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Quarterly Case Law Report (Jan – April 2024)



QUARTERLY CASE LAW REPORT INDEX				
(01-01-2024 To 30-04-2024)				
A SUMMARY OF THE LATEST JUDGMENTS DELIVERED BY THE CONSTITUTIONAL COURTS ON CRUCIAL LEGAL ISSUES				
JUDGMENTS OF INTEREST				
S.No	COURT	SUBJECT	AREA OF LAW	PAGE NO.
1	The Supreme Court of Pakistan	Whether the petitioner/accused is entitled to bail in this case considering the allegations made against him and more importantly procedural and constitutional violations committed by the police?	Criminal Law	1
2		Whether the removal of Justice Shaukat Aziz Siddiqui was conducted in accordance with constitutional requirements, fundamental rights, and fair trial procedures, ensuring judicial independence and due process by the Supreme Judicial Council?	Constitutional Law	2
3		01. Whether the contractual employees (Respondents) can be regularized in the absence of any specific law or policy allowing such regularization? 02. whether the Respondents who were regularized through earlier court orders, which remain unchallenged, can seek ante-date regularization (retroactive	Constitutional and Service Law	3

		regularization from the date of their initial contractual appointment)?		
4		What is the extent of the applicability of the interim measure established in the case of <i>Habib Akram (PLD 2018 SC 678)</i> , which mandated candidates to submit specific affidavits alongside their nomination papers for the General Elections of 2018, and does this requirement persist for subsequent election cycles, specifically the General Elections of 2024?	Civil/Election Law	6
5		Whether the court can convert a prayer for dissolution of marriage on the ground of cruelty to a prayer for seeking dissolution of marriage by way of khula, where the khula is not sought for by a woman?	Family Law	8

6	High Court of Sindh	Whether the transfer of the case from Anti-Terrorism Court No.XII at Karachi to Anti-Terrorism Court, Islamabad, as requested in the CrI. Transfer Application, is justified under Section 28 of the Anti-Terrorism Act, 1997?	Criminal Law	10
7		Whether section 10 (2) of the Pakistan Citizenship Act, 1951, violate Article 25 of the Constitution of Pakistan by discriminating against Pakistani women married to foreign men, and should it be interpreted or amended to ensure gender equality in granting citizenship to foreign spouses?	Civil & Constitutional Law	11
8		Whether K-Electric is liable to pay damages to Batool Fatima for the disconnection of power supply to her woven labels manufacturing unit without any fault or outstanding dues on her part, and if so, what is the appropriate amount of damages to be awarded?	Civil Law	13

9	High Court of Sindh	Whether the enforcement of the foreign arbitral award should be adjourned until the setting aside application is decided by the High Court of Singapore, and whether the defendant is required to provide security during the adjournment period under Article VI of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)?	Civil & International Law	15
10	High Court of Sindh	<p>01. What is the implication of the phrase “<i>Till Further Order Of This Court</i>” in Order Dated 3-4-2013 which was passed by Hon’ble single judge of this court while issuing notice and what would be the impact after its modification? Whether it still operates as interim order?</p> <p>02. Whether the Appellant satisfied the requirements for an attachment before judgment under Order 38 Rule 5 of the Civil Procedure Code (CPC) in light of the Respondents being foreign companies without assets in Pakistan?</p>	Civil Law	17
11	High Court of Sindh	Whether the Assistant Commissioner of PanoAkil acted within his jurisdiction and authority when he canceled the revenue entries of the petitioners based on a previous judgment and decree? The petitioners challenge the legality and validity of the order dated July	Criminal Law	19

		10, 2014, which canceled their entries in the record of rights.		
12		Whether the trademark “ GLITZ ” used by Respondent No.2 is deceptively similar to the trademark “ GETZ ” registered and used by the Appellant, M/s Getz Pharma International FZ LLC, and whether its registration should be disallowed to prevent consumer confusion and deception?	Civil Law	20
13		Whether the fixation of fair rent by the Rent Controller and the Appellate Court, as challenged by the petitioners, was appropriate and lawful under the Sindh Rented Premises Ordinance, 1979?	Civil Law	22

14		<p>1. Whether the subject apartment (Apartment No.101, Koh-e-Noor Centre, Marshal Street, Jubilee Market, Karachi) belonged to the deceased Mirza Anwer Baig at the time of his death, or whether it was part of his father's estate to be distributed among all legal heirs?</p> <p>2. Whether the group insurance benefits received upon the death of Mirza Anwer Baig should be considered part of his estate ("Tarka") and distributed among all legal heirs, or whether these benefits should be distributed according to the service rules and regulations of Telenor Pakistan?</p>	Civil & Constitutional Law	23
15		Whether the order passed by the trial court regarding forfeiture of surety amount was legal and justified under the relevant provisions of Section 502 of the Criminal Procedure Code (Cr.P.C.)?	Criminal Law	24
16	The High Court of Sindh	<p>01. Whether the property in question was a Tikano (Temple) attached to a religious institution and falls within the Trust Pool constituted under the Evacuee Trust Properties (Management & Disposal) Act XIII of 1975?</p> <p>02. Whether the Settlement Authorities validly issued the Permanent Transfer Deed (PTD) dated 19.05.1966 in favor of respondent No.1, Mohib Ahmed Khan, against verified claims through a public auction under Section 10 of the Act, 1975?</p>	Criminal Law	26

17		<p>01. What is the legal significance and admissibility of supplementary statements and extra-judicial confessions, particularly when recorded using modern devices, in establishing the guilt of the accused beyond a reasonable doubt?</p> <p>02. Whether the evidence provided by the prosecution is sufficient and credible to legally justify the convictions and sentences of all the appellants under Sections 302 (b), 201, and 34 of the Pakistan Penal Code?</p>	Civil Law	28
18		Whether the plaint should be rejected under Order VII Rule 11 of the Code of Civil Procedure (CPC) due to multifariousness, i.e., improper joinder of several distinct causes of action and defendants?	Criminal Law	31

19	The High Court of Sindh	Whether the court should allow the rectification of clauses 13(e) and 13(f) of the trust deed of the National Bank of Pakistan (NBP) Staff Welfare Foundation Trust, which has become dormant due to an insufficient number of trustees, as requested by the beneficiaries of the trust?	Civil Law	33
20		Whether the principles of res judicata apply to bar the second suit filed by Sher Khan s/o Liaquat Ali Jakhrani, seeking correction of his date of birth in NADRA records, and whether this Civil Revision Application is maintainable despite being time-barred?	Civil Law	35
21		Whether the ex-parte judgment and decree dated 20.10.2023, passed by the Additional District Judge, Ratodero, legally sustainable given the procedural irregularities and the denial of the appellant's right to a fair trial?	Civil Law	37
22		Whether the construction on Plot No. B-10 Block-16, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi, which was carried out after the submission of a building plan to the Sindh Building Control Authority (SBCA), should be considered as "deemed approved" under Regulation 3-2.6.2 of the Karachi Building & Town Planning Regulations, 2002, due to the lapse of the prescribed time period without an explicit rejection or approval by the	Civil Law	39

		SBCA, despite deviations from the submitted plan?		
S. No	Country	SELECTED ARTICLES	Published in	Page No.
01	New York USA	NUEROSEARCHES By <i>Josh A. Roth</i>	Cornell Law Review https://www.cornellawreview.org/2024/08/01/neurosearches/	42
LATEST LEGISLATION				42
DISCLAIMER NOTE				42

The Supreme Court of Pakistan

1. Zubair Saeed Sabri/Sain Zubair Shah vs The State

Criminal Petition No. 1359 of 2023

Present: *Mr. Justice Qazi Faez Isa, CJ*
Mr. Justice Muhammad Ali Mazhar
Mrs. Justice Musarrat Hilali

Source: https://www.supremecourt.gov.pk/downloads_judgements/crl.p.1359_2023.pdf

Facts: The petitioner seeks bail in connection with FIR No.153/2023, registered at Police Station Hummak, Islamabad, on July 23, 2023. The petitioner's counsel argues that the FIR itself does not establish an offense under section 295-C of the Pakistan Penal Code, 1860 (PPC). Subsequently, the complainant filed an application to charge the petitioner under sections 295-A and 298-B of the PPC. The counsel contends that the allegations do not meet the criteria for these offenses either. Additionally, the FIR was registered with a 28-hour delay, and the investigation was not conducted by a Superintendent of Police (SP) as required by section 156-A of the Code of Criminal Procedure, 1898. Furthermore, the FIR states that the complainant visited the petitioner, a Pir, for a spiritual blessing (dum) and saw a banner in the petitioner's house displaying photographs allegedly of the Prophet (Peace Be Upon Him) and 12 Imams. The complainant did not disclose any interactions that occurred inside the petitioner's house. He then went to the police station, requested police assistance, and they entered the petitioner's house without a warrant, removed the banner from the wall, and took it into custody.

Issue: Whether the petitioner/accused is entitled to bail in this case considering the allegations made against him and more importantly procedural and constitutional violations committed by the police?

Rule: The Apex Court has once again elucidated the well-established principles concerning the unlawful entry into any premises by the police without a search warrant, which results in a violation of the fundamental rights of citizens as enshrined in the Constitution of 1973, specifically under Articles 4, 8, and 14. This act constitutes a blatant disregard by the police to adhere to statutory requirements in letter and spirit, particularly with respect to Section 156-A of the Code of Criminal Procedure, 1898 (Cr.P.C), which mandates that investigations for offences under Section 295-C of the Pakistan Penal Code (PPC) be conducted by an officer not below the rank of Superintendent of Police (SP). Furthermore, the Apex Court took into account an additional factor wherein the charges were amended to Sections 295-A and 298-B of the PPC, and the accused had been incarcerated for seven months awaiting trial.

Application: The petitioner was accused under sections 295-C, 295-A, and 298-B of the Pakistan Penal Code, such offences related to Islam. The court emphasizes that under section

156-A of the Code, only a Superintendent of Police or office of higher rank can investigate offences under section 295-C, which was not followed in this case. The police violated the constitutional rights of the petitioner by entering his home without a search warrant, thus breaching Articles 4, 8, and 14 of the Pakistani Constitution, which protect individual privacy and mandate lawful treatment.

The court also references Islamic injunctions, highlighting that Islamic law and the teachings of Prophet Muhammad (Peace Be Upon Him) stress the importance of respecting the privacy of homes and following due process. Historical examples demonstrate that even during the early Islamic period, such principles were upheld to ensure justice and moral conduct. The court, further, criticizes the police's unlawful actions and notes a senior police officer's commitment to adhering to legal procedures in the future, including potential disciplinary action against the responsible officers. The judiciary expresses concern over the improper handling of religious offence cases, stressing that charges must be clearly specified and substantiated. The passage implies that the police may have been influenced by external pressures or incompetence in filing charges under section 295-C.

Conclusion: The court concluded that the aforesaid factors entitle the petitioner to bail. Accordingly, the petitioner is admitted to bail in the subject case on furnishing bail bond and one surety in the sum of fifty thousand rupees to the satisfaction of the Trial Court. This petition is converted into an appeal and allowed by setting aside the impugned order in these terms.

2. Shaukat Aziz Siddiqui vs Federation of Pakistan, etc...

Constitutional Petition No. 76 of 2018

Present: *Mr. Justice Qazi Faez Isa, CJ*
Mr. Justice Amin-ud-Din Khan
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Source: https://www.supremecourt.gov.pk/downloads_judgements/const.p.76.2018.pdf

Facts: Justice Shaukat Aziz Siddiqui, who served as the senior puisne judge of the Islamabad High Court, was issued a show cause notice by the Supreme Judicial Council (SJC) on 31 July 2018. The notice expressed that petitioner may have committed misconduct following a speech he delivered to the District Bar Association in Rawalpindi on 21 July 2018. In his speech, Justice Siddiqui made several serious allegations, including that the Inter-Services Intelligence (ISI) was involved in manipulating judicial proceedings and influencing case assignments. He claimed that the ISI had approached the Chief Justice of the Islamabad High Court to ensure that Nawaz Sharif and his daughter remained imprisoned until after the 2018 General Elections and to exclude him from specific benches. He also alleged knowledge of individuals who conveyed messages to the Supreme Court and also

alleged that the daily proceedings of the Accountability Court were being reported elsewhere and he had knowledge why administrative control of the Islamabad High Court was removed just to prevent judicial oversight. Additionally, Justice Siddiqui stated that he was asked to assure decisions in line with certain requests in exchange for the dismissal of pending references against him and a promotion to Chief Justice of the Islamabad High Court by September 2018.

Following these allegations, the SJC initiated formal proceedings against him. The Chief Justice of the Islamabad High Court was asked to verify the allegations and seek evidence from Justice Siddiqui, who did not provide any. The SJC, suspecting violations of the judicial Code of Conduct, proceeded with an inquiry. Justice Siddiqui admitted to making the speech, and after reviewing his replies, the SJC determined that he had engaged in conduct unbecoming of a judge. The SJC recommended his removal, and on 11 October 2018, this recommendation was approved by the President of Pakistan, resulting in Justice Siddiqui's immediate dismissal from office. The SJC's conclusion was that his actions undermined the independence and integrity of the judiciary, constituting misconduct.

Issue: Whether the removal of Justice Shaukat Aziz Siddiqui was conducted in accordance with constitutional requirements, fundamental rights, and fair trial procedures, ensuring judicial independence and due process by the Supreme Judicial Council?

Rule: In the proceedings before the Supreme Judicial Council (SJC), Justice Shaukat Aziz Siddiqui was not afforded a fair trial, making the proceedings coram non iudice. The SJC did not conduct an inquiry into the veracity of the allegations made by Justice Siddiqui, as mandated by Article 209(5) and (6) of the Constitution, which requires an inquiry (including recording of evidence) to determine misconduct. Justice Siddiqui was not given an opportunity to establish his allegations or confront those he accused. The lack of inquiry and the assumption that his allegations were false without due process deprived him of his fundamental rights to a fair trial and due process under Article 10A of the Constitution. As a result, the actions taken against him were deemed without jurisdiction and therefore Coram non iudice and also declared as malafide.

The court also emphasized that there should be yardstick to gauge conduct of judges. As per constitution the, supreme judicial council (SJC) is empowered to issue code of conduct and once it issues then SJC must adjudge in accordance therewith. The SJC cannot arbitrarily expand the Code of Conduct to adjudge a judge's behavior beyond its specified provisions. Ensuring the independence of the judiciary requires that judges are adjudged according to established rules, not unspecified or arbitrary standards, to protect them from undue influence and to maintain the integrity of the judicial system

Application: In this case, Justice Shaukat Aziz Siddiqui was sent a show cause notice by the Supreme Judicial Council alleging misconduct based on his statements regarding the judiciary and state institutions. However, he was not provided with an opportunity to defend himself, present evidence, or receive a fair trial as required by the Constitution. The failure to conduct a proper inquiry and adhere to due process deprived Justice Siddiqui of his fundamental rights and fair treatment. However, the notable points of the judgment are given under;

01. Lack of Fair Trial: The court highlighted that Justice Siddiqui was not provided with an opportunity to establish the truth of the allegations leveled against him. He was punished for making certain statements without being given a fair trial or due process, which goes against the principles of natural justice and the Constitution.

02. Violation of Fundamental Rights: The court emphasized that Justice Siddiqui's removal without affording him a fair trial and due process violated his fundamental rights, including the right to a fair trial as guaranteed by Article 10A of the Constitution. Depriving him of these rights undermined the independence of the judiciary and jeopardized fundamental rights enshrined in the Constitution.

03. Independence of the Judiciary: The judgment emphasized the critical importance of maintaining the independence of the judiciary and ensuring that judges are not removed without proper inquiry and adherence to due process. Upholding the independence of the judiciary is essential for safeguarding fundamental rights and ensuring justice.

04. Procedural Violations: The court criticized the failure to conduct an inquiry, provide Justice Siddiqui with an opportunity to present evidence, and follow the requirements of due process and fair trial. These procedural violations led to an unfair treatment with Justice Siddiqui and curtailed his individual freedom, hindering the pursuit of truth and justice.

Conclusion: The SJC's Report/Opinion, dated 11 October 2018, which was submitted to the President and the Notification No. F.9(2)/2018-A.II, dated 11 October 2018, stated to have been issued on the advice of the Prime Minister and his Cabinet of Ministers are set aside. Consequently, Justice Siddiqui shall be deemed to have retired as a Judge of the Islamabad High Court and he will be entitled to receive all the benefits and privileges due to a retired Judge, by allowing these petitions in the above terms.

3. Vice Chancellor Agriculture University, Peshawar etc. vs Muhammad Shafiq etc...

Constitutional Petition No. 2270 & others

Present: *Mr. Justice Syed Mansoor Ali Shah*
Mr. Justice Jamal Khan Mandokhail
Ms. Justice Athar Minallah

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2270 2019.pdf

Facts: The brief facts giving rise to the instant petition is that a set of contractual employees (hereinafter referred to as the “Respondents”) joined the University of Agriculture, Peshawar (“Petitioner”) as Class IV employees from 2009 to 2012. Aggrieved of the fact that the Respondents were not considered as permanent employees despite serving the Petitioner University for seven (07) to eight (08) years, they C.P. No.2270 of 2019, etc. 3 invoked the constitutional jurisdiction of the Peshawar High Court, Peshawar under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”) vide W.P. No. 965-P/2013 praying for their regularization of service and grant of all back benefits. The High Court held that as some of the Respondents having a similar nature of job, have already been regularized, the Respondents were also entitled to be dealt with accordingly. In doing so, the High Court disposed the petition vide judgment dated 02.04.2019 (“Impugned Judgment”) directing the Petitioners to consider the Respondents strictly in accordance with law and in line with the earlier judgments of the High Court. Hence, the present appeal by leave of this Court.

The following set of cases before us include five categories of employees;

(i) Category-A: This includes the Respondents who were contractually employed and subsequently regularized by the High Court. The said regularization has been challenged.

(ii) Category-B: In this case, the Respondents were appointed on regular basis after advertisement and in compliance with the due process. Their contention is that they be given regularization from the date of their initial appointment when they were first appointed on contractual basis (“ante-date regularization”).

(iii) Category C: This category includes those Respondents who were regularized through Court orders with immediate effect, which were not challenged by the Petitioner. Having been regularized, the Respondents have once again approached the High Court to seek ante-date regularization, which was granted to them, hence the challenge.

Category D: This includes the Respondents who simply seek ante-date regularization. Schedule-A to this judgment lists the cases falling in each of the aforesaid categories.

Issues: 01. Whether the contractual employees (Respondents) can be regularized in the absence of any specific law or policy allowing such regularization?

02. Whether the Respondents who were regularized through earlier court orders, which remain unchallenged, can seek ante-date regularization (retroactive regularization from the date of their initial contractual appointment)?

Rule: The rule governing this issue stipulates that regularization of contractual employees can only occur if there is a specific law, rule, or policy backing such regularization. This process must be open, transparent, and based on objective criteria such as performance evaluation, availability of positions, budgetary considerations, and

fairness.

Application: Firstly, the court emphasized that regularization of contractual employees can only occur if there is a specific law, rule, or policy backing such regularization. The process must be open, transparent, and based on objective criteria such as performance evaluation, availability of positions, budgetary considerations, and fairness. The court cited various cases, including *Province of Punjab through Secretary, Livestock and Dairy Development, Government of Punjab v. Dr. Javed Iqbal* (2021 SCMR 767) and *Hadayat Ullah v. Federation of Pakistan* (2022 SCMR 1691), to establish that there is no automatic right to regularization without legal backing. Article 25 of the Constitution, which ensures equality, does not apply to claims based on previous unlawful acts or illegalities. The court also analyzed the importance of institutional autonomy, which allows educational institutions to make decisions regarding their academic work, standards, management, and related activities without external interference. This autonomy is essential for the effective functioning of institutions and for safeguarding public interest and democratic values. Judicial interference in policy matters should be limited, especially in the absence of any violation of fundamental rights.

The court also addressed the issue of ante-date regularization. It held that regularization should be prospective, taking effect from the date a regularization order is passed, and cannot be applied retroactively. Regularization involves several considerations, including the financial impact and long-term legal obligations on the institution, which must be evaluated at the time the decision is made. The court stated that giving retrospective effect to regularization would undermine the institution's ability to make informed and sustainable decisions regarding its workforce.

Conclusion: The court concluded that the regularization of the Respondents cannot occur without the backing of any specific law, rule, or policy and without an open and transparent process based on objective criteria. The High Court erred in ordering regularization without legal backing, so its judgment was set aside. Additionally, the Respondents cannot seek ante-date regularization; regularization must be prospective from the date a regularization order is passed. Therefore, the appeals filed by the University of Agriculture, Peshawar were allowed, and the judgments in question were set aside.

4. Umar Farooq vs Sajjad Ahmad Qamar and others

C.P.L.As No. 210, 212, 213 of 2024

Present: *Mr. Justice Munib Akhtar*
Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 210 2024 r.pdf

Facts: The General Elections to the National and Provincial Assemblies were held on 08.02.2024. Each Assembly's election is distinct, constituting five separate elections on that day. Section 69(1) of the Elections Act, 2017 allows for simultaneous elections, though not mandatory. However, it cannot override constitutional requirements such as election timing after Assembly dissolution. The petitioner appealed for acceptance of his nomination papers for NA-99 (National Assembly) and PP-107 (Provincial Assembly), challenging rejections based on various grounds like absence during scrutiny and discrepancies in signatures. Appellate Tribunals allowed the appeals, but High Court writ petitions by contesting respondents were allowed, barring petitioner's participation due to a criminal case. Petitioner's counsel argued against being declared an absconder and highlighted bail status. The contention revolved around disclosure requirements for criminal cases on nomination papers. The petitioner's absence during the case's filing and incomplete disclosure were emphasized. The Election Commission deferred to the legal process.

Issue: What is the extent of the applicability of the interim measure established in the case of *Habib Akram (PLD 2018 SC 678)*, which mandated candidates to submit specific affidavits alongside their nomination papers for the General Elections of 2018, and does this requirement persist for subsequent election cycles, specifically the General Elections of 2024?

Application: The court analyzed the nature of the interim measure in case of *Habib Akram (PLD 2018 SC 678)* and its intended scope. It considered the legislative framework governing nomination papers under different laws, such as the Representation of the People Act, 1976, and the Elections Act, 2017. The court also examined the implications of extending the interim measure beyond the 2018 election cycle and the jurisdiction of the Election Commission in altering the content of nomination papers. However, the notable points of the judgment are given as under:

1. Interim Nature of the Order: The court emphasized that the order in *Habib Akram* case was an interim measure specifically designed for the General Elections of 2018. It was not intended to have lasting legal consequences beyond that election cycle.

2. Comparison of Legislative Frameworks: The court compared the provisions regarding nomination papers under the Representation of the People Act, 1976, and the Elections Act, 2017. It highlighted the differences in the legislative approach, particularly in terms of the authority to alter the content of nomination papers.

3. Jurisdictional Limitations: The court noted that under the 2017 Act, the authority to make changes to nomination papers rested with Parliament, unlike the previous legislation where the Election Commission had more discretion. This jurisdictional limitation influenced the court's interpretation of the interim measure in *Habib Akram*.

4. Applicability to Future Elections: The court clarified that the requirements imposed in *Habib Akram* case, such as filing specific affidavits along with nomination papers, were not meant to extend to future election cycles, including the

General Elections of 2024. Candidates were not legally bound to adhere to these requirements beyond the 2018 election cycle.

5. Legal Consequences: The court concluded that the non-mentioning of a criminal case in the affidavits filed by candidates did not warrant the rejection of their nomination papers. The court emphasized that the interim measure in *Habib Akram* had no legal implications for subsequent elections unless expressly extended by the Court or altered through primary legislation.

Conclusion: The court concluded that the interim measure established in the case of *Habib Akram*, which required candidates to file specific affidavits along with their nomination papers for the General Elections of 2018, does not have legal force or implications for subsequent elections, including the General Elections of 2024. The court clarified that candidates were not obligated to adhere to the requirements set out in *Habib Akram* beyond the 2018 election cycle. The court allowed the appeals based on this interpretation and emphasized that the non-mentioning of a criminal case in the affidavits filed by candidates did not justify the rejection of their nomination papers.

5. Ibrahim Khan vs Mst. Saima Khan and others

Civil Petitions No. 4657 to 4659 of 2022

Present: *Mr. Justice Yahya Afridi*
Mr. Justice Amin-ud-Din Khan
Mrs. Justice Ayesha A. Malik

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4657 2022.pdf

Facts: The basic facts are that Respondent No.1 filed a composite suit for jactitation of marriage or in the alternate, dissolution of marriage, recovery of dowry articles and maintenance on 07.08.2014. She filed a second suit for recovery of maintenance, possession of house or in the alternate, its market value, on 18.10.2014. Both suits were decided vide judgment and decree dated 26.11.2015 of the trial court; the claim of Respondent No.1 for dissolution of marriage was decreed on the basis of khula subject to the waiver of dower, being half portion of the house; her claim for maintenance was decreed along with three months iddat period maintenance; minor was also granted maintenance; dowry articles were decreed to the extent of Rs.15,000/-; whereas rest of the claim of Respondent No.1 was dismissed; suit filed by the Petitioner for conjugal rights was also dismissed vide the same judgment of the trial court. The appellate court, vide judgment dated 21.12.2016, modified the judgment and decree of the trial court by way of enhancing the past and iddat period maintenance; likewise, the cost of dowry articles was also enhanced; and the remaining findings of the trial court were kept intact. Respondent No.1 then, by way of two separate writ petitions, challenged the judgments of the courts below, specifically agitating the grant of dissolution of marriage based on khula stating therein that she never sought khula rather sought dissolution of marriage on the

ground of cruelty and prayed possession of her dower. The High Court, while considering the arguments of both parties, set aside the judgments and decrees of the trial and appellate court on the ground that the Petitioner had already divorced Respondent No.1 by way of talaq and, therefore, granting her khula was not necessary. Consequently, the High Court awarded her dower of half of a portion of the house.

Issue: Whether the court can convert a prayer for dissolution of marriage on the ground of cruelty to a prayer for seeking dissolution of marriage by way of khula, where the khula is not sought for by a woman?

Rule: The legal principles applied in this case revolve around the rules governing under the *Dissolution of Muslim Marriages Act, 1939* (DMMA) and the concept of Khula. The DMMA outlines specific grounds S.2 (cruelty, assault, ill-treatment etc.) for judicial dissolution of marriage, whereas Khula allows a woman to seek dissolution without need to establish these grounds.

For Khula to be granted, it must be explicitly sought by the woman, with her clear consent to waive her dower. Courts are not permitted to grant Khula unless it has been specifically requested by the woman. The procedures for obtaining dissolution of marriage through Khula and under the DMMA are distinct.

In cases of Khula, if pre-trial reconciliation efforts fail under Section 10 of the Family Courts Act, 1964 (FCA), the court is required to immediately issue a decree for the dissolution of the marriage. Conversely, under the DMMA, a decree for dissolution can only be granted after the recording of evidence as stipulated in Section 11 of the FCA. Therefore, the termination of marriage under the DMMA and through Khula operates in different legal frameworks, each with separate consequences. Notably, under the DMMA, a woman's right to her dower is protected.

Application: The court analyzed the principles of Mohammadan Law regarding dissolution of marriage by khula and the DMMA in a case where Respondent No.1 sought dissolution of her marriage on the grounds of cruelty. Under Mohammadan Law, khula is initiated by the wife with the husband's consent, where she offers compensation or waives her dower. It is an irrevocable divorce that doesn't require the husband to be at fault. The DMMA, however, allows a woman to seek dissolution of her marriage on specific grounds such as cruelty, without waiving her dower. The court also examined whether a woman's request for divorce on cruelty grounds could be converted to khula by the court. It concluded that khula must be explicitly sought by the woman, with her consent to waive the dower. Courts cannot grant khula if it has not been specifically requested. In the case at hand, Respondent No.1 sought divorce due to cruelty, not khula, and her claim included her right to dower. Both the trial and appellate courts erroneously granted her khula without her consent, waiving her dower. The evidence suggested that the Petitioner had divorced Respondent No.1, entitling her to her dower. The High Court's findings that she was entitled to her dower were upheld.

Conclusion: Under these circumstances, the court could not find any illegality in the impugned judgment. The Petitions, being devoid of force, were dismissed and leave refused.

The High Court of Sindh

6. The State through Addl. Attorney General Pakistan vs Zafar Khan @ Ram and others
Criminal Transfer Application No. 140 of 2022

Present: *Mr. Justice Aqeel Ahmed Abbasi, CJ*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE1NDc1Y2Ztcy1kYzgz>

Facts: The brief facts of the case have been narrated, including formation of Joint Investigation Team on 25.03.2020, the registration of an Enquiry No.71/2020 made on 21.04.2020 in Commercial Banking Circle, Karachi on the report of FIA, whereafter, on 22.04.2020 such enquiry was transferred and converted into Enquiry No.13/2020 at FIA, CTW, Karachi for further investigation and pursuant to such enquiry proceedings, on 29.04.2020 an FIR No.02/2020 under sections 11-H, 11-I, 11-J, 11-K, 11-N, 21-C(7) and 21-1 of Anti-Terrorism Act, 1997 read with Sections 4/5/23 of FERA, 2020 was registered against six accused persons on the allegation of affiliation with MQM-London allegedly involved in anti-state and terrorist financing activities at Police Station CTW, FIA Headquarters, Islamabad. After completion of investigation, the Investigating Officer submitted report under section 173, Cr.P.C. before the trial Court, where, out of 14 accused persons nominated in the aforesaid FIR, nine (9) accused persons are presently confined at Central Prison Karachi, four (4) accused persons are on bail, and one accused has been shown as absconder. However, the trial is proceeding before the Anti-Terrorism Court No. XII at Karachi situated at Judicial Complex, Central Prison Karachi. The reasons for transfer of trial from Anti-Terrorism Court No. XII at Karachi to Anti-Terrorism Court, Islamabad, as stated in instant CrI. Transfer Application, are that due to highly sensitive case FIA requested the Ministry of Interior to appoint Senior Law Officer to assist the Anti-Terrorism Court, Karachi, thereupon, the Ministry of Law & Justice Division appointed two different DAGs at different times, who resigned due to life threat, whereafter, the Ministry of Law & Justice Division appointed another AAG for prosecution of the case, however, he also recused to proceed with the case due to security threat. Subsequently, Mr. Shabbir Hussain Shigri, Deputy Director (Law) was appointed as Special Public Prosecutor to avoid delay in trial and since his appointment he is regularly appearing before the Anti-Terrorism Court No.XII at Karachi, however, he has also filed an application before Anti-Terrorism Court for provision of necessary security under section 21 of the Anti-Terrorism Act, 1997. Under the aforesaid circumstances, instant CrI. Transfer Application was filed before this Court on 13.12.2022, however, the case diary shows that the applicant did not take any efforts to pursue the case and still CrI. Transfer Application remains pending since its filing without any useful progress.

Issue: Whether the transfer of the case from Anti-Terrorism Court No.XII at Karachi to Anti-Terrorism Court, Islamabad, as requested in the Crl. Transfer Application, is justified under Section 28 of the Anti-Terrorism Act, 1997?

Rule: The relevant rule governing the transfer of cases under the Anti-Terrorism Act, 1997, particularly Section 28, is that a case may be transferred if it is expedient in the interest of justice or for the convenience or safety of witnesses or the accused.

Application: The court focused on evaluating the legality of the application for transferring the case from the Anti-Terrorism Court in Karachi to Islamabad. The court scrutinized the applicant's claims of security threats to the prosecutors, while finding that no substantial evidence or specific incidents were provided to support these allegations. Despite repeated opportunities, the Deputy Director (Legal), CTW, FIA, and the learned Deputy Attorney General failed to place any material on record that could justify the transfer based on security concerns. The court emphasized the principle that the jurisdiction of a court must be safeguarded and cannot be transferred on flimsy or unsupported grounds. Section 28 of the Anti-Terrorism Act, 1997, stipulates that a case can only be transferred if it is expedient in the interest of justice or necessary for the safety and convenience of witnesses or the accused. In this case, the court found that none of these conditions were met. Furthermore, the court observed that the prosecution had not made any efforts to diligently pursue the case. The transfer application appeared to be a tactic to delay the trial, as the prosecution had not progressed due to the pending transfer request. The court noted that the trial had already experienced significant delays and that transferring the case to Islamabad would cause serious inconvenience and financial burden to the accused, their lawyers, and witnesses. This would involve long-distance travel, high costs of air tickets, and accommodation for each hearing date, which would impede the accused's right to a fair trial.

Conclusion: The court concluded that the transfer application was without merit, as it failed to meet the requirements outlined in Section 28 of the Anti-Terrorism Act, 1997. The Honourable Chief Justice highlighted that the jurisdiction of a court should be safeguarded and cannot be ousted based on flimsy grounds. The application was dismissed, noting that transferring the case would cause significant inconvenience and financial burden to the accused and other parties involved, and would impede the fair trial process.

7. Mst. Anila Abrar (Petitioner) and others vs Govt. of Sindh and others

Constitutional Petition No. D-715 of 1996 and others (D.B)

Present: *Mr. Justice Muhammad Shafi Siddiqui*
Mr. Justice Jawad Akbar Sarwana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjExNDA0Y2Ztcy1kYzgz>

Facts: In all these petitions, the petitioners who have Pakistan citizenship seek Pakistan citizenship for their foreign husbands on being married to them.

In C.P. No.D-715 of 1996 petitioner has married to an Indian who was residing in Pakistan since 1980; on 29.07.1988. Petitioner's husband was arrested and challaned under section 3(6)4 of Pakistan Control of Entry Act, 1952 followed by his arrest in terms of order dated 07.04.1996 of respondent No.1 for three months or till his departure to India. The petitioner has thus sought setting aside of such order and citizenship for her husband.

In C.P. D-1572 of 1996 petitioner has married to an Indian i.e. petitioner No.2 in 1992 when latter has come to Pakistan on visit visa. The petitioners then applied for Pakistani citizenship, which was rejected vide order dated 26.09.1994 followed by memorandum dated 12.02.1996 issued on subsequent application. Finally, in terms of letter dated 27.8.1996 petitioner No.2 was ordered to be externed from Pakistan by 12.09.1996. Hence petitioners have approached this Court for citizenship of petitioner No.2 being married to a Pakistani woman, the petitioner No.1.

In the same way in C.P. No.D-2251 of 1996 and C.P. No.D-7019 of 2021 both the petitions seek citizenship for an Indian namely Imran Yousuf. He first married to petitioner of earlier petition on 25.07.1996 3 and then on 01.10.2011 from petitioner of subsequent petition. Both the petitioners have moved separate applications for citizenship of their husband. In subsequent petition it has also been stated that petitioner in C.P. No.D-2251 of 1996 has died. In C.P. No.D-7019 of 2021 petitioner (as being second wife) has married to Imran Yousuf during pendency of CP No.D-2251 of 1996 and filed separate petition. In this petition, petitioner pleaded that they were arrested in November 2011 by Indian intelligence on espionage charges and were released and came to Pakistan in 2019. Petitioner then applied for citizenship of her husband, on medical ground as well, however vide letter dated 15.11.2021 he (petitioner's husband) was given 15 days departure time.

In C.P. D-1415 of 2004 petitioner No.1 married on 06.05.1997 to petitioner No.2 who is an Indian. After marriage both the petitioners went to India however due to some health issues, petitioner No.1 came back to Pakistan in 1999. Petitioner No.1 has claimed that due to health issues, she cannot live with her husband (petitioner No.2) in India and hence she seeks citizenship for petitioner No.2 so that they both can live together in Pakistan.

Issue: Whether section 10 (2) of the Pakistan Citizenship Act, 1951, violate Article 25 of the Constitution of Pakistan by discriminating against Pakistani women married to foreign men, and should it be interpreted or amended to ensure gender equality in granting citizenship to foreign spouses?

Rule: Section 10 (2) of the Pakistan Citizenship Act, 1951, stipulates that a foreign woman married to a Pakistani man is entitled to be registered as a citizen of Pakistan. However, it does not extend this right to foreign men married to Pakistani women. The relevant legal provisions and constitutional articles considered in this case include:

- Article 25 of the Constitution of Pakistan: Ensures equality before the law and prohibits discrimination on the basis of sex.
- Section 13 of the General Clauses Act, 1987: Provides guidance on statutory interpretation to include both genders unless specified otherwise.
- International commitments such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Application: The court analyzed the arguments presented by the petitioners, who claimed that Section 10 (2) discriminates against Pakistani women by denying their foreign husbands the right to obtain Pakistani citizenship, thereby violating their fundamental rights under Article 25 of the Constitution. The court considered:

1. Gender Discrimination: The court found that Section 10(2) of the Citizenship Act discriminates against Pakistani women, as it provides citizenship rights to foreign wives of Pakistani men but not to foreign husbands of Pakistani women.

2. Statutory Interpretation: The court discussed the possibility of interpreting the term "woman" to include "man" and "she" to include "he" under Section 13 of the General Clauses Act to harmonize the provision with constitutional mandates of gender equality.

3. Principle of Reading In: The court considered applying the doctrine of “*reading in*” to insert the missing words "man/he" into Section 10 (2) to avoid striking down the provision and to bring it in line with constitutional requirements.

4. International Commitments: The court referenced Pakistan's international commitments under treaties like the ICCPR and CEDAW, which emphasize non-discrimination and gender equality.

Conclusion: The court concluded that Section 10(2) of the Pakistan Citizenship Act, 1951, in its current form, discriminates against Pakistani women and violates their constitutional rights under Article 25. To remedy this discrimination, the court decided to “*read in*” the missing words "man/he" into Section 10 (2), thereby extending the right to obtain Pakistani citizenship to foreign husbands of Pakistani women. The court allowed the petitions and directed that the status of the petitioners' spouses be adjudged and processed accordingly, ensuring they are not repatriated or dealt with contrary to the findings.

08. Karachi Electric Supply Corporation vs Batool Fatima

High Court Appeal No. 256 of 2005 (D.B)

Present: *Mr. Justice Muhammad Shafi Siddiqui*
Mr. Justice Omar Sial

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjA5OTY3Y2Ztcy1kYzgz>

Facts: Batool Fatima, through her sons Shaukat Ali and Javed Iqbal, owned and operated a woven labels manufacturing unit in the Baldia Town area of Karachi. Due to no fault of the owners, K-Electric (then known as Karachi Electric Supply Company Limited) disconnected the power supply to the manufacturing unit for 291 days. Power was restored on the orders of this Court. On 17.03.1999, Batool Fatima filed Suit No. 414 of 1999 against K-Electric, claiming Rs. 6.25 million as damages. The Suit was decreed in Batool Fatima's favor on 16.05.2005, and it was ordered that K-Electric pay the Rs. 6.25 million with mark-up from the date of the Suit till realization. K-Electric has filed this appeal against the judgment and decree passed by the learned Single Bench of this Court.

Issue: Whether K-Electric is liable to pay damages to Batool Fatima for the disconnection of power supply to her woven labels manufacturing unit without any fault or outstanding dues on her part, and if so, what is the appropriate amount of damages to be awarded?

Rule: The rules may be relevant in the judgment:

1. Negligence and Duty of Care

A utility company, such as K-Electric, owes a legal duty of care to its consumers to provide an uninterrupted power supply unless there is a valid and lawful reason for disconnection.

2. Limitation for Appeals

Under Section 4 of the Limitation Act, 1908, if the period for filing an appeal expires on a day when the court is closed, the appeal can be filed on the next working day.

3. Proving Damages for Economic Loss

Claims for damages, particularly those involving pure economic loss, must be substantiated with clear and specific evidence. Speculative or arbitrary claims without proper documentation or historical records will not be granted.

4. Effect of Unchallenged Testimony:

If a witness's testimony is not cross-examined, it may be deemed admitted by the opposing party. However, the court still requires that the claims be substantiated with concrete evidence.

5. Partial Award of Damages:

Even if the defense is negligent in contesting the claims, the court will only award damages that are adequately supported by evidence. Symbolic or minimal damages may be awarded for unsubstantiated claims if deemed reasonable by the court.

Application: The central focus of judgment is on K-Electric's negligence in disconnecting the power supply to Batool Fatima's manufacturing unit without any lawful justification, which the court firmly identifies as a breach of duty. This disconnection, acknowledged by K-Electric's own officials, occurred despite no outstanding dues or faults on the part of the manufacturing unit, establishing a clear case of wrongful action by the utility provider. The court also addresses the issue of the timeliness of

the appeal filed by K-Electric. By referencing the Limitation Act, 1908, the court finds that the appeal, filed immediately after the court's summer vacation, is within the permissible time frame and thus, not barred by limitation.

The court critically examines the claims for various heads of damages, including loss of business, reputation, clientage, and mental anguish. It observes that although K-Electric was negligent in its defense, failing to cross-examine witnesses and delaying its responses, the claims made by Batool Fatima lacked substantial evidence. The court finds the claims for economic loss to be speculative and not supported by the records or concrete documentation.

Conclusion: Given the above, the appeal stood partially allowed. Batool Fatima would be entitled to recover Rs. 42,078.50 for being unable to meet orders which were in the pipeline when power supply was disconnected. There is no yardstick to measure mental anguish; however, keeping in view the suspension of business, it would be reasonable to award symbolic damages of Rs.100,000/- for mental anguish and Rs.100,000/- for loss of reputation. The remaining damages claimed are disallowed for the reasoning in the preceding paragraphs. The total amount of damages of Rs. 242,078.50 will be paid to Batool Fatima with a 10 percent markup from 17.03.1999 till the date payment is made, within thirty days of this judgment.

9. New Metallurgy Hi-Tech Group Co. Ltd vs Siddiqsons Tin Plate Limited

Suit No. 1098 of 2023 (S.B)

Present: *Mr. Justice Salahuddin Panhwar*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjA5Nzg1Y2Ztcy1kYzgz>

Facts: Through instant suit, the plaintiff seeks the recognition and enforcement of the Final Award dated 06.10.2022 awarded in plaintiff's favor at Singapore. Further plaintiff moved an injunction application u/s 94 CPC r/w Order 39 Rule 1 & 2 CPC and Order XXXVIII Rule 5 and Section 151 of CPC to restrain the defendant from alienating / dispose off / selling its certain immovable properties during pendency of this suit. While defendant sought sine die adjournment of suit till decision to be rendered in appeal filed before Singapore high court without requirement of any security from defendant.

The plaintiff, a registered company in China specializing in technology integration and services in the metallurgical industry, and the defendant, a public limited company in Pakistan, executed two contracts: the CRM Contract for a Cold Rolling Mill Complex and the ARP Contract for an Acid Regeneration Plant, both located in Karachi. The CRM Contract required phased payments totaling CNY 123,299,385, while the ARP Contract required phased payments of CNY 11,410,740. Although executed separately, these contracts were treated as part of the same arrangement to save costs.

Subsequent agreements included an Understanding Letter, Amendment-I, and a

Memo of Meeting, which revised certain contract provisions. Both contracts included arbitration agreements (Article 40 of the CRM Contract and Article 39 of the ARP Contract), stipulating that disputes would be resolved through arbitration in Singapore under the SIAC Rules.

Disputes arose during contract performance, with the defendant failing to complete civil construction on time and wrongfully repudiating the contracts by fraudulently encashing bank guarantees and attempting to cancel the letter of credit. As a result, the plaintiff retained CNY 19,517,577 already paid by the defendant and sought compensation for additional damages totaling CNY 35,799,296. The plaintiff initiated arbitration in Singapore as per the contracts' arbitration clauses. Consequently, the arbitrator at Singapore gave award in plaintiff's favor. Thereafter same award was challenged before Singapore High court in appeal by defendant while plaintiff sought enforcement of foreign award before honorable high court of Sindh by filing the instant suit.

Issue: Whether the enforcement of the foreign arbitral award should be adjourned until an appeal is decided by the High Court of Singapore and whether the defendant is required to provide security for adjournment under Article VI of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) which is also set forth with schedule to the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011?

Rule: **1. Article VI of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958):**

This article allows a court to adjourn the decision on the enforcement of an arbitral award if an application for setting aside or suspension of the award has been made to a competent authority. The court may also order the party against whom the award is invoked to provide suitable security during the adjournment period.

2. Section 6 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011:

This section provides the legal framework for recognizing and enforcing foreign arbitral awards in Pakistan and also set forth article VI of New York convention in its schedule.

3. Singapore's International Arbitration Act 1994:

This Act governs arbitration proceedings in Singapore and includes provisions for setting aside arbitral awards. The defendant has filed an application under this Act to set aside the arbitral award in question.

Application: The court's analysis in this order revolves around the discretionary power provided by Article VI of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). The court examined the defendant's request to adjourn the enforcement of a foreign arbitral award while an appeal is pending before the High Court of Singapore against same award. The court acknowledged the plaintiff's right to enforce the award but also considered the potential financial and operational impacts on the defendant if immediate

enforcement was pursued. It highlighted the permissive nature of Article VI, noting that the provision uses the word “*may*” rather than “*shall*,” indicating that the requirement for security is at the court's discretion. The court considered the defendant's arguments regarding their financial stability, the potential negative consequences of furnishing security, and the overall context of the arbitration proceedings, including the plaintiff's delayed notification of the setting aside application.

Conclusion: The order concluded that the plaintiff's application for an ad-interim injunction is allowed, resulting in the enforcement of the foreign arbitral award being adjourned sine die. This adjournment is granted until the final decision on the setting aside application pending before the High Court of Singapore is made. The court decided not to impose any requirement for the defendant to provide security during this adjournment period. The court's decision reflects the discretionary power under Article VI of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), taking into account the specific circumstances of the case and the potential financial and operational impacts on the defendant.

10. Ghulam Ali P. Allana vs Louis Dreyfus Commodities Suisse SA & others

High Court Appeal No. 62 of 2023 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Justice Ms. Sana Akram Minhas

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjA4NTg1Y2Ztcy1kYzgz>

Facts: The Suit 360 has been instituted by the Appellant (Plaintiff in Suit 360) against the Respondents No.1 to 4 (Defendants No.1 to 4 in Suit 360) for recovery of money and damages arising from contracts for the sale of rice. The Appellant (seller) and the Respondents No.1 to 3 (buyers) are engaged in a dispute, with the Respondent No.4 acting as the latter's local agent. The Suit 360 involves three contracts, with the Appellant claiming outstanding dispatch charges, loss on goods not lifted and general damages. The Respondents deny the dispatch charges under the first and second contract dispute the quantity of goods under the third contract and counter-claim for losses due to the stoppage caused by the Appellant obtaining the interim order. The Appellant filed the Attachment Application seeking to attach goods then being loaded at Karachi Port aboard the vessel "GMT PHEONIX," alleging that the Respondents No.1 to 3 had no other assets in Pakistan and that unless the said goods were attached, the Appellant would not be able to execute any decree that may be passed. This court passed an interim order dated 28-03-2013 whereby defendants were restrained to uplift the rice from being loaded at sea port. Whereby the defendant appeared before court and got substituted the interim order with bank guarantees and rice were loaded. The plaintiff's contended that interim order merged into finality as defendant himself sought substitution of rice with bank guarantees through modified order. While the defendant contended that it was interim measure

and application was not decided on merits. This court rejected the plaintiff's contention and dismissed an application filed under O. XXXVIII R.5 C.P.C This High Court Appeal challenges a learned Single Judge's dismissal of the Appellant's interlocutory application for attachment before judgment (bearing CMA No. 3351/2013) filed under Order 38 rule 5 of the Code of Civil Procedure 1908 by order dated 4.3.2023 ("Impugned Order") passed in Suit No.360/2013.

Issues: 01. What is the implication of the phrase "*Till Further Order Of This Court*" in Order Dated 3-4-2013 which was passed by Hon'ble single judge of this court while issuing notice and what would be the impact after its modification? Whether it still operates as interim order?

02. Whether the Appellant satisfied the requirements for an attachment before judgment under Order 38 Rule 5 of the Civil Procedure Code (CPC) in light of the Respondents being foreign companies without assets in Pakistan?

Rule: Order 38 Rule 5 CPC allows a court to attach a defendant's property before judgment if it is satisfied that the defendant is about to dispose of their property with the intent to obstruct or delay the execution of any decree that may be passed against them. The plaintiff must provide clear proof of the mischief targeted by the rule, and mere allegations are insufficient. The court's power to attach property is a protective measure, not punitive, and must be exercised cautiously and justifiably.

Application: In this case, the Appellant claimed that the Respondents had no assets in Pakistan and were shipping goods to evade the Appellant's claims. However, the court found that the Appellant did not provide sufficient evidence to demonstrate that the Respondents were attempting to dispose of their property to frustrate the execution of a potential decree. The court emphasized that the order dated 3.4.2013 was intended as a temporary modification and did not conclude the Attachment Application, indicating that the matter was still under consideration. The court also noted that the Respondents had deposited security, which the Appellant argued should prevent the release of goods until a final judgment was reached. However, the court maintained that the order was provisional and subject to further assessment. The order states that the phrase "*till further order of this Court*" indicates that the court's directive is provisional and not final. It allows the court to modify or revoke the order at any time until a new order is issued. This language signifies that the court retains control over the proceedings and can reassess the situation as needed, ensuring flexibility in its decisions.

Conclusion: The court upheld the dismissal of the Appellant's application for attachment before judgment, concluding that the Appellant failed to meet the necessary legal requirements under Order 38 Rule 5 CPC. The court's decision highlighted the need for clear evidence of intent to evade claims, which was not sufficiently demonstrated in this case. Thus, the Appellant's request for attachment was denied, and the matter was left open for further proceedings.

11. Nazeer Ahmed and others vs The Province of Sindh and others

Constitutional Petition No. D-2406 of 2014 (D.B)

Constitutional Petition No. D-2507 of 2014

Constitutional Petition No. D-1766 of 2018

Present: *Mr. Justice Muhammad Iqbal Kalhoro*
*Mr. Justice Arbab Ali Hakro***Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjEzMzM5Y2Ztcy1kYzgZ>**Facts:** The High Court with this common order collectively disposed of the captioned petitions, as they encompass analogous legal queries, present comparable factual circumstances, and seek identical relief. In each of these petitions, the petitioners have challenged the veracity and legality of the Order dated the 10th of July, 2014, which was passed by the Assistant Commissioner of PanoAkil. This order resulted in the cancellation of the petitioners' respective entries within the record of rights. The main prayers sought by the petitioners are reproduced below:-**C.P No.D-2406 of 2014**

a) It be declared that the Order dated 10.7.2014, passed by respondent No.2 cancelling the revenue entry No.72 dated 16.3.2009 by misinterpreting the Judgment and Decree of Additional District Judge (H) Sukkur is without lawful authority, hence of no legal effect.

C.P No.D-2507 of 2014

a) To declare that the Order dated 10.7.2014, passed by respondent No.2 cancelling the revenue entries No.16 dated 20.3.2000 and entry No.95 dated 26.3.1990, is without lawful authority, hence of no legal effect.

C.P No.D-1766 of 2018

a) To declare that the respondent No.2 & 3 were endorsed the impugned entry dated 10.7.2014 in excess of jurisdiction and respondent No.3 cancelled the revenue entry No.152 (01-35) and S. No.153(01-09) total 02-19 acres situated in Deh Kot Sadiq Shah Tapo Nouraja Taluka PanoAkil District Sukkur is without jurisdiction and lawful authority, hence of no legal effect.

b) To direct the respondent No.3 to remove the endorsement entry dated 14.7.2014 and restore the entry No.118 dated 10.8.2004 in favour of petitioner.

Issue: Whether the Assistant Commissioner of PanoAkil acted within his jurisdiction and authority when he canceled the revenue entries of the petitioners based on a previous judgment and decree? The petitioners challenge the legality and validity of the order dated July 10, 2014, which canceled their entries in the record of rights.**Rule:** **1. Sindh Land Revenue Act, 1967:** Specifically, Section 161, which gives the hierarchy and process for appeals against orders made by Revenue Officers.**2. Principle of Exhaustion of Remedies:** Established by the Supreme Court of Pakistan, requiring aggrieved parties to exhaust available administrative remedies before seeking judicial review.

3. Jurisdiction and Authority of Revenue Officers: As defined under the Act of 1967, detailing the scope and limitations of the powers of Revenue Officers, including the Assistant Commissioner.

Application: The analysis of the court centers around the petitioners' failure to follow the prescribed legal procedures and the jurisdictional overreach of the Assistant Commissioner. The court observed that the Assistant Commissioner canceled the petitioners' revenue entries based on a previous judgment and decree, which did not explicitly order such cancellations. This action was deemed as potentially beyond the Assistant Commissioner's lawful authority.

A significant aspect of the court's analysis was the principle of exhaustion of remedies. The court emphasized that the petitioners should have utilized the appeals process laid down in the Sindh Land Revenue Act, 1967, before seeking constitutional intervention. This process involves a hierarchical system where aggrieved parties can appeal to higher revenue authorities, ultimately reaching the Board of Revenue on points of law. By bypassing these available remedies, the petitioners prematurely sought relief from the High Court.

The court also highlighted that the constitutional jurisdiction of the High Court is discretionary and generally should not be invoked when there are adequate, alternative remedies available. This principle aims to prevent the overburdening of the High Courts with cases that can be resolved through the established administrative channels. The court referenced several precedents from the Supreme Court of Pakistan to reinforce this point, highlighting that litigants must exhaust all statutory remedies before approaching the High Court.

Conclusion: The court concluded that the petitions were not maintainable because the petitioners did not exhaust the available remedies under the Act of 1967 before seeking constitutional relief. The appropriate course of action would have been to appeal the Assistant Commissioner's order within the established revenue hierarchy. Therefore, the petitions were dismissed on the grounds of prematurity and failure to follow the prescribed legal remedies.

12. M/s. Getz Pharma International FZ LLC vs The Registrar of Trade Marks another
Miscellaneous Application No. 63 of 2022 (S.B)

Present: *Mr. Justice Zulifqar Ahmad Khan*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE3MjgxY2Ztcy1kYzgz>

Facts: The facts leading to the present appeal as per case of the Appellant are that the Appellant claims to have been using trademark “GETZ Pharma” since June 25, 2005 under registration No.210855 in class 05. The record demonstrates that the appellant has been using its branding since 2008 and so as to promote its goods under the trademark “GETZ” it has spent substantial amount of money, time and

labour and as a result whereof the products and services of the appellant earned goodwill and reputation hence its products under the tradename “GETZ” is allegedly in great demand. The anxiety of the appellant is that in the month of December 01, 2016 the respondent No.2’s impugned mark “GLITZ” was advertised in the trademarks journal under application No.373851 in class 5 dated 11th November, 2014 for the purpose of inviting third party opposition to the registration of the said impugned mark, thereafter, appellant filed Opposition before the respondent No.1 to the registration of impugned mark which was numbered as Opposition No.2245/2017 on the ground, inter alia, that the Trade Mark applied for is identical to the Appellant’s trade mark “GETZ” and is likely to deceive or cause confusion amongst the consumers. The learned respondent No.1 having observed the facts and circumstances through impugned decision disallowed the opposition filed by the appellant and application for registration of the impugned mark was allowed, hence this appeal.

Issue: Whether the trademark “GLITZ” used by Respondent No.2 is deceptively similar to the trademark “GETZ” registered and used by the Appellant, M/s Getz Pharma International FZ LLC, and whether its registration should be disallowed to prevent consumer confusion and deception?

Rule: The rule established in this judgment is that a trademark should not be registered if it is likely to cause confusion or deception among consumers due to its similarity to an existing trademark. Specifically, the court emphasized the following key points:

- 1. Likelihood of Confusion:** A trademark that closely resembles an existing registered trademark can mislead consumers, and thus, its registration should be disallowed.
- 2. Protection of Established Trademarks:** Well-known trademarks, like “GETZ”, which have been in use for a significant period, are entitled to protection against similar marks that could dilute their distinctiveness.
- 3. Misapplication of Legal Provisions:** The Registrar's decision to allow the registration of “GLITZ” was found to be incorrect, as it did not adequately consider the potential for consumer confusion as mandated by section 17 of the Trade Marks Ordinance, 2001.
- 4. Consumer Perspective:** The judgment shows the importance of considering the average consumer's perception, as they may be misled by the similarity of the trademarks.

Application: The analysis of the court in this judgment is summarized as follows:

- 1. Examination of Similarity:** The court conducted a thorough examination of the trademarks “GETZ” and “GLITZ”, comparing their phonetic and visual characteristics. It found sufficient similarities that could lead to confusion among consumers, which is a critical factor in trademark disputes.
- 2. Consumer Confusion:** The court emphasized the likelihood of consumer

confusion as a central issue. It recognized that the average consumer, particularly in the context of the products involved, could easily be misled by the similarity of the two marks. This analysis aligns with established legal principles that prioritize consumer protection in trademark law.

3. Distinctiveness and Reputation: The court acknowledged that “GETZ” is a well-known trademark in Pakistan, having been in use for a significant period. This established reputation adds weight to the appellant's claim and highlights the importance of protecting distinctive trademarks from similar marks that could dilute their identity.

4. Misapplication of Legal Standards: The court found that the Registrar of Trade Marks had misapplied the relevant legal standards, particularly Section 17 of the Trade Marks Ordinance, 2001. The Registrar's decision did not adequately consider the potential for confusion, leading to an erroneous conclusion that allowed the registration of “GLITZ”.

Conclusion: The court concluded that the registration of the trademark “GLITZ” would likely cause confusion among consumers and therefore allowed the appeal. The decision of the Registrar was set aside, and the respondent was given six months to change their trademark to one that is not deceptively similar to “GETZ”.

13. Ch. Ghulam Muhuyuddin vs Sheikh Abid & Co (Pvt) Ltd

Constitutional Petition No. 485 of 2010 (S.B)

Present: *Mr. Justice Muhammad Faisal Kamal Alam*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEyNzc3Y2Ztcy1kYzgz>

Facts: All these Petitions have challenged the fixation of fair rent by the learned Rent Controller and the Appellate Court, on the Application filed by the Respondent Company under Section 8 of the Sindh Rented Premises Ordinance, 1979 (SRPO), except C.P. No. S-168 of 2014. These Petitions are related to different Offices / Units, situated in a multistory Building known as ‘ABID CHAMBER’, constructed on Plot No.SR, 6/9, Shahahe-Liaqaut, New Challi, Karachi.

The Constitution Petition No. S-168 of 2014 is filed against the concurrent findings, directing the eviction of Petitioner, on the ground of personal bona fide need. Since the demised premises of this Constitutional Petition, that is, Office No.1/2, First Floor, is also located in the Subject Building, therefore, this Petition is also decided with the title Petitions.

Issue: Whether the fixation of fair rent by the Rent Controller and the Appellate Court, as challenged by the petitioners, was appropriate and lawful under the Sindh Rented Premises Ordinance, 1979?

Rule: The rule applicable in this case is section 8 of the Sindh Rented Premises Ordinance, 1979 (SRPO), which allows the landlord to apply for the fixation of fair rent. The

determination of fair rent must consider various factors, including the rent of similar premises in the vicinity, the cost of repairs, and the amenities provided. The courts must also follow procedural fairness in adjudicating such applications.

Application: As the case unraveled, it became clear that the tenants had failed to effectively contest the landlord's claims. Initially, they did not present evidence or cross-examine the landlord's representative, Dr. Naheed Abid, leaving her testimony unchallenged. The court heavily relied on previous Supreme Court decisions that supported rent enhancements and affirmed Dr. Abid's authority to file rent applications, establishing a consistent legal precedent.

Dr. Abid presented substantial evidence of building repairs and maintenance, justifying the rent increase by highlighting the enhanced amenities provided. The court found this evidence compelling. Comparisons with other tenants who accepted higher rents further strengthened the landlord's case, demonstrating that the new rates were reasonable.

The tenants questioned Dr. Abid's authorization to file applications, but the court dismissed these concerns, referencing a Supreme Court decision and a board resolution confirming her legal standing. Claims of the building's dilapidated condition were not substantiated by the tenants, while the landlord demonstrated significant investments in improvements.

Conclusion: The court dismissed all the constitutional petitions challenging the fixation of fair rent, finding no illegality or procedural unfairness in the decisions of the Rent Controller and the Appellate Court. The petitioners were ordered to pay the enhanced rents as fixed by the lower courts, along with any arrears. The court also dismissed the restoration application in C.P. No. S-168 of 2014 due to unreasonable delay and lack of merit.

14. Mrs. Raisa Bano and others vs Tooba Shoaib and others

Second Appeal No. 192 of 2020 (S.B)

Present: *Mr. Justice Muhammad Faisal Kamal Alam*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEzNDczY2Ztcy1kYzgz>

Facts: The appellants sought the distribution of the estate of the deceased, Mirza Anwer Baig, who was employed by Telenor Pakistan. The key issues in dispute were the ownership of an apartment (Apartment No.101, Koh-e-Noor Centre, Marshal Street, Jubilee Market, Karachi) and the distribution of group insurance benefits.

The appellants claimed that the apartment was the property of their late father, and thus, should be distributed among the legal heirs as part of his estate. In contrast, the respondents, who are the widow and minor daughters of the deceased, contended that the deceased had purchased the apartment during his lifetime, paying the appellants their share, and therefore, the apartment belonged to him and should be

distributed as part of his estate.

Additionally, there was a dispute regarding the group insurance benefits. The appellants argued that the group insurance amount should be considered part of the deceased's estate (Tarka) and distributed among all legal heirs. The respondents, however, asserted that the group insurance benefits were not part of the estate and should be distributed according to the service rules and regulations of Telenor Pakistan, as per the First Appellate Court's ruling.

- Issues:**
1. Whether the subject apartment (Apartment No.101, Koh-e-Noor Centre, Marshal Street, Jubilee Market, Karachi) belonged to the deceased Mirza Anwer Baig at the time of his death, or whether it was part of his father's estate to be distributed among all legal heirs?
 2. Whether the group insurance benefits received upon the death of Mirza Anwer Baig should be considered part of his estate ("Tarka") and distributed among all legal heirs, or whether these benefits should be distributed according to the service rules and regulations of Telenor Pakistan?

Rule: Following rules appeared relevant in the judgment:

1. Ownership and Distribution of the Subject Apartment

When there is an admission in pleadings supported by evidence indicating that a property was acquired by the deceased through an oral family settlement, such property shall be considered part of the deceased's estate. The property should be distributed among the legal heirs of the deceased, not as part of the estate of any prior owner.

2. Distribution of Group Insurance Benefits

Group insurance benefits payable upon the death of an employee are not to be considered part of the deceased's estate ("Tarka"). Instead, these benefits should be distributed according to the rules and regulations set forth by the employer. This rule follows the judicial consensus and precedents, ensuring that group insurance benefits are allocated based on the specific service rules rather than the general principles of estate distribution.

Application: In applying these rules, the court examined the evidence presented by both parties. The appellants argued that the subject apartment was part of their father's estate and should be distributed among all legal heirs. They referred to the agreement of sub-lease showing it was originally sub-leased in the name of the deceased's father. However, the respondents argued that the deceased had purchased the apartment from his father during his lifetime and had compensated the appellants for their shares. The court found that the appellants had admitted in their pleadings that the deceased owned the apartment by virtue of an oral family settlement. This admission was further supported by evidence, leading the court to conclude that the apartment was indeed owned by the deceased and not part of his father's estate. Regarding the group insurance benefits, the appellants relied on the judgment in

Mst. Ameeran Khatoon to argue that these benefits should be part of the deceased's estate and distributed among all legal heirs. However, the respondents contended, based on the precedent in Wafaqi Hakumat Pakistan, that such benefits are not heritable and should be distributed according to the service rules of Telenor Pakistan. The court reviewed multiple judgments and found a judicial consensus that group insurance benefits payable after the death of an employee are not part of the deceased's estate and should be distributed according to the service rules.

Conclusion: The court upheld the appellate court's findings. It concluded that the subject apartment should be distributed as part of the deceased Mirza Anwer Baig's estate, not as part of his father's estate. Additionally, the court determined that the group insurance benefits are not part of the deceased's estate and should be distributed according to the service rules and regulations of Telenor Pakistan. The appeal was disposed of in these terms, maintaining the appellate court's judgment with no order as to costs.

15. Ghulam Mustafa and another vs The State and another

Criminal Miscellaneous Application No. 183 of 2024 (S.B)

Present: *Mr. Justice Arshad Hussain Khan*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEyNzY5Y2Ztcy1kYzgz>

Facts: Through this Cr.Misc. Application, the applicant has called in question the order dated 12.01.2024, passed by trial court, Karachi in Sessions Case No.642/2023, whereby the surety amount of the applicant has been forfeited.

Learned counsel while referring to the impugned order submits that the applicant stood surety and deposited Rs.1,00,000/- for accused Mujeebur Rehman. He further submits that the applicant on 27.07.2023, at the time of hearing filed application for withdrawal of the surety amount, copy whereof was provided to the accused who upon receiving the notice of the application jumped out the bail and subsequently could not be traced out, therefore, trial court forfeited the surety amount. It is contended that the trial court while passing the impugned order has failed to apply its judicious mind and did not consider the fact that the application for withdrawal of surety was moved by the surety in presence of the accused, however, the trial court without observing the provisions of Section 502 Cr. P.C. given notice to the accused who subsequently did not appear before the court and jumped out the bail and resultantly the surety was forfeited. It is further contended that once the surety submits his application for withdrawal of surety, it was the duty of the court to take the accused in the custody as per the requirement of subsection 3 of section 502 Cr.P.C. It is also contended that the notice of the application was not warranted under the law. Learned counsel submits that the applicant / surety is a poor person and he has categorically mentioned in the application that he being an ailing person needs the amount deposited as surety in the case for his medical treatment and further the accused is not willing to proceed with the case as till that date he has not

engaged any counsel.

Issue: Whether the order passed by the trial court regarding forfeiture of surety amount was legal and justified under the relevant provisions of Section 502 of the Criminal Procedure Code (Cr.P.C.)?

Rule: Following are the guiding rules in the order:

1. Section 502 Cr.P.C

Section 502 Cr.P.C. mandates that upon a surety's application for discharge, the Magistrate must issue an arrest warrant for the accused, take them into custody upon appearance or surrender, and call for new sureties. Failure to comply with these steps absolves the surety of responsibility if the accused absconds.

2. Nawazo v. The State (2004 SCMR 563)

In this case the Supreme Court emphasized the court's duty to take the accused into custody immediately upon a surety's discharge application to prevent escape. The responsibility for ensuring the accused's appearance lies with the court, not the surety, after the application is submitted.

Application: Ghulam Mustafa had stood as a surety for an accused, depositing Rs.1,00,000/-. Later, he filed an application to withdraw his surety, as he needed the money for medical treatment. According to the procedures outlined in Section 502 of the Criminal Procedure Code (Cr.P.C.), upon receiving such an application, the court should have immediately taken steps to ensure the accused appeared before it, either by issuing an arrest warrant or taking the accused into custody. This step is crucial to prevent the accused from escaping.

However, the trial court in this instance failed to follow these legal procedures. Instead of taking the accused into custody upon Mustafa's application for discharge, the court merely issued a notice to the accused. This delay allowed the accused to abscond. Mustafa argued that the court's failure to act in accordance with Section 502 (3) Cr.P.C. and the precedent set by the Supreme Court in *Nawazo v. the State (2004 SCMR 563)* relieved him of liability for the accused's escape. In *Nawazo v. the State*, the Supreme Court had clarified that the court must act promptly to prevent the accused from taking undue advantage and escaping, making it clear that the responsibility lies with the court, not the surety.

Conclusion: The court found that the trial court did not comply with Section 502(3) Cr.P.C. and failed to take the accused into custody upon receiving the surety's withdrawal application. Consequently, the accused absconded, which was not the surety's responsibility. The court concluded that the impugned order was illegal and set it aside, directing the return of the entire surety amount to the applicant upon proper verification and identification.

16. Evacuee Trust Property Larkana/Sukkur vs Mohib Ahmed Khan and others
Constitutional Petition No. D-1227 of 2009 (D.B)

Present: *Mr. Justice Muhammad Saleem Jessar*
Mr. Justice Khadim Hussain Soomro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjA4ODQxY2Ztcy1kYzgz>

Facts: Brief facts, as disclosed by the petitioner are that as per Section 2 (d) of the Evacuee Trust Properties (Management & Disposal) Act XIII of 1975 (hereafter referred to as “the Act”), City Survey No: A / 358 measuring (90.6) Sq. Yards, situated at Jilles Bazar Larkana is Tikano (Temple) attached to religious institution which is under the management and control of Evacuee Trust Property Board and forms Trust Pool constituted under the Act ETP (M&D) Act XIII of 1975. It was further stated that the above-said survey number is also entered in Form No.1 of Survey Register of Evacuee Trust Property Board. The said survey number was transferred by Settlement Department through auction proceedings in the name of Mohib Ahmed Khan son of Habib Ahmed Khan (Respondent No.1) and PTD No: 4733 dated: 20.05.1966 was issued in his favour. Thereafter, the City Survey record was changed in favour of Mohib Ahmed Khan S/o Habib Ahmed Khan i.e. Respondent No.1 herein on 15.03.1973. Subsequently, Respondent No.1 sold out the said Survey Number on 12.10.1974 to Respondent No.2 namely, Mohammad Khan S/o Ghulam Hyder and the City Survey record was accordingly changed in his favour. Thereafter, respondent No.2 also sold out said survey number on 29.03.1976 to Respondent No.3, Muhammad Yousaf S/o Muhammad Bux Mughal, and the city survey record was then changed in his favour. Thereafter, respondent No4 namely, Rustam Ali Mughal S/o Muhammad Yousaf Mughal, purchased said C.S No. A/358 from Muhammad Yousaf and the City Survey record was accordingly mutated in his favour on 17.10.1978 and, according to the petitioner, presently respondent No.4 is in possession of the disputed property.

Issues: 01. Whether the property in question was a Tikano (Temple) attached to a religious institution and falls within the Trust Pool constituted under the Evacuee Trust Properties (Management & Disposal) Act XIII of 1975?

02. Whether the Settlement Authorities validly issued the Permanent Transfer Deed (PTD) dated 19.05.1966 in favor of respondent No.1, Mohib Ahmed Khan, against verified claims through a public auction under Section 10 of the Act, 1975?

Rule: The rules found relevant in this judgment are as under;

1. **Section 2(d)** of the Evacuee Trust Properties (Management & Disposal) Act XIII of 1975 defines properties that fall under the Trust Pool.
2. **Section 10** of the Act 1975 provides for the validation of transfers of immovable evacuee trust properties if situated in an urban area and utilized bona fide under any Act for transfer against the satisfaction of verified claims with PTDs issued prior to June 1968.

Application: In this order, the court analyzed the case involving the Evacuee Trust Property Board (ETPB) and several respondents over a disputed property, City Survey No: A

/ 358 in Larkana. Once upon a time, the ETPB challenged the ownership of a property, claiming it was a Tikano (Temple) and part of the Evacuee Trust Property Pool, which should not have been transferred. The property had changed hands multiple times since its initial transfer.

The court delved into the property's history, discovering that in 1947, the original owner, Dhoolumal, had successfully petitioned to change the property's classification from Tikano to personal property. This indicated that the property was not of religious or charitable nature, and thus, not excluded from the compensation pool. The court reviewed the issuance of the Permanent Transfer Deed (PTD) to Mohib Ahmed Khan in 1966. According to Section 10 of the Evacuee Trust Properties Act of 1975, transfers of such properties, if done before June 1968 and against verified claims, were deemed valid. The court found that this transfer met all statutory conditions, including being conducted against verified claims.

The ETPB argued that the transfer was illegal as it was acquired through a public auction rather than verified claims. However, the court noted that the process complied with the legal requirements given in the Act, and the PTD issued before the cut-off date validated the transfer. Over the years, the property had been sold to other individuals. The court recognized these respondents as bonafide purchasers who had legally acquired the property through proper channels, ensuring their ownership rights were protected.

Conclusion: The High Court of Sindh, Circuit Court Larkana, dismissed the petition, upholding the Revising Authority's order. The Court concluded that:

- 1. The property was Evacuee Trust Property but not of a religious or charitable nature, thus it did not need to be excluded from the compensation pool.**
- 2. The Permanent Transfer Deed issued to respondent No.1 before June 1968 was valid under Section 10 of the Act 1975, and the subsequent transfers to respondents No.2 to 4 were also valid.**

17. Asadullah and another vs The State

Criminal Appeal No. S-152 of 2023 (S.B)
 Criminal Appeal No. S-155 of 2023
 Criminal Appeal No. S-156 of 2023
 Criminal Appeal No. S-154 of 2023

Present: *Mr. Justice Amjad Ali Sahito*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjExMzE2Y2Ztcy1kYzgz>

Facts: Briefly the facts of the case lodged on 01.08.2019 by the complainant namely Mehboob Ali at PS Shahpur alleging therein that his younger brother namely Asif Ali besides Zamindari was carrying the business of onion seed and used to visit Nasarpur and Hala for such business; and used to take the onion seed from merchant namely Ali Muhammad @ Alu Barejo at Nasarpur. As per complainant, on 29.07.2019 at 09.00 a.m. while his relative Ali Asghar and brother Asif Ali were available at their house, Asif Ali left the house by saying that he would go along

with his friends from Sakrand towards Nasarpur to take the onion seed from Ali Muhammad. He proceeded to Sakrand towards his friends. At the evening time, complainant tried to contact with his brother Asif Ali on his cell numbers viz. 0300-0355984 & 0300-3766802, but his cell phone was found switched off. Subsequently the complainant made contact with Ali Muhammad @ Alu Barejo, who on query disclosed that at about 12:00 noon Asif Ali contacted him on mobile phone and told that he along with his friends was going to Jam Datar to see the land of Brohi community and then he would come to him. Said Ali Muhammad further informed the complainant that after some time he repeatedly dialed the cell number of Asif Ali but could not make any contact. On such disclosure, the complainant made search and also informed at PS Bachalpur about the missing report of his brother. One day before lodging of the FIR, complainant came to know through social media about the recovery of an unidentified dead body by police of PS Shahpur. Accordingly, complainant approached PS Shahpur where saw the photographs of dead body of an unknown person who was identified as his brother namely Asif Ali. The complainant came to know that after postmortem the police handed over the dead body to Edhi Centre Khursheed Town Hyderabad who buried the same. Hence, instant case was lodged against unknown culprits.

In terms of impugned judgment dated 23.08.2023, passed by the learned trial Court/Additional Sessions Judge in S.C. No.23/2020, Crime No.75/2019 for the offences under sections 302, 201, 34 PPC registered at PS Shahpur, the appellants were convicted under section 302 (b) PPC read with section 34 PPC as Ta'zir for committing murder of deceased Asif Ali and sentenced them to suffer Imprisonment for life and to pay compensation of Rs.200,000/- each as compensation under section 544-A Cr.P.C. to the legal heirs of deceased; in default whereof, to suffer S.I. for six months more. They were also convicted for the offence u/s 201 PPC read with section 34 PPC and sentenced them to suffer R.I. for seven years and to pay fine of Rs.50,000/- each; in default whereof, to suffer S.I. for two months more. However, both the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C was extended to the appellants.

Issues: 01. What is the legal significance and admissibility of supplementary statements and extra-judicial confessions, particularly when recorded using modern devices, in establishing the guilt of the accused beyond a reasonable doubt?

02. Whether the evidence provided by the prosecution is sufficient and credible to legally justify the convictions and sentences of all the appellants under Sections 302 (b), 201, and 34 of the Pakistan Penal Code?

Rule: The relevant legal rules follow as:

01. Section 302 PPC pertains to punishment for murder.

02. Section 201 PPC relates to the punishment for causing disappearance/concealment of evidence.

03. Article 43 of the Qanun-e-Shahadat Order, 1984 deals with the admissibility of confessions made by co-accused as evidence against others.

04. Article 164 of the Qanun-e-Shahadat Order, 1984 allows for the production of evidence obtained through modern techniques.

Application: Application and analysis of the court is summarized as under;

1. Evaluation of Evidence: The court meticulously examined the evidence presented by the prosecution, which included eyewitness testimonies, video statements of the accused, and medical reports. The court found that the ocular evidence provided by eyewitnesses was credible and corroborated by medical evidence indicating that the death of the deceased, Asif Ali, was unnatural.

2. Credibility of Witnesses: The court noted that the prosecution witnesses had consistently implicated the appellants in the crime. Despite minor discrepancies in their testimonies, the court determined that these did not undermine the overall integrity of the prosecution's case. The court emphasized that the prosecution must prove its case beyond a reasonable doubt, and it found that the evidence met this standard for Saleemullah.

3. Role of the Accused: The court differentiated between the roles of the appellants. Saleemullah was found to have directly participated in the murder, while Ashique Ali was deemed to have had no prior knowledge of the murder plan. The court concluded that Ashique Ali's actions constituted concealment of evidence rather than direct involvement in the murder.

The judgment addresses the admissibility of extra-judicial confessions recorded through modern devices, highlighting the following key points:

1. Legal Basis: Article 164 of the Qanun-e-Shahadat Order, 1984 allows for the production of evidence obtained through modern devices, indicating that such evidence can be considered by the court.

2. Admissibility: The court recognizes that video recordings and other forms of evidence obtained through modern technology can be admissible in court, provided they meet legal standards.

3. Requirement for Corroboration: The judgment emphasizes that extra-judicial confessions must be corroborated by other evidence to establish their credibility and reliability. This ensures that such confessions are not solely relied upon without supporting evidence.

4. Discretion of the Court: The court has the discretion to allow and consider evidence from modern devices, reflecting a modern approach to evidence in legal proceedings.

Conclusion: The conclusion reached by the court is summarized as under;

- The court upheld the conviction of Saleemullah for the murder of Asif Ali. His appeal (Criminal Appeal No.S-156 of 2023) was dismissed, maintaining the life imprisonment sentence and compensation ordered by the trial court.

- The court set aside Ashique Ali's conviction under section 302(b) PPC for murder, acknowledging that he was initially unaware of the murder plan and left before the crime was committed. However, his conviction for concealing evidence under section 201 PPC was upheld. His appeal (Criminal Appeal No.S-155 of 2023) was disposed of in these terms, and his Criminal Jail Appeal No.S-154 of 2023 was also disposed of accordingly.
- The court acquitted Asadullah and Sajjad Ali due to reasonable doubt and inconsistencies in the prosecution's evidence against them. Their conviction and sentence were set aside, and they were ordered to be released immediately if not required in any other custody case. Their appeal (Criminal Appeal No.S-152 of 2023) was allowed.

18. Muhammad Farhan Wazir and others vs Federation of Pakistan and others

Suit No. 2316 of 2021 (S.B)

Present: *Mr. Justice Adnan Iqbal Chaudhry*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEzMjc1Y2Ztcy1kYzgZ>

Facts: The factual bone of contention in this matter revolves around the alleged unlawful conversion and misuse of state land by various defendants. The plaintiffs, acting in the public interest, brought a suit challenging this misuse, specifically accusing several statutory authorities and private individuals of using defense and public lands for commercial purposes contrary to their intended uses. These alleged misuses included:

1. Conversion of defense land at the Pakistan Air Force Museum into commercial land for wedding marquees.
2. Reclamation and misuse of land by the Defense Housing Authority (DHA) for non-port activities.
3. Construction of commercial enterprises, such as superstores and wedding marquees, on public lands, including those intended for defense and aviation purposes.
4. Misuse of land reclaimed from the sea, affecting protected mangroves, marine life, and the ecosystem.

The plaintiffs argued that these actions constituted public nuisances, violated various legal provisions, and required judicial intervention to restore the land to its intended public or defense purposes.

The defendants, on the other hand, raised several objections to the maintainability of the suit, asserting that the suit was barred by procedural and substantive laws, lacked cause of action, and was bad for multifariousness. The primary legal contention was that the plaintiffs had improperly joined multiple distinct causes of action against various defendants who did not have a joint interest, thus making the suit

procedurally flawed and subject to rejection under Order VII Rule 11 of the CPC.

Issue: Whether the plaint should be rejected under Order VII Rule 11 of the Code of Civil Procedure (CPC) due to multifariousness, i.e., improper joinder of several distinct causes of action and defendants?

Rule:

- 1. Order VII Rule 11 CPC:** Allows for the rejection of a plaint on certain grounds, including when it appears from the statement in the plaint that the suit is barred by any law.
- 2. Order II Rule 3 CPC:** Permits the joinder of several causes of action in a suit, provided the plaintiffs are jointly interested in the causes of action against the same defendant(s).
- 3. Order II Rule 6 CPC:** Allows the court to order separate trials if the joinder of causes of action cannot be conveniently tried together.
- 4. Section 42 of the Specific Relief Act and Limitation Act:** Additional grounds cited for the rejection of the plaint.
- 5. Order I Rule 8 CPC:** Pertains to suits in public interest.

Application: The plaintiffs argued that various lands were being misused for commercial purposes, contrary to their intended uses. They claimed this misuse constituted public nuisance and required judicial intervention. The defendants countered by raising multiple objections, including that the suit was barred by section 42 of the Specific Relief Act, the Limitation Act, and section 91 CPC, and that the plaintiffs lacked cause of action and *locus standi*. However, the primary contention was that the suit was bad for multifariousness, meaning it improperly joined several distinct causes of action against different defendants.

The court began by examining the procedural rules under the Code of Civil Procedure (CPC), particularly focusing on Order VII Rule 11, which allows for the rejection of a plaint if it is barred by any law. The court noted that while multifariousness is not explicitly mentioned in Order VII Rule 11, it can bar a suit if it violates procedural norms.

The analysis then turned to Order II Rule 3 CPC, which permits the joinder of several causes of action against the same defendant or defendants jointly, but with specific limitations. The court emphasized that this rule aims to avoid unnecessary multiplicity of suits but is not intended to complicate the trial or vex defendants who have no connection with particular causes of action. The court found that the plaintiffs had exceeded these limitations by joining multiple causes of action against different defendants who did not have a joint interest in all the causes of action.

The court further explored Order II Rule 6 CPC, which allows for separate trials when causes of action cannot be conveniently tried together. However, Justice Chaudhry clarified that this rule is applicable only when the joinder is within the permissible limits of Order II Rule 3 CPC. Since the joinder in this case exceeded these limits, Order II Rule 6 CPC could not remedy the defect. In support of its reasoning, the court referred to several precedents, including the Supreme Court case of *Mumtaz Khan v. Nawab Khan*, which recognized that a suit bad for

multifariousness is barred by law under Order VII Rule 11 CPC. The court also cited the Division Bench of the Calcutta High Court in Chandi Prasad Sikaria v. Premlata Nahata, which underscored that multifariousness is a legitimate ground for rejecting a plaint.

Conclusion: The court concluded that the joinder of causes of action goes beyond the joinder permitted by Order II Rule 3 CPC, the plaint is rejected under Order VII Rule 11 (d) CPC. Consequently, I do not consider the other grounds urged for rejection of plaint. By virtue of Order VII Rule 13 CPC the Plaintiffs are free to explore separate suits.

19. Shahid Iqbal Dar vs Public at Large

J.M No. 05 of 2022 (S.B)

Present: *Mr. Justice Agha Faisal*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEyNjM3Y2Ztcy1kYzgz>

Facts: The National Bank of Pakistan (“NBP”) Staff Welfare Foundation Trust (“Trust”) is stated to have become dormant since 2018; on account of a debilitating vacuum in its board of trustees. Two beneficiaries of the Trust have preferred these proceedings, per Section 31 of the Specific Relief Act, 1877 (“SR Act”) read with section 92 of the Sindh Trust Act, 2020 (“Trust Act”), seeking rectification of two sub-clauses of the trust deed dated 24.09.1995 (“Deed”) dealing with appointment of trustees. It is their case that unless the Deed is rectified, in the manner sought, the requisite number of trustees could not be appointed / elected and the Trust would remain dormant; to the manifest irreparable detriment of the beneficiaries. The Trust was settled in 1995 and clause 13 thereof regulates the number/appointment of trustees etc. Sub clause (a) therein states that there shall not be less than seven trustees of the Trust at any given time. It is the petitioners’ case that the number of trustees has fallen much below the said threshold and unless clauses 13 (e) and clause 13 (f) are amended, in the manner sought, the Trust will remain non-functional and dormant. The present form, the proposed amendments and the need thereof, as pleaded, is reproduced herein below in tabular form:

Clause	Previous Provision	Proposed Amendment	Need for Amendment
13 (e)	Secretary General and President of Trade Union Federation will be the permanent trustees whereas the remaining 3 (three) members from the NBP Collective Bargaining Agents	All Trustees hereunder shall be appointed on a yearly basis. Three (3) Trustees will be selected yearly by the Executive Committee of the Bank from amongst 3 senior NBP executives, in its discretion which decision	This provision clarifies that the appointment of each Trustee will be for one year only. The requirement to appoint the Secretary General and President of Trade Union Federation has been removed as no "Trade

	will be rotated and selected from different Provinces each year. Board of Trustees will decide their nominations in a meeting head by the Chairman and minimum 5 (Five) Trustees (2 (Two) Executives and 3 (Three) Union representatives.	in this regard will be final and binding. In addition, 3 (three) members of the Board of Trustees will be selected from the NBP Collective Bargaining Agents and will be rotated and selected from different provinces each year. The Executive Committee of the Bank will decide their nominations yearly and the Committee's decision in this regard will be final and binding. In the event 3 Provincial CBAs are not certified within the Bank in any given year, the vacancy/ vacancies so caused in that year may be filled by the Executive Committee of the Bank in its discretion which decision in this regard will be final and binding.	Union Federation" exists in NBP as defined in the IRA 2012. The provision for 3 CBA representatives on the Board of Trustees remains the same. Drafting of the original provision is flawed as the Union representative Trustees from the previous year are to decide the nominations for the upcoming year. However, there are no validly appointed Union representative Trustees at the moment and no mechanism exists to approve future CBA nominees to the Board.
13 (f)	President/Secretary General of NBP Officers Welfare Federation will be one of the Trustees and will be on rotated basis and will be selected for one year alternatively by the Board of Trustees	Two (2) Trustees shall be selected each year from amongst the Bank employees in the officer cadre by the Executive Committee, which decision shall be final and binding in this regard	No body named "NBP Officers Welfare Federation" exists within NBP

Issue: Whether the court should allow the rectification of clauses 13(e) and 13(f) of the trust deed of the National Bank of Pakistan (NBP) Staff Welfare Foundation Trust, which has become dormant due to an insufficient number of trustees, as requested by the beneficiaries of the trust?

Rule: The applicable legal provisions are:

1. **Section 31** of the Specific Relief Act, 1877 (SR Act), which provides for the rectification of instruments in cases of fraud or mutual mistake.
2. **Section 92** of the Sindh Trust Act, 2020 (Trust Act), which governs the administration and rectification of trust deeds.

Application: 1. **Petitioners side Argument:** The petitioners, who are beneficiaries of the Trust,

argued that the trust deed must be rectified to appoint the necessary number of trustees and prevent the trust from remaining dormant. They emphasized that the current provisions of the deed prevent the appointment of the requisite number of trustees, leading to a detrimental impact on the beneficiaries.

2. Defendants side Argument: The Assistant Attorney General and Assistant Advocate General Sindh concurred with the petitioners, supporting the need for rectification to align the trust deed with the original intention of benefiting the trustees. They also emphasized the importance of addressing the mutual mistake present in the original drafting of the trust deed.

3. Court's Analysis:

i) Existence of a Mutual Mistake: The court found that there was a mutual mistake in the original drafting of the trust deed, as evidenced by the non-existence of entities mentioned (e.g., NBP Officers Welfare Federation) and the impractical requirements for trustee appointments.

ii) Intention of the Trust: The trust deed's primary intention was to benefit the employees of NBP, and the current provisions thwarted this purpose by rendering the trust non-functional.

iii) Legal Precedents: The court relied on precedents that allow for the rectification of trust deeds under mutual mistake, provided it aligns with the original intent of the parties involved.

Conclusion: The court concluded that the rectification of clauses 13 (e) and 13 (f) was necessary to ensure the functionality of the trust and to fulfill its intended purpose of benefiting the trustees. The rectified provisions are:

1. Clause 13 (e): All trustees are to be appointed on a yearly basis. Three trustees will be selected yearly by the Executive Committee of the Bank from amongst senior NBP executives, with additional trustees selected from the NBP Collective Bargaining Agents, rotating from different provinces each year.

2. Clause 13 (f): Two trustees will be selected each year from among the Bank employees in the officer cadre by the Executive Committee.

The court allowed the application for rectification in these terms, ensuring the trust could effectively operate and benefit its intended beneficiaries.

20. Sher Khan vs The Federation of Pakistan and others

Civil Revision Application No. S-05 of 2022 (S.B)

Present: *Mr. Justice Jawad Akbar Sarwana*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEwNjQ3Y2Ztcy1kYzgz>

Facts: Sher Khan s/o Liaquat Ali Jakhrani is aggrieved by the Judgment dated 21.04.2021

passed by the learned trial court/ District judge setting aside the Judgment and Decree dated 30.01.2021 passed in favor of SK Jakhrani by the IInd Civil Judge. He filed this Civil Revision No.5/2022 on 12.01.2022 after a lapse of more than eight (8) months from the date of the appellate Court's Judgment along with an application under Section 5 of the Limitation Act, 1908 (CMA No.76/2022) supported by his affidavit seeking condonation of delay in the filing of the revision.

The brief facts of the matter are that SK Jakhrani had filed Suit No.87/2020 before the IInd Civil Judge, Kashmore essentially seeking an order from the Court to direct NADRA to correct his date of birth from 01.01.1988 to read as 03.03.1994. During the trial, it emerged that five years before the filing of Suit No.87/2020, SK Jakhrani had filed Suit No.42/2015 before Senior Civil Judge Kashmore. After recording evidence and hearing arguments, the trial court passed judgment and decree in Suit No.87/2020 in favour of SK Jakhrani, directing NADRA to make the necessary corrections in NADRA's records. Aggrieved by the Judgment and Decree, NADRA filed an Appeal arguing that SK Jakhrani's two suits were based on the same cause of action, and after the first suit was dismissed on merits, the second suit was barred under the principles of res judicata. The learned District Court set aside the trial court's Judgment and decree, and SK Jakhrani has now filed this time-barred revision.

Issue: Whether the principles of res judicata apply to bar the second suit filed by Sher Khan s/o Liaquat Ali Jakhrani, seeking correction of his date of birth in NADRA records, and whether this Civil Revision Application is maintainable despite being time-barred?

Rule:

- 1. Res Judicata (Section 11 CPC):** This principle bars the re-litigation of issues that have been previously adjudicated by a competent court.
- 2. Limitation Act, 1908 (Section 5):** This section allows for the condonation of delays if sufficient cause is shown for not preferring the application within the prescribed period.
- 3. West Pakistan Civil Courts Ordinance, 1962:** Establishes the jurisdiction and classes of civil courts in Sindh.
- 4. Suit Valuation Act, Section 11:** Determines the jurisdiction based on the pecuniary value of the suit.

Application: The court compared the two suits filed by SK Jakhrani in 2015 and 2020. Despite minor differences, the core issues, parties, and evidence were essentially the same. The earlier suit was dismissed, and without an appeal, it attained finality. Hence, the second suit is barred by res judicata. SK Jakhrani's second suit, which included the same fundamental issues as the first, was dismissed for being barred by res judicata. The court found that the additional evidence, such as the Ali Bux Jakhrani Primary School Leaving Certificate, did not alter the nature of the suits. SK Jakhrani's counsel argued that the parties in the two suits were different, and a new cause of action arose with each application to NADRA. The court rejected this, stating that the differences in parties were not substantial and that the cause of action

was tied to the incorrect date of birth entry, not to each application made to NADRA. The counsel argued that the res judicata principle did not apply because the suits were filed in courts of different pecuniary jurisdictions. The court dismissed this argument, citing that jurisdictional differences based on pecuniary limits do not affect the application of res judicata.

The court noted a legal impediment: if SK Jakhrani's date of birth was indeed 03.03.1994, he would have been underage when applying for his CNIC in 2010, which is legally impossible since NADRA issues CNICs only to those 18 and older. Another unusual aspect was highlighted: both SK Jakhrani and his brother, Mir Khan Jakhrani, pursued similar claims against NADRA in separate suits. The court found it improbable that NADRA made the same error with both brothers, undermining their credibility.

Despite being time-barred by eight months, the court reviewed the revision on merits. The lack of a reasonable explanation for the delay led to the dismissal of the application seeking condonation of delay. The court also dealt with new evidence submitted during the revision, which was not part of the original trial. This evidence was discarded as it was not cross-examined and therefore could not be considered.

Conclusion: The court concluded that no jurisdictional error or irregularity in the concurrent findings of facts or on the point of law has been identified in the impugned judgment and decree of the District Court that could justify this Court's interference under Section 115 CPC which revision being barred by time is also liable to be dismissed. Accordingly, the impugned Judgment dated 21.04.2021 passed by the learned District Judge/MCAS Kashmore at Kandhkot is hereby confirmed, and the Revision along with all pending applications is dismissed with no order as to costs.

21. Muhammad Tasleem vs Kashif Fayaz

First Appeal No. S-06 of 2023 (S.B)

Present: *Mr. Justice Khadim Hussain Soomro*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjExNzk2Y2Ztcy1kYzgz>

Facts: Precisely facts of the case are that the plaintiff/respondent filed a suit under Order XXXVII Rule 2 C.P.C. against the appellant/defendant averred there in that the defendant/appellant received an amount of Rs.70,00,000/- [in words Rupees Seven hundred thousand] (amount in question) for investment in purchasing plots, as the respondent in dire need of the amount which was required to him to arrange the marriage ceremony for his brother, therefore, he demanded the return of his amount from the appellant who for the repayment of the amount in question issued a cheque No.D-83384537 dated 19.12.2020, amounting to rupees 55,00,000/ drawn to Meezan Bank Shikarpur Branch, which was dishonoured on its presentation. The plaintiff/respondent asserted in the plaint that the appellant sought an extension of time for the repayment of the remaining amount of 1700,000/ in the presence of the witnesses. However, the requisite payment was not paid to the respondent;

consequently, he registered an F.I.R. against the defendant/appellant; after usual investigation, the case came up for a trial to the learned 1st Judicial Magistrate, Ratodero who, after that full dressed trial, awarded the conviction and sentenced to him vide judgement dated 21.02.2023. The plaintiff /respondent further stated that the appellant had issued a false cheque to him that was not honoured. Hence, he committed fraud with him, resulting in financial and mental harm to him. Consequently, he claimed that the appellant is liable to pay amount in question, along with a 20% annual markup, calculated from the date of the dishonouring of the cheque.

Issue: Whether the ex-parte judgment and decree dated 20.10.2023, passed by the Additional District Judge, Ratodero, legally sustainable given the procedural irregularities and the denial of the appellant's right to a fair trial?

Rule: The relevant legal provisions include:
Section 96 of the Code of Civil Procedure, 1908 (C.P.C.): Provides for the right to appeal against original decrees.
Order XXXVII Rule 2 C.P.C: Governs summary suits, specifically the procedures and timelines for defendants to seek leave to defend.
Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973: Guarantees the right to a fair trial and due process.
Order V Rule 24 C.P.C: Specifies the procedure for serving notices to defendants confined in prison.
Section 19 of C.P.C: Pertains to affidavits and evidence submission protocols.

Application: The High Court examined whether the trial court followed the correct procedural law for serving notices to the appellant. The essential question was whether the appellant was supplied with a copy of the plaint along with annexures, as required by law. The court reviewed the record, noting that while the trial court issued notices, there was no confirmation that the correct procedure was followed. Specifically, there was no bailiff report confirming service, and it was unclear if the appellant received the plaint. The trial court allowed the appellant's request for time to engage counsel but still proceeded ex-parte without proper notice service. The court highlighted the procedural lapse, noting that the correct procedure under Order V Rule 24 C.P.C., which mandates service to imprisoned defendants through the prison officer, was not followed. The absence of this proper procedure invalidated the ex-parte order. The court observed that the trial court admitted the respondent's affidavit in evidence without a specific order or mutual agreement, as required by Order 19 Rule 1 C.P.C. The appellant was not afforded the opportunity for cross-examination, which is a fundamental right, even in ex-parte proceedings. The court emphasized the importance of procedural law in ensuring fair and just legal proceedings. Procedural compliance is essential to uphold due process, which includes giving parties a fair hearing and opportunity to present their case. Citing the Supreme Court's judgment in *Imtiaz Ahmed vs Ghulam Ali*, the court reiterated that procedural law aims to expedite justice and avoid technicalities that

hinder substantive rights. Non-compliance with procedural rules can lead to injustice and the denial of fundamental rights. The court stressed that procedures should help, not hinder, the administration of justice.

Conclusion: The court found the judgment and decree dated 20.10.2023 passed by the Additional District Judge, Ratodero, legally unsustainable and set them aside. The learned District Judge Larkana is directed to withdraw the suit from the court of Additional District Judge Ratodero and either to keep this suit on his own board or entrust it to any other Additional District Court having jurisdiction for its disposal according to law within three months preferably after receipt of this order. The appellant is directed to appear before District Judge Larkana on 06.02.2023 and file leave to defend, which will be decided on its merits. The appeal stands disposed of with no order as to costs.

22. Shoaib Ahmed Siddiqui vs SBCA and others

Constitutional Petition No. D-5549 of 2022 (D.B)
Constitutional Petition No. D-6026 of 2023

Present: *Mr. Justice Nadeem Akhtar*
Mr. Justice Mohammad Abdur Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjEwNjAzY2Ztcy1kYzgz>

Facts: The petitioner in C.P. No. D-5549 of 2022 challenged the construction on Plot No. B-10 Block-16, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi. The primary claim was that the construction of a Ground + 3 storey building was carried out without obtaining the necessary approval as mandated under Sub-Section (1) of Section 6 of the Sindh Building Control Ordinance, 1979 (SBCO, 1979). The petitioner sought the demolition of the illegal structure, as directed by the court, on the basis of the non-compliance with the building regulations and the absence of an approved plan by the Sindh Building Control Authority (SBCA).

The petitioner in C.P. No. D-6036 of 2023 was the owner of the Said Property. The primary claim was that an application for the approval of a Ground + 1 storey building for a residential bungalow had been submitted to the SBCA on 25 August 2021, and a payment of Rs.69,640/- had been made.

The petitioner contended that the application should be deemed approved under Regulation 3-2.6 of the Karachi Building & Town Planning Regulations, 2002 (KB&TPR, 2002) due to the lapse of the statutory period without a decision by the SBCA. The petitioner sought to prevent the demolition of the structure, arguing that the deviations in the construction (Ground + 3 storey) could be regularized under the relevant regulations, and that the SBCA had incorrectly refused to process the application based on outstanding dues to the Karachi Development Authority (KDA).

Issue: Whether the construction on Plot No. B-10 Block-16, KDA Scheme No.36,

Gulistan-e-Jauhar, Karachi, which was carried out after the submission of a building plan to the Sindh Building Control Authority (SBCA), should be considered as "deemed approved" under Regulation 3-2.6.2 of the Karachi Building & Town Planning Regulations, 2002, due to the lapse of the prescribed time period without an explicit rejection or approval by the SBCA, despite deviations from the submitted plan?

Rule:

1. Sindh Building Control Ordinance, 1979 (SBCO, 1979):

- Section 6 (1): Approval for construction must be obtained before commencing.
- Section 7-A: Illegally constructed buildings are liable for demolition.
- Section 19: Penalties and compounding of offenses related to building regulations.

2. Karachi Building & Town Planning Regulations, 2002 (KB&TPR, 2002):

- Regulation 3-2.6: Plans must be approved within 60 days; otherwise, they are deemed approved if compliant.
- Regulation 3-2.4 and 3-2.5: Guidelines for altering and revising approved plans.
- Regulation 3-2.20: Regularization of works carried out in violation of regulations under specific conditions.

Application: The judgment concerning C.P. No. D-5549 of 2022 and C.P. No. D-6026 of 2023, the court examined the legality of the construction on Plot No. B-10 Block-16, KDA Scheme No.36, Gulistan-e-Jauhar, Karachi, which was undertaken without explicit approval from the Sindh Building Control Authority (SBCA). The core issue revolved around whether the construction could be deemed approved under Regulation 3-2.6.2 of the Karachi Building & Town Planning Regulations, 2002, due to the SBCA's failure to process the application within the stipulated time frame. The court decided core issues as:

1. Deemed Approval under Regulation 3-2.6.2:

The key issue in the case was whether the construction on the said property could be deemed approved due to the SBCA's failure to process the building plan application within the prescribed 60 or 90 days as required under Regulation 3-2.6.2 of the Karachi Building & Town Planning Regulations, 2002 (KB&TPR, 2002).

The court clarified that if an application for approval of a building plan is not explicitly approved or rejected within the stipulated time, it can be deemed as sanctioned, provided it does not violate any provisions of the KB&TPR, 2002, or other relevant regulations such as the Master Plan of the area.

However, this deemed approval is contingent upon the absence of any disputes regarding the title of the property and the compliance of the construction with the relevant regulations.

2. Outstanding Dues to KDA and SBCA's Refusal to Process the Application:

The SBCA argued that the construction could not be deemed approved because there were outstanding dues owed to the Karachi Development Authority (KDA).

The court rejected this argument, stating that the SBCA could not refuse to process the application on this basis.

The court emphasized that the SBCA's role is to ensure the legality of the construction in terms of building regulations, and it cannot withhold approval simply due to financial disputes between the property owner and the KDA. Such financial matters should be resolved separately, without affecting the construction approval process.

3. Deviations from the Approved Plan and Regularization:

The judgment addressed the significant deviations from the approved plan, particularly the construction of a Ground + 3 storey building instead of the initially approved Ground + 1 storey structure.

The court examined the SBCA's authority under Regulation 3-2.20 of the KB&TPR, 2002, to regularize such deviations. The court underscored that while the SBCA has the power to regularize deviations, this power is not absolute and must be exercised within certain limits. Specifically, the regularization should not change the "complexion" or "character" of the originally proposed construction and must not infringe on the rights of third parties.

The court further noted that regularization should be in the broader public interest, ensuring that any increase in building height or changes in the structure do not place undue stress on the civic amenities available to the area's residents.

4. Impact on Public Interest and Civic Amenities:

The court emphasized the need to balance the rights of individual property owners with the collective rights of the community. In cases where regularization is sought, the SBCA must consider whether the additional burden placed on local infrastructure (e.g., water, electricity, sewage) by the deviations would negatively impact the existing residents of the area.

The judgment stressed that regularization should not be granted if it results in a significant increase in demand for civic amenities that the local infrastructure cannot support

Conclusion: The construction on the said property was not compliant with the deemed approval for a Ground + 1 storey building. The SBCA must process the application without regard to outstanding dues but cannot regularize a structure that changes the character or complexion of the approved plan. The existing Ground + 3 storey construction is subject to demolition unless it can be regularized under Regulation 3-2.20 of KB&TPR, 2002, considering it does not prejudice public amenities or third-party rights.

NEUROSEARCHES

Josh A. Roth

Neurotechnology is advancing exponentially, and the laws of data privacy and security cannot keep pace. Soon, governments will exploit this technology in criminal investigations with what this Note calls “neurosearches.” Scholars have argued against the compelled gathering of neurological evidence as a violation of the Fifth Amendment, likening it to testimony and thus barred as self-incrimination. But no court has said so explicitly. This Note operates under the premise that compelled gathering of brain data survives a Fifth Amendment challenge and evaluates these neurosearches under the Fourth Amendment. Part I of this Note summarizes the contemporary state of neuroscience in the commercial marketplace and in the eyes of the law. Part II outlines the Supreme Court’s Fourth Amendment jurisprudence, detailing its application to technologically advanced searches. Part III contemplates the disposition of challenges to neurosearches based on the jurisprudence described in Part II. This Note ultimately concludes that compulsory searches for proprietary brain data survive the reasonableness and particularity requirements of the Fourth Amendment and that commercial brain data falls within the third-party doctrine.¹

Latest Legislation

01. The Toshakhana (Management and Regulation) Act, 2024 (Act No. III of 2024) ²

Disclaimer

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¹ <https://www.cornelllawreview.org/2024/08/01/neurosearches/>

² <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5ppag%3D%3D-sg-ijjjjjjjjjj#download>