

To

The Provincial Police Officer,
Khyber Pakhtunkhwa.

-54
Rameez "Q"

Subject: Departmental appeal /Representation

Respected Sir,

With due respect I have the honour to submit this departmental appeal/representation for your kind consideration and favourable action on the following facts and grounds:

1. That the appellant while performing his duties at Investigation Wing, Mardan, was entrusted the Investigation of case F.I.R. No.619 dated 10.07.2015 U/S 302/324/34/114 PPC PS City, Mardan.
2. That appellant inspected the spot and prepared the site plan. Further, blood stained earth, blood stained clothes, and one pistol of the 30 bore alongwith other items were recovered and taken into possession.
3. That the appellant conducted detail investigation in the case and then submitted the investigation report to the concerned authorities. The whole investigation process was completed in accordance with law. The statements of the concerned persons were timely recorded.
4. That later on, upon the application of the complainant an inquiry was ordered against the appellant. After submission of the inquiry report, the appellant was issued with show cause notice dated 18.05.2017 by worthy DPO Mardan for poor/defective investigation.
5. That the appellant submitted reply to the Show Cause Notice and rebutted all the charges.
6. That the appellant was awarded minor punishment of Censure for inefficiency through order dated 05.06.2017 of the District Police Officer Mardan.
7. That the said punishment of censure was further enhanced to demotion to substantive rank of ASI and removal from promotion list "E" with immediate effect through another order dated 13.07.2017 of Regional Police Officer, Mardan.
8. That the appellant being aggrieved of the order dated 13.07.2017 filed the instant departmental appeal on the following grounds,

GROUNDS

- A. That the appellant has conducted free, unbiased and impartial investigation in the said case, has recorded all the statements of necessary witnesses and recovered one 32 Bore Pistol alongwith other items. Moreover, all the apprehended accused were thoroughly interrogated in accordance with law.

ATTESTED

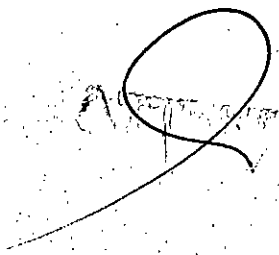
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- B. That the appellant has investigated the case according to law with full dedication, professional responsibility and efficiency. Further, the appellant has no relation/nexus with either party.
- C. That the Bail Petitions of three main accused were rejected by the learned ASJ, Mardan who later on, were released on Bail by Peshawar High Court, vide order 30.10.2016 on other grounds.
- D. That the preliminary enquiry was conducted at the back of the appellant and was not in accordance with law.
- E. That none of the charges have been proved prima facie against the appellant in the preliminary enquiry conducted by SP (Operations), Mardan.
- F. That in the first order dated 05.06.2017 DPO, Mardan has clearly stated that inspite of burden of cases, no malafide could be determined from the enquiry on behalf of the appellant, even then the punishment of censure for inefficiency was awarded to the appellant which is illegal, unjust and not in accordance with law.
- G. That astonishingly the punishment of Censure was further enhanced to demotion of substantive rank of ASI and removal from the Promotion List "E" with immediate effect through impugned order which is also illegal, unfair, unjust and not maintainable in the eye of law.
- H. That the final impugned order dated 13.07.2017 of RPO Mardan was ordered upon the so called application of the complainant whereas the fact is that the appellant was aggrieved of the previous order dated 06.06.2017.
- I. That the RPO, Mardan had no powers to issue an appellate order upon the complaint of a private person. So the RPO, Mardan has excessively used his power and awarded harsh punishment to appellant.
- J. That the appellant has not been treated in accordance with the law and rules on subject and the authorities acted in violation of Article 4 of the Constitution of the Islamic Republic of Pakistan-1973.
- K. That the F.I.R was lodged on 10.07.2015 whereas the complainant filed application against the appellant on 20.02.2017 after the lapse of 02 years which shows malafide on behalf of the complainant.

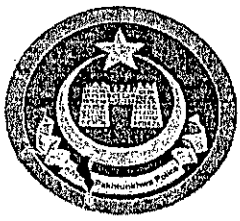
It is, therefore, humbly requested that on acceptance of this departmental appeal, the order dated 13.07.2017 of RPO, Mardan may kindly be set aside and the appellant may be exonerated of all the charges leveled against him by restoring him to his original position of S.I. with all back benefits.

Yours faithfully
 Momin Khan,
 Sub-Inspector
 Investigation Wing,
 Mardan

Dated: ____/07/2017 .



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OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 6983 /17, Dated Peshawar the 23/10/2017. -56

ORDER

Annex "R"

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **ASI Momin Khan (the then SI)**. The appellant was awarded penalty of demotion to substantive rank of ASI and removed from promotion list "E" by RPO, Mardan vide order Endst: No. 5633-34/ES, dated 13.07.2017.

Brief facts are that he while posted as Investigation Officer Police Station City was charged by the complainant namely Khan Habib s/o Ghulam Habib r/o Haji Koroona for poor / defective investigation of case FIR No. 619 dated 10.07.2015 u/s 302/324/34/114-PPC Police Station City. He was proceeded against departmentally, SP/Operation, Mardan was appointed as Enquiry Officer. The Enquiry Officer recommended him for major penalty of removal from service but DPO, Mardan awarded him punishment of censure vide OB No. 1306, dated 02.06.2017.

Aggrieved from the order of DPO, Mardan on 06.06.2017 the complainant submitted another application to the RPO, Mardan as well as IGP/KP received vide CPO, Peshawar Memo: No. 2456/PAS, dated 12.06.2017 requesting therein that:-

- (i) The defaulter Police Official should be punished as per recommendation of the enquiry officer and no lenient view be taken in this regard.
- (ii) The faulty and destructive prosecution case be re-investigated through a special investigation team from CPO Investigation Unit.

The application was marked to Regional Review Board. Regional Review Board submitted report wherein recommended that the main three (03) witnesses who were passerby and injured in the occurrence did not give any kind of evidence regarding the occurrence and the complainant is emphasizing on recording their statements. Hence at this stage neither valuable proof / witness is available to be brought on case file nor the complainant has produced anything in support of prosecution.

RPO, Mardan enhanced his punishment from censure to demotion to substantive rank of ASI and removal from promotion list "E" vide order dated 13.07.2017 as the Investigation Officer badly failed to conduct professional investigation of a heinous case, resultantly prosecution of the case did not stand and accused were bailed out by the Court.

Meeting of the Appellate Board was held on 05.10.2017, wherein the petitioner was present and heard.

During hearing petitioner contended that has recorded all the statements of necessary witnesses and recovered one 32 Bore pistol alongwith other items and all the apprehended accused were thoroughly interrogated. Petitioner further contended that bail of three accused were rejected by the learned ASJ, Mardan and later on released by the Peshawar High Court vide order dated 30.10.2016.

In view of the explanation of the petitioner, the Board decided that the case is hereby remanded to DPO for de-novo proceedings and the witness / applicant be examined in his presence.

This order is issued with approval by the Competent Authority.


(MUHAMMAD ALI KHAN)

DIG/HQrs:

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

No. S/ 6984-90/17,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-III, CPO, Peshawar.


ATTES 111

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OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

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Amir S²

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. _____/R,
Dated _____/2018.

ORDER

This order will dispose-off departmental (De-novo) inquiry, which has been conducted against ASI Momin Khan, on the allegation that he while posted at PS City Mardan, was charged by the complainant namely Khan Habib s/o Ghulam Habib r/o Haji Koroonia for poor / defective investigation of case FIR No. 619 dated 10.07.2015 u/s 302/324/34/114 PPC PS City. Consequently, he was proceeded against departmentally. SP/Operations Mardan was appointed as enquiry officer, who after fulfilling the enquiry process submitted his findings and recommended him for major punishment i.e Removal from Service under Police Rules 1975. The delinquent officer was called in O.R and awarded him minor punishment of Censure vide this office Order No. 5852-55/PA, dated 05.06.2017.

Aggrieved from the order of the undersigned, the complainant submitted another application to the worthy PPO Khyber Pakhtunkhwa, Peshawar and the worthy DIG Mardan for re-investigation of the aforesaid case. Hence, the application was marked to the Regional Review Board for re-investigation. On the submission of report by the Regional Review Board and application submitted by complainant Khan Habib, the worthy DIG Mardan held ASI Momin Khan responsible for faulty investigation and enhance his punishment from "Censure" to demotion to his substantive rank of ASI and removal from promotion list - "E" under Police Rules 1975 (Amended 2014) vide Para - 4(A) vide his office order No. 5633-34/ES, dated 13.07.2017.

Later on the defaulter officer prepared an appeal to the worthy PPO, Khyber Pakhtunkhwa, Peshawar, and his appeal was marked to the appellate board constituted in CPO Peshawar. During the meeting of appellate board on 05.10.2017, his case / appeal was remanded to the undersigned for de-novo proceedings with the directions to examine witness / applicant in the presence of defaulter ASI Momin Khan.

Accordingly, ASI Momin Khan and applicant Khan Habib were called at the office of the undersigned wherein, the applicant leveled serious allegations of biased investigation, favoring the accused party and also charged him for taking illegal gratifications on account of providing CDRs to applicant. ASI Momin Khan was given an ample opportunity for his defense but he failed to produce any substantial evidence in his defense.

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From the perusal of record present on enquiry file and the failure of ASI Momin Khan to prove himself innocent, the undersigned arrived at the conclusion that ASI Momin Khan badly failed to conduct professional investigation of a heinous case, resultantly prosecution of the case did not stand and accused were bailed out by the court as well as not producing any evidence in his support for the charges of taking illegal gratification for official assignments from complainant. Therefore I, Mian Saeed Ahmed (PSP) District Police Officer, Mardan hereby dismissed ASI Momin Khan from service with immediate effect in exercise the power vested in me under Police Rules 1975.

Order announced

O.B No. 242

Dated 30/01/2018.

Dr. Mian Saeed Ahmed (PSP)
District Police Officer,
Mardan.

No. 11/8-24/1R. dated Mardan the 31/1/2018.

Copy for information to:-

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar with his office Memo: No. S/6983-90/17, dated 23/10/2017.
2. The Deputy Inspector General of Police Mardan Region-1, Mardan.
3. The S.P Operations, Mardan.
4. The SP/Investigation, Mardan.
5. The Pay Officer (DPO) Mardan.
6. The E.C (DPO) Mardan.
7. The PA (DPO) Mardan.

To

The Deputy Inspector General,
Regional Police Officer, Mardan.

Subject: Departmental Appeal against the order dated 31.01.2018 passed by the DPO Mardan whereby major penalty of dismissal from service was imposed upon appellant on the charge of faulty investigation.

Respected Sir,

With due respect I have the honour to submit this departmental appeal for your kind consideration and favourable action on the following facts and grounds:

1. That the appellant while performing duties at Investigation Wing, Mardan, was entrusted the investigation of case F.I.R. No.619 dated 10.07.2015 U/S 302/324/34/114 PPC PS City, Mardan.
2. That appellant inspected the spot and prepared the site plan. Further, blood stained earth, blood stained clothes, and one pistol of the 30 bore alongwith other items were recovered and taken into possession.
3. That the appellant conducted detail investigation in the case. Statements of the concerned witnesses were recorded, however, the injured witnesses, who were pedestrians and hit during the course of firing, were admitted in the hospital at that time. The appellant visited the hospital for recording their statements immediately after the occurrence but they were not in a position to record their statements. Subsequently, they went into hidden for many days for not involving themselves in the enmity of the complainant and accused party. After many days they presented themselves for recording their statements which were accordingly recorded as per their version.
4. That later on, upon the application of the complainant, disciplinary action was initiated against the appellant and he was issued Charge Sheet and Statement of allegations on 27.03.2017. Since the charges were baseless, ill-founded, based on malafide of the complainant party, therefore, the appellant submitted a reply thereby explaining his position. An inquiry was conducted by the SP Operations & Headquarters who submitted his report on 12.05.2017. Before the Enquiry Report, an impartial investigation was conducted by DSP City, Mardan who had recommended minor penalty vide Investigation Report dated 25.04.2017.
5. That after the enquiry, the appellant was issued final Show Cause Notice on 18.05.2017 by the competent authority whereby major penalty was proposed to the appellant. Appellant submitted a reply to the Show Cause Notice whereby once again he explained his position to the competent authority, however, appellant was imposed upon the minor penalty Censure vide order dated 05.06.2017 (*Annex:-A*). The complainant party then moved applications to the Provincial Police Officer who referred the same to your good-self for action and accordingly Regional Review Board consisting of SP Investigation Swabi, SP Investigation Charsadda and SP Investigation Mardan to conduct enquiry who conducted enquiry and submitted Report on 16.06.2017 in favour of the appellant.
6. That vide order dated 13.07.2017 (*Annex:-B*) your good-self enhanced the punishment of the appellant to demotion to substantive rank of ASI and removal

Annex "T"
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from Promotion List "E" with immediate effect. The complainant party yet submitted another application (*Annex:-C*) to the Provincial Police Officer who referred the same to your good-self and vide letter dated 16.10.2017 (*Annex:-D*) your good-self observed that the punishment has already been enhanced from the censure, therefore, the application was turned down.

- 7. That against the above-mentioned order dated 13.07.2013, appellant submitted an appeal to the Provincial Police Officer, who referred the case to the Appellate Board and accordingly the case was remanded to the DPO for denovo proceedings vide letter dated 23.10.2017.
- 8. That the learned DPO in denovo proceedings, vide impugned order dated 31.01.2018 (*Annex:-E*) this time imposed major penalty of removal from service upon the appellant with immediate effect.
- 9. That the appellant now being mortally aggrieved of the order of the learned DPO, Mardan ibid, files this Departmental Appeal for your favourable consideration inter-alia on the following grounds:-

GROUNDS

- A. That the charge of biased investigation, favoring the accused party and illegal gratification on account of providing CDRs to the complainant are totally misconceived. There is no bit of evidence to establish the charges except the bald allegations of the complainant party who wanted to punish the appellant on account of grant of bail to the accused. It is a matter of record that the accused were refused bail by the learned Judicial Magistrate as well as the learned Additional District & Sessions Judge, Mardan and it was the Hon'ble High Court which allowed bail to the accused on multiple reasons including non-specific role to the accused persons, solitary injury, contradiction in ocular and medical evidence etc..
- B. That the charge of providing CDR to the complainant on illegal gratification is an afterthought, false and fabricated story because the very first complaint made on 21.02.2017 to the Provincial Police Officer does not contain the same nor the same charge is included in the Charge Sheet and Statement of allegations nor in the Enquiry Report.
- C. That none of the charges have been proved prima facie against the appellant in the enquiry conducted by SP (Operations), Mardan, therefore, he simply recommended censure of the appellant.
- K. That the F.I.R was lodged on 10.07.2015 whereas the complainant filed application against the appellant on 20.02.2017 after the lapse of 02 years which shows malafide on behalf of the complainant.
- D. That the appellant has conducted free, unbiased and impartial investigation in the said case, has recorded all the statements of necessary witnesses and recovered one 32 Bore Pistol alongwith other items. Moreover, all the apprehended accused were thoroughly interrogated in accordance with law.
- E. That the appellant has investigated the case according to law with full dedication, professional responsibility and efficiency. Further, the appellant has no relation/

ATTENTION

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nexus with either party.

- F. That the appellant has not been treated in accordance with the law and rules on subject and the authorities acted in violation of Article 4 of the Constitution of the Islamic Republic of Pakistan-1973.
- G. That the appellant joined the Police Force on 16.12.1989 and has rendered long meritorious service for a period of 28 long years. During this long service, the appellant has not been ever departmentally proceeded against nor any minor penalty has ever been imposed upon him, thus the service of the appellant remained unblemished, spotless throughout. On the investigation of the appellant, vide judgment dated 03.10.2017 accused Umar Bacha has been sentenced to death by the learned Additional Sessions Judge, Mardan.

It is, therefore, humbly requested that on acceptance of this departmental appeal, the impugned order dated 31.01.2018 passed by the learned DPO Mardan may kindly be set aside and the appellant may be reinstated into service including restoration to the substantive rank of SI w.e.f. 13.07.2017 with all back benefits.

Yours faithfully



Momin Khan,
Ex-SI,
Investigation Wing,
Mardan

Dated: ____/02/2018

ATTACHED

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ORDER.

This order will dispose-off the appeal preferred by Ex- ASI Momin Khan of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major Punishment of dismissal from service vide OB: No. 242 dated 30.01.2018.

Brief facts of the case are that the (De-novo) inquiry has been conducted against ASI Momin Khan, on the allegation that he while posted at Police Station City Mardan, was charged by the complainant namely Khan Habib s/o Ghulam Habib r/o Haji Koroona for poor / defective investigation of case FIR No. 619 dated 10.07.2015 u/s 302/324/34/114 PPC PS City. Consequently, he was proceeded against departmentally. SP/Operations Mardan was appointed as enquiry officer. The Enquiry Officer after fulfilling the enquiry process submitted his findings and recommended him for major punishment i.e Removal from Service under Police Rules 1975. The delinquent officer was called in Orderly Room and awarded him minor punishment of Censure by District Police Officer, Mardan. Aggrieved from the order of the District Police Officer, Mardan, the complainant submitted another application to the worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and the undersigned for re-investigation of the aforesaid case. Hence, the application was marked to the Regional Review Board for re-investigation. On the submission of report by the Regional Review Board and application submitted by complainant Khan Habib, the worthy undersigned held ASI Momin Khan responsible for faulty investigation and enhance his punishment from "Censure" to demotion to his substantive rank of ASI and removal from promotion list -"E" under Police Rules 1975 (Amended 2014) vide Para - 4(A) vide this office order No. 5633-34/ES, dated 13.07.2017.

Later on the defaulter officer preferred an appeal to the worthy Provincial Police Officer Khyber Pakhtunkhwa, Peshawar, and his appeal was marked to the appellate board constituted in CPO Peshawar. During the meeting of appellate board on 05.10.2017, his case / appeal was remanded to the District Police Officer, Mardan for de-novo proceedings with the directions to examine witness / applicant in the presence of defaulter ASI Momin Khan.

Accordingly, ASI Momin Khan and applicant Khan Habib were called at the office of the District Police Officer, Mardan wherein, the applicant leveled serious allegations of biased investigation, favoring the accused party and also charged him for taking illegal gratification on account of providing CDRs to applicant. ASI Momin Khan was given an ample opportunity for his defense but he failed to produce any substantial evidence in his defense.

ATTACHED

[Signature]

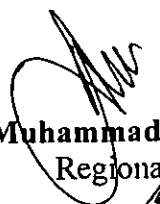
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From the perusal of record present on enquiry file and failure of ASI Momin Khan to prove himself innocent, the District Police Officer, Mardan reached to the conclusion that ASI Momin Khan badly failed to conduct professional investigation of a heinous case, resultantly prosecution of the case did not stand and accused were bailed out by the court as well as not producing any evidence in his support for the charges of taking illegal gratification for official assignments from complainant. Therefore, awarded him Major Punishment of dismissal from service.

He was called in orderly room held in this office on 28.02.2018 and heard him in person. The penalty of dismissal from service is too harsh by keeping in view his lengthy service as well as poor family circumstances, therefore, he is re-instated in service and punishment of dismissal from service is converted into **demotion to his substantive rank of ASI and Removal from promotion list "E" with immediate effect.** The intervening period is treated as leave without pay.

ORDER ANNOUNCED.


(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 1337 /ES, Dated Mardan the 02-03- /2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 191/LB dated 22.02.2018. The Service Record is returned herewith.

(*****)


ATTESTED

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28-6-2016

Counsel for petr present

Amir V²

Counsel for respdt represented, submitted
fresh N/N & sought adjmt to engage counsel.

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Last chance granted for adjmt for

1-7-2016

IN THE COURT OF KULSOOM AZAM,
ADDITIONAL SESSIONS JUDGE-VI, MARDAN

Fawad Habib etc ...vs.....The state.
BA No. 336 of 2016

ORDER
01.07.2016

Counsel for accused/petitioner present.
Complainant alongwith counsel present.
Arguments on behalf of counsel for petitioner
already heard while complainant counsel
advanced his arguments today. Record perused.

Accused/petitioners Fawad Habib, Amir
Habib and Adnan Habib sons of Fazal Habib filed
the instant petition seeking post arrest bail in case
FIR.No. 619 dated 10.07.2015 U/S 302/324/34/114
PPC/15 AA at police station City, District Mardan.

The complainant Khan Habib produced
the dead body of his brother Sajjad Habib s/o
Ghulam Habib alongwith injured Akbar Ali,
Sami Ullah and Imdad Ullah to Casualty DHQ
Hospital, Mardan and reported the matter to the
effect that on the night of occurrence i.e.10.0.2015
he alongwith his brothers Hazrat Habib and Sajjad
Habib was present on the spot after performing of

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"Isha prayer and Taraveh"; that in the meanwhile at 21:45 hours, accused/petitioners duly armed with pistols on the order of their father Fazal Habib started firing at them with intent to commit their murder, as a result whereof Sajjad Habib got hit and sustained injuries who succumbed to his injuries on the way to hospital while he and his other brother Hazrat Habib escaped unhurt. From the said firing three passersby also got injured. Motive behind the occurrence was dispute over a house.

As per record available there is direct charge against the accused/petitioners in the F.I.R who are the real paternal cousins of the complainant. The death of victim/deceased is supported by the postmortem report available on file. Blood through cotton and empties have been recovered from the spot and there are eyewitnesses of the occurrence. The charge against the accused/petitioners contains capital punishment, covered under prohibitory clause of section 497 Cr.P.C and the record is showing prima facie nexus of the accused/petitioners with commission of the offence. The bail petition, therefore, stands rejected.

Record be sent back alongwith copy of this order while the instant petition be consigned to record room after necessary completion and compilation.

Announced.
01.07.2016

Kulsoom Azam
Addl: Sessions Judge-VI/
Mardan

619
7-0
Order---32.
07-06-2016.

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Counsel for the accd/petr present. SPP for the state present. Counsel for the complt also present.

Accd/petr Fazal Habib has filed the instant bail application for his release on bail in case FIR No.619 dated 10-07-2015 under sections 302/324/34/114-PPC of P.S City, district Mardan.

Complt Khan Habib took the dead body of his real brother Sajjad Habib to DHQ Hospital Mardan and in company of injured Akbar Ali, Sami Ullah, Imdad Ullah made report to local police wherein he charged accd/petr Fazal Habib and his three sons Aamir Habib, Adnan Habib and Fawad Habib for committing qatl-e-amd of his brother Sajjad Habib, attempting at his life as well as at the life of passerby injured Akbar Ali, Sami Ullah and Imdad Ullah by firing at them. Case was registered. Accd/petitioner Fazal Habib was arrested hence the instant bail application is filed.

I have heard the arguments advanced by counsel for the accd/petr, SPP for the state and counsel for the complt. Record perused.

Learned counsel for the accd/petr argued that the present acc/petr has only been attributed the role of Lalkara. That he has been shown empty handed. That the occurrence took place during night time. That identification of the accd/petr was not possible. That all the male members of the family have been charged. That the three passerby injured do not support the prosecution case. He referred to the statements of those passerby three injured. He requested for release of the accd/petr on bail.

Learned counsel for the complt on the other hand argued that the accd/petr has directly been charged for commanding "Lalkara". That in this incident one innocent person lost his life while three other innocent persons received fire arm injures on their bodies. That the offence is heinous in nature which comes within the prohibitory clause

9/6/16
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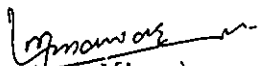
REGISTERED

of section 497 Cr.P.C. That sufficient material is available on file which prima facie connect the accd/petr with the commission of offence. He requested for rejection of bail petition.

Perusal of record revealed that this accd/petr Fazal Habib has only been given the role of "Lalkara". He has been shown empty handed. It will be seen at the stage of trial that whether this accd/petr has commanded his co-accd for committing the offence or otherwise. At this stage case of the accd/petr is one of further probe. Without discussing detail merits of the case, this accd/petr is held entitled for the grant of post arrest bail only due to the above noted reasons. The accd/petr has made no confession. Investigation in the case to the extent of accd/petr is complete and he is no more required for the purpose of investigation. All these facts make case of the accd/petr arguable for the purpose of bail.

In view of the above discussion, the application submitted by accd/petr Fazal Habib for his release on bail is accepted and he is admitted to post arrest bail on furnishing bail bonds in the sum of Rs.03,00,000/- with two sureties each in the like amount to the satisfaction of Judicial Magistrate/MOD. Record alongwith copy of this order be returned to the quarter concerned. File be consigned to the record room after completion.

Announced.
7th June, 2016.


(Munawar Khan)
AS.I-III, Mardan.

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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Annex W³
B.A.No. 1837-A 2016

1. Fawad Habib
2. Amir Habib
3. Adnan Habib all sons of Fazal Habib R/o Haji Korona
Baghdada Mardan(Accused/petitioner)

VERSUS

1. The State
2. Khan Habib son of Ghulam Habib R/o Haji Korona
Baghdada Mardan. Respondents

Case F.I.R. No.619
U/S-302/324/34/-ppc-114
15-AA

Dated 10/07/2015
P : S : City Mardan

Petition for post arrest bail U/S 497 Cr.pc

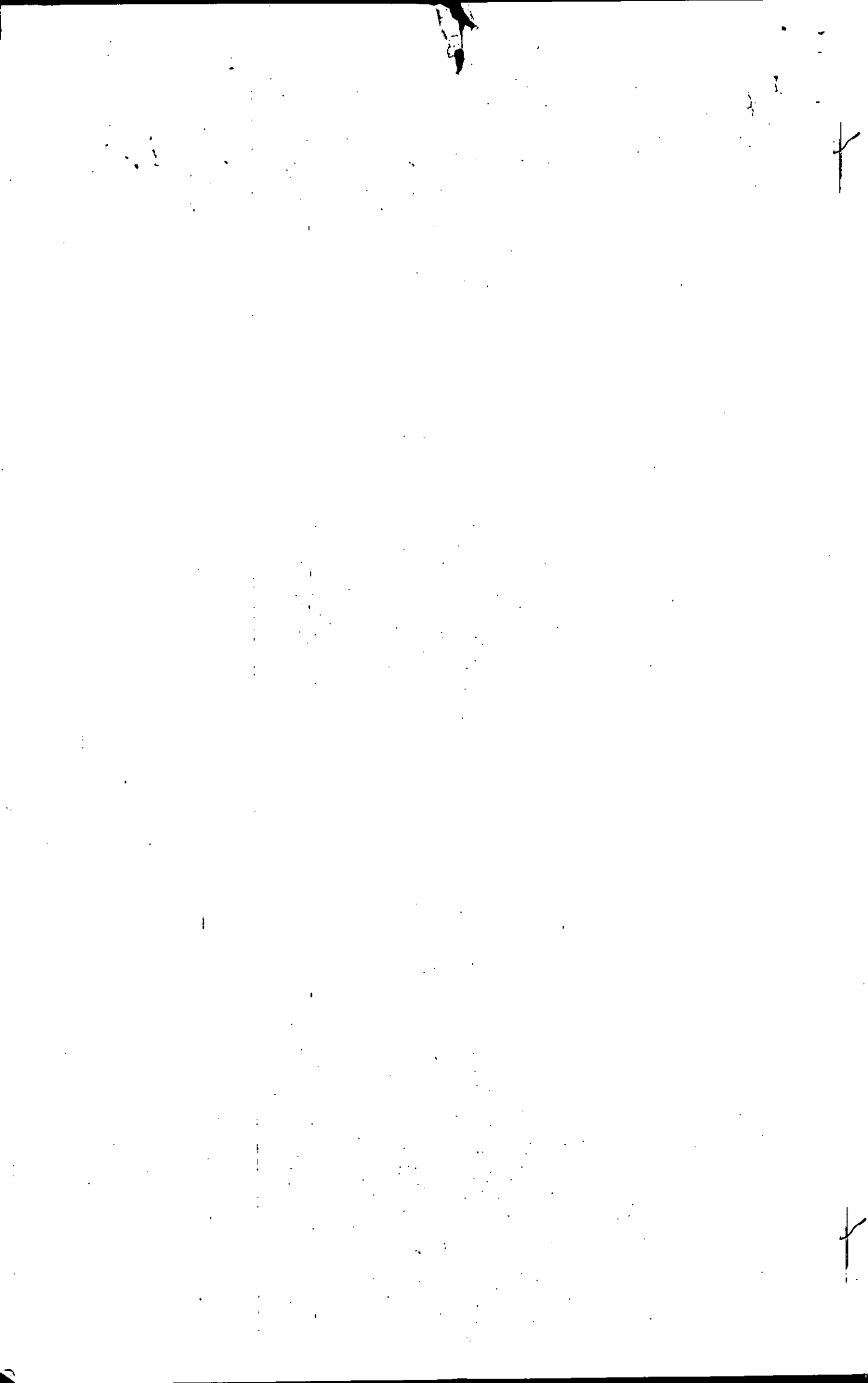
RESPECTFULLY SHEWETH

- 1) That the accused/petitioners stand booked in the above cited case and are behind the bars since their arrest by the local police. (Copy of the F.I.R. is hereby attached as Annex: "A" Better copy is A-1")
- 2) That the accused/ petitioners move an application for their release on bail before the learned Sessions Judge Mardan which was disposed off by the court learned ASJ-vi Mardan and the plea of the accused/ petitioners was turned down on 10/07/2016. (Copy of application and order are attached as Annex B,C).

Now the accused/petitioners are constrained to move before the Hon'able court for their release on bail on the following grounds in law.

ATTESTED GROUND

- A. That the accused/petitioner are innocent and are falsely implicated in the instant case by the complainant party.
 - B. That there is neither ocular nor circumstantial evidence which connects the accused/ petitioners with the commission of offence.
- W



IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department) - 62

Cr.MBA No. 1837-P/2016.

Fawad etc Vs The State.

JUDGMENT

Date of hearing. 31.10.2016
Petitioner(s) by: Mr. Arif Rasool Advocate.
State by: Mian Arshad Jan AAG.
Complainant by: Mr. Muhammad Saleem
Mardan Advocate.

ISHTIAQ IBRAHIM, J:- Fawad Habib,

Amir Habib & Adnan Habib, petitioners, have filed the present petition seeking post arrest bail in case FIR No.619 dated 10.7.2015 under Sections 302/324/34/114 PPC/ 15 AA, Police Station City, Mardan.

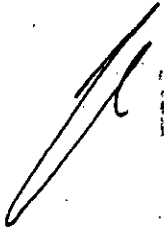
2. According to prosecution case, complainant alongwith his brothers Hazrat Habib & Sajjad Habib after offering Taraveeh prayer, were present on the spot when in the meanwhile, petitioners

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duly armed with pistols on the order/direction of co-accused Fazal Habib started firing at the complainant party as a result of which Sajjad Habib(brother of complainant) was hit who succumbed to his injuries on the way to the hospital. However, complainant and PW. Hazrat Habib escaped unhurt. From the firing of accused, passersbys Akbar Ali, Sami Ullah, Imdad Ullah also sustained injuries. On the report of complainant, present case was registered against the accused.

3. Arguments of learned counsel for the parties, learned AAG for the State, heard and record gone through with their valuable assistance.

4. Record shows that besides deceased Sajjad Habib, three passerbys had also sustained injuries from the firing allegedly made by petitioners but as per statement of injured Akbar Ali available on file, there was brawl between the accused and complainant party during which firing started and he was also hit from the said firing. However, due to darkness he did not know as to with whose fire shots he sustained injuries. Other injured have also charged none in their statements recorded during investigation.



5. Admittedly, general and collective allegation had been levelled against the petitioners regarding firing at the complainant party but no specific role has been attributed to any of the petitioners as to with whose fire shot the deceased received solitary injury and whose shots hit the injured witnesses. The Post Mortem Examination Report of the deceased shows that he had received only one fire shot and that solitary fire shot stands attributed by the prosecution to three accused persons. It is, thus, not clear at this stage as to with whose fire shot, this injury was caused to the deceased. Till this controversy is resolved, case of prosecution is that of further inquiry. Wisdom is derived from the cases "Jaffars & others Vs The State" (1980 SCMR 784), Khan Mir Vs Amal Sherin alias Kamal & others" (1989 SCMR 1987) and "Asmat Ullah Vs The State" (PLD 2011 SC 178).

6. So far as the factum of abscondence of the petitioners is concerned, suffice it to say, it would have no relevance at this stage, as their case calls for further probe into their guilt, within the scope of section 497(2), Cr.P.C. It has been held in Ehsan Ullah v. Th

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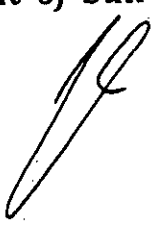


State (2012 SCMR 1137). Ikram-ul-Haq v. Raja Naveed Sabir and others (2012 SCMR 1273) and Mitho Pitafi vs. The State (2009 SCMR 299) that:

"mere abscondence of an accused may not be sufficient to refuse bail to him, if, on the basis of other circumstances, the case called for further inquiry into his guilt and in such a situation, bail should be allowed to him as a matter of right and not by way of grace or concession."

7. Though trial against petitioners has commenced before the trial Court but even the petitioners have not yet been produced before the Court for compliance of provisions under Section 265-C Cr.PC. It will definitely take sufficient time to conclude the trial being at initial stage and for indefinite period petitioners cannot be kept behind the bar when their case is calling for further inquiry into the matter. It has been held by the august Supreme Court of Pakistan in the case of "Nisar Ahmad Vs The State & others" (2014 SCMR 27) that:

"there is no bar with this Court to grant bail at any stage provided petitioner has made out a case of further enquiry. The rule laid down in Muhammad Ismail v. Muhammad Rafique (PLD 1989 SC 585), is a rule of propriety and practice and cannot be taken as a bar for the grant of bail if an accused has



made out a case for the same. In Muhammad Ismail's case supra, this Court alluding to this practice noted that "it is well known practice of the superior Courts of Pakistan that when a murder case is fixed for hearing ordinarily the bail applications are not decided on merits and the matter is often left to the discretion of the trial Judge". But the Court in the operative part of the same judgment attended to the nature and scope of this practice of the Court by holding as follows:--

"The question then arises; whether, subsection (2) of section 497, Cr.P.C. would have operation notwithstanding the afore-stated practice of this Court. Much discussion is not necessary in this behalf. When an accused person becomes entitled as of right to bail under subsection (2) of section 497, Cr.P.C. the same cannot be withheld on the ground of practice; because, the latter is relatable to exercise of discretion while the former is relatable to the exercise and grant of right."

In the afore-referred circumstances, the question of petitioner's guilt would require further enquiry.

Investigation in the case is complete and petitioners are no more required to the Investigation Agency for further interrogation therefore, keeping them behind the bar would serve no useful purpose.

8. In view of above discussion as well as case law cited above, this petition is allowed and all the

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petitioners are admitted to bail subject to furnishing bail bonds to the tune of Rs.2,00,000/- (Two lac) each with two sureties each in the like amount to the satisfaction of Illaqa/Duty Judicial Magistrate concerned, who shall ensure that the sureties are local, reliable and men of means.

The above are reasons of my short order of even date.

Needless to mention that the above observations being purely tentative in nature, should in no way prejudice the proceedings before the learned trial Court.

Announced:
31.10.2016.



JUDGE

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DP/ Mardan

Recd

Not in action

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Regional Police Officer,
Mardan

To

The Provincial Police Office,
Khyber Pakhtoon Khwa,
Peshawar

Subject: Impartial Investigation/Justice in case FIR No.619 Dated 10-07-2015
u/s 302-324-34-114 PPC PS City Mardan

Respected Sir,

D.I.G Office, Mardan.

Case No. 302 I.C-Cell
dated 21-2-2017

Dated:
No.
I.C-Cell
D.I.G Office, Mardan.

FACTS OF THE CASE :

Brief facts of the case are that on 10-07-2015 complainant Khan Habib s/o Ghulam Habib r/o Haji Koroona Baghdada brought the dead body of his brother deceased sajjad Habib and injured Akbar Ali, Sami ullah, Imad ullah to DHQ Hospital Mardan and reported to the effect that on the night of occurrence i.e 10-07-2015 at 21:45 hrs, he along with his brothers Hazrat Habib and Sajjad Habib were present on the spot after performing "Taravehh" prayer. In the mean while accused Ameer Habib alias Aamir , Adnan Habib and Fawad Habib sons of Fazal-e-Habib duly armed with pistols, upon the order of their father namely Fazal-e-Habib, started firing on us. Sajjad Habib was hit and injured while he along with his brothers escaped un hurt. Injured sajjad Habib on the way to hospital succumbed his injuries and died. From the firing of the accused, three passer by namely Akbar Ali . Sami ullah and Imdad ullah were also hit and got injured . Motive for the offence was disclosed to be a dispute over a house. The complainant charged all the above mentioned accused for the offence.

ASI javed Iqbal I/C casualty DHQ hospital Mardan recorded the report of the complainant in the shape of Morasala and prepared the injury sheet and inquest report of the deceased. The injured were handed over to the doctor for treatment and the dead body of the deceased was handed over to the doctor for PM examination. On receipt of the Morasala to the police station, a proper case vide FIR No.619 dated 10-07-2015 u/s 302-324-34-114 PPC PS City Mardan was registered. The investigation of the case was entrusted to SI Momin Khan for investigation.

The I.O inspected the spot and prepared the side plan . blood stained earth recovered through cotton, blood stained cloths of the deceased , one pistol of 32 bore belonging to accused Adnan Habib, empties, three electric bulbs lighting at the time of occurrence were recovered from the spot which were taken into possession. Beside the complainant, the I.O also recorded the statement of eye witness Hazrat Habib who has supported the prosecution story. PM report of the deceased received in +ve. All the charged accused decamped from the spot after the occurrence. Proceedings u/s 512 crpc against the accused were completed and declared as proclaimed offender in the case. Complete challan against the accused u/s 512 crpc was submitted against the accused on 04-08-2015.

On 18-03-2016, all the absconding accused in the case surrendered themselves before ASI Shafique Ahmad Khan I/C PP labour colony. Accused were arrested and 02 days custody was obtained. During police custody, spot pointation was made at the instant of the accused and to this effect, spot pointation memo was prepared. On the expiry of police custody accused were sent to judicial lock up and on 22-03-2016 supplementary challan was submitted in the court.

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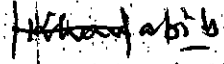
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GROUNDS:

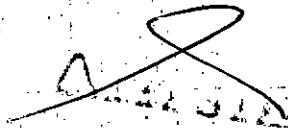
1. That the occurrence has taken place on 10-07-2015 and after the laps of 18 days, on 28-07-2015 statement of the other passer by injured persons namely Akbar Ali, Sami ullah were recorded u/s 161 crpc. These statements were totally found against the prosecution story and destroyed the murder case.
2. That passerby Akbar Ali and Sami ullah have concealed the real facts of the case and recorded their statements according to the wish and directive of one Arshad s/o Farzand Ali Shah r/o Tamboluck Mardan. It would be not out of place to mention here that the said Arshad is the son of law of accused Fazal Habib and brother in law of the remaining accused.
3. That from the CDR report / communication between mobile No. 0300-9763888 in the name Arshad and mobile No. 0316-9519697 in the name of passerby injured Akbar Ali has been confirmed. Moreover communication between mobile No. 0300-9763888 in the name of Arshad and mobile No. 0345-9990722, 0333-9878990 in the name of sub inspector Momin I.O of the present case has also confirmed. Meaning thereby that the statements of Akbar Ali and sami ullah were planted with due consultation of the I.O and Arshad. The role played by SI Momin Khan and the investigation of the case is objectionable and beyond his legal responsibility, for which he is liable to be dealt departmentally and the case is to be re investigated in the interest of justice.
4. That during police custody, accused were not properly interrogated and as such no weapon of offence were recovered at their instance.
5. That the statement of the passerby injured namely Imdad ullah has not been recorded and from his side, statement of his father namely Muhammad Ibrahim has been recorded in a wonderful indirect shape and has ruined the prosecution story which itself shows the malafidity and supporting the accused party of the investigation officer.
6. That all the accused have been bailed out only and only on the basis of the statements of Akbar Ali, Sami ullah and indirect statement of Muhammad Ibrahim followed by the destruction of the whole prosecution case.

Keeping in view the above facts and circumstances, it is humbly requested that strict departmental action be taken against SI Momin Khan for conducting wrong investigation / destruction of the prosecution case and the case be re investigated to special investigation team fro CPO investigation unit for sake of justice.

Yours obediently;


Khan Habib s/o Ghulam Habib
R/o Haji Koroona Baghda, Mardan
Cell No. 0312-9618451

Copy to:

1. Additional IGP investigation (CPO Peshawar)
 2. DIG Mardan
 3. DPO Mardan
 4. SP investigation Mardan
- 

IN THE COURT OF KASHIF DILAWAR
ADDITIONAL SESSIONS JUDGE-I, MARDAN.

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Special Case No. 07/SC of 2016.

Annex "Y"

Date of Commencement of Trial.....03.01.2013

Date of entrustment to this Court.....06.04.2016

Date of Decision.....03.10.2017

State..... Vs..... Umar Bacha s/o Amir Bacha aged
about 41/42 r/o Sangao, District
Mardan
..... (Accused facing trial)

State represented by:- Mr. Sadeeq Anjam
Assistant Public Prosecutor

Counsel for Complainant:- Mr. Yousaf Shah Mohmand Advocate

Counsel for accused:- Mr. Muhammad Saleem Advocate


Charged in case F.I.R No. 1152 Dated 19.10.2012
U/s 302 PPC read with 13-AO of P.S City Mardan.

JUDGMENT

1. Accused named above is facing trial in this Court in criminal case registered vide FIR No. 1152 dated 19.10.2012 u/s 302 PPC read with 13-AO of PS City, Mardan.

2. Prosecution story as unfolded in the FIR is that on 19.10.2012 at 1530 hours, complainant Abdul Khaliq s/o Gul Rahim r/o Sangao Mardan present with his injured son Abdul

3-10-17



~~DATE~~

Y

Qadeer reported to Muqaddam Khan ASI, at Bus Stand Mardan that he along with his son Abdul Qadeer were going to their village from Nowshera Cantt and when reached to the gate of Bus stand Mardan, there accused facing trial duly armed with pistol emerged and fired at his son with the intention to kill him as a result of which he was hit on his head and received injuries. Motive was disclosed as previous blood feud enmity with accused. While decamping from the spot, accused was arrested by the above named ASI along with the pistol, murasila was drafted and sent to Police Station for registration of the case while injured was shifted to DHQ Hospital Mardan. Later on, injured Abdul Qadeer succumbed to his injuries and consequent upon, instant FIR was lodged against the accused.

3. After the conclusion of the investigation, the case was sent-up for trial against the accused. Accused was produced and after observing codal formalities within the meanings of section 265-C Cr.PC, he was charge sheeted on 03.01.2013 for the offence to which he did not plead guilty and claimed trial. Therefore, in order to substantiate the charge against the accused, the prosecution recorded the statements of as many as eight P.Ws with the following resume:-

PW-1 Dr. Wajid Ahmad, had medically examined the injured Abdul Qadeer on 09.10.2012 at 03.30 pm. According to his statement, the patient was



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semi conscious and disoriented having following
fire arm injuries.

74

1. Fire arm entry wound on right side of skull of the size about 5 X 5 cm with blackening around the wound.
2. Firearm exit wound on left side of skull of the size of 1 x 2 cm.
3. Lacerated wound on right side of chin.

Patient was admitted to male Surgical Ward and X-Ray of skull was advised. Nature of injury was found grievous and weapon used was firearm. Probable duration was given as within one hour.

He endorsed his signature on MLR Ex-PW1/1.

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Ex-PW-2 Abdul Munaf s/o Abdul Khaliq, is the marginal witness to recovery memo Ex-PW2/1 vide which the I.O. secured the blood from the place of injured Abdul Qadeer, sealed the same into parcel. He is also marginal witness to recovery memo Ex-PW2/2 vide which the I.O. recovered and took into his possession three empties of 30 bore, Ex-P-1, giving smell of fresh discharge. He endorsed his signatures on both the recovery memos.

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PW-3 Muhammad Saeed FC No.54, is the marginal witness to recovery memo Ex-PW3/1 vide which the I.O. took into possession the blood stained garments of deceased, the then injured, Abdul Qadeer, consisting of shirt Ex-P1, shalwar Ex-P2 and banyan Ex-P3, produced to him by FC Roohul Amin No.937, brought from Khyber Medical College Peshawar. The I.O. sealed it into parcel and prepared the recovery memo. This PW is also witness to pointation memo Ex-PW3/2 through which the accused had pointed out different places on spot to the I.O. in his presence. He endorsed his signatures on both the recovery memos.

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PW-4 Riaz Khan Inspector, has submitted challan in the case and verified his signature upon the challan.

PW-5 Dr. Obaid Ullah M.O. Khyber Medical College, Peshawar, conducted autopsy on the dead body of deceased Abdul Qadeer, Ex-PW5/1 with his endorsement on the inquest report Ex-PW5/2. As per his statement, the post mortem was conducted by him on 19.10.2012 at about 1945 hours, identified before him by Shakeel and Shahid Rasool and presented before him by

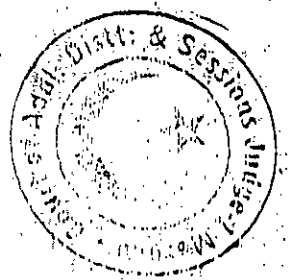
FC Roolhul Amin No. 937. He found the following injuries on person of the deceased:-

-76

- 1- Fire arm entry wound on right side of skull of the size about .5 X .5 cm with blackening in 1 x1 cm area around the wound, 3 cm above right ear and 11 cm from mid-line.
- 2- Firearm exit wound on left side of skull of the size of 1 x 2 cm, 6 cm behind the lateral end of eye brow and 12 cm from mid line.
- 3- Two stitched wounds on chin; one on right side and other on left side, right side is 3 cm from mid line and left is 3.5 cm below corner of lower lip.

Skull, Scalp, Membrane and brain were found injured. Stomach was found healthy and empty. In his opinion, the deceased died due to injuries to brain and its contents due to firearm and wounds No.3 are unrecognizable; Time between injury and death was given as the patient remained hospitalized in DHQ and LRH on 19.10.2012 and time between death and Post Mortem was given as 1 to 4 hours.

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PW-6 Roolhul Amin SI (Retired), was incharge Casualty LRH Peshawar, who had prepared inquest report of deceased Abdul

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Qadeer, Ex-PWS/2, who died in Nerve Surgical Ward LRH Peshawar and sent the dead body for post mortem examination under the escort of Roohul Amin FC No.937. He endorsed his signature on inquest report.

PW-7 Muqaddam Khan SI, was incharge PP New Bus Stand Mardan at the relevant time. On 10.10.2012, he along with Riaz and Roohul Amin FCs were on gusht in New Adda Mardan when at about 1515 hours heard fire shots. Following that, accused facing trial was running having pistol in his hand who was overpowered by him and recovered a 30 bore pistol No.5616, country made, with spare charger and six rounds. The pistol was giving smell of fresh discharge. Meanwhile, complainant Abdul Khaliq s/o Gul Rahim came near him and reported the matter to him at 1530 hours at the spot which he written in shape of murasila Ex-PA/1. The complainant, after admitting the report to be correct, signed it in Urdu. Complainant charged accused facing trial Umar Bacha for commission of offence giving the motive of previous blood feud enmity. He sent the injured to Hospital under the escort of FC Riaz while sent the murasila along with

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accused to Police Station through Roohul Amin FC. He also prepared recovery memo 7/2, vide which he took into possession the pistol, Ex-P1, recovered from accused facing trial along with spare charger Ex-P2. He signed the pistol with sharp nib and sealed the same into parcel No.1 by affixing the insignia of MK. He also issued card of arrest of accused, Ex-PW7/3 and pointed different places to I.O. during spot inspection/preparation of site plan. He endorsed his signatures on above documents.

PW-8

Riaz FC No. 2585, was attached to PP New Bus Stand, Mardan at the relevant time. On 10.10.2012, he along with Muqaddam Khan ASI and Roohul Amin FCs were on gusht in New Adda Mardan when heard fire shots and they attracted towards the fire shots where they saw that a person having a pistol in his hand was running who was chased and overpowered who disclosed his name as Umar Bacha s/o Mir Bacha. Muqaddam Khan ASI recovered a 30 bore pistol with spare charger and six rounds from the accused which was taken into possession through recovery memo Ex-PW7/2, sealed the same into parcel No.1 by affixing his

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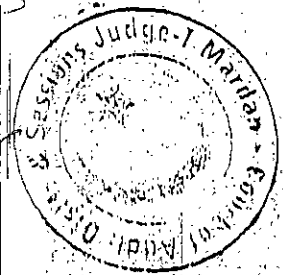
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signature. The pistol was giving smell of fresh discharge. Meanwhile, complainant Abdul Khaliq s/o Gul Rahim reported the matter to Muqaddam Khan ASI which he written in shape of murasila and the complainant, after admitting the report to be correct, signed it. He also escorted the injured to Hospital from the spot along with injury sheet handed over to him by Muqddam Khan ASI. He endorsed his signatures on the recovery memo. He further stated that his statement was also recorded by I.O.

PW-9

Complainant Abdul Khaliq, reiterated in his examination-in-chief the stance which was advanced by him in his initial report. He further stated that after commission of offence, accused was trying to decamp but was arrested by the police on duty to whom he made the report at 1530 hours which was scribed in shape of murasila Ex-PA/1. He endorsed his signature on the report. He further stated that the deceased, the then injured was shifted to DHQ Hospital Mardan from where he was shifted to LRH Peshawar where he succumbed to his injuries. That the I.O. prepared the site plan at his

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instance. He charged the accused facing trial for commission of offence.

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PW-10. Momin Khan SI, has conducted investigation in the case. He prepared site plan Ex-PB at the instance of complainant and police officials. Vide recovery memo Ex-PW10/1, he took into possession blood stained earth, Ex-P1, from the place of deceased then injured Abdul Qadeer, sealed the same into parcel. Vide recovery memo Ex-PW10/2, he took into possession three empties of 30 bore freshly discharged, Ex-P2, from the place of occurrence and sealed into parcel. He also took into possession blood stained garments of deceased consisting of Qameez Ex-P3, Shalwar Ex-P4, Banyan Ex-P5 produced to him by FC Roohul Amin No.937 brought by him from Khyber Medical College Peshawar, vide recovery memo already Ex-PW10/3 and sealed the same into parcel. As the accused was already arrested and was in police lock up who was handed over to him and on the following day, he vide his application Ex-PW10/4, produced him before the Area Judicial Magistrate for physical custody of accused. Two days police custody was granted

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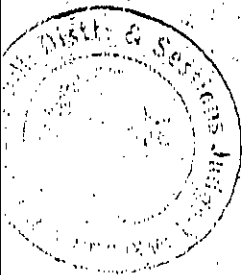
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during which the accused led the police party to the place of occurrence and on his pointation, the I.O. prepared pointation memo Ex-PW10/5. He recorded statements of accused and PWs u/s 161 Cr.PC and on expiry of police custody, he vide his application Ex-PW10/6, again produced the accused before the Area Judicial Magistrate for confessional statement which the accused refused and he was sent to judicial lock up. He also placed on file the FSL reports Ex-PZ an Ex-PZ/1 and on conclusion of investigation handed over case file to SHO for submission of challan. He endorsed his signatures on the above documents.

4. On the closure of prosecution evidence, brief account thereof given above, the statement of accused was recorded u/s 342 Cr.P.C, but he again professed his innocence and false implication in the case. While answering to question No.4, he stated that he was never arrested on spot and in fact he was arrested from his village and this false case was planted against him. He further disputed the murasila and stated that same was prepared by Zahir Shah Khan ASI at DHQ Hospital Mardan and not by Muqaddam Khan ASI but being Incharge of PP New Adda Mardan, Muqaddam Khan was lately introduced and given the role of scribing the murasila. He,

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however, did not opt to record his statement on Oath u/s 340 (2) Cr.P.C. or to produce evidence in defence. - 82

5. I have heard the arguments of learned defence counsel, rebutted by APP and gone through the record.

6. The case of prosecution mainly rests upon direct evidence from primary source contained in statement of complainant corroborated by recoveries from spot as well as accused along with matching report of Arms expert and support of medical evidence. This court has to evaluate the prosecution story first and in order to rely on such ocular testimony of complainant, this court have to observe consistency, texture, quality, intrinsic worth of evidence and also seek physical corroboration of testimony of complainant from the other corroborative evidence.

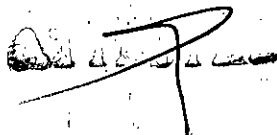
7. It is incumbent upon the prosecution to prove its stance through corroboration of evidence. Complainant has tried to establish his presence on the spot by narrating the story that he was accompanying his deceased son Abdul Qadeer who was employee in Pak Army and posted at Nowshera, and were proceeding to their house at Sangao Katlang and when they reached to New Bus Adda Mardan, there accused facing trial already present duly armed with pistol opened fired at his son as a result of which he was hit and injured who was shifted to hospital from where he was referred to LRH, Peshawar where he succumbed to his injuries. It is also evident from record that

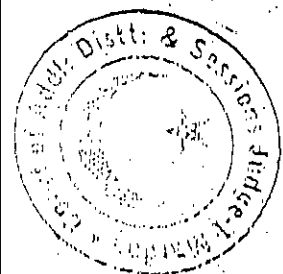
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accused facing trial was arrested by Muqaddam Khan the then ASI along with the pistol No.5616 and spare charger with six rounds in New Adda Mardan and the pistol was allegedly giving smell of fresh discharge. So all these facts coupled with incriminating recoveries need further corroboration with the prosecution story.

8. In the present case, besides the I.O, the evidence of PW-7, PW-8 and PW-9 is of very much importance. PW-7 is Muqaddam Khan ASI who had not only scribed the report of complainant but also arrested the accused while running from the crime scene having a pistol in his hand. PW-8, Riaz FC is the companion of said witness while PW-9 is complainant/eye witness Abdul Khaliq. The time of occurrence could also need to be corroborated by the medical documents and post mortem report. Further, the recovered 30 bore pistol and recovered three empties were sent to FSL and according to Arms Expert report, Ex-PZ/1, the empties were fired from the pistol No.5616, recovered by the PW-7 which also needed to corroborate the stance of prosecution.

9. It is the cardinal principle of appreciation of evidence that direct testimony from a primary source is always has precedence over corroborative evidence, provided such testimony is consistent, unbiased and capable of standing the test of cross examination. It is equally important to note that the corroborative testimony is used to second the direct evidence



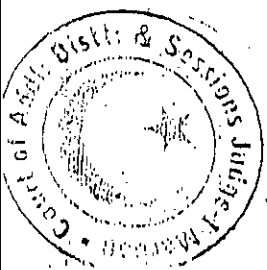


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and it, by no stretch of imagination, can outweighed, but comes out of primary source. Learned defence counsel argued that the very presence of complainant /eye witness at the scene of occurrence was doubtful and could not be considered as proved as the same failed to get any physical corroboration from the circumstances. It was claimed by the defence that besides complainant, other two witnesses were of chance, who could not reasonably explain as to how they were present on the spot. Likewise, it was also alleged that though complainant/eye witness claimed his presence on the spot, but he did not sustain any injury and then as such, his presence became doubtful and it was also contention of defence that the conduct of complainant in mentioned story of FIR was not natural, believable and appealable.

10. The contentions of learned defense counsel is based on five main proposition, firstly, how the complainant accompany the deceased to spot,, secondly, how he escaped unhurt during the shootout when according to site plain, he was available near to deceased and the motive to eliminate him also existed; thirdly non existence of physical circumstances to the complainant story; fourthly, ocular account is not supported by medical evidence and consultation and deliberation is available to prior to lodging FIR; and fifthly, contradiction as well as inconsistency between complainant, PW Muqadam Khan and PW Riyaz:

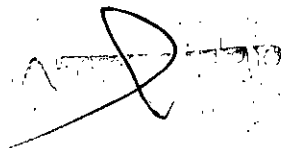
So far as the first argument is concerned, PW-9 claimed his presence at the spot at the time of occurrence and the defence challenged the same. PW Abdul Khaliq appeared in witness box and repeated his earliest version. He faced cross-examination and the defence tried to establish his presence at his village. They also cross examined the witness and tried to bring him in category of chance witness. No doubt it was not the routine of the complainant to be present on crime scene but his presence with the deceased could not be said as by chance appearance because the reason and the explanation forwarded by the complainant that due to blood feud enmity he accompanied his son from Nowshera to village in routine and same was on the day of occurrence, the complainant accompanied his son from Nowshera. Here, a question arises that why was 72 years old father in empty hand condition accompanying his son despite blood feud enmity and young brothers of deceased did not offer this job. List of legal heirs of deceased reveals that the unfortunate deceased had real father and one brother only and the remaining brothers were step to him and it is natural that father takes care of his children due to his love and affection. The witness has justified his presence and replied the queries of learned defence Counsel in natural manner that he and his deceased son, as per their pre fixed programme, on eve of weekend were coming from Nowshera where the deceased was on his job in Army. The reason




~~ATTORNEY~~

forwarded by the PW seems genuine and appealable while it was the duty of defence to prove otherwise but it has not proved so. When the defence plea regarding presence of complainant somewhere else, could not succeed, than naturally presumption of his presence with deceased on the spot would prevail. Yet presence of complainant was also supported by the circumstances such as he stated that the accused had fired with pistol at his son, who was within fifteen minutes of the occurrence, arrested nearby spot while having pistol in his possession. The complainant whether of chance or otherwise has proved his presence on the crime scene, beyond shadow of doubt.

12. Secondly, the arguments that the eye witness was spared by the accused when he was available on spot and motive of equal magnitude existed against him. I am afraid, that very argument would not hold good in circumstances. In case of, Muhammad and other versus the state, 2010 SCMR 385, accused were charged in supplementary statements and statement of witnesses were dishonestly improved. More than 150 fires were made, which were indiscriminated and the witnesses escaped unhurt despite the fact they were never camouflaged. In the case in hand, however, very few shots were made on specific one person. It was not the case of complainant that the accused had attempted at him. From the day one, it was the stance of complainant that the assailant had

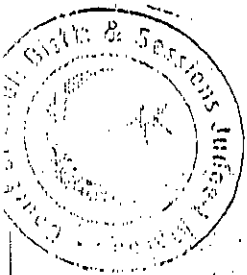



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only targeted his deceased son. In view of this court, this might be due to having no charm to murdered a 72 years old person, therefore, the accused would have committed murder of young son of the complainant and achieved his target. It is also observed from medical report that the deceased has received fire arm injury from very close range and accused facing trial has speared the complainant and committed murder of deceased only.

13. Thirdly, it was argued that ocular account has no physical corroboration, however, matter of the fact is that the stance of complainant that he was present in adda with his son was also physically corroborated by promptly lodged report recorded at spot within fifteen minutes of the occurrence. Besides, the accused while decamping from the spot was overpowered by the scribe of the report having pistol in his possession. This was very strong evidence against the accused. Similarly, incriminating recoveries further support the complainant's version that the deceased was present at that position mentioned by complainant and the weapon used for his assassination was pistol and Arms expert report further confirms that the assassinator had fired at the deceased with same pistol. The lodging of prompt FIR is if supported by collection of empties, pistol and nomination of single accused and place of deceased then in view of this court that is a sufficient physical corroboration of ocular/ direct evidence in

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[Signature]

the present case. Another sight of the case is that the complainant was having the opportunity to charge the accused for firing on him as well but he has recorded true account of the occurrence and has not charged the accused for firing on him. Level of appreciation of evidence change with factual aspects of the case and entire evidence of the case is seen in juxtaposition and after comparing the facts in juxtaposition, it is seen that how important the corroborative evidence in the case is. When direct evidence is consistent, unrebutted then support from relevant facts would be of lesser value and relevant facts could not be used to brush aside the direct account.

14. As to fourth point, learned defence counsel raised a conflict between medical and ocular evidence. It was his contention that there was availability of blackening and charring marks around the wound which would only be caused if fire arm shot made with short distance of about few inches and the same was in contradiction to the version of complainant and site plan as the complainant at the time of pointation of the spot, pointed out different points of his presence as well as of accused and deceased which distance PW-10, I.O stated in his cross-examination as about eight feet in between accused and deceased. Similarly, Learned defence counsel has objected that the medical officer PW-1, in his cross-examination stated that he started medical examination of the then injured at 3:30 pm

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and it was maximum one hour that the injury could have been caused i.e. at 2:30 pm, which was in negation of prosecution version. Learned Defence Counsel further argued that medical evidence is sufficient to prove the element of consultation and deliberation. However, it is pertinent to mentioned here that medical evidence and site plan are supportive evidence and could not considered as corroborative and substantive piece of evidence. The basic principle of medical evidence in criminal cases is to ascertain kind of wound and to prove unnatural death of the deceased which is proved in the instant case as evident from Post Mortem report ExPWS/1, that the same was caused due to fire arm injury. When single accused is charged in criminal case and confidence inspiring eye account is supportive by corroborative evidence which is available then the medical evidence cannot be used to brush aside the ocular account. So for as the first point that blackening is available is concerned, that is proof of true account narrated by the complainant as it shows that at the time of occurrence the accused was present at near distance to deceased than the complainant. Further, in such like ruthless shootout it is not expected that a 72 years old father to react in total normal reflexes. The complainant has narrated the position of both deceased and the assailants and mobility and movement are natural human behavior and confidence inspiring eye account could not be discarded on the point that the distance between




and

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the deceased and accused was of eight feet or less then feet or more. Beside this where the direct evidence from a primary source is consistent, corroborated evidence could not outweigh its credence, merely because very hyper technical and minute details are at variance. Secondly, the report at 3:30 pm and medical examination at 3:30 pm are not considered as contradictory in the circumstances because the deceased then injured was under expectancy of life at that time and he was rushed to the hospital forthwith at short distance. Therefore, margin of error of 5/10 minutes could not be used to discredit the prosecution story.

15. Fifthly the learned defence counsel referred some contradictions and inconsistencies in the statement of PW's, and it has to be seen that the same discredit the ocular account or not. Learned counsel for accused contended that PW-7 Muqaddam Khan stated that he was not present at the time of recording of statement of PW-8 while Riaz PW-8 stated that at the time of recording his statement, PW-7 Muqaddam Khan was present. He also disputed the taking of murasila to the Police Station by Roohul Amin FC, by stating that as per inquest report PW Roohul Amin brought the dead body back from LRH meaning thereby that the said PW instead of taking murasila to PS accompanied the deceased then injured from spot to the hospital which is confronted with the murasila EX-PA/1. Although, these minor discrepancies could be scored out but for



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decision in a case carrying capital punishment, such like minor discrepancies or contradiction can be brushed aside. Contradiction means negation of prosecution version, mere discrepancies in detail of facts does not amount to contradiction, such like discrepancy in the statement of prosecution witness were inherent proof of their truthfulness that they had come forward with natural accounts of event and the same is position of PWs Muqadam Khan, and Riyaz as their deposition were very natural and appealable whereas the complainant remained un rebutted. Reliance is place on case title Muhammad Ilyas and others Vs The State reported in 2011 SCMR460.

16. Learned defence counsel further argued that the murasila was not in the handwriting of Muqaddam Khan, PW-7, rather the same was written by Zahir Shah Khan ASI at DHQ Hospital, Mardan. For comparison, the learned counsel also exhibited one murasila written by said Zahid Shah ASI of some other case as Ex-DA. However, PW-7 categorically denied the contention of learned defence counsel by answering that same was in his own handwriting. Besides, bare perusal and comparison of the same with report of complainant this court is of the opinion that no resemblance of writing of both murasila's has been found. Hence, contention of learned defence counsel to that extent doesn't seem genuine and proved.


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17. Yet another aspect of this case argued before this court was the site plan. Admittedly site plan is not a substantive piece of evidence and cannot be given preference over direct evidence. It was not obligatory on IO to show any possible conceivable thing in the site plan as it was only a supporting document to understand the location of incident any omission in the site plan would not falsify the ocular account and could not be used to contradict or discredit unchallenged evidence of prosecution. Reliance in this regard is placed on PLJ 2006 CRC PESH 635, in case titled Atif Khan VS The State. Similarly, the defence plea that the distance shown between the deceased and complainant hardly of about few paces and his escape unhurt would not be possible and further, distance is not pointed at the site plan, are not considerable to discredit the direct evidence.

18. The arguments of learned defence counsel that the complainant and marginal witnesses to recovery memo's are related to the deceased and as such their deposition would not be worth credence, would not be of any benefit to the accused as real father would all in all his probabilities have a genuine desire to book a genuine culprit for murder of his son otherwise, it is settled on record that the parties had previous enmity, thus the complainant could have easily charged the other male members of accused family and could have also shown the presence of his other sons on spot as eye witnesses but non presence of such facts speaks of veracity of report of

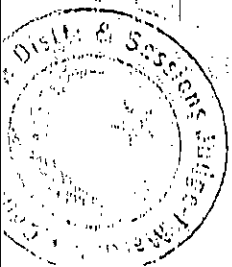
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the complainant. Further, substitution of accused in such like cases is always a rare phenomena Reliance is placed on case title MUHAMMAD IQBAL VS THE STATE reported in PLD 2001 SC 222, and case title ARIF VS THE STATE reported in PLD 2006 Peshawar 5.

19. Motive in the instant case was mentioned as blood feud enmity between the parties. The same was proved by the prosecution and it placed on record copy of case FIR No. 747 dated 09.10.07 registered at PS Katlang under sections 302/324/449/34 PPC which shows that two brothers of accused were murdered for which complainant along with his two sons and one another were charged. Similarly, copy of case FIR No. 780 Dated 20.10.07 registered at PS Katlang, under sections 458/427/148/149 PPC shows that the son of complainant had charged present accused along with others for commission of the offence, motive remained un rebutted.

20. Learned Defence Counsel also negated the presence of PWs on spot. It was arguments of defence that both the PWs namely Muqaddam Khan and Riaz FC were chance witnesses who have not seen the accused while firing at deceased, being not present on the spot at the relevant time, they cannot tell the actual position. It is obvious that PW's Muqadam Khan and Riaz FC along with other police official have not seen the accused while firing at the deceased but they on hearing the fire shots rushed to the place of occurrence and



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overpowered the accused with pistol and they both have witnessed the remaining episode. Further, they being posted in police post of Adda were on routine patrolling; therefore, marking their presence at the spot as a chance witness is not correct.

21. Furthermore, the learned defence counsel agitated that despite thickly populated place no independent/disinterested witness came forward for deposition against the accused nor did the I.O associate the independent witnesses to incriminating recoveries and cited the real brothers of deceased as the marginal witnesses. It is held by the august Supreme Court of Pakistan in case titled "Zafar Iqbal vs the State" reported in 2014-SCMR-1227, that mere relationship of prosecution witness with a deceased cannot render their evidence unreliable unless it is established that they have motive to implicate falsely and the same position is in the instant case.

22. As regards the offence under section 13-AO, PW-7 had recovered the 30 bore pistol bearing No.5616 Pak made, Ex-p1, with spare charger and six rounds, Ex-P2, from possession of the accused at the time of his arrest, through recovery memo Ex-PW7/2 in presence of marginal witnesses, for which the accused failed to produce any valid license even during trial of the case, therefore, section 13 AO was inserted. The learned defence counsel cross examined the witnesses at

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length but could not succeed to drag out anything favorable which could benefit the accused. Therefore, the recovery of pistol is proved against the accused.

23. Crux of the above discussion is that prosecution has been able to prove its charge against the accused facing trial who is found guilty of the offence for the murder of Abdul Qadeer, son of the complainant, therefore, accused facing trial namely, Umer Bacha s/o Amir Bacha is convicted under section 302 (b) PPC for causing Qatl-e-Amd. He is sentenced to death. He will make good the payment of Rs. 300,000/- as compensation to the legal heirs of deceased U/S 544-A Cr.P.C. The amount of payment shall be recoverable as arrears of land revenue U/S 544-A (2) Cr.P.C. In default in payment thereof, he shall undergo further six (06) months Simple Imprisonment. Accused shall be hanged by the neck till he is declared dead.

24. Accused is also convicted for the offence u/s 13-AO and sentenced to two years Rigorous Imprisonment. Both the sentences shall run concurrently.

25. Benefit of section 382-B Cr.PC is extended to the accused. All the substantive sentences of imprisonment shall run concurrently. The reference under section 374 Cr.PC is sent for confirmation of the death sentence. The sentence of death, however, shall not be executed till it is confirmed by the august Peshawar High Court Peshawar. The copy of Judgment is delivered to the convict free of cost and he is directed to file an

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appeal within seven (07) days. Case property be kept intact till expiry of time for filing of appeal/revision. File be consigned to record room after necessary completion and compilation.

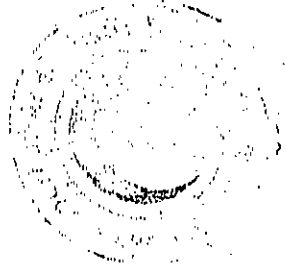
Announced
03.10.2017



(Kashif Dilawar)
Addl. Sessions Judge-I
Mardan

CERTIFICATE

Certified that this judgment consist of five (25) pages, each has been read, checked, signed and corrected by me wherever it was necessary.


(Kashif Dilawar)
Addl. Sessions Judge-I
Mardan





قیمت
50 روپے



30973

ایڈوکیٹ: حالیہ خان ایڈووکیٹ

بار کونسل ایسوسی ایشن نمبر:

رابطہ نمبر: 0313 8922889

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

منجانب: <u>ایڈووکیٹ</u>	دعویٰ:
<u>صوفیہ خان</u>	علت نمبر:
<u>بنام</u>	مورخہ:
<u>پولیس وغیرہ</u>	جرم:
	تھانہ:

بامث تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام کلیئہ عالیہ خان ایڈووکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر نہ تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:

العبد _____ العبد _____
مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی نام قابل قبول ہوگی۔

C

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Service Appeal No. 376/2018.

Momin KhanAppellant.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.

REPLY ON FACTS.

1. Pertains to record, hence, no comments.
2. Correct, hence, no comments.
3. Incorrect. The appellant being inquiry officer in the FIR, cited in Para-2 above, had shown negligence by recording the statements of witnesses after the lapses of 18 days, thereby, providing ample time to the accused for managing the evidence. He also failed to recover the second weapon used in the offence and concealed facts. Further, he recorded statement u/s 161 CrPC of the father of the eye-witness which ruined the prosecution case. **(Copy of preliminary inquiry by DSP City Mardan is attached as Annexure-A)**
4. Incorrect. The appellant being senior most official has committed serious faults/mistakes in the investigation of the case, hence, spoiled the prosecution case.
5. Correct to the extent of complaint and disciplinary action against appellant, however, the charges are founded/proved. Hence, punished as deserved under rules/law.
6. Pertains to record, hence, no comments.
7. Pertains to record, hence, no comments.
8. Pertains to record, hence, no comments.
9. Correct, hence, no comments.
10. Correct, however, the appellant holds no grounds, legal or moral, to stand here on in this Tribunal.

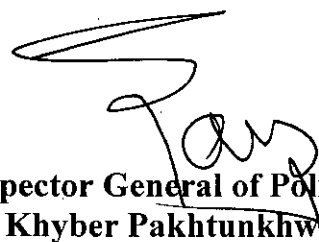
REPLY ON GROUNDS:-

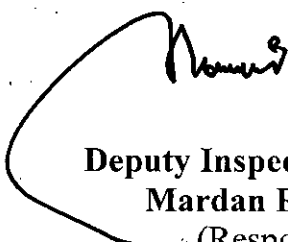
- A. Incorrect. The appellant has been treated as per rules/law/policy and there is no violation of any article of the Constitution of Pakistan. Hence, denied.
- B. Incorrect. Proper inquiry was conducted as per rules/law and all codal formalities have been complied with. Hence, the penalty awarded is correct and as per rules/law.
- C. Incorrect. The allegations against appellant have been proved, hence, awarded penalty he deserved under rules/law.
- D. Correct, however, the said allegations were carried during investigation at the later stage but the allegations of legal lacunas in the investigation, not properly maintaining Ziminies and delayed recording of statements of witnesses has rendered the appellant guilty of misconduct.


- E. Incorrect. During the preliminary inquiry conducted by SP/Operations Mardan the appellant was recommended for Major Punishment. (Copy of inquiry by SP/Operations is attached as Annexure-B).
- F. Incorrect as the complaint/allegations, if arises any ground or evidence, may be made at any stage of investigation of a case. Hence, denied.
- G. Incorrect as the appellant being most senior investigation officer has committed serious legal lacunas in the investigation of the case which spoiled the prosecution case.
- H. Incorrect. The appellant has not applied his wisdom and attention in the case, hence, denied.
- I. Pertains to record, hence, no comments.
- J. Incorrect. The respondent No. 2 has awarded the impugned penalty after thorough perusal of the inquiry papers/service record, hence, denied.
- K. The respondents also seek permission to raise additional grounds, if any, at the time of arguments.

PRAYER:-

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.


**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 01)


**Deputy Inspector General of Police,
Mardan Region-I, Mardan**
(Respondent No. 02)


**District Police Officer,
Mardan**
(Respondent No. 03)

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Service Appeal No. 376/2018.

Momin KhanAppellant.

VERSUS.

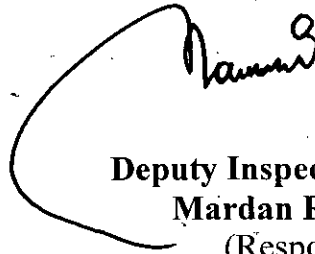
District Police Officer, Mardan
& othersRespondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**



**District Police Officer,
Mardan
(Respondent No. 03)**

From: ³³ The Deputy Superintendent of Police,
City Circle.

To: The Worthy District Police Officer,
Mardan.

No. 620 /S dated Mardan the 25/04/2017. (B)

Subject: IMPARTIAL INVESTIGATION/JUSTICE IN CASE FIR NO. 619
DATED 10.07.2015 U/S 302/324/34/114 PPC PS CITY MARDAN.

Memo:

Kindly refer to your office Endst: No. 136/PA/Inv: dated 15.03.2017 on the subject noted above.

- I. In compliance of directives, vide your good office letter in reference above, to impartially enquire in a matter/case which is complained of through an application to the W/DPO Mardan by one namely: Khan Habib s/o Ghulam Habib r/o Haji Koroona Baghdada Mardan against SI/OH Momin Khan, who conducted investigation in a criminal case, cited in the subject above, and has termed it as poor, defective and partial by giving benefit to the accused party in the case.
- II. On receipt of instant complaint the **complainant: Khan Habib & SI/OH Momin Khan**, who is complained against in the subject case, were called upon in the office of the undersigned and their statements were recorded, wherein, **SI/OH Momin Khan** has categorically negated all the allegations against him in his detailed reply.
- III. The complainant reaffirmed the allegations contained in his applications by calling the **investigation in the subject case as faulty and poorly conducted by the defaulter Police Officer and is influenced by the accused party as well.**
- IV. The complainant has narrated whole facts of the subject case i.e. from occurrence till arrest of all the accused and submission of supplementary challan in the court. Almost the same facts have been recounted by the defaulter Police Officer in his reply/statement.
- V. USB produced by the complainant contains CDRs in soft form which were allegedly given by the OH while, receiving a handsome amount of 02 lac rupees. However, the alleged officer negated the fact and he categorically stated that, CDRs were given to the complainant party for identification of close associates of the POs as both the parties are first cousins and could easily identify the cell numbers of their close relatives etc and it was a joint effort for the arrest of POs. USB has been taken into possession during enquiry proceedings.
- VI. The defaulter Police Officer has negated in his application the allegations carried against him in the applications and **replied parawise**, as below:
 1. That he (defaulter officer) has time & again contacted the injured & even visited their houses to record their statements u/s 161 CrPc in the case, but, they either used delaying tactics or remained reluctant to record statements. In this regard Zimini No. 05 dated 24.07.2015 is worth perusal. He, however, finally succeeded in recording their statements u/s 161 CrPc on 28.07.2015.
 2. Various contacts has been reported via CDR between Arshad Khan (son-in-law of accused Fazal Habib) & injured Akbar Ali on 7, 9, 10 & 11th august-2015 and there might be a commitment between them to conceal the real facts of the case and this fact has been reported in Zimini No. 17 dated 10.07.2017 of the case which shows no ill-intentions on my part against the complainant party.
 3. Correct to the extent of mobile Nos., however, the name of Arshad was given/reported to me by the complainant party himself alleging him of providing shelter/refuge to the accused as being his (Arshad's) close relatives. In this regard several mobile contacts were held between Arshad and him (defaulter officer) with the only hope to produce the accused, nominated & hiding in the case, before Police.

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However, during this interaction Mr. Arshad Khan was also found P.O in a criminal case vide FIR No. 129 dated 03.02.2001 U/Ss 324/353 PPC/13AO/188 CrPc PS City and he was also forced to present his arrest who later on surrendered before ASI Shafiq Khan I/C PP Labour. Besides, raids were also made on the house of Arshad Khan for arrest of the accused nominated in the subject case.


4. Worth mentioning here that CDR of Arshad Khan was drawn on my request and if I had any such alleged commitment/collusion with Arshad Khan then his CDR would have never been requested of.
5. Incorrect as the accused were subject to 02 days police custody wherein they have identified the spot. A pistol 32-bore alongwith empty shells were also recovered from the spot on the occurrence night and sent to FSL Peshawar and thereby reported +ve.
6. Incorrect as injured Imdad Ullah is a 5/6 years old boy & is not eligible to record a statement u/s 161 CrPc, however, on 24.07.2015 his parents were informed to present their child before the IO in the regard but still not appeared.
7. Incorrect as statements of the injured Akbar Ali & Sami Ullah have been recorded in the words they reported and they could not be forced to record statements under my dictation or influence. Besides, statement of Ibrahim was recorded to the extent of being father of a minor child.

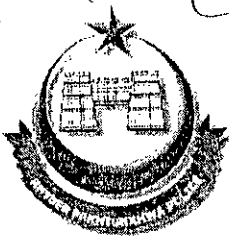
Findings/recommendations:-

I, the undersigned as enquiry officer, thoroughly perused all the documents comprising the allegations of plaintiff against SI/OH Momin Khan in the subject case and the reply submitted by the defaulter police officer as well. The facts of the case narrated by the complainant in his applications to the Provincial Police Officer Khyber Pakhtunkhwa-Peshawar suggest, rather it is self-admitted by him, that the police (investigation officer) has conducted investigation as per law/rules i.e from the time of occurrence till arrest of accused and submission of challan in the court. There is nothing to suggest that the defaulter officer has been in collusion with or otherwise gave favour to the accused party in the subject case. However, he has been found guilty to the extent of not properly writing/managing Zimines and recorded statements of witnesses on the belated stage of investigation. Although, he was bound under rules 25.53, 25.54 & 25.55 of Police Rules-1934 to maintain and submit Zimines daily during investigation of the case as well as to examine and record statements of the witnesses u/s 161 CrPc well in time. Further, delay in recording statements of a witness by police without furnishing any plausible explanation would affect the veracity of the witness but at the same time statements u/s 161 CrPC are not substantive evidence and can be used only for a very limited purpose of contradicting a witness at trial so as to prevent him from corruption his testimony by way of dishonest improvements at trial stage. It would not be out of place to mention here that witnesses Imdad Ullah (5/6 years old) & Sami Ullah (11/12 years old) were minors, however, the statement of Akbar Ali has been recorded as per his version.

In the light of above facts & circumstances, the defaulter officer has no doubt left some legal lacunas in the investigation of the case by not properly maintaining Zimines & delayed recording of statements of witnesses which he was bound to maintain & record under rules/law and thereby rendered himself guilty of misconduct. He is therefore, recommended for minor punishment.

Submitted for favor of perusal & further orders, please.


Deputy Superintendent of Police,
City, Mardan



OFFICE OF THE
SUPERINTENDENT OF POLICE
OPERATIONS & HEADQUARTERS
MARDAN

Tell: 0937-9230117
Fax: 0937-9230111
E-Mail: Spops1506@gmail.com

No. 418 /PA,(Ops)

Dated 12/5/2017

To The District Police Officer,
Mardan.

Subject: DISCIPLINARY ACTION AGAINST SI MOMIN KHAN
SUBSTANDARD INVESTIGATION IN CASE FIR NO 619 DATED
10.07.2015 U/S 302 / 324 / 34 / 114 PPC PS CITY MARDAN.

Memo:

Kindly find enclosed the complete enquiry file (In original).

2. In this regard it is submitted that complainant and accused SI Momin was called in the office many times. A preliminary enquiry conducted by SDPO City Mardan is also placed on the file. SP Investigation Mardan was also contacted for the enquiry procedure in the subject case. From the enquiry following facts transpired:-

FACTS:

- SI Momin Khan being enquiry officer of the case showed negligence as he recorded the statement of witnesses after the lapse of 18 days providing ample time to the accused for managing the evidence in his favor.
- During the interrogation process, IO recovered one weapon of offense (i.e) 32 Bore Pistol but he failed to recover other 30 Bore pistol and concealed the facts.
- So far as recording of statements u/s 161 CrPc is concerned, he recorded the statement of the father of the eye witness which ruined the whole prosecution case as he was not himself present on the spot.

RECOMMENDATIONS:

Keeping in view the above it is apparent that SI Momin Khan is found negligent and guilty of misconduct in the investigation process in Case FIR No. 619 dated 10.07.2015 u/s 302 / 324 / 34 / 114 PPC PS City. For the aforementioned reason he may be awarded Major Punishment of Removal from Service under KP Police Rules 1975 (Amendment 2014).

Sir, May issue him Final SCW before awarding Major Punishment, if agreed, PAB

Superintendent of Police
Operations & Headquarters
Mardan

PA
15/5/17

Final SCW

15/5

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Service Appeal No. 376/2018.

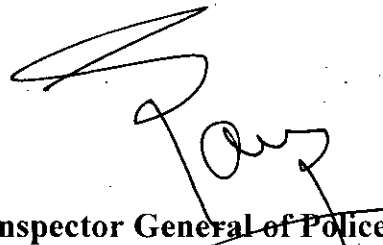
Momin KhanAppellant.

VERSUS.

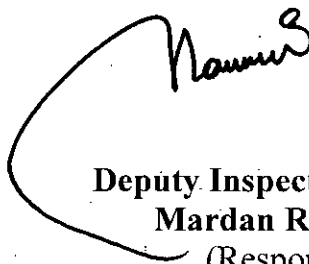
District Police Officer, Mardan
& others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**



**District Police Officer,
Mardan
(Respondent No. 03)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 376 /2018

Momin Khan..... Appellant

Versus

District Police Officer, Mardan & others Respondents

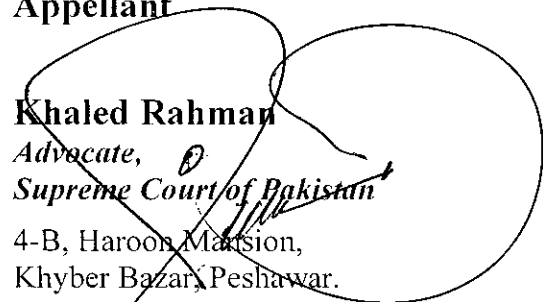

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply with Affidavit			1-



Through

Appellant


Khaled Rahman
Advocate, 
Supreme Court of Pakistan
4-B, Haroon Mansion,
Khyber Bazar, Peshawar.

Dated: 17/12/2018
~~17/12/2018~~

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 376/2018

Momin Khan..... Appellant

Versus

District Police Officer, Mardan & others Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE
TO REPLY FILED BY RESPONDENTS.**

Respectfully Sheweth,

Preliminary Objections:

Preliminary objections raised by answering respondents are erroneous and frivolous. Nothing has been concealed from this Hon'ble Tribunal. Appellant has availed the jurisdiction of this Hon'ble Tribunal with clean hands and for that matter having cause of action. Estoppel cannot run against the law. The appeal is maintainable and all the necessary parties have been arrayed in the title of service appeal.

Facts:

1&2. Need no rejoinder.

3&4. Incorrect hence denied. Appellant being a responsible officer tried his best for concluding the trial in accordance with law. After the commission of offence, he reached the spot in time and recovered the case property from the spot. It is important to add here that appellant recorded the Statements of the concerned witnesses, however, there was also passer-by and hit during the course of firing and admitted in hospital but when appellant visited the hospital they were not in a position to record their Statements but thereafter they did not want to involve themselves in the case due to fear of enmity of the parties. However, after sometime they appeared and recorded

the Statements. Hence, appellant performed his duties under the law and as per circumstances of the case.

5. Incorrect hence not admitted. The imposition of the penalty was the result of malafide intention on the part of Respondent/Department against the appellant. The matter was referred to the DSP City, Mardan who had recommended appellant for minor penalty vide report dated 25.04.2017 and they imposed upon major penalty.
- 6-10. Rejoinder has already been submitted in the preceding paras. However, no plausible replies have been given which amounts to admission. Moreover, upon the applications of the complainant party a Regional Board was constituted which submitted Report on 16.06.2017 in favour of the appellant.

Grounds:

- A. Incorrect. The appellant was not treated according to law and rules. The impugned orders are unjust and unfair, therefore, liable to be struck down.
- B. Incorrect hence denied. Appellant was not associated with the inquiry proceedings. The entire action was taken at the back of the appellant and thus he was condemned unheard.
- C-F. Incorrect hence not admitted. Appellant conducted the investigation and left no lacuna in the trial. The bail application of the accused petitioners were dismissed by the Court of Judicial Magistrate as well as Additional District & Session Judge, Mardan and it was the Hon'ble High Court which allowed the bail to the accused on multiple reasons. It is to be noted that FIR was lodged on 10.07.2015 while complainant filed application against appellant on 20.02.2017 after the lapse of 2 years.
- G-K. Incorrect hence denied. Appellant recovered the blood stained clothes and 30 Bore Pistol from the spot and recorded the Statements of the parties. Appellant joined the Police Forces since long and had

rendered meritorious service for a period of 28 years where he investigated many cases at his credit vide judgment dated 03.10.2017 one accused namely Umar Bacha has been sentenced to death by the learned Additional Sessions Judge, Swabi. Even otherwise, appellant was recommended for minor penalty by the Regional Review Board as well as DSP City, Mardan in their reports.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant


Khaled Rahman
Advocate,
Supreme Court of Pakistan

Dated: 06/12/2018

Verification

Verified that the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Appellant

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1663-64/ST

Dated 30-9- / 2019


To

1. The Provincial Police Officer,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: - JUDGMENT IN APPEAL NO. 376/2018, MR. MOMIN KHAN.

I am directed to forward herewith a certified copy of Judgement dated
28.08.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.