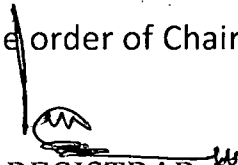


Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 678/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.11.2022	<p style="text-align: center;">The application for restoration of Appeal No.752/2012 submitted today by Mr. Nasir Mehmood Advocate. It is fixed for hearing before Single Bench at Peshawar on . Original file be requisitioned. Notices be issued to applicant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR
CHECK LIST

Razi Ullah

Versus

I. Lal

..... Appellant

..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <i>Nusir Mahmood Advocate Subran Court</i>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- *Nusir Mahmood ASC*

Signature:- *[Signature]*

Dated:- 15-11-22

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Restoration Application no. 678/2022

In Re: Service Appeal No. 752/2012

Rafiullah

..... Appellant

Versus

Inspector General of Police and others

.... Respondents

INDEX

S#	Description of the Documents	Annex	Pages
1.	Application for restoration	*	1
2.	Copy of the sane die adjournment order and acquittal order	A & B	2-29
3.	Wakalat Nama		30

Rafiullah

Petitioner

Through

Nasir Mehmood

Nasir Mehmood

Advocate Supreme Court.

(1)

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Restoration Appli. no. 678/2022

In Re: Service Appeal No. 752/2012

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1948

Rafiullah

..... Appellant

Versus

Inspector General of Police and others

.... Respondents

**APPLICATION FOR RESTORATION OF ABOVE
NOTED SERVICE APPEAL AND DECIDING IT
ON MERIT**

Respectfully Sheweth:

1. That the above noted case was pending adjudication before this Hon'ble Court and was adjourned sane die on 16.05.2014 due to involvement of the appellant in a criminal case.
2. That the appellant has been acquitted in said case and thus, the appeal may kindly be restored to its original number and be decided on merit. **(Copy of the sane die adjournment order and acquittal order are attached herewith as annexure "A" & "B").**

It is, therefore, respectfully prayed that on acceptance of this application the above titled case be restored to its original number and be decided on merit.

Rafiullah
Petitioner

Through


Nasir Mehmood
Advocate Supreme Court.

Annex A



(2)



BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

~~A. W. J. Farooq~~
~~Member Tribunal~~
~~May No. 735~~
~~05/7/12~~

IN RE; Service Appeal NO. 752 \2012

Rafiullah Ex. Police Constable No.847 District Karak.....Appellant

Versus

- 1. Inspector General of Police KPK, Peshawar.
- 2. Regional Police Officer Kohat Range Kohat.
- 3. District Police Officer Karak..... Respondents

Copy No. 1103
Keval against ex-pat
vide order
8-11-12 A

Ex + ante against
Ex-parte No 1103
are set aside vide
order dt. 10.12.12

Appeal under section 4 of the NWFP Service Tribunal Act, 1974 against the Office Order dated 15.05.2012 passed by Respondent No.2 whereby the Departmental appeal of the appellant against the order dated 10.09.2011 passed by respondent No. 3 was dismissed and the appellant dismissal was upheld.

Prayer in appeal:

On acceptance of this appeal the impugned orders dated 15.05.2012 & 10.9.2011 passed by respondent No. 2 & 3 respectively may be set-aside and the appellant may please be reinstated into service with all back benefits

Respectfully Sheweth:

1. That appellant joined police department as foot constable in he year 2007. Thereafter, appellant had undergone the basic police training recruit course and was rendering services to the entire satisfaction of his superiors.
2. That in September 2011 the appellant was posted as gunmen of Deputy Superintendent of Police Headquarters Karak.

5/7/12

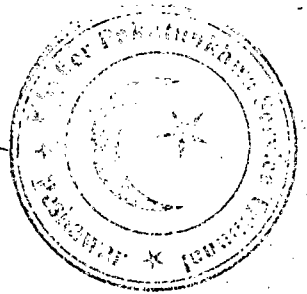
ATTESTED

CHANDER
Member Peshawar
Service Tribunal,
Peshawar

Appeal No. 752/2012



3



16.5.2014

Counsel for the appellant and AAG for the respondents present. Instead of rejoinder, the learned counsel for the appellant moved application for sine-die adjournment of the appeal due to involvement of the appellant in another criminal case. The learned AAG has got no objection to the sine-die adjournment of the appeal. The appeal is accordingly adjourned sine-die, to be revived on application of either of the parties.

Signature
Chairman

Announced
16-5-2014.

Signature
Service National
Peshawar

Date of Presentation of Application 03-06-2020
 Number of Words 800
 Copying Fee 10-00
 Urgent -
 Total 10-00
 Name of Copyist [Signature]
 Date of Completion of Copy 05-06-2020
 Date of Delivery of Copy 05-06-2020

(211) (4)



BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

A. U. J. J. J.
Date: 10/11/12
No. 735
05/7/12

IN RE; Service Appeal NO. 752 \2012

Rafiullah Ex. Police Constable No.847 District Karak.....Appellant

Versus

- 1. Inspector General of Police KPK, Peshawar.
- 2. Regional Police Officer Kohat Range Kohat.
- 3. District Police Officer Karak..... Respondents

Report No. 1163
Read against ex-pat
vide order
8-11-12 B

Ex-parte against
Report No 1163
re sel. order vide
order dt. 10-12-12

Appeal under section 4 of the NWFP Service Tribunal Act, 1974 against the Office Order dated 15.05.2012 passed by Respondent No.2 whereby the Departmental appeal of the appellant against the order dated 10.09.2011 passed by respondent No. 3 was dismissed and the appellant dismissal was upheld.

Prayer in appeal:

On acceptance of this appeal the impugned orders dated 15.05.2012 & 10.9.2011 passed by respondent No. 2 & 3 respectively may be set-aside and the appellant may please be reinstated into service with all back benefits.

Respectfully Sheweth:

1. That appellant joined police department as foot constable in he year 2007. Thereafter, appellant had undergone the basic police training recruit course and was rendering services to the entire satisfaction of his superiors.
2. That in September 2011 the appellant was posted as gunmen of Deputy Superintendent of Police Headquarters Karak.

Handwritten signature and date 5/7/12

ATTESTED

Handwritten signature and official stamp of the Service Tribunal, Peshawar.

(23) 5

3. That on 9.9.2011 appellant has taken his personal Television set for repair to the shop of one Amin Gul TV Workshop situated in Karak City.

4. That the appellant was in police uniform and was also in possession of official Kalashnikov.

5. That appellant was sitting outside the shop while the mechanic was repairing the TV inside the shop, that in the meanwhile Fazal Hanif Sub Inspector Incharge DSB, Karak came in plain clothes and asked the appellant that why the appellant was sitting here? Appellant replied that he has brought his personal TV for repair.

6. That Fazal Hanif told the appellant that why you are repairing TV in duty hours and exchange of hot words took place between them.

7. That the said Fazal Hanif lodged complaint against the appellant on charges of placing official weapon unattended to respondent no.3 and respondent no.3 vide order dated 10.9.2011 dismissed the appellant from service.

8. That thereafter, appellant preferred departmental appeal to respondent No. 2 which was dismissed vide order dated 15.05.2012 hence the present appeal against the orders dated 15.5.2012 & 10.09.2011 passed by respondent No. 2 & 3 inter alia on the following grounds


Grounds

a. That the appellant has not been treated in accordance with law, and his right secured and guaranteed under the law and Constitution has been violated.

b. That the appellant was dismissed from service without conducting enquiry and through one order without giving reasons enquiry proceeding were dispense with and no separate order was passed for the same.

c. That the appellant has been proceeded against without affording him an opportunity of personal hearing or providing him a chance for defense which is violative of the principles of natural justice and of the golden principles laid down by the superior courts.

ATTESTED


MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

d. That no enquiry was conducted in accordance with sec.3(2) of RSO and the impugned action was taken at the back of the appellant and even when action was taken RSO was repealed.

e. That before the enquiry to be conducted, the respondents have decided to remove the appellant from the Police Department by hook or by crook.

f. That the respondents imposed major penalty on the appellant by dismissing him from service without giving any cogent reasons.

g. That the impugned order dated 15.05.2012 and 10.9.2011 passed by respondent No. 2 & 3 are highly arbitrary, malafide, discriminatory, whimsical and thus untenable.

It is, therefore prayed that on acceptance of this appeal the impugned orders dated 15.05.2012 and 10.9.2011 may be set-aside and the appellant be restored to his service with all back benefits.

Any other remedy deemed proper may also be allowed.

Rafiullah

Appellant

Through

[Signature]

Nasir Mehmood Advocate,

13-D Haroon Mansion Peshawar.

AFFIDAVIT

I, Rafiullah Ex. Police Constable No.847 District Karak do hereby solemnly affirm and declare on oath that contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honorable tribunal

Rafiullah

Deponent

[Signature]
Distt. Court Peshawar

03-06-2020

1600
1800

1800

[Signature]
05-06-2020
05-06-2020

Attested
FIDA MOHAMMAD BANGASH
Advocate
Notary Public
Date _____
Distt. Court Peshawar

7

27

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.....\2012

Rafiullah Ex. Police Constable No.847 District

Karak.....Appellant

Versus

1. Inspector General of Police KPK, Peshawar

2. Regional Police Officer Kohat Range Kohat.

3. District Police Officer Karak.....Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the appellant is filing the attached appeal against the dismissal from service by respondent no.3 which has not been filed before this honorable within time.

2. That the appellant was charged in FIR no. 453 dated 28.10.2011 u/s 324PPC and was confined to jail.

3. That due to the above reason appellant was unable to approach this honorable tribunal. However all the orders passed by the respondent No. 2 & 3 are void orders therefore, no limitation runs against them.

It is, therefore, respectfully prayed that on acceptance of this application the delay if any occurred may kindly be condoned.

Rafiullah
Appellant

Through

Nasir Mehmood Advocate

13-D Haroon Mansion , Peshawar

AFFIDAVIT

I, Arshad Mehmood Ex Constable No.847 do hereby solemnly affirm and declare on oath that contents of the above application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honorable tribunal

Deponent

Rafiullah

Original copy
Service Tribunal
Peshawar

Stamp of the Service Tribunal, Peshawar

Amended B
B

In the Court of

ZAHID KARIM KHALIL

Additional Sessions Judge, Karak at Takht-e-Nasrati

Sessions Case No.....44/7 of 2020

Date of Institution.....05.09.2020

Date of Decision.....22.09.2022

**_*_*_*_*_*_*_

The State through Muhammad Taif son of Nadeem Khan resident of Takht-e-Nasrati, Tehsil Takht-e-Nasrati District Karak

... **Complainant**

-- **VERSUS** --

Rafi Ullah son of Fazal Muhammad resident of Chata Banda, Tehsil Takht-e-Nasrati District Karak

... **Accused facing trial**

53/44/7

Ahmad Ullah son of Nek Muhammad resident of Chata Banda, Tehsil Takht-e-Nasrati District Karak

... **(Absconding accused)**

**_*_*_*_*_*_*_

(ACCUSED FACING TRIAL IN CUSTODY)

**_*_*_*_*_*_*_

FIR # 371, Dated 04.10.2013, under Sections 302/324/34 PPC, Police Station Y.K.S (Takht-e-Nasrati), District Karak

**_*_*_*_*_*_*_

JUDGMENT

1. Accused named above after being booked and arrested in case FIR # 371, dated 04.10.2013, under Sections 302/324/34 P.P.C, Police Station Y.K.S (Takht-e-Nasrati), District Karak, was sent to face trial before this Court.

RECORDED
29.10.22

K

2. As per contents of FIR Ex.PA, are that Saeed ur Rehman ASI sent a murasila report through constable Iran Shah belt # 384 to Police Station to the effect that on 04.10.2013, he alongwith police party received information regarding arrival of an injured to emergency room of civil hospital Takht-e-Nasrati Nasrati where injured Muhammad Aslam son of Gul Sardar resident of Takht-e-Nasrati was found who was unconscious and on his behalf his nephew Muhammad Taif reported to the effect that on 04.10.2013, after Juma prayer, he alongwith his uncle Muhammad Aslam was going to the house his uncle Nasrullah, when reached near *Noor Sai Band*, where accused Ahmed Ullah (absconding) and accused facing trial Rafi Ullah duly armed were already present; that both the accused opened fire upon them with intent to commit their murder and from the firing of accused facing trial Rafiullah, his uncle Aslam Khan got hit and injured on left side of his abdomen while he escaped unhurt luckily. Motive behind the occurrence was previous blood feud. Initially FIR u/s 324/34 PPC was registered. Subsequently, the injured Aslam Khan succumbed to the injuries on the way to hospital at Karak, hence, section 324 PPC was substituted with section 302 PPC.

3. Investigation in the case was carried out and after completion of investigation and arrest of accused Ahmed Ullah,

54/44/7
29.10.22

10/11 10

initially challan against him was submitted whose trial was commenced, however, during the course of trial, he absented himself from Court attendance, thus he was proceeded u/s 512 Cr.PC, whose sureties were proceeded against u/s 514 Cr.PC. After arrest of accused facing trial, supplementary challan against him was submitted before this Court who being in custody was produced through Zamima Bay from Central Jail Karak. After his production, copies of relevant statements and documents were supplied to him on 14.9.2020 in compliance with the provisions of Section-265(C) Cr.P.C, the accused facing trial was charge sheeted on 14.12.2020, to which he pleaded not guilty and claimed trial.

55/44/7

4. Where after, the prosecution was allowed to produce its evidence. The prosecution in order to bring home the guilt of the accused, produced and examined as many as thirteen (13) PWs.

5. A brief resume of the prosecution evidence is as under:-

- i. **PW-1: Rasheed Nawaz # 450 (Retd)**, deposed that during the days of occurrence he was posted at P.S YKS and he was attached to the reporting center Civil Hospital Takht-e-Nasrati. On 04.10.2013, he escorted the deceased then injured namely Muhammad Aslam to the Civil Hospital

11

Takht-e-Nasrati for medical examination. After medical checkup the M.O handed over to him the MLC report/Postmortem documents alongwith blood stained garments i.e Qamees Shalwar (cream colour) and Banyan (white color) of the deceased M. Aslam which he brought to P.S and handed over it to I.O. His statement was also recorded by the I.O u/s 161 Cr.P.C.

56/44/7

- ii. **PW-2: Shahid Zaman # 581**, deposed that he is marginal witness to recovery memo Ex.PC vide which the I.O recovered blood stained earth from the place of deceased then injured Muhammad Aslam and sealed the same into parcel No.1. Similarly, he is also marginal witness to recovery memo Ex.PC/1 vide which the I.O recovered and took into possession 28 crime empties of 7.62 bore in scattered condition having fresh smell of discharge, lying near the place of accused and sealed the same into parcel No.2. Similarly, he is also marginal witness of the recovery memo Ex.PC/2 vide which the I.O took into possession blood stained garments of the deceased then injured in the P.S brought by constable Rasheed Nawaz being sent by doctor. He was also entrusted with warrant u/s 204 Cr.P.C issued against accused Rafi Ullah S/o Fazal Muhammad, for execution. He searched for the accused in his village and in the surrounding areas but he was not available. He then returned such warrant unserved with his reports on its back which is Ex.PW-2/1. Similarly, he was entrusted with

SEARCHED

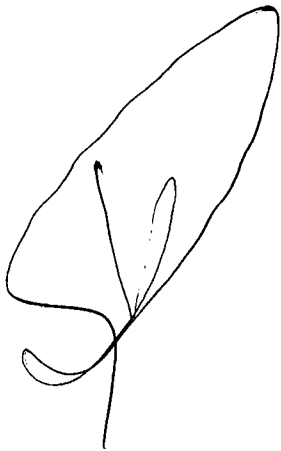
29. 10. 22

12

proclamation notice u/s 87 Cr.P.C issued against the above named accused. He pasted one copy of notice on the notice board of the issuing Court, second copy on the outer door of the houses of accused and returned the third copy of notice with my report at its back which is Ex.PW-2/2. The above referred documents bear his signatures. His statement was also recorded by the I.O u/s 161 Cr.P.C.

57/44/7

iii. **PW-3: Dr. Abdur Rehman SMO**, deposed that on 04.10.2013 at about 04:40 PM he examined injured Aslam Khan S/o Gul Sardar brought by constable Rasheed Nawaz No.450. During examination he found the following.



1. 01 entry wound 1x1cm left interior inguinal region.
2. 01 exit wound 1 ½ x 1 ½ cm right lower renal area (lower flank)

The patient was referred to general surgeon/DHQ Hospital Karak for expert opinion and proper management. The MLC report is Ex.PM/1 which he handed over to the escorting constable alongwith Qamees and Shalwar of the injured.

Later on the injured died and was brought before me by the said constable Rasheed Nawaz No.450 alongwith inquest report. He endorsed the inquest report and conducted autopsy on the dead body of the deceased Muhammad Aslam S/o Gul Sardar at about 07:00 PM on the same date.

RECORDED
29.10.22

⑤ (13)

Symptoms observed before death were having heavy bleeding in shock.

Condition of subject was stout.

External Appearance:-

WOUNDS, BRUISES:-

1. 01 entry wound 1x1cm left interior inguinal region.
2. 01 exit wound 1 ½ x 1 ½ cm right lower renal area (lower flank)

Scalp, Skull and vertebrae: All intact

Thorax: All intact.

Abdomen: Abdominal; wall through and through, peritoneum; perforated, large intestine; perforated, Kidneys; through and through perforated, Kidneys and Bladder are perforated, while rest are intact.

Cranium and Spinal cord: Intact.

Membrane, Brain, Spinal Cord: Intact.

Muscles, bones, and joints: All intact.

Remarks: In his opinion the deceased died due to vital organs and major vessels injures due to which heavy bleeding occurs, due to which cardiopulmonary arrest developed.

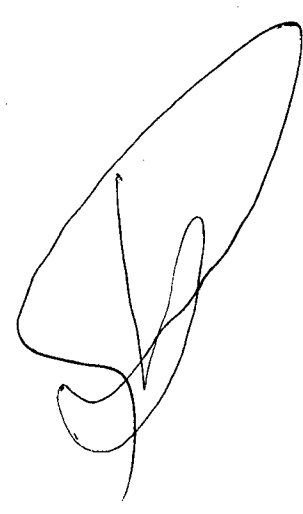
Probable time that elapsed:

Between injury and death: 01 to 02 hours

Between death and post-mortem:- 30 minutes to 2 ½ hours.

After conducting postmortem examination, he handed over the postmortem documents Ex.PM to the police. The post-mortem report consisting

58/44/7



~~CONFIDENTIAL~~
29.10.22

3) 14)
of six sheets bears his signature. Injury sheet and inquest report of the deceased also bears his endorsement. The above referred documents correctly bear my signatures.

iv. **PW-05: Muhammad Yousaf Acting DSP CTD**, deposed that during those days he was posted as SHO Police Station YKS Takht-e-Nasrati. He has submitted complete challan u/s 512 Cr.PC against the present accused Rafi Ullah s/o Fazal Muhammad and complete challan against accused Ahmad Ullah s/o Nek Muhammad, which is Ex.PW-4/1 and bear his signature.

v. **PW-06: Muhammad Tariq Usman S.I**, deposed that during those days he was posted as PASI at P.S YKS. On receipt of Murasilla from ASI Saeed ur Rehman through constable Iran Shah No.484, he correctly incorporated its contents into FIR Ex.PA, which bears his signature. After scribing of FIR, he handed over its copy to KBI staff.

vi. **PW-07: Rehmat Ullah S.I**, deposed that during the days of occurrence he was posted as SHO P.S YKS Takht-e-Nasrati. On 05.03.2020 accused Rafi Ullah S/o Fazal Muhammad came to P.S, voluntarily surrendered before him and he arrested him vide card of arrest Ex.PW-7/1 and handed over him to I.O for interrogation. On 08.03.2020, he submitted supplementary challan Ex.PW-7/2 against accused Rafi Ullah. The above referred documents bear his signature.

vii. **PW-08: Iran Shah # 384**, deposed that during those days he was posted at P.S YKS Takht-e-

59/44/7

ATTACHED
29.10.22

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15

Nasrati. On 01.10.2013, Saeed ur Rehman ASI handed over to him the Murasilla which he brought to P.S and handed over to Moharrir for registration of FIR.

viii. **PW-09: Arshad Iqbal s/o Raham Nawaz**, deposed that on 04.10.2013, he identified the dead body of deceased Muhammad Aslam Khan before the police as well as before the doctor in Civil Hospital Takht-e-Nasrati. His statement was also recorded by the police.

ix. **PW-10: Saeed ur Rehman SHO**, deposed that during those days he was posted as ASI at P.S YKS Takht-e-Nasrati. On 04.10.2013, during patrolling alongwith Nafri, he received information regarding arrival of injured to Civil Hospital Takht-e-Nasrati. So he alongwith Nafri rushed to Civil Hospital Takht-e-Nasrati wherein he found Muhammad Aslam S/O Gul Sardar in injured condition who was unconscious and his nephew namely Muhammad Taif reported the matter which he reduced in shape of Murasilla Ex.PA. He read over the contents of Murasilla to complainant and after admitting it correct, he signed the same. He also prepared injury sheet of injured which is Ex.PW-10/1 and handed over to constable Rasheed alongwith injured for escort to doctor for examination. As the injured was also wanted to police in criminal cases FIR No.26 dated 14.01.2011 u/s 302/324/34 PPC P.S YKS, so he arrested him vide card of arrest Ex.PW-10/2. He sent the Murasilla to P.S through constable Iran

60/44/7

ATTACHED

29.10.22

16

Shah No.384. Later on, on the same date, the injured succumbed to injuries, so he prepared his inquest report Ex.PW-10/3 and handed over to constable Rasheed Nawaz alongwith deceased for escort to post-mortem examination. The above referred documents bear his signature.

61/44/7

x. **PW-11: Inayat Zaman S.I (Rtd)**, deposed that during the relevant days he was posted as S.I/KBI at Police Station Y.K.S (Takht-e-Nasrati). After the arrest of accused facing trial Rafiullah by SHO Rehmatullah, the said accused was handed over to him and he vide application Ex.PW-10/1 produced him before the learned area Judicial Magistrate with request for 07 days custody, however, one day physical custody was granted. He interrogated the accused and on 07.3.2020, vide application Ex.PW-10/2, he again produced him before learned area Judicial Magistrate with request for 03 days physical custody, but the same was turned down and the accused was committed to Judicial Lock-up. He recorded the statement of accused u/s 161 Cr.PC. He then handed over the case file to the SHO for submission of supplementary challan in the Court. The above documents bear his signatures.

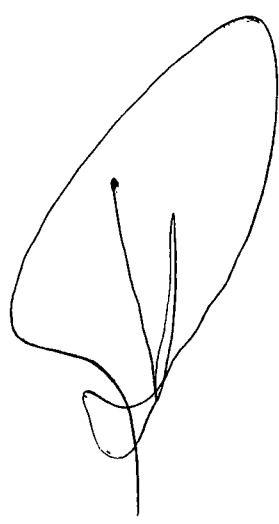
29.10.22

xi. **PW-12: Complainant Muhammad Taif**, deposed that deceased Muhammad Aslam was his uncle. The accused facing trial Rafi Ullah and absconding accused Ahmed Ullah are cousins inter se. On 04.10.2013 after Juma prayer, he alongwith his uncle Muhammad Aslam was going to the house his uncle Nasrullah. When they reached to the

16

17

62/44/7



place of occurrence i.e Nosal Banda, it was about 04:10 p.m when in the meanwhile accused Ahmed Ullah (absconding) and accused facing trial Rafi Ullah duly armed were already present. Both the accused opened fire upon them with intent to commit their murder and from the firing of accused facing trial Rafiullah, his uncle Aslam Khan got hit and injured on left side of his abdomen while he escaped unhurt luckily. Thereafter, the injured was shifted to Civil Hospital Takht-e-Nasrati where in the emergency room, he reported the matter to local police which was reduced in shape of murasilla report already exhibited as Ex.PA. The contents of report were read over to him and after admitting the same to be correct, he put his signature upon it. After giving first aid in Civil Hospital Takht-e-Nasrati, the injured was referred to DHQ Hospital Karak for further treatment. Thereafter, he was summoned by police and I pointed out the spot to local police at 05:10 p.m. Motive behind the occurrence was previous blood feud. His uncle succumbed to his injuries in the way to the hospital at Karak. He charged the accused facing trial Rafi Ullah and absconding co-accused Ahmed Ullah for the commission of offences.

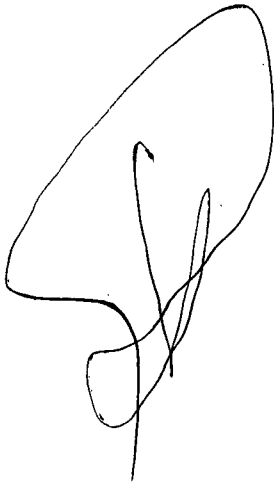
EXAMINED
 29.10.22

29.10.22

xii. **PW-13: Mir Shah Jehan S.I (Rtd)**, deposed that during the relevant days he was posted as S.I/In-charge KBI Police Station Takht-e-Nasrati. After registration of instant case, copy of FIR was handed over to him for investigation. He

12

63/44/7



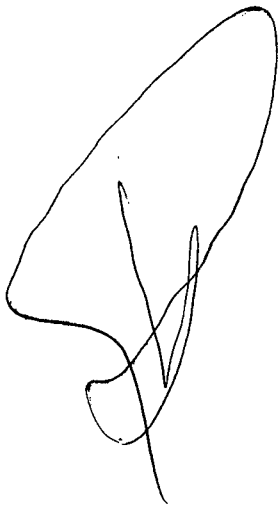
alongwith KBI staff proceeded to the spot and prepared site plan Ex.PB at the instance of complainant. During spot inspection, he vide recovery memo already exhibited as Ex.PC took into possession blood stained earth from the place of deceased then injured and sealed the same into parcel No.01 (Ex.P-1) in presence of marginal witnesses. Similarly, vide recovery memo, Ex.PC/1, I recovered and took into possession 28 crime empty shells of 7.62 mm bore laying in scattered condition and giving smell of freshly discharge from near the places of accused and sealed the same into parcel No. 02. Thereafter, he recorded the statements of PWs u/s 161 Cr.PC. After return to the Police Station, the constable Rasheed Nawaz No. 450 brought blood stained garments of the deceased then injured having corresponding cut marks and sent by the doctor which he took into possession vide recovery memo already exhibited as Ex.PC/2 and sealed the same in parcel No.04 (Ex.P-2) in presence of marginal witnesses. SHO Yousaf Khan handed over to him one Kalashnikov alongwith its ammunition and hand grenade, which were recovered from possession of absconding accused Ahmed Ullah alongwith recovery memo of the above items for which separate case bearing FIR No.373 dated 04.10.2013 u/ss 13 AA/5 Exp. Substances Act, Police Station Y.K.S was registered. The said weapon was also taken into possession as weapon of offence in the instant case by the SHO.

29.10.22

19

Thereafter, he sent the blood stained articles and recovered crime empty shells alongwith Kalashnikov to FSL for analysis. The carbon copy and photocopy of both applications addressed to FSL authorities are placed on file. On receipt of FSL report regarding blood stained articles and that of empty shells and Kalashnikov, he placed the same on file which are Ex.PZ & Ex.PZ/1. On 05.10.2013, he vide application Ex.PW-13/1 produced the absconding accused Ahmed Ullah for obtaining his physical custody whereupon two days physical custody of said accused was granted. He interrogated the said accused and recorded his statement u/s 161 Cr.PC. On 07.10.2013, he vide application Ex.PW-13/2 produced the accused on judicial remand whereupon he was sent to judicial lock-up. He has also conducted house search of accused facing trial Rafi Ullah but neither he was found nor anything incriminating was recovered therefore. He also initiated and completed proceedings u/s 204 & 87 Cr.PC against accused facing trial vide applications Ex.PW-13/3 & Ex.PW-13/4. He then handed over the case file to SHO for submission of complete challan. The relevant documents prepared by him bear his signatures.

64/44/7



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29.10.22

6. After close of Prosecution evidence, statement of accused was recorded under Section-342 Cr.P.C wherein he alleged *mala fide* and professed his innocence. The accused

(20)

neither wished to produce evidence in defense nor opted to be examined on oath.

7. This Court has the privilege to hear the lengthy and exhaustive arguments of learned Dy.PP assisted by learned counsel for complainant and that of leaned counsel for accused...

65/44/2

8. The contents of Murasilla and FIR in categorical words says that the time of occurrence is after Juma prayer on 04.10.2013. The complainant, who is highly qualified person, was supposed to have mention the exact or at least approximate time of occurrence but he deliberately and intentionally did not disclose it so as to strengthen prosecution version. All the official witnesses including Saeed ur Rehman, who reduced the report of complainant into writing, as well as Mir Shah Jehan, the I.O, have endorsed that in the contents of Murasilla and FIR, the time of occurrence is mentioned as, after Juma prayer on 04.10.2013. The complainant when appeared in his in-chief disclosed the time of occurrence to be 04:10 PM, which is a dishonest improvement. He in cross examination confirmed that he mentioned the time of occurrence as 04:10 PM. His this deposition on the one hand contradicts his statement that after reducing the report into writing it was read over to him and he put his signature as a token of correctness and on the other hand contradicts the statement of Saeed ur Rehman that the

(3) (21)

complainant disclosed to him time of occurrence to be after Juma prayer.

66/44/7

9. The statement of the PWs doesn't establish that the time of report is 16:25 hours in the emergency room of Civil hospital Takht-e-Nasrati. Rasheed Nawaz (PW-01) in cross examination has deposed that the injured was brought to the hospital at about 04:30 p.m. When the injured was brought to the hospital at 04:30 p.m i.e 16:30 hours then lodging of report at 16:25 hours is out of question.

10. There is vital inconsistencies regarding the arrival of Muhammad Aslam (deceased) into hospital in injured condition. The contents of FIR suggests that Saeed ur Rehman SHO who was on the routine patrolling of the area near Petrol Pump Lakarki Banda, got information about the arrival of an injured into the civil hospital. On such information, he alongwith the police personnel rushed to the civil hospital and found Muhammad Aslam son of Gul Sardar in injured condition laying in the emergency room of the Civil Hospital. As per the same witness, he prepared the injury sheet Ex.PW-10/1 of the injured and handed it over to constable Rasheed Nawaz alongwith injury sheet for escort to doctor. Since, the deceased then injured was a proclaimed offender vide FIR # 206 dated 14.01.2011 u/s 302/324/34 PPC of Police Station YKS Takht-e-Nasrati and was

required to the local police, hence card of arrest Ex.PW-10/2 was issued by him in respect of the injured. The said witness further stated that at the time of drafting Murasilla, the injured was before him. Initially FIR was lodged u/s 324/34 PPC. Doctor Abdur Rehman (PW-03) has deposed that the injured was produced to him by Constable Rasheed Nawaz at about 04:40 p.m and he found one wound upon the injured. After providing first aid, the injured was referred to DHQ hospital Karak for better management. The same is the statement of the complainant. More so, Mir Shah Jehan, the I.O of the case, has in categorical words stated that as per his investigation, the injured succumbed to his injuries on his way while he was being shifted to DHQ hospital Karak. The above depositions of the important PWs have been nullified by the statement of one Rasheed Nawaz (PW-1) by deposing that the injured was brought to hospital at about 04:30 PM. In cross examination he deposed that the injured had already breathed his last before their arrival to the hospital at about 04:25 PM. He further stated that local police was already present in hospital as someone had informed them about the occurrence through phone. If the statement of this important witness is taken true then nor it nullify the stance of Saeed ur Rehman about receipt of information of bringing an injured to the hospital when he was on routine gusht near petrol pump Lakarki Banda, but it also dislodges the story of

67/44/7

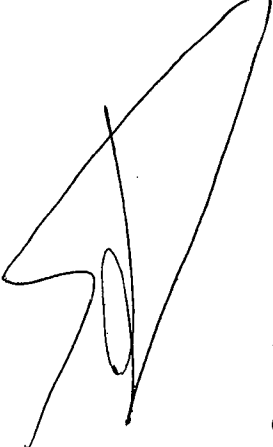


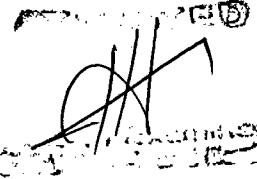
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prosecution whereby FIR u/s 324/34 PPC was initially chalked out. More so, the deposition of the witness also means that the deceased was never brought to hospital in injured condition rather his dead body was brought to the hospital. At the same breath it nullify the stance of Saeed ur Rehman SHO regarding preparation of injury sheet, drafting of Murasilla in presence of injured and handing it over for escort to the doctor. It also contradicts the statement of the complainant, the doctor and of the I.O. More so, the said Rasheed Nawaz has also negated his own version by deposing that he escorted the injured to the doctor at about 04:35 p.m.

68/44/2


11. Similarly, as per Saeed ur Rehman SHO, he got information about the arrival of the injured at 04:20 PM near petrol pump Lakarki Banda and from there he rushed to the civil hospital. He in cross examination further testify that he consumed 10 minutes on drafting of Murasilla and then it was handed over to constable Iran Shah belt # 3840 for its transmission to Police Station. The said Iran Shah was examined as PW-08, who in contrast to the stance of prosecution deposed that Murasilla was handed over to him on 01.10.2013 by Saeed ur Rehman SHO. It is to be noted that the date of occurrence is 04.10.2013 and not 01.10.2013. After handing over of Muasilla to him, he transmitted it to Police Station where it was handed over


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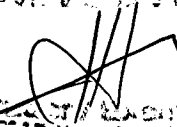
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to the Moharrir at 04:40 PM. Again if the Saeed ur Rehman SHO got information about the occurrence at about 04:20 p.m, then reaching to hospital, drafting murasila and handing it over to constable, must have consumed time and in that eventuality the transmission of murasila to Police Station at 04:40 p.m doesn't seem logical.

69/44/7

12. Saeed ur Rehman SHO, Dr. Abdur Rehman and I.O Mir Shah Jehan are consistent on the point that the injury sheet doesn't reflect the number and nature of injuries. The post mortem report suggest that the time which elapsed between receiving of injury and examination is 01 to 02 hours. If the minimum time of 01 hour is taken, it means that the occurrence took place at 03:40 p.m and if the maximum time is taken it means that the occurrence took place at 02:40 p.m. In both the cases, it doesn't confirm the time of occurrence as claimed by the prosecution.

13. Another important aspect of the case is that per contents of FIR, the injured was unconscious at the time of report, however, Saeed ur Rehman SHO, Doctor and Mir Shah Jehan I.O had conceded that there is no certificate regarding the unconsciousness of the then injured.

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29.10.22

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14. Now come to the ocular evidence that is furnished by complainant Muhammad Taif. Muhammad Taif is the nephew of the deceased Muhammad Aslam. He has made dishonest improvement in his in-chief as well as in cross examination with obvious intention to strengthen the prosecution version. He for the first time in his chief introduced the time of occurrence to be 04:10 p.m. In cross examination, he confirmed by deposing that he mentioned the time of occurrence in his report at 04:10 p.m. He has denied the fact that the deceased was not a proclaimed offender despite of the fact that the injured was arrested in front of him by Saeed ur Rehman SHO, being Proclaimed offender (P.O) in other cases. There is sufficient documentary evidence to prove that the deceased was proclaimed offender and was required to local police in many criminal cases. He put last nail in the coffin of prosecution by deposing that Arshad Iqbal (PW-09) was present at the time of lodging report and in the very next sentence deposed that the said Arshad Iqbal alongwith other people, shifted the then injured to hospital. At another place in cross examination, he deposed that Arshad Iqbal's house is near to the place of occurrence and he was attracted to the spot on hearing firing. He further stated that said Arshad Iqbal accompanied the deceased to the District Headquarter hospital Karak. Arshad Iqbal, when appeared came up with new story by deposing that at the time of occurrence he was not present with

70/44/7

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29. 10. 22

(26)

complainant rather he was present in his house. He further stated that he has no knowledge about the other details of the occurrence and he came to know about the occurrence at his own. He further stated that he reached to hospital at about 06:00 p.m and identified the dead body of deceased before police as well as before doctor about 07:00 p.m. At 06:00 pm, the injured was already referred to DHQ Hospital Karak for better management then the identification of dead body by him before the police is out of question.

71/44/7

15. The ocular account is full of doubt and it is inconsistent on material points. It is on record that the distance between the complainant and accused was not more than 25 feet. It is also on record that the complainant was in the firing range of both the accused, who were duly armed with deadly weapons and they resorted to indiscriminate firing. The recovery of 28 crime empties of 7.62 bore from the points of accused is stand established. It is very strange that despite of the fact that the complainant was in the firing range of both the accused but he escape unhurt. No plausible explanation has been put forth in this respect which means that the prosecution has failed to prove the very presence of complainant on the spot.

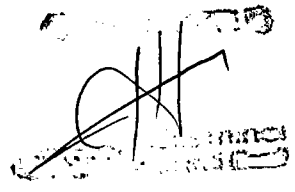
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16. From the very inception of the case it was the stance of the accused that the complainant with connivance of the local

(27)

police has changed the site plan of the present case with the site plan of case FIR # 372 dated 04.10.2013 u/s 324/34 PPC/13-AO of Police Station YKS Takht-e-Nasrati. The complainant though has expressed his ignorance from the said FIR but it is on record that the accused in case FIR # 372 ibid are Kifayat Ullah and Owais. Kifayat Ullah is the real son of deceased Muhammad Aslam of this case and it does not stand to logic that the complainant would not be in knowledge of the said FIR. The complainant admits blood feud enmity with the accused party. The accused in his 342 Cr.PC statement categorically stated about change of site plan of the instant case with the site plan of case FIR # 372 ibid. Investigation Officer Mir Shah Jehan as well as Inayat Zaman have admitted that on the date of occurrence of the instant case, case FIR # 372 ibid was also registered. During cross examination of Mir Shah Jehan Investigation Officer attested copies of the case consisting of 57 pages were produced as mark "A". Investigation Officer Mir Shah Jehan has also testified that investigation of case FIR # 372 ibid alongwith investigation of the instant case was handed over to him on one and the same date and he has visited the site plan in case FIR # 372 ibid. He has also admitted that the place of occurrence of the instant case is at a distance of 3/4 furlong from the house of deceased, while place of occurrence is at a distance of one kilometer from the house of deceased. In these circumstances it

72/44/7

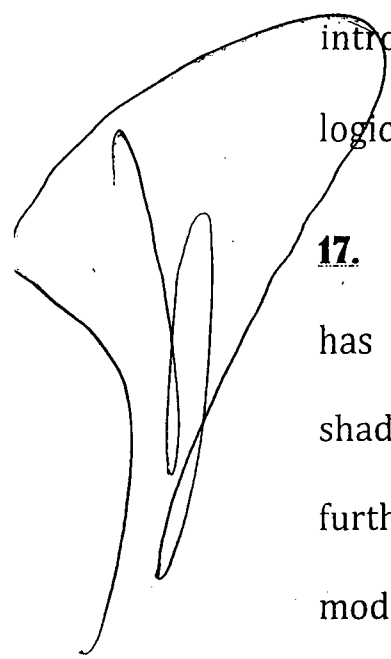


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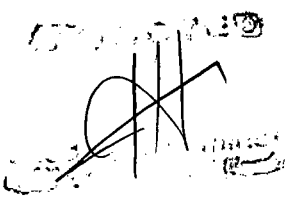
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cannot be ruled out that actually deceased Muhammad Aslam, who was proclaimed offender sustained injuries in case FIR # 372 ibid, but as he was proclaimed offender, hence, he could not be shifted to government hospital during the period of his injury and when he succumbed to the injuries then the complainant Muhammad Taif was arranged and he shifted the dead body to hospital and introduced himself as the eye witness. In view of above backdrop non-mentioning of exact time of occurrence and introducing the time of occurrence as after Juma prayer seems logical.

73/44/7



17. The crux of the above discussion is that prosecution has miserably failed to prove its case beyond any reasonable shadow of doubt against the accused facing trial. They have further failed to prove that the occurrence took place in the mode and manner as claimed in the FIR. Ocular account is pregnant with inherent inconsistencies and fatal contradictions. Even the presence of the complainant has not been established on the spot, therefore, by extending the benefit of doubt, the accused facing trial, namely, Rafi Ullah is hereby, acquitted of the charges leveled against him in case FIR # 371, dated 04.10.2013, under Sections 302/324/34 P.P.C, Police Station Y.K.S (Takht-e-Nasrati), District Karak. He is in custody, he be set at liberty forthwith if not required in any other case(s).



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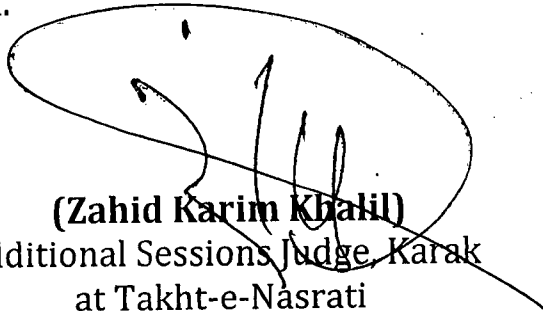
18. So far as absconding co-accused, namely, Ahmad Ullah is concerned, he is willfully avoiding his lawful arrest and a prima facie case exists against him, therefore, he is declared proclaimed offender and perpetual non-bailable warrant of his arrest be issued with the direction to District Police Officer, Karak to enter his name in the register of P.Os and produce him before Court at the earliest upon his arrest.

19. Case property be kept intact till arrest and trial of the P.O.

74/44/7

20. File be consigned to the record room after its completion and compilation.

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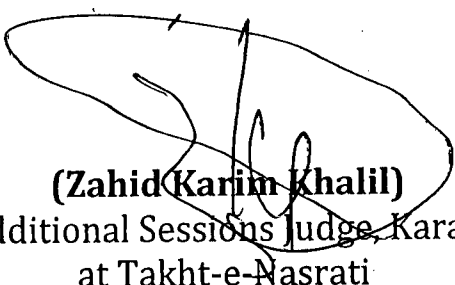


(Zahid Karim Khalil)
Additional Sessions Judge, Karak
at Takht-e-Nasrati

Certificate:

Certified that this judgment consists of (22) pages, each page has been read and signed by me after making necessary corrections.

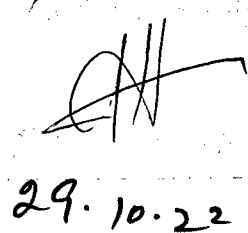
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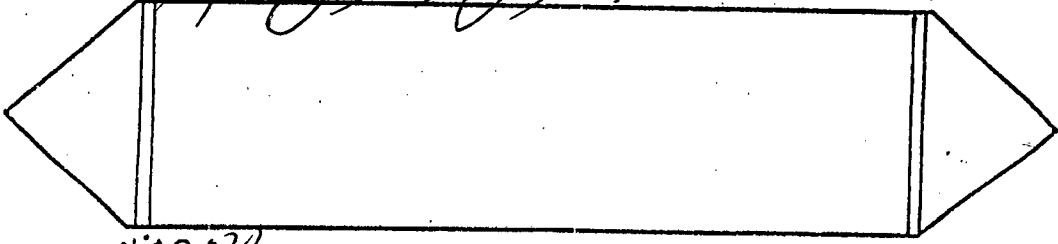
(Zahid Karim Khalil)
Additional Sessions Judge, Karak
at Takht-e-Nasrati

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بعدالت جناب سید سید ابوبکر علیہ السلام



2022ء بمطابق

بسم اللہ بنام اے

موزخہ

مقدمہ

دعویٰ

جرم

0383-9176275

nusib.mahmood.adev3@gmail.com

باعث تحریر آنکے

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

آن مقام ~~کیلئے~~ کیلئے ~~مقرر~~ مقرر کیا جاتا ہے۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ

پر واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے وہ ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی

مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

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ماہ

المرقوم

السواہ الع

کے لئے منظور ہے۔

بمقام

Rakhi ulhas