

PUBLICATION OF QUARTERLY CASE LAW REPORT

ONLINE EDITION

**VOLUME-V, ISSUE, II
(May to August 2024)**



Quarterly Case Law Report (May – August 2024)



QUARTERLY CASE LAW REPORT INDEX				
(01-05-2024 To 31-08-2024)				
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
01	The Supreme Court of Pakistan	Whether the trial and conviction of Mr. Zulfiqar Ali Bhutto by the Lahore High Court and upheld by the Supreme Court of Pakistan comply with the constitutional requirements such as fair trial and due process, as well as with the principles of Islamic law?	Criminal Law	01
02		Whether the Customs Appellate Tribunal has the power to execute orders passed in exercise of its appellate jurisdiction under Section 194-A and 194-B of the Customs Act 1969, or whether the writ jurisdiction of the High Court is to be invoked for the execution of such orders?	Commercial Law	03
03		01. Whether the non-compliance of the Supreme Court's ejection order by the tenant constitutes contempt of court under Article 204 of the Constitution? 02. Whether the Rent Controller, as the executing authority under the Sindh Rented Premises	Criminal & Civil Law	06

		Ordinance, 1979 , failed in its legal duty to enforce the ejectment order?		
04		Whether the dissolution of marriage between the plaintiff (wife) and the defendant (husband) should have been granted on the basis of Khula, or cruelty, or the husband's violation of Section 6 of the Muslim Family Laws Ordinance, 1961 (contracting a second marriage without prior permission of the Arbitration Council), as per clause (ia) of Section 2 of the Dissolution of Muslim Marriages Act, 1939?	Family Law	08
05		Whether the petitioner, Ghulam Shabbir, sentenced to death under Section 302(b) of the Pakistan Penal Code (PPC) for two counts of murder, is entitled to have his death sentence commuted to life imprisonment due to prolonged incarceration and inhumane conditions in death row, exceeding the term of life imprisonment?	Criminal Law	10

06	The High Court of Sindh	Whether the plaintiff (Respondent No.1) was entitled to damages for defamation, mental anxiety, distress, and trauma caused by the alleged malicious actions of the bank (the appellant) and its employees, arising from a complaint filed with the FIA and subsequent events?	Civil Law	12
07		Whether the respondents have a valid and lawful claim to the disputed land despite its annulment under the Sindh Urban State Land (Cancellation of Allotments, Conversions, and Exchanges) Ordinance, 2001, and whether the Pakistan Defence Officers Housing Authority (DHA) can establish a superior claim to the same land?	Civil Law	14
08		Whether the applicant/accused should be granted post-arrest bail in light of delays in the trial caused by the prosecution's failure to secure witness testimony, and whether the issuance of Non-Bailable Warrants (NBWs) against witnesses aligns with legal procedures and the principles of justice?	Criminal Law	15

09	The High Court of Sindh	Whether the Civil Aviation Authority (CAA) of Pakistan, as a state-owned entity, is exempt from the levy of income tax under Sections 34 and 38 of the Pakistan Civil Aviation Authority Act, 2023, and the Pakistan Airports Authority Act, 2023, and whether the Authority is mandatorily required to resolve its tax dispute with the Federal Board of Revenue (FBR) through Alternate Dispute Resolution (ADR) under Section 134A of the Income Tax Ordinance, 2001?	Civil Law	17
10		Whether the trial court erred in applying the amended Section 9(1) of the Control of Narcotics Substances Act, 1997, introduced by the Control of Narcotics Substances (Amendment) Act, 2022, to convict and sentence the appellant/convict, for an offense committed prior to the enactment of the amendment?	Criminal Law	18
11		Whether the court should accept the compromise applications filed under Sections 345(2) and 346(6) of the CrPC, allowing the compounding of the offense of murder (302 PPC) committed by the appellant under the pretext of <i>Karo Kari</i> (honor killing)?	Criminal Law	20

12		Whether the eviction of the Petitioners from the premises justified on the grounds of the Respondent Bank's bona fide need for expansion, considering the challenges raised by the Petitioners regarding the Bank's authorization to file rent proceedings, availability of alternative premises, alleged goodwill payments (<i>pugri</i>), and claims of mala fide intent?	Rent Law	22
13		Whether the prosecution successfully proved that the appellant intentionally threw acid on the complainant causing severe injuries, including partial blindness and facial disfigurement, thereby justifying the conviction for committing the offences under Sections 336 and 336-B of the Pakistan Penal Code?	Criminal Law	24

14		<p>01. Whether the tenant fail to pay rent as per the requirements of the law, thereby committing willful default?</p> <p>02. Whether the landlord's claim that the premises are required for his own or his family's personal bona fide use valid?</p> <p>03. Whether the landlord-tenant relationship exists between the parties, and does the landlord (respondent) have the legal right to seek eviction?</p>	Rent Law	26
15		<p>01. Whether the positions in question qualify as public offices under the scope of quo warranto?</p> <p>02. Whether the appointees, particularly Dr. Asif Ali Memon and others, met the prescribed qualifications and were appointed through a lawful and transparent process?</p> <p>03. Whether there was evidence of nepotism, procedural irregularities, or violations of statutory or constitutional provisions in these appointments?</p>	Constitutional Law	28
16	The High Court of Sindh	Whether the petitioners, as family members or legal heirs of deceased or incapacitated civil/public servants of the Government of Sindh, are entitled to appointments under the quota reserved for deceased employees as per Rule 11-A of the Sindh	Constitutional & Service Law	30

		Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and the relevant policy guidelines of the Government of Sindh, notwithstanding procedural delays or departmental resistance?		
17		Whether the Full Bench of the National Industrial Relations Commission (NIRC) was justified in overturning the Single Member NIRC's order reinstating the petitioner and directing his retirement with full pension and benefits, considering the timeliness of the grievance petition, compliance with grievance notice requirements, and the proportionality of dismissal as a penalty for a minor procedural error?	Constitutional & Labour Law	33
S. No	Country	SELECTED ARTICLES	Published in	Page No
01	Pakistan	Recognition of Foreign Judgments in Custody Cases in Pakistan By <i>Waseem Ahmed Phulpoto</i>	Academia https://www.academia.edu/126886328/Recognition_of_Foreign_Judgments_in_Custody_Cases_in_Pakistan_1	35
02	Pakistan	Embracing Technology and Artificial Intelligence in the Judicial System: Pakistan's Path Toward a Modern Judiciary By <i>Ali Sher Chandio</i>	Academia https://www.academia.edu/126887457/Embracing_Technology_and_Artificial_Intelligence_in_the_Judicial_System_Pakistans_Path_Toward_a_Modern_Judiciary	36

03	International	Decoding the Digital Personal Data Protection Act, 2023 By K.P.M.G	K.P.M.G https://kpmg.com/content/dam/kpmgsites/in/pdf/2023/08/decoding-the-digital-personal-data-protection-act-2023.pdf.coredownload.inline.pdf	36
04	Pakistan	Shaping Pakistan’s Data Protection Law: Insights from Singapore and India By <i>Asghar Ali Mahar</i>	Academia https://www.academia.edu/126834757/Shaping_Pakistan_s_Data_Protection_Law_Insights_from_Singapore_and_India	37
05	International	The Possibility of Applying Artificial Intelligence in the Delivery of Justice by Court	Baltic Journal of Law & Politics https://sciendo.com/pdf/10.2478/bjlp-2024-0010#:~:text=Accordingly%2C%20there%20is%20much%20debate,must%20never%20replace%20the%20judge.	37
LATEST LEGISLATION				38
DISCLAIMER NOTE				38

The Supreme Court of Pakistan

01. Reference by the President of Islamic Republic of Pakistan Under Article 186 of the Constitution to revisit the case of Zulfiqar Ali Bhutto reported as PLD 1979 SC Page 38-53

Reference No. 01 of 2011

Present: *Mr. Justice Qazi Faez Isa, CJ*
Mr. Justice Sardar Tariq Masood
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Yahya Afridi
Mr. Justice Amin-ud-Din Khan
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mrs. Justice Musarrat Hilali

Source: https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_08072024.pdf

Facts: The basic facts of the reference involve the murder of Mr. Muhammad Ahmad Khan, father of Mr. Ahmed Raza Khan Kasuri, who was shot and killed on November 11, 1974, in Lahore while returning home from a wedding. The incident occurred when the car, driven by Mr. Kasuri, was fired upon, and a bullet struck Mr. Khan, leading to his death. Mr. Ahmad Raza Khan Kasuri, who was a vocal critic of then Prime Minister Zulfiqar Ali Bhutto, alleged that he was the intended target and that Mr. Bhutto had expressed hostility towards him in the National Assembly. The initial police investigation and subsequent inquiry by a tribunal failed to identify the perpetrators, leading to the closure of the investigation in 1976. However, following General Zia-ul-Haq's coup on July 5, 1977, the investigation was reopened, and Mr. Bhutto, along with others, was implicated in the murder. The case was transferred to the Lahore High Court, where Mr. Bhutto was tried, convicted, and sentenced to death, a decision that was later upheld by the Supreme Court. These events led to the filing of a reference by the President of Pakistan in 2011, seeking the Supreme Court's opinion on whether the trial and conviction of Mr. Bhutto met legal and constitutional standards.

Issue: Whether the trial and conviction of Mr. Zulfiqar Ali Bhutto by the Lahore High Court and upheld by the Supreme Court of Pakistan comply with the constitutional requirements such as fair trial and due process, as well as with the principles of Islamic law?

Rule:

- 1. Constitutional Provisions:** Articles 4, 9, and 10A of the Constitution guarantee the right to due process and fair trial.
- 2. Criminal Procedure Code (CrPC):** Section 265-D mandates framing of charges before trial, and Section 374 requires confirmation of death sentences by the High Court.
- 3. Evidence Act/Qanun-e-Shahadat, 1984:** Approver testimony must be

corroborated in material particulars under Section 114(b).

4. Article 186 (Advisory Jurisdiction): The Supreme Court cannot reappraise evidence but can examine procedural and constitutional lapses.

Application: 1. Procedural and Legal Lapses:

The Lahore High Court, acting as a trial court instead of the Sessions Court, disregarded established legal norms and procedural safeguards. This deprived Bhutto of the right to an appellate review by a higher court, violating the principle of fair trial.

Violation of CrPC Requirements:

The trial commenced without framing charges initially, a mandatory procedural step under Section 265-D of the CrPC.

The confirmation of the death sentence under Section 374 was bypassed, as the High Court itself acted as both the trial and appellate court, violating safeguards for the accused.

Reopening of Investigation Without Authorization:

The investigation, previously closed by the Magistrate, was reopened without judicial or lawful authorization. It was influenced by the military regime under General Zia-ul-Haq, raising concerns about its impartiality.

2. Fair Trial and Due Process Violations:

Denial of Fundamental Rights:

The trial and appellate processes violated Articles 4, 9, and 10A of the Constitution, which guarantee due process, fair trial, and protection of life and liberty.

Bias and Lack of Independence:

The court noted potential bias due to the involvement of judges who may have been influenced by the political climate under the martial law regime. This undermined the impartiality required for a fair trial.

3. Weakness of Evidence:

Reliance on Approver Testimony:

The primary evidence against Bhutto came from an approver, Masood Mahmood, whose credibility was questionable. His testimony lacked corroboration and appeared to be self-serving, given that he sought immunity for himself.

Circumstantial Evidence:

There was no direct evidence linking Bhutto to the crime. The circumstantial evidence presented failed to exclude all reasonable hypotheses of innocence.

Negative Forensic Evidence:

Forensic evidence, including ballistic analysis, did not connect the crime to the Federal Security Force (FSF) under Bhutto's control. The court found the prosecution's theory of weapon substitution unsubstantiated.

4. Political and Contextual Influences:**Martial Law and Judicial Independence:**

The reopening of the investigation and subsequent trial occurred under the influence of General Zia-ul-Haq's military regime. The court expressed concern over the judicial system's susceptibility to external pressures during this period.

Political Motive in Conviction:

The judgment highlighted how the trial took place in a politically charged environment, with General Zia seeking to eliminate Bhutto as a political rival. This created an atmosphere of inherent bias.

5. Inadmissible Use of Parliamentary Speeches:

Bhutto's speeches in the National Assembly, protected under Article 66 of the Constitution, were used as evidence to establish motive. This violated the constitutional privilege granted to parliamentary proceedings.

6. Supreme Court's Advisory Jurisdiction:**Limitations on Overturning Final Convictions:**

The court acknowledged that it could not undo Bhutto's conviction or execution due to the finality of the original judgment. However, it used its advisory jurisdiction to address the constitutional and legal irregularities.

Focus on Lessons for the Future:

The court emphasized the importance of acknowledging past judicial failures to uphold the rule of law and ensure that such lapses are not repeated.

Conclusion: The Supreme Court, in its advisory jurisdiction, found significant procedural and constitutional lapses in the trial and appellate processes in Bhutto's case. While it acknowledged the lack of a mechanism to set aside the conviction post-finality, it highlighted the denial of fundamental rights, improper handling of approver testimony, and irregularities in the reopening of the investigation. The judgment underscores the need for adherence to due process and safeguards to prevent miscarriages of justice. In the reference the apex court avoided to render any opinion about infringement of established Islamic principle under Quran and Sunnah as due to lack of assistance to court on this issue.

02. Khalid alias Muhammad Khalid and others vs Collector of Customs (Adjudication),

Custom House, Lahore, etc.

Civil Petition No.3391 of 2024

Present: *Mr. Justice Syed Mansoor Ali Shah*
Mr. Justice Athar Minallah
Mr. Justice Malik Shahzad Ahmad Khan

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._3391_2024.pdf

Facts: The officials of the Customs Collectorate (Enforcement), Lahore, seized a certain quantity of gold, alleged to be smuggled, along with a vehicle transporting the said gold, from the possession of Umer Farooq and Mussarat Shaheen (appellants 3 and 2). During the investigation, Muhammad Khalid (appellant 1) claimed ownership of the seized gold and asserted that Umer Farooq was merely his representative, who was transporting the gold to his shop in Faisalabad. All three appellants were charged with contravening several provisions of the Customs Act and the Imports and Exports (Control) Act 1950. By its order dated 29 November 2021, the Collector of Customs (Adjudication), Lahore, confiscated the seized gold and car, allowing the release of the car subject to the payment of a redemption fine. The appellants appealed this order before the Tribunal under Section 194-A of the Customs Act. By its judgment dated 20 December 2022, the Tribunal partially allowed the appeal to the extent of certain pieces of gold that were not found to be of foreign origin and ordered their unconditional release. The Tribunal also ordered the release of the car to its lawful owner upon payment of the redemption fine at the rate of 20% of the customs value. The order of the Collector (Adjudication) was maintained regarding the pieces of seized gold found by the Tribunal to be of foreign origin.

Both the appellants and the Collector of Customs preferred customs references against the Tribunal's judgment. During the pendency of these references, the appellants submitted an application to the Collector of Customs (Enforcement), Lahore, seeking implementation of the Tribunal's judgment and contending that its operation had not been stayed by the High Court in the reference proceedings. Receiving no response from the Collector of Customs (Enforcement), the appellants filed a writ petition in the Lahore High Court, praying that the Collector of Customs (Enforcement) be directed to comply with the Tribunal's judgment. The Lahore High Court dismissed the writ petition by its order dated 28 June 2024 ("impugned order"), observing inter alia that the appellants could not seek implementation of the Tribunal's judgment since they themselves had assailed it in the reference proceedings. Hence, the appellants have approached this Court through the present petition for leave to appeal.

Issue: Whether the Customs Appellate Tribunal has the power to execute orders passed in exercise of its appellate jurisdiction under Section 194-A and 194-B of the Customs Act 1969, or whether the writ jurisdiction of the High Court is to be invoked for the execution of such orders?

Rule: Implied Powers of Execution:

A statutory tribunal, such as the Customs Appellate Tribunal under the **Customs Act, 1969**, possesses the **implied power** to execute its own orders, even if such power is not explicitly stated in the statute.

This principle stems from the rule of statutory construction that a body granted substantive jurisdiction inherently has all ancillary and incidental powers necessary to effectively exercise that jurisdiction.

Relevant Statutory Provisions:

Sections 194-A and 194-B of the Customs Act, 1969: These provisions confer appellate jurisdiction on the Customs Appellate Tribunal to adjudicate disputes.

Section 223 of the Customs Act, 1969: Empowers the Federal Board of Revenue (FBR) to issue directions, such as the Customs General Order (CGO) No. 2 of 2024, which mandates customs officials to implement Tribunal orders unless a stay is granted by a higher forum.

Principle of Adequate Remedy:

Writ jurisdiction under Article 199 of the Constitution of Pakistan cannot be invoked if an **adequate remedy** is available under the law.

Since the Tribunal has the implied authority to execute its orders, seeking a writ in the High Court is unnecessary and inappropriate.

Judicial Precedents:

The Court relied on principles from previous rulings, including **Maxwell on Interpretation of Statutes, Commissioner, Khairpur v. Ali Sher Sarki (PLD 1971 SC 242)**, and **State of Karnataka v. Vishwabharathi House Building Coop. Society (India)**, which establish that statutory bodies with adjudicative authority implicitly hold the power to enforce their decisions.

Application: The Tribunal's judgment remains fully operative and executable, as it has not been stayed by the High Court in the reference proceedings. Under Customs General Order (CGO) No. 2 of 2024, issued by the Federal Board of Revenue under Section 223 of the Customs Act, customs officials are obligated to implement orders of the Tribunal unless a stay order has been issued by a higher forum. The issue arises when customs officials fail to implement such orders despite their enforceability. The Customs Act does not expressly grant the Tribunal the power to execute its orders. However, as established in *Maxwell case* and endorsed by this Court in *Ali Sher Sarki case*, where jurisdiction is conferred, the powers necessary for its execution are impliedly granted. A statute granting substantive power inherently includes incidental and ancillary powers necessary to render that power effective.

The Tribunal functions as a judicial body within its statutory jurisdiction and possesses both express and implied powers to ensure the meaningful exercise of its authority. Such implied powers are limited to those reasonably necessary to fulfill the legislative intent of the grant.

As affirmed in *Vishwabharathi case*, statutory tribunals empowered to adjudicate disputes and pass orders are also deemed to have the power to execute those orders, even if not expressly provided. Without such powers, the Tribunal's jurisdiction would be ineffectual. Similarly, under Sections 194-A and 194-B of the Customs Act, the power to execute orders is impliedly conferred upon the Tribunal. Therefore, as an adequate legal remedy exists, the writ jurisdiction of the High Court cannot be invoked for executing orders passed by the Tribunal.

Conclusion: The Supreme Court, thus, concluded that the Tribunal had the power to execute orders passed in exercise of its appellate jurisdiction under Sections 194-A and 194-B of the Customs Act. Consequently, since an adequate remedy is provided by law, the writ jurisdiction of the High Court cannot be invoked for executing orders passed by the Tribunal. Accordingly, the impugned order of the High Court dismissing the writ petition of the appellants was maintained. The petition is dismissed and leave to appeal was declined. The appellants, however, might approach the Tribunal for execution of the order passed by it, if so advised.

03. Mushtaque Ahmed & others vs Shahzad Khan

Criminal Original Petition No.1-K of 2023

Present: *Mr. Justice Muhammad Ali Mazhar*
Mr. Justice Syed Hasan Azhar Rizvi

Source: https://www.supremecourt.gov.pk/downloads_judgements/crl.o.p. 1 k 2023.pdf

Facts: The facts narrated by the petitioner in the instant Criminal Original Petition, he filed Rent Case No.107 of 2014 (Mushtaque Ahmed Vs. Shahzad Khan) under Section 15 of the Sindh Rented Premises Ordinance, 1979 ("Ordinance"). The learned Rent Controller also framed the issue with regards to the relationship of landlord and tenant because the tenant/respondent denied the relationship on the ground that that the petitioner/applicant is not the owner of the rented premises, because only Abdul Sattar and Mst. Zatoon are the legal heirs of the deceased owner. While referring to the judgment and decree passed in Suit No. 25 of 2000 (Abdul Sattar and another Vs. Mst. Sharifan), it was observed by the Rent Controller that in the said suit, the learned Civil Court held that Mushtaque Ahmed (present petitioner) is the son of Shafi Muhammad (deceased owner of the rented premises) and also reproduced the finding recorded by the Civil Court on Issue No. 2 that "In view of the above discussion on issue No. 1, it has been established that, Mushtaque Ahmed is son of deceased Muhammad Shafi on the basis of documentary evidence produced by the defendants, as discussed above. Nothing has been brought on record to rebut the above documentary evidence i.e. School Leaving Certificate, Driving License, NIC. Order of City Survey, Birth Certificate, Form 'B' of Mushtaque Ahmed and so also

permission of Home Department to carry license weapons to Mushtaque Ahmed, being son of Muhammad Shafi. All documents are public documents and there is no reason to disbelieve the same”. The learned Rent Controller allowed the ejectment application vide order dated 10.05.2019.

Issues: 01. Whether the non-compliance of the Supreme Court's ejectment order by the tenant constitutes contempt of court under Article 204 of the Constitution?

02. Whether the Rent Controller, as the executing authority under the **Sindh Rented Premises Ordinance, 1979**, failed in its legal duty to enforce the ejectment order?

Rule: **Constitutional Authority (Article 204):**

Courts have the authority to enforce their orders and punish for contempt in cases of willful non-compliance.

Sindh Rented Premises Ordinance, 1979:

Section 22 mandates that the final ejectment orders passed under the Ordinance must be executed by the Rent Controller.

Execution proceedings must resolve all disputes relating to the discharge or satisfaction of the order.

Doctrine of Finality:

Judicial orders must gain finality to avoid perpetual litigation, under the maxim *“interest Republicae ut sit finis litium”* (it is in the public interest that there be an end to litigation).

Application: The Court meticulously analyzed the procedural and substantive aspects of the case, emphasizing the importance of judicial finality and the integrity of legal processes. The Court began by delineating the principle of merger, explaining that the initial ejectment order by the Rent Controller had merged into the appellate decisions of higher forums, ultimately culminating in the Supreme Court's final judgment. This doctrine of merger, the Court elaborated, means that the initial order becomes subsumed into the final judgment, and no subsequent legal challenge or delay tactics can undermine its authority.

The Court emphasized the importance of finality in judicial decisions, highlighting that endless litigation undermines the credibility of the legal system and erodes public confidence in the judiciary. Referring to the legal maxim *“interest Republicae ut sit finis litium”* (it is in the public interest that there be an end to litigation), the Court stressed that the judicial process must conclude decisively to serve justice effectively. Allowing the reopening or delay of settled matters was seen as a clear affront to this principle.

In its assessment of the Sindh Rented Premises Ordinance, 1979, the Court reiterated the overarching nature of this legislation in regulating tenancy disputes. The Ordinance, particularly Section 3, provides an overriding framework for such matters, ensuring that no tenant can be evicted except as per its provisions. The

Court clarified that Section 22 specifically obligates the Rent Controller to execute final orders, addressing all issues related to execution and satisfaction without unnecessary litigation or procedural delays. This legislative framework, the Court observed, was designed to ensure swift and effective resolution of tenancy matters.

The tenant's failure to comply with the Supreme Court's prior order became a focal point of the analysis. Despite the tenant's counsel explicitly committing to vacate the premises within six months, the tenant continued to occupy the property, contravening the Court's clear directives. The Court viewed this as an abuse of legal process, designed to frustrate the execution of the order and delay justice. Additionally, the tenant attempted to rely on claims by third parties—alleged legal heirs of the property owner—to justify non-compliance. The Court dismissed these claims as irrelevant, emphasizing that they had no bearing on the tenant's obligation to vacate the premises, as the relationship between the tenant and landlord was conclusively settled.

The Court expressed significant disapproval of the Rent Controller's conduct, which had adjourned the execution proceedings sine die, effectively stalling the enforcement of the ejectment order. By failing to promptly act on the Supreme Court's directives, the Rent Controller not only violated its statutory obligations under Section 22 of the Ordinance but also undermined the principles of justice and judicial authority. The Court firmly stated that executing courts are bound to implement orders as they stand and cannot modify or delay them on flimsy grounds.

Conclusion: Consequently, the Executing Court was directed to execute the ejectment order expeditiously in accordance with law without any further delay or hindrance and hand over the possession of the demised premises to the petitioner/landlord and submit the compliance report to this Court. The Criminal Original Petition was disposed of accordingly.

04. Dr. Faryal Maqsood and another vs Khurram Shehzad Durrani and others

Civil Petition No. 308-P and 1388 of 2019

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

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p. 308_p_2019.pdf

Facts: The plaintiff and defendant were married on September 10, 2007, and had a son, Asadullah, born on December 18, 2008. Their relationship deteriorated, leading to separation in 2012. On July 28, 2012, the plaintiff filed a suit seeking recovery of dower (Rs.500,000, 50 tolas of gold, and a share in the house, as recorded in the Nikah Nama) and dowry articles, claiming the marriage had been dissolved through an oral divorce. The defendant denied the divorce but admitted to paying Rs.500,000 and 50 tolas of gold as dower. He also sought restitution of conjugal rights, asserting the marriage was still valid.

The trial court partially decreed the suit on May 29, 2014, granting the plaintiff

recovery of Rs.500,000 and the house share (or its market value), while dismissing the claim for 50 tolas of gold as dower. It decreed partial recovery of dowry articles, including 51 tolas of gold, and maintenance for the minor. The defendant was also granted restitution of conjugal rights, conditional on payment of prompt dower. Both parties appealed to the Additional District & Sessions Judge. During the appeal, the defendant took a second wife, prompting the plaintiff to seek dissolution of marriage on the grounds of the Muslim Family Laws Ordinance, 1961, arguing that the second marriage violated Section 2 of the Dissolution of Muslim Marriages Act, 1939. However, the appellate court dissolved the marriage on the basis of Khula—a ground neither explicitly nor implicitly sought by the plaintiff—and denied her dower claim. It adjusted the 50 tolas of gold received as dower against the 51 tolas decreed as dowry. The plaintiff challenged this judgment in the High Court under Article 199 of the Constitution. On March 4, 2019, the High Court set aside the appellate court's decision regarding Khula and instead dissolved the marriage on the ground of cruelty, restoring the trial court's decree on recovery of dower and dowry articles.

Issue: Whether the dissolution of marriage between the plaintiff (wife) and the defendant (husband) should have been granted on the basis of Khula, **or** cruelty, **or** the husband's violation of Section 6 of the Muslim Family Laws Ordinance, 1961 (contracting a second marriage without prior permission of the Arbitration Council), as per clause (ia) of Section 2 of the Dissolution of Muslim Marriages Act, 1939?

Rule: **Dissolution of Muslim Marriages Act, 1939 (Section 2):**

Clause (ia) provides grounds for a wife to seek dissolution of marriage if her husband contracts another marriage in violation of the requirements of the **Muslim Family Laws Ordinance, 1961**.

Muslim Family Laws Ordinance, 1961 (Section 6):

A husband cannot contract a second marriage during the subsistence of a prior marriage without prior written permission from the Arbitration Council.

Principle of Khula:

A court cannot grant Khula without an explicit or implied request by the wife (as established in *Mst. Khurshid Bibi vs Baboo Muhammad Amin* (PLD 1967 SC 97)).

Ground of Cruelty:

Section 2 (a) of the Act of 1939 allows dissolution if the husband habitually mistreats the wife or makes her life miserable, even if it does not amount to physical assault.

Application: The recovery of dower and dowry articles was affirmed based on the explicit terms of the *Nikah Nama* and the evidence presented. The Court upheld the plaintiff's entitlement to Rs. 500,000 and a share in the house as dower while excluding the claim to 50 Tola gold, which was proven to have already been delivered. Additionally, the plaintiff was entitled to 51 Tola gold as dowry based on the trial court's decree, and this finding was sustained. The restitution of conjugal rights, as granted by the trial court, was deemed unsustainable by the Supreme Court. Given the long-standing marital discord, the assertion of oral divorce, and the defendant's subsequent second marriage, the Court found reconciliation between the parties to be impractical, making the decree for restitution unjustifiable.

Regarding the dissolution of marriage, the Court found that the appellate court erred in dissolving the marriage on the basis of *Khula*, as the plaintiff neither sought nor implied consent for such dissolution. *Khula*, being a right exclusive to the wife, cannot be granted without her explicit or implied request, as established in prior case law. Similarly, the High Court's decision to dissolve the marriage on the ground of cruelty was flawed, as no new evidence was recorded to substantiate the claim, and the trial court had already resolved the issue against the plaintiff. The Supreme Court held that the High Court had overstepped its jurisdiction under Article 199 of the Constitution by making a factual determination without proper evidence.

The Supreme Court found a lawful ground for dissolution under clause (ia) of Section 2 of the Dissolution of Muslim Marriages Act, 1939. The defendant had admitted to taking a second wife without seeking the required permission from the Arbitration Council under Section 6 of the Muslim Family Laws Ordinance, 1961. This contravention provided a valid basis for dissolution, which the appellate court failed to adjudicate despite acknowledging it in the proceedings.

Conclusion: The Supreme Court set aside the appellate court's decision to dissolve the marriage on the basis of *Khula* and the High Court's dissolution on the ground of cruelty. Instead, it dissolved the marriage based on the valid ground under clause (ia) of Section 2 of the Act of 1939, due to the defendant's contravention of Section 6 of the Muslim Family Laws Ordinance, 1961.

The Court upheld the trial court's decrees regarding the recovery of dower, dowry articles, maintenance for the minor, and the visitation schedule. It modified the decree to reflect the lawful dissolution of marriage on the established ground and dismissed the restitution of conjugal rights claim as invalid. The petitions were converted into appeals and allowed accordingly.

05. Ghulam Shabbir vs The State

Criminal Review Petition No. 103 of 2017

Present: *Mr. Justice Jamal Khan Mandokhail*
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

Source: https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p. 103 2017.pdf

Facts: Facts in brief are that the petitioner was arrested pursuant to FIR No. 243 dated 15.07.1990 for committing murder of two persons and causing injuries to two others. The Trial Court vide judgment dated 07.12.1994 convicted the petitioner under section 302(b) of the Pakistan Penal Code and sentenced him to death on two counts. He was also convicted under section 307 PPC and sentenced to rigorous imprisonment for five years on two counts. The petitioner's appeal was dismissed by the High Court vide judgment dated 07.02.2000. His criminal appeal was dismissed by this Court on 28.10.2015, as a result, his convictions and sentences were upheld. The petitioner has filed the instant criminal review petition on the ground that he has already served his life term, therefore, has prayed for conversion of his death sentences into imprisonment for life. Reference has been made to the cases of *Dilawar Hussain, Hassan* and *Khalid Iqbal*. His review application was entertained on 19.09.2017 and notices were issued to the respondents.

Issue: Whether the petitioner, Ghulam Shabbir, sentenced to death under Section 302(b) of the Pakistan Penal Code (PPC) for two counts of murder, is entitled to have his death sentence commuted to life imprisonment due to prolonged incarceration and inhumane conditions in death row, exceeding the term of life imprisonment?

Rule: **Section 302(b) PPC:**
Provides for two possible sentences for murder: death or life imprisonment.

Prolonged Detention as Mitigating Circumstance:

Precedents, such as *Dilawar Hussain (2013 SCMR 1582)*, *Hassan (PLD 2013 SC 793)*, and *Khalid Iqbal (PLD 2015 SC 50)*, establish that prolonged detention exceeding a life term, combined with inhumane death row conditions, can justify commuting a death sentence to life imprisonment.

Article 4 and Article 14 of the Constitution:

Guarantee the right to dignity and equal protection of the law, which extends to prisoners.

Nelson Mandela Rules:

Ratified by Pakistan, emphasize that prison conditions should not aggravate the inherent suffering of imprisonment.

Application: The Court considered the petitioner's case in light of his detention history and precedents. The petitioner had served over **34 years in prison**, including **24 years in death row**, under conditions deemed inhumane and mentally torturous. The Court noted that such prolonged confinement in a death cell, far exceeding the maximum life imprisonment term of 25 years, constituted a complete and distinct punishment under Section 302(b) PPC. The Court referred to previous judgments, such as *Dilawar Hussain* and *Hassan*, where prolonged detention, systemic delays

in judicial processes, and the failure of the executive to execute sentences on time were recognized as mitigating factors. The Court concluded that forcing the petitioner to continue awaiting execution would amount to punishing him twice, which violates the principles of justice, human dignity, and the rule of law. Additionally, the Court highlighted the inhumane conditions in death cells, including solitary confinement, restricted movement, and lack of access to basic rights afforded to other prisoners. It noted that these conditions, combined with systemic delays, caused severe mental and physical distress, not only to the prisoner but also to their families.

Conclusion: Under these circumstances, the court allowed the petition in part and commuted the petitioner's death sentences to **life imprisonment** on two counts under Section 302(b) PPC, granting him the benefit of Section 382-B of the Code of Criminal Procedure, which considers time already served. The conviction under Section 307 PPC for attempted murder and its sentence of five years' rigorous imprisonment was upheld. All sentences were ordered to run concurrently.

The judgment underscored the importance of ensuring humane treatment for prisoners, expeditious judicial processes, and compliance with constitutional and international standards for the treatment of incarcerated individuals. It also called on the Federal and Provincial Governments to reform outdated prison laws and policies to align with international human rights norms, reducing delays in judicial and executive processes for death row inmates.

The High Court of Sindh

06. The Standard Chartered Bank Pakistan Ltd. vs Nasim Ahmed & others

High Court Appeal No. 47 of 2023

Present: *Mr. Justice Muhammad Shafi Siddiqui, CJ*
Ms. Sana Akram Minhas

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE1Mjg5Y2Ztcy1kYzgz>

Facts: The brief facts of the case have been narrated, including formation of Joint Brief facts are that on account of some misappropriation and embezzlement a complaint was lodged by respondent No.5 when he was an employee of bank with the FIA, which is claimed to be a false and malicious by the respondents/ plaintiff. The complaint before the FIA was filed on 22.07.1998. The complaint did not involve respondent No.1/plaintiff directly in respect of a fraud committed by respondent No.4 to the tune of Rs.6.5 Million being an embezzled amount. Respondent No.1 (plaintiff in suit) claimed that he was maliciously implicated in the fraud by bank as apparently respondent No.4 repaid the entire amount. In addition to such accusation in paragraph 8 of 2 plaint, respondent No.1 being plaintiff, further stated that respondent No.2 Saleem Jan purposely in presence of respondents No.3 Sirajuddin

Aziz and one Khalid Iftikhar attempted to defame him (plaintiff) and his reputation, while he was present before them.

It is claimed that the complaint with the FIA was never pursued by the respondents No.2, 3 and 5 and the main accused respondent No.4 was not charged in the Court of law by the Bank and its officials. It is claimed that despite such recovery from her/respondent No.4, the complaint against the plaintiff/respondent No.1 was not withdrawn; neither any apology was tendered. It is claimed that he has been subjected to hatred and was/is being ridiculed amongst the right thinking members of the Society hence the suit was filed for the recovery of damages on several counts such as defamation, mental anxiety, distress and trauma caused to him through these mala fide actions, as alleged.

Issue: Whether the plaintiff (Respondent No.1) was entitled to damages for defamation, mental anxiety, distress, and trauma caused by the alleged malicious actions of the bank (the appellant) and its employees, arising from a complaint filed with the FIA and subsequent events?

Rule: 01. A plaintiff must establish that the defendant's actions were malicious, defamatory, or caused reputational harm or mental anguish.

02. Liability for damages arises if it is proven that the defendant acted in bad faith, with intent to harm, or negligently caused such harm.

03. Evidence must substantiate the allegations, including proof of defamatory intent, malicious prosecution, or direct implication in fraudulent activities.

Application: The court examined the issues related to whether the complaint filed with the FIA by the bank or its officials directly implicated the plaintiff and whether the subsequent actions were pursued with malicious intent. It found no direct or indirect accusation against the plaintiff in the complaint. The evidence revealed that the bank lodged the complaint as part of its obligation to investigate the fraud, which was resolved without any charges against the plaintiff. The resignation submitted by the plaintiff was voluntary, and there was no evidence of coercion or malicious intent in his transfer or resignation. The court also noted that the plaintiff's claim of defamation and mental distress lacked corroboration, as no evidence showed direct involvement of the bank or its officers in causing harm. Witness testimonies, including that of Respondent No.4, failed to establish any wrongdoing by the bank. The plaintiff's claims of reputational damage and trauma were deemed unsubstantiated, as no malicious actions by the bank were proven.

Conclusion: The court concluded that the plaintiff (Respondent No.1) failed to establish a case for damages based on defamation, mental anxiety, distress, or trauma allegedly caused by the appellant (the bank). It found no evidence of malicious intent or wrongdoing by the bank or its officials. Consequently, the appeal was allowed, the lower court's judgment was set aside, and the plaintiff's suit was dismissed.

07. Pakistan Defence Officer's Housing Authority vs Muhammad Akram & another
High Court Appeal No. 325 of 2016 (D.B)

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

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE1MTU3Y2Ztcy1kYzgz>

Facts: The case involves an appeal filed by the Pakistan Defence Officers Housing Authority (DHA) against the judgment and decree dated 31.08.2016 and 05.09.2016, which favored Muhammad Akram Qureshi and Bashirullah Khan in a suit for declaration of their ownership of land measuring 30 Ghuntas (3630 square yards) in Deh Dih Tapo, Karachi. Akram and Bashirullah claimed ownership based on a chain of title beginning with a 99-year lease granted by the Government of Sindh in 1992 to three individuals, from whom they purchased the land via a registered sale deed in October 1992. They later received permissions for demarcation and construction on the land.

During the pendency of the suit, the Sindh Government promulgated the **Sindh Urban State Land (Cancellation of Allotments, Conversions, and Exchanges) Ordinance, 2001**, which retroactively annulled land allotments made after 1985 that violated legal or market value conditions. This included the subject land. Akram and Bashirullah admitted the annulment but argued that they initiated the regularization process provided under Section 4 of the Ordinance, although they could not demonstrate its completion. The DHA, on the other hand, claimed the land as part of a larger allotment made to it in 1977, though its evidence, including an unregistered lease agreement, lacked specificity and was not adequately proven in court.

Issue: Whether the respondents have a valid and lawful claim to the disputed land despite its annulment under the Sindh Urban State Land (Cancellation of Allotments, Conversions, and Exchanges) Ordinance, 2001, and whether the Pakistan Defence Officers Housing Authority (DHA) can establish a superior claim to the same land?

Rule: The rule in this judgment appears to have derived from the **Sindh Urban State Land (Cancellation of Allotments, Conversions, and Exchanges) Ordinance, 2001**. Under **Section 3**, any allotments, conversions, or exchanges of urban state land made after January 1, 1985, at rates below the market value or in violation of the law, are automatically annulled. However, **Section 4** provides a mechanism for regularization, allowing affected parties to retain ownership by paying the deficit amount determined by the government. Failure to complete this regularization process nullifies the title of the allottee. This rule was central to the court's decision to invalidate the respondents' claim to the disputed land.

Application: The court conducted a careful examination of the competing claims to the disputed land between Muhammad Akram Qureshi and Bashirullah Khan on one side and the Pakistan Defence Officers Housing Authority (DHA) on the other. The analysis

revolved around the evidentiary and legal validity of their respective claims. The court began by scrutinizing the claim of Akram and Bashirullah, who based their ownership on a registered sale deed and subsequent entries in government records, including Deh Form II. However, the court observed that the land had been annulled under the Sindh Urban State Land (Cancellation of Allotments, Conversions, and Exchanges) Ordinance, 2001, as it fell within the scope of retrospective annulments for allotments made after 1985. While the law provided an opportunity for regularization upon payment of a deficit amount to the government, Akram and Bashirullah failed to demonstrate that they had completed this process. As such, their title to the land was effectively nullified by operation of law.

The court then turned to DHA's claim, which was based on a larger allotment of 640 acres purportedly made to them in 1977. However, DHA's evidence, including an unregistered lease agreement, failed to establish the specific location of the disputed land within the allotted area. The court also highlighted deficiencies in DHA's approach, such as its failure to challenge the sale deed and mutation in favor of Akram and Bashirullah or to provide corroborative evidence to validate its lease agreement. Procedural objections raised by DHA, including the alleged non-joinder of necessary parties (e.g., the Sindh Board of Revenue) and improper framing of issues, were dismissed by the court. It held that these procedural matters did not prejudice DHA's ability to present its case and were not fatal to the litigation.

Conclusion: Ultimately, the court set aside the trial court's judgment and decree, concluding that respondents' title to the land could not be upheld in the absence of regularization under the Ordinance of 2001. However, the court also clarified that this did not automatically establish DHA's ownership of the land. DHA would need to independently prove its title in separate legal proceedings. The judgment reflects a balanced approach, holding both parties accountable for the deficiencies in their claims while adhering to statutory and evidentiary requirements.

08. Imran Ali Jatoy vs The State

Criminal Bail Application No. 2455 of 2023 (D.B)

Present: *Mr. Justice Salahuddin Panhwar*
Mr. Justice Khadim Hussain Soomro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE0NDI1Y2Ztcy1kYzgz>

Facts: The applicant/accused sought post-arrest bail in a murder case, citing the prolonged delay in trial proceedings due to the prosecution's inability to produce witnesses. Witnesses failed to appear before the trial court despite court orders. The prosecution's reliance on coercive measures, such as issuing Non-Bailable Warrants (NBWs) against witnesses, exacerbated the delay. Earlier, the court had directed the Senior Superintendent of Police (SSP) and the trial court to ensure witness protection and explore alternative means to secure their testimony. These instructions included measures to avoid harassment or undue pressure on witnesses.

Issue: Whether the applicant/accused should be granted post-arrest bail in light of delays in the trial caused by the prosecution's failure to secure witness testimony, and whether the issuance of Non-Bailable Warrants (NBWs) against witnesses aligns with legal procedures and the principles of justice?

Rule: 01. Under the Criminal Procedure Code (Cr.P.C.), Sections 87 and 88 allow courts to issue proclamations and attach property to secure the appearance of individuals, including witnesses, in legal proceedings.

02. The Sindh Witness Protection Act, 2013, emphasizes safeguarding witnesses from intimidation, ensuring their attendance, and protecting their testimony.

03. Article 164 of the Qanun-e-Shahadat Order, 1984, permits courts to adopt modern devices for evidence recording, provided the methods align with judicial integrity and evidentiary standards.

Application: The court conducted a comprehensive analysis of the delays in the trial caused by the prosecution's inability to secure witness testimonies. It observed that the prosecution relied on coercive measures, such as issuing Non-Bailable Warrants (NBWs) against witnesses, which not only created unnecessary distress but also discouraged witnesses from cooperating with the trial process. This approach was seen as counterproductive and contrary to the intent of the Sindh Witness Protection Act, 2013, which aims to provide safeguards to witnesses so they can testify without fear or intimidation. The court further noted that the government had failed to implement key provisions of the Act, including the establishment of the Witness Protection Advisory Board and the Witness Protection Unit. These bodies are essential for ensuring witness safety and facilitating their attendance at trial, yet their absence has contributed to the systemic failures in the criminal justice process. The court expressed concern over the lack of a proactive approach to witness protection and criticized the reliance on coercion rather than creating an environment conducive to testimony. It also emphasized the importance of adopting modern technological methods, such as video conferencing, to record witness testimonies in a secure and efficient manner. This aligns with Article 164 of the Qanun-e-Shahadat Order, 1984, which allows for the use of contemporary technological advancements to strengthen the judicial process.

Conclusion: Consequently, the applicant/accused was granted post-arrest bail due to the prosecution's failure to ensure timely witness testimonies, which caused significant delays in the trial. The court emphasized that coercive measures, such as issuing Non-Bailable Warrants (NBWs) against witnesses, were inappropriate and contrary to the spirit of the Sindh Witness Protection Act, 2013. The court directed all criminal courts in Sindh to refrain from using NBWs against witnesses unless absolutely necessary and to focus on providing protection to ensure their cooperation. It also mandated the immediate establishment of the Witness Protection

Advisory Board and the Witness Protection Unit as required under the Sindh Witness Protection Act. Additionally, the court recommended the adoption of modern technological methods, such as video conferencing, to record witness testimonies securely and efficiently. The court highlighted the responsibility of the state to uphold the principles of justice by safeguarding witnesses and ensuring fair trial processes. It ordered compliance with these directives to address systemic issues and improve the functioning of the criminal justice system.

09. Civil Aviation Authority of Pakistan vs Federation of Pakistan & others

Constitutional Petition No. 1513 of 2024 (D.B)

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Jawad Akbar Sarwana

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE2MDg1Y2Ztcy1kYzgz>

Facts: The petitioner, Civil Aviation Authority (CAA) of Pakistan, sought a declaration of exemption from income tax under Sections 34 and 38 of the Pakistan Civil Aviation Authority Act, 2023, and the Pakistan Airports Authority Act, 2023, as well as Article 165A of the Constitution. The Federal Board of Revenue (FBR) disputed this exemption, asserting that it was not recognized under Section 54 of the Income Tax Ordinance, 2001. The petitioner also challenged the mandatory requirement for State-Owned Enterprises (SOEs) to resolve tax disputes through Alternate Dispute Resolution (ADR) under the recently amended Section 134A of the Income Tax Ordinance, 2001. The petitioner argued that it does not fall within the definition of an SOE and that the amendment was not applicable. Additionally, the petitioner highlighted that the FBR had already deducted Rs. 15 billion as advance tax for the last quarter from its bank account. The petitioner relied on an opinion issued by the Ministry of Law and Justice, which supported its claim of tax exemption, while the FBR continued to deny such relief.

Issue: Whether the Civil Aviation Authority (CAA) of Pakistan, as a state-owned entity, is exempt from the levy of income tax under Sections 34 and 38 of the Pakistan Civil Aviation Authority Act, 2023, and the Pakistan Airports Authority Act, 2023, and whether the Authority is mandatorily required to resolve its tax dispute with the Federal Board of Revenue (FBR) through Alternate Dispute Resolution (ADR) under Section 134A of the Income Tax Ordinance, 2001?

Rule: **01. Tax Exemption:** Tax exemption for state-owned entities must be explicitly stated within relevant statutory provisions, and any exemption is subject to the rules of the Income Tax Ordinance, 2001, particularly Section 54.

02. ADR Mechanism: Section 134A of the Income Tax Ordinance, 2001, mandates state-owned enterprises (SOEs) to resolve tax disputes through ADR, irrespective of the monetary threshold for disputes.

03. Resolution under 1973 Rules: In cases of inter-ministerial or inter-division

conflict, Rule 8(2) of the Rules of Business, 1973, provides a mechanism for resolution through consultation or escalation to the Prime Minister or Cabinet.

Application: The court analyzed the status of the petitioner, CAA, under the State-Owned Enterprises (Governance and Operation) Act, 2023, and concluded that the Authority qualifies as an SOE because it generates revenue from commercial activities and is managed by the Federal Government. This classification makes Section 134A of the Income Tax Ordinance, 2001, applicable, requiring mandatory ADR for tax disputes. The CAA argued that it is exempt from income tax under Sections 34 and 38 of its governing acts. However, the court found that such exemptions are contingent upon their inclusion in the Income Tax Ordinance, 2001, which, in this case, has not been done. The FBR's position, supported by Section 54 of the Ordinance, denied the exemption. The court also considered the procedural mechanism under Rule 8(2) of the Rules of Business, 1973, which mandates consultation between conflicting divisions or ministries, and escalation to the Prime Minister if disputes remain unresolved. The court emphasized the need for the Federal Government to resolve inter-departmental disagreements internally before approaching the judiciary.

Conclusion: The court held that the petitioner must first pursue the mandatory ADR mechanism under Section 134A of the Income Tax Ordinance, 2001, or resolve the matter internally through Rule 8 (2) of the Rules of Business, 1973. Until these options are exhausted, judicial intervention under Article 199 of the Constitution is unwarranted. The petition was disposed of with directions to the petitioner to follow these prescribed mechanisms, failing which, it could seek legal remedies as available under the law.

10. Asghar Hussain vs The State

Criminal Appeal No. D-145 of 2022 (D.B)

Present: *Mr. Justice Zafar Ahmed Rajput*
Mr. Justice Amjad Ali Bohio

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE5MTg5Y2Ztcy1kYzgz>

Facts: On August 14, 2022, Asghar Hussain was apprehended by Sub-Inspector Syed Imam Dino Shah near the main gate of Amani Shah Graveyard in Latifabad, Hyderabad. During his arrest, the authorities discovered 2,120 grams of charas in his possession. This led to the registration of a case against him under Crime No. 205 of 2022 at Police Station A-Section, Latifabad, under Section 9(c) of the Control of Narcotics Substances Act, 1997. The case proceeded to trial before the Special Judge for Control of Narcotics Substances in Hyderabad. After a full-fledged trial, the court convicted Asghar Hussain and sentenced him to nine years of rigorous imprisonment along with a fine of Rs. 30,000. This punishment was awarded under the newly amended Section 9(1) of the Control of Narcotics Substances Act, which had been revised by the Control of Narcotics Substances (Amendment) Act, 2022.

Notably, this amendment came into effect on September 5, 2022, nearly three weeks after the offense was committed. The defense challenged this conviction and sentence, arguing that the amended law could not be applied retroactively to an offense committed prior to its enactment.

Issue: Whether the trial court erred in applying the amended Section 9(1) of the Control of Narcotics Substances Act, 1997, introduced by the Control of Narcotics Substances (Amendment) Act, 2022, to convict and sentence the appellant/convict, for an offense committed prior to the enactment of the amendment?

Rule: The rule in this judgment is based on **Article 12 (b) of the Constitution of Pakistan, 1973**, which provides protection against retrospective punishment. It states that:

“No law shall authorize punishment for an offense by a penalty greater than, or of a kind different from, the penalty prescribed by the law for that offense at the time it was committed.”

In addition, the sentencing policy established in the Ghulam Murtaza case (PLD 2009 Lahore 362), upheld by the Supreme Court in the Ameer Zaib case (PLD 2012 SC 380), specifies appropriate sentencing benchmarks based on the quantity of narcotics recovered, under the unamended Section 9(c) of the Control of Narcotics Substances Act, 1997.

Application: The court's analysis in this case centered on the interplay between the **constitutional protection against retrospective punishment** and the **application of amended laws**. It delved into the following aspects:

Retrospective Application of Amended Law: The court emphasized that Article 12(b) of the Constitution of Pakistan explicitly prohibits laws that impose a penalty greater than what was prescribed at the time an offense was committed. It noted that the trial court convicted and sentenced the appellant under the amended provisions of Section 9(1) of the Control of Narcotics Substances Act, 1997, which came into effect on September 5, 2022, after the offense occurred on August 14, 2022. This retrospective application of the law was deemed unconstitutional.

Sentencing Policy and Precedents: The court referred to the **Ghulam Murtaza case** and the subsequent approval of its sentencing policy by the Supreme Court in the **Ameer Zaib case**. These cases established sentencing guidelines for narcotics offenses based on the quantity recovered. Under this policy, for recoveries between 2 to 3 kilograms of charas, a sentence of five years and six months rigorous imprisonment, along with a fine, was deemed appropriate.

Violation of Constitutional Safeguards: The court highlighted the broader implications of Article 12, asserting that laws enacted post facto cannot create new offenses, aggravate existing offenses, or increase punishments for acts committed

before their enactment. This protection ensures legal predictability and fairness in criminal prosecutions.

Adjustment of Sentence: The court found that the appellant's sentence under the amended Section 9 (1) was not only unconstitutional but also excessive when viewed in light of the sentencing benchmarks set forth in prior precedents. It adjusted the punishment to align with the unamended Section 9 (c) of the Act of 1997, which governed at the time of the offense.

Proportionality and Fairness: The court's analysis was underpinned by a focus on proportionality and fairness in sentencing. It ensured that the appellant received a punishment consistent with the legal framework in place at the time of his offense, safeguarding his constitutional rights.

Conclusion: Consequently, the conviction of the appellant was converted from amended section 9 (1) to the section 9 (c) of the Act of 1997, which had been enacted at the time the offence was committed, and his sentence was modified, accordingly, by reducing it from R.I for 9 years and fine of Rs. 30,000/- to R.I for 5 years and six 6 months with fine of Rs. 25,000/-, in default thereof, S.I for 5 months and 15 days more, as per the ratio/sentencing policy of Ghulam Murtaza case (supra). The appellant would be entitled to benefit of Section 382-B, Cr. P.C and the remission earned by him as an under trial prisoner. The Criminal Appeal stood disposed of.

11. Arbelo@Arbab Kosh vs The State

Criminal Appeal No. S-77 of 2023 (S.B)

Present: *Mr. Justice Muhammad Iqbal Kalhoro*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE2MTkzY2Ztcy1kYzgz>

Facts: The appellant/accused was tried before the Additional Sessions Judge-II, Mirpur Mathelo, in two sessions cases: one under Section 24 of the Sindh Arms Act, 2013 (arising from Crime No. 94 of 2021) and another under Sections 302 and 311 of the Pakistan Penal Code (PPC) (arising from Crime No. 92 of 2021), both registered at PS Wasti Jiwan Shah, Ghotki. On August 18, 2023, the trial court convicted the appellant. For the Section 302(b) offense, he was sentenced to life imprisonment as *Ta'zir* and fined Rs. 1,000,000, payable to the legal heirs of the deceased, with a default sentence of six months' simple imprisonment (S.I). For the Sindh Arms Act offense, he was sentenced to seven years' rigorous imprisonment (R.I) and fined Rs. 30,000, with a default sentence of three months' S.I.

The case arose from an incident reported by ASI Muhammad Ameen Leghari in an FIR dated September 1, 2021, alleging that the appellant, motivated by accusations of his stepsister Mst. Fatima's affair with Abdul Majeed Kosh, attempted to murder her. The police witnessed the appellant dragging Fatima from his house and, in their presence, fatally shooting her. Despite attempts to save her, she succumbed to her

injuries. The appellant fled the scene, and an FIR was lodged on behalf of the state after no family members came forward to report the murder.

The appellant was subsequently arrested, and a weapon, confirmed as the crime weapon, was recovered from him. The prosecution presented five witnesses and documentary evidence, including the FIR, postmortem report, and forensic reports, to establish the case. The appellant denied the charges but did not present a defense. Upon conviction, he filed two appeals, during which compromise applications under Sections 345 (2) and 346 (6) CrPC were submitted, claiming forgiveness from the legal heirs of the deceased. The trial court examined the legal heirs and confirmed their willingness to forgive the appellant without coercion, waiving their rights to *Qisas* and *Diyat*.

Issue: Whether the court should accept the compromise applications filed under Sections 345(2) and 346(6) of the CrPC, allowing the compounding of the offense of murder (302 PPC) committed by the appellant under the pretext of *Karo Kari* (honor killing)?

Rule: The provisions of **Section 345** of the Criminal Procedure Code (CrPC) and relevant judicial precedents. The law permits the compounding of certain offenses, including murder, by the legal heirs of the deceased with the accused, but this is subject to court approval. Specifically, **Section 345 (2-A)** provides that when a murder is committed under the pretext of *Karo Kari* or similar practices, the court must carefully examine the facts and circumstances of the case. This provision emphasizes that the court has the discretion to impose conditions or even deny the compounding of such offenses if the broader context or public interest so warrants.

Application: The court conducted a detailed analysis, emphasizing the broader implications of the case and the conduct of the legal heirs. It noted that the murder of Mst. Fatima was committed under the pretext of *Karo Kari*, a practice deeply rooted in patriarchal norms and systemic violence. The court scrutinized the conduct of the legal heirs, observing their indifference to the murder from the outset. They neither reported the crime nor participated in the investigation or trial. This lack of action raised doubts about the genuineness of their later compromise with the accused.

The court highlighted that *Karo Kari* murders cannot be treated as routine cases for compounding because they often aim to restore so-called family honor, violating constitutional guarantees of life, dignity, and equality. Accepting such compromises without considering public interest and societal impact would undermine justice and perpetuate harmful customs. The legal heirs' conduct—marked by silence and eventual support for the accused—was deemed incompatible with the principles of justice, as it suggested either complicity or coercion. The court further relied on the proviso in Section 345(2-A) CrPC, which grants the court discretion to reject compromises in cases involving honor-based killings. It stressed that compounding such offenses requires careful evaluation of the facts, circumstances, and societal consequences. It also stressed that it is essential to recognize that this practice is a form of violence and oppression, rooted in patriarchal norms and gender-based

discrimination. It has devastating impact on victims, families and society as a whole, in addition to its character of being in violation of fundamental human rights, including the right to life, dignity, and equality guaranteed under the Constitution.

Conclusion: Consequently, the court was not inclined to accept the compromise between the parties and dismissed the applications (MAs. 5644/2023 and 5645/2023) filed for such purpose and dispose them of accordingly.

12. Adam Ali Mohammad Ali Lotia vs The Standard Chartered Bank Ltd & others
Constitutional Petition No. S-2319 of 2017 (S.B)

Present: *Mr. Justice Muhammad Faisal Kamal Alam*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE2MTYzY2Ztcy1kYzgZ>

Facts: The factual history of these petitions revolves around a series of rent disputes between the Petitioners, who were tenants of the Respondent Bank (Standard Chartered Bank Ltd.), in a building known as “**Standard Chartered Bank Chambers**,” located at the junction of I.I. Chundrigar Road and Talpur Road, Karachi. The Respondent Bank initiated rent cases against the Petitioners, citing **bona fide need** for the premises to expand its Centralized Operations Department due to growing business operations in Pakistan. Notices to vacate the premises were served on July 13, 2006, but the Petitioners did not comply, leading to the filing of rent cases.

The Petitioners resisted the eviction claims, arguing that:

1. They were long-term tenants who adhered to the tenancy terms.
2. The Bank had alternative properties for its expansion and was acting with mala fide intentions.
3. The eviction would cause significant financial loss and mental distress.

Initially, the Respondent Bank faced setbacks in litigation, but the cases were remanded for fresh adjudication. After reevaluation, the Rent Controller ruled in favor of the Bank, finding its claim of **bona fide need** legitimate. This decision was upheld by the appellate court, leading the Petitioners to file these constitutional petitions. The Petitioners raised several objections, including the alleged lack of proper authorization for the Bank to initiate the rent cases, reliance on fabricated evidence, and the presence of alternative unutilized properties, including the Al-Raheem Tower. They also claimed that the proceedings were tainted by mala fide intentions and violated their tenancy rights.

Issue: Whether the eviction of the Petitioners from the premises justified on the grounds of the Respondent Bank's bona fide need for expansion, considering the challenges raised by the Petitioners regarding the Bank's authorization to file rent proceedings, availability of alternative premises, alleged goodwill payments (*pugri*), and claims of mala fide intent?

Rule: **Bona Fide Need:** A landlord has the right to reclaim possession of rented premises if they demonstrate a genuine and bona fide need for the property, such as business expansion. The claim must not be driven by malice or ulterior motives and should be substantiated by evidence.

Authorization for Proceedings: Proper authorization, such as a Power of Attorney or Board Resolution, is necessary to validate legal actions initiated by an organization. The absence of such authorization can render proceedings void, but mere procedural defects do not invalidate the case if the substantive rights and intentions are clear.

Pugri (Goodwill Payments): Claims of goodwill (*pugri*) altering the landlord-tenant relationship must be specifically pleaded and supported by evidence. If not raised during earlier proceedings, such claims are considered an afterthought and are inadmissible.

Application: The court carefully analyzed the facts, evidence, and legal arguments presented by both sides. It began by addressing the Respondent Bank's claim of bona fide need for the premises, which was the core issue in the dispute. The Bank had justified its need to expand its Centralized Operations Department due to increased business operations. The court found that this claim was substantiated by evidence and had been properly evaluated by both the Rent Controller and the Appellate Court. The Petitioners' argument that the Bank's need was not genuine was not supported by the evidence on record.

The Petitioners also questioned the authorization of the Bank's representatives to initiate the rent proceedings. They argued that the Power of Attorney and Board Resolution presented by the Bank were inadequate and procedurally flawed. The court examined these documents and found them sufficient, observing that they met the requirements of law and had been duly recognized by the lower courts. The Petitioners' challenge to the authorization was thus dismissed as unconvincing.

Another key issue raised by the Petitioners was the availability of alternative premises, specifically the Al-Raheem Tower, which they claimed could have been used by the Bank for its expansion. The court reviewed the evidence and noted that there was no proof that the Tower had been sold or was otherwise available for the Bank's use. It emphasized that the choice of premises was the prerogative of the landlord, provided it was reasonable and supported by genuine need.

The Petitioners also raised the issue of "*pugri*" or goodwill payments, arguing that this altered the nature of their tenancy and should preclude eviction. However, the court found that this argument had not been raised in the initial proceedings and was therefore an afterthought. Furthermore, there was no evidence to support the claim that *pugri* had been paid, and the court dismissed this argument as irrelevant.

Conclusion: The court concluded that the eviction orders against the Petitioners were valid and justified. It found that the Respondent Bank had established its bona fide need for

the premises to expand its Centralized Operations Department and that the proceedings were properly authorized. The Petitioners' arguments, including claims of alternative premises, procedural defects, and goodwill payments (*pugri*), were dismissed as unsubstantiated and irrelevant. The court upheld the concurrent findings of the Rent Controller and the Appellate Court, determining that there was no illegality or misreading of evidence warranting interference. Consequently, the constitutional petitions filed by the Petitioners were dismissed. However, the court granted the Petitioners two months to vacate the premises to allow for a smooth transition, with no order as to costs.

13. Mst. Shabana Kausar vs The State

Criminal Appeal No. 189 of 2023

Present: *Mr. Justice Arshad Hussain Khan*

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE0NDM5Y2Ztcy1kYzgZ>

Facts: In this judgment, the factual background begins with the conviction of the appellant, Mst. Shabana Kausar, by the 2nd Additional Sessions Judge, Karachi (Central), in a case stemming from FIR No. 718/2021, registered under Sections 336 and 336-B of the Pakistan Penal Code. The appellant was convicted for throwing acid on the complainant, Muhammad Usman, causing severe injuries, including partial blindness, facial disfigurement, and burns to other body parts. The trial court sentenced her to pay Arsh (half of the Diyyet) under Section 336 PPC and awarded her 14 years of rigorous imprisonment and a fine of Rs. 1,000,000 under Section 336-B PPC, with an additional six months of simple imprisonment in case of default in payment. She was also granted the benefit of Section 382-B Cr.P.C. The prosecution's case was based on the complainant's statement recorded at the hospital, wherein he detailed the events leading up to the attack. He alleged that the appellant, his ex-wife, had thrown acid on him during a visit to her rented flat, where they were discussing the possibility of remarriage. Following an investigation, the appellant was arrested and charged with the crime. The trial included testimony from various witnesses, medical evidence confirming the injuries, and forensic analysis of the acid. The appellant, in her defense, claimed that the complainant himself brought the acid to the flat to blackmail her into lending him money through her brother. She argued that the injuries occurred accidentally during a struggle. However, the trial court found her explanation inconsistent and unsupported by evidence, concluding that the prosecution had proven its case beyond a reasonable doubt. Consequently, the appellant challenged the conviction and sentence through this criminal appeal.

Issue: Whether the prosecution successfully proved that the appellant intentionally threw acid on the complainant causing severe injuries, including partial blindness and facial disfigurement, thereby justifying the conviction for committing the offences under Sections 336 and 336-B of the Pakistan Penal Code?

Rule: **Section 336 PPC:** Pertains to causing permanent disfigurement or loss of a body organ or its functionality, with the penalty including *Diyyet* or other punishments as specified.

Section 336-B PPC: Specifically criminalizes acid-throwing, prescribing severe punishments for acts causing harm through acid or corrosive substances.

Application: The court conducted a detailed examination of the evidence, arguments, and legal principles to determine the above issue. The court began by analyzing the evidence presented by the prosecution, which included the complainant's testimony, medical reports, forensic findings, and the testimonies of witnesses. These elements were consistent and corroborated the claim that the appellant deliberately threw acid on the complainant, causing severe injuries. The medical evidence showed extensive and severe burns, including partial blindness, facial disfigurement, and loss of cornea, consistent with an acid attack. The forensic analysis confirmed that the substance used was acid, and its recovery from the appellant's premises strengthened the prosecution's case. Witnesses, including neighbors and the investigating officer, provided testimony that aligned with the prosecution's narrative.

The court scrutinized the appellant's defense, where she claimed the complainant brought the acid and was injured during a struggle. However, her statements were found inconsistent between the trial and appellate proceedings. Her defence plea lacked supporting evidence, and the nature of injuries sustained by the complainant was inconsistent with her claim of an accidental spill. The appellant's failure to produce defense witnesses or corroborative evidence further weakened her case. The court addressed procedural objections raised by the appellant, such as the delay in lodging the FIR and the absence of independent witnesses. It found the delay reasonably explained by the complainant's medical condition and held that the evidence provided by the prosecution witnesses, including a neighbor, was credible and sufficient. The court also dismissed the claim that the medical report was incomplete, noting that the final supplementary report conclusively supported the prosecution's case. Finally, the court emphasized the gravity of acid-throwing offenses and the need for strict penalties to deter such heinous crimes. It highlighted the importance of ensuring justice for victims while maintaining public confidence in the criminal justice system.

Conclusion: The court concluded that the appellant was rightly convicted under Sections 336 and 336-B of the Pakistan Penal Code for deliberately throwing acid on the complainant causing severe injuries, including partial blindness and facial disfigurement. The court upheld the trial court's judgment, maintaining the sentence of 14 years rigorous imprisonment, a fine of Rs. 1,000,000, and payment of *Arsh* (half of *Diyyet*). The court found that the prosecution had proven its case beyond a reasonable doubt, and the appellant's defense was implausible, inconsistent, and unsupported by evidence. Consequently, the appeal was dismissed.

14. Muhammad Ali Shaikh vs Ali Gohar Khan Kanasiro & others

Constitutional Petition No. 77 of 2024 (S.B)

Present: *Mr. Justice Muhammad Saleem Jessar***Source:** <https://caselaw.shc.gov.pk/caselaw/view-file/MjE0NTY1Y2Ztcy1kYzgz>

Facts: By means of C.P. No.S-348 of 2023, the petitioner Mohammad Ali Shaikh has challenged the Judgment dated 07.11.2023 passed by learned 1st Additional District Judge, Larkana in Rent Appeal No.09 of 2019 filed by the petitioner / tenant, whereby he has upheld the eviction order dated 15.05.2019 passed by 2nd Senior Civil Judge / Rent Controller, Larkana in Rent Application No.09 of 2018 filed by Respondent No.1. C.P. No.S-77 of 2024 has been filed by same petitioner against the Order dated 09.02.2024 passed by VI-Additional District Judge, Larkana in Civil Revision Application No.30 of 2020, whereby he has dismissed the Revision Application filed by the petitioner/tenant and maintained Order dated 09.09.2020 passed by 2nd Senior Civil Judge/Rent Controller, Larkana in Rent Execution Application No.04 of 2019.

Brief facts of the case, relevant for the purpose of deciding these constitution petitions, are that respondent No.1/applicant filed a Rent Application for ejection of the petitioner stating therein that the father of applicant namely, Ali Nawaz Kanasiro, since deceased, was owner of Latif Shopping Center consisting about 30 shops at ground floor, and one residential house at upper storey, constructed on City Survey No. 1466/1 admeasuring an area of 595 Sq. Yards. The shops were rented out to various persons by him in his life time and he used to collect rent from the tenants. It was further averred that after death of applicant's father, the entire property, being joint and undivided, was being looked after by applicant's brother namely, Sher Muhammad, who also died in the year 1990, hence the property / building was looked after by his another brother namely, Javed Ahmed, who also died in the year 2006. It was further asserted that after death of Javed Ahmed property in question was divided amongst all legal heirs / co-sharers by means of a private family settlement, thus applicant being co-owner, acquired Shop No.27 along with other shops in Latif Shopping Center, Larkana being his inherited share in the property. It was further stated in the rent application that the petitioner / opponent was rented out Shop No.27, who was using the same in the name and style of Ali Silk and Dulhan Shop in the Latif Shopping Center, Larkana and used to pay rent at the rate of Rs.6000/- per month under rent agreement which expired in December, 2017. It was further averred that after expiry of rent agreement in the year 2017, applicant asked the tenant to execute fresh agreement and fix new rent amount in accordance with market value but he refused and stopped paying rent to the applicant. In spite of repeated demands he failed to pay the rent, thus violated the relevant law and willfully defaulted to pay monthly rent from January 2018. It was further asserted that the applicant/landlord is an old and aged person having three sons and eight daughters and all his sons are jobless, hence premises was also required for his personal bonafide need in order to establish his own business in the

premises.

Issue: Whether the tenant fail to pay rent as per the requirements of the law, thereby committing willful default?

Whether the landlord's claim that the premises are required for his own or his family's personal bona fide use valid?

Whether the landlord-tenant relationship exists between the parties, and does the landlord (respondent) have the legal right to seek eviction?

Rule: **Landlord-Tenant Relationship:**

A co-owner is fully competent to act as a landlord, collect rent, and seek the eviction of a tenant, even without the consent of other co-owners.

Default in Payment of Rent:

A tenant is required to pay rent regularly. If the landlord refuses to accept the rent, the tenant must promptly deposit the rent in court under Section 10 of the SRPO. While delay in depositing rent after the landlord's refusal constitutes willful default.

Personal Bona Fide Need:

The landlord has the prerogative to choose which premises to use for personal needs, whether residential or business. The landlord's assertion of bona fide need, if supported by evidence and unshaken in cross-examination, is sufficient to establish the claim. The tenant or court cannot dictate alternative premises for the landlord's use.

Application: The court undertook a detailed and comprehensive analysis of the issues raised in the petitions, carefully examining the facts, evidence, and legal principles at play. It began by addressing the fundamental question of whether a landlord-tenant relationship existed between the petitioner (tenant) and the respondent (landlord). Through a review of admissions made by the tenant and the supporting evidence, the court confirmed that the premises in question had originally been rented out by the landlord's predecessor and subsequently inherited by the landlord as a legal heir. This inheritance, coupled with the landlord's position as a co-owner, firmly established his authority to collect rent and initiate eviction proceedings. The court also referenced established legal precedents, affirming that co-owners have full rights to act as landlords, even without the consent of other co-owners.

On the issue of rent default, the court closely examined the tenant's claim that rent was sent through money orders after the landlord refused to accept it. While the tenant argued that he fulfilled his obligation by attempting to tender rent, the court found discrepancies in the timeline and procedure. The tenant had failed to deposit the rent in court promptly after the landlord's refusal, which is a mandatory requirement under the law. The court noted that the delay in depositing rent was substantial and not justified, thereby constituting willful default. Citing relevant case

law, the court emphasized that tenants are obligated to follow the prescribed legal process meticulously to avoid default.

The court then turned to the landlord's claim of personal bona fide need for the premises. The landlord had asserted that the shop was required for his unemployed sons and for his own use. The tenant challenged this claim by suggesting that other shops owned by the landlord could have been used instead. However, the court underscored the well-established principle that the choice of which property to use for personal needs lies solely with the landlord. This prerogative, supported by the landlord's unshaken testimony and corroborated evidence, left no doubt about the legitimacy of the claim. The court dismissed the tenant's objections, affirming that neither the tenant nor the court could dictate alternative accommodations to the landlord. Lastly, the court reflected on the concurrent findings of the Rent Controller and Appellate Court, which had both ruled in favor of the landlord. It highlighted that such findings carry significant weight and can only be interfered with in cases of glaring legal errors or misreading of evidence. Finding no such error in this case, the court upheld the lower courts' decisions.

Conclusion: The court concluded that the tenant had no valid grounds to challenge the eviction orders passed by the Rent Controller and affirmed by the Appellate Court. It upheld the landlord's claim of a valid landlord-tenant relationship, determined that the tenant had committed willful default in the payment of rent from January 2018 to April 2018, and recognized the landlord's bonafide need for the premises as genuine. Consequently, the court dismissed both petitions filed by the tenant. The tenant was directed to vacate the premises within **five months** and hand over vacant and peaceful possession to the landlord. As a condition, the tenant was required to deposit four months' rent in a lump sum with the Nazir of the trial court or Rent Controller. Failure to comply would entitle the landlord to seek immediate eviction, including the issuance of a writ of possession with police assistance, without further notice to the tenant.

15. Hareef Ahmed Keerio vs Quaid-e-Awam University & others

Constitutional Petition No. D-634 of 2014 (D.B)

Present: *Mr. Justice Khadim Hussain Tunio*
Mr. Justice Yousuf Ali Sayeed

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjIwODQ5Y2Ztcy1kYzgz>

Facts: These multiple constitutional petitions filed under Article 199 of the Constitution, challenging the legitimacy of various appointments at Quaid-e-Awam University of Engineering, Science, and Technology (QUEST). These petitions questioned the qualifications, procedures, and motivations behind appointments to academic and administrative positions. One of the central figures in these petitions was Dr. Asif Ali Memon, whose appointment as an Associate Professor (BPS-20) and Chairman of the Energy & Environment Engineering Department was contested. The

petitioners argued that Dr. Memon did not meet the qualifications for these positions, making his appointments illegal. Furthermore, it was alleged that Dr. Memon played a role in orchestrating the appointments of other individuals, including his brother, Yasir Ali Memon, as a Lecturer in BPS-18, raising concerns about nepotism.

Another focus of the petitions was the appointment of Shah Nawaz Channar as an Office Assistant (BPS-14). The petitioners claimed that Mr. Channar had previously been dismissed from service under the Removal from Office Ordinance, 2000, and that he had used procedural and legal loopholes to retain his position within QUEST. They argued that such actions violated the principles of merit and fairness. The petitioners sought a writ of quo warranto to compel the appointees to justify their positions and to demonstrate that their appointments complied with the law. The respondents, including the university and the appointees, defended these appointments by asserting that the recruitment processes followed the prescribed legal and institutional procedures.

As the matter unfolded, it was revealed that Dr. Memon had since been appointed as a Professor in BPS-21 through a fresh, legally valid recruitment process in 2020, which rendered some of the earlier allegations moot. Additionally, evidence presented before the court demonstrated that the selection of other lecturers had been merit-based, with no direct involvement by Dr. Memon in evaluating his brother's application, as he had recused himself from the process.

Issue: Whether the positions in question qualify as public offices under the scope of quo warranto?

Whether the appointees, particularly Dr. Asif Ali Memon and others, met the prescribed qualifications and were appointed through a lawful and transparent process?

Whether there was evidence of nepotism, procedural irregularities, or violations of statutory or constitutional provisions in these appointments?

Rule: The court relied on the principles governing the writ of quo warranto, as established in constitutional law. A writ of quo warranto is issued to challenge the legality of a person holding a public office. For such a writ to succeed, three conditions must be satisfied:

01. The office must be public and created by statute or the Constitution.
02. The office must be substantive and not merely employment at the will of others.
03. There must have been a contravention of legal provisions in the appointment, such as lack of prescribed qualifications, Incompetence of the appointing authority, or Non-compliance with statutory procedures.

Application: The court in this case conducted a thorough examination of the petitions challenging the legality of various appointments at Quaid-e-Awam University of Engineering, Science, and Technology (QUEST). The analysis was guided by principles governing the issuance of a writ of **quo warranto** and relied on established

constitutional and statutory law, as well as judicial precedents. The court began by clarifying the purpose and scope of a writ of **quo warranto**, emphasizing that such a writ is aimed at determining whether a person holding a public office has the legal authority to do so. This involved an assessment of whether the office in question was public, substantive, and created by statute or the Constitution. It also required evaluating whether the appointment process complied with statutory and constitutional requirements.

In addressing the allegations against Dr. Asif Ali Memon, the court noted that he no longer held the contested positions of Associate Professor or Chairman of the Energy & Environment Engineering Department. Instead, he had been appointed as a Professor in BPS-21 through a fresh recruitment process in 2020. This rendered the petitions against his earlier appointments moot, as the fresh appointment was not challenged and appeared to have been made in accordance with the law. The court also found no evidence of nepotism, as Dr. Memon had recused himself from evaluating his brother's application during the selection process for lecturers.

For the remaining appointments, including that of Mr. Shah Nawaz Channar, the court found no significant procedural violations or evidence of usurpation of office. The court reviewed the recruitment process for the lecturers and noted that the appointments were merit-based, with the candidates being ranked according to their performance in the selection process. Regarding Mr. Channar, the court determined that any relief granted to him in earlier petitions could not be revisited through the current proceedings.

The court also examined whether the contested positions constituted "public offices" as required for a writ of quo warranto. Citing precedents, it concluded that academic positions like those of Associate Professors and Lecturers do not involve the exercise of sovereign functions and thus do not qualify as public offices under the Constitution. This finding further undermined the basis for the petitions. It also underscored that quo warranto is an extraordinary remedy that requires clear evidence of legal irregularities, which was lacking in this case.

Conclusion: The court concluded that the petitions were devoid of merit and dismissed them. It held that the appointments challenged did not contravene any statutory or constitutional provisions; the positions in question, particularly academic posts like Associate Professor and Lecturer, did not qualify as "public offices" for the purpose of a writ of **quo warranto**; there was no evidence of nepotism or procedural irregularities in the appointments. Specifically, Dr. Asif Ali Memon's fresh appointment as a Professor in BPS-21 through a legally valid process rendered the earlier challenges irrelevant; the challenges against other appointments, including that of Mr. Shah Nawaz Channar, could not be sustained, as they lacked the foundational grounds for a writ of quo warranto.

16. Mst. Seema vs Province of Sindh and others
Constitutional Petition No. 357 of 2022 (D.B)

Present: Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Mohammad Abdul Rahman

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE1MDkzY2Ztcy1kYzgz>

Facts: The petitions filed by family members or legal heirs of deceased or incapacitated civil/public servants of the Government of Sindh. These petitions sought appointments under the quota reserved for such individuals, as per Rule 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and related government policies. The petitioners contended that despite their applications being in compliance with the rules and policies, the respondent departments failed to process them or unjustly rejected them, citing procedural delays. They argued this amounted to discrimination and violated their rights. The respondents initially resisted the petitions, citing procedural grounds such as delays in applications. However, they later agreed to consider the cases in light of the legal framework, policy guidelines, and prior judicial decisions, including the Supreme Court's decision.

Issue: Whether the petitioners, as family members or legal heirs of deceased or incapacitated civil/public servants of the Government of Sindh, are entitled to appointments under the quota reserved for deceased employees as per Rule 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and the relevant policy guidelines of the Government of Sindh, notwithstanding procedural delays or departmental resistance?

Rule: The rule in this order is primarily based on Rule 10-A and Rule 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, along with relevant constitutional provisions and judicial precedents. Here's a detailed breakdown:

Rule 10-A and Rule 11-A (as amended):**1. General Provision:**

These rules provide a mechanism for the appointment of one legal heir of a deceased or incapacitated civil/public servant to government posts under a reserved quota. The appointment must align with the applicant's qualifications and eligibility for posts in BPS-1 to BPS-17.

2. Cutoff Date:

Initially, applications had to be submitted within two years of the civil servant's death or declaration of incapacity. Later amendments (2014) added provisos to protect the accrued rights of applicants, stating that the cutoff date cannot bar rights established under earlier notifications.

3. Criteria for Appointment:

Applicants must meet the minimum qualifications for the posts. The appointment must follow the proper recruitment procedures, including tests, interviews, and other formalities.

Relevant Constitutional Provisions:

Article 27: Prohibits discrimination in appointments to public service.

Article 35: Obligates the state to protect the family unit, particularly in cases of deceased employees.

Article 34: Ensures special consideration for underprivileged and less represented groups in state services.

Application: The court thoroughly discussed the legal and factual issues presented by the petitioners. It began by acknowledging the struggles of the families of deceased or incapacitated civil servants, who often face significant hardships after the loss or incapacitation of a breadwinner. These families rely on the government's policy to provide employment under the deceased quota, which is a lifeline meant to ensure their survival and dignity. The court delved into the legal framework, particularly focusing on Rules 10-A and 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. These rules, as the court observed, were crafted with the intent of safeguarding the rights of such families by mandating employment for one eligible family member. The court noted how amendments to these rules and judicial precedents had clarified the position regarding procedural constraints like the cutoff date for applications. It emphasized that the two-year deadline, while providing a timeline for administrative efficiency, could not override the substantive rights of applicants whose claims had already accrued under earlier policies or court orders.

The court criticized the respondent departments for their reluctance to act in accordance with these laws and guidelines. It pointed out that procedural hurdles and departmental inaction had often deprived deserving petitioners of their rightful employment. In many cases, the departments had failed to provide justifications for rejecting applications or delaying the process. The court found such conduct contrary to the spirit of the rules and the constitutional guarantees of equality and protection. Relying on a Supreme Court judgment from 2016, the court reiterated that the cutoff date for applications should not be used as a tool to deny accrued rights. It directed the respondent authorities to consider all applications strictly in accordance with the law and avoid repeating excuses that had previously been deemed invalid by the judiciary. The court highlighted the purpose of the deceased quota policy: to alleviate the suffering of families left vulnerable by the death or incapacity of a government employee.

Conclusion: Lastly, the court concluded that public employment is not just a livelihood but a constitutional right, which must be dispensed fairly and without discrimination. It directed the government to process the petitioners' applications promptly and in

compliance with the rules and judicial guidelines.

17. Gul Muhammad Indhar vs M/s Habib Bank Limited

Constitutional Petition No. 1831 of 2022 (D.B)

Present: *Mr. Justice Muhammad Iqbal Kalhoro*
Mr. Justice Arbab Al Hakro

Source: <https://caselaw.shc.gov.pk/caselaw/view-file/MjE2MDQxY2Ztcy1kYzgz>

Facts: The pivotal facts germane to the adjudication of the present petition are that the petitioner was initially inducted as a Guard on 15.9.1991, subsequently ascended to the role of Cashier. During his tenure at Habib Bank Ltd, Daharki Branch Sukkur, he was entrusted with collecting Utility Bills. On 12.9.2002, an explanation was demanded from him regarding the late deposit of Rs. 4,060/-, purportedly received on 15.8.2002 but recorded as deposited on 05.9.2002, as evidenced by the corresponding Sui Gas bill stamp. The petitioner's response to this explanation was deemed unsatisfactory, culminating in issuing a charge sheet. After an inquiry on 14.10.2002, he was recommended for two punishments: Degradation to the Grade of original and a Reprimand. Despite his rebuttal to the final Show-Cause notice, asserting innocence and attributing the error to the concerned officer, the petitioner was ultimately dismissed from service on 11.12.2002.

Issue: Whether the Full Bench of the National Industrial Relations Commission (NIRC) was justified in overturning the Single Member NIRC's order reinstating the petitioner and directing his retirement with full pension and benefits, considering the timeliness of the grievance petition, compliance with grievance notice requirements, and the proportionality of dismissal as a penalty for a minor procedural error?

Rule: The rule in this judgment is based on the following principles of law:

Timeliness of Grievance Petitions:

Under **Section 46 of the Industrial Relations Ordinance (IRO)**, grievance petitions must be filed within the prescribed limitation period unless explicitly condoned.

The Supreme Court in **Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602)** directed that following the abatement of cases under the Federal Service Tribunal, affected individuals were allowed 90 days to file grievances before the appropriate forum. This grace period overrides ordinary statutory limitations.

Compliance with Grievance Notice Requirements:

The law requires a grievance to be brought to the employer's attention but does not mandate a specific format. Substantial compliance, such as addressing the grievance to a senior officer who takes cognizance of it, is sufficient, as established in **Nadeem Ahmed Qureshi v. Habib Bank Limited (2009 PLC 160)**.

Proportionality of Disciplinary Actions:

Disciplinary measures must be proportionate to the offense. Minor procedural errors without evidence of financial loss, malintent, or significant misconduct do not warrant severe penalties such as dismissal.

Certiorari and Supervisory Jurisdiction:

High Courts have the authority to issue a writ of certiorari to annul decisions made with legal or jurisdictional errors, ensuring adherence to principles of natural justice and fair play.

Application: The court conducted a meticulous analysis of the facts, legal framework, and procedural history of the case. Its examination can be summarized as follows:

The court began by addressing the petitioner's grievance that his dismissal from service was disproportionate to the alleged infraction—a minor procedural oversight in affixing an incorrect date on a utility bill, which caused no financial loss to the respondent bank. It observed that the petitioner had already endured extensive litigation for over two decades, highlighting the procedural and substantive unfairness in the case.

In examining the Full Bench of NIRC's decision, the court found two key issues: the **timeliness of the grievance petition** and the **service of the grievance notice**. On the first issue, the court concluded that the Full Bench had misapplied the principles laid down in the Supreme Court judgment in **Mubeen-us-Salam v. Federation of Pakistan**. It clarified that the petitioner had filed his grievance within the 90-day period allowed under the Supreme Court's directions, thereby making the petition timely. The Full Bench's findings to the contrary were deemed erroneous and constituted a misreading of the law.

On the second issue, the court disagreed with the Full Bench's conclusion that the grievance notice was not properly served. It held that the petitioner's appeal to the President of Habib Bank Limited, although addressed incorrectly, was entertained and adjudicated by the Vice President of the bank. This, the court ruled, amounted to substantial compliance with the grievance notice requirement. The court relied on established legal precedent, which holds that procedural technicalities should not be elevated to defeat substantive justice.

The court also scrutinized the proportionality of the penalty imposed on the petitioner. It found that dismissal was an excessive punishment for a minor procedural error that neither caused financial loss to the bank nor involved any malintent. It emphasized that disciplinary actions must be commensurate with the gravity of the misconduct and should not appear punitive or unjust.

Conclusion: Based on the foregoing discussion, this petition is allowed. The impugned Order dated 02.10.2019, passed by the learned Full Bench of N.I.R.C, is hereby overturned. As a result, the Order dated 27.02.2019, passed by the learned Member of N.I.R.C, is reinstated.

SELECTED ARTICLES

Recognition of Foreign Judgments in Custody Cases In Pakistan

Waseem Ahmed Phulpoto

The recognition of foreign judgments in custody cases in Pakistan involves a complex interplay of cultural, legal, and procedural considerations. This paper examines the approach of Pakistani courts to such cases, emphasizing factors like cultural alignment, religious upbringing, and the welfare of minors. Key themes include:

1. **Cultural and Religious Considerations:** Courts assess cultural alignment, education, and religious upbringing to determine the child's welfare.
2. **Judicial Commitment to Minors' Welfare:** The judiciary prioritizes the welfare of minors over procedural or territorial concerns.
3. **Legal Framework and Precedents:** Section 13 of the Civil Procedure Code (CPC) and entry 6-A in the West Pakistan Family Court Act 1964 in pursuance of ratification of The Hague Convention on the Civil Aspects of International Child Abduction, 1980 provides the legal foundation, but judicial precedents reflect a nuanced approach balancing international comity and local norms.
4. **Cautious Enforcement:** Courts cautiously enforce foreign rulings only when they align with Pakistani law and the child's best interests.
5. **Safeguarding Minors' Welfare:** Protecting children's rights remains the guiding principle amidst transnational disputes.

The recognition of foreign judgments in custody cases in Pakistan is a complex legal issue influenced by national laws, cultural contexts, and judicial priorities. The legal framework is primarily governed by Section 13 of the Code of Civil Procedure, 1908 and entry 6-A in the West Pakistan Family Court Act 1964 in pursuance of ratification of The Hague Convention on the Civil Aspects of International Child Abduction, 1980, which outlines specific exceptions under which foreign judgments may not be recognized. These include lack of jurisdiction, judgments not on merits, contradictions to Pakistani law or natural justice, fraudulent nature, and public policy violations. In custody matters, the welfare of the minor is paramount, often overriding foreign rulings if they conflict with this principle. This approach is reflected in key judicial precedents, which emphasize the welfare of the child and the exclusive jurisdiction of Pakistani courts in custody matters.

Foreign judgments in custody cases pose unique challenges in Pakistan due to differences in national laws, cultural contexts, and judicial priorities. This paper explores the recognition and enforcement of such judgments by analyzing key

judicial precedents, including PLD 2013 Islamabad 34, PLD 2010 Lahore 48, PLD 1981 Peshawar 110 and PLD 2020 Lahore 716.¹

Embracing Technology and Artificial Intelligence in the Judicial System: Pakistan's Path Toward a Modern Judiciary

Ali Sher Chandio

Technology and artificial intelligence (AI) are reshaping the way justice is delivered around the world. What once seemed like futuristic tools are now part of everyday life in courts, helping to streamline processes, reduce delays, and improve access to justice. Pakistan, too, is gradually stepping into this digital transformation, albeit with its unique challenges.

The integration of technology and artificial intelligence (AI) into judicial systems worldwide is transforming the delivery of justice by enhancing efficiency, reducing delays, and improving access. Globally, AI is being utilized for tasks such as legal research, case management, and predictive analytics, which streamline operations and allow legal professionals to focus on more complex issues. In Pakistan, the introduction of AI in courts is seen as a promising solution to longstanding challenges like inefficiency and case backlogs, with initiatives such as the Smart Court System (SCS) aiming to modernize judicial procedures.²

Decoding the Digital Personal Data Protection Act, 2023

The first draft of the Data Protection Bill came out in 2018. After various rounds of amendment in 2019 and 2021, the bill was scrapped and replaced with the Digital Personal Data Protection Bill, 2022. The Digital Personal Data Protection Bill, 2023 introduced on 3 August 2023 and was passed by the Lower House of the Parliament on 7 August 2023 and by the Upper House of the Parliament on 9 August 2023. The bill has received the Presidential assent followed by official gazette notification and has become a law of the land on 11 August 2023. The Digital Personal Data Protection Act, 2023 (hereinafter referred to as 'DPDPA') lays down procedures to process personal data in a lawful manner and thereby empowers and protects the rights of Data Principals. Factors such as accountability, transparency, data minimisation, fairness, accuracy, and lawful processing of personal data have been reflected in the DPDPA. It addresses Data Principals as 'she/her', which is unseen in any Indian law till date and sets the tone in a new light. This document delves into the various aspects of the DPDPA and aims to provide our point of view on its implications, challenges, and potential benefits.³

¹ https://www.academia.edu/126886328/Recognition_of_Foreign_Judgments_in_Custody_Cases_in_Pakistan_1

² https://www.academia.edu/126887457/Embracing_Technology_and_Artificial_Intelligence_in_the_Judicial_System_Pakistans_Path_Toward_a_Modern_Judiciaryhttps://www.academia.edu/126887457/Embracing_Technology_and_Artificial_Intelligence_in_the_Judicial_System_Pakistans_Path_Toward_a_Modern_Judiciaryhttps://www.academia.edu/126887457/Embracing_Technology_and_Artificial_Intelligence_in_the_Judicial_System_Pakistans_Path_Toward_a_Modern_Judiciary

³ <https://kpmg.com/content/dam/kpmgsites/in/pdf/2023/08/decoding-the-digital-personal-data-protection-act-2023.pdf.coredownload.inline.pdf>

Shaping Pakistan's Data Protection Law: Insights from Singapore and India

Asgar Ali Mahar

In the digital age, data has emerged as a precious resource, surpassing even traditional fuels in value for businesses and organizations. This invaluable data holds the key to understanding human behavior, the intricacies of nature, individual habits, preferences, emotions, and much more. Notably, the realm of artificial intelligence (AI) has reached remarkable heights, allowing it to mimic and discern emotions while predicting future actions, akin to a form of predictive mind-reading. In response to this data-driven landscape, several countries have taken legislative measures to regulate and ethicalize businesses that heavily rely on data. For instance, Singapore introduced the Personal Data Protection Act (PDPA) in 2012, with recent updates to address contemporary concerns. Similarly, India recently enacted the Digital Personal Data Protection Act (DPDPA) in 2023. However, Pakistan is currently grappling with the development and implementation of a specific data protection law. Despite the presence of various cyber laws, the country lacks a comprehensive framework dedicated to data privacy, which is crucial given the increasing cyber threats and crimes. The existing legal structures are insufficiently enforced, leading to vulnerabilities in data protection. This situation necessitates a robust legal framework to safeguard personal and organizational data effectively.⁴

The Possibility of Applying Artificial Intelligence in the Delivery of Justice by Courts

BALTIC JOURNAL OF LAW & POLITICS

The article analyses the prospects for the application of artificial intelligence in the delivery of justice by courts. The application of artificial intelligence is increasingly spreading in various different areas of life - both in the daily life of individuals and in the public sector. One of the main areas where artificial intelligence is already being applied is in the area of justice. However, given the complexity and importance of this field, the question arises whether artificial intelligence could really replace the person of the judge. In order to answer this question, the authors first assess what constitutes the delivery of justice. Secondly, the authors analyse the concept of artificial intelligence and the possibilities of its use. Thirdly, the authors assess the potential and risks of artificial intelligence in the delivery of justice. The paper reviews various artificial intelligence models already in use around the world and assesses the application of various technologies (large language models such as ChatGPT) in the court. Finally, conclusions are drawn as to whether artificial intelligence can replace the person of the judge.⁵

⁴https://www.academia.edu/126834757/Shaping_Pakistans_Data_Protection_Law_Insights_from_Singapore_and_India

⁵<https://sciendo.com/pdf/10.2478/bjlp-2024->

Latest Legislation

- 01. The International Islamic Institute for Peace (IIIP) Act, 2024**
 - 02. Hajj and Umra Act, 2024**
 - 03. Tax Laws Amendment Act, 2024**
-

Disclaimer

Care and caution have been taken in preparing and publishing this Quarterly Case Law Update. Where required, the text has been moderated, edited, and rearranged. The contents available in this Quarterly Case Law Update are just for information. Users are advised to explore and consult original text before applying or referring to it.