

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1299/2015

Date of Institution ... 10.11.2015

Date of Decision 09.10.2017

Momin Khan, Ex-ASI Khyber Pakhtunkhwa Elite Force. ... (Appellant)

VERSUS1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and 3 others.
... (Respondents)MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate --- For appellant.MR. KABIRULLAH KHATTAK,
Addl. Advocate General ... For respondents.MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBERJUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant who was on deputation from Crimes Investigation Department now Counter Terrorism Department to Elite Force Khyber Pakhtunkhwa, was proceeded against departmentally by Borrowing Department and the Borrowing Department imposed penalty of dismissal from service on the appellant on 19.11.2012. The charge against the appellant was his involvement in two criminal cases. The appellant was finally acquitted in the first criminal case on 13.3.2013 and in the second criminal case

on 05.05.2015. After second acquittal he filed a departmental appeal on 20.05.2015 which was rejected on 12.10.2015. Thereafter, the appellant filed the present appeal before this Tribunal on 10.11.2015.

ARGUMENTS

3. The learned counsel for the appellant argued that the very authority which has passed the order of dismissal was not competent authority for the reason that services of the appellant were admittedly borrowed by Elite Force from CID (CTD). That in such event the very order of dismissal is a void order being passed by an incompetent authority. That no limitation shall run against the void order.

4. On the other hand the learned Addl. Advocate General argued that the proper proceedings were conducted against the appellant. That since the services of the appellant were placed at the disposal of Elite Force, the Commandant of the Force has rightly passed the impugned order.

CONCLUSION.

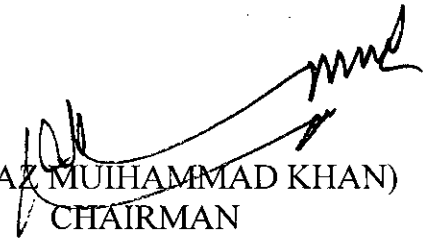
5. Without adverting to the merit of the case, admittedly the services of the appellant were borrowed by Elite Force under Rule 9 of the Khyber Pakhtunkhwa Police Rules, 1975. Under this rule the punishment can be awarded only by the Lending Authority. The Borrowing Authority can only transmit the proposal to the Lending Authority with regard of the proceedings. In view of rule 9, this Tribunal is of the view that the impugned order has been passed by an incompetent authority and the order is void and no limitation shall run against such order.

6. In view of the above discussion, the Tribunal accepts the present appeal, sets aside the impugned order and reinstate the appellant in service. The case is sent back to the Borrowing Authority for proceedings under Rule 9 *supra* within a period of 3 months from the date of receipt of this judgment. Back benefits of the appellant shall be subject

to outcome of denovo proceedings. Parties are left to bear their own costs. File be
consigned to the record room.



(GUL ZEB KHAN)
MEMBER



(NIAZ MUIHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
09.10.2017

13.03.2017

Counsel for appellant and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Ziaullah, Government Pleader for respondents present. Learned counsel for appellant submitted fresh Wakalatnama and requested for adjournment. Adjournment granted. To come up for arguments on 22.06.2017 before D.B.

(Mr. Amanat Naxi)
MEMBER

(ASHFAQUE TAJ)
MEMBER

22.06.2017

Counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 09.10.2017 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Gul Zeb Khan)
Member

09.10.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG alongwith Akbar Hussain, SI (Legal) for the respondents present. Arguments heard and record perused.

As per our detailed judgment of today, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.

Member

Chairman

ANNOUNCED
09.10.2017

1299/15

10.5.2016

Counsel for the appellant and Mr. Javed Shah, Inspector (Legal) alongwith Addl. AG for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 29.08.2016.


Chairman

29.08.2016


Counsel for the appellant and Mr. Javed Iqbal, DSP (legal) alongwith Additional AG for respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. Adjourned for final hearing to 29.12.2016 before D.B.


Member


Chairman

29.12.2016

Clerk to counsel for the appellant and Mr. Javed Iqbal, Inspector alongwith Addl. AG for respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to ~~13/03/~~2017 for arguments before D.B.


Chairman

26.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as ASI Elite Force when subjected to inquiry on the allegations of involvement in a criminal case and dismissed from service vide impugned order dated 19.11.2012. That the appellant was finally acquitted of the criminal case by the Federal Shariat Court vide worthy judgment dated 5.5.2015 where after he preferred departmental appeal on 20.5.2015 which was rejected on 12.10.2015 and hence the instant service appeal on 10.11.2015.

Appellant Deposited
Security & Process Fee



That the impugned dismissal order is without any lawful authority as no inquiry in the prescribed manners was conducted and the absence period, if any, was treated as leave without pay and even appellant acquitted of the criminal case by the Hon'ble Federal Shariat Court referred to above.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 2.3.2016 before S.B.


Chairman

02.03.2016

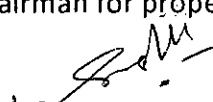

Appellant in person and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 10.5.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1299/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19.11.2015	<p>The appeal of Mr. Momin Khan resubmitted today by Mr. Ijaz Anwar Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>26-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Momin Khan Ex-ASI Khyber Pakhtunkhwa Elite Force received to-day i.e. on 10.11.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of judgment dated 11.03.2013 (Annexure-B) is incomplete which may be completed.
- 2- Annexures A & B of the appeal are illegible which may be replaced by legible/better one.

No. 1759 /S.T,


Dt. 11/11/2015


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv. Pesh.

Six

~~Handwritten scribble~~
1, ~~Handwritten scribble~~ The Appellate provided only that copy so we attached with Appeal
2, ANNEXURE A, B. is Remuan in Appeal
Resubmitted after completion


Sajid Amin
Advocate

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 1299/2015

Momin Khan Ex-ASI Khyber Pakhtoon Khuwa Elite Force,
Peshawar. **(Appellant)**

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa
Peshawar and others.

(Respondents)


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Appellant

Through


IJAZ ANWAR
Advocate Peshawar

&

SAJID AMIN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1299 /2015

K.W.P. Province
Service Tribunal
Diary No. 1341
Dated 10-11-2015

Momin Khan Ex-ASI Khyber Pakhtunkhuwa Elite Force,

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhuwa Peshawar
2. The Additional Inspector General of Police /Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.
3. The Additional Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated: 19.11.2012, whereby the appellant has been awarded the major Punishment of dismissal from service against which the departmental appeal dated: 20.05.2015 has also been rejected vide order dated: 12.10.2015.

Prayer in Appeal: -

On acceptance of this appeal impugned orders dated 19.11.2012 and 12.10.2015, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

Re-submitted to-4ap
and filed.

Registrar

Respectfully Submitted:

1. That the appellant was initially appointed as Constable in the Crimes Investigation Department (CID), now Counter Terrorism Department, on 05.04.1995. Ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance. During the course of employment the appellant also gained promotions to different ranks. He was promoted as Head Constable in the year 2005/06 and then later on promoted as ASI.
2. That the appellant was later on transferred on deputation to the Elite Force, Khyber Pakhtunkhwa. Where he served till his dismissal from service.
3. That while serving in the said capacity, the Appellant, along with some of his other family members, was falsely implicated in a criminal case under section 302-324/148/149 PPC read with 7 ATA, vide FIR No. 794 dated 08.09.2010 of Police Station Pabbi Nowshera. The appellant duly informed his department about his false implication in criminal case. Since there were serious threats to the live of the appellant from his enemies, therefore he could not join his duty.
4. That on the intervention of elders of the locality, a compromise was affected between the parties accordingly the appellant and others co-accused were acquitted by the Hon'ble Judge Anti-Terrorism Court-III, Peshawar vide his judgments and orders dated 07.03.2013 and 11.03.2013. *(Copy of the acquittal Order is are attached as Annexure A) & B)*
5. That in the mean time the appellant was again falsely implicated in another case under section 17/3 Offences against Property Ordinance 1979 read with 324/148/149/411 PPC/ 13AO vide FIR No.81 dated 01.02.2013 of PS Lahor Swabi. Therefore, the appellant though was acquitted in the previous case but remained in the judicial lock up. Later the appellant was convicted in the said FIR by the Learned ASJ Lahor, Swabi vide its judgment dated 29.05.2014. *(Copy of the Judgment dated 29.05.2014 Order is attached as Annexure C)*
6. That thereafter the appellant filed appeal before the Honourable Federal Shariat Court, and the Honourable Court had, while accepting the appeal of the appellant, acquitted him vide judgment and order dated 05.05.2015. *(Copy of the judgment and order dated 05.05.2015, is attached as Annexure D)*

7. That after acquittal when the appellant was released from jail, he duly reported for duty, however he was told that he has been dismissed from service vide order dated 19.11.2012. The appellant requested for the provision of the departmental proceedings conducted against him, however he was only provided the copy of the dismissal order dated 19.11.2012. *(Copy of the dismissal order is attached as Annexure D)*
8. That the appellant after obtaining the copy of the dismissal order, duly submitted his departmental appeal on 20.05.2015, however it has also been rejected vide order dated 12.10.2015. Copy of the rejection order was however, communicated to the appellant on 14.10.2015. *(Copies of the departmental appeal and rejection order is attached as Annexure F & G)*
9. That the penalty imposed upon the appellant is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUND OF APPEAL:

- A. That the appellant has not been treated with accordance to law. Hence his rights secured and granted under the law are badly violated.
- B. That no proper procedure has been followed before awarded the penalty to the appellant, the appellant has not been served with any charge sheet or show cause notice, nor has any endeavor been made to associate him with the inquiry proceedings, if any conducted. Thus the whole proceedings are thus defective in the eye of law.
- C. That the appellant was on deputation to the Elite Force, as per the law the borrowing department cannot proceed against the officials on deputation. The whole Proceedings against as well as the impugned orders being initiated/issued by unlawful authority are thus void ab-initio.
- D. That the appellant has not been allowed the opportunity of personal hearing. Thus he has been condemned unheard.


- E. That the appellant has not been served with any charge sheet or show cause notice thus he has been denied opportunity to defend him self against the charges as such the impugned order is violative of the principles of natural justice.
- F. That the superior courts have always held that mere filling of FIR would not ipso-facto made a person guilty of commission of the offence rather he would be presumed to be innocent unless convicted by court of competent Jurisdiction, since the Respondents were informed about the registration of FIR against the appellant, thus it was required to have keep the proceedings pending against him till the out come of the criminal proceedings. Since the appellant has now gain acquittal from the criminal charges therefore, the impugned orders are liable to be struck down.
- G. That vide the impugned order while awarding the appellant the penalty of dismissal from service, his absence period has also been regularized by treating him as leave without pay, therefore no penalty could lawfully be imposed upon the appellant.
- H. That while rejecting the departmental appeal of the appellant vide order dated 12.10.2015, no reason has been shown for the rejection of appeal, as such the impugned order dated 12.10.2015 is not a speaking order and is the violation of Section 24-A of the General Clauses Act.
- I. That the appellant never committed any act or omission which could be term as misconduct. He was falsely implicated y charged in criminal case, he has also now gain acquittal in the said case, moreover his absence was also not willful but was due to his involvement in criminal case, albeit he has been awarded the penalty of dismissal from service.
- J. That the appellant has at credit at about 17 years spotless service career. The penalty impose upon him is too harsh and liable to be set-aside.
- K. That the appellant is jobless since his illegal dismissal from service.


L. That the appellant seeks permission to relay on additional grounds at time of hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal impugned orders dated 19.11.2012 and 12.10.2015, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.


Appellant

Through


IJAZ ANWAR
Advocate Peshawar

&

SAJID AMIN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2015

Momin Khan Ex-ASI Khyber Pakhtunkhuwa Elite Force,
Peshawar. **(Appellant)**

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhuwa
Peshawar and others.

(Respondents)

**APPLICATION FOR CONDONATION OF DELAY,
IF ANY IN FILING THE TITLED APPEAL**

Respectfully submitted:

1. That the appellant has today filed the accompanied appeal before this Honorable Tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

GROUND OF APPLICATION

- A. That although the Appellant was acquitted on 11.03.2013 in case FIR No.294 dated 08.09.2010, however while the trial of the said case under way, the appellant was wrongly charged in the subsequent FIR i.e., Case FIR No.81 dated 01.02.2013 and was arrested by the local police on the same day and was also convicted by the Learned Additional Sessions Judge Swabi at Lahor vide his judgment and order dated 29.05.2014. During the entire period the appellant was never communicated the impugned order or any other notice from the Respondent department and was thus unaware of the departmental proceedings being initiated against him.
- B. That as a result of subsequent FIR and conviction, the appellant was kept behind the bars until he was finally acquitted by the Hon'ble Federal Shariat Court of Pakistan and resultantly released from jail on 05.05.2015, soon after his acquittal the appellant when came to know

about his dismissal from service, he submitted his departmental appeal well within 30 days of the acquittal order which remained under consideration and was lastly rejected/ filed vide order 22.10.2015. Thus the appellant pursued his case diligently and never remained negligent in pursuing his remedy, therefore delay if any in filing the titled appeal is not willful but due to the reason stated above.

- C. That the delay, if any, in filing the instant appeal was not willful nor can the same be attributed to the appellant as it was due to the imprisonment of the Appellant, moreover the impugned order of penalty was also not communicated to the appellant before his acquittal, therefore the appellant cannot be made suffer for the events beyond his control. Hence delay if any deserves to be condoned.
- D. That it has been consistently held by the superior courts that appeal filed within 30 days from the date of communication of the order on departmental representation / appeal would be in time. ***Reliance is placed on 2013 SCMR 1053 & 1997 SCMR 287 (b)***.
- E. That it has been always held by the Apex Court that filing of appeal before acquittal from criminal charges would be a futile exercise as charges on the basis of which accused civil servant has been proceeded against existed and unless he is acquitted filing of departmental appeal would be a futile exercise. Since the appellant has filed departmental appeal within 30 days of the acquittal order. Therefore it can not be held as time barred. ***Reliance is placed on PLD 2010 SC Page 695***.
- F. That no proper procedure has been followed before the imposition of penalty upon the appellant. He has not been served with any charge sheet or show cause notice nor has been associated with the inquiry proceedings, if any conducted. Moreover the impugned authority had himself treated the period of absence as leave without pay, thereafter awarding penalty to the appellant is illegal and void. Thus the whole proceedings as well as the order of penalty are illegal unlawful without lawful authority and void ab-initio, and no limitation run against such an illegal and void order.
- G. That valuable rights of the appellant are involved in the instant case in the instant case, hence the delay if any in filing the instant case deserves to be condoned.

H. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014 2003 PLC (CS) 769.

It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant appeal may please be condoned.

Applicant

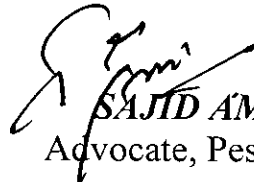
Through



IJAZ ANWAR

Advocate Peshawar

&



SAJID AMIN

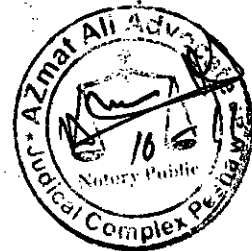
Advocate, Peshawar

AFFIDAVIT

I, Momin Khan Ex-ASI Khyber Pakhtoon Khuwa Elite Force, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as accompanied application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent

ATTESTED



8

Annexure 'A'

IN THE COURT OF SYED ASGHAR ALI SHAH

JUDGE ANTI TERRORISM COURT III PESHAWAR

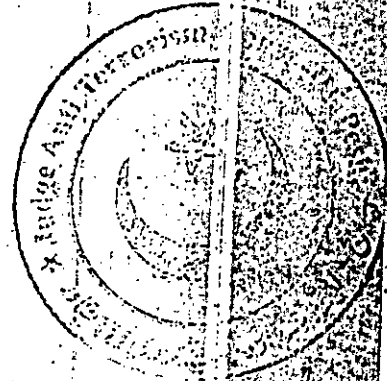
Case No 03/13

Date of institution.....02.01.2013

Date of decision 07.03.2013

STATE VERSUS

- 1) Azam Khan s/o Mukhtiar
- 2) Saidullah s/o Baidullah
- 3) Haroon ur Rasheed s/o Saidullah
- 4) Abid ur Rasheed s/o Saidullah
- 5) Zahid ur Rasheed s/o Saidullah all s/o Haroon Abad Daq Baisood GPO Pabbi District Nowshera.



In Case FIR No. 794 DATED 08/09/2010 U/S 302/324/148/149 PPC & 7ATA OF POLICE STATION PABBI DISTRICT NOWSHERA.

ORDER:-

Learned PP for the state and accused Azam Khan, Saidullah, Haroon ur Rasheed, Abid ur Rasheed, Zahid ur Rasheed and Momin Khan in custody along with learned counsel present. Legal heirs of deceased Saifullah namely Amanullah, deceased Rahamt Ali namely Abdul Hanan and deceased Fazle Mula and Arshullah namely Azmatullah present. Learned counsel for accused submitted statement of Rad Ali and Zia Mohammad s/o deceased Taj Mohammad who could not record statement before this court due to being abroad and have sent their statements from Saudi Arabia. Statement of Zia Mohammad carries attestation of consulate general of Pakistan at Jadda while that of Rad Ali is not attested reason being his presence abroad without legal Viza. Both the statements were placed on file while compromise statements of major legal heirs of all the five deceased and complainant were already recorded while four daughters of deceased Taj Mohammad were examined through local commission the report of which is earlier received and placed on file.

Accused in custody were charged by complainant Zar, Ali for causing murder of aforesaid deceased by firing on them at the time of Maghrib Prayer outside mosque. Motive for occurrence was disclosed to be a moyance of accused party by saying "Ya" before Mohammad (P.B.U.H) in the mosque All accused named in the FIR including acquitted accused Ajab Khan were attributed uniform role of indiscriminate firing on complainant party resulting in the aforesaid tragedy.

One of the accused namely Ajab Khan was arrested who faced trial before this court and on conviction was sentenced to death and fine of one million rupees vide judgment dated 30/11/2011. The judgment was assailed before high Court where convict was acquitted by allowing the appeal extending benefit of doubt to him vide judgment dated 17/05/2012.

Signature

Signature

Signature

IN THE COURT OF SYED ASGHAR ALI SHAH

Justice Anti TERROSIM COURT IN PESHAWAR.

Case No. 03/13

Date of Institution 02.01.2013

Date of decision...07-03-2013.

STATE VERSUS

- 1- Azam Khan s/o Mukhtiar.
- 2- Saidullah s/o Saidullah
- 3- Haroon ur Rasheed s/o Saidullah
- 4- Abid ur Rasheed s/o Saidullah
- 5- Zahid ur Rasheed s/o Saidullah all @/o Haroon Abad
Dag Baisood Pubbi District, Nowshera.

ORDER.

Learned PP for the state and accused Azam Khan, Saidullah Haroon ur Rasheed, Abid-ur-Rasheed, Zahid-ur-Rashid and Momin Khan in custody along with learned counsel present. Legal heirs of deceased Saferullah namely Azmatullah present learned counsel for accused submitted statement of Rad Ali and Zia Muhammad s/o deceased Taj Muhammad who could not record statement before this court due to being abroad and have sent their statement from Saidi Arabia. Statement of Zia Muhammad carries statement of consulate general of Pakistan at Jeddah while that of Rad and attested reason being his presence abroad without legal visa Both the statement were placed on file compromise statement were placed on file compromise statement of major legal heirs of all the deceased were examined through all the deceased and complainant were already recorded while four daughters of deceased Taj Muhammad were examined through local commission the report of which is earlier received and placed on file.

Accused in custody were charged by complainant Zar Ali for causing murder of aforesaid deceased by firing on them at the time of Maghrib Prayer outside mosque Motive fore occurrence was disclosed to be abeyance of accused party by saying 'Ya' before Mohammad (P.B.U.H) in the mosque. All accused named in the FIR including acquitted accused Ajab Khan were attributed uniform role of indiscriminate firing on complainant party resulting in the aforesaid tragedy.

One of the accused namely Ajab Khan was arrested who faced trial before this Court and on conviction was sentenced to death and fine of one million rupees vide judgment dated 30-11-2014. The judgment was assailed before high court where convictor was acquitted by allowing the appeal extending benefit of doubt to him vide judgment dated 17-05-2012.

9

After aforesaid acquittal, accused surrendered while accused Momin was arrested in another case within the area of District Swabi along with acquitted accused Ajab Khan, Mohammad Zeb and Shoukat Khan registered v de FIR No. 81 dated 01/02/2013 u/s 17(3) Harabah/324 353/148/149 PPC and 13-AO of PS Chota Lahore District Swabi. He was shifted from District Jail Swabi to face trial before this court and as such charge was framed against him today which was denied.

As per statements of major legal heirs of deceased recorded before this court, the accused facing trial are pardoned except Momin Khan who was not arrested at that time. They also forgive their right of Diyat and expressed no objection if the accused are acquitted. Daughters of deceased Taj Mohammad were examined through local commission who also recorded their statements available on file wherein they have forgiven all the accused including Momin Khan waving their right of Diyat. Relevant Proforma pertaining to compromise are Ex PA, Ex PA/1, Ex PA/2, Ex PA/3 and Ex PA/4. Accused have transferred their houses in favor of minor legal heirs of deceased vide register deeds bearing Nos.78/1 to 81/1 executed and attested on 01/03/2013. Original Registered Deeds were handed over to major legal heirs namely Amanullah for deceased Saifeerullah, Abdul Hanan for deceased Rahmat Ali and Azmatullah for deceased Fazle Mula and Arshullah whose joint statement to this effect recorded and brought on file along with photocopies of their CNICs. Copies of aforesaid Registered Deeds were also brought on file.

Learned PP in view of aforesaid facts of the case and compromise effected between complainant and accused party plus transfer of properties in the names of minor legal heirs of deceased as their shares in diyat expressed no objection on acceptance of compromise as he stated at bar that though the offence is not compoundable but in larger interest of society and also legal heirs of deceased he did not object to the amicable settlement and acquittal of accused.

In view of the above, accused Azam Khan, Saidulla, Haroon ur Rahsed, Abid ur Rahsed, Zhaid ur Rasheed are acquitted of the charges because of compromise and their forgiveness by legal heirs of deceased. They are in custody and be released forthwith if not required in any other case.

So far accused Momin Khan is concerned, charge is framed against him today. Statements of legal heirs so far recorded do not disclose the patch up of them with him (though generally compromise is with accused party but specific statements are required), therefore he is sent to judicial lock up and be produced before the court on 11/03/2013. Major legal heir of deceased be summoned for statements.

SYED ASGHAR ALI SHAH
JUDGE ANTI-TERRORISM COURT
PESHAWAR

Announced

17.03.2103

ATTESTED

Wanted
MADEP

Altaf

After aforesaid acquittal accused surrendered while accused Momin was arrested in another case within the area of District Swabi along with acquitted accused Ajab Khan, Muhammad Zeb and Shoukat Khan registered vide FIR No. 81/ 81 dated 01-02-2013 u/s 17(3) harabah-324, 353-148-149 and 13-A0 of PS Chota Lahore Distt. Swabi. He was shifted from District Jail Swabi to face trial before this court and as such charge was framed against him before this court and as such charge was framed against him which was denied.

As per statement of major legal heirs of deceased recorded before this court, the accused facing trial are pardoned except Momin Khan who was not arrested at that time. They also forgive their right of Diyat and expressed no objection if the accused are acquitted. Daughters of deceased Taj Muhammad were examined through local commission who also recorded their statements available on file wherein they have forgiven as accused including Momin Khan waving their right of Diyat. Relevant Proforma pertaining to compromise are EX-PA ,EX-PA /1 EX-PA /2, EX-PA /3 and Ex-PA /4. Accused have transferred their houses in favour of minor legal heirs of deceased vide register deed bearing No.78/1 to 81/1 executed and attested on 01-02-2013. Original Registered Deeds were handed over to major legal heirs namely Amanullah for deceased Saifeerullah. Abdul Hanan for deceased Ahmat Ali and Azmatullah for deceased Azle Mula and Arshedullah who is joint statement to this effect recorded and brought on file along with photo copies of their CNICs. Copies of aforesaid Registered Deeds were also brought on file.

Learned PP in view of aforesaid facts of the case and compromise effected between complainant and accused party plus transfer of properties in the names of minor and legal heirs of deceased as their shares in diyat expressed no objection on acceptance of compromise as he stated at bar that though he offence is not compoundable but in larger interest of society and also legal heirs of deceased he did not object to the amicable statement and acquittal of accused.

AIC
/p

So far accused Momin Khan is concerned, charge is framed against him today. Statements of legal heirs so far recorded to not patchup of them with him though generally compromise is with accused party but specific statements are required), therefore he is sent to judicial lockup and he produced before the court the on 11-03-2013. Major legal heir of deceased be summoned for statements.

Announced

17.03.2013

SYED ASGHAR ALI SHAH
JUDGE ANTI TERRORISM COURT
PESHAWAR.

ATC
HD

Continued
Order No. 75
dated
11.03.2013 order

accused party rather they stated before the court to have compromised with accused facing trial and as such legal infirmity was available in the case, therefore accused facing trial was not acquitted with them and following legal heirs of deceased were summoned to record statements to clarify their position removing the infirmity.

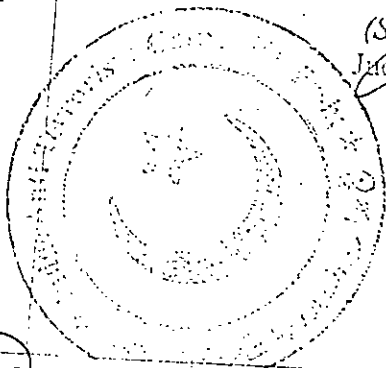
(1) Abdul Haman father of deceased Rahmat Ali. (2) Amanullah father of deceased Saferullah. (3) Azratullah son of deceased Fazle Mula and brother of deceased Arshullah. (4) Bakhtiar Ali. (5) Niaz Mohammad. (6) Ata Mohammad. (7) Kifayatullah and (8) Abid Ali sons of deceased Taj Mohammad.

All the aforesaid legal heirs recorded their statements stating to have compromised with accused facing trial through the intervention of elders and waving their right of Diyat. That they have got no objection on the acquittal of accused. It is pertinent to note that minor legal heirs of deceased have been paid their Diyat Shares in the shape of houses transferred to them through Register Deeds handed over to the elders of those minor legal heirs in court.

— As genuine compromise has been effected with accused facing trial Momin Khan to the satisfaction of learned PP for state with no objection from his side, therefore in larger interest of society specifically of legal heirs including minors of deceased, the accepting of compromise will be a proper approach and accordingly confirmed. Accused is acquitted on the basis of compromise with legal heirs of deceased. He is in custody, be released forthwith if not required in any other case. Case property, if any, be disposed off as per rules. Case file be consigned to record room after completion.

Announced
13.03.2013

(Syed Asghar Ali Shahi)
Judge, ATC-III, Peshawar



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13/3/13

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accused party rather they stated, before the court to give compromised with accused facing trial and as such legal infirmity was available in the case, therefore accused facing trial was not acquitted with them and following legal heirs of deceased were summoned to record statements to clarify their position removing the infirmity.

(1) Abdul Haman father of deceased Rahmat Ali (2) Amanullah, father of deceased Fazle Mula and brother of deceased Arshadullah (4) Bakhtiar Ali (5) Abid Ali son of deceased Taj Mohammad.

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Announced.

13-03-2013.

(Syed Asghar Ali Shah)
Judge, IC-III, Peshawar.


ATC
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(11)

Annexure "C"

BEFORE MANZOOR QADIR ADDITIONAL SESSIONS JUDGE SWABI AT LAHOR

Attested to



Hadd Case No..... 02/HC of 2013
Date of original institution.....02.03.2013
Date of institution in this court.....12-04-2014
Date of Decision.....29.05.2014


The State...Versus...

1. Momin Khan s/o Mukhtiar Ahmad
Resident of Sar Dehri Charsada
presently residing at Pabbi District Nowshera.
2. Ajab Khan s/o Mukhtiar Ahmad
Resident of Sar Dehri Charsada..
residing at Pabbi District Nowshera.
3. Muhammad Zaib s/o Hamza Khan
R/o Sar Dehri District Charsada.
4. Shoukat Khan s/o Akhoon Zada
R/o Dargai District Mardan.

.....(Accused facing trial in custody)

5. Salman s/o Ashraf Khan
Resident of Shah Zaman Kilay Hatyan.

(Absconding accused)


Additional Sessions Judge
Lahor District Swabi
29.05.014

CHARGE U/S-17(3) OFFENCES AGAINST PROPERTY ORDINANCE , 1979/324/148/149/411 PPC/13 AO VIDE FIR NO.81 DATED 01-02-2013 OF POLICE STATION LAHOR, SWABI

CASE ARGUED BY.

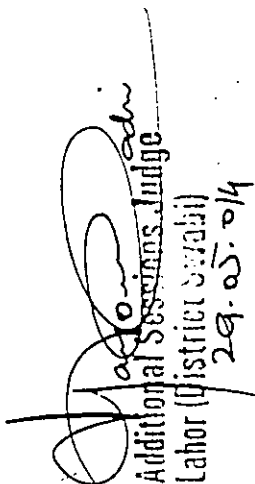
- i. Muhammad Tariq, Learned Special Public Prosecutor For the State Assisted by




- ii. Mr. Mubashir Shah, advocate, learned counsel for the complainant.
- iii. Mian Sher Akbar Bacha, advocate, learned counsel for the accused facing trial.

JUDGMENT:

1. The accused Momin Khan, Ajab Khan, Muhammad Zaib and Shoukat Khan, faced trial in case FIR No.81, dated 01-02-2013 u/s 17 (3) Haraba /324/148/149/411PPC/13 AO registered at Police Station Lahor, (District Swabi).
2. Brief facts of the case as gathered from the murasila Ex.PA/1 based FIR Ex.PA are that complainant Umar Wahid on 01-02-2013 was going to Islamabad along with his companion/servant, Shahpur Khan via Motorway and also carrying cash amount of Rs.11.2 million and when they reached in the limits of village Jalbai, a jeep overtook them and 5 persons wearing police uniform started searching them and recovered the whole amount along with the licensed klashnikove and pistol of the complainant and his companion. The uniformed persons told them that they will take them to Islamabad for further investigation, however, after some time the complainant and his companion were forced to de-board from the vehicle and the accused fled away from the spot in Jeep. The complainant and his companion, through their brother contacted the local police present nearby at the motorway, who chased the vehicle of the accused. The police Squad under the supervision of Gul Jamal DSP overpowered, the accused facing trial, wearing police uniform were arrested and recovered the looted currency along with license weapon of the complainant and his companion. On the report, case was registered against accused facing trial along with


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absconding co-accused Salman for the commission of the offence.

3. After completion of investigation complete challan against the accused facing trial was submitted for trial, which was entrusted to this court. The accused were produced in custody. Copies of the statements and evidence collected against the accused facing trial were supplied to them U/s 265-C(1) Cr.PC, and charge was framed, u/s 17(3) Haraba /148/149/411 PPC/13 AO, against the accused facing trial to which they pleaded not guilty and claimed trial. PWs were summoned along with case property. Prosecution was, however, permitted to lead evidence U/S 512 Cr.PC against the absconding co-accused.
4. Prosecution for establishment of charge, examined 09 PWs in all. A gist of the prosecution evidence are as under.
5. Umar Wahid appeared as PW-1 and stated that on the day of occurrence, he started from village along with PW Shahpur as he already contacted him so he picked him up from the stop of Shah Zaman Qalan. They came to Mardan wherefrom they proceeded to Charsada, met a friend and then they left for Islamabad. They having amount of Rs.11.2 million, one licensed klashnikove and one 9 MM pistol licensed having by PW Shah Pur. When they crossed Rashakai interchange and reached in the limits of Jalsai Mera, a white colour Jeep overtook them in which five persons in police uniform duly armed were present who signaled them to stop. They de-boarded them from car and started searching of his motorcar and took into possession his klashnikove, 9 MM pistol from PW Shahpur and the amount of Rs.11.2 million from the rear seat. They hand cuffed them and inquire the matter that for what purpose he was going with such a huge amount to Islamabad. He was taken by them in their jeep but suddenly alighted them from their jeep and run away. Where after he

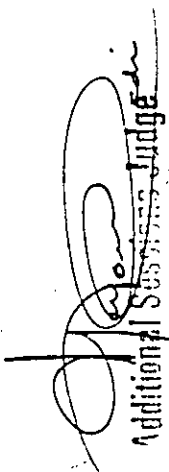
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(14)

contacted his brother namely Sajjad and narrated the story to him, who told him that these persons are not police personnel and might be dacoits. During this time a police mobile came and inquired him that what has happened, he narrated the story to the police and the police mobile started chasing the white Jeep. The persons in white Jeep left their Jeep on motorway and ran away in the fields where from they were arrested by the local police while one person make good his escape. At about 04.00 p.m, he made report on the spot while the occurrence took place at 02;30 p.m. He also produced the license copies of klashinkove and 9 MM to the local police. He charged the accused facing trial Momin Khan, Shaukat, Ajab Khan and Mohammad Zeb and one unknown person for the commission of offence.

6. Shahpur appeared as PW-2 and stated that he is private servant of the complainant and at 12.15 p.m. Umar Wahid telephonically contacted him and at about 12.30 p.m when complainant Umar Wahid reached, he along with Umar Wahid went to Charasada and from there they left for Islamabad and when they reached in the limits of village Jalsai, a white jeep over took them and 05 persons having police uniform de-boarded from the jeep and searched their vehicle. They took 11.2 millions rupees and one klashinkove from car and 9 MM pistol from his possession. In the meanwhile, a police mobile reached there to whom, Umar Wahid narrated the story and the police started chase of the jeep. After two hours, they were informed that police have arrested the accused, where after complainant Umar Wahid reported the matter to the police in the shape of murasila.
7. Raza Khan MHC appeared as PW-3 and stated that on receipt of murasila, he incorporated the same into FIR Ex.PA.
8. Fazal Miraj S.I appeared as PW-4 and stated that on the day of occurrence i.e 01-02-2013 he was on routine gash of the

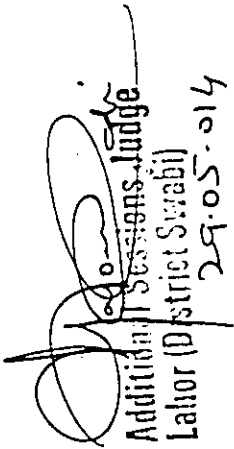

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Illaqa, there a white motorcar with two passengers was parked near Yar Hussain U turn while a Jeep was running in high speed. The passengers of the car disclosed to him that some persons had snatched money from them, so he started chase of the Jeep. At some distance the Jeep was stopped and the accused started running towards the direction of Jalsai Mera. In the meanwhile, he passed message on mobile that such like occurrence took place and he was in the chase of culprits and sought help from them. During this time cross firing took place between the police party and the culprits. In the meanwhile, another police party also reached and apprehended the principal accused Momin from a cattle kotta along with a klashinkove. DSP and SHO along with police party reached and the remaining accused were arrested. He handed over the accused along with Kalashnikov to the SHO.

9. Abdul Azeem ASI, appeared as PW-05 and stated that he is the marginal witness to the recovery memo Ex.PW5/1 vide which the I.O took into possession two number plates of black colour having No. BB7848 KPK Peshawar Ex.P-1 and beneath the seat one ID card Ex.P-2 of police department in the name of Momin Khan having designation of Sub-inspector, one ID card in the name of Ajab Khan police department with the designation of HC Ex.P-3, three photographs in uniform with the designation of Head constable Ex.P-4 and one CNIC Ex.P-5. Similarly, he is also marginal witness to the pointation as well as recovery memo Ex.PW5/2 vide which on the pointation of accused Momin Khan, vide which the I.O recovered Rs.3,00,000/- (Ex.P-6), which was concealed by the accused after the occurrence and from the remaining three accused got recovered one klashinkove No.56-a-19064686 having fixed magazine loaded with 70 rounds of 76.62 bore Ex.P-7 and one 9 MM pistol No.005988 along with 37 rounds of 9 MM Ex.P-8. In his

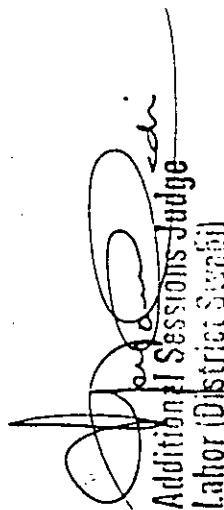

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presence, the accused facing trial led the police party to the spot and pointed out various points of their presence and the pointation memo was duly prepared by the I.O which is Ex.PW5/3. His statement was also recorded by the I.O u/s 161 Cr.PC.

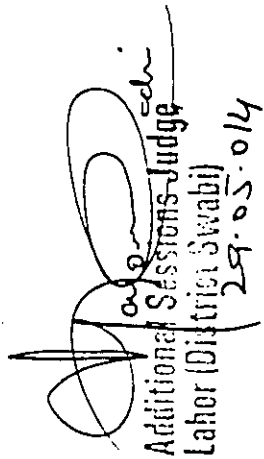
10. Qamar Zaman Khan ASI appeared as PW-6 and stated that, he is the marginal witness to the recovery memo Ex.PW6/1 vide which Fazal Meraj Khan S.I produced one kalakove 222 bore No.A8877 having fixed charger containing 11 rounds of the same bore which was recovered from accused Momin at the time of his arrest and the same was sealed into parcel which is Ex.P-9. He is also marginal witness to the recovery memo Ex.PW6/2 vide which one 30 bore pistol No.A2214 Ex.P-10, with fixed charger containing four rounds of the same bore along with Rs.20,00,000/- with denomination of currency notes of Rs.1000/- each were recovered from accused Ajab Khan. He is also the marginal witness to the recovery memo Ex.PW6/3 vide which one 30 bore pistol country made Ex.P-11 having fixed charger containing three rounds was recovered from accused Mohammad Zeb and was sealed into parcel, marginal witness to the recovery memo Ex.PW6/4 vide which one 30 bore pistol No.A 4551 Ex.P-12 fixed charger containing four rounds of the same bore along with Rs.70,50,000/-, wherein Rs.25,00,000/- were denomination of currency notes of Rs.5000/- each. Rs.45,00,000/- were of currency notices denomination of Rs.1000/- each and Rs.50,000/- were of currency notes denomination Rs.1500/- each from accused Shaukat Khan. He is also marginal witness to the recovery memo Ex.PW 6/5 vide which Fazal Miraj Khan S.I produced a motorcar white colour without number / applied for, belonging to complainant Umar Wahid and he is also marginal witness to the recovery memo Ex.PW6/6 vide which police uniform consisting of


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Qameez, trouser, black cap, blue jersey on the shoulders of which three stars and police badge of Inspector Rank were fixed was taken out from accused Momin Khan, while from accused Ajab Khan, Mohammad Zeb and Shoukat police uniform consisting of Qameez, trousers, blue jersey on the shoulders of which police badges were fixed along with black caps were produced as all the four accused were wearing the said uniforms upon their plane clothes. The said uniforms were taken into possession and were sealed into a parcel. The uniforms are Ex.P-13. The PW also verified the recovery memo Ex.PW6/7 vide which complainant Umar Wahid produced a license coy regarding klashnikove No.56-1-9064686 and Shah Pur produced a license regarding 9 MM pistol. The PW also verified the recovery memo Ex.PW6/8 vide which Fazal Miraj Khan S.I produced Jeep No. Peshawar-0129 white colour used by the accused during the occurrence.


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11. Wafadar Khan S.I appeared as PW-7 and stated that, he is the investigation officer of the instant case, proceeded to the spot, prepared site plan Ex.PB and recorded the statements of PWs u/s 161 Cr.PC. The PW verified application Ex.PW7/1 vide which he sent recovered weapons to the firearms expert for opinion, verified the recovery memo Ex.PW5/1 (already exhibited) vide which he took into possession two number plates EX.P-1, one ID card of police department Ex.P-2, one ID card in the name of Ajab Khan Ex.P-3 of police department, three photographs in uniform Ex.P-4 and one CNIC Ex.P-5. He produced the accused for taking their police custody to the court vide application Ex.PW7/2. He interrogated the accused and during custody, the accused led the police party to the spot and on the pointation of accused Momin Khan, he recovered Rs.3,00,000/- Ex.P-6, which was concealed by him, while the remaining three accused Ajab



Khan, Mohammad Zeb and Shaukat pointed out the place wherefrom he recovered klashinkove Ex.P-7, fixed with a charger loaded with 70 rounds of 7.62 bore and one 9 MM pistol along with 37 rounds. The said articles along with the snatched amount of Rs.3,00,000/- were took into possession vide memo already exhibited as Ex.PW5/2. He also prepared the pointation memo (already exhibited as Ex.PW5/3) at the instance of accused. He also prepared the sketch of the places wherefrom the recoveries were effected which is Ex.PB/1. He recorded the statements of PWs u/s 161 Cr.PC. The PW verified the application Ex.PW7/3 vide which he produced the accused for confessional statement, which they refused. The PW also verified the application Ex.PW7/4 vide which he sent the recovered klashinkove along with 9 MM pistol to Armourer for the opinion. He also placed on file the photocopy of motorcar belonging to complainant Umar Wahid. The PW verified the FSL report Ex.PK regarding the Jeep belonging to the accused party. Verified the fire arms expert report Ex.PK/1. The PW verified application Ex.PW 7/5 for issuance of warrants u/s 204 Cr.PC and application Ex.PW7/6 for issuance of proclamation notice against the absconding co- accused Suliman.

[Signature]
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12. Dr. Ashgar Ali Shah appeared as PW-8 and stated that on 02-2-2013 at 10.00 a.m, he medically examined the injured Momin Khan s/o Mukhtiar Khan and found the following.

Injured conscious with history of firearm.

On examination A grazing firearm wound size about 03 cm in length skin deed on the forehead with right side lateral aspect of scalp.

Nature of Injuries. Shajjah Khafifa.

The kind of weapon used firearm.

The doctor verified medico legal report Ex.PW8/1, his endorsement on the injury sheet Ex.PW8/2.

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On the same day, he also examined the injured namely Shaukat and found the following.

Injured conscious and well oriented in time and space and person H/O firearm injuries right foot.

On examination. Firearm entrance wound on the right foot lateral aspect size about $\frac{1}{2} \times \frac{1}{2}$ cm in dia.

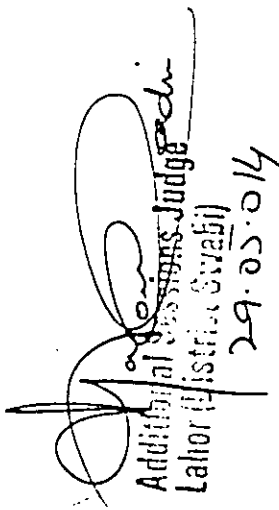
Referred to BMC for X-ray and surgical OPD.

Nature of injuries Jurh Ghyer Jaifah Mutalahima.

Kind of weapon used firearm.

The doctor verified the MLR Ex.PW8/3 and his endorsement on injury of the injured Ex.PW8/4.

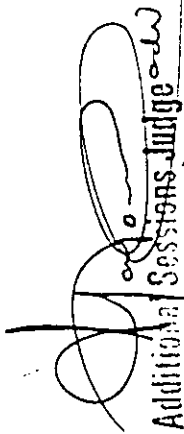
13. Muhammad Fayaz Khan SHO appeared as PW-9 and stated that, on 01-01-2013 he along with FC Akbar Ali, Fahim Dil, Adnan were on gasht of Illaqa, when in the meanwhile he received information through wireless from Fazal Miraj Khan S.I Incharge Cobra Mobile No.2 that some unknown persons had snatched money from owner of the motorcar on motorway and that the said persons were being chased who at some distance left their jeep on road which had been seized by him while the accused were running on foot in the direction of Jalsai Mera and that he along with police constable were behind them. He asked for sending more police force towards Jalsai. On this information, he along with police party, cobra mobile No.3, Qamar Zaman, Murtaza and Asad Ali ASIs and FCs Arif Sher, Younas Khan of elite force, Wafadar Khan S.I, Zaiullah ASI along with other constables rushed to the spot where under the command of Gul Jamal Khan, the then DSP Lahor along with Niaz Wali, Atif and Ijaz gunners started chasing the accused and accused Momin Khan was overpowered by Fazal Miraj Khan S.I and from his possession one klakove 222 bore No. A8877 along with fixed charge having 11 rounds was recovered. Similarly accused Ajab Khan, Muhammad Zeb and Shoukat were also overpowered


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duly armed with pistol and from the possession of Ajab Khan one pistol of 30 bore No.A2214 along with fixed charger having four rounds and cash amount of Rs.20,00,000/-, denomination of Rs.1000/- each currency notes were recovered, from accused Muhammad Zeb one 30 bore pistol without number with fixed charger having three rounds and from the possession of accused Shaukat one 30 bore pistol No. A4551 with fixed charger having four rounds along with cash amount of Rs.70,50,000/- was recovered. The above amount consisting of Rs.25,00,000/- in the denomination of Rs.5000/-, Rs.45,00,000/- in the denomination of Rs.1000/- and remaining amount of Rs.50,000/- was in the denomination of Rs.500/- currency notes. Thereafter, he returned to the place of occurrence where complainant Umar Wahid reported the matter to him at 1600 hours. He recorded his report in the shape of murasila Ex.PA/1. The recovered amount, the crime weapons, jeep, No. KPK-PR-0129 which was left by the accused were took into possession vide recovery memo, as accused Momin Khan was a proclaimed offender in case FIR No.724 dated 08-09-2010 u/s 302/324/148/149 PPC/7ATA of police station Pabbi. The accused were arrested as they have also made firing upon the police party while using the right of self defence, the police also fired in retaliation. One accused whose name was then unknown escaped from the spot of occurrence. He also prepared the card of arrest Ex.PW9/1 to Ex.PW9/4 in respect of the accused facing trial. He also prepared recovery memo already exhibited as ExPW6/1 in respect of kalakov 222 bore along with fixed charger containing 11 round from possession of accused Momin Khan. The Kalakov is Ex.P-9, prepared the recovery memo Ex.PW6/2 vide which a 30 bore pistol No. A2214 Ex.P-10 along with four rounds and Rs.20,00,000/- consisting of denomination of Rs.1000/- each from accused Ajab Khan at

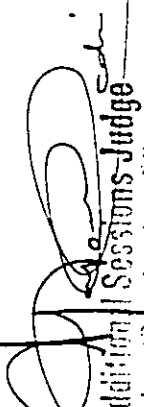

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the time of arrest, prepared recovery memo Ex.PW6/3 vide which a 30 bore pistol country made without number alongwith three rounds of the same Ex.P-11 was took into possession from accused Mohammd Zaib. The PW verified the recovery memos Ex.PW6/4 vide which one 30 bore pistol No. A4551 along with fixed charge containing four rounds of the same bore Ex.P-12 and Rs.70,50,000/- consisting of 25,00,000/- were of 500/- each currency notes, Rs.45,00,000/- were of Rs.1000/- each and Rs.50,000/- of Rs.5000/- each from accused Shaukat, recovery memo Ex.PW6/5 vide which the motorcar white colour belong to complainant Umar Wahid was took into possession which was already taken into possession by Fazal Miraj Khan S.I, verified the recovery memo Ex.PW6/6 vide which the police uniform wearing by the accused Momin Khan and other accused were took into possession. The PW verified the injury sheet Ex.PW8/2 of the accused Momin Khan and injury sheet Ex.PW8/4 of accused Shaukat. He also took into possession license copy of klashinkove regarding one 9 MM pistol produced by complainant vide recovery memo already Ex.PW6/7. He also produced the copy of receipt regarding the return of recovered / snatched amount of Rs.90,50,000/- Ex.PC, vide which the said amount was returned to complainant Umar Wahid. After completion of investigation by the I.O, he submitted complete challan against the accused.

14. After the conclusion of prosecution evidence, statements of all the accused facing trial U/S 342 Cr.PC were recorded wherein they all denied the charges and professed their innocence. All the accused opted not to be examined on oath nor produced their defense evidence.
15. It was submitted by the prosecution and the complainant side that the accused facing trial are directly charged in the promptly lodged FIR by the complainant for the commission


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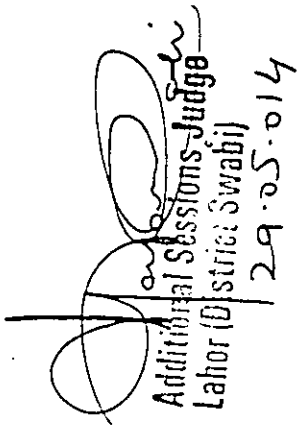


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of offence; that no malafide or ulterior motive, whatsoever, do exist for false implication of the accused facing trial; that no malafide has been attributed to the local police; that ocular account, recovery of looted money, klashnikove belonging to complainant, kalakove 222 bore and one 30 bore pistol belonging to PW Shahpur and police uniforms connected the accused facing trial with the commission of offence. That the prosecution produced two eyewitnesses of the occurrence to corroborate the report, who gave consistence oral account in support of the prosecution version. That the site plan of the spot and MLR of the accused Momin and Shoukat fully supports the prosecution case; that the police recovered the looted money within two hours of the occurrence from the direct possession of the accused facing trial and that during interrogation the looted money was also recovered by the I.O on the pointation of the accused facing trial; that the prosecution has proved its case against the accused facing trial beyond any shadow of doubt; He relied on the following judgments of the Hon;ble Superior Court;

“2003 YLR, 1996 and 2001 SCMR 1774 for inconsistencies in the statements of the PWs”.

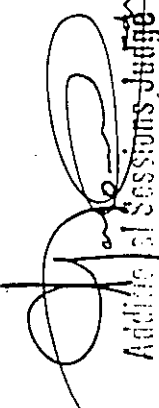
16. Conversely the learned counsel for the accused facing trial submitted that the accused facing trial have directly been nominated for the commission of offence by the complainant in the FIR but the FIR was lodged after delay of two hours after consultation and deliberation; that site plan Ex.PB shows that the complainant car was in direction of Mardan and accused Jeep is in the direction of Islamabad, which does not support the case of the prosecution; that no confessional statement of any of the accused is available on record to connect the accused facing trial with the commission of offence; that the statement of complainant and PW suffers


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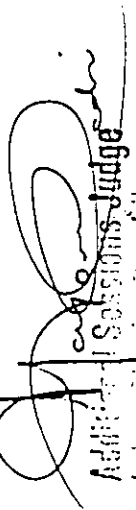
from discrepancies, inconsistencies and improvements; that there exists material contradictions in the contents of case FIR and statements of the PWs recorded in the court during trial; that the alleged pointation of the accused have not been proved by the prosecution, and the evidence brought on record in this respect, is not admissible; that the local police has not prepared any site plan of the place of the arrest of the accused facing trial nor any empty has been recovered from the place of either side; that prosecution has miserably failed to prove its case against the accused facing trial; that the complainant of the case is an international drug dealer and that on the day of occurrence complainant contacted the accused facing trial to come to Swabi and received the amount as fixed by a jirga in lieu of death of a relative. That the case of prosecution is full of doubts, therefore, the benefits of the doubt may be extended to the accused facing trial as a matter of right. He prayed for the acquittal of the accused facing trial.

17. Record in the light of arguments of learned counsel for parties would transpire that the case of prosecution is primarily based upon direct ocular testimony of complainant, Umar Wahid (PW-01) and eyewitness Shahpur (PW-02), who allegedly have seen the accused facing trial participating in the crime and circumstantial pieces of evidence such as the recovery of incriminating articles i.e crime weapons, looted money, jeep, recovery of police Uniforms, medico-legal reports.
18. The ocular testimony originated from the initial report made by the complainant Umar Wahid on the spot of occurrence and specifically nominated the accused facing trial for the commission of offence. In the body of report, complainant had mentioned that on 01-02-2013 he along with his servant Shah Pur was going to Islamabad via Motorway and carrying


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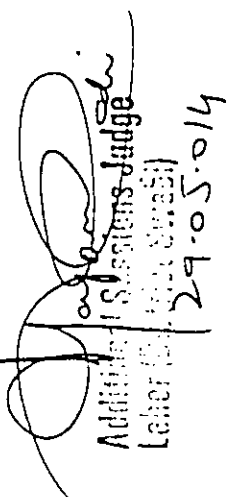
Rs.11.2 million cash amount in their vehicle and when they reached in the limits of village Jalbai, a Jeep overtook them and 5 persons wearing police uniform started searching them and took the whole amount along with the licensed klashnikove of complainant and 9 MM pistol of the eyewitness Shah Pur. The uniformed persons told them that they will take them to Islamabad for further investigation, however, after some time, the complainant and his companion were forced to de-board from the vehicle and the accused fled away from the spot in jeep. While, appearing in the witness box, PW-01 confirmed the contents of the FIR, wherein he had charged the accused facing trial along with absconding co-accused. Similarly PW-02 Shah Pur also corroborated the version of PW-01 by stating therein that on the day of occurrence at 12.30 p.m when he along with the complainant were proceeding to Islamabad and when they reached in the limits of village Jalsai, there a white jeep over took them and 05 persons having police uniform de-boarded them from the jeep and inquired and started searching their vehicle. During search, they took 11.2 millions rupees and one klashinkove which were lying in the rear seat and also took a 9 MM pistol from his possession. No contradiction on material particular has been introduced with respect to deposition of others. Thus, the ocular testimony remained consistent with the contents of initial reports and the statement of complainant emerged afterwards yielding charge against the accused named in the FIR. Thus, the ocular testimony is adjudged to be coherent, reliable and trustworthy. In the circumstances especially consistency in the evidence of the complainant and eyewitness, had indicated availability of the witness at the place of incident at the time of alleged occurrence. Both said witnesses had made their statements in clear terms given detail of occurrence as eyewitness and identified the accused


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facing trial as culprits. Nothing material on the part of the accused persons in cross examination of witnesses were brought to the effect that they were not available at the time of occurrence or they were procured to give testimony. Both the prosecution witnesses were subjected to lengthy cross examination but they remained consistent on all material particulars of the prosecution case. Incident was a day light occurrence and accused remained with the said witnesses for sufficient time to complete their mission and witnesses had close proximity to remember them so as to identified them later. Statements of the witnesses qua the identity of the accused in the court inspired confidence and the witnesses were consistent on all the material points. Nothing was available to suggest that witnesses deposed falsely due to enmity.

19. Now coming to this contention of the learned defense counsel that the witnesses of the occurrence examined in the witness box are contradicting each other and on the basis of which this court cannot held the accused facing trial guilty of the offence. The perusal of the statements of PW.01, and PW.02, would reveals that they have furnished a natural and straightforward account of the events before the occurrence and after the occurrence by recounting the facts mentioned in the case FIR. Both the PWs have clearly and distinctly pointed out the events which took place in the occurrence and the places (as shown in the site plan) where from the car of the complainant was stopped and by snatching a huge amount along with klasnikove and 9 MM bore pistol from the complainant party. Moreover, the defence inspite of lengthy cross examination on the PWs has failed to shatter their testimony and the defence could not extracted from their mouths any thing adverse as could diminish the probative


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worth of their testimony. More so, there is absolutely no conflict between the account furnished by them and the entries made in the site plan. Furthermore, there exists no improvements and material contradictions in the testimony/ocular account furnished by PWs 1 & 2. Though there exists minor variations/ contradictions in the statements of PWs but the same are not material one because usually witnesses, after a lapse of sufficient time and in the instant trial PWs/ eyewitnesses have deposed after a lapse of one year, can not be expected that they would depose the ocular version with mathematical precision in such a traumatic condition. Hence, inconsistencies referred by the learned defence counsel are neither material nor of any consequence and could not be made a reasonable ground for discarding the testimony of the same eyewitnesses as the same minor inconsistencies with the passage of time are bound to creep-up in the depositions of eyewitnesses.

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20. As for as this argument of the learned defence counsel is concerned that since PW-2 (eyewitness) is the servant of the complainant and due to such relation, his statement is not trustworthy nor confidence inspiring and have got no evidentiary value and can not be relied for the conviction of the accused facing trial, however, this court holds the view that relationship itself is no ground to discard the testimony of an eyewitness unless it is shown that the same witness is inimical towards the accused facing trial and interested one. Furthermore, the superior courts in a number of judgments has upheld this principle that when the testimony even of a sole eyewitness is found trustworthy, independent and confidence inspiring and that the same witness is not inimical and interested against the accused and when the defence has failed to bring on record any material contradiction or dishonest and

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intentional improvements (like in the instant case) then even the sole statement of the same eyewitness would alone be sufficient to establish charge against the accused without any other corroborative evidence.

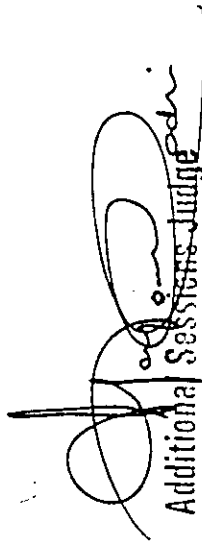
21. It is pertinent to mention here that, the accused facing trial took the plea that complainant and his other family members are international drug smugglers and are in practice of sending innocent people to foreign country on the pretext of providing them jobs but through them complainant smuggling narcotics and earlier to the occurrence, one of their relative was deceived and was arrested and sentenced to death in Saudi Arabia. The matter was raised with the complainant party and ultimately a jirga imposed one million rupees as compensation to be paid to them and on the day of occurrence complainant contacted them on telephone from Islamabad that he had arranged money for them and asked them to come to Swabi. On this they (the accused facing trial) came to Swabi and they met in a fish hut, where complainant paid them Ninety Lacs rupees and after taking tea they started back to their village but when they reached near U turn, the complainant all of a sudden opened firing on them, as a result they stopped the jeep, alighted from it and the complainant started false story of robbing him by them. They jointly came to police station in the company of other police party where they surrendered their selves to the police voluntarily and this fake case was registered against them. The defense also placed on file a copy of judgment Ex.DA and Ex.PD/1 which showing the character of the complainant. In the opinion of this court, this plea of the defence is after thoughts as the defence has failed that which relative of the accused facing trial was sentenced to death in Saudi Arabia. Even name of the said relative is not appeared on the whole file neither any particulars has been

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Ally

provided to this court that the said relative traveled to Saudi Arabia in which airline nor any death certificate is available on file. Similarly none of the jirga member is produced in the defence nor any written agreement showing that jirga imposed one Cror fine on the complainant. Thus, this court cannot rely on the plea of the defence that complainant is an international drug dealer and he send the relative of the accused facing trial to Saudi Arabia, where he was sentenced to death and jirga imposed one Cror fine on the complainant, thus, the plea of the ^{defence} is here by discarded.

- 22 The ocular testimony is supported by physical corroboration of recovery of looted money of Rs.20,00,000/- and one 30 bore pistol from the possession of accused Ajab Khan vide memo Ex.PW6/2, looted money of Rs.70,50,000/- and one 30 bore pistol bearing No.A4551 with fixed charger containing 4 live rounds from the possession of accused Shoukat Khan, one kalakove 222 bore bearing No.A8877 with fixed charger containing 11 live rounds Ex.P-9 from the possession of the accused Momin Khan vide recovery memo Ex.PW6/1, police uniforms Ex.P-13 which was wearing by the accused facing trial vide recovery memo Ex.PW6/6, two number plates bearing Nos BB7848 KPK, Peshawar Ex.P-1, one ID Card of police department in the name of accused Momin Khan Ex.P-2, one ID card in the name of accused Ajab Khan Ex.P-3, three uniformed pictures Ex.P-4 and one Computerized NIC Ex.P-5 recovered from the Jeep vide recovery memo Ex.PW5/1, recovery of looted money of Rs.3,00,000/- Ex.P-6, one Kalashnikov bearing No.56-1-19064686 with fixed charger, loaded with 70 live rounds Ex.P-7 and one 9 MM bore pistol bearing No.005988 along with 37 live rounds Ex.P-8 on the pointation of the accused facing trial vide pointation memo Ex.PW5/2, pointation of the spot Ex.PW5/3


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and recovery of one 30 bore pistol without number with fixed charger containing three live rounds Ex.P-11 from the possession of accused Muhammad Zeb vide recovery memo Ex.PW6/3, recovery of motorcar of the complainant, without number vide recovery memo Ex.PW6/5 and Jeep of the accused facing trial, would provide physical corroboration to the version of prosecution and initial report of the complainant, as the witnesses of these recoveries have not been shattered by the defense. Their testimony emerged to be consistent and un-biased. The evidence furnished by all the PWs fully supports ocular account of the spot and manner and time of the occurrence as narrated in the FIR. Similarly marginal witnesses to the articles recovered from the possession of the accused facing trial as well as on the pointation of all the accused, supports the circumstantial evidence against the accused facing trial. Moreover, the report of Fire Arms Experts in respect of the recovered, one 222 bore rifle, two 30 bore pistols, further corroborate the circumstantial evidence.

29.05.04
Judge
Lahor District Court

23 Though learned defense counsel raised the objection that prosecution case is based on circumstantial evidence, therefore, it could not have been concluded with certainty that the accused facing trial were responsible for the offence and the occurrence in the instant case is unseen. This court is not agree with the contention of the learned defence counsel because it may be noted here that circumstantial evidence is the evidence of basic facts wherefrom, further facts has inference or natural conclusion, according to reason and logic may be deduced. However, its strength, as per circumstances of the case often is stronger and more satisfactory than direct evidence because it is not liable to delusion or fraud and, therefore, in some cases, where direct evidence is either not

Also

available or witnesses are not deemed wholly credible, circumstantial evidence, may be more convincing. The test is that it should not only relevant but consistent and conclusive as well and should be so convincing that circumstances or facts proved on record must lead to a single conclusion as in the instant case where the prosecution has brought on record all the material facts and recovered the looted money, one 9 MM bore pistol, one klashinkove and police uniforms etc, which reasonably connected the accused facing trial with the commission of the offence. Thus, objection of the learned defense counsel is hereby discarded.

24 Coming to the medical evidence, as per record the accused facing trial after the occurrence, on seeing the police party started firing on the local police and the local police also fired in their self defence, as a result of which accused facing trial Shoukat and Momin Khan received injuries on their bodies and were arrested in injured condition by the local police, prepared injury sheets Ex.PW8/2 and Ex.PW8/4 respectively and got examined from the doctor, who submitted his report in the shape of MLRs which are Ex.PW8/1 and Ex.PW8/3 and according to Medico-legal evidence placed on file, would clearly suggest that both the accused facing trial were received one injury each on their bodies. Thus, the medico-legal evidence being not shattered supports the prosecution version.

25 All the above facts have led me to hold that the entire pieces of ocular and circumstantial evidence are reaching the neck of the accused facing trial named Momin Khan, Shoukat Khan, Ajab Khan and Muhammad Zaib.

26 The accused named Momin Khan aged about 36/37 years s/o Mukhtiar Ahmad r/o village Dagbehsud, District Nowshera, accused Shaukat Khan aged about 27/28 years s/o Akhunzada

Additional Sessions Judge
Lahore (District Swabi)
29.05.04

Attest

r/o Dargai, District Malakand, accused Ajab Khan aged about 46/ years s/o Mukhtiar residents of village Sar Dehri District Charsadda, accused Muhammad Zaib aged about 29 years s/o Hamza Khan resident of village Sardehri District Charsadda are found guilty but since the proof required for punishment u/s 7 and 16, the Offences against Property (Enforcement of Hudood) Ordinance, 1979 is not available as the test of Tazkiya Tul Shuhood is not available, therefore, the above named accused are hereby, convicted under section 392 PPC and sentenced to 10 years R.I and to pay fine of Rs. 2,00,000/- (two Lacs), collectively. In case of default of fine, the convicts shall undergo further six months S.I, each. Benefit of 382-B Cr.PC is also extended to the convicts. Attested copies of this judgment consisting upon (21) pages is also handed over/supplied to all the convict/accused free of cost in term of section 371 Cr.P.C and to this effect the convict/accused thumb impressed the margin of the order sheet. All the convict/accused have already in custody, they are sent to jail through conviction warrant.

- 27 As regards the charge u/s 148/149 PPC is concerned, it is established on record that accused facing trial had participated in the commission of the offence and their presence had been proved on record and it is also proved on record that all the accused facing trial were armed with deadly weapons and were member of that unlawful assembly and in the prosecution of their common object. All the accused, are, therefore, convicted and sentenced to two years R.I and to pay fine of Rs.5,000/- each and in default of payment of fine, the accused shall further undergo one month S.I. Benefit of section 382-B Cr.PC is also extended to all the convicts/accused.

Additional Sessions Judge
Lahor (District Swabi)
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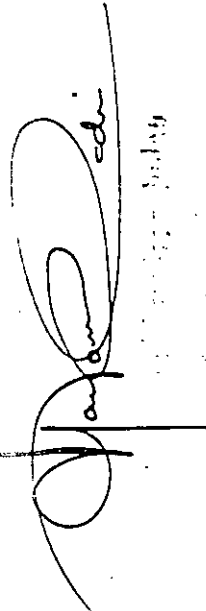
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28 So for as, section 13 AO is concerned, it is also on record that prosecution has also been able to prove its case against the accused facing trial for the recovery of one klakove 222 bore No.A8877 containing 11 live rounds from possession of accused Momin Khan, one 30 bore pistol bearing No.A2214 with fixed charge containing 4 live rounds from possession of accused Ajab Khan, one 30 bore pistol without number with fixed charger containing three live rounds from possession of accused Muhammad Zaib, one 30 bore pistol bearing No.A4551 with fixed charge containing 4 live rounds from the possession of accused Shaukat and are, therefore, convicted u/s 13 AO and sentenced to (03) three year R.I and fine of Rs.2,000/- each and in default of the same the accused shall further undergo one month S.I. Benefit of section 382-B Cr.PC is also extended to all the convicts/ accused.

29 As regards the charge u/s 411 PPC against accused facing trial; it is held that the accused facing trial retained the stolen property having the knowledge that the same is a stolen property, therefore, they are convicted u/s 411 PPC and sentenced to two years R.I and to pay fine of Rs.8000/- collectively and in default of payment of fine, all the accused/ convicts shall further undergo one month S.I. Benefit of section 382-B Cr.PC is also extended to all the convicts. The above mentioned sentences shall run concurrently.

30 Prosecution has also made out the existence of a prima facie strong case against the absconding co-accused Suliman, therefore, perpetual warrant of arrest be issued against him and his name be entered in the register of Proclaimed Offenders kept in the relevant Police Station, and proceeding U/s 88 Cr.PC be initiated against them.

31 Case property i.e klakove 222 bore No.A8877 containing 11 live rounds, one 30 bore pistol bearing No.A2214 with fixed

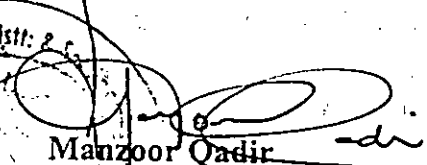


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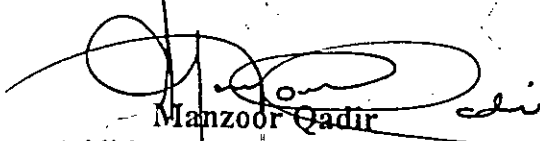
charge containing 4 live rounds, one 30 bore pistol without number with fixed charger containing three live rounds, one 30 bore pistol bearing No.A4551 with fixed charge containing 4 live rounds be kept intact till the arrest and trial of the P.O Suliman. While klashnikove bearing No.56-1-19064686 along with license, 9 MM pistol bearing No.005988 along with license and cash amount of Rs.3,00,000/- be returned to the complainant on his furnishing bail bonds worth of Rs.15,00,000/- with two sureties in the like amount to the satisfaction of SHO concerned with further direction that photocopies of the notes be made and placed on file for record but after period of appeal/ revision.

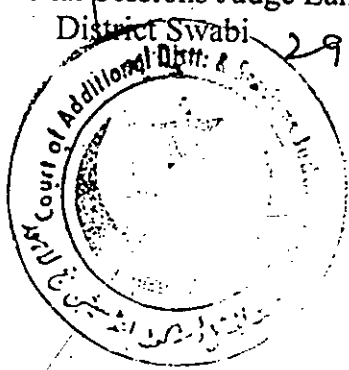
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29-05-2014


Manzoor Qadir
Additional Sessions Judge Lahor
Distt Swabi
29.05.014

CERTIFICATE

Certified that this judgment consists of twenty three (23) pages, each page has been read, corrected, wherever it was necessary and signed by me.


Manzoor Qadir
Additional Sessions Judge Lahor
District Swabi
29.05.04





(57)

Annexure "D"

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

34

PRESENT

MR. JUSTICE RIAZ AHMAD KHAN, Chief Justice
MR. JUSTICE DR. FIDA MUHAMMAD KHAN

CRIMINAL APPEAL NO. 06/P OF 2014 Linked with

1. Momin Khan son of Mukhtiar Ahmad
R/o Serdheri District Charsadda.
 2. Ajab Khan son of Mukhtiar Ahmad
R/o Serdheri District Charsadda.
 3. Muhammad Zaib son of Hamza Khan
R/o Serdheri District Charsadda.
 4. Shoukat Khan son of Akhoon Zada
R/o Dargai District Mardan
- Appellants

*Versus

1. Umar Wahid son of Fazl-e-Rahim resident of Sher Ghar District Mardan.
 2. The State
- Respondents

CRIMINAL REVISION NO.03/P OF 2014

Umar Wahid Petitioner

Versus

- | | | |
|---|-------|--|
| Momin Khan and others | | Respondents |
| Counsel for appellants | | Mr. Hussain Ali,
Advocate |
| Counsel for complainant/
Petitioner | | Sahibzada Asadullah,
Advocate |
| Counsel for State | | Arshad Ahmad Khan,
Assistant Advocate General |
| FIR, Date and Police Station | | 81, 1.2.2013
Lahor, Swabi |
| Date of judgment of
trial court | | 29.05.2014 |
| Date of Institution of
Appeal and Revision | | 12.06.2014, 02.08.2014
respectively |
| Date of hearing | | 22.04.2015 |
| Date of decision | | 28.04.2015 |
| Date of judgment | | 05.05.2015 |

Syed Ali
13/5/15

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JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- The

appellants/accused Momin Khan, Ajab Khan, Muhammad Zaib and Shaukat Khan have called in question the judgment dated 29.05.2014 passed by learned Additional Sessions Judge Swabi, at Lahor, by virtue of which they have been convicted and sentenced as mentioned herein

under:-

* Under Section 392-PPC

10 years R.I. each with fine of Rs.200,000/- each and in default thereof to further undergo six months S.I. each

* Under Sections 148/149-PPC

02 years R.I. each with fine of Rs.5000/-each in default of non payment of fine to further suffer one month S.I.each

* Under Section 411-PPC

02 years R.I. each and fine of Rs.8000/- and in default one month S.I.

* Under Section 13 of Arms Ordinance

03 years R.I. each with fine of Rs. 2000/-each and in default thereof to further undergo one month S.I. each.

The sentences awarded to all the appellants/accused on all counts have

been ordered to run concurrently. The benefit of section 382-B, Cr.P.C. has

also been granted to all the appellants/accused

13.5.2015
The sentences awarded to all the appellants/accused on all counts have been ordered to run concurrently. The benefit of section 382-B, Cr.P.C. has also been granted to all the appellants/accused

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2. Complainant Umar Wahid has also moved Criminal Revision No. 03/P of 2014 for enhancement of sentences awarded to all the appellants/accused vide the same judgment. Since the appeal and the revision arise out of one and same judgment, we are disposing both matters by this single Judgment.

3. Brief facts of the prosecution case as gathered from the murasala (Ex.PA/1) which makes basis of FIR (Ex.PA), are to the effect that on 01.02.2013 complainant Umar Wahid alongwith his servant Shahpur Khan was going to Islamabad via motorway and was carrying cash amount of Rs. 11.2 millions. When they reached near the village Jalsai, a jeep overtook them wherein five persons wearing police uniform were sitting. They started their search and looted the whole amount alongwith a licensed klashincove and a licensed 9MM pistol from the complainant and his companion. They told them that they would take them to Islamabad for further investigation. However, after some time the

complainant and his companion were forced to deboard from their vehicle.

Then the accused made good their escape in their jeep. The complainant

Notified to be True Copy
Muhammad R. Khan
Secretary
Court,
Grass Market, Rawalpindi

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Cr. Appeal No. 06/P of 2014 L/W.
Cr. Revision No. 03/P of 2014.

through his brother contacted the local police present nearby at the motorway. The police squad under the supervision of Gul Jamal, DSP chased the vehicle of the said accused and ultimately over powered the accused and arrested them alongwith the looted money and the weapons. Murasala (Ex.PA/1) was accordingly drafted and formal FIR was registered thereafter.

4. Investigation of the case was entrusted to Wafadar Khan, S.I. He visited the place of occurrence, prepared site plan (Ex.PB) on the pointation of complainant and eye witnesses. He recorded statements of witnesses under section 161 Cr.P.C, sent the weapons to the firearm expert vide application (Ex.PW.7/1) for opinion. He took into possession two number plates lying in the jeeb vide memo (Ex.P1), one ID card (Ex.P2) of police department in the name of accused Momin Khan with designation of Sub Inspector, one ID card (Ex.P3) of head constable of police in the name

certified to be of Ajab Khan, three photographs in police uniform (Ex.P4) and one CNIC (Ex.P5) lying in the jeep. All these items were taken into possession. He

took custody of the accused from the court vide application (Ex. PW.7/2).

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He interrogated the accused and during investigation accused led the police party to the spot. On the pointation of accused Momin Khan, he recovered an amount of Rs. 300,000/- (Ex.P6) which was concealed in the bushes while the remaining three accused namely Ajab Khan, Muhammad Zaib and Shaukat Khan pointed out the place wherefrom he recovered klashincove (Ex.P7) loaded with 70 live rounds and one 9MM pistol alongwith 37 live rounds. The recovered amount, klashincove and pistol were taken into possession vide recovery memo (Ex.PW.5/2). He recorded statements of accused under section 161 Cr.P.C., vide application (Ex.PW.7/3), produced them before the court for recording their confessional statements which they, however, refused. They were sent to judicial lock up. After completing all legal formalities, the I.O. handed over the file to the SHO for submission of challan to court.

5. The learned trial court framed charge against all the

accused/appellants under sections 148/149, 171/149, 411/149 PPC as well

as under section 17(3) of the Offences Against Property (Enforcement of

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Hudood) Ordinance, 1979 and section 13 of Arms Ordinance. The accused did not plead guilty and claimed trial.

6. The prosecution produced 09 witnesses at the trial to prove its case. A gist of their evidence is as under:-

- * PW.1 is Umar Wahid, complainant. He reiterated the same facts as were recorded in the FIR;
- * PW.2 is Shahpur Khan. He corroborated the statement of complainant Umar.
- * PW.3 is Raza Khan, MHC. On receipt of Marasala (Ex.PA/1), he drafted formal FIR (Ex.PA);
- * PW.4 is Fazal Meraj, S.I. He deposed that on the day of occurrence he alongwith other police officials was on routine gasht and saw a white motor car parked near Yar Hussain "U Turn" while a Jeep was running in high speed. At some distance the said jeep stopped and its occupants started running towards Jalsai Mera. In the meanwhile he passed message on mobile that such an occurrence had taken place and that they had chased the culprits during which cross firing took place. In the meanwhile another police party in the supervision of DSP and SHO reached from the Jalasi side.

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the said jeep was running in high speed and he handed over

- * P.W.5 is Abdul Azeem, ASI. He is a marginal witness of recovery memos of the items recovered from the accused;
- * PW.6 is Qamar Zaman Khan, ASI. Like PW.5, Abdul Azeem he is also a marginal witness of the recovered items;
- * PW.7 is Wafadar Khan, SI. He conducted investigation in the case. The detail of his role in the investigation has been mentioned hereinabove;
- * PW.8 is Dr. Asghar Ali Shah, DHIQ Hospital, Swabi. He medically examined accused Momin Khan on 02.02.2013 and found the following:-

“Injured conscious with history of firearm.

On examination

A grazing firearm wound size about 3 cm in length skin deep on the forehead with right side lateral aspect of scalp.

Nature of Injuries Shajjah Khafifa.

The kind of weapon used firearm.

He issued medico legal report (Ex.PW.8/1).

On the same day he also medically examined injured accused

Shaukat Khan and found the following:-

Injured conscious and well oriented in time and space and person.

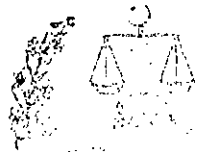
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On examination

Firearm entrance wound on the right foot lateral aspect size about 1/2 x 1/2 cm in length.

Referred to B.M.C. for X-Ray and surgical OPD.

Nature of injuries Jurh Ghyre Jaifah mutalahima.

Kind of weapon used firearm.

He issued medico legal report (Ex.PW.8/3)"; and

* PW.9 is Muhammad Fayyaz Khan, Inspector/SHO Police Station Lahor, Swabi. He, deposed that on the day of occurrence he received information from Fazal Miraj S.I. that some unknown persons had snatched money from owner of the motor car on motorway. On receipt of said information he alongwith police party chased the accused and all the accused/appellants were overpowered and arrested. He recovered kalakove 222 bore from accused Momin Khan. He recovered pistol and live bullets and cash amount Rs. 20,00,000/-from accused Ajab Khan and a 30 bore pistol without number with fixed charger having three rounds from the possession of accused Muhammad Zeb. Similarly from accused Shaukat Khan a 30 bore pistol No.A4551 with 4 rounds and an amount of Rs.7050,000/- were recovered. He drafted murasala (Ex.PA/1) and then formal FIR (Ex.PA) was registered.

After closing the prosecution evidence the learned trial court

Muhammad Raza

Muhammad Raza



wherein they all denied the prosecution allegation and claimed innocence.

They stated that the PWs had made false statements and had falsely involved them in this case. They did not opt to make statements on oath under section 340(2) Cr.P.C. nor produced any evidence in their defence.

The learned trial court on conclusion of the proceeding and hearing counsel of the parties found them guilty and, therefore, convicted and sentenced them as mentioned hereinabove. Hence the present appeal.

8. We have heard learned counsel for the parties and perused the record with their assistance.

9. Learned counsel for the appellants submitted that the case of prosecution is highly doubtful in respect of place of report, place of recovery of jeep, recovery of the huge alleged amount, presence of complainant on motorway and presence of witnesses on the spot. He also submitted that neither 9MM pistol nor klishincove were recovered nor duly recorded at the time of arrest of accused. He further submitted that there is

neither confession of any appellant/accused nor any identification parade

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medical report have not been explained nor its duration has been mentioned. The learned counsel also made submissions about the non recovery of empties from the place of occurrence. The learned counsel placed reliance on:-

- * PLD 1960 (VV.P.) Karachi 753
Amir Ali Versus The state
- * 1997 P.Cr.L.J. 225
Islam Gul Versus The State
- * 1997 P.Cr.L.J. 1900
The State Versus Pirak
- * 2012 MLD 1601
Sher Zaman and 4 others Vs. The State & another

10. Learned counsel for the complainant submitted that the appellants/accused were arrested from the spot and recoveries were effected. He submitted that despite some lapses by the police, the case of prosecution against the appellants/accused is established to the hilt. Explaining the contradictions found in the statements/depositions of PWs he contended that the accused/appellants were arrested from different places spread over a long and wide area. Regarding the huge amount allegedly recovered, he submitted that it was handed over to the complainant, though not strictly in accordance with

submitted to the Court
Amir Raza
Deputy Magistrate
Federal District Court,
Special Magistrate Peshawar.

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He also made submissions regarding registration of the car in-question at Islamabad and recovery of an amount of Rs. 300,000/- etc. from the bushes on pointation of the appellants/accused. He further submitted that Momin Khan was a proclaimed offender, though previously a police official. Regarding the identification parade he submitted that it was not required as the appellants/accused were arrested on the spot. He concluded that there was no malafide on the part of the complainant party.

11. Learned Assistant Advocate General for the State also supported the impugned judgment.

12. We have thoroughly considered each and every point agitated by learned counsel for the parties and have minutely gone through the evidence brought on record in the light of their submissions.

13. It transpires, as alleged by the prosecution, that on 01.02.2013 complainant Umar Wahid was going to Islamabad alongwith his servant

Shahpur Khan (PW.2) via motorway. He was carrying cash amount of

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Rs. 1.2 millions also. When they reached in the limits of Village Jalsah a

jeep carrying five persons, wearing police uniform, overtook their car and

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after stopping them, started their search and resultantly snatched the whole amount alongwith a licensed klashincove and 9MM pistol from the complainant and his companion/servant Shahpur Khan. The said uniformed persons told them that they were to take them to Islamabad for further investigation. After some time, however, they forced the complainant and his companion to deboard from the vehicle and themselves fled away from the spot in the jeep. The complainant through his brother contacted the local police, present nearby at the motorway, who chased the vehicle of the accused. Afterwards the police squad under the supervision of Gul Jamal, DSP over powered appellants/accused and after their arrest recovered the said amount and weapons. A case was registered against the accused and their absconding co-accused Salman for the commission of the offence.

14. On minute perusal, the case of prosecution at the trial, however, suffers from material legal infirmities which has created dints in the whole case. To start with we may mention that no confession has been

made by any one of the appellant/accused. This murasala per report of the

Incharge Officer Police Station Lahor was recorded on the statement of

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complainant Umar Wahid wherein he has alleged that he was carrying Rs. 11.2 millions cash and klashincove while his companion/servant Shahpur Khan was having 9MM pistol. On the way they were over taken by a jeep carrying five persons who stopped them and recovered the whole amount and licensed klashincove and licensed pistol from both of them and also hand cuffed them. After sometime, however, they opened their hand cuffs and resultantly they made their good escape. The complainant contacted his brother Sajjad who informed the police mobile on motorway telling them that the accused had run away to Peshawar side in their jeep after looting the complainant on gun point. Police chased those persons who after deboarding from their jeep fled away but were, however, subsequently over powered. The complainant identified four of the accused who had snatched klashincove, pistol and the whole amount from him.

15. This murasala was drafted on 01.02.2013 at 16.00 hours. On its basis the FIR was lodged at Police Station Lahor on the same date at 16.50 hours.

Saeed Raza

ATL

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16. The case of prosecution is mainly based on the ocular account as well as on the recoveries. We may mention that there is no confessional statement by any one of the accused, though PW.7 produced them for this purpose before the court vide his application (Ex.PW.7/3). All the accused, however, refused to make confession and were sent to judicial lock up. We may also mention that the case was lodged, initially, according to murasala against "unknown accused" who had snatched some amount, klashincove and pistol from the complainant and his companion. It was after their arrest that their names were mentioned by PW.9 Muhammad Fayyaz Khan, Inspector/SHO. The complainant, however, had not nominated any one of them. It is significant that the complainant who had initially informed his brother Sajjad on telephone had not told him about the names of the accused persons and his brother had responded that the accused must be dacoits. This reveals that the complainant was unaware of their identification. It was after their arrest, he stated that they were the same accused who had committed the offence. Regarding this, learned counsel for the complainant submitted that since they had been arrested on the spot

Muhammad Khatib
Counsel for the complainant

ATL

Cr. Appeal No. 06/P of 2014 L/W.
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there was no need for any formal identification parade. In the interest of justice, however, there should have been identification parade to attribute specific role to each one of them as was subsequently stated by the PWs. In this connection, the Judgment (Ex.DA/1) placed on file by the defence, however, reveals that the complainant had faced trial in case FIR. No.32 dated 28.04.2011 under section 9 of Control of Narcotics Substances Act, 1997 at Police Station Anti Narcotics Force Peshawar and had been convicted and sentenced thereunder. It was agitated by learned defence counsel that one of the close relatives of the accused who had been sent to Saudi Arabia by the complainant party on the pretext of providing him a job, had been arrested and sentenced to death over there and in order to settle the matter between the parties, the complainant had paid them ninety lacs rupees and, in the instant case, the complainant had fabricated a false story of robbery against the accused. In this back ground, he submitted, the parties were well known to each other and the allegation by the complainant does not appear truthful.

Amir Raza

ATC

[Signature]

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17. The subsequent recoveries of amount, klashincove and 9MM pistol also do not support the prosecution case. It is pertinent to note that the klashincove and pistol with live bullets allegedly recovered vide memo (Ex.PW.5/2) are shown to have been recovered on 03.02.2013 instead of 01.02.2013, when the accused had been overpowered and arrested. This contradiction belies the prosecution version. It becomes all the more important in the context of Question No.4, put to the accused/appellant Momin Khan, which mentions the "said date, time" and that was 01.02.2013 at 14.30 hours on motorway.

18. The presence of complainant on motorway, at that time and date, in his vehicle bearing registration No.YE-599 which was issued on 01.02.2013 vide receipt No.8664371, is also highly doubtful. According to PW.1 the car in which he was travelling on that day was not bearing Registration No. and instead had only a plate of "Applied for". Surprisingly on that date and time the car was at Islamabad before the Excise and

Subscribed by the
Muhammad Akbar
Taxation Department (Islamabad Capital Territory), for inspection,
Road No. 1, Sector 1, Islamabad.

checking and issuance of Registration No. He admitted that the registration

STC

Cr. Appeal No. 06/P of 2014 L/W.
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No. is 599 and the same is mentioned in (Ex.PW.7/XI). PW.7 has placed on record the registration slip of the said motor car of the complainant but he did not remember as to when and where it was presented to him by the complainant as he had not noted the date in his case-diary, though he admitted its date and time to be correct as shown on (Ex.PW.7/XI). PW.7 also expressed his ignorance about Rs.90,50,000/- which were recovered from the possession of the accused at the time of their arrest but conceded that there was nothing to show as to where that amount had gone. He has also conceded that recovery of the amount of Rs.3,00,000/- as well as the arms weapons were effected on 03.02.2013 i.e. on the third day of the occurrence and that no person from the public was taken to that place to witness the said recoveries. Surprisingly, he also admitted that the recovered items were not made into sealed parcels and were still in open condition. This type of conduct by an experienced official cannot be legally

justified in a case which entails capital sentence.

19. The hand cuffs used by the accused/appellants have also not been recovered. It is very strange that PW.2 Shahpur Khan who was

Sanjay Kumar
Sanjay Kumar
Sanjay Kumar

ATC

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accompanying the complainant at the time of occurrence when allegedly they had been hand cuffed, does not make any reference to this very pertinent factor anywhere in his deposition. He also expressed lack of knowledge if that huge looted amount was ever returned to the complainant. His presence on the spot alongwith the complainant seems highly doubtful.

20. Moreover, it is also pertinent to refer to the site plan (Ex.PB), especially the places marked 'B' and 'D' where motor car of the complainant and Jeep of the accused have been shown in opposite directions---towards Islamabad and Peshawar respectively. We may also mention that though at some places which may be used for taking "U turn" on the motorway but these are usually blocked, with removable but heavy blocks, for use only in cases of emergencies. The story of prosecution in this respect, as alleged, is also questionable.

21. In addition to this, the medical examination of accused Momin

Khan and Shaukat Khan is also worth consideration. PW.8 Dr. Asghar Ali

Shah medically examined Momin Khan and Shaukat Khan.

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appellants/accused on 02.02.2013 and found a grazing firearm wound on the forehead of Momin Khan and stated that the weapon used was firearm.

He also examined the appellant/accused Shaukat Khan on the same day and

found him injured having firearm entrance wound on the right foot. He has,

however, not given duration of injuries in both the cases. How and who

caused these injuries, has not been clarified by the prosecution and no

empties have been recovered from the place of occurrence, as stated by

PW.7. It is also shrouded in mystery to prove that when the motorway was

fenced on both the sides, how could the appellants/accused make good their

escape when according to PW.7 there is no mention in both the site plans

that the fence near the spot was broken whereby pedestrians and vehicles

could easily pass through. According to the prosecution cross firing had

taken place. Since neither any empties were recovered, nor the Forensic

Science Laboratory Report (Ex.PK/1) makes any reference to the use of the

recovered weapons in the cross firing, nothing could be inferred positively

about veracity of the prosecution version.

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22. It is also worth mentioning that two of the appellants/accused were police officials namely Momin Khan and Ajab Khan. Learned counsel for the complainant contended that Momin Khan was declared proclaimed offender. We have examined this point in the light of deposition made by PW.9 Muhammad Fayyaz Khan, SHO who in cross-examination stated that he had got knowledge about accused Momin Khan that he was a proclaimed offender in case FIR No.724 lodged on 08.09.2010 at Police Station Pabbi. The prosecution has, however, not placed on record any document which could show that till the day of occurrence, i.e. 1.2.2013, he had perpetually remained a proclaimed offender. Moreover, a question arises that if he was actually proclaimed offender why he did not arrest him then and there in the aforementioned case also.

23. It is also pertinent to note that, as alleged, the complainant

Umar Wahid (PW.1) and Shahpur Khan (PW.2) had proceeded to

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Charsadda wherefrom they had entered the motorway for Islamabad but the

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complainant has placed no entry pass on record, nor any other proof worth

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the name, to prove that he had actually entered the motorway through that entrance. Likewise entry of the accused to the motorway in their jeep, or even their exit therefrom, has also remained un-established on record.

24. Moreover, it is highly pertinent to observe that, admittedly, the recovered amount was not deposited in safe custody anywhere. It has been stated by the PWs that the huge looted amount was returned to the complainant but strangely neither any original receipt was exhibited nor any amount was produced later in the court. The amount was so huge that it actually assumes pivotal role and forms basis of the whole case. Whether it was recovered, or thereafter ever returned to the complainant, is a big question which is not at all established on record beyond reasonable doubt.

The receipt to this effect drafted in a hap hazard manner is marked as (Ex.PC dated 10.02.2014). It, interalia, reveals that the amount was received by the complainant, in presence of two witnesses. However, not to

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speak of their signatures, even names of such witnesses have not been mentioned. Even the date when the said amount was returned to the

complainant has not been written over there and, strangely enough, it has

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not been signed even by the Investigating Officer. One really wonders why the experienced Investigating Officer ignored these pertinent aspects and why did he return the amount, which was the case property, in such an illegal manner. The amount was huge no doubt but its safe custody was much more important for establishing the case of prosecution to show that the story of robbery was not concocted. Once this type of handing/taking over is admitted by the courts of law, every now and then cases will crop up in abundance and persons so nominated would be sent to the gallows. Besides all this, it is strikingly shocking to note that PW.9 Muhammad Fayyaz Khan, Inspector/SHO himself produced the copy of receipt regarding the return of recovered/snatched amount of Rs.90,50,000/-, which is (Ex.PC), vide which the said amount was allegedly returned to and received by complainant Umar Wahid. PW.9 himself produced the original receipt and added that the amount was available on that day in the court in the custody of the complainant. This shatters the confidence that could be reposed in deposition made by PW.9. The receipt had not been earlier made part of the record and was thus inadmissible in evidence and

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could not be accepted as such. The said amount, if it had been actually recovered from the accused, as alleged, was the most important piece of evidence and being a case property, it had to be kept in the custody of the State and duly exhibited in the court. The above receipt thus obviously appears fake and fictitious.

25. In view of the above it cannot be said with judicial certainty that the huge amount in question was ever looted by the appellants/accused or that the complainant had actually entered the motorway in the said car which was being registered at the same time and date in Islamabad.

Needless to say, that the burden of proving its case is always the duty of prosecution and it has to stand on its own legs but if there is any doubt about material aspects of the case, the benefit should go to the accused. We may add that for giving benefit of doubt to an accused it is not necessary

that there should be many circumstances creating doubts. If there is a single circumstance which creates reasonable doubt in a prudent mind about the guilt of an accused then the accused will be entitled to get the benefit

Justice Raza
Federal Court
Branch: Islamabad

ATC
[Signature]

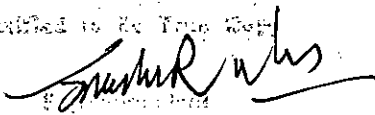
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thereof and that too not as a matter of grace and concession but as a matter of right.


26. The upshot of the above discussion is that there being no satisfactory basis for upholding the conviction and sentences of the appellants/accused, this appeal is allowed. Conviction and sentences of the appellants/accused namely Momin Khan, Ajab Khan, Muhammad Zaib and Shaukat Khan are set aside and they are acquitted of the charges. They are confined in jail and, therefore, they shall be released forthwith if not required in any other case.

27. As a sequel to the above, Criminal Revision No.3/P of 2014 filed by the complainant for enhancement of sentences is dismissed.

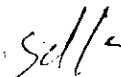
28. These are the reasons of our Short Order dated 28.04.2015.

Sanitized to be True Copy

Fida Muhammad Khan,
Justice of the Supreme Court of Pakistan


JUSTICE DR. FIDA MUHAMMAD KHAN


JUSTICE RIAZ AHMAD KHAN
Chief Justice

Dated 5th May, 2015
Umar Draz Sial/*

Approved for reporting 



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ANNEXURE
"E"

ORDER

You ASI Momin Khan of CID Police now on deputation to Elite Force Khyber Pakhtunkhwa allegedly involved in case FIR No. 794 dated 08.09.2010 U/S 302/324/148/149/7-ATA Police Station Pabbi district Nowshera.

Proper departmental enquiry was conducted against you by Inspector Javed Iqbal of Elite Force Khyber Pakhtunkhwa. You didn't appear before the enquiry officer nor join the investigation process at PS Pabbi District Nowshera, resultantly you became absconder.

To ensure your appearance, a notice was issued to you in daily newspaper "Aaj" dated 21.10.2012, you were directed to join the enquiry process within 07 days after the publication of notice but you neither joined the enquiry proceedings conducted against you nor joined the Investigation process.

I, Muhammad Iqbal, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar, therefore, as competent authority, therefore, impose major penalty of dismissal upon you from the date of absence. The period you remained absent from duty be treated as leave without pay.

(MUHAMMAD IQBAL)

Deputy Commandant,

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 10305-12 /EF, dated Peshawar the

19 / 11 / 2012.

Copy to;

1. Deputy Superintendent of Police Headquarters Elite Force Peshawar.
2. Office Superintendent Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
5. OASI Elite Force Khyber Pakhtunkhwa Peshawar.
6. SRC/FMC Elite Force Khyber Pakhtunkhwa Peshawar.
7. ASI Momin Khan of Elite Force.

*Pls
Promote
sel
UP*

*ASO
Q*

دروازہ جلی نوری صفا۔

17

صفا جلی

Annexure "F"

1138
20-5-15

نیز ایک دروازہ صفا جلی نوری صفا کے ساتھ ہے جس کا نام ASI ہے
خود میں ڈروائی ہے لیکن صفا جلی نوری صفا کے ساتھ ہے اور اسے
12/44-5 صفا جلی نوری صفا کے ساتھ ہے اور اسے
11/12 صفا جلی نوری صفا کے ساتھ ہے اور اسے
صفا جلی نوری صفا کے ساتھ ہے اور اسے
صفا جلی نوری صفا کے ساتھ ہے اور اسے

سربراہ ہے۔ لہذا اس کے ساتھ ہے اور اسے
صفا جلی نوری صفا کے ساتھ ہے اور اسے
صفا جلی نوری صفا کے ساتھ ہے اور اسے

السعدان

20/5/15

ASi - ASI
Call # 8341123 0310

SAE

20-5-15

ANIS

20-5-15

Dy. No 3839
dt 20/5/15

Commandant
Elite Force KPK
Peshawar

A/C



Annexure "G"

Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



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No. 12568 /EF

Dated 12/10/2015

To : Mr. Momcen Khan s/o Mukhtiar Khan
R/O Village Dag Behsud, Pabbi
Tehsil & District, Nowshera. Cell # 0310-8341123.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE

Your appeal for re-instatement in service has been examined by the competent authority and filed.

(ASIF IQBAL MOHMAND) P.S.P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

1/14
06-10-15

POWER OF ATTORNEY

In the Court of _____

Momin Khan

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

P. P O W & Co

} Defendant
} Respondent
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____

Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Sy'd Anwar Adv my true and lawful attorney, for me in my same and on my behalf to appear at Red to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Red the _____ day to _____ the year _____

Executant/Executants _____
Accepted subject to the terms regarding fee _____

Handwritten signature/initials

Handwritten initials

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 & 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PEASHAWAR.

Service Appeal No. 1299/2015

Momin Khan..... (Appellant)

VERSUS

Provincial Police Officer and others (Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth!

Preliminary Objections:-

- a) The Appellant has no cause of action.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for mis-joining and non-joining necessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by law & limitation as the impugned order was issued in the year 2012 and the service appeal has been filed in the year 2015.
- f) The appellant has not come to the Honorable Tribunal with clean hands

FACTS:-

1. Correct to the extent of recruitment of appellant in Police department and his transfer to Elite Force. Appellant was charged in murder case and he avoided arrest in criminal case and joining duties for long period. Departmental proceedings were initiated against him but he avoided association of departmental proceedings. Eventually proclamation was published in Urdu daily "Aaj" 21.10.2012 but he did not turn up, therefore, he was dismissed from service vide impugned order dated 19.11.2012. Copy of the proclamation is enclosed as Annexure-A.
2. Correct to the extent that appellant was received from CID on transfer to Elite Force.
3. Correct to the extent that appellant was charged in the Criminal case and was acquitted on the basis of compromise. However he removed absent for long time which has been proved.
4. Correct to the extent that appellant has admitted his acquittal from criminal charge on the basis of compromise.
5. Correct to the extent that appellant has admitted registration and conviction in another criminal case of moral turpitude however price to this he was dismissed.
6. Correct to the extent of acquittal of appellant in another case by Honorable Federal "Shariat" Court, but the acquittal order was based

on benefits of doubt for that acquitted has criminal charges having no effect on dept proceeding.

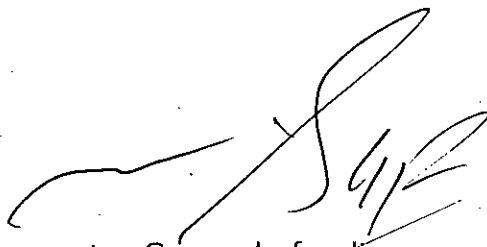
7. Incorrect, appellant was well in picture of the departmental proceedings initiated and registration of criminal case against him but he willfully avoided association of departmental proceedings and facing the criminal charge and remained absconder for long period. Copy of charge sheet as Allegation are as A,B and publication is "C".
8. Incorrect, the departmental appeal of appellant was badly time barred therefore, the same was filed.
9. Incorrect, the appeal of appellant on the basis of given grounds is not sustainable as the appeal of appellant is badly time barred in view of his willful absence and he also bears dubious character as he has admitted his conviction in offence of moral turpitude.

GROUND:-


- A. Incorrect, appellant was treated in accordance with law. Proper departmental proceedings were initiated against him and he avoided association of departmental proceedings. Proclamation was published in Urdu daily but he did not join departmental proceedings.
- B. Incorrect, all the legal, procedural, and codal formalities were adopted before passing the impugned order of dismissal from service order of appellant. Appellant himself deliberately avoided joining of enquiry proceedings.
- C. Incorrect, appellant was received on transferred to Elite Force therefore the impugned order has been passed by competent authority.
- D. Incorrect, All legal formality has been fulfilled.
- E. Incorrect, appellant was avoiding service of charge sheet and did not turn up before the competent authority in response to proclamation published in Urdu daily.
- F. Incorrect, criminal charge and departmental proceedings are distinct in nature. The decision of one forum is not binding on the other forum. Furthermore, appellant remained absent for long period and he was acquitted of the murder charge on the basis of compromise which support the criminal charge. He has admitted his involvement and conviction in offence of moral turpitude and subsequent acquittal on the basis of benefits of doubt.
- G. Incorrect, appellant was dismissed from service and he remained absent from duty and absence period was required to be considered for completion of the record.
- H. Incorrect the departmental appeal of appellant was badly time barred therefore, the same was filed.
- I. Incorrect, appellant remained absent from duty for long period and avoided association of departmental proceedings and arrest in criminal charge therefore, there was no other option but to dismiss the appellant from service.

- J. Incorrect, appellant has himself admitted his involvement in criminal charges including offences of moral turpitude.
- K. Incorrect, appellant is jobless due to his own conduct and misdeeds.
- L. The respondents may also be allowed to raise other case during hearing of the case.

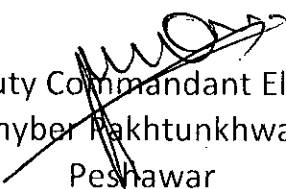
It is therefore, requested that the appeal of appellant may be Dismissed with costs



Inspector General of police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No 1)



Addl Inspector General of Police,
Commandant Elite Force,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No 2,3)



Deputy Commandant Elite Force,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No 4)

CHARGE SHEET

I, Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, hereby charge you ASI Momin Khan of district Nowshera now on deputation to Elite Force Khyber Pakhtunkhwa as follows;

You were allegedly involved in case FIR No. 794, dated 08.09.2010 U/S 302/324 148/149-7ATA Police Station Pabbi, District Nowshera. After the commission of offence you have failed to join the investigation and absconded. The local Police declared you as PO.

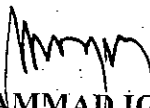
By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are, therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

4. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.


(MUHAMMAD IQBAL)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

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SUMMARY OF ALLEGATIONS

I, Muhammad Iqbal, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, am of the opinion that ASI Momin Khan of district Nowshera now on deputation to Elite Force Khyber Pakhtunkhwa has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

He was allegedly involved in case FIR No. 794, dated 08.09.2010 U/S 302/324 148/149-7ATA Police Station Pabbi, District Nowshera. After the commission of offence he has failed to join the investigation and absconded. The local Police declared him as PO.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Inspector Javed Iqbal Khan of Elite Headquarters is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MUHAMMAD IQBAL)

Deputy Commandant,

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 7006-13 /EF, dated Peshawar the 01/10/2011.

Copies to;

1. OS, Elite Force Khyber Pakhtunkhwa Peshawar.
2. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
3. Inspector Javed Iqbal Khan of Elite Headquarters.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. OASI, Elite Force Khyber Pakhtunkhwa Peshawar.
6. SRC / FMC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. ASI Momin Khan of Elite Force.


(MUHAMMAD IQBAL)

Deputy Commandant,

پشاور ایجنٹ آباد اسلام آباد اور کراچی سے بیک وقت شائع ہونے والا کثیر الاشاعت قومی روزنامہ

روشن شعری خدمات آج کا سب سے بہترین

روزنامہ

پشاور

پاکستان

عبدالواحد ریوی

جلد 23 شمارہ 12

شمارہ 283

10 ستمبر 2012ء

42012ء

1433ھ



آخری نوٹس

آپ کا ٹیلی فون / ایس آئی مختلف اضلاع خالص تینیاں ایلٹ فورس خیبر پختونخوا سرکاری ڈیوٹی سے بغیر کسی اجازت ذیل تاریخوں سے غیر حاضر طے آ رہے ہیں۔ آپ کی خلاف نمکدان کارروائی جاری ہے۔ اس لئے آپ کو بذریعہ اشتہار ہذا مطلع کیا جاتا ہے کہ آپ اس اشتہار کے منظر ہونے کے 07 دن کے اندر اندر مجاز آفس کے سامنے پیش ہوں بصورت دیگر آپ کے خلاف یکطرفہ نمکدان کارروائی کی جائیگی۔

1- ASI موہن خان حال نوشہرہ مورخہ 13/9/2010 سے غیر حاضر

2- کانسٹیبل فیاض الرحمن نمبر 3437 حال پشاور مورخہ 15/8/2012 سے غیر حاضر

محمد اقبال

دینی کمانڈنٹ ایلٹ فورس خیبر پختونخواہ پشاور

Also available on www.khyberpakhtunkhwa.gov.pk INF 113217

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**Office of the Commandant Elite Force
Khyber Pakhtunkhwa Peshawar**



No. 9213 /EF

Dated: 17/10/2012.

To : The Director Information,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: **ADVERTISEMENT**

Memo:

Enclosed please find herewith 07 copies duly signed for advertisement in newspaper and bill for payment may please sent to the undersigned.

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]
DEPUTY COMMANDANT
Elite Force Khyber Pakhtunkhwa Peshawar.

[Handwritten initials]

آخری نوٹس

آپ کنسٹیبل / اے ایس آئی مختلف اضلاع حال تعینات ایلٹ فورس خیبر پختونخوا سرکاری ڈیوٹی سے بغیر کسی اجازت ذیل تاریخوں سے غیر حاضر چلے آ رہے ہیں۔ آپ کے خلاف محکمانہ کارروائی جاری ہے۔ اس لئے آپ کو بذریعہ اشتہار ہذا مطلع کیا جاتا ہے کہ آپ اس اشتہار کے مشتہر ہونے کے 07 دن کے اندر اندر مجاز آفسر کے سامنے پیش ہوں بصورت دیگر آپ کے خلاف یکطرفہ محکمانہ کارروائی کی جائیگی۔

- | | | |
|---|-----|------------------------------|
| ASI موہین خان حال نوشہرہ | (1) | مورخہ 13.09.2010 سے غیر حاضر |
| کنسٹیبل ضیاء الرحمن نمبر 3437 حال پشاور | (2) | مورخہ 15.08.2012 سے غیر حاضر |

(محمد اقبال)

ڈپٹی کمانڈنٹ ایلٹ فورس خیبر پختونخواہ پشاور

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 1299/2015

Momin Khan Ex-ASI Khyber Pakhtunkhuwa Elite Force.
(Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa and others.
(Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully submitted:

The appellant submit his rejoinder as under:

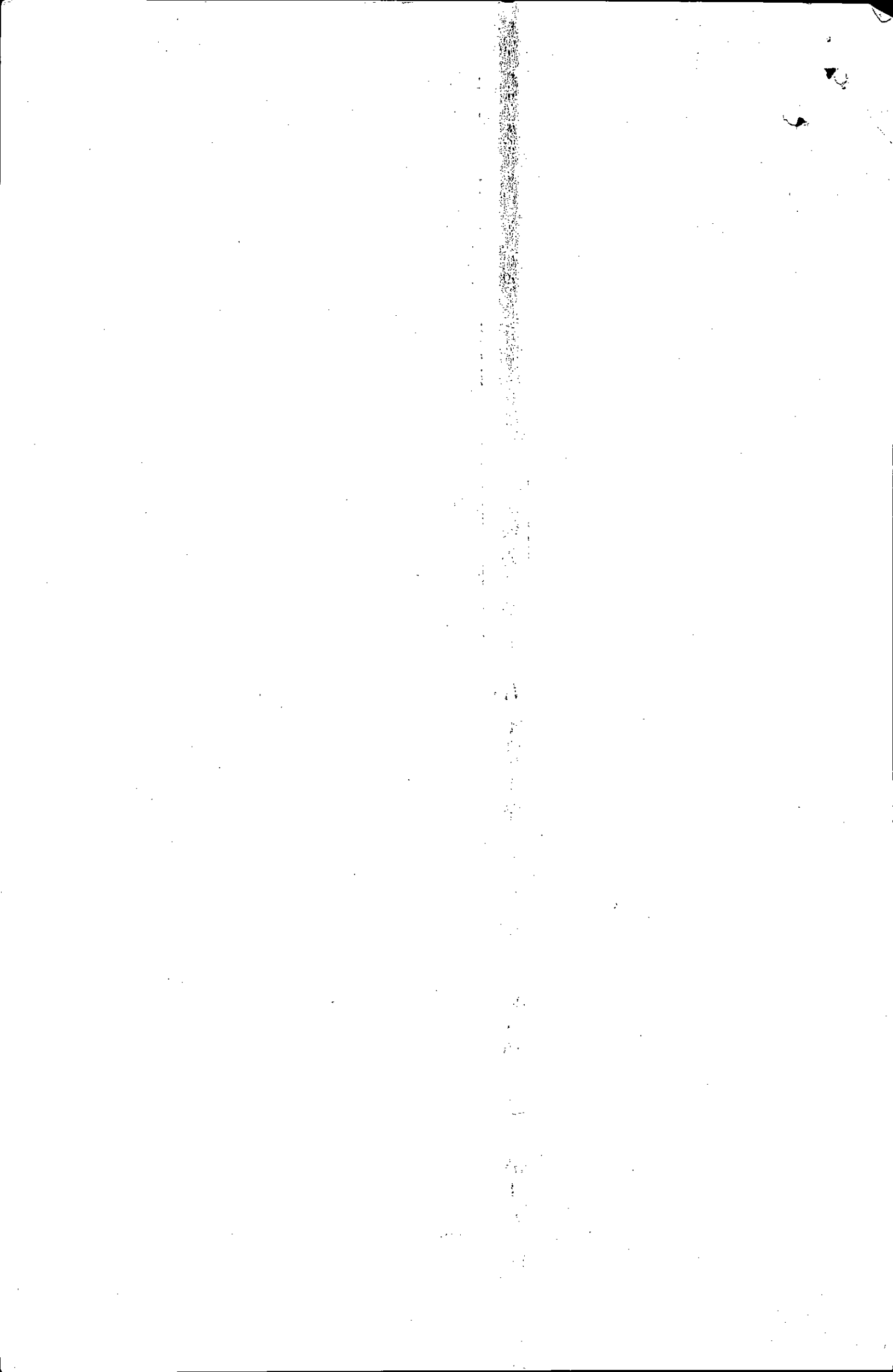
Preliminary Objections:

- a. Contents incorrect and misleading. The appellant has illegally been awarded the major penalty of Dismissal from service hence he has got the necessary cause of action to file instant appeal.
- b. Content incorrect and misleading. The appeal is filed well in accordance with the prescribed rule and procedure, hence maintainable in his present form.
- c. Contract misconceived and incorrect. All the parties necessary for the safe adjudication of this appeal has been arrayed in the appeal.
- d. Contents incorrect and misleading, no rule of estoppel is applicable in the instant case.

Contents incorrect and misleading, the appellant has approached this Honourable Tribunal with clean hands.

Facts of the Case:

1. Contents of Para 2 of the appeal are correct. The reply submitted to the Para is incorrect and false.



2. Contents need no reply, however contents of Para-2 of the appeal are true and correct.
3. Contents to the extent of false implication of the appellant in a criminal case and subsequent acquittal of the appellant being admitted by the respondents hence to that extent need no rejoinder, rest of the reply to the Para is incorrect hence denied. The alleged absent period has been treated as leave without pay thus regularized and could not have been made ground for dismissal of the appellant from service. Moreover contents of Para-3 of the appeal are true and correct.
4. Contents need no reply, however contents of Para-4 of the appeal are true and correct.
5. Contents of Para-5 of the appeal are correct, the reply submitted to the Para is incorrect and misleading, the conviction order was duly challenged by the appellant before the Honorable Federal Service Shariat Court and accordingly the appellant was acquitted vide judgment and order dated 05.05.2015.
6. Contents of Para 6 of the appeal are correct. The reply submitted to the Para is incorrect and false.
7. Contents need no rejoinder, however contents of Para-7 of the appeal are true and correct. Moreover the Superior Courts have in an number of reported judgments held that all acquittals are honorable.
8. Contents of Para 8 of the appeal are correct. The reply submitted to the Para is incorrect and false.
9. Contents of Para 9 of the appeal are correct. The reply submitted to the Para is incorrect and false. The appellant filed his departmental appeal well within 30 days of the acquittal from criminal case hence the appeal was well in time. Moreover no reason has been stated in the rejection order for rejecting the departmental appeal of the appellant, hence the impugned order is not a speaking order within the meaning of law.
10. Contents of Para 6 of the appeal are correct. The reply submitted to the Para is incorrect and false.
11. Contents of Para 5 of the appeal are correct. Reply submitted to the Para is incorrect and misleading.

12. Contents of Para 6 of the appeal are correct. The reply submitted to the Para is incorrect and false.

13. Contents of Para 7 of the appeal are correct. The reply submitted to the Para is incorrect and false. The appellant has wrongly been awarded the major penalty of compulsory retirement from service. The charges leveled against the appellant were never proved against him.

14. Contents of Para 8 of the appeal are correct. The reply submitted to the Para is incorrect and false.

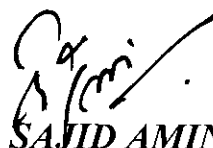
Grounds of Appeal:

The Grounds of appeal taken in the memo of appeal are legal and will be substantiated at the hearing of this appeal. Besides the appellant has not been treated in accordance with law, no proper procedure has been followed before awarding the major penalty to the appellant. The penalty imposed is thus in violation of the law & rules. Moreover the charges were never proved against the appellant, he has gained acquittal from criminal charges, it is a well settled law that all acquittals are honorable. The alleged absence is also regularized by treating it as leave without pay, thus there remained no ground for imposition of penalty upon the appellant albeit he has been awarded the major penalty. The impugned order is not sustainable in the eye of law and is thus liable to be set aside.

It is, therefore, prayed that the appeal of the appellant may be accepted as prayed for.


Appellant

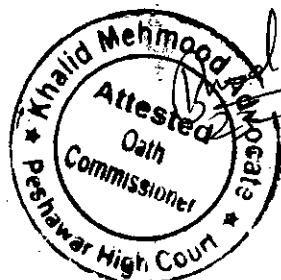
Through


SAJID AMIN
Advocate, Peshawar.

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent





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ایڈووکیٹ/دستخط:

بار کونسل ابار ایسوسی ایشن نمبر:

رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

منجانب:	دعویٰ: ایس اے 1299/2015
Momin Khan	علت نمبر:
بنام	مورثہ:
Police Deptt	جرم:
	تھانہ:

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام پشاور کیلئے محمد آصف علی کھٹک کی شہزاد خان ایسٹریٹ کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر حالت و فیصلہ برصن دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اہیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اہیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ
 میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

مقام _____

کے لئے منظور ہے۔
 Syed Noman Ali Bukhari
 Advocate
[Handwritten signature]

Accepted
[Handwritten signature]
 Syed Noman Ali Bukhari
 Advocate

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2203 /ST

Dated 10 / 10 / 2017

To


The Deputy Commandant Elite Force,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 1299/2015, MR. MOMIN KHAN.

I am directed to forward herewith a certified copy of Judgement dated 9.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 2ND APRIL, 2011.

24	Circle Head Draftsman (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Divisional Head Draftsman with three years service as such.
25	Divisional Head Draftsman (BPS-13)			By promotion, on the basis of seniority-cum-fitness, from amongst the Draftsman, who have passed the prescribed departmental examination for appointment as Head Draftsman with three years service as such.
26	Draftsman (BPS-10)	(a). Secondary School Certificate from a recognized Board; and (b). Two years Certificate course in Civil Draftsmanship from a recognized institute/Board of Technical Education.	18 to 30 years.	a. Fifty percent by initial recruitment; b. twenty five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers having Certificate of Civil Draftsman course of two years duration from a recognized Board of Technical Education with three years service as such; and c. twenty five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Tracers who have qualified the prescribed Departmental Examination of Draftsman and having three years service as such.
27	Tracer (BPS-5)	(a) Secondary School Certificate from recognized Board; and (b) Tracer Course of at least six months duration from a recognized Institute or Board of Technical Education.	18 to 30 years	Note: - If no suitable candidate is available for promotion against the quota at (b) then the vacancy shall be filled-in by the way as prescribed at (c) and Vice Versa. By Initial Recruitment.

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