others.
264.	W.P. No.55853 of 2022	Manzoor Hussain v. Federation of Pakistan and others.
265.	W.P. No 65504 of 2022	Sarwer Shoukat. v. Federation of Pakistan and others.
266.	W.P. No.65519 of 2022	Muhammad Ilyas v. Federation of Pakistan and others.

267.	W.P. No.71561 of 2022	Mudassar Hussaoin and others v. Federation of Pakistan and others.
268.	W.P. No.73335 of 2022	Muhammad Ismail and others v. Federation of Pakistan and others.
269.	W.P. No.73042 of 2022	Ali Husnain v. Federation of Pakistan and others
270.	W.P. No.73147 of 2022	Muhammad Akbar v. Federation of Pakistan and others.
271.	W.P. No.79454 of 2022	Tayyab Ali Ahmad v. Federation of Pakistan and others.
272.	W.P. No. 71571 of 2022	Syed Hammad Hadi and others v. Federation of Pakistan and others.
273.	W.P. No.71582 of 2022	Muhammad Adnan Khalique and others v. Federation of Pakistan and others.
274.	W.P. No.53460 of 2022	Save Pakistan Lawyers Movement (SPLM) v. Federation of Pakistan and others.
275.	W.P. No.80254 of 2022	Muhammad Ibrahim and others v. Federation of Pakistan and others.
276.	W.P. No. 79460 of 2022	Waves Singer Pakistan Ltd. v. Federation of Pakistan and others.

277.	W.P. No. 77550 of 2022	M/s Aziz Flour Mills (Pvt.) Ltd. and others v. Federation of Pakistan and others.

SCHEDULE D

(Change of Tariff)

SR.NO	CASE NO.	TITLE
1.	W.P. No. 56909 of 2022	Amir Shehzad Cold Storage v. Federation of Pakistan and others.
2.	W.P. No. 65494 of 2022	Ch. Muhammad Rafique and others v. Federation of Pakistan and others.
3.	W.P. No. 56518 of 2022	Rana Cold Storage v. Federation of Pakistan and others.
4.	W.P. No. 73403 of 2022	Al-Aziz Cold Storage and Ice Factory v. Federation of Pakistan and others.
5.	W.P. No. 67847 of 2022	Dildar Hussain v. Federation of Pakistan and others.
6.	W.P. No. 65482 of 2022	Waqas Fareed and others v. Federation of Pakistan and others.
7.	W.P. No. 66341 of 2022	Mian Ghulam Rasool and others v. Federation of Pakistan and others.
8.	W.P. No. 65380 of 2022	H.M.Z. Cold Storage v. Federation of Pakistan and others.

9.	W.P. No. 65086 of 2022	Al-Qadir Storage and others v. Federation of Pakistan and others.
10.	W.P. No. 70349 of 2022	Muhammad Hussain v. Federation of Pakistan and others.
11.	W.P. No. 75259 of 2022	Shoaib Ullah v. Federation of Pakistan
12.	W.P. No. 82425 of 2022	M/s Haji Asghar and Sons Cold Store and others v. Federation of Pakistan and others.
13.	W.P. No. 4081 of 2023	Ch. Manzoor Qadir Cold Storage and others v. Federation of Pakistan eetc.

MH/M-66/L Order accordingly.

---

[1] *Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others reported as PLD 2012 Supreme Court 132*

[2] *Messrs Noorani Steel Mills v. Federation of Pakistan reported as 2010 YLR 2872*

[3] *Pakistan Flour Mills Association (Punjab Branch) through Vice Chairman v. Water and Power Development Authority (WAPDA) and others reported as PLD 2013 Lahore 182*

[4] *Flying Board and Paper Products Ltd. and others v. Government of Pakistan through Secretary Cabinet Division and others reported as 2010 SCMR 517.*

[5] *The Collector of Sales Tax, Gujranwala v. Messrs Super Asia Mohammad Din and Sons reported as 2017 SCMR 1427*

[6] *State through Regional Director ANF v. Imam Bakhsh reported as 2018 SCMR 2039*

[7] *Federation of Pakistan through Secretary Finance, Islamabad and another v. E-Movers (Pvt.) Limited and other reported as 2022 SCMR 1021*

[8] *ICC Textiles Limited through Authorized Representative and 31 others v. Water and Power Development Authority (WAPDA), WAPDA House, Lahore through Chairman and 15 others reported as 2009 CLC 1343*

[9] *Naimatullah Khan Advocate and others v. Federation of Pakistan and others reported as 2020 SCMR 622*

[10] *LESCO and others v. North Star Textile Mills reported as 2014 CLC 28*

[11] *Flying Cement Co. Ltd. and others v. Government of Pakistan through Secretary, Ministry of Water and Power and others reported as PLD 2015 Lah. 146*

[12] *Ghani Global Glass Ltd. v. Federation of Pakistan through Secretary Energy (Power Division), Islamabad and others reported as PLD 2020 Lah. 167*

[13] *Flying Cement v. Federation of Pakistan reported as PLD 2016 Lah. 35*

[14] *Lahore Electric Supply Company Limited (LESCO) and others v. National Electric Power Regulatory Authority and others reported as PLD 2018 Islamabad 20*

[15] *National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited reported as 2016 SCMR 550*

[16] *Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others reported as 2011 SCMR 1813*

[17] *Syed Imran Raza Zaidi, Superintending Engineer, Public Health Engineering Circle-I Gujranwala v. Government of the Punjab through Services, General Administration and Information Department, Punjab Secretariat, Lahore and 2 others reported as 1996 SCMR 645*

[18] *National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited reported as 2016 SCMR 550*

[19] *Ms. Shehla Zia and others v. WAPDA reported as PLD 1994 SC 693*

[20] *Muhammad Younas and others v. The State reported as PLD 2005 SC 93*

[21] *Dr. Mobashir Hassan and others v. Federation of Pakistan and others reported as PLD 2010 SC 265*

[22] *Watan Party and another v. Federation of Pakistan and others reported as PLD 2011 SC 997*

[23] *Alleged Corruption In Rental Power Plants and others reported as 2012 SCMR 773*

[24] *Al-Samrez Enterprise v. The Federation of Pakistan reported as 1986 SCMR 1917*

[25] *Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal reported as 2021 SCMR 328*

[26] *Commissioner Inland Revenue, Zone-II, Regional Tax Officer (RTO), Mayo Road, Rawalpindi and another v. Messrs Sarwaq Traders, 216/1-A, Adamjee Road, Rawalpindi and another reported as 2022 SCMR 1333*

[27] *Maj.-Gen. (Retd.) Mian Ghulam Jilani v. The Federal Government through the Secretary, Government of Pakistan, Interior Division, Islamabad reported as PLD 1975 Lahore 65*

[28] *Commissioner of Income Tax and others v. Mubashar Sheikh, City Towers reported as 2017 PTD Lahore 795*

[29] *West Pakistan Tanks Terminal (Pvt.) Ltd. v. Collector (Appraisement) reported as 2007 SCMR 1318*

[30] *Collector of Customs Appraisement, Collectorate, Customs House, Karachi v. Messrs Gul Rehman, Proprietor Messrs G. Kin Enterprises, Ghazali Street, Nasir Road, Sialkot reported as 2017 SCMR 339*

[31] *Habibullah Energy s case reported as PLD 2014 SC 47*

[32] *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others reported as PLD 2016 SC 808*

[33] *Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others reported as PLD 1969 SC 42*

[34] *Sindh Petroleum and CNG Dealers Association and 15 others v. Federation of Pakistan through Secretary and 3 others reported as 2020 CLC 851*

[35] *Messrs Gadoon Textile Mills and 814 others v. WAPDA and others reported as 1997 SCMR 641*

[36] *Pakistan Flour Mills Association (Punjab Branch) through Vice Chairman v. Water and Power Development Authority (WAPDA) and others reported as PLD 2013 LHR 182*

[37] *LESCO and 501 others v. North Star Textile Mills and others reported as 2014 CLC 28 (Islamabad)*

[38] *Ms. Imrana Tiwana and others v. Province of Punjab and others reported as PLD 2015 Lahore 522*

[39] *Ms Krishna Poultry Farm v. State Of Orissa W.P. (C) No. 22202 of 2010 decided on 18.08.2015*

[40] *Rajasthan Ice and Cold Storage v. The State of Rajasthan decided on 11.05.1981 reported as 1981 WLN 346*

[41] *Commissioner of Income Tax v. Radha Nagar Cold Storage (P.) Ltd. decided on 04.06.1980 reported as 1980 126 ITD 66*

[42] *Delhi Cold Storage Pvt. Ltd. v. Commissioner of Income Tax, Delhi-1, New Dehli reported as (1991) 4 Supreme Court Cases 239*

[43] *Commissioner of Income Tax v. Nandlal Cold Storage decided on 24.10.1991 by Allahabad High Court*

[44] *Said Zaman Khan v. Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan Superintendent HSP, Sahiwal reported as 2017 SCMR 1249*

[45] *Justice Qazi Faez Isa and others v. The President of Pakistan and others reported as PLD 2021 SC 1*

2024 C L C 1094

[Lahore]

Before Ali Baqar Najafi, J

SALMAN AKRAM RAJA----Petitioner

Versus

RETURNING OFFICER and others----Respondents

Writ Petition No.8932 of 2024, decided on 12th February, 2024.

Elections Act (XXXIII of 2017)---

----Ss. 8, 9, 15 & 95---Constitution of Pakistan, Arts. 199, 218 (3) & 224---Constitutional petition---Election dispute---Factual controversy---Form 47, authenticity of---Scope---Petitioner / candidate was aggrieved of polling results declared by Election Commission, wherein respondent was declared as returned candidate---Validity---Contesting parties had taken divergent stands in respect of associating petitioner, a candidate, in consolidation process---Whether Form 47 was manipulated or not whether consolidation of results in Form 47 was made in absence of petitioner or not; and whether or not receiving / issuing notice to petitioner was prior to the preparation of Form 47, were all disputed questions of facts and the same could not be resolved in exercise of Constitutional jurisdiction under Art. 199 of the Constitution---Petitioner could file representation under Ss. 8, 9, 15 & 95 of Elections Act, 2017, read with Art.218 (3) of the Constitution before Election Commission of Pakistan---Consolidation of result whether made in presence or absence of petitioner would be resolved by Election Commission of Pakistan while deciding the matter, if agitated before it---Prompt decision by Election Commission of Pakistan would be in the spirit of Arts. 218(3) & 224 of the Constitution by strictly complying the provisions of Elections Act, 2017---High Court in exercise of constitutional jurisdiction declined to interfere in the matter---Constitutional petition was dismissed, in circumstances.

Zulflqar Ali Bhatti v. Election Commission of Pakistan and other 2024 SCMR 997; Muhammad Raza Hayat Hiraj and others v. The Election Commission of Pakistan and others 2015 SCMR 233; Aurangzeb Khan v. Election Commission of Pakistan, Islamabad through Secretary and others PLD 2010 SC 34; Muhammad Hussain Babar v. Election Commission of Pakistan, through Secretary and others reported as PLD 2008 SC 495; Jameel Qadir, Muhammad Asif Baloch v. Government of Balochistan, Local Government, Rural Development and Agrovillers Department, Quetta through its Secretary and others 2023 SCMR 1919; Ali Asjad Malhi v. Ms. Syeda Nosheen Iftikhar and others PLD 2023 SC 1; Muhammad Salman v. Election Commission of Pakistan, Islamabad and others 2019 CLC 1069; Sohail Shahzad v. Chief Election Commission of Pakistan and 4 others 2023 MLD 602 and Dr. Liaqat Ali Khan and another v. District Returning Officer, District Sargodha and 3 others 2002 SCMR 1632 rel.

Sameer Khosa, Waqas Ahmad Mir, Abuzar Salman Niazi, Banister Muhammad Ali Talib, Muhammad Hammad Amin, Ms. Ali Waqar, Syed Aun Abbas and Rai Ahmad Hayat for Petitioner.

Ghulam Sarwar Nihung, Additional Advocate General Punjab, Muhammad Farrukh Khan, Assistant Advocate General Punjab with Rai Aurangzeb, SI/SHO, PS Model Town Lahore.

Imran Arif Ranjha for ECP with Muhammad Haroon Kasi, Director Law, Ms. Bushra Rasheed, Deputy Director Law ECP and Muhammad Kamran Afzal, RO NA-128 Lahore.

Muhammad Shahzad Shaukat, Barrister Taha Shaukat, Barrister Haris Azmat and Barrister Maryam Hayat for Muhammad Aun Saqlain.

ORDER

ALI BAQAR NAJAFI, J.----Through this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the

petitioner has impugned the order dated 08.02.2024 passed by the Returning Officer (R.O.) with a further prayer to issue a direction to respondents to allow the petitioner to participate in the consolidation of results in accordance with Rule 85 of the Election Rules, 2017 and the so called consolidation carried out in the absence of the petitioner be declared unlawful and the R.O. be also restrained from declaring the final result of NA-128.

2. Brief facts giving rise to the filing of this petition are that the petitioner is a candidate for the National Assembly of Pakistan from NA-128 (Lahore) who contested the elections and claimed to have received maximum votes in the polling held on 08.02.2024 in all polling stations and polling booths. After completion of the polling, he himself went to the office of Returning Officer/respondent No.I to witness the process of consolidation of results from 30 polling stations as envisaged under Rule 85 of the Election Rules, 2017. The petitioner was set to win the elections with a large margin but surprisingly, respondent No.3/SP Model Town, Lahore at 10.45 p.m. evicted him through a letter dated 08.02.2024 issued by respondent No.1 consequent to the incident as few minutes before, some miscreants carrying sticks were allowed to enter the lawn of the Government Girls High School Shuhada-e-APS, E-Block, Model Town, Lahore to interrupt the consolidation of results but the situation was immediately controlled. Then at 11.40 p.m. when he tried to be present at the time pf consolidation of result, he was disallowed to enter into the office of Returning Officer/respondent No.1.

3. Learned counsel for the petitioner contend that under section 92 of the Elections Act, 2017 the Returning Officer is bound to prepare and announce provisional consolidated statement of results of the count of the constituency on receipt of the results of the count from all Presiding Officers only in the presence of the contesting candidates, his election

agents or authorized observers. Adds that he is bound to affix a copy of the provisional consolidated statement of results signed by him at a conspicuous place in his office and send a copy to the Election Commission of Pakistan. Adds that under section 95 of the Elections Act, 2017 immediately after announcement of provisional results, the Returning Officer shall give the contesting candidates and their election agents a notice for a day, time and place for the consolidation of the results and in their presence consolidate the result in the prescribed manner of the count furnished by the Presiding Officers. Adds that the Returning Officer within 24 hours after the consolidation proceedings will send a signed copy to the Commission the consolidated statement of the results of the count and final consolidated result together with results of the count and the ballot paper account and that after the consolidation of results the Returning Officer shall give the contesting candidates present during the consolidation proceedings, a copy of the consolidation statement against proper receipt. Adds that ECP within 14 days from the date of the poll, display the documents on its website. Under Rule 84 of the Election Rules, 2017, the Returning Officer is to prepare the provisional results of the count of the constituency, as required under section 92, on Form-47. Under sub-clause 4, after preparing the provisional consolidated statement of results of the count under sub-rule (1), the Returning Officer shall announce the same in the presence of such candidates, their election agents or authorized observers and shall affix a copy of such results at a conspicuous place in his office for information of general public. A timeframe has been provided in the said rule for sending the copy of Form 47. Under Rule 85 of the Election Rules, 2017 the consolidation of results by the R.O. in Form 48 requires the presence of the contesting candidates and one of their election agents. If any contesting candidates objects to the rejection of the ballot paper, the Returning Officer ill mention "rejection" objected to. But all the procedure is being bypassed, therefore, prays for the relief.

4. Conversely, learned counsel for the Election Commission of Pakistan submits that under section 125 of the Elections Act, 2017 the contesting candidate who is aggrieved by any proceedings relating to the count of votes may file an appeal to the Commission within 03 days from the date of completion of the count of votes by the Returning Officer and that a question which can be settled in an appeal shall not be raised in an election petition or before any court or authority. Learned counsel also objects on the maintainability of the petition and submits that the Returning Officer/respondent has become functus officio after preparation of Form 47 according to which the petitioner obtained 159024 votes whereas Mr. Muhammad Aun Saylain his close candidate from Istehkam-e-Pakistan Party obtained 172576 votes.

5. Arguments heard. Record. Perused.

6. The Election 2024 was announced by the Election Commission of Pakistan on 03.11.2023 before the Supreme Court of Pakistan and initiated the process of election as per schedule scanned below:-

ELECTION COMMISSION OF PAKISTAN
NOTIFICATION

Islamabad, the 16th December, 2023

No.F.2(3)/2023-Const.- Pursuant to the announcement of Poll date by the Election Commission of Pakistan vide Notification No.F.2(3)/2023-Const-Vol-I, dated 3rd November, 2023 as **08th February, 2024,** the Election Commission of Pakistan in terms of Article 224(2) read with Article 254 of the Constitution of the Islamic Republic of Pakistan and Section 57(2) of the Elections Act, 2017 (Act No. XXXIII of 2017) and all other powers enabling it in that behalf, hereby calls upon the electors of the National Assembly and the Provincial Assemblies of Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan to elect their representatives from each of the constituencies to the General Seats and in connection therewith, appoints the following dates for various activities of the election to the aforesaid Assemblies:

ELECTION PROGRAMME

Sl. No.	EVENTS	DATE
1	2	3
1.	**Public Notice** to be issued by the Returning Officer on	19.12.2023
2.	Dates for **filing of nomination papers** with the Returning Officer by the candidates	20.12.2023 to 22.12.2023
3.	**Publication** of names of the nominated candidates	23.12.2023
4.	Last date for **Scrutiny** of nomination papers by the Returning Officer	24.12.2023 to 30.12.2023
5.	Last date for **filing of appeals** against decisions of the Returning Officer rejecting/accepting the nomination papers	03.01.2024
6.	Last date for **deciding of appeals** by the Appellate Tribunal	10.01.2024
7.	**Publication** of revised list of candidates	11.01.2024
8.	Last date for **withdrawal** of candidature and Publication of revised list of candidates	12.01.2024
9.	**Allotment of Election Symbol** to contesting candidates	13.01.2024
10.	**Polling day**	**08.02.2024**

2. The above mentioned Election Programme shall also apply to the Seats Reserved for Women & Non-Muslims in the National Assembly and the Provincial Assemblies of Punjab, Sindh, Khyber Pakhtunkhwa and Balochistan. Last date of filing of separate Priority List for Seats Reserved for Women & Non-Muslims before the Returning Officers is **22nd December, 2023.**

By Order of the Election Commission of Pakistan.

(Muhammad Nasir Khan)
Deputy Director (Const.)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad

[For publication in the Gazette of Pakistan, Extraordinary (Part-II) of today's date]

7. Pursuant thereto, the petitioner filed his nomination papers from NA-128, Lahore and after scrutiny he was allowed to contest the elections on 08.02.2024. His case is that in the form 45 prepared under Rule 84(1) of the Elections Rules, 2017 of all the polling stations a copy of which was given to the petitioner according to which he was winning with the large margin. However, he tried to be present in the office of Returning Officer at the time of preparation of the consolidated statement and the result of count under form 47 under rule 84(1) but he was expelled by the orders of the Returning Officer and the form 47 was prepared at his back and in a clandestine manner showing the opposite candidate as successful. He tried to approach the Returning Officer but he was not traceable. However, to cater such like situation the ECP had already issued a press release on 07.02.2024 according to which the complaints regarding recounting etc. could be filed according to the proposed Standard Operating Procedures (SOPs) uploaded on the official website of the ECP. The SOPs issued by the Election Commission of Pakistan on 07.02.2024 had also shown the schedule and the time of filing such complaints under section 9 of the Elections Act, 2017. A copy of the proposed press release and the proposed Standard Operating Procedures for dealing with the matter of recounting, petitions under sections 8, 9 and 15, 95 and 9 of the Elections Act, 2017 on 08.02.2024 and after that which are scanned below:-


PRESS RELEASE

الیکشن کمیشن آف پاکستان

پریس ریلیز

MEDIA COORDINATION & OUTREACH WING


ELECTION COMMISSION OF PAKISTAN

THE FOLLOWING ARE THE PROPOSED STANDARD OPERATING PROCEDURES (SOPs) FOR DEALING WITH THE MATTERS OF RE-COUNTING, PETITIONS UNDER SECTIONS 8, 9 & 15 AND ALSO PETITIONS OF SECTION 95 & 9 OF THE ELECTIONS ACT, 2017 RELATING TO GENERAL ELECTIONS 2024 AND AFTER THAT.

- Nominated officials of diary & dispatch branch of Law Wing will be deputed in RO section separately along with separate diary register who shall receive the petitions from the RO and give them the numbers which will directly be sent to Law Wing for liasion before the Hon'ble Commission. The nominated officials shall sit within the main RO branch.
- In the diary of the nominated officials of the law Wing so receive the numbered i.e. applications/petitions/counter-rits/appeals, etc. from the Rtgarn party, Advocate which must be in sets of 4 + 8 (one original and 8 copies), having date of filing, with complete annexure of petitions. The litigants may also provide the petition in soft form i.e. PDF and also provide the folders evidence (if convenient) in portable RUSB) the applicant must append their CNIC with the applications/petitions/appeals etc. and must provide their active cellphone and office numbers and contact numbers alongwith the complete addresses of the respondents. If the applications/petition is filed through an Advocate, the power of attorney (vakalatnama) must be available in the file having the complete address and contact number of such advocate along with their official Bar-Card, landline number and official certain number.
- All received applications/petitions etc., should be properly indexed, page numbered and with properly flagged endorsers.
- The nominated officials who shall receive the applications/petitions of section 9 of the Elections Act, 2017 may ensure that the applications/petitions shall be in the related procedure provided in Rules 9(A) and 9(B) of the Elections Rules, 2017.
- The upcoming Saturday and Sunday i.e. 10.02.2024 & 11.02.2024 for Law Wing, Election Wing, Monitoring Wing and Admin Wing) after the conduct of General Elections 2018 is declared as working days.
- The petitions of re-counting of votes under the relevant law (which the litigants/counsel received by the nominated officials of Law Wing shall be placed before the Hon'ble Commission immediately without any delay.

- The Admin Branch will make arrangements/ seats for proper handling of visitors, petitioners, applicants who visits the Hon'ble Commission for filing and hearing of the petitions.

The above mentioned SOPs shall be followed with the true spirit.

This SOPs issued with the approval of the Hon'ble Chief Election Commissioner.

8. The present constitutional petition was filed immediately on 09.02.2024 which was fixed before this court the same day and the Returning Officer was summoned but he did not appear and then later in the day a restraining order was passed directing the Election Commission of Pakistan not to issue form 47. Today Election Commission of Pakistan has contested the matter and the opposite candidate namely, Muhammad Aun Saqlain also appeared who had vehemently argued against the maintainability and the premature stand taken by the petitioner through filing of this constitutional petition, while bypassing the remedies which should have been availed by him, first.

9. In view of the above respective submissions made by the parties, it is of paramount importance that the maintainability of this writ petition be discussed first. Under Article 225 of the Constitution, elections and by-elections held in the National or the Provincial Assembly can be challenged under election law. The power to hold elections by the Election Commission of Pakistan has also been mandated under Article 218(3) of the Constitution according to which it is the duty of ECP to organize and conduct the elections honestly, justly, freely, fairly and in accordance with law. Articles 225 and 218(3) of the Constitution are reproduced as under:

"Article 225

No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of [Majlis-e-Shoora (Parliament)]

Article 218(3)

[(1) For the purpose of election to both Houses of Majlis-e-Shoora (Parliament), Provincial Assemblies and for election to such other public offices as may be specified by law, a permanent Election Commission shall be constituted in accordance with this Article.]

[(2)

(a)

[(b)

(3) It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."

10. The powers to hold elections have been interpreted in various judgments by the apex court. In more recent reported judgment in Zulfiqar Bhatti's case[1], it was held by the apex court that the "word" and the expression to conduct elections used in the above said two Articles has also been explained in Javed Hashmi's case in wide connotations to include the entire election process starting from issuance of election program to declaration of returned candidate including the consolidation of results. Para 9 of the judgment is reproduced as under:-

"9 So far as the first question is concerned, the meaning of the term "election" and of the expression "conduct the election" as used in Articles 218 and 225 of the Constitution has already been expounded by a four-member Bench of this Court in Javaid Hashmi case. The words "election" and "conduct the election". as expounded in that case as well as in the other cases approvingly cited therein, have been used in Articles 218 and 225 of the Constitution in a wide sense to connote the entire election process consisting of several steps starting with the issuance of the election programme and culminating with the declaration of the returned candidate, which include filing of the nomination papers, scrutiny of the nomination papers, withdrawal of the candidates, holding the poll, counting of the votes, consolidation of the result and declaration of the returned

candidates, etc. In this wide sense, the process of conducting the election starts with the issuance of the election programme and stands completed on the publication of the names of the returned candidates in the official gazette."

In Muhammad Raza Hayat Hiraj's case[2], the importance of Javed Hashmi's case was emphasized and it was held that where constitutional provision is expressed in negative form to give jurisdiction to Tribunal pointed by the Election Commission of Pakistan, it oust the jurisdiction of all courts in respect of the elections mattes by giving only one mode of challenge. Relevant extract of para 28 is reproduced as under:-

" . The word "election" in Article 225 of the Constitution was given a wide meaning and war broadly construed. Mr. Justice Muhammad Haleem, CJ (as he then was) authored the majority judgment and after referring to the Indian judgment in Election Commission of India v. Shivaji (AIR 1988 SC 61) held:-

"the world 'election' has been appropriately used in the Ankle with reference to the entire process consisting of several steps taken for its completion which have a bearing on the result of the process."

Proceeding further with the ouster clause, the Court held that:-

"In enacting Article 225 in the Constitution the purpose of Legislature is obvious that it did not contemplate two attacks on matters connected with the election proceedings; one while the election process is on and has not reached the stage of its completion by recourse to an extraordinary remedy provided by Article 199, and another when the election has reached the stage of completion by means of an election petition. It is also of utmost consideration that in the case of two attacks on a matter connected with the election proceedings there is likelihood of there being two inconsistent decisions; one given by the High Court and the other by the Election

Tribunal which is also an independent Tribunal and this could not be the intention of the Legislature. Again the words 'except by an election petition' in Article 225 of the Constitution do not refer to the period when it can be called in question but point to the manner and the mode in which it can be called in question. It is, therefore, that the constitutional provision is expressed in the negative form to give exclusive jurisdiction to the Tribunals appointed by the Election Commissioner and thus to exclude or oust the jurisdiction of all Courts in regard to election matters and to prescribe only one mode of challenge. The purpose is not far to seek as in all democratic Constitutions such as is ours the Legislatures have an important role to play, and, therefore, it is of utmost importance that the election should he held as scheduled without being unduly delayed or prolonged by challenging matters at an intermediate stage." (emphasis is ours)."

In Aurangzeb Khan's case[3], it was clearly held the said Article 225 is not capable of two interpretations in the negative phraseology has to be kept in mind. Para 5 is reproduced as under:-

"9. If we look into the terminology used by the legislature while enacting Article 225 of the Constitution, we find it quite emphatic, clear and unambiguou: not capable of any two interpretations. The very language therefore starts with negative phraseology which most commonly is interpreted for ousting any possibility other than on given in the Article itself That is how any law starting with negative phraseology is interpreted."

In Muhammad Hussain Babar's case[4], the question of consolidation of results as well as recounting can be agitated through election petition and not by invoking the constitutional jurisdiction of this court. Para 9 is reproduced as under:-

"9. The grievance of the petitioner, notwithstanding the question of jurisdiction of the election authorities and High Court, was confined only to the extent of consolidation of result and the recount of the rejected votes, therefore, we without commenting upon the merits of the case in either way, dispose of this petition with direction that tithe petitioner avails the remedy of election petition under section 52 of the Representation of the People Act, 1976, before the Election Tribunal established in terms of Article 225 of the Constitution, the Tribunal at the first instance will consider the question relating to the recount or count of rejected votes, as the case may be as preliminary issue and without decision of the same in possible short time, will not proceed on merits. With the above observation, this petition stands disposed of"

In a more recent judgment of Jameel Qadir's case[5], it was categorically held that the extra ordinary jurisdiction of this court cannot be reduced to an ordinary jurisdiction of the High Court as there will be disputed question of facts which cannot be resolved. Para 13 is reproduced as under:-

"13. The writ jurisdiction of the High Court cannot be worn out as a solitary way out or remedy for aerating all sufferings and deprivations. The doctrine of exhaustion of remedies stops a litigant from pursing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The underlying principle accentuated in this doctrine is that the litigant should not be encouraged to circumvents or bypass the provisions assimilated in the relevant statute. The extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. It Is a well settled exposition of law that disputed questions of facts cannot be entertained an adjudicated in the writ jurisdiction; The expression "adequate

remedy" signifies an effectual, accessible, advantageous and expeditious remedy."

The ground before the Election Commission of Pakistan for recounting etc. would be a grave illegality or violation materially effecting the results of elections either in some polling stations or all the polling stations of the constituency as held in Ali Asjad Malhi's case[6]. The single Bench of this court has also followed the above dicta in Muhammad Salman's case[7] and Sohail Shahzad's cases[8].

11. The Election Commission of Pakistan has also placed on record the order passed in Case No.7(2)12024-LAW-II titled Qaisara Elahi wife of Pervaiz Elahi, Lahore v. District Returning Officer NA-64 Gujrat and another order dated 10.02.2024 passed by the Election Commission of Pakistan, Case No.F.7(12)/2024-Law-111 titled "Mian Muhammad Nawaz Sharif through Special Attorney Jehangir Khan Jadoon Advocate, NA-15, Mansehra and Torgarh v. Returning Officer, NA-I5, Tchsil and District Mansehra dated 11.02.2024, Case No.F7(9)/2024-Law-III titled "Syed Muhammad Ali Bokhari v. Returning Officer, NA-48, (ICT-III), Islamabad dated 11.02.2024 and Case No.F7(9)12024-Law-III titled "Muhammad Shoaib Shaheen, House No.34-C, G-9/3, Islamabad v. The District Returning Officer, Islamabad etc." in which 03 members of Election Commission of Pakistan had not only issued the notices but also granted the restraining orders to argue that Election Commission of Pakistan is fully cognizant of its responsibilities which it wants to discharge promptly.

Learned counsel for the petitioner on the strength of Dr. Liaqat Ali Khan's case[9] argued that notwithstanding the right of appeal the act of Returning Officer of preparing of form 47 in the absence of the petitioner was an illegal exercise of the power, therefore, can be questioned in a constitutional jurisdiction. However, in the same judgment at page 1643 it was held that if there was no ordinary

remedy available, the extra ordinary remedy of the constitutional jurisdiction could be invoked. Relevant extract is reproduced as under:-

" ..It is settled law that if a wrong done by a public functionary to a person cannot be undone through an ordinary remedy, the extraordinary remedy of writ petition can be invoked....."

However, in the present case the remedy of filing a representation under sections 8, 9 and 15, 95 and 9 of the Elections Act, 2017 read with Article 218(3) is an adequate remedy available to the petitioner.

13. Besides, the contesting parties have taken divergent stands in respect of associating the petitioner, a candidate, in the consolidation process; whether Form 47 was or not manipulated; consolidation of results in form 47 was made in the absence of the petitioner or not; whether or not receiving/issuing notice to the petitioner was prior to the preparation of form 47 are all disputed questions of fact, which cannot be resolved in the exercise of constitutional jurisdiction under Article 199 of the Constitution. However, at this stage, it will be important to mention that after preparation of form 47, a notice is required to be issued for preparation of Form 48 under the Elections Act, 2017 and the Rules made thereunder. The case of the Election Commission of Pakistan is that the notice will be issued to the petitioner prior to the preparation of form 48. This also brings this court to the following conclusions:-

i) This Constitutional Petition is not maintainable and is therefore dismissed.

ii) The petitioner may always file a representation under sections 8, 9, 15, 95 of the Elections Act, 2017 read with Article 218(3) of the Constitution of Islamic Republic of Pakistan, 1973 before the Election Commission of Pakistan.

iii) The consolidation of the result whether made in presence or absence of the petitioner will be resolved by the Election Commission of Pakistan while deciding the matter, if agitated before ECP. A prompt decision by the ECP will be in the spirit of Articles 218(3) and 224 of the Constitution by strictly complying the provisions of Elections Act, 2017.

14. In view of the reply submitted by the Returning Officer in which he has tendered unconditional apology and has narrated the fact that due to the hectic labour during the election of 03 days, he was exhausted and could not appear in time.

MH/S-14/L **Petition dismissed.**

2024 C L C 1558

[Lahore]

Before Ali Baqar Najafi, J

PERVEZ AKHTAR----Appellant

Versus

ALI SALMAN and another----Respondents

Election Appeal No.24381 of 2023, decided on 14th April, 2023.

Elections Act (XXXIII of 2017)---

----S.63---Constitution of Pakistan, Art. 63 (1)(d)(e)(k) & (m)---General elections for seat of Provincial Assembly---Disqualification of candidate---Office of profit---Nomination papers, acceptance of---Appellant / candidate contented that respondent / candidate was Chairman TEVTA and without completion of two years he could not contest elections---Plea raised by respondent / candidate was that he was not holding office for profit---Validity---Any person was qualified under Art. 63 (1)(m) of the Constitution, who was not in service of Pakistan, if he had held an office which was not whole time office remunerated either by salary or by fee---If Chairman TEVTA was not drawing any salary or fee, he could contest elections---Respondent / candidate was appointed Chairman TEVTA on probono basis and was not holding office of profit i.e. not a whole time office remunerated either by salary or kind as mentioned under Art. 63 (1)(m) of the Constitution---Respondent / candidate was not disqualified under Art.63(1)(d)(e)(k) of the Constitution to contest election---High Court declined to interfere in the order passed by Returning Officer accepting nomination papers of respondent / candidate---Appeal was dismissed, in circumstances.

Mirza Muhammad Tufail v. District Returning Officer and others PLD 2007 SC 16; Shahid Nabi Malik v. Muhammad Ishaq Dar and 5 others 1996 MLD 295; Ghulam Mustafa v. A.S.J. Chunian and others PLD 2016 Lah.

25 and Ghazanfar Ali v. Appellate Authority/Additional District Judge, Sahiwal and others PLD 2016 Supreme Court 151 ref.

Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others PLD 1997 SC 32 distinguished.

Muhammad Naseem Turyali and others v. Ghulam Sarwar Khan and others PLD 2005 SC 570; Javed Ibrahim Paracha v. Federation of Pakistan and others PLD 2004 SC 482; Tariq Hussain v. Sarfraz Ahmed and 4 others 2013 CLC 1620 and Muhammad Nadeem v. Muhammad Mumtaz Akhter Kahloon and others 2013 CLC 1796 rel.

Muhammad Rizwan-ul-Hassan and Hamza Irshad for Appellant.

Abid Saqi for Respondent No.1.

Hafiz Adeel Ashraf, Assistant Law Officer, ECP.

ORDER

ALI BAQAR NAJAFI, J.----Through this appeal under section 63 of Elections Act, 2017 the appellant has challenged the decision of Returning Officer PP-141, Sheikhupura-(VII) dated 7-4-2023 whereby nomination papers submitted by respondent No.1 for the General Elections in the Provincial Assembly in Constituency PP-141 was approved.

2. Briefly, the case of the appellant is that the appellant being an enrolled voter of the said Constituency filed objections to the nomination papers submitted by respondent No.1 in the said constituency to contest the elections to be held on 13-5-2023, notwithstanding the fact that he remained Chairperson of Technical Education and Vocational Training Authority (TEVTA) from 06.08.2019 to 22.04.2022 when he resigned from his office.

3.(sic) According to the learned counsel, he is directly hit by Article 63(1)(k) of the Constitution which mandates that such person should contest the elections after the expiry of two years.

3. Learned counsel for the appellant refers to Technical Education and Vocational Training Authority Act, 2010 to argue that the Chairperson is appointed under Section 6(4)(a) of the Act ibid as Chief Executive of the Authority and runs the administrative affairs and that respondent No.1 has passed relevant orders in his capacity as Chief Executive in respect of transfer and postings. Adds that under Section 21 of the Pakistan Penal Code, a Chairman is a public servant who rendered the services of more than 3 months as the Pattern in Chief of TEVTA, therefore, places reliance upon Mirza Muhammad Tufail v. District Returning Officer and others (PLD 2007 Supreme Court 16), Shahid Nabi Malik v. Muhammad Ishaq Dar and 5 others (1996 MLD 295) and Ghulam Mustafa v. A.S.J. Chunian and others (PLD 2016 Lahore 251).

4. Conversely, learned counsel for respondent No.1 submits that respondent No.1 was appointed as Chairman TEVTA but on pro bono basis without any perks and privileges and, therefore, he was not holding any office for profit in the said organization and as such he is not hit by Article 63(1)(k) of the Constitution but is entitled to the benefit of Article 63(1)(m) of the Constitution. Places reliance also upon Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others (PLD 1997 Supreme Court 32), Ghazanfar Ali v. Appellate Authority/Additional District Judge, Sahiwal and others (PLD 2016 Supreme Court 151) and an unreported judgment of this Court passed in W.P. No. 26257 of 2017 decided on 08.02.2017 to argue that impugned order is legal and does not require any interference in the appellate jurisdiction of this Tribunal.

5. Arguments heard. File perused.

6. Admittedly, the respondent No.1 was appointed on 06.08.2019 as Chairman under Section 6(1)(2) of the Punjab Technical Education and Vocational Training Authority Act, 2016 by the competent authority against a vacant post as probono who continued to work as such until 03.06.2022 when he resigned from his office. As per the certificate, issued

by the D.G. TEVTA dated 15.03.2023 he had not drawn any salary or allowances. Under Punjab Technical Education and Vocational Training Authority Act, 2010 the Authority defined under Section 4 is consisted of a Chairman and 7 to 15 members. The other members are nominated from the government who serve during the pleasure of the government. Under Section 6 the Chairman is appointed for 5 years, and could resign before the expiry of that period. He is the Chief Executive of the Authority and is responsible for the management, administration and day-to-day affairs. Under Section 14 the fund of this authority consists of the budgetary release from the Government, a Federal Government, grants, donation from the government or from any person, local, national or international organization or agency, a fee, cheques, gifts etc. Under Section 21 the Chairperson is a public servant within the meaning of Section 21 of Pakistan Penal Code. Under Section 24, it could frame regulations for efficient performance of its functions.

7. It is also not denied that respondent No.1 submitted the nomination forms to contest the elections in Constituency PP-141, Sheikhupura-VII for Provincial Assembly Punjab, 2023 after resigning from the office of Chairman addressed to Secretary Industries, Commerce, Industrial and Skill Development Department, which means that on the date of scrutiny he was no more working as Chairman.

7(sic) Much emphasis has been laid down by the appellant to Article 63(i)(k) of the Constitution of Islamic Republic of Pakistan, 1973 to argue that since the respondent No.1 remained in the service of Statutory body, a body owned and controlled by the government having controlling share or interest, therefore, he can contest elections only after expiry of 2 years period of his resignation. Article 63(1)k) is reproduced as under:-

""63. (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if-

(a) ..

(b) ..

(c) ..

(d) ..

(e) ..

(f) ..

(g) ..

(h) ..

(i) ..

(j) ..

(k) he has been in the service of Pakistan or of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest, unless a period of two years has elapsed since he ceased to be in such service; or"

8. Here learned counsel for respondent No.1 argues that "Service" means employment for remuneration and, therefore, does not include a probono appointee. He gives reference to Article 63(1)(d) to argue that he did not hold the office of profit in the service of Pakistan, therefore, is not disqualified from being elected as a member of Parliament. Article 63(1)(d)(e) reproduced as under:-

"63. (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if-

(a) ..

(b) ..

(c) ..

(d) he holds an office of profit in the service of Pakistan other than an office declared by law not to disqualify its holder; or

(e) he is in the service of any statutory body or any body which is owned or controlled by the Government or in which the Government has a controlling share or interest; or

He further argues that respondent No.2 was not in service, in stricto sensu of a statutory body.

Here reference is given to case titled Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others (PLD 1997 Supreme Court 32) to argue that not holding an office of profit in the service of Pakistan is distinguished from merely in service of Pakistan, hence the former is not a disqualification from being elected as a member of Parliament. Relevant extract from para 6 is reproduced as under:-

" .However, if the Legislature intended that a person who is in the service of Pakistan but does not hold any office of profit also stands disqualified in the like manner as a person holding office of profit, it could have provided so. The fact that the Legislature while re enacting with amendments sub- clause (e) of clause (1) of Article 63 ibid, only provided for disqualification of persons in the service of a statutory body or any body which is owned or controlled by Government or in which the Government has a controlling share or interest at the time of election, from being elected or becoming a member of the Parliament, is indicative of the fact that the Legislature did not intend to enlarge the categories of persons mentioned in sub-clause (d) ibid any further. The Legislature, therefore, while providing in sub-clause (k) of clause (1) of H Article 63 ibid, that the person who ceases to hold office in the service of Pakistan, or a statutory body or any body owned or controlled by the Government or in which the Government has controlling share or interest, will not be eligible for election or being a member of Parliament for a period of two years from the date he ceases to hold such office, had in its contemplation the two

categories of disqualified persons mentioned in sub-clauses (d) and (e) ibid. The Legislature having chosen not to disqualify a person in the service of Pakistan who does not hold any office of profit, it would be absurd to attribute to the Legislature that it intended to disqualify a person, who was in the service of Pakistan and did not hold any office of profit, from being elected to the Parliament or from becoming its member for a period of 2 years since he ceased to hold such office. We are, therefore, of the view that sub-clause (k) of clause (1) of Article 63 ibid, disqualified only those persons for a period of 2 years from the date they ceased to hold their office who were either holding an office of profit in the service of Pakistans

However, what is the office of profit. The same judgment clarifies that if there is no evidence to show that office was office of profit reimbursement of pocket expenses would not bring such person within the ambit of office of profit.

What is service of Pakistan is defined in Article 20 of the Constitution which is reproduced as under:-

260. (1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say,- "service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of 1[Majlis -e-Shoora (Parliament)] or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, 2[Attomey-General, 3[Advocate General,] Parliamentary Secretary] or 4[Chairman or member of a Law

Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;"

Chairman TEVTA does not appear to be covered in the definition of the service of Pakistan.

9. A reference is also given to Muhammad Naseem Turyali and others v. Ghulam Sarwar Khan and others reported as (PLD 2005 Supreme Court 570) to argue that service of a statutory body or a body which is controlled, owned by government or having controlling share or interest is not a civil service and this concept is not circumscribed by any salary or fee. However, this observation was given in respect of Management Trainee, an employee in the Sui Gas Company. Para 9 is reproduced as under:-

"9. The Expressions "service of any statutory body or anybody which is owned or controlled by the Government or in which the Government has a controlling share or interest" should not be confused with "Civil Service" or a "Civil Servant". It is not circumscribed by any concept of salary or fee. It connotes any service, post or office in the statutory body regulated by the Rules or Regulations framed by the competent authority. The only rider is that the said statutory body should neither be owned or controlled by the Government. It is nobody's case that the Company is not owned and controlled by the Federal Government. Appellant Muhammad Naseem Turyali was appointed as Management Trainee and he was in the service of the Company which was owned by the Federal Government and thus he was squarely hit by Article 63(1)(e) and (k) of the Constitution of Islamic Republic of Pakistan."

10. However, Article 63(1)(m) is most relevant which qualifies a person, not in the service of Pakistan, if he holds an office which is not whole time office remunerated either by salary or by fee which means that if Chairman

TEVTA was not drawing any salary or fee, he could contest elections. Article 63(1)(m) is reproduced as under:-

"63. (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if-

(a) ..

(b) ..

(c) ..

(d) ..

(e) ..

(f) ..

(g) ..

(h) ..

(i) ..

(k) ..

(l) ..

(m) he holds any office of profit in the service of Pakistan other than the following offices, namely :-

(i) an office which is not whole time office remunerated either by salary or by fee;

(ii) the office of Lumbardar, whether called by this or any other title;

(iii) the Qaumi Razakars;

(iv) any office the holder whereof, by virtue of such office, is liable to be called up for military training or military service under any law providing for the constitution or raising of a Force; or

11. The meaning of probno as held in Javed Ibrahim Paracha v. Federation of Pakistan and others (PLD 2004 Supreme Court 482), adopted

from Black Law Dictionary, Chamber Dictionary and Oxford Dictionary generally means for public good or for welfare of the whole being or involved un-compensated legal services performed especially for public good. It involves a general welfare of the public or a whole, and has a stake especially an interest that justifies government regulations.

11. Here reference can also be given to Tariq Hussain v. Sarfraz Ahmed and 4 others (2013 CLC 1620) as in similar situation permission was granted to contest elections 10 years ago. Likewise in Muhammad Nadeem v. Muhammad Mumtaz Akhter Kahloon and others (2013 CLC 1796) the Chairman was in service when the scrutiny was conducted, hence disqualified under Section 63(1)(k) of the Constitution.

12. In view of the above discussion, it can be safely concluded that the Chairman TEVTA appointed as probono was not holding the office of profit not a whole time office remunerated either by salary or kind as mentioned under Article 63(1)(m) and was not disqualified under Article 63(1)(d)(e)(k), thus can contest elections of PP-141, Sheikhupura -(VII) in the forthcoming elections.

MH/P-4/L **Appeal allowed.**

2024 M L D 1233

[Lahore]

Before Ali Baqar Najafi, Shahid Bilal Hassan, and Jawad Hassan, JJ

AHSAN ULLAH---Petitioner

Versus

MUHAMMAD NASIR CHEEMA and 3 others---Respondents

W.P. No. 2816 of 2024, decided on 15th January, 2024.

Elections Act (XXXIII of 2017)---

----S.173---Election dispute---Nomination papers, acceptance of---Omission of substantial nature---Meaning---Weapon, non-disclosure of---False declaration---Scope---Petitioner / objector assailed nomination papers of respondent / candidate on the plea that he made false declaration by not disclosing weapons in his ownership and that his company was a bank defaulter---Validity---Non-disclosure of licensed weapon of both prohibited as well as non-prohibited bores was not an omission of substantial nature as official record duly certified existence of such fact---Furthermore a settlement agreement was reached in High Court whereby date of discharge of liability of bank was extended to March 2025---Discrepancies in land holding and income could not be ascertained with expenditure in summary proceedings and could be agitated in post-election scenario---High Court declined to interfere in order passed by Election Tribunal accepting nomination papers of respondent---Constitutional petition was dismissed, in circumstances.

Muhammad Rizwan-ul-Hassan for the Petitioner.

Imran Arif Ranjha for ECP with Muhammad Haroon Kasi, Director (Law) ECP and Ms. Bushra Rasheed, Deputy Director (Law) ECP.

ORDER

ALI BAQAR NAJAFI, J.---Through this Constitutional petition under Article 199 of the Constitution of Islamic of Pakistan, 1973 petitioner/objector has challenged the order dated 09.01.2024 passed by the learned Election Tribunal whereby the appeal filed by respondent No. 1 against rejection of his nomination papers was allowed.

2. The facts of the case are that respondent No.1 filed his nomination papers for contesting the elections for the constituency of PP 59 Gujranwala in which the petitioner filed objection. After the process of scrutiny, the nomination papers of respondent No.1 were rejected by the Returning Officer vide order dated 30.12.2023, which is reproduced as under:

> "In response to public notice dated 19-12-2023 Mr. Muhammad Nasir Cheema has filed his nomination papers to undersigned through his authorized representative Mr. Nadeem Ashraf Khokhar on 22.12.2023.
>
> Meanwhile the particulars of the candidate had been shared with Election Commission online facilitation center for further Inquiry.
>
> Scrutiny of nomination papers was conducted on 28.12.2023 as per the given schedule. During the process of scrutiny, objections raised by the applicant were examined in the light of the available records/ documents. Moreover, a hearing notice was served to the candidate to provide a fair opportunity of hearing. The counsel of the candidate appeared before the undersigned on the date of scrutiny. He was heard at length and record was perused. He was given a reasonable opportunity of hearing to defend the allegation leveled against the candidate.

On the basis of data provided by ECP Online Facilitation Center and objections raised by the applicant, following discrepancies were found in the nomination papers of the said candidate as prescribed under the Elections Act 2017.

1. The candidate has deliberately concealed the details of weapons. He has Eleven (11) arms weapons in his possession, out of which 8 Non-Prohibited Bore (NPB) Arms Weapons were issued by home department, Government of Punjab and rest were issued by Ministry of Interior Islamabad. He has not mentioned the details of weapons in his nomination papers.

2. As per the letter PP-59-0010/No. BCPD/CPU-01/122/34101-9497912-5/2023 dated 24-12-2023 of State Bank of Pakistan, he owned a company named Ittefaq Rice Mills which is defaulter of 48.568 million rupees of Albaraqa Islamic Bank.

3. On the perusal of record there is a discrepancy in land holding and its income of years 2020-2021, 2021-2022, 2022-2023.

Keeping in view all above, I Touseef Hassan, Returning Officer PP. 59 Gujraranwala, after the perusal of record available, hereby reject nomination papers of Mr. Muhammad Nasir Cheema candidate under sections 62, 112 and .173 of Elections Act 2017."

3. However, the appeal filed by respondent No.1 was allowed by the learned Election Tribunal vide judgment dated 09.01.2024. Paras Nos. 4 to 8 of the order is reproduced as under:-

"4. Arguments have been heard. Record produced by the Returning Officer has been perused.

5. As regards the first objection, it is case of the appellant that he did not conceal any document regarding weapons and all the documents were attached with the nomination papers, however, the

same were misplaced due to fault on the part of the Returning Officer. It is further claimed that copies of all concerned licences are attached to the titled appeal.

In somewhat similar situation it has been held by this Tribunal while allowing Election Appeal No.01 of 2024 that since the error upon which the said ground for rejection of nomination papers has been structured, admittedly is not of substantial nature and the Returning Officer should have acceded to the request made on behalf of the appellant for remedying the said defect. While holding so, reference has been made to the case of Ch. Muhammad Ashraf v. Malik Muhammad Muzaffar Khan and others (2022 CLC 2045) wherein it has been held us under:-

"Plain reading of above said sanction reveals in unequivocal terms that Returning Officer shall not reject a nominaion paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number ino the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the corresponding entries in the electoral roll.

Therefore, the appellant cannot be disfranchised on the basis of said objection.

6. As far as second abjection is concerned, it is case of the appellant that he is not owner of Ittefaq Rice Mills as is reflected from partnership deed 14.09.2005 between Jamal Nasir Cheema, Akhtar Jameel and Mst. Sabeeri Naveed, available on the file. It is also claimed that in a suit filed by Al-Baraka Bank (Pakistan) Limited against M/s Ittefaq Rice Mills, etc. before Lahore High Court, Lahore, on 04.12.2023 a copy of settlement agreement dated 14.07.2023 was

produced on the basis of which decree was passed. The said order is also annexed with the titled appeal. It is further contended that according to a letter dated 27.12.2023 issued by the Al-Baraka Bank to Ittefaq Rice Mills, available on the file; the due date of requisite liability has been extended to March, 2025, The said documents prima facie do not support the objection raised by the Returning Officer and at this stage of summary proceedings it cannot be determined that the appellant has any concern with the said Rice Mills or anything is liable against him in that regard. Thus, the said objection is not sustainable.

7. So far as the third objection is concerned, the alleged discrepancies in land holding and its income have not been specifically pointed out in the impugned order. Even otherwise, at this stage of summary proceedings the said practice cannot be undertaken rather the same is a subject` matter of post- election proceedings. The said objection is also not sustainable.

8. In view of the foregoing, this appeal is allowed and impugned order dated 30.12.2023 of the Returning Officer is set aside. Consequently, the nomination papers of the appellant stands accepted and his name shall be duly reflected in the list of validly nominated candidates for PP-59, Gujranwala-I for the (General Elections, 2024."

3. (sic) After hearing the learned counsel for the petitioner, learned counsel for the ECP assisted by the ECP officials and perusing the files, it is straightway observed that the learned appellate tribunal has rightly held that the non-disclosure of the licensed weapons of both prohibited as well as non-prohibited bores, is not an omission of a substantial nature as the official record duly certifies the existence of this fact. It might be an overlook as held by the appellate tribunal. Besides, a settlement agreement

admittedly reached in this Court on 04.12.2023 whereby the date of discharge of the liability has been extended to March, 2025. The third objection was repelled by observing that discrepancies in land holding and income cannot be ascertained with expenditure in the summary proceedings, and therefore, can be agitated in post-election scenario.

4. In this view of the matter, this writ petition has been found meritless and is, therefore, dismissed.

MH/A-27/L **Petition dismissed.**

2024 M L D 1257

[Lahore]

Before Ali Baqar Najafi, J

Sardar MUHAMMAD AWAIS NAKAI---Appellant

Versus

Rana SIKANDAR HAYAT and another---Respondents

Election Appeal No. 24488 of 2023, decided on 14th April, 2023.

Elections Act (XXXIII of 2017)---

----Ss. 62 & 231---Election for seat of Provincial Assembly---Nomination papers, acceptance of---Bank defaulter, allegation of---Candidate for general electionsfiled appeal before the Election Appellate Tribunal against the acceptance of the nomination papers submitted by respondent (opposing /contesting candidate)--- Objection ofthe appellant was that the respondent deliberately ,with mala fide intention , withheld the required information by disclosing only one lac as bank loan whereas he was defaulter of Rs. 9.90 million --- Validity --- Record revealed that in the form submitted by respondent in the column of LIABILITIES, "Rs. 1 Million loan was mentioned--- In the impugned order passed by the Returning Officer it was observed that the candidate was not declared as defaulter by any institution and that the deficiencies pointed out by the objector were not substantial in nature---Stance of the respondent was that his wife was independent and an affidavit to said extent was produced before the Returning Officer who, of course, had to satisfy himself through an affidavit--- As per a certificate issued by the concerned bank, about half of the loan (Rs. 9.90 million) was already paid as 1st installment, whereas 2nd installment and the remaining amount would be

paid/adjusted on two promised dates of near future---After settlement of the loan, respondent would not be considered as a defaulter ---Appeal filed by the candidate against acceptance of nomination papers of opposing / contesting candidate, was dismissed, in circumstances.

Rana Intezar for the Appellant.

Imran Arif Ranjha for ECP.

Hafiz Adeel Ashraf, Assistant Law Officer, ECP.

Muhammad Rizwan-ul-Hassan and Hamza Irshad for respondent No. 1.

ORDER

ALI BAQAR NAJAFI, J.--- This appeal under Section 63 read with Section 231 of Elections Act, 2017 is directed against the order dated 22.03.2023 whereby the nomination papers submitted by respondent No.1 were accepted.

2. Briefly, the facts giving rise to filing of this appeal are that the appellant is the registered voter of PP-181 (Kasur-VIII) and is also the candidate for the seat of Member Provincial Assembly from the same Constituency. The respondent No.1 submitted nomination papers for the General Elections of the Provincial Assembly from the same constituency wherein he deliberately withheld the required information with a mala fide intention and, therefore, he raised the objection which were rejected, hence this appeal.

3. Learned counsel for the appellant contends that respondent No.1 disclosed in Form-B only One Lac as bank loan whereas he was defaulter of Rs. 9.90 Million of HBL Phool Nagar, Branch and in clause "D" of the affidavit he did not furnish the correct information.

4. Conversely, learned counsel for respondent No.1 submits that the amount due was settled and, therefore, it could not be termed as default. While referring to the tax return, it is pointed out that Rs. 9,884,546/- was the receivable loan from HBL of Account No. 7902507803 and placed reliance upon Umar Khan v. Returning Officer NA-19, N.W.P., District Haripur/Additional District and Sessions Judge, Haripur and another (2003 MLD 222).

5. Arguments heard. File perused.

6. In the form submitted by respondent No.1 in the column of LIABILITIES, "Rs. 1 Million" loan was mentioned. In the impugned order dated 22.03.2023 it was observed that the candidate was not declared as defaulter by any institution and that the deficiencies pointed out by the objector was not substantial in nature. The stand of respondent No.1 is that his wife is independent and an affidavit to this extent was produced before respondent No.2 who, of course, has to satisfy himself through an affidavit. As per certificate dated 13.03.2023 issued by HBL, Rs. 9.90 Million against Pass Book from HBL Phool Nagar Branch, 1st installment of Rs. 4.50 Million was paid on 13.03.2023, 2nd installment of Rs. 4.50 Million will be paid on 15.05.2023 and the remaining amount will be adjusted on 15.07.2023. After settlement of the loan, respondent No.1 would not be considered as a defaulter.

7. In this view of the matter, this appeal is meritless and is, therefore, dismissed.

MQ/M-35/L **Appeal dismissed.**

2024 P Cr. L J 1190

[Lahore (Multan Bench)]

Before Ali Baqar Najafi, J.

Dr. ATIA NAZ---Petitioner

Versus

MUHAMMAD ILYAS SHAH and others---Respondents

Criminal Revision No. 37080 of 2022, decided on 8th December, 2022.

Penal Code (XLV of 1860)---

----S. 499, Eighth Exception---Criminal Procedure Code (V of 1898), Ss.265-K, 435, 439 & 561-A---Defamation---Essential ingredients/ aspects---Mens rea---Good faith---Scope---Petitioner was aggrieved of her summoning in a private complaint proceedings---Assertion of the respondent/complainant was that the petitioner in different documents, including habeas/guardian petition for a, had alleged that he (complainant) was a Ahmadi/Qadiani by faith whereas he was a Barelvi Muslim , thus petitioner had defamed him by causing false imputation---Validity---Essential ingredient of defamation as per S.499 of the Penal Code, 1860 (P.P.C.) is mens rea, therefore according to the Eighth Exception to S.499, P.P.C., accusation levelled in good faith before a lawful authority for protection of right or interest can not be defamation---When the statement is made for public good and to safeguard the interest of its maker, without any malicious motive, offence of defamation is not made out---However, for summoning an accused person, the facts of the case should only be discussed prima facie and, therefore, the inherent powers of the High Court are to be sparingly exercised to prevent the abuse of the process of law---Some important questions must not be lost sight of: firstly, whether the faith of father does not determine the faith of the child in normal circumstances; secondly, in the wake of total denial of a particular faith by a person, whether a Family Court can issue any such declaration within the

scope of Family Courts Act, 1964 , while determining welfare of the minor in deciding his custody petition; thirdly, whether the allegations before the judicial authorities are in good faith; fourthly, whether the Sessions Court is not the forum to determine the criminal consequences of calling someone with some faith other than his own---However, all said questions will have to be determined by the Sessions Court, once the same may be brought to its (Court's) notice through an application under S.265-K, Cr.P.C---Since the petitioner had already entered appearance before it (the Court), criminal revision was disposed of accordingly.

Mst. Shash Begum and others v. Bashir Ullah and others 2013 PCr.LJ 1737; Aun Saieed Hashmi and another v. The State and 2 others PLD 1976 Kar. 706; S. Dawood Shah v. S. Noor Shah and another 1986 PCr.LJ 1689; Sheikh Mahmood Saeed and others v. Amir Nawaz Khan and another 1996 SCMR 839; Muhammad Bux v. Sub-Divisional Magistrate, Sub-Division Matli, District Badin and another PLD 1999 Kar. 366; Mirza Ali Khan v. Sessions Judge, Peshawar and another 2002 SCMR 1461; Lt. Col. (Retd.) Najam Hameed v. The State and another 2007 YLR 2126 and Muhammad Sarwar Khan v. Sub. (Retd.) Muhammad Ashraf Khan 1987 PCr.LJ 1439 ref.

Muhammad Amin Akhtar for the Petitioner.

Ijaz Ahmad Pannun, Deputy District Public Prosecutor for the State.

Rana Zulfiqar Ali Khan for the Respondent.

ORDER

ALI BAQAR NAJAFI, J.----Through this criminal revision under sections 435, 439 Cr.P.C., the order dated 12.03.2022 passed by learned Additional Sessions Judge, Lahore has been challenged whereby the petitioner was summoned in a private complaint to face trial under section 499 P.P.C.

2. Brief facts giving rise to the filing of this criminal revision are that the respondent No.1 filed a private complaint alleging that the petitioner through different documents including habeas petition, guardian petition, etc. at different fora has alleged that the respondent is a Ahmadi/Qadiani by faith whereas he is a Barelvi Muslim and in this way petitioner has defamed him by causing false imputation. Besides, allegations of extending threats to the respondent were also levelled against the petitioner and others. After recording the cursory statements, the petitioner was summoned to face trial, hence this criminal revision.

3. Arguments heard. Record perused.

4. Relevant Eighth Exception of section 499 P.P.C. is reproduced as under:-

> "499. Defamation. Whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or" publishes any imputation concerning any person intending to harm. or knowing or having reason to believe that such imputation will harm the reputation of such person is said except in the cases hereinafter excepted, to defame that person.
>
> .....
>
> .....
>
> Eighth Exception. Accusation preferred in good faith to authorked person. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation."

4. The essential ingredients of section 499 P.P.C. Defamation is mens rea and, therefore, accusation levelled in good faith before a lawful authority for protection of his right or interest cannot be a defamation. When the statement was made for public good and to safeguard the interest of its maker, without any malicious motive, offence of defamation was not

made out. However, it was observed that for summoning an accused person, the facts of the case should be only discussed prima-facie and, therefore, the inherent powers of this court are to be sparingly exercised just to prevent the abuse of the process of law[ ]

5. In the context of above discussed legal position, some important questions must not be lost sight of: Firstly, whether the faith of father does not determine the faith of the child in normal circumstances. Secondly, in the wake of total denial of a particular faith by a person, whether a family court can issue any such declaration, within the scope of the West Pakistan Family Courts Act, 1964 while determining the welfare of the minor in deciding his custody petition. Thirdly, whether the petitioner is alleged to have imputed the allegations against the said respondent before the judicial authorities in good faith. Fourthly, whether the court of Additional Sessions Judge is not the forum to determine the criminal consequences of calling someone with some faith other than his own.

6. However, all these questions will have to be determined first by the learned Additional Sessions Judge once these legal arguments and relevant and essential facts are brought to the notice of the learned trial court through filing an application under section 265-K Cr.P.C. since the petitioner has already entered appearance there. Admittedly, no such application was filed before the said court, therefore, petitioner, if so advised, may file said application. With this observation, the instant criminal revision stands Disposed of.

MQ/A-24/L **Order accordingly.**

2024 P L C (C.S.) 448

[Lahore High Court]

Before Ali Baqar Najafi, J

Syed DANISH HUSSAIN SHAH

Versus

PROVINCE OF PUNJAB and others

Writ Petition No.72701 of 2017, decided on 4th March, 2022.

Pakistan Prison Rules, 1978---

----Rr.1042(c), 1045, 1046 & 1047---Punjab Prisons Department Service Rules, 2010---United Nations Convention on the Rights of Persons with Disabilities, 2007, Art. 1---Constitution of Pakistan, Arts. 18 & 199---Constitutional petition---Recruitment criteria---Eyesight---Petitioner was a candidate for the post of Assistant Superintendent Jail but he was rejected for not having 6 / 6 eyesight without glasses---Validity---If 6/6 eyes sight (without glasses) was considered a permanent disability of candidates then they should b e treated as such---If it was not, then such persons were to be treated at par with other human beings as normal---Nature of job of Assistant Superintendent Jail did not require perfect eyes sight as the official was not required to fulfill any responsibility without power glasses with slight weakness of eyes---High Court set aside condition of 6/6 eyes sight (without glasses) as mandatory for Assistant Superintendent Jail, as such condition was violative of Art. 18 of the Constitution---High Court declared that petitioner was entitled to be considered having 6 / 6 eyes sight with glasses and a sight weakness without glasses if otherwise found eligible for the post in question---Constitutional petition was allowed accordingly.

Khadim Hussain v. Secretary, Ministry of Human Rights, Islamabad and others PLD 2020 Isl. 268; Abdul Wahab and others v. HBL and others 2013 SCMR 1383; Government of Pakistan through Secretary, Ministry of Commerce and another v. Zamir Ahmad Khan PLD 1975 SC 667; Arshad

Mehmood and others v. Government of Punjab through Secretary, Transport Civil Secretariat, Lahore and others PLD 2005 SC 193 and Messrs Al-Haram Travels and Tours (Pvt.) Ltd. and others v. Ministry of Religious Affairs, Hajj, Zakat and USHR through Secretary and others 2011 SCMR 1621 rel.

Mian Inam-ul-Haq for Petitioner.

Muhammad Ejaz, A.A.G. with Dr. Qadeer Alam, AIG (judicial) and Dilshad Ahmed Khan, Office Assistant, I.G. Prisons.

ORDER

ALI BAQAR NAJAFI, J.----Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner has challenged Rule 1042(c) of Pakistan Prisons Rules prescribing vision "without glasses" as ultra vires of the Constitution with a direction to respondent No.2 to issue appointment letter to the petitioner.

2. Brief facts giving rise to the filing of this Constitutional petition are that petitioner applied for the post of Assistant Superintendent Jail (BS-16) with the medical certificate issued by the Services Hospital, Lahore dated 08.02.2017 in response to the advertisement No. 411/2017 published by the Punjab Public Service Commission with the following criteria:-

i. Bachelor Degree (2nd Division) from recognized University and

ii. Physical Standards

Height 173 cm

Chest 85 cm without expansion and 90 cm with expansion.

Vision Right 6/6 without glass Left 6/6 without glasses

The petitioner appeared in the examination and secured 13th position but the appointment letter was not offered to him on the grounds that his eye sight was 6/6 with glasses whereas it should have been 6/6 without glasses. The petitioner filed representation dated 18.04.2017 before respondent No.2 which was rejected on 21.06.2017 on the grounds that in the light of Punjab Prisons Service Rules, 2010 and as per Rule 1042(c) of the Pakistan

Prisons Rules, 1978 a person having 6/6 vision with glasses is not eligible for the post of Assistant Superintendent Jails, hence this writ petition.

3. In the report and parawise comments, it is reiterated that as per the medical certificate submitted by the petitioner, his eye site is 6/6 with glasses whereas under the advertisement published under Punjab Prisons Service Rules, 2010 and under Rule 1042 (c) of Pakistan Prisons Rules, 1978 the required eye sight vision of both eyes is 6/6 without glasses. The impugned letter dated 21.06.2017 issued by respondent No.3, therefore, was lawful as the petitioner has not fulfilled the laid down criteria/terms and conditions as the nature of job of Assistant Superintendent Jails is sensitive and the condition of sharp and accurate eye sight imposed in the Rules ibid is lawful. Lastly, while negating the impression of discrimination submits that one Sajjad Raza, was rightly appointed as he had fulfilled the criteria for the said post having 6/6 vision of both eyes without glasses. Places reliance upon Khadim Hussain v. Secretary, Ministry of Human Rights, Islamabad and others (PLD 2020 Islamabad 268) and prays for dismissal of the writ petition.

3. Arguments heard. File perused.

4. The main controversy raised before this Court is simply whether Assistant Superintendent Jails (BS-16) must have a 6/6 eye sight without glasses. A plain reading, in this context, of the relevant rules reveals that it is an essential condition, and by knowing this as mandatory, the petitioner preferred to apply and also passed in the written test. One may convincingly argue that since perfect eyesight was the requirement of job and anybody not fulfilling this requirement cannot be selected. The possible reasons which may be advanced is that the nature of job of a jail staff requires an Assistant Superintendent Jail to have an accurate eye sight which rules out the possibility of visual distortion for any mistaken identity ever essential to maintain discipline and orderly environment inside jails. But every legislature must have an intelligible rational behind which, of course, changes with the efflux of time. At the time of amendment of the relevant statute the weak eye sight was considered as a handicap in the jail service

as a disciplinary force. However, then the physical requirements were re adjusted with the introduction of modern technology. Owing to different reasons, the use of glasses was no more considered as absolute bar for the recruitments of both officials and officers in the disciplinary forces all over the world.

5. Pakistan is a signatory of the United Nations Convention on the Rights of Persons with disabilities, 2007 and according to Article 1 (Purpose)

> "Persons with disabilities include those who have long-term physical, mental, intellectual of sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on the equal basis"

If 6/6 both eye sight (without glasses) is considered a permanent disability of candidates then they should be treated as such. But if it is not, then such persons are to be treated at par with other human beings as normal to lead a normal life.

6. Likewise, in Islamabad Capital Territory Rights of Persons with Disability Act, 2020 the disability defined in Section 2(f) is

> "disability" means a long term physical or mental condition that limits a person's movement, senses or activities and shall include physical, mental, intellectual and developmental disorders or sensory impairments which in interaction with participate fully and effectively in day to day performance and interaction with others on an equal basis"

> This definition does not cover the 6/6 eye sight in both eyes with glasses as disability.

7. Under Punjab Police Rules, Volume 2 Chapter 12 (Appointments and Enrolments) general condition as prescribed for the recruitments.

APPENDIX No. 12.16.

"Points to be observed by Medical Officers in examining Police recruits.---Medical Officer will satisfy themselves regarding each candidate on the following points in the order given. If a disqualifying defect is noticed, the recruit register (form No. 12.13) will be completed and the recruit rejected without further examination:-

(a) that the vision is up to the following standard :-

The recruit must be able to read the Test Dot Card at a distance of ten feet without any mistake, with each eye without spectacles. Failure to do this renders him unfit. Each eye must have a full field of vision as tested by hand movements. Squint or any other morbid condition of the eyes or eye-lids liable to the risk of aggravation or recurrence will render him unfit.

For those who can read English the test should be the Snellen's type and the standard -

Right eye.... V = 6/6 JI } without glasses Left eye .... V = 6/6 JI }

(Underlining is for emphasis).

For illiterates the split ring test as used in the North-Western Railway should be employed. This corresponds to the Snellen's type.

8. However, Under the Punjab Prisons Department Service Rules, 2010 following amendments were made:-

(1) At Sr. No. 6. (Deputy Superintendent of Jail (BS-17)):

(a) for the entries in column 5, the following shall be substituted:

(i) Master's degree (second division) in any discipline of Social Sciences Including Public Administration or Business Administration or Economics or

Sociology or Psychology Work or Criminology or Political Science from a university recognized by the Higher Education Commission; or

(ii) LLB (second division) from a university recognized by the Higher Education Commissions".

(b) or the entries in column 7, the following shall be substituted:

(i) 25% by initial recruitment on the recommendations of the Punjab Public Service Commission; and

(ii) 75% by promotion on the basis of seniority-cum-fitness from amongst the Assistant Superintendents of Jail (BS-16) with five years' regular service.",

(C) in column 9, for the existing figure "28", the figure "30" shall be substituted.

(2) At Sr. No. 8. [Assistant Superintendent of Jail (BS-16)]:

(a) for the entries in column 5, the following shall be substituted:

"(i) Bachelor's degree (second division) from a university recognized by the Higher Education Commission;

(ii) physical standard (Height: 173 cm, Chest: 85 cm without expansion and 90cm with expansion); and

(iii) vision 6/6 both eyes without glasses.".

(Underlining is for emphasis).

(b) for the entries in column 7, the following shall be substituted:

"(i) 25% by initial recruitment on the recommendations of the Punjab Public Service Commission;

(ii) 60% by promotion on the basis of seniority-cum-fitness from amongst the Chief Warders (BS-9) other than those who qualified Elite Training Course, besides having:

(a) five years' regular service as such with satisfactory record; and

(b) Qualified mandatory course for promotion prescribed for Assistant Superintendent of Jail (BS-16) at the Punjab Prison Staff Training Institute, Lahore or National Academy for Prisons Administration, Lahore or Punjab Prisons Staff Training College, Sahiwal.

(ii) 15% by selection on merit from amongst the Chief Warders

(BS-9)who have:

(a) Qualified Elite Training Course;

(b) Academic qualification of Bachelor's degree (second division) from a university recognized by the Higher Education Commission;

(c) five years/ regular service as such with satisfactory record; and

qualified mandatory course for promotion prescribed for Assistant Superintendent of Jail (BS-16) at Punjab Prison Staff Training Institute, Lahore or National Academy for Prisons Administration, Lahore or Punjab Prisons Staff Training College, Sahiwal.

(e) in columns 8 and 9: for the existing figures "20" and "27", the figures "21 and "30" shall be substituted respectively.

(3) At Sr. No. 10. [Chief Warder (BS-9)]:

(a) the entries in columns 5, 8 and 9 shall be omitted; and

(b) for the entries in column 7, the following shall be substituted:

By promotion on the basis of seniority-cum-fitness from amongst the Head Warders (BS-7) as follows:

(i) 25% on the basis of selection on merit from amongst the Head Warders (BS-7) who have:

(a) qualified Elite Training Course;

(b) Bachelor's degree (second division) from a university recognized by the Higher Education Commission;

(c) five years regular service as with satisfactory record; and

(d) Qualified mandatory course for promotion prescribed for Chief Warder (BS-9) at the Punjab Prison Staff Training Institute Lahore or National Academy for Prisons Administration, Lahore or Punjab Prisons Staff Training College, Sahiwal

(ii) 75% by promotion on the basis of seniority-cum-fitness from amongst the Head Warders (BS-7) other than those who qualified Elite Training Course besides having:-

(a) five years' regular service as such with satisfactory record; and

(b) qualified mandatory course for promotion prescribed for the Chief Warder (BS-9) at Punjab Prison Staff Training Institute: Lahore or National Academy for Prisons Administration, Lahore or Punjab Prisons Staff Training College, Sahiwal

(4) At Sr. No. 12 [Head warder (BS-7A fix the entries in column 7, the following shall be substituted:

"By promotion on the basis of seniority-cum-fitness from amongst the Warders (BS-5) as follows:

(i) 15% by selection on merit from amongst the Warders (BS-5) who have:

(a) qualified Elite Training Course;

(b) Higher Secondary School Certificate (second division) from a recognized Board;

(c) five years' regular service as such with satisfactory record; and

(d) qualified mandatory course for promotion prescribed for Head Warder (BS-7) at the Punjab Prison Staff Training Institute, Lahore or National Academy for Prisons Administration Lahore or Punjab Prisons Staff Training College Sahiwal.

(ii) 85% by promotion on the basis of seniority-cum-fitness amongst the Warders (BS-5) other than those who qualified Elite Training Course besides having:

(i) five years' regular service as such with satisfactory record; and

ii) qualified mandatory course for promotion prescribed for Head Warder (BS-7) at the Punjab Prison Staff Training Institute, Lahore or National Academy for the Prisons Administration, Lahore or Punjab Prisons Staff Training College, Sahiwal.

(5) At Sr. No. 14.[Warder (BS-5)]:

(a) for entries in column 5, the following shall be substituted:

(i) Secondary School Certificate (second division) from a recognized Board;

(ii) physical standard (height: 170 cm, chest minimum girth of 80 cm without expansion and 85 cm with expansion); and

(iii) vision 6/6 both eyes without glasses.".

(Underlining is for emphasis).

(b) for the entries in column 7, the following shall be substituted:

(i) 95% by initial recruitment; and

(ii) 05% by initial recruitment from amongst the Ex-Military Personnel with ten years' service In Pakistan Army having Discharge certificate graded as "Good".

(C) for the figures "20" and "25" in columns 8 and 9, the figures "18 "and "28" shall be substituted respectively.

9. A perusal of these provisions reveals that for Assistant Superintendent Jail (BS-16) and for Warder (BS-5) the 6/6 eye sight of both eyes without glasses is prescribed qualification. However, no such qualification is prescribed for Deputy Superintendent Jail and Head Warder. Under Rules 1045, 1046 and 1047 following are the functions of Assistant Superintendent Jails:-

"Rule-1045. (i) The Assistant Superintendent shall perform such duties as the Superintendent may prescribe in writing in his order book. The duties shall be clearly prescribed and shall be changed periodically to afford them every opportunity to acquire a thorough training and all round experience of every detail of prison management.

(ii) The following duties shall ordinarily be allotted to the Assistant Superintendents:-

(1) Direct change of a Section of the prison including the prisoners confined therein and the Government property that may be located there.

(2) Admission, transfer and release of prisoner.

(3) Award of Ordinarily remission to prisoners.

(4) Appeals and petitions of prisoners.

(5) Supervision of factories.

(6) Supervision and drill of warder Guard.

(7) Supervision of cook-house, issue of rations to the cooks and the examination of cooked food and its distribution.

(8) Supervision of interviews and letters of prisoners.

(9) Search of Prisoners and building under their charge.

(10) Maintenance of registers pertaining to their duties and responsibility for their correctness.

(11) Maintenance of report book when incharge of a factory or circle to record discharge of their daily duties, and any important matter concerning their duties which may be necessary to bring to the notice of the Superintendent.

(12) Presence and supervision at distribution of meal and at evening lock-up.

(13) Night round on turn and search of relieving and relieved night guard once a week.

(iii) The Assistant Superintendents shall perform all other duties as are prescribed in the various chapters of the Prison Rule. Leave on Fridays and public holidays:

Rule 1046. (i) In prisons where there are two or more Assistant Superintendents, one Assistant Superintendent may have the day off in rotation on Fridays.

(ii) On Fridays and public holidays the Deputy Superintendent shall arrange duties of Assistant Superintendents in such a way that one officer is always present inside the prison from unlocking to lock-up. All Assistant Superintendents shall attend the evening lock-up.

Rule 1047. Every Thursday evening the Assistant Superintendents incharge of circles shall hold a parade of the prisoners confined in their circles and shall:-

(a) carefully inspect every prisoner;

(b) examine and check the clothing bedding, utensils and history tickets of every prisoner;

(c) check the barrack register and satisfy themselves that every prisoner is present or accounted for;

and satisfy themselves generally that everything is in proper order. They shall record - in their report book the shortages (if any), the state of clothing, cleanliness of barracks and yards and any other matter of important relating to prisoners of their circle.

10. A perusal of the said provisions reveals that the nature of job of Assistant Superintendent Jail does not require the perfect eye sight since the official is not required to fulfil any responsibility without power glasses with slight weakness of eyes.

11. Globally speaking, at least 2.2 billion people have a near or distance vision impairment. International classification of disease classifies vision impairment into two groups; i.e. distance and near presenting vision impairment. The mild means visual acuity worse than 6/12 to 6/18, whereas moderate is visual acuity worse than 6/18 to 6/60. A severe means 6/60 to 3/60 and the blindness is worse than 3/60. An example may be cited of Australian model where the police officials may use contact lenses and glasses to correct a vision impairment. However, the active frontline members of Fire Brigades, Defence Force Personnels, Air Force staff Pilots and traffic controller, must have perfect vision.

12. In Abdul Wahab and others v. HBL and others (2013 SCMR 1383) it was held that although the eligibility criteria cannot be bypassed only on the sympathetic grounds, but the interpretation of any statutory provision of the Constitution is the responsibility of the Courts under judicial review on the touch stone of the fundamental rights. Under Article 18 of the

Constitution, the petitioner is entitled to carry on in service of the Provincial Government without discrimination. Article 18 (c) of the Constitution is reproduced as under:-

Freedom of trade, business or profession

"18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent-

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons."

This article was interpreted in Government of Pakistan through Secretary, Ministry of Commerce and another v. Zamir Ahmad Khan (PLD 1975 Supreme Court 667), where the word lawful business had been explained at page 672 and it was held that only lawful professions as opposed to illegal professions are protected under Article 18 of the Constitution, which is reproduced as under:-

" ..Therefore, on the wording of Article 18 of the Constitution, the right to enter upon a profession or occupation or to conduct trade or business can hardly be described to be a Constitutional or fundamental right when such right may be denied by law. In this respect our Constitution stands in sharp contrast with the corresponding provision of the Indian Constitution which omits the use of word "lawful" in the relevant provision."

Similar interpretation was made in Arshad Mehmood and others v. Government of Punjab through Secretary, Transport Civil Secretariat,

Lahore and others (PLD 2005 Supreme Court 193) where it was held in para 23 that although the right of profession under Article 18 of the Constitution is not absolute and is subject to regulation which should be reasonable and must not be arbitrary or of excessive nature and that the Court can always look into such restriction. Relevant extract of para 23 is reproduced as under:-

> "23. It is well settled law that the right of trade/business or profession under Article 18 of the Constitution is not an absolute right but so long as a trade or business is lawful a citizen who is eligible to conduct the same cannot be deprived from undertaking the same, subject to law which regulates it accordingly .."

While emphasizing upon the Constitutional rights, in Messrs Al-Haram Travels and Tours (Pvt.) Ltd. and others v. Ministry of Religious Affairs, Hajj, Zakat and USHR through Secretary and others (2011 SCMR 1621) it has been held by the Supreme Court that Constitution is a living organism and has to be interpreted as such. Paras 33 and 34 are reproduced as under:-

> "33. The Constitution is a living organism and has to be interpreted keep alive the traditions of the past blended in the happening of the present and keeping an eye on the future as well. The Constitution must be interpreted keeping in view the entire canvas of national fabric, be it political, social, economic or religious.
>
> 34. It is a well settled principle that Constitution is to be interpreted liberally and saved from cosmetic circumscribed and construction. It is not a document of past or present but so it is to be interpreted in manner to meet the changing conditions of socio-religio and economic dynamics of the State."

It was also held in the same judgment that in such like satiations, the writ is competent. Para 50 is reproduced as under:-

> "50. As regards the contention of the learned counsel that the High Court cannot interfere with the policy matters its jurisdiction, we have some reservations, if the policy in conflict with any provision of or

is violative the fundamental rights citizen, same be question before Court in its jurisdiction. Reference can be made to Watan Party v. Federation of Pakistan (PLD 2006 Supreme Court (sic) and Shaheen Cotton Mills v. Federation of Pakistan (PLD 2011 Lahore 120)."

13. For the foregoing reasons, this writ petition is allowed and the condition of 6/6 of both eye sight (without glasses) as mandatory for the Assistant Superintendent Jails is set aside being violative of Article 18 of the Constitution. Resultantly, the petitioner shall be entitled to be considered notwithstanding having 6/6 eye sight with glasses (without glasses) a slight weakness, if otherwise found eligible for the post of Assistant Superintendent Jails.

MH/D-3/L **Petition allowed.**

PLJ 2024 Cr.C. (Note) 45

[Lahore High Court, Lahore]

***Present*: ALI BAQAR NAJAFI AND SYED SHAHBAZ ALI RIZVI, JJ.**

ATIF INAYAT--Appellant

versus

STATE etc.--Respondents

Crl. A. No. 80517-J of 2021, heard on 6.2.2023.

Pakistan Penal Code, 1860 (XLV of 1860)--

----Ss. 337-F(i), 337-A(i), 334 & 336-B--Conviction and sentence--Challenge to--Ocular account--Medical evidence--Investigation--Victim and her mother-in-law both injured and apparently they did not want to proceed against appellant and fact is that in their first examination in hospital no description of injury was mentioned then they were referred to Jinnah Hospital--The surgical notes are not available and do not suggest type of burn whether caused by sulfuric acid or otherwise--The acid so recovered was easily available for household purposes--The notes by eye surgeon do not suggest recent injury of acid thrown causing damage to eye--The presence of Ansar Bibi is un-natural particularly when she was not injured by any acid burn--The repot of PFSA does not suggest that parts of clothes so recovered were being used by victim since DNA test report is not available--Delayed examination of victim has also caused suspicion about occurrence as a whole--Appeal allowed.

[Para 15] A

Ch. Muhammad Nawaz Bosal, Advocate for Appellant.

Rai Akhar Hussain, APG for State.

Rana Muhammad Arif, Advocate for Complainant.

Complainant in Person.

Date of hearing: 6.2.2023.

JUDGMENT

Ali Baqar Najafi, J.--Through this Jail appeal under Section 25 of the Anti-Terrorism Act, 1997, judgment dated 06.12.2021 passed by the learned Judge, Anti-Terrorism Court, Gujranwala Division, Gujranwala, in case FIR No. 405 dated 05.09.2021 registered under Sections 336-B, 334, 337-A(i), 337-F(IO, 506 (ii), PPC at Police Station Gojra, District Mandi Bahauddin has been challenged whereby the appellant was convicted and sentenced as under:

Under Section 337-F(i), PPC.

Imprisonment for 01 year R.I. and payment of Rs. 10,000/-as Daman to victim Maria, which shall be recovered as arrears of land revenue and in case of non-payment of amount of Daman, convict shall further undergo 10 days S.I.

Under Section 337-A(i), PPC.

Imprisonment for 02 years R.I. and payment of Rs. 20,000/-as Daman to victim Maria, which shall be recovered as arrears of land revenue and in case of non-payment of amount of Daman, to undergo further imprisonment for 10 days S.1.

Under Section 334, PPC.

Imprisonment for 10 years R.I. and payment of Rs. 21,30,602/-as Arsh to be paid to victim Maria, which shall be recovered as arrears of land revenue and in case of non-payment of amount of Arsh, to undergo further imprisonment for 02 months S.I.

Under Section 336-B, PPC.

Imprisonment for 14 years and payment of Rs. 10,00,000/-as compensation to victim Maria, which shall be recovered as arrears of land revenue and in case of non-payment of said amount, convict shall further undergo 03 months S.I.

All the sentences were ordered to run concurrently besides the benefit of Section 382-B, Cr.P.C.

2. Briefly, the prosecution story against the appellant is that the complainant/Ansar Bibi (PW-12) is the resident of the locality falling in the area of Police Station Gojra. Her daughter namely, Maria Afzal, (PW-11) was married to Atif/appellant, who have no child. On the fateful day, at about 07:00 a.m. complainant went to the house of Maria Afzal, to meet her when at about 08:30 a.m. Safdar Hussain (not produced) resident of Bosal Mansoor, her maternal uncle also came there and they were talking to each other. *Mst.* Bashiran Bibi, (did not appear) mother-in-law of Maria Afzal, was also present in the home when at about 09:00 a.m. the appellant also came there and joined talking with them. During the conversation, both appellant and Maria Afzal, started quarrelling. The appellant was armed with pistol who threatened the complainant to kill her and then he went into the room from the Courtyard and brought acid bottle and threw it on the face of Maria Bibi. Bashiran Bibi went forward to save her life but the appellant also threw acid on her. The appellant fled away from the spot on hue and cry by the complainant and Safdar Hussain. The occurrence was reported to the police through application (Ex-PM) filed by the complainant upon which FIR (Exh.PB) was registered.

3. After registration of the FIR investigation was conducted and the report under Section 173, Cr.P.C. was prepared and submitted before the learned trial Court whereafter the charge was framed on 23.11.2021 to which the appellant pleaded not guilty. The prosecution produced thirteen (13) prosecution witnesses namely, Naeem Raza Crime Scene Junior Forensic Scientist (PW-1), Mudassar Iqbal, T/AS (PW-2), Hamid Nasir T/SI (PW-3), Aurangzeb 1425/HC (PW-4), Dr. IrumShahzadi, Women Medical Officer, (PW-5), Atif Khan, 1283/C (PW-6), Dr. AamarShahzad, Medical Officer (PW-7), Dr. Muhammad Asif, General Surgeon (PW-8), Dr. Sarfraz Latif, Eye Specialist (PW-9), Ghulam Shabbir, 133/HC (PW-10), Maria Afzal/victim (PW-11), Ansar Bibi/complainant (PW-12) and Muhammad Iqbal, Inspector (PW-13) Thereafter, the appellants was examined under Section 342, Cr.P.C., wherein he professed his innocence and denied all the allegations levelled against him. The appellant neither opted to depose within the scope of Section

340(2), Cr.P.C. nor produced any defence evidence. In reply to the question as to why this case against him and why the PWs have deposed against him, he replied as under:

> "I am innocent in this case. The case has been falsely registered against me while making concocted, after thought, baseless and false story. Maria was pregnant during first 4 months of marriage and she aborted her child against my wishes. Due to that reason she remained in the house of her parents for one year and six months. I said to Maria in Punchayat that I would initiate legal proceedings against her for aborting the child. Brother of Ansar Bibi complainant namely Safdar was also present in the said Punchayat. In order to save them she and her daughter Maria had planned and got registered false case against me. I have no concern with the occurrence. Acid fell on Maria accidently. I have been falsely implicated in this case by my wife and mother in law. I am totally innocent. I was not present in the house when acid fell on my wife. I have love and affection with my wife that's why I had brought here back to my house even after strained relations. I am completely innocent and complainant has tried to make me a victim of afterthought, manipulated, concocted and fabricated story."

4. After conclusion of the trial, the learned trial Court pronounced its verdict against the appellant and awarded him punishment as aforementioned.

5. After hearing the learned counsel for the appellant, learned APG and perusing the record, it is straightway observed that Maria Afzal/victim (PW-11) is still the legally wedded wife of the appellant and her mother-in-law namely, Bashira Bibi, though injured as per the statement of the doctors/PW-5 and PW-7, was neither examined by the prosecution nor by the defence. Besides, uncle/Mamoon of the victim namely, Safdar Hussain, PW was also given up. However, the prosecution evidence is to be re-appraised, hence the following paragraphs:-

OCULAR ACCOUNT

6. The star witness of the whole occurrence is Maria Afzal (PW-11) the victim herself who admitted that although she was married with the appellant two years ago and for the period of 1½ years she remained in the house of her mother and that no child was born. She denied the suggestion that because of abortion she had to stay in her mother's house but she admitted that for the period of 4 months she remained in the house of her husband and during that period there was no quarrel and that he used to remain at home. On 05.09.2021 at 09:00 a.m. a quarrel developed between the victim and her husband in the presence of her uncle, mother and mother-in-law. According to her, the appellant was carrying a pistol when he went from the Courtyard into the room from where he brought acid bottle in shopper and threw it on her face and body and that Bashiran Bibi, also came forward who also received the acid throw burns. All raised hue and cry but appellant managed to escape then she was shifted to Civil Hospital alongwith her mother-in-law. In the cross-examination, she admitted that once appellant tried to press her neck but she did not report the matter to anyone. She also narrated that on the fateful day at 05:45 a.m. he went to his Dera and he remained there for 15 minutes since his buffalo gave birth to a baby buffalo which might have reminded of his possible aborted child. She admitted that the appellant was not ill as he did not take any medicine in her presence in the past 6 months. She also admitted that when the appellant went to the room from the Courtyard, she did not close the door from outside which indicates that he had no intention to commit such a gruesome act. She admitted that she went to the hospital on her own feet with the help of her Mamoon namely, Safdar Hussain, which show that she remained in her Senses throughout. She volunteered that her signatures were obtained on the blank paper on the pretext of getting her medical examination and not for registration of FIR. She, however, denied the suggestion that acid fell on her due to some accident but did not state any motive against the appellant. She admitted that she has not recorded any statement regarding permanent loss of her eye and did not record as to which part of her body was damaged due to acid throwing. She also did not disclose that any part of her clothes was

damaged. The exact details of the injuries was essential to saddle the appellant for his culpability. She admitted that her two sisters are blind by birth, therefore, the hereditary defect could not be ruled out. The statement of the victim indicates that without giving the details of burn injuries on her person and the time when she was examined in the hospital, though admitted that she was accompanied by her mother-in-law to the hospital, show that the complainant did not accompany her and that Bashiran Bibi, also tried to protect her daughter-in-law. It is not clear whether the acid was thrown or poured by herself.

7. Next is Ansar Bibi/complainant (PW-12) mother of the victim/Maria Afzal, who appears to be un-natural witness since she did not go to her daughter's in-laws Quite often and particularly in the last 6/4 months she visited her daughter once or twice then why on the fateful day at 07:00 a.m. she was to be present at the place of occurrence is not clear. According to her, Bashiran Bibi, her real sister and mother of the appellant came forward to save victim/Maria Afzal, that is why she was also injured. It is not clear as to why Ansar Bibi/complainant was not injured since the grievance of the appellant, if at all, was against the child abortion by Maria Bibi/ victim, then PW-12 should also be the targeted but Muhammad Iqbal, Inspector (PW-13)/I.O. reveals that the complainant was not injured at all. In cross-examination, she admitted that application drafted for registration of FIR was not read over to her and that it was drafted by some attendant who was not introduced as a witness. Different improvements were pointed out in her statement viz a viz showing the pistol by the appellant and sitting in the Courtyard of the house. She admitted that she did not see the police in the hospital during the time the victim remained under treatment and that she did not appear before the police for recording of her statement. She did not visit the police station but went to Lahore accompanying the victim. She admitted that no drop of acid had fallen on her cloth. She denied the suggestion that victim/Maria Afzal, was ever aborted. Surprisingly, she admitted that at the time of occurrence the appellant did not threaten her. She admitted that her two daughters are blind by birth. This shows that she was not there at the time of occurrence.

MEDICAL EVIDENCE

8. Dr. Irum Shahzadi, Woman Medical Officer (PW-5) who stated that on 12.10.2021 at 12:45 a.m. she was posted as WMO at DHQ Hospital, District Mandi Bahauddin, where she examined victim/Maria Afzal (PW-11) in the hospital with the history of throwing acid on 05.09.2021 at 9:00 a.m. She was brought by Muhammad Iqbal, Constable. According to Muhammad Asif (first examiner) examined the following injuries:

> "A chemical burn involving face, lips, tongue, neck, front and back of upper chest. Interior aspect of both knees, left leg almost 24 to 26 percent burned surface area 2nd degree."

According to her opinion, the facial burns were Shajjah-i-Khafifah but on the chest and lower body Jurh Ghayr Jaifah Damiyah. She also examined Bashiran Bibi, the same day. In cross-examination, she admitted that the victim first appeared before her on 12.10.2021 and was sent to Dr. Sarfraz, eye consultant on 13.11.2021 and that her date of discharge as per MLC is 06.10.2021. The description of the injury was not mentioned in the MLC. In other words, this witness had admitted that the victim was not immediately examined by her. Besides, Dr. AamarShahzad (PW-7) stated that on 05.09.2021 at 09:30 a.m. when he was present at Emergency DHQ Hospital, Mandi Bahauddin, the victim/Maria Afzal, was brought as a case to acid burn and she was resuscitated according to burn protocols and admitted in the hospital and he also examined Bashiran Bibi and at the time of examination she stated that acid had fallen on her accidently and that she did not want to undergo any process. The Court put a query about any influence by Bashiran Bibi upon victim but the answer was not clear. Both victims did not disclose the name of any person and that at the time of fixing thumb impression the victim/Maria Afzal was fully conscious. Interestingly, this witness did not exhibit any medical examination apparently for the reason that both the victims did not want to proceed any further.

9. Dr. Muhammad Asif, General Surgeon (PW-8) stated that on 06.09.2021 he examined Maria Afzal, admitted in female surgery ward since

the chemical burn involving face, lips, tongue, neck, front and back of upper chest, interior aspect of both knees and left leg almost 24-26% second degree was observed. The Surgeon referred the victim to Jinnah Hospital, Lahore and at examination time the wounds were dressed by Surgeon. She was referred to plastic surgery department with surgery notes (Exh.PH). He also examined Bashiran Bibi, and made surgical notes (Exh.PJ). In cross-examination, this witness admitted that on 06.09.2021 both patients were conscious and oriented in time and space. At this stage, perusal of (EXH.PH) reveals that only initial examination was mentioned without any details of nature and type of acid.

10. According to Dr. Sarfraz Latif, Eye Specialist (PW-9), Dr. Irum Shahzadi, (PW-5) referred the victim to him on 03.11.2021 who examined her and opined that shrunken eye ball showing no perspective of light in that eye and right eye was permanently structural and functional damage was observed and declared the permanent structural and functional damage of the eye of Itlaf-i-Udw. He did not mention any recent injury or any acid throwing resulting into permanent damage. It establishes the fact that the eye sight of the victim was not the direct result of acid throwing.

INVESTIGATION

11. Muhammad Iqbal, Inspector/I.O. (PW-13) stated that he recorded the statements of the witnesses and prepared the site plan, presented the application (Exh.PQ) to the doctor for recording the statement but without his permission he recorded the statement of the victim. He conducted the raid on 05.09.2021 in the house of the appellant but did not arrest him but on 07.09.2021. He obtained the physical remand and recovered 30-bore pistol and empty bottle which did not contain acid. He obtained 11 sealed parcels from Muharrir on 14.09.2021 but could not deposit it and returned it to Muharrir but on 16.09.2021 he again took the said sealed parcels and deposited in the PFSA, Lahore. In cross-examination, he admitted that he reached on the spot at 06:05 p.m. on the same date of occurrence and in the investigation he did not mention about the burn clothes of the victim. The signatures of Naeem Raza, (PW-1) were not mentioned on the recovery memo and the articles from

the house of the appellant, no places were mentioned from where the specimens were taken. He admitted that he did not collect the OPD record of the victim but denied the suggestion that the victim did not want to proceed against any person. He admitted that during the investigation the Victim did not mention that which part of her body was damaged and that her eye was also damaged. Recovery memo (Exh.PF) did not mention that the bottle so recovered from the possession of the appellant contained acid and admitted that the type of acid was easily available in the market for wash room cleaning. All this investigation suggests that the samples collected from the burnt parts of the clothes were not submitted before PFSA according to the protocols and then why it was returned is not clear. The repot of PFSA on items No. 1.1, 2.1, 2.2, 3.1, 4.1 and 6.2 were given for examination but the result was that no analysis was conducted as there was no reference sample of the victim (Exh.PR). Likewise, the report on the debris of the floor of kitchen item No. 2 on the other part of floor and collected from the floor of the western side as part item No. 3 were not found stained with the acid. According to the report, only one bottle of acid was recovered and sulfuric acid was identified in (Exh.PS). Obviously, pieces of clothes worn at the time of attack by the victim had to be compared with her DNA to establish that it was the flesh or blood of the victim on the parts of the clothes.

12. Naeem Raza, Crime Scene Junior Forensic Scientist (PW-1) admitted that he had not got recorded the statement Under Section 161, Cr.P.C. about 5 samples and that I.O. did not call him to join the investigation and that he did not prepare the sketch of point of collection on exhibit sheet (Exh.PA) and that he did not produce the original record before the Court. He also damaged the prosecution case to corroborate the ocular account.

13. Hamid Nasir, T/SI (PW-3) stated that on 05.09.2021 Ansar Bibi/complainant (PW-12) submitted an application before him in the hospital where he reached at about 02:50 p.m. but she had denied any application having been presented by her personally.

14. Aurangzeb 1425/HC (PW-4) admitted that No Objection Certificate was presented to him on 14.09.2021 when samples were returned to him, this also suggests that the said samples remained in the custody of the I.O. for unforeseeable reasons and what stopped him to give samples to PFSA is not clear.

CONCLUSION

15. Keeping in view the above discussion, it is clear that the victim and her mother-in-law both injured and apparently they did not want to proceed against the appellant and the fact is that in their first examination in the hospital no description of the injury was mentioned then they were referred to Jinnah Hospital. The surgical notes are not available and do not suggest the type of burn whether caused by sulfuric acid or otherwise. The acid so recovered was easily available for household purposes. The notes by eye surgeon do not suggest recent injury of the acid thrown causing damage to the eye. The presence of Ansar Bibi is un-natural particularly when she was not injured by any acid burn. The repot of PFSA (Ex.PR) does not suggest that the parts of clothes so recovered were being used by victim since the DNA test report is not available. Delayed examination of the victim has also caused suspicion about the occurrence as a whole.

FINDINGS

16. For the above stated reasons, we are of the view that the prosecution has not been able to prove its case beyond any reasonable doubt against the appellant. This appeal is, therefore, **allowed** conviction and sentence awarded to the appellant by the learned trial Court is set aside. He is acquitted of the charges levelled against him. The appellant is behind the bars, be released forthwith if not required to be detained in any other criminal case.

(A.A.K.) **Appeal allowed.**

PLJ 2024 Lahore (Note) 47

Present: **ALI BAQAR NAJAFI, J.**

AROOJ HAMMAD--Petitioner

versus

D.G., LDA etc.--Respondents

W.P. No. 62993 of 2022, decided on 6.11.2023.

Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974--

----R. 17--Constitution of Pakistan, 1973, Art. 199--Death during service--Brother of petitioner was appointed--Resignation of petitioner's brother--Application for appointment of petitioner--Refused--Brother of petitioner and now representing him as counsel was appointed under Rule 17-A of Rules, 1974 after death of his father during service--It was also not denied that petitioner accepted appointment in favour of her brother and did not agitate--If argument advanced by counsel for petitioner was allowed, there would be un-ending claim of benefits against family claim which had never been intended by said Rule--"A" child and not "children" of a deceased government servant was to be accommodated once which could be left at option of accommodate child to transfer his right to another after testing rigours of un-suitable job and transferring it to rather more deserving legal heir--Such right once exercised, was non-transferable subsequent to joining of service was with consent of other legal heirs--Petition dismissed.

[Para 6] A, B & C

2021 PLC (CS) 1154 *ref.*

Mr. Nauman Jahangir, Advocate for Petitioner.

Sahibzada Muzaffar Ali, Chief Legal Advisor for LDA.

Date of hearing: 6.11.2023.

ORDER

Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has challenged the impugned order dated 23.08.2022 passed by Addl. Director

General (HQ) LDA whereby the application of the petitioner in compliance of order dated 07.06.2022 passed in Writ Petition No. 34768 of 2022, to accommodate her under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 was rejected on the ground that her brother and deceased son of the employee had already availed the benefit of appointment in LDA by getting the benefit of said Rule and also served there for three years but then preferred to resign from service.

2. Brief facts giving rise to the filing of this Constitutional petition are that father of the petitioner namely, Muhammad Jahangir, was working as Assistant (BS-11) in LDA and during his service he was murdered by land mafia in 1997 while performing his duties. His widow was awarded the pensionary and other benefits. The petitioner's mother/widow of the Muhammad Jahangir, was not awarded sufficient fund which are generally awarded to such family. However, in year 2012 Nauman, brother of the petitioner, was accommodated by the LDA under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 as Junior Clerk in LDA but he resigned from the service on 01.01.2015. The petitioner then filed an application for her appointment as Assistant Estate Officer (BS-16) at the place of her deceased father by invoking the said Rules but on 30.09.2021 she was refused on the grounds that earlier on 15.10.20152 her brother was accommodated. A review application for order dated 30.09.2021 was filed on 22.10.2022 which remained pending. The LDA authorities have refused to accommodate the petitioner as under the said Rules only one member of deceased's family could exercise such right with the consent of all family members which was exercised and cannot be exercised again. The petitioner filed Writ Petition No. 34768 of 2022 which was disposed on 07.06.2022 directing the D.G., LDA to decide the review application of the petitioner which was decided on 23.08.2022 *vide* impugned order, hence this writ petition.

3. Learned counsel for the petitioner contends that the petitioner has an independent right to be appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 after the death of her father as benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 is to be extended to the

family of the deceased father, employee of the LDA. Further contends that petitioner is far more deserving than her said brother to be accommodated because she is better qualified and also needs the financial assistance. Also submits that father of the petitioner died in the line of duty requiring special support and prays for the relief.

4. Conversely, learned Chief Legal Advisor, LDA submits that while acknowledging the right of the deceased/Muhammad Jahangir, the brother of the petitioner namely, Nauman, was appointed in accordance with Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 and that it is not a matter of selection within the family to divide such right in piecemeal amongst others particularly when it has been exercised with concurrence and, therefore, cannot be re-agitated. Adds that it was the joint decision of the family members that brother of the petitioner namely, Nauman, was the most deserving to be accommodated and after the exercise of their right it is no more available for the family of the deceased employee.

5. Arguments heard. File perused.

6. Admittedly, Nauman, brother of the petitioner and now representing him as learned counsel was appointed under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 after the death of his father namely, Muhammad Jahangir, during service. It is also not denied that the petitioner accepted the appointment in favour of her brother (Nauman) and did not agitate that she was more deserving candidate amongst the legal heirs of deceased/Muhammad Jahangir. After the resignation of Nauman on 01.01.2015, the petitioner filed an application to appoint her on 24.08.2021; *i.e.* after six years of the said resignation which is well after thought. It is the case of the respondents that right of the family of the deceased Govt. Servant under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 had already been acknowledged when relief was granted to the deceased's family which cannot be re-agitated as it is not the option of the legal heirs to exercise such right again and again after when it was properly granted to one of them. The right of the petitioner, if any, had existed before the appointment of her brother namely, Nauman, which was surrendered in his favour. If the petitioner was better qualified for the job she could agitate her right by competing within the family members and then with

the consensus the respondents/authority could extend the right to her. But she though it appropriate not to do so. If the argument advanced by the learned counsel for the petitioner is allowed, I am afraid, there will be un-ending claim of the benefits against the family claim which has never been intended by the said Rule. Para No. 9 of case titled *Muhammad Ijaz versus Government of The Punjab through Director General Fisheries, Punjab, Lahore and 3 others* reported as (2021 PLC (C.S.) 1154) is reproduced as under:

> "9. It may be useful to mention here that Rule 17-A was originally not a part of the Punjab Civil Servants (Appointments and Conditions of Service) Rules, 1974. It is only in the year 1987 that Rule 17-A in its un-amended form was added to the Rules. The Rule in its original form was W.P. No. 4396 of 2021 quite narrow and strictly framed. However, gradually over the years the reach, ambit, sweep and scope of the Rule has been considerably and consciously widened so as to reflect a much more beneficial intent, which is in line with the original rationale for introducing such a beneficial Rule. Here is a brief background of the Rule:
>
> - Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 was added *vide* notification No. SOR-IV (S&GAD) 152/86 dated 25.12.1987 (Annex-I). The said proviso reads as under:-
>
> Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in service any one of his unemployed children may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which the possesses the prescribed qualifications and experience and such child may be given to additional marks in the aggregate by the Punjab Public Service Commission or by the appropriate Selection Board or Committee, provided he otherwise qualifies in the test, examination and/or interview.
>
> - The said rule was amended *vide* notification dated 14.10.1989 as under:-
>
> Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in serviced or is declared

invalidated / incapacitated for further service, any one of his unemployed children may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which the possesses the prescribed qualifications and experience and such child may be given 10 additional marks in the aggregate by the Punjab Public Commission or by the appropriate W.P. No. 4396 of 2021 7 Selection Board or committee, provided he otherwise qualifies in the test, examination and/or interview.

- The rule *ibid* was further amended *vide* notification dated 28.08.1993 which provides as under:-

  Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in service or is declared invalidated/ incapacitated for further service, one of his unemployed children, may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualification and experience and such child may be given 10 additional marks in the aggregate by the Punjab Public Service Commission or by the appropriate Selection Board or Committee provided he/she otherwise qualifies in the test/examination and/or interview for posts in BS-6 and above. Provided further that only one child of a government servant who dies while in service or is declared invalidated or incapacitated for further service shall be provided a job against posts in BS-1 to BS-5 in the department in which the deceased Government Servant was working, without observance of formalities prescribed under the rules / procedure, provided such child is otherwise eligible for the post.

  The said rule was further amended *vide* notification dated 12.04.2003 by inserting the words “or his widow / wife” and “or widow / wife” and “the widow / wife” added respectively.

  The rule was further amended *vide* notification dated 05.01.2008 to insert the words “and the posts of Junior Clerk”.

  The said rule was substituted *vide* notification dated 24.09.2017 as under:-

> Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in service or is declared invalidated/ incapacitated for further service, one of his unemployed children or his widow/wife may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualification and experience and such child or the widow/wife may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee provided he/she otherwise qualifies in the test/examination and/or interview for posts in BS-6 and above. Provided further that only one child or widow or wife of an employee who dies during service or is declared invalidated or incapacitated for further service, if otherwise, eligible for the post, shall be appointed to a post in BS1 to BS-11 in the department where the Government servant was serving at the time of the death or the declaration, without observance of the procedural requirements prescribed for such appointment."

It clearly indicates that "a" child and not "children" of a deceased government servant is to be accommodated once which cannot be left at option of such accommodate child to transfer his/her right to another after testing the rigours of un-suitable job and transferring it to rather more deserving legal heir. Obviously, such right once exercised, is non-transferable subsequent to joining of service was with the consent of the other legal heirs.

7. For the above stated reasons, this writ petition has been found meritless and is, therefore, **dismissed.**

(Y.A.) **Petition dismissed.**

PLJ 2024 Cr.C. (Note) 75

[Lahore High Court, Lahore]

***Present*: ALI BAQAR NAJAFI AND ANWAARUL HAQ PANNUN, JJ.**

***Mst.* MAQBOOL TAHIRA and another--Petitioners**

versus

STATE etc. --Respondents

Crl. Misc. No. 37742-B of 2022, decided on 4.10.2022.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 497(2)--Anti-Terrorism Act, (XXVII of 1997), S. 7--Pakistan Penal Code, (XLV of 1860), Ss. 324, 109, 148 & 149--Bail after arrest, grant of --Further inquiry--"Lalkara"-- The allegation against petitioners is that upon their instigation by way of raising a lalkara, their co-accused made firing resulting in injuries to three persons--The petitioners have not been shown to be armed with any weapon--In view of admitted civil litigation pending between parties and close relationship of petitioners with complainant possibility of their false implication in case cannot be ruled--Out, thus case against petitioners prima facie falls within purview of Section 497(2), Cr.P.C. and is one of further inquiry into their guilt--The question of vicarious liability of petitioners and applicability of Section 7 of Anti-Terrorism Act, 1997 against them can validly be determined by learned trial Court at time of trial--Hence, this petition is allowed. [Para 3] A

Rai Ashfaq Ahmad Kharal, Advocate for Petitioners.

Rai Akhtar Hussain, Additional Prosecutor General for State.

Mr. Muhammad Jawad Zafar, Advocate for Complainant.

Date of hearing: 4.10.2022.

ORDER

Through this petition, *Mst.* Maqbool Tahira and *Mst.* Bushra Khatoon, petitioners seek post-arrest bail in case F.I.R No. 292/2022 dated 23.05.2022, offences under Sections 324, 109, 148, 149, PPC and Section 7 of Anti-Terrorism Act, 1997, registered at Police Station Kotwali, Faisalabad.

2. Heard. Record perused.

3. The allegation against the petitioners is that upon their instigation by way of raising a lalkara, their co-accused made firing resulting in injuries to three persons. The petitioners have not been shown to be armed with any weapon. In view of admitted civil litigation pending between the parties and close relationship of the petitioners with the complainant the possibility of their false implication in the case cannot be ruled. Out, thus the case against the petitioners prima facie falls within the purview of Section 497(2), Cr.P.C. and is one of further inquiry into their guilt. The question of vicarious liability of the petitioners and applicability of Section 7 of Anti-Terrorism Act, 1997 against them can validly be determined by the learned trial Court at the time of trial. Hence, this petition is **allowed** and the petitioners are admitted to post-arrest bail subject to their furnishing of bail bonds in the sum of Rs. 100,000/- (Rupees one hundred thousand only) each with two sureties each in the like amount to the satisfaction of the learned trial Court.

(A.A.K.) **Petition allowed.**

PLJ 2024 Lahore 109 (DB)

Present: **ALI BAQAR NAJAFI AND MUHAMMAD AMJAD RAFIQ, JJ.**

Mian **ARIF SAID--Appellant**

versus

PROVINCE OF PUNJAB etc.--Respondents

W.P. No. 37087 of 2023, decided on 26.6.2023.

Pakistan Penal Code, 1860 (XLV of 1860)--

----Ss. 302, 324, 395, 436, 452, 440, 427, 353, 186, 290, 291, 153, 153, 148, 149, 147, 109, 505, 120-B--Anti-Terrorism Act, (XXVII of 1997), S. 7--Jinnah house attack--Arrest of accused persons--Identification parade was conducted--No denial of identification parade--Evidentiary value--Writ of state was challenged--Arrest of accused and identification parade was challenged--Alternate remedies--Neither proceedings of test identification parade are placed before High Court to ascertain their veracity nor it is denied by counsels--The petitioner has alleged malafide against IO and police in general terms which will not be sufficient as it has to be specifically pleaded against government officials-- A person alleging malafide against government should not be allowed a roving enquiry into files of government for fishing out some kind of a case--Unfortunate occurrence of 9th of May, 2023 has not only challenged civil judicial system of Pakistan but has also exposed level of intolerance and dangerous fanatic condition of a charged mob psychology-- Not only writ of State was challenged but also State was directly targeted--Police promptly reacted and registered FIR, whereafter investigation was started and whosoever was found involved was supposedly identified in accordance with law and their arrest should have been regularized keeping in view mandates of law--There are certain alternate remedies available to petitioners which they may resort to--High Court does not find any reason

to declare arrest and detention of detenues as illegal and to allow these petitions--Petitions were dismissed.

[Pp. 116, 118 & 119] A, E, F, G, H, I & J

PLD 1974 SC 151, 1996 PCr.LJ 1455 and 2019 SCMR 2033 *ref.*

Constitution of Pakistan, 1973--

----Art. 199--Object and scope of--Object and scope of Article 199 of Constitution 1973 is enforcement of a right and not establishment of a right, such right must not only be cleared and complete simplicitor but there must be an actual infringement of such right--A writ jurisdiction cannot be expanded on solitary resolution or treatment for un-doing wrong doing, anguishes, or suffering of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under law which cannot be bypassed to attract writ jurisdiction. [P. 118] B

2023 SCMR 316 *ref.*

Constitution of Pakistan, 1973--

----Art. 199--Powers of High Court--Powers of High Court under Article 199 are different than apex Court of Country under Article 187, while exercising them parameters of jurisdiction must be kept in mind according to which only powers conferred by Constitution have to be exercised subject to constitution only where there is no adequate remedy is available--On application of an aggrieved person High Court can direct that a person in custody be brought before to satisfy Court that person was not held in custody without lawful authority or in an unlawful manner and can pass order to enforce fundamental right. [P. 118] C

PLD 2014 SC 1 *ref.*

Maxim--

----*Ubi jus ibi remedium*--The famous maxim ubi jus ibi remedium; when there is a right there is a remedy, is recognized in command of jurisdictive

procedure and Courts show restraint directing parties to first take recourse to an alternative and equally efficacious mechanism and framework of remedy provided rather than to take departure in order to surpass or circumvent such remedy. [P. 118] D

2022 SCMR 25.

Kh. Adnan Ahmed, Advocate for Petitioner (in W.P. No. 37087 of 2023).

Mr. Sameer Khosa, Advocate for Petitioner (in W.P. No. 36750 of 2023).

Mr. Iftikhar Ullah Dhillon, Advocate for Petitioner (in W.P. No. 36897 of 2023).

Mr. Safdar Abbas Khan, Advocate for Petitioner (in W.P. No. 36923 of 2023).

Ch. Ghulam Sarwar Nehang, Addl. A.G. *Sittar Sahil, Falaksher Bakhsh Gill, Idrees Bhatti and M. Farrukh Khan*, AAGs.

Date of hearing: 26.6.2023.

ORDER

This order shall dispose of the instant writ petition as well W.P. No. 36750 of 2023 titled *"Jahanzeb Amin etc versus Province of Punjab etc"* W.P. No. 36897 of 2023 titled *"Ahsan Malik versus Govt. of Punjab etc"*, and W.P. No. 36923 of 2023 titled *"Rizwan Zia Khan versus The State etc"* as common questions of law and facts have been raised therein.

2. **Through these Constitutional petitions** under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioners have challenged the continued illegal custody/detention of the detenue/wife of the petitioner (in W.P. No. 37087 of 2023) namely, Huma Saeed, as well as wife of the petitioner (in W.P. No. 36750 of 2023) namely, Khadia Shah, with Respondent No. 4/Superintendent Central Jail, Kot Lakhpat, Lahore seeking

further direction to produce them before this Court and then set them at liberty. In W.P. No. 36897 of 2023 the detenue namely, Zubair Malik and brother of the petitioner in W.P. No. 36897 of 2023 namely, Rizwan Zia Khan, are also sought to be released and set at liberty. It was further prayed that order dated 31.05.2023 passed by Judge Anti-Terrorism Court-III, Lahore whereby it gave the judicial remands be declared as illegal, without lawful authority, Coram non judice in the eyes of law and of no legal effect having been passed in blatant disregard of the judgements reported as *The State versus Nasir Javed Rana, Civil Judge, Ist Class/Magistrate Section 30, Rawalpindi* (PLD 2005 Supreme Court 86) *Asma Khatoon versus Syed Shabbir Hussain Shah, A.C.M. & F.C.M. COURT-IV Karachi West and 2 others* (PLD 1996 Karachi 51) and *Senator Asif Ali Zardari versus The State* (2000 MLC 921). It is still further prayed that the test identification parade conducted on 01.06.2023 is sham, bogus, fraudulent in nature and, therefore, be declared void ab-initio, inoperative, inalienable to the fundamental rights of the detenues. He also prayed for setting aside of the order dated 03.06.2023 passed by Respondent No. 7/Administrative Judge, Anti-Terrorism Court, Lahore whereby the physical remand of the detenue for 5 days was granted as well as the order dated 08.06.2023 whereby further physical remand was given for photogrammetric tests and recovery of mobile phones.

2. Brief facts giving rise to the filing of the present Writ Petitions are that the detenues (mentioned therein) were arrested from their houses on 23.05.2023 in connection with FIR No. 96 dated 10.05.2023 registered at Police Station Sarwar Road, Lahore at the instance of Respondent No. 6/Muhammad Ishfaq Rana, Deputy Superintendent of Police, North on the allegation, *inter alia*, of rioting, chanting anti- State slogans, staging violent protests by the political activist/supporters of Pakistan Tehreek-e-Insaf (PTI) on 09.05.2023 and marching towards and converged at Jinnah House located in Cantt, Lahore from different directions whereafter it was ransacked and burnt. The case of the petitioners are that the detenues are innocent as they all hold the State institutions of Islamic Republic of Pakistan in highest esteem

and could not possibly think of indulging in any anti-State activities or participation in any violent protest etc.

3. The case of the petitioner (in W.P. No. 37087 of 2023) is that since detenue namely, Mrs. Huma Saeed, resides almost at a stone's throw distance from the alleged place of occurrence she, on watching the live coverage on electronic media televised on different channels, went near the place of occurrence out of sheer curiosity and noticed that different roads leading towards the said venue were swarmed by the host of people marching by foot as well as on vehicles. She just stood empty-handed at the pavement of the road opposite to Jinnah House for a while as a bystander/spectator but when she pre- empted the law and order situation started getting worst, she immediately left for her home much before the sun set whereafter riots erupted in and around the vicinity of the said venue in Cantt.

4. **According to all the petitioners,** their detenues were neither political activists nor had affiliation with any political party, therefore, their mere presence alongside the pavement on the stated places does not bring home guilt against them in the absence of any pre-consulted or joint criminality of intention with the alleged participators which proves the absence of Corpus Delicti for want of positive evidence to connect them with the occurrence. The trumped-up identification parade would not be of any evidentiary value as the detenues could not be saddled with any vicarious liability in the absence of any positive evidence.

5. On factual premise, the detenues were produced before the Judge ATC-I, Lahore on 24.05.2023 by Respondent No. 7/ Investigating Officer through an application requesting for the grant of judicial remand for identification parade whereafter 6 days judicial remand was given with a view to conduct the test identification parade and to produce her before the Court on 30.06.2023. When the test identification parade was not conducted until 30.05.2023, it is the case of the petitioners, their further detention in the jail was in violation of their fundamental rights under Articles

4, 9 and 10-A guaranteed under the Constitution. On 30.05.2023, Respondent No. 7 hampered the Court proceedings and requested the extension of time to comply with the said order but did not produce the detenue before the Court. On 31.05.2023, sub-ordinate of Respondent No. 4/ Superintendent Kot Lakhpat Jail, Lahore through an application/warrant paper dated 30.05.2023 did attend the Court of Respondent No. 8 to seek extension of judicial remand. However, associate of the learned counsel for the petitioner (W.P. No. 37087 of 2023) namely, Raees Ahmed, Advocate present inside the Court room saw police official carrying with him the application/ warrant who took the photograph of the warrants form at 09:33 a.m. which revealed the pasting/affixing of the photograph of the detenue (Huma Saeed) on the left top corner. Likewise, on 02.06.2023 he again took the photograph of the warrant from mobile phone at 08:46 a.m. which also revealed her photographs. This affidavit, according to learned counsel, fulfills the requirement of Article 46-A and 164 Qanun-e-Shahadat Order, 1984. According to the petitioners on 02.06.2023 the detenues were not produced and on 03.06.2023 they were brought in the Court premises at 08:30 a.m. and shifted them to the lock up situated inside the Court premises and when they remained confined till 03:15 p.m. the detenues were produced before the Administrative Judge, ATC and then again after marking their presence they were bungled into the prison. An application was made for the physical remand of the detenue to conduct photogrammetric and audio-sonic test besides the recovery of mobile phone from their possession. According to the learned counsels, under Rule 25.56 of the Police Rules, 1934 the application was to be moved by the Investigating Officer and it is reliably learnt that mobile phone of the detenues had already been taken by the I.O. As there was no need for the physical remand, therefore, it was resisted but was unlawfully granted. It is the case of the petitioner that in the absence of any supplementary statement the remand could not be granted. According to the learned counsel, the said identification parade is void ab-initio.

6. **Learned counsel for the petitioners argued that neither** the names of the detenues were mentioned in the said FIR nor any descriptions of their person were disclosed with particular reference to the features; no overt act was attributed to them; illegal detention of the detenues is in violation of Articles 9, 10-A and 14 of the Constitution; one Naveed posted at Police Station Millat Park, took the detenues from their houses on the pretext of some incriminating material which was not brought before the Court, hence prays for the relief claimed for.

7. Conversely, the learned law officer contends that the occurrence is un- precedented in the history yet all the legal rights of the accused persons have been duly protected despite their hateful acts committed against the public properties having sentiment symbolic values. The physical remands were obtained when required under the law. The non-production of the detenues on 30.05.2023 was beyond the control of I.O. since he had presented the file before this Court and to produce them simultaneously was not humanly possible and that no prejudice has been caused to the detenues. Even then they were produced before the trial Court as required under Section 344, Cr.P.C. and that the I.O. was not lethargic in performing his legal duties. Adds that the superior Courts have time and again observed that Courts should not interfere in the investigation. It is also submitted that judicial remand can be granted for maximum period of 15 days and so the case with physical remand by the Anti-Terrorism Court. According to him, the test identification parade has been conducted for the accused persons which is corroborative piece of evidence and not a substantial/conclusive evidence. Maximum safeguards have been privded to conceal the identity of the detenues. According to him, as per the practice, in 95% cases the allegation to disclose the identity is always levelled but their veracity is determined at the relevant time. The fair trial shall be ensured to the accused person. Places reliance upon *Dossani Travels (Pvt.) Ltd and others versus Messrs Travel Shop (Pvt) Ltd. and others* (PLD 2014 Supreme Court 1) *Sana Jamali versus Mujeeb Qamar and another* (2023 SCMR 316) and *Government of The Punjab through Secretary, Schools*

Education Department, Lahore and others versus Abdur Rehman and others (2022 SCMR 25).

8. **It is notable** that when initially Writ Petition No. 37087 of 2023 was filed on 31.05.2023 the prayer was only to the extent of challenging the illegal detention and setting the detenues at liberty but later vide application bearing C.M. No. 1 of 2023 under Order 6 Rule 17, CPC was allowed and amended memo. of writ petition was placed on record. Likewise, in Writ Petition No. 36887 of 2023 similar applications were allowed.

9. It is further noteworthy that Huma Saeed and Zubair Malik, have been granted bail for sure and the other detenues namely, Khadija Shah and Rizwan Zia Khan, are statedly behind the bars.

10. Arguments heard. Record perused.

11. After hearing the learned counsels for the parties, the learned law officers and perusing the record, it is straightway observed that FIR No. 96 of 2023 dated 10.05.2023 under Sections 302, 324, 395, 436, 452, 440, 427, 353, 186, 290, 291, 153, 152, 148, 149, 147, 109, 505, 120-B, PPC read with Section 7 of Anti-Terrorism Act, 1997 was registered at Police Station Sarwar Road, Lahore on the allegation that on 09.05.2023 at 05:00 p.m. information was passed on through the police that 1400 to 1500 workers of PTI armed with weapons, dandas, sotas, bricks, petrol bombs included Mian Mahmood-ur-Rasheed and Mian Aslam Iqbal, both armed with fire arm weapon were leading the mob. They moved from Upper Mall Road through Rahat Bakery towards Jinnah House and started destroying the public property, creating terrorism, vandalism and resorted to firing and the mob was raising slogans

یہ جو دہشت گردی ہے اس کے پیچھے وردی ہے۔
عمران خان کو رہا کرو

They extended threats that their leadership namely, Imran Khan, Shah Mahmood Qureshi, Farrukh Habib, Hamad Azhar, Musarrat Jamshed Cheema, Jamshed Cheema, Zubair Niazi, Akhtar Zaman, Murad Saeed, Ali

Amin Gandapur and others have ordered them to make a horrible example of the Military installations and the government buildings. They are directed to desist from their illegal design but they ignored and attacked upon the police officers with their respective weapons and injured many of them. According to the police, they all were identified by the police in the light. The injured police officials were sent to the hospital and meanwhile, 400/500 persons had broken the door of Jinnah House and forcibly entered there and started torturing the employees present therein. Meanwhile, the fire of Mian Mahmood-ur- Rasheed had hit Abdul Qadeer and the fire of Mian Aslam Iqbal, hit another person namely, Muhammad Abdullah Wazir, who died. The charged people had removed the equipments, furniture and other expensive items from Jinnah House and then set them on fire which valued about Rs. 1,50,00,000/-, hence this FIR.

12. On 23.05.2023, the above said detenues were arrested and on 29.05.2023 were produced before the Administrative Judge, ATC Lahore. On the request of the Investigating Officer Khadija Shah and Huma Saeed, in custody of the police/muffled faces were sent for the judicial remand for 6 days to conduct their test identification parade. The I.O. was directed to keep their faces muffled when exposed to the public. He was further directed to file an application to fix a date for identification parade. On 30.05.2023 the said detenues could not be produced before the ATC Court and a rapt in this behalf was written. On 31.05.2023 the remand paper was placed before the duty/ Administrative Judge, ATC, Lahore since Ms. Abher Gul Khan, Administrative Judge ATC, Lahore was on leave. The I.O. stated that the accused persons could not be produced before the ATC Court due to the fact that identification parade is in progress in jail premises and record of the case is also with I.O. present inside the jail premises. The learned counsel for 125 suspects argued about illegal custody of their clients. They also stated that a writ petition No. 35551 of 2023 titled *"Arshad Virk versus Inspector General of Police etc"* had been filed and that the record has been produced before this Court. The learned Court, therefore, had given no comments about their non-

production on 30.05.2023 before the Court. It was, however, observed that since the suspects were behind the bars, therefore, Investigating Officer as well as the Area Magistrate were required to expedite the proceedings of test identification parade. The accused, therefore, were directed to present them before the Anti-Terrorism Court on 02.06.2023.

13. Meanwhile, the present Writ Petition was filed on 01.06.2023 and it was directed to be enlisted for 05.06.2023 on which Writ Petition No. 36923 of 2023 titled Rizwan Zia Khan versus The State etc was also filed.

14. The learned counsels for the petitioners have greatly emphasized on conducting of test identification parade and also on non-production of the accused on 30.05.2023 before the Anti-Terrorism Court. It is notable that neither the proceedings of test identification parade are placed before this Court to ascertain their veracity nor it is denied by the learned counsels that on 30.05.2023 Writ Petition No. 35551 of 2023 titled Arshad Virk versus Inspector General of Police etc has been pending before this Court in which the order was passed to the following effect:

> "30.05.2023 Mr. Ali Imran Rao, Advocate for the petitioner.
>
> M/s. Ghulam Sarwar Nehang, Addl. Advocate General, Muhammad Akram Khaksar, Assistant Advocate General and Sittar Sahil, Assistant Advocate General.
>
> In view of the fact that the alleged detenue has been arrested in case/F.I.R. No. 96 dated 10.05.2023, under Sections 302/34/395/436/452/440/505/109/147/148/149/152/153/290/291/ 186/353/427, PPC and 7 of ATA, 1997, Police Station Sarwar road, learned counsel for the petitioner in order to avail alternate remedy does not press this petition, however reserved the right of agitating the excess/high handedness made by the respondents.
>
> 2. Disposed of accordingly."

The legal requirement regarding test identification parade has been greatly focused by the learned counsels and they have relied upon *Fazal Elahi versus The Crown* (PLD 1953 FC 35), *Ibrahim Bhak versus The State* (PLD 1955 FC 113), *Muhammad Bashir Alam versus The State* (PLD 1958 Supreme Court 1), *Lal Pasand versus The State* (PLD 1981 Supreme Court 142), *Muhammad Afzal versus The State* (1982 SCMR 129), *Ghulam Rasul versus The State* (1998 SCMR 557), *Shafqat Mehmood versus The State* (2011 SCMR 537), *Sabir Ali alias Fauji versus The State* (PLD 2011 Supreme Court 401), *Javed Khan alias Bacha versus The State* (2017 SCMR 524), (PLD 2019 Supreme Court 488), *Mian Sohail Ahmed versus The State* (2019 SCMR 956), *Muhammad Yaqoob versus The State* (1989 P.Cr.L.J. 2227), *Kirir versus The State* (PLD 1996 Karachi 246), *Shafique Ahmed versus The State* (2002 P.Cr.L.J. 518), *Wahid Iqbal versus The State* (2003 P.Cr.L.J. 1928) *Muhammad Imran versus The State* (2009 P.Cr.L.J., 997), *Mansoor Ahmad alias Shahzad alias Sheeri versus The State* (2012 YLR 2481), *Ameer Bux versus The State* (2012 P.Cr.L.J. 500), *Nadeem versus The State* (PLD 2021 Lahore 415), *Fidaullah versus The State* (2016 P.Cr.L.J. 1584), and *Adnan versus The State* (2018 MLD 43) which relate to the conduct of test identification parade and its evidentiary value. The other set of referred judgments are in respect of involvement of the mobs and selection of the accused person which are not relevant at this stage when the investigations are underway. Reliance has been placed upon *Fazal Elahi versus The Crown* (PLD 1953 FC 35), *Muhammad Altaf versus The State* (2002 SCMR 189) and *Ramachandran versus The States of Kerala* (2012 SCMR 1152) which authorities are relevant for the test identification parade of the accused person. At this point of time, when the arrest and detention of the detenues has been challenged, the only relevant argument might be the non-appearance of the accused persons on 30.05.2023 before the Administrative Judge, ATC Lahore which according to the learned counsel for the petitioner would make the entire edifice of arrest illegal and will crumble to the ground. However, it is not denied that on the said date a writ petition was pending before this Court

and a rapt was already prepared to this effect and, therefore, the remand paper had to be presented without the accused persons.

15. **Undoubtedly,** the object and scope of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is the enforcement of a right and not establishment of a right, therefore, such right must not only be cleared and complete simplicitor but there must be an actual infringement of such right. A writ jurisdiction cannot be expanded on the solitary resolution or treatment for un-doing the wrong doing, anguishes, or suffering of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. Reliance is placed upon *Sana Jamali versus Mujeeb Qamar and another* (2023 SCMR 316). Powers of this Court under Article 199 are different than the apex Court of the Country under Article 187, therefore, while exercising them the parameters of jurisdiction must be kept in mind according to which only the powers conferred by the Constitution have to be exercised subject to the constitution only where there is no adequate remedy is available. However, on the application of an aggrieved person this Court can direct that a person in custody be brought before to satisfy the Court that the person was not held in custody without lawful authority or in an unlawful manner and can pass the order to enforce the fundamental right under Chapter I Part II, as interpreted by the Supreme Court of Pakistan in case titled *Dossani Travels (Pvt.) Ltd. and others versus Messrs Travel Shop (Pvt) Ltd. and others* reported as (PLD 2014 Supreme Court 1). The famous maxim ubi jus ibi remedium; when there is a right there is a remedy, is recognized in the command of jurisdictive procedure and the Courts show restraint directing the parties to first take recourse to an alternative and equally efficacious mechanism and framework of remedy provided rather than to take departure in order to surpass or circumvent such remedy. Reliance is placed upon *Government of The Punjab through Secretary, Schools Education Department, Lahore and others versus Abdur Rehman and others* (2022 SCMR 25). The petitioner has alleged malafide against the Investigating

Officer and the police in general terms which will not be sufficient as it has to be specifically pleaded against the government officials. However, it is most difficult to prove and the onus is always upon the person alleging as there is a presumption of regularity in all official acts and until that is rebutted, the action cannot be challenged. Specific pleadings must be made with reference to particular malafide, which is not interchangeable with any other kind of malafide. A person alleging malafide against the government should not be allowed a roving enquiry into the files of the government for fishing out some kind of a case. Reliance is placed upon *The Federation of Pakistan Through The Secretary, Establishment Division, Government of Pakistan Rawalpindi versus Saeed Ahmad Khan and Others* (PLD 1974 SUPREME COURT 151). Under the concept of separation of powers, the investigation of a criminal case falls in the domain of the police. If independence of judiciary was a hallmark of a democratic dispensation then on the other hand independence of the investigation agency was equally important to the concept of rule of law. Undue interference in each other's role destroyed the concept of separation of powers and will go towards the defeating of jurisdiction. Reliance is placed upon *Muhammad Hanif versus The State* (2019 SCMR 2033). An illegal detention, if it was, is regularized where the cognizance has already been taken by the Magistrate whereafter he has passed the remand order in the absence of the detenues, but subsequently passed the order in their presence. The detention cannot be regarded as illegal. Reliance is placed upon *Safia Bibi versus The Superintendent of Camp/Central Jail, Lahore and another* (1996 P.Cr.L.J. 1455).

16. Last but not least is the fact that the unfortunate occurrence of 9th of May, 2023 has not only challenged the civil judicial system of Pakistan but has also exposed the level of intolerance and dangerous fanatic condition of a charged mob psychology. Until this incident, our country-men have never witnessed this type of ransacking of undisputed like the Jinnah House; a symbol of Unity, Faith and Discipline. The wrath of people was aimed at the leadership both civilian and Military but what happened on the said fateful day

is unexplainable. Not only the writ of State was challenged but also the State was directly targeted. After all, the State has to protect itself and also its subject individual and to protect them the system of administration of justice, Alhamd-o-Lillah, is very much in place. It is with this background, that the police promptly reacted and registered the above said FIR, whereafter the investigation was started and whosoever was found involved was supposedly identified in accordance with law and their arrest should have been regularized keeping in view the mandates of law. Of course, the accused persons have valuable legal rights which are to be protected by the Courts and this Court has no doubt that our legal system is capable not only of protecting them but also uphold the rule of law in the society through our efficient judicial system. Normal recourse to the law will be the best advised strategy for the petitioners. Bypassing the whole procedure and methodology will not help the petitioners. There are certain alternate remedies available to the petitioners which they may resort to. At this stage, this Court does not find any reason to declare the arrest and detention of the detenues as illegal and to allow these petitions.

19. For the above stated reasons, these writ petitions have been found meritless and are, therefore, **dismissed.**

(Y.A.) **Petition dismissed.**

P L D 2024 Lahore 129

Before Ali Baqar Najafi, Abid Aziz Sheikh, Shahid Karim, Asim Hafeez and Anwaar Hussain, JJ

ASHFAQ AHMAD KHARAL and 21 others---Petitioners

Versus

PROVINCE OF PUNJAB through Secretary, Law and Parliamentary Affairs and others---Respondents

Writ Petitions Nos. 5324, 5343, 5055 and 6545 of 2023, decided on 14th February, 2023.

Per Ali Baqar Najafi, J; Abid Aziz Sheikh, Shahid Karim and Anwaar Hussain, JJ agreeing; Asim Hafeez, J., dissenting [Majority view]

(a) Words and phrases---

----Care-taker---Meaning---Care-taker is a person who takes care of certain things and fulfills his responsibility so entrusted to him---Such person holds the fort to protect and discharge his assigned duties---Care-taker is the one who looks after in the owner's absence.

Collins English Dictionary rel.

(b) Constitution of Pakistan---

----Art. 224(1), (1A) & (1B)---Elections Act (XXXIII of 2017), S. 230---Care-taker government---Object, purpose and scope---Care-taker Government is a government temporarily in power until election is held---It is a temporary Government commissioned by Governor-General or State Governor, usually for short period until stable Government can be formed---Care-taker governments are established during the time of uncertainty when it is not clear whether any party or coalition of parties is capable of forming a stable government---Care-taker governments carry on routine business of government but they are expected to refrain from making important policy decisions.

Dictionary of Politics and Government Third Edition rel.

(c) Punjab Law Department Manual, 1938---

----Part 1, Chap. 1, Cls. 1.5 & 1.18---Elections Act (XXXIII of 2017), S. 230---Constitution of Pakistan, Art. 140---Advocate General---Appointment and functions---Dispute was with regard to removal of Advocate General of Punjab Government along with Law Officers working there by Care-taker government---Held, that dispensing with service of Law Officers is not to be necessary based upon displeasure of the Governor---Sole purpose of Care-taker government is to conduct fair and free elections---If Care-taker government was of the view that such Law Officers were not helpful in creating impression of impartiality in the mind of public, their services could be dispensed with---This was objective decision of Care-taker Chief Executive---High Court upheld the notification for removal of Advocate General Punjab and other law officers---High Court set aside notification for appointment of such new Law Officers to the extent of Law Officers who retained their offices in the political government immediately preceding the last government---Constitutional petition was allowed accordingly.

Khawaja Muhammad Asif v. Federation of Pakistan and others 2013 SCMR 1205; Rab Nawaz Randhawa, Advocate and others v. Rana Muhammad Akram, Advocate and others PLD 2014 Lah. 591; Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others PLD 2022 Pesh. 100; Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others PLD 1992 SC 723; (Reference No.1 of 2020) PLD 2021 SC 825; Khawaja Muhammad Sharif v. Federation of Pakistan through Secretary Cabinet Division, Government of Pakistan, Islamabad PLD 1988 Lah. 725; The Regional Commissioner of Income-Tax Central Region, Lahore and others v. Zaffar Hussain and others PLD 1992 SC 869; Government of Balochistan through Secretary Services and General Administration Department and others v. Abdul Rauf and others PLD 2021 SC 313; Malik Muhammad Bashir Lakhesar, Assistant Advocate-General, Punjab v. Government of Punjab and others 2019 PLC (C.S.) 206; Secretary, Ministry of Law,

Parliamentary Affairs and Human Rights, Government of Punjab and others v. Muhammad Ashraf Khan and others PLD 2011 SC 7; B.P. Singhal v. Union of India and another (2010) 6 Supreme Court-Cases 331; State of U.P. v. U.P. State Law Officers Association and others AIR 1994 SC 1654; Joginder Singh Wasu v. State of Punjab (1994) 1 Supreme Court Cases 184; V.C. Rangadurai v. D. Gopalan and others AIR 1979 SC 281; P.K.Kunjukrishnan Nair v. State of Kerala and others AIR 1989 Kerala 253; Lalit Mohan Taran v. Lal Mohan and others AIR 1985 Gauhati 35; Imtiaz Ahmad Kaifi v. Government of Punjab and others PLD 2013 Lah. 598 and Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others PLD 2012 SC 132 rel.

Per Abid Aziz Sheikh, J; agreeing with Ali Baqar Najafi, J

(d) Interpretation of statutes---

---Maxim "Leges posteriores priores contrarias abrogant"---Applicability---When there is conflict between two special laws containing overriding clauses, generally statute later in time prevails over the statute prior in time---This principle is based on maxim leges posteriores priores contrarias abrogant.

Syed Mushahid Shah and others v. Federal Investment Agency and others 2017 SCMR 1218; Ahmad Saeed Kirmani v. Fazal Elahi, Speaker and others PLD 1956 Lah. 807; Messrs Usmani Associates Sub Proprietary Firm v. Central Board of Revenue and another 2001 PTD 2982; Sui Northern Gas Pipeline Limited, (SNGPL) through General Manager v. Director (Legal), President Secretariat (Public), Aiwan-e-Sadar Islamabad and 2 others PLD 2018 Isl. 51 and Messrs Federal Bank For Cooperatives, Islamabad v. Commissioner of Income Tax, Companies Zone, Islamabad 2021 PTD 1203 rel.

(e) Punjab Government Rules of Business, 2011---

----Rr. 13(1), 14(1), Third Schedule, Part-A, Serial No. 4 & Seventh Schedule, Part-A Serial No. 16---Punjab Law Department Manual, 1938, Part 1, Chap. 1, Cls. 1.5 & 1.18(4)---Constitution of Pakistan, Art. 140 (3)---Advocate General and Law Officers---Appointment and removal---

Counsel and client relationship---Distinction---Chief Minister is Competent Authority for appointment and removal of Advocate General, Additional and Assistant Advocates General under the Constitution, Rules of Business and Punjab Law Department Manual---Law Officers cannot be treated at par with government employees or public servants compelling Government to retain a particular counsel irrespective of lack of faith and confidence on said Law Officers by the Government.

(f) Counsel and client---

----Relationship---Scope---Client is under no obligation to give reasons for withdrawing his brief from his lawyer---Lawyer is not agent of his client but is a spokesman and advisor to his client.

BP Singhal v. Union of India 2010 5 (SCC) 331 rel.

(g) Interpretation of statutes---

----Word 'Public interest'---Scope---Term "public interest" is not capable of precise definition and has no strict meaning but it takes colour from the statute in which it occurs.

(h) Elections Act (XXXIII of 2017)---

----S. 230---Term "public interest"---Scope---Term "public interest" is to ensure honest, just, free and fair elections in accordance with law, which is also the mandate of Arts. 218 to 224 & 224-A of the Constitution.

(i) Constitution of Pakistan---

----Art. 140---Elections Act (XXXIII of 2017), S. 230---Punjab Law Department Manual, 1938, Part 1, Chap. 1, Cl. 1.5---Advocate General and other law officers---Removal from office---Public interest---Dispute was with regard to notification appointing Law Officers, who were also Law Officers in the Government preceding previous Government---Validity---Such Law Officers could not be justified on the touch stone of public interest and if they were allowed to continue as Law Officers, that would defeat the entire purpose of transparency urged and appointment of those independent Law Officers who have not been appointed by any political Government earlier to ensure free and fair elections in the public interest---High Court declared the notification as ultra vires of law and S.230 of

Elections Act, 2017, to the extent of such Law Officers and not sustainable---Constitutional petition was dismissed in circumstances.

Nemat Ullah and others v. Chairman Government Body, Worker Welfare Board/Secretary to Government of KPK, Labour Department and others 2016 SCMR 1299; Ministry of Information Technology and Telecommunications, Islamabad and another v. C.M. Pak (Pvt.) Ltd., Islamabad and another PLD 2020 SC 551; Rasheed Ahmad v. Federation of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, Islamabad and others PLD 2017 SC 121; Lahore Development Authority through D.G. and others v. Ms. Imrana Tiwana and others 2015 SCMR 1739; Bayindir Insaat v. Pakistan through Ministry of Communication and 3 others PLD 2001 Lah. 426; Abu Dhabi Medical Devices Co. L.L.C. v. Federation of Pakistan through the Ministry of Health and another 2010 CLC 1253; Miss Naheed Khan v. Government of Pakistan and others PLD 1997 Kar. 513; Ashiq Ali Bhutto v. President, Summary Military Court No.2, Karachi and 2 others PLD 1979 Kar. 814 and Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others 2022 PLC (C.S.) 778 rel.

Per Asim Hafeez, J; dissenting with Ali Baqar Najafi and Abid Aziz Sheikh, JJ. [Minority view]

(j) Constitution of Pakistan---

----Art. 224(1), (1A) & (1B)---Elections Act (XXXIII of 2017), S. 230---Care-taker government---Scope---Care-taker Government is a government 'sui generis' - one of its kind---Constitution draws distinction between elected Chief Minister and care-taker Chief Minister, as far as obligations, responsibilities, powers and functions are concerned---Elected Provincial Government is accountable and answerable to Assembly and care-taker Provincial Government works in absence of an Assembly.

(k) Punjab Law Department Manual, 1938---

----Part 1, Chap. 1, Cl. 1.5---Elections Act (XXXIII of 2017), S.230---Constitution of Pakistan, Arts. 25 & 140---Advocate General and other law

officers---Appointment and removal---Care-taker government, jurisdiction of---Scope---Discrimination---Dispute was with regard to removal of Advocate General and other Law Officers by Care-taker government of Punjab province on the plea of political affiliation with outgoing political party---Validity---Appointment of Advocate General is a substantial appointment and otherwise falls in the realm of major policy decision---Simplicitor removal of Advocate General on the allegation of having political affiliation/association - solely because appointed by elected Provincial Government - and without any plausible justification and reasoning and without seeking indulgence of Election Commission, per se violated mandate of S. 230(1)(d) of Elections Act, 2017---Such action could not otherwise be construed as an impartial act to a political party---Segregation so made had no basis in law and in fact stigmatized excluded Law Officers, risking their chances of seeking appointment in the office, by dint of their competency and merits---This was discrimination and did not meet test of reasonable classification---Excluding nineteen (19) Law Officers contravened the Constitutional mandate and had rendered effect of Art. 140(2) of the Constitution ineffectual, which prescribed scope of duties for Advocate General---High Court directed Care-taker Provincial Government to operate and function within the ambit of S. 230 of the Elections Act, 2017 and set aside appointment of fresh Law Officers---Constitutional petition was allowed in circumstances.

Khawaja Muhammad Asif v. Federation of Pakistan and others 2013 SCMR 1205; Rab Nawaz Randhawa, Advocate and others v. Rana Muhammad Akram, Advocate and others PLD 2014 Lah. 591; Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others PLD 2022 Pesh. 100; Khawaja Ahmad Tariq Rahim v. The Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs, Islamabad and another PLD 1992 SC 646; Faisalabad Development Authority v. Raja Jahangir Nasir and others 2004 SCMR 1247; Supreme Court Bar Association of Pakistan through President and another v. Federation of Pakistan through Ministry of Interior

Islamabad and others PLD 2023 SC 42; Ijaz Muhammad and others v. Raja Muhammad Zubair and others C.P. No.3145 of 2018; Aurangzeb v. Managing Director, Sui Northern Gas Pipelines Limited and 3 others. 2017 PLC 12; Sindh Employees' Social Security Institute v. Pakistan National Produce Co. Ltd. 1989 PLC 81; Sardar Hussain Babak and another v. Government of Khyber Pakhtunkhwa through Chief Secretary and 3 others PLD 2015 Pesh. 206; Haji Ameerzada and 6 others v. Secretary to Government of Khyber Pakhtunkhwa, Revenue Department and others PLD 2016 Pesh. 278; Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others PLD 2016 SC 808; Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others PLD 2013 SC 195; Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources v. Dewan Petroleum (Pvt.) Ltd. through M.D/Chief Executive and another PLD 2012 SC 189; Malik Muhammad Bashir Lakhesar, Assistant Advocate General, Punjab v. Government of Punjab and others 2019 PLC (C.S.) 266; Syed Aziz-ud-Udin Kakakhel v. Governor Khyber Pakhtunkhwa through Principal Secretary and 8 others PLD 2019 Pesh. 145; Shafaqat Mahmood Lodhi v. The Accountant-General West Pakistan Lahore PLD 1968 Lah. 786; State of Uttar Pardesh and others. v. Rakesh Kumar Keshari and another (2011) 5 Supreme Court Cases 341; Bhadreswar Tanti v. S.N. Choudhary and another AIR 1985 Gauhatti 32; Justice Qazi Faez Isa and others v. The President of Pakistan and others PLD 2021 SC 1; Vice-Chairman Punjab Bar Council and others v. Government of The Punjab and others PLD 2021 Lah. 544; Mehran Security Service (Pvt.) Ltd. and 2 others v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan Islamabad and 3 others 2000 YLR 2655; Muhammad Usman v. Additional Sessions Judge, Rawalpindi and 3 others 2022 YLR 1131; Hadayat Ullah and others v. Federation of Pakistan and others 2022 SCMR 1691; M. Ashraf Khan, Advocate Supreme Court of Pakistan v. Secretary Law, Parliamentary Affairs and Human Rights, Government of The Punjab, Lahore and 19 others PLD 2008 Lah. 312; Federation of Pakistan and others

v. Haji Muhammad Saifullah Khan and others PLD 1989 SC 166; Tanveer A. Qureshi v. President of Pakistan, President House, Islamabad and 3 others PLD 1997 Lah. 263; Commissioner of Police, Bombay v. Gordhandas Bhanji AIR 1952 (SC) 16; Constitutional Law of India by H.M. Seervai -- Fourth Edition/Silver Jubilee Edition, Volume 2 and Shapiro v. United States' (335 U.S. 1, 16 (1948) ref.

S.R. Bommani and others v. Union of India and others AIR 1994 Supreme Court 1918 rel.

Barrister Abid S. Zubairi, Ch. Muhammad Sarwar, Mian Ihsan-ul-Haq Sajid, Usama Zubair, Amna Khalili, Menahil Malik, Arif Ansari, Qazil Ali Bash, Salma Riaz, Ashhad Ali Azhar, Ali Awais, Belal Awais, Moeen Ahmad, Hassan Awais, Usman Fazal, Syed Faisal G. Meeran, Mian Haq Nawaz Saqib, Tanveer Ahmad Gill, Uzma Firdous, Muhammad Nadeem Abbasi for Petitioners (in W.Ps. Nos.5324 and 5343 of 2023).

Hasham Ahmad Khan for Petitioner (in W.P. No.6545 of 2023).

Ch. Rizwan Kashif Kalaar, Ch. Adnan Faiz Kalaar, Waheed Ahmad and Belal Awais for Petitioners (in W.P. No. 5055 of 2023).

Ahmad Awais, Advocate General Punjab, Ghulam Sarwar Nihang, Additional Advocate General, Rai Shahid Saleem Khan, Additional Advocate General, Mustafa Imran Pasha, Additional Advocate General and Syed Abul Ali Jafari, Assistant Advocate General.

Tahir Mehmood Khokhar, Additional Attorney General, Malik Javed Awan, Additional Attorney General and Mian Waseem Shahabi, Assistant Attorney General, Ch. Usman Ghani, Assistant Attorney General for Federation.

Mansoor Usman Awan, Barrister Hamza Shehram Sarwar, Haris Irfan, Ms. Maham Shehzad Laun, Mian Shahzeb Quddous and Asad Zaman Tarar for Respondents Nos. 1 and 2.

Shezada Mazhar, Muhammad Jawad Khan Lodhi, Asad Raza, Muhammad Ahmad Khan Niazi, Rizwan Rasool, Samir Sohail and Imran Arif Ranjha (Legal Advisor) for ECP with Khurram Shehzad, ADG (Legal) ECP. Nasar Ahmad, Additional Attorney General for Federation.

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ

اِنَّ اللّٰهَ يَاْمُرُكُمْ اَنْ تُؤَدُّوا الْاَمٰنٰتِ اِلٰٓى اَهْلِهَا ۙ وَاِذَا حَكَمْتُمْ بَيْنَ النَّاسِ اَنْ تَحْكُمُوْا بِالْعَدْلِ ۭ اِنَّ اللّٰهَ نِعِمَّا يَعِظُكُمْ بِهٖ ۭ اِنَّ اللّٰهَ كَانَ سَمِيْعًۢا بَصِيْرًا (سورۃالنسآءآیت نمبر58)۔

خدا تم کو حکم دیتا ہے کہ امانت والوں کی امانتیں ان کے حوالے کر دیا کرو اور جب لوگوں میں فیصلہ کرنے لگو تو انصاف سے فیصلہ کیا کرو خدا تمہیں بہت خوب نصیحت کرتا ہے بے شک خدا سنتا اور دیکھتا ہے۔

On 14.02.2022 these Writ Petitions were disposed of through the following short order:-

"For the reasons to be recorded later, with a majority of four to one with Asim Hafeez, J. dissenting, these writ petitions are partially allowed in the following terms:-

1. The removal of the Advocate General Punjab and other law officers vide notifications dated 24.01.2023 is upheld.
2. The notification of even date for the appointment of new law officers to the extent of law officers who retained their offices in the political government immediately preceding the last government and headed by Muhammad Hamza Shahbaz Sharif as Chief Minister, is set-aside."

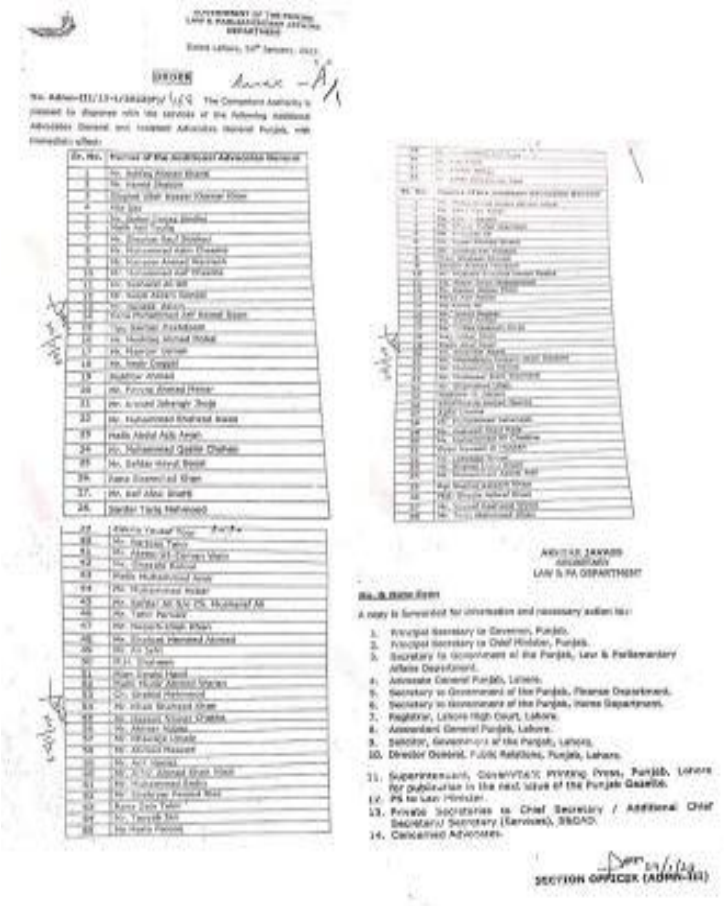
This is the detailed order of the previous short order.

ORDER

ALI BAQAR NAJAFI, J.---This order shall dispose of the instant W.P. No. 5324 of 2023 titled "Ashfaq Ahmad Kharal and 21 others (Ahmed Awais, Advocate-General as petitioner No.22) v. Province of Punjab etc., as well as W.P. No.5343 of 2023 titled "Muhammad Awais Ahsan Joyia etc. v. Province of Punjab etc.", Writ Petition No. 5055 of 2023 titled "Tipu Salman Makhdoom v. Province of Punjab etc." and Writ Petition No. 6545

of 2023 titled "Asif Afzal v. Province of Punjab etc." as in all same questions of law and facts are involved.

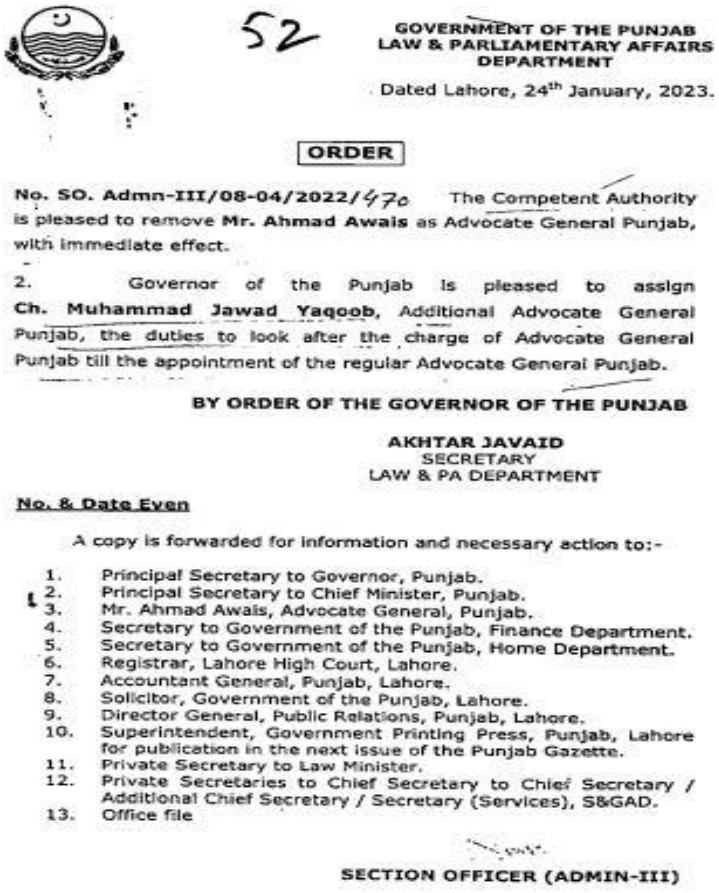
2. In all these writ petitions since notifications dated 24.01.2023 have been challenged whereby Advocate General Punjab, 32 Additional Advocate-Generals and 65 Assistant Advocate-Generals (total 97) have been removed and 46 new law officers have been appointed and look after charge was given to an Additional Advocate-General by the caretaker Chief Minister, Punjab. The impugned notification is scanned as under for ready reference:-



The notifications appointing the new law officers are also scanned as under:-



The notification of removal of the Advocate-General, Punjab and assigning look after charge to an Additional Advocate-General, Punjab is also scanned as under:-



52

GOVERNMENT OF THE PUNJAB
LAW & PARLIAMENTARY AFFAIRS DEPARTMENT

Dated Lahore, 24th January, 2023.

ORDER

No. SO. Admn-III/08-04/2022/470 The Competent Authority is pleased to remove **Mr. Ahmad Awais** as Advocate General Punjab, with immediate effect.

2. Governor of the Punjab is pleased to assign **Ch. Muhammad Jawad Yaqoob**, Additional Advocate General Punjab, the duties to look after the charge of Advocate General Punjab till the appointment of the regular Advocate General Punjab.

BY ORDER OF THE GOVERNOR OF THE PUNJAB

AKHTAR JAVAID
SECRETARY
LAW & PA DEPARTMENT

No. & Date Even

A copy is forwarded for information and necessary action to:-

1. Principal Secretary to Governor, Punjab.
2. Principal Secretary to Chief Minister, Punjab.
3. Mr. Ahmad Awais, Advocate General, Punjab.
4. Secretary to Government of the Punjab, Finance Department.
5. Secretary to Government of the Punjab, Home Department.
6. Registrar, Lahore High Court, Lahore.
7. Accountant General, Punjab, Lahore.
8. Solicitor, Government of the Punjab, Lahore.
9. Director General, Public Relations, Punjab, Lahore.
10. Superintendent, Government Printing Press, Punjab, Lahore for publication in the next issue of the Punjab Gazette.
11. Private Secretary to Law Minister.
12. Private Secretaries to Chief Secretary to Chief Secretary / Additional Chief Secretary / Secretary (Services), S&GAD.
13. Office file

SECTION OFFICER (ADMIN-III)

3. Brief facts giving rise of the filing of these Constitutional petitions are that on 12.01.2023 on the advice of the then Chief Minister, Punjab, Mr. Pervez Elahi, to the Governor Punjab, the Punjab Assembly stood automatically dissolved on 14.01.2023 after 48 hours under Article 112 of the Constitution of Islamic Republic of Pakistan, 1973. On 22.01.2023 the Caretaker Chief Minister Syed Mohsin Raza Naqvi, was appointed by the Election Commission of Pakistan. On 24.01.2023, three impugned

notifications were issued whereby the petitioners/law officers including the Advocate-General Punjab have been removed and new law officers were appointed. These Constitutional petitions for removals and new appointments have been challenged before the Single Bench of this Court who referred the matter for constitution of a larger Bench upon which Hon'ble Chief Justice on 04.02.2023 has constituted this Bench.

4. Constitutional position of a Chief Minister is that under Article 129 of the Constitution of Islamic Republic of Pakistan, 1973 the executive authority of the Province is to be exercised in the name of the Governor by the Provincial Government through a Cabinet consisting of Chief Minister and under Article 130 thereof, the Provincial Ministers are to act through the Chief Minister as its head, to aid and advise the Governor in the exercise of his executive functions. Under sub-Article (5) thereof, the Governor shall call upon an elected member to assume the office of the Chief Minister who shall take oath in the form set out in the 3rd schedule and that there was no restriction on the number of terms for the office of the Chief Minister. Under Clause 6 of the said Article, the Cabinet as a whole is collectively responsible to the Provincial Assembly and that the total strength of the Cabinet shall not exceed 50 members or 11% of the total membership; i.e. whichever is higher.

5. Factual position in the present case is that the Provincial Assembly of Punjab automatically stood dissolved on the advice by the Chief Minister made on 12.01.2023 after expiry of 48 hours on 14.01.2023 as envisaged under Article 112 of the Constitution. Under Article 224 of the Constitution, a general election of the Provincial Assembly is to be held within a period of 60 days from the date of expiry of the term of the Assembly and that on dissolution of the Assembly on completion of its terms or in case it is dissolved automatically under Article 112 of the Constitution (as in the present case) the Governor was to appoint a caretaker Cabinet but first a caretaker Chief Minister was to be appointed in consultation with the leader of the Opposition. As an agreement could not be reached, therefore, the procedure provided under 2nd proviso the

Article 224-A was followed under which three nominees are to be sent each from the Opposition as well as the Government to the Chief Election Commission; out of which one is to be announced as a caretaker Chief Minister. Due to the lack of consensus, the Election Commission of Pakistan appointed Syed Mohsin Raza Naqvi as the caretaker Chief Minister who took the oath on 22.01.2023. On 24.01.2023 the impugned notification was passed, hence these petitions.

6. Barrister Abid S. Zubairi, learned counsel for the petitioners contends that the caretaker Government so appointed was to perform functions within the scope of Section 230 of the Elections Act, 2017 and that it would restrict itself to the activities that are of routine, non-controversial and urgent in nature that too in the public interest and revisable by the future Government elected after general elections in the Province and that it was not to enter into any major contracts or undertakings if it was detrimental to the public interest or was not to make promotions or major appointments or transfers of public officials, unless it is considered expedient and in the public interest after approval of the Election Commission. Learned counsel further argues that under Rule 2(e) of the Punjab Government Rules of Business, 2011, Cabinet means Cabinet of the Ministers and the Chief Minister as its head as mentioned in Article 130 of the Constitution and under Rule 13 of the rules ibid no order shall be issued without the approval of the Governor in cases mentioned in Part-A of 3rd schedule and that no order shall be issued without the approval of the Chief Minister in case involving policy decision or departure from the policy decision as mentioned in Part-A of 7th schedule. He refers to the clause 16 of the 7th schedule to argue that Additional Advocate-Generals and Assistant Advocate-Generals are to be appointed, removed in accordance with the terms and conditions of service under this provision. He refers to Clause 4 of Part-A of 3rd Schedule under which a Chief Minister is to advise the Governor for the appointment, removal and regarding the terms of service of the Advocate-General. Under Clause 1.5 of the Law Department Manual the Advocate-General is governed by the Advocate-General Terms and

Conditions of Service Rules, 1962 who is a whole time employee of the Government and shall hold office during the pleasure of the Governor and liable to be removed from the office at any time without notice. He could submit resignation to the Government through the Law and Parliamentary Affairs Department and he was not to indulge into private practice of any kind. Under Clause 1.6 duties have been assigned to Advocate-General to advise the Government for initiation of criminal proceedings by the State or execute action by the Government and is duty bound to advise on other legal matters which may have been referred to him by the Provincial Government or the Governor. He would represent the State or arrange the representation in criminal cases in High Court and Supreme Court and quasi criminal matters and the Government could direct the Advocate-General to represent in a case owing to its special importance. He is supposed to appear or arrange the appearance of law officer/state counsel in High Courts and Supreme Court. Under clause 1.18 the Government from time to time could appoint number of Additional Advocate-General and Assistant Advocate-General and could appoint them on the basis of their qualification and experience.

7. Learned counsel for the petitioner further contends that the caretaker Chief Minister although takes the same oath as that of the Chief Minister of an elected Government yet his powers have been circumvented under Section 260 of the Elections Act, 2017. Contends that removal of the law officers and appointment of new incumbents is tainted with mala fide since the old law officers of the second last Government have been re-adjusted. Adds that the appointment and removal was made on the same date and that look after charge was given to an Additional Advocate-General in a strange manner. He refers to the case laws cited as Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205) Rab Nawaz Randhawa, Advocate and others v. Rana Muhammad Akram, Advocate and others (PLD 2014 Lahore 591) and lastly Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others (PLD 2022 Peshawar 100) to argue that the caretaker Chief Minister

cannot appoint or remove the law officers unless there is a reason to do that. He also refers to Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others (PLD 1992 Supreme Court 723) to argue that office of the Advocate-General is only for the purposes of providing assistance to the Courts and at time he is not supposed to watch the interest of his own client but assist the Court in his capacity as officer of the Court, hence the principle of right to choose a representative by a client will not be applicable stricto sensu. He further adds that Advocate-General is duty bound to make a statement before the Court under specific instructions and that the caretaker Chief Minister cannot make statement regarding implementation of a policy decision for the simple reason that he is there for an interim period, therefore, such a policy statement could not be expected from the Advocate-General office. He further adds that day-to-day business of temporary nature can be looked after by the law officers appointed by the Previous Government and that their removal has to be based upon public interest which is lacking in the present case. Finally, argues that element of neutrality in the decision of the Chief Minister particularly in the appointment of law officers, is not above board.

8. Mr. Mansoor Usman Awan, ASC, learned counsel for the respondents, however, conversely submits that the principles governing the attorney- client relationship are fully attracted to the Advocate-General and the Additional and Assistant Advocates General as they are neither public/government servants nor contractual employees; having no master-servants relationship with the employee and the very fact that their law practice licenses are not suspended, is evident of the fact that their conduct is regulated by the disciplinary bodies called Bar Councils. Adds that they hold their offices only and only during the pleasure of the Governor of the Punjab. Further adds that the powers of the caretaker Chief Minister are derived from Article 224 third proviso of the Constitution of Pakistan and the powers given to him under Articles 132 and 127 thereof cannot become redundant keeping in view section 230 of the Elections Act, 2017 by any

principle of statute interpretation. He further adds that the public interest behind the notification was to give the proof of being a neutral government with the sole purpose to work within the framework of law and the constitution. Finally, adds that the court can always provide guidelines for the appointment of the law officers, if the court is dissatisfied with such appointees.

9. Arguments heard. Files perused.

10. After hearing the learned counsel for the parties and perusing the files, we have straightway observed that in view of the lack of consensus and confrontationist approach adopted by the Government and the Opposition the Constitutional mechanism had to prevail under which not only the Punjab Assembly stood automatically dissolved but also a caretaker Chief Minister, Syed Mohsin Raza Naqvi, was appointed by the Chief Election Commissioner under Article 224 after when the consensus was not reached between the members of the Government and Opposition in its committee, therefore, the said appointment was made by the Election Commission of Pakistan with unanimity of its members. This is the background in which the petitioners have approached this Court to seek indulgence in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against their removal as law officers and the appointment of new law officers.

11. Before we can understand the powers and authority of the Caretaker Government in reality, we need to understand some of the common but basic concepts which would guide us to reach on a just decision of the present cases. We enumerate these in the following paragraphs:-

A Caretaker and Caretaker Government.

12. A caretaker is a person who takes care of certain things and fulfills his responsibility so entrusted to him. Such a person holds the fort to protect and discharge his assigned duties. For further understanding, it will be expedient to refer different definitions of a caretaker. A caretaker is the one who looks after in the owner's absence[1]. A caretaker is a person who is in charge of maintenance of building, estate, etc. superintendent and one who

or that which temporarily performs the duties of an office[2]. The word caretaker Government is a government temporarily in power until the election is held[3]. It is a temporary Government commissioned by the Governor-General or State Governor, usually for a short period until the stable Government can be formed. Caretaker governments are established during the time of uncertainty when it is not clear whether any party or coalition of parties is capable of forming a stable government. Caretaker governments carry on the routine business of government, but they are expected to refrain from making important policy decisions.

The purpose of caretaker Chief Minister under the Constitution of Islamic Republic of Pakistan, 1973.

13. A caretaker Chief Minister takes oath as set out in the Third Schedule of the Constitution from the Governor which is the same assigned to a regularly elected Chief Minister in order to exercise his powers as Chief Executive of the Province, therefore, under Article 224 the caretaker Chief Minister then forms his Cabinet by the order of the Governor on the advice of the Chief Minister under 3rd Proviso of Article 224. Undoubtedly, he is the Chief Executive of the Province and discharges his duties under the Constitution and the Elections Act, 2017. He is supposed to be a strong Chief Executive of the Province as he is assigned an onerous duty to thoroughly implement the policy of Election Commission in the Provinces to hold fair, free and transparent elections having approval by the public-at-large. Article 224 of the Constitution and Section 230 of the Elections Act, 2017 are reproduced for ready reference:

Time of Election and bye-election.

224. (1) A general election to the National Assembly or a Provincial Assembly shall be held within a period of sixty days immediately following the day on which the term of the Assembly is due to expire, unless the Assembly has been sooner dissolved, and the results of the election shall be declared not later than fourteen days before that day.]

(1A) On dissolution of the Assembly on completion of its term, or in case it is dissolved under Article 58 or Article 112, the President, or the Governor, as the case may be, shall appoint a care-taker Cabinet:

Provided that the care-taker Prime Minister shall be [appointed] by the President in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly, and a care-taker Chief Minister shall be appointed by the Governor in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly:

[Provided further that if the Prime Minister or a Chief Minister and their respective Leader of the Opposition do not agree on any person to be appointed as a care-taker Prime Minister or the care-taker Chief Minister, as the case may be, the provisions of Article 224A shall be followed:]

Provided [also] that the Members of the Federal and Provincial care-taker Cabinets shall be appointed on the advice of the care-taker Prime Minister or the care-taker Chief Minister, as the case may be.

(1B) Members of the care-taker Cabinets including the caretaker Prime Minister and the care-taker Chief Minister and their immediate family members shall not be eligible to contest the immediately following elections to such Assemblies.

Explanation.---In this clause, "immediate family members" means spouse and children.]

(2) When the National Assembly or a Provincial Assembly is dissolved, a general election to the Assembly shall be held within a period of ninety days after the dissolution, and the results of the election shall be declared not later than fourteen days after the conclusion of the polls.

(3) An election to fill the seats in the Senate which are to become vacant on the expiration of the term of the members of the Senate shall be held not earlier than thirty days immediately preceding the day on which the vacancies are due to occur.

(4) When, except by dissolution of the National Assembly or a Provincial Assembly, a general seat in any such Assembly has become vacant not later than one hundred and twenty days before the term of that Assembly is due to expire, an election to fill the seat shall be held within sixty days from the occurrence of the vacancy.

(5) When a seat in the Senate has become vacant, an election to fill the seat shall be held within thirty days from the occurrence of the vacancy.

[(6) When a seat reserved for women or non-Muslims in the National Assembly or a Provincial Assembly falls vacant, on account of death, resignation or disqualification of a member, it shall be filled by the next person in order of precedence from the party list of the candidates to be submitted to the Election Commission by the political party whose member has vacated such seat.]

[Provided that if at any time the party list is exhausted, the concerned political party may submit a name for any vacancy which may occur thereafter.]

230. Functions of caretaker Government.---(1) A caretaker Government shall---

(a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;

(b) assist the Commission to hold elections in accordance with law;

(c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and

(d) be impartial to every person and political party.

(2) The caretaker Government shall not--

(a) take major policy decisions except on urgent matters;

(b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;

(c) enter into major contract or undertaking if it is detrimental to public interest;

(d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;

(e) make promotions or major appointments of public officials but may make acting or short term appointments in public interest;

(f) transfer public officials unless it is considered expedient and after approval of the Commission; and

(g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

(3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

(4) In this section, caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government.

14. For the purposes of our discussion the main emphasis is laid upon Section 230(2)(e) by the learned counsel for the petitioner whereby the caretaker Government is not entitled to make promotions or major appointments of public officials but may make acting or short term appointments in public interest and that the caretaker Government has to restrict itself to the activities that are of routine, non-controversial and urgent in nature that too in the public interest, revisable by the future Government elected Government. But in order to interpret Section 230, we will have to refer to the preamble of Elections Act, 2017 according to which it was expedient to amend, consolidate and unify laws relating to the conduct of elections and matter connected therewith or ancillary thereto. It deals with de-limitation of Constituencies, Elected rolls, Conduct of Elections in the Assemblies, Senate, Falling of Election Expenses,

Resolution of Election Disputes, Formation of Political Parties, Allocation of Symbols, Conduct of Elections of the Local Government and Chapter XIV deals with the related other matters. Importantly, this Act does not define the caretaker Chief Minister or caretaker Government but under Section 4 thereof, he has power to issue directions or orders for the performance of its functions and

duties and under Section 5(2) it is the responsibility of all executive authorities of the Federation and Province to perform such duty assigned to the Commission in discharge of his functions. Under Section 8 it is within the power of Commission to ensure fair elections during the conduct of the elections. Sections 4, 5 and 8 are reproduced as under:-

4. Power to issue directions.---(1) The Commission shall have the power to issue such directions or orders as may be necessary for the performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

(3) Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done bysuch authority and in such manner as the Commission may direct.

5. Assistance to the Commission.---(1) The Commissioner or the Commission may require any person or authority to perform such functions or render such assistance for the purposes of this Act as he or it may direct.

(2) It shall be the duty of all executive authorities in the Federation and in the Provinces to render such assistance to the Commissioner and the Commission in the discharge of his or its functions as may be required by the Commissioner or the Commission.

(3) The Federal Government and each Provincial Government shall make available to the Commission such staff as it may require for the performance of its functions under this Act:

8. Power of Commission to ensure fair election.---Save as otherwise provided, the Commission may--

(a) stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;

(b) review an order passed by an officer under this Act or the Rules, including rejection of a ballot paper; and

(c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.

But under the exclusively allocated Chapter XIV of the Act the functions of caretaker Government have been given in Section 230 of the Elections Act, 2017.

JUDICIAL PRECEDENT.

15. In a recent judgment rendered by Hon'ble Supreme Court in Reference No1 of 2020[4], the five member Bench of Supreme Court had observed that Election Commissioner or the Election Commission had all powers vested in them to ensure that the elections were organized and conducted honestly, justly, fairly and in accordance with law and corrupt practices were guarded against and under Articles 213, 218 and 222 of the Constitution the Commission was required to take all available measures including utilizing technologies to fulfil the solemn constitutional duty of conducting elections honestly, justly, fairly and in accordance with law. A milestone judgment on this subject is obviously is the one handed down by the Supreme Court in Khawja Muhammad Asif's case[5] before the promulgation of the Elections Act, 2017 in paragraph No.13 of which it has

been held categorically that according to settled and accepted norms/practice the caretaker Provincial Government which means Care-Taker Chief Minister and the Cabinet is required to perform the functions to attend to the day-to-day matters necessary to run the affairs of the Province and also to watch the national interest in case of any eventuality but it is not authorized to make decisions having effect on the working/policies of the future Government. Besides, it is responsible to provide assistance to the Election Commission in organizing free, fair, honest and just elections but shall not take decisions which is bound to pre-empt the scope and sphere of the activity powers and jurisdiction of elected Government, hence it possesses limited powers for the simple reason that there is no Provincial Assembly hence the accountability is absent. Giving more powers to the caretaker Government will also go against the doctrine of separation of powers ever mandatory or lifeline of any vibrant democracy. Since the caretaker Government lacks the mandate of the majority of the people, therefore, it is not allowed to exercise complete powers available to an elected Government otherwise it would make an attempt to continue to remain in office for a longer period of time. It was also observed in paragraph No.15 that a caretaker Government remains in office for a very limited period whose first and the last concern is to ensure that fair, free, honest and just elections are held in the Province. But where proposed act is within the powers, it can exercise it fearlessly.

16. In Kh. Muhammad Sharif's case[6], it was held that the caretaker Cabinet should confine it to take care of day-to-day administration of State and they can take decisions requiring attention or action like in respect of war, earthquake or flood having fire reading affects but they cannot take undue advantage either for themselves or for their political parties and, therefore, had to remain impartial for everyone including their rivals or opponents in the political fields and they cannot take advantage of their official position at the expenses of the other political forces. Neutrality and impartiality, detachment and devotion of duty to carry on day-to-day affairs of the State without keeping in view their own interest are sine qua non of

a caretaker Cabinet. This view was further followed in Zaffar Hussain's case[7] and also in Kh. Muhammad Asif's case supra, and it is settled by now that a caretaker Government exercises the powers for a limited period relating to the elections

and is not supposed to make fresh appointments of the civil servants or head of Autonomous or semi-Autonomous Bodies, Corporations, Regulatory Authorities, etc, appointments on contract basis or allowing deputation or promotion to the civil servants without realizing the scope of their efficacy to share higher responsibilities to run the affairs of the Government. This has been re-inforced and reiterated

in Abdul Rauf's case[8] where the Hon'ble Supreme Court had dismissed the recommendations of a recruitment committee constituted by a caretaker Government as legally un-sound, therefore, not to be implemented.

17. Such concept is vogue in a number of countries either written in the Constitution or followed as practice. It will be expedient to give example of caretaker convention in Australia where day-to-day administration of departments and agencies in the wider state sector continue during the caretaker period but the departmental officials and board members and employees of other state sector agencies should always take into account the fact that they are operating in a caretaker environment, and exercise special care when making decisions during this time. In all such countries the scope and activity of the caretaker Government is to run affairs of the State during the interim period; i.e. till returning to power of the elected Government having the full powers. These Governments do not appoint civil servants.

NATURE AND NECESSITY OF THE PROVINCIAL LAW OFFICERS.

18. The office of Advocate General is a constitutionally defined office under Article 140 of the Constitution of Islamic Republic of Pakistan, 1973 which is responsible to get advices on the matter referred to it by the Government. An Advocate-General is appointed by the Governor on the advice of the Chief Minister under the powers given in Clause 4 of Part-A

of Third Schedule under Rule 13 of the Punjab Government Rules of Business, 2011 read with Clause 16 of the Seventh Schedule Part-A made under Rule 14(1) of the Punjab Government Rules of Business, 2011. The provisions are reproduced as under:-

13. Reference to the Governor.---(1) No order shall be issued without the approval of the Governor in cases mentioned in Part-A of Third Schedule.

(2) With respect to a case mentioned in sub-rule (1), the Department concerned shall incorporate a paragraph to this effect in the summary titled as 'Summary for the Chief Minister', and the Chief Minister shall submit the case to the Governor with appropriate advice.

(3) The Summary containing the orders of the Governor shall be returned to the Chief Minister.

(4) The cases enumerated in Part-B of Third Schedule shall be submitted through the Chief Minister to the Governor for information.

14. Reference to the Chief Minister.---(1) No order shall be issued without the approval of the Chief Minister in a case involving policy decision or departure from a policy decision or in a case mentioned in Part-A of Seventh Schedule.

Explanation.---The 'departure from a policy decision' includes departure from a previous decision of the Cabinet or the Chief Minister.

(2) A case submitted to the Chief Minister for his orders shall include a self contained, concise and objective summary stating the relevant facts and the points for discussion and the specific recommendations of the Minister-in-Charge. It shall also carry a draft communication, wherever appropriate.

(3) The cases mentioned in Part-B of Seventh Schedule shall be submitted to the Chief Minister for information.

(4) The Chief Minister may, by general or special order, require any other case to be submitted to him or he may call for any case or

information from any Department, Attached Department, Regional Office, or a District Government.

19. Historically speaking under section 55 of the Government of India Act, 1935, The Governor of each Province was bound to appoint a person, being a person qualified to be appointed a Judge of the High Court, as the Advocate General for the Province during the pleasure of the Governor and for the purpose of his appointment/dismissal and remuneration, the Governor was required to make an individual judgment. Under the Constitution of the Islamic Republic of Pakistan, 1956 the same wording was used in Article 72 and under the Constitution of the Islamic Republic of Pakistan of 1973, Article 85 Governor of the Province had the same powers to appoint Advocate-General for the Province. Under the present Constitution of 1973, Article 140 has empowered the Governor regarding the appointment of Advocate-General, which is reproduced as under:-

"140. (1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a Judge of the High Court, to be the Advocate General for the Province.

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Provincial Government.

(3) The Advocate-General shall hold office during the pleasure of the Governor 5[and shall not engage in private practice so long as he holds the office of the Advocate-General].

(4) The Advocate-General may, by writing under his hand addressed to the Governor, resign his office."

20. The Advocate-General has been defined in Clause 1.5 of the Law Department Manual to be a person with whole time employment of the Government who shall hold office during the pleasure of the Governor and shall be liable to be removed from office at any time without notice. His nature of employment and duties have been enumerated as follows:-

"1.5 Advocate General. The Advocate General is governed by the Advocate General for the Punjab (Terms and Conditions of Services) Rules, 1962. He is a whole time employee of Government and shall hold office during the pleasure of Governor and shall be liable to be removed from office at any time, submit his resignation to the Government through the

Law and Parliamentary Affairs Department. He shall not be allowed private practice of any kind. [1] However cases of local Bodies, statutory bodies, autonomous or semi autonomous bodies shall not be included or covered by the expression, "Private practice".

1.6. Duties of Advocate General.--- His duties are as follows:-

(a) The Advocate General will advise on any case relating to the initiation of criminal proceedings by the State or executive action by the Punjab Government under the law and on any other legal matter that may be referred to him by the Punjab Government or the Law Secretary. It will also be his duty to advise upon any matter on which his advice is required by the Governor, acting in his discretion. (For further details see Chapter 2 following).

(b) He will represent the State or will arrange for the representation of the State, at all stages in all criminal cases in the High Court, as well as Supreme Court and in quasi criminal matters. The Punjab Government may direct that owing to the special importance of the case, the Advocate General shall himself represent the state.

(c)He will appear or arrange for the appearance of Law Officer/State Counsel, in the following civil cases:

(i) Cases in the High Court and Supreme Court to which the Punjab Government is a party or cases relating to the affairs of the Punjab Government to which the Federal Government is a party.

(ii) Cases in the High Court and Supreme Court to which officers serving under the Punjab Government are parties and which the Punjab Government has decided to conduct on behalf of such officers.

(iii) Cases in the High Court and Supreme Court in which either the Punjab Government or such officers are directly interested but in which government considers itself to be sufficiently interested to render it advisable to conduct the case on behalf of some third person.

(iv) Appeals from the cases referred to above.

(d) He will personally appear when so required, before the High Court in references from subordinate courts to which the Punjab Government is a party or which can otherwise be heard.

(e) He will appear himself or arrange for the conduct of civil cases of the nature described above in the other civil courts of Lahore.

(f) He will also be expected to appear in any civil or criminal cases outside Lahore when specially desired to do so by the Punjab Government or by the Law Secretary.

(g) He will attend the legislative assembly when required to do so by Government.

Under clauses 2.11 and 2.12 he forms an opinion in dissenting with the Law Secretary.

21. Under Rule 12 of the Punjab Government Rules of Business, 1974, the Governor was bound to follow the advice of Chief Minister tendered under Part-A of Schedule-III which states about the appointment of Advocate General, Additional Advocate General and Assistant Advocate General. Rule 12 is reproduced as under:-

12. Reference to the Governor

"(1)) Notwithstanding the provisions made in these rules, where in terms of any provision of the Constitution, any function is to be performed or any orders have to be issued by the Governor or his specific approval is required, the department concerned shall incorporate a paragraph to this effect in the summary titled as 'Summary for the Chief Minister'. The Chief Minister shall tender his advice and submit the case to the Governor. After the Governor has seen and approved the case, it shall be returned to the Chief Minister. The

cases to which this sub-rule applies are enumerated in Part A of Schedule-III.

(2) The cases enumerated in Part B of Schedule-III shall be submitted to the Governor for his information through the Chief Minister.

(3) Notwithstanding the provisions made in these rules, where in terms of any provision of the Constitution, any function is to be performed or any order have to be issued by the Governor in his discretion, the department concerned shall submit the case to the Governor through the Chief Minister in the form of a self-contained, concise and objective Summary titled as Summary for the Governor stating the relevant facts and points for decision prepared on the same lines as those prescribed in these rules for a summary for the Cabinet except that only one copy will be required which may not be printed. This procedure will not, however, be applicable where the case is initiated by the Governor himself and decided in consultation with the Chief Minister. The cases to which this sub-rule applies are enumerated in Part C of Schedule-III.

(4) The Chief Minister shall keep the Governor informed of all important, political and administrative matters and major developments in the fields of planning, economic development and industrialization, etc."

22. The said provisions of the Punjab Law Department Manual, 1938 have been interpreted by this court in Malik Muhammad Bashir Lakhesar's case[9] it was held that the doctrine of pleasure was based on public policy, public interest and for the public good and that whenever a public interest is in conflict with private interest, the former must yield to the latter. In Secretary, Ministry of Law, Parliamentary Affairs and Human Rights, Government of Punjab's case[10] it was held that by no stretch of imagination under Rule 1.18 of the Law Department Manual (as amended by the Notification dated 19.10.1993), a consultation of the Governor with the High Court in the matter of appointment of Additional Advocate-General or Assistant Advocate General be made applicable to the appointment of

Advocate General of the Province which was a constitutional office and dealt with under Article 140 of the Constitution of Islamic Republic of Pakistan, 1973.

JUDICIAL PRECEDENTS FROM OTHER JURISDICTIONS.

23. In B.P. Singhal's case[11], it was held that the pleasure appointment is an employment that can be taken away at any time with no requirement of notice of hearing. It was held that withdrawal of pleasure in the case of Attorney General will be relevant criterial to determine the loss of confidence and that it will not be a ground for a judicial review for removal of the said officer. On the same analogy the office of Advocate General removal can also not be challenged. In State of U.P's case[12], it was held that a client is not obliged to give reason for withdrawing of his brief from his lawyer. The relevant extract is reproduced as under:-

> "Legal profession is essentially a service-oriented profession. The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the government and the public bodies started engaging them to conduct cases on their behalf. The government, and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the government and the

public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules, waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer."

24. In Joginder Singh Wasu's case[13] it was held that the relationship between the Advocate General and the State Government is essentially that of an Advocate and a client in relation to his appearance in court and arguing the case before the court on behalf of the State. Likewise in V.C. Rangadurai's case[14] it was held that relationship between a lawyer and his client is highly fiduciary in its nature and of a very delicate exacting and confidential character, requiring a high degree of fidelity and good faith. Relevant extract from para 31 is reproduced as under:--

"31. Nothing should be done by any member of the legal fraternity which might tend to lesson in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Lord Brougham, then aged eighty-six, said in a speech, 1864, that the first great quality of an advocate was to reckon everything subordinate to the interests of his client. What he said in 1864 about 'the paramountcy of the client's interest', is equally true today. The relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character, requiring a high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a

position of trust to whom he occupies a position of trust. The appellant completely betrayed the trust reposed in him by the complainants."

25. In P.K. Kunjukrishnan Nair's case[15] it was held that the office of Law Officers is essentially one of utmost trust and confidence and no member of the profession would cling on to a file or to a client, the moment the client is seen to show the slightest dissatisfaction about his conduct. Relevant extract from para 7 is reproduced as under:-

"The petitioner fills in an office as a member of the learned profession. That office is essentially one of utmost trust and confidence. And no member of the profession would cling on to a file or to a client, the moment the client is seen to show the slightest dissatisfaction about counsel's conduct. In that sense, the case is different from an ordinary probationary civil servant or persons of that stature."

Para 11 is also relevant showing the relationship of the Law Officers and the State which is reproduced as under:-

"11. In the very nature of things relationship between State and law officers cannot be equated to that of master and servant; it is on a higher plane, in a different context and at a different level. No doubt the office of the Government Pleader is an office under the State. But the office is one which necessitates an extraordinarily high degree of confidence on the part of the State Government and it appears to me that to compel the State Government to continue to deal with a law officer irrespective of other circumstances would be an arbitrary imposition of a service of a law officer on the Government; that may also be contrary to public policy."

26. On the application of the General Clauses Act, the Lalit Mohan Taran's case[16] is relevant and is therefore, reproduced as under:-

"The other contention that the State Government could not appoint an Additional Advocate-General is also meritless. The Governor of a State has, under the Constitution, to appoint an Advocate General. That power includes the power to appoint an Additional Advocate-

General as well, Art. 367 of the Constitution provides that unless the context otherwise requires, the General Clauses Act, 1897, shall apply for the interpretation of the Constitution. There is nothing repugnant in the subject or context which would exclude the applicability of the General Clauses Act. The provisions of General Clauses Act shall therefore be pressed into service while interpreting Art. 165. Now on the language of S.13, General Clauses Act, the provision in the singular for appointment of Advocate-General must include the plural. The Governor has, therefore, the power to appoint an Additional Advocate General also. In the view we have taken we find support from a decision of the Kerala High Court in M.K. Padmanabhan v. State of Kerala, 1978 Lab IC 1336."

27. In the present context, the relevant judgment rendered by this court in Imtiaz Ahmad Kaifi's case[17] is duly attracted in which it was held that no discrimination should be taken place while dispensing with the service of the law officers and they should not be stigmatized. In para 6 it was further held that there is no vested right of such law officers who served during the pleasure of the Government. It was further held that the Law Officers hold lawyer and client relationship with the Government of Punjab and confidence is a subjective matter and the removal does not amount to a casting aspersion. Reliance was placed upon Muhammad Yasin's case[18] Para 10 is relevant, therefore, is reproduced as under:--

"10. A caretaker government has no politics. Under Article 218(3) of the Constitution, it shares the duty of the ECP to conduct the general election honestly, justly, fairly and in accordance with law and that corrupt practices are guarded against. Given that charter as reiterated in Kh. Ahmad Tariq Rahim's case, the caretaker government has discretion to make changes that strengthen its ability to discharge its constitutional obligation. One significant aspect of the said constitutional obligation of caretaker provincial government is to demonstrate and maintain strict neutrality in the discharge of its functions, inter alia, by appointing non-government

may be justified on the said account. However, if the appointment of the petitioners by a political government is the presumable cause of their fall from confidence, then the retention of government, has no justification. On that ground an allegation of discrimination by the petitioners is well founded."

28. The dispensing with the service of the law officers are not to be necessary based upon the displeasure of the Governor as the sole purpose of the caretaker government is to conduct fair and free elections. If it is of the view that such law officers will not be helpful in creating an impression of impartiality in the mind of public, their services can be dispensed with since it is the objective decision of the caretaker Chief Executive.

29. Learned counsel for the respondents has prayed before the Bench to provide guidelines for the appointment of Law Officers but we observe that it is the exclusive domain of Caretaker Chief Minister to make appointments as per qualification and disqualification prescribed under the law.

30. This court cannot keep into the mind of the Chief Executive of the Province to ascertain and substitute its opinion and question whether in his view the free and fair elections are possible in the presence of certain incumbents in the Advocate-General Office but can definitely draw a line between the appointees of the previous political government or previous government who came in power as a result of no confidence resolution.

31. For the foregoing reasons, with a majority of four to one with Asim Hafeez, J. dissenting, these writ petitions are partially allowed in the following terms:-

1. The removal of the Advocate General Punjab and other law officers vide notifications dated 24.01.2023 is upheld.
2. The notification of even date for the appointment of new law officers to the extent of law officers who retained their offices in the political government immediately preceding the last government and headed by Muhammad Hamza Shahbaz Sharif as Chief Minister, is set-aside.

Sd/-
(ALI BAQAR NAJAFI)
JUDGE

Sd/-
(SHAHID KARIM)
JUDGE

Sd/-
(ABID AZIZ SHEIKH)
JUDGE

Sd/-
(ANWAAR HUSSAIN)
JUDGE

Sd/-
(ASIM HAFEEZ)
JUDGE

(has given a separate dissenting note)

ABID AZIZ SHEIKH, J.---I have seen in draft the reasons for short order dated 14.02.2023/judgment rendered by my learned brother Ali Baqar Najafi, J., which shall be the judgment of the Court and I agree with the reasoning recorded and conclusion drawn therein. However, in view of the significance and importance of the issues raised, I have chosen to write a separate note of my own.

Sd/-
(ABID AZIZ SHEIKH)
JUDGE

ADDITIONAL NOTE

ABID AZIZ SHEIKH, J.---The detailed facts and submissions of respective parties have already been elaborated in the main Judgment, authored by my learned brother (Ali Baqar Najafi, J.) and need not be reiterated. However, in order to comprehend the discussion on legal issues, it is necessary to narrate brief facts and contentions of the parties.

2. In these Constitutional Petitions, the petitioners have challenged three separate Notifications dated 24th January, 2023 (impugned Notifications) issued by respondent No.2 (Secretary, Law and Parliamentary Affairs Department, Government of Punjab) on the direction of caretaker Chief Minister (CM), Punjab. Through 1st Notification, the services of Additional Advocate-Generals and Assistant Advocate-Generals (Additional and Assistant AGs), Punjab were dispensed with, by 2nd

Notification fresh appointments of Additional and Assistant AGs, Punjab were made with immediate effect against the existing vacancies subject to terms and conditions prescribed in the Notification, and by virtue of 3rd Notification, the former Advocate-General, Punjab was removed from the post of Advocate-General, Punjab.

3. The main contention of the petitioners is that Caretaker CM, Punjab has no lawful authority and jurisdiction to remove the Advocate-General Punjab or dispense with the services of Additional and Assistant AGs, Punjab and appoint new Additional and Assistant AGs against the existing vacancies, as the powers and functions of caretaker Government are prescribed under Section 230 of the Elections Act, 2017 (Elections Act) and the impugned Notifications are not only beyond the scope of the said provision but also against the Constitution of Islamic Republic of Pakistan, 1973 (Constitution) and law settled by the Hon'ble Supreme Court in "Khawaja Muhammad Asif v. Federation of Pakistan and others" (2013 SCMR 1205). The respondents, on the other hand, defended the impugned Notifications.

4. In order to better appreciate the baseline question, it is expedient to examine the process and relevant laws for appointments and removal of Advocate-General, Additional and Assistant AGs. The Advocate-General is appointed under Article 140 of the Constitution by the Governor and under Article 140(3) of the Constitution holds office during pleasure of the Governor. Under Rule 13(1) read with Serial No.4 of Part-A of Third Schedule of the Punjab Government Rules of Business, 2011 (Rules of Business), the Governor orders are upon the advice of Chief Minister for appointment, removal, resignation and terms and conditions of service of Advocate-General. So far as the Additional and Assistant AGs are concerned, they are appointed under Rule 14(1) read with Serial No.16 of Part-A of Seventh Schedule of Rules of Business, under which approval of the Chief Minister requires for their appointment, removal, resignation and terms and conditions of service. Even under the erstwhile Punjab Government Rules of Business, 1974 under Rule 12(1) read with Serial

No.4 of Part-A of Third Schedule, the Governor's order required advice of the Chief Minister for appointment, removal, resignation and terms and conditions of service of Advocate-General, Additional and Assistant AGs. No doubt, under the Law Department Manual, 1938 (Manual) Clause 1.18, Sub-Clause (4), it is mentioned that Additional and Assistant AGs shall hold office during pleasure of the "Government", however, the Manual was made under the Government of India Act, 1935 and remained existing law in terms of Article 224(1) of the Constitution 1956, Article 225(1) of the Constitution 1962, Article 280 of the Interim Constitution, 1972 and said existing law was also protected under Article 268(1) of the Constitution, however, subject to the Constitution and until altered, repealed or amended by appropriate legislation. On the other hand, Rule 14(1) read with Serial No.16 of Part-A of the Seventh Schedule of the Rules of Business are made under Article 139 of the Constitution and being subsequent legislation on same subject will prevail over Manual in case of any inconsistency between two. It is settled law that where two statutes operate in the same field independently, though they may contain different provisions in this behalf, if by giving effect to the provisions, one of the provision of the other enactment are rendered or are likely to be rendered nugatory, the two statutes clashes and are inconsistent, then the provisions of later statute to the extent of grounds covered or intended to be covered will supersede and displace the other statute. It is also well settled that when there is conflict between two special laws containing overriding clauses, generally statute later in time would prevail over the statute prior in time. This principle is based on maxim leges posteriores priores contrarias abrogant. It means that the latest expression of the will of the legislature must prevail. In this regard, reliance is placed on "Syed Mushahid Shah and others v. Federal Investment Agency and others" (2017 SCMR 1218), "Ahmad Saeed Kirmani v. Fazal Elahi, Speaker and others" (PLD 1956 Lahore 807), "Messrs Usmani Associates Sub-Proprietary Firm v. Central Board of Revenue and another" (2001 PTD 2982), "Sui Northern Gas Pipeline Limited, (SNGPL) through General Manager v. Director (Legal), President

Secretariat (Public), Aiwan-e-Sadar Islamabad and 2 others" (PLD 2018 Islamabad 51) and "Messrs Federal Bank For Cooperatives, Islamabad v. Commissioner of Income Tax, Companies Zone, Islamabad" (2021 PTD 1203). The discussion brought forth above would lead to the ineluctable conclusion that Chief Minister is the Competent Authority for the appointment and removal of Advocate-General, Additional and Assistant AGs under the Constitution, Rules of Business and Manual.

5. It is manifest from Article 140(3) of the Constitution, Rule 13(1) read with Serial No.4 of Part-A of Third Schedule, Rule 14(1) read with Serial No.16 of Part-A of Seventh Schedule of Rules of Business and Paras 1.5 and 1.18(4) of the Manual that Advocate-General as well as Additional and Assistant AGs shall hold office during pleasure of the Governor on the advice of Chief Minister and they have no fixed tenure. This is due to nature of services rendered by Advocate-General, Additional and Assistant AGs, which is essentially a relationship between lawyer and his client and is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also for same reasons. The client is under no obligations to give reasons for withdrawing his brief from his lawyer. Similarly the lawyer is not an agent of his client but is a spokesman and advisor to his client. The Law Officers cannot be treated at par with government employees or Public Servant compelling the Government to retain a particular counsel irrespective of lack of faith and confidence on said Law Officers by the Government. The Supreme Court of India in "BP Singbal v. Union of India" (2010 5 (SCC) 331) held that loss of confidence is very relevant criteria for withdrawal of pleasure. However, the pleasure is not based upon any special prerogative but must be based on public policy and in public interest and for public good.

6. Now the baseline and moot question is that whether this power could be exercised by caretaker CM under the Constitution, Elections Act, Manual and Rules of Business. In this context, before promulgation of Elections Act, the Hon'ble Supreme Court in 'Khawaja Muhammad Asif case' supra laid down the scope of caretaker Government/Cabinet and held

that caretaker Government is empowered only to carry out day-to-day affairs of the State with help of available machinery, resources, manpower and it cannot take policy decision and permanent measures, including recruitments, appointments, transfers and postings and it must leave such matters to the Elected Government which will take charge as a result of elections. However, in the concluding Para 30 of the said judgment, the Hon'ble Supreme Court allowed the Federal Government to continue with the appointments, removal and transfers made by caretaker Cabinet/Government in the public interest subject to following requisite provisions of law. Relevant part of the Hon'ble Supreme Court's judgment is reproduced hereunder:-

"(i) However, the Federal Government, in exercise of its powers would be authorized to allow to continue any of such appoint-ments, transfers made by the Caretaker Cabinet/Government in the public interest, subject to following requisite provision of law ..

(i) The Federal Government would be empowered to continue the removal or transfers, etc., of Chief Executive Officers/heads of the departments, statutory bodies, autonomous/semi-autonomous bodies, corporations, regulatory authorities, etc. in the public interest, subject to following requisite provision of law."

The principles laid down in 'Khawaja Muhammad Asif case' were also followed in "Government of Balochistan through Secretary Services and General Administration Department and others v. Abdul Rauf and others" (PLD 2021 Supreme Court 313) and "Nemat Ullah and others v. Chairman Government Body, Worker Welfare Board/Secretary to Government of KPK, Labour Department and others" (2016 SCMR 1299).

7. Beside the guidelines by August Supreme Court, prior promulgation of the Elections Act, there was no specific provision in law prescribing the functions of caretaker Government. For the first time in Elections Act said powers are envisaged by Section 230, which is reproduced hereunder for convenience:-

"230. Functions of caretaker Government.---(1) A caretaker Government shall---

(a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government;

(b) assist the Commission to hold elections in accordance with law;

(c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and

(d) be impartial to every person and political party.

(2) The caretaker Government shall not--

(a) take major policy decisions except on urgent matters;

(b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;

(c) enter into major contract or undertaking if it is detrimental to public interest;

(d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;

(e) make promotions or major appointments of public officials but may make acting or short term appointments in public interest;

(f) transfer public officials unless it is considered expedient and after approval of the Commission; and

(g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

(3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

(4) In this section, 'caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government."

(emphasis supplied)

8. Plain reading of Sections 230(1)(c) and 230(2)(e) of the Elections Act shows that a caretaker Government shall restrict itself to activities that are of routine, non-controversial and urgent, in public interest and reversible by the future Government elected after the elections. Similarly, the caretaker Government shall not make major appointments of public officials but may make acting or short term appointments in the public interest. Though, there is no specific provision in Section 230 of the Elections Act which debars the caretaker Government from exercising its powers prescribed under the Constitution, however, the caretaker Government must restrict itself to routine, non-controversial and urgent matter, in the public interest and can also make acting and short term appointments in public interest. The word "public interest" has not only been used in Sections 230(1)(c) and 230(2)(e) of the Elections Act but same was also applied by the Hon'ble Supreme Court in 'Khawaja Muhammad Asif' case supra, where appointments, transfers and postings made in the public interest by the caretaker Government were allowed to be continued by the Federal Government. This means that if the impugned Notifications are in the "public interest" then these are not only permissible under Section 230 of the Elections Act but same are also protected by the judgment in 'Khawaja Muhammad Asif' case, however, if these Notifications are not in the public interest or contrary to the prescribed law, then same are not sustainable.

9. Now before we examine the impugned Notifications on this touch stone, it is necessary to understand what 'Public Interest' means. Although, the expression "public interest" has not been defined in any law, however, this expression is to be understood and interpreted in the light of entire scheme, purpose and object of the enactment in which it is employed. The Hon'ble Supreme Court from time to time applied "Public Interest" in different statutes considering peculiar situations as under:-

(I) In "Ministry of Information Technology and Telecommunications, Islamabad and another v. C.M. Pak (Pvt.) Ltd., Islamabad and another" (PLD 2020 Supreme Court 551), it was held as under:

"These protective measures are taken on the request of law enforcement authorities in view of past experience of terrorist activities at similar events. If such events caused the issuance of the impugned directions then the same would be in the public interest, reasonable, fair, consistent with the object of the law and therefore valid. Accordingly, the exercise of power by PTA under the policy directive dated 26.12.2009 ought to be evaluated in the light of the threat that is anticipated."

(II) In "Rasheed Ahmad v. Federation of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, Islamabad and others" (PLD 2017 Supreme Court 121), the August Supreme Court applied the public interest in following context:

"The Constitution, the Rules of Business, the Attorney-General for Pakistan (Terms and Conditions) Rules, 2011, the Central Law Officers Ordinance, 1970 and the Additional Attorney-General, Deputy Attorney-General and Standing Counsel Rules, 2011 do not specifically permit the Federal Government to engage private counsel. There may however be cases which involve complicated questions of the Constitution or some extremely technical law which the Attorney General, in the case of the Federation, and the Advocate-General, in the case of the law officers do not have the requisite ability to attend to. In such a case the concerned constitutional office holder should certify that he and the law officers do not have the requisite expertise in the field and that the engagement of a private counsel who is competent and experienced is required. Needless to state, the engagement of private counsel can only be sanctioned for compelling reasons and in the public interest

and not to protect or save a particular individuals (as was done in W.P. 1548) or for any other ulterior reason."

(III) In "Lahore Development Authority through D.G. and others v. Ms. Imrana Tiwana and others" (2015 SCMR 1739), the word "public interest" has been used in following terms:

"75. Likewise the Provincial Government, in the exercise of its legislative and executive authority can aid and support the Local Government. The Provincial Government is also not prevented from taking the initiative for the growth and development of the people and the Province in the exercise of its legislative and executive authority. The exercise of such authority must, however, be in the public interest. It should encourage institutional growth and harmony. It must be in consultation and with the participation of the Local Government. To complement is not to take over.

76. We are conscious that at times a Local Government too may decline consent for extraneous reasons. Where such consent is unreasonably withheld or denied for considerations other than in the public interest the Provincial Government would be at liberty to act in the public interest while constantly drawing guidance from the provisions of the PLGA 2013 as for the time being in force. Indeed the Courts too can step in and interfere with such a failure to grant consent."

Learned High Courts also discussed the words "public interest" in following judgments:-

(IV) In "Bayindir Insaat v. Pakistan through Ministry of Communication and 3 others" (PLD 2001 Lahore 426), it was held as under:

"The expression "public interest" as defined in Black's Law Dictionary is as under:--

"Public Interest.---Something in which the public, the community at large has some pecuniary interest or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as interests of the particular localities,

which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

(V) In "Abu Dhabi Medical Devices Co. L.L.C. v. Federation of Pakistan through the Ministry of Health and another" (2010 CLC 1253), the expression "public interest" was elaborated as under:

"Public Interest is very wide expression and embraces public security, public order and public morality. Expression Public Interest in common parlance means an act beneficial to general public and action taken in public interest necessarily means an action taken for public purpose. It further leads general social welfare or regard for social good and predicating interest of the general public in matters where regard was social good is of the first moment. The dispute involved in the present case is directly related to the larger public interest and such type of matter should be decided expeditiously."

The same view was also expressed in "Miss Naheed Khan v. Government of Pakistan and others" (PLD 1997 Karachi 513) and "Ashiq Ali Bhutto v. President, Summary Military Court No.2, Karachi and 2 others" (PLD 1979 Karachi 814).

10. From the above case law, it can be deduced that expression "public interest" is not capable of precise definition and has no strict meaning but it takes colour from the statute in which it occurs. When the above rule of interpretation is applied to the words "public interest" used in Elections Act, this indeed means that public interest in this case is to ensure honest, just, free and fair elections in accordance with law, which is also the mandate of Articles 218 to 224 and 224-A of the Constitution. When the impugned Notifications are examined in the above context, it is not difficult to ascertain that in order to achieve the ultimate goal of free and fair elections in the Province, Advocate-General was removed and the services of Law Officers were dispensed with, being appointed by the previous Government and to ensure that caretaker Government is represented by the Law Officers who are independent and not appointed by the previous Government. This policy/decision of the caretaker Government is neither

of permanent nature nor irreversible by the Elected Government, hence, cannot be held to be mala fide or not in the public interest or contrary to Section 230 of the Elections Act. Rather such decision, unless tainted with mala fide or in violation of prescribed law, is permissible under Clauses 1(d) and 2(e) of Section 230 of the Elections Act as well as law settled by the Hon'ble Supreme Court in 'Khawaja Muhammad Asif' case.

11. It is also relevant to note that the impugned Notifications of removal from service of Advocate-General and dispensation of the services of Additional and Assistant AGs are not only in accordance with procedure prescribed in Constitution, Rules of Business and Manual but same are also in line with the law laid down by this Court in "Imtiaz Ahmad Kaifi v. Government of Punjab etc." (PLD 2013 Lahore 598), where this Court set-aside the removal of Law Officers from service on the ground of discrimination and casting aspersion on their service or conduct, however, allowed the caretaker Government to dispense with the services of Law Officers without discrimination and without casting aspersion on their service or conduct. In the present case, as the services of Additional and Assistant AGs appointed by the previous Government have been dispensed with without discrimination and the word "removal from service" has also not been used against them, therefore, the respondents have complied with the principles laid down by this Court in aforesaid judgment.

12. So far as the judgment of learned Peshawar High Court passed in "Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (2022 PLC (C.S.) 778) is concerned, no doubt the said petition was allowed against the removal of Law Officers but it was held in said judgment that the Notifications were mala fide and contrary to the mandate of the statute. No such mala fide or violation of procedure prescribed in law has been highlighted in this case for removal of the Advocate-General or dispensation of the services of other Law Officers. Though, the leave was not granted by the August Supreme Court against the aforesaid judgment of learned Peshawar High Court while relying upon 'Khawaja Muhammad Asif' case, however, as

already discussed above, the impugned Notifications for removal of Advocate-General and dispensation of services of Additional and Assistant AGs are not contrary to the law settled in 'Khawaja Muhammad Asif' case supra but being in the public interest are protected even by the ratio decidendi settled in the aforesaid judgment of august Supreme Court.

13. However, we agree with the learned counsel for the petitioners that the appointment of Law Officers, who were also Law Officers in the Government preceding previous Government, cannot be justified on the touch stone of public interest as discussed above, and if they are allowed to be continued as Law Officers, this will defeat the entire purpose of transparency urged and appointment of those independent Law Officers who have not been appointed by any political Government earlier to ensure free and fair elections in the public interest. Therefore, to their extent the impugned Notification is ultra vires of law, including Section 230 of the Elections Act and not sustainable.

Sd/-
(ABID AZIZ SHEIKH)
JUDGE

DISSENTING NOTE

ASIM HAFEEZ, J.---I have the privilege of reading the majority decision authored by my learned brother Ali Baqar Najafi, J. and additional note by my learned brother Abid Aziz Sheikh, J. and respectfully disagree with the reasoning extended, conclusions reached, and decision rendered, including reasoning in the additional note.

2. Context of subject matter challenge are the orders of removal of Advocate General, Punjab and Additional and Assistant Advocates General(s) - Law Officers -- by the care-taker Chief Minister Punjab, posing itself as the Competent Authority - whereafter look-after charge was assigned to the Additional Advocate General. And fresh appointments of the Law Officers at the Office of the Advocate General are also collaterally impugned.

Statements of facts and arguments

3. Essential facts, for the purposes of this dissenting decision, are that need for care-taker set-up arose in the wake of dissolution of the Punjab Assembly, precipitated on the advice dated 12.01.2023 of outgoing Chief Minister. The Assembly stood dissolved by operation of law, in terms of clause (1) of Article 112 of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), on 14.01.2023. Incumbent care-taker Chief Minister was appointed by the Election Commission of Pakistan ('Commission') on 22.01.2023, in terms of proviso to clause (3) of Article 224A of the Constitution. Care-taker Chief Minister took oath on 22.01.2023 and, notably, the care-taker Provincial Cabinet was sworn in on 26.01.2023, thereby completing the composition of care-taker Provincial Government. Evidently, even before the lawful formation of the caretaker Provincial Government, care-taker Chief Minister had ordered the removal of the Advocate General Punjab, issued in the name of the Governor. Care-taker Chief Minister additionally directed to dispense with the services of ninety-seven [97] Law Officers, and simultaneously proceeded to appoint batch of fifty-five [55] Law Officers. This composite action was taken on 24.01.2023, though conveyed through separate orders. This case was initially fixed before learned Single Bench and during pendency whereof another petition was fixed before another learned Single Bench, latter was referred to the Hon'ble Chief Justice with request for formation of a Full Bench. And in the light of said order instant petition was also referred, whereafter larger Bench was constituted which heard and decided the matter.

Submissions on behalf of the petitioners

4. Learned counsel questioned removal orders on the grounds of legality and propriety thereof; objecting to the authority of the care-taker Chief Minister to effect removals and absence of justiciability-cum-reasoning qua the orders. Learned counsel submits that clause (1) of Article 105 of the Constitution must be read and construed 'subject to the Constitution' and the Governor, in performance of its functions, was required to act on the advice of elected Chief Minister only and care-taker Chief Minister is not

empowered to render any advice, let alone advice for the removal of Advocate General. Reference is made to clauses (5) and (6) of Article 130 of the Constitution to distinguish the office of an elected Chief Minister from the care-taker Chief Minister. Learned counsel submits that functions of the care-taker Chief Minister are not provided in the Constitution, however, the expression "care-taker Chief Minister" used therein was in the context of the mechanism provided for appointment of care-taker Chief Minister and care-taker Cabinet under Articles 224 and 224A of the Constitution -- which Articles fall in Part VIII [Elections], Chapter 2 [Electoral Laws and Conduct of Elections]. Submits that section 230 of the Elections Act 2017 ("Elections Act") provides for the scope and extent of the functions to be performed by the care-taker provincial government, which cannot perform functions otherwise available to elected provincial government under the Constitution or in terms of Punjab Government Rules of Business 2011 ('Rules of Business'), framed under Article 139 of the Constitution. Learned counsel read relevant rules with corresponding schedules of Rules of Business to emphasize disability of the care-taker Chief Minister to order removal of the Advocate General and the Law Officers, and adds that no such power was otherwise available to the care-taker Chief Minister under the Rules of Business. Adds that removal of the Advocate General cannot otherwise be ordered upon invoking clause (g) of the Notification dated 22.01.2023, issued by the Election Commission of Pakistan, being inapplicable to the Office of the Advocate General, which office is classified as 'Special Institution' under the Rules of Business. On merits, learned counsel argued that it is wholly unwarranted and unjustified to politicize the office of the Advocate General, merely because appointments were made by elected provincial government. Learned counsel highlighted the scope of duties to be performed by the Advocate General and read various portions from the decision in the case of Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others v. Aftab Ahmad Khan Sherpao and others (PLD 1992 Supreme Court 723), and referred the case of Rab

Nawaz Dhadwana, Advocate and others v. Rana Muhammad Akram, Advocate and others (PLD 2014 Lahore 591) to highlight the significance of the office of Advocate General. Learned counsel also elucidated the role/duties of Advocate General and the Law Officers under the Punjab Law Manual 1938. Adds that out of fifty-five [55] fresh appointments, 19 Law Officers had been appointed by the political government, which preceded the government of outgoing Chief Minister. In brief, counsel objects to the removal of Advocate General and Law Officers on political considerations. Adds that in terms of clause (a) of subsection (1) of section 230 of the Elections Act, care-taker provincial government is only entitled to attend to day-to-day matters, necessary to run the affairs of the Government and same is not eligible to remove/terminate the public office holder and/or to make appointments. Submits that the limitations prescribed in terms of subsection (2) of Section 230 of Elections Act must be adhered to before taking actions specified therein. Learned counsel submits that sum-total functions of the caretaker provincial government are provided under Section 230 of the Elections Act and care-taker Chief Minister had in fact transgressed its authority and disregarded the mandate of clause (e) of subsection (2) of Section 230 of Elections Act, which particular function is exercisable only in case of an underlying necessity of public interest, which condition was not fulfilled in the case at hand. Learned counsel read various paragraphs from the decision in the case of Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205), and referred the case of Khawaja Ahmad Tariq Rahim v. The Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs, Islamabad and another (PLD 1992 Supreme Court 646) -- latter in the context of explaining the scope of the Government. Learned counsel referred to the decision in the case of Faisalabad Development Authority v. Raja Jahangir Nasir and others (2004 SCMR 1247) in the context of written authorization required to Law Officers before giving any concessionary statement in Court. Learned counsel read few paragraphs from the decision in the case of Supreme Court Bar

Association of Pakistan through President and another v. Federation of Pakistan through Ministry of Interior Islamabad and others (PLD 2023 Supreme Court 42). Learned counsel emphasized on the ratio settled in the case of Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others (PLD 2022 Peshawar 100) and read paragraphs 10 and 11 thereof and refers to the order of Hon'ble Supreme Court of Pakistan in C.P. No.3145 of 2018. Learned counsel during submissions referred to decisions reported as Aurangzeb. v. Managing Director, Sui Northern Gas Pipelines Limited and 3 others (2017 PLC 12), Ijaz Muhammad and others v. Raja Muhammad Zubair and others (Civil Petition No. 3145 of 2018), Nemat Ullah and others v. Chairman Governing Body Worker Welfare Board/Secretary to Government of KPK, Labour Department and others (2016 SCMR 1299), Sindh Employees' Social Security Institute. v. Pakistan National Produce Co. Ltd. (1989 PLC 81), Sardar Hussain Babak and another v. Government of Khyber Pakhtunkhwa through Chief Secretary and 3 others (PLD 2015 Peshawar 206), Haji Ameerzada and 6 others v. Secretary to Government of Khyber Pakhtunkhwa, Revenue Department and others (PLD 2016 Peshawar 278), Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808), Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan and others (PLD 2013 SC 195), Rasheed Ahmad v. Federation of Pakistan through Secretary, Ministry of Information, Broadcasting and National Heritage, Government of Pakistan, Islamabad and others (PLD 2017 SC 121) and Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources v. Dewan Petroleum (Pvt.) Ltd. Through M.D/Chief Executive and another (PLD 2012 SC 189).

Submissions on behalf of respondents Nos. 1 and 2

5. Conversely, learned counsel appearing for respondents Nos.1 and 2, submits that no reasons need to be assigned or conveyed for removal of the Advocate General and Law Officers, firstly, in wake of nature of client-attorney relationship, based on trust and confidence, and secondly, such

appointments are pleasure posts, and no cogent reasoning is required for withdrawal of pleasure, otherwise. Adds that orders of removal of public officers from pleasure posts are not amenable to judicial review jurisdiction. Submits that care-taker Chief Minister, in exercise of powers under Article 105, read with Rule 13(1), Part-A of Third Schedule to Rules of Business is entitled and empowered to advice the Governor to withdraw the pleasure qua the Advocate General. And by virtue of Rule 14(1), Part-A of Seventh Schedule to Rules of Business, the care-taker Chief Minister is competent to directly order removal of the Law Officers. Submits that functions to be performed by the care-taker Chief Minister are not restricted to the confines of Section 230 of the Elections Act, which inter alia extends to certain essential functions, though performed by the regular Chief Minister. For instance, in case of removal of one of the members of the care-taker Cabinet resort can be made to clause (3) of Article 132 of the Constitution. Learned counsel read few clauses of Law Manuel 1938 and submits that unless anything contrary thereto is found in the Rules of Business, the Law Manual, being an existing law in terms of Article 270AA of the Constitution, will apply and orders passed are covered thereunder. Submits that removal was made in the public interest, objective was to ensure removal of vestiges of outgoing political government and make certain that free and fair elections are carried out, and action under reference is essential to dispel the impression of partiality and partisanship, since appointments under reference were made during the tenure of outgoing political government. Submits that continuity of Advocate General in office, in the absence of trust and confidence, would likely to create disagreements, complications and conflict of opinions, since Advocate General had previously represented the outgoing political government. Adds that guidance is solicited from the case of Imtiaz Ahmad Kaifi v. Government of Punjab and others (PLD 2013 Lahore 598), while making en masse removals of Law Officers, without cherry-picking discretion. Learned counsel attempted to distinguish the decision in the case of Raja Muhammad Zubair and others' and adds that said order was

assailed before the Hon'ble Supreme Court of Pakistan, wherein leave was refused, hence, said decision of the Apex Court is not a binding precedent. Learned counsel referred to decisions from our and Indian jurisdiction in support of submissions - listed in the written submissions provided -- which are reported as, Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132), Malik Muhammad Bashir Lakhesar, Assistant Advocate General, Punjab v. Government of Punjab and others (2019 PLC (C.S.) 266), Syed Aziz-ud-Udin Kakakhel v. Governor Khyber Pakhtunkhwa through Principal Secretary and 8 others (PLD 2019 Peshawar 145), Shafaqat Mahmood Lodhi v. The Accountant-General West Pakistan Lahore (PLD 1968 Lahore 786), State of Uttar Pardesh and others v. Rakesh KUMAR Keshari and another ((2011) 5 Supreme Court Cases 341), B.P. Singhal v. Union of India and another ((2010) 6 Supreme Court Cases 331), State of U.P. and others v. U.P. State Law Officers Association and others (AIR 1994 SC 1654), Joginder Singh Wasu v. State of Punjab (1994) 1 Supreme Court Cases 184), V.C. Rangadurai v. D. Gopalan and others (AIR 1979 SC 281), P.K. Kunjukrishnan Nair v. State of Kerala and others (AIR 1989 Kerala 253), Bhadreswar Tanti v. S.N. Choudhary and another (AIR 1985 Gauhatti 32), Justice Qazi Faez Isa and others v. The President of Pakistan and others (PLD 2021 SC 1), Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808) and Vice-Chairman Punjab Bar Council and others v. Government of The Punjab and others (PLD 2021 Lahore 544)

Mehran Security Service (Pvt.) Ltd. and 2 others v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan Islamabad and 3 others (2000 YLR 2655), Malik Muhammad Bashir Lakhesar, Assistant Advocate-General, Punjab v. Government of Punjab and others (2019 PLC (C.S.) 266), Secretary, Ministry of Law, Parliamentary Affairs and Human Rights, Government of Punjab and others v. Muhammad Ashraf Khan and others (PLD 2011 SC 7), Muhammad Usman v. Additional Sessions Judge, Rawalpindi and 3 others (2022 YLR 1131), Rabnawaz Dhadwana,

Advocate and others v. Rana Muhammad Akram, Advocate and others (PLD 2014 Lahore 591), Khawaja Muhammad Asif v. Federation of Pakistan and others (2013 SCMR 1205), Government of Balochistan through Secretary Services and General Administration Department and others (PLD 2021 SC 313), Raja Muhammad Zubair and others v. Government of Khyber Pakhtunkhwa through Chief Secretary and others (PLD 2022 Peshawar 100), Nemat Ullah and others v. Chairman Governing Body Worker Welfare Board/Secretary to Government of KPK, Labour Department and others (2016 SCMR 1299), Imtiaz Ahmad Kaifi v. Government of Punjab and others (PLD 2013 Lahore 598), Khawaja Muhammad Sharif v. Federation of Pakistan through Secretary Cabinet Division, Government of Pakistan, Islamabad and 18 others (PLD 1988 Lahore 725), Khawaja Ahmad Tariq Rahim v. The Federation of Pakistan through Secretary Ministry of Law and Parliamentary Affairs, Islamabad and another (PLD 1992 SC 646), Muhammad Usman v. Additional Sessions Judge, Rawalpindi and 3 others (2022 YLR 1131), Hadayat ULLAH and others v. Federation of Pakistan and others (2022 SCMR 1691) and M. Ashraf Khan, Advocate Supreme Court of Pakistan v. Secretary Law, Parliamentary Affairs and Human Rights, Government of The Punjab, Lahore and 19 others (PLD 2008 Lahore 312).

Determination.

6. The grit of the nation is always gauged by its ability to navigate through testing times, how difficult those might be. Some nations may emerge stronger, and others just become mere historical fact. Conventional wisdom established that attitudes-cum-resilience of the citizenry is no doubt an indispensable factor for recording a success story, but nonetheless forbearance of the Institutions is the foundational principle. What could be worse than the position of the Londoners, when the German war-machine [Luftwaffe -- German Air-force] played havoc and caused unparalleled devastation, but the nation not only survived but thrived. War strategies and support from across the Atlantic were critical factors but the rallying point

was the argument by the then British Prime Minister, Sir Winston Churchill, which was,

> "Are the Courts functioning"? And was told that judges are dispensing justice as normal and Churchill replied, "Thank God. If the Courts are working, nothing can go wrong"
>
> [Emphasis supplied]

7. Working of the Courts does not imply a mere nine to five jobs but discharging of their fundamental function. i.e., dispensation of justice. Dispensation of justice is not a term of art but implies an unhampered and uncompromised enforcement, preservation, adherence to and ensuring continuity of the constitutional conventions, articulated in the Constitution of 1973. Perpetuation of the constitutional mandate would ensure the existence, supremacy and continuity of constitutional democracy, and essentially confirming the authority of the people of Pakistan, having absolute and uncompromising power and authority to elect/choose their representatives for running the affairs of the State. And constitutional democracy is sustained by free, fair and transparent elections under the supervision and control of an impartial and nonpartisan body, constitutionally speaking, the Election Commission of Pakistan.

8. In the context of peculiar circumstances qua dissolution of the Punjab Assembly, care-taker provincial government of the Punjab was placed to assist the Election Commission of Pakistan in organizing and conduct of honest, fair, just and transparent elections. Care-taker provincial government is in place for limited period, i.e., pre-election phase -- such phase commonly referred as Purdah in United Kingdom -- and entrusted with limited functions.

Controversy at hand, earlier scripted in the statement of facts portion, on its face, appears simple, involving an act of removal of the Advocate General, Punjab and Law Officers by the care-taker Chief Minister - simplicitor having client-attorney relationship and otherwise occupying pleasure posts -- but devil lives in the details. And sharper focus expounds

seriously triable questions of law, hereunder summarized, for ease of comprehension,

(i) What is the nature, scope and extent of the functions, powers and authority conferred upon and exercisable by the care-taker provincial government during pre-election phase?

(ii) Whether the act of removal of Advocate General and Law Officers is lawful and covered in terms of the functions prescribed in law? And whether Section 230 of Elections Act, 2017 prescribes sum-total functions of caretaker provincial government(s) or its otherwise?

(iii) Whether care-taker Chief Minister, even before the formation of the care-taker provincial government, is a competent authority to order en masse removal of the Advocate General and Law Officers? AND Whether section 230 of the Elections Act recognizes individuality of the care-taker Chief Minister, independent of care-taker provincial government?

(iv) Whether political affiliation/association is attributable to the Office of Advocate General merely because appointments were made by elected political government?

(v) Analysis of the decisions referred, and effect of ratio settled therein, including dicta settled in the case of 'Imtiaz Ahmad Kaifi' and Raja Muhammad Zubair and others'

9. These proceedings are initiated against the orders of the care-taker Chief Minister, and do not relate to alleged removal by the Chief Minister, elected in terms of clause (5) of Article 130 of the Constitution. Learned counsel on both sides of the aisle extensively argued in the context of the nature and scope of pleasure post(s), element of loss of trust-cum-confidence in context of a simple client-attorney relationship and necessity of providing reasons for removal or otherwise. This is not the actual controversy. Judgments referred from the neighbouring jurisdiction and case of 'Rab Nawaz Dhadwana, Advocate and others' (supra) are not relevant for the purposes of controversy at hand -- latter decision

highlighted the scope and significance of the constitutional office and indispensability of appointment of a full-time Advocate General [except the judgments discussed while dealing with question (v)]. Here, the context calls for determination of legality of alleged actions by the care-taker Chief Minister. Now, I take up the first question.

(i) What is the nature, scope and extent of the functions, powers and authority conferred upon and exercisable by the care-taker provincial government during pre-election phase?

10. In the context of controversy, brief review of constitutional powers of elected Chief Minister is necessary. Part IV of the Constitution deals with the Provinces. Article 105 of the Constitution envisages that, subject to the constitution, the Governor, in performance of its functions, shall act on and in accordance with the advice of the Cabinet or the Chief Minister. Clause (1) of Article 129 of the Constitution provides that, subject to the constitution, executive authority of the Province shall be exercised in the name of the Governor by the Provincial Government, consisting of Chief Minister and the Provincial Ministers, which shall act through the Chief Minister. Clause (2) of Article 129 of the Constitution indicates that, in performance of his functions under the Constitution, Chief Minister may act either directly or through the Provincial Ministers. And clause (1) of Article 130 of the Constitution states that there shall be a Cabinet of Ministers, with the Chief Minister at its head, to aid and advise the Governor in exercise of his functions. Chief Minister, in terms of Article 131 of the Constitution was required to keep the Governor informed about matters touching the Provincial administration, legislative proposals to be brought before the Provincial Assembly. And in terms of clause (1) of Article 132 of the Constitution, Provincial Ministers are appointed on the advice of the Chief Minister. And, relevant to the context, Article 140 of the Constitution provides for the office of the Advocate General, nature of duties and requisite and continuing pleasure of the Governor for holding the Office. Repeated references were made to Rule 13(1), read with Third Schedule and Rule 14(1), read with Part-A of Seventh Schedule of the

Rules of Business to claim the powers of elected Chief Minister and to bring alleged orders within the ambit thereof. The moot question is whether under the current constitutional framework functions of the care-taker Chief Minister are provided and if not whether such situation warrants that expression the "Chief Minister" be interchangeably read as "care-taker Chief Minister". The care-taker Chief Minister is appointed, in the context of existing circumstances, in terms of proviso to the clause (3) of Article 224A of the Constitution. After hearing the learned counsels no reference or indication is found to legally treat care-taker Chief Minister as alter ego of an elected Chief Minister. Simply, alleged commonness of functions, between the care-taker Chief Minister and elected Chief Minister, cannot be presumed because of use of expression care-taker Chief Minister in the Constitution or because care-taker Chief Minister took oath in terms of Third Schedule of the Constitution. No clear stipulation is found qua the functions to be performed by the care-taker Chief Minister in the Constitution. For all intent and purposes, the Chief Minister and care-taker Chief Minister are mutually exclusive entities. In the case at hand, care-taker Chief Minister is appointed in terms of proviso to clause (3) of Article 224A of the Constitution -- which article is found in Chapter 2 -- ELECTION LAWS AND CONDUCT OF ELECTIONS -- Chapter VIII of the Constitution. Simplicitor mechanism for appointment of care-taker Chief Minister was provided in the Constitution without reference to the functions to be performed under the Constitution. Learned Counsel for the respondents Nos.1 and 2 erroneously referred to clauses (1) and (3) of Article 132 of the Constitution to show that constitutional function prescribed therein can be performed by care-taker Chief Minister, in the context of advising the Governor for appointing care-taker Cabinet and to advice, if any need for removal arises. Argument falls in the realm of pure imagination. Learned counsel overlooked the existence and significance of third proviso to clause (1A) of Article 224, clearly catering for the situation pointed -- appointment of provincial care-taker Cabinet on the advice of the care-taker Chief Minister, independent of Article 132 of the Constitution.

This fact is indicative of seperate/independent status of the care-taker Chief Minister. It is expedient to reproduce clause (IA) of Article 224 of the Constitution, which reads as:-

(IA) On dissolution of the Assembly on completion of its term, or in case it is dissolved under Article 58 or Article 112, the President, or the Governor, as the case may be, shall appoint a care-taker Cabinet:

Provided that the care-taker Prime Minister shall be appointed by the President in consultation with the Prime Minister and the Leader of the Opposition in the outgoing National Assembly, and a care-taker Chief Minister shall be appointed by the Governor in consultation with the Chief Minister and the Leader of the Opposition in the outgoing Provincial Assembly:

Provided further that if the Prime Minister or a Chief Minister and their respective Leader of the Opposition do not agree on any person to be appointed as a care-taker Prime Minister or the care-taker Chief Minister, as the case may be, the provisions of Article 224A shall be followed:

Provided also that the Member of the Federal and Provincial care-taker Cabinets shall be appointed on the advice of the care-taker Prime Minister or the care-taker Chief Minister, as the case may be".

[Emphasis supplied]

11. Care-taker Government is 'sui generis' -- one of its kind -- and Constitution per se draws distinction between an elected Chief Minister and care-taker Chief Minister, as far as obligations, responsibilities, powers and functions are concerned. Elected provincial government is accountable and answerable to the Assembly and care-taker provincial government works in the absence of Assembly. Residual argument of relying upon Rules 13 and 14 of the Rules of Business is also misconceived. Rules of Business draw existence from Article 139 of the Constitution, and clause (3) thereof mandated for the framing of rules for the allocation and transaction of its business. Rules of Business per se does not confer any power unto the Chief Minister, outside the scope of functions and powers provided under

Constitutional framework, merely regulates the powers conferred. Rules of Business, though provides for the allocation and transaction of executive business, may claim preference amongst the family of subordinate/delegated legislation but cannot be treated as higher than the Act of the Parliament. Can Rules of Business be treated as superior to the Elections Act, and Section 230 thereof as far as the functions of care-taker provincial government is concerned. Reference is made to paragraph 16 of the case of Mehran Security Service (Pvt.) Ltd. and 2 others v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan, Islamabad and 3 others (2000 YLR 2655).

"16. Since this matter has not been taken very seriously on behalf of the respondents, it has not been specifically contended that the said decision was made on the authority of Rules of Business, 1973 of the Federal Government but it seems that the decision was made on the assumption that said Rules of business empower the Ministry to take this decision. These Rules have been framed under Article 99 of the Constitution, and Article itself clearly states that they shall be "for the allocation and transaction of the business of the Federal Government" of course, these Rules have a higher status than they have been made on the authority of the Constitution itself, but they cannot substitute an Act of Parliament or Law to determine or affect the rights and duties of the citizens. Where a law assigns a function or confers a power on the Federal Government, the Rules of Business merely prescribe as to which of the Ministries or Divisions shall perform those functions and exercise those powers, and in what manner. These Rules cannot, therefore, be used to lay down the limitations, requirements and mode, as done in this case, which can only be done by enactment ".

[Emphasis supplied]

12. The scope of Rules of Business is also discussed in paragraph 63 of decision in the case of Mustafa Impex (supra), reproduced hereunder for ease of reference,

'It needs to be stressed with clarity and precision, that the allocation of business, i.e. by whom and how a matter is to be dealt with, is not equivalent to the grant of power. Allocation of business is merely a matter of inter-departmental procedure to indicate which division of the Government is going to deal with a certain subject. The mere fact that a certain Division is going to deal with a specified matter does not confer any extra or additional, constitutional or statutory powers on the said Division.'

[Emphasis supplied]

13. Proposition that some functions could be performed by the care-cater Chief Minister under the Constitution, and others are only reserved for elected provincial government leads to ludicrous situation. How and who will determine that which of the functions are available to the care-taker Chief Minister, and which function is categorized as forbidden fruit. Section 230 of the Elections Act provided solution, in terms whereof the functions of the care-taker provincial government are codified. Elections Act was framed by the Parliament in exercise of legislative powers under Article 142(a) of the Constitution -- and relevant item is 41 of the Federal Legislative List. Before the promulgation of section 230, ibid, scope of functions of care-taker governments/Cabinet(s) were largely regulated by reference to constitutional conventions prevalent and shaped by the ratio settled in following cases from our jurisdiction, which are reported as Khawaja Muhammad Sharif v. Federation of Pakistan through Secretary Cabinet Division, Government of Pakistan, Islamabad (PLD 1988 Lahore 725), Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others (PLD 1989 Supreme Court 166), Khawaja Ahmad Tariq Rahim v. The Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs, Islamabad and another (PLD 1992 Supreme Court 646), The Regional Commissioner of Income-Tax Central Region, Lahore and others v. Zafar Hussain and others (PLD 1992 Supreme Court 869), Tanveer A. Qureshi v. President of Pakistan, President House, Islamabad and 3 others (PLD 1997 Lahore 263), case of Khawaja Muhammad Asif

(supra) and Nemat Ullah and others v. Chairman Governing Body, Worker Welfare Board/Secretary to Government of KPC, Labour Department and others (2016 SCMR 1299).

Decision in the case of Khawaja Muhammad Asif (supra) steered the process of codifying functions of the care-taker governments which resulted in drafting of section 230 of the Elections Act. Selective reference to some rules of the Rules of Business is insignificant. If rules 13 and 14 of Rules of Business could be invoked by the care-taker Chief Minister what discourages him from claiming all the powers of the Chief Minister, classified under Rule (5) of the Rules of Business. The care-taker provincial government before claiming or exercising executive function is required to seek support of law without which alleged action would not be sustainable in law -- must confirm to the requirement of section 230 of the Elections Act. Legality of every act, order, decision of care-taker provincial government would be adjudged in the context of section 230 of the Elections Act and not in terms of Rules of Business. In view of the above, the scope of the functions and extent thereof, permissible to be exercised by the care-taker provincial government are contained in section 230 of Elections Act. Now, I take up next question.

(ii) Whether the act of removal of Advocate General and Law Officers is lawful and covered in terms of the functions prescribed in law, and whether Section 230 of Elections Act, 2017 prescribes sum-total functions of caretaker provincial government(s) or its otherwise?

14. The question is not regarding the proprietary of the orders -- circumstances or alleged causes of removal -- but legality of the orders of removal passed by the care-taker Chief Minister -- who had a solo-flight and hurriedly removed public officers from public office before the formation of care-taker provincial government. Whether act of removal is legal or illegal. Upon coming into force of section 230 of the Elections Act, no further confusion exists. The sum-total functions to be performed by care-taker provincial government are statutorily defined. Anything done, action taken or decision made beyond the scope of section 230 of the

Elections Act will be construed as act in excess of the jurisdiction and patent misuse of authority. Plea of availability of some alleged functions under the Constitution is misconceived, and any acknowledgment thereof would jeopardize very existence and legality of section 230 of Elections Act. What and how would the limitations prescribed in terms of subsection (2) of section 230 of the Elections Act be justified or implemented if care-taker Chief Minister be authorized to perform functions otherwise assigned to an elected Chief Minister under the Constitution. Hence, the care-taker provincial government operates and functions according to the charter of functions provided in section 230 of the Elections Act. It is expedient to reproduce section 230 of the Elections Act for convenience of reference, which reads as,

"230. Functions of caretaker Government.--(1) A caretaker Government shall --

(a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government.

(b) assist the Commission to hold elections in accordance with law.

(c) Restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and

(d) Be impartial to every person and political party.

(2) The caretaker Government shall not--

(a) take major policy decisions except on urgent matters;

(b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;

(c) enter into major contract or undertaking if it is detrimental to public interest;

(d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case.

(e) make promotions or major appointments or public officials but may make acting or short term appointments in public interest;

(f) transfer public officials unless it is considered expedient and after approval of the Commission; and

(g) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

(3) The Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.

(4) In this section, 'caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government".

[Emphasis supplied]

15. Textually subsection (1) of section 230 of Elections Act provides the functions to be performed by the care-taker provincial government with clear guidelines and subsection (2) of the Elections Act provides restraints/limitations to be adhered to, but with certain exceptions/ conditionalities. Now the question is whether the orders of removal could legally seek shelter under section 230 of the Elections Act. In the context of clause (e) of subsection (2) of section 230 of the Elections Act, underlying necessity of requisite public interest must be satisfied. Clause (e) of subsection (2) of section 230 operates on the principle of causation. Option of appointment arises in case of occurrence of vacancy, which is the cause and effect thereof is permissibility to make acting or short-term appointments in public interest. In the case under reference cause was allegedly created to justify consequent action of making fresh appointment of Law Officers. This amounts to fraud on the law. Primary reason for the removal of Advocate General and Law Officers is a mere subjective opinion of the care-taker Chief Minister that Advocate General had political affiliation/association, since same was appointed by the outgoing

provincial government. The question is not of formation of opinion but indication of the circumstances, based on which inferences were drawn, need full disclosure. Care-taker Chief Minister believes that further retention of Advocate General, and Law Officers would result in disagreements and an obvious conflict between the person of the Advocate General and care-taker provincial government, on policy matters, assuming that former will oppose the working and operations of the care-taker provincial government. Learned counsel for the care-taker Chief Minister adds that removal was otherwise imperative for the conduct of honest, fair, free and transparent elections of the Provincial Assembly. Incidiently, nothing has been brought in shape of any official summary -- containing reasons and grounds for removal and that free and fair elections are not achievable in presence of the Advocate General -- nor any affidavit of any official was submitted, except that some details of print/electronic media were appended with the written submissions -- at the fag-end of Volume-II - to highlight alleged political propensity of the Advocate General, but those documents were not referred during submissions before the larger Bench. No plea of alleged political affiliation and association was pleaded in the report/para-wise comments submitted. Learned counsel for the respondents Nos. 1 and 2 hammered his client's position that no reasoning was required to be disclosed for the appointment or removal of the pleasure post(s), and whether any detail is provided or not, such matters are otherwise unreviewable under the judicial review jurisdiction. This argument is inherently defective in the context of existing circumstances -- scope of functions exercisable by the care-taker Chief Minister and extent thereof as excess committed or breach reported, the matter is reviewable under constitutional jurisdiction.

16. Learned counsel for the respondents Nos. 1 and 2 emphasized that act of removal of Advocate General and Law Officers is a reversable act, by future Government elected after the elections. This argument needs to be analysed in the context of the effect caused by a particular Act. Articles 100 and 140 of the Constitution relate to the appointment and removal of

Attorney General and Advocate General. The argument raised may be inconsequential for present purposes or having an academic value but if this scenario is examined in the context of Attorney General -- assuming that Attorney General and not the Advocate General is removed by the president on the advice of care-taker Federal Government. Notably, Attorney General is the member of the Judicial Commission of Pakistan and is required to attend the meeting, who attends and votes qua the appointment or confirmation of the Hon'ble Judge. Is an act of Attorney General, appointed by care-taker Federal Government, reversable. Agreed that Advocate General is not the member of Judicial Commission, but would it imply that Articles 100 and 140 of the Constitution be read and interpreted differently and grounds pleaded in instant petitions for the removal of the Advocate General are not available for the removal of the Attorney General, in the context of argument of reversible decision. No further discussion is required in the context of conjectural situation. Learned Counsel for the respondents fails to appreciate that element of reversibility is not the only condition prescribed in clause (c) of subsection (1) of section 230 of the Elections Act. Was a removal of person holding constitutional position a routine act. The appointment of Advocate General is a substantial appointment and otherwise fall in the realm of major policy decision. Simplicitor removal of Advocate General on the allegation of having political affiliation/association -- solely because being appointed by the elected provincial government -- and without any plausible justification and reasoning and without seeking the indulgence of the Election Commission, per se violates the mandate of clause (d) of sub-section (1) of section 230 of the Elections Act -- and action cannot otherwise be construed as an impartial act to a political party.

No material was provided to show/establish requisite public interest -- this argument is otherwise unsustainable because the care-taker Chief Minister proceeded to remove public officers before the Cabinet had sworn in. The care-taker Chief Minister or the care-taker provincial government cannot be allowed to claim privilege of not disclosing reasons for the

removal of Advocate General, and Law Officers on the premise that it was obligatory for the care-taker set-up to give explanations/reasons qua decision taken and actions initiated for the purposes of meeting the requirements of section 230 of the Elections Act, failing which section 230 ibid loses its effectiveness, purpose and applicability. Care-taker provincial government is not answerable to the Assembly or to the people of Pakistan but same cannot be allowed to claim immunity or relaxation qua the requirements of section 230

of the Elections Act, more particularly subsection (2) thereof. It is nowhere provided in the text of the orders that how alleged removal or consequent appointments met the condition of underlying public interest. Since no document or material is supplied therefore, I would not assume the existence or fulfilment of the condition of

public interest. Learned counsel for the respondents Nos. 1 and 2, at the rostrum, attempted to justify the orders, ex-post facto/retroactively. I am afraid that such retroactive explanations qua removal of persons, holding public office, are not acceptable while exercising constitutional jurisdiction, when no material was brought to ascertain the question of fulfillment of condition of requisite public interest.

In the exercise of constitutional jurisdiction any deficiency/shortcoming cannot be supplied to assume existence of element of public interest when order per se is otherwise devoid of material details. Reference is made to the observations in the case of "Commissioner of Police, Bombay v. Gordhandas Bhanji" (1952 AIR (SC) 16), Para-9 thereof reads as under,

> "9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect

and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

[Emphasis supplied]

17. Orders are inherently defective and of no legal effect -- made even before care-taker provincial government was formed. This jurisdictional defect is uncurable. Section 230 of the Elections Act does not envisage or admit of any solo-flight by the care-taker Chief Minister, independent of caretaker Provincial Government, which provision of law envisions principle of joint responsibility of care-taker Cabinet. Evidently, purported exercise of authority tantamount to transgression and gross overreach. If such an action is approved or ratified, it will defy the purpose of bringing a care-taker provincial government and instead create a 'Frankenstein's monster' 'a despot', which is not the intent of section 230 of the Elections Act. I am afraid no endorsement qua purported actions of the care-taker Chief Minister could be extended. The purpose of the care-taker provincial government is to assist the Commission to hold elections in accordance with the law [Clause (b) of subsection (1) of section 230 of Elections Act]. I find the involvement and participation of Election Commission, in the context of the decisions of removal of Advocate General and Law Officers conspicuous by its absence, which remained on the sidelines and did not object to an apparent overreach of authority by the care-taker Chief Minister -- even did not object that how care-taker Chief Minister could operate before the formation of the caretaker Provincial Government. Is Election Commission performing its constitutional duties. Res ipsa loquitur -- the thing speaks for itself. No prejudice intended! Full-stop. Now I take the next question.

(iii) Whether care-taker Chief Minister, even before the formation of the care-taker provincial government, is a competent authority to order en masse removal of the Advocate General and Law Officers? AND whether section 230 of the Elections Act recognizes individuality of

the care-taker Chief Minister, independent of care-taker provincial government?

18. The question is, by and large, answered in preceding paragraphs. Individuality claimed and exhibited in terms of the orders impugned is not recognized under section 230 of Elections Act. Likewise, the appointment of fresh Law Officers is of no legal effect, authority purportedly being exercised in an individual capacity and outside the scope of clause (e) of subsection (2) of section 230 of the Elections Act. Above all element of pressing public interest is conspicuously absent. This court while exercising constitutional jurisdiction would hold an inquiry to look for element of public interest, otherwise shrouded in mystery, neither substantiated by any material/document nor manifested in the orders assailed. Public interest can be a ground for initiating action and not raising ex-post defence allegedly to defend the order, which is otherwise, on its face, ambiguous and unsubstantiated. This takes me to the next question.

(iv) Whether political affiliation/association is attributable to the Office of Advocate General merely because appointments were made by elected political government?

19. Advocate General is a top/senior legal officer of the provincial government, whose duties are to give advice to the provincial government upon such legal matters, and to perform such other duties of legal character, as may be referred or assigned to him by the provincial government -- Clause (2) of Article 140 of the Constitution. Advocate general cannot be classified as a political appointee, merely because appointment is made by the elected provincial government. The office of Advocate General is not a political office but a constitutional office. It is wrong to construe that Advocate General appointed shall pursue or toe the philosophy of the political government or party politics, unless such serious and prejudicial allegations are specifically alleged, confronted to and substantiated. Some instructive discussion in this context is found in Constitutional law of India, by H.M Seervai -- Fourth Edition/Silver Jubilee Edition, Volume 2, relevant portions from pages 2108 to 2114, which is reproduced hereunder,

"18.143 The debates in the Constituent Assembly show the anxiety of the framers of our Constitution to ensure that the administration of justice was not perverted by executive or political pressure, and they took steps to enact provisions which would secure that object. Article 32 gave the Sup. Ct. power to issue writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto for violation of fundamental rights, and Art. 226 gave the same power to the High Courts, and also gave the power to issue those writs for any other purpose. These two Articles secured judicial control of administrative action. Article 51 directs the State to take steps to separate the executive from the judiciary, a directive which has been carried out by a large number of States. The power to grant pardon conferred by Arts. 72 and 161 on the President and the Governor of a State is designed to temper justice with mercy. In rejecting all attempts to make the office of the Att.-Gen. and the Advs.-Gen. political offices, and in deliberately making those offices non-political, the framers made independent legal advice at the highest level available to the Union and the States. Besides, the Constitution imposed an obligation on the Att.-Gen. and the Adv.-Gen. to discharge statutory duties for the protection of the public interest -- duties which they could discharge independently, without being suspected of political partisanship: Arts. 76 and 165. The non-political nature of the Att-Gen.'s office not only secured independent advice for the Union, but was a further protection to the States in their dealings with the Union, for the duty of the Att.-Gen. is not only to advise the Union on matters which concern only the Union, but also on matters which concern the relation of the States and the Union, and the advice given by a political partisan might be unfair to the States and might lead to needless litigation and disharmony between the Union and the States. The framers were aware that in the United Kingdom the offices of the Att.-Gen. and the Sol-Gen. were political offices. But the framers were also aware

of the breach in the doctrine of ministerial responsibility caused by the convention that in the discharge of their judicial functions the law officers must act independently of the ministry. Besides, a convention can be ignored; therefore, the Constitution expressly imposed a duty on the Att. Gen. and the Advs. Gen. to exercise independent statutory powers conferred upon them by any law. As the Chapters on the Judiciary will show (Chapters XXV and XXVI in Vol. III of this edition) care was taken to secure the appointment of judges who should be free from political pressure. Motions designed to require ratification of the appointment of judges inter alia by "some members of the legislature were rejected as making the appointments subject to political pressures". Further, Arts. 233 to 235 placed the subordinate judiciary under the control and supervision of the High Courts to free them from executive control.

18.144 The administration of justice is not the function only of the courts or of the law officers. The executive government is charged an with the administration of criminal law and is also in charge of civil litigation affecting rights and powers of government which must necessarily affect the public interest. What provision did the framers of our Constitution make to see that the executive administration of justice was not perverted by political or party considerations? The services of the Union and the States have been provided for in a distinct part of the Constitution and will be fully considered in Chapter XXVII of Vol. III of this edition. But the organization of the civil service is of vital importance to the fair administration of justice. Broadly speaking, there are two widely contrasted systems of civil service, one of which existed in the United States for over 100 years, and the other of which has existed in U.K. The American system is described as "the spoils system" which is defined as the "practice of giving public offices to adherents of successful party". The other system is best described as the system of a permanent civil service selected by open competitive examinations or by

recruitment through an independent agency like a Public Service Commission. The spoils system in the United States appears to have been a concomitant of the Presidential form of government, for Art. 2(2) of the U.S. Constitution provides that the President shall, by and with the advice and consent of the Senate, appoint, inter alia, all officers of the United States whose appointments are not provided for in the Constitution and which shall be established by law. A full discussion of the spoils system in the United States is outside the scope of this book. But an extremely illuminating discussion of that system will be found in the undernoted book. The evil effects of that system are summed up by Prof. Finer thus:

"Effects of the system. An enormous number of offices -- most, in fact -- fell into the hands of the politicians. Every four years a large clearance was effected. and during each Presidential term other violent changes occurred Sheer inefficiency was the first result; an increase in public costs the second: the creation of a class of office seekers the third, political corruption the fourth: a standing battle between the President and the Senate for the control of appointments and removals a fifth; and a terrific waste of time and labour on the part of the President and heads of departments, coupled with the real pain of refusal of applications for office, the sixth. Never had a state been so debauched Officials were chosen through the loosely jointed machinery of Congressmen and the local party; bosses'. Moreover, the parties prayed upon the officeholders' salaries, by 'assessing' them at so much per cent for contributions to campaign funds, and this again caused a counter pressure for higher salaries, so that indirectly the parties were paid by the State Finally, the political appointees were obliged to be politicians all the time to secure their future reinstatement. Worse still, politics and administration fell into public

contempt.

From this evil the Federal Government of the United States freed itself largely due to the efforts of reformers who were struck by the civil service in the United Kingdom which they tried to introduce, and largely succeeded in introducing, in the United States.

18.145 The underlying basis of the spoils system is that a government is best served by those who share its "philosophy" or more accurately, its party politics; and that an inefficient public servant belonging to the political party in power is a better public servant than a more efficient person who does not belong to that party. On the other hand, the civil service in U.K. is a concomitant of the cabinet form of government, that is, a cabinet responsible to Parliament and removable by it, in which the minister accepts responsibility for the acts of his department The function of the permanent civil service is to carry on the administration no matter which Govt is in power -- Conservative, Liberal, Labour, or a combination of one or more of them. The duty of the civil service is to put its knowledge and experience at the disposal of the ministers before policy decisions are taken, and then to implement the decisions whatever the personal views of the civil servant may be. The framers of our Constitution having adopted the cabinet or the ministerial form of government, adopted the British system of a permanent civil service which in fact existed in India. The framers also enacted provisions in the Constitution which would secure a permanent civil service recruited by open competitive examination and/or by the Public Service Commission. Article 16 secures to all citizens equality of opportunity in matters of public employment, which opportunity includes promotion, transfer, pensions and the like. These provisions would make the spoils system impossible in the selection of candidates for public offices. The Public Service Commission was made as independent of the Govt. as law could make it: see Arts. 315 to 323. Further, after appointment in government service, Art. 311 protected the Govt. servant from being dismissed or

removed from service or reduced in rank without complying with the requirements of that Article, thus ensuring the security of service, no matter what political party was in power from time to time. The kind of civil service provided for in the Constitution was a reasonable safeguard against perverting the course of justice. The framers of the Constitution were aware that the legal business of Govt. was conducted by the Legal Department both on the criminal and on the civil side, and that it was the duty of the legal department to advise all other departments. The legal department consisted of highly trained lawyers with a Remembrancer for Legal Affairs (R.L.A.) and Secretary of the Law Department who was not only the administrative head of the department but was the highest law officer in the Secretariat. The Rules made for the Law Officers, which include the Law Secretary, as also the Rules of Business show -- what would even otherwise be obvious -- that it is the function of the Legal Department to give correct legal advice on the problems which arise in the administration of civil and criminal justice. That the Legal Department may take a different view of a legal problem from that taken by the Minister in charge of Law and Justice is also made clear from the Rules of Business. On this point, Kedar Prasad v. State is an instructive case. Rule 20, Sch. 3 of the Rules of Business of the State of Bihar provided that any proposal for the institution or withdrawal of a prosecution against the advice tendered by the judicial department (the Legal Remembrancer's Branch) must be referred to the Council of Ministers for discussion and final orders of government. In respect of two persons, the Dist. Magistrate and the Secretary of the Legal Department advised against the withdrawal of the prosecution, pointing out that there was a prima facie case and "justice demanded that it should be thrashed out in court." Disregarding the advice, the Minister of Law directed the prosecutor to withdraw the prosecution which, however, could not be withdrawn because the Magistrate refused

permission to withdraw it. During the pendency of the criminal revision applications against this order, the State of Bihar published a resolution in the Gazette Extraordinary appointing a Commission of Inquiry to inquire, inter alia, into the following charge: "Sri Hazibur Rehman thus by misuse of his official position and power unnecessarily interfered with the administration of justice in a serious case of rioting with murder." This case shows that it is expected that the Legal Department will give independent advice, and that if in important matters the Law Minister overrules that advice, the matter should be considered by the whole Council of Ministers and failure to conform to this salutary rule may expose the Minister to a charge of abuse of power and interference in the administration of justice. Independent advice given by the Legal Department thus not only protects the public interest, but protects the Minister from the imputation of interfering with the course of justice, by making the whole Ministry responsible for the final decision.

18.146 The reasons why the legal department and the law officer must give independent legal advice to Govt. are elementary and well known to every lawyer. Those reasons were well known to the framers of the Constitution, who, therefore, took no steps to ensure that the advice given by the legal department to Govt. should be independent legal advice. The proper functioning of the legal department was so well known, that in the first edition of this book, I considered it unnecessary to deal with the Executive and the Administration of Justice which is the subject of the present Section III. However, a different view of the role of law officers (including law officers in the legal department) and Govt. advocates has been propounded recently which has made it necessary to discuss the subject and to examine the validity of the new doctrine. Addressing a Law Officers' Conference, a Law in Bombay is reported to have said:

"I do expect the government lawyers to be committed to the philosophy of the Government those who do not have faith in government's philosophy and are on its panel have to make self-analysis regarding the same." And further "If government engages lawyers holding views directly in conflict with its philosophy, then that government is not worth its name. The Government must see that it has committed lawyers to take up their briefs and lawyers on their part must advise government properly if they believe in the philosophy of the Government."

18.147 A little "self-analysis" would show that the new doctrine is not only opposed to the provisions of our Constitution set out earlier, but is untenable for reasons which are elementary and well-known:

(a) When a lawyer is asked to give a legal opinion, he must use his knowledge and skill, first, in ascertaining the relevant facts and then in ascertaining the relevant law applicable to those facts. His opinion will state briefly the relevant facts and will indicate what he considers to be the correct position in law. Neither the facts nor the law, as he finds them, can change according to the "philosophy" of the person who seeks his opinion.

(b) A government, more than a private litigant, must have competent and correct legal advice, for State litigation involves not merely questions relating to money or property but it involves questions of legislative and executive power. The framers of our Constitution rightly assumed that a popularly elected Minister in charge of a public department would wish to protect the interests of the State, and that he would not wish to incur the odium of being responsible for the actions of a department whose advice was frequently found incorrect when tested by courts and tribunals.

(c) By far the largest part of civil litigation is concerned with statutory law which has nothing to do with any particular philosophy. Suits relating to contracts, sale of goods, transfer of property, or litigation arising from tax laws, or the ascertainment of compensation

according to principles laid down by law involve no question of the "philosophy" of government. And it is difficult to see what part the "philosophy" of government can play when the public prosecutor prosecutes a person for an offence under the Penal Code or under special laws.

(d) Private litigants in their litigation with government are not inhibited from securing the ablest lawyers and advocates for their cause by the "philosophy" of those advocates, and a glance at the Law Reports shows that when it comes to protecting Govt.'s interests as a litigant Govts. try to secure the services of the ablest advocates regardless of their "philosophy".

18.148 The following passage from Prof. Abraham's book on The Judicial Process (3rd ed. pp. 193-4) is apposite for showing the high traditions of law officers:

The Solicitor General is in charge of all of the government's litigation in the Supreme Court, which comprises in excess of 50 per cent of the Court's total work load. He and his staff argue all of the government's cases before it. His office supervises all government briefs filed in the Court, and he must personally approve, or disapprove, any case before the government takes it to the Court. Moreover, the Solicitor General -- whose post pays $ 48,500 (1974) -- has supervisory authority over the government appeals. Only if he gives his approval may the government appeal from an adverse decision in a trial court. [It must of course be remembered that both the federal and state governments are checked by the formidable Fifth (and Fourteenth) Amendment safeguards against double jeopardy.] Sometimes, much to the chagrin of certain members of both the executive and legislative branches, the Solicitor General's office exercises its commendable tradition of alertness toward any unfairness in government cases. When he detects such unfairness, the Solicitor General will usually file a 'Confession of Error in the Supreme Court, in which he asks that it set aside a victory won by

the government in the lower court. Although this practice is of the very essence of justice -- which, after all, should be the aim of all litigation -- it may be doubted that a large number of private counsel would be similarly willing to forego a victory. All too frequently litigation is viewed as a courtroom battle between two opposing teams of highpowered trial lawyers bent upon victory rather than upon the triumph of justice."

18.149 A distinguished Att-Gen. of the United States, Griffin B. Bell, has put the duty of all public servants, which would include ministers and law officers, in the following admirable words:

" .. those who wield the power of central authority must always remember that they are there to serve the people and to follow the will of the majority, restrained and tempered by the constitutional provisions which are meant to keep the majority itself from becoming a despot.

"Public servants must keep clearly in mind that they are the government. It is they to whom the people look, and it is they who are accountable to the people. The only limits to reforming our system lie in us. I'm reminded of an experience Justice Harry. A Blackmun had several years ago. Visiting in Aspen, Colorado, he got into conversation with a five-year-old boy named Matthew. That night, when Matthew's mother put him to bed, Matthew said to her 'I met the nicest man tonight'

"Who was it?" she asked.

"'I don't know,' Mathew said, 'but I think he was the government.'

"The government is us -- every public official."

18.150 The new doctrine considered above would make the office of the Att.-Gen. and the Advs.-Gen. political offices, so that these law officers must change with the change in the government, thus introducing in Arts. 65 and 165 an amendment by executive action which the Constituent Assembly rejected when moved as a formal amendment to draft Art. 63 relating to the Att Gen. and deleted by

an amendment from the draft Art. 145 relating to the Advs. Gen. Secondly, the new doctrine has been taken to justify the appointment of lawyers sharing the "philosophy" of the Government as honorary legal advisers to give legal advice to Government, notwithstanding that the Adv. Gen. (and the same would apply to the Att-Gen.) is there to advise State governments, and notwithstanding that the law before and after the Constitution has given them pre-eminence at their respective Bars. The legal validity of these honorary offices is a matter of grave doubt, but there can be no doubt that such offices derogate from the position which the Adv.-Gen. is designed to fill by the Constitution and the law. However, a detailed discussion of the problems raised by the appointment of honorary legal advisers to Government would involve an elaborate inquiry and discussion more appropriate to a book on the Law Officers of India than to this book."

[Emphasis Supplied]

Significance of clause (2) of Article 140 of the Constitution cannot be undermined, which defines the scope of duties of the Advocate General. It is expedient to reproduce clause (2) of Article 140 of the Constitution to understand the nature of duties performed by the Advocate General, clause (2) reads as,

"It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Provincial Government".

[Emphasis supplied]

Expressions upon such legal matters and such other duties of legal character are critically important in the context of allegations of alleged political affiliation/association. Constitution defined the scope and duties, comprising of legal matters and legal character, to be performed, and nature of duties are further elucidated in terms of clause 1.6 of the Punjab Law Department Manual, 1938, latter appliable being an existing law.

Constitution expressly imposed a duty on the Advocate General, who is required to follow the constitutional mandate and maintain independence in the context of the duties prescribed. It is not the mandate of the Advocate General to push or promote political philosophy of a political party, which allegations if substantiated, attracts charge of misconduct. A reference to Article 165 of Indian Constitution is apt, which is slightly different. Clause (2) of Article 165 of Indian Constitution is reproduced hereunder,

> "It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force".
>
> [Emphasis supplied]

Evidently there is not much difference in the substance. Advocate General is required to discharge duties as assigned under the Constitution, further explained in terms of Punjab Law Department Manual, 1938. In these circumstances, the office of the Advocate General and appointee thereat cannot be labelled as political appointee -- who is to advice on legal matters and perform duties of legal character -- this sufficiently divorces the office of the Advocate General from the political thicket. In these circumstances, simplicitor attributing motives or intention of political affiliation/association is not enough for the removal of the Advocate General but taking cue from the principle of strict liability, breach of an absolute duty need to be established. The office of the Advocate General or Attorney General, in essence, are Constitutional Offices notwithstanding appointments being made by elected political government(s). Attributing political motives, political biasness, partiality or partisanship tantamount to demean the stature of the office of Advocate General and discourage professional lawyers from eying/aspiring for said office - allegations on individual basis is another matter provided same are substantiated. According to the constitutional requirement, Advocate General must be a

person qualified to be appointed as a judge of the High Court, who is required to discharge constitutional/statutory duties, as prescribed in the Constitution. Labelling of constitutional office of Advocate General as political office and appointee therein as political appointee manifest immaturity and distrust in inherent goodness of the system. In terms of our constitutional structure, the Governor is appointed by the President, on the advice of the Prime Minister. Whether the office of the Governor can be labeled as a political office. Upon assumption of charge the Governor holds a constitutional office and is required to act and perform functions/duties assigned in the constitutional. Unfortunately, in the recent past we have witnessed such events where the Governor(s) merely acted as an instrumentality of the political party, still irrespective of the happening of such incidents, the character of the office of the Governor would not change. But then law cannot be made subservient to mere attitudes or practices. We must proceed with the presumption that office of the Advocate General is apolitical -- in the context of individual cases allegations/motives attributed are required to be substantiated. If determination of once neutrality and impartiality is merely dependent upon the source of the appointment or for that matter nomination - source being the political party -, is it fair to attribute political inclinations to incumbent care-taker Chief Minister only because he was the nominee of a political party, which proposed him for the appointment of care-taker Chief Minister. Not at all, no such attitude is attributable or presumed, unless alleged political partiality, bias or partisanship, towards any person or any political party is sufficiently substantiated. Likewise, appointment of the Advocate General and the Law Officers, merely by an outgoing Chief Minister, who headed coalition government, would not per se make the appointment political. One need to draw distinction between the Law Officers of the Advocate General Office and mere legal advisor of the department. The orders assailed, if not set-aside, had the tendency of politicizing the office of Advocate General -- potential of having domino effect.

In the context of instant petitions, there is another aspect. There is presumption of regularity qua performance of official acts. It is expedient to reproduce observations in the case of S.R. Bommani and others v. Union of India and others (AIR 1994 Supreme Court 1918), and relevant portion from paragraph 147 reads as,

> "While interpreting the Constitution neither motives nor bad faith nor abuse of power be presumed unless in an individual case it is assailed and arises for consideration on that premise. Section 114 (e) of Evidence Act raises statutory presumption that official acts have been regularly performed".
>
> [Emphasis supplied]
>
> [Equivalent thereto is Article 129(e) of Qanun-e-Shahadat Order, 1984].

It is argued that reasoning for removal was avoided to avoid stigmatizing the person, which is a fair concern, but whether the allegations of political affiliation/association are per se not an act of denouncing or stigmatizing one's professionalism/vocation. Notably, allegations attributed are neither figured in the orders impugned nor confronted to the Advocate General, who was not even asked to resign voluntarily, after care-taker provincial government is constituted, if at all any perceived threat qua holding and conduct of fair and independent elections was identified or found. In these circumstances, no judicial notice of the facts alleged can be taken under Article 111 of the Qanun-e-Shahadat Order, 1984 in absence of any available material. Haste shown in ordering removals ipso facto denuded the actions of any credibility and neutrality -- bedrock feature of the care-taker government. In this case since the Advocate General and Law Officers have not tendered resignations voluntarily, it is imperative to establish alleged political bias/partiality and consequential threat to the conduct of free, fair and transparent elections, as condition for meeting the statutory dictates of the law, both provisions of Elections Act and Article 218 of the Constitution. Why the case of the Advocate General and Law Officers, if any opinion was formed qua their political affiliation/association or probable threat to the conduct of fair, just and

transparent elections is perceived, not referred to the Election Commission, an autonomous body tasked with the duty of ensuring fair, just and transparent elections? Admittedly the mandate of section 230 of the Elections Act, is not followed by the care-taker Chief Minister. In these circumstances, attribution of allegation of political affiliation/association is mere figment of self's imagination, otherwise being unsubstantiated.

20. It is important to reiterate the objection and purpose of bringing a care-taker setup, which is to provide continuity of administrative machinery, i.e., to attend to day-to-day matters, being necessary to run the affairs of the Government and assist Commission to hold elections in accordance with the law. The care-taker provincial government is obligated to maintain neutrality, to remain impartial to every person and political party [clause (d) of subsection (1) of section 230 of the Elections Act, and such attitude must be manifested and demonstrated in every action taken or decision made. A caretaker Provincial Government and the care-taker Chief Minister must be above of all suspicion, alike Caesar's wife. This benchmark of neutrality and impartiality prescribed in law and followed in practice shall ensure the credibility of the care-taker set-up and augur well for fair, free and transparent elections, leading to much required political stability and strengthening of constitutional democracy. Any breach of the mandate of section 230 of the Elections Act or any excess committed in terms thereof are reviewable under the judicial review jurisdiction, provided such breaches and excesses remained unattended, left unremedied/uncured by the Election Commission of Pakistan. This brings me to next question.

(V) Analysis of the decisions referred, and effect of ratio settled therein, including dicta settled in the case of 'Imtiaz Ahmad Kaifi' and Raja Muhammad Zubair and others'

21. Subject cases are referred from both sides of the aisle, in the context of the orders of removal of Advocate General and Law Officers. Before discussing aforesaid cases, it is apt to refer to the case of Khawaja Muhammad Asif (supra), repeatedly referred and extensively read -- which

deals with orders of transfers and postings of civil servants and public office holder(s), ordered by the then care-taker Prime Minister/Care-taker Federal Government before conduct of general elections of 2013. Learned counsel for the respondents Nos.1 and 2 attempted to distinguish the case of Khawaja Muhammad Asif (supra) on the premise that question of removal of Law Officers was not the subject matter of controversy therein, who conversely referred the case of Imtiaz Ahmad Kaifi (supra). Learned counsel for the petitioner(s) emphasized qua the dicta laid in the case of Raja Muhammad Zubair and others (supra). Of all the cases referred only the cases of Imtiaz Ahmad Kaifi (supra) and Raja Muhammad Zubair and others (supra) deal with the issue of removal of law officers -- though removal of the Advocate General was not subject matter thereof. The principles enunciated in the case of Khawaja Muhammad Asif (supra) cannot be overlooked, in the context of present controversy.

22. It is expedient to discuss the reasoning in the case of Khawaja Muhammad Asif (supra) to comprehend the scope and significance of section 230 of the Elections Act.

Paragraphs 13 and 15 of the judgment outline the scope of functions and extent of powers-cum-authority available to the caretaker government, which, for ease of reference, are reproduced hereunder as,

> "Essentially, according to the settled and accepted norms/practice, the Caretaker Government (Prime Minister and Cabinet) is required to perform its functions to attend to the day-to-day matters, which are necessary to run the affairs of the State and also to watch the national interests, etc., in any eventuality in absence of an elected Government, and such Government is not authorized to make decisions/appointments having effect on the working/policies of the future Government, which is likely to take over after the elections. Apart from providing assistance to the Election Commission in organizing free, fair, honest and just elections in the country, it is not vested with the authority to take decisions concerning the affairs of the Government, which are bound to pre-empt the scope and

sphere of activity, powers and jurisdiction of an elected Government. A Caretaker Government possesses limited powers and authority particularly in view of the fact that when it is appointed, there is no National Assembly in place and thus the all important aspect of accountability is absent. Further, the exercise of complete powers by the Caretaker Government goes against the doctrine of separation of powers which is the lifeline of any vibrant democracy. As noted earlier, the absence of legislature results in lack of checks and balances. The Caretaker Government also lacks the mandate of the majority of people, which is to be acquired by elected government through the general elections. Therefore, if a Caretaker Government is allowed to exercise complete powers available to an elected Government, it may make an attempt to continue to remain in office for a longer period of time or may take such decisions which may cause problems for the future elected government".

"The object and purpose of making reference to these provisions is to highlight that the functions of the elected Government have remained under serious threats. At the same time, it is also significant to point out that despite appointment of the Caretaker Prime Minister/Cabinet, no guidelines were ever provided laying down the parameters to be observed by the Caretaker Governments in the exercise of their powers. As far as Constitution is concerned, Article 2A envisages that State shall exercise its powers and authority through the chosen representatives of the people and a comprehensive procedure, including qualifications and the disqualifications for the persons to be elected as Members of Majlis-e-Shoora (Parliament) has been prescribed. Thus, it is the chosen representatives of the people who have to run the affairs of the State for a fixed term of five years. Such representatives of the people are required to ensure good governance, lay down policies, and ensure betterment of the general public through legislative and executive

actions. On the contrary, a Caretaker Government as compared to an elected Government remains in office for a very limited period whose first and last concern is to ensure that fair, free, honest and just elections are held in the country. The concept of caretaker or interim Government, in absence of an elected government is in vogue in a number of countries since the ancient times. Inasmuch as, in the Constitution of some of the countries, the concept of caretaker government does not specifically find a place, yet the practice of appointing caretaker government is in vogue in those countries".

[Emphasis supplied]

23. While deciding the case, Hon'ble Supreme Court of Pakistan referred to the Constitutional system of Australia, in the context of question of scope and powers of caretaker government and in particular, the sphere of "SIGNIFICANT APPOINTMENTS", which reads as,

""3. SIGNIFICANT APPOINTMENTS

3.1 Governments defer making significant appointments during the caretaker period. When considering the advice it would give on whether an appointment qualifies as 'significant', the agency should consider not only the importance of the position, but also whether the proposed appointment would be likely to be controversial.

3.2 If deferring the appointment is impracticable, usually for reasons associated with the proper functioning of an agency, there are several options:

the Minister could make an acting appointment where permissible;

the Minister could make a short term appointment until shortly after the end of the caretaker period; or

if those options are not practicable, the Minister could consult the relevant Opposition spokesperson regarding a full term appointment."

24. In paragraph 18 of the decision, constitutional structures and conventions prevalent in various countries along relevant case-laws was analyzed, and summarized in following terms,

"The crux of the above case-law and conventions/guidelines is that the Caretaker Government/Cabinet has to confine itself to the running of the day-to-day administration of the State. Indeed, it may take decisions required for ordinary orderly running of the state, but decisions having far-reaching effects should only be taken in extraordinary circumstances, like in war, earthquake, floods, etc. Although there may not be any express restriction on the powers of the caretaker government by the Constitution itself, but a major policy-decision which can await the formation of regularly elected Government without causing any disruption or danger to the functioning of the State or orderly running of the country should be left to be determined by the elected government. Thus, there can be no two opinions that the caretaker government has to exercise the powers for a limited purpose as it has been highlighted hereinabove, namely, relating to the elections and not to make fresh appointments of the civil servants or make appointments of the heads of the Autonomous, Semi-Autonomous Bodies, Corporations, Regulatory Authorities, etc., appointments on contract basis or allowing deputation or promotion to the civil servants without realizing the scope of their efficacy to share higher responsibilities to run the affairs of the Government".

[Emphasis supplied]

25. The observations regarding absence of express restrictions on the powers of the caretaker in the Constitution are significant. First, it cannot be inferred that in absence of specific restrictions the care-taker government or for that matter care-taker Chief Minister will, by default, claim all functions and powers otherwise constitutionally extended to an elected-cum-regular provincial government. And secondly, at that point in time when judgment was handed down, there was no law defining the

functions, scope of functions and extent thereof -- [other than the judicial precedents and regulation of affairs of care-taker governments in terms of powers of the Election Commission under sections 103(c) and 104 of the erstwhile Representation of People Act, 1976]. Now situation is different; section 230 of the Elections Act is available which defines the scope, extent and manner for the performance of functions by care-taker provincial government. Legislature was conscious of the observations of the Apex Court in paragraph 19 of the judgment and subsequently legislated in this behalf. It is expedient to reproduce relevant portion from paragraph 19 of the judgment, which reads as,

"In addition to it, although in our country in respect of the powers of the caretaker government no conventions have been developed and for such reasons the instant Caretaker Government indulged in taking vital policy decisions and making postings and appointments of heads of statutory bodies, postings and appointments in civil service, statutory bodies, autonomous, semi-autonomous bodies, corporations and regulatory authorities, including appointments on contract or accepting the services of various persons on deputation by allowing them to occupy one step higher positions than the one, which they were holding previously".

26. Paragraph 28 of the judgment defined the charter of the functions to be performed by the care-taker governments, which is reproduced hereunder:-

"In light of discussion made hereinabove, we hold that:--

(a) The Caretaker Cabinet/Prime Minister appointed under Article 224(1)(2) or 224A, as the case may be, is empowered to carry out only day-to-day affairs of the State with the help of the available machinery/resources/manpower and also to watch national interest against war or national calamity or disaster faced by the nation, including terrorism, etc.

(b) The civil servants who have already been appointed in accordance with the rules/regulations on the subject ought not to be

posted/transferred, etc., except in extraordinary circumstances, that too, temporarily.

(c) Major policy decisions including making of appointments, transfers and postings of the Government servants should be left to be made by the incoming government in view of the provisions of Constitution that the affairs of the State are to be run by the chosen representatives of the people.

(d) As newly elected Government is mandated to perform its functions of achieving the object and purpose of welfare of the people for which it has been duly appointed, therefore, caretaker Cabinet/government/Prime Minister, having no mandate of public support, is only caretaker set up and due to this connotation should detach itself from making permanent policies having impact on future of the country".

27. It is evident that judgment in the case of Khawaja Muhammad Asif (supra) proceeded to decide questions relating to the affairs and scope of powers of care-taker government considering judicial pronouncements, the then prevalent law, i.e. Representation of People Act, 1976 -- wherein no peri materia to section 230 of Elections Act is found -- and constitutional conventions. And now, undoubtedly, all questions relating to the scope of functions of care-taker provincial government and extent thereof, including the manner of performance of functions, are controlled and regulated in terms of section 230 of the Elections Act, 2017.

28. The reasoning extended in the case of 'Khawaja Muhammad Asif (supra) was embodied in section 230, ibid', which provision of law need to be examined and interpreted in the context of principle of 'Prior-Construction Canon, - [referred/discussed in Reading Law -- The Interpretation of Texts by Antonin Scalia and Bryana. Garner] and elucidated in the case of Shapiro v. United States' (335 U.S. 1, 16 (1948), by Vinson C.J, in following terms, reproduced hereunder as,

"In adopting the language used in the earlier act, Congress 'must be considered to have adopted also the construction given by this Court to such language, and made it a part of the enactment.'"

29. In this background, case of Imtiaz Ahmad Kaifi (supra) is examined, wherein the question of scope and extent of powers of the care-taker provincial government was not subject matter of reasoning provided, though nature of the relationship of the Government and office of the Advocate General was discussed, and in said case the orders of removal were set-aside on the premise of discriminatory treatment, in the context of the facts involved therein. There is another distinguishing feature. When judgment in the case of Imtiaz Ahmad Kaifi (supra) was handed down, no law provided or prescribed the functions, to be performed by the care-taker Government - sections 103(c) and 104 of erstwhile Representation of People Act, 1976 extends powers to the Election Commission, in the context of the role assigned under the Constitution. Section 230 of the Elections Act brought a sea change in the context of the subject of the functions of the care-taker government.

30. The question of legality of the orders of removal of the Law officers, by the care-taker government of Province of Khyber Pakhtunkhwa during pre-election 2018 elections, were discussed and decided in the case of Raja Muhammad Zubair and others (supra), in the context of post-section 230 of the Elections Act, wherein dictum laid in the case of Khawaja Muhammad Asif (supra) was followed. I tend to differ with the argument that ratio settled in the case of Raja Muhammad Zubair and others, which was based on the ratio of decision in the case of Khawaja Muhammad Asif (supra), is not attracted. The case of Raja Muhammad Zubair and others (supra) elaborates and enunciates scope of section 230 of the Elections Act, which decision was latter challenged before the Hon'ble Supreme Court of Pakistan through Civil Petition No.3145 of 2018, whereby vide order dated 27.04.2020 leave was refused but the ratio settled in the case of Khawaja Muhammad Asif (supra) was reiterated, which order is reproduced hereunder,

"2. After hearing the learned ASC and going through the case record, we find that perhaps the matter may have become infructuous and in that the question before the learned High Court was that the Interim Government neither could have terminated the services of the petitioners nor it could have made appointments. In this regard, the learned High Court while relying upon a judgment of this Court reported as Muhammad Asif v. Federation of Pakistan (2013 SCMR 1205) has rendered the impugned judgment. In our view, the learned High Court has rightly followed the principles laid down by this Court in the judgment, referred to above, and thus we find no illegality in the impugned judgment. This petition is therefore dismissed. Leave refused".

[Emphasis supplied]

31. Order of the Apex Court has peculiar features, whereby the order of the Hon'ble Peshawar High Court was upheld while reiterating the principles enunciated in the case of Khawaja Muhammad Asif (supra), which tantamount to reaffirmation of the dictum/enunciation of the law, which peculiar features makes its effect binding and enforceable in terms of Article 189 of the Constitution -- law enunciated in the case of Khawaja Muhammad Asif (supra) is forerunner to the statutory principles embodied in section 230 of the Elections Act.

32. Respectfully stated, the majority decision and additional note, disqualifying 19 newly appointed Law Officers for the reasons stated is not endorsed on the premise that reasoning advocated tantamount to politicize the office of the Advocate General, would compromise independence of the office and convert a constitutional office into a political camp/unit. Exclusion of 19 Law Officers and determining their eligibility for the office, barely on the touchstone of criterion that they are not eligible to be retained merely because same were appointed by the political government, which had preceded the outgoing elected government, is unreasonable and unjustified. This apparent segregation, having no basis in law, has in fact stigmatized the excluded Law Officer, risking their chances of seeking

appointment in the office, by dint of their competency and merits. This apparently is discrimination and does not meet the test of reasonable classification. Respectfully stated, the reasoning extended to exclude 19 officers essentially contravenes the constitutional mandate and renders the effect of clause (2) of Article 140 of the Constitution ineffectual, which prescribed the scope of duties for the Advocate General. Scope and ambit of clause (2) of Article 140 of the Constitution was discussed earlier while determining question (iv).

33. I conclude the decision by reproducing observation from paragraph 164 in the case of S.R. Bommani (Supra), wherein reference was made to the closing speech by Dr. Ambedkar to the Indian Constituent Assembly, which reads as:--

> "The conventions and political morality would help successful working of the Constitution. Constitution cannot provide detailed rules for every eventuality. Conventions are found in all established constitutions. The conventions are meant to bring about Constitutional development without formal change in the law".
>
> [Emphasis supplied]

34. In view of the above, this and connected petitions are allowed and orders dated 24.01.2023, assailed therein, are set-aside, including the appointment of fresh Law Officers. Care-taker provincial government shall operate and function within the ambit of section 230 of the Elections Act.

Sd/-
(ASIM HAFEEZ)
JUDGE

MH/A-37/L **Order accordingly.**

2024 Y L R 161

[Lahore]

Before Ali Baqar Najafi, J

REHMAT ULLAH---Appellant

Versus

The STATE and another---Respondents

Criminal Miscellaneous No. 47143-B of 2023, decided on 4th September, 2023.

Criminal Procedure Code (V of 1898)---

----S.497---Punjab Food Authority Act (XVI of 2011), Ss.22-A, 23, 24, 27 & 28---Substandard and injurious food stuff---Bail, grant of---Case of further inquiry---Accused was arrested for allegedly selling substandard meat injurious to human consumption---Validity--- Nature and degree of substandard meat and relevant standard, which was to be maintained by accused as shopkeeper, was not described anywhere---Accused placed in his file a certificate issued by Punjab Food Authority valid from 01.12.2022 to 30.11.2023---Date of occurrence was 05.07.2023 which was within the period stated in the certificate---Police file did not reflect any complaint lodged by any private person against accused for selling substandard meat---Out of 2500 Kgs. meat less than half was considered as harmful but question was on what grounds, the police investigation required further input---Report/Certificate of Veterinary Officer was not enclosed in police file---Offence did not fall within the prohibitory clause of S. 497, Cr.P.C.---Accused remained detained in judicial lockup for about two months---Bail was allowed in circumstances.

Nadeem Shibli for Petitioner.

Abdul Samad, APG with Mian Ijaz, ASI for the State.

M. Bilal Younas, Food Safety Officer and Dr. Abdul Jabbar, Veterinary Officer, Punjab Food Authority.

ORDER

ALI BAQAR NAJAFI, J.---Petitioner seeks post arrest bail in case FIR No. 1153/2023, dated 05.07.2023 for offences under sections 22-A, 23, 24, 27, 28 of the Punjab Food Authority Act, 2011 registered at Police Station Thekri Wala, District Faisalabad on the allegation that a team of Food Safety Department along with Veterinary Officer, Dr. Abdul Jabbar, has raided the shop of the petitioner who upon inspection found 2500 KG of meat which was checked of which 1050 KG meat was found substandard and injurious to human consumption. It was further observed that at the stated place requisite steps for cleanliness and hygienic conditions to prevent insects were not made. Besides, there was no label or date on the meat, therefore, a call was made on 15 and the police was asked to arrest the petitioner, hence this FIR.

2. After hearing the learned counsel for the petitioner, learned Additional Prosecutor General and perusing the record it is straightaway observed that the petitioner was arrested on 05.07.2023 and was sent to judicial lockup on 06.07.2023. The police file further reveals that although a certificate/Order of voluntary withdrawal/destruction was issued by Muhammad Bilal Younas, Food Safety Officer, Punjab Food Authority, Faisalabad and the receipt of the said meat was prepared with reference to the certificate of Veterinary Officer namely, Dr. Abdul Jabbar but the file does not reflect any such certificate. Obviously, a certificate/report based

on the positive evidence cannot be substituted for the naked eye of a common man. What was the nature of substandard meat and what was its degree and what was the relevant standard which was to be maintained by the petitioner as a shopkeeper is not described anywhere. The petitioner has placed in his file a certificate issued by the Punjab Food Authority valid from 01.12.2022 to 30.11.2023 and the date of occurrence i.e. 05.07.2023 is within the said period. The police file does not reflect any complaint lodged by a private person against the petitioner for selling of substandard meat. Surprisingly, out of 2500 KG meat less than half was considered as harmful but on which grounds the police investigation requires further input. According to the petitioner the raid was arranged by his opponents on the ground of professional rivalry. Learned Prosecutor has argued that FIR No.1537, under Learned Prosecutor has argued that FIR No.1537, under sections 22-A, 23, 24, 27 of Punjab Food Act, 2011, FIR No.386/12, under section 379, P.P.C., FIR No.453/14, under sections 2B, 3A, 269, 272, 373, P.P.C. and FIR No. 93 / 15 under sections 381-A, 411, P.P.C. were registered against the petitioner at Police Stations Ghulam Muhammad Abad and Thekriwala, District Faisalabad but the learned Prosecutor has not been able to place on record any conviction order in any of the said FIRs which means that criminal charges are still to be proved against the petitioner.

3. On the basis of tentative assessment and in view of the fact that report/certificate of the Veterinary Officer is not enclosed with the police file and the very fact that the offence does not fall within the prohibitory clause of section 497, Cr.P.C. and the period of detention in judicial lockup exceeds about two months, I am inclined to allow this petition and grant post arrest bail to the petitioner subject to his furnishing bail bonds in the

sum of Rs.1,00,000/- with two sureties each in the like amount to the satisfaction of the learned trial court.

MH/R-14/l **Bail allowed.**

PLJ 2025 Civil (Note) 30

[Lahore High Court, Lahore]

***Present*: Ali Baqar Najafi, Shahid Bilal Hassan & Jawad Hassan, JJ.**

IMRAN AHMED KHAN NIAZI--Petitioner

versus

ELECTION TRIBUNAL and 3 others--Respondents

W.P. No. 2687 of 2024, decided on 16.1.2024.

Election Act, 2017 (XXXIII of 2017)--

----Ss. 60(1), 62(9)(d)(ii) & 232--Constitution of Pakistan, 1974, Art. 63(1)(h)--Nomination papers--Concurrent rejection--Proposer was not belonged to same constituency--Conviction was not suspended--Disqualification of petitioner--Pendency of appeal against conviction--Proposer is not voter of constituency NA-122, Lahore--The conviction had not been suspended or set aside by any competent Court of law till to date, therefore, Criminal Appeal No. 273 of 2023 was pending before Islamabad High Court--The plain and unambiguous meaning leaves no question about disqualification of petitioner to contest elections--The order of Returning Officer as well as Election Tribunal were not to be interfered with in routine unless some exceptional circumstances so warrant--Petition dismissed..

[Para 6, 7, 9 & 11] A, B, C & D

PLD 2016 SC 944; 2023 SCMR 803 & PLD 1989 SC 396 *ref.*

Mr. Uzair Karamat Bhandari, Mian Sami-ud-Din, Ameer Hamza Dogar, Asfand Mir, Ali Uzair Bhandari, Rai Muhammad Ali and Abuzar Salman Khan Niazi, Advocates for Petitioner.

Mr. Imran Arif Ranjha, Advocate for ECP with *Mr. Muhammad Haroon Kasi,* Director Law ECP, *Ms. Bushra Rasheed,* Deputy Director Law ECP.

Barrister Abdul Qadoos Sohal, Muhammad Ramzan Chaudhry, Faisal Mahbob Malik and Iftikhar Ahmed Mayo, Advocates for Respondent No. 3.

Date of hearing: 16.1.2024.

Order

Ali Baqar Najafi, J.--Through this Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner has challenged the order dated 30.12.2023 passed by the Returning Officer as well as order dated 10.01.2024 passed by the learned Election Appellate Tribunal whereby nomination papers of the petitioner were concurrently rejected on the following three common grounds:

(a) The proposer Muneeb-ur-Rehman is not a valid voter of NA-122, Lahore.

(b) The petitioner was convicted and has been debarred to contest the elections for 5 years *vide* Election Commission Notification dated 08.08.2023.

(c) Signatures of the petitioner were not attested by the Superintendent Central Jail, Adiala, Rawalpindi, where he is undergoing his sentence.

2. Learned counsel for the petitioner contends that under Article 63(1)(h) of the Constitution, a separate declaration of moral turpitude is required as the said provision of law is not self-executory. Further Contends that his sentence of 3 years has been suspended and in the absence of observation regarding moral turpitude by any Court of law the petitioner is entitled to contest the elections. He argues that sentence of the petitioner has been suspended but the conviction is not which is not imposed on the basis of finding on moral turpitude which, by itself, is not an offence defined under the law, therefore,

he is entitled to contest the elections. He further argues that before the 18th amendment the "corrupt practices" were distinguishable from the "moral turpitude" but now it is no more, therefore, he has a right to contest the elections. He adds that the appeal is pending against the conviction order before the Islamabad High Court and there is every likelihood of its success by acquitting the petitioner honorably, and that under Article 17 of the Constitution of Islamic Republic of Pakistan, 1973 he has a fundamental right to contest in the General Elections, 2024. Adds further that law distinguishes between conviction and final conviction. He contends that notification dated 08.08.2023 for disqualification of the petitioner by the Election Commission of Pakistan is already challenged before the Full Bench of this Court, and since it was a void order as the Election Commission has no jurisdiction to disqualify the petitioner for 5 years, therefore, said notification should be understood in that context. Further submits that the order passed by the Supreme Court dated 30.11.2023 is not a judgment in rem but a judgment in personam whereby the delimitation were not recognized.

3. Conversely, learned counsel for the ECP and Respondent No. 3 vehemently opposes the prayer by stating that admittedly the proposer does not belong to the same constituency, therefore, the petitioner submitted the invalid nomination forms. He refers to Paragraph No. 11 of the judgment Nadeem Raza's case, reported as 2023 SCMR 803 in support of his arguments. He submits that making a false statement violates a social duty and settled standard of truthfulness in all societies, therefore, constituted a moral turpitude. He places reliance upon *Ghulam Hussain versus Chairman, P.O.F. Board, Wah Cantt and another* (2002 SCMR 1691). Also submits that under Article 63 of the Constitution standard of moral turpitude is higher for a public representative and it is not expected particularly from the ex-Prime Minister of Pakistan who is otherwise supposed to be a fair person. Refers to *Saudagar*

Ali versus Chairman District Council, Multan and another (PLD 1963 W. P. 601) in support of his arguments.

4. Arguments heard. File perused.

5. After hearing the learned counsel for the parties and perusing the file, it is straightway observed that in sub-paragraph's V and VI of the prayer clause relief with respect to issuance of party's symbol are directly in conflict with the judgment of the Supreme Court dated 12/13 January, 2023 passed in Civil Petition No. 42 of 2024 titled *"The Election Commission of Pakistan through its Secretary and others versus Pakistan Tehreek-e-Insaf through its authorized person and others"* in which the Pakistan Tehreek-e-Insaf has been deprived the symbol "Bat". Prayer clauses V and VI are reproduced as under:

"v. Declare that the petitioner is entitled to be included in the list of validly nominated candidates for NA-122 and is entitled to allocation of his party's symbol: and

vi. Direct Respondents No. 2 and 4 to include the name of the Petitioner in the list of validly nominated candidates for NA-122 and allocates his party's symbol to the Petitioner.

Under Article 189 of the Constitution it cannot even be discussed in this order. Article 189 of the Constitution is reproduced as under:

"189. *Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all Courts in Pakistan."*

Hence, the said prayer is rejected at the very outset.

6. As far as the prayer clauses, II, III and IV are concerned, they are relating to the orders of Returning Officer and the Election Appellate Tribunal whereby the petitioner's nomination papers were rejected on threefold grounds

referred in Paragraph No. 1 of the order. So, far as the first Objection on the proposer namely Mr. Muneeb-ur-Rehman is concerned it is clear as per Section 60 (1) of the Act, 2017 that *"Any voter of the constituency, may propose or second the name of a qualified person to be a candidate for member for that constituency"*. This is a substantial defect and, therefore, cannot be ignored under Section 62 (9)(d)(ii) which reads ad under:

"The Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the Corresponding entries in the electoral roll."

It is not denied that the above said proposer is not the voter of the constituency NA-122, Lahore. His vote Certificate No. 2023/13661 shows his block Code: 137030602 with Patwar Circle No. 6 of Tehsil Cantt. Was issued on 21.12.2023 at 6.19 p.m. whereas the nomination papers were verified later on 23.12.2023. As far as the question that the delimitation has ousted the name of the proposer, it is again clear that under Section 62(6) of the Election Act, 2017 *"The returning officer shall not inquire into the correctness or validity of any entry in the electoral roll"*. In the most relevant judgment given by the apex Court of our country is *Tariq Nadeem Shafi's case* (PLD 2016 Supreme Court 944) it is held that if the proposer and seconder are not from the same constituency it will be a defect of substantial nature not curable by the Returning Officer or Election Appellate Tribunal.

7. Regarding the second objection of conviction on moral turpitude, the judgment dated 05.08.2023 passed by the learned Additional Sessions Judge, Islamabad in Tosha Khana case, the petitioner has been convicted as follows:

38. “Keeping in view the fore-discussed complainant evidence, and the record, this Court finds it more than convincing that the complainant has produced confidence inspiring, well knitted and corroborated evidence, and so the charge against the accused has successfully been proven that accused has committed offense of corrupt practices by making and publishing false statements/ declaration in respect of assets acquired by way of gifts from Toshakhana and disposed of during the years 2018-2019, 2019-2020 and making and publishing a false statement and submitting false and incorrect by declaration in material particular relating to Form-B for the year 2020-2021. He has been found guilty of corrupt practices by hiding the benefits he accrued from national exchequer wilfully and intentionally. He cheated while providing information about gifts he obtained from Toshakhana which later proved to be false and inaccurate. His dishonesty has been established beyond doubt. Accordingly, the accused is convicted under section 174 of The Election Act, 2017, and he is thus sentenced to three (03) years simple imprisonment with fine of Rs. 100,000/-, and in case of default in its payment, he shall also suffer six (06) months simple imprisonment. The accused is not present today, therefore, a copy of this order along with warrant of conviction be communicated to the I.G. Islamabad for execution of the said warrant, File be consigned to the record room after compilation and necessary completion whilst, requisitioned record(s) be returned forthwith.”

The judgment of Additional Session Judge (West), Islamabad establishes that the conviction of the Respondent is related to the offence of moral turpitude and the candidature of the Respondent is hit by Article 63(1)(h) of the Constitution of the Islamic Republic of Pakistan. Moreover, the conviction has not been suspended or set aside by any competent Court of law till to date, therefore, Criminal Appeal No. 273 of 2023 is pending before the Islamabad High Court. Here reference can be given to case titled *“Divisional*

Superintendent, Postal Services, D.G. Khan vs. Nadeem Raza and Another" (2023 SCMR 803), in which the following was held:

"11. Being relevant to the instant case, another question that arises is with regards to the applicability of the test of proportionality to interfere with a penalty imposed for misconduct which involves moral turpitude. "Moral turpitude" was defined in Imtiaz Ahmed as "the act of baseness, vileness or the depravity in private and social duties which man owes to his fellow man, or to society in general contrary to accepted and customary rule of right and duty between man and man." In Ghulam Hussain, it was held that moral turpitude includes anything which is done contrary to the good principles of moral values or established judicial norms of a society. Therefore, for all intents and purposes, misappropriation or embezzlement of public funds while in Government service would be considered as gross misconduct involving moral turpitude."

8. Furthermore, disqualification the notification of the Respondent of dated 08.08.2023 is not confined to the extent of NA-45 Kurram-1. The language of the *ibid* notification is very clear which describes that as a consequence, Mr. Imran Ahmed Khan Niazi has become disqualified under Article 63(1)(h) of the Constitution of the Islamic Republic of Pakistan read with Section 232 of the Act, 2017. Therefore, Mr. Imran Ahmed Khan Niazi is disqualified for a period of five years:

ELECTION COMMISSION OF PAKISTAN

****

NOTIFICATION

Islamabad, the 8th August, 2023

No. F.17 (4)/2023.Coord. -In pursuance of the judgment dated 05th August, 2023, handed down by the Additional Sessions Judge Islamabad (West), in Case No 01/2022 titled as ***"District Election Commissioner Islamabad versus Imran Khan Niazi"***, whereby Mr Imran Ahmed Khan Niazi has been found guilty of corrupt practices under Section 167 of the Elections Act, 2017 and has been convicted and sentenced under Section 174 of the Act (ibid) to three (03) years simple imprisonment, with a fine of Rs. 100,000/. As a consequence, Mr. Imran Ahmed Khan Niazi has become disqualified under Article 63(1)(h) of the Constitution of Islamic Republic of Pakistan read with Section 232 of the Elections Act,2017. Therefore, Mr. Imran Ahmed Khan Niazi is disqualified for a period of five years and is also de-notified as a returned candidate from constituency NA-45 Kurram-I.

By Order of the Election Commission of Pakistan.

8-8-2023

Syed Nadeem Haider
Additional Director General
(Elections-II)

The Manager,
Printing Corporation of Pakistan Press,
Islamabad

[For publication in the Gazette pf Pakistan,
Extraordinary (Part-III) of today's date]

9. The plain and unambiguous meaning leaves no question about the disqualification of the petitioner to contest elections. They are reproduced for ready reference:

[63. (1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if-

(a) ……..

(b) ……..

(c) ……..

(d) ……..

(e) ……..

(g) ……..

(h) he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has clapsed since his release;"

Under Section 232 of the Elections Act, 2017, Qualification mentioned: and disqualification have been mentioned:

"231. Qualifications and disqualifications.--The qualifications and disqualifications for a person to be elected or chosen or to remain a Member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly shall be such as are provided in Articles 62 and 63."

"232. Disqualification on account of offences.--Where a person has been convicted for any offence under this Act or has been found guilty of any corrupt or illegal practice by a Tribunal, he shall, if the Commission is of the view that circumstances so warrant and makes an order to that effect, be disqualified for such period not exceeding five years as may be specified in the order from being, or being elected as a Member of an Assembly, the Senate or a local government."

10. As far as question of the delimitation order whether in *rem* or *personam* is concerned, it has rightly been held by the learned Election Tribunal that the election 2024 are being held under the new delimitation, therefore, constituencies be recognized as such. Besides, the question of moral turpitude has been discussed in detailed with support of the case law, therefore, needs

no further deliberation. All arguments advanced by the learned counsel for the petitioner have been dealt with in detailed.

11. Even otherwise, the order of the Returning Officer as well as the Election Tribunal are not to be interfered with in routine unless some exceptional circumstances so warrant. The Supreme Court of Pakistan in case titled *"Election Commission of Pakistan through its Secretary versus Javaid Hashmi and others"* (PLD 1989 Supreme Court 396) has given wide meaning to the word 'election'. It is observed that in Article 225 of the Constitution 'election' is used with reference to the entire process consisting of several steps taken for its completion which have a bearing on the result of the process. It is further concluded by the Supreme Court that at intermediate stages any matter having effect on the election should not be brought before any other forum besides the Commission. It will be advantageous to reproduce the following extract of the aforesaid judgment:

"Here I may point out that the exercise of power under Article 199 cannot be placed on any higher footing than that emanating from Article 225 of the Constitution; and that while the power under Article 199 exercisable by the High Court is "subject to the Constitution" whereas there is no such limitation in Article 225. This Article by its language creates an independent jurisdiction for the decision of election disputes under the law and its contents, therefore, should be given the fullest meaning irrespective of anything contained in any other Article. More particularly so as it is an essential part of parliamentary jurisdiction which under the law entrusts election disputes for decision to the Election Tribunal and in appeal to the Supreme Court whose decision is final both on questions of law and fact ....."

In case titled *"Ayatullah Dr. Imran Liaquat Hussain versus Election Commission of Pakistan Islamabad and another"* (PLD 2005 Supreme Court

52), the Supreme Court emphasized that all steps in conduct of election could only be challenged by way of election petition and blanket cover is provided to all litigable challenges in respect of every kind of order passed in course of election process because the provisions of Article 199 of the Constitution are subject to the other articles including Article 225 of the Constitution. In Paragraph No. 47 of the judgment in case titled *"Federation of Pakistan and others versus Mian Muhammad Nawaz Sharif and others"* (PLD 2009 Supreme Court 644) while relying upon *"Javaid Hashmi" case (Supra)* it is held that only limited window in writ jurisdiction under Article 199 of the Constitution to challenge the order passed by functionary of the Commission during the currency of the election process, is available. It was further held in case titled *"Let. Gen (R) Salahuddin Tirmizi vs. Election Commission of Pakistan"* (PLD 2008 SC 735). Relevant extract is reproduced as under:

"Such power of the High Court is confined to the extent of an order passed by election authority without lawful authority or it is coram non judice or mala fide and judicial review of the High Court cannot be enlarged to the cases relating to factual inquiry or in cases in which another view of the matter was also possible and if such view would have been taken it would not be illegal or unconstitutional--High Court is also not supposed to substitute its opinion on the question of the fact with the opinion formed by election authority or a Tribunal of competent jurisdiction."

A Division Bench of this Court in case titled titled *"Malik Javed Akhter alias Javed Awan versus Returning Officer Constituency No. PP-157, Lahore-XXI and 2 others"* (2004 YLR 1459), in this regard, concluded as under:

"Article 225 excludes the jurisdiction of the Court to entertain any matter relating to the Election (which can be questioned only by an Election Petition under the law prescribed by appropriate Legislature *i.e*. Representation of

People Act, 1976). The word "Election" means the entire process culminating in a candidate being declared elected and is not confined to the final result, therefore, by virtue of mandate of Constitution prescribed in the aforesaid Article 225 of the Constitution, any matter which arises while the elections are in progress *i.e.* at every stage from the time of the issue of the notification appointing a date of nomination till the results are declared as held by the Honourable Supreme Court in "Javaid Hashmi" case supra, meaning thereby Article 225 of the Constitution does not permit interlocutory hold-ups in the process of election."

For what has been discussed above, this writ petition has been Found meritless and is, therefore, **dismissed.**

(Y.A.)

PLJ 2025 Civil (Note) 60
[Lahore High Court, Lahore]

Present: **Ali Baqar Najafi, J.**

Mst. **SHAGUFTA PARVEEN--Petitioner**

versus

ADDITIONAL DISTRICT JUDGE etc.--Respondents

W.P. No. 6799 of 2014, decided on 20.10.2020.

Family Courts Act, 1964 (XXXV of 1964)--

----S. 14--Constitution of Pakistan, 1973, Art. 199--Post remand constitutional proceedings--Suit for recovery of dower and dowry articles--Decreed--Appeal--Case was remanded--Appeal was dismissed in post remand proceedings--No production of receipt of dowry articles--No evidence regarding source of income--Factual conclusion drawn by two Courts below could not be overturned except for strong reasons such as grave misreading of record or fault in adhering to law--Present post remand constitutional proceeding had a limited scope to see any violation of fundamental rights or gross misreading of evidence perpetuating injustice to parties--Neither any receipt of dowry articles was produced, nor source of income of brothers of petitioner was mentioned on basis of some reliable evidence--Admittedly, her family did not own any significant agricultural or urban property which could be utilized partly for purchase of dowry articles--Nominal dowry articles were awarded by trial Court with alternate price of Rs. 50,000/-were not challenged by respondent--No misreading or overlook by Courts below could be pointed out warrant interference by this Court--Petition dismissed. [Para 1, 6, 8, 9 & 10] A, B, C & D

2009 SCMR 1243 *ref.*

Mian Muzaffar Hussain, Advocate for Petitioner.

Mr. Zulfiqar Ali Hargan, Advocate for Respondents.

Date of hearing: 20.10.2020.

Order

This order is being passed in compliance to the order passed by the Hon'ble Supreme Court of Pakistan dated 18.07.2017 whereby the case was remanded to this Court to re-determine the question whether the petitioner was entitled to the dowry articles of Rs. 5,25,200/-after when it was observed that factual conclusion drawn by the two Courts below could not be overturned except for strong reasons such as grave misreading of the record or fault in adhering to law. The order dated 18.07.2017 passed in Civil Petition No. 2957 of 2016 is reproduced as under:

"2. Having heard the learned counsel for the parties, we are of the view that the learned High Court while deciding the claim of the dowry articles did not consider the evidence available on the record in totality and also not appreciated the reasons assigned by the first two Courts of fact, which drew a conclusion that the dowry articles were not proved by Respondent No. 1 and therefore, while exercising the constitutional jurisdiction such factual conclusion could not be overturned except for strong reasons such as grave misreading of the record or fault in adhering to law. This is conspicuously missing in the present case. Resultantly, we convert this petition into an appeal and partly allow the same to the extent of dowry articles or the amount of Rs. 5,25,200/-in lieu thereof and remand the matter to the learned High Court to re-determine the question whether Respondent No. 1 was entitled to such claim or not."

2. Since the order disposing of this writ petition dated 22.03.2016 has been set-aside, this constitutional petition was deemed pending, therefore, both the learned counsel were heard at length.

3. Brief facts giving rise to this constitutional petition are that in the year 2005 'sharai nikah' had taken place between the petitioner and the Respondent No. 3 but the 'rukhsati' was materialized in the year 2006.

However, later the said Nikah was registered on 04.01.2008 but unfortunately the marriage was dissolved just about two years later on 24.02.2010. The suit for recovery of Rs. 3 lacs as dower amount and for dowry articles of Rs. 5,25,200/-was filed by the petitioner which was decreed on 22.11.2011. On 17.08.2013 the learned appellate Court remanded the case with the direction that the statement of nikahkhawan be recorded. On 02.11.2013, the dowry articles were dismissed but dower amount of Rs. 3 lacs was granted. On 07.02.2014 the learned appellate Court dismissed the appeal of the petitioner, hence this writ petition.

4. Learned counsel for the petitioner submits that the brother of the petitioner lived in Greece and he was present in Pakistan at the time of marriage, therefore, had good financial status who had purchased the dowry articles which should be granted to the petitioner.

5. On the other hand, learned counsel for the Respondent No. 3 submits that it was the second marriage of the Respondent No. 3 with the petitioner who was otherwise his first cousin and that no name of the person who had purchased the dowry articles was mentioned, therefore, prays for dismissal of the petition.

6. After hearing the learned counsel for the parties and perusing the record, it is straightaway observed that present post remand constitutional proceeding has a limited scope to see any violation of fundamental rights or gross misreading of evidence perpetuating injustice to the parties. Of course, this Court is not required to re-evaluate the entire evidence as an appellate Court and at the most, could see the material irregularity giving rise to the denial of any fundamental right of the petitioner. The concurrent factual findings cannot be interfered in view of the case law titled *"Waqar Haider Butt vs. Judge Family Court and others"* reported as 2009 SCMR 1243 in which the full bench of august Supreme Court had observed as follows:

"7. It is settled principle of law that Constitutional Petition under Article 199 of the Constitution in the Lahore High Court is not maintainable against the concurrent findings of the tribunals below as law laid down by this Court in Khuda Bakhsh V. Muhammad sharif and another SCMR 1974 SC 279 and Muhammad Sharif and another V. Muhammad Afzal Sohail and others PLD 1981SC 246. Both the Courts below have given findings of fact against the petitioner, therefore, learned High Court was justified to dismiss the constitutional petition which is in accordance with the dictum laid down by this Court in Begum Wazir Ahmad Industrial Home's case PLD 1976 SC 214. It is settled proposition of law that normally this Court does not meddle with the findings of fact reached by the primary Courts or a High Court when it is satisfied that the findings of the Courts below are reasonable and are not arrived at by disregarding of any provision of law or any accepted principle concerning the appreciation of evidence. This would be notwithstanding that a different view might also be possible."

7. The petitioner while appearing as PW-1 had tendered in evidence list (Exh.P-1) and also gave the details mentioned therein. After the marriage, she experienced the soar relationship with the respondent, and sometime used to go to her parents' house and then would come back and start living with the respondent, but in the month of August, 2008 she finally returned to her parents' house. According to the petitioner, she was taken to Karachi from where she was sent home in wearing apparels by the respondent who pronounced talaq-e-salasa' upon the demand by the petitioner. According to her, respondent demanded that petitioner should waive of the condition in the Nikahnama. According to petitioner, one brother was employed in Pak Army whereas the second brother worked in Greece and the third worked in Dubai. In cross-examination she admitted that in chak, neither they had any house nor any agricultural land owned by her family. The claimed dowry articles were purchased by mother, elder sister and elder

brother who were not produced from the petitioner side and that the receipts of the purchased dowry articles were with the respondent family but their photocopies were not produced. The list of the dowry articles was prepared by the clerk of her learned counsel. PW-2/Muhammad Ikram her brother admitted that he did not purchase the dowry articles since he was out of country in Dubai and that his father had no business of his own. They purchased only 5½ marlas land in Bhalwal after coming from the Chak No. 6. On the other hand, the respondent while appearing as DW-1 denied the receiving of any dowry articles at the time of marriage and he denied pronouncement of 'talaq' to the petitioner. DW-2 is Dost Muhammad/ father of the Respondent No. 3 who stated that his step brother Sadar-ud-Din was involved in the murder of the brother of the petitioner, namely, Zafar Ullah. He was present in Nikah and Barat.

8. Scanning the above evidence, it is noted that neither any receipt of the dowry articles was produced, nor the source of income of the brothers of the petitioner was mentioned on the basis of some reliable evidence. Admittedly, her family did not own any significant agricultural or urban property which could be utilized partly for the purchase of the dowry articles. Even it is not proved on record that formal Rukhsati in front of guests had taken place and on that very occasion the dowry articles were taken to the house of the respondent in vehicles. However, the nominal dowry articles were awarded by the learned trial Court with the alternate price of Rs. 50,000/-were not challenged by the respondent.

9. Undoubtedly, in the rural background the receipts are not retained in safe custody as it is considered as a bad omen but to claim huge dowry articles, some evidence has to be seen. The grant of dowry articles on presumptions has a very limited scope to the extent of those articles which are normally used by bride, therefore, are given as a customary practice.

10. In this view of the matter, no misreading or overlook by the Courts below could be pointed out warrant interference by this Court. Resultantly, this writ petition has been found meritless and is, therefore, **dismissed**.

(Y.A.) **Petition dismissed.**