

12.05.2022

Appellant present through counsel.

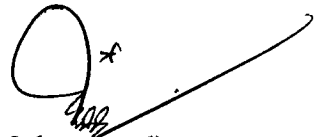
He made a request for adjournment in order to prepare the brief of the case. Adjourned. To come up for preliminary hearing on 19.07.2022 before S.B.



(Rozina Rehman)  
Member (J)

19.07.2022

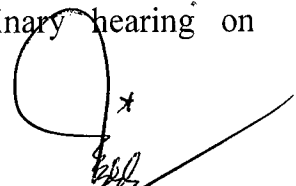
Learned counsel for the appellant present and requested for adjournment in order to further prepare the brief. Adjourned. To come up for preliminary hearing on 21.09.2022 before S.B.



(Mian Muhammad)  
Member (E)

21.09.2022

Learned counsel for the appellant present and requested for adjournment to further prepare the brief. Adjourned. To come up for preliminary hearing on ~~21~~ 24.10.2022 before S.B.

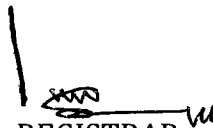



(Mian Muhammad)  
Member (E)

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 218/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23/02/2022	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Peshawar and the Hon'ble High Court vide its order dated 16.02.2022 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">   REGISTRAR </p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>12-05-2022</u></p> <p> <i>For notes.</i>  <i>72</i>  Notices be issued to the appellant and his counsel for the date fixed </p> <p style="text-align: right;">   CHAIRMAN </p>
2-		



*The*  
**PESHAWAR HIGH COURT**  
*Peshawar*

Ph: No. 091-9210149-58



No. 47607 (1)/781/2022/WP-MN

Dated. 22-February-2022

**From**

**Deputy Registrar (J),  
Peshawar High Court,  
Peshawar.**

**To**

✓  
The Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**Subject:** Writ Petitions W.P 1658/2019 Title: Noor Shah VS District & Sessions Judge Charsadda  
Writ Petitions W.P 1670/2019 Title: Liaqat Ali VS Senior Civil Judge  
Writ Petitions W.P 5652/2019 Title: Wakeel Khan VS District & Session Judge District  
Mohmand

**Memo,**

I am directed to send herewith the titled cases in original alongwith all annexures and copy of judgment of this Honble Court dated 16.02.2022 for compliance.

Deputy Registrar (J)

22/2/2022

**Encl:** Copy of Order / Judgment

2

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.1658-P/2019.**

Noor Shah Ali

Vs.

District & Sessions Judge, Charsadda and others

Date of hearing      **16.02.2022**  
Petitioner by:      **Mr. Saadullah Khan Marwat, Advocate.**  
Respondents by:    **Mr. Rab Nawaz Khan, A.A.G.**

\*\*\*\*\*

**JUDGMENT**

\*\*\*\*\*

**IJAZ ANWAR, J.** Through this single judgment, we intend to decide the Writ Petition No.1658-P/2019 alongwith two connected Writ Petition No. 1670-P/2019 titled: Liaqat Ali Vs. Senior Civil Judge, and Writ Petition No. 5652-P/2019 titled: Wakeel Khan Vs. District & Sessions Judge, Mohmand & others, as common question of law and facts is involved in all the cases.

**2.** In the instant writ petition, the petitioner has sought the following relief:-

“It is therefore, most humbly prayed that on acceptance of the writ petition, in exercise of the extraordinary Constitutional jurisdiction, this Hon’ble Court be pleased to:

28  
/

- i. **Declare order dated 23.12.2006 and 22.12.2009 of R.No.01 and 02 to be illegal, improper, unjust, malafide, discriminatory, without lawful authority and of no legal effect.**
- ii. **Direct the authority to reinstate petitioner in service with all consequential benefits of service; and / or**
- iii. **Any other writ / order / direction deemed proper and just in the circumstances of the case may also be issued / order / given."**

**3.** In essence, petitioners are aggrieved of the orders whereby their services were terminated and against which, their appeals before the worthy Registrar, Peshawar High Court, Peshawar were dismissed while same of the petitioner of the connected W.P. No.5652-P/2019 is still pending.

**4.** Comments were called from respondents, who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioners.

**5.** Arguments heard. Record perused.

**6.** The record transpires that petitioners were serving against the ministerial posts in the District



Judiciary and were proceeded departmentally. The departmental proceedings culminated into their dismissal from service. Thereafter, they approached the Khyber Pakhtunkhwa Service Tribunal, Peshawar by filing service appeals; however, during its pendency and in view of the Judgment of the Hon'ble Supreme Court of Pakistan reported as 2016 SCMIR 1206, the same were returned by the Service Tribunal vide Order dated 29.01.2019.

7. It appears that subsequently a larger bench was constituted in order to determine the question as to whether an appeal of the ministerial staff of the District Judiciary would be maintainable before the Khyber Pakhtunkhwa Service Tribunal, which was accordingly decided wherein it was held that the employees of District Judiciary are civil servants within the meaning of law; thus in view of status of the petitioners as civil servants and besides, the bar contained in Article 212 of Constitution of Islamic Republic of Pakistan, 1973; this Court cannot entertain the instant and as well connected petitions. We, therefore, instead of dismissing the same on the ground of jurisdiction; keeping in view the facts of the case and time utilized in agitating their grievances, send this and the connected writ petitions to the Khyber Pakhtunkhwa Service Tribunal, Peshawar for its decision in accordance with law. Parties are directed to appear before the Tribunal

on 24.02.2022. Original files alongwith its annexures be transmitted to the Khyber Pakhtunkhwa Service Tribunal, while its copies be retained for the purpose of record.

Announced  
16.02.2022

  
JUDGE

  
JUDGE

*\*Amjad Ali Steno\*(D.B) Justice Musarrat Hilal & Mr. Justice Ijaz Anwar, Hon'ble Judges.*

1-3

W.P 1658/2019 (Main case) (Statutory-Termination), Adjourned by the court from 05-May-2020 and fixed before H.D.B on 22-Oct-2020. Inform Petitioner and his Counsel.& AAG. (A/W.1.wp.1670-p/19).

*[Handwritten initials]*

Deputy Registrar

#####

27-October-2020

W.P 1658/2019 (Main case) (Statutory-Termination), Left over by the court from 22-Oct-2020 and fixed before H.D.B on 10-Dec-2020. Inform Petitioner and his Counsel.& AAG. (A/W.1.wp.1670-p/19).

*[Handwritten initials]*

Deputy Registrar

Adjournment by

Petitioner	Respondent
1	0

#####

10-December-2020

W.P 1658/2019 (Main case) (Statutory-Termination), Adjourned by the court from 10-Dec-2020 and fixed before H.D.B on 18-Feb-2021. Inform Petitioner and his Counsel.& AAG. (A/W.1.wp.1670-p/19).

*[Handwritten signature]*

Deputy Registrar

Adjournment by

Petitioner	Respondent
1	0

W.P 1658/2019 (MOTION CASES) (Statutory-Termination) ( ) Adjourned by the court from 18-Feb-2021 and fixed before H.D.B on 11-May-2021. Inform Petitioner and his Counsel.& AAG,

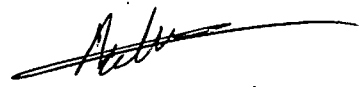
*[Handwritten signature]*  
Deputy Registrar

Respondent



py

W.P 1658/2019 (MOTION CASES) (Statutory-Termination) Deleted from 11-May-2021 and fixed before H.D.B on 29-Sep-2021. Inform Petitioner and his Counsel.& AAG,(A/W connected cases-T-3-cases)

  
Deputy Registrar

#####  
30-September-2021

W.P 1658/2019 (MOTION CASES) (Statutory-Termination) Left over by the court from 29-Sep-2021 and fixed before H.D.B on 24-Nov-2021. Inform Petitioner and his Counsel.& AAG. A/W Rev. Pett. 140-p/2018 in wp.751-p/2018(Main cases)

Adjournment by


Petitioner	Respondent
1	0

  
Deputy Registrar

30-September-2021

W.P 1658/2019 (MOTION CASES) (Statutory-Termination) Deleted from 24-Nov-2021 and fixed before H.D.B on 09-Feb-2022. Inform Petitioner and his Counsel.& AAG, (A/W Rev. Pett. 140-p/2018 in wp. 751-p/2018(Main case))

Respondent
0

  
Deputy Registrar

11-May-2021

W.P 1658/2019 (MOTION CASES) (Statutory-Termination) Deleted from 11-May-2021 and fixed before H.D.B on 09-Feb-2022. Inform Petitioner and his Counsel.& AAG, (A/W Rev. Pett. 140-p/2018 in wp. 751-p/2018(Main case))

Respondent
0

Deputy Registrar

#####  
22-June-2019

W.P 1658/2019 (MOTION CASES) (Main case) (Statutory-Termination),  
Adjourned by the court from 20-Jun-2019 and fixed before H.D.B on  
25-Sep-2019. Inform Petitioner and his Counsel. (A/W.1.wp.1670-p/19).

Adjournment by

Petitioner	Respondent
0	0

29-10-19  
26-11-19  
Ads

  
Deputy Registrar

#####  
30-November-2019

W.P 1658/2019 (Main case) (Statutory-Termination), Adjourned by the  
court from 26-Nov-2019 and fixed before H.D.B on 06-Feb-2020. Inform  
Petitioner and his Counsel. & AAG. (A/W.1.wp.1670-p/19).

Adjournment by

Petitioner	Respondent
0	0

Ads + Roslids

  
Deputy Registrar


#####  
07-February-2020

W.P 1658/2019 (Main case) (Statutory-Termination), Adjourned by the  
court from 06-Feb-2020 and fixed before H.D.B on 13-Mar-2020. Inform  
Petitioner and his Counsel. & AAG. (A/W.1.wp.1670-p/19).

Adjournment by

Petitioner	Respondent
1	0

Ads

  
Deputy Registrar


#####  
19-March-2020

W.P 1658/2019 (Main case) (Statutory-Termination), Adjourned by the  
court from 13-Mar-2020 and fixed before H.D.B on 05-May-2020. Inform  
Petitioner and his Counsel. & AAG. (A/W.1.wp.1670-p/19).

Adjournment by

Petitioner	Respondent
1	0

Ads

  
Deputy Registrar

Handwritten notes at the bottom left corner, including "145" and "66".

p-2

**IN THE PESHAWAR HIGH COURT PESHAWAR**

Writ Petitions No. 1658 -P/2019 <sup>copy made & note</sup> with TR ~~copy~~

*Source* matrimonial Re-Instatement

**Noor Shah V/s District & Sessions Judge Charsadda**

Presented by Saadullah Khan Marwat  
on behalf of appellant/petitioner.

139432

Entered in the relevant register.

Be laid Before DB for orders on 16-APR-19

*copy*

**Dated 09 MAR 2019**

*[Signature]*  
Reader

**Dated 09 MAR 2019**

Countersigned

**Dated 09 MAR 2019**

*[Signature]*  
Deputy Registrar

*A/W. 1670-1190/1*  
*(1/1) copy*

1  
19-April-2019

W.P 1658/2019 (MOTION CASES) (Main case) (Statutory-Termination),

Adjourned by the court from 16-Apr-2019 and fixed before H.D.B on

20-Jun-2019. Inform Petitioner and his Counsel. (A/W.1.wp.1670-p/19).

*[Signature]*

Adjournment by

Petitioner	Respondent
0	0

Deputy Registrar

M

15  
M

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

**APPLICATION FOR ADJOURNMENT**

14.	Case No.	wp 1658/2019	
15.	Title	Noor Shah Versus PHC	
16.	Case Fixed For	06.02.2020	
17.	Application by	Petitioners	
		Respondents	Khalid Rahman @
18.	Reason (s)	Will be busy before Apex Supreme Court of Pakistan.	
19.	Whether Stay Granted	Nil	
20.	Stay When Granted	NO	
21.	Stay Granted To	N	
22.	Previous requests	N	
23.	Case Status		
24.	Name of Opposite Counsel	Sadullah Khan Marwat	
25.	Cell/ Phone No. of the Opposite Counsel	0300 5872 676	
26.	Whether Opposite counsel informed	Yes	

Dated: 04.02.2020

Applicant

Submitted for orders, please .

**Khalid Rahman**  
Advocate  
Supreme Court of Pakistan  
Cell: 0313-8922889

Branch Incharge

Additional Registrar (Judl:)

Case remain on Cause list

Addl. Registrar (J)

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W. P. No. 1658 P / 2019  
*Service Appeal No. 218/2022*

Noor Shah Ali S/O Jamrooz Khan  
R/O Sokhta Shabqadar,  
Ex, Junior Clerk / Moharrir, Court  
of Civil Judge / Judicial Magistrate,  
Shabqadar . . . . . Petitioner

**VERSUS**

1. District & Sessions Judge,  
Charsaddar.
2. Registrar, Peshawar High Court,  
Peshawar.
3. Civil Judge / Judicial Magistrate,  
Shabqadar District Charsadda . . . . . Respondent

⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔

**WRIT PETITION UNDER ARTICLE 199**  
**OF THE CONSTITUTION OF ISLAMIC**  
**REPUBLIC OF PAKISTAN, 1973:**

⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔⇔

**Respectively Sheweth:**

1. That petitioner was appointed as Junior Clerk / Moharri and was posted with District & Session Judge, Charsadda. At the time of the occurrence he was performing duty with Civil Judge / Judicial Magistrate, Shabqadar.
2. That FIR No. 343 dated 31-05-2005 Police Station Shabqadar u/s 452/506/342/436/477/148/149 PPC wherein no one was charged for the commission of offence, however, one Raham Sher recorded confessional statement in the court where in petitioner along with Liaqat Ali, Junior Clerk / Moharrir were named as counterparts. Later on the section of law were changed through section 409/436/161/165-A/182 PPC read with 5(2) of the prevention of Corruption Act, 1947. (Copy as annex "A")

**FILED TODAY**  
Deputy Registrar  
26 FEB 2019

- That on implicating of the petitioner in the case, he was served with Show Cause Notice regarding burning of record of some cases which was replied on 20-09-2005 by the petitioner and denied the allegation. (Copy as annex "B" & "C")
4. That on 01-10-2005, petitioner was suspended from service by ADJ Charsadda. (Copy as annex "D")
  5. That on the same day, i.e. 01-10-2005, petitioner was served with Statement of Allegation without Charge Sheet by ADJ Charsadda and not the Enquiry Officer himself. The Statement of Allegation was replied on 08-11-2005 and denied the allegations. (Copy as annex "E" & "F")
  6. That on 09-01-2006 and 13-01-2006 statement of Raham Sher and petitioner were recorded when in the meanwhile, the court of Special Judge (P) Anti Corruption, Peshawar initiated Criminal proceedings against petitioner, Raham Sher, Liaqat Ali and convicted them for 05 years and fine on 21-08-2006 and thereafter on 20-10-2006, the Enquiry Officer stopped the enquiry proceeding against the defaulters with direction to wait for the decision of the trial court in the offences. (Copy as annex "G", "H", "I" & "J")
  7. That petitioner filed appeal before the Peshawar High Court, Peshawar for setting aside the conviction and sentence of the Special Judge (P) Anti Corruption, Peshawar which was allowed on 14-11-2006 by treating the undergone sentence as sufficient. (Copy as annex "K")
  8. That on 22-11-2006, the Inquiry Officer recorded statement of Mujeeb-ur-Rehman who categorically stated that he was forced by the police as well as by the Inquiry Officer to give statement against petitioner, etc. and the said bailiff who was similarly placed person with petitioner was made witness against petitioner etc and the bailiff was then exonerated of the charges and is still serving the department as bailiff. (Copy as annex "L")
  9. That without completing rest of the enquiry proceeding i.e. recording of statements of witnesses, giving opportunity of cross examination, serving with Final Show Cause Notice and personal hearing being mandatory and by substituting another Inquiry Officer, the later submitted the enquiry report to the authority on 15-12-2006 by proposing major penalty of dismissal from service with effect from 21-08-2006. (Copy as annex "M")
  10. That on 23-12-2006, District & Session Judge without serving petitioner with Final Show Cause Notice and supply of enquiry proceeding, petitioner was dismissed from service with effect from 21-08-2006 retrospectively. (Copy as annex "N")
  11. That on 23-01-2007, petitioner submitted appeal before R. No. 02 which was rejected on 22-12-2009. (Copy as annex "O")

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR**

w.p no 1658/19

Noor Shah

.....Petitioner

**V E R S U S**

PHC

.....Respondents

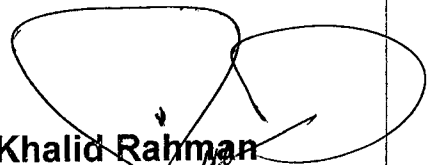
**APPLICATION FOR ADJOURNMENT**

**Respectfully Sheweth:**

1. That the above titled case is pending adjudication before this Hon'ble Court and is fixed for 06.02.2020.
2. That counsel for *Respondent* will be busy before the Apex Supreme Court of Pakistan in case CMA No.11617/2019, titled "District Bar Council Vs. Govt. of Pakistan & others", and therefore would not be able to appear and assist this Hon'ble Court on the said date.

It is, therefore, respectfully prayed that on acceptance of this application, the titled case may kindly be adjourned.

Through



**Khalid Rahman**  
Advocate Supreme Court  
Cell: 0313-8922889

Dated: 04.02.2020



Writ Br &lt;phc.writbranch@gmail.com&gt;

---

**WP Nos. 1658/2019 & 1670/2019 For submission of comments.**

1 message

Writ Br &lt;phc.writbranch@gmail.com&gt;

Thu, Apr 18, 2019 at 4:10 PM

To: AG &lt;hamza.ayaz1974@gmail.com&gt;, DAG &lt;dagphc161@gmail.com&gt;, dsj dsj &lt;dsjcharsadda@yahoo.com&gt;

*Dear Sir/Madam,*

السَّلَامُ عَلَيْكُمْ

**URGENT COURT MATTER***Case file alongwith Order of this Honourable Court, is transmitted for information & necessary compliance at the earliest.**please acknowledge receipt of this Email.*WRIT BRANCH (NOTICE SECTION)PESHAWAR HIGH COURT, PESHAWAR

Phone No. 091-9210149-158 (Ext: 364).

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**4 attachments**WP-1670-2019 (16.04.2019).pdf  
16KWP-1658-2019 (16.04.2019).pdf  
18Kwp1658 2019 NOOR SHAH ALI VS DJ full USB 63 pags.pdf  
2233Kwp1670 2019 LIAQAT ALI VS SCJ full USB 59 pags.pdf  
3841K



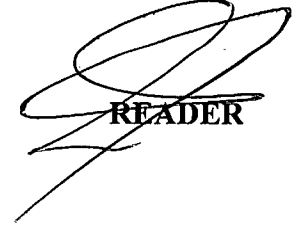
IN THE PESHAWAR HIGH COURT, PESHAWAR.  
OBJECTION SLIP

No: 8675

Noor Shah V/S District & Sessions Judge Charsadda

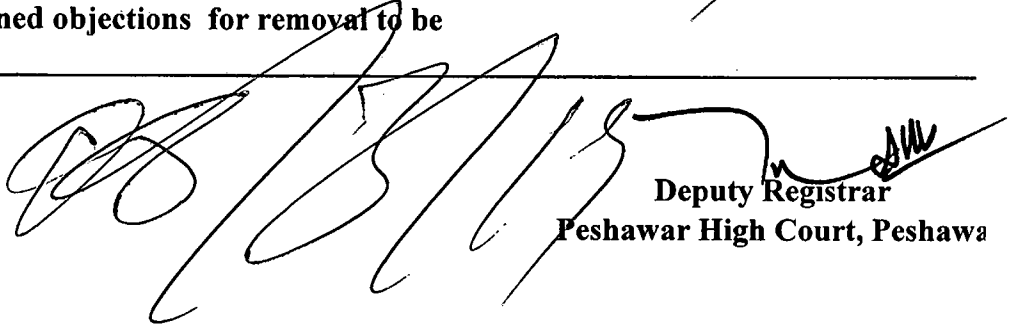
8 Copies of annexures 78, 9, 10, 25 are not legible/attested.

32, 43, 44

  
READER

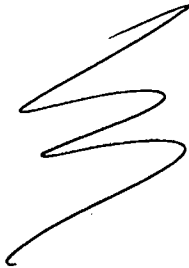
Returned with above mentioned objections for removal to be re-submitted on or before \_\_\_\_\_

26 February 2019

  
Deputy Registrar  
Peshawar High Court, Peshawa

Sir

Re-submitted after  
completion.



8-03-19

**Before the Peshawar High Court Peshawar**

**CHECK LIST.**

Case Title: <u>Noor Shela Ali</u> .....Versus..... <u>DI f. etc.</u>		YES	NO
1.	Case is duly signed.	YES	NO
2.	The law under which the case is preferred has been mentioned.	YES	NO
3.	Approved file cover is used.	YES	NO
4.	Affidavit is duly attested and appended.	YES	NO
5.	Case and annexure are properly paged/ numbered according to index.	YES	NO
6.	Copies of annexure are legible and attested. If not, then better copies duly attested have been annexed.	YES	NO
7.	Certified copies of all the requisite documents have been filed.	YES	NO
8.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	YES	NO
9.	Case is within time.	YES	NO
10.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	YES	NO ✓
11.	Court fee in shape of stamp paper is affixed. (for writ Rs.500, for other was required).	YES	NO
12.	Power of attorney is in proper form.	YES	NO
13.	Memo of addresses filed.	YES	NO
14.	List of books mentioned in the petition.	YES	NO
15.	The requisite number of spare copied attached. (Writ Petition-3 Nos, Civil Appeal (SB-1, DB-2) Civil Revision (SB-1, DB-2)).	YES	NO
16.	Case (Revision/appeal/petition etc.) is filed on the prescribed form.	YES	NO
17.	Power of attorney is attested by jail authority (for jail prisoner only).	YES	NO

It is certified that formalities/documents as requires in column 2 to 18 above, have been fulfilled.

Signature. *[Signature]*

*[Signature]*  
Advocate Peshawar.

Date: 25-10-2019.

For office use only.

Case No. \_\_\_\_\_

Case received. \_\_\_\_\_

Complete in all respect; Yes/No (if No the grounds) \_\_\_\_\_

Date in court. \_\_\_\_\_

Signature. \_\_\_\_\_

(Reader)

Countersigned \_\_\_\_\_

Date. \_\_\_\_\_  
(Deputy Registrar)

*[Handwritten marks]*  
26/10/19

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

Service Appeal No. 218/2022 W.P. No. 16581/2019

Noor Shah Ali versus District Judge & Others

**I N D E X**

S. No.	Documents Descriptions	Annex	Page #
1	Opening Sheet		A
2	Memo of Writ Petition		1-4
3	Affidavit		5
4	Addresses of Parties		6
5	FIR dated 31-05-2005	"A"	7-8
6	Show Cause Notice	"B"	9
7	Reply to SCN dated 20-09-2005	"C"	10
8	Suspension order dated 01-10-2005	"D"	11
9	Statement of Allegations, 01-10-2005	"E"	12
10	Reply to Statement of Allegations, 08-11-05	"F"	13
11	Statement of Raham Sher, 09-01-2006	"G"	14-15
12	Statement of petitioner dated 13-01-2006	"H"	16
13	Judgment of ATC dated 21-08-2006	"I"	17-30
14	Stoppage of Enquiry proceedings, 20-10-06	"J"	31-32
15	Judgment of High Court dated 14-11-2006	"K"	33-42
16	Statement of Mujeeb-ur-Rehman, 22-11-06	"L"	43
17	Enquiry Report dated 15-12-2006	"M"	44-45
18	Dismissal order dated 23-12-2006	"N"	46
19	Appeal dated 23-01-2007	"O"	47-48
20	Rejection order dated 22-11-2009	"P"	49-50
21	Appeal to Service Tribunal	"Q"	51-56
22	Order dated 29-01-2019	"R"	57
23	Notice		58
24	Court Fee of Rs. 500/=		
25	Wakalatnama		

RE-FILED TODAY  
Deputy Registrar  
08 MAR 2019

FILED TODAY  
Deputy Registrar

26 FEB 2019

Dated: 23-02-2018

63  
26 FEB 2019  
Through

Petitioner(s)

Saadullah Khan Marwat  
Advocate,  
21-A Nasir Mension,  
Shoba Bazar, Peshawar  
Ph: 0300-5872676

That thereafter, petitioner filed appeal before service Tribunal on 14-01-2010 which was returned vide order dated 29-01-2019 to seek remedy before appropriate forum as per the reported judgment, 2016 SCMR 1206. (Copy as annex "P" "Q")

Hence this Writ Petition, inter alia, on the following grounds:

**GROUND:**

- a. That petitioner has more service than 14 years in his credit and no benefit of the rendered services were ever given to him.
- b. That on perusal of the record, it is quite clear that the enquiry was not conducted in accordance with the rule on the subject. Petitioner was behind the bar since 23-08-2005 till 14-11-2006. The Inquiry Officer did not visit him in Jail to either record statement of witnesses if any, or to provide him opportunity of defence.
- c. That it was obligatory for the authority to serve petitioner with Final Show Cause Notice and to supply him all the enquiry proceedings to enable him to submit comprehensive reply but such mandatory requirement was ignored which vitiates all the proceeding to be null and void.
- d. That one Mujeeb-ur-Rehman bailiff of the court of R. No. 01 who was in equal footing with other counterparts was made approver and petitioner etc. were dealt with severely and as per the judgments all similarly placed persons will be dealt with similarly and equally on similar charges but PW-4 Mujeeb-ur-Rehman was exonerated from the charges and is serving the court of R. No. 01 as bailiff till date while petitioner was dismissed from service, thus discriminated.
- e. That criminal and departmental action as per the judgments of the apex Supreme Court of Pakistan can go side by side even at variance decisions, yet in the case in hand, the original as well as appellate authority did not adhere to law, yet mandatory requirement in the departmental action was not observed.
- f. That Show Cause Notice and Statement of Allegations were served upon the petitioner by R. No. 01 himself and not the Inquiry Officer. This glaring illegality vitiates all the proceedings to be null and void and then the impugned order becomes void-ab-initio.

FILED TODAY  
Deputy Registrar  
26 FEB 2019



That original as well as appellate orders were not made in accordance with law but with ulterior motive, so are illegal, improper, unjust, without lawful authority and of no legal effect. Hence liable to be reserved.

It is, therefore, most humbly prayed that on acceptance of the Writ Petition, in exercise of the extraordinary constitutional jurisdiction, this Hon'ble Court be pleased to:

- a. Declare order dated 23-12-2006 and 22-12-2009 of R. No. 01 and 02 to be illegal, improper, unjust, malafide, discriminatory, without lawful authority and of no legal effect.
- b. Direct the authority to reinstate petitioner in service with all consequential benefits of service;

**AND / OR**

- c. Any other writ / order / direction deemed proper and just in the circumstances of the case may also be issued / order / given.

Petitioner(s)  
Through   
Saadullah Khan Marwat  
  
Amjad Nawaz  
Advocates

Dated 23-02-2019


**LIST OF BOOKS:**

1. Constitution.
2. 2016 SCMR 1206
3. 2008 PLC (CS) 609

**CERTIFICATE:**

As per instructions of my client, certified that no such like Writ Petition was earlier filed by the petitioner before this Honorable Court.

(D.B Case)

  
Advocate

**FILED TODAY**  
Deputy Registrar  
26 FEB 2019

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P. No. -P / 2019

Noor Shah Ali

versus

District Judge & Others

**AFFIDAVIT**

I, Noor Shah Ali S/O Jamrooz Khan R/O Sokhta Shabqadar, do hereby solemnly affirm and declare that the contents of the **Writ Petition** are true and correct to the best of my knowledge and belief.

Identified By:

*Saad Ullah Khan*

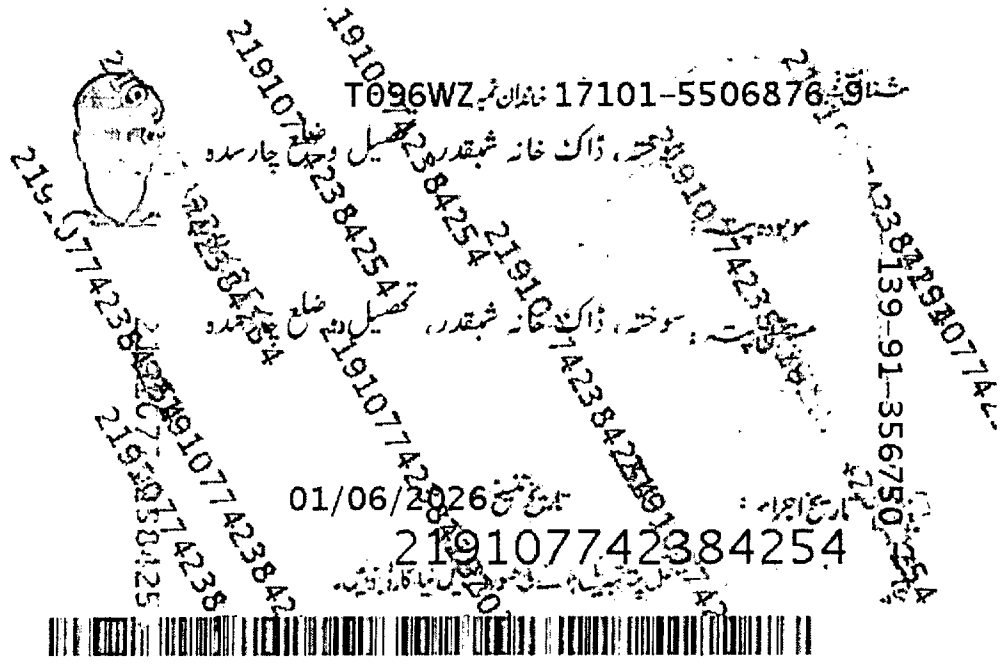
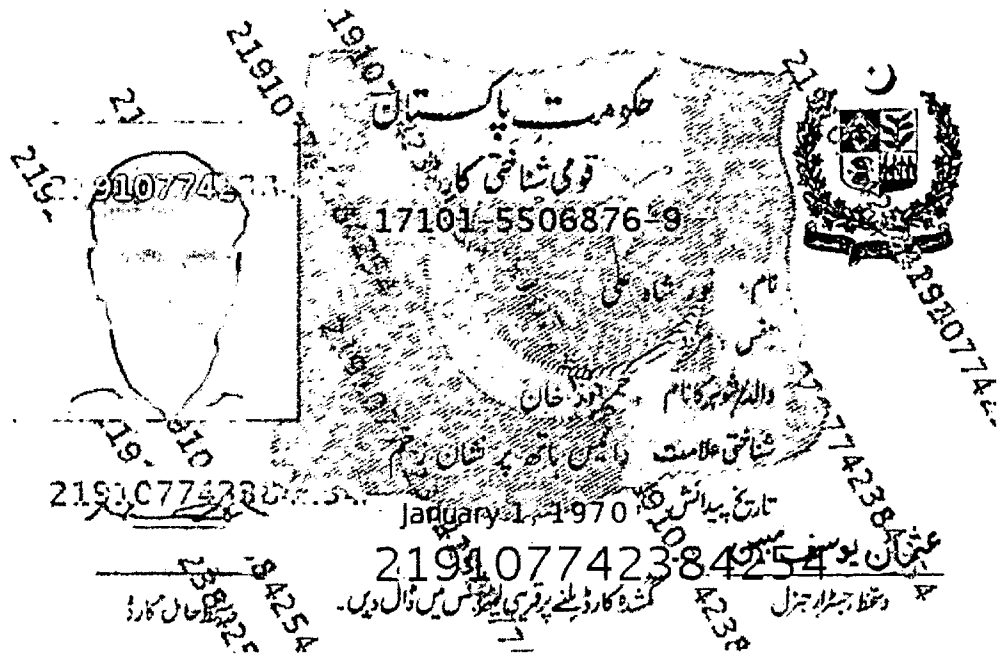
**Saad Ullah Khan**  
Advocate

*[Signature]*  
DEPONENT  
CNIC#: 17101-5506876-9  
Cell No. 0345-9393707

No:..... <i>81478</i> .....
Certified that the above was verified on solemnly affirmation of <i>25/2</i>
day of <i>Feb</i> <i>19</i> <i>Noor Shah Ali</i>
s/o <i>Jamrooz Khan</i> <i>Sokhta Shabqadar</i>
who was <i>present</i> <i>Saad Ullah Khan</i>
Who is personally known to me:
<i>[Signature]</i> <i>23/2/2019</i>

*Made Verified*

FILED TODAY  
Deputy Registrar  
26 FEB 2019



Census 1998 Database [x]

The individual exists in the census database as father's name نور شاه گل current address سوختہ شبندر چارسدہ سوختہ and date of birth "January 1, 1970"

Other Information that does not appear on card [x]

Place of Birth	چارسدہ
Religion	Islam
Mother's Name	انورہ

Digital Signature [x]

**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P. No. 1658P / 2019

Noor Shah Ali

versus

District Judge & Others

**ADDRESSES OF PARTIES**

**Petitioner:**

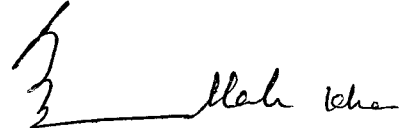
Noor Shah Ali S/O Jamrooz Khan  
R/O Sokhta Shabqadar,  
Ex, Junior Clerk / Moharrir, Court  
of Civil Judge / Judicial Magistrate,  
Shabqadar

**Respondents:**

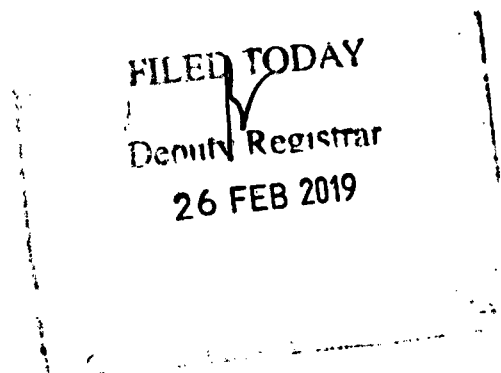
1. District & Sessions Judge,  
Charsaddar.
2. Registrar, Peshawar High Court,  
Peshawar.
3. Civil Judge / Judicial Magistrate,  
Shabqadar District Charsadda

Petitioner(s)

Through

  
Saadullah Khan Marwat  
Advocate

Date: 23-02-2019





ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ نوچکداری

تاریخ و وقت وقوع کی اطلاع  
 31 مئی 2005ء 08:00 بجے  
 پورٹ  
 لاہور دہندہ دستگیر  
 جرم (معدومہ) حال اگر کچھ لیا گیا ہو  
 عد فاصلہ تھانہ سے اور سمت  
 ذمہ دار  
 جو تفتیش سے متعلق کی گئی اگر اطلاع درج  
 میں توقف ہوا تو وجہ بیان کرو۔  
 سے روانگی کی تاریخ و وقت

ابتدائی اطلاع پورٹ درج کر سوتے ایک تھری رپورٹ از ان ضابطہ نوچکداری  
 ولد شاہجہاں سنگھ کوٹکے در تھانہ کوٹکے میں واقع پولیس سٹیشن کے سامنے  
 اور ظن سول جج جوڈیشل میگزین کے سامنے تھانہ بدست سبیلوں کے نائب سرورٹ کے سامنے  
 ہو کر درج ذیل ہے۔  
 To The SHO shabqadar subject Registration.  
 of FIR Memo find enclosed herewith the statement of Chokidar  
 namely, Sheharat Khan regarding mischief with respect to the  
 record of the court lying in the office of the Moharrir of the  
 Court by breaking open the doors of the office putting all the  
 case files and putting fire to the same. It is therefore  
 required that FIR be registered in respect of the subject  
 statement of Sheharat Khan s/o Shah Jehan R/o Kotak Shabqadar. Posted a  
 Chokidar in civil court. Shabqadar. Stated that on the night  
 occurrence at about 1-30 AM 31-5-05 I was present in the  
 premises of the court where I noticed some noise in the  
 corner of the premises of the court. I came there where

Handwritten signature

FIR 31.5.05

Some 4/5 Persons overpowered me and muffled my face with a piece of cloth. The said unknown Persons climbed over the roof of the court room passing me through the adjacent mosque for outside and boarded me in a car parked somewhere outside the Premises of the court. After some while they made me come down from the car forcibly walked me for some time. They made me sit in an unknown place. After some time some other Persons came and told the others that they have got the work done. The said unknown Persons again took me some where else and put me down leaving my face muffled and hands cuffed. During morning time some kids passed there who opened my face and hands then I came to the court where I found the doors of the office of the Moharrir of the court broke open and the record of the court burnt. I went to the P.S and informed the local police.

دستبرد اول نشان (نٹوٹہ شہر پارکن کاروائی قائم بقدرہ -  
 تمبرہ رپورٹ کے صرف صرف دن کا مالہ ہرگز نہیں بیدار بلکہ چاکے کسک لے کر ہر جہت سے  
 لٹوں لٹیں جوانے اپنی اور انہیں گنبد شانی کے مین میں ہیں تھیں

SOR.  
 31-5-05

دستخط

عہدہ

نوٹ: اطلاع کے نیچے دہندہ کا دستخط ہوگا۔ یا اس کی مہر نشان لگایا جائے گا اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔  
 مزدور الف یا بروشنائی سے بالقابل نام ہر ایک ملزم یا مشتہر علی الترتیب واسطے باشندگان علاقہ یا وسط اسیاء یا افغانستان جہاز  
 موزوں ہو لکھنا چاہیے۔

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لیدائن جناب شعیب خان I-ADSI صلب چارجس

سہ کار ہم نورشاہ علی

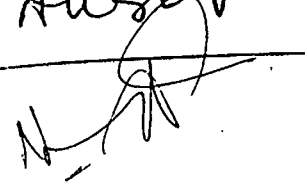
علت 343 سنو 5/31 میرا PPC 452-477-436  
342-506-448-149

جواب طلبی بناہ نورشاہ علی موراج تیر بشدر

نفرم مذرم عنوان بالا میں کوالر لیورٹ فرم سواتر علی اللہ شتوکت روم معد معلول ج  
جوڈیشنل مجسٹریٹ شتقدر - تم نورشاہ محمد زریکاڈر جلائے اور پبلک پراپرٹی  
کو نقصان پہنچا نے میں علوت ہو - جسکی بنا پر تم پر مقدم علت 343 سنو 5/31

حرم 452-477-436  
342-506-148-149  
PPC  
تھانہ شتقدر قائم ہوا ہے ہذا تم نورشاہ علی فرم کو ہدایت

کی جاتی ہے کہ اپنی جواب طلبی لکھری جواب اندر 7 یوم یعنی 9/24 تک زیر دستگی  
کو پیش کرو

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ  


بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ  
ADSI-I  
end.

To

The Additional Sessions Judge-I,  
Charsadda.

Subject: **EXPLANATION.**

Respected Sir,

With reference to Show Cause Notice No. Nil dates Nil. The accused/official respectfully submits his explanation as under:-

1. That the accused/official was performing his duty as Junior Clerk/Muharrir in the court of Illaqa / Judicial Magistrate Shabqadar to the best of his ability, honesty and the Presiding Officer of the court was satisfied from his duty.
2. That unfortunately the record of the court during night time as it was known later on, was set on fire and the Chowkidar was held responsible for the offence.
3. That later on the accused/official along with his other colleague was involved in the case falsely and with malafide intention on the statement of a person whose statement has been obtained under coercion and threat extended to him by police after he was entrapped in the case by his enemies who met hands with the local police. This statement was belied by father of the said confessor through Print Media which I will produce at the relevant time.
4. That I have committed no offence and have been charged falsely, as stated above, in case FIR No. 343 dated 31-05-2005 U/S 452/477/336/342/506/148/149 PPC P.S Shabqadar and now-a-days I am confined in Sub-Jail Charsadda.

Thanking You Sir.

Your's obediently

Sd/-

(Noor Shah Ali)

J/C, Muharrir in the court of

Judicial Magistrate, Shabqadar

At present confined in Sub Jail Charsadda

Date 20-09-2005



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To:

The Addl. Sessions Judge-I,  
Charsadda.

Subject: EXPLANATION.


Respected Sir,

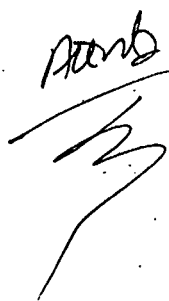
With reference to show **cause notice No. Nil** dated Nil. The accused/official respectfully submit his explanation as under-

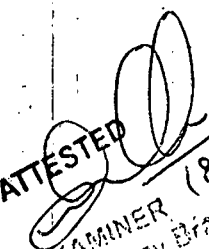
1. That the accused/official was performing his duty **8S Junior Clerk/Muharrir** in the court of **Waqar/Judicial Magistrate, Shabqadar** to the best of his ability, honesty and the presiding officer of the court was satisfied from his duty.
2. That unfortunately, the record of the court during night time, as it was known later on, was set on fire and the **Chowkidar** was held responsible for the offence.
3. That later on, the accused/official along with his other colleague was involved in the case falsely and with malafide intention on the statement of a person whose statement has been obtained under coercion and threat extended to him by police after he was entrapped in the case by his enemies who met hands with the local police. This statement was belied by father of the said confessor through print media, which I will produce at the relevant time.
4. That I have committed no offence and have been charged falsely, as stated above, in case **FIR No. 343 dated 31.05.2005 u/s 452/477/336/342/506/148/149 PPC P.S** Shabqadar and now-a-days I am confined in Sub-Jail Charsadda.

Dated: 20.09.2005.

Yours Obediently,

  
(Noor Shah Ali) 24/9/05  
J/C, Muharrir in the court of  
Judicial Magistrate, Shabqadar.  
At present confined in Sub-Jail, Charsadda.



ATTESTED  
  
EXAMINER (8/11/07)  
Copying Agency Branch  
Court of Dist. & Session Judge  
Charsadda

D

11

10  
05

ORDER

I, SHOAIB KHAN Additional District & Sessions Judge-I, Charsadda being Authorized Officer, while exercising powers under Rule 5 sub-rule (1) of the NWFP, Govt: Servants (E & D) Rules 1973 with the prior approval of the Honourable Authority place you accused official Mr. Noor Shah Ali under suspension for a period of three months with immediate effect.

Dated: 01/10/2005

-sd-

(SHOAIB KHAN)

Add: District & Sessions Judge-I,  
Charsadda / Authorized Officer

COPY TO THE FOLLOWING FOR INFORMATION AND FURTHER NECESSARY

ACTION PLEASE:

- 1) The Honourable District & Sessions Judge, Charsadda
- 2) The District Accounts Officer, Charsadda
- 3) Official concerned
- 4) Record copy

R. d. d. l.

(SHOAIB KHAN)

Add: District & Sessions Judge-I,  
Charsadda / Authorized Officer

ATTESTED

EXAMINER

18/11/07  
Copying Agency Branch  
Court of Distt & Session Judge  
Charsadda

*Handwritten signature*

E

12

1/10/05

STATEMENT OF ALLEGATION

Whereas you accused official Noor Shah Ali have been involved and charged in a criminal case vide FIR No. 343 dated 31/05/2005 u/s 452/476/436/342/506/148/149 PPC registered at P.S Shabqadar for setting on fire and causing irreparable loss and damaged to the judicial record of the court of Civil Judge / Judicial Magistrate, Shabqadar.

And I being Authorized Officer direct you accused official to put in any written defense on 08/10/2005. You are also required to state whether you wished to be heard in person.

- sd -

(SHOAIB KHAN)

Add: District & Sessions Judge-I,  
Charsadda / Authorized Officer

Dated: 01/10/2005

ATTESTED  
EXAMINER  
Copying Agency Branch  
Court of Distt & Session Judge  
Charsadda  
18/11/07

Attested  
[Signature]

To

The Addl: District & Sessions Judge,  
Charsadda.

Subject: REPLY TO STATEMENT OF ALLEGATION.

R/Sir,

With due respect I submit my reply to the statement of allegation dated 01-10-2005 as under :-

1. That I am permanent employee of Judicial Department and was posted as Moharrir in the court of learned Judge/  
Civil/Judicial Magistrate, Shabqadar.
2. That I was performing my duty honestly and to the best of my ability.
3. That unfortunately on night the record files set on fire by someone and I alongwith other was falsely been enroped in a criminal case referred in the statement of allegation and confined in judicial lock up at Charsadda.
4. That I am innocent and have committed no offence.
5. That I wished to be heard in person because during inquiry proceeding I will cross examine the so called witnesses.

It is, therefore, humbly prayed that on acceptance of this reply of the statement of allegation against may be filed.

Yours obediently,

Sd/- ( Noor Shah Ali )  
Moharrir attached to the court of  
learned CJ/JM Shabqadar confined in  
Sub-Jail Charsadda.

Ali  
my



G. 14 9-1-06

Pr.

Statement of accused Raham Sher S/O Sher Muhammad aged about 56 years R/O Sro Killi Tehsil Shabqadar District Charsadda on oath.

Stated that during the course of investigation of case FRR No: 343 dated 31.5.2005 registered u/s 435/436/452/477/409-PPC read with 5(2) prevention and corruption act registered at PS Shabqadar. I was arrested by the local police and during the proceeding of investigation I was produced before the learned JM, Shabqadar for recording of my confessional statement. In this connection my statement u/s 164/354 CrPC was also recorded at the court of learned Judicial Magistrate, Shabqadar but in fact I am not aware of any of the facts mentioned in the said confessional statement and the same is the result of police torture. Today thought in the course of inquiry I am deposing as witness against the defaulting official under inquiry initiated departmentally but in fact neither I had ever given any statement to the local police or to the learned Magistrate Shabqadar. I was also having a civil case pending in the court of Civil Judge, Shabqadar which was pending for the last 2/3 years.

X X X

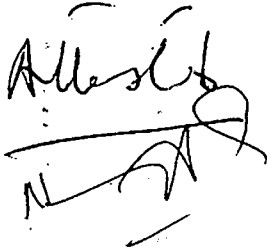
So far as my case pending there is concerned I had not instituted the same but in the event of that very case I was sued by another person. I was not on friendly terms with the official under inquiry previously. I do not know any accused in that very case with the name of Ashfaq. I was remained in the police custody for 4-days. I was subjected to physical torture by the local police. My statement is the dictation given by the local police. It is correct that I had not made any statement before the learned Judicial Magistrate, Shabqadar and if any statement would have been there, the same is the result of police torture and would have been manipulated against me. I do know -----

*Pr.*

Mujibur Rehman, Bailiff but only to the extent that I was used to see him as a court official while attending my case. During the course of investigation I was kept in PS Sardheri and I was also kept at Ghanderi PP. I was kept there for 4-days/ I do not know that whether Mujib Bailiff was also kept there for two days in PS Sardheri. The entire allegations on behalf of me against the defaulting official is the result of police torture and in fact I had not involved the official under inquiry for any case of bribery.

RO & AM  
9.1.2006

SAJIDUR RAHMAN SHAIKH,  
SOO/Inquiry Officer, Ghd.

Attest  


H 16 13-1-06

Statement of defaulting official Noor Shah Ali, Meharir attached to the court of CJ/JM, Shabqadar on oath:

Till date I have performed more than 14 years service in Sessions court, Charsadda. During this tenure of service no complaint has been received against me to my superiors. During the days of occurrence I was on leave. I am ready to take oath on Helly Quran that I am completely innocent in that very case. I do not know and also have no acquaintance or relationship or friend ship with one Raham Sher. I have no concern what-so-ever directly or indirectly in the incident or in the incident of setting on fire the record of the court. On the following morning of the night of occurrence I was informed by Mujib Bailiff of the court who was sent after me to my house that such an ~~xxx~~ incident had taken place and you should come to the court and accordingly I came to the court. I have no hand in the occurrence, and am completely innocent.

RO & AG  
13.1.06

(SAFIULLAH JAN)  
SCJ/JM, Inquiry Officer,  
Charsadda.

Attest  
Noor Shah Ali

In the Court of Senior Special Judge, Anti-Corruption NWFP,  
Peshawar.

Case No.40 of 2005.

Date of Decision. 21-8-2006



State Versus:-

- ✓ 1. Liaqat Ali S/O Shahkhel,  
R/O Mirzai, Ex-Moharrir,  
Court of Judicial Magistrate,  
Shabqadar.
- ✓ 2. Noor Shah Ali S/O Jamroz,  
R/O Sokhtar, Ex-Moharrir,  
Court of Judicial Magistrate,  
Shabqadar.
3. Raham Sher S/O Sher Muhammad,  
R/O Hajizai, now at Akbar Filling  
Station,  
Saro Kalay.
4. Sheharyar S/O Shah Jehan,  
R/O Kotak Tarnao, Chowkidar,  
Court of Judicial Magistrate,  
Shabqadar.
5. Sajjad (alias) Manay,  
S/O Purdil, R/O Haleemzai,  
District Charsadda.

ATTESTED

EXAMINER  
Court of Special Judge  
Anti-Corruption  
NWFP, Peshawar.

23/8/06

Case FIR No.343 Dated 31.5.2005 U/S 409/436/161/165-  
A/182/PPC read with section 5(2)PC Act of P.S. Shabqadar,  
Charsadda.

Judgment:-

Present case pertains to the court of Civil Judge, Shabqadar, District Charsadda. According to the initial information recorded on 31.5.2005, when Shaukat Ahmed Khan Civil Judge, Shabqadar reached the court in the morning, Rahim Dad peon informed him

SPECIAL JUDGE  
Anti-Corruption  
NWFP, Peshawar.

21-8-06

Handwritten signature and initials.

that the court record had been burnt that night. The presiding officer summoned Sheharyar chowkidar and recorded his statement Ex.PW1/1. He stated that in the night of occurrence, while on duty, at about 1.30 AM he noticed a noise from corner of the court premises and when he approached he was over-powered by some 4/5 persons who muffled him and put him in a car present outside and took him away to an un-known place and after some time another person informed these persons that they had got the work done. He was then taken to some-where else and left him handcuffed and muffled. That in the morning some passer-by kids released him and when he reached to court he found door of moharrir office broken open and record of the court burnt. According to this <sup>statement</sup> Sheharyar went to the police station and informed the local police.

The Presiding officer forwarded this statement of Sheharyar chowkidar under his covering letter Ex.PW1/2, to the police station for registration of case. This report was taken as first information and case was registered as FIR No.343 Ex.PA u/s 452/506/342/436/477/148/149/PPC relying upon the information provided by Sheharyar.

Sheharyar chowkidar was arrested as suspected offender. On the following day i.e. 1.6.2005, Sheharyar disclosed that the narrations that he made to the Presiding Officer and incorporated in the FIR were concocted and actually he was not present on duty during the eventful night. His statement u/s 161 Cr.PC was taken after three days in custody.

In course of investigation, police got a clue that one local proclaimed offender Ashfaq was behind the incident, and that he and his brother Adnan were on friendly terms with Raham Sher, chowkidar of a filling station in village Sarokalay. In course of enquiry as directed by the Sessions Judge, Charsadda, while recording statement of court officials, name of Raham Sher came forth. At this, Liaqat Ali Moharrir of the court allegedly asked, Mujeebur Rehman bailiff of the same court to inform the said, Raham Sher regarding the fact. Mujeebur Rehman approached Raham Sher in his petrol pump where he was chowkidar at "sarokalay" and give him the message of the moharrir. This is what

was subsequently disclosed by Mujeebūr Rehman bailiff in statement Ex.PW3/1 recorded on 26.8.2005 u/s 164 Cr.PC.

On 23.8.2005 Raham Sher was arrested and on 24.8.2005 he was produced before the magistrate vide application Ex.PW8/1 and he recorded his confessional statement Ex.PW1/4 u/s 164 Cr.PC. In his confessional statement Raham Sher disclosed that he had developed friendly relations with co-accused Noor Shah Ali and Liaqat Ali both moharrirs of court of civil judge, Shabqadar, in course of his civil suit titled "Sarwar vs-Raham Sher" and that Ashfaq co-accused wanted to police in so many criminal cases was raided for which Ashfaq suspected Raham Sher as police informer and asked him (Raham Sher) to end up the court cases pending against him any way. According to this statement the accused Noor Shah Ali and Liaqat Ali were approached and a bargain against Rs.1,50,000/- was struck which amount was paid to Noor Shah Ali and after one day the record was burnt.

After recording this confessional statement of Raham Sher on 24.8.2005, the accused Noor Shah Ali and Liaqat Ali moharrirs were also arrested and sections of law were converted to 161/162/409/436/477/PPC read with section 5(2)PC Act.

On 25.8.2005, vide application Ex.PW8/2 they both were produced before the magistrate and after obtaining six days police custody vide application Ex.PW8/2 & Ex.PW8/3 they were admitted to judicial lock up vide Ex.PW8/4.

It is pertinent to mention that in the confessional statement of Raham Sher there is mention that accused Noor Shah Ali and Liaqat Ali were approached for bargain, Raham Sher was accompanied by Adnan co-accused brother of co-accused Ashfaq and third person of unknown identity. In course of investigation the accused Sajjad was arrested as that "third person".

The investigation was conducted under the supervision of a special team and after completion of investigation challan was submitted for trial.

Charge was framed against accused Liaqa Ali, Noor Shah Ali, Raham Sher in custody and Sheharyar and Sajjad Alias Manay who were released by them on bail. The other co-accused Ashfaq and Adnan were placed u/s 512 Cr.PC and all of the accused pleaded innocence.

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NWFP, Peshawar

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Anti-Corruption N.W.F.P.  
21-8-06

The following persons were examined as Prosecution witnesses :-

- 1) Shaukat Ahmed khat, Judicial Magistrate, Shabqadar as PW-1.
  - 2) Ikramullah khan, ASI, P.S. Shabqadar as PW-2.
  - 3) Mujeebur Rehman, Balif of the court of Judicial Magistrate/Civil Judge, Shabqadar as PW-3.
  - 4) Muzaffar khan S.I. P.S. Pabbi as PW-4.
  - 5) Badshah Gul, ASI, P.S. Kabli as PW-5.
  - 6) Mushtaq Ahmed, SHO P.S. Mattani as PW-6.
  - 7) Rahim Shah, SHO P.S. Charsadda as PW-7.
  - 8) Hamdullah S.I. investigation P.S. Shabqadar as PW-8
- one Qamar Zaman was abandoned by the prosecution.

Statement of Abdul Mabood DFC was also recorded as SW-1.

After conclusion of the prosecution evidence statement of accused u/s 342 Cr.PC recorded. Accused Raham Sher opted to be examined on oath and also wished to produce defence evidence. His statement was recorded on oath and one Hamdullah produced by him was examined as DW-1. It was at this juncture when the prosecution requested for summoning of Moharrir of the court of Civil Judge, Shabqadar alongwith record pertaining to civil suit No.287/1 titled Sarwar Vs-Raham Sher and the request was allowed.

Riazur Rehman Moharrir was examined as CW-1 who produced copies of the relevant record Ex.CW1/1 to Ex.CW1/6.

After conclusion of the statement of CW-1, additional statement of the accused Raham Sher, Liaqat Ali, Noor Shah Ali were recorded. It was this point when the co-accused Ashfaq also surrendered by then partial arguments in the case has already been heard. It was deemed proper that he be tried separately and was ordered accordingly.

I have heard arguments advanced by the learned defence counsel and P.P. for state and gone through the record with their valuable assistance.

Shaukat Ahmed khan PW-1 was Civil Judge/Judicial Magistrate Shabqadar and the incident pertains to his court. As PW-1 he gave account of the officials attached to his court and the

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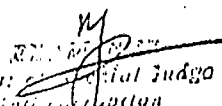
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Court of Special Judge  
Anti-corruption  
MIRPUR, DISTRICT  
23/8/06

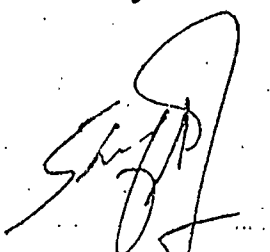
SPECIAL JUDGE  
Anti-Corruption  
MIRPUR  
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lot includes Liaqat Ali, Noor Shah Ali, Moharrirs, Sheharyar chowkidar accused and Mujeebur Rehman Bailiff. The witness has narrated the primary circumstances leading to registration of the case. He confirmed recording of statement of Sheharyar chowkidar Ex.PW1/1 and its transmission to the police station under his covering letter Ex.PW1/2 for registration of case. According to him he forwarded a copy of covering letter to the Registrar, Peshawar High Court and second copy to his Sessions Judge for information. He is the witness who recorded confessional statement of Raham Sher on 24.8.2005 Ex.PW1/4 and has confirmed his signature and seal of the court on Ex.PW1/4, on memo Ex.PW1/3 and certificate Ex.PW1/5. The witness was subjected to lengthy cross examination.

In course of cross examination this PW ~~which he~~ pointed out that he had recorded 164 Cr.PC statement of Mujeebur Rehman PW-3 also. The witness denied that he had supervised the investigation rather stressed that he recorded the statements as Illaqa Magistrate. In his cross examination he rebutted the suggestion that seal of the court was affixed on the confessional statement Ex.PV1/4 before recording the text and obtaining thumb impression of the accused. He gave detail account of the events while recording this confessional statement according to which the accused was produced on 8.30 AM and that after an hour time given for relaxation. Statement was recorded at 9.30 AM which lasted till 9.45 AM. He rebutted the suggestion that the accused had told him that he was in police custody since 21.8.2005 and that he was innocent. The witness admitted that he did not refer the accused for medical check up before and after recording confessional statement. About the 164 Cr.PC statement of Mujeebur Rehman Bailiff the witness rebutted the suggestion that the statement Ex.PW3/1 was provided to him and he adopted the same or that he obtained signature of Mujeebur Rehman on a blank paper.

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PW-2 Ikramullah ASI is a marginal witness to the recovery memo Ex.PW2/1 vide which he as I.O. collected material mentioned in the memo, from the spot. He is also marginal witness of the recovery memo Ex.PW2/2 vide which motor cycle No.PRR-1617 Ex.P-5 was taken into possession.



PW-3 Mujeebur Rehman is the bailiff of the court of civil judge, Shabqadar. In his examination-in-chief recorded on oath he has reproduced the narrations recorded in his statement Ex.PW3/1 and confirmed his signature on his statement Ex.PW3/1 recorded on 26.8.2005. In his cross examination he stated he was tortured, kept under observation till 26.8.2005 and then the statement was recorded which was a result of tortured and he was forced to make the statement against the accused. according to this witness he was produced before the magistrate in hand cuffs and was forced to give false statement.

PW-4 Muzafar Khan ASI was incharge investigation of P.S. Shabqadar during the relevant days. He prepared site plan Ex.PW4/1, on the pointation of Sheharyar chowkidar. He prepared the recovery memo Ex.PW2/1 and took into possession ash Ex.P-1, semi burnt files P-2, semi burnt chairs P-3 and a broken 7-up bottle P-4 from the spot. He recorded statements of marginal witnesses of the recovery memo. He arrested Sheharyar and obtained his police custody. He photo graphed the scene of occurrence and recorded statements of the locals living around.

PW-5 Badshah Gul ASI is scribe of the FIR Ex.PA which was registered on the basis of written report Ex.PW1/2.

PW-6 Mushtaq Ahmed SHO submitted complete challan in the case. In his cross examination he pointed out that the special investigation team headed by S.P. investigation was constituted after the remarks of the honourable High Court while hearing the bail petition of the accused and a note to this effect has been recorded in this regard by Hamdullah PW-8. The witness emphasized that the investigation was carried out by a team of senior police officers like DIG Mardan, DPO Charsadda, SP investigation Charsadda, DSP Shabqadar and SDPO investigation and has rebutted the suggestion that only Hamdullah S.I. has conducted the investigation and it was supervised by him (the witness) alone.

PW-7 Rahim Shah SHO remained associated with the investigation after when section 5(2)PC Act was added. The witness relied upon the investigation already carried out and which was almost complete.

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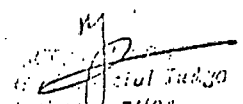
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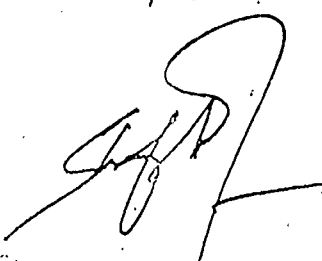
PW-8 Hamdullah S.I. investigation Shabqadar got investigation in hand on 25.6.2005. He arrested the accused Sajjad, obtained his custody and on spy information arrested Raham Sher on 23.8.2005, who disclosed the names of the co-accused Liaqat Ali, Noor Shah Ali, Adnan and Ashfaq. He produced Raham Sher on 24.8.2005 vide application Ex.PW8/1 before the magistrate and got recorded his confessional statement. He arrested Liaqat Ali and Noor Shah Ali on 24.8.2005 and got their police custody on 25.8.2005 from the magistrate on applications Ex.PW8/2, PW8/3 & PW8/4 and admitted both the accused to judicial lock up without a confessional statement. This PW took into possession Motor Cycle PRR-1617 produced by Imroze brother of the accused Noor Shah Ali vide recovery memo Ex.PW2/2. He also got recorded statement of PW-3 Mujeebur Rehman Ex.PW3/1 u/s 164 Cr.PC and got issued 204 Cr.PC warrants in respect of accused Ashfaq and Adnan. After addition of section 5(2)PC Act, he handed over investigation to Inspector Rahim Shah.

In cross examination the witness admitted that the accused Raham Sher was not medically examined but for the reason that he was produced for confessional statement within the permissive period of detention. He rebutted the suggestion that the accused Raham Sher was arrested on 21.8.2005. The witness stated that Raham Sher was brought to the court for confessional statement at 8.10 AM and was produced before the court at 9.AM. He stressed that the investigation was conducted under the supervision of investigation team. The witness disclosed that out of 13 cases pending against the accused Adnan, Ashfaq, their father and brother in law, five files were burnt.

In their statement recorded u/s 342 Cr.PC the accused Liaqat Ali and Noor Shah Ali admitted their position as Moharrir in the court but they denied any link with the co-accused Raham Sher and stated that they knew him in course of the present case only. They denied taking of the conspiracy amount of Rs.1,50,000/- and destruction of the record. They termed 164 Cr.PC statement of Mujeebur Rehman Ex.PW3/1 and confessional statement of Raham Sher Ex.PW1/4 the result of coercion, torture and pleaded themselves all out innocent.

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In his statement u/s 342 Cr.PC Sheharyar accused admitted his position as chowkidar and he admitted his absence from the duty on the eventful night but denied to be a part of the conspiracy. He termed his statement Ex.PW1/1 as fabricated one and stated the affixation of his thumb impression on this statement <sup>as</sup> a result of command of the controlling officer.

Accused Sajjad also denied any connection with the co-accused Raham Sher, Liaquat Ali and Noor Shah Ali and also with Adnan and Ashfaq any link for the commission of offence.

In his statement made u/s 342 Cr.PC and further on oath u/s 340(ii) Cr.PC the accused Raham Sher denied any familiarity or link with the accused Noor Shah Ali and Liaquat Ali or payment of any amount to the Moharrirs. He alleges his confessional statement Ex.PW1/4 to be a result of coercion and police torture. He emphatically denied that he is a party to any civil suit pending before the civil court and specifically denied to be a defendant in civil suit titled "Sarwar Vs-Raham Sher". He, however admits that he has got no enmity or ill will with the magistrate or police.

DW-1 Hamdullah has stated that Raham Sher is a trust worthy person of humble background having no property or any civil suit and that he works with them as chowkidar in the filling station since long. He insists that Raham Sher was arrested on 21.8.2005 from the filling station.

CW-1 Riazur Rehman has produced the court record of suit No.287/1 titled "Sarwar Vs- Raham Sher", a brief account of which has already been given above in the relevant para of the statement of accused Raham Sher.

Prosecution story in shortest terms is that accused Adnan and Ashfaq involved in so many cases pending before the court some how persuaded the accused Raham Sher (who was in good terms with the co-accused Liaquat Ali and Noor Shah Ali Moharrirs of the court) to manage an "end up" to the cases. They both (Moharrirs) struck bargain with him (Raham Sher) and receiving an amount of Rs.1,50,000/- from him, they, during the night of 30 & 31.5.2005 set the case files and court record ablaze. This lot of the burnt record included five case files of the accused Adnan and Ashfaq. Further that the accused Sheharyar chowkidar of the court who was actually absent from duty on the eventful night reported a false

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Anti-Corruption Cell  
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story to the presiding officer on the basis of which false report in the shape of FIR 343 of P.S. Shabqadar was registered.

From the produced evidence it is proved that the accused Liaqat Ali and Noor Shah Ali were moharrir of the court, custodian of the record and they were the persons knowing well about the record. The accused Sheharyar chowkidar was supposed to be on duty and he was supposed to report the real position of the occurrence to the presiding officer even if he was absent from duty. But instead of doing so the report made by him to the Presiding Officer and incorporated in the FIR Ex.PA subsequently proved false and he (Sheharyar) himself admitted it to be false.. There remains no room to doubt that the accused Sheharyar made a false report about the occurrence in order to cover up his absence from duty and to save his service career. Being so he deserves to be punished for that. So far as his role in the occurrence is concerned, it however, begins with this and ends with this. He has no role in rest part of the episode.

So far as direct or ocular evidence is concerned there is non available in the case. There is however inculpatory confessional statement Ex.PW1/4 on behalf of the accused Raham Sher, from which he has subsequently retreated.

PW-1 the magistrate who has recorded the statement and PW-8 the concerned I.O. have given an account of the relevant circumstances in which this statement was recorded. These two statements carry no fatal contradictions inter-se or within. The accused Raham Sher was, per record, arrested on 23.8.2005 and produced for recording statement on 24.8.2005. The allegations that he was arrested on 21.8.2005 and kept in illegal confinement for torture till 24.8.2005 finds no support from some solid evidence There was no complaint whatsoever during this period even on behalf of his masters in the filling station one of whom appeared as DW-1 as well. No doubt the accused was not medically examined during the process but this does not mean that he was definitely tortured. He was immediately committed to prison on 24.8.2005 and there is nothing recorded there about physical problem of the accused if at all he was tortured. The justification that he was produced before the magistrate within the permissive period after his arrest by police and for that reason he was not medically

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examined itself carries weight. In his statements the accused has categorically stated that he has got no enmity or ill will with the magistrate who had recorded the confessional statement or with the police who arrested him.

While examining the circumstances of this confessional statement a single contradiction between the statement of PW-1 & PW-8 was noted about the timing. PW-1 has stated that Raham Sher was produced at 8.30 AM while PW-8 has stated that he was presented to the court at 9AM. PW-8 has however, stated that the accused was brought to the court at 8.10 AM. Date is the same and the difference is that of minutes which create no fatal doubt in mind rather reflect fairness of both the PWs while giving statement on Oath. The circumstances leading to the arrest of Raham Sher have been made clear and PW-3 is relevant whose statement was recorded u/s 164 Cr.PC during investigation. PW-3 has fully confirmed the contents of his 164 Cr.PC statement Ex.PW3/1 in his examination in chief. Though in cross examination he has termed this statement a result of torture and coercion which is unbelievable in the given circumstances. It is unbelievable that a Presiding officer of the court would let police torture his own subordinate and would himself record his false statement on production by police. The witness was produced in his well familiar environment before his own Presiding officer and it appears that the statement recorded u/s 164 Cr.PC and confirmed in the examination in chief was natural and genuine while allegations put forth in the cross examination as PW are not true, may be a result of fear of local revenge. This statement of PW-3 explains the background and circumstances in which the police initially made access to the accused Raham Sher. It is a point that had the police being searched of some one to fill the blank, it had one Sheharyar and another Sajjad already arrested and in hands available for compelling them to confess but it was not the case which support the prosecution stand that Raham Sher was a genuine case for apprehension and he gave confessional statement voluntarily based on true account of facts.

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In course of trial it was also insisted upon by defence that the thumb impression of the accused Raham Sher was obtained on blank paper and text of the confessional statement Ex.PW1/4 was

subsequently filled up . The original Ex.PW1/4 give no such visible clue from any angle rather it indicated otherwise, when the original sheet was anxiously examined with this view.

In statement u/s 342 & 340(ii) Cr.PC Raham Sher has denied any familiarity with both these accused Liaqat Ali and Noor Shah Ali and same is the case of the accused Liaqat Ali and Noor Shah Ali as reflected in, their statements u/s 342 Cr.PC. Confessional statement Ex.PW1/4 attribute origination of the friendly relation of the three to a court case civil suit titled "Sarwar Vs- Raham Sher" indicated in the confessional statement. In his court statements recorded during trial, Raham Sher has subsequently specifically and categorically denied existence of any such case indicated in the confessional statement. Not only Raham Sher but also his witness DW-1 Hamdullah has also denied pendency of the suit stating that Raham Sher has a humble background having no landed property.

Statement of CW-1, however leads us some where else. The witness has produced record of civil suit No.287/1 titled "Sarwar Vs- Raham Sher" instituted on 11.4.2002 by Sarwar khan and 21 others against Raham Sher S/o Sher Muhammad and 11 others. The record produced by this witness includes Register civil suit, Order sheets of civil suit No.287/1 "Sarwar ETC Vs-Raham Sher ETC", Plaint and written statement of this case, certificate of reconstruction of the file and special power of attorney of accused Raham Sher and his thumb impressed Vakalatnama in favour of Muhammad Fayaz advocate submitted on 09.6.2005. This record proves it more than sufficiently that civil suit "Sarwar Vs- Raham Sher" is pending since 11.4.2002, Raham Sher is party as one of the defendants in the case and he has been actively contesting it from the very beginning by submitting his written statement and has engaged counsel there in and that the case is still pending after reconstruction of the file burnt down in the accident. Question arises that if the confessional statement is not genuine then how this case was mentioned in his statement while it finds no mention on record of investigation before this statement? In the absence of something to the contrary, the only possible answer to this can be that it was the accused Raham Sher who knew about his case and he genuinely mentioned it in his confessional statement. If contents of the confessional statement

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that Raham Sher developed friendly relations with co-accused Noor Shah Ali and Liaqat Ali Moharrirs in course of this case/suit were incorrect then the question that what prompted Raham Sher to deny the fact of pendency of this suit against him is of even more importance. The only possible answer is that being mindful of the consequences of this fact he (Raham Sher) needed this denial to delink himself from the co-accused Liaqat Ali and Noor Shah Ali to falsify the confessional statement and he might had done it successfully had there not been statement of CW-1 and record of the case produced.

In addition to this, statement of PW-3 recorded u/s 164 Cr.PC and given on oath, as discussed above, irrespective of his unfounded allegations deposed in his cross examination indicate that Raham Sher was not only known to the accused Noor Shah Ali, Liaqat Ali rather he was dear to other staff of the court also as such Mujeebur Rehman bailiff PW-3, conveyed him the message of Liaqat Ali when he was sent to him, as confessed in the statement of PW-3.

The confessional statement of Raham Sher Ex.PW1/4 is corroborated by other facts and evidence as discussed and there remains no room to doubt that the inculpatory confessional statement of Raham Sher is voluntarily, genuine and natural giving true account of the facts. While assuming this inculpatory confessional statement valid and genuine it can be safely taken against all the three accused.

In the given circumstances, the prosecution has proved beyond doubt that the accused Raham Sher managed to pay illegal gratification to the accused Noor Shah Ali and Liaqat Ali for an illegal act to "end up" court cases of Ashfaq and Adnan and he committed an offence punishable u/s 165-A/PPC; That accused Liaqat Ali and Noor Shah Ali, both government servants as Moharrir of the court were custodian of the court record and had access to that, accepted the gratification as reward for "ending up" of cases and subsequently "accomplished the task" by putting the court record to fire. They therefore, committed an offence punishable u/s 409/161 and 436/PPC and being govt. servants guilty of misconduct, they are liable to be punished u/s 5(2)PC Act as well. That the accused Sheharyar gave false information of the incident

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Court of Special Judge  
Anti-Corruption  
N.F.P. 2016



21-8-06

which report he believed to be false and therefore committed offence punishable u/s 182/PPC.

So far as accused Sajjad is concerned the prosecution has however proved nothing against him and he deserves to be acquitted honourably.

Consequently, the accused Liaqat Ali and Noor Shah Ali are convicted and sentenced as under:-

- 1) They both are convicted and sentenced U/S 409/PPC to imprisonment for Five Years (5) R.I. with a fine of Rs.25,000/- (Twenty Five Thousand each) or in default thereof shall suffer six (6) months S.I. each.
- 2) They are also convicted and sentenced U/S 161/PPC to Two Years (2) R.I. with a fine of Rs.75,000/- (Seventy Five Thousand) each or in default thereof shall suffer One year S.I. each.
- 3) They are convicted and sentenced U/S 436/PPC to Five Years (5) R.I. with a fine of Rs.20,000/- (Twenty Thousand) each or in default thereof shall suffer Four (4) months S.I. each.
- 4) They are further convicted U/S 5(2) of the Prevention of Corruption Act, 1947 and sentenced to Three (3) years R.I. each with a fine of Rs.10,000/- (Ten thousand) each or in default thereof shall suffer Three (3) months S.I. each.

The accused Raham Sher is convicted and sentenced U/S 165-A/PPC to imprisonment for Two (2) years R.I. with a fine of Rs.10,000/- (Ten thousand) or in default thereof shall suffer Three (3) months S.I.

The accused Sheharyar is convicted and sentenced U/S 182/PPC to imprisonment for Three (3) months R.I. with a fine of Rs.1,000/- (One thousand) or in default thereof shall undergo one month S.I. He is present before the court on bail, he be taken into custody and committed to jail for execution of sentence awarded to him. It is left open to the concerned department to take departmental action against him for absence from his duty on the night of occurrence.

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Court of Sessions Judge  
Anti-Corruption  
NKEP, Daska

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The accused Sajjad is honourably acquitted from the charges levelled against him. He is on bail and his surety stand discharged of the liability.

All the substantive sentences of imprisonment shall run concurrently. The convict shall have the benefit of section 382-B Cr.PC. for the period spent by him as under trial prisoner in jail.


The absconding accused Ashfaq has already been arrested and supplementary challan submitted against him and separate trial is going on.

The other absconding accused Adnan is declared as proclaimed offender. Perpetual warrant of arrest be issued against him and the DPO concerned may be asked to enlist him in the register of proclaimed offenders.

The case property ash, files and bottle be kept intact till the expiry of the period of limitation prescribed for appeal/revision. So far as Motor Cycle Registration No.PRR-1617 is however, concerned it is found that it has nothing to do with the present case and it was taken by I.O. in custody from Imroz Khan brother of the accused Noor Shah Ali. It be returned to Imroze Khan S/o Jamroze Khan against proper bond to the effect that it shall be produced if ever required by any court.

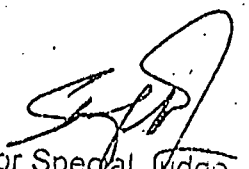
File be consigned to the record room.

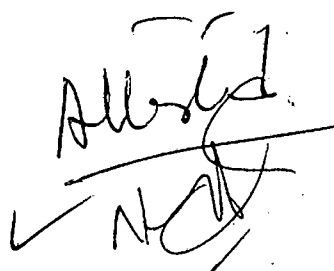
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Senior Special Judge,  
Anti-Corruption NWFP,  
Peshawar.

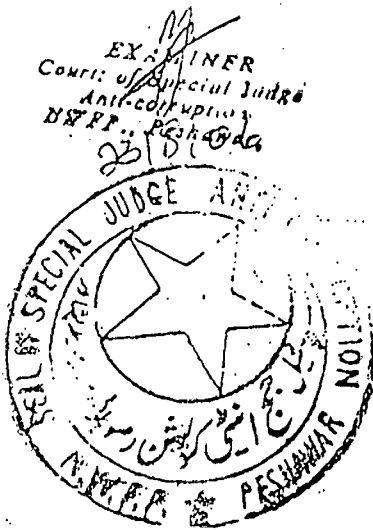
Certificate.

Certified that this judgement consists on Fourteen pages, each page has been corrected and signed by me wherever necessary.

  
Senior Special Judge,  
Anti-Corruption NWFP,  
Peshawar.



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# بعدالت جناب سنیر سول جج اسول جج اجودیشنل مجسٹریٹ چارسدہ

عنوان

مقدمہ نمبر

نمبر شمار حکم	تاریخ حکم	حکم
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Defaulting official namely Noor Shah Ali, present in custody. PW Raham Sher who is ----- accused in the main case present and examined during the course of inquiry while PW Mujibur Rehman abandoned by the inquiry officer being unnecessary. Case to come up for defence of defaulting official for 13/1/06

*[Signature]*  
SCJ/Inquiry Officer, Chd.

nr. 8  
13/1/06

*Defaulting official Noor Shah Ali*  
*is present in custody along with his*  
*counsel. He recorded his statement*  
*to come up for submission*  
*of enquiry report on 29/10/06*

With regard to the captioned proceeding the undersign being enquiry officer shall submit the enquiry report in pursuance of direction of authorized officer/Honourable Additional District & Sessions Judge-I, Chd. Dated 22.10.05.

In the course of proceeding the delinquent official who is accused in case FIR No.343 dated 31.05.05 U/s 452/477/436/342/506/148/149-PPC at P.S Shabqadar was summoned, who wished to contest the statement of allegations and charge sheet against him, so in this view picture of the matter the witnesses against him were summoned to record their statements against the delinquent official in the course of instant enquiry.

For the purpose of enquiry proceeding, statement of the principal accused in the main criminal case who is also serving as a star witness against the official under enquiry was recorded as Pw-1, while Mujeeb bailiff was relieved as he in his statement U/s 164 CrPC he has not charge the present delinquent official for any kind of overt act. In absence of record which is lying

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EXAMINER  
Copying Enquiry Branch  
Court of P.S. Shabqadar  
Additional District & Sessions Judge  
P.T.O

حکم	تاریخ حکم	تاریخ حکم
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before ~~the special~~ Judge Anti-Corruption the learned Judicial Magistrate SQR was ~~not~~ summon in order to record his statement who has recorded the ~~confessional~~ statement U/s 164/364 CrPC of accused Raham Sher in the ~~capacity of~~ a judicial officer without any personal illwil to either of the party.

After recording the statement of Raham Sher Khan as Pw-1 an ~~opportunity~~ was given to the delinquent official to produce his defence if he ~~wishes so~~. In this connection he himself on oath recorded his statement and also wished ~~to~~ take special oath on Holy Quran regarding his innocence.

In light of available material on record it is very humbly opined that though ~~in~~ his statement recorded as Pw-1 the star witness against the present delinquent official has retracted from his confessional statement which is the sole ~~piece~~ of evidence against the official under enquiry but at the same time though ~~not~~ examined in the course of instant enquiry for non-availability of record ~~which~~ is still in field being recorded by a Judicial Officer sanctity is also attached ~~to~~ the confessional statement as contrary to the same on the other hand the official under enquiry has totally failed to brought on record any iota of evidence ~~to~~ indicate any malafide either on the part of the principal accused or on the ~~part~~ of the learned Judge to maliciously involved the present delinquent official in ~~the~~ commission of the alleged offence.

On the other hand it is also important to note that the delinquent official is an employe of the Judicial Department and it might be possible that against his involvem~~ent~~ in the offence certain interested hands are secretly working just to save their own skins from their vested lawful liabilities, so while fixing the liability of ~~the~~ official under enquiry great care and caution is to be observed because if ~~it~~ was found that he has been made escape goat then he be honorably discharged. however if he was found involved then he be made an example for all evil-m~~inded~~

Resultantly in this scenario I humbly suggest that before fixing any liability on the delinquent official departmentally, let he be faced the consequences of his alleged offences at the respective trial courts and then he be finally ~~proceeded~~ against departmentally, however for the time being he be kept suspended ~~till~~ the final conclusion of his departmental proceedings.

Enquiry report is hereby submitted before your honour, for perusal, ~~consideration~~ and further orders please.

(SAFIULLAH JAN)

Senior Civil Judge, Charsadda.

2017/58

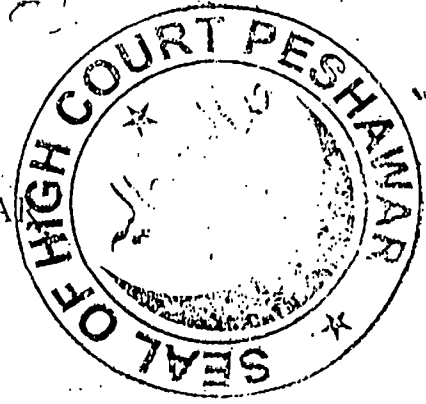
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ATTESTED

EXAMINER 8/1/67  
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Court of Dist & Session Judge  
Charsadda

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JUDGMENT SHEET  
 IN THE PESHAWAR HIGH COURT PESHAWAR  
 JUDICIAL DEPARTMENT

JUDGMENT

..... Cr. Appeal No. 569 ..... of ..... 2006...  
 Date of hearing ..... 17-12-2006 .....  
 Petitioners/Appellants (Liaqat Ali etc.) By Mr. Abdul Sattar Khan  
 Respondent (State) By Mr. Muhammad Aziz Khan D.A.S. ....

TALAAAT QAYYUM QURESHI, J.- Cr. Appeals. No.569 and 607 of  
 2006 are directed against the judgment/order dated 21.8.2006 passed by  
 the learned Senior Special Judge Anti-Corruption NWFP Peshawar,  
 whereby each one of the appellants Liaqat Ali and Noor Shah Ali is  
 convicted and sentenced as under:

1. U/s 409 PPC to 5 years RI with a fine of Rs.25,000/- or in  
 default to suffer further six months S.I.
2. U/s 161 PPC to 2 years RI with a fine of 75,000/- or in  
 default to suffer further one year SI.
3. U/s 436 PPC to 5 years R.I. plus fine of Rs.20,000/- or in  
 default to suffer 4 months SI.
4. U/s 5-(2) of the P.C. Act, 1947 to 3 years RI with a fine of  
 Rs.10,000/- or in default to suffer further 3 months SI.
5. Appellant Raham Sher is convicted and sentenced to u/s  
 165-A/PPC to 2 years R.I. with a fine of Rs.10,000/- or in  
 default to suffer further 3 months SI.

**ATTESTED**  
 EXAMINER  
 Peshawar High Court

2. Since both the appeals have arisen out of one and the same criminal transaction and the impugned judgment/order is common, therefore, I propose to dispose of both the appeals by this single judgment.

3. Briefly stated the prosecution case is that accused Adnan and Ashfaq involved in so many cases pending before the Court somehow persuaded the appellant Raham Sher, who was in good terms with the convicted-appellants Liaqat Ali and Noor Shah Ali Moharrirs of the Court at Shabqadar, to manage an "end up" to the cases. Both the Moharrirs concluded bargain with Raham Sher appellant and receiving an amount of Rs.1,50,000/- from him, they during the night between 30<sup>th</sup> & 31<sup>st</sup> May, 2005 set the case files and court room ablaze. This lot of the burnt record included five case files of the accused Adnan and Ashfaq. Furthermore, the appellant Shehreyar Chowkidar of the Court who was actually absent from duty on the eventful night reported a false story to the Presiding Officer on the basis of which case u/s 409/436/161/165-A/182 PPC read with Section 5 (2) of the Prevention Act, 1947 was registered at P.S. Shabqadar vide FIR No.343 dated 31.5.2005.

4. The investigation was conducted and after completion of investigation challan was submitted for trial.

5. During the course of investigation apart from the three appellants, Shehreyar Chowkidar of the Court Judicial Magistrate Shabqadar (not appellant before this Court) and Sajjad were put to trial,

**TEST**  
EXAMINE  
Shabqadar High

the latter one was acquitted and the appellants were convicted as stated above.

6. In order to establish its case the prosecution examined as many as 8 witnesses. They have stated about the performance made during the investigation. The statements of the appellants were recorded u/s 342 Cr.P.C. Out of them appellant Raham Sher opted to be examined on Oath and also wished to produce defence evidence. His statement on Oath was recorded and one Hamdullah was produced by him as D.W.1. On the request of the prosecution Moharrir of the Court of Civil Judge Shabqadar was examined who produced the record pertaining to Civil Suit No.287/1 titled "Sarwar Vs. Raham Sher"

7. In their statement recorded u/s 342 Cr.P.C. the appellants Liaqat Ali and Noor Shah Ali admitted themselves to be Moharrirs in the Court, but they denied any link with the appellant Raham Sher and stated that they knew him in course of the present case only. They denied taking of the amount of Rs.1,50,000/- and destruction of the record. They termed the statement of Mujeebur Rehman placed on record as Ex.P.W.3/1 and confessional statement of Raham Sher Ex.P.W.1/4 being the result of coercion, torture and all the appellants did not plead guilty to the charges and claimed trial.

8. Mr.Safirullah Khan, Advocate the learned counsel for the appellants in Cr.A. No.607/2006 argued that the confession was not voluntary and it was extorted. Shaukat Ahmad P.W.1 was complainant in the case, therefore, he should not have recorded the confessional statement of the accused. The thumb impression of Raham Sher

ATTESTED  
 EXAMINER  
 Subdar H. H. G.

appellant was obtained on plain paper. He was arrested on 21.8.2006, whereas he was shown to have been arrested on 23.8.2006.

9. It was also argued that the alleged confessional statement was produced by the police and copied by the Court. Complainant Shaukat Ahmad was complainant in the case, therefore, legally he could not have recorded the confessional statement.

10. It was also argued that the I.O. P.W. 8 admitted that accused was given back to police after recording his confessional statement for putting the accused to Judicial lock up. The accused was never sent to Doctor for examination before or after recording the confession, which could not have been done legally.

11. It was further argued that except the retracted judicial confession there is nothing on record to connect the appellant Raham Sher with the case. He added that the I.O. was SI and the requirement of Section 5-A of the P.C. Act is that the I.O. should be of the rank of Inspector.

12. Mr. Abdul Sattar Khan, Advocate the learned counsel for the appellants in Cr.A. No.569/2006 argued that except the retracted confession of appellant Raham Sher co-accused of other appellants, there is no corroborative piece of evidence available on record to connect the appellants with the commission of offence.

13. It was also argued that the confessional statement was over zealous, hence not worthy of credence. Reliance was placed on 1951 AIR Qudh 92.

14. He further argued that no departmental enquiry was conducted. He added that 28.5.2006 was the date of marriage of Noor

Shah Ali and except Section 436 PPC no other Section of law is applicable to the present case.

15. Mr. Muhammad Ayaz Khan, the learned DAG appearing for the State has very frankly conceded that Shaukat Ahmad P.W.1 was the complainant in the case, therefore, he should not have recorded the confessional statement of the accused.

16. He further stated at the bar that there was no corroborative piece of evidence available on record to connect the appellants with the commission of the offence except the retracted confession of appellant Raham Sher.

17. I have heard the learned counsel for the appellants and perused the available record.

18. The argument of the learned counsel for the appellant that the entire investigation was conducted by Sub-Inspector Hamdullah (P.W.8) who was not authorized under section 5-A of PC Act 1947 has a force in it. The contents of Section 5-A of the ibid Act are reproduced hereunder for convenience:-

“Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1998), no officer below the rank of (Inspector) shall investigate any offence punishable under any of the sections of the Pakistan Penal Code (Act XLV of 1860), mentioned in Section 3 or any offence punishable under Section 5 without an order of a Magistrate of the first class or make an arrest therefore without a warrant.”

19. The perusal of the record reveals that on registration of the case, Muzafar Khan, ASI was entrusted with the investigation of the case. He prepared site plan Ex.P.W.4/1, on the pointation of Sheharyar Chowkidar. He prepared the recovery memo Ex.PW.2/1 and took into possession as Ex.P-1, semi burnt files P-2, semi burnt chairs P-3 and a



broken 7-up bottle P-4 from the spot. He recorded statements of marginal witnesses of the recovery memo. He arrested Sheharyar and obtained his police custody. He photo graphed the scene of occurrence and recorded statements of the locals living around.

20. // It was on 25.6.2005 that the investigation of the case was handed over to Hamdullah, Sub-Inspector (P.W.8). He arrested the accused Sajjad, obtained his custody and on spy information arrested Raham Sher on 23.8.2005, who disclosed the names of the co-accused Liaqat Ali, Noor Shah Ali, Adnan and Ashfaq. He produced Raham Sher on 24.8.2005 vide application Ex.PW.8/1 before the Magistrate and got recorded his confessional statement. He arrested Liaqat Ali and Noor shah Ali on 24.8.2005 and got their police custody on 25.8.2005 from the Magistrate on applications Ex.P.W.8/2, P.W.8/3 and P.W.8/4 and admitted both the accused to judicial lock up without recording their confessional statements. This P.W. took into possession Motor Cycle PRR-1617 produced by Imroz brother of the accused Noor Shah Ali vide recovery memo Ex.PW.2/2. He also got recorded statement of P.W.3. Mujeebur Rehman Ex.P.W.3/1 u/s 164 Cr.P.C. and got issued warrant is 204 Cr.P.C. against accused Ashfaq and Adnan. After addition of section 5(2) PC Act 194, he handed over investigation to Inspector Rahim Shah.

21. The above mentioned position would reveal that the entire investigation of the case had been completed by Muzafar Khan, ASI (P.W.4) and Hamdullah Sub-Inspector (P.W.8) and during this period none of the senior officials as directed by High Court were associated with the investigation.

22. This Court while deciding the bail application of co-accused Shehreyar had in clear words directed:-

“It is statutory duty of police to promptly investigate cognizable cases/offences and lay hands on culprits. Crimes of this nature must be considered/viewed very seriously by it. For investigation of this case Team of Investigation experts was required to have been constituted but none has taken a little interest in the matter in this regard. Thus the police has failed in its duty by not performing its statutory obligations. This Court constrained to express serious displeasure over the role of investigation Agency in this case. Accordingly the DIG Provincial Head Quarters (Investigation) is directed to constitute a Team of highly expert Investigating Officers for the investigation of this case on proper lines and to trace out all the real culprits who shall be chased and arrested wherever they are. The Investigating Agency is given maximum time of one month to accomplish the task.

The learned Sessions Judge Charsadda shall supervise the progress of investigation by the Team of experts to be so constituted and shall discuss with the DPO/DIG concerned day to day progress in the case. Any omission or default on the part of the investigation Team or any other police officer would be seriously viewed and action against the delinquent officer shall be taken according to law by the Sessions Judge who shall also report the matter to the High Court promptly. Registrar of this Court shall also personally pursue the matter so that the Team of experts in investigation is sent to the District concerned within a week time. Any failure or deliberate omission or any in action on the part of all concerned would not be tolerated and this Court would take stern action against the defaulter. Needless to remark that in the course of fresh investigation if the Investigation Team reasonably require further custody of the petitioner for further interrogation, it may apply to the Illaqa Magistrate in this regard”.

23. Neither the Investigating Agency nor the learned Sessions Judge Charsadda cared about the directions of this Court with regard to the conduct of the investigation. The entire investigation, as mentioned in detail above, was, therefore, conducted by un-authorized persons in violation of Section 5-A of the Prevention Act, 1947.

24. The occurrence in the case in hand was not witnessed by any person. It was Shehreyar Chowkidar of the Court, who informed Shaukat Ahmad Khan Civil Judge/Judicial Magistrate Shabqadar P.W.1 about the occurrence, who recorded the statement of Shehreyar Chowkidar Ex.P.W.1/1, transmitted the same to Police Station under his covering letter Ex.P.W.1/1 for registration of the case. A copy of the said letter was sent to the Registrar of this Court, whereas copy of the same was addressed to the Sessions Judge Charsadda for information.

25. The case of the prosecution revolves around the confessional statement made by Raham Sher accused. Mr. Safeerullah Advocate the learned counsel representing him argued that he (Raham Sher) was arrested on 21.8.2005, but was shown arrested on 23.8.2005. He was tortured and coerced to make the confessional statement, hence he was produced on 24.8.2005 before the Judicial Magistrate, who was the complainant in the case. The question that arises is as to whether the confession which was retracted later on by him was volunteer or not? So far as the record of the case is concerned, there is not an iota of evidence except the statement of Hamdullah D.W.1 that he was arrested on 21.8.2005 rather the record supports this version that he was arrested on 23.8.2005. In his confessional statement Ex.P.W.1/4 Raham Sher appellant narrated as to how he came in contact with co-accused Noor Shah Ali and Liaqat Ali, Moharrirs of the Court. He also admitted having received Rs. 1,50,000/- from accused Adnan and Ashfaq against whom so many cases were pending in the Court. Although in the statement recorded u/s 342 Cr.P.C. he retracted the said confession and even went to the extent that there was no case pending against him and

that the two Muharrirs named above were not known to him, but this part of the statement was belied by the prosecution by producing Ziaur Rehman C.W.1, who produced the Court record with regard to suit No.287/1 titled "Sardar Vs. Raham Sher" and in order to show that there was liaison between Raham Sher and Moharrirs, the prosecution examined Mujeebur Rehman Bailiff of the Court as P.W.3 whose confessional statement was recorded as Ex.P.W.3/1 on 26.8.2005. In his confessional statement he stated that accused/appellant Liaqat Ali Muharrir had directed him to inform Raham Sher accused that his name had appeared as an accused in the case, on which he transmitted the said information to Raham Sher.

26 Except the confessional statements of Raham Sher accused and Mujeebur Rehman P.W. 3 there is no other corroborative piece of evidence to connect the accused appellants with the commission of the offence. It is worth mentioning that Muzaffar Khan ASI P.W.4, who initiated the investigation and prepared site plan Ex.P.W.4/1 did not take into possession the broken/burnt locks. However, a few semi burnt files P-2, burnt chairs P-13 and broken 7-up bottle P-4 was only recovered from the spot. Although the thumb impressions of all the staff members were sent to the expert, but the report of the said Examiner was in negative.

27. The confessional statements of accused Raham Sher and Mujeebur Rehman (P.W.3) Bailiff of the Court were examined by Shaukat Ahmad Khan (P.W.1) Civil Judge/Judge Magistrate Shabqadar, who was admittedly complainant in the case. Being complainant he should not have recorded their confessional statements

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and should have referred them to some other Judicial Magistrate for doing the needful, but he did not care that it was he, who was the complainant and was, therefore, an interested party in the case and recording of their confessional statements would weaken the prosecution case. The investigation of the case as mentioned above in detail was not done as per Section 5-A of the P.C. Act and the directions of this Court by a Team of investigators in the light of order dated 31.10.2005. All these factors led me to the irresistible conclusion that there are weaknesses in the prosecution case but keeping in view the confessional statement of Raham Sher accused, the gravity of the offence committed by the accused, whereby not only 5 files of the cases of Adnan and Ashfaq, his brother, out of 11 cases of serious nature pending against them and one case file of suit No.287/1 "Sarwar Vs. Raham Sher" were burnt and all those files which were intended to be burnt were arranged in such a manner by the two Muharrirs so that if any fire is caused which could later be extinguished those files should be burnt first. I, therefore, while maintaining the conviction reduce the sentences of all the appellants to the one already undergone by them. They shall be set free if not required in any other case. The order of the learned trial Court with regard to the absconding accused shall remain intact and similarly separate challan submitted against the accused

*This prosecution find 3 no mention in the record.*

Ashfaq shall proceed further in accordance with law.

*Amirul*  
 14-11-06  
 46/07  
 For *Faizal Qayyum Qureshi - J*

Date of Presentation of Application *14-11-06*  
 No of Pages *16-0*  
 Copying Fee *200*  
 Urgent Fee *0*  
 Total *200*  
 Date of Preparation Copy *18-11-06*  
 Date of Delivery of Copy *18-11-06*

*Abulhasan*  
 14/11/06  
 CERTIFIED TO BE TRUE COPY  
 Peshawar High Court Peshawar  
 Authorised Under Section 75 Acts Ord  
 18/11/06

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22-11-06

PW-2.

Statement of Mujibur Rehman, Bailiff: CJ, Shabqadar.

Stated that during the days of occurrence I was posted as bailiff with CJ-I Shabqadar. I have a total length of service is 10 years. I am well acquainted with the process of courts and my duties. I know Noor Shah Ali to the extent that he ~~was~~ <sup>was</sup> Moharrir in the Court of CJ-I, Shabqadar. I also know Raham Sher S/O Sher Muhammad R/O Haji Zai for the reason that he had a case before the court of CJ- Shabqadar and in that case I made service of process. After the occurrence took place at Shabqadar, during the course of investigation the police officer investigating the case has recorded my statement, but I made the said statement under the undue influence of police officer as he had taken me into custody and was continuously torturing me. I have also made a statement before the Magistrate, Shabqadar but same was also made under the influence of police officers. I am in no knowledge <sup>of</sup> the fact that whether the official namely Noor Shah Ali was involved in the occurrence or not. I have got no knowledge that who is involved in the occurrence.

X X X

If I have made any statement against the official Noor Shah Ali that was made due to influence of police. I am not aware of the true facts of the occurrence. I was tortured by the police and worried that if I would not made statement against Noor Shah Ali and as per their will, I will also be involved in this case and as such I made my statement under the said fear.

RO & AC  
22.11.06

*Mujibur*

Mujibur Rehman  
Bailiff in the court of  
CJ, Shabqadar.

*Mohsin Ali Turk*  
MOHSIN ALI TURK  
SCJ/Inquiry Officer,  
Chersadda.

*Ali*  
*MA*



M

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Better copy

15 <sup>12</sup>/<sub>86</sub>

## ENQUIRY REPORT

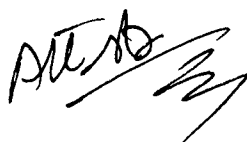
The official under enquiry was appointed as Moharrir in the court of Civil Judge / Judicial Magistrate and was charged vide FIR No. 343 PS. Shabqadar dated 31-05-05 U/s 452/477/436/342/506/148/149-PPC for a criminal conspiracy and receiving a consideration of Rs. 150,000/- along with Liaqat Ali, Naib Nazir for burning record of the court of Civil Judge, Shabqadar.

Concurrent with the criminal proceedings, the Worthy District & Sessions Judge, Charsadda on 06-08-2005 initiated departmental enquiry against Noor Shad Ali. Junior Clerk/Moharrir and authorized the learned additional District & Sessions Judge-I Charsadda to conduct enquiry. The officer under enquiry was formally charged and was directed to submit his written defense if any who on 20-09-05 furnished his explanation and submitted that he was falsely involved on the basis of fabricated statement made by Raham Sher under coercion and influence of police officer.

The officer authorized on 21-10-05 observed the need for collection of evidence and appointed the then Senior Civil Judge, Charsadda as enquiry officer who summoned the accused / official under enquiry from jail and also the Pws. In the matter we have examined two witness i.e. Raham sher the principal accused and Mujeeb-ur-Rehman Bailiff and recorded statement of the official under enquiry.

Raham Sher the principal accused admitted that he has given a statement to police, recorded his confessional statement before the Alaqa-Magistrate and nominated the official under the enquiry but the said statement was made under coercion and due to the torture given by police. He admitted that he had a case, pending before the civil judge, Shabqadar, very similar was the statement of Mujeeb-ur-Rehman, Bailiff. He also said that he made his statement before the police and magistrate under coercion of police. He has totally denied his knowledge about involvement of Noor Shah Ali in the occurrence.

The accused/official under enquiry said that during the days of occurrence he was on leave and is having no concern whatsoever with the occurrence. He said that he is





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15-12-06

ENQUIRY REPORT

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Concurrent with the criminal proceedings, the Worthy District & Sessions Judge, Charsadda on 26.08.05 initiated departmental enquiry against Noor Shad Ali, Junior Clerk/Moharrir and authorized the learned Additional District & sessions Judge-I, Charsadda to conduct enquiry. The officer under enquiry was formally charged and was directed to submit his written defense if any who on 20.09.05 furnished his explanation and submitted that he was falsely involved on the basis of fabricated statement made by Raham Sher under coercion and influence of police officer.

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The accused/official under enquiry said that during the days of occurrence he was on leave and is having no concern whatsoever with the occurrence. He said that he is