Quarterly

Case Law Update

Online Edition

Volume 3, Issue-I (January-March, 2022)

Published by:
Legal Research Centre (LRC)
Peshawar High Court

Available online at: https://peshawarhighcourt.gov.pk/app/site/108/c/Case_Law.html

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Dated of Decision: 06.01.2022

Imposition of Major Penalty of Removal from service. Domain of Competent Authority

Gulzar Ahmad, J.

We note that imposition of penalty is in the domain of the competent authority, for that, the competent authority is fully empowered to impose such penalty upon its employee on finding him guilty of commission of misconduct as it considers appropriate and normally the Court will not interfere in such exercise of power by the competent authority. The conversion of penalty imposed by the competent authority will require a strong justifiable reason beyond what is stated by the Tribunal in the impugned judgment. The Court is not empowered to arbitrarily and whimsically find the penalty imposed by the competent authority to be harsh merely, on the ground that the respondent has put in 24 years' of service and is entitled to grant of retirement benefits. The quantum of punishment has to be left with the competent authority and the Court cannot without any strong reason interfere with the same. The interference in the matter of punishment will be without jurisdiction when strong reasons are not assigned to support the same.

Civil Appeal No. 1389 / 2014

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1389_2014.pdf

Muhammad Shifa etc VS Meherban etc

Whether the principle of *res judicata u/s 11 CPC 1908* is applicable to Muslim Personal Law/inheritance?

Qazi Faez Isa,J.

4. We have heard the learned counsel, examined the referred to citation and the Muslim Personal Law (Shariat) Application Act, 1962 ('**the Act**'). The learned Judges in the case of *Muhammad Zubair,* with utmost respect, whilst referring to the Act assumed that the Act had stipulated that *res judicata* and/or sections 11 and 12 of the Code were not applicable to Muslim Personal Law. However, the Act does not state this. In the case of *Salehon v Sardaran* (1994 SCMR 1856), the principle of *res judicata* was considered to be applicable with regard to the Act and leave was refused by three learned Judges of this Court; this judgment was not referred to in the case of *Muhammad Zubair*.

This Court had granted leave on the same point as contended by the appellants' counsel in the case of *Fatima Bibi v Province of Punjab* and the leave granting order passed therein is published in 2012 SCMR 72, but since the decision of the appeal is not published we enquired from the office about its fate and the file of the appeal (Civil Appeal No. 370-L of 2011) has been examined by us, which was heard and dismissed by a three-member Bench of this Court *vide* judgment dated 11 October 2013; review was sought (Suo Moto Review Petition No. 267 of 2013) but that too was dismissed on 5 December 2013

6. In the present case the Appellate Court had disregarded the principle of *res judicata* /section 11 of the Code and the High Court corrected this mistake of law, and having done so it followed that the suit filed in the year 1997 by the respondents had to be dismissed, because the very same matter had already been decided almost forty years earlier. Public policy also requires that disputes once finally decided should not be reopened. In the present case the 1958 judgment was also not challenged by Sahib-un-Nisa, nor was it challenged by her legal heirs, and instead it was sought to be negated by filing a suit in the year 1997, which is not permissible. Therefore, this appeal is dismissed, but there shall be no order as to costs, as the appeal was filed as of right.

Civil Petition No.3011 of 2021

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3011_2021.pdf

Hassan Aziz etc vs Merajud Din etc

Date of Hearing: 08.02.2022.

Great Grand children have no right of inheritance u/s 4 MFLO 1961.

MunibAkhtar,J.

We would like to commend the learned Single Judge of the High Court for the valuable discourse that is to be found in the impugned judgment. However, in our view there is an alternative basis on which the question can be decided, and one which avoids touching ground reserved by the Constitution for the FSC and the Shariat Appellate Bench of this Court. Now, it is a fundamental principle of the law of Muslim inheritance that the legal heirs of a person are only determined at the moment of death and not before. This rule is clearly reflected in s. 4 by use of the words "opening of succession". The point is then reinforced by the immediately succeeding words, "the children of [the predeceased] son or daughter, if any, *living at the time the succession opens*" (emphasis supplied). The words emphasized impose a clear limitation: s. 4 applied only to those grandchildren as are

alive at the time of death of the propositus. Had these words been absent then, perhaps, a case could be made out for the interpretation put forward by learned counsel for the leave petitioners. However, the words do exist and therefore must be given due effect. To accept the case sought to be made out would, in effect, erase them from the statute. That would be contrary to well established rules of interpretation. It is of course well known that under the rules of Muslim inheritance the legal heirs of a predeceased son or daughter do not inherit from the parent of the predeceased. Section 4 carves out a carefully constructed exception from this rule. It is not without significance that the section does not refer to the legal heirs of the predeceased son or daughter: the words used are "the children of such son or daughter" and not 'legal heirs'. Quite obviously for the predeceased son or daughter to have children they would have to have had a spouse, who could also be alive when the parent passes away. Yet, any spouse is excluded from the applicability of s. 4. It is also to be kept in mind that some of the rules of Muslim inheritance can apply across generations, which is encapsulated in the phrases "how high so ever" and "how low so ever" used in the standard treatises. Any possibility of s. 4 having such an effect (which, in essence, is the case pleaded by the leave petitioners) is carefully excluded by use of the words emphasized above, i.e., "living at the time the succession opens". Read as a whole, the purpose and intent behind s. 4 is clear. The exception created by it is limited and circumscribed. It applies only to those grandchildren as are living at the time of the death of the propositus. An extended meaning cannot be given to the section in terms as urged by learned counsel for the leave petitioners. They, being the great grandchildren, did not have any share in the property left behind by the propositus on the basis of s. 4. Both the learned trial court and the learned High Court were therefore correct in dismissing their claim.

2022 SCMR 576

Civil Petition No. 2420 of 2015

IkramUllah Khan Yousafzai VS Dr. IkaramUllah

State authority is a sacred trust; it vests in its functionaries to accomplish purposes designated by law.

Qazi Muhammad Amin Ahmad,J.

2. State authority is a sacred trust; it vests in its functionaries to accomplish purposes designated by law and no doubt while exercising such authority within remit thereof, the functionaries must act in a manner most benign with a degree of

restraint, expedient to avoid transgression. At the same time, a reasonable freedom for the functionaries is most essential to effectively perform the duties they are tasked with. Any obstruction with the performance of State business is interference with the writ thereof and cannot be countenanced without grievously undermining its authority. Independence is not sole prerogative or attribute of any particular limb of the State as within the defined limits of law, each department, must be sovereign to effectively ensure its functionality so as to achieve statutory purpose, there being no sword of Damocles' hanging over the head. It is even more important for those who are assigned with the responsibility of enforcement of law or for collection of State revenue and, thus, while there must be an unblinking judicial vigil over alleged transgressions, the Court must simultaneously give effect to statutory presumption attached to official acts as contemplated by Article 129 (e) of the Qanun-i-Shahdat Order, 1984 as well as Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973.

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._406_2017.pdf

Criminal Petition No.406 of 2017

Noor Zaman vs The State

Death Sentence----- *"Proof beyond doubt"*

Qazi Muhammad Amin Ahmed, J.

Thus, it is not open to the defence that the petitioner did not know as to why he was in the dock. It is high time to get out of the quagmire of hyper technical past so as to adopt a more realistic and dynamic approach to ensure an effective administration of criminal justice, a sine qua non to maintain peaceful equilibrium in the society; an inconsequential lapse or failure to observe a procedural formality without causing prejudice or handicap to an accused in his defence cannot be allowed to deny justice to the victim of crime.

Similarly, presumption of genuineness is attached to the official acts both under article 129 (e) of the Qanun-i-Shahadat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973, supreme law of the land and, thus, in the absence of a positive proof to the contrary, pleaded specifically, a delayed dispatch by itself cannot be viewed with suspicion. Three innocent persons including two women in their prime youth have been

done to death with repeated fire shots, two in the safety of their home, in a manner most callous and brute, thus, the wage settled is conscionable in circumstances; scales are in balance. No interference is called for.

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3958_2019.pdf

Civil Petition No. 3958 of 2019

Nasir Ali VS Muhammad Asghar

Date of Hearing: 02.02.2022

Scope of Revisional Jurisdiction

Muhammad Ali Mazhar, J.

The effect of onus probandi

It is well settled exposition of law that Section 115 C.P.C empowers and mete out the High Court to satisfy and reassure itself that the order of the subordinate court is within its jurisdiction; the case is one in which the Court ought to exercise jurisdiction and in exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision. If the High Court is satisfied that aforesaid principles have not been unheeded or disregarded by the courts below, it has no power to interfere in the conclusion of the subordinate court upon questions of fact or law. The scope of revisional jurisdiction is limited to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or if the conclusion drawn therein is perverse or conflicting to the law. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C. In the case of Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi. Vs. Ikhlaq Ahmed and others. (**2014 SCMR 161**), this Court held that the provisions of Section 115, C.P.C under which a High Court exercises its revisional jurisdiction, confer an exceptional and necessary power intended to secure effective exercise of its superintendence and visitorial powers of correction unhindered by technicalities. In the case of Atiq-ur-Rehman Vs. Muhammad Amin (**PLD2006 SC 309**), this Court held that the scope of revisional jurisdiction is confined to the extent of misreading or non-reading of evidence, jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case or the conclusion drawn therein is perverse or contrary to the law, but the interference for the mere fact that the

appraisal of evidence may suggest another view of the matter is not possible in revisional jurisdiction. There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and the conclusion drawn is contrary to law. This Court in the case of Sultan Muhammad and another. Vs. Muhammad Qasim and others (**2010 SCMR 1630**) held that the concurrent findings of three courts below on a question of fact, if not based on misreading or non-reading of evidence and not suffering from any illegality or material irregularity affecting the merits of the case are not open to question at the revisional stage.

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1647_2018.pdf

CIVIL PETITION No. 1647 OF 2018

Abid Hussain etc VS Muhammad Yousafetc

Dated of Decision: 03.02.2022.

Hiba/Gift or immovable property to minor--- its revocation after long time.

Muhammad Ali Mazhar, J.

If at the time of conveying a gift the donee was minor, the acceptance of gift could be made by his or her guardian and predominantly for the reason of minority of donee alone, the factum of gift made by his natural guardian does not cease to exist but remains valid on fulfillment of all ingredients of valid gift. A minor donee may not have the capacity to understand the legal consequences as in this case where the donee was only five years of age when his father put into words the gift but minor was a person in existence and thus he was a competent donee. According to all schools of thoughts under the Muslim law, a father has been recognized and acknowledged as the natural guardian of his child though, in the case in hand, the donor was father and gift was accepted by real mother of donee on his behalf. Even if the gift was not accepted by the mother, it would not have any adverse impact or effect on the gift made by a father in favour of his minor son. In case a guardian makes a gifts in favour of his ward, he declares the gift as donor and accepts the gift on the part of the donee, the delivery of possession is not compulsory provided that there must be a *bona fide* intention on the part of the guardian/real father to divest and part from his ownership and pass on it to the donee out of love and affection. According to authoritative and trustworthy texts on Muslim Law, if the donee is minor son of the donor, then delivery of possession itself is not *de rigueur* or compulsory, as it is foreseeable in case of other donees under a hiba. The possession of the guardian amounts to possession of minor and separately no *aliunde* evidence is required to prove that the guardian handed over possession of the property to the minor. In this regard, a lucid exposition has been divulged by D. F. Mulla in his book"Principles of Muhammadan

Law" in the annotation No.155, that no transfer of possession is required in the case of a gift by a father to his minor child or by a guardian to his ward. All that is necessary is to establish *bona fide* intention to give. In the case of *Mst. Kaneez Bibi and another vs. Sher Muhammad and 2 others* **(PLD 1991 Supreme Court 466,)** this Court held on the question of the delivery of possession in cases like the present one: when the husband is the donor for a wife living with him, when the father is the donor for a daughter and/or a minor living with him or a father-in-law for a daughter-in-law and/or her husband living with him, was not at all noticed. It may be straightaway remarked that in such cases strict proof by the donee of transfer of physical possession, as in other type of cases, is not insisted upon. To cite only one example the Privy Council, three quarters of a century ago in the case of Ma Mai and another v. Kallandar Ammal (AIR 1927 Privy Council 22) had observed that in the case of gift of immovable property by such a close relation of the female as are mentioned above, once mutation of names has been proved the natural presumption arising from the relationship existing between the donor and the donee, the donor's subsequent acts with reference to the property would be deemed to have been done on behalf of the donee and not on his own behalf. Whereas in the case of *Bahadur Khan vs. Mst. Niamat Khatoon and another***(1987 SCMR 1492),** this Court held that under the provision of Section 167(2)(b) of the Muhammadan Law by D.F. Mulla, when the donor and the donee are related within the prohibited degree, a gift made cannot be revoked. While discussing the dictums laid down in the case of Muhammad Latif v. Muhammad Nawaz (PLD 1960 Lahore 130) and Daud Khan v. Aurangzeb (PLD 1968 SC 54), it was further held that the basis on which the learned Judges have differed with Imam Shafei on the retractability of a gift in favour of a son or a ward has also considerable merit. As reasoned by them, the exception in case of a son appears to be based more on the authority of the father as a natural guardian to deal with the property of his minor son than on the concept of retractability of a gift, for a father is responsible for the maintenance of only his minor children and not adults. This view is in conformity with Shia Law that a gift to ones descendants and accepted by them is irrevocable and finds support from the tradition 'when a gift is made to a prohibited relation it must not be resumed', the term prohibited in this context being construed as (قرابت دار) and not the persons with whom marriage is prohibited.

10. According to Mishkat-ul-Masabih, Vol. II by Faziul Karim (An English Translation with Arabic Text of Selection of Ahadis from Highly Voluminous Works of Bokhari, Muslim and other Traditionists of Repute), "18. Ibn Abbas reported that the Messenger of Allah said: He who takes his gift back is like a dog which takes back its vomitings. There is no other evil simile for us.967- Bukhari. While in Al-Shari'a [Sunni &Imamiyah Code], Vol. II, by S. C. Sircar (deduced from Fatawa-i-Alamgiri; Fatawa-iSirajiyyah; Sharifiyyah; Sirajiyyah; Durr-ul-Mukhtar; Hidaya; Sharh-ul-Vikayah; Jami'urRamuz; Sharaya-ul-Islam; Rouzat-ulAhkam; Mufatih; Irshad and Tahrir-ul-Ahkam) as per annotations regarding the

revocation of gifts, it is stated at page 30: "If a person make a gift of anything to his relation within prohibited degrees, it is not lawful for him to resume it, because the Prophet has said, "When a gift is made to a prohibited relation, it must not be resumed;" and also because the object of the gift is an increase of the ties of affinity, which is thereby obtained". (Hidayah, Vol. iii, p. 302).

PESHAWAR HIGH COURT

https://peshawarhighcourt.gov.pk/PHCCMS/judgments/CrA-970-2021-24-23-2022-J.pdf

Cr. A No.970-P of 2021 With Murder Reference No.21-P/2021

Efficacy of evidence of stamped witness

FAZAL QADAR ETC VS THE STATE ETC

ROOH-UL-AMIN KHAN, J: -

13. Injured Ubaid Ali is a child witness aged 13 years. Before recording his statement, certain questions were put to him by the learned trial Court, who after giving its rational answers was examined as PW. 15. He deposed that on the fateful day he along with his father and brothers had visited the house of his maternal grandfather, namely, Muhammad Iqbal (complainant). At about 05.00 p.m. an altercation took place between his maternal grandfather and the accused, on which he along with his mother Mst. Farhana and maternal aunts, namely, Mst. Samreen, Ruqayia and Rani came out from the house. During altercation the accused drew their pistols and started firing at them, as a result, he, his mother and his aunts named above got hit.

14. Both the above-named eye witnesses, have been subjected to lengthy and taxing cross-examination, but nothing beneficial to defence could be extracted from their mouths. Both remained consistent with each other on the mode and manner of the occurrence and have charged the appellants and absconding co-accused Fazal Karim and Bilal for commission of the offence.

19. As regards injured PW Ubaid Ali, he having stamp of firearm injury on his person, his presence at the spot cannot be doubted. When he was examined by the Medical Officer he noticed him conscious and oriented in time and space. **It is settled law that evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained**

injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness. In the instant case as stated earlier the testimony of injured PW Ubaid Ali is corroborated by strong circumstances evidence and supported by medical evidence, therefore, the same is sufficient for recording conviction of the appellants.

20. It is proved from the prosecution evidence that the occurrence has not taken place at the spur of moment, rather there was a controversy between complainant and the accused on delivery of possession of a house sold by Fida Muhammad to Iqbal Hussain. The complainant and accused party were middle men in the bargain. Rupees twenty Iacs were paid by Iqbal Hussain to Fida Muhammad and the remaining sale consideration was agreed to be paid within three months. The complainant was demanding delivery of possession of the house for Iqbal Hussain. **It has been categorically mentioned by the complainant in his initial report that prior to the occurrence whenever he demanded delivery of possession of the house from the accused, the accused would start altercation with him, meaning thereby that the accused had already made up their mid for the occurrence. Arrival of the accused with deadly arms to the spot and the numbers of firearm injuries sustained by four deceased daughters of the complainant prove the intention and premeditation of the accused.** In this view of the matter, there exists no ground to warrant lesser punishment then the one already awarded by the learned trial Court to the appellants to which no exception can be taken except with slight modification in the sentence of fine imposed upon the appellants under section 324 PPC which instead of its payment to the complainant and injured Ubaid Ali shall be deposited by the appellants in favour of the State as fine under section 324 PPC.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/BA148-2022ORDER28.3.2022.pdf

Cr.M BA No. 148-P/2022 with Cr.M No. 44-P/2022

Plea of alibi at bail stage.

Nasir Abbas Noori Vs The State

LAL JAN KHATTAK, J: -

3. It is noteworthy that on 01.11.2011 i.e. within a week of his nomination as accused in the case petitioner moved an application to S.P (Investigation), Hangu pleading his innocence on which an inquiry was conducted and according to the findings of the inquiry officer petitioner is not involved in the murder of Syed Ali Murtaza Hussain. It is also worth to mention that as per record annexed with the petition, petitioner had left his police station i.e. the place of his posting for gasht at 07:10 AM on the day of occurrence vide daily diary No.54 and had returned there at 03:00 PM vide daily diary No.16. It is further worth to add that the Inquiry Officer had recorded statements of the police personnel who had been with the petitioner in the gasht at the relevant time.

4. **True that the plea of alibi is normally left for the trial court to judge it but at the same time if it is taken at the earliest and is verified one then for the purpose of bail it can be pressed into service and cannot out rightly be rejected.**

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-5496--P--2020.pdf

Writ Petition No. 5496 P/2020

Constitutional jurisdiction of High Court to interfere could not be abridged when an order impugned is patently illegal, arbitrary or perverse.

Muhammad Abbas khan vs. Govt of KPK and others

Musarrat Hilali J.

8. In view of the above discussed facts, it is a clear case of abuse of authority as the respondents No.3 was required to re-instate the petitioner on his position but the Principal (respondent No.4) instead of re-instating him had issued a letter dated 15. 10. 2012 for payment of the pension amount to him which in view of the report of the Vice Chancellor and BOG decision is making no sense and logic, particularly, where, on one hand, the respondent No.4 in his letter was seeking an apology of the false allegation levelled against the petitioner by the Ex-Principal, while, on the other hand, he (the petitioner) was relieving him compulsorily from his services. Even otherwise, the letter is neither in line with the language of the Facts Findings Report of the Vice Chancellor nor is the decision of the BOG, nor is it under the mandate of Rule 46 of the Edwards College Rules.

9. So far as the objection raised by learned counsel for the respondents

regarding maintainability of the instant petition that the service rules of the college are not statutory rules, therefore, not amenable to constitutional jurisdiction of this court is concerned, suffice it to mention that this issue has already been set at rest by this court in a case titled Bishop Humphrey Sarfaraz Peters, Chairman Board of Governors, Edwardes College Peshawar vs Governor of Khyber Pakhtunkhwa/Chancellor of Khyber Pakhtunkhwa Universities through Principal and 4 others (2020 CLC 219) wherein it has been held that the Edwardes College is a nationalized and autonomous institute pursuant to the Privately Managed Schools and Colleges (Taking over) Regulation, 1972 (Regulation No. 1 18) which has been validated as per Article 269 of the Constitution, 1973, and its affairs are properly managed by the Board of Governors headed by the Governor of the Khyber Pakhtunkhwa. Even otherwise, as held by the august Supreme Court in a case titled **Pakistan Defence Officers' Housing Authority of Pakistan and others vs Arshad Nadeem (2013 SCMR 1707),** when an order or action impugned was patently illegal, perverse or arbitrary, the constitutional jurisdiction of High Court to interfere could not be abridged.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-No-3258-P-of-2021.pdf

W.P. No.3258-P/2021

Baz Muhammad Khan vs. The SP Chamkani, Peshawar and others

Imposition of suitable cost to eliminate the concocted litigation

IJAZ ANWAR J.

7. We have noted in numerous cases that **the provisions of Section 22-A Cr.P.C is misused; besides, frivolous litigation in the Courts have become unstoppable, unnecessarily burdening the Courts and wasting their precious public time. It is high time for the Courts to take effective measures to curb the uncalled for and frivolous litigation and imposition of suitable cost could be one of the deterrent modes to eliminate the concocted litigation.**

8. The Hon'ble Islamabad High Court, while expressing its concern over filing of frivolous litigation by suppressing and concealing facts, summarized the principles of law enunciated on the subject as follows:

"(i) It is recognized as a duty of the Court to take effective measures against obstinate litigants who resort to frivolous or fraudulent litigation.

(ii) Though Civil Procedure Code, 1908 (hereinafter referred to as "C.P.C. is applicable to writ jurisdiction **("Hussain Bakhsh V. Settlement Commissioner, PLD 1970 SC 1)**, yet being extra ordinary constitutional jurisdiction, the High Court has ample power to do justice and to prevent misuse or abuse of its process.

(iii) Section 35-A of C.P.C., in no way limits the constitutional jurisdiction of a High Court and in appropriate cases can impose costs, while exercising jurisdiction under Article 199, "Notwithstanding the parameters" of the said provision. Thus costs in excess of the amount prescribed under Section 35-A, can be imposed.

(iv) Petitioners wasting public time and exchequer should be burdened with heavy costs.

(v) Courts can award heavy costs for harassing others or dragging them in frivolous litigation.

(vi) High Court under its constitutional jurisdiction under Article 199 can award, in appropriate case, costs to compensate a party made to suffer unnecessarily through frivolous litigation.

(vii) Imposition of suitable costs is one of the mode to deter or eliminate frivolous litigation.

(viii) In appropriate cases proceedings under the law of contempt can be initiated against the litigant and the person who drafted the petition."

9. The Hon'ble Supreme Court of Pakistan when found that "petition was completely ill-founded. ill-advised and incompetent. dismissed the same with a heavy cost'.

10. In the instant case, since the petitioner has history of differences/animosities with the respondents; besides, having no authority from the Respondent-Company to initiate legal proceedings against the alleged violators in order to discourage the tendency of frivolous litigation and wasting precious time of this Court, this case also deserves to be dismissed with heavy cost.

15. **In view of the above and the fact that petitioner has resorted to uncalled for litigation and abused the process of law, thus, in order to curb such frivolous litigation; this writ petition is dismissed with a cost of Rs. 50,000/- (Rupees Fifty Thousand).** The Senior Civil Judge, Peshawar is . directed to recover the aforesaid amount from the petitioner and to deposit it in the public

ex-chequer. Compliance report be submitted to the Additional Registrar (Judicial) of this Court for perusal of the Hon'ble Judges in Chambers.

2022 P Cr. L J 517

Before Lal Jan Khattak and S M Attique Shah, JJ

MUNTAZIR KHAN Versus The STATE and another

For maintaining conviction under capital charge, evidence of unimpeachable character is required

S M ATTIQUE SHAH, J

16. 14. …. The deceased was real brother and father of the eye-witnesses; albeit, the pronounced aspect of the case is that neither, they had lifted the dead body of the deceased from the spot; nor, could they name those persons who attracted to the spot after the occurrence and; lifted the dead body of the deceased to the police station; which in the given circumstances is not appealable to a prudent mind; being against the natural human conduct. Furthermore, both the eye-witnesses in their respective statements have stated that no firing was made upon them and only deceased was fired at. It is also pertinent to mention that when both the accused were duly armed with Kalashnikov; then why they had not fired at the eye-witnesses; knowing well that they would become witnesses of the occurrence and would depose against them during the trial. On mere direct charge of the appellant by the eye-witnesses without strong corroboration of their testimony, conviction of the appellant would be against the principles of administration of justice.

17. 15. For maintaining conviction under capital charge, evidence of unimpeachable character is required; which lacks in the instant case. The prosecution miserably failed to prove its case in the mode and manner as alleged and; upon re-appraisal of the evidence, we have no hesitation in holding that the occurrence was an unseen one and; the attendance of both the PWs was procured later on, in order to strengthen the case of the prosecution.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/CR.A174-2021-.pdf

Cr.A No. 174-P of 2021 with M.Ref No. 03-P of 2021

Raziq Jan Vs The State etc.

Mere fact that the accused was handed over to the police after recording of confession in all circumstances shall not be a ground for discarding the confessional statements, if otherwise, it rings true and voluntary

Date of hearing: 22.03.2022

ISHTIAQ IBRAHIM, J.-

11. The confessional statement of the appellant RaziqJan recorded by the Judicial Magistrate, (PW-2) on28.11.2017 while that of co-appellant Ghulam Rasool was recorded on 29.11.2017 respectively. The learned trial Court in para-5 of the judgment has discarded the confessional statements of both the appellants. Since we are seized of an

appeal and Murder Reference as well and the entire evidence led by the prosecution is to be reappraised by this Court. We do not subscribe to the view taken by the learned trial Court by discarding the confessional statements of both the appellants on the ground that the accused were handed over back to the police after recording their confessional statements. It is noteworthy here that evidence led by the prosecution is to be appraised accumulatively and not in isolation. In other words, the Court has to see the impact of the entire evidence led by the prosecution for proving the charge against the appellants. No doubt that law is there that after recording the confession, if the accused is handed over to the police back to some extent affect the credibility of the confession, but, in this case the confessions recorded by the appellants are not the only evidence with the prosecution on file against them as discussed in the preceding paragraph, the dead body was also recovered inconsequence of the information provided by the appellants.

12. Mere fact that the accused was handed over to the police after recording of confession in all circumstances shall not be a ground for discarding the confessional statements, if otherwise, it rings true and voluntary. Reliance is placed upon the judgment rendered by the Hon'ble Apex Court in cases titled Muhammad Sharif..vs.. The State (1969 SCMR-521), wherein it is held that;

"If, as suggested, the appellant had for some reason been under the impression at the time of making the confession that he would be taken as an approver, he could not have forgotten to mention it when explaining why he had made the statement. Judging from the notes made by PW-44 regarding his examination of the appellant before recording his confession to which reference has already been made we have no reason to doubt his evidence that he satisfied himself that the confession was being made voluntarily. As regards the remanding of the appellant to the police custody, the Magistrate did so for the purpose of further investigation. The mere fact that the appellant was remanded to the police custody cannot be taken as proof that the confession was not made voluntarily.„

15. Now adverting to the confession of co-appellant Ghulam Rasool, who was arrested on 27.11.2017, his confessional statement was recorded on 29.11.2017,wherein he has narrated the entire episode that how the dead body of the deceased was brought to him by co-accused Raziq Jan and where the same

was buried. His confession has been duly proved through the statement of learned Judicial Magistrate (PW-2) who categorically stated that appellant has admitted his role and the role of co-appellant in the commission of offence, again it is reiterated that mere fact that he was handed over back to the police after recording his confessional statement to the Naib Court of the Court cannot be considered as a sole ground for rendering the confessional statement inadmissible. We are of the firm view that confession alone is sufficient for basing conviction, if the same is found to be voluntary and true. Reliance in this regard is placed upon the judgment rendered by the Hon'ble Apex Court in case titled Khan Muhammad and others.vs The State (2007 SCMR-518),wherein it is held that;

"Accused was convicted after trial and sentenced to imprisonment for life, which was maintained by Federal Shariat Court... Plea raised by accused was that both the courts had wrongly convicted him on the basis of circumstantial evidence produced by prosecution in shape extra-judicial confession.... Validity....Both the Courts below had given finding that accused had made confessional statement voluntarily before his own nearest relative who appeared as prosecution witness.... Confession of accused was also corroborated with other piece evidence recovered during investigation... Conviction could be awarded on the basis of circumstantial evidence alone... Roth the Courts below had convicted and sentenced the accused after proper appreciation of evidence on record... Concurrent conclusions arrived at by Courts below could not be interfered by Supreme Court in exercise of jurisdiction under Article-203F(2-B) of the Constitution. Supreme Court declined to interfere with the conviction and sentence awarded by both the Courts below....Leave to appeal was refused.

,,

In light of what has been discussed above and with the modifications referred in the preceding paragraph with regard to the sentence of appellant Raziq Jan both the appeals are dismissed.

Murder Reference No.3 of 2021 sent by the learned trial Court for confirmation of death sentence awarded to the appellant Raziq Jan is answered in positive.

https://peshawarhighcourt.gov.pk/PHCCMS/
/judgments/Cr-A--No-189-B-2021.pdf

Cr. A No.180-B of 2021

with

Murder Reference No.04-B/2021

When the prosecution is uncertain regarding the exact cause of death, then the same can be pressed into service to assess as to whether the conviction was done rightly?

Nazar Khan, alias, Nan Vs. The State etc:

SAHIBZADA ASADULLAH, J: -

16. As the prosecution succeeded in bringing home guilt against the appellant, so this Court is to determine as to whether the awarded sentence is justified and is in accordance with law. As the appellant has been convicted to death sentence, so this Court is under the obligation to reassess the already assessed evidence to ascertain as to whether the awarded sentence is legally correct and as to whether the learned trial court had no alternative to go for a lesser sentence. The record tells that both the deceased and the appellant during the days of incident were aged about 22/23 years, an age where it is hard to resist the emotions, temptations and the surrounding influences. We lurk no doubt in mind that the prosecution could not succeed in bringing on record the exact cause of the incident, rather previous blood feud was projected to be the cause of death of the deceased. True that on record brother of the deceased was charged in the motive F.I.R. but equally true that the prosecution could not bring on record concrete evidence in that respect to exclude any other hypothesis. As the complainant, the deceased and the appellant were nearly of the same ages, **the** possibility cannot be excluded that it was a chance encounter which led to the death of the deceased. The record is silent that what happened a little earlier to the incident which claimed the life of the deceased. As the complainant stated that at the time of incident, both the accused i.e. the appellant and his co-accused were duly armed with .30 bore pistols and that it was from the fire consideration the attending circumstances of the case for awarding sentence. There is no denial to the fact that on one hand there are minor discrepancies in case of the prosecution, whereas on the other the prosecution could not convince that it was the previous blood feud between the parties which claimed the life of deceased. When the prosecution is uncertain regarding the exact cause of death, then the same can be pressed into service to assess as to whether the appellant was rightly convicted. We are conscious of the fact that when the prosecution succeeds in bringing home guilt against an accused charged, then the normal penalty is death, but in case in hand the discrepancies in the prosecution case and the

uncertain cause of death leads this court to hold that the awarded sentence is a bit harsh and the same needs interference

17. We, in order to avoid miscarriage of justice deem it appropriate to reduce the awarded sentence from death to imprisonment for life under section 302 (b) P.P.C. The instant Criminal Appeal is partially allowed, the impugned judgment is modified by maintaining the conviction and reducing the sentence from death to life imprisonment, while rest of the sentence shall remain intact.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-287-OF-2022...30032022135345_001.pdf

W.P. No.287- N2022 Malik Muhammad Nawaz Vs. Government of Khyber (Petitioner). Pakhtunkhwa

Whether a person on acquiring nationality of a foreign state may still remain a citizen of Pakistan?

WAQAR AHMAD J.

14. Next question for our consideration was "Whether a person on acquiring nationality of a foreign state may still remain a citizen of Pakistan? This was also important question for determination of the instant case in the sense that if answered in negative, then respondent No. 3 would stand disqualified for the reason that he has admittedly acquired citizenship of Australia. In this respect, Section 14 of the Pakistan Citizenship Act, l95l lays down a criteria wherein a general principle has been provided that if a person acquires citizenship of any foreign country, he shall lose citizenship of Pakistan, but while providing such general principle, certain exceptions have also been provided. One of those exceptions, which is important for our present discourse is that such an exception shall not be deemed to have applied to a person who is also citizen of United Kingdom, its former colonies or such other country as the Federal Government may by notification in the official gazette, specifies in this behalf. Section 14, being relevant to the present controversy, is reproduced for ready reference:-

" 14. Dual citizenship or nationality not permitted.- (1) Subject to the provisions of this section ,f any person is a citizen of Pakistan under the provisions of this Act, and is at the same time a citizen or national of any other country he shall, unless he makes a declaration according to the laws of that other country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan. (IA) Nothing in subsection (l) applies to a person who has not attained twenty-one years of his age: (2) Nothing in subsection (l) shall apply to any person who is a subject of an Acceding State so far as concerns his being a subject of that State. (3) Nothing in subsection (1) shall apply, or shall be deemed ever to have applied at any stage, to a person who being, or having at any time been, a citizen of Pakistan, is also the citizen of the United Kingdom and Colonies or of such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf. (4) Nothing in subsection (l) shall apply to a female citizen of Pakistan who is married to a person who is not a citizen of Pakistan

As mention in the judgment of the Hon'ble Supreme Court of Pakistan, given in the case of Muhammad Ibrahim Shaikh Vs. Government of Pakistan Secretary Ministry of Defence and others" reported as PLD 2019 13, nineteen countries have been notified by the Federal Government under the above reported Section law particularly its sub-section (3), whose names are also reproduced herein below:-

1 Jordan 2 France 3 Syria 4 Switzerland 5 Belgium 6. Netherland 7 Iceland 8 United States of America 9 Australia 10 Sweden 11 New Zealand 12 Ireland 13 Canada 14. Bahrain 15 Finland 16. Denmark 17. Egypt 18 United Kingdome 19 Italy

Acquiring citizenship of the abovementioned countries shall not, ipso_facto cause stripping person of his status as Pakistani citizen. 15. It has therefore become manifestly clear that on acquiring citizenship of one of those countries mentioned above, a person does not loose Pakistani Citizenship but if he acquires citizenship of any other State not included in the above list, he shall loose citizenship of Pakistan. Reliance in this respect may be placed on observation of the august Supreme Court of Pakistan in the case of Syed Mehmood Akhtar Naqvi Vs. Federation of Pakistan through Secretary Law and others" reported as PLD 2012 SC 1089

https://peshawarhighcourt.gov.pk/PHCCMS/
/judgments/W.P-97-m-of-2022.pdf

WP 97-M/2022

Mujeeb-ur-Rehman Vs Malak Sadiq Ahmad

The purpose behind the first proviso of section 24 of the Pre-emption Act

MUHAMMAD IJAZ KHAN, J: -

The purpose behind the first proviso of section 24 of The Pre-emption Act (where the pre-emptor is required to deposit 1/3rd of the pre-emption money not beyond 30 days) is to protect vendee from frivolous litigation and also to ascertain the financial capacity of the intending pre-emptor to purchase the property sought to be pre-empted at the time when the property was being sold, keeping in mind the period of such deposit which would commence from the date of filing of the suit. Definitely it is all-around to keep a check on the preemptor so that he may not prolong the deposit of 1/3rdpre-emption amount and as such any relaxation in the same would amount to frustrate the very purpose of the first proviso to Section 24 (l) of the Act of 1987. In the case in hand, the conduct of the petitioner/plaintiff appears to be that he has just posted/filed the pre-emption suit without caring for his corresponding statutory obligations which are to be performed within the specified period.

During the course of arguments, the main plea of the petitioner was that since the Court has not directed him to deposit a fixed amount, therefore the penal consequences of subsection (2) of Section 24 of the Pre-emption Act, 1987 could not be pressed against him, appears to be misconceived as this fault too could not be attributed to the Court as it was the duty of the preemptor to produce the mutation, which he has pre-empted or at least he should have been disclosed a probable amount of the suit property, so that the Court may be in a position to order for deposit of a fixed amount. The record appended with this petition would reveal that though the petitioner/plaintiff has pre-empted mutation No. 2090 attested on 27.11.2020 but copy of the same was not annexed with the plaint and the same has now appended for the first time before this Court with his petition. The aforesaid conduct of the petitioner/preemptor would show that he has never been vigilant in pursing of his case and to comply with the mandatory provision of law.

The mandatory nature of Section 24 of the Pre-emption Act, 1987 qua the deposit of 1/3rdpreemption amount, the strict observance of 30 days period and calculation of this period, discretion of the trial Court in extension of this period and its fatal nature in case of its non-compliance has been remained a favorite subject of the Hon'ble Apex Court. In the case of Hamza Sheraz and another vs. RiazMehmood (deceased) through L.Rs. reported as PLD 2022 Supreme Court 3, the pre-emptor was required to deposit 1/3rdpre-emption amount, which came to 5,33,334.35/-, however he deposited an amount of Rs. 5,33,000/- and thus there was a shortfall of Rs. 334.35/- only but his suit was dismissed for such a deficiency.

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