



HIGH COURT OF SINDH

Case Law Review



Fortnightly Bench Update



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FORTNIGHTLY BENCH UPDATE

(01-06-2025 to 15-06-2025)

An Overview of Recent Judgments of the Supreme Court of Pakistan, Sindh High Court, and Lahore High Court, Latest Legislative Amendments and Important Articles, Compiled and Published by the Legal Research Cell, High Court of Sindh, Karachi

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SUPREME COURT OF PAKISTAN

1. Supreme Court of Pakistan

Criminal Petition Nos. 467, 441, 442, 468, 469 and 485/2023 (Against the judgment/order dated 13.03.2023 passed by Islamabad High Court, Islamabad in J. A. No. 117/2022, Crl. Rev. No. 28/2022, Crl. A. Nos. 111, 123 & 136/2022 and M. R. No. 3/2022)

Present: Mr. Justice Muhammad Hashim Khan Kakar, Senior Judge
Mr. Justice Ishtiaq Ibrahim
Mr. Justice Ali Baqar Nijafi

Source: https://www.supremecourt.gov.pk/downloads_judgements/crl.p.467_2023..pdf

Facts: The case arises from the heinous murder of Noor Mukadam, whose decapitated body was discovered on 20.07.2021 at the Islamabad residence of the petitioner, Zahir Zakir Jaffar. Initially, Zahir was the sole accused, but following supplementary statements, his parents and two domestic workers—Muhammad Iftikhar (watchman) and Muhammad Jan (cook)—were also implicated. The FIR was registered under sections 302, 376, 342, 364, and various other provisions of the Pakistan Penal Code. The Sessions Court convicted Zahir Jaffar and sentenced him to death under section 302(b) PPC, life imprisonment under section 376(1) PPC, and other terms of imprisonment under sections 342 and 364 PPC. The Islamabad High Court dismissed his appeal and not only upheld the convictions but also enhanced the sentence under section 376(1) PPC from life imprisonment to death. Petitions for leave to appeal were filed before the Supreme Court by the convict Zahir Jaffar, his co-accused Muhammad Jan and Muhammad Iftikhar, and the complainant who sought enhancement of sentence and reversal of acquittals.

Issue: Firstly, whether a conviction leading to capital punishment can be founded solely on circumstantial evidence? Secondly, whether CCTV footage is admissible in evidence and what is its evidentiary value in the absence of eyewitness testimony? Thirdly, whether the prosecution succeeded in establishing its case against the petitioner and the co-accused beyond reasonable doubt, thereby justifying the punishment awarded by the courts below?

Rule: The Court reiterated the well-settled rule that a conviction can be based solely on circumstantial evidence, provided the chain of events is complete, unbroken, and points conclusively and irresistibly toward the guilt of the accused. This principle mandates that each link in the evidentiary chain must connect the accused with the crime scene and the deceased, leaving no plausible hypothesis of innocence. With regard to CCTV and digital evidence, the Court adopted the rule laid down in *State v.*

Ahmed Omar Sheikh (2021 SCMR 873), which prescribes a two-fold test for admissibility: the source of the footage must be explained, and a forensic report must confirm that it has not been tampered with. Moreover, the Court endorsed the “Silent Witness” theory from comparative jurisdictions, under which authenticated CCTV recordings, even in the absence of an eyewitness, can serve as primary and substantive evidence. The Qanun-e-Shahadat Order, 1984, as amended through the Electronic Transactions Ordinance, 2002 and the Criminal Laws (Amendment) Acts of 2017 and 2023, now explicitly recognizes such evidence as primary and admissible under Articles 73, 46-A, and 164.

Application: In applying the above rules to the facts of the case, the Court observed that the prosecution had produced strong and credible circumstantial evidence. The deceased’s body was found in the petitioner’s house, and CCTV footage captured her attempting to flee, being intercepted and dragged back by the accused. The footage, extracted from the DVR and produced as exhibits P-13 and P-14, was forensically verified and found to be unedited. Facial recognition confirmed the identity of the accused, and the footage showed no signs of manipulation. Moreover, medical and DNA reports confirmed sexual assault, and the murder weapon was recovered with the deceased’s blood. The Court found Zahir’s explanation under section 342 CrPC—that a drug party was underway and someone else committed the murder—completely unconvincing and unsupported by any evidence. He failed to provide any justification for Noor’s presence in his house or for the recovery of her body from his premises. The chain of evidence, both digital and physical, was complete and firmly established the petitioner’s guilt. As to the co-accused, although their role was not one of direct participation, the CCTV showed them failing to prevent the crime and assisting the petitioner after the fact. However, given the passage of time and the limited nature of their involvement, the Court took a lenient view and considered their sentences already served.

Conclusion: The Supreme Court, after careful consideration of the law and facts, upheld the conviction of Zahir Zakir Jaffar under section 302(b) PPC and affirmed the sentence of death. However, his conviction under section 376(1) PPC, though maintained, saw the sentence reduced from death to life imprisonment. The conviction and sentence under section 342 PPC were sustained, while the conviction under section 364 PPC was set aside, resulting in his acquittal on that count. As for the co-accused Muhammad Iftikhar and Muhammad Jan, their convictions were upheld, but their sentences were reduced to the time already undergone, and they were ordered to be released. The Court dismissed the petitions filed by the complainant for enhancement of sentence and against acquittals, finding no merit in them. The **ratio decidendi** of this case lies in the affirmation that **circumstantial evidence and authenticated CCTV footage, under the “Silent Witness” theory, are sufficient to sustain convictions including capital punishment.** The Court’s extended discussion on the

evolution of digital evidence in Pakistan and its future role in criminal trials constitutes **obiter dicta**, serving as judicial guidance for integrating technology into evidentiary standards.

**2. Sindh High Court
Muhammad Imran v. The State
Criminal Appeal No.606 of 2024**

Present: Mr. Justice Zafar Ahmed Rajput, Honourable Senior Puisne Judge
Mr. Justice Dr. Fiaz ul Hassan Shah

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjcxNDU5Y2Ztcy1kYzgZ>

Sindh High Court Citation (2025 SHC KHI 1700)

Facts: In the present case, the appellant challenged the judgment dated 08.08.2024 passed by the learned 4th Additional Sessions Judge/Special Judge (CNS), Malir, Karachi in Sessions Case No.1135/2024 arising out of FIR No.303/2024 under sections 6/9(1), (3) of the Control of Narcotic Substances (CNS) Act, 1997, registered at PS SSHIC, Karachi. During the hearing of the appeal, it came to light that the statement of the appellant recorded under Section 342 of the Code of Criminal Procedure (Cr.P.C.) was not in compliance with Section 364(2) Cr.P.C., as the mandatory handwritten certificate from the presiding judge was missing.

Issue: Whether the omission to record the accused's statement under Section 342 Cr.P.C. in strict compliance with the provisions of Section 364(2) Cr.P.C., particularly the absence of the judge's handwritten certificate, constituted a procedural irregularity severe enough to vitiate the trial?

Rule: Under the relevant legal rule, Section 342 Cr.P.C. mandates that the accused be examined by the trial judge to allow an opportunity to explain the circumstances appearing in the evidence against them. Section 364(2) Cr.P.C. further requires that such statement be recorded with a handwritten certificate by the judge to ensure authenticity and voluntariness. Judicial precedents, such as *Kafeeluddin v. State* (1989 PCr.LJ 25) and *Mehboob Karim v. State* (1987 MLD 1536), have established that failure to comply with Section 364 Cr.P.C. constitutes a curable irregularity, which typically results in a remand for proper recording of the accused's statement. The Supreme Court in *Muhammad Rafique v. The State* (PLD 1981 SC 246) and *Nazeer Ahmed v. State* (PLD 2003 SC 704) has also emphasized the seriousness of this requirement, reinforcing the need for personal examination and documentation by the judge.

Application: Applying this rule to the facts of the case, it was found that the trial court had failed to append the required handwritten certificate to the appellant's statement under Section 342 Cr.P.C., thus rendering the statement procedurally defective. This omission undermined a critical safeguard meant to uphold the authenticity and voluntariness of the accused's statement. As such, this failure constituted a serious irregularity which could not be ignored, especially in a criminal trial where procedural fairness is paramount. The judgment relied upon Indian and Pakistani authorities alike, such as *Raj Kumar Singh v. State of Rajasthan* [(2013) 5 SCC 722], to reinforce that the recording of the accused's statement is not a mere formality but a substantive right that impacts the outcome of the trial.

Conclusion: In conclusion, due to non-compliance with Section 364(2) Cr.P.C., the accused's statement under Section 342 Cr.P.C. was deemed irregularly recorded, thereby compromising the integrity of the trial proceedings. Consequently, the impugned judgment was set aside and the case was remanded to the trial court for proper recording of the accused's statement in accordance with law. After fresh recording and hearing both the State Prosecutor and Defence Counsel, the trial court is to deliver a new judgment. This course of action aligns with the principles of justice, ensuring that the accused's rights are preserved and that the trial proceeds with procedural integrity.

3. Sindh High Court
Ghulam Abbas and another v. The 2nd Additional District Judge Badin
First Appeal No. D-42 of 2017

Present: Mr. Justice Mehmood A. Khan
Mr. Justice Abdul Hamid Bhurgri

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUyNjk0Y2Ztcy1kYzgZ>

Sindh High Court Citation (2025 SHC HYD 566)

Facts: The appellants, Ghulam Abbas and others, owned agricultural land measuring 3-12 acres in Survey No. 84, Deh Kak, Taluka Tando Bago, District Badin. On 18th August 1988, the Irrigation Department took possession of this land without issuing prior notice or following lawful acquisition procedures. The land was used for the excavation of the saline water drain (Sim Nala 5-R), which damaged standing sugarcane crops and rendered approximately four acres uncultivable due to deposition of mud. For over two decades, the appellants were unable to cultivate five adjacent acres due to obstruction in water flow caused by the construction. Despite repeated representations to authorities, including the Deputy Commissioner and the Provincial Ombudsman, the appellants' grievances

remained unaddressed. They eventually filed a constitutional petition in 2010, which led to a High Court directive to issue an award. Accordingly, an award was passed on 2nd February 2011, and a partial payment of Rs. 438,500 was made to the appellants under protest. Dissatisfied with the compensation and exclusion of statutory benefits, the appellants filed a reference under Section 18 of the Land Acquisition Act, which was dismissed by the trial court. Aggrieved, they filed the present appeal before the High Court of Sindh, Circuit Court Hyderabad, seeking enhanced compensation, interest, and other legal entitlements.

Issue: Whether the appellants (Ghulam Abbas and others) were entitled to enhanced compensation for the compulsory acquisition of their agricultural land under the Land Acquisition Act, 1894, including claims under Sections 28-A and 34 of the Act, considering that possession of land was taken in 1988, but the award was issued and partial payment was made in 2011?

Rule: Under Section 23(1) of the Land Acquisition Act, 1894, compensation must be assessed based on the market value of land at the date of the publication of notification under Section 4. Section 34 of the Act provides for interest on delayed compensation, mandating compound interest at the rate of 8% per annum from the date of taking possession until full payment is made. Section 28-A, previously allowing additional compensation of 15% per annum from the date of notification to payment, has been omitted in Sindh through the Land Acquisition (Sindh Amendment) Act, 2009 (Act No. XVI of 2010) and is deemed never to have existed.

Application: In this case, the appellants argued that their land was taken unlawfully in 1988 for the construction of Sim Nala by the Irrigation Department, without due acquisition proceedings or payment of compensation. Though an award was ultimately passed in 2011 after the High Court's direction and partial payment was made, the appellants contested the valuation and claimed enhanced compensation. The Court, after examining Section 23 of the Act, found the Land Acquisition Officer (LAO) had correctly valued the land using the 1989 market rate, as mandated by law. However, the LAO and the trial court had erred in not awarding interest under Section 34 from the date of possession in 1988 until the payment in 2011. The Court noted this omission was a legal violation, entitling the appellants to such interest. Regarding Section 28-A, the Court held the appellants were not entitled to its benefits, as it had been repealed by provincial legislation and was considered never to have been enacted. Any amount awarded under this provision was ordered to be deducted. The appellants also claimed damages for destruction of crops and land usability, but the Court found insufficient evidence to support those claims, upholding the trial court's findings.

Conclusion: The appeal was disposed of with directions to the Land Acquisition Officer to amend the award by adding interest under Section 34 of the Land Acquisition Act from the date of possession (1988) to the date of payment (27.04.2011). However, the appellants' claim under Section 28-A was rejected, and any amount previously awarded under that provision was to be deducted. The claim for damages was also dismissed due to lack of evidence. The rest of the trial court's judgment was maintained.

**4. Sindh High Court
Sajid Ahmed Khan v Federation of Pakistan & others
Constitutional Petition No. D-1977 of 2022**

Present: Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Nisar Ahmed Bhanbhro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjcxNjMzY2Ztcy1kYzgZ>

Sindh High Court Citation (2025 SHC KHI 1702)

Facts: The petitioner, Sajid Ahmed Khan, was appointed as a Cashier at National Bank of Pakistan (NBP) in 1996 under the NBP Staff Service Rules, 1973, based on his Intermediate in Commerce qualification. He was promoted to Officer Grade-III in 2004 and Officer Grade-II in 2009. In 2016, he submitted a performance appraisal form in which he allegedly claimed to have obtained a B.Com degree, attaching a transcript that was later verified by the University of Sindh as "bogus." Consequently, disciplinary proceedings were initiated, and he was dismissed from service through an order dated 30.01.2017. His departmental appeal remained undecided for years, leading him to file C.P. No. D-7240/2021. The High Court disposed of that petition, directing the NBP to decide the appeal after granting a personal hearing. The appellate authority reaffirmed the dismissal on 24.02.2022. The petitioner then filed the present petition under Article 199, challenging the order dated 24.02.2022, asserting that he never submitted the alleged bogus degree and continued to rely on his Intermediate qualification. The Bank countered by emphasizing that the 2021 NBP Rules were non-statutory and that factual disputes precluded writ jurisdiction.

Issue 1 Whether the Constitutional Petition under Article 199 is maintainable in light of the repeal of the NBP Staff Rules, 1973, by the non-statutory 2021 rules?

Issue 2 Whether the dismissal order dated 30.01.2017, reaffirmed on 24.02.2022, was unlawful, arbitrary, or tainted with malice, justifying interference under the High

Court's writ jurisdiction?

Issue 3 Whether disputed questions of fact involving alleged submission of a bogus degree could be adjudicated under article 199?

Issue 4 Whether the petition is barred by laches or the doctrine of res judicata?

Rule The High Court reaffirmed that if a public sector organization such as NBP operates under statutory rules, its actions become amenable to judicial review under Article 199. This principle was reinforced through *Muhammad Naeem v. Federation of Pakistan* (2023 SCMR 301), where the Supreme Court held that employees governed under statutory service rules could invoke the writ jurisdiction. However, disputed questions of fact requiring detailed evidence cannot be resolved under Article 199, as reiterated in *Government of Khyber Pakhtunkhwa v. Shah Faisal Wahab* (2023 SCMR 1642) and *Waqar Ahmed v. Federation of Pakistan* (2024 SCMR 1877). Where complex factual controversy is involved, the appropriate remedy is before a competent civil forum capable of recording evidence. Moreover, the doctrine of laches and res judicata restricts constitutional jurisdiction where claims are unduly delayed or have already been adjudicated upon.

Application: The Court found that although the 1973 Rules were repealed by the 2021 Rules, the petitioner was governed by the 1973 Rules at the time of appointment and disciplinary proceedings. Thus, the petition was held to be **maintainable**, since the impugned order flowed from a process under statutory rules. However, on the merits, the Court emphasized that the petitioner's core contention—that he never submitted a bogus B.Com degree—was contradicted by documentary evidence in the form of his 2015–16 performance appraisal form. This form, containing the bogus transcript, was submitted by the petitioner and verified as such by the University. The petitioner failed to provide any cogent rebuttal—either by denying authorship of the appraisal form or showing any manipulation by bank officials. He also failed to file any rejoinder to the NBP's reply or produce the original appraisal form disclosing only an Intermediate qualification. Further, the Court stressed that the dispute over whether the bogus document was submitted by the petitioner or maliciously inserted by the Bank raised complicated questions of fact, unsuitable for resolution through writ jurisdiction. No mala fides, bias, or extraneous motives were alleged against any Bank officials, nor was there a claim that the inquiry was conducted unfairly. Additionally, the Court observed that the petitioner did not directly challenge the original dismissal order of 2017 in this second round of litigation, despite having already litigated the issue in 2021. This omission rendered the current petition procedurally defective, further compounded by inordinate delay of over five years, barring equitable relief due to laches.

Conclusion: The High Court dismissed the petition, holding that while maintainable on jurisdictional grounds (as the 1973 Rules were statutory), the petition failed on merits due to the existence of disputed questions of fact, absence of any allegation of mala fides or arbitrariness, and failure to challenge the original dismissal order. The Court emphasized that the scope of Article 199 does not extend to conducting mini-trials on factual controversies such as whether a forged document was genuinely submitted by the employee or not. Therefore, the ratio decidendi is that writ jurisdiction under Article 199 cannot be invoked to adjudicate complex factual disputes in service matters, particularly where alternative remedies exist. The Court's observations on factual deficiency and procedural lapse are obiter dicta, indicating caution against judicial overreach.

**5. Sindh High Court
Muhammad Ali v. The State and ors
Special Criminal Anti-Terrorism Appeal No. 87 of 2024 and ors**

Present: Mr. Justice Omer Sial
Mr. Justice Muhammad Hassan (Akber)

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjcxNDI1Y2Ztcy1kYzgZ>

Facts: In the afternoon of 12.11.2023, Tanveer-ul-Islam and Qasim Ali, both members of an intelligence agency, were sitting at a bus stop in connection with their official duties when three boys on a motorcycle emerged on the scene. One of the three boys disembarked and shot Tanveer-ul-Islam dead. The assailants then left the scene. Qasim Ali recorded a section 154 Cr.P.C. statement at 15:15, and at 15:45, F.I.R. No. 500 of 2023 was registered under sections 302 and 34 P.P.C., read with section 7 of the Anti-Terrorism Act, 1997, at the Nazimabad police station. On 22.11.2023, three people were arrested: Younis Khan, Mohammad Ali, and Noman alias Kabari. All three, when arrested, were already in police custody in another crime (F.I.R. 519 of 2023). On 27.11.2023, Qasim Ali identified all three accused as the three assailants in a test identification parade held by the learned Judicial Magistrate No. 9 at Karachi Central. The accused, Mohammad Ali, was identified as the shooter, and the remaining two had accompanied the shooter.

Issue: Whether the convictions and sentences awarded by the Anti-Terrorism Court under Sections 302, 34 PPC, 7 ATA 1997, and 24 Sindh Arms Act 2013 against the appellants—particularly the death sentence awarded to Muhammad Ali—were legally sustainable on the basis of the evidence, particularly eyewitness testimony, identification parade, and applicability of common intention under Section 34 PPC?

Rule: Section 6 ATA, 1997: An act can only be classified as terrorism if its design or purpose, as laid down under Section 6(1)(b) or (c), causes terror or insecurity in society. Mere killing without evidence of motive or intent to create terror cannot constitute terrorism.

Section 34 PPC: To hold an accused vicariously liable, there must be evidence of a shared *common intention* to commit a criminal act. Presence at the scene is not enough; a pre-arranged plan or direct participation must be proven.

Identification Parade Standards (PLD 2019 SC 488): Must be conducted with adequate precautions, including distinct dummies and proper documentation. Prior exposure of the witness to the accused undermines its evidentiary value.

Case Law:

- *Muhammad Akbar v. The State* (PLD 1991 SC 923)
- *Muhammad Yaqoob v. The State* (PLD 2001 SC 378)
- *Shoukat Ali v. The State* (PLD 2007 SC 93)
- *Subha Sadiq v. The State* (2025 SCMR 50)

Application: The case arose from the targeted shooting of an intelligence agency official, Tanveer-ul-Islam, by Muhammad Ali, while two other accused, Younus Khan and Noman @ Kabari, accompanied him. The key evidence was the eyewitness account of Qasim Ali, the deceased's colleague, who identified all three accused in an identification parade and during trial. However, significant procedural lapses undermined the reliability of the identification: the same set of dummies was used for each accused, the physical descriptions were not recorded, and the possibility that Qasim had seen the accused beforehand was not rebutted. Despite this, the Court found Qasim Ali's testimony credible and trustworthy.

Regarding **terrorism charges**, the Court held that neither motive nor intent to spread terror, as defined under Section 6 of the ATA, was proven. The killing appeared personal or part of an attempted robbery, which excluded it from the ambit of anti-terrorism jurisdiction.

As to **common intention under Section 34 PPC**, the Court found no evidence of a pre-arranged plan or shared motive. Only Muhammad Ali was seen firing; the roles of Younus and Noman were limited to accompanying him. Therefore, the Court held that their mere presence did not satisfy the threshold for vicarious liability, especially when motive remained unproven.

Weapon recovery was also questionable. Ballistic evidence lacked chain-of-custody clarity, and the origin of the recovered pistols was doubtful due to procedural inconsistencies and lack of verification from the Crime Scene Unit.

Conclusion: The Court allowed the appeals partially and held:

- **Muhammad Ali:** His conviction under **Section 302(b) PPC** is maintained, but his **death sentence is reduced to life imprisonment** in the absence of motive and terrorism. He is acquitted under the **ATA 1997** and the **Sindh Arms Act 2013** due to unreliable recovery. His property will not be forfeited, but he remains liable to pay **Rs. 500,000 compensation** to the deceased's legal heirs.
 - **Younus Khan and Noman @ Kabari:** **Acquitted of all charges**, including under **Section 34 PPC**, as the prosecution failed to prove a common intention or participation beyond reasonable doubt.
 - The **death reference was answered in the negative**, and all appeals were disposed of accordingly.
-

06. Sindh High Court
Faizan Baiq v. The State
Criminal Miscellaneous Application No.480 of 2025

Present: **Mr. Justice Muhammad Hassan (Akber)**

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjcyMzQ5Y2Ztcy1kYzgZ>

Sindh High Court Citation (2025 SHC KHI 1707)

Facts: The complainant alleged that the accused persons, through their company, purchased 176 tons of coal from him and agreed to pay an amount of Rs. 72,08,005/- within 20 days. However, they failed to make the payment, repeatedly postponed it, and eventually issued threats to the complainant. As a result, FIR No. 246 of 2025 was registered at Police Station Awami Colony, Karachi under Sections 406, 420, 506, and 34 PPC. The accused were granted bail by the learned Additional Sessions Judge, which the complainant sought to have cancelled through this Criminal Miscellaneous Application filed under Section 497(5) Cr.P.C. before the High Court of Sindh.

Issue: Whether the bail granted to respondents in FIR No. 246/2025 under Sections 406, 420, 506, and 34 PPC could be cancelled under Section 497(5) Cr.P.C., as a matter of routine or because the order granting bail was erroneous or vague or the same resulted in miscarriage of justice?

Rule: The principles for **cancellation of bail** are well settled and Ordinarily, the superior courts were reluctant to interfere with an order extending concession of bail unless very strong and exceptional grounds exist to interfere with such concession which pertains to liberty of such person, which is a precious right guaranteed under the Constitution. Bail can only be refused if:

1. The bail granting order is so patently perverse or violates settled legal principles and mere possibility of an alternate view would not be sufficient. (‘*Munir Ahmad v. The State and another*’ 2014 SCMR 1669; ‘*Suba Khan v. Muhammad Ajmal and 2 others*’ 2006 SCMR 66)
2. The accused misuses the bail concession, absconds, tampers with evidence, pressurizes the prosecution witnesses, interferes with the investigation or engages in similar offence. (‘*Sami Ullah and another v. Laiq Zada and another*’ (2020 SCMR 1115); ‘*Tariq Bashir and 5 others v. The State*’ (PLD 1995 SC 34); ‘*Shahid Arshad v. Muhammad Naqi Butt and 2 others*’ (1976 SCMR 360).
3. There are **fresh circumstances** establishing the accused’s guilt or misuse of liberty;
4. Mere existence of another possible legal opinion is **not** a ground for cancellation (*Munir Ahmed* 2014 SCMR 1669).

Application: In this case, the bail had been granted by the Sessions Court because:

- There was an **unexplained delay of 11 months** in lodging the FIR.
- The transaction in dispute appeared to be a **civil business transaction** regarding the purchase of 176 tons of coal for Rs. 72,08,005/-.
- The matter had already been **addressed by the trade association (KATI)**.
- Substantial **payments were already made** by the accused, and dispute regarding the balance payment remained.
- Sections 420 and 506 are **bailable**, and section 406 **does not fall under the prohibitory clause** of Section 497 Cr.P.C.
- The **ingredients of Section 406 and 420 PPC** could not co-exist in the same FIR for the same transaction.
- Thus, the Sessions Judge found that it was a case of **further inquiry** under Section 497(2) Cr.P.C.

The applicant failed to point out any **illegality, perversity, or misuse** of bail by the respondents. Nor was there any new evidence or allegation of interference with the investigation.

Conclusion: The High Court held that no **exceptional circumstances** were made out to justify the **cancellation of bail**, and the **principles of liberty and presumption of innocence** weighed against recalling the concession of bail. The application for cancellation was dismissed in *limine*.

07. Sindh High Court
Rabi Khan vs. The State
Criminal Bail Application No. 1215 of 2025

Present: **Mr. Justice Muhammad Hassan (Akber)**

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjcyMzUxY2Ztcy1kYzgZ>

Sindh High Court Citation (2025 SHC KHI 1708)

Facts:	The complainant reported that on 11.04.2025, his wife Hina, aged about 20 years, and his two-year-old son Muhammad Sadiq went missing. Upon inquiry, it was discovered that a person named Azan, using mobile number 03151177209, had been in contact with his wife and had allegedly enticed her, leading to the lodging of FIR No. 415 of 2025 under Section 496-A PPC at Police Station Korangi Industrial Area, Karachi. During investigation, it was revealed that the said phone number was registered in the name of the applicant, Rabi Khan, and the Call Data Record (CDR) showed repeated and consistent contact between him and the complainant's wife in the days leading up to her disappearance. Although Rabi Khan was not initially named in the FIR, this evidence led to his implication during the investigation.
Issue:	Whether the applicant, Rabi Khan, is entitled to the concession of pre-arrest bail under Section 498 Cr.P.C. in FIR No. 415 of 2025 registered under Section 496-A PPC, despite being implicated during investigation and not nominated in the FIR?
Rule:	<p>Pre-arrest bail is an extraordinary relief that can only be granted where the accused shows:</p> <ul style="list-style-type: none"> • No direct involvement in the offence, • Mala fide on part of the complainant or police, • Likelihood of false implication, or • Ulterior motives in lodging the case. <p>Where material evidence exist which connects the accused to the alleged offence, and no mala fide or enmity is established, the accused is not entitled to such relief. Relevant precedents include:</p> <ul style="list-style-type: none"> • <i>Mst. Shameem Akhter v. The State</i> (2010 P.Cr.L.J. 135) • <i>Muhammad Naseer v. The State</i> (2017 YLR 902) • <i>Mukhtiar Ali v. The State</i> (2018 YLR 1743) • <i>Safdar Ali v. The State</i> (2011 P.Cr.L.J. 765)
Application:	In this case, though Rabi Khan was not named in the FIR , the investigation revealed that the complainant's wife and child went missing on 11.04.2025 and she was in contact with cell number 03151177209 , which belonged to the applicant. The Call Data Record (CDR) confirmed frequent and consistent communication between Rabi Khan and the complainant's wife, despite his claim of having no relationship with her. When confronted with the CDR during hearing, the applicant had no satisfactory explanation . Moreover, there was no personal enmity or mala fide was even alleged against the complainant or the police, and the connection between the applicant and the missing woman was prima facie established by the material on record.
Conclusion:	The High Court found no justification for pre-arrest bail , as the material collected clearly linked the applicant directly with the alleged offence, and no case of false implication or ulterior motive was made out. Accordingly, the ad-interim pre-arrest bail granted earlier was recalled , and the bail application was dismissed .

08. Sindh High Court
Waqar Ali and another v. Imran Ali Junejo
Second Civil Appeal No. S-35 of 2024

Present: **Mr. Justice Abdul Hamid Bhurgri**

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjUzMtY2Y2Ztcy1kYzgZ>

Sindh High Court Citation (2025 SHC HYD 444)

Facts: In the case of second civil appeal No.S-35 of 2024, the appellants, Waqar Ali and Amir Khan Rahujo, contested the rejection of their plaint by the trial court under Order VII Rule 11 of the Civil Procedure Code (CPC). They claimed specific performance of a contract regarding agricultural land purchased by their father, Haji Daim, from Jethanand. The appellants alleged that subsequent to a previous suit (F.C. Suit No. 260/2010), they entered into a fresh sale agreement on September 28, 2016, after resolving disputes over heirship. However, the defendants sold the land to Imran Ali Junejo (respondent No. 8) without executing a sale deed in favor of the appellants. The trial court dismissed their suit, citing res judicata and limitation, a decision affirmed by the appellate court.

Issue: Whether the appellants' suit was barred by **res judicata** due to the previous suit's dismissal and whether the claim was time-barred under **Article 113 of the Limitation Act, 1908**?

Rule: Under **Section 11 of the CPC**, a suit is barred if the matter has been directly and substantially in issue in a former suit between the same parties and has been finally decided. Additionally, **Article 113 of the Limitation Act** stipulates a three-year limitation period for specific performance suits, commencing from the date fixed for performance or when the plaintiff has notice that performance is refused.

Application: The court analyzed the history of litigation, noting that the previous suit involved the same parties and the same subject matter but was dismissed on merits. However, the appellants argued that their current suit was based on a fresh cause of action arising from the new agreement dated September 28, 2016, which was not adequately considered by the lower courts. The court emphasized that the rejection of the plaint under Order VII Rule 11 should only consider the plaint's averments, not extraneous materials. The ruling highlighted that the determination of whether the suit was barred by res judicata required a detailed examination of pleadings and judgments from previous cases, which was beyond the scope of a summary dismissal. Regarding limitation, the court noted that the absence of a fixed date for performance in the new agreement meant that the issue of limitation could not be summarily resolved without evidence from the parties.

Conclusion: The court concluded that both lower courts erred in dismissing the appellants' plaint based on res judicata and limitation. Therefore, the second appeal was allowed, the impugned orders were set aside, and the case was remanded to the trial court for further proceedings. The trial court was directed to allow the respondents to file their written statements and to adjudicate the issues of res judicata and limitation based on the pleadings and evidence presented. The ruling emphasized the importance of a fair trial over technical dismissals, ensuring that substantive rights are adequately addressed.

09. Lahore High Court
Muhammad Rafi v. Muhammad Yousaf
Civil Revision No. 806 of 2015

Present: Mr. Justice Sultan Tanveer Ahmed

Source: <https://sys.lhc.gov.pk/appjudgments/2025LHC3906.pdf>

Lahore High Court Citation (2025 LHC 3906)

Facts: In Civil Revision No. 806-2015, the respondent filed Suit No. 639/1-R.T. on September 19, 2011, seeking specific performance of an agreement dated September 26, 2008, concerning a 4-marla property (Property-A) in Thatha Langian, Bashmoola Faiz Pur Khurd, Tehsil Ferozewala, District Sheikhupura. The agreement stipulated a total consideration of Rs. 160,000, with Rs. 110,000 paid upfront and the remaining Rs. 50,000 due within three months. The respondent claimed full payment was made, including an additional Rs. 40,000 for registration fees. The defense contended that, due to a stay order on Property-A, the parties mutually agreed to transfer a slightly larger 4-marla 1-sq.ft. property (Property-B) in its place, with the respondent paying an additional Rs. 40,000, acknowledged at the back of the agreement. The trial courts reached differing conclusions, prompting the current revision.

Issue: Whether the respondent is entitled to specific performance of the agreement dated 26.09.2008 concerning 04 marla property-A, or if the agreement was novated to property-B, thus rendering the original agreement void?

Rule: Under Section 62 of the Contract Act, 1872, a contract may be rescinded or altered by mutual consent of the parties. The Supreme Court of Pakistan in *Haji Baz Muhammad Khan v. Noor Ali* (2018 SCMR 1586) held that once an agreement is novated, the original agreement ceases to exist unless expressly stipulated otherwise in the new agreement.

Application: The respondent filed suit No. 639/1- R.T. on 19.09.2011 for the specific performance of an agreement dated 26.09.2008 concerning property-A, alleging full payment of

Rs.160,000/-, including an additional Rs.40,000/- for registration fees. However, the defense contended that due to a stay order on property-A, the parties mutually agreed to substitute property-A with property-B, as evidenced by mutation No. 8024 dated 17.07.2009. The respondent's witness (PW-5) acknowledged the payment of Rs.40,000/- but could not specify its purpose, and the agreement did not mention registration fees. Moreover, PW-1, another witness, failed to provide satisfactory answers regarding the payment's purpose. The respondent's failure to disclose the simultaneous agreement for property-B in the suit and the contradictory statements of witnesses raised doubts about the original agreement's validity.

Conclusion: The evidence and circumstances suggest that the original agreement concerning property-A was novated in favor of property-B. Therefore, the respondent's suit for specific performance of the original agreement is not maintainable. The learned trial Court's findings are upheld, and the civil revision is allowed, resulting in the dismissal of the suit.

SELECTED ARTICLES

"Role of Arbitration Councils and Mediation in Family Disputes "

By Amir Latif Bhatti

Senior Civil Judge, Posted at District South, Karachi

Definitions

According to Black's Law Dictionary, the terms 'arbitration', 'mediation' and 'alternative dispute resolution (ADR)' have been defined in the following manner:

- Arbitration is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.
- Mediation is a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.
- Alternative dispute resolution (ADR) refers to a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.

Introduction

Alternative dispute resolution (ADR), such as arbitration, allows disputes to be resolved without going to court. Arbitration is essential in family law cases for resolving disagreements between spouses. According to Pakistan's family law, the arbitration council is responsible for mediating disputes between disagreeing couples. It has been declared in **section 7(4) of the Muslim Family Law Ordinance of 1961** that the chair of the council will form an arbitration council and make an effort to mediate the prevailing disputes between the parties. Similarly, it has also been contemplated in **section 10(3) of the West Pakistan Family Court Act of 1964** that the court has to make efforts with regard to reconciliation between a husband and wife. However, the standards for the selection of council members and the manner in which their decisions will be accepted and carried out have not been specified.

Pakistan's **Family Courts Act of 1964** specifies the procedure of the family court. This law was passed to provide women and children with better alternatives. The **Constitution of Pakistan** further stipulates that women must be treated with respect. The court has established standard procedural rules as well as a specific procedure for resolving spousal disputes. The goals of such reconciliation include safeguarding the partners and finding a respectful solution to their disputes. When spouses get divorced, women are reported to experience more suffering than men. As a result, an arbitration committee gets formed to ensure spouses can reconcile. However, a suitable framework has not been adopted for the arbitration council. The family court

judges are in charge of mediating the reconciliation and their decision is followed by arbitration. As a result, the settlement carried out by family courts is not particularly noteworthy. Additionally, the arbitral council lacks power as its head is typically a political figure who has little to no interest in the arbitration procedure.

Arbitration in light of Quran and Sunnah

The **Quran** and **Sunnah** are considered sources of arbitration. According to **Surah An-Nisa, verse No.35** of the **Holy Quran**, in case of disagreement between spouses, mediators should be hired to facilitate reconciliation.

“If you anticipate a split between them (the spouses), appoint a mediator from his family and another from hers. If they desire reconciliation, Allah will restore harmony between them. Surely Allah is All-Knowing, All-Aware”.

According to *Ibn Kathir*’s interpretation of the **Quranic verse No.35** of **Surah An-Nisa**, if a disagreement arises between spouses, the adjudicator will refer the couple to a steadfast person to determine their dispute. If they are still unable to address the concerns, the adjudicator will choose a credible member from the husband’s family and, similarly, from the wife’s family, who will do their utmost to convince the partners to reconcile.

Arbitration in Family Disputes

Family arbitration has been described by both **Quran** and **Sunnah**. The process of spousal arbitration is expressly mentioned in the **Quranic verse No.35** of **Surah An-Nisa**. The judge will prefer two arbitrators, one from each side, to resolve the dispute, if it gets determined that there is a conflict between the couples to the point where a divorce is feared. The arbitrators will make every attempt to bring the spouses together. Muslim jurists have differing views on the qualifications of the arbitrators, but the majority of them believe that the judge and the arbitrator should have the same qualifications and that the arbitrators should be competent to perform the act of ‘unification of a couple’. Reuniting a married couple is the goal of choosing arbitrators, which is only attainable when the arbitrators are competent. In addition, a woman can be nominated as an arbitrator and in some cases it has been found that she is even better in being able to bring the couple together. Arbitrators in divorce proceedings serve to mediate a settlement between the parties. They should regard the spouses equitably and their impartiality should be able to motivate the couples to get back together.[7][8]

Arbitration Council in Pakistan

According to Pakistani family law, if a husband wants to divorce his wife, he must send a divorce notification to the head of the Union Council who will then establish an arbitration council. This has been contemplated in **section 10(3)** of the **West Pakistan Family Court Act of 1964**:

“At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible.”[5]

The family court is also expected to work to reunite a couple and prevent a spouse from reaching a conclusion that could possibly have long-term implications for their lives, while the law expressly prohibits divorce proceedings without first attempting reconciliation. A report on the mediation procedure in family courts, published by the Law and Justice Commission of Pakistan, has deemed the procedure unsatisfactory.

A case reported as **1996 CLC 673** determines the authority of the chair of the arbitration council. In this case, the competence of the arbitration council had been determined by the court. The court also declared that the sole objective of forming the arbitration council was to facilitate the reunification of a married couple. The court shared a similar viewpoint regarding the delegated right to divorce in the event of a separation, acknowledging that if a person had transferred the right to divorce and the case had been filed before an arbitration council, a settlement between the parties should have been mediated by the committee. The court remarked that if the arbitration council had not been formed in accordance with the requisite rules and regulations, the divorce would not be enforceable. In this regard, legislation is silent with respect to what happens if a case is decided by the council without going through the requisite procedures.[9]

The court further held that it was solely within the family court’s purview to determine how such proceedings should be handled. With regard to the reconciliation process in family disputes, the superior courts have ruled that simply noting whether reconciliation is not possible does not constitute sufficient compliance with the pertinent legal requirements. Due to this, the vast majority of respondents who are female and who began their divorce proceedings in Pakistani courts hold the view that the arbitration council has failed to fulfil its duty to mediate between spouses and remain dissatisfied with the arbitration council’s process. Additionally, the parties are dissatisfied with the mediation procedure itself, while the outcomes rendered through arbitration in family courts are occasionally skewed. As a result, the arbitration system has been unsatisfactory in family disputes in Pakistan.

Family-Mediation Benefits

- It provides swift justice, which also lessens the pressure on courts.
- The concerns are addressed peacefully without harming the relationship between spouses.
- It protects the family’s connection and its children from emotional problems brought on by a protracted legal dispute. Additionally, it is unquestionably a smart move in situations where the children need their parents to stay in contact even after the divorce.

- It upholds privacy and secrecy, giving parties the chance to be candid about the options they want to take into consideration, which does not occur in court proceedings.
- The litigants also save money since they have more discretion in this process than in court proceedings, allowing clients to keep the specifics of their disputes out of public view.
- Family-related disputes become more contentious in court processes, whereas in mediation the parties can communicate and come to a more convincing resolution as a result of their own choices. Decisions in mediation can be made based on what works best for the family's needs, which may not be the case in court.

Conclusion

The arbitration procedure evidently plays a crucial function in family disputes. Islamic law also lays emphasis on reconciling disputes and reuniting families. Pakistani legislation also requires mediation in family conflicts and disputes between spouses. An arbitration council in a divorce case gets set up specifically for this purpose, but the law remains silent regarding the nomination and appointment of the arbitrators and the required mediation process in family matters. At times, even the council's chair, a political figure, is unaware of the legal requirements of the arbitration process

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